S v SHAIK AND OTHERS 2007 (1) SACR 142 (D)

Citation	2007 (1) SACR 142 (D)
Case No	CC27/2004
Court	Durban and Coast Local Division
Judge	Squires J
Heard	May 31, 2005; June 1, 2005 and June 2, 2005
Judgment	June 8, 2005
Counsel	W J Downer SC (with him G H Penzhorn SC, A Steynburg and S Manilall) for the State F van Zyl SC for accused 1 - 10 and 12. H K Naidu SC for accused 11.
Annotations	Link to Case Annotations

D

Flynote : Sleutelwoorde

Corruption - Contravention of s 1(1)*(a)* of Corruption Act 94 of 1992 E - Elements of offence under s 1(1)*(a)*(i) and (ii) set out - Giving of a benefit is corrupt when it is done with intention of influencing recipient of benefit to perform or disregard his duty - What is penalised under s 1(1)*(a)*(i) is giving or offering of benefit with intention of influencing F recipient to commit or omit to do 'any act in relation to such power or duty' - Such the position even if it is not function of recipient to achieve desired result or such result falls outside his duty - Under s 1(1)*(a)*(ii) giving of benefit is corrupt if it is given as reward for duty done or not done to advantage of donor - Giving of benefit or offer to give it must be G unlawful, ie it is of a nature not sanctioned by society's perception of what is just or acceptably proper.

Evidence - Admissibility - Hearsay evidence - Exceptions to hearsay rule - Document constituting executive declaration in carrying out of unlawful conspiracy - Document admitted into evidence as vicarious liability statement where charge brought against co-conspirator or in support of H conspiracy to commit offence.

Corruption - Sentence - Accused convicted on two counts of contravention of s 1(1)*(a)* of Corruption Act 94 of 1992 - Accused making payments to, and arranging bribe for, prominent politician in return for exercise of politician's influence in favour of accused's businesses - Corruption like I cancer, eating away remorselessly at fabric of corporate probity; if not checked, would become systemic, corroding confidence in integrity of anyone who had public duty to discharge and leading unavoidably to disaffected populace - Corruption violating human rights of people who experience it and causing estrangement from political process - Pervasive and insidious evil, and interests of democratic people and their government J

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requiring its rigorous suppression - Axiomatic that the higher the status of A the beneficiary of corruption, the more serious the offence - Accused pursuing corrupt payments with single-minded purpose - Corrupt agreement aimed at intensifying corrupt activity at highest level of government - Accordingly no substantial and compelling reason not to impose minimum sentence prescribed in Criminal Law Amendment Act 105 of 1997. B

Headnote : Kopnota

The Corruption Act 94 of 1992 repeals both the common law of bribery and the Prevention of Corruption Act 6 of 1958 and replaces them with a provision intended to penalise corruption in the widest sense and in all its forms. To constitute the offence under subpara (i) of s 1*(a)* of the Act, as the language C now used indicates, there must be, first, a giving of or an offer or agreement to give; secondly, a benefit that is not legally due; thirdly, to a person who is vested with the carrying out of any duty, by virtue of his holding of an office or by reason of his employment or in his capacity as an agent or by any law; fourthly, with the intention of influencing that person to do an act or omit to do some act in the performance of that duty; fifthly, that the giving D or offer of such benefit was done corruptly and therefore unlawfully; and, finally, that it was done intentionally, but that is really part of being done corruptly. Under subpara (ii) of the subsection, the giving of such benefit is corrupt if it is given after the person charged with the duty has committed or omitted the act that constitutes the misuse or neglect of such duty as a reward for so doing. The giving of a benefit is corrupt when it is done with E the intention of influencing the recipient of the benefit to perform or disregard his duty, so as to give the donor of the benefit an unfair advantage over others or as a reward for having done so before the benefit is given. If the recipient accepts such benefit for that reason, then the donor commits an offence under subpara (ii) of s 1(*a*) of the Act. That is the difference between 'future' and 'past' corruption. (At 156e - i.) F

As far as the corruptor is concerned, what is penalised under subpara (i) of s (1)*(a)* is the giving or offering of a benefit with the intention of influencing the recipient to commit or omit to do 'any act in relation to such power or duty'. So even if it is not, in truth, the function of that recipient to achieve the desired result or that result in fact falls outside his actual duty, but who is even mistakenly seen by the corruptor as a means of G achieving that corrupt result, then the offeror nevertheless commits an offence. As long as the corruptor sees the recipient of a benefit as the means to achieving a corrupt result, then that offeror commits the offence. Under subpara (ii) the giving of the benefit is corrupt if it is given as a reward for duty done or not done to the advantage of the donor. (At 157j - 158b.)

It needs to be made clear that such giving is done corruptly if it is done with the H intention of persuading or influencing the recipient to act other than in impartial or proper discharge of his or her prescribed duties to the advantage of the donor or some other indicated person. As part of this requirement, the giving of the benefit or offer to give it must be unlawful, which means it is of a nature not sanctioned by society's perception of what is just or acceptably proper, and it is this requirement that excludes from the I ambit of corruption under the Act the giving of tips as a reward for some service done well enough to deserve some recognition, or lunches or entertainment facilities for clients or customers that are a common practice among many business activities, though that may depend on the nature and extent of the benefit. (At 158b - e.)

The first accused was a businessperson, and, of his 11 co-accused, ten were J

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companies which he controlled or in which he had a major interest ('the A Nkobi group'); the 11th co-accused was a company primarily active in the armaments industry. Charges against this accused were withdrawn before plea. Three main charges, and a number of alternatives, were preferred against the first accused, and, in different combinations, against the corporate accused. The first main charge was of a contravention of s 1(1)*(a)*(i) and (ii) of the Corruption Act 94 of 1992. It was alleged that B over a period of time, from October 1995 to September 2002, the first accused, or one or other of his companies, made some 238 payments of money to a senior politician, Z, with the object of inducing Z to use his name or political influence in favour of the first accused's businesses, or as a reward for having done so. The second main charge was one of fraud, in C that three loan accounts totalling an amount of R1 282 000 were written off the accounts of one of the Nkobi group companies on the false pretext that they were expenses incurred in a driver's licence project. The true purpose of the writing-off, it was alleged, was to extinguish the debts owed by the first, ninth and tenth accused to the fourth accused; the misrepresentation was the concealment of this fact from the shareholders and creditors of the D group and from the Receiver of Revenue. The main charge on count 3 was of a contravention of s 1(1)*(a)*(i) of the Corruption Act. It was alleged that the first appellant, acting on his own behalf and that of the corporate accused, was party to an agreement in terms of which a French arms company would pay R500 000 a year to Z, in return for which Z would shield that company from an inquiry being conducted into aspects of the E government's arms acquisition programme ('the arms deal'), and would thereafter promote the company's business interests in South Africa.

Count 1

There was little, if any, dispute about the actual payments made to, or for the benefit of, Z, although some of the payments, according to the accused, F were in fact contributions to the political party of which Z was an office-bearer. For the rest, the defence contended that the payments were made for altruistic reasons and that Z had insisted that they would be repaid. To

this end two acknowledgments of debt had been drawn up in March 1998. Furthermore, it was contended, no assistance had been gained by the accused from Z as a result of these payments. The main G question that arose for determination, therefore, was whether or not the payments to Z had been made with the intention of influencing him to use the weight of his political offices to protect or further the business interests of the accused. The question contained three subissues: first, whether the sums involved were loans, as the accused claimed, or payments for Z's H goodwill, as the State alleged and, even if they were loans, whether the basis upon which they were made was not a 'benefit' in terms of the Act; secondly, if they were a benefit, whether they were given to induce Z to use his influence in favour of the accused's interests; and, thirdly, whether the intervention sought involved Z exercising his duties as a Minister in the provincial government of KwaZulu-Natal or, later, as Deputy President of the Republic. I

The evidence revealed four instances where Z had intervened to protect, assist or further the interests of the Nkobi group's business enterprises. First, after it appeared that the group would be rejected as the black economic empowerment partners of Thomson-CSF, a French arms company bidding for a contract in the arms deal (Thomson), Z had met a senior executive of Thomson in London in July 1998, a meeting arranged by the first accused. J

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A second meeting at which the Thomson executive, Z and the first accused A were among those present was held in Durban in November 1998. Shortly thereafter, the Nkobi group was reinstated by means of a share-deal as Thomson's partner. This intervention, according to the first accused, was an act of friendship by Z, and had nothing to do with the payments that had been made to him up to that point. The second instance involved an intervention on the first accused's behalf by Z with a Malaysian company B interested in a Durban property-development project. Z had met with an executive of this company and urged that the first accused be included in the project. The third instance occurred when Z signed certain letters indicating his approval of a tourism-development project and suggesting to the initiator of the project that he take on the Nkobi group as his local partner. The fourth instance involved the first accused requesting Z to C arrange a meeting between the then Minister of Safety and Security and a British businessperson, S. The first accused was pursuing a potential partnership with S in the field of vehicle-fleet outsourcing. The access arranged by Z was not something that an unconnected businessperson could expect to achieve. These four episodes showed both the first accused's readiness to turn to Z for help in his business affairs, and Z's D willingness to give it.

While the evidence plainly showed that Z was prepared to intervene on behalf of the Nkobi group's interests, the essential issue was whether or not a causal link existed between the first E accused's admitted payments to Z and these interventions. Were these interventions the result intended by the first accused when he made the payments? The first accused's version was that the payments were made out of friendship. However, while his assistance in managing Z's financial affairs was something that could reasonably be expected of a friend, the first accused had gone much further. He had made it possible for Z to continue living beyond his means, without anyone else knowing the *quid pro quo* he would ask for and which the evidence F established. Moreover, he had started doing this at a time when the Nkobi group could not afford it. No sane or rational businessperson would conduct business on such a basis without expecting some benefit that would make it worthwhile. Since Z could not repay money, he could satisfy the sense of obligation that the payments must have engendered in him only by providing the help of his name and political office. The first accused must G have foreseen, and by inference did foresee, that, if he made these payments, Z would respond in this way. Genuine friendship would also not have resorted to the blatant advertising of his association with Z in which the first accused indulged. Such advertising was patently aimed at attracting business partners on the basis of the political support that would be forthcoming from Z, and this clearly underlay the reason why the payments were made. (At 187c - e; 189f - h and 190b - 191j.) H

The next question to be answered was whether, as the first accused claimed, they were loans, or whether they were irrecoverable gifts. He testified himself that, until February 1998, he had not regarded them as loans. The two purported acknowledgments of debt drawn up at that time, and a loan agreement dated May 1999, were all merely for public consumption and I not reflective of a genuine obligation to repay. Furthermore, even if the payments could be regarded as loans, despite all the evidence to the contrary, the basis upon which they were made amounted unarguably to a 'benefit' within the meaning of the word in the Corruption Act. The loans were made with no date for repayment, with no interest being charged until May 1999, and without security being given. No such advantages would be J

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enjoyed by a normal borrower, and the sense of obligation from such A generosity could not fail to have the result of causing the borrower to discharge any duty incumbent upon him in favour of the lender. As to the first accused's claim that certain of the payments were in fact contributions

to Z's political party, this was plainly an afterthought designed to make his payments to Z look less than they really were. (At 195j - 196d and 199f.) B

Count 2

Since the falsity of the representations alleged, and the potential prejudice to probable readers of the financial statements in question, had been admitted, the only issue was whether or not the first appellant knew of it and was party to it. The only State witness who testified about what happened at the C meeting where the writing-off was discussed was not an impressive witness, and, had there not been corroboration for his version, the Court would not have acted upon it. However, the objective circumstances surrounding the decision were a reliable indication of where the truth lay. At that time, November 1999, the first accused knew that the Nkobi group was facing an D audit and was in a loss-making situation; and he knew that it was necessary to ensure a good set of accounts in order to secure an extension of the group's overdraft. He was also aware that he was facing a difficulty relating to his loan account with the group and the tax liability inherent therein. He had also been warned by his accounting staff to limit expenses, including the payments being made to Z. These factors, and the results achieved E by the writing-off, were a cogent corroboration for the witness's version that the first accused was party to the decision. It was so unlikely that these decisions were simply left to his accountant and auditors that the first accused's version to this effect could be disregarded. (At 201i - j; 202d - i; 205i - 206a and 212d). F

Count 3

The evidential foundation of the main charge on count three was the draft of an encrypted fax. It was not disputed that it had been written by an executive of Thomson, one T; nor was it disputed that its plain and obvious meaning was that an arrangement discussed at two previous meetings involving the G first accused, T, and a colleague of the latter, had been agreed upon at a subsequent meeting involving the first accused, T and Z. The fax, which was hearsay in the absence of testimony from T, was received into evidence as a vicarious liability statement that was admissible as an exception to the hearsay rule when a charge was brought against a co-conspirator or in H support of a conspiracy to commit an offence. In any event, it would probably have been admissible in terms of the provisions of s 3*(c)*(i) - (vii) of the Law of Evidence Amendment Act 42 of 1988. (At 213c - 214a.)

The State's contention was that the agreement set out in the fax was to the effect that Thomson would pay Z the sum of R500 000 per year for a certain period, in return for which Z would protect it from the inquiry into the I arms deal and, thereafter, promote it in future bids for government business. The first accused, on the other hand, while denying all knowledge of the fax, conceded that the gist of what it related was outwardly correct. He had attended the meetings, but what was discussed was simply the payment of a donation to an educational trust fund of which Z had been elected patron. Whether the payment was a bribe, therefore, or simply a J

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donation, could be determined by an examination of the surrounding circumstances. A

It was unusual, if not positively strange, that discussion of a donation would be hedged about with a code for acceptance, then coupled to unlawful advantages for the donor, and then left open-ended until some further contingent event occurred. It was equally strange that, if Thomson had really been asked for a donation, it would have responded in this cautious B and hesitant way. It was a wealthy company and it was no stranger to making donations to good causes. The first accused's explanation, that the French were sensitive about donations of this kind, was untenable. The tone of the first accused's letters to T also did not lend themselves to such an explanation; if they were merely reminders to deliver on the agreed donation, there was no need to have disguised them in opaque and cryptic C terms. Likewise, terse and veiled references in faxes between the first accused and T to 'issues raised' and 'matters of mutual interest' were quite incompatible with the suggestion that the writers were referring to a possible donation. This language was plainly used in order to avoid overt mention of the matter under discussion. Furthermore, there was no evidence to suggest that such a donation was ever anticipated by the D educational trust, despite its being short of funds and despite that fact that its trustees, including Z, repeatedly emphasised the need to raise funds. If Z had genuinely thought that Thomson was considering a donation to his trust, it was inconceivable that he would not himself have approached them and pursued the matter, especially since he and the executive who would have to approve the supposed donation were known to each other. For all E these reasons, the explanation advanced by the first accused - that the agreement referred to in the fax concerned a donation - was not only not reasonably possibly true, but nothing short of ridiculous. There was no doubt that the document in fact reported the conclusion of an agreement reached by the first accused and T that Thomson would pay Z R500 000 F per year in return for which Z would shield Thomson from the arms-deal inquiry and promote Thomson's future bids for government business. (At 228b - 230e and 231i - 232b.)

Accordingly, the first accused was guilty on the main charges in all three counts. Since all the accused companies had been used at one time or another to pay the sums of money to Z mentioned under the first count, they were all G guilty on the main charge in this count. Four of these companies had been used by the first accused to commit the fraud in count two, and they were therefore guilty on the main charge in that count; the remaining six companies were not guilty. Two of the accused companies were guilty of contravening s 4*(a)* and *(b)* of the Prevention of Organised Crime Act 121 of 1998, the first alternative charge under count 3. The remaining eight accused companies were not guilty on this count. H

Sentence

All three of the offences of which the first accused had been found guilty fell under Part II of Schedule 2 to the Criminal Law Amendment Act 105 of 1997; accordingly, a sentence of 15 years' imprisonment was to be imposed I on each count unless there were substantial and compelling circumstances justifying a lesser sentence. Regarding corruption, the offence in counts one and three, this phenomenon was like a cancer, eating away remorselessly at the fabric of corporate probity; if not checked, it would become systemic, corroding confidence in the integrity of anyone who had a public duty to discharge, and leading unavoidably to a disaffected populace. The evidence J

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showed that corruption constituted a violation of the human rights of A people who experience it, since it discriminated against those people who could not afford to resort to it, or who would not do so. Likewise, it caused what could be described as 'an estrangement from the political process'; citizens could conclude that it was futile to deal with government through official channels, and that, if they did so, others would pre-empt them B through bribery and the use of connections. It was plainly a pervasive and insidious evil, and the interests of a democratic people and their government required its rigorous suppression. (At 238f - 239j and 240a - e.)

The first accused had become the CEO of a small corporate empire by virtue of his vision, ambition and energy. The convictions alone would have an adverse effect on his career and both he and his companies might well be C disqualified in future from tendering for government work, his main area of economic operation. Among the aggravating factors, however, were the following: the payments had not been made to a low-salaried bureaucrat, and it was axiomatic that the higher the status of the beneficiary of corruption, the more serious was the offence; the first accused was the principal actor and had pursued the corrupt payments with single-minded D purpose; far from upholding the objects of the struggle, in which he claimed to have credentials, the whole saga represented a subversion of those objects; and the corrupt agreement in count three was aimed not only at undermining the law, but also at intensifying corrupt activity at the highest level in confident anticipation that Z might one day be President. Taking all these factors together in respect of counts one and three, it could not be E found that there were substantial and compelling reasons why the penalty directed by Parliament should not be enforced. (At 240e - f; 241e - g; 242c - h and 243b - c.)

As to count 2, while fraud in the conduct of a commercial enterprise was always a potentially serious offence, the circumstances *in casu* were not so grave as to justify the prescribed minimum sentence. No innocent party had been F cheated or deprived of the sum involved in the writing-off, and no actual prejudice had been established; nor had it been shown that it was the first accused's idea. However, it was an act that merited more than a slap on the wrist. (At 243f - 244b.)

First accused sentenced to 15 years' imprisonment on each of counts 1 and 3, and to three years' imprisonment on count 2, the latter two sentences to run G concurrently with the first. Corporate accused sentenced to fines in various amounts, the fines of those companies unable to pay being conditionally suspended.

Cases cited

S v Ndhlovu and Others 2002 (2) SACR 325 (SCA) (2002 (6) SA 305; [2002] 3 All SA 760): referred to H

S v Salzwedel and Others 1999 (2) SACR 586 (SCA) (2000 (1) SA 786; [2000] 1 All SA 229): referred to.

Legislation cited

Statutes I

The Corruption Act 94 of 1992, s 1(1)*(a)*: see J*uta's Statutes of South Africa 2003* vol 1 at 1 - 454

The Criminal Law Amendment Act 105 of 1997, Schedule 2, part II: see J*uta's Statutes of South Africa 2005/6* vol 1 at 1 - 532

The Law of Evidence Amendment Act 45 of 1988, s 3: see J*uta's Statutes of South Africa 2006* vol 1 at 1 - 690 J

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The Prevention of Organised Crime Act 121 of 1998, s 4: see J*uta's Statutes of South Africa 2006* vol 1 at 1 - 576. A

Case Information

Criminal trial on charges of corruption and fraud. The facts appear from the reasons for judgment.

W J Downer SC (with him *G H Penzhorn SC, A Steynburg* and *S Manilall*) for the State B

F van Zyl SC for accused 1 - 10 and 12.

H K Naidu SC for accused 11.

Cur adv vult.

Postea (June 2, 8). C

Judgment

Squires J:

The accused persons in this trial are Mr Schabir Shaik, who is accused No 1, and ten of the corporate entities that are part of his group of private companies. There are other companies in that group but these proceedings are not concerned with them and, of those charged, some played a noticeably more active role than others. But, whether by reason D of being the sole shareholder or only a majority shareholder in each company and whether he owned such shares directly or indirectly through another company, Schabir Shaik effectively controlled all of them.

There was originally another corporate accused in these proceedings by the name of Thint (Pty) Ltd. This company was initially called Thomson-CSF (Pty) Ltd, and was a subsidiary of another eponymous E company called Thomson-CSF Holdings (Southern Africa) (Pty) Ltd. These two companies came into existence pursuant to an agreement reached by Schabir Shaik in mid-1995 with Thomson-CSF (France), the French-based defence and electronics giant which was by then re-establishing a foothold in this country, especially in the government-driven F defence and public works sector programmes being contemplated and started after 1994. That agreement committed Thomson-CSF (France) to pursue its business in this country on a joint-venture basis with the Nkobi group of companies already established or to be established by accused No 1. On that basis was Thomson-CSF Holdings (Southern Africa) (Pty) Ltd incorporated on 27 May 1996 and in which G Thomson-CSF (France) held 85 of the 100 shares issued, Nkobi Investments (accused No 3) held ten and a Swiss-based company called Gestilac SA held the remaining five. As the name indicates, this was to be the holding company of Thomson's interests in this country, so another company was incorporated on 16 July 1996, through which its anticipated operations would be carried on, and in which Thomson-CSF H Holdings held 70% of the shares and Nkobi Investments held 30%. That was Thomson-CSF (Pty) Ltd and, by subsequent change of name, in August 2003 it became known as Thint (Pty) Ltd. Although the charges against it were withdrawn before the plea, it still plays an important role in the trial, especially in respect of count 3, in the commission of which I the State said it was a co-accused and still alleges that it was a participant in the offences charged in that count.

The accused are charged with three main counts, but in each count there are a number of lesser alternative charges. Three of these are against Schabir Shaik only, but all the rest are directed at both him and his companies. J

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SQUIRES J

The main charge on count 1 is that of contravening s 1(1)*(a)* of the A Corruption Act 94 of 1992. That is both subparas (i) and (ii) of ss *(a)*. This alleges that over the period of time from October 1995 to 30 September 2002, and taking place in or about Durban, Shaik, or one or other of his accused companies, gratuitously made some 238 separate payments of money, either directly to or for the benefit of Mr Jacob B Zuma, who held high political office throughout this period.

Initially, from 1994 to 1999, he was the Minister of Economic Affairs and Tourism in the Provincial Legislature of KwaZulu-Natal, and after June 1999 the Deputy President of the country and leader of government business in its Parliament. Besides that, and also throughout this period, C he held high office in the ruling political party, first as the National Chairman until 1997 and thereafter as its Deputy President. Over those years a total sum of R1 340 078 was so paid to Jacob Zuma,

and the State claims that this was done corruptly, the object being to influence Zuma to use his name and political influence for the benefit of Shaik's business enterprises or as an ongoing reward for having done so from D time to time.

There is a bit more to count 1 than this bald recital of the wording may indicate. All the charges in this case were preceded by a lengthy preamble which set out the main background facts upon which the charges are framed, and which is to be read with the charges. The wider picture thus E presented was widened even further by a lengthy request on behalf of the accused for further particulars to both the preamble and the charges, to which the State made an equally copious reply. From the full result of all this additional information, it emerges that the State case is not the usual corruption F charge of one payment for one act or omission in the line of the recipient's duty. It is that the payments made by the accused effectively constituted a type of retainer by which accused No 1 agreed, expressly or impliedly, to pay these many expenses over this period to Zuma or for his benefit or to make cash payments to him as and when he needed such financial help, while he, in return, would render such assistance as he could to further the accused's interests, as and when G asked. It is not alleged that there was any particular payment for any particular act or omission of duty. It is the same kind of activity that is penalised by the Act but carried out in this particular way in this case. That must be an offence under the Act, otherwise it would be too easy to avoid its provisions. H

Secondly, it is clear that the acts or omissions attributed to Jacob Zuma in this charge are alleged to be those inherent in his offices of Minister of Economic Affairs and Tourism in the KwaZulu-Natal Legislature over the first period covered by the charge, that is from October 1995 to mid-1999, and thereafter as Deputy President of the I national government and leader of government business in Parliament. This aspect assumed some importance in the hearing because Mr *Downer* sought to urge the argument that the ambit of Zuma's duties and powers should be interpreted as including such acts as he carried out on behalf of the accused's interests as deputy president of the ANC before he became Deputy President of the national government and while he J

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was still a member of the Executive Council of the KwaZulu-Natal Legislature. A

That cannot be accepted for two reasons. In the first place, it is not alleged in the charge that the accused's intention in giving the alleged benefits to Zuma was to influence him in the discharge of any duties he may have as deputy president of the ANC. But, secondly, whatever those B powers or duties are, if any, they are not a power that is 'conferred by law', as the Corruption Act requires, or held in any other office of the State that is created by law. If the tenure of that office did impose a duty or range of duties on the holder to act in the public interest, and that was stated in the charge, then it could fall into the Act if a bribe was paid to the holder who discharged such duties or failed to do so to the benefit C of anyone who was offering the payment. But that is not the case here, and such acts as the evidence shows might have been carried out by Jacob Zuma solely in his capacity as deputy president of the ANC would not be covered by the charge.

Mr *Van Zyl*, on the other hand, as I understood him, sought to argue, D in identifying the ambit of the charge, that the acts that Zuma was allegedly intended to commit or omit to do in respect of the payments in the schedule included those listed in para 11 of the State's reply to the accused's request for further particulars. That meant that the case was that Zuma breached his ministerial duties by 'allowing' Schabir Shaik to do various things, like advertise his relationship with Zuma and use the E title of 'financial advisor' to Zuma in brochures and correspondence, when there was no evidence that Zuma even knew this was being done, let alone allowed it to happen.

That seems to me to be a misconception, for I do not think the charge, as amplified, reads that way. The emphasis is not on what Zuma allowed F in breach of any duty, it is on what the accused intended he, Shaik, would achieve, in making the payments he did, and one of which intended results was to advertise this connection.

Then, as a first alternative to this charge, if a corrupt motive for these payments is not established, then Schabir Shaik himself is charged with contravening s 424(3) of the Companies Act 61 of 1973, in that, by G making the payments he caused to be made to Zuma through his companies and, as the controlling mind of those companies, he carried on their business recklessly or with the intention of defrauding their creditors. That follows, says the State, because it was not the business of any of these companies to pay or even lend money to politicians, H particularly when those companies were chronically in a situation of cash shortage and unable to

pay ordinary creditors, effectively borrowing money from the banks to make these payments to Zuma and making them interest-free.

Then, in the event that the carrying on of the business in this way is I not regarded as reckless or to the loss of creditors, there is a second alternative charge to count 1, in the shape of a contravention of s 226(1)*(a)*(i) of the Companies Act, which section forbids the making of loans by a company to a director without the prior consent of all the shareholders of the company, or in terms of a special resolution authorising such loans. In addition, he is charged with contravening J

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SQUIRES J

s 226(4)*(b)* of that Act, a corollary of s 226(1)*(a)* and which forbids A a director from being a party to the acceptance of such a loan.

It is the State's case that many, if not all, of the payments to Zuma, though from the funds of one or other of his companies, were appropriated and used by Shaik in order to pass on to Zuma and reflected thereafter as a loan to Shaik in the company's books. B

Then the second main charge is one of fraud, and it arises out of the framing and signing of the annual financial statements of the accused group of companies for the financial year ending 28 February 1999. It is alleged that in the audit process carried on for that year, which produced these financial statements and which audit took place in late November C 1999, three loan accounts in the accounting books of accused No 4, Kobifin (Pty) Ltd, which were reflected in the names of accused No 9, accused No 10 and accused No 1, respectively, and which, in Shaik's case also included his director's remuneration and a loan indebtedness to Proconsult (Pty) Ltd, which is accused No 6, in a total amount of R1 282 000, were written off such accounts, and that was done on the D false pretext that they were expenses incurred in the setting up of the polyester driver's licence card contract with the Department of Transport, known as the Prodiba project. That misrepresentation concealed the true nature of the writing-off of these loan accounts, which was E to extinguish the debts owed by those three persons to Kobifin, which debts included R268 775,69 of the money paid to or on behalf of Jacob Zuma up to that year, month and day, and the action concealed that fact from shareholders, from creditors of the group, including the bank that provided the overdraft facilities, and from the Receiver of Revenue.

To this main charge there are also a number of alternative charges. The first alternative is one of theft levelled against accused No 1, Schabir F Shaik, only, in that if there was no fraud proved in the facts established by the main count then, by writing off his debt owed to Kobifin (Pty) Ltd, he effectively stole that sum of money from that company.

The second alternative consists of three separate counts. First, it is said that by framing the false accounts in this misleading way and G ostensibly reducing the amount of Shaik's remuneration, the accused did so, among other objectives, to evade assessment or tax in contravention of s 104(1)*(c)* of the Income Tax Act 58 of 1962. Secondly, they are charged with not keeping accounting records that were necessary to fairly present the state of affairs of the business of these companies, in contravention of s 284(4)*(a)* of the Companies Act, as read with the H penalty sections of that Act. This is charged because, it is said, the accounting records so prepared did not reveal, as they should have done, that this written-off amount had the effect of extinguishing the debts owed to Kobifin by accused No 1, by Clegton Investments (Pty) Ltd and Floryn Investments (Pty) Ltd, and which included all the payments made to Zuma from those accounts up to then. I

As a third and final alternative to this count, the State alleges that, in contravention of s 250(1) of the Companies Act, accused No 1 only, as a director of these companies, falsified or made those false entries with intent to defraud or deceive in the books of account or financial statements of the companies. J

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Then, finally, as the main charge on count 3, there is a further A allegation of corruption, this one in contravention of s 1(1)*(a)*(i) only, of the Corruption Act. That arises from the following circumstances. As a consequence of the revelations by Miss Patricia de Lille in Parliament on 9 September 1999 about allegations of corruption during the process of bidding for contracts in the government B arms-acquisition programme and her moving of a notice of motion in Parliament for the appointment of a judicial commission of inquiry to investigate these allegations, there were an increasing number of calls in the media for a public inquiry into the matter, eventually

including resort to the Special Investigation Unit of Judge Heath. That was reinforced by the Minister of Defence agreeing C on 28 September 1999 that the normal review of such an acquisition exercise carried out by the Auditor-General's department would in this instance be regarded as one of high risk, which meant particular attention would be paid in the audit process to the way in which agreements or bidding awards were reached and contracts concluded.

The State alleges that on 30 September 1999, and at Durban, accused D No 1, acting for himself and all the presently charged companies, met the local director of the Thomson-CSF South African companies, one Alain Thétard. At this meeting the suggestion was made, either by Shaik or by Thétard, that, in return for the payment by Thomson to Zuma of R500 000 a year until another suitable source of revenue became E available in the form of dividends from ADS, a situation that is dealt with later, Zuma would shield Thomson from the anticipated inquiry and thereafter support and promote Thomson's business interests in this country. Whoever made this suggestion, the State claims that the proposal so discussed was then put by Thétard on a visit to the Paris head office of the Thomson group on 10 November 1999 to the director F for Africa and Thétard's superior, one Jean-Paul Perrier, and approved by him. Then, to set the seal on the matter at a further meeting, again in Durban, on 11 March 2000, and this time between accused No 1, Thétard and Jacob Zuma, Jacob Zuma confirmed his acceptance of the proposal to Thétard, who thereafter, on 17 March 2000, sent a telefax G message to his superiors in Paris from the local Thomson office in Pretoria, advising them that the proposal was confirmed and accepted.

Then there are two alternative charges to count 3 as well, both alleging contraventions of the Prevention of Organised Crime Act 121 of 1998, and both stemming from the alleged requested payment of R1 million to H Zuma, but arising out of the method by which such payment was to be made.

The first such alternative is an alleged contravention of s 4*(a)* and 4*(b)* of that Act, in that, knowing that payment of these sums of R500 000 was unlawful, the accused, including the erstwhile accused No 11, entered into an agreement called a service-provider agreement, which I had, or was likely to have, the effect of concealing or disguising the nature and disposition of those payments and thereafter caused accused No 5, Kobitech (Pty) Ltd, to pay some entity called Development Africa an amount of R250 000 and to issue three postdated cheques for R750 000, all for the benefit of Jacob Zuma in discharging his obligation J

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to pay Development Africa for the building of his rural home at Nkandla, A the total sum being R1 million.

As a second alternative to count 3, the accused are charged with contravening s 6*(a)*, *(b)* or *(c)* of the same Act, in that, knowing the R500 000 a year payable by Thomson-CSF to Zuma was the proceeds of unlawful activities, the accused, particularly accused No 1, accused No 5 B and thereafter accused No 4, had the first payment of R500 000 in their possession during that period.

The accused's answer to all these charges is not simply a bare denial. The commission of any of the offences alleged is certainly disputed but there is a considerable measure of acceptance of many of the objective C facts that form the bases of the State case. What is put clearly in contention are specific instances of conflicting evidence and the inferences that the prosecution seeks to draw from those objective facts.

So far as count 1 is concerned, for example, there is very little, if any, dispute over the actual payments made over the period alleged, by the various accused, to or for the benefit of Jacob Zuma. All but a small D number were admitted. Some were explained as being misunderstood and two categories of others as being contributions to the ANC, and not payments to or for Zuma. But it was the accused's case that, of those that were so paid to or for Jacob Zuma, they were paid for altruistic motives and accepted by Zuma only on the basis that they would be repaid, a E condition reluctantly agreed to by Schabir Shaik, and it was for this reason that two acknowledgments of debt were drawn up on or about 5 March 1998, in the sums of R200 000 and R140 000, respectively. Subsequently both such acknowledgments of debt and all the amounts advanced up till then paid to Zuma or paid for his benefit were later replaced by a revolving interest-bearing loan of R2 million, repayable F after five years from the date appearing on the face of the agreement, which is 16 May 1999. Nor is it disputed that, on one occasion at least, in 1998, Zuma was asked by Shaik, or might even himself have taken the initiative, to try and restore the interest of the Nkobi group to the benefit of the profits that ADS would earn from the design, supply and G installation of the munitions suite of the new corvettes for the Navy in circumstances that are dealt with later. But this was done quite openly and on notice to the then

President of the ANC, Zuma being the deputy president of that body, and 'on the basis of friendship', not financial reward. But, apart from that, it is denied that in fact any assistance was gained from Jacob Zuma as a result of these payments. On the contrary, H of all the contracts for which an Nkobi company tendered in KwaZulu-Natal during the period of Zuma's tenure of office on the Executive Council of that province, only one was awarded, and that was not by Zuma's Ministry of Economic Affairs and Tourism.

Nor was there any substance in the alternative charges under the I Companies Act. Accused No 1 said that he had instructed the accounting department in the head office of the Nkobi group of companies to keep a full record of all payments made to or on behalf of Zuma on company accounts, as well as his own personal account, and to debit such payments made from any company account against his own loan account. J

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Then, in answer to count 2, the accused accepted both the incorrect A nature of the several relevant journal entries and the false explanation of them given in the annual financial statements for the year ended 28 February 1999, on which the State relies as the *actus reus* for this charge. But Shaik says that this was done on the initiative of the auditors and his accountant, who prepared the statements without his knowledge B of their wrongfulness or that the effect would be possibly unlawful. When this was made known to him some two years later, and on taking legal advice about the matter, he authorised the reversal of all these incorrect entries and the rectification of this fundamental error. He had no intention whatever of defrauding anyone and did not authorise the keeping or maintaining of C false books of account or the falsification of any records of his companies.

Then, in answer to count 3, the response of the accused is in two parts. First, while the several meetings between the identified persons alleged in the charge did take place on the days alleged by the State, save that 11 March was moved to 10 March, these were held to discuss the making of a donation to the KwaZulu-Natal Jacob Zuma Education Trust. D Secondly, while the factual existence of the service-provider agreement is not disputed, the amount of remuneration for the service in question was only R500 000, payable in two instalments, and not R1 million, as alleged by the State. Thomson-CSF International (Mauritius), a subsidiary of the Paris parent, only made one such payment and then E eventually terminated the agreement.

Such other money as was also paid to the Development Africa entity came from a different internal, and entirely legitimate, source, being part of a donation of R2 million from the former President of the country, made on 16 October 2000, and intended for two benevolent-fund F purposes. Half of that amount was to be devoted to the KwaZulu-Natal Government Jacob Zuma Education Trust, and which amount was so paid on 17 October 2000. The balance of R900 000 of the other R1 million, which was actually intended for the benefit of traditional leaders in KwaZulu-Natal, was transferred from Zuma's bank account by accused No 1, as Zuma's appointed financial adviser and acting under a G general authority to move such moneys, to the account of accused No 10 at a time when accused No 1 had no knowledge of any other such destination. It was only R900 000 because R100 000 had been automatically deducted by the bank in reduction of Zuma's overdraft. But once Shaik found out that there was such an entity called Development H Africa and that its existence was for the benefit of traditional leaders in KwaZulu-Natal and the Zulu Royal Household, he had what was needed of the funds transferred from accused No 10 to Development Africa Trust, where it was used for that intended purpose. There was nothing illegal about either source of such money and the single payment made I under the service-provider agreement had nothing whatever to do with an alleged scheme to disguise any bribe for Zuma from the Thomson group. It was the first payment under the service-provider agreement that I have referred to. For the same essential reasons, there was no contravention of s 4(1) or (2) of the Prevention of Organised Crime Act 121 of 1998. The R250 000 admittedly received from Thomson-CSF J

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International Ltd in Mauritius was not the proceeds of any unlawful A activity and neither the service-provider agreement nor Jacob Zuma's Nkandla Development were transactions likely to have the effect of disguising the nature or disposition of this money or enabling anyone to avoid prosecution. Nor was possession of the sum of R250 000, nor any part of the R2 million received from the former President, a contravention B of s 6*(a)* or *(b)* or *(c)* of the Act, because none of these sums was the proceeds of any unlawful activity of any other person.

Now, from that recital of the several charges and the accused's answers to them, what then are the issues that fall to be decided? Before embarking on consideration of the issues and the facts relevant to them, C particularly as they arise in counts 1 and 3, it may be convenient to set out the nature and extent of what is regarded as corruption in breach of Act 94 of 1992. In the common law what is now called corruption was called bribery but, because of its historical origins, it was only applied to the offence as committed by or in respect of State officials. As it became increasingly obvious over time that the same lack of morality could take D place in the private commercial sector, and to obviate difficulty in deciding whether an offender was a State official or not, the common law was extended by a succession of statutory enactments, the last of which was the Prevention of Corruption Act 6 of 1958, which was also amended from time to time. These created a separate statutory offence to cover those offences E of bribery that were not related to a State official.

The Corruption Act 94 of 1992, under which the accused are presently arraigned, repeals both the common law of bribery and the 1958 Prevention of Corruption Act and replaces them with a provision intended to penalise corruption in the widest sense and in all its forms. To constitute the offence under subpara (i) of s 1*(a)* of the Act, as the F language now used indicates, there must be, first, a giving of or an offer or agreement to give; secondly, a benefit that is not legally due; thirdly, to a person who is vested with the carrying out of any duty, by virtue of his holding of an office or by reason of his employment or in his capacity as an agent or by any law; fourthly, with the intention of influencing that G person to do an act or omit to do some act in the performance of that duty; fifthly, that the giving or offer of such benefit was done corruptly and therefore unlawfully; and, finally, that it was done intentionally, but that is really part of being done corruptly. Under subpara (ii) of the subsection, the giving of such benefit is corrupt if it is given after the person charged with the duty has committed or omitted the act that H constitutes the misuse or neglect of such duty as a reward for so doing.

So the giving of a benefit is corrupt when it is done with the intention of influencing the recipient of the benefit to perform or disregard his duty, so as to give the donor of the benefit an unfair advantage over others or as a reward for having done so before the benefit is given. If the I recipient accepts such benefit for that reason, then the donor commits an offence under subpara (ii) of s 1(*a*) of the Act. That is the difference between 'future' and 'past' corruption.

The reason for punishing corruption in the private sector is that it subverts the principle of lawful competition and free enterprise because the corruptor may be offering the bribe to obtain preferment over some J

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competitor whose product or service is actually better than the offeror, A but who cannot or will not resort to bribery. And in the public sector it is punished because society has an interest in the transparency and integrity of public administration. It is at least the duty of State officials in the discharge of any power conferred by the State to exercise their administrative capacity as required by s 195(1) of the Constitution of the B Republic of South Africa, 1996. This provision requires, among others, that these duties be provided 'impartially, fairly, equitably and without bias'. The conditions on which they hold their particular office may require more. But with no other such bench-mark, all would be required to discharge the duty as the Constitution requires. So when benefits are given to State officials to influence them or him or her to depart from this C level of their duty, or even to do their duty to the advantage of the donor, that would be given corruptly; and the same applies if the benefit is given subsequently as a reward for such exercised duty.

The act of giving or offering to give some benefit is largely self-explanatory. There must be some overt physical expression of the D intention to do so, usually by a statement or action to that effect. But it may also be implied by conduct, as long as the conduct is clear enough to be recognised as such a statement or offer. Nor is the benefit confined only to money. The Act says:

> '(A)ny benefit of whatever nature which is not legally due.' E

Such benefit would usually consist of actual money or money's worth, but it is clearly not limited to that. Indirect economic or patrimonial benefit such as an award of a tender or employment promotion would also be included, and the word could also include non-patrimonial benefit, such as withdrawal of a criminal charge, passing an examination F or nomination to some prestigious position or, indeed, any benefit seen by the recipient as being sufficiently valuable in his eyes to influence the exercise of whatever duty it is he has to discharge. As long as whatever is given or offered or sought is not legally due and is so given or sought, either to persuade someone to

perform a duty or not perform it to the advantage of the donor, or with the undertaking, express or implied, that G it will subsequently be so performed, then it will breach this provision.

The person in respect of whom corruption may be committed by an offeror must be:

'(A)ny person upon whom any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law. . . .' H

That is obviously a very much wider breadth of potential corruptees than a person employed by the State. Quite apart from those whose duties are prescribed by the terms of their employment, this prohibition applies to anyone, whether official of the State or not, who exercises the power derived from any law and that clearly includes a power I conferred or a duty charged under or by the supreme law itself, the Constitution.

Then so far as the corruptor is concerned, what is penalised under subpara (i) of ss (1)*(a)* is the giving or offering of a benefit with the intention of influencing the recipient to commit or omit to do 'any act in relation to such power or duty'. So even if it is not, in truth, the function J

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of that recipient to achieve the desired result or that result in fact falls A outside his actual duty, but who is even mistakenly seen by the corruptor as a means to achieving that corrupt result, then the offeror commits an offence nevertheless. As long as the corruptor sees the recipient of a benefit as the means to achieving a corrupt result, then that offeror commits the offence. Under subpara (ii) the giving of the benefit is B corrupt if it is given as a reward for duty done or not done to the advantage of the donor.

Then, finally, it remains to make clear that such giving is done corruptly if it is done with the intention of persuading or influencing the recipient to act other than in impartial or proper discharge of his or her C prescribed duties to the advantage of the donor or some other indicated person. As part of this requirement, the giving of the benefit or offer to give it must be unlawful, which means it is of a nature not sanctioned by society's perception of what is just or acceptably proper, and it is this requirement that excludes from the ambit of corruption under the Act the giving of tips as a reward for some service done well enough to D deserve some recognition, or lunches or entertainment facilities for clients or customers that are a common practice among many business activities, though that may depend on the nature and extent of the benefit.

The overall dispute in count 1 is, of course, whether the payments E admittedly made to or on behalf of Jacob Zuma were made 'corruptly'. That is to say, were benefits made with the intention of influencing him to use the weight of his political offices to protect or further the business interests of the accused? This contains at least these subissues: first, whether these sums were loans, as the accused claims, or simply payments for Zuma's goodwill, as the State alleges, and included in this F is the further question that, even if these were loans, the basis on which they were made was still not 'a benefit' in terms of the Corruption Act. Then, secondly, if they were a benefit, whether they were so given to influence Zuma to use his political status to protect or further the accused's interests during the course of these payments; and, thirdly, G whether the intervention sought would involve the exercise of his duties as a Minister of the Provincial Government in KwaZulu-Natal or as Deputy President of the country and leader of government business in Parliament.

If that is not proved, then the issue in terms of the first alternative H charge to count 1 is whether it can be said that continuing to pay Zuma the amounts that were so paid over the period in question was a reckless way of carrying on the business of the accused companies and whether such recklessness would be to the prejudice of their creditors, especially when the Nkobi group was invariably short of cash and could not survive economically without bank assistance. I

Then if, in turn, that is not proved, the issue is whether the loans admittedly made to accused No 1 by one or other of his companies were properly authorised by the directors or shareholders of the company that did so.

Turning next to count 2 in the main charge, the only remaining issue is whether accused No 1 was a party to the false journal entries and the J

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plan to write off the three identified loan accounts against the upwardly A revalued assets and the representation that the loans being so written off were costs incurred in the development of the Prodiba polyester driver's licence project. In regard to count 2, the three alternative counts

also depend on the State establishing that accused No 1 was aware of what the auditors planned to do in effecting their recreated journal entries. B

In count 3, and in respect of the main charge, the issues are, first, whether there was any such agreement sought from or made by Thomson to pay Zuma R500 000 a year, until the anticipated funds from ADS became available, to use his influence to protect Thomson's interests in any public investigation into the alleged misconduct charged to Thomson in the evaluation process of the arms-acquisition package C and thereafter in the quest for more government business, or whether the subject of the discussion at these various meetings was the making of a donation. Secondly, related to that is the question of whether the service- provider agreement entered into was a device or disguise to conceal the true nature of the payments then intended to flow to Zuma through one or other of the Nkobi companies. D

The accused's case is that this was a genuine agreement of a kind typically used by Thomson for providing information regarding development prospects and possibilities, on which the government of the country of the information provider might be intending to embark, and which might afford an attractive venture for Thomson's business, but E which was, unfortunately, terminated only after one payment because of Nkobi's disappointing performance in providing such information.

Insofar as the money-laundering alternative charges under the Prevention of Organised Crime Act are concerned, the issue is the nature of the payment admittedly received by the accused under this service- F provider agreement and paid over, either immediately or later, to Development Africa. There is no dispute that the R1 million of the R2 million donated by the former President Mandela to Jacob Zuma went immediately to the Jacob Zuma Education Trust, as was intended by the donor, nor that some of the balance of R900 000 eventually found its way to the welfare of traditional leaders in KwaZulu-Natal. It is the G reason for the R250 000 that came from Mauritius via accused No 5 to Development Africa that constitutes the real issue. The State says that that was the first instalment of the bribe money for Zuma that went into repayment of Development Africa for the cost of Zuma's Nkandla residence. The accused's answer is that these payments were made to the H Development Africa Trust as the donor intended, although no trust was ever formally registered at the time, once he realised its existence, because it was money due to that entity that he had inadvertently taken.

On those lines then, was battle joined. At the start of his opening address, Mr *Downer*, for the State, likened his case to Virgil's classic epic, I the *Aeneid*, as being 'A story of arms and a man'. Apart from the essential narrative of the arms-acquisition package and Shaik's indirect involvement in it, the only resemblance his case bore to the twelve books of this classical illustration was the epic proportions of the evidence he eventually led.

That evidence was given by many witnesses - over 40 in total - and J

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not all of their contributions seemed to us to be discernibly relevant. A Indeed, at times and despite attempts to contain it, the breadth of matters canvassed in the evidence had the appearance of a commission of inquiry, not only into the arms-acquisition programme but banking and bookkeeping practices and procedures, black economic empowerment policy, parliamentary procedures, and much else besides. B

Moreover, the oral evidence was reinforced by a small avalanche of documents, about 27 files of them, at least some of which were duplicated. But these were perceptibly more helpful, in that they came from many different sources and covered a long period of time and, placed in chronological sequence, often in the form of inquiry and C response, their contents produced a clearer picture of contemporary events than fallible human memory could do. In many instances they effectively constituted the dots which, when joined by the logic of cause and effect, could found a compelling, if circumstantial, conclusion. As the Eastern sage puts it, 'As today is the effect of yesterday, so also is it the cause of tomorrow.' And, of course, separate, isolated circumstances D that, in combination, point strongly to a particular conclusion can often carry more weight than direct oral explanations.

Some of the evidence, both oral and documentary, was hearsay, admissible under one or other of the statutory relaxations of the rule against the admission of hearsay evidence. We have sought not to rely on E any of this unless its admissibility was expressly accepted under s 220 of the Criminal Procedure Act 51 of 1977 or there is confirmation of it in the accused's own evidence. But the result has been over 6 000 pages of evidence, with many references to explanatory documents in which are the answers submitted by one side or the other to the issues raised by the charges and the pleas. Whether eventually relevant or not, it all gives rise F to a spread of

discussion and conclusion which unavoidably threatens the coherence of any answer and, notwithstanding the careful help of counsel, it is not impossible that some needles may have been overlooked in the haystack.

The events that gave rise to the present charges in the instant G proceedings had their genesis, for the most part, in the change of government brought about by the 1994 elections. That exercise resulted in an administration with a whole range of new philosophies and agendas designed to open the doors to new prospects in the political, economic and social fields to the many people who had previously been excluded from such participation. H

Mr Schabir Shaik was one of the expectant beneficiaries of these new opportunities. He had come to know Jacob Zuma in circumstances that are considered later, but it was through him, and in the early nineties after Zuma's return to this country, that Shaik came to assist the late Thomas Nkobi in his office as Treasurer-General of the ANC. The I vision of opening the country's economy to greater black participation in the form of economic empowerment seems to have been a primary goal of Nkobi's, and he was impressed and attracted by the programme of the Malaysian government to the same end. That programme, known as 'Bumiputera', was said to have been an insistence on a minimum share in all government-directed public companies and projects being allocated J

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to indigenous Malaysian ownership and benefit, with the ruling A political party participating directly or indirectly as a beneficiary. To see this policy at work and establish contact with his equivalents in the Malaysian political hierarchy, Nkobi made a number of visits to Malaysia during 1994 and took Shaik with him, making such visits as members of the ANC. B

As this concept looked like developing into actual government policy, Shaik was not slow to realise the potential openings and opportunities it offered to people like himself who qualified for acceptance as part of black economic empowerment, especially if, by being the necessary black economic empowerment component of a large company, whether foreign or domestic, in a bid for government work, he could obtain a C share of that work and its consequent rewards. To this end, he planned to set up a structure of companies in which, initially, he intended to include the ANC as a shareholder and, as early as June 1994, he incorporated accused Nos 9 and 10, Clegton Investments (Pty) Ltd and Floryn Investments (Pty) Ltd. With this in mind, notes recovered D from the Nkobi group offices by the National Prosecuting Authority reveal that he contemplated allocating shares in Floryn Investments (Pty) Ltd to both the ANC and Zuma. That was not carried out, most likely because of the decision subsequently taken by the government that it would not follow the Malaysian model. But the idea of a government-related interest in his well-being was evident then. E

Some of the earlier such opportunities came from contacts that Shaik had made on his visits to Malaysia, particularly with a company called Renong Berhad, which had professed a positive intention to pursue construction projects in South Africa as occasion offered. At least two of these were the proposed Hilton Hotel and the redevelopment of the F Point area in Durban, to both of which Shaik was able to introduce Renong. But that was not all because there were also instances where South African private-sector expertise was recognised as a suitable match for Malaysian company needs and Shaik was, likewise, able to provide the introductions that led to some successful commercial combinations of this nature. In late 1994 he also participated in the acquisition of G property in Rivonia in Johannesburg as the proposed site of a head office in South Africa for the Renong company.

In carrying on these activities he seems to have held himself out as acting for the ANC. Certainly, there is evidence that some of the Malaysians regarded him as such, and he himself used ANC letterheads H to arrange some of the meetings between South African and Malaysian enterprises. For all these efforts he was financially rewarded, and quite handsomely in some instances. But these rewards he kept himself and used them to fund his early companies.

Running concurrently with these developments were two other attractive possibilities for someone of Schabir Shaik's new advantages. One I was the prospect of profitable ventures in the defence sector of government spending which he confidently expected to expand, and the other was the potential to exploit that expansion which was latent in the company then called African Defence Systems (Pty) Ltd, or ADS.

The company that became ADS, and in which Shaik sought participation, J

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was originally incorporated under another name in 1967. After a A succession of changes of shareholding and changes of name, it became a division of Allied Technologies Ltd (Altech). This latter company was one of those enterprises into which enormous subsidies were poured by the previous government, in a bid to develop the South African armaments industry to meet the arms embargo placed on this country by B the United Nations. Allied Technologies Ltd, and this particular division, met the challenge sufficiently well to be regarded eventually as world class in this field and the only local electronics enterprise capable of producing the necessary combat munitions suite equipment for the proposed new warships.

Among those South Africans who knew of this expertise and capability C was Mr Schabir Shaik. If he could persuade a suitable foreign company to become involved with him and his group in acquiring an interest in or control of ADS, the prospects of profitable business in the defence industry were enormous.

At first he had in mind to approach a Malaysian company to this end. D In the facsimile letter he had received in October 1994 from Renong Berhad that was addressed to him in his capacity as 'representative of the ANC', there was an indication that the Malaysian Minister of Defence was available to meet the chairman of Advanced Technologies and Engineering (ATE), apparently an aeronautical service provider prominent E in the local field of avionics and particularly in the design and control of missile-guidance technology for use in aircraft of different kinds, and which was in contact with Shaik at the time.

But by mid-1995 he had decided that better prospects were offered by joining forces with Thomson-CSF (France), who had identified the same potential in the government defence sector even earlier than Shaik F himself.

It is clear from the evidence of Mr Pierre Moynot, who represented Thomson in this country in the early 1990s, that, if it was not already known then, it was confidently expected well before the government white paper on defence was put before Parliament in 1996, that an G extensive upgrading of this country's defence capabilities would be needed sooner rather than later because a great deal of the equipment of the Defence Force was by then already obsolete or likely to become so soon. Nor was it only warships, surface and submarine, that would be needed, as Moynot had realised by 1993, but, as the white paper subsequently indicated, also aircraft, both fixed-wing and helicopter, and H a battle tank, none of which could be made in South Africa and would have to be obtained from a foreign source.

Indeed it seems that, as early as 1995, the government had selected a Spanish shipyard as being suitable for the building of its required corvettes, but that came to nothing because it was realised that there had I first to be a white paper on the subject to be laid before Parliament and, while Thomson itself did not build ships, its electronics industry could, and wanted to, supply the munitions suite of any such vessels as the new South African government wished to acquire.

It was this capacity and interest that first brought Shaik into contact with Moynot and Thomson-CSF. At a meeting between Thomson, J

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represented by Moynot, the company called ATE with whom Schabir A Shaik was already in contact, the South African branch of Plessey, and Nkobi, represented by Shaik, the topic of discussion was for these four participants to form a company that would compete against others for the combat systems of any such vessels. While Moynot could not recall the date of this meeting, it was clearly before early August 1995 because B it was out of this meeting that Moynot and Shaik discussed the question of Nkobi joining Thomson, and which eventually led, after one or two attempts, to the meeting in Paris on 9 August 1995 between Schabir Shaik and Mr Gomez, where Thomson accepted the principle of joint ventures in South African business with Shaik and Nkobi as its black economic empowerment partners. C

There then followed the incorporation in South Africa of Thomson-CSF Holdings (Southern Africa) (Pty) Ltd on 27 May 1996, in which Nkobi Investments was allocated 10% of the shares and with Schabir Shaik appointed as a director, and on 16 July 1996 the incorporation of Thomson-CSF (Pty) Ltd, in which Nkobi Investments held 30% of the D shares and Thomson-CSF Holdings 70%, and of which company Schabir Shaik was a director from its inception. The importance of repeating these facts is that when it was first mooted in 1995 that Thomson would acquire an interest in ADS and, as this development subsequently unfolded, the company that was to acquire such ADS shares as Altech would sell was Thomson-CSF (Pty) Ltd, as the local E operations company, and in which Shaik had nearly a one-third interest.

It also needs to be mentioned that in 1995, but before the meeting at which the Nkobi group joined forces with Thomson, Shaik's plans for involving the ANC in his business enterprises received something of a rebuff. The causes of this are not entirely clear but it had perceptibly F serious repercussions which bear on one of the issues in count 1. It may well have been resentment at the fact that Shaik was seen as holding himself out as acting on behalf of the ANC in his Malaysian contacts without authority, or with authority but keeping the rewards for those services to himself at a time when the ANC was facing a debt of R40 million to its bankers. G

But in a letter of 9 May 1995 from the office of the new Treasurer-General of the ANC, Thomas Nkobi having died in October 1994, the new Treasurer-General, the Reverend M A Stofile, with whom Shaik seems to have been on good terms personally, advised Shaik in his official capacity that the initiatives begun by Thomas Nkobi for the ANC and H which he, Shaik, was to lead, would not be pursued or authorised; and although Shaik had assisted in the 1994 elections, he held no position in the ANC; and finally, that Stofile's own communications with him would stop forthwith.

Shaik's explanation of this letter was that it said no more than what I had a little earlier in late 1994 or early 1995, been spelled out to him by Mr Thabo Mbeki, the then Deputy President, to the effect that, while a change in government economic policy to free-market principles meant the ANC could no longer contemplate the party or Ministers being involved in government-driven development projects, he (Schabir Shaik) was welcome to pursue such opportunities himself. That may have some J

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support in the fact that during July and August of 1995 he was writing to A the South African High Commissioner in Malaysia to thank her for her assistance and guidance during a trip to that country and requiring more meetings with the Malaysian Defence Ministry, and on 8 August 1995 he wrote to the Deputy Minister of Defence in Malaysia to thank him for having met them. B

But the tone of the letter from Stofile says more than that. Its subject is 'The ANC and your position', which suggests that something Shaik had been doing as a member of the ANC or on behalf of that organisation had been discussed, and the rest of the letter spells out the decision reached in consequence of that discussion. Its message, apart C from the writer's personal views, is certainly abrupt and even blunt, and it does not readily admit of the party's blessing for Shaik to continue his plans on his own. That may have been the effect of what is said, but it is not what the letter says. His energetic pursuit of business opportunities thereafter, as indicated by the evidence, shows that he was not unduly D fazed by the communication. Indeed, defiance of difficulties seems to be part of his character.

It is also clear that his interest in Malaysian contacts did not end then and it was by no means confined to defence sector possibilities. Apart from the Point area development and the Hilton Hotel, ecotourism in E the Province of KwaZulu-Natal, toll roads, airports and holiday resorts along the North Coast were also avenues he was keen to explore and exploit as the black economic empowerment partner of any foreign or domestic firm he could interest in doing so. Even after his agreement with Thomson, there are indications, no doubt from Shaik's suggestion, that Thomson would consider Malaysian participation in their ventures. F

One of Thomson's early such ventures, of which Nkobi Holdings and, subsequently, Kobifin (Pty) Ltd and Kobitech (Pty) Ltd were a part, was, while acting in concert with Face Technologies, which was a division of Denel, the securing of a contract driven by the Department of Transport for the production of the polyester driver's licence cards. This G came to be known as the Prodiba project, which is discussed more fully in relation to count 2.

But the most important aspects of Thomson's activities in South Africa in this trial were, first, the part it played in the bidding process for the new Navy corvettes and its eventual accommodation of Nkobi's H interests in the benefit of such bid; and, secondly, its alleged attempt with Shaik thereafter to buy Zuma's protection from any public investigation of the arms deal and his promotion of Thomson's interests in the future, which is the subject of count 3.

However, to establish how that all came about and how the State says I the influence of Zuma was invoked and applied, it is, unfortunately, necessary to set out a little of the history of the bidding process that came to be known as 'The strategic defence package programme'. This programme consisted of several exploratory and investigative stages, extending from March 1997 to November and December 1998, when the successful bids were announced, and, even beyond, to late 1999 and J

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early 2000, when, after prolonged negotiations, the final contracts were signed by Armscor. A

Starting with the defined requirements of each service arm, information was sought from the governments of several countries whose industrial capacity included the ability to produce the required needs of the white paper. From the answers received, it seems international B competition was keen and it may be of interest to note that, of the nine governments so asked, one did not reply but there were nevertheless responses from eleven countries. Three governments not so asked also submitted unsolicited information. In fact and in all, for the seven products to be acquired there were 37 would-be suppliers. C

From these applicants a short list of possible suppliers was prepared, and that list was drawn up by November 1997. These selected offers were then subjected to an extensive process of examination, analysis, discussion and provisional conclusion by successive committees in the Ministry of Defence, each one in turn examining and assessing the other's conclusions. If, after such a process, both eventually agreed on a D particular requirement and a particular possible supplier of that requirement, a further short list of these was prepared for subsequent consideration and that stage was reached by early 1998.

It was the suppliers on this list that were then sent a request for offers. That request was intended to elicit from each such possible supplier its E best and final offer for the supply of those particular equipment types so offered. Such response would constitute an irrevocable offer on which the government or its purchasing agency, Armscor, could thereafter negotiate and conclude a binding agreement. Once these offers were received, they were subjected to yet a further evaluation process. This time by a number of specialist committees, the members of which came F not only from the service arms concerned with the particular equipment, but also representatives of the Ministry of Defence, the Ministries of Trade and Industry, of Finance, Public Enterprises and even some private-sector bankers.

Each offer comprised three sections, a technical section, a section that set out the extent to which local industries could be utilised and a section G on the financing of the project that was offered, so they required an equivalent spread of expertise to assess and evaluate their work. That process was done against predetermined value systems with marks being awarded as the details of each offer met or did not meet the specified requirements, and from each such exercise would emerge the offeror H with the best score. Adding up the scores of the different evaluation teams would determine eventually, as the highest marks indicated, who would be the preferred bidder for each product type, and that process took place from May to July 1998.

Nor was that the end of the selection process. The preferred suppliers I who emerged from this winnowing reduction were again closely examined by the two specialist committees in the Ministry of Defence. Their conclusions were then submitted to a special *ad hoc* subcommittee of the Cabinet, consisting of the Minister of Defence and his Deputy, the Ministers of Public Enterprises, of Trade and Industry, and of Finance, and presided over by the Deputy President. That milestone was reached J

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in August 1998. This Cabinet subcommittee then reported its conclusions A and recommendations to the full Cabinet, which made the final decision on the preferred bidders, which decision was announced on 18 November 1999.

But central to this whole exercise, managing and driving it and privy to every bid, reaction, debate and response was Mr Chippy Shaik, the B brother of accused No 1, who held an important office in the Ministry of Defence. And another person whose presence and activities during this whole process were noted by the French observer was Mr Jacob Zuma, although officially he had nothing to do with the selection process and was not then a member of the national government. The State is quite entitled to ask what business he had to be there. C

Nor was even that the end so far as the corvette bid and Thomson's interest in it was concerned. When the German Frigate Consortium (GFC) was announced as the preferred bidder for the corvettes, it was only to provide the hull and propulsion machinery. The government, speaking for the Navy, had wanted to retain the capacity of deciding who D should supply the sort of combat suite that was required. So when bids for the corvettes were submitted they excluded that part of the vessel, except for the anticipated price that the munitions suite would cost. For that reason, after the announcement of the GFC as the preferred bidder for the corvettes, a further process was commenced to decide on the E required contents of the munitions suite or the 'black box', as Moynot called it, at the most competitive price.

In this context, although Thomson-CSF (France) had ADS to offer, since by then it had acquired control of that company, and ADS, being South African and already a supplier of some of the Navy's requirements, would have been a preferred choice for this work, the first F presentation by Thomson-CSF of what it offered to provide was not accepted because the price was too high. The GFC, which had in its bid indicated an intention to use ADS as a leading part of the combat-suite installation, was then asked to obtain prices from other possible suppliers to compare these with those of Thomson. This was done and the result G was that if the Navy was to accept Thomson's offer, it required a reduction in price.

Some anxious exchanges then took place that were finally resolved, according to Moynot, by the government being prepared to underwrite the risk of any defective performance by any of the South African subcontractors that it wanted to be used in this contract. If that were H done, Thomson was able to reduce its price by the amount of the risk provision it had factored into its original cost projections to cover this potential source of liability. Thus the munitions-suite contract was settled on 24 November 1998, when it was announced that Thomson-CSF would supply the combat suites for the corvettes, although the formal contracts were only signed about a year later. I

For anyone with an interest in the outcome, that was a very welcome achievement. By then, as is discussed later, Nkobi had been restored to the ranks of ADS beneficiaries, and in the chairman's report of the Nkobi group of companies for the financial year ending 28 February 1999 there is reference to the fact that the contract for systems J

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integration of the combat suites for the corvettes had been awarded to ADS in the sum of R450 million. A

But that reward for all Shaik's hard work and planning had very nearly been derailed, for running concurrently with the exercise of the bidding process were two other dramas that have a bearing on the dispute that is count 1. The first was this. The evidence shows that, taking place in B tandem with this prolonged process of solicitation, response and repeated scrutiny to semifinal and final selections, was a constant swirling undercurrent of lobbying and informal meetings between interested applicants and potential selectors, carried on through the medium of self-proclaimed confidantes of the persons perceived to be the ultimate decision-makers. Mr Moynot, with charming Gallic candour, said that it C was standard practice in the armaments industry to cultivate the services of such people, although the rumours or information they provided always needed careful assessment for their reliability. Moreover, he said, notwithstanding the existence of apparently impartial institutions like tender boards, the ultimate choice in competitions of this sort was always made at a political level. D

In the instant case, of course, the final choice was always going to be made at a political level because of the uniqueness of the event and the cost to which the country would be committed. But the need to meet the relevant political figures for a chance to impress on them the wisdom of selecting one's own offerings, and a need to cultivate the individuals who E claimed to facilitate such access, still remained.

The second such drama was the acquisition of ADS by Thomson-CSF (France), and the two such developments meet in the circumstances of Jacob Zuma's intervention on behalf of Schabir Shaik that is admitted by the accused. F

Although the thought of acquiring an interest in ADS had been in contemplation by Shaik and Moynot since 1995, it was not until a joint meeting of shareholders and directors of both Thomson-CSF Holdings and Thomson-CSF (Pty) Ltd on 25 August 1997 that the possibility of such an investment was formally resolved. Thereafter, on 22 September 1997 Moynot wrote a letter to Shaik, announcing that agreement in G principle had been reached with Altech for the disposal of 50% of Altech's ADS business to Thomson-CSF (Pty) Ltd at a cost of R50 million. This was to be done by an increase in, and a restructuring of, the share capital in ADS and the subsequent issue of shares to both future owners to reflect this agreement. But when this arrangement was H brought to fruition it emerged that the 50% plus one share of the increased share capital of ADS had been issued to Thomson-CSF (France) and not to Thomson-CSF (Pty) Ltd. Neither Shaik nor Nkobi had any right or interest in the parent Thomson company and were thus excluded from the anticipated rewards that a successful contract for ADS would bring. I

This change of strategy on the part of Thomson was explained thus by Mr Moynot, albeit on a basis of hearsay evidence. At some stage between November 1997, when steps had been put in train for Thomson- CSF (Pty) Ltd to acquire the ADS shares and the bidding process was under way, somebody, identified as one Youssuf Surtee, one of the J

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self-appointed facilitators of contact by interested bidders with high-level A political figures, and who acted as such during the bidding process, had put it about and actually told Thomson in Paris that both the then President and Deputy President did not like Shaik, and that if Thomson persisted in its embrace of Shaik as its black economic empowerment partner in the arms-acquisition programme, then its chances of success B for any contract in the process were poor. In fact, Moynot was led to believe that Surtee's motive in doing this was to offer himself as a black economic empowerment partner to Thomson, instead of Shaik. That may or may not be true, but that is how Moynot understood the matter.

Although this was all second- or even third-hand reports, it can be C accepted that something of the sort happened because Schabir Shaik himself confirmed it, although he did so on the basis that it was derogatory comments ascribed to Mr Mbeki only that were reported to him. These were to the effect that his claim to be a black economic empowerment participant was unacceptable because he was Indian and not an indigenous black South African, and that this was, in fact, being D repeated by Perrier, the Thomson parent head of African operations.

The dismay caused by this news was exacerbated by recollection of an earlier response by President Mandela, also reported to Shaik at the time it occurred, that a reference by Perrier in the course of a speech given at a luncheon for the President, to the effect that Thomson were keen to E re-establish themselves in South Africa and fully embraced the principle of black economic empowerment, also let fall a reference to the fact that the Nkobi group was its selected partner for this purpose. This particular comment was said to have been received with less than enthusiasm by the then President, a reaction which apparently caused Perrier some F embarrassment. That also may or may not have happened, in fact, but that is what Shaik had in mind that increased his concern.

But he said he asked Zuma, or it may have been Zuma's suggestion, that Zuma meet Perrier and explain that this criticism of him as an unsuitable black economic empowerment partner was unjustified and incorrect. That was done by letter dated 17 March 1998, from Shaik to G Perrier, which was copied to Mr Mbeki as the then President of the ANC, and which stated that it was Zuma who wanted a meeting with Perrier to discuss this looming threat to his plans for Nkobi's fortunes. That letter received no response, so a further letter on 13 May 1998, stimulated by a reminder from Zuma, was likewise addressed to Mr H Perrier. That too received no reply. But as it was anticipated that Perrier would be visiting South Africa later that year, tentative arrangements were put in train for Zuma to meet him then. Attempts by the local French representatives may have been sharpened to do so by the threat made by Shaik at a meeting of shareholders of Thomson (Pty) Ltd and I Thomson Holdings on 9 June 1998, and generated by his understandable resentment and dismay at this development, that he might take legal action to interdict the transfer of the prescribed shares in ADS to the parent Thomson-CSF company on the strength of his original shareholders' agreement with that concern.

These efforts to arrange a meeting in South Africa also came to J

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nothing because Perrier fell ill, so Shaik took the opportunity of A arranging for Zuma to meet Perrier in London at the beginning of July, at the end of an official visit by Zuma to the United Kingdom in his capacity as Minister of Tourism in KwaZulu-Natal. That meeting took place. The only participant in that encounter who gave evidence was Mr Shaik himself, and his description of what took place is that Zuma B explained the real basis on which the government and the ANC saw black economic empowerment credentials, namely, that this concept was not limited to indigenous black South Africans only but included coloured and Indian nationals as well. He said that Perrier was satisfied with this explanation and undertook that the ADS shares would be repatriated to the South African subsidiary, explaining his caution to C Shaik on the basis that, as the South African government was Thomson's only customer, the parent company had to be careful that it selected an economic empowerment partner that was acceptable to that customer.

To keep the issues in view, however, it is necessary to say at this point that this account of what happened is not consistent with Moynot's D evidence which was called on behalf of the accused, and which made it clear that right from the start of Thomson's return to the South African business scene it had read the government's requirement in respect of black economic empowerment for government contracts and proceeded on the basis that the only class of person excluded from the ambit of this E requirement was white males. So it does not sound correct to venture the explanation that all Zuma had to do was explain to Perrier that black economic

empowerment did not also include coloured and Indian nationals. Perrier would already have known that.

But whatever was discussed and accepted at this meeting, the fact is F that thereafter the French parent directors, together with Moynot, worked out a strategy whereby the shares in ADS acquired by the Thomson-CSF parent could be used to the benefit of the Nkobi group. This strategy was in place and was disclosed at a meeting on 18 November 1998 at the Nkobi offices, attended by Mr Perrier with the two local directors of the South African subsidiaries, Moynot and Thétard. G Mr Perrier was on a visit to this country to attend the biennial Defence Force exhibition of that year. But a request had been earlier made by local French officials to Shaik on 9 November 1998 to arrange for him to meet Zuma and Shaik during this visit.

Notes of the meeting on 18 November 1998 were kept by Mr Anand H Moodley, then the Nkobi legal adviser. These and the subsequent minutes prepared from them, and recovered from the Nkobi offices, show that the meeting is described only as 'Nkobi with Thomson's'. It lists the persons present as including 'JZ', which was Zuma, and the burden of the meeting was the means whereby Thomson-CSF (France) I would sell 20% of its shareholdings in ADS to Nkobi Investments, which was the equivalent of a 10% interest in ADS, doing so by restructuring the shareholding of Thomson-CSF (Pty) Ltd. The price of such acquisition and the means whereby Nkobi could pay for this interest were also tabled, as also the fact that Thomson-CSF (Pty) Ltd would acquire the remaining 50% shareholding in ADS from Altech at some J

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time in the future. At the end of all that, the French parent of Thomson A would own 50% of ADS shares and Thomson (Pty) Ltd the remaining 50%.

Shaik's evidence disputed any suggestion that the notes taken by Moodley may indicate that Zuma attended the meeting as a participant. The notes were wrong to say that. What had happened, he said, was that B to accommodate Perrier's request to meet Zuma, which was only to renew that acquaintance, having earlier discovered a common interest in a socialist form of government, Zuma had merely called in at Perrier's request, his ministerial office being close by. After some uncertainty, he said that Zuma came when the meeting was over, was introduced to those he had not already met, shared some refreshment with the people C present and then departed.

Moynot's description of events at this meeting was substantially the same, but with this slight but significant difference. Zuma did only arrive when the business of the meeting was over and tea or coffee was being served and he did partake of this, that was correct. But while doing so, D the decision that had been reached about the inclusion of Nkobi in the anticipated ADS dividend stream was explained to him, at the end of which he pronounced himself happy with the result.

Moreover, the letter from Thomson-CSF of 9 November was that a meeting be arranged for Perrier to meet both Zuma and Shaik. It would E not have been necessary to include Shaik in the desired encounter, if all Perrier wanted to do was renew his acquaintance with Zuma. It is more probable that he wanted to meet those same two individuals to explain the proposal to repatriate at least part of the ADS interest to South Africa in the shape of Thomson-CSF (Pty) Ltd. That is why an explanation of this was also made to Zuma when he arrived at the meeting. It was to F explain the way by which Perrier intended to achieve what he undertook at the London meeting of 2 July 1998. Apart from that, it is also more probable that if Perrier only wanted to meet Zuma to renew their acquaintanceship, it is Perrier, who knew of Zuma's political status, who would have gone to meet Zuma, not the other way round.

And, of course, the strategy planned by Thomson-CSF trod a careful G line between accommodating Shaik's interest in the anticipated ADS prosperity and not offending the government by having Nkobi as the black economic empowerment partner in ADS which was to be the actual member of the consortium that offered to design and supply the munitions suite. H

The government's requirement was met by Thomson's disposing of a 20% interest in ADS to FBS (Pty) Ltd, an acceptable black economic empowerment partner to the government, while Shaik's interest was met by the parent company disposing of, first a portion of, subsequently all, its shares in ADS to Thomson-CSF (Pty) Ltd. On that basis then, with I FBS accepting 20% instead of 25% plus 1 of the ADS shares which it demanded initially, the question of a suitable black economic empowerment partner for ADS and Shaik's participation in its future prosperity was settled.

Moreover, the fact that the problem was solved on this basis also makes it unlikely that the reason for Zuma's appointment with Perrier in J

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London on 2 July 1998 was simply to persuade him that the stories he A heard that Shaik was not acceptable to the ANC leadership because he was not an indigenous black South African; had that been the case, and Perrier was satisfied with that, as Shaik claimed, the difficulty could have been overcome by simply including Nkobi or Thomson-CSF (Pty) Ltd as the black economic empowerment partner for ADS, and not FBS B (Pty) Ltd. The eventual outcome and Moynot's evidence about Thomson-CSF's concern not to antagonise the South African government, its only customer in this country, suggests that Zuma's visit was about more than that.

In the event, however, and shortly thereafter, on 24 November 1998, Thomson-CSF, in the form of ADS, was declared the successful bidder C for the munitions suite of the corvettes.

That is one of Zuma's interventions to protect or assist or further the interests of Nkobi's business enterprises. This was done, the accused said, as an 'act of friendship', and nothing to do with the R343 724-odd that up to then had been paid to or on behalf of Zuma since early 1997. D That issue is addressed later, but there were three other instances of this sort of intervention put forward by the State in support of the case on count 1.

The first of these is the alleged intervention by Zuma on Shaik's behalf in the redevelopment of the Point area of Durban that had attracted the interest of Renong Berhad. The evidence of this is contained in the first E of the two affidavits of Mr David Wilson, the head of Renong's foreign operations arm, which were admitted in evidence by virtue of s 222 of the Criminal Procedure Act, as read with ss 34 and 35 of the Civil Proceedings Evidence Act 25 of 1965. In this affidavit Wilson describes his experiences in arranging a presentation of Renong's bid for the Point redevelopment contract, which was to be awarded by a body called The Point F Waterfront Company (Pty) Ltd, headed by one Mzi Khumalo.

This presentation included Renong's accommodation of the necessary black economic empowerment component which Wilson had selected from persons Khumalo said had been approved by the government, but which did not include Nkobi. This component was to be housed in 49% G of the shares of a shelf company at first called Secprop 60 (Pty) Ltd, but which later changed its name to Vulindlela (Pty) Ltd.

It is common cause that Schabir Shaik was also anxious to secure a place in the work offered by this project and he had assembled a consortium of other such enterprises, including a well-known leisure- H centre developer, to present the bid for such work. The affidavit shows, which is also common cause, that on the day before presentation of the competing bids to the Waterfront Company, Shaik invited Wilson to discuss the question of joining forces on the project. Wilson declined the invitation and made Renong's presentation to the selection committee I on the next day in competition with others, including Nkobi; but Renong was apparently accepted and thereafter was the only bidder in the field.

That was all done by October or November 1995, and that is all common cause. But delays occurred in the commencement of the work and by mid-1996 nothing had been done about embarking on the project. Wilson reported to his chairman in Malaysia that this delay was J

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due to Shaik's continued attempts to gain acceptance in the project. A Whether that was well founded or not does not matter. The fact is that that is what Wilson reported, with the result that this chairman, one Halim Saad, thought Renong should try and obtain political confirmation that Wilson's choice of black economic empowerment partners was politically acceptable. B

But at some time in early June 1996 Shaik himself visited Saad in Malaysia. Something of the purpose of this visit appears from his letter of 10 June 1996 to Saad, and which is exh QQ10, and written after his return to Durban. This shows, *inter alia*, that Shaik had not lost interest in the Point development project, despite not being selected as a bidder, C but was still seeking a basis for participation and, secondly, it shows that some arrangement had been made in terms of which Saad was to write a letter to Zuma, after which Shaik trusted that,

> '. . . given your written confirmation and our combined commitment hereof (*sic*), I would be in a position thereafter to influence and accelerate the much-awaited Point development'. D

That suggests at least a proposal that Saad write to Zuma, opening the door to Nkobi participation, but on the basis that such accommodation would be a government decision and not something for which Renong could be blamed by the already selected BEE partners. Thereafter Shaik could use his influence to activate the stationary condition of the project.

Mr Saad did, in fact, write a letter to Jacob Zuma, as Minister of E Economic Affairs and Tourism in KwaZulu-Natal, on 8 June 1996, which is exh QQ25, and which is almost certainly the letter that Shaik was urging in exh QQ10, and in it, after setting out what Shaik wanted of him on this visit, Saad sought Zuma's advice as to who Renong should accept as its BEE partner. To this letter Zuma replied by the letter which F is exh QQ11. Although that letter is dated 31 October 1996, it was obviously written before that date because the penultimate paragraph on the first page asks Saad or a senior and trusted member of his company to see Zuma about this difficulty before 2 October. That senior official was Wilson, who returned to South Africa in January 1997, having been G advised of Zuma's letter of 31 October, and armed with instructions to arrange a meeting with Zuma. He preceded his return with a note to Shaik, asking for a meeting with Shaik to discuss the Point development and other matters on 3, 4 or 5 February 1997.

Wilson says that the desired meeting with Zuma took place, arranged by Shaik, and that it took place in Shaik's apartment. He initially said H that this occurred during the last part of 1996, but in his second affidavit, after he discovered further correspondence, particularly exh QQ27, he acknowledged that this was a mistake and the meeting took place in January 1997. In the course of this encounter, according to Wilson, Zuma said he was not happy with the persons nominated to represent the I empowerment interest in the Point development and suggested that Shaik be included, stressing repeatedly that Shaik would be a good partner for the work envisaged in the project. Wilson said that while Renong had no wish to be involved in a dispute as to the selection of empowerment partners, as that was a matter for the government to decide, he would continue with the existing partners, unless formally J

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told by the government to change. So the meeting ended with no A resolution of the matter and Renong heard nothing more about it.

Thereafter, on 3 February, another meeting took place between Shaik and Wilson, at which this topic was pursued between them, but it likewise achieved no result, and shortly afterwards the South East Asia currency crisis broke and Renong put its local projects into abeyance to return to its homeland. B

All those facts are admitted, save the meeting with Zuma in Shaik's flat prior to the meeting of 3 February 1997. Shaik denies any such meeting ever took place as Wilson alleges, and the resulting issue is one of credibility, which is considered later.

The next such intervention is that reported by Professor John Lennon. C Professor Lennon was an academic from Glasgow University, but one of the new breed of academics that applied his learning to actual commercial enterprises, his field of expertise being in hotel and tourist management. In September 1998 he was part of a United Kingdom trade mission to this country in which he was to give a workshop lecture on D tourism development, with particular emphasis on training to meet the shortage of skilled labour. He had particular projects in mind for this country, one in Mpumalanga and the other in KwaZulu-Natal, where he thought local training centres may be needed, especially for the 16 years- plus age group. If these were to be established then he would need local partners to do so. E

He said that after this talk, as was not unusual, a number of the audience came up to speak to him in person. On this occasion he thought one of such listeners was Shaik, who gave him the Nkobi Holdings brochure, which is exh AA2. This claim was disputed by Shaik, but it is not at the moment necessary to decide that difference. Of more relevance F is the fact that among the audience was also Jacob Zuma, at least for part of the time. Lennon attached importance to his presence because, he said, experience made it clear that for enterprises such as the one he mooted, it was necessary to have local politicians involved and Zuma's presence indicated a political interest with a focus on tourism.

With the assistance of contacts Lennon already had in Johannesburg, G he was later able to meet Zuma. This encounter subsequently took place in Durban in Zuma's ministerial office. Lennon's object in doing so was to solicit Zuma's support for his project because he could obtain funding for his contemplated training schools from the United Kingdom British Council or the Development Bank of Southern Africa if he could show H local support and partners. He said that Zuma's reaction was keen and enthusiastic and willing to provide the letter of support that would help his application for funds, particularly from the Development Bank of Southern Africa, who had already indicated they might be so prepared to help. But for a long time after Lennon returned to the United Kingdom, no such letter was forthcoming. I

It also happened that, quite fortuitously, Lennon's disappointment at not receiving the promised letter from Zuma came to the ears of one Deva Ponnoosami, a friend of Shaik's living in England

who, while not formally an agent, regarded it as his function to steer such prospective British concerns as he knew of, wanting to do business in South Africa, J

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in Shaik's direction. Whether it was for this exercise or others as well is A not known, but in March 1999 he had submitted a claim to Nkobi for payment of \P894,54.

The resolution of Lennon's long delay appears from an e-mail document that is exh AA8 retrieved from a computer in the Nkobi offices, which explains how Ponnoosami came to Lennon's assistance. It B seems that the solution consisted of a letter drafted by Lennon of the sort he needed Zuma to sign to impress the potential funder of the proposed tourist-industry projects. That draft is the typewritten part of exh AA9, which document was recovered from the Nkobi offices. Lennon thought, correctly it seems, that he must have sent that to Ponnoosami. It has a fax note as coming from Glasgow University. It arrived at Nkobi's offices, C obviously, but it was Shaik's evidence that it came with the manuscript additions already on the face of it together with exh AA10(1). These accretions, he said, were the work of Ponnoosami. In substance, they suggest two letters to be sent by Zuma, one supporting the request by Lennon to the Development Bank for financial support and a second as D if acknowledging receipt of Lennon's earlier letters, but including a reference to the advantages to Lennon of forming a joint venture with Nkobi Holdings in the terms set out in exh AA10(1), which came with Ponnoosami's faxed letter enclosing Lennon's draft. The manuscript amendments on exhs AA10(1) and AA10(2), AA10(2) being the reverse E of AA10(1), are Shaik's contribution to the combined effort. That effort and Ponnoosami's suggestion are reflected in exhs AA14 and AA11 and 12, respectively; 11 and 12 are duplicates, 11 being sent from Nkobi's offices, as appears from the fax address of the sender. But these show that Zuma signed the letters drafted for him, indicating his approval of Lennon's project to the bank and the letter suggesting Lennon take in F Nkobi as his local partner.

The evidence also shows that the collaboration between Shaik and Zuma was sufficiently close not only for that exercise but also for Shaik to save Zuma the trouble of sending the letter by fax from his own office. Moreover, on the same day, 4 February 1999, and to consolidate such G suggestion as Zuma had apparently made, Shaik's office wrote to Lennon seeking an early response to Nkobi's interest in a joint venture, as appears from exh AA13. To this Lennon replied by means of exh AA14 to the effect that he was most keen to work with Nkobi and suggesting that Shaik contact Lennon's already established environmental associates, one of the two persons who engineered Lennon's September 1998 H meeting with Zuma. The response to this was Shaik's letter of 15 February 1999, which is exh AA16, which ended by giving Lennon three days in which to respond to his suggestion of a joint venture or that he, Shaik, would 'go back to Minister Zuma'.

Shaik's response to all this was that he was merely carrying out I Ponnoosami's suggestion for Lennon's benefit and had the letters typed as asked by Ponnoosami. He agreed to do so because he understood from Ponnoosami's draft that Lennon had already accepted that Nkobi would be part of Lennon's plan and he also agreed that exh AA11 was faxed from his office, but said that was only because Zuma did not have a fax number for Lennon. Exhibit AA12 was simply a copy of the letter J

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that he would have so sent. When Lennon's reply indicated he already A had a contact in South Africa, Shaik said he became angry at what he perceived to be a white, foreign-owned enterprise using Nkobi as a convenience to obtain political support without intending to embrace a black economic empowerment partner, and his parting threat was to the effect that, unless Lennon showed this was not so, he would advise Zuma that his support had been obtained on false pretences. B

None of the facts that constitute the evidence of Lennon was disputed, save the claim by Lennon that he had met Shaik at his trade-mission presentation of September 1998 in Johannesburg. To the extent that that requires an answer, Lennon's version is supported by his possession of the Nkobi Holdings brochure which does not, in fact, say anything about C tourism. It is therefore somewhat surprising that Lennon should be in possession of it if it was not given to him by someone from Nkobi. But the answer to the dispute in this respect lies in the inferences to be drawn from the admitted exchanges and whether Shaik's answer to them could reasonably possibly be true. D

That question then raises the important issue of credibility. There are instances in the evidence, not only in regard to count 1, but also in count 2 and count 3, where Shaik's version of events conflicts with that of a State witness. Where a resolution of the ensuing dispute requires it, these competing versions have to be weighed against each other in the light of the relevant considerations that may properly help to decide where the E truth of the matter lies. Apart from actual conflicts of evidence, there are also instances, particularly in count 3, where even without his evidence being gainsaid by a State witness and reliance is placed by the State on circumstantial evidence, then, for purposes of deciding whether his evidence in denial or explanation can reasonably possibly be true, an F assessment of his general credibility is a necessary factor to be considered.

So before embarking on an assessment of the State case on count 1, it is perhaps an appropriate point in the exercise to examine the arguments for and against Schabir Shaik's credibility and our consequent general assessment of his performance as a witness, so that it does not have to be G repeated every time an issue of credibility arises in the other counts.

As good a point of departure for an examination of the question of credibility as any may be the closing argument of State counsel.

The fruits of an exhaustive trawl through the evidence on the subject of Shaik's credibility are set out in a series of annexures to the heads of H argument presented by the prosecutor. These contain, in respect of each count and grouped under selected categories of dispute in each count, a comprehensive review of the evidence on each such topic, supported by a specific reference to the record of evidence, or documentary exhibit, or the accused's case, whether contained in their s 115 statement or as put to the State witnesses, or given by the accused's own witnesses. All of I these show, as the State argues, the nature and extent of the contradictions, improbabilities, inconsistencies, evasions and equivocations in Shaik's evidence, together with samples of an alleged tendency to blame others in order to avoid liability or acts or omissions that should be his responsibility. J

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It is said that these run throughout the evidence, primarily that of Mr A Schabir Shaik, but also some of the other defence witnesses.

In passing and in this respect, while I might have expressed concern, or even protest, at times during the trial at the pedestrian pace of the State's case, I think it has to be said that while the mill stones of the prosecution might grind slowly, on this occasion at least they have B ground exceedingly small.

This catalogue of criticisms is copious, detailed and potentially quite formidable in its effect, probably because it concentrates in close juxtaposition the evidence by Shaik and the defence witnesses and the reasons for holding that it is unreliable, that would otherwise have to be culled from widely dispersed parts of the record with consequent loss of impact. C

A close examination of the contents of these annexures shows that not all of the criticisms are well founded. Some are overstated and others, while there is *prima facie* a contradiction or inconsistency in the evidence, may genuinely be due to vagueness of recollection of events that would D have occurred some six or seven years previously. But there are at least a good number that seem entirely valid and which serve to illustrate the conclusion to which we have come. However, our own conclusions are these, taking those submissions into account.

First, there is the matter of Shaik's false claims about his professional qualifications and business achievements. In itself this was a silly thing to E do, rather than indicative of fundamental dishonesty, and perhaps understandable if done by a new business enterprise to try and impress customers or would-be joint-venture partners, being rather like a personal form of merchandise puffing. But the disturbing aspect of these falsehoods, in our view, was the conspicuous lack of any embarrassment F or remorse on the part of the witness when the falsity of these claims was admitted. That lack of any expression or sign of regret at practising such a subterfuge seems to indicate a mentality that appears quite untroubled by the thought of resort to duplicity or falsehood to gain one's ends.

Then, secondly, and exhibiting the same tendency, there is Shaik's statement in the course of an encounter with Absa, the group's then G bankers, on 3 September 1999. The occasion was an approach to the bank to secure funding in anticipation of a merger or a joint venture between Kobitech (Pty) Ltd with the South African operations of an American company called Symbol Technologies, a leading maker of electronic scanner devices for reading barcodes. If this had come to fruition, the resulting enterprise would have been well placed to tender H for and

perhaps quite likely secure a contract with the Department of Transport, either under the Prodiba umbrella or independently, for the production of 15 000 of these hand-held scanners for roadside testing of the polyester driver's licence card.

Negotiations for this merger had been in progress then for three or I four months and the local manager of Symbol Technologies' operations was supportive of the proposal, but there was patently a good deal of discussion and negotiation still to be done, apart from a due-diligence exercise by the proposed American consort.

In that situation the evidence shows that in his presentation to the bank, Shaik told its officials, not that there were negotiations to this end, J

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but that Nkobi then had a contract for R150 million over five years that A it would be bringing to the joint enterprise. That was plainly untrue. There was no contract in existence. At most there were negotiations and hopes of such a contract which, in the event, came to nothing. Yet he did not scruple to advance this false claim, obviously to impress the bank and obtain the assistance he sought. B

Then, thirdly, there is the occasion when, as Zuma's financial adviser, he submitted lists of assets and liabilities of both himself and Zuma to the same bank with a view to either seeking overdraft facilities or a renewal of such bank-assisted borrowing. In neither of these documents does he show any money due to him by Zuma, notwithstanding his claim that the C payments he made over the years into Zuma's pocket were repayable loans, nor reflect Zuma's liabilities as including such indebtedness, nor does he reflect the full extent of Zuma's liabilities, even apart from these loans, omitting any indication that money was still owed on some of the indicated assets.

Shaik said that this was done with the knowledge, if not the connivance D of the bank manager, so that the application would not be compromised by revealing the full extent of Zuma's already existing debt to other creditors. That does not sound credible, since it would amount to a serious dereliction of such manager's duty. But if the bank was anxious to have or keep Zuma as a customer because of his political E prestige, as it seemed to be, it would have done so despite the poor risk that a full disclosure of his debts would reveal.

This, too, we thought, was a calculated deception put in train to achieve his desired ends, which was assistance for Zuma in obtaining an overdraft. F

It is a small matter when measured against the other aspects of this saga, but it again shows the nature of his approach to anticipated difficulties. He was quite prepared to deceive to achieve his desired result.

Then there is the list of Zuma's debts that was prepared by Shaik G through his attorney, for submission to the former President who, it was said, was concerned that Zuma's administrative or political efficiency was being impaired by the burden of his personal debt and who was therefore contemplating some measure of financial assistance to Zuma. This list set out those debts and creditors of which Shaik was aware, H including one of R200 000, which was shown in that list as being owed to a creditor called the Pitzu Trust. This reflected the amount in one of the two acknowledgments of debt signed by Zuma in February 1998 which was, on the face of the document, and as claimed by Shaik, a sum of money owed to Shaik.

The Pitzu Trust is a family trust of Shaik and his wife, so it could be I regarded as an *alter ego*. But the identity of the real creditor was deliberately concealed from Mr Mandela because Shaik did not want him to know that he, Shaik, was one of Zuma's creditors, for fear of the anticipated reaction. That too was a confessed falsehood purposely done to mislead Mr Mandela and his then attorney. J

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It is likewise a small matter in the overall scheme of things, but it also A demonstrates the tendency to avoid an unwanted result by resorting to falsehood.

That may be a widely accepted practice in business or in other forms of human activity, though one would not like to think so, but it must have an adverse effect in a situation where a premium has to be placed B on truthfulness, such as a criminal trial, where identifying the truth on any disputed matter is absolutely essential if a desired level of justice is to be done. In any individual in such circumstances, it is a habit or a fault that must unavoidably compromise his credibility.

But the assessment of credibility goes further than that. Shaik's C performance as a witness was, on the whole, not impressive. His answers in cross-examination, at first glance, were a curious mixture, being mostly long and frequently irrelevant replies to a question, but interspersed with occasional and surprising flashes of candour. The lengthy and irrelevant replies may have been the result of a natural verbosity stimulated perhaps by the stress of cross-examination. But when one D scrutinises his replies to some disputed facts of the evidence, no other conclusion can reasonably be reached than that he had no coherent answer to the question.

An example of this is his explanation of the claim that the sum of R140 000 reflected in one of the acknowledgments of debt was not in E fact money paid to or for Zuma and owed by Zuma to him, but was the sum of cumulative donations to the ANC for the burden it had or might have accepted in paying Zuma's accommodation rental, because he wished to live in Durban rather than Ulundi, and for the payment of the debt owed by Zuma to AQ Holdings.

This claim is discussed more fully later, but it is not sensibly F reconcilable with an allegation that this composite figure represented donations or contributions to the ANC, which would ground no cause for repayment or the drawing up of an acknowledgment of debt that introduced a debtor for a debt that did not exist. A far more likely explanation is that this acknowledgment of debt and its co-equivalent for R200 000, both signed but dateless, save for the computer indicated date G of the draft on 5 February 1998, were in fact signed later that year when the implications of the Executive Code of Ethics Act became clear, to the effect that Members of Executive Councils in provincial legislatures would also henceforth be required to declare this sort of obligation.

This evidence had the hallmarks of an *ex post facto* invention, a H conclusion reinforced by Shaik's confused explanation, including an admission eventually that he did not know why there were two such acknowledgments of debt, one for R140 000 and a second one for R200 000.

Apart from that sort of falsehood, there are instances where he I contradicted his own evidence. One such occurred in the debate about the amount of money that he paid to Zuma by 16 May 1999 when exh P46 - 47 was allegedly signed. This was the replacement loan agreement that superseded the two acknowledgments of debt signed on 5 February 1998 and consolidated all amounts which, by then, had been paid to Zuma, into the sum lent and to be lent under this agreement. This J

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document which was, and is still, in copy form only, does not state the A precise sum that was being so consolidated and upon which interest was to run thereafter.

When asked by counsel for the State if he knew of the outstanding balance of the payments so made to Zuma, either at the date of the agreement or the date of the cross-examination, Shaik said that he did B not because he left all the necessary keeping of such records to competent accounting staff. Moreover, notwithstanding the limit of R2 million to be so lent, he did not know whether that sum had already been exceeded when the agreement was signed, but that, if there was an increase above that amount, it was not substantial; nor indeed whether any such reimbursement of these payments, that Shaik had taken from C Zuma, had ever been brought into account. But when Mr *Downer* subsequently put to him that this showed a complete lack of a serious intent to establish and keep a true and correct balance of what Zuma had been paid or advanced and that therefore these were not real loans, Shaik insisted that at all times he had wanted to be aware of the balance that Zuma owed him, because he regarded this 'as a serious loan account'. D

When one compares that difference in the answer in cross-examination to his original statement that he lent these sums out of friendship and did not mind if they were never repaid, it becomes difficult to know just where the truth of the matter lies.

Another and perhaps extreme example of this propensity for confusion E and contradiction is to be found in the cross-examination regarding the supply to the relevant parliamentary official, one Jefferies, of information relating to the loan to Zuma for lodging with the appropriate officer of Parliament of the details required by the Executive Code of Ethics Act and Regulations, which would include the question of the interest due on such moneys as had been lent to him. F

Shaik said in one answer that he never sent a schedule to Jefferies setting out the detail of Zuma's loan indebtedness. His practice would be to visit Jefferies in Cape Town, taking a set of documents with him which would include the interest payable and discuss the needs of the declaration with Jefferies in person. G

He was accordingly asked if he had never merely sent a letter to Jefferies with the necessary schedules because it seemed improbable that he would journey all the way to Cape Town just for this, to which the answer was, that he thought he would have done, and that Jefferies would have the correspondence. H

These replies showed different and conflicting explanations in successive answers, which must indicate he was either quite heedless of what he said or really had no truthful answer to give.

Another is his evidence about his knowledge of the encrypted fax that is the subject of count 3. He knew nothing of this, he said, until he read I of its existence and its contents in the media, but in describing the reasons for his meeting in Mauritius in early November 2000 and with two Thomson's executives, De Jomaron and Thétard, and to which he had gone with a file of newspaper reports about the alleged corruptions in the arms acquisition procedures, he said, among the matters raised or mentioned, was this fax. J

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On that evidence, its existence was known to him then. But that could A not be true because it was not until June of 2001 that its existence in possession of Mrs Delique was known to the National Prosecuting Authority. That was a foolish slip, but one that is typical of a confused story. He could not have known then of an encrypted fax as such, so it could be he may have meant the contents of the fax was one of the items B for discussion.

There are many other examples of such answers, but I do not want to burden this exercise with a recital of more, because there are other aspects of his evidence that are equally disturbing and also need to be mentioned, such as evidence that contradicted his s 115 plea explanation C and evidence that contradicted what appeared to be his instructions to counsel.

An example of the first is his repudiation as incorrect of paras 10.1 - 10.4 of his s 115 statement concerning the basis on which he approached Thomson-CSF (France) rather than a Malaysian company D as a vehicle to achieve a foothold in the potential cornucopia represented by the defence industry. That sort of different evidence is strange, because he had ample time and opportunity for reflection and recollection before settling on the terms of the plea statement. The disturbing factor is that, if even the statements in that prepared answer to the charges are incorrect, then one must, perforce, wonder whether his E extempore evidentiary narrative is any more reliable.

Another example of a change of version is his description of events at the meeting of 18 November 1998 at the Nkobi offices at which the Thomson-CSF personnel met Shaik to state and explain their plan to F include the Nkobi interest in the benefits of the ADS contract to supply the munitions suite for the corvettes. The issue here was whether Zuma attended the meeting.

It was put to Van der Walt, as Shaik's version of this event, that Zuma was present but not for the whole duration of the meeting. He arrived while it was in progress, stayed for a while, spoke to Perrier and G the others and then left well before the meeting concluded.

That description should be contrasted with Shaik's subsequent evidence-in-chief in which he said Zuma came at the end of the meeting when the participants were enjoying some refreshment and after the business was concluded. H

In his cross-examination this changed to a statement that he could not recall whether Zuma arrived before the meeting took place or much later; or possibly while the meeting was still on; or towards the end, he could not recall; and he elaborated on that later to say that Zuma might have come in between, he meant during, or after, but they stopped the meeting when he did, to have a cup of tea. I

The burden of his evidence in this respect was that Zuma came to the meeting merely to renew his acquaintance with Perrier and not to take part in the discussion in any way, notwithstanding a recording of Zuma in the minutes that were kept of this meeting, as having been present as one of those attending. J

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Then there are the number of times he sought to answer the evidence A of a State witness that his own evidence contradicted with an explanation that was never put to that State witness.

This was particularly noticeable in the case of Mrs Bester, but he similarly sought to discredit the force of Bianca Singh's evidence by a claim that since leaving Nkobi's employ in November 2000 she had B asked to return to work there, which was likewise never put to that witness.

These instances are also disturbing, because a noteworthy feature of his counsel's cross-examination of the State witnesses was the scrupulously full and unambiguous way in which there was put to each witness what the accused's answer would be to a particular disputed allegation; C nor did his counsel ever complete a cross-examination without reference to his attorney and the accused, by which he could be reminded of any overlooked topics in the accused's case. It is so unlikely that these bases of contradiction were forgotten when cross-examination was taking place, that such a possibility can be safely discounted. D

A far more likely explanation is that they were never part of the instructions in the first place and the accused was again extemporising an answer that he thought would serve his immediate purpose, which included his oft-repeated insistence that others were to blame, particularly his accounting staff, for questions that he had difficulty in answering. It was indeed as if he existed in a bubble of his own preoccupation E and belief system, without regard to external factors or reactions.

And then it should also be borne in mind that there were a number of instances when the witnesses called in support of the accused's case either contradicted the evidence given by Shaik or gave a significantly different version of the events he described, none of which makes it easy F to rely on what he said.

In the result, we were not impressed by his performance as a witness, either in content of evidence, or the manner in which he gave it.

That, of course, does not make him guilty of any offence. It does not even mean he is never to be believed in anything he says. Some of his evidence was plainly truthful. But measured against an otherwise G convincing State witness, it may be something of a disadvantage.

Turning then to the factual disputes and the inferential issues that arise in count 1, there is firstly the conflict arising out of para 17 of the affidavit of David Wilson. That is exh QQ1 - 8.

The broad outline of this has already been set out earlier in this H exercise. What follows is in further consideration of that narrative.

Wilson had been a managing director of the overseas operation arm of Renong Berhad and was that company's lead man in obtaining the choice of Renong for the Durban Point area development project.

He was due to give evidence in person in these proceedings and had I deposed to the affidavits before us for that purpose, but the publicity surrounding this trial, and particularly the alleged implication of the Deputy President, had reached Malaysia, and Renong Berhad had, by that time, become owned by the Malaysian government. That government apparently was anxious not to be seen participating in a trial which had perceived political overtones, and asked Mr Wilson to decline to give J

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evidence, which, after consulting the directorate of his present employer, A he having left the service of Renong Berhad, he felt constrained to do. Hence the subsequent application to have the affidavits earlier obtained from him admitted in evidence in terms of s 222 of the Code, which was granted at the end of the State case.

Paragraph 17 of that first affidavit describes their meeting between B Shaik, Zuma and Wilson, arranged by Shaik at Wilson's request. The substance of that meeting has already been set out earlier. There is a measure of impression or opinion evidence in para 17 which an ordinary, intelligent layman would be capable of forming, but we have paid no attention to any of that, because Wilson was not available for cross-examination, C and have had regard only to the narrative of factual events that he says occurred.

To recapitulate briefly, the subject of the meeting was the black economic empowerment quotient of Renong's project in this redevelopment of the Point area.

According to Wilson, Zuma said at this meeting that he was not happy D with the persons already included as the empowerment interests in the Renong project, although he gave no reason for this. He proposed that Shaik be involved and repeatedly stressed that he would be a good partner for the exercise. Wilson's response was that Renong had no wish to choose empowerment nominees because he believed that was a matter E for the South African government to decide, so the meeting ended with the question unresolved.

Now to put this dispute into clear perspective. Shaik's answer to this evidence was a denial that such a meeting ever took place, not that a meeting did so occur, but that Zuma said nothing of

the sort that was alleged by Wilson. It was that F no such encounter had taken place as Wilson describes.

To decide what weight should be attached to such affidavit evidence, one is enjoined by s 35 of the Civil Proceedings Evidence Act to have regard to the several considerations listed in that provision and particularly all the circumstances surrounding the evidence stated in the G document that bear on the accuracy of the statement made. In this respect, the following seems to us to be relevant to the issue.

Zuma's letter to Saad urged Saad to meet him about the question of the black economic empowerment make-up of Renong's undertaking. Saad could not, or did not want to do so himself, but told Wilson to go H in his place as the senior official requested by Zuma.

Wilson returned to South Africa towards the end of January 1997, having given Shaik notice of this in late November 1996 and asking by a fax dated 20 January 1997 for a meeting with Shaik on 3, 4 or I 5 February 1997. He met Shaik at such a meeting on 3 February 1997, the minutes of which are annexed to Wilson's affidavit as exh QQ14 - 21.

These minutes are accepted by Shaik as correctly reflecting what happened at that meeting. Indeed the first paragraph thereof was urged as corroboration for Shaik's denial that any such meeting as claimed by Wilson between himself, Shaik and Zuma ever took place. That paragraph quotes an apology by Shaik for Zuma's absence in Johannesburg, J

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indicating that Zuma would have liked to meet with Wilson and sending his regards to Wilson through Shaik. A

It was argued that there would hardly have been a message in these terms if the parties had only recently met. But the next paragraph of this minute makes it plain that this meeting on 3 February was about Shaik's interest in sharing some of the Renong projects, including the Point B development.

It goes on to record Wilson's statement that a discussion with Minister Zuma had taken place about the structure of that development, particularly the 49% which was the black economic empowerment portion of the project and which discussion plainly involved Nkobi taking part in that 49%. C

It goes on to add Wilson's attitude, to the effect that he did not want to be involved in the make-up of that percentage and preferred a statement from Zuma that, whatever happened, Zuma accepted the make-up of that percentage.

It seems to us that, if Wilson had discussed this with Zuma, then he D must have had a meeting with Zuma to do so and obviously at some time before the instant meeting on 3 February 1997. Moreover, the content of the discussion so held as reflected in this minute was precisely what Wilson said was discussed at the meeting he had with Zuma and Shaik in Shaik's apartment and what he or Saad had been invited to discuss with Zuma, and at which no answer was decided. E

It is also clear that the meeting of 3 February 1997 was about the same question and it seems highly probable that the subject was being pursued because there had been no conclusion reached at the earlier discussion with Zuma, as Wilson says was the case.

In such circumstances it is not unlikely that Zuma would have wanted F to be present and would express regret at being unable to do so, bearing in mind his invitation to Saad to resolve this very question; nor is it unlikely that he would have asked his regards to be passed to Wilson if he had met Wilson in the recent past and which he would not have done if Wilson was a virtual stranger.

Wilson could not have had this meeting with Zuma in the last quarter G of 1996 as his first affidavit stated and which statement he later found to be incorrect upon seeing the faxed exchanges between himself and Shaik in November and December of 1996, in which there were intimations of a desired meeting early in the year 1997.

It must follow then that Wilson must have held this meeting with H Zuma some time after he returned to Durban at the end of January 1997 and before the meeting of 3 February.

The fact that he made a mistake in his first affidavit, about the time when the meeting took place, was urged by Mr *Van Zyl* as a reason for regarding his affidavit as unreliable. We do not think that this error I detracts at all from the validity of his statement that he met Zuma as his chairman had asked him to do and as Zuma had requested in order to discuss Nkobi's investment

in the Point project. That is the sort of misplaced recollection any honest witness could make, especially nearly seven years after the event.

The essential dispute is that Shaik said no such meeting took place. J

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Wilson says one did, and, having regard to the repeated instances in A Shaik's evidence when he resorted to falsehood to avoid a result that contradicted his case, we are eventually amply satisfied that Wilson's affidavit, supported as it is by the objective facts, can be accepted as the truth of the matter, namely, that Zuma sought to persuade Wilson to accept Nkobi as one of the black economic empowerment partners for the Point development project. B

In the nature of things it cannot be said that Wilson's affidavit statement was made at the same time as the events described, but the minutes of the meeting on 3 February 1997, on which reliance is placed to test the accuracy of Wilson's affidavit statement, were made shortly afterwards and the accuracy of these is not disputed. C

Moreover, Wilson no longer works for Renong or anyone else with an interest in the matter and no incentive to conceal or misrepresent the facts on his part was suggested to us, nor can we think of any.

Then there is the question of whether Shaik could reasonably have believed that exhs AA9 and 10 were a combined effort of Ponnoosami D and Lennon seeking Shaik's assistance in obtaining Zuma's approval to the inclusion of Nkobi in Lennon's plans, for which he needed a statement of local political support as a prerequisite to obtaining funds for his ecotourism hotel-management proposals.

Lennon said that he did no such thing and the probabilities seem to E support that. He already had potential partners and agents in this country and his proposed training establishment, in any case, needed a feasibility study as a necessary prelude and he knew nothing about Nkobi's capacity to undertake that.

A perusal of the documents relevant to this issue reveals the following: F Ponnoosami's e-mail letter to Shaik, that is exh AA8, shows communication between Ponnoosami and Shaik the day before the e-mail was sent, namely, 8 January 1999 and which communication was about Lennon. The discussion seems to have reported, *inter alia*, Lennon's disappointment at Zuma's lack of response to Lennon's request for a letter he could show to a possible source of funding for his venture. G Ponnoosami reports in this e-mail a suggestion that he made to Lennon about speeding up the process, to which Lennon seemed agreeable and for which Ponnoosami indicated Lennon might supply a copy. Ponnoosami ends this message with the statement that he would e-mail

> '. . . the draft letter we spoke about after I had spoken to him'. H

The context of this indicates quite clearly, in our view, that Ponnoosami discussed a draft letter with Shaik after he had spoken to Lennon about Lennon's need for Zuma's approval for funding.

The plain fact of the matter, as subsequently described by Lennon, is that this 'copy' which it was suggested he might supply was in fact the I typed part of exh AA9. Lennon's evidence and the faxed details at the top of that document show that the typed draft did indeed go from Lennon's office at Glasgow University to Ponnoosami on 13 January 1999.

Then the terms of 'the draft . . . we spoke about', is Ponnoosami's manuscript writing on the rest of that page and the typing of exh J

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AA10.1, to which Shaik made some amendment and then added the A manuscript note on exh AA10.2, Ponnoosami's manuscript note on exh AA9 shows quite clearly that it is his draft, not his and Lennon's. It says:

> 'I suggest that the two letters go out from JZ, the first to Victoria Clark, which is only focused on the funding; the second should be from JZ to Prof Lennon acknowledging his most recent correspondence and it is in this letter B that reference should be made to Nkobi Holdings as per my draft on the e-mail.'

The rest of the manuscript additions by Ponnoosami are suggestions as to the form and contents of both these letters with a small change to Lennon's draft to the Development Bank of Southern Africa about support for Lennon's proposal. He then expands on the suggested C contents of the

second letter and the form it should take, incorporating the typed contribution to exh AA10.1, which would be Ponnoosami's draft sent by e-mail, as he promised.

A reference or comparison of these drafts and suggestions to exhs AA14 and AA12 shows that this is exactly what was done, to which Jacob D Zuma then added his signature.

To complete the charade, the resulting exh AA12 was actually faxed from Nkobi's offices, where it must have been hatched, and not from Zuma's Ministry.

What clearly happened here was that Ponnoosami, under the guise of E helping Lennon obtain the letter of support he wanted from Zuma to seek funding for his proposed schemes, took the opportunity, in consultation with Shaik, to obtain a letter from Zuma suggesting Lennon pursue his project with Nkobi Holdings as his black economic empowerment partner. F

The claim by Shaik that he thought this was a scheme by Ponnoosami and Lennon to use his offices to obtain Zuma's signature is simply incredible and so manifestly untenable, we think it can justifiably be rejected as false.

Then there is also the letter written by Shaik on 5 October 2000 to Mr Zuma seeking his help in arranging a meeting with the then Minister of G Safety and Security, the late Mr Steve Tshwete, and a Mr Grant Scriven of a British company called Venson plc.

This person, together with Shaik as a potential business partner, was anxious to try and persuade the Minister to outsource management of the vehicle fleet used by the SAPS to his company. The letter is plainly H a request to invoke Zuma's help to gain direct access for this visitor to the top decision-maker in matters of administration of the country's police force. Moreover, it was a request to accommodate the convenience of this visitor who, it appears, would only be in the country in the following week. I

It is equally clearly not an access that any unconnected businessman could expect to achieve, merely for the asking, and it was evidently so arranged. Scriven and Shaik had the meeting with Minister Tshwete, but nothing came of it.

Shaik said that he did this, not because of any personal connection with Zuma, but because Zuma was the person in government responsible J

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for co-ordinating co-operation and interdepartmental activities A between different Ministries. We find that explanation difficult to believe. There was no evidence whatever that established such a function in Zuma. But even if there was, there is nothing about this request that has anything to do with co-ordinating any other Ministries' work with that of Safety and Security. It was at this stage, a first approach, purely a matter B for the police administration, and Zuma would undoubtedly have had the authority of his office and influence to persuade Tshwete to accommodate the request, one of the few people who could.

These four episodes show, in our view, that Zuma did in fact intervene to try and assist Shaik's business interests. While it may be accepted C that his intervention on behalf of Shaik to relieve the threatened exclusion of Nkobi interest in ADS and the munitions-suite contract was undertaken as Deputy President of the ANC, it would not, in the absence of any alleged and known duty vested in that office that was discharged or subverted for Shaik's benefit, constitute a contravention of Act 94 of 1992. But it clearly shows, as do those in the Renong, Eco-Tourism D and Venson situations, a readiness in both Shaik to turn to Zuma for his help, and Zuma's readiness to give it.

Apart from these, there is also the evidence of Bianca Singh who, while Shaik's secretary, described an occasion on which she was present in his office when a call sounded on Shaik's cellphone. The ensuing E response and reaction of Shaik to this call indicated a perceived problem disclosed by his brother, Chippy, who was always fully aware of ongoing developments in the several bids for aspects of the Arms Acquisition Programme, and an immediate recourse to Zuma for his assistance to resolve the difficulty reported by Chippy Shaik.

It is not known, of course, what the difficulty was, but for it to be F reported by Chippy to Shaik and interpreted by Shaik as pressure in 'landing a deal', it must have been something that affected Shaik's interest in a particular business enterprise; and, if it came from Chippy Shaik, it very probably had something to do with the Defence Acquisition Programme and that Chippy was having difficulty in achieving some desired result on behalf of Shaik. G

Subject to the criticism of Bianca Singh that is dealt with directly, she says this happened towards the end of 1998, not long before she left Shaik's employ for the first time in March 1999;

and Thomson's concern in being awarded the Corvette Munitions Suite contract was in the balance at the end of November 1998. But even if it was something else, H it again shows Shaik's readiness to invoke Zuma's assistance to safeguard or further his business interests.

As Zuma had no shares or interest in any Nkobi company and was in no position to lend any money to help Shaik's enterprise, the only help that he could give to 'land any deal' would be the influence and weight of his political office. I

Ms Singh's evidence of this occurrence was criticised because one of her answers in cross-examination was interpreted as saying that this incident had taken place during the SCOPA inquiry in which Chippy Shaik was also concerned, which was in October 2000. Asked if this was so, she said she thought it was, but, when asked to explain the J

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contradiction of this with her evidence that it occurred in late 1998, she A said that, if she had given the impression it was during the SCOPA inquiry, that was a mistake. She reiterated quite firmly that it was in late 1998 that this had occurred.

In reading the exchanges in the evidence where this took place, it is clear that her response was elicited by a question that selected two B superficially related events in a loosely expressed answer and then presented these as a positive statement to the effect that she said this telephone call took place at the time of the SCOPA inquiry. All that it seems she was trying to say was that her impression that it was Chippy making the phone call and that it was related to the arms deal was reinforced by her subsequent knowledge that Chippy was involved in the C SCOPA inquiry which was indeed about the arms deal.

If that evidence is true, which is discussed later, it also reveals an instance when Zuma's assistance was sought.

But while the evidence plainly shows, in our view, Zuma's preparedness to intervene or protect the Nkobi business interests, and Shaik's D readiness to ask for it, the essential issue, of course, is the existence of a causal link between Shaik's admitted payments to Zuma and this sort of assistance by Zuma. Were these the result intended by Shaik of the admitted benefits?

Even though it happened in 1996 and before the payments of the schedule to count 1 began in any earnest, John Sono, then an executive E director of Nkobi Holdings, said that 'political connectivity' was explained by Shaik to his potential business-partner audiences, of whom Sono met several, on the basis that, '(w)e (Nkobi) have political connections in government', and this meant an ability to deliver contracts to any joint venture that enlisted Nkobi as a black economic empowerment partner. F

While he did not dispute using the phrase 'political connectivity', Shaik said that this meant his black economic empowerment credentials and it was this that would make Nkobi a preferred choice in government contracts, not any particular influence with any Ministers. But this was contradicted by Sono, who said that this 'connectivity' was nothing to do G with black economic empowerment. In fact, Sono resigned because he said this claim to be black empowerment was a sham.

Such other evidence as there was about Shaik's black empowerment, that is, evidence apart from his own, showed a narrow-based ambit of benefits that limited the beneficiary recipients to a few of Shaik's H employees or their family, who then had the opportunity to be appointed to some senior positions in Prodiba or acquired some equity stakes in his companies, or both. Mrs Bester, after 13 months working in Nkobi, described this as a few overpromoted and overpaid individuals; and a lack of genuine black empowerment was one of the reasons for her eventual disillusionment and resignation. I

Finding employment for some disadvantaged people, while not to be dismissed, is not the same as spreading wealth downwards, as real black economic empowerment envisages. That requires mechanisms to broaden the beneficiary base to include all black investors, management, employees, suppliers and eventually communities as well. It is not just J

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hand-outs, but a means to identify, embark on and maintain productive A economic enterprises that put an end to dependence. If there was any sign of this in the Nkobi group, it was hidden from those two.

Furthermore, while the evidence of John Sono is to hand, the remark that he attributed to Shaik when difficulties were being discussed about participation in the Point area development and Renong's apparent B reluctance to admit Nkobi participation, that '(i)f they (Renong) want to play hardball, we can play political ball', should not be forgotten. Shaik denied ever saying anything of the sort, but we do not believe that is something Sono made up. In the circumstances in which it was said, it is just the sort of combative, aggressive response that Shaik would display. C

To return to the question of the intention behind these payments, it should not be left out of account that, although they did not start to a noticeable extent until January 1997, Shaik was plainly on close terms with Zuma by then.

Apart from the claims of a friendship born out of association during D the apartheid years, in mid-1996, by which time there was a general belief that Zuma would be the next Deputy President of the country, and in circumstances that are discussed more fully later, Shaik had suggested that Zuma move into Malington Place as a safer place to live than a flat in Albert Park, and arranged for him to occupy Mrs Suleman's flat, E where he stayed without ever paying any rent until later in the year, and then moved into Nkobi's subleased flat in the same apartment block, where his rent-free accommodation continued for the next two and a half years.

Whether he was a real apostle of Bumiputera or not, the evidence F suggests that Shaik realised the value of political support for his enterprise right from the start. It shows that he toyed with the idea of issuing 20% of the shares in his original companies to the ANC and 2,5% to Zuma, among others.

The accommodation of the ANC as a shareholder was not pursued, although generous financial support was given to the organisation in this G province. But the origin of the generosity that is manifest from the admitted benefits was said to be a desire to keep Zuma in the political field. This desire, said Shaik, stemmed from a remark passed by Zuma in late 1996 or early 1997 that, because of his precarious financial position, he was thinking of abandoning a political career because he could no longer afford it. He was not only over his head in personal debt, H as a complaint by the Standard Bank showed, but also concerned about the future education of his children.

Shaik said that the prospect of Zuma leaving the political field in this province alarmed him, because of his belief that, if Zuma were to do so, it could mean a resumption of interparty political violence in KwaZulu-Natal I which would, of course, be bad for the province's economic prospects. He claimed that Zuma was the one senior member of the ANC who could make an impact on the Inkatha Freedom Party in the preservation of political stability. But, of course, it would also mean the disappearance of a potential source of help, one which even then, it was strongly believed, would be the country's next Deputy President. J

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When this report was made to Shaik by Zuma, Shaik set to work to A stabilise the proliferation of Zuma's personal debt and then arranged a structure to meet the ongoing costs of school and university attendance of Zuma's several children, hence the thrust of payments set out in the amended annexure to the indictment, being largely channelled through accused Nos 9 and 10. But all of these payments, whether for these B purposes, that is, for the children's education or paying off Mangerah's claims or to help Zuma's personal affairs, were finally debited to loan accounts in Shaik's name as debts due by him to the company that actually made the payment in question.

He thereafter undertook the management of Zuma's personal debt as his 'financial adviser'. He sought to achieve this by monitoring Zuma's C bank account and, with the necessary power of attorney, he maintained a Cash Focus computer contact with and control of Zuma's bank account with Absa, which provided the means to supervise the daily cash position in that account and match Zuma's needs as advised by Zuma or anticipated by Shaik, with payments from one or other of the Nkobi D companies or himself; or even, as rare occasion presented, to take money out of Zuma's account and place it in one of his companies.

The evidence showed that, notwithstanding the regular ongoing payments to institutions of secondary and tertiary learning and the lengthy period of time over which the postdated cheques were issued by accused No 9 in payment of Mangerah's claim, every now and then E some sudden and unexpected expenditure incurred by Zuma, or occasionally by his wife, would cause a temporary crisis in the management of his finances, until other arrangements could be made by Shaik to accommodate the immediate emergency and stabilise matters once more. F

Very broadly stated, that was the mechanics of this stream of payments. Zuma's financial affairs were largely managed and his needs thereafter in this province were constantly supplemented by the accused.

Shaik's evidence was, however, that these payments were all given out of friendship, fortified by a sense of loyalty and camaraderie that were the hallmarks of people like Zuma and himself, allied in the struggle against G the common oppressor and that, in their case, an even closer bond than usual was forged because they both came from KwaZulu-Natal and social contact after any business meeting during the period they worked together overseas would provide an opportunity to discuss places, events and people who were known to both. The friendship that developed out H of this continued after their return to the country in the early 1990s, when it strengthened and was extended to a friendship between their families as well.

Against that, and on the other hand, there has to be measured the evidence that tends to support that of Sono, to the effect that 'political I connectivity' meant no more than cultivating friends in high places.

The evidence of Bianca Singh establishes that in an unguarded moment on one occasion Shaik made it clear that his reason for pandering to Zuma's need for money was to get what he wanted. In explanation of a somewhat crude remark once made to her about his relationship with politicians, he said in effect that he did not mind being J

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exploited by political figures. He did what they wanted because they did what he wanted. A

Mrs Bester heard the same sort of thing during her stay at Nkobi from November 1998 to December 1999, namely, that political connectivity meant Zuma's high position in the ANC and Shaik's link to him, and was an important factor in making Nkobi attractive as a black economic B empowerment partner.

Shaik's assumption of control of Zuma's income and expenditure was indeed one thing that a friend could reasonably and properly do, but this went much further. Instead of just stabilising the situation and managing Zuma's chaotic finances thereafter, so that the debts could be paid off C and financial stability restored, Shaik then made it possible for Zuma to continue living beyond his means by the payments which constitute the factual matrix of count 1, without anyone else knowing the *quid pro quo* that he would ask for and which the evidence establishes. Moreover, he started doing that when the Nkobi group could not afford it.

Mrs Bester's evidence contains a number of occasions when there was D insufficient cash flow to pay all the Group's creditors, when Shaik would choose who should be paid and who had to wait. His business strategy was to borrow the funds that were necessary for him to obtain a minority shareholding for Nkobi with a joint-venture partner and then negotiate a workshare in the enterprise so undertaken. The workshare would then E provide the basic income out of which current debts had to be met, but he could not expect a dividend income until his loan debt had been repaid. That inevitably meant a delay of three or even four years. Yet he was paying money to Zuma before this dividend income became available and when his business could not afford to, and that is at a time when Zuma enjoyed a ministerial salary and allowances. F

In our view, no sane or rational businessman would conduct his business on such a basis without expecting some benefit from it that would make it worthwhile.

Shaik is quite plainly anything but a fool. Our assessment of him over the prolonged period he spent in the witness box, supplemented by the G tone of his letters and his contributions to shareholder and board meetings revealed in the minutes, shows him as being ambitious, far-sighted, brazen if not positively aggressive in pursuit of his interests, and discernibly focused on achieving his vision of a large, successful multi-corporate empire; and moreover, someone who believed Zuma was destined for high, if not the highest, political office. H

It would be flying in the face of common sense 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 I circumstances of the commencement and the sustained continuation thereafter of these payments can only have generated a sense of obligation in the recipient.

If Zuma could not repay money, how else could he do so than by providing the help of his name and political office as and when it was asked, particularly in the field of government contracted work, which is J

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what Shaik was hoping to benefit from. And Shaik must have foreseen A and, by inference, did foresee that, if he made these payments, Zuma would respond in that way. The conclusion that he realised this, even if only after he started the dependency of Zuma upon his contributions, seems to us to be irresistible.

Then apart from the coarse but candid remark to Bianca Singh about B the mutual convenience of himself and politicians, there were times, according to Mrs Bester, when she was the Nkobi group's accounts manager and juggling the limited cash available to meet selected creditors, including the regular payments for the motor car and a flat for Zuma, Shaik would occasionally show irritation at accommodating Zuma's expenses and suddenly decline to pay them. But these exhibitions C of irritation were transient and he would later relent and resume the burden.

Mrs Bester did not know what caused the irritation, but, if that is true, then it makes the claim of friendship as the cause of these payments somewhat less credible, particularly after Zuma became Deputy President D in mid-1999, when his total salary and remuneration could no longer possibly be regarded as so little that he needed a friend's help to live decently.

It seems an inescapable conclusion that he embarked on this never- ending series of payments when he realised the extent of Zuma's indebtedness to Mangerah and the extent to which Zuma was living E beyond his income; and he also realised the possible advantages to his business interests of providing the means to retain Zuma's goodwill by helping him to support a lifestyle beyond what he could afford on his Minister's remuneration.

Then there are a number of letters that were put in evidence, written F by Shaik to various would-be business partners, inviting them or recommending them to meet Jacob Zuma, to whose political offices and close association with Shaik reference would then be made. In some of these there are quite obvious suggestions that any joint venture with Nkobi would be sure of political favour from this quarter.

A typical example is one that is exh RR38, in which a potential joint- G venture partner is told of a vision of an investment bank which could compete for government budgets as 'deposit taker', particularly in KwaZulu-Natal where the Ministry of Economic Affairs and Tourism was headed by Minister Jacob Zuma and where Nkobi stood 'a better than equal' chance of receiving that Ministry's deposit. H

Moreover, and for the same reason, his self-assumed title of 'financial adviser to the Deputy President', or 'economic adviser to the Deputy President', neither of which was an officially conferred title, was blazoned across letterheads, business cards and business brochures.

Genuine friendship, we think, would not have resorted to such blatant I advertising of the association with Zuma if these payments were really given for that reason. They are patently aimed at attracting business partners on the basis of political support for any eventual joint venture that would be forthcoming from Jacob Zuma and, in our view, that clearly underlies the reason why these payments were made.

That intention with which the payments were made is closely bound J

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up with their real nature. Were they loans, as Shaik claimed was the case A at Zuma's insistence, or were they non-recoverable gifts to cultivate and retain Zuma's goodwill?

Until about February 1998, by which time some 47 or 48 of these payments had been made since early 1997, amounting in all by then to R245 976, nobody regarded these as loans. Shaik did not, because he B said so in his evidence, several times. If he had never been repaid any of it, he said, he would not have minded and the evidence supports that.

Save for the appropriation of a total sum of R144 000 over all the years covered by the charge and which amount included Zuma's surrendered insurance policy, appropriated from Zuma's bank account over which C Shaik had control, and deposited to one or other of his companies that needed it, Shaik never reclaimed repayment of a single cent of these amounts in all that time. He gave this, he said, out of friendship and a desire to help a deserving comrade whose salary was too little to pay for all his needs, his salary then being some R20 000 a month net.

In support of the claim that these were loans, and to be weighed D against the other evidence urged by the State, two acknowledgments of debt were put in evidence signed by Zuma, that acknowledged two separate debts to Shaik that have been mentioned before, one for R140 000

and the other for R200 000. These were prepared by Nkobi's attorney at Zuma's request. The date on the E first draft shown on the document is 5 February 1998.

The genuineness of these two acknowledgments, as being what they purport to be, was strenuously contested by the prosecutor and an examination of the surrounding evidence indicates that such a protest was not surprising. F

This evidence shows that the agreement reflecting a debt of R140 000 was alleged to consist of the amounts paid by Shaik to both AQ Holdings, which is Mr Abdool Qadir Mangerah, in discharge of Zuma's debt to that creditor, and those paid for Zuma's accommodation in 191 Malington Place, which is the flat subleased by Nkobi. G

Another document from which this information was said to be culled, and which is identified as 'ACKN Debt' in Shaik's handwriting, reflects the make-up of this total sum. R77 500 was said to be the postdated cheques originally given to Mangerah in discharge of his claim against H Zuma, which had been presented and met between 30 April 1997 and 30 April 1998, most of these being for R5 000 each, but some for R7 500.

Similarly, it shows a sum of R62 500 being the rent paid to the tenant of that flat from whom Nkobi had subleased the property and in which Zuma had been lodged since January 1997. Between 10 March of that I year and 14 October 1998, it was claimed by the accused that these two sums equalled the amount of R140 000 reflected in the acknowledgment of debt in that sum, and that this was the explanation of that document.

There is no date of signature on this document, nor on the one for R200 000 for that matter, nor any witnesses to the signatures. But the computer on which they were typed indicates the first draft of them was J

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prepared on 5 February 1998. That seems plausible, because the A attorney's fee note in respect of these two agreements is dated 8 March 1998.

But the amount of R140 000 could not have been owed by then, because the list of payments that allegedly constitute this total sum shows payments made after the date of this first draft. Something is B plainly amiss. Either the list of payments is false or the acknowledgment of debt is, a possibility that is increased by the fact that, although Shaik claimed he regarded those payments as a contribution to the ANC, this agreement shows Zuma personally acknowledging liability to pay them back.

The situation is made even more curious by the fact that, being C contributions to the ANC, Shaik never expected them to be repaid. Nor could he advance any reason why there were two acknowledgments of debt, other than to blame his accounting staff for making a mistake.

We thought eventually that the State's contention about these documents was well founded. They are clearly not what they purport to be and were probably drawn up when this sort of information had to be D disclosed by Members of Provincial Executive Councils, and it would have been a suspicious circumstance if these payments had not been recorded as a loan.

The evidence regarding the second such agreement, that is, the agreement of loan of 16 May 1999, is hardly any better as a genuine statement of what it purports to be. E

It was said to be a consolidation of all the existing debts and acknowledgments of debt that to date had not been paid by Zuma to Shaik, yet there is no such consolidated sum stated in the agreement. Seeing that interest was payable on this amount at a market-related rate, that is a strange omission. Nor had Shaik any idea of what the amount F was or might have been, although by the time he answered the questions on this document, as I have said, during his evidence he maintained he seriously regarded all these payments made to Zuma as loans. He could not even say whether the amounts advanced up to then exceeded the R2 million allowed for in the agreement, or not.

It is also clear from the evidence of Linda Makhathini, the official legal G adviser to the Deputy President, that the Executive Code of Ethics Act had been promulgated in October the previous year and the resultant Code was in the process of being drafted and actually came into existence in the following year. To show loans made without interest being payable under that Code would amount to a benefit which would H require a special declaration. If they carried interest, on the other hand, they were regarded as a liability, and did not.

It is also obvious, we think, from the evidence of Julekha Mahomed, Zuma's private attorney, that she was summoned to Durban, while on a holiday in Mozambique, to prepare this document,

plainly in anticipation I of Zuma being included in the next National Cabinet and as a Member of Parliament, although it seems the 1999 elections had not by then taken place.

She described how she did it in a Durban hotel in a hurry and without the availability of her professional office library of precedents to assist her and, although she said she had some precedents on her laptop computer, J

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the resulting agreement does not measure up to the standard of what A could be expected from one drawn by an attorney giving proper and full consideration to the matter in hand.

One only has to consider the financial position of the Nkobi group as at the date of signature of this document to see how divorced from reality it was as a genuine business proposition. B

By then, that is, 16 May 1999, there was insufficient cash in the group to pay all its creditors. Their main income was from the workshare payment received from Prodiba, out of which Nkobi had to pay its employees who were working at Prodiba, as part of that workshare entitlement. What was left over from this was the group's income plus what little amounts came in from the construction companies. All of that C put together was insufficient to pay the accounts.

Throughout 1998 the group had largely been kept going by bank overdrafts, first from Standard Bank until the middle of that year and thereafter from Absa. By 16 May 1999, when the overdraft limit was R450 000, R384 902 of this had been used, yet the payments to Zuma D by then amounted to R528 080. The group was, in effect, borrowing money to keep up its payments to Zuma.

Since the bank overdraft would necessarily be periodically reviewed, an annual review being the longest likely period, this document reflects a commitment to lend Zuma another R1,5 million, when it could not pay E all its ordinary creditors. It could not have been a genuine agreement of loan in those circumstances.

In our assessment, therefore, this document also can be safely disregarded as acceptable proof that these payments were loans. Like the two previous acknowledgments of debt, it was merely for public consumption and not reflective of a genuine obligation to borrow or repay F these amounts.

Besides these there are those other features of the evidence that indicate that these payments were not really loans. One is the fact, as mentioned before, that, even after Zuma became Executive Deputy President and leader of government business in Parliament, with an G annual remuneration, according to Proc 79 of 1998 and *Government Gazette* 1038 of that year, of some R850 000 from his two offices, Shaik still continued to make these payments, when there can have been no possible reason to do so, whether they were regarded as loans or friendly payments to help a deserving comrade whose work was inadequately rewarded. H

The continuation of such payments after this can only have been to allow Zuma to live at an even higher standard of material comfort than his official remuneration provided and can only have been to continue the existence of a sense of obligation towards Shaik in return.

And, secondly, his claim, that he would have looked to Zuma's I gratuity or commuted pension for repayment, we think, betrays his real intention. For even assuming that Zuma could have afforded to pay this debt plus the interest accrued by the time he received his pension and gratuity and Shaik's professed friendship would have accepted Zuma's reduced ability to enjoy his previous standard of living by doing so, it would necessarily mean that he was not making any more such payments J

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to Zuma. That could only be because his political influence had ended A once he retired from office and no further help could be gained from that quarter for Shaik's business enterprises.

Bearing in mind the starting point of these payments which were to keep Jacob Zuma in the political field, this contemplated cessation might have said more than was intended. B

Moreover, the payments to Zuma or for his benefit only started as a steady stream in 1997 when he sought Shaik's help over repayment of his debts, not only to the Standard Bank, but also to individuals like Mangerah. Zuma could not sensibly afford any more debt and creditors were taking steps against him for repayment, which steps and the level and incidence of the debts they were claiming could easily become public C knowledge, such as the High Court judgment

and writ which were issued against him and which, if they did, could not but diminish his aspirant political stature. Such a development would also perceptibly have reduced Shaik's chances of help from that quarter.

Paying Zuma then to stay there made eminent sense if his future D assistance was contemplated, as subsequent events showed were the case.

Finally, it is also clear from Mrs Bester's evidence that, although she asked Shaik more than once during her spell in charge of the monthly accounts and the bookkeeping at the Nkobi head office for an explanation of the Floryn Investments loan account, she never got an answer up E to the time she left Nkobi's employ in December 1999.

Upon a proper investigation being done by the auditors in 2002, after the allegations of fraud were raised by the Directorate of Special Operations, 'a subaccount' was found in Shaik's own loan account, of payments to Zuma; and in Floryn's account, the payments of rent F for Zuma's use of 191 Malington Place and payments of Zuma's children's school fees; and in Clegton's account, the payments of R150 000 in discharge of Zuma's debt to Mangerah.

If he avoided disclosing the existence of these to his financial accounts manager, the question arises, why would he do so? It could only be because he did not want it known that he was doing so, particularly G on that scale; and, if he did not want it known, that could only be because he believed it was improper.

Mrs Bester certainly knew of the occasional irregular payments for Zuma's motor car or Mrs Zuma's vehicle, but these were not the bulk of the largesse, and even these dismayed her. H

Finally, even an elementary assessment of human psychology suggests that generosity on this sustained scale must, at least after a while, become egocentric. While this might have started out of friendship, to see Zuma over the worst of his debts, to keep him in politics and, by doing so, maintain the flow of payments that he did make, and commit himself to I lend as much as R2 million - if that was genuine - at a time when the donor companies could not afford it and their creditors were going unpaid, it smacks far more strongly of long-term self-interest than sustained concern for a friend.

But then, even if these could be regarded as loans despite all the evidence to the contrary, the basis on which they were made would, in J

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our view, unarguably amount to a 'benefit' within the meaning of the word in the Corruption Act. A

These loans were such that there was no date for repayment and until May 1999 no interest was charged, no security was asked, and all this made available to a borrower with a bad record of default in repayments. Any and every sudden and unexpected need was met by an eventually B patient lender with the prospect of ever repaying it very dim and distant. All this surely meant that the borrower could live and continue to live at a level of expenditure that his regular income could not afford. His children could go to schools, which he would not be able to send them to if he lived within his salary, and he could afford to live in accommodation which his previous disastrous debtor situation indicated he would C be unlikely to afford as well.

These are among the advantages not enjoyed by the normal borrower and, even if they had to be repaid eventually, such advantages would attract a person whose expenditure was more than his income and cause him to discharge any duty that may be incumbent upon him in favour of D such a lender. The sense of obligation from such generosity could not fail but have that result.

That brings me to one further question about these loans and that is the amount so lent.

This assumed some importance, because the forensic accountant E called by the State had calculated, given the size of Zuma's anticipated gratuity payment when he retired from office, that it would be insufficient to repay the accumulated debt owed to Shaik with interest even at 15%, and notwithstanding the *in duplum* rule. If that was so, then it certainly reinforced or tended to reinforce the argument that these payments were not loans. F

To meet this argument, the accused called similar professional evidence which said that the real size of the debt, taking into account sums taken from Zuma's account by the accused and deducting those that were contributions to the ANC, the total indebtedness of Zuma to Shaik was only some R888 000-odd, a sum which, including interest, Zuma G would be able to pay, notwithstanding the dent that it would make in his wealth.

I turn then to consider this dispute. It is really only a matter of credibility, because there is no doubt that, even if Shaik genuinely regarded these as contributions to the ANC, the benefit of such contributions inured entirely to Zuma and the cost entirely to Shaik. H

The payment of R150 000 to Mangerah relieved Zuma of the need to pay AQ Holdings its claim against him; and the rent Nkobi paid to Mrs Brown, or Zapolski, allowed Zuma to live at 191 Malington Place without having to find a single cent of the cost, R3 500 a month for two and a half years. The total sum of R150 000, which Shaik paid in I postdated cheques to Mangerah from the resources of Clegton Investments (Pty) Ltd, accused No 9, was part of this because, said Shaik, Zuma had told him that what he borrowed from Mangerah was all spent on ANC business, which he had not told Mangerah about because it was too sensitive. That does not sound true.

Mangerah knew what Zuma was about at the time he began lending J

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these sums of money to him from AQ Holdings. He knew that Zuma was A engaged in establishing ANC credibility in this province and that he might well need money for bodyguards or to give to needy people who claimed allegiance to the party as a reason for justifying the request for some immediate financial assistance; and in that respect he allowed that Zuma was a generous man. B

There was certainly interparty violence in those years, despite the existence of a government of unity dominated by Inkatha, but of which other ANC members, like Zuma, were part.

Now even allowing that the national government could not supply bodyguards that Zuma could trust while engaged on this sort of work, which seems unlikely for someone as highly regarded as Zuma was, there C is nothing sensitive about employing such people for such a laudable purpose; nor about helping those who claimed financial assistance as members of the ANC, who had been dispossessed or harmed, in some way, by rival factions.

It should also be borne in mind that Mangerah was similarly an ANC D stalwart, not just an office-bearer in the Stanger Branch of the ANC, but the treasurer of that branch and the man who would have access to that body's funds or sources for such funds, if anybody had.

Moreover, he knew Zuma as a colleague on the ANC Regional Executive Council for Southern Natal. It is not readily credible to be told that Zuma would not have taken Mangerah into his confidence if he E really needed money for the ANC's benefit when he first asked to borrow these sums, or at least told Mangerah this when Mangerah began to press him for payment.

Mangerah had no doubt that these were personal loans to Zuma and proceeded to recover them on that basis, eventually resorting to legal F assistance to do so, before Shaik intervened to pay for them. There was never any doubt between the two of them, at any rate, and even if some of the loans were not spent on Zuma himself, that Zuma was the person to whom Mangerah looked for the payment of the moneys he lent.

Moreover, these payments were part of the acknowledgment of debt for R140 000, signed some time in 1998, which appear as debt owed by G Zuma to Shaik. That it should not be so shown, if what Shaik says is true, is manifest. But equally it is unlikely that Zuma would be acknowledging liability for a debt that was not ever going to be recovered from the ANC because it was not a recoverable payment.

The untruthfulness of this claim is perhaps best underlined by the H evidence of Dr Zweli Mkhize, the Treasurer-General of the ANC in KwaZulu-Natal during those years, who was called as a witness by the accused.

He acknowledged that Shaik was a generous donor to the ANC causes, having paid for accommodation for political refugees, for a motor I vehicle for the party's use in the 1999 election, and the like. But in a document that was identified by him, which was a letter that he had written, but not signed, there is set out a list of the contributions that Shaik made to the ANC, which were required to be reported to the National Treasurer-General. This shows that for the year up to 19 May 1999 what are called 'actual disbursements' in the sum of R1 261 595,16 J

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were payments by Shaik of various accounts incurred by the ANC, or a A promise to pay other such accounts in the future. There is no mention in this of any such payments that relieved Zuma

of his debt to Mangerah.

Then the other substantial portion of these admitted payments was the rent paid by Shaik for the flat occupied by Jacob Zuma at Malington Place into which Zuma moved in about mid-1996. He moved there, we B were told, because of a message from the National Intelligence Agency sent to Shaik to the effect that there was a suspected plot being hatched by some disaffected persons to assassinate Zuma; and Malington Place offered better security than Zuma's then place of residence, which was said to be a flat in Albert Park. This better security consisted of the usual automated gates and a security guard at the entrance. C

Dr Zweli Mkhize's evidence confirmed that there were these alarms from time to time, whether from a government source, such as the NIA, or private informants, the reliability of any which might be questionable. That there was at least one such alarm about Zuma may be accepted and even that it should be sent to Shaik and not to Zuma himself. But had D there been any substance in this warning, it is more than passing strange that the national government itself did not do anything to take steps for Zuma's safety, even apart from the squad of bodyguards that political figures of his rank are wont to have around them, especially if he was as vital to political stability in this province as is suggested.

It hardly seems any justification for a three-year E period of rent-free accommodation in a luxury flat, especially when bodyguards could be obtained from the ranks of a Minister's own political supporters.

Moreover, when Zuma first moved to Malington Place, it was to flat No 91, which belonged to a Mrs Suleman. That move was achieved by an agreement negotiated between Shaik, Zuma and Mr Suleman, with F the latter assuming that Shaik would pay the rent. Suleman could not recall exactly when this occurred, but when an enquiry was made for unpaid rentals, Suleman was told by Shaik to look to Zuma for payment.

By the end of July 1996 the rent for the preceding three months had also not been paid. Suleman said that while it was possible that he was G told that Zuma would ask the ANC to pay for the rent, he could not recall that being said, and he certainly never tried to recover rent from that quarter. And while he also accepted that this could have been done because of a security issue, he could not say what that issue was. There had been hostility between the ANC and Inkatha in the past, but he was not sure if that was the reason. None of that sounds as though there was H any real danger of an assassination.

On 26 August 1996 Nkobi Holdings subleased 191 Malington Place from a Ms Tracy Brown until 31 August 1997 and it was into this flat that Zuma then moved without Shaik informing the sublessor.

As I have said, Zuma stayed there until July 1999 with the rent being I paid by Nkobi, usually late and occasionally not at all. But in all this, there is not a word of looking to the ANC for payment. At most it was put to Suleman that Zuma would mention to the ANC that his rent should be paid by it, but on what possible basis such a request could even be made, let alone accepted, was never suggested; and even accepting that Zuma did not want to live in Ulundi, where government accommodation J

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was apparently available, there is no possible reason that has A been suggested as to why the ANC should ever have been thought likely to accept responsibility for paying Zuma's rent.

He was, after all, a Minister earning a ministerial salary; and according to Dr Zweli Mkhize, if a Minister chose not to live in Ulundi, he was expected to pay for his own accommodation, if living in Durban or B Pietermaritzburg suited him better. And, in any case, it appears that Zuma was the owner of other property in Durban, at Saratoga Gardens on the Berea. He, that is, Dr Mkhize, was never approached, as Treasurer-General for the KwaZulu-Natal, to undertake liability for such rent.

If such Minister could not afford the cost of moving to safer accommodation, C as this was said to be, it would have to be paid by well-wishers or supporters of the ANC. But if a well-wisher or a supporter did so, it was for the benefit of the Minister, not to the ANC.

The claim that these were regarded as contributions to the ANC therefore sounds unlikely, a conclusion that is reinforced by the eventual D discovery of the payments for this flat being reflected in the Nkobi books as a debit to Zuma's personal loan and not as a contribution to the ANC. But even if Shaik later persuaded himself to regard them as such, it has no effect on the amount of payments made for the benefit of Mr Jacob Zuma.

In our view, it is far more probable, having regard to the other E evidence I have mentioned, that the invitation to move into Malington Place was part of a longer-term vision of cultivating and maintaining the goodwill of a patron whose political stature promised to be a source of protection and promotion for Shaik's contemplated business enterprises. We do not believe him when he says he regarded these as contributions F to the ANC. That is plainly an afterthought designed to make his payments to Zuma look less than they were.

It was also disputed that five of the payments listed in the schedule to the charge, items 124, 177, 179, 185 and 186, should be regarded as payments for Zuma's benefit.

These were all payments to an outfitter of men's clothing called G Casanova. Shaik maintained that only one such payment was for Zuma, the rest were for himself. But a later schedule, compared by the Nkobi accountant, listed these items as being for Zuma; and Bianca Singh likewise said that she was given more than one invoice from this shop in respect of clothing purchased by Shaik for Zuma. H

In the larger scale of payments, these hardly matter. But here also the evidence of Shaik is contradicted by apparently credible sources.

It finally remains, in regard to count 1, to make known our assessment of the State witnesses, to the extent that their evidence was contradicted by Shaik in the resolution of such conflicts of credibility. I

Van der Walt was plainly an impartial witness who simply described, chapter and verse, in extraordinary detail, the evidence that he culled from the mass of documents given to him to investigate. In the one or two respects that he expressed an opinion, there was nothing amiss about so doing, but we have not relied on any of those.

The suggestion in his cross-examination that he might be biased J

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against the accused because of his long-since national service as a A policeman in the fraud investigation department, and the fact that his investigation efforts were paid by the State, can be safely dismissed as entirely without merit.

Then there is Professor John Themba Sono. He was obviously a man of a clear and decisive set of values, based on a personality in which B dignity and self-respect were plainly evident. His resignation from Nkobi after less than a year's contact and only three months of full-time work there, says much for his views of the situation in which he found himself.

He had been introduced to a vision of a growing, vibrant enterprise dedicated to the philosophy of black empowerment, but found the reality C sadly short of delivery.

He noticed the reliance on political connectivity by Shaik, *inter alia*, in the discussions with Denel and Thomson about the consortium to bid for the polyester driver's licence project from the Department of Transport, that later became Prodiba. D

He described how Shaik defended Nkobi's lack of financial contribution to the start-up costs of the enterprise, by emphasising Nkobi's ability to obtain the contract. That was its contribution to any joint venture. Nor would he have invented the reaction he attributed to Shaik over the Renong Point development difficulties of Nkobi's participation, which E would have taken place during 1996 while Sono was a director. In the light of his realisation of what 'political connectivity' really meant, it is not surprising that he recalled the incident. We believe him when he says that happened. It had the ring of truth and he was a demonstrably better witness than Shaik.

Then finally there is the support which Sono's evidence affords that of F Bianca Singh in respect of the knowledge of and interest in the Nkobi group in the possibilities of participation in the supply of corvettes to the South African Navy. He said that when he arrived there, in April 1996, there was talk of this possibility, which was some months before the White Paper was presented and which Shaik said was his first knowledge of that prospect. G

Then there is the credibility of Bianca Singh to consider. She was a somewhat naive and unsophisticated young woman in a business environment, not surprisingly, really, because Shaik offered her employment just after leaving high school, but someone who was nevertheless H intelligent and perceptive. She joined the Nkobi group in June of 1996 and left at the end of March 1999 in eventual protest at Shaik's occasionally rude and abusive attitude towards his staff. She was first a receptionist/secretary and seems to have done most of Shaik's secretarial work, sufficiently well for her to be later told she was to be made up to be a personal assistant, although that did not seem to change her I workload to any tangible extent. She was persuaded

to rejoin the group in February 2000, but left again in November of that same year, after some altercation with Shaik while in Mauritius in circumstances that are discussed in regard to count 3.

We were particularly impressed with three aspects of her evidence. J

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First, her employer's reference to the jar of Vaseline as a necessity for A being at another person's beck and call when she was to become a personal assistant.

Secondly, the cellphone call from Chippy Shaik to Shaik himself, followed immediately thereafter by Shaik's telephone call to Zuma.

And, thirdly, the presence of a laminated drawing of a corvette in B Shaik's filing cabinet that she noticed soon after starting at Nkobi in June of 1996.

It is simply not credible that she has invented these three aspects of her evidence. The way she narrated them, the obvious diffidence with which she repeated Shaik's very words about the use of Vaseline, the absence of any attempt to interpret or embellish the overheard telephone exchanges, C and her firm adherence to her evidence that exh 3, a laminated ship's drawing of an environmental patrol boat put to her by defence counsel, that it was not the ship's drawing that she saw, because she was able to describe, albeit as an untutored layman, the essential difference of superstructure that was not apparent on exh 3. Moreover, she said she D asked Shaik, out of curiosity, what it was and he told her it was a corvette.

There were many other aspects of her evidence in which she described her knowledge and impressions of events in the offices of Nkobi, including the emphasis laid on political connectivity and the friendship E with Mr Zuma, to whom she was once asked to take R700, in cash, to the airport at his request.

The way she described these incidents impressed us all in the conclusion that she was reliving an actual experience in describing them, which is the best guarantee of truthful evidence. F

It is true that when she described the cellphone call from Chippy Shaik and the resulting call to Mr Jacob Zuma to the DSO in July of 2001, she did not mention the initiating call from Mr Chippy Shaik in her description of this episode. But the essence of her reply to a question by that organisation on that occasion showed that she was describing the incidence of telephone communications which Shaik had with Mr Zuma G about various contracts and she mentioned this particular one in which help was 'really needed to land some deal'. The fact that she gave a fuller version of the entire incident before us does not detract in the slightest from our assessment of her truthfulness.

Accepting then the evidence of these witnesses, as the truth of the H matters they described, makes the case on count 1 not just convincing in total, it is really overwhelming.

I turn next to count 2. It is not necessary to repeat the charges, either the main or alternatives. They have already been described together with the accused's answer to them. I

The falsity of the representations alleged and the potential prejudice to probable readers of the financial statements in question is admitted. The only issue is whether Shaik knew of it and was party to it. The State witness, Mr Ahmed Paruk, who was the audit partner of David Strachan and Taylor, in charge of the audit, says he was. Mr Shaik says he was not and that such discussions as were held that resulted in the decisions to J

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write off these loans as development costs of Prodiba took place with his accountants, Messrs Isaacs and Lechman. A

We do not think there can be any mistake about this, they cannot both be right, so somebody is lying. But the difficulty of deciding who is doing so is compounded by the fact that Paruk was not an impressive witness, and his is the only evidence on what took place at that meeting that was B led by the State. That is perhaps not surprising as the other persons present were Mr Colin Isaacs and Mr Paul Gering. According to Paruk, Lechman was not there. Isaacs, who was the Nkobi in-house accountant and computer-operation manager and who would be responsible for the bookkeeping, is still so employed by Shaik; and Gering was and still is a tax adviser and confidante to Shaik, being closely involved with him in C the Kobitech and Symbol Technologies proposals and regarded by Mrs Bester as an old friend of Shaik's from the struggle days, whose

firm is still the Nkobi auditors. But neither of these other participants was called by the accused either, notwithstanding their availability, so not much can be derived from that fact. D

Paruk had given a different answer in his s 28 interrogation by the NPA in explanation of this write-off and his supine acceptance of Shaik's explanation of the existence of these loan debits was, in retrospect anyway, conspicuously less than professional. It is true he offered explanations for both of these perceived shortcomings, but had his E evidence stood alone and without any corroboration, we would not have been prepared to act upon it, notwithstanding our negative impression of Shaik as a witness.

Does examination then of the different objective circumstances that led up to this audit and the resulting write-off of these loan accounts afford some more reliable indication of where the truth lies? F

I turn next to consider this question. One such source of explanatory circumstances seems to us to lie in the financial position prevailing in the Nkobi group in the months leading up to the end of November 1999, when this audit took place and resulted in this step being taken. Although the payments to or for Jacob Zuma started in October 1995, G the first two, which it may be accepted were to help Mrs Zuma's domestic difficulties, do not establish anything helpful. It is only from 1997, when Shaik asked Zuma to stay in politics, that the payments increased dramatically. By December 1997 another R256 432,22 had been paid to or for Zuma's benefit and, by December 1998, a further R183 554,15, making R439 986,37 in all by the end of that year. These H payments were being made, it should be remembered, in a loss-making situation by the Nkobi group and by 28 February 1998 both Kobifin (Pty) Ltd (accused No 4) and Proconsult (Pty) Ltd (accused No 6) were in a technically insolvent condition, with their liabilities exceeding their assets. I

A letter from the then auditors of these companies, Mr Satish Ramsumer of Desai Jadwat, to Mr Shaik, of 8 March 1999, reminded Shaik that in November 1998, when the group's financial statements for that year were discussed, the financial position of Kobifin and Pro Con Africa (Pty) Ltd (accused No 7), which were then also technically insolvent, had been brought to his attention. The management accounts J

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for the group had not then been ready and Shaik was told by the auditor A that to avoid an adverse audit report both these accounts and a group projection for the next three years were required. If these could show that future profitability could recoup past losses then there would be no need for such an adverse report.

This letter from Ramsumer was in response to a complaint by Shaik to B the senior partner of Desai Jadwat on 5 March 1999 about the lack of the group's 1998 annual financial statements. The required management accounts and the three-year projection were to have been provided by Mr Colin Isaacs, the group's in-house accountant, by 30 January 1999. But by 21 February of that year they were still incomplete and by 5 March 1999 Ramsumer was still awaiting the final product and the C January 1999 management accounts.

This report prompted a swift and vigorous response from Shaik. On 8 March 1999 he dispatched an 'Urgent Memo' addressed to Isaacs and C Muiznieks, in which he made it clear that he was highly displeased about this state of affairs and required it to be speedily remedied. The D situation was plainly urgent because a meeting with the bank was scheduled for the next day, 9 March, in order to seek an enlarged overdraft facility of R450 000, up from the R275 000 being used at that time.

Minutes of the meeting which then took place, and which was also attended by Ramsumer of Desai Jadwat, repeat that the release of the E February 1998 financial statements depended on substantial profits being shown in Kobifin, for, if that was not achieved, then there would be difficulty in certifying that the group was 'a going concern' in the auditor's report.

It should perhaps be said at this stage that Celia Muiznieks held the F degree of BCom Accounting but was not a chartered accountant, although she had served articles to that end. She had joined the Nkobi group in November 1998, fired by what she believed was Shaik's commitment to black economic empowerment in its true sense of the word. She was obviously a capable and efficient employee who, although taken on initially as a project evaluator, then became used in the G compilation and vetting of Nkobi tenders and finally, because of her accounting training, was brought into the managing of the group's accounts and accounting to help resolve the cause of Shaik's complaint of 8 March.

Although she twice came to the verge of resignation during 1999, she H stayed on until 14 December of that year, when she left in circumstances that are related presently; and, although her name was Muiznieks during her employment at Nkobi, she divorced and remarried after leaving and before this trial, and gave her evidence during these proceedings as Bester. So any reference to Muiznieks in the record of evidence is a reference to Mrs Bester in the judgment, and vice versa. I

Her evidence showed that her work in the accounts section really assumed two functions. One was the longer-term exercise of trying to bring the 1998 accounts to rights, while the other more immediate and pressing was the day-to-day recording of the accounts and preparations of cash-flow reports and projections, as well as the monthly management J

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accounts required of her job. Her constant exposure to this process A prompted her to keep Shaik advised on an ongoing basis of the difficulties she encountered, particularly in finding the means to pay the group's creditors.

She kept him so advised in a series of internal memoranda which occasionally ventured into the field of suggesting a restructuring of the B group because the way it was being carried on was not, to her mind, achieving anything. She committed all this to writing, she said, out of habit, to record her difficulties and report them, so there could never be complaints that she had been remiss in discovering, anticipating or reporting problems that the company would face. Our assessment of her C was that not only was she unusually capable and efficient, but also a highly principled person as well. The contents of these memoranda not infrequently spill over into topics that do not concern the disputes in this trial but some, quite clearly, do.

In her attempts to restore order to the 'mess' (her word) that was the accounts when she started in this department, and while doing so under D the general supervision of Satish Ramsumer, she discovered the existence of a debit loan account in Floryn Investments (Pty) Ltd for R290 000, for which she could find no underlying transaction records. If these were debits for some expenditure, there were no corresponding credits to show what they were. On the other hand, if they were loan debits, then E they should be recoverable, but no one to whom she turned for guidance or advice, in the form of Ramsumer or Isaacs, could shed any light on this. At the same time and on the same quest, she discovered the size of Shaik's own loan account in Kobifin (Pty) Ltd. Since this had to be accounted for in the year-end financial statements for 28 February 1999, F a director's loan account in debit posed a number of difficulties, not the least being that director's tax liability, quite apart from a director having a non-recoverable loan from his company when that company was in overdraft.

It may help to bear in mind, in considering these loan accounts, that Kobifin (Pty) Ltd, being the recipient of such income as there was from G the Prodiba workshare entitlement, was regarded as the group's bank and cash holder. Cheques in payment of claims or needs would be drawn on it and if no item against which a payment could be charged could be found, then it would be noted as a loan to Shaik or one of the other two companies. The Clegton and Floryn loan accounts were postings from payments made by Kobifin in this way. H

In a memorandum to Shaik of 16 March 1999, which is exh S21, Bester raised these two aspects for discussion but, until the time she resigned on 14 December 1999, she never received any answer from Shaik about the loan account in Floryn and only a few notes on a piece of paper about his own loan account, which did not answer her question. I The existence of this large account continued as a problem because of the potential tax liability that it posed, since it could be regarded as his remuneration or, depending on the circumstances, would attract fringe-benefits tax.

That this warning made an impact on Shaik is evident from a subsequent memorandum from Mrs Bester of 21 April 1999 to Shaik, in J

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which she protested his rejection of her efforts to include his tax liability A in a packet prepared for presentation to the bank. But, she said, he never discussed his loan account fully with her either.

By mid-year the situation had deteriorated even further. As part of a cash-flow forecast for June to December 1999, addressed to Shaik and a co-director, Mr Phambili Gama, on 7 June 1999, which is exh S28, 29, B Mrs Bester warned of a looming cash-flow crisis, and among other facts

reported in this document was a reminder to Shaik that the liability for his personal tax was not included in the liabilities that would have to be met in the period covered by this forecast. The reported situation was indeed tight. The limited income which the group enjoyed from their Prodiba workshare and from the construction companies was facing C diminution as the Proconsult township housing work income was reducing with the poaching of the group's individual workers to set up in business themselves.

Mrs Bester concluded that the group could not continue to fund itself and its arrear debt, which included substantial sums due to the Receiver D of Revenue for long-unpaid VAT and PAYE deductions. A similar story was repeated in July in a memorandum addressed to Mr Gama, in Shaik's absence on his visit to the United States to discuss the Symbol Technologies joint venture. At this stage not even the R500 000 that would become due from Thomson-CSF (France) for the purchase of E Nkobi's interest in Thomson-CSF Holdings (Southern Africa) (Pty) Ltd would have relieved the dependence on overdraft. By August 11 a similar communication reported the overdraft facility at R450 000, of which R441 693,89 had been taken up, with debts of R114 686 from July still unpaid.

And so this catalogue of difficulties continues. It does not serve to F repeat any more but the situation remained this critical until November, when the overdraft was due to expire on the 15th of that month. For this purpose she advised Shaik in another memorandum of 10 November 1999 that the bank had granted an extension of that overdraft until 31 December. But, for this accommodation, it needed the draft accounts G signed by the auditors and the latest management accounts with a 12-month forecast, all by the end of November. She ended this update on the financial situation in these terms:

> 'The consolidated company is still in an insolvency situation as it was last year. The finalising of these accounts is important and many decisions are H going to be required by you and Paul [Gering] to ensure a good set of accounts is drawn up. I bring this to your attention as these accounts are critical for the extension of the overdraft. Colin has informed me that the Symbol deal seems to be going well but it seems likely it will only take place in Jan 2000. This would need to be incorporated in the 12-month forecast.' I

So by the end of November, when the audit for the 1999 year was undertaken, these facts were undoubtedly known to Shaik - first, the poor state of the group's finances and the need to present a good set of accounts to the bank to extend the overdraft on which the group depended. Secondly, he knew he faced the problem of some difficulty about his loan account and the tax liability inherent in that. And, thirdly, J

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he was aware of her warning to watch expenses, in which she included A money spent on Zuma.

She had been advised of the unpaid arrears on Zuma's purchase of a Mercedes-Benz 320 motor car and the demand from Wesbank that these arrears be paid. Not only were they paid, not without difficulty, but future payments were ensured by a debit order payable by Nkobi, which B meant that some of the company's creditors were unpaid. But these were the only payments she knew of that had been made for the benefit of the new Deputy President. She did not know of the other payments that had been made ever since 1997 for the Malington Place flat rent, nor for his children's education or the discharge of the debt to Mangerah. The lists C of these drawn up by Isaacs after the investigation started and which show payments for Minister Zuma she had never seen. With her views about that sort of expenditure, as revealed in her letter of resignation, that is exh S82, and her willingness to confront Shaik on issues that she thought important, it is highly probable that, had she known then of these payments, she would have made that voluble protest sooner and more cogently than she did. D

Then another source of ongoing events that was engaging Shaik's attention during the months preceding this audit were the steps being taken to bring about the joint venture between Kobitech and the local arm of Symbol Technologies to bid for the Department of Transport E contract for hand-held barcode scanners for the driver's licence verification needs. It was said by Paruk, and not disputed, that at the time this audit took place at the end of November the hopes and plans for a merger of Kobitech with the local functions of this American company were apparently gaining momentum.

It is common cause that the negotiations to this end had started in F about June 1999 and, if they had come to fruition, it would have resulted in a substantial capital payment for the Nkobi group with promising prospects of a further lucrative contract, either through Prodiba or independently to provide the Department of Transport with the 15 000 hand-held barcode scanners, which is the contract calculated by Shaik G mentioned earlier as being worth R150 million over a period of five years. This appears from the meeting which he and his advisers in the matter, including Mr Paul Gering, held with Absa Bank on 3 September 1999. At the end of

October of that year there is a communication from Mr Paul Gering to Colin Isaacs, advising on a presentation to Symbol Technologies of the attractions of Kobitech, which raises the question of H emphasising the value of Kobitech's investment in Prodiba and, possibly contemporaneous with the disputed meeting in question, which must have been towards the end of November, is a note from Isaacs to Gering, forwarding further information of the future outlook for Kobitech.

So by the time the disputed attendance meeting was held, there were I questions about Kobitech and its future arrangement being aired and debated. Paruk had been told a little of this by his partner, Gering, and it was from Gering that Paruk learned that Symbol Technologies was interested in acquiring a share in Kobitech. While this interest was being pursued then, the work of the audit was taking shape. From the previous year's audit Paruk and his audit team also knew of the reservations J

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voiced by the predecessor auditor, Desai Jadwat, over the solvency of the A Nkobi group and its future as a going concern, a doubt, which, if it persisted, might well mean a qualified audit. They also knew of the need to produce the annual financial statements for presentation to the bank, that such statements were needed urgently and that a favourable picture of the group would have to be depicted. B

Then there is a third stream of facts flowing into this particular pool, which could not help but be present to Shaik's mind. On 9 September 1999, barely three months before the audit, Miss De Lille had raised her allegations of corruption in the arms-acquisition programme in Parliament. There is nothing to suggest that she mentioned any person by name in that broad statement, let alone the new Deputy President. But C the very same day there was issued by the Presidency an emphatic denial that Mr Zuma was involved in any such activity, and that would only have been done if it was believed that Miss De Lille's general statement of this included him, as in fact it did, in addition to accused No 1, Thomson-CSF (France) and ADS. D

Then there was the fact that it was Thomson-CSF (France), in the form of ADS, that had won the corvette munitions-suite contract and Zuma had helped Nkobi to a share of that.

Then on 28 September the new Minister of Defence approved the high-risk audit review of the arms-acquisition programme, which meant there would be a closer than usual investigation of the bidding procedures E in that exercise, a decision which would have been known to Mr Chippy Shaik in his official capacity in that Ministry.

On the very next day, 29 September, Shaik appointed David Strachan & Taylor as auditors of the rest of the Nkobi companies, including Floryn Investments and Clegton Investments, in place of Desai Jadwat, F and Floryn and Clegton, respectively, were two of the principal funders of Zuma's benefits, which David Strachan & Taylor would not know.

To a greater or lesser measure, the facts and effects of all these separate sequences of events must have been present to Shaik's mind towards the end of November. G He needed a good set of accounts that showed a more profitable enterprise than Ramsumer had reviewed the previous November. He needed that to retain and increase, if possible, the bank overdraft on which the group depended. He also needed to prepare the ground as carefully as possible for the Kobitech/Symbol Technologies joint venture which was going to be discussed at the same time. He also needed to rationalise and reduce his tax liability and he needed to keep his funding H of Zuma as close a secret as he could.

It is true that Bianca Singh, and possibly Isaacs, knew of the fact that Zuma lived in the Nkobi flat in Malington Place and that Shaik and Zuma frequently met on a one-to-one basis. But no one else knew of the counter-performance that was asked of Zuma from time to time. If any I of that dependence should leak out, particularly after De Lille's public alarm, the consequences could be unpleasant.

In that situation then, this is what Paruk said about the meeting to discuss the draft financial statements, and his is the only evidence that there is. He said that some four matters were raised and discussed. Not only the loans but also the question of safeguarding Kobifin's workshare J

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interest in Prodiba, the valuation of Kobitech's investments in that A enterprise and Shaik's remuneration and his liability for tax on it. So the meeting at the end of November at which the loans were consolidated and written off as development expenses was not only about loan accounts. Also discussed, if not considered as important, was accommodation of the implications

of the possible merger of Kobitech with the B Symbol Technologies operation, because it appears that Isaacs, the Nkobi group's financial director, came to the meeting equipped with spreadsheets that were calculated to facilitate the conclusion about Kobitech's future. That involved, among other things, finding another home for Kobitech's interest in Prodiba because, although Kobifin was vested with the benefit of the service-provider income, by virtue of a C subcontract to the original loan agreement, it was Kobitech that was the one-third shareholder in Prodiba. Paruk personally knew little of these facts and this arrangement, and he assumed it had been discussed and agreed between Shaik and Gering. But in addition to the workshare aspect Paruk said it was also Shaik who wanted his investment in Prodiba D to be reflected in the balance sheet at its proper market value of R3,5 million, and not be relegated to a place in the footnotes to the annual financial statements at the previous figure of R30 000.

In addition to these topics, there was also the matter of Shaik's remuneration, which included the liability on it for tax. It was noted that E the company had a tax loss and suggested, Paruk thought, by Gering, the tax expert of David Strachan & Taylor partnership, that the company had a tax loss and could not claim a deduction for Shaik's salary. In that situation, said Paruk, the question of the director's remuneration should be structured on the basis that it would be pointless for Shaik to take a salary. So his salary was reduced to one of R24 000 and the loan account F in the director's fees of R171 000 was consolidated with his existing loan account in Kobifin and written off as development costs for Prodiba.

Then, what is perhaps more relevant for present purposes, the question of the loans referred to earlier was also raised because of the query about their recoverability. The draft financial statements prepared G by Mr Anthony Gibb, the audit clerk who did the field-work of the audit, showed that his checking of the records for Kobifin (Pty) Ltd revealed Shaik's own loan indebtedness to that company standing at R508 032,73. Gibb was concerned about the size of that loan, which needed a certificate to show that it was recoverable. He also noted the existence of the loan debits in the names of Clegton Investments (Pty) H Ltd and Floryn Investments (Pty) Ltd in the sums of R226 576,44 and R347 159,80, respectively, for which he could find no explanation, nor was Mrs Bester able to enlighten him, for reasons already given. There was also a debit loan account of Shaik in Pro Con Africa (Pty) Ltd for R57 668 and the loan debit referred to of R171 000 in the director's fees account of Kobifin. I

All this information was in Paruk's possession by the time the disputed meeting took place. Paruk said that when the question of the loans referred to was raised because of the query about their recoverability, it elicited a strong protest from Shaik on the basis that it was quite impossible that he owed such sums to the relevant companies. Whatever J

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expenses he had incurred, he claimed, he had done so for the benefit of A the various operating companies. He had landed one big contract - the Prodiba connection - and had achieved a number of others that were in the pipeline and would come to fruition in the future. It could only have been errors by his accounts staff that had debited his loan account with the expenses he incurred in achieving all this, particularly his own B personal loan account which had been carried over from previous years. This apparent loan indebtedness, Shaik said, was therefore essentially the misallocation of various expenditures he had ordered or made for the benefit of the Nkobi companies.

According to Paruk, this explanation was accepted by himself and Gering for the reason that the accounts had indeed been previously kept C by an outside third party, and in order not to overstep Kobifin's overdraft limits Shaik had paid at least some of the company's expenses from his own account. So the possibility of erroneous allocation of expenses seemed not unreasonable and, because it was accepted that these should not have been debited to his account, the instruction eventually went out to the audit clerk to pass the necessary corrective journal entries. D

Shaik's protest was not checked because he was the only effective director and shareholder of Kobifin and would therefore be the only person likely to be affected by the decision, and that is how the writing- off of these loans came about. The suggestion that they be written off against the development costs of Prodiba arose from the fact that E Prodiba and its association with Kobifin was being discussed at the same time. It is common cause that these debits could not possibly be Prodiba development costs.

It is also common cause that after this meeting Gibb was instructed by the audit partners to pass the necessary journal entries to show a F consolidation of all Shaik's loan indebtedness, including the sum of R57 668 that was his loan account in Pro Con Africa, all into his Kobifin loan account,

together with those of Clegton Investments and Floryn Investments, making a total of R1 282 027,63, and to reflect these as development costs of Prodiba so they could be written off as part of the income statement. Shaik's director's salary was to be entered as R24 000. G

It is also not disputed that at the same time Gibb was likewise told to pass journal entries showing that Kobi IT (Pty) Ltd, which had been a dormant company up till then, henceforth had an asset in the form of the workshare right in Prodiba valued at R3,5 million and against which the H development costs were written off. That asset had been purchased, according to the forensic accountant, Mr Van der Walt, from Kobifin with a loan of that amount from Kobitech that was, in turn, borrowed from Kobifin.

If the workshare right had not been introduced as an asset and valued I at that figure, then it is also not disputed that Kobifin's accounts would have shown a substantial loss, particularly in view of the accumulated loss of R1 400 000 from the previous year, and the entire group's solvency would have been at serious risk, if not beyond dispute. In addition to this instruction and the consequent journal entries, there was a revaluation of Kobitech's interest in Prodiba from R30 000 to J

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R3 million which, as a matter of interest, was further increased in the following year by another R5 million. A

It is also not disputed that the whole exercise resulted in a considerably improved set of accounts. For example, by reversing the director's fees the income of the company was improved. The corresponding increase in Shaik's loan account would have increased his liability to tax, but that did not matter because that could be written off in that form. B

So there is objective support for Paruk's description of what happened at this meeting. The instruction given to Gibb and the journal entries he thereafter passed and handed to Mrs Bester to correct her own accounts fully support Paruk's description of the ambit and nature of the debate that took place. The adjustments of the Kobifin, Kobitech and Kobi IT C accounts to prepare for the joint venture with Symbol Technologies are nothing to do with count 2, but they are strong support for the evidence that this all happened at the same time.

Nor does it seem credible that the protest and information advanced as the explanation about the loan accounts debited to Shaik, being D company expenditure or expenses incurred on behalf of promoting the company's business, can have come from any other source than Shaik himself. And while Isaacs would certainly have known about Kobitech's interest in Prodiba, having been involved in the negotiations to join forces with Symbol Technologies, he is unlikely to have raised the E question of its investment being given a market value and to have it included as an asset in the statements, rather than as a footnote. That sounds much more like Shaik. Nor is it likely that Isaacs could have ventured the explanation that expenditure on the company's business had been erroneously allocated to loan accounts, since he himself was either directly responsible for them or very remiss in checking and F supervision of the then bookkeeper assistant.

Then again it seems unlikely that the question of Shaik's remuneration and the tax implications of the loan debit revealed by Gibb's preliminary audit would have been raised and the solution suggested in his absence. An auditor's function is to prescribe treatment for the accounting G problems of the business in the same way as a doctor would do for the illness of a patient. But such an auditor would need to be told the nature of the problem by someone who knew of it, just as the doctor would need to be told by the patient what is his ailment. It is unlikely, in our view, that Isaacs would have been able to furnish this, even if he knew of the size of the loan account. It is also unlikely that it was agreed before this H meeting and simply suggested by Gering at the time, because it would not have been realised until Gibb's draft statements were examined that there was the large debit that there was in Shaik's name in the director's remuneration account of Kobifin. That only became apparent at the time of the meeting. I

While it might be validly said that Shaik's is the sort of mentality that focuses on the large picture and would be bored by detail, Mrs Bester's evidence indicates that he was certainly capable of micro-management and of a daily interest in the money available to his companies - evidence that is supported by his close monitoring of Zuma's bank account records, which is common cause, and his written notes on Mrs J

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Bester's memoranda. One of these shows his reaction to Bester's A warning that the group faced insolvency in her memorandum to him that is referred to earlier, because he corrected her use of that word. Moreover, he would have been aware of the need to ensure that the financial statements showed a better position for the group than that reflected in the previous year and, of course, he would have been B considerably relieved to know that the signs of payments to Zuma reflected in the loan accounts of Clegton and Floryn Investments remained concealed.

In those circumstances, and although Paruk did not impress us as a witness, the background and surrounding circumstances of this audit exercise and the decisions taken at it, which constitute the main charge C on count 2, are cogent corroboration of his version of what occurred. Fortified by that circumstantial evidence, we are satisfied we can accept his evidence that Shaik did attend this meeting and we reject his denial as false. Indeed, it is not conceivable that he did not attend it, having regard for the compelling reasons that required his presence there. D

The fraudulent nature of these entries is admitted, so there is no need to explore that aspect. But these false journal entries were agreed at the audit meeting, the statements signed by the auditors and put into effect before Mrs Bester knew of them. It was an unusual procedure for the alterations to the journal to be implemented without discussion with the accountant responsible for the accounts. There are not normally many E journal entries to be made, and those that are, are usually for correcting errors of allocation or noting. When she discovered what had been done, and she only discovered that by asking Gibb to let her know what had happened, she was outraged and resigned, this time for real and for good. The decision to bypass her must have been taken by somebody who F knew of her concern about these loan accounts, that factor also points to Shaik, and he would not have done so if he was ignorant of the consequences or thought that it was all entirely lawful.

Finally, in regard to count 2, we should say that Bester markedly impressed us as a witness. If she tended to wear her heart on her sleeve, at least it was a conspicuously honest one. She was also, by training, if G not by nature, too, a careful person who set out the queries and difficulties that she encountered in the course of her work in written form, as the evidence amply demonstrates. The contemporaneous memoranda, forecasts and cash flow reports which she directed to Shaik over the months during 1999 that she worked in the Nkobi group are H powerful support for the truthfulness of her evidence. Where she was contradicted by Shaik we have not the slightest qualm in preferring her evidence as the truth of the matter. Particularly is that so in respect of her final meeting with Shaik. He did not leave his auditor advisers to deal with her objection, as he claimed. Most of her letter of resignation was I directed at his conduct in carrying on the business, and Mrs Bester was not the sort of person who would have been fobbed off with explaining her protest, particularly in that respect, to the auditors alone.

And then there was Shaik's reaction, or lack of it, when he received the letter that is exh O, pp 1 - 4. That is the letter from the senior partner of David Strachan & Taylor, drawing Shaik's attention to the fact that the J

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Directorate for Special Operations had interrogated his office about the A 1999 financial statements of Kobifin (Pty) Ltd, in the context of allegations of corruption and/or fraud in connection with the acquisition of armaments by the Department of Defence, particularly the expenditure that was regarded as development costs. Had this been the work of the two auditors only, even with Isaacs's assistance, there must surely B have been a protest by Shaik to that effect. Particularly is that so when part of the letter required confirmation by Shaik that the expenditure in question was indeed development expenditure. Yet there was no such protest, or even suggestion, that if there was fraud or corruption the question asked should be directed towards the writer's partners. All Shaik did was seek legal advice as to whether those journal entries in C question could be reversed as a fundamental error which, as was common cause, was in fact later undertaken.

In the result, we have no doubt that he did attend this meeting and was party to the decisions taken because the circumstances make it so unlikely that this was all left to his accountant and auditor advisers, that D his evidence to this effect can be rejected as false.

We turn next to count 3. The main charge on this count, as read with the preamble and further particulars, is the making by Shaik and Thétard of an agreement in contravention of s 1(1)*(a)*(i) of the Corruption Act to offer or give to Jacob Zuma the sum of R500 000 a year until dividends E from ADS became available, which sum was not legally due, with the intention of influencing Zuma to exercise his powers or duties as Deputy President and leader of government business in Parliament to further the interests of Thomson-CSF in two ways:

(1) by protecting Thomson in the investigation of the bidding process for the munitions suite of the corvettes; and F

(2) by promoting Thomson in their future bids for government-driven public works.

The first alternative to the main charge is an alleged contravention of s 4*(a)* and/or 4*(b)*, as read with ss 1, 4(i), 4(ii) and 8 of the Prevention of Organised Crime Act 121 of 1998. This was achieved, says the G amplified charge, by the service-provider agreement entered into some time in 2000 by Kobifin (Pty) Ltd (accused No 4) with Thomson-CSF International (Africa) Ltd, the Mauritius-based arm of the Thomson group operations. In terms of that agreement it is alleged R1 million was to be paid in instalments of R250 000, the first two of these being due before the end of December 2000 and the second two on 28 February H 2001, the money being needed to fund Jacob Zuma's residential development at Nkandla. The purpose of this service-provider agreement, it is said, was to disguise the nature and source of the money intended as the payment for Zuma's protection, that is the thrust of the main charge. I

The first tranche of R250 000 was received from Mauritius on 9 February 2001 into the account of Kobitech (Pty) Ltd (accused No 5) and, on 28 February 2001, Kobitech paid that sum to Development Africa and issued three other postdated cheques with numbers sequential to the first, for R250 000 each, all in favour of Development Africa, and on 19 April 2001 payment on the last three cheques was stopped. J

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But later in September of that year Shaik himself paid another R250 000 A in two separate payments of R125 000 each to Development Africa.

There is a second alternative count that alleges the contravention of other sections of Act 121 of 1998, in that one or other of the accused companies had the bribe money in its possession, but this charge depends on the same facts as constitute the first alternative. B

Now although the charges are part of the same sequence of events, in substance they are separate and distinct. The alleged commission of an offence under the Corruption Act can or could have taken place before the service-provider agreement was entered into and without the alternatives being added to the charge. But the service-provider agreement is said to be the implementation of the corruption payments, so both need C to be considered in that light.

The evidential foundation of the main charge is the handwritten draft with the encrypted fax or, for practical purposes, the agreed translation into English, which are exhs E25 - 26 and E30, respectively. It is not disputed that exh E25/26 was written by Thétard, nor that he and Shaik D were both directors at the time of Thomson-CSF (Pty) Ltd, as accused No 11 was then called. Nor was it disputed that the plain and obvious meaning of the fax is that a proposed arrangement discussed at two previous meetings by Shaik and Thétard on 30 September 1999 in Durban, and by Thétard and Perrier on 10 November 1999 in Paris, E respectively, was confirmed with a third meeting in Durban on 11 March 2000, of Shaik, Thétard and Jacob Zuma, and agreement reached about that proposal. Nor is it disputed that the document was composed, as the draft indicates, to be sent by encrypted fax to Thétard's two superiors in Paris, including Perrier.

It was received in evidence, after objection was raised, as being a F declaration by Thétard, made as a co-conspirator with the present accused No 1, of an act in furtherance of a common purpose, the common purpose alleged being that the arrangement suggested at the two earlier meetings and confirmed at the third was the offering of a payment of money to Zuma to use his authority and influence, first, to protect and, thereafter, promote the interests of the Thomson-CSF G companies, and Zuma's acceptance thereof. It was an executive declaration in the carrying out of an unlawful conspiracy which was no less an executive statement because it mentioned the two historical, earlier meetings that led to the third meeting. Those references were an integral part of the executive statement and explained the basis on which the final H agreement was made.

On that basis it was held to be one of the accepted vicarious-liability statements that are received as exceptions to the hearsay rule when the charge is brought against a co-conspirator or in support of a conspiracy to commit an offence.

A second reason for its admissibility was advanced in the form of I s 3*(c)*(i) - (vii) of the Law of Evidence Amendment Act 45 of 1988. I did not think it was necessary to decide this argument in view of the conclusion reached as to its executive character, although following the approach of the Supreme Court of Appeal in the decision of *S v Ndhlovu and Others* 2002 (2) SACR 325 (SCA) (2002 (6) SA 305; [2002] 3 All J

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SA 760), it seemed to me that it would have been admissible on that basis as well. A

The State's case was that the draft fax spoke for itself. The arrangement discussed between Shaik and Thétard on 30 September 1999 was the payment of a sum of money to Jacob Zuma in return for his help in the possible difficulties that they were facing; that this was put by B Thétard to Perrier on his visit to Paris on 30 November and that thereafter at the meeting of 11 March of Thétard and Shaik with Zuma this was either put to and accepted by Zuma or to confirm to Thétard his acceptance of the suggestion already made to Shaik. In return for the sum of money offered he agreed to protect Thomson's interests in any official investigation of irregularities into the Sitron programme which, it C is common cause, was a reference to the armaments suite of the corvettes, and thereafter to promote Thomson's interests in its bids for more government-driven public works in the future.

This, says the State, is all clearly established by the fax.

The accused's answer and explanation of this document is that, while D he had no idea why Thétard ever composed the draft fax in the terms he did, and he was wholly unaware of it until he saw it reproduced in the media during one of the leaks of the prosecution material that made their appearance from time to time before the trial started, the gist of what it relates is outwardly correct.

He did meet Thétard on 30 September 1999, one of many meetings, E but it was to discuss the making of a donation by Thomson-CSF (France) to the Jacob Zuma Education Trust, a Government RDP-started trust fund for the education of rural poor children and of which trust Zuma had been elected patron. Thétard thought Thomson's would meet the request and undertook to put the matter to Perrier, his superior F in the Thomson corporate hierarchy, which he did on his visit to Perrier on 10 November 1999. Perrier's answer, although sympathetic, was not a commitment to a fixed amount or to any amount at all, but at least hopeful of a substantial gift in the near future. It was not a matter entirely free of difficulty, it was said, being something that would need board G approval, but that Perrier would do what he could. This intelligence was conveyed to Zuma, who was plainly pleased at the prospect but, because the French needed to be certain of the genuineness of the beneficiary, Zuma agreed to meet Thétard to persuade him of this fact.

Shaik managed to arrange such a meeting, originally for 11 March 2000 but rescheduled at the last minute for 10 March because of some H unavoidable commitment on Zuma's part. Despite the hopeful indications given by Thétard who, though never mentioning the amount the French would give, always intimated that it would be substantial, nothing materialised. Shaik wrote several letters to Thétard during the year, protesting this lack of performance and made it plain that Zuma's I unrealised expectations were causing dismay and embarrassment to him and no less to Shaik. Finally, in October 2000 a generous gift of R1 million was received by the trust from the former President, which relieved the strain on the trust finances, and Thomson's undelivered promise ceased to bother him.

These two versions identify the essence of the dispute between the J

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State and the accused on this charge. Where does the truth lie? Was it a A bribe that was discussed and agreed at these meetings or a donation? Again, the surrounding circumstances may point to the correct conclusion.

The evidence in this regard establishes the following. In support of the State's contention it is quite clear that by 30 September 1999, when the B first meeting with Thétard took place, it would have been known, to Shaik at least, that he had been specifically mentioned in the denial put out by the Presidency, following the statement by Miss De Lille in Parliament on 9 September, of any complicity by Jacob Zuma in any of the allegations of corruption provided to Miss De Lille. The fact that an allegation had been made to her that required the issue of this denial C must mean that somebody obviously thought or believed that there was some corrupt link between Shaik and Zuma. If he had been paying Zuma money for the preceding two years, as he had, that might look awkward if any investigation into the matter established that fact.

Such level of concern as this may have generated would at least have D been maintained by Minister Lekota's approval of 'the high risk' rating given by the Auditor-General to the arms-deal audit, which the Minister did on 28 September 1999. That approval, which meant a closer than usual inspection of the bidding process, would have been known to Chippy Shaik and thence,

almost certainly, to the accused; and both Thomson-CSF and ADS had been included in the dossier given to Miss E De Lille by 'concerned ANC MPs', but on a non-specific basis.

Then it is also the fact that, by that time, Nkobi's finances were in a hand-to-mouth state, as Mrs Bester's evidence makes clear. However much underlying asset value there might have been in his companies, as the accused often asserted, the fact was they could not pay all their creditors. F

As against that struggling ability to pay for Zuma's expenses, Zuma's own need for more than even his increased salary as Deputy President allowed, remained unabated. On 29 September 1999, for example, Wesbank had informed Isaacs that payments for Zuma's Mercedes motor car were in arrears in the sum of R46 618,89, notwithstanding G that Kobitech had by then already paid R66 000 towards it.

It is also not disputed that the very next day, 1 October 1999, Shaik wrote to Thétard, referring to the previous day's discussion, and asked for a meeting with Perrier on 22 October in Paris. That never came to anything but Thétard himself went the next month to the same person H who, as already stated, was the Chief of Operations in Africa for the Thomson group. What was said, of course, in that meeting is not known, but nothing more seems to have been said or done before 9 February 2000. That may well have been a continuation of the reaction of Thétard's superiors that was reported to Mrs Marais by Thétard when the revelations were first made by Miss De Lille in early September, I which was not to take any action about the allegations which were then regarded as vague and general.

But on 9 February 2000 *City Press*, a newspaper circulating in the Gauteng/Pretoria area, carried an item headed 'Official in Arms Deal Scandal', which reported first that a Defence Department official J

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allegedly brokered a range of deals to 'a French company' which A involved, in many cases, inferior or overpriced technology. But in the same report that identification was more express. It read as follows:

'Claims under scrutiny include that:

- a senior politician intervened to reopen negotiations for the contract to provide the corvette defence suite, after which French outfit Thomson, B together with a local empowerment group, African Defence Systems, were declared the preferred bidders
- this was after a different local company received indications it was the preferred bidder.'

That report clearly identified Thomson as one of the C culprits in the allegations of corruption and left the identity of the senior politician to guesswork and rumour.

On hearing of the report, Thétard set his secretary to obtaining a copy, which he did, as exh E12, and which he read. Something of the sort may have come to Shaik's notice as well, for on 11 February he faxed a memo to Thétard in these somewhat cryptic terms: D

'I refer to our understanding re Deputy Pres Jacob Zuma and issues raised. I will appreciate it if you can communicate to me your availability to meet.'

This elicited a reply from Thétard on the same fax message in manuscript, which said:

'At this occasion I propose to have a meeting with you regarding the issues raised in your fax.' E

Allowing for the fact that English was not Thétard's home language, that seems to mean that he welcomed the idea of a meeting to discuss the issues that had been raised. If it was a bribe they had been talking about, F the news item of two days earlier would have sharpened the need for discussion. Thereafter there are memoranda or diary entries to show that Shaik met Zuma in Cape Town in January 2000, although that was with another person, and also not unusual, and in Durban by themselves on 15 February, which meetings are also common cause, and Thétard's G diary shows a planned meeting with Shaik on the 25th of that same month. So contacts between the three persons concerned were taking place during January and February, albeit in different combinations of the two.

But, as these events were taking place, it seems clear that Jacob Zuma was wanting to have built for himself a residence in the Nkandla district H of northern KwaZulu-Natal, and would have given instructions to a local firm of architects to that end for there appears early in the year 2000 an architect's plan of such a residential complex designed on the style of a traditional Zulu *muzi*. This is exh M20, 110004. The date of issue is not fully legible but it seems to have been in March 2000, but whenever it I was, the cost would plainly be more than Zuma could afford if he still

needed Shaik's help to live on his remuneration as Deputy President. So he would have a need for money, not only to meet his current needs but also to pay for this acquisition.

After the 25 February meeting, the speed of events seems to have picked up. Shaik met Zuma in Johannesburg on 2 March and something J

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must have been agreed then, because on 8 March Thétard wrote to Shaik A confirming a meeting with Zuma on 10 March, which Bianca Singh's diary entry shows was a management meeting, with Thétard to stay over to the following day, Saturday, for a meeting with Zuma. Then on that Saturday, 11 March, the meeting of Thétard and Shaik with Zuma took place that is reported in the encrypted fax. B

On the face of it the meeting was about 'JZ/S Shaik' and the contents clearly show that a suggestion made by Shaik at the meeting with Thétard on 30 September 1999, which suggestion had been put to Perrier on 10 November 1999, was adopted and confirmed by Zuma in a manner satisfactory to Thétard, to obtain which assurance may have been part of his brief. It then shows what the suggestion was, namely, the C payment by Thomson of R500 000 a year until ADS dividends were paid and the *quid pro quo* that was agreed. It is not disputed that the word 'Sitron' was the name given to the corvette acquisition programme, nor that Thomson had an interest in future government-driven public works. Nor is it disputed that the author's plain intention, as noted on the draft, D was that a report of the meeting and the resulting agreement was to be faxed to De Jomaron, the Thomson sales chief for Africa, and to Perrier, respectively.

Thereafter it is common cause that Shaik made his visit to Perrier on 22 May 2000 while in Paris for a board meeting of ADS, but that he also saw Perrier privately, he says, about the requested donation after that board meeting. E

It is also clear that Shaik had high hopes of considerable income being received eventually from ADS, which would be a reason for setting a limit to assistance from Thomson until those dividends came on stream. But there was plainly going to be an interval and delay in the receipt of F any such dividends in the hands of Thomson-CSF (Pty) Ltd because, in order to acquire its ADS shares from Thomson-CSF (France), Nkobi had to borrow R7 464 000 and commit itself to an escrow agreement by which all Nkobi dividends from ADS would have to be placed into an escrow account until the loan was repaid. In fact, that happened because the ADS dividends declared for the two years ending 31 December 2000 G and 2001 were not enough to clear that debt and is probably the cause of the disappointment that prompted Shaik to write to Thétard on 1 October 2001, hoping he would not have to wait a lifetime to see the financial benefits of his hard work in securing ADS. And it is very likely also the reason for his earlier unsuccessful plea to Thomson to make him H a gift of the shares that he had had to buy as a reward for his contribution and to obtaining the contract.

This enforced delay in the receipt of dividends from ADS also puts the negotiated payments for Zuma referred to in the encrypted fax, that are the alleged bribe money, into an intelligible perspective. On this basis I they appear as a sort of anticipated bridging finance to continue the funding of Zuma that Nkobi was finding increasingly difficult to maintain and to which Thomson now had some reason to contribute, until the revenue expected from ADS became available to Nkobi.

Despite the arrangement made then and the subsequent meeting with Perrier on 23 May 2000, nothing more was heard from Thomson. That J

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was apparently not through lack of any trying by Shaik, as his letter of A 31 August 2000 to Thétard makes clear. He ended this letter, which was a catalogue of other complaints about Thétard's tardiness in these terms:

> 'I have also raised a very important matter with Mr Jean-Paul Perrier which he had sanctioned for implementation by yourself. This was done during our last meeting in Paris several months ago and, despite my several attempts to B raise this issue with you in order to resolve the undertaking, you have continually ignored this concern. You leave me no choice but to seek alternative remedy to this matter and therefore I wish to put the above matter on record with you.'

So far the stream runs quite clearly. But from July 2000 onwards a C number of other events crowd into the chronological narrative that muddy the waters but which have a relevance to, and an effect on, the end result, and which therefore need to be identified and considered.

When Shaik wrote his letter of 31 August to Thétard, complaining of inaction by Thomson over the matters sanctioned by Jean-Paul Perrier, he did not know that construction had started on Jacob Zuma's Nkandla D home. This was undertaken by a Mr Eric Malengret, who was introduced to the project and invited to tender for it by a mutual friend of the Deputy President and himself, a Mrs Nokuthula Ngubane of Nelspruit. The price quoted for this construction by Malengret was R2 400 000, payment for which was to be made on a project valuation every two E weeks with the usual retention clauses that characterise building contracts. Malengret was told that his quote was too high and, on his somewhat vaguely stated but firmly meant intention to reduce it where he could, he embarked on construction on 20 July. Mr Zuma himself once visited the site on 29 July 2000, by which time Malengret could see his way to effecting some reductions in the original price, mostly by F omitting aspects he had factored into his original quote that were undertaken by other agencies, and by being allowed to live with his workmen on the site rather than having to hire accommodation in Eshowe.

Payment was never made in terms of the agreement. It came in odd G sums and from odd sources. On 14 August 2000 two cheques drawn by a Nelspruit business, which turned out to be owned by Mrs Ngubane, and totalling R90 000, together with a cash payment in the sum of R10 000, was deposited into Malengret's bank account. That was the first payment he received. On 4 October another cheque for R40 000, drawn by the same Nelspruit enterprise, and on 18 October some H unidentified person made a cash deposit of R50 000, again both being made into Malengret's bank account.

So by 5 October, when the next incident involving Shaik occurred, Malengret had done about R226 000 worth of construction, for which he had only received R140 000, and he may not have known on I 5 October of the cheque for R40 000 deposited into his bank account the previous day.

But during this period, that is, from mid-September 2000 and until it made its 14th report to Parliament on 3 November, the Select Committee on Public Accounts (SCOPA) was investigating the Auditor-General's review of the arms-acquisition programme. Included in its scope of J

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consideration were areas of concern to which the Auditor-General had A drawn attention in his report, to the effect that three stages in the procurement process had broken down, which could have opened up possibilities of abuse in the selection of both prime and subcontracts. In addition to that there was the question of conflicts of interest within the Department of Defence. One such potential conflict was between Mr B Chippy Shaik and the accused's business interests, and in which there was evidence before the committee to suggest that Chippy Shaik's reported recusal from discussion and decision that affected the accused's interests was fictitious and false. There was apparently evidence which claimed that he remained in and influenced the proceedings from which he purported to recuse himself. C

Perhaps of equal, if not greater, concern to those who were mentioned, were the statements in a letter from concerned ANC MPs that had been handed to Miss De Lille and among them were allegations that Thomson-CSF and ADS were implicated in corrupt practices, and as part of the corruption attributed to Schabir Shaik was the statement that D he worked closely with Vivian Reddy and that Jacob Zuma used them both.

Then to revert again, in chronological sequence, to the construction of the Nkandla residence, shortly before 5 October, on or about the 1st of that month, Shaik learnt of the Nkandla project and the identity of the builder, being advised about it during a telephone exchange with Jacob E Zuma. He thereupon contacted Malengret and arranged to meet him to discuss the matter, and this meeting occurred on 5 October. The effect of this new knowledge on Shaik seems to have been one of dismay, if not shock, believing, as he did, that the cost would be the R2,4 million that was stated in Malengret's original quote and asking Malengret if 'Zuma F (thought) money grew on trees'. To ensure that Zuma was getting some value and whether the construction so far was anything like the quote that he knew of, on the next day, that is, 6 October, he asked a quantity- surveyor friend of his to visit the site and assess the worth of Malengret's construction.

But thereafter he took these steps. In what order he did them is not G known, but both are connected in time to this incident. One was the letter of that same date to Thétard, which is exh RR58 - 58, and which said:

> 'Dear Mr Thétard,
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> Following on my telephone call to you in Mauritius two weeks ago, you H undertook to call me back the next day from your Mauritius office. As I have not heard from you, I am therefore forced to write this fax urging you to sit with

me to cover important strategic issues. As you would no doubt appreciate, the longer we leave matters of mutual interest to be resolved, the harder or the more difficult they become to be resolved.'

There then followed a list of the matters urgently requiring their I attention and decisions. The first four do not concern the present issue, but the fifth one reads as follows:

'5. The subject-matter agreed by ourselves in Pretoria during the Dexsa Show over breakfast. My party is now saying that we are renegading (he meant ''reneging'') on an agreed understanding, this request already having been J

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agreed upon by Mr Perrier. I since then communicated this understanding A to my party. Several months later, no real action. I share the sentiment with my party that he feels left out. This is particularly unpleasing, given the positive response from Mr Perrier. Consequently, as my party proceeded to an advanced stage on a certain sensitive matter which was required to be resolved, this delay is obviously proving to be extremely detrimental and embarrassing for all of us. I therefore urge you to respond timeously on this B extremely delicate matter.'

That anxiety might have been further sharpened by the public inquiry held by SCOPA in October and in which, according to Bianca Singh, Shaik had sufficient interest to have the televised proceedings taped for later viewing. When he had seen it, his comment the following day to her, C she said, was that they (SCOPA) had focused on the wrong person. Mr Gavin Woods's evidence was that the focus of the televised proceedings had been on Mr Chippy Shaik.

The other was a telephoned instruction to Malengret to stop work on the construction site. Malengret was not prepared to do this until he had D such an instruction in writing. That was accordingly done by letter, but only done on 19 October, which letter is exh M20, 110047. Malengret advised his client of this instruction by telephone but was told by Zuma to ignore the letter and carry on with the building operations.

As that happened, other contributory events were taking place. A day E or so before 16 October 2000, Jacob Zuma's office approached Mr Gerhardus Pretorius, who was then head of the Absa Bank Trust and Wills Services division and, as such, a co-trustee of the Jacob Zuma Education Trust and whose office administered the funds of that trust. Pretorius was brought a counter-cheque drawn by Nedbank in favour of the former President, Mr Mandela, in the sum of R2 million. On the F reverse of this counter-cheque was an endorsement by Mr Mandela in favour of Jacob Zuma. The cheque was brought to Mr Pretorius with the request that it be paid into Zuma's personal account. This presented some difficulties because it was a non-negotiable instrument and one for a large amount. But, with his connections in Absa and the high political G profile of the donor and the recipient, Absa Bank managed to have the cheque deposited into the personal account of the Deputy President.

Of this R2 million a portion was to be paid to the Jacob Zuma Education Trust and, to that end, Mr Pretorius was asked to go to Zuma's office at Luthuli House, where Zuma gave Pretorius his personal account cheque book to write out a cheque for R1 million to the Education Trust. Pretorius did that and Zuma signed the cheque, and that sum of money duly went to the H trust, leaving the balance in Zuma's cheque account, and on 19 October, as I have already said, having been told by Malengret that Shaik ordered the construction to stop, Zuma countermanded that and said Malengret should continue. With that sum I of money in his bank account he could well feel confident to tell Malengret to complete the project.

What Zuma did not know, however, was that on the previous day Shaik, noticing on his Absa Cash Focus system that there was R900 000 in Zuma's personal account, withdrew that sum and placed it into a fixed-deposit account in the name of Floryn Investments, so that it J

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would attract a higher rate of interest for which, he said, he would later A account to Zuma. What interest accrued would have been reduced since at least some of the R900 000 was spent on various needs of one or other of the Nkobi group companies. On 17 November, for example, R563 634,24 was transferred from this fixed-deposit account to Floryn Investments' cheque account, and of which R146 820 was thereafter B transferred on 20 November to Kobitech Transport Systems (Pty) Ltd, and Kobitech's overdraft was reduced by a further sum of R100 000.

Then on 30 October the Select Committee on Public Accounts issued its 14th report, being the conclusions reached on the various C allegations contained in the Auditor-General's review that had been referred to it and which conclusion recommended a joint investigation by the various Parliamentary agencies, such as the Public Protector, the Auditor-General, the National

Prosecuting Authority and the Heath Special Investigation Unit. To anyone following the progress of the inquiry, this development must have at least generated interest, if not concern, because it meant that, if it were pursued, the enquiries into the arms- D acquisition programme in the areas indicated by the Auditor-General would be continued. As a matter of historical interest, the report was presented in Parliament on 2 November and adopted without debate on the next day. That was followed on 13 November by a meeting of the four investigative agencies recommended in the SCOPA report as continuing the inquiry. E

Then on 31 October, and making his first direct appearance in the evidence is Mr Vivian Reddy. Mr Reddy, a Durban-based businessman, who also seems to have taken on the task of advising Jacob Zuma about his financial affairs, knew Eric Malengret and he knew that Malengret was F building Zuma's Nkandla home, and he also knew Malengret had not been paid and was short of money to continue. On that day, that is, 31 October, Reddy lent Malengret R50 000, to enable him to continue with the Nkandla project, and had also given him other relatively minor work for another R50 000 to help Malengret remain in business while he waited for payment from Zuma.

On the next day there appears the first application form for a service- G provider agreement. What led to the original thought of it is discussed later. It may have been part of the exchanges that had taken place between Shaik and Thétard that are referred to in the letter of 6 October. The State says this was the cover for the payment of the bribe money to Zuma. The accused's evidence was that it was nothing of the sort; it was H a normal Thomson procedure by which a client service provider could benefit from an association with Thomson by introducing the principal to more business in the country concerned. The disputed agreement was in a standard contract form, accompanied by an application form for such agreement. There are at least three specimens of this document that were put before us in evidence. I

The first, recovered from the Nkobi offices in the search and seizure operation carried out by the NPA, is an application form for such service provider agreement, completed and signed by Shaik on 1 November 2000. In the space allocated to any special comment by the applicant, Shaik had written: 'Look forward to a mutually beneficial relationship', J

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with the words 'mutually beneficial' underlined, presumably for emphasis. A With that was the specimen draft agreement itself with the name and address of the applicant, Kobifin (Pty) Ltd, the expiry date altered from April 30 to May 30 2001, the banking details of the applicant and also signed on its behalf by Shaik.

But there are two manuscript notes in the body of the agreement that B are admittedly in Shaik's handwriting, although he said he could not remember placing them there. The first in the margin opposite a clause in the printed form contract which sets out a warranty by the service provider that he will not be party to any bribery of the government concerned is a question mark above the words 'Conflicts with intention'. The second, added to the remuneration provision in clause 7 of the draft C of R500 000 in two instalments, one before the end of December 2000 and the second on 28 February 2001 are two additions in pencil, also inserted by the accused. Each of these is for the sum of R250 000, in effect wanting to increase the remuneration to the service provider for the six months of its operation to R1 million. Apart from these notations, D there are small tick marks down the right-hand margin of the draft agreement itself, as if these had been read by the person making them and were found acceptable. In the nature of things, such notes would not be made unless they reflected the thoughts of the maker at the time.

Then on 6 November 2000 the National Prosecuting Authority E instituted the preparatory investigation into this matter, in terms of s 28(13) of the National Prosecuting Authority Act, into, among other aspects of the arms-acquisition programme, a contract and subcontracts between GFC and Thomson-CSF (France) as the prime contractor for the supply of the corvettes, and that investigation started on the 13th of that month. F

But also on 6 November Schabir Shaik departed to Mauritius, accompanied by Bianca Singh, to meet the Thomson officials there, including De Jomaron and Thétard who, by that time, was spending more time in Mauritius than in Pretoria. Bianca Singh said she was specially told to take with her the file of newspaper reports on the alleged G corruption in the arms-acquisition programme that she had meticulously cut out and kept, also on Shaik's instructions, since these started appearing after Miss De Lille's parliamentary statement. The day after arriving this meeting took place and at which she was required to take minutes. This she did for the first items of discussion, which was a requirement of foreign exchange for the Prodiba enterprise. Thereafter H the bundle of press cuttings was produced and the discussion turned, in Shaik's words, she said, to 'damage control'. The use of this expression was not disputed by Shaik, nor

was Miss Singh's evidence of his remark that, if a particular person in the ANC opened his mouth they would be in trouble. He did say something of the sort, he said, but he was referring I to another contractor involved in the acquisition process. It had nothing to do with him or Nkobi, although he took the opportunity to admonish his Thomson colleagues for not taking more seriously the allegations in the media reports that implicated them.

As this was taking place, the press cuttings were being photocopied by Thétard, and when Shaik remarked that evidence from the ANC man J

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might cause trouble, Thétard and De Jomaron looked at her in apparent A consternation. Observing this, she said that Shaik said he hoped she was not minuting the discussion and after which she was asked to leave. On doing so, she left the minutes she had so far recorded on the table, but never saw them again, leaving Mauritius and Nkobi's employ the next day as a result of some private collision with Shaik. She did not record B the name of the ANC man whose open mouth might spell danger because, as she was trying to reduce the sound of the name to a spelled form, the discussion moved on and she was interrupted by the request that she leave the meeting.

It seems at least very probable that the service-provider agreement and its implications were further discussed thereafter and something arranged C between the participants. That appears from the letter which Shaik sent on 8 December next, which opened with the words: 'Herewith application form for the service provider agreement, as discussed.' Further action in this respect seems to have been suspended until 8 December 2000, when Shaik sent that form to Thétard in Mauritius with that covering note. D

But on the day after Shaik left for Mauritius, that is, 7 November, and while he was meeting with Thomson in that country, Mr Vivian Reddy opened a bank account with Nedbank in the name of Development Africa. We were told by Dr Zweli Mkhize that Development Africa was a formal trust of which he was one of the four trustees, and was dedicated E to the provision of money for the ANC supporters who needed financial relief of one kind or another and was properly founded in a form trust deed lodged with the Master, as required by statute. Moreover, he thought that that happened on Reddy's suggestion in about late 2000. But he seems to be clearly mistaken about that. Nor was the original F intention to be money for needy ANC supporters. He told Shaik at first that it was for traditional leaders in KwaZulu-Natal.

In any event, when this bank account was opened by Reddy, there was no sign of Development Africa being anything other than a banking arm of Reddy's. There is no indication that it was a trust. If there had been, it is highly improbable the bank would not have required a trust deed to G be presented and would have opened the account in the name of a trust. Moreover, Reddy was the only signatory on the account and that too is unlikely if there were other trustees properly indicated in a formal trust document approved by the Master. In fact, there is no sign at that time that Development Africa was anything other than the *alter ego* of Mr H Reddy; and it is common cause, or amply proved, that Reddy it was who eventually arranged for the payment of the bulk of the cost of Zuma's Nkandla home, for it was Reddy who arranged the bond that finally paid R900 000 of Malengret's claim and it was he who stood surety for the mortgagor and he who, up to November 2004, when the evidence was given, had paid all the bond instalments as they fell due. I

Mr Reddy was not called to give evidence. He was initially on the list of proposed witnesses for the State but was not so called by the prosecution and was made available to the accused to do so. However, they also decided not to call him, so the extent of his activities has to be gauged from other persons who dealt with him. J

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This evidence clearly shows that Reddy assisted in the payment to the A builder of Zuma's Nkandla residence. He did so, as already stated, by advancing R50 000 to Malengret on 31 October 2000 as a loan and, when Malengret had not been paid for the work he had done, he offered Malengret work elsewhere for another R50 000, to keep Malengret in business. Moreover, by the time Reddy applied for the bond on Zuma's B behalf, Malengret was still owed R1 150 000. His eventual cost, after all the reductions he would make, was R1 340 000, of which he had received R190 000. He was therefore still owed R1 150 000. By the time the bond was applied for, Shaik had himself or through Kobitech paid R500 000 to Development Africa. The first application for the Zuma C bond was for R650 000, which would have been the remaining cost if

Shaik's R500 000 was taken off the total amount. Why it was raised to R900 000 thereafter is not clear. But that would be the sum required if one of the payments of R250 000 made by Shaik was either repaid to him or devoted to some other expense. But that did not take place till 2002.

But by 4 December 2000 Malengret had completed almost all the D work on the Nkandla residence but had still not been paid anything since 18 October, and even that was less than he was owed then. He was sorely in need of payment, not only to pay his suppliers but also to finish the work, and he had made many unanswered requests to Zuma for payment.

The first transaction that appears on the bank statement of Development E Africa is a deposit of R1 million on 6 December 2000, the description of which reads: 'Deposit J G Zuma, Pretoria', and on the same day Zuma drew his personal cheque for R1 million in favour of Development Africa. If this was intended to pay Malengret for the construction of the residential complex at Nkandla it would have covered F most of what was done once the project was completed, which it was by March 2001. But this cheque was stopped by Shaik and it was stopped because he had already taken the balance of the R2 million from President Mandela on 18 October.

That incident would have left Shaik in no doubt that Zuma needed the G R900 000 replaced. At that time he did not have the ability to replace it, nor had Thomson made any payments in terms of the agreement of 11 March, and the best part of one year had already passed without any sign of such payment.

A need for Thomson to make some payment would have been H underlined by the call made by SCOPA on 8 December for the President to issue the necessary proclamation for the Special Investigation Unit to take part in the investigation, and Shaik agreed that he carefully monitored all of these developments. But even without that knowledge, the sense of urgency is self-evident in the fax of 8 December which Shaik sent to Thétard, and which reads as follows: I

> 'Herewith application for the service provider agreement, as discussed. Kindly expedite our arrangement as soon as possible as matters are becoming extremely urgent for my client.'

If that was to be genuinely a payment in terms of the service-provider agreement, then it was being requested before any service had been J

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performed by Shaik, and as though such payment was expected in terms of some arrangement related to the agreement. A

Furthermore, while this was going on, and consequent upon a recommendation of SCOPA that the concerns of the Auditor-General be further investigated, this resulted, according to Mr Gavin Woods, in mid-December and beyond, in some discernible dismay among some B senior ANC officials and even from some Members of the Executive when use of the Special Investigation Unit was recommended. And not only dismay but positive unhappiness and even resistance to the idea, with perceptible attempts being made to discredit not only SCOPA but also the Auditor-General's review. ANC members of the Parliamentary Committee were summoned to Tuynhuis and thereafter, on 18 January, C and notwithstanding legal advice sought for the President from senior counsel which recommended the intervention of the Special Investigation Unit, the request to initiate this, made by SCOPA, by issue of the necessary proclamation, was refused, a result that was communicated to Mr Woods by a letter from the Deputy President, that Woods thought was unnecessarily personal and hostile. D

After that, and furthermore, the leader of the ANC component of SCOPA felt compelled to resign and the make-up of the committee, which had been deliberately non-partisan up till then, with an IFP Member of Parliament as the chairman, was reconstituted with not only the former majority of ANC members but also an ANC chairman. That E all falls within the province of government business in Parliament. The antipathetic tenor of Zuma's letter to Woods and the ousting of Mr Andrew Feinstein on 29 January 2001, as leader of the ANC members, was a surprise since Feinstein had earlier reported to Woods Zuma's apparent support of the committee if it recommended an investigation. F

Mr *Van Zyl* made some point of this as indicating Zuma's innocence of any intervention in the matter. But having made a public denial of any complicity in the corruption in the arms deal, he could hardly do otherwise if he was ever in a position of having to declare his attitude.

But the end-result was a clear indication that there would be no investigation of the Auditor-General's and SCOPA's concerns and Miss G De Lille's allegations by the Special Investigation Unit. There may well have been other valid reasons for excluding it, other than the Constitutional Court's decision about Judge Heath's role and status, but the tone of Zuma's letter indicated obvious satisfaction in the decision. Furthermore, he gave it the widest publicity, including

dispatch to the contracting H parties involved in the arms-acquisition process. If they were not concerned about the outcome of any inquiry into the exercise there would hardly be any need for that.

It may have been coincidence thereafter that, on 9 February 2001, R250 000, less R275 bank commission, was deposited by Thomson I (Mauritius) into Kobitech's bank account. But this was plainly the first payment of R250 000 due before the end of January according to the service-provider agreement signed on 1 January 2001, that is exh P13, and was the third of the specimens put before us. It may also have been stimulated by the fact that at least part of the looming possibility of investigation into the bidding process had now been shut out and that J

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some performance by Thomson was overdue. It could not have been the A result of any information supplied on counter-trade possibilities that the agreement ostensibly rewarded. That was only done later in August and was falsely backdated to April.

It also seems that on a date unknown but probably when he realised he had taken money that Zuma intended to pay Development Africa, Shaik, B through Kobitech, had issued four postdated cheques to Development Africa. These were numbered sequentially, 1329, 1330, 1331 and 1332, each one being for R250 000. That amounts to R1 million and is exactly the sum of the cheque issued by Zuma to Development Africa on 6 December 2000 and on which Shaik had stopped payment. The first C cheque, No 1329, was presented for payment on 24 and cleared on 28 February 2001, and that seems plainly to have been met from the first payment received from Thomson in Mauritius. More must have been expected from that source because the Kobitech cash-flow projections for May 2001 to November 2001, presented to Absa Bank, state that commissions were due from Thomson in four tranches, the second and D third being payable in May and November and a fourth, also for R250 000, indicated on the cash-flow spreadsheet as 'other income receivable' during June of that year. Shaik said that these were commissions for work or services provided to Thomson. But the only business being carried on by Nkobi that was established in the evidence was the E provision of staff to Prodiba, and it seems unusual for future commissions to be budgeted in tranches of a constant amount.

But be that as it may, the dates for presentment of the other three postdated cheques issued to Development Africa were 15 March, 31 March and 15 April, respectively. None of them had been presented by 19 April, when a letter from Nkobi Holdings was sent to Absa Bank F to stop payment on the remaining cheques, namely 1330, 1331 and 1332, each for R250 000, in favour of Development Africa.

The evidence establishes that the Nkobi group was in a particularly cash-starved situation then and its bank had ordered no more cheques were to be issued. As a matter of interest, two of these are still in G possession of Development Africa but have never been presented for payment although, according to Dr Zweli Mkhize, one of the present trustees, Nkobi and Shaik still owe the trust R500 000, notwithstanding the alleged urgency that Shaik claimed was the explanation of his fax to Thétard of 8 December 2000.

But nothing more came from Thomson and in September 2001 Shaik H himself made two separate payments of R125 000 each to Development Africa, being put in funds to do so by Kobitech, an achievement apparently made possible by careful juggling of the overdraft facilities of the two sources concerned.

But before that, in August, and while Shaik and Isaacs were in I Mauritius, an attempt was made to look as though Nkobi had submitted reports of the kind contemplated, justifying a claim for R1 million, these being backdated to April and July 2001, respectively. These were prepared, Shaik explained, at the request of De Jomaron and Thétard in Mauritius to square the accounting records of that company. That would really only be done if there was no information provided as the J

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agreement contemplated, and to make it look as though it had, although A nothing had ever been submitted for the one payment made. The agreement itself was later formally cancelled by Thomson on the basis that Nkobi had not made the performance required of it, but that was done on 12 December 2002 and well after the National Prosecuting Authority investigations had begun.

The reason for the cessation of any further payments is not known but B minutes of a meeting of Thomson-CSF (Pty) Ltd, held on 28 March 2001 may offer some explanation. In para 12 of these

- it was exh M20, 040491, and in answer to a query by Shaik as to Paris's view of the press reports of the inquiry into the arms deal, Thétard said that Thomson had nothing to hide in the matter and, for the time being, the company was C ready to defend itself. When Shaik reminded him that the South African government had not stopped its inquiry and there may still be an inference that Thomson landed its contracts unfairly, Thétard said, in that event, the company preferred an indirect approach, since trying to exonerate itself publicly usually produced negative results, and he closed D the discussion by requesting Shaik to pursue the matter with Moynot. He may have felt confident enough to dispute further investigations and secure government work without anyone's intervention. But that is a matter of conjecture and we have paid no attention to it.

As already indicated, all the objective facts that are mentioned in the E encrypted message are common cause, but the accused's case is that the meetings referred to were all held with a view to persuading Thomson-CSF (France) to make a sizeable donation to the Jacob Zuma Education Trust. The two Thomson officials to whom the request was made expressed sympathetic support, although they could give no firm commitment themselves, both needing higher authority approval for such a F step, but both were hopeful. One of the difficulties in obtaining such a commitment was for Thomson to be satisfied as to the genuineness of the trust and its needs. That desire led to the meeting with Zuma on 10 March, not the 11th, who confirmed all Shaik had said about the nature and objects of the Education Trust, and this satisfied Thétard that the request was genuine. Thétard reported that fact to Perrier, and Shaik G himself saw Perrier later in May 2000 to reinforce that plea. Zuma was delighted with the anticipation of such a donation though no sum was ever mentioned and was, according to Shaik, able to tell his co-trustees of the fact and even encourage the guardians of several deprived children that their hopes of an education may soon be met. H

When no sign of this gift was forthcoming by the end of August, he wrote the letter to Thétard that is referred to earlier and which he ended by saying the lack of response from Thomson left him no choice but to seek an alternative remedy elsewhere. When that produced no better result, he wrote again on 6 October, ending with the complaint that the I delay in receiving this was becoming both detrimental and embarrassing to all the parties concerned. But when he later learned from Dr Zweli Mkhize in early December 2000 of the reason for the payment of R2 million into Jacob Zuma's personal account on 17 October, namely, that half of it was for the Jacob Zuma Education Trust and that this sum had been paid to the trust, he ceased to be concerned about obtaining J

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payment of the promised donation. So his further faxes and notes to A Thétard on 8 and 11 December, respectively, were to expedite payments from the service-provider agreement so he could refund to Development Africa the money he had unwittingly appropriated. Now, can those explanations be reasonably possibly true?

Turning first to the actual language of the encrypted fax, it seems to us B to be *prima facie* unusual, if not positively strange, that discussion of a donation should be hedged about with a code for acceptance and then coupled to the stated advantages of the donor, particularly advantages that would be unlawful, and then left open-ended until some further contingent event occurred.

Then when considering the wider probabilities, it seems equally C strange that, if Thomson had really been asked for a donation, it would have responded in this cautious and hesitant way. It was a wealthy company and could have made a very generous donation out of the ADS petty cash and for an obviously worthy cause. It had, we were told by Shaik, already previously made a donation of R250 000 for a school D library at the request of Mr Mbeki, so it was no stranger to providing for good causes. Moreover, there are suggestions in the notes of the bidding process made by one of the French observers of the scene that Thomson had come close to incurring the displeasure of the government for what was perceived to be conduct verging on interference in South Africa's E political affairs. There could be no better way to mend fences and polish its image, if that was the case, or in any event without that, than by making a donation that would please the Deputy President and do so by giving it the usual publicity with which the business world occasionally seeks to invest its charity.

It is not really credible that such an enterprise as Thomson would not F have the public-relations expertise to exploit such a possibility to its obvious advantage. To suggest, as Shaik did, that the French were sensitive about donations of this kind is not, in our view, a tenable explanation of this reticence to mention the promised donation in correspondence.

Then the tone of the letters of 31 August and 6 October do not, in our G view, lend themselves to such an explanation. If they were truly reminders to Thétard to deliver on the donation, there is no need whatever to disguise the matter in such opaque and cryptic terms. The professed urgency, in itself, is also difficult to understand since, according to Shaik, not only had no figure of a donation ever been suggested H but not even a firm commitment to make one had been made. Nor would it be true to claim that Perrier had 'sanctioned the arrangement' as the letter of 6 October states. The evidence of the accused was that Perrier would do his best to get his board to approve. He never reached the stage of sanctioning payment of a donation. That is at odds with the I letter of 31 August also, which referred to a matter that had already 'been sanctioned for implementation by Mr Jean-Paul Perrier'.

The same difficulty attaches to the language used in the faxes and messages exchanged between Shaik and Thétard prior to the meeting that led to the encrypted fax. The terse, veiled references to 'issues raised' and 'matter of mutual interest' are quite incompatible with the J

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suggestion that the writers were referring to a possible donation. These A were explained by Shaik as being his usual style of writing. But a reference to many of the letters written by him that are in the documents placed before us shows a hollowness of this explanation. His normal style is, if anything, an overexpansive volubility. The language used in these exchanges is plainly a need to avoid overt mention of the matter to be B discussed, as it is in the passage relied on by Mr *Van Zyl* at p 78 of exh RR. That paragraph, far from supporting Mr *Van Zyl's* argument, seems to us to establish the fact that when Shaik wants to conceal the identity or nature of the subject he uses language that is veiled, obscure and understandable only to the recipient reader.

Mr *Van Zyl* also argued that the last sentence of the letter of 31 August C made it difficult to explain if the letter was written in the context of a bribe payment which was not forthcoming. We do not think that is a sound argument either. On the contrary, bearing in mind the circumstances in which the original suggestion was made, this plainly means that, if Thomson's do not perform their part of the bargain, he, that is D Shaik, would seek the promised financial help elsewhere, with the consequence that the protection offered in exchange would be withdrawn.

Then turning to the evidence about the trust itself for which this donation was being sought, there is absolutely nothing to suggest there was ever such a donation anticipated by the trust. Reliance was placed E by Mr *Van Zyl* on the evidence of Mrs Madladla and Miss Makhathini to the effect that the trust was always in need of money. That such an organisation could never have too much is really stating the obvious. But it begs this particular question, which is whether there was any expectation or hope entertained by the trustees emanating from its patron that F a substantial donation was expected from Thomson. There was none, and having regard to the emphasis placed by the co-trustees and Zuma in particular on the need to raise funds, which appears from the minutes of almost every meeting of the board, that is strange. Mr Pretorius, who attended these meetings as a trustee, said there was never such a possibility mentioned, even though promises or prospects of donations G from foreign sources were mentioned on occasion and minuted as such.

Then Shaik explained that the references to 'embarrassment', on the part of Zuma, as being caused by the fact that he would have told not only his co-trustees of the anticipated windfall from Thomson but also would-be beneficiaries. That cannot be true either. The procedure for H accepting applications for money from the trust, as described by Mrs Madladla, made it quite clear that a careful selection process, carried out by a special committee of which she was the chairperson, had to be completed before any commitment by the trust was made to educate any child. Nor was availability of funds the only criterion. The suitability of the applicant, his or her qualification as an orphan to be a beneficiary, I that he or she was from the local area served by the trust, the length of time such child would need financial support, were other considerations taken into account. This alone reduced the number the trust would accept. Moreover, according to Mr Theunis Bennemeer, the Absa official who actually monitored the funds and paid the recipient educational J

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institutions, there were always funds to meet the number of children A selected by this committee, even without Mr Mandela's donation of R1 million. So to suggest that Zuma had been promising parents and children that this requested donation from Thomson would see their hopes realised shows either Zuma did not know how the trust operated, which is unlikely, or else this, too, is an ill-considered invention. B

And, finally, it should not be forgotten that Zuma himself actively pursued donations for this trust. It was he who approached the former President when the trustees were advised that financial help could not be provided by the Mandela Children's Education Fund because it only funded school buildings. His approach was obviously successful and C resulted in part of the deposit of R2 million into Zuma's account on 16 October. If he had genuinely believed Thomson were thinking about making a donation to his trust, it is, in our view, inconceivable that he would not himself have approached them and pursued the matter. After all, he and Perrier had met, were known to each other and shared a common political interest. D

We have no doubt eventually, for these reasons, that the explanation advanced by the accused, that the agreement described in the fax was for a donation, is not only not reasonably possible, it is nothing short of ridiculous and we reject it as false.

Mr *Van Zyl* also urged us to regard the fax with caution and suspicion E because the author of it was Thétard, who was a demonstrably untruthful and dishonest person. Not only had he given four different explanations for its existence, one of which was a denial that he ever composed such a document, but Mrs Delique, his former secretary, also said he was capable of devious deception. That may well be so and we accept that he F was or is capable of falsehood to serve his own interests. But it must depend on the circumstances in which the statement was made.

In this instance he was reporting the outcome of a prolonged series of contacts and exchanges upon which a great deal might have depended. He was reporting it to his superiors who had entrusted him with the G delicate and possibly embarrassing task of confirming this suggested arrangement, in which, it seems, he had succeeded. The probabilities are overwhelming in that situation that he would tell them the truth of what happened. It was, so to speak, right from the horse's mouth, reporting that their immediate and future welfare had been secured by the goodwill of the political figure they saw as 'the rising man'. There is no incentive H or reason whatever for him to deceive them in that situation.

But tested by another measure, if Thétard had been one of the accused, which he would have been had he not left the country and refused to return, this would have amounted almost to an extracurial confession. In assessing its reliability, a court would look for corroboration I that gave some confirmation that its contents were in fact the truth of the matter. Applying that test here, there is, in our view, ample such support. It is common cause that De Jomaron and Perrier were Thétard's superiors and the very people he would be expected to advise on the outcome of such a sensitive matter. Indeed, De Jomaron may well have been in the meeting of 30 September 1999 because, in reporting to J

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him, Thétard refers to the meeting 'we' had with Shaik, meaning, it seems, 'you and I'. A

It is also common cause that Thomson's office in Pretoria had facilities for sending an encrypted fax and that this was a frequent means of communication of confidential material. The telephone records confirm that the fax number of Thomson's office in Paris was called from the B Pretoria office that day, 17 March 2000. Thétard's own diary confirms that he expected to meet Perrier on 10 November 1999 in Paris, and it is common cause that he met Shaik on 30 September of that year. Nor can it be disputed that there was substantial cause for concern about a possible investigation of the bidding process and a good reason for Thomson to have an interest in the suggestion that they look for C protection. The exchanges leading up to the meeting on 11 March are not disputed, nor that the object of that meeting was to pursue the subject first raised on 30 September 1999, nor is that all. From another perspective it is also clear beyond dispute that Zuma would need the money and that Nkobi was finding it difficult to keep up its payments to him. D

There is, in our view, ample corroboration for the substance of the fax that all points towards it having the meaning contended for by the State. The fact that Thétard repudiates it now is not at all surprising for its survival and presence in the hands of the prosecuting authority marks him as both a fool and a rogue in being party to it and not destroying any E of the evidence. If it was just a donation that he was writing about, it is surprising he was not prepared to say so even in one of his conflicting affidavits.

Mr *Van Zyl* also attacked the reliability of Mrs Delique. To be sure, that was primarily in opposing the admission of the document in F evidence, and I did not understand him to pursue it at the final stage to the same degree. But in case I misunderstood him, I should say what we thought of her as a witness. She was plainly a highly strung person who lived on her nerves. She had always been reluctant to give evidence in this trial and at first had refused to do so. Her nervousness showed quite plainly in the giving of her evidence, but apart from one occasion when G she

contradicted herself about sending the fax to Perrier as well as to De Jomaron, which she immediately corrected, her story was a compelling one. It was certainly replete with unusual circumstances. But however unusual it may have sounded, it was supported by objective facts and, more important, her description of the sending of the fax, as she claimed, H to De Jomaron and Perrier was fully corroborated by the expert examination of her computer stiffy, which showed that the original typed version of the fax was created on 17 March 2000 and at the time she said. But, in any event, we do not think her evidence matters in this regard because, if this was an offence, it was committed before she was told to send the record of it to the Paris office. I

Then finally it remains to say that, for the same reasons as corroborate the essential truth of Thétard's report to his superiors, the substance of the State case is also supported *pro tanto*. We have no doubt at the end of it all that this document reports the conclusion of an agreement reached by Shaik and Thétard that Thomson would pay Jacob Zuma J

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R500 000 a year until the ADS dividends became available, in order to A secure the two benefits for Thomson, namely, that he would provide a present protection from the corvette acquisition investigation and hereafter help in securing government contracts in the future.

Mr *Van Zyl* also urged us to consider as a reasonable possibility, arising out of Thétard's falsehoods and Mrs Delique's belief that he was B cheating on his travel-expense claims, that Thétard alone produced the draft fax to report a fictitious arrangement with Shaik, so that he could deceive Thomson into paying this money, which he would then pocket himself. We are unable to accept this reasoning. In the first place, by revealing the plan to his superiors, unless they were in the scheme, other C people responsible for expenditure would know from the mere fact that he advised them of the arrangement and could ask at any unpredictable moment for an explanation. So that sounds improbable. But, more importantly, and, secondly, it ignores the surrounding facts of the case, especially Shaik's subsequent letters to Thétard. It is incredible that these would have been written by someone who is not expecting D something from the arrangement.

But Mr *Van Zyl* had an alternative argument in the event that Shaik's evidence about the encrypted fax was held to be false and rejected for that reason. As we followed it, his argument went like this. If Shaik's evidence is false then the only evidence connecting Jacob Zuma with the E charge of corruption on count 3 is the encrypted fax. That is so because the State case is to the effect that Zuma's participation was achieved through Shaik who, acting on Zuma's behalf, made the request to Thétard for a bribe to be paid to Zuma and then offered the resulting bribe to Zuma in exchange for his protection and support. On that basis then, in order to prove the commission of the offence, the State had to F show that Zuma knew of the request made on his behalf and agreed to accept it in that knowledge. Without the accused's evidence, the only connection of Jacob Zuma with the offence of corruption is the encrypted-fax document and the one subsequent payment from Thomson to Kobitech. It is common cause that Zuma had nothing to do with that payment, so the only connection is the fax. G

That fax establishes that a code was used by Zuma to signify his acceptance of the bribe and that code was designed or arranged by Thétard, so the only way Zuma could know of such a code or how he was to signify acceptance to it would be through Shaik. So if, by falsely H pretending to Thétard that he represented Zuma in asking for money and working out a code with him and then, on the other hand, by deceiving Zuma into thinking that an affirmative reaction to the code would bring some benefit like a donation to his trust, then by Zuma's positive response or confirmation Thétard would think Thomson would be paying R500 000 a year to Zuma for his protection, while Zuma, on I the other hand, would think it would be for an innocent cause and which Shaik would receive by way of the service-provider agreement, about which Zuma knew nothing, and in that situation would keep the proceeds.

That was perfectly feasible, and supported by the facts, so the argument went, because Zuma's known actions after 10 March 2000 J

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showed a person who publicly encouraged the SCOPA committee in its A investigations into the arms deal. He was not shown to do anything to promote Thomson, after the date of the fax; and thereafter sent his attorney to Paris to enquire of Thétard whether Shaik was not trying to make

money out of Thomson by using his name. On that basis, while Shaik may have deceived Thétard, neither he nor Zuma have contravened the Corruption Act. B

If a prize were awarded for tenacious ingenuity, then this argument would be a strong contender. But a period of careful consideration, in our view, shows it to be fallacious.

In the first place, it is based on the misconception of our finding on Shaik's evidence about the encrypted fax. We did not reject all his C evidence on that issue as false. What was disbelieved was his claim that the previous meetings and the arrangement that took place on 10 or 11 March had been about Thomson making a donation to the Jacob Zuma Education Trust. The claim that this was a donation was so inconsistent with the objective facts, particularly the contents of his D letters, that it could not be believed. It did not follow from that finding that we disbelieved everything he said about the encounters and what took place at them. On that basis it was clear from his evidence that whatever took place at the meeting between himself and Thétard with Zuma, he was there to make sure that Zuma understood Thétard and Thétard understood E Zuma. His previous experience of the French had left him wary of their behaviour in some circumstances and he wanted to ensure there was clarity about the result.

If that is the case, it is not possible to accept that the only evidence connecting Zuma with the fax is the code that is mentioned in the document. Whatever that code was, Shaik's evidence made it clear that F all the parties knew what was discussed and what was concluded.

Secondly, it overlooks the fact that, whether fraudulently induced or not, both the deceived parties would be expecting a performance and a counter-performance from each other once the agreement was concluded, and if either failed to deliver thereafter the reaction of the G disappointed party would very likely be to complain to the other. The complaint might not achieve any satisfaction but it could well reveal the deception. The mere fact that a code was the form of communicating acceptance would not prevent a party aggrieved by non-performance from later taxing the non-performer. Whether in code or not, it is the parties' understanding of the agreement that would be affected H and explanation likely sought if no result occurred, and there could be no guarantee on Shaik's part that such a development might never come to pass.

Thirdly, the argument pays no regard to the probabilities of the agreement. If accused No 1 was acting as a sort of dishonest broker, he I would not arrange the actual end agreement in the presence of the two parties, for there is no way he could ensure that neither of the two intended victims of his false representation would not ask a question or make an answer or a remark that would expose his plan. It is the sort of risk no person bent on such a subterfuge would run.

Then to reach an agreement in terms that this fax reflects, it really J

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presupposes that all the parties to it had some idea of ADS and its A income-generating capacity, particularly whether the flow of dividends would compare to the R500 000 per annum.

Then the three factors advanced in support of this argument seem to us to be at least somewhat overstated.

First, the claim that Zuma had publicly and actively encouraged B investigation into the arms deal is not borne out by the evidence. It is based on two hearsay sources, neither of which seems to be public, save that one was reported in a newspaper. The first was a remark apparently made privately to Mr Andrew Feinstein, the then leader of the ANC component of SCOPA, that he, Zuma, supported the SCOPA investigation, C and the second was a newspaper report of the events that took place during a meeting of ANC Members of Parliament at which Zuma is said to have rebuffed attempts to interfere with the SCOPA inquiry. The circumstances in which both of these were made are unknown, as was the reliability of the intervening sources of information for the newspaper report. D

A far more reliable guide to Jacob Zuma's feelings about the SCOPA recommendations is to be found in the letter he signed, if he did not write it himself, of 19 January 2001 to Mr Gavin Woods, the chairman of SCOPA, who had asked for the issue of a Presidential Proclamation to introduce the Special Investigation Unit into the inquiry, and had been E conspicuously urging it in the SCOPA meetings. That letter was to advise Woods of the President's decision not to issue the proclamation necessary to do this. Woods described this letter as unique in his experience of 11 years of letters from Members of the Executive. He said that in its hostility, sarcasm and untrue statements of several issues, it was like nothing he had ever received. While we are not in a position to F say whether any of the statements or issues are untrue, one is bound to say that a reading of that letter confirms the rest of the assessment. It is almost as if the writer is taking a special delight in rubbing the collective nose of SCOPA, and Woods in particular, in the rejection

of its recommendation. That is conspicuously not the attitude of someone G who was supportive of the investigation being pursued by SCOPA. Moreover, this scathing and humiliating rebuke was made widely known to a number of other interested persons, including the contractors, some of whose conduct was perceived to justify the investigation that had been refused.

Then, secondly, it is said that there is no evidence to show support by H Zuma of anything to protect or promote Thomson's company's interest as a group after this event. With press reports and rumours linking him to corrupt dealings with Thomson, it is hardly surprising that nothing overt was done. Nor, indeed, was there any opportunity or even need because Thomson had its hands full carrying out the corvette munitions- I suite contract. Nor was this a topic that was put to any State witness, that could have been explored on the basis that it was to support an argument of this sort. This feature of the evidence, in our view, is quite colourless.

Thirdly, it is said that one of Zuma's concerns in sending his attorney to Paris to meet Thomson officials after news of the encrypted fax appeared in the local media was whether Shaik had been using his name J

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to get money from Thomson. His main concern, according to Miss A Mahomed, his attorney, was to try and find out more about the encrypted fax. He had only read about it in the local media but was anxious to obtain a copy to verify its contents for himself. He had made an application to the High Court to obtain such a copy from the NPA, but that forum would not accept the alleged urgency of his application. B So rather than wait for a delayed date of set-down, he sent Miss Mahomed to Paris to try and obtain a copy and, in the event, also to deliver a letter to Perrier. Nor is it possible that he could have suspected from the contents of the fax that it was Shaik trying to make money out of Thomson, because the fax plainly said it was Thomson giving money to Zuma for its interests. Nor did Zuma make any mention to her of C Shaik asking Thomson for a donation using Zuma's name.

It is this allegation that seems to be the foundation of the present argument, to the effect that Shaik might have been deceiving Thétard into paying him money by making Thétard think that was money for Zuma, and it is based on this answer by Miss Mahomed that she gave D to myself during her cross-examination which, taken in isolation, could be so interpreted. But read in the context in which it was asked and answered, it more properly establishes that the reason why he, Zuma, wanted a copy of the fax was to see how or in what connection his name had been used by Shaik to get money from Thomson. In other words, how he, Jacob Zuma, was involved in the matter because it seems he, E too, was shocked and dismayed by publication of its contents in the local media. It would be a natural response to distance himself from the report, if possible, and finding out exactly what the fax said in its original form would be the best starting point to do that.

Moreover, measured against the wider probabilities, after all the F generosity he had enjoyed from Shaik over the years, the suggestion that he would be wanting to obtain a copy of the fax to see if his long-time friend, former comrade-in-arms and present benefactor would be falsely using his name to cheat Thomson is not a reasonably possible explanation.

In the result then, we do not think there is any substance in this G argument either.

That leaves the question of the service-provider agreement. Was it a disguise for the payment of the R500 000 a year to Jacob Zuma or a legitimate means of earning money from Thomson by providing a service for that company? H

Mr *Van Zyl* argued that the letter of De Jomaron dated 1 March 2001, that is, exh P116, to Shaik is supportive of the case that the service- provider agreement was a genuine arrangement, for which Thomson expected performance by Nkobi. On the face of it, and by itself, that could be so. But Shaik himself said that the backdated letters of 15 April I 2001 and 16 July 2001 were both composed in August 2001 while the parties were in Mauritius and deliberately backdated at the request of De Jomaron, to accommodate internal accounting requirements of the Thomson operation in Mauritius. That indicates a desire and a readiness by De Jomaron to mislead somebody, if only his accountant or auditors. Moreover, if the bribe money was being dealt with as a service- J

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provider-agreement payment, such a letter is a sensible part of the A deception, for the more realistic the outward appearance of the disguise could be, the less chance of its real purpose

being discovered.

So the existence of this letter is not inconsistent, in our view, with the facts which showed that the agreement was intended to be a disguise. On the contrary, it seems to be equally arguable that it supports that B conclusion. The letters of 31 August and 6 October, written by Shaik to Thétard, show a marked sense of frustration on the part of Shaik at the lack of some unspecified action on the part of Thomson. For reasons already given, that was patently not for payment of a donation. With an ongoing need for money for Zuma and none forthcoming, as Shaik expected, it would more cogently explain the tone of those letters. By the C time the second one was written the possibility of an investigation into the corvette contracts was a live issue, made even livelier by the recommendation of the SCOPA inquiry that the investigations be continued by, *inter alia*, specialist investigative agencies like the NPA and the Heath Commission. This possibility became a likelihood by the time D the 14th SCOPA report was ready at the end of October.

All these developments, as I have said, Shaik agreed he watched and noted. That development would have brought into focus the need for someone who could thwart that recommendation, which was exactly what the agreement of 11 March was all about. But as Thomson had not E looked like performing their part, reliance on the selected protector might prove illusory. So the payment had to be made somehow and obviously by a medium that would not attract attention. It is therefore overwhelmingly probable, in our view, that this is the reason why the first service-provider-agreement application was prepared on 1 November, and it is on the *pro forma* agreement that was found with this in the Nkobi F office that the manuscript notations are recorded which, in our view, indicate the thoughts of the maker at the time. Those establish very cogently Shaik's perception of the purpose he intended this agreement to serve.

That conclusion is reinforced by the conspicuous contradiction between G his evidence of how he came to resort to the service-provider agreement and the objective facts. According to the accused, he decided to resort to the service-provider agreement after learning from Dr Zweli Mkhize that the R900 000 he had taken from Zuma's personal account was for Development Africa. He heard of that on 6 December 2000 and immediately arranged with Thétard to put such agreement in train to H earn money to repay what he had taken and sending the application form received from Thétard with the covering letter of 8 December. That cannot be true, for the completed application form with the *pro forma* agreement referred to earlier and found in the Nkobi offices is dated 1 November 2000. I

He may well have sent the same application form to Thétard on 8 December but it was not the first time he thought of using that as an instrument to obtain money from Thomson. Moreover, the completion of the application on 1 November was just before he went to Mauritius to meet De Jomaron and Thétard, two of the three Thomson personnel concerned in the fax of 11 March, to discuss, among other things, J

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'damage control' to their mutual interests. It seems at least very probable A that this means of paying Zuma the promised money was decided then and the urgency noted in the 8 and 11 December faxes was due to the increasing pressure of the SCOPA committee to have the Special Investigation Unit brought into the inquiry into the corvettes contract.

But the plan was derailed by the unexpected discovery that Shaik had B taken money marked by Zuma for Development Africa which he had already largely used in his group, and that was needed for the cost of the Nkandla residence. It is also overwhelmingly likely to have been the reason why Shaik issued four postdated cheques of R250 000 each to replace this, and he would not have done that without expectation of being able to meet those cheques somehow, sometime, as his Kobitech C cash projections show, in four tranches of commission from Thomson during 2001.

Why Thomson stopped paying is not known but it is clear that one payment was made which went via Kobitech to Development Africa, which was Reddy, and Reddy eventually achieved payment of a large D part of the costs of the Nkandla project. But what Reddy did with the R500 000 that was paid to Development Africa by Kobitech, respectively, is not really relevant to the issue.

The intention behind the introduction of the service-provider agreement is what is central to the alternative charges on count 3. The primary facts relevant to this charge are either common cause or amply proved E beyond reasonable doubt. The inference which the State asks us to draw from them is that the service provider agreement was intended to be the means by which Thomson was to pay the R500 000 a year to Zuma until the ADS dividends became available. The accused disputes that, and says it was only introduced to help him earn an income to replenish

the F money for Development Africa that he had appropriated from Zuma's account. But that explanation cannot be true, because it is in conflict with the admitted fact that he first completed an application form for the service-provider agreement well before he learned he had to make good the money he had taken from Zuma. G

In our eventual conclusion, then, that inference is certainly consistent with all the proved facts and those facts exclude any other reasonable inference, particularly as there is clear proof that the accused's explanation cannot be true.

In the result, we are amply satisfied that the cumulative effect of the evidence establishes to the necessary degree and beyond a reasonable H doubt that this was the means whereby money was to come from Thomson for the benefit of Zuma, as arranged in the meeting that is recorded in the encrypted fax.

For all those reasons we find eventually as follows:

1. Since all the accused companies were used at one time or another I to pay sums of money to Jacob Zuma in contravention of s 1(1)*(a)*(i) or (ii) of the Corruption Act and accused No 1 directed them to that end or made payments himself, all the accused are found *guilty* on the main charge on count 1.

2. (i) On count 2, accused No 1 was party to the false representations made that constitute the main charge of fraud and he J

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used accused Nos 4, 7, 9 and 10 in so doing. Those accused A are accordingly found *guilty* on the main charge on count 2.

(ii) Accused Nos 2, 3, 5, 6, 8 and 12 are found *not guilty* on count 2.

3. (i) On count 3 accused No 1 is found *guilty* on the main charge of contravening s 1(1)*(a)*(i) of the Corruption Act. B

(ii) Accused Nos 4 and 5 are found *guilty* on the first alternative charge of contravening s 4*(a)* and 4*(b)* of Act 121 of 1998.

(iii) Accused Nos 2, 3, 6, 7, 8, 9, 10 and 12 are found *not guilty* on count 3.

Postea (June 8), as to sentence. C

Counsel as before.

Judgment

Squires J:

The question of punishment of persons found guilty of D criminal offences is often the most difficult and anxious aspect of a trial.

One has to focus on three distinct factors. In no particular order of importance, they are, first, the circumstances of the offender; secondly, the nature of the offence or offences of which he has been found guilty; and, thirdly, the interests of the community in the type and level of E sentence imposed, balancing those three factors against each other to decide on a fit and suitable penalty, and taking care not to over-emphasise any one of them at the expense of any other.

In the instant case that exercise is complicated by the fact that, so far as accused No 1 is concerned, all three offences of which he has been F found guilty fall within the ambit of Part II of the Second Schedule to the Criminal Law Amendment Act 105 of 1997. That statute introduced a prescribed level of sentence of 15 years' imprisonment for the various criminal offences set out in that Schedule, unless there are substantial and compelling reasons which justify the imposition of a lesser penalty than that prescribed. If such circumstances are so identified, then they G must be entered in the record of proceedings. By that enactment Parliament plainly intended that, when considering sentence for these offences, emphasis had to be shifted to the objective gravity of the type of offence and the public's need for effective sanctions against it.

That does not mean other considerations are to be left out of account. If passing of the standard sentence in any particular case would lead to H a discernible injustice, then the Court is given a discretion to pass a sentence that would reflect one more ordinarily given for that sort of offence.

It has to be observed, in addition, that these provisions of the statute are to be read in the light of the values that are enshrined in the I Constitution of the Republic of South Africa, 1996, and, unless it proves impossible to do so, they are to be interpreted in a manner which respects those values.

To deal first then with the nature of the offence that is established in counts 1 and 3, that is, corruption in contravention of the Corruption Act. J

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I do not think I am overstating anything when I say that this A phenomenon can truly be likened to a cancer, eating away remorselessly at the fabric of corporate probity and extending its baleful effect into all aspects of administrative functions, whether State official or private- sector manager. If it is not checked, it becomes systemic and the after-effects of systemic corruption can quite readily extend to the corrosion of any confidence in the integrity of anyone who has a duty to discharge, especially a duty to discharge to the B public, leading eventually, and unavoidably, to a disaffected populace. One can, hopefully, discount the prospect of it happening in this country. But it is that sort of increasing disaffection which leads, and has led in other parts of our continent and elsewhere, to *coups d'état* or the rise of Populist leaders who, in turn, manipulate politics for even greater private benefit. C

There was led before us on this subject the evidence of Mr Hendrik van Vuuren of the Institute of Strategic Studies, a long-time student and qualified observer of this phenomenon, and a report he prepared on the subject was handed in as exh MMM1 - 24. Apart from some questionable D quantifications of the economic costs of corruption on a world-wide or continent-wide basis, his report was not challenged, and it is, in any case, a well-put statement of what really is the visceral feeling of all fair-minded people about corruption. There are two excerpts from his report that are worth highlighting and including in the instant exercise.

The first is the effect of corruption on human rights, and that this E factor plays a role in a situation like the present is stated by the late Mahomed CJ in the decision of *S v Salzwedel and Others* 1999 (2) SACR 586 (SCA) (2000 (1) SA 786; [2000] 1 All SA 229), where the learned Chief Justice said that the ethos of human rights, as espoused in the Bill of Rights, permeates the length and breadth of our Constitution; such F ethos should influence judicial interpretation and discretion, as well as the application of sentencing policies.

I turn then to consider the impact of corruption on human rights, as assessed by Mr *Van Vuuren*.

> 'Corruption in all its forms constitutes a violation of the human rights of the people who experience it. Governments who are complicit in corruption are G failing in their duty to protect and promote human rights. The struggle for human rights and the struggle against corruption are intimately and inextricably linked because corrupt governments do not respect human rights. Human rights are, by definition, general and universal while corruption, by definition, concerns the few and the particular. And corruption plays an important role in perpetuating the situation, where the mass of people are denied those rights. H It infringes this aspect of people's lives because it achieves a discrimination against those who cannot afford to resort to it or will not do so, and so denies them access to public services and the due benefits of the rights given by the Constitution. In this respect it is an obstacle to the realisation of those rights. For example, if a child cannot obtain a place in a school without paying a bribe to a head teacher, that child's rights have been violated. It is a denial of I accountability and prevents people from exercising their due political rights. When politicians are bought and sold by powerful economic interests, it undermines the democratic process. Most importantly, human beings are an expression of a belief in the equality of human beings and of equal treatment of them by their government.'

Then there is one further aspect of corruption which might be J

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described as 'estrangement from the political process'. This is what Mr A *Van Vuuren* says about that:

> 'An open, responsive and effective political process requires at a minimum a significant amount of citizen trust in officials, in institutions and in each other. Open politics means not only that people are free to advocate vigorously their own interests but also that they abide by official decisions, accepting B unfavourable outcomes as fundamentally legitimate and mounting their responses through the political process. It also means people trust others to do likewise, for there is little reason to play by the rules if one's critics and opponents are unlikely to do so. In addition to its material costs, one of the primary political costs of corruption is that it undermines and can destroy this political trust. Citizens can conclude, quite rightly, that it is futile to deal with C government through official, political and bureaucratic channels, or that even if such channels are still functional others will pre-empt them through bribery and connections. Before long, citizens come to distrust each other, not only because their goals and interests differ, but because those differing interests can be fundamentally threatening in a situation where rights and protections are no longer believable and dependable. The very right to express oneself politically can become endangered.' D

It is plainly a pervasive and insidious evil, and the interests of a democratic people and their government require at least its rigorous suppression, even if total eradication is something of a dream.

I turn next to the accused's own circumstances. A middle-aged, E married businessman, who came from a fairly lowly start in adult life to a considerable fortune and business achievement. He has become the chairman and CEO of a small corporate empire which he has taken to eventual prosperity by his vision, ambition and energy. The convictions alone will have an adverse effect

on this career because he will need at least the Court's permission to be a director of a company in future. F Furthermore, he or his companies, or both, may well be disqualified from tendering for government work in future, which was his main area of economic operation.

Moreover, said Mr *Van Zyl*, the offence in count 1 was not the usual form of corruption. It started as friendship for Jacob Zuma and a desire G to help him manage his debts, and not as a wilful, direct attempt to offer bribes. Nor did it succeed in obtaining any contracts from Jacob Zuma's ministerial competence.

And in count 3, Mr *Van Zyl* said, it was not accused 1 who offered the money to Jacob Zuma and agreed to pay it, but Thomson. The accused really only acted as a facilitator for this situation to be reached and, since H it was not clear who instigated the offence, the accused should be given the benefit of the doubt and not be regarded as the prime culprit. Apart from that, he argued that only 25% of the promised amount was ever paid and there is nothing to show that Jacob Zuma ever did anything for that. His letter of 19 January 2001 only shows his reaction to a refused I recommendation made by the SCOPA committee that the President appoint the Special Investigation Unit to pursue the Auditor-General's inquiries. Even if it was an Executive decision, and not that of the President alone, there may well have been compelling reasons other than those that appear in this letter, for refusing SCOPA's request, and there is nothing to show that Jacob Zuma helped or urged the decision. In J

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short, that the accused's role in count 3 was the lesser of the participants A and that should be reflected in the sentence.

And then, as regards count 2, it was said the offence consisted only of his being party to the false representation that the loan accounts that were written off were stated to be development costs of Prodiba, when they were not. It had no adverse effect on any shareholder, nor was there B any clear evidence that the bank was misled by the better profit presented.

At most, in that situation, the prejudice was potential and not actual.

Furthermore, the tax liability of the accused did not affect the company and his own fiscal debt has been resolved with the Revenue Service. C

In those circumstances it would be a great injustice to inflict the prescribed minimum sentence on the accused for this. It is entirely distinguishable from the sentence imposed in the case like *S v Price*, referred to in the argument, and which the prosecutor urged as a guide in the instant case. D

I have considered those submissions as fully as I can in consultation with my assessors. While they have given me the benefit of their views, these are my conclusions.

Against the submissions to which I have just referred made by Mr *Van Zyl*, there has to be weighed these factors. In the first place, these were no payments to a low-salaried bureaucrat, who was seduced into E temptation. And I think it must be axiomatic that the higher the status of the beneficiary of corruption, the more serious is the offence.

Moreover, these payments over five and a half years, and which are almost entirely admitted, were a sustained level of support designed to allow Jacob Zuma to pursue a lifestyle he could not otherwise afford on F his ministerial salary, and to the point where it created a dependence. They effectively constituted an investment in Zuma's political profile and from which the accused could benefit.

Both the start and the continuation of these payments were the accused's own decision. He was the principal actor and he pursued the payments with a single-minded purpose, despite being frustrated and annoyed in doing so at times. G

There was no trickle-down effect that resulted in a benefit for anyone else. He was the only potential beneficiary. Nor were they paid to avoid red tape or bureaucratic delays. They had that result once, in the appointment achieved through Jacob Zuma's intervention to bring Mr H Grant Scriven of Venson plc to a meeting with the late Minister of Safety and Security. But they were not paid with that in view, as is sometimes the excuse put forward by businessmen seeking business from a particular government.

Nor do I think eventually that the accused merits any favourable I consideration because of what was called 'his struggle credentials'. In the old apartheid regime the economy was politically directed, with the allocation of resources, some of them scarce, being deliberately skewed in favour of a particular privileged group. Despite the accused's professed claims to have struggle

credentials with Jacob Zuma, the political profile and rise of Jacob Zuma's fortunes was as much a part of the J

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accused's plan as was his plan for building the Nkobi company empire. A His corporate empire's progress and prosperity was plainly linked to the possibility that Jacob Zuma would finally ascend to the highest political office.

The favours which he asked and intended to ask were calculated to achieve exactly the same situation as the old regime's command of the B economy. That is to say, a skewed economy in favour of the few elite rich who could afford to pay for the favours that they asked, while the bulk of the population, who could not, or would not, resort to this would have no prospect of the same advantages the accused was able to command.

So, far from achieving the objects to which his struggle credentials C were directed, the situation which he thereafter developed and exploited was the very same that the struggle had been intended to replace. Far from carrying out the objects of the struggle, this whole saga represents a subversion of them.

Turning to count 3, even accepting that the accused only acted as a facilitator, the arrangement that is the subject of count 3 plainly suited D his purpose. His companies were cash-strapped and could not easily, if they could at all, continue the level of payments to Zuma, and the corvette munitions-suite contract was threatened by investigation. That investigation could have revealed that he and his patron had been linked by a series of payments, which fact might well have supported the belief E held by someone, as reported to Patricia de Lille, that he was benefiting from some irregularity in the bidding process.

He therefore had good reason for wanting protection from any investigation of that exercise, particularly in view of the extent to which he had been funding Zuma's enhanced lifestyle. His letters of 31 August 2000 and 6 October of that year show the measure of his increasing F concern at Thomson's lack of performance. Moreover, Thomson's future welfare could have brought him benefits to the extent of a 30% share in Thomson-CSF (Pty) Ltd's gain.

Apart from that, what did this agreement try to achieve? The first object was certainly to undermine the law and the second was to further G intensify corrupt activity, and at the highest level, in the confident anticipation that Jacob Zuma may one day be President. The author of the note found in the Nkobi offices to the effect that he would thereafter be in 'the pound seats' was more than likely to be correct in his prediction.

Nor does it seem to me to matter that, in the event, only one payment H was made. It is not known why Thomson paid only the one instalment. But that payment and the accused's own contribution of R250 000 went to the person who eventually saw to the payment of Zuma's residential complex at Nkandla. It was a typical example of a privileged treatment to a selected political figure in a situation redolent with lack of I transparency and subversive of administrative fairness and integrity, and that is what the law seeks to punish.

Then, finally, as it seems to me, I do not think that money matters all that much to the accused. It is undoubtedly pleasant to have ample for one's needs. But I think what was important to him was the achievement of a large, multi-corporate business group of the sort he described to J

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Professor Sono and the power that goes with that, and close association A with the greatest in the land. And it is precisely in such circumstances that corruption works. The starting point is the belief that prevailing over someone else would be advantageous. For, in order to win, one has to take advantage of other players in the scene. One creates the advantage by an offer or a suggestion, which then allows one to dictate terms to one's own advantage, and the slippery slope starts from there. B

Weighing all those factors together in respect of counts 1 and 3, and giving the matter the fullest consideration I can, I am eventually unable to see my way to finding that there are compelling and substantial reasons in the situations created by the commission of these two offences why the penalty directed by Parliament should not be enforced. That is C not something one can take any satisfaction in doing to someone who otherwise showed commendable vision, ambition and energy. But somewhere and somehow, on his journey to achieve his ambition, the accused seems to have lost his moral compass and the scruples that should be upholding the values of the Constitution that his participation in the struggle helped to achieve. D

In passing any sentence after conviction in a criminal trial, a court is the mouthpiece of the community whose interests are one of the requirements that any sentence is required to safeguard. And, to that end, a sentence must be a message to that community. For present purposes, it is this. If any businessman gives money or money's worth to E an official of the State with the intention and expectation that such official will exercise or neglect his or her duty in favour of that businessman, and the amount involved is more than R500 000, he is liable to a punishment of this level. Nor is it limited to businessmen and State officials. It is of the same sort of application to the same relationship in the private sector. F

So far as count 2 is concerned, I think Mr *Van Zyl* is on stronger ground. While fraud in the conduct of a commercial enterprise is always a potentially serious occurrence, the circumstances of this offence do not seem to me to be that grave that justifies a level of the sentence ordered in Act 105 of 1997. While the total sum of the loan accounts that were G written off was R1,2 million and a little over, it is not as though any innocent party was cheated or deprived of that sum as a result. It was an intragroup accommodation that did not actually result in any prejudice that was established. And although the corporate veil would found an argument that the accused's loan account written off the Kobifin books H was effectively lost to that company as a claim against him, in reality, he was the only person who would actually suffer, save for the Revenue Service, which has received its tax with interest long since. Nor does the evidence show that it was Shaik's idea. If it had been, then the matter would be much more serious. But the evidence before us shows that he I protested the draft statements that showed his large loan account of over R500 000 in Kobifin's books, on the basis that these were expenses he had incurred in procuring business for his companies. Without checking this claim, the auditors accepted it and devised the solution which met his protest.

In those circumstances then, I agree it would be so far removed from J

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a just punishment to impose the mandatory penalty of 15 years, that I am A justified in departing from it for those reasons. But, that said, it was not an act that merits a mere slap on the wrist. The Revenue Service was paid eventually, but only after the Directorate of Special Operations alerted the auditor firm to the question of fraud.

And, while there was no evidence that these financial statements B containing the false representation were presented to the bank, the object of the audit was to improve the group's balance sheet and show an increase of profitability in Kobifin. The bank needed to see the financial statements to consider the overdraft, and it did, in fact, increase it to as much as R1 500 000 shortly after 31 December 1999, which was the day to which Mrs Bester said the existing overdraft was then extended. C

So there is a discernible measure of agreement to the wilful deceit, although it was an intragroup transaction. But the potential for mischief was certainly there. However, because of the great disparity that would result in the eventual gravity of this offence, compared to what the statute requires, I am at large to impose a different and reduced level of D sentence. But I do so having regard to the factors I have just set out.

In the result, and for those reasons, the sentence on accused No 1 on counts 1 and 3 is one of 15 years' imprisonment on each count. On count 2 it is three years' imprisonment.

However, since these were all part of the same sustained course of E corruption, particularly the circumstances of counts 1 and 3, there is an obvious basis to reduce the cumulative effect of the sentence, which would otherwise be far too long, by ordering that the sentences on counts 2 and 3 are to run concurrently with that on count 1.

I turn next to the sentence on the corporate accused. It follows from their legal nature that the only penalty that can be imposed on them is a F fine, nor are they subject to the provisions of the Criminal Law Amendment Act 105 of 1997. It is therefore the ordinary guidelines that regulate the imposition of a fine as a suitable punishment which can apply to them. The situation is complicated, however, by the fact that accused Nos 6, 7, 9, 10 and 12 are either dormant or have no assets, or G both. Of those that are active and earn an income, or are investment or holding companies, the situation is further bedevilled by the fact that the Asset Forfeiture Unit, acting under the Prevention of Organised Crime Act 121 of 1998, has seized part or all of the assets of Thint (Pty) Ltd, in which Nkobi Investments (accused No 3) has a 25% share, and there has also been identified to that unit, but not yet seized, another asset in H Nkobi Investments, being the shares in Cell C (Pty) Ltd, which Nkobi Investments effectively owns.

From all that, it seems that the only corporate accused who are able to pay a fine are accused Nos 2, 3, 4, 5 and 8. I am satisfied, however, that, even though it may cause some dislocation to their present arrangements, I they are all able to pay a fine, particularly if given some time to raise the money. They have, either available or can raise from their resources, the fines I have in mind to impose.

On count 1 accused No 2 is sentenced to a fine of R125 000; accused No 3 to a fine of R1 million; accused Nos 4, 5 and 8, a fine of R125 000 each, making a total of R1 500 000. For the rest of the accused, that is, J

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Nos 6, 7, 9, 10 and 12, it is not sensible to impose any fine that is A presently exigible. But since some sentence must be imposed, I propose to sentence each of them to a fine of R25 000, but in each case that fine will be suspended for five years on condition that they are not found guilty of any offence involving corruption, fraud or dishonesty, committed during the period of suspension. B

On count 2, of the accused companies found guilty on this count, only accused No 4 has the ability to pay a fine. It is therefore sentenced to pay a fine of R1 400 000. Accused Nos 7, 9 and 10 are sentenced to a fine of R33 000 each. But in each case, that is suspended for five years on the same conditions as apply to the suspension of the penalties in count 1.

On count 3, accused Nos 4 and 5 are each sentenced to a fine of C R500 000 each.

In all cases, these are to be paid by 30 July next, unless further suspended by Court order.

Finally, Mr *Downer*, I propose to order that the evidence of Mr Ahmed Paruk be sent to the Secretary of the Accountants and Auditors Board, D for that body's consideration of the professional conduct of the auditors in the events that led to the prosecution and conviction of the accused on count 2.

Attorneys for Accused 1 - 10 and 12: *Reeves Parsee*. Attorneys for Accused 11: *Fathima Karoida*. E

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