

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 19 MAY 2015

CHAIRPERSON: Thank you.

JOHAN WILLEM DU PLOOY: (d.s.s.)

CHAIRPERSON: Good morning everybody. Advocate Lebala?

5 ADV LEBALA: We are ready to proceed, Chair, Commissioner Musi. Can you, yesterday, when your testimony ended up, when we adjourned for the day, we took you through what you see in paragraph 127, page 38 of your testimony. Relating to the subject, that was little or no political will. Do you remember?

10 COL DU PLOOY: I do, honourable Commissioner.

ADV LEBALA: Now, to be specific, this paragraph is in the context of the BAE leg. Am I right?

COL DU PLOOY: It is also in context of the GFC leg.

ADV LEBALA: Now let us be specific. You say there was little or no
15 ...[intervene]

CHAIRPERSON: I am sorry, Advocate Lebala. Which page are you? On which page are you?

ADV LEBALA: We started with what we went through, on page 38, paragraph 127, paragraph 127, page 38 of the statement. But, for the,
20 for the sake of completeness, please look at page 26, paragraph 76, page 26, paragraph 76 of your statement. Can you see that the heading relates to BAE investigation?

COL DU PLOOY: I see that.

ADV LEBALA: So, do you agree that paragraph 127, if you look at it, it
25 is only confined to the BAE investigation, in the context in which you put

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it, in your statement.

COL DU PLOOY: I will accept that.

ADV LEBALA: Now, let us be specific. Was there lack of political will or no political will, in as far as the Shaik, Nkobi, Zuma, Thomson leg is
5 concerned?

COL DU PLOOY: If I, for me, it was as I referred yesterday to the fact that, although the case withdrawn that investigation, the prosecution team did not agree with the decision. But, they say there was no political involvement. I cannot say, state that there was no political
10 involvement, in that sense.

ADV LEBALA: So, in as far as the Shaik, Nkobi, Zuma, Thomson leg, you cannot say there was no political will, or there was little political will.

COL DU PLOOY: It is difficult to answer, to say, there is no, there was no political will, because it depends from the side. You see what,
15 because for me, from the investigations side, prosecution side, the fact that the case withdrawn, although the prosecution then felt that there is a prima facie case, against President Zuma and it was withdrawn. I would interpret that as there was no political will, to continue. But, it is very difficult to answer and say there was.

20 ADV LEBALA: Let us go to the GFC leg. Would you say there was little or no political will? We know that there is specific, but in an far as the BAE leg is concerned, if maybe if it comes to the [indistinct] on pagagraph 127, page 38 of your statement that there was little or no political will. But, let us go to the GFC leg. What do you say about the
25 GFC leg?

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COL DU PLOOY: The GFC leg, if I also take in to consideration what I said, under the BAE chapter, chapter six in my affidavit, regarding the [indistinct]. It is also applicable on the GFC leg, because we, and if you look at memorandums that Advocate Downer wrote, we were trying to
5 obtain the MLA from the Germans. As well as, from our side, especially the memorandums, where we tried to point the investigating director, as Billy Downer said in his last memorandum, the one that we referred yesterday to and I can refer to the document. His memorandum dated, I think, it is 31st of May 2010. If we take that into consideration and other
10 aspects in the memorandums that we requested from the Germans and also, then I would say they was also not [indistinct] to assist in that regard.

ADV LEBALA: Fair enough. We will get to that and the Conlog leg?

COL DU PLOOY: In respect of the Conlog leg, I cannot say there was
15 or was not. I was not involved in the Conlog leg. So, what I do know is, and it was what Advocate Ferreira informed me, me yesterday was that the Conlog leg did not continue, due to the passing away of Minister Joe Modise. That they found they are not going to continue. But, if, it is true, I do not know. We will have go ask [indistinct] management.

20 ADV LEBALA: Now, you continued with some of the investigations, whilst you were under the command or leadership of General Meiring. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: General Meiring came to testify and told the
25 Commission that there is no way it could be said that there was no

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political will, in as far as the investigations of the arms strategic packages are concerned. What is your comment about it?

COL DU PLOOY: My comment that perhaps General, you must also see it, in the, from the perspective that General Meiring, he was not part
5 of the investigation for 10 years. And he may not have had the same frustrations maybe, I endured, in the investigation, in the sense of obtaining the overseas, especially information on the BAE and the GFC leg, as well as the withdrawal of the matter against the President. But, for me, it was the difficulties, the hurdles we had to overcome, every
10 time and the internal, for lack of a better word, fights mainly that we had, for trying to obtain information from Switzerland, Lichtenstein, Jersey and the UK, as well as the Germans. That caused for me a frustration and when I approached him and I explained to him also, about the circumstantial evidence and the cost involved and how long it will take
15 and the resources. Maybe, he was the national head of commercial crime and he may have looked at it from a different point of, from a managerial point of view. Where I looked at, if I say, to the picture in front of me, from a different, ja, maybe from the bottom. He may have had different views and he then also told me that, because there is no
20 prima facie case at the moment, against any individual, in respect of the BAE matter, as well as the GFC, he feels that I should write a memo to him, which I did, that is also in the bundle and give investigative reasons, why the matter should be closed and which I duly did. I believed in those reasons. We did not lie and we also, [indistinct]
25 because from an investigative perspective, things happened many years

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ago. The investigation that we should obtain information, like even bank information, but they only keep records for five years, maybe sometimes 10 years. But even that, the information overseas that the Germans have how they obtained them, we, it must also be remembered that we received that information on an informal basis. So, we still have to proceed with it formally. We did not know what would be the evidential value of that information. So, there are lots of aspects. So, he requested me and I did draft a memo, which I believe in. I also have reasons, why we could not, of which, would have been very difficult to continue, in respect of the prospects of a successful prosecution and maybe he then, they went, as the national head and came to the conclusion that, no, there is no evidence. There is nothing substantial to invest in such an investigation, with the prospects of a possible successful prosecution. We also, just last week, requested from the SCCU, the Special Commercial Crime Unit, we also handed the docket to them for guidance. If I am not mistaken, it was Advocate Glynnis Breytenbach that then also wrote a letter, that is also part of my bundle, where she also indicated that due to the long period of time that lapsed, it is possible that they, that the defence can argue that the, in a sense of a speedy trial. We also and that also, you know, from a lawyer's point of view or an advocate's point of view, I abide what they said in [indistinct].

ADV LEBALA: Thank you, colonel. I allowed you to go on, albeit you have long answered my question. Am I right to say and I am not going to waste time on this question, if you look at what you say, in file six, JDP 40, page 2203 to 2205. File six, JDP 40, 2203 to 2205. The

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Commission will appreciate this memo, in the context of what they heard from General Meiring as delineated in JDP 41, page 2006 to 2211. I am not going to take you through the contents of both documents now. What we know is that General Meiring testified that his decision was also informed, by a memo you prepared for him. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: And this memo, it is a memo contained in annexure JDP 40 before the Commission.

COL DU PLOOY: That is correct.

10 ADV LEBALA: Now, in that memo, you do not mention anything about the MLA. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: You are not specific in the memo that there was little or there was no political will. Is that not so?

15 COL DU PLOOY: That is correct.

ADV LEBALA: So, the decisions from your memo that influenced General Meiring to arrive at the decision to stop investigation, there were other mediate of reasons, not including lack of political will, in other words.

20 COL DU PLOOY: I discussed all the information, as I have just stated, regarding the political also, with General Meiring. But, he informed me that we would rather stay away from that kind of, if I can call it, for lack of a better word, allegations or possible frustrations, and let us concentrate on what is there, regarding investigation reasons. I did that
25 and therefore, I did not include any information, regarding the

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frustrations we had in [indistinct] and so forth. Because again, remember, I only had, as I stated before, it is on hearsay from the prosecutors, informing me. Although there is here and there a document saying that the MLA's were withdrawn and so on. But, it was, 5 most of it was about hearsay.

ADV LEBALA: What has become clear and this is why we are asking you this question and taking you through this piece of your testimony is that, your senior says, there is no way, in which you can talk about lack of political will. You say that there was little or no political will. But, what 10 is significant is in your memorandum that informs your senior that is not mentioned at all, lack of political will, or little political will. Even in his memorandum, nothing is being mentioned about little or no lack of political will. Am I right that one could conclude that? Then he has got a point, when he said a type of lack of political will is out of place. It 15 cannot be said that there was no political will.

COL DU PLOOY: From my point of view, I disagree. Because my perception, as I stated in my affidavit, I had the perception that there was no political will, due to the aspects, I referred to, in the memorandums, regarding the MLA's and so forth. He may have differed, 20 or have a different option and I respected that. But, it might be that I might differ from him, in that regard. But, I stand with my, the memo that I wrote and the investigation reasons and also the memo that he drafted, which I agreed to it, it is also correct. It is not wrong. It is not lies.

ADV LEBALA: Let us assist the Commission quickly and run through, 25 because this aspect, we may have to come back to it and make

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contentions on it. I know that the Chair has mentioned that we have long picked it up that it appears that there were [indistinct] or discomfort between the Department of Justice, headed by the DG, as the accounting authority and the NDPP, under Advocate Mphe. Now, the annexures JDP 45 let us go to annexure JDP 45. I am going to take them all, just to summarise one or two things, to assist the Commission, to make its conclusions in this regard. We know that in JDP 44, there were outstanding investigative issues, in as far as the GFC and the project BAE are concerned. For instance, you will see, just for the sake of fairness, for completeness, if you look at paragraph 3.1, on page 2217, annexure JDP 44. The subject, JDP 44, page 2217. The subject, German GFC investigation at 3.1, in all fairness to you:

“The copy of the MLA request received from the German authorities by the Department of Justice still needs to be obtained.”

Now, let us go to JDP 45. Let us run quickly through it. And that is where we were just about to take you, when the Chairperson commented that, you know, they can see already, where we are taking them to. But, I would like us to be specific and conclude this part. We start on page 220. Now, this annexure seeks to demonstrate that there were, not only challenges, but it puts in perspective what General Meiring said, with regard to lack of political will or no political will. Or it cannot be said that there was no political will. We know, that if you look at page 224, it is a letter, which is unsigned, from Advocate J Kruger, the Deputy Director of Public Prosecutions, in his address to Advocate Similane, if you look at page 220, the NDPP. Now, on page 220,

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paragraph 1:

“The issue of the information, received from Lichtenstein is dealt with.”

On page 221, paragraph 5, reference is being made of a meeting of 3
5 December 2009, in which you are present, together with General
Mering. Look at page 221, 2111. If you look at paragraph 5.1, 5.1.1
General Meiring was present and 5.1.3 you were present. Now if you
look at 222, the next page, page 222, I would like you to look at line 5 to
11. It is paragraph 7, page 222, line 4 to 7 and I would like to read it to
10 you.

*“Much progress had been made, in co-operating with investigating
authorities of the UK, Switzerland, Lichtenstein and Jersey. He
indicated that although the South African police services now, had
responsibility of the investigations, the NPA offered whatever assistance,
15 SAPS required. The wealth of knowledge of the matter that had been
acquired, during the investigation, should not be discarded. He
requested that the South African Police Services should consider,
providing the investigating officer with sufficient resources to complete
the investigation.”*

20 Who are they referring to here? Okay. Let us not bother about it. The
theme seeks to suggest that there is co-operation. Am I right?

COL DU PLOOY: I just want to go back to the previous question. You
asked who they referred to. What do you mean by, who did they refer
to?

25 ADV LEBALA: They keep on talking about he, he:

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“Much progress had been made, in co-operating with investigating authorities of the UK, Switzerland, Lichtenstein and Jersey.”

If you look at line 5:

*“He indicated that although the South African police services now,
5 had responsibility of the investigations.*

Are you with me, colonel?

COL DU PLOOY: Yes.

ADV LEBALA:

*“The NPA offered whatever assistance, SAPS required. The wealth of
10 knowledge.”*

There it goes on. When they talk about he, for instance if you look at the penultimate line:

*“He requested that the South African Police Services should consider,
15 providing the investigating officer with sufficient resources to complete the investigation.”*

My question was, who are they referring to, when they keep on talking about he, he?

COL DU PLOOY: If I look at the memo. I just had to read a bit further, just to see it in context. As I understand it, it would have referred to
20 Advocate Billy Downer, the he.

ADV LEBALA: Thank you. Let us quickly go to the next page, paragraph 11, page 223. That paragraph has got 10 lines. But, the theme of it is that it informs that General Meiring accepted the documentation received from Lichtenstein, in which Lichtenstein
25 requested that the NPA should investigate matters, disclosed in the

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document. Now, General Meiring even stated that it would be appropriate to make the documentation available to the NPA prosecutors and the assets forfeiture unit. Now, this is what has been captured. I do not want to waste time on it. Now, does that show co-operation?

5 COL DU PLOOY: This was a meeting between Billy Downer was there and Anton Steynberg, if you can see on page 221 and Advocate Johan Kruger that I understand was, I am not sure if it was, but he was working in the office of the NDPP, Advocate Simelane. We had a meeting to discuss in what, how can we, the relationship work together and solve
10 certain frustrations. But, if you look at the next memorandum, on page 225 of 10 February, it was from Advocate Downer to Advocate Simelane and he said the NDPP on 27 January 2010 and he kept on, met with the NDPP together with Advocate Steynberg [indistinct] with Kruger. Then, in paragraph 4 that he says, the NDPP resolved, that he did not accept
15 the recommendations. I understood that, that after our meeting that we had, with General Meiring, he had a meeting and that is how I also understood from Advocate Downer. He will be the better person maybe to testify about all this. But, what I understood from him then was that after he resolved certain issues between us, then he had a meeting with
20 the NDPP, Advocate Simelane. Then, he said, no, he does not accept those recommendations.

ADV LEBALA: Fair enough. But, my question is, if you look at what you say in page 223. I am taking it, in the context of what you say that there was no political will or little political will, against what General
25 Meiring says. But, paragraph 11, on page 223 informs us, in line with

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what General Meiring says. Let me read, actually line 7 to 10. It says, may I read line 7, if we start from the top paragraph 11:

“Commissioner Meiring agreed to accept the documentation for this purpose.”

5 You will bear in mind that these are documentation directly from Lichtenstein. Am I right, if you look at the top?

COL DU PLOOY: That is correct.

ADV LEBALA:

“He indicated that in accordance with SAPS project management’s approach in this matter, it would be appropriate to make available to the NPA prosecutors in the AFU, copies of the documents.”

I see co-operation and a will to work together. Is that not so?

COL DU PLOOY: It is correct.

ADV LEBALA: Look at the last paragraph, the last sentence on
15 paragraph 12. The last sentence:

“Commissioner Meiring agreed to make such copies available as soon as possible.”

COL DU PLOOY: That is correct.

ADV LEBALA: Now, let us go to JDP, the last one, JDP 45 that you
20 referred us to. If you look at page 227, it is from, it is signed. It is from Advocate Downer SC, the Deputy Director of Public Prosecutions. It is addressed to Advocate M Simelane, the NDPP. Now, something remarkable happens. It appears, at this stage, Advocate Simelane is no longer the Director General. Am I right?

25 COL DU PLOOY: It is now the acting NDPP, or the NDPP. I am not

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sure.

ADV LEBALA: Now, let us look at page 227, paragraph 8. I would like us to look at line 1 to 4 and may I read it to you?

5 *“The issue of the funds, frozen in Lichtenstein bank account, in relation to this matter was discussed, including that the funds were only frozen, until mid March 2010, pending an application, from the RSA, relating to the further disposal of the funds, in asset forfeiture proceedings.”*

Now, this was an ongoing discussion. Am I right?

10 COL DU PLOOY: Correct.

ADV LEBALA: Now, there was co-operation between the AFU, the NDPP and the Director General's office, in discussing the subject, from what I see. Is that not so?

COL DU PLOOY: It seems so.

15 ADV LEBALA: Now, there is a draft letter, the last one, that I think, the Commission should be, attention should be drawn to that seeks to vindicate you. If you look at page, it is annexure JDP 47, page 229. You will see that, I beg your pardon, page 2230. It is acting by the NDPP, initialled MMSC. Are we talking about Advocate [indistinct]? Am
20 I right? Look at page 2230, MMC, at the top, MMSC acting NDPP.

COL DU PLOOY: That is correct.

ADV LEBALA: And you see that it is addressed to the honourable Minister of Justice and Constitutional Development, on page 228.

COL DU PLOOY: Correct.

25 ADV LEBALA: The subject is the DSO Armsdeal investigation, the

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German MLA. Now, paragraph 1 says:

"I refer to a letter, which my predecessor Advocate Pikoli sent to the Director General, the [indistinct] dated 13 August 2007, the copies are attached as annexure a."

5 Paragraph 2:

"The letter explained, inter alia, the pressing need for the Director General to refer the reported German mutual legal assistance application, concerning allegations of corruption, in connection with the Corvettes programme of the Armsdeal, to the DSO for all reasons that
10 *are explained in the letter. One of the reasons for requiring the information is that it appears to relate to the DSO's investigation that was authorised in 2001, concerning this very programme of the Armsdeal. In other words, the DSO was already investigating the subject matter of the German MLA."*

15 From what is being written here, are you saying, would you say that the German Mutual legal assistance was not coming forth?

COL DU PLOOY: That is correct.

ADV LEBALA: Paragraph 3:

"Despite an argument, reached with the Director General, to hold a
20 *meeting, concerning this matter, such a meeting has not transpired and the matter had not been resolved. In the result, the DSO has not been provided with the German MLA, either with a view to investigate in the matter or to assisting the German authorities. I understand that the Director General has since, referred the MLA back to the German*
25 *authorities, with certain queries. I have not been consulted in this*

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regard and I am unaware of the nature of the queries.”

I would like you to turn quickly to the last page, 229. Something damning is being said there. But, for you to appreciate it, let us start in paragraph 4:

5 *“In my opinion, the failure, by any South African investigating agents, who can investigate the reported allegations of grave criminality, committed in our country or that is justiciable in our country is becoming ever more embarrassing. The apparently damning evidence, at the disposal of the German authorities cries out for investigation. The*
10 *failure to do so is indefensible. The fact that the DSO has been unable to obtain evidence from the Department of Justice that apparently relates to an existing DSO investigation, is equally inexplicable and embarrassing.”*

Paragraph 5:

15 *“I request again and most earnestly that the German MLA, together with the DG’s queries should be forwarded immediately to me for onward transmission to the DSO.”*

Paragraph 7:

20 *“Should the German MLA application not have been provided to me, for onward transmission to the DSO, this fact may have to be revealed in application papers, in the interest of all disclosure, as per the application.”*

Now, given this, why was this aspect not mentioned in your memorandum? And, and I am asking, I am asking this, in the context of
25 what General Meiring says. I can see that General Meiring seeks co-

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operation. There seems to be co-operation. Different organs of State are discussing. General Meiring receives the documents from Lichtenstein. He distributes them to the [indistinct], the NDPP. In his view there is co-operation. There is a will to assist. But, there are also

5 letters that demonstrate that there were [indistinct], permit to use this expression, in teaming up to provide this MLA. But, something significant does not gel here. You do not mention this, at all, in your memo, to General Meiring. In his memo to General Dramat, to stop the investigation, this issue does not get mentioned. Before testifying,

10 either there was political will. Or there was no political will. Or there was little political will. Your senior says, there is no way, in which you could say, there was little or no political will.

COL DU PLOOY: Honourable Chair, to answer the question, I just have to give you a brief overview of where these documents come from.

15 The last document, it seems of, it is number 2228. It is not necessarily in the same, or in the correct sequence of events. But, where, if you look at page 2227, if I remember now correctly, it is mentioned that the AFU have received copies of the Lichtenstein documents from SAPS and was preparing [indistinct] application in terms of POCO. At that

20 stage, if I remember correctly, they had a meeting. The Lichtenstein information was sent to us, from the judge in Munich. But, they could not take the investigation in Lichtenstein any further and they will send the documentation to South African authorities. When we received those documents and, as I remember, it was given to the AFU, because

25 one of the Advocates there, could speak German. It would take a long

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time to translate these documents. What happened then was, eventually it has in, I think, in one bundle, the volume five of, I think it has Downer's application there, for the restraining order in Lichtenstein, for accounts that they are to Mr Hlongwane. An affidavit is also attached

5 to that and where she tries, well not tries, where she translated some of this Lichtenstein documentation. Through that, I obtained an order that is also attached to the bundle and a specific, I am not sure if it was a preservation order. But, I obtained an order from the judge, here in Chambers. But, that order was then withdrawn, by Advocate Simelane

10 and as I understand that he has also written his views that I attached. But, it was after a meeting that the AFU, Advocate Hofmeyer and the NDPP, Advocate Simelane had, with Mr Fana Hlongwane, with his legal representative, then Mr Stockenstrohm, as I understand also Advocate Jaap Cilliers. I asked for [indistinct]. It is all in the bundle. I was not

15 invited. Afterwards, as I state in my affidavit, afterwards, I heard what happened there. The, after Mr Hlongwane then in that meeting gave an explanation and it was accepted, that explanation, according to the NDPP. But, then, to come go back to why I did not mention it to Meiring of all this political will, so I am just trying to put that memorandum in

20 context of what transpired afterwards. When I explained to General Meiring, I informed him of all this. Not on a daily basis, but on a regular basis, what is happening. As I stated, I had the perception, I came to the perception, or in my head felt that there is no political will. Because the moment I feel we are going forward, we are going one step back.

25 Therefore, when I discussed it with General Meiring he said that we

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should not include that in the memorandum, that we must stay with investigative reasons. I abide by that request, because that, as I said before, the reasons in that memorandum are not wrong. It carries more than enough weight and is understandable by those reasons,
5 investigative reasons, to close the matters.

ADV LEBALA: Ja. But, something remarkable happens here. This annexure ...[intervene]

CHAIRPERSON: Advocate Lebala. Let us go to [indistinct] how do you know [indistinct] to respond to, responding to the letters here
10 ...[intervene]

ADV LEBALA: Thank you.

CHAIRPERSON: [Indistinct] let him respond to that.

ADV LEBALA: There is a last point on this point, Chair. And very quickly, if you permit me, I will go to the next point. This is a draft letter
15 to the Minister and it is not signed. Do you know, whether it was signed or not? This is a damning letter that clearly signifies lack of political will. It is not signed. It is headed a draft letter to the Minister. In all fairness to you, one sees bright lights that there was no political will. Now, this letter, was it signed?

20 COL DU PLOOY: I do not know if that letter was sent eventually. Because how it worked was, when we draft a letter, it normally will be by Advocate Downer. He will circulate many of the correspondence to us and the rest of the team. You must remember he stayed in Cape Town. Advocate Steynberg was staying in Durban and I am in Pretoria. But,
25 some letters like this, he would send to the NDPP for signature. Those

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document that were signed, will be then, be at the NPA office, which I do not have control over. There are some versions then, like, the NDPP or so sign, it does not come back to me, to keep in my correspondence files. Thank you.

5 ADV LEBALA: Has General Meiring seen this draft letter?

COL DU PLOOY: I do not ...[intervene]

ADV LEBALA: Have you enquired, before you came to the Commission, as to whether there is a signed copy?

COL DU PLOOY: I did not enquire, but I could not, a while ago, I was
10 requested by the NPA for certain documentation in the application from the DA, regarding, I think, the spy tapes and they requested me. When I also could not find certain documentation that they requested from me, I informed him and I went to the DGM building of the NPA. Where I knew, they kept all those specific documents, in the days of Leonard McCarthy.
15 That office and I asked the people there, where is the documentation? It should have been in this. They could not answer me. Therefore, I could not find it then. So, I saw no reason why I should now try to find certain documents. But, then, why do you attach it? The letter goes to the political head, to signify that there was no political will. That bodes well
20 in your favour. But, it is unsigned. It is a free floating letter. It is draft. Why does it get attached, if it does not carry weight? What are we trying to demonstrate?

COL DU PLOOY: I am trying to demonstrate and as I stated yesterday, there is, I understood my, the reason for me, for the
25 Commission is to bring to them the necessary or information, under my

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control or that I could find that it may assist the Commission, in making a finding, in, according, in terms of their mandate. Some of the documentation, as I indicated, in my affidavit, I was not privy to these documents that they just found. I cannot testify to the, to the contents
5 even, or, but it is documents that were sent to me and therefore, also that Advocate Downer can maybe shed more light on the meaning of these documents. Because there were documents that either way involved Advocate Steynberg. But, your question is why it is for me, just in short, to try to explain, to show the Commission that all of these
10 things happened. It is for them, to make a decision, as I stated yesterday, on what [indistinct] Chair, I am just trying to help the Commission, assist the Commission, in coming to some decision, on how to go, the way forward.

ADV LEBALA: I want to take you to the testimony of Christine, it is
15 French, but looks German or Spanish. Is it Guerrier? I remember that we do not pronounce the last, the words. I am twitching my tongue, Christine Guerrier, the in house council of Thales, who testified on the 26th of March 2015, in this Commission. What she did, she attached an affidavit of Alain Thetard, the Director of Thales International. Of course,
20 Alain Thetard is known to you. Am I right?

COL DU PLOOY: That is correct.

COMMISSIONER MUSI: Can I, can I interject, before you proceed further, Advocate Lebala? I just want to get Clarity, this letter, this draft letter, supposed to have been written by Advocate Mpshe, but I seem to
25 hear you to say that the author is actually Advocate Downer and not

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Advocate Mpshe. Is that correct?

COL DU PLOOY: Honourable Commissioner. Yes. That is what I will assume, because that is normally how we, how we operate. It was that the prosecutor will draft the letters and normally, then the NDPP for
5 signature, if he is satisfied. Otherwise he will send back or make changes, but at least there is a draft for him to work on. Then, either sign or make the necessary changes, as he deemed fit.

COMMISSIONER MUSI: And it would appear that Advocate Mpshe, then have signed the letter and forwarded it, to where it was intended to
10 go.

COL DU PLOOY: Honourable Commissioner, I am not sure if he did sign it, in fact, which I could not hear you perfectly.

COMMISSIONER MUSI: So, you were not sure whether he did sign the letter and whether, in fact, it went to the Minister. You do not know?

15 COL DU PLOOY: I do not know. I would not say.

COMMISSIONER MUSI: Thank you.

ADV LEBALA: Thank you, Commissioner Musi. As I have said earlier, I wanted to draw your attention to the testimony of Christine Guerrier, who attached the affidavit of Alain Thetard and you have just testified
20 that Alain Thetard is known to you. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: I just want to speed things up, by just going to the relevant portions, that you would maybe appreciate, why we are going to ask you the questions that we are going to ask you. In page 73 of Alain
25 Thetard's affidavit, which has been attached to Ms Christine Guerrier's

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testimony and statement, before the Commission, the following is being said, paragraph 5:

“I relocated to Port Louis, Mauritius during the third quarter of 2000, to take up a position as an officer of Thales International Africa LTD. I was, however, still responsible for the affairs of the second and third accused. I remained a director of these two companies until approximately 30 January 2002.”

I am certain that this information, you do know it. Given your investigative instincts and powers and duties that you did, during President Zuma’s, I mean, Mr Shaik’s, I beg your pardon, Mr Schabir Shaik’s criminal trial. Am I right?

COL DU PLOOY: That is correct.

ADV LEBALA: Paragraph 6:

“In my capacity, as director of the third accused, I was summonsed, pursuant the provisions of Section 38 (6) of the National Prosecuting Authority 1998, ‘the NPA Act’, to appear at an enquiry, before the investigating director on 13 June 2001.”

You know of this fact also. Am I right?

COL DU PLOOY: Honourable Chair, as you know, I was only appointed on August 2001. But, I do know about the subpoena.

ADV LEBALA: Let us go to page 74 of those index and paginated papers, paragraph 8 of Mr Thetard’s statement. Would I read it to you?

“Advocate William Downer SC ‘Downer’ the lead prosecutor in the criminal trial against Mr Jacob Zuma and the second and third accused, was present at the enquiry and he did most of the questioning of me.

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Downer put various questions to me, during the course of the enquiry, which questions I answered truthfully. I returned to Mauritius, shortly after having given evidence of the enquiry.”

Were you aware of this questioning by Advocate Downer of Mr Thetard?

5 COL DU PLOOY: I only heard about it later and after I was appointed.

ADV LEBALA: Now, I would like to you to nub of why I am reading this affidavit to you. Now, in paragraph 43 of the self, same affidavit, Mr Thetard says the following. I beg your pardon. Let us start, let us [indistinct] and start on paragraph 42, page 85 of those indexed papers.

10 *“On Saturday, 19 February 2005, two days after the State had closed its case, the State applied to the Durban and Coast Local Division for a warrant for my arrest. I attach a copy of the Warrant, marked AT 4”*

But where this is State case against Mr Schabir Shaik. Am I right?

COL DU PLOOY: That is correct.

15 ADV LEBALA: Paragraph 43:

“It takes little imagination, if any, to arrive at the conclusion that the State considered that I could well be useful, be a useful witness for Shaik, especially if I was going to repeat my explanation, regarding the ‘encrypted fax’ as set out, in my second affidavit. Du Plooy must have realised this, hence his averment in paragraph 11 of AT 1 that ‘Thetard was intent, in his second affidavit, on attempting to sabotage the State’s case in this matter.’”

Let us go to paragraph 44:

25 *“It is not inconceivable and appears most likely that Du Plooy believed that I was the witness, whom Shaik’s council wanted to consult*

in Pretoria.”

Here comes the nub, why we want to pose a question to you. This is paragraph 45, page 86 of the index papers:

5 *“The sudden need to apply for a warrant for my arrest under the circumstances, set out above, was at the very least questionable and smacked of an attempt to prevent me from testifying to anything, which might have harmed the State case against Shaik.”*

Do you understand the themes and what Mr Thetard is saying?

COL DU PLOOY: I do.

10 ADV LEBALA: Do you want to respond to that?

COL DU PLOOY: Yes, please.

ADV LEBALA: Proceed.

COL DU PLOOY: I would like to, just to give a little bit background and I, if I can read from an affidavit that I did not attach. The Thetard aspect, I did not attach in my bundle, or refer to that, because I was not sure, if
15 it was necessary. But, on Sunday, I was informed, by the evidence leaders and I was shown the document with, or this specific document and I was asked if I could comment. To comment, I just want to refer to this affidavit that I did the application for the, ag, the arrest warrant that
20 he referred to, during the Shaik trial. Just give me a moment. On 2 October I did the warrant of arrest for Alain Thetard at the Pretoria [indistinct].

CHAIRPERSON: Advocate Lebala, are we still dealing with the issues, which are relevant, in terms of this Commission? Or are we dealing with
25 something outside our terms of reference? I am not quite sure, which

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point you are trying to make. I think, if we can just help each other here, whether are we still within our terms of reference?

ADV LEBALA: Colonel, perhaps if you had not responded to this question. I think there are two important questions that you could
5 answer on the terms of reference. The relevance of this, actually makes us to abandon one or two things, based on what Mr Fana Hlongwane testified to, before the Commission. So, let us not pursue this. Maybe I should go to another line of questioning. I want to take you to the containers now.

10 COL DU PLOOY: Sorry?

ADV LEBALA: I want to take you to the containers. General Meiring testified before the Commission that the containers were dumped and he was asked why he said so. He said that there was no pagination and an index. Do you agree?

15 COL DU PLOOY: Before I answer. I would just like to come back to that question, because it is inside his evidence on record, and regarding Thetard, that is not true. If I am given an opportunity, I would like, just to put it in context. Because what he says, in his affidavit, Mr Thetard, is not the truth. I just want to put that on record.

20 ADV LEBALA: Thank you. Actually, its relevancy would have been born by an incremental question. But, we realise that we have to remember the terms of reference, at all times. Now, is it true that you made submissions to this Commission, before you came to testify? I am not talking about your statement.

25 COL DU PLOOY: But, can I just ask? But, they were allowed, upon,

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the French, as I understand, were allowed to hand in this document, regarding that. But, I am not allowed to put it in perspective.

ADV LEBALA: I think, we have parted ways, with that question. Let us forget about it. I am not even going to demonstrate anything about it. I

5 am happy that you did draw my, the Commission's attention that we did discuss it with you, before the, we brought it before the Commission.

The Commission reminded us that is it relevant to the terms of reference? We could demonstrate to the Commission that it is. But,

there are better questions that we could ask, because we want to close

10 our line of asking you questions, shortly. Shall we proceed, please?

COL DU PLOOY: [Indistinct].

ADV LEBALA: Now, before you came to testify and before you made the statement that is before the Commission, you made submissions.

Am I right?

15 COL DU PLOOY: Please explain those submissions?

ADV LEBALA: It means, you made a statement, other than the statement that is before the Commission.

COL DU PLOOY: I understand. I thought you were referring to previous presentations, by the, yes, it is true.

20 ADV LEBALA: Now, that statement accompanied some documents that you supplied to the Commission, at the beginning, before the Commission's hearing started. Is that not so?

COL DU PLOOY: That is correct.

ADV LEBALA: We know that you have also made a statement before
25 this Commission and you have also attached documents. Am I right?

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COL DU PLOOY: It is correct.

ADV LEBALA: Are these documents that you made before you came to testify, when you supplied documents to the Commission, in the beginning, including these documents that are before the Commission in
5 your statement, part of the documents, which are in the containers?

COL DU PLOOY: Parts are in the containers and many of the documents are, like scanned documents on my computer, or word documents on my computer. That is not necessarily in the container.

ADV LEBALA: So, am I right to say, the documents initially, that you
10 gave to the Commission, together with that statement, together with the documents, accompanying your statement, were retrieved from the containers?

COL DU PLOOY: I handed the Commission of access, I had access to the containers. Then, also, I handed a hard drive with all scanned
15 documentation and other documents that were created on computer related electronic documents, for the Commission.

ADV LEBALA: Do you feel and sense that the documents that you gave to the Commission, in the beginning, when you made that statement and the documents that you have just given to the
20 Commission now, accompanying your current statement? Given the fact that you have been the investigator for almost how many years? 10 or 15 years, are going to assist the Commission?

COL DU PLOOY: I, you use the word gave. I just made the documents available, because the containers have too many
25 documents, to make copies and to hand them to the Commission. I

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know that there is some part of the BAE seized documents that were given to the Commission for perusal. That I had, since 2012, access to the documentation. You mention that 10 or 15 years. Although I was the investigating officer on the Armsdeal, you must remember that I only
5 investigated from 2001 August, the specific part of Schabir Shaik. Then, it ran over to President Zuma. Only in 2008, I actually started with, end of 2008, really started with the BAE. That part was also, the BAE investigation was in at least, baby shoes. Although it was there from 2000, you must remember, when the [indistinct] send, there in LA the
10 information we received, then I only got really involved. The same with GFC, which not really ever started, because we were waiting for, I think, in LA, for the Germans to try and locate that. Then, I think, [indistinct] opened the matter in November 2000 [indistinct] he opened the matter. So, to answer and say that all the documentation there is sufficient or
15 not, it is difficult to say, but that there is information of a crime. The only information I know of, that is there, in one container and that I investigated. I was part of team investigators in the matter of Schabir Shaik and President Zuma [indistinct] his case. The other documentation is available. But, I cannot say exactly what each and
20 every document means there.

ADV LEBALA: Now, my question is simple. You have started investigating in 2001 and we know that the investigation rendered, was stopped in 2010, whilst you have been investigator approximately 10 years or nine years. Am I right?

25 COL DU PLOOY: I did you hear you say about nine or 10? What did I

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investigate, 10 or nine years?

ADV LEBALA: You started the investigation in 2001 and the investigation was stopped in 2010, which means that you have been investigating approximately nine to 10 years, to be precise nine years.

5 Am I right?

COL DU PLOOY: But, that is now, in respect of which part of the Armsdeal? I did not investigate the whole Armsdeal for those 10 years, because seven years of that was the Schabir Shaik, Jacob Zuma.

ADV LEBALA: Fair enough. Let us make it seven years, five years,
10 three years. Or look at it, between 2001 and 2010. It is up to you, what figure do you want to put. But, we know that you investigated. Now, my question is, you having been the investigating officer, are you able to tell this Commission that the documents that you have provided to it, in the beginning, when you made those submissions or statements and the
15 current documents that you have just submitted now, do satisfy you that they will assist this Commission?

COL DU PLOOY: I believe it can assist the Commission. But, if I listen to the terms of reference, yesterday and how it is interpreted. As I stated yesterday, there is, I do not have any proof of a prima facie
20 matter in respect of any government official that would have influenced the awarding of the main contracts. But, what I do have, where I can assist the Commission, as I say, is, there is a lot of, there are many documents that, the documents, it shows that there are red flags, as Advocate Lebala yesterday mentioned, a lot of red flags that may be
25 followed up. But, I am not sure, if it is the Commission's mandate, to

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institute or to recommend that a further investigation be instituted. If not there, I am not sure if there are many documents, in terms of that mandate that can assist.

ADV LEBALA: Now, I am talking to you, in your capacity [indistinct] on,
5 as the investigating officer. We know that we cannot be able to [indistinct] that you have investigated for six years, seven years, eight years, nine years. But, we know that it was between 2001 and 2010. You approximate for six years. All that I want is, for you to be able to say, with your head held high, that the documents that you have brought
10 before the Commission, in as far as you are concerned, you, yourself, as the investigating officer, would assist the Commission, to discharge its mandate, only those that you brought. I, we, there might be other documents. We know that documents have been dumped. We know that they have not been indexed and paginated. For instance, we took
15 some witnesses through some documents, they you have not attached. I mean, my team took middle officers, through documents that you have not attached.

COL DU PLOOY: I doubt that the documents will assist them, that I have here in the, in the bundles in the mandate. Because we could not
20 retrieve the documents, from overseas, that we believe that is important. But, to answer, I understand your question was the documents that are here and as I understand the mandate now, of the Commission, the documents you have, I doubt that it will assist.

ADV LEBALA: Now, you are changing. I am confused. You are
25 saying two different things. Initially, you said they will. Now, you are

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saying, because there were documents that could not be retrieved overseas, you think that these documents that are before the Commission that would, that would not assist. Now, which one is correct, because you are giving me two versions?

5 ADV PANSERGROW: Sorry, Mr Chair, might I be allowed to just raise a point here, if it so pleases the honourable Commission? Thank you, Mr Chair. Mr Chair, the way I understood the evidence of Colonel Du Plooy to have been, it is not that it is a contradiction. But, that Colonel Du Plooy has indicated that he has brought all the documents to the
10 honourable Commission, to assist the Commission, as far as, he is only the messenger and he has not investigated everything. To now, confront Colonel Du Plooy, by saying he is giving a contradictory version, cannot be correct. Because he is now being asked questions, whether it will assist the Commission, which is placing him in the
15 unenviable position, of trying to put himself in the shoes of the honourable Commission. That is very definitely not a fair question. With respect, it appears to me, unless I am mistaken, it, respectfully submit, I am not, that my learned friend Advocate Lebala, is perhaps not correct in the question, which he poses to the witness. It is not fair. I
20 respectfully submit it is not [indistinct]. Thank you, Mr Chair. Much appreciated.

COMMISSIONER MUSI: Can I, can I chip in and I think, I agree with you, because I think, all that the witness did, was to bring to the attention documents that he thought, might assist the Commission.

25 ADV LEBALA: But, Chair and distinguished Commissioners, I am

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taken aback. This witness is an investigating officer. Experienced, you have heard even his senior, General Meiring, saying, in actual fact, if you want to talk about the investigations, the person better qualified to talk to the investigation is this witness. Now, this is a witness with
5 [indistinct] to bring all the relevant documents before the Commission. Now, a question is simple. For instance, the allegations that, we, as evidence leaders, shall we say, we are lazy. We do not want to go and look at the containers. Why should we go and look at the containers, if we have managed to lead evidence, up to so far, on all the relevant
10 issues and the terms of reference? Why should we go and look at the containers, if this witness, who investigated ...[intervene]

CHAIRPERSON: Advocate Lebala, if I can interrupt? I understand what you are trying to establish. If you do not mind, can you rephrase the question? Can you rephrase the question?

15 **ADV LEBALA:** Colonel Du Plooy, given what you have testified, up to so far, with your experience, as an investigating officer, particularly, having spent a period, spanning from 2001 to 2009, in the investigation of the arms procurement strategic packages. I am saying that, the team of evidence leaders still have to go to the containers. Now, given what
20 you have said, up to so far, bearing in mind that we have brought several documents before the Commission ...[intervene]

COL DU PLOOY: Honourable Commissioner, yes, I understand the question now better. It is difficult to here say, yes, you know, because for me, I am just the investigating officer. It is for the Commission to
25 decide and make a decision on the documentation, I have put in front of

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him that is part of this bundle, as well as the documentation in the containers, that has been to the disposal for the past years. It is not for me to say, yes or no. I am not trying to interpret the mandate or the terms of reference. I am not going to go that far then. For me, as I see

5 my role is, to come here to say, this is what documents under my control. This is what, there is a summary of some of the information. There may be documents there, in the container, especially, maybe BAE. I went through it. I perused it. The SFO perused it. We did not find anything specific there, significant in those documentations. But,

10 then, you must understand or remember also, the day of the searches, lots of documentation, the morning, before we searched, was taken away from Fana Hlongwane's business. We have an affidavit to that effect. I do not have information [indistinct]. But, when we went into the offices, big files were removed. We had difficulty to gain access to his

15 house. But, to answer you, for me, it is for the Commission to decide. All I am saying, all I am doing here, is to say, this is what I have. The evidential value, it is up to the Commission, if they can use it or not. But, as investigating officer, I am trying to say, this is everything, or most of it, or some of it that I could lay my hands on, in a short period of time

20 and that I think, need be, will assist the Commission, in their decision.

ADV LEBALA: Should the ones that you brought before the Commission, are they specifically significant and important to assist the Commission, in as far as you are concerned?

COL DU PLOOY: Yes. From my perspective.

25 ADV LEBALA: Do you agree with General Meiring, when he says that

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the documents were dumped and they are not indexed and paginated?

COL DU PLOOY: The word dump maybe that is a very strong word.

But, it, we, all of it was in strong rooms, safes, in three different safes.

Due to the change to the SAPS, they took DSO, Gauteng offices

5 [indistinct] and getting sorted, or being filed. I had to move these

documents, the containers, to make space for the SAPS. It is in the

containers and there are shelves in the containers, where it is being put

there, for lack of a better word. Well, and then, but the numbering of the

documents, what happened was the BAE, it is very difficult, where we

10 started to number it, where it is a long process. To give you an

indication, after the Schabir Shaik searches in 2001, it took me six

months to index and number the documentation and to make the

necessary copies, because you are working with copies, not with the

original files. Each and every document that you see gets a number and

15 it is the same kind of number that I have stamped on my affidavit and

my bundle. So, that is how it was. With the BAE, we got busy, trying to

index it, or not necessarily index, the numbering, but then, also scanning

process has to be conducted, after the, and that can take easily, with all

those documents, up to, up to a year. But, there were lots of pressures

20 and taking into consideration all the other difficulties, I previously

testified about, taking a heist and all that and things that kept me busy. I

will not say it was done, but it was, put everything in a container, for

safekeeping.

ADV LEBALA: General Meiring further said that, because the

25 documents are not indexed and paginated, it would be difficult to

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retrieve information. It makes it more difficult, because, as I always say that it is, the documentation, in respect of the case that I was involved in this, Schabir Shaik again and the President Zuma matter. Everything was indexed, numbered and also scanned and OC parked. By that I mean, you can search, everything is then put on your computer and you file, want to search one document or a name, I can immediately retrieve all the documents. I had a search engine, DT search. Also, all the documentation that was retrieved, via computers, we have millions of documents. So, if I key in a name, it brings up all the documentation. It makes my searches much easier. But, in the BAE matter and GFC and the others, all the other investigations, that was not the case. When I had to prepare, I agree with General Meiring, it is very difficult then, to go and find a specific document. Therefore, as I said, I did some searches on my computer and I could have missed also, some of the documentation that may have been also of assistance.

ADV LEBALA: I just want to ask you three remaining questions. I know the Commissioners have indulged with us.

CHAIRPERSON: And how long are the last of your questions, are you talking of. Because I see, yesterday, you said to me 35 minutes. I thought that we are going to adjourn now. I see you are going for the second hour.

ADV LEBALA: Chair, I have learnt to mislead people, since I joined this Commission, particularly yourselves and I apologise, especially on time factors. I apologise to you. You have testified that there were different teams, in investigating these legs. The advocates, who were

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part of the teams, actually were trained to investigate. Am I right?

COL DU PLOOY: I will not say trained to investigate. But, they undertook a more investigative role, at the DSO, than I would say, maybe in the normal terms of the SCCU.

5 ADV LEBALA: So, they were qualified to investigate.

COL DU PLOOY: They were qualified to investigate.

ADV LEBALA: Do you know that there are critics of this Commission. Am I right? If you do not understand, I will repeat my question. If you do not understand what I mean by critics, I will also qualify. You do
10 know that there are critics of this Commission. Am I right?

COL DU PLOOY: Only what I may have read in the newspapers. But, I do [indistinct].

ADV LEBALA: I am talking about those, who are commentators, those who are authorities, or unless, authorities on various subjects, in as far
15 as arms procurement is concerned.

COL DU PLOOY: Are you saying, you are talking about the Commission now, or the whole Armsdeal?

ADV LEBALA: I am talking about the Commission, in the context of the Armsdeal. I am talking about the Armsdeal, arms procurement,
20 arms procurement packages, in the context of the Commission. Now, I am talking about the critics, who have written books. Who have made comments about arms procurement, in the context of this Commission.

COL DU PLOOY: Yes. I know about people or individuals that have been, that are criticising the investigation of the Armsdeal.

25 ADV LEBALA: No. I am not even conditioning them, as criticising the

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investigation of the Arms Procurement Commission. But, let us be specific. Do you know Mr Andrew Feinstein?

COL DU PLOOY: Yes.

ADV LEBALA: Mr Paul Holden?

5 COL DU PLOOY: I do not know him personally, but Andrew Feinstein personally, I know, because we met him in London, on trying to obtain an affidavit from him. But, we were unsuccessful. I think, it was in 2004, if I am not mistaken. But, Paul Holden, no, I only he has, he wrote a book.

10 ADV LEBALA: So, you do know about Mr Paul Holden, but you know Mr Andrew Feinstein personally.

COL DU PLOOY: Ja. As I said, I met him, but not like in personal person.

ADV LEBALA: Mr Van Vuuren?

15 COL DU PLOOY: Which Van Vuuren? He is the one from the security ...[intervene]

ADV LEBALA: Let us confine ourselves to, for the moment, Mr Andrew Feinstein and Mr Paul Holden. In your investigative functions, did you consult with them?

20 COL DU PLOOY: As I said, I tried, we tried to consult to, with Mr Andrew Feinstein. But, my memory, I cannot remember if he, he did even show up, or not. But, what I do know is that we were unsuccessful in obtaining an affidavit from him. But, I was involved.

ADV LEBALA: Do you think, the testimony was going to assist the
25 Commission. Do you think, am eliciting your opinion and you will

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understand, your opinion may not matter. But, you will understand where I am going. Do you think that testimony was going to assist the Commission, bearing in mind that you struggled to get hold of both of them, or one of them?

5 COL DU PLOOY: I think, Mr Feinstein and Paul Holden, he was not part of anything that I know, why you would have wanted to talk to him. He did not say anything. The only reason, as I remember and I am talking from my memory is that Mr Feinstein was at SCOPA and we needed some, of what happened there, at SCOPA, with that
10 investigation. Because I think, the, actually what was referred to SCOPA and so on and we, there was what we wanted to talk to him, what happened there, before he left.

ADV LEBALA: Did other members of your teams talk to them, in their investigative capacity?

15 COL DU PLOOY: It is possible that Advocate Downer, may have spoken to him. If I put it correctly, I think, he spoke to him, on the phone and via email and I know they had more of a relationship than I had [indistinct].

ADV LEBALA: Are there any reports, prepared in that regard?

20 COL DU PLOOY: Not that I know of.

ADV LEBALA: Why is that so? Having consulted with one of them.

COL DU PLOOY: You use the word consult, consult is where you and I might have use, when I consult, I sit down with that person and I ask him questions and he answers and I ask him again questions. That is
25 consult. For just talking to someone, maybe you ask him, will you be

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willing to talk to us? Will you come forward? The question, it is not necessary a consultation, that is just an invitation.

ADV LEBALA: So, you went all the way to, is it London?

COL DU PLOOY: That is correct.

5 ADV LEBALA: What were you going to do in London?

COL DU PLOOY: We went to London and also to France and to Switzerland, to obtain evidence from witnesses, to assist. What happened in London was, as I explained yesterday, and I am hoping, now again, another part is like, when you look at the KPMG report, it is
10 the other aspects that we had to talk, or obtain affidavits from people overseas. We even went to Malaysia, to obtain affidavits from people there, that would have invested in South Africa, where Schabir Shaik and Nkobi Holdings was, was involved. Like for instance, Malaysia is Wilson [indistinct]. We were in Nebraska at this professor at the
15 university. So, it is for instance, not part of this.

ADV LEBALA: Actually, I want to focus on Mr Holden and Mr Feinstein. What would you do, if say the evidence was going to assist the Commission? Because I am sensing that you do not think their evidence was going to assist the Commission and I will tell you why, if
20 you want us to debate it, because what they have done much more. What would you do, if you say, that their evidence was going to assist the Commission?

COL DU PLOOY: I do not know, if it will assist the Commission. All I know is that while we investigated, we wanted to get his version,
25 regarding that period of the SCOPA period and what happened there, if I

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remember correctly and that is it. I do not know if it will assist. I cannot comment.

ADV LEBALA: Why do you think, their evidence will assist the Commission and I agree with you? This team agrees with you. I do not
5 know what the Commission thinks. But, this team thinks they will not assist the Commission. Why do you think, they would not assist the Commission?

COL DU PLOOY: I did not say will. I say I do not know. So, I do not know if it will. I cannot say it will or it will not.

10 ADV LEBALA: Let us be specific. Do you think they will assist the Commission?

COL DU PLOOY: Again, I do not know.

ADV PANSENGROW: Sorry, Mr Chair. I beg an indulgence to perhaps interrupt again, if the honourable Commission so allows me.
15 The witness leader is repeating the questions and the witness has repeatedly answered the question. The witness is trying to answer truthfully. He stays with his version. But, there seems to be an attempt to bring him onto the field of speculation, which is not going to assist the honourable Commission, with all due respect. How should this witness
20 know, precisely what that person, whom he wanted to see, would be able to convey. Then, also, in the second instance, how do we know, at this stage, if that would have assisted the honourable Commission. The witness has testified about it. He has answered it. With all due respect to the honourable witness leader, it is done and dusted. We are wasting
25 time with this. Thank you, honourable Chair and Commissioner.

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CHAIRPERSON: Thank you. I do not quite agree with your objection.

I think, I am going to allow Advocate Lebala to continue on that question, because we also just want to know, whether those people would have assisted the Commission or not. He is an investigating

5 officer. He knew why he wanted an affidavit from them. He had investigated. He went up to London, also trying to get an affidavit from Feinstein. We want to know, whether these people offered him the information that he gave, whether there are things that Mr Feinstein would have assisted about. I am not quite sure what the answer is now.

10 So, Advocate Lebala is entitled to continue this cross-examination. We also want to understand that. I am sorry, not cross-examination. He must continue trying to find the answer, which we all understand from this witness, as far as, particularly as far Mr Feinstein is concerned. He wanted to take an affidavit from him. If he wanted to take an affidavit

15 from him, or there were certain things that wanted from him.

COL DU PLOOY: Honourable Chair, thank you. I do understand now, from, in respect of the questioning. It is not a problem. I will have to, that was in 2003, 2004. I cannot from the top of my head, remember specifically. I will have to do some research on my computer, to can see

20 what the reasons were what specifically we wanted from him. Because, you must understand that, you know, as soon as he said, no, or he is not going to assist, it is like going out of your head. So, I will have to need time, to go and research that and come back to the Commission to answer that.

25 CHAIRPERSON: So, if I understand you well, you tried to get him, to

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give an affidavit and he said, no. He refused to give you an affidavit.

COL DU PLOOY: Honourable Chair, that is how I remember it. We did not receive any affidavit from him.

CHAIRPERSON: Thank you.

5 ADV LEBALA: The last question on this is, am I right to say, you did not pursue him vigorously?

COL DU PLOOY: We tried, if I remember correctly. But, it is difficult for witnesses, even if you compel a witness in, according to the Criminal Procedure Act, 205, and even in our, in the NPA Section 28 and they did
10 not want to divulge the information. Then, they [indistinct] normally a selective amnesia and they just cannot remember and they also not want to call a witness to a stand at his cost. It is not always good for you. But, that was a decision from the prosecutors to do that, or not.

COMMISSIONER MUSI: If I understand, in a nutshell, he did not want
15 to co-operate with your investigations.

COL DU PLOOY: That was my perception of it, honourable Commissioner.

ADV LEBALA: Now, as investigating officer, were you aware of the book, were you aware of the books they have written? I am talking
20 about Mr Holden and Mr Feinstein?

COL DU PLOOY: Yes. I am aware of that.

ADV LEBALA: Were you interested in reading them?

COL DU PLOOY: I have read Mr Feinstein's book many years ago.

ADV LEBALA: Did you pursue him and ask where did he get this
25 information from that is contained in his book?

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COL DU PLOOY: I did not really pursue him. But, in my own mind, I was not satisfied or happy, with the fact that the contents of the book and what was written in the newspapers about the book. I felt that why did he not give that information today or, yes, then we wanted or
5 immediately his assistance or his views and bring the truth out there? Because we are, we do not see this as, we tried to hold this case, just from the one side, because we were after the truth. At the end of the day, we are trying to put the truth in front of the court. I was, a bit, in myself unhappy with the fact that now he is writing a book and he should
10 have assisted us maybe. But, what his reasons were and all that, I do not know. But, I am willing to say that that was my internal thing, my perception.

ADV LEBALA: Now, Sir, have you shared by some of, members of your teams, who were investigating the arms procurement strategic
15 packages?

COL DU PLOOY: My colleague, Isak Du Plooy, we discussed it and we felt the same way. But, we did not really discuss it with Advocate Downer and his kind, because it was water under the bridge.

ADV LEBALA: So, there is no report, in fact, on what your team has
20 read, or what you have read from the books of Mr Holden and Mr Feinstein.

COL DU PLOOY: No.

ADV LEBALA: In the context of the investigating, investigations, in as far as the arms procurement strategic packages are concerned.

25 COL DU PLOOY: No. I do not know, if the case would have pursued

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against President Zuma, if the prosecutor would have decided to, then again pursue Mr Feinstein, to obtain an affidavit for those purposes. I do not know.

ADV LEBALA: But, I will tell you why, I have been asking you these 5 questions. It appears that, correct me if I am wrong. Your team and your staff, at one point or the other, came to the conclusion that what you have read in the books was not going to assist the investigation.

COL DU PLOOY: No. I never looked at it in that way, to read the book and then to say this will assist us. No.

10 ADV LEBALA: I will tell you why, because if there was something diligent, as your teams were, the good that they were producing. Advocates were investigators, qualified to investigate, a report would have been prepared, if, if something came out, from these books, when you were investigating.

15 COL DU PLOOY: My recollection is that, when we wanted his assistance, it was before he wrote the book. After he had written the book, that is what I said now, it was still a question of, will he assist. But, according to my memory, in the beginning, in the Schabir Shaik trial, it was of some importance for us to obtain an affidavit from him, or 20 to get his version that transpired from the SCOPA, in those days. As I said, I will have to do some research, to give more detail. Then, the book was, there was no co-operation, then the book was written. So, I do not know if Advocate Downer, at that stage, felt that, because we have not discussed the list of witnesses that we were going to call 25 specifically. Or I was informed by Advocate Downer or Advocate

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Steynberg to try and obtain affidavit again from Mr Feinstein. So, to answer you, the book, for me, I doubt if it played any role, because, when we follow up on evidence for trial, it is not necessarily taking a book for, and to follow up on certain things. In certain circumstances, we do that, but in a certain [indistinct] it was there. We knew what we wanted by [indistinct].

ADV LEBALA: Do you agree that if anything was that important, in as far as the writings of Holden, of Feinstein are concerned, or in as far as that, which the investigators wanted to sort from the most important, there would have been a statement or a report to that effect?

COL DU PLOOY: I am not sure I understood the question. Can you just repeat?

ADV LEBALA: If Feinstein's evidence, testimony, whether written or not, was important, if Holden's evidence or statements, were important, whether written or not, if their evidence was important to the Commission, there would have been a statement or report on that. Do you agree?

COL DU PLOOY: As I said, in 2004, we wanted a statement from Mr Feinstein, when he was in London. It is not like in South Africa, where you can compel someone, via Section 28 or a Section 205 of the Criminal Procedure Act. So, we were absolutely relied on his willingness to see us. He did not even give us some, that necessary co-operation. Holden I do not know. I have never spoken to him. I do not know what he is saying. I have no idea what is his, his link to the Armsdeal. I do not know him.

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ADV LEBALA: I have seen reports and statements that shows that
MLA's were important ...[intervene]

CHAIRPERSON: No. I am sorry, Advocate Lebala. I know, that you
know, normally, when you escalate, you are not that accurate. I am sure
5 it will not be that bad. I see it is already two hours now, you [indistinct]
35 minutes. Now, how long do you think, you still need to [indistinct]
with the witness?

ADV LEBALA: My questions are in heads. I have one last question on
payments and one question on the ADS, one question on payment, one
10 question on the ADS. I do not know, whether there will be incremental
questions from there. It means, I have two headings and my questions
are headed, one is ADS. The other is payments and under them, there
could be one or two questions. But, there is just one last question, on
this aspect and I go to the payments.

15 CHAIRPERSON: Maybe last aspect, last question. Then we will break
for tea. But, then, you remember that yesterday, the witness said that
they wanted to comment on the evidence of four witnesses, who have
already testified. I hope you will keep that in mind then.

ADV LEBALA: Okay. Thank you. Thank you, Chair. I have seen
20 reports on Lichtenstein, the MLA, because it was very important. Am I
right? I have taken you through various memorandums and letters
exchanged.

COL DU PLOOY: That is correct. I just want, before you continue, I
just want to, I asked the Commission. I have to, if I need to answer
25 further on the Andrew Feinstein subject, I will have to do more research.

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Do I have to, or is it?

ADV LEBALA: No. These questions are practical questions. You do not have to do research. What I am asking you now, it is practical form, demonstrated, by the evidence, before the Commission. For instance, I
5 have just demonstrated to the issue of the MLA, Lichtenstein was very important. Hence, there are the reports on it. One can read about it.

Do you agree?

COL DU PLOOY: Yes.

ADV LEBALA: You agree that if the testimony of Feinstein and Holden
10 was that important, there would have been a report, saying Feinstein was followed, he never co-operated. His testimony is still needed, or evidence is still needed, or his statement is still needed. Do you agree?

COL DU PLOOY: I do not agree, because that is the decision from the prosecutor. Sometimes in a court case, a criminal matter, at some stage
15 you decide, also became, I think, if my memory serves me right, there, on the list of witnesses in the Schabir Shaik case, there was more than 100. I think, we only led 30 odd witnesses, because that is the decision from the prosecutor. Maybe, although it was important to know, we felt that we had enough, that we have to go, we can go without his
20 evidence, although it is still important, but we can go to trial, without his evidence. But, again, because he did not want to co-operate at that stage, so for me, to answer that, you have to ask Advocate Billy Downer, if, [indistinct] why did he write a memo about it? Because at the end, we went to trial without his evidence and we got a conviction.

25 COMMISSIONER MUSI: I am sorry. You would not have known what

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sort of evidence he would provide, if you did not have his statement. Surely, you cannot be asked, whether he would have assisted or not, when you never got a statement from him. Therefore, you never knew exactly, what kind of evidence he had.

5 COL DU PLOOY: That is correct, honourable Commissioner.

ADV LEBALA: You consulted with Richard Young?

COL DU PLOOY: Yes [indistinct].

ADV LEBALA: Mr Terry Crawford-Browne?

COL DU PLOOY: No.

10 ADV LEBALA: Ms Patricia De Lille?

COL DU PLOOY: Yes.

ADV LEBALA: Ms Taljaard?

COL DU PLOOY: Yes.

ADV LEBALA: You consulted with them, before you had their
15 statements. Am I right? Or you did not have their statements, to consult with them. Is that not so?

COL DU PLOOY: It depends, because you mentioned a couple of names and you must bear in mind that, during that due process in 2000 and 2001, many people approached and started, trying to explain
20 [indistinct] as I understand it, the process. You will also find a [indistinct] affidavit in there, a Section 208. I think, Patricia De Lille was also in that period, early period. Then, during the Shaik trial, that is the only, that was the first time, I met her. Then, we sat down, going through the evidence that she has to testify about. That is, but to say, we consulted
25 and then an affidavit. Normally, what will happen, if you take an

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affidavit, yes, you consult, you make notes. You go back. You draft the affidavit. You consult with your witness inside. Then, after the third or fourth draft maybe, everybody, because it must be, what he is saying. I must not put words into the witness's mouth. Then, we agree and
5 exactly, he read it and it is done. So, consult, sometimes you consult and you decide, no, it is not necessary for an affidavit and you do not take one.

ADV LEBALA: Mr David Maynier, you consulted with him?

COL DU PLOOY: No. I did not.

10 ADV LEBALA: Now, let us be specific. You did not need Ms De Lille's statement, in order to consult with him. You did not have, you did not have read the statement first, to consult with him. Am I right?

COL DU PLOOY: I did not. Are you saying I did not read Andrew Feinstein's affidavit, before there was another affidavit?

15 ADV LEBALA: No. Please listen. You do not have to have read the statement of Ms De Lille, in order to go and consult with him. Do you agree?

COL DU PLOOY: As far as I remember, no.

ADV LEBALA: Now, let us be specific. Did you read the statement of
20 Ms De Lille first and you went to consult with him?

COL DU PLOOY: If you mean Andrew Feinstein?

ADV LEBALA: No. My, my vernacular disposition comes in. The issue is, do you agree that you do not have to read the witness's statement, in order to consult with the witness, yes or no?

25 COL DU PLOOY: Yes. You do not, that is illegal.

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ADV LEBALA: Let us be specific. You did not have to read the statement of Ms De Lille. We know that you consulted with her. Or you need not have establish, whether she made the statement first, in order for you to go and consult with her.

5 COL DU PLOOY: Yes. I do not have to. Because if you receive, for instance, you see her later, you do not have to ask ...[intervene]

ADV LEBALA: You have answered me, colonel. You have answered me, I think, we should get going. You have answered me. Now, do you agree that you need not have had the statement of Feinstein, or Mr
10 Holden, in order to go and consult with them?

COL DU PLOOY: Yes ...[intervene]

ADV LEBALA: Yes or no?

COL DU PLOOY: The purpose of consultation is to obtain an affidavit.

ADV LEBALA: I think you have answered me. Now, do you know the
15 following? The African Defence System was the preferred bidder in as far as the combat suite is concerned. Do you know that fact? African Defence System, we know that Mr Schabir Shaik bought shares in African Defence System. I will refresh you and Thomson bought ADS. Do you know that [indistinct] personally?

20 COL DU PLOOY: Yes. I know that. You can also find that in the KPMG report.

ADV LEBALA: And there is still evidence, before this Commission that historically, even in the 80's that is when the position, albeit, ADS might not have been called ADS in the 80's. Testimony came that Mr Bill
25 Venter owned it. He took dimensions and I am refreshing my mind of

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Altech, up until it became ADS, because it was involved in different wings in group arms procurement.

COL DU PLOOY: That is correct. I think it was first Altech Defence System and it was changed to African Defence Systems.

5 ADV LEBALA: Now, when Mr Shaik bought shares in ADS, do you agree that it was foregone conclusion that ADS was the preferred bidder, in as far as the combat suite system is concerned?

COL DU PLOOY: By the time I was involved, I, and according to what I have read, I understood that ADS was, African Defence Systems or
10 Altech Defence Systems was the only company in South Africa and therefore, it was the correct BEE partner for Thomson [indistinct].

ADV LEBALA: Do you agree that where the ...[intervene]

CHAIRPERSON: I am sorry, Advocate Lebala. Can we just adjourn for tea? Can you just try and clarify with this witness, what he means by
15 BEE partner. I do not quite understand what he is saying. What he means, when he is saying ADS was a BEE partner. The evidence that we have is that ADS is not a BEE, was not a BEE company. It has nothing to do with BEE. ADS had dealings with the Army for some years. It had nothing to do with BEE. Can you just ask the witness to
20 go that portion of the evidence, before he continues then, to testify? Because even yesterday, I heard him say that ADS was a BEE partner. ADS was not a BEE company, according to the evidence on record. Maybe let is adjourn for tea and then we will take that one up, just after tea. Thank you.

COMMISSION RESUMES

ADV LEBALA: Thank you, Chair. Colonel, let me just assist you, about the testimony, just before the Commission. I have tried to refresh my memory with my team and assistance of senior colleague Sibeko.

5 The evidence before the Commission is that Mr Schabir Shaik bought shares in ADS, through Nkobi Holdings, hence bought shares in ADS. Now, ADS, historically, has always been a preferred entity, that always was considered, when combat suite was being built. That is the evidence that we have before the Commission. I just do not want us to
10 waste time. Let us not even go into BEE or non-BEE. My question is, given the fact that ADS, historically, has always been identified as a partner, to do the combat suite, will you agree that Mr Shaik's relationship with President Zuma, has not influenced the appointment of ADS, to build the combat suite. Bearing in mind, that historically, in the
15 80's Altech was preferred, because of the capacity and ability in arms industry. They ended up being ADS and that is when ADS came into the picture, as the preferred builder of combat suites, when ships were being built, especially fighting ships, military ships. Now, this context, does it address the content that says, Mr Shaik's relationship with
20 President Zuma has not influenced the appointment of ADS, to be the entity, preferred, to build the combat suite?

COL DU PLOOY: Honourable Chair, yes, I must apologise, we in the team, for many years, loosely the term, ADS as the BEE partner. But, as Advocate Lebala stated, ADS was not a BEE partner. I was wrong to
25 refer to them as, but Schabir Shaik or Nkobi, became the BEE partner,

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in ADS, as I understand. I would like to read from the report how it was stated and to refresh of how I understand it. According to KPMG that drafted the report, they said:

5 *“One of issues, that ADS, being a local South African entity with skills and expertise in the market and its potential partners had to, was finalisation of its Black Economic Empowerment participation, in order to be finally awarded the contract. The selection of the correct Black Economic Empowerment partner was inter alia, determined, by its political connectivity. This is a concept that features constantly in*
10 *selection of the correct Black Economic Empowerment partners, by Thomson and ADS. This appears to have been the perception of Thomson and is also supported by the actions and words of Shaik, meetings with politicians, including Zuma and was echoed by Chippy Shaik, the brother of Shaik, who was chairing SOFCOM, which formed a*
15 *critical component of the formal process.”*

Then, just last paragraph:

“There were various partners that attempted to involve themselves as the selected Black Economic Empowerment partner of ADS. Each drove its own process, within the political environment jointly and or
20 individually, each with its own agendas and various forms of political support. These were Xhosa [indistinct] CNI, Surtee, Shaik, through Nkobi Group and Moloi for [indistinct] FPN.”

ADV LEBALA: By the way, this KPMG report, you did testify, that as the investigating officer, you played a significant role in assisting the
25 auditor to compile.

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COL DU PLOOY: That is correct.

ADV LEBALA: Short of saying, it could not be compiled, without your assistance.

COL DU PLOOY: That is correct.

5 ADV LEBALA: I want to deal with the subject, payments made. Tell me, other than the payments, made to Mr Fana Hlongwane, are you aware of payments, made to any other South African citizens?

COL DU PLOOY: That is a difficult question, in a sense of payments made from who?

10 ADV LEBALA: Payments in the context of the arms procurement strategic defence [indistinct], all inclusive.

COL DU PLOOY: The reason why I am asking the question, because it is a difficult question. Because as you now, if you look at the informal manner, in which President Zuma received payments from Schabir
15 Shaik and Schabir Shaik received payments from ADS, ag, from via Thomson, who had shares in ADS. Now, I can say, yes, he received. Fana Hlongwane received in respect of a covert system, according to Garry Murphy's affidavit. There are also other South Africans. I will just have to check again. But, like, from Austria, there is a Richard Charter,
20 of Austria, the nation received. There were also other individuals. I know Bredenkamp, but he also said [indistinct] according to the covert system. I will just have to check again there for it. And then, that I know about. I cannot proof say it, like for Fana Hlongwane, here are the bank statements. That I can prove. The others are just, as they say, and in
25 respect of Chippy Shaik and that, there is a documents signed. He

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would have received. That is all.

ADV LEBALA: While still on the payments, you remember yesterday when we were referring you to figure 1, figure 2 on page 18 of your statement, in the context of the terms of reference, we refreshed you
5 that around 1998 when the preferred bidder was chosen, President Zuma was an MEC in KZN, and when the packages were being signed in December 1999 we... Actually, when the preferred bidder was chosen, he was not in the Ministerial Committee, and he was not a member of Cabinet. Do you remember?

10 COL DU PLOOY: That is correct.

ADV LEBALA: Do you remember you said that but he was a member of the ANC? Do you remember that part?

COL DU PLOOY: That is correct.

ADV LEBALA: What are you saying about this? Are you saying the
15 ANC is corrupt? And let me tell you why I am asking this question. I demonstrated to you that who were the ministers in the Ministerial Committee, and I said to you at best for you you could say that by being the MEC in KZN he was within government. I do not think you followed that up, you only said but he is a member of the ANC, after having told
20 you that President Mbeki came and said he challenged everybody to demonstrate that the ministers within the Ministerial Committee were improperly influenced and they received money. You said but he is a member of the ANC. What does that mean, are you saying the ANC is corrupt?

25 COL DU PLOOY: The ANC is certainly not a corrupt organisation, and I

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did not try to say that. The point I tried to make, if I remember your question correctly, was there or do I have any evidence that there was any person influenced on a ministerial level in the awarding of the contracts, the main contracts. And I said all that we do have, and even
5 on the aspect of President Zuma, we did not investigate that part of where he could have influenced the other ministers. That was not part of the case, the matter we investigated against President Zuma was the financial benefit he received, and the intervention he did by assisting Shabir Shaik becoming part of Thomson, or part of ABS, via shares
10 through Thomson. So, I just tried to make a point, or to answer you to say that I have no evidence at that level, and certainly I never said that, or tried to implicate or implied that the ANC is corrupt.

ADV LEBALA: Thanks for clarifying this. So, what do you mean? Are you saying the ANC influenced the bid? Remember, this stems from
15 what I have demonstrated to you and asking you to comment that the Ministerial Committee is the decision making body, and it advises Cabinet, and President Zuma was not part of Cabinet, he was not even part of the Ministerial Committee. But, you said but the ministers were members of the ANC.

20 COMMISSIONER MUSI: Is he not belabouring the point?

ADV LEBALA: Actually, you said he was a member of the ANC. What are you saying? Are you saying the ANC influenced the bid?

COL DU PLOOY: No, I do not.

ADV LEBALA: Now, let me just deal with this last aspect, before I go to
25 my final question, and I think the Chair Commissioner Musi are having a

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gust of fresh air when I say this. The payments made between President Zuma and Mr Shaik, we know what the court said, that is one thing. Let me test the following. Irrespective of whether the court found that there is a corrupt relationship between Mr Shaik and President
5 Zuma, that is also one thing. I think that is not contested, it is common cause.

As an investigator, and members of your team, did you try and establish that those payments could have been made because of historical ties between the two?

10 COL DU PLOOY: If I remember correctly, I think Shabir Shaik, part of his defence, was that President Zuma was a comrade, and therefore it was donations. I have to refresh my memory again in a report [indistinct] all the facts, but he was... Sorry, I just went through and then think of certain things, because we must remember, as I understand it,
15 is that President Zuma only received the benefit, a financial benefit, by assisting Shaik. And, in the case, in the trial, it was found as I understand it, and the judgment was and I think I made some reference in my affidavit to it, and I cannot remember the specific words, but in my own mind I understand that it was the Judge Squires found that Zuma
20 did intervene, and he did assist Shaik obtaining the [indistinct] in ADS.

ADV LEBALA: Yeah, but that part we have dealt with, to demonstrate that ADS was already preferred even before we could think that President Zuma played a significant role in making ADS to be the preferred entity that build the combat suite. That part we demonstrated.
25 My question is just on the practicalities, as to whether the investigators

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did consider this aspect. I think you mentioned it that in his explanation before court, Mr Shaik mentioned that they were comrades. Is that correct?

COL DU PLOOY: He mentioned that.

5 ADV LEBALA: Did it occur to the investigators that there could be merit in that?

COL DU PLOOY: To answer the question in full, and to explain, I will have to take the Commission through the KPMG report, because it is difficult to see just small parts, and to explain why I say what I say.

10 ADV LEBALA: Colonel, I assure you that the KPMG... [intervene].

CHAIRPERSON: I am sorry.

ADV LEBALA: Report will be considered.

CHAIRPERSON: I am sorry, Advocate Lebala. Colonel Du Plooy, you can be rest assured we will not allow you to take us through the KPMG
15 report. We do not have another four five days to deal with that report. [indistinct] you are unable to comment on this question, or you do not want to comment, say so. But, there is no way [indistinct] to go through that KPMG report. Advocate Lebala, maybe you can rephrase the question in order to make sure we do not have to go through the KPMG
20 report.

ADV LEBALA: Colonel, we have read the KPMG report. Payments were made, Judge Squires judgment confirms that payments were exchanged. That part, let me say it is not disputed. All that I am saying is that the investigators, including yourself, did consider the fact that
25 these payments have been made because of the historical ties, the

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relationship they had, other than the fact that President Zuma was being utilised to influence that ADS should succeed in the combat suite.

COL DU PLOOY: I believe as investigator Shabir Shaik used President Zuma to obtain that stake, and the stake in ADS and into the Arms Deal, and the payments he made to the President was not just for the sake of friends or comrades, it was also for his own benefit, and mostly for his own benefit in the Arms Deal and also other projects.

ADV LEBALA: But, the question of their comradeship, friendship, historical ties was also not ruled out. I think you are confirming that.

10 COL DU PLOOY: It is not ruled out, but it was not a reason why the President assisted Shabir Shaik, and Shabir Shaik asked for the President's assistance. It was for financial benefit for both.

ADV LEBALA: I just want to deal with one... [intervene].

15 COMMISSIONER MUSI: I am sure we are not going to be reviewing that case, I am sure. We are not going to review the Shaik trial, I am sure.

ADV LEBALA: This is not the forum, Chair, and Commissioner Musi I assure you not at all, not at all. I would like to take you to Mr Hlongwane's testimony and Mr Shaik's testimony. This is the last aspect that we will be dealing with, and I am not going to be long in dealing with those two issues. We have dealt with Ms Christine Guerrier's testimony before the Commission.

I would like to refer you to page 8973, the record of the testimony of Mr Fana Hlongwane on the 11th December 2014. I would like to read what is being said from line 14 to 17, unclear as it is. In actual fact, for

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you to appreciate, let me start from line 7.

*“ADV HLONGWANE: Chair, I later discovered that I was a subject of investigation by the SFO. The SFO never approached me. I was never informed of any investigation. I always travelled in and out of the UK to
5 10 service my clients at all material times. I was never stopped at any airport or [indistinct]. Equally the reports that I read that the DSO itself is investigating me, but I have never had any contact with anybody from the DSO to tell me such. Except an ex parte application around 2008 [indistinct] Van der 15 Merwe, where in my humble and respectful submission chair, manufactured and fabricated evidence was presented to the judge for him to grant the [indistinct]. And I have asked my legal team to [indistinct] this matter vigorously with this [indistinct]. As it relates to the rule of law. As it relates to how we conduct ourselves. As responsible 20 citizens.”*

15 Now, let me understand, were you involved in the application concerning Mr Hlongwane during or around 2008?

COL DU PLOOY: I drafted an affidavit for the search and seizure operation in 2008, but it seems like I do not have that in front of me. I know the evidence leader showed it to me on Sunday night, but if I
20 remember correctly, it seems like it is more referring to the affidavit application of Advocate Downer in the asset forfeiture application, for the Lichtenstein.

ADV LEBALA: Now, van der Merwe which is being referred to, would he probable be referring to the judge?

25 COL DU PLOOY: I assume so, but I was not involved in that part,

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because it was [indistinct].

ADV LEBALA: So, you bear no knowledge of that application, or you only relate a minimum role in it.

COL DU PLOOY: I do know about the application, I was informed, but I
5 was not that in depth part of the application and assistance, but I do know about it and what transpired after that.

ADV LEBALA: Now, in all fairness, are you able to comment regarding the theme of what Mr Hlongwane says here, about the manufacturing and fabrication of evidence that was presented to the judge?

10 COL DU PLOOY: If he implies that Advocate Downer is creating evidence incorrectly and fabricating evidence, I know Advocate Downer and for me he is one of the most honest men, and he would not fabricate something in this regard. I cannot believe it.

ADV LEBALA: The other aspect, lastly, relates to the testimony of Mr
15 Shaik during or about 11 November 2014, and I will read you from page 8914, eliciting your comment, where the witness was being led by my colleague, Ms Sello:

*“ADV SELLO: And lastly and this issue I raise because [inaudible] raised quite often and to give you an opportunity to deal with it if you are
20 able to. There is an allegation that you solicited or caused to be paid to yourself from one of the bidders an amount of 3 million dollars for efforts allegedly made by 15 you in ensuring that such bidder is successful in this SDP. What is your comment to that?”*

MR SHAIK: *I solicited no such offer nor did I receive no such money as
25 described in these various allegations.*

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ADV SELLO: And was any money associated with the SDP's received by 20 any company that you own or have a share in or any interest in?

MR SHAIK: No, I have no such interest in any company."

Do you have a comment?

5 COL DU PLOOY: Honourable Chair, if you just give me a chance, I just want to also answer a comment that Advocate Lebala made regarding Investigating Officers, if I understood it correctly, for Mr Fana Hlongwane, that he never gave me the opportunity, or he never [indistinct]. I just quickly want to refer the Commission in BUNDLE 5 at
10 page 2133, where it is a letter from Mr Hlongwane's defence, where there is known or he is starting to talk about that the AFU approached him, and then I would also like to refer the Commission to page 2172 where I wrote a letter to Mr Stockenstrom and inviting his client, and it is dated 7 April 2010. Inviting him and giving us:

15 "Kindly note that this letter serves as an invitation to Mr Hlongwane in order to establish if he is willing to provide a warning statement to the Investigating Officer. If he agrees to provide a warning statement more detail will be provided, for example specific questions, et cetera.

Apart from any written responses, should he so request we are also
20 willing to afford a private personal interview at the SAPS Commercial Crime offices [indistinct] Pretoria, the date and time that will suit all relevant parties."

The next question, regarding Chippy Shaik, just give me a moment. On that request, maybe while I am looking, I only received a
25 memorandum from Mr Stockenstrom signed by Mr Stockenstrom, not by

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his client, and it was more or less the same version that was given to a review, but not the full version. On the question of Chippy Shaik, I assume it is referring to the \$3 million, the only information I have is that we received from the Germans, and I understand also it is a non-official
5 manner and off the record bases. What she says there is that:

“We enclosed (I read that certain part yesterday) in your [indistinct] the inquiry. The case was dealt with. We managed to keep copies of those documents relating to South Africa entities and to make them into official parts of our case files, as we had to return the seized material.”

10 Further in the email on page 2256, I am sorry I just want to refer. On 2256 in BUNDLE 6 she says:

*“We have two proven cases of bribery with your official. Two cases in which South African officials are involved, which we could not prosecute because of legal limitations and because the bribe agreement was made
15 before the legislation in Germany had been changed, and thus are exempted from punishment.”*

And these documents, as I stated yesterday, I am not sure if Billy Downer, Advocate Downer received it or Isaac du Plooy, because at that stage he was the Investigating Officer before he left end of 2009, or
20 2008. In those documents there are several documents attached, it seems to be reports as she mentioned, and in those reports of the Germans, they say in paragraph 11 on page 2307 in BUNDLE 6:

*“On the 9th of October 1998 a consultancy agreement dated 8th of October 1998 between TRT [indistinct] and Marion LTD signatory
25 [indistinct] was signed over a commission of \$3 million [indistinct]*

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payment, the moment when the Corvette contract would come into force, and the down payment has been received in our account for our fee, and unrestricted disposal. And after all necessary approvals from the South African and German authorities had been received.”

5 They talk, then there is a... I doubt if I can read the whole document, but in short what she says, or what Anton Steinberg then in an email, in a summary of what he said and what he found, he says that:

Chippy Shaik, wow, this doc is absolutely dynamite. If even one tenth of these allegations are true, this investigation will be far more extensive and explosive than anything we have done to date. On my reading of the documents several distinct lines of enquiry emerged. The Chippy Shaik \$3 million bribery agreement, and subsequent money laundering arrangement involving Ian Pierce and Marion LTD. In this regard document EDF1, (which is also attached that is the memo also attached

10 *in my bundle) is our smoking gun, and the German equivalent of encrypted facts. Together with the subsequent payments to Marion, this*

15 *investigation [indistinct].*

The Tony Ngeni \$2.5 million bribery agreement, if I read the documents correctly, it seems that the Germans are in possession of an agreement of the payment of the 2.5 million Deutsche Mark, commission to Ngeni, signed by himself.

20

[Indistinct] Simpson Anderson leg. Other suspects in this leg include contract management consultants CMD and VA retired [indistinct].

The big bomb is the allegation that TRT [indistinct] agreed in 1995 to pay Miller [indistinct] a \$22 million commission in four to six monthly

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instalments. Pursuant to this agreement, subsequently in May 200, paid a total of \$21.5 million. A figure was reduced to a personal guarantee of \$500 000 given by [indistinct]. This money was allegedly stemmed for high ranking members of Government.”

5 All I am saying here is this is the documentation we received from the Germans, but it was not received from the Germans, as I explained in the memorandums and the [indistinct]. So, if Chippy, Mr Shaik, Chippy Shaik says that he did not receive it, I cannot say he did, because we have not followed up in that depth of the account in Jersey where the
10 money was paid into, and to whom it went to and so forth.

ADV LEBALA: Now, these are documents that could have been sanctioned by an approved and qualified MLA. Am I right?

COL DU PLOOY: I am sorry, Honourable Commission, that is [indistinct] to say it is sanctioned, just explain.

15 ADV LEBALA: Short of saying these are documents that were the subject of the MLA, is it not?

COL DU PLOOY: That is correct.

ADV LEBALA: And the valid MLA would have qualified these documents to be legitimate. Am I right?

20 COL DU PLOOY: It depends who would have sent the MLA, and what I can gather from the communication between Advocate Downer and the German investigator, or prosecutor, it could be. But, I want to reiterate, this is information that is here, I just want to put it in front of the Commission. I cannot say how far it would have gone, I do not know the
25 legal issues surrounding it, I do not know how far we would have gotten

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with it. I do not know, it is difficult to say.

ADV LEBALA: Now finally, Colonel, is there anything you want to say to this Commission before our teams keep quiet?

COL DU PLOOY: Yes. If the Honourable Chair and Commissioner, I
5 know I have said it many times, but if I can just maybe for my own record. The Commission must just understand that for me it was a difficult task coming and to prepare and also to testify, in the sense of that they always say I was the last man standing still from the whole team. Although Advocate Downer was still in Cape Town, but I was the
10 person in control of all the document. So, I was at the end of the day the last investigator, even for the past couple of years.

So, it makes it difficult to testify about aspects, certain aspects of the Arms Deal, due to the fact that I do not have personal knowledge, and even of those cases that I have personal knowledge, it is long time ago
15 and it made it a bit difficult to testify. I hope and pray that the Commission will take that in consideration with my testimony.

CHAIRPERSON: Thank you. Are there any other people who will want to cross-examine Colonel du Plooy?

ADV CANE: Thank you, Chair. The Department of Defence does have
20 some questions to go to this witness.

CHAIRPERSON: I am sorry, before you start. Any other person who might be keen to cross-examine?

ADV CHOWE: Commissioner, from the DTR side there would not be any questions.

25 CHAIRPERSON: Thank you. So the two teams who will want to cross-

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examine, from [indistinct] I do not have any questions. Thank you. So, in other words it appears it is only Advocate Cane who will want to cross-examine. Thank you, Advocate Cane.

ADV CANE: Thank you, Honourable Chair. Mr du Plooy, my name is
5 Jane Cane and I represent the Department of Defence. I want to put some questions to you. At any point you require me to explain myself more clearly I will be happy to do that. We will go through this slowly, but I do not think [indistinct].

I understood from your evidence yesterday that the GFC leg of the
10 investigation only commenced in 2008/2009. Is that understanding correct?

COL DU PLOOY: In an active manner, yes. But, if you look at the [indistinct] investigation, when it was started in November 2000, it covered everything, and then in August 2001 that [indistinct] was also
15 including the GFC part. But, at that stage as I have explained, in August when I was appointed, together with that my purpose was for the organised searches, and afterwards I was then asked to stay on, due to the fact that the previous investigator [indistinct] so he decided not to continue.

20 So, me, and then the facts as I explained, the encrypted facts were found. So, our focus and my focus was more on the payments, the informal process how the President assisted facts, what they talked about Thomson. We continued with that, but then Gerda Ferreira and then the management, top management, according to me they did not
25 appoint, and we will have to Gerda Ferreira's memorandum of 2003

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when she left, and if I recall correctly she mentions that the FPS/ADS leg that will be dealt with [indistinct]. But, we never got to that point, but it is [indistinct] combat suite part that we only dealt with, not the GFC. In my view the GFC is the platform, that will be [indistinct] Vos came in. I
5 never looked at that.

So, I can say according to my knowledge it was there but it was inactive. Only in 2007 when we read in news paper articles that we were actually the last team remaining, and why that can only top management answer. I do not know why they did not appoint more
10 people or assist, I do not know. But, then in 2007 we read that there are certain possible allegations of bribes in German, about the corvettes, the GFC. That is when we started, the investigators like Isaac du Plooy on the internet to find more. We found out that there was an MLA sent from the Germans. We tried to get hold of that.

15 So, in a way in 2007 we tried, but we did not have enough information, we did not have information. I mean, we tried with this MLA's. Then, in 2009 November, Richard Downer if I remember correctly, and I think it is also part of my bundle, where he said a document, a memorandum, to the NDPP, and I think at that stage it was
20 Advocate Nhlele, asking him that the DSO, or NPA investigated this part. But, he said he did not receive any reply, he was not satisfied. After June 2009, July, we went over to the police, the Scorpions was dismantled. Then, he called me numerous times and said that there is bribery, and I said if he is serious, you know I cannot do anything I need
25 something under oath, he must go to the nearest police station, open a

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case, it does not help he just send me lots of documents, that is not how the police work. We only act if there is a case registered. Then he went and registered the case, I think it was November 2009. Does that answer you?

5 **ADV CANE**: Yes, thank you. I just want to clarify a couple of things. You mentioned Richard Young sent a document [indistinct], and you mention the date of November 2009, and then you [indistinct] June 2009 when you went over to the police. I wonder if that sequence of events, did the communication from Richard Young to which you referred, 10 perhaps [indistinct] 2009, when you [indistinct] document in file 6 page 2337.

COL DU PLOOY: That is correct. That is the document I referred to that he would have sent to Advocate [indistinct]. It seems like he sent it via Advocate Billy Downer.

15 **ADV CANE**: So, we can confirm that the communication from Richard Young that you referred to, with the information, [indistinct] document JDP59, and it was dated 26 March 2008. Are you in agreement?

COL DU PLOOY: That is correct.

ADV CANE: Let us just have it right in some of the aspects [indistinct], 20 does later come into your possession at some stage, even though you were not originally the addressee. Can you just explain how you came to know this document and when you received it?

CHAIRPERSON: I am sorry, Advocate Cane, on which page is that document?

25 **ADV CANE**: Chair, it is Volume 6 page 2337.

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CHAIRPERSON: Can you give the page number again?

ADV CANE: Certainly, Chair. It is marked in printed pagination page 2337, and it bears the notation JDP59. [Indistinct].

COL DU PLOOY: Yes, I have. You are talking about a document that
5 was by Richard Young, sent to the Director of Public Prosecutions, and attention to Advocate Downer.

ADV CANE: Yes. That is correct. You recall I asked you about you became in possession of this document. Can you please describe that?

COL DU PLOOY: I cannot recall when I would have received this
10 document from Advocate Downer. It may have first been sent to the NDPP and then he had to make a decision. I am not sure, I cannot remember when I would have received this.

ADV CANE: Well, let us just consider the probabilities. You mentioned that during 2007 some information was gained from news paper articles,
15 pertaining to alleged bribes involving the GFC, and that did instigate some investigations [indistinct] Isaac du Plooy, but you did not have information at that stage, 2007. Now, is this the first receipt of documentary information that came into police authority?

COL DU PLOOY: Just give me a moment, I just want to check
20 something. If I look at the dates on the emails on page 2252, 2253, it was August 2008 where Advocate Downer communicated with the German authorities. During that period I think he would have received the documents attached, all those documents regarding the German authorities that we would have received.

25 But, from my own perspective, you must understand that what

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happened at that stage, our main focus was still the investigation on the State v Jacob Zuma, the President. We were running with that, and whilst we were busy with that, there were many many applications, we were running up and down because there were plenty applications in the court regarding President Zuma. Then, this information came in and all I can remember that would have happened, because people saw Advocate Downer as the Arms Deal investigator and us, then a lot of people came to us. Now, we could not handle all that, and he was then asked to refer to other people, like in the instance of the BAE. Other investigators, we requested that other people investigate that matter, but they also left, because in that period 2008 the rumours were very strong that the Scorpions were going to close down. So, we lost many investigators and prosecutors, they left. So, the moment one start then he gets a job outside and he left. That is what happened on BAE, and then you have to pick up again.

Now, here on GFC, we only sent Isaac to just see what we have, then Billy followed it up perhaps, because I think in a document if I can refer you, where Isaac du Plooy on page 2261, he sent a letter to Mr Lichtenberg in 2007, trying to obtain information from the German authorities. I was not involved in all that, so for me he was busy obtaining the information. In 2008 we were busy with the SFO, we were busy with the BAE, I am one person busy with the Jacob Zuma matter. So, I cannot recall to answer you perfectly, to say when I received this information and the specific sequence, I cannot.

ADV CANE: Thank you, Mr du Plooy. Let us just look at a couple of

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documents you referred us to. The document you referred to, JDP53 at page 2252, is an internal email [indistinct] other members of the team, [indistinct]. Do you confirm that?

COL DU PLOOY: That is correct.

5 ADV CANE: That is 19 August 2008, and it is Advocate Steinberg that is commenting on the contents of something he has read. He refers to it as stuff, and it [indistinct] the alleged \$3 million bribery agreement involving Shabir Shaik. It refers to the Tony Ngeni matter. In point four he is dealing with the \$22 million commission, and five [indistinct]. Do
10 you see that? That is [indistinct]. My question to you is, surely knowing the documents as you do, you can enlighten me and confirm that he is referring to the documentation that Richard Young sent, which is JDP59, [indistinct] Richard Young have emailed to your department at that time.

COL DU PLOOY: The email on page 2252 I interpret it more than
15 referring to the documentation, that is all the documents from page 2263 to 2238, and not necessarily the documentation from Richard Young.

ADV CANE: Let us agree on that, that he is traversing the documents that you have annexed from JDP55 to JDP58, you refer to this in paragraph 139.1 in your statement as being the documents that
20 [indistinct] the information from Germany. That is what is traversing, do we agree on that?

COL DU PLOOY: That is how I understand it, yes.

ADV CANE: Now, you referred the Commission a few moments ago to a document sent to German authorities by one of your co-investigators.
25 You referred us to page 2261, it was from Isaac du Plooy [indistinct] in

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June 2007. To your knowledge, has there been a response to that request?

COL DU PLOOY: As I remember, the response to this request, and I am not saying there is a specific response, but my understanding is in short there were allegations made in the media. Then, Isaac du Plooy was asked to follow up. He then contacted German authorities to find out, as I understand from also his letter, he asked if you look at page 2262 paragraph 6, the purpose is to wish to make informal contact with those officials involved in Germany to ascertain the status [indistinct].

10 Because we also understood that there was an MLA sent to South Africa, we were trying to locate that. Together with all that and the media reports, I understood that then Billy Downer must have also made contact with their authorities, and these documents as I say, documents 2263 up to 2236 was sent via the German authorities, but I do not know how it came about. As I stated before, I spoke to Isaac du Plooy. He himself says he cannot specifically recall that he received it. I even spoke to Advocate Downer, trying to find out when they received it, and he also says he cannot recall specifically from whom he received it, but he knows there is documentation coming from the German authorities.

20 ADV CANE: You see, at paragraph 139 of your statement, you tell us that the information from Germany was received from Advocate Downer, you had received it from Mr Richard Young. That was your first choice of possible sources. Your second [indistinct] journalist [indistinct]. So, as I understand it, you are not alleging in paragraph 139 that anyone had any communication from the German authorities, and in fact, you

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cannot point us to any. Am I correct?

COL DU PLOOY: What I tried to do in my affidavit was to, again as I said to the Commission, I have these documents, it is a file on my computer marked Information from Germany. All I am trying to do is to
5 say I cannot recall who sent it, how we received it because it was unofficial, but I have this information that I feel is important for the Commission to know about. I spoke to Advocate Downer, he sent me an email and he said he also cannot recall specifically, maybe from Richard Young are journalists from Mail and Guardian. It was always in
10 my head, I thought it was Isaac du Plooy who received it and then took it under his control, or it could be Advocate Steinberg.

So, please see it from the point of I cannot specifically remember. All I am trying to do is to say here are documents, I found this on my computer and it may be of assistance for the Commission. Does that
15 answer you?

ADV CANE: Yes, I do understand the position you found yourself in. But, this bears some significance to [indistinct], and what I am understanding from your answers is that you contacted Advocate Downer and he could not refer you to any communication from the
20 Germans under which this was received. And then in fact, the primary suspicion is that it was received from Richard Young. Am I reading you correctly?

COL DU PLOOY: I do not think the primary suspicion was that it was from Richard Young, because that is also why I attached those emails,
25 the communication on page 2252 up to 2262, is also trying to show the

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Commission that although I found these documents saying received from Germany, maybe these communications can also enlighten the Commission on, or maybe assist the Commission further. Not necessarily to say where we received it, but it is there and there was
5 communication. Then on page 2256 it is to Mr Downer, and where it is [indistinct] when we sent our MLA we must refer to a certain file number 130-JS2-06, and that we must mention where to find that.

ADV CANE: Would you please have a look at page 2337, [indistinct]. That is a document that appears to have come from Dr Richard Young,
10 it is signed by him on page 2341 and it is dated March 2008. I want to draw your attention to some aspects in that document. If you turn to page 2338, you first have [indistinct] with a bribe of some \$22 million [indistinct], and it mentions the entity Marion. Do you see that?

COL DU PLOOY: I do.

15 ADV CANE: Now, the next line:

*“These are serious allegations indeed, and the Germans elude to having substantial documentary evidence in support of such allegations, specifically regarding the payment to Chippy Shaik. In my view there are [indistinct] circumstantial grounds for believing these allegations to
20 be true.”*

Now, the document and I just glanced through it, there is a number of serious other allegations. Have a look at the top of page 2339:

“[Indistinct] the German Frigate Consortium to bribes of \$22 million. That \$3 million should come as no surprise.”

25 He continues, and look at the foot of that page for instance, he says

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in the last paragraph, the second line:

“There are fairly clear indications of both very high amounts of money being made available within Thomson [indistinct] project budget to pay bribes, and to secure the Corvette Combat suite business.”

5 And so it carries on. But, also an extraordinary level of interference in the acquisition process by mainly Thabo Mbeki but also [indistinct] Shaik. Now, let us just fast track this and go to the last page [indistinct] last paragraph.

*“Taking into account Thabo Mbeki and Chippy Shaik’s elicit
10 involvements in the Thomson CSF, as well as [indistinct] conduct as alleged by the German prosecutors regarding the Corvette platform, I have not [indistinct] for the South African prosecuting and investigating authorities to be investigating both the roles these two persons played in the Combat Suite acquisition process, as well as the possibility of
15 [indistinct] or related parties such as the ANC receiving bribes.”*

Now, you will agree with me that these are very serious allegations indeed. I want to know, if these type of allegations [indistinct] person with the stature of Advocate Billy Downer or anyone else in your team?

COL DU PLOOY: I do not know if after receipt of this document by
20 Advocate Downer if it was attended to by the National Director, because as I said, I assume it was sent to the National Director for his view and to decide what to do with it. From an investigative perspective I just want to mention that although we can follow up on information that has been given to us, not necessarily under oath, but in many aspects in the
25 Arms Deal, and I am not specifically referring to this document, but

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whilst I was the Investigating Officer many people contacted me and came up with lots of allegations against very prominent people, including President Mbeki. My answer to them was “If you are willing to make this allegation, put it under oath, and as soon as you do that then I
5 will be interested in looking into that.”

Maybe it was just a method from my side to try to distinguish what is real and what is not. It may be wrong, may be right, but I have received so much information over the years, and that was the way I dealt with it.

ADV CANE: Well, I want to ask you whether having read this letter, as
10 [indistinct] document on 2252, Anton Steinberg for instance would not have asked if you did not already have them, where these German documents are that Mr Young is referring to, and surely he would have called for copies of them.

COL DU PLOOY: I do not know.

15 ADV CANE: You see, what I am putting to you is that by the time the email is [indistinct], which appears on page 2252 on 19 August 2008, what we see in your documentation is a letter that [indistinct] emanating from Richard Young, we see a request to the German authorities for assistance but no reply. And, we have the one statement indicating the
20 documents that led to this investigation were probably received from Mr Richard Young, or journalist from the Mail and Guardian. So, I am putting it to you that that actually caused the start of the investigation. These documents were no received from German authorities, [indistinct] point to no evidence of that, that every probability on the paper indicates
25 that they came from Dr Richard Young. Do you have any reason to

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dispute that?

COL DU PLOOY: That is not how I recollect, that is not how I read the documents. As I say, I just wanted to put in front of the Commission what we had, or what was under my control what I could find in respect
5 of the German documents. As I said in my affidavit, I have a folder on my computer marked "Information from Germany", and the same you will find on my computer "Information received from SFO", with a date. And, when I referred to the documentation in respect of late Minister [indistinct], because I put a date there, and in this case I did not, it just
10 says information received from Germany. That means it was information received from that side.

But, I also say and not necessarily Richard Young, I also say or perhaps from Isaac du Plooy or Advocate Steinberg, because I do not know how we received it, but in my head and what I always believed
15 and understood, and I think I always informed the Commission with our previous consultations that it was received from German authorities. I never understood that the documents as we referred to from the Germans, page 2333 down to page 2263, that it was received from Richard Young. I never understood it like that.

20 ADV CANE: Let me take you further. I want to put some aspects in Richard Young's evidence to you for your comment. He said when he was testifying before this Commission, that he had informally sent emails to the team, and I presume the team is the team to which you belonged, and he said it consisted [indistinct] Advocated Downer,
25 Advocate Steinberg and Senior Superintendent Johan du Plooy at that

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stage that was you. So, he said he sent emails three or four times to that team, and he had not had a response. What do you say about that?

COL DU PLOOY: As I say, can I ask the dates of those emails? Did he
5 mention the dates and the period when?

ADV CANE: He did not at that point in his evidence, but we were not dealing with period in issue, so we can place it 2007 to 2009. I know that is a broad period, but according to [indistinct] time frame.

COL DU PLOOY: Again, as I stated, at that period you must appreciate
10 that the team, everybody saw us and we were the only team left in respect of the investigation of the so called Arms Deal, although it was not the Arms Deal as a whole and everything we investigated. We were the team that was responsible for the investigation in respect of Shabir Shaik and President Zuma.

15 When this information came, we tried to direct it, and I think that is why Advocate Downer, and I am speculating, saying ask Richard Young on page 2337 to direct his letter to the Director of Public Prosecutions, to him, but then also for him then to send it to the right person at the NDPP, so it does not end up in any other office. So, for me, if he says
20 he sent us several emails, it could 100% be true, he possibly communicated many times.

But again, we were busy [indistinct] on the one side, and as information came in, I understood that it was directed to the NDPP or to Leonard McCarthy, the head of the DSO, and they should decide to
25 whom to send the information, or to open a case or to continue with the

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investigation.

ADV CANE: Colonel du Plooy, he goes on to say that you then had a meeting with him, and the purpose of the meeting, or one of the aspects that you discussed in the meeting, was your request that he formalise his complaints by laying a charge with the South African Police Services. Do you agree that you asked him to do that?

COL DU PLOOY: We are now at the period of 2009 when I was in the police, as I tried to explain earlier. What happened was that he said he wants to continue, there is bribes paid to Chippy Shaik and he felt that it was not looked after or looked into, and I said to him that if he feels that strongly about it he has to open a case, because in my memory it has always been like in memorandums, it has never been under oath. And I said "Richard, go to the police station, open a matter and then we will look into the matter." Because if a case is registered at the police we have to look into that matter. While he dealt with me, it does not help he goes to the nearest police station and open a case and nobody knows what it is about. So, I told him when he opens it he must tell that person that they must refer it to me, I am the person dealing with this, otherwise they get the information and they do not know what to do. So, I directed him to send it to the correct person.

ADV CANE: Right, now he goes on and he says that you showed him some documents in order to encourage him to lay the complaint. In fact, his words are that you needed him to open a formal investigation in order that you could take it further. So, this is what he says. So, of course he needed to tell me what I needed to be complaining about.

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So, he did not share the whole report with me, he did not give me a copy, but he allowed me to see some of the documents, he says, showing the subject matter of what was involved. Do you agree with that?

- 5 COL DU PLOOY: I do not agree with that, because according to my recollection is that he opened a case in November 2009, and the reason why I remember that is that that is the case number, I think it was [indistinct] of 2009, is the two BAE and GFC docket registration number. So, he must have opened it then. I know when I received his, as I
- 10 attached JDP60 page 2370 to page 2554, in my mind I remember and therefore I have proof, I went down to Cape Town, and I think it was early in January 2010 to discuss his, like in any normal case you will go to your complainant and you will have to pass certain questions. If I remember, I think in his, and I have not read his statement now in that
- 15 depth, but he mentioned a couple of things, and if I remember correctly I could have then showed him these German reports that we would have received and say "Do you have any knowledge of this?", because it is not attached to his affidavit, and "Do you have more knowledge about the \$22 million and the \$3 million that was paid?", that he talks about.
- 20 But, I think in my head I remember the \$22 million that I wanted to ask him, because they just talked about government officials, does he know specific persons or anything, because as I remember this it was just like government officials. But, I do not recall, or I deny, or I do not agree with him if he says I went to him, show him documents if I understand
- 25 your question correctly, then to open a case on my request. No. I

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remember it as he was not happy or satisfied in the manner in which his information that he sent to the NPA did not get the necessary attention, and when the DSO closed down the Scorpions in 2009, at some stage I said to him "If you feel very strong about it, go and open a case." That
5 is how I recall it.

ADV CANE: So, you will not agree with him that when he says that the reason you showed him some extracts from these reports, we are talking about the German documents, was because you were trying to show him that he would not be wasting his time, that he was on the right
10 track and should therefore lay a complaint. You will not agree with that.

COL DU PLOOY: No, I do not agree with that statement.

ADV CANE: In fact, what you are saying is that he laid the complaint, and I can give you the date, it was 27 October 2009, he says he laid that complaint. You say that it was after that that you would have gone and
15 see him, in order to do your job in other words, to follow up on the complaint. It was only at that point that you would have asked him about the allegations in his affidavit pertaining to the \$3 million and \$22 million. Am I correct?

COL DU PLOOY: That is correct. But, I think October or November, I
20 just want to clarify. He opened the matter in Knysna police station, and that was sent to me, and the CAS number, the docket is in Brooklyn, so I register it was only in November, just to clarify that. But yes, I agree with that.

ADV CANE: So, by that stage you had these allegations in his affidavit
25 that pretty much resonated with the sections of his earlier letter I have

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read to you, JDP59, and you were now following up. Did you not ask Dr Young for his documentation upon which he based such serious allegations?

COL DU PLOOY: Yes, I did, and it is not just after the fact in January
5 2010. Honourable Chair, it must also be remembered that while he was
in constant communication with me, he would phone me numerous
times and he would say “Must I include this”, or not saying that, but I
cannot remember all our conversations. But, I know we had
conversations before he signed the affidavit, or opened the case, but not
10 in the sense of saying “Listen, you have to, you have to, for me to
continue.” It was more of a sense “If you feel that strongly about the
evidence you have, open a case and then we will look at it.” And, that
was against the background, because of where he said he sent his
memorandums or complaints to the NPA and nothing happened, and I
15 said “Well, if you go to the police we will have to look at it.” Therefore I
told him to open this case. During that period, as well as the day I saw
him and consulted with him and asked if these are all the documents he
has, is there anything more, I did not receive anything more, this is what
was in the docket, that is attached now.

20 ADV CANE: Could we just get clarity, as you say this is what is in the
docket, that the docket is not going to reflect what you are pointing to in
your hand. So, if you could just give us the page references as to what
he provided, and which constitutes the bases for your further
investigations.

25 COL DU PLOOY: I apologise. It is page 2370, Crime docket [indistinct],

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and it goes up to page 2554.

ADV CANE: So, you are saying this is all the documentation that you received from Dr Young. This will be the full extent of it, is that what you are saying to the Commission?

5 COL DU PLOOY: That is what, and I received it from Knysna, this was the pack of documents that I registered the docket on.

ADV CANE: Right. So, this is the pack of documents which was lodged with the Knysna police station and passed on to you. But, there seems to be [indistinct]. I am talking about you have now received the
10 information as submitted by Dr Young, and you go and visit him in Cape Town for the purposes of conducting your investigation. At that point, did you not say to Dr Young “You have made very serious allegations in your affidavit, and you refer to German documents and German investigations and such things as \$3 million and \$22 million. Where did
15 you get that from, may I have documents in that regard?” Did you not ask him that, Colonel du Plooy?

COL DU PLOOY: By that time I already had the other documents, and I cannot recall in 2010 what I showed him or he would have showed me, because for me it was to go through his statement and to ask is there
20 anything else, because if you look at the documents attached, it is many of the documents applicable on the Shabir Shaik, the Thomson part that we handed in in the Shabir Shaik trail. If I remember correctly, I went to him, or would have, and he makes these allegations and say “But, do you not have more direct evidence, maybe, or more substantial
25 evidence in respect of the allegations you make in your affidavit?”

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ADV CANE: Yes. You see, it is only natural and normal that a person as diligent and committed to his work as you were, would have asked those questions. So, this cannot be the full extent of what you received.

COL DU PLOOY: On preparation for the Commission, the docket in my office or in the container, I took that and I made a copy, and this was
5 what was in the docket.

ADV CANE: Yes. So, this is simply what is in the docket. There can surely be no doubt that you would have visited Richard Young and requested the documents upon which he based his allegations in
10 relation to the GFC. Surely you cannot dispute that you would have asked him for that and he would have given you further documents.

COL DU PLOOY: I would have asked him, but I cannot recall that he handed me any documents. I cannot recall.

ADV CANE: Thank you, Chair. Those are the questions from our side.

CHAIRPERSON: Thank you. I suppose there is going to be a question
15 of re-examination. Can I [indistinct], Advocate Pansergrow?

ADV PANSEGROW: Thank you, Mr Chair. There are a few questions in re-examination, if it so pleases the Commission. Mr Chair, is it possible that we can briefly adjourn for a few minutes before we
20 commence? I see it is 12:45. I do not know whether there is a lunch adjournment again, or not, or what the procedure is. I will be very brief once I commence. If I just sort out my thoughts, I promise I shall not promise the Commission that I will take half an hour. I will probably be able to keep it to less than half an hour.

CHAIRPERSON: Maybe then in this case let us adjourn for lunch. I see
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it is 12:50. Can you come back at 13:15?

ADV PANSEGROW: Yes, we can do so. Thank you, Mr Chair.

CHAIRPERSON: Thank you.

COMMISSION ADJOURNS

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COMMISSION RESUMES

COLONEL DU PLOOY: (s.u.o.)

ADV PANSEGROW: May it please the Honourable Commission. May I kindly be allowed to proceed, Mr Chair?

CHAIRPERSON: Yes.

10 ADV PANSEGROW: Thank you. Colonel du Plooy, mention was made that at the closure of the investigations, or after you consulted with General Meiring, the matter was referred to the prosecutors of the Special Commercial Crimes Unit. Why so? Why were the Regional Prosecutors not consulted?

15 COL DU PLOOY: Honourable Chair, the Regional Prosecutors, Advocate Downer and Steinberg and Baloi, they were not available anymore. And because we were no part of the police, I could only go to the SSCU because they were servicing the Commercial Crime Unit in the police.

20 ADV PANSEGROW: And, just to put it more clearly, why were the two respective prosecutors not available anymore, referring to Advocate Downer and Advocate Steinberg?

COL DU PLOOY: Because the Scorpions closed down, and I was now part of the SAPS.

25 ADV PANSEGROW: Where was Advocate Downer at that stage?

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COL DU PLOOY: HE was still with the [indistinct] in Cape Town.

ADV PANSEGROW: And the position of Advocate Steinberg?

COL DU PLOOY: I am not sure where Advocate Steinberg was at that stage, because I know at some stage he moved over to assisting the UN
5 or [indistinct] if I am not mistaken, but I was not sure he was still in South Africa at that stage.

ADV PANSEGROW: You were at that stage working in Pretoria, as you are at present?

COL DU PLOOY: Correct.

10 ADV PANSEGROW: Colonel, then broadly speaking as regards the investigative procedures, taking note that each case has its own specific merits that might require adaptation to the approach, what was the approach of the DSO, the investigating team in respect of the Arms Deal? How was the broad perspective, not going into detail as to very
15 much the specifics of each occurrence, just the broad perspective on how the investigation was approached.

COL DU PLOOY: We approached the investigation, and in general terms it is actually all over, or most investigators [indistinct] if by following the money, and in corruption cases, or alleged corruption case
20 and by following the money, you will then find more evidence and everything that transpire from there.

ADV PANSEGROW: Is it easy, or accessible as a general norm to get direct evidence of corruption of the specific participants?

COL DU PLOOY: No, it is not, because what is discussed and dealt
25 with is not always written down, there is not notes or evidence to that

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effect. Sometimes you need circumstantial evidence to try to prove what have happened behind the scenes, or in those meetings where it was discussed.

ADV PANSEGROW: I know we are referring to what had already
5 transpired, or to some extent doing archaeology, but is this the procedure that was followed in respect of the Shaik trial, which was concluded successfully? Just in general terms.

COL DU PLOOY: That is correct.

ADV PANSEGROW: Colonel, and just to conclude, you are Afrikaans
10 speaking, your home language, but you testified in English?

COL DU PLOOY: That is correct.

ADV PANSEGROW: Thank you, Honourable Commission, there is no further re-examination.

CHAIRPERSON: Advocate Lebala?

15 ADV LEBALA: Thank you, Chair. It is a follow up question on the unique approach in as far as the investigations pertaining to the Arms Procurement Package is concerned. You mentioned that the money had to be followed to assist you to establish [indistinct] in the context of corruption. Am I right?

20 COL DU PLOOY: That is correct.

ADV LEBALA: What about improper influence?

COL DU PLOOY: I do not understand the question.

ADV LEBALA: The emphasis was money, from what you are saying, because it makes things easier, is it not?

25 COL DU PLOOY: In general terms what we normally do as investigator

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is to find out who the role players are. If we receive a matter you decide, or you look at who the role players are and you then obtain their financials and their financial situation, and as I say, to see if there was a flow of moneys or funds. Does that answer?

5 ADV LEBALA: But, that does not conclude that there was improper influence. Do you agree?

COL DU PLOOY: Improper influence to what extent?

ADV LEBALA: We are talking about the Arms Procurement Commission. You say that it is easier to follow money, because money
10 ends up demonstrating that there is corruption when you find evidence. Now, separate to money, there could be improper influence on its own. Do you agree? There is money, there could be improper influence, do you agree?

COL DU PLOOY: Yes, I do.

15 ADV LEBALA: It is not easy to follow improper influence, let us be honest.

COL DU PLOOY: That is correct.

ADV LEBALA: Now, will you agree that the fact that money was there, does not conclusively mean that there is improper influence?

20 COL DU PLOOY: Yes, it depends on the specific case, but I agree.

ADV LEBALA: Thank you.

CHAIRPERSON: Thank you. Colonel du Plooy, just two questions from me. The documents which are alleged to be in the so-called containers, do you perhaps know when were they booked in those containers and
25 by whom?

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COL DU PLOOY: Honourable Chair, it is difficult to say a specific date, but it was always in safes or strong rooms in the building itself, and it must have been during late 2010 or during 2010 that it was moved to containers [indistinct].

5 CHAIRPERSON: Thank you. Will I be right to say that your unit, the chances are that they have perused those documents before they put them into the containers, because otherwise it does not make sense for you to collect documents all over and end up not looking at the documents before they are filed away, or put away, or dumped into the
10 containers?

COL DU PLOOY: Honourable Chair, if I understand you correctly, what we did after the searches in 2008 and while it was on the BAE matter, remember on the Shabir Shaik matter everything was done, that was fine, it was on a computer, it was perused. But, on the BAE matter the
15 documents that were seized, that was perused as normal. But, then there are documentation that were in other safes that was more about the process, for instance documents regarding the Ngeni matter that was in court and so forth. That is also contained in the container, and that I would not have gone through at that stage.

20 CHAIRPERSON: But, will I be right to assume that the probabilities are high that those documents, somebody or someone [indistinct] must have went through them? I do not think that they would have [indistinct] without looking at them and then just put them in those containers.

COL DU PLOOY: Honourable Chair, yes, you are 100% right. It would
25 have been dealt with by either Advocate Ferreira or some of the other

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teams, absolutely.

CHAIRPERSON: Lastly, by the time you made the recommendation to General Meiring, that the investigations must be closed because you could not find any *prima facie* evidence against anybody, you made that
5 after you having received, or after the unit had already seen the documents which are dumped in the containers.

COL DU PLOOY: Honourable Chair, I do not follow precisely.

CHAIRPERSON: Okay, let me repeat. By the time you made the recommendation to General Meiring that the investigations must be
10 closed, you were aware of the documents which were in those containers.

COL DU PLOOY: The documents I myself plus maybe the other two workers assisting me to carry all those documents that were in the safes in the building to the containers. By the time in September I drafted my
15 memo, I cannot say it was already that everything was in a container. Some parts of it were, and if my memory serves me right, the BAE part documents, those boxes about 460 boxes, were put in the container that I had access to.

CHAIRPERSON: Thank you. Lastly, if [indistinct] any document which
20 proves some wrongdoing on the part of anybody, and they were in those containers, you would not have said to General Meiring that you recommended that the investigation should be closed. Will I be correct?

COL DU PLOOY: In the containers, regarding the BAE that there were certain documents that [indistinct] I cannot recall that there were specific
25 in respect of BAE and GFC, because as I tried to indicate, there were

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documents that we received, again referring to the German documents that we received from them, that was on my computer and not necessarily in the container. But, at that stage there was no *prima facie* evidence against any person that would have, or could have influenced the awarding of the main contract to [indistinct].

CHAIRPERSON: Maybe I need just to rephrase my question. If in those containers there were documents which would have established a *prima facie* case against any person, or an entity, you will not have written the memo that you sent to General Meiring, where you recommended that the investigation should be closed.

COL DU PLOOY: Honourable Chair, as I indicated in my evidence earlier, for me it was at that where I felt there is no political [indistinct], so I discussed with General Meiring. I informed him about the documents that is under my disposal, because I made several presentations to the police, saying this is what we have and what we need to obtain the MLA's, oversees information or evidence that we need to obtain. But, under my immediate control a document that we received or that I have in the correct manner, because remember what I am trying to say now is that the German document when received was on an informal bases. So, in regards to that in that moment, I told him that we have this document regarding Chippy Shaik, but it is informal, it was not on a formal bases that we received it, we have to go oversees and obtain this information. That was my, and in the end as I stated, if you look at all the memorandums, the difficulty of the challenge, I came to the conclusion [indistinct] political will, it may be strong, but I felt that I

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am not going to get anywhere, it is many years later, and then I drafted, because on the one hand, but on the other hand also I believed in what I said there in the memo, saying that it is so many years after to find evidence now in South Africa will be [indistinct].

5 CHAIRPERSON: The last question from me, am I right to say those containers, at the time when you wrote a memo to General Meiring, there was no documents which could establish a *prima facie* case against anybody?

COL DU PLOOY: Not in the containers, except the case where the
10 team believed there is a *prima facie* case against the President. But, besides that, regarding BAE and that, no there was not.

CHAIRPERSON: Thank you. Any questions arising from that?

COMMISSIONER MUSI: Just to get certainty, are there any documents that came onto that container after the closure of the investigation?

15 COL DU PLOOY: Honourable Commissioner, can you just repeat the question?

COMMISSIONER MUSI: Are there any documents that came onto that container after the investigations were closed in 2010?

COL DU PLOOY: No, Honourable Commissioner.

20 COMMISSIONER MUSI: Thank you.

CHAIRPERSON: Any questions arising from our questioning of Colonel du Plooy?

ADV LEBALA: None from our side, Chair.

CHAIRPERSON: Advocate Cane?

25 ADV CANE: No, thank you, Chair.

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CHAIRPERSON: Okay.

ADV PANSENGROW: None, thank you, Honourable Chair.

CHAIRPERSON: Thank you. Colonel du Plooy, thanks a lot you are excused, and thanks a lot for giving evidence.

5 COL DU PLOOY: Thank you very much, Commissioner.

CHAIRPERSON: Okay. No, no, you just wait until I am finished. Advocate [indistinct] what is our position, because I see according to our program we are supposed to have [indistinct] today.

ADV MDUMBE: [Indistinct]. The representatives [indistinct] submissions to the Commission, and Advocate [indistinct] will address the Commission.

ADV SEBEKO: Certainly, Chair, with your leave. I am [indistinct] passing the buck to me. But, be it as it may, there have been submissions made on behalf of [indistinct]. [Indistinct] a subpoena was issued to the CEO of the [indistinct] BAE systems, [indistinct] to appear before the Commission for purposes of giving evidence that might [indistinct] to BAE's involvement in the acquisition process.

Mr Johan Steyn, who is the current CEO of this company has indicated that he has no personal knowledge of any processes or any facts to which he can give evidence, regarding the Strategic Defence Procurement Packages, which forms the subject matter of the Commission's work. It is stated [indistinct] that he started only with this company during 2004, after the [indistinct] PLC [indistinct] 75% interest in a company formerly known as [indistinct] South Africa, in which company Mr Steyn held the position of CEO.

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Now, as a result of the lack of knowledge, it has been contended on his behalf that no purpose will be served by Mr Steyn coming to give evidence, because he cannot assist the Commission in any manner whatsoever. And just so to conclude this aspect of BAE, it does appear
5 that in 2014 this company was 100% [indistinct] process of [indistinct]. So, apart from the written submissions that were made on behalf of BAE, there will be no further oral evidence that will be given on behalf of this entity.

A similar position has been adopted by the legal representatives of
10 [indistinct], Adams and Adams, in a letter written to the Commission on 13 May 2015, in which the following is recorded in paragraphs 2 and 3 of that letter:

*“2. Our client has undertaken an extensive internal process to sufficiently address the issues raised by the [indistinct] leaders when
15 previous communications from us. It has however become apparent through the aforesaid internal process, that no single person in [indistinct] employment has any personal knowledge of issues detailed in the statement.*

*3. In view of this, and as advised during our telephone conversation,
20 our client does not believe that there will be any evidentiary benefit to provide the Commission [indistinct] by a person with no personal knowledge of the issues.”*

Chair, [indistinct] context, that the once [indistinct] was admitted by SAR, they have since submitted a further extensive written submission
25 for the purposes of being [indistinct] Commission. Now, from this letter

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it is apparent that none of the officials currently employed by SAR has any personal knowledge of the matters that the Commission has to investigate. Now, for those reasons, Chair and Commissioner Musi, they have contended and have submitted that [indistinct] by them
5 sending any of the officials who have no personal knowledge of the issues.

Just in closing, in paragraph 5 of the letter that I have referred to earlier, the attorneys of SAR [indistinct] as follows:

*"In view of our client's involvement with the Commission since the
10 inception, we believe it is only appropriate for our client to be involved in its conclusion. We will provide the Commission with written closing submissions before 10 June 2015, as required. Our only difficulty is that our counsel is not available during the week of [indistinct] to present our client's closing submissions."*

15 So, in a nutshell, Chair and Commissioner Musi, in the absence of not only one, but two companies being able to give evidence orally on issues that the business of this Commission is about, it does appear that Colonel du Plooy would have been the Commission's last witness.

CHAIRPERSON: Thank you. [Indistinct], if the companies are not
20 willing to come, we cannot subpoena them because we do not have that jurisdiction. [Indistinct] they no longer have got [indistinct], and the same thing applies to [indistinct] that those who can testify, if we do find them, they will be somewhere outside the country.

So, it means that our next sitting then is going to be on the 22nd of
25 June, when we start with the closing submissions. I think for the time

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being the venue will still be the same venue, but then we will ask the Commission's staff to issue a fresh program, apprising people when and how the closing submissions are meant to be made. This we will publish at a later stage.

5 Okay, before we adjourn, I am going to ask DOD and Armscor to prepare a very short document for me, and in that document I want them to address two issues. The first issue is when I look at the evidence of Admiral Kamerman, he states that CCI2 tendered for at least seven contracts under the SBP, and he further said that two of the contracts
10 won by CCI2 were cancelled on the bases of non-performance. This is what Admiral Kamerman said at the time when he testified, he spoke about seven contracts.

 Last time under cross-examination, the DOD produced a document which indicated that CCI2 put in six bids, they won three and they lost
15 three. So, I am not quite sure which is the correct figure, the one that was mentioned by Rear Admiral Kamerman, or the figure that was mentioned by the DOD when they cross-examined Dr Young.

 Then, the second thing which did not appear on the schedule that we have, or the contracts that Dr Young put in bids for. There is a sub
20 system called submarine torpedo firecontrol system. Rear Admiral Kamerman said that even this sub system's contract was awarded to Dr Young. But, in the schedule you gave me the last time when you cross-examined Dr Young, this sub system was not mentioned.

 Can you try and clarify this issue? Having in short whether CCI2 did
25 make a bid for this submarine fire control system, and if that is the

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position, then it means that you know they put in bids for seven. They put in seven bids and not six bids. Whatever reply that you are going to give to me as far as that is concerned, can you please make sure that you send it to Dr Richard Young so that he should also comment? I think that will help to clarify that issue, because at the moment I am not sure whether it was six or seven.

ADV CANE: Yes, certainly, Chair, I would attend to that.

CHAIRPERSON: Thank you. I think we have come to the end of our sitting today. I see it is 13:45. We are now going to adjourn till, we will come back on the 22nd. Thank you.

(COMMISSION ADJOURNS)

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