

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**20 JANUARY 2020**

**DAY 201**

20

**PROCEEDINGS RESUME ON 20 JANUARY 2020**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PAUL PRETORIUS SC:** Moring Chair.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** Chair the legal team wishes to lead the evidence Messrs White and Du Plooy in the next few days. One or two of the implicated persons are Mr and Mrs Shabalala. Their counsel Ms Shazi is here; wishes to bring an application to stay the evidence intended to be led. May she address you?

10 **CHAIRPERSON:** Ja. Come and address me from here Ms Shazi.

**MS KHUMBU SHAZI:** Thank you Chair.

**CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** Chair our application is simple and straightforward. We apologise firstly for not preparing a substantive application; we did not have enough time since receiving our notices.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** We received notices on – or my clients received their notices on the 9 January.

**CHAIRPERSON:** Hm.

20 **MS KHUMBU SHAZI:** Which was the Thursday before last.

**CHAIRPERSON:** I just want to confirm that you are appear on behalf of Mr and Ms Shabalala?

**MS KHUMBU SHAZI:** I do.

**CHAIRPERSON:** Just put their names on record?

**MS KHUMBU SHAZI:** It is Sipho Derrick Shabalala.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** And Beatrice Nthombenhle Shabalala.

**CHAIRPERSON:** Yes. Okay and your instructing attorneys?

**MS KHUMBU SHAZI:** It is D Malloy and associates.

**CHAIRPERSON:** Yes okay alright. Thank you.

**MS KHUMBU SHAZI:** From Durban. As I was indicating they received their notices on the 9<sup>th</sup> and they found their way ...

**CHAIRPERSON:** That is the Rule 3.3 Notices?

**MS KHUMBU SHAZI:** The Rule 3.3.Notices.

10 **CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** On the 9<sup>th</sup>.

**CHAIRPERSON:** Huh-uh.

**MS KHUMBU SHAZI:** The Notices found their way to the instructing attorney that Saturday on the 11<sup>th</sup>.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** And I was instructed or briefed on Monday the 13<sup>th</sup>.

**CHAIRPERSON:** Hm.

20 **MS KHUMBU SHAZI:** We wrote to the commission the following day on Tuesday.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** And we only received a response back to indicate that we can come and bring this application on Friday which is why we are here today.

**CHAIRPERSON:** You wrote on the 13<sup>th</sup>?

**MS KHUMBU SHAZI**: On the 14<sup>th</sup> we wrote.

**CHAIRPERSON**: On the 14<sup>th</sup>?

**MS KHUMBU SHAZI**: 14<sup>th</sup> we wrote to the commission.

**CHAIRPERSON**: Yes. Oh.

**MS KHUMBU SHAZI**: Which was on Tuesday.

**CHAIRPERSON**: Yes.

**MS KHUMBU SHAZI**: We received their response on Friday the 17<sup>th</sup>.

**CHAIRPERSON**: Oh okay.

**MS KHUMBU SHAZI**: And we could only come here today.

10 **CHAIRPERSON**: Okay.

**MS KHUMBU SHAZI**: And we were not able to prepare a substantive application.

**CHAIRPERSON**: Yes.

**MS KHUMBU SHAZI**: However I was in the crunch time that we had I was able to just prepare a little written submission on our application.

**CHAIRPERSON**: Yes.

**MS KHUMBU SHAZI**: Firstly why we are here is we are not trying to stop the evidence from being heard.

**CHAIRPERSON**: Is there anything you want to hand up or not really?

20 **MS KHUMBU SHAZI**: I have given it to...

**CHAIRPERSON**: If you do not have it, it is fine I will just listen more carefully.

**MS KHUMBU SHAZI**: I have, I have given it given to my learned friends.

**CHAIRPERSON**: Yes.

**MS KHUMBU SHAZI:** And I have a copy for Chair.

**CHAIRPERSON:** Okay alright. Yes thank you. Oh there is more.

**MS KHUMBU SHAZI:** Thank you. Now Chair a little bit of a background.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** Our clients were arrested in 2010 pursuant to a criminal investigation which the witness is going to testify today, will be testifying about. Now subsequently after their arrest they were indicted in the Pietermaritzburg high court. The trial under the case number  
10 CC14/12. The trial was supposed to start in 2010. It has yet to start. There have been – currently – initially there were 21 accused. There is now 11. They have been whittled down to 11. Now amongst the other accused that are before court there there has been a number of preliminary application, [indistinct] applications permanent stay applications. A lot of starting and stopping which has delayed the trial. It has been an untold frustration to my clients because they want their trial to start. Now in trying to mitigate the prejudice that they are suffering because of the delay of the trial our client we brought – we approached the Durban high court and we brought an application in  
20 terms of Section 157 of the Criminal Procedure Act; Chair will be familiar with that which is suppression of trials. On 17 December last year the Durban high court grant that application; that the trial must be separated from the rest of the accused because that trial there is not going – is not going to start any time soon. There is still a pending permanent stay application that is still going to be brought and once

that is brought there is going to be appeals upon appeals. Now with the permanent – with the separation application having been granted the way is open for my clients' trial to start. Once the session starts in Durban ...

**CHAIRPERSON:** So – so there are two categories of accused persons?

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** There are those who say we do not want this trial to take place anymore.

**MS KHUMBU SHAZI:** Yes.

10 **CHAIRPERSON:** For whatever reasons therefore we have applied so those are applying to the high court for a permanent stay?

**MS KHUMBU SHAZI:** Permanent stay – they are...

**CHAIRPERSON:** Of prosecution. Your clients fall into a different category. Your clients' attitude is we want the trial.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** We want – we want to be tried.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And we want it as soon as possible.

20 **MS KHUMBU SHAZI:** As soon as possible. We do not want to get around it.

**CHAIRPERSON:** We are not part of those who say there should be no further trial.

**ADV KHUMBU SHAZI:** No.

**CHAIRPERSON:** Ja.

**ADV KHUMBU SHAZI:** We do not want to get around it we want to get

through it.

**CHAIRPERSON:** Yes, yes okay.

**ADV KHUMBU SHAZI:** But what we do not want is the delay.

**CHAIRPERSON:** Yes. Is the delay ja.

**ADV KHUMBU SHAZI:** But it seems now that it is not starting and there is no end in sight to these applications.

**CHAIRPERSON:** Yes, yes.

**ADV KHUMBU SHAZI:** So what we approached the Durban court to do was we brought motion proceedings to order that our trials be  
10 separated so that it can start immediately.

**CHAIRPERSON:** Yes, yes.

**ADV KHUMBU SHAZI:** Now the way is open for us to do that.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** Now as soon as the session starts then we going to set the matter down for trial. The state has indicated – has been indicating throughout the permanent stay proceedings in the other applications that they are ready to start with the matter. So there will be no delay in bringing my clients to trial. Now the – Mr White who is going to testify; whose evidence the commission seeks to lead is the  
20 main witness in their trial. My clients' allegedly are the nucleus of the charges against the rest of the accused. The corrupt acts that supposedly was done my clients are at the centre of it. Now if Mr White testifies today before he testifies in court untold prejudice is going to happen and it is going to [indistinct] my clients. We are not stopping him from testifying we are asking the commission to delay his

testimony until he has testified in court. There is a reason why in criminal proceedings witnesses who have not yet testified are sent to sit outside and not hear the witness who is testifying at the time. Because witnesses are known to colour their evidence to suit the witness – I mean the witness' evidence who has testified. It has prejudicial consequences for the accused. He says my clients are facing serious there and sentencing provisions that follow the conviction are serious. Now the commission is widely publicised. It has a vast audience and unfortunately the commission cannot dictate  
10 who it reaches. The witnesses are going to be testifying in their trial will be listening to this evidence and they will know what is going to – and what – he is not only testifying – Mr White is not only testifying about primary evidence so to speak. He performed a forensic investigation into the – the corrupt activities or into the charges or allegations whatsoever so his evidence is wide encompassing. He will be covering the entire trial. Him and Colonel Du Plooy. Our – my clients' want to participate. They want – they do not want any allegations against them to remain unchallenged. They want to participate in this proceedings. But by them participating in these  
20 proceedings it would require that we cross-examine Mr White and Mr Du Plooy which means that our entire trial strategy is going to be laid bare in front of this commission before we start the trial. And in front of every other witness who is going to be listening and watching the commission. By the time we get to court to start the matter whatever...

**CHAIRPERSON:** Your voice is going lower and lower as you proceed.



**ADV KHUMBU SHAZI:** I beg your pardon. By the time we get to court at whatever time even the loopholes that we would have – Mr White’s evidence allegedly you post that would have so to poke he would be able to close them. This is one of the grounds for permanent stay of prosecution. Because if my clients – if this testimony is allowed to continue before it is heard in the criminal court it is trial related prejudice. The presiding officer who is going to hear this matter might be watching the commission. As much as presiding officers are able to divorce themselves from any impressions and all of that but justice  
10 must be seen to be done. You cannot for a fact indicate that he is not influenced by what he would have heard here. If this is allowed to continue my client has grounds for a permanent stay application which we are going to bring and we will be citing the commission unfortunately as the basis for that application. I know that – I know that Chair does not want all of that. So we are just trying to avoid that. We are not saying from what we have gleaned in the media and everywhere else this commission is not going to end any time soon.

**CHAIRPERSON:** Ill – its lifespan goes up to the end of February.

**ADV KHUMBU SHAZI:** This year or next year?

20 **CHAIRPERSON:** No this year. Next month.

**ADV KHUMBU SHAZI:** This February.

**CHAIRPERSON:** Unless the court grants this commission an extension. We have applied to the high court for the extension of its lifespan but we do not take the attitude that the court will grant us the extension just because we have asked for it.

**ADV KHUMBU SHAZI:** But I am sure...

**CHAIRPERSON:** The court will take into account everything.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And we should not take anything for granted. I believe that the – the application that the commission has made has reasonable prospects of success but I am not the court.

**ADV KHUMBU SHAZI:** I understand not in this forum. But I am sure Chair is hopeful that there will be an extension.

**CHAIRPERSON:** I am hopeful but I am not the court.

10 **ADV KHUMBU SHAZI:** Now if what we have gleaned – from what you have seen and the interest that the commission has had it is unlikely that it will stop any time soon if there is still evidence that needs to be led. What we are saying is – and now that we have the commission on our side to say that we need that matter stand down for trial as soon as possible because there is evidence that is being held over at the commission.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** For the trial to start. It is actually helping both ways. But if the trial – if the commission hears this evidence before  
20 the...

**CHAIRPERSON:** Well Ms Shazi if – if we take your clients' reasoning to its logical conclusion what it would mean is that today you are here before me asking that we adjourn the hearing of the evidence of these witnesses because your client must first have – your clients must have – first have their criminal trial start and get completed or at least

maybe until these witnesses give evidence there.

**ADV KHUMBU SHAZI:** Yes they are the first two witnesses of the state.

**CHAIRPERSON:** Ja.

**ADV KHUMBU SHAZI:** The first ones.

**CHAIRPERSON:** Ja and then if I agree to that next week somebody else comes up and says, my clients are implicated by this witness you want to listen to and their trial is coming up too. Please postpone the hearing of this witness' evidence. We postpone. That other week  
10 another one comes. So where does that put the commission?

**ADV KHUMBU SHAZI:** Chair I understand and I am loathe to stand here at the – at the back of what happened last week.

**CHAIRPERSON:** We have – we have – we have issued – the commission has issued Rule 3.3 Notices to I believe over the past two years to no less than 1000 people.

**ADV KHUMBU SHAZI:** But Chair.

**CHAIRPERSON:** And it continues to issue such notices to more people.

**ADV KHUMBU SHAZI:** I – I understand Chair but how many of them  
20 have pending criminal trials that are – that...

**CHAIRPERSON:** Well some are not pending – well some – there are – that are pending who have not applied – who have not made this application. Who have allowed witnesses to continue but they have said do not force us to give evidence because we are having a trial. There are issues that are being dealt with in regard to those. But they

have not come to say delay the hearing of the evidence of these witnesses who are implicating us. They have just said, we will – do not force us to come and put our version.

**ADV KHUMBU SHAZI:** But we do not want to – to be forced to be put the version we want to put the version. Because as Chair is aware there are adverse inferences – there are adverse inferences that are drawn.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** Either way even in this commission.

10 **CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** If a witness does not put a version there are adverse inferences that are drawn there. In trial court if witnesses do not put their version there is adverse inferences that will be drawn there.

**CHAIRPERSON:** Yes but let us just deal with this thing quite quickly. Is your clients' difficulty in having to disclose their version is they have to apply for leave to cross-examine these witnesses or is their difficulty more than that?

**ADV KHUMBU SHAZI:** Twofold.

20 **CHAIRPERSON:** Ja.

**ADV KHUMBU SHAZI:** One as Chair has indicated the difficulty is to have our trial strategy opened up here at the commission or revealed at the commission which we will have to do. And Chair knows how important it is that – I mean cross-examination goes to the heart of the trial. That is one. Two – to have other witnesses who are going to

testify in this trial, hear this testimony before the trial commences.

There is a reason why in court witnesses are asked to sit outside before – when another witness is testifying. There is a reason for that.

**CHAIRPERSON:** Well you see we have got to strike a balance between public interest.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And the rights of individuals.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** There are many people who may be charged after this  
10 commission has finished its work whose – who will have witnesses in  
their trial who had been heard giving evidence.

**ADV KHUMBU SHAZI:** I...

**CHAIRPERSON:** And the evidence that has been given and their statements become public documents once they have given evidence before the commission – everybody has access to them. So that is inevitable.

**ADV KHUMBU SHAZI:** I – I...

**CHAIRPERSON:** But it means that you client will know what the witness has said and cross-examination that will be available to your  
20 clients during the trial will also look into that. So in other words it is not a situation where everything can be 100% for your client. There may be some things that they do not like and would have preferred that by the trial – by the time their trial happens those things did not happen. But when you have got to balance their interest as well as the interest of the public some things may have to happen which they would

prefer not to happen. Because the matters that this commission is looking into are of immense public interests and the – the commission has been hearing evidence for one and a half years. It is two years after it was established it needs to try and finish. In the court application that has been made for the extension of the commission's lifespan it has been stated that we are asking for an extension up to the end of December. And if we grant – if I grant the order that you are asking for then I may as well forget about finishing this year. As you – as you speak to me you do not know when the trial will start. Even if  
10 you knew we all know what happens with trials particularly criminal trials. Postponements and not finishing and all kinds of things. So it seems to me that I would need a lot of convincing to grant your application.

**ADV KHUMBU SHAZI:** I am trying – I am trying to.

**CHAIRPERSON:** Ja I know you trying. Yes.

**ADV KHUMBU SHAZI:** Believe me I am trying. Now I agree with Chair in saying that the – at the end of the commission there may be people that will be charged – [indistinct] but that is a maybe. Those people may be charged. And in fact what is going to happen is that the  
20 prosecution is going to use the evidence of this commission to tailor the charges of those people.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** To find out what was – what has been said and all of this so the evidence that is going to be led in this commission is very important.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** Now with my client it is not a matter of maybe.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** He is already charged.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** His charges are out there. He is already – charge is already appearing in court.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** As much as Chair is saying we do not know  
10 when the trial will start the state has already said that they are ready.  
What this needs is – in fact what this needs is that we approach the –  
the Judge President of the high court who is going to give us a judge  
and the matter starts. We not asking – we are aware of the public  
interest which is why we are not asking. But if you weigh that with the  
– with the right to a fair trial of an accused who is facing a minimum  
sentence of fifteen years the only prejudice that is going to befall this  
commission if it delays this evidence is that it would have wasted half a  
day. There are other witnesses that are going to come.

**CHAIRPERSON:** You assume you will be the only one?

20 **ADV KHUMBU SHAZI:** So far in two years Chair. So far. As Chair has  
indicated that people are not interested in...

**CHAIRPERSON:** Well you are the first one to say please delay – delay  
until...

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** My trial has been finalised.

**ADV KHUMBU SHAZI:** No. No, no.

**CHAIRPERSON:** My clients' trial has been finalised.

**ADV KHUMBU SHAZI:** No. Yes – so – it is not that everyone else is going to do it. It has been two years that this commission is sitting.

**CHAIRPERSON:** Well there are...

**ADV KHUMBU SHAZI:** And no-one else has done it.

**CHAIRPERSON:** There are some who have already appeared in court a few times. Like some who are connected with Bosasa evidence that was led here.

10 **ADV KHUMBU SHAZI:** And they have appeared consequent upon the evidence that was led here. They were not charged before the evidence was led here.

**CHAIRPERSON:** But – but does it make a difference? They could have the same complaint.

**ADV KHUMBU SHAZI:** No it does. It does make a difference Chair. Because the – the evidence that is going to be led by the state then – would – the state might not even lead the evidence that was led here. It will depend on the investigations that are still going to be done.

**CHAIRPERSON:** No. No. If they took the same position as you.

20 **ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** They would have come here and applied for exactly the same order that you are asking for when those witnesses who implicated them were going to come because they too received 3.3 Notices just like your clients.

**ADV KHUMBU SHAZI:** Are we talking about witnesses that have



already been charged or people that are expecting to be charged?

**CHAIRPERSON:** No.

**ADV KHUMBU SHAZI:** Consequent of the evidence.

**CHAIRPERSON:** No, no those who have appeared in court and who continue to appear in court.

**ADV KHUMBU SHAZI:** After the evidence was led here at the commission?

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** That is my – that is my argument Chair.

10 **CHAIRPERSON:** No I do not understand your argument because I am saying.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** You said your clients received 3.3 Notices.

**ADV KHUMBU SHAZI:** Yes they did.

**CHAIRPERSON:** And they were told that certain witnesses are going to come and give evidence that will implicate them.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Those witnesses are witnesses that they believe will give evidence in their criminal trials.

20 **ADV KHUMBU SHAZI:** They are going to give evidence in their criminal trial.

**CHAIRPERSON:** Ja they are going to give.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Evidence.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And they have certain fears arising out of that.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** I am saying with those people that I am talking about they received 3.3 Notices. Those 3.3 Notices said there are witnesses who are going to give evidence in the commission. They will implicate you.

**ADV KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And those people ...

**ADV KHUMBU SHAZI:** May...

10 **CHAIRPERSON:** Did not come – did not come to say delay and then evidence was led and then they were charged – they were arrested and charged. They did not come and say, stop we continued.

**ADV KHUMBU SHAZI:** Yes Chair. I am not sure why they did not but maybe the difference is that...

**CHAIRPERSON:** Ja.

**ADV KHUMBU SHAZI:** Their argument would have been these witnesses may give evidence against us.

**CHAIRPERSON:** Okay.

**ADV KHUMBU SHAZI:** May.

20 **CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** Our argument is that this witness is going to give evidence.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** Against them and he is the first witness in the trial.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** The forensic report is the basis of their trial.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** He is definitely going to give evidence. There is no maybe about it.

**CHAIRPERSON:** Ja okay.

**ADV KHUMBU SHAZI:** So we are going to be prejudiced.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** It is not that there may be prejudice; we are.

10 And the only prejudice that is going to before the commission as I was saying is that the commission has got to have to delay for a day. If we were given these notices timeously we were going to be able to deal with this beforehand so that we preserve time for the commission.

**CHAIRPERSON:** Hm. Hm.

**ADV KHUMBU SHAZI:** The – the fairness of the trial is at the cornerstone of the criminal justice.

**CHAIRPERSON:** Hm.

**ADV KHUMBU SHAZI:** And if my clients' trial is ventilated in this commission before it is ventilated in the trial court that is prejudice that  
20 cannot be undone. It cannot be undone. A witness who is cross-examined or who gives evidence and is cross-examined before he goes to the trial court and deal with the same witness and same cross-examination obviously by the time he gets there he will know what is awaiting him. And every other witness will know. This witness will testify.

**CHAIRPERSON:** And your submission is that that outweighs public interest?

**ADV KHUMBU SHAZI:** It outweighs – if – it would be one thing Chair if we were saying his evidence must not be heard at all. We are not saying that. We are saying...

**CHAIRPERSON:** So you say it must be heard some time in the future and you do not know when?

**ADV KHUMBU SHAZI:** We – we – if – if the Chair can give us or put us down to – and nail us down to a date we may be able to give you that  
10 date.

**CHAIRPERSON:** But it is not within your power.

**ADV KHUMBU SHAZI:** We may be able to give you the date next week. Because all that we need to do is to approach the Judge President to give us a judge and a date which is something that he can do.

**CHAIRPERSON:** Yes and – and that date might be October, November this year.

**ADV KHUMBU SHAZI:** Well it can – from what we have ascertained which is why we have been driving to say that my clients' trial must start. It has delayed for ten years. Ten years.

20 **CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** So his entitled to his day in court.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** Before he gets his day here at the commission.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** He – I think he is entitled to get his day there.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** First. We approached and we have the condition before us to say we are – now we need to start that trial before the witness has testified here. What – all we need to do is that this witness who is the first witness must testify be cross-examined and that is it. And then those two witnesses and that is it. Not the trial must end. For example if the trial were to – were allowed to run to its finality and my clients are acquitted it would be something else for this witness who would come to testify here but I am not even going there.

10 I am only saying he must be allowed to testify there and that is it. The moment he finishes testifying there he can come to the commission and testify and then we will come and cross-examine him here.

**CHAIRPERSON:** Ja.

**ADV KHUMBU SHAZI:** And my clients will participate fully.

**CHAIRPERSON:** Do you need more than three minutes to finalise your submissions?

**ADV KHUMBU SHAZI:** No.

**CHAIRPERSON:** You do not need more okay. I give you three minutes to finish but if you are done it is fine.

20 **ADV KHUMBU SHAZI:** Yes we – we – that is basically our application.

**CHAIRPERSON:** Yes.

**ADV KHUMBU SHAZI:** That is just be delayed for a little while. If we are nailed down to a date we can give the commission that date and the soonest date it would be in – I do not know when the dates are going to be but it will be the soonest date.

**CHAIRPERSON:** Ja. Thank you. Thank you. Mr Pretorius.

**ADV PAUL PRETORIUS SC:** Thank you Chair. We had prepared written submissions.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** And have attached some authorities if I may hand that up?

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** But before dealing with them I just – would like to make four points. The first is that we have approached  
10 the matter from a point of view, a principle and cited the relevant authorities for your convenience Chair. Because as you have already pointed out what happens here may create a precedent in relation to some if not all the witnesses who have testified and who may yet testify. So it is important that the matter be dealt with at the level of principle from the legal team’s point of view. The second point is that there is a degree of irony. Not a degree of irony. There is an extreme irony in the approach of the Applicants. The very separation that they asked for is a request to the court to deal with all the issues - in fact the central nucleus and all the issues in the criminal trial before the  
20 other accused are heard. Precisely what they have asked for ...

**CHAIRPERSON:** Hm. Hm.

**ADV PAUL PRETORIUS SC:** They complained about in this ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** Matter.

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** In other words a ...

**CHAIRPERSON:** Hm. Hm.

**ADV PAUL PRETORIUS SC:** A canvassing of the issues ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** In relation to accused ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** Still to come before the ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** Commission - before the courts. The third  
10 point by way of introduction is there is an absurdity in the approach of  
the Applicants. This Commission is statutorily mandated to investigate  
criminal conduct. Criminal conduct which might have been  
contemplated for prosecution, but delayed as in this case.

Criminal conduct which might yet result in criminal  
prosecution or which has already resulted in prosecution. You were  
then mandated Chair to make recommendations in regard to that  
criminal investigation or investigation into amongst other things  
criminal conduct.

If you were somehow obliged in circumstances to delay the  
20 evidence until the conclusion of the criminal trial the result is an  
absurdity. There is no purpose for the investigation at all. In short  
Chair this Commission has a job to do and it must do it. The particular  
circumstances here are not circumstances which enjoy the protection of  
the law and that is the principled approach that is highlighted.

In fact there is no compulsion here at all. The Applicants

have a choice. They can choose to cross-examine and deal with the consequences in putting a version in that cross-examination or they can choose to remain silent. Absent as summons which is not relevant here. That choice is recognised as a hard choice.

It is a difficult choice, but its consequences are not protected by law. The only time the law steps in is where witnesses are compelled to testify in one proceeding when there is another parallel proceeding pending and that is the nub of the allegation - the submissions that we which to make before you.

10 They are summarised on page 1 of the submissions and I will deal with the summary and then for the sake of time and convenience go briefly through the rest of the submissions, but the submissions are completed in themselves. The first point is that in essence what the two witnesses are saying that in these circumstances not only do they have a right to remain silent, but also they have a right to prevent evidence being given in the course of the inquiry.

That goes much further than the other circumstances dealt with in the cases, but where an accused person is implicated in parallel civil and criminal proceedings in the Commission and in a future  
20 criminal trial. A stay of the civil proceedings or these proceedings will only be granted where there is an element of compulsion.

In other words only where the accused or the potential accused has no choice, but must testify. That is not the case here. There is a choice and that choice is as far as it goes for them. They are not under any compulsion to provide any self-incriminating



evidence.

You will know Chair that the furthest that the law goes the Act and the regulations is to provide some degree of protection against persons against self-incrimination. That certainly does not go so far as to protect the Shabalala's or the Applicants in this case. Instead they face a choice. Now this choice has been recognised in a number of cases.

They may challenge the witness' evidence by testifying and cross-examining or they remain silent. There is a third choice. They  
10 may apply to cross-examine and put their version after the criminal trial. That is a third via media that they may adopt. Such rights as exist in law including the right to self-incrimination do not protect the Applicants in this case.

Such interest as they have alleged to protect trial strategy for example are not interests that are legally protected. Those interests such as they are to reveal the strategy that they may adopt in cross-examination to put their version in a prior proceeding must be weighed - as you have pointed out Chair - against the statutory duty of the Commission to investigate and hear evidence of criminal activity.

20 It is inherent in the statutory mandate of this Commission that it will hear evidence of criminal activity before a criminal trial. Any other approach is simply nonsensical. As I have pointed out if evidence of criminal activity had to be stayed for whatever reason including the reasons here pending the conclusion of a criminal trial there would be no need for the Commission at all. Chair and ...

**CHAIRPERSON:** Well I - I got the impression during Ms Shazi's address that she recognised that her clients at this stage have not been compelled and might - they might never be compelled to testify in regard to issues or matters which could incriminate them before the trial is heard.

So they are the ones who choose - who may choose not to challenge the evidence of these witnesses at least at this stage. I seem to have got the impression that she was relying more now on saying well there are other witnesses who will be called at trial who  
10 may - who will be listening to this witnesses and they might adjust their evidence. I do not know if you want to say anything about that.

**ADV PAUL PRETORIUS SC:** Well Chair that is inherent ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** In the duty of this Commission. Potential criminal activity or allegations of criminal activity are widely canvassed. Not only the allegations but the responses to the allegations. It goes to the central point of what is the mandate of this Commission.

If this Commission were to delay the hearing of evidence  
20 because witnesses in a future criminal trial may listen to the - I mean the - the result is absurd. It just cannot ever be that the work of this Commission must be curtailed, because people may listen to what is going on here and may adjust their evidence accordingly in later criminal proceedings. In fact ...

**CHAIRPERSON:** Hm.

**ADV PAUL PRETORIUS SC:** It is inherent in the notion of a public inquiry which may lead to criminal - criminal proceedings that the issues are fully canvassed. In fact the history of this Commission and its continuing work will be based not only on allegations being made, but allegation being fully dealt with from all angles including contrary versions.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** So it is inevitable that these will be heard ...

10 **CHAIRPERSON:** *Ja.*

**ADV PAUL PRETORIUS SC:** And it is - it is contemplated that this be so in giving the Commission that mandate.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** If I may ...?

**CHAIRPERSON:** Do - do you need more than three minutes to finalise your submissions?

**ADV PAUL PRETORIUS SC:** Point taken Chair.

**CHAIRPERSON:** Huh-uh.

20 **ADV PAUL PRETORIUS SC:** Fine. I - I just want to refer you Chair to paragraph 45 which is one of the cases which recognises the involvement of a person including a potential accused in two fora whether it be a Disciplinary Inquiry or whether it be a Statutory Inquiry or whether it be a Commission of Inquiry and the - the position of the courts is to say when you are not compelled where you might have an argument and the protection there is just limited.

The evidence cannot be used later. You have a choice. Your choice may not be a pleasant one. Your choice may be to put your version and suffer the consequences of putting your version or it may be to remain silent and face the consequences of remaining silent, but that is your choice and you must face the consequences of your choice. Simply put says the court. This is the Supreme Court of Appeal.

10 “When a party is required to appear in different fora each of which has jurisdiction in respect of the subject matter. The manner in which that party deals with the process in each forum is a matter of choice which holds particular consequences attendant on the choice so made.”

The difficulty in the choice which is recognised and the difficulty of the consequences of making a choice one way or the other have been recognised by the courts, but they have said absent compulsion that is simply how it must be. Thank you Chair.

**CHAIRPERSON:** Ms Shazi.

20 **MS KHUMBU SHAZI:** Unfortunately Chair I will not be able to respond point by point as to what my learned friend has said. I was not - as much as I - I supplied them with my written arguments. I was not given their copy. When ...

**CHAIRPERSON:** Oh. Is that so?

**MS KHUMBU SHAZI:** Yes. When the lady here asked if I should be furnished with a copy the gentleman said no. So I am not sure why, but I do not have a copy of their submissions.

**CHAIRPERSON:** Oh.

**MS KHUMBU SHAZI:** So I am not sure. I cannot follow - I could not follow.

**CHAIRPERSON:** Is that so?

**MS KHUMBU SHAZI:** I do not know why I was not allowed to have a copy of their submissions.

**CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** But be it as it may I have for some reason it was kept ...

10 **CHAIRPERSON:** Well ....

**MS KHUMBU SHAZI:** To - to themselves. I ...

**CHAIRPERSON:** Well I can ...

**ADV PAUL PRETORIUS SC:** Sorry Chair if I may intervene. That was a complete misunderstanding.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** It was the intention to hand the copy ...

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** When we addressed you and I apologise ...

20 **CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** That it was not done.

**CHAIRPERSON:** I would imagine it must have been a misunderstanding. Well maybe - do - do you want me to stand the - to - to adjourn and give you a chance at least to read - I have not read it myself. To - to read it and ...

**MS KHUMBU SHAZI:** Yes. I would - I would love to.

**CHAIRPERSON:** And - and ...

**MS KHUMBU SHAZI:** I would have loved to do that initially when ...

**CHAIRPERSON:** *Ja.*

**MS KHUMBU SHAZI:** They had ...

**CHAIRPERSON:** So that when you respond ...

**MS KHUMBU SHAZI:** Attempted to give it to me.

**CHAIRPERSON:** So that when you respond at least you have had a chance to ...

10 **MS KHUMBU SHAZI:** Yes. Thank you Chair.

**CHAIRPERSON:** To read it. We are at nine minutes to 11. It is - well I see the first part is about nine/10 pages. I think the rest is just authorities. Shall I give you - what - 15 minutes or ...?

**MS KHUMBU SHAZI:** That will be fine.

**CHAIRPERSON:** That will be fine.

**MS KHUMBU SHAZI:** Can I have the authorities? Thank you.

**CHAIRPERSON:** Okay. Alright. We will adjourn for 15 minutes. So we will resume at five past 11.

**MS KHUMBU SHAZI:** Thank you.

20 **CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV PAUL PRETORIUS SC:** Chair before the reply.

**CHAIRPERSON:** I did not expect to see you. Yes.

**ADV PAUL PRETORIUS SC:** May I just use a few seconds of the three minutes that I was granted to draw your attention just to ...

**CHAIRPERSON:** *Ja.*

**ADV PAUL PRETORIUS SC:** Four paragraphs.

**CHAIRPERSON:** Huh-uh.

**ADV PAUL PRETORIUS SC:** Four sections ...

**CHAIRPERSON:** *Ja.*

**ADV PAUL PRETORIUS SC:** Where the authorities deal succinctly with the issues before you.

10 **CHAIRPERSON:** *Ja.*

**ADV PAUL PRETORIUS SC:** It is paragraph 22. These are of our legal submissions.

**CHAIRPERSON:** *Ja.*

**ADV PAUL PRETORIUS SC:** Paragraph 11.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** Paragraph 28.

**CHAIRPERSON:** Huh-uh.

**ADV PAUL PRETORIUS SC:** Paragraphs 32 and 33 and paragraph 45.

**CHAIRPERSON:** *Ja.*

20 **ADV PAUL PRETORIUS SC:** Okay.

**CHAIRPERSON:** Thank you. Ms Shazi.

**MS KHUMBU SHAZI:** Thank you Chair.

**CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** I am going to be very short.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** Chair was correct. Our - our gripe is not so much so as that we are being denied the right to remain silent. Our gripe is that we are being denied the right to presumed innocent.

**CHAIRPERSON:** Huh-uh.

**MS KHUMBU SHAZI:** In - in that criminal allegations or evidence against my clients is going to be ventilated in this public forum other than a court of law. A very, very public forum. Each case must be decided on its own merits. I - I understand what my learned friend is saying.

10                   That in - in parallel proceedings you have civil proceedings and you have criminal proceedings and in most of the case law that has been - that was handed up it is mostly disciplinary hearings where people were testifying in disciplinary hearings. This case is different. We are not talking about evidence that is being led in a room with one stenographer and two officials and one person hearing that evidence.

                  We are talking about evidence that is led before 50 million people. I am not sure how many people are in this country. 50 million people who are watching and one of those people is the Presiding Officer who is going to hear this matter. That Presiding Officer ...

20                   **CHAIRPERSON:** Is - is that your biggest worry?

**MS KHUMBU SHAZI:** One of my biggest worries. One of my - one of my biggest worries. In fact if Chair turns into - into one of - of the precedents that were handed up. **Law Society of Cape of Good Hope vs Landau** you see there on page 4-4-1 paragraph 15 the Judge there says - Judge of Appeal says:



“I turn now to the general principle as it applies where there are both criminal and civil proceedings pending which are based on the same facts.”

This is what is happening here.

“The usual practice is to stay the civil proceedings until the criminal proceedings have been adjudicated upon if the accused person can show that he or she might be prejudiced in the criminal proceedings should the civil proceedings be heard first.”

10

That is why we are here. We are here to say that we would be prejudiced if the civil proceedings are heard first ...

**CHAIRPERSON:** How - how ...?

**MS KHUMBU SHAZI:** Before the criminal proceedings and it is ...

**CHAIRPERSON:** How will you be prejudiced simply because this witness - these two witnesses give evidence here before the criminal trial starts? I see benefit to you, because this witness - these - you are going to watch these witnesses and you can come and sit here watch these witnesses give evidence here.

20

These witnesses will be questioned by the legal team of the Commission. These ...

**MS KHUMBU SHAZI:** Who does not represent my clients.

**CHAIRPERSON:** Yes. These - these witnesses are not the legal team's clients. The legal team is not taking anybody's side. They want to establish what the truth is. The rules of the Commission make that

clear that a member of the legal team is entitled to question a witness to establish the truth. So you will be watching.

Your clients will be watching and see how these witnesses answer questions. By the time that they testify in the criminal trial your clients have already watched and listened to them as they give evidence and they get given - they asked - they get asked questions and they answer. I see a lot of benefit for an accused person who gets that chance.

The first chance - the first benefit an accused gets is when  
10 they get the statement of a witness who will get to give evidence. So they know in advance this is what this witness will say. Now here they will get the further advantage that the witnesses will testify in open. Not only that they will be questioned about their evidence.

So your clients get a chance to even be more prepared for when these witnesses testify in the criminal trial.

**MS KHUMBU SHAZI:** I take - I take the Chair's point. Yes the - the witnesses will be asked questions for clarity. They will not be cross-examined.

**CHAIRPERSON:** Well...

20 **MS KHUMBU SHAZI:** I ...

**CHAIRPERSON:** You say for clarity. I say the rules say to establish the truth.

**MS KHUMBU SHAZI:** Will that be tantamount to cross-examination?

**CHAIRPERSON:** Well I do not know whether it amounts to that, but it says to establish the truth.

**MS KHUMBU SHAZI:** I - I take - I take the Chair's point, but what ...

**CHAIRPERSON:** But ...

**MS KHUMBU SHAZI:** What ...

**CHAIRPERSON:** But your - your clients ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Have a right to apply to me for leave to cross-examine these witnesses.

**MS KHUMBU SHAZI:** We understand that.

**CHAIRPERSON:** Of course if they do that they have got to put up their  
10 version and I think that is where your clients' problem or part of the problem was.

**MS KHUMBU SHAZI:** Part of the problem. Yes.

**CHAIRPERSON:** *Ja.*

**MS KHUMBU SHAZI:** Part of the problem; and - and Chair is correct in saying that we can sit here and we can listen to the evidence. My clients will be listening to the evidence. Our problem is that everyone else will be listening to the evidence. There will not be a reason why a Presiding Judge does not have foresight of the evidence that is going to be led.

20                   There is not going to be a reason why witnesses are not even - the Prosecution Policy is that you cannot even consult with two witnesses at the same time. You cannot, because it is very, very important that witnesses become impartial. It is important that witnesses testify independently. In the independent recollection of what happened.

This is not going to happen when - if - if this witness is allowed to testify. There will be no point to it, but the courts are very rigorous in making sure that the rights of the accused when it comes to witnesses who are testifying being independent is - is not infringed upon, because it goes to the heart of the right to be presumed innocent.

If there was no consequence and serious dire prejudice to the accused then every witness will be allowed to sit in court and hear the evidence. Here it is not - the Commission is a drawcard. People are  
10 drawn into listening to this evidence - to the evidence of the Commission and everybody who will be testifying in their trial.

The part of the problem is the part of remaining silent and - and my clients having to come here and - and cross-examine, but that - that is a choice. They do not have a choice ...

**CHAIRPERSON:** But do you realise ...

**MS KHUMBU SHAZI:** In having ...

**CHAIRPERSON:** Do you realise that there are - there may be many persons who will be charged after the Commission has finished its evidence in respect of whom - whose trial there may be witnesses who -  
20 who will have access to the records of the Commission and the statements - public statements that have been given here. So - so people will get to know who - who said what ...

**MS KHUMBU SHAZI:** Hm.

**CHAIRPERSON:** Including witnesses who will testify. They will get to know.

**MS KHUMBU SHAZI:** I am - I am very alive to that Chair ...

**CHAIRPERSON:** Ja.

**MS KHUMBU SHAZI:** And I appreciate that. I will take three more minutes. I am very alive to that and I appreciate that.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** My gripe with that is that that may happen or may not happen. That is why we are here. That is why those people ...

**CHAIRPERSON:** Well hang on.

**MS KHUMBU SHAZI:** Yes.

10 **CHAIRPERSON:** The - in regard to persons who get charged ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Once they get charged ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** After the Commission has finished its work. They are - they - they are in the same position as your client in the sense that although the witnesses have given evidence. They will have access. Other witness can have access and could actually have had - listened to evidence without knowing that necessarily they will be called.

**MS KHUMBU SHAZI:** Yes. I - I agree. I ...

20 **CHAIRPERSON:** But they get called ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And they did hear the evidence.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** My - my point to the Chair as I say it is a maybe

that after this Commission has - has conclude the state will have - by the state I mean the prosecution. They will have a chance to do further investigations. They may not even lead evidence that is being led at this Commission. It is very possible that their - their investigation may have different legs.

They - they can come up with an entirely different set of charges. It might be standing from the evidence, but they may not lead evidence of the witnesses that have testified here. So there is a lot of maybe and presuppositions and I take that from what the Chair is  
10 saying. I am here to say it will happen. It is going to happen. The prejudice ...

**CHAIRPERSON:** Well ...

**MS KHUMBU SHAZI:** Is real.

**CHAIRPERSON:** Well ...

**MS KHUMBU SHAZI:** There is no likelihood of it. It is going to happen.

**CHAIRPERSON:** The “will” and “maybe” are on different things.

**MS KHUMBU SHAZI:** I beg your pardon Chair.

**CHAIRPERSON:** The “will” and the “maybe” are on different things.  
20 When I talk about will happen it is certain things, but when you talk about whatever prejudice you say your client would suffer.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Is the same prejudice that anybody ...

**MS KHUMBU SHAZI:** May.

**CHAIRPERSON:** Will suffer if they are accused. They are charged ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** After the Commission has finished its work. Two, a witness is called who has listened to the evidence of certain witnesses.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** You said certain witnesses might adjust their evidence.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** So because they have had access or they have heard what these witnesses say.

10 **MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** So in regard to those people that I am talking about the same thing also could happen when somebody is charged.

**MS KHUMBU SHAZI:** I hear Chair.

**CHAIRPERSON:** In your case your client is going to trial ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And some - some witness you say may adjust their evidence.

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** So I have put the “mays” together ...

20 **MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** And the “will” together.

**MS KHUMBU SHAZI:** Yes. What I am complaining about is that the “mays” at the end of the Commission people may not be charged. It will depend what the state is - is intends on doing. People may not be charged. Witnesses may not be called. The prejudice will be fall ...

**CHAIRPERSON:** (Indistinct).

**MS KHUMBU SHAZI:** If - if they are charged. So then there will not be any prejudice.

**CHAIRPERSON:** *Ja*, but do you agree that those are charged will be in the same position as your client?

**MS KHUMBU SHAZI:** If - if they are charged.

**CHAIRPERSON:** Those who will be charged. You do agree that that category would be in the same position as your client.

10 **MS KHUMBU SHAZI:** So we know that there are people that will be charged.

**CHAIRPERSON:** No, no. If that category happens ...

**MS KHUMBU SHAZI:** Yes.

**CHAIRPERSON:** Do you agree that they will be in the same position as your client?

**MS KHUMBU SHAZI:** I do if the state uses the same evidence. If the state

**CHAIRPERSON:** *Ja*.

**MS KHUMBU SHAZI:** Uses the same evidence.

**CHAIRPERSON:** *Ja*.

20 **MS KHUMBU SHAZI:** That - that is where I am.

**CHAIRPERSON:** *Ja*.

**MS KHUMBU SHAZI:** If the state. There are so many ifs and buts and presuppositions. They may not even be prejudiced.

**CHAIRPERSON:** Hm.

**MS KHUMBU SHAZI:** It may just end up being just my client.



**CHAIRPERSON:** I am - I am making you take long. You said you would be short.

**MS KHUMBU SHAZI:** It may just be - yes - yes.

**CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** It may just be my client. There is an "if" it may not happen and in fact the state may just not do it to guard against this complaint, because this complaint may happen at a later trial. They may then decide to do their own investigation and get their fresh evidence.

10                   It may be premised upon the - the work of the Commission, but to guard against this complaint, because it will be raised. They may not do it, because they are alive to it, but that will not be. For my client the - the - that ship would have sailed. It would have gone. The SCA recognised that it is general principle.

                  That if you can prove prejudice then the civil proceedings must stay until the criminal proceedings have been - it - it is a general principle until the criminal proceedings have ... (intervenes).

**CHAIRPERSON:** I do not want us to take too long, but I do not - I do not understand the authorities to which Mr Pretorius referred to be  
20                   saying that.

**MS KHUMBU SHAZI:** I have ...

**CHAIRPERSON:** They - they place reliance on compulsion as I understand that ...

**MS KHUMBU SHAZI:** Yes. In the same ...

**CHAIRPERSON:** And here there is no compulsion.

**MS KHUMBU SHAZI:** I - I - there is when it comes to remain silent ...

**CHAIRPERSON:** Yes.

**MS KHUMBU SHAZI:** But you - that is not the only prejudice that you can show. You can show other prejudice. I have quoted on paragraph 15 where it says it is a general principle. You can show prejudice. You cannot only show prejudice because your right to remain silent has been infringed.

There are other prejudice that you can show which is what we are trying to do. To show prejudice that there are rights to a fair trial is going to be infringed. The rights to ...

**CHAIRPERSON:** Okay.

**MS KHUMBU SHAZI:** Be presumed innocent to a fair trial will be infringed if my clients' trial is ventilated before it is done in the criminal court.

**CHAIRPERSON:** Do you need more than three minutes now? Are you done?

**MS KHUMBU SHAZI:** I am done.

**CHAIRPERSON:** Are you sure?

**MS KHUMBU SHAZI:** Yes.

20 **CHAIRPERSON:** Okay. Alright.

**MS KHUMBU SHAZI:** Thank you Chair.

**CHAIRPERSON:** I ...

**MS KHUMBU SHAZI:** Just one - one more thing.

**CHAIRPERSON:** Yes. Huh-uh.

**MS KHUMBU SHAZI:** One point. The statutory obligations of the

Commission do not trump constitutional rights of an accused person.

**CHAIRPERSON**: Hm.

**MS KHUMBU SHAZI**: They cannot.

**CHAIRPERSON**: Hm.

**MS KHUMBU SHAZI**: If that were to be allowed.

**CHAIRPERSON**: Hm.

**MS KHUMBU SHAZI**: It will be a sad state of affairs.

**CHAIRPERSON**: Hm. Thank you.

**MS KHUMBU SHAZI**: I am done now.

10 **CHAIRPERSON**: You are done now?

**MS KHUMBU SHAZI**: Yes.

**CHAIRPERSON**: Okay. Alright. I am going to dismiss the application. If the Applicants really require me to give reasons they will request them and then they will be given. The application is dismissed.

**ADV PAUL PRETORIUS SC**: Thank you Chair.

**CHAIRPERSON**: Are we ready to continue?

**ADV PAUL PRETORIUS SC**: Chair we are ready to continue.

**CHAIRPERSON**: Yes. Yes.

20 **ADV PAUL PRETORIUS SC**: Ms Wentzel will deal with the next witness.

**CHAIRPERSON**: Yes.

**ADV PAUL PRETORIUS SC**: May I ...?

**CHAIRPERSON**: Or should we - maybe we should take ...

**ADV PAUL PRETORIUS SC**: Ja. There are a number of files that need to be ...

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** We need to clear our own mess.

**CHAIRPERSON:** Okay. We will - we will take ...

**ADV PAUL PRETORIUS SC:** So Chair could we take five minutes?

**CHAIRPERSON:** We will take an adjournment that will take the place of the tea break. On my watch it is 22 minutes past. We will resume at 20 to.

**ADV PAUL PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** 20 to 12. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Ms Wentzel are you ready?

**ADV SUSAN WENTZEL:** Yes Chair, Chair before I start Mr Maneklal just wants to put his representation on record if that is suitable?

**CHAIRPERSON:** Ja.

**MR MANEKLAL:** Good morning Judge.

**CHAIRPERSON:** Good morning.

20 **MR MANEKLAL:** Judge as earlier alluded to in chambers I record that I am here representing MEC Peggy Nkonyeni. Judge she is the MEC for Human Settlements and Public Works. Judge we have received the notice quite late but we have received the notice nonetheless and Judge for the record we – she deserves the right to file an affidavit or bring an application to cross-examine the witness if it really becomes necessary after the witness has testified.

Judge I am also on Saturday I was served with the – I was

sent, forwarded the notice for General Ngubeni, the former Provincial Commissioner, in relation to the witness who is also present.

**CHAIRPERSON:** Yes.

**MR MANEKLAL:** I have duly forwarded to her and she has advised me to furnish the same reservation after the witness testifies to then decide on her alternatives that are available to her in terms of the rules.

**CHAIRPERSON:** Yes, okay, no that's fine.

**MR MANEKLAL:** Thank you Chair.

10 **CHAIRPERSON:** Thank you very much. Ms Wentzel I don't know whether it is you or anybody who put that in there, it should be separate, it is more convenient that way. I hope the witness's one is also so brief.

**ADV SUSAN WENTZEL:** Yes it is and Chair I took the liberty of doing it for that very purpose because when we're referring to so many annexures I thought it might be helpful for all of us to have the affidavit itself separate.

**CHAIRPERSON:** Well you see if you want it to be here don't put in a file cover, just put the statement, but once you put it in a file it is a file  
20 on its own and it is quite awkward for it to be here.

**ADV SUSAN WENTZEL:** Yes Chair ...[intervenes]

**CHAIRPERSON:** What do you want to do with this?

**ADV SUSAN WENTZEL:** What I was proposing was that the statement would be marked EXHIBIT RR4 and that each of the next files which contain annexures would be marked RR4A, B, C, D, if that was a

convenience way for you?

**CHAIRPERSON:** What will be A, B, C, D?

**ADV SUSAN WENTZEL:** Each – all the other files in front of you, you will see there are four files, I think you've got one.

**CHAIRPERSON:** I've only got two files in front of me.

**ADV SUSAN WENTZEL:** You've got an A, there should be a B and a C and a D file.

**CHAIRPERSON:** Are these all annexures to Mr White's statement?

**ADV SUSAN WENTZEL:** Yes they are.

10 **CHAIRPERSON:** Ja, they can be A, B, C up to whatever but what I am talking about is whether you want his statement, his affidavit, to be part of A?

**ADV SUSAN WENTZEL:** I think it would be more convenient if it wasn't part of A, it is separate and it is just on its own called RR4. It could be RR4(1) but it could just be RR4 and then the exhibits will be files A, B, C and D, whichever is convenient.

**CHAIRPERSON:** Ja we will have it separate and then maybe you may have to put it into a smaller lever arch file.

20 **ADV SUSAN WENTZEL:** Chair I will arrange for that for you to be done over the lunch adjournment.

**CHAIRPERSON:** Yes, okay, do you want me to admit these?

**ADV SUSAN WENTZEL:** I would like you to admit these exhibits.

**CHAIRPERSON:** The affidavit of Mr Trevor Sean White is admitted and will be marked EXHIBIT RR4, then there are four lever arch files which contain various annexures to that affidavit and one file will be

marked RR4A, another one RR4B, another one RR4C and the last one RR4D.

**ADV SUSAN WENTZEL:** Thank you Chair. Chair also for the record before we commence just in response to Mr Maneklal's statement that he only received the notices on Saturday, Chair I have shown him the printout prepared by the Secretariat which shows that these notices were sent to both of his clients on the 20<sup>th</sup> of December 2019 and both of these were delivered. He indicated to me that perhaps there's a problem with their email server their side but from the Commission's  
10 side those notices were timeously sent.

**CHAIRPERSON:** Yes okay.

**ADV SUSAN WENTZEL:** Thank you.

**CHAIRPERSON:** Thank you. Yes please administer the oath or affirmation to the witness.

**REGISTRAR:** Please state your full names for the record.

**WITNESS:** Trevor Sean White.

**REGISTRAR:** Do you have any objection to taking the prescribed oath?

**WITNESS:** I do not.

**REGISTRAR:** Do you consider the oath to be binding on your  
20 conscience?

**WITNESS:** I do.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth, if so please raise your right hand and say so help me God.

**TREVOR SEAN WHITE** (duly sworn, states)

**CHAIRPERSON:** Thank you. Yes, you may proceed.

**ADV SUSAN WENTZEL:** Thank you Chair. Mr White have you submitted an affidavit to the Commission?

**MR WHITE:** I have.

**ADV SUSAN WENTZEL:** And is the affidavit without the annexures referred to in Exhibit RR4 in front of you?

**MR WHITE:** It is Chair.

**ADV SUSAN WENTZEL:** Can I refer you to page 57 of that affidavit, in fact sorry, 56 of that affidavit, is that your signature?

10 **MR WHITE:** That is correct Chair.

**ADV SUSAN WENTZEL:** And you confirm that the averments in the affidavit are true and correct?

**MR WHITE:** That is correct Chair.

**ADV SUSAN WENTZEL:** Thank you. Mr White where are you currently employed and what is your position in that company?

**MR WHITE:** Chair I am a partner and director of Price Waterhouse Coopers and I work in the forensic investigations department.

**ADV SUSAN WENTZEL:** And what are your qualifications?

20 **MR WHITE:** Chair I have a Bachelor of Commerce degree, which I obtained in 1987, a post-graduate diploma in Accountancy which I obtained in 1989, I was admitted as a member of the South African Institute of Chartered Accountants in 1992 and I was also admitted as a member of the Association of Certified Fraud Examiners in 1998.

**ADV SUSAN WENTZEL:** And what is your experience as a forensic auditor?



**MR WHITE:** Chair I have been involved in conducting forensic investigations since 1996, I have conducted what must be more than 1 000 investigations during that time, I have testified in court on investigations conducted of which I would say 90% are criminal matters and I have testified more than 50 times in South African courts and the Lesotho High Court.

**ADV SUSAN WENTZEL:** Mr White could you tell the Chair how you became involved in the investigation into the contracts awarded by the South African Police Services in KwaZulu Natal to the businessman Mr  
10 Thoshan Panday?

**MR WHITE:** Chair Price Waterhouse Coopers was on the police panel of forensic accountants, it comes out every three years, we had submitted it and we were on that panel. There was then a request to provide a quotation in terms of that panel which we did and we were subsequently appointed to assist the police with undertaking the forensic investigation in support of case 781 as it was known this was the case relating to the allegations of irregularities and corruption relating to procurement of the South African Police Services in KwaZulu Natal relating to amongst others the procurement relating to the World  
20 Cup in 2010.

**ADV SUSAN WENTZEL:** Thank you. Pursuant to your mandate did you prepare a report?

**MR WHITE:** I did Chair, the report which I issued on the 24<sup>th</sup> of November 2014 was some 400 pages long, it is attached to this affidavit and attached to that report is 20 lever arch files of supporting

documentation which is cross-referenced to that report Chair.

**ADV SUSAN WENTZEL:** And if you have regard to Annexure TSW1, it's Volume A, Exhibit A, does that entire file comprise of your report.

**CHAIRPERSON:** You will have to be consistent and be – and use the correct exhibit name, are you referring to Exhibit RR4A?

**ADV SUSAN WENTZEL:** RR4A yes, thank you.

**CHAIRPERSON:** Okay, what page?

**ADV SUSAN WENTZEL:** Page 59.

**MR WHITE:** Chair that is correct, that report that starts at page 59 of  
10 RR4A the front page of that report is signed by myself and my signature  
also appears at the last page of that report, which is the last page in  
that bundle at page 510.

**CHAIRPERSON:** Thank you.

**ADV SUSAN WENTZEL:** And if you have regard to page 115.

**CHAIRPERSON:** One, one, five?

**ADV SUSAN WENTZEL:** Yes, is this a list of all the annexures to your  
report, the documentary evidence?

**MR WHITE:** Chair that is a list of documents that were provided to  
Price Waterhouse Coopers to assist us with doing the analysis of the  
20 procurement in flow of funds between the various entities. Only the  
relevant pages therein were attached as, that I actually referred to my  
report are attached to the report, but that is a total list of documents  
that the police provided and one can see from page 118 there was  
43 700 documents, pages of documentation.

**CHAIRPERSON:** So the information in the columns at pages 115 to

118 does it reflect a recordal of all documents that were given to you by the police?

**ADV SUSAN WENTZEL:** That is correct Chair.

**CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** And Mr White on page 114 paragraph 9.001 you deal with the sources of information used to compile this report, could you please tell the Chair what those sources were.

**MR WHITE:** Chair they were all documents provided to Price Waterhouse Coopers by the investigating officer and his team and the  
10 source of the documents were documents that came from the supply chain management department of the police, including their policy. There was bank statements that had been subpoenaed as well as images of various computers which the police cybercrime unit had made and had provided to us to undertake the investigation.

**ADV SUSAN WENTZEL:** Finally Mr White on page 112, paragraph 4.002 in the second line you say:

20 “The scope of my work was limited to a review of the documentary evidence made available to me and enquiries undertaken to address issues identified in execution of the investigation undertaken.”

Is that correct?

**MR WHITE:** That is correct Chair.

**ADV SUSAN WENTZEL:** Thank you. You also said in paragraph 6 on page 113, that’s 6.001 that this report focuses on documentary evidence provided by the SAPS which documents had been acquired

from the SAPS SCM Division, Operational Respond Services, Gold Coast Trading, Unite Mzansi Trading, Casiaf Traders, BravoSat 25CC, Valotone 21CC and the residence of Panday in addition to the bank accounts of the aforementioned entities, is that correct?

**MR WHITE:** That is correct Chair.

**ADV SUSAN WENTZEL:** Could you please tell the Chair what was the nature of the investigation, what was it about?

**MR WHITE:** Chair this investigation related to various allegations relating to the procurement of goods and services by the South African  
10 Police Services in KwaZulu Natal, in the lead up to the World Cup in 2010.

The overall allegation was that entities linked to Mr Toshan Panday, when I say linked entities in his wife's name or his mother's name or his brother-in-law's name were used to provide quotes where no third party was providing a quote and that this enabled them to quote significantly above market related prices, thereby making significant profits that would not be in the normal course of business and that policemen within the supply chain management department, being Colonel Madhoe and Captain Narainpersad assisted them in  
20 assuring that they receive this beneficial treatment and over the same period Mr Panday's entities were purchasing gifts for them that were enabling to circumvent the supply chain management procedures of the police, so effectively this report that I prepared summarises the procurement process, shows how it was circumvented, Colonel Madhoe and Captain Narainpersad helped with that process.

We then show the benefits that they received and how they received it and then at the same time show the benefit that former Provincial Commissioner Ngubeni, the procurement of a birthday party for her husband was paid for by Mr Panday at the same time that she was instructing the police officers in KZN to stop this investigation.

**ADV SUSAN WENTZEL:** Thank you. How much was paid to Mr Panday and his related entities?

**MR WHITE:** Chair it was approximately R47million and that Chair was in a period from November 2009 to August of 2010, some ten months.

10 **ADV SUSAN WENTZEL:** And from your investigations were you able to assess what profit margins were being charged by Mr Panday's entities?

**MR WHITE:** Chair on average they were billing approximately three times the price they were procuring things for, where it was physical goods and when I talk about goods it could be anything from a generator to a garment to sun screen, to a notice board, to a Venter trailer, they literally supplied anything the police required at the time. The accommodation in some instances they billed for accommodation that was never provided and in other instances they billed just more  
20 than twice what it was costing them they billed the police for.

**ADV SUSAN WENTZEL:** Mr White I would like to refer you to paragraph 16 on page 6 of your report, could you please tell the Chair who were the suspects in this investigation?

**MR WHITE:** Chair there were 12 suspects, some of which were natural persons, the first one being Mr Panday, he effectively was the main

person involved, he was the person that in most instances we could trace payments to the various police officials involved in procurement directly to his instructions.

The police officials involved, Colonel Navin Madhoe, he was the head of acquisitions for the South African Police in KZN, so he also approved payments relating to – payment to Mr Panday's entities, as well as dealing with the sourcing of accommodation particularly for the World Cup, and chair when I refer to accommodation for the World Cup this is accommodation for the police members that are coming from  
10 outside of the Durban area that needed to be on duty during the World Cup.

Captain Ashwin Narainpersad he was also in the procurement department and he certified that goods had been received, and he was also instrumental in summarising the three quotes to give the impression that a procurement process independently quotes from the market had been prepared, but in all instances where Mr Panday's entities got paid the other two entities related to Mr Panday in one way or another.

Then Lt General Ngubeni, who was the Provincial  
20 Commissioner at the time who based on affidavits that were given to me to consider relating to the date and the time of the birthday party that was paid for on her behalf she was in the month leading up to that birthday party giving instructions to Brigadier Kemp and General Booysen to stop the investigation.

Then from a National perspective there was Major General R S

Pillay, he was involved in signing off documents relating to accommodation for the World Cup and he signed off motivations just before the accommodation was required to be booked, saying that it was urgent when if one looks back at the various meetings that had taken place for some eight or ten months before they knew at least that long before accommodation would be required and police procurement procedures do not allow a lack of planning as a basis to justify an urgent or emergency procurement that then doesn't follow the procurement process.

10           The sixth person is Ms Pravisha Panday, that is Mr Toshan Panday's wife, there is then Ms Riwenda Panday which is Mr Panday's mother, and then there are the entities that are involved, there's Goldcoast Trading CC of which Mr Panday is the sole member, that was the entity that provided accommodation both for the World Cup as well as for other deployments of police officers in KZN. Then Unite Mzansi Trading and Project CC, this is an entity that Mr Panday is the sole member of, this entity was used to quote against Velatone 21 CC which was owned by his wife and BravoStat 25 CC which was owned by Mr Panday's mother.

20           And then Cassief Trading CC was owned by Sabesh Ismail Kamar which is Mr Panday's brother-in-law, he is married to Mr Panday's sister.

**CHAIRPERSON:**   The one Unite Mzansi that's how it's registered, because it looks like they confused where the S should be and where the Z should be, they must have intended Mzansi.

**MR WHITE:** I agree Chair.

**CHAIRPERSON:** Ja, but that's how it's registered?

**MR WHITE:** That's correct Chair.

**CHAIRPERSON:** Okay, alright.

**ADV SUSAN WENTZEL:** Thank you Chair. Now Mr White in your report you deal extensively with when and how Mr Panday's wife, mother and brother-in-law came to own the companies you referred, Velatone, BravoStat and Cassief Traders and you also deal with how these companies were reflected on the supply database. This is dealt  
10 with by you on pages – from pages 119 to 130.

**CHAIRPERSON:** I see that the list of suspects appears at page 6 of Mr White's affidavit, paragraph 16.

**ADV SUSAN WENTZEL:** Yes it does.

**CHAIRPERSON:** It will help if as we go along we know whereabouts in the affidavit we are. Of course you will refer to the other exhibits but it helps if one knows exactly where we are.

**ADV SUSAN WENTZEL:** Chair I actually did say it was page 6 and paragraph 16 but I know it's ...[intervenes]

**CHAIRPERSON:** Mmm?

20 **ADV SUSAN WENTZEL:** I think I did say that that but I will make sure that I tell you where we are in the affidavits.

**CHAIRPERSON:** Yes, no that's fine, just mentioning paragraph numbers of the statement as we go along will help me to see where we are.

**ADV SUSAN WENTZEL:** Yes, Chair I won't follow in the course of



giving this evidence the affidavit exactly but I will certainly show you where we are.

**CHAIRPERSON:** That's fine ja, so you referred to Exhibit RR4A, is that right, what page number?

**ADV SUSAN WENTZEL:** We were referring to, it's dealt with essentially from pages 119 to 130 but I am now going to look at page 134.

**CHAIRPERSON:** Okay. Continue.

**ADV SUSAN WENTZEL:** Mr White without me reading what is  
10 contained in your report with regard to this could you perhaps with regard to the enlarged timeline which is Annexure TSW25 referred to in Exhibit RRD right at the end explain to the Chair what happened with regard to the ownership of that company?

**CHAIRPERSON:** Maybe before he does so, let's establish how we went about the investigation, did he interview witnesses, was it just document based, Mr White do you want to just explain that to me, how did you go about with your investigation?

**MR WHITE:** Chair our appointment was to assist the investigation  
20 team that was allocated this investigation by the police. They provided us with all the documentation. They then the individual investigating officers went and obtained statements from the various people where they needed a supporting statement around whether service was provided, whether the supplier had 20 rooms if the accommodation that was paid for was 20 rooms and in some instances the supplier only had ten rooms, so if the people weren't sharing the accommodation couldn't

have been provided.

So the police went and obtained those statements and then provided us, when I say us, I mean PWC, with copies of those statements and we would have input into the questions that would be asked of those witnesses and information that we required to enable me to make the conclusions I made in my report.

So we, PWC, and the staff assisting me from PWC, didn't specifically interview the witnesses that were – that provided statements that are in the criminal docket.

10 Chair just in that regard there are literally hundreds of statements because every time there was a person identified that did something the investigating police officers went and obtained statements from those people.

**CHAIRPERSON:** Is the position that after you had look at some statements, or at any statements if you wanted clarification you would indicate to the relevant police official to say we want this information from this witness, or would you write directly to the witness and obtain information of pick the phone and ask them or how would you go about that?

20 **MR WHITE:** Chair we worked very closely with the – the police officers and that would be done during – in discussions and then Colonel Van Loggerenberg who headed up the – he was the main investigating officer he would then instruct the other policemen working for him to go and take further statements. So in some instances there would be a statement in the docket and then there would be an addendum to that

statement which had further information around specific issues that I required clarity on before I could finalise my report.

**CHAIRPERSON:** Okay. So your team provided – was providing assistance to the investigation conducted by the police?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Is that right. Okay. Thank you.

**ADV SUSAN WENTZEL:** Thank you. Mr White if we can go to page 134 of your report? You there say in paragraph 10.051 with regard to Volatone 21 C – no with regard to Bravosat and who you have said was  
10 Mr Panday's mothers' company. You say this:

“The certificate issued by the Registrar of Companies and Close Corporations dated the 28 June 2010 reflects that as at the 28 June 2010 the only member for Bravosat 25 CC was Avendra Panday. However the Experian Report extracted on this entity reveals that she resigned as a member thereof the same date she became a member namely 9 November 2009 at which date Panday became the sole member of this entity. I have also established from documents  
20 provided by CIPC that Arvendra Panday became a member of Bravosat25 CC on the 26 October 2009 and resigned on the 9 November 2009 although the CIPC was only informed of her resignation on the 12 April 2011. I can therefore conclude from the abovementioned documents that Avendra Panday

was initially the only member for this entity and who was recorded as the only member thereof as at the 28 June 2010 a year after the registration on the SAPS Supply Data Place. However subsequent to the aforementioned date the CIPC was informed of her resignation as the only member of Bravosat 25 CC which date is recorded as the 9 November although the CIPC was only informed of her resignation on the 12 April. The aforementioned documents concur with each other...”

**CHAIRPERSON:** Ms Wentzel

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Ms Wentzel you cannot...

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Read for so long. Here is the witness.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** This is his report. He knows his report.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Ask him questions that will elicit the information that you want him to place before me.

**ADV SUSAN WENTZEL:** Yes. I want it with reference to those paragraphs if you could please refer to Annexure TSW25? It is...

**CHAIRPERSON:** Before that Mr White Ms Wentzel do not forget the question you wanted to ask. Your – your report I see there are – there are writings on the – on the margin on the side F2/2-3 what do those

signify – what do they represent?

**MR WHITE**: Sorry Chair I should have explained that at the beginning. And I refer to it at the bottom of each of those pages. Those references in those columns are references to the supporting documents that were in the 20 lever arch files.

**CHAIRPERSON**: Yes.

**MR WHITE**: That are attached to that report.

**CHAIRPERSON**: Yes.

**MR WHITE**: So anywhere where I refer to information in the report – a  
10 reader of the report can go to the source document where I got that information from.

**CHAIRPERSON**: Yes. Okay. And would they also be helpful now in regard to the other exhibits that have been admitted or they were – would have been helpful at the time for your own investigation? If I want to see the source for anything you write there that source would – those sources would be here or some would be here others will not be here?

**MR WHITE**: Chair none of those documents are attached to this affidavit that I have prepared.

20 **CHAIRPERSON**: Yes.

**MR WHITE**: But I have provided them in an electronic form to the commission. So they are all available.

**CHAIRPERSON**: Oh okay.

**MR WHITE**: It is just all the annexures I refer to in the reports before the commission.

**CHAIRPERSON**: Ja.

**MR WHITE**: There is some 50 lever arch files of documents.

**CHAIRPERSON**: Yes. Yes. But what you...

**MR WHITE**: The commission has it.

**CHAIRPERSON**: What you mean is they can be found if necessary?

Ja.

**MR WHITE**: Chair they – the commission has them.

**CHAIRPERSON**: Has got them in electronic form?

**MR WHITE**: Yes Chair.

10 **CHAIRPERSON**: Okay thank you.

**ADV SUSAN WENTZEL**: Thank you Chair. Mr White with reference to Annexure TSW25 Exhibit RR4d it is at page 1986.

**CHAIRPERSON**: You are speaking away from the microphone.

**ADV SUSAN WENTZEL**: Sorry. It is at page 1986 could you please explain what transpired with regard to Bravosat? I am sorry the – is that suitable if it is the whole document yes. Thank you.

**MR WHITE**: Chair that annexure is just – it was included in my report that is being referred to.

**CHAIRPERSON**: That annexure is on what page in Exhibit RR4a?

20 **MR WHITE**: Chair it is in RR4d.

**CHAIRPERSON**: It is in RR4d. Okay.

**ADV SUSAN WENTZEL**: It is 1986 Chair.

**CHAIRPERSON**: Yes. Okay continue.

**MR WHITE**: Chair that is just a representation on a timeline showing some anomalies that relate to the registration of the companies relating

to Mr Panday's wife and his mother. So the ...

**CHAIRPERSON:** Just speak to them.

**MR WHITE:** The document – the document that is currently on the screen which is at page 1986 in RR4d just sets out the date the entity was initially registered being the 9 November 2009. The fact that – and I will deal with the change at a later date. And the fact that at that date Mr Panday's wife was the member a bank account in the middle of that page was opened on the 18 November 2009. Mr Panday's wife was the sole signatory. And on the 30 November it was registered on the Police  
10 Supply Data Base. When it was registered on the Police Supply Data Base it was registered as an entity owned by Privisha Panday. What then happened was almost...

**CHAIRPERSON:** I am sorry. It was – when it was registered in the Police Data Base it was registered as an entity owned by who?

**MR WHITE:** Pravisha Panday.

**CHAIRPERSON:** That is Mr Panday's wife?

**MR WHITE:** That is correct Chair.

**CHAIRPERSON:** Okay.

**MR WHITE:** Chair just...

20 **CHAIRPERSON:** So.

**MR WHITE:** What I am trying to show there is that from the date this entity was first registered.

**CHAIRPERSON:** Yes.

**MR WHITE:** On the 9 November.

**CHAIRPERSON:** Ja.

**MR WHITE:** Before the end of that month being the 30 November this entity had opened a bank account and it registered on the Police Supply Data Base. From what was...

**CHAIRPERSON:** I am sorry. Did you say – did you say that before it was registered a bank account had been opened?

**MR WHITE:** No, no Chair shortly after it was registered. So if we look at page 1986 we start at the left in that timeline it was registered on – with...

**CHAIRPERSON:** I am sorry hang on one second. You say page 1?

10 **MR WHITE:** 1986.

**CHAIRPERSON:** Is that the page – well – 1986 okay.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay now I see. Okay alright.

**MR WHITE:** So Chair in the bundles there is an A4 document with a copy in A3 as well so that it is easier to read.

**CHAIRPERSON:** Yes, yes, yes. Okay continue.

**MR WHITE:** So Chair if we start on the left. The entity was first registered on the 9 November 2009.

**CHAIRPERSON:** Yes.

20 **MR WHITE:** It skipped the other date and we move to the middle of the page. They opened a bank account on the 18 November.

**CHAIRPERSON:** Yes.

**MR WHITE:** And they were then registered on the Police Supply Data Base on the 30 November.

**CHAIRPERSON:** Yes.



**MR WHITE:** So this is a brand new entity. It has just been opened.

**CHAIRPERSON:** Yes.

**MR WHITE:** It – from what my investigation showed they did no work for anybody else only for the police.

**CHAIRPERSON:** Hm. Hm.

**MR WHITE:** However some two years later on the 17 August 2009 on the right hand side there was an instruction sent to CIPC the entity that controls the registration of Close corporations recording that Mr Panday's wife had resigned on the 9 November 2009 being the very day  
10 she was appointed and replacing him as the sole member. Chair.

**CHAIRPERSON:** Well I am sorry Mr White. I have read your statement so I have a certain understanding which I want to make sure I check whether it is correct. I thought based on my reading of your statement and what you said earlier on. It thought there is a point to be emphasised that you want to emphasise with regard to who was registered as the member of the CC when. Is it convenient to deal with that? That point first or is it more convenient to deal with other things and come back to it later?

**MR WHITE:** No Chair I can deal with it now.

20 **CHAIRPERSON:** Yes.

**MR WHITE:** So the point is that when this entity registered on the Police Supply Data Base to try and give the impression is my view that it was independent of Mr Toshan Panday.

**CHAIRPERSON:** Yes.

**MR WHITE:** The sole member was registered as his wife.

**CHAIRPERSON:** Yes.

**MR WHITE:** However at a later point once this investigation started they went and backdated her involvement, to remove her as a member of that Close Corporation. But what they could not change.

**CHAIRPERSON:** Hm.

**MR WHITE:** Was the date the bank account was opened and who the sole signatory was and they could not change the record on the Police Supply Data Base where it was recorded as being his wife's entity.

**CHAIRPERSON:** Yes okay let us deal with it this way as I read the  
10 annexure. On the 9 November 2009 that is when this entity gets registered, is that right?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And at that stage the founding statement of the Close corporation and the Close corporation we are talking about is Valotone, is that right?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Valotone CC. Ms Privisha Panday previously Summergeeth is the sole member of the CC.

**MR WHITE:** Correct Chair.

20 **CHAIRPERSON:** And then you have in the next column something relating to the same date 9 November 2009 and you say, "on the same day Ms Privisha Panday resigns as sole member of Valotone 21 CC", is that right?

**MR WHITE:** Correct Chair. But the...

**CHAIRPERSON:** But that resignation is it effected in the intellectual

property office or not?

**MR WHITE:** Chair it is only registered...

**CHAIRPERSON:** At that stage.

**MR WHITE:** Not at that stage.

**CHAIRPERSON:** Not at that stage.

**MR WHITE:** Only reflected in that office on the 17 August 2011.

**CHAIRPERSON:** Okay the date which is right at the end of that page.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** So – but is it – is it backdated?

10 **MR WHITE:** Correct Chair.

**CHAIRPERSON:** Is the resignation backdated?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** So – so this organisation Valotone 21 CC gets registered on the 9 November 2009 and its owner or sole member is reflected as Ms Privisha Panday, Mr Panday's wife. And then on the 18 November 2009 a bank account is opened at ABSA and the sole signatory to the account is Privisha Panday, Mr Panday's wife in regard to this entity. And on the 30 November 2009 this entity is registered in the SAPS Supplier Data Base. So as at the time when it is registered  
20 in the data base of the SAPS on the 30 November 2009 as far as the records at the Intellectual Property office are concerned Ms Privisha Panday is the sole member of the CC.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Is that right? And – and when that registration at SAPS is made in the data base of the SAPS in regard to this entity the

– she is reflected as the sole member of the CC?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And then you say on the 17 August 2011 that is now close to two years later from when it was registered. At that time a letter is then submitted to the Intellectual Property office to say that she had resigned. Not to say she was resigning as at that time. Is that right?

**MR WHITE:** Correct Chair that she had resigned on the 9 November 2009.

10 **CHAIRPERSON:** And that is what is submitted to the Intellectual Property office a letter that is dated 9 December 2009 or what is – oh is it the – the text of the letter or email of resignation that tells that office that this resignation is with effect from 9 November 2009?

**MR WHITE:** Chair I cannot recall the exact form of it but it was that it was effective the 9 November 2009.

**CHAIRPERSON:** That is the – that is the – however it was put that was the effect?

**MR WHITE:** Correct Chair.

20 **CHAIRPERSON:** The person who put it Ms Panday intended the Intellectual Property office to take her resignation to have been with effect from the day on which the entity was registered with them?

**MR WHITE:** Correct Chair. So if one has an enquiry on this entity with Intellectual Properties office now they will show that she resigned on the 9 November 2009.

**CHAIRPERSON:** Yes. Yes. Oh of course – of course in all probability

legally the resignation should only be from – with effect from the date when the Intellectual Office officer may be got the – the letter, I am not sure. But in any event she intended that the resignation should be taken to have been with effect from the day on which the – the entity was registered?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay thank you. I just wanted to understand that – that point because I thought in your statement you make that point quite clearly. But there may be other points you want to make in regard  
10 to this.

**MR WHITE:** Chair the only – just at the same time when one considered Bravosat which is his mother's company. The same thing happened the dates are slightly different as related to the resignation date. But the opening of the bank account, the registration on the Police Supply Data Base is exactly the same. And also the resignation is backdated by close to two years. So it appears that these entities were registered with people related to Mr Toshan Panday but not himself personally, applied to be on the Police Suppliers Data Base. Those entities were then used to provide quotes competitively against  
20 each other, competitively used quite loosely. But after they had stopped doing work for the police and this investigation had started Mr Panday then went – or these two ladies went and backdated their resignation to say they were never the members of these entities.

**CHAIRPERSON:** Yes. And yet throughout the period as far as the Intellectual Property office is concerned and therefore as far as the

public is concerned and far as the SAPS were concerned it was in the case of Valotone 21 CC Ms Privisha Panday who was recognised as the sole member of that?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Ja. Okay.

**ADV SUSAN WENTZEL:** And Mr White were anyone in procurement told that Valotone that Ms Privisha Panday was no longer a member of Valotone between the 9 November 2009 and the 17 August 2011?

**MR WHITE:** Not to – not based on the records I have seen Chair.

10 **CHAIRPERSON:** Did you ask the police to enquire from Ms Privisha Panday why this was done?

**MR WHITE:** Chair they were the suspects so as far I am aware they were not interviewed and warning statements had not been taken. Up to the date when there was a decision not to prosecute the accused.

**CHAIRPERSON:** So we – so at this stage we – we do not know what they say why they – what they have to say about this very strange way of doing things.

**MR WHITE:** We do not Chair.

20 **CHAIRPERSON:** Yes okay. Ms Wentzel has the – have the investigators checked with them what – how do they explain this?

**ADV SUSAN WENTZEL:** No Chair you will see that this statement from Mr White was obtained in the end of the – well the middle of December. The investigators all then went on leave and as far as I am aware I do not know if they have been approached as yet to determine what their version is as to why this occurred.

**CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** Thank you Chair. Could you please explain what transpired with regard to Bravosat with reference to Annexure TSW26 Exhibit RR4d? It is on page 998.

**MR WHITE:** Sorry Chair it is 1988.

**ADV SUSAN WENTZEL:** 1988.

**CHAIRPERSON:** Yes 1988.

**MR WHITE:** Chair that is just the timeline that is very similar to the one I have just referred to for – for Valotone the only difference is the  
10 date the entity was registered in this instance it is now the 26 October 2009 and the date there was an amendment to the founding statement and the other difference obviously is this one relates to Mr Panday's mother whereas the previous one related to his wife. Otherwise what they did with his wife's entity they did effectively the same thing with entity that his mother was a member of.

**CHAIRPERSON:** I saw in regard to the previous CC that we just dealt with that from the beginning your documents reflect or refer to an amended founding statement even at the time of registration. That gives the impression that there had been a founding statement which  
20 was subsequently amended but that might – is that the position?

**MR WHITE:** That is correct Chair. From what I could determine these entities were effectively shelf close corporations. So businesses that were on the business of registering companies or close corporations

**CHAIRPERSON:** Yes okay.

**MR WHITE:** They register a whole lot and then they just...

**CHAIRPERSON**: Oh okay, okay.

**MR WHITE**: So there an employee of the organisation that originally registered this.

**CHAIRPERSON**: Yes.

**MR WHITE**: Was the first member.

**CHAIRPERSON**: Okay.

**MR WHITE**: So that is why...

**CHAIRPERSON**: Okay, okay.

**MR WHITE**: The very first one is an amendment.

10 **CHAIRPERSON**: It is an amendment to replace whoever may have been the sole member when the CC was in a shelf so to speak.

**MR WHITE**: That is correct Chair.

**CHAIRPERSON**: And then to reflect the – the new and sole member with effect from the date of registration of the amended statement.

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Ja. Okay so – so that the – the registration – the registration would not be the first registration of the CC?

**MR WHITE**: Correct.

20 **CHAIRPERSON**: Because the CC would have been registered before it was put into a shelf?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: So to speak. It is the registration of the amendment which then reflects the new sole member that is what it means?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Okay alright. Please continue.



**ADV SUSAN WENTZEL:** Thank you. Now with regard to Kaseev Trading which you said was owned by Mr Panday's brother-in-law was the same amendments made to the founding statement?

**MR WHITE:** No Chair. So he continued to be the member from the documents that I have seen.

**ADV SUSAN WENTZEL:** And then if you have regard to Annexure TSW27 on page 1990.

**CHAIRPERSON:** Are you done with the one for Bravosat? I thought you had asked him to talk to that one.

10 **ADV SUSAN WENTZEL:** I – I beg your pardon. I thought he had completed. Is there anything further you would like to say as to that one?

**MR WHITE:** No Chair.

**CHAIRPERSON:** Because I think as and when you get to the others you can then deal with whatever issue relating to amendments if there is an issue.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** But it is better that once we have got to one let us finish with that one.

20 **ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Ja.

**ADV SUSAN WENTZEL:** Thank you.

**MR WHITE:** Chair relating to – to Bravosat.

**CHAIRPERSON:** Ja.

**MR WHITE:** Effectively the modus operandi was exactly the same.

**CHAIRPERSON:** As in the...

**MR WHITE:** As in Valotone which ...

**CHAIRPERSON:** Yes.

**MR WHITE:** So they did the same thing. They registered on the same date. They then backdated it so that the portion that related to the registering with the police and opening the bank account was exactly the same days.

**CHAIRPERSON:** Yes well let us just get this sorted out. On the 26 October 2009 the founding statement of the CC was amended and it  
10 then reflected from that date – that is for Bravosat 25 CC it reflected Avendra Panday as the sole member of the CC. And you said Ms or Mrs Avendra Panday was Mr Panday's mother?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Is that correct? And that – and then – and then on the 18 November 2009 a bank account was opened at ABSA in regard to Bravosat CC and on the 30 October 2009 Bravosat CC was – Bravosat 25 CC was registered in the data base of Supplier Date Base of SAPS and on the 12 April 2011 Ms Avendra Panday submitted whether it was  
20 a letter or a document to the Intellectual Property office indicating that she had resigned from – as a member of Bravosat 25 CC with effect from 26 October 2009. Is that correct? Have I summarised this part correctly?

**MR WHITE:** That is correct Chair. Just with one correction just for the record.

**CHAIRPERSON:** Ja.

**MR WHITE:** You said it was registered on the Police Supplier Data Base on the 30 October it is actually the 30 November.

**CHAIRPERSON:** Yes, no thank you. Ja 30 November 2009. So it was exactly the same method or – as we have heard in regard to the other CC?

**MR WHITE:** Correct Chair. And again just to highlight that entity was registered shortly or transferred into Mr Panday's mother's name shortly before they registered on the Police Supplier Data Base and they then did work for the police or were paid for services provided to  
10 the police for the next six or eight months. So again newly registered entity onto the Police Supplier Data Base within a month and then they immediately proceeded to receive significant orders and were used to quote against each other to give the impression that there was competitive pricing obtained by the police.

**CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** And Mr White when was Gold Coast Trading and the other corporation which – of which Mr Panday was a member when were they registered?

**CHAIRPERSON:** Were they registered on the same day otherwise we –  
20 we should go do the same exercise one by one unless they are registered on the same day?

**ADV SUSAN WENTZEL:** Mr White the – the point is were they comf – were they companies of which he had been a member of a long time or was it similar in that ...?

**MR WHITE:** Chair it was not – it was not exactly the same timelines. I

cannot – I cannot recall off the top of my head but it was not exactly the same.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** Was it a long...

**CHAIRPERSON:** Had they been there for quite some time or as you recall not too long?

**MR WHITE:** Chair no – not Mzansi was – had not been there for long.

**CHAIRPERSON:** Hm.

**MR WHITE:** I am just trying to – if any of them were had been there for  
10 longer it would have been Gold Coast because that was his main entity  
that he operated. I am just trying to –

**CHAIRPERSON:** Well.

**MR WHITE:** Chair they had only shortly before this around the same  
time registered on the Police Supplier Data Base.

**CHAIRPERSON:** Is it all the others or only specific ones?

**MR WHITE:** Well Chair there is – there are those two entities.

**CHAIRPERSON:** Ja many.

**MR WHITE:** Those two entities there and then Unite Mzansi which is  
Mr Panday's entity and then Gold Coast Trading which is his entity.

20 **CHAIRPERSON:** Ja. Okay well Ms Wentzel you must just tell the  
witness exactly what you want him to look at so maybe during lunch –  
the lunch break.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** He can have a look and then you can ask him the  
details later.

**ADV SUSAN WENTZEL:** Yes I – I – yes I will do that. I asked you earlier whether this same modus operandi that was used with regard to Bravosat and Valotone was employed with regard to Kaseev Traders which was own by Mr Panday's brother-in-law.

**MR WHITE:** Chair he did not resign from the company and transferred into Mr Panday's name like the wife and brother had done. Sorry wife and mother had done.

**ADV SUSAN WENTZEL:** And from the timelines you referred to Annexures 20 – TSW25 and 26. What inferences can you draw from  
10 this?

**MR WHITE:** Chair it appears that these two entities were registered with the sole purpose of obtaining work from the South African Police Services. They were registered, bank account opened, on the Police Supplier Data Base and within a month receiving significant orders. Chair the reason I say that is when one looks at the procurement documentation within the police records those two entities together with Unite Mzansi Mr Panday's entity were used to cover quote effectively against each other so that the police were procuring goods at significantly inflated prices. So – and from the records that I was  
20 provided that were seized from their business premises by the police they did not appear to do work for any other entity. So it appeared that this was a specific planned event form these entities and then use them to effectively manipulate the police procurement process with the assistance because it can never work if you do not have a person within the procurement department assisting so with the assistance of

Colonel Madhoe and Captain Narainpershad.

**ADV SUSAN WENTZEL:** Mr White which of these entities was in the main used to provide accommodation and which entities were in the main used to provide goods?

**MR WHITE:** Chair Gold Coast was the entity used to provide accommodation to the police and the other entities effectively quoted against each other for the supply of any other specific goods that were provided to the police. So the other entities did not provide accommodation.

10 **ADV SUSAN WENTZEL:** And with regard to the good supplied so the Chair can get an idea of the nature of the goods I would like to refer you to Annexure TSW1. It is in Exhibit RR4a at page 268.

**CHAIRPERSON:** What page?

**ADV SUSAN WENTZEL:** 268 Chair.

**CHAIRPERSON:** Did you say RR4a?

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** And page 268?

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Okay.

20 **MR WHITE:** Chair maybe just to – to place it into context before I explain what is in that – that table. Is the South African Police Services at the time and we are now talking 2009/2010 they had a Supply Chain Management User Manual and in that manual it stated that all procurement must be fair, equitable, transparent, competitive and cost effective. As the Chair would know those are the same

requirements as set out in Section 217 one of the Constitution. It also set out levels on which different police officials could approve procurement and in the – and what was required by way of competitive quotes or tenders depending on the level of authority. If it was above R200 000.00 there was a requirement to go out to open public tender. If it was less than R200 000.00 three quotes could be obtained. They would be compared and the cheapest entity would be appointed. In terms of Colonel Madhoe's level of authority he could approve – he was the final signatory on the three quote process. So he could approve  
10 that the cheapest of the three could be appointed to provide the services.

**CHAIRPERSON:** That is now for items that were less than R200 000.00?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay.

**MR WHITE:** So Chair if one looks then at the – at page 268 of RR4a that table is a summary of procurement authority submissions. Chair now a procurement authority submission is a document that is prepared summarising the three quotes that have been received. The names are  
20 inserted, the prices and then based on the prices a rating is done in terms of a scoring and then there is a recommendation that the cheapest one be appointed and then there is an approval. Chair that – the process of preparing the document and verifying it to the supporting documents was undertaken by Captain Narainpershad and then the approval...

**CHAIRPERSON:** I am sorry. Captain Narainpershad was he Colonel Madhoe's

**MR WHITE:** Madohoe's junior.

**CHAIRPERSON:** Madhoe's supervisor?

**MR WHITE:** Junior Chair.

**CHAIRPERSON:** Junior okay my understanding of the ranks in the police and the army is terrible.

**MR WHITE:** So Chair the Captain is junior to the Colonel.

**CHAIRPERSON:** Oh okay, okay.

10 **MR WHITE:** So – so Mr Narain or Captain Narainpershad is junior to Colonel Madhoe.

**CHAIRPERSON:** Hm.

**MR WHITE:** So he prepared the document, summarised it and then Colonel Madhoe approved it or authorised it.

**CHAIRPERSON:** Okay.

**MR WHITE:** So he signed it off and said the order can be placed.

**CHAIRPERSON:** Yes.

**MR WHITE:** And then the procurement process follows.

**CHAIRPERSON:** Hm;

20 **MR WHITE:** Captain Narainpershad then confirms that the goods and services were received.

**CHAIRPERSON:** Hm.

**MR WHITE:** And then they get paid for.

**CHAIRPERSON:** Okay.

**MR WHITE:** Now Chair that table at page 268 is a summary of 23



procurement authorities submissions that were seized by the police from the Supply Chain Management department of the police. So it was seized by Colonel Van Loggerenberg and his colleagues. And what I have done is I have summarised those in that table. Chair just one can see if one looks so there is 23 lines. The second column relates to the date. Those are all dated the 6 May 2010 or the 5 May 2010. All 23 of those submissions and approvals were done on the – within two days of each other.

**CHAIRPERSON:** Yes. So would that date – would those dates reflect  
10 the date on which the quotes were received or the dates when some decision was made?

**MR WHITE:** Chair that would be the date they were approved.

**CHAIRPERSON:** They were approved?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay. Alright. And in this case the person to approve was Colonel ...

**MR WHITE:** Madhoe.

**CHAIRPERSON:** Madhoe. Okay alright.

**MR WHITE:** And the preparation had been done by Captain  
20 Narainpershad.

**CHAIRPERSON:** In each case?

**MR WHITE:** In each case Chair.

**CHAIRPERSON:** Yes.

**MR WHITE:** So Chair just to put in context those are the – are two of the individuals that Mr Panday was purchasing gifts and benefits for

around the same time.

**CHAIRPERSON**: Yes. Yes. Yes. Okay.

**MR WHITE**: Chair then just to highlight the type of items under the goods required column that were being purchased. So line 1...

**CHAIRPERSON**: Yes well maybe – yes okay go ahead.

**MR WHITE**: So just without going through all the lines. There is digital cameras, sleeping bags, flood lights, notice boards, sunscreen, ration packs, garmins, angle iron, venter trailers, beds. So Chair it is almost anything you could possibly think of.

10 **CHAIRPERSON**: Yes. Yes.

**MR WHITE**: He supplied and this was just a summary of some of the items. I mean there were blankets, there were all sorts of things in other ones.

**CHAIRPERSON**: Yes.

**MR WHITE**: Chair then just to – the three entities that provided quotes according to those documents – it is in the middle of that page. It is Kaseev Traders, Unite Mzansi and Valotone.

**CHAIRPERSON**: Well they have got Mzansi correct here but that is not how it is registered.

20 **MR WHITE**: Chair I think when I was ...

**CHAIRPERSON**: The correct version is the incorrect version.

**MR WHITE**: No Chair I think – I think it was wrong in the previous reference in my affidavit Chair.

**CHAIRPERSON**: Oh it not how it was registered?

**MR WHITE**: I think this – ja Chair I think I have actually had a mistake.

**CHAIRPERSON:** Oh okay this is the correct one.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay no that is fine.

**MR WHITE:** So Chair those are the – and if one looks at the prices they are fairly similar to each other but we then have in the column third from the right the company approved and we can see the first five were awarded to Kaseev Traders The next five to Unite Mzansi and then the balance to Valotone. Chair there is then

**CHAIRPERSON:** Yes I was just checking on the screen you have got  
10 the – you have got this or not what we are looking at. If you can put it on the screen I think that might be helpful for people to see. But basically the first one at the top SAPS required digital cameras I think two of them. And Kaseev Traders, Unite Mzansi and Valotone put in quotes. Kaseev put in a quote for R37 000.00. Unite Mzansi R38 500.00. Valotone R39 500.00. And there were – these were all entities whose sole members were Mr – they were linked to Mr Panday?

**CHAIRPERSON:** Correct Chair.

**CHAIRPERSON:** And then this document reflects that in regard to  
20 digital cameras Kaseev Traders quote for R37 000.00 was then approved.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And then one can go down right through all of them. The same thing happened and they actually – these three entities Kaseev Traders, Unit Mzansi and Valotone they all sent quotes in regard to 23 items required by SAPS as stipulated here.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And – and sometimes the one was approved, sometimes it was another one. All of them at one stage or another there was approval. Some Kaseev got some approvals for some quotes. Unite Mzansi got some approval for some quotes and Valotone also got some approvals. So they all shared this business.

**MR WHITE:** Correct Chair. And what I will – will show later is that some of that money they received they then subsequently paid up to Gold Coast which was Mr Panday's entity.

10 **CHAIRPERSON:** And in Gold Coast he was the only sole member?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Yes.

**MR WHITE:** So while he was using these entities to win the work.

**CHAIRPERSON:** Yes.

**MR WHITE:** And received payment from the police.

**CHAIRPERSON:** He was the ultimate beneficiary.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Yes.

**MR WHITE:** Chair but maybe...

20 **CHAIRPERSON:** Did you say in some of them or in all of them?

**MR WHITE:** No in some of them Chair because...

**CHAIRPERSON:** In some of them ja okay.

**MR WHITE:** Because obviously these entities would have to pay for the goods they bought. So all the money cannot go back to Gold Coast.

**CHAIRPERSON:** Yes okay.

**MR WHITE:** But Chair maybe just to – to come back to – to use one as an example to show the prices that they received for the specific goods. If I could refer to – to line 8 and line 10. So line 8 and line 10 the goods required are ration pack. Chair so on the same day the 5 May 2010.

**CHAIRPERSON:** Yes.

**MR WHITE:** Ration packs were ordered and Chair it is not summarised here but there were 500 packs each of those orders.

**CHAIRPERSON:** Yes.

10 **MR WHITE:** With a total order of 1000 but two orders of 500.

**CHAIRPERSON:** Yes.

**MR WHITE:** Chair if one looks at that – the cheapest price was provided by Unite Mzansi at R142 500.00.

**CHAIRPERSON:** Yes.

**MR WHITE:** Chair it is my opinion that those orders were split into two because if a total price of R285 000.00 had been the price that they were going to order the goods at.

**CHAIRPERSON:** Yes.

**MR WHITE:** There would have been a requirement to go out to tender.

20 **CHAIRPERSON:** Ja.

**MR WHITE:** Because it is above the R200 000.00.

**CHAIRPERSON:** Yes.

**MR WHITE:** And Colonel Madhoe could not approve it.

**CHAIRPERSON:** Yes.

**MR WHITE:** So on the same day they split it.

**CHAIRPERSON:** Hm.

**MR WHITE:** The police paid R285 000.00 if one adds the two together.

**CHAIRPERSON:** Hm.

**MR WHITE:** We found that in the records that were seized from Mr Panday's entities that the original cost of these goods was R93 201.00.

**CHAIRPERSON:** So – so in effect either Mr Panday or one of his entities, these entities – the entities or one or more of them effectively paid R92 000.00 you said?

**MR WHITE:** R93 000.00 Chair.

10 **CHAIRPERSON:** R93 000.00.

**MR WHITE:** Correct.

**CHAIRPERSON:** But the SAPS paid more than R200 000.00 for the same thing.

**MR WHITE:** Paid R285 000.00.

**CHAIRPERSON:** Ja.

**MR WHITE:** And as a result this entity made being Unite Mzansi made a profit of R191 000.00. So they charged the police more than three times the price.

**CHAIRPERSON:** Yes.

20 **MR WHITE:** That the police could have bought it for.

**CHAIRPERSON:** Yes.

**MR WHITE:** And Chair that is fairly consistent.

**CHAIRPERSON:** Yes.

**MR WHITE:** Across the board for all the supplies regardless of what they were supplying.

**CHAIRPERSON:** In regard to these entities.

**MR WHITE:** It relates – the goods are marked up.

**CHAIRPERSON:** Ja.

**MR WHITE:** To that extent.

**CHAIRPERSON:** Ja.

**MR WHITE:** And Chair I can make that conclusion because the original supplier invoice was found in Unite Mzansi or Valotone's records by the police.

**CHAIRPERSON:** Yes.

10 **MR WHITE:** And then the investigating officers went and obtained statements from those suppliers confirming they had supplied the goods.

**CHAIRPERSON:** Yes.

**MR WHITE:** The price, how they were paid, which entity paid them etcetera?

**CHAIRPERSON:** Yes.

**MR WHITE:** And just in this instance the supplier invoice is for 1000 goods. It was then split into two of 500 when it was supplied to the police on the same day.

20 **CHAIRPERSON:** Hm. Hm.

**MR WHITE:** So they knew they were receiving an order for 1000.

**CHAIRPERSON:** Yes.

**MR WHITE:** Because they bought 1000 from their supplier.

**CHAIRPERSON:** Yes.

**MR WHITE:** And Chair I believe the only inference that can be drawn is

that it was done in – on purpose.

**CHAIRPERSON**: Yes.

**MR WHITE**: To keep it below the procurement level that Colonel Madhoe could approve.

**CHAIRPERSON**: In order to make sure that it does not go out on tender.

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Yes okay.

**ADV SUSAN WENTZEL**: Thank you.

10 **CHAIRPERSON**: You do not have the total – I am sorry Ms Wentzel. You do not have the total of the amount at page 268 when you put all of these together to be able to say maybe just on these 23 items they got like R10 million but if the police had actually just gone out and bought these themselves maybe they would have paid only R3 million.

**MR WHITE**: Chair what I did do is I summarised that at the end of the report.

**CHAIRPERSON**: Yes.

**MR WHITE**: And I cover it later in my affidavit.

**CHAIRPERSON**: Okay.

20 **MR WHITE**: And by way of example just in round numbers the goods that were bought for R4 million round they supplied them at R12 million. So in total it is a similar percentage.

**CHAIRPERSON**: Yes.

**MR WHITE**: So I have done that calculation.

**CHAIRPERSON**: At the end.



**MR WHITE:** Of the prejudice at the end Chair.

**CHAIRPERSON:** Ja okay.

**MR WHITE:** In total.

**CHAIRPERSON:** Okay thank you.

**ADV SUSAN WENTZEL:** Thank you Chair. Mr White can I please refer you now...

**CHAIRPERSON:** I think we are at one already.

**ADV SUSAN WENTZEL:** Oh I beg your pardon.

**CHAIRPERSON:** Yes.

10 **ADV SUSAN WENTZEL:** Thank you Chair. If it is a convenient time?

**CHAIRPERSON:** We will – we will take the lunch adjournment and resume at two o'clock. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay. Let us continue.

**ADV SUSAN WENTZEL:** Thank you Chair. Mr White before the adjournment ...

**CHAIRPERSON:** *Ja*, okay.

20 **ADV SUSAN WENTZEL:** Thank you. Mr White before the adjournment you were explaining how the Supply Chain Management Policies worked or were applicable to the procurement that you were investigating. Could you now deal in a little bit more detail with how these provisions were circumvented?

The first was with regard to the cover quoting. Did you have

any evidence of this cover quoting?

**MR WHITE:** Yes Chair. As - as I said be - before the lunch adjournment. The entities related in one way or another to Mr Panday which included his mother's and wife's companies as well as his brother-in-law's company were used to give the impression that independent quotes were being obtained from three parties.

So if one looked at the documents culled within the police records it would appear that three quotes were obtained. Whereas if you know the background to the entities and the fact that for all intents and purposes these were Mr Panday's alter ego and he effectively controlled all of them and they actually operated out of the same premises and the same person within those premises - which I will come to - to later - actually was preparing the quotes for all three entities and one can see that the very essence of obtaining competitive quotes from the market was being circumvented and Chair it cannot just be a coincidence that the person within the police that is requesting the quotes by chance chooses three companies that are linked to each other.

It - it just - the statistics of that happening by accident is almost impossible.

**CHAIRPERSON:** Yes. So there were no other companies that sent their quotes. It was only these - it was only entities linked to Mr Panday?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And you must tell me if you are - if you deal with this

later, but there is the question of what the process was of getting quotes. How is - how was it possible or how would they explain whoever they were. The fact that all the time the entities were all linked to Mr Panday.

**MR WHITE:** Chair, there is no explanation. It is impossible to explain. The process that should be followed is they should identify suppliers from the police supplier database for the type of goods they are looking for and then request those suppliers to quote and Chair what we can see is that these entities were new to the police Procurement  
10 Department.

They only registered at the end of November 2009. So it was not - and they were registered at the same time on the same day. So everyone knew they were Mr Panday's entities ...

**CHAIRPERSON:** Yes.

**MR WHITE:** And Chair just to - to take it a step further when the people from Supply Chain were dealing with queries relating to these entities they spoke to one person relating to all the entities. So if they had a query about an invoice or delivery note they spoke to one person being Mr Panday's secretary/personal assistant.

20 **ADV SUSAN WENTZEL:** And do you remember or recall what her name was?

**MR WHITE:** Chair, her name was Tasleem Rahiman - R-A-H-I-M-A-N.

**CHAIRPERSON:** Okay. Thank you.

**ADV SUSAN WENTZEL:** Mr White, if I might refer you to your report - EXHIBIT RR4A at page 2-3-4.

**CHAIRPERSON:** What page?

**ADV SUSAN WENTZEL:** 2-3-4 Chair.

**CHAIRPERSON:** 2-3-4?

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Okay. Do not be too far away from the mic?

**ADV SUSAN WENTZEL:** Sorry. Sorry Chair.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** You refer in the middle of that page to a Waltons counter book which you put “Tasleem Rahiman record book”.

10 **ADV SUSAN WENTZEL:** Could you please tell the Chair about this record book and how it was obtained?

**MR WHITE:** Chair that book is a normal black covered exercise book like one would expect a school pupil to have. It is just called a Waltons counter book. On the front cover of it is written what I have in quotes there. It is “Tasleem Rahim record book” is written on the cover and Chair that was effectively a book that in the inside of it one could determine that she recorded everything she was told to do.

20 Many instances she refers to instructions she receives from Thoshan being the Christian name of Mr Panday and she writes down what she did and she also writes down dealings she had with people from the police particularly Mr Narainpersad regarding orders or quotations or invoices relating to all the entities that are referred to before the lunch adjournment.

Chair, also in that book she records the prices in many instances that would be quoted for each of the entities. So she records

effectively the cover quoting and in some instances we were able to trace those - the records that she had written in that book to the actual ultimate orders that the police placed and the - the Panday related entities ultimately supplied with the inflated prices.

So this book Chair it is - it is what people always wished they could find in an investigation of this nature. Where someone writes down what they actually did. It was the first time for me in more than 20 years of investigating where it was actually found and this was part of the records that were seized by the police when they did a search of  
10 Mr Panday's business premises.

**ADV SUSAN WENTZEL:** Mr White, from pages 2-3-6 onwards you provide some examples of extracts from this book and I would like to take you to some of them and just ask your comment. If we could start on page 2-3-6. It is record 1-9-1-1-0 and it says at the top:

“Thoshan asked to redo quotes for the ...”

I assume that FFG means the following and then at the bottom:

“All must be done on three companies: Gold Coast,  
Bravosat and Valotone.”

Do you see that?

20 **MR WHITE:** I do Chair.

**ADV SUSAN WENTZEL:** Hm.

**MR WHITE:** So Chair that - maybe just to explain how this - how I summarised in the report. So Chair when under document number - that 1-9-1-1-0 - Chair every page of evidence that was seized by the police ... (intervenes).

**CHAIRPERSON**: I am sorry. I am sorry. 1-9-1 ...

**MR WHITE**: One.

**CHAIRPERSON**: On page 2-3-6.

**ADV SUSAN WENTZEL**: Yes.

**MR WHITE**: Yes Chair. At the top left hand corner.

**CHAIRPERSON**: *Ja*. 1-9-1-1-0. Yes.

**MR WHITE**: So Chair each page of documents that was seized by the police or subpoenaed by the police was given a unique reference. So what when we worked with the documents if one wanted to go back to  
10 the original source document. It could be obtained in the evidence that the - that the police were storing.

So this book was given numbers - every page of it was numbered. So this evidence that I am referring to came from - from document 1-9-1-1-0 and the way I summarised it for ease was I have typed up at the top of that box what Advocate Wentzel has just referred to is a - is a typed version of the handwritten that was in the book which is directly below that.

So all the entries in this book were handwritten. I have just typed it to the best I could from deciphering the writing ...

20 **CHAIRPERSON**: Oh.

**MR WHITE**: As to what it actually meant Chair.

**CHAIRPERSON**: Okay. Okay. So the - the typing is or at least intended to be a reflection of what is handwritten?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: *Ja*. Okay.

**MR WHITE:** So Chair that - but what can be seen there is that Thoshan - being Mr Panday - has asked to redo the quotes and it is for video cameras, digital cameras, throw phones, GPS. So there is a - a variety of things. A flip chart board. A generator and these - and then the instruction:

“All must be done on three companies: Gold Coast, Bravosat, Valotone.”

I interpret that to mean Chair that they must do three quotes that are effectively going to be the cover quotes that are going to be used to supply to the police.

**ADV SUSAN WENTZEL:** Could you comment on the records ...

**CHAIRPERSON:** So - I am sorry.

**ADV SUSAN WENTZEL:** Sorry.

**CHAIRPERSON:** So when it says:

“All must be done on three companies: Gold Coast, Bravosat and Valotone.”

So you are saying this - you interpreted this as a request that quotes from these three companies be sent through?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** Could you please comment on the next record - 1-9-1-1-1 - 1-9-1-1-1?

**MR WHITE:** So Chair this is a summary of a discussion that I interpret her to have had with a gentleman by the name of Direshan K Makan and this is relating to - to Garmins Chair, because the ref - the number

1410 is a - is a type of Garmin and the price that he had quoted her was R2 795,00 and she then writes at the bottom of the page:

“Inform Thoshan. He said to do quote R9 995,00.”

Chair, almost four times the price they are going to pay for it and then she writes:

“Done quotes”.

Now Chair if - if you are doing a quote for one item for one supplier it would be singular. So I would interpret that to again mean that they have done three quotes for the supply of this and the police if  
10 they had gone to the supplier of the goods they could have bought them for almost a quarter of the price that they ultimately would have been quoted.

**ADV SUSAN WENTZEL:** If you might then please have regard to page 2-3-8 document 1-9-1-1-9. Could you comment on that please?

**MR WHITE:** So Chair then on this it appears that Mr Panday has requested a breakdown for three of the companies as to which entities had won what bids. So for Gold Coast she has recorded nothing and for Valotone she has recorded three items where they were awarded it and then for Bravosat there are seven items where they were awarded  
20 it.

Again Chair interesting to note at - at no stage do any of those prices exceed R200 000,00, but again just in - a clear indication that a person working directly for Mr Panday has access to all three entities records.

**ADV SUSAN WENTZEL:** Then if you could turn to page 2-3-9 and



document 1-9-1-2-0?

**MR WHITE:** So Chair this one ...

**CHAIRPERSON:** I am sorry. What is the page number?

**ADV SUSAN WENTZEL:** 2-3-9.

**CHAIRPERSON:** Okay.

**MR WHITE:** Chair it is at the top of that page and it said:

“Thoshan called to redo quotes for the following:

Garmin GPS 1410 times 10 units.”

Should have two sets of quotes. One Bravosat wins and the  
10 other Valotone wins. So again you can see from - just from their own  
records that they are keeping that they splitting as to which entity they  
want to - want to win the - the order for the supply of the goods.

**ADV SUSAN WENTZEL:** And then the same is repeated in 1-9-2-1 if  
you could explain. It is on that same page - 2-3-9. This is for the  
video cameras.

**CHAIRPERSON:** I am sorry. What page - 240?

**ADV SUSAN WENTZEL:** 2-3-9. It is ...

**CHAIRPERSON:** And what item?

**ADV SUSAN WENTZEL:** Document number 1-9-1-20.

20 **CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** This one now - so 11 referred to the quotes  
for the Garmin and if you have look at 12. This one is quotes for the  
video cameras and the same kind of instruction.

“Do the quotes the same. Two sets. One time

Valotone wins and one time Bravosat ...”

**MR WHITE:** Correct.

**ADV SUSAN WENTZEL:** And then for the digital cameras you will see the same.

“Do the quotes the same. Two sets. One time Valotone. One time Bravosat wins. Gold Coast nothing.”

**MR WHITE:** Correct Chair. It is - there is just - there are pages and pages of examples in this book that are the same where it is clearly being done on instruction - according to the book - of Thoshan whom I  
10 interpret to be Thoshan Panday and that she is preparing these quotes and - and sending them through.

**ADV SUSAN WENTZEL:** If you can go - have a look at page 2-4-1 and document number 1-9-1-2-9. There is reference there. It says:

“Went to the SAPS to deliver the 45 bags. Also dropped off the correct invoices for the digital and video cameras with Ashwin. He said they will sort out.”

Who is Ashwin?

**MR WHITE:** Chair, Ashwin was the Christian name of  
20 Captain Narainpersad. So he is referred ...

**CHAIRPERSON:** And who was that?

**MR WHITE:** So he was the person who was in the Supply Chain that prepared the submissions of the three documents that then went to Colonel Naidoo to - to authorise.

**CHAIRPERSON:** Within SAPS?

**MR WHITE:** SAPS in the ...

**CHAIRPERSON:** *Ja.*

**MR WHITE:** Supply Chain Management Department in Durban.

**CHAIRPERSON:** Okay.

**MR WHITE:** So Chair, he is referred to throughout documents as Ashwin or as Ash - A-S-H.

**CHAIRPERSON:** Okay.

**ADV SUSAN WENTZEL:** And then if you can comment on the document number 1-9-1-4-3 further down on that page - page 2-4-1.

10 **MR WHITE:** Again Chair this is where a quote has been done for - on the Bravosat letterhead on - and she has informed Thoshan and again it is done and sent to Captain Ashwin via email as well as fax.

**ADV SUSAN WENTZEL:** And also said to change the price.

**MR WHITE:** Correct.

**ADV SUSAN WENTZEL:** Do you see that?

**MR WHITE:** Correct Chair. So Chair if one looks at - at the timing when these things are happening over that six month period. This is the time period when these police officials are receiving gifts from Mr Panday.

20 **ADV SUSAN WENTZEL:** If you could have regard to page 2-4-4 document number 1-9-15-1? If you could just refer to that.

**MR WHITE:** Chair, this is based on what I could read in the book and - and determine she was - they - these entities had started using a new accounting system called Pastel and she was attempting to capture these into this accounting system, but again it is just clear that she is

doing Bravosat as well as Valotone and when she needed numbers.

She just made them up. If - if the reference numbers etcetera did not work in this (background noise), but again it is just an indication of both entities.

**CHAIRPERSON**: Well do you want to read into the record the writing on - that appears against 1-9-1-5-1?

**MR WHITE**: Yes Chair. It reads:

10                    “I then tried to capture the invoices for Bravosat as well as Valotone and I needed a supplier invoice number. I made up numbers.”

**CHAIRPERSON**: So this is Mr Panday's PA?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Who has written - put this in hand - in her own handwriting?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Is that right?

**MR WHITE**: Correct.

**CHAIRPERSON**: And she is recording what she did?

**MR WHITE**: Correct Chair.

20                    **CHAIRPERSON**: She tried - she says she tried to capture the invoices for Bravosat as well as Valotone?

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: So for two of those entities that you told me about earlier?

**MR WHITE**: Correct Chair.

**CHAIRPERSON:** So she was trying to do in - invoices for them and she needed the supplier invoice number and she made it up?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Maybe she - maybe she suspected that she might need a record to show that she was instructed to do these things.

**MR WHITE:** Chair, I think it - from my reading of this book it appeared just to be - she kept a detailed record of everything she was told. So which ...

**CHAIRPERSON:** Yes. It is very unusual unless you want to make sure  
10 that there is a record of ...

**MR WHITE:** Chair, in my report I did not speculate as to why she did it. I just summarised ...

**CHAIRPERSON:** *Ja. Ja.* No, no, no. I - I understand. *Ja.* I mean to - to write down that she just made up the number. It is like she - she wants to either produce this somewhere at some stage or she wants to make sure that she can show that she was instructed and this is how she was operating.

**MR WHITE:** Chair, reading the book it is very clearly - indicates that and Chair as I said in more than 20 years of doing investigations of this  
20 nature. This is a ...

**CHAIRPERSON:** You have never come across?

**MR WHITE:** First for me.

**CHAIRPERSON:** Yes. Yes. Thank you.

**ADV SUSAN WENTZEL:** If you might just read one further entry on page 2-4-5 document number 1-9-1-6-5 into the record and comment.

**MR WHITE:** It says:

“Called Shamila.”

She was another person that worked in the procurement at the police.

“Captain Ash has gone to the Commissioner’s Office, but she can help me with the invoices that she requires. One: flip chart R2 000,00 - R4 000,00 Gold Coast plus invoice. Two: generators 10kv Yamaha. Bravosat one times 92 500. One times 91 000. Valotone one times 91 050. One times 90 000. Gold Coast one times 93 250. Resubmit new invoices for the above. Digital camera: Bravosat invoice 1-0-2-1 97 500. Valotone no invoice for GPS 1410 (10 times 100 000). Gold Coast invoice number 1-0-0-6-7. Make it the generator. Done all the above. Called Captain Ash. He has received - everything is fine. Shamila is just capturing all the 2010 equipment. Once she is done she will do all the tactical work. Inform Thoshan as to what Captain Ash - Ashwin requires.”

So again Chair and I mean those generators that are referred to there at just around 90 000 to my recollection were costing about R5 000,00.

**CHAIRPERSON:** Yes. I think - I think one of the witness - I think Colonel Van Loggerenberg did say that for example there would be a

generator that cost about R4 000,00, but it gets - SAPS gets charged I think somewhere in the region of R90 000,00.

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Ja. Yes.

**ADV SUSAN WENTZEL:** And then there is an interesting entry on page 2-5-2 and I am referring to document number 1-9-2-1-0. If you could read that into the record please?

**MR WHITE:** It says:

10                   “Came and sorted out Captain Ashwin booking at -  
                      sorry - Captain Ash - Ashwin booking with Karin at  
                      Protea R/Bay.”

Which I interpret to be Richards Bay.

“Informed Thoshan.”

Chair that entry in the book is dated 31 March 2010 and we subsequently could identify that that was a booking made and paid for by Thoshan Panday for Captain Ashwin Narainpersad to stay at the Protea Hotel in Richards Bay and when I talk about the benefits that they received. This is one of the ones which ...

20                   **CHAIRPERSON:** I am sorry. I am sorry. The last page I had was we  
                      were going to 2-5 - 2-5-2. Is that where we still are?

**MR WHITE:** Yes Chair.

**ADV SUSAN WENTZEL:** Chair, it is ...

**CHAIRPERSON:** And which number?

**ADV SUSAN WENTZEL:** It is document number 1-9-2-1-0.

**CHAIRPERSON:** Oh. Okay. Okay. Thank you.

**MR WHITE:** Chair, it is the second from the bottom of the page.

**CHAIRPERSON:** Yes. Okay. So you established that that related to a booking basically for Captain - what is his name again?

**MR WHITE:** Narainpersad.

**CHAIRPERSON:** Yes which was to be paid for by either Mr Panday or one of his entities?

**MR WHITE:** Correct Chair and we - we subsequently could trace that back to the booking. It was confirmed by an official from the Protea Hotel in Richards Bay that Captain Narainpersad had stayed there. The  
10 police obtained a statement from the Manager of the hotel with all the supporting documents and payment for the stay could ultimately be traced back to Panday related bank accounts or credit cards.

**ADV SUSAN WENTZEL:** Now Mr White we have seen that cover quoting in this respect particularly when there were only three companies which you controlled yourself who were quoting and competing against each other. What are the most important impact that would have on the budget of the South African Police Services?

**MR WHITE:** Chair, the - the simple answer is the police will pay significantly above the market related price for the goods they are  
20 purchasing and as a result money that in these instances we can see in many instances they paid three times the price. Chair, I will - I will refer to a summary later, but out of R12 million they spent by way of example.

The goods actually only cost Panday 12 - four million. So the police effectively wasted R8 million that they got no benefit for.



**ADV SUSAN WENTZEL:** Now apart from a cover quoting what was another method used by Mr Panday to circumvent the Supply Management procedures and precepts - percept's?

**MR WHITE:** So Chair, I - I had briefly referred to it earlier and that is where they split the order. So again that is just to keep the level of authority within the approval limits of - in this instance - Colonel Madhoe. So that was where they split it to keep it below the - the R200 000,00 limit.

The other benefit of that is it allows them to get quotes and  
10 not have to go out to tender.

**ADV SUSAN WENTZEL:** And for the accommodation that was provided.

**MR WHITE:** So Chair the other method that is used not only by these entities, but in a lot of Government procurement. Is to justify the purchase as an emergency or as an urgent procurement, because if the ...

**CHAIRPERSON:** Hm.

**MR WHITE:** Sorry Chair.

**CHAIRPERSON:** I am sorry. I am sorry. Before you go there. Going back to Captain - the Captain's booking. Did you get to know how - for  
20 how long he stayed in that hotel in Richards Bay and what the - what - the reason why? Whether he was on holiday or what the story was?

**MR WHITE:** So Chair I will ...

**CHAIRPERSON:** In terms - in terms of the investigation.

**MR WHITE:** Yes Chair. We did. I will come to the detail later on - on some of the payments that were made to the officials ...

**CHAIRPERSON**: Yes.

**MR WHITE**: But by way of example the one that clearly sticks in my mind is the stay at the Karridene Hotel.

**CHAIRPERSON**: Hm.

**MR WHITE**: The - also a Protea Hotel was for Valentine's Day.

**CHAIRPERSON**: Yes.

**MR WHITE**: It was the 14<sup>th</sup> ...

**CHAIRPERSON**: Of February.

**MR WHITE**: Of February.

10 **CHAIRPERSON**: Yes.

**MR WHITE**: So those were - it appears that these were all holiday stays. The stays for Colonel Madhoe and his family was a trip to Cape Town.

**CHAIRPERSON**: Hm.

**MR WHITE**: Air tickets and accommodation.

**CHAIRPERSON**: Hm.

**MR WHITE**: So they - they appear to have been of - of a vacation nature.

**CHAIRPERSON**: Hm. Okay.

20 **ADV SUSAN WENTZEL**: What was the - you - you have dealt with the - the splitting of invoices to make sure that the amount is less than the 200 000 cut off level. Where there were large amounts as in the case of the accommodation provided what were the procedures that were required particularly if there was an amount more than 20 million or 30 million as in the case of accommodation?

**MR WHITE:** So Chair in the instance of the accommodation they should have gone out to tender, but what was done in the lead up to the World Cup as well as for the World Cup the police officials and the Supply Chain Management Department justified the procurement as urgent or as an emergency.

Chair in - and as a result they never got - even got three quotes, they got one quote and appointed that entity, that entity was Gold Coast. Now there's motivations written, in most instances those motivations, if one just looks at them slightly critically, make no sense at all. So by  
10 way of example one of the bookings that was done was for a training event where police officials – that was in early 2010 needed to come to Marian Hill which is just outside of Durban for a weeks training. That accommodation was only booked on the Friday. People didn't decide on Friday, we're going to have 30 members in Marian Hill from Sunday Night for a weeks training, it was booked at the very last moment and one must remember that Gold Coast, Mr Panday's entity didn't own any hotels or buildings they source them from other suppliers. So that's one where they justified as an urgent procurement but it's just, either  
20 poor planning or from what it appears it was done intentionally to leave it to the last minute.

The other ones are accommodation throughout Kwa-Zulu Natal where police members, for one reason or another, needed to stay in certain areas. So at the time there was some municipal unrest in some areas, there was some taxi violence in other areas and they needed members to stay in these different areas. What was done is, a first

booking for two or three days was done on the basis that it's urgent and that it's an emergency, a booking would be done and that booking would then be extended on a week by week basis relying on the original motivation for sometimes in excess of a month. So again, never going to the market to obtain quotes to see whether this was a fair price and in that regard – so that happened in the lead-up to the world cup and then a similar sort of motivation was used when making the significant procurement that related to the accommodation in the month around the world cup and Chair in that instance the police and in the minutes of  
10 the various meetings you could see that some eight months before that knew that they needed accommodation for their members that would be stationed in Durban in the month of the world cup.

There were backwards and forwards saying it was a national responsibility to provide the accommodation but in late 2009 we can see that some suppliers were asked to provide quotations, the records that have been written by the police saying that there was no response out of the ten from, I think, eight of the suppliers, one said they had no accommodation and Gold Coast said they had accommodation. The police interviewed those different suppliers, or potential suppliers  
20 where the supplier said no accommodation available or no response, so particularly the ones that said no response, those suppliers said, when interviewed, they were never asked to quote but then what happened was, when the procurement was ultimately done, 80% of the total amount to be booked was booked with Gold Coast.

**ADV SUSAN WENTZEL:** Perhaps before we deal – because you're

touching on it now, before I deal in more detail with the rules regarding emergency procurement, could you tell the Chair about the Coastlands Hotel?

**MR WHITE:** So Chair the Coastlands Group is a Durban based group that owns more than one hotel in Durban, they said they were never asked in 2009 to provide a quotation, they then, to my recollection were asked in April and May of 2010, they provided quotations to the police, they said how many rooms they had available and because it was an extended period of time, they almost reserved those rooms, although  
10 they didn't have an official order for the police. The price they were quoting was in the region of R400.00 a night per person. When they ultimately received an order from the police for accommodation, because they were the ones – Gold Coast received 80%, Coastlands got 16% and then another small supplier got 4%, when they received the order it was for significantly less than the number of rooms they told the police they had available.

Now the fact is they were supplying the rooms in the region of R400.00 a night and Gold Coast were quoting R850.00 a night, almost double the price. What then happened is, because Mr Panday didn't  
20 have rooms, he had to source rooms, even although he had the order, one of the suppliers he used to supply him as a conduit to supply the police was Coastlands, he had gone back to Coastlands and told them that because he was only getting around R400.00 a night he then negotiated a rate from them of R350.00 a night per person sharing and then billed the police just more than R900.00 a night. So the police

could have done the same negotiation and bought the room for R350.00 and Chair there's – it's thousands of nights, so ultimately there were more than 20 000 nights of accommodation booked through Gold Coast and if everything is being charged double the price one can see how quickly the prejudice to the police accumulates.

**ADV SUSAN WENTZEL**: If we can then...[intervenes].

**CHAIRPERSON**: One second, yes.

**ADV SUSAN WENTZEL**: If I can then refer you to page 171 and there you deal with part 5 of the Supply Chain Management manual which  
10 deals with urgent and emergency cases. Could you please explain to the Chair what the rules were with regard to this?

**MR WHITE**: Chair the police procurement procedures were no different from what one finds in most Government departments because these are linked back to the Public Finance Management Act and the Regulations and guidelines that have been issued by National Treasury related to that and Chair it's where an urgent and emergency traces are sort of almost used interchangeably, the terminology but what it does say is that the supply of the goods is of critical importance and then and that there must – people's, effectively lives are in danger and that  
20 if it's not procured urgently then people are in danger and their lives can be affected. So Chair, I mean, an example would be if there was flood damage and a hospital's roof was blown off one would see, that's an emergency, you would need to fix it urgently because a hospital can't operate and patients are exposed to the elements. So those are the kind of things that, my understanding is justified in this basis but

here there's a accommodation for an event that as South Africa we had known about for years and years before, we had built stadiums but the police couldn't manage to procure accommodation until the month before the event. Chair what it also sets out is that you can't use bad planning or the lack of proper planning as a requirement to justify an urgent procurement and for circumventing the procurement requirements as a result.

**ADV SUSAN WENTZEL:** Mr White from your investigations were there meetings held regarding the accommodation and what transpired at  
10 those meetings?

**MR WHITE:** Yes Chair those were the meetings that I said I referred to earlier that go back, some eight months, so towards the end of 2009 where it's been discussed at Regional planning meeting within KZN that there's going to be additional members from other provinces brought to KZN they will be staying in Durban and they will need to be accommodated and that just keeps getting deferred – a number of the inputs into those meetings are from Colonel Madhoe again, the person who's ultimately responsible for some of this procurement for inserting Gold Coast into the equation and the person who was receiving benefits  
20 for himself and his family from Mr Panday.

**ADV SUSAN WENTZEL:** And it's correct he was saying, when he was asked, he's still waiting for feedback from head office?

**MR WHITE:** Correct Chair and then it gets to the very last moment and they do a motivation to head office to approve the procurement on the basis that it's now an emergency.

**ADV SUSAN WENTZEL:** Mr White if we can then have a look at the submission made by Major General Pillay...[intervenes].

**CHAIRPERSON:** One second, thank you continue.

**ADV SUSAN WENTZEL:** If we can then have a look at the submission signed off by Major General Pillay which you deal with on pages 217 to 224 of your affidavit.

**CHAIRPERSON:** I'm sorry, where do you want us to ...

**ADV SUSAN WENTZEL:** Page 217.

**CHAIRPERSON:** Of Exhibit RR4A.

10 **ADV SUSAN WENTZEL:** Yes, sorry Chair.

**CHAIRPERSON:** Page 227?

**ADV SUSAN WENTZEL:** 217 Chair.

**CHAIRPERSON:** 217?

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** Mr White you deal with this extensively in your report all the way up to page 230, if you wouldn't mind explaining and providing your comments to the Chair with regard to the submissions made motivating urgency or an emergency in this case?

20 **MR WHITE:** So Chair this document was a document that was submitted to the National Bid Adjudication Committee of the police, it was dated the 4<sup>th</sup> of June 2010. One recalls Chair that's about a month before the world cup started and Chair this motivation was to obtain approval to deviate from normal bidding procedures by finalising the abovementioned requirement on a quotation basis in terms of



paragraph 16 (a) 5.4 of the Treasury Regulations issuing terms of the PFMA on an urgent basis. Chair, as I've already indicated, this was known well in advance. If there was a motivation to be done now the basis for not following procurement process would not be that it was an emergency, it would have to be justified that they didn't plan properly and they now need to – they don't have time to go out for tenders. Chair but the submission...[intervenes].

**CHAIRPERSON**: Well I guess on what you have already told me, they did plan but they planned to beat the system.

10 **MR WHITE**: Chair that's 100% correct because prior to this they had already obtained quotes from Coastlands and Gold Coast in April and May.

**CHAIRPERSON**: Yes.

**MR WHITE**: So they'd already identified who they were going to use.

**CHAIRPERSON**: Yes okay.

**MR WHITE**: But Chair paragraph 3 of this submission which I refer to at the bottom of page 217, paragraph 13.025 it states,

20 "Due to the short period between now and the indicated dates on which the accommodation is required, as well as the fact that the accommodations must not be known to the public, it is impossible to advertise a bid in this regard",

Chair I agree there was a short period, which was of their own making but Chair the part that makes absolutely no sense to me is the fact that part of this motivation which was signed off by Major General Pillay as well was that they didn't want the public to know where the

police were staying during the world cup for safety reasons, later on they refer to it as for safety reasons. Chair advertising to say please, to potential suppliers, can you provide accommodation and at what price in no way does that tell the public where the police will actually be saying. So Chair it is just – and this is signed off by numerous people, this – of which Major General R S Pillay was the last person to sign off but Chair if he had applied his mind in any way he would have said, this motivation cannot make any sense but that just shows the length that was gone to, to try and justify the basis for an emergency  
10 because they actually didn't have a basis.

**ADV SUSAN WENTZEL:** And if I could just refer you to page 219.

**MR WHITE:** So Chair at the top of that page in paragraph 13.030 I've taken an extract of what Major General R S Pillay's authorisation at the end of this document said and he – in handwriting which I assumed to be his is stated,

“Certified as being urgent and based on safety and security of the members of the SAPS, there's then a signature that says Logistics: SWC which I've interpreted to be soccer world cup and then there's a stamp that says R S Pillay, Major General”.

20 So Chair it's not like he signed without reading what was put before him, he's actually said it's because of the safety...[intervenes].

**CHAIRPERSON:** Wrote it himself.

**MR WHITE:** Ja which doesn't make sense Chair, it's not a basis for circumventing the procedures.

**CHAIRPERSON:** Mmm.

**ADV SUSAN WENTZEL:** And then if I can just point out on page 221 in paragraph – the middle paragraph it's 13.035 you point out there that the police were discussing accommodation of police members during the soccer world cup as early as March 2009.

**MR WHITE:** That's correct Chair, that was in a committee that they called Section Four Committee which was around the planning that related to the world cup and yes Chair it's more than a year prior to the world cup that they were talking about the accommodation. That was a monthly meeting and it was a standing item on the agenda but it took  
10 them until June to actually put the motivation for the tender waiver to the Bid Adjudication Committee.

**ADV SUSAN WENTZEL:** Now you've touched on the benefits that were received by people in – associated with the procurement process and you summarise this in your affidavit on page 21, so I'm back in your affidavit not in your report. Could you please explain to the Chair the footnotes that you've included under that table and also for record purposes, indicate what the value of the benefit was...[intervenes].

**CHAIRPERSON:** What did you say the page is on the affidavit?

**ADV SUSAN WENTZEL:** 21 Chair.

20 **CHAIRPERSON:** Okay, yes.

**MR WHITE:** Chair that table is an extract from my report and I've summarised the payments that were made for the benefit of various police officials. In line one it's Madhoe which was Colonel Madhoe it was R89 104.95, Chair and the footnote to that shows that there was Oyster Box R6 010.00, SA Airways, R8 584.00, Advocate Cars

R60 000.00, Western Grand Cape Town, R14 510.95. The second...[intervenes].

**ADV SUSAN WENTZEL**: If you could just explain those as far as you understand each of those?

**MR WHITE**: So Chair the Oyster Box was a stay for Colonel Madhoe and I assume his wife at the Oyster Box Hotel in Durban it was for a weekend it was paid for by Mr Panday's Diner's Club card and the documents – and in each of these Chair the supplier of the goods or service was interviewed by the police, they provided statements they  
10 provided all the supporting documents, how the order was made, how it was paid for and where it was hotel accommodation, how they – the register where the various policemen signed in to stay or any other slips that they signed while staying in the hotel, so they provided all that documentation. Chair so based on that I've got no doubt in my mind that these individuals received these benefits. Where it relates to the Advocate Cars it was a car that was bought by Mr Panday for Colonel Madhoe, SA Airways was air tickets to Cape Town for Colonel Madhoe and his family...[intervenes].

**CHAIRPERSON**: I'm sorry have I missed something, have you  
20 explained what that Advocate Cars – what's the reference to Advocates?

**MR WHITE**: Chair it's just the name of the supplier.

**CHAIRPERSON**: Oh it's the name of the supplier okay.

**MR WHITE**: No Chair it's got nothing to do with the legal profession.

**CHAIRPERSON**: Okay, alright.

**MR WHITE:** And then the Western Grand Hotel was accommodation for Colonel Madhoe and his family in Cape Town. The second one was for Captain Narain Prasad R59 662.71, these were – that's a total of – in varsity college payment of R43 500.00 it was a payment made for one of Captain Narain Prasad's children to attend university. There's a payment to Game Stores of R7 154.00 that was a treadmill that was bought by Mr Panday and the delivery shows it as being delivered to Captain Narain Prasad's house. The Protea Hotel Karridene was a stay over the, to my recollection, it was for Captain Narain Prasad and his  
10 wife and then the Protea Hotel Richards Bay that I referred to earlier, that was in the secretary's book where she confirmed that she'd made the booking, that's R7 256.00. Chair then there's a payment for the benefit of Lieutenant General Ngobeni being the Provincial Commissioner at the time R20 962.00, this was a payment of R18 712.00 to the Dish restaurant in Umhlanga for her husband's birthday as well as a payment of R2 250.00 to the DJ that was booked and paid for, also by Mr Panday for that event and then the last payment is for Major General R S Pillay R1 535.92, Chair that was for  
20 the hire of a vehicle at the Durban airport that was booked and paid for by Mr Panday's entities and it was the use of that vehicle, the person who's name it was booked in and signed for it was R S Pillay.

**ADV SUSAN WENTZEL:** Then with regard to the surprise birthday party for General Ngobeni's husband are you aware of any investigations that were carried out with regard to that, was the restaurateur interviewed by police?

**MR WHITE**: He was Chair, he provided an affidavit as well as various supporting documents. That event was booked by Mr Panday, there was an initial payment of R10 000.00 cash, the balance of the payment being R8 712.00 was paid for using Mr Panday's credit card and while he wasn't aware of who's birthday it was, he was told that Mr Panday wasn't attending but it was the Brigadier's birthday. General – Lieutenant General's Ngobeni's husband is a Brigadier in the South African Police and to my knowledge it's not disputed that it was her husband's birthday and that it was paid for by Mr Panday. In addition  
10 to that the DJ that played the music and provided the microphone for the evening has also provided an affidavit and he confirmed that it was Ngobeni's that attended the function together with some friends and he was paid R2 250.00 for attending the evening and providing the equipment.

**ADV SUSAN WENTZEL**: And are you aware whether the restaurateur was approached to explain this and who had paid for – who had booked the party and who had paid for the party and what he said?

**MR WHITE**: He was Chair he provided an affidavit together with the supporting documents showing the receipt of the R10 000.00 cash, that  
20 he dealt with Mr Panday and he also explained, and I don't know why, but Mr Panday asked him to give him an inflated invoice for a higher amount which he then provided...[intervenes].

**CHAIRPERSON**: I'm sorry I missed, who provided that affidavit?

**MR WHITE**: The manager of the Dish Restaurant Chair.

**CHAIRPERSON**: Oh okay.

**MR WHITE**: So he provided all the documents relating to the booking and the payment and who attended but he was also asked by Mr Panday to provide an invoice for a higher amount. Chair I can't see why he would ask for that and the only reason I can think of is that Mr Panday may have been wanting to tell the Provincial Commissioner that the birthday party cost more than it actually did.

**CHAIRPERSON**: And it was inflated, did he agree to inflate it?

**MR WHITE**: Yes Chair.

**CHAIRPERSON**: What was the correct amount that he should have  
10 included what was the...[intervenues].

**MR WHITE**: So Chair he should have included R18 712.00.

**CHAIRPERSON**: Yes.

**MR WHITE**: But Chair an example just if I could refer to it in RR4A at  
page 325.

**CHAIRPERSON**: Yes.

**MR WHITE**: Chair that's a copy of the – what he called the inflated  
invoice that he had provided, Chair at the top left-hand corner you can  
see it's the Dish Restaurant, the customer, the middle just below that  
the name is Mrs BM Ngobeni and then on the right-hand side just below  
20 the heading, tax invoice, we have invoice date, 30<sup>th</sup> of May 2010 and  
then we have job number, it says Mr Panday and then it sets out the  
costs that – of what was billed. Chair I have the number somewhere in  
the report but if we total those up it comes to R29 712.00 so it's  
approximately R11 000.00 more than it actually cost.

**CHAIRPERSON**: Yes okay thank you.

**ADV SUSAN WENTZEL:** And Chair just for your purposes, the – this issue is dealt with from page 322 of the affidavit, it's the Dish Restaurant and the restaurateur is a Mr Freddy Singh.

**MR WHITE:** Chair, maybe just to refer back, I said that of the R18 000.00, R10 000.00 was paid in cash and the balance using a credit card and Chair just on page 324, so the page prior to the one we're currently at, is an extract of Mr Panday's credit card and then in the middle in that red box we can see, Dish Umhlanga Ridge R8 712.00. So those were the documents we could find to confirm,  
10 one, what the people said but as well as documentation to support how it was paid for etcetera. Chair and one just needs to remember that around the same time as this is when the Provincial Commissioner was telling Brigadier Kemp and General Booysen to stop the investigation into this procurement.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** Perhaps that you have mentioned that now and before dealing with this – with Major General – General Ngobeni further which I will do you prepared a timeline annexed to your report. It is Annexure TSW3 on page 514. It is in bundle B.

20 **CHAIRPERSON:** Exhibit RR4d?

**MR WHITE:** B Chair.

**CHAIRPERSON:** B for Beatrice?

**ADV SUSAN WENTZEL:** B. B for Beatrice.

**CHAIRPERSON:** Okay. What page?

**ADV SUSAN WENTZEL:** 514 Chair.



**CHAIRPERSON**: Yes.

**MR WHITE**: Chair effectively that ...

**ADV SUSAN WENTZEL**: Chair I am just – sorry I noticed that the gentleman who is supposed to be doing our overhead slides I do not see him. So...

**CHAIRPERSON**: Well there is somebody who normally keeps an eye on them and they communicate with him if there is a problem. Did he indicate that there was a problem?

10 **ADV SUSAN WENTZEL**: Well not to be me Chair. He was here this morning.

**CHAIRPERSON**: Your realise he is not there?

**ADV SUSAN WENTZEL**: Yes I am turning – I – he – I think this where he sits Chair.

**CHAIRPERSON**: Oh okay.

**ADV SUSAN WENTZEL**: It think that is his computer. Perhaps he has gone to – for a comfort break. But we can continue.

**CHAIRPERSON**: Let us continue because we have not been told there is a problem.

**ADV SUSAN WENTZEL**: Yes.

20 **CHAIRPERSON**: And – ja okay.

**ADV SUSAN WENTZEL**: Thank you. Now here you – the heading of the document is Relationship between significant events and the benefits to the South African Police Services personnel. Could you briefly take the Chair through this document?

**MR WHITE**: So Chair that – that document if effectively a timeline on

which I have inserted the dates on which the various benefits were procured for the different police officials. So if one then – the colours on the – on the diagram Chair the different colours relate to different police officials. So at the very bottom of the page I have a key where pink relates to the Provincial Commissioner Ngubeni. Green relates to Captain Naraipershad. Red for Colonel Madhoe and blue for RS Pillay. Chair what one can see if one just looks at the bottom of that page – so below the yellow line in the middle. The first entry I have is on the – [indistinct] in the middle of the page and it is the Oyster Box  
10 accommodation for Colonel Madhoe it is the 14<sup>th</sup> and 15<sup>th</sup> November. So that effectively right at the beginning of this procurement process. That is just before Colonel Madhoe assisted Panday in having his wife and mother's entities registered on the Police Supplier Data Base at the 30 November. So two weeks before that there is a stay at probably one of the most elite hotels in Durban and Umhlanga for Colonel Madhoe. Chair the – it then continues and one can see that fairly consistently across that page through to the last one on the bottom right is the Dish Restaurant for the Provincial Commissioner – that benefit which was on the 29 May 2010. So it is right through the  
20 procurement process leading up to the World Cup. And Chair at the – at the top of the page if one just looks at the pink items. So the first pink line it may be a bit difficult to see Chair but it is dated the 5 May 2010 and that was the first date that according to Brigadier Kemp he was instructed by P C Mgobeni to stop the investigation into the procurement process at SCM. So that is on the 5 May according to

Brigadier Kemp some three a bit weeks prior to the benefit of the birthday party. And then there is ongoing dates which I have extracted from various affidavits where on the 8 May Major General Booyesen was also told to stop the investigation. So Chair this just – the purpose of this was anticipation of testifying in a criminal trial to be able to show when referring to dates when a benefit was received and it was throughout the period that people in Supply Chain Management were receiving benefits or were in a position to be able to stop the investigation being the Provincial Commissioner. They were receiving  
10 benefits right around the time they took various actions.

**ADV SUSAN WENTZEL:** Mr White would you mind dealing also with the...

**CHAIRPERSON:** I just wish the writing on TSW3 was bigger than it is but maybe that can be sorted out later? Maybe not.

**MR WHITE:** Chair we could...

**CHAIRPERSON:** It would help.

**MR WHITE:** I could prepare another copy with bigger writing Chair.

**CHAIRPERSON:** Oh that would be very helpful. Thank you.

**ADV SUSAN WENTZEL:** Mr White if you could just also deal with the  
20 entry date the 10 May 2010 also in the pink? At the top of the page.

**MR WHITE:** Chair that is – that was again from – from Major General Booyesen who received that information where I have stated here that PC Ngobei stated direct lines with head office in request of – quest for certain information should be terminated. Booyesen again told to stop the investigation.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** Chair Mr White deals with these affidavit upon which he relies here in his report at page 327 starting at paragraph 15.077. I do not know if it is necessary to go to those affidavits unless you would like me to take you there?

**CHAIRPERSON:** Well if – if it is – if it just confirms what he has already said that is – we do not need to.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** You have – you have indicated for the record where it  
10 is to be found.

**ADV SUSAN WENTZEL:** Yes. Thank you Chair. Now we know that Mr Panday has made several millions of rands profit from these transactions and relatively speaking in particular with regard to Major General Pillay the amounts paid are – well the amount paid to him is small, it is R1500.00 for a car hire. In that respect I would like to refer you to a money flow chart prepared by you. It is Annexure TSW2. It is Exhibit RR4b for Betty at page 512.

**MR WHITE:** Chair this – this diagram is effectively summarises the flow of the money that was either paid by the police or to the extent I  
20 could determine what was done by it – by Mr Panday's entities. Chair I apologise again it is quite small but quite difficult to fit the information onto one page.

**CHAIRPERSON:** Yes

**MR WHITE:** Chair on the very left in blue we have the SAPS and then flowing from that if one moves to the right I have summarised all the

payments that were made to the different Panday entities. Chair if one adds those all up if we look at the bottom just below – between the blue and the yellow boxes is an amount of R47 346 597.00. The last number on the left hand side of the page. Chair that was the total amount that was paid by the police to the various Panday entities.

**CHAIRPERSON**: Over a period of ten months?

**MR WHITE**: Chair yes.

**CHAIRPERSON**: More or less November 2010.

**MR WHITE**: Even maybe just ...

10 **CHAIRPERSON**: 2009 to?

**MR WHITE**: To August 2010.

**CHAIRPERSON**: August 2010?

**MR WHITE**: Ja so approximately two months Chair.

**CHAIRPERSON**: Ja.

**MR WHITE**: Sorry ten months. Chair that then to the extent I could tracked the flows of the money. I do not summarise on here payments to suppliers but I can show Chair is that the blue lines just to the right of those yellow boxes are monies that have flowed between the different Panday entities. Just to refer to them colloquely as that and  
20 it is – Chair it is millions of Rands. It is not like it was a small payment. So those are monies that are – flowed from the entities down the bottom predominantly up to Gold Coast. Chair there is then significant payments that come out of Gold Coast and flow to various banks accounts controlled by Mr Panday or his wife. Chair that would effectively mean that all those payments would be profits that have

been made by the entity because they are not used to pay the suppliers.

**CHAIRPERSON:** The amounts that went to members of the SAPS leave out the money for the birthday party for the Provincial Commissioner's husband. The other people was that – is that based on tracing the amounts that were paid from these entities into their bank accounts or how was that established?

**MR WHITE:** So Chair – so Chair those payments were always to suppliers. So they were not – the police officials were not paid in cash.

10 **CHAIRPERSON:** Yes.

**MR WHITE:** So that Chair if one looks at the – the far right of this diagram we have the police officials as in Pillay, Madhoe and Narainpershad and if one works backwards you can then trace where the – the payments actually came from. Which accounts of Mr Panday's were used to pay the suppliers for the benefits that the police officials received? And we can then trace that money back to show that it originated with the police.

**CHAIRPERSON:** Yes, no what I am asking is, how did you establish that they reached the police official concerned?

20 **MR WHITE:** Well Chair in all instances they bought them hotel accommodation...

**CHAIRPERSON:** The one that – that was flown to Cape Town or Richards Bay or that stayed in a hotel that I would understand. But I thought that part of this was just cash.

**MR WHITE:** No Chair that – that amount there was – there was no

cash.

**CHAIRPERSON**: It is – it is the monetary value...

**MR WHITE**: Of the...

**CHAIRPERSON**: Of whatever benefit was given to them.

**MR WHITE**: Correct Chair.

**CHAIRPERSON**: Whether it is a trip or a trade meal or anything like that.

**MR WHITE**: Or a car or university education.

**CHAIRPERSON**: Yes. Okay, okay.

10 **MR WHITE**: So this was actual benefits.

**CHAIRPERSON**: Yes.

**MR WHITE**: So Chair what – what did happen and what – because one looks at the amounts that were paid to the police officials and one says it is less than R200 000.00 and the total procurement was R47 million. It looks pretty small. But Chair what – what did happen in this process if one looks at that diagram in the middle at the bottom of the page there is three amounts that refer to cheques that were cashed. So Mr Panday cashed cheques with a total value of R3.7 million. I do not know what happened to that cash.

20 **CHAIRPERSON**: Okay. Would that have been at the same time or within a few days of each other?

**MR WHITE**: Chair it was over the period.

**CHAIRPERSON**: Ja.

**MR WHITE**: And it was all as a result of receiving money from the – that was paid by the police.

**CHAIRPERSON:** Oh.

**MR WHITE:** So some of that money was ...

**CHAIRPERSON:** Yes.

**MR WHITE:** Gold Coast then wrote out cash cheques and they cashed them.

**CHAIRPERSON:** Yes okay.

**MR WHITE:** I do not know what happened to that cash.

**CHAIRPERSON:** Yes.

**MR WHITE:** But it – for a business that is buying goods from approved  
10 suppliers does not make sense why Mr Panday would now need such a  
high amount of cash in a period of eight months – he had R3.7 million  
worth of cash.

**CHAIRPERSON:** Otherwise he would have been transferring money  
from the accounts of these entities into his own account – accounts if  
he need – if he needed?

**MR WHITE:** Chair he had already transferred well over R10 million to  
his wife and his personal bank account.

**CHAIRPERSON:** Yes. Yes.

**MR WHITE:** So in addition to that there is R3.7 million cash.

20 **CHAIRPERSON:** Yes. Okay thank you.

**ADV SUSAN WENTZEL:** Thank you Chair. Mr White at page 508 of  
your report it is Exhibit RR4a you deal with the losses suffered by the  
SAPS and you postulate a number of scenarios. If you would not mind  
taking the Chair through those scenarios

**CHAIRPERSON:** What page did you say that is?



**ADV SUSAN WENTZEL:** 508 Chair.

**CHAIRPERSON:** 508?

**ADV SUSAN WENTZEL:** Yes Chair.

**CHAIRPERSON:** And it is RR4a?

**ADV SUSAN WENTZEL:** Yes Chair.

**MR WHITE:** Chair the – because of the manner in which the procurement had been done and the way in which Mr Panday via Gold Coast invoiced the police was not possible in all instances to trace back a specific Gold Coast invoice back to an order because the order was just a huge amount or back to a specific supplier. But Chair what I – I could do is I could determine instances where services were never provided or I calculated the amount at which they were provided above the cost price. Chair and maybe just before or maybe just to start with – with scenario 1 at the top of page 508. So that – and this only relates to the World Cup accommodation provided by Mr Panday and Gold Coast. So scenario 1 I have described as the calculation of the value of overstated invoices.

**CHAIRPERSON:** Overstated invoices does that mean inflated?

**MR WHITE:** Inflated Chair.

20 **CHAIRPERSON:** Yes okay.

**MR WHITE:** So Chair that amount of R4 968 775.47 Chair that is effectively where Gold Coast charged the police for 5287 nights of accommodation where no police official was booked into the accommodation. So what they did Chair and I will come back to explain a specific example. If Gold Coast paid for 20 nights they billed the

police for 23. They just inflated their invoice. And Chair that number has been proved by going back to the suppliers to say how many nights did Gold Coast buy from you and when we track it back we take the nights – their invoice what they were paid by Gold Coast and then take what Gold Coast billed the police. Chair it sounds like it is impossible but once again Gold Coast actually kept a record of this and they did it on purpose Chair. And Chair maybe – I think we missed this earlier Chair but if I could go to page ...

**ADV SUSAN WENTZEL:** It is 491.

10 **MR WHITE:** Well Chair maybe just my affidavit it is probably easier Chair. It is at page 15 of my affidavit.

**CHAIRPERSON:** 15 of your affidavit?

**MR WHITE:** Yes Chair.

**CHAIRPERSON:** Yes I am there.

**MR WHITE:** So Chair this again comes back to the books that are prepared by Mr Panday's secretary writing down what she does.

**CHAIRPERSON:** Yes.

**MR WHITE:** There was a second book that related to the Soccer World Cup and Chair in that book there is an example at the top of page 15 of  
20 one of the items that she has recorded. And this was prepared by supplier of accommodation to Gold Coast. So we have a date column, we then have true stay and then we have Gold Coast charge.

**CHAIRPERSON:** So it is like a true stay and false stay?

**MR WHITE:** So Chair true stay we could trace back to the supplier of the accommodation.

**CHAIRPERSON:** Ja.

**MR WHITE:** What they were actually paid and then Gold Coast charge we can trace back to the Gold Coast invoice to the police.

**CHAIRPERSON:** Yes.

**MR WHITE:** So then on the 6 June 2010 the true stay is 48 members, the Gold Coast charges 60 members. So on that day for that one supplier they charged 12 extra nights. Chair and the average...

**CHAIRPERSON:** Oh this is what this means. So it means that the correct position is that 48 members stayed in whatever accommodation  
10 but they charged for 60 members?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And they write it down.

**MR WHITE:** They write it down. And Chair that was then traced back to all the documentations.

**CHAIRPERSON:** Yes.

**MR WHITE:** Either to the Gold Coast invoice to the police or to the different suppliers to Gold Coast of the accommodation. And once again Chair the police went and got affidavits from all these people and their supporting documents.

20 **CHAIRPERSON:** Yes, yes.

**MR WHITE:** In some instances the number of nights that Gold Coast were charging for – the number of rooms exceeded the size of the – and some of these were small establishments.

**CHAIRPERSON:** Yes.

**MR WHITE:** Exceeded so they billed for rooms that just do not exist

never mind were not booked for the police.

**CHAIRPERSON**: So they could say for argument sake in lodge A on the 20 January or let us go to 2010. On the 6 June 2010 10 members stayed there but only to find that when you go there the lodge only has five rooms. Is that the kind of thing you are talking about?

**MR WHITE**: Correct Chair. A better example maybe to say it has four rooms

**CHAIRPERSON**: Yes.

**MR WHITE**: And even if there was two people per room it only comes  
10 to eight. But they billed for ten.

**CHAIRPERSON**: (Chair not speaking into microphone).

**MR WHITE**: Correct Chair and the – the owners of the different establishments have provided statements, affidavits to the police confirming exactly what they were paid for by Gold Coast based on the number of people that stayed there.

**CHAIRPERSON**: Yes. Okay.

**MR WHITE**: So Chair that – in that – and it is a quite a large analysis but once that whole analysis is done it shows that there is 5287 nights that were charged to the police where no police member stayed in the  
20 accommodation.

**CHAIRPERSON**: Yes.

**MR WHITE**: And Chair what I did was I calculated an average price for all the accommodations. So based on the number of rooms compared to what Gold Coast charged and the average price is R939.81. So that price multiplied by the 5287 gives you your R4.9 million. So that was

the – the first and probably most blatant amount. Chair it is just did not exist so you are billed for a service that was not provided. The second scenario Chair was where they overcharged based on the incorrect tariff. So when the order was given to Gold Coast and Gold Coast quoted. They said we will charge R850.00 a night. They actually charged as I said on average R939.00 a night. Chair the difference between those two amounts multiplied by the accommodation provided which is 22 548 nights will give you that – the R2 million overcharge. So that R2 million is on page – sorry on page 508. Scenario 2. So that  
10 R2 million is the difference in price between what Gold Coast quoted and the average price they charged. Chair there is then the issue of how much was paid to Gold Coast as a result...

**CHAIRPERSON:** I am sorry I just want to make sure I understand these scenarios you have put in here. Scenario 1 is where it says calculation of the value of overstated invoices. Is just the total amount of inflated invoices, is that right?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** And scenario 2 calculation of overcharge based on incorrect tariff used by Gold Coast Trading. The incorrect tariff would  
20 have been tariff provided...

**CHAIRPERSON:** So Chair they...

**CHAIRPERSON:** That is supposed to have been provided by the supplier.

**MR WHITE:** So the...

**CHAIRPERSON:** But the supplier provided them with a correct tariff

but they represent to the SAPS that the tariff was a higher one when in fact that was not the case?

**MR WHITE:** Not quite Chair the...

**CHAIRPERSON:** Not quite – okay.

**MR WHITE:** The tariff was the price Gold Coast quoted the police.

**CHAIRPERSON:** Ja.

**MR WHITE:** So Gold Coast quoted the police R850.00 a night. That is what the order was based on. They then charged R930.39 a night. So they charged at a higher rate per night than the approved order was  
10 for.

**CHAIRPERSON:** Yes okay.

**MR WHITE:** So that when I refer to an incorrect tariff.

**CHAIRPERSON:** So that is now even above their own quotation as it were tariff?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Ja okay. And that is something that somebody working in Colonel Madhoe's section or unit either Colonel Madhoe or somebody else should have picked up?

**MR WHITE:** Correct Chair that is the first step.

20 **CHAIRPERSON:** Ja to check ja.

**MR WHITE:** In approving a payment.

**CHAIRPERSON:** Yes, yes.

**MR WHITE:** Is to vouch it back to your order.

**CHAIRPERSON:** Yes. Would there have been so many instances like that one that one might be tempted to think that it was not negligence

in terms of just the one where the tariffs are higher? I mean we know based on what you are saying that even though we will hear what they have to say that it looks like it was a scheme but that particular – one would have thought that they would have said no, no but put it in accordance with the tariff that is on our records. If you do it above that tariff I cannot approve it because how will I justify approving it to my superiors.

**MR WHITE:** Chair that would be the common sense answer but if one looks at this, this happened ten years ago and nothing has happened to  
10 date.

**CHAIRPERSON:** But what I was asking was that – was whether there may have been isolated instances where a Gold Coast claimed something even above their own tariff or whether they were many such instances?

**MR WHITE:** Chair there were many.

**CHAIRPERSON:** There were many?

**MR WHITE:** No it was not just one or two that they did that thing.

**CHAIRPERSON:** Yes.

**MR WHITE:** Because to change the average by so much you have got  
20 to do it almost consistently.

**CHAIRPERSON:** Yes. Yes. Okay thank you. Was you – did you reach the conclusion that it is not a question that it was not picked up. It was accepted because that was part of the wrongdoing on the part of maybe Colonel Madhoe and whoever was working with him or you did not reach – you did not go that far?

**MR WHITE:** Chair I did not go that far.

**CHAIRPERSON:** Ja okay.

**MR WHITE:** I felt that was the court's to make that call.

**CHAIRPERSON:** Ja. Yes no but from your own – from your own observation there is a chance of being – of being able to say, but there is no way how anybody through negligence cannot pick this up when it has happened so often. It has got to have been deliberate. There is a chance of saying, look I am not sure you know maybe if they are too busy, maybe you know it was negligence or incompetence that is what I  
10 was asking?

**MR WHITE:** Chair, I did not go that far.

**CHAIRPERSON:** Okay. Alright. (Indistinct) as you sit here and you have had many years of reflecting on your report if they were to say in regard to those who were Gold Coast charged even at a rate above their own tariff. If they were to say no. It was oversight. Would you be able to accept that kind of explanation?

**MR WHITE:** No Chair.

**CHAIRPERSON:** You would not?

**MR WHITE:** No.

20 **CHAIRPERSON:** And that is - that is partly because there were so many of them?

**MR WHITE:** Yes Chair and it is - it is the first - it an obvious step to normally take in - in approving an amount for payment ...

**CHAIRPERSON:** Hm.

**MR WHITE:** Because you confirm - compare it back to what you



ordered.

**CHAIRPERSON:** Yes. Yes.

**MR WHITE:** And there would be a significant process to go through to now pay more than the order amount.

**CHAIRPERSON:** *Ja. Ja.* Okay. Thank you.

**ADV SUSAN WENTZEL:** And Mr White do you believe that there reasonably could have been just more than R2 million worth of mistakes?

**MR WHITE:** No Chair. Chair then scenario three is where I have  
10 calculated the difference between what was paid by Gold Coast to their  
supplier and the R850,00 a price that they should have been supplying  
the police. So the difference between those two prices is - is just in  
excess of R12 million.

So Gold Coast made a profit up to the amount that the order was placed to them of R12.3 million. They then over billed by R2 million above the amount of the order and then addition to that billed R4.9 million for accommodation just not provided. So Chair you would - to calculate the prejudice you would add all three together.

Chair, but in the interest of being fair when Gold Coast were  
20 negotiating with the police as a supplier they said they do not own  
accommodation. They own accommodation broker and that they charge  
a 20 percent profit margin above what they purchase the  
accommodation at.

**ADV SUSAN WENTZEL:** So if we can just stop there so that I - I can just show that to the Chair. You deal with Gold Coast's letter of

22 October 2009 on page 197.

**CHAIRPERSON**: What is that page number again?

**ADV SUSAN WENTZEL**: Page 197 Chair in EXHIBIT RR4A.

**CHAIRPERSON**: 1-9-7?

**ADV SUSAN WENTZEL**: Yes Chair and this refers to Gold Coast's letter dated 22 October 2009 which on the following page you say:

“Paragraph 2 of this letter is in response to paragraph 2 of SAPS letter wherein the following is recorded.”

10 If you could just deal with that.

**MR WHITE**: Chair, this was a - a document found in Gold Coast's records by the police and it says amongst others:

“The order must be issued to Gold Coast Trading. Gold Coast Trading is a vendor for the SAPS with a vendor number (please see Annexure C). Please note that Gold Coast is in business of accommodation broking. We deal with various hotels in the Durban area. We have block booked hotels for the World Cup. This was done around in  
20 2008. We are going to place approximately 20 000 people for this event.”

And with regard to paragraph 5:

“Registration with the SAPS and vendor number. Our company works on a profit margin of 20 percent gross.”

So chair this is one document. The other documents that have been written to the police where they refer to themselves as making a 20 percent profit. So to just - a couple of other points about this letter. In all the suppliers that were interviewed by the police that ultimately provided accommodation to Gold Coast.

They said there was no block booked accommodation. So - so Gold Coast did not have ...

**CHAIRPERSON**: They did not exist? Did - did it exist before in 2008 - Gold Coast?

10 **MR WHITE**: Chair, to my recollection Gold Coast had been around for a number of years.

**CHAIRPERSON**: Yes.

**MR WHITE**: (Intervenues).

**CHAIRPERSON**: So it might have existed?

**MR WHITE**: Yes.

**CHAIRPERSON**: Yes.

**MR WHITE**: I think it ...

**CHAIRPERSON**: But it did not make that block booking?

**MR WHITE**: Did not make the bookings.

20 **CHAIRPERSON**: Yes.

**MR WHITE**: So to say they had bookings for 20 000 people. That was not true ...

**CHAIRPERSON**: Yes.

**MR WHITE**: Because all the suppliers they ultimately used to supply the police. None of them said it was prebooked.

**CHAIRPERSON:** Yes.

**MR WHITE:** Even in early 2010.

**CHAIRPERSON:** Hm.

**MR WHITE:** It was not prebooked.

**CHAIRPERSON:** Hm.

**MR WHITE:** So Chair if one allows them best case scenario for them a 20 percent profit margin ...

**CHAIRPERSON:** Hm.

**MR WHITE:** This involved - the police were told they were making the  
10 20 percent.

**CHAIRPERSON:** But did they - when they gave a quotation before they were appointed did they talk about this 20 percent?

**MR WHITE:** They did in some of their documentation.

**CHAIRPERSON:** They did in some of their documentation?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** You are not talking about when they were sending invoices? I mean when they were ...

**MR WHITE:** No, no. So before when they were ...

**CHAIRPERSON:** Before.

20 **MR WHITE:** Regarding quotations.

**CHAIRPERSON:** Yes.

**MR WHITE:** In the April and the May before the World Cup ...

**CHAIRPERSON:** Yes. Yes.

**MR WHITE:** They said we make a 20 percent margin.

**CHAIRPERSON:** Yes, but - the people were to - that information was

basically going to Colonel Madhoe?

**MR WHITE:** Correct Chair.

**CHAIRPERSON:** Yes. Okay.

**MR WHITE:** So Chair if one goes back to page 508. All I have done in scenario four is I have now assumed that the cost to Gold Coast is not or the - the amount that could have been billed to the police should be Gold Coast's cost plus 20 percent. So in calculating a prejudice it would either be scenarios one, two and three or one, two and four.

So that was just if the argument they had was - we make it 20  
10 percent. We have told you we do. Well then the prejudice is two million less than it would have been, but it is still - it is either 17 million or 19 million. So that - that is the reason why I - I did that additional calculation Chair.

**ADV SUSAN WENTZEL:** And from your investigations on average what will you say were the profit margins being charged?

**MR WHITE:** Chair, it was approximately on the - on the goods and - on the goods that were provided it was - they were charging about three times the cost price. Chair out of the total 47 million they made approximately a R30 million profit.

20 **CHAIRPERSON:** About how much profit?

**MR WHITE:** 30.

**CHAIRPERSON:** 30?

**MR WHITE:** 30.

**CHAIRPERSON:** Okay.

**MR WHITE:** So Chair for eight months of work ...

**CHAIRPERSON:** Hm.

**MR WHITE:** One - one customer ...

**CHAIRPERSON:** Hm.

**MR WHITE:** R30 million profit.

**CHAIRPERSON:** Yes. Do you have any idea about how Gold Coast was performing prior to this windfall?

**MR WHITE:** No Chair.

**CHAIRPERSON:** You do not?

**MR WHITE:** I do not.

10 **CHAIRPERSON:** Okay. Thank you.

**ADV SUSAN WENTZEL:** Mr White, you testified that you have done a number of investigations. You have appeared numerous times in court. On the basis of the available documentary evidence provided to you what do you believe was the strength of the case against the suspects and the prospects of success?

**MR WHITE:** Chair, based on my experience the documentary evidence in this case is probably the strongest I have ever seen. The - the documents speak for themselves and the suspects in the matter being primarily Mr Panday and his associates kept records of their  
20 wrongdoing and those records can actually be traced back to what the police ultimately paid and Chair this is a - a case that can be basically won on the documents.

You almost do not need witnesses, but because of the fact that it related to police corruption and fraud. Investigating officers went to great lengths - it is probably the right word - to get statements

from every possible witness. So every supplier that provided services in whether it was the treadmill. Whether it was accommodation.

Whether it was a Garmin or a generator. They obtained statements from each of those suppliers.

**CHAIRPERSON:** Well I have not read the report - your report, but I have seen some of the letters and correspondence. Maybe memorandums I am not sure that you wrote particularly in regard to responding to some of the prosecutor's reasons for not - for declining to prosecute and they did seem to me what you had to say seems to be  
10 quite meticulous.

It looks like you - you understood the evidence that was involved in this case very well. You went into details to deal with a lot of points that they raise. So - so - *ja*. Okay. Thank you.

**ADV SUSAN WENTZEL:** Thank you Chair. I am going to start dealing with that now Chair. Mr White was your report and findings sent to the investigators and the National Prosecuting Authority?

**MR WHITE:** It was Chair and I refer to that at page 26 of my affidavit at RR4.

**ADV SUSAN WENTZEL:** And who was the prosecutor assigned to the  
20 case?

**CHAIRPERSON:** Well before you do that. Before you go to that stage. I think you should take Mr White through to the findings - if there are any findings in his report.

**ADV SUSAN WENTZEL:** Yes. There are findings Chair.

**CHAIRPERSON:** So that he can speak to those findings.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** Before we move further.

**ADV SUSAN WENTZEL:** Yes Chair. They are at the end of his report. They are his conclusions which Chair you will find in File RR4A at page 5-0-3 right at the back of the file Chair.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** Could you explain your findings to the Chair please Mr White?

**MR WHITE:** So Chair, what I have summarised under the ...

10 **CHAIRPERSON:** Hm.

**MR WHITE:** Section of my report from page 503 through to page 510 is effectively a summary of - of most what I have - I have said to you.

**CHAIRPERSON:** What you have already said?

**MR WHITE:** Already said Chair.

**CHAIRPERSON:** *Ja.*

**MR WHITE:** Chair, maybe just one or two items that I have not specifically covered. So if one goes to page 506.

**CHAIRPERSON:** I will tell you what I am looking for.

**MR WHITE:** Sorry Chair.

20 **CHAIRPERSON:** I am looking - I am looking for evidence. I am looking - I would like you to take each suspect if you are able to and say this is the finding or conclusion I reached in regard to this finding and if you are able to give the specifics, but if your report is not structured in that way that is fine.

You can deal with it in another way, because you see the -



the real interest of the Commission is twofold. One is whether there was corruption and fraud that took place. Maybe threefold. Two, how that came about and who was to benefit or who was behind the whole thing, but also was this case strong enough against the various suspects for this Commission to justifiably say any prosecutor who declined to prosecute the suspects in the face of this evidence must have reached that conclusion because of something else.

Not because they were doing their job properly and not because they are - they were just mistaken. Not because they just  
10 missed something, but because there was some other agenda. So - so that is why I am - I want you to be able to speak to that in regard to each suspect, but it is possible that your report is not structured in such a way that it makes it easy for you to do it that way.

In which case you can do - you can give me a picture in whatever way is convenient to you.

**ADV SUSAN WENTZEL:** Chair, if I might be of assistance. In the body of the report Mr White does - he deals with each benefit obtained and he makes a finding in his report in respect of every benefit and ...

**CHAIRPERSON:** That is what I want.

20 **ADV SUSAN WENTZEL:** And perhaps we can go through ...

**CHAIRPERSON:** So why do we not go there?

**ADV SUSAN WENTZEL:** We can go there perhaps with some more detail now. Perhaps we can start Mr White. It is the benefit of the stay in Protea Hotel on page 298 of the report.

**CHAIRPERSON:** Yes.

**ADV SUSAN WENTZEL:** So if we went - I am just trying to see. Let us - sorry. Let us start at page 295. I was going to the summary of the findings, but you can see there you deal with - you say:

“Gift to Captain Narainpersad.”

You deal with the gift. The analysis of credit card statements.

**CHAIRPERSON:** *Ja.* No. Ms Wentzel ...

**ADV SUSAN WENTZEL:** And then the findings at page 298.

**CHAIRPERSON:** Ms Wentzel precisely what you are referring to here  
10 at 2-9-5.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** I am want him to talk about - about that.

**ADV SUSAN WENTZEL:** Yes.

**CHAIRPERSON:** If you say Captain Narainpersad was given a gift and you talk around that and then move on and deal with all the suspects. It maybe - because I think that up to now you might have mentioned that kind of thing on the in passing. I just want to - to understand and for whoever is listening or watching to understand with regard to the suspect.

20 This was the case against them. With regard to that one this was the case. This is what they did wrong. This is how it happened and so on. You already have some where you have talked about the benefit and the prejudice. Benefit to the suspects. Prejudice to SAPS. That kind of information. Is - is it going to be easy or is it difficult?

**MR WHITE:** Chair, I just need to try and - it will take some time,

because I just need to find the - the different references, because I was not ...

**CHAIRPERSON:** (Indistinct).

**MR WHITE:** Was not - I did not prepare to ...

**CHAIRPERSON:** Oh, you are not ready for that?

**MR WHITE:** To provide that level of detail.

**CHAIRPERSON:** Oh. Okay. We can - are we finishing? We are not finishing today with him. Are we finishing today with him?

**ADV SUSAN WENTZEL:** No Chair. He is going to testify I think the  
10 whole of tomorrow Chair.

**CHAIRPERSON:** *Ja*. So what - what we can do is. Tomorrow you can - we can revisit this issue. You just - I just want you to be able to be able to say with regard to Provincial Commissioner Ngobeni this is what the investigation revealed he did - she did wrong. This is what - this is what they were - the police were charging her with. This is the conduct that was problematic. You go to Colonel Madhoe. You go to each one and so that it is quite clear, because right now - up to now one has an idea, but it needs to be - to be told in a very clear and - and methodical way. In your report it might come out like that, but so far it has not  
20 come out like that in oral evidence. You understand?

**MR WHITE:** Chair, I do. It - it is in the report ...

**CHAIRPERSON:** Yes.

**MR WHITE:** In different places. I will ...

**CHAIRPERSON:** *Ja*.

**MR WHITE:** Find the different references tonight and then tomorrow ...

(intervenes).

**CHAIRPERSON**: Yes. So - so tomorrow you can then just deal with that. Take each one and - and deal with the case around them like that. Okay. Thank you.

**ADV SUSAN WENTZEL**: Thank you Chair. Chair would you like me to continue or do you propose that we adjourn now?

**CHAIRPERSON**: No. That - that aspect can be dealt with tomorrow. We still have him to - for tomorrow and then after tomorrow it is Colonel Du Plooy.

10 **ADV SUSAN WENTZEL**: Du Plooy.

**CHAIRPERSON**: Okay and then it is the aviation witnesses later in the week?

**ADV SUSAN WENTZEL**: Yes and Advocate Manyathi Chair, but that witness will not be too long.

**CHAIRPERSON**: *Ja*. That is a short one. *Ja*.

**ADV SUSAN WENTZEL**: Yes.

**CHAIRPERSON**: Okay. So let us - let us adjourn, because anyway we are at five to four now ...

**ADV SUSAN WENTZEL**: Yes Chair.

20 **CHAIRPERSON**: And then we will continue tomorrow at 10 o' clock.

**ADV SUSAN WENTZEL**: Thank you Chair.

**CHAIRPERSON**: Okay. We adjourn.

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS TO 21 JANUARY 2020**