THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES (TRC CASES INQUIRY)

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:
Adv Ishmael Semenya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES
Adv T Masuku (SC) (for Adv Menzi Simelane)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv KD Moroka (SC) – DoJ representative
Adv Motlalepule Rantho (for SAPS)
Adv Ebenezer Prophy (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Nwabisa Ntshizana (for Adv RC Macadam)
Mr Tabata (for Adv RC Macadam)
Mr Lutando Gcilitshana (for Adv RC Macadam)
Adv Gwala (SC) – NPA representative

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MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzanzisa.com

PROCEEDINGS ON 19 MARCH 2026

CHAIRPERSON: Good morning. Today we are here for the cross-examination of Adv Ackermann. Mr Masuku, I believe you are on record for Mr Simelane, for Adv Simelane.

ADV MASUKU: That is correct, Chair.

CHAIRPERSON: Yes. Are we ready to proceed?

ADV MASUKU: Chair, we are ready to proceed.

CHAIRPERSON: Yes.

ADV VARNEY: Chair, before we proceed, yesterday you gave a direction to the parties cross-examining Mr Ackermann to meet and come up with rough allocations of time.

CHAIRPERSON: Yes. Mr Varney, I do not intend to put time limits for the cross-examination of a witness, but I do want to bring to the attention of counsel that cross-examination should be pointed. We are dealing with a witness with health issues and we may have to adjourn as is required by the witness when requested to do so, but I do not intend to put any time limitation to the cross-examination of Adv Ackermann, but I do wish to bring to the attention of the cross-examiner that we are dealing with a witness with health issues and cross-examination should be pointed.

ADV MASUKU: Yes, Chair. We accept entirely the importance of focused cross-examination; and bearing in mind that what you are telling us that the witness is not in good health. We accept that. We will try our best to accommodate all the variables that are unnecessary to ensure that the cross-examination goes smoothly and

that we reach a decent hour to get to the bottom of the truth.

CHAIRPERSON: We have five parties for the cross-examination of Adv Ackermann. We have Mr Simelane. We have the Department of Justice. We have the South African Police Service. We have the National Prosecuting Authority and we have the president. So, all those should be accommodated within two days. Please bear that in mind.

ADV MOROKA: If I may, Chair; I am sorry to interrupt. There is a list that was sent out about the sequencing of the cross-examination. I did indicate yesterday to Ms Thuko that we will not be ready to cross-examine this morning. We had arranged with the SAPS people that we would swap with them. I have been informed by Mr or Ms Motlalepule Rantho that they are stuck in the middle of nowhere in a train. So we will see how that goes. I am hoping that they will be here any time soon, but the train issue will be resolved. I was just mentioning it as a matter of housekeeping. Thank you, Chair.

CHAIRPERSON: Yes. It has been brought to my attention, Ms Moroka, that your cross-examination will only be conducted tomorrow.

ADV MOROKA: And for the record, it is going to be short. It is just that it is…

CHAIRPERSON: Thank you very much, Ms Moroka. I will keep you to your word in that regard.

ADV MOROKA: You most certainly may, Chair.

CHAIRPERSON: Thank you. I have ...[intervenes]

ADV VARNEY: Chairperson, I wonder if we can just respond to that question of sequencing. I am advised from Cape Town that Mr Ackermann has prepared for Mr Simelane and the minister today, because he assumed that that was the order. So he has not prepared for the other parties. So I just wish to place on record that this is inconveniencing Mr Ackermann and he wishes the commissioners to be aware of that. And if I may, it was my learned friend who asked for two weeks to prepare. So we are surprised that she now needs an extra day. We just wish to place that on record, Chair.

CHAIRPERSON: Yes. I mean is it your submission, Mr Varney that Adv Ackermann would not be able to be cross-examined today by any of the parties?

ADV VARNEY: Chair, on that score, I would need to make contact with the team in Cape Town to establish that.

CHAIRPERSON: Yes, please do so.

ADV VARNEY: Perhaps we can commence with Mr Simelane's cross-examination and during that period we will make contact.

CHAIRPERSON: Thank you. Mr Masuku?

CROSS-EXAMINATION BY ADV MASUKU: Thank you, Chair and thank you, Commissioners. Good morning, Mr Ackermann.

ADV ACKERMANN: [Indistinct] of the commission, relating to my evidence that Mr Mpshe told me that it was Mr Simelane ...[intervenes]

ADV MASUKU: Sorry, Mr Ackermann. I did not hear you from the

beginning. I do not think all of us; the recording was not coming well. So could you start from the beginning what you are saying? I was greeting you.

ADV ACKERMANN: Can you hear me now? Can you hear me?

ADV MASUKU: Yes, but I ...[intervenes]

ADV ACKERMANN: Can you hear me?

ADV MASUKU: I can hear you, Mr Ackermann, but I started off by greeting you. I said hello, Mr Ackermann.

ADV ACKERMANN: Good day, good morning. As I said, there is a matter that I wish to bring to the attention of the commission relating to my evidence that Mr Mpshe told me that it was Mr Simelane who informed him to remove me from the TRC cases. Last night I thought long and deep about that evidence and my diary is still at the NPA to desist, but I still thought about the matter. I realised that there might be room for a misunderstanding on my part.

When Mr Mpshe told me that he had decided to take me off the TRC cases, I told him that it was not his decision, but that he was instructed by the minister to do that. I had my reasons for saying that to him. And I gave him the background on how Mr Simelane had a meeting with Mr Pikoli to discuss my removal, how there were cluster meetings discussing my removal by ministers and Commissioner Selebi.

And then I said that is where the possibility came in for the existence of a misunderstanding. Mr Mpshe said it was Mr Simelane who told him about me being *persona non grata* and the ministers,

not the minister; and the ministers wanted to remove me or words to that effect and that these discussions with Mr Simelane took place at the airport. And Mr Simelane told him about these meetings.

Now the possibility does exist that Mr Simelane just explained to him the reasons why I should be taken off TRC cases, as he did probably with Mr Pikoli, but I do not exclude the possibility that Mr Mpshe did tell me that Adv Simelane requested my removal. I [indistinct] to both Mr Mpshe and Mr Simelane that my evidence and the matter caused problems, but as I say, there might be some misunderstanding between me and Mr Mpshe that what happened. That is what I want to state.

ADV MASUKU: Thank you, Mr Ackermann, but you understand that you are now under cross-examination, right?

ADV ACKERMANN: Yes.

ADV MASUKU: And in your own evidence you anticipated that this very area you have just dealt with would be a subject of this cross-examination.

ADV ACKERMANN: Of course.

ADV MASUKU: And what you just said you have pitched it at the level of misunderstanding, but I want to get to a point where we are comfortable with your view that this can be pitched at the level of a misunderstanding. We want to put questions to you that suggest that there was something more than just misunderstanding, that this was a contrived, carefully thought-through position that you took because you wanted a scapegoat for the problem that this TRC, this

commission is about.

ADV ACKERMANN: Now you said a lot. I did not look for a scapegoat.

ADV MASUKU: Yes, we want to show you. I will ask you questions then that will determine whether or not this is just a misunderstanding and not a deliberate, a deliberate ...[intervenes]

ADV ACKERMANN: I understand that.

ADV MASUKU: Yes. Have you ever met Simelane or spoken to him?

ADV ACKERMANN: Yes, I have.

ADV MASUKU: Do you recall the circumstances under which you met Simelane and can you tell the commission how you met Simelane; and if you recall the conversation you had with him, can you please tell the commission what conversations you had with him?

ADV ACKERMANN: Well, I cannot, but I have vague memories about discussion. So I know at some stage, after we have smoked a peace pipe, that I assisted him making certain decisions regarding a fraud matter in Durban. I think about another matter in Kimberley, fraud matters. He then asked me to go down to Kimberley and sort it out there. Anything that refresh my memory, I can answer you.

ADV MASUKU: Okay, but have you ever spoken to Mr Simelane about the TRC cases at all?

ADV ACKERMANN: I do not think so.

ADV MASUKU: So when you are thinking about why the TRC matters are not progressing as you would have wanted them to

progress and when you are dealing with the challenges that you were faced with in your handling of these cases, not once did you speak to Adv Simelane, either as DG or the NDPP. Am I correct?

ADV ACKERMANN: That is correct. I think you are quite right [indistinct]. I do not know at what stage you are talking about this. I am aware of what the directors of [indistinct] said about TRC matters. I knew their views. I knew Mr Selebi's view and I do not know which context, but if I knew about that, I would not go to him and ask him for assistance.

ADV MASUKU: Yes, but I want to put it to you that you have never discussed any TRC cases with Adv Simelane.

ADV ACKERMANN: I will agree. I will agree.

ADV MASUKU: You have never informed him of the difficulties you are facing as the head of the PCLU handling the TRC cases, of any difficulties that you are facing. You have never written a memo to him. You have never written a letter to him. You have never received a call from him about any of these TRC cases. Is that correct?

ADV ACKERMANN: That is correct, but can you just refresh my memory? When did he become the National Director of Public Prosecutions?

ADV MASUKU: No, no, I ask questions, Mr Ackermann. I have asked you a question and you have given an answer that I am comfortable with; that ...[intervenes]

ADV ACKERMANN: You know, it is important for me to note when

Mr Simelane was the National Director of Public Prosecutions. It is a simple question, not difficult to establish.

ADV MASUKU: No, no, no, it is not difficult to establish, I accept that, but would that cherish the answer you have given to the question I specifically asked you?

ADV ACKERMANN: Yes, if it is asked 2007, October or September 2007, why will I approach him?

ADV MASUKU: Sorry, then give your answer on the assumption that it was 2007. What would your answer be?

ADV ACKERMANN: Well, okay, after September 2007 I will not approach him and before 2007 I will also not approach him.

ADV MASUKU: So, on either timelines your answer is that you have never spoken to Adv Simelane either as DG or the NDPP on any cases that involved the TRC.

ADV ACKERMANN: No. If you give me the facts to refresh my memory, I might say yes.

ADV MASUKU: Okay. Now, so Mr Ackermann, it is quite surprising, because in your evidence on 5 March and it is in the transcript of that evidence on page 45, if you have access to that transcript; page 45 on 5 March 2026. Do you have the transcript, Mr Ackermann?

ADV ACKERMANN: [Indistinct], ja.

ADV MASUKU: I see there are hands showing on the screen. Is someone helping you there?

ADV ACKERMANN: Of course.

ADV MASUKU: Oh, okay.

ADV ACKERMANN: I have Mr Jos Venter to give me the documents. I have not got it.

ADV MASUKU: Okay. Now, are you on page 45?

CHAIRPERSON: On page?

ADV MASUKU: 45 of that transcript.

ADV ACKERMANN: Yes.

ADV MASUKU: Right at the bottom, I think it is from line 15, you say:

> "Now Commissioners, I am of the view that the affidavit Mr Simelane submitted to the commission is one of the most damning pieces of evidence to prove the existence of a political interference."

Can you point us out?

ADV ACKERMANN: Yes.

ADV MASUKU: Yes, can you point us out directly from that affidavit which aspect you regard as proof of existence of political interference?

ADV ACKERMANN: No, what happened, on top of my head, Mr Simelane stated in his affidavit that I am an apartheids prosecutor and that ...[intervenes]

ADV MASUKU: No, no, Mr Ackermann, no. No.

ADV ACKERMANN: Ja.

ADV MASUKU: You say in your evidence that the affidavit submitted by Adv Simelane to this commission is one of the most damning, not

the damning, not... you say most damning pieces ...[intervenes]

ADV ACKERMANN: The most. May I have the affidavit, please?

ADV MASUKU: Can I just finish, Mr Ackermann? – is one of the most damning pieces of evidence to prove the existence of a political interference. All I am asking you to do is to go to that affidavit that was submitted to the commission of Adv Simelane and point out to the commission evidence you suggest proves the existence of political interference.

ADV ACKERMANN: You know his affidavit by heart. Just go to the place where he refers to Ackermann being an apartheids prosecutor.

ADV MASUKU: Okay, I will stick with you with the recollection of that aspect. What about that allegation is evidence of political interference? How does that demonstrate, how does that support your view that it is a damning piece of evidence to prove existence of political interference? We will get to your view of whether you are not an apartheid prosecutor or not, but you have given that, you have pointed in your recollection what I will regard as your best recollection of evidence that you gave in respect of Mr Simelane's affidavit that proves the existence of political interference. What about what he say ...[intervenes]

ADV ACKERMANN: Ja, you must…

ADV MASUKU: Go ahead, Mr Ackermann.

ADV ACKERMANN: You must just go a step back. It is common cause that Pikoli and I, that we were obstacles in the prosecution of TRC cases.

ADV MASUKU: It is not common cause to us. It is certainly not common cause to Mr Simelane, but can you answer the question?

ADV ACKERMANN: Yes.

ADV MASUKU: What about in the affidavit of ...[intervenes]

ADV ACKERMANN: It will take me some time.

ADV MASUKU: Okay. We have time.

ADV ACKERMANN: Now, they had to find the reason that ...[intervenes]

ADV MASUKU: Who?

ADV ACKERMANN: Well, the persons who ...[intervenes]

COMMISSIONER KGOMO: Mr Masuku, Mr Masuku, when the witness is explaining, you should not interrupt him.

ADV MASUKU: No, Chair, I am just clarifying a point that is necessary for the witness answer. I am asking; he says when 'they' and I am asking ...[intervenes]

COMMISSIONER KGOMO: Mr Masuku ...[intervenes]

ADV MASUKU: I am asking who.

COMMISSIONER KGOMO: You can follow it up.

ADV MASUKU: Well, I am not interrupting then, Chair if it is a relevant question I am asking. He can clarify it as he answers the question.

COMMISSIONER KGOMO: I am saying you interfered.

ADV MASUKU: It is okay.

COMMISSIONER KGOMO: You interrupted.

ADV MASUKU: I apologise, Commissioner Kgomo.

COMMISSIONER KGOMO: Okay.

ADV MASUKU: I apologise, Mr Ackermann if I interrupted you. Please go ahead.

ADV ACKERMANN: I am of the view there was a common purpose between, amongst Mr Selebi, Mr Simelane, the minister, the cluster ministers to get rid of me. If you do not agree with that, you say 'I do not agree'.

ADV MASUKU: I am not the one under cross-examination. Give your evidence.

ADV ACKERMANN: They took various steps to get rid of me. They forged letters to discredit me. They had my computer to discredit me. They did not succeed and their last resort was to say I am an apartheids prosecutor; and therefore, the cluster is not happy with me and I should be removed from the TRC matters. Now, the most damning evidence; if they proved that I am an apartheids prosecutor, I have no problems for them to remove me. It must be a valid reason. If they cannot prove that I am an apartheids prosecutor, then the obvious question arises. Why did they do that? There can be ...[intervenes]

ADV MASUKU: Mr Ackermann…

ADV ACKERMANN: Ja?

ADV MASUKU: No, sorry, I am interrupting you again, but I want to heed Commissioner…

CHAIRPERSON: Kgomo.

ADV MASUKU: Kgomo's admonishing not to interrupt you, but you

are making very serious allegations that I do not want to forget in sequence that you are accusing my client, Mr Simelane of. Are you accusing him of having forged a letter against ...[intervenes]

ADV ACKERMANN: I do not know who forged that letter, but at least ...[intervenes]

ADV MASUKU: But are you accusing Mr Simelane of having forged a letter?

ADV ACKERMANN: He did not forge that. He did not forge it.

ADV MASUKU: Thank you. Are you also accusing ...[intervenes]

ADV ACKERMANN: That ...[intervenes]

ADV MASUKU: Just a moment.

ADV ACKERMANN: Can I proceed? That letter was in possession of the police. Mr Selebi was the commissioner; and Mr Selebi and Mr Simelane, looking at the correspondence, were very close to each other ...[intervenes]

ADV MASUKU: No, but ...[intervenes]

ADV ACKERMANN: Writing letters.

COMMISSIONER KGOMO: Mr Ackermann, if the question is: did Mr Simelane forge the letter, the answer can be simply no or yes; and leave it.

ADV ACKERMANN: No. I say no.

ADV MASUKU: Are you also accusing Mr Simelane of having been party to the forgery of the letter? He was a group. He was part of a group that forged the letter. You have mentioned the minister. You mentioned ...[intervenes]

ADV ACKERMANN: No.

ADV MASUKU: Okay, thank you. You are also not accusing Mr Simelane of having hacked your computer?

ADV ACKERMANN: No.

ADV MASUKU: You are only accusing Mr Simelane of having removed you or at least engineered your removal. Is that what you are accusing him of?

ADV ACKERMANN: Yes.

ADV MASUKU: Okay. We will get to that, but can I just go back to the evidence you gave at the beginning when you said you recall having a peace-pipe discussion with Mr Simelane. Do you recall that?

ADV ACKERMANN: Ja.

ADV MASUKU: Can you tell us what circumstances would have occurred in that kind of discussion in which you were smoking a peace pipe?

ADV ACKERMANN: Yes ...[intervenes]

ADV MASUKU: I can tell you Mr Simelane does not smoke at all.

ADV ACKERMANN: Ja, but I am quite certain you know what I meant and he knows.

ADV MASUKU: Yes, I do. I do.

CHAIRPERSON: Mr Masuku, that is an expression.

ADV MASUKU: Yes.

CHAIRPERSON: I am sure you know it.

ADV MASUKU: I am sure that Mr Ackermann knows that. I was just

pulling his leg.

CHAIRPERSON: I also do sometimes smoke a peace pipe and I do not smoke.

ADV MASUKU: Okay. So we are in good company. Anyway, Mr Ackermann was about to explain his peace pipe smoking session with Mr Simelane.

ADV ACKERMANN: Ja. Can you just refresh my memory again? When did he become the national director?

ADV MASUKU: It was end of 2010.

ADV ACKERMANN: End of 2010?

ADV MASUKU: Yes, 2011.

ADV ACKERMANN: Okay.

ADV MASUKU: Does that complicate your life, Mr Ackermann?

ADV ACKERMANN: Then at least I know I did not discuss any TRC matters with him, but that is not what you are asking me. What you are asking me is about the peace pipe.

ADV MASUKU: Yes.

ADV ACKERMANN: Now, I was also the head and managing the Missing Persons Task Team. I was actively involved there; and when he arrived there, it must have been that time. Madeleine Fullard came to me and say she believes that I am going on a holiday trip to Austria. They have bones or a skeleton that they wanted to analyse for DNA and the only people that can do it is the teams in Herzegovina and she asked me is it possible for me to transport these bones without certificates transporting human bones and

deliver it somewhere in Europe close to Herzegovina.

I said to her: listen, I was not on my itinerary list to go to Herzegovina or Croatia, but what I will do, I can see if I can buy a budget airline ticket from Vienna to wherever close to Herzegovina and then they can come and fetch these bones, which I did. I got a cheap ticket. I think it was something like 50 dollars, flew down to Split, went to stay in a hotel.

The people from Herzegovina drove through, met me at the hotel and I delivered these bones, skeletons. I went back to Vienna, had a holiday there, got back to Pretoria and then submitted a claim. The claim was minimum. It was a 50 dollar ticket, airline ticket. It was a 3-star hotel. It was the transport from the airport. I do not think; the amount was under 10 000, but you know if I recall, it must be 6 000, 7 000. So, I submitted and explained everything in this why I asked for the approval only now and if that is okay. You know, I received a letter back from him that he does not approve ...[intervenes]

COMMISSIONER KGOMO: From him, who? From him, who?

ADV ACKERMANN: Any…

COMMISSIONER KGOMO: Mr Ackermann ...[intervenes]

ADV ACKERMANN: I cannot hear.

COMMISSIONER KGOMO: Mr Ackermann, you say ‘him’. I say from him, who?

ADV ACKERMANN: This is Simelane writing to me that he is not going to approve it. I did not do it in time. Now, I knew that Mr

Simelane was not happy with me and I did not want to make a fuss about it, because I realised that he is looking for a confrontation and I left it at that. 6 000, 7, 8 I spent and did it for a good cause. I may add that when the bodies or whatever were handed over, there was a ceremony and Minister Radebe made big hoo-ha in his speech about how the Missing Persons are working on these cases and they make use of Herzegovina and all these people. I did not say a word. I took it as a loss, a bit as experience, write it off as experience.

At some stage Mr Simelane then asked one of my juniors – and I am talking under correction, it is Mr Shaun Abrahams; to have coffees, lunch or whatever with him. I do not know what transpired there. Mr Abrahams came back to me. He told me he had this coffee or lunch. I just gave him a look. I did not ask him what it is all about, because I know Mr Abrahams is a loyal employee of me and he will not backstab me.

After about a week or two Mr Simelane requested me to go to the International Prosecutors Association, a conference in The Hague. It was like he was giving me a holiday for a week.

COMMISSIONER KGOMO: Was that part of the peace pipe?

ADV ACKERMANN: That was the peace pipe part and I realised, whether rightly or wrongly, that he realised that his perception of me was not right; and that is why he offered me this trip. Of course I must say, this trip there was also some interaction I had with security intelligence agencies of Rwanda that I had. On his instructions I had to discuss certain matters with them, but they were also at this

conference.

That is a peace pipe and then suddenly out of the blue he called me in to assist him in this fraud matter. I do not know the name, Penny something came to mind and I explained to him that the charge sheet, there are too many accused. He cannot conduct a prosecution with 20 or 10 accused. You never go to court. You will always find that there is one person not there and there will be a remand; and he agreed with me.

Regarding the Kimberley matter, there were quite a few fraudulent matters that I then... I think I drafted the indictment, but I did not conduct the prosecution. So, in fact, I was the only one that was happy when Mr Simelane made the following decision and I thought it was a very, very good decision. Conferences should not be held at 5-star resorts to discuss strategy. He was the one that says from now on meetings will be held at the VGM Building and you can bring your own sandwiches.

I just laughed, because I never went to these conferences or strategic building, the team buildings and I was under the impression that we work well, notwithstanding the fact that there were articles saying that Ackermann is a prosecutor, apartheids prosecutor. That is it. Anything else you would like to know?

ADV MASUKU: No.

ADV VARNEY: Chairperson, sorry ...[intervenes]

ADV MASUKU: Can I just ...[intervenes]

ADV VARNEY: Chairperson, sorry to interrupt, but we do need to

clear up the starting date of Simelane's period at the NPA and I hope it does not make any difference to the evidence, but when Mr Masuku asked Mr Simelane when he started, he said end 2010 and I think beginning 2011. But according to Mr Simelane's statement, paragraph 1, it is actually 2009 and I believe the official date was 1 December 2009. We just wish to place that on record and hope that it does not interrupt the evidence.

CHAIRPERSON: Yes, thank you. Mr Masuku?

ADV MASUKU: Yes, I will revisit that aspect later on, but there are more important issues that I need to canvass with Mr Ackermann and I have to put these questions to him. On page 42 of the transcript, Mr Ackermann, of the transcript; are you there?

ADV ACKERMANN: Ja.

ADV MASUKU: You were dealing with the fact that at some point when you were preparing your statement for this commission, you had to decide what goes into that statement and what goes out of that statement. You recall that? You recall the evidence?

ADV ACKERMANN: Yes, yes, Mr Varney came to see me at home.

ADV MASUKU: You recall it?

ADV ACKERMANN: Ja ...[intervenes]

ADV MASUKU: The answer is yes.

ADV ACKERMANN: Yes.

ADV MASUKU: Thank you. And then I want to take you to paragraph, just from paragraph 10 on page 42 where you say ...[intervenes]

CHAIRPERSON: Line 10.

COMMISSIONER KGOMO: Line 10.

ADV MASUKU: Line 10, I beg your pardon; line 10, just maybe starting from above line 10.

> "Of course then I give evidence here. I stated that Mr Mpshe told me when I said it is the minister; he said no, it was Mr Simelane who told him. Now I asked the council to remove that and I have my reasons and I wish to give you my reasons why I did that. Commissioners, in my life I base all my decisions on probabilities. Every decision I make, I take the probabilities and I anticipated a certain scenario; and the scenario that I anticipated is that there will be a civil court case in the Thembi Simelane matter and that I will have to be a witness in that case and my evidence will be to the effect that Mr Mpshe told me that it was Mr Simelane who told him to take me off the TRC cases. I then had to take a decision as to what are the probabilities that Mr Simelane was going to admit that he informed Mpshe. On the probabilities I decided that it was Neil. I have previous information about Mr Simelane; Commissioners, of course that is my opinion. That is how I saw it at the time making

> my decision and I was not so certain about his. I read quite a few court cases and there was a Ginwala Commission and there was an interview I had with some newspaper. I think it was the Daily Mail. In any event, I made the decision that he was not, I anticipate, he was not going to admit it, rightly so, because I see he does deny it."

What is very hurtful for Mr Simelane about your evidence is what follows.

> "My and I say, rightly or wrongly, my opinion was then that he was not, that he was going to be untruthful of that subject."

You ...[intervenes]

COMMISSIONER KGOMO: Just a moment. Chair, I do not know. I have page 42. Then it goes to page 44. I do not have page 43.

CHAIRPERSON: Oh, 43. Is it not double-sided?

COMMISSIONER KGOMO: But carry on, Mr Masuku. We will sort it out.

ADV MASUKU: And then you say that Mr Simelane was going to be untruthful. Did you appreciate saying that ...[intervenes]

ADV ACKERMANN: [Indistinct].

ADV MASUKU: Did you appreciate saying that, given what you just said at the beginning of your evidence? Did you appreciate the impact of your statement that Mr Simelane was going to be

untruthful? Did you appreciate what implications that has on him professionally?

ADV ACKERMANN: No, that was the reason why I had certain parts removed and I am still of the view that he is a truthful person.

ADV MASUKU: And what are you basing that on, Mr Ackermann?

ADV ACKERMANN: Base that?

ADV MASUKU: What are you basing your view that Mr Simelane is an untruthful person? What are you basing that on?

ADV ACKERMANN: Let us start with his Ginwala Commission.

ADV MASUKU: You see, Mr Ackermann, you in fact anticipated this. I will show you who is untruthful in this case; and it is you, because in the first place you do not tell the truth about... in your statement to this commission. You do not tell the truth. What you do is; you decide what you are going to do and you say you work with probabilities; and that is why you instruct your attorneys to remove the stuff about Simelane that you had put in there. You asked them to remove it, because you were working with probabilities. You are not working with the truth. If you believed the truth, you would not have worked with probabilities. You have simply told the truth as you know it. You were not telling the truth when you were asking your attorneys to remove what you then came back in oral evidence and mentioned. You were untruthful.

ADV ACKERMANN: What is the question?

ADV MASUKU: I am putting a statement to you. You are the one who is untruthful. You are untruthful, because you work with

probabilities. You do not work with the truth. You decide to wait until you get a response from Mr Simelane and then decide what to say to the commission in oral evidence. Because if you believe that what you know is the truth, you would have put it in your statement and allowed Mr Simelane to respond to it in the statement, but you decided to remove it, to remove what you said in oral evidence that was not in your written statement, which is that Mr Simelane is the one who said that, who said that you… that Mr Simelane was going to deny the allegation that he had instructed Mr Mpshe to remove you.

ADV ACKERMANN: Are you finished?

ADV MASUKU: Mr Ackermann, I am putting a statement to you. You are a senior counsel. Behave like one. You know when I put a statement to you.

ADV ACKERMANN: Can I answer that?

ADV MASUKU: Answer. You can respond.

ADV ACKERMANN: Yes. I gave the reasons why I did not put it in. If there was a court case on the probabilities, I was of the view that both parties may deny that. Then I was of the view that the court will not accept my evidence and they will accept the evidence of these two prominent people in the legal fraternity and I did not want to give evidence on what happened. What changed my mind was when I saw that the presiding judge was going to be a person of integrity that I can trust to make the correct finding. That is the reason why I then disclosed that.

ADV MASUKU: Mr Ackermann, when you put a statement under

oath, do you accept that you are supposed to be telling the truth, nothing else but the truth?

ADV ACKERMANN: I did tell the truth.

ADV MASUKU: No, what you did, Mr Ackermann is that you told a convenient truth in the sense that you selected what you wanted to tell the commission, based on your predisposed views of Mr Simelane, not on the truth.

ADV ACKERMANN: Where did I not tell the truth?

ADV MASUKU: Because Mr Ackermann, right at the beginning of your long statement you gave at the beginning of your evidence today, you came to the conclusion that you pitched it at saying that it was a misunderstanding. Mr Simelane is likely not to have been the one that told, well, that Mpshe is not likely to have told you that Mr Simelane is the one who asked that you be removed on the TRC matters. Do you recall that?

ADV ACKERMANN: You know, I ...[intervenes]

ADV MASUKU: Do you recall that?

ADV ACKERMANN: Because I want to do the right thing.

ADV MASUKU: Wait, wait, wait. I think we must do this properly. Do you recall that?

ADV ACKERMANN: Refresh my memory. I have a very short-term memory span.

ADV MASUKU: I think you are probably correct, Mr Ackermann, because you said at the beginning of your evidence that you have reflected on the statements you made, unfortunate statements you

made about Mr Simelane. And having read that Mpshe has said, you come to the conclusion that there is room for misunderstanding; and the misunderstanding that you want the commission to accept is that you were wrong that, you might be wrong, not that you are wrong, because you do not say that you are wrong. You might be wrong. You might be wrong that Mr Simelane or Mr Mpshe told you that Mr Simelane was responsible for your removal. You recall that?

ADV ACKERMANN: Yes.

ADV MASUKU: Right. So I am saying to you that if you read where I have just referred you to, the long paragraph that I read, there you were not, you were looking at strategies of presenting information to the commission; and your strategy was that you tell your attorneys or whoever was helping you draft the affidavit, all the information; and they put that information in. One of the, some of the information that they put was what you told them about Mr Simelane having been responsible for your removal. Is that correct?

ADV ACKERMANN: Yes.

ADV MASUKU: And then at some point when you started to do your calculations, your probabilities and trying to figure out how it would look like, you decided: 'no, actually take that out. Take that out, because Mr Simelane and Mr Mpshe, if they do not tell the truth, then I am in trouble.' The credibility is going to depend on a judge. And you referred to that judge as a judge you can trust. You do not refer to a judge. You say a judge that you can trust. Do you understand what that means?

ADV ACKERMANN: That is correct, I ...[intervenes]

ADV VARNEY: Chair, I do not wish to interrupt the proceedings, but just so that we are on the same page. We need to be clear that the affidavit in question is not the affidavit before the commission, but the 2015 affidavit.

CHAIRPERSON: Yes, I think Mr Ackermann understands that.

ADV VARNEY: Yes, but I understand from Mr Masuku that he is referring to the affidavit that Mr Ackermann made before this commission.

CHAIRPERSON: No.

ADV VARNEY: Thank you, Chair.

COMMISSIONER KGOMO: Mr Masuku, I may have missed it, but did Mr Ackermann not say a judge is a judge of integrity, not a judge that he can trust? Maybe he said both of them, but he did speak of integrity.

ADV MASUKU: Commissioner Kgomo, I may be wrong to have gone as far as saying a judge you can trust, but I believe that it is a judge whom he can trust to make the right decision.

COMMISSIONER KGOMO: Okay.

CHAIRPERSON: Yes, because he has integrity.

ADV MASUKU: Yes.

COMMISSIONER KGOMO: Yes, okay.

ADV MASUKU: Just from…

CHAIRPERSON: But Mr Masuku, just to clarify the issue that Mr Varney has raised; you are talking about the affidavit of 2015 and not

the one that was before the commission.

ADV MASUKU: Yes, but what I am saying is that when he gave his evidence; that is why I read from the transcript. He himself says 'I had to instruct my attorneys to remove certain information in my affidavit' and I believe that is the affidavit of this commission, because that is... I mean we can go. We can go to that where he specifically says that 'I then…' Okay, he said on page 43, just above 10.

> "Who is going to be the presiding officer? The judge; and he will have to make certain decisions. He is going to make a credibility decision on two prominent persons in the legal fraternity, which is something they said already. Now against that, should he believe me, the word of a prosecutor of the old regime? I then made a decision that the odds are against me."

Now, you made a decision to exclude certain information about Mr Simelane.

ADV ACKERMANN: I did not. Can you read my affidavit what I stated?

ADV MASUKU: Yes, Mr Ackermann.

ADV ACKERMANN: The affidavit, the 2015 affidavit, what did I state?

ADV MASUKU: Yes, but are you on page 43 of the transcript?

ADV ACKERMANN: Yes, I have 43.

ADV MASUKU: Right. Can you then go to the middle of,

between…?

ADV ACKERMANN: Yes.

ADV MASUKU: It is the middle of 10 and 20.

"Now against that, should he believe the word of a prosecutor of the old regime? I then made a decision that the odds are against me. It is a two-to-one decision. Two will state that I am not telling the truth and it must be borne in mind that at that stage I have been framed many a time and I went through the mill in the department. Many false claims have been lodged against me during the time of my career. So I made the decision just to say it can be safely assumed that he received instructions from political instruction. I even recall exactly what I said. Now Commissioners, I also took out another, I took out of course another insurance against the evidence of Mr Mpshe and Simelane. In my affidavit to the commission I also deliberately left out a very important fact that Mr Mpshe told me. He said that the meeting between himself and Simelane to discuss my removal from TRC cases took place at an airport and he stressed that it was not a formal meeting. Now it would be very easy for the commission investigators to establish from

> the flight records whether Mr Mpshe and Simelane were together at an airport between the suspension of Mr Simelane, the date I was removed from my duties."

I think that is what it means. And then the chairperson says: "which airport?"

> "He did not state. I did not want to elaborate on that. He just said it was at the airport. Now how I remember it so vividly is; at the time I thought by myself, in my experience that is where underhand handovers and meetings take place usually at the police, at the petrol depot, on the highway, there were patrol stations or at airports, but of course I did not tell him that, but that is why I remembered it was at the airport. Now I was right in that Mr Simelane denied that he told Mr Mpshe that, or no, he said in his statement he never had any discussion with any person. I do not know. I am waiting for the statement of Mpshe to hear what he is going to say about the matter, whether he is going to deny that he told me it was Mr Simelane."

So, I am saying when you read that statement, you do not have to go to the affidavit of 2015. When you read what you just said before this committee, this commission, you said you specifically took out facts

that you had pleaded elsewhere in an affidavit or that you had told somebody; and you place them here as evidence, stuff that you had taken out in an affidavit or you had instructed be removed from an affidavit, but ...[intervenes]

ADV ACKERMANN: I made sure that I did not commit perjury.

ADV MASUKU: No, if you are a man with ethics, Mr Ackermann, which I think you are, you would know that that is not how you draft an affidavit or that is not how you present the truth. You do not present the truth as a strategy. You present the facts as you know them; and the facts as you know them are not presented here. What you did was engage in sophistry, engage in some devious way of trying to present information that would suit your view, your predetermined view; and that source of that view we will probably discover later on. Your source of your view that Mr Simelane is inherently untruthful, because that is what you mean by he is dishonest.

ADV ACKERMANN: That is what I thought that he is a dishonest and I am still of that view.

ADV MASUKU: No, we cannot help you with that, Mr Ackermann. Your thinking is your thinking. We cannot help you with that kind of thinking. We just asked you.

ADV ACKERMANN: Well, [indistinct].

ADV MASUKU: Ja, we cannot help you with that kind of thinking. It is tragic that you think that way, but you have no basis ...[intervenes]

ADV ACKERMANN: Any person ...[intervenes]

ADV MASUKU: Can I finish, Mr Ackermann? We cannot help you with your thoughts about Mr Simelane, because your thoughts are perhaps a reaction to your view that you are not an apartheid prosecutor; and we will get to that point. Is that the reason you are angry with Mr Simelane; that he reported that there are people in the cluster who believe that you are an apartheid prosecutor? Are you angry with him on that?

ADV ACKERMANN: No, worse things have been said about me.

ADV MASUKU: So you are okay being called an apartheid prosecutor?

ADV ACKERMANN: I beg your pardon?

ADV MASUKU: Are you okay with being called an apartheid prosecutor?

ADV ACKERMANN: I cannot hear you.

ADV MASUKU: Are you okay with being called an apartheid prosecutor?

ADV ACKERMANN: No, I am not happy about that.

ADV MASUKU: But Mr Ackermann, you are an apartheid prosecutor. Why are you not okay with it?

ADV ACKERMANN: I just want to go back to why I think Mr Simelane is not a truthful person.

CHAIRPERSON: No ...[intervenes]

ADV ACKERMANN: You only have to read the transcript ...[intervenes]

CHAIRPERSON: Adv Ackermann, Adv Ackermann, let us try and

confine ourselves to the questions which are being put to you. Are you okay at being called an apartheid prosecutor?

ADV ACKERMANN: No.

ADV MASUKU: And why is that, Mr Ackermann?

ADV ACKERMANN: Well, apartheid prosecutor has a bad connotation.

ADV MASUKU: Okay. According to your professional, sorry, your CV or what do they call it, your background; you were a prosecutor during the apartheid state.

ADV ACKERMANN: That is correct.

ADV MASUKU: You served the apartheid state with distinction. You were regarded as a very meticulous prosecutor. Were not you?

ADV ACKERMANN: It is their views.

ADV MASUKU: Sorry?

ADV ACKERMANN: I am not sure, yes. I do not know what they... I mean, you stated it, not me.

ADV MASUKU: You were a good prosecutor during the apartheid system.

ADV ACKERMANN: I did my best.

ADV MASUKU: And the state, the apartheid state would have trusted a good prosecutor like you to give effect to its apartheid laws. Is that not right?

ADV ACKERMANN: I do not know what they thought.

ADV MASUKU: Sorry, are you saying you did know? What is it that you do not know?

ADV ACKERMANN: Well, what the apartheid state thought.

ADV MASUKU: No, Mr Ackermann, you are not naïve. You know what the apartheid thought about good prosecutors like you.

ADV ACKERMANN: I do not know.

ADV MASUKU: That they can be trusted to enforce apartheid laws.

ADV ACKERMANN: I did not enforce apartheid laws.

ADV MASUKU: Did you not prosecute during the apartheid times?

ADV ACKERMANN: That is correct.

ADV VARNEY: Chair, I object to this line of questioning. If Mr Masuku's has information that in a particular case Mr Ackermann enforced apartheid, he must put that up. It cannot be put in a general fashion.

CHAIRPERSON: Mr Masuku?

ADV MASUKU: I am not going to respond to Mr Varney's directive as to how I should cross-examine Mr Ackermann. I do not need to point Mr Ackermann to a specific case. He has a vast experience as an apartheid prosecutor. It is shocking that he is in fact wanting to turn it around and make it my responsibility to prove that he was a servant or very loyal servant of the apartheid state. It is a very…

COMMISSIONER KGOMO: Mr Masuku, can I just ask you this? I do not know. The Chair can rule. Does Mr Varney have a right to object? He has objected and the Chair can rule on that.

ADV MASUKU: Yes, I have given my response, Chair.

CHAIRPERSON: Yes. I think Mr Varney's objection is overruled.

ADV MASUKU: Thank you, Chair.

ADV ACKERMANN: Chair, may I interpose here? They ask me whether I was a loyal servant of the apartheid laws; and I said no. M'Lord, ag, Chair, you get two kinds of laws – just laws and unjust laws. A just law you have to obey. It is your moral duty to obey it. An unjust law you do not have a moral duty to obey it, but not to obey it will have consequences. And I have refused to obey unjust laws.

In 19… I was a young prosecutor; it must have been 1977, 78. The Group Areas Act was still in force. Dockets of the Group Areas Act landed on my desk. I refused to prosecute any person. My senior referred it to Mr Neil Rossouw who then called me in and told me that is the law. And I said to him I am not going to apply that law anywhere; and that was held against me. That is it.

ADV MASUKU: And how was it held against you, Mr Ackermann, because from what you say, you were in fact promoted to a fairly high office as a deputy AG, if I recall, in Durban and here in Gauteng.

ADV ACKERMANN: That is correct.

ADV MASUKU: How did you suffer for your… yes? So how did you suffer the consequences of your objection to the Group Areas Act?

ADV ACKERMANN: Well, I do not know what is written in my report. I am quite certain you have sight of all my... what is it called; quarterly reports about me. I do not know. You ask me. I did not ask them, the authorities that be to promote me.

ADV MASUKU: You wanted to be promoted to higher office, so you could enforce the laws that you were objecting to.

ADV ACKERMANN: Yes. There must be somebody to stand up to

these laws.

ADV MASUKU: It is an astonishing statement you are making today. You know that if you were a conscientious objector of the apartheid state, you would not have served it at all as a prosecutor.

ADV ACKERMANN: You are making a grey area.

ADV MASUKU: Elucidate.

ADV ACKERMANN: Let me read. I would like to read something [indistinct]. I have one. Mr, I think, Masuka.

ADV MASUKU: Masuku.

ADV ACKERMANN: I am going to read ...[intervenes]

ADV MASUKU: Masuku.

ADV ACKERMANN: Masuku, sorry, [indistinct] names.

ADV MASUKU: No, it is okay. It is okay, Mr Ackermann.

ADV ACKERMANN: I am going to read out just 10 lines about the person.

> "After matriculating, he joined the Department of Justice in a low level position, serving as support interpreter and a messenger. Over the 17 years he worked continuously in [indistinct] magistrate's court across Natal, beginning with nine months in a rural, Impendle, then several years in Harding and then stints in Camperdown, Howick, Stanger and Ndwedwe. During his early years as an interpreter and clerk, he developed a growing love for law as means of solving at least some of

> the problems that confronted our people and he became convinced that the legal education was a prerequisite to influencing the justice system. In 1970 he enrols a part-time correspondence programme at University of South Africa and he graduated with B.Iuris, LLB at the same time. He rose through the ranks of the magistrate's offices, prosecutor and magistrate."

Do you know who that person was?

ADV MASUKU: I am sure you know.

ADV ACKERMANN: Yes. It is a former Chief Justice of the Republic of South Africa, Pius Langa.

ADV MASUKU: Yes, but that ...[intervenes]

ADV ACKERMANN: He worked for this apartheid state for 17 years.

ADV MASUKU: We are talking about you, not the former Chief Justice Pius Langa. You have no idea what Justice Pius Langa went through during the apartheid system. You ...[intervenes]

ADV ACKERMANN: I know.

ADV MASUKU: You cannot put yourself at the same level as the ...[intervenes]

ADV ACKERMANN: I know.

ADV MASUKU: Ja, but please ...[intervenes]

ADV ACKERMANN: I know. I have been on ...[intervenes]

COMMISSIONER KGOMO: Sorry. Sorry, Mr Ackermann, Mr Masuku. I do not know how far you would want to pursue this line of

apartheid prosecutor. Are we going to go to apartheid judges and the negotiations about judges who served pre-1994? All had to, you know, retire and then negotiations that follow. It is difficult to define apartheid prosecutor, apartheid spy. I am not so sure where this is going to help the commission, but I am not saying, I am not saying do not pursue the line. I just cannot see it.

ADV MASUKU: Thank you, Justice Kgomo. The commission is looking at a very important, but difficult time of South Africa. It is looking for reasons why cases that were supposed to be prosecuted during that, for crimes committed during the apartheid times were not prosecuted.

And one of the reasons that Mr Simelane gave which is the reason why we are cross-examining Mr Ackermann; Mr Simelane said that there was general distrust of Mr Ackermann because of his apartheid past. Mr Ackermann has made very scandalous, unfair and unfortunate allegations against Mr Simelane for a debate that occurred during that time, which is a legitimate debate, because as you would know, Chair, who prosecuted these cases, matters? It was not going to be acceptable that... it was not competency alone that was important.

For example, if the prosecutor of these cases were assigned to, the prosecutor of the Rivonia trials, that would have caused problems. And so the debate about whether Mr Ackermann was an apartheid prosecutor or not, we are suggesting that was a legitimate debate. It was not a frivolous debate, as Mr Ackermann would like to

call it or a debate that was scandalising him. It was who prosecuted and what steps are they taking to prosecute? Who are they prosecuting? That was as important as the competency of that prosecutor.

So, I think the reason why this issue of apartheid prosecutor is very difficult allegation for Mr Ackermann to receive is because obviously nobody wants to be told they were racist, they supported the racist system. Now we are all, you know, in a constitutional democracy. There are no longer racists and there are no longer apartheid prosecutors, but he was an apartheid prosecutor. That is just as simple as that.

COMMISSIONER GABRIEL: Mr Masuku, I do not have Mr Simelane's statement in front of me right now. I know it has been delivered to the commission. Please remind me. Is it the version of Mr Simelane that the role of, let us call it apartheid prosecutors and the dissatisfaction of Mr Ackermann being an apartheid prosecutor is one of the reasons why he was removed?

ADV MASUKU: It is not just one of; it is not just Simelane who said it. The discussion about him; he himself says the minister wanted him out. He says DGs wanted him out. He says they even fabricated things to get him out. So, it is not just Simelane who says it, but Simelane's affidavit says: I was in a meeting where I was, we were dealing with why the TRC unit was not getting the investigative support that it needed in order to move forward with the prosecutions. And one of the reasons raised during that meeting was the distrust

that they had of Mr Ackermann.

He was then asked to go and get a meeting with Pikoli, Adv Pikoli and he scheduled that meeting with Adv Pikoli. He says that in the statement. And he said, Mr Pikoli, the DGs wanted to meet with you or the cluster wants to meet with you over this issue that is trapping the ability of investigators to support the TRC investigation; and it is something to do with Mr Ackermann and the issue of Mr Ackermann is a problem. And Mr Pikoli there and then told him that he was not going to remove Mr Ackermann, but agreed to go to a meeting where that discussion was going to take place. Mr Simelane says then that meeting took place and the discussion happened.

So Mr Ackermann would not be; that discussion about his past unfortunately is a discussion that is part and parcel of the TRC process. It is uncomfortable and I understand Justice Kgomo that right now it is not, we will go to apartheid judges. We will go to apartheid this and apartheid that. At some point the country had to take a decision that the enemies, those who served the apartheid system would now serve the constitutional state and Mr Ackermann was one of them, but for Mr Ackermann to deny that he was a servant of the apartheid state is extraordinary.

CHAIRPERSON: Yes, Mr Masuku, you can only take it so far in your cross-examination.

ADV MASUKU: Yes, no, at that point, Chair I completely accept that I will beg down and leave it there.

CHAIRPERSON: Yes. I think you have made your point.

ADV MASUKU: But I just want to ask a couple more questions. They are not more than three, Chair on this apartheid issue, because it is very important, because we believe that it explains why there is such hostility from Mr Ackermann towards Mr Simelane. So Mr Ackermann, you heard the discussion or rather the remarks I was making in response to Justice Kgomo's question about my questioning. I do not know if you want to say anything about that, but if not ...[intervenes]

CHAIRPERSON: No, you must not invite him to say anything. You are speaking to the commissioner.

ADV MASUKU: Thank you, Chair. Mr Ackermann, can I then ask; would you regard yourself as a conscientious objector while you were a prosecutor; that you were in the same league as those young, white citizens who refused to go to serve the army, because they did not believe in the system? Would you regard yourself at that level?

ADV ACKERMANN: You know, ideological I am now looking at your question that was put. The ideological and ethical objections did not even enter my mind. I was 23 years old. I was married, no financial backing and I had to put food on the table. I am not a political animal, but I have genes in every cell of my body which I inherited from my mother that told me what is wrong and what is right. I know that. I have learnt according to my own personal values and my own personal principles.

You know, when I stood in that court in Johannesburg when I was 24 years old, arguing that the police is responsible for the death

of Vilakazi, I knew there were going to be consequences and there was consequences. I was transferred within a month from the Johannesburg Magistrate's Court to the last outpost, English outpost in South Africa and that is Pietermaritzburg. And that is something, at least that what Adv Bizos told me was, makes you feel good about yourself; that you have done something. I never ...[intervenes]

ADV MASUKU: But Mr Ackermann.

ADV ACKERMANN: The question is; did I ever object? Can you perhaps tell me where can I go to as a 24-year old? Do I write to the minister and I say: I object to this job you are giving me? Do I go to the magistrate, say: I object to this where I am working or do you expect me to resign with a bursary? You know, they gave me a bursary. I had to work for the Department of Justice in Johannesburg. The building of the magistrate court was across Anglo American. Now every lunch time I looked at these smart, young, white males walking there in blue shoes and blue suits and brown shoes and I wanted to work for them, but the opportunity never arose. I worked 40 years for the Department of Justice, 43. That is my position. I never objected.

ADV MASUKU: Okay. No, that is fine. I accept, Mr Ackermann; I think it is probably one of the most difficult questions you will get from me or one of the statements I am going to put to you, which is that you were a diligent servant of the apartheid system. You do not like it, but all the facts you have put before this commission point to one fact; that you were a very loyal servant of the apartheid state.

You were in fact promoted to a fairly senior position and you found a place in the constitutional state because of the level at which you had been promoted by the apartheid state. So when the constitutional state came, you were in a position to be looked at as someone with the requisite skills to assist the transition from that order which you say you did not like to an order that liberated you. So, you would accept that statement. Would not you?

ADV ACKERMANN: I accept that that suddenly came to mind being a good servant. I read my report for going off on health reasons. I took two days of leave, two days of sick leave in a period of 37 years. That is what Mr Radebe wrote in the report.

ADV MASUKU: And then, but Mr Ackermann, do you regard the discussion about who would be assigned the duty to conduct these TRC cases as a debate or discussion within government that was legitimate?

ADV ACKERMANN: Listen, if there was evidence that I was an apartheids prosecutor and that I prosecuted the comrades and I enjoyed prosecuting the comrades, then I can understand. They must have concerns, if I am a prosecutor that proved himself to be positive about [indistinct] ...[intervenes]

ADV MASUKU: So is the answer, is the answer to my question yes, the discussion about who would prosecute TRC cases was a legitimate discussion within government? Is the answer yes?

ADV ACKERMANN: Yes.

ADV MASUKU: And I think you are correct, because you say that

there would have to be evidence of your past that could create doubt about your commitment to the values of the new constitutional order. Am I correct?

ADV ACKERMANN: Yes.

ADV MASUKU: And for that evidence to be obtained, there would have to be a discussion with the formal or informal, an inquiry into your past. Am I right?

ADV ACKERMANN: Yes.

ADV MASUKU: But you also came with a little bit of a burden, I would say a burden you say you do not like, but you came with a burden of the past, which was that you had served as a diligent prosecutor in the apartheid state.

COMMISSIONER KGOMO: Burden or baggage?

ADV MASUKU: Sorry?

COMMISSIONER KGOMO: Burden or baggage?

ADV MASUKU: I prefer burden, baggage, burden or baggage; any of the two. So you heard my question, Mr Ackermann?

CHAIRPERSON: Are you not going back to where you come from, Mr Masuku?

ADV MASUKU: No, I am almost closing, Chair.

CHAIRPERSON: Yes.

ADV MASUKU: I am almost nearly coming to the end.

CHAIRPERSON: I am also keeping in mind the fact that you had three questions before you closed this aspect of your cross-examination.

ADV MASUKU: Yes, Chair. So can the witness respond to the last question asked?

CHAIRPERSON: Yes. Can you repeat your question?

ADV ACKERMANN: Ja, I have a short memory.

ADV MASUKU: The question was: when the constitutional state was now looking for prosecutors who would carry the responsibility of prosecuting these TRC cases, you came into the scene of that discussion as carrying the burden or the baggage of being an apartheid prosecutor. Am I correct?

ADV ACKERMANN: I am not prepared to answer that. What is my baggage?

ADV MASUKU: No, it is fine, Mr Ackermann. I think the commission can make what it makes of the question or the answer. But those who were tasked with managing the prosecution of the TRC cases would have had to be very careful about who they assigned the prosecution responsibilities to and who they assigned the investigative responsibilities to. Am I correct?

ADV ACKERMANN: [Indistinct] can you just come again?

ADV MASUKU: I am saying those who were tasked with managing the prosecution of the TRC cases would have had to pay attention to who is in fact the prosecutor of these cases; to know the person.

ADV ACKERMANN: Are you now referring to say for instance the committee of the directors generals or is it a cabinet or ...[intervenes]

ADV MASUKU: No, no, no. No, no, Mr Ackermann. Let me perhaps put it this way. When the prosecution of the TRC cases

were assigned to the NPA, would you say that the NPA at the time it was Mr Bulelani Ngcuka? Would they have to pay attention to who he assigned the duty to prosecute to?

ADV ACKERMANN: Yes.

ADV MASUKU: And if, for example, the prosecutor that was available to him turned out to have been the prosecutor that prosecuted Mandela, he would have had to say: no, I cannot assign these kind of cases to this particular individual. Would you accept that?

ADV ACKERMANN: Ja, it would have been a bad choice.

ADV MASUKU: It would have been a bad choice. And you would accept if he said: I am not going to accept this particular prosecutor or I am not going to assign these cases to this particular prosecutor because of his past.

ADV ACKERMANN: I will accept that.

ADV MASUKU: Now, if, for example, the NDPP at the time appointed the prosecutor that prosecuted Mandela and this is theoretical, this is, you know, an example.

ADV ACKERMANN: Ja, ja. I know what you are getting at.

ADV MASUKU: If he had assigned, if he had assigned the duty to prosecute, ANC and apartheid generals to the prosecutor of the Rivonia Trial and those who have been prosecuted objected to that prosecutor on the basis of his past, would that objection have been a valid objection?

ADV ACKERMANN: They would not have succeeded.

ADV MASUKU: No, but I am saying would they not have been justified in objecting?

ADV ACKERMANN: Yes, they can object. I can understand that.

ADV MASUKU: So I am trying to get us to come down a little bit to a discussion ...[intervenes]

CHAIRPERSON: Mr Masuku, I must draw your attention to the fact that cross-examination must be pointed and you must bear in mind the facts, the evidence which is before the commission. Ackermann was appointed by presidential proclamation. That is the evidence before us.

ADV MASUKU: Yes, I am not sure I said anything that he has to contradict that.

CHAIRPERSON: Yes, I mean your line of questioning is bordering towards that.

ADV MASUKU: Okay. Mr Ackermann, the Chair has just reminded me that you are appointed by presidential proclamation.

ADV ACKERMANN: That is correct.

ADV MASUKU: I think in your affidavit somewhere you talk about having gone through a security clearance process. Am I correct?

ADV ACKERMANN: Yes.

ADV MASUKU: You would accept that when the President of the Republic was appointing you as a prosecutor to deal with these particular cases, he would have considered whether or not you would serve the constitutional state faithfully.

ADV ACKERMANN: Yes.

ADV MASUKU: That is true, because in your, I think it was in one of your, in your affidavit, but I will remind myself very clearly. In your affidavit you say that if there was anything wrong, the security clearance process would have picked it up. Am I correct?

ADV ACKERMANN: That is [indistinct]. That is why it is vetted.

ADV MASUKU: Do you recall a complaint by Reverend Chikane?

ADV ACKERMANN: Yes.

ADV MASUKU: Do you recall that that complaint raised, despite you having been appointed by the president and passed the security clearance, that a victim of the criminal deeds of the apartheid state expressed a view that, and I will read it for you. It is in ...[intervenes]

ADV ACKERMANN: Which one is that?

ADV MASUKU: It is attached to Mpshe's affidavit.

ADV ACKERMANN: May I just ask him to, so that I can have that document?

ADV MASUKU: It is a letter dated 22 October 2007.

ADV ACKERMANN: I received that, I think that document, what, two days ago or when was that, yesterday?

ADV MASUKU: I also received yesterday.

ADV ACKERMANN: Was it yesterday?

ADV MASUKU: Yes, [indistinct] a bit bigger. Yes, I have the letter here.

ADV MASUKU: Okay, if you go to the third paragraph of the letter, Reverend Chikane says, the first point, or maybe we should just read from the beginning. As you would know; it says:

"As you would know, the case of those who were involved in my poisoning, namely, Johannes Velde van der Merwe, Adriaan Johannes Vlok…"

And he mentions all of them.

"…was disposed of at the Pretoria High Court on 17 August 2007 through a plea bargaining arrangement between the accused and the state. Although I am pleased that we have concluded this matter, I am concerned about a number of issues which I would like to raise with you and hereby the government of the Republic of South Africa. I hope that you will find it necessary to share my concerns with cabinet, as I believe that this will be helpful in handling other matters of a similar nature. The first point I would like to raise is the handling of this matter by the National Prosecuting Authority. From my interaction with the relevant officials within the NPA, it is clear to me that the said officials are simply the wrong people to deal with the post-TRC matters."

What do you say about that view that Reverend Chikane was expressing?

ADV ACKERMANN: He is talking about me.

ADV MASUKU: Yes.

ADV ACKERMANN: I do not agree with it.

ADV MASUKU: And I did expect that you would say you do not agree with it, Mr Ackermann. Bear with me. The reason you do not agree with it is because you believe that you were going to serve the constitutional state faithfully. I accept that. But the question I asked which I think will probably be the last question, Chair on this issue of the apartheid is whether you believe that concerns raised by officials of government who were tasked with managing these post-TRC cases about your past were irresponsible concerns or irrelevant concerns.

ADV ACKERMANN: You know, I think all accused appearing before certain judges are not happy about it, but that is now a given. You have to appear before that judge, whether you like him or not. Now I was the prosecutor not making decisions. I cannot manipulate the law. I can just present the facts as presented in a police docket. And if I bring certain irregular things in a high-profile case, it will immediately be picked up by the judge, the political authorities. I accept that, but I am a vehicle in this cock, in this whole prosecuting system. That is how I [indistinct].

ADV MASUKU: Yes, and Mr Ackermann, what I then want to do is, so that perhaps at some point when you reflect further on the grave injustice you have done to Mr Simelane, you would realise that what he conveyed to Mr Pikoli were not his views. These were views that were expressed by, that had been expressed by Selebi, you said yourself that had been expressed by the DG of NIA, Mr Manzini. They had been expressed in the DG's meeting. He was simply telling

Pikoli the views that had been expressed as being potentially responsible for why there was no support for investigations towards these TRC cases. That is [indistinct] ...[intervenes]

ADV ACKERMANN: I agree, I agree that he was just the messenger in a sense when I spoke to Mr Nishen, I said to him it is not... or how did I state it? It was... in any event, I realised that he is just a messenger. So I could not believe that he was the person who in fact thought this about this matter. And if I, I apologise if I harmed his career, his future career.

ADV MASUKU: Thank you, Mr Ackermann for that. And then of course ...[intervenes]

CHAIRPERSON: Mr Masuku, have you finished this aspect of your cross-examination?

ADV MASUKU: Yes. I am now moving towards another…

CHAIRPERSON: Yes, may I just make an investigation from Adv Ackermann if he is happy to proceed until 11 o'clock or this would be an appropriate time to take a short adjournment in the light of his health?

ADV ACKERMANN: Can we proceed and I will tell you when I am really not? I want to get rid of this.

CHAIRPERSON: Yes. Mr Masuku, we will aim to take a tea adjournment at 11 o'clock.

ADV MASUKU: At 11 o'clock. Thank you, Chair. Thank you, Mr Ackermann. Mr Ackermann, so I am sure Mr Simelane is here and he is listening to your apology and in the heat of things, things do get

said that can have far-reaching consequences for other people's lives. So he appreciates your apology. But here is another issue that we need to just go through, so that we assist the commission, evaluate your evidence in relation to what you say Mr Simelane's role was in the way these prosecutions occurred. Your evidence is not, and if you say yes, I am happy with that. Your evidence is not that there was a single case that Mr Simelane interfered with, to your knowledge, that you were responsible for as a member of the PCLU.

ADV ACKERMANN: I think there was only one case, but I do not know of any... no, no, he did not interfere. I did not have any interaction with him pertaining to TRC cases. I cannot recall.

ADV MASUKU: But you would not have been told by anybody that Mr Simelane's conversation with Pikoli about how to resolve the issue of reluctance of investigators to support your PCLU was in fact an act of sabotage. Let me put it that way.

ADV ACKERMANN: No, Mr Pikoli discussed a lot of things with me. You know, I cannot recall anything, but something might come up.

ADV MASUKU: Yes, because I am trying to get to that conversation you had. Even if the conversation were to be correctly recorded, would you have conceded that conversation to have been responsible for the way in which the TRC turned out? I mean would you concede that it would have been interference with the prosecution of the TRC cases that were there?

CHAIRPERSON: On the part of Mr Simelane.

ADV MASUKU: On the part of Mr Simelane, yes.

ADV ACKERMANN: You know, except for, I do not know what role he played. I believe there is a director-generals committee and there is cluster meetings. I have no insight in those meetings and what was decided there. I do not even know whether he was present, but I know it was a general consensus that there was political interference in it. I do not know if he was a member of all those committees.

ADV MASUKU: Okay, so if you are looking at Mr similar as a collective in the sense of a member of, a director-general and a member of the forum of the DGs or the cluster, would you accept his assurance that every meeting that he was involved in, where discussions about these TRC matters were involved, was a discussion in which they genuinely looked for solutions towards that would support the investigative, the investigation of these TRC cases and subsequently the prosecution of those cases; that they were genuine. There was no professional or personal interest in sabotaging a national responsibility to prosecute apartheid crimes. Would you accept that ...[intervenes]

ADV ACKERMANN: No, no, I think there was some interference when the threat by Velder, Foundation for Equality before the Law, General van der Merwe's organisation, Wagenaar's intervention informed the ANC that if any Security Branch person is prosecuted, they are going to prosecute the ANC 37; and that they are in possession of a docket proving beyond any doubt that there is a case against the ANC 37. And I think from that moment on, and it make sense to me that the ANC 37 or the powers to be had to take steps to

prevent a prosecution of the perpetrators in the Chikane matter; the fact that they were concerned – at least that must be common cause. They knew about it. It was discussed at every meeting. So to say that they did not interfere in any case is simply not true.

ADV MASUKU: Yes. So I am trying to reflect on the... I am trying to get you to accept that the DGs as the implementing agents of the government decision to prosecute these TRC cases were people who genuinely in good faith sought solutions to the problem. They may have been wrong ...[intervenes]

ADV ACKERMANN: [Indistinct].

ADV MASUKU: They may have been wrong. I mean what I am saying is; I am not saying that the solutions were perfect. I am saying but they were genuinely engaged in a process of trying to find solutions in order to get these TRC cases moving.

ADV ACKERMANN: What was the solution for investigating these matters? How?

ADV MASUKU: Provide ...[intervenes]

ADV ACKERMANN: To go the Minister of Police stating: please appoint investigating officers. They did just the opposite. Commissioner Selebi said his policemen will not investigate TRC matters until Ackermann is there. That is how I understood it.

ADV MASUKU: And that is how the solution that was proposed was that you are moved out of the position, because then the investigators could be provided.

ADV ACKERMANN: Ja, but you know that is, in a just society that is

not how matters are settled. Every time the commissioner decides that he is not going to do that, then the politicians will sort something out. That is not the work of the politicians. Police are there in terms of the act to investigate crime. And as I stated, I do not regard these as TRC cases. The TRC process is history.

We are now at the stage; we are prosecuting people who committed crimes and who have not received amnesty; full stop. I know the argument is; ja, these are TRC cases. That might be true, but victims are interested in the prosecution of these cases. The public is interested to prosecute; these matters should be prosecuted. That is how I see it. It is a simple matter.

ADV MASUKU: Yes. So, what I really was trying to get you to appreciate is that you are not the only person in the system that was set up in order to deal with these TRC or post-TRC cases that was genuinely looking for solutions; that there was no deliberate government scheme which was manufactured in highways and byways and airports ...[intervenes]

COMMISSIONER KGOMO: Would he know about the government's scheme?

ADV MASUKU: Sorry, Chair. Sorry, sorry, Mr Kgomo.

COMMISSIONER KGOMO: Would Adv Ackermann know about the government's scheme? That is broad. That is very broad.

ADV MASUKU: I think he would say if he did not understand it, but what I mean is the government plan, the government; that there was no deliberate. What I am trying to say is that Mr Ackermann should

not think that the DGs, who were servants of the constitutional state, the minister, the president were all sitting somewhere, cooking up a scheme to sabotage the prosecution of this scheme, of this trial. I am trying to get him to understand that there were also... even if you come to the conclusion that they got it wrong, that the motivation for their engagement with his past in these TRC cases was a responsible, was aimed not at sabotaging the TRC cases.

COMMISSIONER KGOMO: [Indistinct] [mic switched off] aspect Governance King, he can answer, but I cannot see how it can advance what ...[intervenes]

ADV MASUKU: No, Chair, Justice Kgomo ...[intervenes]

COMMISSIONER KGOMO: To resolve here in this commission.

ADV MASUKU: Justice Kgomo, I really do not want to waste your time. I mean if this question is irrelevant for what we are doing, I will move fast and ask another question. Mr Ackermann, I am sure you have read the book that Mr Pikoli wrote, the second, *My Second Initiation*. You remember that book? Have you read it?

ADV ACKERMANN: No, but I have read the relevant parts.

ADV MASUKU: The relevant parts. You would have read those parts about you.

ADV ACKERMANN: No, ja, obviously ...[intervenes]

ADV VARNEY: Chair, can we ask ...[intervenes]

ADV ACKERMANN: [Indistinct] of my name, why I read about it. Somebody said to me: 'did you hear what your former boss say about you?' I said no. He said, and I said to the person: oh, it must be a

good write-up on me; and on the contrary, when I read it, he said I am a very brash and abrasive person. That is the part what I read, not very complimentary about me, but that is it. I may add; you know, when I read it, I thought by myself; you know, Mr Pikoli made use of a person who is brash and abrasive to do all his operational work. I did not read the whole book. I just read about what… if I can recall, there were quite a few things that he correctly stated.

CHAIRPERSON: Adv Ackermann, if I may just interpose here. The question is: have you read the book, yes or no?

ADV ACKERMANN: No, I have read four pages.

CHAIRPERSON: Yes. So you have not read the book.

ADV ACKERMANN: No.

ADV MASUKU: He has only read four pages.

CHAIRPERSON: Yes, it does not mean he has read the book.

ADV MASUKU: Yes.

CHAIRPERSON: Yes.

ADV VARNEY: Chair, with respect, it is custom in this commission to provide a bundle upfront of documents to be relied on. My learned friends have not provided a bundle. I see he is reading from some arbitrary page in the book. It would have been very helpful if that bundle had been provided upfront, so we can find it as well.

ADV MASUKU: I will get a copy [indistinct] [mic switched off]

ADV VARNEY: Well, it is not helping to get us a copy, you know, at any time when a question is being put now.

ADV MASUKU: With respect, it is not the first time that such has

happened. My learned friend, when I was here, there were certain documents he did not have and we agreed that he could give those documents later. So he cannot come here and bully me around about this aspect.

ADV MOROKA: Chair, if I may, Chair; there is a problem with your mic.

CHAIRPERSON: Thank you, Ms Moroka. Mr Masuku, what do you say to his response that he has not read the book, save for four pages?

ADV MASUKU: Another way to ask this question, because it is contained in Mr Simelane's statement. Can I ask it via that statement?

CHAIRPERSON: Via Mr Simelane's statement.

ADV MASUKU: Mr Simelane's statement, which is confirmed in the book itself. Mr Simelane's statement, if you recall, Mr Ackermann, says that in one of the meetings you presented a picture of how you intended to conduct this prosecution and you are going to prosecute on one side and then you are going to prosecute on the other side;. Meaning, on one side you are going to prosecute generals of the apartheid system or the servants of the apartheid system and on the other side you are going to prosecute the ANC liberation or the liberation groups. Do you recall that statement from Mr Simelane's statement?

ADV ACKERMANN: No, I cannot recall it.

ADV MASUKU: Do you perhaps want us to go there, the statement

of Mr Simelane, so that we read it?

ADV ACKERMANN: [Indistinct].

ADV MASUKU: Sorry, it is in paragraph 39 of Mr Simelane's statement. It reads:

> "Ackermann then reiterated the NPA's approach that the NPA's approach is that they would be proceeding to prosecute this side and then this side until everyone on the list was prosecuted. Adv Pikoli also reiterated the general mandate of the PCLU which the members understood it to be an explanation and justification of what Ackermann had just indicated. Adv Pikoli then indicated that if the members insisted on the removal of Ackermann from the TRC cases, then we will remove him, but that he will seek his counsel any time if he needed it."

You saw that?

ADV ACKERMANN: May I have some time just to read this? Where did this meeting take place?

ADV MASUKU: According to Mr Simelane, it was the meeting that took place…

ADV ACKERMANN: [Indistinct].

ADV MASUKU: Sorry, the paragraph I referred you to does not say where the meeting took place, but you recall that you had a plan to prosecute these cases which you conveyed in a meeting, wherever

that meeting happened; where you would prosecute from one side and then the other.

CHAIRPERSON: Mr Masuku ...[intervenes]

ADV ACKERMANN: No, I do not know about that meeting, but what I can state is; since 2003 I have presented about 10 audit reports, cases ready, what we are going to do about the cases, how many cases we had. You can go and read the affidavits by, not affidavits, these reports by Macadam. There were many cases and we had a strategy. I think we can start off.

I am just thinking about the date. Is there one 15 May 23? Ja, even one in February 2003, but it is correct. The statement like that was probably made that we are going to peruse all the cases and then decide who to prosecute and I accept that it must be somebody on the ANC side or the liberation movement side. There will be cases on the Security Branch side that we are going to prosecute. You know, it follows if you read all the TRC cases; that there will be cases on both sides of the spectrum.

ADV MASUKU: Yes. So, when you gave evidence on that aspect, on this aspect of Mr Simelane's statement, I will just find it. I believe you used quite strong words. Sorry, no, in fact you do say that you do not recall such, when you talk about the... you say you do not recall this meeting. You do not recall this meeting where you presented that, but Mr Simelane does recall a meeting where you presented. You made this presentation that there would be prosecutions on both sides and that is what he says created quite a

bit of a discussion about the ANC, your inclusion of the liberators in that list of people that you are going to prosecute.

ADV ACKERMANN: Chair, I stated in my evidence that I cannot recall one of the meetings that he is referring to in his affidavit, stating; I cannot recall a West Wing meeting. I cannot recall a meeting where there was disorder. I cannot recall a meeting where I sat next to Mr Pikoli and gave them a list of people. I cannot recall those meetings. Mr Simelane says these minutes are available; and I asked the relevant authorities to furnish us with those meetings, because I have not met Mr Selebi. I have not met these ministers.

And if you read his affidavit, it is about where I sat right next to Mr Pikoli, informing the persons that I am going to prosecute, this list. They are sitting in front of me; that I am informing him that we are investigating them and we are going to prosecute them. I might be undiplomatic, but I am not stupid. To inform these people that I am going to prosecute them whilst at the back of my mind I know they are stating it that I am investigating them and Mr Pikoli is denying that we are investigating.

And these cases never appear anywhere on any report we submitted to the minister, to any report we submitted to Mr Ramaite does appear about this list and the people that the ANC people we are investigating. It is a mystery to me that he could make statements like that.

ADV MASUKU: Mr Ackermann, he could make those statements, because unlike you, he recalls that meeting and the details that he

has given. Would you accept that he remembers; you do not?

ADV ACKERMANN: That is correct, but he; at this meeting there were ministers and Mr Pikoli and they were all ...[intervenes]

ADV MASUKU: He never said there were ministers. He never said there were ministers.

ADV ACKERMANN: I thought it was the West Wing. There was a West Wing meeting.

ADV MASUKU: But he did not say there were ministers there.

ADV VARNEY: Well, you know if you can tell me the meeting, I might even then concede it, but I cannot recall such a meeting and I know he can recall it, but what he states happened at that meeting, I… not recalling it, as it did not happen. I will never sit next to Mr Pikoli and then informing the ...[intervenes]

COMMISSIONER KGOMO: You have said it.

CHAIRPERSON: Mr Ackermann, Mr Ackermann ...[intervenes]

COMMISSIONER KGOMO: You have said it. You do not have to repeat it.

ADV MASUKU: Chair, it is 11. Would that be a good time to…?

CHAIRPERSON: Yes. Will you be moving to a different point?

ADV MASUKU: Yes. They are all sort of interrelated, Chair. So it will simply go into another topic.

CHAIRPERSON: How long do you envisage to be in your cross-examination, in as much as I have not allocated time for cross-examination? We have got to be alive to the fact that there are quite a number of people who have been given the right to cross-examine.

ADV MASUKU: I understand, Chair. Chair, I honestly, given how this morning has gone, I tried to get short questions as I can, but Mr Ackermann has a lot to say. So it really depends on; maybe I should be a bit more firm.

CHAIRPERSON: I know you are only as long as the answers you get in response to your cross-examination, but how long ...[intervenes]

ADV MASUKU: And Mr Ackermann would help to ...[intervenes]

CHAIRPERSON: How long do you envisage to be in your cross-examination?

ADV MASUKU: Chair, it is a hard one. Could I say…?

CHAIRPERSON: We have got to adjourn at one o'clock. You are aware of that.

ADV MASUKU: Yes. Chair, if I say up to one o'clock, would that be too stingy with the time?

CHAIRPERSON: Yes.

ADV MASUKU: Because in light of ...[intervenes]

CHAIRPERSON: That would be quite unreasonable to the other people who must cross-examine Mr Ackermann, given the time that we have allocated for this cross-examination of five interested parties.

ADV MASUKU: Chair, then can I then maybe respond when we come back from…?

CHAIRPERSON: Yes, yes, you may.

ADV MASUKU: Because then I can [indistinct].

CHAIRPERSON: We are adjourned until 11:20.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Masuku.

CROSS-EXAMINATION BY ADV MASUKU: Thank you, Chair. Thank you, Commissioners. I am not sure if Mr Ackermann is there.

ADV ACKERMANN: Ja.

ADV MASUKU: Oh, thank you. Mr Ackermann, I will put certain positions to you that Mr Simelane has instructed me to put, which relates to your recollection of meetings with him. Mr Simelane makes it absolutely clear, and this is going to be his evidence, that he has never met you in person, and shaking your hand, alone, and had a discussion of the nature that you suggest you had.

ADV ACKERMANN: He says, "He never had any discussions with me on any matter"?

ADV MASUKU: Not when you are alone.

ADV ACKERMANN: Well, I denied that.

ADV MASUKU: Okay. And then he says, "That there would have been no reason for you to meet, because you have a supervisor, someone that you report to, and if he had any issue that you needed to deal with, that related to your core functions, you would have had to deal, firstly, with your supervisor before coming to him". And he has never had that kind of meeting with you.

ADV ACKERMANN: I deny that.

ADV MASUKU: And then he also says, "That he would have had no reason to smoke any peace pipe with you, because there was nothing

on which to smoke a pipe with you".

ADV ACKERMANN: Well, I regarded as a peace pipe [indistinct] nice [indistinct]. And thereafter he called me in at least three times to discuss a prosecution of, I think a councillor or maybe a court matter, and I think I had to go down to Durban on his instructions to talk to the prosecutors, but I think he was there too. I also had, he gave me personally a brief to take some junior prosecutor and prosecute these matters in Kimberley, [indistinct]. We had executive meetings. Of course, there were other people present, but we did talk. Of course, when I came back from The Hague, he asked me specifically about the two intelligence officers of Rwanda that I had to meet there. And I came back and I sat alone with him and I told him what these intelligence officers told me. I am just thinking of the meetings that I had with him.

ADV MASUKU: Yes, stop... (intervenes)

ADV ACKERMANN: It should have that... (intervenes)

ADV MASUKU: So his instructions are that you did not have, the way in which the NDPP, at least during his time, functioned was such that there would have been no need for you to meet him directly on your core functions, that you would have to, whatever was conveyed to him was conveyed to him about your work via his, via your supervisor. That you never sat... (intervenes)

ADV ACKERMANN: I do not know what... (intervenes)

ADV MASUKU: He never sat across the table or in a corner with you and had a private discussion about any of the functions that were

your core functions.

ADV ACKERMANN: I deny it. I did not discuss any TRC matter with him.

ADV MASUKO: Yes, we know that. But, so you also say that, perhaps I should not say, do you accept that there was a supervisor, you had a supervisor that reported to Mr Simelane?

ADV ACKERMANN: Doctor Ramaite.

ADV MASUKO: Right. So it would have been Dr Ramaite that would have spoken to Advocate Simelane about issues relating to your trip. There would have been a motivation for why you needed to go to a trip, a memo, and that would have been motivated by your supervisor and he would have had to consider it and he would have had to apply his mind and possibly authorise it, as in this case it appears he did.

ADV ACKERMANN: Well, I accept that. I went to the Hague.

ADV MASUKU: But he says that you never, coming back from the Hague, never sat down with you and asked you for any feedback of the matter you are you suggesting he did.

ADV ACKERMANN: There is no doubt in my mind. I am hundred percent sure I have been brought back about the Rwanda intelligence agents.

ADV MASUKU: He accepts that you had to report back, but that you had to report back via a supervisor, not directly to him. So there was no opportunity for you to go to him directly, the two of you, to engage with each other on that kind of work.

ADV ACKERMANN: Doctor Ramaite did not even know about this

side issue about the Rwanda intelligence officers.

ADV MASUKU: Okay. I am going to move to another issue and please bear with me because it is also an issue that might raise a bit of temperatures. You suggested that you have got experience and it is in your testimony, the transcript. I understand there is a cross-examination transcript and it is the transcript of the 5th of March where you say that, and I accept that you have dealt substantially with the other issues that may be relating to your meeting with Mpshe. But on page 44, where you claim to have had this conversation with Mpshe where Mpshe told you that he had an informal conversation with Simelane at the airport. And you suggested that you put it across as a possibility to find out from the flight records whether there was such a meeting of the two. And you say, "Now how I remember is so vividly, is at the time I thought to myself, in my experience, that is where underhand handovers and meetings take place, usually at police station." What is that kind of experience? What is that experience? Were you directly involved in that experience? What are you saying there?

ADV ACKERMANN: What I am saying is, in my 40 years as a prosecutor, I read thousands of dockets. Now let us get to Pietermaritzburg.

ADV MASUKU: Ja.

ADV ACKERMANN: In Pietermaritzburg, the dockets I read was when 30 years working within the [indistinct] fly from [indistinct] what I [indistinct] in these dockets, fly from Johannesburg to Cape Town, to

Johannesburg to Durban. And then the deal will be done on the airport... (intervenes)

ADV MASUKU: Sorry, Mr Ackermann... (intervenes)

ADV ACKERMANN: [Indistinct].

ADV MASUKU: Sorry Mr Ackermann, are you talking about dockets involving criminals?

ADV ACKERMANN: No.

ADV MASUKU: So you are saying that from your reading of dockets, you are aware that crime was being planned and executed in this basis?

ADV ACKERMANN: Ja.

ADV MASUKU: And on what basis... (intervenes)

ADV ACKERMANN: [Indistinct].

ADV MASUKU: On what basis do you suggest that Mr Simelane and Mr Mpshe would have been involved in this kind of operation?

ADV ACKERMANN: No, I did not say that. What I was thinking when you spoke about that, they spoke at the meeting at the airport, just automatically, I think, yes, that is where exactly they will discuss my removal.

ADV MASUKU: And that would be... (intervenes)

ADV ACKERMANN: [Indistinct] meeting it will not be [indistinct] meeting... (intervenes)

ADV MASUKU: Okay. But Mr Simelane denies completely that he has ever been involved in this kind of activity that you suggest in your evidence, that he was involved in an informal meeting with Mpshe to

discuss anything that was illegal or anything that was criminal.

ADV ACKERMANN: You know, I simply said, I was informed by Mr Mpshe that he in fact had a meeting with Mr Simelane at the airport. He stressed it was not a formal meeting, and at this meeting Mr Simelane told him about the fact that I am a *persona non grata* and that the ministers are not happy about me in TRC cases and that I must be taken off.

ADV MASUKU: Yes we know... (intervenes)

ADV ACKERMANN: [Indistinct].

ADV MASUKU: We now know the truth Mr Ackermann.

ADV ACKERMANN: Ja.

ADV MASUKU: But what you say in that paragraph gives it a sting, your evidence gives it a sting. It suggests, from your knowledge of how criminals operate, that you are putting Mr Simelane and Mr Mpshe in the same category as these criminals you have come to know who operate in the highways and petrol stations and the airports.

ADV ACKERMANN: Not at all, not at all. If I gave that impression, I profusely apologise to them that I get that impression that they are acting as some kind of smugglers.

ADV MASUKU: And just so we, I am almost at the end of my cross-examination Chair.

CHAIRPERSON: Yes.

ADV MASUKU: Just so we can wrap up this cross-examination. Mr Simelane's evidence about you, Mr Ackermann, is going to be that he

actually never met you. He had no opinion of the nature that you now describe, which is that he could have been involved in some sleazy, unethical methods of trying to get rid of you in order to stop you from performing your functions. He has never met you in person, like he has met you in senior meetings, yes, but not a lot alone.

ADV ACKERMANN: I deny that.

ADV MASUKU: Yes. And... (intervenes)

ADV ACKERMANN: The two years that I worked there, he never met me and spoke to me in person?

ADV MASUKU: Yes, that is, that is, not you alone.

ADV ACKERMANN: I deny it.

ADV MASUKU: Not you alone. You must understand, he... (intervenes)

ADV ACKERMANN: I deny it. I was alone, I was alone with him in his office.

ADV MASUKU: Okay. Okay. So, Mr Ackermann, from your evidence, can you accept that Mr Simelane had absolutely no role in interfering at all with your ability to prosecute, to prosecute TRC cases?

ADV ACKERMANN: Well, I only have it on everything I, the best side I had from Mr Pikoli, you know, [indistinct]... (intervenes)

ADV MASUKU: Yes, but you do not have personal knowledge of having seen a document, had a conversation, seen any report, written any report, responded to any report by Mr Simelane in which he was saying, please do not prosecute these TRC cases.

ADV ACKERMANN: Correct. Correct.

ADV MASUKU: And you will say that there is not a prosecutor that will, that will have that kind of evidence which suggests that he stopped the prosecution of, prosecution generally, but prosecution of the TRC cases.

ADV ACKERMANN: I have no knowledge. I have not heard about it. I have no knowledge.

ADV MASUKU: Like you, Mr Ackermann, Mr Simelane believes in prosecutorial independence.

ADV ACKERMANN: Good.

ADV MASUKU: And like you, Mr Ackermann, he believes that as DG of justice, he executed his duties with a commendable level of integrity during a fairly difficult time of the, of the, of the country.

ADV ACKERMANN: That is not my memory when I read the Ginwala Commission that he was not involved in anything.

ADV MASUKU: No, your, your, your refuge in Ginwala is astonishing. I mean, that is the only place you can find your, your refuge of trying to scandalise Mr Simelane.

ADV ACKERMANN: [Indistinct]... (intervenes)

ADV MASUKU: Let me finish Mr Ackermann. But it is a fairly irresponsible analysis of your understanding of Ginwala. Ginwala had nothing to do with what this Commission is about. Ginwala Commission... (intervenes)

ADV ACKERMANN: In what?

ADV MASUKU: Ginwala inquiry had nothing to do with what this

Commission is about. The Ginwala inquiry was looking at the fitness for office of Advocate Pikoli. It had nothing to do with the fitness of office for Advocate Simelane. Do you accept that?

ADV ACKERMANN: Yes, but I have read the, his verbatim evidence when cross-examined by Mr [indistinct]... (intervenes)

ADV MASUKU: [Indistinct].

ADV ACKERMANN: And on that I base my opinion.

ADV MASUKU: Yes.

ADV ACKERMANN: [Indistinct] that is the [indistinct]. There are many articles written that I have read in the newspaper. [Indistinct] there was an article, and everybody can go and read it. I think the heading says, "The incredible Mr Simelane". Where he had lunches with state advocates, in fact he was asked 20 questions, and he replied to those questions. Those are the facts, whether they draw up my baseline opinion not.

ADV MASUKU: No, no, no. Mr Ackermann, you are a, you are not just a seasoned legal practitioner. You are also old. You have matured. Let us behave like that. You cannot suggest today that you are coming to this Commission to tell them about the Ginwala findings as relevant to their assessment of whether Mr Simelane interfered with the prosecution of these cases. Is that what you are trying to do?

ADV ACKERMANN: No. No. You are saying that he is an honest person, and I am doing that maybe you should quite asking those questions. Because I am of the opinion that he is an untruthful

person.

ADV MASUKU: No I... (intervenes)

ADV ACKERMANN: You are asking me again.

ADV MASUKU: No, no, no. We have that on record. It is going to be there for the ages. But you prove yourself to be a very untruthful person whose training under the apartheid system is not helping you because you can fabricate evidence in order to scandalise a person's career and affect a person's career. Your basis for saying Mr Simelane is not a truthful person is of no relevance to this Commission because it is based entirely on the remarks made by Ginwala in her Commission in her inquiry.

ADV ACKERMANN: I am not talking about the remarks.

ADV MASUKU: And also, sorry, sorry. It is also based on media reports. How did they help this Commission assess the evidence, your evidence of Mr Simelane role in the TRC cases?

ADV ACKERMANN: Well, I spoke about the TRC cases. I said he had played no role.

ADV MASUKU: No. So, Mr Ackermann, any gratuitous... (intervenes)

CHAIRPERSON: Gratuitous.

ADV MASUKU: Gratuitous statement you are making about Mr Simelane has just been really mean and unnecessary.

COMMISSIONER KGOMO: English.

ADV MASUKU: Well, it is a, no, no I am just quoting Major General Julius Mkhwanazi's English. Sorry. It can have a disorganising effect

on us.

CHAIRPERSON: Yes, yes. I think you have made this point, Mr Masuku.

ADV MASUKU: Yes. So, it is sad, Mr Ackermann, that we can end. I was hoping that we would end on a note of fairly professionals looking at each other in the eye and saying, well, you know, I read things about you that you are an apartheid person. I have never met you. And I could formulate all sorts of views about what has been written about you. But it would be quite irresponsible to give it as evidence before a Commission that must evaluate that evidence when it is completely irrelevant.

The Ginwala findings are completely irrelevant. Your assessment of Mr Simelane as being an untruthful person is a gratuitous... (intervenes)

CHAIRPERSON: Gratuitous.

ADV MASUKU: Gratuitous attack on him. And it is meant to show up your sense of credibility as a person who is standing guard for people who are looking for justice. It has nothing to do with the truth. And it has everything to do with you just being mean and unkind when it is not necessary to be like that. Do you have a comment?

ADV ACKERMANN: And I was trained, and I was trained by the apartheid system to be like that.

ADV MASUKU: Yes, well, I mean, you tell us that you know that people cook up things in roads and in highways and byways, and that must have been how the apartheid system operated.

ADV ACKERMANN: I do not see the relevance.

ADV MASUKU: You try and criminalise decent people. You try and criminalise the work of people who are decent, who are doing their work competently and diligently when they were serving this country. And you want to come out smelling like a rose because you can say these things about people without any consequences. It is not right, Mr Ackermann. Mr Simelane, he has to come and defend his role. And right now, you have not been able to point to a single case that you can say Mr Simelane interfered with in the TRC. Not a single one. Because you never interacted with him on TRC cases. It is irresponsible to form a view based on newspapers, come here and mischaracterise and attack someone's character and credibility. Based on what you have read in the newspapers and what you have read in opinions of other people. It is just such an irresponsible way of assisting this Commission to evaluate Mr Simelane's, the evidence that this Commission needs about Mr Simelane's role in the TRC cases. You must tell the truth as you know it do not [indistinct]... (intervenes)

CHAIRPERSON: Mr Masuku.

ADV MASUKU: Sorry Chair.

CHAIRPERSON: I do not want to interfere with your line of cross-examination, but is that not an issue for argument?

ADV MASUKU: Ja, I would like, yes, it is an issue for argument.

CHAIRPERSON: Yes.

ADV MASUKU: I accept it entirely. So just a final parting shot, Mr

Ackermann. The discussions by DGs and ministers and the president and the country generally about who to prosecute was an important one. And because you have this baggage of being an apartheid prosecutor, it was necessary for them to discuss you and to reach a conclusion that even though you have this baggage, you could still serve this country under a constitutional system diligently as you did in the apartheid system. That is the first point I want to raise. What do you say about that?

ADV ACKERMANN: You really want me to respond?

ADV MASUKU: No, if you do not want to respond, that is your choice, but I would like you to respond.

ADV ACKERMANN: I do not want to respond.

ADV MASUKU: Okay, then the second issue.

ADV VARNEY: Chair with respect, these questions have been put and Mr Ackermann has responded to them previously.

CHAIRPERSON: Mr Varney, Mr Varney, I do not want to overrule you, but Mr Ackermann, Advocate Ackermann is here to respond. If he has already made a response, he will indicate to the Commission.

ADV MASUKU: Thank you Chair. And then Mr Ackermann, there is room, as you put it, to extend to each other the presumption of integrity. So when you do not recall certain meetings that Mr Simelane refers to, it is decent to say I do not recall those meetings. But it is also not right to suggest that his recollection of the meetings is dishonest.

ADV ACKERMANN: It is just wrong. His memory is not good. I have

never attended any of those meetings. Plus, I have seen him at least three or four times in person, sitting at the office. Now, what do you want me to say if he says that that definitely did not happen? What do you think I am then thinking?

ADV MASUKU: Okay, no, I think I cannot take... (intervenes)

CHAIRPERSON: Yes.

ADV MASUKU: Anything further unless... (intervenes)

CHAIRPERSON: Thank you.

ADV MASUKU: Let me just find out my junior... (intervenes)

CHAIRPERSON: Yes.

ADV MASUKU: Chair and Commissioners, we end it here with Mr Ackermann. And I thank you for the opportunity to test his vision of what he said about Advocate Simelane.

CHAIRPERSON: Thank you, Mr Masuku.

COMMISSIONER KGOMO: Switch off your microphone.

CHAIRPERSON: Mr Varney, any re-examination?

RE-EXAMINATION BY ADV VARNEY: Thanks, Chair. We will try to keep it to the absolute minimum, given the constraints on time. So we will just confine ourselves to a small number of questions.

ADV MOROKA: Chair, I was whispering, but not talking to you.

CHAIRPERSON: Oh.

ADV MOROKA: I just wondered whether it is not more efficient, with respect to the leave of the Chair, that Mr Varney does it right at the end. Otherwise, he is going to do [indistinct] for all of us. Hey, I was just whispering... (intervenes)

CHAIRPERSON: No, I think it is appropriate that he re-examines now.

ADV VARNEY: Thank you, Chairperson. As mentioned, this is going to be very short. Mr Ackermann, it was put to you by my learned friend, Mr Masuku, that the Ginwala Commission had nothing to do with what is before this Commission. Am I right in saying that one of the complaints that the Government made against you was your handling? At least, one of the complaints made against Mr Pikoli was his handling of the TRC cases.

ADV ACKERMANN: That is correct. In fact, the charges against him.

ADV VARNEY: Yes, indeed. And do you recall whether evidence was led on that, and whether this subject matter appeared in the finding of the Ginwala Commission?

ADV ACKERMANN: After he replied to the Commission, because I was involved with the drafting of his reply, they abandoned the TRC charge.

ADV VARNEY: Yes. And it is dealt with in the report of the Ginwala Commission from paragraph 209 of that finding. Let us then move to the question of the assertion put to you by my learned friend for Mr Simelane that the source of your hostility against his client, Mr Simelane was that you had been accused of being an apartheid-era prosecutor.

Now, can I ask you, while Mr Simelane was Director General of Justice, did he ever accuse you of being an apartheid-era prosecutor?

ADV ACKERMANN: I have, not personally, but I read it in articles and you know there are many articles, but the incredible Mr Simelane articles, where he said it. Plus, somebody at the office of the MPA said to me the following, but I do not want the, it is hearsay evidence and I do not want to involve this woman, what she said to me, but I think it is common knowledge that he wanted to get rid of apartheid prosecutors.

ADV VARNEY: So, at any time while he was Director General of Justice and then subsequently as NDPP, did he put it to you that you were an apartheid-era prosecutor?

ADV ACKERMANN: He never said it to my face.

ADV VARNEY: Let us then turn to your evidence in relation to Detective Hennie Brits. And this is in relation to the accusation that you are an apartheid-era prosecutor and therefore you should go. And [indistinct] we are relying on the memo dated 30th of October 2006 in Bundle two at page 123. You recall that you addressed a memo, I believe it was to the NDPP, and in it you dealt with some matters including the question of this Detective Hennie Brits. Can you explain why you raised the question of Hennie Brits?

ADV ACKERMANN: Chair, they wanted him to assist me in the investigation of matters, of TRC matters. Now Brits, more than once, want to persuade me and my deputies that there was a provable case of terrorism against President Mbeki. And I told him more than once there is no case. Then he told me that, but General van der Merwe had a case. I said, "Well, get it and I will [indistinct] you can produce

it". AG you know, I see I wrote a letter. I do not know which part you wanted me to read.

ADV VARNEY: No, I was... (intervenes)

ADV ACKERMANN: I was not happy for him to assist me in the investigation of TRC matters because he was inclined to refer me every time to the President's case. And I complained to the police, or I in fact stated at the tasking meeting, I do not want to see you on the investigation of any matter concerning TRC matters.

ADV VARNEY: Yes no... (intervenes)

ADV MASUKU: Sorry Chair, in cross-examination I did not deal with, I did not say anything about Mr Brits. Can I be allowed a minute when he is done with his re-examination.

CHAIRPERSON: Yes.

ADV MASUKU: To ask questions on Mr Brits?

CHAIRPERSON: Yes.

ADV MASUKU: Thank you.

ADV VARNEY: Chairperson, it is in reaction to the claim that he is an apartheid era prosecutor it warranted his removal. And in this memo Mr Ackermann [indistinct] to Doctor Ramaite and objects to the appointment of Hennie Brits because he is a former security branch officer who was bend upon prosecuting the ANC. And the allegation was made by Mr Ackermann that Mr Brits in so far as to release documents to the former Commissioner who was then head of the Foundation for Equality for Law, former Commissioner van der Merwe. So it is in that context that we are putting this question to Mr

Ackermann.

CHAIRPERSON: Mr Masuku, having regard to the context in which the issue of Hennie Brits is being raised, I will not allow you an opportunity to cross-examine.

ADV MASUKU: I accept that Chair.

CHAIRPERSON: Thank you.

ADV MASUKU: But could I not respond to his context?

CHAIRPERSON: Yes, you may.

ADV MASUKU: Before you... (intervenes)

CHAIRPERSON: Yes.

ADV MASUKU: Rule me out. Chair, the issue of Mr Ackermann's motivation to have Mr Brits removed as an investigator is raised in the context of trying to show Mr Brits, sorry, Mr Ackermann as having been somebody who was sensitive to the issue of apartheid investigators. The context is not, I know what he is saying is that the context is different, but what he really wants the Commission to see is that contrary to what Mr Simelane says, Mr Ackermann was not an apartheid prosecutor. It was irrelevant that he was not an apartheid prosecutor because he identified apartheid investigators who he believed, who he could not trust, because he believed they were still loyal to the apartheid system. And the steps he took shows that he is not an apartheid prosecutor.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: And it is a legitimate question to put in re-examination, Chairperson. It has been put to Mr Ackermann that the

reason for his hostility against Mr Simelane was because of the accusation of him being an apartheid prosecutor who had to be removed.

CHAIRPERSON: Yes, I will allow it.

ADV VARNEY: Thank you, Chair. So, in the light of that, Mr Ackermann, at paragraph 2.28 of that letter, you point out various matters that effectively that Mr Brits was aligned with the former security branch and should be removed. Now, given that you have been accused of being an apartheid-era prosecutor, how does that align with your attempt to remove a detective who most clearly was an apartheid-era police officer?

ADV ACKERMANN: Well, he proved himself to be one on the evidence, and that is why I asked him to be removed.

ADV VARNEY: Okay. Then let us turn to, and again, in the same context of you apparently being an apartheid-era prosecutor warranting removal, you gave evidence before this Commission about your approach to a prosecution against Mr Allan Boesak, and we all known an anti-apartheid activist. Commissioners, this is in page 62 of the transcript of Mr Ackermann's evidence on the 5th of March 2026. It is day 18.

I am sure you remember the matter. There is no need for you to go find the transcript to save time, but can you remind the court what was your approach in that particular case?

ADV ACKERMANN: Chair. Well, it is an apartheid message hugely but was flown up on a certain date, and there was a meeting, and

they asked me to draft an indictment. I produced this document the next morning. I gave my report and told them it is a simple matter. It is an economical crime that is committed, and it was clear to me that the people sitting there were not satisfied with my view on the matter. And I was flown down to Malmesbury [indistinct] where I made an application and I was then taken off. It was clear to me that the powers that be, and that was not until the minister [indistinct] what was it, okay he was a minister. That I wanted to have a show trial, again, with lots of people involved. I was not prepared to do it, and I was taken off.

COMMISSIONER KGOMO: They wanted you to charge him with what?

ADV ACKERMANN: Come again.

COMMISSIONER KGOMO: With what did they want you to charge Doctor Boesak?

ADV ACKERMANN: Chair, [indistinct] running conspiracy trial that he was, for the common purpose... (intervenes)

COMMISSIONER KGOMO: Not everything, just the description of the crime, like terrorism or whatever that may be.

ADV ACKERMANN: Chair, what [indistinct] ag what Mr Boesak did was the following. He went and told them... (intervenes)

COMMISSIONER KGOMO: No you do not follow. You say... (intervenes)

ADV ACKERMANN: I want to... (intervenes)

COMMISSIONER KGOMO: Listen, listen. You say, according to

you, it was a commercial offence and not what? And not what offence?

ADV ACKERMANN: [Indistinct]. It was not a serious offence, it was plain protesting against economic, boycotting shops, that is what it was. If I can recall you know it happened more than 25 years ago.

CHAIRPERSON: Yes. Advocate Ackermann, if I may just interpose again, did they not want you to charge him in connection with terrorism?

ADV ACKERMANN: If there is some protestors under the Terrorism Act, it must be the economic crime. I cannot recall what the Terrorism Act said about it. But if there is an section under terrorism saying to boycott shops, it might be that kind. But it was not a high treason kind or something serious that I regard as serious.

CHAIRPERSON: Mr Varney, you can come to his assistance. It does appear on page 62 of the transcript.

ADV VARNEY: Yes, thanks Chair. I was going to offer to read that into the record.

CHAIRPERSON: Yes.

ADV VARNEY: I think it will help us. So at the bottom of page 61, Mr Ackermann, you are asked to read from a paragraph file of a certain document. My team will identify that document. You say you have not read it in a long time. I found it amongst the file in my office it quotes, it says:

> "That in the 80s, Mr Ackermann was instructed to manage another high-profile prosecution on behalf of

the apartheid government. Mr Allan Boesak, a well-known anti-apartheid activist for the Contravention of Terrorism Act. After he drafted an indictment, it became apparent that the government wanted to make a political point to the prosecution. They insisted that the prosecution proceed on the basis of a grand conspiracy, which would include all the prominent apartheid movements, including the internal UDF. Mr Ackermann refused. His decision was based on sound legal principles. In a series of meetings with the highest political figures in South Africa at the time, including State President PW Botha, he maintained his point of view. Another prosecutor was then identified to prosecute the matter. A year later, the investigation into this conspiracy trial was abandoned."

Does that jog your memory?

CHAIRPERSON: Yes.

ADV ACKERMANN: That is proof that my brain is slow.

COMMISSIONER KGOMO: So does that capture an answer to my question, as Mr Varney has put it? As simple as... (intervenes)

ADV ACKERMANN: That is correct.

COMMISSIONER KGOMO: Okay. I cannot even recall what I said yesterday.

ADV VARNEY: Thank you Commissioner Kgomo. Lastly on this accusation that has been made against you. I want to read a portion

of an extract from the letter of George Bizos dated 14 January 1998. It is in bundle three at page 30. I am not going to read the whole letter to save time, but he is... (intervenes)

COMMISSIONER KGOMO: But you have to go there because he pointed it out as one of the justifications that he was not partial, but impartial. The, but maybe I must allow you to do that. Yes. Okay.

ADV VARNEY: Perhaps, Chair, I will just put one short line to him. Bizos writes:

> "I have always singled him out."

Him being you:

> "As the outstanding exception amongst those who thought that protecting the police was more important than serving justice."

Now in the light of what George Bizos, one of the most famous human rights lawyers in South Africa's history, said about you, what is your reaction to the fact that the accusation was made by Mr Simelane that because you were such a well-known apartheid-era prosecutor, you had to be removed?

ADV MASUKU: Sorry, Chair.

CHAIRPERSON: I am not going to [indistinct].

ADV MASUKU: Sorry it is unfair. If Mr Varney reads the statement of Mr Simelane, Mr Simelane makes it very clear that it is a view that was held by DGs who were meeting somewhere. He has not said he holds that view.

CHAIRPERSON: Yes.

ADV MASUKU: And Mr Varney keeps writing on this narrative that it is Mr Simelane who is calling Mr Ackermann an apartheid prosecutor in the affidavit. It is a wrong narrative. He must give the proper evidence, not this narrative that he is going on with.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chair, I think this point has been dealt with adequately. It has been put to Mr Ackermann that this is the reason behind his removal. I just have one last question on this [indistinct].

CHAIRPERSON: Yes.

ADV VARNEY: Mr Ackermann, it was put to you by my learned friend for Mr Simelane that Mr Simelane... (intervenes)

COMMISSIONER KGOMO: Mr Simelane, Mr Masuku.

ADV VARNEY: My learned friend for Mr Simelane.

COMMISSIONER KGOMO: Oh okay. Sorry.

ADV VARNEY: Ja. Who is Mr Masuku? That you had, just like a young white conscientious objectors refused to go to the army, you should have refused to serve in the NPA.

CHAIRPERSON: I think that is not... (intervenes)

ADV MASUKU: That is not true... (intervenes)

CHAIRPERSON: Not correct, Mr Varney.

ADV VARNEY: I stand to be corrected, Chair.

CHAIRPERSON: Yes.

ADV VARNEY: In any event, the assertion put to you is that those who serve the apartheid State in institutions like the NPA are effectively... (intervenes)

COMMISSIONER KGOMO: But also he said I was 24 years old. I had a bursary. Should I have resigned? I think when the issue of conscientious objection came up, is it not adequate?

ADV VARNEY: It is adequate but that is not my question Commissioner.

COMMISSIONER KGOMO: You are making a different point as lawyers would say.

ADV VARNEY: Yes... (intervenes)

COMMISSIONER KGOMO: You made that different point. .

ADV VARNEY: Thank you. Thank you, Commissioner. The proposition that those who served, who were loyal servants of the apartheid State in the sense that they served during the apartheid era in the NPA, the magistrate's court or the judiciary. Would it be fair to say that they were all loyal servants of the apartheid State and should be tainted with that brush?

ADV ACKERMANN: No, I have told you, I do not know what you... Can you repeat it, please? My mind is away.

ADV VARNEY: Yes. For example, you gave the example of Justice Pius Lunga, who had served as a prosecutor and a magistrate in the apartheid era. The suggestion is that those who served in such capacities were loyal servants of the apartheid State. Is that a fair assumption to make?

ADV ACKERMANN: No, that is why I read out his curriculum in time where he worked. I mean, he also worked for this... He was also an apartheid prosecutor and an apartheid magistrate. He resigned.

There are thousands, there must be millions of them.

CHAIRPERSON: Thank you Advocate Ackermann.

\ADV VARNEY: No further questions.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Switch off your microphones.

CHAIRPERSON: Ms Rantho? Advocate Ackermann, are you still in a position to proceed?

ADV ACKERMANN: No.

CHAIRPERSON: Yes. Would you like us to adjourn for the day, Advocate Ackermann?

ADV ACKERMANN: [Indistinct].

CHAIRPERSON: Ms Rantho, you will proceed with the cross-examination of Advocate Ackermann tomorrow morning at 09:00. These proceedings are adjourned until tomorrow at 09:00.

INQUIRY ADJOURNS TO 20 MARCH 2026

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CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the aforegoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN	**:**	Inquiry
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TRANSCRIBERS	**:**	M Brits, L Lerm
DATE COMPLETED	**:**	2026-03-20
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<u>TRANSCRIBER'S NOTE</u>:

- ***Where no information provided, names transcribed phonetically.***
- ***Grammar errors types verbatim.***
- ***Indistinct words/phrases due to the following reasons: Some microphones not switched on at times / audio of Adv Ackermann has an echoing sound***

MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com