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CHAIRPERSON: Good morning everybody. Advocate Lebala.

ADV LEBALA: Good morning esteemed Commissioners. We are ready to proceed with the chapter in as far as the testimony of Admiral Howell is concerned. Admiral Howell is standing before the Commission Chair.

**(Witness is sworn in.)**

CHAIRPERSON: Advocate Lebala, just before you start are you in a position to indicate to us which paragraphs have changed [indistinct] unsigned statement that [indistinct].

ADV LEBALA: Chairperson, I'm advised that it's page 20 paragraph 70.

CHAIRPERSON: Just hold on. Page?

ADV LEBALA: Page 20 of paginated paper paragraph 70.

CHAIRPERSON: 20?

ADV LEBALA: Page 20 paragraph 70.

CHAIRPERSON: You said the [indistinct] new statement will be paragraph 70.

ADV LEBALA: Chair, I'm advised that the paragraphs and the pages have also changed, so let's focus on paragraph 70 which will be in page 22 of the current new statement. It means in the earlier statement it will be page 20 paginated paragraph 70 it's page 22.

CHAIRPERSON: I'm going to need some help because it seems to be confusing us.

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ADV LEBALA: Chair, let me try and simplify it. I suppose that you and Commissioner Musi have the old statement. Now ... And the new one. In the old statement the changes in as far as the old statement is concerned will be in page 20 paragraph 70, in the new statement ...

CHAIRPERSON: Just hold on, page 20?

ADV LEBALA: Paragraph 70. Page 20 paginated paragraph 70.

COMMISSIONER MUSI: In the old statement there's no page. There's no paragraph.

ADV LEBALA: I think it's in the new statement where there is no paginated page 20. In the new statement it's page 22, in the old statement it's paginated page 20 paragraph 70.

CHAIRPERSON: Advocate Lebala if you look at the new statement the paginated page 20 right at the top you've got paragraph 70.

ADV LEBALA: You are right Chair. Chair, could we adjourn for five minutes please?

CHAIRPERSON: [Indistinct], it's just that I've made some notes in [indistinct] old statement, I just wanted to follow my notes properly [indistinct] I know which paragraphs are new paragraphs and all that have been changed.

ADV LEBALA: Chair, as if you know this is how we also do it, I mean I've just been told five minutes ago that there are changes, I made notes, I rely on my own statement, it means I

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will be taking you and Commissioner Musi relying on both statements but our focus will be on the old statements because our notes are on the old statement and these changes are cosmetic come to think of it, but they seem to be very  
5 important, so it means when you get to the relevant portions then we will draw your attention so that you can rely on the old statement. Chair, we will proceed with the old statement and we will draw your attention when we get to the relevant portions where the changes have to be effected. The witness  
10 ...

ADV CANE: Sorry Chair, Commissioner Musi, the difficulty is that the witness himself has prepared to give his evidence on a statement which is the new statement, which is the one he is working from and has in front of him and to give  
15 evidence of the statement which is no longer accepted as the one he wants to give to the Commissioners being correct, it would be unnecessarily confusing and difficult for the witness. Thank you Chair.

CHAIRPERSON: Can I then make a suggestion? The  
20 witness can give evidence on the new statement and probably after the tea break you can just draw our attention to the difference between the old and the new statement, unless you want to know which part of our evidence [indistinct] which are contained in a certain statement but not in the first statement.  
25 Can we do that after the tea break?

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ADV CANE: Yes, we certainly can.

CHAIRPERSON: Thank you. Advocate Lebala, let's start then, let's continue with the second statement.

ADV LEBALA: Chair, you will notice [indistinct] that it  
5 becomes manifest that the Commissioners do prepare and it's  
something that we should always bear our mind on these  
changes, it doesn't have to have irreparable repercussions but  
it doesn't affect our preparations, we'll proceed as proposed  
Chair. Thank you. We are ready to proceed. Has the witness  
10 been sworn in Chair?

**WITNESS (SA NAVY) : REAR ADMIRAL ANTHONY NEVILLE  
HOWELL - RETIRED (Hereinafter referred to as "MR  
HOWELL"), GIVES EVIDENCE UNDER OATH**

15 EXAMINATION IN CHIEF:

ADV LEBALA: Admiral Howell, you have prepared a  
statement which is before you, am I right?

R/ADM HOWELL: Chair, that is correct.

ADV LEBALA: I'm certain that you've heard the  
20 challenges that have emerged arising from the changes that  
have been effected on the statement but we'll proceed as  
suggested by the chair, you are comfortable with that isn't it?

R/ADM HOWELL: Chair, I'm very comfortable. I've in fact  
got both in front of me if there is a problem, I'm very  
25 comfortable. Thank you.

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ADV LEBALA: Let's proceed by taking you through your statement page 1 paragraph 1. In that paragraph you say:

*"I'm an adult male and presently self-employed and reside at Windmeul near Paarl, Western Cape".*

5 At this stage we want to make you comfortable, we are setting the scene. What do you mean when you say you are self-employed, it's not relevant to the issue that have brought you before the Commission but I just want you to be comfortable, what do you mean when you say you are self-employed?

10 R/ADM HOWELL: Chair, when I retired I purchased a smallholding and I'm farming figs. Just on that farm there is 6 Hectares and I'm also a consultant for a Spanish company.

ADV LEBALA: Thank you. The relevance of your retirement is also highlighted by paragraph 2 of your  
15 statement:

*"I was employed by the South African Navy from 1965 until July 2001 when I retired".*

That's approximately 36 years, am I right?

R/ADM HOWELL: That's correct Chair.

20 ADV LEBALA: Paragraph 3:

*"On 1 January 1993 I was promoted to commodore and appointed Chief Naval Staff Plans".*

Let's pause there. What does commodore mean?

R/ADM HOWELL: Chair that was a rank in the Navy, it was  
25 subsequently changed to rear admiral junior grade after a long

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discussion but in today's terms it would be rear admiral junior grade.

ADV LEBALA: Now your colleagues have testified to the Commission about the grades in as far as the admirals are concerned, at this stage just to refresh us, because this might be relevant to an extent to which it's applicable in your testimony. How many grades of rear admirals, of admirals do we have?

R/ADM HOWELL: Chair, in South Africa we've got four. The easiest way to differentiate is by stars that they wear, we wear on our shoulders, the rank. A rear admiral junior grade has got one star, a rear admiral has got two stars, a vice admiral or chief of the Navy has got three stars and if an admiral, and we've had one in the long distant past, becomes chief of the Defence Force he's got four stars, he's then a full admiral, we call it four star admiral.

ADV LEBALA: How many stars did you have as at the time of your retirement?

R/ADM HOWELL: Chair when I retired I was a two-star admiral, I was a full rear admiral.

ADV LEBALA: Now let's proceed:

*"I had the responsibility for Naval Projects from the Logistics Division in March 1993 and commenced the Corvette Project which became known as Project Sitron".*

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Now your role in as far as Project Sitron is concerned started around 1993, March?

R/ADM HOWELL: Chair that's correct, because when I became Chief of Naval Staff Plans the Projects Division was under the Logistics Division at Navy Headquarters, the Chief of Naval Staff Logistics had the responsibility. It was passed to me in March with all the other projects that were running at the time and then that's the time when we then started Sitron as well.

5  
10 ADV LEBALA: Now you are known as the Chief of Naval Staff Plans, I think it will come time and again. Just explain what does it entail? I know that the Commissioners have heard about these positions but as far as your testimony is concerned it's going to emerge at a later stage. What does the Chief of Naval Staff Plans' functions entail?

15  
20 R/ADM HOWELL: Chair, at that stage I was responsible for the capital budget of the Navy, for the strategic planning of the Navy and then projects came along with it as well, so I was then responsible as the staff officer responsible for projects plus many other functions.

ADV LEBALA: Let's proceed to paragraph 4:

*"On 1 April 1998 I was appointed Director of Naval Acquisition. At that time I moved office to the 6<sup>th</sup> Floor of ARMSCOR Building in Pretoria. My immediate superior was the Chief of Acquisition Mr*

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*Shamim Chippy Shaikh”.*

Now the functions of Naval Acquisition I as far as the Navy is concerned, are they separate from acquisition in as far as the whole DoD with ARMSCOR being in the picture is concerned?

5 R/ADM HOWELL: Chair, if I understand that question correctly they are not really separate because the Navy’s acquisition partner was what I called projects before that, it’s, that moved as that section of my division, we moved up to acquisition because the whole Defence Force’s acquisition  
10 structure changed and so I took that section of my division up to fall under Mr Shaikh to become the Acquisition Department of the Secretariat but obviously the Naval section of that acquisition.

ADV LEBALA: So the Naval Section of Acquisition did fall  
15 under the whole umbrella Division of Acquisition which was headed by Mr Shamim Shaikh?

R/ADM HOWELL: Yes absolutely, then I had colleagues, there was an Army colleague and an Air Force colleague that were responsible for their arm of service acquisitions as well.

20 ADV LEBALA: Now briefly at this stage just explain your working relationship with Mr Shamim Shaikh in the context of you being the director of Naval Acquisitions, him being the Chief of Acquisition.

R/ADM HOWELL: Mr Chair, it was a newly appointed Chief of  
25 Acquisitions, it was a new post, it was newly created, it was

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the first time that Acquisition was then under the Secretariat, he was a civilian, so I was in fact his naval advisor for when it came to naval acquisition. I would worry about the detail and the technical side of the acquisition and report to him and he  
5 relied on me for what equipment we were going to buy and he was then obviously responsible to higher up authorities. I hope I've answered the question.

ADV LEBALA: Now you mentioned that you were his naval advisor, bearing in mind that he was a civilian. Now did he  
10 have the Air Force advice if I were to use this expression?

R/ADM HOWELL: Yes, he had an Air Force one and an Army one, later on I think a medic, at that stage I can't remember, but I don't think we had a medic with us.

ADV LEBALA: Now your relationship with him in as far as  
15 acquisition is concerned, was it inclusive of other activities outside Acquisition, a relationship with him, we know that it was based on the fact that you were the Director of Naval Acquisition and he was the Chief of Acquisition. Did you have any other relationship with him outside this one qualified by  
20 function, the function Acquisition?

R/ADM HOWELL: Chair, if I understand that correction, the question correctly the answer is no because I was, it was purely a working relationship with him and when we dealt with each other on a daily basis it was with naval projects.

25 ADV LEBALA: Thanks for simplifying the answer for

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yourself. The question was too broad and you will appreciate why it was put to you that way, and thanks for confining it to working relationship now. Other than the working relationship you had with him did you have any other relationship outside  
5 the working relationship?

R/ADM HOWELL: No Chair, the answer to that is no.

ADV LEBALA: Let's proceed, paragraph 5:

*"A copy of my abbreviated CV is attached marked 'AH1'".*

10 Chair, Commissioner Musi, you will find that CV on page 1 of the annexures, you will see that the annexures start at page 1. Let's run through your CV, it's not that critical except where it's irrelevant to your testimony where it's relevant to your testimony. If one looks at the, to your left the year 1970,  
15 that's where I would like to start, especially line number 4. I hope the Commissioners are with me. To your left you will see that there are dates and years, actually specifically years. I would like us to focus our attention on 1970 starting with first submarine. I want to see whether the Commissioners are with  
20 us. Commissioner Musi is nodding, I suppose Chair is also nodding. I see the Chair is nodding, let's proceed. Let me start where you served in all three Daphne submarines as Detection and Weapons officer and 1<sup>st</sup> lieutenant. Now does this explain your expertise and interest in submarines or you  
25 were conditioned from the onset when you joined the Navy to

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focus on submarines?

R/ADM HOWELL: Chair, when I joined the Navy there were no submarines and we weren't, there wasn't any sort of hope of getting any but in fact I was still at the Military Academy when they announced we were going to get them volunteered immediately and was fortunate enough to be selected as the junior officer of the first submarine, that's the communications of [indistinct] we call him as a communications officer, and then I progressed up through the levels, the Detection officer is the next one, the next one was the Weapons officer and then 1<sup>st</sup> lieutenant and I was privileged to command a submarine at the end of my command but in that progress I've moved from submarine to submarine and they were exactly the same with very, very subtle, minor changes and so I was fortunate to be the first officer who actually had the career right through from junior to top where the others started in those more senior ranks.

ADV LEBALA: Thank you. The relevance, you mentioned that you served in all three Daphne submarine, does it mean that we only had three Daphne submarines as a country?

R/ADM HOWELL: That is correct Commissioner. We had the three, at that stage they were called Maria Van Riebeeck, Emily Hobhouse and Johanna Van der Merwe. They subsequently have changed their names.

ADV LEBALA: Thank you, the commissioners have heard

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about this testimony. We are going to avoid repeating testimony that has become common cause, you will see that I tried to direct you away from [indistinct] end up repeating testimony. Now let's look at the yes, below 1970 we see 1981  
5 to 1983 you commanded the SAS Maria Van Riebeeck, it was one of the submarines.

R/ADM HOWELL: That's correct Commissioners.

ADV LEBALA: Now below I would like us to put our foot on the pedal, I'm going to 1 January 1993, can you see it to  
10 your left below 1989 and 1992?

R/ADM HOWELL: Yes Chair.

ADV LEBALA: But let's recapitulate and go back to 1989 and 1992, you commanded the Naval College in Gordon's Bay.

R/ADM HOWELL: Yes Chair, that's the officers' training,  
15 initial training school.

ADV LEBALA: Yes, we have heard your colleagues who have testified before you talking about that. 1 January 1993 you were promoted to commodore, you've heard about that, you were also appointed Chief of Naval Staff Plans, you've  
20 explained what the position of Naval Staff Plans entailed, you remember?

R/ADM HOWELL: Yes Chair.

ADV LEBALA: Do you focus on capital budget in as far as Naval Staff Plans are concerned or there are other  
25 responsibilities that you do?

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R/ADM HOWELL: Chair, as I said there are a lot of other responsibilities, that's strategic planning, the projects as well, as well as the capital budget.

ADV LEBALA: I would like us to go to 1 April 1998 just  
5 below 1 January 1993. You were appointed Director Naval Acquisition, we've heard about it, Defence Secretariat, you moved to ARMSCOR Building with Director Projects, Captain O J Van der Schyff, the Commissioners are going to hear about that where relevant, and project officers and teams. Now does  
10 this mean that at that stage changes were happening because you were moving in that direction and [indistinct] seeks to suggest that there were new developments on the ground?

R/ADM HOWELL: Yes Chair, the whole Defence Force was changing and the whole acquisition structure was changing, so  
15 the secretary had been made responsible for acquisition and this was giving him the capability to carry out that responsibility, that he then got the capacity by us moving to fall under him.

ADV LEBALA: I see you are coughing, do you need some  
20 more water, are you okay?

R/ADM HOWELL: Thank you very much Chair, I'm fine.

ADV LEBALA: Let's proceed. And on the 1<sup>st</sup> April below  
1 April 1998 you were promoted to rear admiral, that's where you would acquire two stars, am I right?

25 R/ADM HOWELL: That is correct Chair.

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ADV LEBALA: And you were appointed Chief Director Maritime Warfare Navy Office. I think the Commissioners have heard about the chief director by the time of ..., just summarise it quickly because its relevance is going to come again at a later stage. Just summarise it quickly, what does it entail?

R/ADM HOWELL: Chair, at that stage it was the officer responsible or the staff officer responsible for Operations in the Navy, Planning as well, and then also for Management Services. The post was, when I retired the post was closed and when it was reopened it was called Chief Director Maritime Strategy which are, the two posts are exactly the same.

ADV LEBALA: And we know that around 31<sup>st</sup> July 2001 you retired, hence farming.

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Now let's go back, we've talked about yourself, I suppose that you are more relaxed now, we are proceeding. Paragraph 6 just informs us page 1 of the witness's statement Commissioners, it just tells us about why you are standing before the Commission, you are going to testify about your involvement in the Corvette and the submarine projects, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: And we are going to focus on your limited role, we are not going to engulf everything that the Commission has heard about, let's proceed to paragraph 7, how you

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approach your evidence:

“I’ve read the statements submitted by my former colleagues in the South African Navy, Admirals Green, Higgs, Schoultz and Captain Jourdan”.

5 And we assure the Commission that we are not going to repeat what they said.

10 *“I shall avoid repeating in this statement what they’ve said in this regard to Project Wills, Sitron and the SDPP but I will be able to do so in my evidence, if this is necessary, to explain my personal involvement in matters, why certain events took place”.*

Now paragraph, page 2 Commissioners, paragraph 9, it’s common cause but its significance just comes to refresh us about the testimony that the Commission has heard when the Secretariat came into the picture. I would like us to focus on line number 4, paragraph 9 look at line number 4 starting with “The Secretariat ...”. Can you see? I’ll read it quickly:

20 *“The Secretariat was to serve as administrative arm of the Department of Defence under the leadership of the Secretary of Defence and the Minister of Defence. Mr Pierre Steyn served as the Secretary of Defence and Chippy Shaikh was appointed as the Chief of Acquisitions. As far as I can ascertain Mr*  
25 *Steyn was appointed on 1 April 1995 and Mr Shaikh*

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*acted as the Chief of Acquisition Designate for a period to his former appointment on about 1 March 1998”.*

Let's pause there. Just explain this process where Mr Shaikh acted as Chief of Acquisition Designate. What does it mean in relation to his post as the Chief of Acquisitions?

R/ADM HOWELL: Chair, as far as my memory serves me correct that whole organisation was still being structured and the posts were still being created, so he couldn't in fact be appointed as the final last, because the post didn't exist, it was being created, so the organisation was being created, so he was in fact designate and working with General Du Preez as under Chief of Staff Logistics who was responsible in, let's call it the "old organisation" for projects.

ADV LEBALA: Now does it mean that before the post of Chief of Acquisition was designated there was a post which was serving the functions of acquisitions within the Department of Defence?

R/ADM HOWELL: Chair yes, the acquisition function fell under the Chief of Staff Logistics and he had an organisation who was responsible for acquisition and they moved then, and obviously ARMSCOR as well.

ADV LEBALA: Now at this stage you are informing the Commission that there were changes that were happening on the ground, clarity was being sought as to who is going to

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serve as what, which position is going to be occupied by who, but something in the self-same paragraph explains that process. Let's start with the penultimate sentence, if you look at the sentence starting with: "1998, ...", can you see towards  
5 the bottom? Paragraph 9.

R/ADM HOWELL: Yes, I've got it.

ADV LEBALA: I hope the Commissioners are with us.

*"When the Management Committee described in paragraph 31 below was at his instance named  
10 SOFCOM (Strategic Offers Committee".*

What was happening at that time that there was committee called Management Committee and then we see SOFCOM being mentioned there, would you like to bring clarity?

R/ADM HOWELL: Chair when General Du Preez was  
15 responsible, and we'll get to that I'm sure, he was, he formed the Management Committee and when Mr Shaikh became Chief of Acquisition and took control of acquisition he then reformed the Committee as the Strategic Offers Committee, SOFCOM, but the majority of the members were exactly the same members, I  
20 certainly was.

ADV LEBALA: Thank you. Let's quickly go through paragraph 10:

*"Pursuant to the 1996 White Paper on Defence the-  
then Minister of Defence Mr Joe Modise appointed a  
25 project team known as the Ministry of Defence*

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5 *Acquisition MODAC Workgroup, to investigate and make proposals with respect to the management execution and structure of the acquisition function in the DoD. As stated by Minister Modise in his foreword to the MODAC Report dated 8 August 1998 the recommendations made in these reports were accepted as departmental policies”.*

Now what does that mean, was MODAC laid a foundation for departmental policies within the DoD?

10 R/ADM HOWELL: Yes Chair, that ... The Minister appointed the workgroup who did the work, then came up with this policy that guided acquisition in the Defence Force.

ADV LEBALA: Were you part of that group?

15 R/ADM HOWELL: I was not part of the workgroup because that, the workgroup included people from the Defence Headquarters and at that stage I was at the arm of service headquarters which is the Naval Headquarters.

20 ADV LEBALA: Now [indistinct] relevancy comes in [indistinct] in line with your testimony that the Commission wants to hear has got nothing to do with MODAC, but we would like the Commission to appreciate why this MODAC Workgroup was very critical and important. Let's quickly read paragraph 11 before we go to common cause, we'll be jumping some of the paragraphs that need not be repeated. Paragraph 11:

25 *“One of the fundamental projects emanating from*

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5            *the MODAC 1 Report was that because of the*  
*acquisition posts consumed national resources it*  
*had to take into account the broader national*  
*objectives of job creation, wealth generation, trade*  
*balance, countertrade, technology development and*  
*industrial development. It was recognised then that*  
*this new approach might conflict with the previously*  
*applied acquisition processes including the*  
*objective of ensuring that acquisitions were done at*  
*the lowest cost and therefore these objectives had*  
*to be prioritised by management’.*

I think the Commission has heard about this but they will appreciate why we wanted to read it.

*“The MODAC Report is attached as Annexure ‘AH2’”.*

15        We don’t even have to go to it. Paragraph 12, the Commission has heard about it. Paragraph 12 “History”, the Commission has heard about it. Paragraph 14 “History”, the Commission has heard about it. Paragraph 15, the Commission has heard about it, we are on page 4 Commissioners. Paragraph 16, the  
20        Commission has heard about it, actually we’re overwhelmed with that testimony. Paragraph 17, they’ve heard about it. Paragraph 18, it would repeat, just to complete the picture of your *Curriculum Vitae* and your involvement, your personal involvement in submarines. Paragraph 18:

25            *“I was at the time working on the replacement of the*

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5           *ageing Daphne Submarines. The initial plan was to start the Submarine Acquisition Project once a new surface ship project Sitron was in the build-phase. The delay of Project Sitron meant that the ship and submarine and submarine projects had to be run concurrently”.*

Let's pause there. As at that stage were you both involved in Project Wills and Project Sitron or you were only focusing on submarines which appears to have been your forte?

10    R/ADM HOWELL:     Chair, I was very much involved in Project Sitron. At the time that was the major project running in the Navy, so as far as project side of my responsibility was the main focus was Sitron, although there were other projects also running because Sitron was the survival of the Navy, but as  
15    from the planning side of my responsibilities I was working on the replacement of the submarines and the planning said that the submarines should start after we've already got the ships going mainly because of the sources, but the delay in the surface ship, Sitron actually put the two together, so we had to  
20    run the two projects together.

ADV LEBALA:           Thank you. Paragraph 19 common cause, we've overwhelmed the Commissioners about it. Paragraph 20 common cause, paragraph 21 the Commissioners heard about it. Paragraph 22, now let's just refresh ourselves and give the  
25    Commission the background of your involvement in the package

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deal. Paragraph 22 at the ..., I beg your pardon, I note that the pages have changed. On the new statement it's on page 5 on the old statement, we are starting on page 4 at the bottom, are you with me Admiral Howell?

5 R/ADM HOWELL: Yes Chair, I've got it.

ADV LEBALA: I understand that this led to the idea of a package deal which had started with the Upholders and the Yarrow Ships and evolved into, and became known as the Strategic Defence Procurement Packages. Now we are talking  
10 about your personal involvement, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Let's go to paragraph 23 headed "The Strategic Defence Procurement Packages", we are not going to overwhelm the Commissioners about it, they've heard about it.  
15 We are jumping paragraph 23, we are jumping paragraph 24, we can start on paragraph 25 "Policy Directive 4/147" in as far as your personal involvement is concerned:

*"The Department of Defence Policy Directive 4/147 which was approved by the Council of Defence on  
20 8 August 1997 put in place a policy for dealing with International Defence Equipment Offers in the Ministry of Defence".*

I refer to Annexure "AH4", now you will find that on pages 51 to 54:

25 *"MoD Policy Directive 4/147 established a policy for*

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*dealing with International Defence Equipment”.*

Now this is where you start to be personally involved, but I assure you that the Commission has heard about this testimony, now I don't want us to delve deeper into it, let's not waste time by going to Annexure "AH4" on pages 1 and 54. Now that part in as far as your personal involvement is concerned also goes to common cause issues. Paragraph 26 is also common cause, paragraph 27 is also common cause. Paragraph 28 is also common cause, we'll start on paragraph 29.

Now I would like the Commission to appreciate the following; that your statement when it was prepared this way it was meant to assist anyone who reads your statement to appreciate the historical background in the context of your personal involvement, it was not a waste of time and I'm not relating this as if it's not important, the Commission doesn't want to hear repeated testimony, it burdens the record and it does not serve any purpose. Now all of this background, it will become relevant when the main relevancy of your testimony comes in, where your moderation roles comes in, where your role as a director of Naval Staff Plans comes in, and with this background in mind then we'll proceed to paragraph 29 to appreciate why we are just chopping and changing and jumping some of the paragraphs. Paragraph 29:

*“The assessment procedure was to incorporate a*

*multi-tier approach consisting of three orders”.*

Now the Commission has been overwhelmed with that testimony, actually we call it the three-tier process where at the lower level it was the different teams, at the middle level it was SOFCOM and to the upper team it was the Ministry. Now your role when it comes to the issue of moderation will be looked at in the context of these three multi-tiered approaches. Now let's complete the picture by reading paragraph 29.1:

10                   *“The first order was the responsibility of the Ministry of Defence and I had no involvement at that level”.*

You agree?

R/ADM HOWELL:     That is correct Chair.

ADV LEBALA:        Now who was involved at that level?

15     R/ADM HOWELL:     Chair that's the upper, that's, if my memory serves clear the Minister obviously, the chairman of ARMSCOR, Chief of the Defence Force and if necessary, and when it was that particular project was the chiefs of arms of service, the applicable one.

20     ADV LEBALA:        Was Mr Shaikh involved at this level?

R/ADM HOWELL:     No sorry, Mr Shaikh, Mr Shaikh for projects, he would in fact do all the briefing and informing of that level.

ADV LEBALA:        Then in 9.2:

25                   *“The certain order envisaged the appointment of a*

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5 *representative MoD Evaluation Team to develop a  
second order MoD Value System and it was  
envisaged that this would embrace  
interdepartmental and political sanction. It was  
envisaged that project teams would be appointed at  
this level to deal with the separate acquisition  
projects. In the result a management team was also  
appointed to operate at this level which later  
became known as SOFCOM on which I sat. My  
10 involvement at this level is set out below”.*

Now we know that you were a member of SOFCOM, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Mr Shaikh was also involved.

15 R/ADM HOWELL: Mr Shaikh was very involved, he was in  
fact chair.

ADV LEBALA: So the Director of Acquisition and the  
Chief of Acquisitions were also both involved in SOFCOM?

20 R/ADM HOWELL: The Director of Acquisitions, let me just  
check. The Chief of Acquisitions was in fact involved as in the  
SOFCOM, yes.

ADV LEBALA: The Director of Naval Acquisitions and the  
Chief of Acquisitions were both involved with SOFCOM.

R/ADM HOWELL: Sorry yes Chair, that's correct.

25 ADV LEBALA: I would like the record to correct myself.  
Thank you Admiral. Now this is second tier. Now let's go to

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the third tier. The Commission has heard about this, now when we take you towards your testimony on moderation they are going to remember why we are taking you through this. 29.3:

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*“The third order consisted of the six project teams appointed at the second order level which were tasked with the evaluation of the six separate acquisition projects. I describe my appointment and role as moderator for two of the project teams, Project Wills (Submarines), and Project Sitron*

10

*(Corvettes), below”.*

Now that’s where your role starts to come to the fore. Just explain to the Commission that at this level what qualified you to moderate both the Project Wills and the Project Sitron?

15

R/ADM HOWELL: Chair, in fact the policy was that the moderate ..., their arm of service representative on SOFCOM was the moderator for the project, however, as Chief of Naval Staff Plans in the beginning and then Director Naval Acquisition I was in fact responsible for those projects, so I was the arm of service representative but I was also the staff officer responsible for those projects, for projects, all of them, but we’re talking about Sitron and Wills, so therefore both those projects were my responsibility, not only if I was moderator or not, but as the staff officer responsible.

20

25

ADV LEBALA: Now if you look at 29.1 the first order, 29.2 the second order, 29.3 the third order, would I be right to

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say you could explain them by taking them from below upward?

R/ADM HOWELL: Yes Chair, that is, the project teams we could say they worked at the bottom level, they work and they do the staff work and the technical work and then it goes up to  
5 the next level for approval, it then goes up to the next level for the next approval.

ADV LEBALA: Now we've got to be careful because you see we've spent such a lot of time on this piece of testimony, the Commission heard about, we two-stepped it to try and  
10 explain it in such a manner that we understood it and we're happy that the Commissioners understood it from the onset. Now your role as a moderator at that level, would you like to simplify it as to how those things brought whatever reports that you had to evaluate, which teams brought those reports to you?

R/ADM HOWELL: Chair, those teams brought everything to  
15 me as I was the responsible officer. I have, the moderator, I really didn't worry that that role came to me, I always saw myself as responsible whether I was moderator or whatever they called it, and I was also the responsible officer for them,  
20 so that both teams brought everything to me, and I kept myself informed of what was happening with both teams at all times.

ADV LEBALA: Now by both teams you are talking about the teams that dealt with Project Wills and the team that dealt with Project Sitron, am I ...

R/ADM HOWELL: That is correct Chair, Captain, then-

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Captain, now-Admiral Kamerman as Sitron, and Commander-then and Captain Reed when he came for Projects Wills.

ADV LEBALA: Just explain to the Commission why two moderators were not chosen to focus on each of these teams bearing in mind that you assumed the responsibility of moderating of teams.

R/ADM HOWELL: Chair if I understand the question properly they were both naval projects, there was one naval representative on this SOFCOM and there was one Naval officer responsible for both of them, so therefore he was responsible for moderating both of them as well.

ADV LEBALA: We'll go, we'll come back and deal with the nitty-gritties of moderation, we're just laying the foundation for that. Please go to paragraph 30 which is common cause, we are not dealing with it. Paragraph 81 "Management Directive: Evaluation of International Offers", and I think we have already laid a foundation that SOFCOM started as a management, MoD Management Committee if you look at line number 4, paragraph 31 starting with:

"From April 1998 once the Acquisition Department was formally established this was called SOFCOM".

We know that at one time people were trying to find each other, that's why Mr Shaikh was the designate, but at this stage now SOFCOM is established.

*"The representative of the Management Committee*

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*from the arms of service including myself as the representative from the South African Navy were to act as moderators of the relevant evaluation teams’.*

Paragraph 9 as read with paragraph 14(h). That’s where we have to pause. Let’s look at Annexure “AH6”. Commissioners it is on page, it starts on page 61. Just for the sake of completeness let’s start on page 61 Commissioners, you will see that the document is dated 28 October 1997, it is headed “Management Directive: Evaluation of International Offers”. The relevant portions in as far as the witness’s testimony is concerned starts on page 64. For you to appreciate what we’ll be taking you through is to repeat what is being said in paragraph 31, that:

*“The representatives of the Management Committee from the arms of service including myself as a representative from the South African Navy, were to act as moderators for the relevant evaluation teams”.*

Paragraph 9 as read with paragraph 14(h). Now at this stage what did you understand the function of the moderator to mean?

R/ADM HOWELL: Chair, my understanding of the moderator and the responsibilities of the moderator were then to ensure that correctness, the accuracy and the completeness of any report going up to higher authority. So, when the teams did it I

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was responsible, I signed it, so therefore I must be happy what was there and that it was complete and it was true and accurate.

ADV LEBALA: Paragraph 81 tells us about:

5                   *“The representatives of the Management Committee from the arms of services, including myself as the representative from the South African Navy were to act as moderators”.*

Now how many moderators were there?

10 R/ADM HOWELL: Chair, to the best of my knowledge the moderators for the other projects, the arms of service, there were three, so there’s obviously the Army one and then the moderator for the Air Force. To the best of my knowledge those people weren’t in fact the equivalent of my position as  
15 responsible for acquisition as a whole.

ADV LEBALA: Now let’s simplify what you say to the Commission by looking at page 64 headed “Evaluation Teams”. Paragraph 14, “Management Committee”. Now we’ve heard about Management Committee and SOFCOM. At this stage was  
20 it clear that we were talking about Management Committee or SOFCOM, looking at what paragraph 14 tells us.

R/ADM HOWELL: At that stage Chair it was Management Committee.

ADV LEBALA: Now:

25                   *“The MoD Management Committee acting in*

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*accordance with the policy guidelines contained in reference C is ...”.*

Now these names we see D ... Actually let's start with B, Mr Esterhuysen representing ARMSCOR, D-Mr Shaikh, the DoD, H-  
5 Commodore A M Howell. Now at that stage you were a commodore.

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now we see J something remarkable, a name has been blotted there. For interest sake what does it  
10 signify?

R/ADM HOWELL: Chair, to the best of my knowledge that was the representative from the Intelligence Division, so obviously the person who declassified it feels that the Intelligence Division's person's name shouldn't be put there.

15 ADV LEBALA: And we see that K, there were representatives from the DTI, L-representative from DAS-SCT, what does it stand for?

R/ADM HOWELL: I'm afraid I'm not sure Chair. Department of ... Chair, I'm going to need help on that one. I'm not quite  
20 sure in fact what ..., it's an outside department, it's not inside the Department of Defence.

ADV LEBALA: Okay, I think after tea adjournment we should be able to assist the Commissioners to appreciate what does it stand for. Can we just park it and come back with an  
25 answer. Are we able to inform the Commissioners after tea

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adjournment what does it entail? Thank you. [Indistinct representative from the Department of Finance. Now one sees that you were part of the evaluation teams. Now this team is called the MoD Management Committee, what was it tasked with?

R/ADM HOWELL: Chair, I'm ... Sorry, we could read the detail there but my understanding is that it was responsible for coordinating and controlling the staff work for the projects.

ADV LEBALA: Now look at page 65. Paragraph 16 "Industrial Participation", is it a team on its own?

R/ADM HOWELL: Chair yes, my understanding is that there was a separate team appointed.

ADV LEBALA: And paragraph 17, the Finance Team, was it a team on its own?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: And page 66 paragraph 18 "Defence Equipment":

*"The following officials are appointed as chairmen and leaders of the six equipment evaluation teams which have been notified along with the value system to ARMSCOR".*

What does that mean in simple terms? Remember we are gravitating towards your function as a moderator.

R/ADM HOWELL: Chair, those were the ... They were the project teams that you will notice that Captain Kamerman, then

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Captain Kamerman was for Project Sitron, Submarines was Wills and the Maritime Helicopter, although it's an Air Force German Helicopter, it was a maritime helicopter, so Captain Kamerman was still responsible there. Chair, we'll also notice  
5 that those are naval officers, military men, they are responsible there. The other projects were in fact led by ARMSCOR personnel, they all missed us and they were led by ARMSCOR personnel. The Navy worked slightly differently to the other arms of service because we had a bigger engineering  
10 capacity and capability, so the Naval officers led the teams as opposed to ARMSCOR leading the teams.

ADV LEBALA: Now from appreciating what we see in paragraph 18 am I right to say (a), Corvettes, (e), Submarines, (f), Maritime Helicopters were moderated by yourself?

15 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now for the sake of completeness why were you not allowed to moderate (b), (c), (d), look at Light Fighter Aircraft, Light Utility Helicopter, (d) Main Battle Tank.

R/ADM HOWELL: Chair that's outside my area of  
20 responsibility and expertise, so Battle Tank was Army, Light Utility Helicopter and the Fighter Aircraft or the Air Force, but as I say they were in fact led by ARMSCOR personnel.

ADV LEBALA: Now let's look at what paragraph 9 says, Annexure "AH6", paragraph 9 in line with the foundation of your  
25 moderating functions. That is on page 63 Chairperson and

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Commissioner Musi:

5                   *“The MoD Management Committee’s involvement in  
this evaluation would be regulated by the policy  
guidelines of reference C. Arms of service  
representatives on the MoD Management Committee  
will act as the moderators for the relevant  
evaluation teams involved with the six defence  
equipment segments of the proposals”.*

10                   Let’s pause there. As at that stage did you understand what  
the function of a moderator entailed as at that stage? Did you  
understand what the function of a moderator entailed?

15                   R/ADM HOWELL: Chair, I’m not sure anybody understood  
exactly what the word “moderator” meant, but it didn’t worry me  
because I was responsible anyway as the function, it was my  
area of responsibility, so whatever I was called didn’t worry  
me.

ADV LEBALA: Now let’s read on and see something  
remarkable there:

*“The Chief of Acquisition designate ...”.*

20                   Who was she by the way?

R/ADM HOWELL: That was Mr Chippy Shaikh.

ADV LEBALA: *“... is the moderator of the Industrial  
Participation Evaluation Team”.*

25                   It’s not fair for me to ask you what did he understand  
moderator to mean, he could come and explain it himself.

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*“The appointed leaders of the evaluation teams are responsible for receiving the information to be evaluated from the MoD coordinator Mr K P Hanafey and providing him with the results”.*

5 Was that the task that had to be done?

R/ADM HOWELL: That is correct Chair, it’s a normal project administration task that the project teams did as a standard practice.

ADV LEBALA: Now as at that stage would I be right to  
10 say that the function of a moderator envisaged a situation where it’s someone independent from a person who was a member of that team?

R/ADM HOWELL: Chair, he wasn’t ... I didn’t say he didn’t  
15 have to be inde..., he couldn’t be totally independent, he’d have to be involved to get to know and to understand the detail of what was going on so that he could then moderate. It’s a little different to a university exam moderator which I saw certainly as different.

ADV LEBALA: Now you seem to be telling the Commission  
20 that at that stage you had an idea what to expect from a moderator, am I right?

R/ADM HOWELL: ... (Indistinct) ..., at that stage I knew  
25 what my responsibilities were as the man in charge, so therefore I accepted those responsibilities and I carried out my work whether it was called moderator or is it called Chief of

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Acquisition.

ADV LEBALA: But what you have demonstrated up to so far is that there were two teams that you had to moderate and those teams fell under a name and you were a naval officer and those teams were the teams under Project Sitron, you've testified that it was headed by Captain Kamerman and the team under Project Wills headed by Captain Reed.

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Were you a member of those teams?

10 R/ADM HOWELL: I was in fact not a member of those teams, those teams reported to me, so I was in charge of those teams because both those officers were responsible to me.

ADV LEBALA: When you say "those teams" reported to you, was it in relation to every day's functions and responsibilities because you were an officer, you were superior to them, am I right?

R/ADM HOWELL: That is correct Chair, I was superior to them and I hesitate to say in command, but they reported to me, whether it was in the packages or not they were my staff.

20 ADV LEBALA: So, you had a relationship with them even outside those packages, remember the package, by the packages you mean the SDPP's , am I right?

R/ADM HOWELL: Chair, the organisation of the Projects Division there was in fact you had a man, we called him Director Projects who reported to me while I was still known as

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Chief of Naval Staff Plans, and he did the ..., the Project Directorate, let's call it that, as Captain Van der Schyff, and he was responsible for the administration of projects. Then for every separate project you got a project officer who was solely  
5 responsible for that project, reporting. Originally it was, he should have actually reported to Director Projects, Captain Van der Schyff, but because of the importance of Sitron and Wills, both Kamerman and Reed reported directly to me.

ADV LEBALA: Now outside the responsibility of Captain  
10 Kamerman and Captain Reed being project officers of Project Sitron and Project Wills they were reporting to you on other activities within the Navy, am I right?

R/ADM HOWELL: Chair no, as I understand that question  
15 that's no, they didn't report on anything else, they were solely responsible for their projects, each one for his own project.

ADV LEBALA: Yes, but still that begs my question. You  
said that they were reporting to you even outside the packages and I think we are talking about the SDPP's in the context of Project Sitron and Project Wills, am I right?

R/ADM HOWELL: Chair, not really. I think just to clear this  
20 up, there might be a misunderstanding here. Sitron was running before the project, the packages were ever dreamt of, before they were created, so that's what I meant by that was outside. Project Sitron was running as a project with  
25 Kamerman in charge reporting to me from 1993, long before the

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packages were dreamt of, and Wills started before the projects as well and in fact Reed only came later, I was, had to act as project officer over and above my duties with Wills before Reed was appointed to me as a project officer.

5 ADV LEBALA: Thanks for the clarity. Then you are able to answer this question because, and this is evidence that is standing before the Commission that Project Sitron started a long time ago. Now I'm looking at it in the context of the packages and I'm looking at Project Wills in the context of the  
10 package. My question is outside the packages were the two captains reporting to you? Were they reporting to you outside the packages in the ordinary day-to-day functions as your subordinates? It means I'm saying remove the packages, remove Project Sitron, remove Project Wills, were they  
15 reporting to you ordinarily as your subordinates?

R/ADM HOWELL: Chair, if I understand that project correctly the answer is no, because if you remove Project Sitron and Project Wills you then remove those officers and send them somewhere else to do other jobs, so they weren't the  
20 administrative staff of projects where you wouldn't, if you remove those two projects Captain Van der Schyff would have still stayed because we were, he was responsible for the administration of the project and he had, there were a number of other project officers at the same time doing other projects  
25 at the Navy was doing at the time.

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ADV LEBALA: Now were you stationed in the same environment as Captain Kamerman and Captain Reed, environment as in offices, location, building?

5 R/ADM HOWELL: Chair yes, absolutely. We got the project officers as close as we could to us so that we could work on a day-to-day basis.

ADV LEBALA: In terms of their responsibilities in preparing the reports, would they consult with you, would you guide them on what to include in those reports on how to  
10 formulate?

R/ADM HOWELL: Absolutely Chair. Myself and Captain Van der Schyff would guide all project officers on what we wanted and what was required in reports.

ADV LEBALA: Was that before you moderated?

15 R/ADM HOWELL: I saw it as Chair, I saw it as part of my duties of moderating to make sure that those reports and the facts and figures and everything in the reports were accurate.

ADV LEBALA: So your responsibilities, I think let's unpack them, included the following; they would come to you  
20 about the details of the evaluation teams that they headed because they were project officers and tell you that they have this information, they would like to put it in a particular context, discuss it with you and you would guide them how to do it.

25 R/ADM HOWELL: Chair, at the upper level yes. Obviously

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not right down to the nitty-gritty figures, they had all of those, but certainly if there was anything that they doubted or anything that they were unsure of they would come to me and for instance with the projects I'd go through all of it but  
5 certainly not right down to the nuts and bolts and little, the detail, but the majority yes, they would come to me and I'd be aware of the overall content of what they were going to present.

ADV LEBALA: Okay, let's be specific. Captain Reed, in  
10 as far as the submarines are concerned would come to you and say the German Frigate Consortium has got so many points with such a price, does it mean that he would discuss it with you and he would put it in a report even before you moderated that report?

R/ADM HOWELL: Chair, I saw that as part of moderation, I  
15 mean I didn't moderate it after the fact that it was done, I moderated it through the process that we were doing it, in fact so Reed did the German Submarine Consortium, not the Frigate Consortium, and then Kamerman with the Frigate Consortium,  
20 they'd bring their reports to me as they were written yes.

ADV LEBALA: I stand corrected, may the record reflect  
that I wanted to say the GSC, not the GFC in as far as Captain Reed is concerned, the German Submarine Consortium, not the German Frigate Consortium, thanks for correcting me Admiral  
25 Howell. Now from what you are saying your function as a

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moderator and having taken you through this documentation one appreciates that it was inclusive, it was inclusive of guiding even before you moderated and I like the fact that you, you remember you mentioned like a moderator at university, you remember?

5 R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Of course you are learned, you have a B.Mil degree, do you know that at University it happens this way, I'm trying to appreciate in the context of what we've read and what we are still going to read before we start to analyse those evaluations brought to you by the captains. At university a student, a learner or a scholar would write an exam or a scholar would do a paper and there would be a direct contact examiner who examine that paper, am I right?

10 R/ADM HOWELL: Chair, that's my understanding yes.

ADV LEBALA: And then there would be another independent person, independent who has got no relationship with that student who would moderate that paper isn't it?

15 R/ADM HOWELL: That's my understanding Chair, yes.

ADV LEBALA: Was it done this way in as far as Project Sitron and the Project Wills is concerned?

20 R/ADM HOWELL: Chair that understanding no, it wasn't done like that, it was done by the officer responsible for the projects.

25 ADV LEBALA: Now you start to appreciate why I kept on

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asking you what did you understand the functions of the moderator to mean, you remember?

R/ADM HOWELL: Yes Chair.

5 ADV LEBALA: And you will remember I kept on asking you were there two officers having some form of a relationship in terms of reporting to you outside the packages, you remember?

R/ADM HOWELL: Yes Chair.

10 ADV LEBALA: Now let me ask, as the Chief of Naval Staff Plans outside the packages, we know that the packages were in place, were there two officers reporting to you?

R/ADM HOWELL: Yes Chair, because they were project officers for projects that I was responsible for yes.

ADV LEBALA: As a Director of Naval Acquisition?

15 R/ADM HOWELL: The situation was exactly the same Chair.

ADV LEBALA: Now you and the captains, you discuss everything how they should formulate, does it include how they should have formulated even their evaluation reports before they brought them to you for moderation, for moderation, not  
20 for discussion purposes because I get that the following, and please correct me, they would come and discuss with you before they even formulated them into reports, am I right?

R/ADM HOWELL: Chair to a certain extent yes, because I'm not a micromanager and I certainly wouldn't have, they were  
25 responsible senior officers and they got on with the job but if

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there was any problem or anything yes, they would have discussed it with me, but I certainly didn't tell them how to do their job, they knew how to do their job, I ensured that it was in fact done properly.

5 ADV LEBALA: And they would also discuss them with you after they formulated the reports.

R/ADM HOWELL: Chair yes, they would discuss it. Before it went to SOFCOM for instance the reports came to me and we'd sit down together and make sure that we're happy with them,  
10 and we then take them to the Naval Board as well, I think that's an important factor.

ADV LEBALA: And then there would be the final stage where I suppose you would look at the reports before they go to SOFCOM?

15 R/ADM HOWELL: Yes Chair, certainly we looked at the reports before it went out yes.

ADV LEBALA: Now I think that, and that's my thinking, that's my opinion that the term moderator is being used loosely, ...

20 CHAIRPERSON: Sorry Advocate Lebala, I'm sure your opinion will not help us in any way, your opinion will not at all [indistinct], I'm more interested to know what the witness has got to say rather than your opinion.

ADV LEBALA: Thank you Chair. That stage of me  
25 expressing my opinion will come Admiral Howell and I'm

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indebted to the Chair for correcting me, this is not the right place to express an opinion. Actually I should put an assertion to you, it appears that you were ... Before I even put this assertion the term "moderator" is being used loosely, am I right?

R/ADM HOWELL: Chair I agree with that. In this, if you look at the term "moderator" in the University context and in this context yes.

ADV LEBALA: And one should bear in mind that you were also sitting as SOFCOM isn't it?

R/ADM HOWELL: Yes Chair, I also sat at SOFCOM.

ADV LEBALA: So, the process started with you discussing with the captains commenting where necessary, correcting where necessary and also literally on your own looking at the reports before they go to SOFCOM.

R/ADM HOWELL: Chair yes, I don't like the word "on my own" as I never did anything on my own, that went up through forums but certainly the staff work in preparation to go to those forums yes, because it was my responsibility.

CHAIRPERSON: I'm sorry Advocate Lebala, let's take the tea adjournment for 20 minutes and then we'll continue with the evidence.

ADV LEBALA: Thank you Chair.

CHAIRPERSON: It's already 11h10. Thank you, we'll now adjourn.

**(Commission adjourns.)**

**(Commission reopens.)**

CHAIRPERSON: Can the witness confirm that he is still under oath?

5 R/ADM HOWELL: I do.

CHAIRPERSON: Yes Advocate Lebala.

ADV LEBALA: Thank you Chair. Chairperson the detail on page 64 paragraph 14(I), representatives from that abbreviation that we could not find an answer to has been provided, Miles Carter with his seniority has assisted us. It stands for the Department of Arts and Culture, Science and Technology. Department of Arts and Culture, Science and Technology. Paragraph 14 page 64 item (I). Thank you Chair. Admiral Howell before we adjourned there were a number of issues that became clear to the Commission, amongst them having taken you from where we started with your testimony was the fact that there was an MoD Management Committee which later became SOFCOM, am I right?

15 R/ADM HOWELL: That is correct Chair.

20 ADV LEBALA: And we also demonstrated the Commission that in as far as the history of acquisition in the Department of Defence is concerned it started not as an acquisition department but it was initially the function of the Chief of Staff Logistics who acted as the acquisition division of the department isn't it?

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R/ADM HOWELL: Chair that is one of the responsibilities of the Chief of Staff Logistics, yes.

ADV LEBALA: And we also noted that at one time it fell under the Secretariat Mr Pierre Steyn before it became the Acquisition Division isn't it?  
5

R/ADM HOWELL: Chair, that became the Acquisition Division under Mr Pierre Steyn when he got the responsibility for acquisition yes.

ADV LEBALA: Thanks for that clarity, and that's how we understood that at one time Mr Shaikh became the Chief of Acquisition Designate before clarity got sought in as far as it being a functional acquisition division.  
10

R/ADM HOWELL: That's correct. While everything was still being sorted out Chair and it was a period of change he was, he had to be designate until the post and everything was properly created yes.  
15

ADV LEBALA: We also established the basis of how you became a moderator, there was a management directive, it's Annexure "AH6", we took you through to it, where the arms of service representatives became moderators for the relevant evaluation teams, you remember?  
20

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: And we demonstrated to the Commission that you are a member of the MoD Management Committee on policy guidelines, hence we took you to Annexure "AH6" on  
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page 64, Annexure "AH". You may look at it because we are completing your testimony on moderation now. Annexure "AH6", page 64. That's the MoD Management Committee Policy Guidelines that qualifies you as a moderator, am I right?

5 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now we were busy with what you understood "moderator" to mean, you remember?

R/ADM HOWELL: Yes Chair.

10 ADV LEBALA: What has become clear is you testified that irrespective of the fact that you were doing different functions, liaising with the two captains, your subordinates, your project officers and leaders of Project Sitron and Project Wills, you never understood the term "moderator" to mean literally moderation as envisaged from a university moderator.

15 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: What occurred before the Commission in the previous week I think will be in line with your testimony and we'll deal with it because Mr Esterhuysen, do you know who Mr Esterhuysen is, let me start there.

20 R/ADM HOWELL: Chair I know him very well, I worked with him continually.

ADV LEBALA: He also came to testify about the term "moderator" and "moderation" and I'll take you through to his testimony at the right time. Let's proceed from where we ended. We established the following; that you assisted the

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project officers to formulate the evaluation reports, you also assisted them in making it a point that the detail contained in their evaluation report was discussed with you before the evaluation reports were taken to SOFCOM, am I right?

5 R/ADM HOWELL: Chair that is correct but you could also use the word “supervise”.

ADV LEBALA: Now that supervisory function was done outside SOFCOM where you also sat as a member, am I right?

R/ADM HOWELL: That is correct Chair.

10 ADV LEBALA: And by the time the evaluation reports arrived at SOFCOM you had already supervised them, you have participated in the analogy, you have even advised the project officers on how they should be formulated.

R/ADM HOWELL: Yes Chair, they went there under my signature, so therefore I had to happy with what was in them.

ADV LEBALA: Now would you regard yourself more as a supervisor or a moderator?

R/ADM HOWELL: Chair, ...

CHAIRPERSON: I’m sorry Advocate Lebala I think you know  
20 he captured very well his functions by saying that: “I was a supervisor” and we all understand what a supervisor’s functions are in a particular, or in any given circumstances and I think even his last answer in fact even explained it much better by saying that: “At the end of the day I was [indistinct]”.  
25 [Indistinct], I think correctly covered unless you think that

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there is some other thing that you want to raise as far as moderation, I think it's [indistinct].

ADV LEBALA: Thank you Chair. I agree full square with what you say but the basis of this question premises what Mr  
5 Esterhuysen said before this Commission, the penultimate question I asked the witness, and I'm certain that the Commissioners would appreciate its relevancy when we go to, and we note what you said Chair but we thought that the importance of the witness telling us how he regarded himself  
10 assist us in bringing what Mr Esterhuysen said to a proper context, if you'll permit. We're eliciting your opinion now on how you regard yourself. We heard what the Commissioners are saying and we agree with them. \_

Now would you regard yourself, we know what  
15 moderation means how the term was used, the functions that you were doing, that has become clear, but would you regard yourself more as a moderator and you yourself, you're the one who define moderation in the context of the university, and we dealt with it. Now would you regard yourself in as far as this  
20 function is concerned more as a supervisor or a moderator?

R/ADM HOWELL: Chair, my understanding of my responsibilities at the time probably fits better under "supervisor", but I signed the documents that moderate it because that's what I was appointed as.

25 ADV LEBALA: I'll leave that and take you to what Mr

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Esterhuyse said before the Commission, and this has become common cause, I'll just simplify it because we have to expedite your testimony. Mr Esterhuyse at the hearings of the 30<sup>th</sup> April 2014 was asked questions by my colleague Mr Sibeko and I'm just going to take you through the relevant portions. Mr Sibeko asked Mr Esterhuyse the following questions:

*"Now we have heard of another concept referred to as 'moderation'. When did moderation take place if at all?"*

10 Mr Esterhuyse:

*"Chairman, to my knowledge moderation is not allowed in this process. If moderation should mean modifying the figures that is certainly not within the rules of ARMSCOR or DoD. I'm not aware of any specific modification or changes to figures to try and achieve a different outcome"*

Now one appreciates the capacity in which you are standing there and a capacity in which you testify and the capacity in which Mr Esterhuyse was standing there and the capacity in which he testified. Now based on this response what do you say about his view to he is not aware of any specific modifications or changes to figures and if moderation should mean modifying the figures, that is certainly not within the rules of ARMSCOR or DoD. Do you want to comment?

25 R/ADM HOWELL: Chair yes, my understanding now that I

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agree with Mr Esterhuyse totally that if it's moderating means changing, because nothing ever was, the figures were never changed. You will see later in my evidence that I made decisions in that capacity to the other things, but nothing was ever changed.

ADV LEBALA: Well to bolster further the concept "moderation" is understood within ARMSCOR or DoD by various individuals, here comes another portion by Mr Esterhuyse. There's a reference in one document which is associated with the DIP and the NIP, I suppose you know what DIP and NIP stands for, Defence Industrial Participation and National Industrial Participation. In terms of the document where it sets out the procedure to integrate the DIP and the NIP there's reference to an activity that is called "audit and moderation" but I am unaware what that content of that particular task was, the way it would affect the outcome. Now Mr Sibeko goes on:

*"And to your knowledge was any moderation or the results contemplated at least at the SOFCOM?"*

He's talking about at the SOFCOM. Mr Esterhuyse:

*"Chairman, not at any of the discussions or meetings that I've been involved and as far as my knowledge stretch, and this is hearsay, not at the meeting of 2<sup>nd</sup> July".*

Now here comes Commissioner Musi:

*"I understand, I'm sorry to interrupt, I understand*

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*that moderation was not allowed but what does it mean, what do you do when you say moderation as opposed to consolidating and integrating [indistinct]?”.*

5 I think something was missing, the tapes could not, the stenographer could not capture it, but here comes Mr Esterhuysen's response:

10 *“Commissioner, I personally do not know what exactly the definition of ‘moderation’ is, it is not a word that was familiar to me and I’ve never seen it being applied to any value equation”.*

Now back to you, when you equate it to the university analogy, do you understand what it means?

15 R/ADM HOWELL: In the university I’ve never been a moderator and I understand, I think I’ve got an understanding of what happens in universities because a long time ago I was there, but my understanding of what happened at the SOFCOM and with these projects yes, it certainly, nothing was, if you understand moderating as changing then that’s the wrong  
20 understanding. I understood moderating as supervising and checking and making sure what was going up was right, correct and genuine and honest, lacking another word, that it was complete and it was correct.

25 ADV LEBALA: Thank you. Let’s proceed. I would like us to look at paragraph 32, 33 and 34, I think we’ve dealt with,

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we've laid a foundation about the annexures, paragraph 32:

*"There were six teams involved with the six defence equipment segments of the proposals – one team for each type of equipment – and I was the Moderator for both Project Wills (submarines) and Project Sitron (Corvettes)".*

That has become clear. If we look at Annexure "AH6" page 66 that's where those six teams were. We know that you focused on three items out of those teams, that is items that relate to Project Sitron and Project Wills. 33:

*"The Management Directive implementing the Second Order envisaged in Policy Directive 4/147 set out the evaluation process and time schedules and appointed the members of the Management Committee (later SOFCOM). I was appointed to the Management Committee as the South African Navy's representative (paragraph 14h)".*

You have referred the Commission to that paragraph. For the sake of completeness it is on page 64. I think the Commissioners have seen it, that's why we started the way we started. Paragraph 34:

*"The Directive also appointed the leaders of the six defence equipment evaluation teams (as listed in paragraph 18 of the Directive). Thus I was to be the Moderator of the project teams to be led by*

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*Captain (later R Adm (JG) Kamerman (Project Sitron] and Commander (later Captain Reed (Project Wills)”.*

We have dealt with that. That's on page 66. Now let's look at  
5 paragraph 35:

*“My role as Chief of Naval Staff Plans, Director Naval Acquisition and Moderator of Project Wills and Sitron”.*

Now let's start here. Were you doing all these functions at the  
10 same time?

R/ADM HOWELL: Chair, the simple one would say yes, but  
Chief of Naval Staff Plans had responsibility for projects, I  
then moved to Director Naval Acquisition as we've heard, to do  
it, and then because I was appointed as the Navy's  
15 representative I was also moderator, so in fact I was Chief of  
Naval Staff Plans and Moderator and then later Naval  
Acquisition and Moderator.

ADV LEBALA: How important was your expertise and  
experience in making you to assume these different roles,  
20 including you being appointed moderator of these two projects?

R/ADM HOWELL: Chair I consider that the experience, not  
because of me as an individual but that role had to be filled by  
an experience naval officer, Chief of the Navy appointed a man  
that he felt had to do and gave him the responsibility to do the  
25 job because of his naval background and his experience and

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expertise.

ADV LEBALA: Now this, do the two functions, the Chief of Naval Staff Plans and the Director of Naval Acquisition played a role in you overseeing these two projects?

5 R/ADM HOWELL: Yes Chair absolutely. It was the responsibility of both those posts.

ADV LEBALA: Yes, I think you have answered it, paragraph 35, let's go to paragraph 36 which is common cause, we jump it. Paragraph 37:

10 *"It was for this reason that the Chief of the Navy, Vice Admiral Simpson-Anderson, decided that I should take direct control of both these projects".*

Now we are going back to your role as Chief of Naval Staff and Director of Naval Acquisitions. I think that qualified you to take [indistinct].

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R/ADM HOWELL: Yes Chair, that's correct.

ADV LEBALA: *"The project officers, Captain Kamerman and Captain [sic] Reed, reported directly to me".*

That has become clear to the Commission.

20 *"Captain Van der Schyff was to be responsible for all other naval projects that were running at the time".*

Now let me ask a question, why was Captain Van der Schyff not asked to be the moderator, bearing in mind that you assumed the role as Chief of Naval Staff Plans and also as Director of

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Naval Acquisition and you still had to oversee these two projects?

R/ADM HOWELL: Chair, really Captain Van der Schyff was on my staff as well, in fact he sat, you know he reported to me as the project officers did and as moderator I was appointed in that role because I was the Navy's representative on Management Committee, not because I was Chief of Staff Plans or then later Acquisition, it's because I was the Navy's representative on the Management Committee.

5  
10 ADV LEBALA: So you qualified because of status, not the functions that you were rendering?

R/ADM HOWELL: I wouldn't say status, it's because of my appointment and my responsibilities of, because I was sitting as the representative.

15 ADV LEBALA: Yes, seniority qualified you to be the South African Navy's representative, isn't it?

R/ADM HOWELL: Chair, I suppose that is correct yes.

ADV LEBALA: Now ...

CHAIRPERSON: Advocate Lebala, let's not speculate.

20 [Indistinct] ever been appointed, he told us his history and he told us, any inference that you want to draw from that, that [indistinct], I don't think it's proper for you to ask for his opinion, to give an opinion about what other people thought before he was given those responsibilities.

25 ADV LEBALA: Thank you Chair. Paragraph 37 line

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number 4:

*“However, we had contact virtually on a daily basis and discussed almost every aspect of the projects”.*

I think that has been demonstrated.

5 *“Captain Van der Schyff was particularly good at the administrative suspects of running projects and I relied on his experience in this regard”.*

If I may ask, a person at the level of Captain Van Der Spuy [sic] be appointed as the Navy’s representative?

10 R/ADM HOWELL: No Chair, I think he was too junior at that stage, the Chief of the Navy wanted an admiral sitting or commodore first and Admiral sitting in that post.

ADV LEBALA: Let’s proceed, paragraph 38:

15 *“I was responsible for providing the Chief of the Navy and the Naval Board with regular progress reports. This was a standing item on the Naval Board agenda. I would discuss Project Sitron with Captain Kamerman, Project Wills with Commander Reed and Project Wills with Commander Reed and*  
20 *the rest of the projects with Captain Van der Schyff. I frequently requested them to prepare and give presentations to the Naval Board”.*

Now the Captain, Commander Reed, Captain Kamerman and Captain Van der Schyff would only go to the Naval Board as per  
25 invitation.

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R/ADM HOWELL: Chair that's correct, they'd only appear if they had a presentation to do, they would come in, the presentation and leave, they were not members of the Naval Board.

5 ADV LEBALA: *"The Naval Board insisted that all ships and submarines evaluated were acceptable to the South African Navy. Ensuring that this mandate was fulfilled was an important part of my responsibility as Moderator, and was also in compliance with Policy 4/147. I refer in particular to paragraphs 11, 12a, 13 and 15c of Annexure 'AH4'".*

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I think that has become clear, for instance paragraph 11 is on page 53, paragraph 12a is on page 53, paragraph 13 page 53, page 54, paragraph 15c is on page 54. Paragraph 39:

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*"As the Moderator, I was the most senior officer responsible for Project Wills and Sitron, with a high level of relevant expertise and experience. I was required to bring my expertise and experience to bear in order to ensure that the value systems and evaluations appropriately applied the policies set out in the MODAC report and DoD Policy Directive 4/147 as described above. It was my duty as Moderator to ensure that the equipment was evaluated by the project teams in accordance with*

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5           *the relevant value systems formulated by those teams for the specific equipment being considered, that the results of the evaluation were credible and accurate, and that the ships and submarines evaluated were acceptable to the South African Navy”.*

Does that qualify your supervisory functions?

R/ADM HOWELL:     Yes, I think so Mr Chairman.

10       ADV LEBALA:       Of course this was not moderation, according to you it was supervisory. 40, paragraph 40:

*“In this regard I refer to the function and responsibility of the Third Order ...”.*

This has become common cause. 41; the relevant portion is towards the end:

15           *“With news of the SDPPs in the market, potential suppliers of naval equipment were sending uninvited delegations to the Navy and seeking to consult with naval officers without appointments, authority, or forewarning and without proper processes and*  
20           *controls being in place. I was determined to curb these practices and to place order and control in those circumstances”.*

Now what does that mean, are you saying that there’s been an instance where as a moderator, as the Chief of Naval Staff  
25       Plans, as the director of Naval Acquisitions you had to draw

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bright lines in as far as roles are concerned that there shouldn't be confusion?

R/ADM HOWELL: Chair yes, we had projects like this run, there is a tremendous amount of lobbying and information seeking, you almost use the word "spying" by companies trying to find out information and where they stand so we had to be very, very careful about how we played it to make sure of the transparency and the fairness of the whole procedure to make sure that no one was benefited by another one because they had access to anybody really in the Navy or in the line of people who knew about the project.

ADV LEBALA: Now why was this task not given to someone like Captain Van der Schyff in your office?

R/ADM HOWELL: Chair, in fact the drawing up of the document was given to Captain Van der Schyff because he was my administrative leader, in fact that document was drafted by Captain Van der Schyff, but I signed it and I take responsibility for it.

ADV LEBALA: Now you are referring to the document that is being mentioned in paragraph 42 "AH7", am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now we are going to that paragraph, paragraph 42:

*"Thus pursuant to DoD Policy Directive 4/147 and as Moderator of the two project teams, I put in*

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*place a procedure applicable to these projects. I refer to Annexure 'AH7'.*

That is page 68 to 62, 71. I think let's just look at that annexure. It starts on page 67. Now its importance seeks to demonstrate that in as far as your function, now we are talking about your function as a moderator is concerned there could have been some misnomer, confusion, because you were supervising actually you insist that you were doing a supervisory function but your role as Chief of Naval Staff Plans, Director of Naval Acquisition, let's see whether bright lines get to be drawn. Now if I may ask, let's look at paragraph 41 again, when you were curbing these practices that are being mentioned in paragraph 41 what role were you playing, were you playing the role of a moderator?

15 R/ADM HOWELL: No Chair, I was playing the role of Chief of Naval Staff Plans, the staff officer responsible for the projects.

ADV LEBALA: Now what its relevancy with your role as a moderator, nothing?

20 R/ADM HOWELL: No, it had nothing to do with my role as moderator Chair.

ADV LEBALA: I think the Commissioners would raise eyebrows as to why do we want to take you through this testimony, I think let's pass this testimony, but what has become clear that where there's a need for you to draw lines and not to confuse to separate functions that happens.

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Paragraph 39:

*“As the Moderator I was the most senior officer responsible ...”.*

I think we have dealt with that, I don't know why I go back to it.

5 We are on paragraph 42. Just for the sake of completeness of that function of curbing practices where Naval officers are not influenced, where other people come and meet them without appointments, paragraph 42 ... Let's start at paragraph 42 actually:

10 *“Thus pursuant to DoD Policy ... 4/147 and as Moderator of the two project teams I put in place a procedure applicable to these projects”.*

Now you were doing it as a moderator.

R/ADM HOWELL: Chair that is what I've written there but in fact the person doing that was more as my role as the staff officer.

ADV LEBALA: I'm ... I want to appreciate your answer, were you doing this as a moderator or not, yes or no?

R/ADM HOWELL: Chair yes, that's what I've put there but if you look at it very clearly the difference, the line between the moderator and as the staff officer responsible to me is irrelevant.

ADV LEBALA: But let's look at page 68, let's start on page 68, "AH7". The document is headed "Procedures for the Solicitation, Submission and Evaluation of Offers for the

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Acquisition of Cardinal Equipment for the South African Navy”.

Now what is significant is that if you look at page 69 there is an entity called the Naval Evaluation Team means, which means the Military Naval personnel mandated to carry out the naval function, functional evaluation including co-opted specialist from support organisations as required. Were the two officers, the project officers who were reporting to you, who you were moderating, part of this team?

R/ADM HOWELL: They in fact were the leaders of the teams, those two teams were their teams, yes.

ADV LEBALA: So that confirms that this document on Procedures for the Solicitation, Submission and Evaluation of Offers for the Acquisition of Cardinal Equipment for the South African Navy, you were doing it with your cap on as a moderator?

R/ADM HOWELL: Chair yes, but also with my cap as Chief of Naval Staff Plans.

ADV LEBALA: Let’s look at page 70 to accredit you as a moderator to show that you respected separation and independence, paragraph 10. Page 70 paragraph 10 Commissioners:

*“The Naval Evaluation Team may, on behalf of the Minister of Defence ask suppliers or contractors for clarification of their offers in order to assist in the examination, evaluation and comparison of offers.*

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*No change in the matter of substance in the offer, including changes in price and changes aimed at making an unresponsive offer responsive shall be sought, offered or permitted”.*

5 Now was this a function which has been discharged by Captain Reed and Captain Kamerman?

R/ADM HOWELL: Yes Chair, that was to ensure that the project officers weren't unduly influenced by outside, by the companies.

10 ADV LEBALA: Now what role did you play to satisfy yourself that this has not been done as moderator?

R/ADM HOWELL: Chair, they worked very close to me and on a daily basis and I was, I was quite happy that they were not being approached, they were not giving access to the  
15 companies to get to them.

ADV LEBALA: Let's look at page 71 paragraph 19, another aspect that accredits the independence and the separateness of the moderation function because it makes one to realise that where it's necessary confusion was not brought  
20 in. Paragraph 19:

*“Until such time of the official announcement by the Minister of Defence members of the NET shall not accept social invitations, gifts, tokens or any consideration from any entity that may be directly  
25 or indirectly connected with the process”.*

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Now there were strict lines showing that there should not be confusion and interference, am I right?

R/ADM HOWELL: That is correct Chair, that was standard procedure in the Navy projects that when we go into that phase  
5 that the project teams basically lock themselves away.

ADV LEBALA: And the last paragraph headed "Authorisation to Act as Nodal Points for Communication", paragraph 20:

10 *"The officers underneath are authorised to communicate directly with and to receive communications directly from suppliers or contractors in connection with the military portion of the offer during the evaluation period:*

- 15 a. *Capt J E G Kamerman*  
b. *Cdr A J C Reed".*

We see at the bottom that, what does that mean, it's been signed by you, does it mean it has been prepared by you or it's still approved by yourself?

R/ADM HOWELL: Chair, that means I approved it. If we look  
20 just under my signature or under the "PP" there, there are little words saying "OVDS/OFFER", that in fact the OVD is standard for Okkie Van der Schyff, which was Captain Van der Schyff, he would have written it, I would have checked it and signed it.

ADV LEBALA: What is significant about this piece of  
25 testimony and document is it demonstrates the following; where

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there is a need for clear lines, very bright lines to be drawn, that there should not be confusion and separation, it becomes clear because the two officers Captain Kamerman and Captain Reed as members of the Naval Evaluation Team, up until the official announcement is made by the Minister, they shall not accept social invitations, gifts, tokens or any consideration from any entity. Now I'm going to ask you this question based on that; when was this separation not drawn in as far as your moderation is concerned where you had to inspect their functions, where you had to assume a supervisory function instead of moderating?

We see that lines are drawn here very clearly that they can't do certain functions, for instance this document is a procedure for solicitation, submission and evaluation and it accredits the team that formulated these documents, but when it comes to another function of moderation the bright lines are not there, why is that so?

CHAIRPERSON: I'm sorry, just hold on, before the witness answers the question let me understand the question. I don't quite follow the question. Maybe you can try and rephrase?

ADV LEBALA: The witness says this documentation was prepared under the auspices of him discharging his functions as the moderator and you can see that this document Chairperson, Commissioner Musi demonstrates that there is not going to be confusion as to what Captain Kamerman and

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Captain Reed do as members of the Naval Evaluation Team, it was with a view to make it a point that solicitation, submission and evaluation of offers is in place. Now suppliers had to be asked, contractors had to be invited for clarification, functions had to be discharged by this team that he has to moderate, and more significant this team had to make it a point that it does not accept social invitations gifts, tokens, it means lines are drawn, this team was not allowed as it does. Now let's look at what the moderator does under ...

10 CHAIRPERSON: Just hold on. That falls within his field of [indistinct].

ADV LEBALA: Indeed.

CHAIRPERSON: He is the one who put in place those procedures.

15 ADV LEBALA: Let alone that Chair, he says, actually he even mentions it in the statement, he says it's his function because it falls under moderation. I'm looking for that paragraph. I want to take you to the relevant paragraph, I just had it on my finger pulse Chair. We went all the way backward.  
20 Chair it's where I was, actually I'm trying to locate what brought this question, that's the last part that I was dealing with Chair, we're trying to locate it, I beg your pardon.

ADV CANE: Chair, perhaps I could assist my learned friend and indicate to him that he was at paragraph 42.

25 ADV LEBALA: Oh yes. I'm indebted to Ms Cane, I was

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vacillating between paragraph 42, 42.2 and 43, I'm indebted to Ms Cane. Paragraph 42 reads as follows Chair:

*"Thus pursuant to DoD Policy Directive 4/147, and as Moderator of the two project teams, I put in place a procedure applicable to these projects".*

5 That's the procedure Chair, that's the procedure we're dealing with. That's the context in which we bring it in that this procedure that he put in place draws separate lines, it's very precise and clear, there's no confusion, there's no vacillation, you don't supervise, you don't assume functions that you were not assuming, it's separate, that's the analogy that we are trying to bring and hence we put this question to him that he3re there's a procedure which draws bright lines on functions. Now why was that not the case in as far as his moderation is concerned where he had to assume the supervisory task. We are eliciting this question this question and his comment on it Chair.

10 COMMISSIONER MUSI: [Indistinct] to ask him why was there no definite guidelines relating to the role [indistinct]? It seems to be [indistinct]. Now he couldn't have himself drawn guidelines for these [indistinct] why would someone not put down [indistinct].

15 ADV LEBALA: Well, thanks for the guidance Commissioner Musi. In actual fact your concern confirms the question at hand that we need to bear in mind that the moderator

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discharges functions and the witness himself did appreciate the function of a moderator, we didn't lead him, he is the one who told us about the example of a moderator at university.

COMMISSIONER MUSI: Can I interrupt you Advocate Lebala, 5 but you have explained exactly what in fact is [indistinct]. Maybe the term moderator is [indistinct]. I mean he has explained exactly what his role is and I don't understand why we should be [indistinct].

ADV LEBALA: I'll leave it if need be for a contentious 10 argument in the ultimate ...

CHAIRPERSON: Advocate Lebala, I think I won't give you [indistinct], I don't quite understand why you would want this witness to tell us why [indistinct] those powers that are supposed to be found [indistinct] the role of a supervisor 15 [indistinct] and that is why I was saying to you he was in charge of his team and as a result he prepared a procedure that [indistinct] his functions, I think it would be unfair for you to ask him that those who put in place SOFCOM, why do they come up with detailed procedures on how he was [indistinct]. 20 If you want to put that question I think you'd' probably try to get some people, those who are responsible for the formation and/or constitution of SOFCOM and why they can come up with detailed procedures that must be followed by those, by the moderators when they carry out their functions and as 25 Commissioner Musi has said I think we've exhausted this topic,

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he has told us exactly what a supervisor [indistinct], maybe let's move to the next point.

ADV LEBALA: Thank you Chair. If need be we'll demonstrate that there was no need for the powers that be to define or bring that document, the witness himself could have discharged those functions by demonstrating these separate lines but we'll demonstrate it if need be Chair. We are proceeding with another portion of your testimony. We have seen that you have signed this document on the 20<sup>th</sup> October 10 1997, we are on paragraph 42, we are now going to paragraph 42.1, we are still looking at you functions as a moderator:

*"The procedure was designed to ensure the fair and equitable ..."*

Actually we've dealt with that.

15 R/ADM HOWELL: Yes.

ADV LEBALA: We've highlighted, I think let's go past it. 42.2:

20 *"That is why, for example, once the RFO's were issued the members of the Naval Evaluation Team were expressly forbidden from accepting social invitations, gifts et cetera, and only kept Captain Kamerman and Commander Reed could direct any communications at all to potential suppliers and even then they understood that it was to be through*

25 *the ARMSCOR Secretariat"*.

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We know that this is specified in that document.

R/ADM HOWELL: Yes.

ADV LEBALA: *“Such communications could only be for clarification purposes and had to be disseminated to all tenderers. A written recordal had to be maintained. I refer in particular to paragraphs 6e, 10, 19 and 20 of Annexure ‘AH7”.*

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6e is on page 69, 10 page 70, 19 page 71, 20 page 71 of Annexure “AH7”. Now actually I think the Commissioners have left me a little bit thirsty to ask this question. The document that we referred you to clearly demonstrates guidelines, it’s specific on how these Captain Kamerman and Captain Reed have to behave. Do you know why there was no document or guidelines specifying how moderator in your capacity ought to conduct himself?

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R/ADM HOWELL: I certainly don’t know why, quite honestly I don’t think it was needed. I understood my responsibilities as the Chief of Naval Staff Plans and later Acquisitions very clearly and as moderator that was part of them. I understood what I had to do clearly, I didn’t think it was necessary for separate guidelines.

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ADV LEBALA: Let’s go on. Paragraph 43. I think paragraph 43 has become common cause, dealing with the submarine or the Main Battle tank being excluded, I think the Commissioners have heard about it. 43.1 common cause, 43.2

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common cause, 43.3 common cause, 43.3 common cause, 43.4 common cause and 44 the Commissioners have heard about it.

*“Ultimately the Main Battle Tank was excluded from the final SDPP contracts even though it was recommended to the AASB by SOFCOM”.*

Paragraph 45 common cause, paragraph 46 the Commissioners have heard about it. Paragraph 47, it lays a foundation for the questions that we have to ask. Paragraph 47:

*“Based on the information that was provided, the leading contenders following the RFI evaluation, were the German T 1400 and the Swedish Type 192. I moderated the Evaluation Report (AH8)”.*

*Pages 72 to 134, we are going to deal with it, it was compiled by Commander Reed.*

*“The report detailed the evaluation process followed and the results for performance, costing and military value. I had no need to adjust Commander Reed’s evaluation report as it fully complied with all the relevant policy guidelines”.*

Am I right to say that you participated throughout in the formulation of the report of Commander Reed in its preparation up until it was sent to SOFCOM?

R/ADM HOWELL: Chair, I participated as much as I needed to, to ensure myself that I understood what was in the document and had enough knowledge of the document to assure

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myself that it was correct and true and so that I could sign, I didn't sit with the team on a minute-to-minute basis but I certainly participated enough that I was happy to sign the document.

5 ADV LEBALA: Yes, and that's the reason why there was no need for you to adjust that evaluation report because from the onset when it was being formulated Commander Reed consulted you.

10 R/ADM HOWELL: Chair, we must be careful here, I feel I certainly ..., when the people were scoring for instance that, that I didn't participate in and I didn't interfere with at all, so that's what, if somebody decided to give the particular score that was his responsibility as part of the team, I didn't sort of say no, wait a minute, why have you done that, that was his  
15 prerogative.

ADV LEBALA: Well, that's one thing. I think I'm not even trying to suggest that you're trying to influence him in a particular manner, all that I'm saying is that it appears from what you are have said that throughout, and this is your  
20 testimony, they would, both Captain Reed and Captain Kamerman would consult with you.

R/ADM HOWELL: Yes absolutely, I had, constant is the wrong word, continual and open liaison with them both.

25 ADV LEBALA: Yes. And why would you adjust, because you've been a participant throughout the process.

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R/ADM HOWELL: That is correct Chair.

ADV LEBALA: And I think we overwhelmed the Commission with this detail, we are not even going to go back there, we have to select. You see, as I take you through the paragraphs I have to formulate that which I don't want us to see being repeated to save time. Am I right, let's take the Project Sitron, am I right to say that you did participate in the RFI Value System of Project Sitron? I'm not qualifying "are you participating" but you did play a role at one stage or the other in as far as the RFI Value System of Project Sitron is concerned.

R/ADM HOWELL: Yes, absolutely Chair because I signed that Value System as well.

ADV LEBALA: The RFO Value System?

R/ADM HOWELL: Correct, that one as well Chair.

ADV LEBALA: The same with Project Wills?

R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: So there was no need for you to adjust Captain Kamerman's evaluation report because you participated from the formulation of the value system up until the formulation of the report that has to go to SOFCOM.

R/ADM HOWELL: Yes Chair, but I had to satisfy myself that the value system was being correctly applied in the evaluation of that and which I did satisfy myself and I was quite happy to.

ADV LEBALA: And I think you have saved a distance

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because I don't even have to take the Commission to the annexures that shows that you approved those value systems, I mean it has become common cause before the Commission, we spent a lot of time on them. Let's go to, we are still with  
5 Project Wills, submarines:

*"As stated above it was established in the RFI phase that all the proposals that were received during the RFO phase were technically acceptable to the South African Navy. The Value System which  
10 was approved by the ..."*

I think we have dealt with that. 49 we've dealt with. Now we start to deal with your role as a moderator, paragraph 50:

*"In my role as Moderator, I required certain specified adjustments in the evaluation report, all  
15 of which were fully disclosed in the report"*

What has ... I would like us to look at what you are saying here in the context of what you said in paragraph 47 and paragraph 47 the last sentence:

*"I had no need to adjust Commander Reed's  
20 evaluation report as it fully complied with all the relevant policy guidelines"*

Is it specific to policy guidelines or is it specific to each and every item that was involved in the evaluation report?

R/ADM HOWELL: Chair, it was specific to each and  
25 everything but that is the RFI phase, I had no need to adjust

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anything, the RFO phase I did, there were aspects that we had to adjust.

ADV LEBALA: Now let's be specific, are you dealing with those adjustments in paragraph 50.1?

5 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Let's summarise to the Commission without wasting time, we know that in as far as the submarines are concerned the German Submarine Consortium was the successful party, what adjustments did you make to the Evaluation Report that was brought to you? I think the Commission has heard, and you know, I've got to make it a point that we don't repeat, I need to refresh myself and appreciate the questions that I'm directing towards you. Now what occurred is Captain Rob Vermeulen prepared reports and took us through testimony on how the points were allocated and we have summaries, I think the Commissioners have heard and they understood why the German Submarine Consortium succeeded, that has become clear before the Commission. That report of the Integrated Project Team that was given to Captain Reed as the project officer, are there any adjustments that you have made, if any are those that you are referring to in paragraph 50.1? Am I making sense?

15  
20  
25 R/ADM HOWELL: Chair, if I understand you and if my answer then is what you want then you are making sense. To me my understanding is the adjustments I had to make were to the

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German ..., because their logistic offer wasn't, we considered that all the cost items weren't in there, we sat down and it wasn't arbitrary, we sat down as a team and said actually where these things must also come, so we have to add 75% to  
5 the cost and the Swedes we did the same and added 50%.

ADV LEBALA: Now that deals with paragraph 50.1. Two things come out, that when the report came to you two issues that were, that needed attention that had to be adjusted was the logistic offer, what we came to know as ILS and the cost  
10 item where 75% had to be added. Now was this the position when you were discussing supervising the report with Captain Reed?

R/ADM HOWELL: Chair yes, you could say that because that, it was with Captain Reed and the team and they came to  
15 me and in our discussions we decided that that was not enough for the logistics and we had to act.

ADV LEBALA: Now when you were adjusting this logistics offer and cost items were you sitting with Captain Reed alone or were you sitting with Captain Reed and the team?

R/ADM HOWELL: Chair it wasn't the full team, the full team was all over, most of them were in Simon's Town but whether it was Captain Reed and myself alone at the final decision I'm not  
20 sure but certainly the others had input into it, yes.

ADV LEBALA: Okay, then we have to read this paragraph  
25 to appreciate the content and the context in which you put it

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and there is an annexure that we want to take you to. Paragraph 50.1, and we know that this adjustment, the adjustments were the ones that were taken to SOFCOM, am I right? These adjustments, they were the ones that were taken to SOFCOM, am I right?

R/ADM HOWELL: Chair yes, they were made before SOFCOM, but they were made visible at the SOFCOM level.

ADV LEBALA: 50.1:

*"In respect of the German bid, it was noted that while the logistic support package offered by the Germans was comprehensive a large number of the deliverables were offered as options and therefore not costed into the proposal".*

That's what you said, the logistic offer and the costs.

*"The logistic risk regarding the German submarine was determined as low. Notwithstanding that, as many options were not costed, after consultation with the team members I decided that an additional amount should be factored into the price".*

At that stage were you discussing with Captain Reed and the team?

R/ADM HOWELL: Yes Chair, absolutely.

ADV LEBALA: Was it a supervisory function?

R/ADM HOWELL: I certainly, I saw that as my function yes.

ADV LEBALA: Now at that stage was it the first time that

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you were discussing this report or was it the second time or it was more than once?

R/ADM HOWELL: Chair, there's no ways I can answer that. It was an ongoing affair, whether it was first, second or third  
5 time, it was an ongoing process.

ADV LEBALA: *"I therefore directed the Evaluation Team to add an additional amount of 75% of the quoted logistic cost to the logistic cost to reach management".*

10 When this was happening was it the first time, the second time or it was more than, when they've approached you more than once?

R/ADM HOWELL: Chair that was the final time that, and it was the last time obviously where we made the decision. It  
15 was the first time that we sat down and said we need to make a decision on this one, sure.

ADV LEBALA: *"I wanted to ensure that the South African Navy would not in future run out of funds for the Integrated logistic support. Despite the addition of  
20 this amount the German bid still came out as being the best value for money. I refer to paragraphs 5b (Annexure 'AH9' page 136 and 20 of the RFO Evaluation Report".*

I wouldn't like us to waste time because we took the  
25 Commission through that. I think you know, this is, these are

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things that the Commissioners were taken to, let's not go back. Now these adjustments, were they an ongoing thing or these specific ones which are mentioned were once-off, were they at that point and they were closed, or it was just a continuation?

5 R/ADM HOWELL: Chair, that was a once-off adjustment.

ADV LEBALA: And I suppose the, in as far as the Project Wills is concerned Captain Reed did agree to that?

R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: And the team?

10 R/ADM HOWELL: In all the team there was no dissention at all that this is what should happen.

ADV LEBALA: Yes, 50.2 I don't want to deal with it because it's non-controversial. The Swedish offer had fallen off but one could appreciate what you did as a moderator,  
15 probably I think for the sake of completing this testimony let's read from line number 6 starting with "However, ...":

*"However, as the Moderator I directed an additional amount should be allocated to deal with this risk and thus an amount of 50% of the quoted logistic support was added to the logistic cost or risk  
20 management. I refer to paragraphs 5d and 22 of the RFO Evaluation Report".*

The Commissioners have been taken through that. Now the Swedish offer, was it the first time you were tweaking or  
25 adjusting or it was an ongoing thing?

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R/ADM HOWELL: Chair it was ongoing, that's the only adjustment we made to that, so that ... Yes.

ADV LEBALA: And Captain Reed agreed to it?

5 R/ADM HOWELL: Captain Reed and the team fully agreed with that.

ADV LEBALA: Now comes the critical factor of course, 50.3:

10 *"The performance result as a relative measure between the four of just (reduced from five as the Upholders had been bought by the Canadians) had to be adjusted to give proper weight to the critical factor of cost and thus arrive at the Military Value Index. The philosophy of the RFO stage, given that*  
15 *all four proposals were technically acceptable to the South African Navy was to place emphasis on the logistic support to ensure life cycle costs were kept as at as low as possible".*

20 Now as at that stage were you briefed about how important the logistic support and the issue of keeping costs low and the importance was, the importance thereof was?

R/ADM HOWELL: Absolutely Chair, that was a major problem, a factor in the Navy, it has been for the last 10 years. Cost is always a major factor, logistic support and life cycle costs is always a concern of Naval [indistinct] with new  
25 equipment and it's a major factor.

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ADV LEBALA: Now I refer to the evaluation, to the RFO Evaluation Report, we took the Commission through it, we are not going back there. Paragraph 6, it's Annexure "AH9" page 137:

5 *"I was aware that there were two ways to factor in cost to determine the military value index and I decided upon the formula as set out in paragraph 15 of the evaluation report".*

Who briefed and educated you about the Military Value Index?

10 Who had briefed you and educated you about the Military Value Index? You could say I was already educated by then or members of the team, if there is a specific one who told you about that.

R/ADM HOWELL: No Chair, I was already educated, there was nobody specific about that, it was part of the process.

ADV LEBALA: Well, the next sentence explains what the formula is all about and how cheaper and lesser the cost among ended up being, the Commission has heard about it. Let's go to 51, your role as moderator. Now what we know up to so far, what has become clear to the Commission is that you adjusted, you made adjustments, the question of logistic offer and cost items came to the fore, you had to adjust with the team and you adjusted:

25 *"As a moderator with overall responsibility to ensure that the best product was procured for the*

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*Navy in accordance with the policies prescribed by MODAC and DoD Policy 4/147 I was satisfied that the evaluation report achieved this objective in putting forward the Type 209 German Submarine for the following reasons; ...”.*

The Commission has heard that. The Commission has heard why the German Submarine Type 209 was preferred. This is a repetition, so if I'm not dealing with 1.1, 51.2, 51.3, 51.4, 51.5, 51 ... I would like to deal with 51.5 based on your CV and why you are testifying before the Commission:

*“As a submariner with 16 years’ experience, including two years in command, I had no doubt that the German submarine was the best option. I had sufficient knowledge of all the submarines to make this assessment”.*

51.6:

*“In addition to all of this, the Type 209 German submarine was the cheapest by some R800 million, ...”.*

The Commission has heard about this. Paragraph 52, we are concluding on the Project Wills:

*“I signed the evaluation report in my capacity as Moderator on 30<sup>th</sup> June 1998 in the belief that I had done my duty as Moderator to ensure that the submarines had been properly evaluated, that the*

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*results of the evaluations were credible and accurate and that the Type 209 German submarine should be put forward as having the best military value for the South African Navy”.*

5 Now let me ask, if you had been distant where you would allow  
Captain Reed as the project officer of Project Wills to do  
everything and he only came to you for you to moderate and  
report before it goes to SOFCOM, he only came at that stage  
just for moderating the report before it goes to SOFCOM. Are  
10 you saying you wouldn't have arrived at the conclusion that you  
arrived at? We know that you played a role, it has become  
clear, you supervised through thick and thin, formulation,  
consultations up until the literal moderating role before it goes  
to SOFCOM. Now are you saying if you had remained at a  
15 distance, waited for Captain Reed to bring his report, of course  
it was fed in by what the IPT Team gave him, what Mr Rob  
Vermeulen gave him you know, all those other [indistinct, he  
came only at that stage, would you not have arrived at the  
conclusion that we see on paragraph 52 in as far as Project  
20 Wills is concerned?

R/ADM HOWELL: Chairman, we, the team would have arrived  
at the same conclusion of the German submarine but if I hadn't  
played it, done it the way I had I would not have been happy in  
my own heart to sign it without the knowledge of exactly what  
25 was going on, I would not have been happy to sign just, or I

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would have had to put in days and days of work to satisfy myself.

ADV LEBALA: Now am I right, before we go to Project Sitron Corvettes, and I see that it's about to, we are on lunch  
5 actually, I thought that we are five minutes to lunch, we are on lunch, but before we adjourn I would like to ask you this last question because we'll be starting Project Sitron when we come back. The adjustments that you did, we know that the process started with you being involved, supervisory role up to a point  
10 where you had to adjust, were exclusively influenced by two issues, logistic offer, what we call the ILS and the cost.

R/ADM HOWELL: Yes Chair, we decided in that RFO phase to emphasise the logistics, cost was always emphasised, but in the RFI phase we were happy that those four submarines were  
15 acceptable, but in particular we were worried, concerned about logistics and through life support *et cetera*, that's why we put the weight on that section of it.

ADV LEBALA: And were you satisfied that the German Type 209 submarine became the preferred one because of its  
20 lesser price compared to the other competitors?

CHAIRPERSON: I'm sorry Advocate Lebala, I'm not quite sure whether that is a fair question because [indistinct] also come into the equation in order for a fair [indistinct] supplied to determine, unless if you want the witness to confine himself  
25 to the [indistinct] or technical aspects of the submarine.

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ADV LEBALA: Thank you Chair. Actually I was breaking it into incremental questions; the other questions were going to follow up from the cheaper price. There were other factors that played a role but we could do that after lunch adjournment.

5 CHAIRPERSON: Can we adjourn for lunch, we'll come back at 13h45. Thank you.

**(Commission adjourns.)**

**(Commission reopens.)**

10 CHAIRPERSON: Can the witness confirm that he is still under oath?

R/ADM HOWELL: I do.

15 ADV LEBALA: Thank you Commissioners. Chair, may I be permitted to remove my jacket? Admiral Howell, before we adjourned we traversed the function that you discharge as a moderator in as far as the submarines are concerned under the guise of Project Wills. Do you remember?

R/ADM HOWELL: Yes Chair.

20 ADV LEBALA: Of significance is the fact that when you were moderating the submarines you dealt with the specified adjustments before the documents the report was referred to SOFCOM and the issue that we looked at was logistic offers and cost items, am I right?

R/ADM HOWELL: That's correct Chair.

25 ADV LEBALA: Now we avoided delaying and saving time by not referring to most of the annexures because the

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Commission has heard about them. Perhaps to complete the picture, and I know that there's a question that the Chair felt that it's unfair for me to pose it to you, I will still deal with it. Just permit me to complete the picture by asking you to look at  
5 the documents that you had before you, that is whilst you were moderating before the report was referred to SOFCOM and I'm just going to take you through those documents quickly, we just want to identify them. It's common cause that you had the RFI Value System and the RFO Value System, let's not waste time  
10 with those.

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Just for the sake of completeness it's Annexure "AH8", that is the RFI Value System page 72 to 73. and the RFO Evaluation is page 156 to 157 Annexure "AH9", am  
15 I right?

R/ADM HOWELL: No, I've got 9 as page 133.

ADV LEBALA: Now the RFO evaluation page, you say it's page 13?

R/ADM HOWELL: 133.

20 ADV LEBALA: Oh yes, I stand corrected and appreciate, may the record reflect that it's not 156, actually I flagged this, it's not 156, 157, it's page 133 and 134, am I right?

R/ADM HOWELL: Chair, that's the start of it but it's a much longer document.

25 ADV LEBALA: Yes, but where you sign identify ...

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CHAIRPERSON: Advocate Lebala, I think [indistinct] we had more than eight, nine, 10 witnesses who all told us that [indistinct] RFO's, I've gone through them probably three, four, five times, so I think we can accept that as common cause, all  
5 [indistinct] unless if at all there's a specific issue that you want to raise in the [indistinct].

ADV LEBALA: Thank you Chair. By the way you signed your, the report where you were moderating on the 30<sup>th</sup> June 1998. Please look at page 134.

10 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Of course you had the evaluation report before you, I'm talking about the one that you moderated, I'm not going to take you through it, I think the Chair, the Commissioners must have seen it, it was before you whilst you  
15 were moderating isn't it?

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Now the Chair drew our attention to an unfair question that I asked you with regard to the price that the Type 209 German submarine was the cheapest and I think I  
20 stand corrected because in actual fact if you look at paragraph 51.1, 51.2, 51.3, 51.4, 51.5 and 55.6 they refer to all the considerations that were made, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: I'm not going to waste time and ask them  
25 incremental cost, I was isolating that one as to whether, 51.6,

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as to whether in your view whilst you were moderating sitting with these teams, was the issue of the price more significant but you've mentioned that it was a number of considerations, not only that.

5 R/ADM HOWELL: That's correct Chair, there were a lot of considerations.

ADV LEBALA: And that's what the other witnesses have testified about. Now let's look at Project Sitron. Now we are done with the submarines. We are looking at your task as a  
10 moderator under Project Sitron. By the way, we mentioned that Captain Kamerman was the project officer of the Project Sitron, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now we are not going to deal with  
15 paragraph 53, it's common cause, we are in paragraph 53 Commissioners, of the witness's statement, it's common cause paragraph 54 is common cause, paragraph 55 is common cause, paragraph 56 just refreshes us that the RFI Value System, and I think you have already testified about that, that you know,  
20 and the Commission has already heard that the RFI Value System of the submarines and the RFI Value System of the Corvettes were also considered simultaneously, we need not repeat that. Paragraph 56 just mentions that aspect that before you whilst you were moderating you did look at the RFI  
25 Value System. Of course you approved it am I right?

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R/ADM HOWELL: That is correct Chair.

ADV LEBALA: We are not going to waste time and look at it. Paragraph 57 the RFO Value System, we've already traversed this testimony, you also had it before you and added, you approved it.

R/ADM HOWELL: It's correct Chair.

ADV LEBALA: We know that for instance in the case of submarines it was compiled by the project officer Captain Reed and you approved it.

10 R/ADM HOWELL: Correct Chair.

ADV LEBALA: The same even in the case of the Project Sitron, it was compiled by Captain Kamerman and you approved it.

R/ADM HOWELL: Correct Chair.

15 ADV LEBALA: Both the RFO's and the RFI's.

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Paragraph 58, it's common cause. Paragraph 59, it's common cause, Paragraph 59 is common cause, actually you have just confirmed it. Now let's start looking at paragraph 60:

*"The results of the evaluation are contained in a report dated 14 November 1997. A copy of this is Annexure 'AH12'. It was prepared and signed by Captain Kamerman. I signed the report as Moderator of the Corvette Military Evaluation. The*

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5 *report further indicated that it was ratified by the reduced Naval Board on 17 November 1997 and thereby approved. For reasons for cost and time to avoid the need to fly them to Pretoria for meetings the reduced Naval Board did not include the members from Simon's Town".*

Now I just want to deal with pages 316 to 323, not all of it, let's look at Annexure "AH12" page 316 to 323. Now if you look at page 323 it has got your signature as the moderator.

10 R/ADM HOWELL: That's correct.

ADV LEBALA: And the Naval Board also approved it.

R/ADM HOWELL: That's correct Chair.

15 ADV LEBALA: Were there any adjustments that you've made in as far as the Corvettes are concerned? We know that there were adjustments in as far as the submarines are concerned.

R/ADM HOWELL: There were no adjustments made to the Corvette evaluation.

20 ADV LEBALA: In fact what does that mean when you say there were no adjustments in as far as the Corvettes are concerned?

R/ADM HOWELL: Chair, as far as I can remember there were no ..., I did not have to make any adjustments to the Corvette.

25 ADV LEBALA: Now the fact that you participated throughout the whole process, consultations, supervision,

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simplified you to arrive at the conclusion that there was no need for adjustments to be made.

R/ADM HOWELL: That's correct Chair.

5 ADV LEBALA: In actual fact if I may ask, let's go back to submarines, what expedited, what tempted you or what made you to make those adjustments that ought not have happened in as far as the frigates are concerned?

10 R/ADM HOWELL: Chair, they were necessary in the submarine evaluation for the points that we've discussed but there weren't any such points in the Corvette evaluation.

ADV LEBALA: Now on paragraph 60 you talk about the inadequacy of Naval Board members. Now did it affect your report?

15 R/ADM HOWELL: Chair not at all, I put that in there just in case to let people understand what a reduced Naval Board meant. It's just that we set time constraints and of course cost, that there were two people, I think at Simon's Town, the chaplain who obviously had nothing to do with the technical detail and the officer serving in command in Simon's Town.

20 ADV LEBALA: Now what would have happened if for instance the reduced Naval Board had a problem with your report?

R/ADM HOWELL: They would have sent me back to the drawing board Chair.

25 ADV LEBALA: Even if it was a reduced number of Naval

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Board members?

R/ADM HOWELL: Absolutely Chair, it didn't take away the authority of it, in one or two cases in fact it was then tabled also at the Naval Board, at the full Naval Board, but I think the  
5 pertinent factor here is that Chief of the Navy chaired everything, it's just that one or two members weren't flown up specially.

ADV LEBALA: Now was the same process followed in as far as Project Wills is concerned, submarines for the report to  
10 be ratified by the Naval Board?

R/ADM HOWELL: Yes it was, but it wasn't actually recorded, only evaluation report as it has been here on the Corvette one, but the same process was followed for both projects.

ADV LEBALA: Now let's look at paragraph 61, it's  
15 common cause. Paragraph 62, it's common cause. Paragraph 63 we have traversed it. Paragraph 64, it's common cause. Paragraph 65, it's common cause. I would like us to deal with the Strategic Offers Committee. Now we have seen and heard how ..., actually we have seen it as it was given to us by Mr  
20 Rob Vermeulen, Mr Byrall Smith, Mr Fritz Nortjé. I think they shed light with us about the processes involved in the compiling of reports that ended up coming before you, I'm talking about the self-same reports that were given to project officers, that process has become clear. Am I right to say all  
25 these reports, that process is cascading towards that three

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tier, multitier process you referred to in paragraph, you call it orders, the other witnesses called it tiers. Yes paragraph 51.1. the three tier system, just paragraph 29, now we are gravitating towards where it leaves the lower level, that is the third tier, it goes towards SOFCOM, am I right?

R/ADM HOWELL: Yes, certainly Chair.

ADV LEBALA: And it has become common cause that you were a member of SOFCOM.

R/ADM HOWELL: It is correct Chair.

10 ADV LEBALA: And we know that when the reports that you moderated arrived at SOFCOM you already know what's contained in it.

R/ADM HOWELL: Absolutely Chair.

15 ADV LEBALA: Now did you discuss the report with any members of SOFCOM before it arrived at SOFCOM?

R/ADM HOWELL: Chair, I probably, I would have discussed them with Mr Chippy Shaikh as my boss throughout as well, probably not as often as I discussed it with the project teams, but Mr Chippy Shaikh and I worked together and discussed things on a regular basis.

20 ADV LEBALA: Now let's not waste time, you've covered paragraph 66, the constitution of SOFCOM has become common cause before the Commission. Paragraph 67 common cause, paragraph 68, 69 common cause, 69.1, 69.2, we've have  
25 overwhelmed the commissioners about that, they have heard

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about it. Paragraph 70, ...

CHAIRPERSON: I'm sorry Advocate Lebala I see here, I've made a note here, [indistinct] evidence when he talks about the presentation to the SOFCOM, [indistinct] saying that I don't think I've ever seen the minutes of the ASB of 8 July 1998 where he made, where SOFCOM made a presentation, unless if I've missed a copy of those minutes. Can you just try and find out from the witness if at all he's aware of the copy of those minutes?

10 ADV LEBALA: I think the Chair is drawing your attention to paragraph 68. I think for the sake of completeness let me read it to you to appreciate the Chair's concern:

15 *"During early July 1998 the SOFCOM met to consider the evaluation reports of the six procurement programmes that were then under consideration. Senior representative from ARMSCOR, from the arms of service, the DoD, the Department of Trade and Industry and the Department of Finance were present. The outcome of the deliberations was the recommendation of the preferred bidders to the Armaments Acquisition Special Board (AASB) on 8 July 1998".*

20 Now the Chair wants to know as to whether have you had sight or knowledge of the minutes of that meeting?

25 R/ADM HOWELL: Chair yes, I have read those minutes, I in

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fact haven't got them in my bundle but we have got them.

ADV LEBALA: Chair, I thought that this has become common cause and one didn't want to bother you, it was not disputed but for the sake of completing this witness's testimony we can lead him on it, we have seen it but we know that ultimately the preferred bidders were chosen and ...

CHAIRPERSON: Advocate Lebala, [indistinct] and I'm aware that there was a charge of [indistinct]. Then if you remember there was a problem about what SOFCOM actually recommended to the AASB, We know that at some stage, although up to now we're not quite certain where the non-costed option crept in, basically that's what I'm trying to define, whether is he aware of such a [indistinct]? We know that you know, the non-costed option crept in at some stage and I've tried to look at the minute ..., my notes, and I couldn't see whether it crept in at the SOFCOM meetings or it crept in after SOFCOM had prepared the report. That is why I was saying to you, trying to find out whether is he aware of the minutes of the presentation that were made at the Armaments Acquisition Steering Board.

ADV LEBALA: Thank you Chair, I think the witness, I'm giving over to the witness Chair.

R/ADM HOWELL: Mr Chair, I certainly was aware of that costed and non-costed option of the Hawk, that's the Air Force's LIFT programme, it wasn't my field of expertise and it

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wasn't for me to speak on it, but I was well aware of it at SOFCOM level and in fact at that AASB meeting on the 8<sup>th</sup> of July it also appeared to the best of my memory.

CHAIRPERSON: Let me follow up on that question. Was it  
5 ever discussed at SOFCOM level?

R/ADM HOWELL: Chair, that ... Now we've got to go around  
memory because I certainly knew about it before it went to the  
AASB and the way I would have known about it, it would have  
been discussed at the SOFCOM level, so it was common  
10 knowledge certainly to me at that stage.

ADV CANE: Chair, I wonder if I may be of assistance  
to you. In Volume 2 of Mr Griesel's bundles at page 172 ...

CHAIRPERSON: Just hold on.

ADV CANE: If I may repeat it's page 172 Volume 2 of  
15 Mr Griesel's documents. We have there the minutes of the  
special AASB of 8 July 1998. And Chair, if I may, taking up on  
your concern refer you to page 176 of that file you will notice  
that the Lead-In Fighter trainer is recorded as having both the  
cost option ranking and a non-cost option ranking in that  
20 particular minute.

CHAIRPERSON: Thank you. Although my question wanted  
[indistinct] I note that this one had been recorded, but then I  
wanted to find out from the witness if he knows, because he  
was a member of SOFCOM, how non-costed options came up to  
25 the table.

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ADV CANE: Yes, certainly that's a matter for the witness to deal with but perhaps I could just give you one further reference and that is to the minutes of 1 and 2 July of the SOFCOM, there are confirmation notes in relation to that  
5 minute, also in Mr Griesel's Volume 2 at page 154.

CHAIRPERSON: Maybe before we proceed, am I correct to say that you can't remember whether the non-costed option was discussed at SOFCOM level or not? If you can remember can you just explain to us how it came about?

10 R/ADM HOWELL: Chair if I may, it was definitely discussed at SOFCOM level, I have got the minutes of the work session that we had on the 1<sup>st</sup> and 2<sup>nd</sup> of July in front of me. Under LIFT it says at paragraph 29:

*"Two options that must be provided are:*

- 15 a. *An option including acquisition cost and;*  
b. *An option excluding acquisition cost".*

So that was minute at the July SOFCOM meetings, that was, it was indeed in front of the SOFCOM.

CHAIRPERSON: Can you recall how this topic was  
20 introduced or how it came to be on the agenda, the non-costed option?

R/ADM HOWELL: Chair, I was on the perimeter of the fight for that, is that the Air Force's, the costed option as we did all our projects, the Italian aircraft won it and then with the, if you  
25 take cost out of it then the Hawk, the British Hawk wins and

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that was a discussion around which one should be ..., the actual reasons why it then had to be [indistinct] and that was at a higher level than I was.

CHAIRPERSON: So, in other words you don't know how the non-costed option came, came about, you say that probably that was a decision that were made at a higher level?

R/ADM HOWELL: That to my understanding was a decision made at ministerial level Chair.

CHAIRPERSON: Thank you. Advocate Cane, do you still want to say something before the witness continues?

ADV CANE: Thank you. No Mr Chair.

CHAIRPERSON: Thank you. Advocate Lebala.

ADV LEBALA: Thank you Commissioners. We are in paragraph 70, that's the paragraph that has changes. Paragraph 70. I think there's an important change there but you will deal with that paragraph just to take the Commissioners along with you when we come to it. I'll also assist in bringing your attention to it, but before we got there let's go back to paragraph 69 and let me read it just to complete the context in which I would like to deal with a proposition I'm going to put to you:

*"Set out below are the tables of the results presented to SOFCOM in respect of the submarines and the Corvettes. In regard to the other five projects I defer to the expertise of the senior*

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*officials in the arms of service involved with those projects”.*

Now look at the table 69.1 and 69.2. Now these were tables that were presented in the report that was given to you after  
5 the teams have prepared those reports, am I right?

R/ADM HOWELL: No Chairman, no, not really. These are tables, the teams, we were working purely on the Military Performance Index, these tables in fact include the Industrial Participation and the Financial Index, so that was the tables  
10 after SOFCOM had brought all three aspects together, the project teams didn't have sight of the other ones.

ADV LEBALA: My question is that these tables are based on the information from different teams in other words?

R/ADM HOWELL: Absolutely Chair, that the individual teams  
15 brought those figures to SOFCOM and then SOFCOM compiled these tables, yes, that's correct.

ADV LEBALA: I mean I'm saying that the project officer, if there was any, or the leader of the team that dealt with finance, the leader of the team that deals with NIP's and DIP's,  
20 the leader of the team that deals with technical evaluation were the ones who provided the detail of these information we find in 69.1 and 69.2.

R/ADM HOWELL: Absolutely correct Chair.

ADV LEBALA: Now you mentioned in the self-same  
25 paragraph that you deferred to the expertise of the senior

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officials in the arms of service involved with those projects.

R/ADM HOWELL: That is ... Chair, that is for the scores of the aircraft and the tank.

ADV LEBALA: Now all this detail and information I think  
5 the Commissioners heard about it, hence I say let's just not  
waste time, we've just confirmed that it was information that  
came from the various teams. Let's go to paragraph 70. Now  
in regard to the, to Military Value of the submarines I think we  
are not even going to repeat what does Military Value mean, I  
10 think the Commissioners have heard it, technical value, military  
value:

*"In regard to Military Value of the submarines, the  
adjustments to which I refer in paragraph 50 above  
...".*

15 We've dealt with them:

*"... that I caused to be made as moderator of the  
Submarine Evaluation Report were clearly set out  
and presented to SOFCOM. They were acceptable  
to everyone, including the representatives from  
20 ARMSCOR and the moderators from the other arms  
of service to whom they were presented at  
SOFCOM. At a later stage the ARMSCOR auditor (Mr  
Grobler) also accepted them as was apparent from  
his audit report of January 1999. (I refer to  
25 paragraphs 3.4.1.4 at page 293 of the documents*

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*attached to Mr Grobler's statement, a copy of which I attached for convenience as 'AH16'.*

That is page 388 to 408J. I would just like to deal with one aspect in that statement, but before we do that let's pose the following question, what would have happened had SOFCOM not been satisfied with the report presented by the presenters before it, the report that they moderated? By the way, who presented it, who presented that report before SOFCOM?

R/ADM HOWELL: Chair I tabled it and I got the project officers to do a presentation on the detail.

ADV LEBALA: Now let's imagine what would have happened had SOFCOM had reservations or even decided not to approve it?

R/ADM HOWELL: Chair, they would have told us what their problem was and they would have sent us back to redo the work.

ADV LEBALA: At any stage we know that it was acceptable to everyone. Were there [indistinct] voices, one or two, before it was accepted by everyone? I'm talking about during the deliberations, or they just accepted it from the onset?

R/ADM HOWELL: Chair to the best of my memory there was no discussion at all, everybody looked at the presentation and accepted it unanimously.

ADV LEBALA: Now Mr Grobler, I would like us to look at

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something that we picked up in this report, let's look at page 408E if I'm not mistaken, 408, Annexure "AH16". Chair, I would like us to start at page 408E, at the bottom of that page, I'm struggling to flag my document Commissioners. Now let's  
5 identify this document, we know it's common cause. Please look at page 388 Annexure "AH16". Now the ARMSCOR auditor Mr Grobler's report, you will see that page 388 confirms what you are saying, you will see the title of the document on page 388, it's "Audit Report : Foreign Package Proposals", the date  
10 is January 1999, copy number, the name of Mr J G Grobler appears there, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now we've qualified "AH16". I would like you to go to page 408F, Let's start actually at the top, not at  
15 the bottom. No, in actual fact let's recapitulate and start at page 408. It appears that in the report at the bottom under the paragraph headed "Observations", may I read it? Paragraph 3.4.1.4 that you were referred to, "Observations":

20 *"The evaluations results for the military performance index given in paragraph 16 of the report could not substantiated by either the Quality Engineering or the Internal Audit members of the team ..."*.

Now which Quality Engineering and Internal Audit members are  
25 they referring to, of which team?

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R/ADM HOWELL: Chair, my understanding is the ARMSCOR personnel.

ADV LEBALA: Okay, let's read on:

*"... during the audit based of the supporting data  
5 given in the report".*

That is, we are on page 480F "Discussion":

*"This was a cause for concern on the part of the  
audit team and J G Grobler from Internal Audit  
verified the final results by independent inspection  
10 of the spreadsheets used by the evaluation team".*

Now which evaluation team?

R/ADM HOWELL: Chair, that would be the evaluation, the Corvette and Submarine Evaluation teams, the NET teams.

ADV LEBALA: *"It was, however, found that the value used  
15 to calculate the performance ratio of one offer was  
US\$1 million less than the actual value.  
Fortunately this did not influence the final result of  
the evaluation".*

I know that you didn't prepare this but what do you understand  
20 it to mean? I don't want us to call Mr J G Grobler, this is very  
clear, please assist us.

CHAIRPERSON: I'm sorry Advocate Lebala [indistinct]. Mr  
Grobler himself came and testified and we understand exactly  
what he is said, now you want to ask the witness to tell us what  
25 Mr Grobler has already told us, I'm not sure if that is going to

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add any [indistinct].

ADV LEBALA: Thank you Chair, it has become clear before the Commission, that's one aspect that I think resolves itself, noting that Mr Grobler was before the Commission.

5 Paragraph 71 common cause, paragraph 72 common cause.

Now we are going past SOFCOM, I don't know why I confuse these paragraphs. Still on paragraph 29, you remember on

paragraph 29.1.2.3 we kept on talking about that multi-tier approach that the Commission has heard about, now we are

10 going past. That is starting from below, the technical teams,

different teams, SOFCOM, now we are going up, up past

SOFCOM. Who according to you, in line with paragraph 29.1 it

means we are going to the first audit towards the Minister, am I right?

15 R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Paragraph 73, paragraph 73:

*"After a recommendation for each programme was compiled by the SOFCOM, the Armaments Acquisition Steering Board (AASB), and the*  
*20 Armaments Acquisition Council (AAC) were briefed on the result".*

Now who briefed them? Do you have an idea?

R/ADM HOWELL: Mr Chippy Shaikh briefed them Chair as his capacity of Chief of Acquisitions.

25 ADV LEBALA: Were you aware of the presentation that he

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made, what he said to those two important bodies?

R/ADM HOWELL: Chair, the, at the AASB, that 8<sup>th</sup> of July I was present, so I knew exactly what he said. The presentations were in fact prepared by, from the Military side, not the overall ones were prepared by my staff and the AAC I was not there and I am not aware but when things came back I was aware that no changes were made.

ADV LEBALA: Now at the Armaments Acquisition ... At the Armaments ..., at the Armaments Acquisition Steering Board on the 8<sup>th</sup> of July, were you satisfied about the presentation, that it was the correct reflection?

R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: Now who made the presentation at the Armaments Acquisition Council?

R/ADM HOWELL: Chair, that was again Mr Shaikh.

ADV LEBALA: Did you discuss with him before he made that presentation as the Navy's representative in the office of the Chief of Acquisition?

R/ADM HOWELL: Chair not specifically I don't think because it was basically the same presentation that went through the AASB and he was happy that the same presentations were going up the line.

ADV LEBALA: Right, now you've clarified the last sentence in paragraph 73:

*"I was not involved in making any of the*

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*presentations or deliberations of any structures after SOFCOM”.*

We know that you were present, albeit you didn't do the presentation at the Armaments Acquisition Steering Board.

5 R/ADM HOWELL: It's the Steering Board. That's correct Chair.

ADV LEBALA: Now in your work assignments you did discuss issues with Mr Shaikh who was your boss, am I right?

R/ADM HOWELL: Yes Chair, on a daily basis.

10 ADV LEBALA: So when he, because he presented more or less the same document as you say, to say the Armaments Acquisition Council, would you say you participated in the deliberations of that presentation? We know that you didn't make it, I'm just mentioning it's going up, we know that it's  
15 before the Minister, did you?

R/ADM HOWELL: Chair from the Military, from our side yes, that the slides he was using and things like that you know we made them and I was happy with what he was presenting.

ADV LEBALA: Okay, I suppose that corrects what you are  
20 saying in: 'I was not involved in making any of the presentations or deliberations of any structures after ...'; it means you did not literally do the presentations.

R/ADM HOWELL: Chair that's exactly what I was saying. You know we did the staff work but we didn't go and do it.

25 ADV LEBALA: Thank you. Paragraph 74:

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*"I understand that there was a special Ministerial briefing to the-then Deputy President, the Ministers of Defence, Trade and Industry, Public Enterprises and the Deputy Minister of Defence on the*

5 *31<sup>st</sup> August 1998".*

Who did the special briefing?

CHAIRPERSON: Advocate Lebala, [indistinct] because there are people who were there, we asked [indistinct] evidence about it and it will be [indistinct].

10 ADV LEBALA: Thank you Chair, let's proceed.

*"On the 18<sup>th</sup> November 1998 a briefing was presented to the full Cabinet upon which Cabinet approved the preferred suppliers for each of the equipment types and authorised that negotiations be*

15 *entered into with the preferred suppliers in order to arrive at an affordable contracting position with the respective suppliers".*

Now from the Acquisition Office, Acquisition Department, who was liaising with these important players?

20 R/ADM HOWELL: Chair, that's Mr Shaikh.

ADV LEBALA: Thank you. Paragraph 75, but we've heard about the Project Control Board. Let's pass. Now the relevant portion comes at the bottom of, let's see on the new, I beg your pardon Chair, on the new document where this aspect comes,

25 paragraph 75.

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R/ADM HOWELL: Top of 21.

ADV LEBALA: Page 21. Part of it has become common cause, I think the Commissioners have heard so much about it. I would like us to look at where we, after the constitution of the PCB is attached as "AH17", I want to read from there on the new document, it's line number 5, I would like to read from line number 5. On the old document it's at the top of page 20, I would like to read from line number 3. Are the Commissioners with us? Yes.

10                   *"The PCB was chaired by the Chief of Acquisitions and consisted of both ARMSCOR and DoD members, including the Chief of Navy and ARMSCOR's executive officer".*

That has become common cause.

15                   *"From time to time members of the Integrated Joint Project Teams would report to the PCB".*

Now it's through invitation, am I right?

R/ADM HOWELL: Yes Chair, they were in fact instructed. when that project came up they came and did presentations.

20                   ADV LEBALA: Now:

*"The Chief of Acquisitions disclosed to the PCB his possible conflict of interest in respect of certain subcontractors that we considered at PCB meetings".*

25                   Now it's common cause that you were a member of the PCB.

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R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now let's look at, I think you know we'll just deal with the relevant aspects of this testimony because you are the one who brings it in. You see, the Commissioners are able to test whether, with their training and experience, whether this is relevant or not, but you mentioned it. The most important part of your testimony why you are here is about moderation, that we have dealt with. Now you bring an aspect which I think belongs to a different Term of Reference of this Commission about the conflict of interest of one of the members of the PCB, the Chief of Acquisition. Now are we testing it because you have even attached annexures that deal with it. I wish I could just go past it but explain to the Commission why is it relevant. Before we deal with it let's test its relevance, why is it so relevant, this aspect of the conflict of interest of the Chief of Acquisition?

R/ADM HOWELL: Chair, I think it's relevant because the Chief of Acquisition felt it necessary to recuse himself at certain stages because of the conflict of interests that he had with one company that had a major role to play in the Corvette dealings. Do you want more detail?

ADV LEBALA: Please summarise it to the Commissioners, I can take you to the annexures but I don't want to overwhelm them. That aspect is still going to be dealt with at a different level in one of the Terms of the ..., Terms of Reference of the

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Commission. Okay, let me simplify it. Please look at Annexure "AH24" page 503 to 506, that's a minute of one of the meetings of the PCB, page 503. Would you please ...

CHAIRPERSON: I'm sorry Advocate but let me try and understand your question. Those minutes that you have referred me to this morning is reflected. Now what is the question that you are putting to him now?

ADV LEBALA: The witness ...

CHAIRPERSON: [Indistinct] this meeting and he then refers us to the minutes of, all the minutes of those meetings. Now what is the question that you are putting to him, let me also try and understand your question so that I can also [indistinct].

ADV LEBALA: Thank you Chair. I would be very happy if the Commissioners intervened to direct us not to [indistinct] with this aspect if it's not relevant at this stage. The witness is drawing our attention to the fact that it's common cause that he's a member of the PCB, Mr Shaikh, the Chief of Acquisition was a member, the witness is a member. Now in those meetings, one of the meetings Mr Shaikh kept on referring to his conflict of interest. Now my question is, is it relevant at this stage.

CHAIRPERSON: I'm sure that is not a question for the witness to answer, we will decide [indistinct].

ADV LEBALA: Thank you Chair.

CHAIRPERSON: If at all I think the witness is giving

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information which is not relevant I will make [indistinct].

ADV LEBALA: Thank you Chair. I always trust the Commissioners' guidance on this aspect. We will deal with this aspect that is highlighted by this chapter of your testimony:

5                   *"The Chief of Acquisitions disclosed to the PCB his possible conflict of interest in respect of certain subcontractors that we considered at the PCB meetings".*

Now let's look at the PCB meetings. I would like us to start  
10 with "AH24", we'll start at the back and go to the front, page 503 to 506. In actual fact it starts on page 501 and ends at page 506. Let's start on page 501. Do you want to have some water? I see you are yawning, this is exhausting, I know. You can imagine the Commissioners who sit everyday being  
15 overwhelmed with these details. Now let's start at page 501, you will see at the top that it's dated 23<sup>rd</sup> March 1999.

R/ADM HOWELL: I've got the page Commissioner.

ADV LEBALA: The subject is "The Minutes of the Project Control Board (PCB) Meeting held at DAPD on  
20 10 October 2000". I stand corrected, it's held at 081000B March 1999, please correct me, I thought that I could interpret that. I should be careful not to testify, please assist, on "081000B MAR 99". What does that mean?

R/ADM HOWELL: Chair that's just another way of put the  
25 date, it was on the 8<sup>th</sup> of March starting at 10h00 and B is the

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time zone that South Africa is in.

ADV LEBALA: Thank you, “to Review Project Sitron, Wills and Maulstic”. Now we note people present, Mr Shaikh was present, can you see?

5 R/ADM HOWELL: I do Chair.

ADV LEBALA: Now you were also present if I see number 5.

R/ADM HOWELL: I see that Chair.

ADV LEBALA: Mr Llewellyn Swan, he was the CEO of  
10 ARMSCOR, was also present.

R/ADM HOWELL: That’s correct Chair.

ADV LEBALA: Vice Admiral Simpson-Anderson, the Chief  
of the Navy was also present.

R/ADM HOWELL: Correct Chair.

15 ADV LEBALA: And we note that there were other persons  
who were present for part of the meeting. Just to complete the  
relevancy Captain Kamerman was present for part of the  
meeting, Captain Reed was present for part of the meeting, Mr  
Nortjé, Mr Vermeulen who of course this team has had interest  
20 in dealing with that, can you see?

R/ADM HOWELL: That’s correct Chair, they came in for their  
presentations and their part of the meeting.

ADV LEBALA: Okay, is that the only reason why they  
were present for part of the meeting?

25 R/ADM HOWELL: That’s correct Chair, we didn’t make the

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ship people sit through the submarine presentations and *vice versa*.

ADV LEBALA: But what is significant is that the minutes reflect on this meeting that reviewed Project Sitron and Project Wills.

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now let's go to page 503 paragraph 13 Item 5, "Corvettes". Now obviously when you deal with Corvettes we are dealing with Project Sitron, am I right? Now paragraph 13 Commissioners:

*"The chairperson reiterated that due to a possible conflict of interest he will recuse himself from any decisions taken on the Combat Suite but will not recuse himself from the meeting".*

Of course the chairperson if you look at page 492 was Mr Shaikh.

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now as at that stage on the 4<sup>th</sup>, no I beg your pardon, on the ...

R/ADM HOWELL: 8<sup>th</sup>.

ADV LEBALA: On the 8<sup>th</sup> of March 1999 were you aware that Mr Shaikh had conflict of interest, you personally being a member of the PCB?

R/ADM HOWELL: Chair yes, I knew at that stage, well, I've known for a long time that his wife was working for the

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company, ADS, and I later became aware that his brother with Nkobi Holdings had bought into a share arrangement with the company, detail I had none but I'm aware that his brother was involved.

5 ADV LEBALA: Now let's address ourselves to the 8<sup>th</sup> of March 1999. In as far as the chairperson's, remember it comes from him, it deals with Project Sitron where you were also involved and you are looking at this as a member of the PCB, you were wearing two caps, a member of the PCB and a  
10 senior officer involved in Project Sitron. The chairperson says:

*"... due to a possible conflict of interest, he will recuse himself ...".*

Now let's be specific. On the 8<sup>th</sup> of March 1999 which conflict of interest were you aware of, both of them or only one  
15 because you are mentioning his brother and his wife.

R/ADM HOWELL: Chair, his wife I'd known for a very long time, long before these projects have started, but I cannot put a date to exactly when I became aware of his brothers.

ADV LEBALA: Now can you precisely tell us, I know that  
20 you can put a date, can you tell us with precision as to whether on the 8<sup>th</sup> March 1999 you had a clue whether his brother was involved in ADS/Nkobi Holdings? Of course the relationship between the Corvettes comes through ADS/Nkobi Holdings, am I right?

25 R/ADM HOWELL: Chair, in fact the ADS was involved with

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this, could have been involved in the submarine as well, that was another debate but I'm trying to look in my evidence, I really cannot put a date at the moment of when I actually became aware of the brother.

5 ADV LEBALA: Okay let's take it that with certainty we know that the conflict arose from the wife who was employed by ADS, am I right?

R/ADM HOWELL: That's definite Chair.

CHAIRPERSON: Advocate Lebala I'm not quite sure whether  
10 one [indistinct] is all about the conflict of interest. If I recall he spoke about possible conflict of interest, unless if my recollection is not correct because those two concerns are [indistinct], unless if at all my recollection is [indistinct]. Can I just find out from the witness whether [indistinct] possible  
15 conflict of interest or he spoke about a conflict of interest?

ADV LEBALA: The Chair's concern is very clear, are you able to respond to that?

R/ADM HOWELL: Yes Chair, I am able to respond to that. Definitely it was a possible conflict, he did not want anybody  
20 pointing fingers at him because of his wife's and his brother's involvement. It was a possible conflict. He didn't want any accusations made against him.

ADV LEBALA: Now but we know that from the 8<sup>th</sup> of March 1991 it was not possible, it became clear, full  
25 square, because the Chair has mentioned it.

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R/ADM HOWELL: Chair, he mentioned that as a possible conflict yes. He didn't say: "I have got a conflict of interest, he just said ..., he basically felt he could be accused of having a conflict of interest.

5 ADV LEBALA: Okay. We can put the adjective or not, the subject becomes a conflict of interest was roaming and it was linked to the Chair, am I right?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: Now other members of the PCB, let's look  
10 at them on page 501. This might sound unfair but I suppose that of course you served in the same board, you do discuss issues, am I right?

R/ADM HOWELL: Correct Chair.

ADV LEBALA: Did you discuss this subject of the chair's  
15 possible, or conflict of interest with your colleague Vice Admiral Simpson-Anderson?

R/ADM HOWELL: Yes Chair, the two of us had the exact same knowledge.

ADV LEBALA: Now did you discuss it?

20 R/ADM HOWELL: Chair we would have shared exactly why he had said that, yes.

ADV LEBALA: Any other colleague that you discussed with, all the colleagues that we see on 501?

R/ADM HOWELL: Chair, I know I can speak on authority of  
25 Captain Van der Schyff, here Captain Kamerman and Captain

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Reed, all the Naval officers, we were all aware of the fact.

ADV LEBALA: Now what was the view of your colleagues?

R/ADM HOWELL: Chair we had no undue concern about it at all because we'd worked with ADS as a company for many, 5 many years, long before Mr Shaikh came anywhere near us as Chief of Acquisitions and we had that, those dealings with ADS and we were quite confident that Mr Shaikh would not unduly influence any decision we were going to make with respect to ADS.

10 ADV LEBALA: It means that's the view that you also shared? I asked you about the view of your colleagues, now I would like to know is that the view that you shared?

R/ADM HOWELL: Chair, I obviously can't speak on their behalf or nothing, but I am confident in saying yes, I believe 15 so.

ADV LEBALA: Now the subject of the Combat Suite related to the overall Project Sitron, isn't it? It was a subset of Project Sitron.

R/ADM HOWELL: That is correct Chair.

20 ADV LEBALA: Now let's see something that happens in paragraph 15 "Note", under paragraph 15:

*"The Chief of Acquisition handed over the Chair to C Navy for the discussion on the Combat Suite".*

Now "C Navy" stands for?

25 R/ADM HOWELL: It stands for Chief of the Navy Chair.

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ADV LEBALA: That is Admiral Simpson-Anderson?

R/ADM HOWELL: That is correct Chair.

ADV LEBALA: So, we know that at one time or the other  
the meeting of the 8<sup>th</sup> March 1999 had to be chaired by the  
5 Chief of the Navy?

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Particularly when the discussion focused  
on Combat Suite.

R/ADM HOWELL: That's correct Chair.

10 ADV LEBALA: Now when the Combat Suite was being  
discussed was Mr Shaikh outside the meeting or did he remain  
inside the meeting?

R/ADM HOWELL: Chair, he remained in the meeting.

ADV LEBALA: What was your view with that conduct?

15 R/ADM HOWELL: Chair, I know that the common practice is  
that if someone recuses themselves they also move out of the  
room and are not involved. He stayed as Chief of Acquisition,  
felt that he had to be in the picture. We actually didn't think  
anything of it, it was quite happy because we felt that he could  
20 not influence the decision anyway, so whether he stayed or not  
actually didn't worry us.

ADV LEBALA: In your view was he supposed to remain in  
the meeting?

CHAIRPERSON: Advocate Lebala, [indistinct] the witness  
25 whether that was correct or not [indistinct] at this stage, the

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witness is here to give evidence and not to give us his opinions.

ADV LEBALA: Thank you Chair. Was the conduct of Mr Shaikh correct to remain in that meeting? We know that he mentioned the possible conflict of interest and decided not to recuse himself from the meeting. Was that conduct correct?

ADV CANE: Sorry Mr Chair, may I object to that question? My learned friend has been edging closer and closer as you have just remarked, to eliciting evidence which is opinion evidence on legal issues. Thank you.

ADV LEBALA: Chair, this witness before the JIT hearing has not ...

CHAIRPERSON: Advocate Lebala what we know is the witness [indistinct] Mr Shaikh told him about a possible conflict of interest and when he came into the Combat Suite somebody else took over as chairperson. Mr Shaikh did not leave at all, that much we know, so while the witness [indistinct] is neither here nor there. The witness further, according to his statement had testified about that they relationship that they had with ADC and I think I heard him saying [indistinct] whether Mr Shaikh was present or not that could not have, or shouldn't have influenced that one way or the other, so his opinion on whether it's correct that Mr Shaikh was inside the room or not, I think it's a legal matter that can be argued at a later stage. Let's get the facts from him and not [indistinct].

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ADV LEBALA: Thank you Chair. You testified before the Joint Investigation Team, am I right?

R/ADM HOWELL: That is correct Chair.

5 ADV LEBALA: I'm not going to waste the Commission's time by referring the Commission directly to the record of your testimony, I will put it on record as a fact, and you could confirm whether I'm right or wrong. You testified about the subject before the JIT Team isn't it?

R/ADM HOWELL: That's' correct Chair.

10 ADV LEBALA: You gave your views about whether Mr Shaikh was supposed to have recused himself or remain at that meeting after he mentioned the possible conflict of interest, am I right?

R/ADM HOWELL: That's correct Chair.

15 ADV LEBALA: At the JIT meeting you were specific, you said that in actual fact it was wrong of him to remain at that meeting isn't it?

R/ADM HOWELL: That is correct Chair but as you rightly say that's my opinion.

20 ADV LEBALA: Yes, but that's my point, this opinion, I have to come in again. The Chair noted it that it's a question for argument, hence I'm eliciting this opinion, I'm not eliciting as an expert, I know the Chair, both Commissioners are highly trained, I know why they would resist opinion evidence, but  
25 here it becomes relevant based on what you said at the JIT

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hearing. Now my question premised on what you said at the JIT Hearing brings to the fore the question that I asked that my learned friend Ms Cane objected to, are you still standing by what you said at the JIT hearing?

5 ADV CANE: Sorry Mr Chair, if I may interject at this point, I have the record of the JIT evidence open and what the witness in fact said ...

CHAIRPERSON: Ms Cane, I'm sorry, speak into the mic [indistinct] struggle to hear you.

10 ADV CANE: Is that better Mr Chair? What the witness in fact said in the JIT Inquiry, and I'm reading from page 1398, he said:

*"In my opinion he should have left ...".*

And again he says:

15 *"... because in my opinion he should have left".*

The ..., Mr Lebala put to him that he had stated that in his view Mr Shaikh's conduct was wrong and that is in fact going a step too far. The witness may have held an opinion that Mr Shaikh should have left but he's not categorising that the conduct is good or bad. As you please.

20 ADV LEBALA: Chair, I thought my learned friend heard me saying that he gave the opinion at the JIT hearing and that opinion one could say has become factual because it's standing stubborn before us. My learned friend has referred to it as a  
25 fact and facts don't lie, it has become a fact that at the JIT

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hearing he said:

*"In my opinion he should have left".*

What does it mean? The witness should have left after he, I mean Mr Shaikh should have left after he mentioned the question, the aspect of the possible conflict. That's what the witness says and ...

CHAIRPERSON: Advocate Lebala [indistinct], is that correct or not?

ADV LEBALA: It is.

10 CHAIRPERSON: [Indistinct].

ADV LEBALA: Indeed Chair.

CHAIRPERSON: Thank you.

ADV LEBALA: Could I close by asking the following question, I've demonstrated that you gave an opinion at the JIT hearing, this forum is similar to the JIT hearing, actually in my view this forum is higher, I've got to avoid giving opinions, but this forum is higher. Now what is, what are you saying about Mr Shaikh having remained after having identified or mentioned this possible conflict of interest, what are you saying to that?

20 ADV CANE: Sorry Mr Chair, again if an opinion is being sought from this witness as to the characterisation of Mr Shaikh's conduct, it being right or wrong, good or bad, I do object to that question.

ADV LEBALA: Chair, I no longer see merit in this objection. What is stubborn before us is what the witness said

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in another forum, whether it's through an opinion or a factual assertion doesn't matter, we are eliciting from this witness premised on what he said in another forum as to whether is he still repeating what he said in another forum. What's wrong with that Chair?

CHAIRPERSON: Is he still repeating what?

ADV LEBALA: Is the witness still standing by what he said in that forum in as far as this subject is concerned.

CHAIRPERSON: You want his opinion?

10 ADV LEBALA: Indeed.

CHAIRPERSON: I think I'm more interested about the facts about what he knows rather than ... If you want to you can let him be, you can be on record that this is what he said at the JIT hearing, I don't know the circumstances under which he said it, that, we have never been given a copy thereof. And two; I'm not quite sure about what you are trying to do, [indistinct] something [indistinct] because he is going to tell us about his opinion and [indistinct] at that time, I'm not quite sure what [indistinct] or not but I you know, it's your witness, if you want to despite the objection from Ms Cane I'll allow you to continue on that question, let's see how far can we take this.

20 ADV LEBALA: Chair, I premised the JIT Report by mentioning that we don't want to waste time, this is what he said, the witness mentioned that he testified at the JIT, we need a premise for it, we're not taking the Commission by

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surprise, in actual fact it's not lying, it's standing before the Commission that this witness testified at the JIT. Now the issue of the opinion Chair, we'll part ways with it, I think we'll deal with it by way of argument, we'll part ways with it, I think we'll deal with it by way of argument, all that I could say to you Admiral Howell is it remains that at the JIT hearing you did give an opinion about Mr Shaikh remaining in the meeting after he mentioned his possible conflict, am I right?

R/ADM HOWELL: Chair, that is correct.

10 ADV LEBALA: I will leave it because we still have some distance to traverse, I was a bit ambitious that we could finish with your testimony today, part of it that remains is what the Commission has heard and it elicits your views about the gearbox, that is stubborn before the Commission, I'm not going to take you through it, for instance paragraph 76, 77, 78, 79, 15 the Commission has heard about the gearbox MAAG, RENK. The selection of the Detexis Data BUS, the Commission heard so much about it. Now you were talking about your personal involvement here, we can quickly just mention it what your views are in relation to the selection of the Detexis Data BUS, 20 I don't know whether the Commission would like to hear this? I could lead you into it but this is also part of the testimony that the Commission has heard. I'm less tempted to take you through it because it has become common cause what 25 influenced the decision not to choose IMS, C2I2, Integrated

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Management System and to go with Detexis Diserta Database, that's common cause, so I'll leave paragraph 80, I'll leave paragraph 81, I'll leave paragraph 82 because it's common cause. 84, it's common cause. We took the Commission to demonstrate that you and Mr Llewellyn Swan, the CEO of ARMSCOR went to speak to Mr Richard Young in Cape Town, the Commission has heard about this, I wouldn't like to overwhelm them about it.

84, 85, 86, 87 common cause, 88 common cause.

10 Meeting Richard Young page 89 [sic], you are confirming what has become common cause before the Commission in Cape Town. I see paragraph 90 you are clarifying that which is before the Commission. Page 91 [sic], that letter of Mr Swan, we took the Commission through it. Paragraph 92 I could deal with it given your personal views on what the critics have said. Now I assure you that this well-drafted statement, I'm not, our team is not subtracting anything from it but we cannot repeat the evidence which is standing before the Commission, your meeting with Richard Young the Commission has heard about it, 15 for instance paragraph 90, the risk factor that Category C, Category D, we have heard about it. 20

Paragraph 88, they heard about it. 87 they heard about, 86 they heard about, so let's go to paragraph 92 and I repeat that does not subtract from this well-drawn statement, 25 all these paragraphs that are common cause we'll bring into

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context in which we could arrive at paragraph 92. Paragraph 92 at page 93 paragraph 1.6.7 and at page 150 of the Andrew Feinstein's and Paul Holden's joint submission. Now this one cannot be disputed, so ... I know you are not a lawyer, something that cannot be disputed gets to be accepted, we are not going to waste time and present it before the Commission and isolate it, we have it.

They allege that the categorisation of C2I2 Data BUS into Category B rather than Category C was not properly made, they referred to claims that the decision was made that an extraordinary and un-minuted PCB meeting on 19 August 1999, which they say would not have been correct, these allegations are not correct, now we are dealing with your views. 92.1:

*"Mr Llewellyn Swan called for a special PCB on 19 August 1999 to explain the risk issues and the proposed categorisation of equipment into Categories A, B and C".*

Albeit the Commission has heard about this.

*"This was not a decisions making meeting and was solely for the purpose of assisting PCB members to understand the Project Team's proposal. Mr Fritz Nortjé gave a presentation which became Appendix 'D' to the minute of the Project Control Board of 24 August 1999".*

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The Commission has heard about this and have seen that Appendix "D".

*"Admiral Kamerman gave a much shorter presentation in support of Mr Nortjé's presentation".*

5 We even elicited Mr Nortjé' who mentioned that Admiral Kamerman is better qualified to come and talk about this.

*"The members of the PCB were placed in a position to consider the risk issues before they were called upon to make a decision on whether to accept the Project Team's recommendation at the next PCB meeting of 24 August 1999".*

10

The Commission has heard about this.

*"The meeting of 19 August was not intended to be a minuted meeting".*

15 Now that's your view. That's where you are giving your personal testimony. I should be careful, not a view as an opinion but personal testimony.

*"The meeting of 19 August 1999 was not intended to be a minuted meeting as it was only for the purposes of informing the PCB members prior to their decision-making meeting of 24 August 1999".*

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So that was not a decision-making meeting according to you, it was just to give information. Paragraph 92.2:

*"Paragraph 15 of the minute of the Project Control Board of 24 August 1999 refers to Appendix 'E'*

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dated 19 August 1999. At the beginning of the minute one of the items is 'Project Sitron: PCB ratification required'. Thus the fact that the issue was placed before the PCB for decision on 5 24 August 1999 was minuted. The PCB in fact ratified the classification of the Data BUS as a Category B item and confirmed that despite cost ceiling of the Corvettes could not be exceeded. These two factors resulted in the selection of the 10 Detexis Data BUS".

Also before the Commission. 93:

*"In paragraph 59 of Young's statements he refers to Mr Chippy Shaikh's declared conflict of interest in regard to the Combat Suite acquisition process. He 15 complains that notwithstanding this conflict Mr Shaikh played a role in negotiating the scope and price of the Combat Suite".*

Let's pause here. Is it true that when Mr Shaikh, I can take you to those other minutes of the PCB for what it's worth, 20 Project Sitron did not only involve the Combat Suite isn't it?

R/ADM HOWELL: Chair, [indistinct] the Project Sitron was Combat Suite and Platform was two separate items.

ADV LEBALA: But for instance, if for instance the Combat Suite and the Platform were the main rivers, there were 25 other elements like costs, risk, finances, am I right?

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R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: Now at the PCB meetings when Project  
Sitron was being discussed some of the issues that have been  
discussed outside the Combat Suite and the Platform referred  
5 to cost, finances and risk [indistinct].

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: And Mr Shaikh remained during those  
discussions, we know that where the Combat Suite was being  
discussed we've seen that he recused himself but when other  
10 factors, the tributaries that flowed into the Combat Suite and  
the platforms were being discussed he remained.

R/ADM HOWELL: Yes Chair.

ADV LEBALA: So, is Mr Young not correct in saying  
notwithstanding the mention of these conflicts Mr Shaikh  
15 played a role in negotiating the scope and price of the Combat  
Suite?

R/ADM HOWELL: Chair, I don't think it's correct because he  
may have said the price, but on the scope of the Combat Suite  
and saying what must be in the Combat Suite Mr Shaikh did  
20 not, he might have been present but he had no say and he  
didn't participate and he didn't dictate to us, he didn't put his  
opinion in or anything on what that Combat Suite should look  
like. He did with the price obviously as it was his  
responsibility to come within budget.

ADV LEBALA: Yes, but my question is not that. Thanks

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for the clarity. I'm not saying that Mr Shaikh dictated, influenced, I'm saying there were instances where there were deliberations at the PCB meeting, we can go there for the sake of completeness, where one can see that the issue of finances was being discussed, do you agree? We can go to other minutes other than, we don't have to waste time, you do agree?

5

R/ADM HOWELL: I fully agree, finances always had to be discussed Chair.

ADV LEBALA: Finances that relate to the Project Sitron?

10

R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: That also touched on the Combat Suite?

R/ADM HOWELL: Yes, certainly.

ADV LEBALA: So, Mr Young is correct. The detail of going into the scope goes without saying that the PCB meetings don't tell us that Mr Shaikh participated, the price of the Combat Suite specifically, one sees that Mr Shaikh did not participate but in talking about finances, risk, costs, of Project Sitron Mr Shaikh participated.

15

R/ADM HOWELL: Chair, not in my understanding. I just read there in that when you say he played a role in negotiating the scope and price of the Combat Suite he, Mr Shaikh gave us the overall and he insisted on coming within budget and that sort of thing but when we negotiated the detailed prices of equipment and the scope of what was going to go on that ship Mr Shaikh did not play a role in that.

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ADV LEBALA: Okay, then that clarifies negotiations, but deliberations? Discussions, nitty-gritties, finances at the PCB meetings?

5 R/ADM HOWELL: Chair, for each individual equipment and things, there's certainly, he could possibly have but he was more in an overall and we were in the nitty-gritty, the Project Team was in the nitty-gritty of what each one was going to cost.

10 ADV LEBALA: Tell me, when the issues of the finances were being discussed without specific reference to the Combat Suite but to Project Sitron did anyone, including yourself, of members of the PCB mention to Mr Shaikh that you guys are comfortable for this to be discussed in his presence? We have heard what you have said that he didn't influence, that part has  
15 become clear, he would not even influence you. My question is not related to that, my question is did anyone say to him: "We feel uncomfortable that you we are talking about the finances that pertain to the Project Sitron and we know that the Project Sitron involves the Combat Suite and the Platform, but we are  
20 talking about finances of the Project Sitron and you are remaining here, we are comfortable", did anyone of your colleagues, including you, mention that to him?

R/ADM HOWELL: Chair, [indistinct] at any stage say we were comfortable, probably also at another stage did we say  
25 we're uncomfortable and I personally never felt uncomfortable

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at all.

ADV LEBALA: There was nothing wrong with Mr Shaikh remaining when these discussions were going on from what you are saying?

5 R/ADM HOWELL: I felt for what we were discussing and what input and influence he could have had on what, on the results of the discussion, I had no problem with him being there.

ADV LEBALA: Okay. Admiral Howell, I'm certain that at no time did Mr Shaikh say to yourself and to some of your  
10 colleagues at PCB: "This is going to be your thinking", I'm sure you agree with me? Mr Shaikh never said: "You are going to think this way members of the PCB", that one I haven't seen and I'm certain that you agree with me?

R/ADM HOWELL: I agree with you totally Chair, there is no  
15 way Mr Shaikh would have influenced our thinking, myself especially and Chief of the Navy.

ADV LEBALA: At no time I've seen these minutes, I can take you through them, did Mr Shaikh say: "You are going to decide in favour of ADS or consider ADS", I'm sure you will  
20 agree with me?

R/ADM HOWELL: I agree with you fully, at no time did he say that.

ADV LEBALA: But Mr Shaikh's presence there, when the subject of finances pertaining to Project Sitron were being  
25 deliberated upon played a role because he was part of those,

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of that meeting, am I right? I don't say he deliberated, he was part of that meeting, the minutes reflect that.

R/ADM HOWELL: He was there and the finances were very much his responsibility, so he would have been aware of the finances, certainly.

ADV LEBALA: So by reflection Mr Shaikh did participate in the Combat Suite deliberations through finances because the Combat Suite is part of Project Sitron and the finances of Project Sitron were being discussed?

10 R/ADM HOWELL: Yes, if you put it that way but I still stick with he didn't play a role in negotiating the scope.

ADV LEBALA: That has become clear and we know that he never even influenced directly, directly, he never even told you how you should think, he never said: "Consider in favour of the ADS". Now do you agree with me that Mr Shaikh need not have specifically mentioned what you should do in order to influence, he need not have been specific to influence you and members of the PCB, he need not have specifically mention anything by being specific to influence you, his presence there played a role.

R/ADM HOWELL: Yes, I expect if you put it that way he played a role yes, but he certainly didn't influence it.

ADV LEBALA: Now before the meetings of the PCB would you go and discuss the agenda with your boss Mr Shaikh?

25 R/ADM HOWELL: Chair, at that stage my boss was Admiral

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Simpson-Anderson, again I was Chief Director Maritime Warfare at that stage, Mr Shaikh wasn't my boss anymore.

ADV LEBALA: I stand corrected. When ... Let's go to where you are the Director of Naval Acquisitions and Mr Shaikh is the chief of acquisitions. Would you discuss subjects with him pertaining to the agenda before you attended meetings?

5

R/ADM HOWELL: I did discuss most things pertaining to the projects with him Chair.

ADV LEBALA: Would you discuss with him after the meetings?

10

R/ADM HOWELL: Certainly Chair, yes.

ADV LEBALA: Tell me, I know Mr Shaikh would come and answer this, would Mr Shaikh discuss the issues that would arise from the agenda of the PCB with other members of the PCB, do you have an idea? Either you have an idea or not.

15

R/ADM HOWELL: Chair, I wouldn't know whether he discussed it with anybody else, no.

ADV LEBALA: Would Mr Shaikh discuss the issues with you as Admiral Howell or as, you were commodore then, were you commodore then? Let me stand corrected.

20

R/ADM HOWELL: At PCB level I was a rear admiral.

ADV LEBALA: Would he discuss issues with you pertaining to the agenda at the PCB?

R/ADM HOWELL: Chair, at PCB level we had very much less discussion because we sat in separate buildings and we would

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only then come up for the meetings, so not really, there wasn't much. There wasn't as much interaction but there certainly was interaction yes.

ADV LEBALA: Okay let's be specific. Would he come to  
5 your office before you go to the meeting of the PCB to discuss subjects of agenda with you?

R/ADM HOWELL: Chair, to the best of my knowledge he never came to my office when I was in Naval Headquarters.

ADV LEBALA: Okay, outside your office would you have  
10 an opportunity to discuss with him anywhere?

R/ADM HOWELL: No Chair, we didn't meet socially at all.

ADV LEBALA: After the meetings of the PCB?

R/ADM HOWELL: After the meetings of the PCB it was very likely that we stayed behind and had informal discussions yes.

ADV LEBALA: On a one-to-one with you?  
15

R/ADM HOWELL: That is possible Chair, I certainly don't, I wouldn't know how to bring up examples but it could have been possible.

ADV LEBALA: Would you have discussed the issues of  
20 the Combat Suite with him after the meetings?

R/ADM HOWELL: Chair I avoided discussing controversial points and exactly and sort of the role for ADS we, I have avoided discussing the detail with Mr Shaikh.

ADV LEBALA: Would you at any time have discussed the  
25 finances of the Project Sitron with him after the PCB meetings?

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R/ADM HOWELL: Chair I would have, if there was a problem with the finances I certainly would have discussed it but we would discuss it in the meeting, if I had anything to say I would have said it in the meeting Chair.

5 ADV LEBALA: Amongst those discussions would there be, would there have been an opportunity for you to discuss the interest of ADS directly or indirectly?

R/ADM HOWELL: Chair there could have been opportunity but as I have said I avoided, I realised the situation with ADS and I avoided discussing anything that could have been controversial with him.

ADV LEBALA: Now other than yourself would you see Mr Shaikh also after the PCB meetings having an informal discussion with any other of your colleagues?

15 R/ADM HOWELL: Chair, I don't recall any.

ADV LEBALA: Okay. Let's read paragraph 93 at the bottom. Well, let's premise by starting on line number 2 , complete it:

20 *"He complains that notwithstanding this conflict Mr Shaikh played a role in negotiating the scope and price of the Combat Suite. He also says that Mr Fritz Nortjé and Admiral Kamerman recorded same in an internal programme memorandum. I wish to state the following in this regard:*

25 93.1 *The Combat Suite negotiations with the*

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representatives of the German Frigate Consortium and of South African industry were commenced at Silvermine during January 1999. I was present at these meetings but Mr Shaikh was not. Thereafter  
5 the further meetings were held mostly at the ARMSCOR Building in Pretoria and were also not attended by Mr Shaikh”.

Now would Mr Shaikh come to you to discuss after these meetings? We know that he was not present, all that I want to  
10 know is would he come and discuss with you after these meetings?

R/ADM HOWELL: No, I didn't have. After these particular meetings that the Project Team were discussing with him I then had no further discussion with Mr Shaikh.

15 ADV LEBALA: Before this meeting?

R/ADM HOWELL: Before each meeting, in fact it was totally separate, away from us, the meeting I referred to here is Mr Mono, the cost of the Combat Suite had more than doubled and Mr Moynot was trying to explain why and we weren't prepared  
20 to accept that and he and Mr Shaikh and I met to, for Mr Shaikh to let him know that there is no more money, we cannot go over cost, we then went down to the Silvermine Work Session where we told the team and Mr Moynot in front of the team that there was no more money, we had to chain, we had to cut costs or  
25 cut out equipment, in fact we did cut out equipment in the end,

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Mr Shaikh was not involved thereafter in that cutting out equipment and things, it was between the Project Team and the Navy in fact.

ADV LEBALA: But you are saying that before this meeting  
5 the subject of the Combat Suite was discussed by yourself, Mr Moynot and Mr Shaikh?

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: Do you have an idea as to whether before  
10 this meeting at Silvermine Mr Shaikh did discuss the issues pertaining to the subject at that meeting with some of your colleagues who attended these meetings? Do you know, yes or no?

R/ADM HOWELL: I don't know anything of that, no.

ADV LEBALA: 93.2:  
15 *"During the negotiations phase Mr Shaikh did not take part in any of the meetings and negotiations at the Project Team level".*

Now do you know whether Mr Shaikh did take part in any discussion's outside the Project Team level?

20 R/ADM HOWELL: No Chair.

ADV LEBALA: Are you specific to say that you don't know whether he discussed it with some of your colleagues or colleagues in those terms?

R/ADM HOWELL: Chair, as far as I'm concerned he didn't  
25 but obviously I don't know if he, you know I cannot state what

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was happening outside my ...

CHAIRPERSON: Advocate Lebala [indistinct].

ADV LEBALA: We are done, we are done Chair actually,  
if you look at, well let's look two paragraphs and we are done,  
5 I thought that we could complete the testimony but I'm in your  
hands Chair, we are done.

CHAIRPERSON: Any possible re-examination?

ADV CANE: Chair, I would be grateful for five to 10  
minutes.

10 CHAIRPERSON: Five to 10 minutes, I'll check. Can I make  
a suggestion that let's adjourn for 10 minutes and then we'll  
come back and try and finalise this witness, maybe if it will  
cost us another 40 minutes to an hour [indistinct] finish.

ADV CANE: Certainly Chair.

15 CHAIRPERSON: Thank you. Let's, we'll adjourn for about  
10 minutes.

**(Commission adjourns.)**

**(Commission reopens.)**

CHAIRPERSON: Can the witness confirm that he is still under  
20 oath?

R/ADM HOWELL: I do.

ADV LEBALA: Esteemed Commissioners, thank you for  
indulging us to allow us to finish this chapter of the witness's  
testimony. We are ready to proceed Commissioners. We are in  
25 paragraph 93.2:

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*“During the negotiation phase Mr Shaikh did not take part in any of the meetings and negotiations at the Project Team level”.*

5 Now do you agree with me that you are saying Mr Shaikh was not directly involved in the negotiations?

R/ADM HOWELL: Chair no, that’s not what I’m saying, in the negotiations at all, I’m saying that at the Project Team level with the deliberations at their level Mr Shaikh was not there and not involved.

10 ADV LEBALA: But you have told us that you are not aware, you can’t tell us whether Mr Shaikh did have meetings with other members of the Project Team at the Project Team level. That you can’t say?

15 R/ADM HOWELL: I can’t say that Chair no, because he could have had meetings anywhere at any place that I wasn’t aware of, sure.

20 ADV LEBALA: And you would agree with me that certainly he would have to, because he was the Chief of Acquisitions, negotiations can’t just go on without him and that’s my point. I don’t want to argue, I’m just putting an assertion. That’s my point that it has become clear that he was not directly involved with negotiations, that has become clear, but you can’t tell us whether was he discussing with other members of the Project Team?

25 R/ADM HOWELL: Chair, the negotiations at that level were

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not his, he was negotiating at the higher level with the International Negotiating Team at that level. The nitty-gritty technical things at the lower level, Mr Shaikh was not at that level.

5 ADV LEBALA: Now would you agree with me that even if Mr Shaikh did not take part in any of the meetings and the negotiations at the Project Team level you can't say to the Commission that that doesn't mean he did not talk to individual members of the Project Team?

10 R/ADM HOWELL: No Chair, obviously I can't say that.

ADV LEBALA: If I were to say that as a Chief of Acquisitions he had to have interest in these negotiations and that means that, and this one we'll have to establish from him, all that I could say that as the Chief of Acquisitions he had to have interest in this negotiations.

R/ADM HOWELL: Chief, he would have to have interests and perhaps that's a question for Captain Kamerman whether he ever spoke to Captain Kamerman at that level.

20 ADV LEBALA: Thank you. "I'm not aware ...", we are reading further:

*'I'm not aware of Mr Shaikh intervening, influencing or being involved in any of the negotiations being conducted by the Project Sitron Project Team'.*

Now you are still talking about direct involvement, am I right?

25 R/ADM HOWELL: That's correct Chair.

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ADV LEBALA: Because you are not aware as to whether he was talking to individual members, isn't it?

R/ADM HOWELL: That's correct.

ADV LEBALA: *"Mr Shaikh had no influence whatsoever  
5 over the selection of the Combat Suite and its  
elements".*

Now you are also talking about direct influence.

R/ADM HOWELL: Chair, here I can state with a good amount  
of confidence that Mr Shaikh at the Combat Suite, the Combat  
10 Suite we'd been working on for many years before that, it was  
from 1993 onwards, even before that we were working on  
elements of the Combat Suite and Captain, then-Captain,  
Admiral Kamerman and I had been working with Project Sitron  
and when Project Sitron was delayed with Project Suvex and we  
15 were working through that and so that Combat Suite was put  
together before Mr Shaikh was anywhere near the scene and  
our worked with ADS was there and ground and ADS was the  
only company in South Africa we could have worked with and  
that was, we would have worked with them whether Mr Shaikh  
20 was there or not, whoever was Chief of Acquisition we would  
have been working with ADS.

ADV LEBALA: What has become clear is that certainly  
there was no direct influence but you have agreed, actually you  
have even confirmed, not only have you agreed that in the  
25 meetings where he would recuse himself, remain part of the

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meetings. The issues of the finances that touched upon the Combat Suite were discussed in his presence, he might not have participated but they were discussed in his presence, you did agree to that.

5 R/ADM HOWELL: Yes Chair, I did.

ADV LEBALA: He discussed with you and Mr Moynot about the Combat Suite?

R/ADM HOWELL: He did not discuss the detail of the Combat Suite, he discussed with us that there was no option on getting  
10 an increase of finances.

ADV LEBALA: But the subject was the Combat Suite?

R/ADM HOWELL: Absolutely Chair.

ADV LEBALA: I agree that there was no direct discussion but the subject of the Combat Suite was discussed in his  
15 presence with yourself and Mr Moynot.

R/ADM HOWELL: That's correct Chair.

ADV LEBALA: 93.3:

*"As a result of the history of the ADS being the only ..."*

20 I think this one you have just said it, that's common cause, we could just complete:

*"As a result of the history of the ADS being the only South African company developing the Combat Suite technology during the years of the arms embargo it  
25 was the only South African company capable of*

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*providing the Combat Suite. It had no local competitor”.*

Actually that’s common cause. I’m interested in:

5

*“There was thus no question that ADS was going to be the SA partner to the German Frigate Consortium to provide the Combat Suite. Young himself recognised this in his notes of 5 August 1999, paragraph 21, Annexure ‘AH22’”.*

That is pages 488 to 491 where the following is recorded:

10

*“Although ADS is a South African registered company, it is now foreign-owned. However, we recognise that there is no other single company with the requisite experience to take its place”.*

93.4:

15

*“Thus it is an objective fact that ADS’s role as the provider of the Combat Suite was not in any way the result of Mr Shaikh’s influence or role”.*

Now you are referring to direct influence, am I right?

20

R/ADM HOWELL: Chair, any influence at all, no inference would have made any difference to us.

25

ADV LEBALA: Yes, but we know and I’ve got to be careful, you see these Commissioners are not going to allow me to ask you an unfair question, we do not know whether he discussed with other people, we know that the issue of finance was also discussed that pertains to the Combat Suite, albeit it

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was not the direct discussions of the Combat Suite, hence I say  
are you referring to direct influence, and he's got to come and  
answer because he's got to be asked questions about direct or  
indirect influence. I agree, I can't see direct influence, that I  
5 can't see, but that doesn't eliminate indirect influence, hence  
I'm asking you are you talking about direct influence?

CHAIRPERSON: Advocate Lebala, the witness answered  
that question.

ADV LEBALA: Thank you Chair.

10 CHAIRPERSON: And in my view even before he answered  
that question he's given a [indistinct] question, he based his  
answer, he said ADS was the only [indistinct] and Mr Shaikh  
was there or not [indistinct] was still going to be [indistinct],  
so I'm not quite sure what point you are trying to make.

15 ADV LEBALA: Chair, I think the picture would be  
completed when Mr Shaikh himself testifies and probably it's  
not fair to pursue this line of questions especially at this stage  
of the Commission when we deal with this Term of Reference,  
but the witness has invited this by his adequate statement and  
20 these questions arise from what he says. Let's proceed. 93.5  
is common cause except that there's a correction which has  
been inserted above the "conflict of interest", I just want us to  
read 93. I beg your pardon, I want to ask to read the new 93.5  
in the new statements. Commissioners, it's on page 27 of the  
25 statement that was handed today, the latest statement. May I

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take the liberty to read it?

5           *"The only conflicts of interest of which I became aware were firstly that Mr Shaikh's wife worked as an employee of ADS. During a PCB meeting of 4 December 1998 and again on 8 March 1998 Mr Shaikh declared that he had a possible conflict of interest with recusing himself from any decision taken on the Combat Suite but would not recuse himself from the meeting. In this regard I refer to*  
10           *the PCB minutes of 4 December 1998 and 8 March 1998, Annexures 'AH23' page 51, and 24, 52. Secondly I became aware some time later that Mr Shaikh's brother was a director of the company that had acquired the shareholding in ADS".*

15           That completes your testimony in as far as this aspect is concerned. I just wanted to read it for the record. 93.6:

20           *"The memorandum to which I understand Young intends to refer is a document dated 2 March 1999 headed 'Discussion between the South African Navy, ARMSCOR, GFC and ADS on 1 March 1999 at Silvermine' Annexure 'AH24' refers to page 524. In paragraph 1 the following appears:*

25           *'Mr Moynot explained the background of the meeting with Mr Chippy Shaikh and Admiral Howell on 26 February 1999. He explained that*

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*Mr Shaikh requested certain information regarding prices and alternatives’.*

Now the subject of that discussion was also the Combat Suite?

R/ADM HOWELL: Yes Chair, I think we’ve been through this.

5 ADV LEBALA: 93.7:

*“The meeting of 26 February 1999 that I attended with Mr Shaikh and Mr Moynot (CEO of ADS) was a short one to inform ADS that unless the prices quoted at that stage could be significantly reduced, the State could not afford the Project”.*

10

Of course this was in the context of the Combat Suite.

R/ADM HOWELL: Chair, that’s right but if we did not have a Combat Suite we didn’t have a ship.

15

ADV LEBALA: *“The purpose of the meeting at that level was to lend force to the Project Team’s insistence that the Main Contractor produce a more affordable offer”.*

R/ADM HOWELL: Offer, yes.

20

ADV LEBALA: Now as at that stage did the issue of conflict of interest arise?

R/ADM HOWELL: We were obviously still aware of his conflict of interest, yes Chair.

25

ADV LEBALA: That’s the end of your testimony. Is there anything that you want to say before I give over to Ms Cane, based on the questions that I’ve asked in relation to your

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testimony?

R/ADM HOWELL: Chair yes, it's become very obvious to me that the thing of Mr Shaikh and ADS and the conflict of interest is important. Can I put on record to illustrate what I mean  
5 always when I say that he had no influence, no ... His influence on it is that in the submarine project the Combat Suite in fact was also two options, the one option was the German [indistinct] Atlas option and the other one was a French [indistinct] which ADS would have played a major role  
10 in, it would have been, and as much role with the submarine as it was with the Corvette. We in fact selected the German, after lots of debate and lots of project work we selected the German one and we went on ahead. So just to prove that Mr Shaikh had no influence over our decision-making on what to choose.

15 CHAIRPERSON: Thank you. Is there anybody who wants to cross-examine Admiral Howell? Re-examination.

ADV CANE: Thank you Chair, I shall comfortably fit within my earlier undertaking.

**RE-EXAMINATION:**

20 ADV CANE: Admiral Howell, would you have a look at paragraphs 80 to 91 of your statement, those are the paragraphs dealing with topic of the Detexis Data BUS. In fact let me take you to paragraph 76, we begin with the Corvette gearbox issue and then from paragraph 80 to 91 the Detexis  
25 Data BUS. Now those paragraphs were ones in relation to

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which the evidence leader went extremely quickly and hardly dealt with at all, I would like you to confirm, looking at them now that you stand by what is recorded in your statement and that you are happy that we can confirm on oath that paragraph  
5 76 to 91 constitute your evidence on these topics.

R/ADM HOWELL: Certainly Chair I stand by this, these statements.

ADV CANE: Now Admiral Howell there is one issue in relation to the Detexis Data BUS whereas as far as I am aware  
10 you will be the only person giving evidence and it pertains to a meeting that you were authorised to hold with Mr Young and Mr Swann in Simon's Town. You will find it referred to in paragraph 88, 89 and 90 and 91 of your statement, if I could ask you to direct your attention to those five paragraphs.  
15 Could you please inform the Commissioners what the purpose of your meeting was, your and Mr Swan's meeting with Mr Young when you went to Simon's Town?

R/ADM HOWELL: Chair, at that stage there was a threat of Mr Young indicting and stopping the proceedings of the project  
20 because he was unhappy with his system not being selected, this obviously would have had a major influence on the project, so Mr Swan and I were tasked to go and speak to ... It was Mr Swan's responsibility and it was his area of responsibility and background knowledge but it was a naval system, so I went with  
25 him as the naval, as the senior naval man and we went and had

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those discussions.

ADV CANE: When you met with Mr Young did you raise any option as a way in which Mr Young could perhaps still remain in the project?

5 R/ADM HOWELL: Chair yes, there were other systems that Mr Young in fact would compete for as well and we also gave him the option of the, Mr Swan gave him the option of the financial guarantees that he could, if he put up the financial guarantees he could. From the Navy's side we were insistent  
10 that the risk had to be covered because if something fell in his system the whole Combat Suite would have failed.

ADV CANE: Was Mr Young amenable to putting up a guarantee?

R/ADM HOWELL: Chair not at all, it was way beyond his  
15 means.

ADV CANE: At the next PCB meeting which is dealt with in paragraph 90 of your statement is the meeting of 6 October 1999, did you report back and if so what did you report?

20 R/ADM HOWELL: Let me get to ...

ADV CANE: You will find you place at paragraph 90.

R/ADM HOWELL: 90, okay. Chair, at that project meeting on the Combat Suite and Data BUS I had reported back to the [indistinct] that Mr Swan and I had our meeting and that Mr  
25 Young had agreed to withdraw all legal action at that stage, as

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the minutes correctly say he agreed to withdraw all legal action.

ADV CANE: Did you report back at all on the issue of the guarantee?

5 R/ADM HOWELL: It wasn't minuted and I can't remember whether I actually, because ... No, I would not have particularly sort of raised the guarantee because that was what we went down to discuss and we had agreed that he would ..., so I took it for granted that they understood he therefore  
10 wouldn't pay the guarantee.

ADV CANE: What was the consequence of all that?

R/ADM HOWELL: The consequence is that we closed the item as a [indistinct], took the Detexis system and moved forward.

15 ADV CANE: Thank you Admiral Howell, thank you Commissioners, I have no further questions.

**QUESTIONS BY COMMISSIONER MUSI:**

COMMISSIONER MUSI: Can I just ask [indistinct] evidence correctly that [indistinct] process took place within [indistinct]  
20 Secretariat and the question is the processes that followed [indistinct] ARMSCOR policies [indistinct] policies have been following [indistinct].

R/ADM HOWELL: Commissioner Musi, the answer to that is yes, the evaluation reports and the evaluation processes were  
25 all done with in the standard ARMSCOR policy, yes.

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COMMISSIONER MUSI: The [indistinct] system followed, was that [indistinct] talked about the different formulas that was [indistinct] ARMSCOR policies [indistinct] seemed to have come from a [indistinct].

5 R/ADM HOWELL: Commissioner Musi, here the ... The formulas used at the, let's call it the third tier level, the Project Team levels the costs were different to the formula used at the second tier, the second order or second tier level. What Mr Esterhuysen was referring to, and I've quickly read his  
10 evidence, was that second tier level where originally it was going to be best value plus the Industrial Participation over the financial and that was then changed by Mr Shaikh on the 1<sup>st</sup> and 2<sup>nd</sup> of July to read "111. Best Value plus Industrial Participation, plus financing" he brought in, because the  
15 financing had come in as an index, so that, I think that's the formula Mr Esterhuysen is talking about, at the project level to decide on which equipment there was another formula used.

COMMISSIONER MUSI: And I think [indistinct] issue because based on your evidence I now understand the difference  
20 between the so-called [indistinct] and I understand that what you are talking about now is your second order that [indistinct] appears on page 18 of your statement, [indistinct] Industrial Participation [indistinct].

R/ADM HOWELL: Sorry Sir. Yes Commissioner, that is  
25 definitely, that's the one that you know, that got populated at

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SOFCOM level, so the project teams we gave the Military Value, then the Industrial Participation teams gave theirs and the Finance people gave theirs and then that formula got populated at the second tier level. That wasn't the project teams, they were responsible for just the first one, Military Value.

COMMISSIONER MUSI: Yes, that's precisely what I wanted to enquire on because I understand [indistinct] evidence is that according to ARMSCOR policies [indistinct] the correct, it seems to be sceptical about the formula that you applied as appears on page [indistinct] and my question is this formula that you applied, is it an ARMSCOR formula or a formula that was created by [indistinct]?

R/ADM HOWELL: Sir, it was a formula created by SOFCOM and given to the SOFCOM by Mr Shaikh after I ... My understanding at that stage was after discussion, especially with the finance people and it actually wouldn't have worked with it being as a divided by, if it had the Military Value and IP over the financial, he wasn't happy with that and he then changed it to the three in a row.

COMMISSIONER MUSI: And then if I understand this formula was authorised by [indistinct] 4/147? Correct, SOFCOM was authorised [indistinct] by that directive [indistinct], correct?

R/ADM HOWELL: Sir, to the best of my knowledge without going back to 147 SOFCOM was authorised but then that

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formula came much later, it only came in July the 1<sup>st</sup> in 1998.

COMMISSIONER MUSI: Yes, but [indistinct] authorised in terms of direct [indistinct], in other words SOFCOM had the power, [indistinct].

5 R/ADM HOWELL: Sir yes, that is correct. It is my understanding yes.

COMMISSIONER MUSI: You see, I'm asking [indistinct] because from the evidence of Mr Esterhuyse he seems to be sceptical about [indistinct] this formula.

10 R/ADM HOWELL: I agree, and then I know Mr Esterhuyse was not present at that meeting on the 1<sup>st</sup> and 2<sup>nd</sup> when that formula was tabled. He was at leave in that particular meeting.

COMMISSIONER MUSI: The next question I just want to [indistinct] the SOFCOM constitution, was it ever adopted?

15 R/ADM HOWELL: Sir, to the best of my knowledge there's no formal adoption of it anywhere, we got the drafted one and I cannot in my memory and in any traceable document, can I find anything that it was then ratified and accepted as a formal document, no Sir.

20 COMMISSIONER MUSI: But SOFCOM nonetheless [indistinct] that constitution [indistinct].

R/ADM HOWELL: Yes Sir.

COMMISSIONER MUSI: Thank you.

CHAIRPERSON: Admiral Howell, thanks a lot for giving  
25 evidence, you are now excused. Thank you.

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R/ADM HOWELL: Thank you very much Sir.

CHAIRPERSON: Advocate Lebala, we're listening.

ADV LEBALA: Chair, we'll be proceeding with the testimony of Admiral Reed on Thursday and I suppose the  
5 esteemed Commissioners are [indistinct] Wednesday, it's election day, tomorrow we'll be consulting, just final touch-ups with Admiral Reed who, if I'm not mistaken, has just arrived in the country or is on his way to the country from Sweden.

CHAIRPERSON: So can we start at 09h00 on Thursday?  
10 Can we start at 09h00 on Thursday?

ADV LEBALA: Certainly Commissioners.

CHAIRPERSON: Thank you. Then we'll adjourn until Thursday and we'll start at 09h00 and in the meantime can we ensure that a summary of the witness's statement is posted on  
15 our website?

ADV LEBALA: They are already posted Chair.

CHAIRPERSON: Thank you. We adjourn until Thursday and we'll start at 09h00 on Thursday. Thank you.

20 **(COMMISSION ADJOURNS)**