IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: 25/09

In the matter between:

THE STATE

and

JACOB SELLO SELEBI

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

5 : 7 : 2010
DATE

SIGNATURE

J U D G M E N T

JOFFE J:

1. The accused was the former National Commissioner of the South African Police Services ("SAPS"). At all relevant times in this judgment he acted in that capacity.

2. The accused is charged with two main counts. He is also charged in the alternative to the first count (as separate counts) with two sub counts. The reference to the counts that follows is as set out in the indictment as originally formulated by the state.

3. The first count is that the accused is guilty of the crime of corruption in contravention of s 4 (1) (a) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004

("PCCA"). The first alternative count is that the accused is guilty of the crime of corruption in contravention of s 1 (1) (b) read with s 3 of the Corruption Act, No 94 of 1992 ("CA"). This count is in respect of the period 1 January 2000 to 26 April 2004. The second alternative count is that the accused is guilty of the crime of corruption in terms of s 3 (a) and or 4 (1) (a) of the PCCA. This count is in respect of the period 27 April 2004 to 16 November 2005.The reason for the two alternative counts is to be found in the repeal of the CA by the PCCA. The PCCA came into effect on 27 April 2004.

4. The second count is that the accused is guilty of the crime of defeating or obstructing the administration of justice.

5. The factual basis as set out in the indictment for all the counts can be summarised in broad outline as follows: The accused is a public officer in terms of the PCCA. A relationship developed between a Mr Glen Norbert Agliotti ("Agliotti") and the accused. This relationship became a generally corrupt relationship. The accused received sums of money and clothing for himself and on one occasion for the accused's sons from Agliotti. The accused received the aforementioned gratification in order to act in a manner proscribed in s 4 (1) (a) (i) to (iv) of the PCCA and the

accused did so act. The accused so acted by sharing with Agliotti secret information about an investigation against Agliotti conducted by United Kingdom law enforcement authorities; protecting Agliotti from criminal investigation; sharing with Agliotti information about SAPS investigations; sharing secret and or confidential information with Agliotti; agreeing to and or attempting to influence the investigative and or prosecutorial process against one Rautenbach; sharing with one Sanders and or one Nassif and others tender information relating to impending contractual work to be performed in Sudan; assisting Agliotti and or Agliotti's associates to receive preferential or special SAPS services.

6. The accused pleaded not guilty to all the charges. He furnished a plea explanation in terms of section 115 of the Criminal Procedure Act, No 51 of 1977 ("CPA"). In essence the accused denied all the allegations made against him. In addition, the accused contended that this prosecution is not bona fide and was instituted with an ulterior motive in an attempt to discredit him and to ensure the continued existence of the Directorate Special Operations ("DSO"). In order to place the plea explanation in its proper perspective it should be noted that the DSO (commonly referred to as the Scorpions), was a unit within the National Prosecuting Authority ("NPA"). The National Director of Public

Prosecutions is the head of the NPA. As far as is relevant to the plea explanation, Mr Bulelani Ngcuka ("Ngcuka") and Mr Busumzi Patrick Pikoli ("Pikoli") were the Directors of Public Prosecutions. Pikoli succeeded Ngcuka in that position on 1 February 2005. Reverting to the plea explanation it is stated therein that:

6.1 The relationship between the accused, as the National Commissioner of SAPS, and the DSO deteriorated substantially in the years preceding 2005 because the accused supported the view that the DSO acted beyond their mandate by involving themselves in local and foreign intelligence matters not relating to the investigation of criminal matters in the Republic of South Africa and that the DSO should be dissolved and incorporated into the SAPS;

6.2 Details are then given of information obtained by the accused during the latter half of 2005 in regard to Ngcuka during his term as National Director of Public Prosecutions and also as head of the DSO and Pikoli during his term as National Director of Public Prosecutions.

6.3 In regard to Ngcuka the information was that whilst National Director of Public Prosecutions and head of the DSO, he approached a Mr Ramsay ("Ramsay"), an attorney, who represented a Mr Muller Conrad

Rautenbach and who is referred to in the evidence as Billy Rautenbach ("Rautenbach") suggesting a solution to a pending criminal case against Rautenbach, which had been investigated by the DSO, if Rautenbach co-operated with Ngcuka. Ngcuka had attempted to extort a bribe from Ramsay and that Ngcuka was more interested in information regarding mining rights in the Democratic Republic of the Congo ("DRC") and Zimbabwe than in the offences that Rautenbach allegedly committed. The information further showed that Ngcuka and the DSO were involved in the illegal gathering of intelligence and that they had involved themselves with foreign intelligence agencies in the Rautenbach investigation without any authorisation. In regard to Pikoli the information was that he obtained in an improper manner, through his wife, material gratification from a Mr Brett Kebble and or the JCI group of companies. The gratification consisted of shares in Simmer and Jack Ltd and was acquired through Jaganda (Pty) Ltd and Vulisango (Pty) Ltd.

6.4 Toward the end of 2005 the accused summoned Pikoli to his office to discuss the above issues. At that time Pikoli was the National Director of Public Prosecutions.

6.5 At that meeting Pikoli claimed that he had no knowledge of the negotiations relating to the Rautenbach and

Ramsay "*situation*". According to the accused's plea explanation Pikoli's response was "*Oh it is a murky world*". The accused warned Pikoli that "*they*" should not deal with fugitives with the assistance of foreign intelligence agencies. With regard to the gratification which Pikoli received through his wife, Pikoli became very emotional and stated that his wife is his "*Achilles heel*".

6.6 The accused subsequently instructed the Directorate Crime Intelligence to proceed with their investigation in regard to Ngcuka and Pikoli.

6.7 The accused's above conduct caused a further deterioration in his relationship with the NPA and the DSO. The accused then points out that it must be borne in mind that the National Director of Public Prosecutions is the person ultimately responsible and in control of the DSO. The accused adds that it must also be remembered that the question of the further existence of the DSO was reaching a climax at that stage.

6.8 Shortly after what the accused refers to as "*the above confrontation with Pikoli*" the DSO commenced their investigation against the accused.

6.9 The accused points out that it should be noted that whilst Ngcuka was at this stage no longer the Director of Public Prosecutions he exerted huge pressure on one

McCarthy, the then head of the DSO, to proceed with the campaign against the accused.

6.10 Shortly after the investigation started the NPA and the DSO leaked information to the press in an attempt to destroy the accused's credibility. This was done deliberately in accordance with a specific strategy agreed upon at a meeting including the senior management of the DSO. False, misleading and or untested information was given to the Cabinet and or the President to have the accused's employment as National Commissioner of the SAPS terminated and or suspended. In addition the NPA and DSO provided false and misleading evidence to this court to ensure the continuation of the campaign against the accused.

6.11 It is stated that the NPA and the DSO approached a number of people with a history of criminal activities, and offered them indemnities against prosecution on serious crimes ranging from murder, attempted murder, drug trafficking, money laundering, fraud, theft, intimidation, defeating the ends of justice and other crimes in exchange for false statements implicating the accused.

7. The accused concluded his plea explanation by stating that the case against him "*was manipulated with male fide intentions in an attempt to discredit him for the reasons set*

out above and to ensure the continued existence of the DSO".

8. It should perhaps just be mentioned at this stage that Pikoli did not directly succeed Ngcuka. Dr Ramaite ("Ramaite") appears to have been the acting head of the NPA prior to the appointment of Pikoli.

9. The trial commenced on 5 October 2009. On that day the charges were put to the accused. The accused pleaded and tendered the plea explanation already referred to.

10. The state called its first witness, Agliotti, on 5 October 2009.

11. Whilst Agliotti was testifying in chief, the accused's counsel objected to the leading of certain evidence on the grounds that the evidence fell out of the time frame provided for in the charge sheet. The accused's counsel pointed out that the state was seeking to elicit evidence of the disclosure of certain documents by the accused to Agliotti. The one document was referred to during the trial as the UK report and the other document as an e-mail. In regard to the former document Agliotti was about to testify that the UK report was handed to him during July or August 2006. In

regard to the latter document Agliotti was in the process of testifying that it had been handed to him by the accused in 2006.

12. In answering the objection the state's counsel sought an amendment to the charge sheet in terms of s 86 of the CPA. The amendment was granted. It was indicated that reasons for the granting of the amendment would be given at the conclusion of the trial. The historical account of the trial will now be interrupted and the reasons for the granting of the amendment will be given.

13. It was pointed out by the state's counsel that the charge sheet was intended to include events that occurred in 2006 up to the arrest of Agliotti. Agliotti was arrested on 16 November 2006.

14. In developing their argument the state's counsel referred to the further particulars that the state furnished to the accused at his instance. In paragraph 30.1 of the request the accused asked "*when exactly did the accused allegedly share secret information with Agliotti*". The secret information referred to need at this stage only be identified as the e-mail, the UK Report and the NIE report. In response to the request the state stated that the exact date

is unknown to the state. As to the e-mail the state stated in the further particulars that it "*was shared with Agliotti on a Saturday after the 20th April 2006*". In response to a request where exactly the accused shared the secret information with Agliotti, the state responded by stating that the UK report and the NIE report were shown to Agliotti at Maverick Masupatsela. Counsel for the state pointed out that whilst these particulars did not put a date to the sharing of the UK report it linked it to an incident. It was further pointed out by the state's counsel that the e-mail and the UK report had been made available by the state to the accused and that the evidence which the state seeks to lead in this respect is in conformity with the content of affidavits that the state had made available to the accused's legal team. This was not contested by the accused's counsel.

15. In the alternative to count 2 it is alleged that "*during the period 27 April 2004 to 16 November 2006*" the accused accepted gratification "*in respect of his doing and or omitting to do any act in relation to the exercise, carrying out or performance of his powers, duties or functions within the scope of his employment relationship, more particularly as described in the preamble*" to the charge sheet. It should be emphasised that the charge sheet referred to 16

November 2006 prior to amendment. The accused sought particulars in regard thereto and was given the same replies as are set out above.

16. S 86(1) of the CPA empowers a court to amend a charge sheet at any time before judgment if it considers that the amendment will not prejudice the accused in his defence. Regard being had to that set out above it could not be found that the accused would suffer any prejudice if the amendment was granted. His counsel did not point to any prejudice.

17. Accordingly the following order was made:

"On the application of the state, the indictment is amended in the following respects:

1. *P 2 thereof the year 2005 appearing twice on that p is amended to read 2006.*
2. *P 13 thereof the year 2005 appearing in the third line of paragraph 1 thereof is amended to read 2006.*
3. *P 18 thereof the date 31 December 2005 in the first line of the second paragraph is amended to read 31 December 2006 and the date 17 November 2005 in the second line of the second paragraph is amended to read 16 November 2006.*

4. *In p 21 thereof the year 2005 in the first paragraph is amended to read 2006 and the date 17 November 2005 in the second paragraph is amended to read 16 November 2006.*
5. *In p 24 thereof the date 31 December 2005 in the paragraph preceding paragraph 15 is amended to read 31 December 2006."*

18. After the amendment was granted the state continued leading Agloitti's evidence. On the completion thereof Agliotti was cross examined for a period of 9 days.

19. In the course of Agloitti's cross examination counsel for the accused sought to play to the court and to put to Agliotti the content of an audio visual DVD recording of a meeting which took place on 7 January 2008 between Agliotti and Commissioner Mphego of the SAPS. The state contended that the recording was inadmissible as evidence. This was disputed by the accused's counsel. After hearing argument it was ruled that the DVD recording of the interview which took place on 7 January 2008 would be provisionally allowed. During argument at the conclusion of the trial, the state did not persist in its contention that the recording be ruled to be inadmissible. Once again the historical account

of the judgment will be interrupted and the reasons for the ruling will be furnished.

20. Counsel for the state did not dispute the authenticity of the DVD recording. They objected to its admissibility.

21. This objection was based on the fact that Agliotti had made it clear to Mphego that the interview which was recorded was to be off the record as he had not spoken to his legal team which he still wished to do. He added that the DVD "*was not to be used and was totally off the record*". According to Agliotti, Mphego was in agreement with what he had stated and that "*it was just for gathering intelligence purposes and that he (Mphego) respected my (Agloitti's) wishes as to consult with my legal team*".

22. Accordingly it was argued by counsel for the state that, once Agliotti had indicated that he wished to consult with his legal advisers, Mphego should have stopped the interview and that the continuation thereof was illegal.

23. In this matter it is not contended that the DVD constitutes evidence that was unconstitutionally obtained. What is contended is that the admission thereof into evidence breaches the undertaking given by Mphego and would be

in conflict with public policy in that public policy demands that undertakings be fulfilled and that it would furthermore constitute a deliberate and conscious violation of Mphego's undertaking.

24. It was submitted, with reference to S v Nombewu 1996 (2) SACR 396 (E) at 417 a to c, that the concept of a fair trial includes fairness to the state and that such fairness demands the ruling sought by the state. As to what fairness requires it was held in Key v Attorney-General, Cape Provincial Division, and Another 1996 (2) SACR 113 CC at 121 a "*What the Constitution demands is that the accused be given a fair trial. Ultimately... fairness is an issue which has to be decided upon the facts of each case, and the trial judge is the person best placed to take that decision. At times fairness might require that evidence unconstitutionally obtained be excluded. But there will also be times when fairness will require that evidence, albeit obtained unconstitutionally, nevertheless be admitted.*" There can be little doubt the concept of a fair trial must include fairness to the state and that accordingly evidence unconstitutionally obtained may be excluded from the trial at the instance of the state. See also S v M 2002 SACR 411 (SCA) on 431 f to j. It is not only evidence that is unconstitutionally obtained that may be excluded. Evidence

that is improperly obtained may be excluded as well. In S v Hammer and Others 1994 (2) SACR 496 (C) on 498 I the court referred with approval to the following conclusion by Professor Skeen in an article "The Admissibility of Improperly Obtained Evidence in Criminal Trials" (1998) 3 SACJ 389: "*Despite its subjectivity it is submitted that the intermediate approach affords the best solution to the vexed problem of improperly obtained evidence. It is suggested that the courts in South Africa should feel themselves free to develop a general discretion to exclude improperly obtained evidence on the grounds of unfairness and public policy. The following factors may be useful in deciding whether to exercise the discretion: (a) society's right to insist that those who enforce the law themselves respect it, so that a citizen's precious right to immunity from arbitrary and unlawful intrusion into the daily affairs of private life may remain unimpaired; (b) whether the unlawful act was a mistaken act and whether in the case of mistake, the cogency of evidence is affected; (c) the ease with which the law might have been complied with in procuring the evidence in question (a deliberate "cutting of corners" would tend towards the inadmissibility of the evidence illegally obtained); (d) the nature of the offence charged and the policy decision behind the enactment of the offence are also considerations; (e) unfairness to the*

accused should not be the only basis for the exercise of the discretion; (f) whether the administration of justice would be brought into disrepute if the evidence was admitted; (g) there should be no presumption in favour of or against the reception of the evidence, the question of an onus should not be introduced; (h) it should not be a direct intention to discipline the law enforcement officials; (i) an untrammelled search for the truth should be balanced by discretionary measures, for in the words of Knight Bruce VC, "Truth, like other good things, may be loved unwisely - it may be pursued too keenly - may cost too much"."

25. As far as the requirement of a fair trial is concerned counsel for the accused relied on S v Kidson 1999 (1) SACR 338 WLD on 345 where Cameron J (as he then was) referred with approval to the following passage in the work of Hogg The Constitutional Law of Canada vol 2 at 45-12 to 45-13 : "*In any conversation, no matter how confidential its subject matter, each participant runs the risk that his interlocutor will betray the confidence by repeating the conversation to someone else. If a participant is charged with a crime and the conversation is relevant to the charge, then his interlocutor is free to talk to the police and to testify in court about the conversation. Indeed, the interlocutor can be compelled to testify about the*

conversation in court. Since the disclosure of a private conversation is admissible in a court of law, then surely the recording of a conversation by a participant ought to be admissible too. The recording simply improves the participant's power of recollection making the evidence more reliable. For this reason, the Supreme Court of the United States of America has held that participant surveillance is not a search and seizure within the Fourth Amendment. When the accused discloses the confidence to someone else, he assumes the risk that his interlocutor will reveal the confidence to the police and therefore there is no breach of a reasonable expectation of privacy when the interlocutor does reveal that confidence to the police, even when electronic aid is employed. By rejecting this distinction, the Supreme Court of Canada has produced an ironic result. The police informers in Duarte and Wiggins are free to testify in Court about their conversations with the accuseds (sic), where their memory and credibility will no doubt be challenged by the accused; but the electronic records of the conversations, which would set all doubts at rest, are inadmissible!"

26. Counsel for the accused pointed out that they had received the DVD from the state as part of the docket. The effect of this submission is that the accused was not a party to the

breach of the undertaking made by Mphego. Indeed counsel for the accused submitted that in determining the application it should be kept in mind that the accused obtained the DVD in an absolutely proper way. This submission, and the role played by Mphego in the making of the DVD and his role in an interview with Agliotti on 28 August 2003 will receive consideration later in this judgment. At the time the ruling as to the admissibility of the DVD was made the submission that the accused obtained the DVD in an absolutely proper way was accepted by the court.

27. Regard being had to all the aforegoing it is clear that the court, in determining the admissibility of the DVD, must balance the competing interests of the state and the accused. In most cases, indeed all the reported cases which were referred to by counsel, it would be the accused seeking to exclude evidence which the accused considered was obtained unconstitutionally or illegally. In the present case it is the state that seeks to do so.

28. It is contended on behalf of the accused that the DVD goes far in establishing the innocence of the accused and that the accused was not involved in any way in its procurement.

29. As far as the undertaking is concerned, the high office that Mphego held in the SAPS must be emphasised. By admitting the evidence the court would be condoning the breach of an undertaking by a senior policeman which, no doubt, would be construed as reducing the standing of the SAPS in the eyes of the general public. Its admission could also reduce the esteem of the courts in the eyes of the general public.

30. When balancing the competing interests of the state and the accused the scale must favour the accused. If the DVD goes a long way in establishing his innocence, as was submitted by his counsel, it would be unfair to him to exclude it from evidence. Accordingly it was ruled that the video evidence of the interview which took place on 7 January 2008 would be admissible. It was added that the ruling as to admissibility was provisional.

31. At the conclusion of the trial counsel for the state did not repeat their objection to the admissibility of the DVD. No additional arguments were advanced against its admissibility. For the reasons already furnished the video evidence of the interview which took place on 7 January 2008 is ruled to be admissible.

32. The DVD recording is exhibit 1(a) and the agreed typed transcript of its verbal content is exhibit 1(b).

33. Finally, in regard to the history of the trial, it should be noted that Advocate L Hodes SC, who at times during the cross examination of Agliotti advised Agliotti of his rights, was invited to make submissions in regard to the admissibility of the DVD. This was done in view of Agliotti's contention that the content of the DVD was to be off the record. Mr Hodes' submissions are on record and did not play a role in the conclusion arrived at. Furthermore, in so far as Mr Hodes' submissions purported to place facts before the court, they were ignored and played no role in the determination of either the application or the trial.

34. After the aforesaid ruling was made the cross examination of Agliotti continued. During Agliotti's further cross examination an application was brought by the accused for my recusal. The accused and the state were placed on terms for the filing of affidavits. The application was heard and dismissed on 30 October 2009. The judgment forms part of this record. It need not be referred to any further herein.

35. After the refusal of the recusal application the cross examination of Agliotti continued. Prior to the completion of the cross examination of Agliotti, the defence handed up an application for a special entry in terms of s 317 of the CPA. The application stood down to furnish the state an opportunity of dealing with it. Later it was ruled that it would be dealt with at the conclusion of the trial. During argument at the conclusion of the trial the accused's counsel indicated that they were not pursuing the application for a special entry at this stage but reserved the accused's right to do so in the event of the accused being convicted.

36. On the conclusion of Agliotti's evidence the state advanced the evidence of 17 witnesses. They will be identified later. The second last witness called by the state was Mr B Gilder. He was called on 23 November 2009. When he was called to give evidence, counsel representing the Minister of State Security, the Director-General of the State Security Agency and Mr Gilder himself appeared in court. Counsel, Adv. Moerane SC, sought an order that Gilder should not be required to testify. The application was dismissed as was an application for leave to appeal against the order. The trial was however postponed to enable those for whom Adv. Moerane SC appeared to petition the Supreme Court of Appeal. The petition failed. The trial however had to be

postponed further to enable the same parties to petition the Constitutional Court. That application was dismissed on 15 February 2010. Gilder testified on 1 March 2010, thereafter the state called another witness and after certain admissions were made by the accused the state closed its case on 2 March 2010.

37. Thereafter the accused launched an application for his discharge in terms of s 174 of the CPA. The application was dismissed on 12 April 2010. The following order was made:

37.1 "*The application for the discharge of the accused in terms of s 174 of the CPA is dismissed.*

37.2 *In as much as the contention that the accused has not had a fair trial, as is set out in the heads of argument filed on behalf of the accused, constitutes a separate application for the discharge of the accused, it is ruled that such application should not be determined at this stage. Such application may be advanced and, if advanced, will be determined at the conclusion of the trial*".

38. The accused requested a short postponement of the trial. The trial recommenced on 14 April 2010 when the accused entered the witness box. On the conclusion of the

accused's evidence the accused adduced the evidence of 6 witnesses. These witnesses will be identified later. The accused then closed his case.

39. The following witnesses testified on behalf of the state in the sequence that their names are set out hereunder.

39.1 Agliotti.

39.2 Ms Diane Marie Muller ("Muller").

She is the Chief Executive Officer of Maverick Experience Exhilarator (Pty) Ltd. She was the former fiancée of Agliotti.

39.3 Mr Martin Flint ("Flint").

He is the Financial Director of Maverick Experience Exhilarator (Pty) Ltd. He is the father of Muller.

39.4 Mr Dean Friedman ("Friedman").

He is a director and employee of KPMG Services (Pty) Ltd. He is employed in its forensic business unit.

39.5 Mr Stephen Colin Sanders ("Sanders").

He was a policeman from December 1984 to March 1998 when he resigned. He thereafter worked in the private security industry.

39.6 Ms Paula Stephanie Roeland ("Roeland").

She is a Chief Forensic Examiner of the Special Investigation Unit. From 1984 to 2006 she was a member

of SAPS. She was attached to the Serious and Violent Crime Unit.

39.7 Mr Aubrey Morris Shlugman ("Shlugman").

He is a police reservist in the SAPS with the rank of Superintendant. In 2005 he was the head reservist at the Sandton Police Station.

39.8 Mr Mark Hankel ("Hankel").

He is a Commissioner in the SAPS. In 1999 he was appointed Section Head of Intelligence Centres. On 1 February 2008 his designation changed to Head of Operation Intelligence Analysis Coordination.

39.9 Mr Wilhelm Johan Els ("Els").

He is a Commissioner in the SAPS attached to Crime Intelligence.

39.10 Mr Abraham Nelson ("Nelson").

He is a Senior Superintendant in the SAPS attached to Crime Intelligence.

38.11 Mr Shaun Maharaj ("Maharaj").

He is a bookkeeper and payroll administrator in the employ of Surtee Esquire (Pty) Ltd.

39.12 Mr Jürgen Kögl ("Kögl").

He is director of African Renaissance Holdings Company. This company owns a minority shareholding in Maverick Experience Exhilarator (Pty) Ltd.

39.13 Mr Busumzi Patrick Pikoli ("Pikoli").

He was the National Director of Public Prosecutions from 1 February 2005 until his suspension by the former President of South Africa, President Mbeki, on 23 September 2007.

39.14 Mr Muller Conrad Rautenbach ("Rautenbach").

He lived in South Africa between 1990 and 1999. He was involved in various business enterprises in South Africa. Fearing his arrest he left South Africa in late November 2009.

39.15 Mr Hermanus Adriaan Jacobus Nel ("Nel').

He is a Superintendant in the employ of the SAPS. He is attached to Crime Intelligence.

38.16 Mr Aasif Surtee ("Surtee").

He is employed by the Grays group where he runs the computer system and the warehouse. The Grays Group is part of Surtee Esquire (Pty) Ltd.

39.17 Mr Andrew Gordon Leask ("Leask").

He was a member of SAPS. In 2000 he was appointed in the Directorate of Special Operations at the rank of Senior Special Investigator. He was appointed in 2001 to the rank of Chief Special Investigator and to head the Special National Project in the Directorate of Special Operations' head office. He is the Chief Investigator in the matter against the accused.

39.18 Mr Barry Gilder ("Gilder").

During the period March 2005 to October 2007 he occupied the post of coordinator for intelligence which post was established by the National Strategic Intelligence Act.

39.19 Senior Superintendent Annette Lombard ("Lombard").

She is a member of SAPS and is employed in the finance department at SAPS head quarters.

40. Before the state closed its case the accused made certain admissions in terms of s 220 of the CPA. These admissions are contained in exhibit XX11.

41. Agliotti, Muller, Flint and Sanders were all warned in terms of s 204 of the CPA. In due course consideration will have to be given to whether they, or any one or more of them are entitled to be discharged from prosecution in respect of the offences of which they were warned. During argument counsel were in agreement that this issue be considered after this judgment has been delivered.

42. The accused then testified in his defence. He adduced the evidence of the following witnesses whose names are set out hereunder in the sequence that they testified

42.1 Brigadier S de Beer.

From 2004 she was the spokesperson for the National Commissioner of SAPS.

42.2 Ms Eunice Elizabeth Grové.

She was an employee of SAPS and she was the accused's personal assistant.

42.3 Brigadier Reginald James Taylor.

He is a member of SAPS and as such is the head of Interpol in South Africa.

42.4 Mr Lawrence Sithembiso Mrwebi.

He is currently the Deputy Director of Public Prosecutions in the office of the Director of Public Prosecutions in Pretoria. From April 2002 until his suspension from office on 28 January 2009 he was the Regional Head of the DSO in Kwa Zulu Natal.

42.5 Mr Prince Mokotedi.

He is the senior manager enforcement in the employ of the National Prosecuting Authority.

42.6 Mr Johannes Hendrikus van Loggerenberg.

He is an employee of the South African Revenue Services. During the period 2000 to 2005 he was manager of a special compliance unit in the Revenue Service that was specifically established to cooperate with the SAPS focussing on organised crime.

43. Prior to the accused closing his case the state made certain admissions. These admissions are contained in annexure XX13.

44. No attack is made on behalf of the accused on the credibility of the state witnesses except for Agliotti and Muller. No attack is made on behalf of the state on the credibility of the witnesses called by the accused. Needless to say the state challenges the credibility of the accused's evidence. These issues will be determined in due course.

45. Agliotti and the accused are the central role players in the factual exposition that will follow. From observation whilst giving evidence, it appears the Agliotti is a large man of imposing physical appearance. He is relatively well spoken. He always appeared extremely well dressed in court. He did not appear to lack confidence. It emerged from his evidence that when travelling he stayed at the best hotels, supported up market clothing stores, travelled overseas whilst flying first or business class and enjoyed a luxurious life style. He deliberately gave the impression that he liked the better things in life. Flint testified that when he met Agliotti (this must have been after 1993), Agliotti was a different person to the one now accused of serious crimes. It appears that Agliotti did not portray at that time the signs

of affluence which he sought to portray in the witness box. The accused was educated in Johannesburg where he matriculated. He was awarded a Bachelor of Arts degree by the University of the North. He qualified as a teacher. He thereafter, in the early 1970's, taught at a number of high schools in South Africa. At an early age the accused became involved in politics. He became the secretary of what was then called the South African Student's Organisation. He was detained without trial on two occasions. Ultimately the accused went into exile. Whilst in exile the accused taught at the Solomon Mahlangu Freedom College in Tanzania. The accused was a member of the African National Congress and was elected as the head of the African National Congress's Youth League. At a later stage he was elected to the National Executive Committee of the African National Congress. Whilst teaching in Tanzania he was called to Lusaka by the then president of the African National Congress, Mr Oliver Tambo and was sent for further military training in Moscow. He returned to South Africa in approximately 1991. He was put in charge of the repatriation programme of the African National Congress. In 1994 he became a backbencher in the first democratic parliament in South Africa. In the first year of the parliament he was appointed as the South African ambassador to the United Nations in Geneva. After

approximately 4 years he was appointed as the director general of the department of foreign affairs. In 2000 he was appointed as the national commissioner of SAPS.

46. The accused and Agliotti came into contact with each other for the first time in the early 1990's. Their contact terminated on 16 November 2006 when Agliotti was arrested by the DSO on charges of the murder and the conspiracy to murder Mr Brett Kebble.

47. This judgment in essence deals with the nature of the relationship between them. It has to determine whether their relationship was a corrupt relationship as contended for by the state. At the outset it should be stated that the task of determining the relevant facts was made even more difficult than usual by the mendacity of the material witnesses. This will be alluded to further on in this judgment.

48. The issues in dispute must be considered in their correct factual background. This factual background is largely not in dispute. In setting out the background issues that are in dispute will be referred to from time to time as part of the narrative. These issues will however not be addressed in any detail at this stage. As far as is possible the factual

background will be set out chronologically by reference to principal events. Where subsequent events took place which flow from the principal event they will be referred to under the relevant principal event which will interrupt the chronology but facilitates the exposition of the facts. Evidence relating to alleged payments made by Agliotti to the accused and gifts allegedly given by Agliotti to the accused will be omitted from this background. They are all denied. They will be set out after the factual background has been set out.

49. In the early 1990's Agliotti met the accused at the head office of the African National Congress. At that time the accused was in charge of social welfare and development within the African National Congress. Agliotti was considering the importation into and the sale in South Africa of second hand clothing. Agliotti was considering giving a percentage of the profits to cover the relocation costs of members of the African National Congress returning to South Africa. Agliotti and the accused had approximately twelve meetings. Nothing came of this and eventually Agliotti and the accused went their own ways. During this time Agliotti met the accused's secretary, Ms Ntombi Sylvia Matshoba ("Matshoba").

50. Rautenbach lived in South Africa from 1990 to 1999. He was involved in several businesses. The first business was a trucking business known as SA Botswana Hauliers. In approximately 1992 he became involved in the importation of Volvo trucks from Botswana into South Africa. In 1993 he became involved in a business which acquired the Hyundai motor vehicle franchise. In 1999 he became aware that an investigation was being conducted into the Hyundai business. During November 1999 certain of the business premises in Germiston were raided by the SAPS. Shortly thereafter, in late November 1999, Rautenbach fearing arrest left South Africa for Zimbabwe.

51. Agliotti met Muller in 1993. In approximately 1995 they were involved in a relationship. Thereafter and during 1997 or 1998 they commenced living together. In June 2003 the relationship ended and Muller moved Agliotti out of her house. Muller testified that she moved Agliotti out of her house because of his inability to tell the truth. Flint testified that he met Agliotti at the time Muller met him. He stated that Agliotti was not the person who appeared in court. He conveyed that at that time Agliotti had a far more modest appearance. He then drove a battered Nissan motor vehicle and wore clothes from "*Edgars and places like that*".

52. In 1999 Muller commenced trading with Mr Andrew Ross ("Ross") as event managers. They originally did so through a close corporation known as Monster Marketing CC trading as Maverick. After a period of time they required a black economic empowerment partner. Agliotti introduced them to Mr John Stratton ("Stratton") and Mr Hennie Buitendag ("Buitendag"). Stratton was a director of JCI and a confidante of Kebble. Buitendag was the chief financial officer of JCI. In her evidence in chief Muller stated that this was in 2004 and 2005. In re-examination she stated that the negotiations commenced in the beginning of 2003 and then moved into 2004. Flint, who was intimately involved in the business of Maverick, testified that Agliotti had overheard him speak about the need to acquire a black economic empowerment partner and had suggested that they raise the issue with JCI. He testified that this occurred towards the latter half of 2003. After apparently long negotiations with JCI an agreement was arrived at pursuant to which Maverick Masupatsela (Pty) Ltd acquired 30 % of the business conducted by Monster Marketing CC trading as Maverick. The new entity traded under the name of Maverick Masupatsela (Pty) Ltd and commenced trading as such in 2005. After the death of Kebble in September 2005 the entire transaction collapsed and the deal was reversed.

The business was thereafter carried on under the name of Maverick Experience Exhilarator (Pty) Ltd. In due course another black economic empowerment partner, in the form of African Renaissance Holdings Ltd, invested in the company. Kögl is a director thereof. Muller is the chief executive officer of the company; Ross is the creative director and Flint the financial director. The companies and close corporation referred to in this paragraph will for ease of reference be referred to herein as Maverick.

53. During cross examination Muller testified that during the negotiations with JCI, Stratton requested Maverick to purchase a motor vehicle for him. Muller confirmed that this was done and that the sum of R18607.44 was paid by the company monthly on the car until she caused it to be sold.

54. It is necessary to refer to the premises occupied by Maverick. In 2000 Maverick moved its premises to Gallagher Place office park in Midrand. Thereafter Maverick moved its premises to Mount Royal Office Park, also in Midrand, from where it still operates. According to Muller the latter move was effected in October 2004. Flint testified that Maverick moved into its present premises in June 2004. The lease commenced 3 months later. He testified that the actual date of the move, as confirmed by

Telkom records, was 4 June 2004. The Mount Royal premises comprised of a reception area with 2 showrooms on the right and the left of the reception area downstairs. A stairway led to the top floor. The stairway led directly into a boardroom. Left of the stairway is a passage leading to an office. The office had 4 desks for the use of Muller, Ross, Flint and Agliotti. Agliotti's desk has since been removed. Muller could see the entrance to the boardroom from her desk.

55. Notwithstanding having the use of a desk at Maverick's premises, Agliotti played no role in the business affairs of Maverick. According to Muller, Agliotti had no place, other than coffee shops, from whence he could conduct his own business. Muller provided him with the use of the desk. He would be present at Maverick's in the morning for a time, except for Wednesday mornings, when he played golf. Thereafter he went about his business.

56. The accused and Agliotti renewed their acquaintance in early 2000. Mr Paul Stemmet ("Stemmet") ran a security company known as Palto. He was a police informer. He told Agliotti that he was going to attend a meeting with Mr Yusuf Surtee ("Surtee") and the accused. Surtee is a director of S Surtee Esquire (Pty) Ltd. This company owns

various upmarket clothing stores such as Boss, Grays and Lacoste. Agliotti, never one to miss an opportunity, informed Stemmet that he would like to attend the meeting as he knew the accused. Agliotti attended the meeting but did not participate therein. According to Agliotti Surtee informed the accused that Stemmet had done investigative work for him and that he could recommend Stemmet to him and SAPS. Mr Freddy Burger ("Burger") likewise attended the meeting. Burger was a colleague of Stemmet. The accused recalled this meeting. He linked it to the African Hope event to which reference will be made later.

57. Towards the end of 1999 and the beginning of 2000, Rautenbach approached a business colleague, Mr James Ramsay ("Ramsay"), who had been a practising attorney in South Africa, and requested him to make contact with the NPA on behalf of Rautenbach. The upshot of this was that Ramsay met with Ngcuka on a few occasions. Flowing from these discussions Ngcuka directed a letter to Ramsay. The letter is dated 12 June 2000 and is on the letter head of the NPA. The letter reads as follows:

"We believe that there is a real possibility of us finding a mutually acceptable solution in respect of all outstanding criminal matters against your client. In our view, it is important for your client to convince us about his bona

fides. In order to enable us to take this process forward, we would like your client to respond satisfactorily to the following questions:

1. *What is the purpose of Hewa Bora Limited that was incorporated in Mauritius by Annerien Nel on your instructions? Who are the beneficial owners of this company? Please provide the details of payments that were made to this company, including the beneficiaries, dates and bank accounts.*
2. *Are you aware of any bank accounts, properties or any other financial instruments that are being used by members of foreign governments to launder money in South Africa? Please provide details.*
3. *Did you have any contact, either directly or indirectly, with officers of any national intelligence services during 1999? If so, please provide dates, identify the people attending and provide the details of your discussions.*

Have you ever tasked any private intelligence and investigations companies to investigate any South African government officials? If so, please provide the details."

Ramsay replied to this letter on 3 July 2000.

"I refer to our meeting at your offices on the morning of Monday 19 June 2000.

Following thereon I have had further discussions with Billy Rautenbach who has requested me to convey to you his assurances of his bona fides and his desire to find a mutually acceptable solution in respect of all outstanding matters.

At our aforementioned meeting I undertook on Billy Rautenbach's behalf to respond in writing to the 4 questions set out in your fax to me of 12 June 2000 and which I now do hereunder seriatim:

1. *The purpose of incorporating Hewa Bora Limited ('HBL') was for it to be used as a vehicle to participate in a profit sharing agreement relative to a mining operation in the DRC ('the agreement').*

   The shares in HBL are bearer and accordingly whoever presently holds these would be the effective beneficial owner.

   It is felt that it would be more appropriate for further details including details of all payments made pursuant to the agreement to be furnished at the Maputo meeting referred to hereunder and Billy Rautenbach undertakes to do this.

2. *This question refers specifically to members of foreign governments. He is unaware of any bank accounts, properties or any other financial instruments being used by such members for the purpose stated and is of the view that in the light of exchange control restrictions and the volatility of the Rand currency South Africa is an unlikely venue for such activities.*

3. *He did have contact with officers of the South African Intelligence Services during December 1999. As I advised you at our meeting of Monday 19 June 2000 he met with Andries and Raymond in Maputo and his father met with these same gentlemen in Pretoria earlier this year.*

4. *Yes. A private investigative company/ies was/were requested to investigate Mr Nick Rowell (attached to the Investigating Directorate) and a Mr Badenhorst of the Receiver of Revenue's department. There may have been others who were investigated but this information is peculiarly within the knowledge of Mr Doppies Kotze who was employed in the group's security department.*

When I met with you at your offices on Monday 19 June 2000 it was arranged that subject to the issues of bona fides being satisfactorily addressed a meeting would be held in Maputo which Billy Rautenbach would attend and to which meeting you would despatch mandated representatives to attend. You will recall that we provisionally set Thursday 13 July 2000 and Friday 14 July 2000 as the dates for such meeting.

I would now like to suggest that if convenient and subject to the availability of flights from Johannesburg on the morning of Tuesday 11 July 2000 the Maputo meeting be held on Tuesday 11 July 2000. If this is not suitable we can keep to the date of Thursday 13 July 2000. While it would be preferable to complete the discussions in one day they can if necessary be extended for a further day.

I confirm that at this meeting we will in addition to debriefing from your side also address the cessation of investigations and the matter of an acceptable resolution in respect of outstanding matters and that the representatives who will be sent by you will also be fully mandated for such purposes.

I have made plans to be available in Johannesburg from the morning of Tuesday 11 July 2000. At the Maputo meeting Billy Rautenbach will furnish any further information you may require relative to your fax to me of 12 June 2000 and any other relevant information. You already have his assurances of his good faith and willingness to cooperate.

I would hope, as we discussed at our meeting on Monday 19 June 2000, that at the Maputo meeting we will be able to reach an overall arrangement including the cessation of the investigations and a solution in respect of all outstanding matters.

While I have assured Billy Rautenbach of your good faith I must however ask you to kindly confirm to me in your response hereto that no attempt will be made on the part of the South African authorities to extradite Billy from Mozambique, hinder his arrival and departure therefrom or to in any way either directly or indirectly interfere with his liberty when he visits Mozambique for the Maputo meeting.

I would appreciate hearing from you urgently so that final arrangements can be made for the Maputo meeting."

As is apparent from this letter Ramsay had a meeting with Ngcuka on 19 June 2000 at which meeting it was agreed that a meeting would be held with Ngcuka's representatives and Rautenbach in Maputo in July 2000. The meeting was duly held. Ngcuka was represented at the meeting by Mr P Richer ("Richer"), who introduced himself as working for Ngcuka, and Mr J Maqetuka ("Maqetuka") who was a deputy director of the NIA at that time. According to Leask, in 2000 Richer was in fact one of the Deputy Directors General of the National Intelligence Agency. In view hereof it is perhaps not surprising that not much was discussed in regard to what Rautenbach described as the Hyundai case. What was discussed was mainly intelligence issues relevant to issues outside South Africa's borders. A subsequent meeting was held at the request of the South Africans with some officials from the DRC. Thereafter Rautenbach received a letter from Richer advising to the effect that all negotiations or communications were terminated.

58. In early 2000, and after Agliotti had renewed his acquaintance with the accused, Muller was involved in raising money for challenged children in South Africa. It was part of an international project. The South African

project was called African Hope. Agliotti approached the accused for assistance and to obtain the assistance of SAPS in the project. The accused was favourably disposed to the project and eventually appointed Mr Ben van Deventer to liaise with Agliotti. Eventually a successful event was held in early 2001. The accused was instrumental in getting the involvement in the event of 1000 police officers and arranging for the closing of some of the streets of Cape Town for a torch run from the Table Bay Hotel to the steps of Parliament. During this time Agliotti had meetings with the accused at the offices of Maverick and at SAPS head quarters as well as in Sandton. According to Agliotti he and the accused would frequent coffee shops in the Sandton shopping centre. He mentioned the Brazilian Coffee Shop and Europa Coffee Shop. The accused did not appear to dispute this. Agliotti further testified that he and the accused would also shop together. This was however disputed by the accused and will be referred to later.

59. It was at the time of this project that Muller and Flint first met the accused. According to Muller she saw the accused after the completion of the African Hope project. She testified that she saw him a few times at Maverick's premises at the Gallagher Place office park and on average

twice a month at Maverick's premises at the Mount Royal office park

60. It appears from the evidence that from approximately the time of African Hope the relationship between the accused and Agliotti developed. The nature of the relationship and its development are in dispute and will be referred to later.

61. The Kya Sands drug bust occurred on 3 January 2002. Agliotti testified that he was approached by a Chinese lady known as Madam Chen to assist in the delivery of 2 twenty foot containers to Kya Sands for, what he regarded, as a ridiculous sum of money. Agliotti informed Stemmet hereof and instructed him to arrange for a controlled delivery at Kya Sands at Bryanston. The operation conducted by the SAPS was successful.

62. In cross examination Agliotti accepted that he phoned the accused and advised the accused as well of his suspicions prior to the police operation. It was also put to Agliotti that he informed Mr Morné Nel of his suspicions as well prior to the police operation. Agliotti was less emphatic in his acceptance of this proposition. The issue was not taken further.

63. Nel testified that on 3 January 2002 he was informed by Stemmet that he had received a request to provide an armed escort and to transport expensive tiles that had been imported from China from City Deep to Kya Sands for a remuneration of R70000. Nel met Stemmet and an operation was planned. This operation resulted in the arrest of 7 people and the confiscation of R1,2m worth of Mandrax tablets. After the arrests the investigation of the incident was handed to the Organised Crime section of the SAPS. Nel testified that at the time of the arrests and the confiscation of the drugs he was unaware of any role played by Agliotti in the furnishing of information.

64. According to Agliotti he telephoned the accused from the airport after the police operation and before leaving for overseas. He asked the accused if he was happy with the operation. According to Agliotti the accused was ecstatic. Agliotti phoned the accused again from Italy and asked if there was any reward payable to him. It is emphasised that this occurred in January 2002 and it indicates the state of the relationship between the accused and Agliotti at that stage.

65. Nel testified that Stemmet received a reward of R500000 from the SAPS for the information supplied by him. He

identified a document contained in exhibit A25 entitled "*Information Note*" as having been completed by him to motivate the reward. In the context the informer referred to was Stemmet. It is necessary to quote certain portions of this document. "*1.1 On 2002-01-03 registered human source operational under the auspices of SR29660 reported that a container of drugs, originating from Panyu Chemical Import & Export Corp. (Panya Republic of China) arrived in Johannesburg from Durban on 2002-01-02. Information on hand indicated that the container will be moved on 2002-01-03 to The Randburg Public Storage facility in Kya-Sands, Johannesburg.*" and "*3.1 Registered Human Source SR29660 infiltrated the syndicate managed by the Chinese Triads under very dangerous and difficult circumstances. The source was operational for a period of thirty (30) working days in order to gather the necessary intelligence which led to the success mentioned. He is still in place pertaining to other containers and more successes is expected in the next two weeks.*" And finally "*3.4 SR29660 played a vital role in the investigation of Chinese Foreign Nationals involvement in the smuggling of drugs and abalone between South Africa and China/Hong Kong. The source is still well placed amongst the Chinese and Taiwanese Triads and more intelligence are currently being generated in order to prevent more drugs been imported*

into South Africa and abalone exported to China." (sic). The accused had to approve the payment of the reward. His approval is apparent from his signature to a document to which the information note was attached.

66. Nel testified further that at a later stage he was approached by Stemmet. Stemmet informed him that Agliotti had been helpful in the process of acquiring information in respect of the Kya Sands operation and that he wished to give Agliotti R100000 of the reward that he had received. This was subsequently done in his presence in Sandton. According to Nel there was a relationship between the accused and Stemmet.

67. In cross examination it was put to Agliotti that in a witness affidavit deposed to by Stemmet, Stemmet made serious allegations against Agliotti in respect of the Kya Sands transaction. It was put to Agliotti that he had asked Stemmet to assist in the transportation for a large sum of money. This had aroused Stemmet's suspicions and he had informed Nel thereof. Agliotti denied this proposition and Stemmet never testified. In addition it was suggested to Agliotti in cross examination that the only reason that he received R100000 was because he was not a registered

informer at the time the information was given. This was not established by the accused in evidence.

68. Leask had access to the police docket in the Kya Sands matter. From the docket it emerged, according to Leask, that charges had been withdrawn against three of the accused. As to the remainder of the accused Leask could find no document in the docket relating to them but there has been no prosecution at all in the matter.

69. At the end of January 2002 Stemmet informed Nel that he wanted to introduce him to the source of his information who could potentially provide further information relating to international drug trafficking into South Africa and the exportation of perlemoen to China. On 23 January 2002 Nel was introduced to Agliotti. Agliotti was paid a recruiting fee of R10000 and on 30 January 2002 he was registered as an informer. He remained an informer until early 2003 when his services were terminated. Agliotti's version differs only slightly from that of Nel and need not be considered further. Save for the R10000 recruitment fee and the R100000 referred to above, Agliotti did not receive any further payments from the SAPS.

70. In early 2003 Agliotti met Rautenbach in Zimbabwe. He was introduced to Rautenbach by Mr Brian Baxter ("Baxter") as someone who could assist in moving Rautenbach's Hyundai matter forward in South Africa. Baxter was a friend of Rautenbach's father. According to Rautenbach he had unsuccessfully attempted to resolve his issues with the NPA. He did not believe that the state had a case in the Hyundai matter. He stated that he wished to gain access to the authorities in South Africa so that he could explain what had occurred in the Hyundai matter. He was unwilling to return to South Africa as there was a warrant for his arrest. Agliotti said that he had contacts in South Africa. He mentioned amongst others the accused and Ngcuka.

71. Agliotti said he needed more information and Rautenbach undertook that he would make his attorney in South Africa available to furnish documents and information. When Agliotti returned from a trip the attorney met Agliotti at the airport and handed him a file. The file contained the letter referred to in paragraph 57 supra. Agliotti added that Rautenbach was of the view that Ngcuka had abused his office and had tried to extort a bribe from Rautenbach. Agliotti subsequently handed this letter to the accused.

72. According to Rautenbach Agliotti returned to Zimbabwe about 3 months later. He had a magazine or brochure with him which contained a photograph of him and the accused. Rautenbach recalled that Agliotti came on a further occasion to see him in Zimbabwe. On this occasion Agliotti informed Rautenbach that he was no longer working with Baxter and that he required a fee of a million rand to take Rautenbach's issue further. Rautenbach declined to pay this amount.

73. Rautenbach testified that he met Stratton at Harare airport together with Agliotti at the request of Agliotti. This must have occurred after the commencement of Agliotti's relationship with the Kebbles which will be referred to hereinafter. According to Rautenbach Agliotti informed him that Stratton was involved at a high level with JCI and that JCI was interested in expanding its mining interests in the DRC. Rautenbach also had mining interests there. They accordingly discussed mining possibilities. Stratton then enquired whether Rautenbach had any "*dirt or any bad information*" on Ngcuka. Rautenbach replied that the only information he had was the correspondence referred to in paragraph 57 supra.

74. It is not clear on the evidence precisely when Agliotti met Kebble and Stratton. As will appear hereinafter it was certainly prior to 28 August 2003. Agliotti testified that he was introduced by Stemmet to Kebble and Stratton. Stemmet indicated that Agliotti had a close relationship with the accused. According to Agliotti the Kebble family was a prominent mining family in South Africa. They "*owned*" JCI and Consolidated Managements Services Limited ("CMMS"). CMMS is a subsidiary company of JCI. Kebble was the chief executive officer of JCI. Stratton was a director of JCI and a confidante of Kebble. Buitendagt was the chief financial officer of JCI. Mr Roger Kebble is Kebble's father and was also a director of JCI. Stemmet was the head of Kebble's security.

75. According to Agliotti the Kebbles had problems with Associated Intelligence Network ("AIN"). AIN is a private security company and it had been appointed at the instance of Mr Mark Wellesley-Wood ("Wellesley-Wood") and Durban Roodepoort Deep Limited ("DRD"). Wellesley-Wood was the chief executive officer of DRD which is a gold mining company. This lead to the Kebbles having a complaint which they wanted investigated at the highest level. Agliotti approached the accused with a letter. The accused indicated that he would arrange for the complaint

to be presented. A meeting was duly arranged with Commissioner Mphego ("Mphego"), Commissioner Lalla ("Lalla"), both of the SAPS, and various other members of the SAPS. JCI was represented at the meeting by Mr Willem Heath ("Heath"), Stratton and Agliotti. Heath was an advisor to the Kebbles. A follow up meeting held at a house in Melrose between Mphego and another person, whom Agliotti assumed worked for Mphego, and Stratton and Agliotti. The house referred to was utilised by Kebble and his associates as a meeting place.

76. Agliotti testified that after he had set up these meetings the Kebbles were grateful to him. He added that the Kebbles had a whole host of problems. He cemented his relationship with them based on his knowledge of the commodity market in Africa and because of his relationship with the accused. The Kebbles wanted "*the accused to be onboard and to have access to the accused*". Agliotti indicated that to provide those services he required a consulting fee of $1m. The Kebbles agreed to pay that amount. The fee was Agliotti's to do with as he wished.

77. Agliotti introduced the accused to Mr Gavin Varejes ("Varejes") who he had met at his gym. Varejes is a businessman. It is not clear on the evidence when this

occurred. Prior to introducing Varejes to the accused, Agliotti had introduced Varejes to Stemmet who performed certain investigations for Varejes. As will become apparent hereinafter Stemmet's relationship with the Kebbles was terminated and the relationship between Agliotti and Stemmet deteriorated as a result thereof. It is accordingly assumed that this introduction occurred prior to the termination of Stemmet's relationship with the Kebbles. Thereafter Varejes, through Stemmet and Agliotti, requested a meeting with the accused. According to Agliotti he asked Varejes to attend a dinner at Varejes' home in Morningside. The accused attended the dinner. As far as Varejes is concerned, Leask testified that during a period in excess of 2 years those involved in the investigation were unable to get Varejes to sit down and speak to them. He added that they had gone to great lengths to endeavour to get him to come for a consultation.

78. At the insistence of Kebble, Agliotti invited the accused to attend 5 to 6 dinners with amongst others Kebble and Stratton. Agliotti would meet the accused en route to the dinner and then follow him to the venue. Mr Clinton Nassif ("Nassif") attended one such dinner.

79. Agliotti had met Nassif. He was introduced to Agliotti as being involved in the security industry and as having good contacts and in particular within the South African Revenue Services. Kebble was dissatisfied with the performance of Stemmet as head of security. Agliotti introduced Nassif to the Kebbles as somebody well connected, in particular well connected to the revenue services, and connected to the accused as well. Nassif then replaced Stemmet as head of the Kebbles security.

80. In August 2003 Mphego telephoned Agliotti and informed him that he needed to see him urgently. Agliotti saw Mphego on 28 August 2003. Unbeknown to Agliotti the interview was videoed. The meeting was mentioned during Agliotti's evidence in chief. The video was introduced in the cross examination of Agliotti. It was provisionally admitted into evidence. The video is exhibit 2A and the transcript thereof is exhibit 2B. The accused saw the video 2 to 3 weeks after Mphego had recorded it.

81. According to the transcript:

81.1 Mphego refers to "*that Kebble stable*" and that SAPS have been engaged in a variety of interactions with them as Agliotti knows.

81.2 Mphego stated that SAPS have been monitoring a lot of their communications and activity and that this monitoring has been done legally or illegally.

81.3 Mphego had reviewed whatever had been recorded alone.

81.4 What concerned Mphego arising out of the review is "*One point something million to Nascom and what have you*". Mphego stated that he knows that the aforegoing was said. Agliotti responded "*Mphegs its got nothing to do with Nascom, it is my eh... it is my business account offshore and its got nothing to do with him, and I wouldn't lie to you. I am dead serious; it's got nothing to do with National Commissioner*" and "*In fact it is a lot more. There is another 1.5 million that is needed for Tobacco in Zimbabwe to buy*".

81.5 Mphego responded and said the machines don't lie. "*What you capture you capture and so far what I am saying to you Glen is that this footage is only with me.*" Mphego asked "*Why would this name of Nascom be dropped eh on the footage you know to say you know Nascom this and this and I don't know maybe it is what is going on between you and them, some, some ...*"

81.6 Agliotti responded by saying that he was

"*being honest I am doing a deal with them where I am saying to them it is only between them and I. It's got nothing do with National Commissioner and I am telling you honestly again I am not going to lie to you. Right I said to them guys I will consult for you and like this I am taking them to see Obasanjo in Nigeria that's for JCI*" and "*It has nothing to do with me, I don't have the infrastructure and the means of JCI or 4 or 5 billion to go put up a fertiliser plant in Nigeria with eh palm oil extraction plant and float glass plant at Cross Rivers of Donald Due, so they have got to pay me for that*".

81.7 Mphego then stated that his dilemma was that if he did not get "*flesh on the footage*", to say what it meant, he was "*obligated to go and say to Jackie, this is what is on the table.*"

81.8 Agliotti responded by stating that he appreciated that Mphego was honest with him and had called him to the meeting. He added "*I used Jackie's name and I am not lying to you. I shouldn't have, right in the beginning, then I said: 'listen guys Jackie is, Jackie obviously won't take a cent', we all know that I said its got nothing to do with Jackie now this is between you and I. This was, and uhm and I have told them okay, I have said to them I*

want one and a half million dollars to consult for, and I will tell you that I took them to Zimbabwe..." Agliotti continued referring to his services and concluded by saying "*Okay, so I am being totally honest with you, right in the beginning they wanted to meet with Jackie I asked Jackie and he said no, right in the beginning he said I want you must deal with Mphego and Ray right*". Agliotti added that when he phones the accused whom he refers to as Jackie and Jacks they talk on purely "*friendship things*".

81.9 Mphego then voiced his concern that some judicial enquiry may find the recording which had not been given to the accused.

81.10 In answer to a question by Mphego Agliotti responded "*Yes they know it is not for Jackie I have told them I said listen guys (inaudible) I used but it is for me Glen, you pay me to do a job, it is like anybody you are going to pay me a consultants fee, I am doing it. So they are quite happy its true they are quite happy.*"

81.11 Agliotti then offered the following "*...John will often say to me please speak to Mphego, ask him what's happening and I'm to tell you and I will say yes John, I will and meanwhile I won't cause I*

know you have got so much on your plate, and so much on your head. It is like remember that I phoned you I said please Mphegs phone back urgent which you did and I appreciate it. I didn't even know what it was about. So yes that often happens when John will say please ask Mphego to phone me and you know I haven't heard from him, and you know I will phone you and say Mphegs do you mind to speak to John that sort of inter-reaction happens with John and, I not daily, but he does and often it's the case I don't even phone you cause I think you know what you are so busy you are methodical you know what you are doing."

81.12 Agliotti stated that he would give nformation to Mphego "*of a shipment coming in from India of eh it is nothing ... I know Paul has given Nascom some samples it is not that, that's coming via Mozambique that is Heroin shit this is Mandrax powder.*"

81.13 Agliotti referred to a shipment of mandrax powder and "*chocolate*" that was being brought into South Africa from India. He referred to two meetings that he had with an intermediate party. He stated that he would give the necessary information to Mphego. During the course hereof

Agliotti added that the "*big Mandrax bust that we did with Nascom about two years that was through me...I gave Jackie everything in that whole big bust ...*"

81.14 Agliotti added that he deals with a lot of gangsters. He continued "*I am flashing you now you will hear me talking about cigarettes, Peter Stuyvesant, or contraband you will hear me say bring it but they have not come forward yet there is a lot of people phoning me for and I know all the gangsters unfortunately you know good people and you know bad and I am telling you know, that is how we did that Mandrax bust through the Chinese they came to me can I clear it, and I said yes, yes and I phoned Jackie and we hit it, the one in Bryanston for 400 million or whatever. So if you hear that on my phone I deal where guys offer me cigarettes, contraband they offer me all sorts of shit you will know at least you now about it now if it's anything contraband, cigarettes, I will come and give it to you.*"

81.15 Agliotti referred to information which he gave to the DSO in Durban which led to "2 *busts*". He added ..."*I gave it to them one is Minora Blades and the other was Peter Stuyvesant then they said no they*

are going to charge me." Agliotti indicated his outrage at the intimation of being charged as he was the source of the information.

82. Flint testified to attending a meeting at JCI with Agliotti, Stratton and Buitendag in December 2003. The meeting was in connection with the black economic empowerment deal that Maverick was seeking to conclude with JCI. At a point during the meeting Kebble, who was not part of the meeting, enquired from Stratton and Buitendag whether they had sorted out the company that was needed for the DRD matter. Agliotti enquired what they needed. They said that they had to form a company as they were going to do some security and development work. Flint was the sole shareholder of Spring Lights 6 (Pty) Ltd ("Spring Lights"). It was agreed that Flint would sell his shares in the company for the sum of R350000 which according to Flint was the amount of his shareholders loan account. The sum of R350000 was paid into Flint's bank account the next day.

83. Spring Lights had a bank account with Nedbank Ltd's Petticoat Lane branch in Midrand. Flint had signing power on the bank account. After Spring Lights was taken over Flint continued operating on the bank account. He would draw and sign cheques on the instructions of Agliotti. If the

drawn cheques were payable to a particular person, except his daughter, he would hand the drawn cheque to Agliotti. If the cheque was drawn in favour of Muller he would personally hand it to her. If the cheque was drawn to cash, he would cash the cheque and give the cash to Agliotti as soon as he could.

84. According to Flint, despite his signing all the documentation necessary for JCI to take over Spring Lights, it failed to do so despite complaints from him. Arising from his complaints, so Flint testified, he was asked to procure Agliotti's signature to operate Spring Lights bank account. This he said occurred in mid 2004. (It is not apparent how this resolved Flint's complaints)

85. According to Friedman during the period 5 December 2003 to 30 December 2005 R39227566.51 was deposited into the account of Spring Lights. During broadly the same period cheque payments totalling R36197888.45 were made from the account. Friedman further determined the source of the funds deposited into the Spring Lights account. He determined that deposits aggregating R26 684 000 originated from CMMS. Deposits commenced on 5 December 2003, when R4m was deposited, and terminated on 18 January 2005. Save for the aforementioned deposit

of R4m and the last deposit of R600000 which was made on 18 January 2005 all these deposits were made in 2004. Deposits totalling R6 391 771 were made into the Spring Lights account where Agliotti is reflected as the depositor. These deposits save for the first one which was made in December 2004, were made in 2005. Deposits totalling R1m were made into the aforesaid account by Mr Roger Kebble during 2005. During 2004 further deposits were made into the aforesaid account by Heath Forensic Investigators and Consultants CC. According to Friedman these deposits in fact emanated from CMMS and were routed through the aforementioned depositor. Other small deposits were made in and credits given to the account. In regard to payments from the Spring Lights account, Friedman testified that during the period 1 December 2003 and 31 December 2005 86 cheques aggregating R2 862 755.16 were cashed. In December 2004 6 cheques totalling R665000 were cashed. Details of these cheques appear from annexure J (exhibit C3 annexure J p141). The 6 cheques were cheque 212 dated 1 December 2004 for R10000; cheque 214 dated 6 December 2004 for R250000; cheque 215 dated 6 December 2004 for R5000; cheque 219 dated 10 December 2004 for R100000; cheque 222 dated 13 December 2004 for R200000 and cheque 226 dated 20 December 2004 for R100000.

86. Sanders testified as to a meeting which he attended together with Nassif and Mr Tamo Vink ("Vink"). Vink was an advisor of Nassif. At the meeting Nassif informed Sanders that he had just secured a contract with JCI to set up an investigations company with surveillance teams and that the investigations company would be paid a monthly retainer. Sanders agreed to join Nassif in this endeavour. Central National Security Group (Pty) Ltd ("CNSG") was the vehicle in which the aforesaid business was conducted. It was formed in 2004. Sanders was the operational director. Nassif informed Sanders that he had appointed Matshoba as a director of CNSG. Nassif stated that she had a close relationship with the accused. Sanders understood that Matshoba had been the accused's secretary and that she had strong political and business contacts.

87. A few weeks after joining Nassif, Nassif informed Sanders that he wanted him to meet Agliotti as he had close ties with the accused. He added that the accused was unhappy with the services rendered to SAPS by Palto and that Agliotti wanted to introduce them to the accused so that they could perform those services. The meeting was held during a game of golf at the Dainfern Country Club. The

services rendered by Palto included making "*drug busts*" and the monitoring of the illegal movement of containers across the borders of the country. Agliotti informed Nassif and Sanders that the relevant employees of Palto were appointed police reservists with the rank of captain and that he would arrange that they get the same appointment certificates.

88. According to Agliotti he set up a meeting with Nassif and the accused at Melrose Arch as Nassif wanted to meet the accused. Agliotti was not certain as to who attended the meeting in addition to himself, Nassif and the accused. Sanders could have been present but Agliotti was not certain. At the meeting Agliotti asked the accused if he could afford Nassif the same opportunity of working with SAPS as had been afforded to Stemmet and Palto.

89. Some time later Agliotti called Nassif. As a result Sanders went to the premises of Maverick where he and Agliotti met the accused. The accused arrived in a black Mercedes Benz motor vehicle and in uniform. The purpose of the meeting was for the accused and Sanders to get to know each other. During the meeting the accused said that Agliotti had spoken to him about the other matter and that they would have a meeting in that regard. Sanders took this

to mean performing the services referred to above and being appointed as captains in the SAPS reserves force. According to Sanders the accused asked him if he had been a member of the SAPS before. Sanders informed him that he had been a member and that he had worked in the organised crime unit and the endangered species unit. He did not tell him that he had worked in the security branch and in a unit known as Koevoet. The accused's version of this is somewhat different. According to the accused Sanders told him that he had been a member of the SAPS task force. On returning to his office the accused made enquiries as to the accuracy of what he had been told by Sanders. He ascertained that Sanders had been working "*in endangered species, Flora and Fauna and something of that sort*".

90. Subsequently a meeting was held with the accused at The Meat Company in Melrose Arch. The meeting was attended by Sanders, Nassif, Agliotti, Matshoba and the accused. The accused stated that it was not possible for any services to be rendered to SAPS. He stated that he under too much pressure from senior police officers in the utilisation of the services of private security companies in performing services for the State or for SAPS. He stated that he had a proposition in regard to a mission in the

Sudan. He was about to send 80 policemen to the Sudan. He had international funding in respect thereof. The accused put a document on the table and indicated that he needed certain services to be performed. Nassif looked at the document and passed it on to Sanders. Sanders spent some time after the meeting going through the document and indicated thereon what services could be supplied by CNSG or others affiliated to them. When Sanders had completed working on the form he handed it to Matshoba. The accused denied Sanders's evidence and stated that he did not know how they manufactured that.

91. A few weeks after the document was handed to Matshoba, she brought what was described as a tender document to CNSG. The proposed tender was for the supply of body armour to SAPS. The tender was completed and submitted. It was not successful.

92. A further meeting was held at the Melrose Arch Hotel on a Saturday morning. Nassif, Sanders, Matshoba, Agliotti and the accused were present at the meeting. It was a short meeting as the accused had to attend a rugby match and was wearing a rugby jersey. Nassif asked the accused if there was any news in regard to the Sudan contract. The accused replied that he had not received funds. He added

that he had not forgotten them and that things were still on track. The accused denied having ever worn a rugby jersey.

93. Yet a further meeting was held at the Meat Company in Melrose Arch. This meeting was attended by Nassif, Sanders, Matshoba, Agliotti and the accused. It was also attended by Mr Eyhab Jumean ("Jumean"). Jumean is a Jordanian citizen and apparently is a wealthy banker. He married an international model who is a South African. Agliotti asked the accused to attend this meeting. According to Agliotti, at the commencement of the meeting, he explained to the accused very briefly the purpose of the meeting and thanked him for coming to the meeting. The meeting took place at request of Nassif in regard to an investigation they were busy with. The investigation related to Jumean and his wife. It was alleged that Jumean was being blackmailed by a person who was named and who was a police reservist. According to Agliotti the amount involved in the blackmail was £500000. The purpose of the meeting was to inform the accused of the blackmail and the fact that it was being perpetrated by a police reservist and to have the alleged perpetrator's reservist status revoked. According to Sanders this subsequently did happen. At this meeting the accused stated that he did not like the fact that

CNSG employed Mr André Burger ("Burger") and Mr Henri Beukes ("Beukes"). He stated that if they wanted a working relationship with him must dismiss the two men. They were dismissed.

94. The accused's version as to who called this meeting differs from that set out above. According to the accused Nassif telephoned him directly to arrange this meeting. The purpose of the meeting was that Nassif wanted to get recognition for the rescue of a child that had been kidnapped. This was the first issue discussed at the meeting. Thereafter discussion took place in respect of the alleged blackmail of Jumean. After the meeting the accused made enquiries in regard to the reservist. He ascertained that the reservist was facing a large number of charges arising out of his activities as a bouncer. He informed the Provincial Commissioner of Gauteng of this and the alleged blackmail. The matter was thereupon dealt with.

95. Sanders testified as to an incident that involved Burger. He was involved in the rescue of the kidnapped child. He lied to the SAPS investigators and was arrested. Sanders was informed hereof and of the fact that he was being handled roughly by the police. He phoned Agliotti. Agliotti said he

should phone the accused direct. Sanders already had the accused's telephone number saved on his cellular phone. He phoned the accused and told him that he gave the order to carry out the rescue. Sanders asked the accused if they could not release Burger. Three to four hours later Burger was released.

96. During September 2004 Mokotedi joined the NPA. His function was to investigate allegations of fraud within the NPA and the DSO. When he joined the NPA there was an ongoing investigation into allegations that members of SAPS were furnishing information to the DSO and that the members of the DSO were presenting the information as if acquired from their own sources. Money would then be paid out of the so-called C-fund for that information. When Mokotedi took over the investigation he was told by a member of the DSO that he should be looking at the big fish. He was directed by this member of the DSO in this regard to Mr Jeff Ledwaba ("Ledwaba"), who was a senior member of the DSO. During this investigation of Ledwaba the name of the senior prosecutor for the state came up as being implicated in the abuse of the C-fund. As Mokotedi was not obtaining assistance in the investigation and was in fact being blocked in the investigation despite a meeting with Ramaite and Advocate McCarthy ("McCarthy") he

reported the matter to the accused. McCarthy was the head of the DSO. According to Mokotedi a meeting took place between his superior in the NPA, the accused, the director general of the Department of Justice and the head of the NIA. This meeting took place somewhere between the middle and the end of 2005. At the meeting the accused stated that he was about to arrest senior DSO members because of their abuse of the C-fund. It appears that the only prosecution arising out of all of this is the prosecution against Ledwaba which is still proceeding.

97. Pikoli was appointed in February 2005 as the National Director of Public Prosecutions. At the time of his appointment there were no problems in the relationship between the accused and Pikoli.

98. Pikoli and the accused were co-chairs of a task team that was established in the Eastern Cape known as the Joint Anti-Corruption Task Team or JACTT. Soon after Pikoli's appointment, in approximately May or June 2005 Pikoli and the accused flew in a police jet to the Eastern Cape to visit this task team. Whilst on this trip and while walking with the accused, the accused asked Pikoli why they were not dropping the charges against Rautenbach. Pikoli asked why they should drop the charges. The accused replied

that he was in possession of a letter that could cause embarrassment to both Ngcuka and the DSO. Pikoli dismissed the comment because he felt it was not a matter that the accused should be concerned with as it was a matter that related to the DSO and not to the police. The accused denied Pikoli's evidence as to the discussion and testified that the issue relating to the letter was raised with Pikoli in the accused's office in December 2005. This issue is in dispute and will be dealt with later .

99. Agliotti testified that he requested the accused to have a meeting with Mr James Tidmarsh ("Tidmarsh") who represented Rautenbach. Tidmarsh is an attorney practising in Switzerland. He and Rautenbach had mining interests in the DRC ("DRC"). The accused testified in cross examination that the meeting was convened at his request. The meeting was held in a business lounge on the 23rd floor of the Sandton Towers Hotel in Sandton. According to Rautenbach the meeting took place on 19 April 2005. Rautenbach remembered the date as he regarded the holding of the meeting as a turning point in his attempt to resolve his issues. The accused attended the meeting in full police uniform. It is common cause that at least the letter dated 12 June 2000 directed by Ngcuka to Ramsay was discussed at the meeting.

100. Rautenbach testified that after the meeting Tidmarsh had telephoned him. Thereafter Tidmarsh went to the DRC to see Rautenbach. Tidmarsh informed Rautenbach that he and Agliotti had met with the accused and discussed Rautenbach's case. Tidmarsh added that Agliotti obviously had the contacts and that maybe this was the way of taking the matter forward. Tidmarsh added that Agliotti wanted a fee of $100000. Tidmarsh thought that the amount stipulated by Agliotti was exorbitant but he and Rautenbach agreed to pay it.

101. A few days later Agliotti flew in to the DRC. He left the DRC a few hours after his arrival on the same aeroplane as he had arrived in. He met Rautenbach and Tidmarsh in Rautenbach's motor vehicle in the car park at the airport in Lubumbashi. Agliotti sat in front of the vehicle with Rautenbach. Tidmarsh sat in the back. Tidmarsh handed $100000 over to Agliotti. Rautenbach confirmed that the money was paid over as he was trying to resolve his issues in South Africa and he believed that Agliotti had the necessary contacts to raise his matter and get it resolved. The reason for this belief was founded in the fact that the doors of the NPA were closed to Rautenbach. Agliotti had managed to at least raise the issue with the accused.

Rautenbach regarded that as important so that he could try and find a conclusion to his case.

102. It was put to Rautenbach in evidence in chief that it appeared from Agliotti's passport that he had travelled to the DRC on 22 April 2005. He was asked if the payment could have occurred on that date. He responded in the affirmative. He was then told that there was a subsequent entry in Agliotti's passport which indicated that he had been in Lubumbashi on 6 January 2006. He was asked if the payment could have occurred on that date. He responded that it could not have. Rautenbach added that he and Tidmarsh had had a commercial disagreement in about August 2005. This led to Tidmarsh applying from the British Virgin Islands for, and obtaining on 6 January 2006, an order for the liquidation of their company. Since the disagreement he and Tidmarsh were not on talking terms. It should be added that Agliotti was not certain when he received the payment of $100000. He stated in re-examination that he was not sure when it occurred but that he recalled that it occurred on his last visit to Rautenbach in Lubumbashi. This occurred in 2006.

103. According to Agliotti he had intended giving the accused $40000 of the $100000 that he had in fact received. He

testified that he in fact had only given him a total of $30000 on three separate occasions.

104. In cross examination Rautenbach was referred to an e-mail which had been attached to an affidavit deposed to by him. He had not been referred thereto during his evidence in chief. Rautenbach testified that Ramsay and Tidmarsh were debating as to how to advance his issues after the meeting with the accused had been held. The e-mail was sent by Tidmarsh to Rautenbach. He thought that he had received the e-mail a couple of weeks after the meeting with the accused. It is apparent that Tidmarsh is commenting on the contents of a memorandum and suggesting amendments thereto.

105. The e-mail reads as follows:

"Hi Billy,

Thanks for bouncing that on. I have the following comments/suggestions.

1) We should delete the reference to "facilitator". It is enough that James is an attorney. In paragraph 1, I would suggest that we add a brief sentence describing the allegations. (Just to highlight the fact that the questions

asked by Ngcuka had nothing whatsoever to do with them).

2) In the second paragraph, James says that "it became evident that there was a real interest on the part of the South African authorities (including the National Intelligence Agency) with regard to the contacts/business activities of Mr. Billy Rautenbach in the DRC...". I would suggest as follows:

- I think that its VERY important to say that the interest was not that of the South African authorities-- or the NSA -- but rather to suggest that the interest was that of Ngcuka himself. When I discussed the matter with Jackie -- he said that Ngcuka was suspected of "abusing his office" -- (those are his words!) -- He told me that they suspect that he was in fact controlled by Kroll, as well as by British intelligence. Maybe James can say that he was surprised that the focus of the questions had absolutely nothing to do with the allegations that had been made. Maybe James can suggest that such questions were desperately out of place. (Basically, Jackie thinks that Kroll and the Brits were using what they knew of Ngcuka's role as an informant during the apartheid era to blackmail him and control him).

- I suggested to Jackie that the Ngcuka was interested not only ion the DRC, but in Zim. (This plays on his suggestions that the Brits were behind all this). If he does have that impression, can James say that Ngcuka was interest also in the Zims? (The letter of 12 June does refer to "foreign governments" -- in the plural -- and not just to a "foreign governments"). Was Bob ever mentioned, for example?

3) Maybe James can note that there is no reference at all on the letter. (This was picked-up by Jackie when I showed him the letter). (As a passing note -- why is no fax-line visible on the letter?)

4) I am just wondering how we knew that Pete Richer and "Jeff" were indeed from the NIA. Was it just that Ngcuka told us that? That they told us? Can we explain?

5) Can we just briefly describe the focus of the meeting in Mputo? I assume that nothing at all about the actual "allegations" was discussed and that the focus was ONLY the DRC and your relations with foreign governments -- including Victor. What specific questions were asked of

you at that meeting? Did Richer or "Jeff" explain why they were interested in such matters?

6) I think we need a short explanation of who Victor was? ((Otherwise one sort of wonders). Did they specifically ask for a meeting with Victor?

7) Perhaps we could add a short explanation that they never to our knowledge met with Victor in Paris. (Otherwise, one is left wondering if that meeting ever happened?)

8) Maybe James can also build briefly on the fax that he received on 21 September from Richer saying that "negotiations [were] discontinued'. Did the message come out of the blue? Was he surprised? After all, he'd been fully cooperating. Can we say that we were left with the impression that the charges were trumped-up, and an excuse to ask about your relations with the Governments of Zim and the DRC?

9) Between 8 September and the fax of 21 September -- did James contact Richer or Ngcuka?

10) Anything further after the fax? Did James contact Richer, or Ngcuka for that matter, to obtain an explanation for the abrupt message?

My final suggestion is that the memo be turned into an "affidavit" -- and that it be signed by James as a more formal document. (Annexes should be numbered, or rather lettered).

Best regards,

James"
(Sic)

106. In August 2005, whilst on patrol duties, Shlugman was informed over the police radio of an armed robbery in progress. He and his crew proceeded to the scene of the robbery, which was a residential complex known as West Ferry in School Road, Morningside. On arrival the hijackers had already left the scene. Shlugman, together with his crew, sat at a table with their backs to the front door and commenced doing the necessary paperwork. Whilst so doing a man and a woman entered the apartment. The man was talking on his cellular phone. He tapped Shlugman on the shoulder and informed him that the commissioner would like to speak to him. Shlugman was

taken aback. He asked which commissioner and was informed it was the National Commissioner. Shlugman introduced himself and recognised the accused's voice. The accused asked for a rundown on what had occurred. Shlugman briefed the accused who told Shlugman that "*He is a good friend of mine, you must look after him.*" Thereafter Agliotti introduced himself to Shlugman. Agliotti testified that he had made the call to the accused on his return from dinner.

107. About 3 weeks later, at approximately 21h50 on a Sunday night, Shlugman received a telephone call from Agliotti. He stated that there was a problem at West Ferry and that he cannot get hold of Jackie Selebi as his cellular phone was on voice mail. Shlugman referred Agliotti to the Sandton SAPS.

108. On 26 September 2005 Kebble was killed. It emerged that Agliotti is charged with the murder of Kebble. He testified that he had been at the scene where Kebble had been shot. The trial is pending.

109. It was put to Agliotti in cross examination that :

109.1 Kebble was in fact not murdered but that his shooting and death constituted an assisted suicide.

109.2 Agliotti was not involved in the planning or the execution of the shooting of Kebble.

109.3 The person who shot Kebble was in a motor vehicle in which three people were conveyed, namely the driver of the motor vehicle, the shooter and a passenger and that SAPS were aware of the identity of them all as well as of the role played by Nassif in the shooting.

109.4 Nassif had engaged and paid the aforesaid three men.

109.5 SAPS had been on the verge of arresting the three men and Nassif when the DSO stepped in and offered section 204 indemnities to the men and informed SAPS that they had taken over the investigation. Agliotti accepted all that was put to him.

109.6 The only person facing criminal charges arising from Kebble's death is Agliotti and that his trial for the murder of Kebble is constantly being postponed. Counsel for the accused added that the impression is created that a sword is being kept over Agloitti's head so as to force him to testify against the accused.

109.7 Nassif used two of the men that were involved in the Kebble shooting in the shooting of Mr Steven

Mildenhall ("Mildenhall"). He was the chief executive officer of Allan Gray Investments in South Africa.

109.8 Kebble had problems with Mildenhall hence his shooting. None of the people involved in the Mildenhall shooting were prosecuted.

110. Agliotti agreed with all that was put to him. It is not apparent how Agliotti would have personal knowledge of much that was put to him. No other witness gave evidence in this regard.

111. Leask testified in cross examination that the DSO was investigating the Kebble killing and offences relating to the Kebbles. He added that on his case Agliotti and Stratton were the brains behind the syndicate. According to Leask, Agliotti and Stratton will stand trial in respect of the Mildenhall shooting.

112. Roeland carried out a cellular phone analysis as part of the investigation into Kebble's death. She found that Kebble and Agliotti had 7 telephone calls on the night before Kebble's death. At the time of these calls Kebble was located at the place where he was shot the next night. The calls occurred at approximately the same time as Kebble

was shot the next night. During November 2005 Roeland reported on the outcome of her investigation to her superiors and she accompanied them to the accused where a presentation was done. In addition to the accused Commissioners Schutte, Williams and de Beer and Director Ras were present. After the presentation a discussion ensued about the possibility that Kebble had had a third cellular phone that had been stolen at scene of the shooting. In this regard the name of one Erasmus, a police reservist, who arrived at the scene of the shooting, was mentioned. According to Roeland after the name Erasmus was mentioned, the accused made a call on his cellular phone. She heard the accused say "*Hullo Glen, what is the story you told me about the reservist.*" After the call ended Roeland asked the accused if the call had been to Agliotti. The accused ignored her. She then asked the accused if he had a telephone number for Agliotti. The accused responded that he did not know numbers. The reason why Roeland required the number was that on the day Kebble was shot none of Agliotti's cellular phones were active. Roeland had hoped to get another active number. After the meeting the strange answer by the accused was discussed by Roeland, Schutte and Ras. In cross examination it was put to Roeland that the accused had no recollection of phoning Agliotti in respect of the reservist ("*reservis*

storie"). It was subsequently put that the accused denied that he had phoned Agliotti to find out about any reservist situation. She replied in respect of both that the conversation occurred. As far as the meeting is concerned it was put to Roeland in cross examination that all that the accused can remember of the meeting was that he was very angry with the investigating team because the police had apparently agreed to a third party removing Kebble's motor vehicle from the scene. She denied that the accused was very angry at the meeting. Reference will be made to the accused's evidence in cross examination in this regard later.

113. In approximately October to December 2005 the accused called Agliotti and arranged to see him at Maverick's offices. When the accused arrived, so Agliotti testified, the accused had a thick document with him which was opened on a particular p and there were two lines underlined on the p. Agliotti read the two lines. According to him the content of what he had read was to the effect that Jürgen Kögl reports that the Kebbles are paying the accused. The accused asked if Agliotti knew the person mentioned. Agliotti did not know who Kögl was. He undertook to attempt to ascertain who he was. The accused informed

Agliotti that the document was an intelligence report and that it went to the President.

114. Agliotti asked Stratton and the Kebbles as to the identity of Kögl. They told him that Kögl had entered into a business venture with them that had gone sour. Agliotti subsequently informed the accused hereof. The accused was upset and said he would get an apology from the author of the document. Agliotti referred to this report as the NIA report as that is what he perceived it to be.

115. Kögl testified that he is a director of African Renaissance Holdings Ltd. The company was incorporated in March 1994 and was created in the context of black economic empowerment. In 2005 and 2006 African Renaissance Holdings Ltd investigated the possibility of rescuing JCI from its financial difficulties. Kögl conducted a due diligence investigation into the affairs of JCI. He became aware of persistent allegations of money flowing out of the JCI group of companies to the accused. As a result of this information he consulted senior counsel and was advised that, regard being had to the provisions of the CA, he was obliged to report that which he had heard, notwithstanding the fact that it was no more than allegations. Pursuant hereto he informed the then President of South Africa,

President Mbeki and the then Minister of Justice Mr Maduna.

116. Leask testified that he was informed of a report to which Agliotti referred to as the NIA report. Leask testified that his understanding was that it was a report by the National Intelligence Agency. In one of the report backs to Pikoli and his executive committee, Pikoli undertook to make enquiries. In a subsequent meeting Pikoli informed Leask that the correct name for the report is a National Intelligence Estimate ("NIE") which is a document in the custody of the National Intelligence Coordinating Committee ("NICOC"). He consulted with Gilder who was the then retired coordinator of that committee. Leask established the existence of such a report.

117. Pikoli confirmed in his evidence that during the BG investigation there was feedback about a NIA report which had been mentioned in Agliotti's statement. Pikoli investigated this issue. The effect of his evidence is that he attended on Gilder. Gilder showed Pikoli a report that had been submitted by the NIA to NICOC which made reference to Kögl stating that the accused was paid or was in receipt of money from the Kebbles. This information was

not contained in the final NIE as there was objection to its inclusion.

118. In his evidence Gilder confirmed that he was coordinator for intelligence from March 2005 to October 2007. The post is created in the National Strategic Intelligence Act and he was appointed to his post by the President of the country. One of Gilder's responsibilities was to chair NICOC. NICOC produced a range of intelligence assessments for government. Its main product was an annual national intelligence estimate. This estimate is referred to as the NIE. The NIE is drawn from the intelligence received from the 4 statutory intelligence services of the government as well as from open sources. It is prepared normally towards the end of a calendar year and is normally presented to the President and cabinet either at the end of the year or early the next year.

119. The preparation process of the NIE commences during the middle of the year. At some stage in its preparation the draft NIE would be presented to a task team consisting of the NICOC staff as well as representatives of the 4 statutory intelligence services and it would then go through various stages of drafting and redrafting. The final NIE report would have the same appearance as the draft report.

120. Gilder testified that he was visited by Pikoli. Pikoli referred to a draft NIE in which there had been a reference to the accused. Gilder made a copy of the relevant draft NIE available to Pikoli.

121. According to Gilder, *prior* to a NICOC meeting to consider a draft NIE, the draft would be distributed 3 to 4 days before the meeting, in hard copy form to the participants of the meeting. The reference to the accused was not taken up in the final NIE. A NICOC meeting was held in approximately October 2005. At the meeting it was agreed that the passage referring to the accused be removed from the draft NIE. Gilder testified that Lalla was present at the meeting. In cross examination, Gilder testified that the accused would not have been a recipient of the draft NIE. It was also agreed at the meeting that a letter of apology be written to the accused for the inclusion of his name in that context in the particular draft. Gilder testified that as far as he could remember such a letter of apology was in fact written to the accused.

122. Gilder was shown Exhibit G. He confirmed that its contents formed part of the draft NIE. On the last p thereof there is a note that reads "*This document is subject to the Protection*

of Information Act, Act 84 of 1982" and that it should be destroyed after use. In the case of the draft NIE in this matter, the normal practice was for the draft to be brought to the NICOC meeting for discussion. At the end of the meeting the draft reports would be collected and then destroyed.

The following appears at the foot of p 6 of the NIE, p2 of exhibit G:

"*Very little intelligence has come to light on the matter. Intelligence indicates that individuals sympathising with Mr Zuma, namely Jurgen Kögl, a businessman, and Maurice Brugee, an alleged French intelligence agent, are seeking to discredit the President. It was partly triggered by the DSO having targeted Kögl. The latter is gathering information on supposed illegal activities of SAPS National Commissioner*"

The following appears on the top of p 7 of the NIE, p 3 of exhibit G"

"*Jackie Selebi. He claims that the National Commissioner received large sums of money from the Kebbles emanating from questionable business deals concluded on his behalf*".

123. The accused denied in his evidence in chief that he had ever been in possession of the relevant draft NIE. He did confirm that he received a letter of apology from Gilder.

The letter of apology did not identify the reason for the apology. The accused admitted that he had asked Agliotti for information in regard to Kögl. He did so he said because he knew, independently from Agliotti, that Kögl was involved with Maverick. The accused stated that when he sought this information from Agliotti it was one of those rare occasions where Agliotti was unable to respond immediately and said that he would revert to him. When he made the enquiry, the accused testified that he had a document in his possession. He described the document as one relating to pedlars of information. The next morning, whilst still giving evidence in chief, the accused introduced exhibit H2 into evidence. He testified that this was the type of document that he would have shown Agliotti when asking him about Kögl. Exhibit H2 is marked secret. Paragraph 2 on p 1 thereof reads as follows:

"1. *Introduction*

In all the discussions we have had about this matter over the past two years or so, I have been trying to indicate to you that much more resources (especially human capital) will be needed to sustain any such investigations. The only resources that I have at my disposal are within the Agent Program and are quite limited. If the

National Security Council is as concerned about the threat posed by such activities, and if we are to contribute meaningfully to any joint investigation with the rest of the intelligence community, then we should on our side, seriously look into such issues that I have already canvassed with you.

As I have indicated to you, I am also reluctant to bring CIG and especially CIMC on board, firstly because we have established that some of the personnel have sympathies towards the protagonists but secondly, because of the suspicious link with hostile Foreign Intelligence personnel. As I have informed you on previous occasions, we have been able to establish from our own sources as well as "walk ins", that there are indeed persons who are involved in malicious information peddling, with a declared purpose of undermining Government and the constitutional dispensation in general. The greatest concern however, is their apparent ability to influence key people in key government

positions to perpetuate their aims as much as their apparent link to foreign forces of hostile intent.

2. *Information Peddlers*

As you have suggested, I have met with operatives from NIA and agreed that we should pull our resources together. On comparing our note thus far-we have uncovered that:

- *A certain Jurgen KÖGL is coordinating efforts to discredit the Head of state. According to the source, KÖGL (profile unavailable) is looking for assistance to gather intelligence to "sink MBEKI". In his attempt, he is reportedly "hatching" a conspiracy to smear individuals he perceives to be close to President Thabo MBEKI. Intelligence gleaned thus far reveals that he has already targeted Bulelani NGCUKA..."*

The paragraph continues as follows on p 2 thereof:

"...for allegedly fathering a child to an under-aged mother. Intelligence had also gathered, that information peddlers working at the behest of the Kebbles, have deliberately planted information, designed to embarrass the NDPP.

KÖGL is also reported to be have targeted Jackie SELEBI (National Commissioner of SAPS), with a corruption or bribery smear. According to a well placed source, his aim is to get whatever fabrication through to the media. KÖGL is reported to be closely linked to one Paul O Sullivan (former security chief of ACSA- full profile not available). Further investigation is recommended

In another arena, Emile VAN DER MERWE (self styled private investigator) is reported to be used by personnel of the Scorpions' GAUTENG office to peddle information to the media about suspects under their investigations. Surveillance has been activated to monitor a suspect address in GRANT Avenue-NORWOOD. Further investigation is recommended.

3. *Manipulation and abuse of office for improper motives"*

124. The dispute on the evidence in this regard will have to be resolved later in this judgment.

125. A commission was appointed to consider whether the DSO should continue its independent existence or whether it should be incorporated within the SAPS. The commission was presided over by Justice Khampepe and is referred to as the Khampepe commission. The accused testified that he was opposed to the existence of the DSO as a separate entity and that he made his opposition known from the creation of the DSO. He added that SAPS had made submissions to the Khampepe commission in line with his opposition to its existence.

126. In this regard the accused testified of a meeting that he attended where Ngcuka "*was sitting there gloating about this new organisation*". He asked Ngcuka if the DSO was being set up to do all these investigations what would there be left for the SAPS to do. Ngcuka, according to the accused, responded by saying that the accused is opposed to the establishment of the DSO. The accused then said

that he was opposed thereto and had always been opposed thereto.

127. The accused's opposition to the DSO grew as time went by. He was concerned that recruits were taken from university and sent to the United States of America to be trained by the FBI. He asked the rhetorical question how many of these recruits come back as double agents. If these recruits were then sent to do a three month course in the United Kingdom, how many come back as MI6 agents. His biggest concern however was what he described as the DSO's alleged "*illegal collection of intelligence and sharing of intelligence with foreign intelligence agencies*". Still later he became aware that members of the DSO were allegedly misappropriating state funds. The DSO had access to a secret fund known as the "*C-fund*". The accused alleged that these funds were misappropriated. The accused testified that he received letters and facsimile transmissions in this regard. One of these, an anonymous letter, was handed in by the accused as exhibit H1. It is addressed to the President, two cabinet ministers and the accused. The accused caused an investigation to be launched in regard to the C-fund. He stated that pursuant thereto Mr Hans Meiring, who was the head of commercial crimes detectives, wrote a letter to the controller of the C-fund, Mr

Kasper Jonker, requesting information and documentation in regard to the C-fund. The response hereto was that the SAPS investigators must attend at the DSO's offices where they could examine the documents. The accused added in this regard that a massive discussion took place within SAPS as to whether they were prepared to go to the DSO's offices. According to the accused the DSO's response was a smokescreen to make sure that the investigation did not continue. Why the SAPS could not go to the DSO's offices is unclear.

128. Reverting to the Khampepe commission, Mrwebi testified that the establishment of the commission caused a great deal of panic within the DSO and especially amongst the senior members of the DSO. The commission was to receive submissions from the national management of the DSO and from two regions within the DSO, namely Kwa Zulu Natal and Gauteng. McCarthy, who was at that time the head of the DSO, informed Mrwebi that his regional submission must be in line with the DSO's national submission. He required Mrwebi to submit a copy of the Kwa Zulu Natal submission to him to enable him to verify that it was in line with the national submission. In addition McCarthy instructed Mrwebi to ensure the arrest of as many policemen as possible so as to make as big an

impact as possible before the national management of the DSO makes their submissions to the commission.

129. The Khampepe commission completed its report at the end of 2005. The finding of the commission was in favour of the continued existence of the DSO and a mechanism was provided for the DSO and the SAPS to cooperate with each other. Certain guidelines in this regard were set out.

130. It was suggested to Pikoli in cross examination that there was a dispute between the DSO and SAPS relating to the integration of the DSO into SAPS. Pikoli denied this. He stated that the Khampepe Commission related to the mandate and location of the DSO and not its integration. Flowing from this dispute it was put to Pikoli that the DSO was involved with foreign intelligence through an entity known as Kroll and Associates. Pikoli denied the alleged involvement and added as far as Kroll and Associates is concerned that it provided organised security training for security departments including SAPS, the NIA and the prosecutors. As part of the foreign intelligence involvement is concerned, Pikoli was asked if he knew Ms Robin Plitt ("Plitt"). He stated that she was an employee of the DSO who left whilst he was still in office. She left for the US. Counsel for the accused then asked Pikoli "*Was she not a*

member of the FBI". Pikoli responded that he did not know that. Mr Paul O'Sullivan ("O'Sullivan") was then raised. Pikoli replied that from newspaper reports it appeared that he was now living in the UK. As far as the investigation into the accused is concerned he told the investigating team that he did not want the investigation tainted by O'Sullivan's involvement. O'Sullivan had been involved in the Paparas arrests. Pikoli testified that he had heard about the O'Sullivan dossier but had not seen it.

131. As far as Plitt is concerned, Leask testified that she initially was an investigator attached to the investigative directorate of the organized crime unit in the Western Cape and formed part of the team that dealt with urban terrorism. She was subsequently appointed as an investigator in the DSO. She is a South African citizen currently living in the USA with her husband. Plitt married an American policeman and she is living with him in the USA.

132. It was put to Pikoli in cross examination that towards the end of 2005, maybe the beginning of 2006, the accused called him to his office and raised with him the concern that Ngcuka had tried to bribe Rautenbach, Pikoli's wife had received a substantial donation from the Kebbles and the DSO's involvement with foreign intelligence agencies.

Pikoli denied that this was raised with him by the accused. The Rautenbach issue, Pikoli stated was raised by the accused in the context of the accused asking him why the NPA were not dropping charges against Rautenbach as he was in possession of a letter which could embarrass Ngcuka. This was raised by the accused much earlier in the year.

133. Towards the end of January 2006, Pikoli received a letter from the Director of Public Prosecutions for Gauteng. The letter and the annexure thereto is exhibit A 29. The letter according to its reference was written in regard to "*Assistance with investigation into the murder of Kebble*". The annexure to the letter was described by Leask as a source document. According to Pikoli the Director for Public prosecutions for Gauteng, Advocate de Beer requested a meeting with him. The meeting was held towards the end of January 2006. Advocate de Beer was accompanied at the meeting by Advocate Robbertze. Advocate de Beer expressed dissatisfaction with the SAPS team investigating the Kebble murder and the conduct of the accused. As to the former she stated that their was a reluctance by the investigating team to obtain cellular phone billings from the service providers of certain cellular phone numbers relating to Agliotti, Nassif and the accused relating to calls made on

the day before and on the day of the death of Kebble. Pikoli added that the records referred to are only kept for a limited period of time. As to the latter she stated that one of the police officers had reported to her that at a meeting the accused had telephoned Agliotti. She requested that Pikoli authorise the involvement of the DSO in the investigation. Leask confirmed that the investigation commenced in response to the request contained in A 29. It must be emphasised that assistance was sought in an investigation into the murder of Kebble.

134. It was put to Pikoli that when he received the letter of 24 January 2006 from Advocate de Beer with its attachment, he was only aware of two complaints against the accused as mentioned in the annexure. First that Nassif paid the accused R50000 every month for work or favours done. Second that the accused and the Kebbles were involved in fraud. It was put to Pikoli that these complaints were both untrue. Pikoli accepted this and added that he never put these allegations to the accused either. It was further put to Pikoli that once he had Stemmet's (around March 2006) and Nassif's affidavit (November 2006) he knew that the allegations made against the accused in the annexure to the letter were untrue. Pikoli responded by saying that it

was an ongoing investigation. Some allegations would be thrown out and others would be proven true.

135. According to Leask the first development in the investigation occurred in March 2006 when Stemmet provided the DSO with an affidavit. In the affidavit Stemmet implicated Agliotti in the Kya Sands incident and made reference to a relationship between Agliotti and the accused. Leask testified that the Stemmet affidavit was used in support of the application for authorisation of the investigation which was required in terms of the founding act and was in fact attached to the application.

136. According to both the accused and Agliotti after the Kebble murder and from approximately February 2006 a media campaign was launched against Agliotti and the accused. The campaign related inter alia to their relationship. After the commencement of the media campaign the accused was convinced that Agliotti's phone was being tapped or monitored. Agliotti purchased a pay as you go mobile phone. He would call the accused's driver and he would then arrange to meet the accused.

137. In March 2006 Pikoli had sight of the affidavit deposed to by Stemmet. Based on the content of this affidavit he

authorised the investigation by the DSO apparently into inter alia the accused. Pikoli informed the Minister of Justice and, after that, the President, of the authorisation of the investigation.

138. On 26 April 2006 Leask attended a meeting in the early evening which went on till the late hours of the night. At the meeting Leask was introduced to O' Sullivan and Mr Anthony Dormehl ("Dormehl"). Dormehl furnished Leask with information relating to a consignment of hashish half of which was still in his possession. Dormehl implicated Mr Paparas senior and his son, Mr Stephanos Paparas. He also incriminated Agliotti and a person known as Bob the American. As Dormehl was incriminating himself, Leask informed him that he could offer him the benefits of s 204 of the CPA provided he cooperated fully and handed over the hashish in his possession.

139. During the meeting Leask took objection to the manner in which O'Sullivan wished to control the further investigation of the matter. He excused everyone else from the meeting except O'Sullivan. He informed O'Sullivan that he never had a private individual advise him or instruct him in regard to an investigation and that whilst information from O'Sullivan was welcome he should understand the nature

of his involvement. According to Leask, O'Sullivan played no further role in the investigation or in the investigation against the accused.

140. Leask testified that following a covert operation, on 5 July 2006 arrests were carried out on Paparas senior, Mr Poonin, Mr Marques, Mr Albas and a Mr Curtis. Mr Curtis was the person referred to as Bob the American. Paparas handed himself over to the SAPS later and was subsequently added to the case. According to Agliotti he was on holiday in Los Angeles when the arrests were effected. Paparas junior advised him of the arrests. It emerged that Paparas was married to a cousin of Agliotti.

141. Curtis, Marques and Albas pleaded guilty to dealing in drugs. In addition they provided the SAPS with information that implicated Paparas senior and junior, Poonin and Agliotti. At this stage the focus of the investigation was on Agliotti. The trial of Paparas senior and junior and Poonin is presently part-heard in the Germiston Regional Court. Agliotti and Nassif subsequently pleaded guilty to their part in the drug shipment. Leask testified that Agliotti pleaded guilty in accordance with the role that he played in the Paparas matter. Leask added that Stephanos Paparas played the main role in the drug shipment and that Agliotti

was the person who moved containers and did so very effectively. He added that Agliotti was not the king pin in the whole drug-dealing transaction.

142. de Beer testified that on Saturday 15 July 2006 she was at the Vaal dam with her family. Whilst there she received a telephone call in the morning from a journalist. The journalist informed her that she had certain documents in her possession and that she wanted to interview the accused in connection therewith. de Beer contacted the accused. The upshot to this was that it was agreed that the journalist would make the documents available to the accused, where after an interview between the journalist and the accused would take place. The documents were obtained and delivered to the accused and de Beer attended the interview by the journalist, who was accompanied by a colleague, and the accused. A number of high ranking police officers attended the interview as well. Included amongst there number was Deputy National Commissioner Pruis ("Pruis"). The following day a front p lead article appeared in the Sunday Independent newspaper. de Beer testified that she checked the article for accuracy and found it to be an accurate reflection of the discussion that had taken place. She identified exhibit H8 as the newspaper article in question.

143. In the newspaper article it is stated the accused said during the interview that he knew who had circulated the documents that had come into possession of the media during the week. Director Bokaba, who was present at the interview, added that he had spoken to the alleged source who had informed him that he had handed a thick dossier containing *"a list of Selebi's involvement in all kinds of wrongdoing including his links with Kebble and Agliotti"* to the NPA. According to the article the allegations are contained in two bundles of documents. The one bundle labelled *"strictly private and confidential"* is a summary of intelligence reports containing notes of interviews with one "*CS - a casual source*". The second bundle *"consists of affidavits made by Anthony Dormehl, under the pseudonym Bill Smith. Attached to this is a damning covering letter re the Assassination of Brett Kebble"* addressed to the NPA. The article proceeds as follows: "*Dormehl had made the affidavits pertaining to a cigarette-smuggling syndicate, and the five men arrested in Alberton for the alleged drug smuggling of hashish and dagga to Canada, in an effort to obtain an indemnity from prosecution. He makes no mention to Selebi in his affidavits, but does mention that Agliotti was allegedly connected to one of the accused. It is, however, the covering letter that contains the*

most serious allegations against Selebi. Among these is that he received R50 000 from Clinton Nassif, Kebble's former head of security and the man whose agent helped find a child kidnapped in Eldorado Park last year: Selebi denied this. It is also suggested in the first bundle of documents that Selebi owned a close corporation called Universal Technical Enterprises in Midrand, but that he had other police fronting as the 'real' owners".

144. The covering letter referred to in the article appears to be the annexure to the letter of 24 January 2006 which is referred to in paragraph 133 above.

145. According to Agliotti he received a call in 2006 from the accused who said he had to meet with him. They agreed to meet on a Saturday afternoon in the parking lot of the Makro store in Woodmead. On arrival Agliotti parked his motor vehicle next to the accused's vehicle and got into the back of the accused's vehicle. The accused's driver, Andries, was in the vehicle. The accused handed a document to Agliotti.

146. During the course of the trial this document was referred to as the e-mail. The document is exhibit A6. The document

consists of two distinct parts. The first is entitled "*Statement of Journal*" and purports to be the statement of one "*Bill Smith*". The statement consists of four ps. The second is an e-mail communication from O'Sullivan to Plitt. The e-mail communication consists of four ps. Each p of exhibit A6 bears a specific p number as part of a sequence of eight ps which constitutes the entire document. Agliotti testified that he handed the document to Hodes and that this numbering was effected by Hodes whilst Agliotti was in police detention as will appear later herein. According to Agliotti when the accused handed the document to him the e-mail communication appeared before the statement. Finally on the top of each p of exhibit A6 a date and a time appears. In addition a "*from*" and a "*to*" number appears. According to Hankel the "*to*" number is the facsimile number of the accused. The "*from*" number indicates a facsimile machine within the PABX system of the SAPS, but located in a building other than Wachthuis. No issue was made of the date appearing on each p of exhibit A6, namely 20 July 2006.

147. According to Agliotti he and the accused had a discussion about the document that the accused had handed to him. The conversation related to the fact that he and the accused could discredit the Scorpions because, as was

apparent from the document, the Scorpions were using O'Sullivan in the investigation. The accused said that Agliotti should read the document and give it to his advocate or legal team. Agliotti handed the document to Mr M Hodes SC the father of Hodes. Hodes senior represented Paparas in the drug charge referred to above. At the time exhibit A6 had been handed to him Agliotti's name, according to him, had not come up in court in the Paparas matter.

148. In cross examination it was put to Agliotti that he did have discussions with the accused in early 2006 after the so-called media campaign had started. The discussions revolved around the issue as to who was behind the media campaign. After some time Agliotti and the accused believed that O'Sullivan and the DSO were behind the media campaign. It was further put to Agliotti that the accused admitted giving a document to Agliotti. As far as the accused could recall it was an e-mail from which there was a clear indication that O'Sullivan and the DSO was behind the media campaign. The document which was given to Agliotti was part of the so called O'Sullivan dossier and had been given to the accused by the press. The intention of the accused in providing the documentation to Agliotti, so it was put, was to resist the improper and

unlawful smear campaign against the accused and Agliotti in the media which was based on untrue facts. This issue will be reverted to later.

149. Reference must be had to the content of the statement of journal. It is apparent from the evidence of Leask and the content of the statement that the statement was made by Dormehl. It appears from the commencement of the statement that he had already deposed to three written statements. On the face of it the statement implicated Agliotti in criminal activity. It appears from the statement that it was through Agliotti that the maker of the statement met Paparas and that Bob, a Canadian man, (probably the same as Bob the American), brought large quantities of hashish into the country. When the maker to the statement first met Bob, Paparas was with him. Late in 2005 it became apparent to the maker of the statement that Bob had some involvement with Agliotti. Finally the maker of the statement indicates that Agliotti was guilty of some kind of fraud in regard to tobacco. This issue will likewise be reverted to later.

150. Agliotti was referred in his evidence in chief to the so-called UK reports. In this regard Agliotti testified in chief that he received a call during, he thought, July or August 2006

from the accused to meet him urgently. They met at Maverick. The accused passed a document to him which he glanced at fleetingly. The issue was not canvassed further by reason of an objection to the evidence. When the issue was raised again the next morning, Agliotti, whilst still in chief, testified that he had asked to look at his statement in regard to the date on which he was shown the UK report. He testified that according to the statement he was shown the report in 2005.

151. Agliotti testified that what he could remember about the document that the accused had showed him was that it bore a coat of arms and "*either HSM or Her Majesty's customs something to that effect*". What he recalled reading from the document was that he and Nassif had travelled to the UK and that he and his daughter had also travelled to the UK on a shopping trip. Furthermore that he had met with Billy Ambrose and one Cahil. According to Agliotti the accused asked him whether he knew the persons mentioned in the document. He responded that he did but that he was not concerned. The accused stated that Agliotti was being monitored by the UK authorities. Agliotti asked the accused for a copy of the document. The accused refused the request.

152. Agliotti testified that he discussed the report with Nassif as he and Nassif had assisted Paparas in clearing a container for which he was arrested.

153. In an endeavour to identify the report that Agliotti stated had been shown to him, he was referred to exhibits A1 to A5. Exhibit A1 bears a coat of arms and has the words "*HM Customs and Excise*" and underneath that "*Law Enforcement*" printed in bold type on the right top of the first p thereof. Exhibits A2 to A5 each bear a coat of arms and have the words "*British High Commission*" and underneath that "*Pretoria*" printed in bold type on the right top of the first ps thereof.

154. Exhibit A1 reads as follows:

"The above detailed operation is a new UK operation that focuses on the drug trafficking activities of:

Norbert Glenn AGLIOTTI, DOB 22/11/1956 who is believed to be a South African National.

Background.

Information from the UK indicates the AGLIOTTI and others are involved with the trafficking of significant quantities of cocaine to the United Kingdom. The cocaine is

due to be shipped by sea to the UK concealed within furniture.

AGLIOTTI is associated with a South African business, Maxbit which is linked to an address; Unit 13 Gallager Place North, Richards Drive, Midrand, South Africa. AGLIOTTI is also associated with the following contact points:

0027113153959

0027113155237 (fax)

0027832737070 (mobile)

glenn@maxbit.co.za

AGLIOTTI also controls secure lock up in a warehouse outside Johannesburg. (Comment: It is not clear from the intelligence whether the premises identified above is the warehouse but it is strongly suspected that it is.)

The cocaine is transported by air from Venezuela to Angola, and then transported by road to South Africa.

Unidentified South Africans are responsible for the movement of the cocaine from Venezuela to Johannesburg. However intelligence suggests that it is

transported by a Boeing 747 aircraft from Caracas to Angola, and then by truck, during daylight hours to South Africa.

When the cocaine is removed from the lock up (near Johannesburg) for onward transportation, a Customs seal is placed on the container. The containers are shipped from Cape Town.

The organisation intends to send three 'dirty' containers from South Africa to the UK. Prior to this, three 'clean' containers will be despatched to act as cover, should one be called for examination.

A dummy run took place on 18 June 2004 using the Johannesburg - Cape Town - Tilbury, UK route.

Additional information.

AGLIOTTI is suspected of having close links within South African who assist facilitation with his drug trafficking enterprises.

AGLIOTTI is also associated with a UK based male known as 'Baldy John'.

'Baldy John' is involved with the shipping of AGLIOTTI's cocaine from South Africa to the UK.

'Baldy John' is a white male, 32 years old with a midlands accent and is linked with a clothes shop in Buckhurst Hill, London.

'Baldy John' is associated with UK mobile telephone number +447876032558.

'Baldy John's' father was also involved with drug trafficking.

AGLIOTTI has considerable business contacts within the UK. These contacts will be used to assist with moving forthcoming proceeds from the UK to Switzerland.

AGLIOTTI visited the UK in early July possibly around 3 or 4 July 2004. He is believed to have travelled with his daughter and stayed at No1 Aldwych, London which is an exclusive hotel in Central London.

AGLIOTTI is also associated with a UK national called Billy Ambrose.

Current intelligence.

Most recent intelligence indicates that AGLIOTTI and a male identified as CLINTON NASSIF, DOB 28/10/1968, travelled together to London on 23 July 2004 on South Africa flight number SA234.
They have a booking to return to Johannesburg, 25 July 2004 on flight SA235.

NASSIF is associated with the following South African numbers:

0027828916327 (Mobile)
6803073

Whilst in London, AGLIOTTI and NASSIF are scheduled to stay One Aldwych, London which is an exclusive hotel in the centre of London used previously by AGLIOTTI.

Assistance sought.

The UK have asked whether it would be possible to:

1. *Establish whether AGLIOTTI and NASSIF are known to the South African Authorities.*
2. *To check the South African movement control system to see whether any additional travel for AGLIOTTI and NASSIF can be identified. (Note: We accept that if the two individuals are in fact SA nationals then there details are not held on the movement control system)*
3. *Whether the addresses detailed are known to the South African Authorities and whether they exist or not.*
4. *Whether the company said to be owned by AGLIOTTI exist and whether it has ever exported any goods from South Africa to UK.*
5. *Whether telephone billing and reverse billing checks can be undertaken on all the numbers detailed in the report to identify additional international points of contact that AGLIOTTI has been in contact with."*

155. In cross examination it was put to Agliotti that not one of the exhibits A1 to A5 contains all the information that he testified he saw in the document shown to him by the accused. This was not disputed by Agliotti. He added that he saw the document fleetingly. It was put to Agliotti that

the accused did show him some documents but not A1 to A5. He replied that he was not able to dispute that.

156. Hankel testified that he was and is the information manager of the SAPS functioning within the Crime Intelligence Division. According to him that entails in theory that all intelligence generated throughout the SAPS will eventually either cross his desk or those of the centres under his command at head office. He also has responsibility for liaison on intelligence matters with foreign law enforcement agencies. According to Hankel the standard operating procedure when a request is made for information by a foreign law enforcement agency is for the request to be forwarded to his office. The request is then assimilated into the SAPS repository of intelligence. The request is then dealt with either in the intelligence centres or if it relates to an existing operation by the intelligence centre dealing with that operation.

157. Hankel testified in respect of the so-called UK reports and in particular in respect of exhibits A1 to A5 and exhibit D2. The reports are all directed by Mr Tony Tenger ("Tenger") to the SAPS. He describes himself in each report as the "*UK Drugs Liaison Officer*". Assistance is sought from SAPS in regard to drug trafficking. In particular in each of

the reports information is sought in regard to Agliotti in respect of drug trafficking. Exhibits A2 to A5 and D2 each bear the British coat of arms and the words "*British High Commission Pretoria*" in bold type on the right hand top side of the p on which the report commences. Exhibit A1 is different. On the right hand top side of the p on which the report commences there is a logo of a crown on top of bars similar to the bars on the window of a prison cell with chains running down on either side of the bars. The words "*HM Customs and Excise*" in large print appear on the right hand side of the p. The words "*Law Enforcement*" appear there under in smaller print.

158. Hankel identified exhibit A1 p1-3. The document was submitted to his office on 3 August 2004 and dealt with by him on 4 August 2004. The document which he described as a report emanated from the drug liaison officer of Her Majesty's Customs and Excise, which is a UK law enforcement body, authorised to communicate intelligence matters to Henkel's office. Hankel was aware that Agliotti, who is identified in Exhibit A1, had previously been drawn to SAPS attention as part of an operation called Operation Chaser. The report was booked out for attention by the Special Operations Intelligence Centre. Preliminary feedback was provided to the drug liaison officer on 18

August 2004. The telephone records of the telephone numbers referred to in exhibit A1 were subpoenaed and further feedback was provided with specific communication records of foreign numbers that were dialled by Agliotti. Hankel was requested to make the data available to the prosecuting authority. This information would have been contained in the Operation Chaser file. He then discovered that the file relating to Operation Chaser had been booked out of his offices by a Captain M Thema ("Thema") on 21 April 2006. It emerged from Hankel's evidence that he summoned Thema and Director Lakalakala ("Lakalakala"), who was Thema's commander at the time, in about February 2009, and demanded the return of the file. They were in no position to explain what they had done with the file. Neither Lakalakala nor Thema suggested that the file had been returned. On the contrary it emerged from Hankel's evidence that a few weeks after the meeting with them, they sent Hankel a file container containing a lot of scraps of paper. In cross examination Hankel added that had the file been returned it would have been indexed back into his environment and he would have expected Thema to have obtained a receipt for the return of so important a file. In any event he searched his archives and the file is not to be found.

159. Hankel endeavoured to obtain the information that had been provided in response to exhibit A1. Some information was obtained from the SAPS computers other information was obtained from MTN. The information obtained from MTN Is contained in Exhibit D 1 to 57 and reflects a record of telephone calls from 1 July 2004 to 20 August 2004 made to and from cellular telephone number 0832503333 which was identified as Agliotti's cellular phone. It is noteworthy that in this period there were 16 calls made by the accused to Agliotti and 41 calls made by Agliotti to the accused.

160. Exhibits A2 and A3 are addressed to Nelson. He testified that he did not recognise either report nor did he deal therewith. Exhibits A2 and A3 are both not signed by the writer thereof and are dated 4 October 2004 and 23 December 2004 respectively. They both bear a SAPS date stamp of 21 February 2007. Nelson testified that he did not deal with either A2 or A3. He further stated in cross examination in regard to exhibit A1, that once the information had been obtained and a report compiled, the original of exhibit A1 would be returned to Hankel. The original request for assistance would not be retained in the operational file.

161. Exhibits 4 and 5 are addressed to Director, now Commissioner Els. Hankel confirmed that these reports, although not properly addressed, were provided to his office and dealt with by his office. Els confirmed this and added that a copy of the letter was sent to Superintendant Fikter so that the information sought could be provided. Nelson confirmed that he completed a report in respect of the request contained in A4.

162. Hankel testified that he had been requested to identify all reports in his environment pertaining to Agliotti. In this process he found exhibit D2. In cross examination Hankel testified that he is unable to account for one copy of exhibit A1 and that was the copy that was placed in the Operation Chaser file which as appears above he no longer has in his possession. It was put to Hankel that the accused denied that he ever had access to the UK reports.

163. When Leask commenced investigating the matter he approached Tenger at the British High Commission and enquired from him if any reports had been communicated to the SAPS. Leask furnished Tenger with the information he had received from Agliotti. Leask was subsequently informed that such reports existed and that arrangements had been made for the reports to be made available with

Lalla who was at that time the head of Crime Intelligence. Leask was subsequently furnished with 5 reports by Director van Vuuren who was the head legal advisor for Crime Intelligence.

164. In cross examination the accused firstly denied that the Operation Chaser file was missing. He labelled Hankel as a liar for stating that it was missing. He added that he would prevail on his counsel to call Thema or Lekalakala to testify. They would apparently say that the file was returned to Hankel's secretary. The accused further accepted that exhibit A1 was booked out to Operation Chaser and worked on by at least Thema. It then emerged that the accused had consulted with Thema after Hankel had testified. When asked how he could consult with a state witness, the accused responded that he was unaware that Thema was a state witness. His attention was then drawn to portion of the cross examination of Hankel from which it is manifest that Thema is a state witness. Finally in this regard it should be pointed out that neither Thema nor Lekalakala were called to testify on behalf of the accused.

165. In September 2006 a search and seizure operation was carried out by the DSO at Agliotti's home and Maverick's premises.

166. According to Leask, Nassif and Agliotti were two of the people being specifically investigated in regard to the Kebble shooting. In this process an undetected incident was established in regard to a fraud in which Nassif was implicated. The DSO could not trace a police docket. They reconstructed a docket and on 26 October 2006 Nassif was arrested on a charge of fraud. Adv B Roux SC ("Roux") was Nassif's counsel. He approached the DSO and indicated that Nassif wished to provide certain information. Roux provided a draft affidavit. Leask took the affidavit to the prosecutors and the National Director of Public Prosecutions and his executive committee as Nassif indicated that he wanted the benefits of s 204 of the CPA and wished to stipulate further conditions which were set out in the draft affidavit.

167. According to Leask after a decision had been taken that the conditions stipulated by Nassif could be complied with, Nassif signed the affidavit on 8 November 2006. In broad outline the affidavit deals with the shooting of Mildenhall in Cape Town, secret reports, meetings with the accused, the relationship between the accused and Agliotti, to some extent his own relationship with the accused and two bank

accounts namely those conducted by Spring Lights and Misty Mountain.

168. Pikoli had sight of this affidavit. After reading the affidavit Pikoli informed the Minister of Justice and thereafter the President of the contents of the affidavit and of the fact the accused's name kept on cropping up in the investigation. Pikoli went as far as showing the President the affidavit deposed to by Nassif. The President read the affidavit and suggested to Pikoli that he should raise all the issues with the accused. Pikoli phoned the accused and requested him to attend a meeting with him. The meeting was held according to Pikoli on 11 November 2006 in Pikoli's office. The only persons present at the meeting were the accused and Pikoli.

169. Pikoli asked the accused questions along the lines of that which was contained in the affidavit deposed to by Nassif. Questions were asked in respect of the Spring Lights bank account, the Misty Mountains bank account, the buying of clothes, the so-called UK reports and intercepted e-mails between Plitt and O'Sullivan. Questions were also asked about the alleged covering up by the police of an accident involving a child.

170. As far as the receipt of payments was concerned, the accused denied that he received any payments. Pikoli added that the accused's denial was very convincing. Pikoli was so convinced by the denial that he said to the accused that he believed him when he said that he did not receive any money. Pikoli testified that he cried tears of relief and that the accused cried as well. On other issues Pikoli did not find the accused as convincing. As far as the intercepted e-mails were concerned, the accused admitted that "*they do have correspondence between Robin Plitt who was an investigator in the DSO at the time and Paul O'Sullivan*". The accused then went on a tirade against the DSO accusing the DSO, according to Pikoli of all sorts of things. Pikoli elected to ignore these issues as they were not what he wished to achieve from the meeting. The accused undertook to revert to Pikoli in respect of the UK reports and the covering up of the accident.

171. The following Monday the accused reverted to Pikoli and informed him that a child had not been involved in the accident. The accused did not make any reference to the UK reports and Pikoli did not press him further. The accused's version in respect hereof will be set out later.

172. Pikoli reported back to the President in respect of his meeting with the accused. Pikoli indicated that there was the need for further questioning of the accused and that in view of the seniority of the accused that questioning would be undertaken by McCarthy. Pikoli informed the accused of this decision. The accused was also informed that the interview would be with prejudice and recorded. The accused was further informed that he was entitled to have a lawyer with him at the interview. This was confirmed in a letter to the accused.

173. When Pikoli was cross examined the issue of s 204 of the CPA was raised with him. The thrust of this examination was aimed to establish that the desire to prosecute the accused overrode all else. Firstly in regard to Stemmet, Stemmet gave the first affidavit to the investigators. He made the statement in terms of s 204 of the CPA. It was put to Pikoli, and accepted by him, that Stemmet admitted in his affidavit to the commission of very serious crimes. One of the crimes admitted to was the planting of a bomb at Microsoft in order to scare Microsoft into increasing their security budget instead of reducing it. Another of the crimes was the planting of evidence in the fabrication of a case against a person. Pikoli was taxed as to why Stemmet was not prosecuted in respect of the crimes. Pikoli's response

was that the accused was also implicated by Stemmet and the prosecutors indicated that they would use Stemmet as a witness. Secondly, in regard to Nassif he too entered into an arrangement with the prosecutors. Nassif arranged for people to be shot. This included Mildenhall the former chief executive officer of Allan Grey. It was put to Pikoli in this regard "*Yes, the arrangement is you get a 204, just come and say anything against the accused not so, then we excuse you of these attempted murders, the murder of Kebble, etc, etc. not so?*" Pikoli responded that when he looked at the case and discussed it with his deputies from an objective and independent perspective and had regard to the high rate of crime in the country, he concluded that as South Africans we could not afford to have a National Commissioner of Police who is alleged to be involved in the commission of serious crime. He added that he regarded these allegations against the accused as being very critical and very serious. Pikoli stated that this is why he had to raise the matter with the President. He concluded by saying that it is part of our law that in dealing with organised crime you would need to use criminals against criminals. It was pointed out to Pikoli that Nassif's statement is based mainly on what Agliotti told him and is thus hearsay. Pikoli acknowledged this. He added however that without the admissions made by Nassif, the Kebble murder would not

have been solved. It was put to Pikoli that he was so enthusiastic to get any evidence against the accused that he was willing to grant exemptions and not proceed with the prosecution of Nassif on serious crimes that were not related to the accused. Pikoli responded that the admissions made by Nassif did implicate the accused and that there is nothing as bad for the country as to have allegations that the Commissioner of Police is in the pocket of organised crime. Pikoli added that he would want to believe that exemptions from prosecution is not an abuse of the discretion which prosecutors have as at the end of the day it is the court that would grant immunity not the prosecutors. When pressed further on the issue that the person who shot Kebble, the person who drove the vehicle transporting the shooter, the passenger in that vehicle and Nassif who paid them were all not being prosecuted and being asked who was there left to prosecute, Pikoli responded that Agliotti and Stratton who were the brains behind the shooting were left to prosecute.

174. Finally in regard to the s 204 exemptions when asked in cross examination whether it was necessary for all the exemptions to be granted, Pikoli indicated that the decision was taken by the executive of the NPA. It was a painful decision. They felt that if the allegations made against the

accused were supported by evidence regard being had to the nature of the accused's office it was a risk or gamble worth taking. The national executive of the NPA consisted of Pikoli, his four national deputies and his special advisor.

175. Fouché testified that Agliotti played golf at the Dainfern Country Club. Fouché was approached towards the end of 2006 by one Pieterse, who was a member of the Scorpions, for information on his database relating to Agliotti. He was asked by the Scorpions to assist them in placing a tracking device in Agliotti's motor vehicle. He originally agreed to assist but changed his mind. He informed Pieterse accordingly. He also told Agliotti about the request of the Scorpions. Agliotti responded by saying the Scorpions were trying to get at the accused through him. About a week later Agliotti informed Fouché that he had obtained advice to the effect that he should remove the tracking device and place it in an envelope.

176. On 15 October 2006 the DSO applied for warrants for arrest in respect of Agliotti and Stratton for the shooting of Kebble.

177. On 16 November 2006 Agliotti was arrested on a charge of the murder and conspiracy to murder Kebble. He was

remanded in custody in the Sandton police station cells. From the time of his arrest he was represented by Adv L Hodes and Mr R Kanarek.

178. On the day Agliotti was arrested, Pikoli and McCarthy flew to Cape Town hoping to have a meeting with the Minister of Justice, the Minister of Safety and Security and the President. They met with the Minister of Justice and the acting Minister of Safety and Security, Mr N Balfour. They were briefed on the arrest of Agliotti as well as the events that led to the arrest. Pikoli and McCarthy were unable to see the President.

179. As had been intimated to the President, McCarthy interviewed the accused towards the end of November 2006. McCarthy reported back to Pikoli in respect of the interview.

180. According to Agliotti whilst he was in custody he instructed his legal representatives to prepare a bail application. He also instructed his legal representatives to endeavour to broker a deal for him with the DSO. Whilst his bail application was in the process of being prepared, Agliotti was advised by his legal team to make notes of people, important incidents and contacts. Agliotti did so in his own

hand writing. When making the notes Agliotti did not have access to documents or computers. Agliotti identified the handwritten notes as the three ps of documents headed "*Annexure C*" and which are contained in exhibit A21. Agliotti confirmed that the three ps are in his hand writing as well as in the handwriting of Hodes. The following appears in Agliotti's hand writing on the first p of exhibit A21:

"Comms

- Direct Calling

- Paper/Andries/Then Put Line

- Would meet in Person/Not Much Said on Phons

Payments.

- R 300 once – R 1 m

- 30 Dinner INTERPOL

- $ 40 over few occasions

- Suits, Shoes, H/bags/Kids clothing

- 50 at a time 3 times

- Always at office /at airport/or Andries

- Billy Rautenbach/James Tidmarsh/Surtee Sema J.S/I Pillay

Reports

1. H.M.S.

2. NIA.

3. NPA"

181. Leask testified that he was approached by Agliotti's counsel and informed that they were going to apply for bail and that they would provide an affidavit giving certain information. The affidavit which was deposed to on 7 December 2006 was not satisfactory and Leask indicated that the state would oppose the bail application.

182. According to Leask he was again approached by Agliotti's counsel who had in his possession handwritten notes that had been made by Agliotti which contained far-reaching information which they wished to provide. At their request Leask accompanied Agliotti's legal representatives to see Agliotti in the police cells. Leask told Agliotti that whatever he wished to say he should reduce to writing, in whatever form he was advised, and should make specific mention of whatever corroboration he had for his allegations. Leask thereupon left. In due course Leask was provided with an affidavit which was deposed to by Agliotti on 11 December 2006 and which had several attachments. The affidavit was written by Hodes. A copy of the hand written original together with the annexures thereto was handed in as exhibit A43. A typed version thereof without the exhibits

thereto was handed in as exhibit A32. The e-mail and the hand written notes which were attached to the copy of the hand written affidavit, were handed in as separate exhibits. The e-mail is exhibit A6 and the hand written notes is exhibit A21.

183. Agliotti was released on bail on 15 December 2006. Agliotti's trial on a charge of the murder of Kebble has been postponed from time to time and is still pending in this court.

184. A meeting of the JCPS cluster was arranged for December 2006. There was no quorum for the meeting. The accused invited Pikoli to his office saying there is something he wanted to show him. The accused showed Pikoli 2 video recordings. Mphego was the interviewer in both. In the one Mphego interviewed Stemmet and another person whom Pikoli did not know and in the other he interviewed Agliotti. Stemmet was questioned in regard to cigarette dealings in an attempt to establish that he was involved in unlawful activities. Agliotti was questioned about monies that Agliotti had said had been paid over to the accused. Pikoli recalled an amount of 1 million or so. Agliotti denied in the video having given any of the money to the accused. Pikoli added that he thought that he was being shown the videos so that

he would come to the conclusion that if the NPA were relying on Stemmet or Agliotti neither were reliable witnesses.

185. It appears that the DSO experienced difficulty in obtaining the SAPS murder docket after the arrest of Agliotti. There was according to Pikoli at that stage already a bad relationship between the DSO and SAPS. Pikoli approached the President for assistance in obtaining the Kebble docket. The President phoned the accused's office. The accused was in Cape Town but was returning that afternoon. The President, who was due to leave for Cape Town, delayed his departure. On his return from Cape Town the accused came to the President's office. In the presence of the President, Pikoli requested the accused to make the Kebble docket available to the DSO. The docket was subsequently handed over to the DSO.

186. On 11 March 2007 Pikoli met with the President, the Minister of Justice and Ngcuka. After Ngcuka left the meeting Pikoli informed the President and the Minister of Justice of the problems encountered by the DSO in gaining access to information in the so-called BG investigation. The DSO wanted access to the videos that had been shown to Pikoli (and also McCarthy), the UK report and informants'

files. In response to their request for documentation the DSO received a letter from the State Attorney stating that if documentation was required the DSO must seek such documentation through his office. The President suggested that a meeting be held between the Minister of Justice and the Minister of Safety and Security and Pikoli to sort the matter out. The meeting was held at Luthuli House. The upshot of the meeting was that the Minister of Safety and Security undertook to look into the matter and to revert to Pikoli. During the same week the Minister of Justice contacted Pikoli and requested him to attend a meeting with her, the Minister of Safety and Security and the President. This meeting was held in Kempton Park. Prior to the accused, who apparently was also going to attend the meeting, and the Minister of Safety and Security arriving at the meeting, Pikoli met with the President. The President enquired why Pikoli did not meet with the accused. Pikoli responded that he was reluctant to have a meeting with the accused as he was a formal suspect. The President responded, according to Pikoli, by saying that the idea of the meeting was for Pikoli to get the information that he required. Pikoli then met with the two ministers and the accused. The accused was uncooperative and dismissive of Pikoli's request. He said that he was in charge of security in the country and that the DSO was not going to

get any documents from him or his people. Pikoli informed the Ministers that there was no point in continuing the meeting and he left the meeting.

187. On 19 March 2007 Pikoli wrote a letter to the Minister of Justice expressing the DSO's frustration in not obtaining the requisite documentation. Pikoli subsequently received indications that the information would be handed over. The indications proved to be incorrect.

188. On 7 May 2007 Pikoli wrote and caused to be hand delivered to the office of the President a letter. In the letter Pikoli sought the intervention of the President in obtaining the documentation failing which an application would be made to court for appropriate relief. On receipt of the letter the President called Pikoli and said the letter did not give him much time. Pikoli responded that he would not proceed until the President had tried to resolve the matter. The President said he would revert to Pikoli the next day. The next day the Minister of Justice phoned Pikoli and asked him to attend a meeting with the Minister of Defence.

189. On 8 May 2007 a meeting was held between Pikoli, the Minister of Justice and the Minister of Defence. At the meeting they enquired as to the strength of the case

against the accused. They also sought information as to the effect of s204 of the CPA.

190. The next day Pikoli received a call from the office of the President requiring him to meet the President and the accused at the offices of the crime intelligence gathering unit of SAPS on 9 May 2007.

191. The President attended the meeting. Pikoli attended the meeting together with McCarthy. The accused attended the meeting with Mphego, Lalla, Williams and Tshabalala. At the end of the meeting a process was agreed upon in terms whereof two teams led by McCarthy and Lalla were to ensure that the DSO received the documentation it sought.

192. Mrwebi testified as to a meeting of the DSO that was convened by Pikoli and which took place on 5 June 2007. At the meeting Pikoli stated that the purpose of the meeting was to discuss the so-called Browse Mole document. This document had apparently been compiled by members of the DSO and leaked to the press. The purpose of the meeting was to ascertain how the document had come about. The upshot of the meeting was that Pikoli informed the meeting that the National Security Council had instructed that an investigation be held into the

circumstances surrounding the production of the Browse Mole document, its leakage, the intentions of the compilers and any other related matters. Pikoli added that all present at the meeting should cooperate fully with the proposed investigation. Mrwebi added that in time he became aware that a task team of the National Security Council had been set up to investigate the matter.

193. On 18 June 2007 the African National Congress held a policy conference. One of the decisions taken at the conference was to disband the DSO. Mrwebi stated that this decision had still to be ratified at the conference of the African National Congress which was to be held in Polokwane in December 2007.

194. According to Pikoli, during the course of the BG investigation, the investigation team would report to Pikoli, McCarthy and Pikoli's advisor Ms Kalyani Pillay. When difficulties were encountered with SAPS failing to make documents available, Pikoli called in the assistance of Mr Willie Hofmeyer. Hofmeyer is a national deputy director of Public Prosecutions and is the head of the Asset Forfeiture unit. As the investigation progressed and matters were coming to a head and because it was a matter of national importance, Pikoli decided to involve his national deputies.

The investigating team started briefing the national deputies as well. Pikoli identified the deputies as McCarthy, Ramaite, Hofmeyer and Pillay.

195. On 25 June 2007 the investigating team gave a full briefing to the Minister of Justice as to the status of the investigation.

196. On 25 July 2007 a special management meeting of the DSO was called by McCarthy in Pretoria. The purpose of the meeting, according to Mrwebi, was to consider strategies to ensure the continued existence of the DSO in the light of the policy decision referred to above and the forthcoming conference of the African National Congress. What occurred at the meeting appears from an affidavit deposed to by Mrwebi, which is exhibit H9, the truth of which was confirmed by Mrwebi in his evidence. How this affidavit came into existence will be referred to later.

197. According to the affidavit both the lead prosecutor for the state and the lead investigator of the investigation against the accused were present at the meeting. The chairperson of the meeting, McCarthy, outlined four matters which he regarded as problematic for the DSO. The four matters were *"(a) The Zuma matter (b) The Mac Maharaj matter (c)*

The Ramatlodi matter (d) The Bad Guys matter (Agliotti/Kebble)". McCarthy indicated that he needed advice as to how these matters need to be handled before the December conference of the African National Congress. In cross examination it emerged that there was a fifth case that was discussed. It was referred to as Travelgate.

198. A discussion took place at the meeting as to the continued existence of the DSO. Suggestions were debated as to how the status quo with regard to the DSO could be maintained. These included:

- *"That we must go back to the so called 'Hollywood Style' to show the public that the DSO is still alive*
- *We must explore and undertake other publicity exercises to sell ourselves to the public, government and business*
- *We identify politicians who are favourable to the DSO and try to influence them*
- *We identify business executives who are favourable to the DSO and try to influence them*
- *That a possible legal challenge may be considered in view of the recommendations of the Khampepe Commission*
- *That all the above must happen before the ANC National Conference in December 2007"*

199. With regard to the problematic cases there were, according to Mrwebi divergent views. Some suggested that the matters must be dealt with as soon as possible, whilst others suggested that the outcome of the Polokwane conference should be awaited. According to Mrwebi "*both options were seen to be problematic as the perceptions and accusations of abuse of power will remain either way*". No decision was taken in this regard.

200. The affidavit then proceeds to its conclusion from paragraph (e) thereof as follows: *'(e) From the discussions at the meeting it became clear that the members were concerned about the autonomy of the DSO if the resolution to co-locate them with SAPS were to become a reality, hence the suggestions to influence the process in order to retain the status quo. But it appeared that the urgency for the DSO lies in the type of decision that had to be taken around the four problematic cases, as I gathered from the meeting that there was indeed a real feeling that these cases were likely to influence the course of direction and position of the DSO.*

(f) With regard to the four problematic cases referred to above, I can, from an insider perspective, give the following background information:

- *As said that the chairperson did not give any details as to why the said four cases were problematic for the DSO but from various discussions at different levels the perception created of targeted investigations and prosecution of high profile individuals would arise.*
- *The Zuma matter has always been cited as a matter that directly contributed to that perception.*
- *However, with regard to the Maharaj and Ramatlodi matters it was the first time during this meeting that these were specifically mentioned as being problematic for the DSO, otherwise we just knew that there were some investigations pertaining thereto.*
- *With regard to the Bad Guys (BG) matter we knew that the DSO was involved in the investigations of any ordinary organized crime matter, but lately, before this meeting the following events are of note:*
    - *It would be mentioned that that BG matter is very important for the DSO and that it actually meant life and death for the DSO.*
    - *That is even why the Regional Head of Gauteng, is himself designated as the prosecutor in the matter.*

⊥ *Further that is even why later the Investigating Director himself was further designated to also conduct the prosecution in the matter and that he would not be attending any management meetings and he will be full-time in the matter.*

⊥ *That was indeed very strange to us as we would not be told of the reason for the importance of this matter for it to even require such high level intervention. To us it was an ordinary, albeit complicated organized crime matter, involving drugs, murder, and serious economic crime related matters. And it was no different from other matters we used to handle. The question the answer to which we had not been provided was and is why is this matter of such importance as to even pose a threat to the existence of the DSO.*

⊥ *However, from further inquiries, it became clear to me why the BG matter was of such importance to the DSO.*

⊥ *As no details were given about why the four matters were regarded as problematic for the DSO and no reasons for a need for suggestions and decision thereon in the light of the ANC June*

Policy conference and the upcoming ANC December National Conference were given as well we were only left to speculate. However, what was clear from discussions was the urgency of taking decisions in these four matters either way before the December ANC National conference.

RESOLUTIONS OF THE MEETING

The meeting closed with the following resolutions, inter alia:

- *That we embark on an aggressive campaign to market/publicize the DSO by identifying certain identified cases for that purpose.*
- *That politicians favorable to the DSO be approached with a view to influence them in order to ensure the status quo remains.*
- *That business executives (some were named by the chairperson) favorable to the DSO be approached as well to similarly influence them.*
- *That Top Management (Head Office management) of the DSO will deal with the four problematic cases and*

take a decision on how the matters will be approached."

201. The last presentation that was made by the investigating team was made at de Hoek over a period of 3 days being the last 3 days in August 2007. The NPA secured the services of Mr Cockrell a practicing counsel to be of assistance in the matter and to test the sufficiency of the evidence that the DSO had against the accused at that time. According to Leask the major decision that was taken at de Hoek was that there was a case for the accused to answer and that preparations must be made for the necessary warrants.

202. In August 2007 Mrwebi received a telephone call from a person who introduced himself as being from the office of the President. This person indicated that he was part of the task team investigating the Browse Mole document. A meeting was arranged between the task team and Mrwebi in Durban. The task team consisted of Fraser from the NIA, Lalla from the crime intelligence unit of SAPS, and Mr Loyiso Jafta from the office of the President. At the meeting Mrwebi was informed that from their investigations of the origins and source of the Browse Mole document, he or his office was implicated as the source of the document.

Mrwebi indicated that he would investigate the information the task team had. He was then requested to be part of the investigation team and to assist with the investigation. After investigating the matter Mrwebi presented the task team with a report dispelling the allegations directed against his office.

203. Two to three weeks after submitting his report, according to Mrwebi it must have been towards the end of August 2007 or the beginning of September 2007, he was contacted again by the task team. They now wished to see him in connection with the meeting of the DSO which had occurred on 25 July 2007. He attended such a meeting. He did not have the contemporaneous notes which he had made at the meeting of 25 July 2007 with him at the meeting. After the meeting he consulted his notes and at the request of the task team prepared the affidavit which is annexure H9. He regarded the affidavit as top secret as he had been informed that the investigation was a top secret investigation. After he had deposed to the affidavit he handed it to a NIA officer in Durban with the request that it be handed over to the relevant members of the investigating team.

204. A warrant for the arrest of the accused was applied for and issued by the Chief Magistrate of Randburg on 10 September 2007.

205. A search warrant was applied for and issued by the Deputy Judge President of this division on 14 September 2007.

206. On 23 September 2007 Pikoli was suspended in his office by the former President of South Africa, President Mbeki. This suspension led to the appointment of a commission of inquiry referred to as the Ginwala Enquiry.

207. On 27 September 2007 Leask was directed by the then Acting National Director of Public Prosecutions, Mr Mpshe, to hand over the original warrant of arrest and search warrant to him. Leask ascertained that the warrant of arrest was subsequently cancelled and that an application was brought for the cancellation of the search warrant but such application was unsuccessful.

208. Mpshe appointed a review team to analyse the case against the accused as it stood at that time. The review team commenced its task in October 2007.

209. Leask testified that after Agliotti's release on bail consultations took place with him and his counsel and preparations were made to draft an affidavit. During 2007 the process was taken further in that Agliotti went with the investigating team to Stellenbosch for a week for the purpose of finalising the affidavit. This was done with the consent of Agliotti's counsel. On their return the affidavit was made available to Agliotti's counsel. Thereafter it was deposed to by Agliotti on 21 November 2007. This affidavit is exhibit A33.

210. In cross examination it was suggested to Leask that the process of preparing this affidavit was long and laborious and that there must have been drafts of the affidavit. Leask responded that there were logistical delays occasioned by the availability of Agliotti's counsel. No draft affidavits were prepared. One document was worked on in digital form and this document was ultimately presented to Agliotti's counsel for their approval. This method was adopted because of the overlapping cases. There were changes to the document in that the information contained therein was enhanced. Leask was emphatic that there was no change in versions.

211. On 28 November 2007 Agliotti pleaded guilty to dealing in drugs in the Paparus matter. Prior thereto Agliotti and the

state had concluded a plea bargain in terms of s 105A of CPA and the charge was disposed of in that manner.

212. In December 2008 the findings of the Ginwala Enquiry were made public. The finding was that Pikoli was fit to hold the office of the national director of public prosecutions and his reinstatement to office was recommended. Notwithstanding this finding President Motlanthe determined to dismiss Pikoli from his office. Pikoli thereupon instituted review proceedings in the High Court. The review was to be heard shortly after Pikoli testified in this court.

213. In late December 2007 the review committee that had been established by Mpshe to determine whether the prosecution should proceed made its decision known. Although not expressly stated the decision must have been to proceed with the prosecution.

214. On 4 January 2008 Agliotti deposed to a further affidavit. This affidavit is exhibit A23. It came into existence in the following manner. Agliotti testified that during the period 2007/8 he was befriended by Mrs Volskenk, whom he described as a business colleague. She claimed to have, according to Agliotti, a business relationship with Mr

Manzini who was the head of the NIA. Agliotti had previously discussed with Volskenk his complaints against the NPA. Volskenk suggested that Agliotti meet with the NIA in order that he gives them his grievances. Agliotti agreed provided he would meet with the highest person in the NIA.

215. Agliotti received a call on 4 January 2008 to attend a meeting at an office park in Rivonia. He did attend the meeting. Prior thereto he had partaken in a family luncheon. At the office park Agliotti was met by Volskenk and Mr Dennis Kekana. Agliotti was told he first needed to make a statement as to how he was treated and that thereafter the same evening he would meet with the NIA. A statement was duly produced. Agliotti dictated the contents thereof and Volskenk typed the statement. Kekana then took Agliotti and the statement in his motor vehicle to the Balalaika Hotel in Sandton. In the foyer of the hotel they were met by a NIA member who took them to a suite in the hotel. There Agliotti met Manzini and Fraser from the NIA and Mphego. Agliotti testified that he was surprised to see Mphego at the meeting as the meeting was supposed to be with NIA. Mphego summoned a police officer before whom Agliotti took the oath and signed the statement. The

statement reflects that the oath was taken in Brixton. This is wrong.

216. Agliotti testified that at the time of making the affidavit he had been in jail, he was under house arrest, his life had been put on hold, he and his family had been exposed to an armed robbery and he had never been offered a deal such as Nassif and others had been offered by the DSO. He wanted somebody to hear his side of the story. Volskenk had intimated that this may be possible through the NIA. Accordingly Agliotti determined to give the NIA a version that they wanted to hear. He stated that he gave a version in the affidavit of Kebble's theory of what was going on with Ngcuka and McCarthy and what he thought was in the accused's and his interest as well as what he thought the NIA wanted to hear. The paragraphs of the affidavit were numbered and Agliotti was taken to the content of the affidavit from which it appeared that certain information had been given to him by the DSO and the NPA. Agliotti testified that the information had not expressly been given to him. It was his interpretation of the facts.

217. In paragraph 9 of the affidavit the following is stated:

"Their intention was to prove a case of bribery and corruption against Jackie Selebi and others and in return I

would receive indemnity in the following cases being number 1) to plead to a 105 plea bargain agreement in the Papparus drug case and 2) a 105 plea bargain agreement in the Bret Kebble murder and 3) in the empire K fraud case they would give me a 204 if I testified. In return, I had to testify against National Commissioner Jackie Selebi to case of bribery, corruption, money laundering and defeating the ends of justice. I maintained to the DSO all along that I never bribed Selebi at all and I was not going to testify."

In paragraph 10 of the affidavit the following is stated:

"If made a statement against Selebi, I would get a 204 indemnity and could not be prosecuted for bribery and corruption against Selebi, and would receive a 204 indemnity against prosecution in the empire K case, I was told that I could go to jail for at least 15 years and therefore should make the necessary statements. It was made VERY clear to me that the DSO along with the NPA were "the law" that governed the country as well as justice in South Africa. They made it very clear that no other law enforcement agency could dictate to them or question their motives or actions."

Finally Agliotti stated in paragraph 12 the following:

"On numerous occasions, I requested an audience with Vusi Pikoli when I was told by Gerrie Nel that this would not be possible at all. My request was to speak to Pikoli on the basis that he had no right whatsoever to give 204 indemnities to Nassif, Smith, McGuirck and Schultz for the murder of Kebble as I had no part to play in this. I was told that this would NEVER happen, however, if I did a deal, I could have an audience with Leonard McCarthy - head of the DSO at which I stated that I had no desire whatsoever to speak to Mr. McCarthy. It is very clear to even a blind man that the DSO used people such as Paul O' Sullivan, Tamo Vink, and various others to attempt to bring down Selebi in order to save the DSO from being incorporated back into the SAPS organisation. It is VERY clear that the DSO abused their office of power to achieve this goal."

218. According to the accused Agliotti's affidavit of 4 January 2008 was faxed to the office of his lawyers. This must have been prior to the accused's application which is referred to hereinafter being launched. Later in cross examination the accused stated that the affidavit was received on 5 January by fax at his counsel's chambers.

219. According to the accused he did not discuss the meeting at the Balalaika Hotel at any stage with Mphego. The

accused heard about the meeting approximately I week after the meeting. He was told about it by Mr Manzini who was the Director General of National Intelligence.

220. On 7 January 2008 a further meeting took place between Agliotti, Mphego, a representative of the NIA and a few other people whom Agliotti could not identify.

221. This meeting was held at the Villa Via hotel in Sandton. Agliotti was taken to the meeting by Kekana. A video recording was made of the meeting. According to Agliotti he made it abundantly clear to Mphego that the meeting was to be conducted off the record as he wished to speak to his legal team and had not yet done so. Mphego agreed hereto and indicated that the meeting was only for intelligence gathering purposes. According to the accused he was unaware of this meeting. He was told that the meeting had occurred by Mr Fraser who was the deputy director of national intelligence. According to the accused Fraser furnished him with no further detail in regard to the meeting.

222. In cross examination it was suggested to the accused that he had been telephoned by Manzini at 00:11 and at 00:22 by Mphego on 5 January 2008. He replied that he would

have remembered had that happened. He was also asked whether Manzini had telephoned him 13 times and whether he had telephoned Manzini 4 times on 5 January 2008. His response was that he did not remember. He accepted that the easiest way for this to be cleared up was for the relevant phone accounts to be produced. These phone accounts were kept by Grové. The accused stated that he needed a reason to ask Grové to check this up. A request by the prosecutor for the information did not constitute a sufficient reason for the request. Suffice it to say the relevant phone accounts were not produced.

223. According to the transcript of the video recording:

223.1 The interview commenced with Agliotti referring to Nassif. A person, who had previously been with military intelligence, had been employed by Nassif. Nassif had dismissed him from his employ. According to Agliotti this person then went to the DSO and offered to give them information relating to Nassif. This person, known as Eugene, was, so Agliotti is recorded as having said, was recruited by O'Sullivan and is the casual source referred to an e-mail sent by O'Sullivan to Plitt. Nassif was arrested on a charge of fraud. On his release from prison after spending one night there Nassif told

the DSO who had been involved in the killing of Kebble.

223.2 Agliotti added that the DSO went on an "indaba" for three days. The DSO took a reporter from the Mail and Guardian newspaper with them. This was done so that they could determine how they were going to report about the accused and Agliotti. The interview proceeded with Agliotti stating that that the DSO had targeted him and the accused in the press and that they had to tarnish Agliotti so as to bring down the accused.

223.3 It was common knowledge according to Agliotti that the prime objective of the DSO was to "*take down*" the accused and that it was politically driven. In response to a question posed by Mphego as to reason for this, Agliotti stated that the DSO wished to retain its identity and that and did not wish to be absorbed in SAPS. He added that that DSO had fought for their lives during the Khampepe commission.

223.4 Agliotti added that another reason from which the political nature of the prosecution of the accused could be determined was the fact that he continually told the DSO that he had not bribed the accused. He added that the DSO "*go on the whole*

assumption that because of my criminal activity, I had to have him on my side so that he could protect me. I said he's never offered me protection, I never asked it of him because I respect as a friend, I respect his position that he held, I never ever once went to him and said: "Please help me, I've been arrested for drunken driving". "Please help me for this", "Please help me for that". "Give me a tender". Agliotti said that if he bribed the accused he would surely have got a tender from SAPS for bullet proof vests which he had submitted in the name of Masupatsela Risk Management.

223.5 Agliotti stated that the DSO's whole motive was to arrest the accused, discredit him and that's it. Mphego is recorded to have responded "*By hook or by crook*". Agliotti replied "*They don't give a damn*".

223.6 Mphego then focussed the discussion again on Nassif. It appears from Agliotti's response that Nassif stated that Agliotti had paid for the killing of Kebble and that he was arrested on that basis. Agliotti stated that he had no role to play in the killing and that he furnished the DSO with a paper trail in regard to the relevant payments.

Nonetheless, Agliotti stated that he was arrested as the DSO had to "*take (him) down*".

223.7 Agliotti stated that the perpetrators of the Kebble killing were hidden from SAPS by the DSO as they knew that they would be arrested by SAPS.

223.8 Mphego is recorded of having stated to Agliotti that he had hinted in his statement about playing golf with the DSO. Agliotti responded by giving details of a visit with the DSO to Stellenbosch were his statement was finalised.

223.9 The interview concludes with Mphego recorded as having said "*...Like you have indicated that you do not have a problem in giving us a statement under oath on matters where you are not a state witness. But necessarily you want to talk to your lawyers first.*"... "*...That in this, this voluntary conversation that we had I have refused to take the statement under oath if you are a state witness on a particular matter*" and "*Because I can only take such a statement on issues that are not included in the issues that you are a state witness on.*"

224. Leask testified that he was unaware of the meetings at the Balalaika Hotel and the Villa Via Hotel.

225. During the course of Agliotti's cross examination counsel for the accused referred Agliotti to an article which counsel said had appeared in the City Press the previous Sunday. The article is exhibit A39. It should be emphasised that Agliotti had already testified in regard to the events of 4 January 2008 and 7 January 2008 when he was confronted with this article. In the first 2 paragraphs of the article it is alleged that the meeting at the Balalaika Hotel on 4 January 2008 was video recorded as well and that reporters from City Press had seen the video. It appears that neither counsel for the state nor the accused were aware of the existence of the video, if it indeed exists. If the video does in fact exist it is a matter of concern that the video was shown to reporters who then commented on the veracity of Agliotti. If the video does exist and was shown to the reporters it would appear that whoever caused the video to be shown to them, was attempting to influence proceedings in this court.

226. In early January 2008 the accused brought an application in the High Court. The affidavit deposed to by Agliotti on 4 January 2008 was attached to the application. The affidavit deposed to by Mrwebi (exhibit H9) and already referred to was also attached to the application. It is not apparent how this affidavit came into the possession of the accused and

his legal representatives. The accused sought the following relief in the application:

"PART A:

1. *That this application be heard as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court and that Applicant's non-compliance with the rules with reference to time periods, form and service be condoned;*

2. *An interdict prohibiting Respondents to proceed with the institution of any criminal prosecution against Applicant and/or take any steps in the furtherance of any envisaged criminal prosecution against Applicant pending the finalisation of the main application for the relief as set out in Part B of this notice;*

3. *That costs of the application with reference to Part A of the notice be reserved for decision in the hearing of the main application as set out in Part B of this notice;*

4. *Further and/or alternative relief.*

PART B

1. *An interdict prohibiting Respondents to proceed with the institution of a criminal prosecution against the Applicant and/or taking steps in the furtherance of any envisaged criminal prosecution against the Applicant;*

2. *An interdict prohibiting Respondents to execute any warrant for the arrest of the Applicant relating to the present investigation against Applicant and/or to take any steps to obtain a warrant for the Applicant's arrest;*

3. *An order to compel First and Second Respondents to provide Applicant with full details of the specific allegations against Applicant;*

4. *An order to compel First and Second Respondents to provide Applicant with an opportunity to answer to the specific allegations mentioned in 6.3 above;*

5. *An order compelling Respondents to provide Applicant with a copy of the report compiled by a*

panel of experts dealing with the alleged allegations against Applicant;

6. *An order setting aside any warrant for the Applicant's arrest;*

7. *An order setting aside any decision already taken by the First Respondent to prosecute Applicant on certain criminal charges relating to Respondents' present investigation against Applicant;*

8. *An order compelling First and Second Respondents to provide Applicant with copies of all affidavits and other information placed before the relevant authority in the application for the issue of a warrant for Applicant's arrest and the subsequent application for setting aside such warrant for Applicant's arrest;*

9. *An order compelling First and Second Respondents to provide Applicant with copies of all affidavits and other information placed before the relevant authority in the application for the issue of a warrant for the search of Applicant's office and/or*

residence and the subsequent application for setting aside such warrant.

In the alternative to prayers 1 and 2 above the following relief will be seek:

10. *An interdict prohibiting Respondents to proceed with any criminal prosecution against Applicant pertaining to their present investigation without providing him with details of the specific allegations against Applicant and further providing him the opportunity to answer to such allegations and consider his answer to the allegations prior to any final decision whether or not to prosecute him;*

11. *An interdict prohibiting Respondent to execute any warrant for Applicant's arrest pertaining to their present investigation against Applicant and/or to take any steps to obtain a warrant for the Applicant's arrest prior to providing him with details of the specific allegations against him, further providing the Applicant with the opportunity to answer to such allegations and consider.' his answer to the specific allegations*".

The application was dismissed for want of urgency.

227. When Agliotti's affidavit came to the knowledge of Leask, he made immediate contact with Hodes and Kanarek and had a meeting with them. This led to Agliotti making yet another affidavit. This affidavit was deposed to on 10 January 2008. The affidavit is exhibit A37. In paragraph 13.15 of the affidavit Agliotti stated that "*At all times as recorded in my plea and sentence agreement, I undertook to testify in any matters in which I was required to do by the DSO. I have never maintained that I never ever bribed Selebi or that I was not going to testify.*"

228. On 8 January 2008 the lead prosecutor for the state was arrested by SAPS. According to Mokotedi the charge brought against the lead prosecutor was withdrawn a week later. As at 5 May 2010 the charge has not been reinstated. The charge did not relate to the C-fund.

229. Reference can now be made to the evidence relating to payments allegedly made to the accused and gifts allegedly given to the accused. Agliotti testified that he made payments to the accused and that he gave the accused gifts. Save for admitting to receiving a Swiss army knife, which included a watch as an accessory as a birthday gift from Agliotti, the accused denied that Agliotti

had ever given him money or gifts. Agliotti in turn denied having given the accused a Swiss army knife as put to him.

230. It is expedient to set out the evidence dealing with the alleged payments first and thereafter to deal with the alleged gifts.

231. Before referring to the evidence of Agliotti, Muller and Flint in this regard it is expedient to refer to the evidence of Friedman.

232. Friedman testified that on 24 August 2005, Kebble, his father, Stratton and Buitendag resigned from the board of directors of JCI. A new board was appointed. The new board instructed KPMG to perform an investigation on JCI and its subsidiaries. One of its subsidiaries was CMMS. The project was called Project Hole. In December 2005, as part of this investigation difficulty was encountered with payments made to Spring Lights. An enquiry (exhibit B 1) was sent to Agliotti on 19 January 2006. In the enquiry, which is said to be in connection with Spring Lights, Agliotti was requested to "*Provide a list of individuals and/or entities who received payments during the course of your assignment as you explained previously*" and to state "*What was the total amount that Spring Lights received*

from JCI directly and indirectly" and finally to reply to the question "*Did you receive any payments from third parties who effected payments on behalf of JCI*". The enquiry was responded to as appears from exhibit B2. This was done in April 2006. As to the first query the following is stated in the response :

"*The following analysis, from 5th December 2003 to 31st January 2005, has been compiled from bank statements and paid cheques.*

M.Flint- Spring Light Loan a/c	*350,000*
Sterling cc	*3,200,000*
Sterling Assets Management	*8,020,000*
New Sterling Asset Management	*5,165,000*
Central National Security Services	*00,000*
CRN International Investment & Recovery	*871,367*
Care Products	*3,577,000*
American Express (Approved Travel)	*1,810,000*
Cash Payments	*2,224,186*
J.Murray	*300,000*
T.Bond	*700,000*
F.Viljoen	*32,089*
M.Flint	*129,200*
Bank Charges	*5,158*
TOTAL	*R26,684,000*"

As to the second query the following is stated in the response:

"Compiled from bank statements and received in 8 amounts over the period from 05/12/2003 to 08/05/2004.

"JCI	*7,600,000*
JCI Group (Consolid)	*12,000,000*
TOTAL	*R19,600,000"*

As to the third query the following is stated:

"Yes. Compiled from bank statements and received in 5 amounts over the period 29/04/2004 to 18/01/2005.

Consolidated Mining Man Serv *R7,084,000"*

As will appear hereinafter the reality differs substantially from the response furnished by Agliotti

233. In June 2006 JCI and Rand Gold and Exploration Company Limited reported certain suspected offences to the DSO. KPMG was then appointed by the DSO to assist them in an investigation which was called "Empire K". The Empire K investigations in turn lead to a further investigation by KPMG which related to the accused. KPMG was asked to analyse the accused's bank accounts, credit card accounts, investment accounts and foreign currency trades performed by him and on his behalf by the South African Police Service and they were asked given a certain category of transactions identified in a draft of an affidavit

by Agliotti, to determine whether they could identify any transactions with those characteristics in the bank statements of Spring Lights and also to determine the funding of Spring Lights. The results of the investigation are set out in a report styled "*Report on factual findings dated 19 March 2009*" (exhibit C1) and two volumes of documents (exhibit C3 and C4) and in an addendum to exhibit C1 dated 2 November 2009 (exhibit C2) and three volumes of documents (exhibits C5, 6 and 7). Volumes C3 to C7 contain annexures which were generated by KPMG and exhibits which were handed to KPMG by the DSO.

234. Annexure M (exhibit C3 p153) reflects the total income and expenditure as reflected in the accused's bank account for the period 13 January 2003 to 4 January 2007. According to Friedman and as is apparent from annexure M, the income into the accused's bank account exceeded the expenditure from the bank account by R152970.45. An amount of R400000, which is reflected as an item of expenditure, was utilised by the accused to acquire a unit trust investment. This R400000 is also an accrual to the accused's estate. Accordingly at the end of the period the accused was R552000 better off than at the commencement of the period. The detail of the information set out in Annexure M appears from annexure L1 (exhibit

C5 p753 to p760). The columns in annexure L1 from left to right are in respect of the following: alleged payments made to the accused from Spring Lights, details of transactions in the accused's bank account, details of transaction in the accused's two credit card accounts-each account is reflected in a separate column, accused's and his wife's foreign exchange transactions and the source of the information in respect of the latter.

235. Annexure K (exhibit C3 p143) reflects the monthly comparison for the period February 2003 to December 2006 of income and expenditure from the accused's bank account and credit cards. As is apparent from the column entitled "*Nett*", the outflow from the account exceeded the inflow from the account in most months. During the entire period the inflow (R 2,421,881.48) exceeded the outflow (R 2,296,375.05) by R125506.43. It should be noted that Annexure M deals with a slightly longer period than annexure L1. The R400000 acquisition of unit trusts must also be kept in mind.

236. Friedman testified that the cash flow in the accused's bank account was under pressure. The inflow only exceeded the outflow by reason of the inflow of amounts into the account in respect of pension payments and the like. See in this

regard the inflows into the accused's account in November 2005.

237. In regard to annexure U (Exhibit C3 p163) Friedman testified that the annexure represents the accused's monthly discretionary spend. This is achieved by disregarding debit orders on the accused's bank account and only having regard to cheque payments made from that account, cheques cashed from that account, cash withdrawals from that account and credit card expenditure. This annexure deals with the period March 2004 to December 2005. The content of the annexure is set out hereunder:

Month	Cheque payments	Cheques cashed	Cash withdrawals	Credit cards expenditure	Aggregate total
Mar-04	34 281.00	5 088.00	22 000.00	1 550.00	62 919.00
Apr-04	34 187.23	0.00	5 000.00	941.35	40 128.58
May-04	39 888.55	0.00	1 000.00	7 562.49	48 451.04
Jun-04	27 033.84	13 000.00	10 000.00	1 841.78	51 875.62
Jul-04	15 808.72	0.00	16 000.00	3 904.28	35 713.00
Aug-04	29 265.39	6 000.00	11 000.00	7 825.17	54 090.56
Sep-04	24 767.45	2 160.00	10 800.00	2 504.32	40 231.77
Oct-04	31 826.61	0.00	15 000.00	3 242.67	50 069.28
Nov-04	9 377.90	0.00	3 000.00	3 186.95	15 564.85
Dec-04	18 370.60	3 000.00	3 000.00	7 485.60	31 856.20
Jan-05	0.00	0.00	0.00	465.35	465.35
Feb-05	0.00	0.00	0.00	188.12	188.12
Mar-05	19 397.50	0.00	0.00	876.15	20 273.65
Apr-05	11 830.86	0.00	1 000.00	944.75	13 775.61
May-05	15 585.91	0.00	16 300.00	10 462.98	42 348.89
Jun-05	40 781.70	0.00	0.00	1 152.80	41 934.50
Jul-05	22 406.00	0.00	0.00	0.00	22 406.00
Aug-05	25 287.99	0.00	13 000.00	9 254.37	47 542.36
Sep-05	20 381.66	0.00	5 500.00	1 069.37	26 951.03
Oct-05	0.00	0.00	0.00	2 351.41	2 351.41

Nov-05	3 246.73	0.00	0.00	1 123.21	4 369.94
Dec-05	3 825.00	0.00	0.00	4 596.81	8 421.81
Total	427 550.64	29 248.00	132 600.00	72 529.93	661 928.57
Average	19 434.12	1 329.45	6 027.27	3 296.82	30 087.66

238. Friedman pointed out that:

238.1 There were no cash withdrawals in January, February, March, June, July, October, November and December 2005 from the accused's bank account.

238.2 Since January 2005 no cheques were cashed on the account. No cheques were cashed on the account in April, May, July, October and November 2004.

238.3 In January and February 2005 and October 2005 no cheque payments were made from the account.

238.4 There was a significant reduction in credit card expenditure in the months of January to April 2005 and no credit card expenditure in July 2005.

238.5 For the 10 month period March to December 2004 the total of cash withdrawals from and cheques cashed on the account amounted to R126048. For the 12 month period from January to December 2005 the total of cash withdrawals and cheques cashed amounted to R35800.

238.6 The total expenditure from the accused's bank account for the period March 2004 to December 2004 amounted to R430899.90. It only amounted to R231028.67 for the period January to December 2005. According to Friedman and as is apparent from annexure L1 (exhibit C5 p753) the pattern of reduced expenditure continued into 2006 and only started picking up round about July 2006.

239. Friedman testified that he had been referred to a draft affidavit by Agliotti in which he had indicated that certain cash payments had been made to the accused. As far as the draft affidavit is concerned Leask testified that he furnished Friedman a print out of a portion of Agliotti's draft affidavit that was being worked on containing only that which was relevant to Friedman. Friedman testified that reference was then had to the Spring Lights account and in particular to the cash cheques in that account in order to determine if there were any payments that had the characteristics in description or in amount which could be associated with the allegations made by Agliotti. Seven such cheques were identified. These cheques are set out in the schedule in exhibit C1 p33. Particulars of these cheques are as follows:

Cheque number	Counter foil note	Cheque date	Bank stamp date	Cheque Amount R
0127	"CASH JSGA"	14 June 2004	14 June 2004	10 000.00
0201	"CASH COP"	8 November 2004	8 November 2004	10 000.00
0204	"CASH COP"	18 November 2004	18 November 2004	5 000.00
0222	"CASH 200000"	13 December 2004	13 December 2004	200 000.00
0226	"CASH COP"	20 December 2004	20 December 2004	100 000.00
0271	"CASH GR Chief"	12 April 2005	13 April 2005	55 000.00
0355	"CASH Chief"	28 September 2005	28 September 2005	30 000.00
Total				R410 000.00

240. These seven cheques and their counterfoils were placed before Agliotti for the first time approximately two to three weeks before the trial when he consulted with the state prosecutors in preparation for the trial.

241. Just before Friedman's cross examination ended he was asked whether he had encountered Spring Lights' cheques or counterfoils to cheques in which reference was made to Stratton either by name or by use of his initials "*JS*". He replied that he could not recall encountering such cheques or counterfoils. He was asked to inspect Spring Lights' cheques and counterfoils to ascertain whether there were Spring Lights cheque stubs which referred to John Stratton as JS. Friedman did the exercise and found 3 such cheques. The 3 cheques were made out to Monster Marketing. The first cheque, cheque number 159 dated 3

August 2004, was in the amount of R182274.30. The cheque stub is annotated "*J.S.M.B*". The second cheque, cheque number 193 dated 12 October 2004, was in the amount of R18607.44. The cheque stub is annotated "*JS Car*". The third cheque, cheque number 213, dated 1 December 2004, was in the amount of R18607.44. The cheque stub is annotated "*Car JS*".

242. Agliotti testified that in the very beginning of his relationship with the accused in the early 1990s the accused indicated to him that he had his own problems and that he had a medical bill payable in respect of medical treatment for one of his sons. The bill was for approximately R1200. Agliotti testified that he paid the doctor by cheque. The accused denied this, describing it as a "*blue lie*".

243. According to Agliotti prior to his involvement with Kebble he would pay the accused money from his own funds. The accused would come to Maverick's office and money which had been placed in an envelope would be given to the accused in the board room and the accused would leave. The amounts that were paid to the accused were small amounts possibly R5000 to R10 000 at a time. When Agliotti became involved with Kebble the amounts increased as he told "them" he was looking after the

accused financially. According to Agliotti he would request Flint to draw a cash cheque. Flint would give him the money and he would hand it to the accused. The payments occurred mostly in the board room on the first floor of Maverick's offices, at the Europa Coffee shop and on one occasion at O R Tambo International Airport then known as the Johannesburg International Airport.

244. Agliotti testified the he paid the accused in rand and dollar currency approximately R1m. These payments were made over a period of a "*year and a bit*". Agliotti stated that he could recall making these payments. He added that the accused had informed him that he had a problem and that he needed approximately R1m. Agliotti did not enquire as to the nature of the problem but indicated that he would assist the accused over a period of time. In this regard Agliotti referred to two payments, one of R120000 and the other of R200000.

245. As to the payment of R120000 Agliotti testified that he asked Flint to cash a cheque in the sum of R100000. Agliotti added to that amount the sum of R20000 that he had on him. The total sum of R120000 cash was put in an envelope and handed to the accused. As to the payment of R200000 Agliotti testified that a cheque was cashed for that

amount and the money was packed in a large envelope. He asked Muller to assist him in the packing of the money in the envelope. He handed the envelope to the accused in Maverick's boardroom. He added that he had originally been under the impression that Flint had written the cheque, but after thinking about it and being presented with the cheque, he realised that the cheque had been made out and cashed by him. In regard to these two payments the accused was referred to exhibit A10 and A17 being the cheque and counterfoil in respect of the payment of R200000 and A11 and A18 being the cheque and counterfoil in respect of the payment of R120000, made up of the proceeds of the cash cheque of R100000 and the R20000 cash added thereto. It is apparent from exhibit A10 that the cheque is dated 13 December 2004. Exhibit A17 that is the counterfoil to the cheque of R200000, bears two hand writings. The date, the word "*cash*" and the numerals 200000 on the top of the counterfoil were written by Agliotti. The numerals 200000 at the bottom of the counterfoil were written by Flint. It is apparent from exhibit A11 that the cheque is dated 20 December 2004. The cheque was drawn by Flint on Agliotti's instructions. Exhibit A18, that is the counterfoil to the cheque of R100000, was also completed by Flint and bears the word "*CASH*" and underneath that word the word "*COP*". Agliotti testified that

he presumed that the reference to "*COP*" was a reference to the accused.

246. Agliotti was asked in his evidence in chief if there were any witnesses present when he handed money over to the accused. He responded by testifying that on only one occasion was a witness present. The witness was Muller. Agliotti testified that he asked Flint to cash a cheque for R100000 which he did. Agliotti came to the office and obtained the money. He had R20000 in his briefcase and he asked Muller to package the money. Agliotti was late for the meeting and proceeded into the boardroom to meet with the accused. Muller entered the boardroom and placed the package on the table. Agliotti slid the package across the table to the accused.

247. Muller testified that on one occasion Agliotti telephoned her. He told her that he was running late and that he was due to meet the accused. He asked Muller to give the accused coffee when he arrived and to talk to him. The accused did arrive at Maverick's offices. Muller gave the accused coffee in the boardroom. Muller added that Agliotti came running up stairs into the boardroom. He greeted the accused and asked Muller to come with him into their office. In the office Agliotti handed Muller money from his

briefcase and he asked her to count the money. He said that the money that he handed to her should be R110000. Agliotti had a money counting machine in the office. Muller counted the money and found that it amounted to R120000. She removed R10000 and put the balance in a white bank bag. Muller took the bank bag into the boardroom. She placed the bag in front of Agliotti. He slid the bag to the accused and said to the accused "*Here you go my china*" or "*my broer*" but, she added that she is convinced it was "*my china*". The accused according to Muller looked decidedly uncomfortable and did not touch the bag. Muller thereupon left the boardroom. When the accused left Agliotti shouted to Muller that he was leaving. She waved good-bye and saw he was carrying the bank bag. Thereafter Muller joked with Agliotti that the accused had got R110000 and that she had only got R10000. Agliotti put the R10000 in his briefcase. According to Muller she told Agliotti that it was not the way for things to happen that is for the National Commissioner of Police to be paid off by Agliotti. He told her to mind her own business.

248. Muller testified in chief that she thought this payment took place at the end of 2004. The reason for the money was that the accused was taking his family overseas on holiday.

249. Agliotti was referred to further cheques that had been identified by Friedman. He was referred to exhibit A7 which is a cheque for R10 000 dated 14 June 2004. The counterfoil to the cheque is exhibit A14. The cheque is drawn to cash and it and the counterfoil were completed by Flint. The counterfoil has on it the word "*CASH*" and there under the letters "*JSGA*". Agliotti testified that "*JSGA*" referred to himself and the accused. Flint confirmed his signature and hand writing in the cheque and counterfoil. According to him "*JSGA*" would have been noted as a result of what Agliotti had told him. Flint was referred in his evidence in chief to paragraph 21 of a statement which he had made (exhibit B4). In that paragraph he stated in regard to this counterfoil that "*JSGA*" refers to John Stratton and Agliotti. He testified that he was wrong in stating that in the statement. He stated that the only JS that came to mind when making the statement was John Stratton. Flint says he had been working with Stratton at the time but there was no particular issue that he could tie Stratton to the cheque.

250. Agliotti was referred to exhibit A8 which is a cheque for R10 000 dated 8 November 2004. The counterfoil to the cheque is exhibit A15. The cheque is drawn to cash and it and the counterfoil were completed by Flint. The counterfoil

has on it the word "*CASH*" and underneath it "*COP*". There are two dots under the C and the O. Agliotti testified that "*COP*" can only refer to the accused. Flint testified that he put the dots under the C and the O and that the note reads C.O.P. In the statement, exhibit B4, Flint stated that this payment related to a retired policeman who he understood had been involved in a car crash. Flint testified that he now recalls that the policeman came to Maverick's old offices. This cheque would have been made out at the new offices and he does not recall the policeman coming to the new office.

251. Agliotti was referred to exhibit A9 which is a cheque for R5000 dated 18 November 2004. The counterfoil to the cheque is exhibit A 16. The cheque is drawn to cash and the cheque and the counterfoil were completed by Flint. The counterfoil has on it the word "*CASH*" and underneath it "*COP*". Agliotti testified that this could only be a reference to the accused. Flint stated that he does not know what "*COP*" means. In the statement, exhibit B4, Flint stated that this probably refers to the same policeman as is referred to above. Flint testified that his statement was not correct.

252. Agliotti was referred to exhibit A12 which is a cheque for R55 000 dated 12 April 2005. The counterfoil to the cheque is exhibit A19. The cheque is drawn to cash and the cheque and the counterfoil were completed by Flint, The counterfoil has on it the words "*CASH G.A. CHIEF*". Agliotti stated that this refers to the accused. Flint testified that the counterfoil was poorly written. He testified that it was either "*Cash GA Chief*" or "*Cash GL Chief*" or "*GR Chief*". He had no knowledge of what the notation on the counterfoil meant.

253. Agliotti was finally referred to exhibit A13 which is a cheque for R30 000 dated 28 September 2005. The counterfoil to the cheque is exhibit A20. The cheque is drawn to cash and the cheque and the counterfoil were completed by Flint. The counterfoil has on it the words "*CASH (Chief)*". Agliotti testified that "*Chief*" would refer to accused. Flint testified that he had no knowledge of what "*Chief*" refers to.

254. According to Muller JCI transferred relatively large amounts into Spring Lights. Agliotti would then instruct Flint to write out cheques or draw cash. Flint would hand cash to Agliotti who would put it in envelopes or in a black briefcase. Agliotti would put amounts like R5000, R2000 R10000 into envelopes. Agliotti wrote initials on envelopes and either

people would come and collect the envelopes or he would put them in his briefcase. Muller assisted Agliotti in this on about six occasions. Agliotti would tell her how much to put in each envelope and thereafter put initials on the envelopes or give her the envelopes with the initials already on. Some of the initials were AD which referred to Anthony Dormehl, CN which referred to Clint Nassif, CB which referred to Charles Bezuidenhout and JS which referred to the accused. As to JS Muller testified that Agliotti had told her that JS referred to the accused and the accused would arrive at the office most of the time after Agliotti had made the notation JS on the envelopes.

255. Agliotti testified to making a payment to the accused for a specific reason. He testified that an amount of R30 000 was paid to the accused in cash at Europa Coffee Shop in Sandton for an Interpol dinner that the accused attended. Agliotti added that the accused had to attend an Interpol dinner in France where he was lobbying for votes to become president of Interpol. Ten to twelve people were to attend the dinner. Agliotti indicated that he was happy to sponsor the dinner. The estimated cost of the dinner was calculated and an amount of R30 000 was arrived at in respect of the cost of the dinner after a per head calculation. Agliotti thought that this had occurred in 2005.

256. Muller testified that she overheard a telephone conversation between Agliotti and the accused whilst in Agliotti's Mercedes Benz motor vehicle. The motor vehicle is fitted with a car phone and the conversation was conducted on this phone. During the call the accused asked Agliotti for a R10000 loan which he required for his son's birthday. Agliotti agreed and said he did not have the money on him and that the accused should come the next day to the office to collect the money. After the call was concluded Agliotti said "*Lend my ass. I will never see that money again.*" The next day Muller asked Agliotti if he had remembered his friend. He said yes and took the money out of his bag. The accused then arrived at Maverick's offices and he and Agliotti went into the boardroom. Later Agliotti told Muller that he had handed the accused the money in the boardroom.

257. As to the reason for making the payments Agliotti testified that he made them because he and the accused were friends and because he needed the accused in his business dealings and because he needed the accused close to him. He added that he needed him for purposes of the Kebbles.

258. Reference will now be made to the evidence in respect of gifts. Agliotti testified that he and the accused enjoyed shopping at shops within the Surtee group in Sandton City. These shops may be described as exclusive men's clothing stores. According to Agliotti he and the accused would often meet for coffee in Sandton. They would often just meet for coffee. On other occasions they would shop together. The accused would buy articles for himself and Agliotti would instruct the shop assistants to put the articles on his account. This happened over a period of a couple of years.

259. Agliotti testified that he bought two pairs of shoes for the accused at Harrods in London. He also bought him a pair of Louis Vuitton shoes in Hong Kong. Agliotti recalled purchasing for the accused Hugo Boss knitwear jerseys which the accused enjoyed wearing and an Aigner jacket in a hounds tooth fabric. Agliotti had purchased one such jacket for himself and the accused liked it so he purchased one for the accused. Agliotti testified that his suit size is a 60 whilst the accused's size was a 58 or 60 depending on the cut. In addition he bought the accused's wife a red patent leather Louis Vuitton handbag for her birthday. As far as he could recall the purchase price was R10 000. The accused was in the same shopping centre but not with

them at the time of the purchase. He also purchased for Matshoba a Gucci handbag at a cost of 500 pounds. Muller testified that when she was in the United Kingdom with Agliotti, Agliotti went into the Gucci shop and said he was buying a handbag for Anne Selebi. It should be emphasised that there was no suggestion that the clothing was bought for the accused. The evidence was at all times that the clothing was bought for the accused's sons.

260. Agliotti purchased for the accused's sons clothing from a store called Fubu in the Sandton City shopping centre. The accused was present. Accused had acquired an interest in Fubu and had put it in his wife's name. Muller testified that she was at Fubu together with Agliotti, the accused, his wife Anne and the accused's sons. The accused's wife left the shop. Agliotti let the accused's sons buy shoes, shirts jeans and whatever they wanted. The purchases were placed in a packet and they left the shop. Agliotti told the saleslady, whom she described, that he would pay for the purchases in the morning. The accused dealt with this in his evidence. He denied the allegation in the following manner: "*I know he even says something about, some nonsense about Fubu. My children do not wear Fubu. I do not wear Fubu. I would be regarded as a mad person if I were to wear Fubu. You know what Fubu is, Mr Celliers?*

Fubu is, if you have ever seen a match of, what is this, Basket ball, this American thing, basket ball, they put on these baggy huge pants and huge T-shirt, everything is huge. That is Fubu. My children do not put on Fubu. I do not know if I can put Fubu, I think everybody would think something has gone wrong, this case has made Jackie to lose his mind. There is no such thing".

261. One of the shops from which clothing purchases were made is Grays. Exhibit A22 p 62 dated 31 October 2004 is an invoice from Grays and reflects purchases by Agliotti of 2 Aigner jackets and an Aigner polo. Agliotti testified that he has not bought two jackets at the same time (as opposed to suits). He did not wear Aigner polo shirts. He testified that he was sure that he would have bought them for the accused. Exhibit A22 p 6 dated 29 March 2005 reflects the purchase of an Aigner jacket and Hugo Boss knitwear. The Aigner jacket is reflected as size 58. Agliotti testified that he was certain that he bought the jacket for the accused. Agliotti testified that he purchased two Carnali ties. This is confirmed in exhibit A22 p 59 and p 69. One of the ties, he testified he presumed and expected was for the accused.

262. Maharaj, the bookkeeper and payroll administrator of Surtee Esquire, testified as to the accused's and Agliotti's purchases from stores in the group. In respect of both Agliotti and the accused he referred to a Debtor Transaction List. The list sets out purchases and payments in respect of the purchases for each of them. The back up documents in respect of each transaction was also identified by the witness. These documents are contained in exhibit E. It is apparent from the documentation that the accused is reflected to have purchased goods for the first time on 29 October 2004 in the amounts of R11200 and R1000. Thereafter there were purchases on 29 August 2005 and 29 September 2005 in the amounts of R2980 and R56430 respectively. It is noteworthy that the first payment on this account was only made on 16 October 2005 when a payment of R25000 was made. This payment was made by way of cash. Subsequent payments on the account in the amount of R5000 (4 payments) and one of R4000 were made by way of cheque over the period 6 March 2007 to 9 February 2008. The present outstanding balance on the account amounts to R24283. It is apparent from the documentation that Agliotti is reflected to have purchased goods for the first time on 29 June 2004. His account presently reflects an outstanding balance of R15182.20 the last payment having been made on 28 September 2006.

263. It is apposite to set out at this stage the relevant legal principles which prescribe the approach which has to be followed in the determination of the trial.

264. It is trite law, but nonetheless law that bears repetition, that the State must prove its case against the accused beyond reasonable doubt. Likewise it is trite law which also bears repetition, that there is no onus on the accused. If the version proffered by the accused is reasonably possibly true the accused is entitled to his acquittal. As was pointed out in S v van der Meyden 1999 (2) SA 79 (W) at 80 H "*These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives*". The reason for the onus being formulated in this manner is the natural and constitutionally correct desire to preclude the innocent from being convicted and unjustly punished.

265. In this regard it is sufficient to refer to S v Jaffer 1988 (2) SA 84 (C) on 89 B and further where it was held: "*In S v Kubeka .... Slommowitz AJ said in regard to an accused's story:*

'Whether I subjectively disbelieve him is, however, not the test. I need not even reject the State case in order to acquit him. I am bound to acquit him if there exists a reasonable possibility that his evidence may be true. Such is the nature of the onus on the State.'

Referring to this passage Van der Spuy AJ said at 715G:

'In other words, even if the State case stood as a completely acceptable and unshaken edifice, a court must investigate the defence case with a view to discerning whether it is demonstrably false or inherently so improbable as to be rejected as false.'

I agree. The test is, and remains, whether there is a reasonable possibility that the appellant's evidence may be true. In applying that test one must also remember that the court does not have to believe her story; still less has it to believe it in all its details. It is sufficient if it thinks there is a reasonable possibility that it may be substantially true (R v M 1946 AD 1023 at 1027)."

266. The judgment in S v van der Meyden supra, is instructive as to approach that a court must adopt in this regard. It was held in regard to the same passage in the Kubeka judgment as was referred to in S v Jaffer supra that "*That passage does no more, in effect, than to reiterate that the conclusion of a criminal court is not to be reached merely by choosing what it considers to be the better of two competing versions (Hlongwane's case supra at 341A; S v Singh 1975 (1) SA 227 (N)). Purely as a matter of logic, the prosecution evidence does not need to be rejected in order to conclude that there is a reasonable possibility that the accused might be innocent. But what is required in order to reach that conclusion is at least the equivalent possibility that the incriminating evidence might not be true. Evidence which incriminates the accused, and evidence which exculpates him, cannot both be true – there is not even a possibility that both might be true – the one is possibly true only if there is an equivalent possibility that the other is untrue. There will be cases where the State evidence is so convincing and conclusive as to exclude the reasonable possibility that the accused might be innocent, no matter that his evidence might suggest the contrary when viewed in isolation.*"

267. As was held in S v Khumalo 1991 (4) SA 310 (A) at 327 G to H, in regard to an alibi, but equally applicable to any defence raised by an accused, the correct approach is to consider the alibi against the totality of the evidence and the courts impression of the witnesses. In considering the alibi or defence, the court must, as was confirmed in S v Jochems 1991 (1) SACR 208 (A) at 211C-F that the onus remains throughout this process on the State and that there is no onus of any nature on an accused to prove the truth of an alibi or it may be added of a defence raised by the accused. Where a court finds that an accused's version might reasonably be true, that is sufficient for the accused's acquittal.

268. Where there is a conflict of fact between the witnesses for the State and that of the accused and the accused's witnesses, it is impermissible to approach the case on the basis that because the court is satisfied as to the reliability and credibility of the State witnesses that, therefore, the evidence of the defence witnesses, including the accused, must be rejected. The proper approach in such a case is for the court to apply its mind not only to the merits and demerits of the State witnesses and the defence witnesses, but also to the probabilities of the case. See in this regard S v Singh 1975 (1) SA 227 (N) at 228 F to H. Guidance as

to the approach that a court will adopt in determining mutually destructive factual versions can be found in the judgment in Stellenbosch Farms Winery Ltd & Another v Martell CIE & Another 2003 (1) SA 11 (SCA) where the following was held in paragraph 5: "*On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So, too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of*

other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail." This approach, of course, does not alter that which has already been set out above and that is that it is for the state to prove its case against the accused beyond reasonable doubt and that if the accused's version is reasonably probably true the accused is entitled to an acquittal.

269. A factor not mentioned in the Stellenbosch Farms Winery Ltd judgment is the value of circumstantial evidence in a

criminal case. As was stated in S v Sikosana 1960 (4) SA 723 A at 729 D there is no limitation upon the kind of evidence that may adequately confirm a confession or prove aliunde the commission of the offence charged. Proof of either or both of these factors may be purely circumstantial, but may conceivably be so utterly conclusive as to be far more satisfactory than the testimony of a person who purports to have been an eye witness.

270. Against this background consideration must be given to the credibility and reliability of the two main witnesses in this trial, Agliotti and the accused. It should be emphasised that save on the issue of payments, the accused's counsel did not attack the credibility of any state witness. They limited their attack to the credibility of Agliotti and Muller.

271. The starting point of this consideration as far as Agliotti is concerned is his arrest and remand in custody in November 2006. It was made clear to Agliotti by his counsel that the key to obtaining bail on the Kebble murder charge and to avoid numerous other serious charges was to provide the DSO with a statement implicating the accused. To this end Agliotti was told by his counsel whilst in custody to make the notes which now appear as exhibit A21. It should however be noted, that save for the single

visit by Leask at the request of and in the presence of Agliotti's legal representatives, Agliotti had no contact with the DSO prior to him making the notes. Nonetheless, the mere fact that the notes were prepared with the intention set out above, must result in the content of the notes being treated with circumspection. It must also be borne in mind that these notes served as the genesis of Agliotti's affidavits of 11 December 2006 (exhibit A43 and its typed version exhibit A32) and 21 November 2007 (exhibit A33) and of course his evidence in this court. Clearly, in view hereof, Agliotti's evidence in this court must be viewed with circumspection.

272. In the affidavit deposed to by him on 4 January 2008 (exhibit A23), Agliotti stated that "*I maintained to the DSO all along that I never bribed Selebi at all and I was not going to testify*". This was put to Agliotti in cross examination and he was asked when his stance had changed. Agliotti replied stating that the change in stance had occurred when he concluded the plea bargain in the Paparas matter. This serves to reinforce the conclusion that Agliotti's evidence must be viewed with circumspection.

273. Agliotti's approach to the truth was revealed in cross examination. Firstly in paragraph 9 of the affidavit of 4 January 2008 (exhibit A23) Agliotti had stated that "*The DSO requested me to entice Selebi and his personal aid Wessel Jenner to my house and to record all and any conversations*". Already in his evidence in chief Agliotti had stated that this statement was not true. When asked in cross examination why he included this statement in the affidavit, Agliotti responded that he did so because he believed that it was what the NIA wanted to know. He added that in his view, the DSO and the NIA. were not the best of friends and he was trying to do everything to discredit the DSO. He accepted that in the process of negotiating a deal with the authorities he would do anything to ensure the conclusion of a beneficial deal and that he would not allow truthfulness to inhibit the process. Secondly in the affidavit of 11 December 2006 Agliotti stated that Varejes paid by credit card for the accused and/or his family members to go to Mauritius because of his help with the "*Porit matter*" and various other things. In cross examination it emerged that Agliotti did not have personal knowledge hereof despite the affidavit commencing with the usual statement that the content thereof was within his personal knowledge. Thirdly Agliotti falsely stated to Kebble and Stratton that Nassif rendered

certain services to SAPS under the direct control of the accused. This was a false statement and was made as part of a process which culminated in Kebble appointing Nassif and his company to provide services for Kebble. Fourthly in the affidavit of 10 January 2008 (exhibit A37) Agliotti unequivocally stated that he had "*never maintained that (he) never ever bribed Selebi or that (he) was not going to testify*". In the affidavit of 4 December 2008 (exhibit A23) Agliotti stated, only 6 days earlier, that he had never bribed the accused.

274. It is evidence of this nature that emboldened the accused's counsel to submit, as they put it, without fear of contradiction, that Agliotti can be described as probably one of the most untruthful and unreliable witnesses ever to testify in this court. By its very nature this is a very broad submission and one that is impossible to evaluate. It will become apparent hereinafter that even restricting the submission to the present matter, Agliotti's title, as awarded to him by the accused's counsel, is at least under severe threat or perhaps no longer his. Irrespective of this it is clear that Agliotti's evidence must be treated with the greatest circumspection and can only be accepted if corroborated by other acceptable evidence.

275. Any assessment of the accused's credibility must commence by the striking difference in what had been put to Agliotti and the accused's own evidence as to the impression that the accused had of Agliotti. It was put to Agliotti that the accused regarded him as an international businessman and a businessman of standing. In cross examination the accused was asked what his understanding was of the business that Agliotti was involved in or conducting. The accused's response was that he could not say. He added that he always knew that Agliotti was a hustler trying to make ends meet. One day he was involved in export and import, the next day in mining and the next in sports promotion. By no stretch of the imagination can that which was put to Agliotti be reconciled with the accused's description of Agliotti as a hustler. This divergence typifies the accused's evidence. The accused throughout his evidence demonstrated a capacity to tailor his evidence to his best advantage. Often this resulted in his credibility being impugned.

276. Numerous issues of importance were not placed in dispute by the accused's counsel during the state's case or raised with the state's witnesses so that they could deal with them only to be disputed by the accused whilst giving evidence. A few examples in this regard will suffice. First, it was not

disputed that Agliotti had requested the accused to meet Tidmarsh. In the accused's evidence in chief this issue was not even touched on. It was only in cross examination that the accused stated for the first time that he had requested Agliotti to arrange the meeting with Tidmarsh. Second, it was not disputed that Agliotti had asked the accused to attend the meeting with Nassif and others including Jumean. Subsequently the accused testified that Nassif had telephoned him directly to arrange the meeting. Third, exhibit H5a was not put to Agliotti. This constitutes a massive change in stance by the accused. Fourth, it was never put to Agliotti that the accused's sole interest in him was that of information gathering. Nor was the information that was allegedly obtained from Agliotti put to him. In this regard it must be emphasised that Agliotti testified that he and the accused were friends. Had this been put to him Agliotti's response would have been interesting. According to Agliotti he and the accused were friends. Fifth it was never put to Agliotti that it took him two years to persuade the accused to see the Kebbles. (The closest one comes to any reluctance by the accused appears in the transcript of the recording of the meeting between Mphego and Agliotti. There it is stated that at the very beginning "*they wanted to meet with Jackie. I asked Jackie and he said no. Right in the beginning he said I want you must deal with*

Mphego...”). Even in this passage there is no indication of a period of reluctance for a period of two years. In any event, such a lengthy period of reluctance appears to be improbable regard being had to the timeline of the relevant events.

277. In making submissions in regard to the accused's credibility, counsel for the state referred to what they described as the big five lies. The accused's counsel did not challenge or seek to ameliorate this submission.

278. The first of the big five lies relates to an alleged meeting between the accused and Pikoli. This meeting was first adverted to in the accused's plea explanation. As fully set out above, it was stated in the plea explanation that the accused summoned Pikoli to his office towards the end of 2005 to discuss various serious issues. In brief, the issues related as far as Ngcuka was concerned, to Ngcuka's alleged attempted extortion of a bribe from Ramsay, the display by Ngcuka of greater interest in mining rights in certain African countries rather than in the offences Rautenbach allegedly committed and the illegal gathering of intelligence and the involvement with foreign intelligence agencies by the DSO and Ngcuka and as far as Pikoli was concerned to the receipt by Pikoli through his wife of

shares in Simmer and Jack Ltd. With regard to the issues relating to Ngcuka, Pikoli's response was "*Oh it is a murky world*". With regard to the issues relating to his or his wife's shareholding, Pikoli's response was that his wife was his "*Achilles heel*". In evidence in chief Pikoli denied that he had ever had a meeting with the accused at which the receipt of shares by either him or his wife had been discussed. He also denied having had discussions with the accused in regard to an attempt by Ngcuka to obtain a bribe from Rautenbach. In cross examination it was put to Pkioli that the accused "*raised*" the alleged bribe, the receipt of the shares and the DSO's involvement with foreign intelligence with him in the accused's office towards the end of 2005. Pikoli denied that this meeting took place.

279. On the evidence the Tidmarsh meeting took place on 19 April 2005. According to the accused he received the copy of the letter (exhibit A26) directed by Ngcuka to Ramsay at that meeting. He added that he would not have waited six months to raise the content of the letter with Pikoli. He stated emphatically that he would have raised it with Pikoli at the earliest possible time. That would certainly not have been in December 2005. Clearly this on its own casts doubt on the accused's version. When the matter was revisited in further cross examination, the accused conceded that he

had erred when stating that the Ramsay letter had been discussed at the end of December 2005. He then added that the "*murky world*" comment came after he had summoned Pikoli to his office on a second occasion. On this occasion he showed Pikoli the DVD of the interview between Mphego and Agliotti and it was on that occasion that Pikoli made the "*murky world*" comment. It should be pointed out that up to that stage there had been no mention of Pikoli being summoned to a second meeting. According to Pikoli the DVD was shown to him in December 2006. It bears repetition that the plea explanation places the "*murky world*" comment at the end of 2005 meeting and not in December 2006. When the matter was again revisited in cross examination, three meetings were raised with the accused. Meeting one, so it was put, was the meeting that took place in 2005 in the accused's office; meeting two was the meeting in Pikoli's office in 2006 and meeting three was the meeting at which the DVD was shown to Pikoli. The accused responded that he did not agree therewith. Meeting one, according to the accused, included the DVD.

280. The accused's evidence as set out above is implausible and contradictory. It is also improbable. There is absolutely no logical reason for the accused to have shown the DVD to Pikoli in December 2005. As at December 2005 no

allegations had been made linking the accused to Agliotti. As submitted by the state's counsel this unsatisfactory evidence would tend to explain the accused's strange demeanour where he chose to face the public gallery rather than to direct his attention on the court proceedings.

281. According to the accused, at the meeting in December 2005, from what he had heard from Pikoli, there was enough information available for a serious investigation to be launched against Pikoli. This investigation he said was not launched. He indicated that he required permission from the President to conduct such an investigation. He approached the President for such permission but was told by the President "*that if we collected more information he would be able to give his consent...*". This evidence is simply incomprehensible. Without an investigation no further information would be forthcoming and no further investigation was authorised. It is also not clear on what basis the head of SAPS required consent for SAPS to perform its constitutional function. Finally, it should be pointed out that whilst Pikoli kept the President and Cabinet Ministers informed of progress in the investigation against the accused, he did not seek permission for the investigation.

282. The accused's counsel did not attack the credibility of Pikoli. Pikoli was a good witness who testified clearly and logically. He neither contradicted himself nor was shown to be an untruthful witness. On the issues where Pikoli's evidence and the accused's evidence diverged, Pikoli's evidence must be accepted and the accused's evidence rejected as not being reasonably possibly true.

283. The second of the big five lies relates to exhibit H6. As background to a discussion of this document reference must be made to the accused's evidence in chief where he testified that whilst he was aware of the big projects done in his home, his wife attended to the financial administration. Even earlier it was put to Friedman in cross examination that the accused's wife was in complete control of all the accounts and that the accused was not the type of person who involved himself in this issue. Whilst in cross examination on household expenditure the accused kept on having regard to a document that was in his possession. Eventually counsel for the state asked the accused for the document. The accused first refused to hand the document over. When the request was repeated the accused stated that counsel for the state must first ask for the document. The document was requested again and then handed over. This document is exhibit H6. It sets out household

expenditure for various months. It was prepared by the accused's wife in the presence of the accused. The accused refuted the suggestion, which was in accordance with his evidence in chief, that the evidence which he was giving in regard to exhibit H6 was what he had heard from his wife and that he would not be able to give the evidence without the document. The accused accepted that being the man of the house he knew what was going on with the finances and that he only needed exhibit H6 to remind him of things that had happened a long time ago. This of course deviates from the accused's evidence in chief and from that which was put to Friedman.

284. The accused was referred in cross examination to page two of exhibit H6 and asked what he understood by the reference to "*Reasons for aggregate of R40128.58*" in the fourth line thereof. He indicated that it referred to money or cash at hand. The amount of R34187.23 appearing in the next line was according to the accused the proceeds of cheques that had been cashed. He was equally convinced that the "*Reasons for aggregate of R62919.00*" referred to in the first line of page 1 of exhibit H6 meant that R62919.00 was available in cash. The accused was referred to page 3 of exhibit H6 and asked for an explanation for the note "*Reasons for aggregate of*

R39888.55-cheque" in the fourth line thereof. The accused responded that it referred to money that was available. When asked if the word "*cash*" meant anything, the accused responded that it meant that cheques were cashed. The accused was then confronted with the schedule appearing in paragraph 5.5.3 in exhibit C1 page 44. The accused did not concede the incorrect evidence given by him but was only prepared to state that the identical figures were a huge coincidence. Clearly the accused's evidence that he was involved in the preparation of exhibit H6 cannot be accepted. He simply did not have any personal knowledge in regard to its compilation.

285. The third of the big lies relates to the shredding of documents by the accused's wife. The accused testified that in the preparation of exhibit H6 he checked the household expenditure. This was done according to the accused by having regard to the till receipts in respect of the household expenditure. According to the accused these till receipts were kept by his wife in a file. He added that he had seen the till receipts over the weekend prior to giving evidence. The till receipts would reflect the details of the purchase and would show if the purchase was paid for by cash or credit card. The accused was asked if he would be able to bring the till receipts to court. He replied in the

affirmative. The next day during cross examination the accused was asked if he had brought the till receipts referred to the previous day. He replied that he had not but that he had brought something better namely the credit card statements reflecting the purchases. It was put to the accused that the till receipts do not exist. He denied this and added that he had seen them over the weekend. The accused was asked to bring to court the file containing the till receipts the next day. The next day the accused was asked if he had brought the till receipts with him. He replied that he had not. He testified that his wife had shredded the till receipts as the credit card statements constituted better evidence. He had not looked for the shredded paper to enable him to bring it to court to provide some corroboration for his evidence.

286. The accused's wife was not called as a witness to attempt to explain her inexplicable conduct in shredding the till receipts. The only inference that can be drawn from these events and the failure to call the accused's wife is that the till receipts did not exist. The information set out in exhibit H6 did not emanate from till receipts but from the credit card statements ultimately produced by the accused. This conclusion further negates the accused's contention that he was personally involved in the compilation of exhibit H6.

287. The fourth of the big lies relates to exhibits H5 and H2. Whilst testifying in chief, the accused described the type of document that he would have shown to Agliotti in regard to Kögl. According to him the document related to information pedlars and may have included reference to Agliotti himself. The accused stated that he would check the document. The accused was asked if the document was a classified document. He responded that it was not and that he was trained in intelligence and that he would not show a classified document to a person who was not supposed to see the document. The next day the accused was shown a document, which he described as a document dated 8 July 2005 that had been produced by Crime Intelligence for his use at a meeting of the National Security Council. The accused stated that he could not say that this document was the document that had been shown by him to Agliotti in regard to Kögl, but that it was a document along the lines of this document. This document became exhibit H2. It must be immediately pointed out that the document had not been put to Agliotti and that on the face of it the document is classified as secret. The accused in cross examination testified that he had not shown Agliotti exhibit H2 but that he had shown Agliotti a document containing information about information pedlars and Kögl was one of these

information pedlars. He later added that the document containing this information would be classified and that he exercised his power to declassify the document to enable him to show the document to Agliotti.

288. The accused was then asked in cross examination if he had recently seen the document that he had actually shown Agliotti. He answered in the affirmative. He stated that the document was contained in his files at his home. He was asked if he had made it available to his legal team. He responded that he had not and that nobody in his legal team had asked him for the document. The accused accepted that on that document there must be a stamp providing for the declassification of the document. That stamp must be signed by the compiler of the document and the word "*secret*" wherever it appears on the document would be scratched out and the signatures of the compiler and the recipient would appear alongside the scratched out word. The accused could offer no explanation why this document had not been put to Agliotti when he was cross examined about the NIE report. The accused was satisfied with his unsatisfactory response that he did not wish to present the document at that time.

289. The accused then changed tack entirely in regard to his evidence in respect of exhibit H2. From being the document along the lines of the document that the accused would have shown Agliotti, it without fanfare and without so much as a blush or an explanation, miraculously became the document that was in fact shown to Agliotti. The accused was then asked if he had declassified the document. He responded that he had. When asked where the declassification stamp appeared on the document, the accused responded that he would show the declassification stamp on the original of the document when he brought it. When asked why he had not made a photocopy of the declassified document the accused responded that he would then have had to make a photocopy of the entire document. It is not apparent why the accused could not just have photocopied the same two pages of the declassified document as he did with H2.

290. The next day the cross examination in regard to the document shown to Agliotti was taken up again. A new reason was given for the declassification of the document shown to Agliotti. The new reason was that the accused wanted the document declassified because he wanted to use or present the document at a National Security Council meeting. He was confronted with this explanation. He

accepted that the National Security Council is a most secret organisation. It simply does not make sense for a secret document to be declassified before being submitted to a most secret organisation. Be that as it may, the accused now testified that after the document was declassified he took it to the National Security Council meeting where it was discussed. After the meeting he took the document back to his office and showed a portion of it to Agliotti. The accused conceded that had he asked Mphego to declassify the document so that it could be shown to Agliotti he would not have consented thereto.

291. The next day the accused produced the original of exhibit H2. The original is exhibit H5a and the copy of exhibit H5a is exhibit H5. The document which was tendered as an original document was clearly not an original. The so-called declassification stamp was no more than a date stamp. The date stamp was itself not complete in that it did not show the day of the month. The compiler of the document, Mphego, never signed the document as he should have. The document only bears the signatures and initials of the accused. The letter type and font on portions of H2 and H5a differ. Although the accused agreed that the differences were obvious he could not furnish an explanation therefore. Finally the accused was unable to

explain how the complete logo was not displayed on the alleged original document but appears in full on the alleged copy.

292. Suffice to say the accused's evidence in this regard is simply unacceptable. His evidence as set out above displays complete contempt for the truth. The inference is irresistible that the accused created or allowed to be created, after Agliotti had testified, a document that would suit the accused's version.

293. The fifth of the big lies relates to the dinners and meetings that have been referred to. The accused in his evidence attempted to create the impression that it took Agliotti two years to convince him to meet with Kebble and his associates. This was simply not put to Agliotti. What makes this even more difficult to understand was that Agliotti testified that he had tried to prevent a meeting between Kebble and his associates with the accused. He stated that he did not want Kebble and his associates to have easy access to the accused as they would then no longer need Agliotti's services. Had the accused's instructions been as stated in his evidence, it is inconceivable that his counsel would not have put this to Agliotti. The only inference that can be arrived at in this regard is that the accused changed

his evidence as a result of submissions made during the application for his discharge. The question was then raised if the accused had ever displayed a reluctance to attend dinners or meetings that he was requested to attend by Agliotti. This interchange led to the change in stance by the accused. Additional examples of this have already been set out above.

294. Counsel for the state limited themselves to the big five lies by the accused. Perhaps their reason for doing so can be ascribed to the big five to be found in South Africa's wonderful game reserves. However in wildlife circles South Africa is often referred to as the home the of big six, whales being included amongst the other five. The accused made him himself guilty of another lie, which is no smaller than the five mentioned and should be added to the big five lies, resulting in the big six lies.

295. The sixth of the big lies relates to exhibit A6. In evidence in chief Agliotti testified that the accused handed him exhibit A6. He was led as to the numbering that appears on the right hand top of each page of the exhibit. This numbering was brought about by his counsel and reflects each page as being a distinctive page in a set of eight pages. This could not have failed to have attracted the attention of the

accused. Agliotti was not challenged in cross examination as to the composition of this document. Indeed from the evidence in chief of the accused it was apparent that the accused regarded the document, which consisted of eight pages, as a composite whole consisting of a statement and an e-mail communication in which the statement had been forwarded to Plitt. Counsel for the accused put to the accused "……*From the email that accompanied that,…..It is indeed clear that Mr O'Sullivan sent the relevant statement of the person referred to as Bill Smith to R Plitt at the NPA office, is that correct*?" The accused responded in the affirmative. This evidence is only reconcilable with exhibit A6 consisting of the entire eight pages. Later in his evidence in chief, the accused was asked how he had received exhibit A6. The accused responded that de Beer had sent a deputy named Nelson to the office of certain journalists and he returned with an envelope full of e-mails. Exhibit A6 was one of the e-mails in the envelope. Again the accused's evidence is only reconcilable with exhibit A6 consisting of the entire eight pages.

296. Later, in cross examination, the accused testified that he could not recall having seen the e-mail component of exhibit A6 when he had received the documents from the journalist. In detailed cross examination the accused was

required to furnish an explanation as to why he had made various portions of the e-mail component of exhibit A6 available to Agliotti. The accused responded thereto. This cross examination was based on the supposition that the e-mail component of exhibit A6 had been handed over by the accused to Agliotti.

297. When counsel for the state reverted to this issue, the accused made a stunning volte-face. It can only be given justice by quoting extensively from the record:

"And I am not testing your memory, but if you can just tell us again and the email portion, that is now from p 16 to 19 you, what was the reason why you give this portion to Agliotti? --- 16 to 19?

Yes, just have a look please. --- I said I did not see 16 to 19.

Ja but remember, all I am asking you is, why did you give it to Agliotti, 16 to 19? --- If I had not seen it I could not have given it to him.

No we cannot go there Mr Selebi. You gave it to him. --- I said the one that I saw is up to, from 12 to 15. That is what I saw. It ends with "Commissioner of oath".

You never ... --- No I did not.

You never, that portion 16 to 19 you have never seen? --- I did not.

COURT: Let us just get it clear. You never saw it and you never gave it to Agliotti? --- Agreed.

MR NEL: You know Mr Selebi, I want to be really fair and I would just want you to think about this. As you stand there you are convinced you never gave A16 to A19 to Agliotti? --- 16, from p 16 to 19...

You never gave to Agliotti? --- I am convinced, because I never saw it. I never had it.

And if Agliotti, no not if, he said that you gave it to him, but that is a lie, because you did not? --- It is untrue.

Now the document that you remember having given him that is now A6 12 to 15. There is no indication that that is an email am I right? --- No there is no indication.

The only indication is that it is an unsigned statement that is what it is? --- Yes.

You see Mr Selebi, I really have difficulty with your answer now, because we dealt with this email yesterday and you never yesterday denied that you gave it Agliotti. --- I never gave it, 16 to 19. If you are talking about 12 to 15 I say yes. 12 to 15. That is what contained in the dossier. That one I say yes, 16 to 19 I did not see.

Before I deal with it, I am putting it to you, you are changing your version. --- You are wrong.

And I am putting it to you that the reason you are changing your version is that it now today suddenly dawned on you

that that could have been an intercepted email because it was never given to you. That is why you are changing your version. --- I have not and no policeman that are under my command ever intercepted any email. The emails I have and the dossier that I have comes directly from the media. But this was not part of it, 16 to 19? --- 16 to 19 I did not see.

Let us just, remember we had, I hope you can remember. We had this argument about the Kebble murder yesterday, why would share detail of the Kebble murder with Agliotti, remember that? --- Yes.

You never denied that you gave him the information, you just said that he knew about it therefore you did not care? Are you changing today? --- Me and you yesterday had an argument when you asked me if I may remind that Pikoli asked me about an intercepted email. I said to you then that is a blue lie because he never asked me about an intercepted email because we never intercepted any email. The email that I am talking about, the information I had, the document that I have is documents that came directly from the media. That is why I was reading the portion I was reading from this dossier.

Mr Selebi you are not answering the question because the word "intercept" is bothering you. That is why you are not answering. The question is, can you remember that we

yesterday, you answered questions on what you shared detail of the Kebble murder with Agliotti. That is the only question. Can you remember that? --- I can remember the discussion about the murder with you.

Now as you stand there, why did I ask you the questions, where did I get the information from? --- Which information?

That you shared information, that you shared detail of the Kebble murder with Agliotti, where did I get it from? --- I do not know where you got it from. I really do not know.

Can you remember that argument about Jos Diedericks? --- Yes.

Where did I get that from? --- I do not know.

Can you remember the argument or the cross examination about a Mr Mazibuko? Where did I get that from? --- I really do not know where you got the information from. I am not telling you, I am not intercepting your communication, I am not looking at that so that I know you knew Mazibuko from this, I do not know.

Mr Selebi you know the word intercept got you all worried and you are not concentrating, because the word intercept is worrying. Why do you not just listen to the questions, because I am putting it to you Mr Selebi this is the worst change of a version that I have ever seen. --- It is just not true, what you are saying.

It is a change of a version by educated intelligent person overnight. --- It is not true".

298. The accused's evidence in this regard is unacceptable. He clearly did not instruct his legal team that he had not received a portion of exhibit A6. His evidence vacillated between being in receipt of the entire exhibit and only a portion of it and between furnishing Agliotti with the entire exhibit or only a portion of it. It is submitted by counsel for the state that the only reason for the change in evidence is the suggestion that the e-mail portion of exhibit A6 had been intercepted by SAPS. In this regard the content of an affidavit deposed to by Pruis was put to the accused. Pruis was present when the documents were handed over to the accused. In the affidavit he stated that he had never seen the e-mail portion of exhibit A6. Pruis' statement as put to the accused assumes significance in the light of the suggestion that the e-mail portion of exhibit A6 had been intercepted. It should be pointed out that the accused had intimated that Pruis would be called by him as a witness. It was in this context that Pruis' statement was put to the accused. Despite the intent to call Pruis he was not called as a witness.

299. There is no good reason not to accept Agliotti's evidence that the entire content of exhibit A6 was handed over to him by the accused.

300. Whilst the aforegoing were described by the state as the big five lies and to which one has been added, making them the six big lies, there are other portions of the accused's evidence which reflect negatively on his credibility and that must be examined.

301. First the accused testified that he never signed subsistence and travelling claim forms. The accused was referred to such claim forms signed by him. The accused was then asked why he had said that he never signed such a claim. His unsatisfactory response was that he never completed such a claim form but that he signed claim forms that were completed for him. In dealing with one of the claim forms the accused stated that he had not signed the particular form and that his signature had been affixed by way of a stamp. The accused explained that because of the large number of documents that had to be signed in his office a stamp was created that looked like his signature. The accused was asked if this was not dangerous. He responded by saying that he trusted the people that he worked with. Clearly on the accused's evidence the

impression was created that the stamped signature was not only used for innocuous documents. Grové testified that there was a stamp of the accused's signature. It was used to sign Christmas cards. The stamp was made available by the accused in December, utilised for the purpose of signing the Christmas cards and then returned to the accused. So much for the accused trusting his staff. Grové made it quite clear that a signature brought about by a stamp would not be accepted by SAPS's financial department. As to the accused's evidence that on one claim form his signature was brought about by way of a stamp, the accused brought the stamp to court and the stamp of his signature was affixed to exhibit H7. The accused was referred to the claim form on which he had testified his signature had been affixed by way of the stamp (exhibit C5 p 1027). The accused conceded that his signature had not been brought about by the stamp.

302. Second, the accused testified that he received a gift voucher from the Taiwanese embassy. He added that the gift was to his wife and not to him. He stated emphatically that the gift was recorded in his gift register. He stated that he had given instructions for the voucher to be recorded in the gift register and that he had checked and it was in the register. The accused testified that Grové kept the gift

register. It was manifest from the accused's evidence that the gift register did in fact exist. Later in cross examination it emerged that the instruction to put the voucher in the gift register was given to a female who worked with Grové. Grové confirmed that she and a Ms Bosch administered the accused's office. Grové was unaware of the existence of any gift register in the accused's office. Needless to say none was produced by the accused.

303. Third, Agliotti had testified that the accused's suit size was, if he was not mistaken either 58 or 60 depending on the cut of the suit. Agliotti was not challenged in respect hereof. In cross examination the accused denied that his suit size was 58 or 60. He stated that he never wore a size 58 suit. The accused eventually stated that his suit size was between a 54 and a 56. It was put to the accused that regard being had to the invoices contained in exhibit E, he never purchased any suits for himself during the period October 2004 to February 2008. The accused eventually testified that he had purchased on account size 56 suits for himself from Grays and that for some inexplicable reason his account as placed before this court does not reflect these transactions. The accused's was questioned in respect of his purchases from Boss which are reflected in an invoice dated 29 September 2005 (exhibit E p 3). The

invoice reflects the purchase of clothing to the value of R56430.00 after a discount of R18810.00 had been allowed. As was pointed out to the accused these purchases were in an amount greater than his monthly salary. The accused's response hereto was that he had been elected President of Interpol and had to attend the first Interpol conference as President and that he had to keep up appearances, hence the purchase of the Brioni suit which he added is top of the range. The clear import of the accused's evidence in this regard is that the clothing reflected in the aforementioned invoice was for him. Notwithstanding this the accused testified that the suits reflected on the invoice dated 29 September 2005 were not for him as he never wore a size 58 or 60. So much for keeping up appearances at Interpol. However the accused did point out that two shirts, a pair of shoes and a jacket were also purchased on that day. The accused's evidence in this regard was less than satisfactory. It reflects a desperate attempt to stay away from size 58 suits as they were reflected on Agliotti's invoices and constituted clothing which Agliotti said he gave the accused and which corresponded to the accused's size of suit according to Agliotti.

304. Fourth, the accused testified that he had seen a paid cheque drawn on his account in favour of the City Council of Tshwane. The cheque bore the number 459. It was certainly not part of exhibit CC. The accused undertook to bring the cheque to court. Subsequently the accused was asked if he had brought the cheque to court. He responded that he had not but that he had found the counterfoil to the cheque. The accused was reminded of his evidence that he had seen the cheque. He stated that he had looked for the cheque but could not find it. It was put to the accused as is apparent from exhibit C5 annexure L1 on p 758 and 759 that the cheque had not gone through the accused's bank account and accordingly had not been received back from the bank. The accused was unable to offer any comment. His evidence that he had seen the cheque was clearly false.

305. Fifth, the accused's evidence that he was unaware that Thema was a state witness. The accused's counsel cross examined Hankel in respect of Thema. In the course hereof Hankel was asked if he had seen Thema's statement. He was further told that Thema was a state witness. A portion of Thema's statement was put to Hankel. All this could not have been lost on the accused. Prior to Thema's release as a state witness, the accused arranged a meeting with

Thema where he discussed the missing Operation Chaser file with him. When this was raised with him, the accused's immediate response was to deny that he was aware that Thema was a potential state witness. In the light of that set out above this denial has no substance to it and must be rejected.

306. The accused did not dispute that he is aware of court procedure yet he proceeded to consult with a state witness. He simply displayed a complete lack of respect for court procedure.

307. At the end of the day there is not much to choose between the truthfulness of Agliotti and the accused. Both are strangers to the truth when it is in their interests to be. What perhaps distinguishes the mendacity of the accused from that of Agliotti is that firstly the accused manufactured evidence that he placed before the court. In this regard reference is made to exhibit H2 and its alleged original exhibit H5a. Little credence if any can be given to the testimony of a witness who stoops to such low levels. Secondly, as opposed to Agliotti the accused did not acknowledge his untruthfulness.

308. It is perhaps, no wonder, that the accused's counsel did not endeavour in their heads of argument to argue that the accused's version on any issue in dispute was reasonably possibly true. They in essence argued the accused's case on the basis of the state's evidence. They submitted that they did this on the basis of a worst case scenario. Considering the quality of the accused's evidence it would appear that they had very little option but to argue on the state's case. Nonetheless in considering the issues in dispute the accused's evidence will be considered and a determination will be made whether the accused's version is reasonably possibly true.

309. It is never pleasant to make an adverse credibility finding against a witness. It stigmatises the witness as a liar and a person of low moral fibre. It proclaims to all that the word of the person against whom the finding has been made cannot, without more, be relied upon. It is a stigma that remains forever. It is so more unpleasant to make such an adverse credibility finding against the person who stood at the head of SAPS in regard to events which unfolded whilst he was at the head of SAPS. Everyday society in general and the courts in particular rely on the honesty, integrity and truthfulness of policemen and women. Mostly this reliance is not misplaced. In the case of the accused it was.

He has, in this regard, not set an example that must be emulated. On the contrary, members of SAPS must know and value the importance placed on their credibility and integrity and conduct themselves in such a manner as not to tarnish it.

310. Reference will now be made to the issues that remain in dispute. In dealing with these issues, where necessary, further credibility findings will be made.

311. In considering the issues in dispute generally, the accused's counsel placed much emphasis on aspects of Agliotti's evidence. They pointed to the fact that in respect of payments and the accused's reaction to the receipt thereof, the state is dependent on the evidence of Agliotti. They added that the state had not discredited Agliotti and that accordingly the state was bound by Agliotti's evidence and concessions made by him in the course of his evidence. In this regard reference was made to Agliotti's evidence where he stated that he had consistently stated that he had not bribed the accused and that was still his evidence. He added that because of his respect for the accused he would never have asked him for favours. Indeed he testified that he had never received favours from the accused. Agliotti amplified this evidence by stating that

he had not wanted to compromise his friendship with the accused in any way. Finally reference can be had to Agliotti's evidence that he had not made payments to the accused or given the accused gifts on the basis that the accused should do or refrain from doing anything.

312. This submission is ill founded and confuses the role of the witness and the trier of fact. It is the function of the witness to place the relevant facts before the court. It is the function of the trier of fact to determine the facts and then to apply the facts to the law and make the necessary findings. It matters not that Agliotti testifies that he did not bribe the accused. Such evidence constitutes a conclusion of fact. The court is obliged to consider the evidence and to determine the facts it can accept as opposed to the conclusions of fact that Agliotti was encouraged to make. Once these facts have been determined it must be decided whether or not the state has discharged the onus resting on it and proved that the accused is guilty of corruption. It matters not how Agliotti described his conduct.

313. The submission is ill founded for another reason. It does not take into account evidence given by Agliotti where he gives factual evidence. Agliotti testified that he "*made payments to the accused because firstly, we were friends;*

secondly I needed him in my business dealings. I made payments to him and needed him close to me". When asked why he needed the accused, Agliotti responded that he needed him for purposes of the Kebbles. When asked "*And you received things in return from him*" Agliotti responded "*Sure, I mean he, you know, and it is in my affidavit, in my handwriting notes that he did help me with three (3) reports or showed me three (3) reports.*" When asked about the attendance of the accused at dinners, Agliotti stated that he initially came along as his friend, but thereafter, "*if it is deemed that he had to come because of monies given to him, and you know I did not personally perceive it like that*".

314. The submission is ill founded for yet a further reason. As will appear hereunder the accused is charged with corruption and it is his conduct and intent that must be determined. Whether Agliotti believed that he bribed the accused or not is irrelevant. What has to be determined is whether the accused contravened the provisions of the PCCA.

315. Counsel for the accused further argued that there was no evidence of any discussion or of the conclusion of any agreement between Agliotti and the accused that the

accused would act or not act in a particular way as a result of payments made to him by Agliotti. Indeed the accused testified that there had never been such a discussion.

316. The accused is charged with a contravention of s 4 (1)(a) of the PCCA. It creates an offence in respect of "*any public officer who directly or indirectly, accepts or agrees or offers to accept any gratification*..." It further creates an offence in respect of "*any person who directly or indirectly, gives or agrees or offers to give any gratification*..." Whilst the act criminalises the conduct of both the corruptor and the corruptee, it clearly and expressly, does not require the existence of an agreement between them. The PCCA conforms in this respect to the common law crime of bribery. In S v Gouws 1975 (1) SA 1 (AD) it was held that "*Waar dit dus die ampsintegriteit is wat beskerm moet word is dit moeilik om in te sien waarom die amptenaar wat n geskenk ontvang nie skuldig bevind sou kon word tensy die gewer van die geskenk bedoel het om hom om te koop en dus self ook aan die misdaad skuldig is nie*". In the judgment of the trial court in the matter of S v Shaik as referred to in the judgment of the Supreme Court of Appeal in that matter as reported in 2007 (1) SA 240 (SCA), it was held in regard to a charge brought in terms of the CA that "*It would be flying in the face of commonsense and*

ordinary human nature to think that he did not realise the advantages to him of continuing to enjoy Zuma's goodwill to an even greater extent than before 1997; and even if nothing was ever said between them to establish the mutually beneficial symbiosis that the evidence shows existed, the circumstances of the commencement and the sustained continuation thereafter of these payments, can only have generated a sense of obligation in the recipient".

317. In the result the absence of the conclusion of an agreement between the accused and Agliotti is not fatal to the state's case. Moreover, whilst there may be no express evidence of such an express agreement, the evidence may inexorably compel the finding of such an agreement or understanding. This will be considered later but it must be reiterated that is not a requirement for the state to secure a conviction.

318. Before attention is given to the issues of payments and gifts and the benefits that Agliotti allegedly received it should be noted that much of the evidence in this regard is the evidence of a single witness namely Agliotti. S 208 of the CPA provides for the conviction of an accused on the evidence of a single witness. In S v Sauls 1981 (3) (SA) 172 (A) at 180 the court considered the dictum in R v

Mokoena 1932 OPD 79 which was made in regard to the evidence of a single witness. It was held at 80 that the evidence of a single witness should only be relied on where the evidence of the single witness is clear and satisfactory in every material respect. In Sauls case it was held in regard to this dictum that "*There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness (see the remarks of RUMPFF JA in S v Webber 1971 (3) SA 754 (A) at 758). The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. The cautionary rule referred to by DE VILLIERS JP in 1932 may be a guide to a right decision but it does not mean*

> *"that the appeal must succeed if any criticism, however slender, of the witnesses' evidence were well founded"*

(Per SCHREINER JA in R v Nhlapo (AD 10 November 1952) quoted in R v Bellingham 1955 (2) SA 566 (A) at 569). It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense".

319. In S v Khumalo & Ander 1991 (4) SA 310 (A) the Supreme Court of Appeal referred to the position of a single witness and made the following remarks at 327 J: *"Dit is geykte reg dat die getuienis van 'n enkelgetuie met versigtigheid benader moet word. Normaalweg word die getuienis van 'n enkelgetuie slegs aanvaar as dit in elke wesenlike opsig bevredigend is of daar stawing daarvoor is (R v Mokoena 1956 (3) SA 81 (A) op 85-6; S v Letsedi 1963 (2) SA 471 (A) op 473F; S v Sauls and Others 1981 (3) SA 172 (A) op 180E-G), Stawing in dié sin is 'bevestigende bewysmateriaal buite die getuienis wat gestaaf word' (Schmidt Bewysreg 3de uitg op 108). Die stawing hoef nie noodwendig die beskuldigde met die misdaad te verbind nie. Die getuienis van 'n enkelgetuie, soos Holmes AR in S v Artman and Another 1968 (3) SA 339 (A) op 341A-B opgemerk het, 'does not require the existence of implicatory corroboration; indeed in that event she would not be a single witness'".*

320. Attention will now be given to whether the state proved that Agliotti gave money and gifts to the accused and whether Agliotti received benefits from the accused.

321. As far as payments are concerned reference will only be had to payments where there is corroboration for Agliotti's

evidence firstly because of the credibility finding made against him and secondly because in respect of some of the payments he is a single witness. As far as the two big payments of R200000 and R120000 are concerned there is no corroboration for Agliotti's evidence in respect of the payment of R200000. There is potential corroboration in respect of the payment of R120000.

322. When considering the evidence in regard to this payment reference must be had to Agliotti's note, exhibit A21. He wrote in regard to payments "*R300 once*". The point is made by the accused's counsel that there is only reference to a once off payment of R300000 and that there is no mention of payments of R200000 or R100000 or R120000. This is correct. However above the notation and in the accused's counsel's hand writing the following appears: "*Split and trace cheques-Martin*". Futhermore the cheques of R200000 and R100000 are dated 13 December 2004 and 20 December 2004. It will be recalled that when the note was made Agliotti did not have access to the cheques or their counterfoils.

323. Reference has already been made to the evidence of Agliotti and Muller in this regard. This evidences places Muller at the scene of the payment and could provide

corroboration for the payment. In Agliotti's statement to the DSO of 11 December 2006 (exhibit A32), he did not mention that Muller was present when he handed the money to the accused. Agliotti was not able to give an explanation for his failure to do so.

324. The first potential corroboration emanates from the counterfoil of the relevant cheque which has the word "*COP*" noted on it. The note on the counterfoil was brought about by Flint. Agliotti testified that he assumed that it referred to the accused. It is necessary to refer briefly refer to Flint's evidence.

325. Flint made a statement to Agliotti's advocate and attorney on 8 February 2007 (exhibit B3 p 6 and a further statement to Mr G Hardaker of the DSO on 23 October 2007 (exhibit B4 p 10).

326. In his evidence in chief Flint departed from his 23 October 2007 statement. In respect of the counterfoil of the cheque for R10000 dated 16 June 2004 (exhibit A14 p 27), which bears the annotation "*JSGA*", Flint stated unequivocally in the affidavit (exhibit B4 p 20 paragraph 21) that the annotation relates to "*John Stratton and Glen Agliotti*". In evidence in chief, when asked why he had said that in the

affidavit, Flint replied *"The only 'JS' that came to mind when he was doing this affidavit was in fact John Stratton. I had been negotiating with him for some considerable months and was in contact with him on not a regular basis, but you know, at least once, twice a month"*. When asked if he could link the '*JS*' to anything specific he replied *"We were at that point of time working with John Stratton"* and *"there was no particular issue that I would tie it to."*

327. Flint testified that when Agliotti asked for a cash cheque Agliotti would furnish him with a brief description of the purpose of the cheque. Flint would make a note of this on the counterfoil to enable Agliotti if he ever queried Flint to identify the payment. That which was written on the counterfoil was always based upon that which Agliotti told him.

328. Flint in cross examination testified that he had no reason to suspect that any payments were made to the accused. Accordingly "*JS*" could not refer to the accused. When the question was again put to him in cross examination as follows "*So we can emphatically state to His Lordship that the "JS" there does not refer to Jackie Selebi"* he replied as follows: "*Sir, My Lord I cannot state that, because 'JS', when Glen said to me 'JS' he could have meant but when I*

wrote it I interpreted it as being, as you know, John Stratton".

329. In respect of the counterfoil of the cheque for R10000 dated 8 November 2004 (exhibit A15 p 28), which bears the annotation "*COP*", Flint stated in the affidavit that *"The annotation relates to a retired policeman who I understand had a car crash."* In evidence in chief Flint stated that he had linked the payment to a retired policeman who he thinks was called Bezuidenhout. He added that Bezuidenhout had had some kind of serious accident and that Agliotti had agreed to help him. He now recalls however that the policeman came to Maverick's old offices. The cheque in question, he stated, was made out whilst Maverick traded from its old premises and he did not recall the policeman in question coming to the new offices. Accordingly Flint stated that his recollection when he made the statement was incorrect. In cross examination Flint was taxed on his ability to remember Bezuidenhout's name. He stated that he was able to do so because he remembered the name as part of a story. He testified *"So in other words this great big story of him being hit by a train at a level crossing is what stays in my mind and the name was associated with that."* When asked why he did not mention Bezuidenhout's name in the statement. Flint responded

that he was answering questions and that question had not been asked of him. In paragraph 31 of the affidavit of 23 October 2007 (exhibit B4 p 31), Flint however stated explicitly that he could not recall the name of the policeman concerned. After this contradiction was put to him he added that on that day he probably did not remember the name. Flint suggested that the name could have been given to him by the prosecutor during consultation. Flint indicated that the prosecution team had questioned him on his statement and had pointed out to him that if they were in the new building the statement is wrong. Flint was confronted with Muller's evidence that the business had moved to new premises in September/October 2004. Flint gave convincing evidence in this regard. He stated that the premises occupied by the business were renovated and the business was given three months free occupation with the lease of the premises only starting on 1 October 2004. He added that Muller was aware that the lease had expired at the end of October 2009 but had forgotten the 3 months free tenancy for the renovations. Despite his evidence of bad memory Flint recalled that the policeman came to the old premises and not the new premises.

330. In respect of the counterfoil of the cheque for R5000 dated 18 November 2004 (exhibit A16 p29) which bears the

annotation "*COP*", Flint stated in the affidavit that the annotation probably relates to the same policeman as the cheque referred to in the previous paragraph.

331. Reverting to the cheque for R100000 and the note "*COP*" on the counterfoil Flint, who had written the word on the counterfoil, testified that he had no idea what it meant. He stated in cross examination that he noted down whatever Agliotti told him in order to be able to control it with him later. He added that he decided what was written on the counterfoil "*so he might say it is for the Chief or it is for this and I just write "Chief" on it. I would put something down in an effort to enable him if he ever queried me on it to identify it, but it was always based upon what Mr Agliotti had told me".* Notwithstanding Flint's evidence that he never had reason to believe that any moneys were paid to the accused it is clear that whatever Agliotti told him was sufficient for him to note the word "*COP*" on the counterfoil. It is noteworthy that Flint linked the word "*COP*" on the two counterfoils referred to above to a policeman albeit not the accused. On his evidence that would have been sufficient for Agliotti to identify the transaction. Agliotti linked this payment to the accused. Agliotti did testify that the only other member of SAPS to whom payments were made was Bezuidenhout.

332. Flint's ignorance of the meaning of the annotations on the counterfoils of the cheques is just not credible. It is impossible to accept that Flint did not know more. During the period 5 December 2003 to 31 January 2005 Flint was paid R129200 from the Spring Lights account. These payments he says were authorised by Agliotti as he had rendered services. It must be assumed that the services were rendered to Spring Lights. On the evidence the only services rendered were the preparation and signing of cheques on Agliotti's instruction, the cashing of cheques and the handing of the cash to Agliotti.

333. The inference is inescapable that Flint when making the affidavit of 23 October 2007 endeavoured to give an explanation for the cheque annotations which exculpated him from any wrongdoing. His evidence in court was likewise directed at this purpose

334. In the result the counterfoil of the cheque for R100000 which reads "COP" is corroboration for Agliotti's evidence.

335. Secondly Muller's evidence, if credible, constitutes potential corroboration. The accused's counsel launched a substantial attack on Muller's credibility in general and the

divergence between her evidence and Agliotti's evidence in respect of this payment in particular.

336. Before dealing with these attacks it is appropriate for some general reference to be made to Muller's evidence. Muller made 2 affidavits during the investigation against the accused. The first affidavit was made on 8 February 2007 and was drafted by Agliotti's counsel Hodes (exhibit B5 p 50). The second affidavit was made on 23 October 2007 at the request of Hardaker of the DSO (exhibit B6 p 52).

337. After Agliotti's arrest, Muller was asked by Hodes visit him. Muller was reluctant to go. She did see him. She told Agliotti that she did not ever want to hear him say a word about the case because she did not want to hear anymore lies and the less she knew the better for her. She has accordingly not discussed the case with Agliotti. Muller is the managing director of Maverick which today has an annual turnover of R40m to R42m.

338. After termination of their relationship Muller and Agliotti remained friends. Muller stated that she went overseas with Agliotti twice after termination of their relationship. They went to Thailand at request of Agliotti to try and reconcile. This was not successful. Agliotti accompanied Muller once

to London. Agliotti continued to have the use of her office and Muller continued performing secretarial services for Agliotti. Based on this the accused's counsel suggested that the relationship between Muller and Agliotti had not been as completely severed as Muller had testified. There is no basis for this suggestion. Muller appeared to be a strong willed and determined woman. When she testified that she moved Agliotti out of her home, there can be no doubt that she did just that. Although they remained friends the relationship between them was severed.

339. As far as the general attack on Muller's credibility is concerned reference was first made to Muller's evidence in respect of certain payments that were placed in envelopes with the initials "*JS*" on them which would leave with the accused. She was asked how she knew the envelope would leave with the accused. She replied that she could see from her office down the passage to the boardroom and when anybody came in or out of the boardroom she could see them. She was then asked "*did you see it*" and she replied in the affirmative. In cross examination she stated that she never saw the accused with an envelope. This evidence may be construed as a contradiction of her earlier evidence. It depends on the meaning to be ascribed to the word "*it*" to which Muller referred. Secondly it is

argued that Muller stated in her statement to the DSO that the accused had received payments from Stemmet. It is pointed out that Agliotti denied having told her that Stemmet had made such payments and that there is no evidence indicating that Stemmet had made such payments to the accused. Clearly there is a divergence in the evidence of Agliotti and Muller in this regard and factually there is no evidence of such payments. That however does not exclude the possibility of Agliotti telling Muller that such payments were made. Thirdly, and of more moment than that which has been referred to thus far, reference was made to Muller's statement to the DSO where she stated that "*JS*" could have referred to Stratton, but that because she never saw Stratton she assumed it referred to the accused. When asked in her evidence in chief how she knew that "*JS*" referred to the accused she replied that Agliotti had told her and that after Agliotti had written on the envelopes the accused would arrive at Maverick's premises. When asked why it was necessary for her to have assumed anything and that she could have told the DSO that she knew who it was because Agliotti had told her, Muller responded that "*Except for we both know the credibility of Mr Agliotti. I never took anything he told me for fact.*" She added that at the time Agliotti told her what "*JS*" meant she believed him but there were a lot of

other things that Agliotti told her that were not correct. Clearly there is a divergence between Muller's statement and her evidence in court in this regard. Fourthly reference was made in regard to Muller, and for that matter Flint, to the fact that the DSO had permitted Agliotti's legal representatives to take their first statements. This, so it is submitted, occurred some months after Agliotti had promised to procure a statement from Muller and Flint. It matters not who took the first statement. What is of importance is whether or not Muller or Flint gave evidence contrary to what had been set out in their statements. Fifthly, and finally, it was submitted by the accused's counsel that regard must be had to the fact that Muller had been Agliotti's fiancé for a number of years, they had travelled overseas after the break-up of their relationship, Muller had benefitted from the Spring Lights account, Agliotti had stated that he would procure Muller's statement and that Agliotti's legal team, which had assisted Agliotti in making a deal with the DSO had provided the statement.

340. An additional ground can be added to this general attack on the credibility of Muller. In her statements she never mentioned that she removed the sum of R10000 from the sum of R120000 before she put it in the bag. When asked

to explain why it was not mentioned she responded that she had not considered it relevant.

341. It must also be recalled that Muller testified in chief that the payment was made in December 2004. In her statements Muller stated that the payment was made in October or November 2005. She eventually linked the date of the payment to the fact that Agliotti went on holiday to Mauritius in 2004 and the fact that Kebble was still alive when the payment was made.

342. Consideration has been given to each of the grounds set out above. Taken individually and cumulatively they are not sufficient grounds for Muller's evidence to be rejected. Muller was subjected to intense cross examination. She repeated her version of the events relating to the payment without deviation. She, was notwithstanding the criticism set out above, a good witness.

343. There are major differences between the evidence of the Agliotti and Muller in respect of this payment to the accused. First on Agliotti's version, Flint cashed the cheque and handed the R100 000 in the offices of Maverick to Muller before Agliotti had arrived at Maverick's premises. Agliotti only handed Muller R20 000 to add to the R100

000. This is contradicted by Muller. Muller testified that Agliotti had handed her the money which he had taken from his briefcase and that he had asked her to check that it amounted to R110000. Second, according to Agliotti an amount of R120 000 was handed over to the accused in the boardroom. Muller is very adamant that only R110 000.00 had been handed over to the accused. Third, Agliotti made no mention of the fact that Muller removed R10 000 from the money that she had counted and informed him thereof. On the contrary, according to Agliotti, he wanted to give as much money he had to the accused. It was for that reason that he added R20 000.00. Fourth, Agliotti testified that the money was paid to the accused because he had informed Agliotti that he had problems. Muller testified that the money was paid to pay for a holiday for the accused and his family. Fifth Agliotti testified that he had arrived at Maverick and that shortly after his arrival the accused arrived. Muller testified that the accused had arrived first and that Agliotti had informed her prior to the arrival of the accused that the accused would arrive first and that she should entertain him whilst waiting for Agliotti.

344. Had Muller and Agliotti conspired with each other to give false evidence against the accused those differences would have been avoided. Their very presence, whilst creating

difficulty in regard to reliability or cogency, gives the evidence credibility.

345. At the end of Muller's cross examination it was put to her that the accused denies that he ever received payments from Agliotti. She turned her face so that she faced the accused. Looking directly at the accused she said "*That is not the truth.*" Her reaction was not contrived. It gave her evidence the stamp of credibility. Regard being had to all the criticism of her evidence that stamp of credibility is justified and accordingly her evidence in general and in regard to this payment in particular is accepted. It is accordingly found that Muller's evidence does serve as corroboration of the payment to the accused. Agliotti testified that the payment was R120000. Muller testified that the payment was R110000. Her evidence in respect of the R110000 was convincing and it is accordingly held that her evidence is corroboration for the payment as testified to by Agliotti up to that amount.

346. Additional corroboration for the state's case in respect of this payment is to be found in the evidence of Friedman. He testified, as is set out above, in regard to the accused's bizarre spending pattern. For present purposes it is only necessary to state that in January 2005 the total amount

paid out of the accused's bank account amounted to R465.35 and in February 2005 to R188.12. No credible explanation for this was provided. The accused's wife, who was proclaimed as the person who was in charge of the household's finances, was not called as a witness to explain this. The absence of cash cheques and cash withdrawals, also referred to in Friedman's report, were not explained.

347. Further corroboration is to be found in the accused's foreign currency transactions. Reference will be made to two. The accused received an advance for a visit to France in the amount of R8537.17. Notwithstanding this the accused utilised the sum of R13064.15 to purchase euros for this journey on 3 June 2005. Interestingly enough and after the visit the accused sold 680 euro at a rand value of R5193.90 on 28 June 2005. It is apparent from this exposition that the accused in effect spent slightly more than his advance. He was unable to furnish any explanation for his conduct. Absent an explanation it appears that the accused was attempting to launder money or create an explanation for having excess cash in his possession. The accused received an advance of R8954.81. Notwithstanding this the accused utilised the sum of R21796.65 to purchase $3152 on 28 July 2005.

After the visit the accused sold $2237 at rand value of R14020.70 on 19 August 2005. It is apparent that the accused spent slightly less than his advance. He was again unable to furnish any explanation for his conduct. It appears that the accused was attempting to create the same impression as set out above.

348. Finally additional corroboration is to be found in the accused's relationship and dealings with Agliotti which will be dealt with later in this judgment.

349. Confronted with the state's case as set out above, and having due regard to the poor quality of the accused's evidence, the accused's denial of receipt of the payment is not reasonably possibly true.

350. Regard being had to all of the above the state has proved beyond reasonable doubt the accused received the payment at least in the sum of R110000.

351. The next payment where there is corroboration is the payment of R30000 in respect of which the cheque dated 28 September 2005 was cashed. The counterfoil to the cheque has the words "*CASH (chief)*" noted on it. As

already indicated Agliotti referred to the accused as chief. This serves as corroboration for Agliotti's evidence.

352. This cheque is dated the day after Kebble died. In re-examination Agliotti stated that on the day after Kebble died he had to identify Kebble's body. He did not know where the mortuary was. He went to Nassif's office. Nassif instructed one of his employees André Burger to show him where the mortuary was. Whilst driving in the car to the mortuary the accused phoned Agliotti and asked for money. The accused's counsel was given leave to cross examine Agliotti on this new evidence. It emerged from this cross examination that this issue had not been raised by Agliotti in any of his statements or in his evidence before his evidence in re-examination. It was put to him that from cellular phone records provided by the state no record could be found of calls from the accused to Agliotti on the day in question. The state objected to this question. The state thereupon showed the accused's counsel the cellular phone records, where the calls were reflected, and the question was not persisted in.

353. It was pointed out by the accused's counsel that Agliotti only referred to one payment of R30000 in his hand written notes (exhibit A21). That payment was linked to the dinner

to lobby for support for the accused's election as head of Interpol. It is common cause that this occurred in September 2004. Accordingly the proceeds of this cheque, which is dated 28 September 2005, could not have been in respect of the Interpol dinner. It is further suggested by the accused's counsel that when the state realised the mistake they alleged two payments of R30000 were made and not one. The answer to their submission is that the state referred to both payments of R30000 in the indictment. The Interpol dinner is referred to in paragraph 16 on p 10 and the other payment in paragraph 22 on p 12. The state contends that the date of the accused's election as president of Interpol is a well known fact in the public domain and is specifically mentioned in paragraph 4 on p 4 of the indictment. In these circumstances the state could hardly be said to have made a mistake.

354. It was finally argued in regard to this cheque by the accused's counsel that it has been demonstrated clearly in the evidence that the proceeds of this cheque of R30 000.00 did not go to the accused but was utilised by Agliotti for other purposes. It is submitted that Agliotti's evidence illustrates that the only inference to be drawn is that the proceeds of this cheque was used as a clearance payment for a drug transaction that he was involved in. The basis for

this submission is the content of paragraph 26 of Agliotti's statement dated 10 February 2008 (exhibit A36). In that paragraph the following is stated: *"The normal procedure for payment will be that the owner of the consignment would pay the forwarding and clearing charges. The money I used could have come from either the Care Products- or Spring Lights account. It is more likely that it came from the Spring Lights account. Martin Flint who ran the Spring Lights account was not always aware what the money was intended for. He only acted on my instructions and drew cash at my request.* "

355. As previously stated the counterfoil of the cheque reflects "*Chief*".

356. Confronted with the state's case as set out above and the general corroboration referred in regard to the payment of R110000, and having due regard to the poor quality of the accused's evidence, the accused's denial of receipt of the payment is not reasonably possibly true.

357. Regard being had to all of the above the state has proved beyond reasonable doubt that the accused received the payment of R30000.

358. The next payment in respect of which there is corroboration is the cheque for R55000 which is dated 12 April 2005. The counterfoil to this cheque reads "*cash GA Chief*". Agliotti testified that the note on the counterfoil referred to the accused and that it could not mean anything else. Flint testified that the counterfoil is poorly written. He said *"I think it is Cash GA Chief, but it could be GL Chief, my handwriting, or GR Chief, I do not know, but I do not recall exactly what I said in my statement. GL Chief is the way I interpret it, but I must say that I had difficulty reading my own handwriting at that point"*. In Friedman's report the counterfoil is read as "*Cash GR Chief*".

359. It is argued by the accused's counsel that in Agliotti's notes that he made whilst in prison in December 2006, no reference is made of any payment of R55 000.00. Furthermore Agliotti never made any reference to any payment of R55 000.00 to the accused in any of his various statements and the state did not make reference to any payment of R55 000.00 in the charge sheet. This is all correct. Agliotti did however refer to "*50 at a time 3 times*".

360. In view of the possibility that the note may not read "*GA*", as remote as this possibility may be, the accused is entitled to the benefit of the doubt and it is not found beyond

reasonable doubt that the accused made this payment to the accused.

361. Finally reference is made to the two payments of R10000 and the one payment of R5000. The counterfoils of these cheques all link the cheques to the accused. Flint originally linked these payments to another policeman. He changed this in his evidence. His evidence was not strong. Perhaps being over cautious it cannot be held that these payments were requested by Agliotti for the accused. The counterfoil of the second cheque of R10000 reads "*CASH JSGA*". This serves as corroboration for Agliotti's evidence. Despite concessions made by Agliotti and the accused's poor evidence, regard being had to the general corroboration referred to above and the accused's poor evidence the state has succeeded in proving beyond reasonable doubt that this payment was made to the accused.

362. Agliotti testified that he paid the accused $30000 in three payments. The one payment was made according to Agliotti in the first class lounge at the international departure lounge at O R Tambo Airport. The accused denied receipt of the payment. Agliotti received the $100000 on the 22 April 2005. In this regard it was put to the accused that he went to Cyprus for an Interpol regional

conference from 23 May 2005 to 28 May 2005. The accused received an advance in respect of the expenses of the trip from the SAPS of €700 which was acquired at a cost of R5900.75. On his return to South Africa the accused's actual expenses were calculated in the some of R6223.62 and claimed from the SAPS. This resulted in a net payment of R323.62 being paid to the accused. Included in the claim was the amount of 508.99 euros or dollars in respect of accommodation. On his return to South Africa on 28 May 2005 and contrary to his normal practice of allowing Grové of attending to his foreign currency transactions, the accused sold $2500 at O R Tambo international airport. This one month after Agliotti had received the $100000 from Rautenbach. The accused was asked to indicate where the dollars had come from. His first response was to indicate that he would have the foreign currency from the Cyprus trip. It was then pointed out to him that the advance of foreign currency had been in euros. The accused then suggested that it was an advance form Interpol. To avoid the suggestion that he had been paid for the same expenditure by the SAPS and Interpol the accused stated that the SAPS advance went back to the SAPS and the Interpol allowance was used. This evidence is simply not true.

363. His conduct amounts to corroboration for Agliotti's evidence that he gave the accused US dollars, albeit not in the amount of R30000. It is accordingly held that the state has proved beyond reasonable doubt that Agliotti paid US dollars to the accused.

364. As far as gifts are concerned there is corroboration for Agliotti's evidence that clothing was bought for the accused's sons. Muller testified in that regard. When it was put to her at the conclusion of her cross examination that the accused denied that Agliotti ever purchased clothes at Fubu for the accused's children she responded with conviction and whilst looking at the accused "*That is a lie*". The accused did not seek to place the evidence of his wife or his sons before the court in this regard. In the light of the state's case, the accused's denial is not reasonably possibly true.

365. In the result the state succeeded in proving, as set out above, beyond reasonable doubt that the accused received payments and gifts from Agliotti to the extent indicated in this judgment.

366. The first benefit that will be considered is the so-called UK report. Hankel testified that he was requested to identify all

reports that could be found within his environment pertaining to Agliotti. He added that there were six reports in total according to SAPS records where there was either content related to Agliotti or a reference to Agliotti. These six reports are exhibit A1 to A5 and exhibit D2. This evidence was not challenged in any way by the accused.

367. Agliotti's evidence was clear, he was shown a document by the accused. The accused asked him to read the document and thereafter questioned him about his knowledge and relationship with the names mentioned in the report. The accused then said "... *that I was being monitored or my movements were.*" Agliotti testified that the report that he was shown had a particular appearance. According to him it bore a coat of arms and "*either HSM or Her Majesty's customs something to that effect*". It cannot be disputed that only one of the reports that was placed before the court, has a coat of arms and the words "*H M Customs and Excise*" in bold print on it. As to the purpose of being shown the document Agliotti testified that the accused wanted Agliotti to know that the UK authorities were monitoring his movements.

368. In cross examination Agliotti was taken to task as to his recollection of the content of the document that he had

been shown. The thrust of the attack was that in testifying as to what he had recalled as being in the document shown to him he stated that there was reference to one Cahil and exhibit A1 did not refer to Cahil. Agliotti's response was that he had been shown the document very fleetingly and later that he did not take a full note of the document and that the accused would not give him a copy, despite him having requested the accused to do so.

369. It was argued by the accused's counsel that there is no evidence that the accused at any stage had a copy of any of the reports referred to by the state. The submission is correct. Some reliance is placed on the inability of Hankel to dispute that the accused had any of the reports in his possession. Not too much can be made of this, other than Hankel does not have knowledge of the accused's possession of any of the reports.

370. Hankel was an impressive witness. His annoyance that the Operation Chaser file could not be accounted for in his archives was apparent and clearly truthful. He clearly and emphatically placed liability for the missing file on Thema. As has already been alluded to, the accused, who was then the former commissioner of police, and indicative of his relationship with Thema discussed the missing file with

Thema despite the fact that Thema was at that time still a state witness. The accused was aware that he was not entitled to consult with state witnesses. His denial that he knew that Thema was a state witness cannot be reasonably possibly true. He heard the contrary in court prior to his discussion with Thema. Despite this the accused was prepared to risk consulting with Thema. This clearly indicates that the accused realised the importance of the missing file and gives credence to it being the source of the report that Agliotti states was shown to him. Despite all this Thema was not called as a witness.

371. It is noteworthy that the Operation Chaser file was booked out by Thema on 21 April 2006 and Agliotti's evidence was that he was given sight of the report in July or August 2006.

372. As appears above Pikoli interviewed the accused on 11 November 2006. Amongst the issues that Pikoli raised was the UK report and an issue in respect of an accident. According to Pikoli the accused undertook to revert to him on the following Monday in respect of both these issues. The accused did revert to Pikoli in respect of the accident issue but failed to do so in respect of the UK report. Pikoli's evidence in this regard was unchallenged. In cross

examination the accused testified that Pikoli did not ask him about the UK report.

373. The accused testified in cross examination that during 2006, because of the allegations in the press against Agliotti, he requested SAPS to conduct an investigation into Agliotti and to bring back to him anything that was concrete. It was later put to the accused that the DSO wanted access to the UK reports in connection with Agliotti. The accused testified that he gave instructions for the reports to be made available but made no enquiries as to the content of the reports. This evidence is improbable in view of his prior instruction that he requested SAPS to conduct an investigation into Agliotti.

374. The UK report, exhibit A1, is not the type of document that the man in the street would have knowledge about. The document was at all times in the possession of SAPS. There is no suggestion that Agliotti could have gained knowledge of the existence and the content of the document from any source other than a source connected to SAPS. Whilst Agliotti could not recall the content of the document completely accurately, his recollection of the content and appearance thereof is sufficient to establish that exhibit A1 was the document that was shown to him.

On the evidence the only person who could have shown exhibit A1 to Agliotti is the accused. This conclusion is arrived at notwithstanding the comments made in respect of Agliotti's general credibility and the fact that he is a single witness. As set out above there is sufficient corroboration for Agliotti's evidence in this regard. The accused's denial that he permitted Agliotti to read the UK report is not reasonably possibly true.

375. It is finally argued that Agliotti would not have benefited by being shown exhibit A1. It is argued that at the time exhibit A1 was shown to Agliotti he was already referred to in the press as an international drug dealer. Accepting this to be so there was still benefit for Agliotti in being warned that United Kingdom police were investigating him. The inference is reasonable that by showing Agliotti exhibit A1 the accused warned Agliotti of the interest the United Kingdom authorities had in him and of the fact that their interest was known to SAPS as well.

376. It is accordingly found that the accused showed exhibit A1 to Agliotti for the benefit of Agliotti.

377. The second benefit that Agliotti allegedly received from the accused is sight of the NIE. Reference has already been

made to the accused's evidence in this regard. It constitutes the fourth big lie. Suffice it to say the accused's evidence in this regard cannot be reasonably possibly true. All that can be accepted on the accused's evidence is that he concedes that he showed a document to Agliotti. On his evidence he showed Agliotti the second paragraph on the second p of exhibit H5. The reason for doing this is that he wanted to show Agliotti the name "Jürgen Kögl". The accused testified that he was concerned that he would not remember the spelling or the pronunciation of the names. The problem with this explanation is that only the name Kögl appears in the second paragraph. The name Jürgen does not appear. Of course there is no reason why the name Jürgen Kögl could simply not have been written down on a piece of note paper. This constitutes still further unsatisfactory evidence by the accused. More importantly perhaps, it should be pointed out that the accused's proclaimed objective in showing a document to Agliotti would have been achieved had the NIE been shown to Agliotti. As is apparent from the second p of exhibit G the name Jürgen Kögl appears.

378. The accused's evidence that he showed a document to Agliotti provides corroboration for Agliotti's evidence that the accused showed him a document and moreover

corroboration that the document had to do with Jürgen Kögl. All that has to be determined is whether a portion of the NIE is that which was shown. Agliotti testified that during 2005 the accused showed him a document which was pretty thick in size. The document had a blue covering on its top and bottom. It was opened and there were possibly two lines that were underlined. The accused asked Agliotti if he could identify the person referred to in the two lines. Agliotti could not remember the exact wording of the two lines. They were to the effect that Jürgen Kögl reports that the Kebbles are paying the accused. The accused indicated that this document was an intelligence report that went to the President. Agliotti referred to this document as an NIA report because that is what he perceived it to be. Agliotti also referred to the document as an NIA report in exhibit A21. Agliotti did not know who Jürgen Kögl was. He made enquiries from the Kebbles and Stratton. He was told that they had entered into an unsuccessful business venture with Kögl and there was a strained relationship between them. Agliotti subsequently informed the accused of what he had learnt. The accused was rather upset and stated that he would demand an apology.

379. Counsel for the accused argue that all copies of the draft NIE were destroyed at the meeting where it was discussed.

This certainly was the evidence of Gilder. This is however not devastating to the state's case as submitted by the accused's counsel. It is clear on Gilder's evidence that the NIE would be circulated to the participants of the meeting three to four days before the meeting. The distribution of the NIE before the meeting would permit the participants to the meeting of making a copy thereof and the showing thereof or of the distributed NIE itself to Agliotti. The fact that the accused was not a participant at the meeting is also not destructive of the state's case. The draft NIE was distributed to Lalla who represented SAPS and who reported to the accused..

380. It is correct, notwithstanding Agliotti's evidence, that the information that he saw was on two pages of the NIE and not on one as testified to by him. His memory may have let him down in this regard or when Gilder printed exhibit G the format may have altered slightly resulting in the information which Agliotti saw being on two pages rather than one. Agliotti identified the document that he saw as an NIA report. He testified as to its content. The state produced a draft NIE report with similar content. This cannot be sheer coincidence.

381. On the evidence it is clear that Agliotti saw a document which contained particular information. The NIE contains that information. The accused admits to showing Agliotti a document. Agliotti was aware of the demand for an apology. The accused's explanation of what he showed Agliotti cannot by any stretch of the imagination be regarded as reasonably possibly true. In the circumstances there is more than adequate corroboration for Agliotti's evidence.

382. It was finally argued in this regard by the accused's counsel that Agliotti did not benefit by the accused showing him the NIE. This submission is devoid of substance. Assuming that the accused received payments and gifts from Agliotti and that he at the very least attended meetings with the Kebbles as a result thereof (none of which has yet been found), the accused shared this information with Agliotti to enable him and the Kebbles to take steps to protect themselves.

383. It is accordingly found that the accused showed portion of the NIE to Agliotti to the benefit of Agliotti.

384. The third benefit that Agliotti allegedly received from the accused is the handing over to Agliotti of exhibit A6. The

evidence in this regard has already been referred to. It constitutes the sixth lie by the accused. On the evidence, it cannot but be found that the accused handed over exhibit A6 in its entirety. Any evidence by the accused to the contrary is simply not reasonably possibly true.

385. It is submitted by the state that there is a sinister reason for the change of stance and sudden denial by the accused that the e-mail communication was part of exhibit A6 when the exhibit was handed over to Agliotti. It is suggested that the e-mail communication was in fact intercepted. In this regard the following appears from the cross examination of the accused: "*And I am putting it to you that the reason you are changing your version is that it now today suddenly dawned on you that that could have been an intercepted email because it was never given to you. That is why you are changing your version. --- I have not and no policeman that are under my command ever intercepted any email. The emails I have and the dossier that I have comes directly from the media*".

386. The accused testified that the document which he had given to Agliotti had been handed to him by the journalist during the interview referred to above. After the interview his colleagues who had been present at the interview took

the documents away with them. A week or two later, the accused wanted the documents and called for them. It is clear that the complete exhibit A6 was faxed to the accused's office. There is no evidence of any other document except exhibit A6 that was faxed to the accused's office in response to his request. It would appear that of all documents in the dossier the accused, on his evidence, only called for exhibit A6. Despite this the accused persisted in his denial that he had handed the complete exhibit A6 to Agliotti. The accused could offer no explanation how Agliotti gained possession of the entire exhibit A6 and conceded that it is highly unlikely that he could have received it from anybody other that himself. It is manifest that the entire document was available within SAPS and to be more precise in the accused's office and in at least one other SAPS office.

387. There is evidence to support the accused's evidence that the statement portion of exhibit A6 was part of the dossier. There is no evidence to support the accused's evidence that the e-mail communication portion of the exhibit was part of the dossier. On the contrary the accused testified that he could not remember having seen the e-mail communication portion of exhibit A6 on the Saturday when the interview with the journalist occurred. It is in this

context that the submission that the e-mail communication was in fact intercepted was made. What gives this submission substance is the fact that the accused on his own evidence had not seen the e-mail communication portion of exhibit A6. If he had not seen it when the interview with the journalist took place, there is no way on the evidence that he could have called for the document.

388. It was not disputed by the accused that the statement portion of exhibit A6 was sent by e-mail to Plitt at the office of the NPA. Pikoli testified that in the November 2006 meeting between him and the accused, he asked the accused about the intercepted e-mails between Plitt and O'Sullivan. In regard to the e-mails, Pikoli testified that the accused admitted that "*they*" do have correspondence between Plitt and O'Sullivan. His evidence was not challenged in cross examination. In cross examination it was put to the accused that he had never said to Pikoli in November 2006 that he received the e-mail from the media. The accused responded that Pikoli had never asked him. The accused added emphatically that Pikoli's evidence that he had asked about the e-mail was a "*blue lie*". The accused was then referred to Pikoli's evidence. It was put to the accused that Pikioli had testified that when asked about the intercepted e-mail the accused had said

that we have the e-mail. His answer was "*I am saying there is no intercepted email from Robin Plitt. So if somebody asks me about an intercepted email from Robin Plitt my answer would be no because that email that we are talking about is not an intercepted email it is an email that was brought by journalists broadly. Not an intercepted thing*". As appears from the foregoing this evidence is false as the accused testified that he did not see the e-mail communication part of exhibit A6 when he had the interview with the journalist.

389. It is not necessary for this issue to be determined. It may however well be that the accused's bad evidence in regard to what was shown to Agliotti can be ascribed to wanting to distance himself from an intercepted e-mail.

390. During cross examination Agliotti stated that when handing exhibit A6 to him, the accused stated that it constituted proof that O'Sullivan was behind the media campaign and that he should hand it to his lawyer so that he can take the necessary legal steps. He later accepted in cross examination that it was not handed over because of any payments made or gifts given by him to the accused, but to resist the so-called improper media campaign. The conclusion made by Agliotti as to the reason why exhibit A6

was handed over is irrelevant. His evidence as to what the accused said when the exhibit was handed over must be taken into account. Accepting that the accused regarded exhibit A6 as constituting proof that O'Sullivan was behind the media campaign and that he said that Agliotti should hand it to his lawyer, by giving it to him he still gave benefit to Agliotti.

391. The reasons the accused furnished for the disclosure of exhibit A6 are so weak that they cannot be reasonably possibly true. Although he masked his reasons for disclosure, regard being had to the content of the document and the time of its disclosure, indicate as the only reasonable inference that the accused must have intended to warn Agliotti of a DSO investigation and give him details of an investigation wherein Agliotti was implicated whilst the Paparas bail application was proceeding. This can only be construed as a benefit which Agliotti derived out of the relationship between him and the accused.

392. It was further submitted on behalf of the accused that the content of exhibit A6 was already in the public domain and had been reported on in the press. Based on this submission, it was argued that the handing over of exhibit

A6 cannot be construed as unlawful. It cannot be argued, nor was it suggested, that exhibit A6 was available to Agliotti. What appeared in the Sunday Independent was but a small portion of that which appeared in the statement and the covering letter. The content of the e-mail was not referred to. Clearly Agliotti benefitted by being placed in possession of all the documentation referred to including the e-mail.

393. The fourth benefit that Agliotti received was his ability to secure the attendance of the accused at dinners and meetings.

394. It was Agliotti's evidence that he arranged the meetings or dinners between the accused and the Kebbles and their associates, between the accused and Tidmarsh, the accused and Nassif when the Jumean issue was raised and the accused and Varejes. The accused's counsel did not challenge Agliotti in respect hereof. After hearing the application for his discharge being argued, the accused advanced a different case to the case his counsel had conducted in this regard. Firstly, he resisted Agliotti's request to meet with the Kebbles for two years. Secondly, he called for the meeting with Tidmarsh and thirdly Nassif arranged the Jumean meeting directly with him. This

evidence was simply not true and clearly could not have been his instructions to his legal team. It is inconceivable that the accused's "*new*" evidence would not have been put to Agliotti and Sanders. This change in stance by the accused was deliberate and was done in an attempt to avoid the inference that access to him could be gained through Agliotti. In the result, the false evidence reinforces the inference that the accused could be made available through Agliotti. This in fact was the reason why Rautenbach paid Agliotti $100000 after originally refusing to do so. As Rautenbach put it Agliotti had at least managed to raise Rautenbach's issues with the accused. This was valued at $100000.

395. It is inconceivable that the accused would have been willing to be in the company of the Kebbles and their associates let alone have dinner with them. The accused was aware of the content of the interview which was held on 28 August 2003 between Mphego and the accused. He therefore knew that the Kebbles were subjected to police monitoring. In addition he knew there were discussions between Agliotti and the Kebbles relating to the payment of $1.5m to him. He had seen and heard this on the DVD recording of the meeting of 28 August 2003. Despite all this he, as the highest officer in the SAPS, was prepared to be in their

company without even another member of SAPS present. The accused, who testified that he was trained in intelligence, and who is not naïve, would not have exposed himself to the obvious risks of being in the company of the Kebbles, unless he was not in a position to refuse the request.

396. It was suggested to Agliotti and accepted by him that at these meetings general conversation took place along the lines of friendship and general political discussions. The accused however had it differently. His evidence was that he had "*demanded*" the meeting with the Kebbles after he had received an affidavit from Kebble so that he could discuss the allegations made in the affidavit. These allegations related to the arrest of Roger Kebble at O R Tambo International Airport by the SAPS in the presence of Goldblatt. By reason of Goldblatt's presence it was suggested that SAPS "*were in cahoots*" with him. According to the accused he was able to explain that the arrest was not at the behest of Goldblatt but it was a police operation as a result of alleged insider trading. Subsequent meetings related to general political issues.

397. It appears from Agliotti's evidence that he had handed the affidavit to the accused. Subsequent to this the accused

arranged a meeting with representatives of the Kebbles and Mphego and Lalla. Agliotti in fact referred to a letter in his evidence and not an affidavit.

398. It is inconceivable that the head of SAPS would involve himself in the political education of Kebble and his associates. But that is what Agliotti says that they did and what the accused says that they did from the second meeting. Agliotti's evidence that the Kebbles insisted on meeting the accused has the ring of truth to it. They would want to see tangible proof of the accused's relationship with Agliotti. Agliotti's reluctance to facilitate such a meeting also has the ring of truth to it. He stated that he did not want the Kebbles to have easy access to the accused because they would then no longer need Agliotti or his services. Agliotti was street wise enough to appreciate this.

399. The accused's evidence in regard to the Kebble meetings is not reasonably possibly true. These meetings were arranged by Agliotti and attended by the accused. They were not attended out of friendship but because the accused was obligated to go by reason of the payments made to him by Agliotti.

400. The same applies with regard to the Tidmarsh meeting and the Nassif meeting at which the Jumean issue was discussed as well as the other meetings referred to by Sanders.

401. The Tidmarsh meeting had added benefits. Rautenbach through Tidmarsh was given information to enable him to comment on a proposed letter playing on government concerns that would not in the normal course have been be available to him. The accused attended this meeting, on his evidence to obtain confirmation of corruption by Ngcuka. He would have it that he did this alone. It is so improbable that it can be rejected on the face of it as not reasonably possibly true.

402. The Kya Sands operation is a cause of concern. The accused appears to have been the only person in SAPS in possession of all the relevant facts and in particular of Agliotti's role. At the very least when the accused read the motivation for the reward of R500000 to Stemmet he must have realised that it was factually incorrect. It did not refer to Agliotti's role and it may, by reason thereof, have exaggerated the role played by Stemmet. The accused was also aware that Agliotti had enquired whether he would be paid a reward. Yet despite all this the accused authorised

the payment of R500000 to Stemmet. Stemmet in turn subsequently paid R100000 to Agliotti. There is no evidence of the accused playing any role in the payment by Stemmet to Agliotti. Finally no prosecutions flowed from this operation. On the evidence the Kya Sands operation leaves a bad taste in the mouth. It cannot be held however that the state has proved that Agliotti gained any benefit from it.

403. In the result the state has succeeded in proving beyond reasonable doubt that Agliotti received benefits from the accused.

404. As indicated above there is no evidence of an agreement between the accused and Agliotti for benefits to be given to Agliotti in return for payments. On the evidence it is clear that such an agreement or understanding must have existed. It did not have to be expressly concluded. At the very least it came into existence over a period of time. The accused must have known the adage that there is no such thing as a free dinner.

405. Reference has already been made to the accused's plea explanation. From paragraph 5 thereof to its conclusion the accused sets out his contention "*that the prosecution*

against him is not bona fide but was instituted with an ulterior motive..." In the last paragraph of the plea explanation the accused states that "*the case against him was manipulated with male fide intentions in an attempt to discredit him for the reasons as set out above and to ensure the continued existence of the DSO.*" The accused's contention was based on three arguments. First that the accused was targeted because of his views on the DSO's integration into the SAPS. Second that he was targeted because he received information in the latter part of 2005 relating to Ngcuka whilst he was the National Director of Public Prosecutions. The source of the information was in essence the content of the letter from Ngcuka to Ramsay. This letter is exhibit A26. Third that the accused was targeted because of the corruption allegations relating to Pikoli.

406. As far as the second argument is concerned it was never developed by the accused. There exists no suggestion on the record that Ngcuka influenced his prosecution in any way. It is unclear when, how and who Ngcuka must have influenced to initiate the investigation and the decision to prosecute the accused. The accused failed to even suggest that Ngcuka knew that he was in possession of the Ramsay letter. It is furthermore unclear why Ngcuka would,

in 2006, pursue the accused because of a letter dated 12 June 2000. It is all the more confusing since this supposedly occurred at a time when he was no longer the National Director of Public Prosecutions. Furthermore, the allegations of Ngcuka attempting to solicit a bribe proved to be false. There is also no evidence of Ngcuka exerting any influence in the DSO in general and on McCarthy to proceed with the *"campaign"* against the accused. Accordingly this argument need not be considered any further.

407. As far as the third argument is concerned its foundation is the meeting to which the accused alleged he summoned the accused to at the end of 2005. The evidence in regard hereto was dealt with when the facts relating to the accused's first big lie was set out. No point would be served in rehashing it. Suffice it to say this meeting simply did not take place. This finding is of significance in the assessment for the accused's contentions. On the accused's version after this confrontation the letter of Advocate de Beer dated 24 January 2006 was sent. This letter, so it is contended by the accused, started the investigation against the accused. It has already been found that the meeting relied upon by the accused did not take place. There can accordingly be no taint in the motive

of sending the letter of 24 January 2006. Furthermore the evidence established that that letter did not initiate the investigation against the accused. The letter requested the DSO to become involved in the investigation of the Kebble killing. The reason for the request was the accused's strange behaviour at a police briefing in respect of which Roeland testified and the fact that the retention of telephone billing records is time limited and if not accessed within the limited time will result in them being lost to the investigation. Accordingly this argument need not be considered any further.

408. What remains is the argument that the accused was targeted because of his views in connection with the DSO's integration within the SAPS. The basis for this argument is the contention that the DSO commenced their investigation against the accused on receipt of the letter from Advocate de Beer. This is incorrect. The investigation into the Kebble killing commenced with that letter. The framework of the investigation is set out in the evidence of Pikoli and Leask. There is no reason why their evidence should not be accepted.

409. Further as to the argument that the accused was targeted the ultimate decision to prosecute the accused was taken

by the review committee established by Mpshe. It is not suggested that any extraneous issues that may have existed prior thereto played any role in the decision to prosecute. It is also noteworthy that despite the setting aside of the warrant of arrest and the suspension of Pikoli the accused placed no evidence before the court that he had articulated to anybody that he had been targeted because of his views in regard to the placing of the DSO. A chronology of the relevant facts is also against the accused's argument. The Khampepe Commission completed its findings in 2005. It recommended the continued existence of the DSO. As Leask put it after the commission there was clarity as to the placement of the DSO and how the DSO and the SAPS were to work together. Thereafter the investigation continued as set out above culminating in a decision to prosecute the accused. In these circumstances there is no merit in this argument either.

410. The accused's counsel advanced a further argument in regard to the trial. The basis of the argument is the requirement of the objectivity of the prosecution as an integral part of a fair trial. This argument was not adverted to in the accused's plea explanation. They developed this argument by referring to s 34 of The Constitution which

provides that everyone has the right to a fair trial. They then referred to s 165 of The Constitution which provides that the courts must apply the law impartially. It is then submitted that one of the most basic and important rights which the court must enforce is the right of a fair trial of an accused. They then refer to s 179(4) of The Constitution which provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice. S 32 of the National Prosecuting Authority Act, 32 of 1998 provides that a member of the Prosecuting Authority shall serve impartially and carry out his or her functions in good faith.

411. In developing this argument reference was made to Shabalala v Attorney-General, Transvaal & Another 1995 (1) SACR 88 (T) and the unreported judgment in Bonguli & Another v The Deputy National Director of Public Prosecutions & Others in the North Gauteng High Court (Case Number 17709/2006). In the latter judgment it was held that a prosecutor who conducts a prosecution without fear, favour or prejudice is seen as an integral part of a just criminal prosecution. Reference was finally made to Smyth v Ushewokonze and Another 1998 (2) BCLR 170 (ZS) at 174 where it was held that *"It is specifically alleged against the first respondent that he has involved himself in a*

personal crusade against the applicant and that he lacks the objectivity, detachment and impartiality necessary to ensure that the State's case is presented fairly. It is said further, that the first respondent has exhibited bias against the applicant. Before considering the particular features of the first respondent's conduct upon which reliance is placed, it is as well to outline what society expects of a prosecutor. A prosecutor must dedicate himself to the achievement of justice (see R v Banks [1916] 2 KB 621 at 623). He must pursue that aim impartially. He must conduct the case against the accused person with due regard to the traditional precepts of candour and absolute fairness. Since he represents the State, the community at large and the interests of justice in general, the task of the prosecutor is more comprehensive and demanding than that of the defending practitioner (see R v Riekert 1954 (4) SA 254 (SWA) at 261 C-E). Like Caesar's wife, the prosecutor must be above any trace of suspicion. As a "minister of the truth" he has a special duty to see that the truth emerges in court (see R v Riekert (supra) at 261 F-G; S v Rija and Others 1991 (2) SA 52 (E) at 67 J – 68 B). He must produce all relevant evidence to the court and ensure, as best he can, the veracity of such evidence (see S v Msane 1977 (4) SA 758 (N) at 759 A; S v N 1988 (3) SA 450 (A) at 463 E). He must state the facts dispassionately.

If he knows of a point in favour of the accused, he must bring it out (see S v Van Rensburg 1963 (2) SA 343 (N) at 343 F-G; Phato v Attorney-General, Eastern Cape and Another 1994 (2) SACR 734 (E) at 757 d). If he knows of a credible witness who can speak of facts which go to show the innocence of the accused, he must himself call that witness if the accused is unrepresented; and if represented, tender the witness to the defence."

412. The accused's counsel argue that any reasonable suspicion that the prosecutor has an interest in the outcome of the case, or has lost his or her impartiality, or is acting in bad faith will be an infringement of the accused's right to a fair trial. They add that it is the court's duty to ensure that criminal trials are conducted according to these principles.

413. Against this background reference is made to aspects of the DVD recording of the meeting of 7 January 2008. Firstly they point out that Agliotti accepted that but for one or two issues what he said in the interview was correct. They then refer to a portion of the recording where Agliotti stated "*Yah, they said: We targeted you and Selebi in the press and we had to tarnish you and make you look as bad as we could to bring down Selebi*". In his evidence in chief, Agliotti

was referred to the affidavit which he deposed to on 4 January 2008 (exhibit A23). In that affidavit he stated that he was targeted with the accused during the period March 2006 until deposing to the affidavit on their own admission by the DSO and the NPA. He stated in evidence that that was his own belief and perception. Counsel for the accused then referred to a further portion of the recording and made the submission that it is clear from that portion that the DSO manipulated the evidence by suggesting to Agliotti to make statements against the accused that were not true. If there was any manipulation of evidence it was by the DSO and not the prosecutors. It is clear on the evidence that Agliotti's first statement was prepared by his legal representatives. The second statement was approved by Agliotti's legal representatives. It is difficult to see in those circumstances how words could have been put into Agliotti's mouth. Counsel for the accused then referred to a passage in the recording where Agliotti stated that he received the money from JCI legitimately and that he paid it out on their instruction and Nassif recieved the money. It is argued that this destroys Agliotti's version that he received money as payment for services. Some of the money may well have been paid to Nassif. It is clear on the evidence that the money in the Spring Lights account was controlled by Agliotti and Flint. Counsel for the accused referred to yet

another passage in the recording where Agliotti said that members of the DSO kept on telling him to take the deal. Again the complaint lies against the DSO as opposed to the prosecutors. In any event it is difficult to comprehend how Agliotti who had legal representation throughout could be intimidated.

414. None of the aforegoing, taken individually or cumulatively results in the conclusion that the prosecutors had acted in a manner which resulted in the accused not having a fair trial. It has already been pointed out that the state did not obtain a statement from Agliotti without the assistance of his legal representatives. The prosecutors only consulted with him two weeks before the trial. Prior to the consultation there was no meeting between Agliotti and the prosecution team without Agliotti's counsel present.

415. The accused's counsel then referred to the evidence of Mrwebi. His evidence has already been set out herein. He testified that the Khampepe Commission caused a lot of panic within the DSO. McCarthy instructed Mrwebi and other regional heads that to make an impact before the national management of the DSO makes their submission to the Khampepe Commission they should ensure that they arrest as many policemen as possible. McCarthy did not

testify during the trial. There is no reason not to accept Mrwebi's evidence, subject to the caveat that McCarthy's version in respect hereof has not been heard. This is an unfortunate statement and must be and is deprecated. It is not clear however how it impacts on the independence of the prosecutors in this trial. The Khampepe Commission was over before any steps were taken against the accused.

416. Mrwebi also testified in regard to the meeting on 25 June 2007 of the top management of the DSO which was convened after the African National Congress's policy conference on 18 July 2007. What occurred at that meeting has already been set out fully herein. According to Mrewbi it was stated at the meeting that the project bad guys (which referred to the accused) was very important for the DSO and that it actually meant life or death for the DSO. Discussion ensued in regard to strategies to maintain the separate existence of the DSO.

417. Reference was also made to the evidence of Mokotedi which has been fully set out above. The accused's counsel submit that the significance of Mokotedi's evidence is the fact that there was unlawful conduct by senior members of the DSO relating to their dealing with the secret fund used for payment of informers (the C-Fund).

418. All that has occurred in regard to Mokotedi's evidence is that one senior member of the DSO, one Ledwaba, has been prosecuted in regard to this. His trial is still pending. No other prosecutions have been instituted. At the beginning of 2005 the accused stated at a meeting that he was about to arrest senior DSO members because of their abuse of the C-fund. It is suggested that the letter dated 24 January 2006 which was written by Advocate de Beer was the reaction thereto. It has already been indicated that there is no basis for this suggestion.

419. In the result it cannot be held that there was anything improper about the conduct of the prosecutors in this matter. The words of Harms DP in National Director of Public Prosecution v King [2010] ZASCA 8 (8 MARCH 2010) bare repetition: {[5] ....*Courts should further be aware that persons facing serious charges – and especially minimum sentences.... One can add the tendency of such accused instead of confronting the charge, of attacking the prosecution."*

420. In any event the accused would not only have to establish an infringement of his right to a fair trial, but also that the infringement was of such a nature that he did not have a

fair trial. Assuming, without so finding, for present purposes, that the accused's right to a fair trial was infringed, it has not been established that the infringement was of such a nature that the accused did not have a fair trial.

421. After having considered the accused's contentions in regard to a fair trial, it is apposite to mention certain issues. First at the end of August 2007 the decision was taken to prosecute the accused. A warrant for the arrest of the accused and a search warrant in respect of the accused's home and offices were applied for and granted. Thereafter Pikoli was suspended. Mpshe was appointed to succeed Pikoli in an acting capacity. On application the warrant of arrest was cancelled and, after an unsuccessful application for the cancellation of the search warrant, the search warrant was not utilised. These issues were all referred to in the evidence. The reason for this conduct was not established nor is it the task of this court to determine the reason. Suffice it to say, without so finding, and it is stressed without so finding, that interference with the prosecution process finds no place in our democracy. Second, there appears to have been a flurry of activity after the review team appointed by Mpshe made its decision known to proceed with the prosecution of the accused. This

included the preparation of the affidavit of 4 January 2008, the meeting at the Balalaika Hotel that night at which Manzini and Fraser of the NIA and Mphego of SAPS were present and the meeting at the Villa Via hotel on 7 January 2008 with Mphego which was recorded. It would appear that it is more than coincidence that this activity occurred after the review committee's decision was made known and would appear to be designed to have an impact on the prosecution of the accused. This conclusion is reinforced by the fact that the affidavit deposed to by Agliotti on 4 January 2008 was faxed to the offices of the accused's legal representatives on 5 January 2008 and utilised in the urgent application of the accused that was brought on 8 January 2008. The reason for this flurry of conduct was not determined nor is it the task of this court to determine it. Suffice it to say, without so finding, and it is stressed without so finding, the activity appears to have been designed to assist the accused and in making available the affidavit did assist the accused. If that is indeed so and in so far as a member of SAPS and another government agency were involved therein it is to be deprecated. Third, on 8 January 2008 the lead prosecutor was arrested. A week later the case was withdrawn and has not been reinstated. Save for the fact that the arrest did not relate to the C-fund and that according to Mokotedi the SAPS are

still investigating the matter, no additional evidence was placed before the court in regard to this arrest. It would not be correct to comment on the arrest, other than to note its timing and to express the hope, perhaps a forlorn hope, that the arrest was not designed to embarrass the prosecution. It should also be noted that some one and a half years have passed since the arrest of the prosecutor and the investigation is still not completed. Fourth, the affidavit which Mrwebi deposed to as part of a top secret investigation became an annexure to the application brought by the accused. Mrwebi was unable to advance an explanation for this. Suffice it to say that someone who was in receipt of the affidavit which Mrwebi regarded as top secret made it available to the accused.

422. In the result having considered all the evidence and the arguments advanced by counsel for the state and the accused the accused is found guilty of corruption in contravening s 4(1) (a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

423. As far as count two is concerned it is argued by the state that the sharing of exhibit A6 by the accused with Agliotti, the accused's conduct in regard to the Kya Sands matter

and the showing of the NIE to the accused constitutes defeating or obstructing the ends of justice.

424. As far as the sharing of exhibit A6 and the NIE is concerned, they represent some of the benefit which Agliotti received by reason of his corrupt relationship with the accused. A conviction of defeating or obstructing the ends of justice in respect thereof would amount to duplication of convictions. See in this regard S v Radebe 2006 (2) SACR 604 (O) and S v Pokone 2008 (1) SACR 518 SCA.

425. As far as Kya Sands is concerned it is argued on behalf of the state that the accused's conduct in allowing a distortion of the facts had the effect that the SAPS not only paid an exorbitant reward to Stemmet but also lead to false information being provided to motivate Stemmet's claim. It is argued that it is clear from the motivation that SAPS was not in possession of the true facts but that the accused was.

426. Accepting the facts postulated by the state it is not apparent how such conduct constitutes defeating or obstructing the ends of justice. Obstructing the ends of justice takes place when the proceedings are impeded or

interfered with. In regard to Kya Sands there were no proceedings that could be impeded or interfered with.

427. In the result the accused is found not guilty on count two.

428. In summary:

428.1 The accused is found guilty of corruption in contravening s 4(1) (a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

428.2 The accused is found not guilty on count 2.