

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

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FINAL

20

PROCEEDINGS ON 2 MAY 2019

CHAIRPERSON: Good morning Ms September, good morning everybody.

ADVOCATE VERUSHKA SEPTEMBER: Good morning Chair.

CHAIRPERSON: Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Morning Chair.

CHAIRPERSON: Morning Major General Booyesen.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Morning Chair.

CHAIRPERSON: Thank you. We continue from where we left off?

10 ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Before we do I understand that we have colleagues who are seated here who may wish to place themselves on record.

CHAIRPERSON: I am sorry ...(not speaking into microphone)

ADVOCATE VERUSHKA SEPTEMBER: We have legal representatives?

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: Who may wish to place themselves on record.

20 CHAIRPERSON: They have not replaced themselves on record yet?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay, alright let them place themselves on record?

ADV YANGA LUDIDI: Morning Chair.

CHAIRPERSON: Good morning.

ADV YANGA LUDIDI: My name is Yanga Ludidi from the office of the

State Attorney.

CHAIRPERSON: Yes.

ADV YANGA LUDIDI: Yes I am here to represent Major General Mnonopi and Advocate Mtolo.

CHAIRPERSON: Yes.

ADV YANGA LUDIDI: Yes.

CHAIRPERSON: Thank you. It is a – Mr Pretorius we need to reflect of what the implications are of the fact that the Legal Team of the Commission is technically briefed by the State Attorney as I understand  
10 it. But the State Attorney also represents some implicated persons. I – that had not occurred to me. It just occurs now. I do not know whether you have had a chance to think about it but we will need to reflect on it. It may be that I should not be concerned but on the face of it, it seems that it needs reflection. Okay.

ADV PAUL JOSEPH PRETORIUS SC: I have noted what you have said DCJ ...(intervenues).

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And I will discuss it with you later.

20 CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And give it some thought.

CHAIRPERSON: That is fine. Yes.

ADV PAUL JOSEPH PRETORIUS SC: As to how it can be dealt with.

CHAIRPERSON: Yes, ja, that is fine.

ADV PAUL JOSEPH PRETORIUS SC: Any change in any system with

the Commission unfortunately takes time.

CHAIRPERSON: H'mm.

ADV PAUL JOSEPH PRETORIUS SC: And one would not want that to be disrupted.

CHAIRPERSON: No, no, I understand that. That is partly why I am saying we need to reflect on it.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: But equally we need to reflect on what dangers it might pose.

10 ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: If ...(intervenes).

ADV PAUL JOSEPH PRETORIUS SC: Now I understand that. It is a concern.

CHAIRPERSON: Because a ...(intervenes).

ADV PAUL JOSEPH PRETORIUS SC: And we will have to address it.

CHAIRPERSON: Ja because so to speak as I understand the position the state attorney becomes instructing attorneys to you people and an instructing attorney has access to certain things and in regard to counsel that they instruct and if they also instruct counsel who  
20 represents an implicated person what does that mean? So we need to reflect on that as well.

ADV PAUL JOSEPH PRETORIUS SC: Yes. No it is a valid point.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: And we will investigate it.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: This is the first time that I have become aware of this circumstance.

CHAIRPERSON: Yes, yes. Okay.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Thank you. Is there another member?

ADVOCATE VERUSHKA SEPTEMBER: Yes there is.

CHAIRPERSON: Yes thank you.

ADV JN MALINGA: Good morning Chair.

CHAIRPERSON: Good morning.

10 ADV JN MALINGA: My name is Joel Malinga. I am from Malinga Attorneys.

CHAIRPERSON: Yes.

ADV JN MALINGA: I would like to put myself on record on behalf of Brigadier Ncaba.

CHAIRPERSON: Brigadier?

ADV JN MALINGA: Ncaba.

CHAIRPERSON: Ncaba?

ADV JN MALINGA: That is correct Chair.

CHAIRPERSON: Okay thank you very much.

20 ADV JN MALINGA: As well as Lieutenant General Matakata.

CHAIRPERSON: Who?

ADV JN MALINGA: Lieutenant General Matakata.

CHAIRPERSON: Okay thank you very much.

ADV JN MALINGA: Thank you Chair.

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Chair there is one last quick matter and that is that an additional bundle is before you. It is marked Exhibit Z(G).

CHAIRPERSON: Oh yes it has been handed to – it was handed to me in the past few days. I understand that to be the full report of the Mokgoro Inquiry?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: I beg leave that it forms part of  
10 the documents before you.

CHAIRPERSON: Thank you. That will be Exhibit Z(G).

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: But we will not need it for today is it or will we?

ADVOCATE VERUSHKA SEPTEMBER: We will need it for today Chair.

CHAIRPERSON: Oh okay. Alright thank you.

ADVOCATE VERUSHKA SEPTEMBER: Based on the long adjournment  
...(intervenes).

20 CHAIRPERSON: What page were we on the last time I thought I had marked but it does not look like I did?

ADVOCATE VERUSHKA SEPTEMBER: The witness was giving evidence in relation to the Cato Manor investigator which begins at Exhibit bundle Z(A) page 23.

CHAIRPERSON: Thank you. Let me just check something before you

proceed. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Before we commence where we left off ...(intervenes).

CHAIRPERSON: Major General Booysen have you got all the documents that we all have?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think I do Chair.

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Before we get to where we left off on the last occasion you will recall General  
10 Booysen that you gave evidence in relation to the Toshan Panday case which was guided by the timeline in Slide 2. Is there anything in particular that you wish to add in addition to the evidence that you had given in relation to that matter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Indeed there is Chair. One thing that concerns me and it has been of a great concern to me over the last couple of years. As we speak of the Colonel from the South African Police Service Colonel Navin Madhoe who had put just under R1.4 million in the boot of my car in an attempt to bribe me, he is still at work. After that event I was arrested and suspended. I will deal  
20 with that but the problem that I have is that Colonel Navin Madhoe is still sitting in the same position dealing with the same matters and it had been brought to my attention by a senior person from Finances that some of these irregular activities after my departure still continued. Now I cannot confirm so I have not been able to independently verify that but he did report that to me and it is a very senior person from

Finances in KwaZulu-Natal. There are two matters. The one is the R60 million corruption investigation and then the attempt to bribe me. So what happened is Chair when he was arrested after they attempted to bribe me there was an attempt to have a disciplinary hearing on Colonel Navin Madhoe. However he managed to obtain an interdict preventing the police from continuing with that particular disciplinary hearing because they had followed the wrong procedures. But that interdict only pertains to the attempt to bribe me. Nothing up until today in spite of myself making – bringing it to the attention of senior  
10 management at SAPS nothing, absolutely nothing, has happened. He is still in the same position, still doing the same work and that to me is of real concern.

CHAIRPERSON: Just to refresh one's memory. What was the year of the bribery case again?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it was in 2011 – August 2011.

CHAIRPERSON: So for about eight years or so no disciplinary – well from what you say there was an attempt to take disciplinary action and he obtained an interdict and after that as far as you know nothing  
20 happened?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Nothing happened Chair and over and above that while I was still in office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I received information and I canvassed this with the then Head of the Hawks.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: A General Anwa Dramat.

ADVOCATE VERUSHKA SEPTEMBER: Can ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I had information that I will be suspended on a specific date and that Colonel Navin Madhoe had now been suspended for the attempt to bribe me would return on a certain date. And those two dates I conveyed to General Dramat and lo and behold on the day that I was told that ...(intervenes).

10 CHAIRPERSON: He would be ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Madhoe had returned back to work – he returned back to office.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was temporarily removed to another office.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But within a month or two he is placed back into his position and on the exact same date that the prediction was and those predictions came from none other than the  
20 main suspect in the investigation Toshan Panday.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He predicted the exact day on which Navin Madhoe would return back to office and the day that I would receive my suspension notice.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: Chair if I may? I humbly apologise for the interruption.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: But should General Booysen perhaps be sworn in again or is it not necessary?

CHAIRPERSON: No it is the same oath continuous.

ADVOCATE VERUSHKA SEPTEMBER: Thank you.

CHAIRPERSON: Because he had not finished his evidence. It is different if he has finished and he comes back for cross-examination.

10 ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: So you say you had raised the issue with the – in any event just to be on the safe side – in any event you confirm that you are still under oath that you had took previously and you will continue to give your evidence under the same oath?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I accept that I am still under oath Chair.

CHAIRPERSON: Yes, yes thank you. Now in terms of the people at SAPS or people within whatever structure internally to whom you had reported this for purposes of any disciplinary action are you able to say  
20 this is to whom I addressed correspondence or spoke – this is who I spoke to and these would be the people who would have taken decisions or is that something that you are not able at this stage to indicate?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair as recent as late last year.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I was phoned by a Colonel in KwaZulu-Natal who was desperate to talk to someone and that was a Colonel Myburgh. Colonel Myburgh had also reported corruption emanating from the office of Colonel Navin Madhoe. There was a protracted investigation and the nett result of that investigation was that they were going to charge the whistle-blower, Colonel Myburgh. So I flew to Durban and I had a conversation with the Acting Provincial Commissioner General Mkhwanazi and he stopped that  
10 process. But during that discussion I did detail to him the fact that Navin Madhoe had managed to obtain an interdict for a disciplinary hearing pertaining to the attempted bribery but that does not preclude them from continuing with the disciplinary hearing against him for the main charge the R60 million corruption and which is fully implicated. And that – the same applies to the captain that works with him Captain Narain Prasad.

CHAIRPERSON: H'mm, h'mm. And you do not know what happened ultimately with that interdict because an interdict will normally and I assume it was just a temporary interdict and you – from what you have  
20 said there was some procedural problem or something. It – you do not know whether it was discharged or fell away at some stage or whether it is still in existence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair what typically happens in SAPS.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: If they want to get rid of you they follow the procedure.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Or they attempt to follow the procedure. And I am speculating now. The way they treated the disciplinary hearing of Madhoe it was a paper exercise. And obviously that being a paper exercise they would remand it and then they would stop it and eventually when they wanted to proceed with the matter just before I was going to give evidence he went to the labour  
10 court and applied for an interdict which was granted. I think it was a final order and because the police had procrastinated with the proceedings. And quite rightly so Chair I mean what is good for the goose is good for the gander so I do not have a problem with that interdict. The police did not follow the necessary – their own rules but the problem that I do have is in the other matters.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely nothing was done.

CHAIRPERSON: Well in any event it seems to me that certainly within  
20 SAPS or the Hawks somebody should look into that issue thoroughly and see who – what the – why there seems to be nothing that has happened in regard to the other matters. But also to look at the one relating to the interdict because obviously I have no knowledge of the interdict that you talk about but courts would not lightly say somebody must not be disciplined at all when there seems to be evidence you

know. They might say follow up with the right procedure if you want to discipline you know. So somebody might need to look at that carefully. Who would be the right person? Would it be the Head of the Hawks?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No.

CHAIRPERSON: To ultimately who would have the ultimate responsibility to check these things and see if somebody is not doing their job.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it would be the Provincial Head for Support Services in KwaZulu-Natal.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which I recall is Major General Ngembe.

CHAIRPERSON: But they would all fall under the Head of the National – Head of the Hawks or not?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair because Madhoe does not work ...(intervenes).

CHAIRPERSON: Oh he is with ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He is not with the Hawks.

20 CHAIRPERSON: Oh he is with ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He is with the as they say SAPS.

CHAIRPERSON: SAPS – with SAPS ja. But ultimately the National Commissioner of SAPS would be able to talk to whoever at provincial level that needs to investigate and see what is happening.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: If it is brought to his attention.

CHAIRPERSON: If it is brought to his attention.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not – Chair I do not think the current national commissioner is aware but ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Provincial Management in KwaZulu-Natal.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Is blissfully aware.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the fact that he is still in the same post they did not even think it prudent ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To at least put him in a different department.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where there can be no attempts to commit.

20 CHAIRPERSON: Yes, yes. I think the Legal Team should while we are busy with the investigation maybe through the acting secretary just bring the matter to the attention of the National Commissioner of SAPS to say that Major General Booyesen raised this concern about a matter that he is giving evidence about for the National Commissioner to look into it and see whether there is not something that is happened that

should not be happening. And I am sure he would let the Commission know what was found out. Thank you Major General Booysen.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Thank you Chair.

CHAIRPERSON: For raising the issue. Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Sorry if we could then resume where we left off and that is then on page 23 of Exhibit Z(A).

CHAIRPERSON: I must just check Ms September you have a soft voice let me check if they can hear you at the back? Are you able to hear Ms September at the back? They say I think they wish you to raise your

10 voice a bit.

ADVOCATE VERUSHKA SEPTEMBER: I will speak a little louder.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: In that case let us resume at page 23 of Exhibit Z(A).

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: General Booysen following the evidence that you gave in relation to the Toshan Panday investigation you then addressed two additional investigations one which you have termed to be the Amigos investigation and the other which was the  
20 looting of the secret service account. You then turned to the Cato Manor investigation and when last this matter was heard you had sketched a factual background in relation to the investigation. To this end can I ask you to turn to Exhibit Z(G) which is the new bundle that has been placed before the Commission? So from your main affidavit at page 23 you deal with the Cato Manor investigation very briefly and

that is but in two paragraphs which is at page 75 and 76. Since our last hearing.

CHAIRPERSON: Paragraphs 75 and 76 hey?

ADVOCATE VERUSHKA SEPTEMBER: Correct Chair.

CHAIRPERSON: I think you said page?

ADVOCATE VERUSHKA SEPTEMBER: Oops. Paragraph ... (intervenes).

CHAIRPERSON: Thank you.

ADVOCATE VERUSHKA SEPTEMBER: Sorry paragraph 75 and 76.

10 CHAIRPERSON: 75 and 76.

ADVOCATE VERUSHKA SEPTEMBER: On page 23.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: Since the last hearing a report has been publicised which relates to the Inquiry in terms of Section 12(6) of the National Prosecuting Authority Act and the unabridged version of that report is contained as Exhibit Z(G). This particular report relates to the Commission which was chaired by Justice Mokgoro.

CHAIRPERSON: I think it is called Inquiry.

20 ADVOCATE VERUSHKA SEPTEMBER: Inquiry.

CHAIRPERSON: I do not think it is a commission.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: It is an Inquiry in terms of the National Prosecuting Authority Act.

ADVOCATE VERUSHKA SEPTEMBER: Thank you.

CHAIRPERSON: A commission will be a commission under the Commissions Act of 1947.

ADVOCATE VERUSHKA SEPTEMBER: Apologies for my error.

CHAIRPERSON: Okay. Ja.

ADVOCATE VERUSHKA SEPTEMBER: This report related to the Inquiry which was chaired by Justice Mokgoro. For ease of reference we will refer to the report as The Mokgoro Report. Have you considered this report General Booysen?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have perused  
10 it more specifically in the passages that deals with the Booysen matter.

CHAIRPERSON: Yes thank you.

ADVOCATE VERUSHKA SEPTEMBER: And it is correct that you gave evidence at this Inquiry?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Indeed Chair.

ADVOCATE VERUSHKA SEPTEMBER: Just to clarify the context of this particular report if I ask you to turn to page 14. At paragraph 12 it reads:

20 "That the scope of the terms of reference was to look into the fitness and propriety of both Jiba, being Advocate Nomgcobo Jiba, and Mogwebe being, Advocate Lawrence Mrwebi, to hold office in their respective capacities. In relation to Jiba and at the panels' discretion the Inquiry was to consider evidence arising from the cases referred to in the terms of reference."

It is correct that the matter which is referred to in this report as the Booyesen Evidence is the evidence relating to the racketeering charges related to the Cato Manor investigation, is that ...(intervenes)?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

ADVOCATE VERUSHKA SEPTEMBER: Thank you. Chair while we place this entire report before you and tender it as evidence we will not deal with or detract from the particularity or detail in the report but simply highlight certain evidence relevant to this witness so this witness can then augment some evidence that was not necessarily  
10 placed before the Inquiry.

CHAIRPERSON: Well you place it before me as nothing more than simply a report of the Mokgoro Inquiry is it not?

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: You place it for no other purpose other than that it is a report of that Inquiry? What we make of it is another matter.

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: To the ...(intervenes).

CHAIRPERSON: But that is my understanding.

20 ADVOCATE VERUSHKA SEPTEMBER: If I am ...(intervenes).

CHAIRPERSON: So I am just pointing that out because you said you put – place it before me as evidence. So I think that might cause confusion. I think you place it before me for what it is a report of the Mokgoro Inquiry.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: Ja. If you place it for any purpose you can come back and tell me what that other purpose is.

ADVOCATE VERUSHKA SEPTEMBER: Okay.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: Then let me ask General Booyesen in considering the parts of this report which relates to you, do you have any comment on the accuracy of the evidence as it is recorded in here which you gave at the Inquiry?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair with regards to  
10 where my name appears in this report it correlates with the evidence that I gave at the Mokgoro Inquiry – the Justice Mokgoro Inquiry.

CHAIRPERSON: Yes thank you.

ADVOCATE VERUSHKA SEPTEMBER: Okay.

CHAIRPERSON: So to the extent that it might summarise or it might purport to summarise the evidence that you gave at that Inquiry as far as you are concerned it correctly does so. It correctly summarises your evidence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my case Mr Chair.

20 CHAIRPERSON: Thank you. Okay.

ADVOCATE VERUSHKA SEPTEMBER: And accordingly Chair to that extent we do not intend to lead all this evidence again.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: But rather just augment certain aspects of it to the extent necessary.

CHAIRPERSON: Well I have not read the report. I paged through. From where to where does the report deal with the issue that Major General Booyesen refers to?

ADVOCATE VERUSHKA SEPTEMBER: Yes I will take us through the relevant excerpts.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: With your leave.

CHAIRPERSON: Ja well if you first tell me where I find it?

ADVOCATE VERUSHKA SEPTEMBER: No problem. The first  
10 reference of the pertinent case relating to General Booyesen is at page 58. It is in fact a synopsis of the case of Booyesen versus Acting National Director of Public Prosecutions and others 2014 2ALL SA319KZ(D) which was delivered on the 26 February 2014 by Justice Gorvan.

CHAIRPERSON: Is this not a summary of the judgment as Justice Mokgoro and her panellists understood the judgment?

ADVOCATE VERUSHKA SEPTEMBER: Correct Chair. That very judgment appears ...(intervenes).

CHAIRPERSON: Because that does not need Major General Booyesen's  
20 confirmation as correct?

ADVOCATE VERUSHKA SEPTEMBER: Not at all. I am just pointing it out that that is one of the aspects.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: In fact ...(intervenes).

CHAIRPERSON: I want to be able – I want you to identify the part of

the report which Major General Booyesen has talked about as a correct summary of the evidence he gave at that Inquiry. That is what I want you to identify?

ADVOCATE VERUSHKA SEPTEMBER: No problem Chair. If we go to page 97 of the same Exhibit.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: That deals particularly with the Booyesen case. It relates to pages 97 to 143 which starts at paragraph 295 to 453. In particular to General Booyesen's evidence.

10 CHAIRPERSON: I see at page 106 where it says Booyesen's version is that the one ...(intervenes)?

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: You talk about?

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: As Booyesen's evidence?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Is that what you are talking about?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

20 CHAIRPERSON: So which part? Is it this part that you and he are talking about when you say is a correct summary of his evidence before that Inquiry? It is important to identify that part.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair perhaps I can assist.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am referring from

page 96 to page 143.

CHAIRPERSON: 96 to page 143?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Is that the same that you have in mind when you asked him that question? Is that the same?

ADVOCATE VERUSHKA SEPTEMBER: Not particularly.

CHAIRPERSON: Not particularly but that is what he is talking about that we know now? Which one are you talking about when you were talking him the question?

10 ADVOCATE VERUSHKA SEPTEMBER: General Booyesen is indeed correct to the extent that evidence relating to his matter is contained in – from page – hello.

CHAIRPERSON: Oh.

ADVOCATE VERUSHKA SEPTEMBER: I do not know what happened.

CHAIRPERSON: It looks like the ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: Hello.

CHAIRPERSON: I might have to take or are we back? Ja it looks like we are back. Okay just continue or – there is goes again. Okay it looks like we are back. Okay pages 96 to – just repeat Major General  
20 Booyesen?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it is 96 to 143 but in addition to that ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There are also sections ...(intervenes).

CHAIRPERSON: Of the report.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In the latter part of the report by – at the findings.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which I highlighted and which I ...(intervenes).

CHAIRPERSON: Which you go along with?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is indeed so Chair.

10 CHAIRPERSON: Yes we – they fall outside of the pages you have just mentioned?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Do you want to mention where they are if you do know? But if you do not know she will help us later on. I thought you might have it at hand.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair unfortunately it is on my phone.

CHAIRPERSON: Oh.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because I numbered them on my phone.

CHAIRPERSON: Ja okay later on that can be done.

ADVOCATE VERUSHKA SEPTEMBER: Okay.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: If I could perhaps just clarify.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: From 96 to 143 it is a consolidation of all the evidence in relation to the Booyesen matter.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: To the extent that it consolidates the evidence. There are parts of Booyesen's evidence which is included at different intervals.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: There is also a dedicated section.

CHAIRPERSON: H'mm.

10 ADV VERUSCHKA SEPTEMBER: Which is at the page Chair directed us to which is page 106.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: And that is specifically to his version.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: So my understanding is that when General Booyesen considered these paragraphs – and I am happy for him to confirm this to.

CHAIRPERSON: H'mm.

20 ADV VERUSCHKA SEPTEMBER: He agrees that where any evidence that he placed before the Inquiry.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: Is recorded in the report.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: In the bigger context of the evidence as consolidated.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: That evidence is in fact accurate.

CHAIRPERSON: Is accurate?

ADV VERUSCHKA SEPTEMBER: Recorded.

CHAIRPERSON: Reflected?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay. Major General that is what you say that to the extent that the report refers to evidence that you gave in the Mokgoro Inquiry. It reflects your evidence correctly.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I confirm that Chair.

CHAIRPERSON: Okay. Thank you. Then later on you can identify maybe prepare a piece of paper that identifies where one can find all of those parts.

ADV VERUSCHKA SEPTEMBER: As it ...(intervenes).

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: In that instance can we then start off at page 96? It is correct that the purpose of the evidence in relation to the or rather paragraph 94 records that this particular section which deals with your matter hones in on new aspects of the Booyesen matter.

20 If I may refer to it as such and deals with the issue of racketeering authorisations. The purpose of evidence is not to evaluate or determine the guilt or innocence of Booyesen in relation to the criminal charges you are currently facing but rather to consider with reference to the terms of reference vis-à-vis the lawfulness of the decision taken by Jiba to authorise the prosecution of Booyesen for racketeering?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I confirm that Chair.

ADV VERUSCHKA SEPTEMBER: Okay. In other words all facts that are then contained in here augment paragraphs 75 and 76 of your affidavit on page 23?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: (No audible reply).

ADV VERUSCHKA SEPTEMBER: If we could then look at page 97.

CHAIRPERSON: Well did you not want him to confirm that?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It does Chair.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I confirm that Chair.

CHAIRPERSON: Okay, thank you.

ADV VERUSCHKA SEPTEMBER: At page 97 paragraph 296 it is recorded that the evidence before the Inquiry.

CHAIRPERSON: Well since we are dealing with two exhibits at the same time just repeat that you are now – you are referring to Exhibit Z(G).

ADV VERUSCHKA SEPTEMBER: Thank you.

CHAIRPERSON: So that there is no confusion as to which one of the two exhibits we are dealing with now.

20 ADV VERUSCHKA SEPTEMBER: Thank you. Exhibit Z(G) page 97 paragraph 296. It is stated that:

“The evidence before the Inquiry relates to the following and it is fourfold. The first is the authorisation by Jiba to charge Booyesen with racketeering. The second is the lawfulness and

proprietary of Jiba's conduct in ordering that the prosecution of Booysen and others in the Cato Manor Unit be done by a team of prosecutors from outside KZN. The third is the involvement or lack thereof of Advocate Simphiwe Mlotshwa together with the instructions to him ostensibly either at the behest of Jiba or at the very least with the knowledge and consent to sign an indictment in the absence of supporting evidence and lastly Mlotshwa's removal as  
10 Acting DPP and the appointment of Advocate Moipone Noko in his stead is dealt with."

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I confirm that Chair.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: From page 98 of the same exhibit at clause 5.2.1.2 the powers of the DPP to prosecute outside of their jurisdiction is addressed in particular from paragraphs 297 to paragraph 303 on page 102.

CHAIRPERSON: I am sorry. I am confused. You are referring to page 98 of Exhibit Z(G)?

20 ADV VERUSCHKA SEPTEMBER: Correct Chair.

CHAIRPERSON: The best part of that page consists of a quotation from Section 179 of the Constitution. Is it not?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Is that what you are referring to?

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Or have I missed something?

ADV VERUSCHKA SEPTEMBER: My submission is that the recordal in relation to the considerations of the DPP to prosecute outside of their jurisdiction which General Booysen need not comment on is dealt with in paragraphs 297.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: To 303.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: The offence, we are now on page  
10 102, which deals specifically with the offence of racketeering and the judgment of Gorvan J, okay and so to just for the record the offence of racketeering is dealt with only in two paragraphs which is 304 and 305. When one then looks to page 103 if I can take you to clause 5.2.1.4 it talks about the process of evaluation of racketeering charges within the NPA.

CHAIRPERSON: Is that the paragraph of the report 5.2.1.4?

ADV VERUSCHKA SEPTEMBER: It is the – it appears to be a sub-section. Just above paragraph 306.

CHAIRPERSON: Ja, okay. Yes.

20 ADV VERUSCHKA SEPTEMBER: General Booysen you have given evidence that you have extensive knowledge in relation to racketeering and process. Is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Do you have any comments in relation to the process of evaluating racketeering charges within the

NPA based on your experience in the service?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have read this passage from the Inquiry. I can confirm that the evidence that that was led at the Inquiry, not by myself. It was a statement by Advocate Mamabolo. I confirm the procedure that he describes in his affidavit. In my experience I was surprised to see that this procedure was not followed in the Booysen matter. As Head of the Hawks in KZN the procedure – and I am going to try and use an analogy of a narcotics investigation.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The investigators would start a project on narcotics. Once it starts to look that it could – there could be a possible case of racketeering – I just want to add that in each province we had advocates which we call organise crime advocates who work with the Hawks.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: This Advocate and the investigators would then at regular meetings that we have in terms of progress in projects would then allude to the fact that this might be a  
20 case for racketeering.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That Advocate will then basically give instructions to the investigator.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: As to what evidence is

required.

CHAIRPERSON: Guide the investigators?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Once they are satisfied from my office we will then contact the National Office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At the National Office previously I would – I actually dealt with Advocate Mamabolo and  
10 Advocate Johan Kruger. They were dealing with the desk where through these racketeering cases had to go before it is presented to the NDPP.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For authorisation in terms of the Prevention of Organised Crime Act.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my experience and the Savoi or the Amigos case is a case in point.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where the investigators were sent back several times to – from National to obtain more and relevant evidence to establish the enterprise number one.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And number two to link the individuals to the enterprise.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Individually and collectively.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So – and it is true what Mamabolo says – Advocate Mamabolo says in his statement.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He says normally that procedure would take 14 days.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if you look at the correspondence the application to prosecute myself and Cato Manor for racketeering I think landed on the desk of Advocate – I think is Anthony Mosing at the time and within a day I think it landed on his desk on the 15<sup>th</sup>.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And on the 17<sup>th</sup> the racketeering charges were authorised.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So it is.

CHAIRPERSON: It was an unusually short period that was taken?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

CHAIRPERSON: Yes, okay. Thank you.

ADV VERUSCHKA SEPTEMBER: And that is in fact confirmed on page 105 paragraph 320 which reads that the process which is preceded in paragraphs 313 to 319 was not followed in the Booysen matter and no explanation has been provide as to why the accepted process was not followed.

CHAIRPERSON: H'mm. Have you since the time that instruction was issued have you ever been told or given an explanation why in your case this took such a short time either through your own enquiries or through your lawyer's enquiring or through any affidavits that may have  
10 been filed at some stage in court?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair I did not.

CHAIRPERSON: You have never been given any explanation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I might have mentioned it in my founding affidavit Chair or in any of my supplementary affidavits in the review application.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But I cannot recall specifically asking why was ...(intervenés).

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: My matter dealt with ...(intervenés).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So quickly within a space of one day as opposed to ...(intervenés).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Other cases that I personally dealt with.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With my investigators. That normally took longer than two weeks.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Mamabolo says 14 days. In some instance it actually took much longer than that.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I have never pertinently asked the question.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I have never given – well obviously never got an answer.

CHAIRPERSON: You say you did pertinently ask the question?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, I did not Chair.

CHAIRPERSON: Oh, you did not, ja but you say you are not sure you may or may not have raised the issue in some affidavit?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I suspect I might have ...(intervenes).

CHAIRPERSON: Raised it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair but ...(intervenes).

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Over the last six

years I made.

CHAIRPERSON: Many affidavits?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Six founding affidavits, replying affidavits and supplementary affidavits.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I might have mentioned it. So ...(intervenes).

CHAIRPERSON: Well it would be – it may be important to establish whether in any of the court applications that you made you raise the  
10 issue as part of challenging, whatever you were challenging, and to see whether it was dealt with in response and if so by whom and how. So that might be important to establish. So maybe if you still have access to all your affidavits it might help to just check.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will check. I do have all the affidavits.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

CHAIRPERSON: Yes, thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. If we can then turn  
20 to page 106 and at sub paragraph 5.2.1.5 which is titled “Booyesen’s Version” that is in fact the version that you tendered before the Inquiry. Is that so?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

ADV VERUSCHKA SEPTEMBER: Okay and in particular at page – same page of 106 paragraph 232 – sorry 323, the last line reads that:

“Maema is a DPP based in the North West Province and who was appointed to the Booyesen Matter by Jiba.”

Paragraph 324 reads:

“That at the time he was charged according to both Booyesen and Padayachee he was working on a particularly sensitive and high profile case namely the Toshan Panday investigation and this case involved a multimillion Rand corruption investigation against wealthy businessman Toshan Panday. He is alleged to have had business links to direct family members of Zuma, presumably former President Jacob Zuma.”

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

ADV VERUSCHKA SEPTEMBER: 325 first sentence says:

“The case also concerned procurement regularities within the South African Police Services.”

And 326 confirms:

“That the charges against both Madhoe and Panday were subsequently provisionally withdrawn.”

At paragraph 327 mention is made of an article that appeared in the Sunday Times which stated that:

“Cato Manor SVC Section was a “death squad”. The article also accused Booyesen of being complicit in the alleged actions.”

Do you have any comments in relation to this particular article that appeared in the Sunday Times and the context within which that -

that occurred?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair basically what happened is photographs were used by the Sunday Times and the two journalists responsible for that were Stephan Hofstatter and Mzilikazi wa Afrika. Now Chair would recall when I testified when Colonel Madhoe attempted to bribe me when I met him the first time. He showed me certain photographs.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I do not think it is  
10 any coincidence that those very same photographs were the photographs that eventually appeared in the Sunday Times.

CHAIRPERSON: Okay, h'mm.

ADV VERUSCHKA SEPTEMBER: On what basis do you draw the conclusion that it was not a coincidence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair it is – it stands to reason. I saw the photographs well not all of them. There was a whole file.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: On the laptop that  
20 Navin Madhoe showed me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I also had a discussion with Mr Stephan Hofstatter in my office.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Before they published

the article.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I still took issue with him and I said to him look the photographs that you guys have not all those people were shot by Cato Manor.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the one – probably the most gruesome picture was the one of, I think, four or five people deceased on the back of a bakkie.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where Cato Manor had not been involved. They actually tendered to the scene.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I found it very suspicious that the very same photographs that were used ...(intervenues).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To put pressure on me now all of a sudden appear in the Sunday Times.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the reason why I am saying that is it later became evident.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That it was indeed a member from Crime Intelligence that colluded with the Sunday Times.

There were also intercepted communications between Panday – Toshan Panday ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Mzilikazi wa Africa.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where certain photographs and CD discs were promised which obviously I – which I was privy to.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So it was clear to me Chair and there was also a statement and I cannot recall the name of the person who actually stole the photos. Chair these photographs were actually photographs at Cato Manor ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: On the computer system which they logged.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Those photographs came from the dockets – the case dockets.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the reason why those photographs were kept is the number of instances where robberies had been committed and incidentally we had one last night where a person shot a police Colonel about three months ago in Durban

and this very same person was shot and killed last night in Johannesburg during a robbery case. So that is one of the reasons why they keep those albums.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To identify suspects who had been – who had become deceased.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who were involved in other cases.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is a statement in one of the dockets where the person who stole these photographs – it was done so at the behest of Colonel Madhoe with the involvement of another Colonel Rajen Aiyer.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So the only escapable conclusion one could come to is.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Those photographs were shown to me on the computer to put pressure on me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is evidence that they were stolen for a particular purpose and the next moment.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They appear in the

Sunday Times.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So that is why I come to that conclusion.

CHAIRPERSON: H'mm, but just to go back to your evidence earlier in regard to those photographs, When Colonel Madhoe showed them to you is my understanding correct that you never asked him why are you showing me these photographs?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I asked him  
10 what it was all about.

CHAIRPERSON: Ja ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because it did not make sense to me. He showed me photographs which I could probably give – given him thousands of.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then he just said to me no, no he can get some more of these.

CHAIRPERSON: So he did not answer what was the point of him showing you these photographs?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well I did Chair. I said to him well what is this all about. These are normal police photographs.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is at that point where he closed the laptop and he said no he can get more of these

photographs. I said to him well get more.

CHAIRPERSON: Yes, but what I am saying is from what you are saying it seems to me that he did not give you an answer to your question. My understanding is that your question was – I am paraphrasing. What is the point of showing these photographs? Is my understanding correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He did not give me an explanation Chair.

CHAIRPERSON: But that was in effect the question you put to him?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

10 CHAIRPERSON: And he did not give you an answer to that question?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, no.

CHAIRPERSON: Yes, okay. Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. So just to confirm the conclusion of coincidence that you draw is your conclusion?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is my conclusion Chair.

ADV VERUSCHKA SEPTEMBER: To continue on page 107 of Exhibit Z(G) paragraph 328 it is recorded that:

20 "Booyesen was then suspended from duty. He successfully challenged his suspension in the Labour Court on two occasions."

Next.

CHAIRPERSON: When – I am sorry. You went to court a number of times I think you said. Is that right? In regard to your suspensions and criminal charges against you. Is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if I include the disciplinary hearing and the SCA matter that was abandoned by SAPS I think it is probably about seven or eight times but to court – to High Court and Labour Court I think six or seven times.

CHAIRPERSON: Yes. That must have been quite expensive in terms of lawyers?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Very expensive Chair.

CHAIRPERSON: Yes, okay. Thank you.

ADV VERUSCHKA SEPTEMBER: To then quickly deal with your  
10 suspensions. When were you first suspended General Booyesen?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair just after the Sunday Times article appeared in December 2011. Officially we had the Christmas period then nothing happened during December. Then early and – I think it was early February I received a notice of intention to suspend me and I had to advance reasons why I should not be suspended.

CHAIRPERSON: And this was what year now – February what year?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 2012 Chair.

CHAIRPERSON: Yes, okay and at that stage who – the notice would  
20 have come from whom – a provincially person?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No that came from national Chair.

CHAIRPERSON: Would it have been the National Commissioner of Police?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At that time no. It

was from General Dramat.

CHAIRPERSON: Oh, okay alright. Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair early/mid-February I received this notice of intention to suspend but the notice was very vague. So I wrote to SAPS and I said look I need more information to make a meaningful representation. I cannot make a representation if I do not know why I am suspended and I received a letter back from.

CHAIRPERSON: After – well I think if somebody is considering  
10 suspending anybody they are the ones who must give the basis first. Why are they thinking of that in the first place?

MAJOR GENERAL JOHAN WESSL BOOYSEN: Indeed Chair.

CHAIRPERSON: So that – then you can address those issues rather than simply saying you must say why you should not be suspended without saying why they are thinking of suspending you in the first place.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is indeed the case Chair.

CHAIRPERSON: That should apply to everybody.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair their response was very curt saying that well there is enough information at my disposal and they are proceeding with the matter. So I went to the Labour Court and applied for an interdict because of the paucity of the information in the notice. The – well the police did appoint Counsel but by consent the order was granted and the order said that the police

cannot suspend me unless and there was a list of questions that they had to answer. I never received those answers. There was a very amateurish attempt a couple of the – I think seven or eight questions were answered but in no particular sequence and I wrote back to them and I said to them look this is unacceptable. You still have not complied with the court order and I think it was about three weeks later I was called in and given a notice that I am now suspended and I still said to the General ...(intervenes).

CHAIRPERSON: Without answers to those questions?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Without any answers to those questions Chair.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I still said to the General – he handed me the suspension notice. I said well there is an interdict and she just shrugged her shoulders and I phoned my attorney right there and then and I proceeded to his office and we worked throughout the night to apply for an urgent court order to set aside the suspension – to declare it unlawful Chair.

CHAIRPERSON: Just before you proceed just to make sure one gets –  
20 understands who the players or the actors were in this context now. You said the notice to – the notice giving – asking you to make representations why you should not be suspended came from General Dramat?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Was it him also who made the decision that you

should be suspended, the suspension that you are now talking about which you and your team were looking at challenging?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in my view de facto it was him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No de juro it was him but de facto it was someone else.

CHAIRPERSON: Oh, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: H'mm.

10 CHAIRPERSON: I am sure you will explain how that came about.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think I will ...(intervenes).

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Probably later on in my ...(intervenes).

CHAIRPERSON: In due course. That is fine, ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because I firmly believe that ...(intervenes).

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: General Dramat was under pressure from the then Minister Nathi Mthethwa ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Minister of Police at the time.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And also later on I will  
...(intervenes).

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Explain that later on.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair just to recap  
I obtained an interdict.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Against SAPS not to  
10 suspend me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Unless they provide  
me with the necessary information that I require to make a meaningful  
representation.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They do not supply all  
of the information.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We correspond to and  
20 from and we tell them we are not happy with response. The next  
moment they suspend me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I immediately went  
back to court and I applied for the suspension to be declared unlawful  
and to be set aside.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I recall it was a public holiday the following day and the Judge still said look this is a public holiday. It is not going to impact on the applicant – myself.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that he is giving SAPS until 15:00 that following afternoon to tell him why he should not grant the order.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And 15:00 the following afternoon I received a call from my attorney wherein SAPS requested me to withdraw my application.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they will withdraw the suspension which I declined. I said no I would like to see them in court and you can make – we will make it an order of the court.

CHAIRPERSON: I mean that did not make sense. I mean you went to court because they suspended you. If they wanted your application not to proceed they should – they would just have to withdraw the  
20 suspension. Not the other way round.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair not much of what they did at the time made sense.

CHAIRPERSON: H'mm, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I insisted that I wanted to go to court.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And have it declared unlawful.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And we went to court the following day and my suspension was set aside and the contempt proceedings against SAPS was remanded sine die.

CHAIRPERSON: And the – so there were contempt proceedings that you had brought in the meantime as well?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well I had brought them simultaneous.

CHAIRPERSON: Simultaneously with your application to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: And that the basis of the contempt proceedings was that the suspension was in breach of the first court order which had said before they could suspend you they had to answer those – certain questions and you were saying they were in breach of that court order because they suspended you without complying with that requirement?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is indeed the case Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. What then happened during September 2012?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then I went back to work and ...(intervenes).

CHAIRPERSON: Maybe before we proceed, what happened to the contempt proceedings because at some stage some finality would have been required?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair they were remanded sine die, I did not pursue that for the simple reason I was bogged down with litigation and it was basically a fight for survival so I never pursued that.

CHAIRPERSON: Yes, yes, but from your own understanding would that mean that it may still be pending or was it withdrawn formally or do you  
10 have any recollection?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair at one stage I did canvas this with my attorney, Mr van der Merwe, and – but that was much later when I had more time and he said to me look Johan I don't think it's going to be appropriate at such a late stage to pursue this so I just left it.

CHAIRPERSON: Ja, so you don't know whether it was formally withdrawn but you effectively abandoned it.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I abandoned it Chair.

CHAIRPERSON: Yes, okay thank you.

20 ADV VERUSCHKA SEPTEMBER: Thank you. General Booysen what then happened during September of 2012?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then – sorry which month?

ADV VERUSCHKA SEPTEMBER: During September of 2012.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair after my

suspension was set aside I went back to work and continued with the investigations and then in September 2012 I was arrested. I was detained for one night, went to Court the following day, released on bail, bail was not opposed and I went back to work and then about a week or two later I was suspended again and this time Chair I thought it would be a futile exercise to now again try and set aside the suspension because that suspension went hand in hand with me being arrested for a criminal offence.

ADV VERUSCHKA SEPTEMBER: And did that suspension result in a  
10 disciplinary hearing being convened?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair no in terms of the police regulations once you are suspended the disciplinary hearing should commence within 60 days, so there was no disciplinary hearing, what in fact happened is when I – in the meantime I had taken the Jiba authorisation on review and then after Judge Gorvan ruled in my favour I said I am going back to work now and then that following week, it was during the evening I was served with papers and that was – I still recall I think it was 600 days later instead of 60 days later.

CHAIRPERSON: Did you say 600 instead of 60 days?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct yes so what kept me out of office was the criminal charges hanging over my head. When the Court ruled in my favour and the charges were withdrawn by the State often I could go back to work and then belatedly, 600 days later, 600-odd days later I was served with papers for a disciplinary hearing.

CHAIRPERSON: That will be – 600 days will be more or less two years.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Two years later Chair.

CHAIRPERSON: And was there ever an explanation why this was being done so late in breach of the 60-day requirement?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair when the hearing started we raised the point in limine objecting to the procedure being followed. The Chairperson overruled us and then I said to my  
10 attorney let's just place it on record, if the finding eventually is adverse to me then at least we can take it on review, we have placed it on record. Fortunately it turned out that I was exonerated during that disciplinary hearing which lasted six months.

ADV VERUSCHKA SEPTEMBER: And who chaired that disciplinary hearing?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was senior counsel, Advocate Naseer Cassiem.

ADV VERUSCHKA SEPTEMBER: To that end can I then take you to bundle Z(B)? That's page 442 or rather 443, sorry. This document is  
20 marked as findings. If I can ask you to then turn to page 470, is it correct that the conclusion of Advocate Naseer Cassiem SC was:

"That the employer has not discharged the onus of demonstrating wrongdoing on the part of the employee, Major General Johan Wessel Booysen,"

And at paragraph 77:

"In my view it would be unjust not to forthwith reinstate Booyesen to his position as Provincial Head of Priority Crime Investigation in KwaZulu-Natal so that he can do what he is best suited to do, that is fight crime."

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was the finding Chair.

ADV VERUSCHKA SEPTEMBER: While we are dealing with this particular finding I ask you to turn to page 44 – sorry paragraph 44 which is at page 457 of the same bundle. At paragraph 44 the findings  
10 of Advocate Naseer Cassiem, SC reads:

"That I found Colonel Aiyer to be a dismal witness in material respects. He is obsessed by the notion of his own importance and his entire testimony was permeated by his political acceptability and self-importance. I find him not to be the kind of professional policeman one would expect holding the rank he holds. His tenure of evidence as I have indicated above is one in which he emphasizes his own importance but lacking in conduct justifying his  
20 usefulness. I think those in charge of the SAPS ought to carefully consider Colonel Aiyer's continuous role in the Police Force. In his quest for acceptance and self-importance he is determined to tarnish Booyesen's reputation and dignity irrespective of the cost to the overall interest of the police force. If in fact the

employer party actually believed that it could establish a case against the employee based on the evidence of Colonel Aiyer this was a serious error of judgment and worse still a strong indication that the employer sought to create a case where one did not exist.”

Who exactly was Colonel Aiyer in the context of the racketeering process that was instituted against you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Colonel he – sorry Chair he is the key witness in the racketeering case. I am being  
10 charged under (e) and (f) of POCA and (f) being that I managed the enterprise. So whereas he was the actual Unit Commander at the time he now becomes a witness against me, I don't know how he can be a witness, he should have been a 204 witness, but he is now the key witness against myself and some of the Cato Manor members in that we managed a criminal enterprise. His statements were ventilated in the matter – the review matter which I brought in front of Judge Gorvan and my contention at the time was that the statement that he had made at the time, well he made three Chair and all three are very incoherent to say the least. It related to office politics, there was no indication of  
20 any offence being committed whatsoever and my assertion was confirmed by Judge Gorvan that it only relates to office politics and much later when Advocate Abrahams became the NDPP he procured a legal opinion from two of his advocates, one being a senior advocate, Advocate Jan Ferreira and Advocate Van Eeden in which they had to – well they had to give him a legal opinion as to why they should proceed

with criminal charges against Advocate Nomgcobo Jiba for – in my matter, and in that particular legal opinion which I managed to obtain because it became part of court papers in another application by one of these non-governmental organisations, in that particular legal opinion both those advocates from the National Prosecuting Authority actually confirms, or they don't confirm they agree with what Judge Gorvan have said, and what I have said confirmed by Judge Gorvan that it only relates to office politics and it's this very same Colonel Aiyer that Advocate Sean Abrahams is still relying on because he much later and I  
10 will testify about that later, in spite of the court order he authorised my prosecution but he still remains the key witness for the State.

ADV VERUSCHKA SEPTEMBER: So charges have been reinstated against you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is indeed the case Chair.

CHAIRPERSON: But that is from when – when did that happen?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it was reinstated I think February 2016.

CHAIRPERSON: Yes okay, thank you.

20 ADV VERUSCHKA SEPTEMBER: So Advocate Naseer Cassiem's findings which is dated the 16<sup>th</sup> of September 2014 is released, do you return to work?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have now been exonerated by Advocate Cassiem in a disciplinary hearing, the Court had found that there was no case against me, and fortunately for

myself the Constitutional Court then at that time with the Glynnister matter said that myself would now report to the National Head and the National Head to the Minister, whereas in the previous era am I to report to both the Provincial Commissioner and to the National Head, and the National Head of the Hawks also had to report to the National Commissioner, so that was all taken out of the equation, so I decided, I phoned General Dramat and I said look I am going back to work now, and he agreed with me. I then received a phone call from General Dramat that I need to come to Pretoria where I had to meet with him  
 10 and the then National Commissioner Riah Phiyega. General Phiyega called me to her office, myself and Dramat and she gave me three options, she said to me either you must remain at home on special leave or you should take a transfer or if you should take a Section 35, Section 35 is a golden handshake, I still had three years left in the police service so she was prepared to pay me out for three years and then I said to her well ...(intervenes).

CHAIRPERSON: If that happened – if you had gone for that route ,that option, what it would have meant is that one, the country would have paid you for three years for staying at home when you could have been  
 20 working, that's one, is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it's actually worse than that because at that stage I had already been sitting at home for two years, so another three, so the State would have had to pay me, and despite what a lot of people say the police generals get a generous salary, the taxpayer would have to pay myself sitting at home

for five years.

CHAIRPERSON: Yes, yes, but also in relation to the three years if you had taken that route they would have had to appoint somebody else in your position and paid that person for that three years, so during that three years they would have been paying two people for the same job.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's indeed the case Chair.

CHAIRPERSON: So but that's one of the options she offered you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's what she  
10 offered me Chair.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair so I told her, at that stage she told me she's taking Advocate Cassiem on review so I said to her well you need to file a record for me to oppose it, which up until today she hadn't done, but then she said to me she is going to give me a month to think about it, a month later I went back and she called me into her office once again and this time around she already had the Brigadier from Finance Services there with the documentation for me to sign, so I said to ...(intervenes).

20 CHAIRPERSON: To sign for what now?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Either the transfer or the Section 35, the golden handshake.

CHAIRPERSON: Oh ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair she asked me so what did you decide so I said to her option number one is not an

option, I am not going to stay at home any longer, I have been sitting at home for two years already and then she said to me option number two, I said I am not going to take a transfer, then she said to me so I give you a lawful instruction to transfer you you're going to – you're not going to comply with my instruction. I said no that's not what I'm saying, so she what are you saying I said well if you transfer me I will take the matter to court. She said why, I said because you cannot transfer me. Then she said to me well who can transfer you. I said General Dramat can transfer me in terms of the Glynnister judgment.

- 10 Then she asked General Dramat what do you say General, and then he said to her no he agrees with me, at which point she – well then the whole tide changed, then she started arguing with him, and then when it got to the point of the Section 35, the Golden Handshake, then she said to me what about that option, I said no I am not going to take that either, and then she said to me why not, I said well I'm still reasonably fit and young and I think I can still make a contribution to fight crime in KZN and at that time the cash in transit heists and the political killings had spiralled out of control and I said to her crime is out of control in KZN, she said how can you say that. I said well your own Divisional
- 20 Commissioner as recent as last week made a statement in the Daily News newspapers that he needs to send a task teams to KZN to deal with these crime matters, and then she said to me before I excuse you is there anything else you would like to say, so I said no there is something I would like to say, I got up and I said I will be back in my office tomorrow and then I walked out and then I had to wait for

General Dramat and I could hear through the walls that it wasn't a pleasant meeting.

Then Dramat eventually came out and we left and he said to me Phiyega wants to know what makes me tick, I said what makes me tick is let me do my work, that's what makes me tick. He said to me that she has requested that I don't go back to work and that I take two weeks leave.

CHAIRPERSON: What for?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair they just didn't  
10 want me back at the office. They just didn't want me back at the office.

CHAIRPERSON: Did General Dramat tell you whether he asked her what for?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair General Dramat is a very soft spoken person, and he is not confrontational. But he was 100% behind me going back to work and I agreed with him I said to him look what I will do is I will take two weeks leave, but I am going to go back to my office, I am going to report back for duty, because I know how they operate, if you stay away then they will say no you acquiesced to the process of staying away now you're back so I said I  
20 will go back to work then I am going to apply for leave for two weeks, I am going to send it to you, you must approve it, that means I am back at work.

Then he said to me how can we overcome this impasse, I said let General Ngobeni, the Provincial Commissioner at the time, let us all have a round table with the National Commissioner, let's sort this thing

out. So a month later we had this meeting and this meeting turned into a debacle, to say the least.

CHAIRPERSON: Now the general that you referred, Ngobeni, the Provincial Commissioner.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: And this was after the incidents – obviously it was after the incidents where she called you and said stop the investigation and so on and so on.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

10 CHAIRPERSON: Okay, yes alright.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So they convened this meeting with General Phiyega, General Makubela, who has since passed away, General Dramat, there was another General from Legal Services, I cannot recall her name, she was sitting across, and I could see from her demeanour that she wasn't even interested in listening because she knew what was going on was wrong, she was on her phone, I don't know whether she was texting or blaming games or whatever but she had no interest in this meeting and quite rightly so, and then Chair it wasn't a meeting, the more I tried to ...(intervenes).

20 CHAIRPERSON: Just again who was at this meeting?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was General Riah Phiyega, General Dramat, who was with me, and General Makubela who is a lady, she subsequently passed away.

CHAIRPERSON: Yes the Provincial Commissioner was not there?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was also there.

CHAIRPERSON: She was also there. This meeting was convened pursuant to your suggestion there should be a round table meeting.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's right Chair, yes Chair.

CHAIRPERSON: Okay, alright. Maybe we will take the tea break now, and then we will resume. Let's take the tea break, it's 20 past, we will resume at 25 to.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: We adjourn.

10 REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms September you may proceed.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: I think Major General Booyesen was in the middle of his evidence when he had to adjourn. I think he may proceed from there.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. It was your evidence that you then returned to work following the finding of

20 Advocate Nazeer Cassim?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: We were dealing with, if I recall correctly but I may be mistaken, what happened after that round table meeting that you talked about and you returned to work after that, is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: And as I understand it you returned with the intention to apply for leave or fill in leave forms which would have to be considered by General Dramat?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. Following your return to work were any – were there any further disciplinary steps taken against you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair when I returned  
10 to work I called in the investigators. Obviously I wanted feedback as to how all these investigations had proceeded in the time that I had been out of office – suspended.

CHAIRPERSON: And you had been out of office for how long by the way?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: About two years  
Chair, just over two years.

CHAIRPERSON: So it was a long time

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Long time Chair.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair it was clear to me that well number 1, is the attempt to bribe me by Panday and Madhoe but that matter had been withdrawn by Advocate Moipone Noko. The main case, the R60 million case, that case was nolle prosequi declined to prosecute by I think it was Advocate Abby Letsholo from the Durban office in spite of the fact that there was overwhelming

evidence. Chair there was even a forensic report which cost the tax payer R1.93 million from Price Waterhouse Cooper and which the – it is clear from that report – there were approximately 20 arch lever files and over 200 affidavits and in spite of all that overwhelming evidence Advocate Letsholo declined to prosecute. Then there was the matter ...(intervenues).

CHAIRPERSON: Just one second.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sorry Chair.

CHAIRPERSON: Maybe for the record you can help with the spelling  
10 for Letsholo or you are not – are you not able to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I will have to write it then ...(intervenues).

CHAIRPERSON: If you are not able to that is fine maybe some other time somebody will give it to us.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am going to second guess Chair I do not think I am going to get it right.

CHAIRPERSON: But anyway you say there was an investigation – forensic investigation by Price Waterhouse?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Price Waterhouse  
20 Cooper Chair.

CHAIRPERSON: Yes. And that investigation would have been authorised during the time you were not there?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair what happened just before I was ...(intervenues).

CHAIRPERSON: Suspended.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Suspended the investigators told me the scope of the investigation was of such a nature that we would have to get forensic auditors involved and then we applied to national head office at the time the National Commissioner was the now Minister of Police.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Mr Bheki Cele.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He approved it.

10 CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that particular report Chair SAPS was invoiced R1.93 million for that report.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the conclusion of that report was that there was definitely corruption committed by ...(intervenues).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The people that we were investigating.

20 CHAIRPERSON: Yes. So – but there was a decision not to prosecute notwithstanding that that is what you are saying?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Indeed Chair.

CHAIRPERSON: Yes. When you returned to work how long before that had that decision been taken if you are able to remember?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I ...(intervenues).

CHAIRPERSON: How old was it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think it was quite a long time before I returned back to work.

CHAIRPERSON: Oh okay, alright.

ADVOCATE VERUSHKA SEPTEMBER: If I can just interject there? Yesterday when we consulted there were certain documents that was – that you referred to. Chair it is not included in the bundle but with your leave if I may?

CHAIRPERSON: H'mm.

10 ADVOCATE VERUSHKA SEPTEMBER: Hand these documents up please?

CHAIRPERSON: What are they?

ADVOCATE VERUSHKA SEPTEMBER: The one document relates to a submission by Advocate Noko in relation to the withdrawal of charges in the corruption matter against Mr Toshan Panday and Colonel Navin Madhoe.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: And the other is a memorandum – apologies. The other is a response by General Booyesen to that  
20 particular memorandum.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: And these were documents that he called for upon his return to office.

CHAIRPERSON: Thank you. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: I will be guided by you as to

how you wish to mark them Chair.

CHAIRPERSON: We should – we can – maybe we should have them dealt with – we should have them put separately because the ones that you already have here they are referred to in his affidavit. These ones are not referred to is it not?

ADVOCATE VERUSHKA SEPTEMBER: No it is not Chair.

CHAIRPERSON: So I think we will need to – we have got Exhibit Z(A) and Z(B), is that right?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

10 CHAIRPERSON: And then ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: And it runs to Z(G).

CHAIRPERSON: And then you have got Z(G) as well. Have you got the other alphabets in between?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Have you got C, D, E, F?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Oh okay then we should make Advocate Noko's – is it Advocate Noko's submissions?

20 ADVOCATE VERUSHKA SEPTEMBER: Yes Chair. That is the one at the bottom.

CHAIRPERSON: That memorandum we should make it Exhibit Z(H). H will be in brackets because you have put the others in brackets. And then Major General Booyen's – I think it is in the form of a letter.

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Letter responding or dealing with that dated 19

November 2014 we will mark that Exhibit Z(I) in brackets. Yes thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Those are the witness – of the witness have they been marked or not? I am sure he will be able to mark them. He has dealt with these – with Exhibits for many years. You understood which one I said would be Exhibit Z(H) that is Advocate Noko's submissions. Exhibit Z and in brackets (H) and your letter include – which contained your response Exhibit Z(I) and I will be in brackets. Thank you.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Thank you Chair.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. If I could then quickly refer you to Exhibit Z(H) which is the memorandum that was prepared by Advocate Noko in relation to the withdrawal of charges.

CHAIRPERSON: But let – before we go there I just want clarification. So this briefing that you asked for from the people under you did it happen before you went on leave or before you went on leave?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: No it is – after my two weeks leave Chair I went back to work.

CHAIRPERSON: Oh okay so it was after?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: After Chair.

CHAIRPERSON: Okay ja I wanted us to clear that part as to where it fell okay. So your leave was – you went back to work, you filled in the forms for leave and General Dramat approved the leave?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair and I – for that two weeks in my absence I appointed Brigadier Vlek.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who was the second most senior person at the time to act in my absence for those two weeks.

CHAIRPERSON: Yes. During the time that you had been suspended for two years was there somebody acting in your position and if so who was it?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair there was Brigadier I cannot remember his name now – Mboto – Brigadier Mboto acted in my place.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In those two years.

CHAIRPERSON: Yes. Because I assumed that whatever issues you would have dealt with in regard to these matters would then have fallen to be dealt with by him in your absence being the person who was acting in your position during that two year period?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I would have expected that to happen.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But it did not happen.

CHAIRPERSON: It did not happen ja. Okay. And I assume you had no hand in – no role in his appointment as – to act in your position?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: None whatsoever

Chair.

CHAIRPERSON: Yes. But generally you would be the person empowered to appoint a person to act in your position if you were away or would that be somebody else's power?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair under normal circumstances I would have been – I would appoint a person to act in my absence if I go on vacation leave or ...(intervenes).

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But in this particular  
10 instance I think well once you are suspended you do not have any say.

CHAIRPERSON: Yes. Yes. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: General Booyesen it was your evidence that when you returned to office you called for a reporting on the status of investigations?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: If you could look at Exhibit Z(H) which is the memorandum prepared by Advocate Noko dated the 21 October 2014. Is this a memorandum that was placed before you when calling for a status update?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: This was one of the documents that was placed before me Chair when I wanted an update from the investigators as to how the ...(intervenes).

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: After considering this particular document it is understood that you then prepared Exhibit Z(I)?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I did Chair.

ADVOCATE VERUSHKA SEPTEMBER: And that letter under your hand is dated 19 November 2014.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: Okay. Can you please explain the basis of your letter and the objections that you had taken as documented in your letter?

CHAIRPERSON: Maybe let us start with this. Do you want to in relation to Exhibit Z(H) that is the memorandum by Advocate Noko, do  
10 you want to highlight any particular fissures of her submissions that you think are important that may have struck you, that may – you may have decided should be dealt with in one way or another?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the general gist of Advocate Noko's report if I can summarise it?

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It looks like it was written by a defence attorney rather than a prosecutor for the state.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is as if she has  
20 looked at any possible excuse and some of the stuff she basically made up. I mean that is why I say in one of my – paragraph 2

“Assertions are an aberration which lacks substance supported by credible evidence.”

Some of them are blatant untruths that she placed on record in the report.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that was paragraph 2 of Exhibit Z(I) which is your letter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is paragraph 2 of my letter Chair.

ADVOCATE VERUSHKA SEPTEMBER: Thank you.

CHAIRPERSON: Well Ms September it is important to deal with the gist of the submissions by Advocate Noko and at least the gist of the – of Major General Booyesen's response. Somebody listening needs to know what it was about, what was its purpose and to the extent that  
10 she was – she may have been saying the withdrawal of the charges was justified or the charges should be withdrawn for this and that reason. At least the important fissures must be dealt with so somebody listening can follow.

ADVOCATE VERUSHKA SEPTEMBER: No ...(intervenes).

CHAIRPERSON: And then the response what Major General Booyesen may have said about some of those reasons.

ADVOCATE VERUSHKA SEPTEMBER: No problem Chair.

CHAIRPERSON: Even if it is not everything.

ADVOCATE VERUSHKA SEPTEMBER: No problem Chair. The  
20 response that was prepared by General Booyesen is quite specific to the paragraph referenced in Advocate Noko's submissions.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: And if with your leave ...(intervenes).

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: If I may then take him through the points as he referenced it?

CHAIRPERSON: Ja but not ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: And his objections to it.

CHAIRPERSON: Not necessarily everything, the important points.

ADVOCATE VERUSHKA SEPTEMBER: Okay. General Booysen ...(intervenes).

CHAIRPERSON: Or maybe he has not had both you and him he have not had time to look at the important ones.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair all those paragraphs are ...(intervenes).

CHAIRPERSON: Are quite important.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Are quite important because it is evident.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: From Noko's memorandum that this is a contrived document.

CHAIRPERSON: Let us deal with them. Let us deal with everything because it is – it may be quite an important issue so let us hear – let  
20 us deal with the submissions from Advocate Noko and then we will deal with – let us deal with them fully, it is okay.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. If we could then look at the documents simultaneously. Your first issue as taken in paragraph 3 of your letter relates to paragraph 2.3.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Well maybe – sorry maybe before we do that. I think in paragraph 1 she indicates, I understand she – it is a lady, is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes. She indicates what this document – what the purpose of the document is. She says:

10           “I had previously provisionally withdrawn this matter on the basis that there were considerations of justice that I had to look into in order to arrive at a proper decision that is in the interest of justice. These have been so looked into and my decision is indicated hereunder with substantiation.”

So she had withdrawn – she had provisionally withdrawn the matter and she had said so according to this that she needed to look into certain considerations of justice. She now says:

“I have had a chance to do so.”

20           And then she says her decision is indicated hereunder and she says she is giving substantiation for her decision. What was her decision that she gives hereunder you would have known because you know the matter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if I can just respond to that. She confirms why the case against Panday and Madhoe was withdrawn the attempt to bribe me. Then they go into the main case, the R60 million case as to why there was going to be no prosecution. But what she does not say in this report of hers is after

she initially withdrew the charges against Panday and Madhoe the investigators reported to me and that carried on for almost six months that she refused to return the docket to them.

CHAIRPERSON: H'mm. But the memorandum I have not read the memorandum so I think in case you have read it. In the memorandum does she confirm the decision to withdraw the charges?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

10 CHAIRPERSON: So the reason the substantiation that she is talking about therefore means she is giving reasons to justify her decision to withdraw the charges?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the case Chair.

CHAIRPERSON: Against Panday and ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Madhoe.

CHAIRPERSON: And Madhoe. Yes okay I think that is where you – then everyone understands while looking at the reasons what reasons did she give for the decision to withdraw. Okay deal with that.

20 ADVOCATE VERUSHKA SEPTEMBER: For the benefit of those listening paragraph 3 of your letter or rather let me start me off by saying paragraph 2 of your letter makes a general statement to say that it:

“This missive from Advocate Noko is rather verbose it is permeated with conjecture, innuendo, inaccuracies

and in certain instances blatant untruths. The assertions are an aberration which lacks substance supported by credible evidence.”

CHAIRPERSON: No Ms September. Let us hear what the reasons are that she gives first then we can go to General Booyesen’s critique of that if necessary.

ADVOCATE VERUSHKA SEPTEMBER: Would you like me to address all of the reasons and not just those that he objected to or took issue with?

10 CHAIRPERSON: Ja well let us do that. This might be very important.

ADVOCATE VERUSHKA SEPTEMBER: Okay. With your leave then Chair it is quite a technical document. Could I then read the paragraphs as indicated into the record? General Booyesen does raise issues with very specific paragraphs and not all of them but I am guided by your direction Chair.

CHAIRPERSON: If it is possible then we – maybe we need to skip this part. Maybe during the lunch break have a look properly at the – at these two documents and then after lunch let us deal with these properly. I am sure you will find a way that we deal with them without  
20 reading them.

ADVOCATE VERUSHKA SEPTEMBER: No problem Chair.

CHAIRPERSON: Okay because maybe you have not had enough time to look at them.

ADVOCATE VERUSHKA SEPTEMBER: No problem Chair.

CHAIRPERSON: Okay. So let us return to that part after lunch. I think

to the extent necessary we – you may just be able to say there were – there was that submission by Advocate Noko and Major General Booysen having read it was unhappy with the reasons given and he gave his comments in this submission that we will deal with later and then proceed.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. With your direction we will then deal with that – the submissions and letter.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: At a later stage.

10 CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: After lunch.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: General Booysen you returned to work. You go on leave. Were there any subsequent disciplinary steps that were taken against you following your return to work?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair perhaps I should just contextualise my response to Advocate Noko.

CHAIRPERSON: To that question.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because that is what now led to ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Another – further suspension.

CHAIRPERSON: Yes. So it – if you deal with it without dealing with this?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: It takes away the context?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: It takes away the context.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I can just perhaps summarise that I ...(intervenes).

CHAIRPERSON: Yes but let me just say what I am looking for. I want  
10 to be told these were the reasons given by Advocate Noko for the  
decision to withdraw a, b, c, d. okay? Then because you responded to  
that you then say in regard to a, I did not have a problem, b I did not  
have a problem but I had a problem with c, d and e. And my problem  
with c, d and e were the following bang, bang, bang. That is the kind of  
thing I am looking for. I have not read this because they only got  
handed up now so I am not able to assist. If you are able to do it that  
way do it that way. If you are unable we may have to read them you  
know throughout the – all the pages.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I will attempt  
20 during the lunch break to do as you request.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But I think for  
purposes of answering the questions.

CHAIRPERSON: Of continuing you need to say something.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: This – I wrote this to

the newly appointed National Director of Public Prosecutions.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Nxasana.

CHAIRPERSON: Yes okay yes. Also your exhibit the Exhibit Z(I) was directed at Mr Nxasana?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the case.

CHAIRPERSON: Yes he was the new NDPP at the time.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Okay yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I then also went to General Dramat and I told him that I had written this ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: This report and he said to me he had also written a report to Mr Nxasana.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Under very similar lines.

CHAIRPERSON: Yes. And the purpose of your letter which contained your views on the Noko submission the purpose was to get that  
20 decision reversed, is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was the – my position Chair.

CHAIRPERSON: That was your – yes okay continue.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair and also at the very same time I received a phone call from the Head of ICD then

IPID now the Independent Police Investigative Directorate a Mr McBride and he asked me what was going on and I gave him a report. And because of this and the reason – also the report by Dramat and McBride I do not know whether McBride wrote a letter to Mr Nxasana or whether he paid him a visit but nevertheless I was then asked myself and the accountant for Price Waterhouse Cooper to come to national head office where we did a presentation to Advocates from that Advocate Nxasana had appointed to relook – have another look at these cases that either had been withdrawn or nolle presequi. A  
10 specific Advocate was appointed. At the time it was Advocate Gerrie Nel. He had started interviewing witnesses. He had visited some of the witnesses in KZN and we were about to embark upon basically prosecuting the majority of the people mentioned in this investigations. Then it was after the appointment of the – mister – well Major General Berning Ntlemeza he was then appointed Head of the Hawks. After Dramat had been ...(intervenues).

CHAIRPERSON: Oh okay let us get the sequence correctly. You returned to work after the two weeks leave. You get briefed on matters that were ongoing when you were suspended and in regard to the  
20 Panday/Madhoe matter you get furnished with Advocate Noko's submissions as to why it was justified to withdraw the charges. You prepare comment on that the purpose of which was to have that decision reversed so that the prosecution could proceed against Mr Panday and Colonel Madhoe. And at that time General Dramat was still the Head of the Hawks when you ...(intervenues).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: That letter.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes but after that – after some time she was – he was suspended or removed or he left, is that correct.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair this is where things get complicated.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because in that  
10 December I think it was the 24<sup>th</sup> of December just prior to that  
...(intervenes).

CHAIRPERSON: And just mention the years as well because there are too many years we are dealing with here.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair so it was 2014.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Ja 2014. So I just  
returned to work giving the reports, written these reports. In that  
interim period I cannot recall the exact dates there is another Sunday  
Times article that appeared by the same two journalists Hofstatter and  
20 wa Afrika.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Accusing General  
Dramat and General Shadrack Sibiba and there was another colonel I  
cannot recall his name I think it was Khumalo I am not too sure  
accusing them of so called rendition.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were accused of extraditing Zimbabweans without extradition papers. And that is another chapter Chair which I will ...(intervenes).

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will talk to a bit later. Then Dramat got suspended.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In December that  
10 year.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And immediately when after he was suspended they appointed as acting Head of the Hawks Major General Berning Ntlemeza.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He acted for a period of time and then in that period Dramat agreed with SAPS to leave SAPS on a special dispensation. And then the post for Head of the Hawks was advertised. I applied for that. Myself and three others were short  
20 listed for that post. We were flown down to the then Minister of Police Mr Nathi Nhleko's office at Parliament to be interviewed for the post. Ntlemeza was not there. It was myself, two ladies and a gentleman.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: We completed our interviews on the day and a month or two later Ntlemeza was appointed

as the Head of the Hawks.

CHAIRPERSON: Do you know whether he was an applicant for the position at the time you were interviewed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I do not know.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because normally what he would say in public and what actually happened were two different things. What I do know is in an open meeting in Polokwane the meeting with all the Provincial Heads.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And other Senior Managers from the Hawks.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He said that he did not apply for the post.

CHAIRPERSON: That is Ntlemeza?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Ntlemeza said that personally at a meeting at Polokwane.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now whether he just said that and applied or not I do not know but that is what he said.

CHAIRPERSON: That is what he said yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But he was not present on the day that the four of us were interviewed.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And whether he had applied and whether they had a separate session with him I do not know.

CHAIRPERSON: You do not know ja, yes. Okay, but you say about a month after that interview.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I would say about a month or two Chair.

CHAIRPERSON: About a month or two he was appointed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was appointed.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair and the ... (intervenes).

CHAIRPERSON: But all the other people that as far as you knew had applied and you do not know whether he had applied or not were there?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were there Chair.

CHAIRPERSON: On the day of the interviews?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There were four of us there Chair.

20 CHAIRPERSON: Yes, okay. Thank you.

ADV VERUSCHKA SEPTEMBER: So ... (intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

ADV VERUSCHKA SEPTEMBER: So Major General Berning Ntlemeza was in office and were any steps then taken?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair within I would

say a week after his permanent appointment as Head of the Hawks I received another notice of intention to suspend me.

CHAIRPERSON: Okay. Let us also just get clarification. General Dramat got suspended and General Ntlemeza was appointed to act in his position. How long did he – for how long did he act before he was permanently appointed as – if you are able to remember?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think he was – he started acting I think it was on Christmas Day 2014.

CHAIRPERSON: Yes.

- 10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I think he was appointed permanently perhaps in July the following year.

CHAIRPERSON: 2015.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Give or take a month or two.

CHAIRPERSON: Yes. Oh, okay. So I just wanted to get a timeframe, yes. Okay. You say within a week or so after he was permanently appointed you got a notice from him asking you for representations why you should not be suspended?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Once again Chair.

- 20 CHAIRPERSON: Once – yes and what was your response?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair this time around he accused me of committing fraud.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And what is interesting more or less at the same time he also accused

General Shadrack Sibiya of committing fraud.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was eventually prosecuted and ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Acquitted.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my matter I wrote a letter – well in my presentation I think.

10 CHAIRPERSON: I am sorry. Let us – was fraud the only thing that was the basis of the notice?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Okay, alright.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The fraud.

CHAIRPERSON: What did he say the fraud was about?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The fraud related to a monetary award Chair that was written by the Commander of Cato Manor.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: For work done by his members.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In the investigation of the killing of Colonel Chonco.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The killing of Chonco one of the suspects that was sought by Cato Manor Magojela Ndimande.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were looking for him and they could not trace him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I received information from an informer that he was on his way to Pietermaritzburg.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I conveyed that to Cato Manor.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They got hold of the surveillance unit to manage to track down Magojela Ndimande. The surveillance unit then informed Cato Manor that he was on the freeway. Subsequent to that there was a chase on the freeway where – whereby Magojela was shot and killed and his.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: He had a bodyguard with an AK47.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who was also shot and killed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So my role played in the tracing of Magojela was detailed in that report.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: A number of detectives and I will guess probably about 18 to 20 detectives.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That get a R10 000 monetary award.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Somewhere in the report there is a wrong date.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So ...(intervenes).

CHAIRPERSON: What kind of award would that be? What was it for? Is it a performance?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: H'mm.

CHAIRPERSON: Bonus or what is it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it is not really a performance bonus. It is – police regulations make provision where  
20 police officers did exceptional work.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That they can be awarded with a certificate or a medal or ...(intervenes).

CHAIRPERSON: Oh, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Or a monetary award.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Up to, I think, it is R30 000.

CHAIRPERSON: So it was a monetary award connected with excellent performance of their duties?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes, okay.

ADV VERUSCHKA SEPTEMBER: On that particular point if I can take you Bundle Z(G) which is the Mokgoro Report at page 108. Under sub  
10 paragraph 5.2.1.7 which is titled "Monetary Reward" it is dealt with from paragraphs 331 to 337 on the next page. Is that the monetary reward that you were referring to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the same monetary award that that Judge Mokgoro refers to Chair.

CHAIRPERSON: He must still tell us what he was still telling us about this, ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair.

CHAIRPERSON: So the members of SAPS were said to have claimed – put in claims for a monetary award?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it is not a claim.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is an application.

CHAIRPERSON: It is an application.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In terms of those regulations.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which is done by the Unit Commander.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So the Unit Commander detailed the names of people who had been part of this investigation.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And he sent that to  
10 me but my – and the process is I would send that to my superior.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He will send to the Provincial Commissioner who was General Mgidi.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He has a committee that sits on it.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He eventually approves. It goes to National Head Office.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where Deputy National Commissioners – more than one.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sits on a panel and then they will eventually agree or disagree.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in this particular instance they agreed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And awarded each of us with a R10 000 once off payment ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Award.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: The problem according to Ntlemeza was that there was a date that was wrong.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But if you read the things sequentially it is clear that it is a typographical error.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I wrote a detailed report and I said to him it is clear from that it is a typographical error.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I actually pointed out and his notice of intention to suspend me – he has also made similar mistakes.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in spite of a detailed report he nevertheless suspended me.

CHAIRPERSON: But are you saying that – was the position that

General Ntlemeza said in effect you should be charged for or he said that you should make representations why you should not be suspended on the basis that you may have committed fraud and the fraud that he was talking about was based on the fact that a certain date had been given in the document that you had signed. Is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, I did not. Chair that is just the point. I never signed the document.

CHAIRPERSON: Oh, you never signed it? Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because I was a  
10 possible recipient.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I did not feel comfortable signing that document ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Recommending  
...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For myself although when I send it to my superior I recommended that the people in that  
20 report ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Be awarded.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But I deleted my name  
...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At the bottom.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I put the General Brown's name there.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He then dealt with the matter.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: He recommended to ...(intervenues).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Provincial Commissioner.

CHAIRPERSON: Yes but what was according to General Ntlemenza's letter what associated you with that date that you say was wrong?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely nothing Chair.

20 CHAIRPERSON: And his letter did not indicate what you had to do with the put – with putting in that date?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in ...(intervenues).

CHAIRPERSON: Did he accuse you of having given?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

CHAIRPERSON: The wrong information or something?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Maybe if I can explain it this way. I took that decision to suspend me on review as well.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in – this time to the High Court.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the Judge on that matter, I think it was Judge Van Zyl.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: He ruled that there is not an indication of an offence being committed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Let alone by the applicant.

CHAIRPERSON: H'mm. Anyway you made representations to Mr Ntlemeza saying among other things this is – it is clear when you read the document that this is a typographical error and you say despite that he still suspended you?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I also told him in my representation Chair that what he is saying in his notice of intention to suspend.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That he is actually misrepresenting facts ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That could possibly prejudice me.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that he will make himself guilty of an offence of fraud if he does that.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I did subsequently open a fraud case against him.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which I believe is now with the NDPPs Office.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But he – in spite of the fact that I am – it is evident Chair if you read my report that there is just no reason or there is just no valid reason for him to have suspended me.

CHAIRPERSON: Yes. Okay, thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. If I can ask you to turn to Bundle Z(B) and in particular page 315? Is this the Van Zyl –  
20 Justice van Zyl judgment that you refer to which at page 345 sets aside your suspension and ordered that pending the outcome of any disciplinary proceedings you will be not liable to suspension from your employment in addition to which a punitive costs order was granted?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is the judgment Chair.

ADV VERUSCHKA SEPTEMBER: Thank you.

CHAIRPERSON: The – General Ntlemeza’s notice and Major General Booyesen’s response are they here because then if they are we must just identify them?

ADV VERUSCHKA SEPTEMBER: We do not have that Chair.

CHAIRPERSON: They are not here?

ADV VERUSCHKA SEPTEMBER: No but we can certainly.

CHAIRPERSON: For the sake of completeness it might be important to have them.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I still have them Chair.

CHAIRPERSON: Ja. If you can make them available that would be helpful because it is important.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: To see what facts you place before him and despite that he made the decision – continue with the decision.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Ja. Thank you.

20 ADV VERUSCHKA SEPTEMBER: Thank you Chair. It is correct that the suspension did result in not only being set aside by court but additional legal action was taken?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair a few things happened. Ntlemeza applied for leave to appeal the Van Zyl judgment which was refused and then he petitioned the SCA. In that interim period I indicated that I am going back to work again, but he then

indicated the boys serve papers on me for another disciplinary hearing.

CHAIRPERSON: Are you able to remember this suspension – this application that you had just won in court now – that you have just talked about where Judge Van Zyl gave judgment. That was what – the second or the third time that you had to challenge a suspension in court?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the very first one was the interdict that I got because they did not give me enough information.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And they suspended me in spite of the interdict.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I then had that overturned.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The second time was when I was arrested. I was suspended. I did not challenge that for obvious reasons.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: H'mm.

CHAIRPERSON: Then there was a disciplinary Inquiry?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then there was a disciplinary Inquiry in which I was exonerated.

CHAIRPERSON: Which found in your favour?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes and then you were told about various options by General Phiyega?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: And then you went on leave. Then you came back and then and there was this suspension now by General Ntlemeza?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: H'mm.

CHAIRPERSON: So it was a second suspension. Is that right or a third?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: It would be the third one Chair.

CHAIRPERSON: The third one ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of which I challenged two.

CHAIRPERSON: Yes. Okay, alright. So continue.

ADV VERUSCHKA SEPTEMBER: Is that the suspension which led to a hearing the evidence of which shall not be placed before the Commission at this stage?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

20 CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: So you had just said that something had happened and General Ntlemeza was preparing to suspend you again or I think or I think – I thought it was something you were saying that or did I misunderstand you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair he – no he did suspend me.

CHAIRPERSON: Yes. I know about the first suspension.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was overturned.

CHAIRPERSON: You won. He applied for leave. He was turned down. He petitioned the SCA. Was he turned down there as well?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair so what happened then is and I am not going to give this evidence.

CHAIRPERSON: Ja.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: At that point in time I had been approached by a private sector.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For – and I was sitting at home doing nothing and the matter – I was due to retire July 2017.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the matter was set down for the SCA for March 2017.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I – by now I think I know how the courts work. Judgment will be reserved and if you are lucky I would have gotten my judgment by say May/June which in effect would have meant that I would basically go back to work.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And fill in my retirement papers.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that – I indicated to SAPS that if they are prepared to release me now I am prepared to go.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They agreed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think they were very happy to get rid of me.

10 CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Or some individuals within SAPS.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I was – I went – I left the police in February.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And ...(intervenes).

CHAIRPERSON: 2017?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 2017 Chair.

20 CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I was supposed to have left in July that year. So they paid me out ...(intervenes).

CHAIRPERSON: Till July?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For that period of time as well.

CHAIRPERSON: Yes and did that form a settlement of the appeal or not?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was part of the – well Ntlemeza then indicated then that if that is the case they will not.

CHAIRPERSON: Proceed with the appeal?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Proceed with the SCA application.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I know and I was privy  
10 to the communication that the Registrar had sent to the State Attorney at the time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Basically telling General Ntlemeza that the way they dealt with this matter is not the way that the SCA works.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because.

CHAIRPERSON: In terms of procedural issues?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

20 CHAIRPERSON: H'mm, okay. Yes, continue.

ADV VERUSCHKA SEPTEMBER: In that instance can we go back to the Exhibit Z(G), the Mokgoro Report at page 109, and just to add Chair in the initial presentation to the stream there was a slide that was posted which informed that Major General Berning Ntlemeza acted during the dates of 2014 to 2015 following which he was appointed to

the position of National Head of DPCI from 2015 to 2017.

CHAIRPERSON: What page in the Mokgoro Report do you want to refer us to?

ADV VERUSCHKA SEPTEMBER: Page 109 which is sub paragraph 5.2.1.8 and titled "Padayachee Affidavit". Without going into the detail of what is stated from paragraphs 338 to 345 is it correct that this particular Colonel Brian Padayachee is the same Padayachee who assisted you in the Toshan Panday investigation relating to interception ...(background noise)?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was the same Colonel Padayachee Chair.

ADV VERUSCHKA SEPTEMBER: Can we then move on to page 111 of the report? Under paragraph 5.2.1.9 it is marked "The Decision to Authorise the Prosecution and the Steps Taken". This particular section is dealt with at length and to that end you were asked General Booyesen to please clarify the – as far as you are aware, the process and involvement of Mlotshwa as the Acting DPP to authorise the prosecution and the steps taken by augmenting what is already stated here.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair at the time when I was still at the office before all my problems started the actual DPP at the time was the current NDPP Advocate Shamila Batohi. She then took up the position at the International Court at The Hague and Advocate Simphiwe Mlotshwa was appointed as the Acting DPP in KZN. Mlotshwa – I did not personally know him at the time but I knew about

him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because some of my investigators had reported that they dealt with him and one of the cases on which I already testified was the Amigos case under which there was pressure on Mlotshwa – Simphiwe Mlotshwa to ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Withdraw those  
10 charges. So I knew about him but I had never met him.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Unbeknown to me and I only established this much later. This came out that during that same period that I was busy with these investigations.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Mlotshwa received a phone call from the then Acting NDPP Advocate Nomgcobo Jiba.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And – where she said to him that because of pressure and urgency there are certain documents that he had to sign.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was on his way to Port Shepstone to court and he indicated to her when he arrives back

at the office he will have a look at it and if all the necessary documents are there that he would sign the documents. It turns out that it – there is other a covering letter or the actual indictment to have myself and Cato Manor members prosecuted for racketeering. On his arrival back at the office there was only the letter to sign with no supporting documents.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He then wrote an e-mail to I think it was Advocate Chauke.

10 CHAIRPERSON: H'mm. Would the letter that he was expected to sign have been a letter to authorise your prosecution?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It would have been a recommendation Chair.

CHAIRPERSON: It would have been a recommendation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: That you be prosecuted?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Okay.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So normally the DPP in spite of the fact that the NDPP must authorise prosecutions in terms of racketeering. It remains the responsibility of the DPP to sign the indictment. So it was the accompanying letter with the indictment that I suspect that he had to sign but he indicated in an e-mail to Chauke look I am not going to sign this thing until and unless it is clear from the supporting documents which individuals are linked to the criminal

enterprise individually and collectively. Then it is communication between Chauke and Mlotshwa to and from in which it became evident that Advocate Mlotshwa was not comfortable to sign the documents. At a later stage there was a meeting at National Head Office – at the National Prosecuting Office, where Advocate Chauke told Advocate Simphiwe Mlotshwa that Advocate Jiba wanted to see both in her office. Advocate Jiba once again asked him what the problem was and he said he is happy to sign it but he needs the supporting documents that links us collectively and individually to the criminal  
10 enterprise. The meeting was adjourned and the next moment or awhile later Advocate Mlotshwa was replaced by Advocate Moipone Noko. Now Chair.

CHAIRPERSON: How soon after that, if you are able to say?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I will have to guess but it was not very long after that.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now Chair a lot of things happened simultaneously now because there is Mlotshwa's refusal to withdraw charges against Mabuyakhulu and Nkonyeni.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is his refusal to sign documents for our prosecution and the next moment he gets replaced by Advocate Moipone Noko.

CHAIRPERSON: So just to understand. So as you understand the position Advocate Mlotshwa in regard to the Amigos case which related

to Mr Mabuyakhulu among others and Ms Nkonyeni – in regard to that case your understanding is that pressure was being put on him to withdraw the charges and he was refusing and in regard to you he was being asked to recommend your prosecution and he was saying until I have supporting documents that show how these individuals are linked to the enterprise I am not prepared to sign. That was his stance in regard to the two matters. Is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 100% Chair.

CHAIRPERSON: Thank you.

- 10 ADV VERUSCHKA SEPTEMBER: So Mlotshwa refuses to sign without the supporting documentation. Who in fact signed the indictment? Are you aware?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The – well there were two indictments. The first one I think was signed by – I think it was unsigned but I think the covering letter was signed by Advocate Noko.

ADV VERUSCHKA SEPTEMBER: And.

CHAIRPERSON: So after Advocate Mlotshwa was no longer the Acting DPP and Advocate Noko had been appointed Acting DPP then your indictment was signed?

- 20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is ...(intervenes).

CHAIRPERSON: Or your prosecution was?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: Authorised?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well not authorised  
Chair.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was recommended to.

CHAIRPERSON: Was recommended?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Ja, okay by her that is Advocate Noko to ...(intervenues).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: The National Office.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair somewhere in this exhibit here.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: Z(G).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Z(G) where I think make such a finding.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That Noko did what Mlotshwa did not want to do.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is a reference to that.

CHAIRPERSON: Let us go there if we can. Ms September do you know where that is or not really?

ADV VERUSCHKA SEPTEMBER: There is certainly the exchange between Mlotshwa at page 155. Mlotshwa actually testified at the

Inquiry and that talks to his agreement to in fact sign the indictment without the supporting documents and Jiba's non-interference in the exchange between him and Chauke. Is that what you refer to Chair?

CHAIRPERSON: Well it is Major General Booysen that is looking for something. I think he said it is in the judgment. Is that right? Major General Booysen.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Judge when ... (intervenes).

CHAIRPERSON: What you are looking for is in the judgment?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes. It is in the judgment where she is – where the Judge actually comments that.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Noko did what Mlotshwa had refused to do.

CHAIRPERSON: And which is it – Judge Van Zyl's judgment or Judge ... (intervenes)?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No it is the Mokgoro judgment Chair.

CHAIRPERSON: Oh. Oh, oh here, okay.

20 ADV VERUSCHKA SEPTEMBER: Can I perhaps have a look at that?

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: And revert to you? I do not have it at ... (intervenes).

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: At my fingertips right now.

CHAIRPERSON: Okay. Look for it during the lunch break, okay.

ADV VERUSCHKA SEPTEMBER: Will do Chair.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: If I can then take you to page 117 of the report – Mokgoro Report and that is sub paragraph 5.2.1.10 and that in fact confirms evidence that, unless I am incorrect, evidence in relation to Mlotshwa's end of office. Do you have any comments in this regard?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Can you just rephrase  
10 the question please?

ADV VERUSCHKA SEPTEMBER: No problem. Page 117 sub paragraph 5.2.1.10 is titled "No Reappointment of Mlotshwa". Do you have any personal knowledge in relation to that no reappointment?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair not personal over and above what I have read in this finding by Judge Mokgoro.

ADV VERUSCHKA SEPTEMBER: Thank you. If we can then go to page 119 and this particular sub section 5.2.1.11 talks specifically to "Nel's Opinion" – "Advocate Nel's opinion". Do you have any personal knowledge in relation to that?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have got ...(intervenes).

CHAIRPERSON: I am sorry. Let us finalise Advocate Noko gets appointed as Acting DPP what happens? Let us get that story. What happens after that?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair three

significant things happen. She gets appointed within two weeks. She withdraws the Amigo case charges against Mabuyakhulu and Peggy Nkonyeni.

CHAIRPERSON: Ms Nkonyeni.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: About two or three months later she withdraws the charges against Toshan Panday ...(intervenes).

CHAIRPERSON: H'mm, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And company.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And if one looks at the timeline it is during that same timeline.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Unbeknown to me then but known to me now.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That my prosecution is recommended.

CHAIRPERSON: Yes. So your prosecution is recommended by her to  
20 the National – the Acting – to the NDPP?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: At that time who was the NDPP – Mr Nxasana or ...(intervenes)?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, no then it was Advocate Nomgcobo Jiba.

CHAIRPERSON: Oh, Miss Jiba, and was your prosecution then authorised?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Yes and you were served with an indictment?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I was arrested Chair and then served with indictment.

CHAIRPERSON: Yes okay continue.

ADV VERUSCHKA SEPTEMBER: If I can then take you to – I've just been informed paragraph – page 121 of the Mokgoro report, paragraph  
10 375 which is exactly where we are now Chair, so it's page 121 paragraph 375 talks to Noko having signed which she regarded to be the covering letter to the Prosecution Memorandum at the request of Chauke, is that the paragraph that you were referring to earlier?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's the paragraph I was referring to Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you on that score and specific to the Prosecution Memorandum in the outline of the procedure that needs to be followed for the purposes of obtaining the authorisations  
20 relating to racketeering charges, a Prosecution Memorandum needs to be submitted. If one looks then from paragraph 375 at page 121 of the Mokgoro report an address is made in relation to the Prosecution Memorandum specific to your case. Do you have any comments in relation to the Prosecution Memorandum submitted?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I don't want to

comment specifically because some of the stuff I only realised and heard about ex post facto.

CHAIRPERSON: Yes well do you want to be specific about the question that you want him to comment on.

ADV VERUSCHKA SEPTEMBER: No problem Chair. If I could ask you – just bear with me Chair. If I could ask you to turn to page Z(A).

CHAIRPERSON: To Exhibit Z?

ADV VERUSCHKA SEPTEMBER: Z(A).

CHAIRPERSON: Z(A) okay.

10 ADV VERUSCHKA SEPTEMBER: Page 204, do you recognise this document?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do Chair.

ADV VERUSCHKA SEPTEMBER: Please explain what this document is?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair normally, as I've said earlier on in my evidence, once the desk at the National Prosecuting Authority, for instance Advocate Mabolo and Advocate Kruger, if they are satisfied that all requirements are met a meeting is then – or a session is then set down with the NDPP, at that session  
20 she's presented or he is presented with a Prosecution Memorandum. How it normally works in practice is that they will also do a PowerPoint presentation and go through that in order – there are decided cases, and I think it was in the Moodley matter where it's not a prerequisite to read all the dockets and statements. So just a factual report how the accused are linked.

CHAIRPERSON: Basically they say this is the charge, these are the requirements for us to prove this charge, this is the evidence that we have that proves each of the elements, that's what they go through more or less.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And based on that if she's then happy or he's then happy that the crime of racketeering had been committed he or she will then authorise the prosecution.

10 CHAIRPERSON: Yes, yes.

ADV VERUSCHKA SEPTEMBER: So the document that appears from page 204 until page 260 of Exhibit Z(A) is that the Prosecution Memorandum relevant to the charge – the racketeering case against you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The one that's signed by Advocate Noko?

ADV VERUSCHKA SEPTEMBER: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's the same one Chair.

20 ADV VERUSCHKA SEPTEMBER: And if I can then take you to page 261 of that same bundle there's another document which appears there which runs until page ...(intervenes).

CHAIRPERSON: I'm sorry what page?

ADV VERUSCHKA SEPTEMBER: 261 of the same bundle.

CHAIRPERSON: Of Z(A)?

ADV VERUSCHKA SEPTEMBER: Z(A), still on Z(A).

CHAIRPERSON: Sorry just hang on one second.

ADV VERUSCHKA SEPTEMBER: It's the lever arch, it's in fact the document immediately after the document we just referred to.

CHAIRPERSON: But the report that I was looking at was at Z(E). Was I on the wrong document, the report that you were asking the witness about?

ADV VERUSCHKA SEPTEMBER: Yes the report I was referring to is in Z(A).

10 CHAIRPERSON: Z(A) not Z(E)?

ADV VERUSCHKA SEPTEMBER: Z(A).

CHAIRPERSON: Okay what was the page, let's go back to it because I think I was looking at the wrong one then.

ADV VERUSCHKA SEPTEMBER: No problem it's page 204.

CHAIRPERSON: 204, okay so that's the Prosecution Memorandum that Major General Booyesen says was used in regard to his racketeering case, is that right?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay.

20 ADV VERUSCHKA SEPTEMBER: And if one goes to page 261 of that same bundle there's a presentation document that appears there. What document would this be?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think I just need to correct something. If you look at this memorandum ...(intervenes).

CHAIRPERSON: The one at 261?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Ja, that's the second one she signed or a second prosecution. I'm referring to the covering letter – the covering minute in the first application for my authorisation.

CHAIRPERSON: Yes that's the one you want to identify or at least to find, okay.

ADV VERUSCHKA SEPTEMBER: Unfortunately I don't ...(intervenes).

CHAIRPERSON: Do you know where – do you know whether it is in the bundle or not?

10 ADV VERUSCHKA SEPTEMBER: It certainly doesn't come to mind and I do not recall it to be included in the bundle.

CHAIRPERSON: Okay will you check over the lunch break.

ADV VERUSCHKA SEPTEMBER: Will do.

CHAIRPERSON: Are you able to make the point without looking at it that you may have wanted to make about it or you'd rather make it after lunch when it has been filed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I would like to be 100% accurate, I'd much rather look at the document first.

20 CHAIRPERSON: Ja but your recollection is that it is in the bundle or you are not sure?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I'm not too sure whether it's in the bundle Chair I've seen it somewhere.

CHAIRPERSON: Yes, okay thank you.

ADV VERUSCHKA SEPTEMBER: If we could then deal with these documents since we're at them which is the Prosecution Memorandum

and the presentation. Is it correct that you took certain action in relation to the detail of these documents and please explain the context of such action that was then taken, if I can then refer you to ...(intervenes)?

CHAIRPERSON: I'm sorry, I'm sorry, let's know about the documents first. This one at 261 you say is a presentation where?

ADV VERUSCHKA SEPTEMBER: So it was General Booysen's evidence that in the process of obtaining the necessary authorisations there are two documents that need to be submitted.

10 CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: The one is a Prosecution Memorandum.

CHAIRPERSON: Which we have seen.

ADV VERUSCHKA SEPTEMBER: And the other is – which is the one that appears at page 204.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: And the other is a presentation that needs to be done at page 261.

CHAIRPERSON: Yes.

20 ADV VERUSCHKA SEPTEMBER: Both of these documents, if I understand the evidence correctly, are documents that were then submitted in support of the institution of racketeering charges.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair so you have the Prosecution Memorandum and the PowerPoint presentation which basically encapsulates what's contained in the

memorandum.

CHAIRPERSON: Yes okay.

ADV VERUSCHKA SEPTEMBER: If I can then take you to page 191 of the same bundle.

CHAIRPERSON: I've got it.

ADV VERUSCHKA SEPTEMBER: It's Annexure JWB17.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which file are we in now?

ADV VERUSCHKA SEPTEMBER: Still the same bundle it's Z(A).

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Page?

ADV VERUSCHKA SEPTEMBER: Page 191 there's an affidavit which appears there which is your affidavit.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's my affidavit Chair.

ADV VERUSCHKA SEPTEMBER: And similarly at page 199 of the same bundle appears another affidavit that you deposed to.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's also my affidavit Chair.

20 ADV VERUSCHKA SEPTEMBER: However these affidavits are in fact unsigned.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They are unsigned Chair but those affidavits – the original ones with my signature on are in the police dockets.

CHAIRPERSON: Yes the one affidavit is one at page 191 the other one is where?

ADV VERUSCHKA SEPTEMBER: Page 199.

CHAIRPERSON: 199 okay, so there are original affidavits – there are original versions of the same affidavits that are signed?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair yes I normally keep copies because in these type of investigations, and it has already happened, that statements seem to disappear so I keep copies and I did not re-sign them because it would have had a different date on.

CHAIRPERSON: Yes, ja no that's fine.

ADV VERUSCHKA SEPTEMBER: These affidavits talk to the  
10 Prosecution Memorandum and it talks to the presentation which is enclosed below. Please explain the context of ...(intervenes).

CHAIRPERSON: Maybe for what it's worth just in case we never get to the signed ones, do you confirm that the contents of both affidavits are true and correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I did Chair and I handed them in as part of my statement, I confirm that they are accurate and that's what I wrote.

CHAIRPERSON: Yes okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. General Booyesen  
20 please explain why you deposed to these affidavits and the context in which it was done?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair when I was prosecuted the second time, obviously then we applied in terms of Rule 53 for the record of decision and part of that then – the record would be then the memorandum and the PowerPoint presentation. When I

went through the PowerPoint presentation and the Prosecution Memorandum it was blatantly clear to me that both Advocate Maema who was responsible for preparing the Prosecution Memorandum, the second one, and Advocate Noko who worked with him at the time – I was under the impression that she did the PowerPoint presentation but it was later pointed out in court papers that Advocate Maema prepared both, but she just represented it with him to the NDPP at the time. Chair if you go through – now in my experience, and I've done a number of these, if you send a docket to the public prosecutor for a decision and you do a memorandum, you write a praisee of what each witness will say and you'll describe the evidence for the prosecution and for the defence and this particular memorandum – or this particular memorandum is permeated with misrepresentations as to what the witnesses ...(indistinct), there are serious omissions that should have formed part of the Prosecution Memorandum but most importantly Chair it contains falsehoods. In some instances Advocate – and one would not say this lightly on a platform like this Chair, but I will say it, Advocate Maema blatantly lies in the Prosecution Memorandums and I can prove it. He says things that is part of the evidence that's nowhere to be found in the dockets it just does not exist. I deposed of these two affidavits and I opened criminal cases against Advocate Maema and Noko for committing fraud because the misrepresented what is contained in the dockets and because of that myself and the State having prejudiced. Chair if one goes into my statement – or one can have a look at the memorandum and go paragraph by paragraph what I

describe I'll just cite one example. Maema, for instance will write in the Prosecution Memorandum to Shaun Abrahams – Advocate Shaun Abrahams that Booyesen, that's myself and one of the people from Kato Manor, Warrant Officer Paul Mostert, he says in the memorandum that Booyesen and Mostert conspired to kill Colonel Nqcongo. Chair there's nothing of that nature in the docket, we had nothing to ...(intervenes).

CHAIRPERSON: So in other words you say – he says something that's quite critical for the charge but there is no – nothing in the docket that supported that statement, that's what you're saying?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely nothing, what the witness says in his statement, it's a deceased witness by the way Chair, he overheard a conversation by two other people stating that they wanted to get rid of Colonel Nqcongo and they will speak to Booyesen and Mostert about it but he says in the Prosecution Memorandum that it was Booyesen and Mostert who conspired to kill Nqcongo. Chair if he was right then they should have charged myself and Mostert for conspiracy to kill Nqcongo.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: The fact of the matter is an inquest findings Magistrates had already ruled that the number of the people that were being sought were – and eventually killed that they were responsible for the killing of Nqcongo. So that – it's a complete fabrication. When I pointed this out to them in my founding affidavit, in my review application for the second authorisation, he exacerbates his own problem, he says to me that's his interpretation of

what the witness says and, I mean Chair, we can read the statement ... (intervenes).

CHAIRPERSON: It says what the statement he made that you conspired together with somebody else to kill Nqcongo.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Nqcongo.

CHAIRPERSON: Yes he says that is his interpretation of what was in the docket and what was in the docket was certain two people which did not involve you, spoke about – said something to the effect that they needed to talk to you.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: They first said that they need to get rid of Nqcongo ... (intervenes).

CHAIRPERSON: Yes and they would talk to you about it.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Yes okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But Chair then in his answering affidavit he – this time around he lies under oath, he says that Booyesen and Mostert received money from, I can't remember, some ... (indistinct) association on three occasions. There's nothing like that in the docket, there's nothing like that in the statement.

20 CHAIRPERSON: And he could only speak on the basis of what was in the docket, he couldn't speak on the basis of anything else?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair he was speaking what was written in the Sunday Times, he was not confining himself to what was recorded in the dockets.

CHAIRPERSON: Yes but what I'm asking is whether he – for purposes

of him performing the function that he was performing; he was supposed to base whatever he was saying on what was in the docket is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's so Chair.

CHAIRPERSON: But you are saying he was not doing that he was going outside the docket and basing some of the things on what was said in the newspapers?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair he was either making it up himself or someone told him that, but that is definitely not  
10 in the docket.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And over and above that ...(intervenes).

CHAIRPERSON: But if you – if somebody else had told him about it, as long as that was not part of the docket he was not supposed to rely on it, isn't it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No that would have been completely irrational.

CHAIRPERSON: He would have needed to get a statement from that  
20 person, that statement – that person's statement would be part of the docket.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair there's another – I agree with you Chair, there's another allegation in the Prosecution Memorandum that I planted an AK47 on one of the scenes. That story was in the newspaper, there's not even a hint of evidence in any of the

dockets.

CHAIRPERSON: And he included it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's part of the – Chair there are a number of untruths, a number of misrepresentations where they will say what a particular witness said but they will add to what the witness said and there are a number of omissions where there was exculpatory evidence which they were aware of, which they did not make part of the record of decision.

CHAIRPERSON: Yes.

10 ADV VERUSCHKA SEPTEMBER: So who drafted the Prosecution Memorandum?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it was initially my understanding that Maema drafted the Prosecution Memorandum and Noko did the PowerPoint presentation. When I addressed it in my review application the response from Maema was that he did both which in my view exacerbates his problem because the Prosecution Memorandum and the PowerPoint presentation itself are at odds with each other, I cannot see how it could have been done by the same person but if I give him the benefit of the doubt both contain  
20 falsehoods, misrepresentations and omissions.

ADV VERUSCHKA SEPTEMBER: And who authorised your prosecution?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That prosecution was then authorised by Advocate Shaun Abrahams.

ADV VERUSCHKA SEPTEMBER: That was the second.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The second one  
Chair.

ADV VERUSCHKA SEPTEMBER: And the first?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The first one was  
authorised by Advocate Nomgcobo Jiba.

ADV VERUSCHKA SEPTEMBER: Now General Booysen ...(intervenes).

CHAIRPERSON: So – but both prosecutions were still about the same  
thing?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The same thing Chair.

10 CHAIRPERSON: Ja, okay thank you.

ADV VERUSCHKA SEPTEMBER: So just to make sure I too  
understand, you're saying that the same Prosecution Memorandum  
together with the same presentation is what informed both  
authorisations?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

ADV VERUSCHKA SEPTEMBER: Okay now General Booysen, why  
would Advocate Noko and Advocate Maema include falsehoods in  
documents that they are – that they compiled for presentation in such a  
serious proceeding?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in my  
statement, I deal with a specific chapter if I can call it that  
...(intervenes).

CHAIRPERSON: That's the statement before us?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's the statement  
that's before yourself Chair. I deal specifically with a number of

prosecutors which I firmly believe did things at the behest of certain individuals which I will elaborate on when I testify on that chapter.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Maema and Advocate Noko were both part of that group.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it's not the only time that Maema lied.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: When the – Advocate Jiba was – there was an investigation against her consequent to the Gorvan judgment she was charged with fraud and I think defeating the ends of justice and perjury. Advocate Maema made a statement in favour of Advocate Jiba in that statement he also tells a blatant lie. He says in that statement that a witness was killed. He knows full well the witness was never killed, the witness died of natural causes, he knows it because we brought that to his attention in my first review application against Jiba, yet much later in an affidavit in support of Advocate Jiba he says the witness was killed.

20 CHAIRPERSON: And did he ever provide any basis for saying that that witness was killed at any stage, as far as you know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair, no he just mentions in that statement that a witness was killed. I think for the uninformed who would read that statement would come to the conclusion the person was killed by Cato Manor although he does not

say that in his statement.

CHAIRPERSON: So – but you say it would be easy for somebody to think that was – that’s what he intended saying but you say he doesn’t say so expressly?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That’s my position on that point Chair.

CHAIRPERSON: Yes but you say as a matter of fact that witness died of natural causes and this was brought to his attention?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair as a matter of  
10 fact right – with the first review application, I think it was my supplementary affidavit we told him that this witness has died, he even denied that the witness was dead. I sent someone to the Home Affairs to obtain a copy of his death certificate. It’s clear from the death certificate that he died of natural causes. I then, in a further affidavit, told him, here’s the death certificate clearly indicating the man died of natural cause but in supporting Jiba in a criminal investigation against her, he says a witness was killed and he refers to that specific witness Nondlo.

CHAIRPERSON: Thank you.

20 ADV VERUSCHKA SEPTEMBER: Then – if you could then  
...(intervenes).

CHAIRPERSON: It looks like we have reached the point for the lunch break.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Yes, we’ll take the lunch break and resume at 14:00,

we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay you may proceed Ms September.

ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. To quickly address some of the preliminary matters that were raised before we adjourned we are still waiting for a copy of the covering letter.

CHAIRPERSON: H'mm.

10 ADVOCATE VERUSHKA SEPTEMBER: Which is currently in process.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: And then in relation to Exhibit Z(H) and (I).

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: General Booyesen has looked at these in particularity – in particular detail and in doing so it is understood that his letter of response takes issue by and large with majority of what is contained in Advocate Noko's letter but I will leave it to his evidence to give the details to that.

20 CHAIRPERSON: Ja well let us hear what are those? What were the reasons given and then let us deal with each one.

ADVOCATE VERUSHKA SEPTEMBER: Okay.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: If I can then through General Booyesen. General Booyesen if you can refer to Exhibit Z(H) okay. As

previously placed on record this is in fact a letter or a memorandum rather from Advocate Noko dated 21 October 2014 in which it is documented that she had previously provisionally withdrawn the corruptions charges against Mr Toshan Panday and Colonel Navin Madhoe and in doing so sets out the substantiation in relation to that decision below from paragraph 2 onwards. Having considered this particular document can you please inform the Chair as to the detail of substantiation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I had a look at  
10 Advocate Noko's memorandum.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Except for two paragraphs which are very generic and ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which is common cause between the two parties.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I take issue with every point that she makes ...(intervenes).

20 CHAIRPERSON: Every point. Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this memorandum Chair.

CHAIRPERSON: Yes. Where is the first reason that she gives in the points let us deal with that and then you can refer to your ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It will be 2.3 Chair.

CHAIRPERSON: 2.3 ja. Okay what was that reason?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair she basically talks about case 781 was dealt with by the Specialised Commercial Crime Unit in Durban.

CHAIRPERSON: And case 781 is the Panday case?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Panday case Chair.

CHAIRPERSON: Okay.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I do not  
...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Would the Chair want me to read the ...(intervenes).

CHAIRPERSON: If that is ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Makes it  
...(intervenes).

CHAIRPERSON: You can read it ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Okay thank you Chair.

CHAIRPERSON: If that is the best way.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: She says:

“Case 781 was dealt with by the Specialised Commercial Crime Unit in Durban and disposed of recently with a decision not to prosecute anyone as there was no evidence to prosecute any person for any offence. It has been revealed by the SCCU which is

the Specialised Commercial Crime Unit that the SAPS members who were charged with the investigation of this 781 case was gunning for the prosecution of a specific person (KwaZulu-Natal SAPS Provincial Commissioner Lieutenant General Ngobeni) and Mr Panday and Col Madhoe were being pressurised to falsely implicate her in the Commission of Criminal Offences with a promise that they will be exonerated in 781. When the SAPS investigators realised that the PC cannot be charged in this case (781) simply because there is no evidence against her one IO reportedly said the SCCU prosecutor may as well just close her 781 case. It appears Mr Panday and Colonel Madhoe featured nowhere in the 781 then as the focus was on the PC one then may ask a question. Why was Colonel Madhoe arrested in the 466 case?"

The 466 that is the attempt to bribe myself Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN:

20 "Was this lawfully justified arrest or was it a way to pressurise him to implicate the PC as he, Colonel Madhoe even mentions in his representation that he was being irregularly interviewed by the investigating officers so as to falsely incriminate the PC which he flatly refused."

My response to that Chair is:

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “I respectfully disagree with the submissions”

CHAIRPERSON: And that is in what paragraph in your ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That will be paragraph 3 Chair.

CHAIRPERSON: Yes okay yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of my response. So  
10 my response I wrote Chair.

“I respectfully disagree with the submission by Advocate Noko that there was no evidence to prosecute any person with any offence in the main investigation pertaining to the R60 million corruption. The reference number in this case is Durban Central CAS 781/9/2001. It is my submission that there is a prima facie case against Toshan Panday, Colonel Navin Madhoe as well as Captain Ashwin Narain Parsad. For purposes of this submission I refrain from detailing the evidence in this  
20 matter save to say that it contains in excess of 20 lever arch files of documents more than 200 affidavits as well as a forensic audit report compiled by an independent group of auditors namely Price Waterhouse Cooper. I find it objectionable that the Specialised Commercial Crime Unit from her office seeks to entertain and attach

credibility to the claims of the suspects in this matter. Quite how it was revealed by the SCCU that SAPS members charged with the investigation of Durban Central CAS 781 was gunning for KZN Provincial Commissioner Lieutenant General Ngobeni is unclear. This imputation is not supported by any evidence other than the contrived version of the suspect themselves. I for one have never expressed any desire to become the Provincial Commissioner of KZN and neither have I applied for this position before. In my view this is a fallacious argument since the irregularities that were investigated occurred before the 2010 ...(intervenes)."

10

CHAIRPERSON: Before the appointment? Oh before the 2010 Soccer World Cup is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: "The investigation focussed on irregularities before her appointment as Provincial Commissioner. It is thus ludicrous to believe that the suspects i.e. Panday and Madhoe in this regard. The investigating officer could not have attempted to falsely implicate the Provincial Commissioner for a crime that took place before she assumed the post. Her involvement in the matter relates to the attempts by her to interfere with the

20

investigation after she had assumed her position as Provincial Commissioner and not with regard to the procurement irregularities perse. The conclusion by Advocate Noko that neither Panday nor Madhoe features anywhere and I wrote there nowhere verbatim”

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “It is manifestly wrong and this conclusion ought to be challenged. There is overwhelming evidence to support a converse conclusion. The question by Advocate Noko as to why Madhoe was arrested in a subsequent attempt to bribe me is rather rhetorical. A reading of case 466, that is the attempt to bribe me, will demonstrate beyond doubt that Advocate Noko’s reasoning is fallacious and wrong. I find it reprehensible that the suspects’ version of events is preferred by Advocate Noko. This is a worrying precedent.”

10

Okay Chair then the next one.

20 CHAIRPERSON: Yes so but let us just get this one clear. Is my understanding correct that what Advocate Noko was saying in paragraph 2.3 which you have already read of her memorandum is that one, there is no evidence against Panday and – Mr Panday and Colonel Madhoe to prosecute them and two that those who were investigating that case were actually pressurising them to implicate – to falsely

implicate the Provincial Commissioner of SAPS.

Is my understanding correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: That is what she is saying.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is what she is saying Chair.

CHAIRPERSON: And your response is there is ample evidence and you say there are more than whatever the number is of lever arch files of evidence and in this paragraph she has not said anything about having  
10 looked at that evidence, is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: Yes okay. Continue.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then in her paragraph 2.4 of Exhibit Z(H) she writes:

20 “The SCCU revealed the scheming and intercepting of phone calls of inter alia Mr Panday with a motive and agenda to falsely implicate certain people. They allegedly even went further to even boast to Mr Panday telling him that they know what the defence in the 781 case will be as they heard his discussion with the legal representative through the intercepted calls.”

Then my response to that Chair.

CHAIRPERSON: Yes okay your response.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My response Chair is:

“Quite now the SCCU revealed the scheming and

intercepting of phone calls of inter alia Mr Panday with a motive and agenda to falsely implicate certain people in my opinion is a mystery. The ...(indistinct) and tone of Advocate Noko's assertions in this paragraph is indeed worrying and ought to be examined. In her own words there is no proof of Panday's claims as she refers to mere allegations. Her preference of believing the suspects version over the police's version raises to my mind the question of serious impropriety."

- 10 CHAIRPERSON: Of course generally speaking there would be no problem with a prosecutor or DPP when looking at a particular case and they look at the investigating officer's statement and so on and they look at the statement by the accused or suspect if he or she has made one. If they were to come to a decision in good faith that they believe the suspect's version rather than the investigating officers – that generally speaking should be no problem. You have no quarrel with that generally speaking?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not Chair.

CHAIRPERSON: Yes.

- 20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not.

CHAIRPERSON: It is only because of the specific circumstances of this one that you have a problem with that?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair the – and why I have a problem with that is the reasons that she advances.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is no substance.

CHAIRPERSON: Yes, ja, ja no that is – yes let us continue.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Her paragraph 2.5 of Exhibit Z(H).

10 “Mr Panday was even promised by SAPS members in the 781 case that if he falsely implicate the PC, that is now the Provincial Commissioner, they would get rid of the 466 case. It was further explained to Mr Panday that the benefit of this sought incrimination for the PC for them, SAPS members, will be that the PC will be forced to resign and then Major General Booyesen will become the next KZN Provincial Commissioner. Further Major General Deena Moodley would remain in control of the Secret fund.”

And my response to that Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In Exhibit 2(I).

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: “Other than the claims by the suspects in this matter who had much to lose had the investigation led to a prosecution and conversely much to gain should they have managed to derail the investigation there is no evidence whatsoever to remotely support her claims contained in this

paragraph. In any event why would the Provincial Commissioner be forced to resign if she knew the evidence against her were contrived? Furthermore there is no guarantee that I would succeed her as a Provincial Commissioner presupposing that she had resigned. For this or any other reason the vacant post would have been advertised and prospective candidates evaluated for possible appointment. It is my submission that Panday and Company have failed to compromise me. They have attempted to have the investigation stopped. The Deputy National Commissioner for the Hawks Lieutenant General Dramat is au fait with the detail. When this allegation failed they brought in an unsuccessful application the high court to thwart the investigation and after they failed to bribe me with R2 million in cash they have obviously run out of ideas. To now suggest an agenda by myself to become Provincial Commissioner at the expense of Lieutenant General Ngobeni is not supported by any evidence and ought to be rejected. Lieutenant General Ngobeni has no control over the Secret fund. If I had to succeed her the situation would remain the same. To postulate that Major General Moodley would therefore remain in control of the Secret fund makes no sense and it is in any event irrelevant."

CHAIRPERSON: Yes. But I just want to go back to the first paragraph that you have dealt with which contains Advocate Noko's reasons that is 2.3. Am I correct in understanding that what she said in 2.3 of her memorandum, includes saying there was no case in relation to the bribery case against Colonel Mood – Madhoe or did I misunderstand that? In saying there is no case does she include that one or does she not include that one?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think she is dealing here with the main R60 million case.

10 CHAIRPERSON: Yes okay thank you. Yes let us continue.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then 2.6 of Noko's letter.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: "The 781 matter which forms the basis and reason for the alleged corruption of Major General Booyesen by Colonel Madhoe was found to be non-existent by the SCCU."

CHAIRPERSON: What is she saying there? I am not sure that I follow. About non-existent?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I do not think she knows what she is saying here. I ...(intervenes).

CHAIRPERSON: Ja I cannot understand. Yes how did you respond?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: My response thereto Chair was – I have dealt with the Durban Central CAS 781 in paragraph 3 and that would be my paragraph 2.3 above.

“The submission by Advocate Noko I repeat is based on a fallacious argument.”

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then her 2.7 Chair.

10 “Major General Booyesen is the complainant and the only witness in the 466 case against Mr Panday and Colonel Madhoe. The very Panday and Colonel Madhoe who allegedly refused to pave the way for him to become the next KZN SAPS Provincial Commissioner by refusing to falsely implicate the current Provincial Commissioner Lieutenant General Ngobeni.”

2.7 of my response thereto Chair.

20 “I am not the complainant in the matter of Durban Central CAS 466 that is the bribery. This is a disingenuous proposition by Advocate Noko so as to build a legend for her imputations contained in paragraph 2.8 and 2.9 info. For one the state is the complaint in the corruption matter. I am merely one of the many witnesses. Advocate Noko clearly does not understand my role in this investigation. She also chooses to ignore the fact that the Durban Central CAS 781 investigation was initiated by none other than the Financial Head in the province Brigadier Lawrence Kemp. It is inconceivable that Brigadier Kemp knew about my aspirations as alleged by Advocate Noko

unless he obviously colluded with me to discredit the Provincial Commissioner. Had Advocate Noko however bothered to examine Brigadier Kemp's statement in Durban Central CAS 781 she would have established the origin and source of the entire investigation."

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Her 2.8 Chair.

10 "The 466 case, the bribery case is investigated by the members of the police who fall under the command of Booyesen who is the complainant in the 466 case. Their objective dealing with the case becomes questionable especially with the Cato Manor case cloud hanging over their heads. This I believe would shake their credibility and the court would view all these in favour of the two Mr Panday and Colonel Madhoe."

My response thereto Chair.

20 "Advocate Noko has been mendacious in stating that the investigating officer's objectivity are questionable especially with the Cato Manor case cloud hanging over their heads. The investigating officers in these matters are as follows:"

Then I mention the case numbers and the investigating officers' names.

"Colonel Von Loggenberg, Colonel Du Plooy and Colonel Herbst. None of these investigating officers

were ever attached to the Cato Manor unit. They are not implicated in the Cato Manor issue at all hence their credibility cannot be questioned as implied by Advocate Noko. In any event it would appear that Advocate Noko is asserting the functions of the courts as her credibility of witnesses ought to be pronounced upon by the courts.”

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Her 2.9 Chair.

10 “Major General Booyesen being the complainant in the 466 case interfered with an exercise control in this case even going to an extent of determining and deciding who visits Colonel Madhoe when he was detained in the Durban Central police cells in the 466 case. This is exhibited by the letter that was issued on his direct instruction to the Durban Central police station Brigadier V R Stokes. This letter dated September 2011 addressed to all relief commanders and cell commanders and titled Visitation Durban  
20 Central CAS 466 N Madhoe provided that the ... (intervenes).”

CHAIRPERSON: Provide that and then quote on the direct instructions.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “On the direct instruction – provided on the direct instruction from Major General Booyesen only the following persons were

allowed to visit him. One Major General Booysen and Major General Moodley etcetera. What is amazing with this is that Major General Booysen issues an instruction regarding who must visit a suspect in a case that he is the complainant in himself. Further he also has a visitation right in this as it appears in the letter him being mentioned as a number 1 amongst those who are allowed to visit Colonel Madhoe. By the way what would a complainant want to visit a suspect in their own case for? That is unheard and smacks of an agenda."

10

My response to that Chair.

"Advocate Noko is seriously misguided to suggest that I interfered with an exercise control in Durban CAS 466. Had she complied with the National Prosecuting Authority Policy guidelines she was at liberty to consult with me to establish the facts which I shall detail now. As the Provincial Head of the Hawks it is incumbent upon me to exercise control over all investigations conducted by the Hawks in KZN. The National Directorate of the Hawks were kept abreast of, that is now Dramat, were kept abreast of all developments in this investigation. To suggest that I interfered with the investigation is akin to suggest that Advocate Noko herself is interfering with the functions of her subordinates. There is nothing mysterious regarding

20

my instruction with regard to visits to Madhoe. Initial investigations revealed complicity by officers within SAPS. This entry into the occurrence book was made to obviate attempts by officers with mollified intentions. I have dealt with this matter regarding my being the complainant above. Once again the ...(indistinct) and tone of Advocate Noko's contentious appears to be that of a defence counsel rather than that of a prosecutor. The fact that I had not visited Colonel Madhoe at all subsequent to his arrest or that I have not personally communicated with him directly or indirectly demonstrates that Advocate Noko's assertion that it smacks of an agenda is misguided and I reject it with contempt."

CHAIRPERSON: H'mm. Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Her – Advocate Noko's paragraph 2.10.

"The allegation that the accused in 466 Mr Panday and Colonel Madhoe wanted Major General Booyesen to pre-date a report in the 781 case in order to have the Section 205 subpoena set aside (subpoenas for access to the bank account records) and consequently bribe Major General Booyesen to do that does not really hold water because the fact that if there has been any corruption (bribing of Major General Booyesen) that took

place would not make the corruption and its successful prosecution impossible. As Sections 3B and 4(1)B of the Prevention and Combatting of Corrupt Activities Act 12 2004 state the alleged report in the 781 case that it was alleged was to be a predated to invalidate the Section 205 subpoena did not suffice to prove fraud or any offence against anyone especially Madhoe and Panday who are alleged to have bribed Booyesen for the predating of this very report. This report is made out to be the evidence in the 781 case to prove fraud against Panday and Madhoe but one wonders why it would not be seen in this way by the SCCU. If then there is no fraud that could be proven by the SCCU in the 781 case why would Colonel Madhoe and Mr Panday bribe Booyesen or anyone for that matter in respect of 781 case using this report? One would expect that they would know what is contained in 781 case against them as they are part of it. They would know what they did not even know – they would know what they did ... (intervenes).”

CHAIRPERSON: What they did ... (intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “They did to even know what this report has against them especially Colonel Madhoe who was then a procurement official who processed the accommodation documents leading

to the 781 case.”

My response to that Chair.

“Advocate Noko chooses to be deliberately obtuse for one there is indeed a strong prima facie case against Madhoe and Panday in Durban 781. The ...(indistinct) by Colonel Madhoe and Mr Panday to derail the investigation in 781 emanates from the unsuccessful application to have the Section 205 subpoenas set aside. Although the report in question itself does not contain prima facie evidence of a crime being committed predating the report to a date before the application for the Section 205 case have rendered the 205’s and subsequent evidence obtained inadmissible. Information in this report contained evidence gleaned as a result of the 205’s in other words if I had predated this report it would have had meant that the investigators had obtained information legally before obtaining the Section 205 subpoenas. Advocate Noko rightly indicated that Colonel Madhoe was from the procurement section. He had inadequate legal knowledge to argue the points raised by Advocate Noko her sentence one would expect that they would know what is contained in 781 case against them as they are part of it they would know what they did to even know what this report has against them especially Colonel

Madhoe who was then the procurement official who processed the accommodation document leading to the 781 case and then I say is incoherent and difficult to understand. For instance how and why would Panday and Madhoe know what is contained in 781? They were the suspects in the matter not the investigators. Furthermore they knew exactly what was contained in the report since they had illegally obtained it. Two copies of the report were found in Madhoe's vehicle on  
10 two separate occasions. A third copy of the report had fingerprints that matched those of Panday on it. All this evidence is contained in the dockets and for some unknown reason appears not to have been considered."

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 2.11 of Noko's memorandum Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: "Colonel  
20 Madhoe alleges to have met with Booyesen approximately on eight occasions at Booyesen's instance regarding the Cato Manor Unit shootings incidents before the 466 case came into being. I will say no more regarding this issue as the Cato Manor matter is sub-judic. This however indicates a history of some sort being shared by the two. Colonel and Major

General Booyesen. Now they are complainant and accused in the 466 case respectively.”

My response to that Chair.

“Advocate Noko once again prefers to exclude reliable evidence in Durban Central CAS 466 in favour of Colonel Madhoe’s allegations who obviously stands to gain by making these false allegations. There is objective evidence in 466 such as cell phone tower and communication correlation analysis obtained from cell phone records of Colonel Madhoe and Mr Panday. SMS’s sent by Colonel Madhoe, affidavits from Brigadier Madonsella and Sergeant Govender as well as the cell phone records of Colonel Madhoe. Mr Panday and myself to prove that the converse is in fact true. It was Madhoe in fact contacted myself on the number of occasions. The objective evidence will prove that the meeting took place before the so called Cato Manor matter. I would venture to suggest that by not considering the objective evidence and to favour unsubstantiated submissions by accused smacks of an agenda itself. If Advocate Noko had regard to all the available evidence at her disposal she he would not have come to the conclusion she has. Advocate Noko should be aware that my involvement in this Cato Manor matter is not sub judice and has been disposed

of in my favour at the time that Govern had ruled in my favour chair.”

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: “Once again the last sentence in this paragraph in inverted commas “this however indicates a history of some sort of – shared by Madhoe and Booyesen now they are complainant and accused in the 466 case respectively. It is incoherent and difficult to understand.”

10 12. – 2. 12 of her memorandum.

“There is an assumption that is not substantiated by evidence that Mr Panday is part of the alleged bribing of Booyesen and Madhoe. This assumption is derived from the position that they both are suspects in 781 case. This will not stand in court as evidence for corruption against them.”

My response thereto:

20 “Advocate Noko fails to ascribe these assumptions to anyone. Neither the investigators nor I have come to this assumption. If she herself is coming to this assumption she once again fails to consider prima facie evidence in 466. For instance a statement of the person who drew the money on behalf of Mr Panday. Mr Panday’s fingerprints on the documents in question and the paper slips found amongst the money offered to

myself which is linked to Panday's bank account to name but a few."

Then 2.13 of her memorandum.

10 "This is one of those your word against mine kind of cases as it is Major General Booyesen's word against Madhoe's. However Section 208 of The Criminal Procedure Act of 1977 provides that a conviction may follow on evidence of a single witness. The cautionary rules may be applied by the court in this case especially given the background of this case and the challenge there is that Booyesen himself allege to be hitting back at Madhoe for the damning information that Madhoe has against him relating to the Cato Manor case. Madhoe alleges that Booyesen is trying to silence him with the allegation of the R2 million corruption for the damning information that he has against him. A22, a former SAPS Constable Sandesh Dhaniram confirms the possession of the information about Booyesen by Colonel Madhoe in the form of discs."

20 And my response thereto:

"This is not a matter of your word against mine. In fact Advocate Noko had regard to all the evidence it would be clear to her that there is not only direct evidence, witness evidence, but also objective technical evidence and circumstantial evidence to

support my version. No such evidence other than false allegations by the suspects exists to support Madhoe's claims. The reference to Dhaniram's statement is rather surprising as a careful examination of this statement actually confirms my version. Advocate Noko failed in her duty to study the outcome of my successful application in the High Court. See Booyesen v NDPP. Had she done so she would have realised that no such evidence as purported by Madhoe exists. I fail to

10 understand how Advocate Noko seeks to accept an untested and unfounded allegation by a suspect who faces serious consequences in this regard. I also quote a passage of a finding by the then Appeal Court in S v Zuma."

I do not think it is necessary for me to quote that Chair.

CHAIRPERSON: Yes. No stop there sorry.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then her paragraph 2.14:

20 "If the legal strength of the Section 205 subpoenas were based on the date on the report as it is alleged hence Colonel Madhoe wanted it predated to invalidate the subpoenas. It is inconceivable that any person let alone a Colonel in SAPS a person of Colonel Madhoe's calibre was working on these issues of procurement at SAPS would not know that SAPS could simply obtain

other Section 205 subpoenas that would tally with the new predated date in the report. His problem would not have been resolved. Therefore one may ask why would he bribe Booyesen when this would not provide a permanent solution to his alleged problem. This dating of the report would not have caused any subpoenas to be set aside because it is not evidence to 781. Neither does it have any bearing as far as the procedural steps and prerequisites for obtaining a Section 205 subpoena is concerned. This was proven by the SCCU in the 781 case.”

10

My response thereto:

“I dealt with this adequately above. I would like to add however that Advocate Noko wrongly assumes imputed knowledge of law by Madhoe. She herself points out that he works at Procurement who hardly if ever works with Section 205 subpoenas. What concerns me however of this paragraph is once again the tone of her assertions. She is once again deliberately obtuse and misconceives the allegations against Madhoe. I find it disquieting that the SCCU 6 to prove allegations by suspects.”

20

Her paragraph 2.15:

“Further it appears that Booyesen was not the investigating in the 781 case but Van Loggenberg and

Others. Therefore a question arises that why would a favour of the predating of the report that should be in the possession of those who are investigating 781 case be sought from Booyesen not the investigators.”

My response thereto:

10 “Advocate Noko once again demonstrates the ignorance of the evidence at her disposal. The report in question was undated when I received it. It is common practice in SAPS Communication Protocol for the recipient to date stamp and they sign reports when they receive it. It is this date Madhoe wanted me to predate. The fact that ...(background noise) a potential witness in this regard was not interviewed is indeed worrying.”

2.16 of her memorandum:

20 “The cellphone records purported to reflect the calls between Panday and Madhoe do not indicate any specific crime having been planned. It is haphazard conversations with slang and profane language between the two people that one cannot really make out what issue was being discussed as a lot of different issues were being spoken about. More especially a criminal offence cannot be deduced as constituted by the fact from their conversations in the cellphone records available. A question maybe asked that on what basis was an inference drawn by the police

investigators that these conversations pertained to or constitute a criminal offence being planned by the couple specifically that they were planning to bribe Booyesen. The alleged authority to intercept the calls for which Madhoe and Panday calls are alleged to have been recorded was issued during June 2011 for June to September 2011. This appears to go way before the 466 case. This then ties up with what the SCCU has revealed that people's calls were being recorded and the period tallies with the 781 case rather than the 466. One then wonders if the 781 recordings are not utilised in another case, the 466 case which is not permissible." And my response thereto Chair:

"Advocate Noko I respectfully submit could not have listened to all the records between Panday and Madhoe. Her conclusion otherwise would be irrational and subjective. It is evident that she has considered some of the recordings to the exclusion of others which may very well have resulted in the wrong conclusion. It is common cause that Panday's calls were intercepted prior to the 466 case. In any event if she would argue that the recordings are admissible it does not render them illegal. Furthermore there is enough prima facie evidence to secure a successful prosecution in 466 ..."

That is a bribery case.

" ... without presenting the Act 17 deceptions as evidence. This I understand was the stance and view of the investigator. In conclusion it is unfortunate that Advocate Noko seeks to accuse me of having an agenda in these investigations. Even if it is was true and I deny this strenuously the ADS pronounced itself adequately in this regard."

Then I refer to a quotation from the case of Mr Zuma.

10 "I suspect that the converse is true. This matter has been outstanding for more than two years. I think it is no coincidence that this coincides with the renewal of Provincial Commissioner's contract."

That was the Provincial Commissioner Ngobeni. His five-year contract had expired Chair and this – this report by Advocate Noko coincided with the renewal of her contract.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: "The fact that Advocate Noko has failed to return the case docket to the investigating officers and spite a request by him and the subsequent timing of dismissal leaves me with this inescapable conclusion."

And then I request:

"I hereby request you to summon all the relevant documents to your office and to have same evaluated by an independent team from your office. This issue

has been widely reported in the local media. It has drawn various negative remarks from the public and commerce. It is in the best interest of the judicial system, the National Prosecuting Authority, the South African Police Service, Mr Panday, Colonels Madhoe and Narain Prasad for these issues to be ventilated in an appropriate manner once and for all."

CHAIRPERSON: So in her conclusion in her memorandum Advocate Noko among other things says that she has decided to  
10 decline to prosecute Colonel Madhoe and Mr Panday for corruption or any offence in the 466 case. She says:

"This is due to lack of reasonable prospects of a successful prosecution as explained and substantiated above. Further there appears to be agendas among the parties and the score is to be settled."

So – but with regard to the Madhoe corruption case – just to go back, your evidence was that he was arrested at the time when the actual money that he had brought to you as part of – for bribery purposes was there. Photos of the money was taken. This happened  
20 in the basement of the building where your offices are and there were police officers who were waiting for him to come into the building. They saw him coming in. They saw both you and him interacting and as you were leaving and you had agreed with them, that is the police officers concerned, that you would give a certain indication to say they must in fact pounce on him and I seem to think you could not remember

whether you gave the indication or not last time when you were giving evidence – but they – while you were walking towards the lift they jumped and they arrested him.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair yes I did – my evidence was that I did give them the indication ...(intervenes).

CHAIRPERSON: Oh, you did yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I touched my head.

CHAIRPERSON: You touched your head ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I was scared  
10 that they did not see me. I actually started slapping myself on the head.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To make sure.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That they see the signal but over and above that Chair.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is also the video recording.

20 CHAIRPERSON: There was the video recording as well.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of him putting the money in my car.

CHAIRPERSON: Yes and do you know personally that all of this evidence or statements by these police officers and your own statements all of that were in the docket? You know that that was the

case at least before you were suspended or so on.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair. As Chair is aware you have direct witness evidence.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was contained in the docket.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: You have circumstantial evidence.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was contained in the docket.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was technical evidence.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Such as the fingerprints of Madhoe on one of the documents.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was the evidence of Panday's brother's girlfriend's father.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who they had taken to the bank to withdraw a substantial amount of money.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which was linked to a piece of paper – a bank piece of paper.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think it was Nedbank.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was found amongst the money.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was the actual Act 70 interceptions.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was also the tower movement.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That we – A205.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was also the SMS' that he had sent me.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was downloaded from my phone and his phone.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in spite of all that evidence.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She says there is no case.

CHAIRPERSON: Yes and then part of what you are saying it is difficult to understand how she could say that in the light of that evidence that was there?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair to me ... (intervenes).

CHAIRPERSON: That is part of what you are saying?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair to me it is incomprehensible that she can come to that conclusion of ... (intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Over the years I have dealt with many cases.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And she herself says that the Criminal Procedure Act.

CHAIRPERSON: Ja.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Provides for a single witnesses' evidence.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But here it is not a single witness. She says it is his word against mine. There are people who actually saw that. There is a 252(a).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: From the DPP's Office. There is the coordinator. There is the investigator. It is just overwhelming Chair. There is just no ways that anyone could come to a rational conclusion that there is no case against Panday and Madhoe.

CHAIRPERSON: Yes and to the extent that she says among other people you – to the extent that she may be saying you may have had an agenda.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

- 10 CHAIRPERSON: To have the Provincial Commissioner falsely implicated and prosecuted? Had she sought your own statement about that allegation? Had you been approached by her or anybody to say there is this allegation that you are part of an agenda to do this and did you get a chance to refute that before you saw this memo?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair not once.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: From my arrest had I ever been given an opportunity.

CHAIRPERSON: Ja.

- 20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: In terms of a warning statement or in terms of a response.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Not once.

CHAIRPERSON: So these assertions that she makes in her memorandum that, at least we can talk about you, that you may have

been pursuing a certain agenda about the Provincial Commissioner and that you may have been pressurising Panday and Madhoe to falsely implicate the Provincial Commissioner. When she wrote this memo she had never herself or through anybody put this to you to hear your version?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Never ever Chair not once.

CHAIRPERSON: Yes. Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. Following the  
10 submission of your letter was there any – did the decision change at all?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think I testified about that earlier on. That is when subsequent to this letter of mine where Advocate – because this was addressed to Advocate Nxasana.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And subsequent to that a few things happened. One is that Advocate Jiba stood to be  
20 prosecuted for the cases in which I was the complainant and Advocate Gerrie Nel had been in the process of reviewing the withdrawal of these charges and the nolle prosequi and it was at that point where myself and I think McBride thought we were – Mr McBride – we thought we were on top of things now we were now at last making a headway. Then the next thing there was the newspaper article about

Advocate Nxasana not being fit.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And unfortunately he was elbowed out and replaced Advocate Abrahams. So nothing came – as we speak to date none of Panday or Madhoe or Narain Prasad or General Ngobeni has appeared in front of a court on any of these charges.

CHAIRPERSON: H'mm. I am sorry. Let me go back to this issue what we dealt with just a few seconds ago about Advocate Noko. The other  
10 persons that she is talking about when she says certain people have an agenda. Apart from you it would be whom or do you now know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair I think she is referring to General Moodley.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: General Moodley was in charge of Crime Intelligence in the Province.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the guy responsible for the Act 70 interception – communication interceptions.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which is Colonel Padayachee reported to General Moodley.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There was at that stage.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Panday allegedly was called in by Moodley.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And played some of the intercepts.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In order to force him to implicate the Provincial Commissioner.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am not aware of that.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not think that took place because when it was reported in the media at the time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Panday quoted things that was definitely not said during the Act 70 interceptions.

CHAIRPERSON: Huh-uh.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which he said he had heard.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I have got my reservations whether Moodley actually did that or not.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not think it happened.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I think she is referring to ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To General Moodley.

CHAIRPERSON: But am I right to say she was – you were one of the people she was including when she said in the memo certain people  
10 have agendas to?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair yes.

CHAIRPERSON: Falsely implicate the Provincial Commissioner?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Okay, thank you. It is just that it is – it seems to be concerning. I mean she was acting in a senior position of Deputy – DPP in KZN. Would that not be the highest provincial position under the National Prosecuting Authority for the Province or not really?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair are you referring to Advocate Noko?

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Noko was the Senior Prosecutor in the Province ...(intervenes).

CHAIRPERSON: In the whole Province yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: And here you were a very senior member of the police

service – a member of the Hawks. If there was such an allegation that you were involved in something so wrong to have a senior – the Provincial Commissioner of Police falsely implicated one would have expected that before she made the decision such as withdrawing charges she would have at least heard what you had to say about this allegation that you were part of an agenda.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair my response is twofold. One is I agree with Chair. That is a normal course that we always follow when there are representations from accused persons but  
10 what concerns me most about this memorandum of hers. It is almost an attack against me.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the case. It makes me look like the accused person.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the actual accused person is like the complainants.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The tone of her whole  
20 letter.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I would have at least expected, as Chair says, to have at least been – given me an opportunity.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To state my case.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The way I did eventually to Advocate Nxasana.

CHAIRPERSON: H'mm. Do you know whether she ever saw your – your comment that you said to Mr Nxasana or you do not know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not know Chair.

CHAIRPERSON: Yes, okay. Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. If we can then  
10 move on to the next point that Chair had raised for attention and that is the letter – the covering letter specifically by Advocate Noko. With your leave if I may hand up two documents.

CHAIRPERSON: Yes. What are these?

ADV VERUSCHKA SEPTEMBER: Yes. Before you Chair General Booyesen had provided two documents. The first document which is marked blue – which is a blue document.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Is the letter that Chair had  
20 requested. It is the letter from Advocate Jiba. Apologies – it the letter from Advocate Noko to Advocate Jiba which is the covering letter that Chair requested specific to the application for authorisation about the racketeering charges to be instituted.

CHAIRPERSON: Okay. We will need to mark this as Exhibit Z(J).

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: The last one was I.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: This will be Exhibit Z(J). That is now the letter that is blue coming from Advocate M Noko-Mashilo acting Director of Public Prosecutions KwaZulu-Natal and addressed to Advocate N Jiba Acting National Director of Public Prosecution dated 15 August 2012.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: I take it that Advocate M Noko-Mashilo is the same person who so far we have been referring to as Advocate Noko?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

10 CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Chair this is but just the covering letter and it does not include the annexures that are referred to in this letter. In addition to this document General Booyesen had also provided another letter.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: So if I may Exhibit Z(J) as has been marked now relates to the first authorisation of racketeering charges.

CHAIRPERSON: Okay.

20 ADV VERUSCHKA SEPTEMBER: The next document which was also provided and yet to be marked relates to the second authorisation for racketeering charges. Chair will recall that the first authorisation was done by Advocate Nomgcobo Jiba.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: And the second was by – the second authorisation was by Advocate Shaun Abrahams.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: With your permission are we to mark the next document?

CHAIRPERSON: This document will be Exhibit Z(K) and it purports to be an application for authorisation in terms of Section 2(4) of POCA 121 of 1998. It is from Advocate M Noko Director of Public Prosecutions KZN and it is addressed to Advocate S K Abrahams NDPP, yes.

ADV VERUSCHKA SEPTEMBER: If I may?

10 CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: General Booysen if we could first quickly refer to Exhibit Z(J), that is the blue document. That is the covering letter that was sent by Advocate Noko to Advocate Jiba in relation to the first authorisation of racketeering charges. Is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. It specifically then talks to enclosing, as referred to in paragraph 1, an application as – sorry paragraph 1.1 is the application for authority. 1.2 is the proposed  
20 indictment and 1.3 are the draft authorisations. The recommendation is for the authorisation to be granted. This particular document, while we do not have the annexures to this document, was signed in fact by Advocate Noko?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay. Who signed – do you know

who signed the indictment that ought to have been enclosed with this document?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if my memory serves me correctly I think it was Advocate Maema.

ADV VERUSCHKA SEPTEMBER: Thank you and are you aware whether or not in accordance with procedure there was a Prosecution Memorandum and/or the PowerPoint presentation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think ...(intervenues).

ADV VERUSCHKA SEPTEMBER: In support of this application?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think there was a memorandum Chair but not a PowerPoint presentation.

ADV VERUSCHKA SEPTEMBER: Thank you and is this the authorisation that was then subsequently challenged to which a finding was granted by Justice Gorvan?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: Thank you. If I can then move on to Exhibit Z(K).

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if you would allow me I just want to ...(intervenues).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Contextualise the date on this report.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: This is not soon after

Advocate Simphiwe Mlotshwa was moved sideways.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Noko was appointed.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And this coincides with a number of events that occurred at the same time.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: During this period ... (intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I was still busy supervising the Panday investigation.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the Amigos investigation.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Both which Noko subsequently withdrew.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then recommend my – recommended my prosecution.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Thank you Chair.

CHAIRPERSON: Okay, thank you.

ADV VERUSCHKA SEPTEMBER: And then ...(intervenes).

CHAIRPERSON: The events that you refer to that were happening roundabout this time. Do you want to deal with them or not – they are not necessarily in your evidence?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair it is in my evidence.

CHAIRPERSON: Ja, okay.

MAJOR GENERAL JOHANWESSEL BOOYSEN: But I just wanted to bring it to Chair's attention that the timeline here.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Is at the exact same time.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was after Mlotshwa refused to withdraw against ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The people in the legal case.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: He refused to sign our indictment – mine and Cato Manor's indictment.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He gets replaced.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Noko withdraws those

charges.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Against the Amigos groupings.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And also Panday and Madhoe.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in turn  
10 recommends my prosecution.

CHAIRPERSON: Yes. I do not know whether what I am going to ask will relate to the next document that we have just referred to, which Ms September will deal with, namely the question of whether when Ms Noko, if you do know, when Ms Noko recommended your prosecution the documents that Mr Mlotshwa – Advocate Mlotshwa had said he would not sign it if they were not before him whether they were before Ms Noko? You might or might not know ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair all I can – the response I can give is what she says in the letter.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She refers to the application.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In terms of Section 2(4) of POCA.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The proposed indictment.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then the draft authorisations.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then she says:

"I have perused the documents ...(intervenes)."

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: " ... and recommend the application."

CHAIRPERSON: Yes, but we do not know which documents?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair.

CHAIRPERSON: She perused. They might or might not include the ones that Advocate Mlotshwa thought were important to be furnished we do not know. Is that right or we do?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not know Chair but ...(intervenes).

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will venture a guess that they were not there.

CHAIRPERSON: Yes. Okay. I think it will be important to establish well one, what the documents were that Advocate Mlotshwa were insisting should be there because if he signed or recommended

prosecution without them it would be improper and then of course it would be necessary to apply one's mind to the question whether he was correct on insisting on those documents and three whether in making the recommendation Ms Noko had those documents. Obviously if Advocate Mlotshwa was wrong to insist on those documents then even if Advocate Noko recommended without those documents that might not be anything negative towards her, but if those documents were important to be before the person taking the decision to recommend and she recommended without those documents then one would need to  
10 look at that. Thank you.

ADV VERUSCHKA SEPTEMBER: As it pleases Chair. Before we move onto the next document this blue document is the first authorisation in 2012?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: The second document which is Exhibit Z(K) is dated 18 August 2015 which relates to the second authorisation.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

ADV VERUSCHKA SEPTEMBER: Now it is stated in your affidavit at  
20 page 23, paragraph 75 ...(intervenes).

CHAIRPERSON: I'm sorry, where are you?

ADV VERUSCHKA SEPTEMBER: Apologies, Exhibit Z(A), it's in his main affidavit.

CHAIRPERSON: The one with the statement?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Yes, what page?

ADV VERUSCHKA SEPTEMBER: Page 23 paragraph 75.

CHAIRPERSON: Okay, yes.

ADV VERUSCHKA SEPTEMBER: The – what is recorded in paragraph 75 talks to the evidence that you've already presented alluded to by the Chair in that Advocate Mlotshwa refused to sign the indictment until he received certain documentation.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

ADV VERUSCHKA SEPTEMBER: Was the refusal to sign the  
10 indictment then related to the second authorisation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No it was related to the first authorisation Chair.

ADV VERUSCHKA SEPTEMBER: Thank you, if we then look at Exhibit Z(K) there does not appear to be many paragraph references but if you look at page two ...(intervenes).

CHAIRPERSON: Page two of?

ADV VERUSCHKA SEPTEMBER: Page two of Exhibit Z(K).

CHAIRPERSON: Oh okay of the statement?

ADV VERUSCHKA SEPTEMBER: No Chair the new document that we  
20 just entered in, there's the blue one and then there's the other.

CHAIRPERSON: Is that J?

ADV VERUSCHKA SEPTEMBER: Z(K).

CHAIRPERSON: K okay, alright what page on that one or paragraph?

ADV VERUSCHKA SEPTEMBER: So paragraph 1 reads that this document is essentially an application for fresh authorisation of

racketeering charges against you and several others. On page 2 it talks to certain documents that ought to have been enclosed which we do not have in support of the application and 1.1 lists it as the application for authority, 1.2 the fresh Prosecution Memorandum, 1.3 the proposed indictment and 1.4 the draft authorisations, is that correct?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Now in this regard earlier you referred to a Prosecution Memorandum and a PowerPoint presentation.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

10 ADV VERUSCHKA SEPTEMBER: Are those the two documents that may have been referred to in this particular letter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I suspect so Chair.

ADV VERUSCHKA SEPTEMBER: Thank you, just to highlight, on page 3 of the same Exhibit Z(K) paragraph 4 details the documents/evidence upon which – rather which were considered for purposes of this application and in particular it lists at least seven points. If I could quickly go through them, with your leave Chair, paragraph 4(a) informs – or rather paragraph 4 reads:

20 "I have received full briefings from the prosecution team and resolved that the concessions made by counsel on behalf of the ANDPP during the hearing of Booyesen's application were incorrect".

And it seeks to then address certain points which is listed from a to g. If we could then turn to page 5 paragraph 6 talks to copies of affidavits or documents which are relevant to Booyesen insofar as the

racketeering charges and predicate charges are concerned and in doing so lists various documents, including the High Court application where Booyesen is a respondent, documents relating to the monetary awards, statements of Colonel Aiyer dated 3 August 2012, 31 August 2012 and 13 March 2013. Statement of Benkosi Motanyane, Ndundlu dated 31 July 2012. Statement of Andrew Carson Cochran dated 16 May 2012, statements of Commissioner Brown dated 8 and 9 May 2013, statements of Nkosinathi Shoji dated 3 August 2012 and 15 March 2013, statement of Simphiwe Siprin Mathonsi dated 15 March 2013 and

10 statement of Bongani Mandla Mkhize dated 1 August 2012 and its essentially on the basis of this submission that at paragraph 8 on page 6 the request is made – or rather, apologies, paragraph 7 on page 5 where the submission is made that there's sufficient evidence linking them to racketeering and predicate offences as will be shown in the fresh prosecution memo enclosed herewith. At paragraph 8, kindly indicate that you are available for a full briefing with the entire prosecution team. This letter is dated 19 August 2015 notwithstanding the date of 18 August 2015 on the front page. This is then the request for authorisation under which you are currently charged.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: If you could then go back to Exhibit Z(G) which is the Mokgoro report on page 121, we've dealt with the Prosecution Memo and without detracting from the detail that is stated

in here it continues to page 127 which very briefly, at sub-paragraph 5.2.1.13 deals with the manner in which the Booysen matter was dealt with. The next pertinent point is at the bottom of page 127 which talks about – or rather it is titled at paragraph 5.2.1.14 which is Mosing's version. Who exactly was Advocate Mosing in the context of the investigation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it had become clear after Advocate Mamabolo and Advocate Kruger who was in charge of the desk to go through the documents before it's eventually given to  
10 the NDPP. When they removed Advocate Anthony Mosing then took over their position. I later on refer – when I talk about Advocate Mosing under the heading of prosecutors Chair but at this point what I would like to mention is that on the 8<sup>th</sup> of March 2012 that was barely two and a half months into the investigation after the Sunday Times report, I'm in possession of a copy of handwritten notes which Advocate Mosing kept minutes of the meeting which it's – where it indicates that there was a meeting between himself, members from IPID, ICD then, the Minister of Police who was Minister Nathi Mthethwa at the time and also the then acting National Commissioner which would have been  
20 General Mkhwanazi, he wrote Vilikazi though it's actually Mkhwanazi. Now from those notes Chairs ...(intervenues).

CHAIRPERSON: I saw those notes in your bundle earlier on do you know where they are?

ADV VERUSCHKA SEPTEMBER: If I may Chair, yesterday during consultation with General Booysen there's – it's a document that

General Booysen had prepared which is a typed version of the copy of the note which I will direct you to now ...(intervenes).

CHAIRPERSON: Ja let's find them first and then you can hand up the typed version, let's find them where they are first.

ADV VERUSCHKA SEPTEMBER: My humble apologies Chair.

CHAIRPERSON: Was it not Annexure 23 or something?

ADV VERUSCHKA SEPTEMBER: It's Annexure JB12 which is in file Z(A) page 145.

CHAIRPERSON: Have you found Annexure 12?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Is that the typed version?

ADV VERUSCHKA SEPTEMBER: No that's the copy that is in the file.

CHAIRPERSON: The handwritten one first then we can look at the typed version.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: What page is it?

ADV VERUSCHKA SEPTEMBER: It's Exhibit Z(A) page 145.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's indeed the copy chair.

20 CHAIRPERSON: Let me just get there I remember that I got the – difficult to read – yes thank you, then you say there is a typed version.

ADV VERUSCHKA SEPTEMBER: General Booysen had typed up his understanding of the note and with your leave I beg to hand it up.

CHAIRPERSON: Yes okay, did you find it easy to read this, I'm thinking how reliable your typed version is, have you got a typed version from the author that would obviously be much more accurate

but you might – if you are able to read quite well the notes, that's fine.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this copy is not very – it's not a very good copy the one that I – the actual one is clearer than this.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In the typed version there's a lot of places where I – where it's impossible to decipher.

CHAIRPERSON: Okay so we can take this as your – as a typed version based on your understanding of the handwritten notes and if  
10 and when Mr Mosing does give evidence he can tell us what his notes actually say.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Okay Chair.

CHAIRPERSON: Okay thank you. I think that – so that one can't put this when maybe one could put this – one can't put this in here because it's not part of this affidavit.

ADV VERUSCHKA SEPTEMBER: Correct Chair.

CHAIRPERSON: So I think we must make it an Exhibit on its own the last one was K so this will be L, that will be Exhibit Z(L) and it's the typed version of the handwritten notes at page 145 of Exhibit Z(A) as  
20 understood by Major General Booyesen.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Thank you yes.

ADV VERUSCHKA SEPTEMBER: Please proceed General Booyesen.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I'm reading from the typed version.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The meeting was – it says 08/03/12 meeting with the ICD then there are three named, Gamanyana, Glen Angus and Mr Khuba, then it reads,

10           “First meeting, meeting with Minister of Police SAPS – acting National Commissioner Nkankla Vilikazi, I think he recorded that wrong because it’s Mkhwanazi and then it reads on, merge two teams. Mandate – matter pending since December 2011 – hit squad allegations – on the typed version – Chair I’ve those bold letters are my own bold letters it’s what I read from the minutes but I made them bold myself, they’re not bold in the ... (intervenes).”

CHAIRPERSON: It’s not bold in the handwritten notes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That’s right so it says,

20           “Wants arrest by this week worked throughout weekend and then the other one the underlining is also by myself Chair and the boldness and that – in this particular line Chair coincides with what emanated during the – Judge Mokoro’s Commission of Enquiry or the Enquiry not the Commission of Enquiry. Challenged to rope in NPA prosecutors – not submit to KZN DPP but to NDPP and then it reads on General Mabula met with Mhlotshwa promise – then I cannot figure out what’s written there

and then only – join only next week. It mentions 51 cases, those J56 (19) inquest dockets, 12 and then I couldn't make out what he wrote. Now 6 cases that are needing other investigation outstanding, I wrote verbatim Chair – brought 6 cases which they want to bring here and fields I cannot make out what he wrote, wants decision by tomorrow. Suspects 12 in unit – Booyesen PCOC, that PC would be at the Provincial Commissioners office at organised crime unit office.

10 Evidence of photos which General Mabula – with General Mabula's team need to get. Way forward whether and prosecutor – will join next week. ICD offices Durban briefed NDPP".

The things that are highlighted Chair is – it says first meeting with the Minister of Police SAPS and the acting National Commissioner of Police and it says, merged two teams, mandate matter pending since December 2011, hit squad allegations. Wants arrest by this week, work throughout weekend. Now Chair my interpretation of that is if you are there with the Minister, my interpretation of this is that was one of his  
20 demands and then very importantly Chair, challenge to rope in the NPA prosecutors, not submit to KZN DPP but to submit to NDPP.

CHAIRPERSON: And the KZN DPP at that time, would it have been Advocate Mlotho?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

CHAIRPERSON: Yes, okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you and what exactly was your concern or problem with the recordal as you understood it to be in relation to the Minister holding this meeting and calling for arrests within that week?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I might add that subsequent to the Sunday Times apologising to myself I had a radio interview with Carima Brown from 702 channel where some of these issues were discussed and when I left the studio, when I arrived home I received a text message from Carima Brown from 702 that Minister

10 Mthethwa had issued a media release again saying what I had said during the interview. The following morning she phoned me and she said to me that she's inviting the Minister to the studio to discuss these issues, would I be prepared to come back to the studio and I said to her, you can tell the Minister I'll meet him in the studio tonight and she said would you come and I said I would. I arrived there at the studio that same evening he didn't arrive so they dialled him in and during this conversation Carima Brown indicated to the Minister that I'm in possession of these minutes. He was, in the beginning a bit cagey about the meeting, that he hadn't seen the minutes but then she asked

20 him a very pertinent question whether he had a meeting with the prosecutors which he confirmed on national radio or 702. She pointed out to him that he had no business meeting with prosecutors which I agree with. He tried to justify his involvement by saying that there were allegations of human rights abuses and he referred to one particular case where a person by the name of Mkhize got shot and

killed. I expected him to use that example so I took documents with me to the studio which I gave to Carima Brown because the Mkhize family had sued the Minister of Police, Minister Nathi Mthethwa at the time, for the unlawful killing of Mr Mkhize but the Minister at the time, Mr Nathi Mthethwa deposed to an affidavit in a civil matter saying that the shooting by Kato Manor was justifiable and it was lawful and reasonable and he was at pains to explain, on the one hand he says ...(intervenes).

CHAIRPERSON: The shooting was justifiable and the other hand he  
10 says he was concerned about ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's why I got involved but we also pointed out to him then that he's taking up a different position that he had taken up in the Marikana matter where he testified saying that his understanding of the role of the Minister is to deal with matters of policy and we pointed out to him – and that's my understanding as well Chair but we pointed out to him that there was a discrepancy in how he approached these two matters. In the Kato Manor case he sought to get involved in operational matters. He obviously denied that he had gotten involved in the operational matters  
20 but my interpretation of the minutes is that he had met with prosecutors and demanded that we be arrested and that was as early as 8<sup>th</sup> of March 2012 barely before any statements had been taken Chair.

CHAIRPERSON: One would have expected that if the Minister of Police had any concern that the National Prosecuting Authority was not acting diligently in regard to the prosecution of any particular people

that maybe the police had put together enough evidence for, one would have expected that he would raise that with the Minister of Justice and that it would be the Minister of Justice if he thought that it was proper to raise any concern that would raise the concern with the NPA.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Indeed Chair.

CHAIRPERSON: So here – and the notes, if they correctly reflect the people who were there or if they correctly reflect – ja if they correctly reflect the people who are there, there's no indication that the Minister of Justice was at that meeting.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Not at all Chair.

CHAIRPERSON: Yes do you recall who the Minister of Justice was at that time?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think it was Minister Masutha Chair at the time.

CHAIRPERSON: Was it 2012 – 2015, what ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 2012, no it wasn't Minister Masutha, wasn't it ...(intervenes).

CHAIRPERSON: Maybe Minister Radebe.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Radebe that's right  
20 Chair.

CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair, if I can then take you to your statement which is in Bundle Z(A) we are now, effectively dealing with your paragraph references from 77 and 78 on page 24 of your statement. General Booyesen you have made various references to

other perceived interferences by Minister Mthethwa, if I can take you to page 146 which is Annexure JWB13.

CHAIRPERSON: Excuse me, what page is it?

ADV VERUSCHKA SEPTEMBER: 147 sorry.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: General Booysen can you identify this document please?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it's a letter written by Advocate, I think it was, Maema at the time, it's addressed to  
10 IPID, Mr Angus and to the person who was leading the Kato Manor investigation General Mabula and it's from the office of the Director of Public Prosecutions, South Gauteng.

ADV VERUSCHKA SEPTEMBER: Thank you and what is your observations in relation to this letter?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it's evident from this letter, it's a request to have a further interview with one – well the so-called key witness, Colonel Rajen Aiyer and in paragraph 2 it states,

20 "The plan is that we also consult Sikomboso Ndlovu the gentleman from the Civilian Secretariat in the Minister's office who was introduced to us by Colonel Aiyer on Friday the 5<sup>th</sup> of October. It appeared from what Sikomboso Ndlovu was telling us that he has a lot of background information or possible clues to unlock some crucial information that we will require going

ahead with the case”.

Chair I just find it a bit curious that a person from the Minister’s office gets involved in an investigation at this level unless, of course he was a competent witness in this matter which he’s not. So my conclusion here Chair is – and that’s why I’ve added this to my statement, I’ve already imputed that the Minister himself had been involved with prosecutors which was wrong but here someone from his office – from the Civilian Secretariat also now somehow gets involved with the witness, Mr Aiyer, which we now know was a dismal witness.

10 CHAIRPERSON: So you’re linking it with what you said earlier on, namely what was the Minister of Police doing having a meeting with prosecutors, one. Two, what is somebody from the Minister’s office having to – what does he have to do with these matter, that’s what you are raising.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That’s what I’m saying Chair.

CHAIRPERSON: Ja, thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. If I can then take you to the next ...(intervenes).

20 CHAIRPERSON: Sorry you did tell us – you say this letter, the copy we have at page 147 doesn’t show the author but you did say it was the DPP for Southern Gauteng?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair on the original – not the original, the copy that I have I think Advocate Chauke signed the letter but if Chair would look at the top it says with enquiries, G S

Maema, that's Advocate Maema so if they followed the same procedure that we do in SAPS the person drafts the letter, his name is in the top left under enquiries and it's signed off by the Head of the office.

CHAIRPERSON: Oh but this one was signed by who?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: If my memory serves me correctly it was Advocate Chauke Chair.

CHAIRPERSON: Chauke ja okay thank you.

ADV VERUSCHKA SEPTEMBER: In continuance of your evidence concerning your understanding of Minister Mthethwa's involvement I  
10 ask you to go to page 149 which is Annexure JWB14 of the same Bundle Exhibit Z(A).

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: There appears in the middle of the page an e-mail and I shall read from Advocate KMA Chauke sent 12 June 2012 05:14 pm to Cyril S Mlotshwa, CC Toko, J Majokweni, Palessa NP Matse, Sello Maema, Raymon R Matengwa the subject is Re: Indictment Cato Manor. What is your observation in relation to this particular e-mail?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this is clearly a  
20 communication between Advocate Simphiwe Mlotshwa and Chair I just want to say something about Advocate Simphiwe Mlotshwa not to confuse matters.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There is another Advocate Mlotshwa he is JJ Mlotshwa.

CHAIRPERSON: Oh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: From Gauteng.

CHAIRPERSON: Oh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So this Mlotshwa here that is Advocate Simphiwe Mlotshwa who received this e-mail from Advocate Chauke.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think that was pursuant to the conversations they had about the signing of documents  
10 which Advocate Simphiwe Mlotshwa seems to have been reluctant to do.

CHAIRPERSON: Oh the KZN acting DPP at the time?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And there were also other issues that they expected him to do. But Chair the second to last paragraph Advocate Chauke writes:

20 "Another issue of concern to me is the delay in you issuing the instruction of the reopening of the inquest in view of the fact that you have been requested to sign the indictment which must be preceded by your decision to reopen the inquest."

And then the following sentence is the one I want to point out  
Chair.

"If this makes you uncomfortable please indicate so

that I may urgently take the matter up with the acting NDPP which was Advocate Jiba at the time as well as the Minister.”

Now he does not say there which Minister it is Chair. It could be any Minister but ...(intervenes).

CHAIRPERSON: Well when I read this I wrote on the side which Minister is this?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair my – the only inference that I can draw given the history of Minister Mtetwa’s  
10 involvement his officers involvement the only inference that I can come to that it – he was referring to the Minister Mtetwa. That does not necessarily implicate Minister Mtetwa but the question that I would pose is why would Chauke have the liberty to say well he wants to take it up with the Minister?

CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which would have been inappropriate.

CHAIRPERSON: Well the meeting to which you referred to earlier and in respect of which you have produced a typed version of certain notes,  
20 handwritten notes, indicate that that meeting in which the Minister is said to have attended with among other public prosecutors or ND – NPA people was on the 8<sup>th</sup> of March 2012?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is so Chair.

CHAIRPERSON: And this letter or e-mail is dated 12 June 2012?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: A few months later –

three months later Chair.

CHAIRPERSON: Ja. Yes. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: Thank you. And then it is the last part to the Mokgoro Report.

CHAIRPERSON: I am sorry I think that last paragraph may be important. Mr Chauke says to – or Advocate Chauke says to Advocate Mlotshwa in the last paragraph:

10                    “I do not want to step on your toes I was informed that you agreed and arranged with the ANDPP for somebody and then I do not see outside to do the prosecution of this matter. If you have now a change of heart please indicate so that we may resolve it as soon as possible.”

                  It refers to a possible what bringing in of outside people?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It does Chair.

CHAIRPERSON: Yes. Okay thank you.

20                    ADVOCATE VERUSHKA SEPTEMBER: Thank you Chair. If we may then just turn to again Exhibit Z(G) which is the Mokgoro Report and again without detracting from the detail of Mosing’s version as recorded from page 127 and on. The report then deals with the evaluation of racketeering case law at page 130. In particular at page 135 it talks to the Booyesen case. And just to highlight Jiba’s evidence on Booyesen.

CHAIRPERSON: Are you back on the Mokgoro Report?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay. And what page?

ADVOCATE VERUSHKA SEPTEMBER: So Chair will recall that

Mosing's version – just missed it now. Mosing's version without de  
...(intervenes).

CHAIRPERSON: Okay I have got it. 127 hey?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: And without detracting from the  
particularity of detail in here the report continues to deal with the  
evaluation of racketeering case law on page 130.

CHAIRPERSON: Yes.

10 ADVOCATE VERUSHKA SEPTEMBER: And in particular deals with the  
Booyesen case on page 135.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: To highlight to you Chair at  
page 138 Jiba's evidence on Booyesen is recorded at paragraph 430 to  
453. And effectively this section in relation to the Booyesen case as  
considered by the Inquiry ends at page 143.

CHAIRPERSON: Yes.

20 ADVOCATE VERUSHKA SEPTEMBER: The only other reference to the  
Booyesen case or the pertinent sections then is at page 311 of the  
report.

CHAIRPERSON: Do you know whether Mosing is the one who made the  
handwritten notes is it not?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Do you know whether the issue of those notes and  
what they mean and who was present at that meeting is covered in

anyway in the report? I was trying to see whether that is covered.

ADVOCATE VERUSHKA SEPTEMBER: If you could just – there is certainly reference to the notes to the meeting Chair.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: And that reference is at page 128.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: Paragraph 396 and 397.

CHAIRPERSON: Yes.

10 ADVOCATE VERUSHKA SEPTEMBER: But as to the notes in itself I do not specifically recall mention made of such notes.

CHAIRPERSON: Well I see that in paragraph 397 of the report it says notably Mosing does not state that my and other prosecutors from outside of KZN were also at the meeting and had already been tasked with prosecuting the matter. Yes okay continue.

ADVOCATE VERUSHKA SEPTEMBER: Thank you. As alluded to earlier at paragraph – sorry at page 311 of the report the evidence related to the cases are then evaluated and the Booyesen prosecution is specifically dealt with under paragraph 6.1.5.1 running from paragraph  
20 1068 until 1078 on page 313.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: Reference is also alluded to Booyesen in page 327 and although it relates to other evidence as such under 7.1 – paragraph – sorry paragraph ja 7. – or clause 7.1 Jiba reference is made specifically at paragraph 1127.2 where it reads:

“With regards to the Booyesen prosecution the evidence establishes that she allowed and in fact enabled the independence of the NPA to be comprised.”

At paragraph 1127.3 it reads:

“Furthermore in the Booyesen matter despite initiating the prosecution she did not consult with the DPP whose approval was required and when a dispute ensued between Mlotshwa and Chauke she refused to get involved and assist in resolving the issue. This reflects a lack of leadership.”

10

Safe to state that the recommendation which is being made on paragraph – on page 335 has since been implemented Chair which is public knowledge.

CHAIRPERSON: Ja.

ADVOCATE VERUSHKA SEPTEMBER: Those are the pertinent sections of this report which deals with Booyesen. I do wish to however direct your attention to page 345.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: It is an annexure of the report Chair and it is quite a detailed chronology of events.

20

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: For the record in these proceedings there are certainly dates and events which are informed by this witness' evidence that I believe needs to be read into the record and with your leave if I may I will do so?

CHAIRPERSON: What do you want to do?

ADVOCATE VERUSHKA SEPTEMBER: Just read certain dates and events into the record which is ...(intervenes).

CHAIRPERSON: Ja that is fine ja. Okay. The important ones.

ADVOCATE VERUSHKA SEPTEMBER: Important to – or not just important but it is actually informed by the evidence of this witness.

CHAIRPERSON: Ja that is fine.

ADVOCATE VERUSHKA SEPTEMBER: Okay. If I could then start on page 345.

10           "23 December 1998 Jiba's application to be admitted as an attorney struck from the role. 6 August 2000 Jiba appointed as DDPP."

Page 346.

"29 November 2007 Decision to prosecute Zuma is taken by Mpshe and McCarthy. 12 December 2007 Jiba suspended from NPA. 28 December 2007 Indictment is served on Zuma. June 2008 Zuma launches application to review and set aside the decision to prosecute him."

Next page 347.

20           "12 September 2008 Nicholson J, being Justice Nicholson, hands down judgment in favour of Zuma. 12 January 2009 SCA overturns Judge Nicholson's decision to review the decision prosecute Zuma. 10 February 2009 Zuma's legal representatives provide representations to NPA. 3 March 2009 Prosecution

team considered Zuma's representations."

Next page 348.

"1 April 2009 Mpshe ...(intervenenes)."

CHAIRPERSON: Why would Mr Zuma's legal representations when they were made be relevant for purposes of this witness' evidence?

ADVOCATE VERUSHKA SEPTEMBER: Because the witness – this particular witness certainly alludes to certain allegations in relation to President Jacob Zuma – former President Jacob Zuma.

CHAIRPERSON: Ja but I am saying – I am asking why is the question  
10 of when he – Mr Zuma's lawyers made representation to the NPA about his case – Mr Zuma's case would be relevant to Major General Booyesen's evidence? Is there anything I am missing?

ADVOCATE VERUSHKA SEPTEMBER: Chair this particular witness makes a submission and that submission relates to the prosecutorial system. I am happy to deal with that ...(intervenenes).

CHAIRPERSON: Ja but I did not understand anything that you said so far to be – to the effect that his prosecution may have been connected with the prosecution or non-prosecution of Mr Zuma. My understanding was that his prosecution was concerned with the investigations that he  
20 or his team were involved in relating to Mr Panday, Colonel Madhoe and the Provincial Commissioner of SARS.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: That does not seem to me to be connected in any way.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. I am happy

to then exclude such portions and deal with the rest of them if I may?

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: "11 June 2009 which is on page 348 Jiba refers suspension to Labour Court invoking the Protected Disclosures Act."

Next page 349.

"4 September 2009 and 8 September 2009. Mogwebe and Jiba sign settlement agreements with NPA. 9 September 2009 Jiba ...(intervenes)."

10 CHAIRPERSON: On reflection Ms September – on reflection it does not appear to me that there is much purpose to be served in just reading those dates because we have got them here.

ADVOCATE VERUSHKA SEPTEMBER: Okay not a problem Chair. It is then placed before the DCJ and I am happy to move on.

CHAIRPERSON: Ja okay.

ADVOCATE VERUSHKA SEPTEMBER: Sorry. If I can then take you back to your statements.

CHAIRPERSON: Some of the dates might be important to emphasise in relation to specific evidence by the witness. So if there is specific  
20 evidence by the witness in relation to a specific incident then you go to those dates to indicate the context.

ADVOCATE VERUSHKA SEPTEMBER: As it pleases Chair. We are now on page 25 of your statement in particular paragraph 83.

As it pleases Chair. We are now on page 25 of your statement in particular paragraph 83.

CHAIRPERSON: What page did you say?

ADVOCATE VERUSHKA SEPTEMBER: Page 25.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: And it is Exhibit Z(A). If I can ask for the following slide to be shown and that is slide 3 – sorry slide 4, excuse me.

CHAIRPERSON: Is that a slide we have not seen before?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: We have not seen?

10 ADVOCATE VERUSHKA SEPTEMBER: No we have not seen it as yet.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: If we could – Chair you could find a copy of that slide in Exhibit Z(D).

CHAIRPERSON: Z(D)?

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: Okay. Is the point to be made – is the slide quite important for the point to be made – to be shown?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Okay. Thank you. What page at Exhibit Z(D).

20 ADVOCATE VERUSHKA SEPTEMBER: It is Z(D) page 4.

CHAIRPERSON: Okay. Yes thank you.

ADVOCATE VERUSHKA SEPTEMBER: So if we could look at Z(D) page 4 while they – the witness then addresses his evidence from page 83 in his statement.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: Okay. The next theme of your evidence General Booyesen is that you address prosecutors and individual prosecutors within the system.

CHAIRPERSON: I am sorry.

ADVOCATE VERUSHKA SEPTEMBER: Or those who had ... (intervenes).

CHAIRPERSON: Just repeat that I did not hear. Just repeat that.

ADVOCATE VERUSHKA SEPTEMBER: The next theme.

CHAIRPERSON: The next theme ja is?

10 ADVOCATE VERUSHKA SEPTEMBER: Of General Booyesen's evidence is that he now addresses prosecutors – individual prosecutors within the system in the context of the investigations – the four investigations that he has given evidence to.

CHAIRPERSON: Okay he will give evidence about certain prosecutors now? Okay.

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: General Booyesen the slide before you, is a combination of four interlinking circles and one circle  
20 is marked periphery.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

ADVOCATE VERUSHKA SEPTEMBER: Can you please explain what this slide represents?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in my statement I tried to articulate what is in ... (intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this diagram.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There were a number of investigations.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Panday investigation.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which I have testified about.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Amigo case which I have testified about.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Cato Manor investigation which relates to the investigation against myself and Cato Manor.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then also the looting of the Secret Services account case.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The point I am making here Chair is that invariably in all these cases the same prosecutors appear as prosecutors.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For the state.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well in the Panday investigations certain prosecutors – let me start with the Cato Manor one Chair. The prosecutors that I have mentioned under Cato Manor also figure in the withdrawal of charges in the Panday matter and the Amigos case. Also included in my statement Chair which is not part of this diagram is that in other cases that I have knowledge of such as the  
10 so called rendition case against Shadrack Sibiya the General and General Anwa Dramat which subsequently also led to the suspensions of Mr McBride for a so called second report that he had changed.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The SARS matter, the so called rogue unit of Mr Johan Van Loggenberg. Ivan Pillay and Mr Pravin Gordhan.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Inevitably the same prosecutors are always involved with those prosecutions. On the one  
20 hand they prosecute people like myself.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Pravin Gordhan, Johan Van Loggenberg, Anwa Dramat, Shadrack Sibiya, Mr McBride, Sesoko, Ncuba. I cannot recall who the prosecutor against Glynnis Breytenbach was. So you have this group of prosecutors always

involved in the prosecutions of people that are busy with investigations of corruption.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In this – in the SARS matter Mr Johan Van Loggenberg, Ivan Pillay and Pravin Gordhan that has been well documented in the media. They were running a parallel investigation into some of the subjects that we were investigating ...(intervenes).

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: In criminal matters.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It is just – I just find it very odd that the same prosecutors.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Are always involved in prosecuting

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I would call them the corruption busters.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then the same – some of the same prosecutors are then involved in the withdrawal of charges against people that we have been investigating and that already been prosecuted.

CHAIRPERSON: H'mm. Well you were referring to the fact that you

deal with this in your statement. I do not know whether you would like to go to your statement and mention which prosecutor was involved in which matter and so on and so on.

ADVOCATE VERUSHKA SEPTEMBER: In fact Chair if I may.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: The diagram before you.

CHAIRPERSON: Yes. I saw that it does ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: Presents ...(intervenes).

CHAIRPERSON: Have but I got the impression that I may be wrong it  
10 seemed to have or I thought it had only a few. I thought he might be  
having more people in mind I am not sure. Does he have all?

ADVOCATE VERUSHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: It has all?

ADVOCATE VERUSHKA SEPTEMBER: Yes.

CHAIRPERSON: Oh okay.

ADVOCATE VERUSHKA SEPTEMBER: In fact it is a representation of  
...(intervenes).

CHAIRPERSON: Of what is in the statement.

ADVOCATE VERUSHKA SEPTEMBER: All of the prosecutors that he is  
20 about to deal with individually.

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: And ...(intervenes).

CHAIRPERSON: Yes.

ADVOCATE VERUSHKA SEPTEMBER: And the scheme of this  
particular diagram is that Panday Investigation is the blue circle,

Amigos case is the red circle, Looting of Secret Service account is the yellow circle, Cato Manor is the green circle. Where these circles then interlace those would represent public prosecutors.

CHAIRPERSON: Yes I think the point that Major General Booysen you want to make I do not know if you are confident that you have made it sufficiently clearly or maybe Ms September was still going to come to it to simply say in – or prosecutor – so and so on – so and so was involved in that case, and that case and that case this is what he did in that case. In that other case he was also involved and this is what  
10 happened in that case. In that other case the other one was involved and that is what he did. I thought maybe that might be what you wanted to say but you might or might or not feel that you want to.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I am scared that I might leave out some points.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that is ... (intervenes).

CHAIRPERSON: Do you want to read your statement because you have ... (intervenes).

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will just refer to it  
Chair I will not read it.

CHAIRPERSON: Ja. Okay just refer to it to refresh your memory.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair I have – what I have done is I have – I am naming certain prosecutors.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That I feel were not necessary State Capturers.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But enabled State Capturing.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then after that I deal with specific individuals within the Hawks.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That I would say enabled State Capture.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then also to a lesser extent ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The SAPS ...(intervenes).

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Members who enabled State Capture.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair if I should start ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With Advocate

Nomgcobo Jiba.

ADVOCATE VERUSHKA SEPTEMBER: Before we get there. If I may?

At paragraph – at page 26 of your affidavit you allude to the Priority Crimes Litigation Unit.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do Chair.

ADVOCATE VERUSHKA SEPTEMBER: Can – there is already been evidence placed before this Commission in relation to that through another witness but can I ask you to just clarify and explain what you mean by highlighting this particular unit?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the PCLU, Priority Crimes Litigation Unit, was created by Presidential Proclamation 20 – on the 23<sup>rd</sup> of March 2003.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now their focus should be genocide, crimes against humanity, Foreign Military Assistance Act, Intelligence Services Act and International Terrorism. The point I want to make here is that I find it very strange that some of the prosecutors from this – from the PCLU would involve themselves with investigations against the likes of McBride, Dramat, Shadrack  
20 Sibiya for cases I will not say that are not serious but they are relatively much less serious than the things that they should be dealing with. Such ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For instance they would prosecute certain people that I have now mentioned for fraud.

That does not fall into the remit of what they should be doing in the first place.

CHAIRPERSON: Yes, yes. Ja you – the point – part of the point you are making is they were created for purposes of dealing with very serious matters which fall within a certain category.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: You know genocide you mentioned and you mention others and you say but they were now involving themselves in matters that in terms of priority you would not expect them to be really  
10 involving themselves in. That is the point you make?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Absolutely Chair and I will refer to this later on again when I talk about Law Enforcement.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Within the Hawks you have and I will deal with that later.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: You have crimes against the state ...(intervenes).

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of whom Brigadier Ncaba is the head ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Also involving themselves.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With these I would – I will not call them menial investigations.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But much less serious investigations.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I just want to point out this statement of mine I deposed to last year November already.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well I compiled in last year November already.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in this statement of mine I mention that those prosecutors should be dealing with cases and that is before I heard the evidence of Mr Agrizzi. I did not even know who Mr Agrizzi was. And here in my statement I said that they should be – should have been dealing with matters such as Bosasa, State Captures ...(intervenues).

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Gupta's, Steinhoff ...(intervenues).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: All those cases which seriously affected the economy of the country.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But yet they choose to involve themselves with investigations against people that are investigating corruption. Not all of them are from the PCLU Chair ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Some of them ...(intervenes).

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And – but they work closely together with the prosecutors that I will address ...(intervenes).

CHAIRPERSON: That you mention yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my statement.

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: If I can then take you to page 27 of your affidavit and to paragraph 89 in particular.

CHAIRPERSON: Paragraph?

ADVOCATE VERUSHKA SEPTEMBER: So page 27 paragraph 89.

CHAIRPERSON: 59 or 89?

20 ADVOCATE VERUSHKA SEPTEMBER: 89 Chair.

CHAIRPERSON: Page 27?

ADVOCATE VERUSHKA SEPTEMBER: Page 27 of Exhibit Z(A) which is the affidavit.

CHAIRPERSON: Oh okay. I know we have to juggle with all of these ...(intervenes).

ADVOCATE VERUSHKA SEPTEMBER: So we will work through the affidavit now.

CHAIRPERSON: With these three lever arch files here. Z(A)?

ADVOCATE VERUSHKA SEPTEMBER: Z(A) the statement or affidavit rather.

CHAIRPERSON: And what is the page – 27?

ADVOCATE VERUSHKA SEPTEMBER: Page 27.

CHAIRPERSON: Okay. Yes.

ADVOCATE VERUSHKA SEPTEMBER: Paragraph 89.

10 CHAIRPERSON: Maybe before you proceed we are at either 15:59 or 16:00. Normally we would stop at 16:00 but if you are not too tired Major General Booysen I am quite happy that we continue maybe for another hour to try and cover more ground.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I am good with that Chair.

CHAIRPERSON: Is that fine with you?

ADV VERUSCHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: Okay. Thank you. Let us proceed then.

20 ADV VERUSCHKA SEPTEMBER: At paragraph 89 if you make a certain assertion in relation to your view based on your experience within the police please explain your view to the Chair.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in this paragraph I make the assertion that these prosecutors that I am mentioning in my statement acted at the behest of Advocate Jiba.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who was doing the bidding of the then State President Mr Jacob Zuma and also Richard Mdluli.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When I consulted with Advocate September yesterday she said to me it is a wild statement to make.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And I have to at least  
10 substantiate that.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Chair I would like to ...(intervenues).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To do it in the following way.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I just mention a few things. Over and above what transpired and evolved over the last  
20 couple of years the inescapable conclusion – that is the inescapable conclusion that I come to – but I would like just to point out a few things.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When Advocate Jiba arrested – was part of the team who arrested Advocate Gerrie Nel

during this Jackie Selebi trial.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Subsequent.

CHAIRPERSON: I guess you mean authorised the arrest or I do not know if she would have authorised?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No, I think she – between.

CHAIRPERSON: Because it is the police who would arrest. Is it not?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes. Ja well rather  
10 not coincidentally the same General Mabula who arrested Gerrie Nel also arrested me.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In conjunction with Jiba.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: After Gerrie Nel – the case against Gerrie Nel was withdrawn Jiba was suspended for her role in his arrest.

CHAIRPERSON: I am sorry. I did not hear that.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: After Gerrie Nel – the case against Gerrie Nel was withdrawn.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Advocate Jiba was suspended.

CHAIRPERSON: Suspended, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For her role in the arrest of Gerrie Nel.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She challenged the matter in the Labour Court.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And strangely the person who came to her aid there and who deposed to a statement in her favour was Richard Mdluli.

10 CHAIRPERSON: Yes. So there was an affidavit in her application to the Labour Court and there was an affidavit included in her application that had been deposed to by Mr Mdluli?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not know the exact extent of the statement Chair.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where it was just a confirmatory or whether it was.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: His own statement but ...(intervenues).

CHAIRPERSON: There was some?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The statement was in favour of ...(intervenues).

CHAIRPERSON: Supporting?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of Jiba.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Supporting  
...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Her application.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The second thing  
Chair I would like to point out is on the 8<sup>th</sup> of September 2010 the  
husband of Advocate Nomgcobo Jiba – Sikhumbuzo Booker Nhantsi –  
10 whom I believe was an attorney.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He had been charged  
for theft of trust money.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Was convicted. I  
cannot remember what the sentence was.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But on the 8<sup>th</sup>  
of September 2010.

20 CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The then President  
Mr Jacob Zuma.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Expunged his  
conviction.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the third point I want to make Chair to validate my paragraph of 89.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And it was a letter written by Richard Mdluli to the then State President.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In November 2011.

CHAIRPERSON: Huh-uh.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: In which he says:

“In the event that I come back to work ...(intervenes).”

Because he had now been suspended.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At the time.

“In the event that I come back to work I will assist the President to succeed next year.”

CHAIRPERSON: This is now 2000 and?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 2011 Chair.

CHAIRPERSON: And 11.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: November 2011.

CHAIRPERSON: Okay. Is that a letter that we have or?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair.

CHAIRPERSON: No. It is not a letter we have?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No.

CHAIRPERSON: But you know about it?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I know about it and this was widely reported in the media at the time Chair.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think this was just before the Polokwane ANC Conference Chair. I am not too sure.

CHAIRPERSON: No Polokwane if I recall correctly was 2007. 2012 was Mangaung.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think it was that one Chair.

10 CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So Chair having regard to what the Evidence Leader told me – it is a wild statement to make.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I just wanted to mention.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Those are highlights of.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Connections that I draw.

CHAIRPERSON: That you are making, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But there are also other events that makes.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That causes me to come to that conclusion.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I start off by saying that Advocate Jiba has been at the centre of controversy at the National Prosecuting Authority for a better part.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Of the – of a decade.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For one she frustrated lobby groups to have the criminal charges against the Previous President Mr Jacob Zuma ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Reinstated. She frustrated them by releasing the so-called Spy Tapes.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They were eventually I think – it eventually landed up in the SCA.

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where they were compelled to release it.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She also paid.

CHAIRPERSON: So just to refresh one's memory. The Spy case – the

Spy Tapes case – am I correct in thinking that initially what the Democratic Alliance – because I think they are the ones who brought an application to court. What they sought was to be furnished with those tapes and what you are saying is that Advocate Jiba been Acting National Director of Public Prosecutions at the time would have been the one to make a decision whether to release those tapes or not but you say she refused. Is that what you are saying?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She frustrated.

CHAIRPERSON: You say she frustrated that process?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is correct Chair.

CHAIRPERSON: Yes, okay alright.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair as you would recall the ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The Spy Tapes were central to the withdrawal of criminal charges against the ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The previous State President.

20 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair Advocate Jiba was also involved – and it has come out now in Judge Mokgoro's Inquiry.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With the withdrawal of

charges against Richard Mdluli.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was also involved with ...(intervenues).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was also involved with – well Advocate Glynnis Breytenbach who insisted on prosecuting Jiba was then suspended – Breytenbach insisted on prosecuting Mdluli.

CHAIRPERSON: Huh-uh.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was then suspended by Advocate Jiba.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was found not guilty in that disciplinary hearing after her suspension.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was now Breytenbach.

CHAIRPERSON: Yes. I am trying to remember but maybe you might remember better. The suspension of Advocate Breytenbach related –  
20 did it relate to her handling of the Mdluli matter or was it on something else or is that the detail that you cannot remember?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I cannot recall what they suspended her for.

CHAIRPERSON: Okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But it is my view and

it is borne out by a number of ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For instance the – this  
...(intervenes).

CHAIRPERSON: Mokgoro Report.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Inquiry.

CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That – it was  
Advocate Breytenbach's instance on prosecuting Mdluli that eventually  
10 led her to be suspended.

CHAIRPERSON: Yes, okay.

ADV VERUSCHKA SEPTEMBER: If I may Chair.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: In the actual timeline to the report.

CHAIRPERSON: Sorry.

ADV VERUSCHKA SEPTEMBER: In the timeline to the Mokgoro  
Report.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: At page 364.

20 CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: Reference is made there that:

“On the 26<sup>th</sup> of April 2012 Mogwebe writes to  
Breytenbach advising that the NPA should no longer be  
involved in the Mdluli matter and that IGI is the  
appropriate entity to deal with the matter. Four days

later on the 20<sup>th</sup> of April 2012 Breytenbach is informed  
that she is suspended by Jiba.”

CHAIRPERSON: H'mm, okay.

ADV VERUSCHKA SEPTEMBER: The other date.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: That you may find.

CHAIRPERSON: But it does not say what she was suspended for or  
does it?

ADV VERUSCHKA SEPTEMBER: Unfortunately not.

10 CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: The other date.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: That was alluded to earlier in relation  
to the letter by Mdluli to the former President.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: At – in the timeline at page 355.

CHAIRPERSON: Huh-uh.

ADV VERUSCHKA SEPTEMBER: It is recorded:

20 “On 3 November 2011 Mdluli writes to the President,  
Minister and Police Commissioner indicated that the  
charges against him are false and based on a  
conspiracy. He also indicates that he will help the  
President be successful in the following year’s  
elections.”

CHAIRPERSON: And the following year’s election were not general

elections in the country. It was elections of the party. Is that right?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Of the party?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: In 2012.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: Okay. Yes, okay.

ADV VERUSCHKA SEPTEMBER: Okay.

- 10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair once Breytenbach was acquitted that still did not deter then mister – Advocate Shaun Abrahams.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To prosecute her on spurious charges.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the person who then appears on the scene is an Advocate Raymond Mathenjwa.

CHAIRPERSON: Huh-uh.

- 20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Who prosecuted her on these spurious charges.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair this – the same Raymond Mathenjwa – Advocate Mathenjwa I mention it later on and I find it strange that when Advocate Abrahams reauthorized my

prosecution on the Monday he appeared in the court here somewhere in Johannesburg.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I do not know where Breytenbach appeared as the prosecutor.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that very same Friday he is in Durban.

CHAIRPERSON: Oh, ja. I think you mentioned some time ago.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

CHAIRPERSON: Yes. Thank you.

ADV VERUSCHKA SEPTEMBER: At paragraph 93 you deal with Advocate Jiba's role in prosecuting you for racketeering but you have certainly dealt with that in extensive detail earlier.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: At page 29 which is paragraph 94 you deal with additional involvement of Jiba in processes. Can you please deal with that part?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair obviously through the nature of the work that I do and having known a number of prosecutors I engaged with them and I spoke to a number of them.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the feedback that I would get from the prosecutors was that the National Prosecuting Office in Pretoria was like a battle ground.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: There were – there were two factions.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Those who wanted to prosecute ...(intervenes).

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Independently without fear or favour.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then there was what – and I have written a couple of articles about which I would refer to the cabal.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When Advocate Nxasana was appointed.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: It was clear from media reports that both Advocates Jiba and Mogwebe had become extremely recalcitrant with regards to Advocate Nxasana. He actually much later when I eventually met him confirmed that to me in person.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And to that extent he invited a retired Constitutional Court Judge Mr Jakob – Justice Jakob to try and establish what was going on at the NPA.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And it emerged during his attempt – during that Inquiry that both Mogwebe and Jiba had been extremely recalcitrant.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To the extent that I think in the end he recommended a Judicial Commissioner of Inquiry.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair a number of  
10 disparaging remarks had been made against Advocate Jiba. I think all that came out in the Justice Mokgoro Inquiry.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I will not deal with that now.

CHAIRPERSON: Yes, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then I conclude the section with Advocate Jiba that she had been suspended. That there was the Inquiry but the events have overtaken my testimony.

CHAIRPERSON: Ja.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: So we now know that the state ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The State President.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Has dismissed her.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair then I will move onto Advocate Sello Maema.

ADV VERUSCHKA SEPTEMBER: Before we move onto Advocate Sello Maema I just wish to alert you Chair.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: That mention has been made of the Justice Jakob Fact Finding Commission in the Mokgoro Report as well.

CHAIRPERSON: H'mm.

10 ADV VERUSCHKA SEPTEMBER: At page 317.

CHAIRPERSON: Ja, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When I met Advocate Maema the first time.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He looked like a wise old man. He is starting to get a bit grey and he is like a gentleman.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in the beginning I thought – my view of him was that he is a wise old man.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But it emerged later to me that he either was not wise or he had been captured.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Because invariably he seems to be and I describe him as the “go for person”.

CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Whenever there is a problem with certain prosecutions and I highlight some of those prosecutions.

CHAIRPERSON: H’mmm.

ADV VERUSCHKA SEPTEMBER: Chair.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I have referred earlier  
10 on Chair to the statement that he made in the criminal investigation against Jiba in which he lied.

CHAIRPERSON: H’mmm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Under oath to say a witness had been killed.

CHAIRPERSON: H’mmm.

ADV VERUSCHKA SEPTEMBER: Chair if I may it has just been pointed out to me that again in this Mokgoro Report at paragraph 253 page 85 it is recorded that Breytenbach was involved in the prosecution of Mdluli to answer the question.

20 CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: As you have raised earlier.

CHAIRPERSON: No I think that was.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Made clear but I was not sure about whether there was anything in the letter of suspension that indicated whether the

suspension was linked to her handling of the Mdluli matter but you may have read something that suggested that that was the case. I cannot remember but I am sure you will – you will check.

ADV VERUSCHKA SEPTEMBER: No problem.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have already covered paragraph 101 with regards to the fabrications in the Prosecution Memorandum by Advocate Maema.

CHAIRPERSON: H'mm.

- 10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: To prosecute myself and members of Cato Manor.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well the fabrications, the omissions and the misrepresentations. I am also aware that Mr Johan Van Loggenberg one of the accused in the so-called SARS matter.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Had also logged a complaint against Advocate Maema.

- 20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: According to the Advocate for Van Loggenberg he also lied under oath in an application which Mr Van Loggenberg had brought in the Gauteng High Court.

ADV VERUSCHKA SEPTEMBER: Can you just please clarify who do you say lied under oath?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: According to Mr Johan Van Loggenberg from SARS who has also been prosecuted – he filed a complaint with Advocate Abrahams against Advocate Maema and Advocate Nyati in which he accuses – that is where Van Loggenberg accused Maema also of lying under oath.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I have not independently verified that Chair.

CHAIRPERSON: Yes, okay.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then Chair he also gets involved with the so-called Rendition case against Mr McBride.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: For apparently updating the report. Now Chair that case went to court and eventually it was withdrawn.

CHAIRPERSON: H'mm.

20 ADV VERUSCHKA SEPTEMBER: At paragraph 105 you talk about the suspensions of Mr Robert McBride, General Dramat and yourself were held to be unlawful in court whilst the others did not challenge their suspensions and it was consequent to these persecutions various Hawks and SARS investigations were compromised. Which investigations are you specifically referring to in your view?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Well Chair I have already given evidence that in my absence of two years that the Panday

investigations had become dormant.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With regards to the SARS investigations – Chair what happened is I was oblivious to the investigation SARS was busy with. I was invited to the Nelson Mandela Foundation by a journalist to attend to a meeting and when I asked her what the meeting was about she sent me a text message and the invitation basically read only if you are invited you can come to this meeting. So I said to her well I am not invited. She said no but you  
10 are one of the subjects of discussion and I said I would get you there. So I arrived there.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And as I walk in I saw Mr McBride there. So I thought at least there is someone who I know here.

CHAIRPERSON: This is now at the Nelson Mandela Foundation?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Offices?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In Sandton.

20 CHAIRPERSON: Okay, alright and you said you got the invitation from who?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: From a journalist.

CHAIRPERSON: From a journalist?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes.

CHAIRPERSON: Okay, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Chair when I walked in we all recognised each other.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But we have never met before. We recognised each other from media articles and photographs.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Johan Van Loggenberg, Ivan Pillay.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: All the usual suspects.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Were all there.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then we – it was the University of the Witwatersrand conjunction with various other universities. They were doing an investigation into State Capture.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And there is a Professor – I think Lipkin or something. He was leading the discussion.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But during the discussion each one of us had to give – make a small presentation.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Where we fit into this.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Into this story and then after that we decided amongst ourselves to have a separate meeting.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then to bring all our notes with us.

CHAIRPERSON: H'mm.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: And it is at that point where as myself, Van Loggenberg, Pillay and company were talking and General Dramat also eventually joined us in the meeting.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He did not attend the first one and he sent his brother.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It became clear at that point that we were doing criminal investigations and simultaneous to that SARS was doing SARS investigations against a number of  
20 individuals.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That we were also investigating.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that is why I

always maintain that the three – the Cato Manor story, the Cato Manor Death Squad story, the SARS Rogue story and the so-called Rendition story.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOAN WESSEL BOOYSEN: They are inextricably linked.

CHAIRPERSON: H'mm.

ADV VERUSCHKA SEPTEMBER: At page 106 you talk about Advocate Maema's involvement in the Brett Kebble matter.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair. He publically took responsibility in the media for changing the prosecutors. At the time which was I think Gerrie Nel and Andrea Johnson who is still with the National Prosecuting Authority and not surprisingly Mr Kebble was eventually acquitted.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He was also involved with the charges against Mr Mtego who was a senior police officer who was charged for defeating the ends of justice after he allegedly interfered with the witness Mr Agliotti. I understand that matter did not  
20 proceed either.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I conclude Chair by saying:

"It can be no coincidence that Advocate Maema ..."

Having been from Mmabatho I think:

“ ... gets roped in ...”

To use their own phraseology:

“ ... gets roped in, in the prosecution of Booysen,

Dramat and the likes of that I have now detailed here.”

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And in the process – in litigation he has perjured himself on more than one occasion. I have opened criminal cases against him and he is – he actively attempted to defend Advocate Jiba.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair if I could move onto Advocate Anthony Mosing?

CHAIRPERSON: Mosing yes.

ADV VERUSCHKA SEPTEMBER: Just in line with the slide that we have before us Advocate Maema was involved in the Cato Manor investigation only in relation to those four investigations at least?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is right Chair.

ADV VERUSCHKA SEPTEMBER: Thank you.

CHAIRPERSON: H'mm.

20 ADV VERUSCHKA SEPTEMBER: Can you please proceed then to Advocate Anthony Mosing.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I just want to add one thing about Maema. It is my understanding that none of these prosecutors including him – I see Justice Mokgoro addresses that.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I have not gone into the detail but there have been suggestions from other prosecutors that their appointments to prosecute in KZN was irregular.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Maema was one of them.

CHAIRPERSON: H'mm, okay.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair Advocate Anthony Mosing – his name started to feature with the withdrawal of  
10 charges against Mike Mabuyakhulu and Peggy Nkonyeni.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: At the time the investigating officer, Colonel Piet Du Plooy, with forensic auditor – I think it was Mr Trevor White. I cannot recall was summoned to the office by Advocate Mosing and there they indicated to Du Plooy that the case is not very strong and I recall Du Plooy at the time reported to me that they were summoned to Pretoria and it was clear to them that they already had made up their mind. He said to me at the time at the conclusion of the meeting he basically said them he does not see the  
20 need for this meeting because it looks like they are not going to proceed in any event.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So I think that is where the stage was set.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The ball started rolling for the eventual withdrawal of the charges against Mike Mabuyakhulu and Peggy Nkonyeni.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: By Advocate Noko.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In KZN.

ADV VERUSCHKA SEPTEMBER: If we could then move to page 34 of your affidavit and paragraph 110 at which you deal with  
10 Advocate Moipone Noko?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I think I have already alluded to that.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my view at Advocate Noko was appointed and at least one of the points has been confirmed by Justice Mokgoro to – well Advocate Mlotshwa was removed and replaced by Advocate Noko to do what Advocate Simphiwe Mlotshwa refused to do and that is to ... (intervenes).

20 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Sanction.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The application for – for racketeering charges against myself and Cato Manor.

CHAIRPERSON: Huh-uh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: H'mm.

ADV VERUSCHKA SEPTEMBER: And this was the same Advocate Noko who was then appointed and who refused to withdraw the racketeering – apologies, who facilitated the withdrawal of the corruption charges against Toshan Panday?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She withdrew the – Advocate Noko withdrew the charges against Toshan Panday and Navin Madhoe.

ADV VERUSCHKA SEPTEMBER: Okay and who appointed  
10 Advocate Noko?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair my understanding is that those appointments are done by the State President but the State President would not just out of the blue appoint a person.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: They must – I suspect it.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Came as – after a  
20 recommendation by Advocate Jiba.

CHAIRPERSON: H'mm. Yes I – it would be important to check whether it is the President who makes the appointment or the NDPP but I thought maybe you can check overnight.

ADV VERUSCHKA SEPTEMBER: Will do Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: Including acting appointments in regard to such positions as DPP. The NDPP one I am sure is made by the President but the DPP one I am not sure. So you might check up on that.

ADV VERUSCHKA SEPTEMBER: Will do Chair.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the three main points I am making with regards to Advocate Noko.

CHAIRPERSON: Yes.

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: She was put there as a proxy.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She had to facilitate the withdrawal of charges against Panday and Madhoe which eventually happened.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: She had to withdraw the charges against Mabuyakhulu and Nkonyeni.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which she eventually did.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then she also did what Simphiwe Mlotshwa refused to do.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that is to

recommend my and Cato Manor's prosecution.

ADV VERUSCHKA SEPTEMBER: Do you know ...(background noise) whose proxy did Advocate Noko act according to your submission now?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: It would have been Advocate Jiba because Advocate Jiba is the one who wanted Advocate Mlotshwa to sign our – my prosecution.

CHAIRPERSON: The recommendation for your prosecution?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's right Chair.

CHAIRPERSON: Ja.

10 ADV VERUSCHKA SEPTEMBER: Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then a year later Advocate Noko was appointed permanently as the DPP by the State President.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And then I've already testified with regards to Noko's role with Advocate Maema in the misrepresentations and the falsehoods and the Prosecution Memorandum and the PowerPoint presentation to have us prosecuted.

20 ADV VERUSCHKA SEPTEMBER: And in particular the criminal complaint that she laid pursuant to that?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair. I've detailed those in my affidavit which is attached to my statement.

ADV VERUSCHKA SEPTEMBER: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair in the recent interviews that were televised when the – for the appointment of a new

NDPP Advocate Noko was one of the shortlisted advocates.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And one of the panellists asked her about the Booyesen matter and her response was that she had found it on the court roll when she got there, almost absolving herself of any involvement and when I watched it I said to myself how can a person who knows this is being broadcast nationally sit and lie to a panel like that. She had signed both the covering letters for my and Cato Manor's prosecution so she – I think she misled  
10 the panel there by saying to the panel she found the thing there on the court roll.

CHAIRPERSON: Yes, because it can only be on the court roll if there has been an authorisation of the institution of prosecution and you say that she recommended the authorisation of prosecution.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the objective is that she signed both those covering letters and then she tells the panel she found the thing there when she ...(intervenes).

CHAIRPERSON: So you say what she said is contradicted by objective facts?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: Yes, thank you.

ADV VERUSCHKA SEPTEMBER: Page 36 you then deal with Advocate Doctor Torie Pretorius, will you please address the Chair in relation to your observations of the matters that Pretorius was involved in.

CHAIRPERSON: Let's go back to the last point we were making about Advocate Noko, so during her interview when she was a candidate for the position of NDPP recently she was asked about the matter relating to you by one of the panellists and she said when she became acting DPP the matter was already on the roll.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think the words she used Chair is she found it on the court roll.

CHAIRPERSON: She found it on the court roll.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

10 CHAIRPERSON: Ja, and that was the end of that line of questioning?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair.

CHAIRPERSON: Yes, so your understanding is in that way she was making sure she would not be asked about any decisions she took to recommend?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was my interpretation of what she was saying that she did not want to go there because I think that possibly would have led to other questions.

CHAIRPERSON: Yes, okay.

20 ADV VERUSCHKA SEPTEMBER: Thank you Chair, at paragraph 36 you talk to Advocate Pretorius, Dr Torie Pretorius.

CHAIRPERSON: I think it would be important to get a copy of the transcript of her interview if we don't already have it here so that we can have a look at whatever may be relevant that transpired during her interview, including the point that Major General Booysen is mentioning.

ADV VERUSCHKA SEPTEMBER: And that's specifically – to make sure I understand this, that's specifically the transcript of the interview of Advocate Noko?

CHAIRPERSON: Yes of Advocate Noko, she is the only one, because Major General Booyesen is saying she was asked about the matter relating to him and she said she found the matter already on the court roll and Major General Booyesen says that's false, there are objective facts which show that it was not on the court roll when she came, and she is the one who did the recommendation, so it would be good to find  
10 out exactly what the transcript reflects.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Thank you.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair with regards to Advocate Torie Pretorius I described him as a lightning conductor in my statement. We have these prosecutors like Maema and Noko and Mosing and a few others that are in the coalface in the courts but in the background you have Advocate Torie Pretorius giving legal opinions and invariably those opinions are against the likes of myself, Pravin Gordhan etcetera. Both him and Advocate Nyati and I think that is  
20 Advocate Abrahams as well, well it was Advocate Pretorius, Nyati and Abrahams they received notices of intention to suspend them by the then President for their role in the aborted Minister Pravin Gordhan matter. They were eventually not suspended but I think it will be interesting to know what is written in their presentations because that might indicate where the decision to prosecute Mr Pravin Gordhan were

politically motivated or not, but be that as it may Chair the fact that Mr Torie Pretorius had involved himself in aligning with the prosecution of Mr Pravin Gordhan and we now know which had catastrophic effects on the economy of the country and as I previously alluded to the fact that the PCLU of which he is a member these investigations do not fall into the remit of the PCLU, but he constantly seems to get himself involved or either by default or by design and he also gave a legal opinion in the Cato Manor matter when we brought an application to have the matter struck off the roll, when he aligned himself with the prosecutors,  
10 Maema at the time.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: The next prosecutor that you then, the next Advocate that you deal with is on page 37, and that is Advocate Raymond Mathenjwa.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair Advocate Raymond Mathenjwa was the initial prosecutor when the first batch of Cato Manor members were arrested. I wasn't present at court, I had a commitment with members from the FBI in the USA, in KZN but on various occasions he opposed bail, on various occasions he had to be  
20 called to order by the magistrate for his antis in court. He's involved in my investigation, like I said earlier on he was also involved in one week going to court for Glynnis Breytenbach and during the same week a different province for my matter. I have been told by two very senior advocates from the National Prosecuting Authority that there was a letter where a number of prosecutors had been promised promotion by

Advocate Abrahams, I never saw this letter, but two independent Advocates told me about this and Advocate Raymond Mathenjwa was one of them that was going to be a promoted to a post at Nelspruit where a new post was to be created.

My understanding from these two senior advocates from the National Prosecuting Authority is that Advocate Abrahams had already drafted the papers, but it was at that time when the then State President was under pressure and he resigned, so he had not signed off on that, which eventually negated the promotion of these  
10 prosecutors of which Mathenjwa was one.

CHAIRPERSON: Now the relevance of the promotion – of their promotion is it that the promotion was linked to the work they were doing in relation to the prosecution of people like you, or it's just being mentioned?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the people that were mentioned the majority of the people that were going to be promoted are some of the prosecutors that I deal with in my statement.

CHAIRPERSON: Yes, okay. Now the people from within the NPA who gave you this information do you have any idea whether they would be  
20 prepared to come and give evidence about that to the extent that it may be deemed necessary or is that something you don't know?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair the one might not, the other one might.

CHAIRPERSON: Okay. And you will give the names to the Legal Team?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I will Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: At page 38 from paragraph 1 to 4 you deal with the next Advocate who is Advocate Sean Abrahams, who appointed Advocate Sean Abrahams?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair it's common cause that he was appointed by the State President.

ADV VERUSCHKA SEPTEMBER: Okay. Who is – who preceded – who was the previous incumbent to his position?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That was Advocate Mxolisi Nxasana Chair.

ADV VERUSCHKA SEPTEMBER: Okay and what was Advocate Mxolisi Nxasana's view in relation to the withdrawal of criminal charges against the Toshan Panday?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair obviously ...(intervenes).

CHAIRPERSON: Against who?

ADV VERUSCHKA SEPTEMBER: Mr Toshan Panday.

CHAIRPERSON: Oh, okay.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I don't think he had a specific view but he facilitated after I deleted my letter to him he facilitated prosecutors to re-evaluate so in my view those were one of his sins that he was prepared to have all those cases that had become dormant to make them alive again.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The second sin I think he committed was it was under his stewardship that Advocate Nomgcobo Jiba was prosecuted.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And that's borne out Chair by and I refer to that in paragraph 127 of my statement, I was watching the evidence of Advocate Mohofe, where Advocate Mohofe stated ...(intervenes).

CHAIRPERSON: In this Commission?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair. Where he stated that the then Minister of Police, Minister Nathi Nhleko informed him that there is going to be an audience with the State President, which eventually happened, and during this conversation in spite of the fact that he had no relevant experience as a prosecutor, never mind to head the National Prosecuting Authority, that the President wanted him to become the new NDPP, that was while Advocate Nxasana was the NDPP and what struck me of his evidence Chair and that convinced me more than anything else that one of the cardinal sins that I also committed was to be the complainant in a  
20 matter against Advocate Jiba. According to Advocate Mohofe the State President was not happy with the fact that she had been prosecuted and in fact he offered him to become the NDPP and I think the words that he used is that he would be the ...(indistinct) NDPP but Jiba was going to be the default.

CHAIRPERSON: The de facto ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: I think he used the word default ja, default DPP as long as Jiba was left alone. Chair with regards to Advocate Abrahams when he assumed office two of the very first things he did was to call Advocates Ferreira and Van Eeden because they were the prosecutors appointed by Advocate Nxasana to prosecutor Advocate Jiba, and he wanted an opinion from them as to the strength of the case. And I am aware of this Chair because those documents were attached to another application, I think it was in the  
10 Western Cape. He procured that from the two Advocates himself and on a reading of that Chair it's blatantly evident from their opinions that there is a case to be answered by Advocate Jiba.

The other thing that he did was to ask Advocate Gerrie Nel about the Panday matters. That was in 2015 Chair and my understanding is that Advocate Gerrie Nel had made certain recommendations that a number of people in those investigations are prosecuted.

So that was the very first thing he did and we now know what's happened to those investigations, none of those people to date have  
20 appeared in front of a Court and with regards to the – it's the first one I was mentioning, with regards to the Jiba matter that eventually Chair the trial was supposed to commence I think it was on a Wednesday, and I was consulting with the Prosecutor the week before that and we had to work from his files because the Prosecutor told me the docket was with Advocate Mogale – Marshall Mogale I think his name is. What

later emerged was that Ferreira had written an e-mail to Mogale to tell him listen I need my docket, I'm consulting with a witness, the trial is about to commence and Mogale's response to that was in an e-mail that the docket is with the NDPP, obviously Mr Abrahams, and that they should have an answer by the following day, which makes me think that because subsequent to the withdrawal of charges against Jiba they announced that the charges were withdrawn by Advocate Mogale, but I firmly believe that they were actually withdrawn by Advocate Sean Abrahams and that was confirmed in an application to the High Court, I

10 cannot recall whether it was Freedom under the Law or whether that was the Helen Suzman Foundation, there the judges all held, I think it was a full bench Chair, all the judges held there that in spite of the fact that Mogale and Maema deposed to affidavits under oath that it was Mogale that withdrew the charges and not Abrahams. The Court found that it was indeed Abrahams who withdrew the charges and not Mogale.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And Chair not surprisingly you have a High Court finding against Advocate Abrahams and the judges even in their judgment says it raises questions about

20 integrity, and they also make other adverse remarks against Advocate Abrahams and Advocate Mogale and I just find it curious that up until today, in spite of those negative aspersions cast by High Court Judges absolutely nothing has happened to Advocate Mogale and Advocate Abrahams, neither from the employer at the time who was the NPA and neither from – well the then GCB and I believe that there's a new body

now.

CHAIRPERSON: Ja, yes. Do we have that judgment that General Booyesen is talking about in the bundle?

ADV VERUSCHKA SEPTEMBER: No Chair.

CHAIRPERSON: Okay, it should be secured, we should have that. Is your recollection that in that matter Advocate Abrahams had also filed an affidavit?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: And whether his affidavit was saying that it was  
10 Advocate Mogale who made the decision to withdraw?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's right Chair.

CHAIRPERSON: But you say three judges rejected that version?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair.

CHAIRPERSON: And said it was him who made the decision?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Ja, there was majority and a descending judgment but all the judges held that or found that it was in fact Abrahams who withdrew the charges and not Mogale.

CHAIRPERSON: Yes, yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: In spite of the fact that both deposed to affidavits in opposing the application.

CHAIRPERSON: Yes, and do you know whether that matter is somewhere in the Court system with appeals or not or is that something you don't know at the moment?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair obviously what

happened with ...(intervenes).

CHAIRPERSON: So basically what I am looking for is whether those findings still stand or whether they're subject to some appeal ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair, sorry Chair, the Court held that the withdrawal of charges by Abrahams was irrational.

CHAIRPERSON : Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And to my mind the  
10 criminal charges should be reinstated.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But to date none of that has happened. I found out through the Justice Mokgoro Inquiry when they were pushed for an answer Jiba's counsel then said to Judge Mokgoro they're going to establish what happened and then the following day they handed in a letter from an – I think he's from, Advocate Smit, I can't remember which Province he was from Northwest, which he said that so obviously Advocate Abrahams had referred it to another Advocate again who then said no there's no  
20 reasonable chance of success for prosecution.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: In my view he did not have the authority to review what the two other Advocates had already established.

CHAIRPERSON: Okay, we need to have that judgment and it may be

that depending on when one reads the judgment, it may or may not be necessary to have a look at one or more of the affidavits that may be affected on that issue.

ADV VERUSCHKA SEPTEMBER: Male fides Chair?

CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: Were you involved General Booysen in the legal process which led to Nomgcobo Jiba's prosecution?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I was the complainant.

10 CHAIRPERSON: And then related to her role in your case?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's correct Chair, because in the Gorvan matter she – and I accused her of being mendacious and she did not respond to that and it was based on that and the findings of the Court that I lay the charges, and I was privy to the charge sheet because she was going to be charged for perjury for lying under oath in that statement, in the litigation process, she also misrepresented facts which comprised – which I would say makes her guilty of fraud and then also for defeating the ends of justice.

20 ADV VERUSCHKA SEPTEMBER: In your view did you suffer any consequences as a result of laying this complaint against Advocate Jiba?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair my view if – when I took early retirement, five months early, not that I am retired Chair, I am still working, Chair in my view and that's how I feel about it, if I just kept my mouth shut and either taken the golden handshake by

General Phiyega and disappeared into the sunset they would have forgotten about Johan Booysen. The fact that I went back and reopened all these cases and Advocate Jiba was not prosecuted I am convinced that that prompted the reaction that I eventually experienced, that I was now re-prosecuted by Advocate Sean Abrahams.

Chair all the evidence, or should I say the lack of evidence had been ventilated in front of Judge Gorvan and he is very emphatic in his findings. My assertions that the witnesses that they referred to, 10 Aiyer, Dannicas, Londlo, every single one that Abrahams now purports to rely upon the Judge there held over and above the fact that some of those statements weren't even signed but even if they were, does not link me to the offences I am being prosecuted for, yet Mr Sean Abrahams uses the same statements with the addition of one, the statement of the Greek citizen in the Jiba application was never signed, and even if it was signed Judge Gorvan said it does not implicate me in the Commission of an offence.

Advocate Abrahams when I applied to have his authorisation to prosecute me reviewed and set aside in his answering affidavit he 20 states that he had sent Advocate Maema and Advocate Dawood Adams to Greece and they had now taken a signed statement of Dannicas, and he says the statement is now signed, I was satisfied and then he authorised my prosecution.

Chair the problem with that is when I heard – when I saw that I said to my attorney please phone Advocate Maema and ask him for a

copy of the signed statement.

CHAIRPERSON: Yes because obviously it was relevant.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Yes Chair. Which Mr van der Merwe duly did and I was present when he phoned him and Advocate Maema's response was the statement is still in Greek it's not been translated yet.

CHAIRPERSON: It's still in Greek?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Still in Greek Chair.

CHAIRPERSON: Yes, it hasn't been translated?

10 MAJOR GENERAL JOHAN WESSEL BOOYSEN: It hasn't been translated yet. Chair as I sit here today in spite of a number of letters to Advocate Maema I still do not have a copy of a signed statement, I understand that it eventually was translated but that's probably almost a year after Advocate Abrahams re-authorized my prosecution which begged the question how could he have considered a statement which is in Greek, unless he is conversant in Greek which I don't think he is ...(intervenes).

CHAIRPERSON: Is he not conversant in Greek?

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair most of this what they do to me is Greek, but I don't think he is conversant in Greek.

ADV VERUSCHKA SEPTEMBER: Having said that General Booyesen if I can ask you to go to page 182 paragraph 39 of the same bundle.

CHAIRPERSON: What page?

ADV VERUSCHKA SEPTEMBER: It's page 182, paragraph 39.

CHAIRPERSON: 182?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Well General Booysen I was saying asking whether he is not conversant in Greek because you know there are people in the country who are conversant in many languages so until one knows whether he is conversant in Greek ...(intervenes).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I have actually challenged him in my answering – in my replying affidavit to which I have not received a response yet.

10 CHAIRPERSON: Yes, that was – is that in a matter that has been finalised?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: No Chair that matter is pending.

CHAIRPERSON: Oh.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That review application ...(intervenes).

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That's pending Chair.

20 CHAIRPERSON: Yes, okay, okay. So he would have to deal with that in his answering affidavit or in his affidavit?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: He would have to deal with that Chair because I actually accuse him also of lying under oath, and I have invited him to file a fourth set of papers, to dispute what I am saying that he is not conversant in Greek.

CHAIRPERSON: Yes, and do you remember when the time will expire

by when he should file his affidavit, or is it still coming or is it gone, you don't have to be exact, I'm just estimating.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Chair I filed my founding affidavit in 2016 immediately after I was re-arrested and prosecuted.

CHAIRPERSON: Yes, yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: These proceedings have been occasioned by delay after delay occasioned by the National Prosecuting Authority.

10 CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: First they filed the record, because we asked for the Rule 53 record, which they filed. A week later they added material ...(intervenes).

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: To the record.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then about two months later by then I had filed a supplementary affidavit.

CHAIRPERSON: Yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: After I filed my supplementary affidavit they filed more so-called evidence.

CHAIRPERSON: More material.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: More materials. To the extent that I think it was in 2017 or – ja 2017 Chair where they undertook that because Advocate Jiba also had to file an affidavit, they

then undertook I think that was roundabout August that she would file by August.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: When August came they dumped a whole lot of new material which she said she had forgotten about.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Which she had also considered five years prior to that.

10 CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: By now that was the third time that they had added material to the record.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And we did not agree with that because that is not what the Rule 53 requires of the prosecutors. And then we suggested to them that they should apply for condonation. They refused.

CHAIRPERSON: H'mm.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: We then told them well you will have to. And eventually they conceded that they will have to apply for condonation. I think that was around about October, November. But in spite of agreeing ...(intervenes).

CHAIRPERSON: October, November 2018 or 17?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: 17 Chair.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: But in spite of that – of them agreeing to file – to apply for condonation and I think it was November they only filed it in February the following year.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Eventually Chair we applied to have the matter struck off the role because we have appeared 20 times which 18 times I think we were in the high court.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And the case has not  
10 commenced yet.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And it is now after a period of almost seven years.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The matter was not struck off the role. The judge then Judge Lobe said what he is going to do he is going to take charge of these processes and he gave certain timelines.

CHAIRPERSON: Ja, yes.

20 MAJOR GENERAL JOHAN WESSEL BOOYSEN: All of us have adhered to those timelines.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So the NPA and so did we except on one or two occasions where we would engage with each other because the papers were quite comprehensive.

CHAIRPERSON: H'mm.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: With the appointment of the new NDPP Chair the whole review application or the filing of papers are being kept in abeyance by agreement between the two parties and the Judge President has been informed of that.

CHAIRPERSON: Okay. Okay. Okay so one is not sure what will happen with the matter in the light of the new NDPP but still pending?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Now Chair so obviously there is a new bus driver for lack of a better phrase.

10 CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: The respondent in this matter is the NDPP it is not the person.

CHAIRPERSON: NDPP. Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: So in the current NDPP will have to decide whether she wants to proceed with the matter.

CHAIRPERSON: Yes.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: And which event if she wants to proceed with the matter.

20 CHAIRPERSON: Ja.

MAJOR GENERAL JOHAN WESSEL BOOYSEN: Then Advocate Abrahams, Myema and Jiba will have to file.

CHAIRPERSON: File a ...(intervenies).

MAJOR GENERAL JOHAN WESSEL BOOYSEN: File a fourth set of papers if they take up my invitation.

CHAIRPERSON: Yes. Okay thank you.

ADVOCATE VERUSHKA SEPTEMBER: I do not – sorry I do note the time but there is just one particular point with your leave?

CHAIRPERSON: Okay.

ADVOCATE VERUSHKA SEPTEMBER: Because notwithstanding the fact that it is General Booyesen's statement that he has – that there has been a reauthorisation.

CHAIRPERSON: H'mm.

ADVOCATE VERUSHKA SEPTEMBER: For the charges under the helm  
10 of Advocate Shaun Abrahams. It is important to place on record that at page 182 of this bundle at paragraph 9 it is Gorvan J's finding or remark rather and I shall read:

20 "It is important to note that the above findings do not amount to a finding that Mr Booyesen is not guilty of the offences set out in counts 1 and 2 and 8 to 12. That can only be decided by way of a criminal trial. Setting aside the authorisations and decisions to prosecute also does not mean that fresh authorisations cannot be issued or fresh decisions taken to prosecute if there is a rational basis of these decisions."

CHAIRPERSON: Ja. Okay. Okay it is 17:00 so we will adjourn. I think Mr Paul Pretorius had requested that I consider that we start at 09:30 tomorrow morning and I think I may have agreed. But I want to change that back to normal time at 10:00. If you can live with that Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: Certainly Chair. It is your prerogative.

CHAIRPERSON: My – well it is more because I am not feeling too well today. So I might need a little bit of more time in the morning before I come here.

ADV PAUL JOSEPH PRETORIUS SC: Understood.

CHAIRPERSON: That is the only reason otherwise I would not hesitate that we start earlier if it suited everybody including Major General Booysen. So if it is fine let us start at 10:00.

10 ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Yes. Is that fine with you?

MAJOR GENERAL JOHAN WESSEL BOOYSEN: That is fine by me Chair.

CHAIRPERSON: Okay thank you. We will adjourn the proceedings for the day then until tomorrow morning at 10:00. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 3 MAY 2019

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

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