

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

01 APRIL 2019

DAY 77

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PROCEEDINGS ON 1 APRIL 2019

CHAIRPERSON: Yes. Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning DCJ.

CHAIRPERSON: Good morning. We were supposed to start at ten; we have had a delay because of an important meeting that I am attending with the legal team and a representative of the legal team Mr Paul Pretorius and another member of the legal as well as other people relating witnesses. We are going to start later because it is important that we finish that meeting before we start. Mr Pretorius does that accord with our understanding?

10 **ADV PAUL JOSEPH PRETORIUS SC**: Yes Chair.

CHAIRPERSON: Yes. If we say we will start at quarter to eleven would that be in order?

ADV PAUL JOSEPH PRETORIUS SC: That should be in order.

CHAIRPERSON: Should be in order. Okay we will adjourn then and we will start at quarter to eleven.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All Rise.

MEETING ADJOURNS

20 **HEARING RESUMES**

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. The next witness is Mr Clinton Oellermann. His statement is before you in Annexure S11 or rather Exhibit S11. There is also a supplement to Exhibit S11 which is really an extract from the Annexures to the evidence of Mr Agrizzi. It is there purely for convenience but the page references

are all the page references in Mr Agrizzi's testimony and statement and annexures. Mr Oellermann's – Mr Oellermann rather was the lead investigator employed by the SIU at the time of the investigation into Bosasa and he will testify as to the circumstances involved in the SIU investigation of which we have heard much evidence, the production and presentation of the report.

CHAIRPERSON: Okay. Thank you. So this is Exhibit S11. Is that a continuation from Mr Agrizzi's exhibits?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair. It is the same series of statements.

CHAIRPERSON: Same series, okay. Thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC**: May Mr Oellermann be sworn in?

CHAIRPERSON: Ja. Thank you.

REGISTRAR: Please state your full names for the record?

MR CLINTON OELLERMANN: It is Clinton Oellermann. Clinton Oellermann.

REGISTRAR: Thank you. Do you have any objections to taking the prescribed oath?

MR CLINTON OELLERMANN: I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR CLINTON OELLERMANN: Yes I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me

20 God.

MR CLINTON OELLERMANN: So help me God.

REGISTRAR: Thank you.

MR CLINTON OELLERMANN: Thank you.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: My apologies Chair. Prevention is better than

cure.

CHAIRPERSON: Yes Mr Pretorius

ADV PAUL JOSEPH PRETORIUS SC: I had to switch my telephones off.

CHAIRPERSON: You may proceed.

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Mr Oellermann you are at present an investigator in private practice

MR CLINTON OELLERMANN: That is correct yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** During 2005 to 2012 what position did you hold?

MR CLINTON OELLERMANN: I was employed by the Special Investigating Unit the SIU and I initially started off there as a Chief Forensic Investigator. At the – by the time I left in 2012 I was a National Programme Manager.

ADV PAUL JOSEPH PRETORIUS SC: Yes. And it is in relation to that employment that you have prepared this affidavit for the benefit of the commission?

MR CLINTON OELLERMANN: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If you would go please to page 12 of Exhibit S11 please?

20 **MR CLINTON OELLERMANN:** Sorry you said page 12 of?

ADV PAUL JOSEPH PRETORIUS SC: Exhibit S11

MR CLINTON OELLERMANN: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Your statement.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Or affidavit. Is that your signature there?

MR CLINTON OELLERMANN: It is indeed yes.

ADV PAUL JOSEPH PRETORIUS SC: You attested to this affidavit that you are now presenting to the commission yesterday on the 21 March?

MR CLINTON OELLERMANN: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In fact last night?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And the statement or affidavit from page 1 to 12 is that your affidavit?

MR CLINTON OELLERMANN: It is yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Are you happy that the contents of that affidavit are true and correct?

MR CLINTON OELLERMANN: I am Chair.

ADV PAUL JOSEPH PRETORIUS SC: The annexures to the affidavit if we could perhaps identify them now. At pages 15 and following Annexure CO1 what is that document?

MR CLINTON OELLERMANN: It is an affidavit that I attested to which accompanied the SIU report.

CHAIRPERSON: Is everyone able to hear at the back? I think you may have to raise your voice Mr Oellermann.

20 **MR CLINTON OELLERMANN:** Sure.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps if you could speak a little closer to the microphone?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. So you say page 15 is an affidavit

made by yourself for what purpose?

MR CLINTON OELLERMANN: It was the – a covering affidavit for the submission of the SIU report.

ADV PAUL JOSEPH PRETORIUS SC: And the SIU report as I understand it is contained in the pages that follow?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And then if you to C02, what is that document?

MR CLINTON OELLERMANN: This is an answering affidavit which I deposed to which related to a legal challenge that Bosasa brought against the SIU to prevent the
10 proceeding of the investigation.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: In fact they filed an interdict.

ADV PAUL JOSEPH PRETORIUS SC: I understand that you have annexed this affidavit for the purposes of presenting a complete record or relevant documentation to the Chair but we will not refer to that in any detail.

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: You will however talk of the challenge brought by Bosasa to the investigation and its effect on the investigation?

MR CLINTON OELLERMANN: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And then Annexure C03 again included for the purposes of completing the record of evidence rather than for any detailed examination by yourself. What is that document?

MR CLINTON OELLERMANN: This is the charge sheet from the Regional Division of the North Gauteng High Court which relates to the recent charging of members of Bosasa and their affiliate companies as well as members of the Correctional Services

for – for offences which were ostensibly related to the SIU report.

ADV PAUL JOSEPH PRETORIUS SC: And you will tell the Chair of...

CHAIRPERSON: One second Mr Pretorius. I – from my side it does not look like there is much difference between how you speaking before and how you are speaking now. I do not know whether those at the back hear you better now or not.

MR CLINTON OELLERMANN: No it is fine.

CHAIRPERSON: They will indicate to me if the can hear you now?

ADV PAUL JOSEPH PRETORIUS SC: Sorry am I audible Chair or is it something...

CHAIRPERSON: I think you are audible. The – is Mr Pretorius audible? Yes. But
10 there is still a challenge with regard to – with the witness? Yes I they – you have to raise your voice. You know some people naturally have voices that...

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Are quite soft so you just have to raise your voice.

MR CLINTON OELLERMANN: I shall endeavour to raise my voice Chair.

CHAIRPERSON: Okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: The charge sheet at pages 213 and following.
Is the charge sheet related to the recent arrests of Bosasa or ex-Bosasa officials and ex-officials of the Department of Correctional Services?

MR CLINTON OELLERMANN: That is correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And you are able to say I understand where the – you are able to give evidence in relation to the origin of the allegations at least in relation to that charge sheet? We will come to that in due course.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: You say Mr Oellermann that you were the lead investigator in the investigations conducted by the SIU in relation to allegations made

concerning Bosasa on the one hand and the Department of Correctional Services on the other. It is perhaps a legal or technical point but it will become important certainly in your evidence and perhaps later as well. How does the SIU operate and on what basis would it conduct an investigation?

MR CLINTON OELLERMANN: The SIU are – the investigation powers come from proclamation from the President. So a motivation is submitted for an investigation. It is submitted to the Presidency through a process where it goes through the Department of Justice. Once they – one the terms of reference have been agreed the Presidency will – or the President will issue a proclamation and that then sets out the terms of reference for the investigation and authorises the investigation coming forward. It also sets the parameters of the investigation. So for example if – if the SIU is – if the proclamation says the SIU has to investigate ABC then you have to investigate ABC and not anything beyond that.

ADV PAUL JOSEPH PRETORIUS SC: And there was in fact a proclamation that authorised the investigation into matters related to Bosasa and Correctional Services?

MR CLINTON OELLERMANN: Yes indeed.

ADV PAUL JOSEPH PRETORIUS SC: The proclamation did in fact limit the investigation as I understand it?

MR CLINTON OELLERMANN: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** What were the parameters of the investigation that you were authorised to conduct?

MR CLINTON OELLERMANN: So with this particular investigation it related to four tenders with – at the Department of Correctional Services. They are commonly referred to as The Kitchens Tenders, The Access Control Tender, The Fencing Tender and The Television Tender.

ADV PAUL JOSEPH PRETORIUS SC: We have heard evidence in regard to those four tenders and we will talk about them in your evidence as well particularly insofar as they refer to in the SIU report prepared to a large extent at least under your auspices?

MR CLINTON OELLERMANN: That is correct. We – can I just sort of be clear? So we were an investigation team that was put together by the SIU to investigate this. We were approximately six to eight investigators that were investigating these tenders. I was the lead investigator and I was the reporter to my principles which included the Deputy Head and the Head of the SIU at the time.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Now you have been provided with a
10 copy of the SIU report.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you have told the Chair that that is Annexure C01 to your statement.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: That document differs in some respects from the document obtained by Mr Agrizzi and presented in evidence by Mr Agrizzi. It is not that what Mr Agrizzi presented is incorrect or fabricated in any way he presented the report, you have seen that report?

MR CLINTON OELLERMANN: I have seen it yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** There are certain minor differences, page submissions and the like?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. The report that was prepared under your auspices when did the investigations commence?

MR CLINTON OELLERMANN: The investigation – to the best of my recollection they

commenced around about 2007 where they commenced in earnest obviously in the early stages of the investigation there was a lot of intelligence gathering before the investigation proceeded and then when – as the proclamation was published then the investigation commenced in earnest.

ADV PAUL JOSEPH PRETORIUS SC: Alright because the first proclamation you refer to in paragraph 2 is dated 19 November 2004, do you see that?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: It was extended by further proclamation dated 28 November 2007?

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: So what happened between 2004 and 2007?

MR CLINTON OELLERMANN: So there were previous proclamations for the department of – issued for investigations at the Department of Correctional Services. Those previous proclamations did not cover the Bosasa allegations. That necessitated an additional proclamation to be issued to cover these specific allegations which related to Bosasa. So that is why I said when we started receiving the allegations that then formed the basis of the motivation for the last proclamation and then the investigation began in earnest from there.

ADV PAUL JOSEPH PRETORIUS SC: So do I understand you correctly the
20 proclamation relevant to the four tenders involving the relationship between Bosasa and Correctional Services a relevant proclamation is the 2007 proclamation?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you say it is then that your investigations commenced?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: You commenced your investigations then in 2004 – at the end of 2004, November?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And ...

MR CLINTON OELLERMANN: 2007.

MR CLINTON OELLERMANN: Sorry 2007.

MR CLINTON OELLERMANN: 2007.

ADV PAUL JOSEPH PRETORIUS SC: November 2007 my correction – my error.

MR CLINTON OELLERMANN: Correct yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** I am sorry. How long did your investigation take?

MR CLINTON OELLERMANN: We continued our investigation until we issued our report which was in 2009.

ADV PAUL JOSEPH PRETORIUS SC: Right. So it took the SIU under your watch to two years to produce a report which in your opinion and we will deal with the detail later warranted a final investigation and prosecution?

MR CLINTON OELLERMANN: Correct that is correct.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 3 that the report was submitted to the Department. I presume that is the Department of Correctional
20 Services?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you submitted the report to the Department of Correctional Services mid to late 2009 you say?

MR CLINTON OELLERMANN: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What was the nature of the response to your

knowledge from the Department of Correctional Services? We will deal with the NPA the National Prosecuting Authorities.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Response separately and what occurred there.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But for the moment I am concerned about the response or lack of response from the Department of Correctional Services when they received the report?

MR CLINTON OELLERMANN: Well we issued the report to the department and to the
10 best of my knowledge – first of all the report made a number of conclusions and recommendations as you are aware. I am not aware apart from Patrick Gillingham disciplinary proceedings being instituted against Patrick Gillingham I am not aware of any further recommendations that were implemented by the department subsequent to us issuing the report. I left the SIU in 2012 so I am not sure whether there would be any further actioning of the report however that would be three years after we had issued the report in any event so that would be quite a long time after that.

ADV PAUL JOSEPH PRETORIUS SC: Yes. I understand that you and this is hearsay on your part but will be confirmed by other evidence in due course. I understand that you have since received reports at least that the contractual relationships between
20 Bosasa and the Department of Correctional Services continued notwithstanding the submission to them of the report?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And you have also received reports that in some cases contracts were extended notwithstanding the submission of the report to them?

MR CLINTON OELLERMANN: Those are the reports that I received yes correct.

ADV PAUL JOSEPH PRETORIUS SC: Yes and those will be dealt with in further evidence Chair.

CHAIRPERSON: There are police officers who are wearing hats here they must take them off please. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Now you have told the Chair that the terms of the proclamation are restrictive in the sense that they define how far you can go in your investigation and you cannot go beyond?

MR CLINTON OELLERMANN: Yes that is correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** When you did your investigation did you come across indications of wrong doing other than those defined in your proclamation?

MR CLINTON OELLERMANN: Yes we did.

ADV PAUL JOSEPH PRETORIUS SC: Were they – were these indications and let us define them or refer to them for the moment just as indications. Were these indications indications of wrong doing involving Bosasa and other government departments?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: What other government departments?

20 **MR CLINTON OELLERMANN:** We received allegations that there were similar tender regularities that had occurred at the Department of Home Affairs and at ACSA at the airports.

ADV PAUL JOSEPH PRETORIUS SC: And the extent of the wrong doing indicated in relation to Home Affairs were they significant?

MR CLINTON OELLERMANN: The allegations were significant of – we were not able to test the allegations because they fell outside of our proclamation so we – we were aware of them but we were not able to pursue it under that particular proclamation.

ADV PAUL JOSEPH PRETORIUS SC: And the extent or possible extent? Significant, minor?

MR CLINTON OELLERMANN: Significant yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. And had there been an additional proclamation would the SIU have found grounds for further investigation?

MR CLINTON OELLERMANN: I believe under those allegations that were reported to us there would have been yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes. In the event however there was no additional proclamation issued to allow the SIU to go further in its investigations?

10 **MR CLINTON OELLERMANN:** That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Your investigations were expressly limited by the proclamation to four tenders?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Right you have been provided with documentation which in turn was provided to the commission including a SIU report or a copy of a SIU report attached to the affidavit of Mr Agrizzi.

MR CLINTON OELLERMANN: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And if you refer to the supplement to Exhibit S11 from page 278 to 244. These are the page numbers Chair and the annexures to Mr Agrizzi's affidavit in the Agrizzi bundle.

CHAIRPERSON: What is the page – or what page in the bundle?

ADV PAUL JOSEPH PRETORIUS SC: It is the supplementary bundle. It is AA standing for Angelo Agrizzi these are the page numbers in the Agrizzi affidavit as we agreed last with the previous witness this is the way we would manage it.

CHAIRPERSON: Yes no I am asking.

ADV PAUL JOSEPH PRETORIUS SC: 278.

CHAIRPERSON: 278?

ADV PAUL JOSEPH PRETORIUS SC: Yes. To 244.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: You have had a chance to go through that documentation? In other words the document annexed to the affidavit of Mr Agrizzi.

MR CLINTON OELLERMANN: Yes I have.

ADV PAUL JOSEPH PRETORIUS SC: Can you confirm whether the document which Mr Agrizzi referred to is in fact in substance at least the SIU report which you managed
10 and ultimately issued?

MR CLINTON OELLERMANN: Yes that is correct. Apart from a few pages that are missing in between but yes that is the report.

ADV PAUL JOSEPH PRETORIUS SC: Yes well let us deal with the differences. The cover page of the report I believe is different?

CHAIRPERSON: Hang on Mr Pretorius I thought I was there. I thought you said page 278?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Where I will find those pages?

ADV PAUL JOSEPH PRETORIUS SC: Chair do you have my apologies because ...

20 **CHAIRPERSON:** Oh is it this...

ADV PAUL JOSEPH PRETORIUS SC: Perhaps I did not make myself clear. I am referring now to the ...

CHAIRPERSON: Supplementary exhibit S11?

ADV PAUL JOSEPH PRETORIUS SC: Supplement to S11.

CHAIRPERSON: Okay well it was just put in the wrong place. Okay.

ADV PAUL JOSEPH PRETORIUS SC: And Annexure J in that Exhibit S11.

CHAIRPERSON: Yes okay now I found it.

ADV PAUL JOSEPH PRETORIUS SC: Is AA278.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right you have the same document in front of you?

MR CLINTON OELLERMANN: I do.

ADV PAUL JOSEPH PRETORIUS SC: The one combined document?

MR CLINTON OELLERMANN: I do yes Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** That is the document which Mr Agrizza produced

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: He said that that is – was the SIU report, correct you must ...?

MR CLINTON OELLERMANN: Yes I confirm that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you have confirmed to the Chair it is indeed the SIU report so Mr Agrizzi's evidence in that regard is corroborated by you?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: You say however there are some differences –
20 they may not be material differences but omitted from Mr Agrizzi's version of the report we can ignore the cover page being different for the moment.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Are page X of the report.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Where is that in your bundle?

MR CLINTON OELLERMANN: Okay.

ADV PAUL JOSEPH PRETORIUS SC: In Annexure C01? It is roman numeral X.

MR CLINTON OELLERMANN: 28 yes.

ADV PAUL JOSEPH PRETORIUS SC: That distribution list was not included in the copy that Mr Agrizzi obtained?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then page 49 to 75 you say that those pages too were not contained in the document that Mr Agrizzi had?

MR CLINTON OELLERMANN: Yes from the document provided to me that is what I
10 found.

ADV PAUL JOSEPH PRETORIUS SC: But other than that it is the same document for all intents and purposes?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 5 you give some detail of the distribution list that was omitted from Mr Agizzi's report. That merely shows the person to whom the SIU report was distributed, am I correct?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: That same page contains a confidentiality clause which makes it very clear that this SIU report could not properly be distributed to
20 anybody else other than the persons mentioned in paragraph 5. That is the Minister of Correctional Services, The Acting National Commissioner of Correctional Services, the Head of the Special Investigating Unit, The Special Investigating Unit Programme Manager and the SIU Archive. Those were the only authorised recipients of the report?

MR CLINTON OELLERMANN: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: So if that report came into the hands of Bosasa

at any stage that would have been entirely unlawful?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Do you know how the report came to be in the possession of Mr Agrizzi?

MR CLINTON OELLERMANN: I am not aware.

ADV PAUL JOSEPH PRETORIUS SC: And do you know how it became available to other members of the public?

MR CLINTON OELLERMANN: No I am not aware.

ADV PAUL JOSEPH PRETORIUS SC: Did the SIU officially at least and I am not
10 talking about leaks now clearly there was a leak.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But did the SIU distribute the report to any other entity or individual?

MR CLINTON OELLERMANN: No the SIU did not.

ADV PAUL JOSEPH PRETORIUS SC: Are you able to say from your own knowledge at least on the basis of probabilities whether the report was leaked improperly?

MR CLINTON OELLERMANN: I believe it was improperly leaked yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you refer in paragraph 6 to Regulation 4 of the Special Investigating Units and Special Tribunals Regulations which oblige SIU
20 members to keep information including the report I presume confidential?

MR CLINTON OELLERMANN: Absolutely yes.

ADV PAUL JOSEPH PRETORIUS SC: And which makes it an offence to breach that requirement of confidentiality?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You give evidence in paragraph 6.2 of an

incident which indicates that the report was in fact unlawfully leaked.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What happened on that occasion?

MR CLINTON OELLERMANN: It was within a day or two after we had delivered the report to the Department of Correctional Services that I received a call on my cellphone from a journalist who indicated to me that he had a source within Bosasa and the sourced had informed him that our report, the SIU Report, was at Bosasa and was being discussed by the Executives at Bosasa. I questioned him a little bit further but he did not want to divulge too much more information to me.

10 **CHAIRPERSON:** So you say within a day or within two days?

MR CLINTON OELLERMANN: It was within a day or two. It was.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: Yes that is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So to summarise the regulations surrounding the confidentiality of SIU Reports and their distribution were quite strict?

MR CLINTON OELLERMANN: Absolutely, yes.

ADV PAUL JOSEPH PRETORIUS SC: It is a criminal offence to breach those provisions regarding confidentiality?

MR CLINTON OELLERMANN: Yes, it is.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And you say as far as you were aware as the person responsible for the compilation and presentation of the report the report was issued only to the five recipients named in your evidence?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But that within one or two days Bosasa already had according to a report received by you, a copy of the report?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And we know that from the evidence of Mr Agrizzi as well?

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: What measures were in place to; what measures were taken by the SIU to try and make sure that it would be very difficult for anybody who had received among those recipients who had received the report to give it to any unauthorised person?

MR CLINTON OELLERMANN: I can tell you at the time Chair the entire investigation
10 team who was dealing with Bosasa was separated from the rest of the SIU. We were placed in a separate part of the building. We were not allowed to discuss the matter with any of our colleagues. It was being the sensitive matter that it was. We reported directly to our principals, the Deputy Head and Head of the Unit and information, sharing of information was very restricted. Even documents that were printed. We knew how many copies were printed, how many versions there were. So when they were disseminated they were disseminated in a particular order and only to those who needed to have copies of the report. The report that was given to the Department of Correctional Services was a hard copy report. We did not give them an electronic copy. So it was a hardy copy report that was delivered to the office of the Correctional
20 Services in the City Centre of Pretoria.

CHAIRPERSON: When you talk about a report that was given to the Department of Correctional Services, you are talking about the one that was given to the Acting National Commissioner at the time?

MR CLINTON OELLERMANN: That is correct yes.

CHAIRPERSON: Hm. So one copy was given to the Minister of Correctional Services

and then another copy was given to the Acting National Commissioner?

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Okay. Would there have been any warnings or discussions with the recipients as to how much care they needed to take to make sure that the report did not land in the hands of unauthorised persons?

MR CLINTON OELLERMANN: Yes indeed. In fact in the weeks that, in the building up to us delivering the report we had a few meetings with them where we emphasised the importance because the matter was so sensitive and because of the legal challenges that we were facing from Bosasa. We did not want the report to be leaked. So even
10 before we had actually delivered the report to them during those meetings we emphasised the importance of making sure that it is kept secure at all times.

ADV PAUL JOSEPH PRETORIUS SC: Chair I am not sure what the intention is given the late start in regard to the short adjournment.

CHAIRPERSON: Maybe we should take a tea break at 12. How does that sound?

ADV PAUL JOSEPH PRETORIUS SC: It is fine. Thank you Chair.

CHAIRPERSON: Is that fine? Yes, let us take the tea break at 12.

ADV PAUL JOSEPH PRETORIUS SC: Now you say in paragraph 7.

CHAIRPERSON: One second, one second. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 7 Mr Oellermann that the
20 SIU Report contained as we know and as we will confirm later allegations of a number of irregularities in respect of the contracts that you were asked to investigate. It also contained evidence of payments, gratification or bribes paid for the benefit of Mr Mti and Mr Gillingham.

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: As a result of those findings set out in the

report what steps did the SIU take?

MR CLINTON OELLERMANN: Because we had found evidence of the commission of an offence the SIU is obliged to report such conduct to the National Prosecuting Authority, the Relevant Prosecuting Authority is how the Act refers to it which is what we did. We had a meeting with the members of the NPA and we handed over a copy of our report to them in which these allegations and our evidence is contained. So it was a report with all the annexures which set out the basis for the evidence which we had gathered.

ADV PAUL JOSEPH PRETORIUS SC: One of the issues that the Commission is
10 concerned with and is investigating is whether there was undue delay or a lack of interest on the part of the National Prosecuting Authority in dealing with the necessary steps to be taken following on the receipt of your report.

MR CLINTON OELLERMANN: Right.

ADV PAUL JOSEPH PRETORIUS SC: I will ask you questions about that issue or those issues in due course, but for the moment by way of background please explain to the Chair the role of the SIU in investigating matters that you are obliged to in terms of proclamations and the role of the Law Enforcement Authority such as the NPA on receipt of your report.

MR CLINTON OELLERMANN: Right.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Who must do what?

MR CLINTON OELLERMANN: So the SIU will investigate a matter in terms of the proclamation where we find evidence of criminality, evidence which points to a crime being committed an offence being committed. The Act says where practically possible it must hand over that evidence and report it to the Relevant Prosecuting Authority. So the SIU is not a Law Enforcement Agency as such where they investigate crime. Their

focus is on maladministration and civil recoveries for departments' etcetera. So as I said where we find evidence of criminality that then gets reported to and the evidence gathered during the course of our investigation handed over to the National Prosecuting Authority for action. The Act is quite specific. It does not say that we must hand it over to the police. It says we must hand it over to the Relevant Prosecuting Authority.

ADV PAUL JOSEPH PRETORIUS SC: Right. So the role of the Relevant Prosecuting Authority on receipt of your report would be what in order to found and complete a criminal prosecution?

MR CLINTON OELLERMANN: Well they would then have to action it through the
10 police and a criminal case would need to be registered, a complainant statement obtained and a docket registered in order for the criminal investigation to proceed.

ADV PAUL JOSEPH PRETORIUS SC: Right. During the investigation that was conducted under your auspices by the SIU did certain litigation take place?

MR CLINTON OELLERMANN: Yes, it did.

ADV PAUL JOSEPH PRETORIUS SC: You refer to that in paragraph 8. Would you tell the Chair about that please?

MR CLINTON OELLERMANN: Yes. The.

CHAIRPERSON: Maybe before you do that. Let us, when you were investigating I assume you would have taken statements from certain witnesses. Is that correct?

20 **MR CLINTON OELLERMANN:** Yes.

CHAIRPERSON: And you would have gathered various documents in the course of your investigation. When you had completed your investigation and prepared your report and you submitted it to the NPA did you also submit whatever supporting documents and statements that you would have taken in the course of your investigation over to the NPA so that they had the full benefit of what of the

documentation and the statements on the basis of which you had prepared the report?

MR CLINTON OELLERMANN: Yes, we did Chair. Initially we handed over the report and then with the annexures. Then there were subsequent meetings held between the investigating team and members of the NPA. In fact we did a number of presentations to them where we set out the evidence. How we had gathered the evidence and how we had reached the conclusions that we had reached which are contained in the report and then from there we began to hand over all the evidence that we had in our possession.

CHAIRPERSON: So you ultimately handed over all the evidence that you?

10 **MR CLINTON OELLERMANN:** Correct.

CHAIRPERSON: Had gathered?

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Okay, thank you. You were about to answer a question that Mr Pretorius put to you. If you still remember it.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Please answer it.

MR CLINTON OELLERMANN: No, I am fine. Thank you Chair.

CHAIRPERSON: Yes.

20 **MR CLINTON OELLERMANN:** Yes. Bosasa had sought by way of approaching the High Court to interdict the SIU investigation to stop the investigation in fact to limit the scope completing and that led to us curtailing the investigation if I can put it in that way. We eventually reached an agreement where the SIU committed to not continue with the investigation and interview material witnesses and take affidavits from material witnesses whilst these interdict proceedings were on the go. That obviously led to the scope of the investigation being limited quite significantly.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Before we deal with that issue Annexure CO2 is the answering affidavit that you filed on behalf of the SIU in relation to that interdict?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. We need not, it for the sake of completeness sets out your official response to the allegations in the interdict?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You say that:

10 “Nevertheless there was an agreement reached pursuant to the
 application that affectively limited the scope of the
 investigation.”

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Did it also, did the agreement also preclude you from interviewing certain witnesses?

MR CLINTON OELLERMANN: Yes that was part of the agreement is that we would not proceed to investigate or not to investigate, interview senior executives at Bosasa and their related companies pending the outcome of this application.

ADV PAUL JOSEPH PRETORIUS SC: The effects of the agreement in turn the effect of the application is summarised in the SIU Report?

20 **MR CLINTON OELLERMANN:** That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Under the heading “Limitations”. Could you just show us where that is contained please? Is it at page 12? CO, your pagination 49?

MR CLINTON OELLERMANN: Yes that is correct. It is listed as paragraph 4 or Section 4, Limitation of the Investigation and then it sets out the agreement that was

reached as well as the impact on the investigation and the limitations that resulted from it.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Why was an agreement reached?

MR CLINTON OELLERMANN: I am not sure.

ADV PAUL JOSEPH PRETORIUS SC: Why was the matter not defended in order to allow you the full scope of your investigation?

MR CLINTON OELLERMANN: Well to the best of my knowledge the SIU was defending it, but in order for us to be able to finalise the investigation as it was at the time we agreed to not to proceed with these interviews and further investigations.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So as I understand it Bosasa sought an interdict?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: And in all probabilities sought an interim interdict pending finalisation of the application?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Which would have rendered you absolutely inactive?

MR CLINTON OELLERMANN: That is right yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And so to in order, in order to allow you to continue your investigation pending the final outcome of the application an agreement which reached which limited the investigation?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Was the litigation ever finalised?

MR CLINTON OELLERMANN: At the time when I left in 2012 I am not sure whether it had been finalised yet or not, but the fact is we actually released our report as it stood

then. So I would imagine it made those proceedings mute. We had issued our report.

ADV PAUL JOSEPH PRETORIUS SC: Yes, but your investigation, your continued investigation and your report as I understand it would have been limited not only by the terms of the proclamation, but also by the [intervenes]?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But also by the extent and contents of the agreement entered into subject to the litigation?

MR CLINTON OELLERMANN: Very much so yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. Will you not place on record or read into
10 the record paragraph 4 then on page 49?

MR CLINTON OELLERMANN: Sure. Right it says, the heading is:

“Limitation on the Investigation: the report is based on a 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 has sought by way of application
proceedings in the North Gauteng Division of the High Court of
South Africa to interdict the SIU from investigating the full
scope of Bosasa activities regarding the awarding of the four
20 tenders to it by the DCS. 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 Bosasa’s 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 [indistinct] that exists in the investigation will be addressed upon resolution of the litigation between the SIU and Bosasa.”

ADV PAUL JOSEPH PRETORIUS SC: The charge sheet which is the third annexure to your affidavit?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Charges related to intended prosecutions of Bosasa officials and the arrests made this year after Mr Agrizzi has given evidence
10 does that charge sheet range much further beyond the limitations of your report?

MR CLINTON OELLERMANN: There are differences. I can see there are areas where additional charges or investigation has been done, but substantially or in the main it is based on the evidence that was uncovered during our investigation.

CHAIRPERSON: Well you were the leading investigator of the team who investigated these four tenders?

MR CLINTON OELLERMANN: Yes, I was Chair.

CHAIRPERSON: Before an undertaking was given on behalf of the SIU to Bosasa in that litigation that you would or the SIU would refrain from interviewing certain witnesses were you given an opportunity to express your view whether that agreement
20 or undertaking should be given or not?

MR CLINTON OELLERMANN: Yes, we were Chair. I mean the decisions were ultimately made by our principals on the advice of Counsel as well. So we had meeting with Counsel as well.

CHAIRPERSON: Ja.

MR CLINTON OELLERMANN: Obviously as an investigator we would never like to be

curtailed in our investigations.

CHAIRPERSON: Hm.

MR CLINTON OELLERMANN: But the decision that was taken at the time in order for us to complete the investigation as it stood I think was the correct decision at the time.

CHAIRPERSON: It is just that it sounds very strange that the SIU agreed that it would not pending the outcome of or was it pending the outcome of that application it would not investigate, it would not interview material witnesses because that it is the phrase used, material witnesses.

MR CLINTON OELLERMANN: That is correct.

10 **CHAIRPERSON:** In relation to these tenders. So I thought that Bosasa may have approached the court on the basis that you were investigating matters that were outside of your scope as set out in the proclamation, but from what one reads here it was, they did not want you to interview witnesses whom you regarded as material obviously. They thought they were material to otherwise why would they go to court to prevent you from talking to them. That were material in relation to the same tenders.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: So I am wondering why the SIU agreed to that.

MR CLINTON OELLERMANN: Ja, it is not a question I can answer.

CHAIRPERSON: You might be able to assist.

20 **MR CLINTON OELLERMANN:** Ja.

CHAIRPERSON: You might not be able to.

MR CLINTON OELLERMANN: Ja.

CHAIRPERSON: But I would have thought that having been the lead investigator you would have wanted to make sure that you understand what the reasoning is.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: From those who might have been saying let us give this undertaking.

MR CLINTON OELLERMANN: *Ja.* Look as I said I mean it was, I was included in the discussions and with our principals at the time as well as meetings with Council and I mean the legal challenge was on a number of aspects.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: It related to, it went as far as even the proclamation, the motivation for the proclamation.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: So it was a multifaceted challenge.

10 **CHAIRPERSON:** Yes.

MR CLINTON OELLERMANN: But in order for us to be able to at least continue with the investigation and rather than be left or rendered stranded in terms of whether the investigation would just stop I think that was the motivation to continue with the investigation and I think also the intention was once these legal issues were resolved to then interview these material witnesses and to continue from there. However after we issued the report and there was evidence of criminal offences being committed it was then obviously also the National Prosecuting Authority and the police that needed to come on board to conduct those investigations further.

20 **CHAIRPERSON:** But you say you were never subsequently involved in any investigation that would have included interviewing these so called material witnesses who you had been prevented from?

MR CLINTON OELLERMANN: No.

CHAIRPERSON: Interviewing?

MR CLINTON OELLERMANN: No I had not, no.

CHAIRPERSON: *Ja*, but one gets the impression therefore that your investigation as

represented by the report that you gave was not complete or would not be said to be complete until you had interviewed those material witnesses. Is that right?

MR CLINTON OELLERMANN: Understood Chair and.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: You are quite right, yes.

CHAIRPERSON: Yes, but that did not mean that there were no persons who could be charged. Is that right?

MR CLINTON OELLERMANN: No, it did not mean that at all.

CHAIRPERSON: Yes.

10 **MR CLINTON OELLERMANN:** As you will see there was significant evidence.

CHAIRPERSON: Ja. There was adequate evidence for at least some of the people.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: To be charged?

MR CLINTON OELLERMANN: Yes and I think that was part of the motivation to go that route as well and that we had already uncovered evidence of criminality and then to finalise the report in such a way that that evidence could then be exposed and handed over to the National Prosecuting Authority.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: That would then further the investigation.

20 **CHAIRPERSON:** Yes.

MR CLINTON OELLERMANN: Because obviously I mean the police and the Prosecuting Authority have a different mandate to the SIU.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: So where there is evidence of criminality or crimes that are reported they are obliged to investigate that. So that motivation sort of

strengthened the argument to say well we have evidence of criminality.

CHAIRPERSON: Hm.

MR CLINTON OELLERMANN: We have evidence of numerous irregularities involving many of the members of the Bosasa Group as well as Correctional Services Officials.

CHAIRPERSON: Is?

MR CLINTON OELLERMANN: On that basis we wanted to finalise the report and hand it over.

CHAIRPERSON: Is your recollection that part of the motivation for giving the undertaking that was given on behalf of the SIU to Bosasa was that the evidence that
10 you had uncovered already was such that charges could be brought against certain people and that later on if need be the investigation could be taken further, but in the meantime some criminal proceedings could start?

MR CLINTON OELLERMANN: That is correct Chair, yes.

CHAIRPERSON: Ja.

MR CLINTON OELLERMANN: We had gathered evidence as I say which.

CHAIRPERSON: Hm.

MR CLINTON OELLERMANN: We felt was strong enough for.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: Criminal charges to be brought.

20 **CHAIRPERSON:** Yes.

MR CLINTON OELLERMANN: Or at least properly investigated through.

CHAIRPERSON: Ja.

MR CLINTON OELLERMANN: The NPA and the SAPS.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Just to summarise then the scope of the

litigation and particularly the application that was brought for an interim interdict pending the grant of a final interdict.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Included a challenge to the validity of the proclamation authorising the investigation?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What was sought was a final interdict, but pending the finalisation of the application an interim interdict which would have stopped the investigation completely?

10 **MR CLINTON OELLERMANN:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And for better or worse a compromise was reached which allowed you to continue the investigation subject to certain restrictions?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: As an investigator how did you and your team feel about being restricted in this way? What was your view in relation to your intention to investigate these issues?

MR CLINTON OELLERMANN: Well as I indicated earlier as an investigator you always want to be able to investigate the matter fully. To be curtailed in anyway is frustrating to say the least yes, but as I said.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You had told the Chair that the investigations relevant to Bosasa and the Department of Correctional Services could have been extended to include other departments, but that proclamation never came?

MR CLINTON OELLERMANN: No, but in fairness I have to say that that would have required some work to be done as well. There would have to be an assessment of the allegations, motivation for the proclamation and then it is up to the Presidency and the

President to issue the proclamation based on the motivation that was submitted by the SIU.

ADV PAUL JOSEPH PRETORIUS SC: Yes, but whether it would have involved work or not the point is that work was not done?

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: So the request to the President for another proclamation or for that extended the scope of the proclamation that had been issued was not made? In other words the request was not made.

MR CLINTON OELLERMANN: Yes.

10 **CHAIRPERSON:** And not that the request was made but the proclamation was not issued.

MR CLINTON OELLERMANN: Yes. No, I am not aware of any additional requests for proclamations Chair.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: Let us deal for a moment with the draft charge sheet and that is the charge sheet served this year. It appears at page 213 and the questions I will ask you really deal with the extent to which that charge sheet is based on an investigation or facts gleaned from an investigation conducted some 10 years earlier. If you would go please to Annexure CO3 page 213?

20 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Firstly you will see there that the accused are Messieurs Mti and Gillingham, Mr Agrizzi, Mr van Tonder and certain companies that we know to be part of the Bosasa Group of Companies.

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Mr Agrizzi and Mr van Tonder were officials of

Bosasa who gave evidence. Is that correct?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And Messieurs Mti and Gillingham we know well now were officials at one stage of the Department of Correctional Services?

MR CLINTON OELLERMANN: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: The first comment that there is mentioned is the absence of other Bosasa Officials from the list of accused. Do you have any explanation from that?

MR CLINTON OELLERMANN: No, I do not.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Were other officials other than Messieurs Agrizzi and van Tonder mentioned in the SIU Report, one example Mr Gavin Watson?

MR CLINTON OELLERMANN: No, he is not mentioned in our report, no.

ADV PAUL JOSEPH PRETORIUS SC: Why not?

MR CLINTON OELLERMANN: We never had the opportunity to interview him or anything like that.

ADV PAUL JOSEPH PRETORIUS SC: So was he one of the persons who you were precluded from interviewing?

CHAIRPERSON: I am, I am.

20 **MR CLINTON OELLERMANN:** Yes, he was.

ADV PAUL JOSEPH PRETORIUS SC: Pursuant to the litigation?

MR CLINTON OELLERMANN: Yes he was.

CHAIRPERSON: Well if I recall correctly Mr Agrizzi has given evidence to the effect that and I am putting this in my own words Mr Gavin Watson was kind of boasting that his name was not mentioned anywhere in the SIU Report.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: I'm not sure whether Mr Agrizzi was saying that Mr Gavin Watson said this already before the report came out or whether it was after, you may or may not have heard Mr Agrizzi say that, but you are confirming that his name was not mentioned there, but you say the reason why that happened was because he – because Bosasa brought an interdict application in the high court and part of it was that he and certain other people should not be interviewed by yourselves?

MR CLINTON OELLERMANN: Yes that is correct Chair, I can confirm that, his name is not mentioned in the report but the reason for that is because of the agreement that we
10 reached it wasn't only him there were other executives that we would have wanted interviewed as well as part of the ongoing investigation.

CHAIRPERSON: Well the other witnesses that you interviewed didn't they implicate him?

MR CLINTON OELLERMANN: Well as part of the investigation that is what we wanted to test, so we received some information which indicated that Mr Watson was aware of what was going on at all times, and was in fact at the forefront of the irregularities that had been identified. I mean we never had the opportunity to test these allegations with him, or present evidence to him or anything like that.

CHAIRPERSON: Yes, but that was because he didn't want to be interviewed.

20 **MR CLINTON OELLERMANN:** Yes I imagine he didn't.

CHAIRPERSON: So if you had enough evidence from other people why couldn't his name be put there that you have got evidence that he did certain things if that's the evidence you had which were potentially of a criminal nature, why was that not done, because it's not like you couldn't find him, he didn't want to be interviewed from what I understand the Bosasa application meant.

MR CLINTON OELLERMANN: Yes, so if I can just place it into context, I mean the evidence that we got was often hearsay evidence, people would say you know and I think one of, what we were informed was that you would never find Mr Watson's signature on the document, you would never find an email that he had sent or anything like that, he tried to keep his nose clean or out of the document chain and things like that. In fact one of the persons we interviewed said he doesn't even think that Mr Watson's computer is ever used, the one that's in his office, so he said based on that you won't find direct evidence linking him to something, so the evidence that we had needed to be investigated further, before we could approach Mr Watson with – and
10 interview him directly.

CHAIRPERSON: So are you saying that you didn't have enough evidence to put his name in the report, is that what you're saying?

MR CLINTON OELLERMANN: At the time of the issuing of the report yes, that is why we wanted to investigate matters further.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So I understand your answers to questions from the Chair your evidence at least raises two issues firstly the extent to which you ultimately could interview witnesses and obtain evidence from them.

MR CLINTON OELLERMANN: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And secondly the extent to which documentation which you obtained in the course of your investigation implicated persons such as Mr Watson and Mr Watson himself.

MR CLINTON OELLERMANN: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And you say you could find no documentary evidence implicating Mr Watson?

MR CLINTON OELLERMANN: At the time that we had issued the report yes that's where we stood.

ADV PAUL JOSEPH PRETORIUS SC: And the matter was complicated further by servers crash and the apparent attempt to destroy documentation about which you will testify in due course.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The differences between the findings in the report on the one hand and the charges the content of the charges laid this year against the persons that we've just referred to may become relevant in our further
10 investigations and are matters that need to be looked at more closely by the investigators and the legal team, so it's necessary therefore briefly just to highlight what the charge sheet contains that the SIU report did not contain.

MR CLINTON OELLERMANN: Okay.

CHAIRPERSON: Well Mr Oellermann your evidence is that when you look at those charges in respect of Mr Agrizzi and others who were arrested after Mr Agrizzi had given evidence here when you look at those charges substantially they relate to the SIU report that you prepared, is that right?

ADV PAUL JOSEPH PRETORIUS SC: That is correct yes Chair.

MR CLINTON OELLERMANN: Is my understanding of your evidence correct that
20 there is very little that seems from those charges not to be related to the SIU report that you prepared? When you – before you answer that question just make sure that you satisfy yourself that – because it is quite important because I caused a representative of the Commission to try and establish what gave rise to the arrest of persons who were busy assisting the Commission, including Mr Agrizzi and the timing of the arrest and I was informed that SIU said that the arrest was not based on the evidence that was

given here or the SIU report that was completed in 2009 and that it related to some other reports, so I wonder to what extent, whether your evidence actually suggests that may have been told to me, or may have been told to a representative of the Commission which he conveyed to me might not have been correct, so I go back to my question.

MR CLINTON OELLERMANN: No I understand.

CHAIRPERSON: Are you in a position to say that it's very little when you look at those – at the charge sheet there's very little that really doesn't relate to the report, to the SIU report that you prepared.

10 **MR CLINTON OELLERMANN:** I wouldn't say very little Chair, what I will say is that from what I can see going through the charge sheet and looking at what we ... (intervention)

CHAIRPERSON: Knowing the contents of the SIU report.

MR CLINTON OELLERMANN: Absolutely.

CHAIRPERSON: Ja.

MR CLINTON OELLERMANN: A large proportion in the main is what I've said in my affidavit appears to come from the evidence or the investigation that was done which culminated in the SIU report. Now there are various areas where I can see further investigations have been done, and those obviously would not be the basis for – or the
20 charges would not then be the basis from the SIU report.

CHAIRPERSON: Yes, but basically what you are saying is as far as you can see knowing the contents of the SIU report and having regard to this charge sheet you are able to say in the main that charge sheet is based on the SIU report, am I correct? Is that how you see it?

MR CLINTON OELLERMANN: That's how I see it Chair, that's my opinion, having

seen the charge sheet and having – and having knowledge of the contents of the SIU report, the facts that were investigated and the evidence that was obtained during the investigation is there in the charge sheet.

CHAIRPERSON: Ja, okay.

ADV PAUL JOSEPH PRETORIUS SC: Just to wrap that up perhaps we should just refer to paragraph 10.2 and paragraph 10.6 of your analysis of the draft charge sheet.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And there you highlight aspects that were not dealt with in the SIU report.

10 **MR CLINTON OELLERMANN:** That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: For the rest you say substantially the counts not dealt with in those two paragraphs are substantiated in the SIU report.

MR CLINTON OELLERMANN: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: So let's just look at the exceptions then, paragraph 10.2 you say in count 7 and 8 a charge is levelled which contains information not dealt with in the SIU report and these charges relate you say to payments and gratification to accused number 1 Mr Mti for flight tickets, car rental services, accommodation and cash payments over the period May 2004 to July 2015.

MR CLINTON OELLERMANN: That's correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And the second exception to your general observation is in paragraph 10.6 which relate to charges of money laundering and the payment of R62 796 for travel expenses relating to a trip to Europe undertaken by accused number 2 and Teresa Gillingham?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: So those are the only aspect which are not

dealt with in full in the SIU report?

MR CLINTON OELLERMANN: Yes, I can also mention that in paragraph 10.7 where certain information, not all of it, deals with the SIU report, but parts of it are there.

CHAIRPERSON: But just looking at your paragraph 10 it looks like it will be fair to say out of 15 counts, one to six, seven and eight, nine, ten, eleven, twelve out of about fifteen counts only about two or three on your analysis don't necessarily relate to the SIU report, the rest do relate to it.

MR CLINTON OELLERMANN: That's my analysis of it Chair.

CHAIRPERSON: Yes, okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Arising out of that I would like to ask you to deal with a question of concern to the legal team, and that is the issue of delay, but perhaps we could deal with that after the short adjournment Chair.

CHAIRPERSON: Okay, we will take the tea adjournment and we will resume at quarter past twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Before we proceed Mr Pretorius I just want to say something about the lady who sought my attention as I was adjourning. I understand that it is – she is the same lady who called for my attention on one of the day last week and I indicated then that I was requesting the – Mr Pretorius and the legal team to establish what she might have wanted to bring to the attention – to my attention and the attention of the commission. I just want to say I have been given a report in regard to the interactions that she has had with the commission. We continue to encourage everybody who has information that will assist the commission in regard the investigation that the commission is doing. Some of the information people will believe will help us but

maybe when we look at it we will not think it is as helpful as they think it is. We will continue to encourage people but we will respect people's views as well when they have – may have a different view in terms of how useful the information they have will be to the commission. But it would appear that there may be certain personal circumstances relating to the lady that just need to be respected and I think I will leave the matter at that. So yes thank you. Let us proceed.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr Oellermann before the short adjournment you were dealing with your own comparison between the contents of your report and the subject matter of your investigations and the charges that were
10 levelled against certain persons and entities this year after two of the accused in that matter had given evidence before the commission.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Namely Mr Agrizzi and Mr Van Tonder. The SIU report you say was completed in 2009?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: It would have been handed to the NPA when?

MR CLINTON OELLERMANN: It would have been late 2009 that it was handed to them.

ADV PAUL JOSEPH PRETORIUS SC: So shortly after its completion?

20 **MR CLINTON OELLERMANN:** Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: We now have charges brought ten years later based on at least substantial parts of the SIU report. In fact mostly based on the SIU report you have told the Chair?

MR CLINTON OELLERMANN: Yes correct.

ADV PAUL JOSEPH PRETORIUS SC: Do you have any explanation as to why there

should be – have been a delay of ten years between the handing of your report and the level – over to the NPA and the levelling of charges and do you have any comment in that regard?

MR CLINTON OELLERMANN: Look I have no explanation as to why. I will say this that the evidence gathered by the SIU was done in terms of its proclamation under specific piece of legislation the SIU Acts. So the evidence was gathered in terms of the SIU Act. Where we found evidence of an offence that evidence was handed over to the relevant prosecuting authorities, the NPA and the SAPS. There would be certain procedural issues which would need to be dealt with to – for the evidence to be
10 admissible in terms of the Criminal Procedure Act. So I could understand that – that process that would need to be done. But ten years I find it incomprehensible that it would take that long. I am perhaps giving away my age now Chair but I have been – I have been involved in Forensic Investigations for more than 25 years so I am very complex and I have never encountered a criminal investigation of this nature that would take so long.

CHAIRPERSON: So you have no difficulty accepting that there may be – may still have been some issues to be attended to before the actual charging of people but the point you are making is ten years is just far way too long for those procedural issues to have been attended to.

20 **MR CLINTON OELLERMANN:** Correct in my view yes Chair. I mean and I also accept that there would have been further investigation that would needed to have been done as you were questioning me earlier. There were certain things that we could not cover in our investigation which the criminal investigation would ideally have covered. So I accept that some investigation was still to be done. But again ten years is in my mind is an exceptionally long time for a matter to reach its conclusion.

ADV PAUL JOSEPH PRETORIUS SC: If we could move on then to the next part of your statement Mr Oellermann. You have had an opportunity to examine certain other documents provided by Mr Agrizzi to this commission and to prepare some comment on those documents.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: These documents it is apparent from their content mostly emanate from the National Prosecuting Authority and the communications between the Commercial Crimes Unit which is part of the NPA and the National Director of Public Prosecutions at the time.

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you will indicate how these documents and these comments contained in these documents relate to the SIU investigation of which you have told the Chair.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The first is the document that appears in the supplementary bundle. Chair that is the S11 supplementary bundle at page AA388 Annexure Q3.

CHAIRPERSON: Please just repeat the page number?

ADV PAUL JOSEPH PRETORIUS SC: AA388.

20 **CHAIRPERSON:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: This is an email or memorandum from Advocate Glynnis Breytenbach to the National Director of Public Prosecutions Advocate Simelane. Would you read its contents onto the record please?

MR CLINTON OELLERMANN: Sure.

ADV PAUL JOSEPH PRETORIUS SC: I might interrupt you from time to time as you

read it.

MR CLINTON OELLERMANN: Sure. Shall I start at Dear Advocate Simelane?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR CLINTON OELLERMANN:

“The so called Bosasa matter was received in this office directly
from the SIU during late November 2009.”

ADV PAUL JOSEPH PRETORIUS SC: That confirms your own evidence?

MR CLINTON OELLERMANN: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

10 **MR CLINTON OELLERMANN:**

“As a result it has been referred to the SAPS in order for them to
study the material and take a decision on whether or not to open
a case docket. Due to the profile and sensitivity of the matter I
approached Commissioner Hans Meiring [The National Head of
the Commercial Branch] for assistance in getting the matter
allocated to the office of the Serious Economic Offences of the
SAPS. The acting commanding officer allocated the matter to
senior Superintendent D J Kriel for further investigation. Once
the material supplied to us has been studied by myself Advocate
I Grobler and I – sorry Advocate I Grobler and Mr G Nkadameng
the prosecution team and the investigating officer we had a
follow up meeting with Mr Clint Oellermann of the SIU to discuss
the material in their possession but not yet supplied to us and the
admissibility thereof. Mr Oellermann supplied us with copies of
the civil litigation conducted between the SIU and Bosasa during

20

December which was then studied by all the role players when they all returned from their annual leave in order to determine the impact thereon on the criminal investigation if any. This was done chiefly with the view to obtaining a clearer understanding of the issues involved and to avoid any later problems arising as a result of possible derivative evidence. It was essential to understand the nature of the legal challenge against the SIU before proceeding with the investigation proper.”

ADV PAUL JOSEPH PRETORIUS SC: Just before you go on. You will recall and
10 there has been evidence that at some stage an argument was raised that the SIU was dealing with evidence which constituted what is recorded as “Fruit of the Poison Tree”

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And for some reason as a result of that the prosecution could not continue, do you recall that being raised?

MR CLINTON OELLERMANN: I do recall that discussion yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Insofar as that was a real problem and the legal team is not convinced that that is a correct view of the law at all in our new constitutional dispensation not convinced that there was any validity to this “Fruit of the Poison Tree” argument which might prevent a prosecution. But that is another matter
20 that we will deal separately with it Chair. But it is apparent that with the charges now laid that that argument has been abandoned and the prosecuting authorities have changed their mind in respect of that/

MR CLINTON OELLERMANN: It would appear so yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes. If you could really – we do not have to read the whole document. It is unnecessary to read the whole of the email. Just refer

to the summary of the document or the extracts contained in paragraph 11.1 of your affidavit please?

MR CLINTON OELLERMANN: Sure.

ADV PAUL JOSEPH PRETORIUS SC: That would be a more efficient way of dealing with the issues.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Arising out of this email.

MR CLINTON OELLERMANN: Shall I read from...

ADV PAUL JOSEPH PRETORIUS SC: Yes just read the paragraph – sub-paragraphs

10 to paragraph 11.1 if you will.

MR CLINTON OELLERMANN: Alright. So...

20 “The so called Bosasa matter was received in this office directly from the SIU during late November 2009. It is essential to meet with the Acting Commissioner since she would be the [indistinct] person to depose to an affidavit to form the founding affidavit on which to base the investigation. The case docket cannot be registered without the affidavit of the complainant. The SIU has not supplied the source documents relating to the report. It is essential to understand whether the documents so obtained the SIU are admissible and can be used in the criminal investigation. As issue that needs to be addressed on an urgent basis is the position of Mr Linda Mti who is one of the two main suspects and who currently holds the position of Head of Security 2010 World Cup and the impact that this investigation once it gains momentum and attracts the attention of the media might have.

Some guidance in this regard would be greatly appreciated.'

ADV PAUL JOSEPH PRETORIUS SC: Two comments. It appears from the comment contained in this email or memorandum to the National Director of Public Prosecutions that a number of what might refer to as – be referred to as problems are raising with regard to the conduct of any further investigation and prosecution.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Including sensitive issues such as that involving Mr Linda Mti. Now I do not want you necessarily to comment on the merits of these complaints. That is a matter for later consideration.

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: But it is important to note that this document was leaked to Bosasa. This document contained a number of problems raised by persons within the NPA in regard to whether a successful prosecution could be launched.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Such information in the hands of a potential accused person such as officials of Bosasa what is your comment on its usefulness?

20 **MR CLINTON OELLERMANN:** Oh it would be invaluable and highly detrimental to the prosecution. I mean you are giving them insight into procedural issues of the investigation before – before there is a charge sheet that has been issued or anything like that. So you are giving them valuable information which they can use to attack the process, attack the investigation and attack any subsequent prosecution that may follow from that.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 11.2 you refer to the response from Advocate Simelane to Advocate Breytenbach dated the 8 February 2009

and that date might incorrect. Let us just look at AA393 if you would.

MR CLINTON OELLERMANN: I think it is 2010. It should be 2010 [indistinct].

ADV PAUL JOSEPH PRETORIUS SC: That date should be corrected. It is the 8 February 2010 as you say?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Not 2009. We will find an appropriate way of correcting the record Chair.

CHAIRPERSON: No that is fine.

ADV PAUL JOSEPH PRETORIUS SC: That meets with your approval.

10 **CHAIRPERSON:** That is fine.

ADV PAUL JOSEPH PRETORIUS SC: This is the response by the National Director of Public Prosecutions Advocate Simelane to Advocate Breytenbach's memorandum raising concerns with the prosecution or potential prosecution.

MR CLINTON OELLERMANN: That is correct that is how I understand it to be.

ADV PAUL JOSEPH PRETORIUS SC: If you would just read onto the record the extracts contained in your paragraph 11.2.

MR CLINTON OELLERMANN:

“You and your team must withdraw from the case until I am
advised that the case is registered with the police.”

20 **ADV PAUL JOSEPH PRETORIUS SC:** So what is happening here is in response to Advocate Breytenbach's memorandum the National Director of Public Prosecutions is simply saying to Advocate Breytenbach you must withdraw from the case?

MR CLINTON OELLERMANN: That is how I understand it yes.

ADV PAUL JOSEPH PRETORIUS SC: There will be evidence that at some stage people were asked to withdraw from the prosecution, the investigation and they were

replaced by other less experienced persons. What is the effect on an investigation and prosecution if people are simply told to withdraw?

MR CLINTON OELLERMANN: Well in my experience then everything comes to a halt. Then the momentum that you have – that you have gathered with the investigation and the prosecution proceeding is then stopped. And if you have to brief an entirely new team then well then they have got to start afresh. Then they have got to get to grips with the matter if it is technical or complex matter and there are in areas of this investigation where it is quite complex then they would need to be brought on board and study that and make sure that they fully understand it. So you are losing
10 momentum. You are placing yourself on the back foot and it then means that there are just going to be more delays in taking the matter forward.

ADV PAUL JOSEPH PRETORIUS SC: If you would continue reading please.

MR CLINTON OELLERMANN:

“I would have hoped that the – that by now the SIU itself would provide the required affidavits since they have the locus standi to investigate.”

ADV PAUL JOSEPH PRETORIUS SC: We will come to the correctness of that comment in a moment.

MR CLINTON OELLERMANN: Sure.

20 “I note the point that you are making regarding Mr Mti if it mischievous in the least. Firstly there is not police docket or investigation underway. Secondly by your own admission there is still an assessment to be made on the value of the information available. How therefore you can start speculating and making suggestions regarding any person is beyond belief”

ADV PAUL JOSEPH PRETORIUS SC: Okay. Now one may draw one's own conclusions and we may invite the Chair in due course as a legal team to draw certain conclusions in regard to the content and tone of that response. But for the moment as far as you are concerned the contents of the quote in paragraph 11.2.2 and perhaps the remainder of the comments that you have quoted. Please tell the Chair whether Advocate Simelane was correct in his observations?

MR CLINTON OELLERMANN: I do not believe him to be correct Chair. I mean the SIU as we have discussed at some length earlier when they have – when they have uncovered evidence of criminal conduct or criminal offence that can – that evidence
10 gets referred to the National Prosecuting Authority. The SIU cannot open a criminal case on matters that it is investigating. There may be matters internally that they could open cases on where they are the complainant but in this case the SIU is not the complainant. The complainant is the Department of Correctional Services. They are the ones that have been harmed by the criminal offence that was committed. So the affidavit that has been referred to in my view should have been deposed to by a senior person in the Department of Correctional Services.

ADV PAUL JOSEPH PRETORIUS SC: And perhaps they were madly keen to do so but again that is a matter that we will deal with on all the evidence in our submissions to the Chair. But is it correct to say that because the SIU has the locus standi to
20 investigate they must provide the necessary affidavit to commence an investigation by the NPA?

MR CLINTON OELLERMANN: I do not believe that to be correct.

ADV PAUL JOSEPH PRETORIUS SC: The prosecution by the NPA? Does that make any sense to you at all?

MR CLINTON OELLERMANN: It does not make sense to me. What – an affidavit and

I did depose to an affidavit confirming that this was the report conducted and that is part of my bundle. But it was not a complainant affidavit to initiate a criminal case. It was the referral of the evidence of a criminal offence that had been uncovered during the course of our investigation.

ADV PAUL JOSEPH PRETORIUS SC: And what the relevant legislation that you have referred to in your paragraph 11.3 requires you to do is simply to refer the matter in terms of those sections that you have quoted of the SIU Act?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that was done?

10 **MR CLINTON OELLERMANN:** Yes it was.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Then paragraph 11.4 you deal with another document that – well before we go there. Again such a letter as was addressed by Advocate Simelane to Advocate Breytenbach if leaked to a potential accused such as officials of Bosasa would that be of any interest to them; to your mind?

MR CLINTON OELLERMANN: Definitely I mean and it goes back to the previous point that I made you know it is ammunition that they could use to attack the investigation. There would be areas where they could pinpoint exactly where to attack the investigation because they would have insight into the thinking and the strategy that was going on within the investigation and prosecution teams.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. The next document you refer to that was attached to the statement of Mr Agrizzi is a document dated 9 March 2010. The document is or purports to be the minutes of a special extended ministerial meeting and it appears in the supplementary bundle at AA396 as Annexure 5. Do you see that document? It starts at page 397.

MR CLINTON OELLERMANN: Yes I see it.

ADV PAUL JOSEPH PRETORIUS SC: It is a meeting held under the auspices of the National Prosecuting Authority and was attended by several persons and chaired by the then Minister of Justice Minister Radebe. Do you see that?

MR CLINTON OELLERMANN: I do see that yes.

ADV PAUL JOSEPH PRETORIUS SC: And it is a briefing on various matters. It is unfortunately highlighted in a way that obscures much of the content of the important paragraph which is paragraph 3 which deals with a SIU report to the Minister on the – well deals with the SIU report in a report by the NPA to the Minister concerning the Bosasa investigation. Would you just deal with the list of attendees firstly and secondly
10 the extracts that you have quoted in paragraph 11.4 if you would read those onto the record please.

MR CLINTON OELLERMANN: So the attendees were Minister J T Radebe, Minister N N Mapisa Nqakula, Advocate M Simelane and the Secretariat as Mr T Tlale and Ms J Lepinka.

ADV PAUL JOSEPH PRETORIUS SC: And the minutes reflect that Advocate Simelane gave a presentation in regard to the SIU report to those attendees including the two ministers and certain recordals are minuted. Would you read those please?

MR CLINTON OELLERMANN: Yes. So in my affidavit paragraph 11.4.1.

20 “Challenges of the report was outlined i.e. the constitutionality of the report in that the evidence was contained in a said report was contaminated. The SIU report cannot hold any water in any court and that of any Presiding Officer will not proceed with the report at hand. The SIU investigation was not in line with the proper administration of justice “without fear, favour and / prejudice”. Incorrect sections of their mandate were used to find

evidence. Statements were not done accordingly to the
prescripts.”

And then the last paragraph say:

“Political Vendetta / Agenda identified.”

ADV PAUL JOSEPH PRETORIUS SC: Over the page.

MR CLINTON OELLERMANN:

10 “Manipulation of the public identified in that the report was
discussed in parliament prior to the same being handed over to
the relevant exec authority. Media coverage over the report prior
to having heard or confirmed any criminality by the mentioned
senior officials of the DCS a predetermined element was
identified as well as the race of both the investigators SAPS, SIU
and Prosecutors NPA.”

ADV PAUL JOSEPH PRETORIUS SC: Alright. Now let us just deal with those issues
because what Advocate Simelane is saying in no uncertain terms to two ministers
concerned is that the prospects of a successful prosecution here are absolutely
hopeless?

MR CLINTON OELLERMANN: That is how I would read it.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Is that what he is saying? He is saying on a
number of grounds there is no prospect of any prosecution being successful and
therefore it should by implication not proceed?

MR CLINTON OELLERMANN: Correct.

ADV LEAH GCABASHE: And by further implication that we will submit ought not to be
continued?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Let us deal with 11.4.1. The unconstitutionality of the report in that the evidence contained in the said report was contaminated. Now you led the investigation. You obtained the evidence. What do you say about that allegation?

MR CLINTON OELLERMANN: I am not aware of any unconstitutionality that is related to the report. I mean the evidence was gathered in terms of the SIU Act. It was handled in terms of the SIU the investigation was conducted within the parameters of the proclamation and the SIU Act so I am not sure what the unconstitutionality refers to.

ADV PAUL JOSEPH PRETORIUS SC: But even if there were irregularities the
10 constitution as I understand it does not prevent the leading of evidence provided certain groundwork is laid for the admission of that evidence.

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: And it seems in that respect in any event that there has been a change of mind for some reason or other and that the prosecution is indeed continuing based on evidence gathered by the SIU?

MR CLINTON OELLERMANN: Yes. Well it does seem to me that there has been a judgment that has been made on the admissibility of evidence. At such an early stage of the investigation without it actually going through a credible process where it can be properly evaluated.

ADV PAUL JOSEPH PRETORIUS SC: Yes. The second comment is the SIU report
20 cannot hold any water in any court and that any Presiding Officer will not proceed with the report at hand. Is that a fair comment?

MR CLINTON OELLERMANN: I do not believe this to be a fair comment.

ADV PAUL JOSEPH PRETORIUS SC: Right. And again to the extent that in March 2010 before any further investigation is conducted that comment can be made – bears

its own response which we need not bother you with for the moment but again there appears to have been a change of mind?

MR CLINTON OELLERMANN: It would appear so yes.

ADV PAUL JOSEPH PRETORIUS SC: Then it goes on to say:

“The SIU investigation was not in line with the proper
administration of justice without fear, favour or prejudice.”

What do you say to that allegation concerning your report?

MR CLINTON OELLERMANN: Well I do not believe that to be true at all. We were investigating team. We reported to our principles. We were given a mandate to
10 investigate. We did, we obtained evidence I believe legally in terms of the SIU Act. I do not believe we acted outside of the SIU Act or the parameters of the proclamation. Certainly I – before the investigation started I had never heard of any of the ...

ADV PAUL JOSEPH PRETORIUS SC: Were you or your team on a witch hunt of any sorts?

MR CLINTON OELLERMANN: Not at all. It would not have been within my power to implement a witch hunt in any case at that stage.

ADV PAUL JOSEPH PRETORIUS SC: Alright. And you say that you worked with a team but your – the comments you make would apply to the team which operated under you I presume?

20 **MR CLINTON OELLERMANN:** Correct. And we obviously reported to principles and throughout the investigation we took advice on counsel given the sense – from counsel given the sensitivity of the matter we took advise from counsel on a number of matters.

ADV PAUL JOSEPH PRETORIUS SC: And did you act in accordance with that advice?

MR CLINTON OELLERMANN: Yes we did.

ADV PAUL JOSEPH PRETORIUS SC: The further allegation is made to the Ministers that:

“Incorrect sections of the mandate were used to find evidence.”

Is that correct?

MR CLINTON OELLERMANN: I am actually not even sure what they are referring to over there, because I mean the SIU Act is clear and the proclamation was clear and we acted within those boundaries.

ADV PAUL JOSEPH PRETORIUS SC: So you had a proclamation which in your view was an order and you acted in terms of that proclamation and in accordance with the governing legislation?

MR CLINTON OELLERMANN: Correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: And then the final statement there is:

“Statements were not done accordingly to the prescripts.”

Well apart from the grammar what do you say about that allegation?

MR CLINTON OELLERMANN: I do not believe that to be correct. I mean all the affidavits that we obtained were done in accordance with how one would do it legally, yes.

ADV PAUL JOSEPH PRETORIUS SC: And then interestingly a comment is made by Advocate Simelane to the Ministers that there is a political vendetta or agenda that had been identified.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Were you aware of any such political vendetta or agenda?

MR CLINTON OELLERMANN: I am not aware of any such.

ADV PAUL JOSEPH PRETORIUS SC: 11.4.5 we will discuss later:

“Manipulation of the Public Identified in that the Report was discussed in Parliament Prior to the Same Been Handed Over to the Relevant Executive Authority.”

Are you aware of a presentation made by Advocate Hofmeyr to the Parliamentary Portfolio Committee?

MR CLINTON OELLERMANN: Yes, I am. I was present at that presentation.

ADV PAUL JOSEPH PRETORIUS SC: When was that presentation made as far as you can recall?

MR CLINTON OELLERMANN: To the best of my knowledge I believe it to be towards
10 the end of 2009.

ADV PAUL JOSEPH PRETORIUS SC: Right, prior to or after the report was sent to the NPA and to the Correctional Services Department?

MR CLINTON OELLERMANN: It would have been prior to it, I think.

ADV PAUL JOSEPH PRETORIUS SC: And then 11.4.6:

“Media Coverage over the Report Prior to Having Heard or Confirmed Any Criminality by the Mentioned Senior Officials of the Department of Correctional Services.”

We know that there were leaks and we know that there media reports. Did this in anyway affect your investigation?

20 **MR CLINTON OELLERMANN:** Not at all.

ADV PAUL JOSEPH PRETORIUS SC: If there is a leak can this exonerate any accused?

MR CLINTON OELLERMANN: I do not believe that it can.

ADV PAUL JOSEPH PRETORIUS SC: And then 11.4.7 you quote the following:

“A predetermined element was identified as well as the race of

both the investigators in the South African Police Services and
the SIU and prosecutors in the NPA.”

As far as you were concerned was race a relevant feature of your investigation?

MR CLINTON OELLERMANN: Not that I am aware of. In fact the members of the
investigators team encompassed all the races that we have.

ADV PAUL JOSEPH PRETORIUS SC: So you conclude in paragraph.

CHAIRPERSON: I am sorry. I am sorry Mr Pretorius. When one reads Mr Oellermann
that part of the minutes which says, which relates to race one gets the impression that
there were only two investigators, but you have given evidence that your team if I recall

10 correctly was about eight people or there about?

MR CLINTON OELLERMANN: About six to eight people.

CHAIRPERSON: Yes and you have just said that it was a diversity of races?

MR CLINTON OELLERMANN: Absolutely yes.

CHAIRPERSON: *Ja*. So maybe just to complete that picture do you want to say there
were Whites, there were Africans.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: And.

MR CLINTON OELLERMANN: There were Whites, Africans, Indians.

CHAIRPERSON: Yes.

20 **MR CLINTON OELLERMANN:** *Ja*, and females, males.

CHAIRPERSON: Yes. So.

MR CLINTON OELLERMANN: I would suggest that it was a very diverse team, yes.

CHAIRPERSON: So to the extent that this might give an impression that there were
only two investigators of maybe one race you certainly say that certainly is not in line
with the true position?

MR CLINTON OELLERMANN: No, it is factually incorrect.

CHAIRPERSON: Yes. *Ja*, okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Incorrect, maybe being polite. You are free to say what you think.

MR CLINTON OELLERMANN: No, I am fine with correct at the moment. It is fine.

ADV PAUL JOSEPH PRETORIUS SC: The accusation here being that your investigation was motivated by considerations of racial prejudice?

MR CLINTON OELLERMANN: It would seem that way yes.

ADV PAUL JOSEPH PRETORIUS SC: But you say that is politely incorrect?

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Then your final conclusion is summarised in paragraph 11.5.1. Tell the Chair of that please or perhaps you can just read your final conclusion.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Into the record.

MR CLINTON OELLERMANN: “I am not aware of the unconstitutionality of
the report nor any political vendetta or any of the other issues
raised which would prevent a successful prosecution.”

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right. Then the next document you deal with is at pages 400 to 404 of the supplementary bundle. Would you just deal with the extracts in paragraph 11.6 that you quote there please?

MR CLINTON OELLERMANN: Okay.

“It would thus appear as if the SIU received information from various and sometimes unreliable sources and made use of the information either without verifying the facts or failing to point

out anomalies to those reading the report. The SIU Report would appear to have been drafted in a careless and almost casual fashion. A lack of accuracy and precision with the drafting of the report will give ample opportunity to those seeking to fault.”

ADV PAUL JOSEPH PRETORIUS SC: This was a long email from Ms de Kock to Advocate Simelane the National Director at the time. She will give evidence in due course, but insofar as it deals with your report and your work in compiling the report is it correct that the SIU received information from sometimes unreliable sources and that
10 you made use of information without verifying facts or failing to point out anomalies to those reading the report?

MR CLINTON OELLERMANN: No, I do not believe that to be correct. I mean throughout an investigation process one always evaluates the evidence or information that you get. So that is done as a matter of course throughout an investigation and indeed happened over here.

ADV PAUL JOSEPH PRETORIUS SC: So made clear to the Chair that in your investigation you were subject to restrictive conditions which hampered your investigation [indistinct].

MR CLINTON OELLERMANN: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Have you read this full document from Ms de Kock?

MR CLINTON OELLERMANN: Yes, I have.

ADV PAUL JOSEPH PRETORIUS SC: Do you regard the issue she raised there as matters which would undermine the validity and quality of your report in the general sense?

MR CLINTON OELLERMANN: Well yes it certainly does place the report in a bad light and again if someone who was being investigated got their hands on this document it would be invaluable to them to exactly know or what the current situation of the investigation was, the prosecution, where the likely successful challenge to the prosecution would be.

ADV PAUL JOSEPH PRETORIUS SC: That is the; do you agree with all the comments in the report in all its detail and I am talking about the report of Ms de Kock?

MR CLINTON OELLERMANN: No, I do not personally agree with the comments that she has made.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes. We are not going to debate each and every one of the points. That would be an exercise that would take too long and is not entirely to the point that the legal team wishes to raise before the Chair save to say for present purposes at least that the leaking of such a document to the potential accused and to Bosasa would be most useful to Bosasa?

MR CLINTON OELLERMANN: Yes and extremely harmful to the prosecution's case.

ADV PAUL JOSEPH PRETORIUS SC: Right. Anyone who leaked the document to Bosasa at the time must therefore have known according to your evidence that it would harm and hamper the prosecution.

MR CLINTON OELLERMANN: I believe so, yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Then the next comment that you quote here is the following:

“The SIU Report would appear to have been drafted in a careless and almost casual fashion. The lack of accuracy and precision with the drafting of the report will give ample opportunity to those seeking to fault the prosecution...”

I presume.

“...if it would continue.”

Would do you say about that comment?

MR CLINTON OELLERMANN: Well I disagree with it. I mean as I have said before the SIU Report was drafted for the purposes of handing over the evidence of an offence which we had identified for the matter to proceed. I accept that there may have been further investigation that needs to follow, but the purpose of the report was not to hand over a court ready criminal case docket for charges to be immediately drawn and prosecution to be initiated. The report was to identify the areas where we had
10 uncovered evidence of criminal offences and link the individuals that we had identified as part of that criminal offence and then for the investigation and prosecution to take its course from there.

ADV PAUL JOSEPH PRETORIUS SC: The point however or the principal point that I understand you to be making in relation to these documents is highlighted in the last paragraph quoted in your paragraph 11.6.2.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Here one has the appointed prosecutor saying to the National Director of Public Prosecutions:

20 “The lack of accuracy and precision with the drafting of the report will give ample opportunity to those seeking to fault it.”

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Or to fault the prosecution. So the person who leaked this report to Bosasa would presumably have read that and would presumably therefore had known expressly without needing to infer that the mere handling of this document to Bosasa would undermine the prosecution and assisted, unlawfully

assisted the accused.

MR CLINTON OELLERMANN: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: You made points you have already made in paragraph 11.7.1. So we can go to the next document, but Chair it is 1 o' clock perhaps, it is two minutes to one perhaps we can do that after the adjournment.

MR CLINTON OELLERMANN:

CHAIRPERSON: *Ja.* Let us take the lunch adjournment and we will resume at two. We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr Oellermann you've referred in your evidence to documentation sent to and from Advocate Simelane my instructions are that he was appointed National Director of Public Prosecutions during or about 2009, does that – are you able to recollect that?

MR CLINTON OELLERMANN: To the best of my knowledge that sounds correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that this investigation ...(intervention)

CHAIRPERSON: I see you say your instructions Mr Pretorius?

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes, I'm instructed by the investigators to that effect. Perhaps instructions in the investigative sense rather than the adversarial sense.

CHAIRPERSON: Oh you understand from the investigators or whatever/

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: It's just that you give the wrong impression that you have a client

(laughter).

ADV PAUL JOSEPH PRETORIUS SC: True oh I understand yes Chair, so perhaps I'll change that next time. Our information too is that this investigation would have fallen in the NPA under the auspices of the Special Crimes Commission – Special Commercial Crimes Unit.

MR CLINTON OELLERMANN: Yes those are the – we were dealing with them after we handed over the report.

ADV PAUL JOSEPH PRETORIUS SC: The SCCU.

MR CLINTON OELLERMANN: Yes that's correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** And that Advocate Mgwebe was appointed the head of the SCCU shortly after the report of the SIU would have been handed to the NPA?

MR CLINTON OELLERMANN: Ja I can't comment too much on that yes.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps just for the record.

CHAIRPERSON: And that was advocate Mgwebe that you are referring to.

ADV PAUL JOSEPH PRETORIUS SC: Mgwebe yes.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The next document you refer to in your affidavit Mr Oellermann is referred to in paragraph 11.8.

20 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: And it appears in the supplementary bundle to your statement Exhibit S11 at page 417 would you go there please?

MR CLINTON OELLERMANN: I have it.

ADV PAUL JOSEPH PRETORIUS SC: That's Annexure Q8, again would you read onto the record the extracts to which you wish to refer in paragraph 11.8 of your

statement please?

MR CLINTON OELLERMANN: I will, “The Eversheds letter dated 15 November 2009 and addressed to the State Attorney, Cape Town alleged that a copy of the SIU report was furnished to the...(intervention).

CHAIRPERSON: I’m sorry Mr Oellermann where are you reading from I’m at page 418.

MR CLINTON OELLERMANN: I’m reading from my affidavit the extracts that I was referring to.

ADV PAUL JOSEPH PRETORIUS SC: Yes it’s not necessary for the witness, Chair to
10 read the whole of the Mail & Guardian matter it runs into several pages, we can do so if you wish Chair.

CHAIRPERSON: No, no I’m just trying to establish on which page he’s reading from, he’s starting...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes he’s reading from page 11 of his own statement paragraph 11.8.

CHAIRPERSON: Oh okay I thought there was a reference to the supplementary – okay page 11 of his statement okay thank you, you may proceed.

ADV PAUL JOSEPH PRETORIUS SC: Just for the record, Chair, the document referred to is at page 418 of the supplementary bundle but he’s going to read on to the
20 record certain extracts which appear at paragraph 11.8 of his statement.

CHAIRPERSON: Thank you.

MR CLINTON OELLERMANN: Shall I start again?

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: “The Eversheds letter dated 15 November 2009 and addressed to the State Attorney Cape Town allege that a copy of the SIU report was

furnished to Bosasa Operations (Pty) Ltd by Mr Gillingham's attorneys...(intervention).

CHAIRPERSON: I'm sorry Mr Oellermann your voice may have gone down after lunch just try again.

MR CLINTON OELLERMANN: Let me bring the mic closer.

CHAIRPERSON: Yes thank you.

MR CLINTON OELLERMANN: Third time luck then, Judge, I'll try again, "The Eversheds letter dated 15 November 2009 and addressed to the State Attorney Cape Town alleged that a copy of the SIU report was furnished to Bosasa Operations Ltd by Mr Gillingham's attorneys. Neither Mr Gillingham nor his attorneys could legally receive
10 disclosure of the report unless they received the prior written consent of the head of the SIU. It is my respectful submission that Bosasa Operations is in possession of an unauthorised copy of the SIU report. The mere fact that they (may have) received a copy of the report from an attorney does not in any way legalise their possession of the document. The SIU report clearly prohibits that unauthorised distribution and/or possession thereof. The confidentiality clause inserted in the report clearly states that disclosure of the contents amounts to a criminal offence".

ADV PAUL JOSEPH PRETORIUS SC: You have dealt with those facts already just to confirm that, from your knowledge, the leak would not have occurred ordinarily speaking from persons who worked with you under your jurisdiction.

20 **MR CLINTON OELLERMANN:** Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then if we could go to the next document to which you refer, that is at page 477 of the supplementary bundle.

MR CLINTON OELLERMANN: I have it yes.

ADV PAUL JOSEPH PRETORIUS SC: That is a document addressed by advocate De Kock to advocate Mogatle acting Regional Head of the Special Crimes Commercial –

Special Commercial Crimes Unit and again you have quoted two extracts from that document.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And they appear in paragraph 11.9 of your statement, would you read those onto the record please?

MR CLINTON OELLERMANN: Alright, “the SIU pointed out that they did not conduct a comprehensive financial investigation into the benefits allegedly received by Commissioner Mti because of various limitations experienced during their investigation. The investigation of the matter is not yet completed and a charge sheet has not been
10 drafted. Almost 200 statements have been obtained since the start of the investigation, we are still of the view that the investigation will take another six months to complete”.

AADV PAUL JOSEPH PRETORIUS SC: So now this communication is some three years after the report was submitted to the NPA and it refers to statement that have been obtained and a view that the investigation will take another six months after the 26th of November 2012 to complete.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that a realistic estimate, given your knowledge of the matter?

MR CLINTON OELLERMANN: I would think that would be reasonable at that point in
20 time, they list over 200 statements obtained already so yes.

ADV PAUL JOSEPH PRETORIUS SC: Then if we could go to the last document to which you refer and that is the memorandum dated 30 April 2013 from advocate De Kock to advocate Mgwebe, Special Director of Public Prosecutions, it appears at page 481.

MR CLINTON OELLERMANN: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: Please read the extracts in paragraph 11 of your statement?

MR CLINTON OELLERMANN: “I’m busy working on a draft charge sheet in respect of Patrick O’Connel Gillingham, the investigation against Gillingham has not yet been finalised and we still await the forensic audit report. Thus far I’m of the opinion that it will be possible to enrol the matter during the second half of 2013 as indicated before. It would, theoretically, be possible to enrol the case against Bosasa or individuals mentioned in paragraph 1.3.1 above, within the next six months from this date. It is very difficult to give an accurate estimate on the future events but I foresee the
10 prosecution of both Bosasa and Mti within the next 18 months”.

ADV PAUL JOSEPH PRETORIUS SC: Again, it seems that there has been some extension of the forecast time from what was said in 2012 but again a far cry from ten years from 2009.

MR CLINTON OELLERMANN: Yes that’s correct.

ADV PAUL JOSEPH PRETORIUS SC: Again this sort of information, would it be of any interest or use to potential accused if it is leaked to them?

MR CLINTON OELLERMANN: Yes I believe it would, I mean it gives insight into the tracking and progress of the investigation, what is still outstanding, where there might be shortfalls in the investigation and prosecution.

20 **AADV PAUL JOSEPH PRETORIUS SC:** Right that then deals with the documents handed up to the Commission by Mr Agrizzi which he said had been leaked to him, apparently, unlawfully and you confirm that?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And you confirm generally, as I understand from your evidence, and to summarise that all that information would indicate a

selection – a knowing selection of documents to be handed to potential accused which would be of use to them?

MR CLINTON OELLERMANN: Invaluable in my opinion.

ADV PAUL JOSEPH PRETORIUS SC: Not a random selection?

MR CLINTON OELLERMANN: Not at all no.

ADV PAUL JOSEPH PRETORIUS SC: Right, there are a number of issues which you may still be able to assist the Chair with and we can take the opportunity now to go through them with you. The first deals with the destruction of documents at the time the SIU began its investigation. That is dealt with in your report – the SIU report at page 50
10 of the bundle.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Who's Mr Malan or who was he?

MR CLINTON OELLERMANN: So Mr Malan was a – is a cyber-forensic expert who was appointed by the SIU to assist with the imaging and obtaining digital forensic evidence from Bosasa which was going to be crucial for the investigation.

ADV PAUL JOSEPH PRETORIUS SC: What happened in relation to the attempt by the SIU to obtain evidence and any delays and what happened in the period of the delay, if you'll just, from your own recollection tell the Chair what actually happened please and I understand that you were with Mr Malan when he attended at the
20 premises?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: What happened?

MR CLINTON OELLERMANN: So initially – well the meeting with – we had a meeting with Bosasa where they approached us and said they had information that we were going to conduct a search and seizure of their premises.

ADV PAUL JOSEPH PRETORIUS SC: Had you given them this information?

MR CLINTON OELLERMANN: Not at all no, it was part of our planning at the time so where they obtained the information, I'm not sure but this – they approached us through their lawyers and we met at counsel and there was an agreement that they would allow us to image their servers and get access to the serves and image them digitally and forensically. Subsequent to that there was a slight delay...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Why was there a delay, why didn't you go immediately?

MR CLINTON OELLERMANN: Well I can't recall off-hand the reasons for it but they
10 submitted that we couldn't go immediately they would need time to prepare everything and we would then be allowed an opportunity to go in...(intervention).

CHAIRPERSON: Do you recall who the people were from Bosasa with whom you were dealing so that we don't talk about, just they?

MR CLINTON OELLERMANN: Mr Vicchi was at the meeting so he was the one who – and even when we met at Bosasa, he met us at Bosasa where we did the imaging of the servers. So we eventually did go to Bosasa...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Just before you go on and tell us what happened and what Mr Malan and you discovered at Bosasa, normally when you do a search and seizure it's common knowledge that you would not forewarn the subjects of
20 the search and seizure operation, for fear that documents may be destroyed or tampered with.

MR CLINTON OELLERMANN: Yes that's correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: So is it usual to have a situation where, not only do the subjects of the search and seizure operation have forewarning of the operation but persuade the people that are going to conduct the search and seizure to

hold off for a time so that they can, as you put it, prepare?

MR CLINTON OELLERMANN: No I wouldn't say it's usual at all.

AADV PAUL JOSEPH PRETORIUS SC: What is the danger?

MR CLINTON OELLERMANN: Well it gives them the opportunity to sanitise the server if I could put it that way and be selective of what is there for us to image and destroy information and when we go – and we do eventually go ahead and image the servers that information would then be lost so it would be records pertinent to the investigation that would be destroyed and lost.

ADV PAUL JOSEPH PRETORIUS SC: What happened in this case?

- 10 **MR CLINTON OELLERMANN:** We arrived at Bosasa, we met Mr Agrizzi, he took us to the servers he (indistinct) the server room, Mr Malan then prepared to image the servers and we did this over a period of a few nights because of the size of the servers that needed to be imaged but I think it was the second or night that we were there, Mr Malan came to me and he said, look, he can see in the file directories that there seems to be a number of files that are missing. He suspects that there may have been files that were deleted, so he said he would pick it up in the course of his analysis should that be true. Subsequent to that when he had imaged the servers and he began the analysis of the information, he then reported to me that he'd identified a particular software known as "eraser" which had been employed on the servers and he said he
- 20 had identified thousands of files, I think it was over 40 000 files that had been intentionally destroyed or deleted from the server.

CHAIRPERSON: But you, initially, you intended to go and carry out this search and seizure on a particular day.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: And you were asked to – not to proceed.

MR CLINTON OELLERMANN: Yes there was a – they gave an excuse to say that they can't do it that day, someone wasn't available, I think they said they had to attend a funeral or something like that and they weren't available so they asked us for a delay of about two days or so – two to three days.

CHAIRPERSON: So you agreed to that request?

MR CLINTON OELLERMANN: Well my principals agreed to that yes.

CHAIRPERSON: Ja your...(intervention).

MR CLINTON OELLERMANN: The SIU agreed to it yes.

CHAIRPERSON: Yes the SIU people agreed to the request.

10 **MR CLINTON OELLERMANN:** Yes.

CHAIRPERSON: Where you then, simply told that there's been this request, we have accepted it don't proceed today you're proceeding in two days' time or something like that?

MR CLINTON OELLERMANN: Yes that is correct yes.

CHAIRPERSON: Yes and as at that time you had been an investigator for about, what, ten years or so, yourself, I'm just thinking you told us you've been...(intervention).

MR CLINTON OELLERMANN: Yes perhaps a little bit longer, yes Chair.

CHAIRPERSON: Sorry?

MR CLINTON OELLERMANN: Perhaps a little bit longer at that time yes.

20 **CHAIRPERSON:** Yes, so you had quite some experience already.

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Had that kind of thing ever happened when you had wanted to carry out a search and seizure?

MR CLINTON OELLERMANN: To me, personally no.

CHAIRPERSON: Ja you had no experience...(intervention).

MR CLINTON OELLERMANN: It was quite peculiar.

CHAIRPERSON: You had no experience of that?

MR CLINTON OELLERMANN: Yes, it did raise that concern that Bosasa seemed to have an insight track into the investigation at times, they would almost know what we were planning or if we were planning something they would try and obstruct it, which is why the head of the unit took this decision to separate Bosasa investigation team from the rest and we were given a specific area where all our documents and information was kept. In fact we weren't even on the SIU servers we were given a dedicated server outside of the SIU environment where we the conducted the investigation from there.

10 **CHAIRPERSON:** But at the time that you were told about this request, the reason that was given, was it sound to you?

MR CLINTON OELLERMANN: Obviously as an investigator I had my suspicions that this was just delaying tactics.

CHAIRPERSON: So you had that suspicion?

MR CLINTON OELLERMANN: I did have that suspicion yes.

CHAIRPERSON: Did you raise this concern with the SIU principals?

MR CLINTON OELLERMANN: We had a discussion around it and, I mean, the decision was taken that they were – they had given us access, we were going to proceed on a particular day, they've raised this issue and that we should continue –
20 we'll grant them the extra extension and then we'll go in. I mean, our cyber forensic expert did tell us that if they had – if they did destroy files it would be likely that he would find that they had destroyed files as well, which is what happened in the end.

CHAIRPERSON: But from your own point of view, what was your position, do you accept the reason that was given as a valid reason not to carry out this search and seizure or was the position that you raised the issue with your principals and they said

whatever they said, you said whatever you had to say but the decision remained?

MR CLINTON OELLERMANN: Yes like I said I had my suspicions but the decision was taken – and I raised my suspicions and the decision was taken to proceed in that manner and that's what happened.

CHAIRPERSON: And as you recall there is – the reason was that a particular person was not available that Bosasa thought was needed?

MR CLINTON OELLERMANN: Yes that's the...(intervention).

CHAIRPERSON: But would you normally need somebody to assist you for this kind of thing from the subjective investigation, or maybe sometimes, maybe sometimes not?

10 **MR CLINTON OELLERMANN:** You see we didn't know the environment that we were going into so we didn't know how their servers were structured and how their architecture was structured so it would be very difficult to comment on how access needed to be given. Their argument was, they had a dedicated people that were in charge of their IT and because of security reasons only certain people could access it and these people weren't available.

CHAIRPERSON: So but what I'm asking is whether normally when you carry out search and seizure processes, you would depend on assistance from the subjective of such a process?

20 **MR CLINTON OELLERMANN:** No in my experience you wouldn't, if you execute a search warrant for example, you would take along your cyber forensic expert and you would get there, you would shut down their system and you would then image their devices or servers that you would want to – that you would want to have imaged and you wouldn't require their service, you may want to speak to their IT person just to get a layout of their architecture and where – there may be servers off-site or something like that which you need to know about, things like that.

CHAIRPERSON: Ja but those people, if they like to – if they didn't want to cooperate they could refuse to answer questions or not, if you asked for assistance, generally speaking, if you want to carry out a search and seizure, you come, you are ready to carry it out but you think you must talk to some IT person, are they not entitled to refuse to answer questions if they want to?

MR CLINTON OELLERMANN: They may be yes.

CHAIRPERSON: They may be, so it's critical that you should be able to carry out this search and seizure without – despite any lack of cooperation?

MR CLINTON OELLERMANN: Exactly that's why you bring your own experts on board
10 so they can do the imaging, independently of any interference from the entity who's electronic data that you're imaging.

CHAIRPERSON: Yes because purely from the point of view that normally you won't give notice to the people who will be affected by this search and seizure, it must mean that you must be able to carry it out without their cooperation because you want to take them by surprise and you want to be able to do whatever you need to do on your own.

MR CLINTON OELLERMANN: Yes I agree totally.

CHAIRPERSON: But that just emphasises the point, therefore, that it's quite strange that the SIU principals agreed to this request because you are not meant, generally speaking, to require anybody's assistance to get – to carry out this search and seizure.

20 **MR CLINTON OELLERMANN:** Yes.

CHAIRPERSON: So one would have expected that they would say, no, no we don't need anybody we'll be able to do what we need to do.

MR CLINTON OELLERMANN: I agree with you. The problem we had is that as soon as Bosasa approached us and said, we understand you want to come and do a search and seizure at our premises, we're inviting you to come and image our servers, I mean,

the cats out the bag, you've lost the element of surprise. So whether they delayed it by a day or two days or whatever it's almost immaterial because the mere fact that they approached us, they could have had ample opportunity to have destroyed or sanitised the servers before approaching us, you know.

CHAIRPERSON: And it's even stranger that the request is agreed to.

MR CLINTON OELLERMANN: Well we agreed to it on the principle that we would take our experts and go and image the servers as we would if we had done a search and seizure operation.

CHAIRPERSON: Yes Mr Pretorius.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Well, as the Chair says, and the legal team agrees, all these circumstances are very strange but let's look at what the report says so that the facts are there in their proper sequence. Paragraph 5 of the report on page 50 of your bundle says, "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", that is correct?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then you say, "the SIU served notices in terms of Section 5(2) (b) & (c) of the Act on Bosasa requesting *inter alia* that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies
20 of relevant data relating to this investigation". Now is it correct that you served notices on Bosasa requesting access to their servers?

MR CLINTON OELLERMANN: Yes that is correct.

AADV PAUL JOSEPH PRETORIUS SC: The information that Bosasa had independent knowledge of the intention of the SIU to seize documents or documentary evidence was that independent of this notice?

MR CLINTON OELLERMANN: Yes I believe it was.

ADV PAUL JOSEPH PRETORIUS SC: So quite apart from the notice that you served Bosasa knew in any event that there was to be a search operation?

MR CLINTON OELLERMANN: Yes it appeared so, from the meeting that we had with them yes.

CHAIRPERSON: Is that notice a notice required by the SIU Act?

MR CLINTON OELLERMANN: Yes that's correct. : But this was done as a formality, they had already agreed to – this was subsequent to the meeting, so they agreed for us to image their servers. We formalised it through the Section 5 (2) (b) notice to say –
10 and that's where it says, in terms of the agreement we would be granted access to the servers.

ADV PAUL JOSEPH PRETORIUS SC: So the proper sequence then, as I understand it, Mr Oellermann is that you were informed, you being the SIU were informed that you intended to conduct a search and seizure operation.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: You were told that by Bosasa.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: That was, in fact correct that, that information that they had was correct, you did have such an intention.

20 **MR CLINTON OELLERMANN:** It was in our planning we hadn't determined where and how it was going to be done yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright so you had a plan to conduct such an operation, it hadn't been detailed in any form?

MR CLINTON OELLERMANN: No.

ADV PAUL JOSEPH PRETORIUS SC: No particular date or process had been

(indistinct) it was merely a plan.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That plan was obviously then leaked to Bosasa who then said we know of your plan to come and search for documents, is that correct?

MR CLINTON OELLERMANN: Based on the events that happened, that is my summation.

ADV PAUL JOSEPH PRETORIUS SC: A meeting was then held?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Before any formal notice was issued?

10 **MR CLINTON OELLERMANN:** That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And at that meeting, Bosasa asked for an extension of time because someone had to attend a funeral and they had to "prepare" and several days later, and it's summarised in the table below, the operation, then took place.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Paragraph 3 on page 50 reads:

"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, is that correct?

20 **MR CLINTON OELLERMANN:** Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: So it was a week's extension that was required?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: To attend funerals and prepare?

MR CLINTON OELLERMANN: It would seem so yes.

ADV PAUL JOSEPH PRETORIUS SC: Then from 8 to 16 December 2008 the SIU made mirror images of the data on the Bosasa file server, environment domain controller system, email server, financial system server as well as of the personal laptops of Mr Agrizzi, Mr Van Tonder and Mr Vorster. Is that correct?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: It also states here that during the imaging process the SIU was denied access to one server. What happened there?

MR CLINTON OELLERMANN: So whilst we were imaging the servers Mr Malan came to me and said he had identified a server that they had not disclosed to us and he
10 wanted access to it which they then refused. And then it was only after – we then reported it to Mr Wells who was our – or Advocate Wells who was our head legal supporting the investigation and then he contacted Agrizzi and they had a discussion and then we were granted access.

ADV PAUL JOSEPH PRETORIUS SC: Then the last paragraph on page 50 reads:

“Malan analysed the data obtained from Bosasa using key word 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 server – on the servers.

Table 1 below reflects the dates on which the data was erased.”

20 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Then there is a table below which refers to documents being erased from particular servers on particulars dates.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: We read here from Mr Malan’s report presumably that the domain server ADS1 had 32 769 documents and folders deleted on

the 24 July 2008.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The comment is ‘documents appeared to have been overwritten and then deleted, correct?’

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The second entry on the table says:

“In relation to domain server ADS01 60 documents and folders were deleted on 2 December 2008 mostly archived documents as the comment were overwritten and deleted.”

10 And this is during the period of the requested delay?

ADV PAUL JOSEPH PRETORIUS SC: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: So we have expert evidence and if it is contradicted we can call Mr Malan he is available to the effect that during the period that Bosasa had requested the search be delayed documents were deleted?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: The third entry reads:

“File server document and folder count 116. The date of modification and deletion 3 December 2008. The comment is folder names appear to have been overwritten with random data and then deleted.”

20

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So this modification and deletion process took place over the period 2 December 2008, 3 December 2008 and we will see now further dates during that period. But essentially during the period of the delay requested by Bosasa?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Then over the page the table continues;

“File server 468 documents and folders were dealt with, tampered with on the 4 December 2008. The comment is folder names appear to have been overwritten with random data and then deleted.”

MR CLINTON OELLERMANN: And deleted.

ADV PAUL JOSEPH PRETORIUS SC: Again the third consecutive day during the delay period?

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then the 6 December 2008 still during that delay period.

“Domain server ADS01 which is the same server as mentioned previously 7130 documents and folders tampered with on the 6 December 2008 documents appear to have been overwritten and then deleted.”

20 So in summary what the evidence contained in the report shows is that your forensic expert Mr Malan was able to ascertain that during the period of the requested delay on at least four days during that period a substantial amount of documentation was deleted or destroyed?

MR CLINTON OELLERMANN: Yes. That is correct yes.

CHAIRPERSON: I take it that if no postponement had been granted you – your team would have got all of those documents?

MR CLINTON OELLERMANN: Based on the dates that they were deleted.

CHAIRPERSON: At least the ones that were...

MR CLINTON OELLERMANN: Yes.

CHAIRPERSON: Seemed to have been deleted during the first week of December?

MR CLINTON OELLERMANN: Yes Chair. I would agree with that yes.

ADV PAUL JOSEPH PRETORIUS SC: Then the next paragraph on page 51 reads:

“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.”

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And let us just skip the next paragraph and we

10 will come back to it. The last paragraph reads:

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

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So it seems from Malan’s report at least
included in your SIU report, I use the word “Your”

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Loosely. At least to an extent the attempts to
20 destroy data were unsuccessful?

MR CLINTON OELLERMANN: Yes he was able to recover a large amount of the
deleted files yes.

ADV PAUL JOSEPH PRETORIUS SC: But were – are you satisfied that he could
recover all of the data?

MR CLINTON OELLERMANN: No I cannot say that at all no.

ADV PAUL JOSEPH PRETORIUS SC: So the SIU did not know and you did not know in your investigations whether you had a complete ...

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Set of documentation?

MR CLINTON OELLERMANN: That is correct. Once something is deleted you do not know what you do not have. So, yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes. And then if we can go back a paragraph...

CHAIRPERSON: One second. Is it more correct that from – that your understanding is
10 that not all documents were recovered?

MR CLINTON OELLERMANN: That is my understanding.

CHAIRPERSON: In other words – in other words from the discussions with Mr Malan at that point do you know whether the position is that only some even though maybe quite a significant number or maybe most were recovered but not all were recovered or is the position that you do not know whether all were recovered or not?

MR CLINTON OELLERMANN: Yes I do not know if all were recovered.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: Must – as Mr Malan said he was able to recover information.

20 **CHAIRPERSON:** Ja.

MR CLINTON OELLERMANN: And in his view it was ...

CHAIRPERSON: Significant.

MR CLINTON OELLERMANN: A significant amount.

CHAIRPERSON: Okay.

MR CLINTON OELLERMANN: However we cannot say – I cannot say with any

certainty to what extent.

CHAIRPERSON: Ja.

MR CLINTON OELLERMANN: The deleted files remained unrecoverable.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The paragraph just above the final paragraph reads:

10 “Malan also analysed the mirror image of Gillingham’s computers
 and other electronic data storage facilities obtained during a
 search conducted at Gillingham’s residence in terms of Section 6
 of the Act. 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.”

Are the contents of that paragraph consistent with your own personal memory of what happened?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Is there anything that you need to add or wish to add?

20 **MR CLINTON OELLERMANN**: No I think we did conduct a surprise search at the
 premises of Mr Gillingham. So when – when we – that was separate to the imaging of
 the computers. We conducted a separate search of the premises where we seized a
 number of documents and things like that which we then – became evidence which is
 discussed in our report. The – Malan’s report to me was as it is stated in this report is
 that he did find eraser software on Gillingham’s computers.

CHAIRPERSON: Going back to the documents that were – that Bosasa had tried –
had deleted did your team confront Bosasa, Mr Agrizzi or any of the people to say, you

people asked for a postponement and we see that during that postponement you actually deleted documents and if you did, did they give you any answer or explanation?

MR CLINTON OELLERMANN: I am not aware that we approached them after that.

CHAIRPERSON: Yes.

MR CLINTON OELLERMANN: Chair no.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: That relates to a point you mentioned a moment ago Mr Oellermann. Your observations about the knowledge that Bosasa had
10 of the investigation during the course of the investigation you mentioned that they were one step ahead. It seemed to you that they were one step ahead. Can you explain that to the Chair please? Was this usual, unusual in your experience?

MR CLINTON OELLERMANN: Well it is highly – yes. Well my experience would be highly unusual. But it did seem to us as the investigating team that the – we would always encounter obstacles along the way where it seemed that Bosasa had an idea, a very good idea of where we were with the investigation and what the next steps might be. So that was – and then we were of – we did at intervals receive lawyers letters from them and that is also what led to the interdict which we discussed earlier. So throughout the course of the investigation there were these regular incidents which
20 occurred which as I say to me particularly and other members of the investigating team it seemed that they had a very good idea or a very good knowledge of the progress of the investigation and where we were with the investigation.

ADV PAUL JOSEPH PRETORIUS SC: You told the investigators of a visit from Crime Intelligence that you received. Would you tell the Chair about that please?

MR CLINTON OELLERMANN: Yes it was – whilst I was at the office at the SIU busy

with the investigation I was approached by a Captain from the Crime Intelligence Services in Gauteng. I cannot recall his name but he wanted to see me specifically. And during the course of the meeting he informed me that he had received information from a source he had within Bosasa that they had a list of who the investigators were that were conducting the investigation for the SIU and they knew who we were and who – what our identities were. They – he went further on to say that they were trying to acquire more personal information about us and that there was going to be an attempt to discredit the investigation team and me personally he said that they were trying to get my bank details so that they could make an anonymous deposit into my bank
 10 account and so discredit me and taint the investigation and have me removed from the investigation. I reported this to my principles and nothing much happened from there besides – there was no anonymous money in my account that was deposited.

ADV PAUL JOSEPH PRETORIUS SC: What steps were taken within the SIU to prevent this sort of thing happening in relation to privacy, in relation to your bank accounts?

MR CLINTON OELLERMANN: Yeah. Well when I was at the SIU we – part of your employment contract there is a waiver where you sign that the SIU can access your bank account and personal particulars as an employee and do consistent profiling of you to see whether there is anything suspicious happening in your bank accounts or
 20 anything like that.

ADV PAUL JOSEPH PRETORIUS SC: What was the position with regard to instructions given to you to make reports on the progress of the investigation?

MR CLINTON OELLERMANN: Reports to my principles?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR CLINTON OELLERMANN: Yes. Well given the sensitivity of the matter were were

– we reported quite frequently on progress particularly we were at the point where the interdict issue came. We had to report regularly to make sure that we were operating within the agreement and that we were not exceeding the agreement that had been reached so that there could be any form of legal challenge. So we were reporting at least once a week, sometimes twice a week and if we were coming across anything which was considered important then I would relay that information immediately to my principles.

ADV PAUL JOSEPH PRETORIUS SC: So as soon as you in the course of your investigation and prior to the issuing of your report came across something that you say
10 might have been important you reported that into the system to your superiors?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What is the normal practice once a report is handed over say to the National Prosecuting Authority, what would happen normally?

MR CLINTON OELLERMANN: Well normally we would hand over the report. There would be a – we would give them an opportunity to go through the report and then we would meet with them to see whether they had any concerns or questions or any issues of clarity that needed to be dealt with. And then we would – if they were satisfied that there was indeed a criminal offence that would – that has been committed, that needs to be investigated further or that may lead to a prosecution then we would embark on
20 the process of handing over all the evidence and giving them everything that they need for a criminal docket to be registered and for the case to be continued on with the criminal prosecution.

ADV PAUL JOSEPH PRETORIUS SC: Ordinarily once a matter had been handed over then to say the National Prosecuting Authority would you be able to detect whether there was an interest – a momentum or a keenness to take the matter forward?

MR CLINTON OELLERMANN: Yes I believe so. I mean we would have meetings and there would be regular follow up meetings and matters would then proceed from there.

ADV PAUL JOSEPH PRETORIUS SC: And to your knowledge and in terms of your experience was there such a momentum of satisfactory precaution in this case?

MR CLINTON OELLERMANN: Well we handed over the report at the end of 2009. We had regular meetings initially and then they raised some concerns. They said they needed to go back with – internally within the NPA and have the matter discussed. I did a few more presentations after that but by the time I had left the SIU and in October 2012 the matter had not been – and a case had not been registered and there had not
10 been much momentum on the investigation.

ADV PAUL JOSEPH PRETORIUS SC: And you have already commented on the delay between 2009 and 2019 a ten year delay and you have already referred to that as incomprehensible. Do you have any further comment in the light of your evidence now?

MR CLINTON OELLERMANN: I can only say I mean I have been in – involved in investigations for many years. There are matters which will be – will go through the court and then stop. But then they have at least – people have been charged and then there are reasons within the criminal justice system where there are delays. But this matter has not got there yet after ten years. You know we are only now being charged.
20 I have no insight into the investigation that was done subsequent to us handing over the SIU report to them. I mean they may be able to answer with legitimate reasons as to why the investigation has taken so long. But in my experience shall I say it is unique that it has – the matter has taken so long to get to court.

ADV PAUL JOSEPH PRETORIUS SC: And you already testified as to the contents of a meeting where Advocate Simelane reported to the two Ministers concerned. The

Minister of Justice and the Minister of Correctional Services.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In regard to the prospects of a successful prosecution and to put it mildly the prospects of a successful prosecution were entirely trashed at the meeting?

MR CLINTON OELLERMANN: It does seem so yes.

ADV PAUL JOSEPH PRETORIUS SC: It seems that there has been a change of heart and perhaps there will be some explanation in evidence for that? What I want to deal with is one issue that was raised in the correspondence and that is the visit to the
10 parliamentary portfolio committee.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You were part of that visit?

MR CLINTON OELLERMANN: Yes I was.

ADV PAUL JOSEPH PRETORIUS SC: Tell the Chair what happened please?

MR CLINTON OELLERMANN: Well – I mean the SIU is required from time to time to report to parliament on various matters.

ADV PAUL JOSEPH PRETORIUS SC: Required by statute?

MR CLINTON OELLERMANN: Yes that is correct. Yes. Because I was involved in this investigation we were giving some feedback on the Correctional Services
20 investigations in general where the head of the unit at the time Mr Willie Hofmeyr he presented the SIU's – some of the key findings that we had made during the course of the investigation but he – to the best of my recollection he did not – he was not specific with names and things like that. But he did give an indication of some of the major concerns that were arising during the course of the investigation.

ADV PAUL JOSEPH PRETORIUS SC: Can you recall more or less when that visit

took place?

MR CLINTON OELLERMANN: I cannot recall precisely. It was also in 2009 I think it was.

ADV PAUL JOSEPH PRETORIUS SC: What was the response of the parliamentary committee or members of the parliamentary committee to the report, can you recall?

MR CLINTON OELLERMANN: Yeah most of them were very shocked at what they were learning had been uncovered during the course of the investigation. I remember afterwards one of the – one of the members of parliament where we were standing talking and he came he explained to us that he never – he never experienced such
10 blatant irregularities and evidence of possible corruption and he was – and he asked us to make sure that this matter gets finalised and gets given to the relevant authorities.

ADV PAUL JOSEPH PRETORIUS SC: You have told the Chair that in 2009 the report was actually served on the relevant Minister and the Department of Correctional Services.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Did they ever respond to you or come back to you and say, we are concerned about this we would like to understand more about it and we would like some feedback from you. Did they ever communicate with you?

MR CLINTON OELLERMANN: They communicated with us insofar as it led to the –
20 the disciplinary proceedings being instituted against Patrick Gillingham. So we had a number of meetings. A disciplinary was actually convened. I met with the initiator and we prepared for the disciplinary hearings.

ADV PAUL JOSEPH PRETORIUS SC: Did the disciplinary hearing take place promptly? Were there delays?

MR CLINTON OELLERMANN: No it – on the morning of the date that it was

scheduled to commence Mr Gillingham resigned and his resignation was accepted by the department. So we did not proceed with the disciplinary proceedings. But apart from that I was never consulted before I left the SIU on any of the other recommendations around the termination of the contracts and things – and other aspects that were raised.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Because the work of the SIU does not only involve criminal prosecution as I understand it or investigation into criminal acts it is wider.

MR CLINTON OELLERMANN: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Tell the Chair about that please?

MR CLINTON OELLERMANN: Well as I sort of indicated earlier that the role of the SIU is to identify and investigate mal-administration, issues of state institutions, public money that is lost and to recover those monies. So it is a big civil element to the SIU investigations. In fact that is probably the primary focus is to – is to – where mal-administration occurs is to make sure that the – that reversed and that the remedies are implemented that are recommended for action as a result of the investigations. Many of them are civil actions so overturning of contracts, recovering of losses, damages, etcetera.

ADV PAUL JOSEPH PRETORIUS SC: Were you ever asked by the Department of
20 Correctional Services to assist or advice in any way in relation to any civil proceedings?

MR CLINTON OELLERMANN: Not to the best of my recollection no.

ADV PAUL JOSEPH PRETORIUS SC: Alright it is necessary to just go through one more piece of evidence with you and that is the findings contained in the report. If we could go please to page 19.

MR CLINTON OELLERMANN: I have it yes.

ADV PAUL JOSEPH PRETORIUS SC: At page 19 is an executive summary and on that page you record the background to the investigation. Are the facts set out in that part of the report correct?

MR CLINTON OELLERMANN: Yes they are correct.

ADV PAUL JOSEPH PRETORIUS SC: And if we may just satisfy ourselves that if we refer to the executive summary and the findings in the executive summary we will have an accurate reflection of what is contained in the main body?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright then let us deal then with the findings in
10 respect of the kitchens tender. They appear on page 20 and 21 of the report.

MR CLINTON OELLERMANN: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: A number of findings are made. The first of which is contained in the second paragraph which speaks about deviations from supply chain management prescripts issued by National Treasury, is that correct?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: There were such deviations found by you in the procurement process?

MR CLINTON OELLERMANN: Yes indeed.

ADV PAUL JOSEPH PRETORIUS SC: You also found that Gillingham outside the
20 course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Insofar as there has already been evidence that they indeed occurred. You confirm that that is a correct reflection of your investigation and the findings of your investigation?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: The next paragraph reads:

“On the evidence of a whistle-blower a former employer of Bosasa, Bosasa irregularly participated in drafting the specifications for this tender. On the evidence of the witness the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders.”

10 To the extent that Mr Agrizzi gave evidence to that effect that appears from your report to be correct.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Can you confirm that that is what you investigated and that is what you found?

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And then there is reference in the next paragraph to documents obtained from the computers of Mr Gillingham and Mr Agrizzi which confirmed irregular participation in compiling the specifications for the tender.

MR CLINTON OELLERMANN: Yes correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And then finally you say in – or the report says in the last paragraph on page 20:

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

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC:

“The evidence further shows that Mr W D Mansell and Mr J Smith both employees of the Bosasa Group were instrumental in effecting these benefits to Gillingham and Commissioner Mti.”

And then you make certain further findings in relation to those benefits. Is that what you investigated?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that what you found?

10 **MR CLINTON OELLERMANN:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you were satisfied that you had sufficient information to make those findings?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Then you made certain recommendations in respect of the kitchens tender. The first recommendation was that the Department of Correctional Services should consider instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by the – sustained by the DCS on account of the award of the kitchens tender to Bosasa. Do you know whether that occurred?

20 **MR CLINTON OELLERMANN:** I am not aware that that did occur.

ADV PAUL JOSEPH PRETORIUS SC: That will have to be the subject of further evidence from the Department Chair. Then the disciplinary proceedings against Gillingham actually did occur you have told the Chair.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then the final recommendation is that the

NDPP consider criminal proceedings against Gillingham, Mti, Bosasa, the latter's office bearers, Mansell, Agrizzi and Smith, do you see that?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Then further on you make findings in respect of Access Control Tender HK2/2005. This appears to be a tender awarded not to Bosasa but to a related company within the Bosasa Group?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Sondolo IT?

MR CLINTON OELLERMANN: Yes.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** We have heard about that. Again your finding is that there were deviations from the Supply Chain Management prescripts. Correct?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Again findings against Gillingham in relation to his participation and the award of the tender. Is that correct?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Similar findings in relation to irregular participation and the drafting of the bid specifications for the tender. Was that your finding?

MR CLINTON OELLERMANN: Yes that is correct.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** Based on the evidence that you discovered?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And analysed and then from your findings it appears that the award to Sondolo IT was as you refer to it in the last paragraph on that page obviously irregular.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you refer to financial benefits having been received by Mr Gillingham without lawful course according to your findings?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the evidence further shows you say that Mansell and Smith were instrumental in affecting those benefits to Gillingham?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You see that? Those findings that you make on pages 22 and 23 which we have now summarised perhaps a little superficially but nevertheless they are there on record.

10 **MR CLINTON OELLERMANN:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Can you confirm that they were actually your findings based on evidence that you examined?

MR CLINTON OELLERMANN: Yes I can confirm that Chair.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 2 on page 23 the following comment is made:

20 “The SIU did not conduct a comprehensive financial investigation as in the case of Gillingham 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.”

Explain to the Chair what has been said here and what the reference is to limitations please.

MR CLINTON OELLERMANN: Okay. So this relates to what we discussed earlier

Chair in terms of the limitations on the scope of the investigation. So we had proceeded with the financial investigation into Mr Gillingham, but when we got to conducting the financial investigation with Mr Mti that was during the period where Bosasa approached the court to get an interdict against the investigation and that was also during the period when we reached the agreement that we would not continue with the investigation into those officials.

ADV PAUL JOSEPH PRETORIUS SC: Recommendations made by the SIU in this report appear at the foot of page 23 at least in respect of the second tender that we.

MR CLINTON OELLERMANN: Yes.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Are now referring to. Firstly the recommendation was that the DCS, Department for Correctional Service considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the Access Control Tender to Sondolo. Is it also correct may I presume that no such civil proceedings came to your knowledge?

MR CLINTON OELLERMANN: Yes. I am not aware of any such civil proceedings.

ADV PAUL JOSEPH PRETORIUS SC: Disciplinary proceedings against Gillingham are once again recommended. You have given that evidence and then criminal proceedings are also recommended to be instituted under the auspices of the National

- 20 Director of Public Prosecutions.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: On page 24 there is a summary of findings in respect of the Fencing Tender HK24/2005 which was awarded on 29 November 2005 to Phezulu Fencing (Pty) Ltd an affiliate company within the Bosasa Group.

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Again the findings refer to deviations from procurement directives?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Can you confirm that that is in fact what you found?

MR CLINTON OELLERMANN: I confirm that is what we found, yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Once again the evidence shows according to the report that:

10 “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.”

You can confirm that?

MR CLINTON OELLERMANN: I can confirm that yes.

ADV PAUL JOSEPH PRETORIUS SC: Further irregularities appear highlighted in the next paragraph in relation to evaluation criteria. You made those findings?

MR CLINTON OELLERMANN: Yes, I have.

ADV PAUL JOSEPH PRETORIUS SC: And in the next paragraph you highlight that:

20 “An issue of consent to the issue was the fact that substantial
payments were made to Phezulu at the outset of the contract
without adequate performance.”

And you refer to the examination by SIU of payments made to Phezulu in respect of this tender and it appears that:

“In terms of the contract provisions 90 percent of the contract price was payable on delivery of raw materials to construction sites.”

MR CLINTON OELLERMANN: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And then you made conclusions about fiscal dumping?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: You make further observations in the final paragraph on page 24 that:

“The award of the tender was irregular because the bid did not comply in relation to performance by a certain date...”

MR CLINTON OELLERMANN: That is correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** “...with the tender specifications.”

It seems to that the observation is made that:

“In the Bid Evaluation Committee Gillingham scored the service providers referred to above that is the competing service providers who had complied with the time deadlines nought out of six for time...”

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: “...and Phezulu a full six points despite the fact that it expressly did not comply.”

MR CLINTON OELLERMANN: Very clearly.

20 **ADV PAUL JOSEPH PRETORIUS SC:** As you say:

“The SIU finds this approach by Gillingham incomprehensible.”

MR CLINTON OELLERMANN: Correct [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: Do you stand by that finding?

MR CLINTON OELLERMANN: I do indeed.

ADV PAUL JOSEPH PRETORIUS SC: It seems obvious on the face of it and in the

third paragraph the evidence clearly indicates that Gillingham had received financial benefits after the award of this and previous two tenders. In the next paragraph you make the same observation in relation to Mti that you made in relation to the previous tender investigated.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That it was not fully investigated because of the limitations you have referred to in your evidence?

MR CLINTON OELLERMANN: Yes correct.

ADV PAUL JOSEPH PRETORIUS SC: And then there was a failure to disclose
10 benefits. Before we go to the next issue which are the recommendations and then the final tender findings, what strikes one about reading your findings is that the evidence was fairly concentrated, fairly limited and reasonably clear.

MR CLINTON OELLERMANN: [No audible reply].

ADV PAUL JOSEPH PRETORIUS SC: You nod.

MR CLINTON OELLERMANN: Ja, I agree.

ADV PAUL JOSEPH PRETORIUS SC: In the light of the quality of the evidence that you had and the nature of the findings that you made on the basis of that evidence can there be any rational basis for a delay of 10 years?

MR CLINTON OELLERMANN: In my opinion no, I do not understand it.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And then the recommendations in respect of the Fencing Tender are set out at the bottom of page 25.

“The SIU recommends that the DCS considers instituting civil proceedings.”

Again I presume your evidence is the same as in respect of the previous tender?

MR CLINTON OELLERMANN: Yes that is correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: Disciplinary proceedings against Gillingham are again referred to and criminal proceedings in the same terms as previously advised/

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then on page 26 you deal in summary with the final tender that is the contract awarded on 3 March 2006 to Sondolo IT?

MR CLINTON OELLERMANN: Correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: Similar findings are made in respect of the participation of Gillingham and his receipt of benefits?

MR CLINTON OELLERMANN: That is correct.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Similar findings to those made in respect of the other tenders. Again you make the same observation in regard to the limitation of your investigation in relation to benefits received by Commissioner Mti?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But once again you say the limited evidence gathered indicates that he did indeed receive benefits from Bosasa or it reads literally indicates that he received benefits from Bosasa some months before the Television Tender was granted and again you make the same recommendations?

MR CLINTON OELLERMANN: Correct that is correct.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** If you will bear with me a moment please. On Roman page XIII, Roman numeral page XIII on page 31.

MR CLINTON OELLERMANN: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: That is the last page of the section where you set out your terms of reference.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In the last paragraph you say or the report

says rather:

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

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Firstly was the SIU aware of other dealings between Bosasa and Correctional Services that might have warranted its investigation?

MR CLINTON OELLERMANN: There were indeed other tenders that were awarded to Bosasa by the Department of Correctional Services or their group of companies, but
10 they did not form part of this investigation.

ADV PAUL JOSEPH PRETORIUS SC: And the reason it did not form part of the investigation is firstly because that is what the proclamation authorising your investigation said?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And secondly you refer to a legal challenge. Is that correct?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: But the point that I wish to ask about is simply this had the proclamation dealt comprehensively with all possible wrongdoing at the
20 hands of Bosasa in relation to Correctional Services would your investigation have been different?

MR CLINTON OELLERMANN: Yes, we would have included all tenders that had been awarded to Bosasa.

ADV PAUL JOSEPH PRETORIUS SC: Both in respect of Correctional Services and in respect of other departments which you were not authorised to investigate?

MR CLINTON OELLERMANN: That is correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: And you said to the Chair you had indications of irregularities substantial irregularities in respect of other Government departments?

MR CLINTON OELLERMANN: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: At page 7 of the report you deal with the Treasury Guidelines regarding budgeting for the tender process. Do you see that?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And if you look down the page to the third last paragraph on page 44 of your bundle a finding is made there that the DCS, Department
10 of Correctional Services, accordingly used Section 43 of the PFMA to transfer R769 million from the Compensation of Employees Program to the Machinery and Equipment Program under Capital Assets. The essential question that I wish to ask you in relation to your investigation is how the department of Correctional Services financed these projects which you investigated and at what cost?

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Would you tell the Chair about that please?

MR CLINTON OELLERMANN: Well my understanding is within each Government department funds are allocated across various programs and that is their budget that they allocate then for various, for these projects. Once these are allocated they then
20 roll out the projects, but because of the amounts involved with the Bosasa tenders they took money from one particular program and they moved it around to other programs to ensure that there were sufficient funds available at all times for the tenders to be awarded to Bosasa.

ADV PAUL JOSEPH PRETORIUS SC: If one goes over the page to page 45 of your bundle the second paragraph. You refer to a statement made to you apparently by

Mr Lesley of National Treasury where it is said:

“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 i.e. 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.”

Do you have any; can you help the Chair to understand what you were told there by
10 National Treasury during the course of your investigations?

MR CLINTON OELLERMANN: Yes. So what would happen is, throughout the year when you have a program that you roll out you spend money on that particular program. So when it comes to the issue of fiscal dumping often what happens is departments underspend during the course of the year and then when it comes to the end of the year unspent money has to go back to the fiscus, but in order to circumvent that money going back then they would use that money up on large projects or projects very close to the end of the financial year in order for that money to be allocated and then spent.

ADV PAUL JOSEPH PRETORIUS SC: Chair if you would just bear with me a moment.
20 I just want to check that the review is complete.

CHAIRPERSON: That is fine.

ADV PAUL JOSEPH PRETORIUS SC: The remainder of the report deals in more detail with the findings that we have already summarised in the executive summary?

MR CLINTON OELLERMANN: Correct.

ADV PAUL JOSEPH PRETORIUS SC: There is one aspect that I would like to draw to

your attention and that appears at page 16 of the report which is bundle page 53 where your investigation and the report deals with Commissioner Mti's formal relationship with Bosasa. Do you see that?

MR CLINTON OELLERMANN: Yes, I do.

ADV PAUL JOSEPH PRETORIUS SC: The first paragraph under that head reads:

10 “From the information obtained from the Registrar of Companies Commissioner Mti is the Director of a company called Leonora Investment Consultancy (Pty) Ltd. Further information from the Registrar of Companies indicated that Leonora is in one way or another linked to Bosasa. These links include the following: both Sondolo and Leonora's registration document reflects Mr Stephan Kruger as the initial Director with B G B Smit as the auditors. Both Sondolo and Leonora appointed Bester Viljoen Incorporated as their new auditor in place of B G B Smit. Bester Viljoen Incorporated are the auditors for Bosasa.”

It goes on to read:

20 “At the time of Leonora's incorporation Commissioner Mti was DCS National Commissioner. The timing of the registration of the above entity appears to coincide with the awarding to Sondolo of the Access Control Tender on or about 19 April 2005...”

And then you talk about the deregistration of Leonora two years later. There has been evidence concerning the assistance given by Bosasa to Commissioner Mti to register such an entity.

MR CLINTON OELLERMANN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And all I want to establish from you is to confirm that the information set out here is the result of your own investigation and an accurate reflection of the information that you investigated and received?

MR CLINTON OELLERMANN: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Chair we have no questions of the witness, thank you.

CHAIRPERSON: Yes. Thank you. Thank you very much Mr Oellermann.

MR CLINTON OELLERMANN: Thank you Chair.

10 **CHAIRPERSON:** For coming to assist the Commission. If a need arises for you to be asked to come back you will be contacted. I am sure that you will come back if asked to?

MR CLINTON OELLERMANN: Yes Chair.

CHAIRPERSON: Thank you very much. You are excused.

MR CLINTON OELLERMANN: Thank you very much Chair.

CHAIRPERSON: Thank you. Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Chair, may we take a short adjournment before we resume?

CHAIRPERSON: Okay.

20 **ADV PAUL JOSEPH PRETORIUS SC:** We do have.

CHAIRPERSON: Huh-uh.

ADV PAUL JOSEPH PRETORIUS SC: Two witnesses who are due to give evidence. Their evidence will span.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: At least several hours.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: There is also the intervention of a witness due for tomorrow morning.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: At 10 o' clock. It may be an idea to with your leave of course to call that witness before we resume with the Bosasa corroborating witnesses, but we are in your hands if you wish the witness to start now and then another witness to be called in the interim we can do that.

CHAIRPERSON: From what you are saying there is a witness whose evidence does
10 not relate to Bosasa?

ADV PAUL JOSEPH PRETORIUS SC: Correct.

CHAIRPERSON: And.

ADV PAUL JOSEPH PRETORIUS SC: Very brief, but nevertheless he needs to be called tomorrow morning.

CHAIRPERSON: Oh, but that one can only be called tomorrow. He is not available?

ADV PAUL JOSEPH PRETORIUS SC: Yes, not today.

CHAIRPERSON: But there is one or two who are available this afternoon?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** But their evidence will have to be interrupted.

CHAIRPERSON: Oh, okay. No that is fine.

ADV PAUL JOSEPH PRETORIUS SC: And we are not pressed for time until Thursday Chair.

CHAIRPERSON: Yes. Well if we can, I think we can use about an hour or so before we adjourn if that is fine. So if we can take the one that we can take and take about an

hour and maybe adjourn at half past four, would that be fine?

ADV PAUL JOSEPH PRETORIUS SC: Yes that is fine Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But if we could have 10 minutes to?

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Arrange a swap over.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Handing up of documents to you.

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** You do not have the bundle yet Chair.

CHAIRPERSON: Yes. No that is fine. So is it fine if we resume at 25 to four?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: On my watch it is about 18 minutes past now.

ADV PAUL JOSEPH PRETORIUS SC: Hm.

CHAIRPERSON: Or what do you suggest?

ADV PAUL JOSEPH PRETORIUS SC: No, no, no Chair. I do not wish to take issues with you on the time. [Intervenes].

CHAIRPERSON: No, no or would you be more comfortable with 20 to?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

20 **CHAIRPERSON:** Okay. We will adjourn and resume at 20 to four.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: Chair the next witness ...

CHAIRPERSON: We do want to hear you Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: The next witness Chair.

CHAIRPERSON: No I was just saying we do want to hear you, the mic went off.

ADV PAUL JOSEPH PRETORIUS SC: That's good to note Chair.

CHAIRPERSON: Yes?

ADV PAUL JOSEPH PRETORIUS SC: Is Mr Mlambo who has given evidence previously but will continue his evidence in relation to inspections that he has
10 conducted with Mr Le Roux, he will be led, as will Mr Le Roux by Ms Molefe.

CHAIRPERSON: Yes, no that's fine. The registrar must administer the oath or affirmation, do that registrar.

REGISTRAR: Please state your full names for the record.

MR THEMBA PATRICK MLAMBO: Themba Patrick Mlambo.

REGISTRAR: Do you have any objection to taking the prescribed affirmation?

MR THEMBA PATRICK MLAMBO: I have no objection.

REGISTRAR: Do you solemnly affirm that the evidence you give will be the truth, the whole truth and nothing but the truth, if so raise your right hand and say I truly affirm.

MR THEMBA PATRICK MLAMBO: I truly affirm.

20 **CHAIRPERSON:** Thank you.

ADV REFILWE MOLEFE: Thank you Chair. Chair we will be dealing with Exhibit T11, which should be before the Chair.

CHAIRPERSON: You have naturally a very soft voice, but usually you are able to make sure we hear you, just try again, for some reason I wasn't hearing you.

ADV REFILWE MOLEFE: Okay Chair, I was saying that we will be dealing with Exhibit

T11 and that is numbered from page 1 to 46 before the Chair.

CHAIRPERSON: Yes, thank you.

ADV REFILWE MOLEFE: Thank you Chair. Mr Mlambo please refer to the bundle marked T11 before you, on page 1 to 9 of that bundle is that your statement to the Commission?

MR THEMBA PATRICK MLAMBO: It is my statement indeed.

ADV REFILWE MOLEFE: Can you turn with me to page 8 of that statement. Is that your signature appearing on that page?

MR THEMBA PATRICK MLAMBO: It is my signature.

10 **ADV REFILWE MOLEFE:** And still on ...(intervention)

CHAIRPERSON: Maybe bring the mic closer to you, or you closer to the mic Mr Mlambo and raise your voice a little bit higher.

MR THEMBA PATRICK MLAMBO: Okay, I will try.

CHAIRPERSON: Thank you.

ADV REFILWE MOLEFE: Thank you Chair. Still staying on page 8 of that bundle the date there that is written the 1st of April 2019 is that the date on which you signed the statement?

MR THEMBA PATRICK MLAMBO: It is.

ADV REFILWE MOLEFE: Yes, and I believe that there are a few matters you wish to
20 bring to the Chair's attention before confirming the correctness of your statement?

MR THEMBA PATRICK MLAMBO: That is correct Chair.

ADV REFILWE MOLEFE: With your leave Chair.

MR THEMBA PATRICK MLAMBO: Ja, it appears from my statement that there are some corrections that I need to make, for example paragraph 24 appears twice, so the second 24 is supposed to be 25.

CHAIRPERSON: Okay we want to effect the corrections as such but you will draw attention to the specific lines or areas or paragraphs in your statement where there is a problem and then you will talk to it, is that alright.

MR THEMBA PATRICK MLAMBO: If I understand the Chairperson you are saying I must talk to the paragraphs that have got ...(intervention)

CHAIRPERSON: Well I don't know whether what you want to deal with is in a paragraph or where it is, I'm just saying if there are corrections you want to make we won't effect the corrections as such but you must tell us where the problem is and then tell us what you want to say.

10 **MR THEMBA PATRICK MLAMBO:** Yes, there is missing content in the statement which in the draft is there but I see it does not appear in the bundle. For example if you look at ...(intervention)

CHAIRPERSON: Okay, I don't know exactly whether it's our mics again I hear some words in your sentences and not others, okay let's try again.

MR THEMBA PATRICK MLAMBO: Okay what I'm saying Chairperson is that I see from the bundle that there is information that is in my draft statement which is not in the bundle, which I want to bring to the attention of the Chair.

CHAIRPERSON: Oh in other words are you talking about maybe documents that should have been annexures but which are not here?

20 **MR THEMBA PATRICK MLAMBO:** What I'm talking about is not the annexure *per se* but information that forms part of my statement.

CHAIRPERSON: Oh, which has not been included?

MR THEMBA PATRICK MLAMBO: Yes.

CHAIRPERSON: Oh okay.

MR THEMBA PATRICK MLAMBO: It is there in my draft but I see now when I look at

the bundle it does not have that information which is very much material to this hearing.

CHAIRPERSON: Okay, okay, you would know where it would fit in isn't?

MR THEMBA PATRICK MLAMBO: I do know Chairperson.

CHAIRPERSON: Yes, so then maybe what you could do is go to where it should be and it is not and then say this is what should have been included.

MR THEMBA PATRICK MLAMBO: Yes.

CHAIRPERSON: And then later on the legal team will probably prepare supplementary statement for you that will just say the following information should have been included but wasn't included and I've testified about it, but in the meantime you can just point out
10 what should have been included where and what it is that should have been included.
Okay, you want to go ahead.

MR THEMBA PATRICK MLAMBO: Yes thank you Chairperson.

CHAIRPERSON: Yes.

MR THEMBA PATRICK MLAMBO: Firstly in the bundle we've got two paragraphs which states 24, so what I am saying there ...(intervention)

CHAIRPERSON: Yes, do you want to tell us which paragraphs those are?

MR THEMBA PATRICK MLAMBO: It's 24, it appears twice yes.

CHAIRPERSON: Oh, you say there are two paragraphs 24 instead of one.

MR THEMBA PATRICK MLAMBO: Yes sir, yes Chairperson.

20 **CHAIRPERSON:** Okay, alright, so one should ...(intervention)

MR THEMBA PATRICK MLAMBO: The second paragraph 24 is supposed to read 25.

CHAIRPERSON: Yes, so I guess when you get to testify about that part you will just say the first paragraph 24 and the second paragraph 24 so in that way there's no confusion which one.

MR THEMBA PATRICK MLAMBO: Agreed Chairperson.

CHAIRPERSON: And if we were correcting them we may have been able to say 24(a) and 24(b) but we are not correcting them but there is a first paragraph 24 and a second paragraph 24.

MR THEMBA PATRICK MLAMBO: Agreed Chairperson.

CHAIRPERSON: Okay.

MR THEMBA PATRICK MLAMBO: And then the second paragraph 24 it ends with “property search results of Richards” it ends there, when its suppose to read ...(intervention)

10 **CHAIRPERSON:** I’m sorry you talk about how it ends, what do you say about the second paragraph 24?

MR THEMBA PATRICK MLAMBO: The last line there reads “the property search results of Richards”.

CHAIRPERSON: Oh then it doesn’t continue, so the sentence is incomplete.

MR THEMBA PATRICK MLAMBO: Agreed.

CHAIRPERSON: Okay, what should it say?

MR THEMBA PATRICK MLAMBO: It’s supposed to read “the property search result of Richards Bay site shows the address as that of Ms Dumile but ownership and registration thereof do not reveal any results. We knew that the property belongs to her by her own account but cannot be confirmed at this stage.”

20 **CHAIRPERSON:** Yes okay, that’s how it should read, to be complete.

MR THEMBA PATRICK MLAMBO: Definitely Chairperson.

CHAIRPERSON: Okay, any other area that you want to clarify or correct?

MR THEMBA PATRICK MLAMBO: No that is all that I wanted to clarify Chairperson.

CHAIRPERSON: Okay, alright thank you. Ms Refilwe you will, Ms Molefe you will remember later on to arrange for a supplementary statement.

ADV REFILWE MOLEFE: Certainly Chair.

CHAIRPERSON: Yes okay, alright.

ADV REFILWE MOLEFE: Thank you Chair.

CHAIRPERSON: Thank you.

ADV REFILWE MOLEFE: Mr Mlambo do you confirm the correctness of your statement?

MR THEMBA PATRICK MLAMBO: I do confirm.

ADV REFILWE MOLEFE: Thank you. Please turn with me to page 1 of your statement, you are employed as an investigator by the State Capture Commission, is
10 that correct?

MR THEMBA PATRICK MLAMBO: Yes that is correct.

ADV REFILWE MOLEFE: In paragraph 3 and 4 of your statement you make reference to your previous testimony given on the 5th of February 2019, is this correct?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And this is in relation to the investigation into the security installations at the premises of high ranking individuals at the cost of Bosasa, is that correct?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Now in terms of that evidence that you gave Mr Le Roux
20 had accompanied you to several sites is that correct?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And outside these premises Mr Le Roux identified several security equipment which he said were installed by him and he Special Projects Team.

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: After the pointing out exercise by Mr Le Roux and following

investigations by yourself and other investigators of the Commission you established that the respective properties were registered under firstly Ms Nomvula Paula Mekonjane.

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Secondly Mr Desmond Nair and Ms Pavalani Nair.

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Thirdly Mr Sampson Pataqe Magwedla and Ms Gallilea Magwedla.

MR THEMBA PATRICK MLAMBO: That is correct.

10 **ADV REFILWE MOLEFE**: And finally the Vincent G Smith Family trust.

MR THEMBA PATRICK MLAMBO: That is correct Chairperson.

ADV REFILWE MOLEFE: Now you have again interacted with Mr Richard Le Roux relative to other security upgrades is that correct?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And did you accompany Mr Le Roux in relation to any inspections during the course of your interaction with him.

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And was this during the course of your investigation?

MR THEMBA PATRICK MLAMBO: That is true.

20 **ADV REFILWE MOLEFE**: Can you then turn over to page 2 of your statement in paragraph of your statement you deal with your interaction with Mr Le Roux in broad terms, will you tell the Chair what you did with Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Chairperson I was required to conduct further investigation into some of the sites that I had not visited previously. These are the sites where the installations were fitted by a special projects team of Bosasa. So I required

Mr Le Roux to accompany me to those particular sites, as a person who has been conducting these installations and also the person who had knowledge of the places that they did the installations and fortunately agreed.

ADV REFILWE MOLEFE: Yes, and Mr Le Roux accompanying you to these sites was the purpose thereof to undertake a pointing out inspection?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Now did Mr Le Roux know any of the address details of the properties such as the street number or the house number of the sites concerned?

MR THEMBA PATRICK MLAMBO: Mr Le Roux indicated from the onset that he could
10 not recall or he didn't know the actual street addresses of the properties or even the house addresses, however he indicated to me if taken to those particular sites he would know exactly where to go.

ADV REFILWE MOLEFE: Yes. Can we then move on to paragraph 6 where you deal with the first property which was inspected, perhaps before we do so can we go back to paragraph 5, my apologies. There you also state in broad terms which properties you visited with Mr Le Roux, can you just name the properties or the areas rather at which this inspection was undertaken?

MR THEMBA PATRICK MLAMBO: We conducted inspections in two provinces, firstly the Eastern Cape and secondly KwaZulu Natal. Now with respect to the Eastern Cape
20 we went to properties which were associated with a Minister Mantashe, our current Minister of Energy, and then also that of Mr Linda Mtimkulu.

ADV REFILWE MOLEFE: And in the other Province?

MR THEMBA PATRICK MLAMBO: In the other Province which is KZN we went to inspect the property that is associated with Mr Dumyane.

ADV REFILWE MOLEFE: Yes, now of the five sites that you have alluded to, where

did the first inspection take place?

MR THEMBA PATRICK MLAMBO: The first inspection took place at the property associated with Mr Linda Mtimkulu.

ADV REFILWE MOLEFE: And in which area was this property located?

MR THEMBA PATRICK MLAMBO: This was in the Eastern Cape.

ADV REFILWE MOLEFE: In which area in the Eastern Cape?

MR THEMBA PATRICK MLAMBO: There's a place called Colchester so that is the place in the Eastern Cape called Colchester.

ADV REFILWE MOLEFE: Can you spell that for the record please?

10 **MR THEMBA PATRICK MLAMBO**: I think I wrote it down, it will be C.

CHAIRPERSON: Ja, you can have a look.

MR THEMBA PATRICK MLAMBO: Okay let me find Colchester here, anyway let me just because I know it, it's C-o-l-c-h-e-s-t-e-r.

CHAIRPERSON: Okay.

ADV REFILWE MOLEFE: Thank you, and on what date did the inspection take place?

MR THEMBA PATRICK MLAMBO: This inspection took place on the 17th.

ADV REFILWE MOLEFE: Of which month?

MR THEMBA PATRICK MLAMBO: Of February 2019.

ADV REFILWE MOLEFE: Can you recall the approximate time of the inspection?

20 **MR THEMBA PATRICK MLAMBO**: We arrived at East London Airport at around eleven am, and then we drove to Colchester which is in the region of about three hours difference so upon arrival realising that you know we had ample time to ourselves because we were supposed to check in you know at the hotel so in the best interests of time and the investigation I suggested to Mr Le Roux that we at once drive to East London and to start my investigation, he agreed to that and then we dashed off.

ADV REFILWE MOLEFE: Now before you went to the properties did Mr Le Roux indicate what equipment had been installed at that property?

MR THEMBA PATRICK MLAMBO: As far as he could recall they had installed the electric fence, LED perimeter lights, as well as de-energiser which according to Mr Le Roux was stored inside the garage.

ADV REFILWE MOLEFE: Yes, and before you arrived at the property did he tell you whose property this was?

MR THEMBA PATRICK MLAMBO: Well he told me that the property was associated with Mr Mti, so right from then I knew that we were going to a property that was
10 associated with Mr Mti, as to whether he owned the property or not at that point I could not verify.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: But save to say that it was associated with Mr Mtimkulu.

ADV REFILWE MOLEFE: And right at the introduction of your evidence and the properties that you visited you indicated that Mr Le Roux did not have the address details of the properties you were visiting such as the street numbers and house numbers?

MR THEMBA PATRICK MLAMBO: That is correct Chairperson.

20 **ADV REFILWE MOLEFE:** Yes, you deal with this evidence at paragraph 6, please tell the Chair about this inspection starting with how you found the property?

MR THEMBA PATRICK MLAMBO: Because Mr Le Roux did not have the actual addresses but as he had indicated earlier that if taken to sites he would recall, so our going was really based on his recollection, so it was really a matter of what he could remember, so going to Golchester was not such a big difficulty because you know once

you've arrived at Colchester you know we drove around a bit and he could find the place, so we didn't really struggle. There were minor changes in terms of how the area looked like at the time but we had arrived at the place.

ADV REFILWE MOLEFE: So Mr Le Roux directed you until you arrived at the place?

MR THEMBA PATRICK MLAMBO: He did.

ADV REFILWE MOLEFE: And he directed you from the hotel where you were staying?

MR THEMBA PATRICK MLAMBO: And also as we were driving together because we had a lot of time together so we were talking at all times, so he knew he told me that look I know where the place is and I know what we installed, i can recall what we
10 installed, so we didn't really have a difficulty in getting there.

ADV REFILWE MOLEFE: Yes, and you've just stated that point you yourself did not have the address details of the properties that were going to be inspected?

MR THEMBA PATRICK MLAMBO: I did not have the addresses either.

ADV REFILWE MOLEFE: Now was the property on a free stand, was it free standing, or was it in a residential complex?

MR THEMBA PATRICK MLAMBO: This was in the residential complex but let me
alos allude to the fact that as far as Mr Le Roux was concerned at the time they did
their installation on the particular property it was not a security complex, it ws just
freestanding houses, so a little bit of confusion as to what was happening at that time
20 because suddenly you k now it was a gated community if I had to put it like that, which
was not you know there at the time of their work.

ADV REFILWE MOLEFE: So being a gated community I would assume that when you arrive do you – the first point of entry would have been a gate?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: So what happened when you arrived at the gate?

MR THEMBA PATRICK MLAMBO: We arrived at the gate, we realised that you know we couldn't gain access because it was – I don't know what you call it, access pad where you had to punch in the code for entry.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: But then we also realised that there were actually two gates there, so we left for the other gate and upon arrival at that particular gate we were attended by somebody and we informed that particular gentleman, who identified himself as the manager of the complex, so I introduced myself and I introduced Richard and told him the purpose of our visit you know and the fact that we are there on
10 investigation and we wanted to gain entry so it just transpired that that particular gentleman could recognise Richard Le Roux from on TV during the hearings, so he allowed us entry, so what he did guided us to the gate that we started at, and told us that once we are at the gate he was going to open the gate for us remotely, which is exactly what he did.

ADV REFILWE MOLEFE: Yes, now from the gate where you met the manager of the complex who then directed you to the particular property that was to be inspected?

MR THEMBA PATRICK MLAMBO: That was almost a walk in the park because Richard knew exactly where to go, so we just drove directly to the place.

ADV REFILWE MOLEFE: So did you at any point ask the manager of the complex
20 where this property was situated?

MR THEMBA PATRICK MLAMBO: I beg your pardon?

ADV REFILWE MOLEFE: Did you at any point ask the manager of the complex where about the property is situated?

MR THEMBA PATRICK MLAMBO: Not at all.

ADV REFILWE MOLEFE: Okay, so you are saying that Mr Le Roux directed you to the

property?

MR THEMBA PATRICK MLAMBO: He did.

ADV REFILWE MOLEFE: And what is the first thing you saw once you arrived at the property?

MR THEMBA PATRICK MLAMBO: Just as we arrived at the complex automatically we could see the electric fence because it was visible, in actual fact even the – one of the perimeter lights was immediately you know visible to us.

ADV REFILWE MOLEFE: Now when you entered the gate was Mr Le Roux able to immediately identify where the property is situated?

10 **MR THEMBA PATRICK MLAMBO:** He did.

ADV REFILWE MOLEFE: Can I refer you to paragraph of your statement. Did you at any point drive within the gated residential complex looking for this property?

MR THEMBA PATRICK MLAMBO: Yes we drove just a little bit because you know in actual fact there were a few streets that we had to drive through but you know we really didn't struggle because Richard knew exactly where to go so we just drove around just a little bit and then we just got to the property Chairperson.

ADV REFILWE MOLEFE: Yes, now you deal with this as I mentioned in paragraph 7 of your statement, you do not state the address of the property as is stated there. When you arrived at the property what did Mr Le Roux say to you?

20 **MR THEMBA PATRICK MLAMBO:** He informed me that as he had told me that the electric fence that was visible to us and the LED perimeter lights resembled those that they had installed as a team.

ADV REFILWE MOLEFE: Yes, and did you find anyone at the property?

MR THEMBA PATRICK MLAMBO: The property had no one in it, so it was locked, so the only things that we could you know verify was what you could see on the outside,

for example – okay.

ADV REFILWE MOLEFE: No, no carry on.

MR THEMBA PATRICK MLAMBO: For example Mr Le Roux had informed me about the energiser which according to him was in the garage but because we couldn't gain access so I couldn't verify that.

ADV REFILWE MOLEFE: To gain access to the particular property was there another gate that you had to go through?

MR THEMBA PATRICK MLAMBO: There was no other gate, except for – well there was because inside the complex some properties had individual fences you know
10 boundary fences so there was a boundary fence around Mr Mti's properties, all the properties associated to Mr Mti.

ADV REFILWE MOLEFE: And did the property have a gate? Did the property have a gate?

MR THEMBA PATRICK MLAMBO: It does have a gate.

ADV REFILWE MOLEFE: So you arrived at the property and you're saying you found no one?

MR THEMBA PATRICK MLAMBO: Ja we found no one.

ADV REFILWE MOLEFE: Did you knock at the gate, is there a buzzer at the gate perhaps?

20 **MR THEMBA PATRICK MLAMBO:** No because you know there's no one, so there's not even a point because the house is just easy to go around and if there was somebody you know we could have easily seen, so we didn't even knock.

ADV REFILWE MOLEFE: Yes, and did Mr Le Roux identify any security equipment?

MR THEMBA PATRICK MLAMBO: He identified the electric fence, he identified the perimeter lights, LED perimeter lights.

ADV REFILWE MOLEFE: Yes and you also stated that he informed you that there was an energiser in the garage, do I have that correctly?

MR THEMBA PATRICK MLAMBO: Yes, that is correct.

ADV REFILWE MOLEFE: And did he describe where in the garage the energiser is located?

MR THEMBA PATRICK MLAMBO: Well so far as as I can remember he said it was noted inside the garage, you know so I do not recall exactly where, save to say that he told me it was mounted on the wall in the garage.

ADV REFILWE MOLEFE: Yes, so it was just the electric fence and the perimeter lights
10 that Mr Le Roux identified?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And he could see these from outside the gate of the particular property?

MR THEMBA PATRICK MLAMBO: Yes, you could see that easily.

ADV REFILWE MOLEFE: So what did you or Mr Le Roux then do?

MR THEMBA PATRICK MLAMBO: What did I?

ADV REFILWE MOLEFE: What did you or Mr Le Roux then do?

MR THEMBA PATRICK MLAMBO: Then I took a video and the pictures of the installations which was the electric fence, the two LED lights that they had installed and
20 I also took a video.

ADV REFILWE MOLEFE: Yes, can we go then to Annexure TPM5 which appears on page 13 of the bundle.

MR THEMBA PATRICK MLAMBO: Page 13?

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Okay. Okay, I'm there.

ADV REFILWE MOLEFE: Can you please tell the Chair what we are looking at, at page 13?

MR THEMBA PATRICK MLAMBO: On page 13 which is TPM5 this is an open gate.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: At the residence that's also associated with Mr Mti.

CHAIRPERSON: Sorry Mr Mlambo you will have to raise your voice again.

MR THEMBA PATRICK MLAMBO: Okay, I beg your pardon Chairperson. Ja, on page 13 which is TPM5 it is an image of the open gate that is at grey bushes which is a
10 property associated with Mr Mtimkulu.

CHAIRPERSON: So that you talk about an open gate, that looks to me like a closed gate. Is there something I'm missing?.

ADV REFILWE MOLEFE: I'm not sure I understand you Chairperson.

CHAIRPERSON: Did you say it's an open gate at TPM5?

MR THEMBA PATRICK MLAMBO: Yes.

CHAIRPERSON: I'm saying it looks to me like closed.

MR THEMBA PATRICK MLAMBO: No, no, it is open.

ADV REFILWE MOLEFE: No, no Chair this is my mistake, we should be at Annexure TPM1, I apologise profusely.

20 **CHAIRPERSON:** Sorry?

ADV REFILWE MOLEFE: We're supposed to be at Annexure TPM1 which is on page 9, this is my mistake.

CHAIRPERSON: Oh, so he is looking at a different page?

MR THEMBA PATRICK MLAMBO: Yes, I apologise, I would assume so.

CHAIRPERSON: Okay.

ADV REFILWE MOLEFE: My apologies Chair. Mr Mlambo please refer to page 9 at the Annexure marked TPM1.

MR THEMBA PATRICK MLAMBO: Okay.

ADV REFILWE MOLEFE: Can you please explain to the Chair what appears on page 9 of this bundle?

MR THEMBA PATRICK MLAMBO: Ja, on page 9 ...(intervention)

CHAIRPERSON: I'm hoping he's not going to say that's an open one too.

MR THEMBA PATRICK MLAMBO: It is the electric fence that's mounted on the fence of or rather on the palisades of the residence.

10 **ADV REFILWE MOLEFE:** Yes, and is the gate opened or closed?

MR THEMBA PATRICK MLAMBO: Well the gate is closed at this stage.

ADV REFILWE MOLEFE: And there is what appears to be a car that appears in that image, whose car is that?

MR THEMBA PATRICK MLAMBO: Well this is the hired car that I had gotten from the car hire company at the airport.

CHAIRPERSON: That you were using together with Mr Le Roux.

ADV REFILWE MOLEFE: This is the car that we're using Chairperson.

CHAIRPERSON: Ja, okay.

20 **ADV REFILWE MOLEFE:** And can you also then turn with me to page 10 of the bundle.

CHAIRPERSON: So maybe just so that that house there, that property whose property was that?

MR THEMBA PATRICK MLAMBO: Ja this is the property that is associated with Mr Mthimkhulu at Colchester.

CHAIRPERSON: Mr Mti?

MR THEMBA PATRICK MLAMBO: Ja Mr Mti.

CHAIRPERSON: Now when you say Mr Mti Mthimkhulu that is the same person as...

MR THEMBA PATRICK MLAMBO: Yes.

CHAIRPERSON: As the person we have – everybody has referred to as Mr Mti?

MR THEMBA PATRICK MLAMBO: That is correct.

CHAIRPERSON: Yes.

MR THEMBA PATRICK MLAMBO: You – the Chairperson you will realise later on in the statement that I got to – I got to find out that Mr Mti is basically the short for Mthimkhulu but we will deal with that later I suppose.

10 **CHAIRPERSON:** Ja okay. But it is Mr Mti?

MR THEMBA PATRICK MLAMBO: It is Mr Mti.

CHAIRPERSON: Okay, okay. That is – that house is you say – as you put it associated with Mr Mti?

MR THEMBA PATRICK MLAMBO: Yes Sir.

CHAIRPERSON: Okay, alright.

ADV REFILWE MOLEFE: Yes and when you took the picture at TPM1 on what basis did you take that picture?

MR THEMBA PATRICK MLAMBO: This was to show the electric fence that the special projects team had installed.

20 **ADV REFILWE MOLEFE:** Did Mr Le Roux identify it as such?

MR THEMBA PATRICK MLAMBO: He did identify that as resembling the one that they had installed as a special projects team.

ADV REFILWE MOLEFE: Now is there any particular distinguishing feature insofar as the electric fence that one would be able to notice on whether it be on the fence itself?

MR THEMBA PATRICK MLAMBO: I am afraid Chairperson there was nothing. You

know I had to go with what he says.

CHAIRPERSON: Yes.

MR THEMBA PATRICK MLAMBO: But if you ask me if it is a fair assumption I would say you know it is a fair assumption on the basis that even before going to the site he had told me what to expect. And indeed upon arrival we saw the electric fence mounted on the palisades. Whether it is the same one that they – he had installed or not that is – that is a different question.

CHAIRPERSON: But when you saw it did it match the description that he had given you before you reached the house?

10 **MR THEMBA PATRICK MLAMBO**: Ja. Chairperson to be fair I did not know you know...

CHAIRPERSON: Oh.

MR THEMBA PATRICK MLAMBO: How it is supposed to look like.

CHAIRPERSON: Oh.

MR THEMBA PATRICK MLAMBO: All I knew was that I was expecting to see an electric fence.

CHAIRPERSON: Okay.

ADV REFILWE MOLEFE: Yes and is there anything else in particular that Mr Le Roux drew your attention to?

20 **MR THEMBA PATRICK MLAMBO**: With respect to?

ADV REFILWE MOLEFE: With respect to the image at page 9 TPM1?

MR THEMBA PATRICK MLAMBO: Well nothing – nothing more than what I have just said.

ADV REFILWE MOLEFE: Yes can you then turn with me to page 10 of the bundle.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And that is Annexure TPM2.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: Can you explain to the Chair what appears there on page 10?

MR THEMBA PATRICK MLAMBO: The purpose behind this particular image was to show the LED perimeter light and from – and I can see from the...

CHAIRPERSON: The what light? The what light?

MR THEMBA PATRICK MLAMBO: LED perimeter light ja.

ADV REFILWE MOLEFE: Yes. Now on this image which appears to be a close-up.

10 **MR THEMBA PATRICK MLAMBO:** Yes.

ADV REFILWE MOLEFE: Can you explain where the parameter lights are located?

MR THEMBA PATRICK MLAMBO: Ja it is mounted just on top of – of the wall just below the roof and it was facing the street.

ADV REFILWE MOLEFE: And is this a light that was pointed to you by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Yes indeed.

ADV REFILWE MOLEFE: Is there anything else on that page that he drew your attention to?

MR THEMBA PATRICK MLAMBO: Well nothing else.

ADV REFILWE MOLEFE: Can you then...

20 **CHAIRPERSON:** And that is still the same property that is...

MR THEMBA PATRICK MLAMBO: It is the same property Chairperson.

CHAIRPERSON: Ja okay.

ADV REFILWE MOLEFE: Thank you Chair. Can you then turn to page 11 Annexure TPM3.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: Can you explain to the Chair what appears on that page?

MR THEMBA PATRICK MLAMBO: What appears on this particular page are two lights and one of them is the LED light which Mr Le Roux pointed out is that which the – they installed. As for the other light which will be on my – on my right or on the right of the picture just above the wall but below the roof would be another light which according to Mr Le Roux was pre-existing. So they did not install that particular one.

CHAIRPERSON: Oh are there two lights?

MR THEMBA PATRICK MLAMBO: Yes there are two lights yes.

CHAIRPERSON: And one of them was installed by Mr Le Roux's team but the other
10 one was not?

MR THEMBA PATRICK MLAMBO: Yes the other one was not yes.

CHAIRPERSON: Okay.

MR THEMBA PATRICK MLAMBO: And unfortunately this is the closest I could get in terms of the – you know taking pictures of the particular lights.

CHAIRPERSON: Okay.

ADV REFILWE MOLEFE: Yes this image on page 11 appears to be quite different from what appears at page 9 and 10. Is this the same side of the property that you took pictures of at page 9 and 10?

MR THEMBA PATRICK MLAMBO: It is a different side.

20 **ADV REFILWE MOLEFE:** And how were you able to get to the side of that property?

MR THEMBA PATRICK MLAMBO: The property is situated particularly the back you know there is – it is a bushy area which is difficult you know to access. So otherwise we can only access the three sides which is the front and the two sides left and right. But behind there you cannot access it because of the bushes.

ADV REFILWE MOLEFE: So you went to the side of the property as I understand?

MR THEMBA PATRICK MLAMBO: It was on the side of the property.

ADV REFILWE MOLEFE: And...

MR THEMBA PATRICK MLAMBO: And to be specific on this one it was on the left hand side of the property.

ADV REFILWE MOLEFE: Yes. And who directed you to the left side of the property?

MR THEMBA PATRICK MLAMBO: Mr Le Roux himself.

ADV REFILWE MOLEFE: And what did he say you would find on the left side of the property?

10 **MR THEMBA PATRICK MLAMBO:** The LED light. One of the two LED lights that he had installed.

ADV REFILWE MOLEFE: Yes and you did say that before you went to the property he had identified the security equipment that is at the property?

MR THEMBA PATRICK MLAMBO: That is correct.

CHAIRPERSON: And whose property is this one?

MR THEMBA PATRICK MLAMBO: Ja this property is associated with Mr Mti it is still the same Colchester property.

CHAIRPERSON: oh okay thank you.

ADV REFILWE MOLEFE: You also made mention of any energiser which you say Mr Le Roux informed you of, is that correct?

20 **MR THEMBA PATRICK MLAMBO:** That is correct.

ADV REFILWE MOLEFE: And you stated that the energiser was located in the garage?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Were you able to gain access to the garage?

MR THEMBA PATRICK MLAMBO: We could not gain access to the garage on

account that the house was locked and there was nobody to give us access thereto.

ADV REFILWE MOLEFE: And did you find anything else pursuant to the inspection?

MR THEMBA PATRICK MLAMBO: Well in terms of the equipment nothing else.

ADV REFILWE MOLEFE: Yes. And so Mr Le Roux did not point out to any further equipment?

MR THEMBA PATRICK MLAMBO: No.

ADV REFILWE MOLEFE: For how long were you at the property?

MR THEMBA PATRICK MLAMBO: I beg your pardon.

ADV REFILWE MOLEFE: For how long were you at the property?

10 **MR THEMBA PATRICK MLAMBO:** Well we were there for say approximately maybe fifteen/twenty minutes.

ADV REFILWE MOLEFE: Yes. And other than the complex manager did you come into contact with any other person?

MR THEMBA PATRICK MLAMBO: No not at all.

ADV REFILWE MOLEFE: Now following this inspection did you conduct any investigation to establish under whose name the property was registered?

MR THEMBA PATRICK MLAMBO: I only managed to establish later when we returned back to the office.

ADV REFILWE MOLEFE: Yes.

20 **MR THEMBA PATRICK MLAMBO:** And according to the search results it is associated – well it belongs to Mr Mti hundred percent.

ADV REFILWE MOLEFE: Yes and how were you able to establish under whose name the property was registered?

MR THEMBA PATRICK MLAMBO: Ja I requested our team you know to conduct you know search in a property searches and then based on the address and it was

established that it belonged to Mr Mti hundred percent.

ADV REFILWE MOLEFE: When did you get the address?

MR THEMBA PATRICK MLAMBO: Because I was on site so I could see the address.

Unfortunately I cannot divulge the address here for obvious reasons but already I had the address so when I returned I communicated with the – with the search team to do property search.

ADV REFILWE MOLEFE: Okay so if I understand it correct you – you obtained the address once you were at the property itself during the inspection with Mr Le Roux?

MR THEMBA PATRICK MLAMBO: That is correct.

- 10 **ADV REFILWE MOLEFE:** You then with your team of investigators conducted the necessary searches to establish under whose the name is registered?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And can you please give the full names rather of who the property was found to be registered under?

MR THEMBA PATRICK MLAMBO: The property is registered under Mr Linda Mti Mthimkhulu and according to the results he owns it alone hundred percent.

ADV REFILWE MOLEFE: Yes.

CHAIRPERSON: Your voice went down again for the last sentence.

MR THEMBA PATRICK MLAMBO: Oh okay. Alright.

- 20 **CHAIRPERSON:** Hm.

MR THEMBA PATRICK MLAMBO: Ja according to if I may? Ja according to the results the property belonged to Mr Linda Mti Mthimkhulu hundred percent.

ADV REFILWE MOLEFE: Yes. And I believe that you also took a video at the property?

MR THEMBA PATRICK MLAMBO: I did not recall the value of the property but it is in

the documents that – that we had obtained.

CHAIRPERSON: The – in terms of actual registration is it Mti Mthimkhulu that is written or Mti?

MR THEMBA PATRICK MLAMBO: I will have to refer back to the document.

CHAIRPERSON: Okay.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: Before the Chair asked you a question I was asking if – you had earlier said that you took a video I was not asking of the value of the property.

MR THEMBA PATRICK MLAMBO: Yes I did take the video.

10 **ADV REFILWE MOLEFE**: And does the video show the security equipment that you have identified in Annexures TPM1 to TPM3?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Chair we need not play that particular video.

MR THEMBA PATRICK MLAMBO: Chairperson with your permission I have indicated earlier that I did not want to reveal you know people's addresses.

CHAIRPERSON: Yes, yes of course.

MR THEMBA PATRICK MLAMBO: However the video will show hopefully the address which will still give away the kind of information that we might not want to give it.

CHAIRPERSON: Well do we strictly speaking need the – it to be shown?

20 **ADV REFILWE MOLEFE**: No Chair.

CHAIRPERSON: Ja.

ADV REFILWE MOLEFE: We do not.

CHAIRPERSON: Well maybe let us leave it and just carry on.

ADV REFILWE MOLEFE: As it pleases you Chair.

CHAIRPERSON: Ja okay.

ADV REFILWE MOLEFE: Mr Mlambo you then deal with another property in paragraph 8 of your statement, is that correct?

MR THEMBA PATRICK MLAMBO: Okay what was your question?

ADV REFILWE MOLEFE: In paragraph 8 of your statement you then deal with another property?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And on what date did you visit this particular property?

MR THEMBA PATRICK MLAMBO: This was on the 18 February 2019.04.02

ADV REFILWE MOLEFE: Can you recall the approximate time of this visit?

10 **MR THEMBA PATRICK MLAMBO:** We left the hotel accommodation at about eight in the morning. So – and about four hours later we were at Green Bushes so give or take we were there around midday.

ADV REFILWE MOLEFE: Now before visiting the property did Mr Le Roux indicate what equipment would be found at the property?

MR THEMBA PATRICK MLAMBO: He did indicate what equipment we were supposed to find at the particular place.

ADV REFILWE MOLEFE: And what did he say was installed at the property?

MR THEMBA PATRICK MLAMBO: He told me that they had installed electric fence. They had installed parameter lights, LED parameter lights and then also that they had
20 installed the energiser but that particular energiser was inside of the garage.

ADV REFILWE MOLEFE: Yes and before you went to the property did he tell you whose property the equipment that you were going to inspect belongs to?

MR THEMBA PATRICK MLAMBO: Did he ask?

ADV REFILWE MOLEFE: Did he tell you who the property belonged to?

MR THEMBA PATRICK MLAMBO: Well he told me that it is another property that is

associated with Mr Mti.

ADV REFILWE MOLEFE: And this is the same Mr Mti whom you have referred to in respect of the first property?

MR THEMBA PATRICK MLAMBO: Come again?

ADV REFILWE MOLEFE: This is the same Mr Mti that you have referred to...

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: In respect of the first property?

MR THEMBA PATRICK MLAMBO: I beg your pardon yes it is the same Mr Mti.

ADV REFILWE MOLEFE: Now before you went to the property did either yourself or
10 Mr Le Roux have the address details such as the street number and house number of the property?

MR THEMBA PATRICK MLAMBO: We did not have those.

ADV REFILWE MOLEFE: Yes you deal with this in paragraph 8 of your statement. Can you please tell the Chair about this inspection starting with how you found the property?

MR THEMBA PATRICK MLAMBO: This was a bit of a tricky one for Mr Le Roux because this property is situated at a place called Green Bushes. So it is really you know in a very bushy area. You know very beautiful area you know it is basically plots. So getting there is a bit of a challenge and I admitted from the onset that it was just not
20 going to be an easy ride getting there. However you know driving around he should be able to recall. So I – he took me there on the strength of his recollection.

ADV REFILWE MOLEFE: Yes and you have just testified that the property is in the Green Bush area?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: Is that correct? Now when Mr Le Roux directed you to the

property what was the first thing you saw?

MR THEMBA PATRICK MLAMBO: What was the first?

ADV REFILWE MOLEFE: What was the first thing you saw at the property?

MR THEMBA PATRICK MLAMBO: Well you know the first thing that I saw was that well the gate was wide open and – but also immediately you know the electric fence which was enmeshed to the normal fence and then I could also see the – the LED lights. Because just from the streets you know you can see just about the whole of the yard.

ADV REFILWE MOLEFE: Yes before you go into detail insofar as the equipment when
10 you arrived at the property and throughout your trip to the property it was Mr Le Roux directing you, is that correct?

MR THEMBA PATRICK MLAMBO: Yes he did direct me.

ADV REFILWE MOLEFE: And did you assist him at any point?

ADV REFILWE MOLEFE: There was no way I could assist him because I did not know for starters where we were going. I was hundred percent reliant on him.

ADV REFILWE MOLEFE: Yes. You say that the gate was wide open?

MR THEMBA PATRICK MLAMBO: Yes it was wide open.

ADV REFILWE MOLEFE: And was there anyone at the gate?

MR THEMBA PATRICK MLAMBO: We established just once we were there that there
20 was no-one because you know – you know I drove you know just when we were at the gates you know. I sounded the hooter and there was no response.

ADV REFILWE MOLEFE: So did you drive into the gate or did you remain outside the premises of the property?

MR THEMBA PATRICK MLAMBO: No we remained outside of the premises.

ADV REFILWE MOLEFE: What then happened?

MR THEMBA PATRICK MLAMBO: Sorry?

ADV REFILWE MOLEFE: What then happened once you have [indistinct] of the gate?

MR THEMBA PATRICK MLAMBO: Oh yes. There was on the right side of the house the next door house, there was a gentleman there so I approached that particular gentleman to find out if he knows if there is anybody at the house. And then he informed me but no so and so is there they did you not see him? Did you not you know pass each other on the way? I said to him well I do not know who stays here and I also did not notice any car that – that you know – that went past us you know. So then he said to me look he was here now but he took somebody to the taxi rank and he should

10 be coming back.

ADV REFILWE MOLEFE: Yes and after this conversation in fact during this conversation with who you have called the neighbour where was Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Mr Le Roux was always in the car.

ADV REFILWE MOLEFE: What then happened after your conversation with the neighbour?

MR THEMBA PATRICK MLAMBO: I went back to the car and then we were driving around. But then I realised that no man I do not even have the address. We were not leaving per se but you know we were just driving around. Then – then we decided look let us rather turn back and verify what the address is. So we went back but then we

20 went to the other next door neighbour. Now this time on the left hand side of the property the next – well the next – next door neighbour which was on the left this time.

ADV REFILWE MOLEFE: Now the house itself that you went to was it surrounded by – was it enclosed in any way whether it be by fence or some sort of concrete wall?

MR THEMBA PATRICK MLAMBO: No this was – they just had fences. In actual fact I think the first property on the first neighbour they had a wall but you could see

somebody. I think it is a precast wall. You could see people on the other side that is why I could identify the gentleman that was at the property. Now with respect to the second property it just a fence – an open fence just like that of Mr Mti's. So I approached that particular house and then there was a gentleman coming towards the gate. So – so I spoke to that particular gentleman enquiring as to whether he knew who owned the property.

ADV REFILWE MOLEFE: So the property being surrounded by fencing as I understand you could then see the exterior of the property?

MR THEMBA PATRICK MLAMBO: That is correct.

10 **ADV REFILWE MOLEFE:** Did you have any pointing out with Mr Le Roux at that point?

MR THEMBA PATRICK MLAMBO: Ja well he told me – he showed me that you can see the fence and those parameter lights those are the ones that were installed. At least they looked like the ones that we installed. Because I had to make sure to say to him that look you cannot say for certain. If you know for certain that it is the fence then say so but I do not want you to speculate. So he indicated to me that at least they look like the ones that they had installed.

ADV REFILWE MOLEFE: Yes. And when you were at the property did you stay at the property conducting the pointing out outside the property or did you move away from
20 the property?

MR THEMBA PATRICK MLAMBO: At what point?

ADV REFILWE MOLEFE: When you were at the property.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: You have just indicated that Mr Le Roux identified certain equipment that he had earlier told you about.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: What did you then do from there?

MR THEMBA PATRICK MLAMBO: From there I just – I did not recall that I must have spoken to Mr Mti before. So I went through my phone just to see if I still had his contact numbers. So indeed I found the contact numbers.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: And then I called him ja.

ADV REFILWE MOLEFE: You called Mr Mti?

MR THEMBA PATRICK MLAMBO: I did.

10 **ADV REFILWE MOLEFE:** And what did you say to him?

MR THEMBA PATRICK MLAMBO: I informed who I was – introduce – re-introduced myself because I had spoken to him before so – and I was assuming that he would recall my name. But I had to re-introduce myself and who I am and the purpose of my visit. He was a bit upset over the fact that he had not been notified before that I was going to come to do the investigation.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: But then nonetheless he still cooperated with us.

ADV REFILWE MOLEFE: Did you make this call in the presence of Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Mr Le Roux was around yes I was with him.

20 **ADV REFILWE MOLEFE:** So you say that Mr Mti was upset?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: But that he cooperated?

MR THEMBA PATRICK MLAMBO: Yes he was upset over the fact that he had not been notified before or earlier you know that I was going to come and do the investigation.

ADV REFILWE MOLEFE: Did he give any indication or confirm whether that is his property?

MR THEMBA PATRICK MLAMBO: Well at that stage we did not even discuss ownership of the property you know and I think from both of us it was on the – you know there was not assumption that it was his property and he did not dispute the fact that you know okay you are there to do investigation and – so that did not really transpire at that point.

ADV REFILWE MOLEFE: Yes. What then happened after your telephonic discussion with Mr Mti?

10 **MR THEMBA PATRICK MLAMBO:** Ja. I informed Mr Mti that I was there on investigation and the gate was wide open and there was nobody. So he advised me. He said: look but – but a family member should be there. Anyways because the gate – you say the gate is wide open you may go in but rather let me also give you the contact numbers of my family member and he can give him a call. I called ...

ADV REFILWE MOLEFE: Yes continue.

MR THEMBA PATRICK MLAMBO: Yes I called that particular gentleman and – okay prior to calling that gentleman Mr Mti had also informed me that – that that particular gentleman was at that point in time en route to Colchester. Remember we are now in Green Bushes.

20 **ADV REFILWE MOLEFE:** Yes.

MR THEMBA PATRICK MLAMBO: And he told me that member – family member was on his way to Colchester. And...

ADV REFILWE MOLEFE: When ...

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: Sorry to interrupt you. When he said he was on his way to

Colchester was it with reference to a property he owned there perhaps?

MR THEMBA PATRICK MLAMBO: Well he said he was on his way to Colchester you know.

ADV REFILWE MOLEFE: Well he indicate where in Colchester he is going?

MR THEMBA PATRICK MLAMBO: Well he did not indicate – for some strange reason I must admit that because I knew that Colchester he had got a property in Colchester and that his brother was en route to Colchester so funny enough I did not really even question where in Colchester he was going you know. But if my memory is anything to go by he did indicate that he was going to his house in Colchester. But I will fair not to
10 really put that as a definite.

ADV REFILWE MOLEFE: Yes. So firstly he – you say that he allowed you access into the property.

MR THEMBA PATRICK MLAMBO: He did allow us access yeds.

ADV REFILWE MOLEFE: He then gave you a family member's number?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And did you call this particular family member?

MR THEMBA PATRICK MLAMBO: Yes I did call that particular gentleman and he informed me that he was driving and he was on his way Colchester. In actual fact somebody has answered the phone and said because I do not want to divulge names
20 he told me that the person we are looking for is currently driving. And – but he still gave me – he gave him the phone and I told him that, look we are here on investigation and I got your contact numbers from Mr Mti and this is the reason why we are here you know so where are you? So he told me that I am on my to Colchester I will only be coming back later.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: You know so but Mr Mti had given us the permission you know to take you know pictures of the installations as I had requested of him.

ADV REFILWE MOLEFE: So having been access by Mr Mti did you then enter the property?

MR THEMBA PATRICK MLAMBO: We did enter the property yes.

ADV REFILWE MOLEFE: What then happened?

MR THEMBA PATRICK MLAMBO: I took pictures of the – of the installations that were visible. The electric fence which was enmeshed to the normal fence and then I took
10 pictures of the – of the LED parameter lights and now I needed access to the garage.

ADV REFILWE MOLEFE: Before you go there.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: The pictures that you took of the electric fence...

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And the light that you refer to were these pointed out by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Those were all pointed out by Mr Le Roux

ADV REFILWE MOLEFE: Yes. You were going to tell the Chair about needing access to something else?

20 **MR THEMBA PATRICK MLAMBO:** Come again?

ADV REFILWE MOLEFE: You were going to tell the Chair about needing access to something else.

MR THEMBA PATRICK MLAMBO: I am not sure I understand your question.

ADV REFILWE MOLEFE: Okay. You earlier stated that Mr Le Roux said that the equipment on the property was the electric fence, the lights and an energiser?

MR THEMBA PATRICK MLAMBO: And an energiser yes.

ADV REFILWE MOLEFE: And he indicated where the energiser was located?

MR THEMBA PATRICK MLAMBO: He indicated where the energiser was in the garage

ADV REFILWE MOLEFE: He indicated where in the garage?

MR THEMBA PATRICK MLAMBO: He said as soon as you get into the – you see it is a double garage. He said on the second door of the double garage if you open there and the middle of the left hand side of the – of the garage the energiser was mounted there on the wall.

10 **ADV REFILWE MOLEFE:** Yes. So he gave this description of the location of the energiser for you actually entered the garage?

MR THEMBA PATRICK MLAMBO: Absolutely.

ADV REFILWE MOLEFE: And did you – were you able to gain access into the garage?

MR THEMBA PATRICK MLAMBO: I called the family member of Mr Mti.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Requesting access to the garage. He said to me it is fine but you see the problem is the garage is locked.

ADV REFILWE MOLEFE: Yes.

20 **MR THEMBA PATRICK MLAMBO:** You know so but then in the same sentence say that perhaps it is not locked you know. So I went to try the door, I opened it. Indeed it opened.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes it opened.

ADV REFILWE MOLEFE: And when you opened the garage what did you see?

MR THEMBA PATRICK MLAMBO: I went exactly to the left hand side of the middle of the left hand side of the wall.

ADV REFILWE MOLEFE: And where was Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Mr Le Roux was in the car.

ADV REFILWE MOLEFE: Now you say you went to the left side of the garage?

MR THEMBA PATRICK MLAMBO: Yes. Inside.

ADV REFILWE MOLEFE: And this is where Mr Le Roux had indicated...

MR THEMBA PATRICK MLAMBO: Had directed me.

ADV REFILWE MOLEFE: The energiser would be located?

10 **MR THEMBA PATRICK MLAMBO:** That is correct.

ADV REFILWE MOLEFE: What did you then do?

MR THEMBA PATRICK MLAMBO: I took photos of the energiser. Okay at least I thought was an energiser because that was the only thing that was mounted on the wall and it looked electronic to me. I went inside, I took pictures thereof. I think I took two pictures and – and there was a green paper tag on the side of the energiser and then I closed the door and then I showed Mr Le Roux that this is what I saw. He says no but that is the energiser.

ADV REFILWE MOLEFE: Yes is there any reason Mr Le Roux did not go with you inside the garage?

20 **MR THEMBA PATRICK MLAMBO:** Mr Le Roux basically and his approach was he does not want to appear like he had influenced me in terms of you know what I was supposed to find out because he had informed me what I was supposed to find and he left it to me to find those things on my own which is exactly what I did.

ADV REFILWE MOLEFE: Yes. Chair I see that it is 16:38 and I am advised that the Chair wanted to stop at 16:30.

CHAIRPERSON: I think you probably will not be too long so maybe we should finish – how long do you think you would be?

ADV REFILWE MOLEFE: There are about three other properties that Mr Mlambo would have to speak to?

CHAIRPERSON: How long would that take? What is your estimate?

ADV REFILWE MOLEFE: I fear giving estimates but I think maybe an hour and a half to two hours.

CHAIRPERSON: Oh. On this statement?

ADV REFILWE MOLEFE: Yes Chair.

10 **CHAIRPERSON**: In terms of the text of the statement are you not left with something like two pages or two and half pages?

ADV REFILWE MOLEFE: Well Chair we are currently on page 3 of the statement.

CHAIRPERSON: Hm.

ADV REFILWE MOLEFE: We are on page 3 of the statement which is 8 pages long. However there are annexures to the statement that Mr Mlambo would need to speak to.

CHAIRPERSON: Well maybe we will – or maybe let us adjourn at five, how is that?

ADV REFILWE MOLEFE: As it pleases you Chair.

CHAIRPERSON: We are twenty – we are about twenty minutes to – let us adjourn at five and take it from there.

20 **ADV REFILWE MOLEFE**: As it pleases you Chair.

CHAIRPERSON: Okay.

ADV REFILWE MOLEFE: Mr Mlambo you say that you then took a picture of which you believed to be energiser?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: What did you then do?

MR THEMBA PATRICK MLAMBO: I showed Mr Le Roux those pictures and he confirmed that yes indeed those were the – that was the energiser.

ADV REFILWE MOLEFE: Can you turn to page 2 Annexure TPM5?

MR THEMBA PATRICK MLAMBO: Page 2?

ADV REFILWE MOLEFE: No, no this appears on page 13 of the bundle. What appears on page 13 there?

MR THEMBA PATRICK MLAMBO: On page 13 TPM5 this is the – the emphasis of this particular picture is the electric fence that is enmeshed with the normal fence.

ADV REFILWE MOLEFE: And can you then turn to the following page, on page 14
10 Annexure...

MR THEMBA PATRICK MLAMBO: I beg your pardon. I beg your pardon. I think TPM5 is the open gate.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes. And then the next page...

ADV REFILWE MOLEFE: Okay the following page, page 14 Annexure TPM6 what appears there?

MR THEMBA PATRICK MLAMBO: Ja there it is actually the electric fence that is enmeshed to the fence.

ADV REFILWE MOLEFE: And is this the fence that was identified by Mr Le Roux?

20 **MR THEMBA PATRICK MLAMBO:** Ja, it is the fence that is the boundary fence of Mr Mti's property.

ADV REFILWE MOLEFE: Can you also turn to the following page, page 15 Annexure TPM7, what appears on that page?

MR THEMBA PATRICK MLAMBO: On top of the, on the wall but mounted on the, just there on top is a LED perimeter light.

ADV REFILWE MOLEFE: And is this the LED light that was pointed to you by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: On which side of the property is this light located?

MR THEMBA PATRICK MLAMBO: This is on the same Greenbushes property related to Mr Mti.

ADV REFILWE MOLEFE: Yes, but on which side of the property [intervenes]?

MR THEMBA PATRICK MLAMBO: Oh, this is, this is facing the street.

ADV REFILWE MOLEFE: Okay.

10 **MR THEMBA PATRICK MLAMBO:** Yes.

ADV REFILWE MOLEFE: Can you then turn to page 16 Annexure TPM8?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: What appears on that page?

MR THEMBA PATRICK MLAMBO: At the top corner of the wall and on the roof there is another LED light.

ADV REFILWE MOLEFE: And this light was identified by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Come again.

ADV REFILWE MOLEFE: This light was identified by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: It was identified by Mr Le Roux.

20 **ADV REFILWE MOLEFE:** And where about is the light positioned insofar as the direction of the house?

MR THEMBA PATRICK MLAMBO: Ja. This is also facing the street, but on the left corner, on the left top corner of the house.

ADV REFILWE MOLEFE: Yes. After taking these pictures what did you then do?

MR THEMBA PATRICK MLAMBO: After taking the pictures I then left the property.

ADV REFILWE MOLEFE: Yes and you obviously left with Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Yes, indeed.

ADV REFILWE MOLEFE: Did you ever speak to Mr Mti again?

MR THEMBA PATRICK MLAMBO: No, I never spoke to him again.

ADV REFILWE MOLEFE: And did you ever speak to Mr Mti's family member again?

MR THEMBA PATRICK MLAMBO: No, I did not so far as I can recall.

ADV REFILWE MOLEFE: Can you then?

MR THEMBA PATRICK MLAMBO: I must have, I must have informing the family member that the garage door was actually not locked and also that I got photos of the

10 LED light and closed and left.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And then the garage, can you turn to page 17 Annexure TPM9, what appears on that page?

MR THEMBA PATRICK MLAMBO: On that page is the, what I got to learn later was the energizer.

ADV REFILWE MOLEFE: Yes and you say that this is the only equipment that was mounted on the wall?

20 **MR THEMBA PATRICK MLAMBO:** Yes, this was the only one that was mounted on the side of the wall.

ADV REFILWE MOLEFE: [Intervenes].

MR THEMBA PATRICK MLAMBO: When I was in front.

ADV REFILWE MOLEFE: Sorry, located where Mr Le Roux had said it was located?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: And on the following page, page 18 Annexure TPM10 is that

the same device that appears there?

MR THEMBA PATRICK MLAMBO: It is the same energizer.

ADV REFILWE MOLEFE: The following page, page 19 Annexure TPM11 can you describe to the Chair what appears on that page?

MR THEMBA PATRICK MLAMBO: This is a green paper tag that is attached to the energizer.

ADV REFILWE MOLEFE: And did you show this picture to Mr Le Roux?

MR THEMBA PATRICK MLAMBO: I did.

ADV REFILWE MOLEFE: And what were his comments about it?

10 **MR THEMBA PATRICK MLAMBO:** I told him that I will take the picture because I thought maybe it had to do with the serial number in which case at a later stage when I would be expected to verify you know I would verify, but also I was doubtful it could be a serial number because it was on a piece of paper which could be removed, but I still for the benefit of the fact that I was there and if that particular piece of paper could not mean anything at all.

ADV REFILWE MOLEFE: And following this inspection did you conduct any investigation to establish under whose name the property is registered?

MR THEMBA PATRICK MLAMBO: Yes, I did contact our search team. They identified who the property belonged to and it was established that it belonged to Mr Mti.

20 **ADV REFILWE MOLEFE:** And how were you able to establish this?

MR THEMBA PATRICK MLAMBO: From the records of the search in a property search it did indicate that it belonged to Mr Mti.

ADV REFILWE MOLEFE: And how?

MR THEMBA PATRICK MLAMBO: And 100 percent so.

ADV REFILWE MOLEFE: And how did you identify the address?

MR THEMBA PATRICK MLAMBO: Because I had been on the property and I had seen the property and I had the address.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: *Ja.*

ADV REFILWE MOLEFE: Can we then move to the next property which you deal with at paragraph 12? On what date did you visit this site?

MR THEMBA PATRICK MLAMBO: Paragraph 12?

ADV REFILWE MOLEFE: That appears on page 4 of the bundle.

MR THEMBA PATRICK MLAMBO: Okay. Okay, this was on 19 February 2019.

10 **ADV REFILWE MOLEFE:** And can you recall the approximate time of the visit?

MR THEMBA PATRICK MLAMBO: Can I do what?

ADV REFILWE MOLEFE: Can you recall the approximate time of the visit?

MR THEMBA PATRICK MLAMBO: *Ja.* We, again we left the hotel at about 08:00 am after breakfast and we could have driven in the estimate of about three hours towards a place called Elliott.

ADV REFILWE MOLEFE: Yes and before you went to the property did Mr Le Roux identify what equipment would be found at the property?

MR THEMBA PATRICK MLAMBO: *Ja.* He informed me that at the first property that we were supposed to go to in Elliott, he informed me that they installed the CCTV
20 Cameras and they installed LED lights. They installed monitors and the touches that had to do with the functionality of the CCTV Cameras.

ADV REFILWE MOLEFE: Yes and you have just stated that the property was in Elliott. Where is that?

MR THEMBA PATRICK MLAMBO: Elliott is in the Eastern Cape.

ADV REFILWE MOLEFE: And did he say whom this property belongs to?

MR THEMBA PATRICK MLAMBO: He informed me that the property was associated with Minister Mantashe.

ADV REFILWE MOLEFE: And how did you find the property?

MR THEMBA PATRICK MLAMBO: Again this is one of those properties where Mr Le Roux informed me that it will be difficult to describe but if we drove there he would be able to, although not you know with such ease you know with some relative difficulty he would still be able to identify that particular property. So we drove there.

ADV REFILWE MOLEFE: Yes and in paragraph 12 you deal with a certain lodge which we will return to, but for now can you confirm that you reached the place where
10 Mr Le Roux was directing you to?

MR THEMBA PATRICK MLAMBO: We did reach the place where Mr Le Roux directed us.

ADV REFILWE MOLEFE: And was there a gate leading into the property?

MR THEMBA PATRICK MLAMBO: Yes. There was a gate that leads to the property, but before you get to the actual gate that leads to the property you had to drive through some dirt road because the area you know is full of farms you know maybe private farms and it was hilly and a very beautiful scenic place.

ADV REFILWE MOLEFE: Yes. So what did you then do when you arrived at the gate of the property?

20 **MR THEMBA PATRICK MLAMBO:** When we arrived at the gate of the property I called, I do not know whether it is a PA or the bodyguard of Minister Mantashe and the purpose thereof was to let him advise the Minister that I was there at the property and I wanted to verify the; [indistinct] investigation on the installations that were purportedly done by the Sondolo/Bosasa Special Projects Team.

ADV REFILWE MOLEFE: Yes and did you find this person who you called?

MR THEMBA PATRICK MLAMBO: Unfortunately the phone just rang and there was no reply.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: What did you then do at the gate?

MR THEMBA PATRICK MLAMBO: I then tapped the gate, you know for attention. There was no response, but then there were two gentlemen not far from the gate who were fixing a tractor. I approached those two gentlemen, because I had to ask them if they knew who was in the house. So they said look but there is somebody there. Just
10 go in there. I said to them look already I can see a dog, you know and then this one gentleman said no, but it will not bite. I said well look I do not trust dogs, you know. So I am a strange, you know. So one of the gentlemen offered to take me into the yard to look for a lady who he told me who was looking after the property.

ADV REFILWE MOLEFE: Yes. So when you could see the dog this was while you were at the gate?

MR THEMBA PATRICK MLAMBO: Yes, I was at the gate.

ADV REFILWE MOLEFE: And what was surrounding the house? Was it fencing or was there any concrete that was surrounding the property?

MR THEMBA PATRICK MLAMBO: No, it was just a fence.

20 **ADV REFILWE MOLEFE:** Just a fence?

MR THEMBA PATRICK MLAMBO: Just a fence, yes.

ADV REFILWE MOLEFE: So you could see into the property?

MR THEMBA PATRICK MLAMBO: Yes, you could see the property. You could see you know the cameras. You could basically you know the house was just bare.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: You know, from the outside you could see everything.

ADV REFILWE MOLEFE: Yes. Did you then gain entry into the property?

MR THEMBA PATRICK MLAMBO: Did I?

ADV REFILWE MOLEFE: Did you then enter the property?

MR THEMBA PATRICK MLAMBO: Yes, I did with the assistance of the gentleman one of the guys who was fixing the tractor.

ADV REFILWE MOLEFE: And did you drive in or walk in?

MR THEMBA PATRICK MLAMBO: No, I just walked in with him.

10 **ADV REFILWE MOLEFE:** With the?

MR THEMBA PATRICK MLAMBO: With the gentleman, one of the gentlemen who was fixing the tractor.

ADV REFILWE MOLEFE: And where was Mr Le Roux?

MR THEMBA PATRICK MLAMBO: Mr Le Roux at all times, he was in the car. He basically did not get out of the car at that point.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes. I am the only one who had to go in and you know find the person who was responsible for the property.

20 **ADV REFILWE MOLEFE:** Yes and where did he say that the equipment is located on the property?

MR THEMBA PATRICK MLAMBO: Well he informed that even before we left the hotel. Remember from the onset we knew why we were going to the Eastern Cape, because I said to him I want you to take me to the places where you say you did installations, you know. So on my way he even told me that no at this particular property we installed you know the LED lights, the CCTV Camera and you know we installed the monitors.

ADV REFILWE MOLEFE: Yes and does he indicate where in the property those?

MR THEMBA PATRICK MLAMBO: He did indicate exactly where I was supposed to find the equipment.

ADV REFILWE MOLEFE: And where did he say you would find it?

MR THEMBA PATRICK MLAMBO: With respect to the monitors he informed me that if you get into the property as you pass the kitchen there is a passage on the left. If you turn right into the passage you will see on the left there will be a bedroom. There you will find the monitor and the equipment they have you know to do with the functionality of the CCTV Cameras.

10 **ADV REFILWE MOLEFE:** Yes. So you entered the property with one of the gentlemen who was fixing I think you said a tractor?

MR THEMBA PATRICK MLAMBO: Yes.

ADV REFILWE MOLEFE: And did you meet anyone at the property?

MR THEMBA PATRICK MLAMBO: Did I?

ADV REFILWE MOLEFE: Did you meet anyone once you had entered the property?

MR THEMBA PATRICK MLAMBO: *Ja*, basically he called for the female person who was working there and there was no response. So he took me around the property and there is where we met this particular female person.

ADV REFILWE MOLEFE: Yes.

20 **MR THEMBA PATRICK MLAMBO:** Yes.

ADV REFILWE MOLEFE: What, did you say anything to her?

MR THEMBA PATRICK MLAMBO: Oh yes, I had to introduce myself and the purpose of my visit including showing her the identity card that I had with me.

ADV REFILWE MOLEFE: Yes and during this time Mr Le Roux is still in the car?

MR THEMBA PATRICK MLAMBO: All the time Mr Le Roux was in the car.

ADV REFILWE MOLEFE: And what did the female person you met say?

MR THEMBA PATRICK MLAMBO: What is?

ADV REFILWE MOLEFE: The female person you say you met what did she say?

MR THEMBA PATRICK MLAMBO: Well she was a very kind person. She listened to my story and you know and she let me into the house basically, but before we could even go into the house I had to invite Mr Le Roux because he was, remember now he was still outside in the car outside of the yard.

ADV REFILWE MOLEFE: Yes.

MR THEMBA PATRICK MLAMBO: Yes.

10 **ADV REFILWE MOLEFE:** And when you invited him did he enter the yard?

MR THEMBA PATRICK MLAMBO: He did enter the yard.

ADV REFILWE MOLEFE: What then happened?

MR THEMBA PATRICK MLAMBO: I introduced Mr Le Roux to this female person. I want to be politically correct, you know, because I hear now if you say woman or a lady some people are [indistinct], but anyone this female person then I introduced Mr Le Roux to this female person and it was all systems go. So, but Mr Le Roux indicated to me that Pat I told you where to find stuff. I am not going in and I had to respect that. In any event it suited me because if he told me where to stuff you know there was not even a need for him to go in, because then I was expecting to find the
20 stuff on my own.

ADV REFILWE MOLEFE: Yes. When you say he did not want to go in you are referring to the actual house itself?

MR THEMBA PATRICK MLAMBO: Ja, the inside of the house.

ADV REFILWE MOLEFE: So he stayed outside?

MR THEMBA PATRICK MLAMBO: He stayed outside, yes.

ADV REFILWE MOLEFE: Did you then enter the house?

MR THEMBA PATRICK MLAMBO: Yes. At all times in the company of the female person who was with me.

ADV REFILWE MOLEFE: Yes and where is the first place you went to when you entered the house?

MR THEMBA PATRICK MLAMBO: Upon entering the kitchen and towards the passage and I turned right into the passage and immediately left there as a bedroom and we got into that particular bedroom and I took pictures, well I firstly took videos of the stuff that was visible which was the monitor and the equipment that had to do with
10 the functionality of the CCTV Cameras.

ADV REFILWE MOLEFE: Yes. Now where you found this monitor was this as directed by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: This was exactly as I was directed by Mr Le Roux.

ADV REFILWE MOLEFE: Where did you then go?

MR THEMBA PATRICK MLAMBO: Then after that we went to another bedroom whose door was facing the passageway.

CHAIRPERSON: I am sorry. You went into another?

MR THEMBA PATRICK MLAMBO: Bedroom, the second bedroom.

CHAIRPERSON: *Ja*, you see. I am very uncomfortable about you going into
20 somebody's house without having talked to them in advance, without any court order, without anything going into their bedrooms. Why were not proper arrangements made? Why were proper arrangements made in advance?

MR THEMBA PATRICK MLAMBO: Chairperson firstly let me accept the criticism. I accept the criticism positively. As far as I am concerned there was no bad intention save to say that I was doing investigation and if there was an oversight on my part that I

accept as [intervenes].

CHAIRPERSON: *Ja*, I know from reading the statement that subsequently both Mr Mantashe and Ms Mantashe called you and expressed their strong disapproval, you know, subject to what maybe said later on I think that there should be proper justification before certain things are done. I would be really unhappy if somebody just rocked up at my house and spoke to whoever they found there and got into my house and started taking pictures and all of that. I think it is not right. The legal team should apply their mind to this issue and prepare something that, a document and maybe in an open hearing maybe they can just address me on whether it is the right way to do things. We, just because we are investigating we cannot just do things anyhow. We have got to respect other people's rights. We have got to respect people's privacy. If we have got to do certain things there must be proper justification and so I am just expressing my immediate reaction. It may be that when the legal team looks at the whole thing properly and they address me they might be able to say there was justification, but at this stage it just does not seem to me to be right and maybe I should just emphasise a point that I have made to both the legal team as well as the investigation team that everything that the investigators do must be done on the guidance of the legal team. So even that visit should have been done on the guidance of the legal team. Now whether there was guidance from the legal team or not I do not know, but it is important that things be done properly. Okay, alright.

ADV REFILWE MOLEFE: Certainly Chair. Mr Mlambo you were then describing the first room that you entered in the house and you have said that this was as described by Mr Le Roux?

MR THEMBA PATRICK MLAMBO: That is correct.

ADV REFILWE MOLEFE: Chair I am informed that it is 5 o'clock and would this be an

opportune time to?

CHAIRPERSON: Oh, okay alright. I think we must adjourn. We, I assume that you anticipate taking another 30 minutes or so with him?

ADV REFILWE MOLEFE: Certainly Chair.

CHAIRPERSON: Ja and then there are two other witnesses tomorrow. How long should they take in terms of your estimate?

ADV REFILWE MOLEFE: Chair the witness that follows after Mr Mlambo is Mr Le Roux and his evidence should take at the most half an hour and I believe there is another witness whom I think Mr Pretorius can address you on.

10 **CHAIRPERSON:** And Mr Pretorius how long, are you the one who knows how long the other one will take?

MR PAUL JOSEPH PRETORIUS SC: Well Chair there are two witnesses including Mr Mlambo who will deal with the inspections.

CHAIRPERSON: Yes.

MR PAUL JOSEPH PRETORIUS SC: That should take another hour or so tomorrow.

CHAIRPERSON: Yes.

MR PAUL JOSEPH PRETORIUS SC: Then there is the witness dealing with the evidence regarding the evidence of Vytjie Mentor.

CHAIRPERSON: Yes.

20 **MR PAUL JOSEPH PRETORIUS SC:** That witness should not take very long at all.

CHAIRPERSON: Is that the?

MR PAUL JOSEPH PRETORIUS SC: Daphne Nkosi.

CHAIRPERSON: Oh, okay.

MR PAUL JOSEPH PRETORIUS SC: Mashile-Nkosi.

CHAIRPERSON: So tomorrow in terms of witnesses we should be able to do with

three hours or not?

MR PAUL JOSEPH PRETORIUS SC: No, and then there is the evidence of the NPA Prosecutor, Ms de Kock.

CHAIRPERSON: Yes.

MR PAUL JOSEPH PRETORIUS SC: And she will take, I am not sure of the exact detail, but almost a day.

CHAIRPERSON: Okay. So we might end up using the whole day?

MR PAUL JOSEPH PRETORIUS SC: Yes.

10 **CHAIRPERSON:** Oh, okay alright. Should we start at 10 or should we start a little earlier tomorrow?

MR PAUL JOSEPH PRETORIUS SC: Well have Wednesday as well Chair.

CHAIRPERSON: Yes.

MR PAUL JOSEPH PRETORIUS SC: So 10 is fine.

CHAIRPERSON: Yes.

MR PAUL JOSEPH PRETORIUS SC: Time is taken to prepare bundles, prepare [coughing] and the Vytjie Mentor witness or witness to deal with the evidence of Vytjie Mentor.

CHAIRPERSON: She will be very short.

MR PAUL JOSEPH PRETORIUS SC: We are told she will be here at 10 o' clock.

20 **CHAIRPERSON:** Ja. Okay, alright. So let us start at 10 tomorrow then.

MR PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Ja. We will adjourn now and we will start at 10 o' clock tomorrow morning.

INQUIRY ADJOURNS