

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 14

26 SEPTEMBER 2018

PAGES 2272 - 2361

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,
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1 [PROCEEDINGS ON 26 SEPTEMBER 2018]
 2 [09:15] COMMISSIONER: Advocate Steinberg has
 3 just told us that she'd prepared her file very neatly and
 4 they wanted it, somebody wanted it copied and then they
 5 scrambled it all up. So it's not her incompetence if she
 6 can't find the documents.
 7 MS STEINBERG: An advocate's nightmare.
 8 COMMISSIONER: I just want to say
 9 something that yesterday afternoon in relation to these
 10 witnesses who are going to be called. Someone approached
 11 us with a statement and said he wanted questions to be,
 12 certain allegations to be put to these witnesses and I
 13 asked him about the basis for that from his statement and
 14 he had none and I told him as I'm sure, well I know that
 15 Advocate Steinberg would herself have told him that it
 16 would be completely unethical for her to put things to a
 17 witness discrediting a third party when they had no basis
 18 for it at all. And so that witness, not a witness, it
 19 wasn't even a sworn statement and he said he's not prepared
 20 to give evidence on it himself. So if anyone expects that
 21 that kind of criticism will be directed at third parties
 22 who are not even present they can think again. She's not
 23 going to act unethically at all for anyone.
 24 MS STEINBERG: Now, Judge, if I may add I
 25 did offer him the opportunity to make a sworn affidavit

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1 which he hadn't done and if he came back with a sworn
 2 affidavit and with supporting documents I welcomed him to
 3 then come with the evidence.
 4 COMMISSIONER: Well may I just say, Ms
 5 Steinberg, if he had even sworn to that affidavit I would
 6 have told you and I'm sure you would've known that it's
 7 quite improper for, on the basis that he that he had for
 8 those allegations. It would've been quite improper.
 9 MS STEINBERG: Judge, today's programme
 10 there are two things to point out. The first is that the
 11 first witness is unnamed and we're going to be asking the
 12 press firstly not to mention her name but secondly not to
 13 film her or photograph her. She's a witness that deals
 14 with criminals and she wants to tell the public her story.
 15 She believes it's in the public interest to tell the story
 16 but she does not want her photograph in the newspapers or
 17 on television.
 18 COMMISSIONER: And her name, neither her
 19 name or her photograph?
 20 MS STEINBERG: Neither her name nor her
 21 photograph.
 22 COMMISSIONER: Well you know I can make a
 23 direction to that effect and I do make a direction to that
 24 effect. But of course if there's someone unscrupulous who
 25 then just publishes it in any event well then the cat is

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1 out of the bag but I would really request cooperation on
 2 that. I mean these witnesses that you hear, a lot of them
 3 come and give evidence under a lot of anxiety and they do
 4 it because they say they want the public to know. This is
 5 their institution, they want to know what's happening. So
 6 please would you cooperate with that and the cameramen,
 7 would you please not film her at all? Is that okay? Guys?
 8 Thanks very much. And I know you've got cell phones that
 9 can take pictures, please don't. Thank you and don't
 10 publish her name either.
 11 MS STEINBERG: This afternoon on the
 12 schedule is Mr Hlengani Mathebula who is the chief officer
 13 of the governance international relations strategy and
 14 communications at SARS. He had come to the Commission
 15 asking to present his testimony and the reason that I had
 16 scheduled him this afternoon, Judge, was because his name
 17 is going to come up a few times this morning and it
 18 would've been appropriate for him to then give his
 19 testimony in response in part to some of what will come up
 20 this morning. I was told after yesterday's hearing that
 21 he's no longer available to come today. So there is now no
 22 witness schedule this afternoon. I did send a message to
 23 Mr Mathebula that he can come later in the week, we'll fit
 24 him in or at the next hearing.
 25 COMMISSIONER: Thank you.

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1 MS STEINBERG: I call the first witness.
 2 COMMISSIONER: Thanks very much. Sit
 3 down please. Will you affirm that the evidence you give
 4 will be the truth, the whole truth and nothing but the
 5 truth? If so will you say I do?
 6 MS WITNESS: I do.
 7 EVIDENCE OF WITNESS
 8 MS STEINBERG: Morning, Ma'am, thank you
 9 for coming. I think it's best to introduce you as a member
 10 of SARS' anti-corruption structure.
 11 MS WITNESS: That's correct.
 12 MS STEINBERG: And your work for some
 13 years has been focused on internal corruption in SARS.
 14 MS WITNESS: Yes.
 15 MS STEINBERG: You have given me, is
 16 there a problem with the cameras? No? You have given me
 17 not only your testimony but a range of documents that
 18 accompany it and I think your evidence would best be told
 19 in the narrative form in which you presented it in your
 20 submission. So I ask you to kick off.
 21 MS WITNESS: Okay. So I want to start
 22 talking to the anti-corruption journey in SARS in 2008, 20
 23 January 2008 and I start there because it is at that point
 24 when Pravin Gordhan was still the Commissioner of SARS that
 25 the anti-corruption and security unit was set up. So at

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1 the time in 2008 the structure of anti-corruption within
 2 SARS was decentralised and a motivation was put down to
 3 centralise the structure and the reasons put forward at the
 4 time for the centralisation of one big anti-corruption and
 5 security structure included reasons like a lack of synergy
 6 between the different security units, continuous change
 7 management within the various units, the fact that these
 8 units were continuously in crisis mode. So instead of
 9 proactive they were just reactive continuously.
 10 So those were among the reasons that were put
 11 forward to create the anti-corruption and security unit and
 12 it was then approved on 20 January 2008. And I start the
 13 story there because currently we now have also a
 14 decentralised model and the same problems that were put
 15 down at the time are now emerging. So for example there's
 16 a complete lack of synergy between the different security
 17 units within SARS and we struggle on an annual basis to
 18 report to the AG on SARS' fraud prevention plan which is a
 19 requirement of the PFMA. So because every business unit,
 20 the different units whether it's a physical security
 21 vetting, screening, the investigations component, we all
 22 run our own business plans and there isn't coordination in
 23 terms of a fraud prevention plan for SARS. There's no
 24 coordination thereof and so we struggle with the synergy
 25 and we struggle with the reporting to the AG. From there,

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1 so the anti-corruption and security unit called ACAS was
 2 set up. In July 2010 there was a peer review done by the
 3 DPSA at the time and in this peer review basically -
 4 MS STEINBERG: Now who is DPSA?
 5 MS WITNESS: DPSA, yes, Department of
 6 Public Service and Administration. So the Department of
 7 Public Service and Administration did a compliance audit to
 8 establish whether the minimum anti-corruption capability in
 9 the different government departments in fact existed and if
 10 it existed to what degree did it exist. So we as SARS we
 11 participated in this peer review or compliance audit done
 12 by the DPSA and we came out tops. We were the best
 13 performing anti-corruption unit in government at the time
 14 out of a total of 85 government departments we received the
 15 highest score being 87%. That was our score.
 16 MS STEINBERG: Yes and I have that
 17 document, Ma'am.
 18 MS WITNESS: Then in 2013 again another
 19 compliance audit or peer review was done again by the
 20 Department of Public Service and Administration but this
 21 time focused specifically on the JCPS cluster, the Joint,
 22 it's the policing -
 23 MS STEINBERG: Security.
 24 MS WITNESS: Ja, security policing
 25 cluster. So they focused on the departments within the

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1 policing and criminal justice environment and it was part
 2 of sort of a decision by the anti-corruption task team of
 3 government to do such a review of the JCPS cluster
 4 departments. Again, SARS participated and again our, at
 5 this time they didn't rank the departments but they
 6 measured us ranging from excellent to high to moderate to
 7 low. On every aspect that we were measured on for example
 8 leadership commitment we received excellent, custodianship
 9 high. These are aspects of anti-corruption. So the
 10 ability of a department to combat corruptions. So
 11 different measures. In each and every measure we received
 12 a ranking or a rating high to excellent, nothing below high
 13 or excellent and most of the recommendations in the
 14 document really talk about do more of what you are doing so
 15 keep doing what you're doing and the only thing that they
 16 said we should create better coordination between
 17 ourselves, ACAS, the anti-corruption and security unit and
 18 a new unit that had been created within stakeholder
 19 management called Integrity Promotion. So they were
 20 actually saying you need to coordinate better between
 21 Integrity Promotion and the ACAS structure. So again
 22 emphasising the need for coordination and synergy. Those
 23 were really the only recommendations made.
 24 MS STEINBERG: And, Judge, that report
 25 was published on the 2nd of May 2013.

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1 MS WITNESS: So then in December 2014, 18
 2 December 2014, a newsflash went out to SARS' staff which
 3 was issued by then Commission Moyane and it was, the
 4 newsflash was entitled organisational realignment to
 5 strengthen capacity. In the communication the Commissioner
 6 indicates that internal investigations, declarations and
 7 vetting as well as security and protection functions will
 8 be repositioned and, I'm quoting now from the newsflashes.
 9 It says "to allow for better alignment and integration and
 10 will contribute to improved capacity and efficiency for
 11 SARS by having those functions and activities integrated
 12 and positioned in the business areas where they fit best
 13 with relevant functional expertise".
 14 So the communication now outlines new reporting
 15 lines. So the, in effect the ACAS is disbanded and the
 16 separate units were then put into whether it be HR or
 17 facilities or office of the Commissioner. I then, my team
 18 was, went into enforcement. So we were broken up and put
 19 into the different business areas. So what for me is
 20 something remarkable is that a structure that had been
 21 assessed as having high to excellent anti-corruption
 22 capability just a year back is now said to require
 23 realignment and needs to improve its capacity and
 24 efficiency by disbanding the separate unit.
 25 So for me the question is what was the real

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1 reason for realignment because we had participated in two
 2 government peer reviews, 2010 and 2013 which showed us to
 3 be a very strong anti-corruption capability but now there
 4 was a decision stating that we need more efficiency and
 5 more, for better realignment we must now be disbanded and
 6 put into different areas of SARS, so back to the
 7 decentralised model. So on the 31st of December 2014 just
 8 before the year ended emails were sent out by Takalani
 9 Masekwa from HR on behalf of the chief officer of HR to
 10 each one of the managers of the anti-corruption structure
 11 of the different teams and in that communication or emails
 12 the new reporting lines as from the 2nd of January 2015 were
 13 outlined. What is also interesting is in this email the
 14 email states to each one of us, so I also received such an
 15 email, that the changes are for the interim period pending
 16 the overall operating model review. So again my question
 17 to this decision is why were these changes effected at this
 18 stage with such urgency when the new operating model was
 19 coming. So a new operating model is already being planned,
 20 it's underway but for some reason there's an urgency to
 21 actually restructure this particular unit, the anti-
 22 corruption unit, now with urgency.

23 So then in April 2016 the new operating model
 24 kicks in and in terms of the new operating model our
 25 structure was now called or the investigations component of

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1 anti-corruption where I was, was now called Fraud
 2 Investigations. And it consisted of internal
 3 investigations, risk analysis and forensic audit and the
 4 new structure was now said to report to the GE internal
 5 audit. So that was the new operating model restructuring,
 6 we now report to internal audit.

7 On the 18th of April 2016 I attended a meeting, at
 8 that stage I was acting executive. I was requested to act
 9 as the executive of this new component called Fraud
 10 Investigations while we were transitioning into the new
 11 operating model. I acted in that position for three
 12 months. During that time in April I attended a meeting
 13 with the GE of internal audit and other executives of
 14 internal audit. It was a question and answer session at
 15 Hilton House hosted by Bain and the members of the new
 16 operating model steering committee. During that meeting I
 17 asked Ronald Makomba who was heading the whole new
 18 operating model steering committee on the SARS side to
 19 advise on the reason for the placement of Fraud
 20 Investigations in internal audit and when I asked him that
 21 question he said to me where would you place it which was
 22 really shocking. A shocking comment from my point of view
 23 because I believed that Bain and Company had been paid a
 24 hell of a lot of money and I assumed that they were
 25 implementing best practice and that they had done

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1 benchmarking in terms of best practice and therefore the
 2 placement of ourselves within internal audit had, should
 3 have had something to do with a best practice. Instead I
 4 was asked where would you place it. So in essence in that
 5 meeting it was clear, it was made clear that this meeting
 6 was not about a discussion of why the operating model had
 7 placed certain functions where they had placed us, we just
 8 had to accept it and we left the meeting. So we still felt
 9 that placement of the Fraud Investigations component which
 10 is basically internal investigations was incorrect under
 11 internal audit and the reason for that is that we felt that
 12 the lines of defence when you look at risk or the risk
 13 model that SARS used, at that time SARS was using the three
 14 lines of defence. So internal audit is the third line of
 15 defence, ourselves we are first line of defence. Ourselves
 16 we should also be audited by internal audit. They are
 17 third line of defence. So in our view this mixing of the
 18 lines of defence is incorrect and should not be done and we
 19 made such a submission to the new operating model steering
 20 committee. We made – we actually made various submissions.
 21 The one submission was to say that we believe that our
 22 internal investigations should be an independent structure
 23 reporting to the head of the organisation, that by placing
 24 us within internal audit you are mixing lines of defence
 25 and therefore creating a problem for the function and

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1 responsibility of internal audit.

2 [09:35] We also made a submission to say that our name
 3 should not be Fraud Investigations because it created
 4 confusion in that there's another unit within SARS called
 5 criminal investigations who also looks at tax fraud. So
 6 people no longer understood us to be an anti-corruption
 7 capability and later on it emerged that many people would
 8 actually tell me in person that they thought the anti-
 9 corruption capability no longer existed because the name
 10 just didn't explain us or explain our work. So we also put
 11 in a submission to say our name should change to internal
 12 investigations to be able to properly describe what we do
 13 and then we made other submissions relating to reporting
 14 lines which were incorrect. All our submissions, if I go
 15 to, so on the 16th of May 2016 the outcome of our
 16 submissions was communicated via email by the GE internal
 17 audit.

18 Let me also say that the GE internal audit at
 19 that stage supported us. She was also in agreement that we
 20 didn't fit structurally within internal audit. She also
 21 supported the idea that it was messing with the lines of
 22 defence. So she had also signed off on those submissions
 23 that we had made including the one for name change and the
 24 reporting lines. But on the 16th of May 2016 the outcome
 25 from the new operating model to all our submissions was

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1 that they were not approved. They were all declined. So
 2 everything from the request for independence to the request
 3 for name change and the reporting lines were declined by
 4 the operating model and we continued to transition into
 5 internal audit.
 6 And then on the 13th of July 2016 as the acting
 7 executive at the time for Fraud Investigations I received
 8 an email from the acting GE internal audit which was
 9 actually, she was informing me of a letter that had been
 10 issued to my colleague Josef Denath where he was informed
 11 that the position, let me maybe hold there and say that
 12 during the, with the onset of the operating model some
 13 members of SARS were affected. Affected meant that your
 14 job role no longer exists in the new operating model and
 15 then you are required to apply for positions in the new
 16 operating model. So Josef Denath was affected. I was not
 17 affected. To be honest I was quite shocked that I wasn't
 18 affected. The reason being that Bain never interviewed me.
 19 I was never interviewed by Bain. I was never asked what my
 20 unit does and I felt that by not having been interviewed it
 21 meant that they don't actually understand what I do.
 22 Yousuf on the other hand had been interviewed by Bain and
 23 Company, he had been given an audience by them but somehow
 24 he ended up being affected and I was not affected.
 25 So in the process of him now having to apply and

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1 let me say he was a senior manager of internal
 2 investigations at the time, and in the new operating model
 3 there were two senior manager internal investigations roles
 4 available. Other people were, when that situation happened
 5 other people were informed that they should choose one of
 6 the senior manager roles, you were given a choice. So if
 7 there was more than one role that was similar to what you
 8 did previously you would be given a choice. But he wasn't
 9 given a choice. He was made affected. He applied for the
 10 senior, one of the senior manager roles within Fraud
 11 Investigations and in this letter that I was sent by the
 12 then acting GE internal audit the letter to him said that
 13 all positions within Fraud Investigations had been put on
 14 hold as well as, ja all positions and appointments had been
 15 put on hold and the letter also indicated that the
 16 operating model Steerco, steering committee and the SARS
 17 Commissioner were reviewing the scope and mandate of Fraud
 18 Investigations.
 19 So just to summarise we are supposed to be
 20 transitioning into internal audit, we've made submissions
 21 to say we don't belong in internal audit. It was declined.
 22 Suddenly there's a change of mind and Yousuf is being
 23 informed in a letter that the position he has applied for
 24 and all other positions within Fraud Investigations are on
 25 hold because the steering committee and the SARS

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1 Commissioner are reviewing the scope and mandate of Fraud
 2 Investigations.
 3 So the very next day as the management of Fraud
 4 Investigations led by myself as the acting executive we put
 5 together another submission because we could see now that
 6 we felt that we need to give input in terms of where we
 7 should be placed and we can see there's some
 8 reconsideration and we are concerned that we are not being
 9 called in and asked any input. So we decide to proactively
 10 put together a submission ourselves and the reason for this
 11 was we felt let's put a submission, let's give it to the GE
 12 internal audit so that when she gets called in to these
 13 reviews of our scope and mandate she's empowered and she
 14 also, our voice is also part of her input. So by now we
 15 realise that it seems the idea of being independent is not
 16 flying because it was declined, now there's a question
 17 about internal audit, so again we make a submission and
 18 this time we give two options or our input speaks to two
 19 options. One where we still want, we are still proposing
 20 independence, independently reporting to the head of the
 21 organisation as the best practice from our point of view
 22 and then we give a second option which is we propose that
 23 when we should be put in a risk division and we provide the
 24 GE internal audit with these inputs so that she can use
 25 them in her engagements.

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1 About a week later on the 21st of July 2016 Ronald
 2 Makomba who was heading the operating model side from SARS
 3 he asked to meet with me and now unlike the previous
 4 meeting where I had met him, where he was really not
 5 interested in having a discussion with me around the
 6 placement of the structure he now seems quite willing to
 7 have a discussion about the placement of Fraud
 8 Investigations. So then he indicates during this meeting
 9 to me that he actually used a document that was compiled by
 10 the Association for Certified Fraud Examiners ACFE entitled
 11 benchmarking your in-house fraud investigation team and he
 12 used this document to decide that our best placement is
 13 within internal audit. He later sent me the document which
 14 I went through, first let me say that the ACFE or the
 15 Association for Certified Fraud Examiners is a professional
 16 body for fraud investigators. Secondly the document is
 17 actually a survey, it's a survey that was done among
 18 members of the ACFE. So if at best it's common practice,
 19 not best practice. So it's a survey of what is the common
 20 practice and when you look at that survey it says in terms
 21 of the members of the ACFE most of their structures report
 22 into internal audit but when you go to government
 23 departments only you would see there that they would, they
 24 report to the heads of the organisations, the majority
 25 report there. That aside I still feel that this is not a

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1 best practice benchmark. If you really wanted to do a best
 2 practice benchmark you pick the best anti-corruption
 3 capabilities in the industry that you work in so we have
 4 relationships with the Australian Tax Office, Her Majesty's
 5 Revenue and Customs, why did we not go to another revenue
 6 agency and actually benchmark with them and from there
 7 determine what is the best placement of this structure
 8 within the organisation.
 9 MS STEINBERG: If I can just stop you for
 10 a moment, Ma'am. If it's not entirely apparent, my
 11 understanding and you must tell me if I'm correct, is that
 12 the reason the placement of any internal corruption unit is
 13 so important is because this is the unit that exists in
 14 order to check on the rest of the organisation to see that
 15 it is isn't corrupt. Now if it's placed in the heart of
 16 the very organisation that it is supposed to be policing
 17 then structurally it will be compromised?
 18 MS WITNESS: Yes.
 19 MS STEINBERG: So best practice and I
 20 have looked at the Australians and others. Best practice
 21 is to put this unit outside of the daily operating of the
 22 tax authority with a direct line to the head. So that if
 23 you become aware of malfeasance in the organisation you
 24 don't have to tell somebody who might be involved in that
 25 malfeasance of the problem, is that correct?

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1 MS WITNESS: That's correct, that's
 2 correct so it's crucial in any anti-corruption capability
 3 investigations, internal investigations capability is
 4 independence and if, and to be able to actually investigate
 5 anybody without fear or favour you need that independence
 6 and you need that reporting line to the head of the
 7 organisation.
 8 MS STEINBERG: So if you're placed in
 9 internal audit for example and the head of internal audit
 10 is himself or herself involved in fraud or corruption then
 11 you have a problem.
 12 MS WITNESS: Yes. So I also looked at
 13 the Australian tax organisation structure and they have
 14 both internal audit and the internal investigations'
 15 capability sitting independently of each other and
 16 independently of the rest of the organisation reporting to
 17 the head of the organisation and let me also say that the
 18 former anti-corruption and security structure, the ACAS
 19 structure reported to the deputy Commissioner but we don't
 20 have a Deputy Commissioner in the new operating model. So
 21 we reported to the deputy Commissioner who reported to the
 22 Commissioner.
 23 MS STEINBERG: Thank you, please go on.
 24 MS WITNESS: So on the 1st of September,
 25 so, okay a recap. There is no Ronald was basically called

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1 to explain why he put us in internal audit, he's now gives
 2 me this ACFE document. We give our input to our, the GE
 3 internal audit who were reporting to, we also, I also share
 4 the same submission that I shared with the GE internal,
 5 with Ronald and then on the 1st of September 2016 I get an
 6 email from my colleague Yusuf Denath where he informs us,
 7 it's, the email is sent to all the members of Fraud
 8 Investigations and it CCs the acting GE Internal Audit at
 9 the time and he informs us that we are now reporting, so
 10 our reporting line has changed, he's informing us we now
 11 report to the chief officer strategy and communication and
 12 that a meeting will be set up with the new chief officer to
 13 address all members. So let me say that the Chief Officer
 14 Strategy and communication was responsible for risk as well
 15 in the organisation. The promised meeting with all staff
 16 members never takes place. But on the 22nd of September
 17 2016 the chief officer strategy and communication Mr
 18 Hlengani Mathebula calls a meeting with the management of
 19 Fraud Investigations, HR and other members of his office.
 20 During this, well invited to this meeting was also Yegen
 21 Mundi but he did not attend. Yegen Mundi was an
 22 investigator in our environment and at that stage, when
 23 this meeting took place he had been transferred to the
 24 office of the Commissioner. So he was also an invitee, we
 25 didn't know why because only managers were invited from our

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1 side but he was also invited.
 2 MS STEINBERG: What was his position in
 3 the office of the Commissioner at that stage? Do you know?
 4 MS WITNESS: I don't know what position
 5 he held but in that meeting, during the meeting, so when I
 6 came to the meeting I didn't know what position he's
 7 holding in the office of the Commissioner, but in the
 8 meeting I discovered that he was now holding a senior
 9 manager role and I discovered this because Yousuf Denath
 10 who was in the meeting, my colleague asked the question of
 11 the Chair, Hlengani Mathebula, he asked for clarification
 12 on the issue that he had been told that Yegen Mundi is now
 13 a senior manager or acting in a senior manager role and
 14 that this box, I use the term box, which actually belonged
 15 to our structure, had now been moved to the office of the
 16 Commissioner for him to act in this senior manager role.
 17 I'd like to note that Yegen Mundi had no managers reporting
 18 to him. So he was now acting in a senior manager role
 19 apparently, according to what I discovered in this meeting,
 20 with about five members reporting to him ranging from Grade
 21 4A up to 6. There was no managers reporting to him and
 22 when Yousuf asked in the meeting for clarity from the
 23 Chair, Hlengani Mathebula for the reasons why is this
 24 person now a senior manager we were told by Hlengani that
 25 it was the Commissioner's decision. That was it.

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1 MS STEINBERG: My understanding is that
 2 before he was made senior manager in the Commissioner's
 3 office he wasn't even a manager?
 4 MS WITNESS: He wasn't.
 5 MS STEINBERG: He leapfrogged a couple of
 6 rungs.
 7 MS WITNESS: Yes, he was a grade 6
 8 operational specialist investigations which is an
 9 investigator and he, the acting, the senior manager is a
 10 grade 8. So he had jumped 7 to 8 and he was now acting in
 11 this position with no managers or anything reporting to
 12 him. At this meeting that Hlengani called on the 22nd of
 13 September were also told that we will report to Mandisa
 14 Mbekeni who is the executive in the office of the Chief
 15 Officer Strategy and Communications. So the reporting line
 16 now to her was confirmed in that meeting. So in November,
 17 29 November 2016 or around about the last week of November,
 18 I'm not a 100% on the exact, sure of the exact date but the
 19 last week of November 2016 again myself and Yousuf Denath
 20 who were senior managers in the Fraud Investigations
 21 environment we were called to a meeting by Mandisa Mbekeni
 22 who we were reporting to, our executive at the time and
 23 Zanele Zamkaka whose with HR business partner. So in this
 24 that we were called to by Mandisa and Zanele we were
 25 informed that this Tobacco Task Team now, the Tobacco Task

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1 Team includes Gobi Makhanya, Yegen Mundi, Deidre Razak,
 2 Pierre Smith, David Pillay, Lesetsha Ledwaba and Andries
 3 Ntole that this team which was now, which was in the office
 4 of the Commissioner are now going to be co-located with us.
 5 So not, they are not part of us but they are going to sit
 6 there, they are going to be co-located with us. We were
 7 very uncomfortable. We pushed back because just a week or
 8 so before that there was a newspaper article talking about
 9 this unit and indicating that the unit is investigating
 10 cigarette smuggling. So we asked questions like what type
 11 of cases are they dealing with, where do their cases come
 12 from, what governance process does this team have in terms
 13 of determining which cases they investigate and then how
 14 does this fit with us, why do they need to sit with us
 15 because we are internal investigations, we don't
 16 investigate cigarettes, that is an external investigation.
 17 [09:55] Well actually it is criminal investigations
 18 mandate and the newspaper had even referred to them as the
 19 new Rogue Unit and that also made us very uncomfortable
 20 because as ACAS the first mention of a Rogue Unit we were
 21 living with this reputational branding, bad reputational
 22 branding because the confusion in the media that the assets
 23 of the Rogue Unit were our assets and then people within
 24 the organisation believed that we were the Rogue Unit or we
 25 are a Rogue Unit. So we also raised this, myself and

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1 Yousuf in the meeting to say we have a reputational risk
 2 that we are trying to deal with. We even listed it in our
 3 risk register as something we must manage, our reputation
 4 has been tarnished very badly and we need to work on this.
 5 Now you want to co-locate the newly branded Rogue Unit as
 6 the media has branded them with us. So how are we going to
 7 fix our reputation if you do this?
 8 Nonetheless our push back and comments were –
 9 they fell on deaf ears and Zanele even accused me of being
 10 unfair in terms of how – the fact that I'm now saying this
 11 unit is rogue. To which I responded that if they are as
 12 innocent as we are then I do feel sorry for them, but my
 13 concern is about the reputation of our unit which we were
 14 already suffering from media reports and from the view of
 15 people within the organisation. So another aspect of an
 16 anti-corruption unit is trust. You must be trustworthy so
 17 that people can come forward and report fraud and
 18 corruption. So if you lack that trust they won't come
 19 forward and now we are struggling with the reputation and
 20 they are deciding to co-locate us with this unit that is
 21 called Tobacco Task Team.
 22 MR KAHLA: Sorry was there ever an
 23 explanation as to why it was considered necessary to co-
 24 locate that task unit with your team? Was it just a case
 25 of space or what drove the co-location?

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1 MS WITNESS: It was never explained, it
 2 was not explained. I think, this is my analysis is that
 3 they needed to create distance between this unit and the
 4 office of the Commissioner because now there was media
 5 attention to it which was giving the Commissioner's office
 6 a negative view. So they needed to create distance, so by
 7 co-locating with us they would then say no they are not in
 8 the office of the Commissioner, they're there in internal
 9 investigations.
 10 MR KAHLA: But they were not changing the
 11 reporting line, you still reported to the Commissioner.
 12 MS WITNESS: Not at this stage, but soon
 13 thereafter then the reporting line changed. So it was like
 14 step one, co-location. And then later step two, you are
 15 one.
 16 MR KAHLA: What I'm trying to understand
 17 is, if I'm wrong help me, I thought that it was already
 18 reporting to the Commissioner through the gentleman, I
 19 think is Yegen Mundie –
 20 MS WITNESS: Yes.
 21 MR KAHLA: - and then it was – what was
 22 now being sought to be done is to co-locate it without
 23 changing the reporting line. Unless you're saying that in
 24 fact it had never - at that point of engagement around the
 25 co-location there'd never been a reporting line to the

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1 Commissioner.

2 MS WITNESS: To be honest, Mr Kahla, I

3 actually don't know the Tobacco Task Team reporting lines.

4 You know like at this stage Makhanya was already there and

5 later he was more senior to Yegen Mundie. So I don't know

6 how the reporting worked. The documents I've seen around

7 their instructions to operate are actually signed off by

8 Hlengani Mathebula who was also our chief officer at the

9 time. So how that whole thing worked, I don't know the

10 inner workings of the reporting lines and when it changed

11 and when – what I know is that at this stage we were told

12 we are co-located.

13 PROF KATZ: Am I interrupting you or –

14 MS STEINBERG: No, no go ahead.

15 PROF KATZ: Sorry, throughout this

16 period, Ma'am, the beginning of the period that you spoke

17 to us about, it was a very successful unit, well rated peer

18 reviews, everything. Then all these changes took place,

19 how did that impact on your operations, your performance?

20 What happened to the performance of the unit in fact?

21 MS WITNESS: It had a severe impact. One

22 was even the types of cases that we were doing, we moved

23 from working on syndicates, you know syndicates that

24 operated outside of SARS together with corrupt officials in

25 SARS to what I would describe as rats and mice cases. You

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1 know behavioural issues, fraudulent sick leave notes, so we

2 moved from investigating syndicated crime to investigating

3 small sick leave note fraud, kilometre claims that was the

4 one impact. The other impact was the number of reporting,

5 the reporting of cases to us dropped. So people were just

6 not aware that we still existed in terms of that we were

7 still an anti-corruption internal investigations

8 capability, that also dropped. So the volume of reporting

9 that we had dropped and the types of cases that we were

10 doing dropped and then the morale of the whole team was

11 really broken because this – it was as if you are never

12 landing, you are being pushed from pillar to post, there's

13 no champion of anti-corruption in the organisation who's

14 championing the work of anti-corruption. So the morale was

15 just at its lowest.

16 PROF KATZ: So would you say then that

17 corruption increased, that you were a brake against

18 corruption, the brake removed and therefore corruption

19 increased?

20 MS WITNESS: I would definitely say that

21 we were not combating corruption with the same strength and

22 capability that we had done in the past. If syndicates

23 were operating we were no longer getting those cases, we

24 were not investigating them and if you understand SARS it's

25 a bank, it's probably the biggest bank in Africa. The

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1 amount of money that goes through the SARS accounts it's

2 huge, trillions that pass through. So it's not as if

3 syndicates will stop targeting those accounts, it's a

4 constant – you are constantly under threat, constantly

5 under threat because money is going through like a bank.

6 And the moment you're not even aware of the existence of

7 those syndicates then – and have your internal capability

8 which actually has the skills and experience to deal with

9 syndicated crime and let me say that recently in a judgment

10 by Judge Poterill in a procurement fraud matter that we

11 dealt with where we received very harsh sentences for the

12 syndicate involved in that procurement fraud. She actually

13 stated in her judgment that she was surprised to see that

14 there is an anti-corruption, or was an anti-corruption

15 capability in SARS. And after having done that case she

16 realised how important it is to have such a capability

17 within a revenue service because if it wasn't for that

18 capability that syndicate, the procurement fraud one would

19 have never come to light.

20 PROF KATZ: Sorry so one last question in

21 this vein. The effective performance of this vital

22 function by you, when that was reduced was it placed with

23 anyone else or did that function really cease?

24 MS WITNESS: It ceased, it ceased.

25 MS STEINBERG: Well I think we can say

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1 that the Tobacco Task Team notwithstanding its name

2 conducted some internal investigations on SARS' employees,

3 is that correct?

4 MS WITNESS: They did, they did and they

5 used the umbrella of cigarette smuggling, a cigarette

6 smuggling project, as their mandate to investigate internal

7 employees. But if you go into any of those cases none of

8 them actually deal with the Tobacco Task Team or none of

9 them deal with their suspects being part of big syndicated

10 cigarette smuggling. In fact a lot of them were addressed

11 on behavioural issues which had nothing to do with

12 cigarette smuggling. So I would say that the capability to

13 fight corruption as much as Tobacco Task Team was

14 investigating some internal staff, was not at the level at

15 which we were operating prior.

16 MS STEINBERG: Well perhaps you should

17 tell the Commissioner about the internal memo that you

18 recently sent to the Acting Commissioner about the Tobacco

19 Task Team.

20 MS WITNESS: So April of this year, 2018,

21 I was again made Acting Executive of the Fraud

22 Investigations unit and one of the first things I did was

23 to review the cases that the Tobacco Task Team were doing.

24 The reason for my conducting of the review was that their

25 cases were not registered. They didn't go through the SARS

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1 case governance process, the case governance process that
 2 Fraud Investigations is required to go through. So in
 3 SARS' cases there's a separation between who evaluates a
 4 case and determines that it needs to be investigated and
 5 who investigates. So their cases were not registered, they
 6 hadn't gone through a case governance process and by the
 7 time I did the review most of them were already in a
 8 disciplinary stage. They were already within the employee
 9 relations space.

10 PROF KATZ: Sorry you mean the members?
 11 MS WITNESS: No the cases that they dealt
 12 with were already at disciplinary stage, so they'd never
 13 gone through registration, they hadn't followed the normal
 14 SARS governance process and they already were at
 15 disciplinary stage. Those cases they used this approval, a
 16 memo that was approved by Chief Officer Strategy and
 17 Communication Hlengani Mathebula, around cigarette
 18 smuggling, they used that umbrella project to then
 19 investigate and take disciplinary action against a number
 20 of internal staff members. And the types of things they
 21 dealt with were really behavioural issues that these staff
 22 members apparently – that type of misconduct, behavioural
 23 type misconduct. And they took disciplinary action around
 24 that, so I did not see from those cases that they were
 25 really cracking down on cigarette smuggling and that these

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1 members, internal members that they had now taken action
 2 against were, you know, corrupt, internal people working
 3 with syndicates, cigarette smuggling, syndicates outside.

4 MR KAHLA: So what would have been these
 5 behavioural issues? I mean you've already clarified it had
 6 nothing to do with participation or involvement with
 7 syndicates.

8 MS WITNESS: Yes.
 9 MR KAHLA: What would they have been
 10 then?
 11 MS WITNESS: So in the one there was an
 12 issue of an altercation that occurred between a complainant
 13 in the cigarette smuggling industry and an internal
 14 employee when the complainant had come forward to report,
 15 to lodge a complaint with us it ended up being an
 16 altercation. So that altercation was an investigation.
 17 And then there was issues around leaking of information,
 18 leaking of information to private investigation companies
 19 where it was unclear whether this was really leaking or
 20 they were running joint operations with the private
 21 investigation company. So those were the nature of the
 22 allegations that had ended up in disciplinary.

23 MR KAHLA: But none of these were
 24 considered to fit the rats and mice's category that should
 25 have been dealt with by your unit.

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1 MS WITNESS: It should have been dealt
 2 with by us, I agree with you. I still do not understand
 3 how, because it was our mandate to conduct internal
 4 investigations. So if they had picked up these kinds of
 5 contraventions, misconduct they should have been referred
 6 to us to investigate and deal with through the normal case
 7 governance process. In instances like the altercation to
 8 be honest is not actually our mandate at all because our
 9 mandate is internal fraud, internal corruption, serious
 10 misconduct, theft. So behavioural things, leaking of
 11 information would fit our mandate, but altercations is a HR
 12 issue, it's a line management issue. That should have been
 13 dealt with by line management HR.

14 MS MASILO: I just need some clarity, I'm
 15 a bit confused about the role that that unit was playing,
 16 the unit which conducted investigations into cigarette
 17 smuggling. Were they investigating taxpayers or people in
 18 the cigarette industry who were smuggling tobacco or were
 19 they investigating the SARS investigators who were doing
 20 the work, who were conducting investigations into the
 21 cigarette smuggling?

22 MS WITNESS: From my review they were
 23 investigating internal staff which included the SARS
 24 investigators who were investigating cigarette smuggling.
 25 So I didn't see any cases where they – that were

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1 registered, where they were investigating taxpayers. The
 2 focus was on internal staff and in particular those people
 3 internally who were dealing with cigarette smuggling
 4 investigations.

5 MS MASILO: Okay and secondly you said
 6 the types of cases that you used to investigate they were
 7 watered down. What happened to the cases that you – I mean
 8 sort of the cases that you were busy with at the time when
 9 you were moved to internal audit? Did somebody else
 10 continue with the investigation of those internal
 11 corruption cases?
 12 MS WITNESS: No we finalised all the
 13 cases, we finalised our cases, so we continued.

14 MS MASILO: Okay.
 15 MS WITNESS: But what I was trying to
 16 explain is the types of cases we were receiving, so new,
 17 new cases that were coming in were not at the same level of
 18 reporting of syndicated crime as we had been receiving in
 19 the past. So the number of reporting and the severity of
 20 what was being reported changed and was watered down.

21 MS MASILO: Okay thank you.
 22 MR KAHLA: I need to just follow up on
 23 what Advocate Masilo had raised earlier. If this Tobacco
 24 Task Team was investigating other employees who were
 25 involved in investigating the illicit tobacco industry are

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1 you suggesting that there had in fact been a case where
 2 there were a number of other units that were focused on
 3 investigating the same thing? I'm trying to understand how
 4 did it come about that they were falling onto each other if
 5 it was very clear that there was just this one task team,
 6 the Tobacco Task Team, that was focused on the tobacco,
 7 were there other units focused also on investigating the
 8 illicit trade in relation to the tobacco industry?
 9 MS WITNESS: With the onset of the new
 10 operating model a lot of those other units that did
 11 investigate like your illicit economies which included
 12 cigarette smuggling no longer existed.
 13 [10:15] But the people, the individuals who had been part
 14 of those units they were still in the organisation and they
 15 may have found themselves in legal or in criminal
 16 investigations. So they were still in the organisation.
 17 Criminal investigations continued to, it's still part of
 18 their mandate to investigate tax fraud relating to the
 19 illicit economy. So they did still continue but what I'm
 20 trying to explain is that those specialised units they were
 21 no longer there in that specialised, with a specialised
 22 mandate. We had generic investigations and under the
 23 generic things like cigarette smuggling would also fall
 24 within that mandate but previously like your illicit
 25 economy units they no longer existed in the new operating

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1 model. But the people who were part of that unit were
 2 still within the organisation in other roles.
 3 COMMISSIONER: Do I understand you to be
 4 saying that the Tobacco Task Team which had been set up
 5 ostensibly to investigate syndication of tobacco smuggling
 6 and so forth, they ended up as far as you could see that
 7 they were investigating the investigators? Is that what
 8 you are saying?
 9 MS WITNESS: To a large degree, yes.
 10 PROF KATZ: Sorry, when you were
 11 functioning at your prime who would've referred cases to
 12 you?
 13 MS WITNESS: We received them from
 14 everywhere, so our biggest reporters are still internal
 15 staff. Internally the – so the largest number of reporting
 16 still comes from tipoffs within the organisation. They
 17 come from the public, from even other law enforcement
 18 agencies who would be investigating something and then pick
 19 up that there's a link to SARS, that there's an internal
 20 person. So from all over.
 21 PROF KATZ: So after all these changes,
 22 what changed on who reported to you?
 23 MS WITNESS: Well for one, as I said,
 24 staff they, the types of cases that we were getting
 25 internally were not your serious crime. There was even a

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1 perception that the anti-corruption capability no longer
 2 existed. I'm – I thought that our name might have had
 3 something to do it, that it confused people and they
 4 thought there was no longer such a capability but also
 5 after all the media coverage about anti-corruption and
 6 connecting us to a Rogue Unit, there was also I think a
 7 break in trust which – so all these things together with
 8 the fact that there was no, the bigger anti-corruption and
 9 security capability was no longer there. We were just a
 10 small component still conducting investigations.
 11 PROF KATZ: And when you were operating
 12 at your prime, when cases were reported to you, who did you
 13 then after your investigation who did you then refer the
 14 outcome of your investigation to?
 15 MS WITNESS: Our, all our matters go to –
 16 well if we find merit to the allegations then they go to
 17 employee relation space for a disciplinary to be initiated.
 18 Where the allegations are severe and there's a legal
 19 requirement to report to the police we also would register
 20 cases with the police and follow criminal, a criminal
 21 process as we did with the procurement fraud matter that I
 22 referred to earlier. So obviously the, if you're working
 23 with syndicated crime you would have more criminal cases,
 24 you would have more cases in court. But –
 25 PROF KATZ: And –

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1 MS WITNESS: - when you're not working
 2 syndicated crime there's less of a reason to go and open a
 3 criminal case.
 4 PROF KATZ: After these changes who did
 5 you report, to whom did you report cases where you found
 6 there was merit that there were problems?
 7 MS WITNESS: Still to – we still followed
 8 the disciplinary process, it's still within employee, it's
 9 still to employee relations.
 10 MS MASILO: I'm just trying to understand
 11 ordinarily since your, since, during the review of the work
 12 which was done by this team which conducted investigations
 13 into tobacco smuggling, is that they mainly investigated
 14 SARS employees who were conducting those actual
 15 investigations. Why do you think they had a straight
 16 reporting line or they were based in the office of the
 17 Commissioner in the place as opposed to reporting within
 18 your structure in ACAS? Because they were basically doing
 19 what you were doing.
 20 MS WITNESS: I actually, I can't answer
 21 for what was the reason for creating them. I think those
 22 who decided that they needed this specialised, if you want
 23 to call it specialised, I wouldn't, capability are the ones
 24 who would have to explain why. So Hlengani Mathebula who
 25 is the chief officer who signed off on the setting up of

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1 that structure, I think he's best placed to answer that
 2 question.
 3 MS MASILO: Okay.
 4 MS STEINBERG: And if I may say we have
 5 the series of internal memoranda that led to the
 6 establishment, that motivated for and led to the
 7 establishment of the Tobacco Task Team which I was planning
 8 to, put before Mr Mathebula this afternoon. That's why he
 9 was called this afternoon. So we can do that a later point
 10 or I can put those memos in any event. The memo that you
 11 recently sent about the Tobacco Task Team, if I may
 12 comment, the cases that you listed in that memo that that
 13 Tobacco Task Team had initiated and investigated over its
 14 life, as I recall there is not one case directed at a
 15 player in the illicit tobacco industry. Is that right?
 16 MS WITNESS: That's right.
 17 MS STEINBERG: So the name Tobacco Task
 18 Team appears to be a misnomer, it was entirely directed at
 19 SARS staff some of whom were never involved in tobacco.
 20 MS WITNESS: That's correct.
 21 MS STEINBERG: And you recommended that
 22 that Tobacco Task Team be closed down –
 23 MS WITNESS: Yes.
 24 MS STEINBERG: - and the acting
 25 Commissioner agreed to that.

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1 MS WITNESS: Yes.
 2 MR KAHLA: Help me to just, I just want
 3 to come back perhaps to a question you may have asked. The
 4 Tobacco Task Team we now know from your testimony that, we
 5 now hear from your testimony that it investigated no
 6 tobacco related matters. Who was investigating tobacco
 7 related matters if there was anyone?
 8 MS WITNESS: I don't actually know. If –
 9 the only people or the only unit that had the mandate then
 10 in the new operating model would be criminal
 11 investigations. So – and they had – their mandate was more
 12 generic. In other words they would investigate all tax
 13 fraud. So there was no specific dedicated project team to
 14 such an investigation. I'm only mentioning criminal
 15 investigations as a case may have come to them but because
 16 I'm not within criminal investigations I don't know if
 17 there were any cases that they at that stage were then
 18 investigating.
 19 MS STEINBERG: Well the evidence we've
 20 had from criminal investigators here last time and
 21 elsewhere is that nobody was investigating the illicit
 22 tobacco industry. The Tobacco Task Team was set up to do
 23 that but we now know it didn't do that and no one else was
 24 doing it. That's the evidence we have thus far. It's that
 25 there's been no investigation into illicit tobacco since

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1 early 2015.
 2 MS WITNESS: They would know better.
 3 Okay, so we were informed that we're going to be co-located
 4 with the Tobacco Task Team or they are going to be co-
 5 located with us. So they moved in to the, an office which
 6 was the former group executive of the anti-corruption and
 7 security unit's office. They moved in there and they were
 8 operating from there. This was November 2016. April, on
 9 the 4th of April 2017 I received a call and later an email
 10 from Mandisa Mbekeni who was the executive that I was
 11 reporting to and she informed me that Gobi Makhanya now
 12 from the Tobacco Task Team had been appointed the acting
 13 executive Fraud Investigations and that both myself and
 14 Yousuf Denath were now reporting to him. And from that
 15 point onwards, so with Gobi Makhanya being the acting
 16 executive Fraud Investigations, so now we have merged.
 17 Then Yegen Mandi became the acting senior manager of the
 18 syndicates. So in the new operating model we had two
 19 senior managers in investigations, one for regions, one for
 20 syndicates. He then took over as the acting senior manager
 21 for syndicates. There was something strange in the acting
 22 letter that we were sent relating to the acting of Gobi
 23 Makhanya in that it stated that he would be the acting
 24 executive Fraud Investigations as from the 23rd of March
 25 2017 but we were only informed of his acting on the 4th of

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1 April 2017. So I don't know why the delay in informing us
 2 that we actually have a new acting executive. That was the
 3 4th of April.
 4 The very next day my colleague, Yousuf Denath,
 5 was issued with a notice of intent to suspend by Gobi
 6 Makhanya which was basically the first day that he was our
 7 line manager. He suspended Yousuf Denath and I just want
 8 to say that more than a year later Yousuf Denath was
 9 exonerated on all the charges that were brought against him
 10 in that case. So as you can imagine it was a very
 11 difficult time for me personally because my colleague has
 12 been suspended, this is my new line manager. I don't know
 13 what is going on. I'm wondering if I'm the next to be
 14 suspended and I don't know what I can be suspended for. So
 15 it was really a very difficult fearful time for me and for
 16 our team when that took place.
 17 On the 1st of June 2017 the position of the
 18 executive, you will remember that people had been acting in
 19 this role now continuously. So the position was advertised
 20 now for a second time. It had been advertised within the
 21 whole issue of the affected people, so when it was ring-
 22 fenced to affected people and I think it had been
 23 advertised once before. But it was then again advertised
 24 in June and I applied for the position and I was informed
 25 by Recruitment that I had been shortlisted for the position

1 and I would be interviewed on the 12th of June 2017 by three
 2 chief officers and Recruitment. I was surprised that I'd
 3 been shortlisted, not because I don't meet the minimum
 4 criteria, but only because I didn't meet the equity
 5 requirement of the job and SARS at that point had become
 6 very strict in terms of equity and would only shortlist
 7 people who meet the equity requirements of the role. So I
 8 wasn't meeting the equity requirements but I did meet all
 9 the other requirements. And I was supposed to be
 10 interviewed on the 12th of June. On the 6th of June before
 11 the interview I was informed by email by Recruitment that
 12 the interviews had been rescheduled to the 7th of August.
 13 So it's June, I'm being shortlisted to be interviewed two
 14 months later which is really abnormal, not the ordinary. I
 15 was surprised. The reason given by Recruitment for the two
 16 month delay in actually interviewing the shortlisted
 17 candidates was that we were now going to be interviewed by
 18 four chief officers and Recruitment. So also strange that
 19 an executive role which is so, it's not even a group
 20 executive, it's an executive role must be, you must be
 21 interviewed by four chief officers and Recruitment for this
 22 position, okay and also strange that you're now shortlisted
 23 for an interview that's going to take place in two months'
 24 time. So to be honest this is my own thoughts on the whole
 25 thing, is that there was a candidate or a preferred

1 candidate already and this person needed to be prepped for
 2 this interview and needed two months to be prepped. That's
 3 my analysis of the whole thing. And then on the 4th of
 4 August, this is like the Friday before the, my own
 5 interview is supposed to take place and remember I've been
 6 waiting two months now to be interviewed. The interviews,
 7 I'm informed by Recruitment the interviews are cancelled.
 8 So it's two months later they cancelled. And then I
 9 receive an email from Recruitment on the 7th of August
 10 informing me that we are now, because by then we were now
 11 reporting into enforcement. So we had now moved out of the
 12 risk division, we are now in enforcement and that the chief
 13 officer enforcement who was now responsible for us had
 14 requested that the interviews be placed on hold as she
 15 needed time to understand the role and the reporting lines
 16 properly before she is ready to interview.
 17 On the 20th of September I then received an email,
 18 we're now in enforcement, I received an email from
 19 Recruitment informing me that the position is now going to
 20 be re-advertised from scratch because there's just been too
 21 long a delay between the previous advert and the actual
 22 interviewing. So it's now re-advertised and if I'm still
 23 interested in the position I should reapply. I have to
 24 reapply. I did reapply for the position in September and
 25 then in December 2017 I became aware that candidates were

1 being interviewed that week, the week, the first week of
 2 December candidates were being interviewed for this
 3 executive position of Fraud Investigations. But I had not
 4 received an invite and I queried this with Recruitment
 5 because I'd been shortlisted before and as far as I could
 6 see in the new advert nothing had changed in terms of the
 7 minimum requirements which I still met, except for the
 8 equity issue which I had for some reason still gotten
 9 shortlisted the previous occasion. But now I was not
 10 shortlisted. When I queried it with Recruitment I received
 11 a response from Recruitment indicating that I did not meet
 12 the equity requirements and that in the previous round of
 13 interviews exceptional approval had been granted to
 14 shortlist outside the EE, the equity requirements but
 15 possibly this wasn't the case now. So there had been an
 16 exceptional approval in the previous shortlisting and this
 17 time there wasn't one so I was no longer, I no longer made
 18 it to the interviews.
 19 When the query was referred to another
 20 Recruitment officer to confirm whether in fact it was true
 21 that this time there was no exceptional approval and the
 22 new Recruitment officer never responded to me, never gave
 23 me a confirmation and therefore I was just left with the
 24 assumption that in fact there was no exceptional approval
 25 this time. On the 3rd of April this year I was then again

1 asked to act in the position, still no executive appointed.
 2 I don't know what happened with those interviews where I
 3 wasn't shortlisted but I was again asked to act in the
 4 position of executive. As I've indicated before I then
 5 started the whole review of the cases by the Tobacco Task
 6 Team, tried to get all the cases through the case
 7 governance process after the fact so to speak but at least
 8 to be clear from our side that if we get audited I would be
 9 able to explain that when I started acting these are the
 10 actions that I took and this is the process that we've now
 11 followed.
 12 [10:35] I also became aware on the 7th of May 2018 this
 13 years that a benchmarking exercise had been undertaken by
 14 Human Capital and Development or HR. In relation to this
 15 executive role so what I was informed was that Gobi
 16 Makhanya who had been acting executive prior had queried
 17 the minimum requirements of the role because apparently he
 18 too was not shortlisted in December and he queried the
 19 minimum requirements and after his complaint or query of
 20 why he wasn't shortlisted a decision was taken to actually
 21 conduct a benchmark to determine whether in fact the
 22 minimum requirements of this executive role is the same as
 23 that of other executive roles in the organisation. So
 24 there was some belief that it wasn't the same and so –
 25 MR KAHLA: Was it expected to be lower or

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1 greater?

2 MS WITNESS: Lower and so they proceeded,

3 HC&D or Human Capital and Development proceeded to go and

4 benchmark with the Hawks and SAPS and Fraud Investigations

5 Unit in banks and the outcome of that benchmark exercise

6 was that in fact the minimum requirements were correct.

7 They were on par and nothing needed to be changed there. I

8 think that's where I want to stop. So subsequently

9 external candidates I understand have been interviewed for

10 the role. I have never been shortlisted for the role. I

11 am still acting in the position.

12 COMMISSIONER: Have you applied for the

13 position?

14 MS WITNESS: Yes, I have applied.

15 MS STEINBERG: Well, I think perhaps we

16 can ask the chief officer responsible who is testifying

17 later in the week.

18 COMMISSIONER: Okay.

19 MS STEINBERG: Just a question from my

20 side, ma'am, are you aware of the inter-office memorandum

21 that Mr Gobi Makhanya sent to Ms Carol van Wyk copied to Mr

22 Hlengani Mathebula on the 24th of October 2016 requesting

23 permission for him to download emails from the SARS server?

24 MS WITNESS: Yes, I'm aware.

25 MS STEINBERG: Judge, in this memorandum

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1 which is curious because on the 24th of October 2016 Mr

2 Makhanya was not yet part of that acting position that he

3 was put into. He was still in debt management in KwaZulu

4 Natal. He asks Mr Mathebula for permission to obtain

5 authority in order to download emails of SARS employees and

6 to search SARS server for emails from identified suspects

7 in corruption in the tobacco industry. Now I raise it with

8 you because a number of your colleagues are listed here and

9 presumably their emails were then downloaded because Mr

10 Mathebula approved this request.

11 What's also very curious – I want to ask you

12 about the impact that that had on your work but what's also

13 curious and what I wanted to ask Mr Mathebula about this

14 memorandum is it's not only SARS employees who are

15 identified here but people outside of SARS whose email

16 addresses are also provided and Mr Makhanya requests

17 permission to download all their emails too and curiously

18 they include the then head of the special investigation

19 unit for example, Mr Massone and they include someone from

20 the public protector's office but there are also about ten

21 people in your space so I presume that those emails were

22 then accessed and going back many years as far as I can

23 tell and I wanted to ask you about the impact of that, if

24 any.

25 MS WITNESS: For one, the – so it was put

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1 in that request that these people are somehow linked to

2 cigarette smuggling, all these people and therefore their

3 emails need to be downloaded and in that list there are at

4 least two managers in our environment. So the impact of

5 that is one, whistle-blowers report cases directly to

6 managers so – and by saying that I'm not saying that nobody

7 – that certain people should not be investigated. I am not

8 saying that but I'm merely highlighting some of the risks,

9 that there were whistle-blowers' emails where they were

10 reporting matters, okay, to us and obviously that was then

11 made – the Tobacco Task Team then had this information.

12 The other thing is because these members of the Tobacco

13 Task Team, a number of them came from our environment or

14 they were hand-picked or picked from our environment. They

15 now had information that their managers had so information

16 around bonus payments, increases, even issues – wellness

17 issues relating to colleagues, other staff members which

18 the managers were privy to or were only privy to so you now

19 had members of the Tobacco Task Team who were former

20 members of internal investigations now having access to

21 information by virtue of having all the emails of in

22 particular these two managers. They could now see what

23 whistle-blowers were reporting, what information was there

24 relating to their colleagues around wellness issues,

25 etcetera, and it later emerged that it became a real

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1 problem in that one of the whistle-blowers had actually

2 reported something relating to one of the Tobacco Task Team

3 members and he had become aware of the report and it caused

4 a problem for that manager because in – the whistle-blower

5 was then approached by the Tobacco Task Team member and was

6 under the impression that the manager in our area had

7 actually gone and informed the very suspect that the person

8 had reported that he had been reported on so a further

9 breakdown in trust with us.

10 It also later emerged that this same Tobacco Task

11 Team member then used emails that were – he had access to

12 by virtue of having down – having the whole download to

13 defend himself in a separate matter where he was – he

14 needed to explain his own actions. He then used these

15 e-mails which were not sent to him, were between a whistle-

16 blower and one of our managers. He then used those e-mails

17 as attachments to defend himself so a complete breach of

18 information, security, complete breach and abuse of power

19 as well in that the actual – well, yes, you're now using

20 something that you were privy to by virtue of an

21 investigation which is how it was motivated for when the

22 download was requested. You use that now to – for your own

23 personal gain instead of following due process to obtain

24 them.

25 MR KAHLA: Did you ever come across that

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1 information in your review of the work that had been done
 2 by the task team?
 3 MS WITNESS: I came across the – you mean
 4 the actual e-mails?
 5 MR KAHLA: For example the request that
 6 had been made by Mr Makhanya.
 7 MS WITNESS: I only came across it during
 8 an investigation because obviously – so the incident that I
 9 just spoke about where someone used the e-mails to – for
 10 their own personal purposes, then I became aware of and
 11 that person then needed to be suspended and there was a
 12 full investigation. In the process of that investigation I
 13 became aware of this memo where all these e-mails had been
 14 downloaded.
 15 MR KAHLA: Mr Makhanya's – if you could
 16 help me, when did he join the task team on this end – this
 17 Tobacco Task Team?
 18 MS WITNESS: I'm not 100% sure.
 19 MR KAHLA: When was it established?
 20 MS WITNESS: You know, it initially
 21 started with only certain individuals being transferred to
 22 the office of the Commissioner and it seems to have grown
 23 from there so I became aware of Gobi Makhanya being part of
 24 that team only when or more clearly when they were co-
 25 located with us, that's when I became aware so the exact

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1 time when he joined them I'm not certain of.
 2 MR KAHLA: But as I understand from
 3 counsel at the time of this memo requesting the authority
 4 to access the server Mr Makhanya was neither in the Tobacco
 5 Task Team nor part of the co-location.
 6 MS WITNESS: No, he was a debt manager in
 7 KwaZulu Natal.
 8 MS STEINBERG: Mr Kahla, it seems from
 9 what we know that the Tobacco Task Team was established in
 10 some secrecy. We don't know the exact dates. We have two
 11 memos. The first is on the 10th of August 2016 and that is
 12 about investigating criminal investigations or initiating
 13 criminal investigations against SARS investigators who were
 14 later investigated by the Tobacco Task Team. Then on the
 15 1st of September there's a memorandum which seems to – it
 16 asks for resources to set up a unit, a team including safe
 17 houses and things like that and it would seem that that
 18 memorandum which is sent by – both memoranda are sent by
 19 Yegen Mundi to Hlengani Mathebula aimed at establishing the
 20 Tobacco Task Team and that's towards the middle of 2016.
 21 Does that accord with your understanding, ma'am?
 22 MS WITNESS: Yes. I've seen the two
 23 memos but I think what I – both memos are written by Yegen
 24 Mundi or authored by him and signed off by Hlengani
 25 Mathebula so I don't know at which stage Gobi Makhanya then

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1 joined them.
 2 MS STEINBERG: He then – his name then
 3 pops up on the 24th of October 2016 when he's requesting Mr
 4 Mathebula's permission, authorisation to download all these
 5 e-mails.
 6 MS WITNESS: Yes, that's correct.
 7 MS STEINBERG: And that's really as far
 8 as we know.
 9 MS WITNESS: Yes.
 10 MR KAHLA: Thank you.
 11 MS STEINBERG: Are there any other
 12 questions?
 13 COMMISSIONER: No questions from me.
 14 MR KAHLA: I just want to go back to the
 15 point you raised around benchmarks concerning both a
 16 structure location and reporting of this anti-corruption
 17 unit that you had heard of because you had those peer
 18 reviews.
 19 MS WITNESS: Yes.
 20 MR KAHLA: By the DPSA. Who was
 21 benchmarked? I'm trying – when you speak about the
 22 benchmark, the benchmark, who was included in the benchmark
 23 that informed your views around appropriate location and
 24 reporting lines?
 25 MS WITNESS: The actual benchmark that we

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1 used is called the Minimum Anti-corruption Capability which
 2 was designed by the Department of Public Service and
 3 Administration so they did a full study and out of their
 4 study they came up with the Minimum Anti-corruption
 5 Capability for an anti-corruption capability in a
 6 government department. Government department and they have
 7 a model which they put forward which is sort of the best
 8 practice model and it literally, the anti-corruption and
 9 security unit is that model, the one that was designed by
 10 the DPSA and put forward and we actually implemented that
 11 model.
 12 MS STEINBERG: Thank you very much,
 13 ma'am.
 14 COMMISSIONER: Thank you very much.
 15 Thank you.
 16 MS WITNESS: Thank you.
 17 MS STEINBERG: Judge, can I ask for a
 18 short adjournment?
 19 COMMISSIONER: What is the time?
 20 PROF KATZ: Five to 11.
 21 COMMISSIONER: Shall we have 15 minutes
 22 or 20 minutes?
 23 MS STEINBERG: 20 minutes please.
 24 COMMISSIONER: Thank you. 20 minutes.
 25 [INQUIRY ADJOURNS INQUIRY RESUMES]

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1 [11:18] COMMISSIONER: Ms Steinberg, are we
 2 ready?
 3 MS STEINBERG: Judge, we have Yousuf
 4 Denath whose a senior manager of Fraud Investigations in
 5 SARS.
 6 COMMISSIONER: Mr Denath, you affirm that
 7 the evidence that you will give will be the truth, the
 8 whole truth and nothing but the truth, if so will you say I
 9 do.
 10 MR DENATH: I do.
 11 EVIDENCE OF MR DENATH
 12 MS STEINBERG: Morning, Mr Denath?
 13 MR DENATH: Morning.
 14 MS STEINBERG: Mr Denath, you sent a
 15 submission to the Commission.
 16 MR DENATH: Yes.
 17 MS STEINBERG: And I'm really going to
 18 ask you to take us through your submission, the story you
 19 tell here with reference to some of the key supporting
 20 documents.
 21 MR DENATH: Sure. Thank you Advocate.
 22 The submission that I've provided starts on the fact that,
 23 I think it builds up on what the previous witness had said.
 24 I'm the acting senior manager because I've been a
 25 specialist whilst I was on suspension for a year and three

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1 months, Judge and I'm going to start speaking about the
 2 actual suspension. On the day that Mr Gobi Makhanya was
 3 appointed acting executive he then, one of his first acts
 4 was to suspend me.
 5 MS STEINBERG: That was the 23rd of March.
 6 MR DENATH: No, it was on the 5th of
 7 April.
 8 MS STEINBERG: Oh yes and he was
 9 appointed retrospectively.
 10 MR DENATH: Retrospectively.
 11 MS STEINBERG: To the 23rd of March.
 12 MR DENATH: Yes. The significance of the
 13 retrospective dating is that prior to that he was already
 14 investigating me. So now we had a person who was
 15 investigating me being appointed as my acting executive, as
 16 my line manager and then suspending me. This is very
 17 unusual in our process. I am told that the reason why he
 18 was appointed as the acting executive it was because Ms
 19 Mandisa Makena who was our executive at that time refused
 20 to suspend me. So he was brought in to suspend me.
 21 MS STEINBERG: Can we clarify, you said
 22 he had already started investigating you, now was that in
 23 his capacity as a member of the Tobacco Task Team, do you
 24 know?
 25 MR DENATH: Yes.

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1 MS STEINBERG: It was?
 2 MR DENATH: Yes. So that was, because
 3 I'm mentioned in that document, the September document, the
 4 August document excuse me where they identify people who
 5 should be investigated, not for working with the tobacco
 6 industry but just identifying us for our interaction with
 7 the tobacco industry. So there was three people identified
 8 in that document and I was one of those.
 9 MS STEINBERG: Sorry which document are
 10 you talking about?
 11 MR DENATH: The August document which
 12 sets up the, it sets out the rationale for the Tobacco Task
 13 Team.
 14 MS STEINBERG: Okay so Judge that's the
 15 memo I mentioned earlier. 10th of August 2016, it's the
 16 memorandum from Yegen Mundi to Hlengani Mathebula and it's
 17 called tactical intervention unit investigations.
 18 MR DENATH: Yes.
 19 MS STEINBERG: And it says that the
 20 purpose of the memorandum is to provide an informative
 21 background into the allegations that the SARS customs
 22 tactical intervention unit acts outside the ambits of the
 23 law with the intention of providing an unfair advantage to
 24 the specific tobacco manufacturers so that the tobacco
 25 manufacturer will dominate tobacco industry in South Africa

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1 and in short this memorandum accuses Mr Denath among others
 2 of collaborating with the, with a security company called
 3 Forensic Security Services which is contracted to British
 4 American Tobacco South Africa and the memo says that Mr
 5 Denath and others collaborate with British American Tobacco
 6 to undermine other players in the tobacco industry and on
 7 that basis should be investigated.
 8 COMMISSIONER: So was that what you were
 9 being investigated for?
 10 MR DENATH: Yes. So, and the memo
 11 continues by saying that particular persons were being
 12 disadvantaged, these being Mr Yusuf Kajee of Amalgamated
 13 Tobacco Manufacturers and Mr Mark Lipman.
 14 MS STEINBERG: Who is not in the tobacco
 15 space?
 16 MR DENATH: Not that I know of. He's in
 17 a lot of spaces but I -
 18 MS STEINBERG: Also, it also says quite
 19 pointedly in fact -
 20 COMMISSIONER: Were you in fact
 21 investigating -
 22 MR DENATH: No, not at all, Judge.
 23 MS STEINBERG: So yes the memorandum says
 24 SARS is intimidating and harassing those are the words
 25 used.

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1 COMMISSIONER: Mr Kajee and Mr Lipman?
 2 MS STEINBERG: Yes and Mr Kajee's
 3 associate Mr Edward Zuma and because these people, Mr
 4 Denath and others are quote intimidating and harassing them
 5 with the intention of furthering the commercial interests
 6 of British American tobacco one of the four recommendations
 7 of this report is that they be investigated.
 8 COMMISSIONER: And that Mr Mathebula's -
 9 MS STEINBERG: Yes, so that's, that's,
 10 it's - the author of the memorandum is Yegen Mundi, acting
 11 senior manager and it is authorised by Mr Hlengani
 12 Mathebula chief officer enforcement.
 13 COMMISSIONER: Okay.
 14 MS STEINBERG: You can continue.
 15 MR DENATH: So that's fantastic Judge
 16 because SARS doesn't do this. We don't operate like this.
 17 We receive incidents, it goes through a governance process,
 18 it gets evaluated. There are so many different checks and
 19 balances in the process and then thereafter we will set up
 20 investigations. This goes against anything. I mean there
 21 was no process, so that's the thing.
 22 COMMISSIONER: What goes against
 23 everything?
 24 MR DENATH: This memorandum citing
 25 advantages for some and disadvantages for others and then

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1 asking for investigation against myself and others. It
 2 goes against all the governance processes that we have
 3 within SARS.
 4 COMMISSIONER: Why, how should it work?
 5 MR DENATH: If there were these
 6 allegations and they were true -
 7 COMMISSIONER: Well if they're
 8 allegations which you want to investigate.
 9 MR DENATH: Yes, they would, they would
 10 report it into the system and there's so many different
 11 entry points. Thereafter it would go through to our case
 12 governance process which would then see which units should
 13 look into the actual allegations and it would then get
 14 assigned and that then ensures that there's no bias and
 15 this is clearly bias.
 16 MS STEINBERG: So our previous witness
 17 suggested it should have come to her unit which is
 18 responsible for internal corruption, internal fraud
 19 investigation and that one of the reasons she recommended
 20 to the current acting Commissioner that this task team be
 21 closed down is because it didn't follow due governance
 22 processes.
 23 MR DENATH: Yes, so the previous witness
 24 and I are in the same unit.
 25 MR KAHLA: So relative to the governance

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1 you had this other unit was rogue if one has to follow that
 2 sense. The governance system that you have.
 3 MR DENATH: Yes. So the other
 4 inconsistency at the time of my suspension was pointed out,
 5 which I alluded to was the fact that I was already being
 6 investigated by this, in your words Mr Kahla a Rogue Unit
 7 and now I'm being -
 8 COMMISSIONER: Please don't use the word
 9 Rogue Unit.
 10 MR DENATH: It's not mine, he started,
 11 not mine. So when I highlight this to the HR, the Human
 12 Resources and the Employee Relations persons accompanying
 13 Mr Gobi they dismiss it. They do not acknowledge it. So
 14 they have a role to play clearly. The allegations, Judge
 15 at the risk of rehashing and being investigated for the
 16 third time now on allegations made by Mr Kajee were put to
 17 me because it was Mr Kajee who had made the allegations to
 18 the Tobacco Task Team and these were the allegations which
 19 I was being suspended on. I then clarified that I was
 20 already investigated for this. Internally as well as
 21 externally when Mr Kajee made, opened a case at the police
 22 station. In both instances I was found to be innocent of
 23 what he had alleged and the matter should be then closed.
 24 Nonetheless Mr Gobi Makhanya and the HR and ER dismissed
 25 this and continued.

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1 Thereafter we go to the disciplinary hearing. So
 2 I get suspended and immediately when I'm suspended Gobi
 3 takes over the Fraud Investigations unit which is my unit
 4 and they now evolve from Tobacco Task Team and they emerge
 5 now as the Fraud Investigations unit on the day of my
 6 suspension. So transformation is now complete. I'm
 7 suspended and I'm sitting at home for a year and three
 8 months. In the time I try and assert my rights with,
 9 together with Solidarity who represented me very well in
 10 this issue, and we took SARS to the CCMA saying that the
 11 suspension is an unlawful suspension because they weren't
 12 providing me with charges. They kept on extending the
 13 suspension and they kept on delaying. Now for a limited
 14 scope case of this, like this you don't need to suspend and
 15 even if you do suspend it won't go beyond one suspension.
 16 That has been our practice for the ten years I've been in
 17 SARS. So this was unusual. So Solidarity and myself we go
 18 to the CCMA and this causes concern for SARS so then -
 19 PROF KATZ: Sorry, could I just ask is
 20 that after the year and a bit that you go to the -
 21 MR DENATH: So during the year and a bit,
 22 it's during the year and three months, ja. So they
 23 eventually, they provide me with some charges. The charges
 24 in itself are ridiculous. They relate to the tax act, they
 25 relate to the RICA act, they do not relate to any policy or

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1 procedure that I may have been in contravention of. They
 2 grab at the code of conduct, start, you know reaching into
 3 saying my actions are equal to that. Like I said the risk
 4 of being charged again on the same facts, because I have
 5 been now found innocent twice I will just allude to the one
 6 charge. The one charge, Judge, was that in 2011 I had met
 7 Mr Kajee and I failed to produce the SARS ID card, not the
 8 access card, the SARS ID card. Now -
 9 COMMISSIONER: That was 2011 you say?
 10 MR DENATH: Yes, in 2011 -
 11 COMMISSIONER: This is now, what year is
 12 this?
 13 MR DENATH: 2017.
 14 COMMISSIONER: Five years earlier, six
 15 years.
 16 MR DENATH: Six years, ja. That is
 17 enough to suspend me. So the significance of that is that
 18 the card, the act was only promulgated in 2012, the Tax act
 19 that gives rise to the card and the card was only produced
 20 in December of 2012. So I didn't have the card in 2011
 21 because it didn't exist in 2011.
 22 COMMISSIONER: So the problem wasn't
 23 meeting Mr Kajee, it was not producing your card when you
 24 met Mr Kajee?
 25 MR DENATH: Yes, yes, Judge.

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1 COMMISSIONER: You didn't have a card
 2 because there wasn't a card?
 3 MR DENATH: There wasn't a card, it
 4 didn't exist and the act goes further and says if a person
 5 is approached by a SARS official and the SARS official
 6 fails to produce the card all that the person needs to is
 7 assume that you are not a SARS official and not obey your
 8 instructions or follow your direction. Now how this made
 9 its way into a charge sheet, through the approval of
 10 employee relations system is beyond me because there's
 11 supposed to be checks and balances in that as well.
 12 COMMISSIONER: So what happened at the
 13 CCMA?
 14 MR DENATH: So the CCMA, we then paused
 15 our action because of them providing these charges but I'm
 16 not saying that these charges were baseless and it's not
 17 only me saying that these charges were baseless but if we
 18 go to the findings of -
 19 COMMISSIONER: So you had your
 20 disciplinary?
 21 MR DENATH: Yes.
 22 COMMISSIONER: Who presided over that?
 23 MR DENATH: Advocate James Motshega and
 24 he then says that the investigation was a sham. He then
 25 says that there was no legal basis for me to be disciplined

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1 on the same allegations, that the employer presented no
 2 evidence of any exceptional circumstances to justify the
 3 disciplinary action. He says bringing charges of more than
 4 five years old incident deserves to be dismissed on that
 5 basis alone. He says the delay in taking disciplinary
 6 action is not only long but it's also unreasonable. He
 7 then says that the investigation was nothing more than a
 8 sham designed to legitimise the employer's decision to
 9 suspend and ultimately hold me, the employee before
 10 disciplinary hearing to answer allegations that have no
 11 substance. He then goes on to highlight some of the
 12 difficulty he's having that the memo that the Advocate
 13 Steinberg had alluded to, they got that information from a
 14 Twitter account and the Twitter account is called
 15 #EspionageSA and Advocate Motshega, the chairperson says
 16 how that investigation turned into a focus on incident
 17 involving the employee only the investigator and his
 18 principles that acted on his investigation report would
 19 answer. So it's beyond belief that this could happen. He
 20 then goes on -
 21 COMMISSIONER: Sorry what is obtained
 22 from Twitter?
 23 MS STEINBERG: Evidence against Mr
 24 Denath.
 25 MR DENATH: So the precursor to the

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1 memorandum that the Advocate spoke about was some
 2 information that was put on Twitter and then that
 3 information was downloaded, it then made its way into that
 4 memorandum and that it identified myself and others to be
 5 targeted. Advocate Motshega then continues and says that,
 6 myself as the employee attempted to protect and assert my
 7 rights but to no avail. The worst thing was that I wasn't
 8 even interviewed. He said that the employer's conduct is
 9 grossly unreasonable and unfair, that it vitiates the
 10 employer's decision to take action. He highlights some
 11 other issues regarding the irony of events within the
 12 hearings and the evidence produced by the employer and he
 13 says that it clearly shows that employer was clutching at
 14 straws. So where we are, Judge, is that we had a Twitter
 15 thing, it then led to a memo, then leads to me being
 16 suspended and investigated for a long time. Only after
 17 Solidarity intervenes then do we get these charges and then
 18 in these charges are nonsensical and then we have the
 19 hearing in the one year and three months and this is as far
 20 as I can see this is a chastisement of the employer in
 21 their actions.
 22 MS STEINBERG: If I may come in here, we
 23 took the trouble of trying to work out how much taxpayer's
 24 money this hearing cost. As far as we can see the charges
 25 were initiated on SARS behalf by Mashiane Moodley and

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1 Monama Attorneys and the total pay to them as far as we can
 2 see is 2 million 280. On top of that there was an
 3 independent report investigated regarding the installation
 4 of cameras in board rooms that form part of your charges,
 5 that report is almost 219 000.
 6 [11:38] What we don't know is how much the chairperson,
 7 Advocate Motshega was paid. So what we do know is that
 8 we're looking at about R3 million to, in this attempt to
 9 prosecute Mr Denath.
 10 PROF KATZ: And so what was the result?
 11 What happened to -
 12 MR DENATH: I -
 13 PROF KATZ: - SARS afterwards? Were you
 14 reinstated?
 15 MR DENATH: Yes, I was reinstated. I was
 16 found not guilty on all charges. It's a very, very high
 17 cost. We don't, we have our own internal initiation unit.
 18 We don't do this. We don't hire a law firm to initiate on
 19 our behalf, we don't do that. SARS has got sufficient
 20 lawyers to do this even if they didn't want to use the
 21 initiation, the current initiation unit. So this is very
 22 irregular and at that price. This is wrong.
 23 MS STEINBERG: Please carry on.
 24 MR DENATH: Sure. In the process of the
 25 hearing -

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1 COMMISSIONER: Well it may well be of
 2 course that the charges are, it depends what work they were
 3 given to do of course. So it may well be that the charges
 4 are in order, I don't know. But I presume attorneys act
 5 because the client instructs them to act.
 6 MS STEINBERG: I would imagine so. The
 7 ruling is particularly critical of the way in which the
 8 matter was investigated and the way in which it was
 9 prosecuted.
 10 COMMISSIONER: Yes.
 11 MS STEINBERG: It says it was a sham.
 12 COMMISSIONER: Ja.
 13 MR DENATH: So in the course of the
 14 hearing we wanted access to documents. We were told that
 15 they were legally privileged. Now that was the previous
 16 investigation done against me. Why couldn't I get it but
 17 they claimed legal privilege, it's unusual. When we asked
 18 for the, for my laptop to get documents, my laptop was
 19 wiped. There wasn't any information on my laptop. It's
 20 very unusual. When we asked for access to the witnesses
 21 that I would need to had investigated me that time and who
 22 managed that investigation they simply didn't answer.
 23 Under - it's not like you couldn't find those witnesses
 24 because when we had the break they were outside in the
 25 smoking area. So further to that I was told not to call

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1 anyone and people were instructed not to call me and I
 2 wasn't allowed to visit any of the SARS offices. But,
 3 Judge, you can imagine that it's quite difficult to prepare
 4 your defence if you are hamstrung.
 5 MS STEINBERG: Carry on.
 6 MR DENATH: Ja. So this was done by the
 7 Tobacco Task Team or tactical investigations unit or Mundi
 8 unit, as different reporters report on it but I want to
 9 highlight that it was filmed on the 31st of March 2016 when
 10 the chief officer, Thebogo called me, chief officer HR
 11 called me and said that I should transfer Yegen Mundi to
 12 the office of the Commissioner. Thereafter I received an
 13 email from an HR person where the signatures were already
 14 on there of the Commissioner and other people, and that's
 15 Commissioner Moyane and I had to just put my signature and
 16 transfer Yegen Mundi with post and budget to the office of
 17 the Commissioner.
 18 It was later, a few months later that I, we
 19 received a mail saying we needed to transfer other
 20 employees from our unit. And it was at that point and
 21 these forms were already filled in by Hlengani Mathebula
 22 and HR and others, and our manager was instructed to fill
 23 in that form and he raises with me, we found this highly
 24 irregular and unusual. So that's when he and I questioned
 25 it. When we questioned it, it is that meeting that the

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1 first witness spoke about where Hlengani Mathebula called
 2 us to a meeting and said that it's the Commissioner's
 3 decision to appoint Yegen Mundi and to do this unit. HR
 4 people supported that. It had their - from there on we saw
 5 that they travelled and they did their work, the
 6 communications cost centre and this highly irregular. You
 7 are this other unit and you now travelling on a
 8 communications cost centre. That cannot be right. All of
 9 us have our budgeting processes, all of us have our
 10 expenditure, well perceived what you think is going to be
 11 your expenditure for the year and you put that forward.
 12 For this to happen is unusual. So it's not an approved
 13 unit from the new operating model and it's not a normal
 14 project or a, that is in SARS because they have a budget
 15 allocated. So there's no governance even on the setting up
 16 of it but it's been set up at a high level, chief officer
 17 HR supporting it and senior HR persons and it's even
 18 getting run through the finance budget of the
 19 communications cost centre. My investigations and in our
 20 environment this is not according to the Public Finance
 21 Management Act. From there on I forget the exact date
 22 because my computer was wiped, so you'll understand it's
 23 difficult to piece together everything. So I have it back
 24 but it's barely functioning. But my manager and I were
 25 approached by the State Security Agency and they requested

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1 a formal meeting and in that meeting they informed us that
 2 they were busy with an investigation of their own and in
 3 that investigation they were running intercepts on some –
 4 COMMISSIONER: Well just hang on a
 5 minute. I mean is the State Security Agency are they – do
 6 they know about this? Is this confidential?
 7 MS STEINBERG: In my assessment the
 8 witness can talk about it in general terms. The names of
 9 the State Security Agents are protected.
 10 COMMISSIONER: And what about the work
 11 that they do, isn't that protected? Do we – but anyway
 12 have you spoken to the State Security Agency?
 13 MS STEINBERG: No, I haven't.
 14 COMMISSIONER: Well I think that I would
 15 rather leave the State Security –
 16 PROF KATZ: Ja.
 17 COMMISSIONER: - Agency out unless you
 18 speak to them and they say yes, it's fine.
 19 MS STEINBERG: Yes, Judge.
 20 MR DENATH: Okay.
 21 COMMISSIONER: So let's not hear any more
 22 of the State Security Agency, let's go back to the Rogue
 23 Unit.
 24 MR DENATH: And it's not mine.
 25 COMMISSIONER: No, carry on.

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1 MR DENATH: Ja. So moving along,
 2 whereafter we see the communication that emerges in the
 3 media, the previous witness and myself about the Tobacco
 4 Task Team and it's been labelled a new Rogue Unit by the
 5 media and they force them into our space. But this is in
 6 response to a letter written then by Commissioner Tom
 7 Moyane to Minister Pravin Gordhan and in there he tries to
 8 explain, this minister, Commissioner Moyane to the Minister
 9 that this unit is doing internal investigations and
 10 criminal investigations and audits and such. Now – and
 11 that's the whole of SARS, this unit is doing the whole of
 12 SARS because they're doing everything. All units have a
 13 legal mandate. Before we start doing our work we must have
 14 a legal mandate. You cannot work outside your legal
 15 mandate. So that was the reason why I objected together
 16 with the former witness as to why they should not be co-
 17 located with us because this is not legal. It's not proper
 18 and we knew it was a problem. I even raised it with
 19 Mandisa and Zanele who had come and said we had to testify
 20 at the Sikakane Commission on the rogue stories before and
 21 now this. Now we're not comfortable but the unit
 22 continued.
 23 MR KAHLA: Please help me just
 24 understand, Mr Denath, 31st of March 2016 you get the
 25 communication from the chief officer HR, is that written

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1 communication?
 2 MR DENATH: No, he calls me.
 3 MR KAHLA: He calls you.
 4 MR DENATH: And then it's followed up
 5 with an email and a pre-signed document which manages the
 6 transfer of posts and individuals. So it's a legal
 7 document.
 8 MR KAHLA: So that written communication
 9 that follows states expressly that transferring for example
 10 Mr Yegen Mundi –
 11 MR DENATH: Yes.
 12 MR KAHLA: - to the office of the
 13 Commissioner -
 14 MR DENATH: Yes.
 15 MR KAHLA: - with the post and budget.
 16 MR DENATH: Yes.
 17 MR KAHLA: That's in writing.
 18 MR DENATH: Yes.
 19 COMMISSIONER: Have you got that
 20 document?
 21 MR DENATH: Yes.
 22 COMMISSIONER: Is it amongst ours? Yes.
 23 MS MASILO: Were all the other officials
 24 who were subsequently transferred, also transferred with
 25 post and budget?

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1 MR DENATH: Yes.
 2 MS MASILO: Okay. How many of them?
 3 MR DENATH: So it was three.
 4 MS MASILO: Okay.
 5 MR DENATH: So my story is not as long
 6 because then I get suspended, all the funny things happen
 7 within the investigation, but eventually I get the outcome
 8 and I'm reinstated. As soon as I get back, Judge, I start
 9 receiving calls from people saying that they were targeted
 10 by this unit and we find that these cases weren't
 11 registered and at some points they were calling themselves
 12 Fraud Investigations, tobacco projects. So they changed
 13 form at different times. Needless to say when I got back
 14 and go back to my acting now is I was asked now to take up
 15 a position within the unit. So the internal investigations
 16 unit had myself as a senior manager and I had two managers
 17 reporting to me and these managers had 24 persons, 24
 18 investigators reporting into each of them. But that's not
 19 according to a SARS standard because we had grown over
 20 time. So taking the initiative we contacted Bain, that's
 21 this manager and myself and we asked for the elevation of
 22 our posts. So my post becomes an executive post and the
 23 manager post becomes senior manager post and we introduce
 24 managers underneath these senior managers so that we can
 25 bring in, so we can have the staff then reporting to them.

1 Because we have staff around the whole country focusing on
 2 geographic as well as schematic challenges that we may
 3 have.
 4 So when I get back and I'm asked to choose a
 5 post, I said no, look, my post was elevated and yes I did
 6 apply because you made me apply but I should have never
 7 been forced to apply because I should never have been an
 8 affected person. Because affected persons were only those
 9 persons whose jobs changed by 25% of, the job content
 10 changed by 255 or more. Now I know it didn't change
 11 because I drafted it together with my manager. We drafted
 12 it. So we didn't change it. It was the same job, we just
 13 elevated it so that we could have a better span of control.
 14 But this wasn't entertained and I then had to meet with the
 15 chief officer Mogola Makola. I'd never met her before
 16 because she was appointed during the time when I was
 17 suspended and she took over the function of the unit I
 18 think in November of 2017. I spent a long time explaining
 19 my tenure history in SARS and setting up of the unit and
 20 all the good that we'd achieved and addressed some of the
 21 concerns that they had right now and how we could turn it
 22 around within a short period of time. I was made aware
 23 also that she was briefed about me by my manager that I was
 24 on suspension and this is the case and this is how silly
 25 these charges are and it was investigated. So no need.

1 But ja, so she did confirm that as well. So when I – she
 2 then said what is the bottom line. I said the bottom line
 3 is you know we need to fix up my post and fix up the post
 4 of my management team so that we correct our and start
 5 moving forward. I was then told no, you must choose one of
 6 the other posts. I said you know I just come from the
 7 Nugent inquiry and people were complaining about this exact
 8 same thing that when the new operating model was there they
 9 were told you choose one of these posts or there was a
 10 broken line and we never knew where the broken line was.
 11 Because even when I attended the presentation here for the
 12 new operating model all we saw was a broken line and it
 13 went off the screen. Now I find out that that broken line
 14 led to the unceremonious departure of my colleagues, like
 15 Seboletso and Hope Mashilo and they were kicked out. Their
 16 jobs were taken from them and they were told to leave
 17 within 24 hours.
 18 PROF KATZ: Could I just ask, may I –
 19 MS STEINBERG: I think you should finish
 20 this aspect of the story, perhaps you should talk about how
 21 your chief officer handled this.
 22 MR DENATH: So my chief officer said,
 23 look, you must choose either one of the posts or if not get
 24 out. So, excuse me, I mean I've been away for a year and
 25 three months, I didn't know this is the decorum but I don't

1 think it's fair. And he says no, get out. And now
 2 shouting at me to get out. So I said, you know, you don't
 3 care. You don't care that I'm going to speak to Solidarity
 4 and we're going to take you, we won one. I mean a
 5 particularly litigious friend of mine we're going to win
 6 again. So and no, she just shouted at me to get out.
 7 After a one year and three months, the trauma of that, the
 8 trauma that you go through wondering what next, the trauma
 9 I went through, the trauma my family went through. Ja.
 10 MS STEINBERG: Now, Professor Katz, you
 11 had a question.
 12 PROF KATZ: Sorry, if I may, all these
 13 things taking place, all these changes, everything that
 14 you've told us, that the previous witness, where was that
 15 driven from? Where were those decisions taken? What mind
 16 or what was the purpose of all of this?
 17 MR DENATH: Sir, the purpose was, and if
 18 I can even jump onto a question that you had asked the
 19 previous witness, was to target some of us who were, like
 20 for example the people investigating cigarettes, they were
 21 being, who were investigating the cigarette industry were
 22 being targeted. I was being targeted because they need to
 23 take over this post and control investigations. This was
 24 SARS capturer, Prof.
 25 PROF KATZ: And who was driving it?

1 MR DENATH: It was driven by the
 2 Commissioner Tom Moyane, it was supported by the chief
 3 officers and Hlengani Mathebula's name is all over that and
 4 by employee relations, by Luther Lebelo who was the main
 5 designer and main spokesperson for the new operating model.
 6 [11:58] He was the super person in SARS because he was on
 7 TV and Communications and Suspending and part of tax
 8 discussions and, and, and. So it was driven at the very
 9 top and the thing is to fix it, you can't fix it whilst
 10 they are here. You can't fix it with them and it's not
 11 just about fixing the structure, it's about drawing blocks
 12 and doing it. You've got to please the people. We all
 13 came from outside and we were employed here. We competed,
 14 we got our jobs and then we were made, now I'm a
 15 specialist.
 16 COMMISSIONER: Are you also a specialist
 17 you mean?
 18 MR DENATH: Apparently I am, I've been
 19 made a specialist. I found out on my day back when I was
 20 told to choose a post, how can I choose a post if I have a
 21 post and if I don't have a post.
 22 PROF KATZ: So as of now, sorry, well as
 23 of now how's it all functioning?
 24 MR DENATH: So I'm acting in half of my
 25 previous structure. The reason they couldn't fill the

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1 executive post is that every time they tried to do that,
 2 Solidarity intervened and wrote a letter threatening to
 3 indict them on the filling of it because we want that
 4 action finalised. We have placed it formally in the
 5 grievance process and if that doesn't go well we'll be at
 6 the CCMA I'm sure. So –

7 MR KAHLA: Are you suggesting that you
 8 are acting in the post you held prior to your suspension?

9 MR DENATH: So prior –

10 MR KAHLA: Forget about the fact that it
 11 later got promoted into –

12 MR DENATH: Ja.

13 MR KAHLA: - rather an executive level
 14 but is it still the same post –

15 MR DENATH: So –

16 MR KAHLA: - that you held prior to
 17 suspension?

18 MR DENATH: Prior to my suspension I was
 19 the senior manager responsible for overall anti-corruption
 20 investigations. Thereafter there was this new operating
 21 model. We were supposed to be phase 3. So when that was
 22 supposed to have happened it was stalled as we hear. There
 23 was a letter saying freeze and hold and ja. So when I get
 24 back they're now implementing the structure. The actually
 25 implemented the structure when Gobi was appointed acting

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1 executive.

2 MR KAHLA: I'm trying to understand you
 3 made reference to positions that were affected were the
 4 ones that had changed 25% and more.

5 MR DENATH: Yes.

6 MR KAHLA: You suggested that your
 7 position had not changed 25% or more.

8 MR DENATH: Yes.

9 MR KAHLA: Were you shown anything that
 10 suggests that in fact you are wrong?

11 MR DENATH: No. They can't because I
 12 designed it. I have the mails in here which we sent
 13 through to the advocate which will show you where Bain
 14 asked me for the design. I then provide the design. They
 15 then come back to me and ask me to place the people in the
 16 structure. I place the people in the structure and then
 17 they say thank you, well done. Good job.

18 MS MASILO: What was Bain's response to
 19 your request for them to elevate the positions within your
 20 structure?

21 MR DENATH: They agreed. They agreed.

22 MS MASILO: Was it done?

23 MR DENATH: No. They just agreed. They
 24 said they agree on the elevation but they, it wasn't done.

25 MR KAHLA: Are you suggesting that Bain

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1 had a role to play in determining the sizes of the
 2 positions? If you say you had put up this design which
 3 placed the position at executive level, did Bain have a
 4 role in that or was that supposed to go to Bain or was that
 5 something that was determined by SARS itself?

6 MR DENATH: So, no, Bain was determining
 7 it. So because I know that some posts were, which were
 8 executives were then reduced to a senior, lowered to a
 9 senior manager and Bain did it. But Bain did it together
 10 with that design of Luther Lebelo, Ronald Makomba and
 11 others. So they were doing – I don't know who exactly
 12 because it was shrouded in secrecy. Even when they showed
 13 us this structure we weren't allowed to have copies and we
 14 weren't allowed to take pictures of it and it was in this
 15 very room that we were then seeing which posts are being
 16 elevated and which were being reduced. And they then took
 17 for example wellness and they put it under employee
 18 relations. Now it can never work, it's wrong. Wellness,
 19 it's supposed to be the wellbeing and employee relations is
 20 supposed to be the discipline of employees. So how do you
 21 put the two together? It doesn't make sense. So there
 22 were so many such things and when we asked questions we
 23 were really shot down. It actually became a little bit of
 24 a screaming match between some of us and the design team
 25 here in this very meeting. So it was very, very wrong.

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1 COMMISSIONER: But are you in an acting
 2 post at the moment?

3 MR DENATH: Yes, I'm acting for half of
 4 the structure. So remember the executive post –

5 COMMISSIONER: Just one minute. To what
 6 extent does your present acting position compare to the
 7 position you had before your suspension?

8 MR DENATH: I'm doing half of what I used
 9 to do.

10 PROF KATZ: And, sorry, if I may, the
 11 other half?

12 MR DENATH: The other half, well, we've
 13 got, they appointed a senior manager whilst I wasn't here.
 14 So somebody was appointed and ja, we saw the witness before
 15 acting in the executive post. But just to say, you know,
 16 the story was that the new operating model was going to
 17 reduce the number of executives and group executives in
 18 some sort of rationalisation and it did do that but by I
 19 think two or three people being reduced from the overall
 20 number because it then created other ones in other spaces
 21 and then thereafter some chief officers are getting
 22 executives in their posts. These are executives who
 23 managed the office of the chief officer. They have no
 24 staff, they have nothing, I know it is a different term but
 25 ja, apparently it's not good to say it is a PA but that's

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1 what they have. Executive PAs. I then – and then it
 2 doesn't stop there. It grows because then we asked for
 3 positions, we need some posts in our areas, in our
 4 environments, we need manager posts, we need investigator
 5 posts. Now there isn't any but and the chief officers
 6 start getting bodyguards, each of them get two and even
 7 Luther Lebelo gets two. So if you want to do a good study
 8 I think it would be to see how far they strayed from the,
 9 their plan.

10 COMMISSIONER: From the Bain operating
 11 model you mean?

12 MR DENATH: Ja.

13 MS STEINBERG: I have two questions. The
 14 memorandum of 26 October 2016 in which Mr Makhanya asks Mr
 15 Mathebula for permission to download emails from the
 16 server. One of the email addresses given was yours.

17 MR DENATH: Yes.

18 MS STEINBERG: Were your emails
 19 downloaded?

20 MR DENATH: As far as I know, yes.

21 MS STEINBERG: And do you know what the
 22 impact of that was?

23 MR DENATH: So it's catastrophic. I mean
 24 every whistle-blower, every complainant, every person who's
 25 reported anything, their details, their information and

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1 what they reported is on my laptop. I don't travel with my
 2 laptop, I don't take it anywhere because it's at risk. So
 3 downloading it is very serious. I do believe that Ms Ronel
 4 Van Wyk was targeted because they saw her mail to me. Her
 5 mail to me highlighting a serious transgression in an
 6 investigation against Mr Mundi and she was then – I really
 7 do believe that.

8 MS STEINBERG: I was just to say Ronel
 9 Van Wyk who is testifying on Friday is a, was a criminal
 10 investigator in SARS and she had sent you an email
 11 regarding Mr Mundi, is that what you're saying?

12 MR DENATH: Yes. And I think there's, my
 13 concern is that if, where are these mails? And how many
 14 copies were produced? And who has them? And if there's a
 15 bias and if there's a collusion which we need to
 16 investigate, Judge, the activities of this unit so that we
 17 can see what is the damage done. I'm worried about those
 18 people. Every person that has reported to me I'm so
 19 worried about them.

20 MS STEINBERG: Do you understand why
 21 people like Mr Vas Soni, Advocate Soni and the Public
 22 Protectors office would be named as email addresses that
 23 the Tobacco Task Team had to (inaudible) their emails?

24 MR DENATH: So, no I don't think they're
 25 involved but I think, first of all it's wrong to put their

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1 names to, on our request because SARS cannot download the
 2 emails of external email. We can only download the emails
 3 of our own people. My thinking is that they are on that
 4 memorandum because a criminal case was opened by some
 5 people, I haven't seen the docket but I have heard Mr Gobi
 6 Makhanya also refer to a criminal case and –

7 MS STEINBERG: A criminal case against
 8 who?

9 COMMISSIONER: Well this – we're really
 10 getting into the realm of speculation –

11 MS STEINBERG: Okay.

12 COMMISSIONER: - aren't we? I think we
 13 should –

14 MS STEINBERG: Okay.

15 MR DENATH: So isn't that they would then
 16 use that same memorandum to ask the police to do it.

17 COMMISSIONER: Well –

18 MS STEINBERG: Okay, we can move on.

19 COMMISSIONER: - we're not going to hear
 20 –

21 MR DENATH: Okay.

22 MS STEINBERG: Just a final question from
 23 my side. You returned after a year and three months and
 24 you had been investigating, did you say mainly tobacco
 25 industry –

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1 MR DENATH: No.

2 MS STEINBERG: - beforehand? No?

3 MR DENATH: No.

4 MS STEINBERG: You hadn't been involved
 5 in the tobacco industry?

6 MR DENATH: So I think the closest we get
 7 to the tobacco industry is that there's a lot of smuggling
 8 that happens, and I'm just singling out the tobacco
 9 industry, but colleagues of mine and I identified that a
 10 lot of counterfeit goods, cigarettes, tobacco, alcohol, the
 11 illicit stuff, is smuggled through the borders and SARS
 12 employees facilitate that. So that part was my unit was
 13 responsible for identifying the people responsible for
 14 that. The checking of the containers after, you know, a
 15 SARS person facilitated it was done by Mr Kumaran Moodley
 16 who was also suspended and investigated and lots of charges
 17 brought against him. Actually he was first because he was
 18 checking the containers afterwards and doing his thing,
 19 seizing the containers and the goods which is harmful for
 20 our environment. And together with that was Mr Pieter
 21 Engelbrecht who was raising the tax liabilities and
 22 schedules. So it was like they went after all of us in the
 23 value chain but no, we weren't singling out them. We were
 24 focusing on SARS officials facilitating it.

25 MS STEINBERG: The question I wanted to

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1 pose to you was when you came back and looked at what had
 2 happened had these cases been furthered in the year and
 3 three months since you had last been there?
 4 MR DENATH: So, no. The capacity is just
 5 gone. I mean we're now reviving a lot of it now that I'm
 6 back, it's three months, and we're starting to get things
 7 moving again. I think hopefully Mr Kumaran Moodley comes
 8 back and he's still willing and able to do that and we can
 9 revive it and Mr Pieter Engelbrecht I think we can start
 10 because it's good work. All our work is subject to
 11 scrutiny, to audit, to reporting and you're reminding me
 12 now that when we were investigated a senior manager, if a
 13 senior manager is being investigated there's a duty on SARS
 14 to report this to treasury and to the DPSA, the Department
 15 of Public Service and Administration and I know this wasn't
 16 done for us because it was never meant to come out.
 17 MS STEINBERG: I have no more questions.
 18 MR KAHLA: I need to just, you had this
 19 meeting in 2011 with Mr Kajee, what was it about and who
 20 had sought it?
 21 MR DENATH: Okay. So Mr Kajee had made a
 22 statement in a customs meeting that certain, that he had
 23 information on corrupt officials. This was reported to our
 24 unit. I allocated an investigator to get Mr Kajee's
 25 version. He then requested to meet with senior people he

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1 said because he was concerned that this was at a higher
 2 level and then that is how we then set up that meeting.
 3 MR KAHLA: The next question I wanted to
 4 ask you made reference earlier around the time of the
 5 appointment of Mr Makhanya 5 April 20, it must've been 2017
 6 and your suspension. To whom did you report at that time
 7 prior to Mr Makhanya coming on board and you being
 8 suspended?
 9 MR DENATH: So I reported to the
 10 executive in the chief officer's, Hlengani Mathebula's
 11 office which is Mandisa Mbageni.
 12 MR KAHLA: Is that the reason why you're
 13 suggesting that, what's the basis of your suggestion that
 14 she did not want to suspend you and hence Mr Makhanya was
 15 brought in?
 16 MR DENATH: I was told this now recently,
 17 when I got back I was told this. She confided in a person
 18 who then came to come and tell me this.
 19 MR KAHLA: Who told you that? Was that
 20 Ms Mbageni or somebody else?
 21 MR DENATH: No, somebody else.
 22 COMMISSIONER: Can I just repeat, it was
 23 in relation to this witness that the person came to us
 24 yesterday and asked you to put certain allegations to him
 25 to which my response is it would be unethical to do so and

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1 I'm sure you wouldn't have done it but I certainly wouldn't
 2 have allowed you to do it.
 3 MS MASILO: Mr Denath, I just go back to
 4 a very sore point that you mentioned just for clarity.
 5 When your chief officer said you must either choose one of
 6 the position, of the two positions available or get out.
 7 Did she mean get out of her office or get out of SARS?
 8 What was your understanding?
 9 MR DENATH: My understanding was to get
 10 of the office.
 11 MS MASILO: Okay.
 12 COMMISSIONER: Thank you very much
 13 indeed. Sorry?
 14 MR DENATH: Judge, I think I did sit in
 15 one or two events when you asked people how should we fix
 16 it. If I may –
 17 COMMISSIONER: Well I think it would be
 18 very difficult to answer that question. But if you do have
 19 a view it would be very welcome.
 20 MR DENATH: Please. Judge, I think we
 21 have an integrity office in SARS. I think if have the
 22 likes of Tshebeletso back, it's so important that when
 23 structures are created all procurement, large procurement
 24 design the integrity office must sign off on such things.
 25 I think there is value in considering such an option. I'm

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1 not going to go into it more. The anti-corruption office
 2 weakness was that unlike internal audit we don't have an
 3 external body that we can report to and South Africa, I
 4 know you can't suggest it but maybe you can, that South
 5 Africa needs a national anti-corruption office and we
 6 should be able to plug into that so that when we have these
 7 fights of abuses at least there's somewhere for us to go.
 8 I repeat that you know fix the structures is one thing, to
 9 fix the people it's going to take a long time but we need
 10 to have it and the people who did it, the people who
 11 participated and who assisted cannot do it. I'm not saying
 12 they were. When it's difficult to do the right thing
 13 rather do nothing than do the wrong thing. That's all I'm
 14 saying. So they can't fix it. We need to have people come
 15 in here and fix it. SARS is a great organisation and it's
 16 important. Thank you very much.
 17 COMMISSIONER: Thanks.
 18 MR KAHLA: Sorry, I just have question I
 19 forgot to ask. Do you know who deleted your computer?
 20 MR DENATH: No.
 21 MR KAHLA: Who wiped out your computer?
 22 MR DENATH: No, I've requested an
 23 investigation into the entire investigation against me.
 24 I've requested it formally. Solidarity is aware, they're
 25 on board, that we want an investigation into the conduct of

1 everyone in the whole process as well as ER in the process
2 as well as the costs of this 2 million, over 2 million.
3 It's all these unusual things it needs to be investigated
4 because this is not how we've been doing things for the
5 past 10 years. So ja.
6 COMMISSIONER: Ms Steinberg, there are
7 three people who have been mentioned here who are on your
8 list to give evidence, can you make sure that they get a
9 copy of the record of this evidence before they give
10 evidence? I think it's Ms Makola, Mr Mathebula and Mr
11 Lebelo.
12 MS STEINBERG: I'll do so, Judge.
13 COMMISSIONER: I'm sure that they're
14 fairly quick giving the records. Will you just make sure
15 they get, and I think the other gentleman, Makhanya is it?
16 MS STEINBERG: Gobi Makhanya.
17 COMMISSIONER: He should get a copy of
18 this record as well to give him a chance to hear what has
19 been said.
20 MS STEINBERG: I will make sure, Judge.
21 COMMISSIONER: So Mr Mathebula you say
22 has told you yesterday afternoon he won't be here. Is
23 there any indication of when he wishes to be here again?
24 [12:18] MS STEINBERG: No, there isn't, Judge.
25 COMMISSIONER: So we will, okay. So

1 there are no further witnesses today then?
2 MS STEINBERG: No.
3 COMMISSIONER: And so what time, so we
4 adjourn till 9 o'clock tomorrow morning?
5 MS STEINBERG: At 10 o'clock tomorrow
6 morning.
7 COMMISSIONER: 10 o'clock tomorrow
8 morning. Good thank you very much, thank you very much for
9 your evidence.
10 MR DENATH: Thank you.
11 [INQUIRY ADJOURNED]
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