

**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 Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata
Adv Phelo Mahlati-Mbanga

REPRESENTATIVES

Adv Motlalepule Rantho (for SAPS)
Adv Ebenezer Propy (for SAPS)
Adv Irene Dikgale (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Jos Venter – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv KD Moroka (SC) – DOJ Representative
Adv Anisa Kessery-DOJ Representative

28 OCTOBER 2026

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PROCEEDINGS ON 28 OCTOBER 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Good morning Madam Chair and the Commissioners. We are assisted today by Mr Bester and as I gather Ms Rantho will lead the supplementary evidence of Mr Bester before the cross.

CHAIRPERSON: Yes, before the cross.

ADV SEMENYA: Before the cross as well as any other matter immediately before the cross.

10 CHAIRPERSON: Yes. Thank you. Ms Rantho?

ADV RANTHO: Good morning Commissioners. Thank you, Chair. It is going to be... (intervenes)

CHAIRPERSON: May I just remind Colonel Bester, Colonel Bester you are still under your former oath?

COLONEL BESTER: That is correct.

CHAIRPERSON: Thank you. Yes, Ms Rantho?

ADV RANTHO: Yes, Chair. before we start, it is going to be Mr Propy that is going to lead evidence in terms of the supplementary but then I thought it was necessary just to give context
20 in terms of why it was necessary for the supplementary affidavit.

The Commissioners would recall when the witness gave his evidence that there were some requests made by the evidence leaders as well as the Calata Group that there be some translation of his Afrikaans diary, among other things, and there were also issues of certain documentation that Calata Group wanted. So purely

supplementary is to place those documents before the Commissioners in the form of evidence.

CHAIRPERSON: Yes. Thank you. Mr Propy?

ADV PROPY: Thank you, Chair and Commissioners. Colonel, can I just confirm that before you is your supplementary affidavit. It should be the first bundle of documents in the witness bundle?

COLONEL BESTER: Correct.

ADV PROPY: If we can turn to page 6 thereof. It is your signature page, dated 11 September 2026.

10 COLONEL BESTER: All is mine.

ADV PROPY: Confirm that is your signature.

COLONEL BESTER: Signature as well.

ADV PROPY: Then if we go to the first page, you confirm that this is your supplementary affidavit. Supplementing your initial affidavit dated 22 July 2026, correct?

COLONEL BESTER: Correct.

ADV PROPY: And then as has been previously outlined, the Commission sent you a letter dated, this is under the heading, purpose of this affidavit, paragraph 3. The purpose of it is that on
20 26 August 2026, you were sent a letter and that letter is marked our JB1. If we can just turn to page 7 of the bundle.

Page 7 and 8, you confirm that that is the letter that you received from the Commission.

COLONEL BESTER: That is correct.

ADV PROPY: Which states the purpose of what you are responding

to. Then paragraph 2 maybe just outlines what you have been asked to respond to. If we can then go to page 2 of your affidavit. The first thing we will address is CATS 16/08/2007 Docket. Are you with me?

COLONEL BESTER: I am with you. It is correct..

ADV PROPHY: Then we begin at paragraph 6, where in the paragraph states that as you stated in paragraph 21 of your affidavit dated 22 July 2026, you became entrusted with the safekeeping of the documents that were transferred from the NPA to SAPS. This occurred following the retirement of Supt Britz in February 2025.

10 COLONEL BESTER: That is correct.

ADV PROPHY: Then we move to paragraph 7. What is important for you to mention is the fact that it is not a docket but an inquiry file registered under CATS 16/08/2007 and it formed part of the said documents which was investigated by you.

Now, before we continue, can you just explain to the Commission the difference between a docket and an inquiry file?

COLONEL BESTER: I will. Madam Chair, an enquiry file, if you receive information or request to investigate something and there is not a crime committed yet, you open an inquiry file and you continue
20 as in a docket. You have got your A, B and C. Whether there is anything emanating from that inquiry file that must be registered as a docket, then you go to the police station in question and you open a CAS number and then it is a docket. You investigate the docket and the inquiry file goes into the docket. If the inquiry file does not become a docket, you file it at the end of the day, you file the inquiry

file.

ADV PROPHY: Thank you, Colonel. We continue with the broader matter was investigated by Advocate Nel under the auspices of the Directorate of Special Operations, the DSO, under Project Gnome. This is much evident from the correspondence exchanged between Major General Jacobs and Advocate Nel from the NPA on 24 and 27 August 2007 and Commissioner de Beer's response to Advocate Nel on 30 August 2007.

And you attach to your affidavit the correspondence
10 reflecting that statement as LJB 2, which begins at page 9. We may just turn to page 9 of the answers.

COLONEL BESTER: That is correct. I have got it here.

ADV PROPHY: Now, that is what reflects as LJB 2, correct?

COLONEL BESTER: That is correct.

ADV PROPHY: Now, if we turn to page 10, it is a letter from PC Jacobs, date 2007/08/24. Do you see that?

COLONEL BESTER: I see that.

ADV PROPHY: So, General Jacobs addressed the letter to, if we turn back to page 9, to Advocate G Nel.

20 COLONEL BESTER: That is correct.

ADV PROPHY: And the letter is equally dated 24 August 2007.

COLONEL BESTER: Correct.

ADV PROPHY: And the title of it is DSO Investigation, Project Gnome.

COLONEL BESTER: Correct.

ADV PROPHY: Now, if we can go to the second last paragraph of the letter, the paragraph beginning the original file. Do you see that?

COLONEL BESTER: I see that.

ADV PROPHY: I am going to read that into the record.

“The original file with the original document referred to in it, is in the custody of Super Bester under the command of the Division Station, Divisional Commissioner, Detective Service.”

Who was the Divisional Commissioner of Detective
10 Services?

COLONEL BESTER: Commissioner De Beer.

ADV PROPHY: Then it indicates the next paragraph,

“I wish to direct your attention to the fact that Advocate McCarthy, the head of the DSO, had been in conversation with the Divisional Commissioner De Beer and that Commissioner De Beer was willing to discuss the issue with Advocate Ackerman and a senior official from the NPA, which was declined by Advocate McCarthy.

20 The next paragraph, the conclusions made regarding the document and published in the media, were made without the matter being investigated and without the relevant information at the disposal of the NPA.”

You confirm its content?

COLONEL BESTER: That is correct.

ADV PROPHY: Then the correspondence continues. If we can turn to page 12?

COLONEL BESTER: I have it in front of me.

ADV PROPHY: I am going to begin at page 13, that it is a letter from Gerard Nel, Regional head of the DSO: Gauteng, addressed to you, for the Attention of Senior Superintendent L Bester. Do you see that?

COLONEL BESTER: That is correct.

ADV PROPHY: The date of the letter is 27 August 2007 with the title
10 DSO Investigation: Project Gnome.

COLONEL BESTER: That is correct.

ADV PROPHY: I then want to refer you to the third last paragraph from the bottom, the paragraph beginning 'The Investigating Director Authorised.' Do you see that?

COLONEL BESTER: I have got it here.

ADV PROPHY: It reads:

20 "The Investigating Director Authorised a formal
 investigation into allegations of fraud and forgery
 and uttering relating to the above-mentioned
 document.

I then want to turn the page to page 13.

"We formally request access to and the handing over of the document to our investigation team. This document is sought not only to assist us in our investigation, but will also be used as an exhibit in a trial should, it be necessary.

We view the forgery and uttering of an official NPA document in a very serious light and will have no option but to take the steps necessary to secure the mentioned exhibit.”

COLONEL BESTER: That is correct.

ADV PROPHY: And that forms part of the correspondence you mentioned in our JP2, correct?

COLONEL BESTER: That is correct.

ADV PROPHY: Then flowing therefrom, we move to the next correspondence from page 14 and 15. If we can just go to page 15?

10 COLONEL BESTER: I have it in front of me.

ADV PROPHY: We then see that it is an unsigned letter from Divisional Commissioner: Detective Services, JF de Beer.

COLONEL BESTER: Correct.

ADV PROPHY: And if we go to 14, it is addressed to Advocate G. Nel on 30 August 2007, with the subject DSO Investigation: Project Gnome. You see that?

COLONEL BESTER: I see that.

ADV PROPHY: Then I am referring to the second paragraph which reads:

20 “S/Supt Brits brought the letter to my attention
and as his commander, I have informed him that I
will personally respond to it.”

Now, before I continue reading the paragraph, could you just tell the Commission why the previous correspondence was addressed to you by Advocate Nel and you brought that letter to the

attention of Commissioner de Beer? Why did you bring it to his attention?

COLONEL BESTER: I bring it to his attention because he is my direct commander. I inform him about it.

ADV PROPHY: And then I continue, the paragraph reads:

10 "I regard the allegations of forgery and uttering
implying the members of the South African Police
Service in a serious light and had instructed an
inquiry into the document in question. The inquiry
so far has revealed that there is nothing to
investigate criminally. I would, however, want to
have a copy of Advocate Ackerman's file copies
of the questioned document as well as the other
73 decisions taken by Advocate Ackerman, in
respect of the files dealt with by S/Supt Hennie
Brits (ret), before coming to final conclusions.
You are therefore requested to provide copies of
the said documentation to me as soon as
possible.

20 Without having sight of the original document
which is requested, you have clearly decided that
the document had indeed been forged and
already refer to a trial that will be held. In view of
this prejudicial approach from your office, it would
be extremely risky for this office to provide you

with a key and irreplaceable exhibit in respect of possible legal actions which may emanate from these allegations.”

We then turn to page 15.

10 “The threat of a summons under section 28 of the NPA Act, 1998, is regarded as distasteful as I doubt that this extreme power was intended by Parliament to be abused for this type of matter, which in my view and the information at my disposal can easily be resolved on the basis of cooperative governance principles as contained in the Constitution of the Republic of South Africa, 1996, and through discussion.”

Now, it is clear that the matter was elevated by you and dealt with by Commissioner De Beer who then had discussed it with senior members of the, or requested to discuss it with senior members of the NPA. Do you know if such discussions took place?

COLONEL BESTER: I was not aware of any consultations that took place between them.

20 ADV PROPHY: And then in respect of the correspondence you made reference to in the paragraph in your affidavit, this then concludes the correspondence, correct?

COLONEL BESTER: Correct.

ADV PROPHY: If we can then go back to your affidavit. We then continue in paragraph 8.

COLONEL BESTER: I have got it in front of me.

ADV PROPHY:

As explained in paragraph 30 of your affidavit dated 22 July 2026, you became involved in the inquiry in question following the newspaper published by Rapport on 19 August 2007 when Commissioner de Beer instructed you to obtain a statement from S/Supt Britz. As clearly recorded in your Investigative Diary at C3."

10 Which you attach as 'LJB3' and that reflects at page 16. There is no need for us to go there right now because part of your affidavit deals with the translation of your complete investigative diary, so we will deal with C3 when we deal with the diary in its totality.

COLONEL BESTER: Correct.

ADV PROPHY: Then we move to paragraph 9:

20 In summation, my involvement in relation to the inquiry in question was only limited to its safekeeping and subsequent appointment of forensic investigators to conduct analysis on whether the signature on the memorandum authored by Advocate Ackerman SC was authentic."

COLONEL BESTER: Correct.

ADV PROPHY: Now we then move to the next theme being Financial authorisation for appointment of forensic investigators. Paragraph 10

reads:

“Perusal of the documents found in relation to the inquiry in question reveals that:

10.1 On 28 August 2007, you requested a quotation from Forensic Department Consultants, for analysis of documents enclosed in the inquiry registered under CATS 1608/2007”

And you attach a copy of that as LJB4, which reflects at page 19. If we may just go to page 19. Sorry, 17. Apologies, 17.

10 COLONEL BESTER: 17?

ADV PROPHY: LJB4. Page 17.

COLONEL BESTER: I have it in front of me?

ADV PROPHY: This is, the date is 28 August 2007.

COLONEL BESTER: Correct.

ADV PROPHY: To Forensic Document Consultants in which the subject is ‘Quotation for the analysis of documentation: CAT 1608/2007: SAPS. And that is your stamp and name at the bottom of the document, correct?

COLONEL BESTER: Correct.

20 ADV PROPHY: And herein you are requesting a quotation from Forensic Document Consultants. Can you just tell the Commission why you specifically requested a quotation from Forensic Document Consultants?

COLONEL BESTER: I requested a quotation just for other opinion on the forged document, that we can just make sure that we are on the

right track, as far as the forgery is concerned.

ADV PROPHY: And in your quotation, paragraph 2 reads:

“The relevant document consists of a three page document on which comparison should be made to determine the following,

2.1 Whether the signature on the document is authentic in relation to several other documents, (72), that will be supplied with similar signatures on.

2.2 Whether the paper used on the respective question, question 3 page document is the same.

2.3 Whether there is any indication of amendments or tampering on the question document or indicates of a different pen used.

3. Your urgent attention to supply this office with a quotation is highly appreciated.”

Why was it important for you to indicate that urgent attention was required to the quotation?

COLONEL BESTER: The whole allegation was already public in the report. I only take notice of the article when I visit Commissioner de Beer’s office and there were serious allegations towards SAPS about that we perhaps have forged the document. So Commissioner de Beer requested me and by myself, I considered it as urgent and tried to see how quickly I can get all the quotations and all the necessary results from the handwriting people, so that I can see what is the problem and what will be the way forward.

ADV PROPHY: Thank you Colonel. Then in respect of 2.1, 2.2 and 3.3, why was the quotation limited to those aspects only?

COLONEL BESTER: Because it was only the forgery that was in doubt and Commissioner de Beer said we must just investigate or try to investigate if the documents are authentic or whether there was any tampering with the document.

ADV PROPHY: Thank you. You can then go back to your affidavit at page 4, 10.2. It reads:

10 “On 29 August 2007, retired Director Hattingh
provided a quotation in response to my request.”

And you attach a copy thereto as LJB5, which reflects page 8.2.

COLONEL BESTER: I have got it in front of me.

ADV PROPHY: That then is the quotation dated 29 August 2007 from Forensic Document Consultants.

COLONEL BESTER: Correct.

ADV PROPHY: Responding to your quotation, it reads:

20 “1. The estimated time for the examination
and comparison of the documents will amount to
plus minus 4 hours and the total cost there not
more than R2 400.”

You confirm that?

COLONEL BESTER: That is correct.

ADV PROPHY: Then if we go back to your affidavit 10.3:

“On 30 August 2007, you applied for financial

authorisation to the Section Head: Supply Chain Management, S/Supt Rossouw. However, a second page to my application in that regard could not be traced after a diligent search conducted from the documents in possession of SAPS.”

And you attach the one page that you could find as LJB 6 which reflects at page 19.

COLONEL BESTER: That is correct.

10 ADV PROPHY: If we may then go to page 19?

COLONEL BESTER: I have got it in front of me.

ADV PROPHY: Now that is to the attention of Supt Rossouw, the letter dated 30 August 2007 and it is this document that the second page is missing, correct?

COLONEL BESTER: That is correct.

ADV PROPHY: Now if we are just going to focus on the first page being that the title is, the subject of it is Application For Financial Authorisation In Investigation CATS 16/08/2007.

20 I am going to read it in entirety into the record being paragraph 1.:

“1. Application is hereby made for financial authorisation in order to promote proper investigation into the above mentioned inquiry.

2. After consultation with the Divisional Commissioner, Detective Service, instruction and

authorisation was given by him to proceed with the investigation and analysis of the documentation by an independent private forensic handwriting expert. The reason for obtaining an opinion of an independent forensic expert is that although an investigation has already conducted by the SAPS forensic experts, a second opinion is of utmost importance in order to ensure that the South African Police Forensic investigation can be confirmed.

10

3. A quotation was attained from a company, Forensic Document Consultants, for an amount of R2 400 for the said investigation and analysis.”

4. The investigation must be done as a matter of urgency and it is in the interest of Law Enforcement.

5. Five, the said company is the only company that can provide the SAPS with immediate assistance.

20

6. You are required to give your favourable attention to this application. This office has to have an outcome on the investigation done by the private company before 17:00 hours on the 30th of August 2007. The company indicated that they need approximately five hours to conduct the

investigation.

You confirm that content?

COLONEL BESTER: That is correct.

ADV PROPHY: Now, just for the Commission, can you advise what would have reflected on the second page?

COLONEL BESTER: On the second page, you see it is unfortunate that they did not also bring it. There will be the signature of myself, the Commissioner de Beer that will approve it, and then the financial people that at the end of the day said it is okay, I can get the funds so

10 I can do the job and bring the invoice.

ADV PROPHY: Thank you. Now, let me move back to your affidavit, paragraph 10.4. On 30 August 2007, Supt Rossouw received an invoice towards the services rendered by forensic document consultant and you attach a copy as LJB7, which reflects at page 20.

COLONEL BESTER: That is correct, I have got it in front of me.

ADV PROPHY: That is the invoice and the invoice is dated 31 August 2007 and on it, it is signed and received by Supt Rossouw. You see that at the bottom page?

COLONEL BESTER: Correct.

20 ADV PROPHY: And you confirm it being received and signed by Supt Rossouw..

COLONEL BESTER: Correct.

ADV PROPHY: Then, we then move to the next theme in your affidavit being the Complete Investigation Diary, paragraph 11. As requested in the Commission's letter, you annexed a copy of your

complete investigative diary and you attach it as LJB8, which reflects at page 21. So, from page 21 to page 26 is then your complete investigative diary, correct?

COLONEL BESTER: That is correct, I have got it in front of me.

ADV PROPHY: The pages read as C1 to C6 at page 26.

COLONEL BESTER: That is correct.

ADV PROPHY: Then, the requested translation then begins at page 27, marked as LJB8.1.

COLONEL BESTER: That is correct, I have got it also in front of me.

10 ADV PROPHY: Now, we are going to go through your investigative diary as the translation was necessary on your previous hearing. We are going to begin with C1, being the date of 22 August 2007. Are you with me?

COLONEL BESTER: With you.

ADV PROPHY: And we begin at 08:00

“on the 21st of August 2007 at about 16:30, I was contacted on my cellular phone by Commissioner Jacobs and summons by Commissioner De Beer to the Office of the National Commissioner. I was requested to take a file where memorandums were filed in. This
20 file by Brig Nel and Supt Britz who was previously responsible for investigating concerns and concerning the cases which related to political violent crimes which occurred before 1994 during the election took place. The files, dockets and other documents were in a store. I was the key holder. The mentioned file was in my office locked in a safe.

Upon my arrival at the National Commissioner's office, Commissioner De Beer and Commissioner Jacobs were present.

COLONEL BESTER: That is correct.

ADV PROPHECY: We then move to C2: Am I correct that that should read apparently? Is that correct?

COLONEL BESTER: Correct.

ADV PROPHECY: That it is:

10 “Apparently there was a conversation between Advocate Ackerman and Commissioner Jacobs concerning a letter (memorandum) of which Advocate Ackerman needs a copy and later demands that the original must be handed to him. The letter (memorandum) in question was letter 4 in the relevant file with reference A15 from Advocate Ackerman's office dated 24 June 2006.

 “The subject was the State against Mncube”

COMMISSIONER KGOMO: Mncube.

20 ADV PROPHECY: “Nondula and Mbuli and relates to various landmine explosions in the Messina area during 1985 and 1986 where the ANC was involved. The letters in the file in total 73 all relates to decisions and recommendations compiled in a memorandum which was signed by Advocate Ackerman and were all original documents which

were filed in a file”

You confirm the translation is C2?

COLONEL BESTER: That is correct.

ADV PROPHY: Then we move to C3.

10 “Commissioner De Beer then requested me to
take a statement from Supt Britz in which the
process that were followed during the
investigation of the case be explained. There
was also decided that a full handwriting
investigation must be conducted to verify the
signature of Advocate Ackerman and to establish
whether the document was tampered with.
Investigation will be done.”

COLONEL BESTER: Correct.

ADV PROPHY: Then we move to 22 August 2007 at 15:00 hours:

20 “The letters in the file totalled 73, all relates to decisions
and recommendations compiled in a memorandum, which was signed
by Adv Ackerman and it were all original documents which were filed
in the file.
That was the translation from C2?

COLONEL BESTER: That is correct.

ADV PROPHY: Then we move to C3:

“Comm de Beer then requested me to take a
statement from Supt Britz in which the process
that were followed during their investigation of the

cases be explained. There was also decided that a full handwriting investigation must be conducted to verify the signature of Adv Ackerman and to establish whether the document was tampered with. Investigation will be done.”

COLONEL BESTER: Correct.

ADV PROPHY: Then we move to 22 August 2007 at 15:00:

“A statement was obtained from Snr Superintendent HJ Britz, statement filed.

10 You forward a request to Comm du Toit, for the investigation by a handwriting expert of the document - Comm du Toit did acknowledge my request. Request filed as A2.”

You confirm that is the translation of A2,?

COLONEL BESTER: That is correct.

ADV PROPHY: Now before we move on to C4, this now places two Du Toits before the Commission being a Commissioner Du Toit as well as a Colonel Du Toit.. Can you just explain to the Commissioner who they are and their different roles?

20 COLONEL BESTER: Commissioner Du Toit at that stage was the National Commander of the Forensic Science Laboratory and the local fingerprint offices and Colonel Du Toit was working with the handwriting section of the Forensic Science Laboratory. He was not a commander but he was working there.

ADV PROPHY: Thank you, Colonel. Then we move to C4.

“The exhibits that accompanied the request were packed and sealed in exhibit bag FSD250634.

The investigation continues.” Then 23 August 2007...

COLONEL BESTER: Sorry, may I interrupt? Just for clarity, Madam Chair. The request that we must hand it to Commissioner Du Toit came from Commissioner De Beer, just for the sake to expedite the investigation.

That is why we get the Commissioner and he assigned it to.
10 Otherwise, if you book it in at handwriting, it is in the flow. Maybe it is a day or two later that they acknowledge receipt and start because they have a heavy workload.

But Commissioner Du Toit directly assigned it to Colonel Du Toit and that is why I so quickly response back.

ADV PROPHY: Thank you. We then move to 07.30.

“You received the outcome from handwriting expert, Senior Superintendent Du Toit in Commissioner De Beer's office and the statement filed as A3. You stick a seal number 0651047016
20 on page 3 with which exhibits were sealed. Investigation proceeds.”

We then move to 27 August 2007 at 08.15.

“You filed a letter with Commissioner Jacobs sent to Advocate Nel in connection with documentation and that is B1.”

On 28 August 2007:

“After I received an instruction that further impartial handwriting investigation must be done from Commissioner De Beer, I approached a firm Forensic Document Consultants in Pretoria for a quotation.”

You confirm the translation of C4?

COLONEL BESTER: That is correct.

ADV PROPHY: We then move to C5:

“Letter to them filed as per B2.”

10 Can you just indicate to the Commission who 'them' you are making reference to is?

COLONEL BESTER: Correct.

ADV PROPHY: No, who is them? It says the letter to them filed as per B2.

COLONEL BESTER: It is to the forensic consultants. Where is B2?

ADV PROPHY: That would be the Forensic Document Consultants.

COLONEL BESTER: That is it. I received an instruction that further impartial handwriting investigation. That is the document to Forensic Document Consultants.

20 ADV PROPHY: Thank you.

COLONEL BESTER: Correct, sorry,

ADV PROPHY: We then move to 29 August 2007 at 13:00 hours@

“Received a letter via fax from Advocate Nel,
DSO Gauteng in connection with the
documentation. Filed B3. The letter was

discussed with and handed over to Commissioner De Beer.”

30 August 2007 at 9 o'clock:

“Quotation received from the firm Forensic Document Consultants and filed B4.

Filed letter to Advocate Nel, DSO from Commissioner De Beer. The response to B3 as per B5.

10 We then move to the request for financial authorisation for forensic document consultants. Filed B6.

Request to Forensic Document Consultants to perform certain investigations. Filed A4.

You confirm that is the translation of C5.

COLONEL BESTER: That is correct.

ADV PROPHY: Then we move to C6. 31 August 2007 at 09:00:

“You receive the outcome of forensic document consultants. Statement filed as per A5.

20 Invoice from the from FDC handed to Supt Rossouw. Filed as per B7.”

COLONEL BESTER: Correct.

ADV PROPHY: Now can you tell the Commission if anything happened after the 31st of August 2007?

COLONEL BESTER: Nothing else happened. There was no further request for any further investigation. Commissioner De Beer did not

instruct me to do anything else.

ADV PROPHY: Then in respect of the time frame, your diary reflects the dates that you investigated as 22 August 2007 to 31 August. It is approximately nine days. Can you just tell the Commission why was there the limited time frame in respect, why was the investigation done so quickly?

COLONEL BESTER: As I said previously, Madam Chair, it was urgent for SAPS. There was allegations of forgery. It was already in the public domain. So we must act quickly that we can solve the
10 problem. And if it was not forgery, then maybe there was will be a way forward. But it was fine that there is no forgery. And that was the end of the investigation.

ADV PROPHY: Thank you. Then we move back to page five of your affidavit under the theme Translated Version of Supt Britz affidavit. from paragraph 13.

COLONEL BESTER: I have it in front of me.

ADV PROPHY: It states that you were also requested to assist with the translation of Supt Britz affidavit, which is marked as LB7 to your initial affidavit. And same as this affidavit as LJB9. And that
20 translation then begins, if you can go to page 30 of your affidavit.

COLONEL BESTER: That is right. I have got it in front of me.

ADV PROPHY: So page 30 is the actual affidavit in Afrikaans. And then 30, 31. And then 32 is your understanding of the translation of the affidavit, correct?

COLONEL BESTER: That is correct. And my apologies if the

grammar is not perfect, but I try my best.

ADV PROPHY: Now this is the reference you make in your investigative diary that you reflected that the procedure was requested from Supt Britz to explain. And this affidavit then explains the procedure followed. Is that correct?

COLONEL BESTER: Ja, just come again?

ADV PROPHY: In your investigative diary, you indicate that you took a statement from Supt Britz as instructed by Commissioner De Beer. And so I am saying that this is the translation of the statement you
10 took from Britz.

COLONEL BESTER: That is correct.

ADV PROPHY: And its purpose was to explain the procedure that Britz undertook when dealing with the memorandum in question.

COLONEL BESTER: That is correct. And perhaps to mention while we are there, that morning when I take Senior Supt Britz's statement, he was at home, he was already retired. So I went to him and I take the statement on my laptop. And then I returned to my office to print it. And later on, I went back to him and let him sign it. I enter his statement in my investigative diary at 15:00, but I was past three, past
20 15:00 hours with him. I think it is 15:10. When I enter, you will see everything is typed unless the time and our signatures is not typed. So just for clarity there.

ADV PROPHY: Now, why was it important for you to obtain the information from Britz in respect of the procedure he followed with Advocate Ackerman?

COLONEL BESTER: Madam Chair, the documents and everything was out of my domain. I do not know what was the procedure followed by him when he was working there. As I said, the instruction to me was very clear. Safeguard and keep the dockets until you are otherwise instructed, as I was instructed to investigate this alleged forgery. So you must just explain to me what was his working relationship with Advocate Ackerman of the PCLU and how did they communicate with others? How did that memorandum end up in his file? That is what I want to know. And he explained it in his
10 statement.

ADV PROPHY: So what knowledge did you have before investigating the matter around the memorandum?

COLONEL BESTER: Nothing. I have never been in touch with him. Nothing.

ADV PROPHY: Then while we are on talking about Britz, can you just tell the Commissioner what his role was in relation to TRC cases?

COLONEL BESTER: Madam Chair, I mean, I do not want to go too far, but there were many people investigating from D'Oliveira, etc. And then, if my understanding was correct, Nel and Britz, two ex-
20 police officers, were seconded to the NPA to assist them with the dockets. So that docket was all the time in the domain of the NPA or the PCLU unit.

Although, at that stage, when I first came in contact, I have met Britz and Nel the first time in the offices of Advocate Fick, because we did not start with the beginning of the Boeremag

investigation. And they were sitting in offices nearby. And because I never know them in their careers, where they were stationed or who I met them there the first time.

And then every time when I visit Advocate Fick, it is, hello, and how are you, and busy. So I know nothing how they were working. But as I said, their work was, if you are seconded to NPA, the police still pay your salary.

But all the other command and control and other exercises is within the NPA. And I think that is what I just want to know then
10 from him, is what was the procedure. But I do not know what is the procedure that they are working through.

ADV PROPHY: Thank you, Colonel. Then how often did you and Britz interact on TRC cases?

COLONEL BESTER: No, we do not interact too much. We, when he, when we was instructed to remove the documents and everything to Wachthuis, he was still in charge. The head of my office, the chair assisted him.

I do not even know who else get them transferred or else. They removed it there because I was engaged with many other
20 functions that I would have to perform. And then it was the first time when I go there, he tells me just, it was very neat. I think it is somewhere in the statement I said that, Superintendent Britz, all the documents, everything was there. You can just walk to something and you will know what it is. But that is my knowledge of that.

And then when he resigned or his contract was ended

February 2005, then I said to Vanette that again, we must now move it to our office because the commissioners said they want that office put in Wachthuis. So then I, again, do financial authorisation that we can erect an office that is set for safekeeping. I have not got an office for safekeeping that was safe enough for their documents.

And then we move it to that. That is all interaction I have with Britz and the other TRC cases.

ADV PROPHY: So just for clarity, your first interaction with Britz in respect of TRC cases is when you transferred him and now to
10 Wachthuis?

COLONEL BESTER: That is correct.

COMMISSIONER KGOMO: Sorry, is he retired or resigned? I just want to know, you spoke of when he resigned. I say, did he resign or did he retire?

COLONEL BESTER: No, he was already resigned, Madam Chair. He was seconded and his period ended February 2005 and his contract was not renewed with the NPA.

COMMISSIONER KGOMO: Okay, thank you.

ADV PROPHY: Then if we return to your supplementary affidavit at
20 paragraph 14.

COLONEL BESTER: Paragraph?

ADV PROPHY: 14, page 5.

You wish to state that you wish to state that, say, for the documents attached to this affidavit filed with the Commission dated 22 July 2006, as well as those annexed to the supplementary

affidavit, you do not have further documents related to this matter,."

Correct?

COLONEL BESTER: Correct. We then move to the last theme being a Response to Advocate McAdams' evidence, which begins at paragraph 15:

10 "Lastly, you respond to the evidence of Advocate McAdams against you. He testified that Super Britz and you met with him indicating that there was a solid case against President Mbeki and the ANC 37 and wanted McAdams to prosecute them. Advocate Varney consistently put to Advocate McAdams that you had a preoccupation with putting together a case against the ANC 37 taking over from Super Britz. McAdams testified that you were influenced by Super Britz and was displeased by the NPA's decision not to prosecute the ANC 37."

Can you just tell the commission when did you first become aware of the ANC 37?

20 COLONEL BESTER: The 37 was the first time, and I am a police officer and there was an investigating officer, so you hear the stories, but I never, as such, take notice. But the first time I see the ANC 37 was in that report article when we must, when I start investigating the alleged forgery of the document.

ADV PROPHY: Then at paragraph 16, you state that:

“In your initial affidavit, as stated in your initial affidavit, your involvement in TRC matters was limited to the safekeeping of the documents received from the NPA, assistance regarding the audit report, as well as allocation of investigation to nine matters received from Advocate McAdams during 2010.

ADV PROPHY: Now, I just want to break each down and ask you a question. In respect of the assistance regarding the audit report, and that evidence is in your initial affidavit and you testified on your handwriting and contribution to the audit, the only question I have is
10 who selected the cases that reflected in the audit report?

COLONEL BESTER: It was sent to me by Commissioner Jacobs who was at the ITT.

ADV PROPHY: You did not select the cases?

COLONEL BESTER: Ja, he asked me to, he gave me that list and that is where my handwriting comes with the inquest, the knowledge that I can gain at that time.

ADV PROPHY: And then in respect of the allocation of the nine investigators from the letters that you received from Advocate Macadams during 2010, subsequent to you allocating the
20 investigators, did you receive any feedback from the investigators?

COLONEL BESTER: Madam Chair, the initial request via Commissioner Labia from Macadams was that he wants those cases to be investigated and Commissioner Labia said to Macadams it is the year of the soccer World Cup and almost all of my people, including myself, will be involved in the World Cup and we may be not

started as yet but after the World Cup.

But I deemed it fit and I booked it out, all the cases, and if you see on somewhere in the files where I said perhaps Inspector de Toit, you must adhere to this then there is a bring forward date and I think except for the Samora Marshall case, all the other cases was a bring forward date after the World Cup, July, August, the year around. I do not remember quite but it is the Welsh bring forward date and I know some of those dockets during my encounter with the World Cup, I visit my office from time to time and in my file was there and then I
10 will perhaps give guidance but I cannot remember precisely which cases but some of the cases I have seen before I retired at the end of January 2011.

ADV PROPHY: So some of them did move forward during 2010?

COLONEL BESTER: That is correct.

ADV PROPHY: Then from how long was it from the time you allocated those investigations to the time you retired?

COLONEL BESTER: Well this was almost like 10 months, it was March, I think when I received it and I retired end of January 2011.

ADV PROPHY: Thank you. Then the paragraph concludes with:

20 None of these encounters would have resulted in me having any knowledge in respect of the ANC 37, hence I was never tasked to investigate such dockets. In addition to that, the dockets were kept sealed subject to further direction being given by the NPA.

COLONEL BESTER: That is correct. Madam Chair, if I may, I pick it up I think in Advocate Macadams, where he specifically refers to this

that myself and Brits was there and said we have got evidence against President Mbeki and I think the 37.

I do not recall such a meeting and even in that paragraph I see in the middle they said, I forget, that he was asked them already in 2003 to come with evidence. I was in 2003, I was not involved at all. So it is just for the record's sake that I want to put that on record.

ADV PROPHY: Just to connect that to your initial affidavit, when you say you were not involved it is because the Boeremag trial had started in 2002 and that is what you were busy with.

10 COLONEL BESTER: Ja, well there was the Boeremag, at that point in time there was investigations in the National Arms Control Committee with Advocate Pretorius. There was a lot of investigations being done. I cannot remember exactly when the nuclear investigation started but that is all things that I was also attending to and I see that the investigating office, I forget, Macadams and Abrams and so there was a lot of work.

ADV PROPHY: Thank you, that detail is in your initial affidavit. Thank you Chair, that concludes the evidence in respect of the supplementary affidavit. Might we just request a quick, if we may

20 take the tea adjournment at this point?

CHAIRPERSON: Yes, I think we will take a tea adjournment and reconvene at 11:40. We are adjourned.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you.

ADV RANTHO: Thank you, commissioners. Before my colleague, Mr Varney, starts with his cross-examination, there are a few things that we would like to raise and seek some guidance as to whether they should be disposed of now to avoid any interruption, or maybe we should wait at an appropriate time.

But before perhaps I address the commission regarding those issues, I simply wanted to also mention that the contentious document, so-called "fabricated note", the original is available. Should the commissioners be of the view that they want to inspect
10 the documents, we can take the necessary instructions to enable the commissioners to have sight site of that document.

CHAIRPERSON: Yes, thank you.

ADV RANTHO: Commissioner, chair, there is some document that is now forming part of the bundle from ...[intervenes]

ADV SEMENYA: May I unfortunately interrupt my learned colleague?

CHAIRPERSON: Yes.

ADV SEMENYA: Mr Soni is going to make...

ADV SONI: Chairperson, commissioners ...[intervenes]

COMMISSIONER KGOMO: Just wait a bit for the microphone.

20 ADV SONI: When one looks at the cross-examination, you will see that it is not only A15 that is in issue, you will see that A1 to A73 are in issue. So I just want to suggest to my learned friend, Ms Rantho, that instead of only asking for the original of A15 to be produced, the originals of A1 to A73 are all produced. I have seen them, and I submit that they are quite revealing.

CHAIRPERSON: Yes. Ms Rantho.

ADV RANTHO: Commissioners ...[intervenes]

COUNSEL: Sorry, we did not hear that. I have seen them and they revealed that they are quite, we did not get that, chair.

CHAIRPERSON: They are quite revealing.

ADV RANTHO: From our side, commissioners, there should not be any difficulty. We are obviously subject to the advice of the State Attorney in terms of the how part, but we will take the necessary instructions, should that the necessary, commissioners.

10 CHAIRPERSON: Yes.

ADV RANTHO: And then there are some documents that were sent to us late yesterday evening. They appear at page 480 to 539 of the bundle that is in front of the commissioners. That is now the Calata bundle, the cross-examination of Mr Bester. We have raised an issue with my colleague, Mr Varney, to say that we are going to object to the production of those documents. Because we never had any opportunity to go through the documents, and most importantly, to consult with the witness regarding those documents.

CHAIRPERSON: Yes. It is 400 and?

20 ADV RANTHO: From page 480, and it runs up to, they run up to page 539, chair.

CHAIRPERSON: Up to five?

ADV RANTHO: 539.

CHAIRPERSON: 539.

ADV RANTHO: Yes, chair.

CHAIRPERSON: So you have not had an opportunity to consult with your client in regard to these documents...? [intervenes]

ADV RANTHO: Not at all, chair. Indeed, chair, even ourselves, just to go through them, because we were focused on preparation, and this came later.

CHAIRPERSON: Yes.

ADV RANTHO: Yes.

CHAIRPERSON: And when were these brought to your attention?

ADV RANTHO: This morning when we ...[intervenes]

10 CHAIRPERSON: This morning?

ADV RANTHO: Yes, when we were busy with the witness this morning.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: Chair, I do confirm that Adv Rantho and myself have consulted. We accept that these documents were circulated late. I understand they were provided by the NPA, in, fact, they were only circulated around 11:00 PM last night.

CHAIRPERSON: Yes.

20 ADV VARNEY: We understand that Ms Rantho and the client have not yet consulted on them. We have pointed out that most of the documents are already in the record, and we do not intend to refer to most of them. We have identified just two documents that we wish to make reference to, and we have pointed out those two documents to Adv Rantho. And we have suggested that perhaps between now and Friday, because Mr Bester is also scheduled for Friday, that she can

consult at least on those two documents.

CHAIRPERSON: Yes, yes. So you will not deal in your cross-examination with regard to those two documents?

ADV VARNEY: Not today.

CHAIRPERSON: Yes.

ADV RANTHO: Thank you, chair. And then we also have some of the documents that have been there, and they form part of the application for cross-examination of the Calata Group, and firstly is an affidavit by Asmita Thakor. The affidavit is on page 53 to 67 of the
10 Calata cross bundle, and we indicated to my learned colleague that we intend objecting to the production based on what we say is lack of personal knowledge of the attachments to the said statement by the deponent.

And we also have issue of saying that there was no factual basis that was laid. So we just thought we need to bring it up front so that we are not disruptive when my learned colleague deals with cross-examination of Mr Bester.

And then there is also reference in the application for cross-examination to the Selebi trial documents, and that, chair, you
20 will find it on page 11 of the Calata application for cross, footnote 37. And similarly we say this is some sort of external evidence that is also brought without any basis having been laid, and we say again we are going to take an issue with that.

CHAIRPERSON: Yes, at an appropriate time.

ADV RANTHO: Indeed so, Chair. And then there are also, chair, two

articles talking about Boeremag, and those appear in pages 68 to 71 of the Calata cross bundle. The same principle in terms of us intending to object similar to what we indicated about the Selebi document or the Selebi trial document, chair.

CHAIRPERSON: Yes.

ADV RANTHO: And then, chair, there is also a reference to the DPCI report of 2025, and that appears on page 26 of the Calata cross application, the bundle, and then that is also footnote 82 to 84. And we say also if Mr Varney intends doing the cross on that basis, we
10 intend raising our objections. And the last one is again, it talks to the [indistinct] inquest, and that appears on page 24 of the Calata bundle, and then it will be Exhibit FGK appearing at footnote 68, chair.

CHAIRPERSON: Yes.

ADV RANTHO: Yes, so purely we just thought we want to advise the chair so that when that time comes and we object, we do not want to come across as being objecting or being disruptive.

CHAIRPERSON: Yes, thank you.

ADV RANTHO: Thank you, chair.

ADV MOROKA: Chair, if I may?

20 CHAIRPERSON: Yes, Ms Moroka.

ADV RANTHO: After you have conferred with your commissioners.

ADV MOROKA: Chair, we also want to object to just one issue, the admission of the statement at page 53 to 67.

CHAIRPERSON: Page?

ADV MOROKA: Page 53. That is the statement by Ms Thakor. We

have, during correspondence and engagements with the evidence leaders, we have always been of the attitude or of the belief that this testimony by Kimi and Thakor should not be allowed without them coming through to come and give evidence.

We were waiting for a ruling from the chair because we have indicated our objections in writing at the meeting that we had with the evidence leaders and everybody else. We also objected in an official letter to the evidence leaders, addressed in part to you, about how this evidence is going to be admitted. And we are not the only ones
10 who objected to the admission of that evidence in the form and the way that Mr Varney wants to do it.

So absent a ruling from you, and absent hearing from us about what the issues are in relation to how this evidence is going to be tendered, we also object to the admission of that affidavit in the form that it is reported to be laid before the commission, without a factual and a legal basis of laying it before us.

Mr Semenya had indicated in that meeting that it might be that it is not necessary if nobody is impacted by that statement. We believe the witness here is impacted, and therefore, this evidence
20 must be presented in a proper way by a witness to it. We then have an opportunity, if we elect to do so, to apply for cross-examination. But it cannot be correct that it is just put to the witness to respond to a statement that is not before you, but is before you in that form.

CHAIRPERSON: Yes.

ADV MOROKA: Thank you, chair.

CHAIRPERSON: Thank you. Mr Varney.

ADV MOROKA: Oh, chair, and the other issue that we needed to raise is, Mr Varney, on behalf of the Calata Group, group has put in all these documents, and then says he will refer to only two of them. The difficulty that we have is, then what is the status of all these documents before you? Are they properly tendered, are they properly before the commission? What is intended to be done by all these documents before the commission? We would therefore align ourselves with miss, Adv Motlalepule about that issue.

10 CHAIRPERSON: Ms Rantho, Ms Rantho, not Motlalepule.

ADV MOROKA: Thank you, chair.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chairperson, not counting the documents that were only circulated yesterday by the NPA, the application, together with the documents to be relied on, were circulated, I believe, on the 23 September. So my learned friends have had more than a month in which to come up with their objections, and to do so at the last minute, we would submit is problematic. We propose, chairperson, that we do not try to deal with this right now, but we deal with it as it
20 arises in the cross-examination.

CHAIRPERSON: Yes, yes, I think so, I think that would be an appropriate cause of action to take, that as the questions are put to the witness, then the necessary objections will be raised and dealt with.

ADV VARNEY: As the chairperson pleases.

CHAIRPERSON: Yes, you may proceed with your cross-examination.

LOUIS JOHANNES BESTER (still under oath)

CROSS-EXAMINATION BY ADV VARNEY (CONTINUES): Thank you, chairperson. Mr Bester, good morning to you.

COLONEL BESTER: We already said good morning, but again, good morning.

ADV VARNEY: Yes, and officially this time. Firstly, thank you for agreeing to come back and assist the commission, it is appreciated. So, Mr Bester, we have tried to play open cards with you and your
10 team, and in the application to cross-examine you, we have essentially set out all the different issues, and indeed the questions that we want to raise with you to give you and your team an opportunity to consider and prepare yourself. You understand that?

COLONEL BESTER: I understand.

ADV VARNEY: So just to confirm, you have deposed to an affidavit before this commission dated 22 July 2026. That was in response to your rule 3.3 notice.

COLONEL BESTER: That is correct.

ADV VARNEY: And incidentally, can I just check, do you have a copy
20 of the Calata Group's application to cross-examine? Because it will assist you as we go through the questions. I will point you to the particular paragraphs.

COLONEL BESTER: I do.

ADV VARNEY: And can you confirm that you first gave oral evidence before this commission on the 17 August 2026?

COLONEL BESTER: That is correct, chair.

ADV VARNEY: And then as we heard this morning, you filed a supplementary affidavit on the 11 September, or rather, it was dated 11 September 2026.

COLONEL BESTER: That is correct.

ADV VARNEY: And then as we witnessed this morning, you were then led on the supplementary affidavit. So let us then turn to the big issues that we want to deal with you, and we set these out on page 2 of the application under paragraph 7, 8 and 9. But just to give you a
10 sense of where we are going, a bit of a roadmap.

What we want to deal with you today in the cross are the following issues, one, which we set out at 7.1, being the transfer and safekeeping of the Liberation Movement dockets that were transferred from the NPA to SAPS.

Secondly, at 7.2 we want to deal with the assistance you provided to the Interdepartmental Task Team regarding the SAPS audit report. And then, thirdly, the allocation of investigators to nine matters that were referred to you by Adv Macadam during 2010.

COLONEL BESTER: That is correct.

20 ADV VARNEY: So those are the three big matters we wish to deal with you. And then we also wish to turn to the A15 Memorandum, which my clients allege is the forged memorandum. And then, lastly, as we set out in paragraph 9, we wish to pose questions to you in relation to your alleged attempts to try and encourage cases to be brought against the ANC. So that is the roadmap, just to put you in

the picture. And let us turn to the first matter, the discussion, and that is at page 3, titled:

"Removal of Liberation Movement Dockets from
NPA to SAPS."

Now, in your first statement, and I believe it is from paragraph 17 onwards, from page 76 of the cross-examination bundle, am I right in saying that you were involved in the transfer of these documents from the DPP in Pretoria to SAPS head office at Wachthuis, and that this occurred around March of 2004?

10 COLONEL BESTER: That is correct.

ADV VARNEY: And also just relying on your statement, can you confirm that your role involved identifying suitable offices for the storage of those documents that were handed over by Superintendent Brits and Director Nel? Secondly, you were involved in sealing approximately 10 boxes under the instruction of Commissioner Selebi. And then, lastly, the subsequent transfer of the documents from Wachthuis to the General Joubert Building after being entrusted with their safekeeping by Commissioner Selebi.

COLONEL BESTER: That is correct. Chair, just a small correction,
20 Director Nel was already, I think also not there anymore. His contract was not renewed, and Brits was alone, I just want to correct that, Brits was alone.

CHAIRPERSON: Yes.

ADV VARNEY: Thanks for that clarification. We will try to check on when Director Nel retired.

COLONEL BESTER: Both of them was on contract, and I think his contract stopped, but I was not that familiar with their working circumstances. But since the movement of the documents, Brits was the only person present when the documents were moved with Coetzee.

ADV VARNEY: Thanks for that. So in paragraph 21 of your statement you say:

10 "Senior Superintendent Brits remained the person responsible for the safekeeping of the documents that were transferred from the DPP to SAPS until the expiry of his contract of employment on 28 February 2005."

You confirmed that?

COLONEL BESTER: That is correct.

ADV VARNEY: And that after the departure of Brits, you caused the transfer of documents to the General Joubert Building at Visagie Street after being entrusted with their safekeeping by Commissioner Selebi, and that through to 2009 the documents were kept in the custody of your office. Is that correct?

20 COLONEL BESTER: That is correct.

ADV VARNEY: Commissioners, this is from Mr Bester's statement, pages 77 to 78 of the cross-examination bundle. And then also in paragraph 21 you say that:

"Your understanding was that the documents would be safely stored with the SAPS until further

instructions on what needed to be investigated
upon were received from the NPA."

You confirm that?

COLONEL BESTER: I confirmed that.

ADV VARNEY: So we want to put it to you that the opposite is true,
and we set this out at our paragraph 15. We want to put it to you that
the NPA had closed most of these dockets before they were removed
in March 2004. But that SAPS was free to investigate the dockets
and resubmit them to the NPA for prosecutorial decisions. And
10 perhaps on that score I can ask you to turn to page 175 of the cross-
examination bundle?

COLONEL BESTER: Yes, I am there.

ADV VARNEY: And perhaps just for context, we can start the page
before, that is page 174. This is the evidence of Adv Macadam being
cross-examined by Adv Rantho, and I will start reading, I think, from
the third bottom paragraph of page 174.

"ADV RANTHO: You also recall that you
informed the commission that those dockets
would be kept with SAPS pending direction on
20 further investigation from you. Do you remember
that?

ADV MACADAM: No, Madam Chair, what
happened is, there was a very unpleasant
incident where the National Commission of Police
accused Mr Ngcuka at a very, at a high-level

government meeting of preparing to investigate the President and six other prominent ANC officials.

ADV RANTHO: Sorry, Mr Macadam, I do not want us to get into the reasons for the transfer. I wanted to understand what the status was."

We can turn to page 175, and Adv Macadam says:

10 "ADV MACADAM: The status was, as a result of that allegation, because Selebi alleged that the reason those 400 dockets were in the NPA building was to compile this case against the President and these other people, Mr Ngcuka then invited Mr Selebi to come to the DPP's office, remove the dockets. Mr Selebi did not appear when Deputy Commissioners Williams and Price arrived.

20 Mr Ngcuka said, fine, this is the allegation, you take those dockets, so you can no longer make false allegations against the NPA. But Mr Ngcuka said the only reason that those dockets came back to the NPA is if you, the police, say you need assistance from the NPA. If you do not need assistance, they stay where they are. But we are not closing the door on cases that could be prosecuted, but we put the ball back in your court.

You come tell us where you need our assistance."

So according to the NPA and Adv Macadam, in particular, he is saying the reverse is true, the dockets were now in the hands of SAPS, and it was up to SAPS to take them further, and if so, to then come to the NPA for assistance.

COLONEL BESTER: Madam Chair, no. You must remember, up until the visit of the said people, after Ngcuka said we must remove them, just for clarity's sake, I was not present there, so I do not know what happened there. But my opinion is the dockets was in the NPA's
10 environment with two members, of which Brits was left alone, and they were responsible because they were seconded.

\ There are many other agencies, like the people that also got police dockets in their hands, and that is not their responsibility, they investigate. And so to my mind, up to 2004 the dockets was in the environment of the NPA, task-wise from the prosecutors, investigative-wise from Brits to Nel, when he was still there, and now the instruction.

That is how I recall it, from Selebi was take the dockets, take all the stuff, seal it and put it in a safe place until further notice or until
20 you are requested by whoever. And it is evident before the commission that there were certain requests that I, excuse me, complied with, so that is the only way. I do not go in there and start investigating myself and say what is happening here, what is happening here. Even I have to get the instruction, and there was no time to have other workloads. I have got enough workload of my own

at that time.

ADV VARNEY: Thank you, Mr Bester. I think what you are describing was the situation up until those documents and records were transferred to SAPS. But once they were referred to SAPS, they were then under the control of SAPS, and it was up to SAPS to decide whether to take those particular cases forward or not.

COLONEL BESTER: The instruction was we must keep it, safekeeping it until we are instructed. It is not like I received – there is a situation in SAPS, if I can call it "red dockets", you bring forward
10 dockets in five years, a murder case or whatever, and then you start over. These were not "red dockets".

These were dockets under other circumstances, and that is why we are making an audit of everything that was there because it was not in our domain. We must now decide what to happen, and the instruction was safekeeping, and that is what I had done.

ADV VARNEY: Well, to be clear, we will be submitting to this commission that the version of the NPA, which I have put to you, that the dockets were now in the hands of SAPS, and if SAPS wished to take them forward, they had to come back to the NPA. We will be
20 submitting to this commission that that is the version that should be accepted.

COLONEL BESTER: I have not got such an instruction. My instruction was until I requested, and there was a request. Then I complied that question, and the command was given to me to investigate, even from Macadam that last 10 cases.

ADV VARNEY: Let us turn to paragraph 22 of your statement, and that is on page 78 of the cross bundle.

COLONEL BESTER: I have got it in front of me.

ADV VARNEY: So here you point out, you say:

"You deem it important to mention that at the time when the documents were transferred from the DPP to the SAPS, there was neither a handover, nor inspection report received from the NPA in relation to the said documents."

10 Now, why would it have been necessary for the NPA to prepare a handover or inspection report when the two police officers and Brits, in particular, who were still on active duty, when they were responsible for the investigations? Why would you need a handover note when the people carrying those dockets still had access to them?

COLONEL BESTER: Chair, I want to make sure that all the dockets that is handed over to us at the NPA, that it is not another docket popping up somewhere in the NPA environment, or whatever, that was not handover. So now we have got a clear-cut audit, we know
20 which documents and which dockets was there and which was not there.

ADV VARNEY: But would you agree that the person probably most familiar with those dockets would have been Senior Superintendent Brits, and he would not have needed any particular direction or a handover note to tell him what was in those documents and what

needed to be done?

COLONEL BESTER: I was tasked to safeguard those documents and dockets, and I deemed it my duty to see that everyone is there, so I wanted to make sure. I do not doubt that Brits would have given us the correct, but that is why I designated Superintendent Coetzee, and she make that list and that we know everything that was handed to us is there.

ADV VARNEY: All right, so you have mentioned Ms Vinet Coetzee. So let us actually turn to what she has said to this commission in
10 relation to those documents. And in her evidence, and I am now at 17.1, towards the bottom of the application, in her evidence before the Commission she testified that the dockets and documents that were transferred were sealed and classified under the minimum information security standards. And that is set out, if I perhaps can ask you to turn to pages 183 to 184? Chairperson, commissioners, this is extracts from the transcript of Ms Coetzee ...[intervenes]

COLONEL BESTER: [Indistinct].

ADV VARNEY: Oh, you are at page 183?

COLONEL BESTER: Page 183.

20 ADV VARNEY: Yes, I am just explaining that this is a transcript that, or extracts from the transcript of Ms Coetzee's examination-in-chief. And perhaps I will just read into the record one or two paragraphs. Adv Rantho asked her to describe the process, that is towards the top of the page, and she responds at line 9:

"Chair, commissioners, I was instructed to do an

audit of those boxes. It was 10 boxes, and inside was loose documents. If I can recall it was reports and investigations, if I can recall correctly. So all of these dockets was loose, so I had to audit it. I made a list for each box, and then we sealed the boxes on instruction of Colonel Bester."

And then Adv Rantho asks:

10 "And then your indication that classification of the documents have not been ascertained at the time when you deposited the affidavit for compliance with the Minimum Information Security Standards, also known as MISS, M-I-S-S."

And there are certain questions, but let us just drop to the bottom of the page. Adv Rantho wants the Colonel to explain what the MISS is about, and Ms Coetzee says at the bottom of the page:

20 "The MISS document is an instruction where certain classified, how you deal with certain classified documents from serious to top secret, right to compliance, how you deal with this, if you should send it to another office.

You had certain documents that had accompanied those documents, and in this case this document must be stored in a certain way if it is classified, so it must be under lock and key. If you have an

enquiry file and you are working on it, after the day it must be locked in a safe, it cannot lie on the table."

So she essentially sets up the procedures involved. In that last paragraph:

10 "So all confidential or top secret must be locked away at the end of the business day. The same with these, we sealed these boxes with an elite seal, and after sealing those boxes, I set up an index, and for each box there is a list of what is inside of those boxes."

So as I understand Ms Coetzee's evidence, she could not recall what classification was granted at that time. Do you have a recollection of what classification was given to those documents?

COLONEL BESTER: No, I ...[intervenes]

ADV RANTHO: Pardon me, chair. So, chair, if I may come in, I need to clarify something, because Mr Varney seems to paint a picture that the evidence of Lieutenant Colonel Coetzee was that the sealing had, there was a sealing and classification. That is not the evidence of
20 Colonel Coetzee.

What she testified was that at the time when she deposed to her affidavit, she was unsure if there was classification. And that becomes very important because the impression that is created by my learned colleague is that it is a given that there was sealing or instruction to seal and classify in terms of miss... That is not the

evidence of the witnesses.

CHAIRPERSON: Yes.

ADV VARNEY: Well, chair, with respect, I simply read out the evidence of Ms Coetzee verbatim, and verbatim, that is precisely what she says.

ADV RANTHO: Chair, the very same transcripts, and the transcripts speaks to her affidavit. What Ms Coetzee was explaining in her evidence was that she did not know whether there was classification. And she was cautious, because she sort of spoke to some documents
10 that were kept, and there was an instruction at some point that they be sealed. But then I asked her to clarify, just to explain what this document was about. All she gave was to explain what it meant, but she never said those documents were classified in accordance with this document. It is neither in her affidavit, nor in the transcript that Varney referred the commission to.

CHAIRPERSON: Yes.

ADV VARNEY: Well, chair, it is an entirely legitimate question to ask this witness, whether he has a recollection of the classification.

CHAIRPERSON: Yes, you may proceed to ask that question.

20 ADV VARNEY: Thank you. Mr Bester, do you have a recollection whether these documents were classified at any time, and if so, what classification?

COLONEL BESTER: I am not aware if they were classified or not. All I can say, chair, is the whole of the police, actually, all State departments, must adhere to the Minimum Information Security

Standards. It is like the Financial Management Act, so you must see to it, and this was the instruction, we must keep it safe. So if there was any classification on it, no, I do not know, I was not... After the sealing we just put it in a safe place according to the Minimum Information Security Standards. Even if it was classified or not, this was serious enough to put them in a safe place at lock and key.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: Thank you, chair, and thank you, Mr Bester, for that clarification. In terms of the sealing, Ms Coetzee spoke of sealing the
10 boxes with an elite seal. Could you explain to the commission, well, firstly, do you know what an elite seal is, what is it, and how is it applied?

COLONEL BESTER: No, as I said, I was not present, if I understand you correctly, I was not present when she made the audits. I pay her from now on then perhaps a little, but I was not there and see what is in the boxes and when they sealed it, I was not there.

ADV VARNEY: Okay. Well, perhaps that question might be answered if we just turn to the previous page of the transcript of Ms Coetzee, page 183.

20 COLONEL BESTER: Pardon?

ADV VARNEY: 183.

COLONEL BESTER: ...[Intervenues].

ADV VARNEY: And I will just read from paragraph, I will just read 9 to about 14 or 15. Ms Coetzee says:

"Chair, commissioners, I was instructed, I did an

audit of those boxes. It was 10 boxes and inside
was loose documents..."

Let me just jump to that last line:

"So I had to audit it, I made a list for each box
and then we sealed the boxes on instructions of
Colonel Bester."

So according to Ms Coetzee, the sealing was done on your
instruction.

COLONEL BESTER: That is right, I instructed her.

10 ADV VARNEY: Yes, and did you instruct her that this had to be done
by way of elite seal, as she says?

COLONEL BESTER: The instruction was, after she finished with the
audits, the boxes must be sealed and kept there in safekeeping, and
that was done when the boxes were still at Wachthuis.

ADV VARNEY: Right. And am I right in saying that the reason for
sealing is that if somebody just get into those boxes or documents,
you will be able to see, perhaps the seal could be broken and then
you will know that somebody has gotten...

COLONEL BESTER: Again, that documents, chair, was for a long
20 time out of the domain of the SAPS. We do not know what is in that
boxes, although Brits and Nel was working there, they were
seconded. Brits was at no time during 2004 under my command and
control. He was doing his job as a seconded member, still working
with the NPA, although the documents was now, and the documents
was in the SAPS domain. After he left in 2005, we removed those

boxes, and they are still in safekeeping until we were several times requested. And after my departure I know many docks were opened and they carry on with investigations.

CHAIRPERSON: Yes, but the question is, what was the purpose of sealing the documents?

COLONEL BESTER: Of sealing the boxes?

CHAIRPERSON: Yes, sealing the boxes.

COLONEL BESTER: Yes, if there is any enquiries later on, you can go to the index, what was in the box, and you can say it is a
10 newspaper article of this, or this is an enquiry of that, you know in which box to go and look. But it do not lie open and everyone can just look and maybe there is a document missing.

COMMISSIONER GABRIEL: Colonel, I cannot, maybe I did not get your answer to the question. Do you know what an "elite seal" is?

COLONEL BESTER: Just come again?

COMMISSIONER GABRIEL: An "elite seal". It is referred to on page 184. And miss ...[intervenes]

COLONEL BESTER: Are they the same with these? They were sealed with these boxes [indistinct] ...[intervenes]

20 COMMISSIONER GABRIEL: So she says:

"So all confidential or secret, top secret must be locked away after the end of the business day. The same with these, we seal these boxes with an elite seal, and after sealing these boxes, I set up an index for each box."

It is okay if you cannot recall, but ...[intervenes]

COLONEL BESTER: Ja, but it will just be a unique seal that you can know you have sealed it. You can, Vinet, at the end of the day Ms Coetzee can come and say, yes, it was sealed by me, and that is the seal that I put on it.

COMMISSIONER GABRIEL: Okay, thank you.

ADV VARNEY: Thank you, commissioner. Let us move on, Mr Bester. We are back to page 4 of the application to cross, on line 17.2 at the bottom of the page:

10 "According to former PCLU prosecutor, Adv Chris Macadam, the dockets and documents were transferred after Commissioner Selebi accused the NPA at a high level government meeting of preparing to prosecute then President Mbeki and other prominent ANC officials."

And in fact, we have already read that extract from his transcript. Do you have any comment on the view of Macadam that that was the reason for the transfer of the documents?

COLONEL BESTER: I have got no knowledge of that.

20 ADV VARNEY: So ultimately, you know, we wish to put to you, and we will be arguing to this commission that the dockets and documents were sealed and classified under instruction of the then Commissioner Selebi to prevent unauthorised access to those dockets, but ultimately to stop the ANC from being further investigated by the National Prosecuting Authority. Do you have a response to

that?

COLONEL BESTER: I was instructed to safeguard those documents.

I am not aware of any such, what I can call from Mr Selebi why he was doing it. He instructed me, he is my national commissioner. So I adhere to instruction, and it was to preserve, and that is all that I can say, chair.

ADV VARNEY: But you were aware that all these dockets related to potential cases against the former Liberation Movement?

COLONEL BESTER: Well, I will put it to TRC cases, and that
10 includes struggle.

ADV VARNEY: I want to refer you to the cross-examination bundle from page 381.

COLONEL BESTER: 381?

ADV VARNEY: Yes.

COLONEL BESTER: I have got it in front of me.

ADV VARNEY: So this is an internal memorandum dated 30 October 2006. It is from Adv Ackerman SC to Dr MS Ramaite, copied to Adv VP Pikoli. The subject is:

"Details of TRC cases closed by the PCLU ."

20 And the second subject is:

"Re-appointment of Senior Superintendent Brits."

And if we can just turn to page 390, that is red 390.

COLONEL BESTER: 390, I have got it in front of me.

ADV VARNEY: And at the heading at 2.28:

"The re-appointment of Senior Superintendent

Brits."

I just want to read certain extracts because this sets up the version, or the view of the NPA as to why these dockets were transferred. I am not going to read the entire section, but I can tell you that Adv Ackerman is objecting to the re-appointment of Senior Superintendent Brits to the TRC cases. And perhaps I will start at the bottom of that page at 2.28.5:

10 "In particular, Brits tried to persuade me and my deputy on numerous occasions that there was approval of a case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that were security branch members to be prosecuted, the President would also have to be charged. It was clear that he was against prosecutions of Security Branch members. Despite his claims, he could never produce a docket implicating the President. He then raises a concern with which he alleges that Brits leaked a docket to General Van der Merwe."

20 I am going to skip that part and turn to the next page, 3.28.6:

"When the issue of prosecuting Security Branch members for the Pebco 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the President."

I can only draw the inference that sharing of information took place between Brits and Van der Merwe:

10 "2.28.7 The issue of the prosecution of the President was raised at the highest level of government, and resulted in enquiries being conducted by Minister Maduno, as well as members of the President's office. All parties were satisfied that the NPA had no intention of prosecuting the President. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC records.

2.28.8 This highly embarrassing incident caused Mr Ngcuka to instruct that Brits vacate the offices of the DPP, and that all relevant SAPS dockets be removed. Brits was subsequently relocated in the SAPS Crime Against the State Unit."

20 So there you have the view of the NPA. According to the NPA, this report from Adv Ackerman to Dr Ramaite, the reason why the dockets were removed was because of the views of people such as Brits and others, that the President be pursued.

And in particular, this was the case if former members of the Security Branch involved in cases like the Pebco 3 were to be

prosecuted, then threats were being made by the representatives of the accused in those matters that they would call for the prosecution of the President. Do you accept that that was the view of the NPA as to why those dockets...? [intervenes]

COLONEL BESTER: I have got no comment, I cannot, I was not part of it, so I cannot answer on that.

ADV VARNEY: So at any time did Commissioner Selebi or any other police officer explain to you why the dockets were being removed from the NPA to SAPS?

10 COLONEL BESTER: I have heard there was a discussion between the people that was present on that day. I was not there myself at the NPA offices, and Commissioner De Beer tells me there are suitable offices on the 8th floor of Wachthuis and the dockets must be removed. And there was sufficient space for Brits, there was an office for him as well.

ADV VARNEY: And did Commissioner De Beer explain why the dockets had to be removed from NPA to SAPS?

COLONEL BESTER: Not in particular, he just said that must be removed, and there was, just to rectify, chair, Brits was not placed
20 under the command and control of myself at Crimes Against the State, no. He was still working with Ackerman and the NPA. He never reported to me about any case, or come to me and see me and I must give him guidance or he wants an opinion or, no, never.

ADV VARNEY: But from that moment on he was no longer based at the NPA?

COLONEL BESTER: He was still seconded there, he was a seconded ...[intervenes]

ADV VARNEY: But not physically, not physically based there anymore?

COLONEL BESTER: Ja.

ADV VARNEY: They and their dockets were removed?

COLONEL BESTER: His secondment end February 2005.

ADV VARNEY: Now, while those dockets and documents were now in the hands of the SAPS, who had access to them?

10 COLONEL BESTER: Just come again?

ADV VARNEY: Who had access to those dockets once they had been transferred to SAPS?

COLONEL BESTER: They were safeguarded in my... I was... not at Wachthuis, there was... Vinet has got a key and Brits. I never had a key of Wachthuis. But when they transferred it to my office, myself and Vinet is the key holders, and nobody enters there without my permission, or Vinet calling me and saying that there is an enquiry or there is something that happened with all the things that I already testifying about.

20 ADV VARNEY: So if anybody wanted access to the dockets, they would have to approach you?

COLONEL BESTER: They would approach me.

ADV VARNEY: And did anybody approach you?

COLONEL BESTER: No, never.

COMMISSIONER GABRIEL: Mr Varney, before you leave this topic,

may I interrupt you? Colonel, earlier on you said these dockets were serious enough to keep under lock and key. What did you mean?

COLONEL BESTER: That is now in Visage Street?

COMMISSIONER GABRIEL: I am talking about your testimony now. I think, I am not sure, but you said that they were serious enough to keep under lock and key. What gave you that view?

COLONEL BESTER: All the sensitivities surrounding the TRC cases and dockets was, and the instruction was specific from the Bureau when we removed. He said there are suitable offices, and those
10 offices were previously secured and used by other units, so that was, we stayed in there. But when they want to remove it to my offices after the departure of Brits, I said I have not got such a secure place.

Then I apply again for financial authority and they come and secure that, and only me and Vinet Coetzee have that lock. So anybody who wants to enter there is either me or Vinet, and most of the time it was Vinet because many times I was not there. But she will inform me if there was anybody who needs access or there is something to do there, and it was limited, it was limited.

COMMISSIONER GABRIEL: Okay, so you regarded the TRC cases
20 generally as sensitive?

COLONEL BESTER: Yes.

COMMISSIONER GABRIEL: Okay, thank you.

ADV VARNEY: Thank you, commissioner. So would I be correct in saying that the documents remained under your care and under your lock and key following the retirement of Senior Superintendent Brits,

which was in February of 2005?

COLONEL BESTER: Correct.

ADV VARNEY: Now, did the SAPs carry out any further investigations in respect of those documents following their transfer, to your knowledge?

COLONEL BESTER: No, the only thing that we have done, as I have already testified, is when the ITT requested that document that they supplied in my own writing about the inquests that I supplied. Then I went in there and see if there is some of the documents. Some of the
10 documents was not there, I go to the police stations for the perusal of the inquest dockets, *ag*, the inquest registers, et cetera. And then when I entered there with the A15 document, the forgery, and then when Macadams asked me that we must investigate those 10 cases.

ADV VARNEY: So approximately when did you have to go into the secure storage to access the documents for purposes of assisting the ITT?

COLONEL BESTER: Come again?

ADV VARNEY: I am just trying to work out when you had to access the documents, because you wanted to look at the question of
20 inquests.

COLONEL BESTER: Yes.

ADV VARNEY: When was that approximately?

COLONEL BESTER: I cannot remember the date. I testified when the request from Commissioner Flip Jacobs come to me, he was on the ITT, then I supply them. It is part of my main evidence, the date

will be on there.

ADV VARNEY: Okay, my team will look for that date and we will supply it as soon as we find it. And did the PCLU approach you or, to your knowledge, Senior Superintendent Brits for any of those dockets at that time?

COLONEL BESTER: Not that I am aware of, no. I do not know whether, when he was still in 2004 until he left there, if there was any request, but from my office, no. And since, I do not know whether the date is known because I did not remember the date, it was transferred
10 from Wachthuis to my office.

ADV VARNEY: And we are not sure of that date either, but we assume that it would have been around February 2005 ...[intervenes]

COLONEL BESTER: 2005.

ADV VARNEY: Because that is when Mr Brits retired.

COLONEL BESTER: After he left I do not think I apply for financial authorisation for this office to be safeguarded before he left. It was after he left, so two or three months after that the transfer took place, I presume, I have not got a date.

ADV VARNEY: Thank you. And also, to the best of your knowledge,
20 do you know whether the PCLU made any decisions, prosecutorial decisions in relation to those cases while they were in the hands of the SAPS?

COLONEL BESTER: Not that I am aware of. I must apply my mind now. I do not know when was it, but the dockets was not with me either in Wachthuis or there when they proceed with the case against

Adriaan Vlok and Van der Merwe and those. I think those dockets were still with the PCLU. I cannot remember that it was ever with me.

ADV VARNEY: Yes, although we are specifically talking about the dockets that were under lock and key at SAPS.

COLONEL BESTER: Ja, no.

ADV VARNEY: All right, let us turn to the SAPS audit report to the ITT. We are still on page 5 of the application to cross-examine, paragraph 19.

COLONEL BESTER: Just come again with that paragraph?

10 ADV VARNEY: I will just wait. So I am now back to the application to cross-examine, page 5, red page 5.

COLONEL BESTER: Ja, I am on 5.

ADV VARNEY: Great. So you can see there is a heading at the bottom: "SAPS Audit Report Presented to the ITT".

COLONEL BESTER: Yes, I see it.

ADV VARNEY: And in your evidence you said that during October 2006 you assisted Commissioner Philip Jacobs to audit the TRC cases that were in possession of the SAPS. This is set out in your statement at paragraph 25. And this assistance culminated in the
20 SAPS audit report that was delivered to the ITT on the 6 November 2006.

COLONEL BESTER: That is correct.

ADV VARNEY: You confirmed that. So the SAPS audit report listed seven cases against members of the former Liberation Movements, wherein the SAPS allegedly sought guidance from the ITT regarding

inquests that needed to be held in each case. So I am correct in saying this is the work you did, to look into the question of inquests?

COLONEL BESTER: That is correct.

ADV VARNEY: And perhaps we can turn to page 348 of the cross-examination bundle.

COLONEL BESTER: I am on the page?

ADV VARNEY: It is 348.

COLONEL BESTER: 348, yes.

ADV VARNEY: Ja. And in response to a question from Adv Soni,
10 and the question is:

"ADV SONI: Of the 73 matters, you include seven matters in your report.

MR JACOBS: That is correct.

ADV SONI: Why those seven matters?

MR JACOBS: (Line 10) Chairperson, and the
decisions by Adv Ackerman, in most of them there
were indications that attention should be given to
the inquests in those matters. And, I mean, that
the NPA is stating, as we discussed previously,
20 that the documents were returned, that the South
African Police Service returned by the NPA
because they are finalised with it. But we thought
that these inquests need to be dealt with,
especially relating to the families which are
involved."

So that seems to be a reason why Mr Jacobs asked you to follow up on the inquests.

COLONEL BESTER: Correct.

ADV VARNEY: Even though he stated that the NPA was finished with those cases, because in his words, he used the word "finalised", but let us turn to your evidence. And at paragraph 21 on page 6 your evidence before the commission, or rather the evidence of Mr Jacobs:

"I asked Superintendent Louis Bester..."

[intervenes]

10 COLONEL BESTER: Just a moment, just a moment.

ADV VARNEY: Ja.

COLONEL BESTER: Yes, I have got it. Paragraph 21?

ADV VARNEY: That is right. So Mr Jacobs says before this commission:

"I asked Superintendent Louis Bester to indicate to me which matters are outstanding, and he referred me to these cases..."

Presumably the seven cases. Chairperson, that is also in the same transcript at page 350. So according to Mr Jacobs, it was
20 you who identified those seven cases.

COLONEL BESTER: Ja, I received the cases on that letterhead as an attachment, when I just found the attachment, and he gave it to me, and in my own handwriting on the left-hand side I said: "*GO uitstaande* [Inquest outstanding]", or whatever the case may be, and that is the cases.

ADV VARNEY: Yes, but the impression we get, excuse me, the impression we get from Mr Jacobs is that he asked you to indicate which are the matters that are, and to quote him, "outstanding", and he said you referred him to those cases.

COLONEL BESTER: No, I do not refer him to it. It was on, it must be an annexure, I cannot remember what is the annexure to my statement, it is an annexure to my statement. Let me just quickly...

ADV RANTHO: Commissioners, Annexure LB3 to the witness' statement.

10 CHAIRPERSON: Supplementary statement?

ADV RANTHO: No, the initial ...[intervenes]

CHAIRPERSON: The initial statement?

ADV RANTHO: The initial statement, yes.

ADV VARNEY: Yes, we are going to get to the audit report shortly, but perhaps let me refer you to page 350, which is the evidence of Dr Jacobs. This is the transcript when he was under cross-examination by myself.

COLONEL BESTER: I have got the page.

ADV VARNEY: So at the top Dr Jacobs says as follows:

20 "Chairperson, as I have already mentioned, I asked Superintendent Louis Bester to indicate to me which matters are outstanding, and he referred me to these cases. I then drafted the report based on that, and you will see from the report all the paragraphs, there is actually giving

the gist of what every case is about."

And if I can just skip the next paragraph:

"So I then requested Senior Superintendent Louis

Bestow to follow these matters up..."

And he pointed out that you actually went to police stations.

So according to Dr Jacobs, it was you who identified the cases that had to be followed up.

COLONEL BESTER: No, I think there must be a misunderstanding.

He handed me the list, a typed list, and in my own handwriting on the
10 left-hand margin, there is an annexure to my initial statement. I said
there, and some people even asked me that we must translate that as
well, inquest, or whatever the case may be.

So I received the list, and I cannot remember what is the topic on top, in these cases. I think the first case is Musina, and then King Williamstown and Umbumbulu. And all of those places I visit or get information what was the standing with the inquest, was it still outstanding. Some of the J56 I do not even, I could not trace them because there was no mention to police stations. There was chaos at the police stations already at that time.

20 ADV VARNEY: Okay, we will come to the audit report. Just a reminder, Mr Bester, when I am talking to you, you can look at me, it is just that you make sure you understand the question, but your answers have to be directed to the chairperson and commissioners.

COLONEL BESTER: No problem, yes. Sorry, chair, with respect.

ADV VARNEY: So now paragraph 22 on page 6 of the

cross-application. So you stated in your evidence that:

"The status and outcome of the inquest investigations are reflected in the audit report."

That is the report that you have now been referring us to:

"...and the information that appears in the audit report was obtained as a result of investigations in respect of each case."

Would you agree?

COLONEL BESTER: I agree.

10 ADV VARNEY: And you have just also mentioned that on that report there are handwritten notes, and those are your handwritten notes. Is that correct?

COLONEL BESTER: That is correct, chair.

ADV VARNEY: And that from your perspective, those handwritten notes were the final outcomes of your enquiries?

COLONEL BESTER: It was the status at that stage, when I went to the police stations or found some of those dockets or the inquest registers, at that stage, that was my finding. So I know some of the cases, I think, for instance, the Musina case was later, there was
20 people charged and there was people found guilty, and the people later received amnesty. So at that stage, when I was visiting the stations and looking for the inquest, that was the situation.

ADV VARNEY: Perhaps we can turn to the undated information note that you compiled and addressed to Commissioner Jacobs, and I am at paragraph 24 of that particular information note. It is at page 33 of

the cross-examination bundle.

COLONEL BESTER: I have got it in front of me.

CHAIRPERSON: Page?

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

CHAIRPERSON: Three, three?

ADV VARNEY: 33, Exactly.

CHAIRPERSON: Oh, yes.

ADV VARNEY: So that document is titled, "Information Note to Assistant Commissioner PJ Jacobs". The heading is, "TRC-related
10 matters: Inquest", and at the bottom of the page it appears to be signed by yourself, Commander: Crimes Against the State, LJ Bester. Do you confirm that you compiled that information note?

COLONEL BESTER: I confirm, chair.

ADV VARNEY: And there is a handwriting on the top right hand of that page. Do you recognise whose handwriting that is?

COLONEL BESTER: I am not very sure, but it seems like Commissioner Jacobs' handwriting, but I am not sure.

ADV VARNEY: And are you able to read that other handwriting?

COMMISSIONER KGOMO: Does it not look like ...[intervenes]

20 COLONEL BESTER: "Put on file."

COMMISSIONER KGOMO: Sorry. Does not it look like Mr Ackerman's handwriting? But let me read it there.

COLONEL BESTER: You are right, chair, you are right. If you look at the top, "Adv M", it can be Ackerman's handwriting.

COMMISSIONER KGOMO: Okay.

COLONEL BESTER: Ja, I agree with you.

ADV VARNEY: Yes, Commissioner Kgomo, we also believe that to be the handwriting of Adv Ackerman. So then, and now I am back to our paragraph 24 at the bottom of page 26, so that undated info note that you compiled indicates that:

"Further investigations were done in respect of the seven cases after the SAPS audit report was presented to the ITT on 6 November 2006."

And that information note, supporting documents and PCLU
10 memos were attached in a bundle marked ST1 that was attached to the bundle of Mr Jacobs. But essentially what it sets out, and perhaps we can save time without having to go through it case by case, is that in every case either inquests had been held or inquests were not needed, for example, where there had already been convictions and prosecutions. Would you agree with that summing up?

COLONEL BESTER: I agree, chair.

ADV VARNEY: All right, well, in that case there is no need for us to go through paragraph 24.1 all the way to 24.7. If you agree that, as
20 you have just indicated, that in each matter inquests were either held or could not be held. Now, there is one exception though, and that is the case docket Jeppe CR4/7/88 at 24.6, because in that matter it appears that an inquest had not been held, and there was in fact an instruction by Ackerman that this be pursued. No, sorry, I have made a mistake ...[intervenes]

COLONEL BESTER: In the Jeppe instance, chair, I have got it that inquests were held, inquests 90 and 91 of 88.

ADV VARNEY: Yes, yes, I have just realised my mistake, and thanks for pointing it out. So in that matter, as with the others, an inquest had been held. All right, then let us move on. I suppose the question arising is that if in these cases there were no need for further inquests for the reasons given, why were they included in the audit report?

COLONEL BESTER: Just come again?

ADV VARNEY: So you were asked to look into these matters for
10 purposes of pursuing potential inquests.

COLONEL BESTER: Yes, yes.

ADV VARNEY: But we can now see that in all these cases inquests were either held or could not be held. So if that is the case, why were they included on the audit report, the SAPS audit report?

COLONEL BESTER: No, that was asked for me, chair, from the ITT via Commissioner Jacobs, that I must just look into it. That is why I take the effort and look, go to the police stations, look. If I can see a J56 or I can see the inquest register, and that is where my report is based on.

20 ADV VARNEY: Chairperson, we still have a few questions on this particular subject, but I see it is almost 01:00 PM.

CHAIRPERSON: Yes.

ADV VARNEY: Would this be an appropriate time for the lunch adjournment?

CHAIRPERSON: Yes, we will adjourn and reconvene at 2 o'clock.

INQUIRY ADJOURNSINQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Varney.

EXAMINATION BY ADV VARNEY (CONTINUES): Thank you, Chairperson. Chairperson, there is a need for us to quickly revisit the evidence of Doctor Jacobs, of the transcript that we referred to earlier and to give it proper context, we beg leave to hand up the page before page 350. With the leave of the Chairperson we would like to provide the Commissioners with copies, Mr Bester and his legal team.

10

COMMISSIONER KGOMO: Thank you.

ADV VARNEY: Chairperson, I apologise to my colleagues, I thought there were sufficient copies but we are only relying on two paragraphs which I will read into the record slowly.

CHAIRPERSON: Yes.

ADV VARNEY: Chairperson, with your leave we would like to number that page 249.1 (*sic*).

CHAIRPERSON: Yes, you may, noted.

ADV VARNEY: Chairperson, may I proceed?

20 CHAIRPERSON: Yes, you may proceed.

ADV VARNEY: Mr Bester, let me draw your attention to the page that has just been given to you, it is the page before page 350. It is the transcript of my cross-examination of Doctor Jacobs and I am going to read into the record the last two paragraphs on that page, and we are referring here to the information note. And Chairperson,

that is the information note at page 33 of the record that we have already referred to:

“Adv Varney: You will see it is an information note, it is addressed to you titled ‘TRC-related matters inquest’. There are eight matters there and with the exception of number 8, they are the same matters that are listed in your audit report. Did you rely on this information note when compile [I think that should read when compiling] the SAPS audit report?”

10 Doctor Jacobs: Chairperson, I think there is a lot of context that needs to be given to this document. This information note from Senior Superintendent Louis Bester and maybe if I am long in my answer, I think the views that I will express and the concerns is that it addresses that context. I think all these other matters will actually be clear to you as well.”

So if I can ask that we also look at the same time at the audit report, PCJ8 which is on page 1743 of the Jacobs bundle, and we have that audit report at page 91 of the cross bundle and then we
20 turn to page 350. And we have read aspects of this into the record again but I am just going to do so for the sake of completeness:

“Doctor Jacobs: Chairperson, as I have already mentioned, I asked Superintendent Louis Bester to indicate to me which matters are outstanding and he referred me to these cases. I then drafted the report

based on that and you will see from the report all the paragraphs there is actually giving the gist of what every case is about.

Because if you just give a name of a case *et cetera*, the other members on the committee will not be *au fait* or they will not know what you would be talking about. Then after this with the meeting we had and the concerns expressed by Adv Ackermann that these matters have all been finalised, you will see on
10 the top of that page PCJ8, 1743, I wrote in my handwriting 'Gee finale report, follow up'. So I then requested Senior Superintendent Louis Brits to follow these matters up."

And that is where I will pause it for the moment. So Mr Bester, we now have some greater context in relation to the evidence of Doctor Jacobs and he is saying that the SAPS audit report is a document that he drafted, but if you look at the top paragraph of the page that will be line 4 or perhaps let me start again, he asked you to indicated to me, to him which matters are
20 outstanding and he, then you referred him to these cases.

He then drafted the report based on that. So we want to put it to you again that although the report was in fact drafted by Doctor Jacobs, according to Doctor Jacobs it was based on the information that you had supplied to him.

COLONEL BESTER: Chair, the "Report on audit document of South

African Police Service – TRC related matters”, I received that from Commissioner Jacobs and I followed it up and in my handwriting on the left-hand side I wrote what [indistinct], the latest before we wrote that information note is based on this. So I received it from him, the cases that they wanted to see, what is the progress of the inquest and this is that, my respond to it in my own handwriting and then later the information note that was undated.

ADV VARNEY: But now the information that is in the report drafted by Doctor Jacobs, the SAPS audit report which is at page 91 of the
10 cross-examination bundle, perhaps we should just go there, so the information in respect of the cases listed there, where would Doctor Jacobs or Jacobs have gotten that information from, if not from you?

COLONEL BESTER: Chair ja, maybe there is a misunderstanding. I received this page 91 if you read, “Report on audit document of South African Police Service – TRC related matters” at the last meeting of the committee. Now I did not attend, and I was never at that meetings or at the ITT for that matter, so ...[intervenes]

ADV VARNEY: No, we are not talking about the meeting, let us just focus on the information that is in this ...[intervenes]

20 COLONEL BESTER: Ja, that is coming from the committee, the information.

ADV VARNEY: Ja.

COLONEL BESTER: I received this and I in my own handwriting, write and comply with “GO’s afgehandel, Van Eck en De Nysschen” as an example. So I received this from him and I wrote the outcome

on the left-hand side.

ADV VARNEY: Yes, but the evidence of Doctor Jacobs is that he based this memo on the information that you gave to him before he wrote up this SAPS audit report.

COLONEL BESTER: Well I compiled this report after I received this, so I do not know.

ADV VARNEY: So are you denying that you ...[intervenes]

ADV RANTHO: Sorry Chair ...[intervenes]

COLONEL BESTER: No, I will not deny.

10 ADV RANTHO: Apologies Chair, perhaps if my colleague can point to that because there is no such evidence by General Jacobs as well ...[intervenes]

COMMISSIONER KGOMO: Just speak up a bit, madam.

ADV RANTHO: Commissioner, our concern is that such evidence, we have no recollection of such evidence by General Jacobs and we are simply asking that perhaps if Mr Varney can point us to that if ...[intervenes]

CHAIRPERSON: That is page 350, Ms Rantho.

ADV RANTHO: But the context in 350 Chair, is something else, it is
20 not what Mr Varney is advancing and that is why we say if he can point us elsewhere.

ADV VARNEY: Chairperson, I just read it into the records, it is not clear to me what ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: The concern of Adv Rantho is. I can read it again if

...[intervenes]

CHAIRPERSON: Yes, I thought your question was, according to Doctor Jacobs he prepared the report based on the information that had been supplied by Colonel Bester?

ADV VARNEY: Correct, Chairperson.

CHAIRPERSON: And Colonel Bester says he did not supply that information.

ADV VARNEY: That is correct, Chairperson.

CHAIRPERSON: And your question is, if he did not supply that
10 information, from where would Doctor Jacobs have obtained that information which is contained in the report?

ADV VARNEY: That is correct, Chairperson.

ADV RANTHO: Chair, I think what has to be clear in all fairness to the witness, that same document is called manuscript, on the left it has got some handwriting notes and then it has got typed kind of
...[intervenes]

CHAIRPERSON: No, let us forget the document, let us concentrate on the question, Ms Rantho.

ADV RANTHO: It is based on that document.

20 CHAIRPERSON: Yes, yes.

ADV RANTHO: That is what Mr Varney is saying that, and indeed General Jacobs did say he relied on that but the question becomes, which part of that document? Because it has got notes that the witness said those were his notes. Is that what, where General Jacobs, whatever that he relied on or the typed version? And that is

where we say let us be clear which of the information that is contained in that document, Chair.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chairperson, the simple answer is that and for the moment let us ignore the subsequent handwritten insertions, the evidence of Doctor Jacobs is that he relied on the information ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Supplied by Mr Bester to compile that document, so
10 if the contents of that document for the moment excluding the handwritten insertions ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Which only came in later.

CHAIRPERSON: Yes and for that moment you are not concentrating on LB3, your question is based on what has been read out at page 350.

ADV VARNEY: Correct, Chairperson.

CHAIRPERSON: Yes, thank you. Ms Rantho, is that clear?

ADV RANTHO: We are okay Chair, thank you.

20 CHAIRPERSON: Yes, thank you. Mr Bester, Colonel Bester, if Doctor Jacobs did not get the information from you of what is contained in his report, where would he have obtained that information? Are you able to answer? If yes, yes. If no, no.

COLONEL BESTER: My calculation is Chair with all... I cannot remember that I gave it. I was, I, no, I ...[intervenes]

CHAIRPERSON: You did not?

COLONEL BESTER: No.

CHAIRPERSON: You do not know where you obtained that information?

COLONEL BESTER: No.

ADV VARNEY: So to be clear Mr Bester, I had asked you whether you were denying ever giving that information to Doctor Jacobs and as I understood, you were about to say, "I did not, I do not deny it" but perhaps you ...[intervenes]

10 COLONEL BESTER: My recalculation Chair is, maybe it might like that but I cannot recall that I gave it to him. I remember receiving this information and in my own handwriting I wrote what was done.

CHAIRPERSON: Did you give the information on which the report of Doctor Jacobs is based, or not?

COLONEL BESTER: Yes, I gave it.

CHAIRPERSON: You did?

COLONEL BESTER: Ja, I must have otherwise where would he get it? I mean my recalculation is not right, I, but I cannot remember. I remember receiving the information note from him or the letter from
20 him and in my own handwriting as I followed up, I wrote it, a letter on that information note is followed up.

CHAIRPERSON: But what are you saying, Colonel Bester? Did you give Doctor Jacobs the information which formed part of the report ...[intervenes]

COLONEL BESTER: Yes.

CHAIRPERSON: That he compiled?

COLONEL BESTER: Ja, this information ...[intervenes]

CHAIRPERSON: Yes?

COLONEL BESTER: In my own handwriting, yes, I gave it to him.

CHAIRPERSON: You gave it to him?

COLONEL BESTER: Yes.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: And the information in the typed paragraphs?

10 COLONEL BESTER: That is, what is that page?

ADV VARNEY: That is at page 91.

COLONEL BESTER: Page 91, the typed version as far as I can recall, I received from Jacobs and he asked me to follow up and then that is my handwriting on the left-hand side that I followed up on what was the outstanding matters concerning the inquest.

CHAIRPERSON: Yes, the question is, the information that is on the typed record on the report on the audit document ...[intervenes]

COLONEL BESTER: Ja?

CHAIRPERSON: Did it emanate from you?

20 COLONEL BESTER: The typed version?

CHAIRPERSON: Yes.

COLONEL BESTER: Ja, it might have, otherwise where will he get it? I think... Ja.

CHAIRPERSON: Yes, so that was the information that came from you?

COLONEL BESTER: That is the information, ja, ja.

CHAIRPERSON: Yes.

COLONEL BESTER: So that follow-up.

CHAIRPERSON: Thank you. Mr Varney?

COLONEL BESTER: Do I understand correct? Sorry, Chair.

COMMISSIONER GABRIEL: Mr Varney, can I just ask, refresh my memory, what is the date of this report? If you do not have at hand you can come back to it.

10 ADV VARNEY: No, the SAPS audit report is November, the 6 November 2006.

COMMISSIONER GABRIEL: Thank you.

COLONEL BESTER: Ja, I cannot remember when the ITT start functioning, because I was not part of it but it must be during that period, so it might be right, that.

ADV VARNEY: So Mr Bester, the reason that I asked whether you had given the information upon which Doctor Jacobs relied for the typed version of that report, is because correct me if I am wrong, all this information comes from the files that were under your lock and key.

20 COLONEL BESTER: That is correct, ja.

ADV VARNEY: So then let us take a look at some of the information that is in that report in page 91. As we can see this is titled, "Report on audit documents of SAPS – TRC related matters" and under paragraph 2 it says:

"The key to the list is now available and the following

matters need in our view to be followed up.”

And it starts at 2.1 and then it runs all the way to 2.7, starting with “Messina CR 57/11/85 MZ Ncube and Two Others”. Now in fact this, it is this particular case that is the subject of A15, the document that we are going to come to in due course.

COLONEL BESTER: That is right.

ADV VARNEY: And I may as well just read into the record what this matter is about so that we are all on the same page:

10 “The investigation relates to eight landmine explosions
which took place in the Messina area as well as two
landmines planted in the Alldays area, and the death of
two police officials during the escape of suspects. In his
report on this matter, Adv Ackermann indicated that,
“The ANC had approved the use of landmine, and
orders in this regard were given by the command
structure of Umkhonto we Sizwe to members (Amnesty
Judgment of those involved). According to the evidence
those mentioned were under the command of one
Mancheck who gave orders and who had to report to
20 MK commanders. All the other ANC members (foot
soldiers) who were involved in these crimes, are
deceased. Adv Ackermann made the following
decision, in respect of the so-called foot soldiers, no
further investigation is necessary. In respect of the
ANC leadership who gave orders for the landmines

campaign, and who have not received amnesty, a decision need to be taken at an opportune time after consulting with all relevant parties. This is a difficult decision" (26 June 2006). PCLU has indicated that NPA has already decided that no prosecution of cases against ANC NEC leadership will be instituted. A decision is required on how outstanding inquests of deceased in these matters should be disposed of."

So this information that Doctor Jacobs included, would have
10 been information that you had supplied to him, correct?

COLONEL BESTER: Ja.

ADV VARNEY: Ja, you would have to say yes, that is ...[intervenes]

CHAIRPERSON: Ja, he said correct.

COLONEL BESTER: That is correct.

CHAIRPERSON: He said correct.

ADV VARNEY: Oh he did say?

CHAIRPERSON: Yes.

ADV VARNEY: Sorry, I did not hear. So I just want to draw your
attention to that date in brackets, the third line from the top on the
20 second page of the audit report.

COMMISSIONER GABRIEL: Page 92.

ADV VARNEY: Page 92, 26 June 2006. Doctor Jacobs would have
relied on your information and we wish to put it to you Mr Bester, that
the insertion of that date in brackets was a fabrication.

COLONEL BESTER: Ja well I did not look at it in that way, no way.

This was part of an A15 that is on the table for the forging, no. I did not look at this document for that date.

ADV VARNEY: Sir, can I ask you to read into the record and if you are able to give a translation and you did put up a translation, I think Adv Rantho did ask you to offer a translation when she led you in your evidence-in-chief. Chairperson, I can give you the page numbers, it is the evidence-in-chief of Mr Bester, 17 August 2026, pages, from pages 21 to 23.

10 But perhaps just to assist us and to have the handwriting next to you and that is your handwriting, could you just assist us by explaining in English what your handwritten comments are?

COLONEL BESTER: As far as the Messina page is concerned?

ADV VARNEY: You will see next to 2.1, Messina CR, you have got your handwriting comments on the left-hand side.

COLONEL BESTER: Ja, inquest is finalised, Van Eck and De Nysschen, there was somebody who was responsible for that, ja, “onbekende persone wie landmyne geplant het”, unknown persons who plant landmines.

20 ADV VARNEY: Is that the full one, does it include the comment below that?

COLONEL BESTER: The other two of that, is that Ncube and Two Others, the other two which are the two policemen that was shot dead, the inquest of the two police officers, Nel and Gerber, we could not trace, the inquest register is not available and Messina will be contacted or “nagegaan word”, will be, it will be followed up.

ADV VARNEY: So and if we turn to the information note which we know was compiled after this SAPS audit report, that is on page 33, this is your information note, can I ask you to read into the record paragraph 2 dealing with Messina CR?

COLONEL BESTER: Page 53?

CHAIRPERSON: 33.

COLONEL BESTER: 33, oh here it is, ja. Ja this is the undated one. Ja, that must be after that I typed it and sent it to Commissioner Jacobs.

10 ADV VARNEY: If you just read into the record paragraph 2?

COLONEL BESTER: Correct.

COMMISSIONER GABRIEL: No, can you read it please?

COLONEL BESTER: The paragraph 2?

“Messina CR 57/11/85 M Z Ncube and two others.

Inquests were held in respect of the Van Eck and De Nysschen victims. (Attached copies of J56 and annexures A to F). Inquests in respect of the two police officers, Nel and Gerber, were not held because the accused, Ncube and two others were charged and
20 convicted but receive amnesty.”

ADV VARNEY: So we can see that in relation to this matter, inquests were held in respect of the Van Eck and De Nysschen victims and the reason why ...[intervenes]

COLONEL BESTER: I think of the police officers there was not an inquest held.

ADV VARNEY: And the reason why inquests were not held in relation to the two deceased police officers, Nel and Gerber, is because the suspects in that matter were charged and convicted and received amnesty, so there was no need for an inquest.

COLONEL BESTER: That is right but if you look now at page 91 which I translate, "wat landmyne geplant het" and evidence of Nel and Gerber, "Messina sal nagegaan word" and after I go to Messina, then I establish that this docket was finalised and that the gentlemen was charged and convicted and received amnesty.

10 ADV VARNEY: So indeed there was no need for this case to be included in this list of follow-up cases for inquest?

COLONEL BESTER: That is where my problem lie, I do not know what was the actual request, which matters must I include because I include these, there must be some kind of conversation between me and Jacobs for which cases I must include, how I come to the eight cases that is on this list.

ADV VARNEY: Yes. No, that is a question I think we need to interrogate and I do not wish to read Doctor Jacobs' evidence again, because we will sound like a stuck record. But it was Doctor Jacobs
20 who did ask for information on cases for a potential inquest to be followed up and you have conceded that you provided the information upon which his report was based.

Now I want to put it to you that if one goes to the A15 document which is at page 227 of the cross-examination bundle and you have the memo of Adv Ackermann, the aspects of it which we will

deal with later, at the top of page, red page 229, the second paragraph, the information in relation to Mncube and Nondula was already there. Yes, I will read it into the record:

“Eersgenoemde twee persone hierbo (Mncube en Nondula) is later gearresteer en is weens al die gemelde misdade vervol, skuldig bevind en gevonniss, terwyl die derde persoon (Mbuli) nooit gearresteer was nie.”

So already in the report that was at your disposal, you were
10 aware that these two individuals had been arrested, tried, convicted and sentenced.

COLONEL BESTER: Yes Chair, but I, ja, yes, I...

ADV VARNEY: And yet in your report, sorry, in Doctor Jacobs' report under 2.1, that information is not reflected.

COLONEL BESTER: 2.1.

CHAIRPERSON: What page are you at, Mr Varney?

ADV VARNEY: I am back at page 91, apologies.

CHAIRPERSON: Yes.

ADV VARNEY: Back at the ...[intervenes]

20 CHAIRPERSON: Yes.

ADV VARNEY: SAPS audit report, so page 91 and page 92.

COLONEL BESTER: Ja. Ja, that is correct, it is not included there.

ADV VARNEY: Yes, it is not included there.

COLONEL BESTER: Ja.

ADV VARNEY: And instead what is included is that Mr Ackermann

is apparently considering cases against the ANC leadership and that is a difficult decision and the date is apparently the 26 June 2006. So if you were the one providing the information, how is it that that is the information that ended up in this document but not information such as what I have just put to you?

COLONEL BESTER: Chair, I am still confused about this document, the information must have come from me, yes, but all of this knowledge I did not have at that point in time. I followed it up. Ja, it is difficult for me now, I...

10 CHAIRPERSON: You cannot explain it?

COLONEL BESTER: I cannot explain it.

CHAIRPERSON: Yes.

COLONEL BESTER: Thank you, Chair.

ADV VARNEY: Well it is not entirely true to say that you did not have the information because the information I read to you was from the memos under your lock and key which you had access to.

COLONEL BESTER: Ja, I never worked through the memos, that is what my trouble is at the moment, that I cannot recall where exactly this information comes from that I followed it up in this way that I did.

20 Something is slipping my mind, I cannot remember.

ADV VARNEY: Yes, well I want to put it to you that the only source of your information would have been the memos, the very ones that had been transferred to SAPS that were under your lock and key at the time.

COLONEL BESTER: The information is available there but I never

perused those documents till the time that I collect them for the forgery investigation.

ADV VARNEY: And yet it is Doctor Jacobs' evidence that he got the information from you and you have conceded that you probably did give it to him.

COLONEL BESTER: I cannot remember, I cannot remember. It slipped my mind totally now, I cannot.

COMMISSIONER GABRIEL: Can I ask a clarification question? You said earlier that there might have been a prior communication
10 between you and Doctor Jacobs?

COLONEL BESTER: Yes.

COMMISSIONER GABRIEL: What makes you think that?

COLONEL BESTER: Just come again?

COMMISSIONER GABRIEL: If I understood your evidence just a few minutes ago ...[intervenes]

COLONEL BESTER: Ja?

COMMISSIONER GABRIEL: You said there might have been an earlier conversation between you and Doctor Jacobs?

COLONEL BESTER: That is correct.

20 COMMISSIONER GABRIEL: Are you able to recall anything about that or are you still doubtful about whether that happened?

COLONEL BESTER: I am doubtful because I also on a regular basis not concerning TRC case only, but Doctor Jacobs was the Litigation Head of the Police and many of my other cases that I was investigating, I visit him on a frequent basis, so.

COMMISSIONER GABRIEL: Okay, thank you. Thank you, Mr Varney.

ADV VARNEY: Thank you, Commissioner. So it has been your evidence earlier today that those documents were under your lock and key. If I recall you, recall your evidence correctly, you said that no SAPS investigating officer came to ask for those documents or take them away and neither did anybody from the NPA.

COLONEL BESTER: No.

ADV VARNEY: No decision had been taken by the NPA in relation
10 to these matters while they were in your custody?

COLONEL BESTER: No, correct.

ADV VARNEY: And then yet this document suggests that Adv Ackermann had to make a difficult decision apparently on the 26 June 2006?

COLONEL BESTER: Just repeat that?

ADV VARNEY: So your evidence is that no police officer or prosecutor came to ask for these dockets from you?

COLONEL BESTER: That is right.

ADV VARNEY: While they were under your control and certainly
20 through 2006 they were under your lock and key.

COLONEL BESTER: That is correct.

ADV VARNEY: So how does one explain that the memo drawn up by Doctor Jacobs apparently relied on your information, is that Adv Ackermann had to make a difficult decision and that is dated the 26 June 2006?

COLONEL BESTER: I hear what you are saying, Chair. That is what I cannot recall. I went into that office, yes, to peruse when I found out about this inquest that is outstanding. Some of the dockets was there, some was not. I visited the stations, so I have to go into these things but it is doubtful in my mind where I get, who, what is the... whether they get the specific cases.

I cannot thumb suck seven or eight cases and look after them, somebody must have asked me, we must look at those cases.

ADV VARNEY: Commissioner, did you want to put a question?

10 COMMISSIONER GABRIEL: No.

ADV VARNEY: No. Well Mr Bester, in due course we will be putting it to this Commission that that was a deliberate fabrication, it was inserted in order to give the impression that Adv Ackermann in June 2006 was about to make that decision.

COLONEL BESTER: Not true, no, definitely not.

ADV VARNEY: But yet you are at a loss to explain how that appears in this document.

COLONEL BESTER: Ja, I cannot explain but I definitely did not deliberately do it to harm anybody and especially not Ackermann.

20 No, definitely not.

ADV VARNEY: All right, in all the other matters listed here as we have discussed previously, the information that these are supposedly live matters, is all incorrect because your information note confirms that in all these cases inquests were either held or there was no good reason to hold them because individuals either had been prosecuted

and convicted or were deceased.

COLONEL BESTER: Chair, I did not do that out of my own, that is what is boggling my mind now. I was instructed by someone or requested by someone that I must follow up these cases and that is why I am going, get in my car and for each of these I must actually go and look, there must be an as I explained earlier, a catch enquiry file for each of these cases because I cannot just jump in my car, there must be a docket and I especially Umbumbulu, I fly down and the people there come and pick me up and we went for the whole day, 10 they even helped me to search that offices where I can remember, especially the other cases as well.

It is not that I thumb suck and said, so I deny totally that this was done deliberately to influence anybody or to put a blame on anybody. No, definitely not.

COMMISSIONER GABRIEL: Are you able to say who most likely would have spoken to you?

COLONEL BESTER: In my mind this must emanate from the ITT, somebody in the ITT where they were gathering said, "But what about these cases, what happened to these cases, was inquests held?" 20 And that is how it landed on my table, I go into the storeroom, look at certain cases that was on the shelf. For instance, the Messina case is there but I do not find the documentation that I want, so that is how I can establish in my own handwriting on the left-hand side what I was doing to, the information they gave me.

COMMISSIONER GABRIEL: Okay, but you cannot be certain of

that, can you?

COLONEL BESTER: Ja, I cannot be certain, ja.

COMMISSIONER GABRIEL: Okay, thank you.

ADV VARNEY: Well Mr Bester, when you say someone asked you to, there is no mystery as to who the someone is, it is Doctor Jacobs. He says so and you are not disputing that.

COLONEL BESTER: Ja, he was the only person on the ITT from the police and I think Lekalala if I remember correctly, but I was never part of the ITT, so.

- 10 ADV VARNEY: And according to Doctor Jacobs, the idea behind this SAPS audit report was essentially to see whether any further inquests in these particular matters should be pursued and I want to put it to you that from the evidence that we have heard and from your own information note, none of them should have been in this list because there was no prospect of an inquest in any of these matters.

COLONEL BESTER: That is why I am saying Chair, I would not have thumb sucked all these cases and follow up, it must be put on my table or a request from someone to compile this and to follow it up.

- 20 ADV VARNEY: Well I suppose we do have to move on, but again I have to put it to you that the someone is no mystery, it is Doctor Jacobs.

COLONEL BESTER: I am not sure, it might be. He is the only person that was on the ITT, but how it landed on my table with the request that I must look if the inquest was held or not, I cannot

remember.

ADV VARNEY: Yes and you have also confirmed that you with the new information that is reflected in this SAPS audit report, comes from the documentation that were under your lock and key?

COLONEL BESTER: Ja, correct.

ADV VARNEY: So let me then put to you and we can go back to the application to cross-examine on page 8, it is the evidence of Adv Ackermann SC that these cases were included in the SAPS audit report to make it seem as if he was investigating the ANC during
10 October/November 2006, in particular through the inclusion of the Messina matter which we have discussed at length. Your response to Adv Ackermann's assertion?

COLONEL BESTER: No, definitely not.

ADV VARNEY: And moving on to paragraph 28, here we quote an extract from the minutes of the ITT meeting of 16 November 2006. Chairperson, Commissioners, that is at page 192 of the record, the minutes of that meeting. I will read into record the extract:

20 "Adv Ackermann raised a concern over the impression created by the revised audit report from SAPS that he had indicated his intentions of exploring the possibility of prosecuting the President and 37 ANC leaders. He contended that it was SAPS through Superintendent Brits who had persuaded in vain the PCLU to prosecute the President as there was enough evidence on the case. He said that SAPS was the driving force behind

such prosecution and Adv Macadam produced a letter he wrote to Superintendent Brits in which he indicated that no sufficient evidence exists to institute such prosecution.”

So we wish to put it to you Mr Bester, that the inclusion of these cases in the SAPS audit report was put in there for one reason, and that was to bolster the false narrative that Ackermann was pursuing criminal investigations against the ANC during 2006, whereas in reality the investigations in these cases, all these ones
10 listed in the audit report, had been concluded by March 2004.

COLONEL BESTER: I deny it. Firstly Chair, I was not, if it was Brits perhaps or what, but I was not part of that, definitely not.

ADV VARNEY: So when you say you deny it, I just want to be clear what you are denying. Are you denying the fact or the assertion by Mr Ackermann that those seven cases were included in the SAPS audit report to give the impression that during 2006 he was still investigating those cases?

COLONEL BESTER: I deny that, it was not, ja.

ADV VARNEY: And just to be clear, let me draw your attention to
20 page 29 of the cross-examination bundle.

COLONEL BESTER: 29.

ADV VARNEY: And you will see that this is a document titled, “NPA media release dated 15 May 2004 for immediate release. The NPA closes the file on 37 ANC leaders”. Now:

“The NPA has decided not to launch any investigation

into 37 ANC leaders who were refused amnesty by the
TRC.”

I am not going to read this into the record, but it was issued by Sipho Ngwenta, Executive Manager, NPA Communications. That is on page 30 on the next page. So it is clear that the NPA issued a public statement indicating that the investigations into the ANC leadership were closed on or before the 15 May 2004 and notwithstanding that, and Doctor Jacobs’ report and the information on what she says he relied on, on you, the suggestion is made that
10 Ackermann during June 2006 is still considering those cases which is a difficult decision.

COLONEL BESTER: Ja, I was, I am not aware, I cannot comment on this NPA media release. I was not aware of it, I do not bear any knowledge of it.

ADV VARNEY: All right, let us turn to the next heading which is on page 9. It is titled “The forged A15 memorandum”. Can you see it?

COLONEL BESTER: Correct.

ADV VARNEY: It starts from paragraph 31.

COLONEL BESTER: 31, yes.

20 ADV VARNEY: Okay, before we delve into this, can I ask you Mr Bester, are you still persisting that the A15 memorandum, that document was not altered?

COLONEL BESTER: Well there was no forgery. I am not an expert, that is what the handwriting expert said.

ADV VARNEY: All right, so you are still persisting with the version

that you have put up previously, that the A15 memorandum had not been forged or altered in any way?

COLONEL BESTER: Well that is why I am investigating it Chair, that is why I sent it to the handwriting experts and they said there was no tampering, nothing, everything was the same. So I rely on the two versions of the police and the private [indistinct], that is why I sent it for a second opinion and they both came out with the same version.

ADV VARNEY: So in your statement, at paragraph 32 in your statement, it is at page 81, you are saying that pursuant to the
10 publication of the Rapport newspaper article of 19 August 2007, you were summoned to bring the file containing the A15 memorandum which was referred to in the Rapport article to the office of Commissioner Selebi in the presence of Commissioner De Beer and Mr Jacobs. You confirm that?

COLONEL BESTER: Correct.

ADV VARNEY: Chairperson, the Rapport newspaper article is in the cross-examination bundle at page 111. Chairperson, that is in Afrikaans. We do have English translations of the article, if the Chairperson so requires we can make them available.

20 CHAIRPERSON: Yes, please make it available.

ADV VARNEY: Chairperson, I am advised that the translation is already in the Calata Group Bundle 2.

CHAIRPERSON: Yes.

ADV VARNEY: At page 42 and 43 and with the leave of the Chairperson, we will circulate the copies that we have.

CHAIRPERSON: This is not a translation.

ADV VARNEY: Chairperson, if you just flip it over.

CHAIRPERSON: Oh, there, yes.

ADV VARNEY: There is ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: A translation.

CHAIRPERSON: At 606, 605 is the same as LB5, 606 is the translation.

10 ADV VARNEY: That is correct, Chairperson. Now in your first statement Mr Bester, at paragraph 34 of your statement which is at page 81 of this bundle, am I correct in saying that the identity, you say that the identity of the person who leaked the memo to the Rapport newspaper is not known to you?

COLONEL BESTER: Is not known to me.

ADV VARNEY: Now as far as we are aware and there is no evidence, as a fact Commissioner Selebi, Assistant Commissioner De Beer and no other officer ordered an investigation into the leaking of an internal confidential document to the media. Any idea why this did not happen?

20 COLONEL BESTER: No, I was not, I do not know why they did not, there was no instruction concerning the, who leaked it or how it ends up with Rapport, no. I was not instructed to investigate it, Chair.

ADV VARNEY: And did you not record that as very unusual?

COLONEL BESTER: No, I was instructed to investigate the fraudulent or the tampering with the document and I did it.

ADV VARNEY: Yes. No, I understand that you were instructed to investigate the alleged tampering, we will come to that but you know, as a senior detective and investigating officer with years of experience, did you not think it unusual that you or somebody else were not asked to investigate the leaking of a document to the media?

COLONEL BESTER: No, not necessarily, Chair.

ADV VARNEY: And when you say that is not unusual not to be investigated, why do you say that?

- 10 COLONEL BESTER: I do not think there was a need to investigate where the leak came from. We first wanted to see the allegation that it was tampered with and the allegation was against SAPS, so actually you can, it is just my opinion, if there was tampering with the documents then we will proceed but the outcome was, there was no tampering.

So the basis of an investigation will lie with Adv Ackermann because he is the guy that now said there was tampering but now it is proved there was no tampering.

- ADV VARNEY: We will come to the tampering but I must put it to
20 you that that is a separate matter, it is a separate incident, the alleged tampering. The leaking is another matter altogether. Firstly let me ask you, the leaking, the unauthorised disclosure of a police document to the media, is that not an offence?

COLONEL BESTER: Ja, you can see it as an offence but there was no decision that we must investigate it and this ...[intervenes]

ADV RANTHO: Chair ...[intervenes]

COLONEL BESTER: Regard I take my orders from Commissioner De Beer.

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Yes, just for accuracy sake, that document was not a police document, it came from the NPA and that has to be clear that ...[intervenes]

CHAIRPERSON: Yes.

ADV RANTHO: Those documents came from the NPA. The NPA
10 was in position of those documents before.

CHAIRPERSON: Yes. Mr Varney?

ADV VARNEY: Chairperson, it does not really matter where the document came from, it was a confidential document in the possession of the police.

CHAIRPERSON: Yes.

ADV VARNEY: So Mr Bester, you accept that the leaking of the confidential document to the media is an offence which normally speaking, is investigated?

COLONEL BESTER: Ja it is an offence, it is correct, Chair.

20 ADV VARNEY: But in this case to the best of your knowledge, you were not asked to investigate it and you are not aware of anybody else being asked to investigate it?

COLONEL BESTER: Nobody instructed that we must investigate Rapport, no.

ADV VARNEY: Yes, so that brings me back to my original question,

that was very unusual, was it not?

COLONEL BESTER: I would not say it is unusual.

ADV VARNEY: Okay, was it not improper not to investigate ...[intervenes]

COLONEL BESTER: No ...[intervenes]

ADV VARNEY: That offence?

COLONEL BESTER: Because the instruction was ...[intervenes]

ADV VARNEY: Sorry to interrupt, I am not talking about your instructions around the tampering, we are aware of that.

10 COLONEL BESTER: Ja.

ADV VARNEY: We are talking about your view as a senior officer ceased with a related matter that you did not find it unusual or perhaps even disturbing that nobody was asked to investigate the leaking?

COLONEL BESTER: Chair, the basis of this matter is the leaking document that was reported in the Rapport, so a first step, investigate the tampering or the no tampering of the document and that is what I did, and after that the decision was no further investigation, so it was not solely my prerogative to say we must now go on.

20 We stopped it there and after that there was no requests from the NPA that they want now the documents that we sent for handwriting experts, that they want it because they must now conduct their own investigation. Everything turned silent.

COMMISSIONER KGOMO: But Mr Bester, can you not proactively as a senior police officer says, say, "This is an offence, I want it

investigated or I am investigating it?" You must get instructions from someone more senior than yourself to investigate, is this what you are saying?

COLONEL BESTER: Chair, in this instance I was called to the office of Commissioner Selebi with Commissioner De Beer and the other senior officers there, and they instruct me that we must start investigate with the statement of Brits and everything, that I can see what the handwriting experts are saying. When I finished that, there was no further instructions on that and the case was closed.

- 10 CHAIRPERSON: Yes, but the question was, did you as a senior officer not find it strange that there would be no request for the leak to be investigated?

COLONEL BESTER: Not at that stage Chair, no. What was going through my mind is why they blame the SAPS for leaking the document and now we proved it, there was no tampering with the docket because they alleged that we tampered the docket and then explaining it was not SAPS.

COMMISSIONER GABRIEL: Can I ask a question, please? So we know there was this leak to the media.

- 20 COLONEL BESTER: Correct.

COMMISSIONER GABRIEL: If SAPS had to authorise an investigation, who would authorise such an investigation?

COLONEL BESTER: As I said, it should have come from my top because Commissioner Selebi and Commissioner De Beer called me to their office and instructed, De Beer instruct me that I must

investigate the tampering with the document.

COMMISSIONER GABRIEL: Okay, but forget about the tampering.

So we have got this leak to the media and you have said to Mr Varney that is an offence.

COLONEL BESTER: Ja.

COMMISSIONER GABRIEL: If the leak came from SAPS.

COLONEL BESTER: Ja.

COMMISSIONER GABRIEL: Now who would have the authority to sanction an investigation into that leak at SAPS?

10 COLONEL BESTER: Ja, I should have imagined that it must come from the Detective Head because we were handling, there were all these reports ...[intervenes]

COMMISSIONER GABRIEL: Who is the Detective Head?

COLONEL BESTER: Commissioner De Beer, because ...[intervenes]

COMMISSIONER GABRIEL: So would you have the authority to authorise your own investigation?

COLONEL BESTER: In this instance Chair, with all fairness, I was compiling with it because all the documents that they received for
20 instance from Gerrie Nel, I take it to Commissioner De Beer and he responds to that.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: You see, let me put to you an extract from the article itself, so this is the copy that we just handed out now, I will read from the English translation, the second paragraph:

“Rapport this week from impeccable sources learned that the police dockets, that two retired police officers have made earlier for years not [indistinct] the headquarters of the Police Detective Services. The sources’ names are withheld at the request because of the sensitive positions that they hold.”

So the author of this piece is saying that they had been given these documents, that it comes from police officers, they are withholding the names of those police officers because of the
10 sensitive positions that they hold. They indicate that the source of where the documents are located, are locked up at the headquarters of the Police Detective Services.

Now notwithstanding that, notwithstanding the allegation of the writer of this piece, Sonja Carstens, surely when the reporter is writing that this comes from police headquarters, they cannot disclose the names of the officers involved, that that should have triggered an immediate investigation and yet there was not.

COLONEL BESTER: Ja well, it was not done, Chair. We did not proceed with an investigation. I was not instructed and my final
20 report about the tampering, nothing else has happened after that as I said and there was no request further from the NPA as well.

ADV VARNEY: Well we wish to put it to you Mr Bester, that the failure to do so, the failure of Commissioner Selebi, Assistant Commissioner De Beer and yourself actually, in enquiring or ensuring that an investigation into the leak happened is deeply suspicious.

COLONEL BESTER: One can see it in that light but yes, I do not know what to say, Chair. It was not done and there was no instructions to do so, so.

ADV VARNEY: And can you see the concern that outsiders would have, that notwithstanding what the article is saying and pointing to where these documents come from, that the police themselves decide not to investigate that further, can you see that the impression is created that the police do not want that investigation to proceed because they might be covering something up?

10 COLONEL BESTER: I do not agree, no.

ADV VARNEY: And why do you not agree?

COLONEL BESTER: I disagree.

ADV VARNEY: Yes, can you elaborate on the basis of your disagreement?

COLONEL BESTER: Of course I, the allegations I think is from the NPA side, not from the SAPS side.

ADV VARNEY: The allegation is not from the NPA, it is from Sonja Carstens who is writing a Rapport article.

COLONEL BESTER: Ja, I have nothing to say on that, Chair.

20 ADV VARNEY: Chairperson, I understand that the journalist, the author of the piece, Sonja Carstens, is still alive and it may be necessary that she be called to this Commission to clarify.

CHAIRPERSON: Yes.

ADV VARNEY: If we could ask the evidence leaders to take steps to get a statement from her?

CHAIRPERSON: Mr Soni?

ADV SONI: Chairperson, I ...[intervenes]

COMMISSIONER KGOMO: Switch on your microphone.

ADV SONI: I am deeply concerned, Chairperson. We have freedom of the press now protected by the Constitution. We know that in the past journalists we have brought before commissions and before courts in terms of section 205 of the Criminal Procedure Act, it would be unfortunate that we would force her to come. We do not mind asking her and she may come, but we as evidence leaders would be
10 quite reluctant to say that a journalist must reveal her sources.

CHAIRPERSON: Yes.

ADV SONI: That is a worldwide issue, Chairperson. That is happening in Transamerica and it would be a pity if it happens here as well.

CHAIRPERSON: Yes, but you are happy to ask?

ADV SONI: We will make the enquiries, but ...[intervenes]

CHAIRPERSON: Yes.

ADV SONI: We must be careful of not tampering with the press freedom.

20 CHAIRPERSON: Yes. Mr Varney?

ADV VARNEY: Yes Chairperson, we hear what Adv Soni has to say on the matter, we point out that some 20 years has passed since that article was published and we do not know as yet whether Ms Carstens will wish to cooperate or not. It may be that she is happy to cooperate.

CHAIRPERSON: Yes, I think that request will be made by the evidence leaders.

ADV VARNEY: Yes indeed.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you, Chairperson. So if we can just turn to page 10 at paragraph 34 Mr Bester, of the implication to cross, so we want to put it to you that an investigation did not happen because it was not in the interest of SAPS to do the investigation, given that the suspects were most likely SAPS members. Your response?

10 COLONEL BESTER: There was no evidence as far as that is concerned.

ADV VARNEY: Well again the evidence is sitting in the article and the article says exactly where she got the information from, police headquarters.

COLONEL BESTER: No comment, Chair.

ADV VARNEY: All right, let us turn to paragraph 35. You can confirm that the A15 memorandum as filed by Brigadier Nel and Senior Superintendent Brits, that these were part of a group of cases that they were investigating in relation to alleged offences committed
20 by the liberation movements before 1994?

COLONEL BESTER: That is correct.

ADV VARNEY: Now in your investigation diary which is in the bundle at page 130, you recorded that the files dockets and other documents of Brigadier Nel and Senior Superintendent Brits were filed in a storeroom to which you had the key and perhaps let us just

quote the extract from the investigation diary.

You indicate that the file containing the A15 memo was stored in a safe in your office. We actually reproduced the extract from your investigation diary which is in Afrikaans. We provided the following in English translation:

“The file dockets and other documentation were kept in a storeroom of which I am the key holder. The relevant file was locked in a safe in my office.”

Is that translation correct?

- 10 COLONEL BESTER: The translation is correct. Just for clarification Chair, the safe, if I talk about my office, the safe was in that safe environment, storeroom that we provided for the documents, so it was not in my personal office.

ADV VARNEY: So Mr Bester, as the officer charged with the safekeeping of these documents and the officer who held the key to the storeroom where they were kept and given that the relevant file and memo A15 were locked in a safe in your office and that we simply get from your own diary, you are invited to explain why you should not be viewed as a suspect in both forgery and the leaking of

- 20 the memo to the Rapport?

COLONEL BESTER: Definitely not Chair, definitely not, no.

ADV VARNEY: Well since the memo in question was under your lock and key, can you give us an indication as to you know, who the potential suspects are? And I want to put it to you that the potential suspects are likely to be individuals with access to the locked

storeroom or authority to gain access.

We know that the police officers involved had retired from SAPS before this happened, by February 2005, and we further put it to you that the suspects are likely to have been persons with an interest in discrediting the NPA and undermining the pursuit of the TRC cases. So bearing that in mind, who would be the suspects in either the leaking of the document to Rapport and/or the forgery?

COLONEL BESTER: I cannot tell, Chair. I do not know.

COMMISSIONER KGOMO: Can I just find out from you, you and
10 Ms Coetzee, did each one of you have a key to the storeroom?

COLONEL BESTER: Correct.

COMMISSIONER KGOMO: So these were duplicate keys?

COLONEL BESTER: There was from the beginning only two keys made, one for Vernetta and one for me, and mine was locked in my safe in my office of which I also got only the one key for myself, there was not a spare key.

COMMISSIONER KGOMO: So in other words if you are a suspect, supposing you are a suspect, then Ms Coetzee should also be a suspect?

20 COLONEL BESTER: Correct.

COMMISSIONER KGOMO: Okay, thank you.

ADV VARNEY: So now on that last point we will be making the submission that the suspect or suspects were likely people who wish to discredit the NPA or undermine the pursuit of the TRC cases and we want to put it to you that at that time it appeared that there was

some opposition or general opposition to pursuing the TRC cases within SAPS, and that the primary source of this opposition was the National Commissioner himself, Jackie Selebi. Your response?

ADV RANTHO: Chair, I am not so sure who led evidence to that effect.

COMMISSIONER GABRIEL: I cannot hear you, Ms Rantho.

ADV RANTHO: Sorry, my apologies Commissioners, I am not so sure what evidence is being led at this point in time. The evidence about the document and the forgery and the suspicion was dealt with
10 during examination, cross-examination of Adv Ackermann who could not in his examination answer as to whether the same document was found in his computer and then when he was asked as to who could have done that and he said "The police had my computer" and I said "Who specifically", he said, "I do not know, Jacobs, the National Commissioner" and so I am interested to know where is that version coming from that Mr Varney is putting before the Commission?

CHAIRPERSON: Yes. Mr Varney?

ADV VARNEY: Chairperson, we are entitled on the history and the circumstances to make submissions as to who we believe are the
20 likely suspects in this matter and we have set out the motivations we believe are behind those wishing to discredit the NPA. We have put that to the witness, he disputes it.

Now we are putting it to the witness that actually within the SAPS there was opposition to investigating the TRC cases and there is some evidence to suggest that much of that opposition came from

the Commissioner, the National Commissioner himself at the time, Mr Selebi.

ADV RANTHO: Chair ...[intervenes]

ADV VARNEY: And we wish to put it to the witness as we have and which he denies that there was such opposition.

ADV RANTHO: Chair, we object to that. If Mr Varney wanted to make any proposition which we would not have a problem with, he must lay a factual basis for that. If all of us were to put any versions before or interrogate the witnesses on the basis of a fiction or what I
10 think is my view, it is going to be problematic because now what Mr Varney is saying that he is entitled to have whatever opinion, he did not lay any factual basis for that. Because he is entitled to that, he is entitle to put it to the witness, that is problematic, I do not think it accords with the standards, Chair.

ADV MOROKA: If I may Chair, if Mr Varney wants to put what he claims Mr, the late Mr Selebi did, we would also want to know where, where in the evidence that has been tendered before this Commission, we can find it, so that we can make either preparations to cross whoever needs to be crossed on the issue. We have no
20 evidence before us that says Selebi did what he has been accused of doing today.

CHAIRPERSON: Yes.

ADV VARNEY: But Chair, we were about to refer Mr Bester to a report on that question.

CHAIRPERSON: Yes, you may proceed, provisionally put your

question to the witness.

ADV VARNEY: Thank you, Chairperson.

ADV RANTHO: Pardon Chair, perhaps whilst Mr Varney is still busy with that, if he could just assist also for clarification as to who did the translation, the English translation? We are interested to know who did the translation.

ADV VARNEY: Is Adv Rantho referring to the Rapport article?

ADV RANTHO: Correct.

ADV VARNEY: If you look at the top of the page in question, it says
10 Google translate.

ADV RANTHO: So because Chair ...[intervenes]

ADV VARNEY: Because Adv Rantho and her client are free to dispute the correctness and put up their own translation.

CHAIRPERSON: Yes.

ADV RANTHO: But it is problematic because we looked at some of the things, the translation really does not talk to the Afrikaans version and that is why we are interested as to where it is coming from.

CHAIRPERSON: Yes.

ADV RANTHO: But if we have to use AI and then we lead evidence
20 based on that and we cross-examine the witnesses based on what Google is telling us, it cannot be Chair.

CHAIRPERSON: Yes, do you dispute the translation Ms Rantho?

ADV RANTHO: Wholly, wholly Chair.

CHAIRPERSON: Yes, are you able to put up your own translation?

ADV RANTHO: Chair, if we have to we will do so.

CHAIRPERSON: Yes, I invite you to do so.

ADV RANTHO: Noted, Chair.

CHAIRPERSON: Yes, thank you.

ADV VARNEY: Well Chairperson, perhaps, it appears that my learned friend might have an issue with the extract that I read out and perhaps we should simply read the Afrikaans version of that. We have Afrikaans speakers in the House, if anybody believes that the English translation we provided is incorrect then they can say so.

CHAIRPERSON: Yes.

10 ADV VARNEY: That is on page 111.

CHAIRPERSON: Yes, read the Afrikaans version, Mr Varney.

ADV VARNEY: And I will use my best Afrikaans accent, Chairperson. [Laughs].

ADV MOROKA: Chair, if I may, I am trying to understand. Mr Varney is going to read the Afrikaans version into the record?

ADV VARNEY: Yes.

ADV MOROKA: And there will be no English translation to it?

CHAIRPERSON: No, it is for purposes of the record.

ADV MOROKA: And what are we to do with the English version,

20 Chair?

CHAIRPERSON: Ms Rantho is going to put up ...[intervenes]

ADV MOROKA: Oh I see.

CHAIRPERSON: Her own translation ...[intervenes]

ADV MOROKA: I see, thank you.

CHAIRPERSON: Of the Afrikaans version.

ADV MOROKA: Thank you.

CHAIRPERSON: I have invited her to do so and she has agreed.

ADV MOROKA: Thank you. I just wanted to understand that, Chair.

CHAIRPERSON: Thank you.

ADV MOROKA: Thank you.

CHAIRPERSON: Mr Varney.

ADV VARNEY: Thank you, Chairperson. It reads as follows,
“Rapport” ...[intervenes]

COMMISSIONER KGOMO: Which paragraph?

10 ADV VARNEY: I am sorry, it will be the second paragraph on page
111, Commissioner, starting:

“Rapport het die afgelope week...”

It is at the top of the page. Have you got it, Commissioner?

COMMISSIONER KGOMO: Yes, yes, thank you.

ADV VARNEY:

“Rapport het die afgelope week uit onberisp...”

COMMISSIONER KGOMO: Onberispelike.

ADV VARNEY:

“...onberispelike...”

20 Sorry, the font is very small, I am going to actually take
it out.

COMMISSIONER KGOMO:

“...onberispelike bronne verneem...”

ADV VARNEY: He has a bigger ...[intervenes]

COMMISSIONER KGOMO:

“...die polisiedossiere wat twee afgetrede polisieledes
vroeër saamgestel het...”

And then you can continue.

ADV VARNEY: Okay:

“...is al jare toegesluit by die hoofkantoor van die polisie
se speurdienste. Die bronne se name word op versoek
versweg weens die sensitiewe poste wat hulle beklee.”

COMMISSIONER KGOMO: Verswyg.

ADV VARNEY: Verswyg.

10 COMMISSIONER KGOMO: Ja, which means suppress.

ADV VARNEY: Chairperson, I grew up in a part of the country where
not much Afrikaans is spoken, so I apologise for my poor accent.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Unfortunately I cannot translate but I am
Afrikaans speaking.

ADV VARNEY: Thank you Chairperson, at least Commissioner.
Chairperson, so we have read it into the record ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: And our colleagues are free to come up with their
20 own translation.

CHAIRPERSON: Yes, you may now go back to where you were in
your cross-examination.

ADV VARNEY: Thank you, Chairperson. So Chairperson, I was
about to refer Mr Bester to pages 365 to 367 of the cross-examination
bundle and this is a report from an organisation known as

AmaBhungane. It is dated the 15 April 2010 and the title is, "Selebi trial hears of plans to prosecute Mbeki" and I am just going to read the first few paragraphs into the record:

"Former Police National Commissioner Jackie Selebi told the South Gauteng High Court on Thursday that the National Prosecuting Authority (NPA) had planned to prosecute former President Thabo Mbeki and a number of senior ANC politicians for crimes committed during the struggle.

10 Asked by his counsel, Jaap Cilliers, what caused the relationship between him and the Scorpions to deteriorate, Selebi gave a number of examples, including the alleged plan to prosecute Mbeki.

Selebi told the court he was told by police officers who attended a meeting with Senior NPA Prosecutor Anton Ackermann that the NPA needed police detectives to help Ackermann investigate crimes committed under apartheid by the ANC and the South African Security Forces.

20 Selebi refused to assist the NPA. "How am I expected to give police to Anton Ackermann to investigate me and possibly charge me for the fight against apartheid? That created a big problem in our relationship [with the Scorpions]".

So Mr Bester, the report of those, that court proceeding

points to opposition coming from the National Commissioner himself who effectively says that he is not going to provide police investigators to the PCLU, because they could possibly come and investigate him for his fight against apartheid.

ADV RANTHO: Chairperson, this is one of the documents that we said we have a difficulty with. We do not know how it finds itself especially before this witness who never testified about anything that related to the Selebi trial. Is he expected to give his opinion about something written by somebody about the late Commissioner Selebi
10 who is not able to come and tell the Commissioner what is the...? We say it cannot be, Chair.

CHAIRPERSON: Yes ...[intervenes]

ADV RANTHO: To single it out, we object to and you [indistinct] this document in the cross-examination of this witness.

CHAIRPERSON: Yes. Mr Varney?

ADV VARNEY: Well Chairperson, this Commission has already... Press clippings had been put before this Commission on numerous occasions and this Commission has considered those press clippings and perhaps with the leave of the Chair I would just like to quote a
20 passage from the *Corruption Watch* matter dealing with press clippings and its usage by Commissions.

So with the leave of the Chair then the matter is *Corruption Watch and Others v Arms Procurement Commission and Others*. It is a full bench decision from Mlambo JP, Davis JP et Leeuw JP. It is dated 21 August 2019, case number 81368/2016.

ADV RANTHO: Chair.

CHAIRPERSON: Yes, let me ...[intervenes]

ADV RANTHO: Mr ...[intervenes]

CHAIRPERSON: Let me listen to Mr Varney first before you can proceed, Ms Rantho.

COMMISSIONER KGOMO: Switch off your microphones this side.

ADV VARNEY: Chairperson, the citation is 2020 (2) SA165 (GP) and the passage in question is paragraph 69. Chairperson, we do actually have copies for the Commissioners of the judgment, if the
10 Commissioners request it we will hand it up but based on paragraph 69 I will just read the whole passage into the record:

“Based on the uncontested evidence presented to this Court, the Commission failed manifestly to enquire into key issues as would be expected of a reasonable Commission. It refused to admit critical reports such as, the DP Report, at best for it on the basis of a clearly inaccurate understanding of the law of privilege. It accepted facts as common cause when a reasonable Commission would have probed the evidence in order
20 to test the veracity of the evidence from what were referred to as non-critical witnesses. It refused to examine the proceedings of the *Schabir Shaik* trial on the inexplicable basis that somehow the record of that trial was not relevant to the fundamental nature of the Commission's inquiry. At best for the Commission, it

failed to appreciate that the rules of evidence and procedure of a Commission are considerably less strict than those of a Court. Whereas a court of law is bound by rules of evidence and pleadings, a Commission is not so bound. It may inform itself of facts in any way it pleases, including by hearsay evidence, newspaper reports or representations or submissions without sworn evidence. Commissions are designed to allow an investigation which goes beyond what might be permitted in a Court.”

That is the passage from ...[intervenes]

CHAIRPERSON: Thank you. Ms Rantho?

ADV VARNEY: [Indistinct].

ADV RANTHO: Chair, the passage that Mr Varney referred the Commission to, deals with uncontested evidence and I think it has to be read in context. Mr Varney wants whatever piece of document that he comes across to find its way walking into this Commission. Based on that, it cannot be. Every document that is being here, is someone that is explaining, is accompanied by an affidavit. This we say, is quoted out of context, Chairperson.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: It is what? Sorry, I did not hear that.

ADV RANTHO: The *Corruption Watch*, paragraph 69 that Mr Varney referred to, we say is out of context now and if the Commission wants us perhaps to do written submission just to deal with that, we think we

are entitled to address the Commission on that aspect.

CHAIRPERSON: Yes. Ms Rantho, we are of the view that we do not need submission in respect of this issue. We are also of the view that we will allow the cross-examination on this aspect. We are a Commission of Inquiry, we do not conduct our proceedings as a court of law would and we therefore are entitled to rely on any document, articles or otherwise, and we will therefore allow Mr Bester to respond to the article that has been put to him by Mr Varney.

ADV RANTHO: Noted, Chair.

10 CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: As the Chair pleases.

CHAIRPERSON: In this regard we rely on Rule 6 which is there, Ms Rantho. Yes, Mr Varney.

ADV VARNEY: May I proceed, Chair?

CHAIRPERSON: Yes.

ADV VARNEY: Thank you. So Mr Bester, you heard the quote. Since there has been an intervening passage of exchanges, do you remember it or would you like me to read it again?

20 COMMISSIONER KGOMO: Maybe you may have to repeat it. I am not saying he is old.

ADV VARNEY: Many of us in this room are aged and require reminding, Commissioner.

CHAIRPERSON: No, it is only Ms Moroka. [Laughs].

ADV MOROKA: I am very offended, Chair. [Laughs]. I thought I was the youngest in the room.

ADV VARNEY: So it reads as follows:

“Former Police National Commissioner Jackie Selebi told the South Gauteng High Court on Thursday that the National Prosecuting Authority (NPA) had planned to prosecute former President Thabo Mbeki and a number of senior ANC politicians for crimes committed during the struggle.

10 Asked by his counsel, Jaap Cilliers, what caused the relationship between him and the Scorpions to deteriorate, Selebi gave a number of examples, including the alleged plan to prosecute Mbeki.

Selebi told the court he was told by police officers who attended a meeting with Senior NPA Prosecutor Anton Ackermann that the NPA needed police detectives to help Ackermann investigate crimes committed under apartheid by the ANC and the South African Security Forces.

20 Selebi refused to assist the NPA. “How am I expected to give police to Anton Ackermann to investigate me and possibly charge me for the fight against apartheid? That created a big problem in our relationship [with the Scorpions]”. ”

So according to that report in his criminal trial, Mr Selebi explained why he would not give investigators to Anton Ackermann for these cases in respect of offences allegedly committed both by

the Security Forces and also by the ANC. So we are putting it to you Mr Bester, that there is an indication that there was reluctance on the part of the SAPS coming from the National Commissioner himself to provide investigators for these cases.

COLONEL BESTER: I cannot elaborate on that Chair, I mean when I transferred the dockets, here Mr Selebi said safekeeping and nothing else and unless otherwise instructed or requested.

ADV VARNEY: All right, let us move on. I am now at paragraph 39 on page 11 of the cross-application.

10 CHAIRPERSON: Mr Varney.

ADV VARNEY: Yes, Chairperson?

CHAIRPERSON: At an appropriate you will indicate so that we can take a short adjournment to allow the witness a comfort break.

ADV VARNEY: Chairperson, perhaps we can do that now if he needs it.

CHAIRPERSON: Yes.

ADV VARNEY: Ja, this is a good time.

CHAIRPERSON: We will take an adjournment of 15 minutes and reconvene at 15:45.

20 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV SEMENYA: Chair?

CHAIRPERSON: Yes, Mr Semanya?

ADV SEMENYA: May I just indicate that my information is Mr Bester

cannot help us beyond 4 o'clock due to personal commitments he already had.

CHAIRPERSON: Yes, so we have got to adjourn at 4 o'clock.

ADV SEMENYA: Yes.

CHAIRPERSON: Why were we not informed? Otherwise we would not have taken a short adjournment. Ms Rantho?

ADV RANTHO: Chair, we needed to check with the witness, because when he was asked to come today, he indicated that he was not available the following day, tomorrow. And he did say that,
10 provided that you should be released earlier, so that he can make arrangements for his commitments of tomorrow. But we do apologise for not alerting the Commission on time.

CHAIRPERSON: Yes.

ADV RANTHO: It is because we thought it was only Mr Varney, because we were advised by the secretary when we checked that it would only be Mr Varney. So we never thought it was going to be so long. And I think what obviously created a problem was the witness being picked up quite early, because we complete. So that contributed to that, but we do apologise.

20 CHAIRPERSON: Yes. Mr Varney, you may proceed. We only have a few minutes.

ADV VARNEY: Thank you, Chairperson. We will take the constraints into account. Mr Bester, if I can just draw your attention back to page 11 of the application to cross; and we are at paragraph 39, which is towards the bottom of that page, and there we rely on

paragraph 32 of your statement, which is at page 81 of the bundle, where you indicated that you handed the original A15 memorandum to Mr Jacobs to fax to Adv Ackermann, and then the original was returned to you for safekeeping. You confirm that?

COLONEL BESTER: I confirm, Chair.

ADV VARNEY: So our question to you is; how was Mr Ackermann and the NPA meant to forensically examine a fax copy rather than an original, because unlike an original, a fax copy would not allow for a close examination of forensic features such as ink indentation and
10 correction marks. Do you accept that that would be difficult, if not impossible, to forensically examine a fax copy?

COLONEL BESTER: I do not think so. I am not an expert.

ADV VARNEY: And were you aware that it was an incomplete copy that was faxed to Adv Ackermann? It was just pages 1 and 3 of the memorandum. If you are not aware, you can just say you were not aware.

COLONEL BESTER: I handed the original to Jacobs and he sent it to advocate a copy, as I understand it correctly ...[intervenes]

ADV VARNEY: So you did not do the faxing yourself?

20 COLONEL BESTER: No.

ADV VARNEY: So you would not be aware that Ackermann only received pages 1 and 3 of the memorandum?

COLONEL BESTER: No.

ADV VARNEY: Now, you are aware, of course, that Adv Ackermann complained that the A15 memo was forged by the SAPS and that the

NPA regarded the A15 memo as a forgery and authorised its own investigation. And indeed, they issued a press statement to that effect, which is on page 371 of the record. You are aware of that?

COLONEL BESTER: I am aware of it.

ADV VARNEY: So we want to put it to you that the only reason SAPS investigated the matter was because the NPA announced it would investigate as well. And SAPS sought to pre-empt this investigation and indeed prevent the NPA from doing so by never providing it with the original document; your response?

10 COLONEL BESTER: Chair, that is an opinion. I mean, we have got it and I get an instruction that we must investigate. And I think there was correspondence between Commissioner De Beer and Gerrie Nel, likewise; that they will not send. It will stay with us until we finish our investigation. And after that, the NPA never requested that they want the document after we finish our investigation.

ADV VARNEY: Well, we will come to that, because that aspect is in dispute. But thereafter, Commissioner De Beer then instructed you to launch an investigation. And according to your paragraph 35, De Beer instructed you to obtain a statement from Senior Superintendent
20 Britz and to refer the A15 memo to a forensic investigation. You confirm that?

COLONEL BESTER: That is confirmed, Chair.

ADV VARNEY: Now, what we want to know, Mr Bester, is why were you asked to investigate when you were the officer who had custody of the document in question, which had been leaked to the media and

which the NPA viewed as a forgery? Now, under normal circumstances, we put it to you that you would have been regarded as a potential suspect. So I want to ask you; why did you or Assistant Commissioner De Beer not insist on an investigation by an officer or detective from a department or office entirely unconnected to this controversy?

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Chair, if perhaps we can be assisted with the standard that has been applied or the test used to put that question
10 on the witness from Mr Varney. Is it again his opinion? We would want to know as to where does that come from. What is his standard; the yardstick that he is using to say it ought to have happened in that way? We need to understand where is it coming from.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chairperson, it is an entirely legitimate and frankly obvious question. The question is: Mr Bester, given his position, given that he had access to those documents under lock and key, must have been or should have been regarded as a potential suspect in the matter in relation to the leaking and possibly the forging. So
20 the question simply is: why did he or Assistant Commissioner De Beer, well aware of those facts, not say we need an independent investigator, unconnected to this department, somebody who has no association with the controversy at hand to carry out the investigation? That is what one would have expected if it was going to be an investigation with integrity.

ADV RANTHO: Chairperson, no evidence has ever been laid about anyone being a suspect. What is of common cause is that the very same document was once in possession of the NPA. Senior Superintendent Britz retired at the time, and of course the witness. As to where Mr Varney is getting the issue of suspects, I do not know; on what basis, because there is no evidence before this Commission? More so that Adv Ackermann did not deny that the document was found in his computer. And he said that he believed or he believes that it was hacked by the police; another fiction. And

10 we say no, it should not be allowed.

CHAIRPERSON: Yes, Ms Rantho, I will allow the question.

ADV VARNEY: Mr Bester, you heard the question; your response?

COLONEL BESTER: I was instructed. I was called to Commissioner Selebi's office and it never comes to my mind that I am not supposed to investigate. I mean, Commissioner De Beer gives me, if there was a reason for him to believe someone else of another unit or another station must come and investigate, I think he should do so. But with all fairness, I can say that I think he has got trust in me and that is why I investigated him. And that is why I am

20 doing it so quickly within a few days, and finished the investigation.

COMMISSIONER KGOMO: But, Mr Bester, in fairness; you know, the question is, you are a potential suspect. Now, you could have said on your own: 'no, I recuse myself because of the known situation as a senior police officer.' There would be some measure of conflict, would not there?

COLONEL BESTER: Chair, yes, I hear you, but it is not for me to say I do not consider me at any state as a suspect. I think maybe it will come out later. The source is somewhere else. It is not in the police.

COMMISSIONER KGOMO: Potential suspect.

COLONEL BESTER: I beg your pardon?

COMMISSIONER KGOMO: Potential suspect.

COLONEL BESTER: Ja, potential suspect, ja.

COMMISSIONER KGOMO: Mr Varney?

10 ADV VARNEY: Thank you, Commissioner. Well, Mr Bester, we want to put it to you that in these circumstances, as somebody who had direct control over the documents in question, that you were quite obviously connected to the matter and quite obviously a potential suspect, as Commissioner Kgomo has stressed. So we want to put it to you that the investigation was kept in-house in order to maintain control over that investigation.

COLONEL BESTER: I deny that, no. That is not the way we know.

ADV VARNEY: Now, why was it necessary to get a statement from Senior Superintendent Britz when he had retired from SAPS more
20 than two years previously?

COLONEL BESTER: I do not know whether I mentioned earlier, Chair, he was the only person who could tell me what was the working procedure. As I said, I came in contact with the TRC dockets in 2004 where he was. I do not know what was his working procedure. So I have to know what was the procedure following that I

can know it. And that is why I take the statement concerning his working relationship or his working procedure with Ackermann.

ADV VARNEY: Now, you indicated in your evidence earlier today that on the very same day that you were instructed to investigate, you managed to see Mr Britz at his home.

COLONEL BESTER: That is correct.

ADV VARNEY: And you took a statement on the laptop and then you had it printed and then you came back.

COLONEL BESTER: Correct.

10 ADV VARNEY: Now, when you went to see Mr Britz, did you provide him with the original A15 memorandum so that the date reflected on that memorandum, 26 June 2006, could be canvassed with Mr Britz?

COLONEL BESTER: No, I just took a statement, Chair, in connection with his working procedure, what is the procedure that it follows.

ADV VARNEY: But why did you not do that? Was it not an obvious investigative step to take?

COLONEL BESTER: I did not do it. I did not take that to him. I just take his statement, as I said previously, on my laptop, go back, print it
20 and get it printed that I can get the forensic experts also to start with their work.

ADV VARNEY: But the central allegation, Mr Bester; Adv Ackermann SC says the date was changed from 2003 to 2006. So surely that would have been one of the first questions you would have posed to Mr Britz. You would have shown him the document in

question and pointed out the alleged discrepancy in dates.

COLONEL BESTER: Well, I did not do it. I just take the statement as already said, Chair.

ADV VARNEY: Well, I want to put it to you, Mr Bester that that was not just an oversight or omission on your part. I want to put it to you that the dates were not canvassed with Mr Britz. They do not feature in his statement, because if you did canvass it with him, Britz would have had to disclose that all this took place during 2003 and not 2006.

10 COLONEL BESTER: I cannot comment on that.

ADV VARNEY: Mr Bester, I must put it to you that you are being evasive here. I have put it to you that that was a central enquiry that, as an experienced investigator, you should have put to Mr Britz. And you are simply saying you cannot comment on it.

COLONEL BESTER: Chair, I should expect if there was something, that there was no tampering with or there was tampering with the document, then we can start further investigations. As I said, there was no tampering and that was the essence of my instruction from De Beer to investigate.

20 ADV VARNEY: And then if we look at the last line, that is paragraph 4 of Britz's affidavit, he states:

“The date on which I received the signed memoranda and dossiers, that was also recorded in my register among other details.”

Did you ask for that register?

COLONEL BESTER: No, I did not ask for it and I did not produce that register, no.

ADV VARNEY: And why did you not ask for it?

COLONEL BESTER: The same answer, Chair. I was only looking at the tampering with the document.

ADV SEMENYA: Chair, I must indicate that, unfortunately, we are on that hour.

CHAIRPERSON: Yes. Mr Varney?

ADV VARNEY: Chairperson, yes, I am also keeping tabs on time
10 and I notice that it is one minute ...[intervenes]

CHAIRPERSON: Yes, you have gone past four o'clock.

ADV VARNEY: It is one minute to four. So I just want to ...[intervenes]

CHAIRPERSON: No, it has gone past four o'clock.

ADV VARNEY: Has it gone past four o'clock?

CHAIRPERSON: Yes.

ADV VARNEY: Perhaps just to wrap this up, I will just put it to Mr Bester that the failure to ask and get hold of that register was for the same reason. You did not want to have to force Mr Britz to concede
20 that the actual date in question was 2003 and not 2006.

COLONEL BESTER: No, I deny it, definitely.

ADV VARNEY: Thank you, Chairperson.

CHAIRPERSON: Yes. We will adjourn these proceedings and reconvene tomorrow at 10 o'clock.

ADV VARNEY: As the Chairperson pleases.

CHAIRPERSON: Colonel Bester, you are reminded that you have to appear before this Commission on Friday at 10 o'clock.

COLONEL BESTER: It is good, Chair.

CHAIRPERSON: Thank you. We adjourn.

ADV VARNEY: Chairperson, just one last thing. I am reminded that I had a discussion with Adv Rantho about Friday, and she also reminded me that the witness does have time constraints. And given that there might be more than one party cross-examining, we wondered whether we should not start 30 minutes earlier. And she
10 checked that with Mr Bester, who said he was agreeable to that.

CHAIRPERSON: Yes, yes. What will be the order of the day on Friday? Do we start with the Boqwana group to cross-examine Mr Bester or we continue with Mr Varney?

ADV SEMENYA Unless there is an opposing view, we would continue.

COMMISSIONER KGOMO: Switch on both microphones. Yes.

ADV SEMENYA Unless there is an opposing view, Chair, we would recommend the continuation through Mr Varney before we have the Boqwana cross.

20 CHAIRPERSON: Yes. Ms Rantho?

ADV RANTHO: Chair, that is in order with us.

CHAIRPERSON: Thank you.

ADV RANTHO: The witness will be available at half past nine on Friday.

ADV VARNEY: Chairperson, I am advised by my learned junior that

the representatives for former President Mbeki have agreed to come after us.

CHAIRPERSON: They have agreed to come after you.

ADV VARNEY: They have indicated their preference to come after ...[intervenes]

CHAIRPERSON: Yes, to come after you.

ADV VARNEY: Yes, indeed.

CHAIRPERSON: So the arrangement is in order.

ADV VARNEY: Yes, Chairperson.

- 10 CHAIRPERSON: So these proceedings, the cross-examination of Colonel Bester is adjourned until Friday at 09:30.

COLONEL BESTER: No problem.

CHAIRPERSON: Yes. Otherwise, we will continue with our proceedings tomorrow at 10 o'clock.

INQUIRY ADJOURNS UNTIL 29 OCTOBER 2026

CERTIFICATE OF VERACITY

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

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