

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 185

14 FEBRUARY 2014

PAGES 22313 TO 22387



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Page 22313	Page 22315
<p>1 [PROCEEDINGS ON 14 FEBRUARY 2014]</p> <p>2 [09:06] CHAIRPERSON: The Commission resumes. I</p> <p>3 hope everybody has turned his or her cell phone off.</p> <p>4 You're still under oath, Provincial Commissioner.</p> <p>5 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.</p> <p>6 CHAIRPERSON: Mr Mpofu.</p> <p>7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p> <p>8 Thank you very much, Chairperson. Good morning, General.</p> <p>9 GENERAL MBOMBO: Good morning, Counsel.</p> <p>10 MR MPOFU: And Happy Valentine's Day to</p> <p>11 you and all the ladies are wearing red today.</p> <p>12 GENERAL MBOMBO: Thank you.</p> <p>13 MR MPOFU: No, all the ones are wearing</p> <p>14 red for Valentine's Day, thank you, including you, General.</p> <p>15 GENERAL MBOMBO: Thank you.</p> <p>16 MR MPOFU: And Commissioner Hemraj.</p> <p>17 CHAIRPERSON: But are even the AMCU</p> <p>18 ladies wearing red today?</p> <p>19 MR MPOFU: Yes, it's just for today,</p> <p>20 Chairperson. General, we were busy with what I'm going to</p> <p>21 argue was a missed opportunity of what in shorthand we'll</p> <p>22 call the Mathunjwa mission, and just to recap, your</p> <p>23 evidence is that you did not know that the Mathunjwa</p> <p>24 mission was still active, correct?</p> <p>25 GENERAL MBOMBO: Can you explain what you</p>	<p>1 MR MPOFU: Okay –</p> <p>2 CHAIRPERSON: In other words you denied</p> <p>3 it –</p> <p>4 MR MPOFU: No –</p> <p>5 CHAIRPERSON: - allegation was that you</p> <p>6 took political considerations into account and you say</p> <p>7 that's not true, so you denied the allegation. So he's</p> <p>8 right the way he summarises it.</p> <p>9 MR MPOFU: Yes, Chairperson, it's a</p> <p>10 matter of language. I think what she means is not only do</p> <p>11 I deny it, it is not so. It's just a language –</p> <p>12 CHAIRPERSON: Alright.</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: I think she's being</p> <p>15 careful. She doesn't want to be seen to agree to things</p> <p>16 unless she understands what she's agreeing to.</p> <p>17 MR MPOFU: Yes. No, I thought –</p> <p>18 CHAIRPERSON: It might be a ball from the</p> <p>19 back of the hand or something –</p> <p>20 MR MPOFU: Yes, no, later it could be</p> <p>21 used against her. That's correct. Thank you, Chairperson.</p> <p>22 But putting that denial aside, you do accept that if indeed</p> <p>23 you had taken into account political considerations, that</p> <p>24 would be grossly irregular and improper, correct?</p> <p>25 GENERAL MBOMBO: That would have been the</p>
Page 22314	Page 22316
<p>1 mean by active?</p> <p>2 MR MPOFU: Well, your impression – and we</p> <p>3 now know with the benefit of hindsight that that impression</p> <p>4 was wrong – was that the Mathunjwa mission, peace mission,</p> <p>5 was finished and had failed, correct? By the time you</p> <p>6 issued the instruction, that is.</p> <p>7 GENERAL MBOMBO: Oh, that is correct,</p> <p>8 yes.</p> <p>9 MR MPOFU: And had you known that the</p> <p>10 Mathunjwa mission was still ongoing, it would have been</p> <p>11 improper for you to issue that instruction if you had</p> <p>12 known, correct?</p> <p>13 GENERAL MBOMBO: That is correct. If I</p> <p>14 knew, I would have waited.</p> <p>15 MR MPOFU: Yes. Now I will then, I'll</p> <p>16 show you later that you, either you actually knew that the</p> <p>17 mission was still ongoing, or that you ought to have known,</p> <p>18 but that I will do later. You understand?</p> <p>19 GENERAL MBOMBO: I hear you.</p> <p>20 MR MPOFU: Also just to round off one</p> <p>21 issue, I accept that you have denied that you took into</p> <p>22 account political considerations in ordering the operation,</p> <p>23 correct?</p> <p>24 GENERAL MBOMBO: I do not deny that. It</p> <p>25 is not like that. That is not how I work, Mr Chair.</p>	<p>1 case, Mr Chair, yes.</p> <p>2 MR MPOFU: Thank you. And similarly if</p> <p>3 you had taken into account other improper and ulterior</p> <p>4 motives which are not permissible in terms of police work,</p> <p>5 it would also be grossly improper and irregular, correct?</p> <p>6 GENERAL MBOMBO: That is so, yes.</p> <p>7 MR MPOFU: Right, now just for clarity</p> <p>8 sake, is it correct that this operation, although it</p> <p>9 started as a local Marikana issue and grew to become a</p> <p>10 provincial operation, that by the time of the massacre it</p> <p>11 was a national operation, correct?</p> <p>12 GENERAL MBOMBO: That is correct, Mr</p> <p>13 Chair, because we had mobilised police officers from all</p> <p>14 over the country.</p> <p>15 MR MPOFU: Right, thank you. Also you do</p> <p>16 accept that although your primary concern as the police was</p> <p>17 the issue of peacekeeping, but the root cause of the</p> <p>18 conflict there was the labour issue, or the wage dispute,</p> <p>19 correct?</p> <p>20 GENERAL MBOMBO: That is so, yes.</p> <p>21 MR MPOFU: Okay, just for the record, it</p> <p>22 took me about half a day to get that concession from the</p> <p>23 National Commissioner.</p> <p>24 CHAIRPERSON: You don't have to remind us</p> <p>25 of that. We're fully aware of it.</p>

<p style="text-align: right;">Page 22317</p> <p>1 MR MPOFU: Ja, thank you, Chairperson. I 2 withdraw the reminder. Okay, now going back to what we 3 were discussing yesterday, because of that it is self- 4 evident that the shortcut to resolving the whole situation 5 would have been to resolve the underlying issue, in other 6 words the labour issue, so that not only do you not have a 7 violent labour action, but you have no labour action at 8 all, if it's possible, correct? 9 GENERAL MBOMBO: Please repeat the 10 question. 11 MR MPOFU: I'm saying I do appreciate 12 that the primary concern of the police was the peacekeeping 13 because this, although you and I have agreed that it was a 14 labour, the root cause was a labour issue, it was 15 unfortunately accompanied by some violence and that's why 16 you were involved, correct? 17 GENERAL MBOMBO: Yes. 18 MR MPOFU: That I understand. What I'm 19 saying is that it was also the approach of the police that 20 the best way to deal with the situation would have been to 21 resolve the underlying issue, which was the labour issue as 22 between the two parties, labour and the employer, correct? 23 GENERAL MBOMBO: That was part of our 24 attempt, but it was not the reason why we were there. 25 MR MPOFU: Yes, no that I appreciate, but</p>	<p style="text-align: right;">Page 22319</p> <p>1 GENERAL MBOMBO: That is what they were 2 saying, yes. 3 MR MPOFU: And only later you learned 4 through your own interactions with the strikers that the 5 underlying issue was actually a wage dispute and their 6 request to be addressed or to talk to the employer, 7 correct? 8 GENERAL MBOMBO: Yes, that's what we 9 heard. 10 MR MPOFU: And in fact, I can't remember 11 which one, but members of the police effectively had to 12 cross-examine the Lonmin people until such time that they 13 conceded that those people were there employees. I 14 remember, I think somebody said, "Well, if those are not 15 your employees, then where are your employees?", something 16 like that, which was a very good question. 17 GENERAL MBOMBO: There was such a talk. 18 We showed them some photos and they saw on the photos that 19 some of the strikers were their employees. 20 MR MPOFU: And then as I say through your 21 own direct interaction it was made abundantly clear to 22 SAPS, it was made abundantly clear, and repeatedly so, that 23 the protesters had one single demand and refrain, which was 24 to be addressed or to talk to the employer, "Umlungu, 25 Umqeshi," whichever term they used, but whenever you</p>
<p style="text-align: right;">Page 22318</p> <p>1 you also appreciated that if the underlying issue was 2 resolved, that might remove the reason why you were there. 3 GENERAL MBOMBO: We had such a thought. 4 MR MPOFU: Yes, now it was also well – or 5 let me start with this. When you had your first encounter, 6 as it were, with Lonmin, they effectively misled you as to 7 what the real problem was. Is that correct? 8 MR VAN AS: I have to object to that, Mr 9 Chairman. 10 CHAIRPERSON: I don't see on what basis 11 you can object. He hasn't explained to us – he's put a 12 proposition and he's going to explain it to us. 13 MR MPOFU: Okay, maybe – 14 MR VAN AS: If he explains it, then – 15 CHAIRPERSON: Yes, so the objection was 16 premature. 17 MR MPOFU: Yes. Thank you, yes. 18 Alright, to circumvent that problem let me put it this way. 19 When you had your first encounter with Lonmin you were told 20 that uppermost was a problem between NUM and AMCU, correct? 21 GENERAL MBOMBO: Yes, that is what they 22 were saying. 23 MR MPOFU: Yes, and secondly you were 24 told that Lonmin did not know who these people were, they 25 were faceless people who were not their employees, correct?</p>	<p style="text-align: right;">Page 22320</p> <p>1 interacted with them that was the constant refrain, 2 correct? 3 GENERAL MBOMBO: That is what I heard, 4 yes, Mr Chair. 5 MR MPOFU: In fact when the very first 6 encounter happened with the police, with General Mpenbe – I 7 won't take you through the transcript, but you can take it 8 from me that about 10 times the strikers in interacting 9 with General Mpenbe were saying two things; we are not 10 fighting, we want to talk to the employer. You're aware of 11 that? Or when General Mpenbe was reporting to you did he 12 mention that? 13 GENERAL MBOMBO: I remember that, Mr 14 Chair. 15 MR MPOFU: And even on the following day, 16 that would be now the 14th, 15th, and even on the 16th 17 whoever was caring to listen, whether it was the police, 18 whether it was Mr Mathunjwa, whether it was Bishop Seoka, 19 they were making that same demand, we would like to be 20 addressed by the employer. You remember that? Or you're 21 aware of that? 22 GENERAL MBOMBO: I remember hearing that 23 from the police, yes. 24 MR MPOFU: Yes, and the evidence here of 25 both Mr Magidiwana and Mr Phatsha is that they felt that</p>

Page 22321

1 the employer owed them that interaction, even if their
 2 demand for R12 500 was not going to be met. In other words
 3 even if it was just to explain or to say when it will come,
 4 I think that's what Mr Magidiwana said. Are you aware of
 5 that evidence, or that sentiment? But more importantly,
 6 were you aware it around the time of the event?
 7 GENERAL MBOMBO: I do not remember about
 8 Mr Magidiwana's evidence.
 9 MR MPOFU: Okay, fair enough. You didn't
 10 follow Mr Magidiwana's evidence in the media or here in the
 11 Commission?
 12 GENERAL MBOMBO: No.
 13 CHAIRPERSON: But the general proposition
 14 that counsel is putting to you is that the striker's
 15 attitude was they wanted interaction with the employer,
 16 they wanted the employer's representative, I think they
 17 asked actually for the CEO, but had to come and speak to
 18 them to negotiate with them, or engage with them in respect
 19 of their wage demand. That's his question, I think.
 20 MR MPOFU: Yes.
 21 GENERAL MBOMBO: I was just saying, Mr
 22 Chair, I do not remember about Mr Magidiwana's evidence,
 23 but that is what the strikers said to the police.
 24 MR MPOFU: Okay, thank you. Thank you
 25 very much. And according to the – or let me put it this

Page 22322

1 way; so when Mr Mathunjwa – just going back to the
 2 discussion that you had with me and with the Chairperson,
 3 so when Mr Mathunjwa was then saying to you on the morning
 4 of the 16th, "Yes, I've been wanting to go to the koppie,
 5 but the employer is refusing with the commitment to
 6 negotiate and have ignored me," as we've established
 7 yesterday, armed with all the knowledge that you had about
 8 this constant refrain and this singular demand, surely you
 9 would have known that this was nothing knew, this was part
 10 of what the strikers had been asking for repeatedly,
 11 correct?
 12 GENERAL MBOMBO: You must remember, Mr
 13 Chair, when I spoke to Mr Mathunjwa it's because of the
 14 reports I got from the meetings, meetings of the 15th, which
 15 I did not attend. I was told that the Lonmin management
 16 was present in those meetings. When I got this explanation
 17 I took it for granted it was a decision that was made with
 18 Mr Mathunjwa having met the people that he had to meet
 19 with.
 20 MR MPOFU: Yes, okay, I understand that.
 21 So you mean that because this whole mission had originated
 22 on the 15th when Lonmin was itself present, you thought that
 23 Lonmin must have made that commitment on the 15th? Is that
 24 what you're saying?
 25 GENERAL MBOMBO: I thought Mr Mathunjwa

Page 22323

1 is making this commitment after having come to an agreement
 2 with the people he had to talk to. That is why yesterday I
 3 explained that according to me this agreement of Mr
 4 Mathunjwa, the way it was reported to me had no conditions,
 5 was unconditional.
 6 MR MPOFU: Ja, well even if that was true
 7 - and I think we went through this again yesterday – even
 8 if that's what you had initially thought, but now here was
 9 Mr Mathunjwa telling you, using the word "commitment,"
 10 saying that Lonmin is going back on its commitment to
 11 negotiate, so as a person – I can understand that as a
 12 person who was not there on the 15th you would have then,
 13 you should have then thought well, that commitment must
 14 have been made on the 15th. But you couldn't doubt that
 15 there was such a commitment because he was telling you.
 16 Even assuming that when it was first reported to you by
 17 Mpmembe or whoever else, you had mistakenly thought it was
 18 unconditional. What do you say to that?
 19 GENERAL MBOMBO: Mr Chair, I think I made
 20 a mistake by not asking Mr Mathunjwa about this commitment.
 21 [09:26] He was also supposed to tell me, say General, my
 22 purpose of going to these people and talking to them at 9
 23 o'clock depended on this and that and that.
 24 MR MPOFU: But according to exhibit L
 25 that's exactly what he did, General, that's the point I'm

Page 22324

1 asking about this. He told you that the reason, you went
 2 through that with the Chairperson, he told you that the
 3 reason why when you confronted him, rightly so. Why have
 4 you not gone to the koppie or whatever words you used.
 5 Then he says the reason is because Lonmin has gone back on
 6 its commitment to negotiation. What else was he going to
 7 tell you? And your response of that, you are not
 8 interested. So what more do you expect from the man?
 9 GENERAL MBOMBO: No, I'm not sure if
 10 you're putting it correctly.
 11 CHAIRPERSON: Let's look at the slide
 12 again and see whether his summary is correct.
 13 MR MPOFU: 158, Chairperson.
 14 CHAIRPERSON: Yes I remember the –
 15 MR MPOFU: L 158.
 16 CHAIRPERSON: Exhibit L, slide 158. Now
 17 you didn't put it quite correctly, Mr Mpofo, because what
 18 it says in the last sentence of the second bullet is the
 19 following. "Mr Mathunjwa responded by saying that he'd
 20 been at the Lonmin management offices from the early
 21 morning and that they did not want to commit to continued
 22 negotiations and that was the reason for him not addressing
 23 the protestors."
 24 MR MPOFU: But that –
 25 CHAIRPERSON: No, but what it doesn't say

Page 22325

1 is that they agreed the previous night to commit to
 2 continue negotiations and they were now renegeing on that
 3 commitment which was part of the point that you put to the
 4 witness.
 5 MR MPOFU: No, Chairperson, that's not
 6 what I said to the witness. I said to the witness I can
 7 understand that she wouldn't know what commitment Mr
 8 Mathunjwa was talking about and because she says you must
 9 remember, Mr Mpofu, that I was not in the meetings of the
 10 15th. So I said well then you must have then or you should,
 11 in fact I used the word should, you should have then
 12 assumed that the commitment that Mr Mathunjwa is talking
 13 about must have been made on the 15th in your absence. That
 14 was the only reference to the previous night, ja. The
 15 point I'm making now is that Mr Mathunjwa said "and that
 16 was the reason for him not addressing the protestors." The
 17 thrust of the point I'm putting now, Chairperson –
 18 CHAIRPERSON: - that I summarised
 19 correctly, but I don't know that it's – I don't that it
 20 affects the thrust of the question that you're putting to
 21 the witness. So I'll let you to proceed, I'm just
 22 commenting that I didn't think your summary was entirely
 23 correct. But I don't know that it's material for the
 24 purpose of the point that you're putting. Carry on anyway.
 25 MR MPOFU: Thank you, Chairperson. Yes,

Page 22326

1 I'll leave the record to speak for itself on this. The
 2 point I'm simply making now, General, is that the – you are
 3 effectively saying well maybe Mr Mathunjwa should have
 4 explained it more. I'm saying to you what more do you
 5 expect from him than saying what is already reflected in
 6 L158 which is that after you asked him he responded by
 7 saying that he had been at Lonmin's management offices from
 8 the early morning. And that they did not want to commit to
 9 continued negotiations and that was the reason for him not
 10 addressing the protestors. It can't be clearer than that.
 11 And your response was that you're not interested
 12 in that, according to your evidence yesterday.
 13 GENERAL MBOMBO: Mr Chair, according to
 14 me, I was still on the point that at 9 o'clock the people
 15 would lay down their arms, that was not made clear to me
 16 that was dependent on negotiations and laying down of arms
 17 did not stop the process of the negotiations.
 18 MR MPOFU: Thank you, but that can't be
 19 correct too, General. Remember that you, yourself, had not
 20 placed your 100% faith in this so-called commitment of
 21 Mathunjwa's, isn't that correct?
 22 GENERAL MBOMBO: Please explain the
 23 question.
 24 MR MPOFU: Yes you, yourself, either when
 25 you were talking to General Mzembe or when you were talking

Page 22327

1 to the ad hoc meeting of the National Management Forum
 2 anticipated that the Mathunjwa mission might not succeed.
 3 Isn't that correct?
 4 GENERAL MBOMBO: Why do you say so, what
 5 did I say to indicate that?
 6 CHAIRPERSON: I think Mr Mpofu's problem
 7 is he hasn't put the thing quite correctly. Let me put it
 8 to you correctly and I think the problem will disappear.
 9 There were two apparent commitments. One was a commitment
 10 by Mr Mathunjwa that he go there at 9 o'clock and speak to
 11 the strikers. That was one commitment. I suspect that you
 12 trusted him, you believed he would go at 9 o'clock, that
 13 you put your faith in his commitment to go there at 9
 14 o'clock. But the second commitment or so-called commitment
 15 or possible commitment was that the strikers would lay down
 16 their arms voluntarily. That was something that you didn't
 17 put your faith in 100% because you made an alternative
 18 plan. You said to the management forum and to the media
 19 conference later, you said they said they're going to lay
 20 down their arms but if they don't, we will take further
 21 action. So what Mr Mpofu is saying is as far as that
 22 commitment was concerned the commitment, the so-called
 23 commitment, that the strikers would lay down their arms,
 24 you didn't believe in that 100%. You thought it might
 25 happen, you hoped it would happen, but you thought it also

Page 22328

1 a possibility that it won't happen and you planned to deal
 2 with that possibility if it realised itself. That's
 3 correct isn't it?
 4 GENERAL MBOMBO: That is correct, Mr
 5 Chair.
 6 MR MPOFU: Now apart from Mr Mathunjwa's
 7 mission, you were aware that there was a separate peace
 8 mission launched by Bishop Seoka, correct?
 9 GENERAL MBOMBO: When I spoke to Mr
 10 Mathunjwa I was not aware of Bishop Seoka, I only saw him,
 11 that was the bishop, when he arrived at the JOC.
 12 MR MPOFU: Yes and – ja I'm just
 13 paraphrasing, I know that it was later in the day, but what
 14 I'm saying is that were you aware that there was a separate
 15 peace mission launched by the bishop?
 16 GENERAL MBOMBO: I'm not sure about that.
 17 MR MPOFU: Well did the bishop not come
 18 to you and say that he was from the koppie and he needed
 19 some co-operation at the point at which he says you were
 20 rude and you have apologised to him and I can tell you on
 21 his behalf that he accepts the apology. But the point I'm
 22 making now is he made you aware that he was trying to
 23 assist somehow.
 24 GENERAL MBOMBO: I do not believe that he
 25 was making me aware that he was trying to assist with the

Page 22329

1 negotiations.
2 MR MPOFU: Well what were you and him
3 discussing at the occasion at which you may have been rude
4 to him or he may have gotten the impression that you were
5 being rude to him?

6 GENERAL MBOMBO: Except for him asking me
7 if I knew a certain reverend or Mr Mbombo and I told him
8 that I did not know such a person, I'm just married to that
9 family. And the other thing that he said was he came to
10 get some water because it's hot on the koppie, the people
11 there are thirsty. That is when I told him that my part
12 there was to maintain law and order.

13 MR MPOFU: Yes well the bishop's mission,
14 as it were, only had two elements and I'm putting it to you
15 that he mentioned those to you. He was asked by the
16 protestors once again to facilitate discussions with
17 management, one, and two, to please assist in bringing some
18 water. And those are the issues that he outlined to you.

19 GENERAL MBOMBO: Mr Chair, what I know is
20 what I've just said.

21 MR MPOFU: And in any event even that
22 issue of water, according to the bishop, was for any
23 sensible person who wanted to win the confidence of the
24 protestors those were the kinds of things that should have
25 been attended to. But once again you were not interested,

Page 22331

1 is correct that he arrived at a crucial time, but if he had
2 made it clear to me that he came to see me, to talk about
3 this matter and come with the alternative way of looking at
4 this issue I would have considered that. And this was a
5 crucial time to me because I was being briefed by General
6 Annandale.

7 CHAIRPERSON: That reinforces my
8 impression that he didn't make it clear to you. We're not
9 in the blame game at the moment, it's not considered there
10 was a plan. He didn't make it clear to you that he was
11 coming effectively as a second person trying to make peace,
12 trying to solve the problem peacefully. And I take it if
13 you assume that here was a bishop of the church – was he
14 wearing his purple front and a dog collar? Did you see he
15 was a bishop?

16 GENERAL MBOMBO: I saw that is how he was
17 dressed, Mr Chair.

18 CHAIRPERSON: So here comes the bishop of
19 the church, if you had realised that he was saying look
20 here this is a serious matter. I am prepared to try to
21 help to solve this problem peacefully, give me a chance,
22 would you have listened favourably to him and given him a
23 chance?

24 GENERAL MBOMBO: That is exactly what I'm
25 saying, Mr Chair.

Page 22330

1 correct?

2 GENERAL MBOMBO: Because I did not have
3 the means to provide water, I did not have water as I was
4 there.

5 MR MPOFU: All right, I don't have the
6 reference now of the bishop's evidence.

7 CHAIRPERSON: Sorry, may I interpose with
8 something? I'll tell you what my impression is and if I'm
9 wrong you must correct me. My impression is that by the
10 time the bishop came you'd made your decision and it was a
11 very critical moment for you, that you really wanted to get
12 on with the implementation of your decision because you
13 thought it was important for various reasons. When the
14 bishop came you found his visit, I suspect, something of a
15 distraction. You didn't really have time to talk to him
16 because as far as you were concerned there were more
17 important matters that had to be dealt with. That, I
18 suspect, is why he got the impression you were being rude,
19 but your reaction really was that there were more important
20 things to think about and you weren't really concentrating
21 on what he had to say because it wasn't important. Am I
22 correct in thinking that? I'm sure you didn't intend to be
23 discourteous, but that's the way it played out. Would you
24 agree with that impression or am I wrong?

25 GENERAL MBOMBO: Not fully, Mr Chair, it

Page 22332

1 CHAIRPERSON: You were actually grumpy,
2 if I can use that expression, with Mr Mathunjwa because you
3 felt he was obliged to go and convince the strikers to lay
4 down their arms and you felt he'd let you down because he
5 hadn't done that. Is that right?

6 GENERAL MBOMBO: That is correct, Chair.

7 CHAIRPERSON: Now here was someone else
8 who had come along and if you had realised that he was
9 offering to do what you thought Mr Mathunjwa hadn't done
10 would you have availed yourself of the opportunity?

11 GENERAL MBOMBO: That is correct, Mr
12 Chair, I would have given him the opportunity if, but
13 instead he spoke about water, not even directing that to
14 me, but to the Lonmin people. That is when I said I do not
15 have the means to provide water.

16 CHAIRPERSON: As I said, I'm not
17 interested in the blame game and who's to blame, but the
18 impression I get is – I may be wrong and if I am, I hope
19 I'll be corrected. The impression I get though is that
20 there was actually a misunderstanding, a failure of
21 communication. You were concentrating on the briefing you
22 were getting. You were concentrating on the operation that
23 was going to be launched. He was busy with something else
24 and you didn't quite appreciate what he was offering. That
25 seems a fair summary of what happened.

<p style="text-align: right;">Page 22333</p> <p>1 GENERAL MBOMBO: That is so, Mr Chair, 2 but if he came directly to me with a direct proposal about 3 the matter that we're facing I would have considered it 4 otherwise. 5 CHAIRPERSON: To put the proposition 6 differently, if you hadn't been concentrating almost 7 exclusively on the briefing you were getting and you had 8 tried to find out exactly what he wanted to say the result 9 might have been different. But I'm not, as I say, I'm not 10 interested in blaming you or him, I'm just trying to find 11 out what happened. Would you agree with the proposition I 12 put to you that if you had in fact not been engrossed in 13 listening with your full attention to the briefing you were 14 getting and you'd taken the time to find out what exactly 15 it was that the bishop wanted things might have been 16 different? Is that so? 17 GENERAL MBOMBO: Maybe that would have 18 been the case, but even at that time if the bishop wanted 19 me to know that there still time - 20 MR MPOFU: Yes, well okay. Well unlike 21 the Chairperson, I'm interested in the blame game and I'm 22 going to blame you. The issue is that once again you say 23 that just like Mr Mathunjwa, whom I demonstrated to you, 24 that Mr Mathunjwa was as explicit as can be as to the 25 reasons why his mission was being frustrated. But you said</p>	<p style="text-align: right;">Page 22335</p> <p>1 examination. 2 MR MPOFU: Thank you, Chairperson. 3 [09:45] Let's get the facts even before we say nobody is 4 to blame, yes. Okay, now if you go to the Bishop's 5 statement, which is exhibit M - 6 GENERAL MBOMBO: I've got it. 7 MR MPOFU: Paragraph 11 on page 3, this 8 was the evidence of the Bishop which was not challenged. 9 He says, "Mr Mokwena then told us that the workers could 10 not see Mr Farmer as he was either sick" - okay, I'm 11 cutting, I'm sort of, you must assume before that he had 12 made the request to Lonmin that they wanted to meet with 13 management. Then he says, "Mr Mokwena then told us that 14 the workers could not see Mr Farmer as he was either sick 15 and/or out of the country. We asked whether somebody in 16 his stead could please address the workers, to which there 17 was no clear response. We were then asked" - probably by 18 Mr Mokwena - "to accompany them to the Provincial Police 19 Commissioner and put our proposals" - in plural, and we 20 know that he had only two proposals, one was for the 21 negotiations and the other one was for the water - "since 22 the company was not prepared to meet with the workers. 12, 23 The Commissioner was particularly unfriendly, anxious and 24 uncooperative. I still believe that the final instruction 25 to take strong action at the koppie was given at the point,</p>
<p style="text-align: right;">Page 22334</p> <p>1 he should have explained it further and we know that you 2 said that you were not interested. Now again it was 3 Mathunjwa's fault because he didn't make it clear, now 4 again it's the bishop's fault that - 5 CHAIRPERSON: No, no, no I don't 6 understand her - in the end I didn't understand her to say 7 it was the bishop's fault. I put it in a neutral fashion 8 to her and I got the impression, if I'm wrong I'd be 9 corrected again, I got the impression that she agreed with 10 me that - 11 MR MPOFU: Well maybe she did, but before 12 that she said if the bishop had been clear - 13 CHAIRPERSON: No but if she hadn't been 14 engrossed in what she was being told things would have been 15 different - 16 MR MPOFU: That's correct. 17 CHAIRPERSON: You know we're trying to 18 find out what happened without necessarily approaching it 19 looking for people to blame. It's important to get the 20 facts first and when you've got the facts you can then 21 decide whether anyone is to blame and who that person is. 22 MR MPOFU: Yes. 23 CHAIRPERSON: I'm simply trying to, as 24 I've tried often before, to cut a way through the forest 25 for you to enable you to get on with your cross-</p>	<p style="text-align: right;">Page 22336</p> <p>1 i.e. shortly after she left us and went back into the 2 command centre. After she left us there was frantic 3 movement in the command centre, followed by more 4 helicopters taking off in the air," and so on. 5 CHAIRPERSON: Sorry, Mr Mpofu, just 6 before you put the question finally, I can't remember what 7 time did the Bishop speak to firstly Mr Mokwena and then 8 the Provincial Commissioner? That will be in an earlier 9 paragraph of the statement. Can we perhaps see that, 10 please? 11 MR MPOFU: No, Chairperson, we don't have 12 the time, but I think that around the time actually we 13 grappled, if the Chairperson remembers, we had to use 14 inferential reasoning, but at some point it was established 15 that the Bishop had been at the koppie, I think we have a 16 photograph that places him at the koppie at 13:40 or 17 thereabouts. So it must have been shortly, or let's say 18 half an hour, because he didn't spend a lot of time in 19 the - 20 CHAIRPERSON: No, but don't answer the 21 question. Let's just go on. 22 MR MPOFU: Yes. 23 CHAIRPERSON: Can we see what we're 24 looking at the moment? Further on, next page. 25 MR MPOFU: Further on, okay.</p>

<p style="text-align: right;">Page 22337</p> <p>1 CHAIRPERSON: Further on, I think it's 2 paragraph 12. 3 MR MPOFU: Yes. 4 CHAIRPERSON: Next paragraph, can we see 5 that? Yes, it's the next piece. 6 MR MPOFU: Yes, the pertinent – 7 CHAIRPERSON: "The Commissioner was 8 particularly unfriendly, anxious and uncooperative. I 9 still believe the final instruction to take strong action 10 was given at that point, i.e. shortly after she left us 11 and went back into the command centre." The reason I asked 12 the time was we in fact know that the instruction had been 13 given before that because if the Bishop saw her after half 14 past 1, the instruction had already been given at the very 15 beginning of the meeting which started at half past 1. So 16 she'd already given the instruction according to all the 17 evidence we have. The Bishop then on your reconstruction 18 of the time spoke to her after that and you could 19 understand how things were moving at that stage. But 20 anyway – 21 MR MPOFU: Yes, no I agree – 22 CHAIRPERSON: - is now clear to me 23 anyway. 24 MR MPOFU: Yes. 25 CHAIRPERSON: All he says about her is</p>	<p style="text-align: right;">Page 22339</p> <p>1 either it – it is one of two possibilities; it's either the 2 one that the Chairperson is putting, or maybe she came out 3 of the meeting to talk to the Bishop and went back, or 4 whatever, but it was around that time. I think – 5 CHAIRPERSON: No, I know, but the point 6 is we know that right at the beginning of the meeting she 7 said "We're going to implement stage 3." 8 MR MPOFU: Yes. 9 CHAIRPERSON: And she'd already told the 10 National Commissioner that. So – 11 MR MPOFU: That's correct. 12 CHAIRPERSON: So if he came there after 13 20 to 2, then – 14 MR MPOFU: No, the decision was made. 15 CHAIRPERSON: - that particular bullet 16 was through the cathedral by that time. 17 MR MPOFU: Yes, and in any event – yes, 18 no, Chairperson, you're quite right, because in any event, 19 Chairperson, you are even more right because the – 20 CHAIRPERSON: [Microphone off, inaudible] 21 MR MPOFU: Well, more right than you 22 think, Chairperson, because the clear impression is that 23 the decision even in the meeting on EE was really being 24 announced. It was not being made there. So the 25 Chairperson is correct. The decision certainly had been</p>
<p style="text-align: right;">Page 22338</p> <p>1 she was particularly unfriendly, anxious and uncooperative. 2 The anxiety I think she admits to. The lack of cooperation 3 she also admits to, although she'd given from her side her 4 explanation, and I'm sure she came across as unfriendly as 5 well, but – 6 MR MPOFU: And rude. 7 CHAIRPERSON: Well, you can say that. 8 MR MPOFU: No, he said it. 9 CHAIRPERSON: You and I understand – 10 MR MPOFU: The Bishop said it in his 11 evidence, Chairperson. 12 CHAIRPERSON: And she's apologised. I 13 think it's an implied admission that she didn't mean to be 14 rude and I'm sure she isn't normally rude, but on this 15 occasion that's the way it came across. But you can 16 understand – 17 MR MPOFU: Yes. 18 CHAIRPERSON: - in all the 19 circumstances – 20 MR MPOFU: And the Bishop has – 21 CHAIRPERSON: - why she came across the 22 way she did. Alright, so I think we sorted that out 23 between us – 24 MR MPOFU: Yes, that's correct, 25 Chairperson. I agree with you substantially. I think that</p>	<p style="text-align: right;">Page 22340</p> <p>1 made by the time she was talking to the Bishop. Thank you. 2 MR WESLEY: Sorry, Chair, if I could 3 perhaps assist, the photographs that Mr Mpofo is referring 4 to are GG1 and 2 and HH. They're Colonel Mere's 5 photographs. They're 14 hours and 40 minutes behind eTV 6 time, which takes the time of the photographs to 7 approximately 10 past 2. 8 MR MPOFU: Okay. 9 CHAIRPERSON: That makes the point even 10 stronger. 11 MR MPOFU: Yes. 12 CHAIRPERSON: That the Bishop came long 13 after – 14 MR MPOFU: The horse has bolted - 15 CHAIRPERSON: - the decision was taken – 16 well, I don't know about the horse had bolted, but the 17 point, because there were two decisions; the one was the 18 general decision to proceed to the tactical option, stage 19 3. The other decision was the timing of that. It was 20 always a decision that was there, that was going to be 21 implemented, but the actual decision that now the trigger 22 will be pulled, if one can put it – perhaps that's an 23 unfortunate image, I withdraw that – that now the horse 24 will be led out of the stable, to follow Mr Mpofo, that 25 decision was taken at 1:30 or shortly thereafter and the</p>

<p style="text-align: right;">Page 22341</p> <p>1 Bishop arrived obviously after 10 past 2. So by that time 2 one can understand the anxiety and general attitude of the 3 Provincial Commissioner. Anyway, I think – 4 MR MPOFU: Yes, the point is made, 5 Chairperson. 6 CHAIRPERSON: Yes, the point is made. 7 MR MPOFU: Yes. 8 CHAIRPERSON: Sorry, I think we – as I 9 say together we solved the problem. 10 MR MPOFU: We have, thank you, 11 Chairperson. 12 CHAIRPERSON: So perhaps we can move on 13 to solve the next one. 14 MR MPOFU: Yes. The next problem – well, 15 it's not a problem as such, but while we are on the 16 statement, just for the sake of completion while we are on 17 the statement and to situate the issues, if we can just go 18 through paragraph 14 where the Bishop says, "As we're about 19 to leave to convey the message to the workers, an unknown 20 male person approached Mr Mokwena and whispered something 21 in his ear. Mr Mokwena immediately turned to us and said 22 to me, 'Bishop, you can no longer return to the koppie. 23 The place has been cordoned off and is now a security-risk 24 zone,' or words to that effect." So I think that completes 25 the picture that the Chairperson and I were grappling with</p>	<p style="text-align: right;">Page 22343</p> <p>1 it as they put it – 2 CHAIRPERSON: No, Mr Mpfu, by – 3 MR MPOFU: I'm not expecting her to 4 apologise – 5 CHAIRPERSON: By implication she admits 6 that she gave an impression of rudeness, that's why she's 7 apologised. So you don't have to – to change the metaphor, 8 you don't have to flog that horse anymore, it's dead. 9 Can't we move on to another one? 10 MR MPOFU: You failed to cooperate with 11 two missions, two independent missions at creating a 12 peaceful solution yourself. Do you accept that? 13 MR VAN AS: Sorry, Mr Chairperson, Mr 14 Mathunjwa's mission, with respect, must be place in 15 context. If we have regard to exhibit OO13, which is the 16 transcript of the conversation – 17 CHAIRPERSON: Yes, no, no, that's a 18 different question. There's nothing wrong with the 19 question being asked and if you wish to apply, you didn't 20 apply previously – you did, your counsel already cross- 21 examined the witness, but if you wish to ask further 22 questions flowing from the cross-examination that's now 23 happening or other cross-examination, you can make the 24 application at the appropriate time. But you can't just 25 butt in, in the middle of Mr Mpfu's cross-examination. I</p>
<p style="text-align: right;">Page 22342</p> <p>1 here, coupled with the movement of helicopters and so on. 2 But the real point is this; here were two missed 3 opportunities at a peaceful outcome and both of those 4 peaceful missions were effectively botched on your hands. 5 The first one, the Mathunjwa one we've discussed. The 6 second one which one can literally say was Godsend, was the 7 mission of the Bishop and you, both of those people at 8 least independently accused you of being rude and 9 uncooperative. Have you got anything to say about that? 10 CHAIRPERSON: [Microphone off, inaudible] 11 we've gone over this rudeness point – 12 MR MPOFU: No, okay, forget the rude – 13 CHAIRPERSON: I think she admits if she 14 was rude or gave that impression, she's apologised. I 15 don't think there's any extra juice to be extracted from 16 this – 17 MR MPOFU: No, Chairperson – 18 CHAIRPERSON: - from the rudeness lemon. 19 I think you should move on to the next one. 20 MR MPOFU: No, Chairperson, I'm not – the 21 reason why I told her that the Bishop accepts her apology 22 is because I'm not castigating her for the rudeness. I'm 23 merely making the point that two people independently who 24 don't even know each other that they are there, say the 25 same thing about her attitude. So I'm afraid I have to put</p>	<p style="text-align: right;">Page 22344</p> <p>1 won't allow that. Mr Mpfu, please proceed. 2 MR VAN AS: [Microphone off, inaudible] 3 CHAIRPERSON: The objection is not a good 4 objection. The objection really is things must be put in 5 context. You can, if they can be put in context and should 6 be put in context, you can do that later by further cross- 7 examination. I'm not going to allow you to stop Mr Mpfu's 8 point. 9 MR MPOFU: Yes. At least, General, it is 10 the version of the police that Mr Mathunjwa tried his level 11 best to achieve a peaceful solution, is it not? 12 GENERAL MBOMBO: I do not dispute that. 13 MR MPOFU: In fact in the police opening 14 statement there's even reference of how Mr Mathunjwa went 15 on his knees and so on. So the clear thrust of the police 16 opening statement is that Mr Mathunjwa was on a peace 17 mission. 18 GENERAL MBOMBO: I think that is so, yes. 19 MR MPOFU: Okay, Now the reason I'm 20 putting all these questions, General, is because at the end 21 of the case when you are not here I'm going to argue very, 22 very strenuously that your personal omission to cooperate – 23 to put it mildly – with both of those peace missions was 24 directly linked to the abandonment, for lack of a better 25 word, of interventions which could have prevented the</p>

Page 22345

1 bloodshed, and the corollary of that is that had you acted
2 differently, the bloodshed would have been prevented and
3 that you are answerable for that, to that extent, that you
4 spurned those missions. Any comment?

5 GENERAL MBOMBO: I do not agree with you.

6 MR MPOFU: Okay, you yourself for
7 whatever reason never requested or demanded that Lonmin
8 should go and address the strikers, or that they should
9 negotiate with them, correct?

10 GENERAL MBOMBO: Yes, I personally no,
11 but I spoke to them and said they should do everything in
12 their power to try and find a solution.

13 MR MPOFU: And more specifically in the
14 recorded discussion between you and Mr Mokwena in JJJ192,
15 at no point do you say that they must go to the koppie or
16 make arrangements to have a direct interaction with the
17 protesters, correct?

18 GENERAL MBOMBO: That is so, but as I've
19 already said, I wanted them to find a way in order to find
20 a solution according to their principles, how they solve
21 their labour issues.

22 MR MPOFU: On the contrary, you at the
23 very least acquiesced, or did not object when Mr Mokwena
24 indicated that they would not negotiate with the strikers.

25 MR SEMENYA SC: Can the question be

Page 22346

1 repeated? I couldn't follow.

2 CHAIRPERSON: Repeat the question again.

3 MR MPOFU: Okay, I'll –

4 CHAIRPERSON: I think he's referring to a
5 passage appearing on page 4 of exhibit JJJ192, but because
6 I have that page in front of me I followed the question.
7 Perhaps if you'd repeat the question so that Mr Semanya and
8 the witness can understand it.

9 MR MPOFU: Okay, no I'm sure the witness
10 understands –

11 CHAIRPERSON: Well, Mr Semanya doesn't
12 understand it.

13 MR MPOFU: Yes, I'll help him.

14 CHAIRPERSON: Be courteous to him.

15 MR MPOFU: Yes. On the contrary, which
16 means the opposite of asking them to negotiate, you voiced
17 no objection when Mr Mokwena indicated that they would not
18 negotiate or talk to the workers, correct?

19 GENERAL MBOMBO: I do not remember, Mr
20 Chair, I just want to see the exhibit.

21 CHAIRPERSON: Look at page 4 of exhibit
22 JJJ192, starting at line 2.

23 GENERAL MBOMBO: I see it, Mr Chair.

24 MR MPOFU: And what is your answer now
25 that you've seen it?

Page 22347

1 GENERAL MBOMBO: Mr Chair, it was not
2 really my purpose to tell them what they should do. They
3 know what their workers wanted. I just wanted them to do
4 whatever it took, whatever they had to do, whether they had
5 to go to talk to the strikers, whether they had to get
6 someone else to do that, but I just wanted them to do
7 whatever would help.

8 MR MPOFU: Yes. Yes, General, I heard
9 you the first time. I'm saying something different now.
10 I'm saying – in fact I'll put it even stronger. It's one
11 thing to accuse you, as I have, of not having put any
12 pressure on management to talk to the workers, which we
13 have gone through. I'm now accusing you of something worse
14 than that. I'm saying you actually went along with their
15 decision not to talk to the workers.

16 GENERAL MBOMBO: I do not remember
17 agreeing with that, but –

18 CHAIRPERSON: No, no, he doesn't say that
19 you necessarily agreed. He says you went along with it,
20 which is –

21 MR MPOFU: Well, I agree, I'll say agree
22 now.

23 CHAIRPERSON: Alright, but –

24 MR MPOFU: I accept I didn't say it
25 before, but I'm putting that strongly, ja.

Page 22348

1 CHAIRPERSON: So before you get there,
2 before Mr Mpofu gets to the extra point can I just put
3 something to you? Page 4, exhibit JJJ192, this discussion
4 on the Tuesday afternoon between you and Mr Mokwena and
5 other senior people in from Lonmin. Mr Mokwena says, line
6 2, "We say we're not going to talk wages because there's no
7 reason for us to open wages." You see that?

8 [10:05] GENERAL MBOMBO: I see it, Chair.

9 CHAIRPERSON: Right, now you remember the
10 previous night, the Monday night, the Lonmin people had
11 told you they had a two-year agreement which would only
12 expire in 2013, I think October 2013. Remember they told
13 you that?

14 GENERAL MBOMBO: Yes, Chairperson.

15 CHAIRPERSON: They said they couldn't
16 understand how there could be a wage dispute because
17 there's a two-year agreement which was going to run until
18 October the following year. You remember that?

19 GENERAL MBOMBO: I remember that.

20 CHAIRPERSON: So when Mr Mokwena said to
21 you, "We say we're not going to talk wages because there's
22 no reason for us to open wages," you understood exactly
23 what he meant. He was referring to the two-year wage
24 agreement.

25 GENERAL MBOMBO: I think that is how I

1 understood him, yes.

2 CHAIRPERSON: Right, so what they were

3 saying is we're not going to talk wages, we're not obliged

4 to, we're not going to. That was his first point, right?

5 And then someone else who's described simply as "Lonmin"

6 but another senior person from Lonmin says, "And by the

7 way, with AMCU we do not have any collective bargaining

8 arrangements." Mr Mokwena says, "We do not have anything,

9 so we avoid legitimising illegal behaviour. That is our

10 position." I take it that means we're under pressure to,

11 or may be under pressure to negotiate with AMCU, that in

12 fact he said on the previous page but we don't have to go

13 there now. We're not going to do that; it's not something

14 that we have to do because AMCU haven't got any rights to

15 participate in collective bargaining negotiations. Is that

16 the way you understood it too?

17 GENERAL MBOMBO: That's how I understand

18 it, yes.

19 CHAIRPERSON: So when Mr Mokwena says in

20 line 8, "That is our position," then it's quite clear what

21 he's saying; we're not going to negotiate about wages or

22 talk about wages because we don't have to because there's a

23 two-year agreement, and we're certainly not going to talk

24 to AMCU because they haven't got the right to a seat at the

25 bargaining table to discuss wages. Is that right?

1 GENERAL MBOMBO: That's how I understand

2 it, yes.

3 CHAIRPERSON: And the perception at the

4 time - which may have been wrong, but we won't go there at

5 the moment - the perception at the time was the strikers

6 were all really AMCU people and this was really an AMCU

7 engineered and provoked strike. Is that correct? That's

8 the way it was seen?

9 GENERAL MBOMBO: I think there was such a

10 perception, Mr Chair.

11 CHAIRPERSON: Ja, alright. So the

12 position of Lonmin was quite clear and you understood it.

13 But then he goes on to say, "We will not make any decision,

14 Commissioner, without asking your counsel and advice, so

15 that we do not compromise the integrity of police work

16 here." I must tell you, again this is a prima facie view,

17 I'm putting it to you so you can deal with it, that seemed

18 to me to open the door to you a little bit to give you the

19 opportunity to say to them look here, I understand your

20 attitude in relation to wages and in relation to AMCU, but

21 we've got a serious law and order problem here, we've got

22 3 000 people, many of them armed with dangerous weapons,

23 we've got 10 - or you only knew about nine at that stage -

24 you've got nine dead people and we've got to stop this, and

25 it's quite clear to me, you could have said, that unless

1 you people are prepared to make some concession, to move

2 forward in some way, we aren't going to be able to solve

3 this problem peacefully, and if you'd done that and said to

4 them, now look here, I know what you say, but for heaven's

5 sake and the sake of peace, can't you just agree to talk to

6 the strikers themselves, you don't even have to talk to

7 AMCU, just talk to the strikers themselves, their

8 representatives, that may give us a chance to move the

9 thing forward peacefully. That I think is the criticism

10 that is going to be made against you. Whether it's right

11 or wrong I don't know yet because we've got to hear all the

12 evidence, but how would you respond to that criticism?

13 GENERAL MBOMBO: Mr Chair, I was of the

14 views that when they said this they were prepared to accept

15 protection from us if they wanted to go and talk to them.

16 It was not for us to tell the Lonmin people to go and talk

17 to their workers. That was their responsibility, but we

18 were there to protect them if they needed such protection.

19 MR MPOFU: General, the criticism

20 actually that the Chairperson is talking about is exactly

21 what I was coming to, and I will start with that and come

22 back to another point, and -

23 CHAIRPERSON: Sorry, before you do that -

24 MR MPOFU: Yes, Chairperson.

25 CHAIRPERSON: - it's been suggested to me

1 that it might be appropriate for us to take a comfort break

2 and you know, the witness particularly, she hasn't asked

3 for it but if you've ever given evidence as the witness is

4 doing you will understand the need for a comfort break

5 sometimes does arise, not only for the witness, but for

6 other people too. So let's take a comfort break now.

7 Let's try to be back within 10 minutes.

8 MR MPOFU: Thank you, Chairperson.

9 [COMMISSION ADJOURNS COMMISSION RESUMES]

10 [10:31] CHAIRPERSON: The commission resumes. I

11 did say earlier, I did say yesterday in fact that we'd

12 adjourn today at 12:30. I'm informed that won't help the

13 person who asked me to adjourn at 12:30 because the plane

14 will still leave, be leaving earlier than I had thought.

15 So we're going to adjourn at 12:15 and so we'll take tea at

16 about quarter passed 11 and then run through until 12:15.

17 Sorry, they want tea at 11 o'clock, I see, alright. There

18 are apparently things planned for 11 o'clock as I don't

19 know about. So we'll take tea at 11 o'clock and we'll then

20 run through after tea till quarter past 12. By which time

21 presumably Mr Mpofu would have come to the end of his

22 cross-examination. You're still under oath Provincial

23 Commissioner. Mr Mpofu?

24 MR MPOFU: We live in hope, Chairperson.

25 CHAIRPERSON: I hope that my hopes will

<p style="text-align: right;">Page 22353</p> <p>1 not be disappointed.</p> <p>2 MR MPOFU: Won't be dashed, yes, that's</p> <p>3 correct, Chairperson. Yes, Commissioner remember, we were</p> <p>4 at the place where I was saying that or rather I was</p> <p>5 following up on the Chairperson's question, which is this.</p> <p>6 That what Mr Mokwena was basically saying to you is, the</p> <p>7 whole thing that he was saying, he was saying look we must</p> <p>8 align our plans and so on and we must, we don't want to do</p> <p>9 anything without talking to you, effectively he was saying</p> <p>10 the two plans of Lonmin and the police must be aligned,</p> <p>11 correct?</p> <p>12 GENERAL MBOMBO: I remember him saying so</p> <p>13 at a stage, yes.</p> <p>14 MR MPOFU: And part of, two crucial</p> <p>15 aspects of that alignment which I'm going to canvas with</p> <p>16 you, the first one is the one that the Chairperson raised</p> <p>17 with you, part of that alignment was him giving you an</p> <p>18 almost open, a blank cheque to say you must guide us on</p> <p>19 what to do, you must advise us what to do because you don't</p> <p>20 want the misalignment of the plans and the, on that the</p> <p>21 emphasis is that that is an opportunity that you should</p> <p>22 have used to say listen here, now that you are giving me an</p> <p>23 invitation for us to align our plans here we go, you guys</p> <p>24 make interaction with the strikers because that's what</p> <p>25 they've been asking for and that will go a long way in</p>	<p style="text-align: right;">Page 22355</p> <p>1 was not just a mere fact of acquiescing or keeping quiet.</p> <p>2 You actually, when he was emphasising the reasons why they</p> <p>3 will not talk to the people you said that was okay.</p> <p>4 GENERAL MBOMBO: I said so as it is</p> <p>5 written on the statement.</p> <p>6 MR MPOFU: Yes, and this was not okay</p> <p>7 because according to the police as we know they would have</p> <p>8 preferred a peaceful solution which would have started at</p> <p>9 the root causes, in other words if there was interaction</p> <p>10 between the two that may have dissolved the whole</p> <p>11 situation, isn't that correct?</p> <p>12 GENERAL MBOMBO: That is so.</p> <p>13 MR MPOFU: The second aspect of your, you</p> <p>14 and I have established in the morning that the logical</p> <p>15 thing would have been to solve the, let's call it the</p> <p>16 labour issues or the HR issues and they talk and I accept</p> <p>17 that you didn't have to be involved in that so that the</p> <p>18 security situation could be improved, correct?</p> <p>19 GENERAL MBOMBO: That is so, yes.</p> <p>20 MR MPOFU: But Lonmin, Lonmin had a</p> <p>21 different view, Lonmin's view was that you must solve the</p> <p>22 security situation first and the HR issues to follow. So</p> <p>23 once again you had an opportunity to align the plan to say</p> <p>24 no, no, no, no you must sort the HR issues and it will</p> <p>25 improve the security situation and you failed to do so. Is</p>
<p style="text-align: right;">Page 22354</p> <p>1 creating the conditions of peace as you and I established</p> <p>2 this morning and you omitted to take that opportunity.</p> <p>3 That's the nature of the criticism, do you have any</p> <p>4 comment?</p> <p>5 GENERAL MBOMBO: Maybe we should get</p> <p>6 clarity how it came about that he said we should align the</p> <p>7 plans. From what I remember that came about when they were</p> <p>8 talking about distributing pamphlets. So the alignment of</p> <p>9 plans was not about aligning everything that they thought</p> <p>10 of doing or that they were supposed to do.</p> <p>11 MR MPOFU: Alright now the path that I,</p> <p>12 remember I said I'm going to go as far as to say you agreed</p> <p>13 with their decision not to talk? Now I'm going to</p> <p>14 demonstrate that part. Mr Mokwena, the Chairperson stopped</p> <p>15 reading at line 9, around line 10 of page 4 JJJ192. Ja,</p> <p>16 Chairperson stopped reading somewhere in the middle, I'll</p> <p>17 read from we are not in that situation. It says, ja, "we</p> <p>18 are not in that situation, nine people have died, we are</p> <p>19 not going to start talking to parties suddenly. We say yes</p> <p>20 but you know these workers say they want money and that is</p> <p>21 what AMCU is saying. So now it means they are taking over,</p> <p>22 they are the leaders of that group and then you say, okay."</p> <p>23 Do you see that?</p> <p>24 GENERAL MBOMBO: I see it.</p> <p>25 MR MPOFU: So that's what I'm saying, it</p>	<p style="text-align: right;">Page 22356</p> <p>1 that a fair criticism?</p> <p>2 GENERAL MBOMBO: Mr Chair, I said before</p> <p>3 that I'm not sure if I was the one to tell Lonmin people</p> <p>4 what to do. Because even in the previous meetings we've</p> <p>5 had, even the one on the 13th we indicated to them that we</p> <p>6 all wish to find solutions to, to solve this problem, all</p> <p>7 of us as we were there. At the time when I was talking to</p> <p>8 them I was reminding them of the decisions taken in the</p> <p>9 previous meetings, the meetings on Monday. Yes, maybe I</p> <p>10 could have said do this, do that but the fact remains the</p> <p>11 person who had a problem here is Lonmin. He had a problem</p> <p>12 with their workers. We were there to try and maintain</p> <p>13 peace and order.</p> <p>14 MR MPOFU: Yes. I understand that,</p> <p>15 General. I'm saying to you we've agreed about the first</p> <p>16 criticism where you agreed that they mustn't talk. I'm</p> <p>17 saying the second criticism is that you even agree to a</p> <p>18 sequencing that was contrary to the police sequencing and</p> <p>19 I'll take you through what they were saying. While your</p> <p>20 view was that the HR situation must be sorted and then the</p> <p>21 securities situation will be improved, this is what Mr</p> <p>22 Mokwena said which is the exact opposite. Go to page 3 of</p> <p>23 that document. He says, we can only start doing HR issues</p> <p>24 when the security issue is sorted out, oh sorry, I'm</p> <p>25 reading against –</p>

Page 22357

1 CHAIRPERSON: If it will help –

2 MR MPOFU: About 25, about line 25,

3 Chairperson. "We can only start doing HR issues when the

4 security is sorted out so that we do not confuse security

5 issues with HR issues. We have rejected quite a number of

6 positions and people indirectly trying to start

7 negotiating. AMCU you will notice their press statement,

8 so they have thrown stuff into the media to say oh we have

9 asked management to give everybody 12 000 now the media are

10 going to say but management then you must talk to AMCU and

11 SAPs Commissioner yes." So once again you are agreeing

12 with something that is against your own professed belief as

13 to how things should be done. When you had a chance to say

14 no, no Mr Mokwena our approach as the police is this, you

15 sort out the HR issue by going to talk to those people and

16 by so doing that might defuse the security situation.

17 Which you and I have agreed, I'm going to criticise you

18 again for, once again spending yet another opportunity to

19 ensure that peace prevails. Do you have any comment?

20 GENERAL MBOMBO: I do not agree with

21 that.

22 MR MPOFU: And yet the police version is

23 premised on the notion that the police were busy putting

24 pressure on Lonmin to engage with the strikers when that is

25 not the case, well at least as far you are concerned, we've

Page 22358

1 established that's not the case. Are you aware of any one

2 else who exhorted Lonmin to accede to the demand of the

3 workers to engage?

4 GENERAL MBOMBO: I once answered that

5 question before.

6 MR MPOFU: I'm sorry if I'm asking you

7 the same thing, but can you assist me what was your answer?

8 GENERAL MBOMBO: I said those were not my

9 personal words. But our discussion with Lonmin was based

10 on the fact that they had a responsibility of finding a

11 solution to the problem. I also know that all the people

12 were in meetings with General Mpembe, they also had the

13 same view and objective of finding a solution to this

14 problem.

15 MR MPOFU: Yes, but, General, surely you

16 will accept that it's not use making general statements to

17 the attended, we must all find solutions, I'm prepared to

18 accept that you must have said words to that effect. But

19 the criticism I'm directing to you is that it's no use

20 making those general statements, we must all find

21 solutions, here is a specific solution that presents

22 itself, there's only one demand made by the workers, we

23 want to engage, one. So you should have said well here is

24 an opportunity, golden opportunity for these people simply

25 to engage, not even to resolve according to Mr Magidiwana,

Page 22359

1 the whole issue of the 12 500 but simply he said, I can't

2 remember the words he used, just for recognition or their

3 dignity because he said this is our employer, we work for

4 them, why can't they just talk to us. Why can't they even

5 say we do not have the R12 500, this is how much we have

6 and so on and so on and you had a responsibility when that

7 opportunity presented itself to ensure that it happened.

8 MR SEMENYA SC: Chair, the record is

9 really replete with evidence of Lonmin saying they don't

10 intend to go and address the workers.

11 MR MPOFU: Ja, well we'll deal with that

12 when we cross-examine Lonmin, right now I'm busy with the

13 police's responsibility to facilitate, isn't it correct,

14 General, that one of your obligations as the police is to

15 facilitate communication?

16 GENERAL MBOMBO: Which I did, Mr Chair.

17 MR MPOFU: No. Well the, I'm saying to

18 you, you have a duty as a police person to facilitate

19 communication. There are two conflicting sides and one of

20 those sides says for us the only thing that will get us out

21 of this quagmire is just to engage with the other side.

22 Isn't it your obvious duty to then say to the other side go

23 and engage with those people, then it's problem solved.

24 Otherwise what is facilitation of communication.

25 GENERAL MBOMBO: I think the endeavours

Page 22360

1 of the police in trying to talk to the Lonmin people was to

2 get Lonmin to do what was expected of them as the employer

3 or what the employees expected of them.

4 MR MPOFU: Yes and Lonmin made it clear

5 as Mr Semanya correctly points out at the beginning that

6 they did not want to do that and that's why I use the word

7 exhorting because it was upon you to then say that stance

8 is unreasonable, it is likely to lead to bloodshed,

9 especially when they were inviting you and say please do go

10 and engage to them and you failed to do that. Can we just

11 accept that?

12 GENERAL MBOMBO: Who were engaging me?

13 MR MPOFU: No, sorry maybe the question

14 wasn't clear. I'm saying Lonmin having taken the initial

15 stance that because they had the wage agreement or whatever

16 reasons they gave they were not going to speak to the

17 workers. That you knew. Now on the 14th they say to you

18 please guide us, give us advise on what to do and you do

19 not say to them ah here's now a golden opportunity, the one

20 side has said they want to engage and the other side is

21 saying please guide us. So it's simple the guidance should

22 be engage the other side and then the problem is solved.

23 Isn't that a logical thing?

24 MR VAN AS: Mr Commissioner, Mr Chairman,

25 the witness has already indicated that Lonmin was trying to

<p style="text-align: right;">Page 22361</p> <p>1 coincide it's strategy in relation to the delivery of 2 ultimatums with the strategy of the police. It wasn't 3 Lonmin's - it shouldn't be drawn from this transcript that 4 what Lonmin asked the police to do was advise them how they 5 should go about dealing with their workers and with the 6 strike.</p> <p>7 MR MPOFU: Can I respond, Chairperson? 8 No that's, I think Mr Van As is making a mistake. The 9 discussion about the dropping of the pamphlets did indeed 10 take place at a later stage. But he invitation for 11 guidance comes much earlier, on page 3 even where we are, 12 he says –</p> <p>13 CHAIRPERSON: I think the answer is he's 14 entitled to ask the question. Entitled to ask the witness 15 how she understood what was said by Mr Mokwena.</p> <p>16 MR MPOFU: Yes.</p> <p>17 CHAIRPERSON: When Mr Mokwena comes he 18 can ask Mr Mokwena what he thinks. But I don't think 19 there's a basis for stopping him asking the questions. So 20 I think we should let him carry on.</p> <p>21 COMMISSIONER HEMRAJ: General can I just 22 ask you, does SAPS have an official position as regards 23 matters between employers and employees involving 24 industrial action?</p> <p>25 GENERAL MBOMBO: No, Mr Chair, I don't</p>	<p style="text-align: right;">Page 22363</p> <p>1 go back to where we were. I want to take you to the very 2 opening paragraph of JJJ192. This is now in reference to 3 Mr Van As' issue. Mr Mokwena says that we, "Okay, you 4 wanted to see us; I wanted to see you. You also wanted to 5 see us," and so on, and then the Commissioner says, "Maybe 6 let me be first" –</p> <p>7 COMMISSIONER HEMRAJ: Which line are we 8 at, Mr Mpofu?</p> <p>9 MR MPOFU: Right at the beginning, from 10 line 1. Page 1, sorry. The meeting supposedly starts like 11 that. "You wanted to see us; I wanted to see you." "We 12 also wanted to see you, but you know, maybe let me be 13 first," this is the Commissioner. "One is about whilst we 14 are busy that side trying to plan in terms of what we need 15 to do, I need to check from your side what is the actions 16 that are in progress in terms of your thinking, your, in 17 terms of your policy arrangements and all that and that you 18 are busy doing. I was saying to Graham," presumably 19 Sinclair, "it is important that I get to understand because 20 whatever decisions you are making from that side, they 21 obviously have got an impact on what we are doing and that 22 is one of the main reasons why I needed to come to be 23 talking to you, but also tracking from the discussions that 24 we had last night," and so on. So it's not just about 25 pamphlets. The very reason for having this meeting was</p>
<p style="text-align: right;">Page 22362</p> <p>1 remember us having such a thing.</p> <p>2 MR MPOFU: I'm sorry, Commissioner, I 3 heard the answer, I didn't hear the question.</p> <p>4 [10:50] COMMISSIONER HEMRAJ: The question was 5 whether SAPS has an official policy as regards matters 6 between employers and employees involving industrial 7 action.</p> <p>8 MR MPOFU: Oh, okay. Alright, let's just 9 deal with that issue very quickly before I go to the 10 transcript, the one the Commissioner has raised. Can you 11 go to page 6 of the SAPS opening statement? Are you there? 12 Paragraph 15. Can you go to – oh, it's exhibit FFF9, page 13 6, paragraph 15. There SAPS is paraphrasing, as it were, 14 the prescripts, the standard operation procedures and 15 national guidelines and so on. You understand that, 16 General?</p> <p>17 GENERAL MBOMBO: I see it.</p> <p>18 MR MPOFU: Can you go – and they say one 19 of the functions that emanate from those prescripts viewed 20 as a whole is – can you go to 15.5? – is to facilitate 21 communication where there is task saturation and 22 complexities. You understand that to be a SAPS task, 23 correct?</p> <p>24 GENERAL MBOMBO: That is so.</p> <p>25 MR MPOFU: Thank you. Alright, now let's</p>	<p style="text-align: right;">Page 22364</p> <p>1 this alignment of we need to know what you are doing so 2 that we can condition what we are doing. Isn't that 3 correct?</p> <p>4 GENERAL MBOMBO: You must remember, Mr 5 Chair, that those decisions of them that I'm talking about, 6 if they for instance want to go and talk or find someone to 7 go and talk, what part do they want us to play in that. 8 And secondly, as far as facilitative communication, it does 9 not mean that we get deep into the issues of the company. 10 The company does that as it is supposed to do, the way it 11 knows how to communicate with its people, and we do not 12 dictate to companies what they're supposed to say to their 13 employees.</p> <p>14 MR MPOFU: Okay, look, alright, I'm just 15 going to put it to you that you as a person, as evidenced 16 by this discussion not only failed to do exactly what you 17 say you should have done, which is to ask the management to 18 engage with the workers, but you went further and agreed 19 with them when they expressly said that they're not going 20 to do anything of that sort.</p> <p>21 GENERAL MBOMBO: I do not agree with you.</p> <p>22 MR MPOFU: And I also –</p> <p>23 CHAIRPERSON: It's now 11 o'clock, but 24 unless you –</p> <p>25 MR MPOFU: No –</p>

Page 22365

1 CHAIRPERSON: Or just before 11.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: I was proposing, as I told
 4 you, to take tea –
 5 MR MPOFU: That's the right place. I was
 6 moving to another –
 7 CHAIRPERSON: But maybe you want to round
 8 this point off finally before we take the adjournment?
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: I don't want to interrupt
 11 you in the middle of a point.
 12 MR MPOFU: No, Chairperson, by putting
 13 that proposition I was round it off. Thank you,
 14 Chairperson.
 15 CHAIRPERSON: We'll take the tea
 16 adjournment at this stage. I understand it may take a
 17 little bit longer than – is that right? – so I'm not quite
 18 sure when we're going to come back, but I think let's be
 19 realistic, let's try to be back by 11:30. There's some –
 20 it's a saint's day today, which apparently is being
 21 celebrated.
 22 MR MPOFU: Thank you, Chairperson.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [11:39] CHAIRPERSON: The Commission resumes.
 25 Provincial Commissioner, you're still under oath.

Page 22366

1 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
 2 CHAIRPERSON: Mr Mpofu, do you have any
 3 more questions for the witness?
 4 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 5 Yes, Chairperson. General, I'm sorry, I told the
 6 Chairperson that I had rounded off the point, but I'm just
 7 going to put one, two propositions to you in respect of
 8 that point, and to make it quick I'll just read out what is
 9 contained in FFF9, I think. Yes, sorry about that. The
 10 first one is paragraph 22 of FFF9. It says that, "You will
 11 hear," meaning the Commission will hear, "evidence that at
 12 various stages the police service tried to encourage mine
 13 management and labour representatives to engage in peaceful
 14 negotiations, without involving itself in labour disputes."
 15 You see that part?
 16 GENERAL MBOMBO: I see it, Mr Chair.
 17 MR MPOFU: And then at 44.3 in the middle
 18 of that paragraph – oh well, let's read the whole thing.
 19 "On Tuesday the 14th and Wednesday the 15th the police
 20 continued trying to negotiate with the protesters to disarm
 21 peacefully. They demanded to speak with Lonmin
 22 management." And the important part, "Attempts were made
 23 by senior police officers to persuade Lonmin management to
 24 address the protesters. Lonmin management refused, saying
 25 it was not prepared to engage protesters outside collective

Page 22367

1 bargaining structures," and so on. "They also labelled the
 2 protesters as faceless." Okay, that had already happened.
 3 I think the sequence of events is not entirely correct
 4 there, but the point I want to put to you is that neither
 5 yourself nor anyone else to your knowledge had actually
 6 done what is alleged in this opening statement, which is to
 7 persuade –
 8 MR SEMENYA SC: Not correct, Chair. That
 9 was exactly the evidence of General Mpembe.
 10 CHAIRPERSON: You see, apart from that,
 11 Mr Mpofu, in exhibit OO4 at pages 27 and 28 there's a
 12 passage which is relevant here. In the middle of, at line
 13 9, at lines 9 and 10 of page 27 of that exhibit it says,
 14 "Parties speaking simultaneously proves difficult to
 15 transcribe," but it's clear that General Mpembe had spoken
 16 because at line 17, well the facilitator – let me read
 17 that, the facilitator says at line 12, "Joseph, I'm asking
 18 you," that's reference to Mathunjwa, "you had a chance to
 19 speak. Let Barnard speak," that's Mr Mokwena. "NUM has
 20 had the chance. General has had the chance. Barnard, you
 21 have the floor, please speak," and then Mr Mokwena then
 22 says, "Our position, General," so he's replying to General
 23 Mpembe, "is as Lonmin management our position is as
 24 follows. We're willing to engage our employees within the
 25 structures that are known" –

Page 22368

1 MR MPOFU: I'm sorry, Chairperson, what
 2 page?
 3 CHAIRPERSON: Page 27.
 4 MR MPOFU: 37?
 5 CHAIRPERSON: 27 of OO4.
 6 MR MPOFU: No, then I've got the wrong –
 7 CHAIRPERSON: So he's talking to the
 8 General, so we don't know what is the – the bit that was
 9 difficult to transcribe was inaudible, but clearly must
 10 have included what the General said because he's addressing
 11 the General. "Our position, General, is as Lonmin
 12 management our position is as follows. We're willing to
 13 engage our employees within the structures that are known,
 14 in a very safe environment where there are no weapons, not
 15 on the mountain. So we're willing to meet our employees
 16 through their structures, through their leaders to discuss
 17 any issues, not when they are armed, not when they are
 18 actually outside the Lonmin property. So when the workers
 19 are back, disarmed, tomorrow, tonight, through their
 20 leaders we will meet them. That is our position. So we
 21 are not against meeting, discussing issues with the
 22 employees through their right structures. We are prepared
 23 to do that." So that's – now there's a question I'd like
 24 to ask before you carry on, if you'll permit me.
 25 MR MPOFU: Yes.

<p style="text-align: right;">Page 22369</p> <p>1 CHAIRPERSON: The question I'd like to 2 ask the Provincial Commissioner about, did General Mpenbe 3 tell you either on the Wednesday night when he was speaking 4 to you on the telephone and you were at the management 5 forum, or the next morning on the Thursday, did he tell you 6 that that is what Mr Mokwena of Lonmin had said the 7 previous evening, the passage I've read? 8 GENERAL MBOMBO: He did not tell me 9 everything, Mr Chair. 10 CHAIRPERSON: Did he tell you some of 11 that? 12 GENERAL MBOMBO: But he did say they were 13 discussing with Lonmin management and the two presidents of 14 the unions and what they were promoting was to find a way 15 to solve this impasse. 16 MR MPOFU: Yes, well that's exactly the 17 point of my questioning – 18 CHAIRPERSON: I'm sorry, can I just ask – 19 MR MPOFU: Sorry, Chairperson. 20 CHAIRPERSON: When Mr Mathunjwa told you 21 what he did on the Thursday, which you've told us about 22 that Lonmin are not committed to negotiating and so on, was 23 General Mpenbe with you? 24 GENERAL MBOMBO: He was not far from 25 where we were standing, Mr Chair.</p>	<p style="text-align: right;">Page 22371</p> <p>1 CHAIRPERSON: Thank you. 2 MR MPOFU: Yes, thank you, Chairperson. 3 You see, that's exactly the problem that I have, General. 4 That's why I'm saying the impression given in the opening 5 statement is incorrect and I'll try and explain. The only 6 suggestion that this might have been said is the inaudible 7 part that the Chairperson refers to, where he infers from 8 an answer, and quite frankly anything could have been said 9 and it might be what you have been saying to us, namely 10 that we must all find solutions, and that might have been a 11 response to that. All I'm saying is that apart from that 12 inferential logic there is no direct evidence of anyone 13 persuading, as it is put here, of senior police officers 14 persuading Lonmin to go and engage with the strikers. We 15 know that you didn't do it; you've explained why. I'm now 16 talking about other people that they also did not do it. 17 What's your comment? 18 MR SEMENYA SC: Chair, I still raise the 19 same objection. The evidence, direct, given by General 20 Mpenbe before this Commission is that he did. 21 MR MPOFU: Okay, well even if, well – 22 CHAIRPERSON: That seems to be borne out 23 by what appears at page 1 of exhibit OO4 where General 24 Mpenbe says at line 18, "The request that we made to the 25 management is one, is that the way in which the operation</p>
<p style="text-align: right;">Page 22370</p> <p>1 CHAIRPERSON: I see. Did Mr Mathunjwa in 2 effect refer to an undertaking or an alleged undertaking 3 which Lonmin had given the previous night on the Wednesday? 4 When he spoke to you on the Thursday did he – you know, 5 we've gone through the passage of what he told you. Now 6 did he in fact in effect say Lonmin have gone back on an 7 undertaking they gave us previously, yesterday, or words to 8 that effect? 9 GENERAL MBOMBO: I do not remember that, 10 Mr Chair. All I remember is when he said they delayed him, 11 they do not want to talk to him. 12 CHAIRPERSON: So you didn't consider it – 13 well, it didn't arise on the basis of what you understood, 14 according to what you've told us, didn't arise that you 15 could have gone back to Lonmin and said look here, Mr 16 Mathunjwa says you people aren't prepared to negotiate, 17 you've gone back on what you've committed to do, whereas I 18 understand you said something last night in the presence of 19 General Mpenbe. The occasion for you to do that didn't 20 arise because you didn't know what had been said the 21 previous night. Do I understand correctly? 22 GENERAL MBOMBO: Mr Chair, I did not know 23 Lonmin's decisions of the previous night. What I knew 24 about was the decisions of Mr Mathunjwa, which I learned 25 from General Mpenbe.</p>	<p style="text-align: right;">Page 22372</p> <p>1 is moving now, is moving in a direction where we need an 2 intervention." So he refers to the fact that he had 3 already made a request to the management for – 4 MR MPOFU: Solution. 5 CHAIRPERSON: - an intervention. 6 MR MPOFU: Ja. 7 CHAIRPERSON: Because of the way things 8 were moving. So that supports the evidence he gave, or 9 tends to support the evidence he gave before this 10 Commission. But anyway, the point is very simply, you 11 can't put to the witness that General Mpenbe did nothing if 12 the evidence is he did. Obviously from what she now tells 13 us she didn't know much about what General Mpenbe had said. 14 That's a different matter. But you can't put it as a fact 15 that General Mpenbe didn't do anything when the evidence is 16 that he did. You may argue later that that evidence is not 17 to be accepted - that's a different question - but you 18 can't put to the witness as a fact something which is 19 disputed and in respect of which there is contrary 20 evidence. So I suggest you – to use one of your phrases – 21 you take a step back, you reformulate the question, put a 22 question to the witness which Mr Semanya won't object to. 23 MR MPOFU: Okay, that's exactly what I'm 24 going to do. Let's assume – we'll have that debate on 25 another day, so let's assume for argument sake now that</p>

Page 22373

1 General Mpembe in that inaudible part said what is being
2 said by the Chairperson and Mr Semenya. Apart from him, do
3 you know of any other person who persuaded Lonmin to engage
4 with the workers?
5 GENERAL MBOMBO: Mr Chair, as far as I
6 know from the meeting we had with the National Commissioner
7 and the Lonmin people, we emphasise the importance of
8 Lonmin trying to find ways of dealing with this issue,
9 talking to their people in the way that they are supposed
10 to. I did not think that it was important for us to give
11 them details as to how they were supposed to do that. That
12 was not our job. Our job was to maintain peace and order.
13 MR MPOFU: No, General, there's on point
14 by point by point by point; there's one point. The people
15 wanted to engage with management, one point, and I'm saying
16 that the police, do you know of any other policeman,
17 putting aside the question of General Mpembe, who persuaded
18 the people to engage with their workers, to go and talk to
19 the workers as the workers were demanding, one point?
20 MR SEMENYA SC: Chair, there's nobody who
21 persuaded anybody. The issue is whether there was attempt.
22 There's no question that anybody persuaded Lonmin to go to
23 the koppie. We know they didn't go –
24 MR MPOFU: Yes, who exhorted –
25 MR SEMENYA SC: There were attempts –

Page 22374

1 MR MPOFU: Who exhorted, or made –
2 CHAIRPERSON: Tried to persuade -
3 MR MPOFU: Tried to persuade them to go
4 to – attempted, let's use the right word, according to Mr –
5 who attempted to persuade the people to go and talk to
6 their workers as they were demanding.
7 GENERAL MBOMBO: According to me, Mr
8 Chair, I've answered that question and said I personally
9 did not say so, but I mentioned that they have a right to
10 do whatever was in their power, and I think that General
11 Mpembe also tried in the meetings that he had with them.
12 MR MPOFU: Okay, maybe it's my fault; I
13 don't think you've heard my question. I'm saying let's
14 take you out of the picture, because you've said you didn't
15 do it. Do you understand that?
16 GENERAL MBOMBO: I hear you.
17 MR MPOFU: I'm saying let's take Mpembe
18 out of the picture because we've had the debate, which
19 we'll have on another day. Do you understand that?
20 GENERAL MBOMBO: I understand that.
21 MR MPOFU: Do you know of any other
22 policeman who made attempts to persuade Lonmin to negotiate
23 or to address the protesters, apart from you and Mpembe?
24 GENERAL MBOMBO: I don't.
25 MR MPOFU: Ja, and therefore, and there's

Page 22375

1 no other evidence in front of this Commission, that's what
2 I was getting at. The statement that I read out to you
3 says "Attempts were made by senior police officers," in
4 plural, okay, "to persuade Lonmin management to address the
5 protesters," a specific thing, not to find solutions or
6 make interventions and so on, "senior officers to persuade
7 the Lonmin management to address the protesters." You have
8 no knowledge of that, correct?
9 GENERAL MBOMBO: As I'm saying, Mr Chair.
10 MR MPOFU: Thank you. Okay, no I'll
11 leave that for argument. Now let's just go back to
12 something very quickly which we dealt with yesterday. I'm
13 just going to ask one or two questions. Remember the
14 debate you and I had about the removal of the people who
15 had experienced the trauma of the 13th?
16 GENERAL MBOMBO: Removal of the people
17 with experience?
18 MR MPOFU: Yes –
19 CHAIRPERSON: No, no, who had the
20 experience, the people who had been involved on the 13th had
21 been traumatised, or possibly traumatised because of what
22 had happened on the 13th, removal of those people from
23 further participation. That's the point that Mr Mpofu is
24 now going to revert to.
25 GENERAL MBOMBO: Okay.

Page 22376

1 MR MPOFU: You remember that discussion?
2 GENERAL MBOMBO: I remember that.
3 MR MPOFU: Now would you agree that if
4 the initial suggestion of removing all the people who had
5 been involved in that operation had been carried out to its
6 logical conclusion, then General Mpembe himself would have
7 been a candidate for removal?
8 GENERAL MBOMBO: As I have said, I also
9 spoke to him as well, so as I said yesterday - that would
10 have applied to him as well, and as I said yesterday, these
11 people were given that chance and it is not our normal
12 practice to remove people from operations if they do not
13 show signs of not being able to continue with the
14 operation.
15 MR MPOFU: Right, okay. Now if, so
16 General Mpembe would have been a candidate for removal
17 simply on the basis that everyone who was involved on the
18 13th is being removed. Do you agree that you also got
19 reports from other people that he was emotionally affected?
20 [11:59] GENERAL MBOMBO: Yes, as I said I
21 received such a report from Colonel Vermaak. But when I
22 arrived at Lonmin he did not appear to be emotional, that
23 is when he was giving the report although he did not appear
24 to be emotional we had to ensure that he was alright.
25 MR MPOFU: And thirdly you were also

Page 22377

1 given a report that death threats had been made against
2 him, correct?
3 GENERAL MBOMBO: As you say, yes.
4 MR MPOFU: And fourthly, I don't know if
5 you were aware of this, if you're not let me know he
6 himself had made threats to arrest Lieutenant Colonel
7 Vermaak for intimidation?
8 GENERAL MBOMBO: I do not remember having
9 knowledge of that at that time.
10 MR MPOFU: Anyway, how many people were
11 taken for emotional assessment to see HW?
12 GENERAL MBOMBO: I would not be sure of
13 the figures but it was open to all the people who were in
14 the operation of the 13th. We did it likewise on the 16th.
15 MR MPOFU: No, General, please, if you
16 don't know the answer just tell me. The first that it
17 well, it may be open to them might well be so, how many
18 people actually went for emotional assessment?
19 GENERAL MBOMBO: I'm not sure of the
20 figures.
21 MR MPOFU: So it could be anything, it
22 could be two, it could be 10, you don't know?
23 GENERAL MBOMBO: We can get that
24 information, Mr Chair.
25 MR MPOFU: Yes, can you please supply the

Page 22378

1 Commission with that information as well as the outcomes of
2 those assessments.
3 GENERAL MBOMBO: I will do that.
4 MR MPOFU: Did Colonel Merafi for example
5 go for that assessment?
6 GENERAL MBOMBO: I do not know, Mr Chair.
7 MR MPOFU: So, okay you do know that he
8 was there, emotionally affected?
9 GENERAL MBOMBO: I know that he was
10 present in the operation of the 13th.
11 MR MPOFU: That's not what I asked you.
12 Do you know that he was emotionally affected?
13 GENERAL MBOMBO: I'm not sure about that.
14 MR MPOFU: Well that's what he says in
15 his statement, but we'll get to that later. Alright.
16 CHAIRPERSON: Mr MPOFU, I just want to
17 go back to a point you made earlier. You said that the,
18 general, I think it was your fourth reason in the number of
19 reasons you gave why he should have been removed from the
20 further participation in the operation. You said that he
21 had, wanted to know who made the threats and he, when
22 Colonel Vermaak wouldn't tell him, he threatened to open an
23 intimidation case against him. Now that's based on paragraph
24 12 of Colonel Vermaak's second statement which is exhibit
25 LLL8 and it's quite clear from 12, that paragraph, para 12

Page 22379

1 that that threat, the threat that he was going to open an
2 intimidation case if it was made was made at Roots in the
3 subgroup that were discussing the events of the 13th –
4 MR MPOFU: Thank you, thank you,
5 Chairperson. Yes, do you, yes, thank you very much,
6 Chairperson. My apologies, General. Did you become aware
7 that weeks I suppose after the event there was this kind of
8 altercation where General Mpembe threatened to, no not to
9 arrest, to lay a complaint of intimidation against Colonel
10 Vermaak?
11 GENERAL MBOMBO: I becomes aware of that
12 late after Vermaak had made a statement.
13 CHAIRPERSON: I don't quite understand
14 the relevance of that question because the point that you
15 were busy with was whether it wouldn't have been sensible
16 to have removed General Mpembe from further participation
17 in the operation would include participation in the
18 operation on the 16th.
19 MR MPOFU: Yes, Chairperson.
20 CHAIRPERSON: Because of the traumatic
21 experiences that he had had on the 13th. So the fact that
22 several weeks later at Roots he allegedly threatened
23 Colonel Vermaak with an intimidation case wouldn't be
24 relevant in that regard, would it?
25 MR MPOFU: No, well, Chairperson, I mean

Page 22380

1 honestly I even apologised to the witness for making that
2 point as the fourth point. But I'm entitled to ask now
3 that we know that it happened, whether it happened ten
4 years later, whether she knows about another altercation
5 between members of her staff.
6 CHAIRPERSON: I understand her to say
7 she didn't know.
8 MR MPOFU: Yes.
9 CHAIRPERSON: So we can move on.
10 MR MPOFU: Ja, we are, Chair. Now where
11 I'm going with this, General, is that from three, now that
12 the other one is eliminated, reason, there was reason
13 enough for the removal of Mpembe not only from the scene
14 but also from his position as overall commander. Or let me
15 put it this way, let me put it this way. Had the original
16 plan of removing everybody who had been involved on the 13th
17 then you would have had to find another overall commander,
18 correct?
19 GENERAL MBOMBO: If he was unable to
20 continue.
21 MR MPOFU: Who called up General
22 Annandale to occupy the, whatever the position is, he seems
23 to have many positions?
24 CHAIRPERSON: Chief of staff –
25 MR MPOFU: And then he was Chairman –

<p style="text-align: right;">Page 22381</p> <p>1 CHAIRPERSON: Chairman of the JOCCOM. 2 MR MPOFU: Then he was second in command 3 then he was the deputy, then he was this and that. 4 CHAIRPERSON: Chief of staff means that 5 he was the deputy – 6 MR MPOFU: Why, Chairperson, where do we 7 get that? 8 CHAIRPERSON: Well that's the evidence I 9 think, the, from exhibit L we see that he, what his 10 functions were. That he was chief of staff, normally chief 11 of staff as I understand it is the deputy to the person 12 whose chief of staff he is, and he was the chairman of the 13 JOCCOM. That's what we know he was. 14 MR MPOFU: Okay. Do you understand that 15 in terms of the structures and the prescripts there's no 16 such thing as deputy overall commander? 17 GENERAL MBOMBO: But it does not prevent 18 us from having such a person assisting the overall 19 commander. 20 MR MPOFU: Do you accept that in the 21 prescripts there's no such position as deputy overall 22 commander, yes or no? 23 GENERAL MBOMBO: I agree. 24 MR MPOFU: Do you also accept that in the 25 prescripts there's no such thing as Chairman of the JOC?</p>	<p style="text-align: right;">Page 22383</p> <p>1 the name that one would expect is of the person who is the 2 actual overall commander, normally? 3 GENERAL MBOMBO: Mr Chair, I don't know 4 even here in the minutes we're supposed to use the 5 hierarchy levels. 6 MR MPOFU: Well can you see that in that 7 minute, in those minutes you are on top and right at the 8 bottom is, it's you and then it's the Major General then 9 it's the Brigadier, then it's the Colonel and then it's 10 legal services. So there is some kind of hierarchal 11 pecking order, would you agree? 12 GENERAL MBOMBO: I see it as it appears 13 in the minutes. 14 MR MPOFU: No, answer my question. Would 15 you agree that in the context of a JOCCOM when you are 16 present obviously your name would come on top. But that 17 normally the next in line would be the overall commander? 18 GENERAL MBOMBO: It was supposed to be 19 like that, yes. 20 MR MPOFU: Thank you. 21 CHAIRPERSON: It's nearly quarter past 22 12 when I said we have to adjourn. Would it be appropriate 23 for us to take the adjournment now till Monday morning 9 24 o'clock? 25 MR MPOFU: Chairperson, if I can just</p>
<p style="text-align: right;">Page 22382</p> <p>1 GENERAL MBOMBO: There is a chairman of 2 the JOCCOM. 3 MR MPOFU: And who is normally – 4 GENERAL MBOMBO: It was supposed to be 5 General Mpembe. 6 MR MPOFU: Yes. 7 GENERAL MBOMBO: But General Mpembe has 8 got a right to ask anyone available that is working with 9 him. 10 MR MPOFU: Yes. So normally the person 11 who chairs the JOC is the person who is the overall 12 commander, correct? 13 GENERAL MBOMBO: That is normally the 14 case, yes. But anyone present can chair. 15 MR MPOFU: Do you also accept that 16 normally you as Provincial Commander if you were to give an 17 important instruction in the whole JOCCOM set up that 18 instruction would be given to the person who's the actual 19 overall commander, normally? 20 GENERAL MBOMBO: I agree with you there. 21 MR MPOFU: And do you also accept that 22 normally the person, if you can go to exhibit EE please. 23 Would you agree that, oh sorry, alright, would you agree 24 that normally under paragraph 2 in that list of names which 25 is obviously put in some kind of hierarchy that after you</p>	<p style="text-align: right;">Page 22384</p> <p>1 round off this point? 2 CHAIRPERSON: Alright. 3 MR MPOFU: Just so that we finish with 4 this exhibit. 5 CHAIRPERSON: Yes, alright. 6 MR MPOFU: Thank you. 7 CHAIRPERSON: As long as you do it 8 fairly quickly. 9 MR MPOFU: I will, Chairperson, and to 10 make it quick. I'll just read out certain portions from 11 that exhibit and then I'll ask you the question. We've 12 already dealt with what is on paragraph 3 where the 13 provincial commissioner instructed Major General Annandale 14 to proceed with the implementation. The next one is 15 paragraph 4, "Major General Annandale informed the meeting 16 that the approach will be as follows," and then it goes on 17 and then you can go to the middle of the next page. Page 18 2, "Major General Annandale went through the following 19 checklists to ensure everything was in place and show 20 adequate batteries," and so on and so on. Then the next 21 page, "Major General Annandale instructed Lieutenant 22 Colonel Scott to ensure that all commanders are briefed 23 accordingly," and so on and then the big one at the bottom, 24 "Major General Annandale instructed Brigadier Pretorius to, 25 and Lieutenant Colonel Scott to report back to the JOC at</p>

<p style="text-align: right;">Page 22385</p> <p>1 15:15 as he wanted, he wants the operation to commence at 2 15:30." Now there's no mention whatsoever of Major General 3 Mpembe, would you agree that somebody reading this document 4 would gain or rather let me put it this way, would you 5 agree that normally the person who should be dishing out 6 instructions and receiving them from a person like you and 7 ensuring that this is done is the overall commander of a 8 particular operation normally? 9 GENERAL MBOMBO: That is so, Mr Chair. 10 CHAIRPERSON: Had been instructed in 11 paragraph 3, Major General Annandale had been instructed by 12 the Provincial Commissioner to proceed with the 13 implementation. So he was the appropriate person in the 14 light of her instructions to do what is recorded at the end 15 of the minutes. Is that not so? 16 MR MPOFU: Ja, well that a circular way 17 of – 18 CHAIRPERSON: That paragraph doesn't 19 take it any further, the fact that Brigadier, Major General 20 Annandale gave the instruction to Brigadier Pretorius and 21 Lieutenant Colonel Scott doesn't take it any further then 22 the passage in paragraph 3 where this witness instructed 23 Major General Annandale to proceed with the implementation. 24 So that's the point you have – 25 MR MPOFU: Yes, the cumulative –</p>	<p style="text-align: right;">Page 22387</p> <p>1 So I'm afraid you'll have to come back to it on Monday. 2 Because we're now adjourning till Monday morning 9 o'clock. 3 [COMMISSION ADJOURNED] 4 . 5 . 6 . 7 . 8 . 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 22386</p> <p>1 CHAIRPERSON: It's not made stronger by 2 the fact that Major General Annandale then did, then acted 3 in accordance with what the witness had told him. 4 MR MPOFU: Ja, well, Chairperson – 5 CHAIRPERSON: You can concentrate, just 6 before we take the adjournment on what is said in the end 7 of the third paragraph, that's where, that's your stronger 8 point, isn't it where Major General, sorry where the 9 Provincial Commissioner instructed Major General Annandale 10 to proceed with the implementation. 11 MR MPOFU: Ja, Chairperson, well I don't 12 completely agree with that, entirely agree with that. The 13 point – 14 CHAIRPERSON: Disagree with me or not is 15 of no concern to me, just carry on with your questions. 16 MR MPOFU: Well let me explain why. Let 17 me, I have to explain why so that we are on the same page. 18 CHAIRPERSON: I told you we've got a 19 time problem. 20 MR MPOFU: Yes. 21 CHAIRPERSON: May I suggest you make a 22 note, remember what you want to explain because we have to 23 adjourn now. 24 MR MPOFU: I don't want to come back – 25 CHAIRPERSON: We have to adjourn now.</p>	

A				
abandonment 22344:24	22360:18 22361:4	answered 22358:4 22374:8	22337:11 22343:19 22352:2,13 22357:9	22361:19 22370:13 22376:17
able 22351:2 22376:13	afraid 22342:25	anticipated 22327:2	22361:4 22378:11	batteries 22384:20
absence 22325:13	22387:1	anxiety 22338:2	asking 22322:10	beginning 22337:15
abundantly 22319:21 22319:22	afternoon 22348:4	agree 22315:15	22323:20 22324:1	22339:6 22360:5 22363:9
accede 22358:2	22330:24 22333:11	22337:8 22338:1	22329:6 22346:16	behalf 22328:21
accept 22314:21	22337:21 22338:25	anybody 22373:21,22	22350:14 22353:25	behaviour 22349:9
22315:22 22316:16	22345:5 22347:21,21	anymore 22343:8	22358:6 22361:19	belief 22357:12
22343:12 22347:24	22351:5 22356:17	anyway 22325:24	22367:17	believe 22327:24
22351:14 22355:16	22357:20 22364:21	22337:20,23 22341:3	aspect 22355:13	22328:24 22335:24 22337:9
22358:16,18	22376:3,18 22381:23	22372:10 22377:10	assessment 22377:11	believed 22327:12
22360:11 22381:20	22382:20,23,23	apart 22328:6	22377:18 22378:5	benefit 22314:3
22381:24 22382:15	22383:11,15 22385:3	22367:10 22371:11	assessments 22378:2	best 22317:20 22344:11
22382:21	22385:5 22386:12,12	22373:2 22374:23	assist 22328:23,25	better 22344:24
accepted 22372:17	agreed 22317:13	apologise 22343:4	22329:17 22340:3	big 22384:23
accepts 22328:21 22342:21	22325:1 22334:9	apologised 22328:20	22358:7	bishop 22320:18
accompanied 22317:15	22347:19 22354:12	22338:12 22342:14	assisting 22381:18	22328:8,10,11,15,17
accompany 22335:18	22356:15,16	22343:7 22380:1	assume 22331:13	22329:22 22330:10
account 22314:22	agreeing 22315:16	apologises 22379:6	22335:11 22372:24	22330:14 22331:13
22315:6,23 22316:3	22347:17 22357:11	apology 22328:21	22372:25	22331:15,18
accuse 22347:11	agreement 22323:1,3	22342:21	assumed 22325:12	22333:15,18
accused 22342:8	22348:11,17,24	apparent 22327:9	assuming 22323:16	22334:12 22335:8
accusing 22347:13	22349:23 22360:15	apparently 22352:18	attempt 22317:24	22336:7,15 22337:13
achieve 22344:11	ah 22360:19	22365:20	22373:21	22337:17 22338:10
acquiesced 22345:23	air 22336:4	appear 22376:22,23	attempted 22374:4,5	22338:20 22339:3
acquiescing 22355:1	align 22353:8,23	appearing 22346:5	attempts 22366:22	22340:1,12 22341:1
acted 22345:1 22386:2	22354:6 22355:23	appears 22371:23	22373:25 22374:22	22341:18,22 22342:7
action 22317:7,7	aligned 22353:10	22383:12	22375:3	22342:21
22327:21 22335:25	aligning 22354:9	application 22343:24	attend 22322:15	Bishop's 22335:4
22337:9 22361:24	alignment 22353:15,17	applied 22376:10	attended 22329:25	bishop's 22329:13
22362:7	22354:8 22364:1	apply 22343:19,20	22358:17	22330:6 22334:4,7
actions 22363:15	allegation 22315:5,7	appreciate 22317:11,25	attention 22333:13	bit 22350:18 22365:17
active 22313:24 22314:1	alleged 22367:6 22370:2	22332:24	attitude 22321:15	22368:8
actual 22340:21	allegedly 22379:22	appreciated 22318:1	22341:2 22342:25	blame 22331:9
22382:18 22383:2	allow 22344:1,7	approach 22317:19	22350:20	22332:17,17
ad 22327:1	alright 22315:12	22357:14 22384:16	available 22382:8	22333:21,22
address 22335:16	22318:18 22338:22	approached 22341:20	availed 22332:10	22334:19,21 22335:4
22345:8 22359:10	22347:23 22350:11	approaching 22334:18	avoid 22349:9	blaming 22333:10
22366:24 22374:23	22352:17 22354:11	appropriate 22343:24	aware 22316:25	blank 22353:18
22375:4,7	22362:8,25 22364:14	22352:1 22383:22	22320:10,21 22321:4	bloodshed 22345:1,2
addressed 22319:6,24	22376:24 22378:15	22385:13	22321:6 22328:7,10	22360:8
22320:20	22382:23 22384:2,5	approximately 22340:7	22328:14,22,25	bolted 22340:14,16
addressing 22324:22	altercation 22379:8	aren't 22351:2	22358:1 22377:5	borne 22371:22
22325:16 22326:10	22380:4	22370:16	22379:6,11	botched 22342:4
22368:10	alternative 22327:17	argue 22313:21		bottom 22383:8
adequate 22384:20	22331:3	22344:21 22372:16	B	22384:23
adjourn 22352:12,13	AMCU 22313:17	argument 22372:25	back 22315:19 22317:2	break 22352:1,4,6
22352:15 22383:22	22318:20 22349:7,11	22375:11	22322:1 22323:10	briefed 22331:5
22386:23,25	22349:14,24 22350:6	armed 22322:7	22324:5 22336:1	22384:22
ADJOURNED 22387:3	22350:6,20 22351:7	22350:22 22368:17	22337:11 22339:3	briefing 22332:21
adjourning 22387:2	22354:21 22357:7,10	arms 22326:15,16	22351:22 22352:7	22333:7,13
adjournment 22365:8	and/or 22335:15	22327:16,20,23	22363:1 22365:18,19	Brigadier 22383:9
22365:16 22383:23	Annandale 22331:6	22332:4	22368:19 22370:6,15	22384:24 22385:19
22386:6	22380:22 22384:13	arrangements	22370:17 22372:21	22385:20
ADJOURNS 22352:9	22384:15,18,21,24	22345:16 22349:8	22375:11 22378:17	bringing 22329:17
22365:23	22385:11,20,23	22363:17	22384:25 22386:24	bullet 22324:18
admission 22338:13	22386:2,9	arrest 22377:6 22379:9	22387:1	22339:15
admits 22338:2,3	announced 22339:24	arrived 22328:11	ball 22315:18	busy 22313:20
22342:13 22343:5	answer 22336:20	22331:1 22341:1	bargaining 22349:7,15	22332:23 22357:23
advice 22350:14	22346:24 22358:7	22376:22	22349:25 22367:1	22359:12 22363:14
advise 22353:19	22361:13 22362:3	aside 22315:22	Barnard 22367:19,20	22363:18 22379:15
	22371:8 22377:16	22373:17	based 22358:9	butt 22343:25
	22383:14	asked 22321:17	22378:23	
	answerable 22345:3	22326:6 22329:15	basically 22353:6	C
		22335:15,17	basis 22318:10	

<p>call 22313:22 22355:15 called 22380:21 candidate 22376:7,16 canvass 22353:15 can't 22319:10 22336:6 22343:9,24 22351:5 22359:4,4 22372:11 22372:14,18 careful 22315:15 caring 22320:17 carried 22376:5 carry 22325:24 22361:20 22368:24 22386:15 case 22316:1 22333:18 22344:21 22357:25 22358:1 22378:23 22379:2,23 22382:14 castigating 22342:22 cathedral 22339:16 cause 22316:17 22317:14 causes 22355:9 celebrated 22365:21 cell 22313:3 centre 22336:2,3 22337:11 CEO 22321:17 certain 22329:7 22384:10 certainly 22339:25 22349:23 chair 22314:25 22316:1 22316:13 22320:4,14 22321:22 22322:13 22323:19 22326:13 22328:5 22329:19 22330:25 22331:17 22331:25 22332:6,12 22333:1 22340:2 22346:20,23 22347:1 22348:8 22350:10 22351:13 22356:2 22359:8,16 22361:25 22364:5 22366:16 22367:8 22369:9,25 22370:10,22 22371:18 22373:5,20 22374:8 22375:9 22377:24 22378:6 22380:10 22382:14 22383:3 22385:9 chairman 22318:9 22360:24 22380:25 22381:1,12,25 22382:1 Chairperson's 22353:5 chairs 22382:11 challenged 22335:8 chance 22331:21,23 22351:8 22357:13 22367:18,20,20 22376:11 change 22343:7 check 22363:15 checklists 22384:19</p>	<p>cheque 22353:18 chief 22380:24 22381:4 22381:10,10,12 church 22331:13,19 circumstances 22385:16 22338:19 circumvent 22318:18 clarity 22316:7 22354:6 clear 22319:21,22 22326:15 22331:2,8 22331:10 22334:3,12 22335:17 22337:22 22339:22 22344:15 22349:20 22350:12 22350:25 22360:4,14 22367:15 22378:25 clearer 22326:10 clearly 22368:9 coincide 22361:1 collar 22331:14 collective 22349:7,15 22366:25 Colonel 22340:4 22376:21 22377:6 22378:4,22,24 22379:9,23 22383:9 22384:22,25 22385:21 come 22321:3,17 22323:1 22328:17 22331:3 22332:8 22351:21 22352:21 22363:22 22365:18 22383:16 22386:24 22387:1 comes 22331:18 22361:11,17 comfort 22352:1,4,6 coming 22331:11 22351:21 command 22336:2,3 22337:11 22381:2 commander 22380:14 22380:17 22381:16 22381:19,22 22382:12,16,19 22383:2,17 22385:7 commanders 22384:22 commence 22385:1 comment 22345:4 22354:4 22357:19 22371:17 commenting 22325:22 commission 22313:2 22321:11 22352:9,9 22352:10 22365:23 22365:23,24 22366:11 22371:20 22372:10 22375:1 22378:1 22387:3 commissioner 22313:4 22313:16 22316:23 22335:19,23 22336:8 22337:7 22339:10</p>	<p>22341:3 22350:14 22352:23 22353:3 22357:11 22360:24 22361:21 22362:2,4 22362:10 22363:5,7 22363:13 22365:25 22369:2 22373:6 22384:13 22385:12 22386:9 commit 22324:21 22325:1 22326:8 commitment 22322:5 22322:23 22323:1,9 22323:10,13,15,20 22324:6 22325:3,7,12 22326:20 22327:9,11 22327:13,14,14,15,22 22327:22,23 commitments 22327:9 committed 22369:22 22370:17 communicate 22364:11 communication 22332:21 22359:15 22359:19,24 22362:21 22364:8 companies 22364:12 company 22335:22 22364:9,10 complaint 22379:9 completely 22386:12 completes 22341:24 completion 22341:16 complexities 22362:22 compromise 22350:15 conceded 22319:13 concentrate 22386:5 concentrating 22330:20 22332:21 22332:22 22333:6 concern 22316:16 22317:12 22386:15 concerned 22327:22 22330:16 22357:25 concession 22316:22 22351:1 conclusion 22376:6 condition 22364:2 conditions 22323:4 22354:1 conference 22327:19 confidence 22329:23 conflict 22316:18 conflicting 22359:19 confronted 22324:3 confuse 22357:4 consider 22370:12 considerations 22314:22 22315:6,23 considered 22331:4,9 22333:3 constant 22320:1 22322:8 contained 22366:9 CONTD 22313:7 22366:4</p>	<p>context 22343:15 22344:5,5,6 22383:15 continue 22325:2 22376:13 22380:20 continued 22324:21 22326:9 22366:20 contrary 22345:22 22346:15 22356:18 22372:19 conversation 22343:16 convey 22341:19 convince 22332:3 cooperate 22343:10 22344:22 cooperation 22338:2 cordoned 22341:23 corollary 22345:1 correct 22313:24 22314:5,7,12,13,23 22315:21,24 22316:5 22316:8,11,12,19 22317:8,16,22 22318:7,20,25 22319:7 22320:2 22322:11 22324:12 22325:23 22326:19 22326:21 22327:3 22328:3,4,8 22330:1 22330:9,22 22331:1 22332:6,11 22334:16 22338:24 22339:11 22339:25 22345:9,17 22346:18 22350:7 22353:3,11 22355:11 22355:18 22359:13 22362:23 22364:3 22367:3,8 22375:8 22377:2 22380:18 22382:12 corrected 22332:19 22334:9 correctly 22324:10,17 22325:19 22327:7,8 22360:5 22370:21 couldn't 22323:14 22346:1 22348:15 counsel 22313:9 22321:14 22343:20 22350:14 country 22316:14 22335:15 coupled 22342:1 courteous 22346:14 co-operation 22328:19 creating 22343:11 22354:1 critical 22330:11 criticise 22357:17 criticism 22351:9,12,19 22354:3 22356:1,16 22356:17 22358:19 cross 22334:25 22343:20 22344:6 cross-examination 22313:7 22343:22,23 22343:25 22352:22</p>	<p>22366:4 cross-examine 22319:12 22359:12 crucial 22331:1,5 22353:14 cumulative 22385:25 cut 22334:24 cutting 22335:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dangerous 22350:22 dashed 22353:2 day 22313:10,14 22316:22 22320:15 22328:13 22365:20 22372:25 22374:19 dead 22343:8 22350:24 deal 22317:20 22328:1 22350:17 22359:11 22362:9 dealing 22361:5 22373:8 dealt 22330:17 22375:12 22384:12 death 22377:1 debate 22372:24 22374:18 22375:14 decide 22334:21 decision 22322:17 22330:10,12 22339:14,23,25 22340:15,18,19,20,21 22340:25 22347:15 22350:13 22354:13 decisions 22340:17 22356:8 22363:20 22364:5 22370:23,24 deep 22364:9 defuse 22357:16 delayed 22370:10 delivery 22361:1 demand 22319:23 22320:19 22321:2,19 22322:8 22358:2,22 demanded 22345:7 22366:21 demanding 22373:19 22374:6 demonstrate 22354:14 demonstrated 22333:23 denial 22315:22 denied 22314:21 22315:2,7 deny 22314:24 22315:11 depended 22323:23 dependent 22326:16 deputy 22381:3,5,11,16 22381:21 described 22349:5 details 22373:11 dictate 22364:12 didn't 22321:9 22336:18 22338:13 22343:19 22347:24</p>
---	--	--	---	--

22355:17 22362:3 22370:12,13,14,19,20 22371:15 22372:13 22372:15 22373:23 22374:14 22380:7 died 22354:18 different 22333:9,16 22334:15 22343:18 22347:9 22355:21 22372:14,17 differently 22333:6 22345:2 difficult 22367:14 22368:9 dignity 22359:3 direct 22319:21 22333:2 22345:16 22371:12,19 directing 22332:13 22358:19 direction 22372:1 directly 22333:2 22344:24 Disagree 22386:14 disappear 22327:8 disappointed 22353:1 disarm 22366:20 disarmed 22368:19 discourteous 22330:23 discuss 22349:25 22368:16 discussed 22342:5 discussing 22317:3 22329:3 22368:21 22369:13 22379:3 discussion 22322:2 22345:14 22348:3 22358:9 22361:9 22364:16 22376:1 discussions 22329:16 22363:23 dishing 22385:5 dispute 22316:18 22319:5 22344:12 22348:16 disputed 22372:19 disputes 22366:14 dissolved 22355:10 distraction 22330:15 distributing 22354:8 document 22356:23 22385:3 doesn't 22315:15 22346:11 22347:18 dog 22331:14 doing 22352:4 22354:10 22356:23 22357:3,16 22363:18 22363:21 22364:1,2 don't 22316:24 22318:10 22336:11 22336:20 22340:16 22342:15,24 22343:7 22343:8 22349:12,22 22351:6,11 22352:18 22353:8,19 22359:9	22361:18,25 22365:10 22368:8 22374:13,24 22377:4 22377:16,22 22379:13 22383:3 22386:11,24 door 22350:18 doubt 22323:14 drawn 22361:3 dressed 22331:17 dropping 22361:9 duty 22359:18,22 <hr/> E <hr/> ear 22341:21 earlier 22336:8 22352:11,14 22361:11 22378:17 early 22324:20 22326:8 EE 22339:23 22382:22 effect 22341:24 22358:18 22370:2,6,8 effectively 22318:6 22319:11 22326:3 22331:11 22342:4 22353:9 either 22314:16 22326:24 22335:10 22335:14 22339:1,1 22369:3 elements 22329:14 eliminated 22380:12 emanate 22362:19 emotional 22376:22,24 22377:11,18 emotionally 22376:19 22378:8,12 emphasis 22353:21 emphasise 22373:7 emphasising 22355:2 employees 22318:25 22319:13,15,15,19 22360:3 22361:23 22362:6 22364:13 22367:24 22368:13 22368:15,22 employer 22317:22 22319:6,24 22320:10 22320:20 22321:1,15 22322:5 22359:3 22360:2 employers 22361:23 22362:6 employer's 22321:16 enable 22334:25 encounter 22318:5,19 22320:6 encourage 22366:12 endeavours 22359:25 engage 22321:18 22357:24 22358:3,23 22358:25 22359:21 22359:23 22360:10 22360:20,22 22364:18 22366:13 22366:25 22367:24	22368:13 22371:14 22373:3,15,18 engaging 22360:12 engineered 22350:7 engrossed 22333:12 22334:14 ensure 22357:19 22359:7 22376:24 22384:19,22 ensuring 22385:7 entirely 22325:22 22367:3 22386:12 entitled 22361:14,14 22380:2 environment 22368:14 especially 22360:9 established 22322:6 22336:14 22354:1 22355:14 22358:1 eTV 22340:5 evening 22369:7 event 22321:6 22329:21 22339:17 22339:18 22379:7 events 22367:3 22379:3 everybody 22313:3 22357:9 22380:16 evidence 22313:23 22320:24 22321:5,8 22321:10,22 22326:12 22330:6 22335:8 22337:17 22338:11 22351:12 22352:3 22359:9 22366:11 22367:9 22371:12,19 22372:8 22372:9,12,15,16,20 22375:1 22381:8 evidenced 22364:15 evident 22317:4 exact 22356:22 exactly 22323:25 22331:24 22333:8,14 22348:22 22351:20 22364:16 22367:9 22369:16 22371:3 22372:23 examination 22335:1 22344:7 examined 22343:21 example 22378:4 exclusively 22333:7 exhibit 22323:24 22324:16 22335:5 22343:15 22346:5,20 22346:21 22348:3 22362:12 22367:11 22367:13 22371:23 22378:24 22381:9 22382:22 22384:4,11 exhorted 22358:2 22373:24 22374:1 exhorting 22360:7 expect 22324:8 22326:5 22383:1 expected 22360:2,3	expecting 22343:3 experience 22375:17 22375:20 experienced 22375:15 experiences 22379:21 expire 22348:12 explain 22313:25 22318:12 22321:3 22326:22 22371:5 22386:16,17,22 explained 22318:11 22323:3 22326:4 22334:1 22371:15 explains 22318:14 explanation 22322:16 22338:4 explicit 22333:24 expression 22332:2 expressly 22364:19 extent 22345:3 extra 22342:15 22348:2 extracted 22342:15 <hr/> F <hr/> faceless 22318:25 22367:2 facie 22350:16 facilitate 22329:16 22359:13,15,18 22362:20 facilitation 22359:24 facilitative 22364:8 facilitator 22367:16,17 facing 22333:3 fact 22319:10 22320:5 22325:11 22333:12 22337:12 22344:13 22347:10 22349:12 22352:11 22355:1 22356:10 22358:10 22370:6 22372:2,14 22372:18 22379:21 22385:19 22386:2 facts 22334:20,20 22335:3 failed 22314:5 22343:10 22355:25 22360:10 22364:16 failure 22332:20 fair 22321:9 22332:25 22356:1 fairly 22384:8 faith 22326:20 22327:13,17 family 22329:9 far 22327:21 22330:16 22354:12 22357:25 22364:8 22369:24 22373:5 Farmer 22335:10,14 fashion 22334:7 fault 22334:3,4,7 22374:12 favourably 22331:22 FEBRUARY 22313:1 felt 22320:25 22332:3,4	FFF9 22362:12 22366:9,10 fighting 22320:10 figures 22377:13,20 final 22335:24 22337:9 finally 22336:6 22365:8 find 22333:8,10,14 22334:18 22345:12 22345:19,19 22356:6 22358:17,20 22364:6 22369:14 22371:10 22373:8 22375:5 22380:17 finding 22358:10,13 finish 22384:3 finished 22314:5 first 22318:5,19 22320:5 22323:16 22334:20 22342:5 22347:9 22349:4 22353:16 22355:22 22356:15 22363:6,13 22366:10 22377:16 firstly 22336:7 flog 22343:8 floor 22367:21 flowing 22343:22 follow 22321:10 22340:24 22346:1 22355:22 followed 22336:3 22346:6 following 22320:15 22324:19 22348:18 22353:5 22384:18 follows 22367:24 22368:12 22384:16 forest 22334:24 forget 22342:12 forum 22327:1,18 22369:5 forward 22351:2,9 found 22330:14 fourth 22378:18 22380:2 fourthly 22377:4 frankly 22371:8 frantic 22336:2 front 22331:14 22346:6 22375:1 frustrated 22333:25 full 22333:13 fully 22316:25 22330:25 functions 22362:19 22381:10 further 22327:20 22334:1 22336:24,25 22337:1 22343:21 22344:6 22364:18 22375:23 22378:20 22379:16 22385:19 22385:21 <hr/> G <hr/> gain 22385:4
---	---	---	--	--

<p>game 22331:9 22332:17 22333:21 getting 22332:22 22333:7,14 22375:2 GG1 22340:4 give 22331:21 22350:18 22351:8 22357:9 22360:18 22373:10 22382:16 given 22331:22 22332:12 22335:25 22337:10,13,14,16 22338:3 22352:3 22370:3 22371:4,19 22376:11 22377:1 22382:18 giving 22353:17,22 22376:23 go 22322:4 22327:10,12 22327:13 22332:3 22335:4 22336:21 22341:17 22345:8,15 22347:5 22349:12 22350:4 22351:15,16 22353:23,25 22354:12 22356:22 22359:10,22 22360:9 22361:5 22362:9,11 22362:12,18,20 22363:1 22364:6,7 22371:14 22373:18 22373:22,23 22374:3 22374:5 22375:11 22378:5,17 22382:22 22384:17 Godsend 22342:6 goes 22350:13 22384:16 going 22313:20 22317:2 22318:12 22321:2 22322:1 22323:10,22 22324:6 22327:19 22332:23 22333:22 22339:7 22340:20 22344:7,21 22348:6,17,21 22349:3,4,13,21,23 22351:2,10 22352:15 22353:15 22354:12 22354:13,19 22357:10,15,17 22360:16 22364:15 22364:19 22365:18 22366:7 22372:24 22375:13,24 22379:1 22380:11 golden 22358:24 22360:19 good 22313:8,9 22319:16 22344:3 gotten 22329:4 Graham 22363:18 granted 22322:17 grappled 22336:13 grappling 22341:25 grew 22316:9</p>	<p>grossly 22315:24 22316:5 group 22354:22 grumpy 22332:1 guidance 22360:21 22361:11 guide 22353:18 22360:18,21 guidelines 22362:15 guys 22353:23</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 22316:22 22336:18 22337:13,15 hand 22315:19 hands 22342:4 happen 22327:25,25 22328:1 happened 22320:6 22332:25 22333:11 22334:18 22359:7 22367:2 22375:22 22380:3,3 happening 22343:23 Happy 22313:10 hasn't 22318:11 22352:2 haven't 22349:14,24 hear 22314:19 22351:11 22362:3 22366:11,11 22374:16 heard 22319:9 22320:3 22347:8 22362:3 22374:13 hearing 22320:22 heaven's 22351:4 helicopters 22336:4 22342:1 help 22331:21 22346:13 22347:7 22352:12 22357:1 Hemraj 22313:16 22361:21 22362:4 22363:7 here's 22360:19 he's 22315:7 22318:11 22318:12 22346:4 22349:21 22361:13 22367:22 22368:7,10 HH 22340:4 hierarchal 22383:10 hierarchy 22382:25 22383:5 hindsight 22314:3 hoc 22327:1 honestly 22380:1 hope 22313:3 22332:18 22352:24,25 hoped 22327:25 hopes 22352:25 horse 22340:14,16,23 22343:8 hot 22329:10 hour 22336:18 hours 22340:5</p>	<p>HR 22355:16,22,24 22356:20,23 22357:3 22357:5,15 HW 22377:11</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ignored 22322:6 illegal 22349:9 image 22340:23 immediately 22341:21 impact 22363:21 impasse 22369:15 implement 22339:7 implementation 22330:12 22384:14 22385:13,23 22386:10 implemented 22340:21 implication 22343:5 implied 22338:13 importance 22373:7 important 22330:13,17 22330:19,21 22334:19 22363:19 22366:22 22373:10 22382:17 importantly 22321:5 impression 22314:2,3 22329:4 22330:8,9,18 22330:24 22331:8 22332:18,19 22334:8 22334:9 22339:22 22342:14 22343:6 22371:4 improper 22314:11 22315:24 22316:3,5 improve 22355:25 improved 22355:18 22356:21 inaudible 22339:20 22342:10 22344:2 22368:9 22371:6 22373:1 include 22379:17 included 22368:10 including 22313:14 incorrect 22371:5 independent 22343:11 independently 22342:8 22342:23 indicate 22327:5 indicated 22345:24 22346:17 22356:5 22360:25 indirectly 22357:6 industrial 22361:24 22362:6 inferential 22336:14 22371:12 infers 22371:7 information 22377:24 22378:1 informed 22352:12 22384:15 initial 22360:14 22376:4</p>	<p>initially 22323:8 instance 22364:6 instructed 22384:13,21 22384:24 22385:10 22385:11,22 22386:9 instruction 22314:6,11 22335:24 22337:9,12 22337:14,16 22382:17,18 22385:20 instructions 22385:6 22385:14 integrity 22350:15 intend 22330:22 22359:10 interacted 22320:1 interacting 22320:8 interaction 22319:21 22321:1,15 22345:16 22353:24 22355:9 interactions 22319:4 interested 22324:8 22326:11 22329:25 22332:17 22333:10 22333:21 22334:2 interpose 22330:7 interrupt 22365:10 intervention 22372:2,5 interventions 22344:25 22375:6 intimidation 22377:7 22378:23 22379:2,9 22379:23 invitation 22353:23 22361:10 inviting 22360:9 involved 22317:16 22355:17 22375:20 22376:5,17 22380:16 involving 22361:23 22362:6 22366:14 irregular 22315:24 22316:5 isn't 22338:14 22355:11 22359:13 22364:2 22386:8 issue 22314:11,21 22316:9,17,18 22317:5,6,14,21,21 22318:1 22319:5 22329:22 22331:4 22333:22 22356:24 22357:15 22359:1 22362:9 22363:3 22373:8,21 issued 22314:6 issues 22329:18 22341:17 22345:21 22355:16,16,22,24 22356:23 22357:3,5,5 22364:9 22368:17,21 it's 22313:19 22315:9 22315:11 22317:8 22322:13 22337:1,5 22338:13 22339:1 22341:15 22343:8</p>	<p>22347:10 22349:13 22349:20 22350:25 22351:10,25 22362:12 22363:24 22364:23 22365:20 22367:15 22374:12 I'd 22368:23 22369:1 I'll 22314:15 22346:3 22346:13 22347:10 22347:21 22354:16 22356:19 22366:8 22371:5 22375:10 22384:10,11 I'm 22313:20 22317:11 22317:18 22335:10 22335:11 22338:4,14 22342:20,22,22,25 22343:3 22344:7,19 22344:21 22346:9 22347:9,10,13,14,25 22350:17 22352:12 22353:15 22354:12 22354:13,25 22356:3 22356:15,16,24 22357:17 22358:6,6 22358:17,19 22359:12,17 22360:14 22362:2 22364:5,14 22365:17 22366:5,6 22367:17 22368:1 22369:18 22371:4,11,15 22372:23 22373:15 22374:13,17 22375:9 22375:12 22377:19 22378:13 22380:2,11 22387:1 I've 22322:4 22335:6 22345:18 22368:6 22369:7 22374:8 i.e 22336:1 22337:10</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>ja 22317:1 22323:6 22325:14 22328:12 22347:25 22350:11 22354:15,17 22359:11 22372:6 22374:25 22380:10 22385:16 22386:4,11 JJJ192 22345:14 22346:5,22 22348:3 22354:15 22363:2 job 22373:12,12 JOC 22328:11 22381:25 22382:11 22384:25 JOCOM 22381:1,13 22382:2,17 22383:15 Joseph 22367:17 juice 22342:15</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keeping 22355:1 kind 22379:7 22382:25 22383:10</p>
--	---	--	---	--

<p>kinds 22329:24 knees 22344:15 knew 22314:14,16 22322:9 22329:7 22350:23 22360:17 22370:23 know 22313:23 22314:3 22318:24 22325:7,19,23 22328:13 22329:8,19 22333:19 22334:1,17 22335:20 22337:12 22339:5,6 22340:16 22342:24 22347:3 22351:4,11 22352:2 22352:19 22354:20 22355:7 22358:11 22363:12 22364:1 22368:8 22370:4,20 22370:22 22371:15 22372:13 22373:3,6 22373:16,23 22374:21 22377:4,5 22377:16,22 22378:6 22378:7,9,12,21 22380:3,7 22381:13 22383:3 knowledge 22322:7 22367:5 22375:8 22377:9 known 22314:9,12,17 22322:9 22367:25 22368:13 knows 22364:11 22380:4 koppie 22322:4 22324:4 22328:18 22329:10 22335:25 22336:15,16 22341:22 22345:15 22373:23</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 22323:24 22324:15 22324:16 22381:9 labelled 22367:1 labour 22316:18 22317:6,7,14,14,21 22317:22 22345:21 22355:16 22366:13 22366:14 lack 22338:2 22344:24 ladies 22313:11,18 language 22315:10,11 late 22379:12 launched 22328:8,15 22332:23 law 22329:12 22350:21 lay 22326:15 22327:15 22327:19,23 22332:3 22379:9 laying 22326:16 lead 22360:8 leaders 22354:22 22368:16,20 learned 22319:3</p>	<p>22370:24 leave 22326:1 22341:19 22352:14 22375:11 leaving 22352:14 led 22340:24 left 22336:1,2 22337:10 legal 22383:10 legitimising 22349:9 lemon 22342:18 let's 22335:3 22336:17 22336:21 22352:6,7 22355:15 22362:8,25 22365:18,19 22366:18 22372:24 22372:25 22374:4,13 22374:17 22375:11 Let's 22324:11 level 22344:10 levels 22383:5 Lieutenant 22377:6 22384:21,25 22385:21 light 22385:14 likewise 22377:14 line 22346:22 22348:5 22349:20 22354:15 22354:15 22357:2 22363:7,10 22367:12 22367:16,17 22371:24 22383:17 lines 22367:13 linked 22344:24 list 22382:24 listen 22320:17 22353:22 listened 22331:22 listening 22333:13 literally 22342:6 little 22350:18 22365:17 live 22352:24 LLL8 22378:25 local 22316:9 logic 22371:12 logical 22355:14 22360:23 22376:6 long 22340:12 22353:25 22384:7 longer 22341:22 22365:17 Lonmin 22318:6,19,24 22319:12 22322:15 22322:22,23 22323:10 22324:5,20 22332:14 22335:12 22345:7 22348:5,10 22349:5,6 22350:12 22351:16 22353:10 22355:20,20 22356:3 22356:11 22357:24 22358:2,9 22359:9,12 22360:1,2,4,14,25 22361:4 22366:21,23 22366:24 22367:23 22368:11,18 22369:6 22369:13,22 22370:3</p>	<p>22370:6,15 22371:14 22373:3,7,8,22 22374:22 22375:4,7 22376:22 Lonmin's 22355:21 22361:3 22370:23 Lonmin's 22326:7 look 22324:11 22331:19 22346:21 22350:19 22351:4 22353:7 22364:14 22370:15 looking 22331:3 22334:19 22336:24 lot 22336:18 L158 22326:6</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 22335:5 Magidiwana 22320:25 22321:4 22358:25 Magidiwana's 22321:8 22321:10,22 main 22363:22 maintain 22329:12 22356:12 22373:12 Major 22383:8 22384:13,15,18,21,24 22385:2,11,19,23 22386:2,8,9 making 22320:19 22323:1 22325:15 22326:2 22328:22,25 22342:23 22358:16 22358:20 22361:8 22363:20 22380:1 male 22341:20 man 22324:8 management 22322:15 22324:20 22326:7 22327:1,18 22329:17 22335:13 22347:12 22357:9,10 22364:17 22366:13,22,23,24 22367:23 22368:12 22369:4,13 22371:25 22372:3 22373:15 22375:4,7 Marikana 22316:9 married 22329:8 massacre 22316:10 material 22325:23 Mathunjwa 22313:22 22313:23 22314:4,10 22320:18 22322:1,3 22322:13,18,25 22323:4,9,20 22324:19 22325:8,12 22325:15 22326:3 22327:2,10 22328:10 22332:2,9 22333:23 22333:24 22342:5 22344:10,14,16 22367:18 22369:20 22370:1,16,24 Mathunjwa's 22343:14</p>	<p>Mathunjwa's 22326:21 22328:6 22334:3 matter 22315:10 22331:3,20 22333:3 22372:14 matters 22330:17 22361:23 22362:5 mean 22314:1 22322:21 22338:13 22364:9 22379:25 meaning 22366:11 means 22315:10 22330:3 22332:15 22346:16 22349:10 22354:21 22381:4 meant 22348:23 media 22321:10 22327:18 22357:8,9 meet 22322:18 22335:12,22 22368:15,20 meeting 22327:1 22337:15 22339:3,6 22339:23 22363:10 22363:25 22368:21 22373:6 22384:15 meetings 22322:14,14 22322:16 22325:9 22356:4,9,9 22358:12 22374:11 members 22319:11 22380:5 mention 22320:12 22385:2 mentioned 22329:15 22374:9 Merafi 22378:4 mere 22355:1 merely 22342:23 Mere's 22340:4 message 22341:19 met 22321:2 22322:18 metaphor 22343:7 Microphone 22339:20 22342:10 22344:2 middle 22343:25 22354:16 22365:11 22366:17 22367:12 22384:17 mildly 22344:23 mine 22366:12 minute 22383:7 minutes 22340:5 22352:7 22383:4,7,13 22385:15 MIRRIAM 22313:5 22366:1 misalignment 22353:20 misled 22318:6 missed 22313:21 22342:2 mission 22313:22,24 22314:4,4,10,17 22322:21 22327:2 22328:7,8,15 22329:13 22333:25</p>	<p>22342:7 22343:14 22344:17 missions 22342:4 22343:11,11 22344:23 22345:4 mistake 22323:20 22361:8 mistakenly 22323:17 misunderstanding 22332:20 mobilised 22316:13 Mokwena 22335:9,13 22335:18 22336:7 22341:20,21 22345:14,23 22346:17 22348:4,5 22348:20 22349:8,19 22353:6 22354:14 22356:22 22357:14 22361:15,17,18 22363:3 22367:19,21 22369:6 moment 22330:11 22331:9 22336:24 22350:5 Monday 22348:10 22356:9 22383:23 22387:1,2 money 22354:20 morning 22313:8,9 22322:3 22324:21 22326:8 22354:2 22355:14 22369:5 22383:23 22387:2 motives 22316:4 mountain 22368:15 move 22341:12 22342:19 22343:9 22351:1,8 22380:9 movement 22336:3 22342:1 moving 22337:19 22365:6 22372:1,1,8 Mpembe 22320:6,9,11 22323:17 22326:25 22358:12 22367:9,15 22367:23 22369:2,23 22370:19,25 22371:20,24 22372:11,13,15 22373:1,17 22374:11 22374:17,23 22376:6 22376:16 22379:8,16 22380:13 22382:5,7 22385:3 Mpofu's 22343:25 22344:7 Mpofu's 22327:6 mustn't 22356:16</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 22383:1,16 names 22382:24 national 22316:11,23 22327:1 22339:10 22362:15 22373:6</p>
--	---	--	--	--

<p>nature 22354:3 nearly 22383:21 necessarily 22334:18 22347:19 need 22352:4 22363:14 22363:15 22364:1 22372:1 needed 22328:18 22351:18 22363:22 negotiate 22321:18 22322:6 22323:11 22345:9,24 22346:16 22346:18 22349:11 22349:21 22366:20 22370:16 22374:22 negotiating 22357:7 22369:22 negotiation 22324:6 negotiations 22324:22 22325:2 22326:9,16 22326:17 22329:1 22335:21 22349:15 22366:14 neither 22367:4 neutral 22334:7 never 22345:7 night 22325:1,14 22348:10,10 22363:24 22369:3 22370:3,18,21,23 nine 22350:23,24 22354:18 normal 22376:11 normally 22338:14 22381:10 22382:3,10 22382:13,16,19,22,24 22383:2,17 22385:5,8 NOSAZISO 22313:5 22366:1 note 22386:22 notice 22357:7 notion 22357:23 NUM 22318:20 22367:19 number 22357:5 22378:18</p> <hr/> <p style="text-align: center;">O</p> <p>oath 22313:4 22352:22 22365:25 object 22318:8,11 22345:23 22372:22 objection 22318:15 22344:3,4,4 22346:17 22371:19 objective 22358:13 obligations 22359:14 obliged 22332:3 22349:3 obvious 22359:22 obviously 22341:1 22363:21 22372:12 22382:25 22383:16 occasion 22329:3 22338:15 22370:19 occupy 22380:22</p>	<p>October 22348:12,18 offering 22332:9,24 officers 22316:13 22366:23 22371:13 22375:3,6 offices 22324:20 22326:7 official 22361:22 22362:5 oh 22314:7 22356:24 22357:8 22362:8,12 22366:18 22382:23 okay 22315:1 22316:21 22317:2 22318:13 22321:9,24 22322:20 22333:20 22335:4,10 22336:25 22340:8 22342:12 22344:19 22345:6 22346:3,9 22354:22 22355:3,6 22362:8 22363:3 22364:14 22367:2 22371:21 22372:23 22374:12 22375:4,10 22375:25 22376:15 22378:7 22381:14 omission 22344:22 omitted 22354:2 once 22329:16,25 22333:22 22355:23 22357:11,18 22358:4 ones 22313:13 ongoing 22314:10,17 OO13 22343:15 OO4 22367:11 22368:5 22371:23 open 22348:7,22 22350:18 22353:18 22377:13,17 22378:22 22379:1 opening 22344:13,16 22362:11 22363:2 22367:6 22371:4 operation 22314:22 22316:8,10,11 22332:22 22362:14 22371:25 22376:5,14 22377:14 22378:10 22378:20 22379:17 22379:18 22385:1,8 operations 22376:12 opportunities 22342:3 opportunity 22313:21 22332:10,12 22350:19 22353:21 22354:2 22355:23 22357:18 22358:24 22358:24 22359:7 22360:19 opposite 22346:16 22356:22 option 22340:18 order 22329:12 22345:19 22350:21 22356:13 22373:12 22383:11</p>	<p>ordering 22314:22 original 22380:15 originated 22322:21 ought 22314:17 outcome 22342:3 outcomes 22378:1 outlined 22329:18 outside 22366:25 22368:18 overall 22380:14,17 22381:16,18,21 22382:11,19 22383:2 22383:17 22385:7 owed 22321:1 o'clock 22364:23 o'clock 22323:23 22326:14 22327:10 22327:12,14 22352:17,18,19 22383:24 22387:2</p> <hr/> <p style="text-align: center;">P</p> <p>page 22335:7 22336:24 22346:5,6,21 22348:3 22349:12 22354:15 22356:22 22361:11 22362:11,12 22363:10 22367:13 22368:2,3 22371:23 22384:17,17,21 22386:17 pages 22367:11 pamphlets 22354:8 22361:9 22363:25 para 22378:25 paragraph 22335:7 22336:9 22337:2,4 22341:18 22362:12 22362:13 22363:2 22366:10,18 22378:23,25 22382:24 22384:12 22384:15 22385:11 22385:18,22 22386:7 paraphrasing 22328:13 22362:13 part 22317:23 22322:9 22325:3 22329:11 22353:14,17 22354:14 22364:7 22366:15,22 22371:7 22373:1 participate 22349:15 participation 22375:23 22378:20 22379:16 22379:17 particular 22339:15 22385:8 particularly 22335:23 22337:8 22338:1 22352:2 parties 22317:22 22354:19 22367:14 passage 22346:5 22367:12 22369:7 22370:5 22385:22</p>	<p>passed 22352:16 path 22354:11 peace 22314:4 22328:7 22328:15 22331:11 22344:16,23 22351:5 22354:1 22356:13 22357:19 22373:12 peaceful 22342:3,4 22343:12 22344:11 22355:8 22366:13 peacefully 22331:12,21 22351:3,9 22366:21 peacekeeping 22316:17 22317:12 pecking 22383:11 people 22318:24,25 22319:12,13 22322:18 22323:2,22 22326:14 22329:10 22332:14 22334:19 22342:7,23 22348:5 22348:10 22350:6,22 22350:24 22351:1,16 22352:6 22354:18 22355:3 22356:3 22357:6,15 22358:11 22358:24 22359:23 22360:1 22364:11 22370:16 22371:16 22373:7,9,14,18 22374:5 22375:14,16 22375:20,22 22376:4 22376:11,12,19 22377:10,13,18 perception 22350:3,5 22350:10 permissible 22316:4 permit 22368:24 person 22323:11,12 22329:8,23 22331:11 22334:21 22341:20 22349:6 22352:13 22356:11 22359:18 22364:15 22373:3 22381:11,18 22382:10,11,18,22 22383:1 22385:5,6,13 personal 22344:22 22358:9 personally 22345:10 22374:8 persuade 22366:23 22367:7 22374:2,3,5 22374:22 22375:4,6 persuaded 22373:3,17 22373:21,22 persuading 22371:13 22371:14 pertinent 22337:6 Phatsha 22320:25 phone 22313:3 photograph 22336:16 photographs 22340:3,5 22340:6 photos 22319:18,18 phrases 22372:20</p>	<p>picture 22341:25 22374:14,18 piece 22337:5 place 22341:23 22343:14 22353:4 22361:10 22365:5 22384:19 placed 22326:20 places 22336:16 plan 22327:18 22331:10 22355:23 22363:14 22380:16 plane 22352:13 planned 22328:1 22352:18 plans 22353:8,10,20,23 22354:7,9 play 22364:7 played 22330:23 please 22317:9 22326:22 22329:17 22335:16 22336:10 22344:1 22360:9,18 22360:21 22367:21 22377:15,25 22382:22 plural 22335:19 22375:4 point 22323:25 22325:3 22325:15,17,24 22326:2,14 22328:19 22328:21 22335:25 22336:14 22337:10 22339:5 22340:9,17 22341:4,6 22342:2,11 22342:23 22344:8 22345:15 22348:2 22349:4 22351:22 22365:8,11 22366:6,8 22367:4 22369:17 22372:10 22373:13 22373:14,14,14,14,15 22373:19 22375:23 22378:17 22379:14 22380:2,2 22384:1 22385:24 22386:8,13 points 22360:5 police 22316:4,13,16 22317:12,19 22319:11 22320:6,17 22320:23 22321:23 22335:18 22344:10 22344:13,15 22350:15 22353:10 22355:7 22356:18 22357:14,22,23 22359:14,18 22360:1 22361:2,4 22366:12 22366:19,23 22371:13 22373:16 22375:3 policeman 22373:16 22374:22 police's 22359:13 policy 22362:5 22363:17</p>
--	---	---	--	---

<p>political 22314:22 22315:6,23 portions 22384:10 position 22349:10,20 22350:12 22361:22 22367:22,23 22368:11,12,20 22380:14,22 22381:21 positions 22357:6 22380:23 possibilities 22339:1 possibility 22328:1,2 possible 22317:8 22327:15 possibly 22375:21 power 22345:12 22374:10 practice 22376:12 preferred 22355:8 premature 22318:16 premised 22357:23 prepared 22331:20 22335:22 22351:1,14 22358:17 22366:25 22368:22 22370:16 prescripts 22362:14,19 22381:15,21,25 presence 22370:18 present 22322:16,22 22378:10 22382:14 22383:16 presented 22359:7 presents 22358:21 presidents 22369:13 press 22357:7 pressure 22347:12 22349:10,11 22357:24 presumably 22352:21 22363:18 Pretorius 22384:24 22385:20 prevails 22357:19 prevented 22381:17 prevented 22344:25 22345:2 previous 22325:1,14 22348:10 22349:12 22356:4,9 22369:7 22370:3,21,23 previously 22343:20 22370:7 prima 22350:16 primary 22316:16 22317:12 principles 22345:20 probably 22335:17 problem 22318:7,18,20 22327:6,8 22331:12 22331:21 22341:9,14 22341:15 22350:21 22351:3 22356:6,11 22356:11 22358:11 22358:14 22359:23 22360:22 22371:3</p>	<p>22386:19 procedures 22362:14 proceed 22325:21 22340:18 22344:1 22384:14 22385:12 22385:23 22386:10 PROCEEDINGS 22313:1 process 22326:17 professed 22357:12 progress 22363:16 promoting 22369:14 property 22368:18 proposal 22333:2 proposals 22335:19,20 proposing 22365:3 proposition 22318:12 22321:13 22333:5,11 22365:13 propositions 22366:7 protect 22351:18 protection 22351:15,18 protesters 22319:23 22345:17 22366:20 22366:24,25 22367:2 22374:23 22375:5,7 protestors 22324:23 22325:16 22326:10 22329:16,24 proves 22367:14 provide 22330:3 22332:15 provincial 22313:4 22316:10 22335:18 22336:8 22341:3 22352:22 22365:25 22369:2 22382:16 22384:13 22385:12 22386:9 provoked 22350:7 pulled 22340:22 purple 22331:14 purpose 22323:22 22325:24 22347:2 put 22318:11,18 22321:25 22324:17 22325:3 22327:7,7,13 22327:17 22333:5,12 22334:7 22335:19 22336:6 22340:22 22342:25 22343:1 22344:4,5,6,23 22347:10,11 22348:2 22364:15 22366:7 22367:4 22371:13 22372:11,14,18,21 22380:15,15 22382:25 22385:4 putting 22315:22 22321:14 22324:10 22325:17,20,24 22329:14 22339:2 22344:20 22347:25 22350:17 22357:23 22365:12 22373:17</p>	<p style="text-align: center;">Q</p> <p>quagmire 22359:21 quarter 22352:16,20 22383:21 question 22317:10 22319:16 22321:19 22325:20 22326:23 22336:6,21 22343:18 22343:19 22345:25 22346:2,6,7 22353:5 22358:5 22360:13 22361:14 22362:3,4 22368:23 22369:1 22372:17,21,22 22373:17,22 22374:8 22374:13 22379:14 22383:14 22384:11 questioning 22369:17 questions 22343:22 22344:20 22361:19 22366:3 22375:13 22386:15 quick 22366:8 22384:10 quickly 22362:9 22375:12 22384:8 quiet 22355:1 quite 22324:17 22327:7 22332:24 22339:18 22349:20 22350:12 22350:25 22357:5 22365:17 22371:8 22378:25 22379:13</p> <p style="text-align: center;">R</p> <p>raise 22371:18 raised 22353:16 22362:10 reaction 22330:19 read 22354:17 22366:8 22366:18 22367:16 22369:7 22375:2 22384:10 reading 22354:15,16 22356:25 22385:3 real 22318:7 22342:2 realised 22328:2 22331:19 22332:8 realistic 22365:19 really 22330:11,15,19 22330:20 22339:23 22344:4 22347:2 22350:6,6 22359:9 reason 22317:24 22318:2 22324:1,3,5 22324:22 22325:16 22326:9 22337:11 22342:21 22344:19 22345:7 22348:7,22 22363:25 22378:18 22380:12,12 reasoning 22336:14 reasons 22330:13 22333:25 22355:2 22360:16 22363:22</p>	<p>22378:19 recap 22313:22 received 22376:21 receiving 22385:6 recognition 22359:2 reconstruction 22337:17 record 22316:21 22326:1 22359:8 recorded 22345:14 22385:14 red 22313:11,14,18 refer 22370:2 reference 22325:14 22330:6 22344:14 22363:2 22367:18 referring 22340:3 22346:4 22348:23 refers 22371:7 22372:2 reflected 22326:5 reformulate 22372:21 refrain 22319:23 22320:1 22322:8 refused 22366:24 refusing 22322:5 regard 22343:15 22379:24 regards 22361:22 22362:5 reinforces 22331:7 rejected 22357:5 relation 22350:20,20 22361:1 relevance 22379:14 relevant 22367:12 22379:24 remains 22356:10 remember 22319:10,14 22320:13,20,22 22321:7,22 22322:12 22324:14 22325:9 22326:19 22336:6 22346:19 22347:16 22348:9,12,18,19 22353:3,12 22354:7 22354:12 22359:2 22362:1 22364:4 22370:9,10 22375:13 22376:1,2 22377:8 22386:22 remembers 22336:13 remind 22316:24 reminder 22317:2 reminding 22356:8 removal 22375:14,16 22375:22 22376:7,16 22380:13 remove 22318:2 22376:12 removed 22376:18 22378:19 22379:16 removing 22376:4 22380:16 reneging 22325:2 repeat 22317:9 22346:2 22346:7</p>	<p>repeated 22346:1 repeatedly 22319:22 22322:10 replete 22359:9 replying 22367:22 report 22376:21,23 22377:1 22384:25 reported 22323:4,16 reporting 22320:11 reports 22322:14 22376:19 representative 22321:16 representatives 22351:8 22366:13 request 22319:6 22335:12 22371:24 22372:3 requested 22345:7 resolve 22317:5,21 22358:25 resolved 22318:2 resolving 22317:4 respect 22321:18 22343:14 22366:7 22372:19 respond 22351:12 22361:7 responded 22324:19 22326:6 response 22324:7 22326:11 22335:17 22371:11 responsibility 22351:17 22358:10 22359:6,13 result 22333:8 resumes 22313:2 22352:9,10 22365:23 22365:24 return 22341:22 reverend 22329:7 revert 22375:24 right 22315:8 22316:7 22316:15 22330:5 22332:5 22339:6,18 22339:19,21 22348:9 22349:2,4,24,25 22351:10 22359:12 22363:9 22365:5,17 22368:22 22374:4,9 22376:15 22382:8 22383:7 rightly 22324:3 rights 22349:14 root 22316:17 22317:14 22355:9 Roots 22379:2,22 round 22314:20 22365:7,13 22384:1 rounded 22366:6 rude 22328:20 22329:3 22329:5 22330:18 22338:6,14,14 22342:8,12,14 rudeness 22342:11,18 22342:22 22343:6</p>
--	--	---	---	---

run 22348:17 22352:16 22352:20 R12 22321:2 22359:5	22348:7,8 22352:17 22354:23,24 22362:17 22363:4,4,5 22363:11,11,12 22366:15,16 22367:10 22370:1 22371:3 22377:11 22381:9 22383:6,12 seen 22315:15 22346:25 22350:8 self 22317:3 Semenya 22345:25 22346:7,11 22359:8 22360:5 22367:8 22371:18 22372:22 22373:2,20,25 senior 22348:5 22349:6 22366:23 22371:13 22375:3,6 sensible 22329:23 22379:15 sentence 22324:18 sentiment 22321:5 Seoka 22320:18 22328:8,10 separate 22328:7,14 sequence 22367:3 sequencing 22356:18 22356:18 serious 22331:20 22350:21 service 22366:12 services 22383:10 set 22382:17 she'd 22337:16 22338:3 22339:9 she's 22315:14,16 22338:12 22342:14 22343:6 shortcut 22317:4 shorthand 22313:21 shortly 22336:1,17 22337:10 22340:25 shouldn't 22361:3 show 22314:16 22376:13 22384:19 showed 22319:18 sick 22335:10,14 side 22338:3 22359:21 22359:22 22360:20 22360:20,22 22363:14,15,20 sides 22359:19,20 signs 22376:13 similarly 22316:2 simple 22360:21 simply 22326:2 22334:23 22349:5 22358:24 22359:1 22372:10 22376:17 simultaneously 22367:14 Sinclair 22363:19 single 22319:23 singular 22322:8 situate 22341:17	situation 22317:4,20 22354:17,18 22355:11,18,22,25 22356:20,21 22357:16 slide 22324:11,16 solution 22343:12 22344:11 22345:12 22345:20 22355:8 22358:11,13,21 22372:4 solutions 22356:6 22358:17,21 22371:10 22375:5 solve 22331:12,21 22341:13 22345:20 22351:2 22355:15,21 22356:6 22369:15 solved 22341:9 22359:23 22360:22 somebody 22319:14 22335:15 22385:3 sorry 22330:7 22336:5 22340:2 22341:8 22343:13 22351:23 22352:17 22356:24 22358:6 22360:13 22362:2 22363:10 22366:5,9 22368:1 22369:18,19 22382:23 22386:8 sort 22335:11 22355:24 22357:15 22364:20 sorted 22338:22 22356:20,24 22357:4 so-called 22326:20 22327:14,22 speak 22321:17 22326:1 22327:10 22336:7 22360:16 22366:21 22367:19 22367:19,21 speaking 22367:14 22369:3 specific 22358:21 22375:5 specifically 22345:13 spend 22336:18 spending 22357:18 spoke 22322:13 22328:9 22332:13 22337:18 22345:11 22370:4 22376:9 spoken 22367:15 spurned 22345:4 stable 22340:24 staff 22380:5,24 22381:4,10,11,12 stage 22337:19 22339:7 22340:18 22350:23 22353:13 22361:10 22365:16 stages 22366:12 stance 22360:7,15 standard 22362:14 standing 22369:25	start 22318:5 22351:21 22354:19 22356:23 22357:3,6 started 22316:9 22337:15 22355:8 starting 22346:22 starts 22363:10 statement 22335:5 22336:9 22341:16,17 22344:14,16 22355:5 22357:7 22362:11 22367:6 22371:5 22375:2 22378:15,24 22379:12 statements 22358:16 22358:20 stead 22335:16 step 22372:21 stop 22326:17 22344:7 22350:24 stopped 22354:14,16 stopping 22361:19 strategy 22361:1,2 strenuously 22344:22 strike 22350:7 22361:6 strikers 22319:4,19 22320:8 22321:23 22322:10 22327:11 22327:15,23 22332:3 22345:8,24 22347:5 22350:5 22351:6,7 22353:24 22357:24 22371:14 striker's 22321:14 strong 22335:25 22337:9 stronger 22340:10 22347:10 22386:1,7 strongly 22347:25 structures 22367:1,25 22368:13,16,22 22381:15 stuff 22357:8 subgroup 22379:3 substantially 22338:25 succeed 22327:2 suddenly 22354:19 suggest 22372:20 22386:21 suggested 22351:25 suggestion 22371:6 22376:4 summarised 22325:18 summarises 22315:8 summary 22324:12 22325:22 22332:25 supply 22377:25 support 22372:9 supports 22372:8 suppose 22379:7 supposed 22323:21 22354:10 22364:10 22364:12 22373:9,11 22382:4 22383:4,18 supposedly 22363:10 sure 22324:9 22328:16	22330:22 22338:4,14 22346:9 22356:3 22365:18 22377:12 22377:19 22378:13 surely 22322:8 22358:15 suspect 22327:11 22330:14,18 s.u.o 22313:5 22366:1	T table 22349:25 tactical 22340:18 take 22320:7,7 22327:20 22331:12 22335:25 22337:9 22349:10 22352:1,6 22352:15,19 22354:2 22356:19 22361:10 22363:1 22365:4,8,15 22365:16 22372:21 22374:14,17 22383:23 22385:19 22385:21 22386:6 taken 22315:23 22316:3 22333:14 22340:15,25 22356:8 22360:14 22377:11 takes 22340:6 talk 22319:6,17,24 22320:10 22323:2 22330:15 22331:2 22339:3 22346:18 22347:5,12,15 22348:6,21 22349:3 22349:22,23 22351:5 22351:6,7,15,16 22354:13 22355:3,16 22356:16 22357:10 22357:15 22359:4 22360:1 22364:6,7 22370:11 22373:18 22374:5 talking 22323:22 22325:8,12 22326:25 22326:25 22340:1 22351:20 22353:9 22354:8,19 22356:7 22363:23 22364:5 22368:7 22371:16 22373:9 task 22362:21,22 tea 22352:15,17,19,20 22365:4,15 telephone 22369:4 tell 22323:21 22324:7 22328:20 22330:8 22347:2 22350:16 22351:16 22356:3 22369:3,5,8,10 22377:16 22378:22 telling 22323:9,15 tells 22372:12 ten 22380:3 tends 22372:9 term 22319:25
--	---	--	---	---	---

<p>terms 22316:4 22363:14,16,17 22381:15</p> <p>thank 22313:8,12,14,15 22315:21 22316:2,15 22317:1 22318:17 22321:24,24 22325:25 22326:18 22335:2 22340:1 22341:10 22352:8 22362:25 22365:13 22365:22 22371:1,2 22375:10 22379:4,4,5 22383:20 22384:6</p> <p>that's 22315:7,21 22317:15 22319:8 22321:4,19 22323:8 22338:15,24 22339:11 22340:22 22343:6,17,22 22349:17 22350:1,7 22353:2,24 22354:3 22354:25 22358:1 22360:6 22361:8 22365:5 22367:18,19 22368:23 22369:16 22371:3,4 22372:14 22372:17,23 22375:1 22375:23 22378:11 22378:14,23 22381:8 22381:13 22385:24 22386:7,7</p> <p>thereabouts 22336:17</p> <p>there's 22342:15 22343:18 22344:14 22348:6,17,21 22349:22 22358:22 22361:19 22365:19 22367:11 22368:23 22373:13,14,20,22 22374:25 22381:15 22381:21,25 22385:2</p> <p>they're 22340:4,5 22364:12,19</p> <p>they've 22353:25</p> <p>thing 22327:7 22329:9 22342:25 22347:11 22351:9 22353:7 22355:15 22358:7 22359:20 22360:23 22362:1 22366:18 22375:5 22381:16,25</p> <p>things 22315:15 22320:9 22329:24 22330:20 22333:15 22334:14 22337:19 22344:4 22352:18 22357:13 22372:7</p> <p>think 22315:10,14 22319:14 22321:4,16 22321:19 22323:7,19 22325:22 22327:6,8 22330:20 22336:12 22336:15 22337:1 22338:2,13,22,25 22339:4,22 22341:3,8</p>	<p>22341:24 22342:13 22342:15,19 22344:18 22346:4 22348:12,25 22350:9 22351:9 22359:25 22361:8,13,18,20 22365:18 22366:9 22367:3 22373:10 22374:10,13 22378:18 22381:9</p> <p>thinking 22330:22 22363:16</p> <p>thinks 22361:18</p> <p>third 22386:7</p> <p>thirdly 22376:25</p> <p>thirsty 22329:11</p> <p>thought 22315:17 22318:3 22322:25 22323:8,13,17 22327:24,25 22330:13 22332:9 22352:14 22354:9</p> <p>threat 22379:1,1</p> <p>threatened 22378:22 22379:8,22</p> <p>threats 22377:1,6 22378:21</p> <p>three 22380:11</p> <p>thrown 22357:8</p> <p>thrust 22325:17,20 22344:15</p> <p>Thursday 22369:5,21 22370:4</p> <p>till 22352:20 22383:23 22387:2</p> <p>time 22314:5 22316:10 22319:12 22321:6 22330:10,15 22331:1 22331:5 22333:14,18 22333:19 22336:7,12 22336:12,18 22337:12,18 22339:4 22339:16 22340:1,6,6 22341:1 22343:24 22347:9 22350:4,5 22352:20 22356:7 22377:9 22386:19</p> <p>times 22320:8</p> <p>timing 22340:19</p> <p>today 22313:11,18,19 22352:12 22365:20</p> <p>told 22318:19,24 22322:15 22324:1,2 22329:7,11 22334:14 22335:9,13 22339:9 22342:21 22348:11 22348:12 22365:3 22366:5 22369:20,21 22370:5,14 22386:3 22386:18</p> <p>tomorrow 22368:19</p> <p>tonight 22368:19</p> <p>top 22383:7,16</p> <p>tracking 22363:23</p> <p>transcribe 22367:15 22368:9</p>	<p>transcript 22320:7 22343:16 22361:3 22362:10</p> <p>trauma 22375:15</p> <p>traumatic 22379:20</p> <p>traumatised 22375:21 22375:21</p> <p>tried 22333:8 22334:24 22344:10 22366:12 22374:2,3,11</p> <p>trigger 22340:21</p> <p>true 22315:7 22323:6</p> <p>trusted 22327:12</p> <p>try 22331:20 22345:12 22352:7 22356:12 22365:19 22371:5</p> <p>trying 22328:22,25 22331:11,12 22333:10 22334:17 22334:23 22357:6 22360:1,25 22363:14 22366:20 22373:8</p> <p>Tuesday 22348:4 22366:19</p> <p>turned 22313:3 22341:21</p> <p>two 22317:22 22320:9 22327:9 22329:14,17 22335:20 22339:1 22340:17 22342:2,23 22343:11,11 22353:10,14 22355:10 22359:19 22366:7 22369:13 22375:13 22377:22</p> <p>two-year 22348:11,17 22348:23 22349:23</p>	<p>22346:10</p> <p>understood 22348:22 22349:1,16 22350:12 22361:15 22370:13</p> <p>undertaking 22370:2,2 22370:7</p> <p>unfortunate 22340:23</p> <p>unfortunately 22317:15</p> <p>unfriendly 22335:23 22337:8 22338:1,4</p> <p>unions 22369:14</p> <p>unknown 22341:19</p> <p>unreasonable 22360:8</p> <p>uppermost 22318:20</p> <p>use 22332:2 22336:13 22358:16,19 22360:6 22372:20 22374:4 22383:4</p> <hr/> <p style="text-align: center;">V</p> <p>Valentine's 22313:10 22313:14</p> <p>Van 22318:8,14 22343:13 22344:2 22360:24 22361:8 22363:3</p> <p>various 22330:13 22366:12</p> <p>Vermaak 22376:21 22377:7 22378:22 22379:10,12,23</p> <p>Vermaak's 22378:24</p> <p>version 22344:10 22357:22</p> <p>view 22350:16 22355:21,21 22356:20 22358:13</p> <p>viewed 22362:19</p> <p>views 22351:14</p> <p>violence 22317:15</p> <p>violent 22317:7</p> <p>visit 22330:14</p> <p>voiced 22346:16</p> <p>voluntarily 22327:16</p> <hr/> <p style="text-align: center;">W</p> <p>wage 22316:18 22319:5 22321:19 22348:16 22348:23 22360:15</p> <p>wages 22348:6,7,21,22 22349:3,21,22,25 22350:20</p> <p>waited 22314:14</p> <p>want 22315:15 22320:10 22324:21 22326:8 22346:20 22352:17 22353:8,20 22354:20 22358:23 22360:6,20 22363:1 22364:6,7 22365:7,10 22367:4 22370:11 22378:16 22386:22 22386:24</p> <p>wanted 22321:15,16 22329:23 22330:11</p>	<p>22333:8,15,18 22335:12 22345:19 22347:3,3,6 22351:15 22363:4,4,4,11,11,12 22373:15 22378:21 22385:1</p> <p>wanting 22322:4</p> <p>wants 22385:1</p> <p>wasn't 22360:14 22361:2</p> <p>wasn't 22330:21</p> <p>water 22329:10,18,22 22330:3,3 22332:13 22332:15 22335:21</p> <p>way 22315:8 22317:20 22318:18 22322:1 22323:4 22330:23 22331:3 22334:24 22338:15,22 22345:19 22349:7,16 22350:8 22351:2 22353:25 22364:10 22369:14 22371:25 22372:7 22373:9 22380:15,15 22385:4 22385:16</p> <p>ways 22373:8</p> <p>weapons 22350:22 22368:14</p> <p>wearing 22313:11,13 22313:18 22331:14</p> <p>Wednesday 22366:19</p> <p>weeks 22379:7,22</p> <p>went 22323:7 22324:1 22336:1 22337:11 22339:3 22344:14 22347:14,19 22364:18 22377:18 22384:18</p> <p>weren't 22330:20</p> <p>WESLEY 22340:2</p> <p>we'd 22352:11</p> <p>we'll 22313:21 22352:15,19,19 22359:11 22365:15 22372:24 22374:19 22378:15</p> <p>we're 22316:25 22336:23 22339:7 22341:18 22348:6,21 22349:3,3,4,10,13,21 22349:23 22352:15 22365:18 22367:24 22368:12,15 22383:4 22387:2</p> <p>we've 22322:6 22342:5 22342:11 22350:21 22350:21,23,24 22351:11 22356:4,15 22357:25 22370:5 22374:18 22384:11 22386:18</p> <p>we're 22331:8 22333:3 22334:17</p> <p>whatsoever 22385:2</p>
---	---	--	--	---

<p>What's 22371:17 whichever 22319:25 whilst 22363:13 whispered 22341:20 who's 22349:5 22382:18 willing 22367:24 22368:12,15 win 22329:23 wish 22343:19,21 22356:6 withdraw 22317:2 22340:23 witness 22325:4,6,6,21 22343:21 22346:8,9 22352:2,3,5 22360:25 22361:14 22366:3 22372:11,18,22 22380:1 22385:22 22386:3 won't 22320:7 22344:1 22350:4 22372:22 word 22323:9 22325:11 22344:25 22360:6 22374:4 words 22315:2 22317:6 22321:2 22324:4 22341:24 22355:9 22358:9,18 22359:2 22370:7 work 22314:25 22316:4 22350:15 22359:3 workers 22335:9,14,16 22335:22 22341:19 22346:18 22347:3,12 22347:15 22351:17 22354:20 22356:12 22358:3,22 22359:10 22360:17 22361:5 22364:18 22368:18 22373:4,18,19,19 22374:6 working 22382:8 worse 22347:13 wouldn't 22378:22 22379:15,23 wouldn't 22325:7 written 22355:5 wrong 22314:4 22330:9 22330:24 22332:18 22334:8 22343:18 22350:4 22351:11 22368:6</p>	<p>22320:10,20 22322:24 22339:18 22352:22 22365:25 22377:5 you've 22346:25 22350:24 22352:3 22369:21 22370:14 22370:17,17 22371:15 22374:13 22374:14</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zone 22341:24 ZUKISWA 22313:5 22366:1</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>000 22350:22 22357:9 09:06 22313:2 09:26 22323:21 09:45 22335:3</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 22337:14,15 22363:10 22363:10 22371:23 1:30 22340:25 10 22320:8 22340:7 22341:1 22350:23 22352:7 22354:15 22367:13 22377:22 10:05 22348:8 10:31 22352:10 10:50 22362:4 100% 22326:20 22327:17,24 11 22335:7 22352:16,17 22352:18,19 22364:23 22365:1 11:30 22365:19 11:39 22365:24 11:59 22376:20 12 22335:22 22337:2 22352:20 22357:9 22359:1 22367:17 22378:24,25,25 22383:22 12:15 22352:15,16 12:30 22352:12,13 13th 22356:5 22375:15 22375:20,22 22376:18 22377:14 22378:10 22379:3,21 22380:16 13:40 22336:16 14 22313:1 22340:5 22341:18 14th 22320:16 22360:17 22366:19 15 22362:12,13 15th 22320:16 22322:14,22,23 22323:12,14 22325:10,13 22366:19 15.5 22362:20 15:15 22385:1</p>	<p>15:30 22385:2 158 22324:13,15,16 16th 22320:16 22322:4 22377:14 22379:18 17 22367:16 18 22371:24</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 22339:13 22340:4,7 22341:1 22346:22 22348:6 22382:24 22384:18 20 22339:13 2013 22348:12,12 2014 22313:1 22 22366:10 25 22357:2,2 27 22367:11,13 22368:3 22368:5 28 22367:11</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 22335:7 22339:7 22340:19 22350:22 22356:22 22361:11 22384:12 22385:11 22385:22 37 22368:4</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 22346:5,21 22348:3 22354:15 22384:15 40 22340:5 44.3 22366:17</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>500 22321:2 22359:1,5</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 22362:11,13</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 22349:20</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 22323:22 22326:14 22327:10,12,13 22354:15 22367:13 22367:13 22383:23 22387:2</p>		
<hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 22348:18 years 22380:4 yesterday 22317:3 22322:7 22323:2,7 22326:12 22352:11 22370:7 22375:12 22376:9,10 you'd 22346:7 22351:3 you'll 22368:24 22387:1 you're 22313:4</p>				