

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 13 15 NOVEMBER 2012 PAGES 1432 TO 1557

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Page 1432

1 [PROCEEDINGS ON 15 NOVEMBER 2012]
 2 [09:38] CHAIRPERSON: The Commission resumes. Mr
 3 Mpofo, is the air conditioning not working today?
 4 MR MPOFU: Mr Chairman, yes, by the look
 5 of things it's still not working and the temperature –
 6 CHAIRPERSON: You decided to give
 7 yourself permission to –
 8 MR MPOFU: No, Chair. We assumed that
 9 until it's withdrawn it persists.
 10 CHAIRPERSON: That sounds like a good
 11 point. Yes, Mr Mpofo, the Bishop is not available today, I
 12 see you have a new witness on the witness stand.
 13 MR MPOFU: Yes, Chair.
 14 CHAIRPERSON: Or "stand" is the wrong
 15 word, the witness desk really. Who is the witness?
 16 MR MPOFU: Chairperson, we've sort of
 17 withdrawn from the arena for now. I think the evidence
 18 leaders –
 19 CHAIRPERSON: Is this the warrant
 20 officer?
 21 MR MPOFU: They're interposing the
 22 warrant officer.
 23 CHAIRPERSON: So I shouldn't have called
 24 on you.
 25 MR MPOFU: No.

Page 1433

1 CHAIRPERSON: Mr Madlanga, are you back
 2 doing your work as an evidence leader?
 3 MR MADLANGA SC: Yes, we have just
 4 resurfaced, Mr Chairman. The witness in the witness stand
 5 is Warrant Officer Patrick Thibelo Thamae. I'll ask him to
 6 please spell his names.
 7 CHAIRPERSON: We had the spelling of his
 8 name from his statement which we've been handed and it's
 9 P-A-T-R-I-C T-H-I-B-E-L-O T-H-A-M-A-E.
 10 MR MADLANGA SC: Thank you, thank you Mr
 11 Chairman.
 12 CHAIRPERSON: Warrant Officer, would you
 13 please stand? Are you prepared to swear or do you wish to
 14 affirm?
 15 W/O THAMAE: To swear, Mr Chairman.
 16 CHAIRPERSON: Will you swear that the
 17 evidence you'll give before this Commission will be the
 18 truth, the whole truth and nothing but the truth, please
 19 raise your right hand and say I swear, so help me God.
 20 PATRICK THIBELO THAMAE: I swear, so help
 21 me God.
 22 CHAIRPERSON: Thank you, you may be
 23 seated.
 24 W/O THAMAE: Thank you.
 25 EXAMINATION BY MR MADLANGA SC: Mr

Page 1434

1 Chairman, or rather Warrant Officer, you gave a statement
 2 and I believe you have a copy in front of you, is that so?
 3 W/O THAMAE: That's correct, Mr Chair.
 4 CHAIRPERSON: If Ms Pillay can tell us
 5 what the next letter is?
 6 MS PILLAY: Mr Chairperson, I think it's
 7 Exhibit N, N for Nellie.
 8 CHAIRPERSON: N, thank you.
 9 MR MADLANGA SC: Yes, may this statement
 10 be accepted as that exhibit, commissioners?
 11 CHAIRPERSON: If he swears, if he
 12 confirms its contents under oath it can be, not otherwise.
 13 MR MADLANGA SC: Thank you. Do you
 14 confirm that this is your statement and do you confirm that
 15 the contents are true?
 16 W/O THAMAE: That's correct, Mr Chair.
 17 MR MADLANGA SC: Amongst others, the
 18 statement refers to your experience as a member of the
 19 South African Police Service and it also refers to the
 20 training that you have received, not so?
 21 W/O THAMAE: That's correct, Mr Chair.
 22 MR MADLANGA SC: And paragraph 5 reads as
 23 follows, "On the 16th August 2012 I attended at and
 24 processed a crime scene involving Marikana CAS137/08/12 and
 25 at what has come to be known as scene 1 at Wonderkop,

Page 1435

1 Marikana." You've already confirmed the truthfulness of
 2 everything there, I'm just reading it into the record. And
 3 then in paragraph 6 you says, "General Naidoo indicated
 4 some points to me," and I assume that's at scene 1?
 5 W/O THAMAE: That's correct, Mr Chair.
 6 MR MADLANGA SC: "Using those points and
 7 my own observations, I took photos and measurements of the
 8 scene. Warrant Officer Anderson" – is that spelling
 9 correct, is it not H-E? Do you know?
 10 W/O THAMAE: Really I don't know.
 11 MR MADLANGA SC: Okay. "Warrant Officer
 12 Anderson made a video recording of the scene. I compiled a
 13 photo plan using an aerial photo of the scenes. I also
 14 collected exhibits from the scene." Mr Chairman,
 15 commissioners, I want to hand up a document, a columned
 16 document which indicates the names and body numbers of the
 17 people that were killed at scene 1. May that be marked
 18 Exhibit O? We have a similar document, commissioners, in
 19 respect of scene 1. The Chairman will remember that –
 20 CHAIRPERSON: A similar document in
 21 respect of scene 2.
 22 MR MADLANGA SC: Scene 2, I'm sorry –
 23 CHAIRPERSON: You're handing us up scene
 24 1.
 25 MR MADLANGA SC: Scene 1 at the moment,

Page 1436

1 yes –

2 CHAIRPERSON: And that is Exhibit O, you

3 say?

4 MR MADLANGA SC: Yes – yes. Mr Chairman,

5 you will remember that he did ask for such a document when

6 Captain Mohlaki was testifying. We'll just print it and

7 present it to the Commission. Also what I should indicate

8 to colleagues as well is that we have up there the video

9 recording or the footage of the video recording that was

10 taken by Warrant Officer Anderson, just in case some of our

11 colleagues may want that played or may want to use it in

12 cross-examination and so on. It's ready up there.

13 CHAIRPERSON: I don't want to be critical

14 but this exhibit you've handed us, Exhibit O, would be even

15 more useful if it gave us the letter numbers which are on

16 the documentary exhibit –

17 MR MADLANGA SC: May I ask to take the

18 commissioners to B17, B1-7. The commissioners will see

19 that that problem is taken care of. There, there is point

20 A which is the letter number and then it says, indicates

21 the place and position of body number and then 25. And it

22 goes all the way down.

23 CHAIRPERSON: What we'll have to do is

24 we'll have to transpose the information on B17 onto Exhibit

25 O, so that we can use Exhibit O easily but I'm sure we can

Page 1437

1 – we're capable of doing that ourselves, thank you.

2 MR MADLANGA SC: Yes, thank you very

3 much. The problem is taken care of but I agree it would've

4 been perhaps much, much more user friendly if it was in the

5 manner in which the Chairman suggests. Thank you. Warrant

6 Officer, can you please briefly explain what time you

7 arrived at Marikana or the Wonderkop/Marikana area and on

8 what date?

9 W/O THAMAE: It was on the 16th of August

10 2012. We arrived at scene, what is known as scene 1, at

11 round about four o'clock.

12 MR MADLANGA SC: And before you proceeded

13 to scene 1, where had you been immediately before?

14 W/O THAMAE: We had been waiting at the

15 sports ground, south of the Marikana sports ground,

16 approximately two kilometres from where the scene was.

17 MR MADLANGA SC: And for how long had you

18 been waiting there before you proceeded to scene 1,

19 approximately?

20 W/O THAMAE: Approximately five to six

21 hours.

22 MR MADLANGA SC: Can I now take you to

23 B15, 1-5? That is the slide showing on the big screen

24 there. Can you please take the Commission through that

25 slide and explain everything that is appearing there but

Page 1438

1 perhaps before you do so, B16 is a sketch plan, did you

2 prepare that?

3 W/O THAMAE: That's correct, Mr Chair.

4 MR MADLANGA SC: Now let me take you back

5 to B1-5, B15. Can you go through what is showing there or

6 perhaps – you have some colouring there or colour shading,

7 could you please indicate to the Commission what the blue

8 shading stands for?

9 W/O THAMAE: The blue shaded area on the

10 photo indicates the area where R5 rifle cartridge cases

11 were found.

12 MR MADLANGA SC: And is it so that your

13 key which explains what you depict in B15, is at B17, that

14 is B1-7?

15 W/O THAMAE: That's correct, Mr Chair.

16 MR MADLANGA SC: Now or further clarity

17 on the rifle cartridge cases, were they evenly concentrated

18 in that blue shaded area or would you say there were parts

19 where they were more concentrated than others?

20 W/O THAMAE: They were even, evenly

21 concentrated within that shaded area.

22 MR MADLANGA SC: And there is a yellow,

23 we've seen the blue – what does the yellow indicate or

24 depict?

25 W/O THAMAE: The yellow indicates the

Page 1439

1 concentration of pistol cartridge cases within the blue

2 shaded area as well as the red shaded area. The

3 concentration was mixed with – on the blue shaded area it

4 was mixed with R5 – it was mixed with rifle cartridge cases

5 and then in the concentration of, in the red shaded area it

6 was in between shotgun cartridge cases.

7 MR MADLANGA SC: So the red depicts

8 shotgun cartridge cases?

9 W/O THAMAE: That's correct, Mr Chair,

10 the red indicates –

11 MR MADLANGA SC: Now going to the yellow

12 - I'll refer to it as the bigger yellow which is within the

13 blue – are you able to say whether there was more

14 concentration of the cartridge cases there in some parts or

15 as it evenly spread even there?

16 W/O THAMAE: At the area where letter D

17 is, it's where more pistol cartridge cases were

18 concentrated.

19 MR MADLANGA SC: And let's go to the red,

20 are you able to tell whether the shotgun cartridge cases

21 were more concentrated in certain parts or not?

22 W/O THAMAE: If you look at where the

23 words "scene 1" is written, from there downwards is where

24 more concentration was within the red shaded area.

25 MR MADLANGA SC: Now I will be moving to

Page 1440

1 ask you for your recollection of the numbers of the
 2 cartridge cases but before I do that, I just want to take
 3 you to other matters. Did you find any bullets at all –
 4 and by bullets I mean the whole object with the cartridge
 5 case and projectile still in position. Did you find any
 6 bullets anywhere? If so, where?
 7 W/O THAMAE: Yes, Mr Chair. I found one
 8 within the blue shaded area. It was a rifle cartridge
 9 lying within the cartridge cases.
 10 MR MADLANGA SC: Did you find any other?
 11 W/O THAMAE: At the entrance of the
 12 kraals I found a bullet. Within the blue shaded area I
 13 found a bullet as well.
 14 MR MADLANGA SC: So a total of how many
 15 bullets, you say?
 16 W/O THAMAE: Two bullets and the area
 17 where letter E was, there was a pile of – what I can say
 18 traditional weapons – on one of them I found a fragment.
 19 MR MADLANGA SC: Were those weapons
 20 arranged orderly or were they just piled together?
 21 W/O THAMAE: They were just piled
 22 together.
 23 MR MADLANGA SC: We will come back to
 24 those when we go through the exhibit that is Exhibit B.
 25 Did you find any pistol cartridge case that you have not

Page 1441

1 reflected within the shaded areas?
 2 W/O THAMAE: That's correct, Mr Chair.
 3 If you look there by the area of – where, if you look at I
 4 and K where the line has pointed to the ground, round about
 5 that area there was only one cartridge case of a pistol
 6 that I found.
 7 MR MADLANGA SC: Would this be just to
 8 the right of the entrance to the kraal, as one is facing
 9 the kraal in the picture?
 10 [09:58] W/O THAMAE: Can you repeat again?
 11 MR MADLANGA SC: The spot that you are
 12 referring to, that is where you picked up the pistol
 13 cartridge case, would it be to the right of the entrance to
 14 the kraal?
 15 W/O THAMAE: That's correct, Mr Chair.
 16 MR MADLANGA SC: Do you recall the total
 17 number of rifle cartridge cases that you found?
 18 W/O THAMAE: That's correct, I found 210
 19 rifle cartridge cases.
 20 MR MADLANGA SC: Do you remember how many
 21 pistol cartridge cases you found, the total?
 22 W/O THAMAE: That's correct, Mr Chair, 31
 23 pistol cartridge cases.
 24 MR MADLANGA SC: You have two yellow
 25 shaded areas that depict the spot where you picked up

Page 1442

1 pistol cartridge cases. Are you able to tell us how many
 2 you found where, in the two yellow shaded areas?
 3 W/O THAMAE: At the area where – in the
 4 red shaded area there, I found about five cartridge cases
 5 and then in the blue shaded area about 25, 24.
 6 COMMISSIONER HEMRAJ: Mr Madlanga, are
 7 these pistol – are we talking about pistol cartridge cases?
 8 MR MADLANGA SC: Pistol cartridge cases
 9 yes, within the yellow, commissioner. My arithmetic says
 10 it would have to be 26 in the other yellow shaded area, not
 11 so?
 12 W/O THAMAE: I'm saying about five in the
 13 red shaded area and then 24, 25 in the blue shaded area,
 14 taking into account that one within the body.
 15 MR MADLANGA SC: Oh, taking into account
 16 that one was not within the shaded areas?
 17 W/O THAMAE: That's correct.
 18 MR MADLANGA SC: Thank you very much,
 19 thank you. I now want to take you to B40, that is four
 20 zero –
 21 CHAIRPERSON: Before we move on, can I
 22 ask a question?
 23 MR MADLANGA SC: Yes.
 24 CHAIRPERSON: I notice that the red
 25 shaded area appears to include a small portion of the kraal

Page 1443

1 itself, is that correct?
 2 W/O THAMAE: That's correct.
 3 CHAIRPERSON: And so does that mean that
 4 you found some cartridge cases in the kraal?
 5 W/O THAMAE: Not in the kraal area.
 6 CHAIRPERSON: So why is the – why does
 7 the red shaded area include a small portion of the kraal?
 8 W/O THAMAE: Mr Chair, if you can look at
 9 the shaded area, the kraal is not shaded itself. It's
 10 within the – outside the borders of the kraal, it is the
 11 place that is shaded, not the kraal itself.
 12 MR MADLANGA SC: Based on what you've
 13 just said, the impression I get is that it was not intended
 14 that the kraal itself should be shaded. Looking at the
 15 picture it does seem indeed, as the Chairman indicates,
 16 that the part of the kraal, a small part of the kraal is
 17 shaded as well. So are you saying it was not intended to
 18 be?
 19 W/O THAMAE: No, it was not intended to
 20 be.
 21 MR MADLANGA SC: I will now take you to
 22 B40, 44 and 45. There you will see that, starting from the
 23 left hand side and looking at the weapons that are
 24 appearing in full, there is a red one. So forget about the
 25 other one that also has red, but is not appearing fully.

<p style="text-align: right;">Page 1444</p> <p>1 The first one that appears in full and reddish in colour, 2 do you want to tell the Commission or advise it of any 3 observations you made on that weapon, if any? 4 W/O THAMAE: On 40 if you look at the 5 weapon that is red with blue stripes on – 6 MR MADLANGA SC: Yes? 7 W/O THAMAE: I think it's number 7 from 8 the top or number 8 from the top, if you look at that 9 weapon there is something more to, what I can say the back, 10 there is something on the bottom that is attached to that 11 weapon and if you go to photo 44, photo number 44, you'll 12 see that it is a close-up of that weapon with that 13 attachment on the butt. And then if you go to 45 it is the 14 close-up indicating the fragment that I was speaking about. 15 MR MADLANGA SC: All three photographs do 16 depict that fragment. 17 W/O THAMAE: That's correct, Mr Chair. 18 MR MADLANGA SC: And how many shotgun 19 cartridges did you find or retrieve? 20 W/O THAMAE: I found 57 cartridge cases 21 of shotguns. 22 MR MADLANGA SC: Can we now go back to 23 B17 and can you please take the Commission through points A 24 to point P? 25 W/O THAMAE: Point A indicated the place</p>	<p style="text-align: right;">Page 1446</p> <p>1 W/O THAMAE: Point number C indicates the 2 place and position of body number 22 as found at the scene. 3 MR MADLANGA SC: And commissioners, that 4 was Mr Thobisile Zibambele. 5 W/O THAMAE: Point D indicates the place 6 and position of body number 21 as found at the scene. 7 MR MADLANGA SC: And that was Mr Mpangeli 8 Thukusa. 9 W/O THAMAE: Point E indicates the place 10 and position of body number 19 as found at the scene. 11 MR MADLANGA SC: And that was Mr Jackson 12 Lehupa. 13 W/O THAMAE: Point F indicates the place 14 and position of body number 20 as found at the scene. 15 MR MADLANGA SC: And that was Mr 16 Mongezeleli Ntenetya. 17 W/O THAMAE: Point G indicates the place 18 and position of body number 18 as found at the scene. 19 MR MADLANGA SC: And that was Mr Mzukisi 20 Sompeta. 21 W/O THAMAE: Point H indicates the place 22 and position of body number 14 as found at the scene. 23 MR MADLANGA SC: And that was Mr Michael 24 Ngweyi. 25 W/O THAMAE: Point I indicated the place</p>
<p style="text-align: right;">Page 1445</p> <p>1 and the position of body number 25 as found at the scene. 2 MR MADLANGA SC: Commissioners, that 3 would be Mr Khawamare Elias Monesa. Yes, continue? 4 CHAIRPERSON: It would be helpful if the 5 mouse could be used to indicate on what is on the screen, 6 where exactly these particular bodies were found. 7 MR MADLANGA SC: Can you please use, yes, 8 the pointer or mouse please? 9 W/O THAMAE: That is where the – where 10 body A was found. 11 MR MADLANGA SC: Yes, continue. The next 12 body? 13 W/O THAMAE: Point B indicates the place 14 and position of body number 24 as found at the scene. 15 MR MADLANGA SC: Can you again please 16 point and whenever you refer to each one of the bodies, 17 please point where it was exactly. 18 W/O THAMAE: That is where the body B was 19 found and if I can explain to people who maybe – if you 20 look at letter D you will see there is a line running from 21 letter B, where it ends it is the position of where the 22 body is found, as it is the case with all the other 23 alphabets. 24 MR MADLANGA SC: And commissioners, that 25 was Mr Mguneni Noki. Please proceed.</p>	<p style="text-align: right;">Page 1447</p> <p>1 and position of body number 16 as found at the scene. 2 MR MADLANGA SC: And that was Mr 3 Bonginkosi Yona or – Yona. 4 W/O THAMAE: Point J indicated the place 5 and position of body number 17 as found at the scene. 6 MR MADLANGA SC: Warrant Officer, you 7 seem to have forgotten to point at the slide. And this was 8 the body of Mr Andries Motlupula Msenyeno. 9 W/O THAMAE: Point K indicated the place 10 and position of body number 15 as found at the scene. 11 MR MADLANGA SC: And this was Mr Patrick 12 Akhona Jijase. 13 W/O THAMAE: Point L indicated the place 14 and position of body number 23 as found at the scene. 15 MR MADLANGA SC: And this was Mr Cebisile 16 Yawa. 17 W/O THAMAE: Point M indicated the place 18 and position of body number 26 as found at the scene. 19 MR MADLANGA SC: And that was Mr Bongani 20 Ndongophele. 21 W/O THAMAE: Point N indicates the place 22 and position of body number 28 as found at the scene. 23 MR MADLANGA SC: And that was Mr Babalo 24 Mtshazi. 25 W/O THAMAE: Point O indicated the place</p>

Page 1448

1 and position of body number 27 as found at the scene.
 2 Point T -
 3 MR MADLANGA SC: Can you please repeat
 4 the last one, I'm sorry.
 5 W/O THAMAE: Point O -
 6 MR MADLANGA SC: No - no, before O.
 7 W/O THAMAE: Before O?
 8 MR MADLANGA SC: Yes.
 9 W/O THAMAE: Point N indicated the place
 10 and position of body number 28 as found at the scene.
 11 MR MADLANGA SC: Okay yes, let's continue
 12 to O?
 13 W/O THAMAE: Point O indicated the place
 14 and position of body number 27 as found at the scene.
 15 MR MADLANGA SC: And that was Mr John
 16 Kutsvano Ledingoane.
 17 W/O THAMAE: Point P indicated the place
 18 and position of body number 29 as found at the scene and
 19 this point is covered on the sketch plan and other photos
 20 that will follow.
 21 MR MADLANGA SC: May I refer - may I
 22 refer the Commission and my learned friends to B18, B1-8
 23 read with B16 the sketch plan. That is where P is showing,
 24 it's not showing on B15. Now - or can you point out where
 25 P is on your slide? And that was Mr Thembinkosi Gwelani.

Page 1449

1 Commissioners, may I ask to hand up a revised version? My
 2 juniors have already attended to this, put in the letters
 3 and so on and may this be the same exhibit number as the
 4 earlier one?
 5 CHAIRPERSON: It replaces the earlier
 6 Exhibit O that was handed up.
 7 MR MADLANGA SC: Thank you, thank you
 8 Chair and commissioners.
 9 CHAIRPERSON: While that's being done,
 10 can I ask this question? It looks, from what we're looking
 11 at at the moment, as if body P was found quite a distance
 12 from scene 1 and scene 2 - in fact, fairly close to the
 13 informal settlement, is that correct?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 It is a distance of 210 from body -
 16 MR MADLANGA SC: Not from body N?
 17 [10:18] W/O THAMAE: It's a distance of 210 from
 18 body N.
 19 MR MADLANGA SC: Now you say 210, 210
 20 what?
 21 W/O THAMAE: 210 metres, Mr Chair.
 22 MR MADLANGA SC: Then whilst we are at
 23 distances, we already have evidence from Captain Mohlaki
 24 that the distance between scene 1 and scene 2 is about 500
 25 metres. We see that this is reflected on your sketch plan

Page 1450

1 as well. Do you confirm that that is the distance?
 2 W/O THAMAE: That's correct, Mr Chair.
 3 MR MADLANGA SC: Now you have already
 4 said that the weapons that you found were in a pile. Now
 5 at B40, 44, 45 and indeed at other pages of Exhibit B as
 6 well, the weapons appear to have been arranged in an
 7 orderly fashion. Was it you or somebody else who arranged
 8 them in that fashion?
 9 W/O THAMAE: That was me arranging them
 10 in that fashion.
 11 MR MADLANGA SC: And they appear from
 12 B38, continuing through 39, 40, 41, 42, 43, 44 and 45, is
 13 that so?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 MR MADLANGA SC: Let me take you back to
 16 your key, B17. Number 3 in the key, you say the area in
 17 red indicates the concentration of shotgun cartridge cases
 18 as well as rubber balls, used stun grenades and 40
 19 millimetre cartridge cases. Are you able to tell how many
 20 rubber balls you found?
 21 W/O THAMAE: No, Mr Chair, I didn't count
 22 them, I just picked them up.
 23 MR MADLANGA SC: And would this be a
 24 reference to the ball that would've been fired from a
 25 rubber - or rather a shotgun cartridge?

Page 1451

1 W/O THAMAE: That's correct, Mr Chair.
 2 MR MADLANGA SC: And can you tell how
 3 many the used stun grenades were?
 4 W/O THAMAE: I picked up two.
 5 MR MADLANGA SC: Now in this key you also
 6 have some distances and the first one is 2.3 metres and
 7 just above the distances you have the heading, "Distances
 8 between cartridge cases closer to body B." What I want to
 9 establish is, what exactly does the 2.3 metres refer to?
 10 It measured from where to where?
 11 W/O THAMAE: If you look at the sketch -
 12 MR MADLANGA SC: B16, commissioners.
 13 Yes, continue?
 14 W/O THAMAE: Body B was lying here and
 15 then cartridge cases were closer to body B, were in, if I
 16 can say an arc shape, they ranged from 2.3 metres to 6.1
 17 metres.
 18 MR MADLANGA SC: So in other words the
 19 cartridge case that was closest to Mr Mguneni Noki, what
 20 you refer to as body B, would have been 2.3 metres from
 21 him?
 22 W/O THAMAE: That's correct, Mr Chair.
 23 MR MADLANGA SC: And then you measured
 24 the distance between others as well and the furthest of
 25 those was 6.1 metres away.

<p style="text-align: right;">Page 1452</p> <p>1 W/O THAMAE: That's correct, Mr Chair. 2 MR MADLANGA SC: Your slide also has the 3 bodies themselves but I will not ask you to go through 4 those. Is there anything else that you would like to bring 5 to the attention – 6 COMMISSIONER HEMRAJ: Mr Madlanga, before 7 you go on, do I understand that there were no cartridges 8 found with regard to the other bodies in as close proximity 9 as those to body B? Is that how I understand that? 10 MR MADLANGA SC: That's not what was 11 meant to be conveyed. All of those measurements were just 12 in relation to body B only, just – not, no measurements 13 were done at least – but the witness can respond to that – 14 COMMISSIONER HEMRAJ: Yes. 15 MR MADLANGA SC: - in respect of each one 16 of the bodies. 17 COMMISSIONER HEMRAJ: Thank you. 18 MR MADLANGA SC: Yes, thank you. Is 19 there anything else that I may not have covered which you 20 would like to bring to the attention of the Commission 21 perhaps? 22 W/O THAMAE: The 40 millimetre cartridge 23 cases also, I picked up some 40 millimetre, 40 millimetre 24 cartridge cases within the blue, red shaded area. 25 MR MADLANGA SC: And what exactly are</p>	<p style="text-align: right;">Page 1454</p> <p>1 W/O THAMAE: Like I indicated, I've got 2 no comment. 3 MR SEMENYA SC: And you have testified of 4 two stun grenade cartridges. On our count we only have 5 one. Can you comment on that? 6 W/O THAMAE: What I can say is I found 7 two at the time. 8 MR SEMENYA SC: Okay. And we also 9 document 10 teargas canisters that were fired at scene 1. 10 Any comment? 11 W/O THAMAE: If it is that 40 millimetre 12 cartridge cases that I spoke about, I only picked up four. 13 MR SEMENYA SC: I don't know whether this 14 falls within the ambit of your expertise, Warrant Officer, 15 but I think I should place the evidence before you. As I 16 understand, you would have calculated the distance of 17 various cartridges relative to body B, correct? 18 W/O THAMAE: That's correct, Mr Chair. 19 MR SEMENYA SC: And that is because body 20 B would have been the closest of the bodies to the line of 21 fire, correct? 22 W/O THAMAE: It is difficult for me to 23 comment on that because I don't know what was the line of 24 fire or where the line of fire was situated. 25 MR SEMENYA SC: Well, I accept that. All</p>
<p style="text-align: right;">Page 1453</p> <p>1 those or what are they fired – what sort of firearm are 2 they – 3 W/O THAMAE: Mr Chair, I don't have an 4 idea. 5 MR MADLANGA SC: And you say how many of 6 those? 7 W/O THAMAE: There were four, Mr Chair. 8 MR MADLANGA SC: Anything else? 9 W/O THAMAE: No, nothing that I can 10 think. 11 MR MADLANGA SC: That is the evidence of 12 the witness, commissioners, thank you. 13 CHAIRPERSON: Mr Semenya? 14 CROSS-EXAMINATION BY MR SEMENYA SC: 15 Chair, thank you. Warrant Officer, can somebody place 16 before you Exhibit L for Limo? And can I invite you to 17 look at slide 211? Do you have the slide? The evidence, 18 Warrant Officer, is going to be that according to the 19 police, the munitions which were expended at scene 1 are as 20 indicated in that document with 284 sharp point ammunitions 21 discharged at scene 1. Do you want to comment? 22 W/O THAMAE: I have no comment. 23 MR SEMENYA SC: And that 533 of rubber 24 was shot at scene 1. Correction, 522 of rubber. Any 25 comment?</p>	<p style="text-align: right;">Page 1455</p> <p>1 I'm merely saying is, the closest distance between the 2 cartridge and the body would've been that indicated, 2.3 3 metres. 4 W/O THAMAE: That's correct, Mr Chair. 5 MR SEMENYA SC: And the furthest would 6 have been 6.1 metres. 7 W/O THAMAE: Yes, if you take into 8 account my explanation, the arc around body – 9 MR SEMENYA SC: I don't know whether you 10 want to sponsor an opinion but that would have been pretty 11 close to the cartridges where body B was lying. 12 W/O THAMAE: Can you repeat the question 13 again? I don't understand the question. 14 MR SEMENYA SC: That distance of 2.3 15 metres is pretty short, would you agree? 16 W/O THAMAE: That's correct. 17 MR SEMENYA SC: The dangerous weapons 18 appearing on your slides which you said you collected, do 19 you recall those – from slides B40, 41, et cetera. 20 W/O THAMAE: That's correct, I still – I 21 do remember now. 22 MR SEMENYA SC: Are you able to comment 23 where, in relation to the bodies, were those collected? 24 W/O THAMAE: As I already explained, on 25 the photo displayed on the slide show now, if we look at</p>

<p style="text-align: right;">Page 1456</p> <p>1 letter E, where letter E is situated on that photo, that is 2 the area where those dangerous weapons were found in the 3 pile. 4 MR SEMENYA SC: Well, I don't have the 5 benefit of the pointer you use there and that screen is not 6 necessarily helpful to me but are you able to tell us 7 where, in relation to body B, would those weapons have been 8 lying? 9 MR MADLANGA SC: Mr Chairman, 10 commissioners, I understood the witness to be saying where 11 the letter itself – not the body. 12 W/O THAMAE: Ja. 13 MR MADLANGA SC: The letter itself, 14 because there is the letter and then a line pointing to 15 where the body is, so he said in a pile where the letter 16 is. 17 MR SEMENYA SC: Okay. Just help 18 orientate me. The weapons would be lying around the letter 19 B. 20 W/O THAMAE: The letter E. 21 CHAIRPERSON: E for elephant. 22 MR SEMENYA SC: Thank you, Chair. You're 23 not able to give us – 24 W/O THAMAE: No, can I correct something? 25 Sorry, it's the letter F, not E. Sorry, I didn't see</p>	<p style="text-align: right;">Page 1458</p> <p>1 CHAIRPERSON: Mr Tip? 2 CROSS-EXAMINATION BY MR TIP SC: Likewise 3 no questions, thank you. 4 CHAIRPERSON: Mr Bruinders? 5 CROSS-EXAMINATION BY MR BRUINDERS SC: 6 Just a few questions. Warrant Officer, can I ask you to go 7 back to the previous question asked of you? You say the 8 weapons were found in a pile, is that right? 9 W/O THAMAE: That's correct, Mr Chair. 10 MR BRUINDERS SC: You found them in a 11 pile? 12 W/O THAMAE: That's correct, Mr Chair. 13 MR BRUINDERS SC: You don't know who put 14 them there? 15 W/O THAMAE: I don't know who put them 16 there, Mr Chair. 17 MR BRUINDERS SC: You then rearranged 18 them as we see them in the photograph? 19 W/O THAMAE: That's correct, Mr Chair. 20 MR BRUINDERS SC: And the weapons that 21 you found in the pile and then rearranged, were those the 22 total number of weapons that you found at scene 1? 23 W/O THAMAE: Ja, Mr Chair, there was a 24 body – either body N or O – there was a traditional weapon 25 lying alongside that body. That is the only extra weapon,</p>
<p style="text-align: right;">Page 1457</p> <p>1 clearly. 2 MR SEMENYA SC: Help me with the 3 orientation. Those weapons would have been behind body B 4 where it was lying? 5 W/O THAMAE: Not behind body B. I'm 6 referring – the place where the letter F is, where the 7 letter F is placed, that is the place where those 8 traditional weapons were piled up. 9 [10:38] MR SEMENYA SC: Warrant Officer, I am not 10 referring to the weapons in their state of – in the heaped 11 state they were in. I'm trying to establish where they 12 would have been collected from. 13 W/O THAMAE: I don't have an idea where 14 they were collected from. 15 MR SEMENYA SC: Oh, so you're not the one 16 who collected them to put them in the heap in which you 17 photographed them? 18 W/O THAMAE: No, I'm not the one who 19 collected them. I found them in the pile as I searched. 20 MR SEMENYA SC: Those are the questions 21 we have for the witness, Chair. 22 CHAIRPERSON: Thank you, Mr Semenya. Mr 23 Burger? 24 CROSS-EXAMINATION BY MR BURGER SC: We 25 have no questions, Chair, thank you.</p>	<p style="text-align: right;">Page 1459</p> <p>1 besides the ones which were lying in the pile, that was 2 found at the scene. 3 MR BRUINDERS SC: That extra weapon you 4 added to the pile of traditional weapons? 5 W/O THAMAE: No, Mr Chair. 6 MR BRUINDERS SC: Does that extra weapon 7 not appear in your photograph at page 40, 41 to 4? 8 W/O THAMAE: No, it doesn't appear. 9 MR BRUINDERS SC: Why not? 10 W/O THAMAE: Because I photographed it 11 next to the body where it was found and then those, I 12 rearranged them because I was looking for maybe the ones 13 with blood on them so that I can investigate them. So that 14 is why they were rearranged. 15 MR BRUINDERS SC: Could you turn to B35? 16 Have you turned to B35? 17 W/O THAMAE: Yes, I have. 18 MR BRUINDERS SC: That's body N. 19 W/O THAMAE: It's body O. Oh, 36 no, 20 sorry - 21 CHAIRPERSON: B36 is O and one can see 22 what looks like a weapon in the photograph. There doesn't 23 seem to be a weapon, as far as I can see on B, near BN, 24 near B35 which is body N. Am I right? 25 MR BRUINDERS SC: Warrant Officer, you've</p>

Page 1460

1 heard the Chairman, there's no weapon next to N but there
2 appears to be one, well, placed rather photographically
3 across the shoulder of the body at O, is that right?
4 W/O THAMAE: Photo number 36?
5 MR BRUINDERS SC: Yes.
6 W/O THAMAE: Yes, that's correct.
7 MR BRUINDERS SC: Is that the weapon you
8 were talking about?
9 W/O THAMAE: That's correct, Mr Chair.
10 MR BRUINDERS SC: Now, what was the total
11 number of weapons that you collected?
12 W/O THAMAE: Mr Chair, I did not collect
13 them. I photographed them –
14 CHAIRPERSON: No, I'm sorry to interrupt
15 you. You didn't collect them but you rearranged them, you
16 gathered them together so you could presumably photograph
17 them altogether except for the one near body O. So what
18 counsel wants to know is what was the total number of
19 weapons that you picked up and rearranged so that you could
20 take a photograph? Is that right, Mr Bruinders?
21 MR BRUINDERS SC: Yes.
22 W/O THAMAE: I didn't count them there.
23 MR BRUINDERS SC: We can use your
24 photographs to count them for ourselves.
25 W/O THAMAE: That's correct, Mr Chair.

Page 1461

1 MR BRUINDERS SC: And then according to
2 you we must add the traditional weapon, the knobkerrie at
3 body O.
4 W/O THAMAE: Come again, I didn't hear
5 clearly?
6 MR BRUINDERS SC: So to the weapons that
7 you rearranged and photographed, we must add the
8 traditional weapon at body O.
9 W/O THAMAE: That's correct, Mr Chair.
10 MR BRUINDERS SC: And that would be the
11 total, as far as you were concerned, at scene 1.
12 W/O THAMAE: That's correct, Mr Chair.
13 MR BRUINDERS SC: Can you please turn to
14 B15 and tell me when you have it.
15 W/O THAMAE: I have it.
16 MR BRUINDERS SC: That's a photograph of
17 scene 1.
18 W/O THAMAE: That's correct, Mr Chair.
19 MR BRUINDERS SC: And what we see in the
20 middle towards the top of the photograph is the kraal.
21 W/O THAMAE: That's correct, Mr Chair.
22 MR BRUINDERS SC: On the right of the
23 kraal we see what looks like a path that goes around the
24 kraal.
25 W/O THAMAE: That's correct.

Page 1462

1 MR BRUINDERS SC: That leads to a road.
2 W/O THAMAE: No –
3 MR BRUINDERS SC: Or does it lead to a
4 dirt road?
5 W/O THAMAE: I – I'm not sure from which
6 direction are you looking at it. Are you looking at it
7 from the top, which is the – the top down or from what
8 direction, I am not sure.
9 MR BRUINDERS SC: Perhaps we should use
10 your pointer and look at the big screen. Now can you point
11 with your pointer at the path that goes around the right of
12 the kraal as you look at it? That's the path you're
13 pointing now.
14 W/O THAMAE: That's correct, Mr Chair.
15 MR BRUINDERS SC: And that path appears
16 to join up with what looks like a dirt road, can you point
17 that to us?
18 W/O THAMAE: From here you can see where
19 it is going and then here it reaches a dead-end –
20 MR BRUINDERS SC: No, no, go the other
21 way.
22 W/O THAMAE: Straight is a dead-end and
23 then around the kraal and then it joins, it moves to –
24 there's one going that side and then there's one also.
25 MR BRUINDERS SC: So can you just point

Page 1463

1 again to the path on the right of the kraal? Now if you –
2 where you were a moment ago please, on the right side of
3 the kraal as you look at it. Yes, there. Now if you take
4 your pointer down, just there, that path appears to join
5 with what looks like a dirt road. Would that be right?
6 W/O THAMAE: That's correct.
7 MR BRUINDERS SC: Where does that dirt
8 road lead to?
9 W/O THAMAE: If you – this one, if you go
10 to your left –
11 MR BRUINDERS SC: No, please Warrant
12 Officer, we don't want to go to the left of that
13 photograph. I want to keep you to the right of that kraal,
14 do you understand?
15 W/O THAMAE: If you go straight you go to
16 the position of that body.
17 MR BRUINDERS SC: We've been through this
18 before. I want you to go – take the path down towards the
19 dirt road. Yes, have you got that? Now that dirt road –
20 I'll make it easier for you – that dirt road leads into the
21 informal settlement, not so?
22 W/O THAMAE: If you go that direction,
23 yes.
24 MR BRUINDERS SC: Correct. You confirm
25 that?

Page 1464

1 W/O THAMAE: Yes, that's correct.
 2 MR BRUINDERS SC: Warrant Officer, did I
 3 hear you correctly – and forgive me if I didn't hear you
 4 correctly but did I hear you to say that you did not count
 5 the number of cartridge cases that you show on your, on
 6 that photograph?
 7 W/O THAMAE: No, I did count the number
 8 of – all the cartridge cases and I indicated shotgun 57
 9 cartridge cases, pistol 31 cartridge cases, rifle 210
 10 cartridge cases.
 11 MR BRUINDERS SC: Nothing further.
 12 CHAIRPERSON: Mr Bizos?
 13 CROSS-EXAMINATION BY MR BIZOS SC: You
 14 told us that you did not know where the line of fire was.
 15 W/O THAMAE: That's correct, Mr Chair.
 16 MR BIZOS SC: As an experienced person in
 17 gathering material which may be of assistance, did you ask
 18 anyone there, where were you policemen when you fired, in
 19 order to make it more convenient for the findings that
 20 you've made?
 21 W/O THAMAE: Like I indicated in my
 22 statement, that General Naidoo only took us through the
 23 scene and then –
 24 MR BIZOS SC: Who took you through the
 25 scene?

Page 1465

1 W/O THAMAE: General Naidoo.
 2 MR BIZOS SC: General Naidoo. He was
 3 helpful, was he?15:37
 4 W/O THAMAE: That's correct.
 5 MR BIZOS SC: Did you ask him, where were
 6 your policemen when they fired?
 7 W/O THAMAE: No, I didn't ask him.
 8 MR BIZOS SC: Why not?
 9 W/O THAMAE: It didn't come to my mind to
 10 ask him.
 11 MR BIZOS SC: Now perhaps it'll be
 12 helpful to us if you tell us how much experience you have
 13 of the behaviour of cartridges when fired. Do they fall on
 14 the spot or do they fall forwards or do they fall sideways
 15 or do they, depending on the type of gun, they shoot where
 16 they fall?
 17 W/O THAMAE: As far as I'm concerned I'm
 18 not a ballistic expert, I cannot be able to tell what
 19 distance would a firearm eject the cartridge case.
 20 CHAIRPERSON: You weren't asked the
 21 distance, you were asked the direction.
 22 W/O THAMAE: The direction –
 23 CHAIRPERSON: What Mr Bizos wanted to
 24 know was, are you able to tell us in which direction
 25 cartridge cases fall after the cartridge has been fired.

Page 1466

1 That is the question, as I understood the question.
 2 MR BIZOS SC: That is the question.
 3 CHAIRPERSON: And so you haven't answered
 4 it, so will you have a go at answering it now, please?
 5 W/O THAMAE: The firearm ejects cartridge
 6 cases to the right.
 7 MR BIZOS SC: To the right. Forwards or
 8 backwards, or depends?
 9 W/O THAMAE: At this stage I can only say
 10 to the right. I don't know what angle.
 11 MR BIZOS SC: The measurements that you
 12 made at the bottom of the document that was handed in,
 13 varying from 2.3 to 5.4, these were measurements to body B,
 14 is that correct?
 15 W/O THAMAE: That's correct, Mr Chair.
 16 MR BIZOS SC: Now, am I correct in
 17 inferring that the cartridges must have been in a pile for
 18 you to make a measurement like that?
 19 W/O THAMAE: No, they were not in a pile.
 20 MR BIZOS SC: So what did you measure,
 21 one cartridge but – or a number of cartridges?
 22 W/O THAMAE: A number of cartridges.
 23 Like I indicated, they were in an arc form from around body
 24 B, they were some sort of arc shape.
 25 MR BIZOS SC: We know the weapons we have

Page 1467

1 in this pile now, how sure are you that the cartridges were
 2 not piled up or moved around like the weapons were?
 3 W/O THAMAE: I cannot comment whether
 4 they were piled up or not, but I can only confirm that I
 5 found them in that position.
 6 [10:58] MR BIZOS SC: In what position, in
 7 compact or widely scattered, or in between? They were
 8 piled and there were some that may have been scattered?
 9 W/O THAMAE: A few were scattered but
 10 they were in the concentration.
 11 MR BIZOS SC: There was a concentration
 12 of them.
 13 W/O THAMAE: That's correct.
 14 MR BIZOS SC: And that is why you chose
 15 to measure to that concentrated pile of cartridges. What
 16 is the answer?
 17 W/O THAMAE: Your question is not clear
 18 to me. Can you repeat it again?
 19 MR BIZOS SC: When you say that there was
 20 a concentration – you don't like the word pile but we'll
 21 use your word, concentration – that's why you chose that
 22 spot to measure from.
 23 W/O THAMAE: That was the instruction
 24 given to me by evidence leaders, just to measure the
 25 cartridge cases closer to the body.

Page 1468

1 MR BIZOS SC: Closer to one body?
 2 W/O THAMAE: To - yes, if I can say yes.
 3 MR BIZOS SC: Now the bodies, were they
 4 spread over an area?
 5 W/O THAMAE: I can't say they were
 6 spread. If you look at the photo how they were
 7 concentrated, the bodies.
 8 MR BIZOS SC: Which photo must we look
 9 at?
 10 W/O THAMAE: 15 -
 11 MR BIZOS SC: Yes. Well, it does show
 12 that outside the blue line - is that right?
 13 W/O THAMAE: Yes, outside that blue line.
 14 MR BIZOS SC: And what -
 15 W/O THAMAE: At the end of each line
 16 indicates the place where the body was lying.
 17 MR BIZOS SC: Yes.
 18 W/O THAMAE: Yes.
 19 MR BIZOS SC: Now what is the distance,
 20 what is the distance between body B and body H, what is the
 21 distance?
 22 W/O THAMAE: I did not measure the
 23 distances between the bodies.
 24 MR BIZOS SC: More or less?
 25 W/O THAMAE: More or less four metres.

Page 1469

1 MR BIZOS SC: How much?
 2 W/O THAMAE: Four metres.
 3 MR BIZOS SC: And a similar distance for
 4 I?
 5 W/O THAMAE: No. For I it might be
 6 lesser.
 7 MR BIZOS SC: And if we accept your
 8 measurements and your estimates correctly, it would appear
 9 that at least some of the people that were killed may have
 10 been more than 10 metres away from the point that you
 11 measured and as you don't know where the firing line was,
 12 you can't be of any help to us how far the deceased were
 13 from the firing line.
 14 W/O THAMAE: No, on the distances, how
 15 far they were from the firing I can't -
 16 MR BIZOS SC: You can't be of any
 17 assistance.
 18 W/O THAMAE: No, I can't be of any
 19 assistance.
 20 MR BIZOS SC: Do you realise the
 21 importance of the measurements that you took? Were you
 22 told - were you told by General Naidoo or anyone else that
 23 the police shot the protesters in self-defence?
 24 W/O THAMAE: Ja, that is what I was told.
 25 MR BIZOS SC: That's what you were told.

Page 1470

1 I would have thought that as an investigator, the next
 2 question would've been, show me where the policemen were
 3 that shot in self-defence.
 4 W/O THAMAE: Like I said, it never came
 5 to my mind.
 6 CHAIRPERSON: Mr Bizos, I'm proposing to
 7 take the tea adjournment round about now.
 8 MR BIZOS SC: There may be one or two
 9 more -
 10 CHAIRPERSON: If it's a convenient stage
 11 I'll do it, if you want to ask some other questions to
 12 round off this point, let's do that.
 13 MR BIZOS SC: - a couple of questions
 14 that I may want to ask. Perhaps it's an appropriate time
 15 to take the -
 16 CHAIRPERSON: The Commission will now
 17 take the tea adjournment.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [11:31] CHAIRPERSON: The Commission resumes.
 20 Warrant Officer, I must remind you that you are still under
 21 oath. Yes, Mr Bizos?
 22 CROSS-EXAMINATION BY MR BIZOS (CONTD):
 23 You told us that there was a pile of sticks which were one
 24 on top of one another and that you rearranged them in order
 25 to photograph them. Have I got your evidence correctly?

Page 1471

1 W/O THAMAE: That is correct, Mr Chair.
 2 MR BIZOS SC: You don't know where these
 3 sticks were before they were gathered and put onto a pile?
 4 W/O THAMAE: That's correct, I don't know
 5 where they were.
 6 MR BIZOS SC: We do know from footage
 7 that we have on cameras that the majority of the arms in
 8 the hands of protesters were sticks, correct?
 9 MR SEMENYA SC: Chair, that is not my
 10 understanding of scene 1 at all.
 11 MR BIZOS SC: I'm sorry, I don't
 12 understand. Is he saying -
 13 CHAIRPERSON: Mr Semanya says his
 14 understanding of scene 1 differs from yours.
 15 MR BIZOS SC: Well, we can argue you that
 16 but I want you to please assume for the purposes of my
 17 question that it appears that the majority of weapons
 18 possessed were not revolvers, they were not guns, they were
 19 not armoured vehicles, they were sticks - the majority.
 20 Would you agree with that or if you don't want to agree,
 21 assume for that purpose that I have interpreted the
 22 evidence before the Commission correctly thus far. If, in
 23 fact -
 24 W/O THAMAE: Yes, if I look at that -
 25 where, the dangerous weapons that were piled up, I could

<p style="text-align: right;">Page 1472</p> <p>1 see that they were sticks, sharp objects or spears, knives 2 or pangas.</p> <p>3 MR BIZOS SC: Yes.</p> <p>4 W/O THAMAE: Yes.</p> <p>5 MR BIZOS SC: You found no sticks in the 6 – loose in the area between where the firing line may have 7 been and where the bodies were, you found no sticks at all.</p> <p>8 W/O THAMAE: Like I've already indicated, 9 the only traditional weapons that I found or dangerous 10 weapons that I have found, they were piled up at the area 11 where alphabet F on this photo is.</p> <p>12 MR BIZOS SC: Beyond the bodies.</p> <p>13 W/O THAMAE: If you can look at alphabet 14 F, that is where they were piled up and it's only on one 15 body, that is O, where I saw a stick only.</p> <p>16 MR BIZOS SC: [Indistinct] if in fact a 17 large group of the people –</p> <p>18 CHAIRPERSON: Mr Bizos, we're going to 19 have terrible trouble with the transcription of what's 20 happened if you and the interpreter talk at the same time.</p> <p>21 MR BIZOS SC: I'm sorry.</p> <p>22 CHAIRPERSON: So I don't know who has got 23 the preference here, but I imagine the interpreter is 24 interpreting what you've just said, it's only fair to wait 25 for him to finish before you carry on.</p>	<p style="text-align: right;">Page 1474</p> <p>1 W/O THAMAE: No, that is not what I'm 2 expecting.</p> <p>3 MR BIZOS SC: Is that well known 4 throughout the police force from a rookie to a general, 5 that you don't interfere with a crime scene?</p> <p>6 W/O THAMAE: It's a well known thing, 7 except under exceptional circumstances.</p> <p>8 MR BIZOS SC: What would – what sort of 9 exceptional circumstances would there be in interfering 10 with the place where weapons were to be found? What was 11 the hurry?</p> <p>12 W/O THAMAE: It's like, when I say 13 exceptional circumstances, it depends from a member doing 14 it what are the reasons why does that specific member 15 remove or, that specific object or destruct the scene, if I 16 may so say. It depends from that, he can give explanation 17 why he or she did it.</p> <p>18 MR BIZOS SC: Did you ask anybody for an 19 explanation as to why the scene was interfered with?</p> <p>20 W/O THAMAE: In cases of two pistols that 21 I forgot to mention before this Commission, I received two 22 pistols from Lieutenant-Colonel Mere. He handed over two 23 pistols to me, so when handing over that two pistols he 24 told me that he was afraid that somebody might remove the 25 pistols from the scene, so that is why he removed them from</p>
<p style="text-align: right;">Page 1473</p> <p>1 MR BIZOS SC: I'm sorry, Mr Interpreter, 2 Mr Commissioner.</p> <p>3 MR MAHLANGU: Thank you, sir.</p> <p>4 MR BIZOS SC: Yes, you – if in fact there 5 was such an attack and people, 15 people were killed, you 6 would have expected quite a number of sticks in that area, 7 which would've been important evidence of sorts.</p> <p>8 W/O THAMAE: If I understand you 9 correctly, are you saying a number of, those number of 10 weapons that were piled together should have been more than 11 what I found?</p> <p>12 MR BIZOS SC: No, what I am saying is 13 that if the scene was not interfered with by piling up 14 things and if there had been an attack, there would've been 15 quite a number of sticks within the area next to the 16 bodies.</p> <p>17 W/O THAMAE: That's correct, if that is 18 the case, if they were not removed from their original 19 positions –</p> <p>20 MR BIZOS SC: Yes.</p> <p>21 W/O THAMAE: We could have found them 22 there.</p> <p>23 MR BIZOS SC: Yes. Now you are a crime 24 scene expert. Do you expect police officers to remove 25 objects before you get there and rearrange them?</p>	<p style="text-align: right;">Page 1475</p> <p>1 the scene and kept them in their possession.</p> <p>2 MR BIZOS SC: We'll come to the firearms, 3 we'll come to the firearms, but you saw no reason why the 4 sticks should've been piled up.</p> <p>5 W/O THAMAE: I cannot say I see no 6 reason. It depends from people from who removed those 7 dangerous weapons, what was the reason why they removed 8 them.</p> <p>9 MR BIZOS SC: You mustn't be so afraid to 10 pass judgment on the conduct of your colleagues, Warrant 11 Officer. I want to ask you this before we come to the 12 pistols. You were briefed in the morning – please tell us 13 what the person, who was the person who briefed you?</p> <p>14 W/O THAMAE: Captain Mohlaki.</p> <p>15 MR BIZOS SC: Tell us, to the best of 16 your ability, what he said to you and the others that were 17 briefed.</p> <p>18 W/O THAMAE: He told us that the miners 19 were going to gather at 9 o'clock at the hilltop and after 20 gathering they will surrender their weapons, leave them at 21 the place of gathering and disperse peacefully and then we 22 will be called to photograph, document and process that 23 scene. And that we are falling under the group of General 24 Naidoo, he will give us an indication when to go to that 25 place of incident.</p>

Page 1476

1 MR BIZOS SC: You're crime scene
 2 specialists.
 3 W/O THAMAE: That's correct.
 4 MR BIZOS SC: Did one or other of you ask
 5 what crime do you expect to be committed, Captain?
 6 W/O THAMAE: From Captain Mohlaki's
 7 briefing it was clear that the weapons that were to be
 8 surrendered were to be documented, collected and dispatched
 9 to forensics for analysis and it is the type of work I am
 10 doing.
 11 MR BIZOS SC: I see. Did he say that he
 12 expected the weapons to be handed over politely and
 13 voluntarily or did he say that they may have to use force
 14 in order to deprive people of their weapons?
 15 W/O THAMAE: Like I said, they were going
 16 to surrender, which means they were going to leave those
 17 weapons at the place of gathering and disperse peacefully,
 18 which means it was not necessary for police to use force.
 19 MR BIZOS SC: Did you know that more than
 20 600 of your fellow policemen, armed to the teeth with very
 21 efficient killing weapons, had gathered there that morning?
 22 W/O THAMAE: Yes, I'd seen many
 23 policemen. I'm not sure of their number but there were a
 24 lot of policemen.
 25 MR BIZOS SC: You spent six hours

Page 1477

1 waiting, if I understand your evidence correctly.
 2 W/O THAMAE: Yes, roughly six hours.
 3 MR BIZOS SC: Did you discuss with your
 4 fellow experts or your fellow policemen what was to be
 5 expected on this fateful day?
 6 W/O THAMAE: No, we didn't discuss
 7 anything that was work-related. It was just general
 8 discussion because we had to wait there until further
 9 instruction.
 10 MR BIZOS SC: Could you see the koppie
 11 from where you were sitting for six hours?
 12 W/O THAMAE: No, I couldn't see the
 13 koppie.
 14 MR BIZOS SC: You expected their arms to
 15 be handed over by 9 o'clock.
 16 W/O THAMAE: No, by 9 o'clock, according
 17 to the briefing, it was the time when the miners were going
 18 to start gathering. We were not given the time of
 19 dispersing.
 20 MR BIZOS SC: In a case such as this
 21 where 34 people died as a result of being shot by the
 22 police, were there special rules that had to be observed in
 23 relation to the protection of the scene?
 24 W/O THAMAE: The general rule is
 25 everything has to be preserved, so I'm expecting generally

Page 1478

1 each and every thing to be, has to be preserved the same as
 2 – they must be treated equally, if I may so say.
 3 CHAIRPERSON: They must be?
 4 W/O THAMAE: They must be treated
 5 equally, all the scenes, yes.
 6 MR BIZOS SC: Was there a belief that
 7 members of the crowd may use firearms on this day?
 8 W/O THAMAE: According to the briefing it
 9 was clear that the miners were not – were only going to
 10 surrender their weapons. It was not made mention whether
 11 they are going to be used or not but what was clear was
 12 only surrender.
 13 MR BIZOS SC: Can you identify the
 14 persons that gave you the two firearms?
 15 W/O THAMAE: It was Lieutenant-Colonel
 16 Mere.
 17 MR BIZOS SC: Did he tell you that he'd
 18 dispossessed the possessors of those arms himself or
 19 whether someone else did it?
 20 W/O THAMAE: He said he personally
 21 removed them from the scene.
 22 MR BIZOS SC: Who?
 23 W/O THAMAE: He said he personally took
 24 them from the scene.
 25 MR BIZOS SC: I see. From the point of

Page 1479

1 view of the investigation, would it have been important to
 2 preserve the fingerprints of anyone that was in possession
 3 of those arms?
 4 W/O THAMAE: Correctly so. They were
 5 collected, taken to our fingerprint lab, they were
 6 investigated for fingerprints and the results were
 7 negative, meaning there were no prints on both firearms
 8 found.
 9 MR BIZOS SC: Did he tell you whether he
 10 had gloves when he took them from the alleged possessors?
 11 CHAIRPERSON: He did say that he, as I
 12 understood the evidence, he didn't say he took them from
 13 the alleged possessors. The answer that you got in
 14 response to your question about that was, he said he took,
 15 he removed them from the scene.
 16 MR BIZOS SC: From – I beg your pardon.
 17 CHAIRPERSON: He removed them from the
 18 scene. You asked if he took them –
 19 MR BIZOS SC: Oh, I see.
 20 CHAIRPERSON: - whether he said he took
 21 them from the possessors –
 22 MR BIZOS SC: I'm sorry.
 23 CHAIRPERSON: And the answer was, he
 24 removed them from the scene, which is not the same thing
 25 but perhaps –

<p style="text-align: right;">Page 1480</p> <p>1 MR BIZOS SC: Thank you. I missed that, 2 I'm sorry. Did he use gloves when he picked them up? 3 [11:51] W/O THAMAE: Are you referring to Colonel 4 Mere? 5 MR BIZOS SC: Yes, the person who gave 6 you the guns? 7 W/O THAMAE: I don't know if he used 8 gloves but – 9 MR BIZOS SC: When he gave them to you 10 was he wearing gloves? 11 W/O THAMAE: Yes, he was wearing gloves. 12 MR BIZOS SC: He was wearing gloves. 13 Were you wearing gloves? 14 W/O THAMAE: I was also wearing gloves as 15 it is standard procedure for LCRC members to wear 16 protective clothing, wear personal protective clothing when 17 processing crime scenes. 18 MR BIZOS SC: Do you know that a record 19 is kept in Pretoria of all guns that have come into the 20 possession of the police? They've got to be referred to 21 the forensics expert in Pretoria, did you know that? 22 W/O THAMAE: Yes, I do know all the 23 firearms are forwarded to the forensic science laboratory. 24 MR BIZOS SC: Do you know whether these 25 guns were examined by the forensic experts in Pretoria to</p>	<p style="text-align: right;">Page 1482</p> <p>1 CHAIRPERSON: Thank you. Mr Mpofo? 2 CROSS-EXAMINATION BY MR MPOFU: Warrant 3 Officer, do you now accept that the scene was interfered 4 with? 5 W/O THAMAE: That's correct. 6 MR MPOFU: What time did you arrive at 7 the scene? You said about four o'clock? 8 W/O THAMAE: That's correct, Mr Chair. 9 MR MPOFU: You arrived together with 10 Captain Mohlaki, is that correct? 11 W/O THAMAE: That's correct, Mr Chair. 12 MR MPOFU: Captain Mohlaki, when I asked 13 him a question, said that from his impression it was clear 14 that the shooting had just occurred, in fact the people had 15 not even been attended to. Is that – would you confirm 16 Captain Mohlaki's evidence in that regard? 17 W/O THAMAE: I – the question is not 18 clear to me. 19 MR MPOFU: Okay. The first part is just 20 information that I'm giving you. Captain Mohlaki, when I 21 put a question to him, agreed with me that upon your 22 arrival it seemed as if the shooting had just occurred 23 within a few minutes because the persons had not even been 24 attended to. Now the question is, would your evidence 25 according with Captain Mohlaki in that respect?</p>
<p style="text-align: right;">Page 1481</p> <p>1 determine who may have been in possession, including the 2 police, in the past? 3 W/O THAMAE: Yes, I know that they are 4 there for analysis. 5 MR BIZOS SC: Do you know whether that 6 process was adopted before it is suggested to the 7 Commission that these were, belonged to someone in the 8 crowd? 9 W/O THAMAE: Sorry Mr Chair, can you 10 repeat the question again? I didn't understand the 11 question clearly. 12 MR BIZOS SC: Do you know whether any 13 investigation was done by the forensics department in 14 Pretoria as to whether these guns were in the possession, 15 of whom, and more particularly maybe – as has happened in 16 the past – the police? 17 W/O THAMAE: I only know that they are 18 there for analysis but I am not aware whether they have 19 finalised their analysis or not. 20 MR BIZOS SC: I have no further 21 questions, thank you, Mr Chair. 22 CHAIRPERSON: Thank you, Mr Bizos. Ms 23 Lewis, I think you're next. 24 CROSS-EXAMINATION BY MS LEWIS: Mr Chair, 25 I don't have any questions in cross-examination.</p>	<p style="text-align: right;">Page 1483</p> <p>1 W/O THAMAE: That is correct. 2 MR MPOFU: Thank you. When you arrived 3 at the scene the pile had already been collected, correct? 4 W/O THAMAE: That's correct, they were 5 already there. 6 MR MPOFU: In other words, in those few 7 minutes between the shooting and your arrival, someone had 8 already interfered with the scene. 9 W/O THAMAE: That's correct. 10 MR MPOFU: And are you also aware that 11 the interference with the scene was not only confined to 12 the weapons but that some of the bodies had also been 13 moved? 14 W/O THAMAE: Yes, I've seen that on the 15 video footage. 16 MR MPOFU: Thank you. You were asked by 17 Mr Semenya about dangerous weapons. What do you describe 18 as dangerous weapons? 19 W/O THAMAE: A panga, a spear, any sharp 20 instrument, even a stick. 21 MR MPOFU: So you include a stick in the 22 group of dangerous weapons? 23 CHAIRPERSON: I think he means a 24 sharpened stick, doesn't he? 25 MR MPOFU: A sharp stick, sorry. Sorry –</p>

Page 1484

1 sorry. Yes, but you know – I'm sorry, Chairperson, I'll
 2 allow the interpreter –
 3 MR MAHLANGU: Thank you.
 4 W/O THAMAE: Yes, I'm referring to -.
 5 MR MPOFU: Thank you. And you'd agree
 6 with me that a non-sharpened stick is not a dangerous
 7 weapon?
 8 W/O THAMAE: To me it is also a dangerous
 9 weapon.
 10 MR MPOFU: So then why did you agree with
 11 the distinction? In other words, to you, whether it's
 12 sharpened or not sharpened, it's a dangerous weapon?
 13 W/O THAMAE: That's correct.
 14 MR MPOFU: Okay, would you at least
 15 concede that a non-sharpened stick is a much less dangerous
 16 weapon than a spear and a panga?
 17 W/O THAMAE: I'll rather say it will stay
 18 a dangerous weapon. I won't categorise it.
 19 MR MPOFU: I see. Okay, so they are
 20 equally dangerous in your estimation.
 21 W/O THAMAE: I'm saying they are
 22 dangerous – not equally dangerous, they are dangerous.
 23 MR MPOFU: Okay. Okay, which one is more
 24 dangerous?
 25 W/O THAMAE: I've already indicated I

Page 1485

1 won't say – I won't categorise them that the one is more,
 2 less dangerous and the other one is more dangerous. They
 3 might have the same effect.
 4 MR MPOFU: Now was there any – if you go
 5 to B38 – no, I'm sorry. Oh yes, it is B38. Do you see
 6 that there are basically two rows of weapons there?
 7 W/O THAMAE: I can see that, yes.
 8 MR MPOFU: And they – well, certainly I
 9 mean I know you didn't compile this but do you think
 10 there's any logic in how the piles are arranged?
 11 W/O THAMAE: No, they were just arranged
 12 in that fashion.
 13 MR MPOFU: It's just a coincidence.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: So there's no reason why all
 16 the pangas are in row 2?
 17 W/O THAMAE: No, there is no reason.
 18 MR MPOFU: Okay. By the way, do you know
 19 who had interfered with the scene, who had created the
 20 pile?
 21 W/O THAMAE: I've already indicated that
 22 Lieutenant-Colonel Mere handed over the two firearms to me,
 23 that he allegedly said they'd come from the scene. He's
 24 the only person that I know he removed something from the
 25 scene. With regard to these dangerous weapons, I don't

Page 1486

1 know who piled them up.
 2 MR MPOFU: While you were at scene 1 were
 3 you able to hear the shooting that occurred at scene 2?
 4 W/O THAMAE: There was never shooting in
 5 my – while I was at scene 1, no shooting occurred at scene
 6 2.
 7 MR MPOFU: And you were at scene 2 for
 8 what, more than an hour –
 9 CHAIRPERSON: Scene 1 or scene 2?
 10 MR MPOFU: Sorry, I'm sorry, Chairperson.
 11 You were at scene 1 for how long?
 12 W/O THAMAE: Like I indicated, we arrived
 13 at plus-minus 4 o'clock and then I left that place the
 14 following day at round about 6 o'clock in the afternoon.
 15 MR MPOFU: Okay. And your evidence is
 16 that between that 4 o'clock and let's say 6 o'clock, there
 17 was no shooting at scene 2?
 18 W/O THAMAE: Not at all.
 19 MR MPOFU: Right. This has already been
 20 covered but just again to make sure. You are not – well,
 21 given that the bodies were moved, which we've now
 22 established, given the fact that you don't know where the
 23 so-called firing line was and also given the fact that you
 24 said the bullets could fly to the right at whatever angle,
 25 you would not be able –

Page 1487

1 COMMISSIONER HEMRAJ: You mean the
 2 cartridge cases to the right?
 3 MR MPOFU: I'm sorry, yes, the cartridge
 4 cases – thank you, commissioner. It would be impossible
 5 for you – also given this and if all those givens are
 6 wrong, you can correct me – given the fact that you don't
 7 know which bullet or rather which gun or which bullet
 8 killed which person – so those are the givens that I'm
 9 saying – you would not be able to estimate any distances
 10 between a shooter and a shot person, correct?
 11 W/O THAMAE: No, I won't be able to do
 12 it.
 13 MR MPOFU: Now the last issue I want to
 14 canvass with you deals with the briefing that you said you
 15 received. According to your evidence, the only thing that
 16 was going to happen there was people surrendering and you
 17 recording the scene.
 18 W/O THAMAE: That's correct, Mr Chair.
 19 MR MPOFU: At no stage was this changed
 20 to the possibility of something else happening.
 21 W/O THAMAE: No stage.
 22 MR MPOFU: And if I said to you that
 23 there'll be evidence that as early as 12 o'clock, or I
 24 think 12:05, paramedics were called to come and be on
 25 standby at the scene, would that surprise you?

Page 1488

1 W/O THAMAE: Ja, that will be a surprise
 2 to me.
 3 MR MPOFU: Because from your briefing
 4 there would have been no role for paramedics, it's simply
 5 surrendering and taking of – or rather, and recording of
 6 the scene, correct?
 7 W/O THAMAE: That's correct.
 8 MR MPOFU: Okay, I'm sorry I misled you.
 9 There are two other things that I need to cover. Are you
 10 aware of allegations – I think let's put them at that level
 11 for now – that some of the people who had been shot were
 12 finished off, as it were, and shot at close range after the
 13 shooting that we saw on television?
 14 W/O THAMAE: Chair, I won't comment on
 15 those –
 16 MR MPOFU: You're not aware –
 17 W/O THAMAE: - only the pathology –
 18 CHAIRPERSON: Mr Mpofo, sorry, and the
 19 witness. Mr Semenya wants to say something.
 20 MR SEMENYA SC: I want to raise an
 21 objection, Chair.
 22 CHAIRPERSON: I understand you want to
 23 raise an objection, yes. What is the objection?
 24 [12:11] MR SEMENYA SC: Again it's very difficult
 25 to discern whether Mr Mpofo is putting it as a factual

Page 1489

1 statement or a hypothesis. If he says there's going to be
 2 that evidence, he'd better say it in unequivocal terms.
 3 CHAIRPERSON: To be fair to the witness
 4 that you're cross-examining and to Mr Semenya's clients, if
 5 you were to make it clear whether what you were putting is
 6 something that you're proposing to prove in evidence or
 7 whether it's merely a hypothesis which you want to test.
 8 MR MPOFU: Well, Chair, before I answer
 9 the question I must say that I think that's very surprising
 10 –
 11 CHAIRPERSON: I don't think that you
 12 should tell us what you think, Mr Mpofo.
 13 MR MPOFU: Okay –
 14 CHAIRPERSON: I've given a ruling. The
 15 ruling I – if you wish to suggest to me that I should
 16 reconsider my ruling because you wish to address me fully
 17 on the matter –
 18 MR MPOFU: Yes, I do.
 19 CHAIRPERSON: - I'm prepared to listen to
 20 you.
 21 MR MPOFU: Thank you, Chair. Yes, Chair,
 22 simply if, as we were told yesterday, witnesses – material
 23 can be put to witnesses which is not even, does not even
 24 pretend to be evidence, I think with such an allegation
 25 made, that's how I framed the question and if I must use

Page 1490

1 the word "evidence" then I will, but I thought when I say
 2 that is he aware of those allegations –
 3 CHAIRPERSON: If you meant to say, is
 4 that there would in due course be an allegation by someone
 5 –
 6 MR MPOFU: That's exactly –
 7 CHAIRPERSON: - not just speculating or
 8 hypothesising –
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: But mentioning something
 11 that he or she has seen, then of course there's nothing
 12 wrong with the question. There's nothing wrong with the
 13 question even to put it as a hypothesis. All I was saying
 14 to you is, we must be clear which of the two we'd be
 15 dealing with but you've now removed the problem because you
 16 say it's not a hypothesis, it's an actual factual
 17 allegation which you're putting to the witness.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: - Mr Semenya's objection
 20 then falls away.
 21 MR MPOFU: Thank you, Chair. Ja, that's
 22 what I said. Maybe I'll repeat the question and I'll use
 23 both words.
 24 CHAIRPERSON: I think Mr Semenya still
 25 wants to say something.

Page 1491

1 MR MPOFU: Oh, okay.
 2 MR SEMENYA SC: Chair, if the allegation
 3 is going to be something like it was said in the newspaper,
 4 then it mustn't be put as an allegation of that nature. If
 5 it –
 6 CHAIRPERSON: Sorry, I didn't understand
 7 Mr Mpofo to say that he was putting it on that basis. He
 8 said that – he followed it up by saying that if he has to
 9 say there will be evidence, he will say so, that it is an
 10 allegation that he's putting based upon evidence that he
 11 proposes to lead. I understood him to say that and that's
 12 why I said I thought your objection fell away.
 13 MR SEMENYA SC: My objection withdrawn,
 14 my objection would fall.
 15 MR MPOFU: Chairperson, I must say I
 16 don't appreciate my cross-examination being interrupted for
 17 no apparent reason.
 18 CHAIRPERSON: Mr Mpofo, counsel are
 19 entitled to object. If their objections are bad or fall
 20 away, they will be dealt with accordingly. I understand a
 21 cross-examiner doesn't like interruptions but there are
 22 interruptions I'm afraid one has to live with and so I
 23 don't think it necessary to make that sort of comment. If
 24 the objections are persistent and frivolous and unfounded
 25 and uncalled for, you can – I think, I hope –

Page 1492

1 MR MPOFU: Thank you, Chair.
 2 CHAIRPERSON: - allow me to deal suitably
 3 with the objector, but I don't think it's necessary to make
 4 comments like that. Just please carry on.
 5 MR MPOFU: Are you aware – or rather let
 6 me put it like this again. There are also going to be
 7 allegations and evidence that some of the people were run
 8 over by the Nyalas. Did you observe anything of that
 9 nature or are you aware of such allegations and evidence?
 10 W/O THAMAE: I am not aware of something
 11 like that. I've no information and I've never noticed
 12 something like – or observed something of that nature.
 13 CHAIRPERSON: When you mean you haven't
 14 observed anything of that nature, do you mean you didn't
 15 see any Nyalas driving over bodies or do you mean that you
 16 saw nothing which could be indicative of the fact that
 17 something of that kind had happened?
 18 W/O THAMAE: Ja, I never – observed
 19 something like the tracks of the Nyalas going to the side
 20 where the bodies were lying. It's what I observed, there
 21 were no tracks like that next to the bodies.
 22 MR MPOFU: There was also a question
 23 asked to you by Mr Bizos about the majority of the weapons
 24 and I do appreciate that you arrived at the scene at a
 25 particular time but if you can just assist the Commission,

Page 1493

1 can you go to slide 172? Exhibit L, thank you. Are you
 2 there?
 3 W/O THAMAE: Yes, I am, Mr Chair.
 4 MR MPOFU: Okay, apart from the man in
 5 front brandishing a panga, what would you say are the
 6 majority of the weapons there?
 7 W/O THAMAE: I'd say sticks.
 8 MR MPOFU: Thank you. Chairperson, at
 9 this time I would request that we play the video of
 10 Anderson. Chairperson, I am informed or advised,
 11 correctly, that I should – that a warning might be suitable
 12 to be issued in respect of this video, the usual warning.
 13 CHAIRPERSON: I understand that the video
 14 operators are in a position to show the video, is that
 15 correct? Mr Madlanga – Mr Madlanga did say at the
 16 beginning that he had arranged for certain videos to be
 17 shown if it was required in cross-examination. Did that
 18 refer to – is he Warrant Officer Handerson, what's his
 19 rank?
 20 MR MPOFU: He's an Adjutant.
 21 CHAIRPERSON: And is he Anderson or
 22 Henderson? There was some debate about that. I thought it
 23 was Handerson, is that right?
 24 MR MPOFU: Yes, with an H, Chairperson.
 25 CHAIRPERSON: I know it's an H, but H-A –

Page 1494

1 MR MPOFU: Yes.
 2 CHAIRPERSON: Or H-E?
 3 MR MPOFU: Oh, I see. H-E.
 4 CHAIRPERSON: Is it Henderson or
 5 Handerson? Is he going to come and give evidence?
 6 MR MADLANGA SC: Mr Chair, at this stage
 7 I do not know whether it's H-E or H-A.
 8 CHAIRPERSON: Is he coming to give
 9 evidence?
 10 MR MADLANGA SC: Depending on the cross-
 11 examination –
 12 CHAIRPERSON: Well, if he comes –
 13 MR MADLANGA SC: We may or we may not
 14 call him.
 15 CHAIRPERSON: If he comes he can tell us.
 16 MR MADLANGA SC: Yes, Mr Chair.
 17 CHAIRPERSON: And are the video operators
 18 in a position to show us his video?
 19 W/O THAMAE: It is H-E, Chairperson.
 20 CHAIRPERSON: Thank you, so that's
 21 problem has now been solved. The video that is going to be
 22 shown contains graphic scenes which may well cause distress
 23 and unhappiness to the people who are close to some of the
 24 people depicted on the video. So before the video is shown
 25 we will pause for a minute to give anyone who feels that

Page 1495

1 the video may cause him or her distress, to leave the
 2 auditorium. Ms Henderson – I'm sorry, Ms Lewis, I see
 3 you've turned on your microphone.
 4 MS LEWIS: Yes.
 5 CHAIRPERSON: Do you wish to say
 6 something?
 7 MS LEWIS: I do. I'm sorry to interrupt.
 8 I'm just wondering whether it could be possible to give a
 9 more specific warning and in particular to say that the
 10 bodies that will be seen are those which were found at
 11 scene 1 and, if possible, to read out the names of those
 12 people.
 13 CHAIRPERSON: Do you want me to read out
 14 the names of all the people at scene 1?
 15 MS LEWIS: Yes, Mr Chair.
 16 CHAIRPERSON: For the benefit of those
 17 who are going to have to read the transcript, the names are
 18 in Exhibit O so I won't read them out but I'll ask the
 19 interpreter, whose pronunciation will be more accurate than
 20 mine, to please the names out so that those in the
 21 auditorium who wish to be informed which bodies are likely
 22 to appear on the video, will know exactly which bodies will
 23 be shown. Thank you, Ms Lewis, for a very thoughtful and
 24 sensitive suggestion. I see some people have left the
 25 auditorium.

Page 1496

1 MS LEWIS: Thank you.
 2 [VIDEO IS SHOWN]
 3 CHAIRPERSON: I don't think that we heard
 4 very clearly what was being said. I understand it was in
 5 Afrikaans. If we may start the video again and pause at
 6 various stages so the interpreter can interpret, I suppose,
 7 into English and into isiXhosa what is being said.
 8 MR MAHLANGU: Thank you, Chair.
 9 CHAIRPERSON: The volume had better be
 10 turned up because we couldn't hear it very clearly.
 11 [VIDEO IS SHOWN]
 12 MR MAHLANGU: The person introducing the
 13 video says it's a scene of a particular case. It's at
 14 Marikana, it's a murder case.
 15 CHAIRPERSON: Mr Interpreter, I think you
 16 should also interpret into isiXhosa.
 17 MR MAHLANGU: It's happening, it took
 18 place on 2012, the eighth month on the 16th day at 17:52,
 19 17:42.
 20 [VIDEO IS SHOWN]
 21 [12:31] [VIDEO IS SHOWN]
 22 CHAIRPERSON: Yes, Mr Mpofo?
 23 MR MPOFU: Thank you, Chairperson. Just
 24 -
 25 MR MADLANGA SC: Just before my learned

Page 1497

1 friend commences, there are – I'm advised by my junior, Ms
 2 Mojapelo, that there are three more shorter ones – much,
 3 much shorter ones.
 4 CHAIRPERSON: Mr Mpofo, do you want to
 5 see the shorter ones now?
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: Ja, alright. Well, let's
 8 do that –
 9 MR MPOFU: Maybe let's –
 10 CHAIRPERSON: And then I was proposing to
 11 go on till 1 o'clock or thereabouts.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: But if, when we've seen
 14 these three shorter ones, you consider it appropriate to
 15 ask for us to adjourn until after the lunch adjournment,
 16 then you can do so but I'll leave it to you to –
 17 MR MPOFU: Thanks, Chair.
 18 CHAIRPERSON: - decide how you want to
 19 run your cross-examination. I know you don't like being
 20 interfered with.
 21 MR MPOFU: Thank you, Chairperson.
 22 CHAIRPERSON: Not that that will stop me
 23 if I consider it necessary.
 24 [VIDEO IS SHOWN]
 25 MR MPOFU: Sorry, yes. Thank you,

Page 1498

1 Chairperson, just to direct the gentleman, while he is
 2 playing those three shorter ones he might as well – we also
 3 had a short one of Al Jazeera, so could he just do that as
 4 well?
 5 CHAIRPERSON: If he's got it available to
 6 show –
 7 MR MPOFU: Yes, it's –
 8 CHAIRPERSON: - that's fine.
 9 MR MPOFU: It's ready, yes.
 10 [12:51] [VIDEO IS SHOWN]
 11 MR MAHLANGU: It's another case. 23
 12 minutes past 12, again on the 16th August 2012.
 13 [VIDEO IS SHOWN]
 14 CHAIRPERSON: Mr Mpofo, I think perhaps
 15 it would be appropriate at this stage for us then to take
 16 the lunch adjournment. Is there another –
 17 MR MPOFU: Yes –
 18 CHAIRPERSON: We haven't seen the Al
 19 Jazeera one yet. Is there another Henderson clip as well
 20 for us to see?
 21 MR MPOFU: Yes, Chair, there's a short
 22 one. I thought logically let's finish with the clip –
 23 CHAIRPERSON: Alright. I did say you
 24 could determine when we adjourn.
 25 MR MPOFU: Thank you. I'll use that

Page 1499

1 power for now, Chair.
 2 [VIDEO IS SHOWN]
 3 MR MPOFU: Chairperson, sorry, if I may?
 4 Can you play the Al Jazeera one, it's much shorter than
 5 this one.
 6 [13:11] [VIDEO IS SHOWN]
 7 MR MPOFU: Thank you, Chairperson, that
 8 would be an appropriate time for the break.
 9 CHAIRPERSON: The Commission will take
 10 the lunch adjournment.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [14:12] CHAIRPERSON: The Commission resumes. Mr
 13 Mpofo, are you now in a position to cross-examine?
 14 MR MPOFU: Yes, thank you, Chairperson.
 15 CROSS-EXAMINATION BY MR MPOFU (CONTD):
 16 Warrant Officer, I'm going to ask you questions based on
 17 the videos, hopefully avoiding having to replay the videos,
 18 except if there's some disagreement between us. You would
 19 agree – you would agree that there are no weapons next to
 20 the bodies, any of the bodies, except of course N where
 21 there's that stick?
 22 W/O THAMAE: That's correct, Mr Chair.
 23 CHAIRPERSON: I think you mean P.
 24 MR MPOFU: Yes. Yes, by which I meant P.
 25 Sorry, I made a mistake. Except for the body that has a

Page 1500

1 stick, which is P, correct.
 2 W/O THAMAE: If I remember correctly,
 3 yes.
 4 MR MPOFU: It looks like both you and
 5 myself, Chair, are wrong.
 6 CHAIRPERSON: Look at B37. There's a
 7 picture of body P with a stick.
 8 MR MPOFU: Okay. So okay, the
 9 Chairperson was right.
 10 CHAIRPERSON: There's also a stick in O.
 11 MR MPOFU: Oh, that's under the body,
 12 yes. Well, it looks like a rod, yes, but – yes, I'm sorry
 13 Warrant Officer, the body you are referring to is O.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: And we might as well include P
 16 insofar as there's a rod there. Except for those two,
 17 there are no weapons among the bodies.
 18 W/O THAMAE: That's correct.
 19 MR MPOFU: Thank you. And at the
 20 beginning of each video there's reference to a murder case.
 21 Do you know who was murdered?
 22 W/O THAMAE: The bodies lying at that –
 23 at scene 1.
 24 MR MPOFU: And then the first video is
 25 taken at about 17 – is it 42 or 52?

Page 1501

1 W/O THAMAE: 17:42.
 2 MR MPOFU: 42, yes. And it was already
 3 getting dark.
 4 W/O THAMAE: That's correct, Mr Chair.
 5 MR MPOFU: Do you have any reason why the
 6 video was taken almost two hours after your arrival there?
 7 W/O THAMAE: Mr Chair, if I may explain?
 8 Upon our arrival we arrived at scene 1 and we were taken –
 9 we waited for General Naidoo to arrive and then he arrived,
 10 he took us through scene 1. We went to scene 2 and then
 11 when back to scene 1 again. I think that is the reason why
 12 we took so long before we did –
 13 MR MPOFU: Okay, I see. You said that –
 14 I thought your earlier evidence was that the kraal itself
 15 was not part of the scene but would it be correct to say
 16 that there were some clothing items and even shoes inside
 17 the kraal, is that correct?
 18 W/O THAMAE: That's correct, Chair.
 19 MR MPOFU: And the stick that is on body
 20 O, I think we've now established, is sitting very nicely on
 21 his shoulders, is that correct?
 22 W/O THAMAE: That's correct.
 23 MR MPOFU: You don't know who placed it
 24 there?
 25 W/O THAMAE: That's correct, Mr Chair.

Page 1502

1 MR MPOFU: But effectively that's the
 2 only dangerous weapon, on your definition, that you
 3 observed – apart from the pile, of course.
 4 W/O THAMAE: That's correct.
 5 MR MPOFU: Right. It would seem that
 6 about two hours after the – or at least after your arrival,
 7 paramedics were still treating people, is that correct?
 8 W/O THAMAE: That's correct, Chair.
 9 MR MPOFU: Some of the bodies were lying
 10 very close to the kraal, correct?
 11 W/O THAMAE: That's correct.
 12 MR MPOFU: And actually the body number
 13 L, the body of Mr Cebisile Yawa, is lying very close to the
 14 entrance of the kraal, against the kraal itself.
 15 W/O THAMAE: That's correct.
 16 MR MPOFU: And from the video, the answer
 17 which you've already given to what my learned friend Mr
 18 Bruinders asked you, is even much clearer – that the path
 19 leads to the informal settlement, correct?
 20 W/O THAMAE: That's correct, it did.
 21 MR MPOFU: The next video where there are
 22 cones – yes, that's the word I was looking for – where
 23 there are lots of cones, it says 20 minutes past 12 and can
 24 we assume that that means 20 minutes after midnight?
 25 W/O THAMAE: That's correct, Mr Chair.

Page 1503

1 MR MPOFU: Now, we know that – we
 2 established before lunch that the weapons were interfered
 3 with and that the bodies were interfered with. Would you
 4 happen to know if the cartridges were interfered with as
 5 well?
 6 W/O THAMAE: That I don't know.
 7 MR MPOFU: You don't know, thank you.
 8 But you would agree with me that some of the cones are
 9 lying among the bodies?
 10 W/O THAMAE: That's correct.
 11 MR MPOFU: You saw – I think it's video
 12 number 2 or 3 – that there's actually, okay I won't put it
 13 – maybe one or two cartridges which are lying, in my
 14 estimation and you can correct me, less than 30 centimetres
 15 from the head of one of the bodies.
 16 W/O THAMAE: No, I never found a
 17 cartridge case close as that distance.
 18 MR MPOFU: Yes, I know. I'm asking you
 19 whether, on the videos, did you see a cartridge case which
 20 was lying almost 30 centimetres from the head of somebody?
 21 W/O THAMAE: I won't say it's 30
 22 centimetres.
 23 MR MPOFU: Okay, fair enough, you didn't
 24 notice. I'm saying you did not notice that in the video?
 25 W/O THAMAE: I noticed it but it was not

Page 1504

1 – in my opinion it was not 30 centimetres.
 2 MR MPOFU: How many centimetres do you
 3 think?
 4 W/O THAMAE: I'll have to watch it
 5 closely again to estimate. I can't remember how far was
 6 it.
 7 CHAIRPERSON: Can you give us an
 8 estimate? Was it less than a metre, in your opinion?
 9 W/O THAMAE: Mr Chair, I don't want to
 10 mislead the Commission. I really want to watch it over
 11 again.
 12 MR MPOFU: Mr Chair, I'm sorry, I wanted
 13 to avoid this but unfortunately I'm not even sure myself if
 14 it was video 2 or 3 but it was the short one, if we may,
 15 Chair.
 16 CHAIRPERSON: What I propose to do is,
 17 round about quarter past three to take a brief tea
 18 adjournment and carry on till about four. So perhaps
 19 during the adjournment you can do that, look at it and
 20 carry on with something else in the meanwhile.
 21 MR MPOFU: Thank you, Chair. Thank you.
 22 Lastly, Warrant Officer, you saw among – that there were a
 23 lot of abandoned shoes in the veld.
 24 W/O THAMAE: That's correct, Mr Chair.
 25 MR MPOFU: Including a pair of slippers.

Page 1505

1 W/O THAMAE: That's correct, Mr Chair.
 2 MR MPOFU: If you go to – I think it's
 3 15, B15.
 4 W/O THAMAE: I've found it, Mr Chair.
 5 MR MPOFU: Got it? Okay, I'm going to
 6 ask you for an estimation. If you can't give it, you can
 7 say so. That shack that you see there, how far is it from
 8 the kraal? Approximately?
 9 W/O THAMAE: 40 to 45 metres.
 10 MR MPOFU: And the last line of the –
 11 okay, let me put it like this. The south – is it south –
 12 south-most line, part of the blue line, is another let's
 13 say 15 or so metres from the shack, correct?
 14 W/O THAMAE: I don't know. I don't
 15 understand from –
 16 MR MPOFU: Okay, yes – no, no, I
 17 understand, the question is vague. You see that the blue
 18 line traverses the path?
 19 W/O THAMAE: Yes, you can see that.
 20 MR MPOFU: Yes. Now when I say the
 21 south-most point of the blue line, I mean away from the
 22 kraal towards the informal settlement. Do you understand
 23 now? Are you with me, Chair – Adjutant?
 24 W/O THAMAE: I want to – okay, I want to
 25 understand. Do you mean the south part of the shack there?

Page 1506

1 MR MPOFU: No, sorry. I mean the lower
 2 part, maybe let's put it like that. Let's say the part of
 3 the blue line that is next to the red line, can we call
 4 that the higher part of the blue line? Maybe we'll use the
 5 pointer. Okay, the pointer is not going to be helpful now,
 6 I've just lost my glasses –
 7 COMMISSIONER HEMRAJ: Mr Mpofo, why don't
 8 you use one of the alphabet on the slide to –
 9 MR MPOFU: Yes, thank you, thank you,
 10 commissioner. You've got the picture now, Warrant Officer?
 11 W/O THAMAE: Yes.
 12 MR MPOFU: Okay, you see where the letter
 13 F is?
 14 W/O THAMAE: Quite correct.
 15 MR MPOFU: Yes, so let's call that the
 16 higher part of the blue line, of the blue block. Alright,
 17 now my question concerns the lower part, the lowest part,
 18 in other words opposite that. Are we together?
 19 W/O THAMAE: That's correct, Mr Chair.
 20 MR MPOFU: Yes. Now that point which is
 21 the end of the blue line or the lower end of the blue line,
 22 would you agree with me that it's another – sorry, would
 23 you agree that it's another 15 metres or more from the
 24 shack?
 25 W/O THAMAE: That's correct.

Page 1507

1 MR MPOFU: Thank you. So from that – if
 2 you add the 40 or 45 and the 15, then the furthest point of
 3 the cartridges was, let's say more than 50 metres from the
 4 cluster of bodies?
 5 W/O THAMAE: That's correct.
 6 MR MPOFU: Okay, now also despite the
 7 fact that your yellow line –
 8 COMMISSIONER HEMRAJ: I'm sorry to
 9 interrupt.
 10 MR MPOFU: Sorry, sorry commissioner.
 11 COMMISSIONER HEMRAJ: Can you just go
 12 through that again because I don't follow it?
 13 MR MPOFU: Alright. Should I do it by
 14 questions or just explain it, commissioner?
 15 COMMISSIONER HEMRAJ: I think by
 16 questions, yes.
 17 MR MPOFU: Okay. You said that the shack
 18 is about 40, 45 metres from the kraal or from the bodies,
 19 correct?
 20 W/O THAMAE: That's correct.
 21 [14:32] MR MPOFU: And you agreed with me that
 22 from the shack to the lowest point of the blue line is
 23 about 15 metres or so, or more, correct?
 24 W/O THAMAE: That's correct.
 25 MR MPOFU: Therefore 40 plus 15 is 55, so

Page 1508

1 the lowest, the furthest point of the blue line is about 55
2 metres or so from the bodies.
3 W/O THAMAE: That's correct.
4 MR MPOFU: Thank you. Is that better?
5 COMMISSIONER HEMRAJ: That presupposes
6 that the line from the bodies to the southernmost part is a
7 straight line.
8 MR MPOFU: Yes.
9 COMMISSIONER HEMRAJ: But it isn't.
10 MR MPOFU: Yes, I'm using the path as the
11 straight line, I mean – I think the witness understands it
12 in the same way.
13 COMMISSIONER HEMRAJ: Well, I don't.
14 MR MPOFU: Okay. Well, I can't – I'm
15 happy with that answer as it is, thank you. Or maybe just
16 for the sake of completion, this probe takes the
17 supposition – if the measurement that was given would be
18 the same if we were imagining a straight line from the
19 lowest point of the blue line to the entrance of the kraal
20 or the cluster of bodies, correct?
21 W/O THAMAE: That's correct.
22 MR MPOFU: Thank you. Thank you, now the
23 last issue and this time it's the real last one. Despite
24 your – your yellow line, which I understood to be
25 indicating where, within either the blue line or the red

Page 1509

1 block as it were, the concentration of cartridges were –
2 did I understand your evidence correct?
3 W/O THAMAE: Yes, the cartridge cases of
4 the pistols.
5 MR MPOFU: Yes. Yes, what I want to ask
6 you is just for clarification. From your yellow line, your
7 yellow line seems to be outside of the path, correct?
8 W/O THAMAE: That's correct.
9 MR MPOFU: And yet when we looked at the
10 video it looked like the last concentration of the
11 cartridges were on the path, would you agree with that?
12 W/O THAMAE: No, I don't agree.
13 MR MPOFU: Okay. Okay, thank you, we
14 won't play the video now. Maybe when we do it later we
15 will show that part but the cartridge cases or cones,
16 whichever way you look at it, that were littered among the
17 bodies, how many were there approximately? Of course if
18 you can't remember then say so.
19 W/O THAMAE: Mr Chair, before I answer
20 that question I want to bring it under the attention of the
21 Commission that those cones does represent the place and
22 position of cartridge cases. However, we ran out of cones,
23 so it doesn't reflect the true indication of the place and
24 position of the concentration of the cartridge cases.
25 MR MPOFU: Thank you. Thank you very

Page 1510

1 much. So from that answer we can assume that there may be
2 more cartridges than cones that we see among the bodies.
3 W/O THAMAE: That is what I was trying to
4 explain.
5 MR MPOFU: Thank you. Who brought the
6 cones?
7 W/O THAMAE: I brought some, Colonel
8 Botha also brought some, Colonel Van der Merwe and other
9 people who came to assist me.
10 MR MPOFU: Yes, you brought them with you
11 at 4 o'clock?
12 W/O THAMAE: Ja, yes, at 4 o'clock.
13 MR MPOFU: Ja, thank you very much.
14 Thank you, Mr Chairman.
15 CHAIRPERSON: Is that the end of your
16 cross-examination, Mr Mpofu, subject to –
17 MR MPOFU: Subject to –
18 CHAIRPERSON: - coming back after tea –
19 MR MPOFU: Just for that one question,
20 thank you Chair.
21 CHAIRPERSON: Is there anyone else who
22 wishes to ask questions who hasn't had an opportunity yet?
23 Mr Semenya, you want another bite but before you get to
24 another bite, let's see if there's any other counsel or
25 other representative who wants to ask a question.

Page 1511

1 MR MPOFU: I'm sorry, Chairperson,
2 there's just one aspect that I forgot to put to the Warrant
3 Officer.
4 CHAIRPERSON: Mr Mpofu.
5 MR MPOFU: Yes. Page 32 – sorry, Warrant
6 Officer, B32, can you see that?
7 W/O THAMAE: That's correct.
8 MR MPOFU: The hands that are on that
9 body, would it be correct to assume that they belong to one
10 of the policemen?
11 W/O THAMAE: That is not true, it is a
12 mortuary personnel. That photo was taken when the bodies
13 were removed by mortuary personnel.
14 MR MPOFU: Yes, thank you. And is that
15 the time that you, or whoever took the pictures for the
16 evidence, were the pictures then taken at the time of the
17 removal of the bodies to the mortuary?
18 W/O THAMAE: Yes. If you can see, all
19 those bodies with white papers and numbers on those white
20 papers were taken during the time when the bodies were
21 removed from the scene by mortuary personnel.
22 MR MPOFU: Yes. And around what time was
23 it when the mortuary personnel eventually came?
24 W/O THAMAE: I might be wrong, it was
25 maybe around 2 o'clock.

Page 1512

1 MR MPOFU: 2AM?

2 W/O THAMAE: 2AM on the 17th of August.

3 MR MPOFU: About 10 hours after the

4 shooting itself, correct?

5 W/O THAMAE: Approximately.

6 MR MPOFU: Yes, thanks. And those cones

7 that are on page 32 – B32, sorry – what do they represent?

8 W/O THAMAE: This – those cones were

9 placed next to each body.

10 MR MPOFU: Okay. Thank you very much,

11 Chairperson. Just one second please, Chair. Warrant

12 Officer, did you attend the 9-day conference to prepare for

13 the Commission in Potchefstroom?

14 W/O THAMAE: Ja, I went there.

15 MR MPOFU: Did you participate in it?

16 W/O THAMAE: No, I didn't participate. I

17 was never called inside.

18 MR MPOFU: Any of your colleagues from

19 LCRC who were called inside?

20 W/O THAMAE: Ja, it was only Colonel

21 Botha.

22 MR MPOFU: Thank you very much.

23 CHAIRPERSON: - questions, Mr Mpofu?

24 MR MPOFU: No, I actually said that,

25 thank you Chair.

Page 1513

1 CHAIRPERSON: Does any other party

2 representative wish to ask questions before I give Mr

3 Semenya an opportunity, as he has requested it? Mr

4 Semenya?

5 MR BRUINDERS SC: Mr Chair, could I?

6 CHAIRPERSON: Oh, Mr Bruinders, yes.

7 FURTHER CROSS-EXAMINATION BY MR BRUINDERS SC:

8 Yes. Forgive me, Mr Chair, could I just ask two questions

9 about these cones? How many cones did you bring to scene 1

10 at 4 o'clock?

11 W/O THAMAE: It's 10 that I always carry

12 in the vehicle that I use.

13 MR BRUINDERS SC: And how many cones were

14 used in total at scene 1?

15 W/O THAMAE: I didn't count how many did

16 I use.

17 MR BRUINDERS SC: No, I think we all

18 accept that you used your full quota, not so?

19 W/O THAMAE: Yes, my own, I used them.

20 MR BRUINDERS SC: How many cones besides

21 – well, how many cones including yours were used at scene

22 1?

23 W/O THAMAE: Like I said, I never counted

24 how many cones I did use at scene 1.

25 MR BRUINDERS SC: The other cones were

Page 1514

1 brought by the rest of the members of your team.

2 W/O THAMAE: Like I said, yes.

3 MR BRUINDERS SC: There were four of you.

4 W/O THAMAE: We are not four.

5 MR BRUINDERS SC: How many were in your

6 team?

7 W/O THAMAE: In the beginning we were

8 four, yes, and then we split into two, Captain Mohlaki and

9 Constable Molefe went to scene 2, myself and Warrant

10 Officer Henderson stayed behind at scene 1 and then we were

11 later joined by Colonel Botha and a team from provincial

12 office, about five members from provincial office and then

13 there arrived seven or eight members from Klerksdorp

14 office, two or three if I'm not mistaken from Rustenburg

15 office.

16 MR BRUINDERS SC: Now when did these

17 additional people get to scene 1?

18 W/O THAMAE: They arrived something past

19 eight in the evening.

20 MR BRUINDERS SC: Between 4 and 8 o'clock

21 it was – there were two of you at scene 1 plus, I think you

22 were joined you say by Colonel Botha and another member, is

23 that right?

24 W/O THAMAE: That's correct, Mr Chair.

25 MR BRUINDERS SC: And these are the two

Page 1515

1 people you say who brought along cones with them?

2 W/O THAMAE: As members arrived at that

3 scene, because they are always also having cones in their

4 vehicles that they use, they brought along cones and they

5 took cones out of their vehicles.

6 MR BRUINDERS SC: These are the two –

7 you're now talking about the two who joined you at scene 1?

8 W/O THAMAE: I said I was joined by

9 Colonel Botha and there came people from provincial office,

10 members from provincial office –

11 MR BRUINDERS SC: Let's leave aside – I

12 understand that the rest, the provincial office,

13 Klerksdorp, Rustenburg, they all got there you say at or

14 after 8 o'clock that night.

15 W/O THAMAE: Yes, they arrived after

16 eight.

17 MR BRUINDERS SC: Before they arrived you

18 were joined by Colonel Botha.

19 W/O THAMAE: That's correct.

20 MR BRUINDERS SC: And no other evidence

21 gatherer?

22 W/O THAMAE: That's correct.

23 MR BRUINDERS SC: And when did Colonel

24 Botha join you?

25 W/O THAMAE: I cannot remember what time

Page 1516

1 was it but it was maybe after two hours I was, two to three
 2 hours I was at that scene.
 3 MR BRUINDERS SC: When did you start
 4 placing the cones to show where cartridges were lying?
 5 W/O THAMAE: After I recognised the
 6 presence of those cartridge cases.
 7 MR BRUINDERS SC: When was that?
 8 W/O THAMAE: Come again, I didn't –
 9 MR BRUINDERS SC: When was that?
 10 W/O THAMAE: It was shortly before
 11 Colonel Botha arrived.
 12 MR BRUINDERS SC: And that's when you
 13 made use of the cones brought by you and your colleague who
 14 was assisting you at scene 1?
 15 W/O THAMAE: That's correct.
 16 MR BRUINDERS SC: Can you remember how
 17 many cones he brought?
 18 W/O THAMAE: I can't remember.
 19 MR BRUINDERS SC: And did you complete
 20 your setting out of the cones before the rest of the
 21 evidence gatherers arrived later on, at eight or after?
 22 W/O THAMAE: As I said, those cones were
 23 already placed when they arrived and I ran short of cones.
 24 When they arrived I requested cones from them. Myself,
 25 Colonel Botha and Warrant Officer Henderson already used

Page 1517

1 what we had in our vehicle.
 2 MR BRUINDERS SC: And more or less how
 3 much was that?
 4 W/O THAMAE: If I can estimate Colonel
 5 Botha's, there can be 70 to 80 cones that he had.
 6 MR BRUINDERS SC: Is that what Colonel
 7 Botha brought, 70 to 80 cones?
 8 W/O THAMAE: Ja, round about 70, 80.
 9 CHAIRPERSON: Mr Bruinders, please
 10 forgive my lack of comprehension but if you give me the
 11 assurance that you're asking questions for a particular
 12 focused reason, I won't ask you to disclose what it is but
 13 prima facie it seems to me the point that you want to make
 14 has been made insofar as the point – is it necessary to
 15 hammer on this point any further? I know that sometimes
 16 it's important for a cross-examiner to ask a question and
 17 there's a reason and it's embarrassing to disclose it, so I
 18 won't unnecessarily stop you but haven't you taken this
 19 point about as far as it can go, if not a bit further?
 20 MR BRUINDERS SC: I won't be much longer.
 21 You say you don't remember how many cones your colleague
 22 had when he arrived on the scene?
 23 W/O THAMAE: Ja, I don't remember.
 24 [14:52] MR BRUINDERS SC: I won't pursue that any
 25 further then.

Page 1518

1 CHAIRPERSON: Thank you, Mr Bruinders.
 2 Mr Semenya?
 3 MR SEMENYA SC: Warrant Officer, may we
 4 just tidy up some part of your evidence just to remove some
 5 controversy there? You'd recall you were asked about more
 6 or less what time you arrived at scene 1.
 7 W/O THAMAE: That's correct, Mr Chair.
 8 MR SEMENYA SC: And then you were asked
 9 about the weapons that were in a heap or a pile or
 10 concentrated, do you recall that?
 11 W/O THAMAE: That's correct, Mr Chair.
 12 MR SEMENYA SC: Did I hear you say at 4
 13 o'clock when you arrived those weapons were already in a
 14 heap?
 15 W/O THAMAE: That's what I said, yes Mr
 16 Chair.
 17 MR SEMENYA SC: Can I invite you to go
 18 back to B38?
 19 W/O THAMAE: I'm there, Mr Chair.
 20 MR SEMENYA SC: I seem to see at the top
 21 of the page those, the motor vehicle has its headlights on.
 22 Do you see that?
 23 W/O THAMAE: That's correct, Mr Chair.
 24 MR SEMENYA SC: When I look at that slide
 25 together with the other slides up to B45 – do you see all

Page 1519

1 of those?
 2 W/O THAMAE: I see all that.
 3 MR SEMENYA SC: They are night photos,
 4 aren't they?
 5 W/O THAMAE: That's correct.
 6 MR SEMENYA SC: So between four when you
 7 arrived and your first photos, there are no day photos you
 8 took?
 9 W/O THAMAE: That's correct, there are no
 10 day photos.
 11 MR SEMENYA SC: Now Captain Mohlaki told
 12 us about something called an active scene and a passive
 13 scene. Are those phrases familiar to you?
 14 W/O THAMAE: That's correct, Mr Chair.
 15 MR SEMENYA SC: And it was his evidence
 16 that, as crime scene management experts, you do not
 17 interfere or you do not do your work during the active
 18 scene, you wait until it is passive.
 19 W/O THAMAE: That's correct, Mr Chair.
 20 MR SEMENYA SC: So according to him, does
 21 it explain why it is that the photos were taken much later
 22 after the paramedics had attempted assisting those they
 23 can?
 24 W/O THAMAE: That's correct, Mr Chair.
 25 We were giving the paramedics chance to attend to those

Page 1520

1 injured people.

2 MR SEMENYA SC: So is it your distinct

3 recollection, Warrant Officer – and I'm asking you to

4 reflect – that immediately after four on your arrival, the

5 weapons were already made into a heap?

6 W/O THAMAE: That's correct, Chair.

7 MR SEMENYA SC: And you wouldn't have

8 seen who is heaping these weapons at 4 o'clock or more or

9 less?

10 W/O THAMAE: No, I didn't see who did it.

11 MR SEMENYA SC: Did you see them removing

12 them with the attendance of the medical people?

13 W/O THAMAE: I never saw them removing

14 them with the paramedics.

15 MR SEMENYA SC: And the reason would be

16 what, Warrant Officer? You would have been there.

17 W/O THAMAE: It might have happened

18 before I arrived.

19 MR SEMENYA SC: No, then I'm confused.

20 More or less we have an impression that scene 1 happens

21 near or around 4PM.

22 W/O THAMAE: I understand that but the

23 thing is, I'm explaining what I've seen, what I've found.

24 That is what I am explaining. It's not what I've seen

25 happening, it's what I found, what I came across when I

Page 1521

1 arrived at that scene.

2 MR SEMENYA SC: I'm trying, with your

3 assistance, to probe your observations. More or less at 4

4 o'clock the scene 1 happens. Your evidence seems to

5 suggest, and this is what I want to tidy up, seems to

6 suggest that even before the arrival of the paramedics, the

7 weapons had already been bunched up.

8 W/O THAMAE: Upon the time of my arrival

9 the incident had already occurred. That is why I am saying

10 I found those weapons in that condition, piled up at that

11 specific place.

12 MR SEMENYA SC: Just tidy this up for me

13 then. Were the paramedics there by the time of your

14 arrival or they arrived while you were there?

15 W/O THAMAE: I found them upon my arrival

16 at the scene.

17 MR SEMENYA SC: Then maybe it is your

18 timing which is throwing me out, Warrant Officer. So we

19 can accept, by the time you arrived the paramedics were

20 already on the scene attending to the injured.

21 W/O THAMAE: That's correct.

22 MR SEMENYA SC: Let me invite you to look

23 at B14. You dealt with this evidence in relation to the

24 distances from F to the shack and the distance from the

25 shack to the end point of the blue line, do you recall that

Page 1522

1 evidence?

2 MR MADLANGA SC: Is my learned friend

3 perhaps not seeking to make a reference to B15?

4 MR SEMENYA SC: Yes, B15 would be –

5 that's a pictorial element of the same –

6 CHAIRPERSON: You said B14. We looked at

7 B14 and couldn't understand what on earth you were about.

8 If you look at B15 then I think it becomes clearer, what

9 you were asking. It doesn't help to ask – it may have just

10 been a slip of the tongue on your part but B14 –

11 MR SEMENYA SC: It's my page numbering

12 which is wrong, I'm told.

13 CHAIRPERSON: Alright, well, we'd better

14 have the right numbers so we all understand the question,

15 not only the witness.

16 MR SEMENYA SC: At B15 I'm having – I'm

17 corrected, Warrant Officer – do you have that one?

18 W/O THAMAE: I do have it, Mr Chair.

19 MR SEMENYA SC: And you recall the

20 evidence about the distances?

21 W/O THAMAE: Yes, I do.

22 MR SEMENYA SC: And Commissioner Hemraj

23 was trying to point out that there could be another third

24 line which would make those points a triangle. Do you

25 follow the question?

Page 1523

1 W/O THAMAE: No, I don't follow it.

2 MR SEMENYA SC: If you move from point –

3 what is it – letter F to the shack, if you draw a straight

4 line there.

5 CHAIRPERSON: From the letter or the –

6 MR SEMENYA SC: The letter, alphabet. Do

7 you recall that evidence, Warrant Officer? It's not a big

8 point. All I'm saying is, the two points, if you draw one

9 straight below them, will give you a distance different

10 than the sum of the two.

11 W/O THAMAE: That's correct.

12 MR SEMENYA SC: No further questions,

13 thank you Chair.

14 CHAIRPERSON: Before I ask Mr Madlanga if

15 he's got any re-examination, I'd like to ask a few

16 questions. You said you got there at about 4 o'clock to

17 scene 1.

18 W/O THAMAE: That's correct, Mr Chair.

19 CHAIRPERSON: Now, how certain are you of

20 the accuracy of that recollection as to the time?

21 W/O THAMAE: If I remember well, when

22 Captain Mohlaki told me that we are needed at the scene, it

23 was round about quarter to four, 10 to four and it took us

24 more or less 10 minutes or less to arrive at that specific

25 scene.

<p style="text-align: right;">Page 1524</p> <p>1 CHAIRPERSON: So in other words, it 2 sounds to me as if you've reconstructed the time of your 3 arrival at scene 1 based upon an assumption that you were 4 summoned from the holding area to scene 1 at 10 to four, is 5 that correct? 6 W/O THAMAE: That's correct, Mr Chair. 7 CHAIRPERSON: Now, do we know from 8 Warrant Officer Henderson's video what time it was taken? 9 W/O THAMAE: I heard him saying 17:42. 10 CHAIRPERSON: That was the evidence that 11 we had earlier. Now how long after you arrived on the 12 scene did Warrant Officer Henderson arrive? Do you know or 13 can you only estimate or guess? 14 W/O THAMAE: Mr Chair, we were together – 15 myself, Warrant Officer Henderson, Captain Mohlaki and 16 Constable Molefe, we arrived at the same time at that 17 scene. And from scene 1, like I've explained, we were 18 taken through scene 1, we went to scene 2 and then we went 19 back to scene 1 again and then that was then Warrant 20 Officer Henderson started taking a video of the scene. 21 CHAIRPERSON: Now what you've told us 22 about the time lapse – well, no, you've told us what 23 happened between your arrival at scene 1 and your return to 24 scene 1 and Warrant Officer Henderson's having started 25 taking his video. Are you able to estimate the time lapse</p>	<p style="text-align: right;">Page 1526</p> <p>1 the evidence you gave that you didn't hear any shooting at 2 scene 2 after you got to scene 1 isn't correct. That's the 3 proposition I put to you and ask you to comment on. 4 W/O THAMAE: It is true that I didn't 5 hear any shooting and upon my arrival there was no shooting 6 on both scenes, so everything already occurred. So with 7 time I can say, it was still I'd say round about 4 o'clock 8 I arrived at scene 1. 9 CHAIRPERSON: What do you mean by round 10 about? Round about 4 o'clock? Does that mean 4 o'clock, 11 one minute past four or what does it mean? 12 W/O THAMAE: Four or a few minutes after 13 four. 14 [15:12] CHAIRPERSON: Thank you. Mr Madlanga, do 15 you have any re-examination of the witness or does anyone, 16 sorry, want to ask a question based on the questions that I 17 asked? 18 MR MPOFU: Chair, just – 19 CHAIRPERSON: Mr Mpofu, you've raised 20 your hand and turned your microphone on. 21 MR MPOFU: Yes, just one, just arising 22 from your questioning, Chair. 23 FURTHER CROSS-EXAMINATION BY MR MPOFU: 24 Firstly, this issue of the timing – remember that you've 25 been asked about the timing and you've also been asked</p>
<p style="text-align: right;">Page 1525</p> <p>1 between your arrival at scene 1 and the commencement of 2 Warrant Officer Henderson's video? 3 W/O THAMAE: If I may estimate, it took 4 us over one hour because we had also to wait for General 5 Naidoo to arrive at scene 1 to take us through and to take 6 us to scene 2 again and back. 7 CHAIRPERSON: The reason I'm asking these 8 questions, because it occurred to me that if your evidence 9 is accurate that you didn't hear any firing or anything of 10 that sort at scene 2 from the time you arrived at scene 1, 11 then the only explanation one can think of is that your 12 evidence you gave about the time you arrived at scene 1 may 13 be mistaken. I ask you that question because if the police 14 presentation is correct – it may not be, but if the police 15 presentation is correct, there was a shooting incident at 16 scene 2 at some stage shortly after seven minutes past 17 four. I'm referring to a text slide 235, a text at 236 and 18 slide 237. You see either you – if that's correct, if 19 their times are correct, then either your evidence that you 20 didn't hear any shooting at scene 2 when you got to scene 1 21 appears to be false, or it must have been later than you 22 told us. Do you wish to comment on that? When I said 23 false, I didn't mean you were deliberately telling an 24 untruth. I was using "false" in the sense of incorrect. 25 Either you are mistaken as to the time you got there, or</p>	<p style="text-align: right;">Page 1527</p> <p>1 about the pile of arms, correct? 2 W/O THAMAE: Correct, Mr Chair. 3 MR MPOFU: Ja, I just want to ask you one 4 question. At B38 up to 43 – let's call that the row of 5 arms. Shall we call that – would you work with me on that 6 one? 7 W/O THAMAE: That's correct, Mr Chair. 8 MR MPOFU: Is it correct that the row of 9 arms that we see there is a different thing to the pile of 10 arms that you referred to and that we saw on the video? 11 W/O THAMAE: That's correct, Mr Chair. 12 MR MPOFU: Thanks, Chair. 13 CHAIRPERSON: Anyone else want to ask 14 questions flowing from the questions I asked? No. I 15 understand that Adv Hemraj wants to ask a few questions. I 16 think we can then take the tea adjournment, Mr Mpofu can 17 find the section on the video that he wants to put to the 18 witness – 19 MR MPOFU: We've already found it, Chair, 20 so we can – if we could play it now and get it over and 21 done with. 22 CHAIRPERSON: Alright. Anyway, what I 23 meant was it's desirable that you finish your cross- 24 examination before Mr Madlanga re-examines. 25 MR MPOFU: Oh yes.</p>

Page 1528

1 CHAIRPERSON: But let's stand back for
 2 Commissioner Hemraj, let her ask her questions first before
 3 you ask your further questions based on the video.
 4 COMMISSIONER HEMRAJ: Warrant Officer,
 5 when I looked at the video, at the pile of traditional
 6 weapons, it appeared to me that some of them had blood on
 7 the weapons. Was that your observation?
 8 W/O THAMAE: That's correct, Chairperson.
 9 COMMISSIONER HEMRAJ: That doesn't appear
 10 from the photographs.
 11 W/O THAMAE: If I may explain further? I
 12 photographed those and then dealt with the one that had a
 13 fragment on it and then thereafter I requested Warrant
 14 Officer Opperman to investigate those dangerous weapons
 15 further.
 16 COMMISSIONER HEMRAJ: Would you go to
 17 your evidence about what you described as the arc of
 18 cartridge cases around body B? May I enquire why you used
 19 body B as the focal point for those measurements?
 20 W/O THAMAE: That is the body, according
 21 to evidence leaders they wanted to see which of the bodies
 22 was closest to a cartridge case, so they wanted the body,
 23 the cartridge case closest to one of those bodies and B
 24 happened to be one with cartridge cases closer to it.
 25 COMMISSIONER HEMRAJ: But if you look at

Page 1529

1 your sketch plan on B16, the bodies appear to be in very
 2 close proximity, don't they? The bodies appear to be very
 3 close together.
 4 W/O THAMAE: That's correct.
 5 COMMISSIONER HEMRAJ: So would some of
 6 those distances, would they also apply to some of the other
 7 bodies in that, in that very close proximity to body B?
 8 W/O THAMAE: I don't understand the
 9 question.
 10 COMMISSIONER HEMRAJ: You've given us a
 11 range of distances from body B to the cartridge cases
 12 between 2 and 6.1. There are other bodies lying close to
 13 B.
 14 W/O THAMAE: That's correct, Mr Chair.
 15 COMMISSIONER HEMRAJ: And I know you said
 16 you didn't measure any of the other distances but would the
 17 position of some of those cartridge cases, would they also
 18 relate in terms of distance, similar distances to the other
 19 bodies lying close by?
 20 W/O THAMAE: The position of those
 21 bodies, I can say with that – in relation to that arc they
 22 were, they were also lose but B was the closest.
 23 COMMISSIONER HEMRAJ: Yes, thank you very
 24 much.
 25 CHAIRPERSON: Thank you. Can I ask you

Page 1530

1 one question flowing from that, the answers you gave to
 2 Commissioner Hemraj. You said that you measured from body
 3 B because that's what the evidence leaders asked you to do.
 4 Now that can't be right because you made the measurements,
 5 surely, on the 16th August. The evidence leaders only came
 6 on the scene in September, a month later. So somebody – so
 7 it couldn't have been the evidence leaders who asked you to
 8 measure from B, body B on the 16th of August, it must have
 9 been somebody else. Now who was that?
 10 W/O THAMAE: That is correct. The scene
 11 was measured a long time ago on the 16th but what they asked
 12 me is to give them the distance of the closest body because
 13 I had a measurement already, just to give them that.
 14 CHAIRPERSON: Yes, no, but you said you
 15 measured from the body to the cartridge cases. The
 16 question is who asked you to measure or did anybody ask you
 17 to measure from the closest body to the cartridge cases?
 18 W/O THAMAE: That, I did it myself on the
 19 day, nobody asked me.
 20 CHAIRPERSON: Have you got other
 21 measurements, similar measurements from other bodies to
 22 cartridge cases?
 23 W/O THAMAE: If I use the programme that
 24 I've used to determine the measurements, I can get the
 25 measurements from any of those cartridge cases. I have all

Page 1531

1 those measurements.
 2 CHAIRPERSON: Thank you very much. Mr
 3 Mpofo, are you ready now for your video-based question?
 4 MR MPOFU: Yes, Chairperson.
 5 [VIDEO IS SHOWN]
 6 MR MPOFU: Thank you. Warrant Officer –
 7 sorry, I see that the big screen doesn't show the video,
 8 can you use that one or have you got it in front of you?
 9 W/O THAMAE: Yes, I had to check
 10 something on my photo as well.
 11 MR MPOFU: Oh okay, but after that can
 12 you then look at that screen, I think it's the nearest one
 13 to you.
 14 W/O THAMAE: That's correct.
 15 MR MPOFU: Can you see it?
 16 W/O THAMAE: Yes, I do.
 17 MR MPOFU: Would you agree with me now
 18 that that cartridge is lying less than 30 centimetres from
 19 that body?
 20 W/O THAMAE: That is not the body at that
 21 blanket and that blanket was not lying near the body.
 22 MR MPOFU: Alright, how far was the
 23 blanket from the body – if you can remember, of course?
 24 Approximately?
 25 W/O THAMAE: If you can look at F and you

<p style="text-align: right;">Page 1532</p> <p>1 see the line indicating, where the line – the line that 2 indicates the place and position of the body. 3 MR MPOFU: Yes. 4 W/O THAMAE: And you go to the blue line, 5 that is where that blanket is placed – 6 MR MPOFU: Okay – 7 W/O THAMAE: It's – 8 MR MPOFU: Just to clarify because of the 9 earlier confusion. When you say F, do you mean the letter 10 or the point? 11 W/O THAMAE: You see the letter F? 12 MR MPOFU: Yes. 13 W/O THAMAE: There is a line indicating, 14 where this line here ends it indicates the place and 15 position of the body. 16 MR MPOFU: The position of the body, not 17 the letter, correct? 18 W/O THAMAE: If you move back from where 19 the line ended, if you move back towards F you can see 20 there, that is the place and position of that blanket – 21 displayed on the screen. 22 MR MPOFU: Okay, thank you. So wherever 23 that blanket was, one thing that is definite is that it was 24 on the other side of that path, closer to the kraal, 25 correct?</p>	<p style="text-align: right;">Page 1534</p> <p>1 W/O THAMAE: That's correct. 2 MR MPOFU: Thank you. 3 CHAIRPERSON: - examination on this extra 4 point? 5 MR MPOFU: Yes, thank you, Chair. Maybe 6 I might as well just ask this question. That would then 7 mean that there were some cartridges that fell outside of 8 the blue line? 9 W/O THAMAE: It might be possible. That 10 blue line was just made to make it easier for the 11 Commission to understand the layout of the R5 cartridge 12 cases. 13 MR MPOFU: Thank you. Yes, thank you, 14 Chairperson. 15 CHAIRPERSON: Thank you. We'll take the 16 tea adjournment now, then Mr Madlanga can re-examine. I 17 don't know how long you're likely to be. Well, then let's 18 do it. If you're going to be very short, let's do it now. 19 RE-EXAMINATION BY MR MADLANGA SC: Thank 20 you, commissioners. Just one question in re-examination 21 and then something I should have done in chief. Maybe I 22 should start with the latter. Warrant Officer, you confirm 23 that on the 1st of October 2012 you participated at an 24 inspection in loco, is that so? 25 W/O THAMAE: That's correct, Mr Chair.</p>
<p style="text-align: right;">Page 1533</p> <p>1 W/O THAMAE: I don't understand when you 2 say at the other side of the path. 3 MR MPOFU: No sir, I'm sure you 4 understand. Listen, you see where the path is in front of 5 the – the path in front of the kraal which has – or let's 6 put it like this. The end of the blue line, the part that 7 coincides with the end of the blue line, you see that? 8 W/O THAMAE: Yes, I do. 9 MR MADLANGA SC: For the record, 10 commissioners, if it could be indicated that this debate 11 relates to B15. 12 MR MPOFU: B15 yes, thank you. Thank 13 you, Mr Madlanga. Do you see that? 14 W/O THAMAE: Yes, I do. 15 MR MPOFU: So the blanket, as it were, 16 was between that blue line and the kraal. 17 W/O THAMAE: You see underneath that line 18 that goes to F, just outside that blue line, it is where 19 that blanket is situated. 20 MR MPOFU: Thank you, so it's outside the 21 blue line. 22 W/O THAMAE: That's correct. 23 MR MPOFU: And the blue line, according 24 to you, is where all the cartridges are, inside the blue 25 line. Correct?</p>	<p style="text-align: right;">Page 1535</p> <p>1 MR MADLANGA SC: And you pointed out 2 various spots to the Commission. 3 W/O THAMAE: That's correct, Mr Chair. 4 MR MADLANGA SC: And do you confirm the 5 correctness of everything that you pointed out on that day? 6 W/O THAMAE: That's correct, Mr Chair. 7 MR MADLANGA SC: And now the re- 8 examination. From scene 1, let us say you are right at 9 scene 1, if any shooting took place at scene 2 whilst you 10 were at scene 1, would you have heard that or not? 11 W/O THAMAE: My answer can be yes and no. 12 If I explain why, on that day the wind was blowing and my 13 experience, the experience has taught me that different 14 firearms make a different amount of noise. So it will 15 depend which firearm was used to fire. If it is a firearm 16 maybe that can make a loud noise when a shot is fired, yes, 17 I possibly, maybe I would have but if it is a firearm with 18 a low noise, I wouldn't have. 19 MR MADLANGA SC: Let us say it was 20 hundreds of shots with an R5 rifle. 21 W/O THAMAE: Under those circumstances I 22 would have heard. 23 MR MADLANGA SC: No further questions, 24 commissioners, thank you. 25 CHAIRPERSON: Right, we'll take the tea</p>

Page 1536

1 adjournment now. Well, perhaps before we take the tea
 2 adjournment, what's happening next? This is your witness.
 3 Have you got any more witnesses? The witness can be
 4 excused, I take it? I take it you'd like to be excused,
 5 Warrant Officer. You're excused.
 6 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 7 CHAIRPERSON: Right, so that's out of the
 8 way. Mr Mpfu is, my understanding was that the Commission
 9 was adjourned on Friday till Wednesday to enable Mr Mpfu
 10 and Ms Barnes to consult with certain of their clients so
 11 they could give evidence. It was indicated to us that they
 12 needed this time just to prepare them, to let them see the
 13 videos and so on. And originally it was indicated, I
 14 understood, that they might be prepared to start leading
 15 witnesses on Tuesday but we thought it wiser to give them a
 16 chance to Wednesday. Bishop Seoka came yesterday, you've
 17 interposed a witness now, what's going to happen next?
 18 [15:32] MR MADLANGA SC: Mr Chairman, the police
 19 presentation would have continued with a witness that would
 20 touch on training, but Mr Semenya would be in a better
 21 position to explain that and my understanding is that they
 22 still want to precognize that witness and that they would
 23 only be in a position to lead that witness tomorrow but
 24 coming back to the issue that the Chairman is raising, I
 25 would ask the Chairman to raise that issue with my learned

Page 1537

1 friends directly, with Mr Mpfu and today it's Mr Bruinders
 2 who is present. Both of them have had discussions with me
 3 but if the Commission is so inclined, I would ask the
 4 Commission to ask my learned friends to explain what the
 5 position is as of now.
 6 CHAIRPERSON: Mr Bruinders, can you
 7 explain to us what the position is as of now?
 8 MR BRUINDERS SC: Yes, we sent an e-mail
 9 this morning to the evidence leaders in which we attempted
 10 to set out what the position is. I was not here, so as I
 11 understood it there was some request that Mr Mathunjwa be
 12 led. We've sent a fairly lengthy e-mail and perhaps we
 13 should – I should perhaps read it to you or we should make
 14 it available to you to read over the tea adjournment.
 15 CHAIRPERSON: The point of value was that
 16 the – my understanding was that we postponed on Friday
 17 until Wednesday to enable AMCU and Mr Mpfu's clients to be
 18 ready to start giving evidence on Wednesday and that's what
 19 was communicated to me was going to happen.
 20 Yesterday Bishop Seoka gave evidence, led by Mr
 21 Mpfu. I expected – then I was told about the witness we
 22 heard today who wasn't available earlier, but I assumed
 23 that either you or Mr Mpfu was going to led the next
 24 witness, so what's happening? What happened to the
 25 undertaking or understanding or whatever it was that

Page 1538

1 occurred earlier?
 2 MR BRUINDERS SC: Mr Chair, as I
 3 understand it, the undertaking was not that AMCU was
 4 prepared to subject Mr Mathunjwa to cross-examination
 5 before he's seen the statements from the key witnesses who
 6 will potentially present evidence prejudicial to him, his
 7 evidence and to AMCU and before he's seen further documents
 8 which are apparently going to be discovered, like a Lonmin
 9 hard drive that might contain prejudicial information. As
 10 we understand it, once he gets into the witness box now
 11 he's going to be subjected to cross-examination for a long
 12 period of time. He submitted a statement, his statement of
 13 what he's going – his evidence essentially, which is
 14 incomplete but it's been submitted. Incomplete because, of
 15 course, he has not been – he hasn't seen the statements
 16 from the other key witnesses, but AMCU was prepared to do
 17 that because we had promised that we were going to submit
 18 statements to the evidence leaders. We have not seen any
 19 statements from any of the other key witnesses being led by
 20 any of the other parties – none, Mr Chair, we haven't
 21 received any to date.
 22 His difficulty, and we understand, and his
 23 reluctance is this, he says if I get into the witness box
 24 and I'm cross-examined and versions are put to me as a
 25 surprise in cross-examination and I haven't seen statements

Page 1539

1 and I don't know what I must face and I'm reluctant to be
 2 subjected to cross-examination under those conditions – so
 3 what my e-mail says or what [inaudible] e-mail says is
 4 this, is give us the statements of – we named six witnesses
 5 because we can tell from the evidence that they are key
 6 witnesses in relation to his evidence and in relation to
 7 the issues he's going to be cross-examined on – give us
 8 those statements and the statements of anybody else who
 9 will lead evidence or present evidence prejudicial to the
 10 case of AMCU, give us the additional documents that we
 11 understand are going to be presented and he will then
 12 subject himself to cross-examination within two day after
 13 that.
 14 Mr Chair, might I just say that leading him is
 15 very, very simple. He's got a statement, he'll confirm
 16 that and then he'll be available for cross-examination. As
 17 you can anticipate, if he's presented with a surprise in
 18 cross-examination, something that he simply hasn't been
 19 precognized on or had an opportunity to consider, we can't
 20 – we can't consult with him –
 21 CHAIRPERSON: Yes, you don't have to
 22 elaborate on that. I don't believe in litigation by
 23 ambush. I don't believe that commissions should operate on
 24 the same basis either, so I haven't got a problem with
 25 that, you don't have to explain further. Mr Mpfu, we gave

Page 1540

1 you some time to prepare your witness as well, what's
2 happened there?

3 MR MPOFU: Well, Chairperson, certainly I
4 did bring a witness yesterday but apart from that, Chair,
5 the position is as follows. We – well, firstly I made no
6 undertaking so I'm not covered by any undertaking. I think
7 you, Chairperson, called it a non-promise and that was
8 because I made all the disclaimers but be that as it may,
9 one undertaking I did make was that I will try to assist Mr
10 Madlanga as far as I can, which I've started to do by
11 bringing the witness yesterday.

12 As far as further witnesses are concerned, Chair,
13 on this side of the table, as it were, we had our own
14 arrangement that we had made in relation to how we were
15 going to assist and briefly it went something like this,
16 that I would call the Bishop, after that then I understand
17 there's going to be a family presentation, after that there
18 would be Mr Mathunjwa which Mr Bruinders has covered, and
19 then thereafter I would consider my position as to which,
20 if any, of the further witnesses I was prepared to call.

21 Now, where my personal position stands or at
22 least that of my team, Chair, is that – two things. If we
23 call any further witnesses we'd like to do that after the
24 Bishop and once again unfortunately I have to make a non-
25 promise. Of the other witnesses, if we call any one of

Page 1541

1 them it will be after the others have gone but, Chair, I
2 just want to say this, we really sincerely want to assist
3 and I think that Mr Bruinders has put it more eloquently.
4 Obviously that is subject to not prejudicing our cases, so
5 if we seem to be difficult it is not –

6 CHAIRPERSON: You don't have to
7 elaborate.

8 MR MPOFU: Yes.

9 CHAIRPERSON: I indicated to you my
10 aversion to litigation by ambush, commission by ambush.

11 MR MPOFU: Thank you, Chair.

12 CHAIRPERSON: It's not fair to a witness
13 to put him or her in a witness box [indistinct] been, not
14 necessarily told what to say but precognized and given an
15 opportunity to know what's going to be put, seeing the
16 videos and so on. I understand all that. I don't think
17 you need elaborate on that further.

18 MR MPOFU: Thank you, Chair.

19 CHAIRPERSON: Ms Lewis, is there anything
20 you wish to say on this aspect? You appear for the
21 families, don't you?

22 MS LEWIS: I do, Mr Chair. Simply that I
23 am ready to present the families' case. I understood that
24 there was an objection from Mr Semenya, I'm not sure
25 whether that is still the case. If it is, then perhaps he

Page 1542

1 should be given the opportunity to place that on record and
2 I'll respond to it.

3 CHAIRPERSON: Well, you could put these
4 things on record, alternatively, this kind of housekeeping
5 is generally best done outside the Commission chamber, as
6 it were. So I suppose we can now take the tea adjournment.
7 You and Mr Semenya can have a friendly chat over a cup of
8 tea and you can come back and you can announce what's going
9 to happen and then we can take the – then we can adjourn
10 till tomorrow.

11 MR MPOFU: Chair, can I – Chairperson,
12 while you are at it, let me just tidy up two more points.
13 Mr Burger and I have also entered into another side deal.
14 Mr Burger is unfortunately not able to be here between
15 Monday, Tuesday and Wednesday and I had intended to call
16 the Bishop back on Monday, so I've agreed to accommodate Mr
17 Burger. So whatever happens, I'm just doing it for the
18 benefit of the other colleagues, particularly the evidence
19 leaders. Whatever arrangements are done must take into
20 account that the Bishop who is now no longer being called
21 back on Monday - because of what I call the discussions
22 between myself and Mr Burger – but on Thursday. What might
23 happen if we are pressed and there's an unnecessary gap is
24 that plan B of that arrangement would be that I would
25 recall the Bishop maybe on Wednesday so that he can be

Page 1543

1 cross-examined by other people but will have to call him
2 again on Thursday for Mr Burger. If that happens, that
3 might resolve whatever time lapses. If it doesn't, then
4 he'll be back on Thursday. Obviously that's also subject
5 to his own availability which I have not checked yet.

6 CHAIRPERSON: Mr Semenya, I want to take
7 the tea adjournment so you could have a chat to Ms Lewis
8 but if the answer is simply yes, we don't have to waste any
9 time. Do you have any objection to her calling her
10 witnesses tomorrow?

11 MR SEMENYA SC: Indeed I do, Chair, but
12 also may I make a point here that one respects the aversion
13 against litigating by ambush or witnesses coming and
14 testifying blinded to certain elements they otherwise, with
15 precognition, could have tidied up – but that, too, applies
16 to the SAPS. We keep bringing witnesses, at this point
17 we're not aware of the versions that they are to meet. Mr
18 Mpofo got us to release people on bail because he had to
19 consult with them urgently and once he has done that we'll
20 be able to cross-examine. Not one statement of the 260-odd
21 people that he represents has been given to us. It's just
22 not fair. It's either what is good for the goose is good
23 for the gander, but that's not in the interests of the
24 Commission. To the extent that this is investigative, it
25 is inquisitorial, we all need to be placing what we have

1 before you, Chair, without gamesmanship typical of
 2 litigation and trials.
 3 CHAIRPERSON: Ms Lewis, have you made the
 4 statements of your witnesses available to Mr Semenya?
 5 MS LEWIS: Mr Chair, just to clarify the
 6 manner in which we'll be presenting the families' case, we
 7 will be doing it by way of a PowerPoint presentation. That
 8 is because the family members feel strongly about having
 9 their stories presented to the Commission but also, Chair,
 10 the family members do not feel up to testifying themselves
 11 and so what we propose to do is to present their stories by
 12 way of a PowerPoint presentation. Chair, that will all
 13 then be confirmed in affidavits and submitted to the
 14 Commission by, at the latest, the middle of next week. And
 15 so, Chair, it's not unlike the manner in which Mr Semenya
 16 has presented his case to date. We are presenting a
 17 PowerPoint presentation and it will – we have very
 18 thoroughly confirmed the statements that appear in the
 19 presentation with the family members. We've spent the last
 20 two days doing that. So then it will simply be a matter of
 21 putting that – of confirming that in an affidavit and
 22 submitting that to the evidence leaders.
 23 Chair, at that point, if any of the parties feel
 24 that they need to cross-examine one of the family members,
 25 they can make an application to the Commission for the

1 particular family member to be subpoenaed in order to be
 2 cross-examined. We may present submissions at that point
 3 to say that it's not necessary or inappropriate but
 4 certainly that is an option and it will then be for the
 5 Commission to decide whether the family members or
 6 individual family members need to be called to be cross-
 7 examined. But certainly, Mr Chair, my submission is that
 8 there can be no prejudice to Mr Semenya in presenting the
 9 families' case in the manner in which I've described. And
 10 Chair, it seems as if it would help all of the other
 11 parties and the Commission too, because it doesn't seem as
 12 if there are other witnesses at this stage.
 13 CHAIRPERSON: All very unsatisfactory
 14 that in the middle of November, in the case of a Commission
 15 that started at the beginning of October, there are still
 16 not witnesses available. The police presentation was
 17 presented on the clear understanding that the witnesses who
 18 – every statement in the police presentation was capable of
 19 being backed up by evidence under oath and the witnesses
 20 concerned could be cross-examined. You're now presenting
 21 something slightly different but perhaps – I don't know
 22 whether Mr Madlanga wishes to say something at this stage
 23 or Mr Semenya or any of the other parties, but let me give
 24 Mr Madlanga a chance first.
 25 MR MADLANGA SC: Thank you, Mr Chairman,

1 commissioners. I'm not going to be addressing myself to
 2 what Ms Lewis has just said. I'm going to address myself
 3 to what Mr Mpofu said. Commissioners, I'm quite astounded
 4 by what Mr Mpofu says. For him to say that there was a
 5 non-promise by him is most certainly not the agreement that
 6 he and I reached. Mr Chairman, may I refer the Commission
 7 to page 12 –
 8 CHAIRPERSON: Sorry to interrupt you.
 9 MR MADLANGA SC: Yes.
 10 CHAIRPERSON: Last week he spoke about a
 11 non-promise but I understood that thereafter that non-
 12 promise had hardened into something stronger, but the non-
 13 promise part is correct as it was of last Friday, but you
 14 say something happened thereafter.
 15 MR MADLANGA SC: Mr Chairman, what
 16 happened is – let me read what appears at page 1246 of the
 17 record and that was on Friday. This is what the Chairman
 18 says at line 8. "I understand that the proposal is that in
 19 order to give some of the representatives an opportunity to
 20 consult fully with their clients, you will be giving
 21 evidence. It's proposed that we should resume on
 22 Wednesday. Mr Madlanga, would you like to say something
 23 about that?" And then I respond, "Thank you, Chairman,
 24 commissioners, that is so indeed, Commissioners, and that
 25 arises from the discussion that I had with Mr Mpofu and Ms

1 Barnes which was quite fruitful and I must thank my
 2 colleagues for us having been able to reach agreement but
 3 quite understandably, and based on what they had said in
 4 argument, on what was Tuesday, I understand their request
 5 and I have accepted it and I hope the Commission accepts
 6 that as well, that is that we only resume on Wednesday."
 7 In context, on the Tuesday in argument what my
 8 two learned friends had said was that they were not ready,
 9 they needed time to prepare and then the agreement that we
 10 reached before I made this announcement before this
 11 Commission was that on Wednesday of this week they would be
 12 ready to lead their evidence. I don't say it, that,
 13 categorically here but the fact that I even say it was
 14 quite fruitful and so on and so on, it relates to an actual
 15 agreement. We were long past the "non-promise" as at that
 16 stage there was agreement that they would lead their
 17 witnesses from yesterday already. Now what was the content
 18 of that agreement? Mr Mpofu I hope will not say that that
 19 was not the agreement but if he says it was not, I was
 20 referring to an agreement here, most obviously, and if he
 21 says there was not, I would have expected him in open
 22 Commission to say there was no such agreement. What did he
 23 think I was going about at the page, or rather the
 24 quotation that I've just referred to? Now what was that
 25 agreement? This is what it was. Mr Mpofu, talking to me

<p style="text-align: right;">Page 1548</p> <p>1 telephonically, said that – or perhaps let me take one step 2 backwards. The Commission will recall that we indicated 3 that we had asked for five witnesses from Mr Mpfu's list, 4 or rather a list, some – from Mr Mpfu's clients. Now 5 coming back to the point I was making, now in the 6 telephonic conversation Mr Mpfu said of the five people 7 you referred to, I am only going to lead one of those and 8 then I will lead a second witness and you probably know him 9 – and he was referring to me – and he said that was the 10 witness who had been interviewed on a Carte Blanche 11 programme. So two witnesses, and then he said plus the 12 Bishop. 13 [15:52] Ms Barnes, we did not get into any details as to 14 which witnesses would be led exactly but with her as well, 15 the understanding was that she too, or her client too would 16 be ready to lead witnesses as from yesterday. Clear 17 agreement, confirmed by what I've just read to the 18 Commission now. So this non-promise, I just have no idea 19 what it is about. So I would like Mr Mpfu to explain what 20 I was referring to and if he says it was not what I've just 21 explained here, what then did he think it was and why did 22 he not there say, no, I have not reached any fruitful 23 arrangement or agreement with Mr Madlanga, I do not know 24 what he's talking about. Why did he not say so? 25 Mr Chairman, commissioners, I can see my learned</p>	<p style="text-align: right;">Page 1550</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: And I just answers, I don't 3 want metaphorical - 4 MR MPOFU: Well, Chairperson, with the 5 greatest respect, I have to – I'm going to respond to 6 everything that has been put because I have to. 7 Chairperson, the smoke in what has been said is the 8 following. I have been at pains here, and I've said this 9 to you Chairperson, on the record, that I will not be 10 forced to lead any witnesses and the Chairperson agreed 11 with me. What I said in that context is that I will try to 12 assist as much as I can in the impasse that has happened 13 between the SAPS and the evidence leaders. The agreement – 14 the issue of the postponement till Wednesday is something 15 that I requested. I'm the first person who came with the 16 idea of the Wednesday, Chairperson, so that was the 17 agreement that Mr Madlanga and I had reached. We even had 18 to say whether I should make the request or he should make 19 the request and we agreed that he should make the request, 20 as opposed to me putting it to the Chair. That was an 21 agreement between us. 22 What, Chairperson, I did not agree with anybody, 23 whether inside or outside of the Commission, is a 24 commitment that says I'm going to call Mr X or Mr Y. And 25 I'm explaining that as follows, Chairperson. In the three</p>
<p style="text-align: right;">Page 1549</p> <p>1 friend is heating up and cannot even wait for me to finish 2 with my submissions. Now Mr Chairman, I would like my 3 learned friend to indicate whether he will be leading any 4 other witnesses besides the Bishop and if he will, by when 5 will he be doing so. And – and, if he will be, how many 6 witnesses will he be leading? The agreement, the agreement 7 that Mr Mpfu and Ms Barnes and I reached went so far as to 8 say that they would give me the list of the witnesses that 9 they would be calling and their statements on Monday, this 10 past Monday. That was part of the agreement. None of that 11 has been honoured. Sorry, we do have a statement from Mr 12 Mathunjwa that has been provided by AMCU. 13 MR MPOFU: And from the Bishop. 14 MR MADLANGA SC: Yes – yes, thank you 15 very much, Mr Mpfu, thank you very much, and from the 16 Bishop – yes, I must say so. 17 MR MPOFU: Chairperson, I think there's 18 just a lot of heat, smoke without any fire. 19 CHAIRPERSON: There was certainly 20 specific reference made which calls for – 21 MR MPOFU: Well, I'm going to – 22 CHAIRPERSON: Whether that's heat or 23 smoke or fire – 24 MR MPOFU: It's smoke. 25 CHAIRPERSON: But answers are required.</p>	<p style="text-align: right;">Page 1551</p> <p>1 days or four days that the Chairperson kindly allowed us, 2 we have – as I indicated in my earlier address – consulted 3 with what I might call a pool of potential witnesses. We 4 have not come to any – for the reasons that the Chairperson 5 said I should not elaborate on, which are obvious – we have 6 not been able to say of those three witnesses, which one we 7 are able to call at this stage, except for the Bishop. 8 So as I said earlier, the record will show that 9 before Mr Madlanga spoke I said, Chairperson, that the 10 arrangement that we have on the side was that the 11 sequencing – to accommodate this concern of mine of 12 weighing up which witnesses, if any, to call, was that 13 after the Bishop, the other parties which are a part of the 14 broader arrangement would interpose their witnesses. 15 Obviously we hadn't foreseen the fact that the Bishop will 16 be broken into those pieces. I have not said – so I don't 17 know what this is all about – I have not said at any stage 18 that I'm not going to call any witnesses but equally I have 19 not said that I'm going to call one. 20 So if that is what is causing consternation, 21 well, then tough luck because I cannot go further than to 22 say that I have a pool of witnesses, some of whom or one or 23 two of whom I might call but it might be tactically not 24 proper for me to call either one of those at this stage. 25 Mr Chairman, if I can just say one thing and this</p>

Page 1552

1 is what I was trying to say – much as we would like to
 2 assist and we don't want to see waste of the Commission's
 3 time, but Chairperson the people that I represent, some of
 4 them have murder charges hanging over their bodies and I
 5 cannot simply call them just to fill a gap. So I'm making
 6 those kinds of considerations and I'm appealing that I'm
 7 allowed to do so. Within those constraints I am aware that
 8 there are time issues. I will assist when I can but I will
 9 not do so to the prejudice of my clients.

10 CHAIRPERSON: Of course it goes further
 11 than that. Mr Madlanga has said that you gave an
 12 undertaking. Initially it was described as a non-promise.
 13 He says it hardened into a promise, an undertaking which
 14 you've now welshed on. That's what he says.

15 MR MPOFU: Well, Chairperson –

16 CHAIRPERSON: Now you haven't dealt with
 17 that point at all.

18 MR MPOFU: Well, if that is the position,
 19 Chairperson, then I take the strongest possible exception
 20 to any suggestion that I have ever said this – perhaps on
 21 the issue of the Bishop – that any of what I call the pool
 22 of witnesses that I'm still considering, is certainly going
 23 to come here, to anybody and if anybody will want to – it's
 24 very unfortunate that we have to have this kind of exchange
 25 but you know I would, I can go under oath on that one,

Page 1553

1 Chair, if I have to and if I made such an undertaking,
 2 well, somebody has to prove it. And if I did, I'm
 3 withdrawing it right now.

4 CHAIRPERSON: If you have an undertaking
 5 I'm not sure can withdraw it but I have no jurisdiction
 6 over counsel who give or do not give undertakings and then
 7 don't abide by them. That's a matter for the Bar Council -

8 MR MPOFU: Ja.

9 CHAIRPERSON: - not for me and if –

10 MR MPOFU: Or make accusations.

11 CHAIRPERSON: Sorry, I beg your pardon?

12 Yes - no. So insofar as there is a dispute as to what
 13 happened, that's a matter for the Bar Council, not for this
 14 Commission but we are nevertheless in the unfortunate
 15 position that the work of the Commission, as has been
 16 planned and foreseen would proceed, is apparently not able
 17 to proceed and that is a very serious matter because this
 18 Commission costs a lot of money every day and I would be
 19 failing in my duty if I didn't do my utmost to ensure that
 20 the time is usefully used. I just want to say – discuss
 21 something shortly with my -

22 Mr Madlanga, insofar as there's this unfortunate
 23 difference between you and Mr Mpofo, you will agree that I
 24 have no jurisdiction to deal with that. That's a matter
 25 for the Bar Council, not for me. the question is, how can

Page 1554

1 we fruitfully and gainfully use tomorrow and – Friday. I
 2 understand there's going to be a meeting between the
 3 parties' representatives on Friday afternoon, so we won't
 4 be sitting Friday afternoon but we – sorry, that's
 5 tomorrow. Sorry, I was caught off balance by the fact that
 6 we started on Wednesday. Tomorrow we're only sitting in
 7 the morning.

8 I don't know how long Adv Lewis's presentation
 9 is. She does say that she proposes to provide affidavits
 10 from all the family members to support all the allegations
 11 in presentation and that if any party wishes one of the
 12 deponents to give evidence and be cross-examined, the
 13 witness would be available, but what is your response to
 14 that suggestion of hers?

15 MR MADLANGA SC: I have no objection to
 16 that proposal, Mr Chair, but as I indicated earlier, at
 17 least there is the one witness that I understand my learned
 18 colleague Mr Semenya proposes to call. So that witness too
 19 will take part of tomorrow.

20 MR BRUINDERS SC: Mr Chairman, could I –
 21 if you could just give me an opportunity here? I think it
 22 is important that AMCU does place this on record. It is
 23 prepared – it's going to call Mr Mathunjwa and that is its
 24 main witness and it doesn't propose to call another
 25 witness. If, during the course of evidence, it becomes

Page 1555

1 necessary to calculation somebody to rebut a fact that Mr
 2 Mathunjwa can't deal with, well, we've got to deal with
 3 that at that time but the point is this, we undertook – all
 4 of us – a long time ago to provide witness statements by
 5 the 19th of October already. I understand that the parties
 6 could not do that then because a host of documents came in
 7 at that time and afterwards that made it very difficult to
 8 provide statements on the 19th of October because of course
 9 the witnesses have to at least know what's in those
 10 statements and in the documents and so on. But AMCU has
 11 now bitten the bullet and even though there are still
 12 documents to come in, it has provided Mr Mathunjwa's
 13 statement to all the parties. It is prepared to put him
 14 up, to have him subjected to cross-examination two days
 15 after we get – we've told people what statements we require
 16 and we've said that there's been talk about a Lonmin hard
 17 drive and we said if there's any other documentation that
 18 you want to discover, do so as soon as you can because two
 19 days after that he will subject himself to cross-
 20 examination. So it's not as though things can't move
 21 ahead. Mr Mathunjwa can't be expected, as you know and I
 22 think you've confirmed this, to subject himself to cross-
 23 examination if he at least knows what it is he is to expect
 24 from people when they're cross-examining.

25 CHAIRPERSON: Mr Semenya, this witness of

1 yours, how long is he likely to be?
 2 MR SEMENYA SC: Chair, maybe before I
 3 answer that, can we dispel this thing that in the
 4 Commission there are parties and cases to be made by
 5 various individuals because –
 6 CHAIRPERSON: There are parties, there’s
 7 no doubt – that’s a way of describing the persons or
 8 instances or bodies that are being permitted to
 9 participate, because they are parties in that sense. I
 10 agree with you, we’re not here for people to make cases.
 11 This is an investigative process, we’re here to investigate
 12 but there are parties because they – you are appearing for
 13 one of them. But anyway, carry on.
 14 MR SEMENYA SC: Chair, you asked the
 15 question to my learned colleague Ms Lewis whether I have
 16 seen that presentation. The answer has not been given but
 17 it’s a short one. I haven’t seen that presentation. I
 18 would like to interrogate it and inform our position in
 19 relation thereto. Thirdly –
 20 CHAIRPERSON: That’s the answer to the
 21 question of her presentation. Your witness?
 22 MR SEMENYA SC: Thirdly, addressing the
 23 question of the witness, it should be able to occupy the
 24 morning.
 25 CHAIRPERSON: Right, we will adjourn

1 until 9:30 tomorrow morning.
 2 [COMMISSION ADJOURNED]
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A	<p>afternoon 1486:14 1554:3,4</p> <p>ago 1463:2 1530:11 1555:4</p> <p>agree 1437:3 1455:15 1471:20,20 1484:5,10 1499:19,19 1503:8 1506:22,23 1509:11 1509:12 1531:17 1550:22 1553:23 1556:10</p> <p>agreed 1482:21 1507:21 1542:16 1550:10,19</p> <p>agreement 1546:5 1547:2,9,15,16,18,19 1547:20,22,25 1548:17,23 1549:6,6 1549:10 1550:13,17 1550:21</p> <p>ahead 1555:21</p> <p>air 1432:3</p> <p>Akhona 1447:12</p> <p>Al 1498:3,18 1499:4</p> <p>allegation 1489:24 1490:4,17 1491:2,4 1491:10</p> <p>allegations 1488:10 1490:2 1492:7,9 1554:10</p> <p>alleged 1479:10,13</p> <p>allegedly 1485:23</p> <p>allow 1484:2 1492:2</p> <p>allowed 1551:1 1552:7</p> <p>alongside 1458:25</p> <p>alphabet 1472:11,13 1506:8 1523:6</p> <p>alphabets 1445:23</p> <p>alright 1497:7 1498:23 1506:16 1507:13 1522:13 1527:22 1531:22</p> <p>alternatively 1542:4</p> <p>altogether 1460:17</p> <p>ambit 1454:14</p> <p>ambush 1539:23 1541:10,10 1543:13</p> <p>AMCU 1537:17 1538:3 1538:7,16 1539:10 1549:12 1554:22 1555:10</p> <p>ammunitions 1453:20</p> <p>amount 1535:14</p> <p>analysis 1476:9 1481:4 1481:18,19</p> <p>Anderson 1435:8,12 1436:10 1493:10,21</p> <p>Andries 1447:8</p> <p>angle 1466:10 1486:24</p> <p>announce 1542:8</p> <p>announcement 1547:10</p> <p>answer 1467:16 1479:13,23 1489:8 1502:16 1508:15 1509:19 1510:1 1535:11 1543:8</p> <p>1556:3,16,20</p> <p>answered 1466:3</p> <p>answering 1466:4</p> <p>answers 1530:1 1549:25 1550:2</p> <p>anticipate 1539:17</p> <p>anybody 1474:18 1530:16 1539:8 1550:22 1552:23,23</p> <p>anyway 1527:22 1556:13</p> <p>apart 1493:4 1502:3 1540:4</p> <p>apparent 1491:17</p> <p>apparently 1538:8 1553:16</p> <p>appealing 1552:6</p> <p>appear 1450:6,11 1459:7,8 1469:8 1495:22 1528:9 1529:1,2 1541:20 1544:18</p> <p>appeared 1528:6</p> <p>appearing 1437:25 1443:24,25 1455:18 1556:12</p> <p>appears 1442:25 1444:1 1460:2 1462:15 1463:4 1471:17 1525:21 1546:16</p> <p>application 1544:25</p> <p>applies 1543:15</p> <p>apply 1529:6</p> <p>appreciate 1491:16 1492:24</p> <p>appropriate 1470:14 1497:14 1498:15 1499:8</p> <p>approximately 1437:16 1437:19,20 1505:8 1509:17 1512:5 1531:24</p> <p>arc 1451:16 1455:8 1466:23,24 1528:17 1529:2</p> <p>area 1437:7 1438:9,10 1438:18,21 1439:2,2 1439:3,5,16,24 1440:8,12,16 1441:3 1441:5 1442:3,4,5,10 1442:13,13,25 1443:5 1443:7,9 1450:16 1452:24 1456:2 1468:4 1472:6,10 1473:6,15 1524:4</p> <p>areas 1441:1,25 1442:2 1442:16</p> <p>arena 1432:17</p> <p>aren't 1519:4</p> <p>argue 1471:15</p> <p>argument 1547:4,7</p> <p>arises 1546:25</p> <p>arising 1526:21</p> <p>arithmetic 1442:9</p> <p>armed 1476:20</p> <p>armoured 1471:19</p> <p>arms 1471:7 1477:14 1478:18 1479:3 1527:1,5,9,10</p> <p>arranged 1440:20 1450:6,7 1485:10,11 1493:16</p> <p>arrangement 1540:14 1542:24 1548:23 1551:10,14</p> <p>arrangements 1542:19</p> <p>arranging 1450:9</p> <p>arrival 1482:22 1483:7 1501:6,8 1502:6 1520:4 1521:6,8,14 1521:15 1524:3,23 1525:1 1526:5</p> <p>arrive 1482:6 1501:9 1523:24 1524:12 1525:5</p> <p>arrived 1437:7,10 1482:9 1483:2 1486:12 1492:24 1501:8,9 1514:13,18 1515:2,15,17 1516:11 1516:21,23,24 1517:22 1518:6,13 1519:7 1520:18 1521:1,14,19 1524:11 1524:16 1525:10,12 1526:8</p> <p>aside 1515:11</p> <p>asked 1458:7 1465:20 1465:21 1479:18 1482:12 1483:16 1492:23 1502:18 1518:5,8 1526:17,25 1526:25 1527:14 1530:3,7,11,16,19 1548:3 1556:14</p> <p>asking 1503:18 1517:11 1520:3 1522:9 1525:7</p> <p>aspect 1511:2 1541:20</p> <p>assist 1492:25 1510:9 1540:9,15 1541:2 1550:12 1552:8</p> <p>assistance 1464:17 1469:17,19 1521:3</p> <p>assisting 1516:14 1519:22</p> <p>assume 1435:4 1471:16 1471:21 1502:24 1510:1 1511:9</p> <p>assumed 1432:8 1537:22</p> <p>assumption 1524:3</p> <p>assurance 1517:11</p> <p>astounded 1546:3</p> <p>attached 1444:10</p> <p>attachment 1444:13</p> <p>attack 1473:5,14</p> <p>attempted 1519:22 1537:9</p> <p>attend 1512:12 1519:25</p> <p>attendance 1520:12</p> <p>attended 1434:23 1449:2 1482:15,24</p> <p>attending 1521:20</p> <p>attention 1452:5,20 1509:20</p> <p>auditorium 1495:2,21 1495:25</p> <p>August 1434:23 1437:9 1498:12 1512:2 1530:5,8</p> <p>availability 1543:5</p> <p>available 1432:11 1498:5 1537:14,22 1539:16 1544:4 1545:16 1554:13</p> <p>aversion 1541:10 1543:12</p> <p>avoid 1504:13</p> <p>avoiding 1499:17</p> <p>aware 1481:18 1483:10 1488:10,16 1490:2 1492:5,9,10 1543:17 1552:7</p>	B
	<p>B 1440:24 1445:13,18 1445:21 1450:5 1451:8,14,15,20 1452:9,12 1454:17,20 1455:11 1456:7,19 1457:3,5 1459:23 1466:13,24 1468:20 1528:18,19,23 1529:7 1529:11,13,22 1530:3 1530:8,8 1542:24</p> <p>Babalo 1447:23</p> <p>back 1433:1 1438:4 1440:23 1444:9,22 1450:15 1458:7 1501:11 1510:18 1518:18 1524:19 1525:6 1528:1 1532:18,19 1536:24 1542:8,16,21 1543:4 1548:5</p> <p>backed 1545:19</p> <p>backwards 1466:8 1548:2</p> <p>bad 1491:19</p> <p>bail 1543:18</p> <p>balance 1554:5</p> <p>ball 1450:24</p> <p>ballistic 1465:18</p> <p>balls 1450:18,20</p> <p>Bar 1553:7,13,25</p> <p>Barnes 1536:10 1547:1 1548:13 1549:7</p> <p>based 1443:12 1491:10 1499:16 1524:3 1526:16 1528:3 1547:3</p> <p>basically 1485:6</p> <p>basis 1491:7 1539:24</p> <p>beg 1479:16 1553:11</p> <p>beginning 1493:16 1500:20 1514:7</p>	

<p>1545:15 behaviour 1465:13 belief 1478:6 believe 1434:2 1539:22 1539:23 belong 1511:9 belonged 1481:7 benefit 1456:5 1495:16 1542:18 best 1475:15 1542:5 better 1489:2 1496:9 1508:4 1522:13 1536:20 Beyond 1472:12 big 1437:23 1462:10 1523:7 1531:7 bigger 1439:12 Bishop 1432:11 1536:16 1537:20 1540:16,24 1542:16 1542:20,25 1548:12 1549:4,13,16 1551:7 1551:13,15 1552:21 bit 1517:19 bite 1510:23,24 bitten 1555:11 Blanche 1548:10 blanket 1531:21,21,23 1532:5,20,23 1533:15 1533:19 blinded 1543:14 block 1506:16 1509:1 blood 1459:13 1528:6 blowing 1535:12 blue 1438:7,9,18,23 1439:1,3,13 1440:8 1440:12 1442:5,13 1444:5 1452:24 1468:12,13 1505:12 1505:17,21 1506:3,4 1506:16,16,21,21 1507:22 1508:1,19,25 1521:25 1532:4 1533:6,7,16,18,21,23 1533:24 1534:8,10 BN 1459:23 bodies 1445:6,16 1452:3,8,16 1454:20 1455:23 1468:3,7,23 1472:7,12 1473:16 1483:12 1486:21 1492:15,20,21 1495:10,21,22 1499:20,20 1500:17 1500:22 1502:9 1503:3,9,15 1507:4 1507:18 1508:2,6,20 1509:17 1510:2 1511:12,17,19,20 1528:21,23 1529:1,2 1529:7,12,19,21 1530:21 1552:4 1556:8 Bongani 1447:19 Bonginkosi 1447:3 borders 1443:10</p>	<p>Botha 1510:8 1512:21 1514:11,22 1515:9,18 1515:24 1516:11,25 1517:7 Botha's 1517:5 bottom 1444:10 1466:12 box 1538:10,23 1541:13 brandishing 1493:5 break 1499:8 brief 1504:17 briefed 1475:12,13,17 briefing 1476:7 1477:17 1478:8 1487:14 1488:3 briefly 1437:6 1540:15 bring 1452:4,20 1509:20 1513:9 1540:4 bringing 1540:11 1543:16 broader 1551:14 broken 1551:16 brought 1510:5,7,8,10 1514:1 1515:1,4 1516:13,17 1517:7 Bruinders 1458:4,5,10 1458:13,17,20 1459:3 1459:6,9,15,18,25 1460:5,7,10,20,21,23 1461:1,6,10,13,16,19 1461:22 1462:1,3,9 1462:15,20,25 1463:7 1463:11,17,24 1464:2 1464:11 1502:18 1513:5,6,7,13,17,20 1513:25 1514:3,5,16 1514:20,25 1515:6,11 1515:17,20,23 1516:3 1516:7,9,12,16,19 1517:2,6,9,20,24 1518:1 1537:1,6,8 1538:2 1540:18 1541:3 1554:20 bullet 1440:12,13 1487:7,7 1555:11 bullets 1440:3,4,6,15 1440:16 1486:24 bunched 1521:7 Burger 1457:23,24 1542:13,14,17,22 1543:2 butt 1444:13 B1-5 1438:5 B1-7 1436:18 1438:14 B1-8 1448:22 B14 1521:23 1522:6,7 1522:10 B15 1437:23 1438:5,13 1448:24 1461:14 1505:3 1522:3,4,8,16 1533:11,12 B16 1438:1 1448:23 1451:12 1529:1 B17 1436:18,24</p>	<p>1438:13 1444:23 1450:16 B18 1448:22 B32 1511:6 1512:7 B35 1459:15,16,24 B36 1459:21 B37 1500:6 B38 1450:12 1485:5,5 1518:18 1527:4 B40 1442:19 1443:22 1450:5 1455:19 B45 1518:25</p> <hr/> <p style="text-align: center;">C</p> <p>C 1446:1 calculated 1454:16 calculation 1555:1 call 1494:14 1506:3,15 1527:4,5 1540:16,20 1540:23,25 1542:15 1542:21 1543:1 1550:24 1551:3,7,12 1551:18,19,23,24 1552:5,21 1554:18,23 1554:24 called 1432:23 1475:22 1487:24 1512:17,19 1519:12 1540:7 1542:20 1545:6 calling 1543:9 1549:9 calls 1549:20 cameras 1471:7 canisters 1454:9 canvass 1487:14 can't 1468:5 1469:12 1469:15,16,18 1505:6 1508:14 1509:18 1516:18 1530:4 1539:19,20 1555:2,20 1555:21 capable 1437:1 1545:18 Captain 1436:6 1449:23 1475:14 1476:5,6 1482:10,12 1482:16,20,25 1514:8 1519:11 1523:22 1524:15 care 1436:19 1437:3 carry 1472:25 1492:4 1504:18,20 1513:11 1556:13 Carte 1548:10 cartridge 1438:10,17 1439:1,4,6,8,14,17,20 1440:2,4,8,9,25 1441:5,13,17,19,21 1441:23 1442:1,4,7,8 1443:4 1444:20 1450:17,19,25 1451:8 1451:15,19 1452:22 1452:24 1454:12 1455:2 1464:5,8,9,9 1464:10 1465:19,25 1465:25 1466:5,21 1467:25 1487:2,3</p>	<p>1503:17,19 1509:3,15 1509:22,24 1516:6 1528:18,22,23,24 1529:11,17 1530:15 1530:17,22,25 1531:18 1534:11 cartridges 1444:19 1452:7 1454:4,17 1455:11 1465:13 1466:17,21,22 1467:1 1467:15 1503:4,13 1507:3 1509:1,11 1510:2 1516:4 1533:24 1534:7 case 1436:10 1440:5,25 1441:5,13 1445:22 1451:19 1465:19 1473:18 1477:20 1496:13,14 1498:11 1500:20 1503:17,19 1528:22,23 1539:10 1541:23,25 1544:6,16 1545:9,14 cases 1438:10,17 1439:1,4,6,8,14,17,20 1440:2,9 1441:17,19 1441:21,23 1442:1,4 1442:7,8 1443:4 1444:20 1450:17,19 1451:8,15 1452:23,24 1454:12 1464:5,8,9,9 1464:10 1465:25 1466:6 1467:25 1474:20 1487:2,4 1509:3,15,22,24 1516:6 1528:18,24 1529:11,17 1530:15 1530:17,22,25 1534:12 1541:4 1556:4,10 CAS137/08/12 1434:24 categorically 1547:13 categorise 1484:18 1485:1 caught 1554:5 cause 1494:22 1495:1 causing 1551:20 Cebisile 1447:15 1502:13 centimetres 1503:14,20 1503:22 1504:1,2 1531:18 certain 1439:21 1493:16 1523:19 1536:10 1543:14 certainly 1485:8 1540:3 1545:4,7 1546:5 1549:19 1552:22 cetera 1455:19 Chairman 1432:4 1433:4,11,15 1434:1 1435:14,19 1436:4 1437:5 1443:15 1456:9 1460:1 1510:14 1536:18,24</p>	<p>1536:25 1545:25 1546:6,15,17,23 1548:25 1549:2 1551:25 1554:20 chamber 1542:5 chance 1519:25 1536:16 1545:24 changed 1487:19 charges 1552:4 chat 1542:7 1543:7 check 1531:9 checked 1543:5 chief 1534:21 chose 1467:14,21 circumstances 1474:7 1474:9,13 1535:21 clarification 1509:6 clarify 1532:8 1544:5 clarity 1438:16 clear 1467:17 1476:7 1478:9,11 1482:13,18 1489:5 1490:14 1545:17 1548:16 clearer 1502:18 1522:8 clearly 1457:1 1461:5 1481:11 1496:4,10 client 1548:15 clients 1489:4 1536:10 1537:17 1546:20 1548:4 1552:9 clip 1498:19,22 close 1449:12 1452:8 1455:11 1488:12 1494:23 1502:10,13 1503:17 1529:2,3,7 1529:12,19 closely 1504:5 closer 1451:8,15 1467:25 1468:1 1528:24 1532:24 closest 1451:19 1454:20 1455:1 1528:22,23 1529:22 1530:12,17 close-up 1444:12,14 clothing 1480:16,16 1501:16 cluster 1507:4 1508:20 coincidence 1485:13 coincides 1533:7 colleague 1516:13 1517:21 1554:18 1556:15 colleagues 1436:8,11 1475:10 1512:18 1542:18 1547:2 collect 1460:12,15 collected 1435:14 1455:18,23 1457:12 1457:14,16,19 1460:11 1476:8 1479:5 1483:3 Colonel 1480:3 1510:7 1510:8 1512:20 1514:11,22 1515:9,18 1515:23 1516:11,25</p>
--	---	---	---	--

<p>1517:4,6 colour 1438:6 1444:1 colouring 1438:6 columned 1435:15 come 1434:25 1440:23 1461:4 1465:9 1475:2 1475:3,11 1480:19 1485:23 1487:24 1494:5 1516:8 1542:8 1551:4 1552:23 1555:12 comes 1494:12,15 coming 1494:8 1510:18 1536:24 1543:13 1548:5 commencement 1525:1 commences 1497:1 comment 1453:21,22 1453:25 1454:2,5,10 1454:23 1455:22 1467:3 1488:14 1491:23 1525:22 1526:3 comments 1492:4 commission 1432:2 1433:17 1436:7 1437:24 1438:7 1444:2,23 1448:22 1452:20 1470:16,18 1470:18,19 1471:22 1474:21 1481:7 1492:25 1499:9,11,11 1499:12 1504:10 1509:21 1512:13 1534:11 1535:2 1536:8 1537:3,4 1541:10 1542:5 1543:24 1544:9,14,25 1545:5,11,14 1546:6 1547:5,11,22 1548:2 1548:18 1550:23 1553:14,15,18 1556:4 1557:2 commissioner 1442:6,9 1452:6,14,17 1473:2 1487:1,4 1506:7,10 1507:8,10,11,14,15 1508:5,9,13 1522:22 1528:2,4,9,16,25 1529:5,10,15,23 1530:2 commissioners 1434:10 1435:15,18 1436:18 1436:18 1445:2,24 1446:3 1449:1,8 1451:12 1453:12 1456:10 1533:10 1534:20 1535:24 1546:1,3,24,24 1548:25 commissions 1539:23 Commission's 1552:2 commitment 1550:24 committed 1476:5 communicated 1537:19 compact 1467:7</p>	<p>compile 1485:9 compiled 1435:12 complete 1516:19 completion 1508:16 comprehension 1517:10 concede 1484:15 concentrated 1438:17 1438:19,21 1439:18 1439:21 1467:15 1468:7 1518:10 concentration 1439:1,3 1439:5,14,24 1450:17 1467:10,11,20,21 1509:1,10,24 concern 1551:11 concerned 1461:11 1465:17 1540:12 1545:20 concerns 1506:17 condition 1521:10 conditioning 1432:3 conditions 1539:2 conduct 1475:10 cones 1502:22,23 1503:8 1509:15,21,22 1510:2,6 1512:6,8 1513:9,9,13,20,21,24 1513:25 1515:1,3,4,5 1516:4,13,17,20,22 1516:23,24 1517:5,7 1517:21 conference 1512:12 confined 1483:11 confirm 1434:14,14 1450:1 1463:24 1467:4 1482:15 1534:22 1535:4 1539:15 confirmed 1435:1 1544:13,18 1548:17 1555:22 confirming 1544:21 confirms 1434:12 confused 1520:19 confusion 1532:9 consider 1497:14,23 1539:19 1540:19 considerations 1552:6 considering 1552:22 Constable 1514:9 1524:16 consternation 1551:20 constraints 1552:7 consult 1536:10 1539:20 1543:19 1546:20 consulted 1551:2 contain 1538:9 contains 1494:22 CONTD 1470:22 1499:15 content 1547:17 contents 1434:12,15 context 1547:7 1550:11 continue 1445:3,11</p>	<p>1448:11 1451:13 continued 1536:19 continuing 1450:12 controversy 1518:5 convenient 1464:19 1470:10 conversation 1548:6 conveyed 1452:11 copy 1434:2 corrected 1522:17 Correction 1453:24 correctly 1464:3,4 1469:8 1470:25 1471:22 1473:9 1477:1 1479:4 1493:11 1500:2 correctness 1535:5 costs 1553:18 couldn't 1477:12 1496:10 1522:7 1530:7 Council 1553:7,13,25 counsel 1460:18 1491:18 1510:24 1553:6 count 1450:21 1454:4 1460:22,24 1464:4,7 1513:15 counted 1513:23 couple 1470:13 course 1490:4,11 1499:20 1502:3 1509:17 1531:23 1538:15 1552:10 1554:25 1555:8 cover 1488:9 covered 1448:19 1452:19 1486:20 1540:6,18 created 1485:19 crime 1434:24 1473:23 1474:5 1476:1,5 1480:17 1519:16 critical 1436:13 cross 1494:10 1527:23 1545:6 1555:19,22 cross-examination 1436:12 1453:14 1457:24 1458:2,5 1464:13 1470:22 1481:24,25 1482:2 1491:16 1493:17 1497:19 1499:15 1510:16 1513:7 1526:23 1538:4,11,25 1539:2,12,16,18 1555:14 cross-examine 1499:13 1543:20 1544:24 cross-examined 1538:24 1539:7 1543:1 1545:2,20 1554:12 cross-examiner 1491:21 1517:16 cross-examining</p>	<p>1489:4 1555:24 crowd 1478:7 1481:8 cup 1542:7</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 1439:16 1445:20 1446:5 dangerous 1455:17 1456:2 1471:25 1472:9 1475:7 1483:17,18,22 1484:6 1484:8,12,15,18,20 1484:22,22,22,24 1485:2,2,25 1502:2 1528:14 dark 1501:3 date 1437:8 1538:21 1544:16 day 1477:5 1478:7 1486:14 1496:18 1519:7,10 1530:19 1535:5,12 1539:12 1553:18 days 1544:20 1551:1,1 1555:14,19 dead-end 1462:19,22 deal 1492:2 1542:13 1553:24 1555:2,2 dealing 1490:15 deals 1487:14 dealt 1491:20 1521:23 1528:12 1552:16 debate 1493:22 1533:10 deceased 1469:12 decide 1497:18 1545:5 decided 1432:6 definite 1532:23 definition 1502:2 deliberately 1525:23 department 1481:13 depend 1535:15 depending 1465:15 1494:10 depends 1466:8 1474:13,16 1475:6 depict 1438:13,24 1441:25 1444:16 depicted 1494:24 depicts 1439:7 deponents 1554:12 deprive 1476:14 der 1510:8 describe 1483:17 described 1528:17 1545:9 1552:12 describing 1556:7 desirable 1527:23 desk 1432:15 despite 1507:6 1508:23 destruct 1474:15 details 1548:13 determine 1481:1 1498:24 1530:24 didn't 1450:21 1456:25 1460:15,22 1461:4</p>	<p>1464:3 1465:7,9 1477:6 1479:12 1481:10 1485:9 1491:6 1492:14 1503:23 1512:16 1513:15 1516:8 1520:10 1525:9,20,23 1526:1,4 1529:16 1553:19 died 1477:21 difference 1553:23 different 1523:9 1527:9 1535:13,14 1545:21 differs 1471:14 difficult 1454:22 1488:24 1541:5 1555:7 difficulty 1538:22 direct 1498:1 direction 1462:6,8 1463:22 1465:21,22 1465:24 directly 1537:1 dirt 1462:4,16 1463:5,7 1463:19,19,20 disagreement 1499:18 discern 1488:25 discharged 1453:21 disclaimers 1540:8 disclose 1517:12,17 discover 1555:18 discovered 1538:8 discuss 1477:3,6 1553:20 discussion 1477:8 1546:25 discussions 1537:2 1542:21 dispatched 1476:8 dispel 1556:3 disperse 1475:21 1476:17 dispersing 1477:19 displayed 1455:25 1532:21 dispossessed 1478:18 dispute 1553:12 distance 1449:11,15,17 1449:24 1450:1 1451:24 1454:16 1455:1,14 1465:19,21 1468:19,20,21 1469:3 1503:17 1521:24 1523:9 1529:18 1530:12 distances 1449:23 1451:6,7,7 1468:23 1469:14 1487:9 1521:24 1522:20 1529:6,11,16,18 distinct 1520:2 distinction 1484:11 distress 1494:22 1495:1 document 1435:15,16 1435:18,20 1436:5 1453:20 1454:9</p>
---	--	--	---	---

<p>1466:12 1475:22 documentary 1436:16 documentation 1555:17 documented 1476:8 documents 1538:7 1539:10 1555:6,10,12 doesn't 1459:8,22 1483:24 1491:21 1509:23 1522:9 1528:9 1531:7 1543:3 1545:11 1554:24 doing 1433:2 1437:1 1474:13 1476:10 1542:17 1544:7,20 1549:5 don't 1435:10 1436:13 1453:3 1454:13,23 1455:9,13 1456:4 1457:13 1458:13,15 1463:12 1466:10 1467:20 1469:11 1471:2,4,11,20 1472:22 1474:5 1480:7 1481:25 1485:25 1486:22 1487:6 1489:11 1491:16,23 1492:3 1496:3 1497:19 1501:23 1503:6,7 1504:9 1505:14,14 1506:7 1507:12 1508:13 1509:12 1517:21,23 1523:1 1529:2,8 1533:1 1534:17 1539:1,21,22 1539:23,25 1541:6,16 1541:21 1543:8 1545:21 1547:12 1550:2 1551:16 1552:2 1553:7 1554:8 doubt 1556:7 downwards 1439:23 draw 1523:3,8 drive 1538:9 1555:17 driving 1492:15 due 1490:4 duty 1553:19</p> <hr/> <p style="text-align: center;">E</p> <p>E 1440:17 1446:9 1456:1,1,20,21,25 earlier 1449:4,5 1501:14 1524:11 1532:9 1537:22 1538:1 1551:2,8 1554:16 early 1487:23 earth 1522:7 easier 1463:20 1534:10 easily 1436:25 effect 1485:3 effectively 1502:1 efficient 1476:21 eight 1514:13,19 1515:16 1516:21</p>	<p>eighth 1496:18 either 1458:24 1508:25 1525:18,19,25 1537:23 1539:24 1543:22 1551:24 eject 1465:19 ejects 1466:5 elaborate 1539:22 1541:7,17 1551:5 element 1522:5 elements 1543:14 elephant 1456:21 Elias 1445:3 eloquently 1541:3 embarrassing 1517:17 enable 1536:9 1537:17 ended 1532:19 ends 1445:21 1532:14 English 1496:7 enquire 1528:18 ensure 1553:19 entered 1542:13 entitled 1491:19 entrance 1440:11 1441:8,13 1502:14 1508:19 equally 1478:2,5 1484:20,22 1551:18 essentially 1538:13 establish 1451:9 1457:11 established 1486:22 1501:20 1503:2 estimate 1487:9 1504:5 1504:8 1517:4 1524:13,25 1525:3 estimates 1469:8 estimation 1484:20 1503:14 1505:6 et 1455:19 evening 1514:19 evenly 1438:17,20 1439:15 eventually 1511:23 evidence 1432:17 1433:2,17 1449:23 1453:11,17 1454:15 1467:24 1470:25 1471:22 1473:7 1477:1 1479:12 1482:16,24 1486:15 1487:15,23 1489:2,6 1489:24 1490:1 1491:9,10 1492:7,9 1494:5,9 1501:14 1509:2 1511:16 1515:20 1516:21 1518:4 1519:15 1521:4,23 1522:1,20 1523:7 1524:10 1525:8,12,19 1526:1 1528:17,21 1530:3,5 1530:7 1536:11 1537:9,18,20 1538:6 1538:7,13,18 1539:5 1539:6,9,9 1542:18</p>	<p>1544:22 1545:19 1546:21 1547:12 1550:13 1554:12,25 exactly 1445:6,17 1451:9 1452:25 1490:6 1495:22 1548:14 examination 1433:25 1494:11 1527:24 1534:3 1535:8 1555:20,23 examined 1480:25 1545:7 exception 1552:19 exceptional 1474:7,9 1474:13 exchange 1552:24 excused 1536:4,4,5,6 exhibit 1434:7,10 1435:18 1436:2,14,14 1436:16,24,25 1440:24,24 1449:3,6 1450:5 1453:16 1493:1 1495:18 exhibits 1435:14 expect 1473:24 1476:5 1555:23 expected 1473:6 1476:12 1477:5,14 1537:21 1547:21 1555:21 expecting 1474:2 1477:25 expended 1453:19 experience 1434:18 1465:12 1535:13,13 experienced 1464:16 expert 1465:18 1473:24 1480:21 expertise 1454:14 experts 1477:4 1480:25 1519:16 explain 1437:6,25 1445:19 1501:7 1507:14 1510:4 1519:21 1528:11 1535:12 1536:21 1537:4,7 1539:25 1548:19 explained 1455:24 1524:17 1548:21 explaining 1520:23,24 1550:25 explains 1438:13 explanation 1455:8 1474:16,19 1525:11 extent 1543:24 extra 1458:25 1459:3,6 1534:3 e-mail 1537:8,12 1539:3,3</p> <hr/> <p style="text-align: center;">F</p> <p>F 1446:13 1456:25 1457:6,7 1472:11,14 1506:13 1521:24</p>	<p>1523:3 1531:25 1532:9,11,19 1533:18 face 1539:1 facie 1517:13 facing 1441:8 fact 1449:12 1471:23 1472:16 1473:4 1482:14 1486:22,23 1487:6 1492:16 1507:7 1547:13 1551:15 1554:5 1555:1 factual 1488:25 1490:16 failing 1553:19 fair 1472:24 1489:3 1503:23 1541:12 1543:22 fairly 1449:12 1537:12 fall 1465:13,14,14,16 1465:25 1491:14,19 falling 1475:23 falls 1454:14 1490:20 false 1525:21,23,24 familiar 1519:13 families 1541:21,23 1544:6 1545:9 family 1540:17 1544:8 1544:10,19,24 1545:1 1545:5,6 1554:10 far 1459:23 1461:11 1465:17 1469:12,15 1471:22 1504:5 1505:7 1517:19 1531:22 1540:10,12 1549:7 fashion 1450:7,8,10 1485:12 fateful 1477:5 feel 1544:8,10,23 feels 1494:25 fell 1491:12 1534:7 fellow 1476:20 1477:4 1477:4 fill 1552:5 finalised 1481:19 find 1440:3,5,10,25 1444:19 1527:17 findings 1464:19 fine 1498:8 fingerprint 1479:5 fingerprints 1479:2,6 finish 1472:25 1498:22 1527:23 1549:1 finished 1488:12 fire 1454:21,24,24 1464:14 1535:15 1549:18,23 firearm 1453:1 1465:19 1466:5 1535:15,15,17 firearms 1475:2,3 1478:7,14 1479:7 1480:23 1485:22 1535:14 fired 1450:24 1453:1</p>	<p>1454:9 1464:18 1465:6,13,25 1535:16 firing 1469:11,13,15 1472:6 1486:23 1525:9 first 1444:1 1451:6 1482:19 1500:24 1519:7 1528:2 1545:24 1550:15 firstly 1526:24 1540:5 five 1437:20 1442:4,12 1514:12 1548:3,6 flowing 1527:14 1530:1 fly 1486:24 focal 1528:19 focused 1517:12 follow 1448:20 1507:12 1522:25 1523:1 followed 1491:8 following 1486:14 1550:8 follows 1434:23 1540:5 1550:25 footage 1436:9 1471:6 1483:15 force 1474:4 1476:13 1476:18 forced 1550:10 forensic 1480:23,25 forensics 1476:9 1480:21 1481:13 foreseen 1551:15 1553:16 forget 1443:24 forgive 1464:3 1513:8 1517:10 forgot 1474:21 1511:2 forgotten 1447:7 form 1466:23 forwarded 1480:23 forwards 1465:14 1466:7 found 1438:11 1440:7 1440:12,13,18 1441:6 1441:17,18,21 1442:2 1442:4 1443:4 1444:20 1445:1,6,10 1445:14,19,22 1446:2 1446:6,10,14,18,22 1447:1,5,10,14,18,22 1448:1,10,14,18 1449:11 1450:4,20 1452:8 1454:6 1456:2 1457:19 1458:8,10,21 1458:22 1459:2,11 1467:5 1472:5,7,9,10 1473:11,21 1474:10 1479:8 1495:10 1503:16 1505:4 1520:23,25 1521:10 1521:15 1527:19 four 1437:11 1442:19 1453:7 1454:12 1468:25 1469:2 1482:7 1504:18 1514:3,4,8 1519:6</p>
--	---	--	--	---

<p>1520:4 1523:23,23 1524:4 1525:17 1526:11,12,13 1551:1 fragment 1440:18 1444:14,16 1528:13 framed 1489:25 Friday 1536:9 1537:16 1546:13,17 1554:1,3 1554:4 friend 1497:1 1502:17 1522:2 1549:1,3 friendly 1437:4 1542:7 friends 1448:22 1537:1 1537:4 1547:8 frivolous 1491:24 front 1434:2 1493:5 1531:8 1533:4,5 fruitful 1547:1,14 1548:22 fruitfully 1554:1 full 1443:24 1444:1 1513:18 fully 1443:25 1489:16 1546:20 further 1438:16 1464:11 1477:8 1481:20 1513:7 1517:15,19,25 1523:12 1526:23 1528:3,11,15 1535:23 1536:6 1538:7 1539:25 1540:12,20 1540:23 1541:17 1551:21 1552:10 furthest 1451:24 1455:5 1507:2 1508:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 1446:17 gainfully 1554:1 gamesmanship 1544:1 gander 1543:23 gap 1542:23 1552:5 gather 1475:19 gathered 1460:16 1471:3 1476:21 gatherer 1515:21 gatherers 1516:21 gathering 1464:17 1475:20,21 1476:17 1477:18 general 1435:3 1464:22 1465:1,2 1469:22 1474:4 1475:23 1477:7,24 1501:9 1525:4 generally 1477:25 1542:5 gentleman 1498:1 getting 1501:3 give 1432:6 1433:17 1456:23 1474:16 1475:24 1494:5,8,25 1495:8 1504:7 1505:6 1513:2 1517:10 1523:9 1530:12,13</p>	<p>1536:11,15 1539:4,7 1539:10 1545:23 1546:19 1549:8 1553:6,6 1554:12,21 given 1467:24 1477:18 1486:21,22,23 1487:5 1487:6 1489:14 1502:17 1508:17 1529:10 1541:14 1542:1 1543:21 1556:16 givens 1487:5,8 giving 1482:20 1519:25 1537:18 1546:20 glasses 1506:6 gloves 1479:10 1480:2 1480:8,10,11,12,13 1480:14 go 1438:5 1439:19 1440:24 1444:11,13 1444:22 1452:3,7 1458:6 1462:20 1463:9,12,15,15,18 1463:22 1466:4 1475:24 1485:4 1493:1 1497:11 1505:2 1507:11 1517:19 1518:17 1528:16 1532:4 1551:21 1552:25 God 1433:19,21 goes 1436:22 1461:23 1462:11 1533:18 1552:10 going 1439:11 1453:18 1462:19,24 1472:18 1475:19 1476:15,16 1477:17 1478:9,11 1487:16 1489:1 1491:3 1492:6,19 1494:5,21 1495:17 1499:16 1505:5 1506:5 1534:18 1536:17 1537:19,23 1538:8,11,13,17 1539:7,11 1540:15,17 1541:15 1542:8 1546:1,2 1547:23 1548:7 1549:21 1550:5,24 1551:18,19 1552:22 1554:2,23 good 1432:10 1543:22 1543:22 goose 1543:22 graphic 1494:22 greatest 1550:5 grenade 1454:4 grenades 1450:18 1451:3 ground 1437:15,15 1441:4 group 1472:17 1475:23 1483:22 guess 1524:13 gun 1465:15 1487:7 guns 1471:18 1480:6,19</p>	<p>1480:25 1481:14 Gwelani 1448:25</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 1446:21 1468:20 1493:24,25 hadn't 1551:15 hammer 1517:15 hand 1433:19 1435:15 1443:23 1449:1 1526:20 handed 1433:8 1436:14 1449:6 1466:12 1474:22 1476:12 1477:15 1485:22 Handerson 1493:18,23 1494:5 handing 1435:23 1474:23 hands 1471:8 1511:8 hanging 1552:4 happen 1487:16 1503:4 1536:17 1537:19 1542:9,23 happened 1472:20 1481:15 1492:17 1520:17 1524:23 1528:24 1537:24 1540:2 1546:14,16 1550:12 1553:13 happening 1487:20 1496:17 1520:25 1536:2 1537:24 happens 1520:20 1521:4 1542:17 1543:2 happy 1508:15 hard 1538:9 1555:16 hardened 1546:12 1552:13 hasn't 1510:22 1538:15 1539:18 haven't 1466:3 1492:13 1498:18 1538:20,25 1539:24 1552:16 1556:17 head 1503:15,20 heading 1451:7 headlights 1518:21 heap 1457:16 1518:9 1518:14 1520:5 heaped 1457:10 heaping 1520:8 hear 1461:4 1464:3,3,4 1486:3 1496:10 1518:12 1525:9,20 1526:1,5 heard 1460:1 1496:3 1524:9 1535:10,22 1537:22 heat 1549:18,22 heating 1549:1 help 1433:19,20 1456:17 1457:2 1469:12 1522:9 1545:10</p>	<p>helpful 1445:4 1456:6 1465:3,12 1506:5 Hemraj 1442:6 1452:6 1452:14,17 1487:1 1506:7 1507:8,11,15 1508:5,9,13 1522:22 1527:15 1528:2,4,9 1528:16,25 1529:5,10 1529:15,23 1530:2 Henderson 1493:22 1494:4 1495:2 1498:19 1514:10 1516:25 1524:12,15 1524:20 Henderson's 1524:8,24 1525:2 he'd 1478:17 1489:2 he'll 1539:15,16 1543:4 he's 1485:23 1491:10 1493:20 1498:5 1523:15 1538:5,7,11 1538:13 1539:7,15,17 1548:24 he?15:37 1465:3 higher 1506:4,16 hilltop 1475:19 holding 1524:4 honoured 1549:11 hope 1491:25 1547:5 1547:18 hopefully 1499:17 host 1555:6 hour 1486:8 1525:4 hours 1437:21 1476:25 1477:2,11 1501:6 1502:6 1512:3 1516:1 1516:2 housekeeping 1542:4 hundreds 1535:20 hurry 1474:11 hypothesis 1489:1,7 1490:13,16 hypothesising 1490:8 H-A 1493:25 1494:7 H-E 1435:9 1494:2,3,7 1494:19</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 1453:4 1457:13 1548:18 1550:16 identify 1478:13 imagine 1472:23 imagining 1508:18 immediately 1437:13 1520:4 impasse 1550:12 importance 1469:21 important 1473:7 1479:1 1517:16 1554:22 impossible 1487:4 impression 1443:13 1482:13 1520:20 inappropriate 1545:3 inaudible 1539:3 incident 1475:25</p>	<p>1521:9 1525:15 inclined 1537:3 include 1442:25 1443:7 1483:21 1500:15 including 1481:1 1504:25 1513:21 incomplete 1538:14,14 incorrect 1525:24 indicate 1436:7 1438:7 1438:23 1445:5 1549:3 indicated 1435:3 1444:25 1446:25 1447:4,9,13,17,25 1448:9,13,17 1453:20 1454:1 1455:2 1464:8 1464:21 1466:23 1472:8 1484:25 1485:21 1486:12 1533:10 1536:11,13 1541:9 1548:2 1551:2 1554:16 indicates 1435:16 1436:20 1438:10,25 1439:10 1443:15 1445:13 1446:1,5,9 1446:13,17,21 1447:21 1450:17 1468:16 1532:2,14 indicating 1444:14 1508:25 1532:1,13 indication 1475:24 1509:23 indicative 1492:16 indistinct 1472:16 1541:13 individual 1545:6 individuals 1556:5 inferring 1466:17 inform 1556:18 informal 1449:13 1463:21 1502:19 1505:22 information 1436:24 1482:20 1492:11 1538:9 informed 1493:10 1495:21 Initially 1552:12 injured 1520:1 1521:20 inquisitorial 1543:25 inside 1501:16 1512:17 1512:19 1533:24 1550:23 insofar 1500:16 1517:14 1553:12,22 inspection 1534:24 instances 1556:8 instruction 1467:23 1477:9 instrument 1483:20 intended 1443:13,17,19 1542:15 interests 1543:23 interfere 1474:5 1519:17</p>
---	---	---	---	---

<p>interfered 1473:13 1474:19 1482:3 1483:8 1485:19 1497:20 1503:2,3,4 interference 1483:11 interfering 1474:9 interpose 1551:14 interposed 1536:17 interposing 1432:21 interpret 1496:6,16 interpreted 1471:21 interpreter 1472:20,23 1473:1 1484:2 1495:19 1496:6,15 interpreting 1472:24 interrogate 1556:18 interrupt 1460:14 1495:7 1507:9 1546:8 interrupted 1491:16 interruptions 1491:21 1491:22 interviewed 1548:10 introducing 1496:12 investigate 1459:13 1528:14 1556:11 investigated 1479:6 investigation 1479:1 1481:13 investigative 1543:24 1556:11 investigator 1470:1 invite 1453:16 1518:17 1521:22 involving 1434:24 isiXhosa 1496:7,16 isn't 1508:9 1526:2 issue 1487:13 1508:23 1526:24 1536:24,25 1550:14 1552:21 issued 1493:12 issues 1539:7 1552:8 items 1501:16 it'll 1465:11 it's 1432:5,9 1433:8 1434:6 1436:12 1439:17 1443:9 1444:7 1448:24 1449:17 1456:25 1459:19 1470:10,14 1472:14,24 1474:6,12 1484:11,12 1485:13 1488:4,24 1489:7 1490:16,16 1492:3,20 1493:25 1494:7 1496:13,13,14,17 1498:7,9,11 1499:4 1503:11,21 1505:2 1506:22,23 1508:23 1513:11 1517:16,17 1520:24,25 1522:11 1523:7 1527:23 1531:12 1532:7 1533:20 1537:1 1538:14 1541:12 1543:21,22 1544:15 1545:3 1546:21</p>	<p>1549:24 1552:23 1554:23 1555:20 1556:17 I'd 1476:22 1493:7 1523:15 1526:7 I'm 1457:11 I've 1505:4</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 1447:4 Ja 1456:12 1458:23 1469:24 1488:1 1490:21 1492:18 1497:7 1510:12,13 1512:14,20 1517:8,23 1527:3 1553:8 Jackson 1446:11 Jazeera 1498:3,19 1499:4 Jijase 1447:12 John 1448:15 join 1462:16 1463:4 1515:24 joined 1514:11,22 1515:7,8,18 joins 1462:23 judgment 1475:10 junior 1497:1 juniors 1449:2 jurisdiction 1553:5,24</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>K 1441:4 1447:9 keep 1463:13 1543:16 kept 1475:1 1480:19 key 1438:13 1450:16,16 1451:5 1538:5,16,19 1539:5 Khawamare 1445:3 killed 1435:17 1469:9 1473:5 1487:8 killings 1476:21 kilometres 1437:16 kind 1492:17 1542:4 1552:24 kindly 1551:1 kinds 1552:6 Klerksdorp 1514:13 1515:13 knives 1472:1 knobkerrie 1461:2 know 1435:9,10 1454:13,23 1455:9 1458:13,15 1460:18 1464:14 1465:24 1466:10,25 1469:11 1471:2,4,6 1472:22 1476:19 1480:7,18,21 1480:22,24 1481:3,5 1481:12,17 1484:1 1485:9,18,24 1486:1 1486:22 1487:7 1493:25 1494:7 1495:22 1497:19 1500:21 1501:23 1503:1,4,6,7,18</p>	<p>1505:14 1517:15 1524:7,12 1529:15 1534:17 1539:1 1541:15 1545:21 1548:8,23 1551:17 1552:25 1554:8 1555:9,21 known 1434:25 1437:10 1474:3,6 knows 1555:23 koppie 1477:10,13 kraal 1441:8,9,14 1442:25 1443:4,5,7,9 1443:10,11,14,16,16 1461:20,23,24 1462:12,23 1463:1,3 1463:13 1501:14,17 1502:10,14,14 1505:8 1505:22 1507:18 1508:19 1532:24 1533:5,16 kraals 1440:12 Kutswano 1448:16</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 1447:13 1453:16 1493:1 1502:13 lab 1479:5 laboratory 1480:23 lack 1517:10 lapse 1524:22,25 lapses 1543:3 large 1472:17 Lastly 1504:22 latest 1544:14 layout 1534:11 LCRC 1480:15 1512:19 lead 1462:3 1463:8 1491:11 1536:23 1539:9 1547:12,16 1548:7,8,16 1550:10 leader 1433:2 leaders 1432:18 1467:24 1528:21 1530:3,5,7 1537:9 1538:18 1542:19 1544:22 1550:13 leading 1536:14 1539:14 1549:3,6 leads 1462:1 1463:20 1502:19 learned 1448:22 1496:25 1502:17 1522:2 1536:25 1537:4 1547:8 1548:25 1549:3 1554:17 1556:15 leave 1475:20 1476:16 1495:1 1497:16 1515:11 led 1537:12,20,23 1538:19 1548:14 Ledingoane 1448:16 left 1443:23 1463:10,12 1486:13 1495:24</p>	<p>Lehupa 1446:12 lengthy 1537:12 lesser 1469:6 letter 1434:5 1436:15 1436:20 1439:16 1440:17 1445:20,21 1456:1,1,11,13,14,15 1456:18,20,25 1457:6 1457:7 1506:12 1523:3,5,6 1532:9,11 1532:17 letters 1449:2 let's 1439:19 1448:11 1470:12 1486:16 1488:10 1497:7,9 1498:22 1505:12 1506:2,2,15 1507:3 1510:24 1515:11 1527:4 1528:1 1533:5 1534:17,18 level 1488:10 Lewis 1481:23,24 1495:2,4,7,15,23 1496:1 1541:19,22 1543:7 1544:3,5 1546:2 1556:15 Lewis's 1554:8 Lieutenant-Colonel 1474:22 1478:15 1485:22 Likewise 1458:2 Limo 1453:16 line 1441:4 1445:20 1454:20,23,24 1456:14 1464:14 1468:12,13,15 1469:11,13 1472:6 1486:23 1505:10,12 1505:12,18,21 1506:3 1506:3,4,16,21,21 1507:7,22 1508:1,6,7 1508:11,18,19,24,25 1509:6,7 1521:25 1522:24 1523:4 1532:1,1,1,4,13,14,19 1533:6,7,16,17,18,21 1533:23,25 1534:8,10 1546:18 list 1548:3,4 1549:8 listen 1489:19 1533:4 litigating 1543:13 litigation 1539:22 1541:10 1544:2 littered 1509:16 live 1491:22 loco 1534:24 logic 1485:10 logically 1498:22 long 1437:17 1486:11 1501:12 1524:11 1530:11 1534:17 1538:11 1547:15 1554:8 1555:4 1556:1 longer 1517:20 1542:20 Lonmin 1538:8 1555:16</p>	<p>look 1432:4 1439:22 1441:3,3 1443:8 1444:4,8 1445:20 1451:11 1453:17 1455:25 1462:10,12 1463:3 1468:6,8 1471:24 1472:13 1500:6 1504:19 1509:16 1518:24 1521:22 1522:8 1528:25 1531:12,25 looked 1509:9,10 1522:6 1528:5 looking 1443:14,23 1449:10 1459:12 1462:6,6 1502:22 looks 1449:10 1459:22 1461:23 1462:16 1463:5 1500:4,12 loose 1472:6 lose 1529:22 lost 1506:6 lot 1476:24 1504:23 1549:18 1553:18 lots 1502:23 loud 1535:16 low 1535:18 lower 1506:1,17,21 lowest 1506:17 1507:22 1508:1,19 Luck 1551:21 lunch 1497:15 1498:16 1499:10 1503:2 lying 1440:9 1451:14 1455:11 1456:8,18 1457:4 1458:25 1459:1 1468:16 1492:20 1500:22 1502:9,13 1503:9,13 1503:20 1516:4 1529:12,19 1531:18 1531:21</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 1447:17 MAHLANGU 1473:3 1484:3 1496:8,12,17 1498:11 main 1554:24 majority 1471:7,17,19 1492:23 1493:6 making 1548:5 1552:5 man 1493:4 management 1519:16 manner 1437:5 1544:6 1544:15 1545:9 Marikana 1434:24 1435:1 1437:7,15 1496:14 marked 1435:17 material 1464:17 1489:22 Mathunjwa 1537:11 1538:4 1540:18 1549:12 1554:23 1555:2,21</p>
---	--	--	---	---

<p>Mathunjwa's 1555:12 matter 1489:17 1544:20 1553:7,13,17 1553:24 matters 1440:3 mean 1440:4 1443:3 1485:9 1487:1 1492:13,14,15 1499:23 1505:21,25 1506:1 1508:11 1525:23 1526:9,10,11 1532:9 1534:7 meaning 1479:7 means 1476:16,18 1483:23 1502:24 meant 1452:11 1490:3 1499:24 1527:23 measure 1466:20 1467:15,22,24 1468:22 1529:16 1530:8,16,17 measured 1451:10,23 1469:11 1530:2,11,15 measurement 1466:18 1508:17 1530:13 measurements 1435:7 1452:11,12 1466:11 1466:13 1469:8,21 1528:19 1530:4,21,21 1530:24,25 1531:1 medical 1520:12 meet 1543:17 meeting 1554:2 member 1434:18 1474:13,14 1514:22 1545:1 members 1478:7 1480:15 1514:1,12,13 1515:2,10 1544:8,10 1544:19,24 1545:5,6 1554:10 mention 1474:21 1478:10 mentioning 1490:10 Mere 1474:22 1478:16 1480:4 1485:22 merely 1455:1 1489:7 Merwe 1510:8 metaphorical 1550:3 metre 1504:8 metres 1449:21,25 1451:6,9,16,17,20,25 1455:3,6,15 1468:25 1469:2,10 1505:9,13 1506:23 1507:3,18,23 1508:2 Mguneni 1445:25 1451:19 Michael 1446:23 microphone 1495:3 1526:20 middle 1461:20 1544:14 1545:14 midnight 1502:24 millimetre 1450:19 1452:22,23,23</p>	<p>1454:11 mind 1465:9 1470:5 mine 1495:20 1551:11 miners 1475:18 1477:17 1478:9 minute 1494:25 1526:11 minutes 1482:23 1483:7 1498:12 1502:23,24 1523:24 1525:16 1526:12 mislead 1504:10 misled 1488:8 missed 1480:1 mistake 1499:25 mistaken 1514:14 1525:13,25 mixed 1439:3,4,4 Mohlaki 1436:6 1449:23 1475:14 1482:10,12,20,25 1514:8 1519:11 1523:22 1524:15 Mohlaki's 1476:6 1482:16 Mojapelo 1497:2 Molefe 1514:9 1524:16 moment 1435:25 1449:11 1463:2 Monday 1542:15,16,21 1549:9,10 Monesa 1445:3 money 1553:18 Mongezeleli 1446:16 month 1496:18 1530:6 morning 1475:12 1476:21 1537:9 1554:7 1556:24 1557:1 mortuary 1511:12,13 1511:17,21,23 Motlupula 1447:8 motor 1518:21 mouse 1445:5,8 move 1442:21 1523:2 1532:18,19 1555:20 moved 1467:2 1483:13 1486:21 moves 1462:23 moving 1439:25 Mpangeli 1446:7 Mpofu's 1537:17 1548:3,4 Msenyeno 1447:8 Mtshazi 1447:24 munitions 1453:19 murder 1496:14 1500:20 1552:4 murdered 1500:21 mustn't 1475:9 1491:4 Mzukisi 1446:19</p> <hr/> <p style="text-align: center;">N</p> <p>N 1434:7,7,8 1447:21 1448:9 1449:16,18 1458:24 1459:18,24</p>	<p>1460:1 1499:20 Naidoo 1435:3 1464:22 1465:1,2 1469:22 1475:24 1501:9 1525:5 name 1433:8 named 1539:4 names 1433:6 1435:16 1495:11,14,17,20 nature 1491:4 1492:9 1492:12,14 Ndongophele 1447:20 near 1459:23,24 1460:17 1520:21 1531:21 nearest 1531:12 necessarily 1456:6 1541:14 necessary 1476:18 1491:23 1492:3 1497:23 1517:14 1545:3 1555:1 need 1488:9 1541:17 1543:25 1544:24 1545:6 needed 1523:22 1536:12 1547:9 negative 1479:7 Nellie 1434:7 never 1470:4 1486:4 1492:11,18 1503:16 1512:17 1513:23 1520:13 nevertheless 1553:14 new 1432:12 newspaper 1491:3 Ngweyi 1446:24 nicely 1501:20 night 1515:14 1519:3 noise 1535:14,16,18 Noki 1445:25 1451:19 non 1540:24 1546:11 1546:12 non-promise 1540:7 1546:5,11 1547:15 1548:18 1552:12 non-sharpened 1484:6 1484:15 notice 1442:24 1503:24 1503:24 noticed 1492:11 1503:25 November 1432:1 1545:14 Ntenetya 1446:16 number 1436:20,21 1441:17 1444:7,8,11 1445:1,14 1446:1,2,6 1446:10,14,18,22 1447:1,5,10,14,18,22 1448:1,10,14,18 1449:3 1450:16 1458:22 1460:4,11,18 1464:5,7 1466:21,22 1473:6,9,9,15 1476:23 1502:12</p>	<p>1503:12 numbering 1522:11 numbers 1435:16 1436:15 1440:1 1511:19 1522:14 Nyalas 1492:8,15,19</p> <hr/> <p style="text-align: center;">O</p> <p>O 1435:18 1436:2,14 1436:25,25 1447:25 1448:5,6,7,12,13 1449:6 1458:24 1459:19,21 1460:3,17 1461:3,8 1472:15 1495:18 1500:10,13 1501:20 oath 1434:12 1470:21 1545:19 1552:25 object 1440:4 1474:15 1491:19 objection 1488:21,23 1488:23 1490:19 1491:12,13,14 1541:24 1543:9 1554:15 objections 1491:19,24 objector 1492:3 objects 1472:1 1473:25 observation 1528:7 observations 1435:7 1444:3 1521:3 observe 1492:8 observed 1477:22 1492:12,14,18,20 1502:3 obvious 1551:5 obviously 1541:4 1543:4 1547:20 1551:15 occupy 1556:23 occurred 1482:14,22 1486:3,5 1521:9 1525:8 1526:6 1538:1 October 1534:23 1545:15 1555:5,8 office 1514:12,12,14,15 1515:9,10,12 officer 1432:20,22 1433:5,12 1434:1 1435:8,11 1436:10 1437:6 1447:6 1453:15,18 1454:14 1457:9 1458:6 1459:25 1463:12 1464:2 1470:20 1475:11 1482:3 1493:18 1499:16 1500:13 1504:22 1506:10 1511:3,6 1512:12 1514:10 1516:25 1518:3 1520:3,16 1521:18 1522:17 1523:7 1524:8,12,15,20,24 1525:2 1528:4,14 1531:6 1534:22</p>	<p>1536:5 officers 1473:24 Oh 1442:15 1457:15 1459:19 1479:19 1485:5 1491:1 1494:3 1500:11 1513:6 1527:25 1531:11 okay 1435:11 1448:11 1454:8 1456:17 1482:19 1484:14,19 1484:23,23 1485:18 1486:15 1488:8 1489:13 1491:1 1493:4 1500:8,8 1501:13 1503:12,23 1505:5,11,16,24 1506:5,12 1507:6,17 1508:14 1509:13,13 1512:10 1531:11 1532:6,22 once 1538:10 1540:24 1543:19 ones 1459:1,12 1497:2 1497:3,5,14 1498:2 open 1547:21 operate 1539:23 operators 1493:14 1494:17 opinion 1455:10 1504:1 1504:8 Opperman 1528:14 opportunity 1510:22 1513:3 1539:19 1541:15 1542:1 1546:19 1554:21 opposed 1550:20 opposite 1506:18 option 1545:4 order 1464:19 1470:24 1476:14 1545:1 1546:19 orderly 1440:20 1450:7 orientate 1456:18 orientation 1457:3 original 1473:18 originally 1536:13 outside 1443:10 1468:12,13 1509:7 1533:18,20 1534:7 1542:5 1550:23 o'clock 1437:11 1475:19 1477:15,16 1482:7 1486:13,14,16 1486:16 1487:23 1497:11 1510:11,12 1511:25 1513:10 1514:20 1515:14 1518:13 1520:8 1521:4 1523:16 1526:7,10,10</p> <hr/> <p style="text-align: center;">P</p> <p>P 1444:24 1448:17,23 1448:25 1449:11 1499:23,24 1500:1,7 1500:15</p>
--	---	--	--	---

<p>page 1459:7 1511:5 1512:7 1518:21 1522:11 1546:7,16 1547:23</p> <p>pages 1450:5</p> <p>pains 1550:8</p> <p>pair 1504:25</p> <p>panga 1483:19 1484:16 1493:5</p> <p>pangas 1472:2 1485:16</p> <p>papers 1511:19,20</p> <p>paragraph 1434:22 1435:3</p> <p>paramedics 1487:24 1488:4 1502:7 1519:22,25 1520:14 1521:6,13,19</p> <p>pardon 1479:16 1553:11</p> <p>part 1443:16,16 1482:19 1501:15 1505:12,25 1506:2,2 1506:4,16,17,17 1508:6 1509:15 1518:4 1522:10 1533:6 1546:13 1549:10 1551:13 1554:19</p> <p>participate 1512:15,16 1556:9</p> <p>participated 1534:23</p> <p>particular 1445:6 1492:25 1495:9 1496:13 1517:11 1545:1</p> <p>particularly 1481:15 1542:18</p> <p>parties 1538:20 1544:23 1545:11,23 1551:13 1554:3 1555:5,13 1556:4,6,9 1556:12</p> <p>parts 1438:18 1439:14 1439:21</p> <p>party 1513:1 1554:11</p> <p>pass 1475:10</p> <p>passive 1519:12,18</p> <p>path 1461:23 1462:11 1462:12,15 1463:1,4 1463:18 1502:18 1505:18 1508:10 1509:7,11 1532:24 1533:2,4,5</p> <p>pathology 1488:17</p> <p>Patrick 1433:5,20 1447:11</p> <p>pause 1494:25 1496:5</p> <p>peacefully 1475:21 1476:17</p> <p>people 1435:17 1445:19 1469:9 1472:17 1473:5,5 1475:6 1476:14 1477:21 1482:14 1487:16 1488:11 1492:7 1494:23,24</p>	<p>1495:12,14,24 1502:7 1510:9 1514:17 1515:1,9 1520:1,12 1543:1,18,21 1548:6 1552:3 1555:15,24 1556:10</p> <p>period 1538:12</p> <p>permission 1432:7</p> <p>permitted 1556:8</p> <p>persistent 1491:24</p> <p>persists 1432:9</p> <p>person 1464:16 1475:13,13 1480:5 1485:24 1487:8,10 1496:12 1550:15</p> <p>personal 1480:16 1540:21</p> <p>personally 1478:20,23</p> <p>personnel 1511:12,13 1511:21,23</p> <p>persons 1478:14 1482:23 1556:7</p> <p>photo 1435:13,13 1438:10 1444:11,11 1455:25 1456:1 1460:4 1468:6,8 1472:11 1511:12 1531:10</p> <p>photograph 1458:18 1459:7,22 1460:16,20 1461:16,20 1463:13 1464:6 1470:25 1475:22</p> <p>photographed 1457:17 1459:10 1460:13 1461:7 1528:12</p> <p>photographically 1460:2</p> <p>photographs 1444:15 1460:24 1528:10</p> <p>photos 1435:7 1448:19 1519:3,7,7,10,21</p> <p>phrases 1519:13</p> <p>picked 1441:12,25 1450:22 1451:4 1452:23 1454:12 1460:19 1480:2</p> <p>pictorial 1522:5</p> <p>picture 1441:9 1443:15 1500:7 1506:10</p> <p>pictures 1511:15,16</p> <p>pieces 1551:16</p> <p>pile 1440:17 1450:4 1456:3,15 1457:19 1458:8,11,21 1459:1 1459:4 1466:17,19 1467:1,15,20 1470:23 1471:3 1483:3 1485:20 1502:3 1518:9 1527:1,9 1528:5</p> <p>piled 1440:20,21 1457:8 1467:2,4,8 1471:25 1472:10,14 1473:10 1475:4 1486:1 1521:10</p>	<p>piles 1485:10</p> <p>piling 1473:13</p> <p>Pillay 1434:4,6</p> <p>pistol 1439:1,17 1440:25 1441:5,12,21 1441:23 1442:1,7,7,8 1464:9</p> <p>pistols 1474:20,22,23 1474:23,25 1475:12 1509:4</p> <p>place 1436:21 1443:11 1444:25 1445:13 1446:2,5,9,13,17,21 1446:25 1447:4,9,13 1447:17,21,25 1448:9 1448:13,17 1453:15 1454:15 1457:6,7 1468:16 1474:10 1475:21,25 1476:17 1486:13 1496:18 1509:21,23 1521:11 1532:2,14,20 1535:9 1542:1 1554:22</p> <p>placed 1457:7 1460:2 1501:23 1512:9 1516:23 1532:5</p> <p>placing 1516:4 1543:25</p> <p>plan 1435:13 1438:1 1448:19,23 1449:25 1529:1 1542:24</p> <p>planned 1553:16</p> <p>play 1493:9 1499:4 1509:14 1527:20</p> <p>played 1436:11</p> <p>playing 1498:2</p> <p>please 1433:6,13,18 1437:6,24 1438:7 1444:23 1445:7,8,15 1445:17,25 1448:3 1461:13 1463:2,11 1466:4 1471:16 1475:12 1492:4 1495:20 1512:11 1517:9</p> <p>plus 1507:25 1514:21 1548:11</p> <p>plus-minus 1486:13</p> <p>point 1432:11 1436:19 1444:24,25 1445:13 1445:16,17 1446:1,5 1446:9,13,17,21,25 1447:4,7,9,13,17,21 1447:25 1448:2,5,9 1448:13,17,19,24 1453:20 1462:10,16 1462:25 1469:10 1470:12 1478:25 1505:21 1506:20 1507:2,22 1508:1,19 1517:13,14,15,19 1521:25 1522:23 1523:2,8 1528:19 1532:10 1534:4 1537:15 1543:12,16 1544:23 1545:2 1548:5 1552:17</p>	<p>1555:3</p> <p>pointed 1441:4 1535:1 1535:5</p> <p>pointer 1445:8 1456:5 1462:10,11 1463:4 1506:5,5</p> <p>pointing 1456:14 1462:13</p> <p>points 1435:4,6 1444:23 1522:24 1523:8 1542:12</p> <p>police 1434:19 1453:19 1469:23 1473:24 1474:4 1476:18 1477:22 1480:20 1481:2,16 1525:13,14 1536:18 1545:16,18</p> <p>policemen 1464:18 1465:6 1470:2 1476:20,23,24 1477:4 1511:10</p> <p>politely 1476:12</p> <p>pool 1551:3,22 1552:21</p> <p>portion 1442:25 1443:7</p> <p>position 1436:21 1440:5 1445:1,14,21 1446:2,6,10,14,18,22 1447:1,5,10,14,18,22 1448:1,10,14,18 1463:16 1467:5,6 1493:14 1494:18 1499:13 1509:22,24 1529:17,20 1532:2,15 1532:16,20 1536:21 1536:23 1537:5,7,10 1540:5,19,21 1552:18 1553:15 1556:18</p> <p>positions 1473:19</p> <p>possessed 1471:18</p> <p>possession 1475:1 1479:2 1480:20 1481:1,14</p> <p>possessors 1478:18 1479:10,13,21</p> <p>possibility 1487:20</p> <p>possible 1495:8,11 1534:9 1552:19</p> <p>possibly 1535:17</p> <p>postponed 1537:16</p> <p>postponement 1550:14</p> <p>Potchefstroom 1512:13</p> <p>potential 1551:3</p> <p>potentially 1538:6</p> <p>power 1499:1</p> <p>PowerPoint 1544:7,12 1544:17</p> <p>precognition 1543:15</p> <p>precognize 1536:22</p> <p>precognized 1539:19 1541:14</p> <p>preference 1472:23</p> <p>prejudice 1545:8 1552:9</p> <p>prejudicial 1538:6,9 1539:9</p> <p>prejudicing 1541:4</p>	<p>prepare 1438:2 1512:12 1536:12 1540:1 1547:9</p> <p>prepared 1433:13 1489:19 1536:14 1538:4,16 1540:20 1554:23 1555:13</p> <p>presence 1516:6</p> <p>present 1436:7 1537:2 1538:6 1539:9 1541:23 1544:11 1545:2</p> <p>presentation 1525:14 1525:15 1536:19 1540:17 1544:7,12,17 1544:19 1545:16,18 1554:8,11 1556:16,17 1556:21</p> <p>presented 1539:11,17 1544:9,16 1545:17</p> <p>presenting 1544:6,16 1545:8,20</p> <p>preserve 1479:2</p> <p>preserved 1477:25 1478:1</p> <p>pressed 1542:23</p> <p>presumably 1460:16</p> <p>presupposes 1508:5</p> <p>pretend 1489:24</p> <p>Pretoria 1480:19,21,25 1481:14</p> <p>pretty 1455:10,15</p> <p>previous 1458:7</p> <p>prima 1517:13</p> <p>print 1436:6</p> <p>prints 1479:7</p> <p>probably 1548:8</p> <p>probe 1508:16 1521:3</p> <p>problem 1436:19 1437:3 1490:15 1494:21 1539:24</p> <p>procedure 1480:15</p> <p>proceed 1445:25 1553:16,17</p> <p>proceeded 1437:12,18</p> <p>PROCEEDINGS 1432:1</p> <p>process 1475:22 1481:6 1556:11</p> <p>processed 1434:24</p> <p>processing 1480:17</p> <p>programme 1530:23 1548:11</p> <p>projectile 1440:5</p> <p>promise 1540:25 1546:12,13 1552:13</p> <p>promised 1538:17</p> <p>pronunciation 1495:19</p> <p>proper 1551:24</p> <p>proposal 1546:18 1554:16</p> <p>propose 1504:16 1544:11 1554:24</p> <p>proposed 1546:21</p> <p>proposes 1491:11 1554:9,18</p>
---	--	--	---	--

<p>proposing 1470:6 1489:6 1497:10</p> <p>proposition 1526:3</p> <p>protection 1477:23</p> <p>protective 1480:16,16</p> <p>protesters 1469:23 1471:8</p> <p>prove 1489:6 1553:2</p> <p>provide 1554:9 1555:4 1555:8</p> <p>provided 1549:12 1555:12</p> <p>provincial 1514:11,12 1515:9,10,12</p> <p>proximity 1452:8 1529:2,7</p> <p>purpose 1471:21</p> <p>purposes 1471:16</p> <p>pursue 1517:24</p> <p>put 1449:2 1457:16 1458:13,15 1471:3 1482:21 1488:10 1489:23 1490:13 1491:4 1492:6 1503:12 1505:11 1506:2 1511:2 1526:3 1527:17 1533:6 1538:24 1541:3,13,15 1542:3 1550:6 1555:13</p> <p>putting 1488:25 1489:5 1490:17 1491:7,10 1544:21 1550:20</p> <p>P-A-T-R-I-C 1433:9</p> <hr/> <p style="text-align: center;">Q</p> <p>quarter 1504:17 1523:23</p> <p>question 1442:22 1449:10 1455:12,13 1458:7 1466:1,1,2 1467:17 1470:2 1471:17 1479:14 1481:10,11 1482:13 1482:17,21,24 1489:9 1489:25 1490:12,13 1490:22 1492:22 1505:17 1506:17 1509:20 1510:19,25 1517:16 1522:14,25 1525:13 1526:16 1527:4 1529:9 1530:1 1530:16 1531:3 1534:6,20 1553:25 1556:15,21,23</p> <p>questioning 1526:22</p> <p>questions 1457:20,25 1458:3,6 1470:11,13 1481:21,25 1499:16 1507:14,16 1510:22 1512:23 1513:2,8 1517:11 1523:12,16 1525:8 1526:16 1527:14,14,15 1528:2 1528:3 1535:23 1536:6</p>	<p>quite 1449:11 1473:6 1473:15 1506:14 1546:3 1547:1,3,14</p> <p>quota 1513:18</p> <p>quotation 1547:24</p> <hr/> <p style="text-align: center;">R</p> <p>raise 1433:19 1488:20 1488:23 1536:25</p> <p>raised 1526:19</p> <p>raising 1536:24</p> <p>ran 1509:22 1516:23</p> <p>range 1488:12 1529:11</p> <p>ranged 1451:16</p> <p>rank 1493:19</p> <p>reach 1547:2</p> <p>reached 1546:6 1547:10 1548:22 1549:7 1550:17</p> <p>reaches 1462:19</p> <p>read 1448:23 1495:11 1495:13,17,18 1537:13,14 1546:16 1548:17</p> <p>reading 1435:2</p> <p>reads 1434:22</p> <p>ready 1436:12 1498:9 1531:3 1537:18 1541:23 1547:8,12 1548:16</p> <p>real 1508:23</p> <p>realise 1469:20</p> <p>really 1432:15 1435:10 1504:10 1541:2</p> <p>rearrange 1473:25</p> <p>rearranged 1458:17,21 1459:12,14 1460:15 1460:19 1461:7 1470:24</p> <p>reason 1475:3,6,7 1485:15,17 1491:17 1501:5,11 1517:12,17 1520:15 1525:7</p> <p>reasons 1474:14 1551:4</p> <p>rebut 1555:1</p> <p>recall 1441:16 1455:19 1518:5,10 1521:25 1522:19 1523:7 1542:25 1548:2</p> <p>received 1434:20 1474:21 1487:15 1538:21</p> <p>recognised 1516:5</p> <p>recollection 1440:1 1520:3 1523:20</p> <p>reconsider 1489:16</p> <p>reconstructed 1524:2</p> <p>record 1435:2 1480:18 1533:9 1542:1,4 1546:17 1550:9 1551:8 1554:22</p> <p>recording 1435:12 1436:9,9 1487:17 1488:5</p> <p>red 1439:2,5,7,10,19,24 1442:4,13,24 1443:7</p>	<p>1443:24,25 1444:5 1450:17 1452:24 1506:3 1508:25</p> <p>reddish 1444:1</p> <p>refer 1439:12 1445:16 1448:21,22 1451:9,20 1493:18 1546:6</p> <p>reference 1450:24 1500:20 1522:3 1549:20</p> <p>referred 1480:20 1527:10 1547:24 1548:7</p> <p>referring 1441:12 1457:6,10 1480:3 1484:4 1500:13 1525:17 1547:20 1548:9,20</p> <p>refers 1434:18,19</p> <p>reflect 1509:23 1520:4</p> <p>reflected 1441:1 1449:25</p> <p>regard 1452:8 1482:16 1485:25</p> <p>relate 1529:18</p> <p>relates 1533:11 1547:14</p> <p>relation 1452:12 1455:23 1456:7 1477:23 1521:23 1529:21 1539:6,6 1540:14 1556:19</p> <p>relative 1454:17</p> <p>release 1543:18</p> <p>reluctance 1538:23</p> <p>reluctant 1539:1</p> <p>remember 1435:19 1436:5 1441:20 1455:21 1500:2 1504:5 1509:18 1515:25 1516:16,18 1517:21,23 1523:21 1526:24 1531:23</p> <p>remind 1470:20</p> <p>removal 1511:17</p> <p>remove 1473:24 1474:15,24 1518:4</p> <p>removed 1473:18 1474:25 1475:6,7 1478:21 1479:15,17 1479:24 1485:24 1490:15 1511:13,21</p> <p>removing 1520:11,13</p> <p>repeat 1441:10 1448:3 1455:12 1467:18 1481:10 1490:22</p> <p>replaces 1449:5</p> <p>replay 1499:17</p> <p>represent 1509:21 1512:7 1552:3</p> <p>representative 1510:25 1513:2</p> <p>representatives 1546:19 1554:3</p> <p>represents 1543:21</p> <p>request 1493:9 1537:11</p>	<p>1547:4 1550:18,19,19</p> <p>requested 1513:3 1516:24 1528:13 1550:15</p> <p>require 1555:15</p> <p>required 1493:17 1549:25</p> <p>resolve 1543:3</p> <p>respect 1435:19,21 1452:15 1482:25 1493:12 1550:5</p> <p>respects 1543:12</p> <p>respond 1452:13 1542:2 1546:23 1550:5</p> <p>response 1479:14 1554:13</p> <p>rest 1514:1 1515:12 1516:20</p> <p>result 1477:21</p> <p>results 1479:6</p> <p>resume 1546:21 1547:6</p> <p>resumes 1432:2 1470:18,19 1499:11 1499:12</p> <p>resurfaced 1433:4</p> <p>retrieve 1444:19</p> <p>return 1524:23</p> <p>revised 1449:1</p> <p>revolvers 1471:18</p> <p>re-examination 1523:15 1526:15 1534:19,20</p> <p>re-examine 1534:16</p> <p>re-examines 1527:24</p> <p>rifle 1438:10,17 1439:4 1440:8 1441:17,19 1464:9 1535:20</p> <p>right 1433:19 1441:8 1441:13 1458:8 1459:24 1460:3,20 1461:22 1462:11 1463:1,2,5,13 1466:6 1466:7,10 1468:12 1486:19,24 1487:2 1493:23 1500:9 1502:5 1514:23 1522:14 1530:4 1535:8,25 1536:7 1553:3 1556:25</p> <p>road 1462:1,4,16 1463:5,8,19,19,20</p> <p>rod 1500:12,16</p> <p>role 1488:4</p> <p>rookie 1474:4</p> <p>roughly 1477:2</p> <p>round 1437:11 1441:4 1470:7,12 1486:14 1504:17 1517:8 1523:23 1526:7,9,10</p> <p>row 1485:16 1527:4,8</p> <p>rows 1485:6</p> <p>rubber 1450:18,20,25 1453:23,24</p> <p>rule 1477:24</p> <p>rules 1477:22</p>	<p>ruling 1489:14,15,16</p> <p>run 1492:7 1497:19</p> <p>running 1445:20</p> <p>Rustenburg 1514:14 1515:13</p> <p>R5 1438:10 1439:4 1534:11 1535:20</p> <hr/> <p style="text-align: center;">S</p> <p>sake 1508:16</p> <p>SAPS 1543:16 1550:13</p> <p>saw 1472:15 1475:3 1488:13 1492:16 1503:11 1504:22 1520:13 1527:10</p> <p>saying 1442:12 1443:17 1455:1 1456:10 1471:12 1473:9,12 1484:21 1487:9 1490:13 1491:8 1503:24 1521:9 1523:8 1524:9</p> <p>says 1435:3 1436:20 1442:9 1471:13 1489:1 1496:13 1502:23 1538:23 1539:3,3 1546:4,18 1547:19,21 1548:20 1550:24 1552:13,14</p> <p>scattered 1467:7,8,9</p> <p>scenes 1435:13 1478:5 1480:17 1494:22 1526:6</p> <p>science 1480:23</p> <p>screen 1437:23 1445:5 1456:5 1462:10 1531:7,12 1532:21</p> <p>searched 1457:19</p> <p>seated 1433:23</p> <p>second 1512:11 1548:8</p> <p>section 1527:17</p> <p>see 1432:12 1436:18 1443:22 1444:12 1445:20 1449:25 1456:25 1458:18 1459:21,23 1461:19 1461:23 1462:18 1472:1 1475:5 1476:11 1477:10,12 1478:25 1479:19 1484:19 1485:5,7 1492:15 1494:3 1495:2,24 1497:5 1498:20 1501:13 1503:19 1505:7,17,19 1506:12 1510:2,24 1511:6,18 1518:20,22 1518:25 1519:2 1520:10,11 1525:18 1527:9 1528:21 1531:7,15 1532:1,11 1532:19 1533:4,7,13 1533:17 1536:12 1548:25 1552:2</p> <p>seeing 1541:15</p> <p>seeking 1522:3</p>
---	---	---	--	---

<p>seen 1438:23 1476:22 1483:14 1490:11 1495:10 1497:13 1498:18 1520:8,23,24 1538:5,7,15,18,25 1556:16,17</p> <p>self-defence 1469:23 1470:3</p> <p>Semenya's 1489:4 1490:19</p> <p>sense 1525:24 1556:9</p> <p>sensitive 1495:24</p> <p>sent 1537:8,12</p> <p>Seoka 1536:16 1537:20</p> <p>September 1530:6</p> <p>sequencing 1551:11</p> <p>serious 1553:17</p> <p>Service 1434:19</p> <p>set 1537:10</p> <p>setting 1516:20</p> <p>settlement 1449:13 1463:21 1502:19 1505:22</p> <p>seven 1514:13 1525:16</p> <p>shack 1505:7,13,25 1506:24 1507:17,22 1521:24,25 1523:3</p> <p>shaded 1438:9,18,21 1439:2,2,3,5,24 1440:8,12 1441:1,25 1442:2,4,5,10,13,13 1442:16,25 1443:7,9 1443:9,11,14,17 1452:24</p> <p>shading 1438:6,8</p> <p>shape 1451:16 1466:24</p> <p>sharp 1453:20 1472:1 1483:19,25</p> <p>sharpened 1483:24 1484:12,12</p> <p>shoes 1501:16 1504:23</p> <p>shoot 1465:15</p> <p>shooter 1487:10</p> <p>shooting 1482:14,22 1483:7 1486:3,4,5,17 1488:13 1512:4 1525:15,20 1526:1,5 1526:5 1535:9</p> <p>short 1455:15 1498:3 1498:21 1504:14 1516:23 1534:18 1556:17</p> <p>shorter 1497:2,3,5,14 1498:2 1499:4</p> <p>shortly 1516:10 1525:16 1553:21</p> <p>shot 1453:24 1469:23 1470:3 1477:21 1487:10 1488:11,12 1535:16</p> <p>shotgun 1439:6,8,20 1444:18 1450:17,25 1464:8</p> <p>shotguns 1444:21</p> <p>shots 1535:20</p> <p>shoulder 1460:3</p>	<p>shoulders 1501:21</p> <p>shouldn't 1432:23</p> <p>should've 1475:4</p> <p>show 1455:25 1464:5 1468:11 1470:2 1493:14 1494:18 1498:6 1509:15 1516:4 1531:7 1551:8</p> <p>showing 1437:23 1438:5 1448:23,24</p> <p>shown 1493:17 1494:22 1494:24 1495:23 1496:2,11,20,21 1497:24 1498:10,13 1499:2,6 1531:5</p> <p>side 1443:23 1462:24 1463:2 1492:19 1532:24 1533:2 1540:13 1542:13 1551:10</p> <p>sideways 1465:14</p> <p>similar 1435:18,20 1469:3 1529:18 1530:21</p> <p>simple 1539:15</p> <p>simply 1488:4 1489:22 1539:18 1541:22 1543:8 1544:20 1552:5</p> <p>sincerely 1541:2</p> <p>sir 1473:3 1533:3</p> <p>sitting 1477:11 1501:20 1554:4,6</p> <p>situated 1454:24 1456:1 1533:19</p> <p>six 1437:20 1476:25 1477:2,11 1539:4</p> <p>sketch 1438:1 1448:19 1448:23 1449:25 1451:11 1529:1</p> <p>slide 1437:23,25 1447:7 1448:25 1452:2 1453:17,17 1455:25 1493:1 1506:8 1518:24 1525:17,18</p> <p>slides 1455:18,19 1518:25</p> <p>slightly 1545:21</p> <p>slip 1522:10</p> <p>slippers 1504:25</p> <p>small 1442:25 1443:7 1443:16</p> <p>smoke 1549:18,23,24 1550:7</p> <p>solved 1494:21</p> <p>somebody 1450:7 1453:15 1474:24 1503:20 1530:6,9 1553:2 1555:1</p> <p>Sompeta 1446:20</p> <p>soon 1555:18</p> <p>sorry 1435:22 1448:4 1456:25,25 1459:20 1460:14 1471:11 1472:21 1473:1 1479:22 1480:2</p>	<p>1481:9 1483:25,25 1484:1,1 1485:5 1486:10,10 1487:3 1488:8,18 1491:6 1495:2,7 1497:25 1499:3,25 1500:12 1504:12 1506:1,22 1507:8,10,10 1511:1 1511:5 1512:7 1526:16 1531:7 1546:8 1549:11 1553:11 1554:4,5</p> <p>sort 1432:16 1453:1 1466:24 1474:8 1491:23 1525:10</p> <p>sorts 1473:7</p> <p>sounds 1432:10 1524:2</p> <p>south 1434:19 1437:15 1505:11,11,25</p> <p>southernmost 1508:6</p> <p>south-most 1505:12,21</p> <p>so-called 1486:23</p> <p>speaking 1444:14</p> <p>spear 1483:19 1484:16</p> <p>spears 1472:1</p> <p>special 1477:22</p> <p>specialists 1476:2</p> <p>specific 1474:14,15 1495:9 1521:11 1523:24 1549:20</p> <p>speculating 1490:7</p> <p>spell 1433:6</p> <p>spelling 1433:7 1435:8</p> <p>spent 1476:25 1544:19</p> <p>split 1514:8</p> <p>spoke 1454:12 1546:10 1551:9</p> <p>sponsor 1455:10</p> <p>sports 1437:15,15</p> <p>spot 1441:11,25 1465:14 1467:22</p> <p>spots 1535:2</p> <p>spread 1439:15 1468:4 1468:6</p> <p>stage 1466:9 1470:10 1487:19,21 1494:6 1498:15 1525:16 1545:12,22 1547:16 1551:7,17,24</p> <p>stages 1496:6</p> <p>stand 1432:12,14 1433:4,13 1528:1</p> <p>standard 1480:15</p> <p>standby 1487:25</p> <p>stands 1438:8 1540:21 1516:3 1534:22 1536:14 1537:18</p> <p>started 1524:20,24 1540:10 1545:15 1554:6</p> <p>starting 1443:22</p> <p>state 1457:10,11</p> <p>statement 1433:8 1434:1,9,14,18 1464:22 1489:1</p>	<p>1538:12,12 1539:15 1543:20 1545:18 1549:11 1555:13</p> <p>statements 1538:5,15 1538:18,19,25 1539:4 1539:8,8 1544:4,18 1549:9 1555:4,8,10 1555:15</p> <p>stay 1484:17</p> <p>stayed 1514:10</p> <p>step 1548:1</p> <p>stick 1472:15 1483:20 1483:21,24,25 1484:6 1484:15 1499:21 1500:1,7,10 1501:19</p> <p>sticks 1470:23 1471:3,8 1471:19 1472:1,5,7 1473:6,15 1475:4 1493:7</p> <p>stop 1497:22 1517:18</p> <p>stories 1544:9,11</p> <p>straight 1462:22 1463:15 1508:7,11,18 1523:3,9</p> <p>stripes 1444:5</p> <p>stronger 1546:12</p> <p>strongest 1552:19</p> <p>strongly 1544:8</p> <p>stun 1450:18 1451:3 1454:4</p> <p>subject 1510:16,17 1538:4 1539:12 1541:4 1543:4 1555:19,22</p> <p>subjected 1538:11 1539:2 1555:14</p> <p>submission 1545:7</p> <p>submissions 1545:2 1549:2</p> <p>submit 1538:17</p> <p>submitted 1538:12,14 1544:13</p> <p>submitting 1544:22</p> <p>subpoenaed 1545:1</p> <p>suggest 1489:15 1521:5 1521:6</p> <p>suggested 1481:6</p> <p>suggestion 1495:24 1552:20 1554:14</p> <p>suggests 1437:5</p> <p>suitable 1493:11</p> <p>suitably 1492:2</p> <p>sum 1523:10</p> <p>summoned 1524:4</p> <p>support 1554:10</p> <p>suppose 1496:6 1542:6</p> <p>supposition 1508:17</p> <p>sure 1436:25 1462:5,8 1467:1 1476:23 1486:20 1504:13 1533:3 1541:24 1553:5</p> <p>surely 1530:5</p> <p>surprise 1487:25 1488:1 1538:25 1539:17</p>	<p>surprising 1489:9</p> <p>surrender 1475:20 1476:16 1478:10,12</p> <p>surrendered 1476:8</p> <p>surrendering 1487:16 1488:5</p> <p>swear 1433:13,15,16,19 1433:20</p> <p>swears 1434:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 1448:2</p> <p>table 1540:13</p> <p>tactically 1551:23</p> <p>take 1436:17 1437:22 1437:24 1438:4 1440:2 1442:19 1443:21 1444:23 1450:15 1455:7 1460:20 1463:3,18 1470:7,15,17 1498:15 1499:9 1504:17 1525:5,5 1527:16 1534:15 1535:25 1536:1,4,4 1542:6,9 1542:19 1543:6 1548:1 1552:19 1554:19</p> <p>taken 1436:10,19 1437:3 1479:5 1500:25 1501:6,8 1511:12,16,20 1517:18 1519:21 1524:8,18</p> <p>takes 1508:16</p> <p>talk 1472:20 1555:16</p> <p>talking 1442:7 1460:8 1515:7 1547:25 1548:24</p> <p>taught 1535:13</p> <p>tea 1470:7,17 1504:17 1510:18 1527:16 1534:16 1535:25 1536:1 1537:14 1542:6,8 1543:7</p> <p>team 1514:1,6,11 1540:22</p> <p>teargas 1454:9</p> <p>teeth 1476:20</p> <p>telephonic 1548:6</p> <p>telephonically 1548:1</p> <p>television 1488:13</p> <p>tell 1434:4 1439:20 1442:1 1444:2 1450:19 1451:2 1456:6 1461:14 1465:12,18,24 1475:12,15 1478:17 1479:9 1489:12 1494:15 1539:5</p> <p>telling 1525:23</p> <p>temperature 1432:5</p> <p>terms 1489:2 1529:18</p> <p>terrible 1472:19</p> <p>test 1489:7</p> <p>testified 1454:3</p>
---	--	---	---	--

<p>testifying 1436:6 1543:14 1544:10 text 1525:17,17 thanks 1497:17 1512:6 1527:12 that's 1435:4 1449:9 1452:10 1459:18 1460:6 1461:16 1462:12 1464:1 1467:21 1469:25 1489:9,25 1490:6,21 1491:11 1494:20 1498:8 1500:11 1501:4 1502:1,22 1516:12 1518:15 1522:5 1525:18 1526:2 1530:3 1536:7 1537:18 1543:4,23 1549:22 1552:14 1553:7,13,24 1554:4 1556:7,20 Thembinkosi 1448:25 thereabouts 1497:11 thereto 1556:19 there'll 1487:23 there's 1460:1 1462:24 1462:24 1485:10,15 1489:1 1490:11,12 1498:21 1499:18,21 1500:6,10,16,20 1503:12 1510:24 1511:2 1517:17 1540:17 1542:23 1549:17 1553:22 1554:2 1555:16,17 1556:6 they'd 1485:23 they're 1432:21 1555:24 They've 1480:20 Thibelo 1433:5,20 thing 1474:6 1478:1 1479:24 1487:15 1520:23 1527:9 1532:23 1551:25 1556:3 things 1432:5 1473:14 1488:9 1540:22 1542:4 1555:20 think 1432:17 1434:6 1444:7 1453:10 1454:15 1481:23 1483:23 1485:9 1487:24 1488:10 1489:9,11,12,24 1490:24 1491:23,25 1492:3 1496:3,15 1498:14 1499:23 1501:11,20 1503:11 1504:3 1505:2 1507:15 1508:11 1513:17 1514:21 1522:8 1525:11 1527:16 1531:12 1540:6 1541:3,16 1547:23 1548:21</p>	<p>1549:17 1554:21 1555:22 third 1522:23 Thirdly 1556:19,22 Thobisile 1446:4 thoroughly 1544:18 thought 1470:1 1490:1 1491:12 1493:22 1498:22 1501:14 1536:15 thoughtful 1495:23 three 1444:15 1497:2 1497:14 1498:2 1504:17 1514:14 1516:1 1550:25 1551:6 throwing 1521:18 Thukusa 1446:8 Thursday 1542:22 1543:2,4 tidied 1543:15 tidy 1518:4 1521:5,12 1542:12 till 1497:11 1504:18 1536:9 1542:10 1550:14 time 1437:6 1454:7 1470:14 1472:20 1477:17,18 1482:6 1492:25 1493:9 1499:8 1508:23 1511:15,16,20,22 1515:25 1518:6 1521:8,13,19 1523:20 1524:2,8,16,22,25 1525:10,12,25 1526:7 1530:11 1536:12 1538:12 1540:1 1543:3,9 1547:9 1552:3,8 1553:20 1555:3,4,7 times 1525:19 timing 1521:18 1526:24,25 Tip 1458:1,2 today 1432:3,11 1537:1 1537:22 told 1464:14 1469:22 1469:22,24,25 1470:23 1474:24 1475:18 1489:22 1519:11 1522:12 1523:22 1524:21,22 1525:22 1537:21 1541:14 1555:15 tomorrow 1536:23 1542:10 1543:10 1554:1,5,6,19 1557:1 tongue 1522:10 top 1444:8,8 1461:20 1462:7,7 1470:24 1518:20 total 1440:14 1441:16 1441:21 1458:22 1460:10,18 1461:11 1513:14</p>	<p>touch 1536:20 tough 1551:21 tracks 1492:19,21 traditional 1440:18 1457:8 1458:24 1459:4 1461:2,8 1472:9 1528:5 training 1434:20 1536:20 transcript 1495:17 transcription 1472:19 transpose 1436:24 traverses 1505:18 treated 1478:2,4 treating 1502:7 trials 1544:2 triangle 1522:24 trouble 1472:19 true 1434:15 1509:23 1511:11 1526:4 truth 1433:18,18,18 truthfulness 1435:1 try 1540:9 1550:11 trying 1457:11 1510:3 1521:2 1522:23 1552:1 Tuesday 1536:15 1542:15 1547:4,7 turn 1459:15 1461:13 turned 1459:16 1495:3 1496:10 1526:20 two 1437:16 1440:16 1441:24 1442:2 1451:4 1454:4,7 1470:8 1474:20,21,22 1474:23 1478:14 1485:6,22 1488:9 1490:14 1500:16 1501:6 1502:6 1503:13 1513:8 1514:8,14,21,25 1515:6,7 1516:1,1 1523:8,10 1539:12 1540:22 1542:12 1544:20 1547:8 1548:11 1551:23 1555:14,18 type 1465:15 1476:9 typical 1544:1 T-H-A-M-A-E 1433:9 T-H-I-B-E-L-O 1433:9</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uncalled 1491:25 underneath 1533:17 understand 1452:7,9 1454:16 1455:13 1463:14 1471:12 1473:8 1477:1 1481:10 1488:22 1491:6,20 1493:13 1496:4 1505:15,17,22 1505:25 1509:2 1515:12 1520:22 1522:7,14 1527:15 1529:8 1533:1,4</p>	<p>1534:11 1538:3,10,22 1539:11 1540:16 1541:16 1546:18 1547:4 1554:2,17 1555:5 understandably 1547:3 understanding 1471:10 1471:14 1536:8,21 1537:16,25 1545:17 1548:15 understands 1508:11 understood 1456:10 1466:1 1479:12 1491:11 1508:24 1536:14 1537:11 1541:23 1546:11 undertaking 1537:25 1538:3 1540:6,6,9 1552:12,13 1553:1,4 undertakings 1553:6 undertook 1555:3 unequivocal 1489:2 unfortunate 1552:24 1553:14,22 unfortunately 1504:13 1540:24 1542:14 unfounded 1491:24 unhappiness 1494:23 unnecessarily 1517:18 unnecessary 1542:23 unsatisfactory 1545:13 untruth 1525:24 urgently 1543:19 use 1436:11,25 1445:7 1456:5 1460:23 1462:9 1467:21 1476:13,18 1478:7 1480:2 1489:25 1490:22 1498:25 1506:4,8 1513:12,16 1513:24 1515:4 1516:13 1530:23 1531:8 1554:1 useful 1436:15 usefully 1553:20 user 1437:4 usual 1493:12 utmost 1553:19</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vague 1505:17 value 1537:15 Van 1510:8 various 1454:17 1496:6 1535:2 1556:5 varying 1466:13 vehicle 1513:12 1517:1 1518:21 vehicles 1471:19 1515:4,5 veld 1504:23 version 1449:1 versions 1538:24 1543:17 video 1435:12 1436:8,9 1483:15 1493:9,12,13</p>	<p>1493:14 1494:17,18 1494:21,24,24 1495:1 1495:22 1496:2,5,11 1496:13,20,21 1497:24 1498:10,13 1499:2,6 1500:20,24 1501:6 1502:16,21 1503:11,24 1504:14 1509:10,14 1524:8,20 1524:25 1525:2 1527:10,17 1528:3,5 1531:5,7 videos 1493:16 1499:17 1499:17 1503:19 1536:13 1541:16 video-based 1531:3 view 1479:1 volume 1496:9 voluntarily 1476:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 1472:24 1477:8 1519:18 1525:4 1549:1 waited 1501:9 waiting 1437:14,18 1477:1 want 1435:15 1436:11 1436:11,13 1440:2 1442:19 1444:2 1451:8 1453:21 1455:10 1463:12,13 1463:18 1470:11,14 1471:16,20 1475:11 1487:13 1488:20,22 1489:7 1495:13 1497:4,18 1504:9,10 1505:24,24 1509:5,20 1510:23 1517:13 1521:5 1526:16 1527:3,13 1536:22 1541:2,2 1543:6 1550:3 1552:2,23 1553:20 1555:18 wanted 1465:23 1504:12 1528:21,22 wants 1460:18 1488:19 1490:25 1510:25 1527:15,17 warning 1493:11,12 1495:9 warrant 1432:19,22 1433:5,12 1434:1 1435:8,11 1436:10 1437:5 1447:6 1453:15,18 1454:14 1457:9 1458:6 1459:25 1463:11 1464:2 1470:20 1475:10 1482:2 1493:18 1499:16 1500:13 1504:22 1506:10 1511:2,5 1512:11 1514:9 1516:25 1518:3 1520:3,16 1521:18</p>
--	--	--	---	---

<p>1522:17 1523:7 1524:8,12,15,19,24 1525:2 1528:4,13 1531:6 1534:22 1536:5 wasn't 1537:22 waste 1543:8 1552:2 watch 1504:4,10 way 1436:22 1462:21 1485:18 1508:12 1509:16 1536:8 1544:7,12 1556:7 weapon 1444:3,5,9,11 1444:12 1458:24,25 1459:3,6,22,23 1460:1,7 1461:2,8 1484:7,9,12,16,18 1502:2 weapons 1440:18,19 1443:23 1450:4,6 1455:17 1456:2,7,18 1457:3,8,10 1458:8 1458:20,22 1459:4 1460:11,19 1461:6 1466:25 1467:2 1471:17,25 1472:9,10 1473:10 1474:10 1475:7,20 1476:7,12 1476:14,17,21 1478:10 1483:12,17 1483:18,22 1485:6,25 1492:23 1493:6 1499:19 1500:17 1503:2 1518:9,13 1520:5,8 1521:7,10 1528:6,7,14 wear 1480:15,16 wearing 1480:10,11,12 1480:13,14 Wednesday 1536:9,16 1537:17,18 1542:15 1542:25 1546:22 1547:6,11 1550:14,16 1554:6 week 1544:14 1546:10 1547:11 weighing 1551:12 welshed 1552:14 went 1501:10 1512:14 1514:9 1524:18,18 1540:15 1549:7 weren't 1465:20 we'd 1490:14 1522:13 1540:23 we'll 1436:6,23,24 1467:20 1475:2,3 1506:4 1534:15 1535:25 1543:19 1544:6 we're 1437:1 1449:10 1472:18 1543:17 1554:6 1556:10,11 we've 1432:16 1433:8 1438:23 1463:17 1486:21 1497:13 1501:20 1527:19</p>	<p>1537:12 1544:19 1555:2,15,16 what's 1472:19 1493:18 1536:2,17 1537:24 1540:1 1541:15 1542:8 1555:9 whichever 1509:16 whilst 1449:22 1535:9 white 1511:19,19 widely 1467:7 wind 1535:12 wiser 1536:15 wish 1433:13 1489:15 1489:16 1495:5,21 1513:2 1525:22 1541:20 wishes 1510:22 1545:22 1554:11 withdraw 1553:5 withdrawing 1553:3 withdrawn 1432:9,17 1491:13 witness 1432:12,12,15 1432:15 1433:4,4 1452:13 1453:12 1456:10 1457:21 1488:19 1489:3 1490:17 1508:11 1522:15 1526:15 1527:18 1536:2,3,6 1536:17,19,22,23 1537:21,24 1538:10 1538:23 1540:1,4,11 1541:12,13 1548:8,10 1554:13,17,18,24,25 1555:4,25 1556:21,23 witnesses 1489:22,23 1536:3,15 1538:5,16 1538:19 1539:4,6 1540:12,20,23,25 1543:10,13,16 1544:4 1545:12,16,17,19 1547:17 1548:3,11,14 1548:16 1549:4,6,8 1550:10 1551:3,6,12 1551:14,18,22 1552:22 1555:9 wondering 1495:8 Wonderkop 1434:25 Wonderkop/Marikana 1437:7 won't 1484:18 1485:1,1 1487:11 1488:14 1495:18 1503:12,21 1509:14 1517:12,18 1517:20,24 1554:3 word 1432:15 1467:20 1467:21 1490:1 1502:22 words 1439:23 1451:18 1483:6 1484:11 1490:23 1506:18 1524:1 work 1433:2 1476:9 1519:17 1527:5</p>	<p>1553:15 working 1432:3,5 work-related 1477:7 wouldn't 1520:7 1535:18 would've 1437:3 1450:24 1455:2 1470:2 1473:7,14 written 1439:23 wrong 1432:14 1487:6 1490:12,12 1500:5 1511:24 1522:12</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>X 1550:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Y 1550:24 Yawa 1447:16 1502:13 yellow 1438:22,23,25 1439:11,12 1441:24 1442:2,9,10 1507:7 1508:24 1509:6,7 yesterday 1489:22 1536:16 1537:20 1540:4,11 1547:17 1548:16 Yona 1447:3,3 you'd 1484:5 1518:5 1536:4 you'll 1433:17 1444:11 you're 1435:23 1456:22 1457:15 1462:12 1476:1 1481:23 1488:16 1489:4,6 1490:17 1515:7 1517:11 1534:17,18 1536:5 1545:20 you've 1435:1 1436:14 1443:12 1459:25 1464:20 1472:24 1490:15 1495:3 1502:17 1506:10 1524:2,21,22 1526:19 1526:24,25 1529:10 1536:16 1552:14 1555:22</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 1442:20 Zimbabwe 1446:4</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>09:38 1432:2 09:58 1441:10</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 1434:25 1435:4,17,19 1435:24,25 1437:10 1437:13,18 1439:23 1449:12,24 1453:19 1453:21,24 1454:9 1458:22 1461:11,17 1471:10,14 1486:2,5 1486:9,11 1495:11,14</p>	<p>1497:11 1500:23 1501:8,10,11 1513:9 1513:14,22,24 1514:10,17,21 1515:7 1516:14 1518:6 1520:20 1521:4 1523:17 1524:3,4,17 1524:18,19,23,24 1525:1,5,10,12,20 1526:2,8 1535:8,9,10 1st 1534:23 1-5 1437:23 10 1454:9 1469:10 1512:3 1513:11 1523:23,24 1524:4 10:18 1449:17 10:38 1457:9 10:58 1467:6 11:31 1470:19 11:51 1480:3 12 1487:23 1498:12 1502:23 1546:7 12:05 1487:24 12:11 1488:24 12:31 1496:21 12:51 1498:10 1246 1546:16 13:11 1499:6 14 1446:22 14:12 1499:12 14:32 1507:21 14:52 1517:24 15 1432:1 1447:10 1468:10 1473:5 1505:3,13 1506:23 1507:2,23,25 15:12 1526:14 15:32 1536:18 15:52 1548:13 16 1447:1 16th 1434:23 1437:9 1496:18 1498:12 1530:5,8,11 17 1447:5 1500:25 17th 1512:2 17:42 1496:19 1501:1 1524:9 17:52 1496:18 172 1493:1 18 1446:18 19 1446:10 19th 1555:5,8</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 1435:21,22 1449:12 1449:24 1485:16 1486:3,6,7,9,17 1501:10 1503:12 1504:14 1511:25 1514:9 1524:18 1525:6,10,16,20 1526:2 1529:12 1535:9 2AM 1512:1,2 2.3 1451:6,9,16,20 1455:2,14 1466:13</p>	<p>20 1446:14 1502:23,24 2012 1432:1 1434:23 1437:10 1496:18 1498:12 1534:23 21 1446:6 210 1441:18 1449:15,17 1449:19,19,21 1464:9 211 1453:17 22 1446:2 23 1447:14 1498:11 235 1525:17 236 1525:17 237 1525:18 24 1442:5,13 1445:14 25 1436:21 1442:5,13 1445:1 26 1442:10 1447:18 260-odd 1543:20 27 1448:1,14 28 1447:22 1448:10 284 1453:20 29 1448:18</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 1450:16 1503:12 1504:14 30 1503:14,20,21 1504:1 1531:18 31 1441:22 1464:9 32 1511:5 1512:7 34 1477:21 36 1459:19 1460:4 39 1450:12</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 1459:7 1486:13,16 1510:11,12 1513:10 1514:20 1518:12 1520:8 1521:3 1523:16 1526:7,10,10 4PM 1520:21 40 1444:4 1450:12,18 1452:22,23,23 1454:11 1459:7 1505:9 1507:2,18,25 41 1450:12 1455:19 1459:7 42 1450:12 1500:25 1501:2 43 1450:12 1527:4 44 1443:22 1444:11,11 1450:5,12 45 1443:22 1444:13 1450:5,12 1505:9 1507:2,18</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 1434:22 5.4 1466:13 50 1507:3 500 1449:24 52 1500:25 522 1453:24 533 1453:23 55 1507:25 1508:1 57 1444:20 1464:8</p>
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<p>6</p> <p>6 1435:3 1486:14,16 6.1 1451:16,25 1455:6 1529:12 600 1476:20</p> <hr/> <p>7</p> <p>7 1444:7 70 1517:5,7,8</p> <hr/> <p>8</p> <p>8 1444:8 1514:20 1515:14 1546:18 80 1517:5,7,8</p> <hr/> <p>9</p> <p>9 1475:19 1477:15,16 9-day 1512:12 9:30 1557:1</p>				
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