ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

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<u>CHAIRPERSON</u>: Good morning, everybody.

RICHARD MICHAEL MOBERLY YOUNG: (s.u.o.)

ADV SIBEKO: Thank you, Chair, at the outset, I wish to apologise for the late start. I got held up in traffic this morning, coming to Pretoria. So, I could not be here at nine o'clock. When we adjourned yesterday, we were dealing with an annexure RMY 51, which is a series or a set of memos, the first one, entitled the notiz. It is at page 1073 to 1075 of that file three.

10 <u>CHAIRPERSON</u>: Advocate Sibeko, on which page of the statement are we now?

ADV SIBEKO: I am, I am at the, the document that the witness was testifying about. It is RMY 51, at file three, page 1073. I would, the cross-reference to the statement would be the end of paragraph 274. But, it is really that document that the, the witness needs to deal with, before we proceed with the statement. It is the notiz with its Google translation. During the course of the witness's testimony, the issue arose as to when the document may have been with the Commission.

DR YOUNG: Yes. I do not want too long over it, but I was asked, specifically, in the context of the English translation and I hesitated for a moment and eventually I took a, a safe harbour option and I said it was discovered to the Commission on the 5th of March last year. But, I have started off, by saying I thought it was actually an, the most important, no, well, an important annexure to my Constitutional Court supporting

Mr Young wishes to address that point, just briefly.

affidavit. That is indeed correct. That is a document in my, my evidence bundle, RMY 16. As I was saying yesterday, that document was in front of Kate Painting, when she and Advocate Mdumbi visited me, way back in, I think, it is 2013. Anyway that affidavit was dated the 14th of June 2011. So, it has been in the legal domain since then. That notiz, with its translations was also officially served before this Commission, as an annexure to my submission, my application to cross-examined Fritz Nortjè. It was dated the 3rd of June 2013. I do know that it was served before the Commission not long after that. I just want to put that on the record, because I did not want my hesitation from yesterday to, to endure.

<u>ADV SIBEKO</u>: We are done with that answering, Dr Young ...[intervene]

DR YOUNG: Yes. We are indeed.

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ADV SIBEKO: Now, you recall that, when we adjourned yesterday, we had just finished dealing with paragraph 276 of your statement, which appears at page 62 thereof. Now, the matter you had referred to, in 2000, at 276, related to what appeared in that annexure RMY 51. Now, continuing with the allegations, relating to, as you set out in this part of the discussion of your statement, allegation of corruption, relating to the Corvettes. You deal, in paragraph 277, perhaps going right up to, perhaps we will take a pause at paragraph 283, with a couple of documents that you say demonstrate that the German prosecuting authorities had documentary records that point out to these allegations of corruption. Now, the first document that you deal with at the end of

paragraph 277 is DTI 1023, the next one is DT 1-1025. Now, both these documents, Commissioners and colleagues, appear as RMY 52 and RMY 53 and are located at file four of the bundle of documents. Now, perhaps, to start with RMY 52, may you please identify what that document is, Dr Young? It is your DT 1023?

<u>DR YOUNG</u>: Okay. The previous ...[intervene]

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CHAIRPERSON: The RMY 52, at which page is it?

<u>ADV SIBEKO</u>: It is at page 1076 in file four. It starts at 1076, in file four. May you please identify the document for the record, Dr Young?

DR YOUNG: Okay. The, the document is an investigating report, written by the German Investigating Authorities. I believe the same ones, as I disclosed on my first day of evidence, the prosecuting authorities in Dusseldorf and that is very clear. Because the header of the document, I know my German is non-existed, but I will try, is entitled Landeskriminalamt Nordrhein-Westfalen, in, in Dusseldorf.

<u>ADV SIBEKO</u>: The date thereof is 13 February 2007. Is that correct? <u>DR YOUNG</u>: That is correct, yes.

ADV SIBEKO: Now, you, just for the record, inform the Commissioners, how did you get hold of this document?

DR YOUNG: To be honest, I, I do not know exactly who gave this to me. I will say how. It was delivered to me anonymously in digital format, on a digital memory device. I do not know who sent it to me. But, I, what I do know, well, I am, I am pretty sure of this, that it was not provided to me, by either the investigating authorities in Germany or the investigating authorities in South Africa.

<u>ADV SIBEKO</u>: When you say it was delivered to you, in digital form, was this by email, or in the flash disc, or the flash [indistinct], or what, in what form?

<u>DR YOUNG</u>: No. I said it was delivered to me on a digit, a digital memory device.

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<u>ADV SIBEKO</u>: Can you recall, around when, what period this digital device was delivered to you?

<u>DR YOUNG</u>: Yes. I think, I think it was in the, the year 2009, somewhere between 2009 and early 2010.

10 <u>ADV SIBEKO</u>: Now, apart from the Commission, have you shared this document with any other investigative authority, or anyone else?

<u>DR YOUNG</u>: As far as I know not, I certainly shared with the Commission, in terms of, it is a, it is a discovered document. So, by, indirectly, it would have been shared by various parties, who were party to my discovery process.

ADV SIBEKO: Alright. Now, RMY 52 is a 40 page document. It deals with information about the present state of investigations, concerning links to the UK and the possible links to BAE. Do you see that appearing on the first page of that document? Are there specific areas that you would like to deal with in this document?

<u>DR YOUNG</u>: Yes. Indeed, there have been specific areas. I am certainly aware of the time issues. But, I, need to say, at the outset that the two documents, in fact, the three documents coming up, in terms of my evidence before this Commission, in the terms of reference, involving corruption are the most important, by in order of magnitude, or

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two, of all of my evidence. So, it is certainly not an area or a theme, where I want to skim, in fact, if one has to err, I have to err more on the side of elaboration, than, than brevity.

<u>ADV SIBEKO</u>: No, I see, in paragraph 1, it deals with the companies involved. Would you like to take us through it?

DR YOUNG: Yes. I have highlighted a few things. I am going to try and skip over that, which is either self obvious or repetitive or not specifically relevant. But, as you correctly say, it has an introduction of the relevant, the companies. This whole document is relevant to the strategic defence packages or the SDP's or this Commission. I do not think there is any one thing in this document that is not relevant. Every single word is, is relevant. Primarily, I am actually on the theme of the Corvette, so that will be, I, I will concentrate on that. But, as you correctly pointed out, it does have small links to, to British Aerospace and that is involved in the, the military aircraft aspects. But, those are, but found also, in this document, there are, whether one must call allegations, or a, or a cause, involving bribery and corruption of the submarines that are specifically involving Ferrostaal.

ADV SIBEKO: Could you carry on with the passages that you highlighted that you need to deal with?

<u>DR YOUNG</u>: Yes. Indeed. If I may, I, I, introduce this, this theme with the German document, the notiz. Although I had that before I got these documents, if one reads these documents, it is fairly clear that that is, both the documents to which they referred. I think, my inference is a document that they received, whether they, let us say, got from search

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and seizure raids that they did on a multitude of companies, involved in the Armsdeal in Germany. I think it was in 2006 or so. I am not exactly sure. But it was certainly preceding these, these investigation reports. This [indistinct] over the context, there is this first investigation report, which is written in, in English and the second one is also written in English. The third one, which I will come to, as well, is actually written in German. But, I have done a translation of that, for my own purposes. Both the German version and the, the English version are, in my, in my evidence documents. Okay. If we start off with the, who is involved. Most importantly in this particular context, there is a reference in 1.1. this is the German Frigate Consortium. As we know, it is consisting also of Thyssen Rheinstahl Technik, TRT, being a subsidiary of the German industrial group ThyssenKrupp AG. It was basically the, the co-ordinator or the financial leader. They call it the so-called trading company of the German Frigate Consortium and this document specifically addresses bribery money, has been paid from TRT accounts to agents/front companies and we will deal with that, in more detail, as we go along. It is also party to, that is a signatory of consultancy agreements with the conduits of the money, which they refer to as bribery money to the companies, which I actually mentioned vesterday, the Liberian company Mallar incorporated and the company registered I think, in the [indistinct] islands, called Merian LTD. I am not, I am going to skip over, what I have not highlighted here. Anybody can bring me back to it. I am not cherry picking at all. I went through these documents, these two documents last night, for the first time for a year or more and there, it

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amazes me, to be frank, the more you read it, the more relevant stuff is. But, I will try to, to concentrate on what is relevant to the Commission. But, if we go, the next company is part of the GFC. It is Blohm and Voss. Of course, it is, it is common cause that they are the ship yard involved, part of the GFC, who built at least, two of these frigates. It was the design, their design, they built all four of them. I think, the third last bullet, open bullet point there is, had to refund TRT for bribes paid. Now, we are all looking at these documents. The wording of bribery, what is not mine, I am basically just reading the documents, as they stand in front of us. HDW, I do not think we need to go into any details there [indistinct] they are a consortium member of the GFC.

<u>ADV SIBEKO</u>: Can I remind you, Dr Young, that as you refer to the various paragraphs, you are dealing with, if you could just mention what page you are on, so that we can all be able to follow?

DR YOUNG: Sorry. I am just working a new order of this document.

But, we were at still, we were still at the first page of the document. We are now coming, HDW is on the second page of my, second page of 40.

<u>ADV SIBEKO</u>: So, it is correct that we are at 1077?

DR YOUNG: I do not know. I do not know those pages. So, I will have to say it is [indistinct]. Okay. At paragraph 1.2, as I mentioned yesterday, is the contracting party, officially was the consortium, known as ESACC, the European South African Corvette Consortium, which also included Thomson and ADS and the last point. It is not so much a point of corruption, but it is certainly a point that I want to, that I have made and I just want to emphasize this point. It is that Thomson, ADS

was chosen as supplier, by South African and not by the GFC. The GFC only choose them, in response to what was stipulated in the request for information and its [indistinct] document, the element, the ECD document. Alright. The other important companies involved here under 1.3. We talked about Merian and Mallar. The company, we are coming to is called Contact Management Consultants (PTY) LTD, a South African company and another company, quite important in the, in the strategic defence packages, is Futuristic Business Solutions (PTY) LTD.

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<u>ADV SIBEKO</u>: Why do you say that Futuristic Business Solutions is an important company, in relation to the evidence you are giving?

<u>DR YOUNG</u>: One, they are further mentioned in this document. In fact, there is a, certainly a payment that the Germans Thyssen, have claimed as a useful expenditure, which is a, a live term for something. But, nevertheless, Futuristic Business Solutions were a 20 per cent shareholder of African Defence Systems, as well.

ADV SIBEKO: Let us then proceed with the document?

DR YOUNG: Okay. Now we are coming up to companies, but to individuals. On my third page, page 3 here, they start off with the Germans. The first pertinently mentioned is Christoph Hoenings. As I said yesterday, he was the signatory of what I call the [indistinct] internal memorandum. He was also a signatory of the Corvette contract for, with the South Africans. I am just trying to concentrate on more important. Then we come to Sven Moeller, Thyssen's representative in South Africa, who also initiated the reason why there is a thing called the Mabandla document that, the Mabandla dossier that we mentioned

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yesterday. According to this German investigation report, Sven Moeller, was the first person to make contact with Chippy Shaik. It does allege here that Sven Moeller transported 40 million Deutsche Mark in a Thyssen company jet to Geneva, for as bribery money to certain, to certain parties. They specifically say, he paid it into an account for Thabo Mbeki. But, it does say, I want to emphasize, no proof is found yet, for this allegation. I am not, I am also not trying to cherry pick, either in the positive or the negative and I do not think that is an allegation, which, which they continue. Certainly, in the same light, there is no allegation, or in this [indistinct] of time, trying to, to continue with it, at this stage. I would mention the, KG Muller, from Germany, who is the project director for Blohm and Voss.

<u>ADV SIBEKO</u>: Now, KG Muller's name appears on the next page. Is it correct?

DR YOUNG: That is correct, yes. Yes. He, he appears on the next page.

ADV SIBEKO: Alright. You can, you can continue with that.

DR YOUNG: Okay. A very important person, also a director of Blohm and Voss and as a director of a successful company, ThyssenKrupp Marine Systems, the mother company of Blohm and Voss, his name was also included in that notice that I have introduced into evidence yesterday. As I say, it included, he included, or was responsible for including bribery money, into the purchase price. He is also a signatory of the, the Corvette agreement with South Africa. He was also informed and was in the know, in the inner circle regarding the agreement with,

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with Chippy Shaik. As important a person, something with an interesting name like Koopman, I believe was actually a predecessor of Christoph Hoenings and when we come to that section in another theme of my document, he preceded, Koopman preceded Christoph Hoenings in visits to South Africa to basically, to do a pitch, to, to get the German Frigate Consortium back into the running. So, he preceded him in time, as he was his boss, at one stage. As it says here, he was director of Thyssen Theinstahl Technik, at the time of the tender process. He pertinently signed the consultancy agreement with Mallar Incorporated, the one who is, the company that was responsible for funding 22 million ...[intervene]

<u>CHAIRPERSON</u>: I am sorry, Dr Young. I think, in the beginning you said that you do not know where this, who sent the document to you.

DR YOUNG: Sorry, could you just repeat that?

15 <u>CHAIRPERSON</u>: Am I right to say, in the beginning, you said you do not know, who sent you this document here?

<u>DR YOUNG</u>: No. I do not know who sent the digital device to me, which was included in the document. What I do know that it does emanate from German Investigating Authorities.

20 <u>CHAIRPERSON</u>: How do you know that it emanates from the German Investigating Authorities?

<u>DR YOUNG</u>: Well, first of all, by what stands in front of us. It is, it, the, the party responsible for it, is indicated at the very end. I mean, right at the end, the person indicates himself as, as acting for at least Kriminal [indistinct], I think that is the German Investigating Authorities.

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By, my other, my other knowledge of the whole process, which is not necessarily documented, I know that this document did end up in South Africa. Unfortunately, I am not at liberty to disclose every single aspect of my knowledge thereof. Look, there certainly are certain sensitivities about this and I certainly am prepared to divulge those, either in camera, before this Commission, or for any special investigating authority with a mandate to investigate that. But, there are certain things, involving the sensitivities of these documents that I cannot simply divulge.

CHAIRPERSON: Okay. I made me a promise. I am not going to allow anybody to give me information in confidence. This is a public hearing, what anybody wants to tell me, it must be told in public. There is no way, in which I am going to allow anybody to give me information, outside, outside this circle. Just bear that in mind. I am not going to allow it. I am sure, the same applies to my fellow Commissioner.

DR YOUNG: Yes. The, the only thing I do not want to share in public is, is my own induction of who wrote this document, because I do not know that, precisely, by, by person. I do not know that. So, I could be speculating. What I do know is that it emanates from the authority and the entity, which I have, and I am, that I am 100 per cent sure of. I think that, that is good, is good enough for, for this purpose.

<u>CHAIRPERSON</u>: And then, lastly, maybe please, do not speculate.

Tell us about what you, what you know. What you do not know, do not tell us about ...[intervene]

DR YOUNG: I do not think ...[intervene]

25 CHAIRPERSON: The only thing that I wanted to know, how do you

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know that this document emanates from the German Authorities, that you mentioned that they, they are the ones, who authored this document?

DR YOUNG: I said before, from the simple fact that it is indicated and coming from a certain authority on the very last page. Every single page indicates the, the address and let us say the, the fact that it comes from the German Criminal investigating authorities. That is, that is on the document that we read in front of us. The only inference that could begat against that is that somebody has, has concocted this document.

10 <u>CHAIRPERSON</u>: The copy that you have, is it signed at the end? If so, by who was it signed?

<u>DR YOUNG</u>: No. This document that I have in front of me, is the same document that is in front of you and it is a, it is indicated as in text. It is not signed by a human being, signed in alpha numeric format, as from Kriminalhauptkommissarin. That is the commissioner of criminal, criminal authorities.

<u>CHAIRPERSON</u>: Thank you. On it, some of the issues, I will raise them as we go along.

<u>DR YOUNG</u>: But, I, I can, from my own knowledge, vouch for the authenticity of these three documents, which are a series of three, on the same subject emanating from the same, the same source. Sorry, I had to [indistinct] my place. I was down that page four.

<u>COMMISSIONER MUSI</u>: I think my, can I be heard?

ADV SIBEKO: Yes.

25 <u>COMMISSIONER MUSI</u>: I just wanted to, to hear you clearly. Did you

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say you can vouch for the authenticity of this document, or you cannot?

DR YOUNG: No. I said that I can. I am saying that, to the best of my knowledge, there is, I would not, I would not be putting this document before the Commission and reading from it, if I was not 99.999 per cent sure that it is an authentic document, in emanating from the authorities, which I have just identified.

<u>COMMISSIONER MUSI</u>: Thank you. That is all.

DR YOUNG: It is important to realise that I am, I am doing this, because I have been requested, in terms of a summons, to do this. I, to be frank, I have no satisfaction whatsoever, in, in doing this. Unfortunately, I think, it is my duty, in terms of my responsibility to the Commission and also, my responsibility in the greater scheme of things, regarding combating of corruption. So, I am not, I am not doing this for my, for my own purposes. I have got nothing to gain for doing this. I know it is fraught. But, I would not, I certainly would not be doing it, if I had any reason to believe that it was not genuine.

ADV SIBEKO: You were at page 4 of that document, when the Commissioners posed questions, regarding how you obtained these documents and from whom. I think the name of the person, you were dealing with, at that stage was Jurgen Koopman.

<u>DR YOUNG</u>: Yes. He, he is on the previous page 4 and I think, we can now go on to the, my page 5, starting at paragraph 2.2.

ADV SIBEKO: That is on 1080. You can proceed.

DR YOUNG: Okay. This deals with the South Africans and we have been talking about the document, identifying Chippy Shaik. But, this

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document goes on further to address Chippy Shaik in far, far greater It also identifies his brothers Mo Shaik and Yunis Shaik. detail. course, we have talked about Ian Pierce, a, who is also and meant to be involved in the, at least the conduit of funds, coming from that 3 million dollar bribe. Very importantly, another important aspect, regarding the Corvette itself and my greater picture of how things actually happened is Tony Yengeni, who is that, at the relevant time, he was the, I think, he was the Chairperson of the Joint Standing Committee of Defence. Yussuf Surtee, who is involved all over the show in the Armsdeal. This document deals with the Chief of the Navy, at the time. They call him CINC chief. That is actually the Chief of the South African Navy, Vice-Admiral Robert Claude Simpson-Anderson. His predecessor, mentioned in this document, Vice Admiral retired Andries Petrus Putter, Mentioned in the company CMC. Formally, he seems to be the owner or only director with the controlling mind of CMC. It mentions Rear Admiral Jonathan Edwin Gold Kamerman, in a number of respects, particularly as head of the Joint Project Team, now a manager ThyssenKrupp Marine Systems. As it said, or so it says, successor of Klaus-Joachim Muller, since January 2006, a theme that we will come to later, in my evidence document, revolved around this point, saying he took his appointment with ThyssenKrupp Marine Systems, while still a member of the South African Navy. It says there, his last payslip from the South African Navy was for September 2006 and that he also negotiated with ADS, about an employment agreement, after starting employment with ThyssenKrupp Marine Systems. I do not think I need to, or even want to

address the next people. I do not want to be accused of cherry picking. So, anybody is welcome to bring me back to these points, if they wish to do so. The last person, under South Africans, just before paragraph 2.3, of my page 6, unfortunately, my own name is mentioned in this document. My, it is strange that they have my original, correct name. I see, in the transcript, as at the first page, I would like to put on the record, my correct current name is Richard Michael ...[intervene]

CHAIRPERSON: I am sorry, Dr Young, you, let us go back to that

page, page 5, which you were, which you were reading. I think you now furnished names. You did mention now, that we were not quite sure why you are skipping others? I see here, on the copy that I have, unless your copy does not have that. There is also mention of Mandela. I see, you do not mention it. Am I correct that you are now, the, this page 5 had got the name of Nelson Mandela?

15 <u>DR YOUNG</u>: Yes. It does.

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<u>CHAIRPERSON</u>: No. I it is just that, you know, I was a bit surprised that you mention now that you did not mention him, because they are contained in the same document.

DR YOUNG: As we, I, there is 40 page document. There is nothing at, at this particular stage, at least, that I want to traverse, regarding Mandela and Nelson Mandela himself. I am not sure, quite why he is mentioned in this document, in his own name. But, we will come to it, that there is a reference to payments being made, I think, it is to the Nelson Mandela Children's Fund. There is a mention of his, his last wife maybe that is the context. But, as I said, you know, I could, I could more

or less read this entire document, into the record and traverse every aspect of my analysis of it. That might take us the rest of the week. As I said, I am not trying to cherry pick here. But, I am only trying to address the points that I, that I think is relevant for my own evidence. May I continue?

<u>COMMISSIONER MUSI</u>: I am sure, we are listening now. I am sure, we are listening.

<u>DR YOUNG</u>: Oh. Yes. I just actually asked really, whether my evidence leader is. He is leading me, whether, whether he is happy that I continue.

ADV SIBEKO: You can continue.

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DR YOUNG: Okay. Just to ensure that I am doing my level best not to cherry pick and leave out my own name. My own name appears just before item 2.3 here. As I was trying to say, this indicates somebody called Richard Moberley Young. That was the name that I was, I think baptised with. I added on my father's name Michael first. So, my official name right now is Richard Michael Moberley Young. But, I will confirm that to the best of my knowledge Richard Moberley Young is the same person as me. I just also want to point that, although I gave my name correctly, at the beginning of my witness statement, I did not notice that the transcript the first day, for some strange reason refers me to Richard Michael Morgan Young. I think, that is also me, but it is incorrect. But, nevertheless it does refer to me. I did not want to leave that out. Hopefully, I am not mentioned in a negative context, as far as being involved, myself in bribery and corruption. But, I will not leave out me,

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where I am addressed, just in case there are excursions of, of convenient cherry picking here. I am identified as the director, owner of C Square I Square Systems, which is correct and it also says, the reason why, I mean, I am here is I suppose that I competed with ADS for the combat suite systems contract and lost, but that was more for, not the combat suite, but certainly for some of the subsystems, which is correct. I do, they do mention my name later. But, I just want to reiterate that the evidence that they refer to, I gave them, including the organograms, which I share with this Commission. It was all a complete one way street, from me to them. I never received anything, whatsoever from them, other than the invitation to call back Andreas, Detective Chief Inspector Andreas Bruns and speak to him, where he had one of his English speaking colleagues on the speaker phone.

ADV SIBEKO: There are other names that appear at 2.3 referred to as others. Do, is there any person specifically, you want to refer to there?

DR YOUNG: No. Only at the expense of repetition. We will talk about Tony Georgiades, Antony Georgiades, who was the extensible leader, or prime mover of the German Strategic Alliance and I think, the controlling mind of Mallar Incorporated, which was the conduit of the 22 million dollar payments. Otherwise, I do not think it is necessary to refer to the others.

<u>COMMISSIONER MUSI</u>: I am, I am sorry, Dr Young, can, can we have the spelling of this detective. Is it Ander Brumf? Can we have the spelling of the surname?

25 <u>DR YOUNG</u>: Sorry, the spelling of a surname? I did not hear whose

surname?

<u>COMMISSIONER MUSI</u>: Brumf, the investigator, the German investigator you spoke to, Brumf or something like that.

DR YOUNG: It is Andreas, aes at the end. Bruns is spelt B r u n s. I
 am not sure if there is a diaeresis or some kind of inflection on the u.
 But, I know it is B r u n s.

COMMISSIONER MUSI: Thank you. Thank you.

<u>CHAIRPERSON</u>: Just a last one from me. Do you have the, the contact details of this detective?

10 DR YOUNG: I certainly do.

<u>CHAIRPERSON</u>: Can you give us the contact details?

DR YOUNG: Right now?

CHAIRPERSON: Of course.

DR YOUNG: Not right now. I will have to go into my, my records andthat will, it will certainly take, I can certainly can do it after, after the next,the next break.

<u>CHAIRPERSON</u>: Okay. As long as it some time today. Or even, even it will be given to us tomorrow. That will be good enough.

DR YOUNG: Thank you.

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20 <u>ADV SIBEKO</u>: On the next page, your page 7 and our page 1082, the document commences with the origins of their investigation. Is it something you want to take us through?

<u>DR YOUNG</u>: Yes. As I have previously said, they talk about the reference to Sven Moeller and the company jet and the payment of a 40 million, I think it is Deutsche Mark. Okay. They talk about that as the

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origins of the investigation and certainly, that was, there is, something like that did happen. I am not talking about the actual company jet or the payment of money. But, certainly, the fact that they had a kind of a interview with this person, Nicholas Stuart Achterberg, who I believe, did, used to work for Thyssen South Africa. But, I do not think they continue with that. So, I do not want it to be thought that, that I, also am continuing with that. There is probably a small correction that they come to, in their own document, whether it is this one, or the next, where they actually do say that the origins of their own formal investigation were not so actually much, this tip off from Nicholas Stuart Achterberg, but actually a routine investigation into the tax affairs of Thyssen. It is Thyssen's claim for tax deductions, involving the payment of useful expenditure. So, remember these are investigations reports, so I, whether they are correcting themselves, there are, I think, in my view that the real origins, the proper investigation report, are not so much this Achterberg matter, but actually the German tax matters.

<u>ADV SIBEKO</u>: Now, the issue of the useful expenses, it is picked up in that document, in the middle of that document, with a paragraph that begins with Achterberg's allegations led to tax investigation. Can you take us there?

<u>DR YOUNG</u>: That is correct, yes. Okay. My highlighted point there starts off with the same:

"The following "useful expenses" had been claimed."

And the reason why they use useful expenses is in the old days, in Germany and certainly in Europe, before the OEC Convention is, is

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useful expenses was actually euphemism for covert commissions or bribes and they were tax deductable in the hold days. That is why they use that term in inverted commas. But, they specifically refer to the following four amounts. They have referred to the 22 million US dollars paid into South Africa, through the Liberian company, Mallar The 3 million dollars, subject of the Chippy Shaik, Incorporated. Christoph Hoening's Teutonic memorandum, through that Jersey Channel Islands, or let us, let us say UK entity, Merian LTD. There is a small amount Rolf Wegener. I am not quite sure what the relevance to that is. There is also a claim, a tax claim, involving the company FBS. It is not such a small, not such, not such a huge amount of money. But, if it was elicit money, then it is certainly over the threshold of investigative interest, which is R500 000.00. Alright. Put it into context and I do go through this more in the exact origins. But, as they say a lawyer, an attorney, a specialist, I believe, Dr Sven Thomas, acting for ThyssenKrupp, wrote in 1999 an expertise report of how these expenses should be treated under tax legislation and admitted himself that a share of the 10 million US dollars. Out of the contract, some of the 22 million dollars for Mallar Incorporated is very likely, been paid to South African officials, but denies the offence [indistinct] of bribery connections with these payments.

<u>ADV SIBEKO</u>: The next page, under paragraph 4 deals with consultancy agreements with Mallar Incorporated, on that next page, in our 1083, your page 8.

25 <u>DR YOUNG</u>: Yes. Maybe it is important to say, I introduced the, the

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memorandum the, the Teutonic memorandum yesterday, which is clearly something that they refer to in this document. Although I received it before this document it was the only one that was actually sent to me. But, they refer to a lot of documents, of equal significance of, of that. Not only similar bribery agreements or, in my own, at least the two executive statements, but also evidence backing up, confirming the existence and the meaning of all of those documents. They refer to many of those. I think, this first one, the consultancy agreement with Mallar Incorporated is one, one of those. They talk about the first agreement, a consultancy agreement with Mallar, signed as far back as the 26th of April 1995. As I will come to that in my evidence, that is a particularly important time, because it is just before the end of Sitron, Project Sitron, the Corvette contract, not the contract, the, the tendering round, which I think, officially ended a month later. But, clearly, that we will get to, the Germans were exceedingly upset about not, not winning the first round and did all they could to get back and that all, had happened in that March, April, May, time frame. So, that is a significant date of why that consultancy agreement should be drawn up, as far back then. It is relevant to the 1999 Sitron contract, as it was, in that As they say themselves, in late December 1994, the German Frigate Consortium had failed to qualify to get to the next round of the tender process. What is important and this is not casting assertions, just to put it in the context, in January 1995, the then, Vice President Thabo Mbeki came to visit Germany, after a telephone call with Nelson Mandela, he was quoted to have uttered that: 'We will put it

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on the table again.' And: 'That there is still hope for you, you being the Germans.' I think that is eyeing GFC. The important person in this is the intermediary, the interlocker is Tony Georgiadis. About this time, I am quoting from the document probably the first contact with Tony Georgiadis was May. Excuse me. I will then skip a few lines and go on to why Georgiadis is so important, as well as Hoenings and it says here:

"Georgiadis helped Hoenings by advising him how to present the German offer in a more appropriate way to South African decision makers. This led to a first consultancy agreement with Mallar Incorporated and Thyssen Rheinsveldt Technik, TRT, in April 1995, for the sum of 22 million dollars. Tony Georgiadis signed this agreement on behalf of Mallar Incorporated. The signatories on behalf of TRT, were Hoenings and Koopman. Georgiadis and Hoenings met in London to arrange/sign this agreement. On the 17th of May 1995 Georgiadis sent a facsimile to Hoenings saying: "Step one: We have done it."

And again, we will, I will come to that later. It was such an important time, because at this stage, we will see that despite Sitron, round one, having had all the steam it needed, it was actually stopped, by various mechanisms, including the defence review and the, the action of something, we will come to it, Tony Yengeni. All of this happened in May. We will come to the relevant documents, recording meetings of Koopman, with Armscor and the Navy in, I think, March 1995 and with Hoenings and other Germans in, but also the Navy and Armscor, around about this time. It is clear this Sitron Corvette project was indeed stopped and it will be my theory that it was stopped precisely at what I

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am ventilating now. That is why I said, it is one of the most important aspects of my evidence, before us. As it says, carrying on quoting from the document. It says:

"About this time the first tender, most probably had been cancelled."

ADV SIBEKO: Is there a further aspect that you wish to highlight?

DR YOUNG: Not necessary on those pages. I am trying to page forward to do, to, to skip the, it is all important. But, I want to go only on the most important. I am now on my page 10.

ADV SIBEKO: Your page 10 is our page 1085. It has there a number five, a discussion on Antony Vassos Georgiadis. Is that, is that true?

DR YOUNG: Yes. At point five, Antony Vassos Georgiadis. That is correct, yes. The point I want to, to address is four lines above that. It says:

"Mallar Incorporated is an off shore company, registered in Monrovia/Liberia. Due to Liberia's legislation, Mallar Incorporated is not entitled to do any business in Liberia itself."

The import of that is that clearly Mallar is, is a special purpose vehicle. A company would not be registered in a country, where it could not do business, unless it was there, to give the indication of it, being a, a bona fide registered MC, but unless it had a special purpose. My contention, the special purpose was the funding, for funding. There might have been for funding, other funding as well. But, in this particular context, from Thyssen, through Tony Georgiadis, being the controlling mind of Mallar to South Africa.

25 ADV SIBEKO: Anything else on that page?

<u>DR YOUNG</u>: There is nothing else on that page. I am just going to go, just go forward. I will tell you when I get to it. Okay. I am now on the next page, starting at a paragraph that says:

"Georgiadis role in the Corvette deal."

5 ADV SIBEKO: That is your page 11 and our 1086.

<u>DR YOUNG</u>: That is correct, yes.

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<u>ADV SIBEKO</u>: Alright. And that paragraph is the, I think it is the second paragraph.

DR YOUNG: I think so, yes. Stop me if it is a, if I am not in the rightplace. I will read:

"Georgiadis's role in the Corvette deal can be described as the person, who made contact with South African officials, politicians and decision makers in higher positions, the government and Navy. He arranged meetings with Thabo Mbeki, even after the contract was signed, in connection with the acquisition of the so-called fifth ship. He frequently met with Hoenings in Germany, South Africa and London. He was involved in dealings with South African officials, throughout the tendering process. Links to certain individuals will be dealt with later."

I think, that this is not meant to be sarcastic or a joke, but we are now seeing, as we will see in another point, involving Thomson and then we know the interactions with, as this document says, South African officials, politicians and decision makers in higher positions. What I am pretty sure, is that neither Modac nor MD 147 prescribed this kind of acquisition procedure.

25 <u>ADV SIBEKO</u>: Is there any other passage, you would like to refer the

Commission to, on this page?

<u>DR YOUNG</u>: I think, we are at page 10 and now I want to go to page 11.

ADV SIBEKO: We were on page 11.

5 <u>DR YOUNG</u>: I am sorry about that. I now want to go the last, the last paragraph on page 11.

<u>ADV SIBEKO</u>: You can do so. Is this the paragraph? It starts with the words, we found indications.

DR YOUNG: Yes.

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"We found indication (I am quoting now) we found indications that
Georgiadis was recommended by Hoenings to Ferrostaal, members of
the German Submarine Consortium, GSC, to support them, during the
tender process for the submarines for South Africa. Ferrostaal signed a
consultancy agreement with Mallar Incorporated, Georgiadis, acting on
behalf of Mallar, over a commission of 19 million US dollars."

They do elaborate on that, on various other payments. I just want to also point out, as I have said before, the Germans, specifically in this particular case, the German Frigate Consortium, the German Submarine Consortium do, as they often do, hunt as a wolf pack. They were hunting the, the contracts as an organisation that was actually officially called the German Strategic Alliance. We even see some of the reference to that on some, some DOD documents. As I have said before, it is my understanding that the person, who was the prime mover in the German Strategic Alliance, was none other than Tony Georgiadis.

25 The import of that, is why he is acting for both the German Frigate

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Consortium, the, this in particular and its 22 plus 3, plus, plus million dollars of covert commissions. Now, there is reference, there is reference to the submarine consortium and its 19 million dollars. Go onto the next page. The very next page is continuation of that. As I have said, that is, we are coming to the details. They allege here that 6.6 million Euros was paid to Mallar Incorporated in 2000, 2001 from Ferrostaal. These facts were received officially and legally through documents seized during the, during 2006, the search of TRT. May I carry on? The next paragraph starts by saying:

"Further investigations by the tax investigation officers of our team revealed more information, which is unofficial and cannot yet be used as evidence, as they are protected by tax secret."

I think it is, I want to [indistinct] a point, regarding the, the tax angle here and certainly in Germany, taxes obviously, had a ground, more so than corruption, especially corruption on in foreign countries. Nevertheless, they carry on, after the colon there:

"Another 6.6 million Euros were paid at the same time, to a company called Kelco Associates SA."

I think, no, sorry, not South Africa. I think Kelco Associates, it means society anomonim. It is the same as a propriety limited company in this country, resident on Guernsey, a Channel Island domicile with an address there that I will not go through, with the CEO of Kelco, having been named by Ferrostaal as Tony Ellingford. Unfortunately, I will not be addressing the submarine issue, in as much detail as the Corvette one. But, certainly the relevant parties of Tony Ellingford and his

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company, as well as the off shoots of that, being a company called Moist CC, run by Lu Swann. The other company run by somebody I mentioned was, at the very beginning, for very good reason, JRM Consulting CC, run by Rear Admiral Junior Grade retired Jeremy Nathis, are all precisely relevant in this context.

<u>ADV SIBEKO</u>: Do you need to address any other aspect on this page, Dr Young?

<u>DR YOUNG</u>: Yes. Yes. At the end of this page, page 12. I would like to continue:

"In our enquiry, Tony Georgiadis is accused under German legislation for being an accessory to bribery, committed by Hoenings and other executives of the GFC. He is also suspected of being an accessory to embezzlement, committed by Koopman (kickback payments). More details see beyond."

If I may say, at my own analysis of the documents it was only in respect of embezzlement by Koopman. This is in fact, not only kickback payment, but actually, what they call a reverse kickback, where money gets paid, by a bribing party, by a company official. Then, money from the bribed party gets paid back. That is what I call a reverse kickback and Koopman was indeed arrested for that. I think, he spent four weeks in jail for it. But, as far as I, I can see from these documents, Hoenings, himself is alleged to have received a 500 000 dollar, reverse kickback, out of the 3 million dollars, in respect of the payment to, to Chippy Shaik and the group, represented by him.

25 <u>ADV SIBEKO</u>: Anything of interest on the matter?

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<u>DR YOUNG</u>: Everything is interest. But, without belabouring the proceedings, I can skip to my page 14, unless anybody wants me to address the [indistinct].

<u>ADV SIBEKO</u>: Now, your page 14 is our 1089. It has, under paragraph 7, Tony Yengeni. Is that correct?

DR YOUNG: That is correct, yes. Okay. As I have alluded to there were parties involved, involved in stopping the first round. I call it round one. That will be called a phase one of Sitron, the Corvette project. Extensibly, officially, in order to review it under the defence review and then carry on later in round 2, which eventually led to a contract. But, this is the point I am getting to, as they say, starting at point 7, under Tony Yengeni:

"It is during a, that during 2000 and search (sorry) during 2006 search of TRT, an agreement between Yengeni and Hoenings, dated the 11th of August 1995, has been seized. According to that document, Yengeni was promised a commission of 2.5 million Deutche Marks. In fact, I could prove the agreement had been signed one month later, on the 11th of October 1995, during a South African journey of Hoenings, KJ Muller and Koopman."

20 I will skip three lines, for the sake of brevity. Carry on:

"On his return to Germany, Hoenings arranged provision for the promised commission of 2.5 million Deutsche Marks. The provision has been entered into the accounts of TRT on the 28th of September 1995."

They do carry on, in case I get, that particular agreement seemed to have been discontinued. They call it disbanded. But, they, they do

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carry on as they say it is unlikely that TRT did not pay Yengeni the promised commission at all. But, be that as it may, it does not really matter, in terms of, certainly in my view, my lay person's view of corruption in the Republic of South Africa, whether or not an executive statements gets fulfilled, any offer or any request for a bribe, whether consummated or not is still corruption, under the relevant legislation. If it is, what it says on the face of it, in this document that then an agreement, a bribery agreement was entered into, that is good enough from my purposes, at least. They carry on, to, to advise why they have not actually gone out, all out, to prosecute, well certainly, they could not prosecute Yengeni, being a South African citizen. But, they could have prosecuted the people who, who bribed him. At the paragraph, starting with although we have clear evidence, I will stop there, to make sure that everybody is in the right place.

15 <u>ADV SIBEKO</u>: That is the second last paragraph on page 1089. Is that correct?

<u>DR YOUNG</u>: It is at the, it is, sorry, it is at the second paragraph, above what, my pdf page is 14. It says 14/40 at the bottom.

ADV SIBEKO: Let us start with the [indistinct].

20 <u>DR YOUNG</u>: Okay. Thank you. I will read:

"Although we have clear evidence of corruption, in connection with Yengeni, we cannot prosecute this fact. Although the Mallar Incorporated contract, due to the last prolongation and the extension in 1999, at April 1999, the payments to Mallar Incorporated do not qualify for a statutory limitation. We still need an action, by Yengeni, after 19th

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of February 1999. But, by the time Yengeni seems not, by that time Yengeni seems not to have been any longer in that position to influence a South African decision on the Corvette contract. Nonetheless, the facts of the Yengeni case show that employees of TRT contrary to their defender's statements did have direct contact to and themselves arrange bribery agreement, arrange agreements with South African officials. Before the change of legislation, TRT would have been able to deduct the bribe for Yengeni from their company tax obligations."

If I may pause there, just to, to add my own value. I have referred to the OEC the convention, which came into play in Europe and Germany, around about the 1999, 2000 era and that is booked to what they refer the, the legislation that changed. Also, what they talk about statutory limitation, they do not qualify for [indistinct] there. Their interest is not that great there. What they mean is that there is a statute of limitations in Germany that means that they may no longer prosecute, in respect of this Yengeni matter, after, after a certain time, which is February 1999. That is no, that is the reason why they no longer endeavoured with this particular case. Alright. We have come to the next page, my page 15 here.

20 ADV SIBEKO: That is our page 1090.

<u>DR YOUNG</u>: Yes. Maybe I should start with one word from previous pages. I mean this occasion, this explains why they did not disguise the provision and why the agreement was made directly with Yengeni, with out camouflage. That is what I am saying, why, before the OEC Convention it was promulgated in Germany and the German law. Useful

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expenditure, bribes to foreign officials and front companies was tax deductable and that is why their own documentation, which they seized, refers to these three papers. Carrying on with one of the most important statement, I have highlighted in slightly different colour and it says here, and the import in my particular, the context of my evidence is that Yengeni himself claimed in front of Hoenings that he had been responsible for the cancellation of the first tender in 1995. I will address that in more detail, when I come to the relevant them in my own, in my own evidence and my witness statement. As I have said and there is a continuation here, as Chairman of the Joint Standing Committee of Defence and Chief Whip of the ANC, he could perform strong influence on decisions, relevant for GFC. We will certainly address that. But, certainly, he was in a very good position to influence the putting on ice of the Corvette contract and the embarking of the defence review, which was a Parliament, what I remember was a Parliamentary endeavour, way back in 1995. Certainly, whether it is on the record of the committee meetings I do not know. I have not gone that far back. He certainly would have been very influential, at that time. I suppose carrying on here. I am looking at the last sentence of the next paragraph:

"Hoenings obviously, gained information in August, September 1995 that Yengeni had been named as a possible successor of Modise in the cause of an expected Cabinet reshuffle."

Okay. It had been it happened some time:

"This fact makes clear, why 10 days later, the agreement was signed."

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Possibly, I need to pause for this instance, as they are referring to various things, here, about what Hoenings said. My impression is that they actually interviewed, these investigators interviewed Hoenings and some things they say here, is not only from the documents, but also from, from the interview with him. That is my, it is my only question.

<u>ADV SIBEKO</u>: Then they refer to things that were seized, during the search. That you will see on the next paragraph.

DR YOUNG: Yes. That is, that certainly is true. I have not highlighted something, because it involves travel costs, for Yengeni for a flight from South Africa to Switzerland and London. They might, certainly might be important. Switzerland and London, specifically, because as far as I know, that is where money, money ended up. But, I have not highlighted that, because I did not intend to specifically address it today. ADV SIBEKO: If you could take us through the next.

DR YOUNG: Yes. I am not going to go to details. I consider it as, within the contents of this document. But, the next point, they come to is on my page 17, which is headed by a heading, eight, Vice-Admiral Simpson-Anderson.

ADV SIBEKO: Now, that is our page 1092.

20 DR YOUNG: That is correct, yes.

ADV SIBEKO: That is the, you can continue with the aspects of that page, that you wanted to.

<u>DR YOUNG</u>: Okay. Just remember, I am just reading from the document in front of me, in front of all of us. These are not my allegations. They are what I believe, to be relevant allegations for the

Commission of enquiry. It talks about Vice-Admiral Simpson-Anderson and specifically says:

"I found evidence of Georgiadis arranged a meeting between Hoenings, Von Nitzsch and Vice-Admiral Simpson-Anderson in his hotel suite at the Sandton Sun hotel in Johannesburg on the 24th of January 1996. There are unproven indications that the purpose of the meeting was to establish a bribery agreement with Simpson-Anderson, then CINC (that means Commander in Chief, I think they mean Commander in Chief) of the South African Navy."

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Despite them saying unproven communications, that is, I would not, that, that might not be addressing the point at all. But, they certainly go on, in not only this document, but I think, the next one as well, where they probably, what they mean is that, well, they certainly do mean that although Simpson-Anderson might not have received the payment directly from either Thyssen or from, even from Georgiadis. But, they allege that it was received from his predecessor Vice-Admiral Dries Putter, who was working for both the French and Germans, at that stage. So, it is not in the relevant point, despite what is said in that particular sentence. The next point, I, I want to mention is, it carries on saying:

"Hoenings, to whom Simpson-Anderson made this remark that is supposed in his internal report that this remark was made in self protection, because other Navy officials had been present, e.g. Kamerman (still Captain of the SAN) at that time, but already involved in the procurement process."

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Carry on:

"As proof of the self protection theory, Hoenings mentioned that Simpson-Anderson had formally asked Georgiadis to his home. In fact, we have indicated that Georgiades and Simpson-Anderson had lunch together, the day when Georgiades arranged the January 1996 meeting. Simpson-Anderson was quoted in Hoening's handwritten notes as he (Georgiades) does more harm than good."

Carrying on with the theme, just to put into context, we need to read the first sentence:

"In connection with the meeting between Simpson-Anderson, Hoenings and Von Nitzsch in January 1996, Simpson-Anderson's predecessor as CINC (Chief of Navy, chief of the, Commander in Chief) of South African Navy, retired Admiral Putter becomes an interesting figure. In October 2000 he sent a written complaint to Blohm and Voss, stating that of a promised commission of 1 million US dollars. Of 1 million US dollars, he only received from Georgiades 100 000 Pounds, approximately 600 000 Pounds less than promised. Putter wrote under the letterhead of the Contract Management Consultants (PTY) LTD, of Lyttelton Manor, South Africa. This company, I could not yet trace at CIPRO."

<u>ADV SIBEKO</u>: Turning to the next page, is there anything that arises there?

<u>DR YOUNG</u>: Yes. I think it is important just to read that. The, the second sentence says:

"Putter now wanted Blohm and Voss to compensate him."

And in their quotation marks:

"Put us in the financial position, we expected to be, at the end of this very successful project."

I think, if I may say, at this point, the very successful project is effectively getting the Germans back from zero in phase one to hero on phase two.

Carrying on and as I have interrupted, it carries on. The next [indistinct] but one:

"This would mean that Simpson-Anderson had been part of the commission agreement, arranged, during this meeting."

10 Miss a sentence:

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"One possible explanation (I am quoting again) could be that eventually Simpson-Anderson had been paid, directly by Georgiades, or rather Mallar Incorporated and that Putter only received a small compensation for his service."

15 Also carrying on, missing a sentence or two, it says:

"Putter for me, seemed not to have been in a position."

This mike, okay, carrying on with the sentence, which starts with Putter for me:

"Putter for me, seemed not to have been in a position that would

20 justify a commission, as high as one million Dollars, one million US

Dollars."

<u>ADV SIBEKO</u>: But, the view expressed there, is that of the investigator. Is that right?

<u>DR YOUNG</u>: Yes. I think, if I may just end off this particular subtheme, with a very last sentence, which is on the next page, my page

19. I think in their conclusion:

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"Although all these circumstantial evidence was, suggest themselves that Simpson-Anderson had been bribed and promised 1 million US commission, it might be difficult to find sufficient evidence, to prove the bribe. My hope is that we will still find evidence, either at Georgiadis or Alandis or Mallar Incorporated."

That was important, I think for the context, but as important, we will read either, in this document or the next. These investigators also expressed their hope that the South African investigation, which I hope, this is at least part, would also carry on investigating these particular themes, or allegations. That is also one of the reasons, why I am ventilating this issue in these proceedings.

ADV SIBEKO: You are on page 19, which is on 1094. It starts, okay, it has in paragraph 9, dealing with Yusuf Surtee and Nelson Mandela (cheques). Is there something you need to ventilate there?

DR YOUNG: Yes. Without going into too much detail, Yusuf Surtee, or I think the name is spelt incorrectly there. It means it has one s. His name, certainly comes up later, when I ventilate the issue of him being the interlockator between Thomson and, and the high officials, the South African government, that being in respect of the Corvette combat suite. But, he is a, he records this person all over here. He is coming up in the context of the Corvette platform. I will say he also is a person of interest in the, the Serious Fraud Office investigations, as well. But, here is a reference to Nelson Mandela, in particular, as I have said, involving the, I think it comes to the point, involving the, the Children's Funds. Here is

a particular, the cheques that were made out, by Thyssen, I am skipping quite a lot here, but if you go to the middle of my page 20, may I need to give people a chance to get to that particular page. There is a section there, that says:

"The cheques were issued for the benefit of."

And it starts with Nelson Mandela Children's Fund.

<u>ADV SIBEKO</u>: That would be the last quarter of our page 1095. Is that correct?

DR YOUNG: That is indeed, that is indeed correct. Just to introducethe subject for my own purposes. It sets, it starts off, by saying:

"A copy of these cheques was found at Hoening's private home in Dusseldorf. The cheques were issued for the benefit of Nelson Mandela Children's Fund, the Foundations for Community Development and African National Congress."

The, they refer in particular to three cheques of 500 000 South African rands each, made out on the 29th of January 1999. As far as I know, these cheques came from Thyssen. But, I stand to be corrected on that.

ADV SIBEKO: Reference to the amounts of these three cheques is found just above the paragraph, above what you have just been reading.

20 Is that correct?

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<u>DR YOUNG</u>: That is correct, yes.

<u>ADV SIBEKO</u>: Now, on this theme, is there anything else you would like to add? Or would you like to move on to the next?

DR YOUNG: Just finishing off there, conclusion, under Surtee, is onmy page 22, just before the heading, entitled, 10, George Lanaras.

ADV SIBEKO: Now, that is our page 1097.

<u>DR YOUNG</u>: It says:

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"Because the entire circumstances I rather think that Surtee, at least, party acted on behalf of Mandela and Mbeki, or the ANC in general."

And I think that is a fair statement to make, considering what they have addressed, in their investigation of him.

<u>ADV SIBEKO</u>: Is there anything that turns on George Lanaras that you would like to address?

DR YOUNG: No. Not that I would like to address. I think, it is, it isrelevant, but not important enough, to take up more of the Commission's time right now.

<u>ADV SIBEKO</u>: The next important then, you would like to address?

<u>DR YOUNG</u>: Yes. Then, I would like to come to my page 23, a heading, number 11, Merian LTD and Chippy Shaik.

15 ADV SIBEKO: That would appear on our page 1098.

DR YOUNG: That is indeed correct. Now, as I said, when I started addressing this particular investigation report, the notiz, the memorandum or my own wording the Teutonic memorandum talks about the agreement with Chippy Shaik and here they address it. It is clearly, a document that they seized, in their own investigations in Germany. But, what is relevant and important, it is not a self standing document. It is supported by many other documents, in their own possession. I think, it is a fair conclusion, for me to make, is in terms of where I got these documents, also, where I got, is that, well, he has got the memorandum.

If I got that one from the Germans, the German Investigating Authorities,

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I cannot understand why they cherry pick that one alone and not, at least the Tony Yengeni one and all the other ones. So, I can, I can, beyond a reasonable doubt say that it did not come from the Germans. But, they certainly allude, without [indistinct] a report and having all of these relevant documents. What they say here, in the heading entitled Merian LTD and Chippy Shaik is that:

"On the 9th of October 1998, a consultancy agreement, dated the 8th of October 1998, between TRT, with the signatory of Hoenings and Merian LTD with the signatory of Ian Pierce was signed over a commission of 3 million US Dollars, due for payment, the moment when the Corvette contract would come into force and the down payment: 'Has been received in our account for a free and unrestricted disposal' and after all necessary approvals with the South African and German authorities had been received. The effective date of the Corvette contract was the 28th of April 2000. Payment to Merian LTD was made on the 3rd of May 2000 to Barclays Bank plc."

As I have correctly said, St Helier, Jersey. These, these dates are particularly important, because although the umbrella agreement was signed on the 3rd of December 1999. All the contracts, the relevant, the contracts became effective in all respects in, in April 2000. So, as they say, it only, the effective date of contract, over the gates, for, for the financial considerations, including these, if I may term them the elicit ones. What is also important is that the, the document, which the, the notiz or memorandum is the, is not the, the bribery agreement itself. It is just a reference to it. That is not in my possession and is clearly

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something held by, held by them. But, in the terms of evidence, it is an important pointer to it. Of course, here, they actually say that they have it. Of course, they even have the dates. I do not think they would be saying that if they, if they did not know that they existed and had it themselves. Quite importantly as well, going onto the next point, as I said before, Mallar, it is a special purpose vehicle, registered in Liberia, where it cannot do other business. But, the same with Merian, they are saying, the only indication for the existence of Merian Limited, is the agreement, bank account name on the payment instruction. I think, I am correct in saying that indeed, there seemed to have been another company, Merian, but it is a completely separate company. My own company searches show that. But, they opened, but what is important is that Merian LTD, although, you know, had, has registered its domicilium address in London, it opened its bank account in Jersey and that is where the money was paid to. In supporting that point from my, in fact, I did some of my own investigations into Merian. But, it says in the registers of the company's house, and I think, they are talking about the [indistinct], because the author of this report says:

"I have not found a company, which would fit."

20 <u>ADV SIBEKO</u>: Turning to the next page, on [indistinct] of that discussion. Is there anything else, if interest on [indistinct] to draw our attention to?

<u>DR YOUNG</u>: No. I think the document stands as it is written. Just if you turn to the next page, I think it is your page 24, at the last sentence of that page, it makes reference to you. Could you just elaborate on

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that?

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<u>DR YOUNG</u>: Yes. I do not want to skip that point. But, I will first of all just finish the point that, this is basically, maybe a summary of the Merian issue. It says in the last sentence of, of that section, before my name is mentioned. It says:

"In connection with the Merian LTD contract, Hoenings called Pierce in another internal report Chippy Shaik's Emissar."

He says:

"They say I cannot find an English translation for that word, but it means an envoy with a certain commission and no own decision making powers. Thus it would be clear that Ian Pierce acted as a front man for Chippy Shaik."

I think that is good enough for these purposes. If I have to find an English, appropriate English word for Emissar I would call it interlockator and in fact, that same word is used for Yusuf Surtee, interlockator, in that context. I do not want to skip the, the reference to my own name here. But, it says:

"Richard Young, from Richard Young we received information about one payment from Merian LTD to Pierce in the amount of 10 000 US Dollars value date of 30th of March 2001. The money seems to have been transferred from the UK Reserve Bank, via First National Bank of South Africa LTD. Richard Young claims that more payment had been made from Merian LTD to Pierce. But, the abovementioned is the only one he could prove, by presenting a transaction report. Young also presented statements for one bank account of Chippy Shaik, but no

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suspicious deposits could be found."

If I may say, this is true. But, this, this is, as I said, almost in the very beginning of my evidence on Thursday, or even Wednesday that I am really the conduit in, in this context. I am certainly not a primary investigator. Documents were ventilated in some manner or form and, and I got hold of copies thereof, just to send them along to, to the, to the Germans in my one way, in my one way street. In fact, to be ultra frank. I do not want to take too many cudos for this. But, I think that this whole thing was actually reported in the Mail and Guardian. I know it was reported in the press. It cannot be considered necessarily, as meeting the burden of proof. But, certainly did pass along this information to the, to the detective, inspector, Chief Inspector Andreas Bruns, by email. I think it is important to say that this is the first investigation report. I am still going to come to the third one and there, they do actually refer to a lot of payments, made from Merian's account, accounts. There is a kind of follow the money investigation. The money, being paid through Jersey to other mechanisms and finally into a whole bunch, I think it is about 20 different account in South Africa that is, that is addressed in the third of the series of three reports.

20 <u>ADV SIBEKO</u>: Now, there is a further discussion, relating to Ian Pierce, Chippy Shaik and Hoenings, in this part of the document. Is there any specific reference you want to direct the Commission's attention to?

<u>DR YOUNG</u>: Okay. I maybe start of with the section there that says:

"lan Pierce obviously late in 2000 told Chippy Shaik that Hoenings

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had received a share of 500 000 US Dollars from Merian LTD, a payment."

As I have said, I think that that is, if, if it was true, would be a reverse kickback and also unrelated to the Jurgen Koopman, with this kickback.

But, I just wanted to emphasize the point that I made earlier, not that long ago. Carrying on:

"Hoenings learnt that from C Shaik, during the meeting of the 21st of September in Hamburg. In consequence Hoening wrote a memorandum about this fact. This memorandum we found at his private home, during the June 2006 search. From this report and other documents seized from TRT the following sequence of events can be reconstructed. During a visit in Johannesburg from the 27th to 30th of July 1996, Chippy Shaik demanded from Hoenings the confirmation of a verbal agreement, about a commission of the 3 million US Dollars that they had arranged some time before."

And that, I think, precisely is the memorandum, dated the 3rd of August 1998, referring to South Africa over the precise date period of 27th to 30th of July 1998. I am sorry for belabouring the point. But, I have learnt in my small dealing with the law that you cover evidence, with evidence, with evidence, if you possibly can.

<u>ADV SIBEKO</u>: Going forward.

DR YOUNG: Sorry, did you say, going forward?

ADV SIBEKO: Yes.

DR YOUNG: Certainly, to finish off this page, it says here Hoeningsinformed KJ Muller about this agreement and asked him to make sure

that this amount was observed, during the contract price negotiations (i.e. to make sure that this expenditure would be refunded, by the South African government, through the contract price payments, which their observation is, which realises a criminal offence of fraud in German legislation.)

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Indeed, indeed, but the reason why they wanted it to be recorded and to be refundable from the South African government, has, is important. From the respective bribery in South Africa, it affects the South African tax payer and that is one of the reasons why I am sitting right here. This is a public interest then and I think this is a public interest point. But, not only being a criminal offence of fraud, in Germany, which surely might have over, been overtaken by the statute of limitations in Germany. But, it is certainly, in my own knowledge is not overtaken by any relevant statute of limitations in South Africa. So, it is still a live issue, which I am, hopefully are at, suddenly resurrecting from the dead, or almost, almost dead. And they also say, of course, the reason why this stuff is ventilated. So, clearly, that the Germans not only wanted to recoup the money from South Africa, they also wanted to recoup the money from their own tax authority. But, certainly, in the context of this investigation, my evidence, involving the German Frigate Consortium and my overall theme, which, another person I mention in my evidence called Pierre Moynot, caused my complex theory, which unfortunately, I am giving you But, here, they say in any event, Blohm and Voss and TRT today. agreed to share the cost for Shaik's commission, which means that the refunding from South Africa would also have to be shared. That is

certainly part of my complex theory.

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<u>ADV SIBEKO</u>: Further mention is made, in the next page, I think it is your page 26 or page 1101, to further dealings with Hoenings, Georgiadis and Surtee.

5 <u>DR YOUNG</u>: Sorry, I am trying to gather my own wits about me and drink water at the same time. At the page that I wanted to go to next, was my page 26.

<u>ADV SIBEKO</u>: Yes. That is the page that you have been referred to.

<u>DR YOUNG</u>: Okay. I want to start at the second sentence there, because it introduces another sub theme. It says:

"Reading from the document, on the 9th of September 1998, Hoenings met with Georgiadis and Surtee at the Ritz in London. The same day, he also met with Mr Muhlenbeck (Ferrostaal)."

I was wrong, when I referred to a person yesterday, belonging to Ferrostaal. He is actually a member of Thyssen. It was Mr Muhlenbeck that was thinking of and here his name is mentioned:

"And Chippy Shaik, they met in a restaurant, called St Lorenzo in London. From Muhlenbeck, Shaik also required a commission for the submarine deal. Hoening says, in his memorandum that he took the wording of the consultancy agreement from Muhlenbeck. So, the conclusion can be made that Hoenings, Muhlenbeck and Shaik met in London for the purpose and discussing and formulating the agreements with Ferrostaal and TRT. In fact, the wording of the Merian LTD agreement differs from the normally used form. In the records of Ferrostaal, we so far, could not find any contract with or payment from

Merian LTD. So that payment, so that possibly another company name had been used."

It says:

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"We are not yet investigating Ferrostaal and the submarine deal."

Now, if I may say, as I have said before, this document, the investigating report emanates out of Dusseldorf. The way things work in Germany, is in, I think, they might call it prefectures, who investigate criminal affairs in their own areas or prefectures. They did, although they say they were not investigating Ferrostaal. They said not yet. As far as I know, this particular investigating organisation did not have the mandate to and it never did investigate Ferrostaal, because that was actually investigated by their companions, in another prefecture, called Essen. Certainly, many things also come out of, of Munich. So, I just want to say that point that, just because they say they could not find any indications of the contract that does not mean to say it is the end of the story.

ADV SIBEKO: Anything further on this aspect?

<u>DR YOUNG</u>: Finally, I think, on this page and just to backup, what I think, I said yesterday, is that this bribery agreement and not the one that I produced, that was just an indicator of it. They say:

"The signed contract then, was deposited in the bank safe, number A578, Barclays Bank, address 46 Barclay in London, W11HP. Hoenings and Pierce had the exclusive access to the safe. Hoenings had to open an account with Barclays in his own name and make a deposit into that account, before he could get the safe. The money for that deposit, he received from TRT."

<u>ADV SIBEKO</u>: Having come to end of that page, there were further discussions about Hoenings, Pierce and Shaik. In the pages following, before the conclusion, except, I beg your pardon, before they start dealing with Futuristic Business Solutions. In the remaining two pages, discussing this theme, is there anything else, you need to add?

<u>DR YOUNG</u>: I, I think, for the, for the fullness of things, we just need to address the top of my page 27. I am going to carry on, unless somebody stops me to get at the right page. It says here:

"In April 2000, Pierce contacted Hoenings by telephone, to remind 10 him, on the agreement with Merian LTD."

Then, it says:

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"Pierce handed over a closed envelope, via the office of Sven Moeller in South Africa to Hoenings, with the instructions for the transaction. On the 3rd of May 2000, the commission of 3 million US Dollars was transferred to the credit of Merian LTD."

It is important, because here, it is not just request for a bribe, if that course is indeed a bribe, which I would venture it is. It is not just a request. It is not only an offer. But, it is all, it is the culmination. It is the fulfilment of the bribery transaction, is the payment of the funds. It is the consummation of the delicious union, between the briber and the briberee.

<u>ADV SIBEKO</u>: Anything else on that page?

<u>DR YOUNG</u>: Probably important for the greater scheme of things, if anything, if anything comes out of what I have been saying for and needs to be investigated, I have to find the missing 500 000, out of the

missing, out of the 3 million. It says, halfway down the page:

"After the transaction took place, Pierce claimed, he handed over to Hoenings 500 000 US Dollars in cash, which had to be deducted from the commission's sum. Hoenings writes a second memorandum that Shaik had told him that within the group of beneficiaries of the Merian LTD agreement that there had been discussion to offer him a share of the commission, as token of their gratitude."

I think, what is important here, is there is also reiteration at what the Teutonic memorandums says, that 3 million Dollars is in respect of Shaik and a group, represented by him. It also indicates in, in the following of the money that this 500 000 Dollars in cash disappears out of the 3 million Dollars. I am going to briefly address, where some of that 3 million Dollars was dispersed, because it is important. But, it also shows that these people were as thick as thieves, when it comes to, not only kickbacks, but reverse kickbacks as well. Okay. Now, another point let us start at a place where it says:

"It seems that Shaik believed Hoenings and that he made new arrangements with Pierce, concerning the commission money, which now, he wanted to be deposited into a Swiss account, because SA authorities could perhaps trace the money from Merian LTD to Pierce. It also seems that the missing 500 000 Dollars, through this arrangement, turned up again."

Strange:

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"At least this incident seemed not to affect the relationship between Hoenings and Chippy Shaik. This fact, fact no longer is prosecutable,

under German legislation, because of the statutory limitation."

A very important point, I have highlighted in a different colour:

"Is our intention is to encourage South Africa to open an investigation, into this matter. Furthermore, this matter is interesting in the whole context of this case."

If I may say so, they, they might have well have stolen the words out of my own mouth. Except that my words come later than theirs.

<u>ADV SIBEKO</u>: Now, if you turn to page 28, I think that is the page that you conclude ...[intervene]

10 DR YOUNG: Ja ...[intervene]

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<u>ADV SIBEKO</u>: The discussion on this theme, before dealing ...[intervene]

<u>CHAIRPERSON</u>: I am sorry, Advocate Sibeko, we want to adjourn for 20 minutes for tea. We will come back after 20 minutes.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

RICHARD MICHAEL MOBERLY YOUNG: (s.u.o.)

<u>ADV SIBEKO</u>: Dr Young, when we adjourned, you were just about the concluding section of that theme, dealing with Pierce, Pierce, Hoening and Chippy Shaik on your page 28 of the document and our page 1103 of that document.

<u>DR YOUNG</u>: I just want to read out the first sentence, because the introduction, it is, in other words, an appropriate introduction to the, a third of these reports. It says:

"From seized documents referring to this matter, it seems that Chippy

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Shaik, perhaps was the sole beneficiary of the Merian LTD commission.

Hoenings later reported that the group around Chippy Shaik fell out with
each other."

Be that as it may, he certainly was not the sole beneficiary, because first of all, it says that it is a group, represented by him. Secondly, the third document actually records about 20 different payment of the Merian account. So, if you, it surely was for a group of people.

ADV SIBEKO: Anything else on that page?

DR YOUNG: I think, what is, I have highlighted here as an importantpoint, for the record. It starts halfway down the page, where it says:

"Kasrils might be a link to Modise."

Okay. I do not want usually want, that is just a, I pointed to the next sentence. I think it is definitely relevant, but it says:

"But, I think that 3 million US Dollars are too small an amount to 15 satisfy Shaik and Modise."

And I would certainly concur with that. There, there clearly is an amount of 22 million Dollars, plus the 3 million Dollars and I, it would look as though that we, the commissions were paid in, let say, in two different levels. The very last, I am ...[intervene]

20 <u>CHAIRPERSON</u>: Now, I am sorry, Advocate Sibeko, you know, just for my understanding. I am sitting here and thinking. Trying to determine exactly what are we trying to do now. Where are we now? We are reading a document, prepared by, I am not thinking that we are even sure who those people are.

The witness is reading this document and commenting on it. Is that

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his evidence, or not? Because I thought we are at this stage, where the witness must testify and give us evidence, about what he knows. There is nothing wrong with him referring this document.

But, then him trying to analyse this document for us, I am not quite sure what purpose that is serving. You are the one, who is leading him. Maybe try and tell us, exactly what you are trying to do, what you are trying to achieve, by reading a document.

He does not even know who sent the document. He does not even know, whether this document is a genuine document, prepared by the German authorities or not. What is the purpose of him, reading this document to us and trying to interpret it, into, to for us.

We have the document in front of us. If, at the end of the day, the document is, actually is admitted, we will be in a position to read it and analyse it. You are the one who is leading him. Maybe tell us exactly what you are, what you are trying to achieve, by going through this document?

<u>ADV SIBEKO</u>: Chair, you will recall that, in, starting with the theme that he was dealing with, regarding the allegations of corruption, with regard to the Corvettes. The witness indicated that there is information available, at his disposal that seeks to establish these allegations.

Now, as he starts at paragraph 270 of his statement, he seeks to demonstrate that there are these allegations, the nature of which point to improper conduct on the part of some of officials within the DOD that may have improperly influenced the outcome of the procurement of the SDP's. Now, to the extent that the witness alludes to these allegations,

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this is an attempt, by the witness to demonstrate that there is available evidence to support the existence of these allegations.

These documents, the series of three documents, which come from the German authorities, are intended to give support to the allegations that the witness alludes to, with regard to the existence of corruption. It is correct, as the witness has pointed has pointed out, these documents were sent to him, through a digital device.

He believes the documents are from Germany, as he has had some contact with German investigators. Now, they, the documents are offered, purely in support of the witness's allegations of the existence, I beg your pardon, the witness's contention of the existence of these allegations, as investigated by other authorities.

Now, whether these documents are in, are admitted, or alternatively, whether the, at the end of the day, the Commission decides, as to what veracity or weight it seeks to place on the documents and the evidence, as submitted by the witness. We would submit that the purpose of referring to these documents is merely to support the evidence that the witness is tendering, regarding the allegations of corruption as they are relevant to the terms of preference of the Commission.

It is for that reason, it, I would submit that the witness is referring or reading the passages of the relevant documents.

COMMISSIONER MUSI: Can I, my, my own problem is slightly different. I work on the assumption that the authenticity of the document will be established. Because the witness said that he is in the position to prove the authenticity of the documents.

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But, assuming that that he does, in fact, prove the authenticity of the document that is, that is not the end of the story. The document in fact, will a report of the German Investigating Authorities, nothing more. Before this forum, it is not evidence.

So, my problem is, you see, you are reading from this document, as if it is evidence before this, where it is not. Even if it is authentic, it will not be evidence, automatically evidence before this court. What complicates matters for me is this. I would, I would not bother that the witness go through this exercise in this fashion.

But, what bothers me is this, he reads extensively from this document and I am worried about the progress this Commission is making and the time constraints we have. It is the reality of the matter. Look at the further documents that he is still going to rely on.

We have them here and we are told that there are still further documents that he may still have to use. Now, if he goes along in this fashion, we will never finish. For an example, since we started this morning, he has been reading from this document.

It is an annexure. He has not been reading from his statement. So, I am worried about the, the manner in which you are going about this, this issue. And I would maybe propose that, in order to resolve this problem, I do not think it would do any harm, if the witness refers to that document, in support of his evidence.

You must go to his statement, because the statement is his real evidence. Then, he refers to this document, in support of his evidence. But, he can refer us to passages in this document and say see

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paragraph so and so, at page so and so of this document.

Some of the documents are numbered. He can go to, to the particular numbers and say passages and say see paragraph so and so, in this document. Where it becomes necessary for him to quote, he can then quote.

But, but literally, what he is doing now is to read the whole document into the record. I do not think this is, this is conducive to, to the pace that this Commission should be working. Thank you.

ADV SIBEKO: May I request that we stand down for a little while, while I have a discussion with the witness, to try and see how we can take this matter forward, taking the concerns of the Chairperson and Commissioner Musi into account?

<u>CHAIRPERSON</u>: Maybe, before we do that, you know, I think there might, there are other people, who have got an interest in this matter and who, I am sure they are also anxious that we should finish the evidence of this witness as quickly as possible. Can we find out find out, at all, if there are any of the councils who want to comment on this issue, before we, we proceed anything?

ADV KUPER: Chair, if I may, from our point of view, as we understand it, it would be essential if documents of this sort are to be relied upon, if they are to be put in front of the Commission. Then, some proper attempt has to be made, to demonstrate that they probative value.

To put before the Commission documents, where the witness declines to identify, in any convincing detail, the origin of the document, or how he came into possession of the document nullifies any possible

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probative weight, that could attach to an anonymous document. All that the Commission has, is this witness's ipse dixit as to the significance of the documentation and as to their authenticity.

While at the same time, he expressly declines to take the Commission into his confidence, as to its origins, while this is a public enquiry. So, we would submit that whilst, of course, all these matters are in the hands of the Commission that we would not seek to intervene or, or object, if the Commission indicated he wished to hear this documentation.

Once the Commission does invite us, to make the submission, as to the status of these documents and whether they should continue to be dealt with in this way, we would respectfully suggest that it is not helpful. It does not add value. It is inevitable consequence.

It is going to be that this witness will be cross-examined on material, of which he is not the author, in respect of which he declines, to give an authentic version, as to how they are in his possession. And which, in their own terms are entirely speculative and which are clearly preparatory and, and non-definitive documentation.

So, we would suggest, from our point of view, Mr Chairman, that the Commission will not be utilising the time available, to best advantage, if it continues in this way. It will really be from my learned friends, the evidence leaders, to suggest a better method, than the one that they are presently following.

CHAIRPERSON: Thank you.

25 ADV MOERANE: Chair and Commissioner Musi. We agree with the

submissions that have been made, by my learned colleague Kuper. But, we also wish to add that the documents that the witness is, is currently dealing with, the purport to be a report of an investigation by the German Authorities.

It will be useful, Chairperson, to establish, right up front, what the outcome of the investigations was, the investigation, which took place eight years ago, in all probability that investigation was closed for particular reasons. The second point, we wish to mention is that, the certain people, who are mentioned in this report, have given evidence before this Commission.

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The allegations, which are contained in this report, have never been put to those witnesses. Those allegations, which have been put, of impropriety, receipt of bribery, have been emphatically denied. So, I do not know, whether the, the outshot of this or the anticipated outcome of this, is that these witnesses will be recalled.

To come and deal with these new allegations, which appear from a, the report, with absolutely no probative value, in the sense that, it is, it is poor provenance, of their provenance has not been established. Frankly, Chairperson, I think, we are wasting a lot of time. Thank you.

MR CHOWE: Thank you, Chairperson and Commissioner Musi. I have listened to the submissions made, by Advocate Moerane and Kuper. I do agree with their sentiments as far as the way that certain documents are treated.

Maybe it might be difficult, as Advocate Moerane says that, because of the allegations, which are now levelled against people, who have

already given their evidence, whether should they be recalled or not, because of the damage, which the document has itself. But, I do align myself with the comments already made by the two council. Thanks Chairperson.

CHAIRPERSON: I think, I heard what Advocate Moerane said, particularly about the outcome of this investigation. I think, there is some documentation, which tells us, exactly what was the end gain of some of those investigations that took place in, in Germany.

We know what the ultimate conclusion of this is. I think there is a document, which deals with that. So, should you go through this document, making certain allegations, when in actual fact, there might be evidence, which suggest that these investigations were abandoned.

In that case, can I perhaps suggest that all the councils meet together with the evidence leaders and try and suggest a way, of how to deal with this matter? I suppose, Advocate Moerane, you will be privy to that letter, that you are referring to, where, where we say to, answer that ultimately there was some type of a conclusion of this investigation.

Possibly discuss that with the evidence leaders and other, other councils and see if there can be a suggestion on how we should go forward, where, with this particular witness. In order to do that exercise, can we give you 30 minutes and see, let us see, whether in 30 minutes time, you will, you will be in a position to come to some type of a, any suggestion on how to go forward with this matter. Thank you. In that case, I see it is 12 o'clock. Can we come back at 12:30? Thank you.

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(COMMISSION RESUMES)

<u>CHAIRPERSON</u>: Thank you. Has the caucus yielded any results?

ADV SIBEKO: Chair we have the result of the caucus. Is that there is no agreement between us on the one hand and the legal representatives of the various parties participating in these proceedings on the other hand regarding the manner in which we should proceed going forward.

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<u>CHAIRPERSON</u>: I will try to the best of my ability set out the basis of the objection as I understand it with regard to the manner in which we have been proceeding.

It would appear that the primary objection with regard to the manner in which we are objecting is that sorry the manner in which we are proceeding I beg your pardon is that the witness Dr Young. If he should continue to yield evidence he must give evidence on matters in respect f which he has personal knowledge. Now to this extent it does appear that the view that is held by our colleagues that to the extent that the evidence of Dr Young are based on documents in respect of which he is not the author. Also in respect of which he has no personal knowledge or involvement and the authenticity of which he cannot objectively establish. Then he cannot rely on that evidence and to an extent that his statement seeks to rely on these documents then his evidence would also not be admissible for the reason that he has no personal knowledge of matter to which he seeks to give evidence on.

To the extent further that he has given evidence relying on these document. Then as I understand the basis of the objection then an

application will possibly be made at some point to have the evidence which relies on these documents to be struck out. Now our understanding of the basis of the objection is, if it is the duty of the witness to come and give evidence on matters in respect of which he has personal knowledge then that would mean that in so far as he seeks to give evidence on matters or allegations of corruption his evidence to seize to relate to the allegations of corruption but would in fact be fact related to the corruption in respect of which he is testifying.

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Now perhaps maybe of some importance to allude to the terms of reference as they appear in the Government Notice in terms of which the Commission was established. The heading to the terms of reference is that the Commission of Inquiry or this Commission must inquire into allegations. of fraud; corruption and impropriator or irregularity in the Strategic Defence Procurement Package.

Now to the extent that the input of the objection is that people should only come or witnesses should only come and give evidence before this Commission on issues in respect of which they have personal knowledge. The effect of that would be that only members of the various project teams, who were involved in the entire procurement process can come before this Commission and give evidence in respect in which this Commission has been established to inquire into allegations of fraud, corruption and so forth.

It would also mean that members of the various committees or bodies which were involved in the acquisition process of the SBP's are the only witnesses who can come and give evidence of fact relating to these

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allegations of fraud, corruption et cetera. It also mean that it is the officials of the various successful bidders who participated in the procurement process who can give evidence relating to allegations of corruption, fraud or impropriety and irregularity in which they themselves were involved in.

If that is the effect of the basis for the objection we would submit that this witness important as he may be insofar as he participated in the procurement process relating to the combat suite would not be allowed to give evidence before this Commission of matters falling outside of the combat suite in which he had personal involvement and in which he represented the company of which is the director.

We would submit further that this approach would put an onus of this witness to only give evidence of established facts on the basis on which the Commission would then be required to make a finding. Now we would submit in this respect that insofar as principles relating to the functioning of Commissions and the rules of evidence are concerned the Commission is required to proceed in an inquisitorial manner. Also that to an extent that it seeks to collect available information on the allegations into which it is making an investigations. It has to at least it has become accepted that the rules of evidence in so far as they apply in the civil and criminal courts and inquests do not apply equally into Commissions.

Commissions by their very nature investigate matters that are in the public interest and in doing so it would seek to established a balance on what relates to the public interests. Now this submission we make on

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the basis that as there are no facts that are in issue between people who appear before the Commission and no sanction would need to be handed down at the conclusion of the proceedings of the Commission the rules of evidence as they apply in other forum ought to be relaxed. That the evidence of witnesses that had been subpoenaed to give evidence before the Commission ought to be accepted to the extent that reasonable objectivity of the allegations that are sought to be made through such witnesses can be established.

ADV SIBEKO: Thank you Chair. In this regard and trying to conclude on this point I would like to submit that the Commission therefore as it is not a court of law and bound by rules of evidence it may inform itself of facts in any manner that it pleases. Whether by hearsay evidence, newspaper report or even through submissions or representations on submission without sworn evidence.

Now the manner in which this Commission has proceeded was to require witnesses to take an oath. To this extent the witnesses who have appeared before the Commission had sworn that they evidence they give is the truth. Now Dr Young has stated early in his evidence that he was a participant in one section of the SDP's. Subsequent thereto he had made or lodge certain complaints with the various investigating authorities in South Africa and overseas the German Authorities especially.

He has been contacted by investigators from the Serious Fraud Office and generally because of his activism with regard to the SDP's. He has received information from persons from various walks of life. The

evidence that he is given is based on the information that he has received not only from the various people that he has referred too but also from documents that he has received through Pie Applications and so forth.

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I would submit with respect that the various documents that of some of which he has received through the Pie Process are documents in respect of which he is not the author or perhaps have personal knowledge of except for the fact that some of those documents turns to establish the very fact and allegations that he has sought to bring before this Commission. An issue relating to authenticity of the documents in particular the ones relating to I think it is RMY51 to 53. The reports from the German investigators.

Stems from the authenticity of those documents and with a concomitant question relating to the admissibility thereof insofar as their authenticity has not been proven. The witness has testified that these documents emanate from an investigation conducted by German investigating officials. He has testified that his documents were given to him by an anonymous source thought a digital device.

Now that then begs the question whether if the witness is not able to give satisfactory objective evidence before the Commission which would demonstrate the admissibility of the documents begs the question whether the Commission should ignore these documents. We would submit that to the extent that the witness is himself perhaps not able to objectively demonstrate the authenticity of the document there is nothing that precludes the Commission through its staff and whatever

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other means that may be available to it, to itself establish the authentic of the documents.

As we would submit should it in the course of undertaking that exercise the Commission establish that these reports are in fact authentic would mean that when the Commission decides not to admit these documents on the basis thereof the witness is himself not able to establish the authenticity of these documents. Would that not mean that the Commission ignored important evidence that exists and was brought before the Commission but was simply excluded purely on the basis that the person providing the document can himself not establish its authenticity.

We would submit further that the issue of placing the burden or the onus on the witness would in our respectful submission not accord with what the general principles which apply to Commissions that is the gathering of evidence. On the basis of which the Commission would in turn conduct further investigations for purposes of advising the executive on what steps to take based on what has been found during the course of the gathering of the evidence.

We would submit that on that basis Chair that the documents ought to be allowed for consideration by the Commission. Perhaps before leaving the point I just need to add one other matter that was discussed between the caucus and that is, there is nothing wrong if the witness gives evidence of allegations that he has personal knowledge off. To the extent that these allegations may find support in the document that are referred in the statement. He may then refer to the Commission to

an existence of a particular document in his bundle of documents and the Commission would if so wishes at some point refer to the documents that are contained in the bundle of the witness or would put whatever probative value to those documents depending on what the Commission decides to rule.

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In other instances depending on the existence of exceptional circumstances which may be established during the course of giving evidence that perhaps the witness ought to be allowed to read from the document in the course of giving evidence. Now we would submit that to an extent that the witnesses statement seeks to rely on the documents. It is not certain to us who that would work because the statement is more of a [indistinct] memoir to the various documents that the witness seeks to rely on. If exceptional circumstances have to be placed before the Commission at every time at every single document is sought to be relied upon in the course of given evidence by the witness I would submit that would take further time that it would appear to us is sought to be saved in the manner in which we have been proceeding with the witness.

Perhaps a further point that was raised with this witness's evidence is that the witness at this point and through the documents is making allegations relating to the witnesses who have given evidence and were not cross-examined the allegations that the witness is now giving evidence on. Also impact on other witnesses or other persons who have not been called to give evidence and may perhaps need to be called to give evidence to refute these allegations.

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Insofar as the evidence of this witness relates to witnesses who have been called and excused there may be a need to recall those witnesses. Perhaps in what we believe is an unrelated matter is the question of time that perhaps there could be time constraints that may relate to the recall of witnesses or calling of further witnesses as a result of the allegation that appears to be set out in the reports that the witness is talking too.

Perhaps to address the issue relating to the recalling of witnesses. We would submit that perhaps at the outset that indeed it is true that some of the Dr Young's evidence traverses on matters that a witness like Admiral Kamerman and perhaps Mr Fritz Nortjè just by way of example would have dealt with. Then also that the issues raised by him are matters that he could have cross-examined them on.

We would submit in that regard that of course while it is conduct that is consistent with the principles of [indistinct] we would submit that there is no duty on a witness before the Commission to cross-examine another witness. In fact the regulations seems to suggest that cross-examination is not a matter of right and it is not there for the asking. A witness has to apply to cross-examine another witness and the Chair may grant that witness the privilege to cross-examine another.

Now that is all fair and good in instances especially where witnesses are represented. Dr Young is not represented. In a number of instances where he brought applications to cross-examine he did so personally without assistance I believe. In some instances he perhaps will give evidence if he chose to that some of the witness statements and

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bundles of documents of the witnesses he sought to cross-examine were only posted in some instances after those witnesses had been excused. In other instances some days after the witness had started to give evidence.

From the history of his interaction with the Commission it does appear that for purposes for preparing his cross-examination Dr Young has sought to be furnished with certain documents and there were rulings made pursuant to those applications which dismissed his requests for documents, on the basis as I recall among others that he had not shown any relevance of those documents that he sought to cross-examine witnesses as I recall. Such as Fritz Nortjè and Admiral Kamerman.

Perhaps it is worth mentioning that also insofar as the allegations that had emanated some of which were contained in his statement the majority of those allegations are based on documents which I think it is the schedule of 10/61 documents which were discovered by him. I believe that it was during the month of March 2014. Now it was not just the schedule that was vanished but it was also copies of his documents which contained the allegations made here and which the bulk of the statement is based.

I may say also that the application to cross-examine was accompanied by a draft statement in which those allegations are set out. To the extent that these allegations were placed in the public domain as far back as in March last year it does appear at least to ask that there was an opportunity on some of the witnesses who have appeared before the Commission to have dealt with these allegations. Even at a

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general level because perhaps the details thereof or some of the nuances that may have been placed by his testimony during these proceedings were not clear at the time. In the general sense the

allegations were there in the draft statements.

Although there might have been a change somewhat in those allegations the change would perhaps I have been informed by what has transpired during the course of the evidence of some of the witnesses. Fundamentally and substantially the allegations as set out in that draft statement that accompanied the application to cross-examine have not changed.

So we would submit that the allegations that he is setting out now are not new. They have existed for some time. To the extent that, again in terms of the rules of AUDI[?] the witnesses who have testified and have been excused may need to be recalled. We would submit that, that is something that if perhaps applied for and motivated it can be done. We would submit that there is nothing that precludes a recall of such witnesses to take place.

The extent that other witnesses or persons who have not been at least impacted upon by the allegations made ought to be called. We would submit that, that may be done perhaps that might require a request made to the President to extend the tenor of the Commission and only he may refuse if it is clear to him that no extension would be granted. Perhaps he would furnish reasons as to why it should not be extended.

We were informed and furnished with a document entitled, Public

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Prosecutor's Office of [indistinct]. Office focus on the prosecution of commercial delinquency. This appears ...[intervenes].

<u>CHAIRPERSON</u>: Sorry Advocate Sibeko. If you do not mind. Can I go back to the point that I made. I think when we adjourned we made the point that firstly we allowed Dr Young to testify on the base of this document the so-called German Report. The German Report is now part of our record.

When we started getting worried is when he started reading page by page and word for word. We are saying is there no way of dealing with it, can we not find a better way of dealing with this report. If he is going to read the 40 or 50 page document which is not prepared by him word for word and trying to explain to us that that means. That is going to take a long time. This is there was an objection. Whether that document will be admissible or not it is a portion that we will decide at a much later stage.

We have allowed him to use his document. This document is now part of the record of this Commission. The question was how should we deal with it. Because when we started complaining was when we found out that the whole morning were dealt with half a paragraph of his statement. He spend most of his time reading to us a document which is already part of this Commission. We do not need him to read it to us. Once he has given us that document then we can be in a position to read it at our own time. He can refer us to relevant portions of that report.

Then the question of whether it is an admissible document or not that

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can be dealt with at a later stage. At no stage did we make a ruling now that this document is saying that it is admissible or not admissible. We are trying to find out the authenticity of this document. We know what he is saying.

Then we are complaining that he is reading page by page. Word for word. The report is not prepared by him. That he can bring this report to the attention of the Commission, I think that is fair and squire then we understand. He cannot try and interpret that document for us and even try and tell us what the legal implications thereof are. I did not hear you addressing us on that question. This is what caused the adjournment. Not whether this document is admissible or not admissible.

We raised that point. We never said that this document is not admissible or we never said that this document should not form part of the record of the Commission.

ADV SIBEKO: Well Chair I accept what you are saying. You will recall Chair that before you directed the various legal teams to go and have caucus the issue was raised by my colleague, Michael Kuper Sc, regarding the authenticity; admissibility and so forth of the report that the witness was giving evidence on.

As I understand it Morena Sc also landed support to that basis of the objection also. Perhaps also led him on the objection from the bench as to how the manner or as to the manner in which the witness was proceeding in reading evidence. It is on that basis that during the caucus the argument relating to how we should proceed going forward landed itself to matter of authenticity and whether or not this witness has

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to be given the evidence that he is giving in the manner that he is giving relying on the documents that seeks to place his reliance on to establish the allegations of corruption that he is giving evidence on.

So on that basis that stayed into a discussion relating to the admissibility of the documents based on their authenticity. Because it is argued that to the extent that the authenticity of these documents had not been established. We should really not be wasting the Commission's time in leading evidence that are based on these documents. Perhaps if there are exceptional circumstances it was argued we could refer to some passages in the documents. However if we so chose in leading witnesses' evidence we could simply refer to the presence of a document and perhaps to a passage in that document which the Commission at it's leisure can have regard to. It is on that basis that I was addressing the Commission while I accept that perhaps the issue we were supposed to be discussing simply how we should proceed going forward.

I accept the point that to the extent that the witness refers to documents perhaps he should not give his own interpretation of the documents. However one should make a point that to the extent that the documents seeks to illicit a particular point it would seem to us that there is nothing that precludes the witness from in the course of his analyses of the facts allude to perhaps to certain issues that seek to support his evidence and where the document has not appeared to be accurate deal with such.

So it is on that basis that we had the discussion and the issue was

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discussed. So our colleagues on the other side were saying if the witness has not personal knowledge of the document and he can demonstrate no authenticity his evidence should not even go so far as to deal with the documents. That to us put us in a position where insofar as the statement 6/2 rely on documents in respect of which this witness has not personal knowledge it does appear that he should not be leading evidence with makes reference to these documents.

That is the point that I was trying to address Chair.

CHAIRPERSON: Okay, thank you. Let me hear other counsel.

ADV KUPER: Mr Chairman and Mr Commissioner. My learned friend Mr Sibeko has correctly summarised some of the topics that we discussed. They do fall into two separate classes. The one class is how best to deal with the situation which has arisen namely the witness testifying at great length to matters to which he has not personal knowledge.

Secondly the question whether the witness should be tendering the documents in question into the record. Your interest Mr Chairmain was directed to that first discussion. Let me deal with that first. There is a fraud proposition of course my learned friend is right when he said that you are given a far wider discretion than would apply in court proceedings that is why very senior [indistinct] have been appointed as the Commission that is hearing the case.

Then so much more is it necessary that the Commission set guidelines which are intended to serve the objectives of the Inquiry by optimising the value of the time that spent in the public hearing. Also by

ensuring a utility of what is done during those proceedings.

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What has happened here in regard to this witness and in regard to the documents to which he wishes to speak is that days have been spent listening to a witness read out and comment upon material of which he is not the author. Material in respect of which he cannot or will not identify the author. Material in respect of which he cannot or will not explain how he is in possession of it in the first place. Then material to the truth of which he cannot speak or disclose.

In that situation and if these documents are admitted into the record we would respectfully submit that no value is added and no purpose is served by allowing this witness to read out and to comment upon material which by definition he has not ability to propose to the truth of it. It cannot be used to be cross-examined or tested on it because his answers in all cases will be, 'I do not know'. In which the Commission if better suited than the witness to form an opinion on the documents and the material in the documents as they stand.

So that there is really no justification for the time taken as the evidence leaders have done in inviting this witness to read through and to comment upon sections of the material. I want to point to the fact that that kind of procedure has allowed this witness to be the judge of what kind of material should be put before the Commission and not allowing the Commission to judge what kind of material is best put before it and in what way.

It has allowed a witness to publish allegations from material which self evidently is merely preliminary drafts. To publish allegations which

are wide ranging and which are defamatory of the victims in every sense and prejudicial to them so that a man who is unable to speak to the truth of the allegation that he makes is making the allegation by reading it from the material. Making or putting it in the public forum as such without any constraint and without any responsibility. Because his answer is all that I am doing is reading you material of which I have no personal knowledge.

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That has resulted as the Commission would have heard over the past few days in a range of allegations. Some manifestly absurd, some no more than pure speculation made about a whole range of persons many of whom have testified and who when testifying were not confronted with these accusations although the evidence leaders must have had them at the time.

So it is an unhelpful. It is an injurious and it is a time wasting process and the Commission is right alert to the fact that it should not be allowed to continue in this way. We would submit that if this material is to be received by the Commission then let it be received as such. That this witness has come into possession in ways not entirely clear or transparent of a range of material and he wishes to put this material to the Commission. Well let the evidence leader make the request that the Commission receive it, in its records and that the Commission asses it in such words that the Commission would wish to do in due course.

None of that for a minute explains or justifies this witnesses rampage through the evidence as though it were his to comment about or to speak about as though it was his to put before you gentleman as

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commissioners and deal with as though, although he has no responsibility for it and no knowledge of it he can debate it at length.

So we would submit that if the Commission is inclined to allow the documents to go forward then let them go forward. Let them go forward on the matter of them to be handed into the Commission and let the witness get on with what he knows and speak for and can take responsibility for. That so when he is cross-examined we will get a response which will be of some value to the Commission. If I may shortly deal with the second topic which my learned friend right eluded as well because we did discuss it.

We would submit that the Commission now that it is faced with this situation of material of this sort being sought to be put before it as part of the proceedings aught we would respectfully submit to set out those tests which such material should meet.

We will submit with great respect that those tests would be intended to establish firstly that the document that is presented firstly is an authentic document. That his author is known and that the circumstances in which it was created are known so that the Commission can form some kind of impression as to the weight of this not in the final adjudication in the weight of it as to whether it is worthy of being admitted into the record at all.

Secondly that in that regard the Commission would look to see that it content was *prima facie* relevant and that it content was *prima facie* reliable. In that regard one would say in this particular one if one is dealing with the mature judgment of investigators who have completed

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their investigations or does not appear that one is dealing with preliminary, preparatory comment not intended for publication and not intended by the investigators themselves to be of any weight or finality.

I would submit that it is quite clear that while he is dealing with [indistinct] preparatory material and that it is not the kind of material that could seriously be put before a Commission as carrying a genuine balanced insightful judgment that might be of help to the Commissioner of contained well assessed information, that might be of information to the Commission.

Then in this regard as well. We were able to find the Commission papers, a later document emanating in this case officially and signed officially from the investigation in Germany which repudiates these investigations on two basics. One that there was no evidence to support generalised allegations of corruption. Secondly that it was improper for an investigation that was taxed based to be changed in some way or to be used as a cover to some extent for an investigation into foreign corruption.

The document records the repudiation the formal repudiation of that investigation so that the very source which allegedly created these preliminary documents is one record as repudiating them. That being so it is very difficult we would submit to see what value you can give a Commission to receive these preliminary documents in this way.

Then Mr Chair and Mr Commissioner as we said previously you will be alert to ensure that the requirements of natural justice are served where allegations of a reputational damaging nature are made against

persons, who in this case has come before the Commission and not been alerted to this material. Also who cannot properly be ask to defend themselves against anonymous or preliminary allegations. So we would submit that although the Commission may not be intending at this stage to finally assess probative point. Because of these circumstances we would ask the Commission none the less to raise now and to answer now the question whether such material is worthy of being placed before the Commission at all.

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Certainly if the Commission takes the view that it is or that it does not [indistinct] to decide that issue now coming back to the first issue raised by the Chairman our contention would be if it must go in let it be indentified and let it be presented through the evidence in them. It should not be the basis upon which a witness can speak in the way as has been done in the past few days. Just bear with me for a moment.

The final point that I would just like to put to the Commission although the Commission will the way that I understood it. Once these allegations are spoken in this forum they are taken up by the media inevitably and they cause a reputational damage from which the victim can never free himself. That is a further reason why there should be some bar upon the dissemination of allegations from anonymous sources by persons who cannot speak to their truth. Thank you.

<u>CHAIRPERSON</u>: Advocate Sibeko can you just address the last point that Advocate Kuper has made. About this preliminary reports end up costing serious reputational damage. Then should the person who introduce that document cannot take responsibility for that. If it is cross-

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examined he ends up saying I do not know it is not my report but the damage has already been done?

ADV SIBEKO: Chair in that regard we would perhaps make this simple response that while it may well be true that a reliance on documents for which a witness may not take personal responsibility or in respect of which he is not the author. Some reputational damage may be caused to the victim of the allegations. We would submit that indeed what appears in the documents would be allegations.

It is sometimes as it happens that whistle blowers are able to come forth and make allegations which result in investigations being conducted. Also the investigations that are subsequently conducted would have an outcome which would ameliorate or even at best do away with the reputational damage that would have been brought about by allegations made by a whistle blower. Then if the process once it has run its cause demonstrates that the allegations were baseless and unfounded and perhaps not what the paper then written on or the air that was breathed into forums such as these.

We will submit that if allegations are made by their very nature they are allegations which the veracity of which at some point has to be established. We have no intention whatsoever of making of prejudicing anyone referred to in the document. However that reports are what they are. Perhaps on the issue of the report which has been referred to the matter that I sought to address earlier on that the allegations set out in these reports. Or at least by investigation was stopped on the basis that there was no evidence to support the allegations set out therein.

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A document was furnished to us that is the document that I started to address when Chairperson stopped me. At the heading of that document reference is made to a preliminary investigation of your clients, [indistinct] *gesin*.

The report that the witness was testifying about makes reference to certain names of German citizens or residence. This report or at least this document does not refer in any manner whatsoever to the persons or allegations made in the report that the witness who is testing about. I will submit that in that regard that this report in which seeks to state that the prosecution has been withdrawn against *Jan se gesin[?]*. Cannot be evidence that conclusively or in any manner whatsoever I will submit reflect on the outcome of the investigation that was conducted in the reports that the witness is testifying about.

Unless there is such report we would submit that the allegations to which the witness has testified to as set out to establish the facts or the allegations which he seems to put forward. We would submit that to the extent for the Commission to make a ruling on the subject that would determine how we go forward with the delivery of the evidence. Perhaps it would be appropriate then that a ruling in this regard should be made.

COMMISSIONER MUSI: You and I understand quite clearly that the content of this report that we are dealing with are allegations. My experience are in the reporting in the media. My experience is that there is it reported as evidence. That may be a huge problem for the people indicated in the report. The second issue I wish to draw to

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attention to or raise and maybe Advocate Kuper can help me in this regard. If we should receive these supporting documents by the witness and given that we have not decided whether they are admissible or not and also given your concern that they contain or they may cause reputational damage.

If we receive them, what do we do. Do we put them on the website how do we deal with it?

ADV SIBEKO: Chairperson Musi while I understand the concern that has been raised I propose the reputational damage to victims of the allegations which may be caused in the manner in which the media reports these allegations. Perhaps by failing to qualify them as allegations such as evidence I would be the first person to admit that, that is quite unfortunate.

It is quite difficult to respond to that because we would then be required perhaps as evidence leaders to take responsibility for the media which is something that might fall outside of our realm. Perhaps it is something that might be left to the regulators of media practitioners. I understand the concern that you raise. Perhaps regarding the second point is the matter that you raised with Kuper Sc. I will submit that perhaps as I pointed out earlier in agreement with him that perhaps in order for some filter to be placed in trying to protect the victims of the allegations that are made in the documents and in respect of which a witness may perhaps not take responsibility for that just to steal the thunder from him.

I would implore the Commissioners as was suggested by him to make

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a ruling on the matter and perhaps that would guide and perhaps shape the manner in which these proceedings are conducted going forward.

CHAIRPERSON: I am going to propose that we deal with the issue that I raised earlier on. The second question is trying to bring in a filter. It becomes very difficult to implement. There is arch lever files I only receive them yesterday. On Monday I only had the statement. This arch lever files keep on coming on a daily basis and there is no way in which you are going to read those arch lever file before we come here and make a ruling.

Some of the arch lever files that were printed yesterday I have not even taken them home. I only have three at home still battling to go through those three and the other five is already waiting for me in the office. It is going to be very difficult to make that type of ruling or formulating a test in order to determine how we should deal with these documents.

I think the best that we can do under these circumstances is to deal with the documents as and when they come to us. You know if this was a normal court proceedings we would have said that the documents must be served no later than such a day making sure that we know we are getting enough time to read the documents. I think that it is possible this afternoon I was still making copies. Like yesterday like they did on Sunday probably until 12:00 or 01:00. It is going to be very difficult to make a ruling. I think that we are going to make a ruling dealing with the issue that made us to adjourn this matter earlier on.

COMMISSIONER MUSI: Well I have been requested by Chair to

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enhance on the ruling that we intend making. I will make the following preliminary remarks. a Perusal of Dr Young's statement show that he has extensive knowledge of matter relating to the combat suite in particular. He has indeed given extensive evidence in this regard.

I think that we should appreciate that. However it is clear that he has no personal knowledge of many other matters contained in that statement. You allowed him to deal with these purely in order not to be seen to be unduly curtailing the scope of his evidence.

However we have time constraints and could not allow him to continue in the manner that he has been doing since yesterday afternoon. I have to enforce an approach that we have applied in the past in matters of this nature. That is why we had to make a ruling now. The ruling that we made today hopefully will allow Dr Young to continue with his evidence based on his statement and to use his supporting documents.

While at the same time ensuring that time is not wasted on interrogation of matters that does not fall within his personal knowledge. I now proceed to read the ruling.

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20 RULING

It is obvious that the supporting documents that Dr Young wishes to use in his evidence are not matter within his personal knowledge comprising as they do with report, memoranda and statements made by other people or bodies and are strictly speaking not admissible in evidence. However considering that this is an investigative body such

material would be accepted purely in order to assist the Commission in its investigations.

Therefore the ruling is as follows:

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- 1. Dr Young with proceed with his statement and where he wishes to refer to the specifics in a supporting document he can do so and give a brief explanation of what it entails whereupon it would be received as part of the record.
- 2. He shall however not deal with the content of the supporting documents or comment thereon. However he may draw the Commission's attention to specific passages or paragraph in the statement or the documents without reading them.
- 3. Where any matter in the supporting document is within his personal knowledge he may deal with it.

Signed: Chairperson: Sereti, J.

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COMMISSIONER MUSI: Thank you.

<u>CHAIRPERSON</u>: That is the order that we make. Do you want time to reflect or are you ready to proceed with the evidence of Dr Young?

ADV SIBEKO: Chair if we may be furnished with a copy thereof. In order to be able to deal with the evidence of Dr Young going forward. I seem to have heard in one of the paragraphs where Commissioner Musi states that he can deal with the, I am not certain whether he says he may not deal with the contents of the document he seeks to rely on. Perhaps just to seek clarity on how then the witness might be required to make use of the document in respect of which he may not use the

contents off?

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CHAIRPERSON: Okay maybe you are right. Maybe just a chance so that we can reflect on that. Basically what we are trying to say with the third paragraph is that there might be documents somewhere else and those documents might be containing issues that he can personally deal with or which are within his personal knowledge. If they are not he may just refer to them without reading them.

We wasted a lot of time yesterday and this morning allowing Mr Young to read the document the source of which you are uncertain and making comments about issues which other people are investigating. So basically that is what we are trying to clear and we will adjourn for a few minutes then you can go through that order and then we will come back. When we come back you can tell us how you intend proceeding.

Can we come back at 15:45

15 <u>ADV SIBEKO</u>: Yes we can come back at 15:45, is it possible that we can have a copy of the ruling.

<u>CHAIRPERSON</u>: There is just one or two typographical errors we just correct them and then I will give you a copy thereof.

ADV SIBEKO: Thank you Chair.

COMMISSION ADJOURNS

COMMISSION RESUMES

ADV SIBEKO: During the adjournment we reflected on the ruling that was handed down a short while ago. My colleague Ms Sello wishes to address the Commission. It is with regard to I believe it is paragraph 2 and 3 of the ruling. That is how it will unfold on the evidence.

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ADV SELLO: Chair and Commissioner Musi. In dealing of paragraph 2 and 3 items 2 and 3 of the ruling I must at the outset state that it is not our intention to argue against the ruling or to seek to have the Commission or overturn its ruling.

What we would like is a clarification of the two items particularly insofar as the impact on the testimony of Dr Young and how it is delivered to the Commission going forward. So ours is firstly to deal with questions of clarification. Just to make sure that we are all on the same page in relation to the meaning of the ruling.

We first deal with item 2. The first sentence reads:

"He shall however not deal with the content of the supporting documents or comment thereon."

Prior to the ruling being read into the record by Commissioner Musi the Commissioner had expressed concerns about the fact that Dr Young makes reference to these documents or passages within these documents and proceeds to give interpretation to the portions that he has read or to analyse them. Or to give his own subjective view, to the extent that commenting thereon or prohibiting him from commenting thereon is to address the concerns of the Commission.

In our discussion I think we are *ad idem* that maybe it is unnecessary for him to express and interpretation of a paragraph that he is reading in the document. The Commission can do that for itself. It has got the document before it. The difficulty that we have going forward if the first part of the ruling. Which says that:

"He may not deal with the contents of the supporting document."

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The difficulty arises in particular in relation to that aspect of his evidence that relates to allegations be that corruption, fraud or impropriety and irregularity. In his statement Dr Young would time and again make allegations of impropriety of some kind or other and seeking to support his view that there was impropriety he then relies on certain documentation.

Now in dealing with that allegation he may, because he was not personally involved in whatever the impropriety is he does not have documents of his own to support the allegation of impropriety he only has document from other sources that support his view of impropriety. So the limitation that he may not deal with the documents with the content of the documents creates a problem for him because.

1. It would mean the best we can do is say in this regard I refer to RMY52 and I say 52 because that is the one that is immediately before us and not go to the specific paragraph ...[intervenes].

<u>COMMISSIONER MUSI</u>: Then he can say paragraph so and so. Or passage so and so in that particular annexure.

ADV SELLO: Thank you Commissioner Musi. In saying annexure so and so and paragraph so and so. To understand whether he is prohibited to then say what the paragraph says in support of an allegation that he has made in his statement. Also ...[intervenes].

<u>COMMISSIONER MUSI</u>: You refer us to the passage and we will read it ourselves and anybody who is interested will read the passage.

CHAIRPERSON: The difficulty is that he wants to interpret the document for us. He wants to put the legal meaning of that document.

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We are capable enough to do that. He want so say paragraph 15(a) or (b) that is good enough. From there we will go to paragraph 15(a) and (b) and look at it. It is not for him to start telling us what is the legal implications thereof.

He is an ordinary witness as far as legal issues are concerned. He might be an expert in other fields but the legal implications of the paragraph that he refers us too that he must leave to us.

<u>ADV SELLO</u>: If I may address Commissioner Seriti first. Chair we are in full agreement with that and I think that the witness has conceded that he cannot attempt to give legal interpretations to statements appearing in documents. He is not called upon to do that. Insofar as he may attempt to do so then we would concede would have gone beyond the realm of the purpose of which he involves the document.

I think that we are satisfied as far as that is concerned going forward we will not be experiencing that problem. The wording of item 2 is slightly broader than that. It says that he might not deal with the document. Now we are trying to understand exactly what dealing with the document means. If it means refer RMY52 paragraph 1.6 and not say at 1.6 it deals with a, b or c whether he is prohibited from mentioning those words and or whether he is prohibited from saying 1.6 where it states and read a brief extract from 1.6. That is the clarification that we wanted to get?

<u>CHAIRPERSON</u>: You are right on that point. The difficulty we had this morning is he was reading the entire document. That is what is causing a problem. If he wants to say paragraph 15.a or point c which deals with

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this particular issue there is no problem with that. Then this morning he was reading the entire document. It was a 40 page document. When we started he was hardly half way and he still have six or seven arch lever files. That is what we are trying to curb.

COMMISSIONER MUSI: Just to add. Take for instance paragraph 278. German Prosecuting Authorities have refereed that document to the record, written in German inter alia provides details that this parties are involved and the amounts involved and what he belief to be the person doing the payments. He refers to the relevant document we will read that not so?

ADV SELLO: Again if I may address myself to Commissioner Seriti. Commissioner Seriti I think that the question that we pose to get clarification is a slightly different one. There does not seem to be any difficulty that end the witness. He cannot read each and every page of the document that he seeks to rely on. If for any reason time does not permit for that we want him to clarify that. If that is the starting point and the witness understand that may he on the other hand then in dealing with a document just read those extract as he deems primarily important to support the allegation of corruption that he has made.

Not to read each and every page as we have experienced this morning but to make an election within that document in the briefest of ways to quote from that document. Now we believe that we understand that if you were to do that he would in effect be dealing with the documents and we fear that may fall fowl of item 2. Hence the clarification that we seek. Commissioners if I may just remind myself of

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Commissioner Musi's question. Commissioner Musi?

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<u>COMMISSIONER MUSI</u>: What I am saying is that you are reading that 278 paragraph. He refer us to documents and he is going to hand them up those documents. We will read it ourselves. He does not have to analyse them.

ADV SELLO: Thank you Commissioner Musi for reminding me. Yes I think earlier in the course of the day Advocate Sibeko had mentioned that the witnesses position is that the statement acts more as a memoir for him and he gives his evidence through the documents he has listed in the statement. If however and the witnesses view is if however he is not permitted to read from the documents maybe the appropriate way would be to extract from the document that he seeks to rely on and include in the body of his statement that which he deem relevant and to give the document in support thereof just to verify that the quotation that he gives in the statement is exactly as appears in the statement, sorry in the supporting document.

So dealing with 174 for example it would mean that where he says there is documentary record which provides details of the parties the amounts involved and transfer of the bribery payment he would then extract from the documents some of which is voluminous with particular reference to pages and paragraph where he says the parties involved listing them.

The amounts involved, stating the amounts and the transfer of the bribery payments and stating by way of quotation how those transfers were affected. That is the difficulty that we were having because we are

now going forward. We are now at annexure 52 the last count was 150 annexure. We would not want a situation where each time the witness refers to a document then he is dealing with the document and falls fowl of the ruling. Hence the clarification. Also this is particularly relevant to matters that fall outside the sub systems which is where he has personal knowledge.

This is where his Company C-Squid I–Squid submitted documents and had document directed to it. So Chair and Commissioner Musi that is the clarification that we would request of the Commission to enable us to assist the Commission in leading this particular witness. As regard to the 3rd point. It states that ...[intervenes].

<u>CHAIRPERSON</u>: Just before you go to that 3rd point. Are we done with the 2nd point?

ADV SELLO: Yes Chair I have expressed what our where we seek clarification?

CHAIRPERSON: Have we given the clarification?

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ADV SELLO: No Chair I thought I would to place the problems or the request that have all on record and then to give the Commissioners an opportunity to respond. If it suits the Chair better to deal with every point.

<u>CHAIRPERSON</u>: I think we have answered you [indistinct] is concerned. In our view it is good enough for us to refer us to that particular document for instance paragraph 15 a; b; c and d. Not for him to start reading that entire document and giving an interpretation thereof. May we then get to point 3 then?

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ADV SELLO: As the Chair pleases. On point 3 the ruling states:

"Where any matter in the supporting documents is within his personal knowledge he may deal with it."

Again it is it revolves around I guess the verb which is dealing with it and the witness wanted clarity on matters of allegations of impropriety and he wants state for the record he has no personal knowledge of those. His understanding of improprieties stems from a deduction based on facts that are available to him and that deduction is then supported by documents that he does not author.

Consequently he cannot claim to have been personally involved in any propriety allegations of bribery and the like. So that being the case insofar as these allegations are concerned how does item 3 effect his testimony going forward?

CHAIRPERSON: Again when it comes to that because he does not have personal knowledge of that. If he refers to any document he can refer us to that document saying that if you read it in conjunction with that paragraph and this you will get and not for him to read the entire document. I am sure you are aware why we ended up adjourning this morning.

The witness was reading a 40 page document not authored by him. He even tried to give us an interpretation of that document. That is what we are trying to avoid. If he had not personal knowledge of any issue he can bring our attention to it and then we will investigate it. Not for him to start telling us what that document says and what he think we should be doing. This is the difficulty we had this morning. He was reading

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another document trying to tell us exactly what that document says. We can read that document ourselves as long as he brings it to our attention.

ADV SELLO: Thank you Chair if I am confer. Chair and Commissioner Musi I think that we have the clarity that we were seeking During the course of discussions with the witness Dr Young expressed an interest to address the Commission on this point and with your permission I would like to hand over to him?

DR YOUNG: Thank you it is not just one point but I will be pretty quick. Firstly I would like to take these headphones off. Firstly I would like to apologise to the Commission for taking so much time over this one particular document. The only reason why I did it that I reflected on it quite substantially extensively last night and I only did it because it basically other than one particular other mayor allegation regarding corruption it puts all the corruption and bribery things in one thing.

I apologise for the time but I personally think that bribery and corruption is an important point and a term of reference for the Commission it was an important document. I apologise for the way that we handled it. A second point that I would like to make is [indistinct] I am watching two or three different legal things happening and I am an engineer.

If I may say there was certainly some divergent views of the legal teams of the other parties. If I can just make a short point I actually find it incredibly rich that the legal team for the Department of Defence could address the whole issue of reputational damage in the way that

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they did. I am saying that in the context of the evidence presented by one its witnesses being Admiral Kamerman I think it was in May this year 26th or 27th which is very seriously reputational damaging to me and I have not had a chance to cross-examine and to rebut that.

The difference between my evidence despite it being based on documents that I did not author at least my allegations are not board. It might not be a hairy as the legal system might like. But unlike the Department of Defence's reputational damage that it did to me the vast majority of those allegations were not only completely incorrect they were completely bold as well.

The other point of departure that I would like to address is right of the beginning at this Commission Inquiry I have been following the manner in which evidence was led and the fact that each and every witness was required to give an oath and the oath I give it a huge a amount of [indistinct] attention and I even discussed it with my evidence leaders that it the oath to tell the truth, the whole truth and nothing but the truth. That silly joke with the people who have taken my oath here I said that I cannot tell the whole truth, I do not have enough time.

I though the truth that I knew involving corruption was an important part of this Commission certainly important enough to take the time that it did this morning. Secondly as I said right at the beginning I derived absolutely no satisfaction whatsoever. In fact it made my quite nauseous quite ill to read those documents last night in preparation for today. So this is not done for any *mala fides* reason of mine. :It is because partly it is part of the truth.

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The other point it unlike very many legal actions, criminal all criminal trials have a public interest to them. Many civil trial do not. These proceedings are entirely in the public interest. Now I came into possession of these documents. They are bona fide. They are not patent and I tried to testify about that. There are certain sensitivities regarding not so much my knowledge of the author but my speculation of who the exact person might be. I have actually advised the Commission of at least the organisation which authored these documents.

Be that as it may. I was trying to think of what the public for whom this Commission was set up would think that if I was in possession of these documents which include bribery agreements. Executive statements involving people not just any [indistinct] people but people involving the Corvette Program. The Corvette combat suite is still part of the Corvette Program which is acknowledgment that I am knowledgably about. What were people think if I was in possession of these documents and there are certain people who do know it that I omitted to bring it before the attention of the Commission. I think that it would be highly irregular for me to do.

The last point that I would like to make is that unfortunately the term whistle blower has come up today. Commission of Inquiries like this are about evidence gathering and whistle blowing, I use the term in a positive sense it is not being a *impimpi* it is blowing the whistle of things going wrong. Corruption is a mayor thing in this country. If I was just to skirt around the points of corruption what would value actually be in

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terms of the knowledge that I have in terms of documents of which I am the author. It would be very minimal. Unfortunately reputational damage or otherwise or whatever is just part of the course, Part after the course. I am biting the bullet on what has been said about me and the Commission and unfortunately would have expect the same from the other parties.

<u>COMMISSIONER MUSI</u>: Let me assure you ...[intervenes].

DR YOUNG: Excuse me?

COMMISSIONER MUSI: Can you hear me now. Your efforts are being appreciated. You have done a vast amount of work in compiling the sort of documents that are before us today. We are accepting this we are saying bring them in. We said that we are going to receive them and we are going to look at them. They will assist us in the investigation that we are conducting. It is not for nothing that they are before us.

Secondly you have given evidence on matters that are within your knowledge it is extensive evidence that you are giving and I said to you that, that is appreciated. As far as reputational damage is concerned you talk about the evidence that was given before this Commission by one of the witnesses. The difference between his evidence and yours is that he talked about matters that were within his knowledge. If you talk about matters that I would think of knowledge and in the course of that evidence someone might get hurt, it is unfortunate. The difference is that you are talking about matters that are within your knowledge.

Different is a situation when you talk about things that are not in your knowledge. You are repeating allegations made by other people which

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is basically hearsay and people are damaged because of that, that is something else. I hope you understand the difference. Thank you.

<u>CHAIRPERSON</u>: From my side you know as he was saying he thanks you for bringing this document to our attention. Once a document comes to our attention we will definitely have a look at it. I may just mention that we are not seeing this document for the first time.

We saw it two or three years ago. We analysed it and we took certain actions because of the information that were contained in this document. We are not seeing this document for the first time. We do appreciate the fact that you are bringing certain documents to our attention and we do attend to them. We do not simply leave that. The difficulty that we have today was the manner in which this document has been dealt with in order for it to come in to our possession.

Most of the things that you were saying today we are all aware of that. In any event I may just mention that we tried to follow up some of the issues that are raised in that document,. We have already tried to follow up. That is why I wanted to know who the German official is that you have spoken to. We have tried to make contact with them. We have made contact with some of those German prosecutors. So this document was not something new which we saw for the first time when you started testifying today. That is why it might be better for us to try and get a much better way of dealing with this document.

Give us a running commentary of it because, besides we have already spoke to several people who are in this document. I hope that clears a few issues that you raised. That you.

DR YOUNG: Thank you Commissioners.

ADV SIBEKO: Thank you Chair and Commissioner Musi for the clarification of the ruling that we have received. In the light of this clarification and what appears to be a requirement to be complied with in dealing further with the testimony of this witness. We would respectfully seek a adjournment until tomorrow morning to try and reorganise the presentation of the evidence to present it in a manner which is in terms of the clarification that has been made, we can attempt to comply with it.

10 <u>CHAIRPERSON</u>: I suppose in the light of what had happened up to now there will not be any objection that we adjourn 18;00 as I promised yesterday. Can we start at 09:00 tomorrow. Let us make provision for traffic.

ADV SIBEKO: I made every endeavour to be here at 09:00 it was just an accident that I came across outside Pretoria.

<u>CHAIRPERSON</u>: Okay try and take a route where there is no accidents [laughing] thank you. Let start tomorrow at 09:00.

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