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CHAIRPERSON: Good morning everybody. Advocate Lebala.

ADV LEBALA: Good morning Chair, Commissioner Musi. The appropriate person to fire the salvo first is Mr Solomon SC and he will explain when he contextualise everything Chairperson, Commissioner Musi, and our proposal from the side of the Evidence Leader, myself and Mr Ngobese is that Mr Solomon SC should assist the Commission in appreciating what we'd be addressing after he's laid a proper foundation. The foundation that we could lay at this stage would not be as solid as that which could be laid by Mr Solomon SC. If you permit us Chairperson, Commissioner Musi, we would like to give over to Mr Solomon SC.

ADV SOLOMON: Good morning Chair, Commissioner Musi. We received yesterday afternoon through the Secretariat of the Commission an application, a second application brought by Mr Richard Young relating to the cross-examination of Mr Frits Nortjé who is at the moment ready to give his evidence today in terms of the ruling that you made Chair and Commissioner Musi last week. He raises essentially two issues that I wish to deal with together with my colleague Advocate Masilo, and that's this, the first issue is he's requested to be allowed during the cross-examination of Mr Nortjé to question him in respect of 1.5 of the Terms of Reference which we know Chair and Commissioner Musi have been styled the second phase of the

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Commission hearings. That's the first point and I'm going to address it in a moment.

The second point I wish to deal with relates to documents that he has requested, he's got an appendix to his application which contains a whole host of categories of documents and I'll address that after the first point has been dealt with. Returning to the first point we have during the course of the evidence and after the completion of the evidence of both Mr Smith and Mr Rob Vermeulen made it clear that questions should not be directed which impact upon the second phase, those dealing with 1.5 and 1.6 of the Terms of Reference.

Now it strikes the ARMSCOR legal team that insofar as Mr Frits Nortjé is concerned and really following upon the rulings that have already been made by your good self Chair and Commissioner Musi concerning the recalling of witnesses, that there would be little point in dealing with Mr Frits Nortjé in the first phase of this inquiry only to have him recalled in the second phase and we're of the view, we would like my learned and good friend Mr Lebala SC to respond once I'm finished but we would strongly urge the Commission and the Evidence Leaders to allow Mr Nortjé in light of this application received yesterday from Mr Richard Young to give his evidence in the second phase.

And in support of that I want to come to the second

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point that we raised concerning the documentation that Mr Young has requested of the Commission, apparently he says he's requested it on previous occasions, it all relates to the combat suite issue that Mr Nortjé was going to talk about. Now
5 if one looks at that documentation we have prepared in anticipation of Mr Nortjé's evidence this morning a Declassified Documentation bundle.

That bundle has a number of documents that have been declassified by the DoD, the Department of Defence, a lot
10 of those documents were classified by them, they contain some but not all of the documentation that Mr Young has requested in his application to cross-examine, the second application to cross-examine Mr Nortjé which we received yesterday.

A number of the documents and categories of
15 documents that he's requesting in his Appendix "A" relate to the second phase of the Commission, 1.5 which makes sense when you read his application because that's what he's asking for, he says: "I want to have an opportunity to deal with Mr Nortjé not only in relation to 1.1 which is the rationale
20 pertaining to the SDPP's but also in relation to the question of any offences or having been committed, or corruption having been perpetrated in the acquisition, so we think if you look at that documentation that he wants put forward a lot of it touches
on 1.5.

25 We don't want to have a situation where Mr Nortjé

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is cross-examined and then in the midst of his cross-examination there's a request for further documentation or it's sought to put to him documents which he has never seen before, that would not be in our respectful submission an orderly and sensible way of dealing with Mr Nortjé's evidence, so the most sensible way we submit Chair and Commissioner Musi is to let all of the documents that pertain to this combat suite and all aspects of it be placed into this Declassified bundle and let Mr Nortjé stand down until the second phase of the Commission hearings.

We want to point out that Mr Nortjé's advised me that if you look at the list of documents that are being requested by Mr Young they run into several thousands of documents, one could talk comfortably in terms of five to 10 lever arch files of documents. We're not sure how relevant they are but if Mr Young wishes to have access to those documents we would urge the Commission to allow him to have access to those documents and issues of relevancy can be dealt with when and if he chooses to deal with those documents, but none of us wish to be accused of not producing documents to the Commission and I know the Commission's stance has been very strong in that regard that the Commission wants all documents which anyone perceives to be relevant to be placed before the Commission, so the Commission can decide on their relevance and we endorse that approach and I

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know my good and learned friend Advocate Lebala does too.

The other problem with these documents is that most of them are DoD documents, so we have to go through the declassification process and that's going to take time, so it seems to my learned friend Mr Masilo and myself, and with due respect to the Commission that it makes sense to get those documents to the fore, let them be declassified, if they are 2 000 or 3 000 in number, so be it, obviously the Evidence Leaders Mr Lebala and his team would want to look at them and if Mr Richard Young wishes to traverse 1.5 of the Terms of Reference with Mr Nortjé we don't want to have witnesses recalled, that has already been firmly stated by yourself Chair and Commissioner Musi, we think the only sensible and practical way of dealing with it is to allow Mr Nortjé to give his evidence then in the second phase whenever that is next year. That's what we have to say, thank you Chair and Commissioner Musi.

CHAIRPERSON: Advocate Lebala, do you want to add something?

ADV LEBALA: Chairperson, Commissioner Musi, you will recall that we mentioned that the solid foundation that would be constructed by Solomon SC would assist us to positively address this Commission about the challenge that we are facing as the Evidence Leaders, let's start with the obvious Chairperson, Commissioner Musi. Mr Frits Nortjé is a witness

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of the Commission, but he's a client of Solomon SC. Now this reality has expedited that approach which was informed not by our view to undermine you, not to suggest that we cannot adequately address you better than Mr Solomon SC, albeit it all
5 the time Solomon SC does it he simplifies it for our team.

Let's go to the issues. Mr Nortjé is destined to testify before this Commission about the rationale of the Corvette acquisition, he supplements and complements the testimony of Mr Byrall Smith, he talks to the rationale for the
10 combat suite, we've received his declassified bundle and we are better informed Chairperson, Commissioner Musi that Mr Frits Nortjé is a unique witness, more distinguishable, different, not similarly situated as Mr Rob Vermeulen who talked to the submarines, Mr Byrall Smith who talk to the
15 acquisition of the Corvette Project.

He touches on issues pertaining to irregularities, he addresses the Terms of Reference 1.5 and 1.6, I do not know why Solomon SC wants to address 1.5, we read when we read his Declassified bundle that there's some information that
20 advises us that he'll be touching to those additional Terms of Reference. Now we need to pose ourselves a question as to where does this lead us.

It informs us that this witness is going to talk not only to the rationale for the Corvette acquisition but he's going
25 to even touch on issues that pertain to the real nub of the

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issues that we know that large members of our community are interested in, the Terms of Reference 1.5 and 1.6. Now this presents a challenge to us as Evidence Leaders, are we going to lead Mr Nortjé's testimony in piecemeal? Now we had
5 tribulations with Mr Ngobese around this issue, we conferred with Solomon's SC's team and came to the conclusion that the Commission needs to be better advised so that it should make an informed decision on how Mr Frits Nortjé's testimony has to be handled.

10 Now what does this mean Chairperson, Commissioner Musi? According to us we found it difficult to assess whether his testimony could be qualified in percentages, for instance if you had to say if he addresses the question of rationale for the acquisitions of the
15 Corvette/combat suite elements his testimony would be 10% but if you were to address the issues of the irregularities that would be coming out from his testimony his testimony would be 90%, it's dicey subject that we have to handle with care and not mislead the Commission but what is significant is his
20 testimony is going to touch on both.

 Now what does this mean? It means if we were to lead his testimony at this stage of the Commission we'd still have to recall him to come and positively testify to what addresses Term of Reference 1.5 dealing with, whether people
25 within or outside Government have improperly influenced the

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award of the Strategic Defence Procurement Packages. 1.6, if fraud and corruption were imputed on the HDPP's concluded, whether there should be cancellation and they should be returned and the monies paid should be reclaimed.

5 Now this has to be addressed with hindsight
Chairperson, Commissioner Musi to advise you that the
testimony of Frits Nortjé is not going at the outset to say that
he's going to address 1.5 and 1.6 but what would be coming out
of the threads of his testimony is going to weave on the Terms
10 of Reference 1.5 and 1.6.

 Now I've heard what Solomon SC has said, but
before I go on a consensus at the common alter with him in as
far as this subject is concerned let's address the following; the
Commission is to appreciate that the convenience and
15 expediency of the witness's testimony benefits the Commission,
we acknowledge the fact that removing Mr Frits Nortjé from this
phase to testify at a later stage creates a lot of disruptions.

 Now in our view we would like to accommodate Mr
Young but we are not compelled by the application of Mr Young
20 to accede to suspending or deferring the testimony of Mr Frits
Nortjé to a later stage, we have reservations with the approach
of Mr Young, but equally we need to remind ourselves that his
rights to cross-examine are enshrined Chairperson,
Commissioner Musi, not discounting the fact that they are also
25 subject to limitations, they are subject to limitations because

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Mr Young has to appreciate that the Commission has got a timetable, as to how far the Commission's timetable is willing to accommodate Mr Young that has to be decided by himself and his legal teams.

5 We repeat that we are not saying that we need to yield to what Mr Young says, equally we are suggesting that we need to be accommodative to an extent to which we could. Now we are saying what we are saying because there is a lifeline that is being thrown to the Commission and us, we need to
10 consult with Mr Frits Nortjé, there are additional documents that we note having read, the Declassified bundle that we do not have.

 What does that mean? The Commission to be better informed to make its recommendations, to enquire into, to
15 establish facts, to make findings will have to allow us to lead Mr Frits Nortjé in as far as the additional documents that is not before us and that is currently before, not before the Commission is concerned. What does that mean Chairperson, Commissioner Musi? We need time.

20 We've estimated that we might need approximately four days to consult with Mr Frits Nortjé. It has come to our attention that we would have to look at approximately 3 000 docum... 3 000 pages, surmising and you know one analysing the Declassified bundle because the Declassified bundle refers
25 you to those pages.

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Now what does this mean? This informs us that Mr Young seems to be having this documentation that we do not have. Now what does that mean, it means that if we lead Mr Nortjé's testimony based on this tacit and limited
5 documentation that we have Mr Young would have to come and cross-examine him based on the documentation that he has.

Now it has got repercussions which will bring irreparable results Chairperson, it will put us on the spot that we do not prepare, it will expose Mr Frits Nortjé, I suppose
10 Solomon SC wouldn't allow that to happen, but more significantly it would suggest that we are shortchanging the Commission and we are not prepared to do that.

Now in closing we need time to consult with Mr Frits Nortjé, we need to look at this 3 000 of documentation
15 Chairperson. Now where does this leave us, is it leaving us up to next week? It's a question that I find difficult to address. Now if the Commission gets deferred by way of a stand-down to next week it means our consultation with Mr Frits Nortjé will start tomorrow, go into the weekend, we do not know whether
20 by Monday we would be ready to proceed, but to be on the cautious side we would suggest that we should qualify six days as ordinary days, excluding the weekends and where does it leave us, it means if we start tomorrow, Friday, we'd have to look at four days of next week. Now it takes us out
25 Chairperson, Commissioner Musi in as far as this scheduled

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timetable of leading Mr Frits Nortjé is concerned.

Now in closing we rehash the fact that we feel unfortunate about this inconvenience that is assailing the Commission, it's not being created by us, it's a situation
5 beyond our control. Now to be precise Chairperson on an issue that has been raised by Solomon SC as to whether should we leave the testimony of Mr Frits Nortjé to the second phase it makes better sense Chairperson, we applied our mind with Mr Ngobese that in actual fact we'd be doing the Commission more
10 justice if we lead the testimony of this witness Mr Nortjé bearing in mind that he touches on those essential Terms of Reference.

Now you can imagine how challenging it would be for us to shorten the questioning of some of the questions
15 based on the fact that we know that they relate to Term of Reference 1.5 and 1.6 that would be coming later. Chairperson, Commissioner Musi that approach would not be salvaging the Commission, it would not be assisting you to fulfill your mandate of establishing facts, enquiring into them,
20 making findings and eventually making recommendations, we say we would like to take you with us in assisting this process of establishing the truth in as far as the challenge of this Commission is concerned. We could only do it in our view
Chairperson, in our humble view if this witness has to testify in
25 the second phase, that's our submission Chairperson. I beg

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your pardon Commissioner Musi. That's our submission
Chairperson.

CHAIRPERSON: Advocate Lebala I will tell you as you said
right at the beginning we would have preferred it if the witness
5 is called to testify, is cross-examined immediately thereafter
and that witness, there must be no need for any witness to be
recalled. That was the general position that we adopted.
Two, we also said that it will be better if you lead evidence in
such a manner that it deals with the Terms of Reference in the
10 order in which they appear in our, the published Terms of
Reference, but if at all there is a particular witness whose
evidence is going to touch both on 1.1 and 1.5 at the same time
I don't think that should be a difficulty.

The question of the Corvettes to me I find it to be
15 one of the most difficult areas that we have dealt with up to
now and in order for us to be in a position to understand it
properly, to follow exactly what happened I will prefer a
situation where Mr Nortjé testifies during this phase of the
hearing. If at all during his evidence he touches on issues
20 which have got something to do with 1.5 let it be so, let it be
so. I am not inclined to agree to a suggestion that Mr Nortjé's
evidence should be held back until the second phase of the
public hearings, if at all you think that you need about six,
seven days in order to consult with Mr Nortjé and be ready to
25 lead him I would suggest that probably in the meantime if one

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of the teams is ready with the witness, (indistinct) that particular witness and when we finish with that witness we come back to Mr Nortjé.

Two; if at all Dr Young wants to cross-examine Mr
5 Nortjé the usual procedure will have to apply, he has already
made an application and I've seen it, why he's requesting for
permission to cross-examine Mr Nortjé. Because of the special
position that he occupies Dr Young, simply because he was
also involved in one way or the other with the combat suite I
10 have decided to allow him to cross-examine Mr Nortjé but I
think that cross-examination must follow, it must be in such a
manner that it follows the normal procedures.

If I'm not wrong the evidence of every witness is
being put on our website every evening or the following day, if
15 that is the position Mr Young should be in a position to be
ready to cross-examine Mr Nortjé immediately Mr Nortjé
finishes testifying, I will not be inclined to allow a situation
where a witness testifies and he goes away for three, four
months and later on he is recalled for re-examination, the
20 better way of doing it is that once a witness finishes testifying
those who want to cross-examine that witness must be ready at
that time to start with the cross-examination.

Now from what you said I understand that you will
need about four, five days to be in a position to consult with Mr
25 Nortjé to can be ready to lead him, is that correct?

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ADV LEBALA: Certainly Chair.

CHAIRPERSON: Now is there any of your colleagues who is ready with a witness that we can start with either, today or Monday morning whilst we give you an opportunity to finish your consultation with Mr Nortjé.

ADV LEBALA: Chair, that calls for an adjournment, I know that Mphaga SC is present here, he was in a meeting, a brief meeting we held with Solomon SC, I wanted him to be part of the deliberations to appreciate the challenges, but ...

10 CHAIRPERSON: I see Mr Mphaga is sitting here on the left hand side, maybe let me hear what he has to say.

ADV MPHAGA: Thanks Chair. Yes Chair, we will be ready, we have two witnesses, Mr Ferreira and Mr Odendaal or (indistinct) documents in respect of the (indistinct) is ready, the only issue I think is that we expect some application for cross-examination from the Lawyers for Human Rights in respect of Mr Ferreira and Odendaal and maybe to ask that (indistinct) Monday it would be appropriate if we can give them all documents by Friday.

20 CHAIRPERSON: So if I understand well you will be ready to lead your witness on Monday?

ADV MPHAGA: Chair, but for the LHR request we'll be ready right away or tomorrow but then to accommodate them we meet on Monday.

25 CHAIRPERSON: So, in other words (indistinct) Lawyers for

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Human Rights you will you now start leading your evidence on Monday?

ADV MPHAGA: Thanks Chair.

5 CHAIRPERSON: If it was not an attempt on your part to accommodate the Lawyers for Human Rights you would have been ready to lead that witness even today?

ADV MPHAGA: Immediately now, yes.

CHAIRPERSON: Thank you. Advocate Lebala I'll tell you what I'm going to do, the order that I'm going to make, ...

10 ADV SNYMAN: Sorry Chairperson, I'm sorry to interrupt but if I may put on record the exact position of Lawyers for Human Rights as it has been placed on record before us, if I may address you Chairperson, I understand now that it has been placed before the Commission due to a request by
15 Lawyers for Human Rights the Commission would be adjourned until Monday. I just wanted to clarify that that is not the position that we have communicated, we have simply communicated that should other witnesses proceed before
20 Nortjé their statement summaries are not yet on the website and on that basis we have (indistinct) at this stage from even requesting their documents and statements in advance of their testimony, that is merely the position which we indicated this morning.

25 If we do proceed with either of these two witnesses now we would request (indistinct) access to their statements

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and documents as soon as possible and there ought to be no delay in proceeding with the Commission or alternatively if that is not possible that we can access their statements and documents then we would agree that it would be fairer to our clients to give them time to go through those documents once it have been received in order to follow the evidence.

CHAIRPERSON: To be honest with you I don't quite follow what you are saying, can you just perhaps repeat, I don't really quite follow. From which organisation are you or which people are you representing?

ADV SNYMAN: Chair, I represent Andrew Feinstein, Paul Holden and Hennie Van Vuuren from Lawyers for Human Rights. I merely wish to clarify the position of Lawyers for Human Rights as it differs from that which was indicated to the Commission, we are not seeking that the Commission is adjourned until Monday, we are merely stating that we have not yet had access to the summaries of these witness statements and is it, were it possible for us to receive their statements and documents today we see no need to, and certainly we haven't requested any adjournment of the Commission.

CHAIRPERSON: Thank you, I hear what you have said. I think I'm going to make the following ruling, one; Advocate Lebala is going to be given an opportunity to consult with Mr Nortjé and make sure that by the time that their turn comes to lead the evidence of Mr Nortjé that they are ready. Two;

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Advocate Mphaga will lead his witness or witnesses as from Monday and he may (indistinct) Advocate Lebala to be ready to lead Mr Nortjé's evidence. Three; if at all the evidence of Mr Nortjé is going to also deal with 1.5 of the Terms of Reference
5 let it be so because I'm trying to avoid a situation where a witness gets recalled after he had already given evidence. Four; all those who want to cross-examine must make sure that they are ready to cross-examine a witness immediately after that witness has given evidence, so in short we'll adjourn until
10 Monday morning and we'll start with the witness that Advocate Mphaga is going to lead and I suppose in the meantime Advocate Mphaga will do whatever arrangements that needs to be done for instance like posting the summaries of the evidence of those witnesses on our website.

15 And I suppose Advocate Mphaga will do the necessary or make the necessary arrangements with those who wants to cross-examine your witnesses whatever the (indistinct) you might make available to them you will make them available to them before the end of the week. Thank you.
20 We'll adjourn.

(COMMISSION ADJOURNS)