

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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10

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DAY 200

FINAL

20

PROCEEDINGS RESUME ON 16 JANUARY 2020

CHAIRPERSON: Good morning Ms Wentzel, good morning everybody.

ADV SUSAN WENTZEL: Good morning Chair.

CHAIRPERSON: Yes are you ready?

ADV SUSAN WENTZEL: Yes I am ready.

CHAIRPERSON: Yes. I caused a message to be sent through to you to enable you to apply your mind to the question of how much in Doctor Lebeya's statement falls within the Terms of Reference of the Commission.

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: Because if one reads what he says in his statement there is no doubt that if all of that is true he was treated very badly. He was side-lined in various ways within the SAPS. But what seems to be lacking is a clear connection with that ill treatment and being side-lined with the Terms of Reference. Now after reading his statement I have not had a chance to go back and have a look at the Terms of Reference but it seemed to me that maybe quite a limited portion of it may fall within the Terms of Reference. So that is why I sent a message so that you could apply your mind before we start so that you
20 could enlighten me if your submission is that all of it does fall within the Terms of Reference. Because across the breadth and length of the country there would be many people who have been side-lined and have been ill-treated and who have been denied promotions that they deserved and so on and so on. But not all of those people – not all of their cases fall within the Terms of Reference. We must always ask

ourselves the question, how does this fall within the Terms of Reference? So that we do not end up spending time on matters that might not fall within the Terms of Reference. So you have had a time to have a look and maybe you might point out things that I might not have had a chance to look at.

ADV SUSAN WENTZEL: Yes Chair. Chair I thank you for the courtesy of trying to get hold of me in order to ask me to apply my mind to that issue. Unfortunately I was consulting with General Lebeya this morning but it so turns out that that is the first issue that I addressed with him
10 although I did not get the message. So it is something that I have discussed with him and I also have had a difficulty particularly with the – all the detail about the trial in the labour court. And I was not proposing to deal with that in any real detail. Regarding the Terms of Reference Chair if ...(intervenes).

CHAIRPERSON: One second. Where is my blue book that has got the Terms of Reference? Or has it put there. Yes.

ADV SUSAN WENTZEL: If I might just point out at the beginning. The statement submitted to the Commission was submitted by General Lebeya himself.

20 **CHAIRPERSON:** Please do not stand too far from the microphone.

ADV SUSAN WENTZEL: Sorry.

CHAIRPERSON: Otherwise I cannot hear you.

ADV SUSAN WENTZEL: Sorry. I would like to point out at the outset that the affidavit prepared by General Lebeya was prepared by him. He is a highly educated man. He has a doctorate in law. Secondly

...(intervenes).

CHAIRPERSON: But of course he – you are the people who needed to read it and ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And say and see whether ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: What it contains falls within the Terms of Reference and if you did not think so raise that with him and hear what he has to say.

10 **ADV SUSAN WENTZEL**: Yes.

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: As I have understood his statement and it has been clarified this morning is that General Lebeya is of the firm view that his treatment was as a direct result of his involvement in the murder case involving – if I can just get his name correctly. Tshepo Oupa Ramogibe in – and also in investigating the irregularities at Crime Intelligence. And in essence he says that after the Commissioner General Phiyega was appointed. Her attitude to him changed completely once she became aware that he had been involved in these
20 investigations. And he believes that his treatment from then on
...(intervenes).

CHAIRPERSON: But I do not think that – I do not remember seeing anything in the statement that necessarily connects – or that says that it was because Ms Phiyega had become aware of his role in that regard. I do not remember seeing something that is to that effect.

What does appear from the statement is that Ms Phiyega quite early after she had arrived seemed to ignore him in circumstances where he was one of her deputies. Seemed to ignore him and did not include him in the Dumela sessions that he – she was going around about and of course a number of things emerged from the statement that seemed to suggest that for some reason she either did not like him or did not want to give him the recognition that he deserved. But what is not clear is what that reason is and whether that reason would be something connected with anything in the Terms of Reference.

10 **ADV SUSAN WENTZEL**: Chair if ...(intervenes).

CHAIRPERSON: Oh actually after I had finished reading the statement I wondered whether it is not premature to hear Doctor Lebeya's evidence because the question that I had was, has there been proper investigation of the issues that are dealt with in this statement? Because maybe a deeper and proper investigation might actually bring about things that will connect what was done to him properly with the Terms of Reference of the Commission. There are documents that he refers to that he could not place before me because they remain classified. I do not know if anybody has made any attempt to have
20 those documents declassified so that we could see whether the contents of those documents.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Enlighten us as to what was known by the authorities about him. What they may have said about him. There is the one remark which was told to him by Lieutenant General Mkhwanazi when

he was acting National Commissioner that in a meeting that he had with the former President the former President said he kept on hearing Lebeya, Lebeya, Lebeya, who is this Lebeya? And – but when you leave it like that it is not terribly helpful. So it may well be that a deeper investigation would be able to reveal something. Because when you read it you feel that there must have been something – what was it? But I do not think it comes out as clearly as one would like from the statement.

ADV SUSAN WENTZEL: Yes.

10 **CHAIRPERSON:** But you – tell me what your – what you have to say?

ADV SUSAN WENTZEL: If I could refer you to page 11 paragraph 30 of the statement? You will see that it said there that on the 1st of July 2009 General Mdluli was appointed as the Divisional Commissioner of Crime Intelligence. You will see that it was only about six weeks later that General Mdluli an investigation was commissioned by the Deputy Provincial Commissioner Engelbrecht into a – in essence a cold case and that was the death of Oupa Ramogibe. Now that death that occurred in 2002. It has been sent for inquest and nothing further had happened.

20 **CHAIRPERSON:** *Ja* no I know that part.

ADV SUSAN WENTZEL: You know the background?

CHAIRPERSON: No I know I have read the whole statement.

ADV SUSAN WENTZEL: Yes. So what he says is after it he is tasked with this resuscitation of this investigation. He says in paragraph 32
Chair:

“On the same day of 17 August 2009 Divisional Commissioner Raymond Dlala drafted a covering letter to send the missive from Engelbrecht to Deputy National Commissioner Dramat for attention. Dramat assigned the investigation to me. I accepted the instruction and executed it. I had no slightest idea that this would become a career limiting undertaking.”

So ...(intervenes).

CHAIRPERSON: I know all of that. I know all of that. What I am
10 looking for is the connection with the Terms of Reference. There certainly are certain portions.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Of his statement that may appear to be the kind of thing we are investigating.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: But my impression is that a large portion of the statement might not be. But it may be that with further investigation and deeper investigation something can be found that would make it quite clear that it is what we are looking for. Part of the concern I have
20 with using Doctor Lebeja's role in that investigation is be – is that he says later on he recommended that it should be done by Mr Ntlemeza and it went to Mr Ntlemeza.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Which seems to suggest to me that he did not take it to any conclusion that anybody could feel to justify saying the way he

did that investigation offended so and so and so and so therefore did a, b, c, d. It seems he did it – or rather it was with him for a certain time but then he moved it to Mr Ntlemeza. Then Ntlemeza continued with it, reached a certain conclusion which involves saying there was a conspiracy. A number of people I think including Doctor Lebeya were involved in a conspiracy against Mdluli – Mr Mdluli.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: And then later on an investigation initiated by the Minister I cannot – I think, I cannot remember which one, the Minister
10 resulted in a finding that rejected Ntlemeza – Mr Ntlemeza's finding of a conspiracy and in that way cleared Doctor Lebeya and police officers who had been alleged to have had a conspiracy against Mr Mdluli. So I got the impression that maybe some deeper investigation may need to be done to see whether there is enough that ensures that most of what is in the statement falls within the Terms of Reference. It may be that your investigators will say, no deep investigation was done there is nothing more that can be done. This is all that there is in which case then one can make a decision knowing that there is nothing further. For example I do not know maybe you do know has any investigator
20 gone to Ms Phiyega and say, why did you do this to Doctor Lebeya?

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Why did you get your junior to deal with it, to talk to him about a, b, c, d? Why did you not include him and his department or his unit in the Dumela session? There are a number of things that could be asked. Now it may be that she is interviewed and she is

asked about these things. Maybe some answers that she will give could help clear this thing up. For argument sake what if she were to say it is because I had been told to side-line him and I had been told by so and so and so and so. Until you interview her you do not know whether that is what she will tell you.

ADV SUSAN WENTZEL: Chair in regard to that the previous Commissioner has actually approached the Commission pursuant to the receipt of a Rule 3.3 Notice. She has said she would like to make a statement and she has indicated in that statement; I saw this I think a
10 day or two ago, she has indicated in that statement that she – that the General is incorrect in his perception. It was just a personal difference that they had between each other that essentially there was – it had nothing to do with a sinister motive. That is her version. So I do not believe if – and obviously she will now be consulted because she has asked for that and I will certainly make sure that she is consulted. But from understanding what she has said in response to the Rule 3.3 Notice her version is that there was no sinister motive. I was not punishing him because he was involved in the Mdluli investigation.

CHAIRPERSON: That is very important. But it goes back to the
20 question I was asking. Has she been approached?

ADV SUSAN WENTZEL: As yet she has not.

CHAIRPERSON: And ...(intervenes).

ADV SUSAN WENTZEL: Perhaps ...(intervenes).

CHAIRPERSON: And it is wrong that she has not been approached.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: The Legal Team is wrong not to have done that.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: The investigators are wrong not to have done that but more than the investigators I blame the Legal Team.

ADV SUSAN WENTZEL: Yes I understand.

CHAIRPERSON: Because the Legal Team must guide the investigators.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: When they read this statement they see all of these things. Before arrangements are made for the witness to come and
10 give evidence the Legal Team must say, hang on there are too many things.

ADV SUSAN WENTZEL: Let us get her version.

CHAIRPERSON: *Ja*. But more than anything.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Members of the Legal Team must ask with regard to each witness how does this witness' evidence fit into the Terms of Reference?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: For each witness that question must be asked. And
20 no member of the Legal Team should not be ready to deal with that question.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Now if Ms Phiyega says as you say she has said that it was because of personal differences.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: It goes back to the question I am raising ... (intervenes).

ADV SUSAN WENTZEL: Yes it does.

CHAIRPERSON: To say, the way that Doctor Lebeya was ill treated as reflected in the statement can it be said that it falls within the Terms of Reference? Was it corruption? Was it fraud? Was it State Capture? Or could it be that maybe she just did not like him for whatever reason which would be wrong itself.

ADV SUSAN WENTZEL: Yes.

10 **CHAIRPERSON:** But not everything that is wrong falls within the Terms of Reference of the Commission.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: You see and ... (intervenes).

ADV SUSAN WENTZEL: I understand that.

CHAIRPERSON: And the Legal Team should do this.

ADV SUSAN WENTZEL: Yes.

20 **CHAIRPERSON:** We should not have a situation where a day has been set aside for me to hear the evidence of a witness and then we cannot hear and the day is wasted because there is a problem about whether the evidence of that witness should – falls within the Terms of Reference of the Commission.

ADV SUSAN WENTZEL: Yes Chair I understand and I do appreciate that and I must say that I did, it was concerning me and that is why when I consulted this morning again with General Lebeya I said, I am concerned that this – does this fall within the Terms of Reference. But

I agree perhaps we need to do further investigation. But if perhaps the matter could stand down so that I could just discuss it with General Lebeya and he can also give me just a 15 minute adjournment so that I can just discuss this with him and find out if there are facts that he can elude to that could further support a direct link. Because I – if there ... (intervenes).

CHAIRPERSON: How is that going to help for today's purposes? If those facts are not here already.

ADV SUSAN WENTZEL: Yes I understand then we have problems with
10 Rule 3.3. Notices.

CHAIRPERSON: It is work that should have been done a long time ago.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I see that his affidavit was deposed to on the 11th of November 2019.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: That means it has been more than two months and I assume that this is now – so here is a statement that was prepared that is on the letterheads of the Commission or that has been on the
20 Commission. I assume that the Commission investigators and the Legal Team got it soon after that and somebody in the Legal Team as soon as it arrived should have read it and asked himself or herself the question that I am asking. And all of that should have been dealt with in November, long before now.

ADV SUSAN WENTZEL: Yes Chair I do appreciate that and I must say

that when I originally read the statement I – because of what was said in that opening statement I believed that there was this connection and he was in essence being punished for his involvement in the Mdluli investigation.

CHAIRPERSON: Where did you – what facts in the statement did you base that on?

ADV SUSAN WENTZEL: Where he says which I quoted to you earlier Chair. I think it was paragraph 15.

CHAIRPERSON: *Ja* but you cannot base your conclusion on that
10 simply bold allegation.

ADV SUSAN WENTZEL: Yes I ...(intervenes).

CHAIRPERSON: You have got to say where are the facts that support that allegation?

ADV SUSAN WENTZEL: Yes. And ...(intervenes).

CHAIRPERSON: And I do not see them.

ADV SUSAN WENTZEL: And Chair in preparing again through the statement last night after the testimony finished that was – that very fact concerned me. And I read it again and I looked again and I looked carefully and it did concern me. So ...(intervenes).

20 **CHAIRPERSON:** You see ...(intervenes).

ADV SUSAN WENTZEL: I have to agree with you because it is the issue that I canvassed. I also must accept that I should have realised that earlier and I was wrong in that respect. I must accept that and I apologise for that.

CHAIRPERSON: Yes you see if that issue – somebody in the Legal

Team had applied his or her mind properly on this statement soon after it had arrived this could have been avoided.

ADV SUSAN WENTZEL: Yes I agree.

CHAIRPERSON: This could have been avoided. And as it seems now we are going to lose a day and we do not have a lot of time.

ADV SUSAN WENTZEL: Yes it is unfortunate.

CHAIRPERSON: Every hour counts. We need every day.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Please pass on the message to all the members of
10 the Legal Team that this type of homework must be done. So maybe
before I decide whether there will be a short break or not let me talk to
Doctor Lebeya. Doctor Lebeya you understand the exchange that I
have had with counsel?

DOCTOR LEBEYA: I do Chairperson.

CHAIRPERSON: Yes. It may be that from your side you see the
connection that I am struggling to see at the moment but it may be that
it is because of other things that you know that might not be in the
statement. I do not know. But you understand what the concern is. It
is not to say there is nothing in the statement that could fall within the
20 Terms of Reference. Some of it looks like it does but a lot of it does
not seem to fall within the Terms of Reference. But what I think maybe
I should do is adjourn for a short break to enable counsel to have a
discussion with you and the two of you can discuss. When I come back
we can then see where we go.

DOCTOR LEBEYA: Thank you Chairperson.

CHAIRPERSON: Is that alright?

DOCTOR LEBEYA: Thank you Chairperson.

CHAIRPERSON: *Ja.* And if we end up not being able to continue today it is not because of anything wrong you have done. You have not done anything wrong. I am going to take an adjournment now. Is 15 minutes going to be enough or must we take a little longer than that?

ADV SUSAN WENTZEL: Perhaps could we take 30 minutes?

CHAIRPERSON: 30 minutes.

ADV SUSAN WENTZEL: Is that long enough?

10 **CHAIRPERSON:** Okay it is 11:00 so we will adjourn until 11:30. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Wentzel.

ADV SUSAN WENTZEL: (Indistinct).

CHAIRPERSON: Switch on your mic.

ADV SUSAN WENTZEL: Sorry. Thank you Chair.

CHAIRPERSON: H'mm.

20 **ADV SUSAN WENTZEL:** Chair, before I address you counsel is here appearing for General Phiyega. He would like just to place this on record. Thank you.

CHAIRPERSON: Yes. We should have taken care of that right at the beginning.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Okay. Let him come forward.

ADV SUSAN WENTZEL: Unfortunately he only indicated that to me.

CHAIRPERSON: He did not mention it to you? Oh okay.

ADV SUSAN WENTZEL: During this adjournment. Thank you.

CHAIRPERSON: Okay. Alright.

ADV RAVINDRA MANIKLALL: Good morning Judge.

CHAIRPERSON: Good morning.

ADV RAVINDRA MANIKLALL: Judge, my name is Maniklall.

CHAIRPERSON: Yes.

10 **ADV RAVINDRA MANIKLALL:** I have been on the last occasion.

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: Judge, I have been instructed by General Phiyega it is in relation to the witness' evidence to be led – Dr Lebeya ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: And most of the issues you have already raised it.

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: I am not going to repeat ...(intervenes).

20 **CHAIRPERSON:** Yes.

ADV RAVINDRA MANIKLALL: Some of the issues that we had also come across as well.

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: But Judge just to point out ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: One of the important aspects is that my learned friend, I think, during her address mentioned that General Phiyega had in fact made contact with the Commission ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: And the Secretary of the Commission ...(intervenes).

CHAIRPERSON: Yes.

10 **ADV RAVINDRA MANIKLALL:** But beyond that Judge she also requested further details ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: Of some of the allegations that were contained in the affidavit ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: And in order to ...(intervenes).

CHAIRPERSON: Did you know how long ago she made contact with the Commission?

20 **ADV RAVINDRA MANIKLALL:** She made contact – the notice was served on her on the 13th of December ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: 2019.

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: The contact was – she made contact with them in writing via e-mail ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: On the 23rd of December ...(intervenes).

CHAIRPERSON: Okay.

ADV RAVINDRA MANIKLALL: 2019.

CHAIRPERSON: Okay.

ADV RAVINDRA MANIKLALL: Unfortunately there has not been an acknowledgement nor ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: A response ...(intervenes).

10 **CHAIRPERSON:** H'mm.

ADV RAVINDRA MANIKLALL: And that was some of the housekeeping issues that I was going to address ...(intervenes).

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: Judge on ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: Earlier ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: But I did not want to interrupt your ...(intervenes).

20 **CHAIRPERSON:** My - my discussion with ...(intervenes).

ADV RAVINDRA MANIKLALL: Yes.

CHAIRPERSON: Yes. No. That is fine.

ADV RAVINDRA MANIKLALL: Thank you Judge and those had been listed and if there are any difficulties I will forward the very same e-mail to my colleagues again ...(intervenes).

CHAIRPERSON: Yes. Okay.

ADV RAVINDRA MANIKLALL: But one of the most important issues is that Judge I have also been asked to place on record yesterday's evidence from the previous witness as well. I think it is retired Colonel Van Loggerenberg.

CHAIRPERSON: Van Loggerenberg. *Ja.*

ADV RAVINDRA MANIKLALL: Judge, neither General Phiyega not the KwaZulu-Natal Provincial Commissioner, Ngobeni, have been given the Rule 3.3 Notice.

10 **CHAIRPERSON:** Is that so?

ADV RAVINDRA MANIKLALL: That is correct Judge. So that is the ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: One of the aspects that I was specifically asked to raise ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: With the Commission that it could be a housekeeping issue ...(intervenes).

CHAIRPERSON: Yes.

20 **ADV RAVINDRA MANIKLALL:** But it is absolutely prejudicial because ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: They learnt about it in the press release ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: Yesterday ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: And it is quite unfair ...(intervenes).

CHAIRPERSON: *Ja.*

ADV RAVINDRA MANIKLALL: And prejudicial to them ...(intervenes).

CHAIRPERSON: *Ja.*

ADV RAVINDRA MANIKLALL: And it has certain consequences as well
...(intervenes).

CHAIRPERSON: H'mm.

10 **ADV RAVINDRA MANIKLALL:** But they do wish to place their response
on affidavit.

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: So they would appreciate
...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: The relevant notices to enable them to
take ...(intervenes).

CHAIRPERSON: Yes.

20 **ADV RAVINDRA MANIKLALL:** The necessary steps in terms of Rule
3.3.

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: Yes. Judge and then the next aspect
that I was asked to raise in the Commission and this is not to repeat
anything that Judge has earlier addressed ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: My learned friend ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: Was that the – both – especially General Phiyega in respect of this witness has raised pertinent requests and she would want them to be attended to as quick as possible so that she can file her affidavit and obviously in the process of applying to cross-examine, if necessary, it might very well be so that the witness does not want to lead certain evidence ...(intervenes).

CHAIRPERSON: Yes.

10 **ADV RAVINDRA MANIKLALL:** Or be cross-examined.

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: And he has the right as well.

CHAIRPERSON: Yes. Yes.

ADV RAVINDRA MANIKLALL: So therefore it is quite imperative that the Commission at least request my learned friend, if not all the – that the Legal Team or the investigators furnish us with those – that information and the various notices that I have mentioned.

CHAIRPERSON: Yes. No. That should be done, but as you heard me say earlier on ...(intervenes).

20 **ADV RAVINDRA MANIKLALL:** Yes.

CHAIRPERSON: In – investigating means that when you hear one person saying certain things about another person ...(intervenes).

ADV RAVINDRA MANIKLALL: Yes.

CHAIRPERSON: You also go to the other person and say what do you know about this. This is what I am hearing. Hear what that person has

to say. So that you have a full and balanced picture of what the position is. So that is why I raised the concern when I heard that General Phiyega had not been interviewed in regard to these matters.

So that when a matter is brought here there is – there has been proper investigation. Ms Wentzel already told me that Ms Phiyega has said that whatever happened between her and Dr Lebeya was personal.

ADV RAVINDRA MANIKLALL: May ...(intervenes)?

CHAIRPERSON: If I understood her correctly.

10 **ADV RAVINDRA MANIKLALL:** Judge, may I just correct that deception?

CHAIRPERSON: *Ja.* No. Correct it later.

ADV RAVINDRA MANIKLALL: I do not think ...(intervenes).

CHAIRPERSON: Correct it later ...(intervenes).

ADV RAVINDRA MANIKLALL: Okay.

CHAIRPERSON: But what needs to be done is confirmation that the things that Dr Lebeya says were done to him. Were done to him. As far as Ms Phiyega is concerned what her own version and circumstances are which she put forward about those things so that we
20 have a full picture.

She might say I did not do those things or yes I did them, but I was justified because of a, b, c, d and it is not necessarily because of any corruption or whatever and this witness might be able after being furnished with what she has to say no, no, no. That is not true. Go and look at a, b, c, d which will contradict what she is saying. That

kind of investigation should be done.

ADV RAVINDRA MANIKLALL: I agree with Judge.

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: That is – that ought to have been done on a preliminary basis ...(intervenes).

CHAIRPERSON: H'mm. H'mm.

ADV RAVINDRA MANIKLALL: But one of the aspects that I may raise and I think it is very pertinent that we correct it. She has not made the statement nor has she agreed Judge and that is why I think the
10 perception has to be corrected.

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: She has not agreed ...(intervenes).

CHAIRPERSON: H'mm.

ADV RAVINDRA MANIKLALL: That she has done any of the things that are being complained of.

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: In the manner in which it is being complained of ...(intervenes).

CHAIRPERSON: Yes. Okay.

20 **ADV RAVINDRA MANIKLALL:** And she merely wanted an opportunity ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: To have all these documents furnished to her ...(intervenes).

CHAIRPERSON: *Ja.*

ADV RAVINDRA MANIKLALL: In order that she may respond to the allegations contained in the affidavit and obviously then it can be dealt with more comprehensively ...(intervenes).

CHAIRPERSON: Yes.

ADV RAVINDRA MANIKLALL: And Judge you are correct. A proper investigation is absolutely required. No one has approached her to date in that respect.

CHAIRPERSON: Okay. No. Thank you very much. I am sure Ms Wentzel will talk to me about the complaint relation – relating to the
10 Provincial – former Provincial – is it? She is former now?

ADV RAVINDRA MANIKLALL: She is former Provincial Commissioner.

CHAIRPERSON: Commissioner ...(intervenes).

ADV RAVINDRA MANIKLALL: General Ngobeni. Yes.

CHAIRPERSON: Ja. As well as somebody else. You mentioned two people.

ADV RAVINDRA MANIKLALL: I also mentioned General Phiyega and Ngobeni did not ...(intervenes).

CHAIRPERSON: Oh, yes.

ADV RAVINDRA MANIKLALL: Get the Rule 3.3 Notices ...(intervenes).

20 **CHAIRPERSON:** Yes.

ADV RAVINDRA MANIKLALL: In respect of the previous witness ...(intervenes).

CHAIRPERSON: Oh. Okay. Yes.

ADV RAVINDRA MANIKLALL: The former Colonel Van Loggerenberg.

CHAIRPERSON: Yes. Okay. Okay.

ADV RAVINDRA MANIKLALL: Thank you Chair.

CHAIRPERSON: Thank you. Ms Wentzel.

ADV SUSAN WENTZEL: Thank you Chair. Chair, I do not have
...(intervenes).

CHAIRPERSON: Do you want to deal with this first before you
...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Report back?

ADV SUSAN WENTZEL: I will – if I could deal with this first.

10 **CHAIRPERSON:** H'mm.

ADV SUSAN WENTZEL: It would be convenient. First with regard to the fact that Rule 3.3 Notices were not sent to General Riah Phiyega or the former Provincial Commissioner Ngobeni with regard to Van Loggerenberg's statement. The reason for that is that they are actually not mentioned in the statement and the link that the witness made yesterday during his testimony was not something he had indicated before.

It was something he said following the testimony and as a result of that I had intended that a Rule 3.3 Notice would be sent so
20 that they could know that on this date he testified and this is what he said and there could then be a response. So I think that address is why that occurred.

The second is the issue of the request for information. I also do not have the letter here in front of me, but from what I recall. It is not a request for documents that are referred to in the statement. It is

a request for further documents as in General Lebeya's letter of appointment and that kind of thing.

Now whilst the Commission will always be cooperative and try and assist people who are implicated to obtain documentation. It is not the role of the Commission to then carry out fact or document acquiring exercises on behalf of every implicated person and as I have understood it.

It is generally the attitude if we have those documents we will provide them and if we can easily facilitate you getting those
10 documents as in the instance. If it is a – his formal letter of appointment etcetera. That – I am not saying that is definitely one of the things, but it is what I think I remember.

CHAIRPERSON: *Ja. Ja.* Well ...(intervenes).

ADV SUSAN WENTZEL: That we can approach General Lebeya and those documents can be provided.

CHAIRPERSON: *Ja.* The Commission would have no business having the letter of appointment – his letters of appointment.

ADV SUSAN WENTZEL: No.

CHAIRPERSON: *Ja.*

20 **ADV SUSAN WENTZEL:** So ...(intervenes).

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: So that is the one other aspect. When one has regard to the other aspect ...(intervenes).

CHAIRPERSON: Well there is the former Provincial Commissioner. Was she given – was she sent a Rule 3.3 Notice in regard to

Colonel Van Loggerenberg's evidence?

ADV SUSAN WENTZEL: I do not believe so and I do not have the statement in front of me and I do not like to make submissions unless I can double check I am correct, but ...(intervenes).

CHAIRPERSON: Why would it not have been sent to her, because General – Colonel Van Loggerenberg's evidence and statement or at least he – the evidence he gave with regard to various certain documents ...(intervenes).

ADV SUSAN WENTZEL: Yes.

10 **CHAIRPERSON:** Did implicate the former Provincial Commissioner.

ADV SUSAN WENTZEL: It certainly did. I understand from what I recall that every – in respect of Van Loggerenberg's evidence the list – every single person for whom a Rule 3.3 Notice was prepared was sent and received a notice.

CHAIRPERSON: But that does not answer the question. Was a Rule 3.3 Notice prepared and sent in regard to the former Provincial Commissioner?

ADV SUSAN WENTZEL: I – that investigate – I have asked the investigator to go and check that. As I indicated to you I am not sure if
20 I indicated in Chambers or at the hearing yesterday I was not the evidence leader who prepared those Rule 3.3 Notices. I cannot make a submission to you if I – unless I know it is true or false. I need to verify that. I just ...(intervenes).

CHAIRPERSON: Yes, but it may or may not be that somebody else had dealt with the Rule 3.3 Notices, but ...(intervenes).

ADV SUSAN WENTZEL: I led the evidence.

CHAIRPERSON: If you are going to lead the evidence ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: One of the things you should satisfy yourself on is that ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Anyone who is going to be implicated by the evidence of the witness ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

10 **CHAIRPERSON:** Was sent a 3.3 Notice. You have got to say ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Who are the people who are going to be implicated here ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Were all the 3.3 Notices sent? So that if they were not sent ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

20 **CHAIRPERSON:** You can then take steps. You can then make up your mind what you want to do about that ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: And I can be informed ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: That there is a problem in regard to the witness – the evidence of that witness, because you have discovered that – the

relevant 3.3 Notices ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Were not sent. We – I have to rely on the Legal Team
...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: That they would have checked all of those things
...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: And that if there is a problem they will tell me.

10 **ADV SUSAN WENTZEL:** Chair, I cannot believe that Rule 3.3 Notice
was not sent, but I need to check that and perhaps by the time I finish
addressing you on the other aspect the investigator will be back and I
can have an answer for you on that ...(intervenes).

CHAIRPERSON: H'mm.

ADV SUSAN WENTZEL: Because if it was sent then it is not an issue
that needs to be further addressed. If it was not sent ...(intervenes).

CHAIRPERSON: Well if it was sent ...(intervenes).

ADV SUSAN WENTZEL: Is that it certainly is something.

CHAIRPERSON: And counsel says – they say they did not get it. Then
20 there would need to be further investigation as to ...(intervenes).

ADV SUSAN WENTZEL: Yes. Absolutely.

CHAIRPERSON: How that came about ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: That it was sent, but they did not receive it.

ADV SUSAN WENTZEL: Absolutely.

CHAIRPERSON: Okay. Now what is your report back?

ADV SUSAN WENTZEL: Chair, the – I have had the opportunity in the break that you afforded me to discuss the issues raised by you with General Lebeya and what he says is that further investigation is not going to reveal a direct link. He does not believe. What his view is that his statement falls within the terms of reference, because of a number of factors which constitutes circumstantial evidence when viewed together you see the picture that he was targeted.

Perhaps not so much for the investigation into Mdluli's
10 wrongdoings at Crime Intelligence, but because of his alleged involvement in a conspiracy against General Mdluli and you will remember from the papers Chair that once these investigations had commenced and General Mdluli was suspended.

He addressed a letter to the former President and he said these are the Generals who are conspiring against me and he attached affidavits by a person saying that they had been told by a witness, Ronnie Naidoo, that they had conspired with General Cele and the aim was to get rid of Mdluli and the implication is that all these irregularities and – are trumped up charges and he is being pursued.
20 Disciplinary proceedings are being pursued.

He is being charged in this – in the murder investigation again. Ntlemeza has given a report that says that this is also as a result of a conspiracy against him and Chair you will remember the evidence of what is the witnesses who testified who are called colloquially the spooks and particularly the evidence of Mo Shaik.

Where he said that when they were at the Secret Service Agency they were tasked with investigating these allegations of a conspiracy against General Mdluli and they say they went to see the former President and they told him about their investigations and they assured him that their investigations had revealed that there was no such conspiracy.

We do know that the former President refused to accept that and he believed that as he has averred himself in these proceedings that there is a conspiracy against him. He believes too that there was
10 a conspiracy against General Mdluli. One then also knows that the former President is as referred to by you Chair earlier that he says who is this General Lebeya, Lebeya, Lebeya.

I keep hearing his name. So yes, just on its own we – on – cannot really put anything to it, but one then says the evidence of the witness is that after Riah Phiyega is appointed his life then becomes intolerable and it would appear if you look at the facts and to a steadfast refusal to accept that she was side-lining him.

That she was in effect demoting him and when you look at the facts and those are the facts. The correspondence and the letters are
20 there. That she says there is – are only ranks among Colonels.

CHAIRPERSON: Yes. You remember I said right at the beginning that there can be no doubt that if what Dr Lebeya says in his statement is true.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: There can be no doubt that over a long period he was

side-lined. He was ill-treated. He was prejudiced in many ways and the concern I had was does not appear to come out clearly why that was the case and actually I wanted to have a look. I think there is a paragraph towards the end of Dr Lebeya's affidavit where he also says something that I interpreted as something that may lend credence to any proposition that might be advanced.

That this was done to him for personal dislike or something like that. Unfortunately I do not think I ...(intervenes).

ADV SUSAN WENTZEL: Chair, is it is also an issue that I canvassed
10 with the General this morning.

CHAIRPERSON: You know the paragraph I am talking about.

ADV SUSAN WENTZEL: I believe it is paragraph 187 on page 72.

CHAIRPERSON: 187?

ADV SUSAN WENTZEL: Yes. On page 72 ...(intervenes).

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: And he there says ...(intervenes).

CHAIRPERSON: Oh. Yes. *Ja*.

ADV SUSAN WENTZEL: And it was when reading this at
...(intervenes).

20 **CHAIRPERSON:** *Ja*. It is the paragraph I was looking for.

ADV SUSAN WENTZEL: That is what struck me. I was – I read that carefully and then I went back to the first paragraph I quoted.

CHAIRPERSON: *Ja*. Let me just say before you proceed. It says:

“I am of a considered view that my dismissal was influenced by a developed personal prejudice of Phiyega

which is demonstrated by among others blah, blah,
blah.”

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: I accept that one must not read that in isolation
...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: But it is something that concerned me as well.

ADV SUSAN WENTZEL: Yes and that to be honest with you Chair it
was in preparing last night and then I got to the end of the affidavit and
10 I read that and I thought no. Where is the link then if this is what it is?
It did concern me. That is why without even receiving your message I
did canvas this very issue, but I must say that speaking to the General
and – this morning and again now.

I believe that the – my submission is that the probabilities are
as a result of the President – the former President was because of the
treatment of Mdluli and his belief and we understand his belief that
there was a conspiracy against him and that General Lalla was involved
in that conspiracy.

That ended his career, but I cannot and I do not think it is
20 going to be – I think that you are correct that a consultation should now
take place with General Phiyega, but I do not believe and I cannot see
if it is necessary that it is possible without her admitting it which is
unlikely. That you will be able to make a direct link. She was told by
the former President you must get rid General Lebeya. I do not know
how ...(intervenes).

CHAIRPERSON: Well I think what should happen is – which should have happened already.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Not just Ms Phiyega ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: But there may be other people ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Who should be interviewed who may well be able to throw more light ...(intervenes).

10 **ADV SUSAN WENTZEL:** Yes.

CHAIRPERSON: Bring out more facts, because Ms Phiyega will tell you whatever she will tell you. That is fine. She will – may admit having done some of the things alleged against her. She might deny others. She might give her own explanation and justification for why she did those that she will admit, but you need to go to other people as well.

You may need to go into records. Check certain records. What is it that could throw light to explain why – what was done to Dr Lebeya was done? It may be that what she will tell you will seem
20 very plausible. So plausible that does not look like it would be justified to go further ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: But it may be that what she will tell you will still leave question marks and therefore you need – you may need to talk to other people. Get some documentation. Maybe some files need to be looked

at, because on this statement some of the things that were done to Dr Lebeya are difficult to understand.

You say why was this done, but it may be that if further investigation is done that which seems lacking will come out and can then – one can then see the picture in a way that allows one to say no. Now I can see how it fits into the terms of reference. For me in terms of what I have seen here to say it might be the former President who might have done whatever who might have said to somebody do not promote so and so.

10 Side-line him. At that stage from what I see here is just a suspicion. Nothing more than that.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Obviously we cannot decide and make findings on suspicions.

ADV SUSAN WENTZEL: On a ...(intervenes).

CHAIRPERSON: So – but I know you said Dr Lebeya said he does not think that further investigation will change the picture. Maybe he is right, but I would rather have a situation where we have satisfied ourselves that there has been a proper investigation.

20 **ADV SUSAN WENTZEL:** H'mm.

CHAIRPERSON: Particularly to try and establish why – what was done to him was done. There may well be other people. I mean we have had situations where some witnesses might not have been prepared to say certain things in the past but are prepared to say them now. It may well be that if a proper investigation to try and establish ...(intervenes).

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Why all of this was done.

ADV SUSAN WENTZEL: H'mm.

CHAIRPERSON: Maybe that something could come out. So I do not want to say at this stage this does not fall within the terms of reference. I do not want to say that, but I am saying that it falls within does not come out as clearly as I would like it to come out.

Certain portions might – certain portions, but a large portion might not and further investigation might well assist us. That is what I think and I do get the impression that the Legal Team had also not applied its mind fully to that issue in time.

ADV SUSAN WENTZEL: Yes. That is correct. It ...(intervenes).

CHAIRPERSON: *Ja*.

ADV SUSAN WENTZEL: It ...(intervenes).

CHAIRPERSON: *Ja* and I think maybe it is best that we adjourn the hearing of Dr Lebeya's evidence for that further investigation to be done and ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: For the Legal Team to apply its mind to this issue ...(intervenes).

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: And for further investigation to be done and if – and it may well be that as a result of the further investigation. Further affidavits might be obtained from other witnesses who might be in a position to talk about this issue and maybe throw more light on this. If

after all has been done the position remains the same. Then I can make a decision at that stage.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So that is what I am inclined to.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: I – no objection ...(intervenes).

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: To that happening.

10 **CHAIRPERSON:** *Ja. Ja.*

ADV SUSAN WENTZEL: Chair, I have been told that the Provincial Commissioner Ngobeni received a Rule 3.3 Notice in respect of Van Loggerenberg's evidence on the 20th of December 2019.

CHAIRPERSON: Was it sent to her on the 20th or did she receive it on that day?

ADV SUSAN WENTZEL: It is marked received ...(intervenes).

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: But I will speak to my ...(intervenes).

CHAIRPERSON: You will ...(intervenes).

20 **ADV SUSAN WENTZEL:** Speak to my colleague ...(intervenes).

CHAIRPERSON: *Ja* and ...(intervenes).

ADV SUSAN WENTZEL: And see why it is ...(intervenes).

CHAIRPERSON: Yes.

ADV SUSAN WENTZEL: She believes it was not sent.

CHAIRPERSON: Okay. No.

ADV SUSAN WENTZEL: We can make those investigations.

CHAIRPERSON: Okay now that's fine. Doctor Lebeya I think that it is best that we adjourn the hearing of your evidence to allow the Legal Team to apply its mind to the issues that are troubling me, but also for further investigation to see whether the investigators can get evidence that throws light one way or another. We are not necessarily looking for evidence that supports you, even if its evidence that shows that there was what you say is not true or what you believe is not true but we must just get all the evidence that we can get and after all that has
10 been done and the Legal Team has applied its mind to the issues then the – another date may then be arranged and then we try and make a decision.

DOCTOR LEBEYA: I agree Judge.

CHAIRPERSON: Do you understand?

DOCTOR LEBEYA: Thanks Chairperson.

CHAIRPERSON: Okay thank you. If you don't have any further issue to deal with I would be ready to adjourn.

ADV SUSAN WENTZEL: Yes Chair.

CHAIRPERSON: You don't. The witness for tomorrow, who is coming
20 tomorrow, is it Mr White?

ADV SUSAN WENTZEL: The witness scheduled to come tomorrow is Advocate Manyati, but he will be a short witness, I obviously was intending to spend part of tomorrow also leading General Lebeya and Trevor White is due to start on Monday. I've planned to consult with him again during the course of this weekend. I would ask your

indulgence that I have that opportunity before I put him in the witness box tomorrow, I mean so that I don't – I mean I could start leading him and consult over the weekend and continue but I would prefer he is in a hotel, he is coming up this weekend specially to consult.

CHAIRPERSON: Well I have read the affidavit of Advocate Manyati, yesterday I was talking about Advocate Nzinyati, I don't know if I am confusing two people or – but I have read his statement – his affidavit it is short.

ADV SUSAN WENTZEL: It is short yes.

10 **CHAIRPERSON:** I think it's an – I think he is not a witness that should come and give evidence in circumstances where there would be no other witness that day, because we probably wouldn't take more than an hour.

ADV SUSAN WENTZEL: No I don't believe it will be more than an hour.

CHAIRPERSON: So he should be brought in when there is another witness, or other witnesses that will be called so that we don't convene the Commission just for one hour and then we go.

ADV SUSAN WENTZEL: Yes I agree.

20 **CHAIRPERSON:** But then I am more concerned now because it means we are losing two days.

ADV SUSAN WENTZEL: Yes we are, and that is unfortunate.

CHAIRPERSON: I was hoping that Mr White is the one coming tomorrow and that we could sit, hear his evidence tomorrow at least, but you say it is too difficult because you have not – you still need

sessions with him?

ADV SUSAN WENTZEL: I would prefer Chair to have the scheduled sessions with him.

CHAIRPERSON: *Ja.*

ADV SUSAN WENTZEL: But I do – I appreciate that it does lose two days and Chair if you wanted me to I can try and approach him and see how far I could get but ...(intervenes)

CHAIRPERSON: But you say he comes from KZN?

ADV SUSAN WENTZEL: He is coming from, yes, he is only due to
10 come over the weekend to consult.

CHAIRPERSON: So I think with regard to the witness that was going to come tomorrow you need to rearrange so that we – he can come one day when there are other witnesses, otherwise just coming for a witness that will be one hour is not the best thing, it is something one should do only if really there are exceptional circumstances.

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: So next week it means you have Mr White, and who else?

ADV SUSAN WENTZEL: And Colonel du Plooy.

20 **CHAIRPERSON:** The two of them?

ADV SUSAN WENTZEL: Yes.

CHAIRPERSON: Where is General John Maart's statement, I have been saying for some time have we got it already? Not yet?

ADV SUSAN WENTZEL: It hasn't been obtained yet, there is some reluctance on his part I believe to provide a statement but we will

follow up on that and try and get a statement and get his cooperation to get a statement.

CHAIRPERSON: Okay, alright. Somebody must talk to me about obtaining certain statements from certain witnesses who fall under law enforcement agencies because it has been quite some time that I have been expecting statements to have been taken from them. Okay, alright, we are going to adjourn the proceedings for today, I am sorry to everybody that we are not able to continue for the whole day and we won't sit tomorrow as well. I am hoping that steps will be taken to
10 make sure that we don't situations which result in this so we apologise to everybody and the public about that.

So we won't sit tomorrow and then we will continue on Monday. Please apply your minds in regard to witnesses who are still coming, apply your mind with regard to similar issues as the ones that have arisen today.

ADV SUSAN WENTZEL: Yes I will.

CHAIRPERSON: *Ja.* We adjourn

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 20 JANUARY 2020

20

**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
PARKTOWN, JOHANNESBURG**

DATE HELD : 2020-01-16

DAY: : 200

TRANSCRIBERS : B KLINE; M NETTA; D STANIFORTH

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