

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 253

1 JULY 2014

PAGES 31821 TO 31954



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1 [PROCEEDINGS ON 1 JULY 2014]
 2 [09:05] CHAIRPERSON: The Commission resumes.
 3 Would you please tell the witness that he's still under
 4 oath?
 5 MR MAHLANGU: Confirmed, Chairperson.
 6 MR X: (s.u.o.)
 7 CHAIRPERSON: Mr Mathibedi, you may
 8 continue with your evidence in chief.
 9 EXAMINATION BY MR MATHIBEDI SC (CONTD.):
 10 Thanks, Chair. Will you please go to slide 198 of exhibit
 11 L? Do you have it before you?
 12 MR X: Not yet. I've got it, sir.
 13 MR MATHIBEDI SC: Sir, the Nyala depicted
 14 in this slide, do you know where did it end up?
 15 MR X: Yes, sir.
 16 MR MATHIBEDI SC: Will you please proceed
 17 and tell us where it ended up?
 18 MR X: It arrived at a kraal there.
 19 There's a kraal just in front of it.
 20 MR MATHIBEDI SC: As the Nyala proceeded
 21 to the kraal, what were the strikers doing?
 22 MR X: We were going towards the police.
 23 The police were in front on the other side of the kraal.
 24 Some of us turned around the kraal towards the police who
 25 were on the down side, attacking them, Chairperson.

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1 MR MATHIBEDI SC: As the Nyala proceeded
 2 towards the kraal, what was the reaction or response of the
 3 police?
 4 MR X: Shooting with rubber bullets.
 5 Shooting with rubber bullets.
 6 MR MATHIBEDI SC: Were the rubber bullets
 7 not effective in dispersing the strikers?
 8 MR X: No, it wasn't working.
 9 MR MATHIBEDI SC: Why was it not
 10 effective?
 11 MR X: We didn't care about that. What
 12 we were interested in was going to the police to attack
 13 them.
 14 MR MATHIBEDI SC: Will you go to slide
 15 207? Do you have it before you, sir?
 16 MR X: I see that.
 17 MR MATHIBEDI SC: Are you familiar with
 18 what is set out in the slide?
 19 MR X: Yes, that we are attacking.
 20 MR MATHIBEDI SC: Attacking who?
 21 MR X: The police who were on foot, we
 22 were proceeding towards them.
 23 MR MATHIBEDI SC: And at that stage what
 24 was the response or reaction of the police?
 25 MR X: They were shooting with rubber

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1 bullets and teargas which we did not feel, we kept on
 2 proceeding towards them and we went past them. As we were
 3 attacking them, during that commotion the group that was in
 4 front of us fell, they fell on the ground and some of us
 5 turned around and ran away.
 6 MR MATHIBEDI SC: The slide shows some of
 7 the protesters in a crouching formation, can you see that?
 8 MR X: Yes, that was in accordance with
 9 the inyanga's instructions.
 10 MR MATHIBEDI SC: What was the
 11 instruction?
 12 MR X: He gave instructions that when
 13 approaching them we should approach them in a crouching
 14 position and not standing up.
 15 MR MATHIBEDI SC: Are you appearing in
 16 this slide?
 17 MR X: Towards the back there.
 18 CHAIRPERSON: Can you see yourself in the
 19 slide?
 20 MR X: At the back, I'm not appearing,
 21 not visible there. We are in a crouching position,
 22 Chairperson.
 23 COMMISSIONER HEMRAJ: There are people
 24 visible, not very clearly but in the back. Are you able to
 25 tell us where in the slide you might be?

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1 MR X: You see Rasta there, the second
 2 from the back, in that vicinity.
 3 CHAIRPERSON: I don't know to where you
 4 are – is there some way you could indicate to us where he
 5 is?
 6 MR X: I'm in that vicinity, Chairperson.
 7 I wasn't very far from those people, I don't remember
 8 exactly where.
 9 COMMISSIONER HEMRAJ: Can the witness see
 10 what you're pointing out, Mr Pretorius?
 11 MR MATHIBEDI SC: Are you able to see at
 12 the big screen where Mr Pretorius is pointing?
 13 MR X: That's the person I was – where
 14 the pointer is pointing.
 15 CHAIRPERSON: If one looks at the screen
 16 one sees, on the right-hand side one sees the rear of a
 17 Nyala. Near the top of the Nyala there's a slight
 18 projection in line with the top of the window which is
 19 covered by a grid and if one moves to the left from the top
 20 of that window, one sees a man silhouetted, he's about the
 21 fourth from the front as one looks at the photograph and
 22 that is the person who's been shown by Mr Pretorius –
 23 MR MATHIBEDI SC: Sir, you testified that
 24 people fell, do you remember that?
 25 MR X: That's – to the kraals there,

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1 people starting falling and some of us turned away.
 2 MR MATHIBEDI SC: What made those people
 3 to fall?
 4 MR X: This is because the muti had
 5 ceased functioning, it wasn't working anymore.
 6 MR MATHIBEDI SC: Yes sir, but the
 7 question is what made those people to fall?
 8 MR X: The police that were approaching
 9 had started shooting.
 10 MR MATHIBEDI SC: Approaching, who was
 11 approaching?
 12 MR X: The police that we were attacking
 13 started shooting with real bullets. They started shooting
 14 with real bullets which caused people to fall.
 15 MR MATHIBEDI SC: Was the muti not
 16 effective at that stage?
 17 MR X: Yes.
 18 MR MATHIBEDI SC: Now in relation to –
 19 CHAIRPERSON: Yes? What do you mean? Do
 20 you mean that the muti was effective or the muti wasn't
 21 effective? The fact that they fell down – was the muti
 22 still working?
 23 MR X: Chairperson, we were not supposed
 24 to be able to be shot but these people were being shot now
 25 and they were falling, so the muti had lost its power. It

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1 wasn't working anymore.
 2 MR MATHIBEDI SC: In relation to the
 3 people that fell, where were you?
 4 MR X: I was some distance away from
 5 where these people were falling but I was about to be there
 6 and when we realised they were falling, we realised
 7 something was wrong, we turned away and ran.
 8 MR MATHIBEDI SC: Do you know why the
 9 muti was not effective at that stage?
 10 MR X: Chairperson, we were given
 11 instructions not to kill any kind of an animal there. We
 12 discovered later that one of us had actually killed a hare.
 13 Somebody did not seem to have understood the inyanga's
 14 instructions about the killing of animals.
 15 MR MATHIBEDI SC: Do you still believe -
 16 do you still use muti, sir?
 17 MR X: I do, sir. I do, yes. That is my
 18 direction, using of muti.
 19 MR MATHIBEDI SC: Do you still believe in
 20 the effectiveness thereof?
 21 MR X: Yes, it does work, sir, but one
 22 has got to follow the instructions strictly.
 23 MR MATHIBEDI SC: I'm going to refer to
 24 the bundle of the injured and arrested persons. That's
 25 item 7 –

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1 COMMISSIONER HEMRAJ: I'm sorry, what
 2 bundle are you referring to, Mr Mathibedi?
 3 MR MATHIBEDI SC: Sorry, the bundle of
 4 the arrested and injured persons.
 5 CHAIRPERSON: We don't seem to have it
 6 but never mind, let's not waste time with that. What is
 7 the, do you want to make it an exhibit? AAAA26.
 8 MR MATHIBEDI SC: That's correct, Chair.
 9 CHAIRPERSON: What is it?
 10 MR MATHIBEDI SC: It's a Bethanie docket
 11 CAS48/01/2013.
 12 CHAIRPERSON: CAS what? C-A-S?
 13 MR MATHIBEDI SC: 48/01.
 14 CHAIRPERSON: Yes?
 15 MR MATHIBEDI SC: 2013.
 16 CHAIRPERSON: What sort of docket is it,
 17 you say?
 18 MR MATHIBEDI SC: Sorry, Chair?
 19 CHAIRPERSON: Oh, Bethanie being the Free
 20 State.
 21 MR MATHIBEDI SC: That's correct, Chair.
 22 CHAIRPERSON: So it's Bethanie docket
 23 CAS48/01/2013.
 24 MR MATHIBEDI SC: That's correct.
 25 CHAIRPERSON: I've written that in my

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1 book. When I eventually get that docket I'll mark my copy,
 2 thank you.
 3 COMMISSIONER HEMRAJ: Are you referring
 4 to an extract from the docket that's in either bundle A or
 5 B? No.
 6 CHAIRPERSON: The particular document in
 7 the docket that you refer to - and is there a copy in hands
 8 of the machine operator so we can have it on the screen?
 9 MR MATHIBEDI SC: Chair, the docket
 10 comprises of about five pages.
 11 CHAIRPERSON: I understand that but
 12 that's not answering my question. Is it, are we going to
 13 see it on the screen or not? We haven't got copies but it
 14 doesn't matter, we won't hold things up for that. That'll
 15 be sorted out at first break but are these five pages, or
 16 some of them, going to be put on the screen so that we and
 17 the rest of the people here in the chamber can follow
 18 what's going on?
 19 COMMISSIONER HEMRAJ: Is this one of the
 20 dockets that you've provided us with?
 21 MR MATHIBEDI SC: That's correct because
 22 it was distributed.
 23 COMMISSIONER HEMRAJ: Oh.
 24 MR MATHIBEDI SC: And even all the
 25 parties have got it. Chair, if we could just – I'm not

<p style="text-align: right;">Page 31829</p> <p>1 sure of Mr Bennett has got a copy thereof.</p> <p>2 MR MPOFU: Chairperson, Chair, I must</p> <p>3 apologise, I was otherwise occupied outside. I just wanted</p> <p>4 to double check, I hear talk of dockets. It's –</p> <p>5 CHAIRPERSON: What he says, it's a docket</p> <p>6 that you indicated you were going to use in cross-</p> <p>7 examination. What he says is –</p> <p>8 MR MPOFU: Dockets? No.</p> <p>9 CHAIRPERSON: He's handed – I'm just</p> <p>10 telling you, don't shoot me, I'm just the messenger.</p> <p>11 MR MPOFU: No, I'm shooting him,</p> <p>12 Chairperson.</p> <p>13 CHAIRPERSON: No, that's not becoming</p> <p>14 behaviour for a future silk either.</p> <p>15 MR MPOFU: Yes.</p> <p>16 CHAIRPERSON: What he's handed up is,</p> <p>17 metaphorically as it were, handed up as an exhibit, as</p> <p>18 exhibit AAAA26 is what he describes as Bethanie docket</p> <p>19 CAS48/01/2013 and he said it's among a pile of five</p> <p>20 documents, a pile of documents – oh, here we are, here's a</p> <p>21 copy – which was described as "Provisional list of cross-</p> <p>22 examination documents to be used in cross-examination of Mr</p> <p>23 X on behalf of the injured and arrested persons." So it's</p> <p>24 one of your dockets.</p> <p>25 MR MPOFU: Chairperson, I'm asking a very</p>	<p style="text-align: right;">Page 31831</p> <p>1 MR MATHIBEDI SC: That's correct, Chair.</p> <p>2 CHAIRPERSON: I don't think your pending</p> <p>3 application is in any way implicated in this document</p> <p>4 which, as he says, is one you're relying on in your cross-</p> <p>5 examination.</p> <p>6 MR MPOFU: Ja.</p> <p>7 CHAIRPERSON: That sounds okay for the</p> <p>8 moment.</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: And Ms Hemraj has quickly</p> <p>11 checked to make sure there's nothing that's likely to cause</p> <p>12 us any difficulty in this docket that you wish to refer to</p> <p>13 in cross-examination and she says there isn't anything, so</p> <p>14 I think we can carry on.</p> <p>15 MR MPOFU: No, Chairperson, I'm sorry. I</p> <p>16 don't think I'm being understood here. I'm saying that</p> <p>17 when I got here there was talk about dockets that are going</p> <p>18 to be used. There are documents which I've applied –</p> <p>19 CHAIRPERSON: No, no, hang on. Sorry,</p> <p>20 you didn't understand. You've made an application</p> <p>21 complaining about certain statements that Mr Mathibedi</p> <p>22 wishes to rely on.</p> <p>23 MR MPOFU: Ja, which are contained in</p> <p>24 dockets.</p> <p>25 CHAIRPERSON: I know, which are contained</p>
<p style="text-align: right;">Page 31830</p> <p>1 simple question, which docket is he talking about? If it's</p> <p>2 a statement in a docket, that's a different thing. All I'm</p> <p>3 saying is that if there's talk about dockets, remember</p> <p>4 there's a standing application here about documents which</p> <p>5 should be excluded. That's all, I'm just seeking</p> <p>6 clarification.</p> <p>7 MR MATHIBEDI SC: Chair, it's a docket</p> <p>8 wherein the witness is a complainant. I mean it was not,</p> <p>9 it was provided, you know, in their list. It has got</p> <p>10 nothing to do with –</p> <p>11 CHAIRPERSON: Remember in his statement –</p> <p>12 I haven't seen the document so I'm proceeding at my peril</p> <p>13 but, as far as I can recall, in his statement he said at</p> <p>14 one stage he laid a charge against certain people, round</p> <p>15 about January 2013 and he subsequently was prevailed upon</p> <p>16 to withdraw the charge. Do you remember that?</p> <p>17 MR MPOFU: Yes, Chairperson.</p> <p>18 CHAIRPERSON: Now this docket, as far as</p> <p>19 I can understand from Mr Mathibedi, is the document that</p> <p>20 relates to that. In other words, that's the case, there's</p> <p>21 no statement that's the subject of a pending application.</p> <p>22 It's a statement he made, this witness, complaining as</p> <p>23 complainant and thereafter he withdrew it so that –</p> <p>24 MR MPOFU: Yes.</p> <p>25 CHAIRPERSON: Am I right, Mr Mathibedi?</p>	<p style="text-align: right;">Page 31832</p> <p>1 in dockets. Now those – I've made it clear, I think.</p> <p>2 [09:25] If I haven't made it clear up to now, I make it</p> <p>3 clear now that until we deal with your application those</p> <p>4 statements can't be used.</p> <p>5 MR MPOFU: That's correct.</p> <p>6 CHAIRPERSON: That's the first point.</p> <p>7 The second point is that he's not dealing with any of</p> <p>8 those. He's referring to a docket where this witness was</p> <p>9 the complainant and he later withdrew the charge and you</p> <p>10 put that docket in your list of documents you were going to</p> <p>11 use in cross-examination. That's the point. So there</p> <p>12 isn't a problem at the moment. I think we can carry on.</p> <p>13 I'm very much aware of the point you raised and the</p> <p>14 necessity for a decision to be given on that before any of</p> <p>15 the statements Mr Mathibedi wishes to put in can be put in,</p> <p>16 and it may well be that if your objection is upheld he</p> <p>17 won't be able to put them in. But we're not busy with that</p> <p>18 at the moment.</p> <p>19 MR MPOFU: Thank you, yes. Well, I just</p> <p>20 wanted clarification because I couldn't know all that from</p> <p>21 the word "docket". It's just not clear –</p> <p>22 CHAIRPERSON: I understand the word</p> <p>23 "docket" immediately raised fears in your mind that</p> <p>24 something untoward was happening, but don't worry, if</p> <p>25 anything untoward is tried I will not allow it. I'm not</p>

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1 sure that Mr Mathibedi – I'm not suggesting for a moment
2 that he would try to do anything untoward, but anyway, have
3 no fear; let's proceed with this document you were going to
4 rely on in cross-examination, that it's not neutralised by
5 this piece of evidence-in-chief.
6 MR MPOFU: Yes, Chairperson.
7 MR MATHIBEDI SC: Chair, I think I'll
8 come to this aspect at a later stage. It appears Mr
9 Bennett does not have copies, so he won't be in a position
10 to put it up on the screen.
11 CHAIRPERSON: Perhaps during the short
12 break arrangements could be made for him to be given a copy
13 so it can be put on the screen.
14 MR MATHIBEDI SC: Thanks, Chair.
15 CHAIRPERSON: But you've got another
16 topic you wish to deal with in the meanwhile.
17 MR MATHIBEDI SC: Thanks, Chair.
18 CHAIRPERSON: Alright.
19 MR MATHIBEDI SC: Sir, is it correct that
20 you were requested by the South African Police Services to
21 testify before this Commission?
22 MR X: No, I wasn't asked to.
23 MR MATHIBEDI SC: How did it come about
24 that you should come and testify before the Commission?
25 MR X: I went to report a case, I opened

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1 a case against certain people at Bethanie. I was then told
2 I must withdraw that case because I cannot be a complainant
3 in a case in which I am involved, I was with them, involved
4 with them on the mountain. They said to me they are sorry
5 what was done to me because if I open up a case all the
6 secrets of the things that we made on the mountain would
7 then become known.
8 CHAIRPERSON: Who said that to you?
9 MR X: Bala and Nzama.
10 MR MATHIBEDI SC: Why did you report the
11 case against Bala and Nzama?
12 MR X: I joined AMCU and then decided to
13 cancel my membership and went to work. They waited for me
14 at the shaft, waiting for a bus. They asked me why am I
15 now wearing a NUM T-shirt whereas, that I know this has to
16 do with the ANC and I was there together with them having
17 cancelled Zokwana.
18 CHAIRPERSON: I'm sorry to interrupt. So
19 these people met you at the shaft and said to you what
20 you've just told us?
21 MR X: It was at number 1 Shaft and the
22 people were Bala and Nzama, N-Z-A-M-A. What I said to them
23 is that "I'm going to hit you by using a ball pen. I'm
24 going to write something."
25 MR MPOFU: Chairperson –

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1 MR MAHLANGU: Mr Mpofo's light is on,
2 Chair.
3 CHAIRPERSON: [Microphone off, inaudible]
4 MR MPOFU: No, that's why I was calling,
5 Chairperson.
6 CHAIRPERSON: Sorry Mr Mpofo, what do you
7 want to say?
8 MR MPOFU: Thank you. No, I say
9 Chairperson, the previous answer was not fully translated.
10 Firstly, well it was both not fully translated and not
11 properly translated. The first part he says, he used a
12 very difficult word, so I've sympathy with the interpreter.
13 He said "umngwazi ANC." What he meant is that he was
14 wearing a hat of the ANC, and then he also said they asked
15 him why was he wearing that hat when, and he said something
16 about Zuma, which was not translated.
17 MR MAHLANGU: He said ANC.
18 CHAIRPERSON: The best thing is let's ask
19 him to repeat what he said and then you can translate it.
20 MR X: I was wearing an ANC beret and
21 wearing other clothes which they said why am I now wearing
22 this kind of clothes whereas I'd cancelled Zokwana.
23 MR MPOFU: Okay.
24 CHAIRPERSON: I take it he meant
25 cancelled membership of NUM –

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1 MR X: That's what they were questioning;
2 I was out of NUM, why have I now gone back to it. I said
3 in South Africa a person joins any organisation that he
4 wants to join.
5 MR MATHIBEDI SC: Sir, when did you –
6 MR MPOFU: Sorry, Sir. Sorry,
7 Chairperson –
8 CHAIRPERSON: I think he should be
9 allowed to carry on then.
10 MR MPOFU: No. Well, nobody has checked
11 if what I've raised has been rectified or not.
12 CHAIRPERSON: Well tell us what you want
13 to raise.
14 MR MPOFU: Ja, thank you. Thank you,
15 Chairperson. That resolved the first question of the hat
16 which I raised. The other issue that I raised with you was
17 the fact that in part of that answer he had said something
18 about Zuma, which was also not translated. Maybe he can be
19 asked what he was saying about Zuma.
20 CHAIRPERSON: Yes, I –
21 MR MPOFU: It seems Mr Mahlangu doesn't
22 remember.
23 CHAIRPERSON: Yes, I understand that you
24 said something also about Mr Zuma. Can you repeat that,
25 please?

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1 MR X: No, no, I said I was wearing an
2 ANC T-shirt.

3 MR MPOFU: No, Chairperson, this is quite
4 a serious matter. I'd like him to deny specifically that
5 he mentioned the word "Zuma" so that we can play the tape.

6 CHAIRPERSON: Did you a few minutes ago
7 when discussing this conversation you had at the shaft when
8 you were wearing the ANC beret, did you mention anything
9 about Mr Zuma or did you mention Mr Zuma's name in any
10 context?

11 MR X: I spoke of Zokwana, Mr
12 Chairperson, and I said I was wearing a NUM –

13 CHAIRPERSON: Mr Mpofu, I suggest let Mr
14 Mathibedi carry on. During the first break you can listen
15 to the tape and if in fact you heard correctly and what the
16 witness says isn't correct, then you can bring that to our
17 attention afterwards. It may be that it was in fact a
18 reference to Mr Zokwana –

19 MR MPOFU: Thank you, Chairperson.

20 CHAIRPERSON: But anyway, we will be
21 wiser after the break.

22 MR MPOFU: That's the best way to do it.
23 Thank you, Chairperson.

24 CHAIRPERSON: Mr Mathibedi, would you
25 like to carry on?

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1 MR MATHIBEDI SC: Sir, at that stage did
2 you belong to any union?

3 MR X: I was a member of AMCU and I saw
4 the cancellation in around January that I had reverted back
5 to NUM.

6 CHAIRPERSON: When you joined AMCU, you
7 told us about when you joined AMCU; do you know whether the
8 AMCU form that you signed was given to Lonmin so that
9 deductions were made from your wages and paid over to AMCU?
10 Did that happen?

11 MR X: Yes, it was deducted. It was
12 taken.

13 CHAIRPERSON: And when you cancelled, as
14 you have told us, did you send another form to Lonmin so
15 that they stopped deducting money from your wages to pay to
16 AMCU and resumed deducting money and paying it over to NUM?

17 MR X: Yes, I did, Chairperson, I signed
18 that form. AMCU was deducting R90 as their membership fee,
19 membership fee of R90 as an RDO.

20 MR MATHIBEDI SC: Sir, on the occasion
21 that you made a statement to the police at Bethanie, did
22 you tell them what transpired at the mountain during the
23 unprotected strike?

24 MR X: No, I did not tell them.

25 CHAIRPERSON: What was the charge that

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1 you laid against these two people that you spoke to?

2 MR MATHIBEDI SC: Chairperson, they said
3 they would visit me where I'm staying. Now I know a visit
4 has to be a person that is welcomed by being given food
5 when he visits you. In this case a visit that it comes
6 uninvited, I thought they were coming to kill me.

7 CHAIRPERSON: No, you still haven't
8 answered my question. What was the charge that you laid
9 against these two people? What was the offence for which
10 you were laying a charge against them?

11 MR X: I reported to the security office.
12 The police at the security took me to the police at
13 Bethanie on that day to open a case.

14 CHAIRPERSON: You still haven't answered
15 my question. You went to Bethanie Police Station to lay a
16 complaint against these two people. What was the charge in
17 respect of which you were laying a complaint?

18 MR X: That they were going to kill me.

19 MR MATHIBEDI SC: Sir, is it correct that
20 on the 21st of January 2010 you withdrew the charge –

21 CHAIRPERSON: If he did it in 2010 I
22 don't understand how it has any relevance to this case.

23 MR MATHIBEDI SC: Sorry, Chair. On the
24 21st of January 2013 you withdrew the charge that you laid
25 at Bethanie Police Station?

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1 MR X: Yes, I went and did that.

2 MR MATHIBEDI SC: Why did you withdraw
3 the charge against the suspects?

4 MR X: Chairperson, they came to me at
5 the shaft and said to me they would like to take me to the
6 police station, there was a vehicle, take me to the police
7 station to go and withdraw the case because if I have to go
8 to the police station things that were secret that were
9 being done at the mountain will now come out to the open,
10 and when we arrived there they said they were relatives of
11 mine. They dropped me by the gate. As I was coming I was
12 picked up by the security who said they would take me to
13 the place at, go and put me at a safe place.

14 MR MATHIBEDI SC: Sir, before you went to
15 Bethanie Police Station to withdraw the case, did you have
16 a discussion with the person against whom you laid the
17 charges?

18 MR X: Yes, as it was at the shaft where
19 this was discussed that I should cancel the case.

20 MR MATHIBEDI SC: And as a result of the
21 discussion that you had with – with whom did you have the
22 discussion?

23 MR MATHIBEDI SC: Bala and Nzama and two
24 other young men, the one who was driving the vehicle and
25 the other one who works in the safety department at the

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1 shaft. The four of us went together.
 2 MR MATHIBEDI SC: Do you know the names
 3 of the other two persons?
 4 MR X: The one who works at the shaft is
 5 known as Power and the other one who works at safety, the
 6 other one is Ndamase, N-D-A-M-A-S-E.
 7 MR MATHIBEDI SC: As a result of the
 8 discussion that occurred you went and withdrew the case.
 9 Is that correct?
 10 MR X: Yes, I eventually went to withdraw
 11 the case, cancel the case.
 12 MR MATHIBEDI SC: Now how did you go to
 13 the police station, the Bethanie Police Station?
 14 [10:05] COMMISSIONER HEMRAJ: Mr Mathibedi, if
 15 you're going to put the statement to the witness all you're
 16 going to show is his name at the bottom of the page.
 17 MR MATHIBEDI SC: That's correct.
 18 COMMISSIONER HEMRAJ: And would those
 19 contents have been read to him and interpreted because
 20 otherwise what is he confirming, just that his name is
 21 there at the bottom?
 22 MR MATHIBEDI SC: No I'm also going to a
 23 certain extent deal with the contents thereof.
 24 CHAIRPERSON: If you're going to read the
 25 whole statement to him it's going to take ages to read

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1 that.
 2 MR MATHIBEDI SC: I don't intend to read
 3 all the statements, Chair. There are certain statements
 4 where I'm going to – with certain aspects contained in the
 5 those statements but not read the whole statement.
 6 CHAIRPERSON: I don't quite know how to
 7 handle this, I would imagine you could put the pieces of
 8 paper and he can say that's my signature, I signed it. He
 9 can say I signed it after the person who had written it
 10 out, someone else had translated or [inaudible] piece of
 11 paper or had given him the piece of paper. You would
 12 presumably then have to have an affidavit from somebody who
 13 spoke in Xhosa,. Either I translated it myself or had
 14 someone who translated it and I correctly recorded
 15 [inaudible]. That person could perhaps make an affidavit
 16 and then identify the particular documents that you're
 17 going to put in through him and in which he identifies his
 18 signature as correctly containing what he said. I don't
 19 know how else you can do it.
 20 MR BUDLENDER SC: Chair, sorry to
 21 interrupt. Chair, it's not clear to me why we're going
 22 this route. If the purpose is for the witness to give the
 23 evidence which is in the statements then he can give the
 24 evidence without reference to the statements. He can be
 25 asked what happened here and what happened there and he can

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1 give his evidence. If the purpose to prove what he – is
 2 the purpose to give that evidence or is the prove that he
 3 made a statement in which he said those things because it's
 4 only if it's the latter that it's necessary, I would think,
 5 to go through the statements. If the purpose is to prove
 6 that he made a statement in which he said those things then
 7 I can understand that he's taken to the statements. But if
 8 the purpose is to give the evidence the facts he doesn't
 9 need to refer to the statement.
 10 CHAIRPERSON: What are you trying to
 11 achieve by what you're now going to do?
 12 MR MATHIBEDI SC: There are two aspects.
 13 One is to prove that the witness made statements and the
 14 other aspect in particular is to deal with certain parts of
 15 one statement.
 16 CHAIRPERSON: With regard to the first
 17 point when one leads the witness one doesn't normally say
 18 to the witness by the way you made a statement which
 19 contains what you've just told us, would you identify it?
 20 You don't normally do that. That's what cross-examining
 21 counsel does when he or she wishes to contradict the
 22 evidence of the witness by showing that the witness made a
 23 contradictory statement. You don't, normally as part of a
 24 witness in evidence in chief say you made a statement which
 25 sets out what you've just told us in evidence, he's already

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1 given his evidence. I can understand the second point,
 2 there may be some aspects of the statement that you want to
 3 clarify. I haven't got a problem with that but the first
 4 one, I know that what we've done in this Commission is we
 5 encouraged counsel to get the witness to confirm his
 6 statements. That is because very often the statement
 7 contains a lot of other material, for the sake of saving
 8 time everything that's written and confirmed by the witness
 9 goes in. But I don't understand that to be the case here
 10 because the witness doesn't in fact know what's written in
 11 the statement. But I can understand in respect of the
 12 second point, there's a particular aspect of one statement
 13 you want to deal with, I haven't got a problem with that.
 14 I think that must be the answer, Mr Budlender, I'm sure.
 15 Let me just try to cut the thing short somewhere. I
 16 understand that you signed a number of statements, is that
 17 correct?
 18 MR X: Yes, Sir, it's correct. I am the
 19 person who signed underneath there those statements.
 20 CHAIRPERSON: Now before you signed those
 21 statements did someone read to you in Xhosa what it was
 22 said was contained in those statements that you signed in
 23 English?
 24 MR X: Yes, there was.
 25 CHAIRPERSON: And were you happy with

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1 what was read to you in Xhosa was in fact what you had said
2 and what was correct?
3 MR X: Yes I was prepared to stand for it
4 because that is what I knew had happened.
5 CHAIRPERSON: I'm short of actually
6 handing the documents to him and getting him to confirm
7 those are the documents he signed. I don't think you need
8 go further on your first point than the evidence I've
9 covered with the questions I've asked. I understand the
10 second point is a different matter and obviously you can
11 deal with that.
12 MR MATHIBEDI SC: Sir, did you make any
13 statement to Lieutenant-Colonel Shomela?
14 MR X: Yes there is.
15 MR MATHIBEDI SC: Now during that period
16 in which language was the discussion held?
17 MR X: He was talking to me in English
18 and also Shangaan which I didn't understand very well. It
19 became necessary that somebody be called and that is when
20 Ngqoko was called. To the Shangaan policeman I was talking
21 in Fanagalo.
22 MR MATHIBEDI SC: Chair, I would like
23 that exhibit AAA be put up on the screen but without the
24 details of the witness.
25 CHAIRPERSON: But you'd have to leave out

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1 the signature at the bottom, it's signed at the bottom.
2 MR MATHIBEDI SC: That's correct, Chair.
3 CHAIRPERSON: Being blocked off on the
4 copy that's going to be screened?
5 MR MATHIBEDI SC: There was a copy that
6 was provided which is blocked, I don't know if Mr - has got
7 it.
8 CHAIRPERSON: Well I don't want to have
9 something that goes wrong. What I suggest we do is we now
10 take the short adjournment, a quarter of an hour earlier
11 than I intended to, let's take the short adjournment, the
12 comfort break and during that time you can sort out the
13 problem in relation to the dockets and you can also satisfy
14 yourself that what's going to be put up on the screen isn't
15 going to disclose the identify of the witness.
16 MR MATHIBEDI SC: Thanks, Chair.
17 [COMMISSION ADJOURNS COMMISSION RESUMES]
18 [10:51] CHAIRPERSON: The Commission resumes. We
19 were out a bit longer than I thought but we were asked to
20 only come in once the necessary arrangements had been made.
21 We were also given a copy of the criminal docket which I
22 will mark as AAAA26. I take it Mr Mpofu has got a copy has
23 he - have you? Well, you've got exhibit AAAA26, the
24 intimidation docket.
25 MR MPOFU: Oh, yes.

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1 CHAIRPERSON: The witness being the
2 complainant -
3 MR MPOFU: Yes.
4 CHAIRPERSON: It only contains two
5 statements, the original complaint as it were and a
6 withdrawal statement, so there's nothing affected by your
7 pending application.
8 MR MPOFU: No, it's not, Chairperson.
9 For the record I just want to state that that discussion we
10 had this morning, paragraph 38 of my list of documents was
11 referring to statements which were still to be requested,
12 so this is one of them. So it's certainly not covered
13 with, by the exclusion -
14 CHAIRPERSON: Anyway it's now been sorted
15 out.
16 MR MPOFU: Yes.
17 CHAIRPERSON: Okay. Would you please
18 tell the witness that he's still under oath? Mr Mathibedi,
19 are you now going to show him the statements in the
20 dockets?
21 MR MATHIBEDI SC: That's correct -
22 CHAIRPERSON: You can't show him the
23 [indistinct] - docket, it's blacked out on the copy.
24 MR MATHIBEDI SC: Thanks, Chair.
25 MR MAHLANGU: Confirmed, under oath.

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1 MR X: (s.u.o.)
2 EXAMINATION BY MR MATHIBEDI SC (CONTD.):
3 Chair, I think I'm done with this exhibit, with what it is
4 that I wanted to deal with the witness.
5 CHAIRPERSON: Perhaps [indistinct] to me,
6 but I take it - well, I suppose it's enough to say that's
7 the docket. He can't confirm that it is or isn't because
8 he can't read but we can.
9 MR MATHIBEDI SC: Thanks, Chair.
10 CHAIRPERSON: Alright, so the docket is
11 now received. You can carry on with the next item of your
12 examination in chief.
13 MR MATHIBEDI SC: Thanks, Chair, I'm
14 going over to AAAA8. Sir, you have -
15 CHAIRPERSON: The typed statement which
16 was number 10 -
17 MR MATHIBEDI SC: That's correct.
18 CHAIRPERSON: - in bundle B.
19 MR MATHIBEDI SC: That's correct. Sir,
20 you have looked at the statement, is that correct?
21 MR X: I have seen the statement.
22 MR MATHIBEDI SC: Who was responsible for
23 taking this witness, this statement?
24 MR X: The Shangaan policeman was writing
25 it.

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1 MR MATHIBEDI SC: Do you know his name,
2 sir?

3 MR X: Not really.

4 MR MATHIBEDI SC: Sir, you earlier on
5 referred to Lieutenant-Colonel Shomela.

6 MR X: Yes, sir.

7 MR MATHIBEDI SC: So who was, do you know
8 – can you remember who was responsible for taking, the name
9 of the person, official that took down the statement?

10 MR X: I would be able to identify him.

11 MR MATHIBEDI SC: But the name of the
12 officer?

13 MR X: I said that's Shomela. Shomela,
14 he didn't understand Xhosa well.

15 MR MATHIBEDI SC: During the discussion
16 that you had with Shomela, which language was Lieutenant-
17 Colonel Shomela speaking?

18 MR X: Xhosa, and he would come into
19 Xhosa and then out again. Shangaans do take chances with
20 Xhosas but they usually wave out again, as they try.

21 MR MATHIBEDI SC: Sir, I'm going to refer
22 you to paragraph 6 of the statement which I'm going to read
23 into the record. "The two men said to be sons of the
24 traditional healer then started making cuttings on our
25 bodies and put muti on the cuttings. One of the sons told

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1 us that his muti will prevent the bullet to penetrate our
2 bodies and he displayed a curse on the 'boks' which he did
3 ritual on, as well as two goats and he fired shots at them
4 and bullets could not penetrate them, or injury." Sir, I
5 would like you to comment about what is stated herein where
6 mention is made of the two goats and that also tests were
7 fired on them.

8 MR X: This is, he did not understand
9 Xhosa well there. There was misunderstanding there, Mr
10 Chairperson, this is why it became necessary that somebody
11 who understands Xhosa be brought.

12 MR MATHIBEDI SC: I'm going to refer you
13 to paragraph 7 which reads as follows, "The sons of the
14 traditional healer were with us at the hill since the
15 11/08/2012 until the 15/08/2012 where they left the hills.
16 On 12" – sorry?

17 MR X: That's correct.

18 MR MATHIBEDI SC: "On 12/08/2012 there
19 were two security officers attacked and killed, whereby one
20 of them was cut on his chin and tongue and his piece of
21 flesh was taken together with his blood, put inside a
22 plastic bag and also ashes from him as he was burned to
23 ashes." I would like you to comment on what is stated –
24 stated, namely "also ashes from him as he was burned to
25 ashes."

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1 MR X: We, I said that some of his flesh
2 was cut and blood and this person who was writing did not
3 understand Xhosa well.

4 MR MATHIBEDI SC: "The flesh and blood
5 were mixed with muti and well" – "and we all licked it,"
6 sorry.

7 MR X: That is correct.

8 MR MATHIBEDI SC: "This happened every
9 time when a person is attacked and killed whereby his blood
10 was collected and mixed with muti and licked."

11 MR X: No – no, sir, it was only from the
12 security officer that these were taken. He did not
13 understand Xhosa well. No, I didn't say that.

14 MR MATHIBEDI SC: Can we go over to
15 paragraph 8? "I also undergone ritual and licked the muti
16 mixed with human tissues and blood as I was afraid for my
17 life as everyone was forced to join the strike and to
18 support everything decided at the meeting." Were you at
19 any stage – sorry, Mr Mahlangu – were you at any stage
20 forced to join the unprotected strike?

21 MR X: No, this was a strike of the RDOs.
22 I also needed money, I wasn't forced to.

23 MR MATHIBEDI SC: Sir, you have already
24 testified about the sheets that were brought to the koppie
25 by the inyangas, do you remember that?

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1 MR X: Yes, sir.

2 MR MATHIBEDI SC: In all, how many sheets
3 were brought to the koppie by the inyangas?

4 MR X: When I counted there were three.

5 MR MATHIBEDI SC: Chair –

6 CHAIRPERSON: Can I ask a question about
7 the statement? Would you look – well, you can't look but
8 I'll read you what appears in paragraph 2. This is on the
9 first page of the exhibit AAAA8. Can we please have
10 paragraph 2 on the screen? Right. "I am a mine employee
11 who was a member of NUM workers' union until October 2012
12 whereby I was forced to change and join the new
13 mineworkers' union known as AMCU after the strike at Lonmin
14 mines." Is that what you said to the policeman who took
15 the statement?

16 MR X: I had been a member of NUM,
17 Chairperson. I joined AMCU on the mountain there.

18 CHAIRPERSON: What month?

19 MR X: I joined it on the mountain during
20 the month of the strike. This was in August, Chair.

21 CHAIRPERSON: Thank you.

22 MR MATHIBEDI SC: Chair, can we revert
23 back to exhibit AAAA12? You will still remember that the
24 photos that we had at that stage were not that clear.

25 CHAIRPERSON: Must I give a warning?

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1 MR MATHIBEDI SC: Not necessary, Chair.
 2 CHAIRPERSON: I see. I see these are
 3 much clearer than the ones we saw before. These are
 4 clearer copies of AAAA12. There are three photographs so
 5 they'll be AAAA12.1, 12.2 and 12.3.
 6 MR MATHIBEDI SC: Do you have the photo
 7 before you?
 8 MR X: I do have it.
 9 MR MATHIBEDI SC: Will you please
 10 identify the object on photo number 1?
 11 MR X: There are ropes there, one
 12 coloured red, one coloured white and red and there's also a
 13 spoon hanging. Those are the spoons that were used for
 14 mixing the muti. There were also some bottles in which
 15 these were being mixed. There were three sheets were
 16 hanged, enclosing that area. One of the sheets appear, on
 17 which appeared the picture of a lion.
 18 MR MPOFU: Sorry, Chairperson, maybe it's
 19 me. I can't see any spoon there.
 20 CHAIRPERSON: I couldn't see the spoon
 21 either but it was drawn to my attention. If you, I think
 22 Mr – it's now been enlarged and can you see the rusty
 23 spoon?
 24 MR MPOFU: No –
 25 CHAIRPERSON: The arrow is going around

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1 it. On the right side, right, more or less – well, it's no
 2 good referring to the enlargement of the photographs that
 3 are being shown to me now but the –
 4 MR MPOFU: Chairperson, what –
 5 CHAIRPERSON: At the end, at the end of
 6 the – sorry.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: Let's not both talk at the
 9 same time. You see the piece of red and white string wool
 10 –
 11 MR MPOFU: Yes, yes.
 12 CHAIRPERSON: - from the middle of the
 13 picture to the right-hand side.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: And then at one point the
 16 red wool, which starts about a third of the way up the
 17 left-hand side of the picture, that continues to a point
 18 where it crosses the red and white wool. Just beyond that
 19 on the right you see the –
 20 MR MPOFU: Shape.
 21 CHAIRPERSON: - the shape of part of the
 22 rusty spoon.
 23 MR MPOFU: Well, I see the shape but
 24 rusty spoon –
 25 CHAIRPERSON: If you look, so if you look

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1 to the left, to the left of the red and white wool, you can
 2 see something else that looks like a rusty colour which I
 3 imagine is the handle of the spoon. I'm told it's –
 4 MR MPOFU: Ja, but who says it's a spoon?
 5 CHAIRPERSON: - it's more easily visible
 6 on – yes, it is. Look at photo 2. Can we have photo 2 on
 7 the screen?
 8 MR MPOFU: 2?
 9 CHAIRPERSON: AAAA12.2. If you can't see
 10 it, Mr Mpofo, please accept my profound sympathy.
 11 MR MPOFU: Well, Chairperson, I might
 12 return the compliment. I see the shape but I don't know
 13 how you can say it's a spoon or a spear or a throwing, from
 14 where you sit, Chairperson –
 15 CHAIRPERSON: A miniature –
 16 MR MPOFU: - if you can, congratulations.
 17 CHAIRPERSON: If it's a spear it's a very
 18 miniature spear, but anyway there will presumably be
 19 evidence, not just from this witness –
 20 MR MPOFU: That's the point –
 21 CHAIRPERSON: - from those who attended
 22 on the occasion when the wool and the spoon were found, if
 23 it is a spoon.
 24 MR MPOFU: That would be better.
 25 CHAIRPERSON: Unless it's a miniature

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1 spear, as you suggest.
 2 MR MPOFU: I accept –
 3 CHAIRPERSON: We'll have evidence on
 4 that.
 5 MR MPOFU: That I'll accept, Chair.
 6 CHAIRPERSON: I'm pleased I am able to
 7 persuade you to take that –
 8 MR MPOFU: Thank you, Chairperson. Well,
 9 Chairperson, I can take your word on matters to do with
 10 teaspoons. Sorry, Chairperson, on a serious note. The
 11 second issue, if I remember, when we had the debate about
 12 these particular photos was, there was at that stage an
 13 allegation that we could see from these photos some bottles
 14 which I should assume that these clearer photos should also
 15 assist us on.
 16 CHAIRPERSON: I can't see the bottles but
 17 presumably when the witnesses who were present at the scene
 18 come give evidence or an affidavit or something, we will
 19 then know whether this picture is intended to show the
 20 bottles and if so, where it is. I'm afraid I suffer from –
 21 if the bottles are there you and I suffer from the same
 22 disability, we can't see the bottles.
 23 [11:11] MR MPOFU: Thanks, Chairperson.
 24 MR X: There were bottles there,
 25 Chairperson - some of them had red lids, some had yellow

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1 lids - whilst this was being done.
 2 MR MATHIBEDI SC: Thanks, Chair. Chair,
 3 on a lighter note I just note for my colleague that it's
 4 just unfortunate that I can't testify, but the head
 5 reflected there on photo number 3, it's mine.
 6 MR MPOFU: That I can recognise,
 7 Chairperson.
 8 CHAIRPERSON: This exhibit AAA12.3 is
 9 actually upside down and that shows the head of a male
 10 person and the shadow thereof to the left on the ground.
 11 Okay, I'm told one can't say necessarily a male person, but
 12 we have a admission as to who it is and so the statement is
 13 correct, if read at least with the admission.
 14 MR MATHIBEDI SC: Thanks, Chair. Sir,
 15 you accept that on the three photos shown there are no
 16 bottles?
 17 MR X: It is so, but the truth is there
 18 were bottles there.
 19 MR MATHIBEDI SC: When last did you see
 20 the bottles?
 21 MR X: At the time that these bottles
 22 were being used, Mr Chairperson. It's when I went to show
 23 the police this place we could not find the bottles, they
 24 were not there.
 25 MR MATHIBEDI SC: Chair, I only have the

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1 last two –
 2 CHAIRPERSON: That explains why they're
 3 not on the photograph. Yes, Mr Mathibedi.
 4 MR MATHIBEDI SC: I only have two more
 5 questions then I'm done. Bennett, will you kindly show us
 6 a video 00003, it's a video of Callie.
 7 CHAIRPERSON: Who is Callie? I should
 8 know, I know, but who is Callie? I think it's a policeman,
 9 but I'm not on first name terms with him, so what is his
 10 surname?
 11 MR MATHIBEDI SC: Chair, I must – I think
 12 it's a person in the employment of Lonmin.
 13 CHAIRPERSON: Oh, Lonmin.
 14 MR MATHIBEDI SC: It's not a police
 15 officer.
 16 CHAIRPERSON: I see. Well anyway, I'm
 17 not on first name terms with him, so I'd like to know his
 18 surname. Perhaps Mr Van As can tell us. Mr Van As, who is
 19 Callie?
 20 MR VAN AS: Mr Chairperson, Callie Miles
 21 is the one person –
 22 CHAIRPERSON: Miles?
 23 MR VAN AS: - I'm aware of in security
 24 whose first name is Callie.
 25 CHAIRPERSON: M-I-L-E-S?

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1 MR VAN AS: M-I-L-E-S.
 2 CHAIRPERSON: Thank you. So now we know.
 3 Thank you. Alright, please carry on with Mr Miles's video.
 4 MR MATHIBEDI SC: Will you please show
 5 it?
 6 [VIDEO IS SHOWN]
 7 CHAIRPERSON: Won't you think it's
 8 necessary to tell us – I'm sorry, before we carry on. It
 9 would be useful to know what date this video was taken,
 10 where it is. The witness can't necessarily tell us, but
 11 you can perhaps.
 12 MR MATHIBEDI SC: Chair, this video was
 13 taken on the 10th of August at the time office.
 14 CHAIRPERSON: I see, thank you. We have
 15 seen it before, I think, have we not?
 16 MS PILLAY: Chair, this is AAAA10.
 17 CHAIRPERSON: Yes, it's described here as
 18 AAAA27, but it's actually AAAA10.
 19 MS PILLAY: That's correct, Chair.
 20 MR MATHIBEDI SC: Thanks.
 21 CHAIRPERSON: That's right, thank you.
 22 We've marked it before and we're starting round about 3
 23 minutes 24 seconds. Is that right?
 24 MR MATHIBEDI SC: That's correct.
 25 CHAIRPERSON: [Microphone off, inaudible]

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1 if someone's haranguing the crowd or perhaps making a
 2 speech, so perhaps we could have an interpretation of what
 3 is being said.
 4 MR MATHIBEDI SC: Chair, we've already
 5 distributed an interpretation of, translation of the
 6 speech. We have requested parties to –
 7 CHAIRPERSON: This is the one we got the
 8 translation of?
 9 MR MATHIBEDI SC: That's correct. We've
 10 requested parties to comment.
 11 MS PILLAY: Chairperson, just as –
 12 CHAIRPERSON: Have the parties commented?
 13 Ms Pillay?
 14 MR MATHIBEDI SC: We've had nothing so
 15 far.
 16 MS PILLAY: We've received no comment,
 17 Chair. If I can just indicated, Mr Bennett said that this
 18 is a separate video clip, Chair, so this should be marked
 19 AAAA27.
 20 CHAIRPERSON: AAAA24, how do I describe
 21 it?
 22 MS PILLAY: Chair, 27.
 23 CHAIRPERSON: Mr Miles's – oh, I beg your
 24 pardon, 27. Mr Miles's video taken at, shall I call it
 25 time office? Lonmin time office on 10 August 2012. We'll

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1 call that AAAA28.

2 MR MATHIBEDI SC: Thanks, Chair.

3 MR MPOFU: Chairperson –

4 CHAIRPERSON: Mr Mpofu?

5 MR MPOFU: Yes, Chairperson, I must

6 apologise; I didn't, for some reason I didn't get a copy of

7 this particular document, but Mr Mathibedi showed it to me

8 during the break and as a result I've not been able to

9 verify. I'm prepared to accept the Fanagalo seems okay,

10 but the translation is a little bit suspect, so I wouldn't

11 like to bind myself to it, but I'm also not an expert on

12 the think. I'm just simply saying we reserve our rights on

13 the correctness of the translation. I'll check it with one

14 of –

15 CHAIRPERSON: Perhaps Mr Van As can get

16 Mr Blaauw to give us a Fanagalo interpreter to tell us. I

17 understand there may be some debate about what the "Popeye"

18 means. The suggestion is it may be puppet, but Mr Mahlangu

19 I think is a distinguished linguist in most of the

20 vernacular languages in South Africa and I'm sure he can

21 help us. Let's sort it out tomorrow –

22 MR MPOFU: No, Fanagalo is not a

23 vernacular language, Chair.

24 CHAIRPERSON: [Microphone off, inaudible]

25 MR MPOFU: Fanagalo is not a vernacular

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1 language.

2 CHAIRPERSON: It's a composite of a

3 number of them apparently. Anyway, let's not have a debate

4 about that because you may win. Yes, carry on, Mr

5 Mahlangu. Can you tell us, have you looked at the

6 document?

7 MR MAHLANGU: I unfortunately have not

8 seen the document, Chairperson.

9 CHAIRPERSON: Well, that's an omission

10 that can easily be repaired.

11 MR MAHLANGU: Thanks, Chairperson.

12 MR MATHIBEDI SC: Chair, can we deal with

13 the issue of the translation at a later stage?

14 CHAIRPERSON: I would suspect it will

15 take a minute or two.

16 MR MPOFU: Chairperson yes, I don't want

17 to impede. I'm very happy if Mr Mathibedi goes on with it.

18 All I don't want is later to be accused that I kept quiet.

19 I'm simply saying we reserve our right; we'll check the

20 translation. It may or may not be correct –

21 CHAIRPERSON: Yes, okay. Alright,

22 alright. Let's carry on and we'll ask Mr Mahlangu during

23 the tea adjournment to look at it and report back to us

24 after that.

25 [VIDEO IS SHOWN]

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1 MR MATHIBEDI SC: I am told that the

2 witness on the other side can't hear what's being said.

3 CHAIRPERSON: What must I do about that?

4 MR MATHIBEDI SC: Mr Chair?

5 CHAIRPERSON: What must I do about it?

6 MR X: I can hear it, Sir.

7 MR MATHIBEDI SC: I'm sorry, Chairperson,

8 I received a message that he –

9 CHAIRPERSON: It sounds as if your

10 information was erroneous.

11 MR MATHIBEDI SC: I'm sorry about that.

12 I got a message, Chair. Sir, will you identify the speaker

13 for us?

14 MR X: I see him.

15 MR MATHIBEDI SC: Can you identify the

16 speaker?

17 MR X: That is Bhele, the one who is

18 talking.

19 MR MATHIBEDI SC: What was happening on

20 that occasion?

21 MR X: This is where he was saying, "The

22 employer is turning us into Popeyes; we are going to close

23 the shaft today, the nightshift today. We are not playing.

24 We are not playing."

25 MR MATHIBEDI SC: What was your

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1 understanding that "we are going to close the nightshift

2 today"?

3 MR X: It was that we are going to start

4 closing the nightshift, not working in the nightshift

5 today, that the strike was starting.

6 MR MATHIBEDI SC: Thanks, we are done

7 with this video. Sir, yesterday you testified that you saw

8 four Nyalas. Do you remember that?

9 MR X: Yes, Sir.

10 MR MATHIBEDI SC: Are you in a position

11 to – the four Nyalas that you saw, were they all pulling

12 barbed wire?

13 MR X: There was one that was uncoiling

14 barbed wire. The others were in front towards the kraal.

15 MR MATHIBEDI SC: Do you know if the

16 other Nyalas that you saw deployed barbed wire or not?

17 MR X: When we were attacking the police,

18 the other Nyalas were used to block there. There was one

19 that was uncoiling the barbed wire, that was the one coming

20 towards the kraal when we were attacking the police.

21 MR MATHIBEDI SC: Thanks Chair, that's

22 the evidence of the witness.

23 CHAIRPERSON: Thank you. Mr Budlender,

24 you were going to cross-examine on behalf of the evidence

25 leaders, I see.

<p style="text-align: right;">Page 31865</p> <p>1 CROSS-EXAMINATION BY MR BUDLENDER SC: 2 Good morning, Mr X. 3 MR X: Morning, Sir. 4 MR BUDLENDER SC: I hope you don't mind 5 me calling you Mr X, but I don't want to use your name. 6 MR X: Yes, Sir. 7 MR MPOFU: I'm sorry, Chairperson, it's 8 just, I don't want to interrupt Mr Budlender. I wanted to 9 just make it clear that the issue of the hanging 10 application regarding the use or non-use of certain 11 statements, I would like to get clarity. It would seem, 12 what we have done, just by way of background, since the 13 last time, Chairperson, was to supply the IPID statements 14 of the people who make account of, some gruesome accounts 15 of torture and assault and we gave our learned colleagues 16 the list of the six persons to whom we referred in the 17 original application, and that there needs to be some 18 finality obviously over that issue. The issue – well, the 19 reason I'm raising this now, Chairperson, is because Mr 20 Mathibedi has now finished his – 21 CHAIRPERSON: Yes, sorry, Mr Mpofo, can I 22 interrupt you? 23 MR MPOFU: Yes. 24 CHAIRPERSON: I discussed the matter 25 outside the chamber with Mr Mathibedi. I indicated to him</p>	<p style="text-align: right;">Page 31867</p> <p>1 I'm sure he will come back to it at some stage and we will 2 then go into the matter in the light of the material you've 3 provided, and he may wish to provide other stuff, other 4 material in reply. We don't have to worry about it at all 5 during the course of this witness's evidence. 6 MR MPOFU: Well, Chairperson, yes, and 7 though I appreciate that, Chairperson, I – 8 CHAIRPERSON: [Microphone off, inaudible] 9 thing to happen, Mr Mathibedi may say in the light of the 10 statements he's not going to proceed with his application 11 to put the confessions in. Alternatively he may say he 12 wants to, in which case you will then say right, you want 13 these statements to be put in as exhibits, the statements 14 you've provided, and we will then have an argument perhaps, 15 or evidence even, in relation to the admissibility of the 16 statements if he wishes to tender, if he wishes to proffer 17 them, but that's a matter which we'll deal with in due 18 course. We don't have to deal with it now. 19 MR MATHIBEDI SC: Chairperson, I just 20 want to mention that yesterday I had a discussion with Mr 21 Mpofo about this issue and he indicated to me – I made a 22 proposal to him and then he indicated to me that he was 23 indeed [microphone off, inaudible] that's with the attorney 24 and I'm expecting him to come back, Chair – 25 CHAIRPERSON: Yes, yes, we'll deal with</p>
<p style="text-align: right;">Page 31866</p> <p>1 that I didn't think it appropriate for the statements to be 2 relied on in the course of this witness's evidence. It's 3 not normal practice to lead a witness and say by the way, 4 here's a statement of somebody else who agrees with you, do 5 you agree with him. I said that's not appropriate 6 procedure, and he accepted that. I said that if he wants 7 later to argue that the witness's evidence is corroborated 8 by other material and that material is not before the 9 Commission, that will be the time for us to consider – in 10 other words he may well bring an application, I don't know 11 whether he'll do in the light of the documents you've 12 provided. He may well at a later stage bring an 13 application from the bar, as it were, to hand these 14 statements in and to form a platform as it were for an 15 argument later that the witness's evidence is corroborated 16 by these facts. That will be the time when we will deal 17 with your application and we will either rule that the 18 statements can go in, or they can't go in, or perhaps some 19 in and some out, you know, but we don't have to deal with 20 it now during the course of this witness's evidence. 21 Those statements, if they are to be put before us 22 at all, will only be relied on, as is normally the case, at 23 the end in argument to say the witness's evidence is 24 corroborated by this. So it's not going to arise during 25 the course of this witness's evidence, but it certainly,</p>	<p style="text-align: right;">Page 31868</p> <p>1 it if we have to at the appropriate stage. 2 MR MPOFU: Chairperson, well as far as 3 the report back, I've reported back to Mr Pretorius – 4 CHAIRPERSON: Your discussions with your 5 colleague, you don't have to mention – 6 MR MPOFU: Ja Chairperson, can I just 7 finish what I'm saying here? The reason I'm raising this, 8 Chairperson, there are three reasons I'm raising this. One 9 is that there is an application before you which is 10 hanging, so it must have some fate or another, which was 11 brought by me and I think it's appropriate that we put it 12 to bed or do something with it, because you left it on the 13 basis that we were going to obtain the statements from IPID 14 and all that. So I think that's one good reason why this 15 should be put to bed. 16 [11:30] All I'm saying is that as far as that application 17 technically speaking is concerned, it becomes obsolete in 18 the sense that Mr Mathibedi has not used the statements, 19 either through your advice or for whatever reason. So 20 that's the first reason why I'm raising this. The second 21 reason I'm raising it is that in the course of that 22 application I made certain allegations of torture against 23 the police and it's important that I place on the record 24 that though the statements that have been submitted to Mr 25 Mathibedi from IPID corroborate those allegations of</p>

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1 torture, so those were not allegations that were just being
2 made blindly.

3 The third reason and final reason, Chairperson,
4 is that the statements that we are talking about are, as we
5 speak, still part of the bundles and insofar as we had
6 wanted them to be expunged from the record, well, pre-
7 emptively to be expunged from the record, we would like to
8 ensure that whatever, assuming the application is dead now,
9 whatever future – and this is an issue which you have
10 covered in what you've just told me – whatever intended
11 future use of those statements, must bear in mind the
12 history that I've just outlined.

13 CHAIRPERSON: Yes. No, no, we won't
14 forget the history you've mentioned. They're part of
15 bundles but they're not exhibits so they're not part of the
16 records of the Commission and if they are not admitted as
17 such, as exhibits, then as far as the Commission is
18 concerned they will not be there, will not be taken into
19 consideration.

20 MR MPOFU: Thank you, Chairperson.

21 MR BUDLENDER SC: May I proceed, Chair?

22 CHAIRPERSON: You may.

23 CROSS-EXAMINATION BY MR BUDLENDER SC:
24 Now, Mr X, I need you to understand my position. I am one
25 of the evidence leaders. We are not the lawyers for any of

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1 the parties of the Commission. Our job is to try to help
2 the Commission to find the truth. Do you understand that?

3 MR X: Yes, sir.

4 MR BUDLENDER SC: First I have some
5 preliminary questions which I'd like to ask you to clarify
6 some things. The first one is this, you made quite a long
7 statement to the police on the 7th of February 2013, that is
8 exhibit AAAA1.1 which we looked at a bit earlier. Do you
9 remember that?

10 MR X: Yes, sir.

11 MR BUDLENDER SC: The handwritten
12 statement is now on the screen, it's 25 handwritten pages.

13 MR X: Yes, sir.

14 MR BUDLENDER SC: And I assume that the
15 person who was interviewing you said that you must tell
16 them everything that happened that was important.

17 MR X: Yes, sir.

18 MR BUDLENDER SC: And I assume that they
19 asked you questions and they wrote down your answers.

20 MR X: Yes, sir.

21 MR BUDLENDER SC: And when they - for
22 more information, they asked you more questions and they
23 wrote down your answers.

24 MR X: Yes, sir.

25 MR BUDLENDER SC: Now who is the person

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1 from the police who wrote down that statement which you see
2 on the screen, which you signed on the 7th of February 2013?

3 MR X: It was the police who were
4 writing.

5 MR BUDLENDER SC: Yes, who was the police
6 person?

7 MR X: These were the police from Phokeng
8 police station who were writing this statement,
9 Chairperson. The person who was speaking Xhosa was the one
10 I called Ngqoko. All the other policemen were Tswana
11 speaking.

12 MR BUDLENDER SC: Yes, and which one was
13 writing down your statement?

14 MR X: Ngqoko, the one who understood
15 Xhosa.

16 MR BUDLENDER SC: Now, it's a long
17 statement which deals with –

18 CHAIRPERSON: Is this the person who also
19 took your oath? Is this Captain Nnyaniso Moses Ngqoko,
20 N-G-Q-O-K-O, first name N-Y-A-N-I-S-O Moses, Moses as we
21 know it. Is he the person you're referring to?

22 MR X: It was the same person, yes
23 Chairperson, I signed the statement.

24 MR BUDLENDER SC: Right and it's a long
25 statement which deals with many things. It must have taken

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1 a long time for this statement to be taken from you.

2 MR X: Yes, sir.

3 MR BUDLENDER SC: Were the interviews all
4 done in one day or did it stretch over more than one day?

5 MR X: It wasn't done over a day, sir.

6 MR BUDLENDER SC: About how many days did
7 it take?

8 MR X: It was three days because he had,
9 in the meantime, other duties to perform.

10 MR BUDLENDER SC: Thank you. Then you
11 made a further statement about a year later in March 2014
12 at Centurion. Do you remember that?

13 MR X: Yes, it was now during the time of
14 that month. Mathi.

15 MR MAHLANGU: He is looking at the person
16 there.

17 MR BUDLENDER SC: I think he's referring
18 to Mr Mathibedi.

19 MR X: That's correct, yes.

20 MR BUDLENDER SC: Was Mr Mathibedi the
21 person who interviewed you and prepared that statement for
22 you?

23 MR X: Yes, he was asking me questions
24 and writing. Some things that he asked me had not been
25 asked by the previous person, which things he wrote down.

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1 MR BUDLENDER SC: Now, you're now giving
2 evidence to the Commission. Who asked you to give evidence
3 to the Commission?
4 MR X: Nobody asked me to. I came here
5 because of the pain that I felt about the things in which I
6 was involved.
7 COMMISSIONER TOKOTA: Sorry, Mr
8 Budlender, just before you proceed. This policeman who
9 took this statement is not Ngqoko, it's Ngqoko,
10 N-G-Q-O-K-O, Ngqoko. You can see at the end of it, not so?
11 Do you agree with me?
12 MR MPOFU: Definitely, Ngqoko.
13 MR BUDLENDER SC: Even I agree,
14 Commissioner. Now I understand if you say you're giving
15 evidence here because of the pain that you suffered. Was
16 it your idea that you should give evidence to the
17 Commission or did somebody suggest, ask you whether you
18 would like to give evidence to the Commission?
19 MR X: It came from me.
20 MR BUDLENDER SC: And then who did you
21 speak to, to say I would like to give evidence to the
22 Commission?
23 MR X: The police who were taking down
24 the statement, I said to them, I want to go and give
25 evidence in this Commission.

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1 MR BUDLENDER SC: I understand. So what
2 you – so is this when you were making that first long
3 statement?
4 MR X: Ngqoko made the statement.
5 MR BUDLENDER SC: It was when you were
6 busy with the police at Phokeng?
7 MR X: Yes, sir.
8 MR BUDLENDER SC: And you said to them –
9 they were taking a statement from you and you said to them,
10 I would like to go and give this evidence to the
11 Commission, to tell the Commission what has happened?
12 MR X: Yes, I said I'm not turning from
13 that.
14 MR BUDLENDER SC: And nobody suggested
15 that to you, that was entirely your own idea?
16 MR X: No, it was myself, Chairperson.
17 MR BUDLENDER SC: Thank you. Then I want
18 to ask you something about the settlements at Marikana. We
19 know that some of the Lonmin mineworkers live in those
20 settlements.
21 MR X: It is so.
22 MR BUDLENDER SC: And there are also
23 other people who live in those settlements who are not
24 mineworkers.
25 MR X: Yes, sir.

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1 MR BUDLENDER SC: Some of them are men,
2 some are women and some are children.
3 MR X: That's true.
4 MR BUDLENDER SC: Thank you. Then
5 there's another matter that I'd like to clarify. You've
6 given evidence that Mr Mathunjwa telephoned Mr Nzuzo on the
7 evening or night of the 14th of August.
8 MR X: Yes, sir.
9 MR BUDLENDER SC: And the purpose of the
10 call was to ask whether he could come to the koppie.
11 MR X: Yes, sir.
12 MR BUDLENDER SC: I just want to read you
13 what you said in your evidence in chief and make sure I've
14 got it correct. Could we have day 248 put up, page 31222?
15 I'll read it and Mr Mahlangu will interpret it, from line
16 14. It says, your evidence was the following,
17 "Chairperson, the message was received through Xolani's
18 phone because they were the only two, him and Mambush, who
19 were carrying watches. We were not allowed to carry
20 watches or any cell phones. They gave us this information
21 what Mathunjwa was saying."
22 MR X: Yes, sir.
23 MR BUDLENDER SC: That is correct, is it?
24 MR X: It is correct.
25 MR BUDLENDER SC: Then could we go to

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1 page 31223 line 4 and you'll see at line 4 the Chairperson
2 says, "Now I understand you're going to tell us something
3 about Mr Mathunjwa coming there, but I understood you to be
4 talking now about something that happened before Mr
5 Mathunjwa came when you were telling us about a message
6 that Mambush got on his cell phone." And then Mr Mathibedi
7 says, "Sorry Chair, he said Xolani." And then the
8 Chairperson says, "Xolani. Yes, of course, Xolani was the
9 cell phone holder. That's quite right. That's right."
10 I'm sorry, "Yes, that's right." Then the Chairperson says,
11 "So what I'm interested in is the message that Xolani got
12 over the cell phone which he then conveyed to the rest of
13 you, what time did that happen?" And then you answer, "It
14 was quite late, Chairperson," and then you go on and then
15 at line 20 the Chairperson says, "Yes, I understand that,
16 but Mr Mathunjwa came after Xolani had received this
17 message on his cell phone. I understand that. What I'm
18 interested in knowing is –" and you say, "Yes, sir."
19 That's all correct, is it?
20 MR X: Yes, sir.
21 MR BUDLENDER SC: Then there's another
22 matter I'd like to clarify with you before I go to the
23 specifics. Could we have exhibit –
24 CHAIRPERSON: I'm going to take the tea
25 adjournment at a time convenient to you. Perhaps you want

1 to deal with this point first before we do that.

2 MR BUDLENDER SC: Thank you, Chair.

3 Could we go to AAAA1.1, exhibit AAAA1.1 which is your
4 statement from February 2013, paragraph 5 and I wonder
5 whether we can go to the typed version which is a bit
6 easier to work with. AAAA1.2, my apologies. And then
7 about one, two, about 10 lines from, the tenth line from
8 the top of paragraph 5, this is now your statement dealing
9 with the time when you went to the time office to speak to
10 the manager.

11 MR X: Yes, sir.

12 MR BUDLENDER SC: And then two lines up
13 in fact you say, "Our delegates came back accompanied by a
14 white guy. The white guy had our paper of demands on his
15 hand.

16 [11:50] The white guy told us to go back and they want to
17 talk to our unions about our demands. We told the white
18 guy that we do not want to be represented by unions, we came
19 on our own, and then we told that white guy that if he do
20 not want to talk to us no nightshift was going to report
21 for work to all shafts." You remember that?

22 MR X: Yes, Sir.

23 MR BUDLENDER SC: So what we know from
24 this is that the management refused to speak, to negotiate
25 directly with the rock drill operators or the strikers.

1 MR X: Yes, Sir.

2 MR BUDLENDER SC: They said that they
3 would speak to you only through the NUM, which was the
4 recognised union.

5 MR VAN AS: Mr Chairperson, that
6 [inaudible] -

7 MR X: Yes, Sir.

8 MR BUDLENDER SC: I just read it, Chair.
9 I'm sorry if I misread it.

10 CHAIRPERSON: [Microphone off, inaudible]
11 again so we can see whether you or Mr Van As is correct.

12 MR BUDLENDER SC: Well, it's an inference
13 which I draw from the statement I put to the witness and he
14 agreed with me.

15 CHAIRPERSON: No, no, no, I think the
16 point is slightly different. Read the third line from the
17 foot of the page, second page of the exhibit. What it says
18 is this, "The white guy told us to go back and they want to
19 talk to our unions about our demands. We told the white
20 guy we do not want to be represented by unions, we came on
21 our own." It doesn't say, talk about NUM, only talking
22 through NUM, "We'll talk to you through your unions." So
23 Mr Van As I think with respect is correct.

24 MR BUDLENDER SC: Let me clarify that -

25 CHAIRPERSON: It's plural unions, and

1 unions not named.

2 MR BUDLENDER SC: Let me clarify that
3 with the witness. Am I correct in understanding that the
4 attitude of the management was that they would only speak
5 to you in fact through the NUM, because they were the
6 recognised union?

7 MR X: Chairperson, he said he was not
8 prepared to talk to us, he was prepared to talk to the
9 union. The union was the NUM which had the membership.
10 AMCU existed there, though it did not have sufficient
11 people.

12 MR BUDLENDER SC: I don't understand what
13 the dispute is, Chair, because the evidence of Mr Da Costa
14 is that -

15 CHAIRPERSON: Yes, Mr Van As was merely
16 referring to the fact that you didn't accurately quote what
17 was in the statement, but the point now appears to have
18 disappeared, gone up the chimney, because there's no longer
19 ground for it.

20 MR BUDLENDER SC: The point is a simple
21 one, Mr X, and as you've said the management was only
22 prepared to speak to you through the NUM.

23 MR X: Yes, Sir.

24 MR BUDLENDER SC: You did not have
25 confidence in the NUM to represent you on this matter.

1 MR X: Yes, Sir.

2 MR BUDLENDER SC: And you said if the
3 management will not talk to you directly you are going to
4 go on strike.

5 MR X: Yes, Sir.

6 MR BUDLENDER SC: Thank you. Chair, I
7 have one more preliminary point, but if you wish -

8 CHAIRPERSON: Let's get the preliminary
9 points out of the way before we take the adjournment.

10 MR BUDLENDER SC: Just then could we go
11 to the record, transcript, day 248, page 31177, line 14 -
12 I'm sorry, line 12, there's your evidence, you said,
13 "Chairperson, the intelezi in our blood was working in such
14 a way that we did not listen to anything. We just wanted
15 the employer to come to us and give us what we wanted."
16 You see that?

17 MR X: Yes, I see.

18 MR BUDLENDER SC: You wanted the
19 management to come to you so that you could speak to them
20 and you could make your demand for R12 500.

21 MR X: Yes, Sir.

22 MR BUDLENDER SC: Thank you, just one
23 last matter, Chair, if I may deal with this as a
24 preliminary matter. I'd like to go to the Daily Maverick
25 extract which was used as an exhibit yesterday, AAAA25.

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1 Could we go to the next slide, next page. Right, now that
 2 was the photograph which was shown to you yesterday. You
 3 remember that?
 4 MR X: Yes, Sir, yes.
 5 MR BUDLENDER SC: And you said this was a
 6 caucus of the committee to decide whether to allow Mr
 7 Mathunjwa to come to the koppie – to allow Mr Zokwana to
 8 come to the koppie.
 9 MR X: That's correct.
 10 MR BUDLENDER SC: This is the committee
 11 of 15.
 12 MR X: That's right.
 13 MR BUDLENDER SC: And you identified
 14 yourself on that photograph, this arrow pointing - I just
 15 want to make sure –
 16 MR X: Yes.
 17 MR BUDLENDER SC: - I've got the right
 18 person. Are you the person wearing a blanket, or a towel,
 19 and part of it is trailing on the ground?
 20 MR X: That's me.
 21 MR BUDLENDER SC: There are two people
 22 with blankets over them next to each other. You are the
 23 one on the right with the blanket which is actually
 24 trailing on the ground?
 25 MR X: That's correct.

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1 CHAIRPERSON: In other words you're the
 2 person with the arrow pointing at the back of his neck. Is
 3 that –
 4 MR X: That's correct.
 5 MR BUDLENDER SC: And you're wearing a
 6 black shirt. You are wearing a black shirt, a dark shirt.
 7 MR X: That's correct.
 8 MR BUDLENDER SC: Thank you, Chair, those
 9 are my preliminary questions.
 10 CHAIRPERSON: We'll take a 15-minute tea
 11 adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [12:24] CHAIRPERSON: The Commission resumes.
 14 During the adjournment, which took a bit longer than I
 15 thought, we worked out the time allocations in respect of
 16 the cross-examination of this witness and Ms Pillay has got
 17 all the details and she will communicate them to us now.
 18 MS PILLAY: Thank you Chair. NUM have
 19 been allocated two hours and all of the parties have all
 20 the topics granted. Lonmin one hour, Baloyi half an hour,
 21 Monene half an hour, LRC half a day, the families half a
 22 day, AMCU two and a half hours and the injured and arrested
 23 three days.
 24 CHAIRPERSON: Thank you. I understand
 25 that people got what they applied for. The witness, will

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1 you please remind him he is still under oath.
 2 MR MAHLANGU: The witness is still under
 3 oath.
 4 CHAIRPERSON: Before Mr Budlender
 5 continues with his cross-examination, Ms Hemraj would like
 6 to ask a few questions.
 7 MR X: (s.u.o.)
 8 COMMISSIONER HEMRAJ: Mr X, on the 23rd of
 9 January 2013 when you withdrew the charge and you were left
 10 at the side of the road, that was the day that you told a
 11 security person from Lonmin what had happened at the
 12 mountain.
 13 MR X: That is correct, but I only told
 14 him the next day. He said I should wait for him the next
 15 day and he took me from the shafts to the police.
 16 COMMISSIONER HEMRAJ: And did he or
 17 anyone else at Lonmin write down all these things you told
 18 them?
 19 MR X: No, he did not write down what I
 20 was saying, he merely took me to Phokeng.
 21 COMMISSIONER HEMRAJ: When you were at
 22 Phokeng police station, when you told the police what had
 23 happened you implicated yourself in some very serious
 24 offences.
 25 MR X: Yes.

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1 COMMISSIONER HEMRAJ: Were you placed
 2 under arrest or anything?
 3 MR X: No, it never came to that point
 4 where I was detained. I told them whatever I told them but
 5 I was never locked up.
 6 COMMISSIONER HEMRAJ: You made a series
 7 of warning statements.
 8 MR X: Those statements were made and I
 9 put my thumb print on it.
 10 COMMISSIONER HEMRAJ: And when you made
 11 these statements you were warned that you were a suspect in
 12 various offences ranging from murder to intimidation.
 13 MR X: Yes, they did.
 14 COMMISSIONER HEMRAJ: What has happened,
 15 do you know whether you are still to appear in court on
 16 these charges?
 17 MR X: No, I don't have a problem with
 18 that, I will appear in court if I –
 19 COMMISSIONER HEMRAJ: No, the question is
 20 what have you been told about them?
 21 MR X: Yes, I was told.
 22 COMMISSIONER HEMRAJ: What were you told,
 23 whether you would be charged and appearing in court or
 24 would you not be charged?
 25 MR X: They told me there are charges

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1 although they did not physically say I will also be
 2 charged, but I'm also a suspect as I'm sitting here.
 3 COMMISSIONER HEMRAJ: And all these
 4 warning statements you made were prior to the –
 5 MR MPOFU: I'm sorry, Commissioner. I
 6 thought he said he was [Xhosa word], not a suspect.
 7 MR QGIRANA: Yes, he used the words in
 8 Xhosa, [Xhosa words] which would translate to a prisoner
 9 but I chose the word "suspect" in this case.
 10 COMMISSIONER HEMRAJ: All your warning
 11 statements were made prior to your making your first
 12 manuscript statement in February of 2013.
 13 MR X: Yes, that is correct.
 14 CHAIRPERSON: Can I ask a couple of
 15 questions too, if I may, on a similar point before Mr
 16 Budlender starts. You laid a complaint on the 10th of
 17 January 2013 in which you alleged that you'd been -
 18 MR X: Yes, Mr Chair.
 19 CHAIRPERSON: Now who wrote out the
 20 statements that you, that set out the terms of your
 21 complaints?
 22 MR X: The security officer who took me
 23 to Bethanie took down the statements because I made the
 24 complaint to him. He wrote down, took the minutes and then
 25 took me to the –

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1 CHAIRPERSON: So was the security officer
 2 you're talking about, was that a security officer of
 3 Lonmin?
 4 MR X: Security from Lonmin.
 5 CHAIRPERSON: And did he write your
 6 initial statement out?
 7 MR X: Yes.
 8 CHAIRPERSON: In that statement you said
 9 that these two persons who had threatened you had said to
 10 you that you had been with them at the koppie during the
 11 strike and that they were going to kill you because you
 12 were aware of their deepest secrets in the AMCU union. Is
 13 that what they said?
 14 MR X: Yes.
 15 CHAIRPERSON: So when you'd conveyed that
 16 to the security officer at Lonmin, that then meant that
 17 Lonmin knew that you had been on the koppie during the
 18 strike and that you were allegedly aware of the deepest
 19 secrets in the AMCU union, is that right?
 20 MR X: Some knew, others did not.
 21 CHAIRPERSON: Yes, but the point is the
 22 Lonmin person to whom you reported the complaint, who wrote
 23 it out for you, he knew what that said.
 24 MR X: Yes, he knew.
 25 CHAIRPERSON: And then three days later

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1 on the 13th of January you withdrew the charges and the
 2 statement that you made was dated the 13th of January.
 3 MR X: Yes.
 4 CHAIRPERSON: Now who wrote out that
 5 statement?
 6 MR X: The police officer from Bethanie
 7 took down the statement after the withdrawal statement was
 8 made and the charges were not just withdrawn by the
 9 withdrawal statement. There were even the people who I
 10 complained about, made some statements.
 11 CHAIRPERSON: Yes, I see. Now, but you
 12 withdrew the charges on the 13th of January.
 13 MR X: Ja.
 14 CHAIRPERSON: And when were you first
 15 interviewed by members of the police in relation to what
 16 you knew about the events involving the strike?
 17 MR MATHIBEDI SC: Mr Chair, the
 18 withdrawal statement was made on the 21st of January, that's
 19 correct.
 20 CHAIRPERSON: Were you interviewed then
 21 in relation to your first statement on the 21st or was it a
 22 longer period than that? So you withdrew the charges on
 23 the 13th of January?
 24 MR MATHIBEDI SC: The 21st –
 25 CHAIRPERSON: You withdrew the charges on

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1 the 13th, that's the date of the withdrawal statement. Oh
 2 sorry, I'm wrong, I misread it. Yes, yes, you withdrew it
 3 on the 21st of January, yes.
 4 MR X: Yes.
 5 CHAIRPERSON: Okay, yes. I've now got it
 6 right. You lay the charge on the 10th, you withdrew it on
 7 the 21st.
 8 MR X: Yes.
 9 CHAIRPERSON: It appears from the
 10 statements we've been given that the first statement you
 11 made relating to what happened on the koppie was on the 26th
 12 of January. That's the warning statement.
 13 MR X: Yes.
 14 CHAIRPERSON: What happened between the
 15 21st and the 26th of January?
 16 MR X: I was sleeping at this place where
 17 I was kept, taken from this place to work and brought back
 18 from work back to this place until I was put under this
 19 protection programme.
 20 CHAIRPERSON: And the place where you
 21 were sleeping, I think you told us, was on the Lonmin
 22 premises, is that right?
 23 MR X: This was under the Lonmin
 24 premises.
 25 CHAIRPERSON: Was Lonmin looking after

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1 you? Was Lonmin – they were protecting you, in other
2 words.
3 MR X: I was protected by them, yes.
4 CHAIRPERSON: And did they interview you
5 at all before you came into the hands of the police? Did
6 they interview you at all about what had happened? Did you
7 tell them what you knew about the deepest secrets of AMCU,
8 what had happened during this, when you were on the
9 mountain during the strike?
10 MR X: I was asked and I told them.
11 CHAIRPERSON: Thank you.
12 COMMISSIONER HEMRAJ: While you made all
13 these statements as a suspect, all these warning
14 statements, you were not in the custody of the South
15 African Police Services?
16 MR X: Yes, I was never under the police.
17 CHAIRPERSON: Sorry, Mr Budlender, we
18 wanted to sort those matters out before you start.
19 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
20 Thank you, Chair. Mr X, you've identified in your evidence
21 a number of the people who participated in the strike by
22 reference to photographs.
23 MR X: Yes, Chair.
24 MR BUDLENDER SC: I'd like to show you
25 some more photographs and ask you to help us by identifying

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1 some further people. Could we have on the screen the
2 photograph which Mr Chaskalson has prepared, it's called
3 "Presentation 1." Now who is the person in the red shirt
4 who is standing up in front of that group of crouching
5 strikers?
6 MR X: This is camera people from NUM who
7 are shooting there wearing sunglasses.
8 CHAIRPERSON: Is this an exhibit, Mr
9 Budlender?
10 MR BUDLENDER SC: No, it's not yet,
11 Chair. I think we'd better make it an exhibit.
12 CHAIRPERSON: AAAA?
13 MR BUDLENDER SC: AAAA29, Chair.
14 CHAIRPERSON: 29. How do I describe it?
15 MR BUDLENDER SC: Photograph of – it's an
16 extract from the SAPS hard drive identified in the right-
17 hand corner, SAPS hard drive –
18 CHAIRPERSON: No, it appears to be an eTV
19 –
20 MR BUDLENDER SC: From a video –
21 CHAIRPERSON: Oh no – oh, but it's not, I
22 see, that's just the time. So how do I describe it?
23 Extract?
24 MR BUDLENDER SC: Extract from SAPS hard
25 drive.

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1 CHAIRPERSON: Yes?
2 MR BUDLENDER SC: Video 34 –
3 CHAIRPERSON: Sorry, 15 August 2012,
4 video?
5 MR BUDLENDER SC: 34.MTS.
6 CHAIRPERSON: 34?
7 MR BUDLENDER SC: Dot MTS.
8 CHAIRPERSON: MTS. Thank you.
9 MR MPOFU: Chairperson, if we can be of
10 assistance, I think the appellation "SAPS hard drive" is
11 meaningless in the context of this Commission. Which one
12 is it, the one that was discovered or the one that was
13 discovered by the evidence leaders later?
14 MR BUDLENDER SC: Chair, it's the
15 original one but we'll provide the parties and the
16 Commission with the –
17 MR MPOFU: Thank you.
18 MR BUDLENDER SC: - the file name.
19 CHAIRPERSON: Yes, when we get the file
20 name we'll then update the description of the exhibit.
21 Let's not dally on the point for the moment.
22 MR TIP SC: Chair, can we just get some
23 interpretation verified? As it came across through the
24 interpreter he said that that was a photographer from NUM
25 but I understand that what [indistinct].

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1 CHAIRPERSON: Well, let's verify it. You
2 hear Mr Tip's point?
3 MR GOIRANA: No, Mr Chair, that is how I
4 understood the witness to be saying but I –
5 CHAIRPERSON: Ask him to repeat, ask him
6 to repeat?
7 MR X: This man in front of us is one of
8 these camera people, I do not know his name.
9 CHAIRPERSON: Do you know who he worked
10 for?
11 MR X: No, I don't.
12 CHAIRPERSON: That seems to get you off
13 the hook, Mr Tip, for the moment anyway.
14 MR BUDLENDER SC: Thank you, Chair. It
15 was an unintended hook from my part, Chair, an unintended
16 hook from my part or an unconscious hook. In the front
17 row, Mr X, you'll see there is a man who is wearing a red
18 and white blanket. Who is that person?
19 MR X: One of us, a Makarapa member, I do
20 not know his name.
21 MR BUDLENDER SC: Then next to him
22 there's a man in what looks like a white coat of some kind
23 or white overalls, do you know what his name is?
24 [12:44] MR X: Also a makarapa member, I do not
25 know his name.

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1 MR BUDLENDER SC: And then moving along
 2 to the right there's a man with a, crouching with a, with
 3 white shoes on, black pants, a blue striped jersey and a
 4 sash or something across his shoulder. Can you see him?
 5 It's the second-last one from the right, second from the
 6 right. Do you know who –
 7 CHAIRPERSON: Actually the third, I think
 8 it is.
 9 MR BUDLENDER SC: Well, in the front row.
 10 CHAIRPERSON: Ja, alright, front row.
 11 MR BUDLENDER SC: The front row, the
 12 second from the right. Do you know who he is?
 13 MR X: I see him. Mr Chair, I don't know
 14 the names of these people, although they are makarapa
 15 members. The people whose names I know are not appearing
 16 amongst the people. I don't know everybody there, but I
 17 know some.
 18 MR BUDLENDER SC: Let's just try one
 19 more. The man on the right of the front row carrying a
 20 blanket and a stick, do you know who he is?
 21 MR X: I know him by sight. I don't know
 22 his name.
 23 MR BUDLENDER SC: Alright, thank you.
 24 Now I want – sorry.
 25 COMMISSIONER HEMRAJ: The person that's

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1 half visible behind the gentleman doing the videographing,
 2 do you know who that is?
 3 MR X: This is the one who, with the NUM
 4 jacket, but I don't know his name.
 5 COMMISSIONER HEMRAJ: Yes, I'm talking
 6 about the gentleman with the pink and white blanket that's
 7 next to the gentleman in the blue and grey striped shirt.
 8 Do you know that person?
 9 MR X: I see that person. Makarapa
 10 member, I don't know his name. They are members of the
 11 makarapa.
 12 MR BUDLENDER SC: Mr X, just keep your
 13 mind on the, keep that person on the front, on the right of
 14 the front row, the one with the striped, a jersey which is
 15 striped on front and carrying a blanket. You see the one
 16 I'm talking about? He's got, yes he's pointing, he's being
 17 pointed out, he's got blue jeans, a dark jersey with
 18 stripes on the front and he's carrying a blanket. You see
 19 that person?
 20 MR X: I see. I see that man.
 21 MR BUDLENDER SC: Then can we go to the
 22 next photograph in the series and can it be blown up?
 23 CHAIRPERSON: Is this also not an
 24 exhibit?
 25 MR BUDLENDER SC: Yes, can I give it a

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1 name in a moment, Chair. Can you look at the man at the
 2 left of that photograph? Now that is a man with blue
 3 jeans, dark jersey with stripes on it on the front, and
 4 carrying a blanket. He seems to be the one we were just
 5 looking at a moment ago.
 6 MR X: I see him.
 7 MR BUDLENDER SC: It's the same one as we
 8 looked at a moment ago on the right-hand side of the front
 9 row.
 10 MR X: No.
 11 MR BUDLENDER SC: Well, let's look at
 12 him. He's got blue jeans. He's got a dark jersey with
 13 stripes on the front and he's carrying a beige blanket.
 14 That's the same as the one on the previous photograph.
 15 Would you like to look at the previous photograph?
 16 MR X: The photo with the cameraman?
 17 MR BUDLENDER SC: Yes. There he is.
 18 Same person.
 19 MR X: Okay, now I see him.
 20 MR BUDLENDER SC: Yes.
 21 MR X: It's the same person.
 22 MR BUDLENDER SC: And you know him, but
 23 you don't know his name?
 24 MR X: I don't know his name.
 25 MR BUDLENDER SC: Chair, can we just give

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1 this, can we go –
 2 CHAIRPERSON: How do I describe it?
 3 MR BUDLENDER SC: The second –
 4 CHAIRPERSON: This is AAAA30, and how do
 5 I describe it? Shall I simply call it Mere photograph
 6 DSC3449?
 7 MR BUDLENDER SC: Yes. Yes, Colonel
 8 Mere's photograph DSC3449, and that will be AAAA30.
 9 CHAIRPERSON: Ja, I've recorded it
 10 accordingly.
 11 MR BUDLENDER SC: Right, now I want to
 12 ask you some things about Mr Mathunjwa's visit to the
 13 koppie on the evening of the 14th of August. Now if I
 14 understand your evidence correctly you say that Mr Nzuzza
 15 said that he received a call on his cell phone from Mr
 16 Mathunjwa who phoned him to ask whether he could come to
 17 the mountain. Is that correct?
 18 MR X: That is correct, yes.
 19 MR BUDLENDER SC: And Mr Nzuzza then
 20 consulted the committee and they agreed that he could come.
 21 MR X: Yes.
 22 MR BUDLENDER SC: And Mr Nzuzza then
 23 phoned Mr Mathunjwa to say that he could come.
 24 MR X: Yes, Sir.
 25 MR BUDLENDER SC: Now the evidence

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1 leaders have obtained the cell phone records of Mr
2 Mathunjwa and Mr Nzuzi, and I want to tell you what we
3 found. We have examined Mr Mathunjwa's cell phone records
4 for 14 and 15 August. Chair, Mr Gotz has kindly prepared a
5 redacted version which obscures part of the phone numbers
6 phoned and received so that privacy and safety are
7 retained, and we'll hand that in, in due course, but the
8 police have been given the full and unredacted record.

9 This is what Mr Mathunjwa's cell phone record
10 shows, Mr X. Firstly they show that on 14 and 15 August Mr
11 Mathunjwa never phoned Mr Nzuzi. Can you explain that?

12 MR X: He could have been using someone
13 else's phone. He could have been using another phone, not
14 his phone.

15 MR BUDLENDER SC: You were expecting that
16 question, weren't you?

17 MR X: No, I was not.

18 MR BUDLENDER SC: Okay, and they show
19 that on the 14th, on Mr Mathunjwa's phone shows that on the
20 14th and the 15th of August he made and received calls
21 frequently, and I will tell you where – the cell phone
22 records show where he was when he made and received calls
23 on his cell phone, and let me tell you what they show.
24 I'll start from 5PM on the 14th. They show that the places
25 from which he made calls or at which he received calls were

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1 Sandown, that's in Johannesburg, then Pretoria until after
2 7PM, then at another place in Northern Gauteng called Klein
3 Zonder Hout, then at Mpumalanga, and a lot of calls to and
4 from Mpumalanga, with the last call for the day being at 20
5 past 10. So according to his cell phone records he was
6 never, he never received or made any phone calls at
7 Marikana or in the North West. I'm talking about the 14th
8 of August. 14th of August he made, after 5PM he made and
9 received no calls in Marikana or North West. To the
10 contrary, he was in Pretoria and Johannesburg and in
11 Mpumalanga. Can you explain that?

12 MR X: No, I can't explain it other than
13 to say Mr Mathunjwa could have been using someone else's
14 phone.

15 MR BUDLENDER SC: No, that's not the
16 point, Mr Nzuzi – sorry, Mr X. The point is that Mr
17 Mathunjwa's phone was making and receiving calls during
18 this whole period and his phone was not in Marikana, or in
19 North West. It was in Pretoria and in Johannesburg and in
20 Mpumalanga.

21 MR X: No, Mr Chair, when these people
22 get arrested they will point out or talk about Mr
23 Mathunjwa. They are still just playing around. The truth
24 has not come forward yet.

25 MR BUDLENDER SC: That's what I'm trying

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1 to find, Mr X. I'm asking you to explain how it is
2 possible if Mr Mathunjwa was at Marikana on the 14th of
3 August, his phone shows that he was not at Marikana on the
4 14th of August.

5 MR X: Mr Chair, but I'm saying Mr
6 Mathunjwa did arrive there.

7 MR BUDLENDER SC: I'm asking you to
8 explain your evidence in the light of the fact that his
9 phone shows that he wasn't there.

10 MR X: Yes, Mr Chair, but I think it's
11 not far to travel from Pretoria to Marikana.

12 MR BUDLENDER SC: So are you saying –

13 MR X: And Mr Mathunjwa has got a car.

14 MR BUDLENDER SC: So you're saying he
15 made a call in Pretoria, rushed to Marikana, rushed back
16 again and then made another call in Pretoria?

17 MR X: Mr Chair, I don't have knowledge
18 about the workings of this phone, but I know that Mr
19 Mathunjwa was at the mountain.

20 MR BUDLENDER SC: Chair, just one more
21 thing before we take the lunch adjournment. Can I just
22 inform the Commissioners - it's not appropriate to put it
23 to this witness who doesn't know about it – that I would
24 draw the Commission's attention to the fact that Mr
25 Mathunjwa's phone records show that this phone, the phone

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1 in question, received or made phone calls and SMSs at the
2 SABC cell phone base station between 7:06 and 9:41 the next
3 morning, that's the 15th of August. So the phone was at the
4 SABC between 7:06 and 9:41 the following morning, and the
5 Commission knows that Mr Mathunjwa was interviewed at the
6 SABC that morning at that time. I don't expect the witness
7 to respond to that.

8 CHAIRPERSON: I understand if it was not,
9 it's something he can digest over the lunch adjournment,
10 which we will now take and we'll resume at quarter to 2.

11 [COMMISSION ADJOURNS COMMISSION RESUMES]

12 [13:53] CHAIRPERSON: The Commission resumes.

13 Would you please tell the witness he's still under oath.
14 Mr Budlender. It might help the witness to take the
15 chewing gum from his mouth before he answers any questions.

16 MR X: (s.u.o.)

17 MR BUDLENDER SC: May I proceed?

18 CHAIRPERSON: Mr Budlender, you may –
19 your cross-examination.

20 EXAMINATION BY MR BUDLENDER SC (CONTD.):

21 Before the lunch break I asked you some questions about Mr
22 Mathunjwa's phone records, do you remember that?

23 MR X: Yes, I remember.

24 MR BUDLENDER SC: Now we also examined Mr
25 Nzuzi's phone records and I want to tell you what they

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1 show. Firstly, they show that between 3:50PM, 10 to four
 2 on the 14th of August and midnight on the 14th of August Mr
 3 Nzuzza received 13 phone calls on his phone. Then further
 4 during that period Mr Nzuzza did not receive a phone call
 5 from Mr Mathunjwa's phone. Can you explain that?
 6 MR X: Can you check on the date of the
 7 13th, the Monday? Didn't he get a message on that day
 8 because when we killed the police at Marikana that was on
 9 the 13th, Monday.
 10 MR BUDLENDER SC: Can you just repeat
 11 that answer?
 12 MR X: Can you check on the date, the
 13 record for the 13th? Didn't he get a message on that day
 14 because when we killed the police at Marikana it was on
 15 Monday, the 13th.
 16 MR BUDLENDER SC: Mr X, I don't
 17 understand that answer. Your evidence –
 18 CHAIRPERSON: It's more than an answer,
 19 it's a question. He wants to know what phone calls were
 20 received or made or messages or whatever on the 13th. Now I
 21 also don't understand the question because I understand
 22 that he testified to an alleged conversation with Mr
 23 Mathunjwa on the evening of the 14th but that question – why
 24 do you want to know about a phone call on the 13th, Mr X?
 25 MR X: Because he said there's no record

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1 showing these calls on the 14th, so that is why I'm saying
 2 are there no records on the 13th? Maybe he was using
 3 someone else's phone.
 4 MR BUDLENDER SC: Mr X, you say that on
 5 the evening, on the night of the 14th Mr Mathunjwa phoned Mr
 6 Noki – phoned Mr Nzuzza. Let me take a step back, I'm
 7 sorry. You say that on the 14th Mr Mathunjwa phoned Mr
 8 Nzuzza.
 9 MR X: Yes, we received the message on
 10 the 14th, I received the message on the 14th.
 11 MR BUDLENDER SC: I'm telling you that Mr
 12 Nzuzza did not receive a phone call from Mr Mathunjwa's
 13 phone that evening. Now what has the 13th got to do with
 14 that?
 15 MR X: I was just asking maybe the call
 16 was made on the 13th but those reports, we received the
 17 reports on the 14th and he eventually did arrive there.
 18 MR BUDLENDER SC: So your explanation is
 19 that maybe you were wrong and Mr Nzuzza didn't get the call
 20 on the 14th, he got it on the 13th?
 21 MR X: Mr Chair, Mr Nzuzza is the one who
 22 carried the phone on the mountain. We did not have any
 23 phones.
 24 MR BUDLENDER SC: Your evidence is that
 25 he told you on the 14th, I have received a call from Mr

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1 Mathunjwa who would like to come this evening. Is that
 2 evidence true?
 3 MR X: Yes, I heard about that call on
 4 the 14th.
 5 MR BUDLENDER SC: But you think that
 6 maybe what happened is he received the call on the 13th but
 7 he only told you about it the next day.
 8 MR X: That is possible, Mr Chair, but I
 9 got the message on the 14th that he was coming.
 10 MR BUDLENDER SC: Can you think of any
 11 reason why Mr Nzuzza received the message, if he received
 12 the request on the 13th, he would wait until the 14th before
 13 conveying it to you?
 14 MR X: Mr Mathunjwa is educated, he is
 15 educated, he could have been using someone else's phone.
 16 We are not educated. He knows about the problems of a
 17 phone.
 18 MR BUDLENDER SC: That's not what I'm
 19 talking about, Mr X. I'm asking you, you're suggesting
 20 that maybe Mr Mathunjwa phoned Mr Nzuzza on the 13th and then
 21 they only gave you the message on the 14th. I'm asking can
 22 you think of any reason why he would do that?
 23 MR X: I wouldn't know, Mr Chair, but we
 24 got the message on the 14th.
 25 MR BUDLENDER SC: Let me tell you

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1 something else that Mr Nzuzza's phone records show. They
 2 show that Mr Nzuzza never phoned Mr Mathunjwa's phone during
 3 that period of the 14th. Can you explain that?
 4 MR X: I won't dispute it. I hear what
 5 you say.
 6 MR BUDLENDER SC: I'm not asking you
 7 whether you dispute it, I'm asking whether you can explain
 8 it.
 9 MR X: Mr Mathunjwa arrived at the
 10 mountain on the 14th and Zokwana arrived on the 15th and I'm
 11 not changing my story.
 12 MR BUDLENDER SC: I'm not asking you
 13 whether you're changing your story. I'm asking you to
 14 explain, if your story is the truth how is it possible that
 15 the records show that Mr Nzuzza never phoned Mr Mathunjwa on
 16 the 14th?
 17 MR X: Mr Chair, the message was received
 18 on the 14th on the mountain –
 19 MR BUDLENDER SC: And then Mr –
 20 MR X: - whether they phoned each other
 21 or not but something happened and I'm not changing my
 22 story.
 23 MR BUDLENDER SC: You say that the
 24 message was received on the 14th and Mr Nzuzza then phoned Mr
 25 Mathunjwa to say he can come.

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1 MR X: Yes, Mr Chair.

2 MR BUDLENDER SC: But you can't explain

3 how it is that according to Mr Nzuzza's phone records he

4 never phoned Mr Mathunjwa that night?

5 MR X: Yes, he could have been using

6 someone else's not his.

7 MR BUDLENDER SC: Let me tell you

8 something else that Mr Nzuzza's phone records show. Mr

9 Nzuzza's phone records show that every call which he

10 received during that period was received from Marikana. So

11 whatever phone Mr Mathunjwa was using, he couldn't have

12 phoned him from outside Marikana to say can I come, because

13 all the calls Mr Nzuzza got were from in Marikana. Can you

14 explain that?

15 MR X: Mr Chair, I'm saying to the

16 Commission Mr Mathunjwa arrived on the mountain and I'm not

17 changing that story.

18 CHAIRPERSON: Can I ask you a question?

19 MR X: And he arrived there on the 15th

20 with Mr Zokwana, he was *11-55, alone, that is Mr

21 Mathunjwa.

22 CHAIRPERSON: Can I ask you a question?

23 I understood you to tell us that on the 14th you actually

24 heard Mr Mathunjwa speaking on his phone to Mr Mathunjwa –

25 sorry, Mr Nzuzza, yes. I understood you to say that you

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1 heard Mr Nzuzza speaking on his telephone, on his phone to

2 Mr Mathunjwa on the 14th. Now, so there's no question of Mr

3 Mathunjwa maybe having spoken to him on the 13th because you

4 told us, as I recall, that you actually heard Mr Nzuzza

5 speaking to Mr Mathunjwa on the 14th. How do you explain

6 that?

7 MR X: Sorry, Mr Chair, I said the only

8 person who was carrying a phone on the mountain is Nzuzza.

9 We did not carry any phones, watches or anything else and

10 this message was received by him on the phone that he had.

11 CHAIRPERSON: That's not an answer to the

12 question I asked you. The question I asked you was this,

13 you told us that on the 14th you heard Mr Nzuzza speaking on

14 his phone to Mr Mathunjwa – not on the 13th, not on the 13th

15 but the 14th. So how can you now tell us that it may be

16 that this message about Mr Mathunjwa coming which Mr Nzuzza

17 relayed to you, was received by him on the 13th? According

18 to what you told us, you heard him on the 14th talking to Mr

19 Mathunjwa. How do you explain it?

20 MR X: Yes, Mr Chair, Mr Mathunjwa

21 arrived and he said we should not allow Mr Zokwana to

22 address the meeting.

23 CHAIRPERSON: I've asked you the question

24 twice and you haven't given me an answer. I'll leave it

25 there.

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1 MR BUDLENDER SC: Mr X, let me tell you

2 something else that Mr Nzuzza's phone records show. His

3 records show that that evening every call which he made, he

4 made to Marikana. So he cannot have phoned Mr Mathunjwa to

5 tell him he can come to Marikana because he didn't phone

6 anyone outside Marikana. Can you explain that?

7 MR X: This about messages, as I say I

8 won't dispute it.

9 MR BUDLENDER SC: That's not the

10 question, Mr X. The question is, if Mr Nzuzza didn't phone

11 anybody outside Marikana, how could he have phoned Mr

12 Mathunjwa to say he can come to Marikana?

13 MR X: He could have phoned someone else,

14 that is probably Mr Mathunjwa could have phoned someone

15 else and that person passed the message to Nzuzza, someone

16 else also in Marikana and that person would pass the

17 message to Nzuzza.

18 MR BUDLENDER SC: Presumably when Mr

19 Nzuzza was telling Mr Mathunjwa he can come, he phoned

20 someone else in Marikana to get that person to phone Mr

21 Mathunjwa in Pretoria.

22 MR X: It could be like that.

23 MR BUDLENDER SC: But that's not of

24 course, that's not what you told the Commission earlier.

25 Earlier you told the Commission that –

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1 MR X: There is no record of Nzuzza

2 phoning Mathunjwa but we got a message Nzuzza that Mathunjwa

3 would arrive at the mountain.

4 MR BUDLENDER SC: But your evidence is,

5 you told the court repeatedly, told the Commission

6 repeatedly and I asked, I checked it again when I started

7 the cross-examination you said, your evidence is Mathunjwa

8 phoned Nzuzza and Nzuzza phoned Mathunjwa. Now you say maybe

9 that didn't happen, maybe they phoned somebody else.

10 MR X: Mr Chair, I'm saying Nzuzza gave us

11 the message that Mathunjwa is coming. He indeed came.

12 MR BUDLENDER SC: No, that's not what you

13 said. You gave, you said he gave, the message he gave you

14 is that he spoke to Mr Mathunjwa but I've shown you –

15 MR X: Yes, they spoke over the phone

16 then Nzuzza told us that Mathunjwa is coming –

17 MR BUDLENDER SC: They spoke over the –

18 MR X: - message from Nzuzza.

19 MR BUDLENDER SC: They spoke over the

20 phone but Mr Nzuzza never spoke to anybody outside Marikana.

21 How do you explain that?

22 MR X: Yes, Mr Chair, he could have been

23 using someone else's phone, not his.

24 MR BUDLENDER SC: That's not somebody's

25 else phone, I'm not going to go around in circles, Mr X. I

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1 want to put it to you that what you're saying about this is
 2 proved by the phone records to be false and that Mathunjwa
 3 came to the mountain?
 4 [14:13] MR MATHIBEDI SC: Chair, what's the basis
 5 of saying that that is proof? Is it the evidence leaders'
 6 case that this is the only phone number that Mr Mathunjwa
 7 was utilising during that period?
 8 CHAIRPERSON: We've move on from that
 9 point at the moment. What Mr Budlender is busy with is
 10 another point and that is the telephone records indicate
 11 that the only phones that were phoned, the only phone
 12 numbers that were phoned by Mr Nzuzo on the relevant day
 13 were in respect of telephones which according to the
 14 records of the telephone company were in Marikana. In
 15 other words he never made any phone call to anybody who was
 16 not physically, whoever the person was, who was not
 17 physically present in the Marikana area. So he's moved on
 18 from the point that you're dealing with. He only made
 19 phone calls, according to what's put, to people who were
 20 physically at the time the phone calls were made in the
 21 Marikana area. That's the question. So I think that the
 22 objection falls away –
 23 MR BUDLENDER SC: And he only received
 24 phone calls from people who were physically in the Marikana
 25 area.

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1 CHAIRPERSON: That's the point. So I
 2 think you must allow Mr Budlender to continue. The witness
 3 was saying something. Did we get that translated, what the
 4 witness said before Mr Mathibedi raised the query?
 5 MR QGIRANA: Yes, it was very short. I
 6 cannot remember now, Mr Chair.
 7 MR MPOFU: I can assist, Chairperson. He
 8 said, that when Mr Budlender put the proposition to him he
 9 said, his answer was that Mr Mathunjwa did arrive on the
 10 14th.
 11 MR QGIRANA: Now I remember.
 12 MR MPOFU: Oh, yes, actually yes, that
 13 was correct –
 14 MR QGIRANA: He said, it was more of a
 15 question. He asked –
 16 MR MPOFU: Yes, he put a rhetorical
 17 question, is it false that Mr Mathunjwa arrived on the 14th.
 18 MR QGIRANA: That is what he said.
 19 MR BUDLENDER SC: Mr X, I wasn't there –
 20 CHAIRPERSON: [Microphone off, inaudible]
 21 rhetorical question, it doesn't call for an answer. Mr
 22 Budlender, please proceed.
 23 MR BUDLENDER SC: Now Mr X, you didn't
 24 mention this in your statement in February 2013, did you?
 25 MR X: What is it that I did not mention?

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1 MR BUDLENDER SC: You didn't mention
 2 these phone calls and Mr Mathunjwa's visit on the 14th to
 3 the koppie.
 4 MR X: Mr Chair, that gentleman, the
 5 lawyer did not ask me questions like the people who
 6 initially asked me questions. This gentleman was doing a
 7 follow-up about questions, asking me questions.
 8 MR BUDLENDER SC: Mr X, do you agree that
 9 you didn't mention either these phone calls or this visit
 10 of the 14th in your statement of February 2013?
 11 MR X: That gentleman to whom I made the
 12 statement asked me half the questions, but this person who
 13 asks me lately asked me thoroughly and I explained.
 14 MR BUDLENDER SC: Mr X, can you just
 15 answer the question? Is it correct that you didn't mention
 16 any of this in the statement which you made in February
 17 2013?
 18 CHAIRPERSON: Mr Budlender, I think by
 19 implication he's conceding that. What he's saying is that
 20 the person that took my statement in February 2013 didn't
 21 ask me about this, but the subsequent lawyer who took the
 22 statement I made in February 2014 did ask those questions.
 23 I think that's his answer, but by implication he's saying,
 24 he's admitting he didn't mention them in 2013.
 25 MR BUDLENDER SC: Okay, so it was added

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1 in your 2014 statement.
 2 MR X: That is correct.
 3 MR BUDLENDER SC: And we are going to
 4 argue when the Commission has finished its hearings that
 5 your evidence in this regard is not the truth and I want
 6 to –
 7 MR X: Mr Chair, if you eat the sheep, or
 8 someone's sheep, there will the skin remaining and I'm not
 9 changing from my statement.
 10 MR BUDLENDER SC: Yes, that's very
 11 helpful. Mr X, you're giving your evidence under oath.
 12 MR X: Yes.
 13 MR BUDLENDER SC: And you want the
 14 Commission to believe what you said because you are saying
 15 these things under oath.
 16 MR X: Yes, Mr Chair.
 17 MR BUDLENDER SC: You said a lot of other
 18 disputed things also under oath.
 19 MR X: Yes, Sir.
 20 MR BUDLENDER SC: If the Commission finds
 21 that you have not told the truth about the phone calls and
 22 Mr Mathunjwa's visit, why should it believe the other
 23 disputed things you've said under oath?
 24 MR MATHIBEDI SC: Sorry Chair, what are
 25 the other disputed things? I mean I think it's ambiguous.

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1 I think they should be listed to the witness to let him –
 2 CHAIRPERSON: Mr Budlender, there are two
 3 points. The first is I'm not sure that he knows the nature
 4 of the disputes because you're the first person to cross-
 5 examine him. But apart from that I'm not sure that a
 6 question like that is very helpful because what sort of
 7 answer can he give us that will help us take the matter any
 8 further? It's a question very often asked by counsel,
 9 which very seldom, if ever, produces helpful answers.

10 MR BUDLENDER SC: Alright, we'll argue it
 11 in due course, Chair.

12 CHAIRPERSON: It's a matter for argument.
 13 I'm not going to stop you in argument, but I don't know
 14 that it helps to ask him the question.

15 MR BUDLENDER SC: Mr X, let me explain to
 16 you what the problem is with your evidence, as I see it.
 17 I'm sure that some of what you have told the Commission is
 18 the truth. The problem is that it's impossible to know
 19 which parts are the truth and which parts you have
 20 invented. Do you understand the problem?

21 MR X: I hear what you say.

22 MR BUDLENDER SC: The problem with a
 23 witness like you who says "I saw a lot of things" is you
 24 can put in additional things and then it's difficult to
 25 know which parts are the truth and which parts aren't.

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1 MR MATHIBEDI SC: Chair, I think with due
 2 respect, this question is really unfair. Which part of the
 3 witness's –

4 CHAIRPERSON: I don't know, Mr Budlender,
 5 I think that the problem that we've got, he doesn't know at
 6 this stage what issue, exactly what he says is disputed.
 7 He may have a suspicion, but I'm not sure, to be fair, he
 8 knows. But can I perhaps ask a question. Mr X, the
 9 difficulty the Commission may have at the end of the
 10 matter, it may be that many of the things you say are true,
 11 but if it appears that some of the things you've said are
 12 not true – and I'm not saying that this will happen, but it
 13 could happen – and not only that some of the things you
 14 said may be shown to be untrue, they may be shown to be
 15 statements of a kind that you must know are untrue, the
 16 Commission will then sit with a problem. A good deal of
 17 what you say may be true but if some of what you say isn't
 18 true, how can we tell the difference between the true bits
 19 and the untrue bits? That's the problem I think that Mr
 20 Budlender is putting to you.

21 MR X: Mr Chair, I'm saying everything
 22 I'm saying is the truth. That is what we did at Marikana.
 23 There is no better truth than what happened –

24 CHAIRPERSON: Mr Budlender, I think the
 25 point is a point that has been made. I don't think we can

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1 expect any helpful answers from him. I didn't hear the
 2 last answer. What did he say?

3 MR X: The sun does not come out.

4 MR QGIRANA: He said something about
 5 dying or death.

6 MR X: I'm saying I'm telling the truth.
 7 I'm prepared to go to the grave with this truth and I'm not
 8 changing.

9 MR BUDLENDER SC: Now Mr X, if your story
 10 of the visit by Mr Mathunjwa to the koppie on the 14th of
 11 August is not true, then that will also mean that you've
 12 invented the story that Mr Mathunjwa told the strikers to
 13 kill Mr Zokwana.

14 MR X: Mr Chair, Mr Zokwana was called by
 15 Xolani on the 15th whilst inside a Hippo and when he was
 16 being called we were going to kill him.

17 MR BUDLENDER SC: That's not an answer to
 18 the question, Mr X. I'm saying to you that if the account
 19 of Mr – if your story that Mr Mathunjwa came to the koppie
 20 on the 14th is not the truth, then your story that Mr
 21 Mathunjwa told the strikers to kill Mr Zokwana is also an
 22 invention.

23 MR X: Mr Chair, I'm not changing. What
 24 I'm saying is the truth.

25 CHAIRPERSON: Mr Budlender, I think

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1 you've taken this point as far as it could be taken.

2 MR BUDLENDER SC: I'm moving on, Chair.

3 CHAIRPERSON: I suggest you move on, yes.

4 MR BUDLENDER SC: Your evidence is that
 5 on the night of the 14th of August Mr Mathunjwa said that
 6 the next day he was coming with Mr Zokwana.

7 MR X: Yes, Mr Chair.

8 MR BUDLENDER SC: I want to suggest to
 9 you that that also can't be true. Now let me tell you why
 10 I say that. We know that, the Commission knows that on the
 11 morning of the 15th Mr Mathunjwa and Mr Zokwana had an
 12 interview on the radio with Mr Gwala. Can we have exhibit
 13 LL on the screen, please Chair.

14 MR X: Can I answer?

15 MR BUDLENDER SC: Certainly.

16 CHAIRPERSON: You can answer, but what Mr
 17 Budlender wants to show you are transcripts of extracts
 18 from this radio programme. It's on the screen now. I know
 19 you can't read, so they'll have to read it to you so that
 20 it can be interpreted. Obviously I take it you're not
 21 going to put the whole transcript to the witness –

22 MR BUDLENDER SC: No.

23 CHAIRPERSON: But there may be a sentence
 24 or two you want to refer to, so that the witness can know
 25 that what you are putting to him is actually something

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1 which is clearly before the Commission, we have the
2 transcript of the radio programme itself.

3 MR BUDLENDER SC: Yes. I'm going to go –
4 CHAIRPERSON: Perhaps I should explain to
5 you that one of the stations of the SABC is a station
6 called SAFM and they have a radio programme just after the
7 8 o'clock news in the morning called the Forum at 8 and
8 various guests appear on the programme – let me just
9 finish. Various guests appear on the programme and on the
10 morning of Wednesday the 15th of August 2012 on this
11 programme appeared Mr Mokwena from Lonmin, Mr Zokwana from
12 NUM, and Mr Mathunjwa from AMCU, and Mr Gwala, the
13 presenter of the programme, put various questions and made
14 various suggestions to these three people. It was
15 broadcast all over South Africa. It was also recorded and
16 we have a transcript of what was actually said on the
17 programme, and what Mr Budlender is going to put to you, I
18 take it, are extracts from that programme which are
19 relevant to the points that he's discussing with you at the
20 moment.

21 MR BUDLENDER SC: I just want to put one
22 passage to you, Mr X. It's at page 49 of the transcript at
23 line 19 and what has been happening is that Mr Gwala and Mr
24 Zokwana and Mr Mathunjwa had been discussing how to achieve
25 peace at Marikana. Now remember this is the morning of the

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1 15th. This is what Mr Gwala says to Mr Mathunjwa and Mr
2 Zokwana. Mr Gwala says, "Sure, and one way, one way of
3 achieving that is that the leaders of the unions come
4 together, go there publicly together and say okay for now
5 let's go back to work and afterwards we'll discuss the
6 little issues amongst ourselves. Is that too difficult?"
7 Now you say that meeting had already been arranged by then
8 because the night before Mr Mathunjwa said he's coming with
9 Zokwana on the 15th.

10 MR X: Yes, Mr Chair.
11 MR BUDLENDER SC: So what I want to put
12 to you is that the strange thing is that nowhere in this
13 interview did either Mr – when Mr Gwala made his suggestion
14 go to the mountain together, Mr Zokwana doesn't say, I
15 already agreed yesterday I'm going to the mountain today
16 with Mr Mathunjwa, and Mr Mathunjwa doesn't say but that's
17 already been arranged, we're going today. I'm suggesting
18 to you that if your evidence is the truth then that is what
19 they would have said. They would have said don't tell us
20 to go there, we already arranged that. Would you like to
21 comment on that?

22 MR X: No, I don't.
23 MR BUDLENDER SC: Alright, let me give
24 you another reason why I submit that your evidence about
25 this must be an invention. Mr Mathunjwa has actually given

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1 evidence in this Commission about his visit to the koppie,
2 or rather about his visits to the koppie. Could we have
3 exhibit NN on the screen, please? Could we go to paragraph
4 30? This is the statement which Mr Mathunjwa submitted to
5 the Commission and which he then confirmed under oath.
6 [14:33] Paragraph 30 says, "I was invited by the radio
7 station SAfm by Xolani Gwala to a radio interview dealing
8 with Marikana. At about seven in the morning I attended
9 the offices of SAfm with the national organiser and the
10 general secretary. Also present at this interview was the
11 president of NUM, Mr Senzeni Zokwana, as well as Mr
12 Mokwena." Then in paragraph 32 he says, "During the
13 interview Mr Gwala asked whether we would be willing to go
14 to Marikana. I said that I would be willing to cancel my
15 commitments and drive to Marikana immediately after the
16 interview. Mr Zokwana declined Mr Gwala's request to go to
17 Marikana as he said he had other people dealing with the
18 issue." Then he goes on, paragraph 35 he says he went to
19 Marikana, he says, paragraph 35, "As I was entering
20 Marikana Mr Gwala phoned me. I believe that this phone
21 call was broadcast live. Mr Gwala asked me if I'd kept my
22 promise and gone to Marikana. I was able to tell him that
23 I was just entering Marikana." Then can we go to paragraph
24 37, I'm sorry 36, paragraph 36. Paragraph 36B he says,
25 "Present at the meeting at Marikana were included on behalf

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1 of NUM Mr Zokwana who arrived with the other office" –
2 "with office bearers." So what he says, what Mr Mathunjwa
3 made clear in his evidence was that he went to Marikana
4 that day and Mr Zokwana went to Marikana that day as a
5 result of the discussion they had with Mr Gwala that
6 morning. Now the lawyers for the police did not cross-
7 examine Mr Mathunjwa to say, oh no, that the meeting had
8 been arranged the night before. Mr Zokwana and Mr Num –

9 MR MATHIBEDI SC: Sorry, Chair. I think
10 it's important that Mr, to state that Mr Mathunjwa
11 testified in 2012.

12 CHAIRPERSON: No, no, I understand that.
13 He testified before we came into contact with Mr X.
14 MR MATHIBEDI SC: That's correct.
15 CHAIRPERSON: But I take it that the
16 police were on duty during the night of the 14th and – they
17 didn't just all pack up and go home and leave the koppie
18 unattended and presumably if Mr Mathunjwa had arrived and
19 his vehicle's headlights were on and so on, the police
20 would have been aware of it and they would have done
21 something about it, number 1, and number 2, they would have
22 put it to him when he gave evidence. Isn't that the case?
23 MR MATHIBEDI SC: Chair, with due
24 respect, what's the basis of saying probably the police
25 would have seen Mr Mathunjwa arriving on that day? I mean

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1 we don't know precisely where the police were on that
 2 occasion because I think the evidence that has been
 3 presented is that at the stage, at a certain stage the
 4 police left the koppie. And the other thing is that we
 5 only knew of the existence of Mr X this year –
 6 CHAIRPERSON: No, I know you knew about –
 7 no, no, you knew about Mr X's existence from sometime in
 8 January 2013 and the point you make is Mr Mathunjwa giving
 9 evidence in 2012 and therefore Mr X's evidence couldn't be
 10 put to him and that point is clearly correct. The
 11 question, however, is whether on the probabilities Mr
 12 Mathunjwa could have made a secret visit on the night of
 13 the 14th to the koppie which the police were unaware of. It
 14 may be that the evidence isn't entirely clear on that.
 15 Maybe the police will have to tell us who was on duty that
 16 night. Maybe the occurrence book can tell us, we can look
 17 at that as well but I would have thought that, having
 18 regard to the probabilities, it's highly unlikely the
 19 police would have packed up and gone home and left the
 20 hill, the koppie unattended. Anyway that's a matter that
 21 perhaps can be explored in further evidence so – but
 22 certainly the point you make in relation to Mr X's evidence
 23 known to the police is clearly well-established.
 24 MR MATHIBEDI SC: Chair –
 25 CHAIRPERSON: Mr Budlender, do you wish

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1 to respond to the point made?
 2 MR BUDLENDER SC: If he'll allow me to
 3 finish the question instead of trying to give evidence then
 4 I'd be able to deal with this. The point I'm trying to
 5 make is this and I put it to Mr X, the police never put,
 6 never said to Mr Mathunjwa, we organised that meeting the
 7 day before. The police never put it to Mr Mathunjwa when
 8 he gave his evidence, we had organised a meeting on the
 9 14th. No-one else said to Mr Mathunjwa, we organised a
 10 meeting on the 14th.
 11 CHAIRPERSON: Mr Mathibedi, I think you
 12 and I both missed the point Mr Budlender is making because
 13 neither of us gave him a chance and I apologise and I'm
 14 sure you'll join me in that. What Mr Budlender's point is,
 15 is this, Mr Mathunjwa came to the Commission and he
 16 explained how it was that he went to Marikana. He didn't
 17 say, I went to Marikana because the police invited me and
 18 therefore they knew very – he said, I went to Marikana
 19 because I was invited by Mr Gwala or urged by Mr Gwala on
 20 the radio programme to go. And the significance of that is
 21 this, that if Mr Mathunjwa was only invited to go to
 22 Marikana on the morning of the 15th, there's no way that he
 23 could have gone on the 14th to the koppie and said to the
 24 people there, by the way, I'm coming again tomorrow with Mr
 25 Zokwana and you must do certain things. If he, as a fact,

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1 only knew on the morning of the 15th when he was in the SABC
 2 that he was going to go to Marikana and he didn't know that
 3 before, then he couldn't have done what he's alleged to
 4 have done on the 14th. And the point Mr Budlender is making
 5 is that when Mr Mathunjwa came here and gave this evidence,
 6 I got to Marikana because I was told to go by the SABC and
 7 not because I was, anything had happened the day before, if
 8 the police had in fact invited him the day before, and Mr
 9 Zokwana, and known, and he had therefore known about it on
 10 the Tuesday, they presumably would have put it to him and
 11 they didn't. That's the point. Am I right, Mr Budlender,
 12 have I got it right?
 13 MR BUDLENDER SC: Yes, Chair. Nobody,
 14 neither the police nor Lonmin nor NUM, the other parties in
 15 that meeting, said oh no, that meeting was arranged the day
 16 before. None of them said that.
 17 MR MPOFU: Chairperson – ja, Chairperson,
 18 well, I'm only entering this fray insofar as it might save
 19 me from having to cross-examine on this point. I think we
 20 are all talking past each other. Mr Mathibedi's point is
 21 that Mr Budlender can't say to the witness that something
 22 that Mr Mathunjwa had said, or rather that Mr X had said
 23 was not put to Mr Mathunjwa and Mr Mathibedi is quite
 24 correct because to that extent by the time Mr Mathunjwa was
 25 giving evidence, Mr X was not discovered but that's not – I

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1 think the point that Mr Budlender is putting is even
 2 simpler put by the fact that what he's saying that the
 3 police did not put to Mathunjwa, assuming they were
 4 disabled by the fact that they didn't know about Mr X, that
 5 disability did not exist by the time Mr Zokwana was giving
 6 evidence. So if indeed there was any dispute then that
 7 would have been put by the police to Mr Zokwana as well.
 8 So the fact that they did not know about Mr Mathunjwa
 9 doesn't assist them. It's very, very simple, Chair. I can
 10 try again –
 11 MR BUDLENDER SC: Chair, it's even
 12 simpler than that. Can I put my own question?
 13 CHAIRPERSON: Yes, I think so. I don't
 14 think Mr Mpofo has got it right but anyway let's not spend
 15 time – you give us the simplest, the simpler version.
 16 MR BUDLENDER SC: Somebody organised a
 17 meeting on the 15th of August. You say, Mr X, that it was
 18 organised the day before because Mr Mathunjwa told you
 19 about it the day before, correct?
 20 MR X: Yes, Mr Chair.
 21 MR BUDLENDER SC: Now Mr Mathunjwa's
 22 evidence is that it was organised by Mr Gwala on the 15th.
 23 And no-one, neither the police nor Lonmin nor NUM nor
 24 anyone else has said to Mr Mathunjwa, no, no, that meeting
 25 wasn't organised by Mr Gwala on the 15th, it was already

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1 organised the day before. Do you understand the question,
2 Mr X?

3 MR X: I understand that but when they
4 were there in Rustenburg I was having my own problem, I was
5 running up and down. If I was there, I could have been
6 there at that time, I would have said Zokwana was being
7 fooled by Mr Mathunjwa, if I had the chance and I was
8 there.

9 MR BUDLENDER SC: Everybody was fooled by
10 Mr Mathunjwa.

11 CHAIRPERSON: Mr Budlender, I think you
12 made your point –

13 MR X: He was fooling.

14 CHAIRPERSON: - he's been given an
15 opportunity to answer. The answer we've heard, I don't
16 know that he can take it further and I doubt if you can. I
17 suggest we move on to the next point.

18 MR BUDLENDER SC: I'll move on. I now
19 want to move on to the events, to the – Mr X, I want to
20 move to the confrontation between the strikers and the
21 police on the 13th of August.

22 CHAIRPERSON: Sorry, Mr Budlender, before
23 you carry on with that. You did make a comment, I think it
24 was made in sarcastic mode, that Mr Mathunjwa fooled
25 everybody. I think it might be misunderstood by those who

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1 don't appreciate you being sarcastic so perhaps something
2 should be said to make that clear.

3 MR BUDLENDER SC: Yes, what I'm saying is
4 that if Mr Mathunjwa misled – he also misled Mr Zokwana, he
5 also misled the police and he also misled Lonmin by saying
6 that the meeting was arranged, and he misled Mr Gwala by
7 saying the meeting was arranged on the morning of the 15th.

8 CHAIRPERSON: I don't know if the witness
9 can be expected to answer so I think – I understand, you've
10 now made it clear what you meant so there won't be scope
11 for misunderstanding. You were going to move on to the
12 next point when I interrupted you.

13 MR BUDLENDER SC: Thank you, Chair. Now
14 I want to discuss the confrontation between the strikers
15 and the police on Monday the 13th of August.

16 MR X: I understand.

17 MR BUDLENDER SC: You told the Commission
18 what the strikers wanted. You said you wanted the employer
19 to come to you and to give you the money that you wanted.

20 MR X: Yes, Mr Chair.

21 MR BUDLENDER SC: And Mr Noki said to the
22 police at the railway line that you were not fighting with
23 the police, you just wanted the employer to come to you.
24 Do you remember that he said that?

25 MR X: Yes.

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1 MR BUDLENDER SC: Now when he said that,
2 was he telling the truth, that you weren't fighting with
3 the police, you wanted management to come and talk to you?

4 MR X: He was fooling them, Mr Chair. He
5 was saying we should lay down our weapons, the tall
6 gentleman officer was saying we should lay down our weapons
7 and how can I understand what the policeman said, me being
8 myself, to understand that –

9 MR BUDLENDER SC: I'm sorry, can we go to
10 the transcript for day 248, page 31187 line 8. These are
11 the, this is your evidence a few days ago, Mr X. Mr
12 Mathibedi asks you, "Sir, why did Mr Mambush tell General
13 Mpmembe that they are not fighting?" And your answer was,
14 "We were just fooling him." That's the answer you've just
15 given. And then mm says, "Why do you say you were just
16 fooling General Mpmembe?" And your answer was, "We wanted
17 him to hurry up, get angry, so that they should start
18 shooting." So your evidence is that Mr Noki said to the
19 police, we are not fighting with you in order to make him
20 angry so that they would start shooting. Does that make
21 any sense to you at all?

22 MR X: This was an elderly gentleman
23 talking to us and we are busy singing, clapping, hitting
24 the weapons we had against each other. Was there any
25 respect in that? Let me make an example with you. At your

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1 house you're telling your child not to do this and the
2 child misbehaves, does something silly in front of you. Is
3 there respect in that, in what the child would be doing?

4 MR BUDLENDER SC: That's not what we're
5 talking about, Mr X. We're talking about why did Mr Noki
6 say to General Mpmembe, "We are not fighting with the
7 police?" And your answer was, "We were just fooling him
8 because we wanted him to hurry up and get angry so they
9 would start shooting."

10 MR X: Yes, that's how it is.

11 MR BUDLENDER SC: But if Mr Noki had
12 wanted to make General Mpmembe angry, he would have said to
13 General Mpmembe, we've come here to fight you and we're
14 going to kill you. That would make him angry and to make
15 him start shooting. Can you explain why he said what he
16 did?

17 MR X: We were fooling him, Mr Chair.

18 MR BUDLENDER SC: alright, I'll move on.
19 Commissioner Hemraj then asked you, "But you had no quarrel
20 with the police as at that stage." And your answer was,
21 "We were fighting them." Then the Commissioner asked you –

22 MR X: Yes, we were fighting with them.
23 We started fighting with them, the police and the security
24 on the 12th.

25 MR BUDLENDER SC: And the Commissioner

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1 asked you – we'll come to that – the Commissioner asked
 2 you, "Why?" Why were you fighting with them?
 3 [14:52] And your answer was "We wanted, the police were
 4 stopping us from what we wanted. We wanted the employer to
 5 come to give us what it is that we wanted from him."
 6 MR X: Yes.
 7 MR BUDLENDER SC: Is that the truth?
 8 MR X: It is how it is, yes.
 9 MR BUDLENDER SC: Did the police ever
 10 stop you from talking to the employer?
 11 MR X: The police, we could see the
 12 police would prevent us from what we wanted. We wanted
 13 them to bring the employer so that we get what we want.
 14 MR BUDLENDER SC: Did the police ever
 15 stop you talking to the employer, or stop the employer
 16 talking to you?
 17 MR X: The police did not want us to
 18 carry these sharp objects.
 19 MR BUDLENDER SC: Yes. Let's look –
 20 MR X: We wanted the employer to give us
 21 what we wanted.
 22 MR BUDLENDER SC: Let's look at what
 23 happened before the afternoon of the 13th of August. On the
 24 10th of August the strikers marched from Wonderkop to the
 25 time office. Is that correct?

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1 MR X: Yes, on the 10th we were not
 2 fighting, we were not carrying weapons, dangerous weapons.
 3 We were carrying branches. We were gentlemen.
 4 MR BUDLENDER SC: Yes, I'll come to the
 5 other days.
 6 MR X: We started fighting on the 12th
 7 when we killed the two security officers at Wonderkop.
 8 MR BUDLENDER SC: Okay, I'll come to that
 9 in a moment. Let's go through it day by day.
 10 MR X: Yes.
 11 MR BUDLENDER SC: So just be patient with
 12 me for a moment, please. So on the 10th you marched to the
 13 time office. The police didn't stop you, they accompanied
 14 you on your march to the office. Correct?
 15 MR X: The police stopped us at the
 16 crossing, they said we cannot go to the office in such big
 17 numbers, we should wait there. The police went to fetch
 18 the employer –
 19 MR BUDLENDER SC: Alright, and –
 20 MR X: - came with the employer. We gave
 21 the employer 15 minutes to bring a reply to what we were
 22 saying.
 23 MR BUDLENDER SC: Alright, I'm not going
 24 to debate that. The evidence is clear. Let's move to the
 25 Saturday, the 11th.

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1 CHAIRPERSON: Mr Budlender, I was
 2 proposing to take the tea adjournment at about 3 o'clock.
 3 If it's convenient to take it now we'll do so. If you want
 4 to spend a few minutes first setting the scene for what's
 5 going to follow, you can do so. I'm in your hands.
 6 MR BUDLENDER SC: I'll continue for a few
 7 moments, if I may, Chair. On Saturday the 11th of August
 8 you marched to the NUM offices, correct?
 9 MR X: Yes, Mr Chair.
 10 MR BUDLENDER SC: Your intention was to
 11 attack the people at the NUM offices.
 12 MR X: Yes, we were going to kill them.
 13 MR BUDLENDER SC: You marched with
 14 dangerous weapons.
 15 MR X: Yes, we had the sharp objects,
 16 pangas and spears.
 17 MR BUDLENDER SC: The police didn't stop
 18 you marching.
 19 MR X: It's only the securities who were
 20 there. The police were only available when we went to the
 21 time office.
 22 MR BUDLENDER SC: Yes, on Saturday night
 23 the 11th of August some of the strikers slept at the koppie
 24 and carried out rituals there.
 25 MR X: Yes, Mr Chair.

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1 MR BUDLENDER SC: The police didn't stop
 2 you sleeping at the koppie.
 3 MR X: The place where we were operating
 4 from the police could not see it. It was hidden.
 5 MR BUDLENDER SC: They didn't raid you
 6 there.
 7 MR X: No, they never came near.
 8 MR BUDLENDER SC: On Sunday the 12th of
 9 August you again went to the NUM offices.
 10 MR X: Yes, Mr Chair.
 11 MR BUDLENDER SC: On the way you attacked
 12 Lonmin security guards.
 13 MR X: Yes, Sir, others ran away, other
 14 security guards ran away but we killed the two.
 15 MR BUDLENDER SC: You killed Mr Fundi and
 16 Mr Mabelane.
 17 MR X: Yes, Mr Chair.
 18 MR BUDLENDER SC: You stole some of their
 19 property and you burnt their vehicle.
 20 MR QGIRANA: They stole some of?
 21 MR BUDLENDER SC: Some of their property.
 22 MR QGIRANA: And?
 23 MR BUDLENDER SC: And you burned the
 24 vehicle.
 25 MR X: That is correct.

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1 MR BUDLENDER SC: After that you went
 2 back to the koppie and slept there.
 3 MR X: Yes, it is so.
 4 MR BUDLENDER SC: The police did not stop
 5 you sleeping at the koppie.
 6 MR X: The police never reached the
 7 mountain and disturb us there.
 8 MR BUDLENDER SC: They never raided you
 9 there.
 10 MR X: No.
 11 MR BUDLENDER SC: You enforced the strike
 12 through violence and intimidation.
 13 MR X: Yes, we saw to it that our strike
 14 was strong. We were not listening to anyone at this stage.
 15 We were taking part in the muti. We just wanted blood.
 16 MR BUDLENDER SC: You enforced the strike
 17 through violence and intimidation. Is that correct?
 18 MR X: That is correct.
 19 MR BUDLENDER SC: The police didn't stop
 20 you doing that.
 21 MR X: The police tried when we met at
 22 Marikana, telling us to put down the weapons.
 23 MR BUDLENDER SC: That's on the 13th.
 24 MR X: But we were not listening now. We
 25 felt the muti in us.

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1 MR BUDLENDER SC: That is on the 13th.
 2 MR X: We killed the security guards on
 3 the 12th.
 4 MR BUDLENDER SC: Yes, but the statement
 5 you must lay down your arms was on the 13th.
 6 MR X: Yes.
 7 MR BUDLENDER SC: Chair, perhaps this is
 8 a convenient time.
 9 CHAIRPERSON: We take the tea adjournment
 10 at this stage, quarter of an hour.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [15:21] CHAIRPERSON: The Commission resumes.
 13 Please remind the witness he's under oath.
 14 MR X: Confirm, yes.
 15 CHAIRPERSON: Mr Budlender.
 16 MR BUDLENDER SC: Thank you, Chair. Mr
 17 X, if I say to you enforced the strike through violence and
 18 intimidation will you agree with me or will you disagree
 19 with me?
 20 MR X: I agree.
 21 MR BUDLENDER SC: And the police did not
 22 stop you doing that.
 23 MR X: They were trying but we ignore
 24 them.
 25 MR BUDLENDER SC: Were they trying before

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1 the 13th?
 2 MR X: They tried on the 10th when we went
 3 to the time office but as from the 11th after and upon
 4 rituals we didn't listen to them.
 5 MR BUDLENDER SC: Let's move on. On
 6 Sunday the 12th of August you went to K4 to stop people who
 7 were going to work.
 8 MR X: Yes.
 9 MR BUDLENDER SC: You killed Mr Mabebe.
 10 MR X: Yes.
 11 MR BUDLENDER SC: You burnt seven
 12 vehicles.
 13 MR X: Yes.
 14 MR BUDLENDER SC: You then went back to
 15 the koppie and slept there.
 16 MR X: Yes.
 17 MR BUDLENDER SC: The police did not raid
 18 you there.
 19 MR X: No they didn't come and raid us.
 20 We only started meeting them when they came back on the
 21 13th.
 22 MR BUDLENDER SC: Then early in the
 23 morning of Monday the 13th of August you went to Eastern
 24 Platinum to stop people working there.
 25 MR X: Yes we went there, we kill one

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1 person on the railway line.
 2 MR BUDLENDER SC: Yes you killed Mr Langa
 3 because he was on the way to work.
 4 MR X: Yes.
 5 MR BUDLENDER SC: You then went back to
 6 the koppie.
 7 MR X: Yes we did go.
 8 MR BUDLENDER SC: The police didn't come
 9 to the koppie to look for the killers.
 10 MR X: The police started coming to us
 11 when we met them at Marikana on the 13th, the Monday.
 12 MR BUDLENDER SC: In the afternoon?
 13 MR X: It was after midday, after 12.
 14 MR BUDLENDER SC: Now you told the
 15 Commission and I've read you your evidence, you said that
 16 you were fighting the police on the 13th of August. And the
 17 reason you were fighting the police you said in answer to
 18 Commissioner Hemraj, is the police was stopping us from
 19 what we wanted. We wanted the employer to come to us to
 20 give us what we wanted from him.
 21 MR X: Yes.
 22 MR BUDLENDER SC: And I put it to you
 23 again, the police never told the employer not to talk to
 24 you.
 25 MR X: The police were telling us through

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1 Mr Mpembe, the long policeman which we didn't listen to
2 that we must put down the dangerous weapons that we were
3 carrying and go back to the mountain.
4 MR BUDLENDER SC: Yes I understand that
5 but did the police ever tell the employer not to talk to
6 you, which is you wanted?
7 MR X: They didn't tell the employer,
8 they were telling us to put down the dangerous weapons that
9 we were carrying.
10 CHAIRPERSON: Why did you want to keep
11 the dangerous weapons? What did you want to do with them?
12 MR X: It's because we were killing
13 whatever was in front of us, we didn't listen to anything
14 or anyone.
15 CHAIRPERSON: Why were you killing
16 everything in front of you, what was your purpose in doing
17 that? Firstly you're retaining the weapons and thereafter
18 using them for the purpose that you've mentioned, mainly
19 killing people.
20 MR X: It's because we knew that the
21 police were superior than the security, they have to call
22 the police and even then the police they could not manage
23 because we were unable to be shot at.
24 MR BUDLENDER SC: Did the police ever
25 tell the employer not to pay you the R12 500 per month

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1 which you wanted?
2 MR X: No they didn't tell the employer.
3 MR BUDLENDER SC: And I want to put it to
4 you that the police didn't interfere with you before the
5 13th of August when you killed people, intimidated workers,
6 destroyed property and marched with dangerous weapons.
7 MR X: The police made our strike to be
8 weak. They were disturbing us, for them to come and talk
9 to us they had to bring the employer.
10 MR BUDLENDER SC: Is there anything you'd
11 like to add to that answer?
12 MR X: The police wouldn't allow me to
13 carry a dangerous weapon in front of him. The police being
14 the law enforcer.
15 MR BUDLENDER SC: That was on the 13th of
16 August in the afternoon.
17 MR X: Yes.
18 MR BUDLENDER SC: Now we know that in
19 that confrontation on the 13th of August two members of the
20 police and three strikers were killed.
21 MR X: Yes.
22 MR BUDLENDER SC: And the police were, of
23 course, very angry about the killing of two of their
24 members.
25 MR X: Yes.

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1 MR BUDLENDER SC: If it is true that the
2 strikers intended to attack the police on the 13th of August
3 that's information that should be very important to the
4 police.
5 MR X: When there is a fight there is one
6 party that had to be defeated and we knew that the firearms
7 that they were carrying couldn't work against us.
8 MR BUDLENDER SC: Mr X, when you made
9 your statement in February 2013 did you tell the police
10 that you intended to attack the police on the 13th of
11 August?
12 MR X: No, we didn't tell them.
13 MR BUDLENDER SC: Why didn't you tell
14 them this very important information, it was always our
15 intention –
16 MR MPOFU: I'm sorry, Mr Budlender –
17 CHAIRPERSON: Mr Mpofo, you turned your
18 light on. Did you definitely press it?
19 MR MPOFU: The -
20 CHAIRPERSON: The objection is withdrawn
21 and decided on. Yes carry on, Mr Budlender.
22 MR BUDLENDER SC: When you made your
23 statement in February 2013 why didn't you give the police
24 this very important information that on the 13th of August
25 it had been your intention to kill the police and you had

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1 wanted to attack them?
2 MR X: The gentleman that was taking my
3 statement he didn't ask me thoroughly but the gentleman
4 that was taking the last statement, he interrogated me
5 thoroughly as I got more information.
6 MR BUDLENDER SC: No that isn't an
7 answer, Mr X, you knew that you had to give the information
8 to the police which was important. Why didn't you give
9 them the important information that on the 13th of August
10 your intention was to attack and kill the police?
11 MR X: It's like that, it was our
12 intention to go and kill them, it's like that, when you're
13 fighting, you are fighting the other side will have to
14 lose.
15 MR BUDLENDER SC: All right. I want to
16 ask you about another aspect of what happened on the 13th of
17 August. You say that while you were being escorted by the
18 SAPS on the 13th you were going towards the settlement to
19 kill the people there. Is that correct?
20 MR X: Yes they're busy drinking beer
21 there and we're on strike.
22 MR BUDLENDER SC: Yes, now the strike
23 started on the 9th of August.
24 MR X: Yes it was starting on that day.
25 MR BUDLENDER SC: Did you attack any of

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1 the settlements on the 9th of August?

2 MR X: On the 9th we're arranging for the

3 strike but on the 10th we were going to march to that office

4 sending the memorandum.

5 MR BUDLENDER SC: Mr X, it would help if

6 you just listened to the question and answer it. On the 9th

7 of August did you attack any of the settlements?

8 MR X: No we didn't attack anyone.

9 MR BUDLENDER SC: Did you attack the

10 settlements on the 10th of August?

11 MR X: No we didn't.

12 MR BUDLENDER SC: Did you attack the

13 settlements on the 11th of August?

14 MR X: We starting attacking the NUM

15 offices.

16 MR BUDLENDER SC: Did you attack the

17 settlements on the 11th of August?

18 MR X: No.

19 MR BUDLENDER SC: Did you attack the

20 settlements on the 12th of August?

21 MR X: On the 12th we're already fighting.

22 MR BUDLENDER SC: Did you attack the

23 settlements on the 12th of August?

24 MR X: No we didn't go to the

25 settlements, we go to the shaft.

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1 MR BUDLENDER SC: Did you attack the

2 settlements on the morning of the 13th of August?

3 MR X: No we attacked that person, the

4 person we killed because he was coming from [inaudible] and

5 going to work.

6 MR BUDLENDER SC: Did you attack the

7 settlements on the 14th of August?

8 MR X: No we attacked on the 12th at K4.

9 MR BUDLENDER SC: Did you attack the

10 settlements on the 15th of August?

11 MR X: The 15th the rituals were

12 performed, 15th Mr Mathunjwa and Mr Zolwana were arriving,

13 we didn't attack.

14 MR BUDLENDER SC: Did you attack the

15 settlements on the 16th of August?

16 MR X: No we didn't attack on the 16th

17 that's the day we were fighting with the police.

18 MR BUDLENDER SC: So what your evidence

19 amounts to is this, that in that whole week the only time

20 you tried to attack the people in the settlement was when

21 you had armed policemen watching you. Is that correct?

22 MR X: Yes it's like that. We were going

23 to kill the police.

24 MR BUDLENDER SC: No not the police, the

25 only time you attacked any settlement was when you had

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1 armed policemen watching you.

2 MR X: Yes we were going to attack

3 police.

4 MR BUDLENDER SC: Why didn't you attack

5 them at the times when the police weren't watching you,

6 when you were safe, attack the settlements? I'm sorry I

7 don't know whether I put the question correctly. Why

8 didn't you attack the settlements at the times when the

9 police weren't watching, so you could be safe?

10 MR X: It's the police that were

11 disturbing us because the police wanted us to get down from

12 the mountain. We were fighting with them. They didn't

13 want us to get the R12 500 that we wanted.

14 MR BUDLENDER SC: You say the police

15 didn't want you to get the R12 500?

16 MR X: They were blocking us because they

17 said we must put down our arms without us getting what we

18 wanted.

19 MR BUDLENDER SC: Mr X, you said the

20 police did not want you to get the R12 500, is that your

21 evidence?

22 MR X: Yes they way they were doing they

23 didn't want us to get our R12 500 because they wanted us to

24 put down our weapons without them bringing the employer.

25 [15:40] MR BUDLENDER SC: Well, I want to come

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1 back to this attack on the settlement, supposed attack on

2 the settlement. The Commission has heard other evidence

3 about this. Colonel Vermaak was watching the movement of

4 the strikers from the helicopter; he said he didn't see the

5 strikers heading towards the settlement. Captain Loest was

6 watching the strikers; he says he did not see them moving

7 towards the settlement. The video evidence which we have

8 seen doesn't show the strikers moving towards the

9 settlement.

10 I suggest to you that in the light of all that

11 evidence and your claim that the only time you attacked the

12 settlement was when the police were watching you, there was

13 never any attack on the settlement, or never any intended

14 attack on the settlement.

15 MR X: We were going towards the

16 settlement. We were going straight towards the settlement.

17 MR BUDLENDER SC: Alright, I'll move on.

18 CHAIRPERSON: The statement you made in

19 February 2013, paragraph 19, deals with what happened on

20 the afternoon of the 13th near the railway lines. That also

21 doesn't mention that you were going to the settlement. It

22 in fact says, it describes the gunshots that were fired,

23 the attack on the police, but it doesn't mention anything

24 about the move towards the settlement. Can you explain

25 that?

<p style="text-align: right;">Page 31945</p> <p>1 MR X: Still when we came that was coming 2 that side of the eastern, was from the settlement and that 3 other side of Bob, there are also some settlements, 4 MR NTJINGILA: And the voice is going 5 down. I can't hear clearly. 6 CHAIRPERSON: You haven't answered my 7 question. My question was in the statement that you made 8 in February 2013 you do not mention at all that you were 9 going in the direction of the settlement to attack the 10 people in the settlement when the shooting started with the 11 police. You don't mention it at all. You mention the 12 fight with the police. You give certain details which may 13 or may not be accurate, but you don't mention at all that 14 there was any attempt to attack the people in the 15 settlement. Now why is that? 16 MR X: The way that goes to Bob, that 17 other side to Bob there, that other side of the railway 18 line, there are some shacks there. 19 CHAIRPERSON: It may or may not be so, 20 but that doesn't explain why you didn't mention it in your 21 very lengthy statement you made in February 2013. 22 MR X: The person who was taking my 23 initial statement in February, he didn't ask me questions 24 as the last one. 25 CHAIRPERSON: I take it the material in</p>	<p style="text-align: right;">Page 31947</p> <p>1 I'm sorry, my apologies. I apologise to Craig who as usual 2 knows what's in my mind better than I do. Could we – 3 CHAIRPERSON: Para 30 then? 4 MR BUDLENDER SC: Could we go to 5 paragraph 30, the previous page. Right, I'm going to read 6 you what's in your statement. You say, "Whilst proceeding 7 in the field we decided to move towards the informal 8 settlement with the intention of attacking or killing any 9 male person found. This is because all the male persons 10 were expected to be supportive of our cause and be at the 11 koppie." Is that the truth? 12 MR X: Yes. 13 MR BUDLENDER SC: Then could we go to the 14 transcript of day 248, page 31203, line 8. This is what 15 you say, line 8 you say, "We were going towards the 16 settlement." And Mr Mathibedi says, "What were the 17 strikers going to do in the settlement?" and you say, "We 18 were going to go through the settlement to look at the 19 people who were just hiding there, taking beer." 20 Commissioner Hemraj - understandably, if I may say so – 21 says, "I'm sorry, I didn't understand that." And then you 22 say, "We were going to go through the settlement to look 23 and see the other strikers who were not with us, who were 24 busy with beer there." Then the next page, line 2, you 25 say, "Yes, those who were not with us at the mountain who</p>
<p style="text-align: right;">Page 31946</p> <p>1 the statement dated February 2013 he got from you simply by 2 asking you to tell your story. Is that correct? 3 MR X: It's the person that was taking my 4 statement, he didn't ask me thoroughly, but the person that 5 helped me to take the last statement, he asked me 6 everything and I explained everything, even the direction 7 that we were using to go to certain places. 8 MR BUDLENDER SC: May I proceed, Chair? 9 CHAIRPERSON: [Microphone off, inaudible] 10 in answer to my question, do you? So I've asked the 11 question a couple of times, I haven't got an answer, so 12 I'll leave it there and Mr Budlender can continue. 13 MR BUDLENDER SC: Mr X, I want to ask 14 you – 15 CHAIRPERSON: [Microphone off, inaudible] 16 what I'd said should be interpreted to him. 17 MR BUDLENDER SC: Now I want to ask you 18 about one more aspect of what the intention of the strikers 19 was on the afternoon of the 13th of August. Could we have 20 on the screen exhibit LLL16? That is the statement made by 21 the witness on the 10th of March 2014. The name shouldn't 22 appear. I want to go to page 16 of that statement, LLL16, 23 page 16. Paragraph – 24 CHAIRPERSON: Paragraph 30, I think. 25 MR BUDLENDER SC: I'm told it's LLL26.</p>	<p style="text-align: right;">Page 31948</p> <p>1 were busy in the settlement with beer." Mr Mathibedi says, 2 "What was going to happen to those who were not at the 3 mountain?" and you say, "We were going to kill them." So 4 your evidence there is that the people you were looking for 5 to kill were the strikers who had not joined you at the 6 mountain, correct? 7 MR X: Yes. 8 MR BUDLENDER SC: You were looking for 9 the strikers who were taking it easy and drinking beer 10 while you were struggling on the mountain. 11 MR X: Yes, a man cannot enjoy himself 12 while others are busy in the mountain. 13 MR BUDLENDER SC: The point I'm making, 14 Mr X, is you said you were going to kill the strikers who 15 were not with you, yes? 16 MR X: Yes, to join us even there at the 17 mountain where we were. 18 MR BUDLENDER SC: But your statements to 19 the Commission is a different thing. It says something 20 different. You said you "moved towards the informal 21 settlement with the intention of attacking or killing any 22 male person found. This is so because all the male persons 23 were expected to be supportive of our cause and to be at 24 the koppie." Now which one is the truth? Were you going 25 to kill all the men, or were you just going to kill the</p>

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1 beer-drinking strikers?
 2 MR X: We were going to kill any man who
 3 was at the shack when we were at the mountain.
 4 MR BUDLENDER SC: Even if they were not
 5 strikers?
 6 MR X: As long as a man, even if he's not
 7 a striker.
 8 MR BUDLENDER SC: Then your evidence
 9 before the Commission is not the truth because your
 10 evidence that you gave before the Commission said you were
 11 going for the strikers.
 12 MR X: Yes, any man that was there in the
 13 settlement –
 14 CHAIRPERSON: Did you know the people –
 15 MR X: - we were going to take anyone
 16 because we knew that all the people, or all the men that
 17 are there in the settlement, they are working in the mines
 18 but they are sleeping out. So we were going to take anyone
 19 who was there.
 20 CHAIRPERSON: Did you know all the people
 21 in that settlement?
 22 MR X: I don't know all of them, but most
 23 of them, almost most of them who was working in the mines
 24 they are living, they are staying outside the mine
 25 property. They are staying in the settlement.

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1 CHAIRPERSON: Have you ever been to that
 2 settlement?
 3 MR X: Yes, I usually go there. I know
 4 it.
 5 CHAIRPERSON: Did you know that there
 6 were some old men there? Did you know whether there were
 7 some old men there who didn't work for Lonmin?
 8 MR X: Yes, there are old men, but they
 9 were supposed to go to the mountain where other men are.
 10 CHAIRPERSON: They couldn't have been
 11 strikers. If they didn't work for Lonmin they wouldn't
 12 have been involved in the strike, would they?
 13 MR X: The people who are working for
 14 Lonmin, they are not marked, as long as you are a man.
 15 CHAIRPERSON: I see. Do you know whether
 16 any of the people in the settlement had sheep of their own?
 17 MR X: Yes, there are others, they are
 18 owning also cattle.
 19 CHAIRPERSON: Yes, were there people,
 20 were there any men, elderly men in the settlement who were
 21 shepherds?
 22 MR X: Yes, there are people who are
 23 working there at the farms around.
 24 CHAIRPERSON: So if you'd come across a
 25 person there who was a shepherd working on the farm around

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1 there, you would have killed him?
 2 MR X: The place next to the place where
 3 we were, or where we were walking past by, there are no
 4 fields where we find shepherds with their sheep or cattle,
 5 and we know that the people who own sheep or cattle, they
 6 hire people from Lesotho. We know all those things.
 7 CHAIRPERSON: Do I understand you to say
 8 that if you'd come across a shepherd in that informal
 9 settlement you would have killed him?
 10 MR X: A shepherd we'll see or find him
 11 with his sheep, so if we find somebody just moving around
 12 then we had to kill him.
 13 MR BUDLENDER SC: Can I just round this
 14 off, Chair –
 15 CHAIRPERSON: Yes, yes –
 16 MR BUDLENDER SC: - one or two
 17 questions –
 18 CHAIRPERSON: - [inaudible] bloodthirsty
 19 note to end the evidence, but maybe we can find a less
 20 bloodthirsty one before we conclude.
 21 MR BUDLENDER SC: Mr X, when we started
 22 the cross-examination this morning you agreed that there
 23 are men who live in the settlements who are not
 24 mineworkers.
 25 MR X: Yes, there are.

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1 MR BUDLENDER SC: And your evidence today
 2 is that you would have killed all of them.
 3 MR X: Yes, if we find you inside the
 4 shack we're going to kill you. If the person is there and
 5 not working he should go and join other men there in the
 6 mountain because the place that we were is not far away
 7 from the settlement.
 8 [16:00] MR MPOFU: Sir, the last part was not
 9 interpreted. That's the words [Xhosa words].
 10 MR NTINGILA: Yes, that's what I said.
 11 MR MPOFU: No –
 12 MR NTINGILA: Wherever I find –
 13 MR MPOFU: It's okay –
 14 MR NTINGILA: - we are going to kill
 15 because each and every man, even if he's not working,
 16 should go and join other men in the mountain.
 17 MR BUDLENDER SC: If that is the truth
 18 then what you said to the Commissioner previously, that the
 19 people you wanted to kill are the strikers, was not the
 20 truth.
 21 MR NTINGILA: Can you repeat?
 22 MR BUDLENDER SC: If that is the truth,
 23 if what you have just said is the truth, then what you said
 24 originally to the Commission, that the people you wanted to
 25 kill were the strikers, was not the truth.

1 MR X: Any men that we find there in the
 2 settlement, we were not worried if he worked or if he
 3 doesn't work, we were going to kill him.
 4 MR BUDLENDER SC: So what you said to the
 5 Commission previously was not the truth.
 6 MR X: Which one?
 7 MR BUDLENDER SC: When you said you were
 8 going to kill the strikers in the settlements, that was not
 9 the truth, you were going to kill every man in the
 10 settlements.
 11 MR X: We passed by those who were in the
 12 shacks when we were on strike, demanding money. We were
 13 going to kill them all.
 14 CHAIRPERSON: You're not answering the
 15 point that's been put to you. The point being put to you
 16 is that you've told this Commission previously that you
 17 were going to kill strikers. You now say you were not only
 18 going to kill strikers, you were going to kill all the men.
 19 Now that's a significantly different statement. Can you
 20 explain that?
 21 MR X: The striker who is working or the
 22 striker who is not working, they are not *02-54, so any
 23 person who is a male must come and join the other males in
 24 the mountain because we're on strike, we want money.
 25 MR BUDLENDER SC: Chair, I have no

1 further questions –
 2 CHAIRPERSON: Then we'll adjourn till
 3 tomorrow – till Thursday morning. We can't sit tomorrow
 4 I'm afraid, because the municipality requires the chamber
 5 for a committee meeting, it being the first Wednesday in
 6 the month but we will resume on Thursday at 9 o'clock.
 7 [COMMISSION ADJOURNED]

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