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20

PROCEEDINGS HELD ON 23 JANUARY 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

MR ANGELO AGRIZZI: Good morning, Chair.

ADV PAUL PRETORIUS SC: Morning, Chair.

CHAIRPERSON: Morning, thank you. You may proceed once you are or maybe I must just say this. It has been brought to my attention that there is no water in the building and it goes much wider than the building, in the area, I do not know how far and that Johannesburg water has been working on that since early this morning.

It seems to me that what we should do is that during the tea break, for the
10 tea break we should take a longer tea break to enable people who might wish to find
bathrooms somewhere. So we might take a 30 minutes tea break instead of the usual
15 minutes, but if by the time we go on tea break the problem has been solved then our
tea break will be the normal 15 minutes.

Okay, thank you, Mr Pretorius you may proceed.

ADV PAUL PRETORIUS SC: Thank you, Chair. Mr Gillingham before we return to the
SIU report.

MR ANGELO AGRIZZI: Sorry, Mr Agrizzi.

ADV PAUL PRETORIUS SC: Sorry, Chair.

MR ANGELO AGRIZZI: You can call me Nando's anything, just not Gillingham please
20 or Watson anymore.

ADV PAUL PRETORIUS SC: The word Gillingham is staring me in the face right here.

MR ANGELO AGRIZZI: Chair, if I may just do a clarity point please that had been brought to my attention, because I think it is important that number one is, when we mentioned the attorneys now I refer to 33.3 and I say that I was to attend meetings with them and attorney Brian Biebuyck was to ensure that Bosasa was not compromised.

There was nothing sinister there. There is no underhandedness, he had been our attorney for many years and he would basically have to just do what he did best as an attorney.

I would not say that he was compromised in anyway there. He just delayed, he played delaying tactics and that was – I believe that is not untoward for attorneys.

CHAIRPERSON: Well, I do not know, but that is part of the reason why I was saying to you yesterday just be careful in regard to such an issue. Not to say that an attorney cannot do something that he/she should not do can happen, but one needs to be careful, but if one is certain and it happened then it happened, then it can be told. But,
10 so you have clarified your position. What you are saying is – I do not know whether you have reflected and you have concluded that what you are saying is that as far as you are aware he did not do anything untoward.

MR ANGELO AGRIZZI: In terms of 33.3.

CHAIRPERSON: In terms of that meeting.

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Yes, you understand that he was there to delay and so on and so on.

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Okay, alright, thank you.

MR ANGELO AGRIZZI: Thank you, Chair.

20 **CHAIRPERSON:** Mr Pretorius?

ADV PAUL PRETORIUS SC: Thank you, Chair, my apologies Mr Agrizzi. Let us return to Mr Gillingham. We are at page 280 of Annexure or EXHIBIT S1 and we are dealing with the evidence in the long paragraph on that page. Let us just recap. We are going to go through the SIU report as comprehensively as we need to, to illustrate where it corroborates your evidence, but we are not going to go through the whole report *per se*.

MR ANGELO AGRIZZI: Noted, Chair.

ADV PAUL PRETORIUS SC: So the report in this paragraph does concern some of the evidence that you have given and so I would like to go through it sentence by sentence.

CHAIRPERSON: I am sorry, Mr Pretorius, I have got the page on the affidavit where we ended. What page was the report again?

ADV PAUL PRETORIUS SC: The report...[intervenes]

CHAIRPERSON: Is it...[intervenes]

ADV PAUL PRETORIUS SC: The report is at page 278, but we are at page 280.

10 **CHAIRPERSON**: 280, okay, thank you.

ADV PAUL PRETORIUS SC: We are dealing with the executive summary at the moment.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: And the evidence that we are now traversing is under the heading findings in respect of kitchens tender HK2/2004 and that is the catering tender in respect of which the witness has given evidence. If we can go to the long paragraph then on page 280 where we ended yesterday. The first sentence reads:

20 "During the course of a search and seizure operation
 conducted at Gillingham's residence a document containing the
 bid evaluation criteria and guidelines for evaluating the
 kitchen's tender was found in the form of electronic data."

Now in respect of that particular sentence your evidence was I understand it in respect of this tender and others you and Mr Gillingham exchanged information concerning the bid and the bid documents from time to time?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The second sentence read:

"Mr J Malan the SIU Cyber Forensic Expert determined that
this document originated from the computer from Mr A Agrizzi."

Let us stop there. I believe you have a comment to make about the
correctness or otherwise of that sentence.

MR ANGELO AGRIZZI: Chair, I do not think we need to go into too much detail on the,
where it originated or when it was put there, whether it was sent to me, I do not think
we need to go into that detail.

CHAIRPERSON: Well I do not know whether Mr Pretorius wanted you to comment if
10 you wish to or whether he specifically wanted you to say something about whether that
is true or not.

ADV PAUL PRETORIUS SC: What does Mr Malan meant by originated? Is it correct
that documents of that nature would have been sent by you to Gillingham?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And we know that you were not the Chief Executive
Officer or Managing Director, but we need not dwell there.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Let us go on.

20 "According to Malan the document was last saved by Agrizzi
on..."

CHAIRPERSON: I am sorry Mr Pretorius. I do not understand why there should not be
an answer that is specific whether that is true or not?

ADV PAUL PRETORIUS SC: Well, Chair, the reason is we do not understand what
Mr Malan means by originated. It could mean that a particular document was sent from
a particular computer to Mr Gillingham's computer. In other words originated in that

sense. Or it could mean that the original document was composed and compiled on Mr Agrizzi's computer and then sent and we are not sure what Mr Malan...[intervenes]

CHAIRPERSON: Yes, but the witness can deal with that on his understanding of what this originated means.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Whether he had anything to do with that document.

ADV PAUL PRETORIUS SC: Would you like to answer the question?

MR ANGELO AGRIZZI: I can, Chair.

CHAIRPERSON: Yes?

10 **MR ANGELO AGRIZZI:** Basically the document was being compiled by Mr Danie Mansell. It happened to come onto my computer and it was sent from my computer to Mr Patrick Gillingham's computer. So the word originate, was it my computer, no it was not, the actual document, the bid document was actually produced on Mr Mansell's computer.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: That is the only...[intervenes]

CHAIRPERSON: I think that is helpful.

MR ANGELO AGRIZZI: Okay.

CHAIRPERSON: So your point is you did not compile it, but it came to your computer
20 and from your computer you did send it to Mr Gillingham?

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Ja.

MR ANGELO AGRIZZI: And for completeness I think it is important to mention that in terms of the blueprints, the original blueprint, my documents, the reports post the visits those were compiled and originated from my computer that was sent through to Mansell

and to the stock keys and the other email address in Bloemfontein.

CHAIRPERSON: No, yes, that is fine, thank you.

MR ANGELO AGRIZZI: Thank you.

CHAIRPERSON: That is helpful.

ADV PAUL PRETORIUS SC: So as I understand it, apart from the detail and the trail that this document followed from computer to computer what is clear from your evidence is that from Bosasa where document originated whether they went via your computer...[machine malfunction].

...relating to the bid, the bid evaluation criteria and the guidelines for
10 evaluating were actually sent from the Bosasa stable to Mr Gillingham?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: The evidence in the SIU report continued. It says according to Malan the document was last saved by Agrizzi on 28 June 2004, can you comment?

MR ANGELO AGRIZZI: Chair, I do not have my computer, no, I cannot recall.

ADV PAUL PRETORIUS SC: Where is your computer now?

MR ANGELO AGRIZZI: My computer was handed back when I was asked to leave Bosasa in March 2017. It was handed back to Bosasa.

CHAIRPERSON: Okay.

20 **MR ANGELO AGRIZZI**: There were two computers and an I-Pad.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Let us continue. The SIU report reads:

"The evidence shows that this was on the same day that the DCS, Department of Correctional Services commenced with its screening of the bids received in respect of the kitchens

tender."

Can you comment on that?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: It goes on to read...[intervenes]

CHAIRPERSON: Well, I am sorry, well I do not know to what extent if that statement is correct, what extent it also means either the whole or the part of the previous one is correct as well. Maybe not for the date.

MR ANGELO AGRIZZI: Chair, if I can respond to that?

CHAIRPERSON: Yes.

10 **MR ANGELO AGRIZZI**: I am saying that it is correct, because that is what the investigation reveals.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: So I am working off that, so they are saying and they prove it that the dates are correct, then that is why I am saying it is correct.

CHAIRPERSON: Yes, yes, yes.

MR ANGELO AGRIZZI: When you ask me, Chair, if I can remember the date?

CHAIRPERSON: Yes?

MR ANGELO AGRIZZI: I cannot.

CHAIRPERSON: You cannot on your own?

20 **MR ANGELO AGRIZZI**: Correct.

CHAIRPERSON: Okay, but I must just explain this. When Mr Pretorius asked you these kind of questions that he is asking you in regard to this document, this report and maybe other documents for your comment, you have to think whether you accept as true what is stated in the document. The matter that he would have drawn your attention to or you dispute it or you have a different understanding. And you might say

no, that is not true, so this report is wrong in that regard or you say no, it is true or I do not know, it may be true, it might not be true, I do not know, or I cannot remember. So I just want you to understand those nuances so that as he asks you questions when you respond you do not confirm as true for example something that you do not know whether it is true. Okay?

MR ANGELO AGRIZZI: Chair, for clarity I believe that the report is accurate.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: It has been done by auditors.

CHAIRPERSON: Yes.

10 **MR ANGELO AGRIZZI**: And therefore I have to accept it as true.

CHAIRPERSON: No, no that is fine. I just wanted you to understand.

MR ANGELO AGRIZZI: No, I understand, I do.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: Thank you, Chair.

CHAIRPERSON: Okay, alright, thank you.

ADV PAUL PRETORIUS SC: I did understand generally that, that was your approach for example from the date of 28 June 2004, but let us just go back there. What the report says is that the document was last saved by you on that date. It does not purport to give dates in relation to the trail of communications between Bosasa on the
20 one hand and Mr Gillingham on the other?

MR ANGELO AGRIZZI: I understand that.

ADV PAUL PRETORIUS SC: Alright. And you say you accept...[intervenes]

CHAIRPERSON: I am sorry, I am sorry Mr Pretorius and based on what you just told me when I was giving clarification I understand your position to be that you cannot remember of your own, but it may well be true?

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: And that is confirmed by the next sentence, which says:

"Whilst Malan could not determine the date of the first creation of the document on Agrizzi's computer the evidence raises two concerns. First whether Agrizzi and as such Bosasa was in possession of the document at the time that Bosasa's tender was submitted for the kitchen's tender."

Now you are able to comment on that, because you have already given
10 evidence in that respect. What is your comment?

MR ANGELO AGRIZZI: That is – what they are stating there is correct.

ADV PAUL PRETORIUS SC: From your knowledge?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: And the second concern raised in the report is whether Bosasa was a party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Again you are able to comment, because you have given evidence. What is your comment in relation to that?

MR ANGELO AGRIZZI: Sorry, the report is correct, Chair.

ADV PAUL PRETORIUS SC: Well the report raises it as a concern. I understand your
20 evidence to be that that concern reflects a fact which is correct?

MR ANGELO AGRIZZI: The opportunity to get the weighting right so that they could get the high score.

ADV PAUL PRETORIUS SC: Their comment follows:

"Obviously if this was so it would not only have subverted the entire procurement process, because it would have placed

Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the Department of Correctional Services to civil suits from unsuccessful bidders."

MR ANGELO AGRIZZI: In terms of Bosasa was given unduly advantage position that is correct. I cannot comment with regards to exposing DS2 as civil suits.

ADV PAUL PRETORIUS SC: Yes. We do know there were civil suits and the evidence will come through later.

MR ANGELO AGRIZZI: Correct.

- 10 **ADV PAUL PRETORIUS SC:** The report continues and this is the executive summary on page 280 to read:

"The evidence clearly indicates that Gillingham and Commissioner Mti received financial benefits from Bosasa after the award of this tender."

Now you have given your own evidence in this regard from your own recollection.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: You gave no evidence to the SIU investigation in respect of this finding?

- 20 **MR ANGELO AGRIZZI:** No, I did not.

ADV PAUL PRETORIUS SC: So they must have got it from a source other than you?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: It continues:

"The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti."

It goes on to say:

"The evidence further shows that Mr Mansell and Mr Smith both employees of the Bosasa group were instrumental in effecting these benefits to Gillingham and Commissioner Mti."

What is your comment there?

MR ANGELO AGRIZZI: My comment is quite simply that this is correct and – but the instruction to Mr Mansell is not clarified and I think that is probably going to occur now when the further investigation takes place, but the statement that is made is correct.

ADV PAUL PRETORIUS SC: The report continues to conclude:

10 "The timing of the benefits appear, appears to be sufficiently linked to the awarding of the kitchen's tender."

Do you agree with that? Is it consistent with your own knowledge?

MR ANGELO AGRIZZI: I can now agree to it, Chair, at the time I did not know about the rewards that were happening, that was happening without me knowing at that specific time. I now know and I can confirm.

ADV PAUL PRETORIUS SC: Alright. And the conclusion in the last sentence of the first paragraph on page 281 reads:

"In the circumstances it was unlawful for Gillingham and Commissioner Mti to have received these benefits."

20 The report goes onto to refer to extension of the kitchen's contract by Commission Mti on 17 May 2005. Do you recall that fact?

MR ANGELO AGRIZZI: I do recall it.

ADV PAUL PRETORIUS SC: Is it correct?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The SIU then sets out in the executive summary its

recommendations and we must remember these recommendations were made during or about 2009. Firstly that the DCS considers instituting civil proceedings for recovery of losses. Secondly that the DCS considers instituting disciplinary proceedings against Gillingham, Commissioner Mti no longer being in the employ of DCS and thirdly that the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell agreed CM Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities.

For present purposes the recommendation to the NDPP in 2009 in summary
10 form in relation to the kitchen's contract as we now refer to it is set out there.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: What actually happened we will deal with insofar as we are able in due course as part of your evidence at least at this stage. The executive summary then continues on page 281 to deal with findings in respect of the access control tender HK2/2005. You have given evidence about that?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Do you recall that reference HK2/2005?

MR ANGELO AGRIZZI: Yes, I do.

ADV PAUL PRETORIUS SC: And is that a reference which coincides with your
20 recollection of the detail regard to the evidence that you have already given?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The report says:

"This contract was awarded to Sondolo IT an affiliate company
within the Bosasa group on 11 April 2005."

Correct?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: In the next paragraph there is comment on the deviations or alleged deviations from supply chain management rules. We need not go there, but I want to go to the last paragraph on page 281.

"The evidence shows that Gillingham outside of his normal duties played an integral role from the outside in the procurement process and was irregularly instrumental in developing the tender specifications."

What do you know from your own knowledge of that statement Mr Agrizzi?

10 **MR ANGELO AGRIZZI**: My knowledge is that Gillingham assisted by Mansell drew up the final specifications that formed part of the bid document. That is really what I can say, I was involved with designing a system and that was then put together and formed part of the final document.

ADV PAUL PRETORIUS SC: When moneys were paid to Gillingham by Bosasa did you know whether Mr Gillingham was influential or exercised influence in respect of the decision to award the contract?

MR ANGELO AGRIZZI: Chair, I knew about it. I knew he was influential.

ADV PAUL PRETORIUS SC: Over the page, page 282 the first paragraph reads:

20 "According to the evidence of both the witness and Malan Bosasa was irregularly involved in drafting the bids specifications for this tender."

Let us just pause there a moment before we comment on the allegation. Reference is made to the witness. It is evident from the SIU report as a whole that someone from within Bosasa gave evidence to the SIU.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: We need not name the person, but it appears that evidence from within Bosasa to the SIU was used in the compilation of this report, amongst other evidence of course, for example Mr Malan's evidence and secondly that that was not your evidence.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Alright. It goes on to say:

10 "On the evidence of the witness Agrizzi requested him to prepare specifications in line with the technology Bosasa was employing in the kitchen's contract. According to him the specifications prepared by him were drafted in such a manner that the security aspects afforded Sondolo a clear advantage over the other bidders. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender."

Are you able to comment on the correctness of the allegations in that paragraph?

MR ANGELO AGRIZZI: Chair, the accuracy is perfect.

ADV PAUL PRETORIUS SC: It goes on to read:

20 "On the evidence of Malan that is their Cyber Security Expert, a document entitled CCTV bid doc was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa to Mr S Mlombile, Acting Chief Deputy Commissioner

Corrections of Department Correctional Services."

Do you know of your own knowledge anything of what is said in that paragraph?

MR ANGELO AGRIZZI: I do not know, Chair, I have never met Mr Mlombile at any stage, at any time.

ADV PAUL PRETORIUS SC: Let us just clarify. The access control tender, under what name did you know that bid to be?

MR ANGELO AGRIZZI: My understanding was that that was the HK2 of as reflected here and that was the access control tender itself.

10 **ADV PAUL PRETORIUS SC:** And you have given evidence about that?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Previously.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The report continues:

"Given the fact that the evidence disclosed that there was a close connection between Gillingham and Bosasa the probabilities point to the fact that he must have been aware of Bosasa's irregular participation in drafting the specifications."

20 To your knowledge quite apart from what is said here was Mr Gillingham aware of the irregular participation by Bosasa in drafting the specifications?

MR ANGELO AGRIZZI: Chair, I cannot comment on what if he was aware or not, Mr Gillingham. I cannot comment on what he was thinking.

ADV PAUL PRETORIUS SC: Were there communications between – well not on what he was thinking but what he was thinking but on your knowledge of the information received by him or not received by him as the case might be from Bosasa, in other

words were there communications, electronic communications between Bosasa and Gillingham regarding the specifications?

MR ANGELO AGRIZZI: There was communication. Regarding the specification I cannot remember exactly what was discussed or communicated there.

ADV PAUL PRETORIUS SC: Right, but you were instrumental in preparing specifications?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Were these specifications and in whatever form sent from your computer to Mr Gillingham's computer?

10 **MR ANGELO AGRIZZI:** My understanding was I would send it to two email addresses that were given to me. I might have, I cannot comment, I am not sure if I sent it directly to Gillingham or via one of those email addresses to Gillingham. I cannot recall.

ADV PAUL PRETORIUS SC: You are entirely correct. You do recall having said in your evidence that documentation including specifications was in fact sent to those two email addresses?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: There is evidence later on in the SIU report as to the persons who would have received the information at those addresses.

MR ANGELO AGRIZZI: And that is correct.

20 **ADV PAUL PRETORIUS SC:** And we will get there. The next paragraph is not something that you would know directly, but perhaps it should be placed on record at that stage Chair. It reads:

“Despite the fact that the Department of Public Works had previously been engaged by the Department of Correctional Services to assist in drafting specifications for tenders involving

technical detail the evidence showed that the Department of Public Works was excluded by Gillingham and Commissioner Mti from the procurement process for this tender even though technical detail was involved.”

Now you yourself Mr Agrizzi gave some evidence and made some comment in regard to this.

MR ANGELO AGRIZZI: That is; that is true Chair and there was upset from the Department from Public Works on why this was, the process normal process was derailed.

10 **ADV PAUL PRETORIUS SC:** We continue on page 282.

“The evidence further showed that the bid submission period was reduced from 30 to 21 days without any apparent or justifiable cause. Given the technical nature of the tender and Bosasa’s participation in the drafting of the specifications for the bid the shortened period for submission of bids allowed Sondolo to enjoy an unfair advantage over the other bidders.”

What do you say about that statement?

MR ANGELO AGRIZZI: Chair that is true.

20 **ADV PAUL PRETORIUS SC:** Yes, we have dealt with the technical nature of the tender. Let us continue, but perhaps you should comment. The nature of this tender and the knowledge and information required in relation to the technical detail. Was that substantial?

MR ANGELO AGRIZZI: Chair the information that we gathered was because we had been working there. So we understood the pitfalls what needed to be done. We had a good team working there. The provision of a security system. We knew exactly what to

design. So we had the upper hand. There was absolutely no ways given the fact that they had reduced the tender submission date from 30 days to 21 that anybody could compete with us.

ADV PAUL PRETORIUS SC: And that is confirmed in the next paragraph Mr Agrizzi which reads:

“Given the fact that Bosasa operated the Kitchens Contract and therefore had knowledge of the correctional centre environment the probabilities point to the fact that Sondolo enjoyed a significant advantage over its competitors because of its relationship with Bosasa.”

You have confirmed that.

MR ANGELO AGRIZZI: That is what I confirmed.

ADV PAUL PRETORIUS SC: And in those circumstances nevertheless the submission bid period was reduced from 30 to 21 days.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The last paragraph reads:

“Despite it being a bid requirement that bidders should have five years’ experience Sondolo was only registered seven days before the closing of bids, but was still awarded the tender. This was obviously a regular.”

Is that a correct statement?

MR ANGELO AGRIZZI: I refer to that in my affidavit as well.

ADV PAUL PRETORIUS SC: And it is correct?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And once again on page 283 the SIU Report concludes:

“The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tender. The SIU was unable to find any lawful course for such benefits being made to Gillingham.”

And then it proceeds to make further statements consistent with its statements in relation to the previous contract. Paragraph 2 reads that is the second paragraph on page 283:

10 “The SIU did not conduct a comprehensive financial investigation as in the case of Gillingham. I into benefits Commissioner Mti may have received from Bosasa because of various limitations experienced during the SIU’s investigation. However the limited evidence gathered by the SIU indicated that he received benefits from Bosasa a few months before the Access Tender was granted to Sondolo.”

Now you have given evidence of the granting of benefits to both Mr Gillingham and Commissioner Mti over a period of time, but can you comment on that particular allegation regarding benefits given a few months before the Access Tender was granted to Sondolo?

20 **MR ANGELO AGRIZZI:** I found out when I received the report from the SIU that that it happened. I at one stage confronted some of the senior management in Bosasa and it has been confirmed.

ADV PAUL PRETORIUS SC: And then the third paragraph on page 283 reads:

“The Access Control Contract was extended by Commissioner Mti on 4 August 2005 in light of the irregular benefits received by him the extension of this contract was

irregular and unlawful.”

Do you; are you able to confirm as I think you have already stated in evidence that the Access Control Contract was indeed extended by Commissioner Mti?

MR ANGELO AGRIZZI: Yes, I confirmed.

ADV PAUL PRETORIUS SC: Then once again in the executive summary recommendations are made that the Department of Correctional Services considers instituting civil proceedings. That it considers instituting disciplinary proceedings and that it recommends to the National Director of Public Prosecutions that criminal proceedings be instituted against Gillingham, Commissioner Mti, Sondolo, Bosasa and
10 others. [Intervenes].

MR ANGELO AGRIZZI: I am aware of that, yes.

ADV PAUL PRETORIUS SC: Once again it is worth emphasis Chair that this happened in 2009. The executive summary continues with the third contract or tender on page 284 under the headings “Findings in Respect of the Fencing Tender HK24/2005”. Mr Agrizzi you gave substantial evidence in regard to the Fencing Tender the circumstances preceding its award and its award to Bosasa.

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: Do you recognise that reference number, HK24/2005?

MR ANGELO AGRIZZI: I do.

20 **ADV PAUL PRETORIUS SC:** Is it the same contract ...[intervenes].

MR ANGELO AGRIZZI: That is.

ADV PAUL PRETORIUS SC: To which you referred earlier in your evidence?

MR ANGELO AGRIZZI: Chair that is the same contract.

ADV PAUL PRETORIUS SC: Right. The first paragraph reads which is consistent with your evidence:

“The Fencing Tender was awarded on 29 November 2005 to Phezulu Fencing (Pty) Ltd an affiliated company within the Bosasa Group.”

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The report continues to deal with deviations from Supply Chain Management Directives, but we needed not deal with those with you. The third paragraph states:

10 “As in the case of the previous two tenders the evidence shows that Gillingham outside of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.”

Are you able to comment on the correctness of that allegation?

MR ANGELO AGRIZZI: It is correct.

ADV PAUL PRETORIUS SC: “In this tender...”

The report continues:

20 “...there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software system namely the ON-IMIS System which Sondolo introduced through the Access Control Tender. This weighting accordingly favours Phezulu on account of it being an affiliate of Bosasa.”

Basically what was being said there is that in relation to a prior contract a software system had been introduced and in the evaluation criteria access to that system had been emphasised. You gave similar evidence in your testimony earlier. Just explain to the Chair firstly whether this is correct and secondly what has been said here?

MR ANGELO AGRIZZI: Chair this is correct, because what this does and this was the whole plan from the beginning was to encapture the Correctional Services by having the network as I explained, having the system the platform. So it is like having an Apple iPhone. Once you have got an Apple iPhone you have go the iCloud you have to use it and you end up with an iPad. Then you end up with a Mac Air and that was the whole concept behind the state capture here of Correctional Services was to put a system in there. Make every other tender reliant on that system. Then you controlled it.

CHAIRPERSON: So in a way, in a way you, you can always say there was a tender
10 and different companies, you know, put in their bids and Bosasa won, but actually the whole thing would have been manipulated in such a way that the, the winner could only be Bosasa or whoever Bosasa wanted to win.

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: So particularly in relation to this computer software system I understand that no other competing bidder could comply with the evaluation criteria because it did not have access to that system.

MR ANGELO AGRIZZI: And if they did have access to it if we did – I would not say they did not have access. They had access, but it was ludicrously high. So they would
20 have to spend 20/R30 million to have access to the system which would then increase their pricing.

ADV PAUL PRETORIUS SC: Right. Thank you for clarifying that. By access to the system I mean access to the system that had already been installed and was being operated by Bosasa. They could buy the system elsewhere I presume.

MR ANGELO AGRIZZI: Yes, they could, but they could not have access to the system

on site.

ADV PAUL PRETORIUS SC: Yes. The report continues in the next paragraph to read:

"An issue of concern to the SIU was the fact that substantial payments were made to Phezulu at the outset of the contract without adequate performance."

Do you know anything about that allegation?

MR ANGELO AGRIZZI: Yes, for school dumping took place and what actually happened was it was very strange, because the department wanted a guarantee, a bank guarantee, but at the same time they wanted a payment plan. So a payment plan
10 was created and what happened was they would check the bond stores, because we had equipment in bond. They would check that, sign off on that and then make prepayments, but a considerable amount of money was prepaid. I think it was well over R100 million.

ADV PAUL PRETORIUS SC: Without the goods having been delivered or installed?

MR ANGELO AGRIZZI: The goods were in a bond store sir. I just want to correct one thing. That there were bond stores all around the country and they were told this is bond store. I do not know if they ever checked. I personally cannot comment on it, because I did not run that project in detail.

ADV PAUL PRETORIUS SC: Well let us continue, but you used the word fiscal
20 dumping.

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: It is dealt with later in this paragraph. So perhaps we should get there before we explain the concept.

MR ANGELO AGRIZZI: Sure.

ADV PAUL PRETORIUS SC: The paragraph continues:

“The SIU examined payments made to Phezulu in respect of this tender in terms of the contract provisions. 90 percent of the contract price was payable on deliver of the raw materials to the contract sites.”

Is that a correct statement?

MR ANGELO AGRIZZI: I cannot recall that specific amount. If it was 90 percent or 70 percent.

ADV PAUL PRETORIUS SC: But a large percentage. Can you confirm that?

MR ANGELO AGRIZZI: It was a major percentage.

10 **ADV PAUL PRETORIUS SC**: Right.

“The structure of this contract resulted in DCS making very large payments to Phezulu at a very early stage of the contract.”

Can you confirm that?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Without any reference ...[intervenes].

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Yes, one at a time we must speak otherwise the record is not going to read very well.

20 “Since this payment was shortly before the end of the financial year the SIU concluded that this was a case of fiscal dumping. That is to say when departments spend large amounts of money just prior to the financial year end to use up their budget irrespective of whether the department gets value for money for such spending.”

Now you used the word “fiscal dumping” or the words “fiscal dumping” yourself. Is this what you mean?

MR ANGELO AGRIZZI: That is exactly what I mean Chair.

ADV PAUL PRETORIUS SC: “A further issue of concern...”

The report continues:

10 “...is the fact that the bid conditions stipulated that the fences
 be erected by 17 March 2006. At the compulsory briefing
 session for this tender Gillingham confirmed that the erection of
 the fences was to be effected by 17 March 2006. Two bidders
 submitted project plans that complied with this deadline.
 However Phezulu submitted two project plans in terms of which
 they undertook to deliver raw materials to the site by
 17 March 2006, but would install the fences at a much later
 date.”

Again evidence of undue advantage to Phezulu, but do you know anything about those allegations?

MR ANGELO AGRIZZI: I am aware of them, yes.

ADV PAUL PRETORIUS SC: Are they correct?

MR ANGELO AGRIZZI: They are correct.

20 **ADV PAUL PRETORIUS SC**: Are they correct?

MR ANGELO AGRIZZI: They are correct.

ADV PAUL PRETORIUS SC: Right. We learn there that Mr Gillingham was part of the Bid Evaluation Committee for this tender. Were you aware of that?

MR ANGELO AGRIZZI: I was aware of that.

ADV PAUL PRETORIUS SC: “In the Bid Evaluation Committee...”

The report states:

“...Gillingham scored the two service providers referred to above nought out of six for time and Phezulu a full six points. Despite the fact that its projected plan did not comply with the timelines.”

So what is being said here is that two bidders said that they would comply with the timelines for the installation of fences.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: They got nought out of six from Gillingham. Phezulu
10 said it could not comply, could only install the fences at a later date. It got six out of six.
Were you aware of that?

MR ANGELO AGRIZZI: Perhaps they changed the scales of rating. I do not know.
Maybe he did not understand it. I was not aware of that Chair until I had seen the report.

ADV PAUL PRETORIUS SC: Well the ...[intervenes].

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: The report then says perhaps understandably.

“The SIU finds this approach by Gillingham incomprehensible.
Since on the face of it Phezulu’s project plans clearly did not
20 comply with the tender requirements.”

Let us go on. The third paragraph on page 285 reads:

“The evidence clearly indicates that Gillingham had received financial benefits after the award of this and the previous two tenders. The SIU were unable to find any lawful cause for such benefits being made to Gillingham and the evidence further

shows that Mansell and Smith with close connections to Bosasa were instrumental in affecting these benefits to Gillingham.

You have already confirmed those facts in relation to a previous tender. Are you able to comment in relation to this tender on whether those allegations are correct?

MR ANGELO AGRIZZI: They are correct.

ADV PAUL PRETORIUS SC: Right. The report continues in relation to Commissioner Mti and Gillingham's failure to disclose these benefits in similar terms to the findings in relation to previous tenders, but that detail we can leave for the record.

10 Your evidence is your evidence. This is a different source of evidence. Then follow recommendations. Once again civil proceedings, disciplinary proceedings and a recommendation that the National Director of Public Prosecution considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa and others. Page 286 of the executive summary deals with findings in respect of the Television Tender HK25/2005. Once again Mr Agrizzi you have given evidence regarding Television Tender.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: By reference to the report and by reference for example to details such as the reference number HK25/2005 are you able to say whether the
20 Television Tender being dealt with here is the same tender about which you gave evidence yesterday and on prior days?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The contract says the report was sent to Sondolo on 3 March 2006. You can confirm that?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Again deviations from Department of Correctional Services Procurement Directives are dealt with. We do not have to deal with that. The third paragraph reads:

“As in the case of the previous three tenders Gillingham outside the course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.”

Are you able to comment on the correctness of those allegations ...[intervenes].

MR ANGELO AGRIZZI: They.

10 **ADV PAUL PRETORIUS SC:** Or these statements?

MR ANGELO AGRIZZI: They are correct.

ADV PAUL PRETORIUS SC: The next paragraph reads:

“Sondolo’s first invoice for payment was submitted on 13 March 2006 three days after the contract had been signed and it appears 10 days after the contract was awarded to Sondolo. The invoice was for 106 million and it was paid on 23 March 2006.”

Extraordinarily rapid payment for a state department, but be that as it may. This as in the Fencing Tender was once again a fiscal, case of fiscal dumping. Can you
20 comment?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Once again the statement is made:

“The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders.”

Are you able to confirm that?

MR ANGELO AGRIZZI: That is confirmed.

ADV PAUL PRETORIUS SC: And so ...[intervenes].

CHAIRPERSON: So, I am sorry Mr Pretorius. So where an invoice was issued like three days after the signing of the contract that invoice and for as large an amount as R106 million was not and could not have been for work done already. Is it not?

MR ANGELO AGRIZZI: The motivation Chair was that it was imported products and needed to be paid up front.

10 **CHAIRPERSON:** Huh-uh.

MR ANGELO AGRIZZI: That was the motivation ...[intervenes].

CHAIRPERSON: Huh-uh.

MR ANGELO AGRIZZI: And the; that would assist in getting the payment paid up front.

CHAIRPERSON: So that that is the motivation that Bosasa gave to the, to Correctional Services?

MR ANGELO AGRIZZI: At the time yes.

CHAIRPERSON: At the time, ja. Was it a genuine and correct motivation?

MR ANGELO AGRIZZI: No, it was not. Some of it was, needed to be paid up front not all of it. Not, definitely not R103 million. I think it might have amounted to about 25
20 maybe R27 million.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: The argument was as well to prevent forex fluctuations.

CHAIRPERSON: Hm. Okay, alright.

ADV PAUL PRETORIUS SC: Yes. Of course Chair and Mr Agrizzi the issue of whether a department such as the Department of Correctional Services should be in

effect financing the capital expenditure of the business is another question.

MR ANGELO AGRIZZI: 100 percent correct Chair.

ADV PAUL PRETORIUS SC: Similar comments are made in relation to the receipt of financial benefits and the nature of the evidence that the SIU gleaned in relation to Messieurs Gillingham and Mti, but that is generally similar to the other tenders and we need not go into that detail. Your evidence stands and the separate evidence contained in the SIU Report supported by affidavit stands. Once again recommendations made are the institution of civil proceedings, disciplinary proceedings and a recommendation the National Director of Public Prosecutions that criminal
10 proceedings be instituted. The; let us proceed then to the full report which starts at page 288 and I am, having providing summary I am just going to deal with sections of this relevant to your testimony and its possible corroboration or otherwise where there is evidence here that you do not agree with or that is different does not corroborate your evidence I would appreciate if I do not point it out to you, you will do.

MR ANGELO AGRIZZI: I will do.

ADV PAUL PRETORIUS SC: And I have asked that you examine this report carefully as part of your evidence.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The terms of reference of the investigation are set out
20 more fully on page 288. The terms of reference generally deal with the four contracts we have dealt with.

MR ANGELO AGRIZZI: That is right.

ADV PAUL PRETORIUS SC: The undue advantage in relation to drafting of specifications, the payment of monies and other issues are highlighted there. Let us just go to page 290 if we can. Amongst - and this is just for completeness sake Chair -

amongst the matters identified as being within the terms of reference of the SIU which we have not directly dealt with in evidence appear for example on page 290 at paragraphs 8, nine and they read:

“Subject matter for investigation the conduct of officials and employees at the Department which was aimed at influencing or hampering any investigation or the destruction of evidence.”

And nine:

10 “The intimidation of officials or employees of the department or members of the public by officials or employees of the department with the aim to conceal, corrupt or other unlawful practices within the department.”

Those items and others contained in the terms of reference are far broader than your own scope of evidence.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And then at the final paragraph dealing with the terms of reference the following comment is made:

“The SIU’s investigation focussed on the procurement processes related only to the Kitchens, Access Control, Fencing and Television Tenders.”

20 Were there others?

MR ANGELO AGRIZZI: There was Chair. There was a tender investigated for X-Ray Scanners and, but the tender was cancelled and therefore there was nothing that came of the investigation apart from a report that there was undue processes followed in that as well.

CHAIRPERSON: Hm, thank you.

ADV PAUL PRETORIUS SC: And the SIU Report as we have pointed out to the Commission dealt only with the relationship between Bosasa and its companies on the one hand and the Department of Correctional Services on the other.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: It did not deal with the Airports Company and the Post Office and other institutions to which Bosasa had access.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Let us go to page 297 please. This is the introductory part of the report. We need not deal with it in any detail or in fact at all except to say
10 that the report does contain its own information in relation to the formation and directorships of Bosasa, Sondolo and Phezulu as they are referred to there and we may have to deal with that. What we have also not dealt with in your evidence, but Chair it will be dealt with to the extent necessary whether on affidavit or otherwise because it, perhaps not controversial is a resume or a review of the relevant policies of the Department of Correctional Services and particular its procurement policy. So we will not deal with it here.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: But on page 301 various aspects of that policy are set out including the appointment of a bid evaluation committee and a bid adjudication
20 committee and the participation particularly of Mr Gillingham in both those committees in these tenders will be dealt with at a later stage.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: One interesting observation again we highlight this just for completeness sake and it may be dealt with later more directly by affidavit but is a matter of interest is the commentary on the treasury guidelines regarding budgeting for

tender processes. That appears at page 303.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: The question is where the money came from for these large projects and the commentary at page 303 reads as follows:

“accordingly the Department of Correctional Services was entitled to reprioritise funds for the 2005/2006 financial year and was thus entitled to use the compensation of employees funds for projects such as fencing, television and other tenders provided the budget from which these funds were being transferred was not increased. The Department of Correctional
10 Services accordingly used Section 43 of The Public Finance Management Act to transfer R769 million from the compensation of employees programme to the machinery and equipment programme under capital assets.”

Did you know of that?

MR ANGELO AGRIZZI: I only found out about that when I received a copy of the report.

ADV PAUL PRETORIUS SC: And then on page 304 there is reference to the concept of fiscal dumping. The report reads in paragraph 2: “Lastly according to Lesley National Treasury had complained about spending such large amounts close to the end of the financial year and commented that it was equivalent to fiscal dumping that is
20 where departments spend large amounts of money just prior to the financial year end to exhaust their budget ignoring whether the department gets value or not for such spending.” You have referred to fiscal dumping?

MR PAUL AGRIZZI: That is right.

ADV PAUL PRETORIUS SC: You know about the practice?

MR PAUL AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: And you have referred to for example the manipulation of costing for imported goods in order to receive large amounts of money.

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: For example during March of a particular year 2006 I think it was?

MR PAUL AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: It is perhaps rather obviously and does not need a regulation to prevent it but the last paragraph on page 305 refers to the bid evaluation process and a treasury regulation which provides that a supply chain management
10 official or other role player must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts, hospitality or any other act. You were aware that quite apart from the treasury regulations that the provision of monies to official involved in supply chain management at the Department of Correctional Services was highly irregular and unlawful?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And then another treasury regulation is referred to at the bottom of page 306 and it reads: “with regard to contract administration and in particular up front and or advance payments to contractors regulation 15.10.1.2c of the 2005 treasury regulations provides that pre-payment for goods or services must be
20 avoided unless required by the contractual arrangement with the supplier.” Do you know whether the contract provided for the pre-payments that you have spoken of?

MR PAUL AGRIZZI: The actual contract and the bid document did not but what we were advised were do was when we submitted our pricing to submit with it a payment plan which showed a draw down and that was how they managed to get the pre-

payments done. So there was no contractual obligation but the argument was that that there was a drawn down plan submitted as part of the project.

ADV PAUL PRETORIUS SC: Alright and then on page 307 reference is made to the circumstances in which supply chain management prescripts particularly those issued by the treasury may take place?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And the third paragraph on page 307 reads: “paragraph 16.1.1. of Practice Note SCM3 of 2003 deals with modifications to and extensions of contracts. Although the accounting officer has the authority to approve modifications to
10 and extensions of contracts such approval should not infringe the provisions of Section 217(1) of The Constitution.” And very briefly I do not have the wording in front of me 217(1) of The Constitution provides that any grant of any contract by the state or organ of state must comply with basic principles of fairness, transparency and cost effectiveness.

MR PAUL AGRIZZI: I can understand that yes.

ADV PAUL PRETORIUS SC: But you have also said that there were cases to your knowledge where the authority to extend did exist and where authority to extend did not exist?

MR PAUL AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC:** Even where it did not exist – ah sorry even where the authority to extend did exist the person extending was bound by a certain basic principle set out in the constitution?

MR PAUL AGRIZZI: Correct and process yes.

ADV PAUL PRETORIUS SC: Yes and process. Then on page 308 under the head limitation on the investigation the report eludes to certain facts. You will recall previously in the report there was reference to limitation on the investigation?

MR PAUL AGRIZZI: I am aware of that Chair.

ADV PAUL PRETORIUS SC: That reads: “The report is based on the review and analysis of documentary and electronic evidence interviews conducted and affidavits obtained by the SIU. The investigation however was constrained by litigation as explained hereunder. Bosasa ...[intervenes]. I am sorry Chair.

MR PAUL AGRIZZI: That is correct and I think we clarified that on 33.3

10 earlier today.

ADV PAUL PRETORIUS SC: Yes. It reads: “Bosasa has sought by way of application proceedings in the North Gauteng division to interdict the SIU from investigating the full scope of Bosasa’s activities regarding the awarding of the four tenders to it by the Department of Correctional Services. As a result of the application the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted and accordingly any lakuna gaps that
20 existed in the investigation will be addressed upon the resolution of the litigation between the SIU and Bosasa.” Firstly you say you were never interviewed by the SIU?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Secondly do you know anything about these application proceedings?

MR PAUL AGRIZZI: I am aware of them I handled all the legal issues in the group with an attorney, with various attorneys.

ADV PAUL PRETORIUS SC: For what period of time did the undertaking not to interrogate material witnesses – for what period of time did that undertaking lasts?

MR PAUL AGRIZZI: It was quite a while. I cannot recall the exact period of time?

ADV PAUL PRETORIUS SC: Days, weeks, months, years?

MR PAUL AGRIZZI: No months, months into years.

ADV PAUL PRETORIUS SC: Chair we are about to deal with the Cyber Forensic expertise on page 309 but I see it is quarter past 11.

10 **CHAIRPERSON**: Ja but maybe just for completeness do you know when those proceedings ended and therefore when that undertaking fell away?

MR PAUL AGRIZZI: Chair I would have double check. It is on file – the files are with the investigators at the moment.

CHAIRPERSON: Oh okay.

MR PAUL AGRIZZI: So I can just make a call and just check.

CHAIRPERSON: Okay no that is fine. That is fine.

ADV PAUL PRETORIUS SC: We can add that to our homework list.

MR PAUL AGRIZZI: Not a problem.

20 **CHAIRPERSON**: Ja. Do we know whether we need a thirty minute break or a fifteen minute break?

MR PAUL AGRIZZI: Is there water?

ADV PAUL PRETORIUS SC: No there is no water Chair.

CHAIRPERSON: There is still no water. Okay we are going to take a tea break and will resume at quarter to twelve. We adjourn.

MEETING ADJOURNS

MEETING RESUMES

CHAIRPERSON: Yes, Mr Pretorius?

ADV PAUL PRETORIUS SC: Thank you, Chair. Mr Agrizzi if we may can we go back to page 304 of the bundle?

MR ANGELO AGRIZZI: We may.

ADV PAUL PRETORIUS SC: That is the part of the SIU report over which we glossed.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Because it deals with procurement issues of which you would have no direct knowledge.

10 **MR ANGELO AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: But it has been drawn to my attention that I should point out one matter to the, Chair, which appears on page 304. The third paragraph reads:

"The SIU interviewed Mr J Breytenbach of National Treasury with a view to obtaining clarity on a number of aspects applicable to the procurement process and to enable the SIU to appraise the procurement processes followed by the DCS, Department of Correctional Services and those prescribed by National Treasury."

20 And what follows is an analysis of the compliance or otherwise by DCS with the prescripts of National Treasury in relation to procurement.

MR ANGELO AGRIZZI: I am aware of it.

ADV PAUL PRETORIUS SC: It is probably common knowledge that Mr Breytenbach is a senior official in relation to procurement in National Treasury, Chair, but I would like to draw your attention to the penultimate paragraph on page 304. What Mr Breytenbach says is:

"That ordinarily all goods and services procured by state departments were required to be procured through the state tender board. The regulations were amended to allow an option, procurement through the state tender board or alternatively in terms of the Public Finance Management Act and at a stage in 2003 National Treasury informed the various departments of government that goods and services could be acquired by the department under the Public Finance Management Act instead of through the state tender board."

10 Against that background Ms Truter and we have that affidavit said that on 8 March 2004 Commissioner Mti opted for the Department of Correctional Services procuring goods and services in terms of the PFMA rather than through the state tender board.

MR ANGELO AGRIZZI: That is correct, I remember that.

ADV PAUL PRETORIUS SC: Do you remember that yourself?

MR ANGELO AGRIZZI: Yes, I do.

ADV PAUL PRETORIUS SC: And there is an *interim* measure which is fairly technical in terms of the directives, but I am not going to go there. Let us then move back to where we were and that is at page 309 of the EXHIBIT S2 paragraph 5 of the main SIU
20 report. It is headed Cyber Forensic Expertise engaged by the SIU. The first paragraph reads:

"The SIU employed the services of a Cyber Forensic Expert Mr J Malan to assist it with the retrieval and analysis of electronic data obtained from Bosasa and Gillingham."

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The second paragraph states that:

"The SIU served notices on Bosasa requesting amongst others that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies of relevant data relating to this investigation. Bosasa offered to assist the SIU with its investigation."

Do you recall that evidence?

MR ANGELO AGRIZZI: I do.

ADV PAUL PRETORIUS SC: "The SIU and Bosasa reached an agreement in terms of
10 which the SIU would be granted access to Bosasa servers and laptops so that mirror images could be made of them." You referred to a meeting where this issue was discussed, in your evidence.

MR ANGELO AGRIZZI: Chair, that is correct, we discussed it, we had a meeting at advocate's chambers.

ADV PAUL PRETORIUS SC: Alright. Significantly, however, the report continues to read:

20 "The imaging was initially scheduled to take place in the first week of December 2008, but at the request of Bosasa this process was postponed until the second week of December 2008."

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: We will see what happened in the meanwhile.

"From 8 to 16 December 2008 the SIU made mirror images of the data on the Bosasa files survey environment domain controller system email server, financial system server as well

as the person laptops of Agrizzi, Mr A van Tonder,
Mr F Vorster."

You know that that occurred?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: "During the imaging process the SIU was denied access to one server. After the intervention of adv J Wells the SIU's legal advisor access was eventually granted and the server was imaged."

Do you know anything about that?

MR ANGELO AGRIZZI: I am aware of that. There was confusion at the time about the
10 one server.

ADV PAUL PRETORIUS SC: Okay.

CHAIRPERSON: When you say there was confusion are you suggesting that the denial of access by Bosasa to the SIU to that server was not – was genuine, there was some misunderstanding? Or in other words there was nothing untoward about the denial of access?

MR ANGELO AGRIZZI: Chair, there was nothing untoward about it, it was one server's serial number was erroneous and not properly added and we sorted it out I think it was at 00:00 the one evening.

CHAIRPERSON: Okay, thank you.

20 **ADV PAUL PRETORIUS SC**: The report continues in the next paragraph and it reads:

"Malan analysed the data obtained from Bosasa using keyword searches. During his initial analysis of the data he identified that a data deletion utility known as Erase R had been used to delete a significant amount of data on the servers."

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Is that what you described as the created crash?

MR ANGELO AGRIZZI: No, this was a totally separate incident which related to a specific virus that was put onto the server to clean up any documents that might incriminate Bosasa.

ADV PAUL PRETORIUS SC: Alright, so you know of that exercise?

MR ANGELO AGRIZZI: Yes, I do.

ADV PAUL PRETORIUS SC: What is interesting, however, is the table which appears below on page 309 which reflects the dates on which this data deletion utility was used to erase data. Do you see the table below?

10 **MR ANGELO AGRIZZI:** I do.

ADV PAUL PRETORIUS SC: It is headed server name one column, document and folder count the next column, time line of modification and deletion the next column and comment the last column. Do you see that?

MR ANGELO AGRIZZI: I do.

ADV PAUL PRETORIUS SC: Let us go to the second line. It refers to domain server ADSO1 and the time of the modification and deletion was 2 December 2008 and the comment mostly archived documents were overwritten and deleted.

MR ANGELO AGRIZZI: That is correct.

20 **ADV PAUL PRETORIUS SC:** Now the date 2 December 2008 is relevant, because you have told the, Chair, and the report says that the process of imaging was postponed from the first week of December to the second week of December.

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: And it appears that during the time of that postponement a special program was being used to delete information on Bosasa servers?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: You know of that?

MR ANGELO AGRIZZI: I am well aware of it.

CHAIRPERSON: I think yesterday you also testified to an occasion, there was some delay where Bosasa requested the SIU to give them some time before they were going to come and do I think to look at the computers and you said, if I understood you correctly that, that was intended to give Bosasa the opportunity to get to kind of, if I put it in my own words, some information. Was that in relation to this or was that a separate?

MR ANGELO AGRIZZI: Chair, that is in relation to this and it was an instruction that
10 we had received.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: Alright, so this evidence that we are reading of here must be coordinated with the evidence you gave with relation to instruction received to delete documentation?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And the purpose of the deletions, just tell the, Chair, again please?

MR ANGELO AGRIZZI: Chair, the purpose of the deletions was sinister to make sure that all their tracks were covered up.

20 **CHAIRPERSON:** Thank you.

ADV PAUL PRETORIUS SC: Let us step out of that time for a moment please Mr Agrizzi to deal with the first line of the table on page 309. It reads, domain server ADSO1, document and folder count 32 769, time line of modification and deletion 24 July 2008, comment, document appeared to have been overwritten and then deleted. That is a substantial number of documents.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Do you recall this incident at this time in July 2008?

MR ANGELO AGRIZZI: Chair, unfortunately I recall the incident, but I cannot recall what was done there. I am not an IT specialist and Watson had called in IT specialists to do all this.

ADV PAUL PRETORIUS SC: To do all what in July 2008?

MR ANGELO AGRIZZI: Well there was deletion that was done then and I was not involved with the actual deletion.

ADV PAUL PRETORIUS SC: Alright.

10 **MR ANGELO AGRIZZI**: So I am not aware of what was actually deleted, other than that it had reference to the DCS contract Correctional Services, reference to Gillingham and they had reference to anything to do with the newspaper that reported on in terms of the corruption that the SIU was investigated. I trust that clarifies it for adv Pretorius.

ADV PAUL PRETORIUS SC: Thank you. The domain server referred to in line 1 is the same domain server about which you have just now testified in line 2.

MR ANGELO AGRIZZI: It appears that that is correct.

ADV PAUL PRETORIUS SC: Then in the third line there is reference to a file server, the document and folder count is 116, the time line of modification and deletion is now the following day 3 December 2008.

20 **MR ANGELO AGRIZZI**: Correct.

ADV PAUL PRETORIUS SC: Still between the first and second weeks of December in other words between the date that the SIU had originally intended to image files and documents or image servers rather to obtain copies of files and documents and the date upon which the search actually occurred.

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: So in effect Bosasa was saying to what was taking the attitude that the SIU may come and look at the computers and they will cooperate, but they just needed time before the SIU came to make sure that the whole exercise as far as they were concerned would not work for the SIU, at least that is what they thought?

MR ANGELO AGRIZZI: Chair, that is correct and I must add for just for completion that we were told by senior counsel not to do it. We were actually instructed.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: The meeting then ensued in the carpark where we were told forget what senior counsel is saying, I pay your salaries, you just get it done, I will send
10 people that will help. I give you more information in my affidavit about that.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: In short a delay in the search was agreed with the SIU and during the period of the delay experts were used to delete data?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The comment for the deletion and modification on 3 December 2008 reads:

"Folder names appear to have been overwritten with random
data and then deleted."

So categories of documents were deleted in this exercise?

20 **MR ANGELO AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: Then over the page, the exercise appears to have continued on 4 December 2008. The line there reads:

"File server number of documents and folder count 468, the
date is 4 December 2008, the comment is folder names
appeared to have been overwritten with random data and then

deleted."

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: So let us just go back please to what happened on 3 December 2008 according to the report. 116 folders were overwritten and deleted?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And the next line on 4 December 2008 as appears from this table 468 folder names appear to have been overwritten with random data and then deleted?

MR ANGELO AGRIZZI: That is correct.

10 **ADV PAUL PRETORIUS SC:** And then finally on 6 December 2008 domain server ADSO1 was "dealt with". Those are my words. The document count there appears to be 7 130, the date is 6 December 2008 and the comment is documents appeared to have been overwritten and then deleted. 7 130 documents.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: In short a comprehensive expert exercise over the period of at least four days?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The commentary follows on page 310:

20 "Because of the use of the eraser utility Malan had to employ
advanced data recovery techniques which assisted him in his
endeavour to recover the maximum amount of data."

Do you recall your evidence when you gave general evidence regarding this or another exercise where you said that the SIU's Cyber Experts were cleverer than yours?

MR ANGELO AGRIZZI: I recall that.

ADV PAUL PRETORIUS SC: So you would know of this comment here?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Notwithstanding Bosasa's attempt to overwrite and delete folders and documents the Cyber Security Experts still managed to obtain at least some information from the servers?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: It continues to read:

10 "Malan also analysed the mirror images of Gillingham's computers and other electronic data storage facilities obtained during a search conducted at Gillingham's residence. The eraser utility was also found on Gillingham's system, but Malan found that the utility was not used extensively on his computer to destroy data."

It appears from what was said here that the same exercise conducted in respect of Bosasa servers was used in relation to Mr Gillingham's computer and other electronic data storage facilities.

MR ANGELO AGRIZZI: Chair, that is correct.

ADV PAUL PRETORIUS SC: Did you know of that?

MR ANGELO AGRIZZI: Yes, I am well aware of it.

20 **ADV PAUL PRETORIUS SC:** Alright. The report continues:

"Documents of particular relevance to the investigation of the kitchens and access controlled tenders were retrieved and analysed by Malan and are dealt with under the discussion of these tenders."

And we will now deal further with the contents of the report, but just to

summarise this far, from your own memory, experience and knowledge you were able to say that files containing data relevant to the activities of Bosasa about which you have testified were tampered with or destroyed?

MR ANGELO AGRIZZI: Chair, I give full disclosure on what happened and how it happened and the persons involved in my actual affidavit.

ADV PAUL PRETORIUS SC: Alright. And from its own expert examination of the servers of Bosasa this appears to be corroborated by the evidence of Mr Malan?

MR ANGELO AGRIZZI: Mr Malan's report is very accurate.

ADV PAUL PRETORIUS SC: Let us continue then and I am going to take you to
10 page 312 if you would turn to that page please? Under the heading Commissioner Mti's former relationship with Bosasa the SIU records the outcome of its own investigations. You did not give any information as you have said to the SIU investigation in that regard.

MR ANGELO AGRIZZI: Not at all, Chair.

ADV PAUL PRETORIUS SC: But you did tell the, Chair, that as I recall Bosasa facilitated the registration of a company for Commissioner Mti?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: What the report reads is...[intervenes]

CHAIRPERSON: I am sorry is that the one you said that was to be his mother's?

20 **MR ANGELO AGRIZZI:** Lianorah Investments, correct.

CHAIRPERSON: Yes, okay.

ADV PAUL PRETORIUS SC: Alright, the report reads:

"From the information obtained from the Registrar of Companies Commission Mti is the Director of a company called Lianorah Investment Consultancy Pty Limited."

Lianorah[spelt]. It continues:

"Further information from the Registrar of Companies indicated that Lianorah is one way or another linked to Bosasa."

And the links are there set out. Thereafter the report reads:

"At the time of Lianorah's incorporation Commissioner Mti was the DCS National Commissioner."

The company to which you referred in your evidence is that the company referred to here?

MR ANGELO AGRIZZI: That is correct.

- 10 **ADV PAUL PRETORIUS SC:** From your own knowledge there was a link between the incorporation of that company at least and Bosasa?

MR ANGELO AGRIZZI: I found out about it later after it had been done, after the news reports and I checked up on it, Chair, that is what happened.

ADV PAUL PRETORIUS SC: So you say that not only did the SIU investigate this issue and come up with these findings, but it was also independently from you reported in the press?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: I take it as given that you did not give the information to the press?

- 20 **MR ANGELO AGRIZZI:** I did not give the information to the press no.

ADV PAUL PRETORIUS SC: But the information here as far as you are aware is correct?

MR ANGELO AGRIZZI: Spot on, Chair.

CHAIRPERSON: I may have misunderstood you, but if I understood you correctly, maybe you need to say something about part of what is said here. I understood you to

be saying in relation to the company, I understood you to be saying Mr Mti had asked Bosasa or somebody in Bosasa to have a company registered for his mother but you may have meant that it was to be in his mother's name or something. Do you want to just clarify? I see here according to this report, I do not know whether the Director or a Director of that company or one of them was Mr Mti, I am not sure, but do you want to say anything about that?

MR ANGELO AGRIZZI: It was merely a namesake to give it the name Lianorah Incorporated I believe.

CHAIRPERSON: Yes, but it was Mr Mti's company?

10 **MR ANGELO AGRIZZI:** It was his company, Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: The report continues in respect of that company to say:

"The analysis conducted by the SIU has revealed that Lianorah
was deregistered on 20 April 2007."

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The report continues then with the analysis of contracts and deals firstly with the kitchen's tender HK2/2004. The extent of that contract is described in the first paragraph. Will you just look at that briefly please? Does that accord with your evidence and recollection?

20 **MR ANGELO AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: So that the scope of the kitchen's tender entail the providing of full catering services including full maintenance of kitchen equipment, cleaning and training of DCS staff and inmates at correctional centres in seven management areas and those are set out.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Alright, the names of the management areas differ as I recall marginally only from the areas that you mentioned in your evidence, but just check those areas there please, are they correct?

MR ANGELO AGRIZZI: Well they are correct, yes.

ADV PAUL PRETORIUS SC: And the cost here recorded of the three year contract is stated as R239 427 694 per annum.

MR ANGELO AGRIZZI: That is correct, but you will recall that is the cost that was reflected on the tender submission document.

ADV PAUL PRETORIUS SC: You say that in actual fact the way in which the response
10 to the bid was constructed added expenses were permitted and charged?

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: I do not know whether it was in relation to this particular contract or one of the others that you talked about yesterday, but it may have – I seem to think it was this one where I made a note next to the figure that you said over two years. I may have misunderstood you. Do you know whether yesterday you might have said the contract was over two years?

MR ANGELO AGRIZZI: Chair, I was referring to the Sondolo contract we were discussing at that time. Why it could be confusing is because the figure are very similar.

20 **CHAIRPERSON:** Yes, okay, so this was three years you confirmed.

MR ANGELO AGRIZZI: But this one was definitely over per annum.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: And it escalated.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: Because there were extensions to it and it was over a three

year period.

CHAIRPERSON: Okay, thank you.

MR ANGELO AGRIZZI: So just to give you an overview, Chair, the first year was about R270-million actual expenditure. The second year was in the region of about R320-million and the third year was about nearly R450-million. That is how it actually escalated.

CHAIRPERSON: That escalation was it occasioned by the expansion of the scope of the contract or were there some deliberate inflation of amounts?

MR ANGELO AGRIZZI: If you recall, Chair, I mentioned earlier in the testimony what
10 happened was the modelling was done on purpose to throw off the actual cost, so that when the modelling was done, if you remember the special meals and the normal meals they were adjusted so that they should have reflected 70/30 instead of the 90/10 as per the bid submission.

CHAIRPERSON: Yes, and when the escalation was done what was the justification advanced to DCS to Correctional Services for the escalation, do you know?

MR ANGELO AGRIZZI: Well the escalation would have been the normal price escalation which would calculate to 75% of SPIX that would happen annually. The second escalation there was no need to explain anything to anybody. We just did it.

CHAIRPERSON: So are you suggesting that what was wrong was what happened at
20 the beginning namely giving a lower figure on the prize, but with regard to the escalation you say that on its own there was nothing wrong with it. It is simply the fact that the true price was not disclosed at the beginning?

MR ANGELO AGRIZZI: That is correct Chair.

CHAIRPERSON: Okay, alright. Thank you and of course I, I guess it is obvious that the intention in not stating the truth, the correct, the true prize at the beginning was so

that the award of the tender to Bosasa would be seen to be justified on the basis of a lower price compared to other bidders who one assumes would give a true price.

MR ANGELO AGRIZZI: Correct Chair.

CHAIRPERSON: Hm, thank you.

ADV PAUL PRETORIUS SC: In relation to the Kitchen Tenders 2/2004 on page 303 the SIU record a little more extensively than in the executive summary the evidence that they gathered. You in your evidence spoke of a presentation made by Bosasa to the Department of Correctional Services at SuperSport Park in Centurion.

MR ANGELO AGRIZZI: Correct and ...[intervenes].

10 **ADV PAUL PRETORIUS SC**: Recall that evidence?

MR ANGELO AGRIZZI: Correct. I want to clarify a point, is that the meeting held at SuperSport Park actually happened in November 2004. Mr Freddie Engelbrecht made a statement and I recall this where he says the meeting was held in 2003. There was no meeting in 2003. He had his dates wrong. It was 2004.

ADV PAUL PRETORIUS SC: Apart from the date of the meeting as recorded here as having taken place between November 2003 and early 2004 are you able to say whether the facts other than the date set out here are correct?

MR ANGELO AGRIZZI: The facts are not 100 percent correct Chair. The meeting took place at SuperSport Park.

20 **ADV PAUL PRETORIUS SC**: Sorry before you go on, between you was the meeting?

MR ANGELO AGRIZZI: The meeting ...[intervenes].

ADV PAUL PRETORIUS SC: Between who?

MR ANGELO AGRIZZI: The meeting Chair was between a delegation of Bosasa and a delegation of Correctional Services officials.

ADV PAUL PRETORIUS SC: And ...[intervenes].

CHAIRPERSON: And Commissioner Mti was one the people who attended?

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: In terms of your evidence yesterday.

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: So who attended on behalf of the Department of Correctional Services as stated here are the attendees Mti, Gillingham and Engelbrecht. Are they at least correctly recorded as having attended?

MR ANGELO AGRIZZI: They are correctly recorded.

10 **ADV PAUL PRETORIUS SC:** And from Bosasa's side yourself and Mr Leshabane. Is that correct?

MR ANGELO AGRIZZI: Including others. Yes that is correct.

ADV PAUL PRETORIUS SC: And is it correct that a presentation was made to the attending Correctional Services Officials?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Right. Any further comment in relation to that presentation?

MR ANGELO AGRIZZI: Chair I believe or I think where Mr Engelbrecht got confused was we showed them videos of the existing Catering Contracts which were with
20 Correctional Services and the videos streaming capabilities and how we managed to pick up various incidents in the catering facilities where offenders would be stealing or sometimes even officials stealing the food and that was the prelude to show them what other services we could offer. That was in November 2004. What was also explained to them was the Sondolo Systems which was the camera systems and a prelude to being able to motivate to be able to get the camera systems and security access

control. That is perhaps where Mr Engelbrecht got very confused. So the purpose of the meeting was to showcase and I allude to it in the affidavit that I have made, but the fact of the matter is the meeting took place in 2004 and we showed them, we showcased how the systems assisted us in managing the facilities.

CHAIRPERSON: You; when Mr Pretorius was asking you to say who was there from Bosasa you said, you suggested there were others other than yourself and Leshabane. Is that right?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: You want to just mention who those were?

10 **MR ANGELO AGRIZZI:** Well there was Ishmael Dekhane.

CHAIRPERSON: Hm.

MR ANGELO AGRIZZI: Joe Gumede.

CHAIRPERSON: Huh-uh.

MR ANGELO AGRIZZI: Papa Leshabane we have got. Jackie Leyds.

CHAIRPERSON: Hm.

MR ANGELO AGRIZZI: Thandi Makoko.

CHAIRPERSON: Hm.

MR ANGELO AGRIZZI: There would have been our Training Division, Jon ...[indistinct].

20 **ADV PAUL PRETORIUS SC:**

CHAIRPERSON: Hm.

MR ANGELO AGRIZZI: There were various other people who were there from maintenance. I cannot recall all of their names.

CHAIRPERSON: Hm, because I think your...[intervenes].

MR ANGELO AGRIZZI: Sorry Chair. It was a big delegation.

CHAIRPERSON: Your affidavit if I am not mistaken suggested that all in all there were about 40 people.

MR ANGELO AGRIZZI: Correct. I think there were about 14 or 20 from Bosasa.

CHAIRPERSON: From Bosasa.

MR ANGELO AGRIZZI: And about 14 or 20 from Correctional Services. I cannot remember exactly how many.

CHAIRPERSON: Yes. No that is that is fine. Even if we do not mention all of them. I just wanted to, you to mention some of those from Bosasa, yes.

MR ANGELO AGRIZZI: Thank you Chair.

10 **CHAIRPERSON:** You may proceed.

ADV PAUL PRETORIUS SC: Is that the same meeting about which you testified to the effect that Mr Gavin Watson was not present?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: But that after the meeting Mr Gavin Watson gave you positive feedback that he had received in turn from Commissioner Mti.

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: The next paragraph in relation to this presentation reads:

20 “The Bosasa presentation was to advise the DCS of the
 services Bosasa was able to provide including catering and
 measures to prevent the theft of food from prison kitchens.”

Is there a difference between your own evidence and this evidence which appears to emanate from Mr Engelbrecht?

MR ANGELO AGRIZZI: The evidence that comes from Mr Engelbrecht is incorrect. He has got the note, he has got the notion of it, but he does not under; I do not think he was paying attention to the presentation. What we did was, we showcased our camera

systems that we were currently using in the facilities of Correctional Services as a prelude to what we could do for them in terms of the Access Control and the Sondolo Contract. So that is actually what happened there. He has got, he has got it kind of right, but very wrong.

ADV PAUL PRETORIUS SC: Yes. So what you showed was existing measures.

MR ANGELO AGRIZZI: Exactly.

ADV PAUL PRETORIUS SC: Rather than prospective measures.

MR ANGELO AGRIZZI: Exactly Chair.

ADV PAUL PRETORIUS SC: But it was, the measures concerned the prevention of
10 theft of food from prison kitchens?

MR ANGELO AGRIZZI: Correct and we had some very good footage which we showed them of offenders stealing boxes of chicken. We had, we had a funny incident where a warder was sleeping at night by pushing two tables together. We had a few incidents and that is what we showed them. So that we sit, when we spoke to them explained to them that this gives you the facility and the ability to monitor it off site should something happen in one of the correctional centres.

ADV PAUL PRETORIUS SC: Yes. Mr Engelbrecht of course as per this report was an official of the Department of Correctional Services at the time?

MR ANGELO AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC:** The next paragraph reads:

“This meeting took place not only prior to the advertising of the Kitchens Tender, but also before it was made known within the DCS that it would be outsourcing catering services, the full maintenance of the kitchen equipment and the training of DCS staff and inmates at correctional centre.”

That may be incorrect as well.

MR ANGELO AGRIZZI: It is very incorrect.

ADV PAUL PRETORIUS SC: [Intervenes].

MR ANGELO AGRIZZI: This took place before the awarding of the Sondolo TV Contract and the Access Control CCTV Contract for Sondolo. So he has got it horribly wrong in here. If I may add Chair that I think what they could do is they could actually get corroboration from some of the other DCS management staff who were there.

ADV PAUL PRETORIUS SC: There is reference on page 314 to an Executive Management Committee meeting having taken place in the Magaliesburg prior to
10 May 2004 where Mr Gillingham did a presentation regarding the outsourcing of catering services. Do you know anything about that?

MR ANGELO AGRIZZI: I am not aware of the actual meeting. I have read about it subsequently in the document itself.

ADV PAUL PRETORIUS SC: Right and there is reference there to an amendment to the Correctional Services Act regarding the provision of the food and the times at which food should be served. Is that relevant at all to your evidence?

MR ANGELO AGRIZZI: Well it is not really relevant Chair apart from that they had a problem to comply with the Act and that was one of the reasons why the initial training contract happened as far as I was told and thereafter we had to ensure that we
20 complied to the Act when we catered at that stage. That is the only relevance I can think of.

ADV PAUL PRETORIUS SC: The report states:

“At the time of this presentation Gillingham was the Regional Commissioner North West Mpumalanga and Limpopo presumably of Department of Correctional Services.”

It continues to say:

“Shortly after the presentation in Magaliesburg the Department of Correctional Services Chief Financial Officer Mr Tshivhase, T-S-H-I-V-H-A-S-E announced that the DCS would be outsourcing catering services.”

The important statement which I would like your comment on please:

“Gillingham was appointed as the project leader for this tender which was then prioritised.”

MR ANGELO AGRIZZI: I believe that to be correct.

- 10 **ADV PAUL PRETORIUS SC:** Did you know that Mr Gillingham was integrally involved in the processing of this particular tender?

MR ANGELO AGRIZZI: I was told subsequent to this coming out, yes.

ADV PAUL PRETORIUS SC: The timeline of the tender is dealt with. We need not go into the detail there. It is evidence separate from yours, but it seems that the times referred to in the last paragraph on page 314 were quite short. The tender was approved by Commissioner Mti on 24 May 2004. The bid was advertised on 21 May 2004. I do not understand the sequencing there and the closing date was 25 June 2004. In other words one month approximately.

MR ANGELO AGRIZZI: That is correct.

- 20 **ADV PAUL PRETORIUS SC:** Then in the same report under the same head at page 315 the report deals with the drafting of the bid specifications. It seems that the SIU got its information from a Mr Mapasa the DCS Director of Procurement. Did you know that person?

MR ANGELO AGRIZZI: I have met him a few times, yes.

ADV PAUL PRETORIUS SC: Was he indeed the Department of Correctional Services

Director of Procurement?

MR ANGELO AGRIZZI: He was most definitely.

ADV PAUL PRETORIUS SC: Over the page at page 316 the report says:

“The SIU could find no evidence that a needs analysis or feasibility study was conducted prior to the initiation of this tender process.”

Do you know whether that is correct or not?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The next paragraph reads:

10 “Although the Kitchens Contract should have originated in the DCS Directorate Development and Care the SIU established that the need for the Kitchens Contract did not originate in this directorate nor did this directorate initiate the process.”

Do you know that ...[intervenes].

MR ANGELO AGRIZZI: That is ...[intervenes].

ADV PAUL PRETORIUS SC: As a fact or not?

MR ANGELO AGRIZZI: That is what read afterwards when the report came out and it seems to be a fact.

ADV PAUL PRETORIUS SC: Well you do not know from your own knowledge?

20 **MR ANGELO AGRIZZI**: I do not know from my own knowledge.

ADV PAUL PRETORIUS SC: And then reference is made to interviews with an Ms Sishuba, S-I-S-H-U-B-A the DCS Chief Deputy Commissioner Development and Care and Ms M Mbena DCS Director Health Services and they apparently advised the SIU that their directorates were excluded from the entire tender process despite the fact that nutrition fell under their directorates as end users. According to them Gillingham

had resumed responsibility for the initiation and implementation of the procurement process. Apart from the last sentence about which you have testified at length do you know anything about the other allegations concerning Ms Sishuba and Ms Mbena?

MR ANGELO AGRIZZI: I am aware of the allegations that were made.

ADV PAUL PRETORIUS SC: Okay. Were you aware at the time or just now that the allegations are made here?

MR ANGELO AGRIZZI: I; no I was aware of it after the report came out in 2009.

ADV PAUL PRETORIUS SC: Right. Did you know those two persons?

MR ANGELO AGRIZZI: Yes.

10 **ADV PAUL PRETORIUS SC:** At the time?

MR ANGELO AGRIZZI: Not at the time Chair. I only got to meet them after the award of the contract.

ADV PAUL PRETORIUS SC: There are further irregularities alleged in the following pages, but as you were not intimately involved in the internal process I am not going to question you about them at any length. The next paragraph that I would like to deal with is the fifth paragraph on page 316. You have testified of course as to the drafting of specifications for the tender. The paragraph reads and its first sentence:

20 “As regards the drafting of the specifications for the tender under discussion Pretorius informed the SIU that during a meeting he had with Gillingham the latter advised that he was developing specifications for the tender and handed Pretorius a two page document that he was requested to peruse.”

Do you know of the gentleman Pretorius?

MR ANGELO AGRIZZI: I do know the gentleman.

ADV PAUL PRETORIUS SC: Who was he? What office did he hold ...[intervenes].

MR ANGELO AGRIZZI: He was ...[intervenes].

ADV PAUL PRETORIUS SC: Or what post did he hold?

MR ANGELO AGRIZZI: He was in procurement.

ADV PAUL PRETORIUS SC: At Department of Correctional Services?

MR ANGELO AGRIZZI: Correct. That is correct.

ADV PAUL PRETORIUS SC: The only fact here concerning which you have commented and may still comment is whether Gillingham in fact was busy developing specifications for the tender?

MR ANGELO AGRIZZI: Well that was a given Chair.

10 **ADV PAUL PRETORIUS SC**: The specifications for this tender involved aspects of catering that are quite specialised.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Such as the preparation of food, ration scales, quantities, amounts and other matters.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The comment made on page 317 by the SIU is the following:

20 “It is unclear to the SIU what qualified Gillingham to draft the specifications for this bid as he only possessed a Matric qualification and was not a nutrition expert.”

Did you know of Mr Gillingham’s qualifications?

MR ANGELO AGRIZZI: Unfortunately at the time I did not. Now I do.

ADV PAUL PRETORIUS SC: But would it be appropriate for such specifications as you have described in relation to nutrition and catering at, and rationing to be drafted by someone not qualified in that field?

MR ANGELO AGRIZZI: There I have a difference of opinion Chair. The gentleman had ...[intervenes].

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: He had a wealth of knowledge. He had over 40 years' experience in the Correctional Services environment. So I do not think one can, can actually use that argument, but he could not have done it by himself. He would have had to be with a nutritionist, with a dietician in drafting the specification.

ADV PAUL PRETORIUS SC: And you do not know ...[intervenes].

CHAIRPERSON: Thank you.

10 **ADV PAUL PRETORIUS SC:** Whether that was the case do you?

MR ANGELO AGRIZZI: I; I am not aware.

ADV PAUL PRETORIUS SC: The report continues. The specifications revealed a number of unusual specifications being included in the bid. For example the installation of security cameras. The requirement that bidders must have accredited security personnel with proven track records of installing and monitoring off site CCTV and internet protocol surveillance and be International Standards Organisation compliant. They were required, bidders were required to have fully functional integrated Maintenance Departments with a minimum of five years' experience and various other requirements. The Chair may be interested in the confirmation here of the
20 specifications for the Catering Contract in regard to security installations and equipment and expertise. You have given evidence as to why generally such requirements might be included in the tender specifications. Just would you perhaps repeat that evidence in relation to this particular portion of the report?

MR ANGELO AGRIZZI: Chair what we did was we made sure and I allude to it in my affidavit as well is that we raised the bar. That for anybody to get into this type of

business they would have to comply with these minimum requirements. It was virtually unattainable.

CHAIRPERSON: Yes and these features were really not necessary for purposes of the tender. It was simply to give Bosasa an unfair advantage over other bidders.

MR ANGELO AGRIZZI: It was extremely restrictive for other bidders.

CHAIRPERSON: Thank you, hm.

ADV PAUL PRETORIUS SC: Yes.

MR ANGELO AGRIZZI: [Intervenes].

ADV PAUL PRETORIUS SC: Of course we must remember this is a Catering Contract.

10 **MR ANGELO AGRIZZI:** Correct. If I may give you an example Chair.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: One of the things was a mobile kitchen. There was only at that stage ourselves that did that and for anybody to come up with something like that would take at least eight weeks of planning and about another three months of construction. So there was nowhere anywhere in the country they would have been able to find one to be able to comply to this and the bid was structured in such a manner that if you did not attain a 70 percent threshold you did not go to the second phase.

CHAIRPERSON: Yes.

20 **MR ANGELO AGRIZZI:** At one stage they had to push someone through just to; that there were two bidders that bid at the same, with us.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And we know of course is that there was approximately one month for persons to respond to the invitation to bid.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And as commented on, on page 316 according to the affidavit of one Ms Truter, bottom of the page:

“In Truter’s view the tender was rushed, because on 10 May 2004 Gillingham had decided that the tender should be published on 21 May 2004.”

Well whatever the detail there is independent evidence of the tender being, tender process being “rushed”.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Particularly in relation to your own activities Mr Agrizzi
10 the report continues in the next paragraph to read:

“The SIU has further established from the witness...”

That is the whistle-blower.

“...that Agrizzi requested him to develop a solution for the installation of various types of security equipment in correctional centre kitchens. According to him he was informed by Agrizzi that the solution would added to the tender specifications to ensure that Bosasa enjoyed an advantage over the other bidders. The witness advises that the solution formed part of the eventual tender specifications.”

20 Does that accord generally with your own evidence?

MR ANGELO AGRIZZI: It does. I am not going to debate the accuracy of all the words, but it does.

ADV PAUL PRETORIUS SC: But if it is in accurate you must say so.

MR ANGELO AGRIZZI: I think the one issue is that we did not use the word “eventual tender specification”. It was for the blueprint of catering services. If you read my

statement it concurs.

CHAIRPERSON: So in effect Bosasa was drafting the roles of the game?

MR ANGELO AGRIZZI: That is right.

CHAIRPERSON: Bosasa was a player?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Bosasa made sure through Mr Gillingham and Mr Mti that the ref was their ref?

MR ANGELO AGRIZZI: That is right Chair.

ADV PAUL PRETORIUS SC: The general import of this paragraph is that under your supervision solution for the installation of various types of security equipment and
10 kitchens was added to the specifications for the Catering Contract in order to advantage Bosasa.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: We then go on to the findings of the SIU which appear on page 318 under the head “The Bid Evaluation and Adjudication Process”. Apparently there is evidence of Mr Gillingham as Chairperson of the relevant Bid Evaluation Committee having signed a particular declaration form which indicated that he had no interest in any of the bidders for the Kitchens Contract. Do you recall anything about that form at all?

20 **MR ANGELO AGRIZZI:** I am ...[intervenes].

ADV PAUL PRETORIUS SC: Is that matters or is that a matter beyond your knowledge?

MR ANGELO AGRIZZI: It is a matter beyond my knowledge but I am aware of it now, because I had seen the SIU Report.

ADV PAUL PRETORIUS SC: The SIU also interviewed Mr Coetsee C-O-E-T-S-E-E

who was a member of the relevant Bid Evaluation Committee that evaluated the Kitchens Tender. Do you see that in the second last paragraph on page 318?

MR ANGELO AGRIZZI: I am aware of it.

ADV PAUL PRETORIUS SC: He and other Bid Evaluation Committee Members observed that the entire tender process had been managed by Gillingham.

MR ANGELO AGRIZZI: I, I cannot comment on what he is aware of or perceived.

ADV PAUL PRETORIUS SC: Yes.

MR ANGELO AGRIZZI: But I am aware of the statement made.

ADV PAUL PRETORIUS SC: Yes are you - is it consistent with your own knowledge

10 that the whole tender process was in fact managed by Gillingham?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: You know that?

MR ANGELO AGRIZZI: Yes Chair.

ADV PAUL PRETORIUS SC: It appears in the last paragraph that a complaint was made after the awarding of the tender by an entity called Sechaba S-E-C-H-A-B-A which questioned the basis upon which the tender had been awarded to Bosasa. Do you know anything about that?

MR ANGELO AGRIZZI: I am aware of that Chair.

20 **ADV PAUL PRETORIUS SC**: And the complaint apparently went around pricing, but it is not necessary to go into detail. I would like to deal if I may with the allegations in the second paragraph on page 319. Do you remember earlier in your evidence we referred to or I put to you evidence regarding Mr Gillingham's status and how that changed under the direction of Commissioner Mti.

MR ANGELO AGRIZZI: I am aware of that.

ADV PAUL PRETORIUS SC: Alright. The paragraph reads:

“The SIU in the course of its investigation obtained a file relating to allegations of maladministration and misconduct against Gillingham.”

The paragraph further reads:

“Disciplinary action was recommended by DCS Deputy Commissioner Legal and Special Operations Advocate Nqobi N-Q-O-B-I and DCS Chief Deputy Commissioner Central Services Ms J Shriner.”

Do you know anything about those disciplinary proceedings, their recommendation?

- 10 **MR ANGELO AGRIZZI:** Chair I, I have read about it and I am aware of it, but I do not think it is relevant to the matter of state capture. This was an internal issue between him and his wife and him and his girlfriend. I do not think it had anything to do with state captures. So I think I would prefer if we, if we moved on from there.

ADV PAUL PRETORIUS SC: Well I am going to not move on from there at your invitation just to place these allegations in their proper context, because they may well when the evidence is examined have something to do with the evidence that we are talking about and I will tell you about it now.

MR ANGELO AGRIZZI: Okay.

- ADV PAUL PRETORIUS SC:** Contrary to the recommendations that is to institute
20 disciplinary action Commissioner Mti sent a letter to Gillingham in which on the one hand he chides him for his misconduct but on the other thanks him for repaying the irregularly obtained SNT monies which must have formed part of the charge. In the same letter Commissioner Mti proceeded to appoint Gillingham as the Department of Correctional Services Acting Chief Financial Officer which effectively gave him oversight of the procurement division. So in the face of recommendations by senior

officials within the Department of Correctional Services that Mr Gillingham be disciplined he was in fact promoted to a position where he had oversight of the procurement division. Perhaps the Chair will deem that relevant but it is not your decision with respect Mr Agrizzi. And that appointment was shortly before the kitchens tender was awarded to Bosasa. We can move on you do not want to comment?

MR ANGELO AGRIZZI: Not at all.

ADV PAUL PRETORIUS SC: Right. They then set out a table of the members of the bid evaluation committee and the bid adjudication committee in a table below and they remark it will be noticed that Gillingham served on both committees in the BEC as its
10 chairman and in the NBAC that is the adjudication committee in an advisory capacity. We may go on then to page 320 the Cyber Forensic expert's evidence. We have dealt generally with the destruction of information or the deletion and attempted destruction of information. Here it is evident that Malan the cyber forensic expert employed by the SIU recovered a document entitled Checklist.doc obtained from the images seized at Mr Gillingham's residence. The document contains bid evaluation criteria and guidelines for evaluating the kitchens tender. These criteria and guidelines obviously should not have been in the possession of any bidder and especially not before the submission of tenders since it would enable the bidder to know in advance the weighting of certain factors relevant to the tender. You would understand at least those
20 allegations?

MR ANGELO AGRIZZI: I understand the allegations.

ADV PAUL PRETORIUS SC: The evidence recorded here says: "Malan was able to establish that the document was created on 28 June 2004 and saved on the same date by Agrizzi." Is that correct?

MR ANGELO AGRIZZI: I am aware of that Chair.

ADV PAUL PRETORIUS SC: And it is correct?

MR PAUL AGRIZZI: To me that is correct.

ADV PAUL PRETORIUS SC: Alright now interestingly we get to those email addresses to which you referred in evidence. The heading is EMAIL LOGS BETWEEN AGRIZZI, MANSELL AND KOBUS AT BFN.CO.ZA. That was one of the addresses that you refer to in evidence to which you were – had been instructed to send confidential documentation?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: It reads: “During the SIU’s investigation of the access control tender an email address kobus@bfn.co.za was linked to Gillingham. According to Venter Gillingham explained to him that kobus@bfn.co.za was his residential email address.” So without going into particular detail of any conversation between Venter and Gillingham it appears that what the SIU have concluded after their investigations is that particular address kobus@bfn.co.za was Gillingham’s address?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: You did not know it at the time though?

MR PAUL AGRIZZI: I was not aware of it when it started.

ADV PAUL PRETORIUS SC: You were just told to send the documents to that address?

20 **MR PAUL AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: The final paragraph on page 320 reads: “Mr F De Villiers of NCC that is a network and computing consultants situated in Bloemfontein informed the SIU that kobus@bfn.co.za was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005.” The evidence appears to be that Bosasa had this address. It was an address in Bloemfontein and it was an

address which resulted in the delivery of documents to Gillingham. Do you have anything to say about that information?

MR PAUL AGRIZZI: Nothing, nothing whatsoever.

ADV PAUL PRETORIUS SC: Does it make sense to you?

MR PAUL AGRIZZI: It does make sense.

ADV PAUL PRETORIUS SC: Sorry it does not make sense?

MR PAUL AGRIZZI: It does make sense.

ADV PAUL PRETORIUS SC: It does make sense to you?

MR PAUL AGRIZZI: Yes.

- 10 **ADV PAUL PRETORIUS SC**: The SIU it states on page 321 obtained email logs from NCC that is where the address was located in Bloemfontein and found two emails sent from Gillingham to Agrizzi on 26 April 2004 with a subject TENDER EVALUATION CRITERIA DANNY MANSELL AND REVIEWED DOCUMENTS. These documents were sent approximately one month before the kitchens tender was advertised. Do you know anything about the receipt of those documents from that address?

MR PAUL AGRIZZI: As it was spelt it it was sent from Danny Mansell to myself.

ADV PAUL PRETORIUS SC: Yes the report says two emails sent from Gillingham to Agrizzi on 26 April 2004, can you comment on that?

- MR PAUL AGRIZZI**: I cannot, I cannot even recall that time. I remember that there
20 was emails but I cannot recall that specific email what it said.

ADV PAUL PRETORIUS SC: Generally your evidence has been that there was an exchange of emails?

MR PAUL AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Containing information relevant to the tender?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Before the tender was advertised?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: That you can confirm in general terms?

MR PAUL AGRIZZI: Yes. Chair that is correct.

ADV PAUL PRETORIUS SC: It continues: “During a search conducted by the SIU at Gillingham’s residence in terms of Section 6 of the Act a business card in Gillingham’s name was found that reflected that he was a consultant for Consilium which the SIU established as an affiliate company within the Bosasa Group. Furthermore the contact information on the card included the email address kobus@bfn.co.za.” It is not
10 necessary to go into that detail except for the allegation here that Gillingham’s name was found on a business card as a consultant for Consilium, Did you know anything about that?

MR PAUL AGRIZZI: I am aware of it I am aware.

ADV PAUL PRETORIUS SC: At the time was he paid for Bosasa under this guise?

MR PAUL AGRIZZI: I was – I am aware of it now and when we got the report I questioned Mr Watson and Mr Mansell about it and the argument was, was that they needed to look at bulletproof vests a type of a contract that corrections was working on and they wanted Gillingham to go with them under the guise of Consilium. That is the detail behind that meeting.
20

ADV PAUL PRETORIUS SC: Okay.

MR PAUL AGRIZZI: And why he had a business card.

CHAIRPERSON: I mean that explanation are you saying that is the explanation that was given to you when you questioned or that was given to the SIU?

MR PAUL AGRIZZI: No that was the explanation that was given to me and it was confirmed by Dr Smith and by Gillingham.

CHAIRPERSON: Yes. But I am not sure that it makes sense to me the explanation they gave to you.

MR PAUL AGRIZZI: It does make sense.

CHAIRPERSON: If one proceeds – if one proceeds from the premise that him that is Gillingham being employed by the Department of Correctional Services fulltime should not have had any employment relationship of any kind with Bosasa?

MR PAUL AGRIZZI: If I can give clarity to Chair?

CHAIRPERSON: Ja.

MR PAUL AGRIZZI: So very simply there would have been a tender that would have
10 been promulgated for bulletproof vests. Now when you go and see the supplier of the vests you would want to say to them “I have the upper hand so you better work with me when the tender comes out.” Very similar to what happened with Beta Fence. That is normally the modus operandi that has been used by Bosasa. So having Patrick Gillingham go with you in his full regalia clothes but have a card to say oh by the way I have got an interest in this entity would make the supplier want to work with you would it not?

CHAIRPERSON: Well if the supplier was corrupt is it not?

MR PAUL AGRIZZI: Chair you have answered my...

CHAIRPERSON: If the supplier ...

20 **MR PAUL AGRIZZI**: That is exactly...

CHAIRPERSON: Was not corrupt they would say there must be something wrong here. Why is an official from Department of Correctional Services coming with a potential bidder?

MR PAUL AGRIZZI: Unfortunately Chair that is also what I am busy fighting right now is that.

CHAIRPERSON: But it may or may not make sense when Bosasa goes to a supplier, potential supplier but what I was saying is it does not seem to make sense as an explanation when it is given to the SIU or was it not – or is the position that that is not what was given?

MR PAUL AGRIZZI: That was never given to the SIU.

CHAIRPERSON: Oh it was just given to you?

MR PAUL AGRIZZI: It was given to me.

CHAIRPERSON: Oh okay, okay.

MR PAUL AGRIZZI: And that is why he had the card printed as Consilium.

10 **CHAIRPERSON**: Ja.

MR PAUL AGRIZZI: As a matter of fact I confronted Dr Smith on that matter.

CHAIRPERSON: Yes.

MR PAUL AGRIZZI: And he said to me it was such a rush that they did not even think they just sent them down to the design house or to the – where we did all our printing and they quickly made card for him there.

CHAIRPERSON: Ja okay thank you.

MR PAUL AGRIZZI: Does it make sense Chair?

CHAIRPERSON: I am not sure but it is okay.

20 **ADV PAUL PRETORIUS SC**: Well it of course the function of the Chair perhaps with our assistance to make sense of all this evidence. But for present purposes you know that Mr Gillingham was given a card which reflected his position as being a consultant for Consilium?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Further down on page 321 two extensions of the kitchens contract or catering contract as you have described are dealt with. I would just

like to deal with the first and the second one and then perhaps any other information under this head. Let us deal first with the extension of the kitchens contract described under the first head. The report reads: "As already observed the kitchens tender covered seven management areas." You have confirmed that?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The contract signed with Bosasa did not mention seven satellite correctional centres falling within the seven management areas. On September 2004 Bosasa proposed to Gillingham that the seven satellite correctional centres be included by way of an extension of the kitchens tender?

10 **MR PAUL AGRIZZI**: That is correct.

ADV PAUL PRETORIUS SC: The extension was recommended by Gillingham and authorised by Commissioner Mti on 17 May 2005.

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Do you know of those facts?

MR PAUL AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: They are correct as set out here?

MR PAUL AGRIZZI: To the best of my knowledge yes those are correct.

CHAIRPERSON: Sorry Mr Agrizzi.

MR PAUL AGRIZZI: Yes Sir.

20 **CHAIRPERSON**: It might be something that you might deal with at some other stage that might be convenient. It may be that you – you cannot deal with it at any stage because you do not know. It would be interesting to find out how this relationship between Bosasa and Gillingham came about. Ja is that something you know and might deal with it and some stage or is that something that you do not know or when you

came to Bosasa there seemed to be relationship between the two Bosasa and Mr Gillingham?

MR PAUL AGRIZZI: Chair I can deal with it in – I refer to it in the affidavit. I can deal with it at any time it is fit for you.

CHAIRPERSON: Okay is it a long story or is a short story?

MR PAUL AGRIZZI: I think it is a fairly...[intervenes].

CHAIRPERSON: Or you want to ask me whether I want a longer version or a shorter version?

10 **MR PAUL AGRIZZI**: Well it is like the list going around. There is two version or three versions now Chair.

CHAIRPERSON: Well maybe I will – Mr Pretorius you want me to leave it for you to pick up the right time to – for us to deal with it?

ADV PAUL PRETORIUS SC: I am going to make a note perhaps.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: That the legal representatives can prepare a short supplement to the affidavit in that regard.

CHAIRPERSON: Ja, yes.

ADV PAUL PRETORIUS SC: The witness has given evidence.

CHAIRPERSON: Ja.

20 **ADV PAUL PRETORIUS SC**: Of his meetings with Mr Gillingham.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: When those occurred.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: And what occurred at those meetings. He has also given evidence as to the payments made to Mr Gillingham both those that he made and

others made but I understand your question to concern the prior formation of the relationship.

CHAIRPERSON: Yes, yes.

ADV PAUL PRETORIUS SC: And what the witness knows about that.

CHAIRPERSON: Yes, yes. I understand his evidence about his first meeting when he first met Mr Gillingham and when his second meeting was with Mr Gillingham just as he has told us about his first meeting with Mr Mti and his second meeting with Mr Mti. But I just want – I do not know whether or rather I doubt based on what I have seen in the affidavit that he meeting with Mr – his first meeting with Mr Gillingham marked the
10 beginning of the relationship between Mr Gillingham and Bosasa. My impression is that that relationship had been – was already there.

MR PAUL AGRIZZI: You correct.

CHAIRPERSON: Or he met him and I would like to know how it came about and who were involved in bringing it about.

ADV PAUL PRETORIUS SC: We will deal with that. Thank you Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Is this a convenient time?

CHAIRPERSON: Oh yes. We will take the lunch adjournment and we will resume at two o'clock. We adjourn.

20 **MEETING ADJOURNS**

MEETING RESUMES

CHAIRPERSON: Yes Mr Pretorius?

ADV PAUL PRETORIUS SC: Thank you, Chair. At page 321 of EXHIBIT S1 there is SIU evidence regarding the kitchen's or catering contract. I just want to deal firstly with the first extension referred to on that page. You confirmed as I understand it shortly

before the long adjournment that it was proposed by Bosasa to Gillingham that seven satellite correctional centres be included in the scope of the bid and the scope of the contract?

MR ANGELO AGRIZZI: That is correct, Chair. I just want to add for completion that it was actually told to us by Gillingham that we should do a formal request. That is what was told to me by Danie Mansell that we need to make a formal request and we did not know about the seven extensions, the seven satellite extensions. So just for clarity.

ADV PAUL PRETORIUS SC: Was that extension preceded by any tender process?

MR ANGELO AGRIZZI: There was no tender process whatsoever.

10 **ADV PAUL PRETORIUS SC:** The second heading on that page reads:

"The extension of the kitchen's tender period..."

And in the paragraph thereafter it is recorded that

"The contract was due to expire on 31 July 2007."

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Consideration was then given to whether there should be an extension pursuant to a new tender process?

MR ANGELO AGRIZZI: That is correct, Chair, they had delayed the tender process and that is why there was an extension. The extension also allowed for a close to a 30% increase in the price as well.

20 **ADV PAUL PRETORIUS SC:** Whilst this decision as to whether to issue a new tender was being considered the contract was extended firstly by a year and then by a further six months?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: Without any tender process being involved in those extensions?

MR ANGELO AGRIZZI: Those were purely negotiations, no tender was issued, no treasury approval.

ADV PAUL PRETORIUS SC: And then in the second paragraph it reads:

"A new kitchen's contract HK14/2008 was awarded to Bosasa
on 6 January 2009."

The contract period for this contract was three years.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: "In a course of a desktop analysis conducted by SIU it could not find any needs analysis or feasibility study for the new contract."

10 **MR ANGELO AGRIZZI:** That is correct, Chair.

ADV PAUL PRETORIUS SC: Was this extension preceded by separate tender process?

MR ANGELO AGRIZZI: This was a tender process in terms of the new HK14.

ADV PAUL PRETORIUS SC: Yes, and Bosasa won the tender?

MR ANGELO AGRIZZI: That is correct, Chair.

20 **CHAIRPERSON:** Well you might not be able to answer this, but if you are able to tell me where a government department has had in place for some time a contract with a service provider such as let us say Bosasa or any service provider and a need arises for an extension of that contract for a short period, let us say for six months, would that require that bids being invited afresh for that kind of extension or would bids be required to be invited if it was going to be a longish extension?

MR ANGELO AGRIZZI: Chair, I think the correct answer in this process would be if it was six months it is normal. Normally anything over six months you would put it out to tender, because you would have six months to prepare the tender in, which is more than sufficient and from the history of this contract you will see that they never needed

more than six months previously to prepare a tender and conclude a tender. So yes, it was irregular to have what was an 18 months actual extension. That would be irregular.

CHAIRPERSON: But are you saying if it was for a period such as six months there would have been no need for an invitation for bids?

MR ANGELO AGRIZZI: Chair, the initial contract if you look at the timelines took less than six months to promulgate and conclude. So why would the tender take 18 months to renew, to put out a bid? It is not necessary.

CHAIRPERSON: You are answering based on this specific contract.

10 **MR ANGELO AGRIZZI:** Correct.

CHAIRPERSON: My question is at a general level and it may be that you might not be able to answer and it may be a legal question, but I was thinking that maybe based on your experience with tenders you might be able to say in practice generally if it is – if a contract is extended for a short period such as maybe six months government departments do not normally invite bids, but if it is beyond a certain that kind of period then they do.

But of course your experience to the extent that largely it might be based on your experience at Bosasa given your own evidence that almost all those contracts were tainted. You might not have the right kind of experience.

20 **MR ANGELO AGRIZZI:** Chair, I have done government tenders for other companies as well and normally six months is a fair extension. I have never seen an extension longer than six months.

CHAIRPERSON: Yes, and based on your experience in regard to contracts other than at Bosasa you say six months they normally do not invite?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Bids. Okay, alright, thank you.

ADV PAUL PRETORIUS SC: Generally in this regard I take it that you do not profess to have expertise in relation to Treasury Procurement Regulations and the Department of Correctional Service Procurement Directives?

MR ANGELO AGRIZZI: I do not.

ADV PAUL PRETORIUS SC: Yes, that is a matter of detail perhaps that we will deal with through affidavits.

CHAIRPERSON: *Ja*, no, no, that is in order, *ja*.

ADV PAUL PRETORIUS SC: But it does appear from the SIU report at least that there
10 are a number of such deviations and irregularities documented. Some of which this witness can testify to from a factual perspective but not a legal perspective.

CHAIRPERSON: *Ja*.

ADV PAUL PRETORIUS SC: Thank you. You have told the, Chair, that it is correct that a new kitchen's contract or catering contract HK14/2008 was awarded to Bosasa on 6 January 2009.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And this was pursuant to a new tender process, flawed as it might have been according to the SIU?

MR ANGELO AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC:** And we know from the SIU report at least that one of the bidders in relation to this new contract who had been disqualified Royal Sechaba Pty Limited, Sechaba[spelt] instituted legal proceedings to set aside the contract?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: Sorry?

MR ANGELO AGRIZZI: If I could elaborate on it. The case was held before

Judge Preller in the North Gauteng High Court and we had Jeremy Gauntlet represent us. Unfortunately Judge Preller and I mention it in my affidavit his wife was very, very ill. He only gave judgment, we only received the final judgment about 18 months I think it was after the case was concluded and the conclusion of Judge Preller was very simple that he had found it to be corrupt.

CHAIRPERSON: What was his finding?

MR ANGELO AGRIZZI: His findings was that the tender that was awarded to Bosasa was found to be corrupt and would have to be removed. His recommendation was that the tender be cancelled.

10 **CHAIRPERSON:** That is in respect of the kitchen contract that is referred to at the bottom of page 321?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Oh, okay, alright. And what was the difference between that kitchen contract of 2008 HK14/2008 between that contract and the earlier one about which you have already testified relating, being a kitchen contract, in terms of what was to be done as well as the scope?

MR ANGELO AGRIZZI: Chair, if my memory serves me correctly the scope was exactly the same, but now this one incorporated the satellite units as well. The other difference was that they did not need to provide equipment and the initial one
20 equipment needed to be provided by the tenderer and billed accordingly included in the management fee every month.

In this latest tender if you wanted equipment you would have to provide the equipment yourself if the department refuse to purchase it. It was the ideal opportunity to actually make the department totally reliant upon Bosasa, because what happened was we could actually scrap all their equipment, put in all our own equipment at that

stage, spend quite a bit of money on equipment, but the returns would be that nobody else would be able to get into the contract, because of the volume of the equipment that they would need and the timing of getting the equipment into the facility itself.

So you basically controlled the tender process, because anybody who would want to come in and take over would need at least between 60 and R80-million to buy equipment alone. In today's economic times and even with the shortage of the specialised equipment that is required it will be very difficult for anybody to actually come in and take over.

CHAIRPERSON: Yes, okay thank you.

- 10 **ADV PAUL PRETORIUS SC:** The report goes on at page 322. We have dealt with this when we dealt with the executive summary and I am just going to summarise some of the findings at page 322. In short...[intervenes]

CHAIRPERSON: I am sorry Mr Pretorius, before I forget, I take it that if they have not already been done arrangements would be made to get Judge Preller's judgment?

ADV PAUL PRETORIUS SC: Yes, I have made a note.

CHAIRPERSON: Alright, thank you.

ADV PAUL PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Thank you.

- 20 **ADV PAUL PRETORIUS SC:** The findings in summary and stop me please if I say anything with which you disagree or with which you think is incorrect. Firstly there were clear deviations from supply chain management prescripts?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Secondly Gillingham at least played an integral role in the procurement process from the outset?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Thirdly Bosasa irregularly participated in drafting the specifications for the tender.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Fourthly, documents were shared between yourself and others from Bosasa and Gillingham in relation to the evaluation criteria, guidelines and blueprints or other matters?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The report does not mention blueprints, it mentions evaluation criteria and guidelines, but you say that is correct?

10 **MR ANGELO AGRIZZI:** Yes.

ADV PAUL PRETORIUS SC: The evidence which is consistent with your evidence, the evidence gleaned by the SIU in the words of the report clearly indicates that Gillingham received financial benefits from Bosasa after the award of the kitchen's tender.

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: And then finally the extension of the kitchen's contract it was extended upon the recommendation by Gillingham and authorised by Commissioner Mti.

MR ANGELO AGRIZZI: According to Section 9 that is correct, yes.

ADV PAUL PRETORIUS SC: And is that in accordance with your knowledge?

20 **MR ANGELO AGRIZZI:** Correct.

ADV PAUL PRETORIUS SC: The recommendations I have referred to, I have referred you to civil proceedings, disciplinary proceedings and a recommendation of criminal proceedings. There is a fourth recommendation that the Department of Correctional Services cooperate with the National Prosecuting Authority for the purposes of the prosecution of the persons and entities mentioned in the report. Because the SIU

report follows the same pattern of the evidence in respect of this tender as in respect to previous tenders I am going to try and abbreviate your evidence, if possible, in the interest of time.

Would you go to page 325? Are you there?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: The access control tender had a reference number HK2/2005, is this the tender of which you spoke earlier in your evidence?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Contract value R236 997 385,31.

10 **MR ANGELO AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: The timeline of the tender we need only mention that the time for the tender was reduced to 21 days.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: What was the level of technical complexity involved in compiling a response to a bid here?

MR ANGELO AGRIZZI: Chair, the technical requirements would mean that you would actually have to go out and understand the Correctional Services environment. It also means that you would have to design a system and ensure, because it is an integrated system and it had various levels of control and it was a distributed network, not only
20 over a local facility, but nationally, on a national grid, would require quite a lot of work.

You would need to set up a network and this was one of the very first VPN network set up in the country in conjunction with Telkom which alone would take you in the region of about six to eight months to get it going. So the complexity was intense here, although the system itself was very simple and easy to use and effective. It was a complex system to plan and to actually implement.

ADV PAUL PRETORIUS SC: Something easily done in 21 days?

MR ANGELO AGRIZZI: Virtually impossible, Chair, because in 21 days you have to compile a system, you have to have agreements with companies that provide network solutions, there is about 15 different subcontractors that you would need to employ and consult to get your correct pricing.

ADV PAUL PRETORIUS SC: Would you go to page 327 please? There at bullet two the SIU make the observation that Gillingham supported the recommendation regarding the security fences, but suggested that the Department of Correctional Service follows its own procurement process in respect of the security equipment and that all the funds
10 should be allocated before the end of March 2005. You have given general evidence as to the involvement of Gillingham in the process.

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: And do you know that he supported the process and that this tender should be managed by the Department of Correctional Services rather than by any other entity?

MR ANGELO AGRIZZI: Chair, I am aware of a document that was actually sent to the Department of Public Works to say that the department would now be continuing on their own in terms of the regulations put down by Treasury and the fact that they were going to be following the PFMA method in doing procurement themselves.

20 **ADV PAUL PRETORIUS SC:** And that is confirmed in the next paragraph on page 326 where reference is made to Commissioner Mti saying that the Department of Correctional Service should follow its own tender process so as to not experience delays from the Department of Public Works. That is consistent with what you have just told the, Chair.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Let us go please to page 328? Under the head, bid specifications is a record of how the compilation of bid specifications was managed between Bosasa on the one hand and the Department of Correctional Services, particularly Gillingham on the other. You have testified to that.

MR ANGELO AGRIZZI: I have, Chair, that is correct.

ADV PAUL PRETORIUS SC: At the bottom of the page, the last three lines, the report reads:

10 "According to Venter, Gillingham explained to him that
 kobus@bfn.co.za was his residential email address from which
 he forwarded the document to his official DCS email address."

It appears that the flow of documentation regarding bid specifications at least in this case was from Bosasa, Mansell, yourself or both to an email address created at the instance of Bosasa received by Gillingham and then forwarded on from there to Gillingham himself.

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: You say that you did not know this at the time?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: In fact on page 329 the end of the first paragraph or let us read that first paragraph.

20 "Through the SIU's investigation it was established that there
 was no Kobus employed as a consultant at the Department of
 Correctional Services and further that kobus@bfn.co.za was an
 email address belonging to Bosasa, paid for monthly by
 Bosasa between August 2004 and March 2005 which includes
 the day on which the document was emailed to Gillingham.

The SIU was further able to establish that a number of emails was sent by Agrizzi to Kobus."

You have given evidence that it is in fact so that you sent emails to the Kobus address?

MR ANGELO AGRIZZI: That is correct, I make note of that in my affidavits.

ADV PAUL PRETORIUS SC: Alright. And then of course it goes on to refer on page 329 to the fact that a document containing specifications had been given to a witness by yourself in December 2004. Do you see that in the fourth paragraph?

MR ANGELO AGRIZZI: I do see that.

10 **CHAIRPERSON:** Is that correct?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And at that stage the tender had not yet been advertised by the Department of Correctional Services?

MR ANGELO AGRIZZI: As far as I can remember that is correct.

ADV PAUL PRETORIUS SC: In relation to this contract and I do not know whether we have mentioned it in relation to this contract, it appears at the bottom of page 331 that both the bid evaluation committee and the bid NBAC, do you know what that stands for?

MR ANGELO AGRIZZI: National Bid Adjudication Committee.

20 **ADV PAUL PRETORIUS SC:** Bid Adjudication Committee had Gillingham there in one or other capacity. That is what the report says.

MR ANGELO AGRIZZI: I can agree that the report says that. Unfortunately I cannot confirm that is what happened.

ADV PAUL PRETORIUS SC: No, that is in order. Similar findings then are made as were made in respect of the previous contract regarding the benefits received by

Gillingham and Mti and in regard to the preparation of the bid, the involvement of Bosasa prior to the bid being advertised, the extension of the contract and other matters.

Emphasis is placed in paragraph 2 on page 335 to the reduction of the bid period to 21 days. I would just like to place that on record, if I may, Chair.

10 "The evidence further shows that the bid submission period was reduced to 21 days without any apparent cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid the shortened period for submission of bids and the fact that no site visits were allowed provided Sondolo with an unfair advantage over the other bidders. The SIU was unable to find any evidence indicating that there was any urgency for the resource covered by the access control tender."

That is consistent with your evidence.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: What is new in this paragraph is the fact that according to the SIU competing bidders were not allowed to visit the site.

MR ANGELO AGRIZZI: That is correct.

20 **ADV PAUL PRETORIUS SC:** Yet you gave evidence of extensive visits and work being done by Bosasa officials before the bid was even advertised.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: On site.

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: Mr Pretorius I lost you, where are you now?

ADV PAUL PRETORIUS SC: Second paragraph on page 335.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: If you want to have a look at that paragraph I can hold for a minute.

CHAIRPERSON: No, it is fine you may proceed in the meantime.

ADV PAUL PRETORIUS SC: The significance for reference to this paragraph is that not only was the submission bid period reduced to 21 days, but competitive bidders were not allowed site visits and yet that is in the fourth line and yet we know from the evidence of Mr Agrizzi that Bosasa employees had extensive opportunity to be on site,
10 take measurements and the like.

CHAIRPERSON: Was there a specific provision precluding oversized I mean visits to the sites or was the situation simply that at a practical level that was impossible to do it?

ADV PAUL PRETORIUS SC: The Annexures to the report, all I have at the moment, Chair, is the recordal of the fact that no site visits were allowed and this provided Sondolo with an unfair advantage.

CHAIRPERSON: Oh, okay. The paragraph says they were not allowed.

ADV PAUL PRETORIUS SC: Do you know about that?

MR ANGELO AGRIZZI: I am aware of that, Chair.

20 **CHAIRPERSON:** Yes, okay, no thank you. So the difference is that in regard to what you told us about yesterday a bidder who wanted to visit the sites would just have certain challenges in doing so, but it was not precluded as such, but here according to this paragraph site visits were not allowed.

MR ANGELO AGRIZZI: It was impossible for them to take everybody around.

CHAIRPERSON: Yes, but you appreciate the difference between...[intervenes]

MR ANGELO AGRIZZI: Yes.

CHAIRPERSON: The impossibility and a rule saying may not be done. Okay.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The matter is dealt with again in paragraph 4 on page 335 where the SIU report says:

"Since Sondolo enjoyed access to the correctional centre environment, because of Bosasa's kitchen's contract, the fact that no site were allowed in effect follow a significant advantage over its competitors."

10 **MR ANGELO AGRIZZI:** That is correct, Chair.

ADV PAUL PRETORIUS SC: The report under this head repeats the evidence regarding benefits received by Gillingham and Commissioner Mti and its recommendations again include the institution of civil proceedings, disciplinary proceedings, criminal proceedings and plea to the DCS that it cooperate with the NPA for the purposes of prosecutions.

On page 337 the fencing tender is dealt with in the report. Again I am going to refer only to certain aspects of the report, because the pattern follows the same pattern as earlier evidence. Do you recognise the code or the reference number HK24/2005?

20 **MR ANGELO AGRIZZI:** I do most definitely.

ADV PAUL PRETORIUS SC: Is that the same fencing tender to which you have referred in your evidence?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: It seems that the fencing tender was published on 14 October 2005 with the closing date one month later, November 2005.

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: And the contract was actually signed between Phezulu and the Department of Correctional Services on 30 November 2005.

MR ANGELO AGRIZZI: I presume that date is correct, I cannot remember that specific date.

ADV PAUL PRETORIUS SC: Mr Agrizzi perhaps you could comment to the, Chair, in relation to the period of one month and the technical complexity of the bid and whether that one month period would have been sufficient for a comprehensive bid to be submitted.

10 **MR ANGELO AGRIZZI:** Chair, I think I mention it and I allude to it in my affidavit and I think we made it very clear that it is impossible to actually be able to conclude the bid in that period of time.

ADV PAUL PRETORIUS SC: Alright and again as with the previous contract the SIU concluded at least that the tender was initiated by Mr Gillingham. That appears on page 338. Are you aware of those internal processes?

MR ANGELO AGRIZZI: I am not aware of the internal. I see them now, but I was not aware at the time.

ADV PAUL PRETORIUS SC: Again as appears from page 339 it seems that Mr Gillingham was influential in ensuring that the Department of Correctional Services
20 should do its own procurement process and not make use of the Department of Public Works and that that request was approved by Commissioner Mti. That at least is consistent with your evidence.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Then interestingly and this has been alluded to before, paragraph 3 reads that:

“A Mr Venter gave evidence to the SIU in respect of this contract.”

Do you know who Mr Venter was or is?

MR ANGELO AGRIZZI: Yes I am aware of who Mr Venter is.

ADV PAUL PRETORIUS SC: Who is he?

MR ANGELO AGRIZZI: Mr Venter at one stage was responsible for security at, as Head of Security for the Department of Corrections and he worked, he was also the client responsible for the Fencing Contract. He subsequently I believe has left and now works for a company called SA Fence and Gate.

10 **ADV PAUL PRETORIUS SC**: The report reads:

“Venter informed that he completed the request to invite bids [tenders] form on 11 October 2005, but deliberately refrained from competing the estimated expenditure section as his directorate did not have the budget for such a project. The R180 million allocated for the project came from the savings on the compensation of employees’ budget.”

I just mention that for the sake of completeness, but I presume you do not know anything about that.

MR ANGELO AGRIZZI: Not at all Chair.

20 **ADV PAUL PRETORIUS SC**: Then an; you, you gave evidence in relation to employees of Bosasa attending at site and measuring with a ...[indistinct] light. Do you recall that?

MR ANGELO AGRIZZI: That is correct. I reported in my affidavit on Jarryd Mansell and an engineer going out with a ...[indistinct] light measuring up the sites before I ever knew about the promulgation of this tender.

ADV PAUL PRETORIUS SC: A highly sophisticated ...[indistinct] light connected ...[indistinct] light?

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: And it is apparent that for this purpose Bosasa officials were allowed access?

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: Was that for the purposes of this particular Fencing Tender?

MR ANGELO AGRIZZI: That is correct Chair.

10 **ADV PAUL PRETORIUS SC:** Well what is interesting is what appears on the bottom of page 339.

“The same Mr Venter was request by the SIU to explain how the distances of the fences has reflected in an extract from the bid document entitled Appendix A, a list of centres was determined. He explained that due to time constraints he had requested the heads of the centres that he had identified as requiring fencing to appoint officials to measure the distances by foot.”

It is rather remarkable admission for such a complex tender. Do you know anything
20 about that?

MR ANGELO AGRIZZI: I am not aware of the fact that they had to measure it by foot, but what I can tell you is that it would be ideal to get them to do it by foot, because it would confuse everybody, because they would obviously make mistakes.

ADV PAUL PRETORIUS SC: Then over the page and this is something you alluded to in your evidence generally Mr Agrizzi. There is reference made to:

“Subsequent variation orders amounting to approximately R100 million.”

And then there is reference to:

“Additional work such as the removal of trees and substations, construction of guardhouses, blasting and installation of blasting and I suppose the related installation of generators due to inadequate electricity supplies as well as erecting additional fences.”

Can you comment in regard to that?

10 **MR ANGELO AGRIZZI:** Chair I would like to comment there. I was vehemently opposed to that, the 100 million. We had an accountant at the stage and he had kept putting in for variation orders, variation orders. I was not happy after a while and I actually told them to stop. I think I might have put a, I think I might have actually sent out an email to tell them to freeze all variation orders, because already the contract was R437 million or whatever and it was just growing and growing and growing and it would have attracted attention and quite simply it was not necessary. So, yes I believe that the SIU have investigated that aspect, but I think they need to go into it even deeper.

ADV PAUL PRETORIUS SC: Well the SIU do say that according to another witness Mr Stan by 22 May 2009 over R94 million had been paid to Phezulu in respect of
20 variation orders.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And there is more money still due or was due at that stage.

MR ANGELO AGRIZZI: It actually got out of hand quite simply.

ADV PAUL PRETORIUS SC: Again in relation to bid specifications and how those

were compiled you have given your evidence. I do not think it is necessary to deal with what is said here, because it deals largely with matters internal to the Department of Correctional Services.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: But under the head “The Bid Evaluation and Adjudication” it is important to place on record what is said at the bottom of page 340, because there is independent evidence that maybe put before you Chair. It reads:

“Truter...”

T-R-U-T-E-R

10 “...a procurement official within the Department of Correctional Services informed the SIU that he had received a request from his Supervisor, Pretorius, after closure of the bids to inform Commissioner Mti who the bidders were. Despite being uncomfortable with the request because information relating to the tender was confidential and people outside the procurement process should not have access to such information. Truter drafted such a memorandum to the Commissioner.”

I do not expect you to comment unless you have any knowledge of that.

20 **MR ANGELO AGRIZZI**: Quite simply I have not got any knowledge of that specific request, but I find it very strange that it is in there, because normally tenders are opened up in front of everybody and all the names are recorded and, and discussed. So I do not understand why that would be a problem. That is just my comment Chair.

ADV PAUL PRETORIUS SC: At the bottom of page 341 reference is made to the CIDB. That is the Construction Industry Development Board prescripts for the provision of Fencing Services.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Are you aware of those prescripts?

MR ANGELO AGRIZZI: I am not fully aware of them. I do not know the detail, but I do know that in order to put a fence of that calibre and that price range you would need to have a clearance code which is issued by the CIDB to be able to tender for that ...[intervenes].

ADV PAUL PRETORIUS SC: Did Phezulu Fencing have such a clearance?

MR ANGELO AGRIZZI: Chair if I remember correctly I think it would fall under security. So it would be what we call a 7SS or SE Clearance.

10 **ADV PAUL PRETORIUS SC**: Well perhaps you should just look at the fourth bullet on page 342 and the requirements placed on the Department of Correctional Services to ensure that Phezulu was properly registered with the CIDB. Just have a look at that and see if you can comment. If you cannot we can move on.

MR ANGELO AGRIZZI: There is no comment necessary Chair. It is exactly as I understand it. I thought it was a seven. Apparently it has to be a nine grading.

ADV PAUL PRETORIUS SC: Which ...[intervenes].

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Clearance the company Phezulu did not have?

MR ANGELO AGRIZZI: At the time correct, yes.

20 **ADV PAUL PRETORIUS SC**: Then on page 344 I would just like to refer you to the second last paragraph. It reads:

“The evidence shows that Phezulu received 90 percent of the contract value amounting to approximately R392 million prior to the end of the financial year in March 2006 and before any fences had been erected.”

Is that in accordance with your memory?

MR ANGELO AGRIZZI: In accordance with my memory and obviously the accountant would have the detail of the invoicing and that.

ADV PAUL PRETORIUS SC: Yes. Chair, may I ask that we continue from after page 48 in the next exhibit, S2.

CHAIRPERSON: You spoke away from your mic. I could not hear everything.

ADV PAUL PRETORIUS SC: The SIU report ends there on page 344 or should I say more accurately the copy in S1 ends there at page 48, but it continues in EXHIBIT S2 at page 887.

10 **CHAIRPERSON:** Are you going to be proceeding to S2?

ADV PAUL PRETORIUS SC: S2 page 887.

CHAIRPERSON: You are done with this one in S1?

ADV PAUL PRETORIUS SC: I am done with that.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: In fact I am done with pages 1 to 48 of the SIU Report.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Pages 49 and following appear at, in fact page 888 and following and there are just a few matters I would like to deal with there. Do you have page 888 Mr Agrizzi?

20 **MR ANGELO AGRIZZI:** I am still getting there. You may continue.

ADV PAUL PRETORIUS SC: Alright.

CHAIRPERSON: Was it more convenient to have this part here rather than have it on S1?

ADV PAUL PRETORIUS SC: Well I, I did explain earlier that I had all my notes Chair.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: On the part in S1.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Then discovered when I reached page 48 that it was incomplete.

CHAIRPERSON: Oh.

ADV PAUL PRETORIUS SC: And so I called for the remainder.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And in order to avoid a total reconstruction of the indexing and pagination.

10 **CHAIRPERSON:** Oh.

ADV PAUL PRETORIUS SC: It was decided to put the whole report in as part of the second bundle EXHIBIT S2 and so we deal now with and it is, the whole report is there from page 1, but I have just.

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: Distracted everybody by referring to the first 48 pages in the other bundle.

CHAIRPERSON: I think what should be done is that at the end of the part of the report that is in S1 maybe a page should be put in that tells the reader where to find the balance of the report.

20 **ADV PAUL PRETORIUS SC:** Oh, yes we will do that.

CHAIRPERSON: Ja, okay. Okay. You said page 888?

ADV PAUL PRETORIUS SC: Yes, please Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Are you there Mr Agrizzi.

MR ANGELO AGRIZZI: I am there.

ADV PAUL PRETORIUS SC: Alright. In relation to the Fencing Contract and Tender in the second last paragraph on page 888 reference is made to the waiting in the evaluation criteria in favour of the integration of the fences with the computer software system ON-IMIS which Bosasa and Sondolo had already introduced into the Department of Correctional Services.

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: That is the evidence you gave earlier as to how that circumstance would favour, significantly favour Bosasa in its bid or perceivably in its bid.

10 **MR ANGELO AGRIZZI:** Most definitely Chair.

ADV PAUL PRETORIUS SC: And then on page 889 in the second paragraph in relation to the Construction Industry Development Board Act we read that:

“Despite the fact that Phezulu should have been disqualified by virtue of its non-compliance with the bid requirements and the CIDB Act and its Regulations the National Bid Adjudication Committee was not informed thereof and proceeded to award the contract to Phezulu on 29 November 2005. This was clearly irregular.”

Now the extent to which you can assist with your own knowledge in relation to that is
20 limited I understand?

MR ANGELO AGRIZZI: Of course. Thank you Chair.

ADV PAUL PRETORIUS SC: Then at page ...[intervenes].

CHAIRPERSON: I am sorry. Well this paragraph is formulated in such a way that one gets the impression that the National Bid Adjudication Committee was not required to itself check whether a bidder qualified or had complied with bid requirements and that

somebody else had to tell them. I would have thought that they must have satisfy themselves, but you might not be able to comment on that.

MR ANGELO AGRIZZI: I cannot ...[intervenes].

CHAIRPERSON: Ja.

MR ANGELO AGRIZZI: I cannot comment; I was not ...[intervenes].

CHAIRPERSON: Ja.

MR ANGELO AGRIZZI: Integrally involved with this project.

CHAIRPERSON: Okay, alright.

10 **ADV PAUL PRETORIUS SC**: Yes, the little doubt I suppose that that is the express purpose of the various Bid Committees to ensure that there is qualification with internal and external requirements, but perhaps that is a topic for another witness.

CHAIRPERSON: No that is fine.

ADV PAUL PRETORIUS SC: Or affidavit.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: The recommendations then appear on page 890. Once again they are similar to the recommendations in respect of the other contracts and they include civil proceedings, disciplinary proceedings and a recommendation to the National Director of Public Prosecutions that criminal proceedings be instituted. On page 52, I am sure many people will be relieved. This is the last tender.

20 **MR ANGELO AGRIZZI**: 891, sorry Chair.

ADV PAUL PRETORIUS SC: Page 891.

MR ANGELO AGRIZZI: Page 891.

ADV PAUL PRETORIUS SC: Does the reference number 25/2005 accord with your memory of the Television Tender to which you referred in your evidence?

MR ANGELO AGRIZZI: That is correct Chair.

ADV PAUL PRETORIUS SC: And I think there may be a duplication here, but let us just continue.

MR ANGELO AGRIZZI: If I can give you an overview Chair of the tender itself.

CHAIRPERSON: Well I, I guess you did, you did give evidence about it and Mr Pretorius I think just wants to look at certain features of the report and ask you where you confirm.

MR ANGELO AGRIZZI: Sure.

CHAIRPERSON: Because you did give evidence fully.

MR ANGELO AGRIZZI: Ja.

10 **CHAIRPERSON:** On, on it.

ADV PAUL PRETORIUS SC: Yes. Thank you Chair. Chair perhaps we should just refer to page 896. At the top of the page there is reference to the activities of the Technical Committee in the bid process. It reads:

“The Technical Committee subsequently met and found that none of the bidders had submitted convincing bids that warranted their being awarded the contract. Bidders had to reach a 70 percent technical threshold and the bidder with the highest mark Sondolo, received 67.5 percent.”

Do you see that?

20 **MR ANGELO AGRIZZI:** Sorry, the highest, sorry the highest bidder.

ADV PAUL PRETORIUS SC: The highest mark.

MR ANGELO AGRIZZI: Yes. Was ...[intervenes].

ADV PAUL PRETORIUS SC: Sondolo received was 67.5 percent.

MR ANGELO AGRIZZI: Sorry ...[intervenes].

ADV PAUL PRETORIUS SC: That is from a ...[indistinct] member. Take your time

because you have given evidence about the 70 percent technical threshold.

MR ANGELO AGRIZZI: Correct, but Sondolo ...[intervenes].

ADV PAUL PRETORIUS SC: [Intervenes].

MR ANGELO AGRIZZI: IT on table, are we referring to 10?

ADV PAUL PRETORIUS SC: No. We ...[intervenes].

CHAIRPERSON: No, I think he is ...[intervenes].

ADV PAUL PRETORIUS SC: No, I am not there yet.

MR ANGELO AGRIZZI: I am very sorry. I am ahead of you, sorry.

ADV PAUL PRETORIUS SC: Yes. We are referring ...[intervenes].

10 **MR ANGELO AGRIZZI**: Sorry.

ADV PAUL PRETORIUS SC: To the first paragraph.

MR ANGELO AGRIZZI: Yes.

CHAIRPERSON: Do not go ahead of him.

MR ANGELO AGRIZZI: Sorry, I was reading ahead.

CHAIRPERSON: Ja.

MR ANGELO AGRIZZI: My apologies Chair.

CHAIRPERSON: Ja, first paragraph.

MR ANGELO AGRIZZI: The highest mark was 67.5 percent. That is correct.

20 **ADV PAUL PRETORIUS SC**: So in other words nobody qualified before the Technical Committee?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The Technical Committee's evaluation scores were then handed to Gillingham?

MR ANGELO AGRIZZI: That is correct apparently.

ADV PAUL PRETORIUS SC: The detail of what Mr Gillingham did in respect of the

scores is a little confusing without specialist knowledge, but perhaps you could explain it but the result of Mr Gillingham's, I am trying to find a neutral word other than manipulation. Mr ...[intervenes].

CHAIRPERSON: Alterations. Is it alterations?

ADV PAUL PRETORIUS SC: Mr Gillingham's actions.

CHAIRPERSON: Oh, actions.

ADV PAUL PRETORIUS SC: Resulted in the combined scoring percentages in table 10.

MR ANGELO AGRIZZI: That is correct.

10 **ADV PAUL PRETORIUS SC:** And there Sondolo IT scored 80.38 percent and none of the other bidders scored anything more than 59.88 percent?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Well there is 64 there, Connecting Africa. Third from the bottom.

ADV PAUL PRETORIUS SC: I am sorry, oh 64 percent yes.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: I am sorry. My mistake. None of the other bidders received more than 64 percent, but not 70 percent?

MR ANGELO AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC:** So it seems that through the intervention of Mr Gillingham directly in the bid process or the Bid Evaluation and Adjudication process Sondolo moved from a fail to a pass, in short terms. [Intervenes].

MR ANGELO AGRIZZI: It appears that way. You are correct.

ADV PAUL PRETORIUS SC: And then certain question marks concerning that process are raised by the SIU Report and crossed out.

CHAIRPERSON: So just before, just before you proceed Mr Pretorius. So Mr Agrizzi it

would therefore appear that whereas before the Technical Committee none of the bidders could or made it, made 70 percent. Once it was Mr Gillingham who was considering what marks or what, what marks to or points to award to these not only was there no bidder who got, other than Sondolo IT who got more than 64 percent, but actually Sondolo IT got far more than 70 percent.

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Hm.

MR ANGELO AGRIZZI: So Chair what must have happened was the other individuals must have been scored zero.

10 **CHAIRPERSON:** Hm.

MR ANGELO AGRIZZI: And Sondolo IT must have been scored the full marks.

CHAIRPERSON: Hm, hm. Ja, thank you.

ADV PAUL PRETORIUS SC: There is further evidence recorded by the SIU in its reports in the following paragraphs which casts a further shadow on Gillingham's involvement, but I am not sure that you could comment directly on that.

MR ANGELO AGRIZZI: I cannot comment on that, no.

ADV PAUL PRETORIUS SC: Again on page 880, 898 rather under the head "Contract Management" it seems that on delivery of materials 90 percent of the bid price was to be paid and 10 percent after completion and installation.

20 **MR ANGELO AGRIZZI:** That is correct Chair.

ADV PAUL PRETORIUS SC: Again the report refers to benefits received by Gillingham and Mti and goes into detail in relation to the findings which appear from page 898 and following. Interestingly on page 899 paragraph 4 there last two sentences read:

"The payment of R106 million was paid to Sondolo on
23 March 2006 13 days after the contract was signed. Since

this payment was shortly before the end of the financial year
this amounts to fiscal dumping.”

You yourself had made reference to that concept before.

MR ANGELO AGRIZZI: That is correct. That was the rot that was there Chair.

ADV PAUL PRETORIUS SC: Once again the recommendations mirror the
recommendations made in respect of the other contracts. They appear at page 900.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: May we move on to another topic still within the confines
of the SIU Report at page 901? You yourself from your own knowledge had given
10 evidence as to benefits other than financial benefits received by a person such as
Gillingham and Commissioner Mti and members of their families.

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: The SIU investigations appear to have been quite
detailed and they list a number of non-monetary, but nevertheless valuable benefits
received by Messieurs Gillingham and Mti at page 901 and following. The first item
referred to is a VW Golf 5 2005 model and the records examined by the SIU indicate
that this vehicle was purchased at Glen Volkswagen Dealership in Glenvista. Do you
recognise this item and its purchase?

MR ANGELO AGRIZZI: I, I was not present when it was purchased, but I know it, yes.

20 **ADV PAUL PRETORIUS SC:** You gave evidence about a Mercedes and a Golf having
being purchased.

MR ANGELO AGRIZZI: That is right.

ADV PAUL PRETORIUS SC: I just want to know, there are several vehicles here. I
just want to know if you can specific which vehicles you referred to in your evidence.

MR ANGELO AGRIZZI: The vehicles I referred to if I, if we could turn to my evidence

is a Golf, not a Golf sorry. A Polo and a Mercedes.

ADV PAUL PRETORIUS SC: Alright. Well let us go over the page on page 902, I am sorry. Just for the sake of completeness the Golf 5 2005 model referred to on page 109 refers to the vehicle having being purchased by Gillingham on 1 September 2004 at a cost of R196 959,97 and then an analysis of Gillingham's Absa Bank account a deposit appeared in the same amount having been made on 30 August 2004. That is two days prior to the purchase date of the vehicle. Do you know anything of that?

MR ANGELO AGRIZZI: I know of the purchase of the vehicle now. At that stage I was not even aware of it.

10 **ADV PAUL PRETORIUS SC:** This is at page 901. I gave the wrong number earlier and I am receiving a flurry of notes in that regard. My apologies Chair.

CHAIRPERSON: Mr Pretorius you must not complain. You are getting assistance.

ADV PAUL PRETORIUS SC: Yes. Three notes for that one Chair. You can imagine how many other notes I must get in other matters.

CHAIRPERSON: [Laughing].

ADV PAUL PRETORIUS SC: I am receiving expert assistance I might say.

CHAIRPERSON: People give you, do not give you assistance you complain. People give you assistance you complain.

20 **ADV PAUL PRETORIUS SC:** No I am just remarking perhaps to lighten up proceedings.

CHAIRPERSON: Okay. Yes, no, no that is fine.

ADV PAUL PRETORIUS SC: Okay at page 901 the VW Golf 2005 model is referred to.

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: In short what the SIU investigation reveals is at least as far as the report is concerned that that vehicle was purchased by Mr Gillingham and paid for by Bosasa?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And the examination of the flows of the money appear in the last paragraph on page 901. Then on page 902 reference is made to a Mercedes E Class E270 2004 model purchased by Gillingham from Grand Central Motors in Midrand. Did you know anything about that?

MR PAUL AGRIZZI: That specific vehicle I did not know about.

10 **ADV PAUL PRETORIUS SC:** Right.

MR PAUL AGRIZZI: There is a further Mercedes that I know about.

ADV PAUL PRETORIUS SC: But it seems that at least the deposit R155 000,00 was seen on an analysis of Gillingham's ABSA bank cheque account and information obtained from the ABSA bank revealed that the R155 000,00 cheque deposit was made by Smith with the reference Mansell.

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Would you be able to recognise that transaction?

MR PAUL AGRIZZI: That is correct but at the time I did not know about the transaction. I found out about this transaction afterwards.

20 **ADV PAUL PRETORIUS SC:** Yes.

MR PAUL AGRIZZI: Long after.

ADV PAUL PRETORIUS SC: But before you read the report?

MR PAUL AGRIZZI: Sorry?

ADV PAUL PRETORIUS SC: Before you read the SIU report?

MR PAUL AGRIZZI: No.

ADV PAUL PRETORIUS SC: So you found out about it on reading report?

MR PAUL AGRIZZI: Chair if I can – I found out about these vehicles I did not know about these two specific vehicles I only found out about that when I was in Paris and I received a full copy of the report.

ADV PAUL PRETORIUS SC: Right.

MR PAUL AGRIZZI: That is when I found out about it. If you look at my affidavit I refer to the vehicles that I knew about. I do know that – I knew about these vehicles now and since 2009 when I got the report. I just want to clarify that because up until then when these vehicles were purchased this was kept away from everybody. It was
10 handled between Dr Smith and Danny Mansell.

CHAIRPERSON: Yes. You said a while ago you know about another Mercedes?

MR PAUL AGRIZZI: Yes.

CHAIRPERSON: Or you knew about another Mercedes?

MR PAUL AGRIZZI: Correct.

CHAIRPERSON: I am not sure whether are among the vehicles that you mentioned in you earlier evidence there was a Mercedes or is it a – is that new information you want to tell us about?

MR PAUL AGRIZZI: No, no I think it is in this document Chair.

ADV PAUL PRETORIUS SC: It is coming.

20 **CHAIRPERSON:** It is in your affidavit?

MR PAUL AGRIZZI: Yes it is coming.

CHAIRPERSON: Oh it is coming oh okay, okay.

MR PAUL AGRIZZI: Yes. It is late in 2008 or 2009.

CHAIRPERSON: Okay no that is fine.

ADV PAUL PRETORIUS SC: Then also on page 902 reference is made to a silver VW Polo 2006 model. Do you know of this vehicle and its purchase?

MR PAUL AGRIZZI: This specific vehicle here I was not aware of. I only found out about this later.

ADV PAUL PRETORIUS SC: Right. In any event the evidence gleaned by the SIU is recorded here. It may be the subject of other affidavits. But let us go to the last paragraph under this head on page 903. Do you know who Ryan Albert Gillingham is?

MR PAUL AGRIZZI: That is Patrick Gillingham's youngest son.

ADV PAUL PRETORIUS SC: Okay. It appears that this particular vehicle was
10 registered in his name.

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: We do not know whether to the knowledge of young Gillingham or not and I am referring to the purchase. Then on page 903 at the bottom of the page there is reference to a white VW Polo 2006 model.

MR PAUL AGRIZZI: I am aware of that vehicle I was there when it was purchased.

ADV PAUL PRETORIUS SC: Right. And who paid for that vehicle?

MR PAUL AGRIZZI: That vehicle was paid for by Bosasa.

ADV PAUL PRETORIUS SC: Right. And the detail of that purchase and the ultimate destination of the vehicle are dealt with on pages 903 and 904.

20 **MR PAUL AGRIZZI:** That is correct.

ADV PAUL PRETORIUS SC: What is contained in the report is the remark that the ultimate recipients of those vehicle would not have been able to afford them.

MR PAUL AGRIZZI: That is true.

ADV PAUL PRETORIUS SC: Then at the bottom of page 904 there is reference to a Mercedes E Class 320 E320 2007 model. Do you know about that?

MR PAUL AGRIZZI: I am aware of that transaction.

ADV PAUL PRETORIUS SC: Right for whom was that vehicle purchased?

MR PAUL AGRIZZI: That was for Patrick Gillingham.

ADV PAUL PRETORIUS SC: And who paid for it?

MR PAUL AGRIZZI: It was paid indirectly by Bosasa.

ADV PAUL PRETORIUS SC: Right. But ultimately at Bosasa's expense?

MR PAUL AGRIZZI: Yes that is correct.

ADV PAUL PRETORIUS SC: And the detail of those transactions are contained in the report at page 905?

10 **MR PAUL AGRIZZI**: No.

ADV PAUL PRETORIUS SC: If you just glance over it quickly do you recognise those transactions as referred to there?

MR PAUL AGRIZZI: Chair I recognise these transactions. I had to give a loan to Mr Bonifacio. Mr Bonifacio worked as the accountant at that stage. I transferred R180 000,00 into his account and he then paid the vehicle's deposit with the R18 000,00. That came from my account and it was a loan to him it was recorded as such. So I am aware of that transaction.

ADV PAUL PRETORIUS SC: Were you reimbursed?

MR PAUL AGRIZZI: Yes I was I received a bonus.

20 **ADV PAUL PRETORIUS SC**: And it seems that the evidence here may show that it was only the deposit that was paid by Bosasa. Do you know the extent to which this vehicle was financed by Bosasa?

MR PAUL AGRIZZI: They had a – he had a trade-in on a vehicle are you referring to that on the old trade-on of the ...[intervenes]

ADV PAUL PRETORIUS SC: No I am just saying that all I see here on page 905 is payment of the amount of R18 000,00 for that vehicle. I am not sure whether that was payment for the full cost of the vehicle or whether it was part cost?

MR PAUL AGRIZZI: I cannot remember right now. I am sure it was part of and what I can tell you is that the vehicle that he was driving could not be traded in and it was – it was sold to a person who worked at Bosasa who took over the vehicle. I think it was about R100 000,00 or R12 000,00 Chair and that money was reimbursed to Patrick Gillingham through Consilium. I have a feeling that perhaps that was the final payment on the car the R180 000,00. So my answer to you Advocate Pretorius would be yes
10 that was probably the balance of the payment of the vehicle.

ADV PAUL PRETORIUS SC: Alright. Then in the report at page 906 there is a heading CASH AND CHEQUE DEPOSITS and reference to table 12 which according to the report illustrates cash and cheque deposits received by Gillingham. And what follows in the table is a series of payments in various amounts. Are you able to comment on this table?

MR PAUL AGRIZZI: No at that stage all payments to Gillingham and to Mti would be handled by Mansell and Watson and Smith we were not aware of that. That was kept very hush hush. So I see them I was not aware of these payments at the time up until about 2006/2007.

20 **CHAIRPERSON:** Would these payments have been separate from the monthly payments that you told us about that Bosasa was paying Mr Gillingham?

MR PAUL AGRIZZI: That is correct Chair they would have been separate.

CHAIRPERSON: Okay. They would be separate?

MR PAUL AGRIZZI: Yes.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: The purpose of the deposits according to the SIU are described below the table and they relate to the purchase of various vehicles and one item referenced as the kitchen deposit. Do you know anything about the kitchen deposit?

MR PAUL AGRIZZI: That was – what had happened at that stage Chair is that we had interior designers working for us and they would go out and actually design their house and they had expensive tastes so they used imported kitchens from a specific company. That is as much as I know.

ADV PAUL PRETORIUS SC: Do you know whether payments were made directly or
10 indirectly by Bosasa to Gillingham for the installation of kitchen appliances and furniture?

MR PAUL AGRIZZI: Well evidently Chair he got the cash from Danny Mansell because if you look at it he deposited three sets of cash of R20 000,00 each amounting to R60 000,00 and on the 23 August he wrote out a cheque of R66 000,00 to Sterlings Livings. So I would presume that yes the payment would come from indirectly Bosasa.

ADV PAUL PRETORIUS SC: Who was Sterlings Living? Do you know?

MR PAUL AGRIZZI: Sterlings Living is – would have been a kitchen manufacturer company.

ADV PAUL PRETORIUS SC: And it is apparent that the back of one of those cheques
20 contained the reference “kitchen deposit”. You have also referred to Grande Four Property Trust.

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Your evidence in that regard does it have any relationship to the payment on the 5 August 2005?

MR PAUL AGRIZZI: Grande Four was one of the companies that were used at an arm's length that Watson insisted on registering and that would have been used by that stage Mansell who would have wrote – written out cheques from there and reclaimed that via a dummy invoice to Bosasa.

ADV PAUL PRETORIUS SC: And further evidence appears in relation to these payments referenced by the SIU on page 907.

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Under the head TRAVEL paragraph 913 on page 907 is reference to travel benefits. Are you aware of any benefits in relation to travel as
10 specified here? You have given your own evidence.

MR PAUL AGRIZZI: Chair I was not aware of these travel here specifically I became aware of that later.

ADV PAUL PRETORIUS SC: And then paragraph 914 page 907 rugby season tickets?

MR PAUL AGRIZZI: Was not aware of this Chair. This had become apparent afterwards.

ADV PAUL PRETORIUS SC: And it seems that there is a link a season renewal document in the name of Danny Mansell?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The evidence is set out there. Perhaps more
20 significantly there is a reference on page 908 to properties. The first property referred is Erf 106 Midstream Estate, do you know anything about that property?

MR PAUL AGRIZZI: I was not aware at the stage of this property. My understanding is this is currently the property where he resides in.

ADV PAUL PRETORIUS SC: Do you know anything about the architectural plans for that property?

MR PAUL AGRIZZI: Yes the architectural plans were drawn up by the same architect that Bosasa used at the time Chair.

ADV PAUL PRETORIUS SC: And who paid for those plans?

MR PAUL AGRIZZI: Well

ADV PAUL PRETORIUS SC: Do you know?

MR PAUL AGRIZZI: It is evident that on the 10 June R41 100,00 was paid by Bosasa and it says cheque deposit Bosasa Operations.

ADV PAUL PRETORIUS SC: Then do you recall you gave evidence about Riekele Construction and Mr Hoeksma?

10 **MR PAUL AGRIZZI**: That is correct.

ADV PAUL PRETORIUS SC: On page 909 there is a heading BUILDING ON ERF 106 MIDSTREAM ESTATE. Do you know of the facts that the SIU record here under that heading?

MR PAUL AGRIZZI: Chair at the time I did not know but I have found out that these are the facts. I have actually been to the property, seen the property a few times and even had to make repairs to the property in terms of the – where the swimming pool is and decking that was required for the property as well. As well as waterproofing and painting out.

20 **ADV PAUL PRETORIUS SC**: The report does read: “Between 2004 and 2007 it was evidence – it was evident that approximately R30 million was paid to Riekele Construction by Bosasa. During this period Gillingham’s dwelling was constructed. There was no indication in Gillingham’s bank account of any payment to Riekele Construction. Do you have any comment in regard to that?

MR PAUL AGRIZZI: Well they would need to look at Riekele’s accounts but more importantly Grande Four’s accounts.

ADV PAUL PRETORIUS SC: Right.

MR PAUL AGRIZZI: And you would be able to ascertain. I am not an accountant Sir or a tax or a forensic auditor so I would not be able to say exactly what was spent. But I do know that Riekele built the house and I do know Chair that Bosasa used Riekele. Whether Riekele did R30 million worth of work at Bosasa I cannot say. I would have to pull out the invoices and actually go through them very carefully.

ADV PAUL PRETORIUS SC: Well the first sentence under this head says: "Mr R Hoeksma owner of Riekele Construction was employed for the construction of Gillingham's dwelling on Erf 106 Midstream Estate, Midrand". You know of that fact
10 because that is evidence you have given?

MR PAUL AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Then the next heading is IMPORTED KITCHEN. It appears from the SIU report that Gillingham visited the showroom of Sterlings Living in Pretoria to have a kitchen designed according his requirements fitted in his newly constructed Midstream Estate home. Do you know anything about that?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Right. And then there is a record of several payments some of which came from the Grande Four account.

MR PAUL AGRIZZI: Chair that would be the best place to look is in the Grande Four
20 account. I recall as well just for purposes of completion that that was one of the reasons why when he searched the files on that Saturday was to try and get all the information from Grande Four.

ADV PAUL PRETORIUS SC: That is when you destroyed documentation, is that correct or deleted evidence?

MR PAUL AGRIZZI: That is when we had to collect the documentation to then go and put it in safekeeping and then destroy it.

ADV PAUL PRETORIUS SC: Right. Do you know anything about the Protea Retirement Home referred to at the bottom of page 909?

MR PAUL AGRIZZI: All I know on that is that I found out about it afterwards and I believe this was utilised by Patrick Gillingham's father.

ADV PAUL PRETORIUS SC: Alright and we do not suggest that Patrick Gillingham's father necessary knew the source of the money but we are just dealing with what we read here in the report?

10 **MR PAUL AGRIZZI**: I cannot – I cannot comment on that.

ADV PAUL PRETORIUS SC: Then under the head ERF 971 MIDSTREAM ESTATE there is reference to a vacant property with that title, do you know anything about that purchase?

MR PAUL AGRIZZI: I am not aware of that – I was not aware of that purchase at the time I now know about the purchase.

ADV PAUL PRETORIUS SC: Yes in short it appears that in respect of the purchase price Grande Four Property Trust paid an amount of R392 000,00 to the transferring attorneys and the presumption is that the balance was paid by Gillingham?

MR PAUL AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC**: This further evidence regarding the drafting of plans but we need not go there. In the next paragraph PRIVATE EMAIL ADDRESS there is evidence in relation to kobus@bfn.co.za that evidence has been given and no more need be said about that. Then in paragraph 917 and reference should in fairness be made to this paragraph. It appears on pages 910 and 911 and it refers to documents seized during search explaining some of the benefits received by Gillingham.

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And I am not sure that it means explaining in a sense that makes the allegations any less serious but there is reference to a Mr R or RH and the SIU explained that as being a reference to Riaan Hoeksma. There is also reference to GR4 they explain that as a reference to Grande Four Property Trust. The white Polo linked to the person you have described as Mr Gillingham's daughter. Reference to other family members and the like. But it seems that on the computer of Mr Gillingham corroborative evidence was found in relation to the transactions again I am reading it as we speak and nothing seems to be a matter which you can either confirm or deny?

10 **MR PAUL AGRIZZI**: I can confirm these. These were then loan agreements that were drawn up between Patrick Gillingham and the various people. So we attended to an attorney and we asked them to draw up loan agreements and back date them and this would be covered in terms of the declaration to Richmond Mti. I do not know if you understand that Chair.

ADV PAUL PRETORIUS SC: Alright then let us take that step by step. Were these loan agreements that you refer to genuine loan agreements?

MR PAUL AGRIZZI: Chair if I can just explain it properly. These were not genuine loan agreements these were cover ups to try and cover up the fact that monies had gone through the banks and through people to Gillingham. What had happened was we
20 actually found out that they would pick up on it and loan agreements were then back dated and generated to try and cover up this and that is why Gillingham declared his loans to Richmond Mti. If you recall that document that was signed off.

ADV PAUL PRETORIUS SC: That document that was annotated by Mr Mti and signed by him in the bottom right hand corner you referred to that yesterday.

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: So in sum these benefits were paid for by Bosasa?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Or Bosasa related companies?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: For fear of detection the load agreements were created to at least give an appearance of legitimacy to the transactions?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The report at page 911 and 912 sets out the conclusions in relation to these benefits received by Gillingham and perhaps it is not necessary for
10 us to repeat those conclusions. The evidence has been given.

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: But if in your review of pages 911 and 912 if there is anything you feel you should point out to the Chair please do so and perhaps just take a second I am told you are a speed reader to quickly glance through pages 911 and 912 if you would.

CHAIRPERSON: Well Mr Pretorius even if he is a fast reader that seems to be quite long for silent reading.

ADV PAUL PRETORIUS SC: He is a speed reader and I

MR PAUL AGRIZZI: Chair.

20 **ADV PAUL PRETORIUS SC:** Know that he will deal with it in a moment.

CHAIRPERSON: Yes are you done?

MR PAUL AGRIZZI: I am done.

CHAIRPERSON: Oh okay.

MR PAUL AGRIZZI: Chair the one R350 000,00 was something I might have given – I might have forgotten about but that was specifically paid to Grande Four because it was

part payment for a property of Gillingham's son Paddy Gillingham. That I seem to have ...[intervenes].

CHAIRPERSON: That is – you are referring to the R350 000,00 at page 912?

ADV PAUL PRETORIUS SC: That is right.

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: Paragraph 4?

MR PAUL AGRIZZI: That is right.

CHAIRPERSON: Ja okay.

MR PAUL AGRIZZI: Okay so that was basically it was just an internal transaction
10 between the father and the son – sorry to Grande Four which also was then reflected
as a payback to show that loans were being paid back. But in actual fact that was for
vacant property which his son had bought. Okay.

CHAIRPERSON: And just to make sure one does not get confused later on both the
son and the father were Patrick?

MR PAUL AGRIZZI: That is right.

CHAIRPERSON: Okay. Thank you I guess that for – to make sure there is no
confusion we – maybe we – should we not talk about Gillingham senior or but if they
are not mentioned much after this it might be fine.

MR PAUL AGRIZZI: I do not think it is necessary.

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

ADV PAUL PRETORIUS SC: We will take note of that and refer to them as such in
future.

CHAIRPERSON: Ja okay.

ADV PAUL PRETORIUS SC: Just to deal then finally with the conclusion in relation to
Mr Gillingham on page 912 the last paragraph reads: "Given that the Bosasa Group of

Companies were awarded large contracts estimated in excess of R1.5 billion and that Gillingham played an integral role in all of these contracts the benefits acquired by Gillingham and his family within the period these contracts were awarded signifies the existence of an improper and corrupt relationship between Gillingham and the Bosasa Group of Companies.” That is the conclusion reached by the SIU during or about 2009.

MR PAUL AGRIZZI: That is correct.

CHAIRPERSON: Now I do not know whether you might be able to say – would that figure of in excess of R1.5 billion that is contracts that – or monetary value of the contracts that Bosasa had from the Department of Correctional Services which were
10 looked into or rather which the report talks about. Does that sound more or less right in terms of your own knowledge? Is that not – is that close to what you think would have been the case?

MR PAUL AGRIZZI: Chair I would suggest that – that it be looked at by an accountant. They just need to add up what they have paid.

CHAIRPERSON: Ja.

MR PAUL AGRIZZI: Over the last couple of years.

CHAIRPERSON: Yes.

MR PAUL AGRIZZI: And I am sure it exceeds that if not double.

CHAIRPERSON: Yes. And that was as at that time just for something I had wanted to
20 ask you much earlier or a few days ago. When you left.

MR PAUL AGRIZZI: Yes Chair.

CHAIRPERSON: Bosasa are you able to say how many contracts more or less Bosasa had with different government departments and parastatals or are you not able to say?

MR PAUL AGRIZZI: I cannot remember off the top of my head but I will work it out and give you an answer Chair.

CHAIRPERSON: Yes and it would be possible and maybe that the legal team has worked on it I do not know. Would it also be possible to attach the monetary value to Bosasa of the contracts as they existed were at the time you left?

MR PAUL AGRIZZI: I will arrange that Chair.

CHAIRPERSON: Okay thank you. Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Of course the observation or the conclusion rather not an observation reached by these SIU in the last paragraph that is the paragraph we have just read on the record from page 912 appears to be based on the benefits received in the report?

10 **MR PAUL AGRIZZI**: Correct.

ADV PAUL PRETORIUS SC: Benefits received and referred to in the report?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: What the report does not refer to as I think you have already told the Chair is the benefits received by way of cash payments to which you have referred in your evidence?

MR PAUL AGRIZZI: Correct Chair.

ADV PAUL PRETORIUS SC: Those would be over and above the benefits referred to in the SIU report?

MR PAUL AGRIZZI: Correct.

20 **ADV PAUL PRETORIUS SC**: Then if we may turn to page 903 – 913 rather. There are recorded benefits received by Commissioner Mti. You remember you gave evidence of a complex set of arrangements?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Whereby a house would be purchased, placed into the name of a company, the finances would be controlled by Hoeksma. It was intended

ultimately that house would go to Mr Mti?

MR PAUL AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: And that did not occur?

MR PAUL AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Would you look at the first paragraph on page 913. Is this more or less the same set of circumstances being referred to?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: And that did not occur?

MR ANGELO AGRIZZI: That is correct.

10 **ADV PAUL PRETORIUS SC**: Would you look at the first paragraph on page 913? Is this more or less the same set of circumstances being referred to?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Do you have any comments in regards to the contents of the first paragraph of page 913?

MR ANGELO AGRIZZI: Why would one question, Chair, why would the architect requested to compile the plans for the Commissioner for a house to be built on Erf 61 Savannah Hills Estate when the title deeds would be in the name of another company Autumn Storm Harvest. Why on earth would you have to consult to Mr Mti and then a second thing, my observation is why would Bosasa pay for the cheque, pay by cheque

20 for the architectural fees. Not only on one occasion, but on two occasions.

One would be a deposit and the other one would be for the final payment. It just does not make sense.

ADV PAUL PRETORIUS SC: Well, it does not make sense I think you are saying if, correct me if I am wrong, if the transaction was above board and in the normal course of business?

MR ANGELO AGRIZZI: Correct.

ADV PAUL PRETORIUS SC: But what do you say about the allegation here that the architect gave evidence to the SIU to the effect that she was requested to compile plans for the Commissioner for a house to be built in Savannah Hills and that she was told that the house was to be built for Commissioner Mti. You are not calling it to question that evidence, I understand?

MR ANGELO AGRIZZI: Not at all.

ADV PAUL PRETORIUS SC: But the SIU did establish as you have testified as well that the title deeds reflected the owner of the house as being Autumn Storm
10 Investments 119 Pty Limited?

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: Well maybe for the sake of completeness in relation to the point in Mr Pretorius second question from the last question he has put to you have testified that that house was built for Commissioner Mti is that right?

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: And in the report, the report reflects that Ms Zietsman said that she has been told that the house was to be built for Commissioner Mti as well?

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: Thank you.

20 **ADV PAUL PRETORIUS SC**: Yes, the report continues:

"The unit the SIU was able to determine that the company Autumn Storms Investments 119 Pty Limited belonged to Hoeksma as earlier observed between 2004 and 2007 Bosasa paid R30-million to Hoeksma building construction company Riekele Construction for construction work."

What is apparent from this paragraph is that you have given evidence from your own memory as to what occurred.

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: The SIU apparently got its information from original and different sources?

MR ANGELO AGRIZZI: That is right.

ADV PAUL PRETORIUS SC: For example they examined the title deeds, it spoke to the architect and looked at the accounts of Riekele Construction and both you and the SIU have through different sources, corroborative sources come to the same
10 conclusion?

MR ANGELO AGRIZZI: That is correct, Chair, plus I would like to add the fact that we were sent, I was sent with a colleague to go and speak to Mr Hoeksma to make sure that the stories that were told in terms of tenders and that would collaborate.

ADV PAUL PRETORIUS SC: The architect then refers to further payments being made in respect of the plans. Do you have any knowledge of that?

MR ANGELO AGRIZZI: At the time I did not have any knowledge of it, now I do and I verified those payments myself. I went when we had to do a clean-up operation I went and checked on these payments and they were there.

ADV PAUL PRETORIUS SC: And of course both you and the SIU say that
20 Commissioner Mti actually occupied that house?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Right. In the last paragraph under paragraph 9.3 on page 913 there is reference to the purchase of a motor vehicle. Would you look at that paragraph please?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: And say whether you have any knowledge of that transaction?

MR ANGELO AGRIZZI: I do not have knowledge on the transaction. What I do know was there had to be some sort of cover up there. I do not know the detail, you will have to find out more detail on that.

ADV PAUL PRETORIUS SC: Have you seen reference to this transaction in Bosasa records?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: And that is the purchase of a vehicle for
10 Commissioner Mti?

MR ANGELO AGRIZZI: I have seen records of the purchase of the vehicle and the ordering of the vehicle, which was done by a colleague, but I cannot comment on it, because I do not have the detail.

ADV PAUL PRETORIUS SC: Alright.

MR ANGELO AGRIZZI: On that specific vehicle.

ADV PAUL PRETORIUS SC: The findings in respect of Commissioner Mti are set out in paragraph 9.4 on page 913 and 914 and the qualifications in relation to the vehicle and the funding of the construction of the house was set out there. In any event, because their evidence – their sources of evidence are different from yours. It is
20 probably not necessary for you to comment on their qualifications to the evidence that they received and recorded.

Then perhaps in conclusion, because I think we are ahead of time, Chair, we should perhaps place on record the conclusion of the whole report which appears at page 914.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: "The SIU is satisfied that the normal procurement process was not followed by the Department of Correctional Service in the four tenders discussed in this report for the reasons advanced. Given the fact that Gillingham and Commissioner Mti improperly received benefits from Bosasa, the fact that there was a close working relationship between Gillingham and Commissioner Mti leads the SIU to conclude that there was an improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa group of companies. In as much as there was an improper and corrupt relationship between Gillingham and Bosasa the SIU is satisfied that the entire procurement process in each of the tenders was undermined to the

10 extent that Bosasa and its affiliates were unduly and unfairly advantaged as against their competitors for and in respect of the various tenders. On the evidence before it the SIU is accordingly satisfied that the improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa group of companies has seriously undermined the procurement process and exposed the DCS to civil suits by competitors who were unfairly treated."

We can put the second bundle away now and proceed back to where we left off in the text of the affidavit.

CHAIRPERSON: Are you getting assistance there Mr Pretorius?

ADV PAUL PRETORIUS SC: Yes, once more expert and efficient assistance.

20 **CHAIRPERSON:** Yes.

ADV PAUL PRETORIUS SC: It is the Judge Preller judgment to which reference was made earlier, but before handing it up perhaps we should look at it and put it in context, unless you want it now?

CHAIRPERSON: It is not urgent. I just wanted that at some stage we should have it, so I do not have to get it now.

ADV PAUL PRETORIUS SC: Thank you, Chair. Are you comfortable still?

MR ANGELO AGRIZZI: Yes, most definitely.

CHAIRPERSON: Where were we on the affidavit?

ADV PAUL PRETORIUS SC: Page 70, Chair, paragraph 34.

CHAIRPERSON: Okay. Thank you.

ADV PAUL PRETORIUS SC: Do you have that paragraph before you?

MR ANGELO AGRIZZI: Yes, I do.

ADV PAUL PRETORIUS SC: You say in paragraph 34.1 that from approximately 2009 you were tasked by Gavin Watson to become involved with the arrangements regarding
10 the obtaining, handling and delivering of cash for the purposes of bribery and corruption?

MR ANGELO AGRIZZI: Chair,...[intervenes]

ADV PAUL PRETORIUS SC: To bring us back into the sequence of events, prior to 2009 you performed a particular role. After 2009 you performed another role. Please tell the, Chair, briefly about that?

MR ANGELO AGRIZZI: Chair, during that period I would be tasked to actually go prior to that to basically arrange things and to do things as requested and then in 2007/2008 if I recall correctly I was then tasked specifically with the handling of cash, getting the cash, taking the cash, delivering the cash, handling the cash, counting it out for bribery
20 and corruption.

CHAIRPERSON: So was the change to when you were given the responsibility of handling the cash, was that not from 2009, it was from earlier?

MR ANGELO AGRIZZI: Previously I had other people do it.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: Other people were doing it.

CHAIRPERSON: Prior to 2009?

MR ANGELO AGRIZZI: Correct in 2007 I think we cover it in our documentation in the affidavit we actually cover it that it was taken away from a person and I would have to do it myself.

CHAIRPERSON: Ja, okay.

ADV PAUL PRETORIUS SC: Did Gavin Watson make any suggestion in regard to payments at this stage?

MR ANGELO AGRIZZI: 34.2?

ADV PAUL PRETORIUS SC: Yes.

10 **MR ANGELO AGRIZZI:** I presume.

ADV PAUL PRETORIUS SC: Yes.

MR ANGELO AGRIZZI: Gavin Watson stated that it was a more convenient method of handling cash for the payment of junior officials at corrections needed to be implemented and for that person he wanted a safe installed in the offices of Jacques van Zyl.

ADV PAUL PRETORIUS SC: Did this happen?

MR ANGELO AGRIZZI: It happened, a safe was implemented and there was a certain amount of money allocated to that safe, Chair.

ADV PAUL PRETORIUS SC: Before you go to paragraph 34.3 let me ask how do you
20 know that these payments were made to the individuals listed here?

MR ANGELO AGRIZZI: Well what happened was...[intervenes]

CHAIRPERSON: I am sorry, Mr Pretorius did you say before he goes to 34.3?

ADV PAUL PRETORIUS SC: Yes, before he – well I meant before he reads the detail of 34.3.

CHAIRPERSON: Okay, because I was wondering which payments you are talking

about if it is before 34.3.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: But before he does that, this instruction or what Mr Gavin Watson according to you said as recorded in paragraph 34.2 when he said there was a more convenient method of handling cash, was this around 2009 after 2009 or earlier?

MR ANGELO AGRIZZI: Chair, this was in 2007 already, okay.

CHAIRPERSON: So...[intervenes]

MR ANGELO AGRIZZI: In 2007 there were lists that would go to Jacques van Zyl and the like and I think what we do is we actually do cover it further on, we explain the
10 whole process.

CHAIRPERSON: Ja, no, you see in paragraph 34.1 there is a reference to 2009 and logic says to me that that what comes after that paragraph should either be in 2009 or later, but not – it should not relate to something that happened before.

MR ANGELO AGRIZZI: Sorry, Chair, you are correct. It is late in the afternoon. You are correct.

CHAIRPERSON: Okay. So, but am I correct in saying that to the extent that 34.2 relates to something that happened before 2009 should have been before or are you saying I am correct that actually 34.2 is not earlier than 2009?

MR ANGELO AGRIZZI: Correct, Chair.

20 **CHAIRPERSON:** The last is the correct or the first? Which one is correct?

MR ANGELO AGRIZZI: Chair, in 2009 I was tasked.

CHAIRPERSON: Yes?

MR ANGELO AGRIZZI: To handle the cash.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: Alright.

CHAIRPERSON: And what comes after that paragraph?

MR ANGELO AGRIZZI: What comes after it is chronologically correct.

CHAIRPERSON: Correct?

MR ANGELO AGRIZZI: Yes.

CHAIRPERSON: Okay, alright. Okay, thank you now I think we have got the sequence right then. If it does not relate to 2007 as he had indicated earlier.

ADV PAUL PRETORIUS SC: Alright.

CHAIRPERSON: Which he says it does not.

ADV PAUL PRETORIUS SC: Okay, then 34.3 does indeed relate to an earlier period,

10 is that correct?

MR ANGELO AGRIZZI: That is correct.

ADV PAUL PRETORIUS SC: Alright, now before you go and name the names that exist on paper at least in paragraph 34.3 I would just like to ask you on what evidence and knowledge you base the information contained in paragraph 34.3?

MR ANGELO AGRIZZI: Based on the fact that I would have to make up the bundles and actually handed over to and the decision to the persons that is going to deliver it and the decision was taken not by myself, this was taken by a Board of Directors who then called me in and informed me.

ADV PAUL PRETORIUS SC: Where the payments were going?

20 **MR ANGELO AGRIZZI:** Yes.

ADV PAUL PRETORIUS SC: You refer in paragraph 34.4.7 on page 72 to Annexures P1 to P4 and we will come there, the lists?

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Do these persons names appear on lists kept by you?

MR ANGELO AGRIZZI: That is correct, Chair.

ADV PAUL PRETORIUS SC: Alright. So would you then tell the, Chair, of what you have recorded here in paragraph 34.3?

MR ANGELO AGRIZZI: Sorry, Chair, in 34.3?

ADV PAUL PRETORIUS SC: Yes, on page 71.

MR ANGELO AGRIZZI: Alright.

ADV PAUL PRETORIUS SC: Do you have page 71?

MR ANGELO AGRIZZI: Yes. Chair, Gavin Watson, Johannes Gumede, Apelle Chibane and Ishmael Dekane made payments to the following Department of Correctional Services officials on a monthly basis from shortly after Mti's resignation. If

10 I can explain the context. The problem that we sat with was that Mti had left, Gillingham was nowhere and we had no protection in having those contracts. So...[intervenes]

CHAIRPERSON: When you say Gillingham was nowhere is that because he had resigned or?

MR ANGELO AGRIZZI: No, he had not resigned yet, but he was I think he was under pressure, he just could not make decisions. He was not the CFO anymore.

CHAIRPERSON: Oh, okay.

MR ANGELO AGRIZZI: So he was just a normal Correctional Services official in the region.

20 **CHAIRPERSON:** Okay.

MR ANGELO AGRIZZI: So he could not make decisions. So it was decided that we were sitting between the deep blue sea and the Israel and the Egyptians were trying to chase us. So they decided to be – it would be better that we have certain people in place to be able to look after the contracts and these are the names of the people that were put in place.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Did you say in your answer that Mr Mti was no longer CFO or did it not hear you correctly?

CHAIRPERSON: Mr Gillingham.

MR ANGELO AGRIZZI: If I remember correctly Mr Gillingham was no longer CFO he was in the regions.

ADV PAUL PRETORIUS SC: I see. You were referring to Gillingham?

MR ANGELO AGRIZZI: Excuse me?

ADV PAUL PRETORIUS SC: No, no, do not worry.

10 **CHAIRPERSON:** Yes, he was referring to Gillingham.

MR ANGELO AGRIZZI: Yes.

ADV PAUL PRETORIUS SC: Alright, so who received these payments?

MR ANGELO AGRIZZI: These payments were given over to the Directors and they would go and hand them out to the various people, do you want me to read the names of the people receiving the payments?

CHAIRPERSON: Mr Pretorius?

ADV PAUL PRETORIUS SC: Well their names are repeated in the black book, are they or are they not?

MR ANGELO AGRIZZI: That is correct.

20 **ADV PAUL PRETORIUS SC:** Perhaps we should say, reserve those names until we get to Annexures P1 to P4.

MR ANGELO AGRIZZI: I agree.

ADV PAUL PRETORIUS SC: Alright. What was the system that was implemented for the handling of cash?

MR ANGELO AGRIZZI: What would happen is Gavin Watson and myself would on a

monthly basis identify...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, my mind is still on what you have just said.

Are we going to get to the black book?

ADV PAUL PRETORIUS SC: Today? Certainly not today, but we are going to get there, Chair.

CHAIRPERSON: Tomorrow? You do not know?

ADV PAUL PRETORIUS SC: Probably.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: But we certainly are going to get to the list...[intervenes]

10 **CHAIRPERSON:** I am not sure what is the difference between mentioning the names today and mentioning them on another day if all the supporting documents that he is talking about is already there? Is there a particular reason?

ADV PAUL PRETORIUS SC: Well two reasons, Chair.

CHAIRPERSON: Yes?

ADV PAUL PRETORIUS SC: One, the information, the original information upon which he relies apart from his memory is the information in the lists.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: The second is that there may be more or less information on the lists, I have not collated the contents of 34.3 with the lists

20 Annexure P1 to P4.

CHAIRPERSON: There is some work to be done before...[intervenes]

ADV PAUL PRETORIUS SC: So I do not want to be the cause of any incorrect transferred information.

CHAIRPERSON: No, that is fine, that is fine, then I understand.

ADV PAUL PRETORIUS SC: But other than that you are quite right, Chair.

CHAIRPERSON: No, no, that is right, what we can do when we reach that point is that we can mention where in his affidavit the names are, just to link for the reader.

ADV PAUL PRETORIUS SC: Maybe it would be convenient to repeat once again what we said for the legal team in opening.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: That this is the process of investigations. We do not vouch for any information until it has been fully tested.

CHAIRPERSON: Yes.

10 **ADV PAUL PRETORIUS SC:** And all implicated have had an opportunity to put their versions.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Only then will you make up your mind, Chair, about the veracity of the information.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: What was the system followed in relation to the handling of cash and I take it we are now in the period after 2009.

MR ANGELO AGRIZZI: Correct, we actually in the period now going up to 2009. So if I could explain it?

ADV PAUL PRETORIUS SC: Please.

20 **MR ANGELO AGRIZZI:** Okay so initially Gavin Watson and myself would on a monthly basis sit with the directorate and discuss the matter at hand and the directorate would normally come and say look this person needs to be looked after, that means getting financial contributions. They would sit and Gavin Watson and myself would then debate it afterwards and sit and discuss it.

Then that sum total would then be transferred from the safe into what was

Jacques van Zyl's safe and he would control that amount of money. So if it was R3-million or R2-million whatever it would be added up to it would be transferred there. I would then receive the instructions from Gavin Watson and from the Directors and senior management of you know what needed to be paid out.

I would then compile a list, which is referred to in the Annexures of who needed to be paid and what amounts needed to be paid and I would sit and go through it with Gavin Watson for the final approval on those lists. Once I have received that approval I would then encode the list. So I would rewrite it and I would use up and make up codes in my head.

10 **CHAIRPERSON:** The kind of codes that you told us about?

MR ANGELO AGRIZZI: Yes.

CHAIRPERSON: Last week I think it was.

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: *Ja.*

MR ANGELO AGRIZZI: So I would make up those codes, I would then send it to him by hand or by email or by text and he would pack that cash per code into the grey sealable bag and write the code that I had given him on the bag. So you would identify each of the codes on the list with a bag. I would then give the grey sealable security bags to the relevant senior management staff, because it was also senior management
20 staff that would take money out and they would deliver it to the relevant people.

So Annexure P1 to P4 would reflect the actual list of the cash only amounts. Now these would normally have been destroyed and shredded, but for some or other reason they appeared in my briefcase which I had not been using for quite some time and I found them in there.

CHAIRPERSON: Okay, thank you.

MR ANGELO AGRIZZI: So that is basically how it worked. So I do not know if adv Pretorius wants to go to the list right now.

ADV PAUL PRETORIUS SC: In those lists the names that you have set out in paragraph 34.3.1 to 34.3.7 do those names appear there?

MR ANGELO AGRIZZI: They would appear on those lists.

CHAIRPERSON: So you would get the name of the ultimate recipient from a Director?

MR ANGELO AGRIZZI: Correct.

CHAIRPERSON: And you would prepare the cash?

MR ANGELO AGRIZZI: Correct.

10 **CHAIRPERSON:** Put it in a security bag, the ones, the bags that you told us about?

MR ANGELO AGRIZZI: I just want to make a correction there.

CHAIRPERSON: Yes?

MR ANGELO AGRIZZI: Right in the beginning I would not prepare the cash. I would do the list and hand the list over to Jacques van Zyl.

CHAIRPERSON: Okay.

MR ANGELO AGRIZZI: Who would pack it from his safe.

CHAIRPERSON: Okay, okay.

MR ANGELO AGRIZZI: And he would pack it and write the codes on the bag for me and return it with the codes.

20 **CHAIRPERSON:** Okay so initially he would write the codes?

MR ANGELO AGRIZZI: That is correct, Chair.

CHAIRPERSON: So, but the kind of codes that he would write are they more or less the same as the ones that you told us about?

MR ANGELO AGRIZZI: I would give him the codes on a list.

CHAIRPERSON: Oh, you decided on the codes?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: And you were only able to decide on the codes if you knew the name of the ultimate recipient?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Okay, and when the cash was given to the Director with a code the Director would know who that money was for?

MR ANGELO AGRIZZI: That is correct.

CHAIRPERSON: Because of the code, they also knew the codes?

10 **MR ANGELO AGRIZZI**: That is correct. I would tell them the codes and we would repeat it.

CHAIRPERSON: Yes.

MR ANGELO AGRIZZI: And I would normally even if need be write it on a piece of paper for them.

CHAIRPERSON: Okay, alright, thank you.

ADV PAUL PRETORIUS SC: Chair, before we go to the list it is two and a half minutes before 16:00. Probably not convenient, but may I ask that we adjourn?

CHAIRPERSON: Yes, we will adjourn now and we will resume tomorrow at 10:00.

ADV PAUL PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

20 **MEETING ADJOURNED**