

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

27 SEPTEMBER 2018

DAY 16

PROCEEDINGS HELD ON 27 SEPTEMBER 2018

CHAIRPERSON: Good morning Mr Pretorius and good morning to everybody;

ADV PAUL PRETORIUS SC: Morning DCJ..

CHAIRPERSON: I get the impression that things are not ready, Are they ready?

ADV PAUL PRETORIUS SC: We are ready DCJ to proceed.

CHAIRPERSON: Okay. All right. Thank you.

ADV PAUL PRETORIUS SC: Firstly, things will happen today and if necessary tomorrow. .The first is that I will make the application that is before you and describe the contents of the application to you and motivate the application to you Chair. Then
10 Mr Brian Currin will give evidence in relation to the application and the third thing that will happen is that Ms Kate Hofmeyr will present argument in relation to the legal aspects and some factual aspects of the application. So, it is those three things that will happen today and if necessary tomorrow.

CHAIRPERSON: Thank you That is in order.

ADV PAUL PRETORIUS SC: Chair the Notice of Motion and Affidavit forming the application is before you may it be marked J1?

CHAIRPERSON: Do we need to mark it? It is not an exhibit, is it?

ADV PAUL PRETORIUS SC: Well it will be a sequence of other applications that have been made before you and in relation to the full record of all the proceedings that are
20 before you it may be easier to catalogue as if it is given an exhibit number. It is not an exhibit - that is understandable but... [intervenes]

CHAIRPERSON: Should we not - Should we the arrangement not be that there will be a lever arch file or a set of lever arch files which will contain all applications that are dealt with. So now they are separate from exhibits and so on. Would that not – that will

not confuse me in terms of then I know which ones, which documents are exhibits, which ones are not exhibits but have come before the commission.

ADV PAUL PRETORIUS SC: Well just subject to two qualifications, Chair that the Nombembe Affidavit is in fact evidence and the second qualification is there have been a number of applications in relation to cross-examination, applications for cross-examination and rulings that will also go in the comprehensive record that have been given exhibit numbers. So...

CHAIRPERSON: So we might not have ...[intervenes]

ADV PAUL PRETORIUS SC: Perhaps we could do both as a compromise Chair. We
10 will give it an exhibits number so that in the comprehensive record of proceedings it is in sequence and also a separate application file where it will appear separately.

CHAIRPERSON: Of course if it was just Mr Nombembe's Affidavit it would be easy to then make it an exhibit number.

ADV PAUL PRETORIUS SC: Well that is also possible to give the affidavit the...
[intervenes]

CHAIRPERSON: The exhibit...

ADV PAUL PRETORIUS SC: K1.

CHAIRPERSON: *Ja.* Okay, I think the... let us mark Mr Nombembe's Affidavit as EXHIBIT J1.

20 **ADV PAUL PRETORIUS SC:** That will be done.

CHAIRPERSON: *Ja.*

ADV PAUL PRETORIUS SC: Check.

CHAIRPERSON: And I do not know whether we mark anything on the Notice of Motion. It is a little confusing.

ADV PAUL PRETORIUS SC: Chair...

CHAIRPERSON: Notice of Motion to EXHIBIT J1.

ADV PAUL PRETORIUS SC: Well the alternatives are not to mark the Notice of Motion.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And the Affidavit at all.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: The second alternative is to mark the whole application J1.

CHAIRPERSON: Ja.

10 **ADV PAUL PRETORIUS SC**: In the numbering sequence that it already has.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: And the third is to split them, but perhaps Chair, may I suggest that we mark the Application J1, because it has a sequence number from the Notice of Motion and we will create a separate Application file.

CHAIRPERSON: Or maybe we mark the Notice of Motion J1, without saying exhibit and then on Mr Nombembe's Affidavit EXHIBIT J1.

ADV PAUL PRETORIUS SC: Sure.

CHAIRPERSON: Will that or will that be confusing?

ADV PAUL PRETORIUS SC: That is appropriate.

20 **CHAIRPERSON**: Then nobody, nobody thinks we do not know what exhibits are.

Okay. So the Notice of Motion is marked J1 and then Mr Nombembe's Affidavit is marked EXHIBIT J1. Thank you.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Actually should we keep to relieve the Notice of Motion as just J1 or Annexure J1?

ADV PAUL PRETORIUS SC: J1.

CHAIRPERSON: J1. Okay. Thank you.

ADV PAUL PRETORIUS SC: Chair this is an Application for the Admission of Certain Electronic Evidence, it is computer generated data. The Notice of Motion, before you, that is page 1 of J1, refers to an Application to Admit Data and that data exists on three hard drives and we will explain to you in due course how that works and where those forensic images HDDH, HDDH1 and HDDH2 come from. The application is made by Mr Terence Nombembe who acts on behalf of the Commission as the Lead Investigator. You will recall Chair that on 28 May 2017 the Sunday Times first published selections of
10 what became known as the Gupta Leaks or the Gupta Emails. In due course journalists employed by amaBhungane, amongst others, caused to be published excerpts and analysis of this data over a period of time. All this data, Chair was originally contained in a component of a computer, a hard drive. The Commission now has that hard drive in safe keeping – that is what will be referred to as the Original hard drive. How the Commission came to be in possession of that hard drive will be described to you in due course, either on the affidavit of Mr Nombembe or in the affidavit of Mr Currin who is due to testify,
The Commission also has a forensic image of that hard drive made an expert in Europe and his affidavit is available, but it will be handed up to you *in camera* by your leave,
20 because that person does not wish his identity to be known for reasons which can be explained *in camera*. Almost all of the data on the Original hard drive that is the hard drive that is now in safekeeping under the control of the Commission has been recovered and transferred onto the first forensic image HDDH and I will deal with that process in detail in due course.

There are two further hard drives replicating that first hard forensic image that have now been made. All three of these hard drives are in possession of the Commission, as we speak. One is in safekeeping and two, if the application is successful, will be analysed and investigated by the investigators of the Commission.

The Original hard drive, Chair has been damaged and cannot therefore be used by the investigators of the Commission. The danger is that as soon as a non-expert deals with, in any manner, this hard drive there is a risk of permanent and irretrievable damage.

The Original hard drive therefore can only be dealt with by experts as indeed occurred in Europe recently where the complete forensic image was made.

10 That is why this application, Chair seeks to admit as evidence the data on the three hard drives. Those are the three forensic images of the Original hard drive. These hard drives contain electronic data or evidence which we will describe in more detail in due course which is relevant to the work of this Commission.

Finally, by way of introduction, Chair this application is brought *ex parte*. However notice will be given to the presumed original owner of the Original hard drive that is Sahara Computers (Pty) Ltd to show cause at a later date, if it is so ...[indistinct] as why its data should not be used by the Commission. Again I will deal with that aspect in more detail in due course.

It is necessary first however to deal with the legal aspect by way of introduction and
20 support of the application relevant to how this Commission – it will be submitted by myself and in more detail by Adv Hofmeyr evidence of the nature that we have placed before you at present.

The first point that we make is that this is not a trial. It is not a trial where personal rights or liberty maybe directly determined. The findings and recommendations of this Commission may in due course of course lead to criminal prosecution or civil

proceedings. If evidence is to be lead in those proceedings then that evidence will be subject to the rules of evidence governing those particular proceedings, either criminal or civil. Accordingly any rights or interests of persons that may be implicated by this data are preserved. That is the first point.

The second point is that it is trite to say, but it is not always fully understood that this is an investigation or inquiry and on this basis or submission is that the Commission is entitled and in fact it is obliged to examine all available information and evidence and to evaluate that in order to make its findings in doing so it is not bound by the rules of evidence. That this is so is accordance with International Law, International President,
 10 Practice and is the same in South Africa. It is also consistent with the instruments governing the Commission which expressly empower this Commission to control its own procedures and finally Rule 6.1 is clear... [intervenes]

CHAIRPERSON: I am sorry Mr Pretorius. Is it accurate to say is not bound by the Rules of Evidence or is it more accurate to say it is the application of rules of evidence is

relaxed or is the outcome of those two questions the same?

ADV PAUL PRETORIUS SC: Well...

CHAIRPERSON: Is it correct to say the Rules of Evidence it is not bound by the Rules of Evidence at all or is it moer accurate to say the application of rules, of the Rules of
 20 Evidence is relaxed or do you think that the answer to te same – to the two question is the same, whichever way you approach. I am not sure on the face of it it does appear to be... [intervenes]

ADV PAUL PRETORIUS SC: If you

CHAIRPERSON: Maybe a difference between the two.

ADV PAUL PRETORIUS SC: Yes, I agree with that observation Chair, because if you are not - if you are permitted to relax the Rules of Evidence it follows logically that you are not bound by them. It may be that... [intervenes]

CHAIRPERSON: Well the difference between the two is, I think if you say not bound by the Rules of Evidence it means you are just at large to do as you please, it seems to me. Whereas if you say the application of those rules is relaxed it means you do not apply them as strictly as they would be applied in a court of law. So, there is some room to admit evidence that otherwise would not be admissible in a court of law.

ADV PAUL PRETORIUS SC: Yes.

10 **CHAIRPERSON**: But you are completely at large to admit what you want and not admit what you do not want.

ADV PAUL PRETORIUS SC: Chair this has the danger of becoming a semantic argument perhaps from a practical point of view the strict Rules of Evidence are not in themselves binding to their fullest extent on this Commission. But in receiving evidence and evaluating evidence the Chair will obviously be guided by principles and rules normally applicable when evidence is dealt with...

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: And that question is actually relevant because it is one thing to admit the data on the hard drives for investigation and analysis and ultimate
20 presentation to this Commission it is another thing to analyse particular, for example email that emerges and at that stage one may obviously take a more particular approach as to the general approach which you are asked to do now.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: And so perhaps the wording in the ruled compose by the Commission, Rule 6.1 is apposite. That rule reads:

“The Commission may receive any evidence that is relevant to its mandate including evidence that might otherwise be inadmissible in a court of law. The Rules of Evidence applicable in a court law need not be strictly applied to the determination of the admissibility of evidence before the Commission.”

and perhaps the formulation in the second sentence there answers the question

CHAIRPERSON: Yes. Thank you.

ADV PAUL PRETORIUS SC: Of course as stated in this discussion, Chair, there are
10 other stages of the Commission's proceedings where the interest of persons implicated by relevant information or evidence may be safeguarded. So for example, when a particular email is presented before you. If a person is implicated by the contents of the email then it follows that that person may be able to counter it, may confirm its existence, may deny its existence and then that evidence and counter evidence will be weighed up by yourself and a finding be made and then any interest that Sahara Computers may have in the preservation of the confidentiality of the information or evidence – which interest we do not concede Chair is also protected by the procedure adopted in this application. So that in accordance with the Notice of Motion on a return date to be determined by yourself, Chair Sahara Computers may deal with the
20 admission of the evidence in whatever way it chooses, but of course it perhaps note – notable to say at this stage that Sahara Computers will face a dilemma. It may persist in what appears to be an allegation already published in the media that the emails are contrived and fake. If it does so of course then it logically cannot claim any right to the information, because it will not be its information on that version. On the other hand if it contests the admission or use of the evidence on grounds of the right to confidentiality

it must logically admit the authenticity of that evidence and information. So, perhaps we should wait and see what approach Sahara Computers and its officials choose to take in due course. But the essential point we make is this, Chair, that in any investigation properly conducted all relevant material should be placed before the Commission.. It can then be analysed it can be evaluated, both on its own and in the light of other evidence that may be presented. A decision may then be made in regard to the weight if any to be accorded to that evidence. The danger is that if the Commission does not adopt this approach it runs the risk of hampering its own investigation or inquiry unduly and in our submission the inquiry will not adopt that approach, simply it must meet its

10 mandate to the fullest extent.

One may then ask, Chair why this application is brought at all. The legal team maintains and we do not wish to detract from the point that the data on the forensic images could without more and on general principles available to Commission of Inquiry be entered into evidence without more investigated, analysed, evaluated and reported upon. But the reason for the cautious approach – approach that we adopt are several, Chair.

The first is that the approach contemplated by the evidence leaders and in the affidavit of Mr Nombembe will allow this Commission to place greater weight on the evidence referred to in this application. So, to the extent that one goes beyond the basic

20 requirements to that extent greater weight it may be submitted in due course, maybe placed on the evidence.

Secondly and very importantly, Chair the steps taken by the Commission that is both the evidence leaders and the investigators as reflected in this application will assist in preserving the integrity of the evidence for further use in resultant criminal or civil proceedings. This Commission is now in a position to take steps because of the

position that it has been placed in by being given the Original hard drive to ensure that the manner in which it is dealt both in this forum and later forums will enable later criminal prosecutions – should that be the outcome at all or later civil proceedings.

Thirdly in our submission the evidence that is before you is in all the circumstances the best evidence. The Original hard drive cannot be used in evidence because it may be destroyed. That original evidence is in the hands of the Commissions. The copies we know from Internationally recognised experts and you will have that evidence on affidavit, Chair are exact replicas of that original. So what we ask to admit is we will submit both authentic, in the sense that it is a copy, genuine copy of the best evidence

10 available, but reliable as well.

Further Chair this is not the only time, with respect that you will be approached in relation to this evidence. There is, as you are aware, a chain of evidence simply put that is the pass that the hard drive followed from the original place where it emanated from right through to the safekeeping where it now resides in the hands of the Commission. Some of that chain of evidence is dealt with in the present application, in the evidence of Mr Nombembe. Some of that chain of evidence will be dealt with in the oral evidence of Mr Currin, but there is some evidence, important evidence, that lies within the knowledge of two whistle blowers. Their identity is being protected in this application and we have taken extreme steps to ensure that their identity is not

20 revealed even indirectly, in this application. However they are unwilling to testify at this stage – we understand at least to an extent for reasons of personal safety. They have however indicated a willingness to testify in or around July next year 2019. The relevance of that particular date I am afraid we cannot place before you, partly because we are not fully aware of that but in due course it will be placed before you Chair and dealt with accordingly. But we stress once again and this will be stressed in argument

that the full chain of evidence maybe relevant for criminal proceedings, may to an extent be relevant for civil proceedings, but is not an essential component of this application before you and an essential requirement of the relief that we seek.

So, in summary Chair the purpose of the evidence to be lead in future will be two fold.

Firstly to lend further weight to the evidence now to be admitted, to enhance its authenticity and reliability to a greater extent than can be done now and

Secondly to lend the systems to the preservation of evidence in any future civil law criminal proceedings.

So once I have taken you, Chair through the affidavit and application and once Mr

10 Currin has completed his evidence the legal aspects of this application will be tied up by Ms Hofmeyr.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: If I may then go to the facts, Chair and I will refer in due course to the contents of the affidavit. If I may refer to the Notice of Motion. The Notice

of Motion seeks to admit data – that is information contained on a device which we have referred to here as a hard drive. HDDH is the first forensic copy made by the

expert of the Original hard drive. There are two further copies HDDH1 and HDDH2 and I must stop myself in my discussions with the experts who advised Mr Nombembe I was

told in very firm terms I am not allowed to use the word “copy” it is a technical term with

20 a technical meaning. So, I will be scolded by them now but if I may use the forensic

image, in other words a copy made on specialist machinery according to specialised process that is a forensically valid authentic image of the original. So there are two

further forensic images those are HDDH1 and HDDH2. What the Commission has

elected to do is to keep the first forensic image HDDH in safekeeping. HDDH1 and

HDDH2 will, if this application is successful be investigated and analysed in other

worked on. But in this manner the original evidence will be preserved the original data will be preserved both on the original and on the first forensic image. Then in paragraph 3 of the Notice of Motion we asked that the rulings that you make operate on an interim basis pending the return day on which Sahara Computers may wish to place their views before you, Chair.

The first part of the Affidavit introduces the factual history of the matter, Chair. There is the original hard drive which appears to come and on our submissions does come from Sahara Computers. This original hard drive is referred to, in the Founding Affidavit, as HDDA the forensic image of that original hard drive I have dealt with. It is not a copy it
10 is a forensic image a copy is something else and I will explain that in due course. The two further forensic images I have dealt with they are referred to in the Notice of Motion.

There are sadly some technical terms that we have to deal with in order for the import of the application and its content to be fully understood and if I may take you to page 6 of the Founding Affidavit. Chair I might say that in consulting with the experts who instructed the deponent to the affidavit Mr Nombembe I attempted to take detailed notes so that I could be in a position to explain the technicalities to you chair. I eventually discarded those entirely and made up my own, but I trust that they are
20 accurate and more understandable

The first technical term, because you will hear of this in due course is the “clone” – the clone of the hard disc drive. That is a replica of the data on the original hard disc drive, but we call it a “clone” because it is not a forensic image, a forensic image is something more. A forensic image is an exact replica of the data on the original hard drive, made by means of a forensic imaging process. That is a highly and specialised and extremely

reliable forensic imaging process and it uses recognised and specialised forensic software. So not only is the method forensically defensible but also the equipment is forensically defensible and it can be examined at a later stage. So, the forensic imaging process is a process that is recorded on the software and is capable of being checked and examined and then there is a further term that we will come across in the affidavit it is called “checksum” and I am afraid here we will have to trust the experts here. The checksum is a method used by specialists and expert to assess the authenticity of a data set, in other words a collection of information which in electronically recorded.

- 10 So, in relation to the chain of custody as it exist, at present, that is dealt with in paragraphs 23 and following of the Founding Affidavit. The data on the original hard drive has been copied. What that means is that files on the original have just been transferred, on a computer, to another device. They have been cloned, in other words their whole content has been imaged and recorded on another device and forensically imaged numerous times the forensic imaging being the more specialised and reliable procedure. The only copies – up again I catch myself Chair. The only forensic images that are relevant for the purposes of this application are the first one made in Europe by the technical expert and the two later ones made in South Africa of that copy. So, there are three and those are the ones referred to in the Notice of Motion and they are
- 20 forensic images.

The international expert has deposed ...[intervenes]

CHAIRPERSON: I am sorry I thought there were two HDDH1 and HDDH2

ADV PAUL PRETORIUS SC: I am going back to the Notice of Motion Chair.

CHAIRPERSON: Plus the original hard drive.

ADV PAUL PRETORIUS SC: Yes. Well perhaps the numbering could have been more accessible to non-experts like myself.

CHAIRPERSON: And myself.

ADV PAUL PRETORIUS SC: But paragraph 1 refers to admission of the data on HDDH.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: That is the first one made overseas the forensic image made overseas by the technical expert.

CHAIRPERSON: Ja.

10 **ADV PAUL PRETORIUS SC**: The two further forensic images are HDDH1 and HDDH2.

CHAIRPERSON: O, yes.

ADV PAUL PRETORIUS SC: So, those three and just for – to clarify once again HDDH is in safekeeping.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: It will not be worked on but it is always there as evidence.

CHAIRPERSON: Ja.

20 **ADV PAUL PRETORIUS SC**: HDDH1 and HDDH2 will be, if the application is successful, worked on by the investigators.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And analysed accordingly.

CHAIRPERSON: And HDD ...[intervenes]

ADV PAUL PRETORIUS SC: A.

CHAIRPERSON: Right A is the original hard drive.

ADV PAUL PRETORIUS SC: Is the original hard drive if that is accessed in an investigation process the chances of it being entirely damaged, irrevocably damaged, are too high to allow that to happen. So, that is in safekeeping under the control of the Commission. But that is the original.

CHAIRPERSON: It can only be worked on or touched, as it were, by a relevant expert.

ADV PAUL PRETORIUS SC: Correct.

CHAIRPERSON: If it is not to be damaged.

ADV PAUL PRETORIUS SC: Correct.

CHAIRPERSON: Okay.

10 **ADV PAUL PRETORIUS SC**: But the expert will have told you that HDDH is an accurate and virtually complete and when we say virtually complete the figure I will refer to in a moment is 99.99999% so that is not bad.

CHAIRPERSON: Shame.

ADV PAUL PRETORIUS SC: Chair if I may then go back to... [intervenes]

CHAIRPERSON: So the and this might be for much later and not now. So, the only reason why anybody would want the original hard drive would be to see whether the forensic imaging was done correctly.

ADV PAUL PRETORIUS SC: Correct.

CHAIRPERSON: Okay.

20 **ADV PAUL PRETORIUS SC**: In that regard you have what we submit is the most reliable evidence, on affidavit, at present but if necessary if it comes to that we can bring the person here to give evidence, Chair, that a highly sophisticated reliable forensic imaging process was applied in respect of the copying – of the imaging of the data on the original hard drive and its transfer to the first forensic image.

CHAIRPERSON: I guess that at a certain stage irrespective of what Sahara Computers decides to do it might be – a ploy would be necessary to have that evidence...

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Placed before the Commission so that if the Commission were ultimately to rely on that evidence it would do so in the knowledge that the forensic imaging was done correctly.

ADV PAUL PRETORIUS SC: Yes. Chair you have that – we will have that evidence handed to you *in camera* in affidavit form and in our submission we can give you the
10 assurance that that process was the result of much international research. The selection of the entity that performed the operation was not a random quick decision it was in the view of the experts the best operation by the best technical experts and we can – I am quite happy to give you, Chair, that assurance.

CHAIRPERSON: Thank you very much.

ADV PAUL PRETORIUS SC: Chair what has also been prepared or is being prepared is another document. That has not been presented to you at this stage for reasons that we submit are justifiable at present and that is to protect the identity of people who genuinely fear for their personal safety. But their full chain of custody documents will, at some stage, be presented to the Commission or be available for law enforcement
20 agencies and civil authorities, in due course. That chain of custody record will be complete or as complete as is possible and in our submission as complete as is necessary.

Then if I may take you Chair, to paragraph 31 which is paginated page 11 where the narrative is set out. The first whistle blower who obtained possession of the original hard drive we refer to as Stan – that is a name by which he was known in a pre-

recorded interview that was published by amaBhungane on 15 August 2018. The transcript of that interview is annexed, is the first annexure it is on page 29 it is Annexure TN1, Chair. If one read Annexure TN1 one will see that there is nothing in that interview that gives any clue as to the occupation or identity of Stan and of the other person who accompanied him who is known as John. .But those are the first two whistle blowers. That is where the narrative for present purposes starts.

When Stan and John had taken possession of the original hard drive HDDA and I am at paragraph 35, Chair. They examined it and noticed that its contents related to the Gupta family and their associates and those emails contained on the original hard drive appeared to corroborate what the media had at the time being reporting about issues as State Capture – issues directly relevant to the work of this Commission. They also appeared to emanate from Mr Ashu Chawla who was then the Chief Executive Officer of Sahara Computers and in an organisational matrix related to the Gupta family. Stan did not know what to do with this information. He therefore approached a friend, a Mr Brian Currin for advice and you will be introduced to Mr Brian Currin shortly, Chair. That friend, whose identity is not disclosed, did not feel that he had the experience or expertise or network of contact to assist Stan in relation to any potential disclosure of the information that he believed, the friend believe Stan needed. The friend therefore approached Mr Currin, because of the nature of the work that Mr Currin had done for Sunde Caves and work will be described by Mr Currin in his evidence. Mr Currin had dealt with prominent whistle blowers before in this example Captain Dirk Coetzee who blew the whistle on Vlakplaas. Activities in the 90's or the 80's.

Chair the friend and Mr Currin then met with Stan in February 2017. Stan who had been in possession of the original hard drive, for many months was undecided about what he should do with it. Although he had not read all of the emails, some 200 000, Chair

contained in the original hard drive. He had read enough of the emails to be very well informed about what appeared to be corrupt relationships involving the Gupta brothers, Mr Duduzane Zuma, certain Cabinet Ministers and some of the CEOs and officials of major state owned entities in South Africa. At some stage, at least in principle a decision was made by Stan to release this information. That decision was made in principle because of the public interest in the disclosure of the information, but he was very concerned about his safety and John's safety both at the time the information would disclosed and after. So, what Mr Currin took it upon himself to do at the request of Stan and John was to obtain protection. Mr Currin also facilitated the safekeeping

10 HDDA, the original. So, it was handed from the whistle blowers to Mr Currin and that included making arrangements for its safekeeping at the attorneys Norton Rose Fulbright, taking it to Kenya in March 2018 and later, at a later stage handing it over to officials of the Commission.

So, late in March 2018 Mr Currin contacted the Commission in order to disclose the existence of the original hard drive and in order to facilitate the Commission's eventual use of the data on the hard drive. Then on 10 April 2018, Chair, members of the Commission's legal team and an investigator appointed to the Commission travelled to Nairobi Kenya to meet with Stan and John who were, understandably, reluctant to come to South Africa. Mr Currin, an attorney and three individuals who represented certain

20 authorities from the United States. After this meeting Mr Currin and his attorney returned to South Africa with the original hard drive. That hard drive was then handed over to Mr Nombembe at a secure venue and arrangements were made for the high security safekeeping and protection of the original hard drive.

Then during 20 – during July 2018 the Commission's representatives made further contact with Stan and agreed with Stan that the Commission would arrange for an

international data recovery expert to form data recovery on HDDA the original which, by that stage incidentally Stan had thought that the original hard drive had collapsed completely and in fact part of the thinking of the Commission's representative at that stage was that there was not a great chance of being able to recover more data from the original hard drive than had already been done in the past, if at all, because it was recognised that that hard drive was damaged and extremely fragile and vulnerable and it was agreed with Stan that the data on the original hard drive forensically imaged onto other hard drives would be used to further the work of the Commission in accordance with its terms of reference and has been explained to, Chair a carefully
10 selected international expert in the field of data recovery was approached in Europe and the international expert referred to did the work necessary to recover.

On 9 August 218 Mr Nombembe retrieved the hard drive from its place of safekeeping. Handed it over to an investigating attorney who then flew out of the country to hand it over to the international expert. The investigator and the attorney handed over the hard drive and certain other clones of the hard drive to the international expert. The international expert, over the course of a period of 10 days, attended to data recovery and forensic imaging and it remained in his possession throughout this period. As pointed out in paragraph 50 the international expert was able to recover 99.9998269% of the HDDA data from HDDA, the original hard drive. A forensic image was made of
20 this recovered data, on a new hard disc drive, and it has a model number which is apparent there and serial number and that is the model number and the serial number which appears in the Notice of Motion, that is the first forensic image. HDDA the original hard drive is now apparently in safekeeping once more.

The investigator and the attorney then returned to South Africa with that first forensic image HDDH and on their return, one of the Commission's data expert investigators

made two further forensic images of HDDH and they are called HDDH1 and HDDH2.

The investigator then took HDDH that is the first forensic image to a place of safekeeping where it now is and the Commission's investigators have retained the other two forensic images and another suspending your ruling, Chair.

Mr Nombembe has also been informed that two further witnesses will give evidence in public in July 2019. It is possible that alternative arrangements maybe made but I am in no position at this stage to say what they are, what likelihood of success these arrangement may produce. Throughout these events, in relation to the chain of

10 custody, precautions that would be required by chain of custody evidence requirements in criminal jurisdiction have been followed various chain of custody forms have been completed, non-disclosure documents have been completed, tamper proof evidence, bags have been used whilst the hard drives and the forensic images have transported around South Africa and outside the border of South Africa. We have not burdened this affidavit with these details because simply, Chair, it is not necessary at this stage, but that evidence is there for the preservation of the integrity of the information or data and will come before you later as well, Chair when the full chain of evidence can be presented to you in evidence.

So, in summary Chair, the original came into the possession of Stan. That original was taken out of the country for data recover to be performed by the international expert.

20 The international expert managed to recover of the data on the original hard drive 99.9998269%. That has been forensically imaged on the first forensic image HDDH, HDDA is now in secure – in a secure location under protection and then the two further forensic images recorded in the Notice of Motion are also the subject of this application. Chair it is necessary - we have thought, at this stage, to place before you on this affidavit some evidence as to relevance and reliability. So that in our submission you

can be confident that it is appropriate to grant the relief sought even though our prime submission is that relevance and reliability can be developed and produced in due course by further evidence.

The first point goes to relevance. The information on the hard drive comprises communications and other information relating to the affairs of the Gupta family and their association with government officials and state owned enterprises. The Commission's terms of reference, as we are all aware, refer repeatedly to the Gupta family and the references appear expressly in the terms of reference referred to in paragraph 55.2, but we know that the other terms of reference to although Gupta family
10 may not be mentioned by name, the other terms of reference mandate this Commission to investigate their conduct in relation to them.

Secondly after the president had established this Commission on 9 January 2018. Ms Thuli Madonsela, the former Public Protector, is reported as having stated, in public, that this Commission of Inquiry would have to authenticate these emails and would have to go to the original systems to check the veracity or authenticity of the emails. Fortunately we have the original system, the original hard drive under our control as a Commission. That article is attached marked TN2 and as the former Public Protector has identified in this article it is important that the Commission's investigators be given an opportunity to work on the forensic images themselves to use their expertise, to
20 analyse and synthesise the data and as I will deal with in the next section under reliability, Chair, once the data on the forensic images is available to investigators there are various means that can be adopted through analysis and investigation to secure the authenticity of the emails in a manner that we submit would satisfy both criminal and civil jurisdictions – let alone the lower test which you may seek to apply, but Ms

Hofmeyr will deal with the tests in more details in due course. That is as far as relevance is concerned. Chair there can be no doubt that the information is relevant. The second issue dealt with on page 17, of the paginated papers, is dealt with in paragraphs 59 and following. In relation to reliability I have already addressed you relation to the technical reliability of the data as being a true copy, true forensic image of the original. That those allegations are made Mr Nombembe in paragraph 59 to 61 on pages 17 and 18 of the papers and Mr Nombembe is instructed as he foreshadows in the introductory part of his affidavit by experts in amongst his investigators that they appear to be of the view that the data is authentic. In other words that that data is what
10 it appears to be on the face of it, created by actual persons whose names or identities appear on the emails, in real time rather than being manufactured later as fakes by someone wishing to make those emails look genuine when in fact they were not and were fake and Mr Nombembe importantly makes the allegation that he has personal knowledge of the work that the Commission's investigators have done, not in relation to the data sought to be admitted but matters in the public domain already, because as you know Chair, the data is already in the public domain having taken another route through media. That route will be described in detail by Mr Currin in his evidence. For present purposes I have a – we are dealing in this application with the original, the forensic image made in Europe and two copies and of course what is note worthy,
20 Chair is the reference to the data in paragraph 62 as being data in the public domain is some of the data – a far greater percentage of data in the Gupta emails is now in possession of the Commission. It is significantly broader in its ambit than what was available to the media through the other route which Mr Currin will describe. Then what are the indicators of authenticity that maybe used by the investigators to show that these emails, in particular, and this data in general is not fake or could not

reasonably be faked. Now here Chair, from paragraph 63 and following are terms that are entirely technical and quite frankly until I read this and interrogates or asked for explanations, from the experts who contributed to the formulation of this affidavit through Mr Nombembe. I did not understand them. I attempted to make notes. I discarded those notes and I will give you my best application of this which I hope you will understand.

Chair the first point to be made is that the number of email communications and other information comprise of transactions in the numbers of the hundreds of a hundreds of thousands that on its own is an indication that the probability of someone faking the
10 totality is extremely low. It does not mean to say that individual emails may not have been sneaked into the overall data set and have been tampered with, but generally one can accept that it is highly improbable that someone would sit down and fake hundreds of thousands of emails. But there are other more secure indicators of authenticity.. Emails do not exist in a vacuum. They – it is not as if it is equivalent to writing on a piece of paper. On a computer when an email is sent or received data is recorded on the email in relation to what happened to that email, but it is also recorded in the background of the computer and there are technical terms for that but I am not going to use those technical terms.

That background information which would exist on the original hard drive and exist on
20 the forensic images – that data is not visible to the ordinary user it is accessible to persons other than a lay user like myself – it is there but it is not ordinarily visible. So, when someone seeks to fake an email they also have to create all that other hidden data or relatively hidden data which would exist on the hard drive. Now that data exist on the hard drive; So someone has to come and say these are fake. They would have to explain that hidden data on the computer and that, If I may for want of a better word

and I am sure I will be scolded in due course by the experts, that hidden data on the hard drive can be analysed and our submission is that it is entirely improbable that a fake set of data of that nature would go undetected.

Then the third point is that email communications live in a dynamic data environment – they do not – it does not exist only as an email or only in the environment of the particular hard drive with its hidden and visible data. That data may be kept on company servers. There are backup or storage devices which may exist outside of the particular hard drive where the authenticity can be verified or checked. There are service providers, emails are made operable through the services of particular service providers who keep their records which is another source of authentication and verification. Now here especially Chair, if the point was not already obvious it would be impossible for someone seeking to manipulate or create fake emails in this data set to reach out to all the other devices, electronic devices in the environment wherever these my exist and there manipulate too. In addition emails on a device do not exist only as emails they exist within a proprietary platform such a Microsoft Outlook and that email is then linked to other information on that proprietary platform, such as contacts, addresses, messages, calendar and other items, anyone seeking to fake would have to ensure that any fake email was as consistent with all that other information in that software program as the other emails purport to be and that data too resides on the hard drive and can be examined and investigated and once again it is extremely improbable that all that data could be consistently and thoroughly faked to the extent required to avoid detection.

If one goes to paragraph 63.6.4, Chair and that is on page 21. There are circumstantial pieces of evidence which may also contribute to the authenticity of emails, through investigation and through analysis. The author's known email address, electronic

signatures names nicknames maybe apparent. There may be a writing style similar that experts may be able to investigate. There may be reference to facts that can be verified through objective evidence, meetings for example, or other events related to the content of the email. The obvious one is where an email is received and admitted to have been received and that evidence is already to some extent in the public domain where a person's implicated the emails, have admitted their receipt. Of course third party devices, in other words addresses in relation to emails their devices may be examined to ensure authenticity. The point we make in summary that given all this – given the electronic environment of a particular email or a series of emails or a whole data set as contained in the forensic images. It is well nigh impossible to fake that whole environment, certainly in a manner which would avoid detection through proper investigation and analysis and so in essence what we are asking you to do Chair, is to admit the hard drives initially for that purpose and for presentation of evidence, subject to the further protections that we will deal with as an evidence team in due course. Of course once that investigation and analysis has taken place that may be placed before you.

MALE SPEAKER: What is the time?

ADV PAUL PRETORIUS SC: Okay I am going to move on to another topic. It is one minute away from 11:15 may take the short adjournment?

CHAIRPERSON: We will take the short adjournment until half past eleven.

COURT CLERK: All rise.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes, Mr Pretorius?

ADV PAUL PRETORIUS SC: Thank you Chair. Chair, we have reached page 23 of the paginated papers of the application, paragraph 67. Our submission to you is that ...[intervenes]

CHAIRPERSON: I must just say that my ones are not paginated, but I have been following this simply on the page numbers of the affidavit. If you tell me paragraphs that helps. I am sorry, there are – there is a paginated file, but they were put here – I did not know whether it is just some of the files that are normally put here, and I was
10 looking at the affidavit that was sent this morning with annexures, which is not paginated.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: But I see that there is actually a file here that is paginated, but I did not know that, that is the one.

ADV PAUL PRETORIUS SC: I am sorry, Chair, we will find someone to account for that.

CHAIRPERSON: Yes, thank you. Yes?

ADV PAUL PRETORIUS SC: Chair, if I may then refer to paragraph 67 on page 23, but perhaps we can follow the paragraph numbers. There is obviously and clearly,
20 Chair, another reason which perhaps trumps the reliability and the authenticity points and that is the overwhelming public interest that is involved here, and that is relevant particularly in relation to any potential claim that any party might have in relation to confidentiality.

Chair, this will be dealt with in detail in argument after the evidence of Mr Carin, but for present purposes we highlight in paragraph 68 that any privilege based

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on confidentiality is in principle limited. The first is that the principle of confidentiality only applies to information to the extent that it remains confidential and so once information has entered the public domain, then as a general rule the principle of confidentiality can have no application to it.

Now of course here one must qualify the application of that principle, because the extent to which the commission now has in its possession data that was not previously in the public domain or was not – or has not been in the public domain has not yet been fully established.

10 So there is data which has not yet entered the public domain, but that detail can only be produced on analysis. The second is, as you are aware, no doubt, Chair, the law protects confidence only to the extent that there is no overriding public interest in the publication of the material concerned, and our submission here is that there is an overwhelming public interest concern overriding any competing concern.

You will be referred to authorities in this regard, but I may just refer to just one case referred to in paragraph 69.2 where a file that had actually been stolen from the records of the former Minister of Health Ms Chabalala Msimang was held to be disclosable in the public interest despite the theft of that documentation.

20 There are other cases to which you will be referred in due course. The two other considerations, Chair, the one is the duty that the President in particular, but the country in general has placed upon this commission to investigate matters thoroughly and fully, and in our submission this cannot said to be done without the granting of this application and the work that will follow on it as a matter of consequence.

But we draw your attention to knowledge at present in the public domain and that is the extent of our knowledge as it exists at present of course the position

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may change and further knowledge may come to light, but in paragraph 71 we refer to a statement that purports to have been made by or on behalf of Mr Adwil Gupta where he is reported as having said on 3 August 2017:

"Emails. What emails? Adwil Gupta denies everything, despite how improbable it is that someone could have made up 100 000 emails the richest Gupta brother would like us to believe they are all fake."

That is part of the article and not part of any purported quote. We refer in paragraph 72 to the extent of public – extensive public reporting of the content of the devices. Again that will be dealt with by Ms Hoffmeyer. So we say that any confidentiality claim is firstly limited by what is already in the public domain and secondly limited by competing claim of public interest, which in this particular case we say is overwhelming.

We make the allegation in paragraph 70 that the duty to investigate matters of state capture visited upon this commission corruption and fraud in the public sector, including ...[indistinct] enterprises is integral to the well-being of all South Africans and in particular its poor people.

And our submission to you is, Chair, that the privacy concerns, such as they may be, of Sahara Computers cannot be allowed to outweigh the consideration of these factors. Perhaps that is to state the obvious, but it needs to be stated, nevertheless, Chair.

Then finally we deal in paragraph 79 with the position of Sahara Computers. In our submission, Chair, the order should be granted now and not at some later stage. In order for the necessary work to be undertaken, in order to

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obviate any risk that may attach to either persons or property, the devices concerned in the interim.

There are a number of reasons set out in paragraph 73 to 76 of the affidavit of Mr Nombembe, which contains submissions as to why it is necessary, Chair, for this order to be made now. Firstly to protect persons, secondly to protect the property involved, the devices involved and thirdly to allow the commission in particular its investigation and legal teams to begin the vast amount of work that requires to be done.

10 In relation to the position of Sahara Computers, Chair, any interests that they might have or they might seek to vindicate before you can be done in due course. Provision is made for that in the notice of motion and once this application is concluded and to the extent necessary and permissible and appropriate and in terms of any order that you might make, notice will be served on them.

20 There is one more matter to deal with as far as the application is concerned. We have in our possession a declaration under oath attested to. I am informed that the technical word is apostilised by the international expert. It does reveal information that for reasons for personal security and reasons that will be explained to Chair *in camera*, if you allow us to do so, require it to be kept confidential and we would ask leave during the long adjournment to hand it to you *in camera*, together with an explanation as to why it is necessary to do so, but that is the evidence of the international expert which records the process that took place in creating the first forensic image referred to in the notice of motion.

CHAIRPERSON: That is in order. I know that I am still going to hear the evidence of Mr Brian Carin.

ADV PAUL PRETORIUS SC: Yes.

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CHAIRPERSON: And legal argument I think from Ms Hoffmeyer, but already I want to find out from you and you can tell me if it is Ms Hoffmeyer who will deal with this, whether making the order that you have asked for as it stands, would not have the implication that all of that becomes public, whether they should not – whether the public access to this information would not follow, unless there is an order restricting access to it?

ADV PAUL PRETORIUS SC: I understand that point, because ...[intervenes]

CHAIRPERSON: In other words should there not be another order that will ensure that nobody thinks they have access, a right of access, because it was admitted in
10 this hearing?

ADV PAUL PRETORIUS SC: Yes, they would have to deal with that concern, Chair. There will have to be a further order qualifying the previous order stating that the data will only be accessible to public as and when evidence is presented in open sittings of the commission.

CHAIRPERSON: Yes, no, that is alright.

ADV PAUL PRETORIUS SC: By your leave we can add that to it, because, Chair, the point you make is with respect a good one, because the order does talk about evidence before the commission.

CHAIRPERSON: Yes.

20 **ADV PAUL PRETORIUS SC**: And it might be interpreted to have that consequence.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And so we will add a rider to the notice of motion to deal with that issue.

CHAIRPERSON: Okay, no, that is fine.

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ADV PAUL PRETORIUS SC: Thank you for that, Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Chair, then if it is appropriate may we call Mr Brian Carin.

CHAIRPERSON: Thank you. Registrar you can administer the oath or affirmation as the case may be.

BRIAN CURRIN (duly sworn, states)

CHAIRPERSON: Thank you very much.

EXAMINATION BY ADV PAUL PRETORIUS SC: Thank you, Chair. Mr Carin you
10 are a lawyer by profession? --- That is correct.

For how long have you worked in that profession? --- 15 years
...[intervenes]

CHAIRPERSON: I am sorry, press the microphone there, yes, thank
you. --- ...definition of you are a lawyer or when you are not, but I spent the first 18
years of my professional career working as a Human Rights Lawyer, Human Rights
Activist and that was until 1995.

ADV PAUL PRETORIUS SC: Since 1995? --- Well since 1995 I have been
involved in International Peace Processes, the conflict resolution in many parts of
the world which really emanated from the work that I did here in South Africa. I have
20 worked in numerous African countries. I spent five years working in Madagascar and
then many years in Northern Island and the Basque Country and I have worked in
the Middle East and most recently I worked in Columbia whilst the Farque was in
negotiations in Havanna Cuba.

And in particular over the last five years how have you occupied
yourself? --- Well in the last five years my focus has been still in conflict resolution,

but adding to that trust building between the private sector and the public sector, civil society and communities, predominantly in the South African Region.

Where are you based currently Mr Carin? --- At the moment, at the moment I am in Berlin Germany. I am there, I am ...[indistinct] fellow and the Robert Bosch Academy and that is a nine month presence and I am researching the international trends in private sector, public sector relationships, and how the quality of those relationships often reflect either political order or political decay, and if political decay what remedies may be used to reverse that trend to build trust and mutually beneficial relationships between public sector and private sector.

10 You have been present during the address in relation to the application today, Mr Carin, and you no doubt heard of the two whistleblowers mentioned. Do you know those persons? --- I do. I have engaged with them for many months.

Do you know how in their capacity as whistleblowers from your interactions with them, how they feel about their personal protection and integrity? --- Yes, before I answer that question, I would just like to say that I mean these two people, I believe the country owes a huge debt to the state and the nation, because frankly I think if it had not been for them I wonder whether this commission would be sitting today, so I just want to put that on record. In terms of their own fears, certainly right from the outset when I first began to engage with them they
20 were very fearful. I understood that completely. There was a particular dynamic in the country, which I think we all are fully aware of and that is really during the course of most of last year, and that fear which they have continues to exist.

Right. Do you know from your own knowledge whether that position might change in the future? --- My knowledge is that it will change, it should change and I think it will change from discussions that I have had, but that will really only be

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during the course of next year, towards the middle of the year, and as you indicated in your address there are reasons for that which maybe one would not want to go into, but certainly I think it is a question of certain existing circumstances changing.

Let us then move, Mr Carin then – or let us just summarise first your evidence in this regard, if we may, do you know how through interactions with the two whistleblowers they regard their personal integrity and personal safety? --- Just repeat that?

Are they – what do they think in relation to their own personal integrity and personal safety at this time? --- Well they are fearful of their personal safety and
10 that is really the reason as I have indicated why they are not willing to testify at this stage.

Okay, let us then move onto the narrative. It begins as I understand it early in 2017, February 2017 to be precise, what happened then? --- Well as you indicated in your address to the Chair, I was approached by a friend, long standing friend and colleague that I have known for many years, and he mentioned to me that someone with whom he had been acquainted for a relatively short period of time had spoken to him very confidentially about a hard drive in his possession. I cannot recall precisely what his description was, but I was certainly left with the impression that the content of the hard drive dealt with the affairs of the Gupta family and their
20 corrupt relationship with senior politicians and state owned enterprises.

Thank you, Mr Carin – Mr Chair if I may just interject at this stage, Mr Carin will clearly as he has done repeat some of the evidence contained in the affidavit of Mr Nombembe.

CHAIRPERSON: Yes.

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ADV PAUL PRETORIUS SC: What is important about this evidence coming from the mouth of Mr Carin is that it is direct and personal evidence.

CHAIRPERSON: Yes, that is right.

ADV PAUL PRETORIUS SC: If you would bear with us in that regard.

CHAIRPERSON: Yes, no, thank you.

ADV PAUL PRETORIUS SC: So do you know then the name that we have attached or that has been attached to this person that approached your friend? --- Yes, it is Stan.

10 And your friend? --- I referred to him in my statement as my friend, because he too, does not wish to be identified.

 Do you know why your friend then approached you? --- Well, my friend was approached, because from what I gather the Stan, my friend was the only person that Stan knew that worked in the sort of socio political space and he felt that maybe this person might be able to advise him on what he should do with this information that he had. My friend then, who has known me for many years, felt that he was not capable, that he did not have necessarily the expertise, the experience, the networks, the know how, how to deal with this type of situation and he felt somehow that maybe I would be better qualified to provide advise and assistance to Stan.

20 Do you have any experience, direct experience in dealing with a situation in which whistleblowers required to reveal information and secure safety? --- Certainly, you know just in broad terms when I was Head of Lawyer Human Rights we actually even ran a witness protection program which I do not mention in my written statement, but that is something that I subsequently recall, but besides that you mentioned Captain Dirk Coetzee who we know blew the whistle on

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Vlak Plaas, their activities during the 1980's under the command of Colonel Eugene de Kock who was then head of that secret task force C2, known as C10, also referred to as Third Force and Death Squads and just to mention that Captain Dirk Coetzee approached me as early as 1985, well before he came to the public knowledge when he came out with information which he required to be kept confidential for the first number of years.

Did you then come to meet with Stan and your friend? --- My friend and I met with him a few days after I had been approached by my friend. It was certainly during the course of February.

10 Very briefly would you relate to the Chair what happened at that meeting? --- Yes, I was introduced by my friend who was there as someone who could be able to advise and assist him. It was clear that Stan had a need to offload, which was not surprising since he has been in possession of the hard drive, which he was referring to, for many, many months, undecided as to what to do with it, and at last he had this opportunity I think to speak to somebody that might be able to assist. And should I go on?

Yes please? --- Although Stan could not read all 300 000 emails which he indicated there seemed to be, he had read enough of them to be well informed about what appeared to him to be a corrupt relationship involving the Gupta
20 brothers, Duduzani Zuma he mentioned by name, certain cabinet ministers that he also mentioned by name and some of the CEO's of mayor state owned enterprises. He also indicated that the information on the hard drive appeared to comprise emails from one Mr Ashew Chaula who was, he understood then to be the CEO of Sahara Computers.

From your own observation what was Stan's condition? --- Well at that stage he was visibly nervous. He was in a state of shock, one could just see that the man was feeling uncomfortable, he was feeling uncomfortable talking to me, he never met me before and it was a difficult meeting, but I think he got some level of reassurance from that meeting, because then I continued. He continued to be willing to meet with me.

CHAIRPERSON: And that was February 2017? --- That was in February 2017, Chair.

ADV PAUL PRETORIUS SC: Did you learn how Stan came or had come into
10 possession of the original hard drive? --- Yes.

At that meeting? --- I did. He explained in detail how he came into possession and you know at this stage I cannot reveal that, because if I were to do so it would be possible, it would certainly facilitate or enable identification.

Yes, I think we have accepted that it is necessary at this stage to protect the identity of Stan. The point, however, is that, that information and evidence is available and may be placed before the commission in due course. Hopefully sooner rather than later? --- Yes, yes.

Did you inquire where the original hard drive was at that stage? --- I certainly did, because obviously that was the key piece of evidence and I was told
20 that it was in safekeeping with a trusted friend of his together with its clone. So he gave me that information.

Alright. --- He did inform me, I should add, that in due course if all went according to plan he would share with me the detail of the safekeeping of the original hard drive and its clone as well as share with me the passwords and codes which will allow access to the content, that is to the content of the original hard drive and

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its clone. And maybe I should just refer briefly to the plan. At that stage also clearly he on the one hand he is providing this evidence, Chair, but on the other hand as I have indicated he is afraid and justifiably so, and I say one must reflect back to the political environment at that stage. The part of the plan was he was saying to me, can you help me to get out of the country with my family? I need protection. And all of that was certainly part of the plan, and I could understand that he would not be willing to share the information about the hard drive so one could get access, which could then be linked to the media and him sitting in South Africa exposed and in great danger.

10 Alright, if I may just take you back a step, one does not want to get to technical at this stage, but when you refer to a clone. --- Yes.

 Are you referring to it as we have referred to it already, in other words something just one grade less than a forensic data image? --- I am, but I will be honest with you, I – hopefully I am always being honest when I am sitting here, Chair, but I will be honest with you that I did not know the difference until very recently between a clone and the imaging.

 We will certainly share that Mr Carin. --- Thank you.

 So what would be necessary then for you to be able to work together with Stan to further the appropriate handling of this data, its release and the provision of
20 safety and security for the whistleblowers? --- Well the one hand there was the plan which needed to raise funds to enable him and I learned subsequently a second whistleblower to leave the country, but another aspect, which certainly I understood and it was implicit in the way in which we engaged is that we would need to build mutual trust. I clearly needed to trust him. I needed to believe in him and I needed to believe in the authenticity in what he was telling me, but he also needed to trust

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me that I would do the right thing. So that was certainly a critical aspect of what needed to be done.

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Did Stan reveal to you any further information at that meeting? --- Yes, he did.

What was it? --- He revealed to me that besides having placed the original and a clone with his close friend, he kept in his possession two data hard drive devices or HD's with content identical to the clone of the original hard drive. So he still had those in his possession, which was obviously important information for
10 me, because somehow I needed to be able to get access to the content. He also made available, which was at a subsequent meeting two CD's which contained a few hundred emails, no, sorry, I just want to check on this, if my memory, can I just refer to my written statement here, because some of these things are important ...[intervenues]

CHAIRPERSON: Yes, you may. --- That the sequence is correct.

Yes. --- At that meeting he did not share the CD's with me, but he indicated that he had indeed downloaded some of the information onto two CD's which he would share with me at a later stage.

ADV PAUL PRETORIUS SC: Yes, and our expert tell us and I am sure they have
20 told you too that in relation to the copying of files onto CD, we may use the word copy without offending him. --- Yes, absolutely yes.

And in relation to the data that he did have in his possession and in whatever form, did he say how he considered it appropriate to make public? --- Yes.

That information? --- Having had this information in his head for a long time, for many months and bearing in mind he is not a political person, and not

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knowing what to do with it and feeling in his own mind very insecure about sharing it with security or law enforcement agencies in the country, what he had in mind was that it would be necessary to get the information into the public domain in order to enable or to grow a public swell of a pressure from civil society so that a structure which obviously at that stage we could not really think about, would be established, so that those politicians and others who seemed from what he had read were corrupt, could be held accountable by other politicians in the country who indeed were people of integrity.

That was his frame of mind? --- That was his frame of mind.

10 Mr Carin you have mentioned his name, but at that meeting you said that Stan informed you that there was a second person whom he knew, referred to as John? --- That is correct.

Is he the second whistleblower you were referring to? --- He was the second whistleblower and who played a very, very significant role also.

Alright, you have heard or you have told the Chair what you had heard from Stan. What was your state of mind or view at that stage? --- Well we had heard the story and my friend and I came back from it and I can remember sitting in his office and both of us felt well how can this be true? Of course neither of us knew, I did not know Stan at all and my friend had only known him for a relatively short
20 period, but certainly we wanted to peruse these CD's to at least get some sense of what might be on them, and for that reason we asked Stan if he would make the CD's available to us, which he did. He presented them within a – I think if I remember correctly the very next day.

Did you take the opportunity to study the information on these CD's? --- Yes, at this stage my friend was still involved, because he was in a way

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the access to Stan and it was not time for him to withdraw, so he perused them first, because I was not available. I had a day job at the time, which I still got. He perused them and then he gave them to me and I looked at them over the weekend and we met on the Monday and we certainly agreed, Chair, that the emails that we read certainly provided good reason for further investigation into the authenticity of the emails.

Did you meet again with Stan? --- We met with him again, sometime later.

What happened at that meeting? --- Well we shared with him our
10 conclusion, that to us, as laypersons, the emails appeared to be general, and I
emphasise as laypersons, because how does one do that, unless you have that sort
of expertise, which I think you have been referring to, but certainly we felt that we
were willing to and I was willing to take this and see how one could take it further.
We discussed the feasibility of surrendering the evidence to the country's law
enforcement agencies and political leadership in government. That was the very first
thing we did. I mean here we are sitting with what appears to be evidence of serious
corruption. So we discussed that, but given the situation in the country at the time
we decided that, that was not a route that we would follow. We agreed that we could
not trust either the law enforcement agencies or the political leadership. But in
20 saying that, Chair, I do want to emphasise that I know well, and I think we all know
that even at that time, in those agencies and within government there were and still
are and maybe more so today, but certainly even then there were very credible
people, people that I could trust. But overall we just, I could not place my trust in
those institutions.

Was any decision made about releasing the information to the public, in principle at least? --- In principle we agreed that Stan's suggestion of getting public support which would require publication was a strategy that needed to be followed, because one needed to put pressure on sort of high political places for these things to be done, and I mean one also could foresee that it could create some sort of divisions between people who would either want to – or would not want to go or move forward in creating structures that would hold accountable those who may be involved in corruption.

10 Yes, these decisions and their motivation was based on your personal opinion at the time. --- Yes.

Largely inference. --- Yes, and no. I think, I think, well I do not only think, I would say that I had more faith in certain individuals in those structures. Some within the political sector and within law enforcement agencies, that I personally know, that I trust. But, you know overall not. But from Stan's perspective he just felt that he could not trust anybody, which I think probably many people in civil society who are not engaged in that sort of political space would take – would have taken that opinion.

20 Okay. Did Stan say anything at that meeting about his attitude and the attitude of John to their personal safety? --- Absolutely. Again it was emphasised, it was something, it was always emphasised and maybe I should mention that, I mean these meetings that we had were always arranged in sort of absolute secrecy. We never ever had cell phones which were on or could be listened to or actually were near us. So it was all sort of cloak and dagger stuff, meeting discretely and obviously for the reason that they had great fear for their safety. And certainly to take that point further Stan stressed that both whistleblowers and their wives would

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want to leave the country before any publication of information concerning the emails were to be published. They would want to get out of the country before that would happen.

And did he say what they would need in order to achieve that aim? --- Well what they would need would be funds, which would enable both of them to live in exile if we can use that term, but also since, certainly in both of their minds there was a good chance that they would never return to South Africa, because I should mention also that in both of their minds they were not confident necessarily that the outcome would be the political change that would establish a
10 commission of this nature. So certainly in their minds they envisaged that they may never return to South Africa, and what they both needed was sufficient enablement, funds which would, so that they could begin to build new careers outside of South Africa and build new lives for themselves outside of South Africa.

Was there any understanding reached between yourself and Stan and John at that meeting in regard to the detail of any financial support to enable them to live outside the country? --- The understanding was that we agreed that a period of two years would give them an opportunity to re-establish themselves, but also we felt that a period of two years would be sufficient to see which way the wind blows in South Africa, and whether that which appeared to be happening and I think was
20 happening, and we know was happening could be reversed and we could achieve a different political context and environment in South Africa within that two year period. And that agreement was something which really was from the date that they left, the time that they left South Africa.

Do you know when they left South Africa? --- It was June/July last year.

So when would that period of two years expire? --- June/July next year.

June/July 2019? --- 2019.

Did you make any undertaking at the conclusion of the meeting or during the meeting in regard to funding? --- I did. I understood their situation completely and I said that I would speak to people that I know, contacts that I have to try and find South Africans with whom one would have to explain what this was all about to get donations. So that one could in fact, indeed enable them to leave for two years.

What else was discussed then at that meeting? --- What was also discussed at that stage, in our own minds we were not sure how – what would be the best strategy and the best approach in building this public pressure to which would then enable civil society to speak out and to demand that there be public
10 accountability. And there were various options that were discussed and we literally considered everything. Should one take it overseas and get pressure, international pressure. Should it be done within the country? Should one give it to all the media overnight? Should one rather embark on a process which is the one that we eventually decided upon to, you know to get experts to study and to prepare well thought through articles which in turn would be published and slowly build this sort of pressure. And this would require very, very responsible journalism.

Were you concerned about the safety of the devices concerned? The original hard drive and the clone that you learned about? --- Absolutely. We
20 obviously were concerned that either Stan or whoever is in possession of these hard drives may well be identified and that they could be confiscated, so that was a deep concern.

Did you meet with Stan again on 1 March 2017? --- I did, yes.

What happened at that meeting? --- Let me just get to that meeting. Thank you. There were so many meetings. Well one has to just go back a step and

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that is to say that clearly I knew that I would need more than CD's and that I would in fact need something more, hard drives with more information on them. So on that meeting on 1 March, having made the request earlier on I was handed two hard drives.

Just to clarify, because it can become confusing and will become a little more complex as we go through your evidence. The CD's had copies of some of the files on the original data set? --- That is correct.

On the hard drives? --- Yes.

The hard drives themselves, however, which you talk about now were
10 more comprehensive in their content? --- Yes. They had copies of the recovered files on the original hard drive that was being held in safekeeping.

Alright. --- So they had much more information on them. I should mention also that both of those were password protected and I was at that stage not given the password.

Right. Now these two hard drives that you are referring to, was it agreed
between you and Stan how they would be dealt with? --- Yes. So now we are
meeting on a regular basis and as I said taking all sorts of safety precautions, but
have no idea whether we are being observed or listened to and what we agreed was
that neither he nor I should have possession of either of those which contained
20 evidence which clearly was very relevant to the emails. Very relevant to the
allegations of state capture. So what we agreed was that I would take one abroad,
at least get something out of South Africa's jurisdiction, so that if indeed there was a
swoop and they were seized, extensively for justifiable reasons by authorities who
had another agenda, at least there would be one copy abroad and the second copy I
did not want to retain possession of, and that copy I gave to a friend who I have also

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known for many years, Mark Haywood, as we now well known social activist and I arranged to meet him very discreetly and handed over the second hard drive.

Did you make any request to Mr Haywood? --- Yes, we all associate Mark Haywood also with the safe South Africa campaign, I assumed through that he would have access to potential funders. I was still looking for the money that was required and I asked him if he would speak to his contacts to see whether he could help also with fundraising.

In regard to the probable or possible authenticity of the emails or otherwise, did you consider that position, and if so take any steps? --- Yes, at this stage all we have really got is what I have seen content of the CD's. Obviously what we needed, Chair, was for people with expertise, particularly, and we are talking about expertise in Gupta affairs to view a much more sort of, many, many more emails and for them to assess as far as they could the authenticity of the emails. And at that stage I did not know that both Daley Maverick and Amobongani were leaders in investigative journalism and I also knew that Stefans Brummer was probably the expert in Gupta affairs. He had been writing about the Gupta's for about three or four or maybe five years at that stage. So I also needed access to them and I asked Mark Haywood if he knew either or both of them and he was able to very quickly – enable me to make contact or through him to make contact with Bronco Brkic who was the editor in chief of Daily Maverick.

Brkic is spelt Brkic[spelt]? --- That is correct.

Did you meet with Mr Brkic? --- I certainly did very soon after I met with – well not very, but certainly some time after I met with Haywood and we maybe, before I talk about that meeting I wanted to inform Brkic about the hard drive and also discuss with him their ability to analyse the emails and to give a *prima facie*

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view. But I need to go back a step. At that stage we were still not looking at making available the actual hard drives. We were still only going to be making available the CD's, because the availability of hard drives would come at a later stage.

Okay. You say you did meet with Mr Brkic? --- Yes. I met with him on two occasions. It was quickly after one another. The first one was really to be introduced to him and for me to tell him what we believed we had and to ask whether he felt that they would be able to do an analysis and at that stage it was to be of the CD's. Understandably at that first meeting he wanted, he asked if he could see the CD's which I did not take with me, and we met again shortly thereafter and at that
10 second meeting I handed him the CD.

Do you know what he did with that CD? --- He shared the content of that CD with Brummer who is the cofounder of Amobongani, Amobongani investigative journalism, so they then perused those two CD's and within a few days, Chair, they averted to me advising that the emails fitted very well with the Gupta investigations and articles that they had been written over a number of years, where for example they have written articles and certain stuff was not there and they speculated, and now suddenly they would read an email which will fill in a gap, in respect of which they just did not possess previously.

Alright, did they or was an opinion about the authenticity of the emails
20 expressed to you, and before you answer that question, we do not necessarily ask you to rely on that opinion, so it might be given as part of the evidential narrative.

CHAIRPERSON: Yes. --- In their view the authenticity of the emails was highly probable. That was their *prima facie* view, just purely on looking at the CD's.

ADV PAUL PRETORIUS SC: And at that meeting did anything occur in relation to the well being of the whistleblowers? --- Yes, and here we are talking about the

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second meeting with Brkic. I raised with Brkic the question of the need for funds and he certainly understood, motivated why and he understood clearly and he too said that he would speak to some of his contacts.

Did meetings take place between yourself and Stan during the course of March 2017? --- At that stage we were meeting fairly regularly or regularly. Essentially, because partly we were building this mutually trustful relationship, but also he knew that some information was out there, taken off the CD's. He was also feeling insecure, because he at that stage did not have security funding and also we met regularly to talk about what we were doing, what I was doing, people that I had
10 approached to request for funds.

And were those efforts successful or relatively successful? --- The fundraising efforts?

Yes? --- In time they were. Certainly in time for the whistleblowers to leave the country. There were ups and downs. There were promises that did not materialise, but there were others that certainly did and I need to emphasise obviously that until such time that there was security in that sense, Stan had made it quite clear that he would not provide me with the password in relation to those two hard drives, which I had been handed, one of which was overseas and one of which was being held by Mark Haywood.

20 During or around March 2017 did Stan and you agree what interaction there should be with the investigative journalist that you have mentioned? --- We did. The investigative journalists, for two reasons, one they were wanting to see much more, but secondly Bronco Brkic who was attempting to raise funds and obviously those who he was speaking to needed to hear from him more about the

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authenticity of these emails, were putting pressure on me to get access to the password code of those hard drives, or the hard drive that was in the country.

At this stage the communications with the investigative journalists were they aimed at immediate publication or were they aimed at further investigation? --- Yes, they were not aimed at publication. For two reasons, they understood fully that there was no way that anything could be published until the whistleblowers were out of the country and secondly being investigative journalists they both wanted to become as oevey as possible with the content of if possible the entire 300 000 emails, which probably is an impossible task, but certainly with as
10 many as possible that related to the stories that they felt would be hugely hopeful in taking the whole process forward. So the plan then was that if they got the email, the password and code that would purely be for the purposes of further investigations, but not of publication.

Did you attempt to pursued Stan then to reveal the password and code? --- I did, and some success at that stage was achieved in raising some funds. So funds began to come in and he then also understood that in order for those who had been approached to raise the bulk of the funds they would need to be convinced that these emails are not just copies on CD's, but much more, were indeed authentic and for that reason he agreed. For those reasons he agreed to
20 provide the password in order for Brkic to gain access and Amobongani to gain access to the hard drive.

Right, and did that happen? --- Yes.

Was access granted to Mr Brkic? --- That indeed happened and I retrieved the hard drive in South Africa from Mark Haywood and subsequently I made the content of that hard drive available to Brkic and shortly thereafter

I provided them with password and code so that they could then access the content.

Did they revert to you? --- They certainly did within a few days I received a very positive response, Chair, from both, Brkic and Brummer in regard to the content of the hard drive that remained in South Africa.

Did they tell you what they intended to do?--- Ja at that stage, in accordance with our thinking and their own thinking, the plan was to put together a significant team of the most experienced investigative journalists in South Africa and for them all to sit day and night, going through this ([1:06] *indistinct*) mails and to put an entire story together to identify certain themes, certain, particular events and in fact
10 to locate themselves outside of South Africa. Because they too work on sand that if they were sitting with this hard drive that had at that stage been opened and they were doing this work and tomorrow they started publishing one article, that there was a possibility either the law enforcement agencies, or the Hawks, or whosoever, might come in and confiscate. So their plan was to actually take all of this and do the exercise abroad and then start incrementally publishing from abroad.

Do you know what their anticipation was in regard to the date from which publication would start? --- They were looking at beginning publications roundabout September.

2017? --- 2017, Which was sort of three, four months after they were given
20 access.

Was there another advantage and delay in publication..(intervenes) --- Well the other advantage ...

...(indistinct) in relation to stand ([02:34] *indistinct*) --- Absolutely ja. The other advantage was that for both Stan and John, it was easier said than done. Leave South Africa tomorrow. They had lives that they needed to sort of close off

here, there was much that had to be done, there were wives that, that had lives that also needed to be wind up and bearing in mind that there was a prospect that at that stage they would leave South Africa permanently and you know as much I was put in pressure, you need to leave sooner rather than later, as were all of us I think, certainly, I know the journalists too that we were working with, we just were struggling to get to that point. So it just gave them more time to close off their lives and kept put everything together in order to leave South Africa. So that delay really actually helped the, that particular exercise.

At this stage, mid 2017, can you give the Chair at least your impression of
10 how many people would have known about what we have referred to as the 'Gupta emails'. --- Well there were really very few, there were people that I have told as I have already indicated, certain members of my family knew, because I felt that I needed to share that with them. There were people that were being approached for funding and they knew and of course the Amobongani, Dally Marverick, a number of people within those confines knew. Very, I would say confines smallish circle, but enough to enable the work to be done and may I just add to that point, the fact that, that much of this has been heard for the first time today, would indicate that, that those who knew, certainly those who knew about my identity, never spoke about it.

You have told Mr Chair that publication would commence around September
20 2017, after a thorough investigative process have been taken, or had taken place at the hands of investigative journalists. You have also told the Chair that there was some urgency in relation to Stan and John and their families leaving South Africa for safe residence abroad, what happened during this period in relation to your knowledge of the legality of Stan's possession of the original hard drive and potential challenges to his possession. Again Mr Chair if I may interject, the witness will tell

us certain opinions received, but we will only ask you to rely on legal submissions made by us.

CHAIRPERSON: Thank you. --- I have been adlibbing a lot of this evidence, which paragraph are we on, I just want to make sure that I'm, where I should be.

ADV PAUL PRETORIUS SC: 47. --- 47 Thank you.

If you are satisfied that we've dealt with the material before that, we can go on, if you're not please ... --- Ja, no I think I'm happy with that we I believe ... (intervenes)

Please tell me. --- ...that we have ja. So this is now April and things are
10 moving along and we soon can we have access to the content of this hard drive, more than just the CD's. I needed to take legal advice on the legality of Stan's possession, which would also have a bearing on my possession and anybody else's possession, which I did, I took legal advice during the course of April and the advice I got was by the nature of the facts, which I ([07:08] *indistinct*) but which were presented to senior council, that the Stan's possession of the hard drive was indeed legal, lawful and in relation to the content of the, of the hard drive, which is a different issue in law as we know, that the publication of the content would be in the public interest, assuming that the content was indeed what it purported to be.

We mainly to clarify because the detail may become a matter of controversy
20 in due course. At this stage towards the middle of 2017, when you say you had access, or didn't have access, what was the position with your access to, or possession of firstly the devices, such as hard drives or CD's and secondly the content of those hard drives and CD's? --- The original hard drive and, and the clone were still in, were not yet in my possession, they were still in the possession of the person to whom Stan had given them.

And we not really the identity of that person ...(intervenes). --- No, no.

I understand in order to protect his safety and Stan and John's safety. --- Absolutely ja. The two hard drives that I had been given, I taken one overseas and I've taken another to Mark Hayward. None of us had access to the content of any of those hard drives, this stage we only had seen the content of the CD's.

On 20 April 2017, did Stan give you information in regard to John? --- Yes now I had known about John for some time but John was not willing to meet with me for some time, but I was advised then on the 20th April that indeed John was now willing to meet with me and we met some time after that.

10 What happened on the 28th May 2017? --- Well at this stage things are sort of going along according to plan pretty much, work was been done by Kumbugani and we were doing what was necessary to secure the witnesses and on the 28th April the Sunday Times broke ...(intervenes)

28th May. --- Ag sorry, the 28th May 2017, the Sunday Times broke the Gupta Legs story. I got a call roundabout midnight on the 27th May, from Brkic who asked if I had any idea where the Sunday Times had got the story, how they got it and whether maybe I or anyone else for that matter, Stan possibly had been working with the Sunday Times and then given them the information.

20 Had you and Stan been working with the Sunday Times? --- Absolutely, I was totally shocked and deeply concerned as both Stan and John were still in South Africa when that happened.

CHAIRPERSON: I see that you, you have the two incidents not in the order, natural order in which they happened, the publication and they called you from Bronco. The call came first before the publication, is it? --- Ja the, well, what happened was there was publication on the, on the social media, internet, so roundabout eleven

o'clock that night, there was an indication of the story.

Oh okay so on the 27th in the night there was an indication ... --- Actually on the, strictly speaking on the night of the 26th, before, just before midnight, there was something on the internet, which indicated the story and then the Sunday Times broke it. But there was a connection, I, I mean I've looked and there seem to be a connection between the breaking of the story and the Sunday Times.

ADV PAUL PRETORIUS SC: Perhaps we should let the Chair finish his question. ---
Sorry my apologies.

CHAIRPERSON: Yes, ja no I was just interested in the sequence because in terms
10 of your statement ... --- Ja.

...the publication by the Sunday Times happened on the 28th May, but the call to you from Bronco, was on the 27th ... --- Ja.

...before midnight. --- Yes, yes.

So I was just saying that in terms of sequence, the call would have come first and then the publication. --- Ja he think ja ...(intervenes)

What you have said is before midnight there was something the social media which may have ... --- Exactly.

...given Bronco the idea. --- Exactly.

Okay alright. Thank you. --- That is correct.

20 **ADV PAUL PRETORIUS SC**: I asked you the question Mr Currin, in regard to whether you had been working with Stan in co-operation or collusion with the Sunday Times and you answered 'absolutely', is that what you intended to contain?
--- Absolutely not, absolutely not, we had not been working with the Sunday Times and I have no idea, well I don't know let me put it that way as a fact, how the Sunday Times, where the Sunday Times accessed the information upon which they then

subsequently wrote reports.

Perhaps that may be explained in the fullness of time. --- That is correct.

This from your point of view at least, unanticipated breaking of the Gupta emails in the public domain, what effect did it have in relation to Stan, John and their families? --- Well it caused huge anxiety, we, it was just, very, very problematic, it obviously also impacted on their trust in the process that we were following, their trust in what I was doing and was it possible that this had happened since from our perspective this has all been dealt with and managed very tightly by both the Dally Marverick and Amobongani at that stage. So, and of course also they felt extremely
10 vulnerable because they were still in the country.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: What had to be done? --- Well there were two urgent, well first of all they needed to get out of the country sooner rather than later, again which was easier said than done, because by that stage there was plenty that still needed to be done in the country, but there were two outstanding matters, that now needed to be expedited before they left the country.

The first was obviously before they left given the objective of this exercises, project that one may call it that I needed to get the original hard drive at its clone into my possession to be held in safe keeping, in anticipation of hopefully a
20 process which might result in investigations into the emails. So that was the first thing that needed to happen and secondly also I needed to obtain affidavits from both Stan and John and so those are the two things that needed to be done very quickly.

Do you know what the attitude of Stan and John is towards the release of those affidavits to this commission? --- Yes.

In camera or in open session? --- Maybe firstly the understanding that we had about the affidavits, both of them understood fully that in order to enhance the evidential value of the original, but let me say it was ([16:23] *indistinct*) our thinking at that stage it would not be the original because we didn't think that one would ever be able access off the original, but certainly from the clone that the evidential value of those would require supporting affidavits and although they were certainly reluctant initially, both understood that and I motivated it on the basis that if something were to happen to either or both of them, and all if, for example, they were to leave the country forever and for their own reasons, refuse to come back to

10 South Africa to testify, that in that eventuality those and only in eventuality, those affidavits would then be used. But also they both required to have that sort of two year period enable themselves to establish themselves, before any evidence from them be placed before this commission. Once again speaking to their own sense of safety and security.

So we know then that firstly the disclosure of the affidavits at this stage, would reveal their true identity? --- That is correct.

We know too that they do not wish at all costs for this to occur at this stage. It may be appropriate we know thirdly that this be done in the course of time, hopefully sooner rather than later. --- That is correct.

20 Were you told anything then about a second clone of the original hard drive, or of a clone of a clone? I am at paragraph 56. --- Yes, I was later told that a good friend of Stan was in possession of a second clone, which was the clo... ... a clone of the master clone of the clone, which was taken of the original.

Right. --- Which was in our view, was then the best evidence.

So in relation to both these clones, and I hesitate to use the word 'cloned

copies' but in relation to both these clones what was your view, or how were these clones regarded in relation to the existence as best evidence? --- Well the clones at that stage in my view were the best evidence and that was based on the advice, expert advice I was given that the, it was highly unlikely that the original would ever be able to be sufficiently well repaired to be able to actually then once again transfer data from.

What happened on the 29th May 2017? --- On the 29th May, Stan handed over to me the original hard drive and one of the clones. He had collected them the same day from his close friend that he'd given them to and who held them in safe
10 keeping from the pre... when he had handed them over some time, some months earlier.

What did you do, having received the original hard drive and one clone? --- I certainly didn't want to retain possession of them and immediately on the same day, Chair, without them leaving my sight, I took both of those hard drives, the original and the clone, which I received, to the offices of Mr Greg Knot who is a long time friend of mine and who is a partner at Norton Rose Fullbright, for safe keeping in their facility which some of these law firms have and that is where they were taken.

What happened then? --- Well you know I think in terms they were signed
20 for and necessary steps were taken which I think I dealt with in a subsequent affidavit, which I am not going to speak to now.

You say formal steps were taken to record the receive to safe keeping? --- The receive and safe keeping and so on ja, that is correct Chair. Uhhmm
...(intervenes)

Did you ... --- Ja?

I'm sorry I interrupted you. --- No you've, carry on.

Did you then proceed to obtain affidavits from Stan and John? --- I then certainly proceeded to do precisely that and that was done during the course of June Chair.

Are these in safe keeping? --- Those affidavits are in safe keeping and I just mention I actually had took two originals, so there are two originals of each affidavit and they are separate. So I did that in case they were con... they were confiscated then there would be another set somewhere else.

Now obviously in order to respect the integrity of the whistle blows, their
10 wishes and your agreement and understanding with them, we ought not to say anything about the content of those affidavits which might reveal identity. --- Absolutely.

But are you able to say having finalised the affidavits, that the contents are consistent with what you've told the chair today? --- It is actually consistent with what I've told the chair and much more which I have not revealed.

Did anything occur in the country at around the stage that allowed you to reach the conclusion that had might be appropriate to release the hard drive and a clone copy? --- Yes, so when we, when I received the possession and placed them with Norton Rose Fullbright, the political situation in the country was such that I just
20 felt that one would not, could not make their possession to advise anyone of their possession besides the very small group of people that had already knew and as I had indicated Chair, the consensus which we had and the whistle blows and me, was that if we, if there was a situation in the country that would arise that might change that, one could then review the possession and obviously we'd hoped that would indeed happen as a consequence of the publication of the content of the

emails. And as we know during the latter part of 2017, the pressure built because of the publication of the emails and many of the I thought, excellent articles that were written as a consequence of the work been done, the analyses of the content of those emails and then of course the election of President Ramaphosa as president of the African National Congress and the subsequent elevation to the position of president of South Africa and subsequent U Chad Deputy Chief Justice, Zondo as chairperson of this commission of inquiry into State Capture, as well as the naming of the evidence leaders and the finalisation of the commissions in terms of reference which previously had caused me a level of concern, but those having been I think
10 amended and published, will all positive indicators of an inquisitorial ([25:08] *indistinct*) process that would indeed be independent and credible. A process with which I felt I could engage with absolute confidence.

That is then the period towards the end of 2017 and the beginning of 2018 that you're referring to? --- That is correct.

Moving into 2018 would this be appropriate, an appropriate time for the long adjournment?

CHAIRPERSON: Excuse me yes no I think that is in order. We'll take the lunch adjournment and we'll come back at two. --- Thank you Chair.

We adjourn.

20 **HEARING ADJOURNS**

HEARING RESUMES

CHAIRPERSON: Yes Mr Pretorius.

EXAMINATION BY ADV PAUL PRETORIUS SC (continues): Thank you Chair. Mr Currin, we had moved on to 2018, to you meet with Stan on 15th January 2018? --- That is correct yes.

Where did you meet? --- That is correct I did. I travelled to London and met him there.

And what was the purpose of the meeting? --- Well as I had sketched before the break, there was clear evidence that the political situation in the country was changing, it was improving, enabling things to happen, which could not have happened previously in certainly in my assessment and I needed to go and share that, discuss that with Stan and also to raise with him the idea that this would be the time to make the original hard drive and clone available to the authorities that would need it.

While you were abroad, did you learn of anything that had happened of an untoward nature in South Africa? --- While I was in London, I actually got a call from one of my colleagues at my office in Johannesburg, to say that the American authorities had arrived and wanted to meet with me and they obviously didn't know who that was, but essentially just said well I will deal with it when I get home and I got home a few days later and on my return, I contacted the person who'd left the number and within a very short period of time I met with that person at the end of January this year.

When you refer to American authorities, you're referring to United States authorities? --- Ja US authorities.

Did you learn what they knew? --- Well in the first instance I, I wasn't

sure about what they wanted to speak to me because I didn't think that they would know about my role in relation to the hard drive, but I mean not being totally naïve, I thought well maybe they do know and certainly when I met with them they knew my role, they knew my name, they wouldn't tell me who told, how they ascertained that, they knew about one of the whistle blowers, Stan, they said they did not know his true identity and what they said they want or they advised me that they were doing certain investigations of an international nature and that they would like to meet with Stan and also to have access to the evidence.

Did you contact Stan? --- I immediately contacted Stan, he was
10 absolutely adamant, and rightly so, that the evidence would not be made available to them at least not at any initial meeting, but he was willing to meet with them, so that one could sort of ascertain, well firstly what they wanted, but also what they knew, how much they knew, because obviously that was quite relevant to, or we needed to know what they knew, put it that way.

But happened then on the 19th February 2018? --- Well I made all the arrangements with the US authorities here in South Africa to whom I was making these arrangements and we met in a third country on the 19th February. We all travelled there, the American authorities travelled there, I travelled there and Stan also travelled there.

20 Was there any arrangement or understanding reached at that meeting? --
- At that meeting, Stan agreed after fairly long discussion conversation that we would make available to the American authorities on a later date, the first clone of the original, which according to our assessment, was the best and most reliable evidence at the time. We were absolutely adamant that they would not be given access to the original. As you just mentioned that the second whistle blower, we

were hoping that the second, second whistle blower would also be there, unfortunately he couldn't get there on time, he arrived the following day. I already left, but I know that he and Stan did meet and he was then briefed on the outcome of the meeting.

Was there any further arrangement or understanding reached with the American or United States authorities? --- Yes. Now since we had agreed to make available Chair, the best evidence, which from our perspective needed to be available elsewhere, we had South Africa in our minds, we agreed, well the Americans gave us an undertaking that they had excellent equipment which would, if
10 they then used that equipment to make an image of the forensic copy that we have, that Stan had, that the integrity of that copy would be protected.

That's the clone is it? --- That's the clone, my apologies. So we agreed that we would meet then again in another country, where that exercise would be done.

What was this other country? --- The other country we agreed to meet was Nairobi, ag sorry, Kenia, in Nairobi and it was chosen essentially because outside of South Africa, it was the most convenient country for everyone where this equipment which the American US authorities could provide, would be available that would protect the integrity of that particular clone. So maybe I should just add that at
20 that stage even when that discussion was taking place, certainly in my mind was that there, that that process and that meeting would need to be attended by appropriate representatives from South Africa in the capacity in the context of this particular commission.

Mr Currin did working with the US authorities raise any issues for you and Stan? --- Yes and that speaks to the point that I just made about the South African

authorities been present when this exercise takes place. Stan and John were adamant right from the outset for certainly a principle that they emphasized in which we all bought into namely that this should always be seen to be a South African process, driven by South Africa, driven by South Africans in the interest of South Africa and not a foreign initiative.

At this stage then, was there any understanding reached with Stan and John in relation to the ultimate fate of the original hard drive and the clone? --- Ja, so given these discussions that we're having with the American authorities, given also that it was my intention and there was an agreement that we would be
10 approaching this body on my return, we decided that the information about the presence of an original hard drive in South Africa was beginning, could begin to spread much more widely than what it had and therefore we agreed that the original and the first clone, in our view then the best evidence, should be removed from South Africa as soon as possible, before the actual trip to Nairobi.

What did you do in pursuance of this consideration? --- What I then did was I arranged to uplift the original and the clone from the safe keeping at Norton Rose Fullbright and that I did on the 16th March this year.

You uplifted the original hard drive and the clone you say, what did you do with it? --- I then took the sealed package as I had received it, which was in the
20 same seal and as it had been when I deposited there and ...(intervenes)

Sealed package containing the hard drive and clone? --- The packing containing the package the hard drive and the clone, I took them to my home in Pretoria on the same day and kept them in a safe place and the very next day I took these items with me to OR Tambo Airport on route to Nairobi. We decided that since the next process would happen in Nairobi, it would be wise to get them to Nairobi,

not have to move again, because obviously taking evidence of this nature, this highly sensitive and important evidence through airports and through controls and so on, one never knows what, what could happen, so we therefore decided to take them to Nairobi. I had arranged to meet the person, my lawyer, Greg Knot at OR Tambo, I felt it was very important to have a lawyer with me, if I am now moving with these very valuable packages outside of South Africa or through the airport and so on. But before leaving my home, I decided it would be wise to actually separate the clone from the original, so that whoever is carrying them, if apprehended, would not then be found with both. So I then separated them and met with Mr Knot at the OR

10 Tambo, he being the lawyer and I being my lawyer and a proper lawyer not like me, being a real lawyer, he would I think it would be far more difficult for authorities to confiscate from him than from me. So he then carried the original and then carried the copy and we boarded separately.

You then arrived in Nairobi? --- Yes we arrived in Nairobi and then we went directly to, we went directly to the hotel and we then put the two together again, sealed them, so that they could be handed over to an attorney that have been pre-warned of our arrival and an attorney that had given an undertaking that he would be able to keep them in safe, in safety and safe keeping until we returned to Nairobi at a later date.

20 Right, you then, I presume, returned to South Africa? --- I did and on my return, in fact according to my notes on the very next day I made contact with this commission and made arrangements to meet with members of the legal team as soon as possible. Unfortunately people that I contacted we knew one another for a number of years and they literally agreed to meet with me the very next day.

And you met with them? --- I met with them.

Did these meetings give rise to a subsequent trip to Nairobi? --- That is correct, so now ...(intervenes)

When did that take place? --- That took place on the 11th and 12th April.

Who attended these meetings? --- In Nairobi now?

Yes. --- Okay so we're back in Nairobi and we attended those meetings.

The two whistle blowers plus the Stan's wife, together with the American US authorities as well as three representatives of this commission. They all attended and the purpose of the meeting, were from my perspective two-fold Chair, the one was obviously to facilitate, or to be there and to witness and to ensure that the copy, 10 the imaging of the clone would be done strictly in accordance with forensic and expert methodologies. But secondly also to introduce the whistle blowers to the commission.

Right, let's just obtain clarity in this regard, you together with not had on an earlier occasion taken the hard drive and one clone of that hard drive, of the original hard drive to Nairobi? --- Absolutely ja.

It was their place in safe keeping with an attorney? --- Yes.

Who have made certain undertakings regarding that safe keeping? --- That is correct.

You then met with members of the legal team of the commission which 20 meeting gave rise to a subsequent trip to Nairobi? --- Correct yes.

Was the hard drive and forensic copy then retrieved from that attorney in Nairobi? --- Yes so we, when we arrived not arrived before I did, because I had another aspect of the project to implement, which was to meet these second whistle blower, so we all then met converged in Nairobi and sir Knot then facilitated the retrieval of the original and the clone in Nairobi which was then brought to that very

first meeting.

To the extent (*[17:17] indistinct*) not going to give evidence in the course ... --- To the extent he can give evidence.

You spoke about a forensic copy been made by the US authorities and you stated that that would be a copy made of the clone? --- Yes.

May I ask during this whole process between 11 and 12 April 2018, was the hard drive ever subjected to any process and I am talking about the original hard drive? --- No, the original hard drive wasn't other than there it is, look at it, it wasn't touched for any purpose whatsoever and no attempt was made. Stan would
10 absolutely insist that according to the sort of expert advice we were all given that it should be touch anyone and certainly the equipment that was there to make a clone of the clone, would not be sufficient to ensure that a clone could be made of the original. Bearing in mind also that the original we knew had been damaged and it would need to be repaired and that could be a lengthy exercise.

Mr Currin the original hard drive which you say was there, but was not handled or operated on rather in any manner whatsoever, was that appropriately marked and sealed? --- It was appropriately marked and sealed.

After the visit to Nairobi, did you, Knot and the commission representatives return to South Africa? --- We did, we did return, I think that maybe
20 just to mention there had been a discussion around what would happen to the original, where the original would go. There was a bit of a tussle there in the sense that the American authorities also wanted the original, but that did not happen and we certainly insisted that the original be returned to South Africa.

Right. --- As well as obviously the clone, the original clone but I just mention also that at that Nairobi meeting, clones of the clone were made, one for the

American authorities and one also for the commission.

Now what happened to the original hard drive, either in Nairobi or in South Africa in relation to its hand over to the commission? --- Before we left Nairobi, knowing full well that we're returning to South Africa, with the original and the clone, the two most valuable pieces of evidence, there was concern even in the minds of the commission representatives about bringing it into South Africa and particular arrangements were made from Nairobi to ensure that when we travel back to South Africa and let me just also say, that because the commission had no jurisdiction in Nairobi, they would not accept delivery of the hard drive and the clone in Nairobi, 10 which disappointed me hugely, I was hoping to get rid of them. So we then had to travel back to South Africa, but we did so together with our colleagues from the commission and when we arrived at OR Tambo there were special measures had been taken to, to meet us by the commission, in fact by Mr Ncobende, ...(intervenes)

Nombembe. --- Nombembe who was at the commis... who was at the airport to receive us.

Who physical carried the original hard drive and clone to South Africa? --- It was Mr Knot, if I remember correctly.

And were you present? --- I was present yes.

And were you present when Mr Knot met with Mr Nombembe? --- We 20 were all together and then we handed it to him.

Did you observe that hand over ...(intervenes) --- I observed the hand over to Mr Nombembe.

Did you then and I don't think this is controversial accompanied Mr Nombembe and Mr Knot to a place of safe keeping? --- We all travelled together in a blue light ([22:22] *inaudible*) to the, to this venue in, in Pretoria and took many

hours I can tell you to eventually go through the whole process of receiving and registering and locking up in a very, very safe place, the original and the forensic copy that ...(intervenes)

By this time then as I understand from his affidavit and his application, Mr Nombembe was in charge? --- By that stage Mr Nombembe was in charge and he was now the possessor and the commission was now the possessor.

At the meeting in Nairobi, was there any agreement or arrangement or understanding in regard to the fate of the original hard drive and clone and in regard to its further use? --- Yes. Because we were all so acutely aware of the damage to
10 the hard drive, the original, however I think it was hoped that somehow one might be able if the right experts were used and the right equipment, that the commission might be able to actually make an image clone of that original. It was agreed that those efforts would be made, but they would be made in consultation with the, with Stan. Very important that in my view because essentially he was the original custodian of this piece of evidence and felt it was absolutely essential that he should be really included in the decision as to where it should go and so on, so that yes
subsequent to returning to South Africa, that that original would then be subjected to a process which would possibly repair it and then if so make a clone which the
commission could make themselves, which of course would make a big difference
20 and cut out a lot of the evidence, otherwise it would have to submitted in relation to the clones and what happen to them and so on and so forth. That was the one aspect.

Was there any arrangement or understanding or agreement, in relation to who would be responsible for the safe keeping of the hard drive and the clone? --- The commission would be responsible for the safe keeping of the hard drive and the

clone.

And what would be the ultimate purpose of that safe keeping? --- As I indicated to keep it until such time as the commission has been able to identify the top experts in the world, we were talking about who would be able to do this exercise in a seamless fashion without the original collapsing which the chances were great that it would, but at least the best effort would be made to ensure that it was a successful exercise. Alternatively then to, to use the original clone and I just need to make one point about that particular clone. The commitment which we had given to this commission, was that we would take to Nairobi the master clone, which is then
10 the clone that was made of the original and that that clone which was the best evidence probably, disregarding for a moment the original, that that best evidence would then be cloned for both the commission and the American authorities. When we opened and started working with that clone, it transpired that it was probably not the clone of the original, but rather the clone of the clone, because two clones were made at the first instance. One of the original and then a clone of the clone was made and it then transpired that actually what had we taken to Nairobi, was the
20 clone of the clone.

I'm not sure that there for present purposes at least there is any forensic distinction of note between the various clones, they will all be forensically dealt with
20 in evidence in due course, but apart from the distinction between the various clones, what was the understanding, because you haven't been express about this. --- Ja.

About the ultimate use of the data on these devices, what was envisaged by the whistle blowers and by yourself? --- The ultimate use was precisely what we are doing at the moment. The ultimate use of the, of this evidence was to be able to make it available to a credible commission of inquiry in South Africa, that would be

able to use it in order to ascertain the, the veracity of the emails and all the other bits of evidence to assist this commission with its work enable to make appropriate recommendations so that the scourge of corruption in this country in both the public sector and the private sector, could be addressed. That was the ultimate objective.

Right, now if you would look at paragraph 87, the last paragraph of your statement, you will see there in the second line, that you use the words 'after consultation with Stan'. --- Yes.

You say

10 *"it was furthermore agreed by everyone present at the meeting and this is the Nairobi meeting that the commission would at a later stage, after consultation with Stan attempt to undertake a successful recovery and forensic imaging of the original hard drive".*

--- Yes.

In evidence now, you've used the words in consultation with, are you aware of the rather formal approach that our courts have taken to the words 'in consultation' with' and 'after consultation with' and the formal distinction between them? --- Yes I am aware and it was after consultation.

20 So let me, if I may because in terms the rules I must ask, before I may ask a leading question Chair, did you understand that there was any understanding that Stan would have an ultimate ([29:54] *indistinct*) on the fate of this hard drive? --- None.

The original hard drive. --- He would not.

ADV PAUL PRETORIUS SC: Before I may ask a leading question Chair, did you understand that there was any understanding that Stan would have an ultimate veto on the fate of this hard drive? ----- No.

: On the hard drive. ---- No, he would not. There would be a need to consult, but certainly there was no question of having a veto.

Mr Currin the statement that you have in front of you, or had in front of you was amended in your writing. ----- Yes.

Would you look at this document, do you have copy? ----- I have a copy, yes.

10 Does your signature... well, whose signature appears on page 20 of that statement?
----- It's my signature on page 20, the handwriting, the amendments is her colleagues sitting right next to you and I was with her when those corrections were made and they made after some discussions I had last night with people with whom I work.

This process has been going on this... my engagement has been going on for a long time, very often I did not take notes because I didn't want to record in a diary what I was doing, so I had to rely on memory and my memory is not as good as it should be, so I, I think needed to make a few little corrections, which has been recorded on the document.

20 The contents of this signed statement EXHIBIT J2, together with its handwritten corrections are they true and correct? ---- They are true and correct.

ADV PAUL PRETORIUS SC: May I have leave to hand up the duly amended statement?

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told, will need to be told, but fortunately we know that despite the expectations, the original hard drive was capable of being forensically imaged... ----- Yes.

ADV PAUL PRETORIUS SC: ...onto a further hard drive which is the hard drive in respect of which relief is sought in this application. ----- Absolutely.

Is there anything further you wish to add? ----- I have nothing further to add other than to thank this Commission for the way in which they have worked with me. Thank you.

ADV PAUL PRETORIUS SC: The Statement is EXHIBIT J2, 'J' I am reminded. Chair, Mr Currin, the Chair may wish to ask you questions.

10 **FEMALE SPEAKER**: Are you on?

CHAIRPERSON: Oh I am sorry. Mr Brian Currin's statement will be marked EXHIBIT J2.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Thank you Mr Pretorius.

ADV PAUL PRETORIUS SC: That is the evidence.

CHAIRPERSON: Thank you. Just one question: just one question to Mr Currin. When you discovered that a certain clone was actually the clone of the original hard drive, at that time was the Commission already in possession of another clone that you had, up to that point, believed was a clone of the original hard drive?

MR CURRIN: Yes.

20 **CHAIRPERSON**: Yes, so you then took the clone that you discovered was the clone of the original hard drive and handed it over to the Commission as well.

MR CURRIN: That is correct.

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CHAIRPERSON: With the result that that the Commission is now in possession of both.

MR CURRIN: Correct.

CHAIRPERSON: Is that right? Okay thank you, I wanted to have it clarified.

MR CURRIN: Thank you Sir.

ADV PAUL PRETORIUS SC: Thank you Chair. Just to forewarn the Chair there are two more tasks that must be completed apart from argument from Ms Hofmeyr. The first is that the amended Notice of Motion must be handed up in accordance with the discussion that took place earlier. The second is that we would beg leave to hand
10 over a sworn declaration in chambers, after the conclusion of the today's proceedings.

CHAIRPERSON: Yes, no that's fine. Mr Currin I just want to take this opportunity... of course I have known you for a long time from the 80's when you were National Director of Lawyers Human Rights. I just want to take this opportunity to say, thank you very much for the role that you have played in making sure that the Commission is able today, to have access to this evidence that you have told us about.

We appreciate it very much. The Commission will obviously still hear evidence in months to come and will also hear from what you have told us, evidence from Stan and John at the right time, and probably I will get an opportunity in the
20 final report to say something about the role of people that played the kind of role that you have played in the end.

But between now and then, there may be other evidence and I don't know if there will be a challenge to your evidence or not, but we will hear what

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happens. But I just thought that is important that I should let you know, that this Commission deeply appreciates the role that you have played, to make sure that it has access to the evidence that it has been able to have access to. Thank you very much.

MR CURRIN: Thank you Sir.

CHAIRPERSON: You are excused.

MR CURRIN: Thank you.

MS HOFMEYR: Thank you Chair.

CHAIRPERSON: Ms Hofmeyr.

10 **MS HOFMEYR**: Chair the good news is that there is very little for me to do, because my learned leader, Mr Pretorius has dealt very extensively with the basis of the application, both at a factual and to some extent, a legal level. There are however, a few aspects of the legal approach to the application that is before you today, that I would like to address, with your leave.

And I propose to do so in two parts: the first aspect will be to address the appropriate test... (intervenes)

CHAIRPERSON: Maybe before you go there, maybe let's start at the tail end in terms of the... prayer 1 and prayer 2. The prayer 1 and... prayers 1 and 2 require me to admit the data referred in the way it is described there. Is it the data that is
20 sought to be admitted or is it whatever it is, where the data is contained? I don't know if you understand what I mean but, you know you could have something, an object that contains certain information and you might be admitting the object, that object, but inside that object there is certain information. So is it the information, the

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data, or is it the object that has been admitted at this stage, that you want to be admitted that contains the information, so that the actual admission of the information of the data would have much later when certain things have happened?

MS HOFMEYR: Okay let me address that squarely. What the... what Mr Nombembe as the Applicant in this application seeks from the Chair today, is an admission principally of the data and the data is the information contained on the three hard drives, that are described in the Notice of Motion. And Chair the reason for that is because of the manner in which that type of information is dealt with in our law, and the reference point for that is the Electronic Communications and
10 Transactions Act.

It is Statute 25 of 2002 and it is the Act to which reference is made in the application itself. What that Statute makes clear, is that there is something called 'data' which is defined by the Statute to mean electronic representations of information in any form and then in particular a 'data message' which is data generated, sent, received or stored by electronic means and includes voice, where voice is used in an automated transaction and storing.

CHAIRPERSON: Sorry, you didn't make me a copy of the relevant Statute.

MS HOFMEYR: Indeed Chair we do have a bundle of authorities which I will refer to in a moment...

20 **CHAIRPERSON**: Can I have it now?

MS HOFMEYR: Indeed I am not... (intervenes)

CHAIRPERSON: Because I want to have a look at the definitions. I've seen Section 15 of that Act...

MS HOFMEYR: Yes.

CHAIRPERSON: ...which is quoted in, in Schwikkard van der Merwe; The Principles of Evidence, but I would like to have a look at that as you speak.

MS HOFMEYR: Indeed Chair... (intervenes)

CHAIRPERSON: If there is a copy available. I would have appreciated receiving it yesterday.

MS HOFMEYR: Indeed Chair we do apologise for that.

CHAIRPERSON: Can I just please take...

MS HOFMEYR: The Act is not contained in bundle of authorities. The bundle of
10 authorities that was prepared has the relevant case law... (intervenes)

CHAIRPERSON: Just... there is something that is ready for me. Oh, is there not.

MS HOFMEYR: There is, let me be clear.

CHAIRPERSON: Am I intruding...

MS HOFMEYR: Not at all Chair, not at all. What the bundle of authorities contains is the case law to which reference will be made in the course of my argument. It does not have a copy of the text of the Act, we will endeavour to ensure that you have that as quickly as possible.

CHAIRPERSON: Oh okay. Well the case law I can look later, I thought you might have the Act at hand.

20 **MS HOFMEYR**: I have been informed by our attorney, that efforts are being made to copy for you immediately. So as soon as it's available I will beg leave to hand that up.

CHAIRPERSON: Yes, thank you.

MS HOFMEYR: Chair if I may then just return to the question, because we are dealing with a series of technical aspects in today's application. The one is the data, as Chair I understand that for local terms, we refer to it as the information that sits on the drives and the manner of framing the Notice of Motion, is to make it clear that it's that information, which leave is sought to have admitted as evidence before this Commission.

And that is in keeping with the way in which electronic evidence is dealt with in the Act, to which I will reference in due course. But Chair while we are on the
10 Notice of Motion and I know we said we would start at the end, might it be an appropriate time to beg leave to hand up the amended Notice of Motion, simply so that we can address that aspect...

CHAIRPERSON: Yes, thank you.

MS HOFMEYR: ...as you addressed with Mr Pretorius.

CHAIRPERSON: Yes.

MS HOFMEYR: Thank you. Chair what we have done since you received the original application and Notice of Motion, is inserted on the second page, a fourth paragraph, which seeks to address the issue you raised with Mr Pretorius about public access, given the way in which prayers 1 and 2 and the ruling sought there is
20 framed. So what has been introduced in paragraph 4, is a ruling that says as following: notwithstanding the rulings in paragraphs 1 and 2 those are ones in terms of which the defined data is admitted as evidence. It goes on to say:

'The public shall have access to that data, defined as

the HDDH data, HDDH1 data and HDDH2 data, only as and when it is presented by the legal team of the Commission at the public hearings of the Commission.'

CHAIRPERSON: Can we amend that a little bit.

MS HOFMEYR: Certainly Chair.

CHAIRPERSON: Let us say:

'The public shall not have access to that data until...'

MS HOFMEYR: Yes certainly.

10 **CHAIRPERSON**: So I am going to delete only as and when and simply say '*until*', replace that with '*until it is presented by the legal team of the Commission at the public hearings of the Commission.*' Ja.

MS HOFMEYR: Indeed.

CHAIRPERSON: Okay thank you.

MS HOFMEYR: Thank you Chair and that actually also takes care of another aspect of the query that you posed to me Chair, which is... well isn't there a later stage at which this information is actually presented to the Commission. And that precisely what paragraph 4, now as amended Chair, seeks to signify. And that is an aspect which was also traversed in the Founding Affidavit of Mr Nombembe.

20 The point that was made there is that it is critical for the work of the Commission that the data, the information on these 3 hard drives, be admitted in evidence, for amongst other reasons, so that the Commission's investigators can

analyse, synthesize and pursue further investigations based on that information.

It is then anticipated that pursuant to those investigations and possibly further authentication exercises, that the investigators take on; those parts of the information, for example, relevant emails that are pertinent to the work of the Commission, will be presented by the legal team through witnesses or two witnesses in the course of the future public hearings of this Commission.

And so that is precisely the scheme that is envisaged by this application.

CHAIRPERSON: It wasn't clear to me when I wrote the Affidavit why any analysis and investigation by the investigators needed the data to be admitted, first, or why
10 do they need that?

MS HOFMEYR: Chair it is an aspect that we have probed in some detail with them, I can, I can tell you. There is a bigger story that happens around this data and I must deal with it now. This data plays a role no doubt, and is critical to the work of this Commission, but this data may well also, play a role in future possible criminal and civil proceedings.

And it is with a view to its further use in those proceedings, that the investigators of this Commission are very careful to ensure that any work that they do, on forensic images of the original data, is secured in its integrity by a moment in time which is this application before you today, to recognise the steps that have been
20 taken until this point, to secure the recovery of the original and to make that data available to the Commission

And it therefore seeks the comfort of knowing that if at this moment in the Commission's proceedings, this ruling is made, it will then comfortably off the

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back of that full chain of custody, having been presented before this Commission, be able to work with that data. To analyse to re-arrange it to strip it out, to reconfigure it... (intervenes)

CHAIRPERSON: But why do they need an audit meeting in data to do that?

MS HOFMEYR: Chair, Chair it is an aspect of why it is being sought today. Your crisp question is why do the investigators want this admission in order to be able to deal with the data? And the explanation is contained at paragraph 64 of the application. If I may just direct you to it?

10 You will see at paragraph 64, the point is made that until this point, the Commission's investigators have been careful to analyse only the HDDA data. Now let me just be clear about what that is. That's the data that was originally...

CHAIRPERSON: That's the original hard drive.

MS HOFMEYR: Hard... and the data from it that found its way into the Gupta leaks, right. And it is off the basis of the analyses that they have done of that data, that they have been able in this Affidavit to make some initial claims about the authenticity of the data. But it is essential for the purposes of this Commission and for future work, that might require this information to be relevant, that the actual recovered, and what we understand to be fuller set of data, is analysed for authenticity.

20 The Commission's investigators have not done that yet.

CHAIRPERSON: Let me understand... what I don't understand is the, the hard drive and the clones are in the possession of the Commission. The investigators are part of the Commission, they carry out investigative work for the Commission. I don't

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understand why, without an order admitting the data, in these proceedings, they can't do what they need to do to pursue the work of the Commission in terms of investigation.

MS HOFMEYR: Chair we would not put as high as they can't, certainly not.

CHAIRPERSON: Or if, if it's not a matter of they can't, or what the reason is why do they need that order?

MS HOFMEYR: Indeed Chair and that requires me to go to the further reasons for why this application is brought now. Because as your question highlights Chair, and we should not be heard to say they can't deal with the data without this order, that is
10 certainly not the case. It is appropriate rather, that this ruling be given now and that requires further considerations to be taken into account.

So to recap: the one is that the investigators who are concerned with the integrity of the chain of custody process, would like to be dealing with HDDH1 data and HDDH2 data with the confirmation from this Commission, that it is admitted in evidence. But I don't put it higher than, but that is request of theirs, it is not prerequisite for them dealing with it.

The second important point is where we are in these proceedings and the availability of Mr Currin who has come to give evidence today and the appropriate point at which this disclosure could be made, albeit on its limited terms
20 because of the safety issues of those concerned.

And secondly Chair, thirdly indeed Chair, an important aspect that is traversed in the application is that parallel with this application before you, which is taking place in public, there is a full chain of custody set of documents that is being

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compiled by the Commission, which has detailed confirmations of every step that was taken to ensure the integrity of the drives, to ensure that parcels were tamper proof, to keep records of every register of evidence being received and being take to its next location.

It was in the view of the Commission, it's legal team and investigators that it was critically important to freeze this moment in time, when all of that evidence could be put together, albeit not yet publically disclosed, so that if anything were to happen to individuals involved in that process, there would nonetheless be a credible source of that information which may become later relevant in criminal or civil proceedings.

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So it's a conference of those three factors Chair that brings this application to you today.

CHAIRPERSON: Well the point does it amount to this that for among others, reasons of the preservation of the evidence as it exists at the moment, where it is kept, it was important that it be publicly known...

MS HOFMEYR: Indeed Chair.

CHAIRPERSON: ...that the Commission has this kind of evidence which has been obtained in the manner in which we have been told, albeit, not in full for certain reasons so that going forward if anything should happen, at least it should be known what evidence the Commission had, as at a certain date.

20

MS HOFMEYR: Indeed Chair that is precisely the third consideration and it is flagged just for your reference at paragraph 76, which is on page 27 of the application. It says there, and I read from Mr Nombembe's Affidavit:

'It is also in the public interest that the integrity of the process that has been followed thus far by the Commission's investigators and legal team be recorded. If anything were to happen it is important that the Commission has a record of the chain custody in order this to provide a basis for the admission, possible admission of the data in future.'

And Chair if I may say the further point as I understand your question to me that is added, is it's about preserving that which is now in the possession of the
10 Commission and with knowledge, publically that the Commission is in possession of that important evidence for the conduct of its further enquiries. Thank you Chair.

CHAIRPERSON: Yes, okay thank you.

MS HOFMEYR: Chair so we were on the aspects of the, apologies, amended Notice of Motion that were addressed and I've usefully been just handed a copy of the Electronic Communications and Transactions Act, if I may beg leave to hand that up.

CHAIRPERSON: Oh thank you, yes. Thank you.

MS HOFMEYR: Chair it might be an appropriate point just to summarise the points that I was making in relation to that Act now that you have a copy available to you. Chair I was dealing first... you would have seen reference as you mentioned in the
20 evidence text books about particularly Section 15...

CHAIRPERSON: Yes.

MS HOFMEYR: ...because Section 15 deals with admissibility and evidential weight of data messages. Where I began with the definitions of those terms in the Act, and

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data message is of course a derivation of data and so we start with data, which is the language used in the Notice of Motion.

Data means electronic representations of information in any form and then the data message becomes more specific, it means data generated, sent, received or stored by electronic means and includes voice, where voice is used in an automated transaction, or a stored record. We really in the context of it being stored record, for the majority of the information that we are talking about here.

And then what Section 15 does is it talks about the requirements for admissibility but I must emphasise in legal proceedings for the receipt of data
10 messages, which generally in the literature, is referred to as electronic evidence. But Chair before we get into the detail of Section 15, it is important that I frame the test appropriately, which is the one that this Commission, we submit, will adopt when determining whether to grant this application.

Chair and that requires me to emphasis again as my learned leader, Mr Pretorius did, that a commission of enquiry is a species different to a court of law. Chair this is recognised around the world and it has been well expressed with respect, by a number of the highest courts in various jurisdictions.

And Chair it is, with your leave, that I would like then to make reference to the bundle of authorities which you have been provided with, I understand.
20 Because Chair the first two cases in that bundle of authorities are cases first from New Zealand and secondly, from Australia, but the second case from Australia has received the approval of the Privy Council.

And the aspects of those cases that I would like to refer to in particular Chair, is first of all in relation to the first case which dealt with the Royal Commission

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of Enquiry into state services in New Zealand. Cleary J in that matter, at page 115 which Chair you will find at paginated page 11...

CHAIRPERSON: Yes.

MS HOFMEYR: ...had the following to say. Right at the bottom... well it begins at 10 Chair if you go back over a page, the bottom of page 115 of the Law Report, Cleary had the following say about the function of a commission of enquiry. Let me be clear why I go there in the argument. The nature and function and of a commission of enquiry we submit, must inform its approach to the receipt of evidence. Cleary says the following:

10 *'The function of a commission of enquiry on the other hand...'*

...he is contrasting it to court proceedings...

'...is inquisitorial in nature. It does not wait for issues to be submitted but itself, originates enquiry into matters which it is charged to investigate. These are indeed, no issues as in a suit between parties; 'no party' has the conduct of proceedings, and 'no parties' between them can confine the subject matter of the inquiry or place any limit on the extent of the evidence or information which the Commission may wish to obtain.'

20

Chair we submit that that is an accurate description of the role of enquiries and the principle pursuit of those enquiries, which is to gather all

information relevant to its mandate. And Chair the second reference is the reference to Australian case of *Ross v Costigan* which appears beginning paginated page 13 of the bundle of authorities, that has been handed to you Chair. And the relevant part of that judgment appears on the law report page 334 which is at paginated page 21.

Chair there Ellicot J of the Federal Court of Australia said the following in relation to the relevant evidence that the commission made... (intervenes)

CHAIRPERSON: Where about in relation to those marginal paragraph numbers... (intervenes)

MS HOFMEYR: We are on the left hand side of the page, so the reported page 334
10 and adjacent 35, in the lines Chair.

CHAIRPERSON: Okay thank you.

MS HOFMEYR: If I may read there.

'In determining what is relevant to a Royal Commission of enquiry, regard must be had to its investigatory character. Where broad terms of reference are given to it...'

as in this case

20 *'...the commission is not determining issues between parties but conducting a thorough investigation into the subject matter. It may have to follow leads, it is not bound by rules of evidence. There is not set order in which the evidence must be adduced before it.'*

So Chair that is by way of introduction; Chair and it goes on in that

paragraph, if I may just continue to read there.

'The links in a chain of evidence will usually be dealt with separately. Expecting to prove all the links in a suspected chain of events, the commission or counsel assisting, may nevertheless fail to do so. But if the commission bona fide seeks to establish a relevant connection between certain facts and the subject matter of the inquiry, it should not be regarded as outside its terms of reference in doing so. This follows from the very nature of the inquiry being undertaken.'

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And so that second part signifies that there is a level of flexibility in the approach that a commission of inquiry will take to the evidence before it, and the information that it takes into account. And so Chair we draw those references with respect, to your attention, because it is our submission that they frame the appropriate approach that this commission should take to receiving and admitting in evidence, the information on these hard drives.

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The important points Chair in summary are these: This is not a court of law, it is an inquiry which is not bound by the rules of evidence, that is in reference to your previous debate with my learned leader, Mr Pretorius, he referenced and as would I, the rules of this Commission, particularly 6.1 which make the point, and this is for our purposes the most important point.

The Commission may receive any evidence that is relevant to its mandate and so we submit there is single test before you today Chair. Is this information which we call data because of its particular technical usage, in the

relevant Statutes, relevant to the mandate of this Commission?

And we submit that that must be unquestionably so. Mr Pretorius has already dealt Chair, with the links to the terms of reference which were traversed in the application itself. There are on my count, at least six terms of reference that speaks specifically to the engagements with the public sphere in our country and the Gupta family.

You would have heard from the evidence of Mr Currin, and it is also referenced in Mr Nombembe's Affidavit, that what this data appears to show, is communications between members of the Gupta family and associates with
10 individuals such as Mr Duduzane Zuma, various cabinet ministers, officials and chief executive officers of state owned enterprises.

We submit that there can be no doubt, that it is relevant to the terms of reference of this Commission that this information be further investigated. Chair there is a further point to relevance. And we submit that admitting this data now, is consistent with the truth seeking pursuit of this inquiry and the reason for that is the following:

You heard earlier this morning that the recovery exercise that was managed with the employment of a leading international expert on recovery, is such that the version of the data which is currently held by the Commission, is likely to be
20 greater than the data that found its way into the Gupta leaks.

Those are the initial indications that we received both from what Mr Currin told us about how that original data entered the public domain, and what you now of the process that was following by the Commission, in securing this expert to do a 99.99 something, something, something percent recovery, and to confirm that

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he is satisfied that that recovery was indeed effective and that we have for all intents and purposes, a virtual replica of the original data.

Chair there is overwhelming public interest, we submit in the Commission's investigators being in a position to analyse that further data and where appropriate, for it to be presented to this Commission in its public hearings. If only part of the story that can be gleaned from that data has been told thus far, the whole story must be told through the proceedings of this Commission.

And it is for that reason that we submit it is critically important for the Commission and its expert investigators, to begin work on that data so that it can be presented in due course. Chair the second aspect of my submissions ventures beyond what we say, is really the simple question before this Commission. Is the data relevant, and if so, it should be admitted and the process of its analysis and presentation should then be followed.

But the application does go further than that Chair. It goes further to deal with the aspects of reliability that is already apparent in this data, and it addresses questions of confidentiality that could be raised in due course, and the steps that have been taken to protect any possible interests on the part of Sahara Computers that may be raised in due course. And so Chair with your leave, I would like to deal very briefly with those two aspects.

20 **CHAIRPERSON**: Ja.

MS HOFMEYR: Chair the reliability aspect has been addressed for a range of reasons in the application. The first is with a view down the line to the use it might be made of this data in criminal and civil proceedings. I've already addressed to Chair the careful steps that have been taken, by the investigators and the legal team of this

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Commission to ensure the integrity, and preserve the integrity of the drives on which this data sits and on the authenticity processing of that data, so that its credibility and its integrity can be presented in due course.

This has been done not only with a view to those future proceedings, but also because of the only public statement that we are aware of that has yet been made by those persons, who appears to be implicated by the information on the drive. And that is the reference that my learned leader, Mr Pretorius made to the public statement of Mr Gupta that these emails were fakes. Well, it's as against that charge, that some initial work has been done to assess the reliability of this data and
10 that is set out in detail in the application.

The essence of the point is that it is in all probability highly unlikely, necessarily incredible that this massive amount of data with its both visible and hidden traces, within the drives, could've been manufactured, or manufactured in manner that makes it work as such a cohesive hull on the drive itself. So that is the first aspect of reliability.

The second aspect of reliability is the emphasis that will be placed on the declaration of the international expert who has worked on this drive and done its recovery. That will be presented to you in camera, but the essence of that evidence is the expert's both qualification as an expert, and confirmation that he achieved
20 99.999826 percent recovery. And so that itself should give the Commission great comfort.

On the question of what it will be presented with is a replica of that which sat on the original drive. It's a separate question whether that which sat on the original drive was manufactured, but I have already addressed you on all the

hallmarks of authenticity that appear to lay already in that data.

Chair the second point is confidentiality. There is sometimes a tussle in our law between the disclosure of information that may implicate the privacy interests of a party, as compared with the need for the public to know the content of the information and Chair the application traverses the relevant case law in that respect. I would highlight for present purposes only a few.

Our courts have already determined that the public interest may outweigh, and it's an example, but national security interests where those were claimed for top secret and classified material in the Independent Newspapers matter
10 that came before the Constitutional Court.

Our courts have also determined as Mr Pretorius highlighted earlier, that the private medical records of a former Minister of Health, could be disclosed in the public, notwithstanding the fact that they were unlawfully obtained. And our courts have also determined that even a privileged legal opinion of South African Airways could be disclosed publicly, because of the manifest public interest in understanding and learning what was going on within that institution at the relevant point in time.

And so Chair we submit to you today, that if in due course, any attempt is made to raise the spectre of confidentiality as a basis for this Commission not to deal with this information, we submit that contention should be rejected, and it
20 should be rejected because of the overwhelming public interest, in a proper investigation of these matters, because of the terms of reference with which this Commission has been charged.

Chair the final aspect is to facilitate any representations that Sahara Computers may wish to make in due course and the Notice of Motion seeks as its

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third prayer, a ruling that will facilitate notice being given and an opportunity if it is taken up, to make representations to you Chair about the admission of this data.

Chair those are our submissions in support of the application unless there are further questions.

CHAIRPERSON: One has got to always remember that one is not in a court of law.

MS HOFMEYR: Indeed.

CHAIRPERSON: And therefore from time to time try and not act in a manner that a court would necessarily act or decide. But of course it doesn't mean that one must discard everything that courts of law do. Normally when a document or real
10 evidence is being admitted in proceedings, that are placed before that court, we are now talking about a court of law... that is handed up and so on.

This is not happening here, but one advantage of a document for example being handed up is that I could have a look at it, at the contents and maybe get an idea that it could be relevant. But if it's not put up, I may have to rely on somebody to tell me if it's relevant, and maybe that might not be the final word as whether it's relevant or not.

Now to the extent that the order admitting the data is in order, admitting as the Act says in terms of defining what data is, I think representations it says:

'Data means electronic representations of information

20 *in any form.'*

As I understand the position and remember I've got to decide things based on... not on what I might be reading in the media, on what I have here; based on that, based on what I've read in Mr Nombembe's Affidavit, there are hundreds of thousands of

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emails. The Affidavit from what I read in the Affidavit, it would seem that somebody or people must still go through those....

MS HOFMEYR: ...you being asked to admit to the terms of reference of this Commission and we submit, you can be overwhelmingly confident about its relevance, because the A data which is a component of the H data, has already found its way into the public domain and has shown, that it deals with the affairs of the Gupta family, their association with government officials and state owned enterprises.

Chair the application even gives you some examples, and let me just take you to them, because some of them are critical for this question that you have raised. And they are attached in various annexures, various articles that arose with the Gupta leaks. Let me just find the reference if I may.

If you go paginated page 26, you will see that some of the information that has made its way into the public domain, because HDDA data was provided to the journalists at AmaBongani(?) and Daily Maverick is the following. They show that the Bell Pottinger proposed press release, during March 2016, that would have implicated Deputy Finance Minister, Mcebisi Jonas in receiving bribes from a South African businessman.

They show how two months, before the former president Mr Jacob Zuma appointed Mr Mosebenzi Zwane as Mineral Resources Minister, his Curriculum Vitae was sent to the Gupta family for their attention. It shows how Minister Faith Muthambi exchanged proposed drafts of a presidential proclamation with associates of the Gupta family before the proclamation was promulgated.

Those are illustrative examples for the purposes of this application to answer squarely the question of relevance.

CHAIRPERSON: Those would fall under the component that has been analysed.

MS HOFMEYR: Indeed.

CHAIRPERSON: Yes.

MS HOFMEYR: Indeed Chair and it is a portion of the greater recovered data that was the product of the international expert's efforts in August. So what we are able to say to you today Chair, is that a component of the H data, which has been in the public domain, shows that this full data set is clearly relevant to the terms of reference of this commission. Because it is in the main, email communications between associates of the Gupta family, the Gupta family, cabinet ministers, heads of SOE's and their dealings.

And there may be more that is relevant, but that which we already have and have been able to analyse we know is relevant.

CHAIRPERSON: You see what, what, what there can be no doubt about is that, that part that has been not analysed, it's important that it be analysed.

MS HOFMEYR: Indeed.

CHAIRPERSON: There can be no doubt about that.

MS HOFMEYR: Yes.

CHAIRPERSON: No the investigators would do that okay. But again I think i come back to the question why... lets separate the two, that part that has been analysed. That is relevant let's assume is established there maybe it can be admitted. The part that has not been analysed, because it hasn't been analysed we can't know can we for sure, whether it is relevant.

But once it is examined and analysed its relevance or otherwise, will be established. Now why to the extent that we should be... I shouldn't make any order of admission, why shouldn't I admit what has been analysed because its relevance might be established, but in regard to what has not been analysed, I make no order.

That doesn't prevent the investigators from analysing it and at the relevant time that can be raised here in the Commission, after somebody has been able to take a view of its relevance.

MS HOFMEYR: Chair you pose the question on the basis that we couldn't know for certain what was in the remainder, I have to concede that, but we know what the
10 very high probability, what is in the remainder. And that is because of the nature of the data messages that these drives contain, and that is set out in Mr Nombembe's Affidavit.

They are by and large in the majority, email communications and the background hidden messaging that happens pursuant to that communication and some other information. Now because we have seen parts of that through the A data, and in the majority it appears to be relevant, well is relevant on the basis of what has been publicly disclosed already.

There is an incredibly probability that the remainder is, I can't say for certain, very few things a certain, but a very high probability.

20 **CHAIRPERSON**: But how does the work of the Commission get prejudiced if we don't, if I don't make an order admitting that part, that component? How does work of the commission gets prejudiced?

MS HOFMEYR: Chair that takes us back to the previous debate we have about why

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now. And it is to signify that there is more in this application than merely the need for analysis to take place and emails and other evidence to be presented. It is that at this very moment, the Commission has within its possession, the fullest recovery of the data from a original hard disc drive that came from Sahara Computers, and it is because it has that in its possession, and it was appropriate for that to be publicly disclosed now, and could not be disclosed previously, that this is a moment in time in which it should be admitted, to preserve that full record which now in the possession of the Commission.

CHAIRPERSON: But where it is sitting now it is preserved. That is what the witness
10 told us. It's secure, it's preserved, only very few people know about it, why does, why is an order admitting it necessary for its preservation?

MS HOFMEYR: Because despite all the endeavours that have been made to secure it, something may happen to it. It is in within the borders of South Africa, HDDH albeit, in a secure location. That has been disclosed in the Affidavit before you. It is appropriate that all precautions be taken by the legal team and the investigators who are the custodians of that resource of data, tell us publicly that they have it and having done so, increase the preservation if it.

CHAIRPERSON: Well what is the meaning of an order admitting a piece of
20 evidence? I don't think that the mere making of an order that a court, or a forum such as this is admitting the same piece of evidence on its own, helps anything with the preservation. Obviously normally what would happen is that that piece of evidence is handed up and then the Registrar in the case of a court, preserves it whatever.

But here we have a situation where we have been told that all that

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evidence is somewhere secure and all precautions have been taken to make sure that it is safe. Obviously, maybe I shouldn't say obviously, there are no guarantees in life, you know, but from what I have heard, for all intents and purposes, everything has been done to keep it safe and I want to be safe.

I am just not sure that I follow why an order admitting it is necessary for its preservation with regard to evidence that has been analysed. At least it's relevant, it's relevance maybe clearer and the evidence that has not been analysed, probably some of it is relevant, maybe some of it is not relevant and I just saying, how does it help anybody for me to make an order saying I am admitting that part of
10 the evidence.

How does it prejudice the work of the Commission, how does it prejudice the work of the investigators to make or not to make that order? What I referred to earlier on about publicly saying what is in the possession of the Commission, we have already been saying... the witness has told South Africa through... these proceedings are being broadcast so people who have an interest in what the Commission is doing, will know what we have already in terms of that evidence.

I am just not sure of the necessity of making that order now, at least in regard to that. It may be that, it may be that it is something that maybe the legal team which to reflect further on and I am quite happy that we, we look at it before
20 any decision is made, but I, I have that concern as to... I can see that I may make an order admitting the part that has been analysed. I am not sure so about the part that has not been analysed.

MS HOFMEYR: Chair thank you for that, if we may take you up on that opportunity.

We are close to the conclusion of today's proceedings and we do want to reflect

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carefully on the issue that you have raised, and how it may affect the rulings that are sought in this application. So if it would be appropriate and with your leave, possibly to take a moment and adjourn to tomorrow morning, I don't know what is most suitable to you Chair.

CHAIRPERSON: No, no that's fine we can adjourn till tomorrow morning at 10:00am and then we can look at it. It may well be that you might persuade, but I just have those concerns and I mean there is no doubt, that the investigators should go ahead and analyse the component that has not been analysed. There is no doubt about that.

10 But I say they don't need an order admitting those components as evidence, in order for them to do that, and then I just ask why we need to do that to make such an order in regard to that component in circumstances where, with regard to its relevance, we say it hasn't been analysed so some of it may be relevant, some of it might not be relevant, maybe most of it will be relevant but do we need to decide now, or should we let the process of analysing take place first and then a view is taken and once a view is taken, what is brought up for admission is only that which is established as relevant. Okay.

MS HOFMEYR: Thank you Chair we will give careful consideration to those aspects.

CHAIRPERSON: Okay all right. Thank you very much. In terms of arrangements
20 for tomorrow, will be it that part... we don't have any witness for tomorrow, is that right?

MS HOFMEYR: No.

CHAIRPERSON: Okay and as things stand the witness for the 3rd October,

arrangements are still in place for that?

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Thank you. The proceedings adjourn for today, we resume tomorrow at 10:00am.

HEARING ADJOURNS

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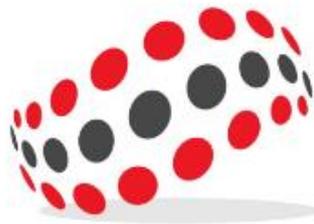
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