

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 260

22 JULY 2014

PAGES 32771 TO 32807



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<p style="text-align: right;">Page 32771</p> <p>1 [PROCEEDINGS ON 22 JULY 2014] 2 [09:08] CHAIRPERSON: The Commission resumes. As 3 soon as the microphone comes on, on the other side, would 4 you please tell the witness that he's still under oath, and 5 then Mr Mpofu will continue with his cross-examination. 6 MR X: [s.u.o. through interpreter] 7 MR MAHLANGU: Confirmed, Chairperson. 8 CHAIRPERSON: Thank you, Mr Interpreter. 9 Mr Mpofu. 10 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 11 Thank you, Chairperson. Good morning, Sir. 12 MR X: Morning. 13 MR MPOFU: How are you today? 14 MR X: I am right, Mr Mpofu. How are 15 you? 16 MR MPOFU: I am also well, thanks. 17 Right, Mr X, yesterday I suggested that – 18 CHAIRPERSON: Excuse me, Mr Mpofu, I'm 19 sorry, but could that light be turned off? I understand 20 why the TV people would like it, but in fact it's very 21 disturbing for us. Yes, I'm sorry, I hope it doesn't 22 interfere with the quality of the pictures that you're 23 taking. Yes, Mr Mpofu, I'm sorry for interrupting. Thank 24 you for turning out the light. 25 MR MPOFU: Thank you, Chairperson. I was</p>	<p style="text-align: right;">Page 32773</p> <p>1 are concerned with which were on the 11th, Sunday the 11th, 2 and the last one, as you say, on the 16th. I've got it 3 wrong. The first deaths were on the 12th and the last 4 deaths were on the 16th, but there were events prior to the 5 12th which we also have to investigate in respect of which 6 we received evidence. 7 MR MPOFU: You understand? 8 MR X: Yes, that is what I was 9 explaining, how those people died. 10 MR MPOFU: Yes, now what I'm saying to 11 you is this; of those deaths, of those 44 deaths only 37 12 are blamed on the police directly. 13 MR X: The police are innocent about the 14 deaths of these people, Chair. 15 MR MPOFU: Yes, no we'll come to that. 16 MR X: [Inaudible, speaking 17 simultaneously with interpreter] 18 MR MPOFU: Ja, so we're going to get to 19 that, ja. So whether they are blamed rightly or wrongly is 20 another matter. I'm simply saying that of those 44 deaths 21 the police are directly implicated in the deaths of 37 of 22 those people. 23 MR X: Sir, the police are innocent about 24 the Marikana happenings. I don't agree to that. I do not 25 agree with you.</p>
<p style="text-align: right;">Page 32772</p> <p>1 saying, Mr X, yesterday I suggested that the bulk of my 2 cross-examination is going to be about showing that you 3 have been called by the police purely as a public relations 4 exercise, which I might add has turned sour and they're 5 quiet, and in that you don't have much to contribute to the 6 core business of the Commission, and I'm just going to 7 continue with that, and I started by dealing with what I 8 called the core events of the Commission, which are the 9 events of the 16th, the core but not the only event 10 concerning the Commission, which are the events of the 16th, 11 and without summarising the evidence of yesterday but 12 coming from it I will argue that as suggested you have 13 nothing to contribute in respect of either scene 1 or scene 14 2, in other words of any of the 34 deaths of the 16th. I 15 just want to put that issue into perspective with you 16 before I ask you questions. You understand that? 17 MR X: I do not understand what Mr Mpofu 18 is talking about, Mr Chairperson. 19 MR MPOFU: Okay. You know that, or you 20 may or you may not know that the Commission concerns 44 21 deaths of various people. Or you might not know the 22 number, but you know that the Commission concerns the 23 deaths of people who died in that period from round about 24 the 9th or 10th up to the 16th, correct? 25 CHAIRPERSON: There are certain deaths we</p>	<p style="text-align: right;">Page 32774</p> <p>1 MR MPOFU: And Mr Budlender - and I will 2 deal with this later – demonstrated clearly – and I will, 3 as I say I will deal with it – that you were not, you were 4 possibly not present on the 13th of, or in the incident that 5 happened on the 13th of August in which three of the deaths 6 implicating the police were involved. 7 MR X: The person who wasn't there is 8 this Mpofu. I have already explained that before. Mr 9 Mpofu shouldn't go back. 10 MR MPOFU: And therefore the 34 deaths, 11 in respect of the 34 deaths of the 16th and the three 12 additional deaths on the 13th, making up the 37 that I spoke 13 about, you have nothing whatsoever to contribute. And I 14 want to put it plainly that in respect of the remaining 15 seven deaths you also have nothing to contribute because 16 when we argue at the end we are going to concede that 17 those, at least five of those deaths can be placed at the 18 door of the protesters, generally speaking, which, because 19 – and let me explain that. 20 Our case will be that the deaths on the 13th, all 21 five deaths on the 13th, even those that might have been 22 perpetrated by the protesters should be laid at the door of 23 SAPS, which triggered that event, and that then leaves out 24 the deaths of Mr Fundi, Mr Mabelane, Mr Mabebe, Mr Langa 25 and Mr Twala. In respect of those deaths, as I have</p>

Page 32775

1 already said, it would seem that those deaths can be placed
 2 at the door of the protesters. Which of the protesters and
 3 under what circumstances is not a matter for this
 4 Commission to determine.
 5 CHAIRPERSON: I don't know whether you're
 6 correct in saying it's not for us to determine under what
 7 circumstances, but I take it what you mean –
 8 MR MPOFU: By that I mean the
 9 legalities –
 10 CHAIRPERSON: What you're really
 11 suggesting is that it's only for us to make prima facie
 12 findings and make recommendations for consideration of
 13 prosecution and so on. I know one of your arguments will
 14 be, which you've foreshadowed already, that in the case of
 15 prosecutions already pending –
 16 MR MPOFU: That's where I'm going.
 17 CHAIRPERSON: - that's something we can
 18 surely deal with.
 19 MR MPOFU: Yes, Chairperson, that's
 20 correct. Maybe I was summarising it too much. When I say
 21 the circumstances I mean the legalities, whether it was in
 22 self-defence and all that, the conviction or acquittal of
 23 those people. I said firstly the identification of which
 24 specific persons and also whether they are indeed guilty is
 25 not a concern of this Commission.

Page 32776

1 CHAIRPERSON: But you'll forgive me for
 2 saying this, but it's a rather long speech you made to the
 3 witness. I understand sometimes it's necessary to do that
 4 so the witness will follow the question you're going to
 5 ask.
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: But I'm afraid he may not
 8 have followed at all. But anyway, perhaps you could come
 9 to your question now and if we see he doesn't follow,
 10 hasn't followed, then we may have to step back a bit, as
 11 you like to say –
 12 MR MPOFU: Ja. No, that's why –
 13 CHAIRPERSON: - and give him an
 14 explanation.
 15 MR MPOFU: Thank you, Chairperson.
 16 That's why every now and again I'm testing him by asking if
 17 he understands. And as the Chairperson has already
 18 alluded, which I was coming to, in fact in respect of
 19 those, or maybe to be safe let me say most of those five
 20 deaths specific protesters have already been charged, and
 21 so the Commission factually will not and cannot be called
 22 upon to recommend the prosecution of people when they have
 23 already been prosecuted, and whether, as I said, whether
 24 they're going to be found guilty or not guilty is a
 25 separate matter.

Page 32777

1 So the real issue then to come to the, cut to the
 2 chase, is that in respect of the 37 or 39 deaths that SAPS
 3 will be blamed for, by us at least, directly, you have
 4 absolutely nothing to offer the Commission.
 5 CHAIRPERSON: Perhaps you should explain
 6 that that's a conclusion that you make. I think you –
 7 MR MPOFU: That I will argue, yes.
 8 CHAIRPERSON: - it's important to explain
 9 the basis for it so he can deal with it, but he can deal
 10 with just a conclusionary statement like that –
 11 MR MPOFU: Fair enough. Fair enough.
 12 Ja, and this, what I'm saying, Mr X, is again as I started
 13 with you yesterday, showing you where I'm going to go with
 14 the cross-examination, so that is what I'm going to argue
 15 in relation to why I accepted that you're being called here
 16 knowingly, knowing that you cannot contribute to assist
 17 SAPS in any of its, that it is blamed for, purely as a
 18 public relations exercise, which turned to be a public
 19 relations disaster. And as I said, the tragedy is that
 20 even in respect of the deaths where you participated your
 21 evidence, the quality of your evidence is such that it can
 22 only be a source of further trauma to those families
 23 because it's so riddled with contradictions and –
 24 CHAIRPERSON: You made all those points,
 25 or endeavoured to make them yesterday. I don't know that

Page 32778

1 time is profitably being spent in repeating them. I was
 2 going to allow you a certain amount of leeway to sort of –
 3 MR MPOFU: I'm rounding off, Chairperson.
 4 The –
 5 CHAIRPERSON: Ja, okay, when've you've –
 6 MR MPOFU: Cutting to the chase means I'm
 7 finishing.
 8 CHAIRPERSON: Yes, well. Okay.
 9 MR MPOFU: Okay. Alright, and we will
 10 deal later with the only possible issue of relevance that
 11 you might have been brought here for is the question of the
 12 use of muti and I will show that even on that issue the
 13 quality of your evidence is completely, amounts to a
 14 nullity.
 15 So let's now move – yesterday we dealt with what
 16 you may or may not have been able to observe on the 16th.
 17 I'm now going to go and deal brick by brick, as it were,
 18 with the other dates, which is the starting from the 10th up
 19 to the 16th.
 20 On the 10th, I've already suggested that you lied
 21 about being in the committee of five. You remember that?
 22 CHAIRPERSON: Mr Mpofo, we've had this
 23 before. Some judicial officers sometimes allow counsel to
 24 put to witnesses they've lied. I don't. You gave
 25 inaccurate evidence; what you said wasn't true, that you

Page 32779

1 can put. I don't like the use of the word "lie."
 2 [09:28] MR MPOFU: Okay, because the Chairperson
 3 doesn't like a certain word. Your evidence on your
 4 involvement in the committee of five was false, the
 5 question was, you remember that I suggested it, I didn't
 6 want to –
 7 CHAIRPERSON: He's starting to answer I
 8 think, you can't stop him. Yes, what do you want to say Mr
 9 X about what counsel has put to you?
 10 MR MPOFU: Do you remember that I
 11 suggested that yesterday?
 12 MR X: I don't understand what Mr Mpofu
 13 is saying, Chairperson. Mr Mpofu is trying to smear the
 14 police with these things, the police are not guilty of
 15 these things of Marikana, they are innocent.
 16 CHAIRPERSON: Mr X, never the speech Mr
 17 Mpofu made earlier, he's now finally cut to the chase as he
 18 puts it. The question he asked you was – he didn't deal
 19 with that topic, what he said to you was what you had said
 20 about being a member of a committee on the 10th was not
 21 correct.
 22 MR X: I was, Mr Chairman, I was.
 23 MR MPOFU: Okay well let's – maybe let me
 24 just indulge you with what you – what the Chairperson calls
 25 a speech which I was asking you to put your evidence in

Page 32780

1 perspective about, it's meant to show exactly what – your
 2 mission, you seem to be very determined that your mission
 3 here is to show that the police were innocent, correct?
 4 Right?
 5 MR X: Just repeat the question, I don't
 6 understand you clearly.
 7 MR MPOFU: Your main mission for coming
 8 here is to demonstrate that the police were innocent, as
 9 you have said about ten times. Correct?
 10 MR X: I said I've come to explain
 11 everything. The mine is innocent, I've come to explain it
 12 thoroughly.
 13 MR MPOFU: Yes well the so-called –
 14 MR X: The mine is innocent –
 15 MR MPOFU: And the police –
 16 MR X: - and the police are also
 17 innocent.
 18 MR MPOFU: Well ja the "speech" was meant
 19 to assist the Commission to understand that that mission is
 20 mission impossible because you are unable as a person
 21 objectively to constitute anything to show whether the
 22 police are innocent or guilty. You just did not observe
 23 the relevant events for which the police are blamed by
 24 people like myself.
 25 MR X: To me it is clear, it is to Mr

Page 32781

1 Mpofu that it is not clear, Chairperson.
 2 CHAIRPERSON: Mr X, the point Mr Mpofu is
 3 putting to you is that on your own evidence you weren't at
 4 scene 2, the koppie behind where a number of the strikers
 5 were shot by the police and you admitted yesterday you
 6 can't help us about because you weren't there. So what Mr
 7 Mpofu is saying on that issue as far as scene, what we call
 8 scene 2 is concerned you can't give evidence to us because
 9 you don't know. It's not your fault, you weren't there,
 10 you don't know. And he's putting, I think he's going to
 11 put it again to you to give you a chance to answer it a
 12 similar point in relation to scene 1.
 13 MR X: I have explained this thing
 14 already, Chairperson, that it is us who attacked the
 15 police. The police are innocent about this thing now of
 16 Marikana. If the police would agree as Mr Mpofu is saying
 17 there will be no fathers to support the children. They
 18 will eat from the mothers.
 19 MR MPOFU: No that is -
 20 MR X: I suggest that Mr Mpofu gets
 21 another person to represent those Marikana people because
 22 it seems as if he is not in a position to. May I also add,
 23 Chairperson, that that expression children only eat from
 24 the mothers, means it's something that is not possible to
 25 happen?

Page 32782

1 CHAIRPERSON: Would you listen to me
 2 please? You are here to answer questions that you are
 3 asked by counsel, you're not here to make comments about
 4 counsel or what their clients should do or who should
 5 appear here for them, that's not your business. Please
 6 refrain from doing that and just answer the questions that
 7 are being asked.
 8 MR X: Thank you, Chairperson, I'm sorry.
 9 MR MPOFU: Yes, no, Mr X, I'm going to be
 10 very patient with you.
 11 MR MATHIBEDI SC: Chairperson, I think
 12 that comment is uncalled for. These are the kinds of
 13 comments that sometimes you know the witness to conduct –
 14 CHAIRPERSON: I didn't quite grasp what
 15 the comment was, but I think the answer is that we don't
 16 need comments from counsel or from the witness. We need
 17 questions from counsel and answers from the witness. We'll
 18 go on much quicker if we do that. I did think it
 19 appropriate for Mr Mpofu to set the scene as it were so
 20 that the question could continue with everybody
 21 understanding and following, but that's now behind us. If
 22 he will ask the questions and the witness will provide
 23 answers we'll all get through this task of ours much
 24 quicker and if the witness misbehaves I will speak to him
 25 again as I have done a moment ago. He has apologised and

Page 32783

1 I've accepted his apology and let's just carry on with –
 2 MR MPOFU: Chairperson, I promise to be
 3 patient with Mr X, but I will not be patient with
 4 interruptions that are directed at me by people who have
 5 allowed their witness to abuse me despite my patience. If
 6 they are not able to bring their witness into order from
 7 what he has been doing since yesterday which I've patiently
 8 ignored then they're the last people to come and lecture me
 9 –
 10 CHAIRPERSON: I hear you but you'll
 11 forgive me when I say that kind of comment from whomever it
 12 comes raises the temperature and doesn't bring it down.
 13 Let's keep the temperature down, I have a few minutes ago
 14 said something to the witness which was designed to protect
 15 you.
 16 MR MPOFU: You have.
 17 CHAIRPERSON: Thanks, let's proceed.
 18 MR MPOFU: Thanks, Chairperson. You've
 19 also confirmed in your statement that on the 10th the march
 20 was peaceful, correct?
 21 MR X: It is so.
 22 MR MPOFU: You can also confirm that the
 23 employer said they would have preferred to talk to you via
 24 the NUM.
 25 CHAIRPERSON: Do you understand the

Page 32784

1 question? What Mr Mpofu is saying is – he wants to know
 2 whether you can confirm, in other words whether you agree
 3 with what he's putting to you, that when you people went
 4 peacefully as you say to the time office on Friday the 10th
 5 and wanted to speak to the employer about this wage
 6 increase that you wanted, because essentially rock drill
 7 operators who were there and the employer said we don't
 8 want – we would prefer to speak to the representatives of
 9 the recognised trade union which acts for the miners,
 10 namely, the National Union of Mine Workers, NUM and he's
 11 asking you to confirm that that's what the employer said.
 12 MR X: The employer said there are people
 13 they are discussing with, they don't talk to us.
 14 MR MPOFU: Yes that's good enough. And
 15 you confirm that you and others at that stage had lost all
 16 confidence in NUM.
 17 MR X: What is he saying? I don't hear
 18 you.
 19 CHAIRPERSON: What he is saying is, I
 20 think he's referring more specifically to the rock drill
 21 operators, but you and your colleagues had lost confidence
 22 in the NUM. You weren't confident that they were able to
 23 present your case properly in respect of wage increases.
 24 Now divide the question in two. Let's leave you out of it
 25 for the moment, your colleagues that you spoke to, who

Page 32785

1 marched with you, were they not happy to have NUM
 2 representing them in presenting their wage demands? Is
 3 that correct? In fact that's in fact why they went as
 4 you've explained.
 5 MR MPOFU: Is there an answer?
 6 CHAIRPERSON: He's sitting thinking about
 7 it. Are you ready to give your answer yet Mr X?
 8 MR X: I'm still thinking about it,
 9 Chairperson. I don't understand it clearly.
 10 MR MPOFU: Do you understand the one from
 11 the Chairperson?
 12 MR X: If you just repeat it, Sir.
 13 CHAIRPERSON: All right let me try again.
 14 A whole number of you, I'm not sure of the exact number,
 15 but a lot of you, hundreds if not more than a thousand rock
 16 drill operators went on the Friday morning to the time
 17 office to ask for more wages, increase in wages. You
 18 didn't ask your NUM shop stewards to go and present the
 19 demands to the employers, you went yourselves. Is that
 20 correct?
 21 MR X: It is correct, Chairperson.
 22 CHAIRPERSON: Now why did you people go
 23 yourselves and not let your shop stewards go for you, the
 24 NUM shop stewards to present your wage demands? There must
 25 have been a reason.

Page 32786

1 MR X: It was a mistake, Chairperson.
 2 CHAIRPERSON: Before you went to the time
 3 office you had a meeting at the stadium didn't you?
 4 MR X: It is correct, Chair.
 5 CHAIRPERSON: And at that meeting you
 6 decided that you wanted this increase to 12 500 a month, is
 7 that right?
 8 MR X: Yes, Chair.
 9 CHAIRPERSON: That wasn't a NUM meeting
 10 that you had at the stadium was it? It was a rock drill
 11 operator's meeting.
 12 MR X: Yes, Chair.
 13 CHAIRPERSON: And normally when you want
 14 more wages, you want an increase in wages, normally that's
 15 a matter that's dealt with by the trade union on your
 16 behalf. Is that correct?
 17 MR X: Yes, Sir.
 18 CHAIRPERSON: You didn't do it this time.
 19 You say it was a mistake, I understand you to be saying
 20 that by which I take it you mean you think now you should
 21 have gone through the union, but there must have been a
 22 reason for making this mistake. Now what was that? Are
 23 you able to give me an answer, Mr X? Before Mr Mpofu asks
 24 the next question you must answer this one.
 25 MR X: My response is that AMCU was

Page 32787

1 there, NUM also was there. It was AMCU that made use of
 2 us. They used us because each and every person has got his
 3 own organisation.
 4 CHAIRPERSON: I tried to do your cross-
 5 examination, I didn't succeed very much –
 6 MR MPOFU: If you go to LLL26 which is
 7 your statement you said, I'm sorry paragraph 4, I'll read
 8 this out and then you tell me if you still stand by that
 9 evidence. You said "The RDOs did not accept the reason
 10 advanced by NUM that it could not negotiate a salary
 11 increase because of the two year agreement that had been
 12 concluded with Lonmin management. The perception was that
 13 NUM was in cahoots with Lonmin management."
 14 [09:48] And in fact that sentiment seems to be – or no,
 15 it is the next sentiment which I've been – I might as well
 16 put it now. Firstly, do you still stand by your evidence
 17 as in your statements?
 18 MR X: I say it, Sir.
 19 MR MPOFU: Yes, and that the implications
 20 of that sentiment is contained in an article which I will
 21 distribute during the tea break, but I want your comment
 22 on.
 23 MR MATHIBEDI SC: Chairperson, I have not
 24 seen the article. I think the same should apply to the
 25 witness. So I have not –

Page 32788

1 MR MPOFU: No, it's not necessary.
 2 MR MATHIBEDI SC: No Sir, it's not a
 3 question of it's not necessary. I think it's not fair to
 4 put an article to the witness that the witness has not
 5 seen.
 6 MR MPOFU: The witness is illiterate
 7 [inaudible, speaking simultaneously with interpreter] –
 8 CHAIRPERSON: Mr Mpofu, no, no, that's
 9 not an answer. We have adopted a practice in this
 10 Commission from early on that if a witness is to be cross-
 11 examined on a document the document is to be shown to the
 12 witness before the cross-examination begins and those
 13 leading the witness are to be entitled to put the document
 14 to the witness. That's what we've done. That's
 15 practically followed throughout.
 16 MR MPOFU: That's fine.
 17 CHAIRPERSON: The way to deal with it,
 18 occasionally documents have come to light when cross-
 19 examination has already commenced. The way we've dealt
 20 with that is we've said the, in those special circumstances
 21 we've allowed counsel leading the witness to consult with
 22 the witness –
 23 MR MPOFU: Okay, Chairperson.
 24 CHAIRPERSON: - even though the cross-
 25 examination has commenced. If you want that to happen I'll

Page 32789

1 allow it, otherwise I'm afraid I won't.
 2 MR MPOFU: No, okay, forget the article.
 3 Would you agree with a view that we're going to argue that
 4 a flexible approach to the wage negotiations during the
 5 strike at Lonmin Marikana might have averted the tragedy on
 6 August the 16th when the police shot 34 people?
 7 CHAIRPERSON: I think that question may
 8 be difficult for the witness to understand. Do you
 9 understand what Mr Mpofu is putting to you? Well, when
 10 it's been translated you can just –
 11 MR MAHLANGU: I had not even translated
 12 the question.
 13 CHAIRPERSON: No, no, it's my fault.
 14 Translate it and then ask him my question whether he
 15 understands what Mr Mpofu is putting.
 16 MR MAHLANGU: Yes, if the question would
 17 again be repeated for me –
 18 CHAIRPERSON: The question was does he
 19 agree with the proposition that a more flexible attitude
 20 towards the negotiations relating to the wages would have
 21 averted the tragedy and not led to the deaths of 34 people.
 22 Do you understand the question?
 23 MR X: I understand, Sir.
 24 CHAIRPERSON: Now what do you say about
 25 it? Do you agree with the proposition that - obviously the

Page 32790

1 people to be flexible would have been the employers, so do
 2 you agree that if Lonmin had been more flexible in the
 3 negotiations regarding the wage demand the tragedy might
 4 have been averted?
 5 MR X: If the question could be repeated.
 6 MR MPOFU: Chairperson, can I just
 7 simply –
 8 CHAIRPERSON: It's your question, Mr
 9 Mpofu, so if you would repeat it. I've tried to explain
 10 it –
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: - in a way that I hoped he
 13 would understand.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: Perhaps you could plough
 16 further on the field that I've already tried –
 17 MR MPOFU: I will, Chairperson. Thank
 18 you. I'll simplify it and then I'll move on if it's still
 19 not answered. The point I'm making, remember we're still
 20 talking about the 10th. Ja, so I'm going to simplify it by
 21 referring it in relation to the 10th, which is what we are
 22 discussing. Would you agree that if, let's say for example
 23 if on the 10th the management had agreed to engage with your
 24 peaceful group of marchers about your concerns about wages
 25 and working hard and so on, that the events which unfolded

Page 32791

1 after that might have been avoided, instead of taking the
 2 position that they would not talk to you?
 3 MR X: We were already told by the mines
 4 that we are going to be given increases of between 750 and
 5 500. The mine said then to us at the time office that
 6 there's an agreement which is still existing, which will
 7 only be, will come up for discussion in 2013. The mine
 8 told us clearly at the time office.
 9 MR MPOFU: Yes, and you think that that
 10 stance of saying there's a two-year agreement and we can
 11 only talk through the NUM did not contribute, or was the
 12 correct thing to do and did not contribute to the events
 13 that followed in the next five or six days?
 14 MR X: That's what the mine told us and
 15 it's something that we knew, that the agreement could only
 16 be discussed the following year. The management also
 17 indicated there are people they talk to about such issues,
 18 there is an agreement that was entered into; let us go back
 19 to work, and they told us our strike is illegal. If we had
 20 gone back to work nothing would have happened at Marikana,
 21 Chairperson.
 22 MR MPOFU: Alright, and so if what the
 23 management was saying was reasonable then why did you not
 24 go back to work?
 25 MR MAHLANGU: I'm sorry, the pronoun

Page 32792

1 "you," is it used with reference to him?
 2 MR MPOFU: Yes. No, it's confusing. No,
 3 I meant it in the singular.
 4 MR MAHLANGU: In singular?
 5 CHAIRPERSON: Mr X, I notice that you're
 6 lowering your head. Are you feeling tired? Would you like
 7 me to take the short adjournment now [inaudible, speaking
 8 simultaneously with interpreter]?
 9 MR X: Oh, it's my stomach that's giving
 10 me problems. I'm suffering from my stomach.
 11 CHAIRPERSON: Would you like me to
 12 adjourn for quarter of an hour to [inaudible, speaking
 13 simultaneously with interpreter]?
 14 MR X: It's running, my stomach is –
 15 CHAIRPERSON: Yes, no, no, I understand.
 16 If we adjourn for 15 minutes that will give you opportunity
 17 to attend to that. Would you prefer that, take a 15-minute
 18 adjournment now? Would you want me to do that then you can
 19 attend to the problem you mentioned? Would you like that?
 20 You nod your head. That means yes, does it?
 21 MR MAHLANGU: He is nodding his head,
 22 yes.
 23 CHAIRPERSON: Alright, you have been
 24 doing it for some time, but [inaudible, speaking
 25 simultaneously with interpreter] you now indicated what the

Page 32793

1 problem is, so we'll adjourn for 15 minutes.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [10:53] CHAIRPERSON: The Commission resumes.
 4 Would you, (a), remind the witness he is still under oath,
 5 and (b), ask him whether he is now ready to proceed? If
 6 the problem has been satisfactorily dealt with.
 7 MR X: I was given some tablets, I'm
 8 feeling better, Chair.
 9 CHAIRPERSON: Good, Mr Mpofo?
 10 MR MPOFU: Thank you, Chairperson. Mr X,
 11 are you feeling a bit better now, Mr X?
 12 MR X: Yes, I'm alright.
 13 MR MPOFU: Okay, you don't want to
 14 possibly come into the hall here to give evidence from
 15 here?
 16 MR MATHIBEDI SC: Sorry, Chairperson, I
 17 think that's not proper.
 18 CHAIRPERSON: No, I don't think that's an
 19 appropriate question, I disallow it, let's carry on.
 20 MR MPOFU: Why, Chairperson?
 21 CHAIRPERSON: He is giving evidence in
 22 terms of the order that I gave in terms of the video link
 23 and what he feels about the matter is not important to me
 24 at this stage.
 25 MR MPOFU: Ja, but that order was given

Page 32794

1 on the basis of his wishes, I must be able to test those
 2 wishes.
 3 CHAIRPERSON: Not only his wishes but the
 4 fears –
 5 MR MPOFU: Ja, but mainly his wishes.
 6 CHAIRPERSON: No, no, mainly the fears
 7 expressed by Mr X and the evidence that they've put
 8 forward, so let's not spend time on that. I suggest you
 9 carry on with the rest of your cross-examination.
 10 MR MPOFU: Alright, now let's go then,
 11 we're done with the 10th now, let's go to the 11th.
 12 CHAIRPERSON: No, you're finished with
 13 the 10th?
 14 MR MPOFU: Yes, Chairperson.
 15 CHAIRPERSON: Well, I would like to ask a
 16 question about the 10th.
 17 MR MPOFU: Okay.
 18 CHAIRPERSON: Do I understand you to say
 19 that you were one of the five representatives who went into
 20 the time office to speak to the employer?
 21 MR X: Yes.
 22 CHAIRPERSON: Now if you look at your
 23 statement, I think it is Exhibit AAAA1.2, it is the lengthy
 24 statement you made in February 2013. Now if you look at
 25 the foot of page 2, paragraph 5, you say the police, the

<p style="text-align: right;">Page 32795</p> <p>1 penultimate line on that page, "The police and the security 2 requested us to send our delegates of five members as they 3 are already nominated. The five delegates preceded forward 4 to meet the police and security. It was said that our 5 delegates were going to meet with the employer, accompanied 6 by the police and security. Our delegates came back 7 accompanied by a white guy, the white guy had our paper 8 demands on his hands." You don't suggest passage that you 9 were one of the delegates?</p> <p>10 In fact it appears clear from what you've said 11 that you were not because you say they came back, so they 12 came back to where you were. What do you say about that?</p> <p>13 MR X: I was explaining, Sir, what 14 happened because we were stopped there at the crossing, the 15 police said we have no right to get near the area there. 16 He went inside and fetched the employer. They came back 17 with him. The white person then took the demands which 18 were written on a cardboard box. He went into the offices. 19 Before he came back from the office we counted for 15 20 minutes and then started approaching the offices. The 21 police stood in front of us at the time office and when we 22 arrived there they had already placed the danger tape 23 through which we could not go. The people who had been 24 with him when he came out of the office who came with us 25 were Bhele and Boo. I'm not changing from there, I'm</p>	<p style="text-align: right;">Page 32797</p> <p>1 representatives were not returning the strikers became 2 impatient and wanted to go inside the office to establish 3 what was happening," is that what happened?</p> <p>4 MR MAHLANGU: He asked me to repeat the 5 question, Chairperson.</p> <p>6 MR X: No, I don't understand that, 7 Chairperson.</p> <p>8 MR MPOFU: Your statement says the 9 following and do you stand by that evidence that, "Noting 10 that our representatives were not returning the strikers 11 became impatient and wanted to go inside the office to 12 establish what was happening," do you stand by that 13 evidence?</p> <p>14 MR X: We counted for this white person 15 from, coming from the corner, we were standing at the 16 crossing, Chairperson, he came to us at the crossing, the 17 white man, when realising from the crossing where we were 18 seated that the white man wasn't coming after 15 minutes, 19 we then got impatient and then when we proceeded, that's 20 when the police blocked us.</p> <p>21 MR MPOFU: Okay.</p> <p>22 MR X: We did not fight on that day.</p> <p>23 MR MPOFU: Alright, I'll take that as a, 24 yes. Now would you agree therefore that that, this 25 impatience that you are talking about is something that you</p>
<p style="text-align: right;">Page 32796</p> <p>1 standing by what I said.</p> <p>2 CHAIRPERSON: The point that I put to you 3 was that according to your statement, the passage I read to 4 you, you didn't suggest that you were one of the delegates 5 who went to meet this employer and then came back, the way 6 you put it in your statement is apparent, it is clear in 7 fact, that you were not one of the delegates and it is 8 fair, isn't it, you weren't?</p> <p>9 MR X: Only two people spoke when we came 10 to the time office, but that white man came out to us and 11 we proceeded towards him.</p> <p>12 CHAIRPERSON: The white man came out and 13 you proceeded towards him. Did you then speak to him 14 outside the time office?</p> <p>15 MR X: Yes, we were inside and then we 16 came out with him.</p> <p>17 CHAIRPERSON: So you actually went 18 inside, did you?</p> <p>19 MR X: The other did not enter there, 20 inside the house, they spoke to him outside.</p> <p>21 CHAIRPERSON: I see, thank you.</p> <p>22 MR MPOFU: Thank you, Chairperson. On 23 the same vein as the chairperson has asked you, if you go 24 to the supplementary statement, LLL26, page 3 thereof, 25 paragraph 8, you say there, "Noting that our</p>	<p style="text-align: right;">Page 32798</p> <p>1 yourself witnessed, correct?</p> <p>2 MR X: Can the question again be 3 repeated? Yes, it was hot outside.</p> <p>4 MR MPOFU: Yes, it was hot outside, okay. 5 Ja, no, that's the point, so that impatience and that heat 6 outside could only be experienced by someone who was 7 outside and not inside?</p> <p>8 CHAIRPERSON: What is your answer to 9 that?</p> <p>10 MR X: Yes.</p> <p>11 MR MPOFU: Thank you, okay, let's to the 12 11th. Now when you left home on the 11th, in your mind you 13 were just going to a meeting near the stadium, correct?</p> <p>14 MR X: Yes, Sir.</p> <p>15 MR MPOFU: You did not know at that stage 16 that you are going to be away for many days?</p> <p>17 MR X: I don't understand the question.</p> <p>18 MR MPOFU: That's fine, I'll ask you 19 another question.</p> <p>20 CHAIRPERSON: I asked the question, I 21 think it is the one that you, did you in fact go, after you 22 left home on the morning of the 11th, that's the Saturday, 23 when did you finally go back home?</p> <p>24 MR X: The agreement that was made there 25 during the time where the charge office, - the change at</p>

Page 32799

1 the time office was that we were going to close the night.
 2 CHAIRPERSON: No, you're not answering my
 3 question, sorry, Mr X, Mr X, you are not answering my
 4 question, let me repeat my question. You say you left home
 5 on the morning of the 11th, the Saturday, is that right?
 6 Never mind what happened in the meanwhile, when did you go
 7 back home?
 8 MR X: I did not go back home.
 9 CHAIRPERSON: No, you would finally go
 10 back home, that obviously means you didn't go back on the
 11 11th, the Saturday. On what day did you go back home?
 12 MR X: I went home after the 16th,
 13 Chairperson.
 14 CHAIRPERSON: Now you can ask your next
 15 question, Mr Mpofo.
 16 MR MPOFU: Thank you. When you left home
 17 what were you wearing, seeing that you were just going to a
 18 meeting?
 19 CHAIRPERSON: Mr X, are you able to carry
 20 on or do you want an adjournment?
 21 MR X: My stomach is worrying me,
 22 Chairperson, it is really worrying me, my stomach.
 23 CHAIRPERSON: Alright, we will adjourn
 24 and when you are ready to carry on with your evidence we'll
 25 proceed, and will you please, members of the audience in

Page 32800

1 the chamber, please keep quiet, don't make noises and
 2 comments, it doesn't help. We will adjourn now until we're
 3 told he is fit to carry on.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [13:17] CHAIRPERSON: The Commission resumes. Mr
 6 Mathibedi, have you got any news for us as to the condition
 7 of Mr X?
 8 MR MATHIBEDI SC: Thanks, Chair. Mr X
 9 was taken to the doctor; he's been booked off for today and
 10 tomorrow because of the –
 11 CHAIRPERSON: I was told Thursday as
 12 well.
 13 MR MATHIBEDI SC: No, not Thursday.
 14 CHAIRPERSON: Not Thursday?
 15 MR MATHIBEDI SC: No.
 16 CHAIRPERSON: Just today and tomorrow?
 17 MR MATHIBEDI SC: Today and tomorrow.
 18 CHAIRPERSON: Thank you. Mr Budlender,
 19 have you any suggestions as to the way forward?
 20 MR BUDLENDER SC: Yes, Chair, I propose
 21 the following way forward; firstly that the evidence of Mr
 22 X should be stood down until he is able to resume, or to a
 23 date to be arranged, and I say that subject to something
 24 I'm going to say in a moment. Secondly, that tomorrow we
 25 will then have the evidence, the continued evidence of Mr

Page 32801

1 Da Costa who will I hope complete his cross-examination and
 2 his evidence-in-chief, he's available, and we've asked
 3 Lonmin to arrange –
 4 CHAIRPERSON: Sorry, you say his
 5 evidence-in-chief. You mean his re-examination?
 6 MR BUDLENDER SC: Yes, I beg your pardon,
 7 his cross-examination and re-examination.
 8 CHAIRPERSON: Yes, thank you.
 9 MR BUDLENDER SC: We've asked Lonmin to
 10 arrange that the next Lonmin witness is available tomorrow
 11 in case Mr Da Costa finishes tomorrow. We'll have further
 12 Lonmin evidence on Thursday. As you know on Friday there
 13 are two members of the SAPS to give evidence in relation to
 14 the recording of the meeting of the night before the 16th,
 15 and we propose that Mr X's evidence should for the moment
 16 stand down till Friday after that evidence has been
 17 completed. If we complete that evidence sufficiently early
 18 we may be able to get in an hour or two of Mr X's evidence,
 19 which would be to everyone's advantage.
 20 So our proposal is the following; that you
 21 adjourn till tomorrow morning at 9 o'clock, that Mr X's
 22 evidence is stood down until Friday at this stage and that
 23 tomorrow we'll proceed with the evidence of Mr Da Costa.
 24 CHAIRPERSON: Mr Budlender, perhaps you
 25 could tell us who the Lonmin witnesses will be. You said

Page 32802

1 Mr Da Costa's at the moment being cross-examined, so he
 2 will continue his cross-examination you say, and then the
 3 re-examination will take place. That's for tomorrow. You
 4 then have another witness, who is that going to be, from
 5 Lonmin?
 6 MR BUDLENDER SC: Can I just get my
 7 email, Chair? The next witness after Mr Da Costa will be
 8 Mr Dewald Louw. After Mr Louw the next witness will be Mr
 9 Motlogelwa, after him Mr Masibi, after him Mr Botes, and
 10 after him Mr Sinclair.
 11 CHAIRPERSON: So these are all people on
 12 the security side, as it were, of Lonmin's operations.
 13 MR BUDLENDER SC: These are all people on
 14 the security side of Lonmin. Mr Sinclair is no longer
 15 employed by Lonmin, but he was employed within the security
 16 department at that time.
 17 CHAIRPERSON: Yes, and who are the
 18 witnesses who it is envisaged you will be calling on Friday
 19 from the South African Police?
 20 MR BUDLENDER SC: I'll ask Mr Chaskalson
 21 to deal with that.
 22 MR CHASKALSON SC: Chair, the two
 23 witnesses who we would like to call on Friday are Major
 24 Letloko and Brigadier Mahlalela, who are the two members of
 25 SAPS responsible for the recording of the proceedings of

Page 32803

1 the National Management Forum meeting on the 15th of August.
 2 CHAIRPERSON: The evening of the 15th of
 3 August.
 4 MR CHASKALSON SC: The evening of the 15th
 5 of August.
 6 CHAIRPERSON: I see. I only have to make
 7 two orders, or rulings now, or first is we postpone until 9
 8 o'clock tomorrow morning and the second is that the witness
 9 presently giving evidence, Mr X, stands down, I suppose I
 10 shouldn't fix a date because we don't know when precisely
 11 he will recover, and (b), whether he will be able to be
 12 fitted in on Friday the 25th, depending on the length of the
 13 testimony of the two witnesses to who Mr Chaskalson has
 14 referred.
 15 MR BUDLENDER SC: Chair, can I suggest
 16 that it be stood down until Friday in the expectation that
 17 there will be some time available, but on the basis that
 18 his evidence will not thereafter proceed because we will
 19 then go through with the Lonmin witnesses who've been lined
 20 up and their counsel have been arranged for those days, and
 21 Mr X will have to come back at some future date.
 22 CHAIRPERSON: Sorry, yes Mr Mpofu, you
 23 turned your light on.
 24 MR MPOFU: Yes, Chairperson. Ja, no this
 25 last part is not what I had understood was the arrangement

Page 32804

1 with the evidence leaders. If it's not proposed to proceed
 2 with Mr X then he should be called whenever he's called.
 3 We can't be doing this stop/start two hours on Friday and
 4 then another, you know.
 5 CHAIRPERSON: Mr Mathibedi turned his
 6 light on. Do you have some contribution to make, Mr
 7 Mathibedi?
 8 MR MATHIBEDI SC: Chair, I think probably
 9 the remaining portion of the evidence of Mr X should be
 10 heard uninterrupted, so I suggest that probably we make
 11 other arrangements.
 12 CHAIRPERSON: I'm reluctant to lose any
 13 time on Friday, but it sounds to me, Mr Budlender, as if
 14 what Mr Mpofu and Mr Mathibedi said has a lot of sense
 15 attached to it. Is that correct?
 16 MR BUDLENDER SC: With respect, I
 17 disagree. We've got to use all the time we've got. We're
 18 under extreme time pressure. If there is material time
 19 available for Mr X and Mr X is available then we should
 20 surely hear his evidence, particularly having regard,
 21 Chairperson, to what has happened with his evidence so far,
 22 which has been a good deal of it has been stop/start and if
 23 it's going to be heard in smaller chunks that may be to the
 24 advantage of the proceedings.
 25 MR MATHIBEDI SC: Chair –

Page 32805

1 CHAIRPERSON: It sounds to me as if –
 2 yes, Mr Mathibedi?
 3 MR MATHIBEDI SC: Chairperson, maybe we
 4 should start with Mr X Friday morning and then we can hear
 5 the evidence of the other two police officials at a later
 6 stage, because the other thing that we need to bear in
 7 mind, Chair, is that there are financial implications for
 8 transporting Mr X to the Commission.
 9 CHAIRPERSON: No, Mr X mustn't get
 10 transported to the Commission. Or not to my knowledge,
 11 unless you want me to amend the order I made.
 12 MR MATHIBEDI SC: I'm sorry about that,
 13 Chair.
 14 MR MPOFU: To the remote location, not so
 15 remote.
 16 CHAIRPERSON: What do you say, Mr Mpofu?
 17 MR MPOFU: I was saying to the remote
 18 relocation, which is obviously not so remote, Chairperson.
 19 CHAIRPERSON: Alright, I don't know
 20 anything about that, but I thought you were supporting an
 21 application that I thought Mr Mathibedi was making –
 22 MR MPOFU: Yes, no, Chairperson, I want
 23 to just say this, just from my point of view. It's going
 24 to be very impossible for me to now prepare for Mr Da
 25 Costa, these other three witnesses and Mr X all for this

Page 32806

1 week. I mean that means all –
 2 CHAIRPERSON: Mr Mpofu, I'm sorry to
 3 interrupt you. You prepared for Mr X surely.
 4 MR MPOFU: Ja, but it doesn't work like
 5 that, Chairperson, as you know. Every time I have to
 6 cross-examine the witness I can't just sleep all night on
 7 the basis that I've prepared. You know, whichever material
 8 comes – what I'm saying is that I'm going to have to be
 9 dealing with four different witnesses at the same time when
 10 I'm working on my own. That's really it.
 11 CHAIRPERSON: I think the way forward is
 12 for me to –
 13 MR BUDLENDER SC: May I ask a question,
 14 Chair –
 15 CHAIRPERSON: You may.
 16 MR BUDLENDER SC: - which may be able to
 17 resolve it. Can I ask from the police whether they can
 18 confirm that Brigadier Mahlalela and Major Letloko are
 19 available on Friday, for Friday?
 20 CHAIRPERSON: Both of them?
 21 MR BUDLENDER SC: Both of them.
 22 MR MATHIBEDI SC: Chair, they are
 23 available.
 24 CHAIRPERSON: Both of them?
 25 MR MATHIBEDI SC: That's correct.

1 CHAIRPERSON: Right.
2 MR BUDLENDER SC: Chair, in order to –
3 and I've just been discussing with Mr Chaskalson if both of
4 them are available he thinks the whole morning is likely to
5 be consumed with them, so I may have raised that for no
6 purpose, so I withdraw the suggestion that Mr X stands down
7 till Friday. I suggest that Mr X's evidence stands down to
8 a date to be arranged and that on Friday we will have the
9 evidence of Major Letloko and Brigadier Mahlalela.
10 CHAIRPERSON: Yes, well I don't have to
11 make a ruling to that effect. The hare can be put back
12 into the jug or whatever, wherever hares are normally kept
13 in. All I rule now is we postpone till 9 o'clock tomorrow
14 morning with the resumption of Mr Da Costa's evidence and
15 that the evidence of Mr X stands down until further
16 arrangements are made. We will now adjourn.
17 [COMMISSION ADJOURNED]
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24 .
25 .

<p style="text-align: center;">A</p> <p>AAAA1.2 32794:23 able 32778:16 32783:6 32784:22 32786:23 32794:1 32799:19 32800:22 32801:18 32803:11 32806:16 absolutely 32777:4 abuse 32783:5 accept 32787:9 accepted 32777:15 32783:1 accompanied 32795:5 32795:7 acquittal 32775:22 acts 32784:9 add 32772:4 32781:22 additional 32774:12 adjourn 32792:12,16 32793:1 32799:23 32800:2 32801:21 32807:16 ADJOURNED 32807:17 adjournment 32792:7 32792:18 32799:20 ADJOURNS 32793:2 32800:4 admitted 32781:5 adopted 32788:9 advanced 32787:10 advantage 32801:19 32804:24 afraid 32776:7 32789:1 African 32802:19 ago 32782:25 32783:13 agree 32773:24,25 32781:16 32784:2 32789:3,19,25 32790:2,22 32797:24 agreed 32790:23 agreement 32787:11 32791:6,10,15,18 32798:24 allow 32778:2,23 32789:1 allowed 32783:5 32788:21 alluded 32776:18 alright 32778:9 32791:22 32792:23 32793:12 32794:10 32797:23 32799:23 32805:19 AMCU 32786:25 32787:1 amend 32805:11 amount 32778:2 amounts 32778:13 answer 32779:7 32781:11 32782:2,6 32782:15 32785:5,7 32786:23,24 32788:9 32798:8 answered 32790:19</p>	<p>answering 32799:2,3 answers 32782:17,23 anyway 32776:8 apologised 32782:25 apology 32783:1 apparent 32796:6 appear 32782:5 appears 32795:10 application 32805:21 apply 32787:24 approach 32789:4 approaching 32795:20 appropriate 32782:19 32793:19 area 32795:15 argue 32772:12 32774:16 32777:7,14 32789:3 arguments 32775:13 arrange 32801:3,10 arranged 32800:23 32803:20 32807:8 arrangement 32803:25 arrangements 32804:11 32807:16 arrived 32795:22 article 32787:20,24 32788:4 32789:2 asked 32779:18 32782:3,7 32796:23 32797:4 32798:20 32801:2,9 asking 32776:16 32779:25 32784:11 asks 32786:23 assist 32777:16 32780:19 attached 32804:15 attacked 32781:14 attend 32792:17,19 attitude 32789:19 audience 32799:25 August 32774:5 32789:6 32803:1,3,5 available 32801:2,10 32803:17 32804:19 32804:19 32806:19 32806:23 32807:4 averted 32789:5,21 32790:4 avoided 32791:1</p> <p style="text-align: center;">B</p> <p>b 32793:5 32803:11 back 32774:9 32776:10 32791:18,20,24 32795:6,11,12,16,19 32796:5 32798:23 32799:7,8,10,10,11 32803:21 32807:11 basis 32777:9 32794:1 32803:17 32806:7 bear 32805:6 beg 32801:6 begins 32788:12 behalf 32786:16</p>	<p>better 32793:8,11 Bhele 32795:25 bit 32776:10 32793:11 blamed 32773:12,19 32777:3,17 32780:23 blocked 32797:20 Booi 32795:25 booked 32800:9 Botes 32802:9 box 32795:18 break 32787:21 brick 32778:17,17 Brigadier 32802:24 32806:18 32807:9 bring 32783:6,12 brought 32778:11 Budlender 32774:1 32800:18,20 32801:6 32801:9,24 32802:6 32802:13,20 32803:15 32804:13 32804:16 32806:13 32806:16,21 32807:2 bulk 32772:1 business 32772:6 32782:5</p> <p style="text-align: center;">C</p> <p>cahoots 32787:13 call 32781:7 32802:23 called 32772:3,8 32776:21 32777:15 32804:2,2 calling 32802:18 calls 32779:24 can't 32779:8 32781:6 32781:8 32804:3 32806:6 cardboard 32795:18 carry 32783:1 32793:19 32794:9 32799:19,24 32800:3 case 32774:20 32775:14 32784:23 32801:11 certain 32772:25 32778:2 32779:3 Chair 32773:14 32786:4,8,12 32793:8 32800:8,20 32802:7 32802:22 32803:15 32804:8,25 32805:7 32805:13 32806:14 32806:22 32807:2 Chairman 32779:22 chamber 32800:1 chance 32781:11 change 32798:25 changing 32795:25 charge 32798:25 charged 32776:20 chase 32777:2 32778:6 32779:17 Chaskalson 32802:20 32802:22 32803:4,13 32807:3</p>	<p>children 32781:17,23 chunks 32804:23 circumstances 32775:3 32775:7,21 32788:20 clear 32780:25 32781:1 32795:10 32796:6 clearly 32774:2 32780:6 32785:9 32791:8 clients 32782:4 close 32799:1 colleagues 32784:21,25 come 32773:15 32776:8 32777:1 32780:10,11 32783:8 32788:18 32791:7 32793:14 32803:21 comes 32771:3 32783:12 32806:8 coming 32772:12 32776:18 32780:7 32797:15,18 commenced 32788:19 32788:25 comment 32782:12,15 32783:11 32787:21 comments 32782:3,13 32782:16 32800:2 Commission 32771:2 32772:6,8,10,20,22 32775:4,25 32776:21 32777:4 32780:19 32788:10 327893:2,2,3 32800:4,4,5 32805:8 32805:10 32807:17 committee 32778:21 32779:4,20 complete 32801:1,17 completed 32801:17 completely 32778:13 concede 32774:16 concern 32775:25 concerned 32773:1 32781:8 concerning 32772:10 concerns 32772:20,22 32790:24 concluded 32787:12 conclusion 32777:6 conclusionary 32777:10 condition 32800:6 conduct 32782:13 confidence 32784:16 32784:21 confident 32784:22 confirm 32783:22 32784:2,11,15 32806:18 confirmed 32771:7 32783:19 confusing 32792:2 consideration 32775:12 constitute 32780:21 consult 32788:21 consumed 32807:5</p>	<p>contained 32787:20 CONTD 32771:10 continue 32771:5 32772:7 32782:20 32802:2 continued 32800:25 contradictions 32777:23 contribute 32772:5,13 32774:13,15 32777:16 32791:11 32791:12 contribution 32804:6 conviction 32775:22 core 32772:6,8,9 corner 32797:15 correct 32772:24 32775:6,20 32779:21 32780:3,9 32783:20 32785:3,20,21 32786:4,16 32791:12 32798:1,13 32804:15 32806:25 Costa 32801:1,11,23 32802:7 32805:25 Costa's 32802:1 32807:14 counsel 32778:23 32779:9 32782:3,4,16 32782:17 32788:21 32803:20 counted 32795:19 32797:14 cross 32787:4 32788:10 32788:18,24 crossing 32795:14 32797:16,16,17 cross-examination 32771:5,10 32772:2 32777:14 32788:12 32794:9 32801:1,7 32802:2 cross-examine 32806:6 cross-examined 32802:1 cut 32777:1 32779:17 Cutting 32778:6</p> <p style="text-align: center;">D</p> <p>Da 32801:1,11,23 32802:1,7 32805:24 32807:14 danger 32795:22 date 32800:23 32803:10,21 32807:8 dates 32778:18 day 32797:22 32799:11 days 32791:13 32798:16 32803:20 deal 32774:2,3 32775:18 32777:9,9 32778:10,17 32779:18 32788:17 32802:21 32804:22 dealing 32772:7 32806:9</p>
---	---	--	---	--

<p>dealt 32778:15 32786:15 32788:19 32793:6</p> <p>deaths 32772:14,21,23 32772:25 32773:3,4 32773:11,11,14,20,21 32774:5,10,11,12,15 32774:17,20,21,24,25 32775:1 32776:20 32777:2,20 32789:21</p> <p>decided 32786:6</p> <p>delegates 32795:2,3,5,6 32795:9 32796:4,7</p> <p>demand 32790:3</p> <p>demands 32785:2,19 32785:24 32795:8,17</p> <p>demonstrate 32780:8</p> <p>demonstrated 32774:2</p> <p>department 32802:16</p> <p>depending 32803:12</p> <p>designed 32783:14</p> <p>despite 32783:5</p> <p>determine 32775:4,6</p> <p>determined 32780:2</p> <p>Dewald 32802:8</p> <p>didn't 32779:5,18 32782:14 32785:18 32786:3,18 32787:5 32796:4 32799:10</p> <p>died 32772:23 32773:9</p> <p>different 32806:9</p> <p>difficult 32789:8</p> <p>directed 32783:4</p> <p>directly 32773:12,21 32777:3</p> <p>disagree 32804:17</p> <p>disallow 32793:19</p> <p>disaster 32777:19</p> <p>discussed 32791:16</p> <p>discussing 32784:13 32790:22 32807:3</p> <p>discussion 32791:7</p> <p>distribute 32787:21</p> <p>disturbing 32771:21</p> <p>divide 32784:24</p> <p>doctor 32800:9</p> <p>document 32788:11,11 32788:13</p> <p>documents 32788:18</p> <p>doesn't 32771:21 32776:9 32779:3 32783:12 32800:2 32806:4</p> <p>doing 32782:6 32783:7 32792:24 32804:3</p> <p>don't 32772:5 32773:24 32775:5 32777:25 32778:24 32779:1,12 32780:5 32781:9,10 32782:15 32784:7,13,17 32785:9 32793:13,18 32795:8 32797:6 32798:17 32800:1 32803:10 32805:19 32807:10</p>	<p>door 32774:18,22 32775:2</p> <p>drill 32784:6,20 32785:16 32786:10</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 32779:17</p> <p>early 32788:10 32801:17</p> <p>eat 32781:18,23</p> <p>effect 32807:11</p> <p>either 32772:13</p> <p>email 32802:7</p> <p>employed 32802:15,15</p> <p>employer 32783:23 32784:5,7,11,12 32794:20 32795:5,16 32796:5</p> <p>employers 32785:19 32790:1</p> <p>endeavoured 32777:25</p> <p>engage 32790:23</p> <p>enter 32796:19</p> <p>entered 32791:18</p> <p>entitled 32788:13</p> <p>envisaged 32802:18</p> <p>essentially 32784:6</p> <p>establish 32797:2,12</p> <p>evening 32803:2,4</p> <p>event 32772:9 32774:23</p> <p>events 32772:8,9,10 32773:4 32780:23 32790:25 32791:12</p> <p>everybody 32782:20</p> <p>everyone's 32801:19</p> <p>evidence 32772:11 32773:6 32777:21,21 32778:13,25 32779:3 32779:25 32781:3,8 32787:9,16 32793:14 32793:21 32794:7 32797:9,13 32799:24 32800:21,25,25 32801:12,13,15,16,17 32801:18,22,23 32803:9,18 32804:1,9 32804:20,21 32805:5 32807:7,9,14,15</p> <p>evidence-in-chief 32801:2,5</p> <p>exact 32785:14</p> <p>exactly 32780:1</p> <p>examination 32787:5 32788:19,25</p> <p>examined 32788:11</p> <p>example 32790:22</p> <p>Excuse 32771:18</p> <p>exercise 32772:4 32777:18</p> <p>Exhibit 32794:23</p> <p>existing 32791:6</p> <p>expectation 32803:16</p> <p>experienced 32798:6</p> <p>explain 32774:19 32777:5,8 32780:10</p>	<p>32780:11 32790:9</p> <p>explained 32774:8</p> <p>32781:13 32785:4</p> <p>explaining 32773:9 32795:13</p> <p>explanation 32776:14</p> <p>expressed 32794:7</p> <p>expression 32781:23</p> <p>extreme 32804:18</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facie 32775:11</p> <p>fact 32771:20 32776:18 32785:3,3 32787:14 32795:10 32796:7 32798:21</p> <p>factually 32776:21</p> <p>fair 32777:11,11 32788:3 32796:8</p> <p>false 32779:4</p> <p>families 32777:22</p> <p>far 32781:7 32804:21</p> <p>fathers 32781:17</p> <p>fault 32781:9 32789:13</p> <p>fears 32794:4,6</p> <p>February 32794:24</p> <p>feeling 32792:6 32793:8,11</p> <p>feels 32793:23</p> <p>fetch 32795:16</p> <p>field 32790:16</p> <p>fight 32797:22</p> <p>finally 32779:17 32798:23 32799:9</p> <p>financial 32805:7</p> <p>findings 32775:12</p> <p>fine 32788:16 32798:18</p> <p>finished 32794:12</p> <p>finishes 32801:11</p> <p>finishing 32778:7</p> <p>first 32773:3 32803:7</p> <p>firstly 32775:23 32787:16 32800:21</p> <p>fit 32800:3</p> <p>fitted 32803:12</p> <p>five 32774:17,21 32776:19 32778:21 32779:4 32791:13 32794:19 32795:2,3</p> <p>fix 32803:10</p> <p>flexible 32789:4,19 32790:1,2</p> <p>follow 32776:4,9</p> <p>followed 32776:8,10 32788:15 32791:13</p> <p>following 32782:21 32791:16 32797:9 32800:21 32801:20</p> <p>foot 32794:25</p> <p>foreshadowed 32775:14</p> <p>forget 32789:2</p> <p>forgive 32776:1 32783:11</p> <p>Forum 32803:1</p> <p>forward 32794:8</p>	<p>32795:3 32800:19,21 32806:11</p> <p>found 32776:24</p> <p>four 32806:9</p> <p>Friday 32784:4 32785:16 32801:12 32801:16,22 32802:18,23 32803:12,16 32804:3 32804:13 32805:4 32806:19,19 32807:7 32807:8</p> <p>front 32795:21</p> <p>Fundi 32774:24</p> <p>further 32777:22 32790:16 32801:11 32807:15</p> <p>future 32803:21</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>generally 32774:18</p> <p>give 32776:13 32781:8 32781:11 32785:7 32786:23 32792:16 32793:14 32801:13</p> <p>given 32791:4 32793:7 32793:25</p> <p>giving 32792:9 32793:21 32803:9</p> <p>go 32774:9 32777:13 32778:17 32782:18 32785:18,22,23 32787:6 32791:18,24 32794:10,11 32795:23 32796:23 32797:2,11 32798:21 32798:23 32799:6,8,9 32799:10,11 32803:19</p> <p>going 32772:2,6 32773:18 32774:16 32775:16 32776:4,24 32777:13,14 32778:2 32778:17 32781:10 32782:9 32789:3 32790:20 32791:4 32795:5 32798:13,16 32799:1,17 32800:24 32802:4 32804:23 32805:23 32806:8</p> <p>good 32771:11 32784:14 32793:9 32804:22</p> <p>grasp 32782:14</p> <p>group 32790:24</p> <p>guilty 32775:24 32776:24,24 32779:14 32780:22</p> <p>guy 32795:7,7</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hall 32793:14</p> <p>hands 32795:8</p> <p>happen 32781:25 32788:25</p> <p>happened 32774:5</p>	<p>32791:20 32795:14 32797:3 32799:6 32804:21</p> <p>happening 32797:3,12</p> <p>happenings 32773:24</p> <p>happy 32785:1</p> <p>hard 32790:25</p> <p>hare 32807:11</p> <p>hares 32807:12</p> <p>hasn't 32776:10</p> <p>head 32792:6,20,21</p> <p>hear 32783:10 32784:17 32804:20 32805:4</p> <p>heard 32804:10,23</p> <p>heat 32798:5</p> <p>help 32781:6 32800:2</p> <p>he's 32771:4 32779:7 32779:17 32781:10 32781:10 32784:3,10 32784:20 32785:6 32800:9 32801:2 32804:2</p> <p>home 32798:12,22,23 32799:4,7,8,10,11,12 32799:16</p> <p>hope 32771:21 32801:1</p> <p>hoped 32790:12</p> <p>hot 32798:3,4</p> <p>hour 32792:12 32801:18</p> <p>hours 32804:3</p> <p>house 32796:20</p> <p>hundreds 32785:15</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>identification 32775:23</p> <p>ignored 32783:8</p> <p>illegal 32791:19</p> <p>illiterate 32788:6</p> <p>impatience 32797:25 32798:5</p> <p>impatient 32797:2,11 32797:19</p> <p>implicated 32773:21</p> <p>implicating 32774:6</p> <p>implications 32787:19 32805:7</p> <p>important 32777:8 32793:23</p> <p>impossible 32780:20 32805:24</p> <p>inaccurate 32778:25</p> <p>inaudible 32773:16 32788:7 32792:7,12 32792:24</p> <p>incident 32774:4</p> <p>increase 32784:6 32785:17 32786:6,14 32787:11</p> <p>increases 32784:23 32791:4</p> <p>indicated 32791:17 32792:25</p> <p>indulge 32779:24</p> <p>innocent 32773:13,23</p>
--	---	---	--	--

<p>32779:15 32780:3,8 32780:11,14,17,22 32781:15 inside 32795:16 32796:15,18,20 32797:2,11 32798:7 interfere 32771:22 interpreter 32771:6,8 32773:17 32788:7 32792:8,13,25 interrupt 32806:3 interrupting 32771:23 interruptions 32783:4 investigate 32773:5 involved 32774:6 involvement 32779:4 isn't 32796:8 issue 32772:15 32777:1 32778:10,12 32781:7 issues 32791:17 it's 32771:20 32775:6 32775:11 32776:2,3 32777:8,23 32780:1 32781:9,24 32788:1,2 32788:3,3 32789:10 32789:13 32790:8,18 32791:15 32792:2,9 32792:14 32804:1,23 32805:23 I'll 32787:7 32788:25 32790:18,18 32797:23 32798:18 32802:20 I'm 32771:18,21,23 32772:6 32773:10,20 32775:16 32776:7,16 32777:12,13,14 32778:3,6,17 32782:8 32782:9 32785:8,14 32787:7 32789:1 32790:19,20 32791:25 32792:10 32793:7,12 32795:25 32795:25 32800:24 32804:12 32805:12 32806:2,8,10 I've 32773:2 32778:20 32780:10,11 32783:1 32783:7 32787:15 32790:9,16 32806:7 32807:3</p> <hr/> <p style="text-align: center;">J</p> <p>ja 32773:18,19 32776:12 32777:12 32778:5 32780:18 32790:20 32793:25 32794:5 32798:5 32803:24 32806:4 judicial 32778:23 jug 32807:12 JULY 32771:1</p> <hr/> <p style="text-align: center;">K</p> <p>keep 32783:13 32800:1 kept 32807:12</p>	<p>kind 32783:11 kinds 32782:12 knew 32791:15 know 32772:19,20,21 32772:22 32775:5,13 32777:25 32781:9,10 32782:13 32784:1 32798:15 32801:12 32803:10 32804:4 32805:19 32806:5,7 knowing 32777:16 knowingly 32777:16 knowledge 32805:10 koppie 32781:4</p> <hr/> <p style="text-align: center;">L</p> <p>laid 32774:22 Langa 32774:24 leaders 32804:1 leading 32788:13,21 leave 32784:24 leaves 32774:23 lecture 32783:8 led 32789:21 leeway 32778:2 left 32798:12,22 32799:4,16 legalities 32775:9,21 length 32803:12 lengthy 32794:23 Letloko 32802:24 32806:18 32807:9 let's 32778:15 32779:23 32783:1,13 32783:17 32784:24 32790:22 32793:19 32794:8,10,11 32798:11 lie 32779:1 lied 32778:20,24 light 32771:19,24 32788:18 32803:23 32804:6 line 32795:1 lined 32803:19 link 32793:22 listen 32782:1 LLL26 32787:6 32796:24 location 32805:14 long 32776:2 longer 32802:14 Lonmin 32787:12,13 32789:5 32790:2 32801:3,9,10,12,25 32802:5,14,15 32803:19 Lonmin's 32802:12 look 32794:22,24 lose 32804:12 lost 32784:15,21 lot 32785:15 32804:14 Louw 32802:8,8 lowering 32792:6</p> <hr/> <p style="text-align: center;">M</p>	<p>Mabebe 32774:24 Mabelane 32774:24 Mahlalela 32802:24 32806:18 32807:9 MAHLANGU 32771:7 32789:11,16 32791:25 32792:4,21 32797:4 main 32780:7 Major 32802:23 32806:18 32807:9 making 32774:12 32786:22 32790:19 32805:21 man 32796:10,12 32797:17,18 management 32787:12 32787:13 32790:23 32791:16,23 32803:1 march 32783:19 marched 32785:1 marchers 32790:24 Marikana 32773:24 32779:15 32781:16 32781:21 32789:5 32791:20 Masibi 32802:9 material 32804:18 32806:7 Mathibedi 32782:11 32787:23 32788:2 32793:16 32800:6,8 32800:13,15,17 32804:5,7,8,14,25 32805:2,3,12,21 32806:22,25 matter 32773:20 32775:3 32776:25 32786:15 32793:23 mean 32775:7,8,21 32786:20 32801:5 32806:1 means 32778:6 32781:24 32792:20 32799:10 32806:1 meant 32780:1,18 32792:3 meet 32795:4,5 32796:5 meeting 32786:3,5,9,11 32798:13 32799:18 32801:14 32803:1 member 32779:20 members 32795:2 32799:25 32801:13 32802:24 mentioned 32792:19 microphone 32771:3 mind 32798:12 32799:6 32805:7 mine 32780:11,14 32784:10 32791:5,7 32791:14 miners 32784:9 mines 32791:3 minutes 32783:13</p>	<p>32792:16 32793:1 32795:20 32797:18 misbehaves 32782:24 mission 32780:2,2,7,19 32780:20 mistake 32786:1,19,22 moment 32782:25 32784:25 32800:24 32801:15 32802:1 month 32786:6 morning 32771:11,12 32785:16 32798:22 32799:5 32801:21 32803:8 32805:4 32807:4,14 mothers 32781:18,24 Motlogelwa 32802:9 move 32778:15 32790:18 mustn't 32805:9 muti 32778:12</p> <hr/> <p style="text-align: center;">N</p> <p>National 32784:10 32803:1 near 32795:15 32798:13 necessary 32776:3 32788:1,3 need 32782:16,16 32805:6 negotiate 32787:10 negotiations 32789:4 32789:20 32790:3 never 32779:16 32799:6 news 32800:6 night 32799:1 32801:14 32806:6 nod 32792:20 nodding 32792:21 noises 32800:1 nominated 32795:3 normally 32786:13,14 32807:12 notice 32792:5 Noting 32796:25 32797:9 nullity 32778:14 NUM 32783:24 32784:10,16,22 32785:1,18,24 32786:9 32787:1,10 32787:13 32791:11 number 32772:22 32781:4 32785:14,14</p> <hr/> <p style="text-align: center;">O</p> <p>oath 32771:4 32793:4 objectively 32780:21 observe 32778:16 32780:22 obviously 32789:25 32799:10 32805:18 occasionally 32788:18 offer 32777:4</p>	<p>office 32784:4 32785:17 32786:3 32791:5,8 32794:20 32795:19,21,24 32796:10,14 32797:2 32797:11 32798:25 32799:1 officers 32778:23 offices 32795:18,20 officials 32805:5 Oh 32792:9 okay 32772:19 32778:5 32778:8,9 32779:2,23 32788:23 32789:2 32793:13 32794:17 32797:21 32798:4,11 operations 32802:12 operators 32784:7,21 32785:16 operator's 32786:11 opportunity 32792:16 order 32783:6 32793:22,25 32805:11 32807:2 orders 32803:7 organisation 32787:3 outside 32796:14,20 32798:3,4,6,7 o'clock 32801:21 32803:8 32807:13</p> <hr/> <p style="text-align: center;">P</p> <p>page 32794:25 32795:1 32796:24 paper 32795:7 paragraph 32787:7 32794:25 32796:25 pardon 32801:6 part 32803:25 participated 32777:20 particularly 32804:20 passage 32795:8 32796:3 patience 32783:5 patient 32782:10 32783:3,3 patiently 32783:7 peaceful 32783:20 32790:24 peacefully 32784:4 pending 32775:15 penultimate 32795:1 people 32771:20 32772:21,23 32773:9 32773:14,22 32775:23 32776:22 32780:24 32781:21 32783:4,8 32784:3,12 32785:22 32789:6,21 32790:1 32791:17 32795:23 32796:9 32802:11,13 perception 32787:12 period 32772:23 perpetrated 32774:22 person 32774:7</p>
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<p>32780:20 32781:21 32787:2 32795:17 32797:14 persons 32775:24 perspective 32772:15 32780:1 pictures 32771:22 place 32802:3 placed 32774:17 32775:1 32795:22 plainly 32774:14 please 32771:4 32782:2 32782:5 32799:25 32800:1 plough 32790:15 point 32781:2,12 32790:19 32796:2 32798:5 32805:23 points 32777:24 police 32772:3 32773:12,13,21,23 32774:6 32779:14,14 32780:3,8,15,16,22 32780:23 32781:5,15 32781:15,16 32789:6 32794:25 32795:1,4,6 32795:15,21 32797:20 32802:19 32805:5 32806:17 portion 32804:9 position 32781:22 32791:2 possible 32778:10 32781:24 possibly 32774:4 32793:14 postpone 32803:7 32807:13 practically 32788:15 practice 32788:9 preceded 32795:3 precisely 32803:10 prefer 32784:8 32792:17 preferred 32783:23 prepare 32805:24 prepared 32806:3,7 present 32774:4 32784:23 32785:18 32785:24 presenting 32785:2 presently 32803:9 pressure 32804:18 prima 32775:11 prior 32773:4 probably 32804:8,10 problem 32792:19 32793:1,6 problems 32792:10 proceed 32783:17 32793:5 32799:25 32801:23 32803:18 32804:1 proceeded 32796:11,13 32797:19 proceedings 32771:1</p>	<p>32802:25 32804:24 profitably 32778:1 promise 32783:2 pronoun 32791:25 proper 32793:17 properly 32784:23 proposal 32801:20 propose 32800:20 32801:15 proposed 32804:1 proposition 32789:19 32789:25 prosecuted 32776:23 prosecution 32775:13 32776:22 prosecutions 32775:15 protect 32783:14 protesters 32774:18,22 32775:2,2 32776:20 provide 32782:22 public 32772:3 32777:18,18 purely 32772:3 32777:17 purpose 32807:6 put 32772:15 32774:14 32778:24 32779:1,9 32779:25 32781:11 32787:16 32788:4,13 32794:7 32796:2,6 32807:11 puts 32779:18 putting 32781:3,10 32784:3 32789:9,15</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 32771:22 32777:21 32778:13 quarter 32792:12 question 32776:4,9 32778:11 32779:5,18 32780:5 32782:20 32784:1,24 32786:24 32788:3 32789:7,12 32789:14,16,18,22 32790:5,8 32793:19 32794:16 32797:5 32798:2,17,19,20 32799:3,4,4,15 32806:13 questions 32772:16 32782:2,6,17,22 quicker 32782:18,24 quiet 32772:5 32800:1 quite 32782:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raised 32807:5 raises 32783:12 RDOs 32787:9 read 32787:7 32796:3 ready 32785:7 32793:5 32799:24 real 32777:1 realising 32797:17 really 32775:10</p>	<p>32799:22 32806:10 reason 32785:25 32786:22 32787:9 reasonable 32791:23 received 32773:6 recognised 32784:9 recommend 32776:22 recommendations 32775:12 recording 32801:14 32802:25 recover 32803:11 reference 32792:1 referred 32803:14 referring 32784:20 32790:21 refrain 32782:6 regard 32804:20 regarding 32790:3 relating 32789:20 relation 32777:15 32781:12 32790:21 32801:13 relations 32772:3 32777:18,19 relevance 32778:10 relevant 32780:23 relocation 32805:18 reluctant 32804:12 remaining 32774:14 32804:9 remember 32778:21 32779:5,10 32790:19 remind 32793:4 remote 32805:14,15,17 32805:18 repeat 32780:5 32785:12 32790:9 32797:4 32799:4 repeated 32789:17 32790:5 32798:3 repeating 32778:1 represent 32781:21 representatives 32784:8 32794:19 32797:1,10 representing 32785:2 requested 32795:2 resolve 32806:17 respect 32772:13 32773:5 32774:11,14 32774:25 32776:18 32777:2,20 32784:23 32804:16 response 32786:25 responsible 32802:25 rest 32794:9 resume 32800:22 resumes 32771:2 32793:2,3 32800:4,5 resumption 32807:14 returning 32797:1,10 re-examination 32801:5,7 32802:3 riddled 32777:23 right 32771:14,17</p>	<p>32780:4 32785:13 32786:7 32795:15 32799:5 32807:1 rightly 32773:19 rock 32784:6,20 32785:15 32786:10 round 32772:23 rounding 32778:3 rule 32807:13 ruling 32807:11 rulings 32803:7 running 32792:14</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe 32776:19 salary 32787:10 SAPS 32774:23 32777:2,17 32801:13 32802:25 satisfactorily 32793:6 Saturday 32798:22 32799:5,11 saying 32772:1 32773:10,20 32775:6 32776:2 32777:12 32779:13 32781:7,16 32784:1,17,19 32786:19 32791:10 32791:23 32805:17 32806:8 says 32797:8 SC 32782:11 32787:23 32788:2 32793:16 32800:8,13,15,17,20 32801:6,9 32802:6,13 32802:20,22 32803:4 32803:15 32804:8,16 32804:25 32805:3,12 32806:13,16,21,22,25 32807:2 scene 32772:13,13 32781:4,7,8,12 32782:19 seated 32797:18 second 32803:8 Secondly 32800:24 security 32795:1,4,6 32802:12,14,15 see 32776:9 32796:21 32803:6 seeing 32799:17 seen 32787:24 32788:5 self-defence 32775:22 send 32795:2 sense 32804:14 sentiment 32787:14,15 32787:20 separate 32776:25 set 32782:19 seven 32774:15 shop 32785:18,23,24 short 32792:7 shot 32781:5 32789:6 shouldn't 32774:9 32803:10 show 32778:12 32780:1</p>	<p>32780:3,21 showing 32772:2 32777:13 shown 32788:11 side 32771:3 32802:12 32802:14 similar 32781:12 simplify 32790:18,20 simply 32773:20 32790:7 simultaneously 32773:17 32788:7 32792:8,13,25 Sinclair 32802:10,14 singular 32792:3,4 Sir 32771:11 32773:23 32785:12 32786:17 32787:18 32788:2 32789:23 32795:13 32798:14 sitting 32785:6 six 32791:13 sleep 32806:6 smaller 32804:23 smear 32779:13 soon 32771:3 sorry 32771:19,21,23 32782:8 32787:7 32791:25 32793:16 32799:3 32801:4 32803:22 32805:12 32806:2 sort 32778:2 sounds 32804:13 32805:1 sour 32772:4 source 32777:22 South 32802:19 so-called 32780:13 speak 32782:24 32784:5,8 32794:20 32796:13 speaking 32773:16 32774:18 32788:7 32792:7,12,24 special 32788:20 specific 32775:24 32776:20 specifically 32784:20 speech 32776:2 32779:16,25 32780:18 spend 32794:8 spent 32778:1 spoke 32774:12 32784:25 32796:9,20 stadium 32786:3,10 32798:13 stage 32784:15 32793:24 32798:15 32801:22 32805:6 stance 32791:10 stand 32787:8,16 32797:9,12 32801:16 standing 32796:1 32797:15</p>
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<p>stands 32803:9 32807:6 32807:7,15 start 32805:4 started 32772:7 32777:12 32795:20 starting 32778:18 32779:7 statement 32777:10 32783:19 32787:7 32794:23,24 32796:3 32796:6,24 32797:8 statements 32787:17 step 32776:10 stewards 32785:18,23 32785:24 stomach 32792:9,10,14 32799:21,22 stood 32795:21 32800:22 32801:22 32803:16 stop 32779:8 stopped 32795:14 stop/start 32804:3,22 strike 32789:5 32791:19 strikers 32781:4 32797:1,10 subject 32800:23 succeed 32787:5 suffering 32792:10 sufficiently 32801:17 suggest 32781:20 32794:8 32795:8 32796:4 32803:15 32804:10 32807:7 suggested 32771:17 32772:1,12 32778:20 32779:5,11 suggesting 32775:11 suggestion 32807:6 suggestions 32800:19 summarising 32772:11 32775:20 Sunday 32773:1 supplementary 32796:24 support 32781:17 supporting 32805:20 suppose 32803:9 sure 32785:14 surely 32775:18 32804:20 32806:3 s.u.o 32771:6</p>	<p>tea 32787:21 tell 32771:4 32787:8 32801:25 temperature 32783:12 32783:13 ten 32780:9 terms 32793:22,22 test 32794:1 testimony 32803:13 testing 32776:16 thank 32771:8,11,23,25 32776:15 32782:8 32790:17 32793:10 32796:21,22 32798:11 32799:16 32800:18 32801:8 thanks 32771:16 32783:17,18 32800:8 that's 32775:16,17,19 32776:12,16 32777:6 32782:5,21 32784:11 32784:14 32785:3 32786:14,15 32788:8 32788:14,14,16 32791:14 32792:9 32793:17,18 32797:19 32798:5,18 32798:22 32802:3 32806:10,25 thereof 32796:24 there's 32791:6,10 they're 32772:4 32776:24 32783:8 they've 32778:24 32794:7 thing 32781:13,15 32791:12 32805:6 things 32779:14,15 think 32777:6 32779:8 32781:10 32782:11 32782:15,18 32784:20 32786:20 32787:24 32788:3 32789:7 32791:9 32793:17,18 32794:23 32798:21 32804:8 32806:11 thinking 32785:6,8 thinks 32807:4 thoroughly 32780:12 thought 32805:20,21 thousand 32785:15 three 32774:5,11 32805:25</p>	<p>32806:5,9 times 32780:9 tired 32792:6 today 32771:13 32800:9,16,17 told 32791:3,8,14,19 32800:3,11 tomorrow 32800:10,16 32800:17,24 32801:10,11,21,23 32802:3 32803:8 32807:13 topic 32779:19 trade 32784:9 32786:15 tragedy 32777:19 32789:5,21 32790:3 Translate 32789:14 translated 32789:10,11 transported 32805:10 transporting 32805:8 trauma 32777:22 tried 32787:4 32790:9 32790:16 triggered 32774:23 true 32778:25 try 32785:13 trying 32779:13 turned 32771:19 32772:4 32777:18 32803:23 32804:5 turning 32771:24 TV 32771:20 Twala 32774:25 two 32784:24 32787:11 32796:9 32801:13,18 32802:22,24 32803:7 32803:13 32804:3 32805:5 two-year 32791:10</p>	<p style="text-align: center;">V</p> <p>various 32772:21 vein 32796:23 video 32793:22 view 32789:3 32805:23</p>	<p style="text-align: center;">W</p> <p>wage 32784:5,23 32785:2,24 32789:4 32790:3 wages 32785:17,17 32786:14,14 32789:20 32790:24 want 32772:15 32774:14 32779:6,8 32784:8 32786:13,14 32787:21 32788:25 32792:18 32793:13 32799:20 32805:11 32805:22 wanted 32784:5,6 32786:6 32797:2,11 wants 32784:1 wasn't 32774:7 32778:25 32786:9 32797:18 way 32788:17,19 32790:12 32796:5 32800:19,21 32806:11 wearing 32799:17 week 32806:1 went 32784:3 32785:3 32785:16,19 32786:2 32794:19 32795:16 32795:18 32796:5,17 32799:12 weren't 32781:3,6,9 32784:22 32796:8 we'll 32773:15 32782:17,23 32793:1 32799:24 32801:11 32801:23 we're 32773:18 32789:3 32790:19 32794:11 32800:2 32804:17 we've 32778:22 32788:14,19,20,21 32801:2,9 32804:17 32804:17 whatsoever 32774:13 when've 32778:5 whichever 32806:7 white 32795:7,7,17 32796:10,12 32797:14,17,18 who've 32803:19 wishes 32794:1,2,3,5 withdraw 32807:6 witness 32771:4 32776:3,4 32782:13 32782:16,17,22,24 32783:5,6,14 32787:25 32788:4,4,6</p>	<p>32788:10,12,13,14,21 32788:22 32789:8 32793:4 32801:10 32802:4,7,8 32803:8 32806:6 witnessed 32798:1 witnesses 32778:24 32801:25 32802:18 32802:23 32803:13 32803:19 32805:25 32806:9 won't 32789:1 word 32779:1,3 words 32772:14 32784:2 work 32791:19,20,24 32806:4 Workers 32784:10 working 32790:25 32806:10 worrying 32799:21,22 written 32795:18 wrong 32773:3 wrongly 32773:19</p>
X					
<p>X's 32801:15,18,21 32807:7</p>					
Y					
<p>year 32787:11 32791:16 yesterday 32771:17 32772:1,11 32777:13 32777:25 32778:15 32779:11 32781:5 32783:7 you'll 32776:1 32783:10 you're 32771:22 32775:5,10 32776:4 32777:15 32782:3 32792:5 32794:12 32799:2 you've 32775:14 32778:5 32783:18 32785:4 32795:10</p>					
0					
<p>09:08 32771:2 09:28 32779:2 09:48 32787:14</p>					
1					
<p>1 32772:13 32781:12 10th 32772:24 32778:18,20 32779:20 32783:19 32784:4 32790:20,21 32790:23 32794:11 32794:13,16 10:53 32793:3 11th 32773:1,1 32794:11 32798:12 32798:12,22 32799:5 32799:11</p>					

12 32786:6
12th 32773:3,5
13th 32774:4,5,12,20
 32774:21
13:17 32800:5
15 32792:16 32793:1
 32795:19 32797:18
15th 32803:1,2,4
15-minute 32792:17
16th 32772:9,10,14,24
 32773:2,4 32774:11
 32778:16,19 32789:6
 32799:12 32801:14

2

2 32772:14 32781:4,8
 32794:25
2013 32791:7 32794:24
2014 32771:1
22 32771:1
25th 32803:12

3

3 32796:24
34 32772:14 32774:10
 32774:11 32789:6,21
37 32773:11,21
 32774:12 32777:2
39 32777:2

4

4 32787:7
44 32772:20 32773:11
 32773:20

5

5 32794:25
500 32786:6 32791:5

7

750 32791:4

8

8 32796:25

9

9 32801:21 32803:7
 32807:13
9th 32772:24