

**ENQUIRY INTO THE SOUTH GAUTENG DIRECTOR OF
PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE**

HELD AT

**SALU BUILDING, 316 THABO SEHUME STREET,
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

9 APRIL 2026

DAY 49



**ENQUIRY INTO THE
SOUTH GAUTENG
DIRECTOR OF PUBLIC
PROSECUTIONS'
FITNESS TO HOLD OFFICE**

PROCEEDINGS ON 9 APRIL 2026

CHAIRPERSON: Thank you. Good morning everyone. Good morning Advocate Chauke. I realized yesterday that we seem to have new members of the camera teams. Are they new? I saw different faces yesterday. If not so, no new member in this family. Advocate Mtsweni, what is the position?

ADV MTSWENI: Good morning, Chair, good morning, members of the panel. Chair, following the discussions in the chambers, more so the directive that I should enquire from
10 Advocate Riley whether is there not a possibility that we can at least start ...[intervenes].

CHAIRPERSON: Please speak louder.

ADV MTSWENI: I am saying following the directive that I should enquire from Adv Riley whether there is a possibility that we can start with her evidence, I contacted her and spoke to her together with Adv Lekgetho and she says she can avail herself to testify, but she requires more time to get herself ready and then that she can do, we can, she will be available from 2 o'clock this afternoon. So, the request is to ask that
20 we stand down till 2 o'clock for her to commence with her evidence.

CHAIRPERSON: Is she still preparing the supplementary statement as you mentioned?

ADV MTSWENI: Both, preparing herself to start testifying as well as the statement. So we might, we will proceed up

until with the parts that she believes are, will be affected by the supplementary statement. I have not seen the supplementary statement, but she is prepared to go as far as we can today, Chairperson.

CHAIRPERSON: We are made to understand that the supplementary statement does not relate to the first part of the main statement.

ADV MTSWENI: Indeed so, Chair.

CHAIRPERSON: As it has happened with other witnesses,
10 is the supplementary statement affecting matters that could not be dealt with in evidence in chief?

ADV MTSWENI: I, in fact, I asked that and she says she believes that we should rather, she prefers to also state that in her, put that in a statement, because I felt, I also then asked the same question, whatever supplementary issues that she would like to raise, she could raise that during the testimony. But I was advised that she prefers to address them in a statement.

CHAIRPERSON: When do you anticipate we will be finished
20 with this witness, because one and a half days is now wasted?

ADV MTSWENI: Chair, if we start today by 2 o'clock, I am sure that if we were to adjourn between say 5 and 6, I would have covered a greater part. The statement is not long. It is just merely submission of the report, so I would have covered

at least between 60 and 70%. I anticipate, subject to what will be contained in the supplementary statement, that I might finish with her evidence either by tea time or at least shortly before lunch tomorrow, but I will try and be as quick as I can with her evidence to at least cover up for the time lost.

CHAIRPERSON: Yes.

ADV BALOYI-MERE: I am trying to understand what is it that Advocate Riley is preparing herself on, because what we are asking her to do is to come and testify on a statement
10 that was long prepared that she has signed. So I am struggling to understand. It is not like singing where you have to prepare your voice. It is a statement that she has already deposed to, so I am really struggling why should we waste the whole morning until 2 when she is not, you say she is not working on the supplementary, she is preparing herself. What is it that needs to be prepared?

ADV MTSWENI: That is what I was told, Madam, Advocate Mere, that she now wants to prepare herself to testify, because I thought that she, I also thought that she had read
20 the statement, familiarised herself with the statement and would have been ready to testify as early as yesterday morning, but that is what I was told by Advocate Lekgetho, and I asked whether can we not do it till, after tea, they said she need at least until 2 o'clock. That is what I was told.

ADV BALOYI-MERE SC: Advocate Mtsweni, this takes us to

what happened yesterday. Yesterday we were told that Advocate Riley is not here, because she does not agree with the contents of the statement, but today she is now supplementing and not necessarily saying I am discarding that statement and coming up with a new statement, meaning that the statement that is already on record still stands.

ADV MTSWENI: Yes.

ADV BALOYI-MERE SC: So I really have a difficulty where we as a panel and as an enquiry are going to have to rely on
10 the preference of witnesses. A witness prefers to start at 2, when we know that firstly, we are statutory guided within, on the time within which to work and we have had other challenges that brought us to where we are, where now we have to run. We are now even thinking about working beyond working hours, going beyond 6. We have done that two weeks ago, but should it be the norm, because witnesses are saying they prefer certain times to start or they prefer doing things in a certain way. I do not think that is how we should work as an enquiry.

20 **ADV MTSWENI:** I accept, Advocate Mere, that that should not be and unfortunately we, that is the, what was conveyed to me. If it were up to me, she would be sitting there and testifying, but this is what I was told.

CHAIRPERSON: You see what is most troubling for all of us is that this is just not a lay witness. She is an advocate. She

is an officer of court. Most of the witnesses who testified who are not even, one witness, not even a lawyer, we never encountered problems with those witnesses. Now someone who understands court proceedings better who should be even the more accountable, who can prepare her statements, we have now wasted a day yesterday and this morning and we are told that the witness prefers to start at 2 o'clock without a clear indication as to why when she has signed her main statement. We do not take kind to that. You can tell
10 the witness that we expect better from her as an officer of court. We may not be a court, but we expect better from legal practitioners in this enquiry to assist us. Do convey that to the witness. We will convey that to her when she starts, because we do not want to put you in a difficult situation of being a mediator between the panel and her. But we do appreciate, Advocate Mtsweni, your efforts in making sure that we start on time. Yes, thank you very much. Advocate Ngcukaitobi?

ADV NGCUKAITOBI SC: Madam Chair, we unfortunately do
20 have remarks to make on this point and I am constrained to make those remarks because I am trying to be as cooperative as I can with Mr Mtsweni, but I think this is beyond me and I have to say what Mr Chauke feels, which he has repeated to us. We do not accept the adjournment of Advocate Riley. We ask the panel should direct her to start now. There is no

reason why we are adjourning, no reason at all.

Number two, yesterday was extreme disrespect to this panel. I have never seen actually a panel being disrespected so much by witnesses. Advocate Riley was first introduced to us on the 24th of October 2025. There was a first meeting with her on the 7th of November 2025, 7 November 2025. The alleged aspects of the supplementary statements were first introduced in our critique of the report by Mr De Kock when Advocate Batohi testified on the 12th and
10 13th of December 2025.

Those criticisms were repeated by Advocate Maema in February 2026, which is the most comprehensive critique of that report. So, yesterday, to learn that she wants to respond to Advocate Maema, which testimony was given in February 2026, without giving any explanation why she did not respond to Advocate Maema timeously is grossly unacceptable.

Thirdly, Advocate Riley has given us a statement. She chose what to put in that statement and no one compelled
20 her to put whatever she put in that statement. Lay witnesses that have come here have supplemented their information. Some of them have corrected what is in the statement verbally. They will say this paragraph is wrong, I beg leave to correct it. The panel has never stopped them from doing that, because it is human nature, you see something wrong,

you did not notice it, you correct it.

CHAIRPERSON: Well, this is what I have just put to Advocate Mtsweni now. I do not think he is in a position to answer for Advocate Riley.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I am not interrupting you, Counsel, but perhaps without saying and your submissions, perhaps we should work towards finding a solution and wait for Advocate Riley to take a stand, because I do not see how when she is
10 not even in the building, you are going to do that back and forth again, sending messages to her and it is just putting too much pressure on us. But I hear what you are saying, Counsel, and I ...[intervenes].

ADV NGCUKAITOBI SC: Madam Chair, I am not going to proceed. Thank you, Madam Chair.

CHAIRPERSON: Yes, I request you.

ADV NGCUKAITOBI SC: Yes.

CHAIRPERSON: I note what you are saying. You know how we feel about this unpreparedness when a month was wasted
20 last year purely because the witnesses for the evidence leaders were not available. We started with the evidence of Advocate Chauke, a procedure that is extraordinary, but we had to make progress. We are now done with the evidence of Advocate Chauke, you have dealt with all his witnesses. We are now back to square one, and I am experiencing the

same challenges. It is even more disturbing that we are experiencing challenges with Advocates who are members of the NPA who are supposed to be helping us more than anybody else.

I request that we pause, Counsel, with respect to you, and find a solution that is not going to cause us more anxiety and distress and wait for the witness to take the witness stand at 2 o'clock. With that understanding we will stand the matter down until 2 o'clock and we hope that
10 Counsel and the State Attorney, Ntate Mametja, who will convey our displeasure to your witness.

We propose to stand the matter down until 2 o'clock when we hope that we will not take any other adjournment, because of the unreadiness of the witness. We do so.

ADV MTSWENI: Thank you, Madam Chair.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Good afternoon, everyone. Afternoon, Advocate Chauke. Advocate Mtsweni, are you ready?

20 **ADV MTSWENI:** I am ready, Madam Chair.

CHAIRPERSON: Is the witness available?

ADV MTSWENI: That is correct, Madam Chair. Madam Chair, I am informed that apparently there is a technical glitch. I thought, I am told by the spokesperson that there is a technical glitch that is being sorted out in Cape Town. I

was under the impression that everything was tested and ready.

CHAIRPERSON: We had sent a message just before we came out here that you should make sure that when we resume, we do not have to go downstairs again. What does that mean? Does it mean that we must pause again?

MALE SPEAKER: It is probably ...[indistinct] [microphone off] so I am just surprised ...[indistinct].

CHAIRPERSON: I think you can phone now. We will wait
10 here. We should not wait for too long.

RECORDING OFF

RECORDING ON

ADV RILEY: Good afternoon, Chairperson, and the rest of the panel.

CHAIRPERSON: Do you see us?

ADV RILEY: I can see you, Chairperson.

CHAIRPERSON: Yes, thank you. You well?

ADV RILEY: I am fine, thank you, Chairperson.

CHAIRPERSON: Yes, thank you. Advocate Mtsweni, I
20 suppose that we can start. We are going to start with you, Advocate Riley. First, do you prefer to take the oath or the affirmation?

ADV RILEY: I can take the oath, thank you.

CHAIRPERSON: Yes. Do you swear that the evidence you are about to give will be the truth, nothing else but the truth.

If so, raise up your right hand and say, “So help me God”.

ADV RILEY: So help me God.

SHAREEN RILEY (duly sworn states)

CHAIRPERSON: Yes, thank you.

ADV MTSWENI: Yes, good afternoon, Advocate Riley.

CHAIRPERSON: Before you start, Counsel, there are just a few matters that I would like to ascertain with the witness. Advocate Riley.

ADV RILEY: Yes, Madam Chair.

10 **CHAIRPERSON:** First, we want to thank you for having made yourself available to come and assist us as a panel in this enquiry. But I must say that we have started late and lost yesterday because seemingly you encountered problems with regard to your flight. Is that correct?

ADV RILEY: That is correct, Madam Chair. If I can just explain, we tried to comply with the due date in respect of my affidavit. We finalised it on the 6th of April, the Monday. I complied, I tried to, as much to comply with the due date. However, I felt that there is potentially a possibility that I can
20 supplement my statement, which I was not, which in my opinion was a bit incomplete because I wanted to deal with Colonel Mangena's evidence, which I did not have an opportunity to do so, that is the one aspect.

And then I was told on the 6th of April that since Major General, retired Major General Booyesen did not submit his

affidavit and he was not able to testify, that I will have to avail myself on the 8th. So, I did try to get a flight. The only flight that was available for the 8th was at 11 o'clock, which basically meant that it would have taken me plus minus two hours to get there around about 1 o'clock and then from there travel to Pretoria.

I do apologise once again to the panel. It was never intended to be disrespectful to the panel. I also want to apologise to Advocate Chauke as well as his legal
10 representation and everybody else involved in the enquiry.

ADV BALOYI-MERE SC: Thank you, Chair. But given that you say you missed your flight yesterday and the earliest available flight was 11, would it not have been prudent for you to make the same arrangements and connect virtually so that at least we salvaged what was left of yesterday's day?

ADV RILEY: I do understand what you say, Chairperson. We did not discuss that option.

CHAIRPERSON: I am not sure to what extent you wanted to deal with Captain Mangena's report as we have not seen your
20 supplementary affidavit. But are you aware that you can supplement your statement whilst you are under oath?

ADV RILEY: That is correct.

CHAIRPERSON: Would it not be possible then if we would have started at least this morning for you to do so?

ADV RILEY: That is correct. I do apologise for that

oversight.

CHAIRPERSON: Would it not have been easier for you instead of writing a supplementary statement to simply start and say whatever you would like to say in relation to the part that you sought to add to your statement, as it often happens?

ADV RILEY: I could have done that as well, Madam Chair.

CHAIRPERSON: Did you consider that or is it something that at that time escaped your mind?

ADV RILEY: I have to admit, Madam Chair, it was not a
10 consideration. But I do understand what the Chair is saying in connection with that, that I could have considered that option.

CHAIRPERSON: Yes, we do understand that initially Major General Booysen was lined up to start testifying yesterday, but for reasons that were beyond our control we could not and then you were lined up to testify. When first were you consulted with by one of the evidence leaders?

ADV RILEY: Madam Chair, in November there was a brief
20 interaction between the evidence leader and myself, as well as Advocate Garth Hulley. It was on a Friday before the enquiry started and then I was informed that on that Friday afternoon, we just briefly chatted about the enquiry, that I would then have to testify at a later stage.

The undertaking was from the evidence leader that he or she will arrange consultations with me after our first

meeting. On the 5th and the 6th of March was the first time that I met the evidence leaders for consultation.

CHAIRPERSON: After having met last year in November?

ADV RILEY: That is correct, yes.

CHAIRPERSON: Were you familiarised with the terms of reference in November during your meeting?

ADV RILEY: Not at that stage. I went to go read it up myself.

CHAIRPERSON: And having been now aware of the contents of the terms of reference, why was it difficult for you to
10 finalise your statement as early as at least beginning of the year?

ADV RILEY: We had, I had attempted to start drafting my statement round about the beginning of February.

CHAIRPERSON: Counsel, I ask this question because you are an Advocate and I am sure it would have been easier for you to prepare your own statement having been closely attached to the history of the matter and being fully aware of what is the subject matter of this enquiry. Am I correct?

ADV RILEY: That is correct, Madam Chair.

20 **CHAIRPERSON:** That would have made it even possible for you to could have testified even earlier than now, had that happened.

ADV RILEY: That is correct, Madam Chair.

CHAIRPERSON: We were supposed to have received your statement on the 4th, on Thursday last year, before we

adjourned for Easter. That did not happen despite our direction and that undertaking. Do you know precisely why did that not happen? Was it because of any omission on your part?

ADV RILEY: I received a draft on the, I think it was the 2nd, and then we, together with Advocate Lekgetho, we worked on the draft over the weekend.

CHAIRPERSON: But I know, I want to know, why is it that we did not receive your statement last week, Thursday? Were
10 you consulted before last week, Thursday, or had arrangements been made with you that your statement would be finalised by the latest, Wednesday last week?

ADV RILEY: I received the draft statement on the 2nd from Advocate Mtsweni.

CHAIRPERSON: Did they tell you that we expected to receive that statement on Thursday last week?

ADV RILEY: He mentioned it in his email, that is correct, yes.

CHAIRPERSON: We waited the entire weekend and only
20 received the statement on Monday, the Easter Monday.

ADV RILEY: That is correct, Madam Chair. There were also certain documents, annexures, that I was required to copy.

CHAIRPERSON: Yes. You see, Advocate Riley, I am mentioning all these because we are running behind schedule ...[intervenes].

ADV RILEY: I apologise, Madam Chair.

CHAIRPERSON: As we are. Last year we lost more than a month because of some delays occasioned by the failure to produce statements on the side of the evidence leaders. We are now back to square one. We are made to wait again for statements from witnesses like yourself.

And I am talking to you as I do because you are an Advocate. You are in a better position to make our task even far easier in terms of availability of statements and
10 cooperation.

ADV RILEY: I do understand, Madam Chair.

MS RAMAGAGA: Advocate Riley, you became aware of the fact that evidence leaders had identified you as one of the witnesses in this matter as far back as October or November last year, is that correct?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: Yes, and I hear now you are talking about Advocate Hulley, but did Advocate Mohlamonyane and Ms Thulare contact you or actually meet you in Cape Town in
20 order to inform you that you are going to be a witness in this matter?

ADV RILEY: I think the meeting of November was to ascertain what do I know about the matter and to determine at a later stage whether I am going to testify. And on that Friday, the undertaking was that we would meet again to

discuss this matter ...[intervenes].

MS RAMAGAGA: [Indistinct]... [cross-talking].

ADV RILEY: Sorry, apologies.

MS RAMAGAGA: Do complete your answer.

ADV RILEY: No, I just wanted to say it was a very brief interaction. What I do know is there was consultations with other witnesses such as Major, retired Major General Booyesen as well as a Kobus Roelofse. So when they called me on the Friday, I know that they had flights the afternoon.

10 So, our discussions around this matter was extremely brief and I was then told that they will contact me at a later stage.

MS RAMAGAGA: Ja, you know, we have not as yet started obtaining your evidence. We just want to understand as to, you know, the history of your meeting with them.

ADV RILEY: Okay.

MS RAMAGAGA: And I try by all means to ask simple questions so that I get simple answers. Compound answers are a bit problematic. So shall we continue with simple answers to simple questions?

20 **ADV RILEY**: Apologize, yes. Thank you.

MS RAMAGAGA: Thank you. I have asked the persons that came to you in Cape Town to meet you about this case are Advocate Mohlamonyane and attorney Thulare who came in their capacity as evidence leaders. Is that statement correct?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: All right. And these people, when they came, they came with prior arrangements. You were expecting them then.

ADV RILEY: That is ...[incomplete].

MS RAMAGAGA: That is correct?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And it was, you also knew that it was in connection with this enquiry that ...[intervenes].

ADV RILEY: That is correct, yes.

10 **MS RAMAGAGA**: ... we are currently holding. And you immediately, or soon thereafter, because from then you knew you were going to be a witness, you then familiarized yourself with the terms of reference.

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And you became aware that during the process, circumstances then dictated that we lead, or we allow the evidence of Advocate Chauke to be led before the evidence of the NPA and any other interested parties is led.

ADV RILEY: That is correct, yes.

20 **MS RAMAGAGA**: And you were aware of, whether in depth or just at high level, the circumstances that led to that approach then being invoked, the approach of getting Advocate Chauke's evidence being presented before the NPA's evidence.

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And with that knowledge, you did not then try to elevate the problem by preparing a draft statement for the evidence leaders. And I am saying for because of lack of sufficient vocabulary, but that statement would be your own statement.

ADV RILEY: That is correct.

MS RAMAGAGA: Why did you fail to do that?

ADV RILEY: I have on my own started to draft my statement based on what Advocate Hulley has requested me to do so.

10 So when I met with the evidence leader, I was able to give him the dates, everything in connection with how this process started as well as started to collect certain documents that might be relevant to the process.

MS RAMAGAGA: Just remind me, when you say you started to do this, collect documents, draw a statement or a draft statement, when did this happen?

ADV RILEY: That was around about February.

MS RAMAGAGA: Around about February.

ADV RILEY: That is correct, yes.

20 **MS RAMAGAGA**: And we are where we are today in terms of participation.

ADV RILEY: That is correct, ma'am.

MS RAMAGAGA: Well, I keep on hearing you throwing in the name of Advocate Hulley. I do not know as to whether is he the person that you were consulting with, communicating

with, or was there an engagement with evidence leaders. Evidence leaders that have come to be known as persons that have come into contact with you by this panel are Advocate Mohlamonyane, attorney Thulare, and Advocate Mtsweni. Has this happened, because that is what is our understanding?

ADV RILEY: The first time was in November, and then again I met Advocate Mtsweni.

MS RAMAGAGA: Ja, I did not ask about the time, I just said,
10 is it correct that even to your knowledge, the evidence leaders are the three that I have mentioned?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And do you understand the delay that appears to be coming from the side of the NPA as you have been following this process?

ADV RILEY: That is correct.

MS RAMAGAGA: You are quite aware of that?

ADV RILEY: That is correct, ma'am.

MS RAMAGAGA: Okay, right. Thank you very much. Thank
20 you, Chair.

ADV RILEY: Thank you.

ADV BALOYI-MERE SC: Advocate Riley, you say you received a draft statement on the 2nd of April?

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: And your statement is about 41

pages.

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: Excluding the annexures.

ADV RILEY: That is correct.

ADV BALOYI-MERE SC: How long did it take you to settle the statement, given that most of the information, as you have just said, you had it in your possession, you had given it to the drafter of the statement, and I take it, it is Advocate Mtsweni. How long then did it take you to settle your
10 statement?

ADV RILEY: We, I sent him my first corrections on the 2nd, and then I received it back, ja.

ADV BALOYI-MERE SC: On the same day, the 2nd?

ADV RILEY: That is correct.

ADV BALOYI-MERE SC: Okay. And then you received it back?

ADV RILEY: Yes, and I worked on it further.

ADV BALOYI-MERE SC: Okay, and when did you send the final version?

20 **ADV RILEY:** It was Sunday evening.

ADV BALOYI-MERE SC: What was Sunday evening, the ...[incomplete].

ADV RILEY: Sorry, can I just say it was Sunday afternoon.

ADV BALOYI-MERE SC: Sunday was the 5th.

ADV RILEY: That is correct, ma'am.

ADV BALOYI-MERE SC: I am asking this keeping in mind that you are an Advocate, also that drafting, especially talking about stuff that you have been involved in, it may have been a number of years back, but it is something that after you were told that you are going to be a witness, you must have refreshed your mind.

And now, and you knew, I take it that you said it, you were made aware that the statement should have been in by the 4th, and you received a draft by the 2nd, and you only sent
10 back the final draft on the 5th.

ADV RILEY: There was ...[intervenes].

ADV BALOYI-MERE SC: Sorry, sorry, I am sorry I interrupted you.

ADV RILEY: No, sorry ma'am, I interrupted you. I just wanted to say that there was also, the final draft was sent on the 5th, the afternoon, but we also worked on it the day before.

ADV BALOYI-MERE SC: So the fact that we received your statement later than what the directive had said cannot be
20 put on the door of the evidence leaders. It was because you were still working on the statement.

ADV RILEY: I will concede to that, Madam Chair, that is correct. It meant that some of the dates I had to go back to emails or to refresh my memory from other documents as well.

ADV BALOYI-MERE SC: Ja, so what I do not understand is that you got the draft on the 2nd, and there was that toing and froing, which is normal when an affidavit is being drafted on behalf of someone. And then, after we received, after we, firstly we received the unsigned draft, which was fine, showing that you are keen to assist us, and then we received your signed draft.

But then come the day of you testifying, you are not ready, you want to make certain amendments. The following
10 day, you still want to prepare yourself. How so? Why would you want to take a day and a half to come and testify on a statement that you finalized on the 5th?

ADV RILEY: I cannot take it further, Madam Chair, except to say that I considered the evidence of Colonel or Captain Mangena to be very important. So what I did was I had to study his evidence and then obviously look at some of his reports to determine whether those reports we have actually received. And that basically meant that I had to go back to all the dockets that were actually on a disc and be
20 downloaded to go through those dockets to determine if we have received a statement to that effect.

And I did indicate that I wanted to draft a supplementary statement that included that information regarding Colonel Mangena's evidence.

ADV BALOYI-MERE SC: Okay, thank you. That, I think that

point has already been canvassed by the Chair with you. I do not need to go back because you could easily supplement your statement while you are in the middle of your testimony, but you have already responded thereto. Thank you.

ADV RILEY: Thank you.

CHAIRPERSON: Advocate Riley.

ADV RILEY: Yes.

CHAIRPERSON: We have noted and accepted your apologies.

10 **ADV RILEY:** Thank you, ma'am.

CHAIRPERSON: And we are going to proceed, but we may proceed with your evidence until a little late today to make up for the time lost because we do not have much time.

ADV RILEY: I understand that, Madam Chair.

CHAIRPERSON: When we pause for tea later at about half past 4, if you need to make any arrangements concerning your personal matters, do so bearing in mind that we may work until slightly late.

ADV RILEY: Thank you for that indulgence. I will do so.

20 **CHAIRPERSON:** Yes, thank you.

ADV RILEY: Thank you.

CHAIRPERSON: Advocate Mtsweni.

ADV MTSWENI: Thank you, Madam Chair.

CHAIRPERSON: Maybe we should make it clear right at the start that as you have familiarized yourself with the terms of

reference, you know precisely what the issues are, correct?

ADV RILEY: That is correct.

CHAIRPERSON: And you can accept for now that we have read your founding statement and the annexures.

ADV RILEY: I accept that.

CHAIRPERSON: You may proceed, Counsel.

ADV MTSWENI: Thank you, Madam Chair. Advocate Riley, you should have before you or with you a document which starts at SR0001. Do you have that?

10 **ADV RILEY:** That is correct, yes.

ADV MTSWENI: And that document goes all the way to SR0040.

ADV RILEY: I confirm that.

ADV MTSWENI: Now on page SR0040, there is a signature there.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Is that your signature?

ADV RILEY: I confirm that it is my signature.

20 **ADV MTSWENI:** Yes. Now before I move on to the next question, is there anything in that document, in your statement basically, that you would like to correct, that you believe should be corrected at this stage?

ADV RILEY: That is correct, just one grammatical error in paragraph 9. It should read, I am further advised.

ADV MTSWENI: Then is there anything else again?

ADV RILEY: Thank you.

ADV MTSWENI: Yes. Now you have read the document, is that correct?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. We, I have noted that the document, although provision is made for it to have been deposed to before a Commissioner of Oaths, that has not happened. Is that correct?

ADV RILEY: That is correct, yes.

10 **ADV MTSWENI:** But be that as it may, do you confirm that the contents of the statement are correct and that they are binding on your conscience?

ADV RILEY: I do confirm that.

ADV MTSWENI: Thank you. Now we then go on and deal with your statement. At paragraph 1, you tell us that you are in the employ of the National Prosecuting Authority as a Deputy Director of Public Prosecutions and attached to the Office of the Director of Public Prosecutions for the Western Cape. Is that correct?

20 **ADV RILEY:** That is correct, yes, I confirm it.

ADV BALOYI-MERE SC: Advocate Mtsweni, I am sorry to interrupt. You have just taken the witness through the statement to indicate what is it that she may not be happy with in the statement and she only made one grammatical correction.

ADV MTSWENI: I said corrected, not added. I said corrected.

ADV BALOYI-MERE SC: Sorry?

ADV MTSWENI: I used the word corrected.

ADV BALOYI-MERE SC: Corrected.

ADV MTSWENI: Yes.

ADV BALOYI-MERE SC: And now she is just confirmed that the statement is correct and is binding on her conscience. Yesterday we were told that she was not ready to testify as
10 she was not happy with the statement and one would have expected that she would say I am not happy with paragraph 14, let it be scratched out or paragraph 32 or something. What is it that she was not happy?

Maybe let me direct it to you, Advocate Riley. Yesterday we were informed that you were not ready to testify because you were not happy with the statement. Now you have just confirmed that you have read the statement and the allegations are correct and it is binding on your conscience. What is it that you were not happy with that made you not to
20 testify yesterday?

ADV RILEY: I think perhaps the word happy is not how I used it. I indicated that I feel that there are certain aspects of my statement that was not completed and I already indicated that was Colonel Mangena's evidence. However, the Chair has corrected me in saying that I could have filed a

supplementary statement even if I am under oath and busy testifying. So I acknowledge that I was wrong in that regard.

ADV BALOYI-MERE SC: Thank you.

ADV MTSWENI: Yes. May I continue?

CHAIRPERSON: You may proceed, Counsel.

ADV MTSWENI: Thank you, Madam Chair. Now, Advocate Riley, we then move on to paragraph 5 to 7 where you tell us your understanding of the terms of reference of this panel. Is that correct?

10 **ADV RILEY:** That is correct, yes.

ADV MTSWENI: And you tell us that your understanding is that the panel is whether or not Advocate Chauke is fit to hold office of the Director of Public Prosecutions for the office of the South Gauteng Division.

ADV RILEY: That is correct, I confirm. That is what I read.

ADV MTSWENI: And in the main, what the Commission has to determine is whether or not Advocate Chauke supported the decision to prosecute Major General Booyesen and the members of the Cato Manor unit on racketeering charges
20 when there was no evidence justifying the prosecution. Is that correct, is that your understanding?

ADV RILEY: That is my understanding.

CHAIRPERSON: Please, gentlemen, one of you must come forward to assist.

ADV MTSWENI: Thank you, Madam Chair. And then, at 7.3

is your understanding is whether or not Advocate Chauke attempted to have the racketeering charges against Major General Booysen and the members of the Cato Manor unit reinstated by the then National Director of Public Prosecution, Mr Nxasana, despite or notwithstanding the fact that there was no evidence justifying the institution of the racketeering charges against them. Is that correct?

ADV RILEY: That is what I read, yes. I understand that.

ADV MTSWENI: Yes. And at paragraph 8, you tell us that
10 you have been advised further that there is already evidence that Advocate Batohi, in August 2019, withdrew the racketeering authorizations issued by Advocate Abrahams as well as the racketeering charges against Major General Booysen and the Cato Manor unit.

ADV RILEY: That is correct.

ADV MTSWENI: Yes. Then, at paragraph 9 and 10, you tell
20 us that you were part of the team that drafted the report titled “Reconsideration of Authorizations in terms of Section 2(1)(e) (f) of the Prevention of Organized Crime Act, 121 of 1998”.
Is that correct?

ADV RILEY: That is correct, yes, I was part of this team.

ADV MTSWENI: Yes. And that team is now known for the record as the De Kock panel.

ADV RILEY: That is correct.

ADV MTSWENI: And the report that you referred to is the

one that is titled SR1 to your statement.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Can you just tell the panel as to who were your co-panel members?

ADV RILEY: The chairperson of this panel was Advocate Rodney De Kock and then Advocate Ivy Tenga, Advocate Elijah Mamabolo, and myself.

ADV MTSWENI: Now, can you tell the panel what was Advocate De Kock's position and where is he now?

10 **ADV RILEY:** At the time of the drafting of this report, he was the DPP of the Western Cape and subsequently became the Head of the NPS at head office. Advocate Ivy Tenga was also a DPP, but she was in a different province in Limpopo. Advocate Mamabolo used to be at head office in the National Organized Crime division, but at the time of drafting this report, he was at SCCU in Pretoria.

Advocate De Kock is deceased. He died last year in January 2025. And Advocate Mamabolo is also deceased. He died, I think, during the Covid period in 2020.

20 **ADV MTSWENI:** Thank you. Now, just before we delve into the report, at paragraph 14 to 17, you deal briefly with your career highlights and growth within the National Prosecution Authority. Is that correct?

ADV RILEY: It is correct.

ADV MTSWENI: And perhaps, and at paragraph 14, you

raise security measures which prevent you from setting out your full personal information. Is that correct?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Are you comfortable telling the panel why you are not comfortable with that?

ADV RILEY: In this matters that we are dealing with currently at the Organized Crime component, we have quite a number of people that are currently under protection as a result of the work that they do. I myself was also under
10 protection for 18 months, and that is primarily the reason why I would not want to divulge personal information about myself.

ADV MTSWENI: Yes. But you then, at paragraph 15, tell us about your career and you ...[intervenes].

ADV RILEY: That is correct.

ADV MTSWENI: And you tell us that you graduated with an LLB degree from the University of Western Cape in 1993.

ADV RILEY: That is correct.

ADV MTSWENI: And then you then joined the Department
20 of Justice as a prosecutor, where you prosecuted up until 1999.

ADV RILEY: That is correct, in the Magistrates Court Wynberg, as well as Strand, yes.

ADV MTSWENI: Yes. And then you then joined the DPP's office as a state advocate in 1999, and was elevated to a

senior state advocate in 2001.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes, and then you, on paragraph 17, you tell us that you then joined the Organized Crime component where you remain to date. Is that correct?

ADV RILEY: That is correct.

ADV MTSWENI: Now, can you, at paragraph 17.1, you tell us what is it that you do, your functions mainly within the component. Can you just summarize that for the panel?

10 **ADV RILEY:** First of all, managing and dealing with prosecution of organized crime within the terms of POCA and other related legislation. We also deal in the context of our work, because we are dealing with criminal networks, analysing and submitting applications for authorizations in terms of Section 2(4) of POCA to the DPP, who in turn will submit same to the office of the National Director for authorization.

Then lastly, part of my duties is also as the Deputy Director of Public Prosecutions, is to assist, supervise and
20 coordinate prosecutions, including analysis of evidence and docket, as well as to assist and guide junior prosecutors, which include state advocates dealing with matters that fall within our mandate, which also will include then racketeering.

ADV MTSWENI: Yes. And then from paragraph 18, you, going down, you set out the circumstances that led to the

panel being constituted.

ADV RILEY: That is correct, yes.

ADV MTSWENI: And you then tell us how then you found yourself as part of the De Kock panel at paragraph 38. That would be on page SR001.

ADV RILEY: That is correct.

ADV MTSWENI: Can you just tell the panel how it then came about that you found yourself being part of the De Kock team?

ADV RILEY: In October of 2018 after the [silence] in April
10 2018 of the Organized Crime component, I think it was during the first ...[intervenes].

ADV MTSWENI: Advocate Riley, if I might just interject, you froze just as when you were talking about October 2018. Can you just go back and start from there, repeat what you were saying.

ADV RILEY: Okay, I will do so. During October 2018, I became the regional coordinator of the Organized Crime component after the regional coordinator, Mr Livingstone Sakata, left. It was during the first week of April, a couple of
20 months after I became the regional coordinator, Advocate De Kock called me to his office.

He then informed me that he has received a request from the NDPP to put together a team or a panel to do a review of the evidence and to provide a report or opinion on the validity or otherwise the authorizations instituted by

Advocate Sean Abrahams. He indicated to me as my DPP that he has recommended me to the NDPP as one of the members of the panel, which I accepted.

ADV MTSWENI: Were you given an option to say no?

ADV RILEY: It is the DPP of the province, so it would be rather difficult, unless you have good and valid reasons why you cannot be part of the panel. But otherwise, I accepted.

ADV MTSWENI: Yes. And then what then happened following, after you have been informed by Advocate De Kock
10 that he was going to recommend you to the panel?

ADV RILEY: I think I did not hear anything. Around about the 9th of April 2019, I was emailed a memorandum from the NDPP, Advocate Batohi. I see the memo, the memorandum was also sent to other members of the panel, which included Advocate Mamabolo, Ivy Tenga, Advocate Tenga, as well as Advocate De Kock.

ADV MTSWENI: Yes. And the memorandum, is that the one found as Annexure SR3 on page SR1076?

ADV RILEY: That is correct, yes.

20 **ADV MTSWENI:** Yes. Now, that memorandum contains what one would call the terms of reference of the panel, or the mandate of the panel. Is that correct?

ADV RILEY: I will agree with that. That is correct, yes.

ADV MTSWENI: Now, if you can, can you just read that into the record for the panel and all the members and everyone

else?

ADV RILEY: That is correct. Advocate Abrahams had authorised two separate racketeering prosecutions in terms of Section 2(4) of POCA. The memorandum said that:

10 “The defence has brought an application to have the authorisation set aside and the NDPP was cited as a party. As the new NDPP, she was in the process of considering the matter because, amongst others, the fact that the NDPP was cited as a party and the implications the matter might have for the NPA. She further stated that she has taken note of the controversy surrounding Advocate Abrahams' decision to authorise the two racketeering authorisations and that this decision has also informed the approach that has thus far been taken in the application. She further stated in 20 this memorandum that as the new NDPP, she must be satisfied that the prosecution on the racketeering charges in this matter were justified and that the ultimate decision rested with her who will inform the approach she takes in

relation to the application. She further stated that this case presents certain complexities and dynamics which could also affect ...”

My understanding was, future racketeering authorisations in general. And then it was stated:

10 “In the premises, we were requested then to peruse all the evidence and other relevant material and thereafter furnish a well-reasoned and motivated opinion as to the validity and appropriateness of the decision by Advocate Abrahams to authorise the racketeering prosecutions in terms of Section 2(4) of POCA.”

ADV MTSWENI: Yes, and then at paragraph 40, you then tell us what the mandate of the panel was, according to your understanding, and you summarise that as being:

20 “Whether there are reasonable prospects of successfully prosecuting Major General Booyesen and the Cato Manor unit on racketeering charges.”

Is that correct?

ADV RILEY: That is correct. Now, we understand that in the indictment, over and above Major General Booyesen and

the Cato Manor unit being charged for racketeering, they were also charged with certain underlying predicate offences. Did you have a mandate in relation to those predicate offences, meaning, were you expected to provide an opinion on the merits or the demerits or the sufficiency or otherwise of the evidence in relation thereto?

ADV RILEY: The 23 dockets which basically constituted the underlying predicate offences were studied to determine if one of the elements of racketeering is there, that is, a pattern
10 of racketeering activities. We were not, part of our mandate was not to determine if prosecution should be instituted or not.

ADV MTSWENI: In relation to what offences?

ADV RILEY: The predicate offences.

ADV MTSWENI: Okay, thank you. Now, we move on ...[intervenes].

CHAIRPERSON: Counsel, I am sorry to interpose. Advocate Riley, when you look at the letter by Advocate Batohi at SR1077, the second paragraph, you can go back to that
20 document, SR.

ADV RILEY: Chair, can you give me an opportunity ...[indistinct] to look at it. I will look at it now.

CHAIRPERSON: SR3 that Counsel referred to earlier.

ADV RILEY: Yes.

CHAIRPERSON: That annexure. The second paragraph at

page SR1077, do you see the page?

ADV RILEY: I do see it, Madam Chair.

CHAIRPERSON: In that second paragraph which reads:

“In this case, I have taken note of the controversy surrounding Advocate Abraham's decision to authorise the two racketeering prosecutions. His decision has also informed the approach that has thus far been taken in the application.

10 As the new NDPP (and now the affected party) ...”

Did you understand what she meant by the words, now the affected party, what she meant?

ADV RILEY: I think my understanding was that she has, there has been applications brought against the NDPP and that she is now the affected party in terms of this notice of motions application. That was my understanding.

CHAIRPERSON: And given the fact that the authorisations that were later declared invalid following your report were
20 those of Advocate Abraham's and Advocate Jiba, it could possibly have also meant as the holder of the same office when she said, now the affected party.

ADV RILEY: That is correct, it could also mean that.

CHAIRPERSON: In other words, the review that you were to conduct were in relation to a decision by the holder of office.

ADV RILEY: That is correct, Madam Chair.

CHAIRPERSON: Held by Advocate Batohi.

ADV RILEY: That is correct, yes.

CHAIRPERSON: Will I be correct that the office was reviewing itself, its own decision?

ADV RILEY: If my understanding was in terms of the NDPP, that she wanted an opinion on whether those authorisations were valid, and I understand what the Chair is indicating in terms of reviewing of the decision. I do however feel that she
10 did it in light of the fact that there were several applications, notice of motion applications and that she had to make a decision as to whether those decisions were valid or not.

CHAIRPERSON: Yes, that is my point. Is the NDPP, being the holder of the same office reviewing, if I may put it that way, her own decision as the NDPP?

ADV RILEY: Of a past NDPP.

CHAIRPERSON: Yes.

ADV RILEY: Ja.

CHAIRPERSON: If you can enlighten me, is that procedure
20 permissible that your, the incumbent of an office, holder of an office, can review his or her own decision by virtue of the fact that his predecessor or her predecessor had taken a particular decision and could then review that decision by seeking an opinion and taking the decision that was taken? Does the NPA Act allow that?

ADV RILEY: I cannot point towards the NPA Act that allows her to review her predecessor's decision. However, she, in light of the fact that she was involved in the notice of motion applications, I understood it that she had to make a decision as to how she will deal with these applications and that stems from her decision whether to look at whether those authorizations were valid or not.

CHAIRPERSON: Yes, I do understand about the pending litigation, but I just want to ascertain whether, in terms of the
10 *functus officio* principle, she could do that, and if you can enlighten me on that.

ADV RILEY: She was reviewing the decision in terms of a new NDPP, in terms of whether that decision was correct or not, and she was entitled to do so.

CHAIRPERSON: In terms of which provisions of the NPA Act?

ADV RILEY: I cannot, I will have to go back to the NPA Act to be able to give the Chair the specific sections in terms of that.

20 **CHAIRPERSON:** Yes, Counsel, if you may revisit that earlier. I will also quickly look at the Act and see if there is such a provision. But the witness, being an Advocate within NPA, I think is better placed to assist me. You may proceed.

ADV MTSWENI: Thank you, Madam Chair. Advocate Riley, just on this issue that the Chairperson has raised with you,

as an Advocate with your years of experience, more so having been in the NPA's office, would you accept that, irrespective as to when Advocate Batohi came into office, the decisions taken by her predecessors are regarded as being her decisions?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. Now, in the context ...[intervenes].

ADV RILEY: And in ...[incomplete].

ADV MTSWENI: Yes, continue.

10 **ADV RILEY:** And especially in light of the fact that she was held accountable now to explain those decisions, she had to make a determination whether she agrees with it or not.

ADV MTSWENI: Yes, but the, now, I just want to, the Chairperson asked you a question whether did you understand Advocate Batohi to be asking you, as the De Kock panel, to be reviewing her own decision. Is that how you understood it, or is it you understood it to say she wanted an opinion on the validity of her own decision being, irrespective as to who took the decision?

20 **ADV RILEY:** I understand the Chair to refer to her reviewing the decision. In respect of the mandate of the panel, we were simply to have a look at the authorizations and then provided her with an opinion, which we did.

ADV MTSWENI: Yes. We will come back to the question of Advocate Batohi's authority to review her own decisions later.

But in absence of any questions, Madam Chair, can I move on to the next ...[intervenes].

CHAIRPERSON: You may proceed.

ADV MTSWENI: Oh, I see Advocate Mere has got questions.

ADV BALOYI-MERE SC: In the same paragraph, the very first sentence, Advocate Batohi takes note of the controversy surrounding Advocate Abraham's decision in terms of authorizing, racketeering authorizations. Were you aware of any controversies around the decision by Advocate
10 Abraham's? And I am asking you this because my understanding is that the authorization is within the realm of the NDPP, the national competency.

And if one has regard to the fact that Advocate Batohi came in February 2019 and this memo is dated the 9th of April, which is plus minus two months since she assumed office, would you care to enlighten us about the controversy if you are able to do so?

ADV RILEY: The only controversies that I am aware of is what I have read in the newspapers, as well as ongoing cases
20 that happened regarding the notice of motion application brought by the persons that were involved in this matter. I did not have personal knowledge or was part of any decision making in that regard, but from what I have read in the media and obviously certain court judgments.

ADV BALOYI-MERE SC: Did you read, whatever you read

in the media, was it specifically referring to Advocate Abraham's decision, or it was just you read articles about the Cato Manor and whatever was happening at the time?

ADV RILEY: It was relating to the notice of motion applications and the fact that these authorizations were, that the group, Booysen and others, were not happy with the racketeering authorization. So I was well aware by reading in the newspaper certain judgments in this matter, as well as decisions at that stage, either to withdraw some of these
10 racketeering authorizations, since it is very much part of our environment, the Organized Crime component, that you obviously acquaint yourself also with these types of cases.

ADV BALOYI-MERE SC: So you read what the applicants were actually saying and complaining about in their application against the NPA and against the authorizations?

ADV RILEY: No, I did not read the applications. I said what I have read in the media and what is going on. And in respect of one judgment that I have read, that was the Jiba judgment, what is commonly referred to as Judge ...[indistinct]
20 judgment.

ADV BALOYI-MERE SC: Yes, I did not say you read the application. Maybe you misheard me. I said you read about what the applicants were saying in the media, complaining about the authorizations and how maybe wrong the authorizations were issued.

ADV RILEY: That is correct, yes, it was in the media.

ADV BALOYI-MERE SC: Okay, thank you.

ADV RILEY: Thank you.

ADV MTSWENI: Now, Advocate Riley, just to put this matter to bed so that we move on swiftly. You said that the DPP has got the power to review her own decisions, and you said that is in accordance with the NPA Act. I am looking at Section 22(2) of the NPA Act, and it lists certain powers of the National Director, and amongst the powers, it says:

10 “She can determine the prosecution
policy and issue policy directives, and
can, may intervene in any prosecution
process where policy directives are not
complied with, and may review a
decision to prosecute or not to
prosecute after consulting the relevant
director and after taking representations
within the period specified by the
National Director of the accused person,
20 the complainant, and any other person
or party whom the National Director
considers to be relevant.”

Is that the power that you say empowered Advocate Batochi to review her own decision as she had asked the panel to do that?

ADV RILEY: That is correct, it is partly. She has asked us for an opinion. She will then make a decision, and based on that decision, she is then required to consult with others, such as the family members, or to make representations or to accept representations in respect of that decision.

ADV MTSWENI: So did you then, as a panel, understand the authorizations by Advocate Abrahams to have been a decision to prosecute?

ADV RILEY: That is correct, yes, whether to institute or to
10 withdraw in terms of our policy directives as well.

ADV MTSWENI: No, no, I am just talking in the context of the authorizations, the validity of which you were to provide an opinion on, did you understand those authorizations to be a decision to prosecute within the context of section 22(2)(c) of the NPA Act?

ADV RILEY: That is correct, to institute or decide not to institute the prosecution.

ADV MTSWENI: Yes, thank you. Are there any other questions on this part, Madam Chair?

20 **CHAIRPERSON:** And did you understand that to include the power vested in the National Director of Public Prosecution in relation to the POCA authorizations?

ADV RILEY: That is correct, yes. That is a prosecutorial decision whether to institute prosecutions in terms of section 2 of the Act.

CHAIRPERSON: Which is the power vested only upon the same NDPP.

ADV RILEY: That is correct, yes. That is the only, you cannot proceed with those prosecutions unless it has been authorized by a National Director of Public Prosecutions.

CHAIRPERSON: Once authorized by the NDPP, the NDPP can then later review himself or herself?

ADV RILEY: That is correct. It happens often that once you receive the authorizations, you will go back to the NDPP if
10 the evidence has changed or even if you feel that your witnesses are no longer available and that you cannot proceed on those charges, you ordinarily will submit an application to the NDPP to review her decision to withdraw the section 2 authorizations.

CHAIRPERSON: In this matter, does it then follow, if you are correct, that the withdrawal of the authorization, having found that the two earlier authorizations were invalid, were in accordance with section 22(2)(c), is that what you are saying?

20 **ADV RILEY:** That is correct, in terms of reviewing your decision or withdrawing your decision once you have made it in terms of Section 2.

ADV MTSWENI: Thank you, Madam Chair. Having analysed that, we then move to at page SR0014. You then tell us how the panel went about delivering on your mandate. Is that

correct?

ADV RILEY: That is correct.

ADV MTSWENI: Yes, and you tell us that you were provided with the dockets, which dockets were given to you in the form of a disc by Advocate McAdam.

ADV RILEY: That is correct.

ADV MTSWENI: Yes.

ADV RILEY: What has happened is that we were all in different provinces, basically, except for Advocate De Kock
10 and myself in the Western Cape. So we wanted to proceed as soon as possible with the reading of the dockets. And I think at one stage I do attach the correspondence to it, how we tried to get hold of the dockets.

So eventually the suggestion was that it must be couriered to us in the form of disc to each panel member and that contained then scanned copies of the dockets that we were supposed to assess, which we then downloaded on our computers, which I did, I downloaded on my computer. And the requirement was that, and the agreement was that each
20 panel member will then individually study and analyse each docket in anticipation that we will have an in-person meeting at a later stage to discuss the evidence.

ADV MTSWENI: Yes. And you say the dockets were given to you in the form of a disc. Now, in the modern technology, disc comes in many formats. There is what we call the USB

disc. There is what we call a hard drive, which is a disc. And there is a compact disc. Which discs in this context were you given?

ADV RILEY: A compact disc.

ADV MTSWENI: A compact disc. Yes, and in the discs, how many dockets were scanned in?

ADV RILEY: I went back and I looked at it, it was about 23 dockets. However, I have to say that in some of the scanned copies, there were other dockets also part of maybe
10 individual dockets, like, you know, like the Durban North or Durban Central dockets. So, but altogether, the requirement was that we must actually look at the 23 dockets that related to the 28 murders.

ADV MTSWENI: Yes. Now, Advocate Riley, I am just going to ask you to go to Annexure SR5.

ADV RILEY: Can you just give me an opportunity to go there.

ADV MTSWENI: Madam Chair, in your volumes, it would be on file 3.

ADV RILEY: I am there now, Advocate.

20 **ADV MTSWENI:** Yes. There is a document called work document. Do you see that?

ADV RILEY: It is correct, yes.

ADV MTSWENI: Can you identify what that document and who authored that document?

ADV RILEY: What happened, it is my work methodology

whenever I have to make a decision in a matter, I prefer to summarize the evidence and potentially identify any shortcomings in the evidence. I look at challenges as well as outstanding investigations.

So this was initially authored by me and then subsequently, when I presented my, the work document during our in-person meeting, I think it was on the 20th of May, the decision was made that we will then comment, receive comments from the different panel members, whether
10 they are in agreement or not, or whether they can identify anything further that is outstanding.

ADV MTSWENI: Yes. Now, the reason I am asking you to, thank you for the answer. The reason I am asking you to go to this, is ask you to go to page SR1092.

ADV RILEY: That is correct, yes, I am there.

CHAIRPERSON: [Indistinct]... [microphone off].

ADV MTSWENI: Of the same document, of her work document. You refer there to Maphumulo CAS 99/08/2009.

ADV RILEY: That is correct.

20 **ADV MTSWENI:** That is the docket relating to the murder of Superintendent Choncho.

ADV RILEY: That is correct.

ADV MTSWENI: And based on the evidence that has been presented to this panel, that seems to have been the murder that set the entire spree, according to the evidence that has

been led by other witnesses, it is called the killing spree by members of the Cato Manor. Now, the question, the reason I am asking you this is, at what, was this part of the docket that was scanned in on the disc?

ADV RILEY: No, it was not.

ADV MTSWENI: Now, when did you, for the first time, see this docket?

ADV RILEY: I saw this docket during our in-person meeting from the 20th to the 22nd, so it could have been on any of
10 those days. What happened was that, you can also check some of my notes is when you do scan copies, often it is either there is a part of the statement missing or there is certain statements not following the A section of the docket.

So what I have done is that, when we went to the 20th of May for our in-person meeting, and that was my understanding of that meeting, that we will discuss the dockets and the evidence in the dockets. We would also then look at the original dockets. So all the original dockets were actually in the office where we were sitting.

20 That office was, the key holder was Advocate McAdam. So there were quite a number of dockets on the one side of the office, and as we were looking at the individual dockets, we will also then draw the original dockets. So this docket relates to the incidents, to three or four incidents, and we felt that it was prudent that we actually

study this docket to see what was the evidence and how it is connected to the other cases.

ADV MTSWENI: Now, is your answer that you saw it for the first time when you had your in-person meeting as the panel in May 2019?

ADV RILEY: That is correct, yes. It was not part of the disc.

CHAIRPERSON: Advocate Riley, if you can try to answer the question directly, and not give a long answer that is confusing me even more. I was wondering what you were
10 answering as you continued. Just answer a simple and straightforward question by Counsel and give the indication when precisely you became aware, and not give us a long answer, please.

ADV RILEY: I will do so, Madam Chair. I saw it for the first time during that three days of the 20th of May to 22nd of May.

ADV MTSWENI: Yes, and you tell us that that was the first time that as a panel you physically met to discuss the dockets.

ADV RILEY: That is correct, yes.

20 **ADV MTSWENI**: Yes, and at paragraph 47, you tell us what happened during that first meeting. Can you just summarize it for the panel?

ADV RILEY: During this meeting, after we have been provided the four discs, the purpose of the meeting was to study the dockets that were presented to us. So, we studied

the original docket as well as the B and C sections of the docket in order to fill in some missing gaps in the dockets. We also discussed the docket in terms of the sufficiency of evidence for successful prosecution on the racketeering charges.

CHAIRPERSON: What are B and C parts? Remember, some of us are not familiar with the acronyms that you use in your office, so if you can just explain.

ADV RILEY: I will do so, Madam Chair. The A section of a
10 docket is ordinarily where all your witness statements or other evidence are filed, so it is normally filed A1 up until whatever number the docket is part of. The B section is ordinarily communications that an investigating officer would have with informants or letters to different units. Or he will even then in that B section make notes regarding any further evidence he must be obtaining.

And in the C section is what we call the investigation diary. Therein, the investigating officer will note the investigation, the obtaining of statements. His Commander
20 could give him further instructions as to what other evidence he must obtain.

CHAIRPERSON: Which part of the dockets will you find experts report?

ADV RILEY: If it is evidence before court, it will be in the A section.

CHAIRPERSON: The A section.

ADV RILEY: That is correct, yes.

CHAIRPERSON: But if, for instance, a ballistic report was included in the docket but the matter was not yet before the court in the form of a trial, this very document, the expert report will still be in the A section, correct?

ADV RILEY: That is correct.

CHAIRPERSON: I am not running ahead of you, Counsel. I just want to know that you are talking about these sections.

10 **CHAIRPERSON:** In the A sections of the dockets that you looked at, did you find ballistic reports in any one of them?

ADV RILEY: There were several ballistic reports in the dockets, yes.

CHAIRPERSON: Do you remember in relation to which case, CAS numbers?

ADV RILEY: Madam Chair, I will have to go through SR5 because that is where I commented on each and every docket that I read, whether there was a ballistic report or whether there were any outstanding ballistic reports.

20 **CHAIRPERSON:** Yes, when you get there at SR5, remember this question.

ADV RILEY: I will do so, Madam Chair.

CHAIRPERSON: And take me through to the contents of those dockets, whether they contained any ballistic reports.

ADV RILEY: I will do so.

CHAIRPERSON: Remember that, Advocate Mtsweni.

ADV MTSWENI: Thank you, Madam Chair, I will do so.

CHAIRPERSON: Thank you.

ADV MTSWENI: Advocate Riley, now that you are telling us that you studied the dockets, perhaps this might be an opportune time just to get your comment on this. During the testimony, and in particular of Advocate Noko, according to my notes, that would have been on day 21, being the 5th of February. And Madam Chair, you would find that evidence
10 starting from page 221.

CHAIRPERSON: What day is that?

ADV MTSWENI: 5th of February.

CHAIRPERSON: 5 February?

ADV MTSWENI: Yes.

CHAIRPERSON: Thank you.

ADV MTSWENI: Going all the way to, I think it will be page 226. During the evidence of Advocate Noko, and when she was being cross-examined by Advocate Ncgukaitobi, there was a criticism levelled against the panel, that in your report,
20 you do not give a blow-by-blow summary of each docket that you say you looked at.

And now I am asking this in the context of SR5, as to whether is that statement correct, that you did not, just simply because in your report, give a blow-by-blow account of each, or summary of each docket, that the panel did not

consider the dockets?

ADV RILEY: That is incorrect. We had a meeting and we studied the dockets. We went through each and every docket.

ADV MTSWENI: Yes. And there were also a number of dockets that were referred to, that you, the report is silent on, and that is amongst others, Pinetown, Rustenburg, Kwamashu, Phoenix, Bhekithemba, Esikhawini, Tongaat. Would you say that you did study those dockets?

ADV RILEY: We did study the dockets. Our report was a
10 summation of what we thought was prudent in terms of the racketeering, and to highlight some of the aspects in some of the dockets. But SR5, or your work document, relates to how we actually went through each and every docket, and discussed it, analysed it, and ja, I would consider that to be proof that we actually went through all the dockets.

ADV MTSWENI: But now, just for the ...[intervenes].

CHAIRPERSON: Of course, unless I am wrong, the criticism was based on the summary as contained in the report itself. Is my understanding correct?

20 **ADV MTSWENI:** In fact, I was about to ask that question, Madam Chair, so I got ...[intervenes].

CHAIRPERSON: SR5 was a work document that I am seeing for the first time. Are you seeing it for the first time yourself?

ADV MTSWENI: Yes, Madam Chair.

CHAIRPERSON: I am saying therefore ...[intervenes].

ADV MTSWENI: No, not today, Madam Chair. I saw it before today.

CHAIRPERSON: I beg your pardon?

ADV MTSWENI: Not today, Chair. I saw it before today.

CHAIRPERSON: Yes, of course.

ADV MTSWENI: Yes.

CHAIRPERSON: But it is the first time that it is brought to our attention.

ADV MTSWENI: Yes.

10 **CHAIRPERSON:** Advocate Ngcukaitobi will speak for himself, but my understanding of the questions was in relation to the cryptic notes in the report relating to the contents of the dockets outside of SR5, which I am only seeing today, or I saw it yesterday. I carefully went through it. In relation to the question you put to the witness, as you have just referred us to the transcript, I think it is fair to remember the basis on which the questions were made. Do you remember?

20 **ADV NCGUKAITOBI SC:** Sorry, Madam Chair, I just want to correct this. I said I do not want to interfere all the time when somebody is leading a witness. Advocate Batohi said she only read the report, the De Kock panel report. So it is that report that was put to her. So there should be no distortion of what questions were put to Advocate Batohi. Advocate Batohi did not say, I read SR5.

CHAIRPERSON: Yes, Advocate Mtsweni says also Advocate Noko was cross-examined and those pages that Counsel is referring us to and makes mention of the criticism that was levelled against the report. But he bases that on SR 5. I am saying to Counsel, subject to correction, SR5 was never before us, even during the cross-examination of Advocate Noko. And Counsel says, yes.

So, I am correcting Counsel to say it is not a fair question or statement that you are putting to Advocate Riley
10 as regards Advocate Ngcukaitobi's cross-examination because it was not based on SR5. Do you understand where my challenge is?

MS RAMAGAGA: Yes, Madam Chair. To the extent that I, in fact, I may have misunderstood the criticism, I apologise and retract that criticism and I profusely apologise to Advocate Ngcukaitobi to the extent that I may have imputed something wrong. It is just an erroneous part. I apologise for that. But I do take note that, in fact, he summarises that at page 226, where, if I might quote:

20 “Now, the reason we had to go through this exercise, even though it is a tedious one, is that if the only thing you read as the NDPP, which is what we know to be the case with Advocate Batohi, she would know absolutely nothing about at

least 12 of the dockets because even on her own best version, she had, other than referring to those dockets, did not analyse a single statement from those dockets. So I think the criticism was that the report itself is silent on those documents, not that the panel did not read the documents.”

It was that the report itself is silent on the dockets.

10 That is my understanding, unless I am wrong.

CHAIRPERSON: Yes, first of all, let me see. You referred us to this volume, 5 February. Let us just get back to this point because I might have missed something. I do not understand now where we are. You referred us to pages 219 of 5 February transcription. Do you remember?

ADV MTSWENI: Yes, Madam Chair.

CHAIRPERSON: This was during the cross-examination by Advocate Ngcukaitobi of Advocate Noko. Am I correct?

ADV MTSWENI: That is correct.

20 **CHAIRPERSON:** And there, what was dealt with was with regards to the analysis of the report by, I think that, I think there, the report was in relation to the 23 dockets if you look at 219, middle page. What I am trying to correct in relation to your question is that SR5 was a working document by the panel. Am I correct?

ADV MTSWENI: That is correct, from the – yes, Madam Chair.

CHAIRPERSON: SR5 was never part of the documents that were presented to us and which were the subject of criticism by Advocate Ngcukaitobi when he went blow by blow in the report itself with the witness. Am I correct?

ADV MTSWENI: That is correct, Madam Chair.

CHAIRPERSON: It follows then that the question should be retracted and be corrected so you can ask the witness about
10 SR5. It is the first time that we are dealing with SR5.

ADV MTSWENI: Yes, Madam Chair, hence I ask that I retract the question. And I think I wanted to ask a question to the witness as to whether was SR5 ever presented to Advocate Batohi. Then she can tell us whether Advocate Batohi had seen it or not, but ...[incomplete].

CHAIRPERSON: Was it presented to Advocate Batohi though, SR5?

ADV MTSWENI: That is what I wanted to establish from the witness.

20 **CHAIRPERSON:** How ill she know?

ADV MTSWENI: It was their working document. It was the panel's working document.

CHAIRPERSON: Whether the SR5 was presented to Advocate Batohi?

ADV MTSWENI: Yes, that is what I wanted to ...[intervenes].

CHAIRPERSON: You may.

ADV MTSWENI: I see Advocate Mere has got a follow up question.

ADV BALOYI-MERE SC: It is not more of a follow up, it is a clarification. The questions as posed in cross-examination were premised on page 27 of the report, of the De Kock report, because that is where you find the 23 dockets and there is no explanation on each docket. They were just listed under four columns, 2008, 2009, 2010, and 2011. And if you
10 go to page 221, you will see that they were referring to page 27. You can see that, I think it was Advocate Skosana who said something about that page 27, at page 221, I think line 10. I just wanted to clarify that and ja, that SR5 is new. Thank you.

ADV MTSWENI: I accept it. Now, ja ...[indistinct].

MS RAMAGAGA: Thank you. Thank you Chair. Advocate Riley, this report that was drawn, which is referred to as the De Kock report, for whose benefit was it drawn?

ADV RILEY: For the NDPP, an opinion was given to her.

20 **MS RAMAGAGA:** And the purpose was to give her sufficient information for her to make a decision ...[intervenes].

ADV RILEY: That is correct, yes.

MS RAMAGAGA: About the racketeering cases. And you answered in anticipation and said that is correct.

ADV RILEY: That is correct, yes, ma'am.

MS RAMAGAGA: Okay. Right, now, when you look, looking at the fact that you say the working notes were not part of the report, what went to Advocate Batohi as a report it is that report that we have, which is signed by Advocate De Kock on behalf of you all. That is what it says at the back, he signed on behalf of you all. Is that correct?

ADV RILEY: That is correct, yes, ma'am.

MS RAMAGAGA: In your view, you know, it is very seldom you ask a person to view a document and to honestly reflect
10 on it and tell this panel or anyone whether the information that is in that report that you authored was sufficient to inform the ultimate officer that had the power to make a decision about those certificates, would you say your report was sufficient to enable the NDPP to make an informed decision, regard being had to the fact that the working documents were not there. We do not see the summaries. We see just a table that tells us as to which cases were considered. Yes, can you advise on that?

ADV RILEY: I would say yes, and I will, if I may proceed to
20 clarify why I say that. On the 2nd of July, that is part of my statement, there was an in-person meeting with the NDPP, which consisted of herself as well as the panel members, where for a whole day we actually sat down, went through the report, discussed with her the various cases, the evidence. We basically did a presentation to the NDPP.

She had an opportunity to interrogate the report, but I also think subsequently there was communication in which the panel members were included, and then there was also communications between her and Advocate De Kock where she had various questions that we had to respond to after she has further analysed the report on her own.

MS RAMAGAGA: The evidence before this panel by Advocate Batohi is that her decision to withdraw, to review and set aside actually, the certificates, was based on the report, and that is purely on the report. She did not mention these other factors that you are now introducing into evidence.

ADV RILEY: I have email correspondence to that effect as well as the meeting that took place on the 2nd of July.

MS RAMAGAGA: Yes, the correspondence can exist, but then the person that made the decision says, I relied on this report. Full stop. What do you say to that?

ADV RILEY: I cannot take it further except for what I know what happened. If she said she relied on the report, and I will accept it, that is what she said.

MS RAMAGAGA: Thank you. Thank you, Advocate Mtsweni.

CHAIRPERSON: Proceed, Counsel.

ADV MTSWENI: I see Advocate Mere still have questions.

ADV BALOYI-MERE SC: I have a follow up question. At paragraph 52 of your affidavit, you refer to the final report

which was presented to Advocate Batohi by the panel on the 2nd of July, that is the very same date that you say there was a presentation that entailed the summation of the material. Is my understanding correct?

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: So, at the end of the day, despite the fact that you made a presentation, what Advocate Batohi was left with is what we have as the report that is now termed the De Kock panel memo or report. So, you went, you presented, but this is the final report that you gave Advocate Batohi and which she says she relied on, am I correct?

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: Okay, thank you.

ADV MTSWENI: Now, can I continue, Madam Chair?

CHAIRPERSON: Proceed, sir.

ADV MTSWENI: You have skipped, you have now gone to the meeting, the presentation of the 1st of, of the 2nd of July 2019. Now, you would say that the presentation entailed the summation of the material and the evidence that were available at the time the authorizations were made, is that correct?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Now, can you just elaborate to the panel, what is it that, if you still remember, what is it that as the panel, you presented to Advocate Batohi?

ADV BALOYI-MERE SC: Advocate Mtsweni, you asked the witness whether that is correct and before the witness answered, you forged forward with your next question.

ADV MTSWENI: I thought I understood her to say that is correct.

ADV BALOYI-MERE SC: Thank you.

ADV MTSWENI: Yes.

ADV BALOYI-MERE SC: Sorry to disturb you, but ...[incomplete].

10 **ADV MTSWENI:** Yes. Now, can you just, we understand and you can accept what Madam Ramagaga has said to you, that Advocate Batohi never mentioned anything outside the report as being the basis of her decision. But from your side, what is it that as the panel, you presented to Advocate Batohi when you met with her on the 2nd of July 2019?

ADV RILEY: We discussed the report, we discussed the evidence in respect of the racketeering charges in which we would have included the predicate offences as well.

20 **ADV MTSWENI:** Did you take her through each and every case and summarised what the case entailed and the material evidence that was contained in each docket?

ADV RILEY: No, we did not take her through every docket.

ADV MTSWENI: Yes. So, it would be correct that if you did not present to her the material evidence that was, or you did not discuss with her the material evidence in the docket, that

the, she would not have known unless she would have gone and read the dockets herself.

ADV RILEY: Can you just repeat that question? I want to understand it.

ADV MTSWENI: I am saying because you did not present to Advocate Batohi each, a blow-by-blow summary of each case, right?

ADV RILEY: Yes.

ADV MTSWENI: So, she would not have known what is in
10 those dockets unless she had gone to read the dockets herself.

ADV RILEY: I do not think she read the dockets herself. That is what I understood ...[intervenes].

CHAIRPERSON: No, no, just answer the question by Counsel. If you may repeat.

ADV MTSWENI: I am saying because you did not give her a blow-by-blow summary of each and every ...[intervenes].

ADV RILEY: Yes.

ADV MTSWENI: What each and every case entailed and the
20 evidence contained therein, which you now know is contained in SR5.

ADV RILEY: Yes.

ADV MTSWENI: Unless she had read the dockets herself, she would not have known what is contained in those dockets.

ADV RILEY: Except for what is in the report and except for

what we discussed in respect of some of the cases, but not all the cases, and yes.

ADV MTSWENI: Yes. So ...[intervenes].

CHAIRPERSON: She will not have known unless she herself read the record, the dockets, because you did not take her through the entire contents of the dockets yourself. That is the question.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. And would I be correct to say that
10 otherwise she would have told us that Annexure SR5 was not part and parcel of the report, that was, that ultimately made its way to her?

MS RAMAGAGA: That is correct, yes.

ADV MTSWENI: Yes. Okay.

MS RAMAGAGA: Just to follow up on that, Advocate Mtsweni. Advocate Riley, we all know that the NPA's life as an institution is evinced by the documents that are found in that institution. Is it correct?

ADV RILEY: That is correct, yes.

20 **MS RAMAGAGA**: The documents are actually the soul and life of any institution. Now, when you talk about having these presentations that you were making and anyone that comes thereafter does not find any record of such, or any, you know, comprehensive and intelligent report that augments the report that you gave to Advocate Batohi, of what good will

that information be to the institution?

ADV RILEY: The only aspect that I can rely on as I indicated before, are the communications in which she interrogated the report further afterwards. But I do understand what you are indicating in terms of the presentation. I agree.

MS RAMAGAGA: What do you agree to? The question that I have asked is, of what good will that be, because now it means part of the life and soul is missing for anyone that comes generations thereafter to this institution.

10 **ADV RILEY:** I agree with your submission that for future persons, they will not have access to that information.

MS RAMAGAGA: Thank you, except for the fact that you say it is my submission. I am not making submissions. I am seeking for information. Thank you.

ADV RILEY: Sorry, I apologize.

CHAIRPERSON: Advocate Mtsweni, now that you went to, directly to SR5 in relation to my previous question, I would like us to go back to it, Advocate Riley, SR5. If you can take me through the work document and indicate the CAS numbers
20 in respect of which ballistic reports had been filed and which you conceded. Can you quickly go through your SR5, your working document? We can tick the boxes in each of those case numbers on your work document, SR5.

ADV MTSWENI: Madam Chair, without being disrespectful, can I ask while she does that, that we take a comfort break?

I could also use some stretching.

CHAIRPERSON: Yes, indeed. My sister had actually asked me. As we have, we adjourn now, Madam Riley, do go through your work document and you can tick all those CAS numbers in respect of which ballistic reports were filed and which you considered ...[intervenes].

ADV RILEY: I will do so.

CHAIRPERSON: Which you considered as you were preparing the report. We will take a short 15 minutes
10 adjournment until half past 4. When we reconvene, you will then take us through to that work document. Remember, you are under oath as we adjourn. We will adjourn for 15 minutes.

ENQUIRY ADJOURNS

ENQUIRY RESUMES

CHAIRPERSON: Thank you, Advocate Riley. Advocate Riley, you continue to be under oath.

ADV RILEY: [No answer]

CHAIRPERSON: Advocate Riley?

ADV RILEY: [No answer]

20 **CHAIRPERSON:** Advocate Riley?

ADV RILEY: I confirm, Madam Chair. I confirm.

CHAIRPERSON: You continue to be under oath.

ADV RILEY: I confirm, Madam Chair.

CHAIRPERSON: Thank you. Proceed, Counsel.

ADV MTSWENI: Yes. Advocate Riley, before we adjourned,

you were asked by the Chairperson to go through the dockets that you summarised in SR5 and identify the dockets wherein there were ballistic reports, irrespective of the author there, be it Mr Steyl or Captain Mangena. Have you been able to do that?

ADV RILEY: That is correct.

ADV MTSWENI: Yes. And are you able to identify them for the panel?

ADV RILEY: That is correct. Yes, that is correct.

10 **ADV MTSWENI:** Please do so.

ADV RILEY: SR1086, the Kwadukuza CAS, 39 of... I confirm that there was a ballistic report in that docket.

CHAIRPERSON: If you can take us to the SR page number to find that docket.

ADV RILEY: It is on the first page, SR1086.

CHAIRPERSON: Where does the work document refer to the ballistic report and of whom? Or by whom?

ADV RILEY: I refer to...

20 “According to Mostert A2, was an Atjanko
[?], AK-47, R4 and I5 cartridges were found
on the murder scene. This is confirmed by
the ballistic report.”

Then also on ...[intervenes]

CHAIRPERSON: Where are you reading? SR?

ADV RILEY: SR1086.

CHAIRPERSON: 86. Whose report was that?

ADV RILEY: This was a report in the matter where the deceased was Lindelani Buthelezi.

CHAIRPERSON: Whose report ...[intervenes]

ADV RILEY: Kwadukuza...

CHAIRPERSON: Whose ballistic report was that?

ADV RILEY: I did not write, in my work document, I did not write the name of the ballistic expert.

CHAIRPERSON: And you still do not remember who it was?

10 **ADV RILEY:** I do not remember. It is a long time, Madam Chair. It was in 2019. If I go back to the docket, I will be able to confirm.

ADV BALOYI-MERE SC: Advocate Riley, you say...

ADV RILEY: Yes.

ADV BALOYI-MERE SC: At SR1086, that is where we will find that something is confirmed by the ballistic report.

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: That would be in paragraph 1.

ADV RILEY: That is correct, yes.

20 **ADV BALOYI-MERE SC:** But if you look at that sentence, it starts at:

“According to Mostert, A2, who was on the Choncho murder crime scene, AK47 and R4 and R5 cartridges were found on the murder scene of Choncho. This is confirmed by the

ballistic report.”

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: And here you are dealing with the Kwadukuza CAS 39/09/2008.

ADV RILEY: That is correct, yes.

ADV BALOYI-MERE SC: So is... are you saying this confirmation by the ballistic report refers to the case where the deceased is Lindelani Buthelezi, or it refers to the case where the deceased is Superintendent Choncho? If you read
10 that paragraph.

ADV RILEY: It is Lindelani Buthelezi.

ADV BALOYI-MERE SC: Then maybe I am more confused.

MR LUBBE: Advocate Riley...

CHAIRPERSON: I am also confused. Maybe you are not confused, Counsel, if you can clarify that aspect. If you look at that short summary, 1086, you read it in conjunction with
1087?

ADV MTSWENI: Advocate Riley, we know that...

ADV RILEY: Yes.

20 **ADV MTSWENI:** ...I had referred you earlier to the KwaMaphumulo docket, the 99 one. Do you recall that?

ADV RILEY: That is correct, Chair. That is correct, Chair.

MR LUBBE: And that is the one that deals with the murder of Superintendent Choncho?

ADV RILEY: That is correct, yes.

ADV MTSWENI: And yet, in your summation of the Kwadukuza, you make reference to Mostert, who was on the murder scene of Choncho, and make reference to the fact that there were cartridges of AK47s R4 and R5. Now, do you get the confusion that you talk about? You are talking about the cartridges in relation to the Choncho murder in the Lindelani Buthelezi case.

ADV RILEY: That is correct, yes.

ADV MTSWENI: So, would you then confirm that
10 ...[intervenes]

ADV RILEY: So, it was from...

ADV MTSWENI: ...that it is...

ADV RILEY: Ja, it was also Choncho.

ADV MTSWENI: No, your summation there is incorrect.

ADV RILEY: Let me just read it again. That is correct, yes.

ADV MTSWENI: So, that is not correct.

CHAIRPERSON: What is the correct, Counsel, Advocate Riley?

ADV RILEY: I think it is correct in terms of it is a reference
20 to the Choncho murder, because on SR1091, I then refer to the ballistic evidence in the Kwadukuza CAS 39/09/2008.

CHAIRPERSON: The second case in relation to which a ballistic report was filed in the dockets and considered by yourself and your colleagues, the De Kock team?

ADV RILEY: Can you just repeat that question, Madam

Chair?

CHAIRPERSON: You remember we are dealing with your Annexure SR5?

ADV RILEY: That is correct, yes.

CHAIRPERSON: And we are trying to ascertain from you as to which case numbers, according to your work document, contained ballistic reports that you considered. And you are taking us through that list, that work document, to indicate to us those case numbers in relation to which ballistic reports
10 were filed. Do you remember the question?

ADV RILEY: That is correct, yes.

CHAIRPERSON: So, just indicate to us you have referred to the Choncho KwaMaphumulo CAS number. And the second one?

ADV RILEY: second one is on SR1089.

CHAIRPERSON: Where do we find that in your list?

ADV RILEY: On paragraph 2.

CHAIRPERSON: Maybe in fairness to you, Advocate Riley, in fairness to you, I am going to park this question. When we
20 adjourn later this evening, you should make a list of those cases because it may be difficult for you to go through your work documents and answer my question. Tonight, look at the work method document and pinpoint those cases that you dealt with in respect of which ballistic reports were filed.

ADV RILEY: I will do so, Madam Chair.

CHAIRPERSON: And in respect of which those reports were considered by your team. If you can do that tonight, then we will continue. Otherwise, we seem to be taking long in identifying those cases. Advocate Mtsweni, remember first thing tomorrow to go through the list that we have prepared by the witness and then you take us through to those pages. This exercise is taking long.

ADV MTSWENI: Yes.

CHAIRPERSON: I would like to have answers to the
10 questions that I asked the witness because I want to make follow-up questions. Thank you.

ADV MTSWENI: Advocate Riley, just one aspect that has been bugging me that I just need clarity on. In your mandate as the panel, you were asked to analyse the evidence that was contained in the docket in order to advise Advocate Batohi whether or not there were prospects or there was evidence or not of successfully prosecuting Major General Booyesen. Do you recall that part?

ADV RILEY: [No answer]

20 **ADV MTSWENI:** Can you hear me?

ADV RILEY: Yes.

ADV MTSWENI: Yes. Did you get the question?

ADV RILEY: Yes.

ADV MTSWENI: Yes, I am going to repeat. You are saying that ...[intervenes]

ADV RILEY: I said...

CHAIRPERSON: Please repeat the question for the witness.

ADV MTSWENI: I am saying that when we went through the mandate of the panel, you were requested as the panel to analyse the evidence that was contained in the dockets in order to advise Advocate Batohi on the sufficiency or whatever of the evidence. Do you recall that part?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. And we now know that on your
10 evidence, you analysed and summarised the evidence in Annexure SR5.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. And on what you told us, Annexure SR5 was a working document, meaning that it was drafted before you started drafting the report.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. And when one reads it, it goes into detail of each and every case, except for now we know that there was a mistake in your summation of the Kwadukuza.
20 But what you do is you analyse each case and identify the shortcomings in each and every case. Is that correct?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. And yet we do not find that detailed analysis in the report. Why did you not as a panel, because this report, SR5, was already in existence, did you not just

simply either cut and paste or repeat it in your report, so that at least you would have delivered on the first part of your mandate being, to review and analyse the evidence?

ADV RILEY: It was a summation of the evidence that we analysed, the dockets that we analysed in the report. I agree it does not contain an analysis that we did in the Word document, but we would then, it is a summation of the evidence that after we read the dockets, we highlight in this report then certain aspects of the dockets, where we, for
10 example, find that in some of the dockets people were incorrectly charged. We used the Word document not to refer to each and every case, but to refer to some of the cases and to explain why we say that the dockets were, for example, not properly investigated or they were so investigation outstanding.

ADV MTSWENI: Yes. Do you have a question, Madam Chair?

CHAIRPERSON: Yes. As counsel is asking you, should you not in the report have done a blow-by-blow, full detailed
20 analysis of the contents of the dockets? Because you have been asked ...[intervenes]

ADV RILEY: It could have been done that way.

CHAIRPERSON: You have been asked to analyse the dockets, the content, the evidence in the dockets.

ADV RILEY: We have been asked to say whether the

racketeering authorisations, whether there was sufficient evidence to authorise those racketeering authorisations.

CHAIRPERSON: That necessitated ...[intervenes]

ADV RILEY: [indistinct]...

CHAIRPERSON: That necessitated, I beg your pardon, that necessitated a proper analysis of the contents of the dockets. Am I correct?

ADV RILEY: That is in terms of whether there was a pattern of racketeering activity, which is one of the...

10 **CHAIRPERSON**: Just please answer the question. The question is whether that which you were asked to do necessitated a full analysis, a detailed analysis of the contents of the dockets.

ADV RILEY: That is correct, yes.

CHAIRPERSON: You did not do that, am I correct, given the very brief summaries that you give in your report?

ADV RILEY: That is correct. It was not contained in the report.

CHAIRPERSON: Thank you.

20 **ADV MTSWENI**: Thank you, Madam Chair.

CHAIRPERSON: If I may, Madam, any reader who would have come across your report and read that report would not have been apprised of the true reflection of the evidence in the dockets because this was just a cryptic summary of the evidence in the dockets. Am I correct?

ADV RILEY: [Pause] The evidence in the dockets we had to analyse to get to whether the authorisations were validly granted. And I agree that we did not, whoever is going to read it is not going to find a blow-by-blow account of each and every docket or the evidence in that docket.

CHAIRPERSON: Will this report therefore have assisted a reader who subsequently did not read the dockets himself or herself?

ADV RILEY: The reader? Because it was submitted to the
10 NDPP on the question of whether there was sufficient evidence ...[intervenes]

CHAIRPERSON: No, Advocate Riley, please listen to the question and answer the question. The question is whether your cryptic reports in relation to the contents of the dockets would not have assisted the reader, who did not read those dockets himself or herself, because the details would not have been included in your summaries.

ADV RILEY: Of what is in the dockets, yes.

CHAIRPERSON: Do you agree that your report would
20 therefore not have assisted the reader or the requester?

ADV RILEY: As I indicated before, we have a, we had a presentation to the NDPP and we discussed for practically a whole day. We went through the report as well as any other evidence that she wanted to hear, which included discussions on certain dockets.

CHAIRPERSON: I understand that, Counsel. I am asking you about the report itself, because that which was presented to the President was not a presentation. It was the report by your team, including yourself. That is why we are focussing on this report.

ADV RILEY: [No answer]

CHAIRPERSON: Therefore, and I repeat my question, will this brief summary of your report have assisted the requester in making a decision whether the racketeering authorisation
10 ought to have been invalidated or not, without the full details of the analysis?

ADV RILEY: [No answer]

CHAIRPERSON: Is my question, would you like me to ...[intervenes]

ADV RILEY: I do not agree...

CHAIRPERSON: ...rephrase? You understand the question?

ADV RILEY: I think the report deals with our mandate and the report deals with the issue at hand as to whether, I understand the question, but I do not agree in terms of the
20 presentation to the NDPP or whether there was sufficient evidence to grant the authorisation. So we discussed at length. For example, in terms of section... section 2(1)(e), we also discussed what was the evidence, what was the requirements in terms of those sections and whether it has been met by the evidence that we have read in our work

document, which is contained in the work document.

CHAIRPERSON: I thought that you have just agreed that the report is wanting in details because it is simply a cryptic ...[intervenes]

ADV RILEY: My [indistinct]...

CHAIRPERSON: Listen to me first. Let me finish. Because your report in relation to those cases was just a mere summary. That does not even deal with the ballistic reports, for instance. And I am saying to you, will this report have
10 assisted the requester in deciding whether the authorisation certificates ought to have been invalidated or not?

ADV RILEY: I understand the question.

CHAIRPERSON: Put aside the question of presentation. We will come to that. Let us focus on the report itself. By a mere reading of this report ...[intervenes]

ADV RILEY: [indistinct]...

CHAIRPERSON: You may answer, Madam.

ADV RILEY: The requester was the NDPP, and she gave us a specific mandate. The mandate was to determine whether,
20 in terms of section 2(1)(e) and 2.1.(f), those authorisations were properly granted or whether there was sufficient evidence. So when we actually presented and we discussed our report, we discussed it in the context of 2(1)(e) and 2(1)(f). What was the evidence in respect of 2(1)(e) and 2(1)(f)? So we did not give her, I agree, we did not give her

a blow-by-blow account of all the predicate offences, but we discussed some of the cases in the context of 2(1)(e) and 2(1)(f). What was the evidence?

CHAIRPERSON: I do not understand your answer. You have just indicated to us that your report, and I am going to be very slow, as you can read it even now, your report gives a very brief summary in relation to each of those cases. Do you agree?

ADV RILEY: I agree. I said it several times already, yes. I
10 do agree. We did not discuss all the cases.

CHAIRPERSON: Yes. I am trying to understand your answers because you do not answer my questions. And my question is, a reader or a requester who asked you to prepare, to analyse the contents of the docket, will she have had the benefit of the details of the docket upon her reading of your summary in the report? In other words, will the report
itself have assisted her, given the fact that the requester would not have read, as we know now, Advocate Batohi did not read the dockets? She said so. My question is, would
20 your report, therefore, have been helpful to her, given that it gives just simply a synopsis of the contents of the dockets?

ADV RILEY: We discussed the dockets in the context of the 2(1)(e) and 2(1)(f).

CHAIRPERSON: Well, you do not want to answer the question. I do not think we should go back there. It appears

to me it is either you do not understand the question or you do not want to answer it.

ADV RILEY: I do understand the question, and I do make the admission that we did not give a blow-by-blow account of the dockets or summary of the dockets, because that was not required. The requirements were that we had to discuss it in the context of whether the authorisations were validly granted and what was the evidence in respect of those charges, and that is how we discussed it.

10 **CHAIRPERSON:** It will be helpful if you can listen to the questions and just answer the questions. Please do that. You may proceed, Advocate Mtsweni.

ADV MTSWENI: Thank you. Advocate Riley, I know that in your statement under paragraph, from paragraph 51 you deal with the panel's analysis of the law relating to racketeering, but there is one aspect that I want us to deal with before we go into that part.

CHAIRPERSON: Which paragraph, Counsel?

20 **ADV MTSWENI:** That is at paragraph 54, but I just want to close up on the previous chapter. Advocate Riley, the report Annexure SR1, is, if one looks at it, is signed on 28th June 2019. Do you confirm that by Advocate de Kock?

ADV RILEY: It is correct, yes.

ADV MTSWENI: Yes. And the reason I am asking you this, so that we get clarity for the record, is that at paragraph 51,

no, starting at paragraph 50, you tell us that after your second meeting where you had made your deliberations, there was a draft report that was circulated amongst the members on the 25th of June 2019. Do you see that?

ADV RILEY: That is correct, yes.

ADV MTSWENI: And meaning that the document that was being circulated was not a final document.

ADV RILEY: That is correct, yes, on the 25th of June. That is correct.

10 **ADV MTSWENI:** And you tell us then at paragraph 51 that on the 28th of June, the draft report was sent to the NDPP.

ADV RILEY: That is correct. It is between that time period that we were working on any further comments from the panel members, further issues, further comments on the law or whatever needed to be inserted further into the report. That was between the 5th and the 28th.

ADV MTSWENI: Was it at all times the understanding of the panel members that that document was a draft and that the panel would meet on the 1st of July in order to finalise it?

20 **ADV RILEY:** That is correct, yes.

ADV MTSWENI: Now, yet, we see the document being sent to Advocate Batohi on the 28th, and it is signed by Advocate de Kock.

ADV RILEY: That is correct, yes.

ADV MTSWENI: And Advocate de Kock, in his signature, in

signing the report, signs it on behalf of everyone. Do you see that? That would be at SR10137.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Now, do you have any idea as to how and why would Advocate de Kock circulate a draft to Advocate Batohi?

ADV RILEY: A draft report was sent, but we also met on the 1st of July, just to discuss the report again as well as a presentation that we are going to make to the NDPP, which
10 is the next day in Cape Town.

ADV MTSWENI: Yes, but the question is, do you have any, can you, if you do not know, ma'am, please tell us, do you have any explanation why would Advocate De Kock, knowing fully well that the document in his inbox was a draft, would sign it and send it to the DPP when he knew that there was a meeting where this was scheduled for the 1st where the meeting would, where the document would be finalised?

ADV RILEY: If I understood it, that was not a signed report that was sent to the NDPP's office.

20 **ADV MTSWENI:** Now, ma'am, the reason I am calling, are you at SR0137?

ADV RILEY: Just repeat that, sir?

ADV MTSWENI: Page SR0137.

ADV RILEY: Yes.

ADV MTSWENI: You would see there it is dated 28th June

2019.

ADV RILEY: That is correct, yes.

ADV MTSWENI: And that is the date on which you say the draft report was sent to Advocate Batohi.

ADV RILEY: That is correct, yes.

ADV MTSWENI: And if you look at it, Advocate de Kock signs on everyone's behalf, that is yourself, Advocate Tenga and Advocate Mamabolo.

ADV RILEY: That is correct, yes.

10 **ADV MTSWENI:** And are you saying that that is not the report that was sent to Advocate Batohi?

ADV RILEY: It is the report, but what I have is a copy, an unsigned copy.

ADV MTSWENI: I am saying I own SR0137.

ADV RILEY: That is correct, yes.

ADV MTSWENI: It contains a signature there. Do you see that?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. Now, so therefore the report is signed.

20 **ADV RILEY:** That is correct, yes.

ADV MTSWENI: And that is the report that you say was sent to Advocate Batohi on the 28th.

ADV RILEY: That is correct, yes.

ADV MTSWENI: And at that date, everyone else understood that it was still a draft.

ADV RILEY: That is correct, yes.

ADV MTSWENI: Now, hence I am asking you, ma'am, if you are able to, I know you cannot speak for Advocate de Kock. He is not here to speak for himself. But to the extent that you are able to shed any light, please do so. Are you able to shed any light as to why would Advocate de Kock sign a draft document, knowing very well that it is a draft, purportedly on behalf of everyone else, and send it to Advocate Batohi? Would you know of the reason?

10 **ADV RILEY:** No, I do not know.

ADV MTSWENI: Yes. Now...

MS RAMAGAGA: Advocate, can I get a minute? Advocate Riley?

ADV RILEY: Yes?

MS RAMAGAGA: Do you accept and acknowledge this report that is on SR1, as your report? May we put otherwise? Advocate de Kock was actually authorised to sign this report on behalf of yourself and your fellow panellists.

ADV RILEY: That is correct, as the Chairperson.

20 **MS RAMAGAGA:** As the Chairperson.

ADV RILEY: That is correct.

MS RAMAGAGA: So it was also then sent with your blessing to advocate ...[intervenes]

ADV RILEY: That is correct, yes.

MS RAMAGAGA: To Advocate Batohi, why do you always

anticipate? The only good thing is that you anticipate correctly what the end of the question will be, but that is right. So it is correct that it was done with your blessing, it is your report, and further that it was to be sent to Advocate Batohi, right?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: Ja. And when one looks on the first page at SR0042, the date on which maybe you agreed about this report and how it would be handled would be the 27th day of
10 June 2019. Do you see that?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And the date on which he signed and maybe sent, it is a day thereafter, the 28th of June.

ADV RILEY: That is correct.

MS RAMAGAGA: Okay. He acted with mandate. That is fine. Thank you. Advocate Mtsweni, you may proceed.

ADV MTSWENI: Yes. Whilst on the report, there was during, I think there was evidence of another report that contains two signatures, that of Advocate Mamabolo and Advocate de
20 Kock. Do you recall seeing that report?

ADV RILEY: You have shown it to me, yes.

ADV MTSWENI: Now, do you know as to when did Advocate Mamabolo sign the report?

ADV RILEY: No, I do not know. I cannot say. The only thing I can say is Advocate de Kock's signature is there, and

it does not really make provision for someone else to sign because there is no line there and it says on behalf. So I cannot say when he signed it.

ADV MTSWENI: Yes. Now, you said you then met on the 1st of July to finalise the report.

ADV RILEY: Yes.

ADV MTSWENI: Although it had already been sent to the NDPP.

ADV RILEY: That is correct.

10 **ADV MTSWENI**: During the finalisation meeting, were there any other changes made to the report?

ADV RILEY: To the report signed by Advocate de Kock? No.

ADV MTSWENI: Now, the report that you guys considered on the 1st of July, were there any other changes?

ADV RILEY: No.

ADV MTSWENI: Yes. So the report remained the same?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Yes. Now, was the report ever brought to you for a signature?

20 **ADV RILEY**: No.

ADV MTSWENI: Yes. Okay. Okay, now that we have closed that chapter, can we move on?

MS RAMAGAGA: You just opened the door half. Let us not close the chapter. I need some clarity. When you answered the question of Advocate Mtsweni about the report that was

signed or that is signed by Advocate de Kock and Advocate Mamabolo, I heard you say, yes, you saw that report, that Advocate Mtsweni showed you. Had you ever had sight of that report before? Or did you only see it at the time when Advocate Mtsweni showed you?

ADV RILEY: [Pause] This one, I have not had sight of. The one signed by both Advocate de Kock and Advocate Mamabolo.

MS RAMAGAGA: Okay, so you only saw it for the first time
10 when Advocate Mtsweni showed it to you?

ADV RILEY: That is correct, yes.

MS RAMAGAGA: Thank you.

ADV MTSWENI: May I proceed, Madam Chair?

CHAIRPERSON: Please proceed.

ADV MTSWENI: Now, let us then move on to the next chapter where you now go into the nitty-gritty of your report. That is the racketeering charges. And from paragraph 54 to 56, you summarise the elements of both the racketeering charges for contravention of section 2(1)(e) and 2(1)(f). Is
20 that correct?

ADV RILEY: That is correct, yes.

ADV MTSWENI: And you tell us that for the purposes of section 2(1)(e), the following elements must be proven. Firstly:

“That there was an enterprise and that the

enterprise had engaged in two or more racketeering activities and that the accused participated in the activities of the enterprise.”

ADV RILEY: That is correct.

ADV MTSWENI: And then you say for the purposes of section 2(1)(e)/(f), you also repeat that there must have been an enterprise and that the enterprise had engaged in two or more racketeering activities and that the accused had
10 managed the activities of the enterprise.

CHAIRPERSON: Right.

ADV MTSWENI: And then at paragraph 57 to 61, you discuss the characteristics of an enterprise. Do you see that?

ADV RILEY: That is correct, yes.

ADV MTSWENI: Can you just summarise that for the purposes of the panel?
ENQUIRY INTO THE SOUTH AFRICAN
DIRECTOR OF PUBLIC PROSECUTIONS' FITNESS TO HOLD OFFICE

ADV RILEY: Section mmm... paragraph 51 or 58?

ADV MTSWENI: Starting from 57, going all the way, how the Act defines an enterprise and what you regard as the
20 characteristics and what you understood to be the authority for the proposition that you say that an enterprise must, or the authority for the proposition on the characteristics of the enterprise.

ADV RILEY: So in terms of section 1 of POCA, you only look at the definition and there you get the definition of the

enterprise, which is an individual. It can be a partnership, a corporation, association, or other juristic person or legal entity. Or it can be a union or a group of people that are associated in fact, although not a juristic person or legal entity. That is where we get the definition of it.

In terms of what constitutes an enterprise, we ordinarily would look at certain characteristics, which is in the enterprise you would have a different differentiation of roles. There is ordinarily a system of command. The group
10 will ordinarily in the enterprise have a common or shared goal or purpose. Although it is not a requirement, sometimes there is an intention to profit from your activities.

And then what is very important is the continuity of your personnel. In other words, you cannot have a situation where you have one person or two people and then one leaves and then you have another person coming in. It can happen in that way, but your grouping or your criminal network must continue, must have continuity.

ADV MTSWENI: Okay, and then at paragraph 59 you deal
20 with how one proves, you deal with the separation or the distinction between an enterprise as well as the existence of racketeering, of a pattern of racketeering. Can you elaborate on that?

ADV RILEY: In terms of your enterprise, ordinarily it is separate from your pattern of racketeering. So the type of

evidence that you will look at is in terms of, is different. But I do understand that sometimes your pattern of racketeering activity can also establish or maybe establish the existence of an enterprise. Then the enterprise exists separately from your pattern of racketeering activity.

ADV MTSWENI: Okay, and then you then continue to deal with what needs to be proven for participation. Please elaborate on that.

CHAIRPERSON: Before that, did you look at the
10 jurisprudence in South Africa dealing with these aspects in relation to the existence of the enterprise? Yes, I see you only referred to foreign jurisprudence.

ADV RILEY: Yes, we have. Advocate Mamabolo, one of his tasks was to compile a report on the legislation dealing amongst other things with racketeering as well as hearsay evidence in terms of section 2, subsection 2 of POCA, where it can be regarded as admissible evidence. So we did look at other case laws, South African case laws, such as Jwara, I think the De Vries decision, the Savoy decision, as well as
20 the Eyssen decision.

CHAIRPERSON: But none of these authorities you are talking about are reflected in your report.

ADV RILEY: That is correct, yes.

CHAIRPERSON: Why so?

ADV RILEY: [Pause] I do not have an answer for that.

CHAIRPERSON: I would imagine, given the fact that this complex legislation, the POCA, resulted in case law in this country, I would imagine that as someone who kind of specialises in that legislation, given your résumé, you would have gone directly into the South African jurisprudence as regards the ...[intervenes].

ADV RILEY: Sorry, it is breaking up, I cannot hear you, Madam Chair.

CHAIRPERSON: I am saying I would imagine that you would
10 have gone straight into the South African jurisprudence in relation to this piece of legislation, POCA, instead of you ...[intervenes]

ADV RILEY: That is correct, yes.

CHAIRPERSON: Instead of you relying entirely on foreign jurisprudence, as you did, is there any reason why you did not refer to case law in South Africa in that regard, particularly in your report?

ADV RILEY: There is no specific reason. I cannot give any specific reason. I do agree with what you have to say, Madam
20 Chair. We could have referred to South African law as well.

MS RAMAGAGA: And you agree that our law on POCA is not identical to the laws of America that you have referred to, or case law in particular?

ADV RILEY: In some cases, yes.

MS RAMAGAGA: That there are distinguishing factors.

ADV RILEY: That is correct, yes.

MS RAMAGAGA: And hence the development of our own jurisprudence.

ADV RILEY: That is correct, yes. I agree with that. Not in all the cases, but in some cases, yes.

MS RAMAGAGA: Thank you.

ADV MTSWENI: May I continue, Madam Chair?

CHAIRPERSON: Yes, proceed.

ADV MTSWENI: You then ad paragraph 62 and 3 give a brief
10 summary as to the element of participation. Can you just summarise that?

ADV RILEY: What the state has to prove, is that the accused, through his conduct of some form, participated in the affairs of the enterprise through racketeering. Ordinarily, you would look through that in your pattern of racketeering activity. We do say it can be either direct or indirect, but must be causally connected to the affairs of the enterprise.

In other words, there must be a connection to the affairs of the enterprise in terms of your pattern of racketeering
20 activity, although distinct from one another.

ADV MTSWENI: Yes. And then you then go on, ad paragraph 64 to 66, to deal with the what would, the characteristics or what it is that the state needs to prove to demonstrate a pattern of racketeering. Can you just also elaborate on that, briefly?

ADV RILEY:

“A pattern of racketeering is the planned, ongoing, continuous or repeated participation and/or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years after the commission of such offence, such prior offence referred to in Schedule 1.”

Then on paragraph 65, I listed a number taken into account if you want to determine whether a pattern of racketeering existed. So, as in this case, you would look, for example, at the number and variety of predicate offences, the length of time over which these offences or acts were committed and the number of victims and accused injured by similar acts. You would look at similarity of offences and the character of the unlawful activity.

So, in other words, one would, for example, really look at the pattern and I think in this regard, it was said that the Cato Manor group, in terms of their pattern of racketeering activity, they were committing murders for rewards. So, that will be in terms of these 23 dockets. Is

there any similarity of the offences? And then, obviously, one would also look at the length of time over which these acts were committed and the number of predicate offences.

Then in terms of paragraph 66, it is required at least two acts of racketeering activity. And in terms of section 2(1)(f), we say that in addition to the enterprise and the pattern of racketeering to prove that the accused managed or was employed or was associated with the enterprise. And then we mentioned the fact that in terms of 2(1)(f), which also
10 differs from the United States, the RICO Act, our sections has pronounced in terms of our Court, in particular the Savoy decision, that knowledge of an accused to be found guilty of management.

So, it is not necessary that you prove that this person was actually on the crime scene or committed these acts, if he merely have knowledge or he must or ought to have reasonably known that another person was engaged in a pattern of racketeering activity. So, therefore, knowledge and not participation is required. We also said that manage,
20 what is to manage is not defined. One must defer to its ordinary meaning, which is to be in charge or supervise.

And then we said we examined the evidence at the hand of what we said, what is the law, whether there was sufficient evidence for successful prosecution on charges of racketeering.

ADV MTSWENI: Yes, and then...

ADV BALOYI-MERE SC: Advocate Mtsweni, before you proceed, at paragraph 68, Advocate Riley...

ADV RILEY: Yes?

ADV BALOYI-MERE SC: ...you are saying mere knowledge and not participation is enough for someone to be convicted or to be found guilty of management.

ADV RILEY: Yes.

ADV BALOYI-MERE SC: Now, in layman's terms, it means
10 you do not have to place a particular person at the scene of crime at that time, but you just have to prove that this particular person knew of that crime, even though they were not at the scene, for them to be charged with a crime of management.

ADV RILEY: In 2(1)(f), yes, I agree.

ADV BALOYI-MERE SC: Thank you.

ADV MTSWENI: Just a moment, Madam Chair? You then, after you had, you then say after you had analysed these principles and against the backdrop thereof, you then went
20 on to analyse the evidence in order to determine whether that evidence does live up, can be sufficient to sustain a prosecution on the racketeering charges. Is that correct?

ADV RILEY: It is correct, yes.

ADV MTSWENI: Yes. And in the start, when you start, in the starting point ...[intervenes]

CHAIRPERSON: Advocate Mtsweni, I think this takes us to the report itself. Am I correct?

ADV MTSWENI: That is correct, Madam Chair.

CHAIRPERSON: You can see that before she starts on the analysis as regards the report, we can pause and start with that tomorrow morning.

ADV MTSWENI: Thank you, Madam Chair.

CHAIRPERSON: In other words, you will start from paragraph 71 tomorrow and take us to the report. Advocate
10 Riley?

ADV RILEY: Yes, Madam Chair?

CHAIRPERSON: We think that we should adjourn now. It is half past five. That will afford you an opportunity to do that little homework that I mentioned earlier, tonight.

ADV RILEY: I will do so, Madam Chair.

CHAIRPERSON: And so that when we start tomorrow, we start with that and then proceed with your analysis.

ADV RILEY: Thank you. I will do so.

CHAIRPERSON: We are going to start tomorrow at nine
20 o'clock. Will that suit you?

ADV RILEY: It is fine, Madam Chair. I will be here.

CHAIRPERSON: Yes, thank you. And I hope that we will not encounter challenges we encountered today in relation to your setting up wherever you are. We are told that ...[intervenes]

ADV RILEY: I am sure that everything is...

CHAIRPERSON: Yes, we are told that Advocate Lekgetho is not far from you. Advocate Mtsweni will tell her to make sure that the setup is properly done, so that we do not get disrupted tomorrow.

ADV RILEY: Thank you, Madam Chair.

CHAIRPERSON: Yes, thank you.

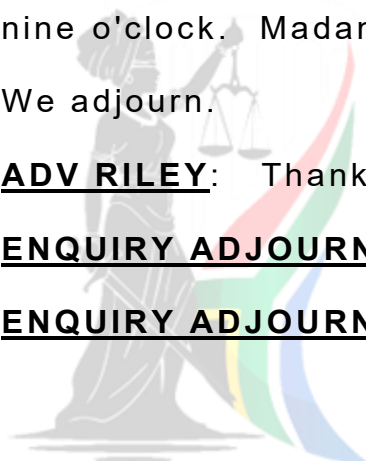
ADV RILEY: She is close by.

CHAIRPERSON: Advocate Mtsweni, Advocate Ngcukaitobi,
10 we propose that we adjourn now until tomorrow morning at nine o'clock. Madam, you are still under off until tomorrow. We adjourn.

ADV RILEY: Thank you.

ENQUIRY ADJOURNED UNTIL 10 APRIL 2026

ENQUIRY ADJOURNS



ENQUIRY INTO THE
SOUTH GAUTENG
DIRECTOR OF PUBLIC
PROSECUTIONS'
FITNESS TO HOLD OFFICE

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

CHAUKE COMMISSION OF ENQUIRY

CASE NUMBER : N/A
RECORDED AT : PRETORIA
DATE HELD : 9 APRIL 2026
NUMBER OF PAGES : 99

PROBLEMS EXPERIENCED WITH RECORDING

1. Verbatim transcript, no syntax or grammar alterations effected.
2. Unknown names spelled phonetically.
3. Microphones not always activated.
4. Witness speaking simultaneously with other parties.

NB: Transcriber can only transcribe what is recorded and clearly audible.

DATE COMPLETED: 10/04/2026

