

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**29 JULY 2020**

**DAY 240**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 29 JULY 2020**

**CHAIRPERSON:** Good morning Mr Hulley, good morning everybody.

**ADV HULLEY SC:** Thank you Mr Chairman.

**CHAIRPERSON:** Yes. I understand that it would be better that we deal with – I deal with an application for a postponement

**ADV HULLEY SC:** That is so Mr Chair.

**CHAIRPERSON:** In regard to a witness who was scheduled  
10 to testify today.

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** And to cross-examine somebody.

**ADV HULLEY SC:** Mr McBride and General Booysen.

**CHAIRPERSON:** Yes so that when we then continue with Mr Nhleko there is no interruption until we – we finish within the two hours that I hope we will finish with him.

**ADV HULLEY SC:** Thank you Mr Chairman.

**CHAIRPERSON:** So okay I think let us deal with that application first. So it – remembering what happened on  
20 Monday it does appear that this is a situation where both Mr McBride who was to be cross-examined is applying for a postponement as well as Advocate...

**ADV HULLEY SC:** Pretorius.

**CHAIRPERSON:** J P Pretorius SC is also applying for a postponement.

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** Okay let us deal with that first. Do you want to place your position as the commission's legal team on record?

**ADV HULLEY SC:** Thank you Mr Chairman. Mr Chairman I was given an indication by my learned friend Mr Matabede who appears on behalf of Advocate Pretorius that it was his instruction to bring an application for a postponement. I – he indicated to me that there was certain – there were  
10 certain issues that he felt ought to be addressed in the affidavit and had not been addressed in the affidavit of his client. I had considered the affidavit prior to that and it was also my view that there much that had not been addressed in the – in the affidavit and if it had been addressed, I felt that it would have curtailed the proceedings to a significant extent. In the context of his indication to me I did indicate to him that if I could – if certain demands of – on our side could be met I would not oppose the application for a postponement because I believe that it may well curtail the  
20 issues. He exceeded to the demands and in that context, I am now placing on record that he – that as the evidence leaders we do not oppose the application.

**CHAIRPERSON:** And obviously in the light of that you would adopt a similar approach to opposition to Mr McBride's own application for a postponement and given what happened on

Monday?

**ADV HULLEY SC:** Indeed, we have already placed ourselves on record as far as that is concerned.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** And he was granted a postponement in relation to Monday.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And we hold the same view in relation to today.

10 **CHAIRPERSON:** Yes. No that is fine.

**ADV HULLEY SC:** As far as General Booyesen is concerned he has indicated that he is on standby. We had anticipated that if he is – if the evidence was led and he was going to be subjected to cross-examination.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** We would phone him once the time arrived or more or less once the time arrived.

**CHAIRPERSON:** Yes. Okay.

**ADV HULLEY SC:** Thank you Mr Chairman.

20 **CHAIRPERSON:** No that is fine. I think Counsel for Mr McBride must also come and confirm that she applies for a postponement in regard to Mr McBride.

**ADV HULLEY SC:** Thank you Mr Chairman.

**ADV HARDING:** Good morning Mr Chair.

**CHAIRPERSON:** Good morning.

**ADV HARDING:** I, for the record again place myself on record. My name is Katherine Harding and I appear on behalf of Mr McBride.

**CHAIRPERSON:** Hm.

**ADV HARDING:** Mr Chair I am instructed to appear as I did on Monday in order to request an adjournment of the cross-examination of Mr McBride by Advocate Pretorius' team as was granted on Monday in respect of the cross-examination by Mr Nhleko's legal team.

10 **CHAIRPERSON:** Hm.

**ADV HARDING:** I do so as I did on Monday on the basis of the affidavit that was filed with the commission on the 26<sup>th</sup> it appears at page 3650 of your bundle Mr Chair, Bundle Y8[H].

**CHAIRPERSON:** Hm.

**ADV HARDING:** The affidavit I believe has been provided to Advocate Pretorius' legal team.

**CHAIRPERSON:** Hm.

20 **ADV HARDING:** And my instructing attorneys Adams and Adams addressed further correspondence to Advocate Pretorius' attorney yesterday. Again, attaching that affidavit and confirming that I on behalf of Mr McBride would be requesting an adjournment today as was granted on Monday.

**CHAIRPERSON:** Hm.

**ADV HARDING:** The basis of the request as you will recall Mr Chair is to afford Mr McBride and his legal team sufficient

opportunity to prepare for the cross-examination by Advocate Pretorius' legal team.

**CHAIRPERSON:** Yes.

**ADV HARDING:** And the detailed reasons for that request are set out in that affidavit.

**CHAIRPERSON:** Ja.

**ADV HARDING:** Your – Mr Chair if you would like me to take you through those reasons again.

**CHAIRPERSON:** No it is not necessary.

10 **ADV HARDING:** I am prepared to do so.

**CHAIRPERSON:** Ja.

**ADV HARDING:** My basis Mr Chair I refer you to simply to paragraphs 20 and 21 of that affidavit in addition in which Mr McBride acknowledges the inevitable inconvenience and apologises to all parties involved and sets out how he tried to ameliorate that inconvenience as much as possible.

**CHAIRPERSON:** Hm.

20 **ADV HARDING:** I wish to reemphasise Mr McBride's commitment to the process and to appearing to be cross-examination subject to having had sufficient opportunity to prepare for that cross-examination. Mr Chair I therefore request an adjournment of his cross-examination by Advocate Pretorius' legal team.

**CHAIRPERSON:** Okay no thank you.

**ADV HARDING:** Thank you Mr Chair.

**CHAIRPERSON:** Thank you. And then Counsel from Mr Pretorius.

**ADV MATABEDI F:** [?] Morning Chairperson.

**CHAIRPERSON:** Good morning.

**ADV MATABEDI F:** [?] Matabedi F together with Advocate Mahlangu and Dramamela we appear on behalf of Advocate Pretorius SC.

**CHAIRPERSON:** Thank you.

**ADV MATABEDI F:** [?] Chairperson on the 27<sup>th</sup> of this month  
10 a substantive application for the relief as more fully set out  
in the notice of motion was launched and delivered and  
acknowledge thereof was given to us My Lord. Chairperson  
the reason why we – we are seeking a postponement it is  
due to a number of reasons.

We were – our client was served with a notice  
indicating that a cross-examination of Mr McBride and  
General Booyens will take place today. However, during  
the discussions that we had it became apparent that the  
evidence of Mr Khuba and Sesoko will also you know play a  
20 role today. The challenge with that is that my – Advocate  
Pretorius was not given a notice – the required notice  
indicating that both Mr Sesoko and Khuba were going to  
implicate him.

Now it is a – it is impossible in leading the evidence  
of Pretorius SC that we will not make reference to the

evidence of both Mr Khuba and Sesoko. And the quadrum that we find ourselves in is that once he refers to that evidence in his evidence in chief then the evidence leaders are entitled to cross-examine him on the evidence that he tendered.

Now what is in best interest of Mr Pretorius SC is to bring a substantive application for the condonation and for the leave to cross-examine both Mr Khuba and Sesoko. As the evidence of both Mr Khuba and Sesoko is inter-related  
10 with that of Mr McBride so it will serve or curtail the proceedings if that is done in a – together.

And the other aspect is the fact that Advocate Pretorius SC he was given permission to cross-examine both Mr McBride and General Booyens. But on a perusal of the initial application it became apparent that he did not deal with a lot of issues that he was supposed to deal with.

Now that being the case it is very important that we should supplement his affidavit and by so doing that will also curtail the proceedings otherwise you know on the evidence  
20 before the commission if one has to apply the principle relating to how evidence has to be weighed we would respectfully submit that he will be save prejudice.

And the other aspect is that there is an understanding between the evidence leaders and the legal team of Advocate Pretorius SC that we will address issues

which the evidence leaders requires of Advocate Pretorius SC to deal with. And by so doing we submit and we are of the reasonable view that the proceedings with regard to the evidence of Advocate Pretorius, the cross-examination of Mr McBride, General Booyens and Mr Khuba and Sesoko will be you know curtailed which is in the best interest of the commission taking into account you know that the commission at the – this juncture you know operates under serious time constraints and restrictions. Unless the  
10 Chairperson would like to hear me on a specific aspect that is the case for Mr – for Advocate Pretorius SC.

**CHAIRPERSON:** Hm. No thank you. No I do not need to hear you on anything else. I understand I have been reluctant to grant postponements unless really it was necessary and there were strong reasons of late precisely because the commission has a very limited lifespan left and we need to finish the work. But the reasons that have been advanced in regard to Mr Pretorius I understand and in the end the curtailment of proceedings is in the interest of the  
20 commission.

So it is quite important that when a witness comes and a cross-examiner comes to cross-examine the issues be quite clear so that the proceedings can run smoothly. So I am prepared to grant the postponement and I am prepared to grant the postponement requested by Mr McBride as well.

I just want to say and everybody Counsel for Mr McBride will be hearing and you will be hearing that because of our determination to try and finish the work that we have to do in the commission within the time that we have we will – we may have a situation soon where we require people to appear in what I call our evening sessions.

That means that you might not be required to present yourself at nine o'clock or ten o'clock but maybe at four o'clock and when the witness was giving evidence for the  
10 day is done, we start with somebody. Maybe we need two hours or three hours we do that, we are done. So we go up to seven pm or something. So as I grant postponements I just want people to understand that they might find that we are in that situation.

Obviously, the ideal thing would be to deal with a witness who can finish his or her evidence that evening but if they cannot finish, we will have to find a way. It is just an attempt for us to find more time. Because – and starting early in the mornings from – we might quite often start at  
20 nine instead of ten now and instead of finishing at four finish at five or even six. Because just in five days if we add two hours by starting at nine and finishing at five suddenly, we have ten hours – extra hours a week and that can be very helpful.

So I am just mentioning that so that people should

not be surprised not only you but other people should not be surprised if we – if they soon get notices where they – which indicate that your evidence will start at four. So – but otherwise I am happy to grant the – the applications for postponement. One by Mr J P Pretorius SC and the other by Mr McBride to dates that are still to be determined.

Obviously whatever needs to be done needs to be done urgently? I do not know whether between yourselves and the evidence leaders any timeframes have been agreed  
10 but they need to be done urgently.

I do not think that the dates to which – that you will be advised of are going to within the next three weeks I think they will be beyond that. But the sooner everything is finalised in preparation the better.

But otherwise both applications are granted and the hearing of the evidence of Mr J P Pretorius SC and his cross-examination of Mr McBride and Major General Booysen is adjourned to a date to be given and Mr McBride's evidence also the hearing of his evidence is also adjourned  
20 to a date to be fixed.

Chairperson we are indebted to yourself and also the evidence leaders.

**CHAIRPERSON:** Thank you very much.

**ADV MATABEDI F:** [?] Thanks Chairperson.

**CHAIRPERSON:** Okay. Alright. Are you ready Mr Hulley?

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Mr Nhleko.

**MR NHLEKO:** Good morning Sir.

**CHAIRPERSON:** Good morning.

**MR NHLEKO:** Good morning Sir.

**CHAIRPERSON:** The oath you took two days ago continues to apply. Let us continue.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** I do not know whether I said this yesterday  
10 but if I did not say it then I am saying it now. I am going to  
be much more stricter today with regard to the proceedings  
so Mr Nhleko those long stories I will only allow them if I  
think strictly speaking, they are relevant.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** So you will be trying to answer questions  
as briefly as you can and then Mr Hulley, I know that from  
our discussion – from our discussion here at the hearing  
yesterday you will also be looking at going to dealing with  
the real meat.

20 **ADV HULLEY SC:** Yes.

**CHAIRPERSON:** Of the issues.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Thank you.

**ADV HULLEY SC:** Just to finish off on two topics that arose  
during the course of yesterday Mr Nhleko.

**MR NHLEKO:** Hello Sir.

**ADV HULLEY SC:** The one related to the deletion.

**CHAIRPERSON:** I am sorry Mr Hulley is that lamp working today Mr Nhleko?

**MR NHLEKO:** No it is actually not working Honourable Chair I must also declare that I brought along isiwashu to assist me. So – but nevertheless no I am fine. I think I am able to manage with the light.

**CHAIRPERSON:** You are able to cope. Yes.

10 **MR NHLEKO:** Thanks.

**CHAIRPERSON:** Well I wonder what is wrong with that lamp because it is supposed to be working. So maybe during the tea break they must look at it again. But Mr Nhleko says he brought his – he is declaring that he brought isiwashu. No I did say that he continues to throw in these Isi-Zulu words. Ja well I know what isiwashu is.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Okay. Yes let us continue.

20 **ADV HULLEY SC:** Thank you Mr Chairman. Chair if I can refer to what has – what is LEA4.

**CHAIRPERSON:** I must just confess I suspect that it is just pure water and not isiwashu?

**ADV HULLEY SC:** Pardon me I did not catch that Mr Chair.

**CHAIRPERSON:** No I am sorry. I am saying I suspect that what he is saying he is declaring as isiwashu I suspect it is

just pure water.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Maybe he is intimidating you Mr Hulley so that when you question him.

**ADV HULLEY SC:** He has been trying since the first day Mr Chair.

**CHAIRPERSON:** You know isiwashu is I think kind of blessed water that blessed by church people is it not? Or do you get it from traditional healers as well?

10 **MR NHLEKO:** No you also do get it from the traditional healers.

**CHAIRPERSON:** Traditional healers.

**MR NHLEKO:** I think it should be understood as the traditional medicine concoction.

**CHAIRPERSON:** Oh okay.

**MR NHLEKO:** Yes. I think isiwashu that is probably what [indistinct 00:19:56].

**CHAIRPERSON:** Mr Hulley continue.

20 **ADV HULLEY SC:** Thank you Mr Chair. Mr Chair the document that I would like to refer to next is part of a – is part of a bundle of documents which we have marked or agreed to be marked as Exhibit Y8[D] it is the affidavit of Matthews Sesoko.

**CHAIRPERSON:** May I confirm to Mr..

**ADV HULLEY SC:** It would be LEA4 bundle.

**CHAIRPERSON:** Y?

**ADV HULLEY SC:** So the exhibit is Exhibit Y8[D].

**CHAIRPERSON:** Ja but the bundle?

**ADV HULLEY SC:** And the bundle is LEA4.

**CHAIRPERSON:** LEA4. Okay. I just want to confirm Mr Hulley we know that Mr Nhleko did not apply for leave to cross-examine Mr Khuba but I take it that Mr Khuba's statement and his evidence forms part of what you notified him.

10 **ADV HULLEY SC:** I believe he had been notified.

**CHAIRPERSON:** Ja okay.

**ADV HULLEY SC:** If there is any challenge to that understood from the address right at the beginning.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** You might recall that there was an indication that there had not been proper notice that had been given.

**CHAIRPERSON:** Ja okay no I just want to make sure that we are on the same page as to the scope of the evidence.

20 **ADV MOKHARI:** Yes indeed Chair as I pointed out that he was not given the notice.

**CHAIRPERSON:** Yes.

**ADV MOKHARI:** But the affidavit of Sesoko and Khuba.

**CHAIRPERSON:** Ja.

**ADV MOKHARI:** Came to his attention later long after they

have testified.

**CHAIRPERSON:** Yes. Yes.

**ADV MOKHARI:** But he is aware of those ja.

**CHAIRPERSON:** He is ready to deal with them.

**ADV MOKHARI:** And remember what I said in my opening statement.

**CHAIRPERSON:** Yes.

**ADV MOKHARI:** That nothing really tells on the affidavit of Khuba and Sesoko.

10 **CHAIRPERSON:** Yes.

**ADV MOKHARI:** And we said that we are not even going to waste our time to cross-examine them.

**MR NHLEKO:** Yes. No, no I remember.

**ADV MOKHARI:** Yes that is right.

**CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Thank you Mr Chair. Now during the course of your testimony yesterday you were speaking about the laws that were applicable to – to the processes within IPID and how IPID reports have to be finalised. Specifically  
20 you were making the point which is the point I wish to deal with for present purposes that there was nothing in the – in any law to use your terminology which required the Executive Director to sign any – to sign off on any reports. Now we speaking specifically about IPID reports. Do you recall that?

**MR NHLEKO:** Yes I do.

**CHAIRPERSON:** Just one second. The heater/air conditioner in the past few days when it was on do you feel that it warming up if I say it should be switched off. Does that prejudice anybody? I will have it kept on if it does warm up but if it does not I am not sure.

**ADV HULLEY SC:** Speaking for myself Mr Chair.

**CHAIRPERSON:** It makes some difference?

**ADV HULLEY SC:** When it goes off – it does make a  
10 difference. When it goes off it becomes incredibly cold. I know that Mr Nhleko has complained.

**CHAIRPERSON:** Oh is that so. Okay.

**ADV HULLEY SC:** But I would happy if it gets switched off. If it is interfering with the ability to hear.

**CHAIRPERSON:** No, I think if we – if both of you try to speak closer to the microphone.

**ADV HULLEY SC:** Absolute Mr Chair.

**CHAIRPERSON:** That might be fine ja. Okay.

**ADV HULLEY SC:** Thank you Mr Chair.

20 **CHAIRPERSON:** Okay.

**ADV HULLEY SC:** Just as far as the – as the different legislation that governs the reporting duty of IPID is concerned that of course is to be found in three different pieces or three different instruments. The one is the IPID Act, the other one is the IPID Regulations and the third is

the standard operating procedures. Are you aware of that Sir?

**MR NHLEKO:** Yes I am aware Sir.

**ADV HULLEY SC:** Now I would like you to turn with me if you will to page – the bundle that I have referred you to a moment ago that is Y[D] – sorry Y8[D] – Exhibit Y8[D]. And you will find that in Bundle LEA4. Then I would like you to turn specifically to page 1542 of that bundle.

**CHAIRPERSON:** I am sorry. Do you say that is in Bundle  
10 LEA4?

**ADV HULLEY SC:** 4. That is correct Mr Chair.

**CHAIRPERSON:** Well this one that I have here is LEA1. That is the one that was handed up a few minutes ago.

**ADV HULLEY SC:** It should – what it did read in the past was Y8[D] on the spine but it ought to have been corrected to LEA4 in accordance with the directives that you gave us.

**CHAIRPERSON:** My one on the spine – this one is written Bundle LEA1.

**ADV HULLEY SC:** No that is not the correct one.

20 **CHAIRPERSON:** That is not the one?

**ADV HULLEY SC:** It should be LEA4 Mr Chair.

**CHAIRPERSON:** Oh okay no I am sorry. I think I am – no I think I have got it here. The one written – well it is written Exhibit Y8[D].

**ADV HULLEY SC:** That is correct Mr Chair.

**CHAIRPERSON:** But it should be written Bundle.

**ADV HULLEY SC:** LEA4.

**CHAIRPERSON:** LEA4.

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** Ja will your team please make sure that my bundles are written exactly what they should be written so that there is no ...

**ADV HULLEY SC:** I will do that Mr Chair.

**CHAIRPERSON:** So that there is no confusion. Okay what  
10 page?

**ADV HULLEY SC:** Thank you Mr Chair. If we can look at two different pages – the first page is at page 1542.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Thank you Mr Chair. So if you turn with me Mr Nhleko to page 1547 but to place this in context Mr Chair page 1542 indicates this to be the Independent Police Investigative Directive Standard Operating Procedures and the effective date is the 1 April 2013. Do you see that Mr Nhleko that is on page 1542?

20 **MR NHLEKO:** Yes I think you asked me to page to where – 1547 and I am at 1547.

**ADV HULLEY SC:** The particular document if you would turn with me to page 1575. You will see there at the – close to the bottom of the page that it is signed by Ms K Mbeki who was the acting – identified as the acting Executive Director

on the 1 April 2013.

**MR NHLEKO**: That is correct.

**ADV HULLEY SC**: Now we know that Ms Mbeki is of course who was the – the acting Executive Director that has been mentioned here previously before Mr McBride became the Executive Director on the 3 March of 2014, is that correct?

**MR NHLEKO**: Yes that is correct.

**ADV HULLEY SC**: Now I would like you to turn with me to page 1547. There is a definition there – the third definition  
10 that appears at – in – on that page a definition of case worker. Got it.

**MR NHLEKO**: Yes.

**ADV HULLEY SC**: And a case worker is defined to mean any official who handles cases and includes a data capturer, a CMS clerk, an investigator, a senior investigator, principle investigator, an assistant director in investigation, a deputy director investigations and a – and director of investigations. Is that correct?

**MR NHLEKO**: Yes I see what it reads.

20 **ADV HULLEY SC**: Now if you would turn with me then to page 1572.

**MR NHLEKO**: Yes.

**ADV HULLEY SC**: 7.10 or paragraph 7.10 contains a table and that table identifies the procedures for the completion and the closing of files and dockets. You see that?

**MR NHLEKO:** I see that.

**ADV HULLEY SC:** Now under that it sets out the procedure. Firstly if you look at – immediately under the heading “procedure” there is an indication of what is contemplated insofar as the completion of the files are concerned and if you go down in the left column you will see items 1 all the way up to 5 and then beneath that you will see that there is a separate section which deals with the closing of files and that is itemised as 6 to 10. You see that?

10 **MR NHLEKO:** Yes I see that.

**ADV HULLEY SC:** Could you read item 1 under “completion of files”.

**MR NHLEKO:**

“The case worker initiates completion of a file through the supervisor after completing a case, investigation report.”

**ADV HULLEY SC:** And could you read item 2 which deals with the obligations of a supervisor?

**MR NHLEKO:**

20 “A supervisor reviews and qualifies, assures directives and quality assures directives and reports and recommends completion to DI/PH.”

**ADV HULLEY SC:** And then can we look at what the obligations of the DI/PH are and I will take you through the definitions of those in a moment. Item 3 in other words.

**MR NHLEKO:** Ja, I see that.

**ADV HULLEY SC:** What are the obligations of the DI/PH?

**MR NHLEKO:** It approves, disapproves completion and the completion register is utilised.

**ADV HULLEY SC:** Now to be... to take it back to page 1552, we will find... sorry. Just go back slightly to 1548 for the definition of a DI. If you look roughly four items from the bottom:

“A director investigations means a person appointed as head of investigation at provincial level...”

10 Do you see that?

**MR NHLEKO:** Okay.

**ADV HULLEY SC:** And if you turn with me to page 1550, you will see that the definition of a PH is a program... sorry, provincial head which means an IPID official appointed to head of provincial office.

**CHAIRPERSON:** I am sorry. Did you say that is at page 1550?

**ADV HULLEY SC:** That is correct Mr Chair. So three items from the bottom.

20 **CHAIRPERSON:** Oh, okay. Now I see. Okay. Yes?

**ADV HULLEY SC:** And just to round off the definition section, if you would turn with me to page 1551. It says that:

“A supervisor means any person who supervises a case worker of any level...”

So a supervisor is not defined with reference to a job

title but rather with reference to a person who supervises a case worker. Do you see that?

**MR NHLEKO:** Ja-no, here. I am following Chair.

**ADV HULLEY SC:** So just to complete. Getting back to paragraph 7.2. It is the case worker who has to initiate the completion of the file and he or she would do so through the supervisor. Item 1 that is. After completed the case investigation report.

**MR NHLEKO:** H'm.

10 **ADV HULLEY SC:** So, in other words, a case investigation report has to be completed and that is the process of initiation for the completion of the file. Correct?

**MR NHLEKO:** Right.

**ADV HULLEY SC:** Correct?

**MR NHLEKO:** H'm.

**ADV HULLEY SC:** In the next step after that is for the supervisor to review and quality assess. Sorry, review and quality assure a direct ...[indistinct] and then to recommend completion to the DI/PH.

20 **MR NHLEKO:** Right.

**ADV HULLEY SC:** Now, you have worked in government for a long time and you be familiar of how one makes a recommendation, would you not so?

**MR NHLEKO:** Yes, I would then.

**ADV HULLEY SC:** And when you wish to make a

recommendation, you would complete either a report. IN this case a report. Or it might be a memorandum or it might be some other document in which you would have the words “recommended/not recommended”.

And if you recommend, you will encircle the word “recommend” or you would delete the word “not recommend”. Correct?

**MR NHLEKO**: H’m. That is correct.

**ADV HULLEY SC**: And you would then append your  
10 signature, correct?

**MR NHLEKO**: That is correct.

**ADV HULLEY SC**: And then when you get ...[intervenes]

**CHAIRPERSON**: I am sorry Mr Hulley. I am not sure that that is the only way in which ...[intervenes]

**ADV HULLEY SC**: I am not sure that ...[intervenes]

**CHAIRPERSON**: ...to make recommendations in government.

**ADV HULLEY SC**: I am not sure that it is. I am not suggesting for a second that it is the only way.

20 **CHAIRPERSON**: Oh ...[intervenes]

**ADV HULLEY SC**: But I certainly suggest ...[intervenes]

**CHAIRPERSON**: ...just let me... the question, I think, was as I understood you was that he has... he worked in government for a long time. He knows how recommendations are made in government. That is how I

understood you.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** And that mean... and then you went onto to say how they are made. I know that he answered in a certain way but that suggested to me that you are saying... you are suggesting that if it is made differently that might not be how recommendations are made in government.

**ADV HULLEY SC:** Sure.

**CHAIRPERSON:** And I was just saying that I am not sure  
10 that there is no other way of making recommendations within government other than that one.

**ADV HULLEY SC:** Thank you, Mr Chair. Well, we know that the method that we have described now is a method that is used within government. Are you aware of other methods that might be used to convey your indication as an official that you accept a recommendation? Sorry, let me rephrase that. That you are in fact making a recommendation?

**MR NHLEKO:** No, I am not necessarily aware of any other except the “submission route” as it is called.

20 **ADV HULLEY SC:** And of course, you... the appending of your signature in the case of... those instances that you were aware of ...[intervenes]

**MR NHLEKO:** Right.

**ADV HULLEY SC:** ...the appending of your signature is a very important aspect to convey your acknowledgment that

you have made the recommendation.

**MR NHLEKO**: Okay.

**ADV HULLEY SC**: And then it has got to go through a third leg ...[intervenes]

**CHAIRPERSON**: I am sorry. Mr Nhleko, do raise your voice so that I can hear your answers.

**MR NHLEKO**: Oh, ja. No, no, no. I keep on agreeing with mister.

**CHAIRPERSON**: Oh, okay.

10 **MR NHLEKO**: Ja and so.

**CHAIRPERSON**: No, that is fine. That is fine. It is just that you are competing with the noise of the heat but it is okay. Just...

**MR NHLEKO**: Okay. No, no, no. I will try my best Chair.

**CHAIRPERSON**: Okay.

**MR NHLEKO**: Thanks very much.

**CHAIRPERSON**: Okay.

**ADV HULLEY SC**: Thank you, Mr Chair. And then Item 3 says that:

20           “The DI/PH approves/disapproves completion and the completion register is utilised and it has got some code...”

But we really need not to worry about the code. But ultimately it must be for the DI/PH to approve/disapprove completion and the completion register. So, in other words,

there are three levels before a report is ultimately approved.  
Would that be correct?

**MR NHLEKO:** Ja-no, I hear you.

**ADV HULLEY SC:** Now what we know in the case in this matter, we do know that and we have debated it for some time of the year, we do know that insofar as Mr Khuba is concerned, his particular report being the report of the 22<sup>nd</sup> of January, was signed only by him. Is that correct?

**MR NHLEKO:** Yes.

10 **ADV HULLEY SC:** Now, picking up on another topic that we have dealt with yesterday.

**CHAIRPERSON:** Before you go to another topic Mr Hulley and you may have covered this angle but I just want to make sure. I see Mr Nhleko that Werksmans in their report to you also quotes Regulation 5(1) of the regulations under the IPID Act.

**MR NHLEKO:** Right.

**CHAIRPERSON:** And I do not know if they have quoted the whole... the sub-regulation 1 here or not because where they  
20 started, they do not start with a capital letter. They start with a small letter.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** But they quote:

“After collecting all evidence, statements and technical or expert reports, if applicable, submits a

report on the investigation of the offence to the executive director or the relevant provincial head as the case may be, containing recommendations regarding further action which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member...”

I think I saw, it might be a full regulation file where the  
10 suggestion or what appears to be the position is that a report must be approved by the executive director.

Is that something that you recall as having been in the position? I know that you have said yesterday there is no law that says a report must be signed by the Executive Director of IPID.

But I seem to think that I saw something saying the regulations require the executive director to approve but here it says the report must be...

“After all evidence has been collected, the  
20 statements and expert reports applicable, must be submitted to the executive director or the provincial head as the case may be containing recommendations...”

And maybe that might mean... this particular part does not seem to say so what is quoted here but it may be that

the purpose of submitting is that he or she should approve. I do not know.

What is your recollection about whether there was a requirement that the executive director should approve, whether he must sign or not sign but he should approve the report? Do you have any recollection of what ...[intervenes]

**MR NHLEKO**: Just two things Chair. I think the first one is that... I think when Mr Yule appears, he will probably clarify that issue and the reference to that particular section of the  
10 regulations.

There are two processes here that should also somehow ...[indistinct] And so the first one. The applicability of your standard operating procedures it is more to do with internal controls, okay.

Now and the... no, not the regulations. The Standard Operating Procedure as quoted by Mr Hulley for an example, places an emphases on quality assurance. Precisely. Because if you are the executive director you are a supervisor, okay.

20 So you will essentially need to satisfy yourself that the work that they would have done is complete, right. Now that is an internal process matter within the institution.

But signing off a ...[indistinct] Remember... or let me try and make a practical example. Suppose the Honourable Chair is an investigator and reports to, I would have satisfied

myself that indeed you... this report is okay, it is fine, okay.

You... whatever, you know issues of standard that I would have to look into that governance the manner in which you, you know, constituted or constructed your report and so on.

Now essentially, I would have to then say to you it is fine. You can now refer this report to the NPA or whatever authority, okay. So that is the Standard Operating Procedure.

10 Now, the issue I was raising is that the Standard Operating Procedure should not be equated to law that says it is compulsory for an executive director to sign off an investigation report.

**CHAIRPERSON:** Ja. No, no, no. I understand that.

**MR NHLEKO:** So that is a distinction I was looking at.

**CHAIRPERSON:** But must I take your response to be that it was within your understanding at the relevant time that in terms of internal procedures within IPID, the executive director would have been required to have seen the report  
20 for purposes of quality assurance that that would have been your understanding?

**MR NHLEKO:** That would have been, yes.

**CHAIRPERSON:** Okay. Alright.

**ADV HULLEY SC:** Thank you, Mr Chair. If I can ...[intervenes]

**CHAIRPERSON:** I am sorry. But you are... are you saying, as far as the regulations are concerned, you do not or you do have a recollection that your understanding was that even the regulations required the approval of the director? Or, you are saying, "I do not remember. I do not know what... whether the regulations ...[intervenes]

**MR NHLEKO:** No, it might require from me to have a read(?) ...[intervenes]

**CHAIRPERSON:** Okay. Ja.

10 **MR NHLEKO:** ...but I really do not have a situation where regulations... because regulations, by the way ...[intervenes]

**CHAIRPERSON:** Yes.

**MR NHLEKO:** ...they are not stand-alone.

**CHAIRPERSON:** [Indistinct]

**MR NHLEKO:** Yes. No, they are not stand-alone. They fall off from legislation.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Okay. No, it is fine.

20 **ADV HULLEY SC:** Thank you, Mr Chair. And although really deal with this issue but just to round off the issue on page 1572. You will see there that 1572 deals also with the closing of files.

And without belabouring the point, it follows the same process as in relation to the completion of files where the

process of the closure of the file is initiated through the supervisor. Sorry, is initiated by the case worker through the supervisor.

And then it is escalated where the supervisor has to review and quality assure the report and then has to make a recommendation to the DI/PH.

And then ultimately, the DI/PH must approve or disapprove the closure of the... and in the closed register is utilised.

10 So it is essentially a pier tier system of initiating, either the completion of the file or the closing of the file. Is that correct?

**MR NHLEKO:** Yes, I hear you sir.

**ADV HULLEY SC:** Now, if we can turn to... I would like to turn to an additional issue but before I do so, I just want to make it clear that, as I understand your evidence, you are not suggesting that internally there is no obligation to comply with the Standard Operating Procedure? That is not your point, is it?

20 **MR NHLEKO:** The... as the terms stands, Standard Operating Procedure is precisely because you need to comply and adhere to certain standards of functionality. That is why it is called Standard Operating Procedures.

**ADV HULLEY SC:** Thank you, sir.

**MR NHLEKO:** Yes.

**ADV HULLEY SC:** Now, insofar as the two reports... and I moving onto a separate topic now, but insofar as the two reports are concerned, you will recall that, once again, that there was the 22 January report which had been signed by Mr Khuba alone and there was the 18 March report which had been signed by Mr Khuba, Mr Sesoko, and of course, by Mr McBride.

Now, then you approached mister... or when you approached IPID through your letter of the 24<sup>th</sup> of November  
10 of 2014 and asked him for the case... for the case docket in respect of the rendition matter.

Mr McBride responded by sending you the letter of the 26<sup>th</sup> of November in which he provided you with the full case docket. Is that correct?

**MR NHLEKO:** Yes, sir.

**ADV HULLEY SC:** And pursuant to that... or rather, in that docket... in that document, he explained to you that the docket was... the original docket was at the National Director of Public Prosecutions.

20 **MR NHLEKO:** I am listening sir.

**ADV HULLEY SC:** Well, if you have got the recollection, then I would have to draw your attention... sorry. If you have no recollection, I will have to draw your attention to the document.

**MR NHLEKO:** Okay.

**ADV HULLEY SC:** So if you will just bear with me.

**CHAIRPERSON:** Somebody must just make sure each time there is a reference to a different file that the witness is given the file that is referred to, unless ...[intervenes]

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** ...unless he is happy to deal with the question without looking at it but it is better if it is made available so that he can then elect whether he wants to have a look or not.

10 **ADV HULLEY SC:** If you can turn with me to Exhibit Y7 Mr Nhleko?

**ADV HULLEY SC:** Yes, Mr Hulley. You are right.

**MR NHLEKO:** No, ...[indistinct]

**CHAIRPERSON:** Somebody should long have stood up to take the file and give it to the witness.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** No, it is alright Chair. Chairperson, I am remembering some few things about that administration. So.

20 **CHAIRPERSON:** Oh.

**MR NHLEKO:** I have already located the Exhibit Y7 file.

**CHAIRPERSON:** [laughs]

**MR NHLEKO:** And I feel so educated by being able to do so.  
[laughs]

**CHAIRPERSON:** [laughs]

**MR NHLEKO:** Thank you very much, Chair.

**CHAIRPERSON:** Ja, okay. Yes, I must say that so far I think we are moving quite satisfactorily. So let us ...[intervenes]

**ADV HULLEY SC:** I do not think we should jinx it Mr Chair.  
[laughs]

**CHAIRPERSON:** [laughs] Let us stick to that lane. Yes. Thank you. Just confirm again Mr Hulley for the record which file?

10 **ADV HULLEY SC:** This is Exhibit Y7.

**CHAIRPERSON:** Exhibit...?

**ADV HULLEY SC:** Y7.

**CHAIRPERSON:** Is it Y7?

**ADV HULLEY SC:** It is one of these ...[indistinct] bundles.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** It is the supplementary affidavit of Mr Robert McBride.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** Now if you turn for me to page 144.

20 **CHAIRPERSON:** 144?

**ADV HULLEY SC:** That is correct, Mr Chair.

**CHAIRPERSON:** Yes?

**ADV HULLEY SC:** To place this in context Mr Nhleko. This is the letter that we referred to, at least yesterday and the day before. It is the letter of Mr McBride dated the

28<sup>th</sup> of November 2014 which is addressed to you as the minister that it is responding to your earlier letter of the 24<sup>th</sup> of November. Is that correct?

**MR NHLEKO:** Yes, that is correct sir.

**ADV HULLEY SC:** If you turn with me to page 144 under the heading “conclusion” at the foot of that page?

**MR NHLEKO:** H’m.

**ADV HULLEY SC:** Mr McBride says that the... in the second paragraph beneath that heading:

10            “The recommendation with the entire docket and evidentiary material was forwarded to the office of the National Director of Public Prosecutions on the 14<sup>th</sup> of April 2014.

On the same day a disciplinary recommendation was forwarded to the office of the National Commissioner...”

**MR NHLEKO:** Alright.

**ADV HULLEY SC:** Did you ever follow up with the National Director of Public Prosecutions to confirm whether he did  
20 indeed have the original case docket with the recommendations?

**MR NHLEKO:** A follow up was made and I think that would also become much more clear as and when we get to the testimony that would be led by Mr Yule specifically in the construction of the... of what is commonly referred to as the

Werksmans report.

And it would also reveal the internal communication even within the National Prosecuting Authority in regard to this matter.

**ADV HULLEY SC:** So would it be fair if I... just to paraphrase it, to try and understand your response? Would it be fair to extract from that that your response is investigation or the follow up in relation to whether the docket was with the National Director of Public Prosecutions  
10 was in fact done by Werksmans?

**MR NHLEKO:** It was through Werksmans, the investigation.

**ADV HULLEY SC:** Now, if you could turn ...[intervenes]

**MR NHLEKO:** Chair, could I just ask? It is extremely cold. It is extremely cold Chair.

**CHAIRPERSON:** Oh.

**MR NHLEKO:** Yes. I am sure that is a... if you are in a mortuary, this is how it feels, I suspect.

**CHAIRPERSON:** [laughs] Well, I can you that Mr Hulley told me on Monday which was his first day of leading  
20 evidence here that he complaint of extreme cold.

Now I have been here for a weeks now hearing evidence but I have had the benefit of some small heaters as well. So I might not be exactly in the same position. I think they are going to try and see what can be done.

The question is whether that is making it colder

...[intervenes]

**MR NHLEKO:** And the nose.

**CHAIRPERSON:** ...and that... and maybe if it is maybe that it might be less cold without it than with it. [laughs]

**MR NHLEKO:** H'm. Possible. Possible.

**CHAIRPERSON:** The relevant person has gone out. I think they will see what can be done. Please raise your concern again if... after some time you do not feel any difference.

There might not be much we can do other than switching  
10 it off and on because it is a big venue and therefore, I think it takes time.

But also I do not know how effective it is but I have had that sometimes people have felt it, at least some slight warmth. I have not had anybody saying it feels very warm here. [laughs]

**ADV HULLEY SC:** [laughs]

**MR NHLEKO:** It is the question of the advantage versus the disadvantaged. [laughs]

**CHAIRPERSON:** [laughs]

20 **MR NHLEKO:** [laughs]

**ADV HULLEY SC:** I think we are disadvantaged in the current environment Mr Chair.

**CHAIRPERSON:** Yes. Well, I see ...[intervenes]

**ADV HULLEY SC:** There are degrees of disadvantage.

**MR NHLEKO:** Yes. [laughs]

**CHAIRPERSON:** I think when you say advantage, he looks at me. [laughs]

**MR NHLEKO:** Yes. [laughs]

**CHAIRPERSON:** Maybe because of the heaters.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** But I think the one I have today, I also do not... yesterday, I had two and I think one was not effective. Today I have got one. It doesn't feel any different from yesterday. Okay let us continue and hopefully something will  
10 be done.

I have been told this venue, this building is old. Some of the infrastructure is not good. So some of the things that one would expect are not because it is an old building with old infrastructure but let us see.

I think probably you would have been well-advised to put on a jersey as well. [laughs]

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Mr Hulley when he felt it was extremely cold on Monday, he also did not have a jersey.

20 **ADV HULLEY SC:** Yes.

**CHAIRPERSON:** But yesterday he had a jersey on as well.

**MR NHLEKO:** H'm. H'm.

**CHAIRPERSON:** So I have been wearing a jersey since we started here. Okay let us continue and just do raise your concerns again later on if we continue to feel extremely cold.

Yes, Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chair. Now, as regards the two reports, the... if I understood correctly from your testimony yesterday, you had received the first report. That is the 22 January report, signed.

And you know that it had been obtained through your internal structures but you do not know precisely by whom. If I understood your testimony, you said it landed on your desk and you do not know who might have placed it there?

10 Correct?

**MR NHLEKO:** Yes, I am listening sir.

**ADV HULLEY SC:** And on the... and the second report which was dated the 18<sup>th</sup> of March of 2014, that was provided to you by the... by Mr McBride through the letter or attached to the letter together with the docket on the 26<sup>th</sup> of November 2014. Is that correct?

**MR NHLEKO:** Yes, I am following sir.

**ADV HULLEY SC:** Now, when you... when one look... considers the two reports and it is a proposition I put to you yesterday but we did not get around to fully ventilate it.

But when one considers the two reports, the second report... there was no suggestion that the second report had passed itself off as the first report.

The second report was a report dated 22... sorry, dated 18 March 2014. It did not purport... it passed itself off as a

report dated the 22<sup>nd</sup> of January of 2014. Would that be fair to say?

**MR NHLEKO**: Maybe let us try some simpler English. I do not know. Are you saying ...[intervenes]

**ADV HULLEY SC**: Shall I start one step at a time then?

**MR NHLEKO**: H'm.

**ADV HULLEY SC**: Firstly, let us look at the date.

**MR NHLEKO**: No, I hear that part but let me... let me get this point correctly. Are you saying there is a  
10 22<sup>nd</sup> of January report which has got nothing to do with the  
18<sup>th</sup> of March report? Is that what ...[intervenes]

**ADV HULLEY SC**: [Indistinct] nothing to do. That is part ...[indistinct] that I am conveying to you.

**MR NHLEKO**: No, I am talking about two distinct reports?

**ADV HULLEY SC**: I am saying that the 20... the 18 March report does not purport to be the 22 January report.

**MR NHLEKO**: It could not be. It is dated the 18<sup>th</sup> of March. So it could not be the 22<sup>nd</sup> January report because it is dated the 18<sup>th</sup> of March. So that is why I was saying, let us maybe  
20 try and, you know, separate the two.

**CHAIRPERSON**: Maybe... let me ask this question and I think it might go back to an issue we have discussed yesterday. Is there any reason why the report of the 18<sup>th</sup> of March could not be taken as a replacement of the report of the 22<sup>nd</sup> of January?

**MR NHLEKO**: I think ...[indistinct] Chair earlier on it should be ...[indistinct] I have been sitting in this freezing place.

**CHAIRPERSON**: H'm.

**MR NHLEKO**: [laughs] I briefly spoke to this issue.

**CHAIRPERSON**: Yes, yes, yes. But ...[intervenes]

**MR NHLEKO**: I even referred... yes, I even referred to the question of what the convention is, you know, even world-wise. If you produce another report that has got to another one, you state so.

10 **CHAIRPERSON**: Ja.

**MR NHLEKO**: You then say, "Look, this report annuls that one". So I am withdrawing that one, replacing it with this one, okay. So that is what practice and a convention would have.

It would also be interesting that with regards to exactly this specific issue to get the prosecutors in the NPA because they spoke to this issue as well. They had a reaction to it in relation to a second report that they then received.

20 So my clarification would be that if then that is the case, because I do not think we should be understood in saying you cannot replace a report.

But if you replace a report, state that you are replacing that report and it is replaced by this one, okay. And state your reasons as to why you think this is correct, you know. I am just making an example. Ja, I wanted to look at that

Chair.

**CHAIRPERSON**: Yes. No, I hear... I think what you have said is, it does clarify to quite a large extent what I had in mind. I think probably what Mr Hulley also had in mind but I am looking at him, he is not nodding. [laughs] So he might... but ...[intervenes]

**MR NHLEKO**: He hardly ever does nod.

**CHAIRPERSON**: H'm?

**MR NHLEKO**: He hardly ever does nod.

10 **ADV HULLEY SC**: [laughs]

**CHAIRPERSON**: [laughs]

**MR NHLEKO**: [laughs]

**CHAIRPERSON**: Well, I have not seen him shake his head either. So. But let me put... make this proposition to you.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: That what you have said, mainly that if you want to replace an earlier report with a later report, you will make... you would write or you would make it clear that this later report replaces the earlier one.

20 Now you may or may not give reasons, you know, but obviously, if the person you are conveying this information to says why, you would have to say why. Okay? You want to say something before I move on? Ja.

**MR NHLEKO**: No, thanks Chair.

**CHAIRPERSON**: Ja.

**MR NHLEKO:** But in that regard, I think when we tried to clarify ourselves around this issue in the manner in which the Chair is doing, at the back of our minds we should not forget these are investigation reports. So they rely largely on what is contained in the docket.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** In the statements there.

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** So I would suppose because I am not  
10 speaking for the NPA or for prosecutors because I do not know how they work. Regardless of the allegations that I have now captured them. But the point is. Certainly, they would have to factor the why question when you come in with the second report that says, “No, I am nullifying the other one”.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** So it would mean it will take them back, all of them, this investigating officers and the prosecutors. It will be have to take them back to the constituting material which  
20 in that case is referred to as the docket.

**CHAIRPERSON:** Yes. No, no, no. I understand that. I am starting from the general before going to the specific.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** I am suggesting to you that you may not need always to explain why you are replacing one report with

another, an earlier report with a later report but obviously, if the person you are giving the report asks the question why, you would have to explain, you know. But I am imagining if one of my staff was understood to – then we would resume at quarter past eleven.

**ADV HULLEY SC:** That is the impression I got. I thought it was incredibly generous.

**CHAIRPERSON:** No, I am under the impression that I said let us make it a tea break so the adjournment would be a  
10 tea break and we would resume at eleven but it is fine, let us continue now.

**ADV HULLEY SC:** Thank you, Mr Chair. Mr Nhleko, before the adjournment, we were dealing with the question of the two reports and what it is that you would have expected a person to do if it was the intention to annul or to change a previous report. Now you have indicated that one would have expected in the new report to indicate that you have changed the old report. Do I understand correctly?

20 **MR NHLEKO:** Yes, sir, I think I must have said that.

**ADV HULLEY SC:** Now you are speaking in general terms. If I understood you correctly, you are saying well, you do not what the processes are within IPID but if I understand you correctly, speaking generally that is what you would have expected.

**MR NHLEKO:** Look, if you say general terms, perhaps I would want to qualify that because, you know, in government there are no general terms, there are practices there and conventions and regulations and laws. Now – because if you say general terms, it is as if you are referring to any other form of a report including a newspaper report. I mean, it cannot be.

**CHAIRPERSON:** But maybe because we were discussing this point earlier on and ...[intervenes]

10 **MR NHLEKO:** Yes, Chair.

**CHAIRPERSON:** ...I think we had not finalised it when the electricity went off. Let me also come in. This is the proposition I wanted to put to you when the electricity was – supply was interrupted, namely that even if – or let me put it this way, is the position not that even if the person who is supposed to give you a report on a certain matter, is the position that even if he does not or she does not say I am withdrawing the earlier report, if having given you a report earlier on a subject matter, he or she gives you a  
20 later report and the later report deals with the same subject matter. Unless there is something in the later report that suggests that the later report does not replace the earlier report, it would reasonable to take it that the later report replaces the earlier report.

So, in other words, unless the later report says or

unless the person tells you you have got to read both, you need both, if the later report deals with the same subject matter, it would be reasonable to take the later report as replacing the earlier report, even if they did not say anything - if you read both, you might say it cannot be intended that they both stand at the same time, one of them falls.

**MR NHLEKO**: I like the last point, one of them falls.

**CHAIRPERSON**: The falling part.

10 **MR NHLEKO**: The one of the falling part, I like that.

**CHAIRPERSON**: Okay.

**MR NHLEKO**: I like that, honourable Chair, but the point really is, is that – and I think I tried to clarify this point. Look, in this particular instance, for an example, Chair, a report does not produce the docket but it is the docket that produces the report. So it works the other way around. Now the docket is the basis that constitutes the essential body of the report, right?

**CHAIRPERSON**: The report will be based on the docket.

20 **MR NHLEKO**: On the docket, yes, exactly.

**CHAIRPERSON**: Ja, not the other way around.

**MR NHLEKO**: Exactly. And I think the wonderful points that – or propositions that you also, you know, put to me yesterday which made me think in a way because, you know, I think it was in the process of thinking, that we

needed to reflect on some of these things but you – I am then saying even if we are not talking of an investigation report because an investigation report is a very serious matter, it is a very serious report because it bases itself on statements collected, the analysis of evidence and whatever else and so on, are they at a *prima facie* level and so on. But I also do think that the question that the Chair is posing is well actually suited for the National Prosecuting Authority to respond. Right? What was their  
10 understanding and is it their understanding based on law that you could produce a second report and if you want to produce a third report, if you want to, and your understanding should always be that because the report is the latest, it replaces the first, the second and the third report. I am just making an example. I think, for me, I would also be very interested in that.

But I am further saying, Chair, that, you know, convention has it. If you produce a report you must then state that this report that you are now producing replaces  
20 the other report on the same subject matter that you must file at some point and you must advance your reasons. I mean here because you are talking of matters that related to law in criminal prosecution you would have to state your reasons why you are now changing and, you know, failing a later report of any sorts and they would have to be cogent

kind of reasons, I should think.

Now, so – and that is why I am saying we should draw the distinction around this particular matter but I am also very interested to hear what the NPA itself understands by this because there were particular reactions the side of the prosecutors that were assigned to assist IPID in this particular investigation in, you know, their reaction in relation to the second report.

**CHAIRPERSON:** No, I understand that part.

10 **MR NHLEKO:** Yes, Chair.

**CHAIRPERSON:** But remember that, as I understood your evidence yesterday, the report is not just for the NPA, it is also for you, as Minister, at the time, as I understood it because you may have to make a decision with regard to disciplinary matters. So, is that correct, is my understanding correct?

**MR NHLEKO:** Look ...[intervenes]

**CHAIRPERSON:** If they recommend disciplinary action, I understood you to say you would have to make those  
20 decisions in regard to disciplinary matters but the NPA would have to make decisions in regard to criminal...[intervenes]

**MR NHLEKO:** On prosecutory matters, yes.

**CHAIRPERSON:** Yes. My understanding is correct?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Okay, so I am saying while the NPA's understanding of this question I am raising might also be important but it is important also in regard to you because you were expected to make decisions in regard to disciplinary matters and when this issue of whether the first report was final or not arises, so it arises in regard to both those who were supposed to make decisions on criminal matters and you are supposed to make a decision on the disciplinary matters.

10 **MR NHLEKO:** Yes.

**CHAIRPERSON:** So your own understanding becomes important and that is why I posed the question and I invite your own understanding what it was.

**MR NHLEKO:** Yes, Chair.

**CHAIRPERSON:** Because the proposition I am putting is that even if the person giving the report does not say this one replaces the earlier one, as you have suggested, I am saying to you, what about the proposition that you may, when you read the two reports, see that they cannot both  
20 be intended to be – to operate and to be valid, only one can and in that case I want to put the proposition that it would be reasonable to think you would say it is the latest one that must be intended as the report and therefore, in that case, it replaces the earlier one, they are not meant to be – you are not supposed to make a decision – to base

your decisions on both particularly when they have material differences.

So my suggestion is that – my suggestion to you, Mr Nhleko, is that if you give me a report today and five days later you give me another one dated five days later, on the same subject matter, and you do not make a note for me to say I must ignore the first one and you go away, if I read both and see that there are differences even without asking you, it is reasonable for me to think that I  
10 must take the later one as intended to replace the first one. What do you say to that proposition?

**MR NHLEKO:** Honourable Chairperson, I hear you but still disagree with you ...[intervenes]

**CHAIRPERSON:** No, no, this is the opportunity to disagree with the Chairperson.

**MR NHLEKO:** Yes, I still disagree with you, Chair.

**CHAIRPERSON:** Because I want to understand your own approach and understanding how you approached the reports. So it is important for me to understand that.

20 **MR NHLEKO:** I would say to you, Chair, look at it from an angle of a person who has an institutional responsibility, an institutional responsibility and, of course, in this definition, I am deliberately excluding the NPA because I think you made a general point. So we are not talking about the specific in this regard, so – but let me also try

and be general.

So here you are, you are a manager and a supervisor and your subordinate has filed a particular report, let us say some few weeks ago and this subordinate says this report, this is how it is final and I finalised it, okay? But then the same subordinate comes back three weeks later with another report on the same subject matter and does not refer to the first report and says to you here is a report, it is as if it is a new report, okay? Firstly, that  
10 on its own, there is something wrong with that, within that approach, completely wrong, but nevertheless. Suppose I ignore that as a person who holds institutional responsibility being a manager of supervisor of sorts, supervisor of sorts, now I have got take a decision. The dilemma that you then have is that you have two reports before you, all of them valid, valid in a sense that the first one filed three weeks ago has not been withdrawn, is still the same. Now you have a second one which is not a continuation or supplementary to the first one because that  
20 is a different matter if it is supplementary, it means continuation, so you now have a second one. Now this second one does not talk to the first one but the subject matter is the same, all you have are material facts that have been removed from the first one to constitute this one.

The question is, in the execution of your duty, what do you do? Now if you assume – if you make the assume, as the Chair, in place, I can assure you of one thing, you would be introducing institutional instability and turmoil within that very same institution because you are likely to then say no, I assume that a second report is the valid one and therefore on the basis of which I am making this following decisions. So you make your decisions but your decisions are wrong because they could then also be  
10 challenged by some of the issues arising out of the first report.

So your decision-making shall always be contested and that is why you need to have absolute clarify around these particular matters and I think yourselves, as lawyers, I think you have a term that you use, un-ambiguity, something like that, I think that is big English but nevertheless.

You know, I think it is absolutely – you must have absolute and absolute clarity so that then you are correctly  
20 empowered, as a supervisor, and a person who is holding institutional responsibility to be able to execute your duty and function otherwise - that is my personal opinion, on the general, of course, as per the proposition by the Chair.

**CHAIRPERSON:** Ja. No, I understand you, let me put this. I think I said yesterday when I put to you the

proposition that the – what do you say about the proposition that the second report may have been or was not and had to replace the first one, I do not necessarily mean that if you thought there was something wrong with the first report or if you thought that arising out of you being given two reports.

**MR NHLEKO**: Right.

**CHAIRPERSON**: The mere fact that the second one is taken as replacing the first one may not necessarily mean  
10 that you cannot pursue anything that you think needs to be pursued.

**MR NHLEKO**: Right.

**CHAIRPERSON**: You know, it is simply to say in this context it is difficult for me to see how you could have thought that the authors of the report intended you to regard both as valid, as continuing to be their report because they had, for example, recommendations that were in conflict with each other.

So once you know that the one report, the later  
20 report, has a certain recommendation that is in conflict with a recommendation or that was made in the first report, it seems to me that logically you have to say they cannot be intending that both must be taken as valid.

What you may still say is okay, I accept that the second one is your final but there is some concern I have

and that is why I want to look into something. I do not have a problem that you say you regard this second one as final but that does not remove my concern when I look at what has happened.

**MR NHLEKO**: Chair, let me try and illustrate this point, maybe differently. And I will come closer to your profession, okay?

**CHAIRPERSON**: Ja.

**MR NHLEKO**: So you issue a judgment today and this  
10 judgment is based on certain considerations and the processing up until the point of an order. Three weeks later – I do not know why I like three weeks later – three weeks later, the same judge writes the judgment on the same matter, right? Arrives on a different order. The matter is the same, the material factors are still the same, right? But now what you are confronted with is that right at the tail end of the judgment you have an order. The first order looks different from the second one.

Now to a person who is the recipient of that order,  
20 what is he or she supposed to do? Which order do you then follow, right? Now – and of course I am not trying to say that investigation reports are equivalent to judgments and orders but I am trying to illustrate this point that you shall always, as a recipient of either a report and/or and order like that, have a problem in terms of which is which

then between the two. But you are also likely to ask yourself one logical question flowing from that issue and that is, how come this order differs from the other? What are the material factors that brought about this?

Now – and that is why I said respectfully I probably disagree with the Chair because the example that you are making is of a general nature, it is any other report like a newspaper article and so on.

But now we are talking about institutions of  
10 governance which have got to be – their work must be executed explicitly, [indistinct] **20.50** and clear, you know? That is the thing. So I am not sure that I am satisfied with the Chair's ...[intervenes]

**CHAIRPERSON:** I think we are very close to seeing the matter in the same way but I think there is just a little bit of – there is a point where we may not be seeing it exactly the same but let me make this point. With regard to a judgment, judges change their judgments all the time as long as the judgments have not been handed down, okay?

20 Once they have been handed down, they may correct certain things, not substance, okay? But before they are handed down you chop and change. Sometimes five days before the date when you are going to hand it down, you are going this way and one day before handed down you realise no, no, no, no, no, I am completely

wrong, you go this way. So people do not know how much you agonised and took different twists and turns before ultimately you handed down.

Now in the case of the investigation report, one, my understanding is that they presented the second report before you could make any decision on disciplinary matters, they presented the second report before the NPA could make any decisions, you know? So it may be that as long as the powers that be have not made any decisions it  
10 should not be a problem but if they have already made decisions it might be a different issue but I said earlier on, whether you take the report, the second report as final on – as the final one or not, I am not necessarily saying that if when you look at what is said in the final report and you look at what is said in the earlier report, you cannot pursue an issue that you think you should be pursued.

So I am working on the basis that even if you accept that the second report is final, that should not necessarily mean that you cannot pursue and issue that is  
20 of concern to you arising from looking at the two reports but still accepting that the final one is the same. So that is where I am. I think we are close, we probably – you might not agree and I might be wrong but I think I am not as far apart as we might seem.

**MR NHLEKO**: Okay, I hear you, Chair.

**CHAIRPERSON:** Ja, okay, alright. Mr Hulley?

**ADV HULLEY SC:** Thank you, Mr Chair. Just to be clear about the question of the amendment of reports, etcetera, I had asked you whether that was a general proposition or whether you were talking specifically about the amendment of reports in relation to IPID but I want to ask you a slightly different question but on the same proposition.

Is there anything within government, either a statute, a regulation or standard operating procedure, a  
10 manual that stipulates that before you amend a report or before you produce a second report on the same topic covered by the first report you must refer to the first report and identify to what extent and why you have – identify to what extent you have changed the first report and why you have done so?

**MR NHLEKO:** No, let me refer to practice because I would not recall of course the applicable sort of regulations and/or policy regulations and or policy positions but practice has it in that if you produce a report as contained  
20 in what is commonly known as a submission for an example and something changes, whether you want to update that, you will need to produce another report in relation to the first submission that you would have made and point, you know, and refer to it in very direct terms that this report that you are now filing is in relation to submission

whatever quote of the submission there and the title of the submission and that you are amending it in respect of whatever the issues are that you would then identify in your new submission.

So that is what practice is and, of course, I have not worked for each and every government department but at least in the areas that are functioned I know that that is the case.

**ADV HULLEY SC:** I am going to follow up on that. Is  
10 there a rule or practice, statutory regulation which stipulates that if one does not follow this practice of which you speak, that gives rise to misconduct and possibly criminal misconduct?

**MR NHLEKO:** Chair, that really depends on what each matter would be contained in such a submission and the gravity thereof, I mean, really, so...

**ADV HULLEY SC:** I am actually putting it at the very  
20 general level, I am asking you is there a rule, either a rule that is contained in some instrument, whether it be a statute, a manual, a regulation which stipulates that the mere failure to follow this practice of which you speak, the mere failure, does not matter what the content is, or does not matter what the extent is, the mere failure constitutes misconduct or constitutes a criminal offence.

**MR NHLEKO:** Look, Mr Hulley, the – it would really

depend on the policy framework and outlook of each given government institution particularly contained in your standard operating procedures.

It is possible that another department, depending on what that department would be, it would maybe in the standard operating procedure refer to a misrepresentation of facts or reports or reports or whatever the case is and therefore, if that is so, that can then be gravitated to an area of misconduct as an when, for instance, an employee  
10 would have committed such an alleged sort of offence.

So – and that is why I do not want to talk about, you know, whether rules, regulations and/or legislation in government because, you know, I mean, really that is very broad.

**ADV HULLEY SC:** Thanks. But of course, the proposition that you advanced and on the example that you use of a misrepresentation, that stands on a completely different footing.

What you mean there is that when you state one thing,  
20 you make it a statement about one thing, whether it has been in the report, whether it has been a verbal statement, when that thing - that you know that thing to be false, that would then amount to a misrepresentation, whether it is a misrepresentation that is actionable in the sense that it is a disciplinary infraction would of course depend on the

content of the misrepresentation and its materiality to a workplace. In other words, it is on a matter of – that is on a matter relating to your duties.

**MR NHLEKO:** No, I hear you Mr Hulley, but I was just making an example.

**ADV HULLEY SC:** Thanks.

**MR NHLEKO:** In terms of what could also possibly be said in a set of standard operating procedures, and/or policy of a particular institution.

10 **ADV HULLEY:** I want to deal with a slightly, or move on to a different topic, I mean, you were the Minister of Police, now one of the issues that had been raised by Mr McBride when he came into your office sometime in March of 2014 was immediately to identify, once he was told that Crime Intelligence had been involved in this investigation, he found that particularly strange. If I understand him correctly, he was saying that it was strange at two levels, it was strange that Crime Intelligence had been involved in an investigation at all because Crime Intelligence doesn't  
20 really, to use the language, carry a docket, they don't investigate criminal misconduct. Crime Intelligence gathers information, they gather and they pass it on to some of the other structures within the SAPS, would that be a fair comment?

**MR NHLEKO:** Look, I think it is, I think it's also a matter

that, in the first report of the civilian secretariat of the police in 2013, no 2012, if I'm not mistaken, does refer to the matter having been picked up by Crime Intelligence and so on and I think that's when the Minister, before I came in, took a decision to then refer the matter to IPID but also at the earlier stages when Ms Koeki Mbeki was the Acting Executive Director then there was some involvement of a person from Crime Intelligence in this, for how long, I don't know but by – you know at some point that person  
10 withdrew. So, the issue of the involvement of Crime Intelligence did not necessarily arise around about February or March of 2014, I think it was a matter that was there, long before the conclusion of the report by Mr Khuba on the 22<sup>nd</sup> of January 2014. So – and I think there's something that I must have seen somewhere by Ms Koeki Mbeki talking exactly to that issue, the decision being taken that, then Crime Intelligence needed to be, whoever person was needed to stand out and away out of the investigative work that IPID was conducting.

20 **ADV HULLEY:** But before I deal with that response, I just want to understand, would it be fair to say that Crime Intelligence is a body or a structure within the SAPS that gathers evidence or gathers information and then pass it on to other bodies or other structures within the SAPS, they don't carry dockets?

**MR NHLEKO:** Ja I think you're correct with the exception that you corrected yourself there correctly, they don't gather evidence, they gather information.

**ADV HULLEY:** Thanks for that correction. Now the person you're speaking of is a certain Colonel Moukangwe, if my memory serves me correctly.

**MR NHLEKO:** Right.

**ADV HULLEY:** Now – in fact Colonel Moukangwe didn't withdraw from the matter, as you suggest, he was involved  
10 in the matter right up until the matter was being dealt with by Mr Khuba and he assisted Mr Khuba throughout and he was instructed by Ms Koeki Mbeki to have Mr Khuba or to have Colonel Moukangwe assisting him at all stages. Would that be, for you, would that be problematic?

**MR NHLEKO:** Look, I think that detail, you know, as and when my understanding is that you could be in the process, Chair, of taking a decision to invite Ms Mbeki here because I think she would, you know, well positioned to clarify that particular point.

20 **CHAIRPERSON:** Ja I think that Ms Mbeki should come in, come and testify, actually. I was surprised that, yesterday Mr Hulley you were told that her affidavit is still not final. About a year ago I said her affidavit should be obtained but I think the reason why Mr Hulley raises this with you might be the same reason that I wanted to raise some of the

issues including – the involvement of Mr Moukangwe with you. I think he raises it with you because the involvement of Crime Intelligence or somebody from – or the involvement of Crime Intelligence prior to an investigation, because as I understand the position, Crime Intelligence had conducted some investigation on this rendition issue before the matter was handed over to IPID and then when it was handed over to IPID Mr Moukangwe, from Crime Intelligence or Mr Khuba was told that he was going to

10 conduct the investigation with Mr Moukangwe and it appears from Mr Khuba's affidavit that the justification that was put forward was that, because Mr Moukangwe had done quite a lot of investigation so he should be captain in the investigation even when the investigation was being conducted by IPID. So, my concern is, why would Crime Intelligence, who are not supposed to conduct investigations, one, conduct an investigation in this case, two, remain so interested in this investigation that one of their own must assist or be part of the investigation even

20 when the investigation is under the auspices of IPID. So, Mr Hulley will you say, you might have a different concern but that's the concern, there are many other features and maybe we'll talk about them, which makes one say, but why was – why were things happening the way it's suggested, were happening in regard to this investigation? Of course,

I have not heard everybody, maybe when I hear witnesses who have not come – who have not been heard yet, like Ms Mbeki certain things will begin to make sense. So, but until that happens there are certain features where you say, but why was this happening. So, I think, for me that is one of the issues to say, you, having been Minister of Police you'd be able to say, well to me it doesn't look strange that, one, Crime Intelligence conducted investigation on this issue at all or two, it doesn't – there's  
10 nothing strange that somebody from Crime Intelligence continued to be part of the investigation even when the investigation was done by IPID because of this understanding that I have or you might say, it also looks strange to me. So that's my – that's what I'd like to hear from you, whether you – what your own reaction is when you hear that this was the case.

**MR NHLEKO:** No, honourable Chairperson, I think, in a way you have also answered yourself that the operatives as and when they appear here from an operational point of  
20 view, they'll be able to give you further detail, for an example. So, it's possible that they will be able to say to you, as Chair of this Commission and say, we had this much amount of information collected but these were the dynamics and nitty gritty's that also involved that there were certain areas that could only be opened, precisely

because, you know, they knew us or it was us who had this information for us to be able to access certain, whatever but that's the kind of operational detail that, in my view, as and when the correct people at an operational level, are here and – and I'm liking to the point that the Chair correctly said, and said look you've not heard everybody it's – therefore, it's likely that as and when we draw in most of these individuals that were involved in this investigation and maybe collection at some point and so  
10 on, that matter will be clarified.

**CHAIRPERSON:** But what I would like you to help me with is whether, as somebody who was Minister of Police for a certain period, whether you regard it as normal for Crime Intelligence, one, to conduct an investigation as opposed to gathering information, I think you made that distinction earlier on and two, to be part of an investigation that is conducted by IPID, is that something that would happen in their normal – in the course of their work, as far as you know?

20 **MR NHLEKO:** Look, I wouldn't know, as far as I know but I think this question that the honourable Chair is posing is a relevant question. It's relevant in the sense that it really depends on what the issues were, I suppose, you know but if we – you had to ask me at a general level you are making an enquiry for an example, I'm just making – this is

now a general thing, you are making an enquiry about a certain matter but I happen – I, who's outside of your function, I happen to be holding a particular information okay, I think it would make sense that I would have to go cooperate with you and say, I hand over this information to you, to assist you in your enquiry or investigation that you are making. Now, it's then the question of operational detail of, do I continue to be involved with you for whatever the reasons are because it really depends on the nature  
10 and the weight of that information, I suppose, and to what extent do I continue to assist you in your investigation and my understanding is that if you look at the historical, sort of reports around this issue, Crime Intelligence is identified as assisting in the investigation, not that they were conducting the investigation. So, the investigation was conducted by IPID but for whatever the reasons were, maybe they were operational reasons, whether they were sound or not so sound, I think operatives in that regard would be able to shed some light.

20 **CHAIRPERSON:** But in terms of the scope of their work, you are not able to say, whether this would normally fall within their scope of work?

**MR NHLEKO:** You mean in terms of their scope of their work they would not be conducting investigations, they would be collecting information, they would not be

investigating police misconduct, for an example

**CHAIRPERSON:** Yes, I think that's – that answers my question.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** I just mention, for what it's worth, and you probably can't say anything about it, but it just adds to features that make the involvement of the Crime Intelligence, features that make this investigation strange or their interest in the matter, strange that according to Mr  
10 Khuba, in his affidavit, one, Ms Mbeki – Koeki Mbeki told him to keep the involvement of Mr Moukangwe secret. Two, according to Mr Khuba...[intervenes].

**MR NHLEKO:** I'm sorry Chair, sorry to disturb you, keep the involvement of Mr Moukangwe, that's the part – there's a part that I couldn't – I heard about Moukangwe, yes.

**CHAIRPERSON:** Yes, I'm sorry, I'm saying, according to Mr Khuba's affidavit one of the strange things for me is that according to him Ms Koeki Mbeki told or instructed Mr Khuba to keep the involvement of Mr Moukangwe secret in  
20 the investigation.

**MR NHLEKO:** Oh okay.

**CHAIRPERSON:** Yes, that's one. Two, Mr Khuba says in his affidavit, Mr Moukangwe asked him to use certain email addresses when sending documents about this investigation but what is strange is that he didn't want Mr

Khuba to send him those documents or emails to his official email address, he gave him a certain email address, I get the impression from what Khuba says in his affidavit that it might not have, even been his personal email address, he insisted they should not be sent to his official email address. So, there are other features that are strange for me but I'm saying – I'm mentioning this you probably can't comment on them.

**MR NHLEKO:** I hear you Chair but there's hardly anything  
10 that I can answer about that ja, no thank you very much.

**CHAIRPERSON:** Thank you, Mr Hulley.

**ADV HULLEY:** Thank you Mr Chair, it is of further concern...[intervenes].

**CHAIRPERSON:** I'm sorry I think Mr Mokhari has something ...[intervenes].

**MR MOKHARI:** Before Mr Hulley puts a question, for purposes of arranging my day, I see that we are no longer sticking to the times that we've spoken about yesterday, I had to arrange my day in such a manner that I  
20 accommodated the proceedings continued today, on the basis of what was said. I moved my commitments to the afternoon two o'clock and four o'clock and – so if I may be told again that we are going to go on so that I can be again, then I mean, shift my commitments.

**CHAIRPERSON:** No, I'm terribly sorry Mr Mokhari actually

about half past eleven I thought of raising the issue but I think something happened and I forgot. I did say that we have got to finish within two hours and in seven minutes time it will be two hours, I think but it's quite clear we are not done. I also still have got quite some questions, I think as far as today is concerned everything has been going satisfactorily in terms of everybody has been dealing with matters the way I expected so there has been cooperation from all sides. Let us talk about what should  
10 happen and – I know that Mr Nhleko wanted to get done and that's why we have moved and Mr Mokhari also wanted this...[intervenes].

**MR MOKHARI:** I think all I need to know Chair, is how much more time so that I'm able to move my commitments that's all that I need.

**CHAIRPERSON:** Well let's talk about that, do we – Mr Hulley what is your own sense, we have got to do justice in the end but we must not take too long but we must still do justice.

20 **ADV HULLEY:** Obviously when I formulate an assessment of time, I do so with reference to the questions that I've got and the response which I think will be accurate according to this. Sometimes if the response is different it might take me down a different pathway but speaking, generally, I would have thought that two and a half hours –

the assessment of two and a half hours yesterday would have been a fair assessment. There's been a few disturbances today, not necessarily related to Mr Nhleko you know, but there have been a few disturbances. The point I'm making, simply is, that I think I've still got – essentially about three broad issues that I still need to discuss. A lot of it is already dealt with in the affidavit but I need to get clarity on exactly what is being said with reference to the affidavit. So, to answer your question Mr  
10 Chair, I would have imagined that if everything goes according to the way I've formulated it in my head it would take about an hour and a half at most.

**CHAIRPERSON:** Sorry just repeat that?

**ADV HULLEY:** What I'm saying is that my assessment based on the questions that I would ask and the answers that I anticipated getting, I would have assessed that it's round about an hour and a half but sometimes there's an explanation that comes...[intervenes].

**CHAIRPERSON:** And sometimes the Chairperson also has  
20 questions.

**ADV HULLEY:** I didn't say that Mr Chair.

**CHAIRPERSON:** I think I can see you are diplomatic.

**MR MOKHARI:** Actually, when he says an hour and a half then we must put thirty minutes of the Chairperson.

**CHAIRPERSON:** No, no that's true.

**MR MOKHARI:** No, no Chair that's all that I wanted just an indication...[intervenes].

**CHAIRPERSON:** Well the reason why I'm taking longer to answer that question on your part, is that I realised that this is quite an important thing and it's quite obvious from Mr Nhleko's statements over the past two days that also he regards this as very important so it should be dealt with properly. So, I've been – I've been thinking about whether we shouldn't run away from the idea that we might not  
10 finish so that when he comes back to cross-examine Mr McBride, we can make space for him to finish first. So that's why I couldn't – I didn't want to immediately answer you, I know that he might have something to say but Mr Mokhari do you have something to say, even though he might have something different to say?

**MR MOKHARI:** No, yes, I'm saying that my question was only in relation of me then arranging my affairs for today, not that I was saying that – so I just want to know because it will be unfair of me to sit here whilst I've arranged with  
20 people. So, all that I needed was, now that you've given me the indication, so during lunch time I'm able then to simply then rearrange my affairs. So I'm not saying that we should not continue until we finish but I'll prefer that we run and we finish with him so that when we come to cross-examine we cross-examine the McBride he's going to be

cross-examined by many people then this may, again, disturb – and he has to come from KZN all the time.

**CHAIRPERSON:** Yes, yes, Mr Nhleko...[intervenes].

**MR MOKHARI:** So, if you can just proceed on that basis.

**CHAIRPERSON:** Yes, Mr Nhleko you wanted to say something, you raised your hand?

**MR NHLEKO:** No, no, no I do confirm this position that, in fact, we should finish but I would have said that perhaps to be on the safe side we should finish at all cost, which  
10 means, that even if it would mean we sit here till 12 midnight I would still prefer that we do that and then we finish and then we come back with a dedicated focus on cross-examining Mr McBride. So that's just my suggestion, of course I'm not a member of the Commission, I'm being subjected to it but – it's a suggesting that I'm making yes.

**CHAIRPERSON:** No, that's fine, well I think, let's continue and we'll talk about how long just now, because the investigations continue there can never be a guarantee that you can't be asked to come back if there is a reason,  
20 you know.

**MR NHLEKO:** Yes, if there is.

**CHAIRPERSON:** But I think the idea is, if we can let's see if we can try and finish. The – so I think, shall we continue, you talked about one and a half hours.

**ADV HULLEY:** I spoke of one and a half hours based on

my assessment...[intervenes].

**CHAIRPERSON:** Ja but it could be...[intervenes].

**ADV HULLEY:** In my own head

**CHAIRPERSON:** Let's continue and shall we say, I don't know if Mr Notshe is here, on the basis that we were going to finish before lunch, there was to be another witness but I think that can be sorted out during lunch time. Let's continue and at 1 o'clock let's see whether we take the lunch break at 1 o'clock, maybe a shorter lunch break or  
10 whether we take a full hour and then maybe, if need be, we continue until, maybe three.

**ADV HULLEY:** Thank you Mr Chair.

**CHAIRPERSON:** Let's see how – how would that affect your situation Mr Mokhari, is that fine?

**MR MOKHARI:** Chair, all I needed was an indication, I'll move my things so that we can finish today.

**CHAIRPERSON:** Okay.

**MR MOKHARI:** Yes.

**CHAIRPERSON:** Okay let's – at this stage we're going to  
20 try and finish as early as we can but at the same time, we want to do justice to the issues and we are looking at not going beyond 3 o'clock, if possible.

**ADV HULLEY:** Thank you Mr Chair.

**CHAIRPERSON:** Okay.

**ADV HULLEY:** Now of course there's an additional

problem and I want to explore this with you Mr Nhleko, if I understood the evidence correctly, based on the docket there were at least the DPCI, which is the Hawks may have been involved in the investigation in – sorry let me rephrase that. May have been implicated in the investigation in respect of the rendition so there was some Hawks Officers that were part of the operation and – as one of the different units. Another one was Crime Intelligence itself; members of Crime Intelligence were also  
10 part of the investigation – sorry part of the rendition in the sense that they, too had been assisting in the arresting of people. So, the proposition I’m putting to you is that it seems to be problematic at least three levels. One level is that it seems that Crime Intelligence is, in fact, investigating Crime Intelligence, that’s quite apart from the fact that Crime Intelligence shouldn’t be involved in an IPID investigation.

**MR NHLEKO:** It sounds like you are making an observation, I mean you are, I suppose, Mr Hulley, you  
20 know within your right to make such an observation. I also still do think that at an operational level there will be, probably, clarity around these questions, the involvement of Crime Intelligence, DPCI and whatever else and so on. I think people who investigated and other people who played a role in the investigation, you know, should be in a

position to verify the Commission around these particular matters.

**ADV HULLEY:** My question is...[intervenes].

**MR NHLEKO:** But you are making an observation and that observation is an observation sir.

**ADV HULLEY:** No of course but I want to – my observation, of course, is meaningless if there's no evidence to support it, I really want your comment on that. That's my observation but I'd like to know whether you  
10 would support that observation, as the Minister of Police? That if Crime Intelligence or members of Crime Intelligence...[intervenes].

**CHAIRPERSON:** You may be able to say, I think it's a legitimate observation, you may say, I don't think it's well founded because of A, B, C, D or you may say I'm not able to comment.

**MR NHLEKO:** Look the – yes, I may not be able to comment, largely because, Chair, I wouldn't know the original reasons why, whether they got involved and to  
20 what extent they got involved so that's why I will not be able to comment.

**CHAIRPERSON:** Okay.

**MR NHLEKO:** But if you were to ask me, Mr Hulley, and I'm not suggesting that he should ask me that question, in fact he prohibited Mr Hulley to ask that question, but the

point really being here, whether, as a matter of principle is it correct for an institution to investigate itself, then I can tell you that it is not correct. So – and conceptually that's a different matter altogether, yes so.

**CHAIRPERSON:** Ja well it's the same point you made yesterday that – maybe not the same but it's related, namely, that it wouldn't be right for IPD ....

Finish with the following sentence [at 1.00.00]

**CHAIRPERSON:** it wouldn't be right for IPID to report to  
10 the National Commissioner because the National  
Commissioners falls within the jurisdiction of investigation.

**MR NHLEKO:** Ja, it is a standing implicated institution.  
[laughing]

**ADV HULLEY SC:** Thank you Sir. Well the report or rather the appointment of Werksmans as I understood it from the Terms of Reference and of course please correct me if I am wrong but my understanding was that Werksmans was supposed to conduct interviews, is that correct?

**MR NHLEKO:** Yes I am listening – I am listening Sir.

20 **ADV HULLEY SC:** Well I am asking if it is correct. Was it your understanding that you wanted Werksmans to conduct interviews?

**MR NHLEKO:** Look again that is – that is operational detail. Werksmans were given a set of Terms of Reference. Now operationally what it means is that as and when they

conducted this work, they would then design their work.  
Okay I would not design work for them for an example.

**CHAIRPERSON**: So in other words...

**MR NHLEKO**: So if the...

**CHAIRPERSON**: Was your position that they should conduct an investigation, these are the Terms of Reference, how they went about it was up to them?

**MR NHLEKO**: Exactly. It is – because that is operational levels so I suppose for an example if you were to say to me  
10 I must investigate a matter which whatever I would take your Terms of Reference and translate them into a work plan. And say this is how I want to go about this and what kind of – a definitive kind of approach you know in an established kind of standards for an example that I would want to follow as an investigator. But I would not then design work for you. You know in a sense as an entity that would be investigated. Yes. And maybe just to complete that point Chair – I am sorry Mr Hulley. The Terms of Reference who and under which circumstances was the  
20 original report altered? And – or how the second report came about with both reports signed by the same person ie. Mr Khuba? Whether any misconduct or offence has been committed and if so by whom? [indistinct 01:02:47] whether there is a *prima facie* evidence of misconduct in criminal liability by Lieutenant General Dramat, Major General Sibiya

and any other officers mentioned in the original report. Fourthly the circumstances under which report and the docket handed in the NPA and what happened to the docket whilst in the NPA possession? Lastly any other matter that might come to your attention during the investigation which is relevant to a conclusions and find it. That is how the Terms of Reference were framed. But then in the report by Werksmans they then went into the detailing in terms of how they went about their investigation. They referred to  
10 interviews, recordings, statements and whatever and so on that they collected and so forth. But that was not prescribed by me. I gave the Terms of Reference. They then designed their work. Thanks Chair.

**ADV HULLEY SC:** Thank you Mr Chair.

**MR NHLEKO:** And thanks Mr Hulley.

**ADV HULLEY SC:** So as part of the Terms of Reference you say in paragraph 6 Mr Chair for your benefit the relevant document is in Bundle LEA2. And it is an annexure.

20 **CHAIRPERSON:** I see that my bundles have still not been written.

**ADV HULLEY SC:** My sincere apologies Mr Chair.

**CHAIRPERSON:** This one is Bundle LEA?

**ADV HULLEY SC:** LEA2.

**CHAIRPERSON:** That is the one that has got Exhibit

[Y8B]?

**ADV HULLEY SC:** That is correct Mr Chair.

**CHAIRPERSON:** Okay. Has somebody given the witness the right bundle?

**MR NHLEKO:** Thank you I follow you. I am saying I will follow you with it but I think I saw it here – it is alright – the bundle ja.

**ADV HULLEY SC:** So Mr Chair to be specific it is...

**MR NHLEKO:** It is just that I no longer have sufficient space  
10 here.

**CHAIRPERSON:** Oh is that so.

**MR NHLEKO:** That is why I am going to use my ear – yes. So it is fine.

**CHAIRPERSON:** You can keep it away if you think you can follow but as and when you think you need it indicate.

**MR NHLEKO:** Yes I will definitely do that ja.

**CHAIRPERSON:** Okay no that is alright.

**MR NHLEKO:** So thanks Chair.

**CHAIRPERSON:** Alright.

20 **ADV HULLEY SC:** Thank you Mr Chair the relevant page is at page 638 of that bundle.

**CHAIRPERSON:** What is the page number?

**ADV HULLEY SC:** 638 Mr Chair.

**CHAIRPERSON:** 638?

**ADV HULLEY SC:** That is correct.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** And in paragraph 6 you say to as part of your Terms of Reference you say to Werksmans that in your investigation you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far. So in short, they had to – they were required to interview relevant witnesses at their discretion in order to complete the task that you had placed  
10 before them.

**MR NHLEKO:** Right.

**ADV HULLEY SC:** And the task that you had placed before them and to which you want to then answer was in the second instance to determine whether any misconduct or offence had been committed and if so by whom. Now when you talk about an offence you referring specifically to a criminal offence.

**MR NHLEKO:** Well of – no Mr Hulley offences they are also committed at the work place level. It is an offence not to  
20 follow of our late policy for instance a workplace policy. So it is not only in relation to criminal.

**CHAIRPERSON:** So you meant both a criminal offence and a disciplinary offence?

**MR NHLEKO:** No my focus was the question of...

**CHAIRPERSON:** A disciplinary.

**MR NHLEKO**: Disciplinary worked – the act of misconduct what does it then do?

**CHAIRPERSON**: Okay.

**MR NHLEKO**: To the image of the institution.

**CHAIRPERSON**: Okay.

**MR NHLEKO**: Yes.

**ADV HULLEY SC**: And then paragraph 3 or sub-paragraph 5.3 rather you ask whether there is a prima facie evidence of misconduct and criminal liability by Lieutenant General  
10 Dramat, Major General Sibiya and any other officers mentioned in the original report. You see that?

**MR NHLEKO**: Yes I see – I hear that Sir.

**ADV HULLEY SC**: So insofar as they were given – given a mandate to interview relevant witnesses at their discretion they had to determine whether a prima facie evidence of misconduct certainly but also criminal liability existed and to that extent they were entitled to interview witnesses. Correct?

**MR NHLEKO**: That is correct.

20 **ADV HULLEY SC**: Now to that extent with respect Mr Chair because they would be conducting a criminal investigation were they not?

**MR NHLEKO**: No. I do not think so. I do not think so. You heard the Honourable Chair Mr Hulley you had a report done on it that is that said these two individuals are implicated in

the commission of [indistinct 01:09:31]. Then you have another report the 18 March which then exonerated them and pushed them out of this. Now – so we are then investigating firstly – first and foremost why you have this disjuncture between the two. But also, secondly that you also need properly view available sort of reports, recommendation and whatever else because it is possible that the second report may be saying, no we are not liable for criminal prosecution.

I am just making an example as recommended. But then  
10 again Chair the issue that interestingly you raised yesterday if you look into the documents that produced the report and that is the docket actually there are statements and reports that implicate these individuals in wrongdoing. Right. So that necessarily is not understood as you know a legal firm that then is conducting a criminal investigation. So that is – that is a distinction there Mr Hulley.

**ADV HULLEY SC:** No, no I understand you to be saying that there was information in the dockets. There was statements that were there and they were certainly entitled to analyse  
20 those statements that is part of their mandate. My earlier question to you to which I thought I had an affirmative answer as far that is concerned i.e. clause 5.3 were they also entitled to interview witnesses? I understood your response to be yes. Did I misunderstand you?

**MR NHLEKO:** I think this point has been canvassed and

subsequently sort of responded to.

**CHAIRPERSON:** I am sorry I did not hear that question. What was the question?

**ADV HULLEY SC:** So the question based on the earlier statement clause 5.3 says amongst the issues that need to be investigated and to be reported upon as part of the Terms of Reference was whether there is a prima facie evidence of misconduct and criminal liability by Lieutenant General Dramat, Major General Sibiya and any other officers  
10 mentioned in the original report. Part of their Terms of Reference includes a paragraph 6 it says:

“In your investigation you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far.”

So the question that I had asked Mr Nhleko earlier was, whether in doing so they would be entitled to actually interview witnesses in relation to clause 5.3? I understood the answer to that to be yes. In other words in respect of...

20 **CHAIRPERSON:** Ja, no. Ja because he said that – he said that how they went about the investigation was their business. You draw attention to paragraph 6 which said they will interview relevant witnesses at their own discretion which seems to say the same thing if I am not mistaken. So it seems to me that he contemplated and he can speak for

himself but my understanding is that he contemplated that if they want to interview witnesses, they – it was up to them.

**MR NHLEKO**: Chair.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: Just to clarify this point differently. You know it was critical and important that in the exercise of this work that I conducted and asked Werksmans to do the element of fairness and being just had to be maintained. It had to be there all the time. In other words, it would be unheard of  
10 that you are conducting a – some enquiry of sorts but eventually you arrive at a conclusion about somebody whom we have not spoken to and find and establish his or her side of the story for an example.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: You know that is – I do not know what they call those kinds of investigations really but it is biased form of an approach.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: And therefore, in the framing of the Terms of  
20 Reference it is vital the question of, yes this gentleman seated across me here he is implicate – he is said to be implicated and they said this and that but let me hear him out and so on.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: By so doing you are able to come out with a

balanced and an objective product which is then also is going to assist me as an employer at the time of course to be able to act and act accordingly in following the legal prescripts that govern our country and institutions. So it – I think it should be understood in that sort of context also why that Term of Reference was included.

**CHAIRPERSON:** But it is maybe important to understand what the answer you give now does to the earlier answer. The earlier answer having been I gave them a mandate how  
10 they went about their investigation was their business. Okay. But what you have said now seems to emphasise the question of interviewing witnesses on the basis that you say but it would have been unheard of for them to reach their conclusion without having interviewed persons who may be implicated.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** So I think there you are saying those two things now of course you might not say anything to them in your brief to them or mandate to them about interviewing  
20 witnesses when your expectation is that they know what they are doing and they will make sure that they conduct the investigation in a manner that meets basic elementary rules of fairness.

**MR NHLEKO:** Hm.

**CHAIRPERSON:** So you might then say, I am not going to

mention that because it is to be taken – it is to assumed that they will interview them but you may have a situation where an interview is not necessary but they send somebody who is implicated an invitation to say give us your side of the story on writing on this issue and this issue and this issue. So in other words, there might be no interview but still the person has been given a chance to put their version.

**MR NHLEKO:** Hm.

**CHAIRPERSON:** So I am just mentioning because the one –  
10 the latest seemed to emphasise that your expectation was that there would be interviews.

**MR NHLEKO:** No. I am also on the one hand explaining the framework and the outlook character wise of the Terms of Reference. You see let us take an example Honourable Chair. The first Term of Reference. It says who and under what circumstances was the original report altered. Now you are not going to work on the basis of a hearsay to answer this question. Right. It is the same thing and I think yesterday I made an example about an allegation that says,  
20 you have stolen the gold. The starting point is that yes you have that allegation but you want me to know to establish the facts whether indeed it did happen. So I would come to you and say to you, Ngobese says you stole his gold. Do you know anything about that, is it true? I am just making an example so that then ...

**CHAIRPERSON:** To say what do you say about this allegation?

**MR NHLEKO:** Exactly you know that sort of thing. So – and that approach I am other than fair there and say that approach satisfies the rules of fairness.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** And being just. That is what I will say.

**CHAIRPERSON:** Okay. Fine.

**MR NHLEKO:** Thanks.

10 **ADV HULLEY SC:** Thank you Mr Chair. I understood from your testimony yesterday that when Werksmans phoned you and said or contacted you in some way and said that they are receiving no cooperation. You then telephoned Mr Khuba and said to him you would like him to cooperate or you told him to cooperate. Now my understanding was perhaps I am wrong my understanding was that you were directing him or instructed him to cooperate. You were not saying to him, out of fairness I would like to afford you the opportunity to cooperate.

20 **MR NHLEKO:** Yes but Mr Hulley where do you – how do you come to that conclusion? Maybe just for the benefit of this exercise how do you come to the conclusion that your understanding was I was instructing him? Maybe start there.

**CHAIRPERSON:** Well maybe let us put it this way. If you say I was not instructing him then you have answered the

question. If he has further issues – he has an issue with your answer he will follow up. If not it falls away.

**MR NHLEKO**: Hm. No Honourable Chair I understand the debate also there is cultural conflict here in a sense.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: You know that is a court approach.

**CHAIRPERSON**: Yes.

**MR NHLEKO**: Okay but for me understanding that this in an inquiry.

10 **CHAIRPERSON**: Ja.

**MR NHLEKO**: You know it also becomes useful to understand an informing state of mind behind a particular question and draw a conclusion. I am just making an example.

**CHAIRPERSON**: No, no I understand that.

**MR NHLEKO**: You know because I do not want to understand Mr Hulley as saying that this is what I said.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: You know so that is why I ...

20 **CHAIRPERSON**: Maybe let us do it this way. Mr Hulley put your – the basis for your suggestion to him to say this is your suggestion that this was an instruction because based on this and then he can respond.

**ADV HULLEY SC**: Thank you Mr Chair. When I listened to your testimony yesterday, I understood you had telephoned

him in order to instruct him based on what you had testified instructed that he was to cooperate. I might be – I might be wrong about that. My recollection may be hazy. But that was certainly my understanding.

**MR NHLEKO:** You are correct insofar as yes I did telephone him you are correct. You are incorrect insofar as you understood that to mean an instruction. I requested him to cooperate and that is basically it. Thank you Chair. And may I also that the level of [indistinct 01:22:16] has improved  
10 a little bit. No it is a little bit better. As to whether it is comfortable as to the same extent as the Chair where he is seated and so on that is a different matter too.

**CHAIRPERSON:** Well I can tell you that it is only in my legs that I feel some warmth. On my upper body I feel quite cold as well. Yes okay alright thank you. Yes Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** May I ask this while Mr Hulley is looking for something. In the Terms of Reference was there – was there any reason why under 5.3 you do not have to look I will  
20 tell you what it says why it was necessary to specify the names of Lieutenant General Dramat and Major General Sibiya where you say Werksmans had to determine whether – or investigate whether there is prima facie evidence of misconduct and criminal liability by Lieutenant General Dramat, Major General Sibiya and any other officers

mentioned in the original report. As opposed to simply saying that to investigate whether there is prima facie evidence of misconduct and criminal liability by any officers mentioned in the report. Was there a particular reason why the two were specifically mentioned by name?

**MR NHLEKO:** You know I suppose it is an explicitly in a sense because the bone of contention was the basis of contention here was the question of the two reports and subsequently the recommendations. One set of  
10 recommendations with explicitly the names of the individuals that the Chair has referred to. The other set of recommendation this other end of the second – so called second report those things have not been taken out and so on. So I suppose that is the reason why it was there.

**CHAIRPERSON:** It was the reason ja.

**MR NHLEKO:** Yes that was the reason why two – yes.

**CHAIRPERSON:** Yes. I do not know if Mr Hulley covered this but let me ask. Bearing in mind your evidence that the area where you were to make decisions related to  
20 disciplinary matters and not to crime the NPA would decide matters of crime.

**MR NHLEKO:** Hm.

**CHAIRPERSON:** Why was it not enough in 5.3 in the Terms of Reference to say they must investigate whether there was prima facie evidence of misconduct? Because is it not

anything that is a crime would fall under misconduct as well or would it not?

**MR NHLEKO**: No but the point Chair is there is no way you will be responsible for a policy portfolio and not be concerned with a situation where your officers are implicated in crime.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: There is absolutely no way. I think you will be totally sort of remiss in your responsibility not to be  
10 concerned about that. Much as you are not the prosecution authority for an example but you know from just your both constitutional and institutional duty you should be concerned about this you know. And I think as a matter of fact I think if – remember it is their workplace right? They have got to uphold the law at all material times.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: Follow policy to the letter and so forth. They have to be the face of the institution but also being – they have to be the face of our constitution and the ultimate  
20 outlook of our society. Okay. Now – but then you have this allegation that this officer is involved in crime in the commission of crime right?

**CHAIRPERSON**: Hm.

**MR NHLEKO**: So indeed, that does something to the reputation of the institution.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** Okay and of course you will not necessarily prosecute this employee on the basis that you committed ABC which falls under criminal activity.

**CHAIRPERSON:** But you want to know.

**MR NHLEKO:** But you want to know and if that has happened it is a disrepute to the image of the institution.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** Yes.

10 **CHAIRPERSON:** Okay.

**MR NHLEKO:** Thanks Chair.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you Mr Chair. Could I ask you to turn with me to Bundle LEA7.

**MR NHLEKO:** Yes go ahead Sir.

**CHAIRPERSON:** Okay he has got it.

**ADV HULLEY SC:** Thank you Mr Chair. It is

**CHAIRPERSON:** Sorry what...

**ADV HULLEY SC:** I believe it is...

20 **CHAIRPERSON:** Sorry what did you say?

**ADV HULLEY SC:** It is...

**CHAIRPERSON:** Bundle?

**ADV HULLEY SC:** It is Bundle Y – sorry LEA7 Mr Chair.

**CHAIRPERSON:** Is it the one marked Y8[H]?

**ADV HULLEY SC:** It is. Sorry Y8[G] pardon me Mr Chair. It

is Y8[G].

**CHAIRPERSON:** LEA?

**ADV HULLEY SC:** LEA7 Mr Chair.

**CHAIRPERSON:** Bundle LEA7 okay.

**ADV HULLEY SC:** That is correct. And the specific exhibit is Y8[U]. It is at page 300 and 3342 Mr Chair.

**CHAIRPERSON:** 3000?

**ADV HULLEY SC:** 342.

**CHAIRPERSON:** 3342?

10 **ADV HULLEY SC:** That is correct Mr Chair.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** This is an affidavit by Mr Nhleko. Can I ask you Mr Nhleko if you would turn with me to page 3347 of that document?

**CHAIRPERSON:** LEA?

**ADV HULLEY SC:** LEA(7) Mr Chair.

**CHAIRPERSON:** Bundle LEA(7). Okay.

**ADV HULLEY SC:** That is correct. And the specific exhibit is Y8U. It is at page 3342 Mr Chair.

20 **CHAIRPERSON:** Three thousand...?

**ADV HULLEY SC:** 342.

**CHAIRPERSON:** Three, three, four, two?

**ADV HULLEY SC:** That is correct Mr Chair.

**CHAIRPERSON:** Yes?

**ADV HULLEY SC:** This is an affidavit by Mr Nhleko. Can I

ask you Mr Nhleko if you can turn with to page 3347 of that document?

**CHAIRPERSON:** What page?

**ADV HULLEY SC:** 3347 Mr Chair.

**CHAIRPERSON:** Okay. Okay, just to place on record. That is the... that is an affidavit by the witness dealing with allegations by Mr Khuba starting... it starts at 3342. You say we must go to 3347?

**ADV HULLEY SC:** That is correct Mr Chair.

10 **CHAIRPERSON:** Yes, continue.

**ADV HULLEY SC:** The signature on page 3347 sir, is that your signature?

**MR NHLEKO:** I seem to have a... I do have a 3347 but I am not following the page.

**ADV HULLEY SC:** Right... at the top right of the corner, page 3347.

**MR NHLEKO:** Right.

**ADV HULLEY SC:** 3347.

**MR NHLEKO:** I was ...[intervenes]

20 **CHAIRPERSON:** It is somewhere towards the right towards the end if it is the... if you have got the right one.

**MR NHLEKO:** Ja. No, no, no. I am getting thirty, forty-seven. In fact, I think I was there and I saw something else.

**CHAIRPERSON:** My concern is that you ...[intervenes]

**ADV HULLEY SC:** The very last page or the very last

document.

**CHAIRPERSON:** My concern is that you are at the beginning of the bundle whereas this page is one of the last ones in the bundle.

**MR NHLEKO:** Thirty, forty-seven.

**CHAIRPERSON:** 3347.

**MR NHLEKO:** Oh.

**CHAIRPERSON:** 3347.

**ADV MOKHARI SC:** I am sorry. Referring to his... are you  
10 referring to the affidavit of Friday?

**ADV HULLEY SC:** That is right.

**ADV MOKHARI SC:** Yes. So that is the Friday affidavit.

**CHAIRPERSON:** H'm.

**MR NHLEKO:** Thirty-three, forty-seven?

**CHAIRPERSON:** 3347.

**MR NHLEKO:** Where did I get the zero from? The other day  
it was 3047.

**CHAIRPERSON:** It must be Mr Hulley's pronunciation. Mr  
Hulley. [laughs]

20 **ADV HULLEY SC:** Yes, Chair. [laughs]

**MR NHLEKO:** [Indistinct] educated Chair.

**CHAIRPERSON:** 3347.

**MR NHLEKO:** 3347.

**CHAIRPERSON:** Ja, 3347. Ja, okay.

**MR NHLEKO:** No thanks. And thanks and apologies Mr

Hulley to get this thing right.

**ADV HULLEY SC:** Is that your signature sir?

**MR NHLEKO:** Yes, that is my signature sir.

**ADV HULLEY SC:** And this is an affidavit that you have deposed to on the 24<sup>th</sup> of July 2020. Is that correct?

**MR NHLEKO:** That is very correct sir.

**ADV HULLEY SC:** Now I would like you to turn with me and if you will go to paragraph... to page 3345 paragraph 7?

**MR NHLEKO:** Yes.

10 **ADV HULLEY SC:** You say:

“I confirm calling Mr Khuba. This was after I had been made aware by Werksmans that he was not cooperating with them.

It is clear from the above exchange between the Chairperson and Mr Khuba that the purpose of my call to him was to entrust him to cooperate with the Werksmans in their investigation. Nothing more and nothing less...”

**MR NHLEKO:** H'm?

20 **ADV HULLEY SC:** So you say that the purpose of the call was to instruct him to cooperate. Is that correct?

**MR NHLEKO:** It is clear from the above exchange between the chairperson... Who is the chairperson?

**ADV HULLEY SC:** The Chairperson before you today.

**CHAIRPERSON:** That paragraph comes after ...[intervenes]

**MR NHLEKO:** Did that not ...[intervenes]

**CHAIRPERSON:** That paragraphs of your affidavit comes after the quotation of Mr Khuba's evidence in... from the transcript, I think.

**MR NHLEKO:** No, but where does it say that he instructed him? Because it is a reference to an exchange between the Chairperson for the Commission and Mr Khuba.

**CHAIRPERSON:** Look at the.... look at the second line of paragraph 7 second sentence. It says:

10            "It is clear from the above exchange between the  
                  Chairperson and Mr Khuba that the purpose of my  
                  call to him was to instruct him to cooperate with  
                  Werksmans in the investigation. Nothing more and  
                  nothing less.

                  So I find it rather curious that despite Mr Khuba  
                  stating categorically that I did not propose that I meet  
                  with him in Cape Town but that it was my PA that  
                  proposed the Chairperson continue to speculate that  
                  I wanted Mr Khuba to come to Cape Town to meet  
20            with me..."

                  Well, you have not been asked about the second and the  
                  last sentence. You have been asked about the one before  
                  but I was reading just in case there is something there.

**MR NHLEKO:** [laughs]

**CHAIRPERSON:** So. [laughs] I am not going to say

anything about it.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: No, I do not know if my request was understood as an instruction. Maybe ...[indistinct] but the point is, I asked him to cooperate with the investigation.

**ADV HULLEY SC**: Now but let us get back to page 638.

**CHAIRPERSON**: Well, maybe before you go. That is why Mr Hulley and ...[indistinct] It is not... this sentence does  
10 not say Mr Khuba understood what you said to him as an instruction.

It is you speaking, saying the purpose... saying “it is clear from the above exchange that is between me and Mr Khuba” that the purpose of your call to him was to instruct him to cooperate with Werksmans.

In other words, if what you have just said after we looked at the sentence, suggests that... you were suggesting that if what you said was understood as an instruction.

So I am saying but you are the one speaking in this  
20 sentence saying “it is clear from the exchange between myself and Khuba” that the purpose of your call was to instruct him.

And you continue to say, “nothing more, nothing less”. So the sentence does not say Khuba said, “he understood that I was instructing him but actually he is mistaken now. I

was not instructing him”.

As you are saying the exchange reveals that “the purpose of my call was to instruct him and nothing more and nothing less”.

**MR NHLEKO**: H’m? No, that is fine. I know ...[intervenes]

**CHAIRPERSON**: You know? Okay. Alright.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Okay. Mr Hulley?

**ADV HULLEY SC**: Thank you, Mr Chair. If we can then go  
10 back to the Terms of Reference which appears in Bundle  
LM2 and to page 638 of that bundle.

**CHAIRPERSON**: What page should we go to?

**ADV HULLEY SC**: 638 Mr Chair.

**CHAIRPERSON**: Six-hundred...?

**ADV HULLEY SC**: Six, three, eight.

**CHAIRPERSON**: Six, three, eight. Yes?

**ADV HULLEY SC**: Thank you, Mr Chair. These are the  
Terms of Reference sir. And I want to just pick up on the  
distinction that you have made with reference to an offence.  
20 You said that you acknowledge that an offence might refer to  
a criminal offence but you said your focus was really on  
misconduct for purposes of disciplinary processes. Is that  
correct?

**MR NHLEKO**: Yes, that is correct sir.

**ADV HULLEY SC**: Now, I just want to understand... if you

can read... read that sentence to me again, paragraph 5.2 and then reconsider your answer.

**MR NHLEKO**: Which says “whether there is a *prima facie* evidence ...[intervenes]

**ADV HULLEY SC**: 5.2.

**MR NHLEKO**: What does it say? How does it start? I am ...[indistinct] ...[intervenes]

**ADV HULLEY SC**: “Were there any mis ...[intervenes]

**MR NHLEKO**: Ja.

10 “Were there any misconduct or offence has been committed, and if so, by whom?...”

**ADV HULLEY SC**: So what you are suggesting is that sentence as you understood it or what you had intended to convey was “whether any misconduct or misconduct(sic) has been committed, and if so, by whom.” Is that what you are saying?

**MR NHLEKO**: It says, “whether any misconduct or offence, and if so, by who?”

**ADV HULLEY SC**: So clearly you are drawing a distinction  
20 between misconduct, which is of a disciplinary nature as between employer and employee, and an offence, which is of a criminal nature which may involve another person or it may... but is a matter for the Law Enforcement Agencies. Would that be fair to say?

**MR NHLEKO**: No, it is not fair. Because you could also use

the term offence as a matter of emphases.

**ADV HULLEY SC:** Sorry, I do not follow what you are saying.

**MR NHLEKO:** I am saying Chair you could... or use the term offence as a matter of emphases, misconduct and/or offence.

**CHAIRPERSON:** Well ...[intervenes]

**MR NHLEKO:** But it is... it does not suggest that the... because once you... once you want to suggest that the usage of the term offence applies only to criminal  
10 investigations, I think that is incorrect.

**CHAIRPERSON:** I will tell you what I expected your answer to be. Based on what you said with regard to 5.3 where you have a reference with misconduct and criminal liability and based on what you said why you would nevertheless be interested to know whether a member of the police service had committed a crime.

Based on that, I would imagine that when in 5.2 you talk about misconduct and offence, it would fit within that understanding.

20 You want to know if there is misconduct committed by member of the police service. Misconduct which is not a crime.

But you are also interested to know if there is a criminal offence that has been committed by the police service. In other words, you are not confining yourself to disciplinary

misconduct only.

You are also interested in knowing whether a member of the police service has committed a criminal offence. So to me it seems that this is what I would expect you to say, giving the answer you gave earlier on.

**MR NHLEKO:** Yes. Look, I accept that Chair. That is also one way of looking at it. But you also earlier made a point and I have said every workplace is governed by a set of policies and rules and regulations.

10 But also, an offence can be committed at a workplace level. For instance, ...[indistinct] a certain fact. Whether it could be criminal or purely an issue of misconduct.

So from not sort of general understanding point of view, I also think the usage and the application of the term offence should not be construed necessarily to mean criminal investigation, you know.

As much as the Chair is correct in respect of this particular specific matter relating to the mere fact that there was a criminal investigation conducted and one report said  
20 this and the other report said that and so on.

So I accept that but I am also broadening it out as I believe such a type of an offence does not necessarily mean that if anybody says, “Ja, but it is an offence for you to do this”, then that would mean you have committed a crime or something.

**CHAIRPERSON:** I do not think we should spend too much time ...[intervenes]

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** ...on this but I think the reason was simple because when you say misconduct, that would cover a certain category, where you say offence, it might mean whatever is not covered under misconduct might fall under offence.

**MR NHLEKO:** H'm.

10 **CHAIRPERSON:** Ja.

**MR NHLEKO:** Okay. No, thanks Chair.

**ADV HULLEY SC:** Thank you, Mr Chair. And of course, what you must bear in mind is that when this matter have been handed over to Werksmans pursuant to this term... to these terms of reference that you have outlined here, General Dramat had already been suspended some two-and-a-half months before that. Is that correct?

**MR NHLEKO:** Yes, I hear you.

20 **ADV HULLEY SC:** And here we are asking him to investigate the very issue that he had already taken a decision on.

**MR NHLEKO:** And what was that decision Mr Hulley?

**ADV HULLEY SC:** That he should be suspended.

**MR NHLEKO:** H'm.

**ADV HULLEY SC:** Because ...[intervenes]

**MR NHLEKO**: Let me come into this because I think the... and sometimes ...[indistinct] the Honourable Chair strange that even lawyers, they miss the point when it comes to this issue of the suspension.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: In fact, the correct term in the public service context is pre-cautionary suspension. And all it does really, it says as so and so, there are these allegations that are levelled against you and we, in other words as the employer,  
10 would like to have an opportunity to investigate these matters further.

But in so doing, they should not be an element of interference and/or perceived interference, you know. So we are also addressing the issue of perception. So which means, there is no decision against you in relation to the alleged violation.

It is just for the employer to establish facts around this and then take it on from there, whether or not and whatever. But for some strange reason, many people including legal  
20 practitioners have begun to understand suspension is a punitive measure when it is not.

In fact, suspension also deals with the question of even protecting the same employee. So I will give you an example. I am working for the Commission which I truly hope never happens. But I am making an example Chair,

that I work for this Commission but reverend... I think there is a Reverend Stimela.

**CHAIRPERSON:** Reverend Stimela.

**MR NHLEKO:** Yes. Is a co-worker with me. So but the allegation involve our unit, whatever our unit is within the Commission together with Reverend Stimela.

Now and the allegations, it is me who are facing them. If I am not removed from the workplace for a further... for investigation to take place, it is likely that when I come in  
10 one day and I have a sour face, you know, and I look at Reverend Stimela.

Reverend Stimela could easily turn around and say, "Hey, hey, hey". And then in which this gentleman looked at me, I can realise he is really up in arms against me because he is being investigated and so forth.

So it is also about isolating the very same employee not be subjected to a what?... unnecessary negative sort of perceptions even at a workplace level.

But similarly, you would also have to protect the  
20 institutional process and information as well, amongst other things. So there is no pollution that takes place there.

So that is how it has got to be understood. So I am raising this point because the manner in which Mr Hulley is raising this issue, embraces this negative concept or definition of this concept of suspension which seem to have

taken a route out there in society that if you suspend any... somebody it is because that person is guilty of anything. It is not.

**CHAIRPERSON:** Mr Hulley.

**ADV HULLEY SC:** Thank you, Mr Chair. If I can move on. The ...[intervenes]

**CHAIRPERSON:** Maybe you... before you move on, let me put this to you Mr Nhleko. My understanding is that most if not all suspensions... maybe I should stay with most and not  
10 go to all.

Most suspensions, whether you are talking about the private sector or the public sector, suspensions of employees are not based on any finding that has already made that the employee is guilty.

They are affected to allow some form of investigation to take place before... to take place before a decision is made whether the employee should be charge with misconduct or not.

**MR NHLEKO:** Yes.

20 **CHAIRPERSON:** Sometimes they happen at a time when the investigation has taken place but the hearing, disciplinary hearing and a decision to charge the employee has been taken but there are... there is going to be some time before the hearing actually starts and the employee is suspended.

The decision whether the employee is guilty or not would

be taken by the chairperson of the disciplinary inquiry in due course.

So but nevertheless, there is a general, I think, understanding within the public sector and maybe the private sector, I am not sure, that before you affect even that suspension, you as the employer would need to be of the *prima facie* view that there may be something that the employee is guilty of.

Because otherwise, if you think there is no basis for this  
10 allegation you would not go that far. That is my understanding of the situation.

**MR NHLEKO:** No, but if you had to do that Chair, whilst I agree largely with what you have just said.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** If you were to assume guilt before the investigation that would be unfair.

**CHAIRPERSON:** Well ...[intervenes]

**MR NHLEKO:** So that is why I am saying, in the public service generally, at least wherever I have worked, it is  
20 important to emphasise pre-cautionary suspension because the emphases on precautionary, all it does is it then says, “Look, we want to have an opportunity to have... to explore this matter further and so on. And we do not want you to be perceived negatively internally within the institution, nor do we want also to experience as an institution, for instance a

situation where there is interference with the information that we require for purposes of investigation”.

I am also aware, because I think the Chair has also, you know, broaden this... eluded to. I am aware also that in other institutions there is a sentence of suspending somebody without pay for a particular duration, you know.

**CHAIRPERSON**: We just separate.

**MR NHLEKO**: Yes, we just separate.

**CHAIRPERSON**: Ja.

10 **MR NHLEKO**: But that is after a disciplinary process would have, you know, ensued and so on. Ja.

**CHAIRPERSON**: H'm. Ja.

**MR NHLEKO**: Ja.

**CHAIRPERSON**: No, and the point you make is that the suspension you talk about in the public sector and the suspension we are talking about here in regard to General Dramat, was a pre-cautionary.

**MR NHLEKO**: Pre-cautionary, yes.

**CHAIRPERSON**: Not a punitive one after a hearing.

20 **MR NHLEKO**: Yes.

**CHAIRPERSON**: Okay.

**MR NHLEKO**: Yes, Chair. Thanks.

**ADV HULLEY SC**: Thank you, Mr Chair. Now ...[intervenes]

**CHAIRPERSON**: Oh, I see we are at one o'clock. Is everybody amenable that we take a shorter lunch break like

this?

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Will that be fine Mr Nhleko? Will that fine?

**MR NHLEKO:** Oh, no. I am ...[intervenes]

**CHAIRPERSON:** You are fine?

**MR NHLEKO:** Yes ...[indistinct] ...[intervenes]

**CHAIRPERSON:** There are two motions. Either we would move now up to one and then we take the lunch break or we take the lunch break now and come back at half-past one. Is

10 there any particular preference?

**ADV HULLEY SC:** Perhaps we should take the lunch break now Mr Chair.

**CHAIRPERSON:** H'm.

**ADV HULLEY SC:** I would imagine that it would be suitable for Mr Mokhari because I suspect we are going to go into his first appointment.

**CHAIRPERSON:** Yes. Okay let us take the lunch break now then and then we will resume at half-past one. Okay we adjourn.

20 **ADV HULLEY SC:** Thank you.

**INQUIRY ADJOURNS:**

**INQUIRY RESUMES**

**ADV HULLEY SC:** The understanding that there is at least *prima facie* case against the employee, would that be correct?

**MR NHLEKO:** Yes, precautionary suspension is on full pay, full benefits, with the exception that you would not be allowed to report for duty and you may have to surrender certain items belonging to the employer for – maybe those things will also be subjected to the same investigation and so on.

**ADV HULLEY SC:** The point I am making is that you must be satisfied at the very least that the person that there is *prima facie* case against the person, is that correct?

10 **MR NHLEKO:** That is correct.

**ADV HULLEY SC:** So against that backdrop, what was the purpose – because according to your terms of reference you have instructed Werksmans to conduct an assessment or to conduct a process, they are entitled to interview witnesses in order to establish whether there is a *prima facie* case against General Dramat and Sibiya.

**MR NHLEKO:** Look that work was also running concurrently, it is - if, for instance, what I said was I am putting you on suspension but I am also instituting an  
20 investigation so the investigation by Werksmans, it is part of a – it is part of this work that needed to happen.

Now remember that – I think I must have also indicated that in the letter that I sent to General Dramat and others, that the precautionary suspension, I think in the public services defined within 60 to 90 days, something

like that.

So it was my intention that within a shorter period as much as possible of about 60 to 90 days you cannot keep the fate of a human individual hanging in the air because, I think, Chair, as I had alluded to earlier on that some of the things that concerned me, not only just with the police but also even in some of the areas in government wherever worked, is the question of, you know, somebody who stays at home for two years on suspension,  
10 four years on suspension, seven years on suspension and so on, it does not make sense.

So it is the swiftness that is necessary in regard to cases such as this and that is why it was important that you put somebody on suspension but start your investigation so that you establish the facts within the shorter period of time as possible.

If there is nothing to be pursued in regard to the person that you have put on suspension, that person comes back to work but if there are matters that have got  
20 to be pursued then you subject that person to a disciplinary process.

**ADV HULLEY SC:** Thank you, Mr Chair.

**MR NHLEKO:** Thank you.

**ADV HULLEY SC:** Now you obtained the Werksmans' report sometime in late April of 2015, is that correct?

**MR NHLEKO:** Maybe, I have not checked the date.

**ADV HULLEY SC:** If you would turn with me to EXHIBIT – bundle LEA1, Mr Chair, and the specific exhibit is ...[intervenes]

**CHAIRPERSON:** LEA1?

**ADV HULLEY SC:** That is correct, Mr Chair.

**CHAIRPERSON:** Okay, I have got LEA1. Yes?

**ADV HULLEY SC:** And this is EXHIBIT Y8A. You have attached to that – your affidavit, you have attached the  
10 Werksmans' report.

**CHAIRPERSON:** What page did you say?

**ADV HULLEY SC:** The specific page number is page 187, Mr Chair.

**CHAIRPERSON:** Did you say 187?

**ADV HULLEY SC:** 187.

**CHAIRPERSON:** 87?

**ADV HULLEY SC:** 87, that is correct.

**CHAIRPERSON:** Oh, the last page of...

**ADV HULLEY SC:** It is the very last page of the  
20 Werksmans' report.

**CHAIRPERSON:** Of the Werksmans' report. Okay.

**ADV HULLEY SC:** It is dated the 24 April 2015. Now that is approximately when you would have received it, is that correct?

**MR NHLEKO:** Ja, as I said, Mr Hulley, it is – whether it

was this date or soon thereafter, I would not know, but I would not have the specifics of it.

**ADV HULLEY SC:** And then arising out of that report, you have now received the report, arising out of it, I would imagine that you would considered the report, satisfied yourself as to its contents, the implications, would that be correct?

**MR NHLEKO:** Yes, that is correct.

**ADV HULLEY SC:** And you would then have taken the  
10 decision about what to do with the report, is that correct?

**MR NHLEKO:** Correct.

**ADV HULLEY SC:** Now we know that a criminal investigation was then instituted against Mr Robert McBride, Mr Sesoko and Mr Khuba, is that correct?

**MR NHLEKO:** Ja, I heard about them.

**ADV HULLEY SC:** And the Werksmans' report had made a recommendation that a criminal prosecution should be – or that a criminal case should be opened against them, is that right? Well, perhaps we should read the report to be of  
20 assistance rather than to misquote. Let us turn to page 186 of that bundle. Look at paragraph 6.4.5. It says:

“In the absence of any information as to which of the three cosignatories were responsible for the deletion of information from the first report, we recommend that Khuba, McBride and Sesoko be

charged criminally for defeating the ends of justice or obstructing the administration of justice and that disciplinary charges be brought against them in their capacities as employees.”

As a fact they were charged criminally, is that right?

**MR NHLEKO:** No, I heard about them being charged, yes.

**ADV HULLEY SC:** Well, were you the impetus or were you the basis upon which – or let me rephrase that, did you open a charge against them?

10 **MR NHLEKO:** No, I do not run criminal investigations, sir.

**ADV HULLEY SC:** Pardon me?

**MR NHLEKO:** I did not run criminal investigations, in my capacity then as Minister.

**ADV HULLEY SC:** No, no, fair enough, but I think anybody can open a criminal case. So the question to you is not ...[intervenes]

**CHAIRPERSON:** I guess the question is did you lay a complaint that led to their criminal prosecution?

**MR NHLEKO:** No, I think what must have happened is  
20 that the Werksmans – I nearly said Worksmen Compensation.

**CHAIRPERSON:** The Werksmans Attorneys.

**MR NHLEKO:** The Workmen’s Compensation, there used to be something like that at some point.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** But the Werksmans' investigation report, it made a variety of recommendations, so must have referred it to different sort of limits also to look at areas that were relevant and/or applicable to them or something, yes.

**ADV HULLEY SC:** In fact, if you will turn with me to bundle LEA7. Are you moving on to another point or are you still ...[intervenes]

**ADV HULLEY SC:** It is the same point.

**CHAIRPERSON:** Oh, okay.

10 **ADV HULLEY SC:** We are just exploring something further, Mr Chair. If you would ...[intervenes]

**CHAIRPERSON:** What page?

**ADV HULLEY SC:** It is at page 3211.

**CHAIRPERSON:** 3211?

**ADV HULLEY SC:** That is correct, Mr Chair, it is part of a docket and it is EXHIBIT Y8G.

**CHAIRPERSON:** Yes.

**ADV HULLEY SC:** If you can turn, Mr Nhleko, to page 3211. Do you have the document?

20 **MR NHLEKO:** No, I am following you, though. So if you can just read it out to me.

**CHAIRPERSON:** Yes, I think he will be able to follow you.

**ADV HULLEY SC:** Thank you, Mr Chair, this is a sworn statement by a certain Lieutenant Colonel Gwayi.

**MR NHLEKO:** Wine?

**ADV HULLEY SC:** Yes.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** Gwayi, I think. I am just mentioning, putting it that way in case if it is pronounced in the way that I think it may – might be – it s just that I do not know whether it is isiZulu or not but if it is isiZulu it would be Gwayi.

**MR NHLEKO:** Oh, okay.

**CHAIRPERSON:** But it might not be isiZulu so... But you  
10 may or may not know who the person is so I thought you might know whether you know the person.

**MR NHLEKO:** Oh, I thought Mr Hulley was just mentioning that there is this statement.

**CHAIRPERSON:** Okay, okay.

**MR NHLEKO:** But I have not heard the question, yes.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Now the sworn statement particularly  
seems to be – it is marked as A1 in the docket which from the instructions that I have received means that it is the  
20 very first statement in the docket, it is the statement usually of the complaint, that is the statement that gives rise to the charge sheet or rather to the docket being opened.

**MR NHLEKO:** No, I hear you and I am following, sir.

**ADV HULLEY SC:** Now he says in paragraph 3 of his

statement, he says:

“I have duly mandated to depose to...”

Well, he actually says dispose but I imagine he intended to say:

10 “...depose to this affidavit by the Acting National Head of the DPCI, General Berning Ntlemeza in my capacity as the office manager in the office of the National Head DPCI. My duties entail, among other functions, dealing with the correspondence that needs the attention of the National Head or has been dealt with by the National Head DPCI. During the performance of my duties I have on the 8 May 2015 received correspondence from Ministry of Police as signed by the honourable Minister of Police, Mr N P T Nhleko to the effect of submission of the report compiled by the Werksmans’ IPID investigation commission into Zimbabwean Renditions. The report, therefore, elucidates some inconsistencies relating to two reports associated o

20 a single IPID investigation on the issue of Zimbabwean Nationals that were subjected to rendition thus giving rise to an investigation of perjury, corruption and defeating the ends of justice by either the IPID deponents that were interviewed, compilers of first and second IPID reports.”

Now are you familiar with the background leading up to this docket being opened?

**MR NHLEKO:** No, I am not, there is something that you read out there which I find strange. I mean, I would not write as Minister of Police to somebody that I do not know and somebody who is not the duly delegated person of the institution in question. So I would not do that, so the person who deposed that affidavit, you said it is a Mr or Ms Wayi?

10 **ADV HULLEY SC:** Gwayi.

**MR NHLEKO:** I would not know that person.

**ADV HULLEY SC:** Well, the person is saying ...[intervenes]

**MR NHLEKO:** So the person say I wrote to him or her, is it not?

**ADV HULLEY SC:** He says:

20 “During the performance of my duties I have on the 8 May 2015 received correspondence from Ministry of Police as signed by the honourable Minister of Police, Mr N P T Nhleko to the effect of submission of the report compiled by the Werksmans’ IPID investigation commission into Zimbabwean Renditions.”

**MR NHLEKO:** Honourable Chair, there is something wrong with this formulation because there is a

presupposition that I must have written to this individual.

**CHAIRPERSON:** Well, certainly what ...[intervenes]

**MR NHLEKO:** Unless this person says ...[intervenes]

**CHAIRPERSON:** What this individual suggests is that there is correspondence that came from you, whether it was directed to him or to somebody else but he refers to correspondence from you.

**MR NHLEKO:** Right.

**CHAIRPERSON:** But I am not sure if it is clear whether  
10 the correspondence was directed to him or to somebody else but he refers to some correspondence from you.

**MR NHLEKO:** Yes. Unless it is somebody who introduces himself or herself, let us say as registry clerk or somebody who receives correspondence and says this is what I have received from ...[intervenes]

**CHAIRPERSON:** Well, he occupies – he does not occupy, I think – I think he is some – is he a Lieutenant Colonel?

**ADV HULLEY SC:** Mr Chair, if you would consider the last ...[intervenes]

20 **CHAIRPERSON:** Ja, his is a Lieutenant Colonel in the South African Police stationed at DPCI investigation offices in Silverton Pretoria at that time.

**MR NHLEKO:** Ja. I do not know, I think it is something that would have to be ...[intervenes]

**CHAIRPERSON:** Would you like to see the particular

...[intervenes]

**MR NHLEKO:** No, it actually does not matter, Chair.

**CHAIRPERSON:** Ja, okay.

**MR NHLEKO:** It is just that I think it is something that requires further clarification at a later point.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Because there is no way that I would write to somebody who is not the head of the institution.

**ADV HULLEY SC:** I do not think it is ...[intervenes]

10 **CHAIRPERSON:** Well what – it may be that you wrote to the head of DPCI but – and that correspondence was in the file that was given to this person for purposes of [inaudible – speaking simultaneously]

**MR NHLEKO:** Supposedly by the head of DPCI, okay.

**CHAIRPERSON:** Yes. That is possible. I do not know whether Mr Hulley would [inaudible – speaking simultaneously] as well.

**ADV HULLEY SC:** Yes, I can be of assistance in that respect. If we could turn to page 3209, which is two pages  
20 before that.

**CHAIRPERSON:** 3209, yes.

**ADV HULLEY SC:** Thank you, Mr Chair. This is the letter that he is referring to which is a letter dated the 8 May 2015 which has your name at the bottom and he has addressed to the Acting Head of the DPCI, General

Ntlemeza, and it reads:

“As the Minister of Police, I commissioned an investigation into the existence of a so-called two IPID investigation reports on renditions of Zimbabwean Nationals. Such an investigation was concluded by Werksmans Attorney on the 24 April 2015. This report is therefore referred to you for your consideration as it implicates some officials of the DPCI.”

10 **MR NHLEKO**: Okay.

**ADV HULLEY SC**: That is the document.

**MR NHLEKO**: Okay.

**CHAIRPERSON**: So that makes sense?

**MR NHLEKO**: Ja, I seem to be – no, I seem to be having at least some sense, an administrative sense of perhaps what might have happened.

**CHAIRPERSON**: Ja, okay.

**MR NHLEKO**: It is just that earlier on, Chair, it sounded like I must have written to this Mr Wayi or Ms Wayi. And  
20 that was my confusion then, but I am clarified, thanks.

**ADV HULLEY SC**: Well, what I was trying to ascertain is this was written to General Ntlemeza because it concerned the officers under his command or people within his area under the DPCI, correct?

**MR NHLEKO**: Correct.

**ADV HULLEY SC:** It says that it implicates some officials of the DPCI. Specifically, it seems to be referring to, amongst others, General Dramat, General Sibiya, correct?

**MR NHLEKO:** Ja, I will take your formulation, ja, amongst others.

**ADV HULLEY SC:** I think there may also be a certain Captain Maluleke.

**MR NHLEKO:** Right.

**ADV HULLEY SC:** But those would be the three people  
10 from the DPCI who had been implicated in the Werksmans' report.

**CHAIRPERSON:** Just one second, Mr Hulley, you say we aim to try and finish at – or I did say we will try and finish at three. Mr Mokhari had indicated yesterday that his re-examination should not be longer than 30 minutes. May I just find out whether that is still the position? He agrees. So it seems that you may have to aim to finish not later than half past two.

**ADV HULLEY SC:** Thank you, Mr Chair.

20 **CHAIRPERSON:** Ja, okay.

**ADV HULLEY SC:** Now what I am trying to understand is how the – the people who were implicated over here and the purpose of the report related, of course, to the DPCI, it was given to them for their purposes and if you are not in a position to assist us of course by all means say so but I am

trying to understand how we went from that to a criminal investigation that is open against IPID officials. If you can be of assistance.

**MR NHLEKO:** No, I think, Mr Hulley, I would not be able to assist you there. Ja, I would not.

**CHAIRPERSON:** Can I take you back while Mr Hulley is looking at something, to the decisions that you may have made with regard to – or arising from the Werksmans' report. Did you make any decision of a disciplinary nature  
10 arising out of that report and, if so, in regard to whom? Like deciding to suspend or that somebody must be – must face a disciplinary hearing, must face disciplinary charges. Did you make any decisions like that arising – based on that report?

**MR NHLEKO:** Amongst others I think it was certainly the suspension of Mr McBride arising ...[intervenes]

**CHAIRPERSON:** Of Mr McBride?

**MR NHLEKO:** Of Mr McBride, yes.

**CHAIRPERSON:** Yes, yes.

20 **MR NHLEKO:** Arising out of that very same report.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Then, of course, I think the relevant levels of authority then dealt with others but at my level ...[intervenes]

**CHAIRPERSON:** Yes, yes.

**MR NHLEKO:** ..it was the question of Mr McBride, I think, out of that report.

**CHAIRPERSON:** Yes. So in terms of any decision to suspend anybody arising out of that report, the only decision to suspend somebody that you took based on that report was to suspend Mr McBride.

**MR NHLEKO:** Right.

**CHAIRPERSON:** But he was only one in terms of the decision to suspend by yourself, not by somebody else.

10 **MR NHLEKO:** No, he was suspended by myself, yes.

**CHAIRPERSON:** Ja, ja, okay. Mr Khuba and Mr Sesoko would have been suspended by somebody else.

**MR NHLEKO:** By somebody else, yes.

**CHAIRPERSON:** Yes, ja. And in terms of whether any criminal investigation should be pursued, did you make any decision - now I accept that you are not the prosecutors, you are not in the NPA.

**MR NHLEKO:** Right.

20 **CHAIRPERSON:** But did you make any decision along the lines that the criminal justice system must – here is the report, they must make whatever decision they might wish to make.

**MR NHLEKO:** Look, the report, Chair, referred to different sort of arms within the police service. They also needed to read it, analyse it on the basis of their area of function.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And then decide what it is that would need to happen.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And I happy that the Chair qualifies this point that, you know, of course, I have got nothing to do with the NPA.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** But also, the NPA itself, will not on the  
10 basis of merely a report out there in public then decide no, we are prosecuting.

**CHAIRPERSON:** Ja, make their own decision.

**MR NHLEKO:** Yes, yes, yes.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** So the arms of investigations such as the police, whichever level it would be, would then be involved to look into that

**CHAIRPERSON:** Yes.

**MR NHLEKO:** And then look at how they work with the  
20 NPA.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** In the construction of charges, if any.

**CHAIRPERSON:** Yes, yes. Let us talk about your decision to suspend Mr McBride. Mr McBride was not a signatory to the first report, is that right?

**MR NHLEKO**: Right.

**CHAIRPERSON**: He was not a signatory to the first report.

**MR NHLEKO**: Right.

**CHAIRPERSON**: Indeed, the first report had been given to the NPA before he joined IPID.

**MR NHLEKO**: Right.

**CHAIRPERSON**: Ja. Now what was your understanding of what you thought he had done wrong even if that was  
10 not a final determination, just *prima facie*, that really needed to be investigated given that he signed the second report only and had not been there – he had not expressed or associated himself in any way with any views or analysis that may have been part of the first report on 22 January because he was not part of IPID at that time.

So up to a certain point I do have some understanding of concern in relation to Mr Khuba, who has signed the first report which said one thing and signed the second report which said something contradictory, but I am  
20 not sure that I understand in regard to Mr Sesoko and Mr McBride who only signed one report, namely the final report.

So you, being the person who made the decision to suspend Mr McBride, I am trying – I would like you to assist me to understand in your own mind what did you see

as *prima facie* wrong as far as he was concerned?

**MR NHLEKO:** Honourable Chair, two things. The first one is that the contention here is not about signing, okay, it is not about signing. And, of course, you know, it is a different set of a debate in terms of regulations and applicable laws and whatever, whatever, that is a different thing. But you know what we seem to be forgetting is that we are all governed by principles of accountability.

For an example, if I were to follow the analogy by  
10 the Chair, it would also apply to me to then say what do I  
have to do with the generation of a report by the Civilian  
Secretariat for Police which was done in 2012 because I  
was not there, I only became Minister in 2014. So which  
would mean any other work done before I came in, it is  
what I do not inherit, you know, I do not identify with it. In  
fact, I do not even want it. Government cannot work like  
that so I am just saying ...[intervenes]

**CHAIRPERSON:** No, no, I do not think it is the same  
thing, maybe let me take you one step further. What do  
20 you say to the proposition that says as far as Mr McBride  
was concerned, he had regard to whatever he had regard  
to and came to the conclusion that the report that comes to  
you, that is associated with him, must contain an analysis  
that he was happy with and recommendations that he felt  
he could justify, if the earlier report had a recommendation

that he felt he could not be justified or had an analysis that he felt could not justify, he may have said well, this one, that will have my signature, must contain what I can also stand for, what I can justify. Now what is wrong with that?

**MR NHLEKO:** I will tell you what's wrong with that Chair.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** Firstly, it takes us back to this issue of, you have a report that is in there, you don't nullify it and therefore you generate another one but the one that you're  
10 generating looks similar to the first one but materially you have tampered with it, that's the issue. Now, in fact, the investigation clearly shows that there was no additional information in the second report, in fact what happened is that there was certain paragraphs and content, material content for that matter expunged from the first report to construct the second report.

**CHAIRPERSON:** But when you say that, when you say that what comes across to me is, you are disagreeing with Mr McBride's approach you are disagreeing with his  
20 analysis, you are disagreeing with his recommendation. You say, I don't agree with this analysis, I don't agree, that what was in the first report, those paragraphs should not also be in this report but he has taken a different view, I'm just taking a possible argument. He has taken a different view, so what's wrong with taking a different view?

**MR NHLEKO**: No...[intervenes].

**CHAIRPERSON**: Do you punish somebody simply because they have a different view.

**MR NHLEKO**: No, I'm not [laughter].

**CHAIRPERSON**: I want you to assist me where I have – I need clarification so in other words...[intervenes].

**MR NHLEKO**: I think it's possible Chair, that you might be missing a point somewhere.

**CHAIRPERSON**: Yes.

10 **MR NHLEKO**: A report, an investigation report is not about views, it's not about...[intervenes].

**CHAIRPERSON**: But surely when they make a recommendation those are views?

**MR NHLEKO**: Can I finish Chair, the investigation report, it's not about views.

**CHAIRPERSON**: Hmm hmm.

20 **MR NHLEKO**: What constitutes an investigation report are statements collected, sworn to statements collected from individuals, analysed, produced that report. So, it's not about views, with my view is that this and so on. So, if you have statements that, clearly, whether it's one or two individuals, that implicate you in relation to allegations of the commission of crime, for an example. So, you can't then say I have a view about these sworn statements that actually you may not have committed that crime it doesn't

work that way. Now – and that's why, Chair, it's quite important, and I think I tried to emphasise this point on the first day, that all of us, we need to respect processes because institutional processes, they are there to assist us, that's another level for an example which must determine your extent of involvement and/or guiltiness for an example, you must establish that but on the basis of what is there, these are the implications and so on. So, much as I hear the Chair from that point of view, but we  
10 shouldn't make it out as if it's, you know, a general analytical kind of report, necessarily. It is borne out of what is contained in the docket and/or dockets.

**CHAIRPERSON:** Yes, you see I have an issue with your evidence that a report such as that is not about views.

**MR NHLEKO:** Okay.

**CHAIRPERSON:** I expect you to agree to this proposition that says, when an investigator, including an IPID investigator has been given the task of investigating something and they collect evidence, they collect  
20 statements from witnesses and they're supposed to see whether there is – there should be prosecution or they should make a recommendation for prosecution or for misconduct, disciplinary action. They take a view on those – on the contents of those statements to say, what do I make of this evidence. Do I think this evidence reveals

that this person committed a crime that this person acted in breach of the rules of the employer? That's the view they take and when they make a recommendation and the IPID Act says they must make recommendations, that recommendation is the view they take. Somebody else might say, given this evidence in these statements, I recommend that so and so should be disciplined. Somebody else might say, given the same evidence I recommend that this person should not be disciplined. So

10 that's where I'm coming from and you'll get a chance to say you agree or not but I expect you to agree that, I'm therefore saying, when it comes to Mr Sesoko and Mr McBride, it seems to me, and I want you to tell me if I'm looking at it wrongly, it seems to me that there's room to say, they expressed to the extent that they were party to the final report they may have expressed views, some of those views or their approach might have differed from Khuba's approach, alone, writing that other report and you didn't agree with their approach in the second report you

20 didn't agree, your view was that they should not have – they should have included certain paragraphs that they thought should be excluded but it's the view they took and if it's the view they took, must they be punished for the view they took. So, what do you say to that proposition?

**MR NHLEKO:** Honourable Chair, I would have really loved

to agree and share your proposition but I don't and I'll probably also try and provide a simplified sort of example to try and illustrate this point. If you go out here in Johannesburg and you cross a red robot, now a traffic officer will stop you and will tell you if you are lucky, it will tell you this is a violation of crossing a red robot and in violation of the Ordinance Act of 1960 whatever the case is and so on right, that's not a view, that's not a view. So, you can't then say, this traffic cop expressed a view which

10 is different from me as a driver or from me as an onlooker to then say, ja he might have crossed a red robot a perhaps it's possible that he did not and so on, no. So, I'm saying institutions of policing, in particular, honourable Chair, they function against institutional regimes. In this case, your Criminal Procedure Act, your whatever, whatever Act of course I'm not an expert when it comes to these things Chair, I was, merely, a political head of the institution but it doesn't make me a Policeman but they will tell you, and there are professionals that are trained in this

20 regard okay. So, you can't then say, those people, having done so, again, in the background of our minds, having made this example about a traffic cop and say that was an expression of a view, no it's not a view. In legal and criminal matters – and perhaps a view, I think, at the level of yourself, honourable Chair, as a Judge, I mean you can

– you’ve been analysing the law and so on but these are Law Enforcement Agencies that’s all that they do.

**CHAIRPERSON:** That’s very interesting that you say that because remember, a Police Officer who sees what he may think, she may think is a violation, a contravention of a traffic regulation or law may come to you and say, why you doing this, why you crossing the robot and if you give him or her certain answer he may decide, no I understand so therefore I’m not going to arrest you, I’m not going to  
10 charge you. You say people are chasing me, wanting to shoot me, so that’s why I’m running away from them. If you give them a different answer they might say, no that’s no valid reason you’ll have to face charges but I think let’s not take it further, I understand what you say and I think you understand where I’m coming from, Mr Hulley.

**ADV HULLEY:** Thank you Mr Chair. Now, you, if I understand your testimony correctly, you decided to take disciplinary charges against Mr – arising out of the Werksmans report, to take disciplinary – institute  
20 disciplinary charges against Mr McBride but not against anybody else, do I understand that correctly?

**MR NHLEKO:** I took disciplinary steps against Mr McBride.

**ADV HULLEY:** And who else?

**MR NHLEKO:** Against Mr McBride sir.

**ADV HULLEY:** Anybody else other than Mr McBride?

**CHAIRPERSON:** I think he said, nobody else, ja.

**ADV HULLEY:** Oh, sorry I thought he said -I'm sorry my apologies

**CHAIRPERSON:** Ja others may have been suspended but it was not his decision, that is what he said.

**ADV HULLEY:** Sure, what about General Dramat, General Sibiya, Captain Maluleka, any of those?

**MR NHLEKO:** No, the others would be outside of my  
10 ambit really, of course, General Dramat, I had already indicated to that but with regards to the others below him it had to be somebody else, not me.

**ADV HULLEY:** What I'm trying to understand, as far as this is concerned, you commissioned a report to investigate whether there were criminal and whether there was disciplinary misconduct on the part of a variety of people. Those people included Mr Sesoko, Mr Khuba, Captain Maluleke and General Sibiya all outside of your mandate or all outside of your scope of – as their employer outside of  
20 your ability, your power to discipline them, correct?

**MR NHLEKO:** Yes, some of the individuals that you mentioned.

**ADV HULLEY:** All or some?

**MR NHLEKO:** No, I'm saying some of the individuals...[intervenes].

**ADV HULLEY:** Which ones do you disagree with, I've named four?

**MR NHLEKO:** Just run down that list again...[intervenes].

**COMMISSIONER:** No, I think Mr McBride was the one person he said he had power to suspend, General Dramat was another person that would have fallen within his power but by the time, I think he had already – he had already suspended him, the Werksmans report.

**ADV HULLEY:** Okay.

10 **CHAIRPERSON:** Ja, I don't think there was anybody else who fell within your power to suspend, is that so, among the people mentioned?

**MR NHLEKO:** And I think we should also qualify this Chair. General Dramat, it was more to do with being implicated in the commission of crime.

**CHAIRPERSON:** Ja, not in the report.

**MR NHLEKO:** Not the question of the two reports and so on.

**CHAIRPERSON:** Ja.

20 **MR NHLEKO:** And I think we need to be able to draw the line between the two, Chair, thanks.

**ADV HULLEY:** In the terms of reference you were concerned, firstly, about the rendition matter and that involved General Dramat, General Sibiyi, Captain Maluleke and perhaps other individuals but you identified two

specifically. You spoke about General Dramat and General Sibiya.

**MR NHLEKO:** Ja.

**ADV HULLEY:** You were also concerned about the circumstances which gave rise to the amendment of the IPID report and as far as that was concerned you were concerned, particularly about the fact that there were three people and that was Mr McBride, Mr Sibiya and Mr Khuba – sorry Mr Sesoko and Mr Khuba, correct?

10 **MR NHLEKO:** That I was concerned about what?

**ADV HULLEY:** In relation to the two reports.

**MR NHLEKO:** Right.

**ADV HULLEY:** Correct?

**MR NHLEKO:** Correct.

**ADV HULLEY:** Now, what I'm trying to understand is how do you – on what basis you commissioned an investigation or an – into misconduct, let's focus specifically on misconduct into misconduct of people who did not fall under your power or authority to discipline?

20 **MR NHLEKO:** Now, there's absolutely nothing wrong with investigating and in the investigation, people who you do not have a direct supervision on are implicated. So, you wouldn't say, these people are implicated but because I have nothing to do with direct supervision over them, so they should not be subjected to disciplinary hearing, that

would be incorrect. In fact, remember that, in the position that I was in, I was responsible in overall of the portfolio. So, if I felt that – not even felt because I remember the Chair and I, we were talking about feelings and views, so I must be careful in terms of what I say here. So, you have an investigation that then points out that in the division or the unit that I am supervising you have a X, Y, Z kind of person who is alleged to have committed the following whatever. Now, you refer that matter to the supervisor

10 concerned and say, here is a report that says the employee that you are supervising is implicated in the commission of an offence, a certain offence or misconduct and so on and that person, manager and supervisor of that employee would then need to roll-out a process of dealing exactly with that issue okay. So – but there's nothing wrong in identifying that, you know, there's certain – there's, in the report, or whatever that identifies people that you are not even supervising who are part of – who are implicated in the commission of an offence and so on, there's absolutely

20 nothing wrong with that and there's a difference, for your benefit, Mr Hulley, there's a difference between what I've just said and I then saying I'm now issuing disciplinary charges against those employees that have been supervised by this other employee that falls under my supervision, you know, there's a difference between the

two, thanks very much Chair.

**ADV HULLEY:** You see the difficulty is, the investigation wasn't exclusively into Mr Robert McBride's alleged misconduct or Lieutenant General Dramat's misconduct. You were investigating or your terms of reference made it clear that you were investigating several people in the DPCI which included Dramat, Lieutenant General Dramat, General Sibiya and others within the DPCI and in relation to IPID you were investigating, not only, Mr McBride but  
10 you wanted others, within the IPID to be investigated as well, would that be fair to say?

**MR NHLEKO:** No, no I think you're wrong Mr Hulley, absolutely wrong. We were not investigating certain individuals we were investigating a circumstance that said, how come you have this report and then you have this one, right. So – because the manner in which you craft it, it's as if, you know, I must have looked at you Chair, and said no, I want to investigate you, no it doesn't work that way. There is a particular circumstance and an occurrence that  
20 took place and the question was, let us establish the facts around this. So, in the process, of course, of the investigation it then begins to reveal players in the occurrence of a particular circumstance and it's on the basis of which, then, a particular institutional process has got to take place. So, I wouldn't like Mr Hulley to

understand this thing as trying to individualise it and say, no there were certain individuals and specific people that were being investigated, there was an occurrence.

**ADV HULLEY:** You see the difficulty with that is, if I understood correctly, the investigation was specifically two-fold. It was an investigation into a criminal misconduct and it was an investigation to disciplinary misconduct, correct?

**MR NHLEKO:** Yes, it covered both the angles.

10 **ADV HULLEY:** And it related to – you wanted to know if there were any of the – any people from IPID who were implicated or any people from IPID who may have been guilty of the criminal or the disciplinary misconduct.

**CHAIRPERSON:** Don't forget here your answer. I just want to say we are at twenty-five past two, okay alright.

**ADV HULLEY:** Thank you Mr Chair.

**CHAIRPERSON:** Ja, give your answer Mr Nhleko.

**MR NHLEKO:** Can you reformulate that question, no not reformulate it...[intervenes].

20 **CHAIRPERSON:** Repeat it, he's asking you to repeat the question.

**ADV HULLEY:** Thank you Mr Chair. Let's consider the terms of reference...[intervenes].

**MR NHLEKO:** No, just ask the question, Mr Hulley...[intervenes].

**CHAIRPERSON:** Might I mention...[intervenes].

**MR NHLEKO:** There's a question that you posed, that's what I'm interested in.

**CHAIRPERSON:** My intervention disturbed...[intervenes].

**ADV HULLEY:** Thank you Mr Chair.

**CHAIRPERSON:** Ja.

**ADV HULLEY:** The purpose of the investigation insofar as IPID was concerned, you wanted to know, specifically, what were the circumstances which gave rise to a changing of  
10 the report, on the first report to the second report and you were specifically concerned with whether there – who were the individuals that may have been involved in doing so and the circumstances which gave rise to the changes and who are the individuals, within IPID that may be guilty of criminal or disciplinary misconduct, is that right?

**MR NHLEKO:** Yes, that's correct.

**ADV HULLEY:** Now, I would have been – given the attitude or the testimony that you've given here today it would have – and your acknowledgement that you had no  
20 power over anybody other than Lieutenant General Dramat or Mr McBride, I would have expected that the investigation would have been into whether Mr McBride committed misconduct or whether Lieutenant General Dramat committed misconduct.

**MR NHLEKO:** Mr Hulley, I've responded to that question

sir. I've need to...[intervenes].

**CHAIRPERSON:** Yes, I think you have.

**MR NHLEKO:** Yes, I made examples Chair...[intervenes].

**CHAIRPERSON:** But I think, maybe Mr Hulley wants to – you are suggesting and you want to know whether he has got any comment to your suggestion?

**ADV HULLEY:** Indeed, it's a proposition that I would obviously – and what you must appreciate sir is that...[intervenes].

10 **CHAIRPERSON:** Because his answer was, there's a situation that had arisen and it was necessary to establish what happened, how the situation came about, who, if anybody was – had committed misconduct or an offence and it so happened that in the course of that investigation, obviously persons who had, had a role to play would be asked questions. I think that is what he said ja, I'm putting it in my own way but he – Mr Hulley is suggesting that he would have expected you to confine the investigation to the persons who fell within your authority in terms of  
20 disciplining, namely Mr McBride and General Dramat, you may be able to say, I didn't see it that way or I thought it's necessary to look at everybody that may have had a role to play, do you want to say anything?

**MR NHLEKO:** No, I disagree with his proposition.

**CHAIRPERSON:** His suggestion.

**MR NHLEKO:** Yes, I actually do and, in fact, even earlier on I did allude to the mere fact around the issues of oversight responsibility.

**CHAIRPERSON:** Ja, okay.

**ADV HULLEY:** Thank you Mr Chair and on what basis, I'm trying to understand this, on what basis, given that you understand, you appreciate that you have not command over or direct command or operational command over Mr Khuba, on what basis, do you phone him and tell him, 10 instruct him, in fact to cooperate with Werksmans investigation?

**MR NHLEKO:** No, on the basis that there was an investigation and he needed to cooperate with the investigation.

**ADV HULLEY:** No, I understand that in the same way that I can phone – one can phone up anybody else but the question is, on what authority did you do so?

**MR NHLEKO:** On the basis of the overall responsibility that I had as mandated by the constitution and the 20 oversight responsibility from the department.

**ADV HULLEY:** Sir your earlier testimony was, yesterday, your testimony was you don't phone people that are lower down on the rung, you phone the person that's at the head of that institution. Now in the case of IPID that was Mr Kgamanyane when Mr McBride was on suspension. So,

what I'm asking you is, if you wanted an instruction to be given to Mr Khuba, why didn't you phone Mr Kgamanyane?

**MR NHLEKO**: No, you're getting it wrong at the time when I called Mr Khuba Mr Kgamanyane was not on the scene, if my recollection – if I'm correct, I mean he was not there...[intervenes].

**ADV HULLEY**: Who was the head?

**MR NHLEKO**: It was Mr McBride...[intervenes].

**ADV HULLEY**: So why didn't you phone Mr McBride?

10 **CHAIRPERSON**: Ja I think that's my recollection as well, that's my recollection as well that it was Mr McBride.

**MR NHLEKO**: Yes, it was Mr McBride who himself was also implicated in the very same issue of the investigation.

**ADV HULLEY**: That's the point and the point is that you bypassed Mr McBride and went straight to Mr Khuba and – now there could only be one reason why you could have gone directly to Mr Khuba, to instruct him to cooperate with the investigation.

**MR NHLEKO**: Right.

20 **ADV HULLEY SC**: Because you suspected that Mr McBride was going to have some wrongdoing? Correct?

**CHAIRPERSON**: No I am sorry just repeat the question.

**ADV HULLEY SC**: There is only one reason why you would have bypassed Mr McBride and gone straight to Mr Khuba was because you suspected that Mr McBride was guilty of

some wrongdoing.

**MR NHLEKO**: No.

**CHAIRPERSON**: Mr McBride – he suspected that Mr McBride had done something wrong?

**ADV HULLEY SC**: That Mr McBride was the one that was guilty.

**CHAIRPERSON**: Okay.

**MR NHLEKO**: But Mr Hulley you would appreciate this thing. Guilt is never suspected. Guilt is established  
10 through processes. So I cannot – I cannot look at you or any other human individual and suspect guilt. It never works that way. However you could be a person that is implicated in the wrongdoing and I think he – those are the added kind of terms that are used but they use about – the usage of the concept of suspected guilt defeats the whole notion of why you need to have institutional and or legal processes that must then establish whether you are guilty and to what extent and whether you are not guilty, that is it. That is my ...

20 **ADV HULLEY SC**: I accept that.

**MR NHLEKO**: Understanding of general practice basically.

**ADV HULLEY SC**: I accept that. You have obviously got to establish it but one could have a suspicion nothing wrong with having a suspicion. Your suspicion could be based on nothing and of course your suspicion could be based upon

something.

**MR NHLEKO:** Mr Hulley I think let us agree that we disagree.

**ADV HULLEY SC:** Okay. Let us move on.

**MR NHLEKO:** I mean for me as I say I mean the – you cannot suspect guilt. You know. Wrongdoing yes you can suspect but not guilt.

**ADV HULLEY SC:** Now the second question is, if you – you knew that Mr Khuba had – had been – you had been told  
10 that Mr Khuba was not cooperating. I would imagine that you would also be told that Mr McBride was not cooperating.

**ADV MOKHARI SC:** Chair if Mr Hulley can indicate when is he going to finish because you have given him time he is just continuing and eating into the re-examination.

**CHAIRPERSON:** Yes I was also looking whether that was going to be the last question.

**ADV HULLEY SC:** Yes.

**CHAIRPERSON:** Or what. We are at twenty-five to three. I  
20 am not – I am not saying stop abruptly.

**ADV HULLEY SC:** Absolutely.

**CHAIRPERSON:** What is the situation?

**ADV HULLEY SC:** Mr Chair if you would bear with me. Yes I think I am down to two – basically two propositions and then I want to sum it all up.

**CHAIRPERSON:** But is that five minutes or how much is that?

**ADV HULLEY SC:** I do not think it is...

**CHAIRPERSON:** Ten minutes?

**ADV HULLEY SC:** I think it is depending on the answers I would think that it is about fifteen/twenty minutes.

**CHAIRPERSON:** Yes but we have got to come to some conclusion.

**ADV HULLEY SC:** Absolutely Mr Chair. The difficulty as I  
10 said at the outset is that I am making an assessment in my head but then my assessment is based upon a response that would be relatively short.

**CHAIRPERSON:** Well we – we – we have got to – we have got to come to some conclusion.

**ADV HULLEY SC:** Absolutely.

**CHAIRPERSON:** I do not want to say abruptly stop. Well can you try and see if you can wrap up in ten minutes?

**ADV HULLEY SC:** Thank you Mr Chair. If I could ask you  
20 Sir to turn with me to your founding affidavit – sorry your affidavit which is in Bundle LEA1.

**CHAIRPERSON:** And I think I can say the ten minutes is the last ten minutes.

**ADV HULLEY SC:** So

**CHAIRPERSON:** So I just want to make sure that you know that. That will be the last ten minutes.

**ADV HULLEY SC:** Thank you Mr Chair. That is Bundle LEA1 Sir have you got it?

**CHAIRPERSON:** Well he – ja I think you can ahead and ask the question he will decide if he needs it. If he is able to answer without looking at it he will. I think that is his approach.

**ADV HULLEY SC:** Thank you Mr Chair. In your affidavit you deal with the Werksmans Report at some length and if I could refer you to the relevant page.

10 **CHAIRPERSON:** Remember that you might not need to refer if you know what is in that page you can just put the question. He might...

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** He might be able to answer because you probably know what the question is you want to put. So...

**ADV HULLEY SC:** Well my understanding arising out of the affidavit was that you had pursuant to obtaining the Werksmans Report you had decided to institute disciplinary proceedings ...

20 **CHAIRPERSON:** And what was the verb – he – it says: He decided to what?

**ADV HULLEY SC:** Institute disciplinary proceedings against the implicated individuals.

**CHAIRPERSON:** Individuals okay. Alright. Mr Nhleko.

**MR NHLEKO:** So what is it that needs to be known about

that Chair?

**CHAIRPERSON:** He says and I am paraphrasing. You have said that after the Werksmans Report had been presented to you the only person that you decided to take disciplinary action against and here I am talking about suspension was Mr McBride. But he is saying in your affidavit you said you decided to take disciplinary action against the implicated individuals plural.

**CHAIRPERSON:** Yes Chair but the point being.

10 **CHAIRPERSON:** Ja.

**MR NHLEKO:** That the investigation report by Werksmans makes reference to the alleged sort of areas of misconduct by the individuals that are concerned. So I agreed with it and I agreed with it. So this particular paragraph that he makes reference to it is precisely because I agree with the original recommendation that says, disciplinary action must be taken against the following individuals. Okay. Now and I think I have explained earlier on the whole question of the distinction between disciplinary steps as a supervisor that  
20 you take against an employee that reports to you. We against a situation where that particular employee takes disciplinary steps against people that report under him. That is it.

**ADV HULLEY SC:** Thank you Mr Chair. And after the matter went to the Constitutional Court this is now Mr

McBride instituted proceedings in the Constitutional Court to set aside his suspension after you had suspended him and he did so on the basis that you had no power to do so. Is that correct?

**MR NHLEKO**: You follow me Chair. I do think that we are meant to be careful as to how we talk to issues of judgments. We are sitting in front of the Deputy Chief Justice here who is also part of that very same matter and is part of that very same order. So Mr Hulley you would know that the  
10 Constitutional Court did not set aside his suspension and as a matter of fact there is no – in all the courts that Mr McBride went to there was never a [indistinct 01:10:40] on the issue of his suspension. Now the Constitutional Court made the following order because I think we need to clarify this point.

**CHAIRPERSON**: But I do not think you need to read I think your point is it pronounced...

**MR NHLEKO**: 6(3) and other provisions are being for lack of a better word are being shifted as aside and in their  
20 place in particular Section 6 of the IPID Act Section 17 DA of the South African Policy Act must be read in there. Right? And then said on the issue – on the issue of the Minister of Police taking disciplinary steps that matter Parliament needed to deal with it within thirty days and it was for Parliament to then decide whether within the

prescribed thirty days by the Constitutional Court whether it is still both Parliament and the Minister of Police whether they still wanted to pursue disciplinary charges against Mr McBride. So Mr Hulley in that order where is the suspension that is set aside? Because the only thing that happened by the way I will tell you what happened. The only thing that happened you are then an institution of state, a democratic state that did not follow this order to the letter and that is Parliament. It elected not to do anything.

10 I mean it is either you take a position that says, yes you agree or disagree but you cannot just be mum when it comes to matters of an order such as this. Now – and I think that is where fundamentally also my problem was and even for that matter conceptually, I seriously have a problem with a situation such as that. But it happened okay. Now the consequence of which was that because the prescribed thirty day period by the Constitutional Court lapsed. There was nothing in law or in any other matter you can think of that then prevented Mr McBride reporting for  
20 duty and going back to work. Right. So there was no setting aside of suspension in law and reinstatement as it has been somewhat alleged [indistinct 01:13:31] [talking over one another]

**ADV HULLEY SC:** Mr Chair if I can just be fair because that was not the question I asked.

**CHAIRPERSON:** Yes. Yes.

**ADV HULLEY SC:** And I have a ten minute response to a question and my question was whether Mr McBride had instituted proceedings to set – to review and set aside his suspension.

**MR NHLEKO:** No.

**ADV HULLEY SC:** I got told about the Constitutional Court and whatever.

**MR NHLEKO:** Honourable Chair I disagree with this  
10 because he in the formulation Mr Hulley pointed directly to the question of the Constitutional Court having set aside his suspension.

**CHAIRPERSON:** Oh okay I...

**MR NHLEKO:** And that is the point I was clarifying.

**CHAIRPERSON:** I cannot say I remember whether it was that or it was simply saying Mr McBride got an application.

**ADV HULLEY SC:** Which I said and that ultimately went to the Constitutional Court.

**CHAIRPERSON:** But I do not know if it – I do not know how  
20 much it matters in terms of what you have in mind Mr Hulley. If it is important ...

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** You can use it to wrap up.

**ADV HULLEY SC:** The point is as you have already pointed out what the Constitutional Court had ultimately declared

was that National Assembly was the body that was responsible to determine whether Mr McBride could not be suspended.

**MR NHLEKO**: Hm.

**ADV HULLEY SC**: Now it is not your fault of course because at the time that the – that this – at the time it indicated the IPID Act indicated that you did have the power to suspend him.

**MR NHLEKO**: No the IPID Act did not indicate. It said the  
10 Minister of Police as the following whatever. So it was very pointed it is not an indication Mr Hulley.

**CHAIRPERSON**: The powers.

**MR NHLEKO**: The powers yes.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: Ja.

**ADV HULLEY SC**: But then that was done away with by the Constitutional Court?

**MR NHLEKO**: Yes.

**ADV HULLEY SC**: The Constitutional Court said that those  
20 provisions were unconstitutional?

**MR NHLEKO**: Right.

**ADV HULLEY SC**: Which meant that you know that whatever powers you might have had or believed you had you no long had and yet you continued to pursue the matter. Not only did you approach the National Assembly having

been told by the Constitutional Court that you actually did not have those powers. Not only did you approach the National Assembly to try and advance your case but when – when the thirty day period lapsed and Mr McBride returned you suspended him again. You said to – you wrote a letter saying that the National Assembly must decide where Mr McBride must go to, Correct?

**MR NHLEKO**: I do not believe this. Now...

**CHAIRPERSON**: That will be the last question Mr Hulley.

10 **MR NHLEKO**: Yes. Just two things about what Mr Hulley has just said.

**CHAIRPERSON**: I think in effect he is saying is it not true that after Mr McBride had returned to work you suspended him again?

**MR NHLEKO**: Yes but Chair he started somewhere.

**CHAIRPERSON**: Ja, no he started somewhere.

**MR NHLEKO**: He then says that he finds almost something wrong with the fact that I approached Parliament. I was approaching Parliament in compliance with the  
20 Constitutional Court order. And all I was saying to Parliament, Parliament comply with the Constitutional Court this is an order. If an order is issued we all follow the order, simple. So you cannot subject for an example an order to any other set of emotions whether they are political or something or otherwise, it is an order so we had to

comply with that. Because it said Parliament and Minister of Police must then decide whether they still wanted to pursue this.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** So in his formulation Mr Hulley that is.

**CHAIRPERSON:** Yes.

**MR NHLEKO:** He – he insinuates that there was something wrong with me doing that by approaching Parliament which is incorrect.

10 **CHAIRPERSON:** I think I understand your point.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** I do want to bring this to an end so Mr Mokhari can re-examine. I did indicate to Mr Hulley that that was to be the last question. And then I think I gave him more than the ten minutes that I said I was going to be the last ten minutes.

**ADV HULLEY SC:** Yes Mr Chair. I am quite happy of course on your instruction Mr Chair to conclude it at this point.

20 **CHAIRPERSON:** Ja.

**ADV HULLEY SC:** Of course, I did want to afford the witness an opportunity to deal with that.

**CHAIRPERSON:** Ja.

**ADV HULLEY SC:** And of course the opportunity because it is in the affidavit that he has dealt with and it is part of the

–

**CHAIRPERSON:** No that – that...

**ADV HULLEY SC:** It is part of the statements that he has dealt with.

**CHAIRPERSON:** Ja. No, no that is fine. We have got to end here. What is the last point you want to say Mr Nhleko?

**MR NHLEKO:** The last point is in relation to Mr Hulley's assertion that not only did I approach Parliament and so that even after he returned I suspended him. That is  
10 factually incorrect.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** Absolutely incorrect.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Indeed, I did then write to the speaker of Parliament. And said look in the light of all these issues and the happenings in the manner in which they have happened.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** They must then as the institution of  
20 Parliament decide as to how they wanted to deal that issue.

**CHAIRPERSON:** Hm.

**MR NHLEKO:** Okay. I had done almost...

**CHAIRPERSON:** The issue of suspension?

**MR NHLEKO:** No – yes the issue of suspension.

**CHAIRPERSON:** Okay.

**MR NHLEKO**: Now I had done almost everything in my power to approach them and said to them this is what the Constitutional Court says. Let us comply with it.

**CHAIRPERSON**: Hm.

**MR NHLEKO**: Now – and by so saying Chair I was not saying they should. Does Parliament agree with my position?

**CHAIRPERSON**: Hm.

**MR NHLEKO**: I was saying they have got to pronounce –  
10 pronounce whether you want to do this thing or not do it.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: You know between the two and I think even the court itself would have then been satisfied that the order was complied with. But you cannot just leave it hanging out there and so on. And that is my problem you know.

**CHAIRPERSON**: Okay alright.

**ADV HULLEY SC**: Mr Chair just to be fair to the witness and of course Mr Mokhari can deal with it. The relevant  
20 passage and I am referring to is a press statement issued by the witness. It appears in Bundle LEA8 and it is at pages 3639 to 3641.

**CHAIRPERSON**: Ja okay.

**ADV HULLEY SC**: So...

**CHAIRPERSON**: That is fine.

**ADV HULLEY SC:** It is dealt with over there.

**CHAIRPERSON:** Thank you.

**ADV HULLEY SC:** Thank you Mr Chair.

**CHAIRPERSON:** Mr Mokhari re-examination.

**ADV MOKHARI SC:** Thank you very much Chairperson for the opportunity. I just want to ask Mr Nhleko just a few questions.

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** Purely for clarification.

10 **CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** It is not necessarily a re-examination.

**CHAIRPERSON:** Yes. Thank you.

**ADV MOKHARI SC:** Mr Nhleko when McBride brought an application in the High Court to declare Section 6(6) read with Section 6(3) of the IPID Act unconstitutional and those were the sections which give you the power to suspend him and also to institute disciplinary proceedings against the Executive Director of the IPID you opposed that application am I correct?

20 **MR NHLEKO:** Yes that is correct Sir.

**ADV MOKHARI SC:** And you filed an answering affidavit?

**MR NHLEKO:** Yes that is absolutely correct.

**ADV MOKHARI SC:** And in that application McBride did make allegations of ulterior motive and as well as that you were suspending him for – or you are malicious or all those

type of things. And you filed an answering affidavit and responding to those allegations in detail, do you remember that?

**MR NHLEKO**: Yes I do remember Sir.

**ADV MOKHARI SC**: And what happened to those allegations in court?

**MR NHLEKO**: He withdrew them.

**ADV MOKHARI SC**: I did not hear the answer just speak up.

10 **MR NHLEKO**: I am saying he withdrew those allegations of ulterior motives and I think it was ulterior motives and something else I cannot remember but...

**ADV MOKHARI SC**: Yes that is fine I just wanted to know then what happened to them that is all.

**MR NHLEKO**: No he withdrew those – yes.

**ADV MOKHARI SC**: Yes that is right, okay, alright. And then the High Court delivered a very lengthy judgment. In essence it declared Section 6(6) read with Section 6(3) of the IPID Act unconstitutional and on the basis of that it then  
20 found that you had no power to suspend McBride and similarly you will have no power to institute disciplinary proceedings against him because those provisions of the law were not consistent with the independence of IPID which ought to be insulated in terms of the constitution.

**MR NHLEKO**: Right.

**ADV MOKHARI SC:** Did the court make any finding against you of ulterior motive?

**MR NHLEKO:** No there was no such a finding.

**ADV MOKHARI SC:** Now in respect of the suspension I know that you are not a lawyer but we have a judgment here and the Chairperson would be able to read it. The High Court did set aside the suspension of McBride but I want you to comment on what did the court say about his suspension? Did it say that McBride now is free to go back  
10 to his position as Executive Director or did it say something else?

**MR NHLEKO:** I think it – it – the matter yes was pronounced upon by the High Court but pending a constitutional challenge. The effect of which was that the suspension itself was not set aside but I think I am subject to correction in case I am missing something here but that is my recollection.

**ADV MOKHARI SC:** Yes of course and I understand that you do not have the judgment with you and I do not want us  
20 to waste time on that.

**MR NHLEKO:** Yes.

**ADV MOKHARI SC:** Chairperson the...

**CHAIRPERSON:** Yes.

**ADV MOKHARI SC:** The paragraph of the judgment will be paragraph 77(6) of the judgment. Paragraph 77(6) of the

High Court Judgment. So all what the High Court said was that although it has set aside McBride's suspension that McBride must remain on suspension until such time that Parliament has looked into the matter. If indeed the suspension was such of magnitude that McBride ought to return to work what is it that the court considered that although McBride succeeded in his challenge he must still remain on suspension.

**MR NHLEKO**: No I am – I did not hear you Mr Mokhari.

10 **CHAIRPERSON**: The question is...

**MR NHLEKO**: [Mumbling]

**CHAIRPERSON**: The question is since the court that is the High Court now said that Mr McBride must not return to work until Parliament had dealt with the matter.

**MR NHLEKO**: Hm.

**CHAIRPERSON**: What are the considerations that led the court to saying that? That was the question.

**ADV MOKHARI SC**: Yes why will a court – the [indistinct 01:27:10] of the court do such a thing that is the question?

20 **CHAIRPERSON**: Of course the answer would be in the judgment I would imagine and I think Mr Mokhari you can feel...

**ADV MOKHARI SC**: Yes I mean issues of like the allegations I mean what was the nature of the allegations – all those type of things? That is...

**CHAIRPERSON:** Well I want to say Mr Mokhari I want to say anything that is in the judgment you are free to just draw my attention to what the court said even if he does not deal with it. If that is what you want to know.

**ADV MOKHARI SC:** In fact I will...

**CHAIRPERSON:** Taking into account you mention [indistinct 01:27:49].

**ADV MOKHARI SC:** Yes, yes. Chairperson from the High Court judgment paragraph 60, paragraph 67, 68 and 77 in particular 77.6. So 60, 67 will then deal with considerations that the court took into account but essentially then the court was alive to the fact that the Minister pointed out to the nature of the allegations against him, the seriousness and that McBride himself said that I am prepared to face the disciplinary proceedings.

**CHAIRPERSON:** Hm.

**ADV MOKHARI SC:** So the issues of the charges that there was no issue of the charges being frivolous or baseless then that is what I was trying to put to you Mr Nhleko.

20 **MR NHLEKO:** Okay.

**ADV MOKHARI SC:** Yes.

**MR NHLEKO:** It is because the court had also recognised that the allegations were of a serious nature.

**CHAIRPERSON:** Hm.

**ADV MOKHARI SC:** Now, so in terms of our legal system

when the High Court set aside or declare a provision of statute and constitutional it does not become effective immediately. The Constitutional Court must have a final say and this matter of McBride was then taken to the High Court – to the Constitutional Court for confirmation. Again, I am not going to deal with the Constitutional – with the Constitutional Court judgment because it is there and then the Chairperson will be able to read it. But then what was before the Constitutional Court would be the material that

10 was before the High Court. The paragraph that I would like to take you to but again because of time I will read it for you. It is paragraph 12 and this was a judgment delivered by – it was written by the late Honourable Bosielo AJ. In paragraph 12 it says:

“Faced with the glaring discrepancies in the two reports the Minister suspected serious tampering. As a result the commission – Sorry – as a result he commissioned Werksmans Attorneys to investigate the two reports relying on the January Report and

20 the investigation by Werksmans the Minister invoked his powers in terms of Section 6(6) of the IPID Act, the Public Service Act and Chapter 7 of the SMS Handbook and placed Mr McBride on precautionary suspension on 24 March 2015 acting on the strength of Section 6(6)A of the IPID Act read with the

provisions governing disciplinary proceedings under the Public Service Act and the IPID Regulations the Minister served Mr McBride with a notice to attend the disciplinary enquiry.”

The order in paragraph 4 is suspended for 30-days in order for the National Assemble and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.

Now remember, the proposition that was put to you by  
10 Mr Hulley because he was saying to you:

“Despite that the commercial court has set aside the suspension, you still forced ahead and went to parliament...”

And your answer was that you are acting in terms of the constitutional court order but you could not refer to a specific paragraph of it.

**MR NHLEKO:** Alright.

**ADV MOKHARI SC:** And so this is the paragraph that actually then would have prompted you to go to parliament  
20 because you have said that the concourt did what... as a last, we call it a read-in.

**MR NHLEKO:** Yes.

**ADV MOKHARI SC:** Concession 6.3 are no longer there. They cannot be used but you can leave a vacuum, that is what the concourt says. And then he says:

“What can we do in the meantime was, for giving the parliament an opportunity to rectify the legislation”.

He says that:

“We will now read in Section 17(d)(a). Am I correct?

**MR NHLEKO:** Yes, that is very correct.

**ADV MOKHARI SC:** And so, then you say that you acted in terms of that section and again the Chairperson will be able to read Section 17(d)(a) and see for himself that Section 17(d)(c) of the Police Service Act, it actually requires a joint  
10 action.

That is now the minister and parliament, must together act then to trigger either a suspension or additional processes. It cannot be you alone. So that is what really then it is saying but then... I mean, am I correct?

**MR NHLEKO:** That is very correct sir.

**ADV MOKHARI SC:** So you are basically in your response to Mr Hulley, you are basically saying to him: “I have done my part. I have gone to parliament because I wanted to be complying with the concourt order”  
20

Paragraph 5 which says that:

“Minister of Parliament, you have 30-days. Make a decision. Are you going to charge this man or not?”

And you say you have done your part. What did parliament do? Did parliament do its own part?

**MR NHLEKO:** No, certainly it did not in this ...[indistinct]

**ADV MOKHARI SC:** Now the question is. Can you tell the Chairperson what would have happened to McBride's suspension had parliament did... had parliament done its part?

**MR NHLEKO:** Look, that suspension... of course, if we acted in accordance with the constitutional court order. The constitutional court order, you know, gave us a period of about 30-days to, you know, the parliament and the Minister of Police, you know, myself at the time when I occupied the  
10 position.

That suspension would have stayed on but the decision perhaps where parliament would intervene, the question of processing the issues of discipline, okay.

Now, suppose the decision by parliament would have been: "Yes, let us go ahead and, you know, these are the charges and so on and let us deal with them".

So suspension would have gone on beyond that 30-day period as per the constitutional court. In fact, the constitutional court order, the 30-day period was not about  
20 suspension.

It was about rectifying and deal with the procedural issues within the 30-day period and see whether you want to proceed or not proceed with the disciplinary action against Mr McBride.

**ADV MOKHARI SC:** Now thank you very much. Now, let us

move to Dramat because it was also something which came up during your testimony. And Mr Hulley did ask you about your suspension of Lieutenant General Dramat.

We know that the ...[indistinct] foundation challenged that suspension of McBride by yourself in the high court and there was a judgment by Prinsloo J. He also opposed that application. Am I correct?

**MR NHLEKO:** Yes, that is correct sir.

**ADV MOKHARI SC:** And Prinsloo J came with a judgment.

10 So the only thing that I want to ask you in respect of that judgment, you know, that opportunity to also ...[indistinct] at some stage. Did Prinsloo make any finding that you have acted with ulterior motive or malice when you suspended Mr McBride? I mean, sorry. Lieutenant General Dramat.

**MR NHLEKO:** No, there was not such a finding.

**ADV MOKHARI SC:** Again, it was a simple question of interpretation. Your interpretation of the provisions of the South African Police Service as far as the powers of the minister, that is to suspend the head of the HAWKS?

20 **MR NHLEKO:** Yes. And may I also just state that your Honourable Chair? Because this assertion has been made over and over again that I acted unlawfully which is a very strong statement by anybody to say. I was acting lawfully ...[intervenes]

**CHAIRPERSON:** In suspending General Dramat?

**MR NHLEKO:** Ja, but also Mr McBride.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** Ja. Now because acting unlawfully would actually mean you were acted either against the provisions of the law or outside of the law. I think that is what it would mean.

**CHAIRPERSON:** Well, acting unlawfully may mean, depending on the circumstances, it means your actions were in breach of the law.

10 **MR NHLEKO:** Yes.

**CHAIRPERSON:** But there are circumstances where you may act unlawfully but genuinely, believing that you are entitled to act in a certain way even sometimes with the benefit of senior counsel's advice. [laughs]

**ADV MOKHARI SC:** [laughs]

**MR NHLEKO:** Yes.

**CHAIRPERSON:** You go to senior counsel and he says... you say, "If I do this, am I within the law?"

**MR NHLEKO:** Right.

20 **CHAIRPERSON:** It gives you an opinion and says you will be within your right, you will be within the law if you do this and he charges you an arm and a leg. You feel confident. You go and do it. And then you are challenged. The court says, "No, you have acted unlawfully".

**MR NHLEKO:** Yes, yes.

**CHAIRPERSON:** So sometimes you are genuine. It does not mean that you are malicious but it is unlawful. But sometimes it might be a situation where you were malicious or you... and so on.

**MR NHLEKO:** No, thank you very much Chair for the education.

**CHAIRPERSON:** Ja. [laughs]

**MR NHLEKO:** [laughs]

**MR NHLEKO:** The point ...[intervenes]

10 **CHAIRPERSON:** Unfortunately, if he was giving the advice you can argue .and not charge you anything ...[intervenes]

**MR NHLEKO:** [laughs] Yes, so. But the point I wanted to make, nevertheless. I am sorry Mr Mokhari, if I... I must have ...[intervenes]

**ADV MOKHARI SC:** That is fine. You can proceed.

**MR NHLEKO:** ...intervened. But the point I wanted to make is that in all these courts and the related sort of cases and processes, there is no court that said I acted unlawfully.

20 **ADV MOKHARI SC:** No, not unlawfully. You acted unlawfully when you used the provision of the law which the court says is not consistent with the constitution. What the Chair is putting to you is that unlawfully is something... to ask his lawyers that is not something that is offensive.

**MR NHLEKO:** Okay.

**ADV MOKHARI SC:** But the problem is, if you have acted

with ulterior motives, malice, bad-faith, then that is where the problem comes. So ...[indistinct] that the court never said you acted with ulterior motives or malice. But unlawfully, the court has already spoken on that.

**MR NHLEKO:** H'm.

**CHAIRPERSON:** You see, the president and the ministers, cabinet ministers, very often they are involved in litigation and the court says they acted unlawfully but as long as the court has not said you were... the minister of the president  
10 was acting maliciously or in bad-faith or dishonestly, they accept that it is part of their job. Well, some of the things they do, meaning well, would be found to have been done unlawfully.

So it does not necessarily... you should not necessarily feel embarrassed if a court says you acted unlawfully, unless it is a situation where it says you were malicious, you acted in bad-faith or you had ulterior motives. Then that is different.

**MR NHLEKO:** Okay. No, thank you very much Chair.

20 **ADV MOKHARI SC:** Yes, Chair. Then I just want to move to the two reports because there was a lengthy engagement between you and the Chair which was quite enlightening.

But I just wanted to clarify so that you know we are clear about... what it is you are thinking around the issue of the two reports.

If you remember the engagement between you and the chairperson yesterday. The Chairperson was putting a proposition to you and say: “Look, we have this IPID institution which has two reports. And it follows that they should not be really an issue but because logically you should simple say that the last report is the final report. And so what is the fuss there?”

So can we get your clear understanding there in the context of your understanding of what are IPID reports there  
10 for?

**MR NHLEKO**: H’m. My understanding Honourable Chair is that our earlier discussion... I am sorry. I will refer to it as a discussion with the Chair because the various critical points that were thrown in the air as part of that engagement.

Is that for me, I think your interpretation there is based on the general side of things and I think I must have pointed that one out.

But with regards to the reports of this nature which i.e. the criminal law matters relating to police misconduct and so  
20 on, they will essentially be based on factual material.

Now the factual material being the material that you will find in the docket and what you will find in the docket are statements from individuals that states certain things and perhaps implicating me, certain people.

So that is the strength. And I think I eluded also Mr

Mokhari to this point that in case there is a material shift, in other words, somebody made a statement implicating X and then turns around and says, “No, actually I was wrong. The X was not there and maybe I lied”. And whatever the case is. So that materially registers a different sort of conclusion, you know, in a particular way.

But it is also to be expected that when you find, whether it is a follow up or a second report, you would have to refer to the first one, whether you are withdrawing it or annulling it  
10 or amending it. I think that is what practices and so on is.

**ADV MOKHARI SC:** Yes.

**MR NHLEKO:** So I was trying Mr Mokhari earlier on to draw the distinction between constructing, what I would call a general report base don... well, not so much of material and so on, as opposed to an investigative report and so on.

So I think my engagement earlier on about that. Yes, yes.

**ADV MOKHARI SC:** Yes, but I think what... but then what you could appreciate from the engagement with the  
20 Chairperson is that in this type of things a debate can go on and you can have different views.

**MR NHLEKO:** Right.

**ADV MOKHARI SC:** But then the questions that I am going to... and that is now is then... I mean, the conclusion, are the following questions which I would like you to assist the

Chairperson with.

Suppose when you got the two reports, you then looked at what your mind is set: “I cannot have this constitutional institution producing two contradictory reports. What will this send? What message will this send to the public?”

And you become angry as the minister or you become furious to say that: “I cannot have this type of situation. I want to get to the bottom of this”.

**MR NHLEKO**: Correct.

10 **ADV MOKHARI SC**: But somebody may say that: “No, but you are overreacting. There is nothing wrong with what they were doing”.

But ...[indistinct] that time you believed that this can be done.

**MR NHLEKO**: Yes.

**ADV MOKHARI SC**: Is that now then... but my question is. If you are found later that in fact you were wrong, you should not have done anything but you have done something, you would have done something? In what way will that become a  
20 state capture? So that is what I wanted to.

Because remember, we are not here in a court of law. We are not here running a trial. We are here in a commission of inquiry which is focussing on a particular issue of a state capture. So can you assist the Chairperson in that context?

**MR NHLEKO**: Honourable Chair, the... I have also viewed this matter, specifically this matter, not the state capture issue. The matter around Mr McBride and others and so on, as purely as nothing else, employer and employee relations.

Now it is natural in industrial relations practice you... it is a natural thing that there will be disputes that also arise in the employment... employee/employer relationship and so on.

So this matter to me still remains that. The most  
10 unfortunate thing is the manner in which it was handled. I do not know, you know, the happenings outside this particular Commission and so on which I would not want the bore this Commission about what happened and who said what where and so on and so it goes.

But the most unfortunate part was that. The consequence of which was that that what was due to the public to be known as the actual truth out of this matter, the public was deprived because the mishandling of the whole affair ...[indistinct] you could not...

20 The processes that were supposed to establish when the whole question of what happened to the two reports and so on and who is to be held accountable for the discrepancies and so forth, never actually occurred, right.

So that is why I am saying the public, members of the public were then deprived of the actual truth about this. But

the allegations are very serious and they still remain extremely serious.

Now, but the suggestions are that... in fact, I also wanted to address the Chair about this question of the suggestion of the state capture.

Now, the allegations against myself are extremely serious because Mr McBride came here and they said they have captured the criminal justice cluster.

Now the Criminal Justice Cluster, just for your benefit  
10 your Honourable Chair, it is the National Defence Force, it is Home Affairs, it is Correctional Services, it is State Security Agency, it is the South African Police Service, it is the National Prosecuting Authority.

Now, ...[indistinct] at the time when I was there ...[intervenes]

**CHAIRPERSON:** And Justice? Is Justice not part?

**MR NHLEKO:** O, ja. Justice. No, sorry. I am... [laughs]  
And I know why Chair you ...[indistinct] you are quick to pick up the Justice is not mentioned.

20 **CHAIRPERSON:** [laughs]

**MR NHLEKO:** I understand that. So. Yes, and the Department of Justice. So that combination, at the time I was there, I am not sure now, but at this time when I was in government, that was your Criminal Justice Cluster.

Now, if you say I have captured the Criminal Justice

Cluster, you are then saying, I as the Minister of Police then, I had the power to decide on the issues of prosecution which is not true. It is not even allowable by law, okay.

So even constitutionally ...[indistinct] that did not happen. It just does not. Now, ...[indistinct] given a... no, at some point was, when I was trying to follow in what way did, I capture the Criminal Justice System.

My ...[indistinct] was largely was that that point was not conversed any further here in the Commission. To then say  
10 but you are making these allegations that, you know, this person captured these institutions because that means all of them are in my pocket in a sense.

But explain to us as the Commission as to how this individual, myself... I mean, meaning myself would have gone about capturing this particular institutions.

So that was the one ...[indistinct] I had to really, to be quite honest on my side, to then say but why is this point not further taken up or so on.

But I am not blaming the Commission. I am just making  
20 an observation about that as well.

**CHAIRPERSON:** Ja, I must say I do not even remember it being made. I am not saying it was not made. I am saying I do not remember it being made. And probably because it is something that affects you directly, you... no, but you do not need to refer me to it because your counsel will be cross-

examining Mr McBride and he will take that point up.

**MR NHLEKO**: Yes.

**CHAIRPERSON**: Ja.

**MR NHLEKO**: Just on that point Honourable Chair and I am sorry about this. In the communication, the initial communication when I was notified by the Commission, in the letter they need... the commission made the following:

10            “You improperly or unlawfully sought to and duly interfere in the investigative independents of the National Prosecuting Authority, the Independent Police Directorate and the Directorate for Priority Crime Investigations, commonly known as the HAWKS.

              Secondly, you improperly and/or unlawfully sought to unduly delay and/or decline recommended prosecutions.

              You improperly (that is the fourth point) or unlawfully sought to participate in the undue persecution of officials in the NPA, IPID and the DPCI.

20            The last point in the Commissions correspondence:

              “You improperly and/or unlawfully sought to destabilise the NPA, IPID and/or DPCI...”

              Now and therefore my point earlier on ...[intervenes]

**CHAIRPERSON**: You are reading from correspondence from the Commission?

**MR NHLEKO:** That is the correspondence from the Commission.

**CHAIRPERSON:** From the Commission?

**MR NHLEKO:** Yes.

**CHAIRPERSON:** Well, I just want to say [laughs]. I do not see all the correspondence that goes out and actually, it is right that way that I should not see. [laughs] Because otherwise, I would not be able to do anything else. But...[intervenes]

10 **ADV MOKHARI SC:** I think ...[indistinct] referring to the Rule 3.3.

**MR NHLEKO:** Rule 3.3.

**CHAIRPERSON:** Yes, but I think ...[intervenes]

**ADV MOKHARI SC:** And actually, those rules are written... they are written as a standard. Just a standard thing.

**CHAIRPERSON:** Yes, but I am simple saying. I am expecting that insofar as it was a 3.3. Notice, it was suppose to reflect what is in somebody's affidavit is... has implicate you.

20 **MR NHLEKO:** Yes. H'm. H'm.

**CHAIRPERSON:** Ja, okay.

**MR NHLEKO:** Yes, that was my misgiving.

**CHAIRPERSON:** Okay.

**MR NHLEKO:** Only to then say but if these are the allegations that are made against me, why these issues

could not then in arising out of testimonies of people that were here, why were these issues not explored to establish the veracity of these particulars matters and so on?

So that was the only thing but I am... ja, I just wanted to clarify that point.

**CHAIRPERSON**: Yes. Okay, okay.

**MR NHLEKO**: Thank you very much Chair.

**ADV MOKHARI SC**: Yes, but the question now after you have read that, the question would be, did you do any of  
10 those things that are alleged in that notice?

**MR NHLEKO**: No, I did not Honourable Chair. I have demonstrated even in the testimony that I led before this Commission as to why I did certain things.

What informed me and what were the enabling instruments for me to take certain positions and/or action in relation to certain individuals that got affected and so on.

So at all material times, I acted in the interest of both the law and the interest of the public.

**ADV MOKHARI SC**: Thank you, Chair. I have no further  
20 questions.

**CHAIRPERSON**: Thank you very much, Mr Mokhari.

**ADV MOKHARI SC**: I am really indebted Chair to the Commission and also for giving us the extra two days so that we can finish and Mr Nhleko does not have to do the to-and-fro.

**CHAIRPERSON:** Yes, yes.

**ADV MOKHARI SC:** Thank you very much.

**CHAIRPERSON:** No, thank you very much. I think also the Commission is appreciative of the cooperation that both Mr Nhleko and yourself, his legal team have given to the Commission.

Everything went smoothly. There were no unnecessary interruptions as we were going along and I think that was good cooperation. So thank you very much.

10 **ADV MOKHARI SC:** I appreciate that Chair.

**CHAIRPERSON:** Thank you. I think have one or two questions that I want to ask Mr Nhleko and maybe one of them is of clarification.

You remember yesterday, I think at some stage I have asked you about a situation where a report has been given but some investigative work must still be done.

If there are two reports, one was provided while there was some investigative work still to be done and another one was given later when there was no further investigative work  
20 to be done.

Would you take the first one as a final report or the second one as the final report?

**MR NHLEKO:** [laughs] I ...[indistinct] Chair because I think we ...[indistinct] quite a number of times.

**CHAIRPERSON:** [laughs] Just for the last time.

**MR NHLEKO:** Ja. No, no, no. That is for the last time.

**CHAIRPERSON:** Ja.

**MR NHLEKO:** I appreciate that. It... again, we would have to go back to the whole question of your second report, what does it intended to do? Is it nullifying the first report or is withdrawing the first report, is it amending the first report?

And it is on the basis of that that as a responsible authority you would then take what you think is the necessary sort of position in action for that matter.

10 So that is my understanding Chair.

**CHAIRPERSON:** Okay, okay.

**MR NHLEKO:** Yes.

**CHAIRPERSON:** No, thank you very much.

**ADV MOKHARI SC:** Maybe the question should be.

**CHAIRPERSON:** Ja?

**ADV MOKHARI SC:** Sorry, Chairperson. Maybe the question should be, what is your understanding of the legal status of the legal status of the IPID reports? What weight do they ordinarily... even have any legal standing or is it one  
20 of those reports that, as you say, enough experience in government which you will ask officials, you know, your managers and so on to prepare a report.

If you do not like it, you can say go back and draft another one. Do they have any legal standing in the scheme of things?

**MR NHLEKO:** The IPID investigations reports are very serious reports. Whichever way you want to look at it but they are very serious reports. And indeed, you know, I... that is why I also understand this closer connection between IPID and the National Prosecuting Authorities because of the weight, I mean, the investigative reports that they produced from that end.

And I think, whether it was yesterday or the day before yesterday, the Chair was also trying to delve into this  
10 question of what is the actual weight of these reports. And I do maintain, they are very weighty. They are very important and so forth.

Now I know that the issue has been... is the 22<sup>nd</sup> of January, the final report or not the final report and so forth. And I maintain that it is a final report.

In fact, that standpoint is also going to be collaborated by further evidence that is going to be led eventually before this very same Commission about the status of that very same report visa vie the report of the 18<sup>th</sup> of March. Thank  
20 you very much Chair.

**CHAIRPERSON:** Thank you very much. Thank you very much Mr Nhleko for coming to give evidence. As I said, I think earlier this morning or yesterday, the investigations continue.

There is no guarantee that we cannot ask you to come

back but I think we were able to cover quite some ground over the past... ja, over the three days but thank you very much for coming forward. You are excused.

**MR NHLEKO**: No, thank you very much Chair. I remain committed ...[intervenes]

**CHAIRPERSON**: Yes.

**MR NHLEKO**: ... to my earlier standpoint of assisting the Commission.

**CHAIRPERSON**: Yes. No, okay.

10 **MR NHLEKO**: At any given point, if there are matters that you think I can clarify this Commission about in relation to this particular matter, I am available and committed to do so.

**CHAIRPERSON**: Thank you very much.

**MR NHLEKO**: Thank you very much.

**CHAIRPERSON**: Thank you. I am going to... Mr Hulley, I am going to take a short adjournment because I have another witness to listen to.

**ADV HULLEY SC**: Yes. Thank you, Mr Chair.

**CHAIRPERSON**: Do you want to say something?

20 **ADV HULLEY SC**: Well, I was just going to ask that we could be excused.

**CHAIRPERSON**: Yes.

**ADV HULLEY SC**: But once we stand down, we will excuse ourselves.

**CHAIRPERSON**: Well, I think if you are able to collect

whatever you need to collect while... during the adjournment, feel free. You are excused as well.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** And then I will remain with Mr Notshe and a few people here.

**ADV HULLEY SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Unfortunately, the lucky ones will leave and the unlucky ones will remain. [laughs] We will take an adjournment up to ten to four. We will resume at ten to four.

10 We adjourn.

**INQUIRY ADJOURNS:**

**INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Mr Notshe, good afternoon everybody.

**ADV NOTSHE SC:** Good afternoon, Chairperson.

20 **CHAIRPERSON:** Yes, you can feel free to take your mask off. I am sorry that you and the witness have had to wait for such a long time, it has been a difficult day but I appreciate that you are here and I do not think we are going to take long so the Commission really apologises for any inconvenience, Mr Blake.

**MR BLAKE:** Thank you, Chair.

**CHAIRPERSON:** Thank you.

**ADV NOTSHE SC:** Chair, the witness we are calling, the genesis of his evidence is the evidence of Mr Agrizzi.

**CHAIRPERSON:** Yes.

**ADV NOTSHE SC:** The Chair will remember Mr Agrizzi referred to the fact that there were certain bookings that were made for persons outside BOSASA employ and he gave evidence to the effect that ...[intervenes]

**CHAIRPERSON:** Well, I think you should start by saying that Mr Blake by establishing – indicating the relationship between Blake, Mr Blake and Blake’s Travel and then, of course, then what Blake’s Travel was to BOSASA and what  
10 Agrizzi said and then that connects with how come Mr Blake is here.

**ADV NOTSHE SC:** Yes. Chair, I am just getting there, that Mr Agrizzi referred to some travel arrangements and made by a company called Blake Travel and that these were the travel arrangements and expenses of BOSASA, the company, and also travel arrangements that were made for people outside BOSASA and, as a result of that, the statements was made and obtained from Mr Brian Blake who is before the Commission today to testify. Mr Blake is  
20 the managing director of the Blake Travel and he has given a statement and he will confirm the statement and, most importantly, he will also confirm the Commission how he came about to also contact the Commission and his statement and the invoices relating to the evidence are contained in bundle D. I understand the bundle is before

you and the statement is EXHIBIT T18.

Chair, you will notice inside the – once you open bundle D you will notice that then the index, there is an index and then outside the index there are – there is the pagination, the pages start with T15. That, Chair, refers to the – this exhibit was initially T15 but because of the changes in the previous hearings it has been moved to T18 and we have kept it at T15, the pages, just to avoid expense of printing other pages, but the page numbers  
10 remain the same. So when we refer to witnesses, we will refer to BB and then the number.

**CHAIRPERSON:** Well, you remember that when you refer to the pages, we do not even mention the letters, we just – and there is zero, we just say page 1, page 2, page 3.

**ADV NOTSHE SC:** The number itself, yes, ja. I am just mentioning the – correct the issue of T so that it does not throw anyone off.

**CHAIRPERSON:** Ja. Okay, alright.

**ADV NOTSHE SC:** Chair, Mr Blake is ready to take the  
20 oath and then we will ...[intervenues]

**CHAIRPERSON:** Ja, but basically Mr Blake's evidence follows up on Mr Agrizzi's evidence part of which was that BOSASA and other companies under BOSASA used Blake's Travel Agency for making travel arrangements and accommodation – I do not know whether also

accommodation ...[intervenes]

**ADV NOTSHE SC:** There accommodation expenses as well.

**CHAIRPERSON:** Accommodation and that some of the persons for whom travelling arrangement were made by Blake's Travel were persons who were in government, government officials, and that some of them – and all the travelling expenses that were incurred were paid for by BOSASA and BOSASA then kept an account with Blake's  
10 Travel and the persons that BOSASA asked Blake's Travel to make arrangements for would not pay Blake's Travel themselves but BOSASA would pay for their travelling. That is my recollection of that evidence, ja.

**ADV NOTSHE SC:** Yes, that is correct, Chair.

**CHAIRPERSON:** Yes and ...[intervenes]

**ADV NOTSHE SC:** And Chair, BOSASA kept an account with Blake Travel. In addition to the BOSASA account Mr Agrizzi also had an account which later changed to a Venter account which, as Mr Agrizzi has testified, it was  
20 the name of his father-in-law.

**CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** And then later his mother-in-law.

**CHAIRPERSON:** Ja, ja.

**ADV NOTSHE SC:** And then the invoices would be issued for those people.

**CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** But the payment would be made by BOSASA.

**CHAIRPERSON:** Yes.

**ADV NOTSHE SC:** Either in cheque or in cash.

**CHAIRPERSON:** Ja. No, that is fine and Mr Blake will correct any of the things that we have said if they are not correct.

**MR BLAKE:** Yes.

10 **CHAIRPERSON:** You can administer the oath or affirmation?

**MR BLAKE:** Sorry, honourable Chair, I am actually Alderman Blake, that makes a difference. I am Alderman Blake, I have a title Alderman, I am sure in the legal – Alderman.

**CHAIRPERSON:** Alderman?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** Chair, he is the member of the municipal council, of a district council.

20 **CHAIRPERSON:** A what council?

**ADV NOTSHE SC:** A district council?

**CHAIRPERSON:** A district council?

**ADV NOTSHE SC:** Yes and they are called Alderman and...

**CHAIRPERSON:** Alderman?

**ADV NOTSHE SC:** Yes.

**CHAIRPERSON:** Okay, how do you spell it, I just want to make sure. You know the noise of the air con competes with you.

**MR BLAKE:** Sorry, Chair, it is A-l-d-e-r-m-a-n.

**CHAIRPERSON:** Oh, but that is a title?

**MR BLAKE:** It is a title, like a Councillor.

**CHAIRPERSON:** Alderman Blake?

**MR BLAKE:** Ja, it used to be Councillors but after a  
10 certain number of years you achieve Alderman.

**CHAIRPERSON:** Okay. No, that is fine. Okay.

**ADV NOTSHE SC:** Alderman Blake – Chair, can Alderman  
Blake move to – use that microphone?

**CHAIRPERSON:** Ja, that is fine. I do not know if the  
other one is working, just – not it is not working.

**ADV NOTSHE SC:** Then move to this chair.

**CHAIRPERSON:** I think move to the other chair. You  
want to sanitise? I think they want to sanitise the chair  
first before you do so. Please administer the oath or  
20 affirmation?

**REGISTRAR:** Please state your full names for the record.

**MR BLAKE:** Alderman Brian Douglas Blake.

**REGISTRAR:** Do you have any objection to taking the  
prescribed affirmation?

**MR BLAKE:** No.

**REGISTRAR:** Do you solemnly affirm that the evidence you will give shall be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say I truly affirm.

**MR BLAKE:** I truly affirm.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Thank you, you may be seated. Yes, continue, Mr Notshe.

**ADV NOTSHE SC:** Alderman Blake, can you tell the  
10 Commission what your relationship between you and Blake  
Travel Agencies?

**MR BLAKE:** My grandmother started Blake's Travel  
Agency in 1948 after she was Mayoress. It was a coal and  
wood agency which used to sell coal and wood but after a  
while the railways came and said do you not wish to sell  
rail tickets and sea journeys or voyages back to the UK?  
My grandfather took over, my father took over and I took  
over when my father passed away in 1994. We are part of  
the Sher Group, my father was very instrumental in getting  
20 Southern African travel agents together to help get better  
deals on hotels, cars, flights and assistance with having a  
network of 50 plus travel agents.

**ADV NOTSHE SC:** Now, Mr Blake, you know you know  
today your evidence is in relation to the relationship  
between BOSASA and Blake Travel. When did that start,

that relationship start?

**MR BLAKE:** In 1999, 1998. Home Affairs asked us for repatriations, sending immigrants or illegal passengers back to their countries and those years Dyambu would bring passports and Home Affairs would collect – we had to hand write tickets those years, collect the tickets and the passports and we would invoice Home Affairs still by typewriter. I remember typing out invoices. These passengers were taken to the airport, put on an aeroplane  
10 and sent back to their home country. There were a few instances of irregularities. I remember one Egyptian Airline passenger running off the aeroplane endangering traffic and being caught and put in the Kempton Park police station. It was quite easy for Home Affairs those years to take the people from the Lindela sort of captive camp and transport them to the airport to send them back home.

**ADV NOTSHE SC:** When you refer to Dyambu, mean Dyambu, D-y-a-m-b-u.

**MR BLAKE:** Yes.

20 **ADV NOTSHE SC:** Yes.

**MR BLAKE:** Your pronunciation is more – we called it Dyambu but I suppose the African word would be ...[intervenes]

**ADV NOTSHE SC:** “Jambu”

**MR BLAKE:** “Jambu” yes.

**ADV NOTSHE SC:** And that was the previous name of BOSASA, am I correct?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** Yes. Now you made a statement to the investigators of the Commission, am I right?

**MR BLAKE:** Yes, I made a statement.

**ADV NOTSHE SC:** Before you made that statement ...[intervenes]

**CHAIRPERSON:** You may keep your mic on, it will not  
10 disturb anything.

**MR BLAKE:** Okay.

**ADV NOTSHE SC:** Before you made that statement, what had happened maybe between – insofar as the relationship between you and BOSASA?

**MR BLAKE:** Well, from 2000 when Dyambu became BOSASA between 2000, 2002, 2004 or somewhere there, we did not make any statements until 2014 when the investigation actually started and my final – well, my signed statement was in 2016.

20 **ADV NOTSHE SC:** Who took the statement from you?

**MR BLAKE:** Sorry?

**ADV NOTSHE SC:** Who took the statement?

**MR BLAKE:** Colonel Smit, Christoffel Smit.

**ADV NOTSHE SC:** Colonel Smit of the South African Police?

**MR BLAKE**: Of the Hawks, yes.

**ADV NOTSHE SC**: Yes, okay.

**MR BLAKE**: Ja.

**ADV NOTSHE SC**: And now who it did it come for you to make a statement to the investigators? What prompted you to come out?

**MR BLAKE**: Well, in 2014 Colonel Smit came to me with a certain request and obviously with confidential information, this man walked into my office and asked me for all details  
10 on three specific clients, passengers and I said well, you know, I cannot give you that, please – you know, you will have to subpoena that or bring me something from the police. I was duly subpoenaed and I took the documents to my lawyer and we agreed to cooperate fully with the Hawks.

**ADV NOTSHE SC**: And you also state in your statement that – and you know that Mr Agrizzi gave evidence before this Commission.

**MR BLAKE**: Yes.

20 **ADV NOTSHE SC**: About relationship between you, your company and BOSASA. Can you take the Commission through that, that relationship, the accounts that were opened?

**MR BLAKE**: Well, Mr Agrizzi would - you know, a travel agency is quite hard to run, it is not simple. People can

phone you at all hours and BOSASA did, you know, especially when vehicles broke down and guards needed accommodation and – I think it started off slowly but BOSASA began to rely on us because of our, you know, superior travel ability of being able to accurately get good prices, book people and, you know, when people had to get on a flight we found seats, different airlines, and it was simple, pick up the phone and book it. We would get an order number for the official BOSASA stuff or Mr Agrizzi or  
10 Mrs Agrizzi would phone me for the confidential stuff.

**ADV NOTSHE SC:** Did BOSASA have an account with Blake Travel?

**MR BLAKE:** Yes, we had a running account.

**ADV NOTSHE SC:** Was it one account or many accounts?

**MR BLAKE:** We had the BOSASA accounts and we had BOSASA VIP account originally.

**ADV NOTSHE SC:** BOSASA?

**MR BLAKE:** VIP.

**ADV NOTSHE SC:** Yes. What was that for?

20 **MR BLAKE:** That was basically, I think, at the beginning that Mr Agrizzi kept that account for very important persons, you know ...[intervenes]

**ADV HULLEY SC:** Payments for the bookings made through the account, who made those payments?

**MR BLAKE:** First of all, it was BOSASA paying us with two

cheques in those years, in the beginning years.

**ADV NOTSHE SC:** Yes.

**MR BLAKE:** And then Mr Agrizzi paid with his American Express card.

**ADV NOTSHE SC:** I see.

**MR BLAKE:** And then it changed to the cash bookings.

**ADV NOTSHE SC:** Now you have said to the Commission that initially it was BOSASA VIP account. Did the account change?

10 **MR BLAKE:** Yes.

**ADV NOTSHE SC:** To what did it change?

**MR BLAKE:** It was BOSASA VIP to Angelo Agrizzi to C Venter, to J J Venter.

**ADV NOTSHE SC:** Now can you turn to the bundle before you, bundle B, page 2.

**MR BLAKE:** Alright.

**ADV NOTSHE SC:** Now paragraph 6 to 9 and in paragraph 9 you were telling the Commission that after Agrizzi's state testimony you contacted the Commission and you told it  
20 that there are certain invoices you have in your possession, is that correct?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And then you say you handed over the invoices to the Commission, is that correct?

**MR BLAKE:** I handed over relevant invoices and

documents. There still may be further documents that the Commission may need.

**CHAIRPERSON:** Oh, there are still other documents that may show different people who travelled?

**MR BLAKE:** It is very difficult, Judge, because we do not know who works for the state and who does not work for the state or who...

**CHAIRPERSON:** Yes, yes.

**MR BLAKE:** We have quite a bit of data.

10 **CHAIRPERSON:** Yes.

**MR BLAKE:** But we have not really had a good investigation, a thorough investigation into it.

**CHAIRPERSON:** Yes, okay. So but you have documentation, invoices and so on somewhere which, if looked into, could well reveal ...[intervenes]

**MR BLAKE:** Further ...[intervenes]

**CHAIRPERSON:** People that have not been mentioned.

**MR BLAKE:** Correct.

**CHAIRPERSON:** Okay.

20 **MR BLAKE:** It could be possible, ja.

**CHAIRPERSON:** Okay.

**ADV NOTSHE SC:** Can you tell the Chair ...[intervenes]

**CHAIRPERSON:** I think that must be explored, if possible, to see whether we cannot unearth some more people. So that can be explored – should be explored in

due course.

**MR BLAKE**: Fully.

**CHAIRPERSON**: Ja.

**MR BLAKE**: Yes.

**ADV NOTSHE SC**: Now also, Mr Blake, can you also tell the Chairperson about what you did to maintain that record accurate and safe?

**MR BLAKE**: Yes, Judge, after the – it is quite a difficult story because we had an investigation with Colonel Smit  
10 from 2014 until 2016 till I actually signed the affidavit and I was ready to appear with Adv de Kock in court in February 2016 and the case just disappeared. Colonel Smit came to me and said I will probably testify in 10 years time but he has been told the case is now flat. His direction was for three passengers, the three mentioned in the report but there is a lot of other people. We do not know, we do not know if those people are involved or not.

What happened thereafter, once Mr Agrizzi began testifying, I tried to get hold of the Hawks and I was told  
20 that the original cloning of my server was stolen, it disappeared. There was guy called Bertus and eventually I could not get hold of Colonel Smit and I eventually got hold of one of the Hawks in Pretoria who came out and recloned my computer in February this year.

**ADV NOTSHE SC**: February 2020?

**MR BLAKE**: Yes, this year.

**ADV NOTSHE SC**: Mr Blake, this is important for the Commission. Just to explain this, you are saying that when initially you were contacted by Colonel Smith they took and cloned your hard drive so that they could see all the invoices that were made and the two that away.

**MR BLAKE**: Yes, both in 2014 and in 2020.

**ADV NOTSHE SC**: And then you say that when you made enquiries after Mr Agrizzi testified you found that that  
10 evidence had been destroyed, had gotten lost with the Hawks?

**MR BLAKE**: I do not know, I spoke to Colonel Smit again and he said no, that evidence could not – it is impossible for that to happen. I have contacted him, you know, subsequently, and he said that is locked away with the Supreme Court, that evidence is locked up.

**ADV NOTSHE SC**: But you – and then also you say that you – insofar as that evidence of Colonel Smith, you were contacted and you were supposed to testify as a witness in  
20 that case but in the end you never testified?

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: I see.

**CHAIRPERSON**: So the documentation that you gave to Colonel Smith, would it relate to travelling arrangements made under the account of BOSASA or does it involve

other people's accounts with Blakes Travel?

**MR BLAKE**: Chair it was specifically for Mr Mti, Ms Njana and Mr Gilliam, Lt Col Smit's focus was on those three passengers and their families.

**CHAIRPERSON**: Yes.

**MR BLAKE**: Obviously there were other people but his focus was totally ...[intervenes]

**CHAIRPERSON**: That fall under the BOSASA accounts?

**MR BLAKE**: BOSASA or BOSASA associates.

10 **CHAIRPERSON**: Yes, that is what I am talking about so I think we should try and do whatever we can to be able to see if we can get those invoices so that we can see whether they are people from government that have not, whose names have not been mentioned here, who also travelled and got paid for by BOSASA. So we should pursue that. So you don't have that documentation with you because it was taken by the Hawks?

**MR BLAKE**: No, we still have that – we have still got it. Chair also I had a – on the 7<sup>th</sup>, sorry on the 14<sup>th</sup> of  
20 September I appeared at a tax inquiry which also asked me for documentation which I gave through lots of invoices.

**CHAIRPERSON**: Yes, yes.

**MR BLAKE**: For them to follow up. There's you know R40million of travel over six years is ...[intervenes]

**CHAIRPERSON**: That is involved there.

**MR BLAKE:** It is a lot of work ja, it is a lot of.

**CHAIRPERSON:** Ja, okay.

**ADV NOTSHE SC:** Mr Blake just to also maybe just clear, when you talk about the evidence that the police took away, it is just the cloning of your hard drive, your hard drive you still have the original hard drive?

**MR BLAKE:** Correct.

**CHAIRPERSON:** Ja, then the investigators should just do something to check how far we can go in trying to get other  
10 names of government people or politicians who may have travelled under the BOSASA accounts at Blake's Travel.

**MR BLAKE:** Yes, and also Chair when I spoke to Colonel Smit there were other travel agencies involved.

**CHAIRPERSON:** Oh is that so?

**MR BLAKE:** Yes.

**CHAIRPERSON:** Which were paid for by BOSASA, where BOSASA had accounts?

**MR BLAKE:** BOSASA or Dr Smit or – I remember a receipt made out with no name on it.

20 **CHAIRPERSON:** Okay, I think that is important if the Commission investigators you can share that information with them when they talk to you, they should take it further.

**MR BLAKE:** Okay.

**CHAIRPERSON:** Okay.

**ADV NOTSHE SC:** Now Mr – Alderman Blake then whilst

we are on page 2 can you just read it for the record, paragraph 11, where it deals with your operations with BOSASA.

**CHAIRPERSON:** Well he doesn't have to read it Mr Notshe, you can ask him the question, he knows these things, he knows it, it is his business, he has been doing it for a long time, he will just tell you.

**ADV NOTSHE SC:** From this paragraph it is clear that the first thing, the main account opened was for BOSASA  
10 operations Pty, is that correct?

**MR BLAKE:** Correct it is BOSASA Pty Limited, ja.

**ADV NOTSHE SC:** And from my understanding of your evidence that was for the operations of BOSASA.

**MR BLAKE:** The general operations of meetings, of people, of detainees, of guards, of accommodation, ja.

**ADV NOTSHE SC:** And then you say that then there was a second account which was opened in the name of BOSASA Operations VIP, the one you talked about, the VIP account.

**MR BLAKE:** Correct.

20 **ADV NOTSHE SC:** And then you say over the years then this changed from the BOSASA VIP to the personal account of Mr Agrizzi?

**MR BLAKE:** Correct, Mr Agrizzi asked me to change it to his name, and ...[intervenes]

**ADV NOTSHE SC:** And then in 2009 it changed to the

name of C Venter?

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: And then 2012 C Venter was closed and then a new account of J J Venter.

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: So the invoices you issued were issued by Blake Travel will be to these – for VIP travels it will be to – the invoice will be VIP and when it changed to Agrizzi to Agrizzi, Venter, C Venter and J J Venter.

10 **MR BLAKE**: Correct.

**ADV NOTSHE SC**: Now if you can turn back to the beginning of, Chair the beginning of Exhibit 18, there is an index Chair.

**CHAIRPERSON**: At the beginning?

**ADV NOTSHE SC**: At the beginning there is an index, it says index Exhibit 18.

**CHAIRPERSON**: Ja.

**ADV NOTSHE SC**: There on item 3 to item 22 of that index what is indicated in those items, from 3 to 22?

20 **CHAIRPERSON**: Why don't we go to the page where they are?

**ADV NOTSHE SC**: They start from page ...[intervenes]

**CHAIRPERSON**: Is it 56?

**ADV NOTSHE SC**: Let me, before I even go there, Mr Blake you confirm that – you have just confirmed that you

did issue invoices for a number of people?

**MR BLAKE:** Well you always issue an invoice Chair, it was standard procedure, it was VAT or non-VAT related it was always to either one of the companies of BOSASA or to C Venter or J J Venter. The record is quite nice in that sense that it is quite accurate because on the invoices also the reference number to the hotel or the car, or air ticket number.

**ADV NOTSHE SC:** If we just take one invoice, Annexure  
10 BB4, starting from page 56 to 57.

**MR BLAKE:** I've got big fingers, I'm sorry. There we go, okay. We have an invoice number BT22804.

**ADV NOTSHE SC:** Yes on page 57, and this is the invoice is to Mr J J Venter?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And that is ...[intervenes]

**CHAIRPERSON:** Let us start by saying it is on the letterhead of Blake's Travel Agents Pty Limited, is that right, Alderman?

20 **MR BLAKE:** Correct yes Chair and it has got the VAT number.

**CHAIRPERSON:** Yes, and it is made out to Mr J J Venter?

**MR BLAKE:** Correct.

**CHAIRPERSON:** Yes, you can continue Mr Notshe.

**ADV NOTSHE SC:** And what is this invoice for

...[intervenes]

**CHAIRPERSON:** ... for the date and so on and the amounts.

**ADV NOTSHE SC:** And he date of the invoice?

**MR BLAKE:** That is the invoice the cheque is dated the 27<sup>th</sup> of January 2016.

**ADV NOTSHE SC:** And what is the invoice for?

**MR BLAKE:** The invoice is for accommodation at Sun City, Sun International Hotel, the Palace.

10 **ADV NOTSHE SC:** And then who ...[intervenes]

**CHAIRPERSON:** I am sorry, so does this invoice reflect that Blake's Travel had made the booking for somebody to stay at Sun International Hotel, the Palace, is that right?

**MR BLAKE:** Chair not always, this one is a little different, I remember it that I think it was Mr Dlamini who made this reservation and we took it over. Often somebody will say please just hold the room for us, and then we would phone in and say right we're taking over, we need your bank details, we will pay by credit card or we will pay you by

20 EFT.

**CHAIRPERSON:** If it was Mr Dlamini was that supposed to be your client?

**MR BLAKE:** Mr Sivion Dlamini worked for ...[intervenes]

**CHAIRPERSON:** Oh, for BOSASA, Sivion Dlamini for BOSASA?

**MR BLAKE:** Ja, correct.

**CHAIRPERSON:** So he had made, initially he made, he asked your travel agency to make a booking.

**MR BLAKE:** Take over the booking.

**CHAIRPERSON:** And was that in respect of himself or in respect of somebody else?

**MR BLAKE:** I think it was first in the name of Mr Bipape and then it was changed to his secretary, Jade Aaron.

**CHAIRPERSON:** Oh, okay.

10 **MR BLAKE:** I presume that was how it – it was a sort of emergency case where Sun International doesn't just hold rooms, you have to pay them, you're quite – very tough on – and we paid them and we invoiced J J Venter who paid us.

**CHAIRPERSON:** Ja, okay. Mr Notshe?

**ADV NOTSHE SC:** Yes and then the amount of the invoice at the bottom it is R16 178,89, correct?

**MR BLAKE:** Correct.

20 **ADV NOTSHE SC:** And then you paid Sun International and then how were you paid?

**MR BLAKE:** I was paid cash by Mr Agrizzi from J J Venter. All J J Venter invoices were reconciled and cash was collected for this.

**ADV NOTSHE SC:** And then the next invoice is on page 58, actually the invoice itself starts on page 59. Is it

correct the invoice is in the letterheads of Blake Travels, in the tax invoice by Blake Travel?

**MR BLAKE:** Correct, it is our invoice.

**ADV NOTSHE SC:** Yes and to whom is it invoiced?

**MR BLAKE:** To Mr K Mokonyane.

**ADV NOTSHE SC:** And what is this invoice for?

**CHAIRPERSON:** Well the invoice is to BOSASA Operations Pty Limited isn't it, it is directed to them?

**MR BLAKE:** Correct.

10 **CHAIRPERSON:** Ja, but in respect of?

**MR BLAKE:** Budget Car Hire, a car rental.

**CHAIRPERSON:** Yes, for whose benefit?

**MR BLAKE:** It says for a Mr K Mokonyane, but sometimes the people get it wrong when the invoice ...[intervenes]

**CHAIRPERSON:** Could that be a Miss?

**MR BLAKE:** It could be. Judge what happens is we would give a voucher through so there is a whole lot of documentation that goes with this, there is a car voucher, it would then be rented out, the bill would come back to us  
20 and then we will do the invoice after we'd received the bill.

**CHAIRPERSON:** Okay.

**MR BLAKE:** So it could be that the car hire company made the error and we just did the invoice after that but the person renting the car would have had to give their ID and their driver's license.

**ADV NOTSHE SC:** Now on the following page, on page 16, is again an invoice by Blake's Travel Agency and to Mr J J Venter, and this is for Budget Car, and the description is Ms K Mokonyane with the amount of 517.

**MR BLAKE:** This Chair relates to a traffic fine.

**ADV NOTSHE SC:** And who paid for this?

**MR BLAKE:** It was Mr J J Venter, well Mr Agrizzi through cash to J J Venter's account.

**ADV NOTSHE SC:** I see. And then the following one at  
10 page 61 is again an invoice to Mr J J Venter, the driver is Ms K Mokonyane and the amount is R287.

**MR BLAKE:** Again a traffic fine, also paid by Mr Agrizzi cash through his J J Venter account.

**ADV NOTSHE SC:** And then the next one is ...[intervenes]

**CHAIRPERSON:** You may, I think for the sake of completeness we can cover the charge as well, to say it was on that date addressed to so and so in respect of so and so and this was the charge, so it makes it easier to know what was spent on a particular individual if there is a  
20 repeat.

**ADV NOTSHE SC:** Chair will it also make it easier if instead of going through the invoices if the Chair were to look at – starting from page 32, page 32 has a spreadsheet of the amounts paid and the triple paid and it then in one place covers the expenses that were paid by Blake Travel

and then compensated by BOSASA. Now Chair this spreadsheet is then backed up by the invoices that I was taking the witnesses through.

**CHAIRPERSON:** Okay.

**ADV NOTSHE SC:** So it can be safe if one goes through this spreadsheet knowing that this is covered by the invoices.

**CHAIRPERSON:** No that is fine then.

**ADV NOTSHE SC:** Mr Blake just to put it on record let's  
10 go to page 32.

**MR BLAKE:** Alright.

**ADV NOTSHE SC:** Just hold, put your hand on page 32 and then this goes up to page 55.

**MR BLAKE:** Right.

**ADV NOTSHE SC:** And now am I correct to say that this spreadsheet is sort of a summary of the invoices that were issued by Blake Travel and it sets out the service provider, the invoice number, the date of the invoice, the addressee, the person to whom the invoice was addressed, a  
20 description of the invoice and the amount and then at the bottom, at the right hand it tells the Commission where the invoice is in the bundle, am I correct?

**MR BLAKE:** It is a very good summary Chair of the clients that we have identified but there may be further people on that J J Venter account that they have fallen

through the cracks.

**ADV NOTSHE SC:** I see, but for now what is on page 32 to page 55 is covered by the invoices that are in this file?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** Now in order to save time but still maintain the evidence I will just refer you – I would like you just to read you know that there is – item number one we have dealt with it, it is to demonstrate also for the Chairperson item number one, the supplier is Sun  
10 International, it is the invoice we had looked at, then there's the invoice number, the date of the invoice and the invoice, your invoice addressed to J J Venter and the description is Sun International Hotel, the Palace and then the number and then the dates and then if the guest was J D Orin, and then the amount is R60 178,47.

**MR BLAKE:** 49 cents yes.

**ADV NOTSHE SC:** 49 cents, is that correct?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And the invoice is the one we went  
20 through.

**MR BLAKE:** BT22804.

**ADV NOTSHE SC:** Yes, and then the next person is Katleho Mokonyane and there the supplier is in all the items it's Budget Car and you have under the invoices invoice numbers and then the dates of the invoices and

then the invoice is addressed to BOSASA Pty on J J Venter and there are a number of items and the total amount is R69 497,25, is that correct?

**MR BLAKE:** 25 cents yes.

**ADV NOTSHE SC:** Now Mr Blake on the – where the invoice is addressed to BOSASA Operations who paid for those invoices after you paid them

**MR BLAKE:** BOSASA would collect all the invoices under BOSASA and pay us monthly by EFT.

10 **ADV NOTSHE SC:** You were paid by BOSASA directly?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And then ones for J J Venter?

**MR BLAKE:** J J Venter was also lumped together in months or two months or three months and paid cash.

**ADV NOTSHE SC:** I see. And then below that you have the invoices for Mohamed Morad. Before that Chair can you go back to – do you know who is Katleho Mokonyane for whom the BOSASA and J J Venter booked for?

20 **MR BLAKE:** I remember the – my, one of the girls in front was saying that they desperately needed a type of a car for the Minister's daughter, so she managed to get a car through Budget Car Hire because none of the car hire companies actually had that car that they were looking for, so I guess they sort of knew it was important to get a car for this person because BOSASA was really wanting us to

find the right vehicle, ja.

**ADV NOTSHE SC:** And then we saw when we were looking at the invoices themselves that there were the amounts of R517 and the amount of R287 were fines.

**MR BLAKE:** Correct, they're traffic fines, they would come through Budget Car Hire or the car hire company and obviously the Traffic Department fine the car hire company and then pass the bill onto us.

**ADV NOTSHE SC:** And then – but for those you say Mr  
10 Agrizzi paid cash for those.

**MR BLAKE:** He paid cash for those ja.

**ADV NOTSHE SC:** And they were not paid by the person to whom ...[intervenes]

**MR BLAKE:** No, the cash, the cash would have been, if there was an invoice for it it would have been tallied and paid by Mr Agrizzi or Ms Agrizzi, cash.

**ADV NOTSHE SC:** Now then the next person is Mohamed Morad, do you know who this person is?

**MR BLAKE:** Not a clue, sorry. I reckon if I know or if  
20 I've met 30% of my passengers from various companies throughout the world that's doing well, but often companies will ask us to book for individuals, we get a copy of their passports quite often and we would make reservations for them but we would never meet them.

You know it is – we were – in the electronic age now

we are not in the old travel agency. You know walk in, have a cup of tea and discuss a cruise. It is, get me on an aeroplane, get me this hotel, get me that car you know it is.

**ADV NOTSHE SC:** But in a situation like this where the booking is made under the name of JJ Venter.

**MR BLAKE:** Right.

**ADV NOTSHE SC:** Who would then give you the name of the passenger or the person from whom the – for whom the booking is made?

10 **MR BLAKE:** It would generally come from Mr Agrizzi or Ms Agrizzi and it would either be sms or phone through but we would have checked the spelling very carefully.

**ADV NOTSHE SC:** And then there is the two bookings and the amount is R3 351.44 cents.

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And the next item is for Dudu Myeni and co travellers.

**MR BLAKE:** Right.

20 **ADV NOTSHE SC:** And these invoices – all the invoices seem to have been made by Mr JJ Venter. Were made – the invoices were made to JJ Venter.

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And the invoices on this spreadsheet starts from page 32 up to 33 with the total amount of R101 071 – R101 718,03.

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: And then when we look at – on page 32 when you look at the description it says Dudu Myeni and co travellers. And then there is a description of Sheraton Hotel PTA and then guests Dudu Myeni, Katherine Dawson and then on the same column is Dudu Myeni, Dudu Zelewene, Katherine Dawson, Sheraton Hotel. And you say these name would come from Mr Agrizzi – Mr or Ms Agrizzi?

**MR BLAKE**: Correct. The PTA stands for Pretoria so that  
10 is the Sheraton Hotel Pretoria.

**ADV NOTSHE SC**: The PTA?

**MR BLAKE**: Is Pretoria.

**ADV NOTSHE SC**: Oh I see. And then over the page we see again there is Sheraton Hotel Pretoria Dudu Myeni, Katherine Dawson and in the following one which may explain other items it has got TIC like a ticket number – there is a number. Is that a ticket number? On Item 3.

**MR BLAKE**: Yes that is a ticket number.

**ADV NOTSHE SC**: And then passenger Katherine Dawson  
20 and then route T&B MQP Nelspruit. Is that the route Johannesburg to Nelspruit?

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: And then there are a whole host of other items up to item 22.

**MR BLAKE**: Correct.

**ADV NOTSHE SC:** Chair I will not waste your time to refer to it but they are referred there by the witness. And then over the ...

**CHAIRPERSON:** I do not remember that you asked me to admit his affidavit.

**ADV NOTSHE SC:** Chair I would – well I was hoping at the end of – after he has testified to confirm the correctness of the affidavit.

**CHAIRPERSON:** Let us do it now. The affidavit of Mr Brian  
10 Douglas Blake deposed to on – on the 28 November 2019 will be marked – admitted and marked as Exhibit T18?

**ADV NOTSHE SC:** Is Bundle.

**CHAIRPERSON:** Is it still T18?

**ADV NOTSHE SC:** It is in Bundle D.

**CHAIRPERSON:** No, no the Exhibit is different from the bundle.

**ADV NOTSHE SC:** T18.

**CHAIRPERSON:** Ja T18. Okay. Alright.

**ADV NOTSHE SC:** Together with the annexures.

20 **CHAIRPERSON:** Ja together with its annexures. Okay. It is important to also mark on its face at the top Exhibit T18. Ja so that it is known that that is Exhibit T18.

**ADV NOTSHE SC:** At the top of?

**CHAIRPERSON:** At the top of the page – of the first page of the affidavit.

**ADV NOTSHE SC:** Oh I see.

**CHAIRPERSON:** Exhibit T18. I think when – when it is done Ms Olivier can mark the one that is with the witness later on. Okay.

**ADV NOTSHE SC:** Now Mr Blake we were on page 33.

**MR BLAKE:** Right.

**ADV NOTSHE SC:** And then there is then the heading of Trevor Fourie at the last – last entry on page 33.

**MR BLAKE:** Page 34.

10 **ADV NOTSHE SC:** No page 33. It starts on page 33 – at the bottom.

**MR BLAKE:** Trevor Fourie the heading yes.

**ADV NOTSHE SC:** Trevor Fourie and then the invoices in relating to Trevor Fourie they are on page 34 am I correct?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** And then there is again it is booked by JJ Venter.

**CHAIRPERSON:** I am sorry I – I am at page 33 but where?

**ADV NOTSHE SC:** At the bottom – at the foot of page 33  
20 Chair will notice there is...

**MR BLAKE:** In blue Chair.

**ADV NOTSHE SC:** An entry in blue on page 33.

**CHAIRPERSON:** Oh okay. Well I think I will write here because the rest relating to him

**ADV NOTSHE SC:** Is on page 34.

**CHAIRPERSON:** Is on the next page. Trevor Fourie. Yes okay.

**ADV NOTSHE SC:** Mr Blake if one goes through all these – the spreadsheet up to page 55 one will follow it is on the blue it is the name of the person who was the – who the booking was made for and then the details of the booking follow that. And then at the end of that column will be then the amount, the value of the entire booking.

**CHAIRPERSON:** That is correct ja.

10 **ADV NOTSHE SC:** And as you had said previously and then that is backed by the – by the invoices that are attached to your affidavit?

**MR BLAKE:** Correct.

**ADV NOTSHE SC:** Now on page 55.

**CHAIRPERSON:** I am sorry do you say 55?

**ADV NOTSHE SC:** Yes Chair.

**CHAIRPERSON:** Can we go back to 35 before you go to 55? Alderman Blake if you look at page 35 you will see that there in the middle you have got the name C Frolick, can you see  
20 that?

**MR BLAKE:** Page 5?

**CHAIRPERSON:** Page 35.

**ADV NOTSHE SC:** 85.

**ADV NOTSHE SC:** 35.

**MR BLAKE:** 35.

**ADV NOTSHE SC:** On the – let me – look on page 35 look on the blue on the [indistinct 00:54:8].

**MR BLAKE:** Page 75.

**ADV NOTSHE SC:** 35

**MR BLAKE:** 35 apology. 35 right.

**ADV NOTSHE SC:** 35 right.

**MR BLAKE:** Correct.

**CHAIRPERSON:** Yes can you see the name Frolick – SC Frolick there?

10 **MR BLAKE:** Correct.

**CHAIRPERSON:** Do you know – would you know what the full name is or would you just know C Frolick in terms of your company with somebody – with a guest?

**MR BLAKE:** No Mr Cheeky Watson told me his name was Mr Cedric Frolick.

**CHAIRPERSON:** Mr Cedric Frolick.

**MR BLAKE:** Ja.

**CHAIRPERSON:** That is what you were told when they were booking?

20 **MR BLAKE:** When they were booking ja.

**CHAIRPERSON:** Okay alright.

**MR BLAKE:** It should appear on the hotel invoice as well.

**CHAIRPERSON:** Yes. Yes.

**MR BLAKE:** And ...

**CHAIRPERSON:** You do not remember any other Frolick that

you might have – it is just this?

**MR BLAKE**: No he was quite...

**CHAIRPERSON**: Is it only this one?

**MR BLAKE**: He was quite tied up with the Eastern Province Rugby ja.

**CHAIRPERSON**: Yes. Yes.

**MR BLAKE**: Ja.

**CHAIRPERSON**: Now I see that when you see – look under his name there there was a booking for him at the City Lodge  
10 O R Tambo Online Club for the period for accommodation for the period 10 June 2010 to 12 June 2010. And then the next booking was on – was at City Lodge O R Tambo and guest to Mr C Frolick then that – the accommodation then was for 21 August 2010 to 22 August 2010. And then – all these booking appear to have been connected with rugby. The third one is for Frolick C on 10 December 2010 to 12 December 2010. And then the next one is – oh why does it look like that? Three which have the same date. There is the third one is 10 December 2010 to 12 December 2010.  
20 The next one is for the same accommodation. The third one is for the same accommodation. Does that mean he stayed consecutively on those days – for those days and if – or there was an extension or why – why do you have it that way there?

**MR BLAKE**: I am not sure Chair. We would have to check

that.

**CHAIRPERSON:** Ja but you see what I am talking about?

**MR BLAKE:** I see that yes.

**ADV NOTSHE SC:** Chair would it help if we turn to page 114?

**CHAIRPERSON:** 114?

**ADV NOTSHE SC:** 114.

**CHAIRPERSON:** Okay. Yes.

**ADV NOTSHE SC:** These are the starting from 114 these  
10 are the invoices of Mr Frolick and am I correct? Alderman.

**CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** Starting from 114.

**CHAIRPERSON:** Well the dates are the same. And I do not know if the...

**ADV NOTSHE SC:** Look at what the Chair is referring you to is?

**CHAIRPERSON:** The place is the same as well.

**ADV NOTSHE SC:** On page – it starts on page 116 and 117.  
And what the Chair is referring to is there is – the date is 23  
20 December 2010 and the Town Lodge Mr C Frolick and at the bottom – if you look at the description the date is the same.

**MR BLAKE:** It could be Chair. There could have been more than one room booked in his name. That is why we must go back and check the invoice from the Town Lodge in George to see why we invoiced. Because we would invoice against

an invoice from the Town Lodge. So...

**CHAIRPERSON:** So it could be that he booked two rooms.

**MR BLAKE:** Two or three rooms.

**CHAIRPERSON:** Or three rooms okay. Okay alright. I think it would be good if that clarification can be obtained. Okay alright. Okay that is what I wanted to check at – at. But that – ja that total, the total for him there at page 35 is R13 990.44. Okay I think we can continue.

**ADV NOTSHE SC:** Thank you Chair.

10 **CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** Chair the evidence I have led so far was either to demonstrate how one can never get through the spreadsheet.

**CHAIRPERSON:** Yes.

**ADV NOTSHE SC:** With your leave can I take the witness to page 55?

**CHAIRPERSON:** Ja that is fine.

**ADV NOTSHE SC:** Alderman can you go to page 55.

**MR BLAKE:** Page 55. Okay.

20 **ADV NOTSHE SC:** Page 55 and at the bottom the last entry there is the total amount that was booked for – by JJ Venter of BOSASA and that amount if I say it amounts to R1 234 481.11 is that correct?

**MR BLAKE:** That is correct. But Chair must also remember that the JJ Venter account – ja the Chair the JJ Venter

account Agrizzi actually thought that that was his account.

**CHAIRPERSON**: Okay.

**MR BLAKE**: So a lot of his private stuff.

**CHAIRPERSON**: Ja.

**MR BLAKE**: So over the period it was closer to R4 million than R1.2 million. But a lot of it was you know family and...

**CHAIRPERSON**: Yes.

**MR BLAKE**: Not ...

**CHAIRPERSON**: Yes.

10 **MR BLAKE**: But there could be stuff that we missed here.

**CHAIRPERSON**: Yes.

**ADV NOTSHE SC**: The R1.2 is in relation to people who are not Mr Agrizzi's family?

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: And these people – the people who are appearing on the description of the invoice did not pay for this but Mr Agrizzi of BOSASA paid for it?

**MR BLAKE**: Correct. Okay ja.

20 **ADV NOTSHE SC**: Now there is also an item that I would like you to tell the commission about it. Mr Agrizzi in his statement he gave evidence to the effect that when there were problems he came to your company and then – you deal with it on page 21 of your statement.

**CHAIRPERSON**: What page?

**ADV NOTSHE SC**: Page 21 Chair.

**MR BLAKE**: Page 21.

**CHAIRPERSON**: 21 okay. Ja continue.

**ADV NOTSHE SC**: And you say there that you heard in the news that Mr Agrizzi says that he came to your company and took five computers of Blakes Travel and buried them somewhere.

**MR BLAKE**: Yes Chair that had me worried because I could not figure out how he could do that. First of all we have proven that it is none of the evidence.

- 10       a. We still have the evidence on our computers.
- b. If you did take a travel agents computer you have to reprogram it with certain items and you have to have a certain IP address and you have to have an email address and it just – it is just nonsense.

There is no way that that could have happened. I just cannot – even my IT expert made a statement to say that that is impossible.

**CHAIRPERSON**: Is it possible that certain computers were taken and were buried somewhere, destroyed and buried  
20 somewhere but that did not necessarily mean all that information that was in the computers was lost. You still could get the information technologically?

**MR BLAKE**: Chair I think Mr Agrizzi must – that was not his only statement. I heard he also buried computers in Port Elizabeth and a couple of other sort of things too so I think

he forgot. I think he did not tick the box because he – he might have buried the BOSASA computers there because I know they were changing invoices from what I hear afterwards. But no. You are welcome to have a look at my computers. They can go back. They can check them. I – none of my staff remember ever getting new computers. I mean surely, they would know if they got a new computer. It is just highly, highly unlikely. And welcome to come and check and prove it. And then why have I got all my invoices?

10 He could have taken my server if he wanted to destroy evidence. Ja.

**CHAIRPERSON:** So that should be taken further with Mr Agrizzi? That should be pursued with Mr Agrizzi to tell me what ...

**ADV NOTSHE SC:** His evidence is refuted by...

**CHAIRPERSON:** Ja and hear what he has to say. Ja.

**MR BLAKE:** Oh thanks Chair.

**CHAIRPERSON:** Thank you.

**MR BLAKE:** I think he just forgot to tick the box.

20 **CHAIRPERSON:** Okay.

**MR BLAKE:** You know. He was this and that and destroy this and do this and do this but you know when – they raided BOSASA in 2006 they did not come to me. But they took all of BOSASA information.

**CHAIRPERSON:** Ja.

**MR BLAKE**: They did not come to me. Only in 2014.

**CHAIRPERSON**: Hm.

**MR BLAKE**: Ja.

**CHAIRPERSON**: Okay.

**ADV NOTSHE SC**: Now on page 15 of your – of the record and of your statement you sort of deal with the issue that was raised by the Chair...

**CHAIRPERSON**: On what page?

**ADV NOTSHE SC**: Page 15.

10 **CHAIRPERSON**: 15 okay. Well before we proceed, I think I have got to ask this. Alderman Blake, I know from page 44 to page 50 there are... the name L Mti appears very frequently. I mean, Mr L Mti from... ja, Mr L... or Mr R Mti, he must be appearing, I am taking a guess, more than twenty times.

**ADV NOTSHE SC**: Perhaps ...[intervenes]

**CHAIRPERSON**: What does... what must I make of that? That he was travelling a lot under the BOSASA account?

**MR BLAKE**: From what I understand Chair, Mr Mti as Mr  
20 Richard Mti which as Mr Agrizzi referred to him, is actually Mr Desmond Linda Mti which was referred to me.

Plus his history was given to me by the lieutenant colonel and it is quite interesting. But yes, very much Mr Agrizzi would find me with the family in the Port Elizabeth, the flights to Port Elizabeth, the car hire.

**CHAIRPERSON:** It say twenty times. That might be ...[intervenes]

**ADV NOTSHE SC:** [Indistinct]

**CHAIRPERSON:** ...an underestimation. It might even be fifty times. I am not sure it is ...[intervenes]

**ADV NOTSHE SC:** Chair, it goes to a 138 times.

**CHAIRPERSON:** H'm?

**ADV NOTSHE SC:** 138 times.

**CHAIRPERSON:** It appears 138 times?

10 **ADV NOTSHE SC:** Yes, Chair.

**CHAIRPERSON:** [Indistinct] ...[intervenes]

**ADV NOTSHE SC:** The total amount. Am I correct, the total amount is R 786 867,32.

**CHAIRPERSON:** Is that what...?

**ADV NOTSHE SC:** On page 51.

**CHAIRPERSON:** Okay, what you paid in regard to Mr Mti?

**MR BLAKE:** It is probably more.

**CHAIRPERSON:** It is probably more?

**MR BLAKE:** Because these are... these are only from 2015.

20 **CHAIRPERSON:** Oh,

**MR BLAKE:** I am not sure if there is ...[intervenes]

**CHAIRPERSON:** Yes, there may be a lot or more before that.

**MR BLAKE:** Ja, but at least that amount, ja.

**CHAIRPERSON:** And I think he left Correctional Services if I

recall the evidence of Mr Agrizzi correctly. He left Correctional Services around 2007/2008 or 2006 or there about. But of course, I think the... it may well be that the relationship between BOSASA and him continued.

**MR BLAKE**: I think Mr Watson's ...[intervenes]

**CHAIRPERSON**: Yes, by mister... ja.

**MR BLAKE**: ...relationship is quite well determined by Lieutenant Colonel Smit ...[indistinct]

**CHAIRPERSON**: Okay. Alright. Mr Notshe.

10 **ADV NOTSHE SC**: So whilst you are on that Chair, it is... on page 44 ...[indistinct], you will see there it is... the heading is Mr Linda Mti and Ms T Njana.

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: Is that right?

**MR BLAKE**: Correct, ja.

**ADV NOTSHE SC**: And then if you turn to page... or the reason... is that... is the reason why you mention those together, were they travelling together now?

20 **MR BLAKE**: No, Ms Njana is actually his wife but under custom. Mr Njana was advised to me to be a SITA officer, as well as, working for government. I think the name was still in the passport as Njana. That is why we ...[intervenes]

**CHAIRPERSON**: Ja, you used it.

**MR BLAKE**: Yes.

**CHAIRPERSON**: Okay.

**ADV NOTSHE SC:** And then on page 51, you then see again Ms Njana standing alone. And then those bookings, there are about 36 of them, they amount to R 172 962,52 on page 53.

**CHAIRPERSON:** What is that total? Page 63?

**ADV NOTSHE SC:** No, five three Chair.

**CHAIRPERSON:** Five three?

**ADV NOTSHE SC:** Five three.

**CHAIRPERSON:** Oh.

10 **ADV NOTSHE SC:** It is R 172 962,52. Am I correct?

**CHAIRPERSON:** But...[intervenenes]

**MR BLAKE:** Yes, well, Ms T Njana.

**ADV NOTSHE SC:** Ms T Njana, yes.

**MR BLAKE:** Ja.

**ADV NOTSHE SC:** And then again, you see the name of Mr Linda Mti just below that. Mti and Ms T Njana ...[indistinct] Then their expense goes over the page to page 54 and the amount there is R 171 992,06. Do you confirm that?

**MR BLAKE:** Ja, R 171 992,06. Correct.

20 **CHAIRPERSON:** But as you say it could be more?

**MR BLAKE:** It could be.

**CHAIRPERSON:** Ja.

**MR BLAKE:** It could be.

**CHAIRPERSON:** Okay.

**ADV NOTSHE SC:** Now if we go back Chair to the... on

page 15, one five. I just need you to clarify. There is an issue. It was raised by the Chairperson regarding the travelling of Mr Frolick.

**MR BLAKE**: Yes.

**ADV NOTSHE SC**: You say there in your statement that the first two invoices were paid by Eastern Cape Rugby but you say, you are not aware of the internal arrangements between them and Mr Frolick.

**MR BLAKE**: There is an email further one which I think sort  
10 of says that Mr Watson did not want Eastern Province Rugby to pay for it but for Mr Agrizzi to pay for it.

**CHAIRPERSON**: Just repeat that? Who paid for Mr Frolick?

**MR BLAKE**: Originally it was Eastern Province Rugby.

**CHAIRPERSON**: Yes.

**MR BLAKE**: I think the invoice was made out to them.

**CHAIRPERSON**: Ja.

**MR BLAKE**: But further down the line, there is an email from Mr Watson asking Mr Agrizzi to pay for it.

**CHAIRPERSON**: Is the email in this bundle.

20 **MR BLAKE**: I think it is.

**CHAIRPERSON**: Okay.

**ADV NOTSHE SC**: Can you look at page 14?

**CHAIRPERSON**: One four?

**ADV NOTSHE SC**: One four.

**CHAIRPERSON**: Does it start somewhere?

**ADV NOTSHE SC:** Yes, the email on paragraph 28.6.

**CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** Is that what you are talking about now?

**MR BLAKE:** Ja.

**CHAIRPERSON:** Where does it start? Let us go where it starts first, the document. The document at page 13. It looks like it is a continuation of a document, does it not?

**ADV NOTSHE SC:** It is on page 14 Chair, he is discussing Invoice 27255.

10 **CHAIRPERSON:** Yes, but what I want is, where does this document begin?

**ADV NOTSHE SC:** The document we are looking at?

**CHAIRPERSON:** Ja.

**ADV NOTSHE SC:** This is his affidavit.

**CHAIRPERSON:** Oh, this is part of his affidavit. Oh, okay.

**ADV NOTSHE SC:** It is on page.... ja, it starts on page 1, yes.

**CHAIRPERSON:** Okay and what paragraph?

20 **ADV NOTSHE SC:** Now, it is on paragraph, page 14, paragraph... He, here, he is discussing Invoice 27255 and then he explains on page... no, on paragraph 28.6. Then he says:

“In respect of Invoice 27255, I have provided the Commission with the email correspondence which is attached as BB111. Seven extracts from the email

are as follows.”

From here again, Smit sent 14 December 2010, 05:11 p.m. to Angelo Agrizzi subject:

“Forward invoice from Shop Blake’s Travel (Pty) Ltd.  
Attachments to be emailed pdf...”

Then in “inverted commas”:

“Angelo, he told me that this invoice must also be paid by BOSASA. Please advise ...[indistinct]

Is that the invoice... the email that you are talking  
10 about?

**MR BLAKE**: Ja, that was the email where Cheeky was asking those invoices to be paid by BOSASA.

**CHAIRPERSON**: Do you know who is being referred to there as Cheeky or would you not know?

**MR BLAKE**: Cheeky Watson.

**CHAIRPERSON**: Cheeky Watson?

**MR BLAKE**: Ja.

**CHAIRPERSON**: Ja, he was... he is Mr Gavin Watson’s brother.

20 **MR BLAKE**: Correct.

**CHAIRPERSON**: Ja.

**MR BLAKE**: From the Eastern Cape Rugby.

**CHAIRPERSON**: Okay so this email was from Mr Smit who was part of BOSASA addressed to Mr Agrizzi and saying that... telling Mr Agrizzi that Mr Cheeky Watson had told him

that the invoice should be paid for by BOSASA. That is what it says, right?

**MR BLAKE**: Correct.

**CHAIRPERSON**: Okay.

**ADV NOTSHE SC**: And then did BOSASA pay the invoice? You will not...

**MR BLAKE**: I am not sure. You know, we are talking 2010. I would presume that we would have to re-invoice it and change the invoice. So it is... or it could have been that  
10 cash was given for that invoice and just square it off  
...[indistinct]

**ADV NOTSHE SC**: And now... and then ...[intervenes]

**CHAIRPERSON**: You may not be able to say anything about this. I understood, I think from either Mr Frolick's affidavit or from someone else's affidavit in this Commission that some of the trips that were being said to have been paid for by BOSASA in respect of Mr Frolick in Gauteng were for him when he came to Gauteng to attend rugby. So but I see that here... it looks in 2010. It looks like it was for the Soccer  
20 World Cup.

**MR BLAKE**: It was for the World Cup.

**CHAIRPERSON**: That was for the Soccer World Cup?

**MR BLAKE**: Ja, correct. In fact, there is more documents that Mr Nixon asked me for which is investigating.

**CHAIRPERSON**: Oh, is that so? So could we have that.

**MR BLAKE:** I have sent it to him already.

**CHAIRPERSON:** Ja, is that one of the investigators Mr Notshe?

**ADV NOTSHE SC:** Mr Nixon is one of the one investigators, yes.

**CHAIRPERSON:** Ja, he is looking into that?

**ADV NOTSHE SC:** Yes, okay.

**CHAIRPERSON:** Okay. Alright.

**ADV NOTSHE SC:** This is Chair on... when there was a  
10 follow up on the statement of Mr Frolick about the travelling  
...[intervenes]

**CHAIRPERSON:** Yes.

**ADV NOTSHE SC:** ...to Port Elizabeth.

**CHAIRPERSON:** Yes, yes, yes.

**ADV NOTSHE SC:** It is the follow up. That evidence will be presented before Mr Frolick testifies.

**CHAIRPERSON:** Yes. No, no, no. That is fine. Can we  
also check whether there might be any chance that your records could still have whatever bookings may have been  
20 made for Mr Agrizzi.

I do not know whether that was in 2010 when he said he travelled to Port Elizabeth to meet with one of Mr Gavin Watson's brothers and Mr Frolick. If it is 2010, your records could still have that.

**MR BLAKE:** Yes, we would have had invoices to it. I did

note that in 2010 because it was the World Cup  
...[intervenes]

**CHAIRPERSON**: Ja, you would still have them.

**MR BLAKE**: There are invoices but it might not be very  
much.

**CHAIRPERSON**: H'm?

**MR BLAKE**: There was not a lot of activity in 2010 with  
BOSASA.

**CHAIRPERSON**: Oh, okay.

10 **MR BLAKE**: But a lot of it was done with FIFA and I will  
have records.

**CHAIRPERSON**: You might have?

**MR BLAKE**: I just have to ...[intervenes]

**CHAIRPERSON**: You will have records.

**MR BLAKE**: ...check and see if they were done with us or  
FIFA paid for them.

**CHAIRPERSON**: Ja, okay.

**MR BLAKE**: Ja.

20 **CHAIRPERSON**: I think and the investigators... Mr Notshe,  
maybe you are working on this. That the trip that maybe  
disputed that Mr Agrizzi talked about when he said he went  
to ...[intervenes]

**ADV NOTSHE SC**: Port Elizabeth.

**CHAIRPERSON**: ...Port Elizabeth and met with... I do not  
know whether Mr Cheeky Watson or ...[intervenes]

**ADV NOTSHE SC:** It is Mr Willem Swarts.

**CHAIRPERSON:** Ja, Willem Swart and ...[intervenes]

**ADV NOTSHE SC:** Willem Swarts.

**CHAIRPERSON:** ...Mr Frolick. Ja.

**ADV NOTSHE SC:** Ja.

**CHAIRPERSON:** Ja, okay. Alright. Thank you.

**ADV NOTSHE SC:** [Indistinct]

**CHAIRPERSON:** Ja. You may continue.

**ADV NOTSHE SC:** Yes. And on page 16 of your statement,  
10 you deal with the booking of Mr Syvion Dlamini. On page 16.

**MR BLAKE:** Yes.

**ADV NOTSHE SC:** Do you know who Mr Dlamini is.

**MR BLAKE:** Yes, I have met him?

**ADV NOTSHE SC:** Who is he?

**MR BLAKE:** He stays in Lock Crescent ...[indistinct] I think,  
number 8 or close by there. He was a regular from BOSASA.

**ADV NOTSHE SC:** I see. And I see there is a booking here  
but also, the invoice was sent to JJ Venter.

**MR BLAKE:** Correct. So one of the bookings that were sort  
20 of kept hush-hush were JJ Venter bookings. They were  
always bookings that were not on the BOSASA account.

**ADV NOTSHE SC:** I see. And paid for by...

**MR BLAKE:** By Mr Agrizzi.

**ADV NOTSHE SC:** Mr Agrizzi. Now on page 17 of your  
statement, then you have got a whole list of people and you

say this is some of the individuals under them, other than the ones you have testified about and other than Mr Gillingham and Mr Mti and then a whole list of them about 15 of those.

**MR BLAKE**: Correct. There is 16 people that appear on the JJ Venter account.

**ADV NOTSHE SC**: Yes.

**CHAIRPERSON**: So just to go back to Mr Frolick. I see from your affidavit that some payments... payment for some  
10 of his travel arrangements made through Blake's Travel were paid for by the Eastern Cape Rugby Union.

And I see that on some stage, he apparently deposed or ...[indistinct] check himself for somebody that I think he may have been with. [laughs]

**MR BLAKE**: The notion or one of the lady rugby players of the Eastern Province, you know.

**CHAIRPERSON**: Yes, yes.

**MR BLAKE**: He paid for her ticket, ja.

**CHAIRPERSON**: So some payments were originally made by  
20 the Eastern Cape Rugby Union ...[intervenens]

**MR BLAKE**: Correct.

**CHAIRPERSON**: And then but later on, BOSASA paid for some?

**MR BLAKE**: Correct.

**CHAIRPERSON**: Okay. Alright. From the top of your head,

are you able to say whether there many that were paid for by BOSASA or you are not able to say it?

**MR BLAKE**: I think, Mr Daniel Watson and Cheeky Watson, he would get his way with the payments although Mr Agrizzi was not very happy about it.

**CHAIRPERSON**: Yes.

**MR BLAKE**: Or it would come from his accounts. [laughs]

**CHAIRPERSON**: [laughs] Okay.

**MR BLAKE**: But Agrizzi would probably be able to verify it  
10 more than...

**CHAIRPERSON**: Ja.

**MR BLAKE**: I would have to go back and triple check my books on that, ja.

**CHAIRPERSON**: Okay. No, that is fine. Mr Notshe.

**ADV NOTSHE SC**: And then the rest of the affidavit, it then deals with your interaction with the bookings of Mr Gillingham and Mr Mti and those are also covered by the invoices that are attached and they are also on the spread sheet. Am I correct?

20 **MR BLAKE**: Correct.

**ADV NOTSHE SC**: Insofar as Mr Gillingham, it is on page 19, you deal with the table that deals with Mr Gillingham there. Is that correct?

**MR BLAKE**: Page 19, Mr Gillingham. Correct.

**ADV NOTSHE SC**: Page 19.

**MR BLAKE**: Ja.

**ADV NOTSHE SC**: Is that the table that deals with travelling bookings of Mr Gillingham?

**MR BLAKE**: Correct.

**ADV NOTSHE SC**: And now who booked for Mr Gillingham?

**MR BLAKE**: Mr Agrizzi would have booked for them. I do see one payment was paid by Mr Mansell or not... two payments were paid by Mr Mansell and others were paid by Mr Agrizzi.

10 **ADV NOTSHE SC**: Did he receive any payment from... directly from Mr Gillingham?

**MR BLAKE**: No. Okay, wait. Let me check.

**ADV NOTSHE SC**: Chair, except for the investigations that Chair has indicated, that is the evidence of the witness.

**MR BLAKE**: Ja.

**CHAIRPERSON**: I think you have covered the important parts.

**ADV NOTSHE SC**: Yes. Chair, and also just for the record. The people that I mentioned that are affected by the  
20 evidence, they were given the what we term the Rule 3.3. Notices in respect of the witness of this witness.

**CHAIRPERSON**: Okay, okay. Thank you very much A Blake for coming to give evidence and for assist us, the Commission.

**MR BLAKE**: Yes.

**CHAIRPERSON:** We appreciate it very much. We may ask you to come back if there is a need but we will not bother you if we have got everything.

But from what the queries are raised, I think probably the Commission's investigators will still be in touch with you. But thank you very much for coming to give evidence. Otherwise, you are excused.

And once again, thank you for being prepared to wait for the whole day but thank you very much.

10 **MR BLAKE:** Thanks. Chair, we have been waiting for six years to get this thing sorted out. [laughs]

**CHAIRPERSON:** [laughs] No, thank you very much.

**MR BLAKE:** But that is how we could ...[indistinct]

**CHAIRPERSON:** Yes. No, that is fine. I think we will adjourn then for the day. Tomorrow I have two or so witnesses at ten o'clock. So but for the day we are adjourned. We adjourn.

**INQUIRY ADJOURNS TO 30 JULY 2020**