

**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

REPRESENTATIVES

Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)
Adv Gwala- NPA representative
Adv Irene de Vos for President Cyril Ramaphosa
Adv Tlotlego Tsagae (DoJ representative)
Adv Motlalepule Rantho (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Jao Venter – The Calata Group
Mr Siphon Tlhaole – The Calata Group
Ms A Thakor – The Calata Group
Ms Vuya Nako– The Calata Group

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PROCEEDINGS ON 20 MAY 2026

CHAIRPERSON: Good morning. Mr Semenya?

ADV SEMENYA: Good morning, Chairperson and Commissioners.

We have Dr Jacobs today for any cross-examination.

CHAIRPERSON: Thank you. Dr Jacobs, you are reminded that you are still under your former oath.

DR JACOBS: That is right.

PHILIPPUS CHRISTOFFEL JACOBS: still under oath

CHAIRPERSON: Thank you. Mr Varney?

10 CROSS-EXAMINATION BY ADV VARNEY: As the Commission pleases. Firstly, the correct way to address you, is it Dr Jacobs or General Jacobs?

DR JACOBS: Whatever you prefer, but I am not working anymore, so you can refer to me as 'Doctor' if you want.

ADV VARNEY: Dr Jacobs. Okay, thank you. I was going to stick with Doctor, but I thought I would just check. Firstly, Doctor, thanks for making yourself available for the cross-examination this morning. We have provided you and your team and the Commissioners with essentially most of our questions, and we intend to stick to those
20 questions. So, the idea is not to take you by surprise, and we have given you the time to prepare as well. So, I am hoping that we can have a constructive exchange this morning.

I am going to kick off, and perhaps I can draw your attention to the application to cross-examine you, because the questions are set out there, and it might be easier to follow. So, that is; I can draw

your attention to page 2 of the cross-examination bundle. And perhaps let us start at paragraph 9 where we would like to know whether you had any knowledge or involvement in the process that led to the development of the amendments to the prosecution policy, either in discussions, reviewing, or the drafting of those amendments.

DR JACOBS: Chairperson, I was not involved at all in that process.

I learnt about the prosecution, the amended prosecution policy after I have been designated to attend the meetings of the ITT.

ADV VARNEY: Meetings of the task team?

10 DR JACOBS: Task team, yes.

ADV VARNEY: Yes. But you do have a sense of what the amendments, the content of the amendments and how they propose to treat the TRC cases?

DR JACOBS: That is correct. When I started in the task team, I got a copy of the amendments and I noted it.

ADV VARNEY: Okay. Now, I understand that you have a Doctor of Laws as well as a second doctorate.

DR JACOBS: Correct.

20 ADV VARNEY: Can I ask you for your views of the guidelines and whether, in your considered opinion, the guidelines, as they apply to the TRC cases, were constitutional and proper? And perhaps to be fair, I will put to you the view of the families, which is that it carved out a special regime just for the TRC cases, and in particular put up special criteria that could be considered for a decision not to prosecute; that only apply to the TRC cases and not others. In the

light of that, and as a very experienced lawyer and police officer, what is ...[intervenes]

ADV SEMENYA: Chair, before the witness answers, really the opinion of this witness is irrelevant. That policy has been set aside. It is not there anymore.

CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: Chair, it was set aside, but I believe only in 2008 or 2009. We are talking about the years while it was in operation; and while the witness was in the task team, it was in operation.

10 CHAIRPERSON: Yes. How will it assist us, Mr Varney at the end of the day?

ADV VARNEY: Well, it might be interesting for the commission to hear from somebody who was in the task team, and he does possess a Doctor of Laws, what his view of the policy was in demarcating a separate regime for the TRC cases.

CHAIRPERSON: Yes. I will allow it to that limited extent.

ADV VARNEY: As the Commission pleases.

DR JACOBS: Thank you, Chair. As I understand it, this policy was amended after a lot of interaction between a number of role-players,
20 and it went through a process where it was tabled in Parliament. It was tabled in Cabinet. Both Parliament and Cabinet have noted it. And if you look at the policy, it is determined by the National Director of Public Prosecutions and with the concurrence of the Minister of Justice.

So it went through quite a huge legal process before it was

actually then put in the Gazette. For me to question it, you know, if I look at the intellectual knowledge that is within the NPA and with all the prosecutors they have there; it is the prerogative of the NDPP to draft that. And I think for me as an official working in the police, to have any doubts about that or to think it might be unconstitutional, I do not think it was up to me to make that decision or to query it.

ADV VARNEY: Okay. Let us move on. Let us turn to paragraph 7, also on page 2 of the application. You have already indicated that you were assigned to the TRC Task Team, and that was on 10
10 October 2006, and this was by former Police Commissioner Jackie Selebi. Before we turn to the questions, would I be right in saying that the Commissioner Selebi; was he your direct boss? Did you report directly to him?

DR JACOBS: No, there was at that stage a Divisional Commissioner for Legal Services, Divisional Commissioner LTMP Mthimkhulu. She was directly in charge, but I was dealing with operational matters, so I quite often related directly with the Divisional Commissioner, Detective Service or other divisions. And that basically was the position, but I had to report at the end of the day on my general work
20 to Commissioner Mthimkhulu. In this case, I was designated by the National Commissioner, so I might report to him directly, but I would also keep my direct head in the loop.

ADV VARNEY: Thank you. And while we are talking about Commissioner Selebi, he was not a career police officer, as I understand it. He was brought in to assume the post of

commissioner, but he had not had a career in the police. Is that correct?

DR JACOBS: That is correct, yes. He had high profile work in Geneva, and I think he was responsible for pushing through the adoption of the Convention against Landmines. And so in that sense, I think, you know, I cannot question anything about his appointment or his career or background, but he was not a career police officer. That is the short of it.

ADV VARNEY: Yes, it seems that prior to his appointment, he was
10 Director General in the Department of Foreign Affairs; and prior to that, he was South Africa's ambassador to the United Nations in Geneva. And then prior to that, he was a member of parliament.

DR JACOBS: Correct.

ADV VARNEY: Were you aware that Commissioner Selebi was one
of the ANC 37?

DR JACOBS: Chair, from the documentation, it was not that evident. But later on, and I must say, even when I went through these documents, I saw that in the application to the TRC by the ANC for amnesty, general amnesty in respect of everything that they have
20 commanded to do, I saw his name was in there.

ADV VARNEY: Yes. Commissioners, that amnesty application that Dr Jacobs refers to is in bundle 3 at page 107. Let us then turn back to paragraph 7. And as you can see, we quote from the amended prosecution policy, paragraph B6. It says:

“The PCLU shall be assisted in the execution of

its duties by a senior designated official from following state departments or other components of the NPA.”

And so four departments are listed, including NIA, Department of Justice and the DSO. Then when it comes to SAPS, it says the Detective Division of the South African Police Service. So my question, Doctor, is: you are not a detective. You were not with the Detective Division. You worked with Legal Services. Why did Commissioner Selebi appoint you and not somebody from the
10 Detective Division?

DR JACOBS: Chairperson, when I started in the police service in 1995, I was appointed within the National Crime Investigation Service, the NCIS; and that was later changed when the Divisional Commissioner of Legal Services came into play. But if you would look at the annexure to my affidavit, the first main affidavit, you will see there was no reference in the invitation to the National Commissioner to designate. It only said designated persons from your department.

So I was working in the Department of Police. I had very
20 close contact with the Detective Service, but in respect of deciding who will attend, that was a decision by the National Commissioner, which I cannot explain, because that was simply his decision together with Assistant Commissioner Lekalakala who was also designated.

ADV VARNEY: Would you agree that it is an unusual choice, because the amended policy B2 specifically said, specifically

demarcated that it would be somebody from the Detective Division?

DR JACOBS: I can see that now, but at the time when he started off with that, then I have not yet studied all these documents and things. And I must also add; through my career, I have worked very closely with the PCLU, with all the officers there. The same cases that they investigated, I had been involved in, in some degree or other.

The mercenary issues, even the nuclear issue when we had to look at how to deal with the exhibits in that case. So I have a very close working relationship with the PCLU. And in addition, I have
10 been exposed in the detective service environment. So that is basically what I can say. To me, it did not really appear strange, because I would say now, I would have been quite happy if they sent someone from the Detective Service.

ADV VARNEY: Yes. It is just that not sending somebody from the Detective Division, suggests that perhaps Commissioner Selebi wanted them not directly involved. He wanted a layer between the Detective Services and the task team.

DR JACOBS: I would not say that, because if you take Commissioner Lekalakala, he was from Crime Intelligence; and Crime
20 Intelligence and Detective Service work very closely together. As a matter of fact, with high-profile investigations, you will find that the Detective Service cannot really investigate the case if it is not in close cooperation with Crime Intelligence. So I think that that covered part of your concern.

But as I have said, the invitation did not limit the National

Commissioner to a member of the Detective Service. And if you look at the policy itself, it said a designated official from the following state departments. And as a matter of fact, the Detective Service is not a state department, but this letter was addressed to the National Commissioner as the Head of the South African Police Service and he was asked to designate an official and in brackets (S or officials to serve on the task team).

ADV VARNEY: And moving on to paragraph 6; when the Commissioner appointed you, did he give you a specific mandate?

10 Was it perhaps a discussion or perhaps directions in writing?

DR JACOBS: Chairperson, no, not at all. If you look on the document, you will see that that invitation, and it is put here in paragraph 7 at the top as well, on 10 October I was designated. So, and the first meeting was on 12 October. So I was simply given the document and say: 'look, there is a request for designation. You and Assistant Commissioner Lekalakala have been designated to attend the meeting. Do so.'

ADV VARNEY: Right, then let us move down to paragraph... Or rather, can we jump to paragraph 12 on page 3? If you look at 12.1,
20 we make reference to the fact that according to your evidence-in-chief, the minutes of the meetings were not shared with the Commissioner, but that you briefed the National Commissioner from time to time. In those meetings, did you discuss specific cases?

DR JACOBS: I briefed the National Commissioner and I kept him abreast of developments. But apart from the Chikane case, where

the National Commissioner just simply said that his view is that Reverend Chikane does not want a prosecution. And he did not take it any further than that, just to state that that is his position as he understand it.

ADV VARNEY: Did you discuss the general functioning of the task team?

DR JACOBS: Chairperson, the minutes of the task team were very limited. I mean, if you look at them, most of them are one or two pages. There might be one that is maybe three pages, but they were
10 very brief, and the National Commissioner preferred to be briefed on it. And as a matter of fact, until the report that was submitted and the request from Commissioner, ag, from Adv Mhaga on investigations they want to have completed, there was actually not really anything substantive in the minutes to bring to the attention of the National Commissioner. But I would brief him on, in generally what happened at the meetings.

ADV VARNEY: Okay. Then perhaps we can return to paragraph 10. And you will recall that at some point in the deliberations of the task team – this is now towards the end of 2006, early 2007, matters came
20 to a head, certainly around the interpretation of the guidelines.

And as we set out here, Commissioner Selebi took the view, supported by the National Intelligence Agency, that a recommendation from the task team and the director-general was necessary before the NDPP could make a decision in each TRC case. And as you are aware, NDPP Pikoli objected to this,

complaining that that was an unwarranted interference in the work of the NPA.

Do you accept that that requirement, that the NPA had to wait for a recommendation before it made a decision in each TRC case, that that amounted to a clear and unwarranted interference in the work of the NPA to conduct its own prosecutions?

DR JACOBS: Chairperson, I do not agree with that. It seems to me there is something wrong with this mic. The light is not on, but if you can hear me, it is fine. Thanks.

10 Firstly, I must say if you look at that view, even in the first meeting of the task team, it was pointed out; it was PCJ2 in the Jacobs bundle. It was pointed out that the role of the committee will be to make recommendations to the NDPP on each case.

 Now, that in itself says that the NDPP is open to recommendations. If I look at the administrative law in general, the requirement for any person taking a decision is to take all relevant factors into account; and if there were concerns from the departments and there was a reason why those departments were in there; the Intelligence Agency, for example, to guide in terms of intelligence
20 concerns, *et cetera*; Detective Service to assist with investigations.

 So, for the directors-general, whether it is as a collective or whether separately through their representatives, the issue about collective was mentioned in the letter from the National Commissioner. Whether it is one of the two, in my view, does not interfere anyway with the powers of the NDPP to be the final

decision-maker.

And even in his letter to Adv Pikoli, that is PCJ13 on page 1756, you will see that that was the understanding of the National Commissioner. He said:

10 “My understanding was that the officials designated on the task team by the directors-general will provide recommendations to the directors-general who will as a collective advise the National Prosecuting Authority as the decision-maker on prosecutions.”

In other words, he never denied or interfered in the sense that he thought he can change the decision. And for the National Director to listen to concerns, I mean, in terms of the guidelines, the victim need to be consulted. It is said there that any other state department could be involved in terms of gathering information. So, the whole issue of making recommendations to the National Director really does not interfere with his powers.

20 And if there was a concern about delays; if, for instance, a recommendation is asked from the directors-general and they would delay, then from scratch the NDPP can lay down a time frame and say: give your input within a week or two weeks and then I am going to make my decision. And when that two weeks have expired, nothing stops him from making that decision and he cannot be queried on it, because he is the final decision-maker on prosecutions.

ADV VARNEY: Yes, it is certainly, the issue is not receiving

recommendations and support or advice. It is what Commissioner Selebi sets out to the directors-general; and I am looking at the third paragraph of PCJ13.

“The directors-general must provide the input before a decision on prosecution is made.”

And that is repeated on the next page, second paragraph; that the DGs must discuss the matter before a decision was made. So, in other words, what NDP Pikoli was objecting to was the clear intention behind what Mr Selebi was saying, as supported by DOJ as well as
10 NIA; that effectively he could not act until he received a recommendation; and that is the objection. And the rejoinder that, you know, he could have laid down deadlines is not an answer, because saying that your hands are tied until you hear from us is the objectionable part of it.

DR JACOBS: But that was not the end of the story, Chair. You will see that the National Commissioner requested the NDPP to convene as soon as possible a meeting with the directors-general in order to discuss the above matters. And if you would look at the top paragraph there, page 1757, you will see that:

20 “In my view, a comprehensive report, such as the one directed to the NPA, should be discussed by the directors-general.”

These were views expressed with an invitation to have a meeting with the NDPP and the other directors-general to come on the same page, but that meeting did not take place. Just a day after this letter, the

NDPP said that he will take the matter to the Minister of Justice.

ADV VARNEY: So let us move on. Let us now turn to paragraph 13 on page 3 of the application. And we want to enquire from you, Doctor whether you were aware of the overriding concern of government at that time; namely, that prosecution of former apartheid officials, such as the suspects in the Chikane case, would give rise to a call or pressure for prosecution of ANC personnel for their activities pre-1994.

DR JACOBS: Chairperson, I was not aware of that. To some extent,
10 these issues have been mentioned by Adv Ackermann in his report where he complained about using Senior Superintendent Britz to assist the police regarding the documentation.

And that was basically then in that complaint by Adv Ackermann. It was put that all the issues they had against Britz; and there was also mention that the issue about the prosecution of the ANC 37 was raised in the highest level of government; and that was to not the president, but the presidency and also with the Minister of Justice.

And that there was then interaction between the Minister of
20 Justice and also between; and the NDPP's office and also with the Department of Justice; if I remember correctly, Minister Penuell Maduna, and they were all satisfied that there was no such investigation. So that broad statement that there was such a general fear on a political level was not, in my view, portrayed by what happened at that meeting.

ADV VARNEY: All right, let us turn to a document where this issue is highlighted, and this was a document that in fact was only brought to our attention after we had submitted your application. It was uncovered by our colleagues in the commission; and if you can turn to page 25 of the cross bundle. There you can see this... just wait for you to get to page 25.

DR JACOBS: That is correct.

ADV VARNEY: So this is a secret internal memorandum addressed to the then Minister of Justice. That is from the acting NDPP. It is
10 titled "Management of TRC Cases by the NPA" and it is dated 14
December 2004. So I think we will spend a little bit of time going
through this document, because it sets out the perspective of the
NPA.

So if we look, for example, at paragraph 1: "The purpose of memorandum". It says:

20 "The purpose of the memorandum is to respond
to allegations made at a meeting with certain
cabinet ministers and the National Commission of
the Police Service regarding the management of
TRC cases by the NPA and to dispel any other
misconceptions."

So it does not give the date of that meeting, but presumably it would have been towards the end of 2004; and at that meeting the National Commissioner made various allegations. Are you aware of such a meeting?

DR JACOBS: I am not aware of such a meeting.

ADV VARNEY: Thank you. If we can turn the page to the second heading, number 2: "historical background". We will not go through everything here. It will take too long, but I think you are probably familiar with the fact that the investigations, after the winding up of the Goldstone Commission and the D'Oliveira Investigation, was divided into two teams – one looking at offences by the security force members and the second team looking at the liberation movements and the right wing. And that this last team was comprised of Director
10 Nel and Senior Superintendent Britz of SAPS, and they worked under Deputy Attorney-General Paul Fick.

It appears from paragraph 2.6 onwards that these two police officers, Nel and Britz, continued to work on these cases. Their contracts were routinely extended by SAPS. And even with the creation of the DSO when the cases were transferred to the DSO, Adv Fick continued with those cases, assisted by the same two police officers.

And if we turn the page just to wrap up that story, we see that the PCLU was created in 2003; that it was not an investigative
20 agency. It would have to be dependent on SAPS and the DSO to assist with the investigations. Is that roughly also your recollection of that history?

DR JACOBS: That is correct, but if you look at paragraph 2.10, you will see that the PCLU was not an investigative agency; and therefore it was dependent on SAPS and the DSO to assist with investigations.

ADV VARNEY: Yes, yes, indeed. So then if we move to the next heading, "Management of TRC cases by the PCLU in March 2003", we see at 3.3 that the PCLU did an audit of cases, including the cases with Adv Fick and there were about 395 police dockets. Various annexures were attached. Unfortunately, we do not have those annexures. We have asked for them, but those lists indicate which ones, which cases were closed and which were still open.

But let us turn to page 4 and then matters arising, and here an account is given of the meetings with Commissioner De Beer, the fact
10 that assistance was sought in relation to certain high-profile cases in 4.12. There are seven cases, including PEPCO Three, Cradock Four, Victoria Mxenge and others.

And in 4.13 it is set out that in September of that year, Commissioner De Beer said that, having discussed the matter with the National Commissioner without the express instruction of the president, these matters would not be investigated, because those cases were all ex, the suspects were ex-policemen. Is it also your recollection of what transpired?

DR JACOBS: I have seen the letter that Commissioner De Beer
20 wrote. I think the wording here is a bit brief in terms of what is actually in the letter. What was said in the letter, as I have read it, is that the understanding was that the DSO will investigate these cases and it was referred to that this was possibly a political decision, but that issue about the political decision was explained just in the next sentence where it was said that many of the people who will be

prosecuted, might be police officers. And the fact is that there might be distrust against the police to perform that function.

ADV VARNEY: But is it not quite routine for SAPS to investigate police officers who have committed crimes, perhaps not using police officers from the same section, but elsewhere within the force. Does not that happen on a fairly routine basis?

DR JACOBS: Let us take the Senior Sup Britz. The suspicions that were there from the, even from the NPA's side on an ex-security police officer investigating these cases and being further involved
10 with the ITT or with the police service.

ADV VARNEY: Yes, although that was an objection to a specific police officer because of his specific background as opposed to a general objection to the police investigating other police.

DR JACOBS: Correct.

ADV VARNEY: In the acting NDPP rights in 414, the perception unfortunately created by this decision is that SAPS was only interested in targeting members of the liberation movement.

DR JACOBS: That is a perception from the NDPP's side. I cannot comment on that.

20 ADV VARNEY: Yes, no, I just want your reaction to the view of the acting NDPP. Is it a fair comment or not?

DR JACOBS: I do not think it is a fair comment. I do not think it is a fair comment.

ADV VARNEY: Right, then let us look at the next section dealing with the ANC 37 case; and the point is made that the TRC refused

amnesty to 37 prominent leaders of the ANC, including the President, Mr Thabo Mbeki; and 4.2.2:

“Members of the PCLU held discussions with Nel and Britz, during which discussions Nel and Britz persisted that there was a strong case against the president and other prominent cabinet ministers.”

And the next sentence is the key one.

10 “This was raised in the context of attempting to persuade the PCLU not to prosecute Security Branch members on the basis that if such members were prosecuted, the president would have to be prosecuted as well.”

So, this is the acting NDPP saying that from the discussions the NPA had with Nel and Britz, this is the message they were getting.

DR JACOBS: Chairperson, I think I must make it clear at this stage that Nel and Britz were police officers. They were given to the D'Oliveira Task Team and then transferred to the office of the NPA to assist people further with the investigations. What they communicated cannot be regarded as communications from SAPS, 20 because that was done on their level. It was not communications from SAPS. If they did this, it might have been in terms of their own experience; and I cannot further comment on that.

ADV VARNEY: Yes, well, that is fair enough, except that that view was also expressed not by individual police officers, but also a few years later at a meeting of the... I believe it was the Justice and

Security Cluster; and the following was said by Minister Skweyiya, and this is at bundle 2, page 142, paragraph 274.2. I will just get my team to extract it, because I do not think it is part of this bundle. I am told it actually is part of this bundle at page 351. Perhaps we can just jump there.

DR JACOBS: Yes, I am there, thanks.

ADV VARNEY: So, this is the supporting affidavit of Vusi Pikoli. It is 2015 affidavit; and if one turns to paragraph 13, sorry, page 13, which is under paragraph 33; and here Pikoli is relying on his affidavit
10 before the Ginwala Commission and he quotes from that affidavit.

And at the top of page 351 the Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute on the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of the activities pre-1994.

So this was not just a view of individual police officers, but it had found its way, you know, to the cluster and it was a view expressed by a minister at one of those meetings.

DR JACOBS: Chairperson, if I can comment on that. I was not part
20 of any of the meetings referred to in paragraph 211 to paragraph 218 of the founding affidavit of Mr Calata. I was not part to any of those meetings. So, it is not within my knowledge that this has happened. I have read the documents and seen it, but it was not part of my experience with this issue.

ADV VARNEY: Thank you. All right, then let us return to the secret

internal memo, the 14 December 2004 memo from the acting NDPP to the minister.

DR JACOBS: Page number?

ADV VARNEY: On page 29.

DR JACOBS: Thank you.

ADV VARNEY: You will see that the report continues in relation to the investigations of Britz into the ANC, and he points out in 4.2.5 that:

10 “The docket or the dossier was with the former
National Commissioner Johan van der Merwe;
and that requests were made for that dossier or
any docket that was in the possession of Britz,
which was never produced.”

Do you have a recollection of that?

DR JACOBS: I have not been involved at all with that.

ADV VARNEY: Then in 4.2.6:

20 “The PCLU was then informed by the NDPP that
Commissioner Selebi had alleged that the NDPP
and the PCLU advocates were on the verge of
arresting the president.”

DR JACOBS: No, I have no recollection. As I have pointed out already, some of these points have been dealt with in the report of Adv Ackermann. You will see there the consequent visit by Minister Maduna, *et cetera*.

ADV VARNEY: Yes. The reason why we are going through it is that,

notwithstanding the denials of Ackermann, these allegations continued from 2003 through 2004 and were still surfacing in 2006. So, the report continues that steps were taken. Minister Maduna in 4.27 visited the offices of the NDPP to look into these allegations.

“4.28 The PCLU perused all available evidence and concluded that there was no evidence against the president.

10 4.29 To clear the lines, the NDPP directed that Britz and Nel vacate the offices of the DPP and that all their dockets be returned to SAPS. Britz, in fact, was reinstated in SAPS crimes against the State, but nonetheless, he still contacted the Deputy Head of the PCLU.”

That is at 4.2.11.

20 “Wanting written confirmation of the decision not to prosecute the president; that was on 2 July 2004 and then just a few days later on 5 July 2004 he and his unit commander approached the Deputy Head of the PCLU, complaining about the decision not to prosecute, alleging there was an abundance of evidence.”

Were you aware of any of those developments?

DR JACOBS: No, not at the time.

ADV VARNEY: If we accept what the acting NDPP is saying here,

would you agree that the push for cases against the ANC was in fact coming from SAPS or at least those particular police officers within SAPS rather than the NPA?

DR JACOBS: No, also doing this in their personal capacity and not on a level that is on a policy level.

ADV VARNEY: Well, I would not say their personal capacity. For example, if you look at 4.2.12 on 5 July 2004, Britz and his unit commander approached the Deputy Head of the PCLU complaining about the decision not to prosecute. That would not be in his
10 personal capacity.

DR JACOBS: I agree, as a police officer, but what I am saying; not on a policy level, it was on an operational level.

COMMISSIONER KGOMO: Mr Varney, the acting NDPP who drafted this document on 14 December 2004, was that Adv Mokotedi Mpshe or who was it?

ADV VARNEY: No Commissioner, we believe it was Adv Silas Ramaite SC.

COMMISSIONER KGOMO: Oh, Silas Ramaite. Okay, thank you.

ADV VARNEY: All right, then let us turn to, let us return to the
20 application to cross-examine, page 4. Here we are now dealing with the SAPS audit reports that were presented at the TRC Task Team. Just by way of context; in paragraph 14 we point out that in your evidence-in-chief you indicated that you were not hands-on with these cases, but you sought the services of Senior Superintendent Hennie Britz to compile the SAPS report. And after he was requested

to do so, after you were requested to do so, the TRC Task Team of 12 October 2006, and that is at PCJ3 of your statement, you then made an oral presentation of those cases at the task team meeting on 25 October 2006.

DR JACOBS: Chairperson, if I can comment on that. What happened is that I requested Senior Sup Louis Bester to provide me with a list that was of the cases that the police had. He provided me with a list, and that list was taken to that meeting of the... it was in the meeting of 25 October. And I do not have a copy of that list and also

10 I do not know exactly which names were on the list, but I suppose it was a broad list of the dockets that the police had, but I do not know exactly how that list looked like. And I talked to it and that is why I said it was not a written, it was an oral presentation that was done.

ADV VARNEY: Thanks for that, Doctor. So it was in fact Senior Superintendent Bester, not Britz who ...[intervenes]

DR JACOBS: Senior Superintendent Bester, yes. I never worked with Senior Superintendent Britz. He has already left the police service when I started interacting with Louis Bester on these matters.

ADV VARNEY: Noted, thank you. All right, so then the questions

20 we have about differences between the lists, you would not be able to help us, because you did not see the original list.

DR JACOBS: That is correct.

ADV VARNEY: All right, then let us turn to the next page, paragraph 17 on page 5 of the application to cross. You state in your evidence-in-chief that you received copies of 73 decisions that were taken by

Adv Ackermann SC on various dockets from Senior Superintendent Bester; and that these decisions were used by you to compile the SAPS audit report that was presented at the 6 November 2006 meeting, but that you did not receive the actual dockets from Bester, just copies of the decisions. Is that an accurate reflection?

DR JACOBS: I did use the decisions in the file that I received from Louis Bester of the 37 decisions that were taken, but I also requested Senior Sup Louis Bester to provide me with a list of the outstanding matters in that file; and he pointed me to some of the outstanding
10 matters, which were the matters that I have dealt with in the report and which were also actually including those relating to quite a number of inquests.

And I did not receive the actual dockets. I think if you look at 395 dockets, to expect in this period of time that was even available between the two meetings, it would have been impossible to do that, but I also did not really have a need for that. Senior Superintendent Bester was an experienced detective and we were looking at that stage at the outstanding matters.

Because you will recall in that report of Adv Ackermann, at the
20 meeting of 25 October, Adv Ackermann clearly indicated that these files, these dockets were transferred to the police service, because it is the property of the police service; and then also, and the NPA has no further interest in them.

The police may come back if they want prosecutions in certain cases, like maybe the Blarney case or whatever, although the

Blarney was before that. I think that it should be seen in that, within that context.

ADV VARNEY: Thank you. So not all 73 decisions were reflected in the SAPS report, the audit report that you presented on 6 November 2006?

DR JACOBS: No, because we referred to the outstanding matters in that file.

ADV VARNEY: Okay. All right, let us then turn to paragraph 19. In your evidence-in-chief you stated that the cases reflected in the
10 SAPS audit report 6 November 2006 meeting were cases in which SAPS sought clarity from the PCLU regarding the holding of inquests. Were these the outstanding cases you have just mentioned?

DR JACOBS: That is correct, Chair. That is on PCJ8, page 1743.

ADV VARNEY: Thank you. Chair, we are about to deal with a new section dealing with a number of possible inquest matters. Before we dive into that, would this be an appropriate time for the tea adjournment?

CHAIRPERSON: Yes. We will adjourn and reconvene at 11:15.

ADV VARNEY: As the Chair pleases.

20 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the Chairperson pleases. Dr Jacobs, just before teatime we had reached paragraph 19, page 5 of the application to cross. And as you can see from paragraph 19 we seek clarity on the

SAPS audit report that was handed up by yourself at the 6 November 2026 meeting of the task team. The minutes of that meeting are at PCJ6 at page 1735 of your bundle. Although in fact the audit report was not discussed at that meeting, but at the next meeting which was held on 16 November 2006, that is at PCJ9, page 1750 of your bundle. And perhaps let us turn to PCJ9 at page”

ADV VARNEY: 1750 of your bundle. We would just want to put to you the objections of Anton Ackermann to the putting up of your audit report. As you can see from the fourth paragraph and I will just read

10 that first sentence into the record:

“Adv Ackermann raised a concern of 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. Adv Ackermann wanted to know from Commissioner Jacobs who compiled the report why it was necessary to include cases that had been finalised and request inquests on such matters.”

20 So it does seem as if the seven cases in question did deal with matters which landmines and other events have taken place. Before we go through the cases, can you remind us your response at that meeting to Adv Ackermann’s concerns?

DR JACOBS: That is:

“Commissioner Jacobs indicated that he compiled

a report and requested guidance from the meeting on how to deal with outstanding inquests. He said they had six inquests, some had been finalised and others not done at all and that were all TRC matters.”

ADV VARNEY: Thank you. Alright, then let us turn to those cases, or before we do, can I just draw your attention to an information note that have been compiled for you by commander, Crimes Against the State, senior Superintendent Bester and that is at page 1574 of your
10 bundle and it looks like it is in the Cross Bundle at page 37. It might be easier just to stay on the Cross Bundle and go to page 37.

DR JACOBS: Thank you, I have it.

ADV VARNEY: And you will see it is an information note, it is addressed to you, titled TRC related matters inquest and 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 compiled the SAPS audit report?

DR JACOBS: Chairperson, I think there is a lot of context that need to be given to this document, this information note from senior
20 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 if address 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.

ADV VARNEY: Please proceed.

DR 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
10 meeting we had and the concerns expressed by Adv Ackermann that these matters have all been finalised, you will see on 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. He actually even went to some police stations.

ADV VARNEY: Can I just check, Louis Brits or Louis Bester?

DR JACOBS: Louis Bester, sorry, my mistake. Then he actually went to some police stations et cetera to find the J56s and all that. You will see he made notes on the side of each paragraph, that is Louis
20 Bester. There he says:

“Gee inquest.”

And I will just translate freely:

“Request have been finalised in respect of van Eck and De Nyssen. It was people responsible, unknown persons who planted a landmine. The

inquest in respect of the two police officers Nel and Gerber cannot be traced. The inquest register at Messina will be checked.”

So in respect of each one of those, he indicated to me what were the... what was the position. And also you will see the previous times before I became involved in the IDT or the task team, I did not work with Louis Bester on inquests or these dockets ...[indistinct].

So in terms of the timeline, I think Adv Ackermann referred to these J56s as proof that the matters have been finalised already. But
10 those documents were not in the file, they were not part of the documentation we had.

So Louis Bester followed it up and then he gave his report which clearly indicated even if you look at the first one, the Messina NZ Ncube and others inquests were held in respect of van Eck and De Nyssen victims, inquest in respect of the two policemen Nel and Gerber were not held because the accused Ncube and two others were charged and convicted but received amnesty.

And that raised a concern as well, because if you would look at the documents you will see, I think A36 of the A1 to A73
20 documents, you will see that in that case as well there were people who received amnesty, but the instruction of Adv Ackermann was that an inquest must be held. So that seemed out of line and I think it is a legal question if amnesty is granted, is an inquest then totally off ...[indistinct].

My understanding is that in every case where the cause of

death was an unnatural, or the death was an unnatural death, there should be an inquest. So this document that senior Superintendent Louis Bester then sent to me was also given to the PCLU. You will on top of the document, page 37 the cross-examination bundle, Adv M, I suppose that is Adv Macadam put on our file and initialled by Adv Ackermann.

So I think the manner in which this was given in the evidence of Adv Ackermann is not within the same context and the timeline is also not the same, because this report followed the report of the, the
10 audit report that I have given.

And then as well you will see in respect of each case where the issue about the ANC 37 is mentioned. We have stated that we agree or we have stated that the NPA has already decided and that is to bring it in line with what Adv Ackermann has also reported. So we were not focussed on prosecutions as such, unless there was a prosecution or an investigation that was outstanding.

So you will see in each one of them and if one would go to the bundle, it is A36, A43, A47, A54, A65, as you go along you will see that constantly they refer to the ANC 37 and say we agree that the
20 prosecution is not at stake, but and we also request as relating to the report that, or the minutes of that meeting that we want clarity on the issue of the inquests.

So after this information of Louis Bester was submitted to the NPA, I think that concluded the matter to a large extent because he found the J56s. In one or two cases there was a problem where he

could not find the J56 and so on and that he reported in his report as well.

ADV VARNEY: Thank you, Dr Jacobs for that explanation. So from the perspective of Adv Ackermann post this meeting and into 2007, allegations that he was still going after the ANC was still then made. And his concern is that in all these matters, inquests, either criminal cases that happened or had concluded as in the first case and that is at 19.2.2.1 and if you look at the next three cases inquest had been held in the early years.

10 In the second case, the Elliras matter, the inquest were held in 1989. In the King Williams town matter, Ackermann had directed an inquest in August 2003 and it was held in February 2004. Then the fourth matter, the Diepkloof one, that inquest was held as far back as 1994. In the fifth matter he decided in 2003 to establish whether an inquest had been held in that matter.

 In the sixth matter, the Jeppe docket inquest were held in the late 1980s and the last one an inquest could not be held because nobody had died in that particular event. So his concern I think was some justification is that there was no need to put up these particular
20 matters before the task team, because there was nothing further to do in those matters and he takes the view that it was put up to bolster this narrative that he and the NPA was still seized with those cases.

DR JACOBS: I deny that narrative, because as I have said in terms of the timelines that narrative does not agree with what I have just explained to the commission. Because the information that

Adv Ackermann is giving there in respect of these things relate to the information note of Louis Bester and Louis Bester gave that information note to me after I have presented the audit report.

ADV VARNEY: Alright, let us... I am sure the version of Ackermann will be that that information was in the record already, given the old dates of most of these inquests. But let us move on. Let us turn to the appointment of investigators for the TRC cases. If I can draw your attention to page 7 of paragraph 20 and you will see from that paragraph that in December 2006 you sent a courtesy request to
10 SAPS divisional commissioner, Detective Service General de Beer to arrange investigators by provincial commissioners for eight TRC cases. And you made this request by way of an undated confidential information note and that is at PCJ17 and it is in your bundle from page 1763. Perhaps if we can just get that.

DR JACOBS: Thank you, I have it.

ADV VARNEY: Now did Commissioner de Beer ever respond to this information note and if so, what was his response? Because we do not see it in your bundle.

DR JACOBS: Chairperson, thank you but maybe I must just refer to
20 paragraph 20 there on page 7. I do not think this was a courtesy request, the description of an undated confidential information note is correct. But it was a recommendation to Commissioner de Beer to appoint investigators and the request was as well that the particulars of these investigators must be conveyed to Adv Mhaga of the PCLU.

The response of General de Beer, immediately when he

received my information note, he requested me to draft the following document that is in my bundle and that is the letter to the provincial commissioners.

Now if you would refer to that as a courtesy request, it might be correct because the national head of Detective Service, he is in charge overall of detectives. But with the provinces we have, you have certain detectives that serve directly under the provincial commissioners. So you had head office components and then provincial detectives.

10 So it would just be a courtesy to ask or inform the provincial commissioners that investigators are needed. And normally if there are problems to do it, then normally it is being sorted out between the provincial commissioner and the head of the Detective Service. So the response of General de Beer was to ask me to draft that letter that is then in PCJ17, page 1763 of the Jacobs bundle.

ADV VARNEY: Thanks and in fact that note to the provincial commissioners that you address that on 6 December 2006 at PCJ18 and that is at bundle page 1966 of your bundle.

DR JACOBS: That is correct, Chair.

20 ADV VARNEY: And as I hear your evidence, you prepared this letter on behalf of Commissioner de Beer.

DR JACOBS: That is correct.

ADV VARNEY: And the offices identified in paragraph 2 that Superintendent Boschhoff, Barkhuizen, Mudladi, Zeeman and Olivier selected those officers.

DR JACOBS: Chairperson, if we could page back to page 1764 of the Jacobs bundle, you will see this meeting actually followed and said in the information note a discussion was held with Adv Nthunzi Mhaga of the priority crimes litigation unit who is also on the committee in order to obtain guidance on where investigators are needed.

So I received on the meeting of 22 November, I had a meeting with... 2006, I had a meeting with Adv Mhaga, he presented this list of cases where we need investigators and you will see in that
10 note in one or two cases they identified specific police officers. But before I finalise that, I had made that or drafted the letter for Commissioner de Beer's signature.

There was some interaction in Detective Service, I do not know exactly who but there was some interaction to the provincial level to look at the availability of police officers. So in some cases there was no specific request from Adv Mhaga for specific investigators. You will see in respect of, if you look at paragraph 4.2 they ask for Fanie Els from Port Elizabeth to assist.

I expect that in the discussions between the Detectives at
20 head office and provincial level they then decided on the Superintendent Boshoff. You will see on page 1766. Barkhuizen, just the following one, was one of the names that Adv Mhaga has indicated. So that is where, that is how the names were identified of the investigators.

ADV VARNEY: Thank you. So you mentioned that at operational

level you would not necessarily be in the loop... [intervenes]

DR JACOBS: No. No, because it is in operational matters you say.
Ja.

ADV VARNEY: Although at the TRC task meeting and I will direct you to paragraph 22, that meeting was on 29 January 2007 which turn out to be the last task team meeting held and that is at PCJ18 at page 1752. You reported to the meeting that feedback was being awaited from the provincial commissioners on the appointment of investigators and that some had already provided their list in that respect. So at
10 least by the end of 2007 you were awaiting a response from those provincial commissioners. And yes, I understand that you were not at the operational level, but given that you had made that report at the end of January, did Commissioner de Beer or those provincial commissioners ever come back to you to confirm that they had been appointed and they had commenced work?

DR JACOBS: I was, as a matter of fact the line of communication would be from the provincial commissioner's office to the divisional commissioner. But the divisional commissioner did give some of the responses, they sent it from his office, they sent it through to me. So
20 that is why I knew at that stage there were some investigators that have been made available.

ADV VARNEY: But you did not know how many and in respect of which provinces?

DR JACOBS: I cannot remember, I do not have that documentation at my disposal.

ADV VARNEY: And I perhaps I am pressing my luck here, but of the ones that were appointed, do you know, investigations commenced?

DR JACOBS: I do not know.

ADV VARNEY: Alright, then it would be unfair to ask you for reasons why they did not commence, so I will not put that question to you. So if we go down to paragraph 23, we want to put it to you that we cannot find any evidence on record that those eight investigations proceeded.

10 And in fact when Adv Mhaga testified before this commission, he made statements such as the following; that the cases were never investigated by the SAPS. He sat on the TRC task team, it is at 23.1, but they never dedicated investigative capacity that was allocated or assigned to the cases that I handled. And that is in the Mhaga transcript at page 70, it is actually in the Cross Bundle at page 149.

20 As far as we know all these eight cases remained unresolved till today, that is, you know some 20 years later. There have been some recent developments and we have actually pointed out some of those developments in the footnote. But perhaps let us start with what Adv Mhaga has to say that as far as he is aware and at least the cases that he was handling, SAPS never allocated investigators to them.

DR JACOBS: Chairperson, I accept that the evidence of Adv Mhaga relates to the term where whilst he was still serving in the PCLU. In respect of my position, the last meeting of the task team that I

attended was on 29 January, so I do not know which cases might have been finalised, which were investigated, all that. It is, I do not know.

ADV VARNEY: Okay. Just to complete that, we have looked at those cases and just to give you a sense as to what has happened since, you know, the end of 2006, early 2007 in Craddock Four. The reopened inquest only commenced in 2025 and that is still ongoing this year.

10 The Pepco Three the prosecution was never reinstated and the reopened inquest is only going to commence in October of this year. There is only one surviving suspect in that matter. In State versus Coetzee an indictment was issued, but that was some nine years later in 2016 following an application brought Thembi Simelane in 2015. That case is still ongoing.

In State versus Hentie Botha and others the accused were only charged in 2024. In Cosas Four the two surviving accused were charged in August 2021, that is also ongoing. In the Heidelberg and St James attacks the investigations into Mphahlele remain unknown and unresolved.

20 In the Ntongo case there was a charge against the former Security Branch officer in November 2025. And then Morudu there was a symbolic burial in 2013 and there might be an inquest at a future date. In respect of those eight cases that have been highlighted one can see that action was only taken many years later, you know, as recently as just the last few years. So I think we can

assume that at that time those investigations were not taken forward.

DR JACOBS: I do not deny that, Chairperson, that speaks for itself.

ADV VARNEY: Yes. And we also touched the presentation that the DPCI head had made to the portfolio committee in 2025. I am not going to go to it because you will not have knowledge. But we looked at those eight cases and the DPCI only opened their investigations about 10 to 15 years after these developments in 2007. But let us move on.

So the next heading is the collapse of the task team on page
10 10. So we have already dealt with the differences that emerged between Commissioner Selebi and NDPP Pikoli, so we will not traverse that again. We know that Pikoli escalated the matter to the Minister of Justice, we do not have to deal with that.

I can draw your attention to 26.3, the NPA sent an invitation to the NPA to attend a task team meeting for 13 March 2008. Then acting national Police Commissioner Timothy Williams stated that until such time that the matter had been cleared up, I am of the view that the committee cannot function meaningfully and he refused to participate until such time that the matter was resolved.

20 He has instructed the representatives of the SAPS not to attend meetings of the task team and of course the matter being whether the NPA had to wait for a recommendation before acting. Is that summing up in 26.3, do you recall that response from acting Commissioner Williams?

DR JACOBS: That is correct, I recall it, it was in May 2008.

ADV VARNEY: Thank you. So we want to put it to you that since that matter could not be resolved because the NPA would not agree to having its hands tied, that indeed it went ahead with the Chikane case without waiting to hear from the DGs. Because of that, once SAPS not only withdrew from the task team, but persisted in withholding investigative support for the TRC cases going forward. And that this explains why the Chikane case went ahead, which had been previously investigated and there was not a single prosecution or inquest that proceeded for the next nine years. Your response?

10 DR JACOBS: Firstly I want to state that I am not aware that after 29 January that the police withdrew from the task team. The response from the national director was that he will interact with the minister. Now that issue had not been resolved and the PCLU who were the conveners of the task team never called for a meeting of the task team.

It is said here that somewhere, I think in August there would have been one, I am not aware of that one. I had not seen an invitation or minutes or something from that, of that meeting. So in my view the PCLU themselves and the NPA they stopped the
20 activities of the task team. If they would have invited us to come there, it might be that there could have been some discussions or whatever, but there was no further meetings of the task team convened by the PCLU.

ADV VARNEY: Well at least one invite was extended, we are trying to find the invite.

DR JACOBS: There was an invite for a meeting on 13 March 2009 I think.

ADV VARNEY: 2008.

DR JACOBS: 8.

ADV VARNEY: And in fact that is one we are referring to, so if we look at page 1808 of your bundle.

DR JACOBS: Ja.

ADV VARNEY: And the annexed SA1, it says:

10 “The representatives of the SAPS received an
invitation for a meeting of the abovementioned
task team, scheduled for 13 March 2008.”

And the rest we have dealt with. Acting Commissioner Williams explains why they would not attend. So you accept that there was an invite from NPA to... [intervenes]

DR JACOBS: Ja, I accept that, yes. But not in the period between 29 January and the Chikane, the prosecution in the Chikane matter. There were no invitations for meetings.

ADV VARNEY: Yes, I think that is correct. It seems that there was an attempt to resuscitate the task team in March 2008.

20 DR JACOBS: Correct.

ADV VARNEY: Am I also right in saying that in fact it was never resuscitated, that January meeting of 2007 that in fact was the last meeting of that task team?

DR JACOBS: Yes.

ADV VARNEY: And in response to what we put to you under

paragraph 26.4, did I hear your response correctly that you have no knowledge of these matters post... [intervenes]

DR JACOBS: No, I have not been involved in, after the letter that was sent by Commissioner Williams, acting national commissioner that until that matter has been resolved and I am not aware that whether the matter has been resolved or not or what followed after that.

ADV VARNEY: Yes. Well it does seem that, well we of course do not know if the matter was resolved, but we do know that later in 2007
10 Adv Pikoli was suspended and Adv Ackermann was relieved of his duties in relation to the TRC cases. But the, what we put to you that post that time, at least post the Chikane case, we are putting it to you that the SAPS withheld investigative support for the TRC cases and that reflected in the fact that very little happened post the Chikane case.

DR JACOBS: No, I cannot comment on that, it is, it could be the experience at the side of the NPA, but I am not, I was not involved in stopping anything or blocking anything or preventing... [intervenes]

ADV VARNEY: Yes.

20 DR JACOBS: Investigators.

ADV VARNEY: And we are not accusing you of stopping anything.

DR JACOBS: Okay.

ADV VARNEY: Alright, then let us turn to the forged memorandum of 26 June 2003. And this is from paragraph 27 onwards. Now in your evidence in chief I understand that you took the view that the

memorandum in question sometimes referred to as A15, it is at PCJ22 at page 1774, but it is also annexed as Annexure B to this application to cross. Is it still your evidence that that memorandum was not a forged document?

DR JACOBS: Chairperson, I conveyed to the commission the two forensic analyses that have been done in this respect. I am not a fingerprint expert or a disputed document expert or whatever, but those were the two reports that were given by people who are qualified to do that analysis.

10 ADV VARNEY: Alright, so I assume that you rely on those two reports and that your evidence is still that the document in question was not forged.

DR JACOBS: I did not give the instruction to have the analysis done and the analysis was done with, in determining whether the document is forged or not, but I cannot comment further on that in that regard.

ADV VARNEY: Alright, let us then turn to paragraph 28.1 on page 11. Now where did you source this document? This is the document of course we have highlighted, it is at Annexure B and it is the same document that you faxed to Adv Ackermann on 20 August 2007,
20 following the publishing of the article in the report on 19 August, the day before. That is at PCJ20, page 1769. So where did you get the document that you faxed to Ackermann?

DR JACOBS: Chairperson, it was part of the document bundle or the file that I received from senior Superintendent Louis Bester. And that is, it was a document A15 which related to the landmine cases.

ADV VARNEY: So effectively the source was Superintendent Louis Bester. Now we want to know why SAPS would be in possession of a document of that nature and as you can see at 28.2 we say that if it was just a file note in the case docket, we can understand why Louis Bester would have access to it. But this document, this document purports to be a memo addressed from the head of the PCLU to the deputy NDPP. So why would SAPS be in possession of an internal NPA memo?

DR JACOBS: Chairperson, this file with the documents A1 to A73
10 was given to me as part of the documents that was transferred to the police service in 2004. It was part of that bundle and there was a number, I think from A1 read here from A1 to I think 16 are in the same format as that. I would not question the manner and the type of communication that is being used by the PCLU and the documents were photocopies of the file that Louis Bester had. The ones that I had. I did not have the originals.

ADV VARNEY: Right, although it does seem that Louis Bester was in possession of the original, but we will come to that shortly. Now Ackermann denies that he would have addressed a memo in
20 Afrikaans to Ramaite SC who is not a native Afrikaans speaker. Would that not have raised a suspicion?

DR JACOBS: Chairperson, I do not know how Adv Ackermann and Dr Ramaite communicated with each other and in which language. I really will not know that. It would not have raised a suspicion with me; these documents were given to me. I must say when I received

the call from Adv Ackermann to send him the copy of the document, I simply did that. And when he came back and said to me that did I look at the date, I was, I must say I was surprised, because I did not see, I did not have any suspicion about anything like that, that could be at play.

ADV VARNEY: Yes. Well it is the evidence of Ackermann that when he communicated with Adv Ramaite, it was in English, not Afrikaans. When Adv Ackermann called you and drew your attention to the date and presumably, you know, Ackermann was saying that the date was
10 wrong, did that raise any alarms with you?

DR JACOBS: Look, I am not, as I have said I am not a police officer, I am not an analyst, to me... and just the following day there was this media statement by the NPA to say that the document is alleged to be a forgery that was sent to Adv Ackermann. That was on the 21st. Immediately thereafter Commissioner de Beer and myself went and we informed the national commissioner about this investigation into alleged forged document, disputed document. So then Commissioner de Beer requested Louis Bester to come to the office of the national commissioner and to bring the file with the original documents.

20 ADV VARNEY: Let me just check, Louis Brits or Louis Bester?

DR JACOBS: Louis Bester, sorry, I have... I am just losing it there. But Louis Bester brought the file to the national commissioner, if I remember it was late afternoon and then the national commissioner or Commissioner de Beer instructed Louis Bester to obtain a forensic analysis. So that was on the 21st.

On 22 August Louis Bester took the request for a forensic analysis to the head of the forensic science laboratory with an information note asking for the analysis to be done. And later that day they received the analysis that was done by, it was a senior Superintendent du Toit as well. The other one was divisional commissioner, this one was the analyst.

So then that document was given I believe to General Selebi immediately after it was received. That was on 22 August. So what happened is just after that Commissioner de Beer also asked Louis
10 Bester to obtain an independent analysis. So what happened is just after that Commissioner de Beer also asked Louis Bester to obtain an independent analysis.

So on the 30th and of course because it is with an independent analysis outside the police service, financial authorisation had to be obtained. So it took a short while for financial authorisation and on 30 August the, 2007, the request to ex-Brigadier Hattingh was given to do the forensic analysis. And he delivered his report on 31 August 2007.

Then thereafter and maybe I must just say that there was
20 communication between the Scorpions, firstly to myself requesting the original docket. And then on the original document, then I informed them I am not in possession of the originals, the original is under the custody of senior Superintendent Bester.

Senior Sup Bester received a similar communication to ask for the document and it was said it might be used in criminal

proceedings and all that. And then Commissioner de Beer wrote a letter to Gerrie Nel, who was with the DSO then. Commissioner de Beer informed him that he will deal with the matter.

So then these analyses, once they were finalised, Commissioner de Beer asked me to accompany him to the office of Adv Leonard McCarthy. Then the analyses were given to Adv Leonard McCarthy and we accepted that he will further deal with the matter. And that is why the document was not sent when it was asked for originally, it was not just sent off so because these analyses
10 were being done.

ADV VARNEY: Thanks for the explanation. So in relation to and we might as well just jump to it since you have dealt with it, at 28.5, you know, where you already indicated that you did fax a copy on 20 August 2007. But Ackermann, as you can see from 28.5, he responded saying, you know, he would like the original document delivered to his office by no later than 16:00 on the same day.

You have already explained that that was in possession of Louis Bester and as you can see from 28.6 the original was apparently handed over to the forensic science laboratory on 22
20 August 2007. Now you mentioned Leonard McCarthy and if you turn the page you will see that Ackermann does write to Leonard McCarthy, the head of the DSO on 27 September 2007, complaining that he has still not been furnished with the original document and that communication is at page 145 of the Cross Bundle.

So it was a question, you know, why was the original not

provided to the NPA and as I understand it, you have explained that the reports from the forensic experts were provided to Leonard McCarthy and that is when matters were left for McCarthy to then handle.

DR JACOBS: That is right and what is interesting from page 145 is what Adv Ackermann said: furthermore it is important in paragraph 4 to note that the handwriting ex... sorry. I am of the view... in paragraph 3:

10 “I am of the view that you do not need a
 handwriting expert to establish that fact.”

ADV VARNEY: Well I do not want to get into a legal debate.

DR JACOBS: No, no.

ADV VARNEY: But there actually is case law that says that, you know, the view of a handwriting expert is not decisive in these matters and that...

DR JACOBS: I accept it can be disputed but then also with expert evidence.

20 ADV VARNEY: Well in fact the case law says that courts are entitled to consider but not be directed by the forensic evidence and that they are entitled to use their own, apply their own minds to the matter. We can leave that for argument. But let me put Adv Ackermann's complaint. And that is that he and the NPA were never furnished with the original, which meant that they could not do their own forensic examination and the complaint is that that was done purposely to stop them from doing a forensic examination.

DR JACOBS: I cannot agree with that, because when the matter was left in the hands of Adv Leonard McCarthy, he could have asked us to have another analysis being done. Even if it would have been with an analyst from the SAPS together with an analyst decided by the NPA, I can see no reason why that would have not been done, but there was no such a test.

ADV VARNEY: Well I do not think that is good enough, because you had received a request from Adv Ackermann for the original and Leonard McCarthy, the head of the DSO, the PCLU fell under the
10 NDPP at the NPA.

DR JACOBS: That is correct. But the DSO was charged with that investigation.

ADV VARNEY: But then why simply not give the original to the NPA, because they had requested it?

DR JACOBS: As I have said that it was, that was the route that General de Beer followed to inform them and they said they will deal with the matter and what evidence they needed from us, they could have requested it.

COMMISSIONER KGOMO: Doctor, I remember enquiring about the
20 original. What happened to the original? Where did it end up?

DR JACOBS: Commissioner, that original document is still in Visagie Street 28 and the evidence leaders are aware of that.

COMMISSIONER KGOMO: Yes, but it seems there was a denial to Adv Ackermann to have the original whatever obstacles may have been on the way, how can he now even invoke the assistance of his

own expert, because he cannot work on the duplicate which he disputes is a forged document. You agree?

DR JACOBS: I agree with that, Commissioner.

COMMISSIONER KGOMO: Yes, okay thank you.

ADV VARNEY: Dr Jacobs, when you faxed a copy of the document on 20 August, it was an incomplete copy. Why was that?

DR JACOBS: I understand that an incomplete copy has been received by Adv Ackermann. It seems to me he realised that some 20 years after the incident happened in terms of his evidence, but I can
10 only accept that there must have been something that has gone wrong with the faxing of the document. At the time Adv Ackermann did not revert to me and said that he received an incomplete document, so I was not aware that only two pages of the document was received by Adv Ackermann.

ADV VARNEY: Yes. Well from his perspective, you know he was expecting not only a complete copy, but the original at some point and that never transpired. But let us move on and I want to pose the question that is 28.4 on page 11. Now why would Ackermann write such a memo in June 2006 and Commissioners, we did provide an
20 English translation which was annexed as A and the Afrikaans version as B and we have highlighted where Ackermann alleges the forgery took place. So the question, Dr Jacobs, is why would he write such a memo in June 2006 when in 2004 he had already concluded that no case had been made out against the ANC leadership. And the then NDPP Bulelani Ngcuka had released a press statement on 15 May

2004, noting that there was no basis upon which to move against the ANC leadership.

DR JACOBS: I would not know why Adv Ackermann would have done that.

ADV VARNEY: But you accept it is unusual?

DR JACOBS: It can be unusual, ja.

ADV VARNEY: Alright then let us turn then to questions in paragraph 29. Let us move to 29.2. You have highlighted the two forensic investigations, now we suggest that those two investigations were not
10 truly independent. The first one was carried out by a police officer and although an independent investigator was also appointed, Mr JF Hattingh, he also served in the police from 1981 to 2006. What is your response?

DR JACOBS: Chairperson, I think from a court perspective it is very important to realise the position of a forensic analyst. Once they are, if they are once discredited in court, their career is over. Then the Brigadier Hattingh, if you would look at his CV on page 1788 of the Jacobs bundle, then and also... excuse me, I just want to page here.

20 He was very well experienced, he had international exposure, he received training with various institutions internationally, he even went to Taiwan where he actually received training regarding the analysis of Mandarin documents. He drafted manuals for the University of South Africa. He testified in courts in our neighbouring countries, as well as in South Africa, higher and lower courts.

He was very well experienced and really I cannot think that

for a case that comes from the police service that a person like that would actually sacrifice his career to just simply do what he is asked to do or to give a result that is wanted. So in my view, I think especially Mr Hattingh really had a good standing to do this analysis. And he was independent, because he was not at that stage in the police service anymore.

ADV VARNEY: So while we are on the Hattingh document, let us just focus on the second page, 1789, paragraph 3. He says he was requested to compare the signature page, compare the signature on
10 page 3 of the disputed document with the specimen signatures as mentioned in paragraphs 2.2 and 2.3.

To determine if the paper used on the three pages of the disputed document are the same and if the three pages form one document as a whole. Thirdly to determine whether any amendments or tampering exist on the disputed document and then lastly to compare the inks used on the disputed document regarding the signature, the date and the correction of the paragraph on page 3.

So we will come back to that in a moment. If I can draw your attention to the subparagraphs on page 13, 29.3, because we want to
20 point out some discrepancies to you. And let us start on 29.3.1. So according to Adv Ackermann his file notes were referenced in numerical order. The first memo was referenced A1, memo A15 which is in our view the forged memo, was purportedly written on 26 June 2006.

And memo A16 which follows A15 is also dated 26 June

2006 and indeed memos A1 to 16 all carried that same date. However, notwithstanding the sequence, memo A17 is dated 11 July 2003 and the subsequent memos are all dated between 11 July 2003 and 10 October 2003. Is that not a discrepancy that should have alerted yourself and the others examining these documents?

DR JACOBS: Chair, in law they say *nemo iudex in causa sua*. I mean this has been questioned. I am not going to investigate myself. I am not an investigator and these discrepancies were pointed out, some of them in correspondence with Adv Leonard McCarthy. So a
10 lot of these things, even if we go lower down, the telephone numbers, all that, those are not issues that I have been aware of that Tia Pretorius... Tia Pienaar that she did not work anymore at the NPA at the PCLU. So all these issues and even the last paragraph, the marked differences between the two handwritten 6s contained in the date and the last 6 on page 3 of the forged document, I would not be able to say that is not the handwriting of Adv Ackermann.

ADV VARNEY: Given that we are alleging that the documents in question is a forgery, we simply have to deal with these discrepancies, so let us turn to the next one. The memos A1 to A16
20 are all dated 26 June 2006, as we mentioned and are all addressed to Adv Ramaite, whereas A17 to A73 are all from 2003 and I only found that they were not addressed to anyone. Again did that not raise an alarm, or should have raised an alarm, looking back?

DR JACOBS: It did not raise an alarm with me.

ADV VARNEY: Then I have to ask the question, why not?

DR JACOBS: Because I have not looked at it from that perspective.

We were dealing with a specific document at the time, I did not go through the whole file and see how it relate to all the other documents.

COMMISSIONER KGOMO: Yes, but Dr Jacobs, not addressed to anyone else, to whom it may concern, *aan wie dit ook al mag behaag* in Afrikaans. It is a bit unusual, particularly with people who are investigating forensic, it is a bit unusual, it should attract attention. Whose attention is invited?

10 DR JACOBS: Commissioner, I, once again I want to say that I was not asked to, there was investigator appointed to deal with the document. These issues could also be taken into account by the investigator. I was not in charge of the investigation, that was tasked by General de Beer to Louis Bester to have those things done.

COMMISSIONER KGOMO: Yes. Thank you.

DR JACOBS: Thank you, Chair.

ADV VARNEY: Thank you, Commissioner. On the Commissioner's point I must also put it to you, Dr Jacobs, that the case law actually says you must not investigate and look an individual forgery or
20 alleged forgery in isolation, it has to be looked in a more comprehensive matter, in a holistic matter and you have to look at a range of other factors, not simply at the document itself. Is that not what the investigator should have done and it appears that they did not do so in this case.

DR JACOBS: I think it would have been better if the investigator did

that, yes.

ADV VARNEY: Yes, on that we agree. And then 29.3.3 and now we are talking about the context and content. So none of the memos A1 to A16 reflect any recent developments or need for further investigations, which would have caused Ackermann to suddenly knock off 16 memos in one day on 26 June 2006, because these were all matters that have been dealt with as far back as 2003.

DR JACOBS: It is correct.

ADV VARNEY: And then you raised the telephone number, so it is
10 not a glaring discrepancy, the telephone number reflected on the memo, 845 6432, that was the number in use in 2003 and we have put up an example of 2003 in the Cross Bundle, page 142. We do not need to go there, unless you wish to. Whereas Ackermann's telephone number since at least 16 May 2006 was 012 845 6474. And again we have put up an example of that, it is in the Cross Bundle at 143 to 144. And there are other examples. And yet on a document purporting to be June 2006, a number from 2003 is reflected. That was not unusual?

DR JACOBS: Chairperson, I think I should just point out that when
20 these documents went for analysis, I understood that that whole bundle of original documents from A1 to A13 were submitted to the forensic analyst.

ADV VARNEY: Well then the question is, do they fail to look into that, how did they miss that?

DR JACOBS: I cannot explain that.

ADV VARNEY: Then let us turn to the initials of the titles which are reflected as TP. Now the secretary who worked for the PCLU in 2003 was a Ms Tia Pienaar. She was no longer in the employ of the NPA when the 26 June 2006 memo was typed. And yet her initials appear at the bottom of the 2006 memos, despite the fact that she was not there and I think we should go to her affidavit which is at page 23 of the Cross Bundle. Because we approached Ms Tia Pienaar and she made out an affidavit which is dated 14 May 2026. I will just read into the record paragraphs 3 to 5.

10 “During the period 1 June 2003 to 30 September 2003 I worked for Adv Ackermann SC in the PCLU. I confirm that the official typing that I did for Ackermann in the scope of my employment with the PCLU was marked with my initials TP.”

Paragraph 4:

“I left the employ of the NPA at the end of September 2003 and stopped rendering typist services to Ackermann SC and the PCLU.”

Paragraph 5:

20 “I did not render any typist services to Ackermann SC or the PCLU after 30 September 2003, including June 2006.”

And yet her initials appear and it does not seem as if the investigators looked into that aspect.

DR JACOBS: I agree with that.

ADV VARNEY: And then lastly Adv Ackermann says that there are marked differences between the first two handwritten 6s contained in the date on the last page, on the signature page of that document which is dated 26/6/2006, there are three 6s there. And he says there is a marked difference with the last 6 on page 3 of that document. And yet the investigators did not find that as an issue or a problem to attend to.

DR JACOBS: Chair, I can assume regarding the 6s that the paper was the same paper used, the handwriting or the signature was the same, it seems to me that only the 6, the last 6 is disputed. Now to
10 get that last 6 there from a document that is dated 2003, you will have to erase the 3. Or you will have to make some change to the document. To change a 3 to a 6 would not be very easy. To erase it, it would have been seen through the, with the microscopic and other evidence ultraviolet and all those issues. So to me that, I cannot explain, I am not an expert in that regard, but I think that is an issue that really lies with the forensic analyst and that I cannot answer.

ADV VARNEY: Yes, which is why it was most unfortunate that the original was not supplied to the NPA when asked for it.

20 COMMISSIONER KGOMO: Mr Varney, I understand that you have to go through this exercise, I am not so sure that beyond clearing Mr Ackermann's name, what else is the purpose of this exercise. If there is a good purpose and I assume there may be, where is Mr Hattingh who should be carrying the candle?

ADV VARNEY: Well firstly Commissioner, we have now dealt with the

discrepancies so we do not have to revisit those. There are a couple of other aspects that we would like to canvass with this witness, which are on page 14 of the application and we think it is important because Dr Jacobs persist in saying that the document was not forged. Thank you.

COMMISSIONER KGOMO: Yes, I follow. I thought perhaps you should have made your point because I do not know what would be the worth of examining a document without the original. I think the whole subtract is removed, taken from the feet of the examiner. But
10 in any event, I do not say you must not pursue it, I just want to clear my own mind.

ADV VARNEY: Yes. We will keep it as brief as we can and we are quite close to the end, Commissioner. Let us move on to the next question, Dr Jacobs. As far as you know, the leaking of the forged, the alleged forged memorandum to Rapport journalist Sonja Carstens which then resulted in this article of 18 August 2007 and that I understand of course triggered this big controversy, was that leak ever investigated?

DR JACOBS: Chairperson, firstly no document was referred to in that
20 media statement. In Afrikaans it is written: 'Rapport verneem dat' and then give that related to the ANC 37. So there was no reference to a document as such. Furthermore I, ja the Rapport article was dated 19 August, not 18 August. 19 August 2007. I think you have copies of the newspaper report in your bundle, I cannot just remember quickly which page it is.

ADV VARNEY: It is 1769.

DR JACOBS: Ja and I think in the cross-examination bundle there is also an English version that has been provided.

ADV VARNEY: Yes. Can I ask you, Dr Jacobs, when Adv Ackermann communicated with you on 20 August, following the publication of the article in Rapport and he asked you to fax the document in question, the imputed document is the one that you faxed to him?

DR JACOBS: No, the fact is that from the Rapport article it is clearly related to the ANC 37. I assume that is the document that he was
10 looking for.

ADV VARNEY: Yes. Well... [intervenes]

DR JACOBS: I cannot remember how he described the document or whatever, whether he gave me a file number or what, but I was able to access the document.

ADV VARNEY: Well I think we can assume that the reporter Sonja Carstens had either access to the document or the information in that document, because that was the basis of her article.

DR JACOBS: Well she must have received information, whether it was a document or someone phoned her or whatever happened, I
20 assume also she must have received an indication of the information that she was dealing with.

ADV VARNEY: Yes. Just looking at the English translation.

DR JACOBS: Ja, you will see in the English translation and that is not my translation, I think it is one from the interdict, they refer in that sentence to there is a strange word in front of Ackermann, I...

[intervenes]

ADV VARNEY: [Indistinct]

DR JACOBS: I do not want to say it.

ADV VARNEY: Let me read the translation and you know, you can tell us whether that is accurate or not. And this is at page 43 of the application... sorry, page 381, the red number, the Cross Bundle and it is the second line.

DR JACOBS: I have it, thanks.

ADV VARNEY: Okay. And the Afrikaans version is in your bundle at
10 1769, but the English translation reads as follows:

“Rapport this week from impeccable sources learned that the police docket of two retired police officers had made earlier for years locked up at the headquarters of the police detective services.”

And the next line:

“The source’s names are withheld at the request because of the sensitive positions that they hold.”

So they, we will not know that the sources are impeccable or not, but
20 they do refer to police documentation.

DR JACOBS: It is correct.

ADV VARNEY: Yes. So it does seem that police information and potentially that the document itself did reach the hands of the journalist. Was that ever investigated?

DR JACOBS: No, not that I know of. I am not aware of any

complaint in that regard or investigation.

ADV VARNEY: Yes. Should it have been investigated?

DR JACOBS: It could have, if the complaint was made it could have been investigated.

ADV VARNEY: Now why did nobody in SAPS seek an interview with Adv Ackermann to get his explanation as to why he thought the document was a forgery?

DR JACOBS: Chairperson, I cannot speak on behalf of the investigator, I was not an investigator.

10 ADV VARNEY: Okay.

DR JACOBS: And I must say if I read that question whether I had any knowledge about the leaking of the forged document, I can just say I have no knowledge of that.

ADV VARNEY: Thank you. We do not doubt that, doctor. Perhaps if we can just go back to that English translation, because my attorney has just pointed out another passage which suggest that they probably did have the document and that is towards the bottom of the page, it is like the fourth paragraph from the bottom. And I will just read it into the record and again this is at page 381 of the Cross

20 Bundle.

“Ackermann had earlier instructed in writing that the police have evidence in the investigation of the ANC leaders, gathered a view to possible prosecution, but last week the police refused to say whether the assignment was carried out and

in progress.”

I can just highlight the words, ‘Ackermann had earlier instructed in writing’ so it does seem to suggest that perhaps the document was in the possession of the journalist.

DR JACOBS: I am in agreement with that, Chair.

ADV VARNEY: Ja. So we just want to put it to you that, you know if the remit to the forensic investigators have been wider and not just in relation to the signature, the paper, the ink and alterations on the document itself; if they looked at the sequencing and the difference in
10 dates and the content of those documents and the phone number and the initials of the typist, do you think they might have reached a different conclusion?

DR JACOBS: Yes, Chairperson.

ADV VARNEY: So then the question is, why were they not given that wider remit?

DR JACOBS: I cannot answer that, I was not the investigator, Chair.

COMMISSIONER KGOMO: Yes, really Mr Varney, that is unfair.

ADV VARNEY: Yes. We will not... [intervenes]

COMMISSIONER KGOMO: He is not in the mind of those people,
20 so...

ADV VARNEY: Yes, indeed. Well just to wrap up this section, we just want to put to you some statements for your response. We want to put it to you that, and here it is not an accusation against you yourself, but that in this investigation SAPS failed to apply their minds and they considered the impugned document in isolation. They relied

exclusively on handwriting experts without looking at the wider context.

DR JACOBS: Chairperson, the SAPS leadership, I cannot talk on their behalf on the issue of failing to apply their mind et cetera, as I have said the investigator should have or could have looked at those issues.

ADV VARNEY: I just want to put it to you that the document in question was forged, it was manifestly altered by elements within SAPS and we believe this was done in order to place pressure on the
10 government and the NDPP to remove Ackermann from the TRC cases and ultimately to bring an end to the TRC prosecutions against all sides in the conflict.

DR JACOBS: Chairperson, I have no knowledge of that.

ADV VARNEY: We want to turn to one last matter. You raised the Highgate Hotel matter in one of the task team meetings in January 2007, this is at PCJ11 and you mention that the Highgate Hotel matter did not require further investigation, that is at page 1753. Now the Highgate Hotel massacre inquest actually wrapped up in December last year. And one of the findings made by the Inquest Court that the
20 likely culprits had been engaged in a false flag operation, can you explain why in January 2007 you took the view that no further investigations were necessary?

DR JACOBS: Chairperson, the docket on the Highgate matter was requested by the PCLU. So I got hold of the docket through Brigadier ...[indistinct] and I studied the document before I gave it to the NPA

and if you look at the place where Adv Mhaga signed for that document, it is page 1768 of the Jacobs bundle, you will see it was, there were two ring binders.

Evidence A1 to 80. Correspondence B1 to 89. Investigation diary, C2 to C153. There were also colour photographs, 102 of them and when I read the docket there were already affidavits referring to the issue that it was not APLA or that it was rogue elements or something, I cannot remember exactly. But that allegation was already in the docket.

10 So the reason why I read it was just to see whether the docket looks in order, in order to hand it over to the PCLU. Then the PCLU are the people who will decide further on how they will deal with the matter. So that docket had been with the PCLU since that date, 29 January 2007.

ADV VARNEY: Thank you, Dr Jacobs. No further questions, Chairperson.

CHAIRPERSON: Thank you. Mr Soni?

ADV SONI: There is no re-examination, Chairperson.

20 CHAIRPERSON: Thank you. Dr Jacobs, we again thank you for having come to give evidence before this commission, you are now finally excused as a witness.

DR JACOBS: Thank you, Chair.

CHAIRPERSON: Thank you. These proceedings are adjourned until tomorrow at 10:00.

INQUIRY ADJOURNS UNTIL 21 MAY 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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