

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 25 3 DECEMBER 2012 PAGES 2577 TO 2675

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



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1 [PROCEEDINGS ON 3 DECEMBER 2012]
 2 [10:01] CHAIRPERSON: The Commission resumes.
 3 Since our last sitting, the former Chief Justice of South
 4 Africa, Arthur Chaskalson, the father of one of our
 5 evidence leaders, has died and I ask you all to stand.
 6 We'll have a minute of silence.
 7 [MINUTE OF SILENCE OBSERVED]
 8 CHAIRPERSON: May his soul rest in peace
 9 and may light perpetual shine upon him. As a mark of
 10 respect to the great jurist who has been taken from us, we
 11 will adjourn for half an hour.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [11:11] CHAIRPERSON: The Commission resumes.
 14 The adjournment took longer than I had originally announced
 15 because we were requested by the legal representative of
 16 AMCU to allow Mr Mathunjwa a longer period to listen to the
 17 recording on which the transcription on which he was cross-
 18 examined on Friday was based. I understand, Mr Bruinders,
 19 that Mr Mathunjwa has now heard the recording and gone
 20 through the transcript and he's ready to be – for the
 21 cross-examination to continue, is that correct?
 22 MR BRUINDERS SC: Correct.
 23 CHAIRPERSON: Before I ask Mr Burger to
 24 continue his cross-examination, my colleague Commissioner
 25 Hemraj wants to ask a question. Before she asks the

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1 question, I have to remind you Mr Mathunjwa that you're
 2 still under oath.
 3 JOSEPH VUSI MATHUNJWA: Thank you.
 4 COMMISSIONER HEMRAJ: Mr Mathunjwa, this
 5 forum that you speak of that you wanted to be part of, do I
 6 understand that forum that you refer to, to be separate
 7 from the bargaining structures?
 8 MR MATHUNJWA: That's correct.
 9 COMMISSIONER HEMRAJ: Yes, thank you.
 10 CHAIRPERSON: Yes, Mr Burger?
 11 MR BURGER SC: Good morning, Mr
 12 Mathunjwa.
 13 MR MATHUNJWA: Good morning, Mr Burger.
 14 CROSS-EXAMINATION BY MR BURGER SC (CONTD):
 15 Can I just have clarity on your last answer. Does that
 16 mean that the forum would be outside the bargaining
 17 structures?
 18 MR MATHUNJWA: That's correct.
 19 MR BURGER SC: I would like to commence
 20 this morning by putting to you the versions by the
 21 witnesses to give evidence on behalf of Lonmin, of the
 22 events of the 16th August at LPD and can I first ask your
 23 attention for Exhibit KK? That's the statement by Mr Jomo
 24 Kwadi and if in that statement you'd turn to page 9,
 25 paragraph 9 please, that deals with the events of the 16th

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1 August.
 2 COMMISSIONER HEMRAJ: I'm sorry, page –
 3 Mr Burger?
 4 MR BURGER SC: Page 9 paragraph 9,
 5 Commissioner. Now Mr Mathunjwa, I'm just reading this to
 6 you, I'm putting it to you as the version of Mr Kwadi on
 7 this issue. In 9.1 he says the following - if you'll read
 8 it with me it may be easier to follow. "On the morning of
 9 the 16th August 2012, Mathunjwa came to LPD. He spoke to
 10 me and requested that we should 'give him something' to
 11 take to the koppie. I advised Mathunjwa, after discussing
 12 his request that Lonmin must 'give him something' with
 13 Mokwena and Kgotle, that Lonmin management was not prepared
 14 to discuss the strikers' demands or grievances outside of
 15 collective bargaining structures and therefore would not
 16 recognise AMCU as the collective bargaining agent of the
 17 strikers." You are welcome to comment before I read the
 18 next paragraph.
 19 MR MATHUNJWA: Not something – what I was
 20 talking to, I was referring to the forum.
 21 MR BURGER SC: Then in 9.2 he says,
 22 "Mathunjwa became agitated and insinuated that he could get
 23 the strikers off the koppie if Lonmin management 'gave him
 24 something' to take to the striking workers. By this, I
 25 understood Mathunjwa to mean that Lonmin should listen to

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1 the strikers' grievances and allow AMCU to negotiate on
 2 behalf of the strikers." Any comment?
 3 MR MATHUNJWA: That is wrong. I was
 4 simply – I was simply telling Kwadi in terms of management
 5 commitment. Remember your client has reneged from its
 6 commitment.
 7 MR BURGER SC: Yes, I put my client's
 8 version to you on Friday on that issue. Paragraph 9.3 he
 9 then says, "I informed Abey" – that's Abey Kgotle – "and
 10 Barnard Mokwena about what Mathunjwa had said. Mokwena
 11 told me that Mathunjwa had already raised the same issue
 12 with him and that he had informed him that Lonmin did not
 13 recognise AMCU for collective bargaining purposes. I
 14 returned and advised Mathunjwa accordingly."
 15 MR MATHUNJWA: That's not correct. The
 16 only thing, that I wanted a seat which Mr Kwadi confirmed
 17 it in one of the – of his recording. That was the
 18 confirmation that I wanted them to give me when Mr Kwadi,
 19 if I can read to the Commissioner?
 20 MR BURGER SC: Where do you read from,
 21 then we can follow it?
 22 MR MATHUNJWA: I think in bold numerical
 23 695, that was a recording of Mr Kwadi of the meeting of the
 24 morning of the 16th. It starts from page 3 right at the
 25 bottom.

<p style="text-align: right;">Page 2581</p> <p>1 MR BURGER SC: I think you read from 2 Exhibit OO4, page 659. 3 MR MATHUNJWA: You are correct. 4 MR BURGER SC: Yes? 5 MR MATHUNJWA: If I may read it, it says 6 "So you are saying that if this issue is to be resolved 7 there has to be, call it a central discussion for lack of a 8 better word, okay." 9 CHAIRPERSON: Sorry, sorry to interrupt, 10 that's actually Exhibit OO13 and it's the foot of page 3 of 11 that document and he's now going on to page 4. 12 MR MATHUNJWA: May I continue? "- a 13 better word, okay. There has to be a central forum to deal 14 with the issues of RDOO across Marikana operations and you 15 are saying the only way you will go to the mountain is if 16 you are guaranteed a place there." That's the central 17 forum that I was referring to. 18 MR BURGER SC: Yes. That's a forum 19 outside the bargaining structure. 20 MR MATHUNJWA: You are correct. And if 21 you go, if I can refer you back, 697 on your page on the 22 same exhibit where you, from the bottom paragraph – right 23 on top where it is said "Mr Mathunjwa" and followed by "Mr 24 Kwadi" and again the third one says "Mr Mathunjwa," because 25 of the situation, I wanted a seat in this special forum for</p>	<p style="text-align: right;">Page 2583</p> <p>1 forum was set whereby all unions were called in and even 2 the parties that were not recognised by the company, 3 referring to workers' delegation. 4 MR BURGER SC: I'm busy putting Mr Jomo 5 Kwadi's statement to you, Exhibit KK. In paragraph 9.4 he 6 refers to a press conference, which is not important for my 7 purposes, but at 9.5 he will say the following, if you just 8 read with me, 9.5. He says, "I later went to the JOC. 9 While I was there I received a telephone call from 10 Mathunjwa. He informed me that he wanted to go to the 11 koppie and requested that management should organise a 12 meeting with the SAPS in order that he be granted 13 permission to go to the koppie. I advised him that the 14 area had been declared as a police area and that it was no 15 longer in management's control. I also informed him that 16 management had been expressly advised that no-one would be 17 allowed to go to the koppie." 18 MR MATHUNJWA: Jomo is confusing issues 19 here. Maybe I would be in the assistance. On the 15th, 20 after we had this meeting with all unions and General 21 Mpmembe and other officers in management, NUM requested a 22 caucus. We waited behind in the boardroom, as AMCU, until 23 such time I phoned Kwadi because the time was already 24 lapsed. Then I phoned him, guys, where are you are, are 25 you not finished with the caucus? And that is when he</p>
<p style="text-align: right;">Page 2582</p> <p>1 these circumstances, for this extraordinary situation that 2 has happened at Karee, not on the normal bargaining forum." 3 MR BURGER SC: But that would mean that 4 you wanted to negotiate on behalf of AMCU with workers 5 partaking in an unprotected strike. 6 MR MATHUNJWA: That is not correct. If I 7 can also draw your attention to the – I don't have that 8 copy but I think because you've got a bundle there, it will 9 be easy for you. The concluded agreement after the 10 shootings were, the very same central forum that was 11 confirmed by Jomo Kwadi took place, which I wanted a seat 12 on. It's where then the strikers themselves had its own 13 delegation, which that delegation of the strike is not a 14 recognised entity, it's just workers forming delegations. 15 So it's where then we said – and then to come closer to 16 your question, AMCU never influenced anything there. They 17 signed on their behalf. They got the mandate on their own 18 from the mountain, so we just had a seat there. 19 MR BURGER SC: Mr Mathunjwa, that was a 20 different situation. 34 people had been killed and NUM had 21 by then agreed that there would be a negotiation in order 22 to obtain peace at Lonmin. That was after the tragedy. 23 This was before the tragedy, you're trying to avoid it 24 here. 25 MR MATHUNJWA: The point is, the central</p>	<p style="text-align: right;">Page 2584</p> <p>1 alerted us that they are at the JOC, then we have to come 2 over to the JOC where, when we arrived at the JOC it was 3 NUM, management and SAPS. Remember, we were left under the 4 disguise that NUM is going for a caucus. And then 5 secondly, I only phoned Jomo Kwadi the following day on the 6 16th when I was from the mountain to give him a feedback of 7 what the workers are saying. It is totally untrue what he 8 is saying. 9 MR BURGER SC: In 9.6 Mr Kwadi will tell 10 the Commission the following. "He" – referring to you, Mr 11 Mathunjwa – "he responded by insulting me. He angrily 12 asked whether management was mad and he told me to go and 13 drink water and that I would perhaps come back to my 14 senses. This is how the telephonic discussion ended." 15 MR MATHUNJWA: Again he is confusing 16 dates and times and even I said to him, those words I've 17 said it clearly to him when I returned from the koppie on 18 the 16th when I phoned him, that I'm here at the JOC, I'm 19 waiting for them. And then subsequently he said they are 20 not prepared to meet with AMCU. It's when then I said, 21 "What substance have you taken? Can't you take a glass of 22 water in order for you to be sober?" That was on the 16th. 23 So he's confusing dates here. 24 MR BURGER SC: Ja, he is dealing with the 25 16th August here, Mr Mathunjwa.</p>

<p style="text-align: right;">Page 2585</p> <p>1 CHAIRPERSON: Paragraph – the whole of 2 paragraph 9.1 and right – in fact the whole of paragraph 9 3 deals with the events of the 16th. Look at the heading of 4 paragraph 9.1, you'll see that.</p> <p>5 MR MATHUNJWA: Should I comment? Yes, 6 even he's dealing with the issue of the 16th but he's 7 confusing with the issues of the 15th because I only called 8 Jomo Kwadi once on Wednesday when I was referring to the 9 issue of the caucus, where are they. And then he said I 10 must come to the JOC. Then on the 16th I only called Jomo 11 Kwadi once, when I was from the mountain, to say come and 12 receive the feedback from the workers, when he said I must 13 give it to the general. I said no, the issue of labour was 14 concerning management. And subsequent to that he said they 15 don't want to meet with us. It's when then I said, "What 16 substance have you taken? Can you have a glass of water?" 17 [11:31] MR BURGER SC: The next version I want to 18 put to you is that of Mr Barnard Mokwena. Chair, if that 19 may be Exhibit OO15? And Mr Mathunjwa, what I'm doing is 20 I'm putting the version of the Lonmin senior management to 21 you. Your version I debated with you on Friday, I don't 22 intend to go back there, so I'm putting their version and 23 Mr Barnard Mokwena deals with these events of the 16th on 24 page 11 as part of paragraph 8 and if I may pick it up at 25 the top of page 12, paragraph 8.2, he's now dealing with</p>	<p style="text-align: right;">Page 2587</p> <p>1 life interesting, Chair. Mr Mathunjwa, let me proceed, 2 I'll come back to that. Let me just read to you the one 3 paragraph I want to put to you from Mr Barnard Mokwena's 4 statement paragraph 8.3 in my statement.</p> <p>5 CHAIRPERSON: That we have, that we have. 6 MR BURGER SC: Can I stay with that, 7 perhaps. If you read 8.3 with me, Mr Mathunjwa. "Jomo 8 later told me that Mathunjwa had contacted him and informed 9 him that he wanted the company to 'give him something' to 10 take to the mountain. I informed Jomo that Mathunjwa had 11 made the same request to me and that I had already informed 12 him that there was nothing to offer him because we were not 13 engaged in wage negotiations. I also told Jomo that Lonmin 14 would not allow AMCU to speak on behalf of the strikers 15 because Lonmin did not recognise AMCU for collective 16 bargaining purposes." Now you may not know about this 17 discussion, but it put it to you in fairness, this will be 18 Mr Mokwena's evidence before the Commission.</p> <p>19 MR MATHUNJWA: We'll dispute that one. 20 MR BURGER SC: And then paragraph 8.5 of 21 my statement deals with that telephone call of which you 22 told us earlier. It reads as follows, "During the course 23 of that morning I received a telephone call from General 24 Mbombo who wanted to speak to Mathunjwa. I handed my cell 25 phone to Mathunjwa but did not hear the conversation.</p>
<p style="text-align: right;">Page 2586</p> <p>1 that day, Thursday, and he says, "Also during that morning 2 General Mbombo, the provincial police commissioner, 3 requested facilities to conduct a press conference at LPD. 4 This was arranged." Then in 8.3 he says the following – do 5 you have that?</p> <p>6 MR MATHUNJWA: Just repeat that one? I 7 didn't see that one.</p> <p>8 MR BURGER SC: Paragraph 8.2 at the top 9 of page 12.</p> <p>10 CHAIRPERSON: Our copy of the statement 11 you've handed us ends at the foot of page 12, it is quite 12 clear that there must at least be a page 13 because the 13 sentence at the foot of page 12 which is the third 14 sentence, paragraph 8.5, is clearly incomplete.</p> <p>15 MR BURGER SC: Perhaps I should refer to 16 the paragraph numbers, my pagination may differ. I read 17 the witness paragraph 8.2. Chair, may I ask through you, 18 does that read "Also during that morning?" Yes.</p> <p>19 CHAIRPERSON: We've got that page. The 20 problem is, that page ends, 8.5 is clearly not the end of 21 the statement because it's quite clear that the last 22 sentence in paragraph 8.5 on page 12 is incomplete so 23 there's something we haven't got. So there's a page 13, 24 that heavy typed page 19, I take it, which we haven't got.</p> <p>25 MR BURGER SC: This is just to make my</p>	<p style="text-align: right;">Page 2588</p> <p>1 After returning my cell phone to me, I did not again see 2 nor speak to Mathunjwa on the 16th of August but did receive 3 an SMS from him after the shooting. I will deal with that 4 hereunder." Any comment?</p> <p>5 MR MATHUNJWA: That is correct, he came 6 in one of the offices and handed over his cell phone to me 7 but he never told me who was on the line.</p> <p>8 MR BURGER SC: And then just finally from 9 Mr Mokwena's statement, paragraph 8.16 –</p> <p>10 MR MAHLANGU: We don't have that. 11 MR BURGER SC: That's the statement 12 Exhibit OO15, 8.16 reads as follows.</p> <p>13 MR MATHUNJWA: I don't have that page. 14 CHAIRPERSON: He hasn't got that and 15 clearly he hasn't either.</p> <p>16 MR MATHUNJWA: I'm sorry, Mr 17 Commissioner, I don't have –</p> <p>18 CHAIRPERSON: That's what I said. I said 19 we haven't got it and I don't think you've got it either.</p> <p>20 MR BURGER SC: OO15. Can I read it to 21 you? It's a short one and we may be able to get past it. 22 Mr Mokwena will say later that day Mathunjwa sent a text 23 message at about 16:37, saying "Your will has been done, 24 are you happy now?"</p> <p>25 MR MATHUNJWA: It's not only one SMS I</p>

<p style="text-align: right;">Page 2589</p> <p>1 sent to him. The first one, you are correct, that's the 2 second one. The first one I sent to him, I don't – I never 3 heard you quoting it. I send him two text messages on the 4 very same day. The first one, if I could recall, was 5 saying I don't get any co-operation, let the peace prevail 6 in that – but I think we can find it – 7 MR BURGER SC: I remember, I seem to 8 remember that, yes – 9 MR MATHUNJWA: Thank you. 10 MR BURGER SC: I must be putting the 11 second text message to you. Can we then establish, did you 12 send him a message round about 16:37 to the effect that 13 "Your will has been done, are you happy now? 14 MR MATHUNJWA: That is correct that I 15 sent that text. 16 MR BURGER SC: Then the last witness I 17 must put to you is Mr Abey Kgotle, if his statement may be 18 OO16, Chair? And Mr Mathunjwa, if you'd turn to page 14, 19 paragraph 55. 20 CHAIRPERSON: I think there's a problem. 21 Page 14 has got in heavy type at the top left hand, the top 22 right hand corner, 35. It contains paragraphs, part of 23 8.11, then 8.12, 8.13 and 9.1. So sorry, I'm not – 24 MR BURGER SC: Is that the statement of 25 Mr Kgotle, Chair?</p>	<p style="text-align: right;">Page 2591</p> <p>1 unannounced at LPD and was demanding to meet us. Kwadi 2 told me that Mathunjwa had arrived at approximately 9 3 o'clock that morning and had indicated to both Kwadi and 4 Patrick Peega that he wanted to discuss 'the strikers' 5 demand of R12 500,00'." Any comment? 6 MR MATHUNJWA: That is totally wrong. 7 MR BURGER SC: He goes on at 9.5 to say, 8 "I advised Kwadi that I would not be in a position to meet 9 with Mathunjwa at such short notice. I asked him to remind 10 Mathunjwa that General Mpembe's message on the previous day 11 to the strikers was in clear terms. They had to disarm, 12 disperse and return to work in order that their issues 13 could be resolved via the established bargaining structures 14 or via the grievance procedures. I further asked Kwadi to 15 remind Mathunjwa that as at the morning of 16th August 16 2012, some 10 persons had lost their lives, many of whom 17 had done so in the line of duty. I was also mindful that 18 Mathunjwa had consistent informed management that AMCU was 19 not involved in the RDOs' wage demands or the RDO strike." 20 MR MATHUNJWA: It is not correct to 21 suggest that we just came at LPD unannounced. I think they 22 knew from the previous night after the debriefing but I can 23 continue, that is confirmed in the recording of these 24 recordings of the meeting of the 16th, even I'm not in the 25 position to point it direct but I came across whereby</p>
<p style="text-align: right;">Page 2590</p> <p>1 CHAIRPERSON: This is Abraham Mojela 2 Kgotle, yes. So something's gone wrong somewhere and I'm 3 just alerting you to it early so that we don't spend 4 further time on it. 5 MR BURGER SC: Thank you. 6 CHAIRPERSON: It sounds as if it's the 7 statement you have, it's just that – 8 MR BURGER SC: Yes. 9 CHAIRPERSON: - the numbering is 10 different. 11 MR BURGER SC: No, that's – 12 CHAIRPERSON: So I'm trying to help you 13 and for some reason – 14 MR BURGER SC: I appreciate that, I'll 15 manage just now. Yes, if I may ask your attention for page 16 36, paragraph 9.4, Mr Mathunjwa? 17 CHAIRPERSON: That's page 15 of the 18 statement at the - 19 MR BURGER SC: 15 of the typed page, 20 indeed. Thank you, Chair. He will say, "During the course 21 of the press conference" – Mr Mathunjwa, this is now the 22 morning of the 16th at LPD, the provincial commissioner is 23 having a press conference, this is the incident referred 24 to. "During the course of the press conference, Kwadi 25 contacted and advised me that Mathunjwa had arrived</p>	<p style="text-align: right;">Page 2592</p> <p>1 someone was saying this, today's meeting was about health 2 and safety. It's in one of the scripts here of the 3 recording of Mr Kwadi. You'll find out there is a 4 paragraph where themselves they confirm that the meeting of 5 this morning was about health and safety. That surely is 6 not that we came unannounced at LPD. 7 MR BURGER SC: As I understand your 8 version, you had spoken the previous evening to Mr Abey 9 Kgotle and agreed to meet him at 8 o'clock the next 10 morning. I get that from the opening statement by your 11 counsel where he said in paragraph 24.7, if you just listen 12 to me, this is what he said, "In response to a request from 13 Mr Mathunjwa, Mr Kgotle agreed that Lonmin would meet with 14 him at 08h00 the next morning to discuss how strikers would 15 be inducted back into the work place as required by mine 16 regulation." Now is that correct? 17 MR MATHUNJWA: Yes, that was said right 18 at the end of the meeting. Even your audio was not quite 19 clear but it does touch the word "induction" for the 20 following day, so that shot confirmed that we did have an 21 agreement that we'll meet with them the following day. 22 MR BURGER SC: And that agreement you had 23 with Mr Kgotle? 24 MR MATHUNJWA: In the presence of Jomo, 25 everyone was present in that meeting.</p>

<p style="text-align: right;">Page 2593</p> <p>1 MR BURGER SC: Those are the versions by 2 the Lonmin people on this important meeting. We know you 3 now go back to the koppie for the first interaction with 4 the workers. What I want to ask your attention for, 5 briefly, is the transcript of that meeting which is Exhibit 6 OO9 and on page 12 there is the following interchange. 7 That's Exhibit OO9 page 12. You say about two-thirds down 8 that – 9 MR MATHUNJWA: Sorry - 10 MR BURGER SC: Right hand column. 11 MR MATHUNJWA: Page? 12 MR BURGER SC: Page 12. 13 MR MATHUNJWA: Page 12? 14 MR BURGER SC: On that page the column 15 starts "Employees, it is ours." Do you have that page? 16 MR MATHUNJWA: Page 12. 17 MR BURGER SC: Is that the page, the 18 right hand column starting with "Employees, it is ours?" 19 MR MATHUNJWA: That's correct. 20 MR BURGER SC: Now if you read with me, 21 please, about 10, 12 lines from the foot of that page there 22 is a section where you say the following. "Firstly, the 23 employer talked to you about this matter." Do you have 24 that? 25 MR MATHUNJWA: Yes.</p>	<p style="text-align: right;">Page 2595</p> <p>1 dispute has got its own processes. And also you need to 2 note that by that time we were the only union that can talk 3 there. I couldn't refer them to something that they don't 4 know of, but that doesn't imply that we wanted to be a 5 bargaining agent at Lonmin. 6 [11:51 7 MR BURGER SC: Mr Mathunjwa, I will argue 8 at the end of this Commission that when you said the 9 following, you suggested to the workers that AMCU could 10 negotiate wages on their behalf in order to defuse the 11 situation. Let me read your words to you again, "that give 12 us power as AMCU to go back to the employer and negotiate." 13 MR MATHUNJWA: I think one has to come 14 very clear with this. We are not in the boardroom there, 15 we are not in the office there, there was no legal counsel 16 next to me, it was not an academic environment. The only 17 thing in my mind was to gain a trust of the strikers and 18 for them to see that I associate myself with their 19 grievance and then that's the reason I said to them those 20 issues can be better dealt with in the labour framework. 21 That didn't suggest that I want to be a bargaining agent 22 for them, but was this situation that was – we were 23 confronted with. And also you need to be reminded that 24 AMCU came in this issue by invitation of your client, so if 25 your client knew that AMCU is not a bargaining agent and</p>
<p style="text-align: right;">Page 2594</p> <p>1 MR BURGER SC: "Firstly, the employer 2 talked to you about this matter and requested you to 3 appoint a team to negotiate about the increment of RDO. 4 The employer has placed the precedent legally, which means 5 the foundation has been laid to show that the employer has 6 agreed to talk to you. The employer also put the 700 7 increment on the table. That gives us power as AMCU to go 8 back to the employer and negotiate." I put to you what you 9 suggest to the workers on that morning is that AMCU can 10 negotiate wages on their behalf with Lonmin. 11 MR MATHUNJWA: Are you finished? 12 MR BURGER SC: Yes, I have. That would 13 be your question. 14 MR MATHUNJWA: No, that is not correct. 15 I think we need to remember, we are facing a very explosive 16 situation there where we want to get people back to work, 17 where we want to save the lives of people. So this was my 18 effort to put their demands through the labour framework. 19 That was my effort. It was not just a normal situation. 20 Yes, I'm a registered trade union, I'm not shy of that, but 21 I was not promoting our union but I was simply saying go 22 back, this issue can be taken into a proper way of how to 23 deal with it. This was – these demands were outside the 24 bargaining structures. I never said I will bargain for you 25 but I said we can take this process as a dispute, then the</p>	<p style="text-align: right;">Page 2596</p> <p>1 they knew that those workers, they need 12 500, why did you 2 call AMCU in this situation? That was our best, since we 3 were called as a responsible union, called by the employer. 4 Again, if I didn't come I would have also been blamed but 5 it seems as if today all our efforts are being crucified by 6 yourselves, just because of availing myself to contribute 7 to defuse the situation. 8 MR BURGER SC: Mr Mathunjwa, how 9 responsible you acted as the president of AMCU will be the 10 subject of submissions I make at the end of the inquiry but 11 may I remind you what we had agreed yesterday? One of the 12 few things we did agree was – 13 CHAIRPERSON: Yesterday, you mean last 14 Friday? 15 MR BURGER SC: On Friday. One of the few 16 things you and I did agree was that the attitude of Lonmin 17 was consistent and responsible throughout this debate, it 18 was the following, that they will not negotiate with an 19 unprotected strike and they will only talk wages through 20 the bargaining structures in place at the mine in August of 21 2012. That I thought we'd agreed. 22 MR MATHUNJWA: I think if my recollection 23 serves me well, I didn't agree with you because during the 24 meeting of the 15th, that LPD meeting, your client Mr Kwadi 25 – Mr Barnard, apology – said the workers they must return</p>

<p style="text-align: right;">Page 2597</p> <p>1 back to work peacefully, then he will engage with the 2 leaders to the structures of the unions. He never 3 mentioned that those issues will be dealt with in the 4 bargaining structures. I haven't heard that one. And two, 5 that was the commitment that he made. He never mentioned 6 that workers return back to work, I've got a two year 7 agreement but in the meeting of the 16th which your tape 8 that was taped by Kwadi, he doesn't - or deliberately or 9 it's by incident – he doesn't record when I was saying to 10 them, when they were telling me that they've got a two year 11 agreement then I responded by saying, you set the 12 precedent, you gave these workers R700 and I believe that 13 that two year agreement was existing, why did you engage 14 those workers outside the two year agreement? So that 15 gives you an indication that your client was not 16 consistent.</p> <p>17 MR BURGER SC: I want to discuss 18 something else with you and have clarity from you. Very 19 early in your evidence-in-chief the Chair asked you the 20 following. He asked you, "Were you aware of earlier 21 increases granted by Implats in respect of rock drill 22 operators" and you said "I have heard about that." The 23 Chair then asked you, "Did that lead to a desire at other 24 mines for rock drill operators to get similar increases?" 25 And you said, "I cannot speculate." Do you remember that?</p>	<p style="text-align: right;">Page 2599</p> <p>1 MR BURGER SC: Does AMCU have a presence 2 at Impala? 3 MR MATHUNJWA: Impala, I think we've got 4 more than 16 000 workers there which are our members. 5 MR BURGER SC: Do you represent the 6 majority of RDOs at Impala, your trade union AMCU? 7 MR MATHUNJWA: We represent workers at 8 Impala, I don't know the classification and the categories 9 of those workers. 10 MR BURGER SC: Do you want us to believe 11 that you don't know whether AMCU represents the majority of 12 RDOs at Impala? 13 MR MATHUNJWA: I've answered by saying I 14 represent workers at Impala, I don't know what their 15 categories are, who is the majority. 16 MR BURGER SC: I will argue at the end of 17 the day, Mr Mathunjwa, that what you conveyed to the 18 workers on the 16th August was that AMCU was also involved 19 at Impala when the RDOs clamoured for increased wages 20 earlier that year and that you had spoken to the workers at 21 Impala on that occasion. 22 MR MATHUNJWA: That will be wrong. The 23 best thing may be to call a meeting and go with you at 24 Impala and ask those workers. 25 MR BURGER SC: We know that you went back</p>
<p style="text-align: right;">Page 2598</p> <p>1 MR MATHUNJWA: Yes. 2 MR BURGER SC: You told us you couldn't 3 speculate. What I want to understand is what was your 4 involvement at the time of the Impala RDO debate earlier in 5 2012? 6 MR MATHUNJWA: There was no involvement. 7 MR BURGER SC: Can I read to you what you 8 said to the workers on the morning of the 16th, on that same 9 page where we are, Exhibit OO9 at page 12? You said at the 10 top of that page or you're recorded as saying, "Comrade, 11 what I bring to you is that we heard that 12 000 is needed. 12 We hear that the employer is not talking about that. I say 13 to you, my siblings, painful as it is, it is the first time 14 that I stand before you. I was standing before you at 15 Impala and talked. It was difficult but today it is 16 bright, it is beginning to dawn." Did you stand before the 17 workers at Impala also, Mr Mathunjwa? 18 MR MATHUNJWA: Yes but not on issues of 19 remuneration or what. It was a May Day celebration where I 20 was invited. The management of Impala knew that I was 21 around the area. I even also, on the day of the 22 commemoration – what do they call it, it's not 23 commemoration – of a memorial service that was held at 24 Impala by senior management, I was also invited there, I 25 addressed the workers.</p>	<p style="text-align: right;">Page 2600</p> <p>1 a second time on the 16th August to the koppie and if we 2 have a look at Exhibit L it's round about 3:30 in the 3 afternoon. Where's the recording of that speech of yours? 4 MR MATHUNJWA: I think that's the 5 question that I posed, that where is the recording of my 6 second visit to Impala – I mean, sorry, to the koppie. 7 MR BURGER SC: No, but I'm asking you 8 because you record what happens at the koppie on your cell 9 phone. Now where's that recording? 10 MR MATHUNJWA: I don't recall recording 11 each and every thing that was happening there. That's the 12 reason, earlier on in this Commission, I mentioned that the 13 media was present there, all those media stations were 14 there, why they don't provide my second visit to the 15 koppie? 16 MR BURGER SC: That was, in your 17 perception, a most important meeting. 18 MR MATHUNJWA: All the meetings that I 19 engage on were very important. 20 MR BURGER SC: The first meeting of the 21 16th, which you call important, you recorded on your cell 22 phone. 23 MR BRUINDERS SC: No, that was the 24 meeting on the 15th. 25 MR BURGER SC: I'm asking about the first</p>

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1 one on the 16th.

2 MR BRUINDERS SC: The meeting on the 15th

3 he recorded on the cell phone, as I understand it, Chair.

4 MR MATHUNJWA: I don't recall.

5 MR BURGER SC: You do not recall or

6 record?

7 MR MATHUNJWA: I do not recall.

8 MR BURGER SC: You do not recall –

9 MR MATHUNJWA: I do not remember.

10 MR BURGER SC: Oh. But it's quite a

11 simple question. I want to know why you didn't record the

12 important second visit to the koppie on the 16th August.

13 MR MATHUNJWA: I think I've answered that

14 one. I can repeat again, all the meetings were important

15 for me.

16 MR BURGER SC: Mr Mathunjwa, you have

17 raised various criticisms against Lonmin during the

18 interview on SAfm and we've dealt with that on Friday and I

19 think we've dealt with the first two and that was the

20 criticism that they didn't arrange a meeting in July 2012

21 and the second one was that they didn't arrange a meeting

22 including AMCU on the 10th August 2012, but there was a

23 third complaint, a third criticism you levelled at Lonmin

24 and that was that they had spoken and dealt directly with

25 the RDOs before and they paid them R700 and that was a

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1 mistake, in your view. Do you remember that criticism?

2 MR MATHUNJWA: That's correct.

3 MR BURGER SC: Now am I correct to

4 understand that how that debate emanated and how the 700 or

5 R750 was paid to the RDOs, you wouldn't know, you weren't

6 present during that period?

7 MR MATHUNJWA: Yes, I was not in that

8 meeting.

9 MR BURGER SC: Now we will address that

10 at the Commission, but can I just briefly put to you the

11 version of Mr Da Costa. Do you know Mr Da Costa?

12 MR MATHUNJWA: I don't know him.

13 MR BURGER SC: He's in charge of Karee

14 mine, of the three shafts there and, Chair, his statement

15 appears in a supplementary bundle which was recently filed.

16 Lonmin indexed a witness statement relevant to the first

17 theme, so I'm just going to hand that up for convenience

18 and put one to the witness and –

19 CHAIRPERSON: This will be OO17.

20 MR BURGER SC: OO17?

21 CHAIRPERSON: Yes.

22 MR MADLANGA SC: Thank you, thank you

23 Chair, Exhibit OO17 and if you go there to paragraph 3.35

24 on typed page 11 – are our pages the same, Mr Mathunjwa,

25 page 11, 3.35? Do you have that?

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1 MR MATHUNJWA: Yes, I do have.

2 MR BURGER SC: Thank you. There's a lead

3 up to it but I don't have to deal with all of that. Mr Da

4 Costa will, on this issue, then say the following to the

5 Commission. He says, "My decision to communicate directly

6 with the RDOs was therefore motivated by the following" and

7 he gives a number of reasons. "The RDOs' request for a

8 higher wage appeared to be confined to RDOs working at

9 Karee." Can I just understand here, I'm told that in

10 August of this year AMCU was dominant at Karee and not

11 dominant at Eastern Platinum and Western Platinum, would

12 that be correct?

13 MR MATHUNJWA: Yes, that could be so,

14 hence we've got limited rights in terms of the recognition

15 agreement.

16 [12:11] MR BURGER SC: The second reason he

17 refers to is that the RDO delegation had specifically

18 requested him not to involve the trade unions in their

19 request for a higher wage. Thirdly, the RDO delegation

20 appeared to have the support of the majority of RDOs at

21 Karee. The fourth reason he suggests is that, pursuant to

22 the Karee strike in May 2011, Lonmin implemented a "line of

23 sight strategy which management would, where possible,

24 communicate - with employees – effectiveness of direct

25 management communication and to identify – and issues

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1 quickly and resolve them at the – level." Mr Da Costa will

2 say that he was aware of the fact that Implats and Anglo

3 Plats had experienced similar problems with their RDOs

4 which had resulted in them paying more money to their RDOs

5 but he was unaware of the mechanism which Implats and Anglo

6 Plats had used in order to pay additional monies to their

7 RDOs. [inaudible] where Lonmin was paying a lower wage to

8 RDOs – when compared to the wages paid to RDOs by Implats

9 and Anglo Plats. Were you aware of this last fact, this

10 fifth fact, Mr Mathunjwa, round about the 13th of August

11 when you became involved in the debate, that if one drew a

12 graph at that time of the wages of RDOs, Anglo Plats,

13 Implats and Lonmin, that the Lonmin RDOs were earning

14 considerably less than the other two? Were you aware of

15 that?

16 MR MATHUNJWA: No. I said no.

17 MR BURGER SC: Thank you. Then finally

18 3.36, I want to put to you that Mr Da Costa will say that

19 since properly trained and competent RDOs are scarce within

20 the platinum mining industry, he deemed it prudent to give

21 careful consideration to the RDOs' request and therefore

22 escalated this matter to EXCO on the 28th of June 2012.

23 MR MATHUNJWA: I don't know, is there any

24 question?

25 MR BURGER SC: No, I'm just putting –

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1 these are the reasons Mr Da Costa will say why he spoke to
2 the RDOs during June/July of 2012.

3 MR MATHUNJWA: Do you want me to respond
4 to it?

5 MR BURGER SC: You're welcome to respond.

6 MR MATHUNJWA: So therefore Mr Da Costa
7 will disregard the collective agreement with the majority
8 union.

9 MR BURGER SC: No, no, that's not what he
10 says and that won't be his evidence. In fact you will, or
11 the Commission will hear that within the bargaining
12 structure there is a discretionary entitlement in between
13 periods of wage agreements where management may award a
14 discretionary increase to component employees and that was
15 what happened when the R700 was added to the RDOs. That
16 was discretionary and that was not agreed with the workers,
17 in fact they didn't accept it but that's another, that's a
18 debate for another day.

19 MR MATHUNJWA: My experience in trade
20 union, it tells me that any monetary things that are put to
21 workers, the recognised trade union is called in even
22 though they cannot negotiate, whether it's money or is it
23 salary adjustment or what, or it's for the prerogative of
24 management but the majority union at the work place will be
25 called and be informed of the processes and the intention

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1 of the company.

2 MR BURGER SC: The majority union in this
3 instance being NUM?

4 MR MATHUNJWA: NUM, according to here and
5 other unions that are part of the –

6 MR BURGER SC: Yes.

7 MR MATHUNJWA: - bargaining forum.

8 MR BURGER SC: I want to deal with some
9 statements contained in the opening statement by your
10 counsel but in order to understand where he obtained his
11 instructions from, can I ask you whether you had read the
12 opening statement before it was presented to the
13 Commission, the AMCU opening statement?

14 MR MATHUNJWA: Yes, sir.

15 MR BURGER SC: You read that. And may we
16 assume that the instructions here accord with the
17 instructions you gave to your counsel when he wrote the
18 opening statement? Did it come from you? He doesn't get
19 it from any other party and if there is another party,
20 please give us the name of that party and I'd like to ask
21 him a few questions.

22 MR BRUINDERS SC: I object to that
23 question.

24 CHAIRPERSON: Mr Bruinders?

25 MR BRUINDERS SC: I object to the

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1 question. What somebody tells their counsel is privileged
2 from disclosure.

3 CHAIRPERSON: I'm not sure that the law
4 is – stiked with that. I've always understood the law to
5 be – I think there was a case called Green in the Appeal
6 Court in the early 60s where, if what was put to counsel,
7 was put to counsel with a view to his putting it in court,
8 then the privilege doesn't apply. That's my understanding
9 of the law. I haven't looked at it for 30 years but I
10 think you'll find that's the law, so – but let's see what
11 Mr Burger says. Maybe I'm wrong, maybe he will agree with
12 your statement of the law. Mr Burger?

13 MR BURGER SC: Chair, at this point I'm
14 only interested to identify the sources of my learned
15 friend's instructions and once I have the names of whoever
16 instructed him, what I certainly intend to do is to read a
17 statement in the opening and ask this witness whether it
18 comes from him and why he said it and that, with respect,
19 that – if there was any privilege, in my submission that
20 privilege is waived when it's written in an opening
21 statement and delivered.

22 CHAIRPERSON: My understanding of the law
23 is that it's not a privileged statement anyway but
24 obviously no-one's in a position to argue the point this
25 morning, but it may well be that you can get around the

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1 problem by putting to him what was said in the opening
2 speech and saying, is that what you said to your counsel.
3 That would, I think – because that wouldn't involve the
4 question of privilege, as I understand it but if you
5 persist in asking the question the way you originally put
6 it, then I may have to decide the point that is raised by
7 Mr Bruinders' objection and we'll have to look at Green's
8 case and the cases since then but if you reformulate the
9 question then we won't have to perform that interesting and
10 time-consuming exercise.

11 MR BURGER SC: Mr Mathunjwa, you have
12 read the opening statement delivered by my learned friend
13 Mr Bruinders, is that correct?

14 MR MATHUNJWA: Yes.

15 MR BURGER SC: And this accords with the
16 instructions you'd given my colleague?

17 MR MATHUNJWA: Yes, on behalf of the
18 union.

19 MR BURGER SC: Yes. Can I ask you to
20 have a look at the opening statement, paragraph 21, it
21 deals with the events of Sunday the 12th of August 2012.
22 Did you give the instructions for the statements contained
23 in paragraphs 21.1 to 21.3 dealing with the events on that
24 Sunday?

25 CHAIRPERSON: Mr Burger, I think the

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1 sensible way to proceed is to take a short adjournment and
 2 we can then read the thing quietly and then come back in a
 3 few minutes when we've all read it, otherwise we have to
 4 sit here in the Commission reading it, which is not the
 5 right way to go about things. We'll adjourn for five
 6 minutes.

7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [12:29] CHAIRPERSON: The Commission resumes.
 9 During the adjournment when we were studying the document
 10 we discovered that we'd been given incomplete copies, only
 11 the odd numbered pages, not the even numbered pages but
 12 that fortunately has been rectified, so we can now proceed.

13 MR BURGER SC: I apologise, Chair.
 14 CHAIRPERSON: Apology accepted.
 15 MR BURGER SC: Thank you. Mr Mathunjwa,
 16 paragraph –
 17 MR BRUINDERS SC: Chair, could I – Chair?
 18 CHAIRPERSON: Yes?
 19 MR BRUINDERS SC: Could I place something
 20 on record about the opening address?
 21 CHAIRPERSON: I don't know what it is but
 22 I can't – I don't know whether I should let you put it on
 23 record. Tell me what it is first.
 24 MR BRUINDERS SC: Well, you can send the
 25 witness out of the room if you like but –

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1 CHAIRPERSON: If Mr Burger doesn't
 2 complain you can carry on.
 3 MR BRUINDERS SC: You'll recall that when
 4 I delivered the opening address I did so – I had not yet
 5 handed in a written copy of an opening statement. In fact,
 6 I'd done that from my own notes, nobody had seen it, my
 7 notes at the time. So the opening address in written form
 8 was only given to the evidence leaders and to you,
 9 commissioners, after a couple of days – I think it was two
 10 days or so after I delivered my opening address. So he
 11 could not physically have seen it because I hadn't shown it
 12 to anybody before I delivered it here in the Commission.
 13 CHAIRPERSON: The question he's being
 14 asked whether what was contained in the opening address
 15 emanated from him. That's the question he's being asked,
 16 so he didn't have to have seen it. The question doesn't
 17 relate to the documents produced after the opening
 18 statement was given, the question relates to discussions
 19 prior to the delivery of the opening address.
 20 MR BRUINDERS SC: Well, two things flow
 21 from that, the first is he was asked whether he'd seen the
 22 opening address and the second is, that's precisely the
 23 objection, is that you can't ask – I mean it's
 24 objectionable to ask a witness what he had told his –
 25 CHAIRPERSON: I've told you I'm not sure

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1 that the law is as simple as that.
 2 MR BRUINDERS SC: Well, I –
 3 CHAIRPERSON: - we'll have to have
 4 argument on that if the question in that form is persisted
 5 in but anyway, I think you've made your point, you've put
 6 on record what you want to put on record. Mr Burger may
 7 proceed and if there are any objections that you have to
 8 the way he proceeds, well, then we will deal with them as
 9 and when they arise.

10 MR BURGER SC: Mr Mathunjwa, paragraph 21
 11 of the opening on page 9, I ask your attention for 21.1 to
 12 21.3. Are the facts there correct?
 13 MR MATHUNJWA: I would hope so, I would
 14 hope so even as I haven't seen this document, it's the
 15 first time I'm seeing this document.
 16 CHAIRPERSON: No, but never mind that.
 17 Just read it quietly and I won't take an adjournment
 18 because you've only got three sub-paragraphs to read, read
 19 it quietly and then Mr Burger will ask you questions about
 20 what you've read. Unless Mr Burger wants to read it into
 21 the record, in which case the few people who are left in
 22 the auditorium will be able to follow what's being said.
 23 MR BURGER SC: Chair, perhaps I should
 24 read it sentence by sentence with the witness and that may
 25 be easier for him. Mr Mathunjwa, what I'm reading to you

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1 is a statement by your counsel at the beginning of the
 2 Commission and this is a summary of what he has said on
 3 that occasion, let me read it with you. 21, he's talking
 4 of Sunday the 12th of August 2012 and he said the following
 5 occurred. "RDOs and other workers gathered at the big
 6 koppie. They were mostly NUM members." Are you reading
 7 with me or are you paging, Mr Mathunjwa?
 8 MR MATHUNJWA: I want to familiarise
 9 myself with your statement because you are just picking on
 10 a certain what –
 11 CHAIRPERSON: No – no, Mr Mathunjwa,
 12 don't try that. He's reading to you from the beginning of
 13 paragraph 21 and what was said by your counsel as to what
 14 had happened on Sunday the 12th of August. He's not picking
 15 bits and pieces, that's where he's starting and he's taking
 16 it sentence by sentence from there and he's asked you to
 17 follow that paragraph and those sentences as he reads them.
 18 So would you be kind enough to stop reading what you're
 19 reading and listen to him as he reads the particular
 20 paragraphs he's reading? You and I have got on very well
 21 up to now, let's carry on the way you've been previously
 22 and don't start misbehaving, alright?
 23 MR BURGER SC: I'm starting again. 21,
 24 on Sunday 12th August 2012 the following occurred. "RDOs
 25 and other workers gathered at the big koppie. They were

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1 mostly NUM members.” Is that correct?
 2 MR MATHUNJWA: Yes, that’s correct.
 3 MR BURGER SC: “They were armed with
 4 weapons such as knobkerries, sticks and spears and pangas.”
 5 Is that correct? Mr Mathunjwa, is that correct?
 6 CHAIRPERSON: Mr Mathunjwa, you’re being
 7 asked whether a paragraph that’s been read to you is
 8 correct. You don’t have to go on reading in the document.
 9 Answer the question you’re being asked.
 10 MR MATHUNJWA: According to the
 11 information, yes *06:22.
 12 MR BURGER SC: Where did you get this
 13 information from, Mr Mathunjwa?
 14 MR MATHUNJWA: I was getting from the
 15 mountain, from the people.
 16 MR BURGER SC: Is this the version that
 17 you got from the people on the mountain on the 15th and the
 18 16th August?
 19 MR MATHUNJWA: This is the message, I’ve
 20 got it from the people, I mean themselves and also from our
 21 comrades who went to the mountain during the strike.
 22 MR BURGER SC: Then give me the name of
 23 your lead comrade. Who’s the most important comrade who
 24 gave you this information? What’s his name?
 25 MR MATHUNJWA: It was in the debriefing,

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1 general secretary Mphahlele.
 2 MR BURGER SC: And he’s available? He’s
 3 around and if he has to give evidence, he can give
 4 evidence?
 5 MR MATHUNJWA: I’ll believe even though
 6 he’s not around here in Rustenburg, but surely if he’s
 7 needed he can be.
 8 MR BURGER SC: Can I read on? The next
 9 sentence says, “They decided to march again to the NUM
 10 offices to put their demand to the NUM.” Now can I stop
 11 there? What was the demand they wanted to put to NUM, as
 12 you understood it? What did they want to ask NUM?
 13 MR MATHUNJWA: I think that was a demand
 14 that they was, keep on saying of 12 500.
 15 CHAIRPERSON: Mr Burger, I think this
 16 questioning is unfair and I’ll tell you why, because if you
 17 look at paragraph 19.5 on page 7, you’ll see that he’s
 18 talking about what had happened on the previous day, as I
 19 understand, and he says that “The RDOs arrived at the LPD –
 20 I’m reading 29.5 – “stopped by the police and Lonmin
 21 security, asked to elect five representatives, they did.
 22 Lonmin management informed the five representatives, called
 23 the five Mdoda, that the strike was unlawful and that they
 24 had to negotiate through NUM. Lonmin refused to discuss
 25 the wage increase with RDOs.” Then the next paragraph

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1 says, “After refusal” – sub-paragraph, sorry – “After
 2 refusal by management to talk to RDOs about their demand,
 3 they decided to strike or to continue to strike and to
 4 march to the NUM offices on the following day to put their
 5 demand to the NUM as advised by Lonmin.”
 6 MR MATHUNJWA: Yes.
 7 CHAIRPERSON: So in other words what he’s
 8 saying is, because Lonmin says we’ll only negotiate with
 9 NUM, if you want this demand to be put to us, you’ve got to
 10 put it to us through NUM. That’s what he means when he’s
 11 talking about it in 21.1. So I think to be fair, if one
 12 cross-examines him on 21.1 standing by itself, without his
 13 being aware of what’s said in the earlier paragraph I’ve
 14 read, then you may find he’s at a disadvantage but anyway
 15 I’ve now, I hope, read the relevant passage which he’s
 16 presumably heard, so you can continue because any
 17 unfairness that might previously have existed has, I hope,
 18 been done away with.
 19 MR BURGER SC: Chair, you’ll remember
 20 that on the evidence there’s a factual conflict here and
 21 Lonmin’s version – and there is a version here which says
 22 that that march on the NUM offices was very different, the
 23 purpose of that march.
 24 CHAIRPERSON: Mr Burger, I’m aware of
 25 that but it’s also common cause, I think, that Mr Mathunjwa

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1 wasn’t there. So Mr Mathunjwa, as I understand it, is
 2 giving us what he was told by his people, if one can call
 3 them that, on the spot at the time. So it’s not just a
 4 question of what really happened on that day, what he says
 5 happened, there is the scope for misunderstanding and
 6 misinformation between his informants and him. But anyway,
 7 the point I was concerned with was 21.1 read by itself does
 8 seem strange, why would they put their demand to NUM, but
 9 if you understand that according to his version or what was
 10 told to him, Lonmin in fact said to the people, the
 11 Amadoda, put your demand to NUM because we can only
 12 negotiate with them and not with you, then it makes sense.
 13 But anyway, as I said, the point has now been, I hope,
 14 sorted out and I suggest you continue with your cross-
 15 examination.
 16 MR BURGER SC: And the second half of
 17 that sentence then, Mr Mathunjwa, says, “They decided to
 18 march again to the NUM offices to complain about the
 19 killing of the two RDOs by NUM officials on the previous
 20 day.” I think we’ve canvassed that on Friday and you
 21 accept that’s not correct.
 22 MR MATHUNJWA: That’s correct.
 23 MR BURGER SC: Yes.
 24 CHAIRPERSON: Can I interpose and ask a
 25 question at this stage? When did you discover that two

<p style="text-align: right;">Page 2617</p> <p>1 RDOs were not killed on the previous day? 2 MR MATHUNJWA: I think in the – also in 3 the loco inspection it was not quite clear that who are the 4 people that had been killed, there was no trace and I did, 5 being asked by the leading evidence on, during this 6 Commission, where I confirmed that I'd never seen them. 7 CHAIRPERSON: But you now accepted when 8 it was put to you by Mr Madlanga that people were shot but 9 no-one was killed on that day, you accepted that. What I 10 want to know is when did you discover that they hadn't been 11 killed, that people had been shot but not fatally? 12 MR MATHUNJWA: It's during the loco 13 inspection when our attorneys were keeping on asking, there 14 was no clarity there that indeed there was someone who was 15 killed. 16 CHAIRPERSON: So you discovered it before 17 the opening speech was made. 18 MR MATHUNJWA: What I'm trying to say, Mr 19 Chairman, is that during that loco inspection where we 20 were, it was not quite clear and keep on, during the – yes, 21 during the loco inspection the workers themselves they said 22 people were killed but if we keep on asking, it was not 23 quite clear when was – I mean where did those people were 24 killed and during my submission of my statement I was still 25 under the impression that there were people that were</p>	<p style="text-align: right;">Page 2619</p> <p>1 shot on the 11th. But that happened way into the inquiry 2 when we were attempting to compile a joint list of who we 3 say was deceased and who not. 4 CHAIRPERSON: Effectively you're giving 5 evidence which you shouldn't do but never mind, it sounds 6 as if this point has now been cleared up, so we can carry 7 on and not waste, spend further time on it. 8 MR BURGER SC: Mr Mathunjwa, in paragraph 9 21.3 of the opening it was said that two marchers were shot 10 and killed by Lonmin security officers. This is on Sunday 11 the 12th August when Lonmin loses two security officers. 12 Now do you accept today this is false? 13 MR MATHUNJWA: That is what I was told, 14 that is what I stand by, that is what was said, that two 15 workers were shot by NUM and two marchers were shot by 16 Lonmin security. 17 MR BURGER SC: Do you accept today that 18 two marchers were not shot and killed by Lonmin security on 19 Sunday the 12th of August 2012? 20 CHAIRPERSON: Mr Burger, I think that's 21 an unfortunately phrased question, it's a double question. 22 They may have been shot and not killed, so by putting the 23 two together you get the – 24 MR BURGER SC: I'm concentrating on the 25 killing –</p>
<p style="text-align: right;">Page 2618</p> <p>1 killed because it's what the people keep on saying. And 2 these workers were keep on insisting that two people were 3 shot, one was gouged with a spear and they died but we 4 couldn't get it. We keep on asking until that statement 5 was submitted and thereafter until Adv Madlanga precisely 6 asked me that did I saw those people, then I said no, I 7 didn't see, then I retracted that statement that people 8 were killed. Thank you, Mr Chairman. 9 MR BRUINDERS SC: Chair, can I place 10 something on record and again if you want the witness to 11 leave then I'm quite happy for that to happen. 12 CHAIRPERSON: If I ask the witness to 13 leave, that's an insinuation that he'll change his story 14 because he's heard you and I don't think it's appropriate 15 for any insinuation of that kind to be made. 16 MR BRUINDERS SC: Chair, long after the – 17 in fact it was after the first witness was called, we, 18 together with Mr Chaskalson, were working on a schedule of 19 the deceased and at that stage during the course of this 20 inquiry our instructions were that two NUM members were 21 killed. We then, in the course of compiling that schedule 22 of the deceased, we – there was a debate between us and the 23 evidence leaders and in fact during the course of that 24 debate certainly I accepted that we couldn't establish that 25 two NUM people were killed on the 11th although they were</p>	<p style="text-align: right;">Page 2620</p> <p>1 CHAIRPERSON: I know, that's the point – 2 MR BURGER SC: So can I put it that way - 3 CHAIRPERSON: It's a double question, 4 rephrase it. 5 MR BURGER SC: Can I put it? I put to 6 you that two marchers were not killed by Lonmin security on 7 the 12th of August 2012. Do you accept that? 8 MR MATHUNJWA: If that is the case, yes, 9 but as far as I know this is what I was told. 10 MR BURGER SC: In fact, I want to put to 11 you that you knew that the two marchers were not killed on 12 that day during the inspection in loco when you walked that 13 road and you heard what was said and you saw where the two 14 security officers were killed. 15 MR MATHUNJWA: During the loco inspection 16 I think the workers themselves, I think in the camera, who 17 was having the video camera, he said that two people were 18 shot and killed. They pointed even where, behind the 19 offices of NUM, I think it's a T-junction and they even 20 pointed the one that tried to cross over the fence and the 21 one ran towards the taxi rank. They pointed where he was 22 finished, in the loco inspection. 23 [12:49] MR BURGER SC: And what we find quite 24 remarkable is that in your witness statement you don't deal 25 with any of these events. Do you have a comment on that?</p>

<p style="text-align: right;">Page 2621</p> <p>1 MR MATHUNJWA: I don't have a comment.</p> <p>2 MR BURGER SC: Were you a NUM office-</p> <p>3 bearer in your past?</p> <p>4 MR MATHUNJWA: Yes.</p> <p>5 MR BURGER SC: And is there another AMCU</p> <p>6 official called Steven who was a NUM office bearer in his</p> <p>7 past?</p> <p>8 MR MATHUNJWA: Repeat that question?</p> <p>9 MR BURGER SC: Steve, a man by the name</p> <p>10 of Steve, I'm told, was a NUM office-bearer, he's now very</p> <p>11 prominent in AMCU at Lonmin. Do you know who I refer to?</p> <p>12 MR MATHUNJWA: Yes, I know.</p> <p>13 MR BURGER SC: I'm told it's Steve</p> <p>14 Kulalukele.</p> <p>15 MR MATHUNJWA: That's correct.</p> <p>16 MR BURGER SC: Is he available to give</p> <p>17 evidence, is he around?</p> <p>18 MR MATHUNJWA: I don't know where, his</p> <p>19 whereabouts right now.</p> <p>20 MR BURGER SC: Is he an AMCU office-</p> <p>21 bearer at Lonmin?</p> <p>22 MR MATHUNJWA: He is not an office-</p> <p>23 bearer, he's an AMCU official. There is a difference</p> <p>24 between an office-bearer and an official. An office-bearer</p> <p>25 is a person who is elected by the members. An official is</p>	<p style="text-align: right;">Page 2623</p> <p>1 speeches on the 16th, which one are you referring to?</p> <p>2 MR TIP SC: I beg your pardon, Mr Chair,</p> <p>3 the first one, the one of which we have a transcript. Mr</p> <p>4 Mathunjwa, you needn't turn to it now, I'm not about to ask</p> <p>5 you a question concerning it, I just want to explain what I</p> <p>6 will be seeking to get your assistance on so that you have</p> <p>7 a proper understanding of where the questions will be</p> <p>8 going. What is apparent in the proceedings and from the</p> <p>9 evidence and the documents that are before the Commission</p> <p>10 at this stage is that the belief amongst the strikers on</p> <p>11 the koppie that NUM had, for no good reason, killed two of</p> <p>12 their members, played a significant role in their attitude</p> <p>13 to their circumstances and their mood. Would you agree</p> <p>14 with that?</p> <p>15 MR MATHUNJWA: Yes, on the 15th it's what</p> <p>16 they told us.</p> <p>17 MR TIP SC: And on the 16th it was raised</p> <p>18 again, in fact you touched on it more than once, didn't</p> <p>19 you?</p> <p>20 MR MATHUNJWA: Yes, that could be, sir.</p> <p>21 MR TIP SC: Now you've made it clear, Mr</p> <p>22 Mathunjwa, that you were not personally present at Lonmin</p> <p>23 on the 10th August or the 11th August or the 12th August or</p> <p>24 the 13th August of this year, correct?</p> <p>25 MR MATHUNJWA: That's correct.</p>
<p style="text-align: right;">Page 2622</p> <p>1 a person who has been employed.</p> <p>2 MR BURGER SC: I am indebted to you, so</p> <p>3 he's employed by AMCU.</p> <p>4 MR MATHUNJWA: That's correct.</p> <p>5 MR BURGER SC: I have no further</p> <p>6 questions.</p> <p>7 COMMISSIONER HEMRAJ: Mr Mathunjwa, your</p> <p>8 second visit to the koppie, do you recall, apart from the</p> <p>9 media, whether anyone else was making a video recording</p> <p>10 when you addressed the crowd?</p> <p>11 MR MATHUNJWA: No ma'am, I don't recall.</p> <p>12 CHAIRPERSON: Mr Tip?</p> <p>13 CROSS-EXAMINATION BY MR TIP SC: Mr</p> <p>14 Chair, commissioners, yes. Mr Mathunjwa, a great many</p> <p>15 circumstances have already been traversed in cross-</p> <p>16 examination and I'm going to try not to go across that</p> <p>17 material again. On occasion, we might have to touch down</p> <p>18 on aspects of documents or what you said because of the</p> <p>19 point that I want to make and in that case, please accept</p> <p>20 my apology in advance and I hope it won't tax you. I want</p> <p>21 to begin by explaining quite clearly what it is that I'm</p> <p>22 really going to be concerned with in my cross-examination</p> <p>23 of you. Apart from the speech that you yourself gave on</p> <p>24 the 16th August about which you have personal knowledge –</p> <p>25 CHAIRPERSON: He said he made two</p>	<p style="text-align: right;">Page 2624</p> <p>1 MR TIP SC: And accordingly I'm not going</p> <p>2 to pose questions to you that seek to extract detail in</p> <p>3 respect of what took place then. However, it is of great</p> <p>4 concern to NUM to try to establish where false accounts of</p> <p>5 what had taken place came to be propagated amongst the</p> <p>6 people on the koppie. I will accordingly begin by putting</p> <p>7 questions to you that seek to obtain some clarity on where</p> <p>8 such reports came from and what the flow of information</p> <p>9 concerning them was. You're with me on the overall</p> <p>10 structure of what I'm going to do today?</p> <p>11 MR MATHUNJWA: Yes, I'm following you.</p> <p>12 MR TIP SC: Thank you. Could I ask you</p> <p>13 then to turn first of all to your statement, Exhibit NN,</p> <p>14 paragraph 25? That – you have it in front of you?</p> <p>15 MR MATHUNJWA: Yes, that's page 9.</p> <p>16 MR TIP SC: That's correct. That deals</p> <p>17 with the meeting that you had at your offices in Witbank on</p> <p>18 the 13th August 2012 when, according to your statement you</p> <p>19 had received a telephone call from Mr Kwadi, do you recall</p> <p>20 that?</p> <p>21 MR MATHUNJWA: Yes.</p> <p>22 MR TIP SC: And towards the end of</p> <p>23 paragraph 25 you say that you delegated the general</p> <p>24 secretary and the national organiser to go to Lonmin and</p> <p>25 meet with Lonmin management and the AMCU branch committee.</p>

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1 They left immediately.

2 MR MATHUNJWA: I see that.

3 MR TIP SC: Yes. And do you confirm that

4 the delegation or instruction that you gave them related to

5 meetings only with Lonmin and the branch committee, nobody

6 else?

7 MR MATHUNJWA: Yes, to meet with Lonmin

8 and the branch structures.

9 MR TIP SC: Now if you'd go to paragraph

10 28 of your statement at the foot of that page, that is now

11 the 14th August, the following day when you got feedback

12 from your general secretary and the national organiser and

13 the feedback was that they had met with the AMCU branch

14 committee, Lonmin management and the striking workers. The

15 striking workers, of course, hadn't formed part of your

16 instruction to them.

17 MR MATHUNJWA: Yes, I didn't mention the

18 strikers.

19 MR TIP SC: Now I'd be glad, Mr

20 Mathunjwa, if you could tell us how that happened? How was

21 it that your instruction came to be extended and how it

22 was, as far as you know, that these two office-bearers were

23 able to meet with the striking workers?

24 CHAIRPERSON: Mr Mathunjwa, is it going

25 to be a long answer, because if it is, it's one o'clock, I

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1 suggest we take the lunch adjournment till half past one,

2 formulate your answer in your mind clearly during that time

3 - at half past one. The Commission will adjourn till 1:30.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [13:32] CHAIRPERSON: The Commission resumes. I

6 had thought that the witness was already back and in the

7 witness seat but I was wrong.

8 MR BRUINDERS SC: They've just gone to

9 call him.

10 CHAIRPERSON: If this was a court and I

11 had an orderly, I could send him to arrest him but I can't

12 do - this is not a court so I can't do that, but you're

13 looking after the matter, Mr Bruinders?

14 MR BRUINDERS SC: We sent somebody out to

15 -

16 CHAIRPERSON: Send a posse of policemen

17 out to find him.

18 MR BRUINDERS SC: To corral him and bring

19 him in.

20 CHAIRPERSON: Mr Mathunjwa, I think you

21 should put your apology on record but before you do that,

22 let me remind you, you're still under oath.

23 MR MATHUNJWA: Thank you. I'd like to

24 extend my sincere apology. I thought the break was for an

25 hour, but I hope you'll accept my apology. Thank you.

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1 CHAIRPERSON: Your apology is accepted

2 but may I give you some advice and listen in future to the

3 questions that you're asked and the comments that are made

4 when the Commission adjourns. Mr Tip, would you repeat the

5 question you asked before the adjournment and give the

6 witness a chance to get his breath back so that he can then

7 give you a considered answer.

8 CROSS-EXAMINATION BY MR TIP SC (CONTD):

9 Certainly, Mr Chair. Mr Mathunjwa, I'd drawn your

10 attention to paragraph 28 of your statement from which it

11 appears that the general secretary and the national

12 organiser not only met with Lonmin and with the local

13 branch committee, but they had also met with the striking

14 workers and I had asked you to account for how that had

15 happened because it wasn't part of your instruction and who

16 had facilitated that meeting with the striking workers?

17 MR MATHUNJWA: Yes, that is correct that

18 they were told that they have to meet management and the

19 branch structures but however, even though that I cannot

20 tell what developments transpired during the engagement at

21 the mine but I should think that the invitation was clearly

22 that they need our intervention.

23 MR TIP SC: Can you tell us whether

24 members of the branch committee, the AMCU branch committee

25 or a full-time official like Steven Kulalukele were in

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1 contact with the striking workers at that stage, did they

2 have an entrée, could they arrange for your general

3 secretary and national organiser to go there and to be

4 properly received?

5 MR MATHUNJWA: As I've stated earlier on,

6 I don't know what transpired on that day when they arrived

7 at Lonmin and what arrangement they came up to that led

8 them to attend to the strikers there at the koppie.

9 MR TIP SC: Very well. I want to move on

10 to the second portion of paragraph 28 of your statement

11 where you say, "They advised us that the striking workers

12 told them that they were demanding 12 500 and asked them to

13 convey this to Lonmin management. They did so." Do you

14 confirm that that was reported to you?

15 MR MATHUNJWA: Yes, on the debriefing on

16 the following day.

17 MR TIP SC: Yes, on the 14th.

18 MR MATHUNJWA: That's correct.

19 MR TIP SC: Was that the only topic on

20 which they reported?

21 MR MATHUNJWA: Inasmuch I might not be

22 precise but I think also to the event led to, for them to

23 be on the strike.

24 MR TIP SC: The event that led to them

25 being on strike, which was what, what event?

<p style="text-align: right;">Page 2629</p> <p>1 MR MATHUNJWA: Even though we'd never – I 2 don't think we've got some minutes of that but it was 3 mainly that they'd been to the employer and then the 4 employer subsequent to that referred them to the union's 5 offices and subsequent to that there were incidents, as was 6 mentioned previously, that occurred, then they ran to the 7 mountain. 8 MR TIP SC: This was, this report I 9 gather was received quite shortly before AMCU drew up the 10 media statement which led to the media briefing of 14 11 August. 12 MR MATHUNJWA: Yes, that is correct. 13 MR TIP SC: Could we turn to that media 14 briefing? It is OO2. I'd be glad if you'd turn to page 2. 15 MR MATHUNJWA: Got it. 16 MR TIP SC: The second paragraph on that 17 page. You've read it? 18 MR MATHUNJWA: The one that starts with 19 "Last week?" 20 MR TIP SC: "Last week Friday," yes, that 21 one. Now what, what was said there in that media statement 22 was and I'm summarising – I'm not going to read the whole, 23 you've, read yourself – but that on the Friday, while 24 passing at Wonderkop mine, people came out of the NUM 25 office wearing NUM T-shirts and they opened fire and one</p>	<p style="text-align: right;">Page 2631</p> <p>1 examination. 2 MR MATHUNJWA: That is correct. 3 MR TIP SC: But what I'm interested for 4 the moment is in where the information came from on that 5 Tuesday the 14th of August that led to this press statement, 6 that the incident had happened on Friday, that being the 7 day when people marched to Lonmin's office and back to the 8 stadium. 9 MR MATHUNJWA: Information inasmuch maybe 10 the day, it looks Friday as I've said also but this 11 information was most of the information of the debriefing 12 that I received from the two office-bearers and officials 13 that were at the mine. 14 MR TIP SC: Let me just draw this to a 15 head, if I can. We know, Mr Mathunjwa, that there was a 16 march from the stadium to the Lonmin offices, the LPD 17 offices on the Friday and back again to the stadium. 18 You're familiar with that? 19 MR MATHUNJWA: Yes, I think that was said 20 in the Commission. 21 MR TIP SC: And what this paragraph in 22 the media statement conveys is clearly that it was in the 23 course of that event that people happened to pass by the 24 NUM office when they were shot at and one was killed and 25 others were injured. Is that a fair interpretation?</p>
<p style="text-align: right;">Page 2630</p> <p>1 worker was killed on the spot while others were wounded and 2 it goes on to say, workers have seen the culprits and can 3 identify them by names. The first question I have for you 4 is, precisely who gave you that information? 5 MR MATHUNJWA: If I do my recollection, 6 this was about the management referring to the call – ja, 7 if I refer to Friday, if I do my recollection, was about a 8 call that I received to management. 9 MR TIP SC: Mr Mathunjwa, I don't want to 10 put questions to you when it's apparent to me that you 11 haven't adequately read this paragraph. I'm going – well, 12 perhaps let me put the question to you. You've described 13 an incident where people were passing the NUM office, 14 evidently not intending to stop there and that NUM people 15 came out and shot at them for no reason. That's correct, 16 that's what is set out here. 17 MR MATHUNJWA: Yes – yes. 18 MR TIP SC: Now are we to understand that 19 you were saying in this media statement that that incident 20 was said to have occurred on Friday the 10th of August? 21 MR MATHUNJWA: Yes, according to here, 22 but I think that I rectified in that people were not shot 23 on Friday. 24 MR TIP SC: Yes, you rectified that here 25 in the course of your evidence last week in cross-</p>	<p style="text-align: right;">Page 2632</p> <p>1 MR MATHUNJWA: Sorry, could you please 2 repeat that question for me? 3 MR TIP SC: Yes, certainly. What I'm 4 suggesting to you is that this paragraph in your media 5 statement clearly conveys that it was in the course of that 6 march where people had gone to Lonmin's office and back 7 again, that they had happened to pass NUM office when they 8 were essentially attacked by NUM people who came out of the 9 office and shot at them for no reason. 10 MR MATHUNJWA: Yes, this suggests that, 11 yes. 12 MR TIP SC: And why it is important in 13 the context of this Commission is that that belief 14 continued to be articulated by people on the koppie. It 15 was said to them during your speech, the first speech on 16 the 16th August - 17 MR MATHUNJWA: Can I come in? 18 MR TIP SC: Yes. 19 MR MATHUNJWA: It's not that it was only 20 said on the 16th August. It was the shooting or apparently 21 the killing on the first day when we went to the koppie 22 with the SAPS the workers, when they were responding, they 23 did indicate that as they were marching then they were shot 24 and killed, two of their colleagues were killed. 25 MR TIP SC: Mr Mathunjwa, you're quite</p>

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1 correct in that and forgive me if you thought that I was
 2 suggesting that it was what you said on the 16th that led to
 3 this being the belief amongst those on the koppie, I'm not
 4 suggesting that. It was there already. Do you follow?
 5 MR MATHUNJWA: Yes, sir.
 6 MR TIP SC: And what I'm really concerned
 7 to do insofar as you can assist us, is to try to find out
 8 who began that belief? In other words, who started that
 9 version and who propagated it before the 15th, by the 13th?
 10 [13:53] MR MATHUNJWA: It came from the workers
 11 after our office bearers, general secretary, went to the
 12 mountain and then they reported to me.
 13 MR TIP SC: Now Mr Mathunjwa, you've
 14 accepted that in fact this didn't take place on the Friday
 15 but because it is so widespread a version, I'm going to
 16 point out two features to the Commission, through you,
 17 which underline that it couldn't have happened in the way
 18 described in your media statement and I'm going to ask you
 19 first of all to look at a map which we propose to hand up,
 20 Mr Chair.
 21 CHAIRPERSON: We'll make it OO18.
 22 MS PILLAY: Chair, may I just – with your
 23 leave, may I just enquire, the OO exhibits have all been
 24 Lonmin documents thus far.
 25 CHAIRPERSON: I see, yes.

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1 MS PILLAY: These are now NUM documents,
 2 so that they should be PP1.
 3 CHAIRPERSON: This should be PP1.
 4 MS PILLAY: That's right, yes.
 5 CHAIRPERSON: Thank you.
 6 MR TIP SC: Mr Mathunjwa, before – you've
 7 got the map there – before I draw your attention to the
 8 relevant features of it, I just want to make clear what the
 9 purpose –
 10 CHAIRPERSON: It's not actually a map, it
 11 looks like a Google photograph.
 12 MR TIP SC: It is a Google photograph.
 13 Google would probably say it was the most reliable map that
 14 one could have, Mr Chair, but that's what it is. I'm going
 15 to ask you to have a look at this because part of this
 16 version that had taken root amongst the striking workers
 17 was that people had been innocently marching past the NUM
 18 office on their way from the LPD back to the stadium. That
 19 is what was being said by them, isn't it?
 20 MR MATHUNJWA: That is correct, that is
 21 how I was briefed.
 22 MR TIP SC: Alright. Now, if you have a
 23 look at this Google photograph you will see that there are
 24 two – there are two yellow pointers. The one on the right
 25 is the NUM office and then you see just to the left and

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1 below that the point of the, the location of the stadium is
 2 marked. The stadium is just to the left of the word
 3 "Stadium," do you see that?
 4 MR MATHUNJWA: Yes.
 5 MR TIP SC: And at the foot of the
 6 photograph if you go straight down, following that yellow
 7 line, you see the LPD office of Lonmin.
 8 MR MATHUNJWA: Yes, I see that.
 9 MR TIP SC: And just to clarify the
 10 coloured lines, Mr Mathunjwa, Chair, this is in fact as
 11 obtained from Lonmin and the long yellow line that runs
 12 vertically is the route of the marches from the stadium to
 13 the LPD office and back again. Do you see that line?
 14 MR MATHUNJWA: That's correct, I see it.
 15 MR TIP SC: And is it also clear to you,
 16 looking at this photograph, that for workers to have gone
 17 to the NUM office on that occasion would have required a
 18 deliberate decision and a deliberate diversion by them.
 19 They weren't going to pass it otherwise, do you agree?
 20 MR MATHUNJWA: Yes, it looks – the NUM
 21 offices are behind the stadium, is that correct?
 22 MR TIP SC: Well, it's to the right of
 23 the stadium. You see that little red line leading up to
 24 the NUM office?
 25 MR MATHUNJWA: Yes, I do see it.

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1 MR TIP SC: That shows the road that
 2 would've had to be followed by anyone who moved from the
 3 stadium area to the NUM office. It would require a
 4 deliberate decision to go there. You agree with that?
 5 MR MATHUNJWA: Yes.
 6 MR TIP SC: Thank you. Then I –
 7 CHAIRPERSON: I don't understand it. If
 8 you are referring to media release statement OO2, second
 9 paragraph, we have to know where the Wonderkop Mine is
 10 because the paragraph says, "We received information. All
 11 RDOs decided to submit a memorandum to Lonmin in the form
 12 of a march." Well, that's – it's not quite clear what that
 13 means but I take it – we get the general idea. "They all
 14 gathered at Karee, together at Karee and proceeded to
 15 Wonderkop Mine to meet with other RDOs there, so they could
 16 all proceed to the stadium where the memorandum would be
 17 handed over."
 18 MR TIP SC: Yes.
 19 CHAIRPERSON: "While passing at Wonderkop
 20 mine, there were people who came out of NUM office who
 21 opened fire" et cetera. Now if you look at this PP1, where
 22 exactly is the Wonderkop mine? Is it where the words –
 23 where the word "Wonderkop" appears near the top of the
 24 page? Because if they were coming from the Wonderkop mine,
 25 they would've passed NUM offices, they would then have

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1 passed the stadium and they would then have gone to LPD.
 2 So I'm not making a statement, I'm asking you a question.
 3 MR TIP SC: Yes.
 4 CHAIRPERSON: Because I can't follow
 5 exactly the point you're making, if one has regard to what
 6 is said in the second paragraph on page 2 of the media
 7 statement which is OO2. So I'd be grateful if you could
 8 clarify that for me.
 9 MR TIP SC: Yes, I'll do that, Mr Chair.
 10 The reason why I specifically refer to the stadium is
 11 because that is the evidence that has been presented thus
 12 far and the Commission will recall that we had video
 13 material which – and accounts that the workers had on that
 14 occasion gathered at the stadium on Friday the 10th of
 15 August and had then proceeded to the LPD offices and back
 16 again.
 17 CHAIRPERSON: The point is that before
 18 they got to the stadium, according to the media statement,
 19 they first had to meet up with the other RDOs, that's the
 20 Karee RDOs, to meet up with the other RDOs whom they were
 21 apparently going to meet, so the statement says, at the
 22 Wonderkop mine. Now if that's correct, and then they were
 23 to proceed from there to the stadium, they would've passed
 24 the NUM offices. That's the only point that puzzles me.
 25 That's why I'd like you to clear that up if you can.

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1 MR TIP SC: Well, let me do it this way.
 2 Mr Mathunjwa, there isn't in fact a Wonderkop mine, would
 3 you agree?
 4 MR MATHUNJWA: I'm not familiar much with
 5 the operations of the mine in totality.
 6 MR TIP SC: And –
 7 MR MATHUNJWA: I know there's a Wonderkop
 8 Stadium, I think Wonderkop Stadium.
 9 MR TIP SC: Yes. And that – well, let me
 10 just ask you. Are you familiar about the location of the
 11 Wonderkop Stadium?
 12 MR MATHUNJWA: Yes, during the in loco
 13 inspection, I happen to know.
 14 MR TIP SC: Yes and that is at the point
 15 shown on this photograph.
 16 MR MATHUNJWA: Yes. I should think so,
 17 ja.
 18 MR TIP SC: Mr Chair, what I propose to
 19 do is to canvass this with those who are more directly
 20 familiar with the route of the march. I've taken the
 21 general thrust of the paragraph, which is that people were
 22 on the march, innocently so, passing the NUM office when
 23 they were shot at and I think, Mr Mathunjwa, you understood
 24 it in that way.
 25 MR MATHUNJWA: That's correct.

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1 MR TIP SC: Thank you. Perhaps what I
 2 should also do is to ask you to go to the written opening
 3 statement made on behalf of AMCU. Where is that? I'm
 4 going to refer just to one, one short paragraph of it.
 5 CHAIRPERSON: Sorry, can I ask you a
 6 question? Am I correct in thinking this isn't in the
 7 transcript because we only got the copy of it after Mr
 8 Bruinders had – some days after Mr Bruinders made it. So
 9 if that's so, then perhaps we should get an exhibit number
 10 and I think it was put in first by Mr Burger, so with Ms
 11 Pillay's permission we'll give it a OO number, is that
 12 right?
 13 MS PILLAY: That's correct, Chair, OO18.
 14 MR TIP SC: Thank you, Mr Chair.
 15 CHAIRPERSON: Thank you. You're
 16 referring to Exhibit OO18, what particular paragraph are
 17 you –
 18 MR TIP SC: Paragraph 19 on page 6 of the
 19 written opening. Mr Mathunjwa, you have it there?
 20 MR MATHUNJWA: Yes.
 21 MR TIP SC: I'm going to draw your
 22 attention only to the first sub-paragraph, so it will read
 23 as follows, "On Friday, 10 August 2012, the following
 24 occurred. Early in the morning RDOs from Lonmin gathered
 25 to march to LPD. There were thousands, they were unarmed,

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1 they marched to LPD. There were no violent incidents
 2 during the march to or from LPD." You're satisfied that
 3 that correctly sets out the position insofar as you are
 4 able to comment?
 5 MR MATHUNJWA: Yes.
 6 MR TIP SC: There is another aspect of
 7 the media statement that I'd be glad to get your response
 8 to. That's OO2, the first paragraph. You welcome the
 9 ladies and gentlemen of the press and the third line you
 10 point out that nine people had been murdered by the time
 11 that this media conference was being held, you see that?
 12 MR MATHUNJWA: Yes.
 13 MR TIP SC: Now, can you tell us where
 14 you got that figure from?
 15 MR MATHUNJWA: If I'm not mistaken, it
 16 was also with the media. The media also was also
 17 publishing that there are people that had been killed.
 18 MR TIP SC: I gather from that answer
 19 that you and your co-office bearers in AMCU hadn't
 20 established for themselves how many people had been killed
 21 and, more particularly, hadn't established what the
 22 circumstances were of those killings.
 23 MR MATHUNJWA: I'd say that is correct.
 24 CHAIRPERSON: Mr Tip, if you look at
 25 Exhibit L slide 61, there's a running summary prepared by

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1 the police from which it appears that nine people had been
 2 killed, that is to say two mine security guards on the
 3 Sunday, two mine employees on the Sunday, two policemen on
 4 the Monday, two protesters on the Monday – that brings it
 5 up to eight – and then the ninth person was the one who was
 6 stabbed, who was found in the informal settlement, it's not
 7 clear whether he was a protester -

8 MR TIP SC: Yes.

9 CHAIRPERSON: - or what actually
 10 happened. So that's nine and that doesn't include anybody
 11 killed on either the Friday or the Saturday.

12 MR TIP SC: Yes.

13 CHAIRPERSON: So what appears from the
 14 media statement in fact is in accordance with the
 15 information given to us by the police in slide 61. Is that
 16 -

17 CHAIRPERSON: I just mention that because
 18 it might shorten things.

19 MR TIP SC: Yes. Mr Chair, that's
 20 precisely correct, with respect.

21 CHAIRPERSON: Sorry, if I anticipated
 22 your cross-examination please forgive me.

23 MR TIP SC: Yes. No, no, I had intended,
 24 if Mr Mathunjwa had established what the circumstances were
 25 of these nine deaths and where they had been, to point out

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1 to him that there was no scope there for a tenth body or an
 2 eleventh body as at the 9th but he has drawn this number
 3 from the press, so he's not really in a position to add
 4 that. In fact, Mr Mathunjwa, you followed that interaction
 5 and I can, with full confidence, put to you that the nine
 6 persons whom you have reflected in this media statement,
 7 did not include or made no provision for another one or two
 8 bodies at the NUM office. Do you accept that?

9 MR MATHUNJWA: That is correct, after
 10 it's been established.

11 MR TIP SC: Yes, thank you. And perhaps
 12 just to underline the same point, we also know and I
 13 believe that I express a common view on this, there are no
 14 dockets in respect of killings in the vicinity of the NUM
 15 office on the 10th or the 11th August. There are no reports
 16 in Lonmin's security accounts of people having been killed
 17 in that vicinity on those days, would you accept that also?

18 MR MATHUNJWA: Yes, because I haven't
 19 seen them, as I acknowledged before the Commission.

20 MR TIP SC: Yes. Now as it happens,
 21 whilst you were conducting your press conference on the 14th
 22 of August, on the Tuesday, a further person was killed, he
 23 being Mr Twala who was killed very close to the koppie. He
 24 was a NUM shop steward and that brought the total to 10.
 25 Did that killing come to your attention on the 14th or the

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1 morning of the 15th?

2 MR MATHUNJWA: Repeat the date, sir, when
 3 was it recovered?

4 MR TIP SC: The killing was on the 14th of
 5 August. The body was found, I think, in the course of the
 6 early afternoon.

7 [14:13] MR MATHUNJWA: I don't quite recall or I
 8 heard from Mr Zolwane in the SAfm, I don't know, by then -

9 MR TIP SC: Can we turn to the SAfm's
 10 transcript? That's Exhibit LL and I'm going to refer to
 11 the typed page numbers and if you begin at page 1, Mr -
 12 have you got it there?

13 MR MATHUNJWA: Yes, I do have.

14 MR TIP SC: Thank you. If you have a
 15 look at page 1, Mr Gwala introduces the topic and then
 16 about the eighth or ninth lines he observes that "We heard
 17 that the death toll has risen to 10 now, after one body was
 18 also discovered late yesterday afternoon." What I'd like
 19 to get your reaction to are some portions of what you said
 20 which are to be found at page 16 and 17 of this transcript
 21 and you again describe how, on Friday, people were shot at
 22 by NUM members or officials while passing the NUM offices.
 23 I'm not going to traverse that again, you've - I've
 24 discussed that, but at the foot of the page you say, "Some
 25 driving" - well - "People wearing T-shirts of NUM and some

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1 driving a Combi fired at the workers and that was
 2 confirmed," you say. Now I'm going to suggest to you that
 3 generally when one uses a phrase such as "that was
 4 confirmed," one wants to convey that there has been some
 5 kind of independent verification of what it is that is
 6 being said, would you agree?

7 MR MATHUNJWA: Yes.

8 MR TIP SC: It is an impressive
 9 collateral statement, that something has been confirmed,
 10 correct?

11 MR MATHUNJWA: Yes, sir.

12 MR TIP SC: Now what - what confirmation
 13 had you had? Who had confirmed what?

14 MR MATHUNJWA: The confirmation that I've
 15 got was from the debriefing that I referred to.

16 MR TIP SC: That was a debriefing from
 17 your general secretary and your national organiser?

18 MR MATHUNJWA: Yes, from the information
 19 they received from the koppie - the koppie, the mountain.

20 MR TIP SC: But that was a report to you
 21 of what they had heard from people on the koppie on the 13th
 22 of August.

23 MR MATHUNJWA: That's correct.

24 MR TIP SC: Now I fail to understand how
 25 that could be described as something that had been

<p style="text-align: right;">Page 2645</p> <p>1 confirmed. Any comment on that?</p> <p>2 MR MATHUNJWA: Yes, I will believe that</p> <p>3 because they were told by the strikers who were involved, I</p> <p>4 think that's where they meant it was confirmed by them.</p> <p>5 But if then it's explained in terms of the competent</p> <p>6 institutions, then it cannot be as confirmed.</p> <p>7 MR TIP SC: And I take it that you</p> <p>8 appreciate, as we sit here today, that it couldn't have</p> <p>9 been confirmed, properly speaking, because it hadn't</p> <p>10 happened.</p> <p>11 MR MATHUNJWA: I'm saying from the</p> <p>12 mountain is what they got, that people were shot and</p> <p>13 killed, so that is what I was debriefed and in this</p> <p>14 Commission as it was established, I said yes, I apologise</p> <p>15 on that effect.</p> <p>16 CHAIRPERSON: Mr Tip, I think it might be</p> <p>17 helpful to find out what he understands the word</p> <p>18 "confirmed" to mean.</p> <p>19 MR TIP SC: Mr Chair, I thought I had</p> <p>20 done that by putting to him that when one comes across a</p> <p>21 phrase like "that was confirmed," that means that it has</p> <p>22 been independently verified, which he – Mr Mathunjwa –</p> <p>23 agreed with. I'm not sure what – but let me ask you, is</p> <p>24 there any further comment that you'd like to make on the</p> <p>25 use of the word "confirmed?"</p>	<p style="text-align: right;">Page 2647</p> <p>1 the actual reference to the transcript for the purposes of</p> <p>2 that topic.</p> <p>3 MR TIP SC: No, I beg your pardon. When</p> <p>4 I say the transcript, I mean the transcript of the evidence</p> <p>5 here. I beg your pardon, I should've clarified that, it's</p> <p>6 not the transcript of the speech. So have you got the</p> <p>7 transcript of the evidence that you gave at page 2356? My</p> <p>8 apologies, Mr Chair.</p> <p>9 MR MATHUNJWA: Is it my statement?</p> <p>10 MR TIP SC: No, not your statement, the</p> <p>11 typed transcript of the testimony that you've given here.</p> <p>12 Well, perhaps I can just read it, it's only a few lines and</p> <p>13 I think that you'll recall it and if necessary we can –</p> <p>14 COMMISSIONER HEMRAJ: Mr Tip, are you</p> <p>15 referring to the transcript that was handed in by Mr</p> <p>16 Burger?</p> <p>17 MR TIP SC: No – no, I'm referring to the</p> <p>18 transcript of the evidence, this four-paged document.</p> <p>19 CHAIRPERSON: This is the transcript that</p> <p>20 we get – it's the document we get electronically and then</p> <p>21 hard copies are printed for us and put in a file –</p> <p>22 MR TIP SC: That's correct, by Realtime</p> <p>23 Transcriptions. Mr Mathunjwa, after that, have you got the</p> <p>24 correct document now?</p> <p>25 MR MATHUNJWA: It's page – what, 2357?</p>
<p style="text-align: right;">Page 2646</p> <p>1 MR MATHUNJWA: The "confirmed" that I was</p> <p>2 referring to, is the confirmed that we – is the normal word</p> <p>3 that we use. Do you confirm that you were there, you have</p> <p>4 seen something or you heard something. So not in the very</p> <p>5 detailed manner in which you presented to me, that it shows</p> <p>6 a different meaning altogether.</p> <p>7 MR TIP SC: Well, we'll leave that for</p> <p>8 submissions in due course. I want to turn to the events of</p> <p>9 16th August and in particular the speech, the first speech</p> <p>10 that you gave on that day. The topic that I want to</p> <p>11 discuss with you is what your message was to the people on</p> <p>12 the koppie in the course of that address and it may be</p> <p>13 appropriate to begin with your evidence-in-chief at page</p> <p>14 2356 of the transcript, lines 6 to 11.</p> <p>15 CHAIRPERSON: Mr Tip, if you're referring</p> <p>16 to his first speech on the 16th, it might be helpful to</p> <p>17 refer to Exhibit OO9 which is extracted from the transcript</p> <p>18 but includes also the original speech in Zulu.</p> <p>19 MR TIP SC: I'm indebted to you, Mr</p> <p>20 Chair, and I'll come to that transcript shortly but I</p> <p>21 wanted first just to note what Mr Mathunjwa had to say</p> <p>22 about the purpose of his speech in his evidence-in-chief.</p> <p>23 CHAIRPERSON: No – no, I understand that.</p> <p>24 MR TIP SC: Yes.</p> <p>25 CHAIRPERSON: Obviously you don't need</p>	<p style="text-align: right;">Page 2648</p> <p>1 MR TIP SC: 2356.</p> <p>2 MR MATHUNJWA: Right on top?</p> <p>3 MR TIP SC: Yes, right on top. Mr</p> <p>4 Bruinders, your counsel is leading you and he asks you this</p> <p>5 question, "What was your message essentially to the</p> <p>6 workers, the strikers on the koppie in that address?" And</p> <p>7 your answer is, "My address to the workers was saying,</p> <p>8 workers disperse, return back to work" – and you were asked</p> <p>9 whether you'd understood the question correctly and he says</p> <p>10 you have. But do you confirm it, that that was the</p> <p>11 essential message that you say that you conveyed to them on</p> <p>12 the 16th August in your first address?</p> <p>13 MR MATHUNJWA: Yes, that was the message.</p> <p>14 MR TIP SC: Disperse and return to work –</p> <p>15 and I think that you had some debate in cross-examination –</p> <p>16 I beg your pardon, Mr Interpreter?</p> <p>17 MR MAHLANGU: I've just finished, thanks.</p> <p>18 MR TIP SC: Oh, you have. That return to</p> <p>19 work also necessarily implies that they would lay down</p> <p>20 their arms.</p> <p>21 MR MATHUNJWA: Yes.</p> <p>22 MR TIP SC: Now if we could turn to the</p> <p>23 transcript of your address, that is OO9. I'm going to be</p> <p>24 testing your evidence on what you say the essential message</p> <p>25 was by taking you, bringing your attention to certain</p>

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1 aspects of what was said by you in order to show that that
2 was something that you didn't very clearly convey and that
3 you conveyed a great deal of other material that would have
4 had a different result from persuading people to disperse
5 peacefully. I'm going to ask for just the very first
6 portion of the recording, the video recording of the
7 proceedings on that day to be played. It's the song, the
8 kill the NUM song. You've given evidence that you
9 reprimanded your national organiser for calling for the
10 singing of that song.

11 MR MATHUNJWA: Yes.

12 MR TIP SC: Now when I play, have this
13 small portion played, I want you to look, if you will, at
14 two aspects of what we see there. The first aspect is the
15 combination of the song and the rhythmic clashing together
16 of lethal weapons by the men who were gathered there just a
17 few metres away from you. And I'm going to put to you
18 immediately what I will be suggesting about that, that the
19 impact of that is extremely menacing and for a person who
20 might be identified in the words of the song, simply
21 terrifying. The second feature of what I want you to look
22 at in the few minutes that that excerpt runs for is your
23 own presence there and what you are seen to be doing is
24 filming the proceedings and again I'm going to put to you
25 in advance that I have been unable to discern any inkling

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1 MR TIP SC: You see I want to suggest to
2 you that there's no scope at all for a different
3 interpretation and certainly no scope at all for the use of
4 a word like "metaphor."

5 MR MATHUNJWA: There is.

6 MR TIP SC: You've seen the performance,
7 did you not think that that was objectively menacing?

8 MR MATHUNJWA: Maybe one should – I hear
9 what you say but the culture comes in. We, if we sing
10 there is a movement, it depends what you've got. Sometimes
11 if you don't have anything in your hand you'll clap your
12 hands. It depends by that time what do you have. So it
13 happens too that the strikers had those weapons and then
14 after that I reprimanded the comrade, I said "Don't sing
15 this song, people they will interpret in a different way."
16 Maybe through the Commissioner, if I may be allowed, even
17 though I was not there – there was a clip that was played
18 by SAPS next to the railway line and when I was listening
19 and watching that clip I saw that there, some of these
20 workers when they were singing they were doing the very
21 same thing of clashing against their weapons, if my memory
22 serves me well. Thank you.

23 MR TIP SC: Mr Mathunjwa, your memory
24 serves you very well. That was workers clashing their
25 weapons together in an incident which, shortly thereafter,

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1 of surprise or concern on your part at the fact that that
2 song was being sung in the manner in which it was sung.
3 Could we have that excerpt?

4 [VIDEO IS SHOWN]

5 MR TIP SC: Mr Mathunjwa, you've seen
6 that excerpt, you've heard what I have to say about it,
7 would you like to comment on those propositions?

8 MS PILLAY: Chair, if I could just
9 indicate for the purposes of the record that that was
10 Exhibit CC7.

11 CHAIRPERSON: Thank you.

12 MR MATHUNJWA: Yes, before it was played
13 there were several questions that you wanted me to answer.
14 Maybe if you can –

15 MR TIP SC: I'll repeat them. I thought
16 that I would identify what was going to be asked so that
17 you could be sure to look at those particular aspects. The
18 first question is that I put to you that the singing of
19 that song in the way that it was sung by a large group of
20 armed men who are clashing their weapons together, is
21 extremely menacing and that – generally – and that for any
22 person who is identified in the words of the song it would
23 be terrifying. Would you agree with that?

24 MR MATHUNJWA: Yes, as I've reprimanded
25 him and said it might have a different interpretation.

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1 was to lead to five deaths but we're not here to
2 investigate the 13th of August. I'm here to put questions
3 to you concerning the situation that you went to on the
4 16th August in order to persuade people to disperse, to lay
5 down their weapons and to go back to work. That's what
6 we're looking at.

7 MR MATHUNJWA: But not only that, also
8 the commitment of the management was supposed to be
9 retaliated or communicated on the 16th August.

10 MR TIP SC: That's a topic which my
11 learned friend Mr Burger has debated with you fully and I'm
12 not going to touch on that again. I'm dealing with what
13 you saw when you arrived on the scene and the first matter
14 that I want to clarify with you is that you would've seen
15 that there were two distinct groups of people. There was a
16 large diffuse group on the koppie itself and there was
17 another more tightly knit but also a large group, armed,
18 that were on the ground some 20 or 30 metres in front of
19 the general group. Do you recall noticing that?

20 MR MATHUNJWA: What I observed, I
21 observed workers from the top hill of the mountain down to
22 the ground and little bit up to another small mountain, the
23 strikers. For those that I was close to them, yes, they
24 were having arms. I won't be in the position to say those
25 that were far, beyond my recognition, what they were

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1 having.

2 MR TIP SC: I fully accept that, Mr

3 Mathunjwa, I'm not concerned here to probe your

4 recollection of what the more distant, larger group on the

5 koppie itself was doing or how they were armed, if at all.

6 I'm dealing with the tightly knit group of heavily armed

7 people who were within a metre or two of you at that

8 location. You accept that there was such a group?

9 MR MATHUNJWA: Among the strikers there

10 were workers that were armed, yes.

11 CHAIRPERSON: That doesn't answer the

12 question. The question was, apart from the people on the

13 top of the koppie, described as the more diffuse group, was

14 there a tightly, tightly knit group on the ground level

15 near you? That was the question. You haven't answered

16 that.

17 MR MATHUNJWA: No, to me from my left

18 going down I saw the people were armed going – I mean in

19 the whatsiname, I didn't, I don't have a recollection that

20 there was a specific, specific people but there were

21 amongst the armed in front of the row where I was standing.

22 MR TIP SC: Mr Mathunjwa, we're not going

23 to take up time in that aspect but would have been clear to

24 you is that the group or the people close to you that were

25 armed and beating their weapons together, they must have

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1 impressed you as being people who were in a high state of

2 excitement. I'll put it neutrally in that way, do you

3 agree?

4 MR MATHUNJWA: No, I couldn't draw any

5 distinction in that.

6 MR TIP SC: You couldn't draw any

7 distinction between those close to you and those further up

8 on the koppie?

9 MR MATHUNJWA: As you've said, I mean the

10 workers, all of them there in front they were clashing

11 their weapons.

12 MR TIP SC: Mr Mathunjwa, Mr Burger put

13 it to you and again I don't want to traverse the material

14 that he has already covered but he put it to you that you

15 had taken the opportunity of this gathering and the

16 opportunity to make a speech to it, to do some recruiting

17 for AMCU.

18 MR MATHUNJWA: That is not correct and

19 even those that were present in the mountain, they never

20 heard me saying, "Comrades, join AMCU."

21 MR TIP SC: Did they ever hear you say

22 "Comrade, lay down your weapons, disperse and go back to

23 work?"

24 MR MATHUNJWA: Yes, surely they heard me.

25 I was always saying that, leave and return back to work. I

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1 said it on the Friday -

2 MR TIP SC: No, no –

3 MR MATHUNJWA: And I repeated on the 16th.

4 MR TIP SC: I'm interested only in what

5 you said on the 16th and I'll repeat my question because you

6 converted what I had asked you into a specific proposition,

7 you never said "Join AMCU" and I'm asking you in an

8 equivalent way whether you said explicitly, "Lay down your

9 arms, disperse, go back to work?"

10 MR MATHUNJWA: It might not maybe

11 explicit but to me, to return back to work it simply means

12 they must leave the weapons there and return back to work

13 peacefully because the word "peacefully" was also mentioned

14 and that is what was also conveyed by management.

15 MR TIP SC: Can you – I suppose that

16 you're familiar with this transcript of your speech, are

17 you?

18 MR MATHUNJWA: Yes, we've been paging it

19 for quite some time.

20 MR TIP SC: Yes, I have no doubt that you

21 have. Well, could you take us to the portion where you

22 explicitly say, "Go back to work, disperse from here."

23 MR MATHUNJWA: Where is that one? Where

24 must I show it?

25 MR TIP SC: Well, you say that it's to be

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1 found in the transcript of what you said. I'm asking you

2 just to take us to those words.

3 MR MATHUNJWA: I think I said it might

4 not be explicit, that is what I've said, but I've said to

5 people they must return back to work and, two, this

6 transcript that is before us is only dealing with only one

7 address here. It doesn't come across, my second address.

8 CHAIRPERSON: I think counsel is

9 questioning you about your first speech at this stage, is

10 that correct?

11 MR TIP SC: That is correct.

12 MR MATHUNJWA: Yes, I mean I did say, as

13 far as my recollection, and hence it was made a mockery out

14 of me when I was kneeling, pleading to the workers, in this

15 Commission.

16 MR TIP SC: Well, I'm not certain what

17 you mean by a mockery and this certainly doesn't form part

18 of any questions that I'm putting to you. You see what I'm

19 going to put to you, Mr Mathunjwa, I have also tried my

20 best to read this transcript with great care several times

21 in order to appreciate what it conveys – I haven't been

22 able to see explicit statements from you, "Disperse, lay

23 down your weapons, go back to work." The closest I've been

24 able to come and I put this, I advance it for your comment,

25 is at pages 12 and 13 where you deal with that topic in a

<p style="text-align: right;">Page 2657</p> <p>1 very indirect way. You essentially say to the workers, 2 "Don't let NUM have the satisfaction of bringing about a 3 bloodbath here." Do you recall that you said that on more 4 than one occasion? 5 MR MATHUNJWA: Yes, I think I recall that 6 one. 7 MR TIP SC: And you said that more than 8 once, correct? 9 MR MATHUNJWA: If the script says so, I 10 concur with that. 11 MR BRUINDERS SC: Chair, at page 12 and 12 13 - 13 MR TIP SC: Well, let me – sorry? 14 MR BRUINDERS SC: It doesn't say "Don't 15 let NUM have the satisfaction of a bloodbath." Those are 16 not the words. 17 MR TIP SC: Right, let me put some of the 18 words to you and then you'll be able to deal with it more 19 directly. Let us, for example Mr Mathunjwa, look at page 20 13 and approximately the middle of the column, the 21 translated column where you say, "I mean, comrade, let us 22 not give satan a chance to see the bloodshed because the 23 decision has been taken." Now who's satan? 24 MR MATHUNJWA: According to my faith, 25 satan feasts on the blood. I'm a Christian, by the way.</p>	<p style="text-align: right;">Page 2659</p> <p>1 would get an opportunity to go back to the platform to 2 continue oppressing the black nation." It is because of 3 passages like that drawn from what you had to say to the 4 workers on that day that I tried to abbreviate it by saying 5 the closest I can get to a call from you to them to 6 disperse and lay down their arms and to go back to work, 7 was this notion that they mustn't give NUM the opportunity 8 of causing bloodshed. Am I correct in my assessment that 9 that is indeed the closest that you get to saying "Move 10 away from here, comrades, leave, put down your weapons, go 11 back to work?" 12 MR MATHUNJWA: No. 13 MR TIP SC: Well, take out and show, Sir. 14 MR MATHUNJWA: As I've said earlier on, 15 as we mentioned we were talking of the 16th. This is just a 16 part of it. I went further and said, "Comrades, if you 17 retreat as a ram, it doesn't mean that all is lost." 18 MR TIP SC: That was – 19 MR MATHUNJWA: And I further said to 20 them, "Your issues can be taken through the labour 21 framework." 22 MR TIP SC: Is that your answer? 23 MR MATHUNJWA: And to say they must leave 24 the koppie because they are going to be killed. 25 MR TIP SC: That was all the second</p>
<p style="text-align: right;">Page 2658</p> <p>1 MR TIP SC: Then if you go down to the 2 foot of that page, the ninth or tenth line from the bottom 3 you are kneeling and you say so, "I am kneeling down, 4 coming to you as nothing I say, let us stop this blood that 5 NUM allowed this employer to let flow. We do not want 6 bloodshed but we want your problems to be solved and get 7 your salaries, comrade." Do you see that? 8 MR MATHUNJWA: Yes. 9 MR MAHLANGU: We are requesting, or I am 10 kneeling down – 11 MR TIP SC: On page 12 again in the 12 middle of the page – 13 MR MATHUNJWA: Yes, I've got it. 14 MR TIP SC: You've got it? 15 MR MATHUNJWA: Yes. 16 [14:53] MR TIP SC: You say, "What I'm asking 17 from you is to diffuse this bomb that they want to let 18 explode, the employer and NUM. There is a time bomb placed 19 for you and AMCU." On page 14, the third line you say, "I 20 appeal to you not to give NUM this opportunity to run and 21 say, 'AMCU made people to be killed in the mountain'." And 22 one more example, page 11 the first paragraph, the last 23 half dozen lines, I'll read them. "The employer wants to 24 run away from your demands and hide with the fact that 25 employees were violent, that is why they were killed. NUM</p>	<p style="text-align: right;">Page 2660</p> <p>1 speech that you made, is that right? 2 MR MATHUNJWA: Yes. 3 MR TIP SC: Now as it happens, I think 4 that in the first speech you also spoke about the CCMA and 5 certificates and so forth, but that's not the way to say to 6 people, put down your arms, leave, go back to work. 7 MR MATHUNJWA: Mr Tip, I think I did 8 mention, I will repeat again, in the Commission, you are 9 talking of the environment that I don't have any control 10 of, which is not my constituency – something that happens 11 outside the labour structures. I won't go there and 12 lecture those workers and say, as you see here, standoff 13 and go. I have to get a wisdom of how to gain their trust 14 and to build hope that their problems will be resolved. I 15 wish I have other wisdom that I could – that was my best I 16 could do to convince those workers to return back to work 17 and address their issues based on the CCMA processes. In 18 any situation you have to associate yourself with the 19 environment that you find yourself in, then is when then I 20 will introduce saying, guys, you do have a concern, you do 21 have a grievance but however, there is another better way 22 that your concerns can be addressed – referring to those 23 processes. And if all the clips of the day of the 16th can 24 be played, after my addresses some of the workers left 25 koppie. I believe that if the company hadn't reneged from</p>

<p style="text-align: right;">Page 2661</p> <p>1 its commitment, surely those workers would have left the 2 koppie. I was facing with a situation that is not just 3 instigation or whatsoever, it's the provocation situation 4 that I was facing there. People were promised something, 5 we conveyed the message. The following day the very same 6 message has been turned, turned away. Then I have to go 7 and face the very same workers that I've been talking to 8 them saying the management is committing that they will 9 address your issues if you left the koppie, through your 10 leaders, through your structures and the following day 11 those things are no longer on the table. You remember, 12 anything that happened there you must think in the split of 13 a second. I don't even know whether I was safe because I 14 already told the workers that this is what's going to 15 happen, tomorrow I'm changing, I mean the topic, management 16 is no longer there – how I will be regarded. I had the 17 way, that was the only way by that time to try and convince 18 them and to associate myself with their grievances and in 19 order to take their grievances through the rightful 20 structures because there was no-one backing me, there was 21 no SAPS close to me, there was no management close to me. 22 Remember, at the JOC I was never provided with security to 23 get to that koppie. There was no armed vehicle that I used 24 the previous night, that I will be inside it or I will be 25 guarded by any police. And today I'm blamed that that was</p>	<p style="text-align: right;">Page 2663</p> <p>1 CHAIRPERSON: You're still cross- 2 examining, Mr Tip. 3 CROSS-EXAMINATION BY MR TIP SC (CONTD): 4 Thank you, Mr Chair. Mr Mathunjwa, you were – you said a 5 great many things in your last answer, all of which is good 6 to get on record, so thank you. I want to deal with the – 7 firstly, with the observation that you made that this was 8 not a pro-AMCU set of addresses, what you and your 9 colleagues were doing there, and that it was simply up to 10 the individual strikers that – up to them whether they 11 wanted to join you or not. I want to draw your attention 12 to some passages in what took place during those 13 proceedings, which appear to me to be fairly direct and 14 deliberate statements about AMCU which are calculated to 15 make people want to join you. Now it begins at page 2 of 16 Exhibit OO9 and the first paragraph under, where you see 17 "Speaker." "Comrades, I will not be too long but, 18 comrades, at all times my brothers we are with you. We 19 cannot allow it, comrades, even yesterday we did not want 20 to catch other planes, saying that we are going to human 21 beings, they are not baboons" – and so on. "We are AMCU, 22 not so?" What is being said there is that AMCU is with 23 you. 24 MR MATHUNJWA: Are you saying there's – 25 what is written AMCU here, I don't get your question.</p>
<p style="text-align: right;">Page 2662</p> <p>1 an opportunity that I've used to recruit for AMCU. I think 2 it is proper to mention the following. If AMCU was the 3 union that believed much in violence or any means of 4 sorting its organisational right, why did I not use it when 5 the CCMA issued a legitimate certificate at Lonmin to 6 embark on a protected strike to pursue my organisational 7 right? I've never done that. I kept on pursuing the 8 management of Lonmin. Until today the COO of Lonmin, there 9 were correspondence that I made, until such time we receive 10 those organisational rights in 2012. The point is, I never 11 went to that mountain to promote AMCU. I went there, in my 12 mind, but to my mind to see the people dispersing. If, 13 after they tend to associate themselves with AMCU - that's 14 correct, I'm not shy of that, I'm a trade union. That's 15 what I'd like to say. 16 CHAIRPERSON: Is this an appropriate 17 stage to take the tea adjournment? 18 MR TIP SC: It would be appropriate. 19 There's a great deal that has been said. 20 CHAIRPERSON: The Commission will take 21 the tea adjournment. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [15:25] CHAIRPERSON: The Commission resumes. 24 You're still under oath, Mr Mathunjwa. 25 MR MATHUNJWA: Yes.</p>	<p style="text-align: right;">Page 2664</p> <p>1 MR TIP SC: I'm saying that when the 2 speaker, who is evidently your national organiser, says 3 "Comrades, I will not be too long but comrades at all time, 4 my brothers, we are with you" – is he not saying at all 5 times AMCU is with you? 6 MR MATHUNJWA: Yes, it can be that, yes. 7 MR TIP SC: And then the next paragraph, 8 "Comrades, we will support you my brothers, we will be with 9 you because we are a trusted organisation at all times that 10 will remain trustworthy to you, that will never lie to you. 11 We are an organisation for employees." That's AMCU? 12 MR MATHUNJWA: Of course, AMCU. 13 MR TIP SC: Page 4, the first paragraph, 14 the last three lines, "Comrades, we will fight as this 15 AMCU. We cannot turn back in fighting for you. We will be 16 with you at all times. Power." Right? 17 MR MATHUNJWA: Yes. 18 MR TIP SC: At the foot of that column, 19 the last four lines, "By so doing comrades, as AMCU we have 20 come to support you. As the national organiser has said, 21 that we will be with you in everything." Then on page 8, 22 the second paragraph. 23 MR MAHLANGU: Page 8, which paragraph, 24 sir? 25 MR TIP SC: The second paragraph, about</p>

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1 five lines in there. This is you speaking, you say "This
2 place is under the control of government who are police
3 officials. It is no longer a place that the employer has
4 control over. Let us explain what does this mean to you.
5 I beg your pardon, to us. That means whatever the
6 government feels like doing to us, it can do it because we
7 are AMCU, we came here knowing the pain of a black person.
8 We decided that some leaders enjoy the fact there should be
9 a bloodshed, we said we cannot allow that." Again AMCU is
10 being marketed and I want to ask you this, incidentally,
11 when you said "We decided that some leaders enjoy the fact
12 there should be a bloodshed," who are those leaders? Who
13 were you referring to?

14 MR MATHUNJWA: In the meeting of the 15th,
15 the management said that they have held back for the police
16 to trigger their action.

17 MR TIP SC: So are you saying here that
18 the Lonmin management enjoy the fact that there should be
19 bloodshed?

20 MR MATHUNJWA: That's what I was saying,
21 it must be avoided.

22 MR TIP SC: You don't say that. You say,
23 "We cannot allow that." The point that I'm canvassing with
24 you is that you say to these workers who are in an angry
25 mood, I suggest to you, there are some leaders who enjoy

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1 the fact that there should be bloodshed. Now a statement
2 like that, Mr Mathunjwa, is that likely to increase the
3 wish of striking workers to peacefully lay down their arms
4 and disperse and go back to work or is it going to increase
5 their state of feeling aggrieved and angry? It's a
6 question. I'll pose it more clearly if you like. I'm
7 suggesting to you that statements of that kind, of which
8 there are unfortunately several in your address, are more
9 likely to increase the sense of being aggrieved that is
10 held by those striking workers than a sense that they
11 should simply lay down their arms and disperse and go back
12 to work.

13 MR MATHUNJWA: That's not correct. If I
14 was saying workers, don't move in this mountain until your
15 12 500 is in your pocket, then I will agree with you but
16 here I'm talking about avoiding which ultimately, at the
17 end of the day, workers were massacred. So here I find you
18 picking certain spots of my message but if you can look
19 holistically then you get the context that I was pleading
20 to the workers that even though they do have grievances,
21 leave, there is a day tomorrow that these issues can be
22 addressed. As I've stated earlier on that this was not a
23 normal situation. What I was doing that day mustn't be
24 looked in the context that I was fuelling violence or I was
25 getting the workers to be more angry but I was looking the

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1 way that I was trying my utmost best. As I've said again
2 earlier on, that after my full address of the day of the
3 16th, not the piecemeal address, the workers themselves,
4 some they dispersed, they left the koppie. If it wasn't
5 that address, maybe there will have been more than 34
6 workers that were mowed down on that particular day. That
7 was my contribution and, lastly, you should appreciate that
8 this country has got over 48 million people – academics,
9 you name it, all sorts of kinds of people in this country.
10 That was – this news was all over the world, but now today
11 that massacre of that day should be put to one person out
12 of 48 million people, Joseph Mathunjwa, you have failed –
13 who doesn't own any sophisticated material or equipment
14 that the government has, not the money that the company
15 has, poor Joseph Mathunjwa should be today, be crucified.
16 That was the best I could do as a mortal man.

17 MR TIP SC: Mr Mathunjwa, I'm really just
18 looking at what you said and putting questions to you about
19 it. I have heard your sentiments but I want to turn to a
20 different aspect. I've pointed to a number of passages
21 where you are at pains, you and your colleagues are at
22 pains to paint AMCU in a very positive light. Equally, you
23 were concerned to paint NUM in a very bad light.

24 MR MATHUNJWA: Maybe that's how you
25 interpret it. Maybe I should answer you in the following.

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1 MR TIP SC: Sorry, I missed that. Maybe
2 you should do what? Did you say pamper me?

3 MR MATHUNJWA: That's how you paint it.

4 MR TIP SC: Oh, yes?

5 MR MATHUNJWA: In Natal recently –

6 MR TIP SC: No, with respect, Mr
7 Mathunjwa, we're not going to Natal.

8 MR MATHUNJWA: It's not because I'm
9 staying there, I'm from there but I think it does have a
10 relevant example that I can pinpoint in this matter because
11 –

12 MR TIP SC: Let me –

13 MR MATHUNJWA: If you may give me an
14 opportunity, if you don't mind.

15 MR TIP SC: Yes.

16 MR MATHUNJWA: Here you want to paint
17 that there is animosity between AMCU and NUM. Then I'm
18 taking the advantage of that, so that's why I'm asking
19 through the Commissioner that can I draw the inference, if
20 they allow, the Commissioner allows me I'll do that but if
21 you said no, I will stop there.

22 CHAIRPERSON: Sorry, I'm not quite
23 understanding you about your inference that you want to
24 draw. Can you repeat the inference? Is it an inference or
25 an analogy really that you are drawing?

<p style="text-align: right;">Page 2669</p> <p>1 MR MATHUNJWA: It's something that has 2 happened.</p> <p>3 CHAIRPERSON: Well, tell us shortly and 4 I'll see if I give you permission to take the point 5 further.</p> <p>6 MR MATHUNJWA: - maybe it is relevant or 7 not, but I will say it. There is a strike in Dundee. We 8 see AMCU, NUM alongside, holding the flag, approaching the 9 employer. We see the security guards of the mine shooting, 10 randomly killing two workers there, but we never – when we 11 hold meeting and say we were promoting AMCU or NUM was 12 promoting what. In this instance of the koppie, it's 13 common cause that the only union that was there was AMCU 14 but not using that, was the recruiting, but it was the only 15 union that was given an opportunity by the workers to come 16 the following day.</p> <p>17 CHAIRPERSON: Mr Mathunjwa, I've allowed 18 you to make your point but I would suggest that you give Mr 19 Tip a chance to ask the questions and endeavour to answer 20 them directly. He is pointing to passages in the speech 21 which tend to show that there is animosity between AMCU and 22 NUM and NUM is being put in a bad light by you and other 23 AMCU speakers. That's what he's asking you about. Now I 24 understand that you and NUM stood together in Dundee, it 25 was very commendable but it's not directly relevant to what</p>	<p style="text-align: right;">Page 2671</p> <p>1 one because otherwise I'm going to take too much time of 2 this Commission. Page 3 of OO9. Now let me correct 3 myself, that is not you speaking at the time, that is still 4 Dumisane, I think, but it is a theme that you reproduced in 5 the course of your own speech and that is the idea that NUM 6 has been oppressing black workers for 30 years, for its 7 entire existence. You yourself spoke and I've already 8 cited the passage at page 11, that you said if people are 9 going to be killed then NUM would get an opportunity to go 10 back to the platform to continue oppressing the black 11 nation. Those are your words. Now Mr Mathunjwa, I haven't 12 forgotten that in the course of last week you dissociated 13 yourself from expressions of that kind, calling NUM an 14 oppressor and I may say that your willingness to do that is 15 appreciated but it's necessary for me to ask you why those 16 statements about NUM were made on that occasion?</p> <p>17 MR MATHUNJWA: Inasmuch one cannot have 18 exactly – but there were things that were said by the 19 strikers themselves against NUM on that particular day.</p> <p>20 MR TIP SC: Yes, but whatever the 21 strikers may have been saying, this is you in your capacity 22 as the president of AMCU who has the rare opportunity to 23 speak to them all on a very tense occasion, who fuels that 24 view. You add to it instead of seeking to neutralise it.</p> <p>25 MR MATHUNJWA: No, I didn't do that. As</p>
<p style="text-align: right;">Page 2670</p> <p>1 you said on the 16th August at Marikana in the passages 2 which are being put to you. So I think I would be grateful 3 if, when Mr Tip asks you further questions, you answer them 4 directly. Anyway, I've given you a chance to make your 5 point. I understand the point you've made but I think bear 6 in mind what I've told you. Mr Tip, would you like to 7 carry on?</p> <p>8 MR TIP SC: Yes, Mr Chair. Mr Mathunjwa, 9 I just want to make it clear that I am not at all directing 10 my questions towards animosity between these two unions, 11 far from it. NUM has an unqualified commitment to there 12 being peace and a cessation of violence. All that I'm 13 doing is to examine the certain passages of your speech in 14 order to assist the Commission in understanding what the 15 likely impact might have been on the events, of your 16 speech. You appreciate that?</p> <p>17 [15:45] MR MATHUNJWA: I understand.</p> <p>18 MR TIP SC: Thank you for that. And I 19 may say that one appreciates also the fact that there were 20 particular circumstances that led to you being there that 21 afternoon but you were there and you had the opportunities 22 to speak and you did speak and it is relevant for this 23 Commission to look at what you said. Now you said that you 24 were not really concerned to paint a bad picture of NUM. 25 There are several examples. I'm going to take you to just</p>	<p style="text-align: right;">Page 2672</p> <p>1 I've explained earlier on, that the situation one finds 2 himself in, it was just not the normal situation. You have 3 to come closer to these workers when they say about their 4 grievances and now what their experiences are. I've never 5 said they mustn't continue being members of NUM. I don't 6 recall saying such things.</p> <p>7 MR TIP SC: Well, Mr Mathunjwa, I've got 8 to take you up on that unfortunately because it is very 9 transparent from a number of passages and what you said to 10 the striking workers that that was your message – NUM has 11 done nothing for you, it has oppressed you and it has 12 killed you. Does that not add up to a clear suggestion to 13 them all that they should not remain members of NUM if they 14 still are?</p> <p>15 MR MATHUNJWA: No, I never suggested to 16 anyone to belong to AMCU.</p> <p>17 MR TIP SC: I'm going to take you to just 18 one passage relating to the attitude to NUM and that's at 19 page 9, to the last passage. Before that you have 20 explained that AMCU sends its condolences to the families 21 of those who've been killed and we now know that there were 22 no such families and you say as AMCU you'll help those 23 families so that the victims can be laid to rest with 24 dignity.</p> <p>25 MR MAHLANGU: You said on page number 11?</p>

<p style="text-align: right;">Page 2673</p> <p>1 MR TIP SC: No, 9. 2 MR MAHLANGU: Page 9. 3 MR TIP SC: The last paragraph I'm coming 4 to. Against that backdrop of saying what AMCU does, what 5 it will do to help, you say the following, "This is where 6 the matter is, those who have already delivered their 7 speeches, the ones who were escorted yesterday, they said 8 the police can do anything. That was Mr Zokwana you're 9 referring to, aren't you? 10 MR MATHUNJWA: Ja, yes because he said he 11 doesn't have members in the mountain. 12 MR TIP SC: Yes, but you are referring to 13 the president of NUM in this way in a derogatory fashion, 14 "those who were escorted here, they have said the police 15 can do anything" – so you are again connecting NUM and the 16 prospect of bloodshed at the hands of the police. And that 17 passage evidently found approval amongst the persons who 18 were gathered on the koppie because it says "Noise by 19 employees." I suppose that was approving noise, a rumble. 20 Any comment on that, Mr Mathunjwa? 21 MR MATHUNJWA: No, I was not fuelling any 22 tension. 23 CHAIRPERSON: What does the expression, 24 "They said the police can do anything" mean? What did you 25 mean by saying "they said?" They obviously means, is a</p>	<p style="text-align: right;">Page 2675</p> <p>1 them not being able to make it to – 2 CHAIRPERSON: We understand where they 3 were today. I have no problem with that. All I'm asking 4 you is, do you or your counsel when they're back here 5 tomorrow, have any questions for the witness? 6 SPEAKER: That's the second thing I was 7 getting to, Chair. The LRC has no questions for Mr 8 Mathunjwa, so we'll not – 9 CHAIRPERSON: Mr Ntsebeza, do you have 10 any questions? 11 MR NTSEBEZA SC: Not one that I can deal 12 with in five minutes. 13 CHAIRPERSON: No, no, the reason I ask 14 you for questions, if you have questions, was to know 15 whether you have questions at all or whether – and if you 16 said you had, I was going to suggest you might like to ask 17 them tomorrow morning. 18 MR NTSEBEZA SC: I will welcome that 19 suggestion from the Chair. 20 CHAIRPERSON: The Commission will adjourn 21 until 9:30 tomorrow morning. 22 [COMMISSION ADJOURNED] 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 2674</p> <p>1 reference to NUM – "they said the police can do anything." 2 What did you mean by that? 3 MR MATHUNJWA: I think that is the word 4 that is being used but I mean according to the meeting, 5 they said they don't have members, let the AMCU must go to 6 the mountain because it's AMCU who promised the people 7 12 500. That I was taking from there. 8 CHAIRPERSON: I'm sorry, Mr Mathunjwa, 9 that's not an answer to my question. I said what did you 10 mean when you said "they", that's NUM, said "the police can 11 do anything?" What did you mean by that? 12 MR MATHUNJWA: I think in this context 13 that they must, people must be removed. In other words 14 it's in the hands of the police, they can do what they had 15 to do, to say. 16 MR TIP SC: Mr Chair, those are our 17 questions. 18 CHAIRPERSON: Is there – yes, it's nearly 19 4 o'clock. I don't know whether – Mr Bizos is not here 20 today but you're standing in for him, do you propose asking 21 any questions? 22 SPEAKER: Thank you, Chair. My name is 23 [indistinct]. I'm an attorney at the Legal Resources 24 Centre. The first thing I'd like to mention, Chair, is 25 that counsel for the LRC have asked me to apologise for</p>	

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