

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 16

28 SEPTEMBER 2018

PAGES 2641 - 2862

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,
Brooklyn, Pretoria



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1 [PROCEEDINGS ON 28 SEPTEMBER 2018]
 2 [09:05] COMMISSIONER: Morning Mr Lebelo. We had
 3 received an email from you requesting information. First
 4 of all you wanted the opinion of Advocate Trengove. Well
 5 I've asked them to get that out, we'll give you and then a
 6 legal opinion internally which agrees with one at number 1,
 7 that is, I think that first document you have, do you have
 8 a copy there? Remember the first -
 9 MS STEINBERG: Yes I do but I only have
 10 my copy.
 11 COMMISSIONER: Do you think you can get
 12 one of your juniors to make a copy?
 13 MS STEINBERG: Yes.
 14 COMMISSIONER: And give it to Mr Lebelo,
 15 then a legal opinion from Advocate Brassey that we cannot
 16 suspend. Well I think that's the document you know very
 17 well, we've discussed it many times. You'll recall you
 18 referred it to your, to Mr Mapakela, it's that document.
 19 There are, I'll tell you now and I'll just get that as
 20 well. Perhaps your junior, just give your junior that
 21 document. So we'll give you a copy of that and then the
 22 legal opinion from Advocate Brassey and then you'll
 23 remember there were a number of, well there were two
 24 opinions, one given by Advocate Brassey himself, the other
 25 was a document which he has told me and I'll show you his

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1 letter that was written, he says by the attorneys, but he
 2 agrees with what they said and that the one that says he
 3 should be suspended. So she'll give you that one, I think
 4 you've seen it as well because it came from your attorneys.
 5 Then there was the third document which was discussed
 6 yesterday which was his memorandum in preparation for the
 7 disciplinary proceedings. Remember that one that Advocate
 8 Steinberg dealt with yesterday. The third, the one in
 9 which he said that the witnesses are being, not cooperating
 10 and so forth. That document, now this is my fault,
 11 Advocate Steinberg suggested that came from the records of
 12 SARS, that one but in fact that was my fault, I, it didn't
 13 come from there, it came from Advocate Brassey who sent it
 14 to me and you'll see that in the letter but you've got that
 15 now haven't you and I presume that would be with your
 16 attorneys as well because your attorneys has produced all
 17 of those records there together with a long letter we'll go
 18 through in which they were now setting out all the document
 19 that they had at the time, that was the only document that
 20 was missing as I understand it. Was that, that memorandum,
 21 but that was sent to me by Advocate Brassy. I think that
 22 is all, that will be all the document that you need and
 23 then if we can ask you, we've got two witnesses this
 24 morning. We should be finished by lunch time with them.
 25 Perhaps you could come back at 2 o'clock, would that be in

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1 order?
 2 MR LEBELO: Maybe before that Judge, I
 3 just want to address the Commission also and then we can
 4 discuss that, if the Judge allows.
 5 COMMISSIONER: Sorry.
 6 MR LEBELO: I was saying that, I just
 7 want to address the Commission on an issue that I want to
 8 raise then.
 9 COMMISSIONER: Can you raise it at 2
 10 o'clock that we can get on Judge Kroon has to go back to
 11 the Eastern Cape.
 12 MR LEBELO: No problem.
 13 COMMISSIONER: He's got a flight booked.
 14 So we would like to get on with that if we may. So can we
 15 deal with that, all, everything at 2 o'clock.
 16 MR LEBELO: No problem.
 17 COMMISSIONER: Thank you very much.
 18 MS STEINBERG: Judge, there are two more
 19 documents we may or may not rely on.
 20 COMMISSIONER: Sure.
 21 MS STEINBERG: The one is the affidavit
 22 of Mina Hendricks and the other I assume, Mr Lebelo would
 23 have because it should be in the MMN files which is their
 24 opinion about the early pension debacle.
 25 COMMISSIONER: Yes.

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1 MS STEINBERG: So I'm alerting Mr Lebelo
 2 that it depends on what he wants to raise, I'm not planning
 3 to use them, but depending on what he raises I may well
 4 refer to those two documents.
 5 COMMISSIONER: Do you know the documents
 6 she's referring to and that is the opinion of Mr Mapakela
 7 in November about the pension issue. I got that from Mr
 8 Mapakela so I presume that he, that you know about it as
 9 well.
 10 MR LEBELO: Ja, Judge I think, I'm in
 11 some serious difficulties and I accept the ruling you've
 12 put. Obviously the proceedings thus far have placed me as
 13 a witness in a trial.
 14 COMMISSIONER: It has not placed you as a
 15 witness in a trial.
 16 MR LEBELO: This.
 17 COMMISSIONER: We're going to carry on,
 18 we will hear you at 2 o'clock.
 19 MR LEBELO: Okay.
 20 COMMISSIONER: Just get the documents you
 21 wanted, Mr Lebelo I just want to remind you, you've come to
 22 see me many times.
 23 MR LEBELO: Yes.
 24 COMMISSIONER: And you've spoken to me
 25 many times, I've given you more time than anyone else. A

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1 lot of my time all of, all of my time to assist you,
2 etcetera.

3 MR LEBELO: I appreciate it.

4 COMMISSIONER: So let's bear that in mind
5 as well. That you've had a lot of time with me, we've
6 discussed a lot of these things in general terms and I
7 think we must now get on with the Commission. So if you
8 can get those documents and we'll see you at 2 o'clock.

9 MR LEBELO: Judge, will I be given an
10 opportunity to address the Commission at 2 o'clock?

11 COMMISSIONER: Yes, at 2 o'clock you
12 will. Of course. Is that in order?

13 MS STEINBERG: That's in order.

14 MR LEBELO: Am I excused?

15 COMMISSIONER: Please, thank you, Mr
16 Lebelo.

17 MS STEINBERG: Judge, we call Judge
18 Kroon. Oh excuse me, Judge Kroon please sit down. I must
19 announce changes to today's programme before we swear Judge
20 Kroon in. The programme reads Judge Kroon and then Ronel
21 Van Wyk. A couple of changes, we reviewed Ms Van Wyk's
22 evidence over the course of the week and took the decision
23 that it would be best to hear that evidence in camera.
24 It's just too sensitive. So we'll do it that way. So Ms
25 Van Wyk's not coming today. However we've now rescheduled

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1 Mr Mathebula who was supposed to come earlier in the week
2 to come at 11 and as we've heard now after lunch Mr Lebelo
3 will resume. So that's our programme for today.

4 COMMISSIONER: Thank you very much. Good
5 morning, Judge Kroon.

6 JUDGE KROON: Morning, Mr Commissioner.

7 COMMISSIONER: Thank you very much for
8 coming to talk to us. Will you affirm that the evidence
9 you give will be the truth, the whole truth and nothing but
10 the truth. If so will you say I do?

11 JUDGE KROON: I do.

12 EVIDENCE OF JUDGE KROON

13 MS STEINBERG: Morning Judge.

14 JUDGE KROON: Morning Advocate Steinberg.

15 MS STEINBERG: Judge, the basis of your
16 testimony is a letter that Judge Nugent sent to you a while
17 ago, posing two questions for you to answer in your
18 capacity as the Chairman of the SARS Advisory Board and the
19 one concerned the board's endorsement of the Bain new
20 operating model and the other concerned the media release
21 by the board on 28 April 2015 in which it was said that the
22 unit referred to had been established unlawfully and Judge
23 Nugent had asked you to explain your thinking in reaching
24 the conclusion that the establishment of the unit was
25 unlawful and perhaps we can address both of those issues in

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1 turn. Can you just tell us a little bit of background to
2 the advisory board. Who sat on that board with you?

3 JUDGE KROON: Mr Mokwena, Ms Maponya, Mr
4 Martin Brooke and originally Advocate Manenge but he left
5 after he was appointed to the bench of the High Court and
6 as provided in the act there were two members, executive
7 members of SARS who were also members of the board, that
8 was Mr Makwakwa who was the chief operations officer and Mr
9 Matluwa who was the chief Finance officer.

10 MS STEINBERG: So it was two seniors SARS
11 representatives and then the, were the remaining members
12 advocates?

13 JUDGE KROON: No, Mr Martin Brooke is an
14 advocate, Advocate Manenge was at the bar at the time and
15 Ms Maponya is a businesswoman and Mr Mokwena is also a
16 businessman.

17 MS STEINBERG: And when was the board
18 appointed?

19 JUDGE KROON: In March of 2015.

20 MS STEINBERG: And it's lifespan?

21 JUDGE KROON: The appointment was for a
22 year.

23 MS STEINBERG: For a year? So it was
24 March 2015 till March 2016?

25 JUDGE KROON: Yes.

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1 MS STEINBERG: Perhaps then we can
2 address the Judge's two questions. The first concerns Bain
3 and Co, we were told that Bain met with the advisory board
4 for an hour, is that correct?

5 JUDGE KROON: I'm not sure of the time,
6 may I explain that initially the board adopted the practice
7 of having comprehensive notes made for purposes of minutes
8 which were to be redacted thereafter into a shorter
9 version. The longer version in fact averts to the
10 adjournment of the proceedings when Bain and Co were there
11 at 12 noon and the resumption thereof after lunch and the
12 length of the two sessions I'm unable to estimate.

13 MS STEINBERG: But it was just that day,
14 the session in that day, that was the sole contact with
15 Bain?

16 JUDGE KROON: On that day, yes.

17 MS STEINBERG: Oh was there contact with
18 Bain on other days?

19 JUDGE KROON: No direct contact with Bain
20 and Co but as it were vicariously through presentations
21 made by Mr Makomba on updates of the occupation, of the
22 organisational review programme or proposals.

23 MS STEINBERG: So you spoke to Bain and
24 you spoke to Mr Makomba who we've been told was the
25 interface between SARS and Bain?

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1 JUDGE KROON: Yes, he was the project
 2 leader.
 3 MS STEINBERG: Did you speak to anybody
 4 else before endorsing the model?
 5 JUDGE KROON: We spoke to Mr Moyane and a
 6 number of times and required a written exposition by him of
 7 his proposals for reorganisation of the SARS structure.
 8 MS STEINBERG: Now before endorsing his
 9 proposals to restructure SARS did you have information on
 10 what the current SARS model was that he wanted to
 11 restructure?
 12 JUDGE KROON: You will have seen from my
 13 statement that I did send a letter to Mr Moyane posing that
 14 as one of the questions. I don't believe that we ever
 15 received a direct answer to that. But the main reports and
 16 the updates dealt with proposed changes in the structural
 17 setup.
 18 MS STEINBERG: I'm wondering why Judge
 19 you would approve a restructuring of a model where you
 20 weren't in a position to Judge whether it was in fact an
 21 improvement on the existing model?
 22 JUDGE KROON: I can't remember exactly
 23 how the question and answer session, sessions went but I
 24 would like to think that these matters were touched on and
 25 were discussed and we came to a conclusion on what we were

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1 told.
 2 MS STEINBERG: On what you were told by
 3 Mr Moyane, etcetera?
 4 JUDGE KROON: Yes.
 5 MS STEINBERG: I ask because our
 6 experience in the last three months has been what a complex
 7 organisation this is, how difficult it is to grasp the
 8 operating model and why it's structured the way it is. So
 9 it is somewhat surprising that the board would endorse a
 10 radical change to that structure to an organisation that
 11 was working extremely well at that stage without a proper
 12 understanding the before and the after and why those
 13 changes were necessary?
 14 JUDGE KROON: In retrospect it would be
 15 fair to say that we should have investigated further these
 16 proposals of Mr Moyane were broached at our first
 17 introductory meeting, when the Minister and Deputy Minister
 18 were present in Cape Town. He had sought the approval of
 19 the Minister to go forward with the restructuring of the
 20 SARS organisational model and I have set out in my
 21 statement some of the aspects that were raised by him in
 22 the parliamentary complex at Cape Town and he also has sent
 23 an application for approval for investigating the renewal
 24 of the structural organisation to the Minister and it had
 25 been approved by the Minister and then we received the Bain

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1 reports and the updates and further information from
 2 Moyane, both oral representations with which we were not
 3 satisfied. Not that we were dissatisfied with the content
 4 but we regarded it as insufficient and we required it to be
 5 in writing and that was in fact insisted upon and it was
 6 forthcoming at the meeting on the 6th of August and again
 7 there was a question and answer session there and the board
 8 after consultation amongst each other came to the
 9 conclusion that the proposals were to be endorsed and I
 10 addressed a letter to the Minister and the Deputy Minister
 11 setting out briefly what the reasons were for the board
 12 having approved the proposals.
 13 MS STEINBERG: So just to summarise. The
 14 board relied on the presentation from Bain, interaction
 15 with Mr Makomba and oral and written submissions from Mr
 16 Moyane including a question and answer session.
 17 JUDGE KROON: That is correct.
 18 MS STEINBERG: And it was on that basis
 19 that the board endorsed -
 20 JUDGE KROON: Yes.
 21 MS STEINBERG: The model. Thank you.
 22 Does the panel have questions on this topic before we go
 23 onto the next one?
 24 PROF KATZ: If I may Judge, similar to
 25 Advocate Steinberg when the board was appointed SARS, I

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1 think by all accounts was regarded as a highlight
 2 successful organisation.
 3 JUDGE KROON: It had that reputation,
 4 yes.
 5 PROF KATZ: Mr Moyane, having come from a
 6 background that didn't deal with tax at all within a fairly
 7 short period gave a long analysis of what he thought was
 8 wrong with SARS.
 9 JUDGE KROON: Yes.
 10 PROF KATZ: Did that not surprise your
 11 board that here was a man who came with little background
 12 on tax, so soon after his appointment with such extensive
 13 changes to a successful organisation?
 14 JUDGE KROON: I know that I personally
 15 thought it was strange that a man with Mr Moyane's
 16 background which I recall was in the prison service was
 17 elevated to the position of head of the revenue services in
 18 the country. But we were to await his proposals and assess
 19 them on the merits as we proceeded.
 20 PROF KATZ: Yes, I think the thrust of my
 21 question is, did it not trigger a concern whether there was
 22 anything else behind a proposal coming so soon after the
 23 appointment by a person with little experience wanting to
 24 restructure extensively the successful organisation.
 25 JUDGE KROON: That thought had not

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1 crossed my mind.

2 PROF KATZ: Thanks. Thanks counsel.

3 [09:25] MR KAHLA: Judge, I would like to just

4 understand, when this presentation was made to the board

5 was the board expected to approve it? Is it in any event

6 within the mandate of the board to approve or does it

7 merely just provide advice or guidance on matters?

8 JUDGE KROON: The board had no executive

9 powers. It was there to advise the Commissioner, the SARS

10 and the Minister on any steps that had been – not on steps

11 that had been taken but to comment on steps that had been

12 taken and to comment on steps that were proposed so we were

13 there in an advisory capacity and there was no time limit

14 set for the approval of any proposed action.

15 COMMISSIONER: But Judge, whether one

16 calls it an endorsement or advice the fact is that the

17 board advised the Minister that you were happy that the new

18 operational model should be adopted.

19 JUDGE KROON: Yes.

20 COMMISSIONER: And I think I'm still not

21 quite clear about the answer to Advocate Steinberg's

22 question. Would it be fair to say that you knew nothing

23 about the existing operating model other than what Mr

24 Moyane might have told you?

25 JUDGE KROON: That would be correct.

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1 COMMISSIONER: Yes.

2 MS MASILO: Judge, I just want to

3 understand if the senior – the two senior members of the

4 board who were SARS officials, did they form part of your

5 decision-making to endorse or did they recuse themselves

6 when the decision was made?

7 JUDGE KROON: No, they recused

8 themselves, then they had been asked to recuse themselves

9 but it was certainly raised between Mr Makwakwa and Mr

10 Matla on the one hand and myself whether they should attend

11 the meetings and have anything to say in regard to the

12 decision reached and it was thought better that they do not

13 participate against the event that someone might think that

14 there was a conflict of interest.

15 MS STEINBERG: May I move to the next

16 question? The next question concerned the so called rogue

17 unit. What gave rise to the Judge's question to you was a

18 press release on the part of the SARS advisory board on the

19 Sikhakhane report and I think the critical paragraph in

20 that press release is paragraph 3, Judge, which says, well,

21 in relevant part, the board has on the strength of the

22 Sikhakhane report and other reports satisfied itself that,

23 1 a secret unit was established within SARS in 2007 which

24 among others had the purpose of the covert collection of

25 intelligence. 2, the establishment of such a unit was

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1 unlawful. 3, the unlawfulness derives from the fact that

2 SARS does not have and did not have the statutory authority

3 to covertly gather intelligence and 4, the application of

4 financial and human resources by SARS to this end had no

5 legal basis and thus constituted wasteful and fruitless

6 expenditure and then it goes on to say that the unit had

7 been disbanded by Commissioner Moyane and no SARS members

8 were currently engaged in such activities.

9 The question posed by the Judge is on what basis

10 the panel reached that conclusion particularly that the

11 establishment of the unit was unlawful and perhaps you can

12 address us on that.

13 JUDGE KROON: Yes, as I said in my

14 report, my first comment was that the statement relating to

15 the unlawfulness of the establishment of the unit were not

16 thought through properly and were in fact incorrect.

17 MS STEINBERG: Can I just probe you on

18 that? Are you saying that in fact what is correct is that

19 it would be lawful, it would have been lawful to establish

20 such a unit?

21 JUDGE KROON: Yes. Such a unit's

22 establishment on its own would be quite lawful an in fact

23 would be a prudent course. It would be unlawful if the

24 person establishing the unit intended that the members of

25 the unit should engage in unlawful activities or foresaw

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1 that that might occur.

2 MS STEINBERG: But you're not saying that

3 that is what happened are you?

4 JUDGE KROON: No.

5 MS STEINBERG: No.

6 JUDGE KROON: What the board should have

7 satisfied itself on is what the Sikhakhane report had to

8 say about anyone who established the unit whilst that

9 person had the intent or the foresight that I have referred

10 to and as to what the report found to be the evidential

11 justification for such a finding and to make the assessment

12 accordingly, but the board did not embark on that exercise.

13 MS STEINBERG: So the board relied

14 entirely on the Sikhakhane report, is that correct?

15 JUDGE KROON: The Sikhakhane report and

16 Mr Moyane's statements to us, Mr Makwakwa's statement to

17 us. There was a report to the standing –

18 MS STEINBERG: Parliamentary committee –

19 JUDGE KROON: Standing committee on the

20 intelligence in parliament. There was the KPMG report,

21 preliminary report at that stage. What was not relied

22 upon, certainly not by me, were the disciplinary

23 proceedings instituted against Mr Pillay. These were only

24 allegations and I've set out in my statement that Mr Moyane

25 himself had intimated that the fact that the proceedings

<p style="text-align: right;">Page 2657</p> <p>1 had been instituted against Mr Pillay and he had been 2 suspended does not – did not mean that he was guilty but he 3 said that the – as I said in my report the buck stopped 4 with Mr Pillay and he ought to have been aware of the 5 activities – unlawful activities of the unit. 6 MS STEINBERG: Which we are saying 7 there's no evidence of such un lawful activities. 8 JUDGE KROON: No, we – the reports that 9 we had detailed allegations of unlawful activity on the 10 part of the members of the unit but we did not speak to any 11 witnesses personally. We relied on what Mr Moyane, Mr 12 Makwakwa said and the contents of the reports that I have 13 referred to. 14 MS STEINBERG: So you based your 15 conclusion that there had been illegal activities only on 16 the Sikhakhane report and other reports and Mr Moyane and 17 Mr Makwakwa's say so? 18 JUDGE KROON: Yes. 19 MS STEINBERG: Did you make your own 20 inquiries at the level of law as to whether or not Advocate 21 Sikhakhane was correct in his conclusion that the 22 establishment of the unit was unlawful? 23 JUDGE KROON: No. We adopted the 24 statement in the Sikhakhane report or may I put it this 25 way, the finding that was recorded in our press release was</p>	<p style="text-align: right;">Page 2659</p> <p>1 JUDGE KROON: Yes. 2 MS STEINBERG: Or your endorsement was 3 incorrect. Is that a view that you are expressing or are 4 you expressing it on behalf of the board as it was then 5 comprised? 6 JUDGE KROON: For the purpose of today's 7 proceedings it is my view. I have not consulted any 8 members of the board on the evidence that I would give in 9 this forum but I have set out in my statement that I – it 10 is at an earlier stage that this recognition of our mistake 11 was recorded. 12 MS STEINBERG: Sorry, I didn't follow 13 that last bit? 14 JUDGE KROON: It wasn't when I drew my 15 statement up for the purposes of the present proceedings 16 that the attitude was adopted that the board – the finding 17 in the press release that the establishment of the unit was 18 unlawful. That wasn't the first time. It had already 19 arisen months before and I mentioned the two aspects in my 20 report that in a comprehensive report on the 30th of June I 21 said that the finding of the board on the 28th of April was 22 that the members of the unit had engaged in unlawful 23 activities and then subsequently in March of 2016 with a 24 meeting with the newly reinstated Minister of Finance, Mr 25 Gordhan and his deputy the aspect of the wording of the</p>
<p style="text-align: right;">Page 2658</p> <p>1 adopted from the paragraph in the Sikhakhane report which 2 was to the effect that the establishment of the unit 3 without the necessary statutory authority was unlawful. 4 But I've said earlier that there were other aspects that 5 had to be investigated whether there was the intent on the 6 part of the person who established the unit or the 7 foresight on his behalf that the unit would engage in 8 unlawful activities and that we did not address ourselves 9 to in respect of the Sikhakhane report. 10 MS STEINBERG: So in summary you relied 11 on the Sikhakhane report that as a matter of law the 12 establishment of the unit was unlawful and you relied on 13 that report as well as Mr Moyane's and Mr Makwakwa's 14 reports to say that there had indeed been unlawful 15 activities. 16 JUDGE KROON: And the other reports that 17 we had received, the KP – 18 MS STEINBERG: The KPMG report, yes. 19 JUDGE KROON: The preliminary KPMG report 20 and the report to the standing committee on intelligence. 21 MS STEINBERG: But no independent 22 inquiry? 23 JUDGE KROON: No independent inquiries. 24 MS STEINBERG: You've now expressed the 25 view that your findings were incorrect.</p>	<p style="text-align: right;">Page 2660</p> <p>1 press release was raised and in substance I gave the same 2 explanation as I have given in these proceedings and as Mr 3 Gordhan was the Commissioner at the time of the formation 4 of the, or establishment of the unit I thought that he was 5 entitled to an apology and I tendered it. 6 MS STEINBERG: So we're now talking – so 7 it was in 2015, April 2015 there was the press release. 8 You then said in March I presume 2016 you reconsidered your 9 view. 10 JUDGE KROON: No, no, that's when I spoke 11 to the Minister of Finance at a meeting which I had with 12 him and the deputy Minister. 13 MS STEINBERG: Yes. 14 JUDGE KROON: Subsequent to the press 15 release there had been reports or views expressed in the 16 media that the finding that the establishment of the unit 17 was unlawful was to be questioned and we revisited it and 18 discussed it and it was concluded that we should not have 19 made that statement. We should have restricted our 20 comments to the members of the unit having engaged in 21 unlawful activities. 22 MS STEINBERG: So, are you saying that 23 was the collective view of the board at that stage? 24 JUDGE KROON: Yes. 25 MS STEINBERG: That the unit was not</p>

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1 unlawfully established but its activities were unlawful.
 2 JUDGE KROON: We could not say that the
 3 unit was unlawfully established and that was our view. We
 4 did not have the full information as to when and how it was
 5 established.
 6 MS STEINBERG: But you also couldn't say
 7 that its activities were unlawful?
 8 JUDGE KROON: We relied on what we were
 9 told.
 10 MS STEINBERG: So you then apologised to
 11 Mr Gordhan. What else did you do once you had agreed
 12 amongst yourselves that you'd made a mistake?
 13 JUDGE KROON: In the report of 30th of
 14 June 2015 I recorded that our decision at the time of the
 15 press release was in fact that members of the board had
 16 engaged in unlawful activities.
 17 MS STEINBERG: That's your official
 18 report as the board.
 19 JUDGE KROON: Yes.
 20 MS STEINBERG: Submitted to?
 21 JUDGE KROON: The Minister, the Deputy
 22 Minister and the SARS Commissioner.
 23 MR KAHLA: Is that members of the board
 24 or members of that unit? As I just lost you, Judge.
 25 MS STEINBERG: Members of the board.

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1 Yes.
 2 MR KAHLA: Who had been unlawful? Who
 3 had –
 4 MS STEINBERG: Please, Judge.
 5 JUDGE KROON: Members of the unit.
 6 MR KAHLA: Of the unit, yes.
 7 JUDGE KROON: Had engaged in unlawful
 8 activities.
 9 MS STEINBERG: But I'm still not sure why
 10 you would tell the Minister in June 2016 that members of
 11 the unit had engaged in unlawful activities.
 12 JUDGE KROON: It was not telling him as
 13 it were for the first time, it was intimating what our
 14 press release should have contained.
 15 MS STEINBERG: I'm –
 16 MR KAHLA: Just clarity for me. Judge,
 17 am I correct in understanding that there was the one bit
 18 around the lawfulness of the establishment of the unit and
 19 you said that the conclusion where you had accepted before
 20 that it had been unlawfully established, that conclusion
 21 was not appropriate and you had withdrawn that in relation
 22 to the unit?
 23 JUDGE KROON: Yes.
 24 MR KAHLA: Then in relation to the
 25 activities of some members of that unit being – those

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1 activities being unlawful, am I correct in understanding
 2 that you're saying that on the basis of what had been
 3 alleged by the people who had put up the allegations, the
 4 board's view was that those activities by whoever those
 5 members may have been were unlawful?
 6 JUDGE KROON: Yes.
 7 MR KAHLA: And once you withdrew the
 8 assessment in relation to the legality of the establishment
 9 of the unit you did not withdraw your position in relation
 10 to what had been said around the activities of some of the
 11 members of that unit?
 12 JUDGE KROON: That is correct.
 13 MS STEINBERG: But as you sit here today
 14 would you perhaps withdraw that conclusion too?
 15 JUDGE KROON: I'm sure it would have been
 16 better if we had ventured into an investigation of the
 17 allegations and requested persons who were implicated in
 18 the allegations to appear before us and give us their
 19 version.
 20 MS STEINBERG: Because it would appear to
 21 me that in April 2015 and in June 2016 and today in
 22 September 2018 it would be more accurate to say that it's
 23 incorrect to say, number one, that it's unlawful to
 24 establish the unit but that number two, it was only based
 25 on Mr Moyane's and Mr Makwakwa's say so that there was any

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1 unlawful activity within that unit.
 2 JUDGE KROON: And the other report which
 3 I've mentioned.
 4 MS STEINBERG: And the K – well, the KPMG
 5 report has been withdrawn now.
 6 JUDGE KROON: So I understand, yes.
 7 MS STEINBERG: So you'd agree now that
 8 that would be more accurate sitting here today?
 9 JUDGE KROON: And the report to the
 10 parliamentary standing committee.
 11 MS STEINBERG: Yes, but I'm asking
 12 whether as you sit here today you wouldn't agree it's more
 13 accurate for the board to have said that they could – they
 14 should neither have concluded that it was unlawful to
 15 establish the unit nor did they have any reliable evidence
 16 that anybody had conducted unlawful activities.
 17 JUDGE KROON: I had no reason to suspect
 18 that Mr Moyane was misleading me in any way but as I've
 19 intimated a moment ago on reflection it would have been
 20 much better for us to have instituted our own inquiry and
 21 contacted witnesses or people implicated to hear their
 22 version.
 23 MS STEINBERG: So your answer to my
 24 question is yes, it would be more accurate to say there
 25 wasn't reliable evidence to say that there were unlawful

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1 activities?

2 JUDGE KROON: There wasn't reliable

3 evidence which would establish that the unit was engaging

4 in unlawful activities although there were many allegations

5 to that effect.

6 [09:45] MS STEINBERG: Why didn't you issue a

7 press release to that effect?

8 JUDGE KROON: Again, in retrospect it is

9 something I should have done. It did not occur to me.

10 COMMISSIONER: Judge, I'm not quite sure

11 what you are saying about the statement that was issued

12 saying that the unit was unlawful. Now that is what

13 Advocate Sikhakhane had said and as you and I both know

14 lawyers can be wrong. I think you've experienced that as

15 well.

16 JUDGE KROON: Vey mush so.

17 COMMISSIONER: Now I'm not sure whether

18 you're saying that you adopted what Advocate Sikhakhane had

19 said and therefore said presume it is unlawful or whether

20 you're saying you didn't adopt that but your wording as you

21 put it was unfortunate and that you didn't mean to say it

22 was unlawful. Only to say that the members had acted

23 unlawfully. Which is it? Is it that you adopted -

24 JUDGE KROON: We did adopt it.

25 COMMISSIONER: And so, you did say - you

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1 did mean to say it's unlawful?

2 JUDGE KROON: We did mean to reflect in

3 the press release what is said there but on reflection it

4 should not have been said and we should've satisfied

5 ourselves in respect that I set out earlier.

6 COMMISSIONER: Well, that's where I'm

7 having difficulty because in your statement you say "I wish

8 at the outset to record that mea culpa the statements in

9 the media release referred to in the Commission's second

10 query to me to the effect that the establishment of the

11 unit had been unlawful were unfortunate, not thought

12 through properly and in fact incorrect." Does that mean

13 that, are you saying there we did mean to say it's unlawful

14 but on reflection we shouldn't have said that because we

15 didn't have a proper basis for that? Would that be

16 correct?

17 JUDGE KROON: Yes, that is correct.

18 COMMISSIONER: The second thing is it

19 troubles me a bit that did you put out to the world that

20 these people had acted unlawfully without hearing anything

21 that they had said?

22 JUDGE KROON: That is correct.

23 COMMISSIONER: Let me just clarify one

24 thing. You know, I've tried in this matter to start from

25 scratch. In other words, not to build on what other people

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1 have said and I have been asking people why it was

2 unlawful. Now this is no criticism of Advocate Sikhakhane.

3 We get things wrong sometimes. People get very cross when

4 I ask the question though why is it unlawful. But I had

5 asked you because I would like to see if I'd missed

6 something and I obviously haven't missed something. I

7 asked Advocate Sikhakhane in order for me to inform myself

8 if I'd missed something. Well, I got a reply which is

9 rather unhelpful. Let me tell you that as I read the

10 legislation it is not unlawful to establish a unit in order

11 to investigate the illicit economy?

12 JUDGE KROON: I agree with that.

13 COMMISSIONER: I don't know if you want

14 to -

15 PROF KATZ: Judge, may I just ask this

16 press statement what was the policy of your advisory board

17 on issuing press statements? Were there any other ones?

18 JUDGE KROON: No, that is the only one.

19 We thought that board whose appointment had received some

20 publicity in the media should at some stage advise the

21 public of what - of some of the activities that it had

22 embarked upon.

23 PROF KATZ: But the unlawful unit, the so

24 called unlawful unit wasn't an activity of your board? You

25 didn't get involved in that?

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1 JUDGE KROON: We only received reports

2 bearing on that.

3 PROF KATZ: So, what would have been the

4 reason or purpose for issuing this statement dealing with

5 the alleged unlawfulness?

6 JUDGE KROON: At our initial meeting in

7 Cape Town the Minister had pressed upon us so that as a

8 matter of propriety we must give attention to I think what

9 he referred to as the adverse publicity that SARS had

10 received by reason of the reports in newspapers about what

11 was referred to as a rogue unit and then we took that

12 further and we thought we would issue a press release in

13 dealing with that aspect which, as I had been at pains to

14 point out, was wrongly worded; not in the sense that it was

15 intended to do it, to so word it but in the sense that on

16 proper thought processes about we should never have said

17 that.

18 PROF KATZ: Judge, with respect, when one

19 sees it's wrong, the worded one, it gives rise to the

20 question who drafted it?

21 JUDGE KROON: My recollection is that a

22 member of the board drafted it and submitted it for

23 consideration by the other members of the board. If you

24 want me to think back as to a name I think it was Advocate

25 Mastenbroek who made the initial draft and it was

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1 circulated and we discussed and it was just accepted.
 2 PROF KATZ: Did SARS have any
 3 participation in the drafting?
 4 JUDGE KROON: The final approval, yes.
 5 Not in the drafting of it. At the meeting on the 28th of
 6 July - April 2015, we discussed the wording of the press
 7 release and certain amendments were made mainly about the
 8 publication of the Sikhakhane report.
 9 PROF KATZ: And you say that the final
 10 one went to SARS, of the draft?
 11 JUDGE KROON: An earlier one was sent to
 12 Mr Moyane. I was told that the earlier draft which did
 13 contain the comments about the unlawfulness of the
 14 establishment of the unit was going to be placed before the
 15 Minister but I think that didn't happen because a proposed
 16 meeting did not take place.
 17 PROF KATZ: Sorry, Judge, why was Mr
 18 Moyane's participation in the drafting or approval a
 19 requirement?
 20 JUDGE KROON: No, it wasn't a
 21 requirement.
 22 PROF KATZ: Why was it given to him?
 23 JUDGE KROON: As a matter of courtesy I
 24 sent a copy of a proposed press release to Mr Moyane and to
 25 the Minister. At one stage I had that thought that Mr

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1 Moyane should be part of the media release but subsequently
 2 I advised him that it is an advisory board event and not an
 3 event of SARS and therefore he's willing to attend but
 4 cannot be part of the release.
 5 PROF KATZ: Sorry, so, Judge, just to
 6 confirm, this was the only press statement that the
 7 advisory board issued in its lifetime?
 8 JUDGE KROON: Yes.
 9 COMMISSIONER: You know, Judge, I'm just,
 10 sorry I'm going back to something, because again you said
 11 the wording was unfortunate. Now I understood you earlier
 12 to say that the wording is not unfortunate. We meant to
 13 say it is unlawful and we got that from what Advocate
 14 Sikhakhane had said so that the wording was perfectly
 15 accurate?
 16 JUDGE KROON: Yes, the wording at that
 17 time was not incorrect in the sense of perfecting what we
 18 intended to say. It was unfortunate that we intended to
 19 say that for the reasons which I have given, not that the
 20 English is a bit tricky there. But it wasn't that the
 21 wording was a mistake. I did later on use the word
 22 erroneous but that is in the sense that it should not have
 23 been made.
 24 COMMISSIONER: Yes, no I understand but
 25 you intended to tell the public that it was unlawful but

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1 read on reflection you had now grounds for it?
 2 JUDGE KROON: Precisely.
 3 COMMISSIONER: I just want to, if you
 4 don't mind, I must ask one question. You said you
 5 apologised to Mr Gordhan. That was an occasion in which
 6 you happened to come together?
 7 JUDGE KROON: Yes.
 8 COMMISSIONER: Did you ever offer to
 9 apologise to him or anyone else without having come
 10 together?
 11 JUDGE KROON: No.
 12 MS STEINBERG: Just one final question.
 13 The consequences of our media release among other
 14 statements were quite devastating for SARS itself and for
 15 the country but also for certain individuals. But there's
 16 also the future to look to. You know, SARS disabled the
 17 capacity to enforce within the illicit economies. Just to
 18 pick up on something you say in your statement; you say you
 19 go further then saying it was acceptable and lawful to in
 20 fact establish a unit to deal with the illicit economies but
 21 that it's indeed prudent. So, you would agree that going
 22 forward it would be something that SARS would in fact be
 23 wise to re-establish?
 24 JUDGE KROON: Yes, I agree with that.
 25 MS STEINBERG: Thank you.

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1 COMMISSIONER: Anymore? Thank you very
 2 much, Judge Kroon.
 3 JUDGE KROON: May I be excused,
 4 Commissioner?
 5 COMMISSIONER: Certainly. Thanks for
 6 coming.
 7 MS STEINBERG: Thank you very much,
 8 Judge.
 9 JUDGE KROON: Thank you.
 10 MS STEINBERG: Judge, our next witness is
 11 only scheduled for 11 o'clock so perhaps we can take a
 12 recess until then?
 13 COMMISSIONER: That would be fine.
 14 [INQUIRY ADJOURNS INQUIRY RESUMES]
 15 [11:00] COMMISSIONER: Are you ready?
 16 MS STEINBERG: Judge, we call Mr Hlengani
 17 Mathebula who is the chief officer, Governance,
 18 International Relations, Strategy and Communications.
 19 COMMISSIONER: Good morning, Mr
 20 Mathebula.
 21 MR MATHEBULA: Good morning, Judge and
 22 your panel.
 23 MS MASILO: Morning.
 24 COMMISSIONER: Do you affirm that the
 25 evidence you give will be the truth, the whole truth and

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1 nothing but the truth? If so, will you say I do?

2 MR MATHEBULA: I do.

3 EVIDENCE OF MR MATHEBULA

4 MS STEINBERG: Judge, Mr Mathebula has

5 submitted quite a lot to the Commission. A statement and a

6 few files of documents to support his statements. This

7 morning he gave me an updated copy of the statement I've

8 seen and he kindly made copies for the panel. So I'm going

9 to ask, I'm think I'm going to ask Advocate Hobden to hand

10 them up. And I've suggested to Mr Mathebula that he take

11 us through the statement that we will stop when we need to

12 get clarification or put other evidence to him. So with

13 your permission, that's how we'll proceed with this

14 witness.

15 COMMISSIONER: Is that in order for you?

16 MR KAHLA: That's in order, Judge.

17 COMMISSIONER: Yes.

18 MS STEINBERG: Please go ahead.

19 MR MATHEBULA: Judge and the panel, the

20 first thing I would like to do is to apologise for my not

21 making it on Wednesday. I had a family crisis that was

22 quite serious. I did inform the secretariat of the

23 Commission that I had that challenge. So my apology that

24 it destabilised the Commission.

25 COMMISSIONER: Thank you, but that's

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1 fine. We heard of your difficulties and thank you.

2 MR MATHEBULA: Thanks so much. I would

3 like to read my statement that I have prepared and I know

4 the copy you have does have a few typos. I did indicate to

5 Advocate Steinberg that the copy I have is updated and at

6 the end I will give Advocate Steinberg the copy that I have

7 or alternatively email to her a different one in the event

8 there is a need for supplementary information to that.

9 MS STEINBERG: And just –

10 COMMISSIONER: Well –

11 MS STEINBERG: - just to say to the

12 secretary, it's the updated one, the corrected one that

13 we'll put on the website, not this one.

14 COMMISSIONER: May I just say that's

15 quite a long statement. Do you find it necessary to read

16 through the whole statement or rather just pick out the

17 main points you wish to make?

18 MR MATHEBULA: Judge, I think for

19 purposes of making sure that there is context I would, if

20 it pleases the Judge, I would ask that I be allowed to read

21 it. I will go through it quite fast so it's really not

22 going to take much time.

23 COMMISSIONER: No, that's fine. Thank

24 you.

25 MR MATHEBULA: Alright. I submit this

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1 statement accompanied by documentary evidence in order to

2 assist the Commission of inquiry chaired by Judge R Nugent.

3 In submitting this statement I'm mindful of the following

4 considerations. That I'm a member of SARS Exco since

5 January 2016. That Exco members play a supporting role to

6 SARS Commissioner who is both the accounting office and

7 accounting authority and in this regard Exco assist the

8 Commissioner in his role both as the first and fifth line

9 of assurance in discharging our responsibilities to fulfil

10 such mandate. That by virtue of my portfolio I'm

11 responsible for inter alia governance and reputation of

12 SARS, this being a significant fiducial responsibility

13 calling for care and diligence underpinned by hard work and

14 SARS' values. That as a citizen of this country I must do

15 what I can to support our maturing democracy and that a

16 collective Exco response will be submitted by the acting

17 Commissioner to ensure that SARS Exco places on the court

18 certain material facts in response to submissions known to

19 SARS. Additionally as I make my submission it is further

20 critical that two competing, albeit important principles

21 are balanced. These principles being the importance of

22 disclosing and discussing facts that are pertinent to the

23 Commission's terms of reference to ensure that the

24 Commission has all the necessary information at its

25 disposal to make its recommendation to the president on the

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1 one hand and the need to rebuild and preserve the

2 reputation of SARS as a key institution in our economy.

3 SARS' reputation is critical in regaining the trust of tax

4 payers and equally the trust by other critical players like

5 the rating agencies as a reflection of confidence in key

6 institutions.

7 In line with an effort to balance these

8 principles, I register my willingness to satisfy in public

9 as I now do and in doing so I'll always be cognisant of the

10 principles of preserving the reputation of SARS and various

11 considerations I stated at the outset. I'm committed to be

12 honest and transparent although at pains to safeguard my

13 safety and that of my family. There have been threats to

14 both my life and my family's life during the latter part of

15 2016. Resulting from these threats I have been assigned

16 security personnel and this has been confirmed by Crime

17 Intelligence and the South African Police Services. I

18 further as a senior SARS, a senior official of SARS and a

19 member of Exco have the common law fiduciary duty in the

20 execution of my duties and duty of care and skill that make

21 me feel duty-bound to testify at this Commission.

22 I now turn to the substance of my submission in

23 the below paragraphs. I joined SARS in January 2016 in the

24 current portfolio I occupy as Chief Officer Governance,

25 International Relations, Strategy and Communications. Part

<p style="text-align: right;">Page 2677</p> <p>1 of my responsibilities included but not limited to advising 2 on governance matters, best practice, enterprise risk 3 management, ensuring SARS presents in the global and 4 regional dialogues on tax, customs and excise as well as 5 revenue collection. I was also responsible for 6 communication, stakeholder engagement and integrated 7 service development, monitoring and reporting.</p> <p>8 Shortly after joining in or around March 2016 I 9 was appointed to act the role of a chief officer 10 Enforcement. This I did until June 2017. The function in 11 this portfolio included investigative audits, debt 12 management, criminal investigations, compliance audit, 13 excise and business report. My working relationship with 14 the Commissioner, and in this regard in refer to 15 Commissioner Moyane, started off the same way as most 16 working relationships between and employer and an employee 17 will start. Cordial, full of enthusiasm, optimism, 18 goodwill and determination to work together harmoniously 19 for the betterment of SARS and the country. However, in 20 and around May 2016, that is hardly four months in the job, 21 various development ensued which soured the relationship 22 between myself and the Commissioner. I summarised this 23 below, some of them, some of the events and developments.</p> <p>24 I expressed a different opinion to the 25 Commissioner and at times Exco colleagues which was seen as</p>	<p style="text-align: right;">Page 2679</p> <p>1 knowledge that the adverse media reports on SARS started in 2 and around 2014. After joining SARS in 2016 the 3 Commissioner expressed his unhappiness with the negative 4 media reports on the institution. I was direct about my 5 diagnosis of the challenges that SARS faced, this included 6 the credibility of the person or the Commissioner which 7 resulted in the credibility or question of the institution 8 itself. This I told the Commissioner personally. I 9 committed the Commissioner that my team and I will do our 10 best to profile SARS in order to boost taxpayer morality 11 and confidence. We suggested to him that as a start we 12 will arrange a luncheon with editors and key journalists of 13 key media houses. This was to allow SARS an opportunity to 14 tell its own story, engaging the media was critical so as 15 to ensure that SARS rectifies the narratives as to ensure 16 that tax morality was not affected by negative media 17 reporting. The Commissioner and Exco agreed to this 18 approach.</p> <p>19 In order to execute this one of my staff members 20 and myself met with various media houses in and around 21 March 2017 and indicated to them that it was a facilitation 22 of an engagement session with them, the SARS Commissioner 23 and the Exco team. The media houses seemed amenable to 24 engage the Commissioner and Exco team. I then planned the 25 luncheon for initial introduction which was rescheduled a</p>
<p style="text-align: right;">Page 2678</p> <p>1 opposition and in some instances even betrayal. My 2 fiduciary responsibilities being responsible for governance 3 and reputation of the institution demanded that I 4 continuously guard and caution against any acts that may 5 affect the effective implementation of policies and may 6 affect the reputation of the institution. This served for 7 a difficult working space. Resultantly various 8 investigations were instituted against me. My portfolio 9 which I alluded to in paragraph 5 above was broken down 10 without any reason of being advanced. This created 11 uncertainties in the team and colleagues. The lack of 12 regard for hierarchy and protocol by other executives who 13 interfered in my portfolio with the Commissioner's 14 blessings and giving of direct instruction to my team by 15 the Commissioner resulted some adverse consequences. My 16 refusal to carry out instructions that I deemed to be 17 against policies and my conscience was seen by the 18 Commissioner as being non-committal. As a result I found 19 myself having to constantly explain and pledge my 20 commitment to serve the institution.</p> <p>21 Details of some of the key areas mentioned above 22 are, so when I say I expressed a different opinion to the 23 Commissioner and at times Exco colleagues which was seen as 24 opposition in some instances or betrayal. Let me start 25 with the issue around the SARS public image. It is common</p>	<p style="text-align: right;">Page 2680</p> <p>1 few times and subsequently cancelled at the last minute by 2 the Commissioner in May 2017. Much as we did our best to 3 manage the situation this made a bad situation worse. I 4 communicated the repercussions of the late cancellations 5 but no further engagements were agreed to by the 6 Commissioner. The negative media coverage of SARS 7 continued and difficult relationship between the 8 institution and the media persisted despite the attempts to 9 drive a different narrative. This obviously affected, 10 amongst others, tax payers. Outsourcing of debt 11 collection.</p> <p>12 MS STEINBERG: May I just ask you to 13 pause for a moment? If you could just elaborate on two 14 phrases. You say that in your diagnosis of the challenges 15 that SARS faced at the time these included the credibility 16 question of the person of the Commissioner. Would you 17 elaborate on that?</p> <p>18 MR MATHEBULA: Ja. Look, I didn't, I 19 think the issue here was that the reporters that we had 20 been able to look at, in the main will see themselves around 21 questioning whether the Commissioner was a competent person 22 to run the institution. It will serve, centre around 23 issues that had happened around the operating model. They 24 – that key units had either been disbanded or had been made 25 to report into different functions. So that in itself</p>

<p style="text-align: right;">Page 2681</p> <p>1 suggested that potentially the Commissioner was not seen as 2 a person that knew what he was doing and in the main the 3 larger part of this media commentary revolved around the 4 Commissioner. So if you had not normalised the 5 relationship between the Commissioner or at least took key 6 editors and key journalists that reported on the 7 institution to be able to understand or at least engage 8 with the Commissioner on a one on one in A closed session, 9 not necessarily a secret session but a closed session, 10 which will allow them to contextualise the issues that they 11 were dealing with. It will have been very difficult for 12 any other person to then come up and say listen, well, 13 which is what we continuously did. We protested that we 14 had the best qualified people who were running the 15 institutions because out of that it will be the 16 Commissioner doesn't know what he's doing. Subsequently 17 the Exco doesn't know what it's doing or the people that 18 are in Exco are not qualified or there had been an absolute 19 brain drain in the institution. And I think we would – it 20 was our responsibility to have to present at least in my 21 view, to present the key members of Exco and the 22 Commissioner, let them meet with the editors or the media 23 houses. Let them interrogate the various members of Exco 24 so that you don't then paint the entire Exco with one 25 brush. If you want to pick Hlengani and say Hlengani is</p>	<p style="text-align: right;">Page 2683</p> <p>1 would've been no reason at all expressed. I mean you've 2 indicated the one which related to the Minister, the 3 meeting with the Minister. On these other occasions there 4 was nothing said about whether a discomfort or I don't like 5 these things? Would he have just simply said I'm not 6 available and that's it and there wouldn't be anything else 7 said? 8 MR MATHEBULA: Look, I don't think the 9 Commissioner will have been able to or would have sustained 10 a view that says I'm uncomfortable because this was an Exco 11 – 12 MR KAHLA: Ja. 13 MR MATHEBULA: - decision in which he was 14 present. And I didn't think in the Exco meeting he had 15 expressed that he was not willing to do so. He had said he 16 is willing to do so and Exco had subsequently then approved 17 that we engage in the manner that we had agreed. So it's 18 safe to say that as I indicate the reason that was I given 19 was unavailability and the one that was given exact 20 reasoning was the one that related to the Minister. There 21 are the subsequent two was that the Commissioner was no 22 longer going to be available and therefore we need to 23 cancel. 24 COMMISSIONER: Mr Mathebula, you've 25 talked here about your one difficulty with the media was</p>
<p style="text-align: right;">Page 2682</p> <p>1 not qualified for his job to do so but then indicate why 2 you think Hlengani is not qualified to do his job. And I 3 think that's what I'm trying to paint in that instance. 4 MS STEINBERG: And what reasons did the 5 Commissioner give you for cancelling these meetings with 6 the media that you arranged? 7 MR MATHEBULA: Look, the first 8 cancellation was understandable. There had been a new 9 Minister that had been appointed in the role. So he had to 10 engage with the new Minister. But the subsequent ones 11 there were no reasons that were advanced why we wouldn't be 12 able to proceed. And that made it very difficult to then 13 explain to editors and I say this because you will then 14 glean from what I have said that I have personally, I 15 didn't delegate this responsibility, I personally went and 16 met with the editors. One of the media houses actually had 17 the entire sheet of their various newspaper editors in the 18 room and they were very, very keen. Now I need to stand 19 now, pick up the phone and say we can no longer do this. 20 The Commissioner is not available. Once is okay, twice at 21 short notice they start saying no, maybe you are playing 22 with us. 23 MS STEINBERG: Okay. You can – 24 MR KAHLA: What we would love to know, Mr 25 Mathebula, I'm struggling to get the sense that there</p>	<p style="text-align: right;">Page 2684</p> <p>1 raising incredibility questions of the person of the 2 Commissioner which you then wanted to go engage the media 3 on. 4 MR MATHEBULA: Yes. 5 COMMISSIONER: As I understand what 6 you're saying now is that the only problem was that the 7 media was getting it wrong and you just had to correct them 8 and it will be okay. Is that what you are saying? 9 MR MATHEBULA: No, I'm not saying the 10 media was wrong. I'm saying that the Commissioner had 11 raised a concern around negative publicity around the 12 institution which was a concern for all of us and for a 13 person that has joined the institution and was tasked with 14 media, I shared the view that we were in the newspapers 15 almost every week for one story or the other. We had 16 unending leakages of documentations that were official and 17 I thought that went to the core of what this institution 18 is. This institution doesn't sell tomatoes. This 19 institution is entrusted with information that people must 20 be confident that when they supply that information it is 21 going to be safe. This institution is entrusted with being 22 a, the heartbeat of the country. We collect 95% of 23 government's revenue. We ensure, Judge, and I come from a 24 village that doesn't have a tar road and I have a hope one 25 day that through the tax we collect my village will have a</p>

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1 tar road and my people will have a better life from that
 2 perspective. So and that started at a simplistic level,
 3 one can put it. So the criticality of this institution is
 4 very serious. And if you continue to barrage it to the
 5 extent that people will start having reasons why they
 6 cannot pay their taxes then you have a problem.
 7 [11:20] CHAIRPERSON: No indeed, I think that the
 8 importance of the institution is well-known to us and of
 9 great concern to us, but my question was your difficulties
 10 that you saw being published in the media, I get the
 11 impression from your evidence that you felt well it's just
 12 that the media has got it all wrong and all we need to do
 13 is explain it to them. And you know we don't have to fix
 14 anything at all. Is that correct or not?
 15 MR MATHEBULA: No that's incorrect.
 16 That's incorrect. I'm saying in the engagement with the
 17 media the media will then be able to ask difficult
 18 questions of the institution and the leadership of the
 19 institution will then be able to say listen in this
 20 instance we think you're getting it wrong. And in getting
 21 it wrong this is how we will want – this is the information
 22 that we have at our disposal that can be able to dispute
 23 this. So let's say, let's take an example, Judge. Let's
 24 say the media says no, no you have disbanded the Large
 25 Business Centre we think that taxpayers are not getting the

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1 best value out of – the manner in which now the Large
 2 Business Centre has been serviced and we really, truly
 3 believe that the new model is much more better than the old
 4 one. Then we will have the responsibility to explain that
 5 to the media in the detail that will not include comprising
 6 taxpayer information. And to that extent if the media
 7 continues because we have failed to explain to them then at
 8 least they have been able to hear you. This thing of a
 9 newsletter going out or a press statement going out and
 10 waiting for calls to come in that for me wasn't necessarily
 11 working.
 12 I happen to have been – one of my
 13 responsibilities has been to be a spokesperson for the
 14 South African Reserve Bank and we had had difficulties in
 15 that institution on a matter that would have been of
 16 serious credibility crisis for the institution. But we
 17 handled that matter quite well to the extent that we did
 18 not compromise how the institution was reported on.
 19 COMMISSIONER: You see I'm still hearing
 20 from you saying look we just have to explain to the media,
 21 but what I'm not hearing is saying well maybe there are
 22 problems here that we should look at ourselves inside
 23 rather than just tell the media that they are – explain to
 24 them well it's wrong. And that's what I'm not hearing a
 25 lot of is it seems that your approach is well it was all

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1 okay and it's just the media that was misreporting. I'm
 2 more in what was happening within the Exco to examine what
 3 the media was saying and see if it was correct.
 4 MR MATHEBULA: No that's correct. So let
 5 me give you a different example because I thought that as
 6 we go you will then see that the issues around the specific
 7 things that were wrong we then address that.
 8 COMMISSIONER: Okay. Well then I'll
 9 leave that and we can come back to it. Just one other
 10 question though if I may. If you go to paragraph 7.5 of
 11 your submission. Do you have that?
 12 MR MATHEBULA: Yes.
 13 COMMISSIONER: My refusal to carry out
 14 instructions that I deemed to be against policies and my
 15 conscience was seen by the Commissioner as being non-
 16 committal. What were these instructions that you
 17 considered to be against policy and against your
 18 conscience?
 19 MR MATHEBULA: So I'll give you an
 20 example and this is a live example of what I thought was an
 21 instruction that I couldn't execute with clear conscience.
 22 The Commissioner one day called me into his office and he
 23 gave me a list of names of people I will have had to either
 24 dismiss or suspend. And in the list there were names of –
 25 at least there was one person that I was familiar with,

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1 that I had interacted with and I believed in this person's
 2 integrity.
 3 At first I was shocked that I was given this
 4 list. I then asked for time to consider what the
 5 Commissioner had requested of me to do. A day or so I came
 6 back and asked the Commissioner where did he get the list
 7 because he had refused to give me the list. He had asked
 8 me that I should write down and what will have been the
 9 major reasons why I should either suspend or investigate
 10 these people and the reason was given is because they were
 11 part and parcel of the Rogue Unit. Now I had read this
 12 stuff, I had no evidence, but I wasn't comfortable to
 13 investigate people without information, but simply being
 14 given the names. So I asked where did you get this
 15 information. He said to me Mr Makwakwa had given him the
 16 list whilst they were together in New York. So I said
 17 okay, but what are the real things that I needed to then do
 18 in this instance. No, no, no you can investigate. So I
 19 said look, Commissioner, I'm uncomfortable with this. I'm
 20 uncomfortable if in the course of my work as the acting
 21 head of enforcement I discover information that will lead
 22 to saying these people are involved in one or the other
 23 activity that requires investigation or that may lead into
 24 them being suspended I will do so, but in this instance I
 25 was not prepared to do so.

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1 COMMISSIONER: Are there any other cases
2 in which instructions were given to you that you deemed to
3 be against policies and your conscience?
4 MR MATHEBULA: Yes the Commissioner came
5 to me with names of people that he wanted me to appoint in
6 certain positions. The positions happened to have been –
7 it was a senior manager and an executive. I then said I
8 thought it was difficult to do so without following process
9 and suggested that we would have to advertise the role and
10 we will have to open them up and allow other people to
11 apply. I didn't doubt that the people could potentially
12 have the experience but I had discomfort around the process
13 that I could just appoint them. The Commissioner was
14 unhappy about that.
15 MS STEINBERG: May I ask to –
16 MR KAHLA: Just – the Commissioner set
17 out why he considered it appropriate that these individuals
18 be appointed and be appointed in the manner that he had
19 suggested.
20 MR MATHEBULA: Ja look he did say that,
21 he was taking a great deal of pressure from Parliament and
22 I was with him in one of the parliamentary sessions where
23 parliamentarians who had asked us quite serious questions
24 around our enforcement capabilities and particularly around
25 illicit and tobacco in particular. And he really wanted us

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1 to urgently establish a team that would look at the issue
2 around the tobacco industry because there was a lot of
3 smuggling of tobacco going on or all sorts of manner of
4 things that were not necessarily legal that was going on in
5 that space.
6 MR KAHLA: These individuals were part of
7 your internal resources or were they to be sourced from
8 outside?
9 MR MATHEBULA: No these individuals were
10 part of the internal resources. So from that p. And he
11 really wanted us to urgently establish a team that would
12 look at the issue around the tobacco industry because there
13 was a lot of smuggling of tobacco going on or all sorts of
14 manner of things that were not necessarily legal that was
15 going on in that space.
16 MR KAHLA: These individuals were part of
17 your internal resources or were they to be sourced from
18 outside?
19 MR MATHEBULA: No these individuals were
20 part of the internal resources. So from that perspective I
21 did not have a reason to doubt that they did not have the
22 experience because where they were at any rate they were
23 doing the kind of work that he wanted me to appoint them
24 to. But these were senior roles that I then needed to put
25 them, I needed to make sure that they had the requisite

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1 experience that would have been required on those roles.
2 MS STEINBERG: Well let's talk about
3 those people. I am assuming that, some of the people that
4 were on the list that the Commissioner wanted you to get
5 rid of included Mr Yousuf Denath, Mr Kumaran Moodley, Mrs
6 Elmarie Jacobs, am I right?
7 MR MATHEBULA: Not the ones he wanted me
8 to appoint here –
9 MS STEINBERG: No, no the ones he wanted
10 you to get rid of.
11 MR MATHEBULA: Okay so Elmarie Jacobs was
12 not one of those –
13 MS STEINBERG: Kumaran Moodley?
14 MR MATHEBULA: Kumaran Moodley was one of
15 those.
16 MS STEINBERG: And Yousuf Denath?
17 MR MATHEBULA: He was one of them.
18 MS STEINBERG: And the people he wanted
19 you to appoint I'm assuming were Mr Mundie and Mr Makhanya.
20 MR MATHEBULA: Yes they were.
21 MS STEINBERG: You see I do have a series
22 of questions for you around this and I'd like to just take
23 you through the evidence I've been given so we can try and
24 clear this up. Yesterday late in the afternoon when Ms
25 Makola was testifying I asked her about a memorandum that

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1 she had signed and sent to Mr Kingon in June this year.
2 And that memorandum is entitled Request for Access to SSA's
3 Act 70 Recording. And she writes a memo, she signs a memo
4 and then attaches to it a number of affidavits and to that
5 a number of emails. And I have provided you with all of
6 that and really the upshot of the memo is a story that is
7 told through the affidavits that in June 2016 at the time
8 you were the acting head of enforcement I believe.
9 MR MATHEBULA: Yes.
10 MS STEINBERG: The SSA brought to SARS's
11 attention that they were in possession of a legally
12 obtained intercept and in that intercept they said, SSA
13 told SARS there was a recording of Mr Yegan Mundie talking
14 to a well-known cigarette smuggler and he provided
15 information to that smuggler about competing taxpayers, but
16 also discussing SARS individuals, within the SARS
17 individuals who were actually trying to do their
18 enforcement job in the illicit tobacco space. And the
19 story continues that the relevant people in SARS brought it
20 to Mr Moyane's attention and suggested that Mr Moyane get
21 this recording from the SSA which Mr Moyane refused to do
22 on the basis that he didn't like the tone of the request.
23 Now Mr Moyane included you in the emails and the
24 discussions and appears to have asked you to resolve it.
25 The final email that I have is you writing to Yousuf Denath

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1 saying to him that you don't have the necessary
 2 information, the Commissioner's out the country and I'd
 3 like to have a meeting on his return. Whether or not you
 4 met what we do know is that the Commissioner never actually
 5 asked for that intercept and it is only in the last couple
 6 of months that Mr Kingon got the intercept. Does that
 7 accord with your understanding?
 8 MR MATHEBULA: So I think we need to
 9 clarify two things in that. Number one is that Mr Yousuf
 10 Denath wrote to the Commissioner asking for an audience
 11 between him and another staff member. Now what I'm going
 12 to do in this testimony is that I will refrain talking
 13 about individual members of staff unless you mention them
 14 because as I said in one of my statements when all this is
 15 done we will retain the responsibility to build this
 16 institution and I think that I will be more comfortable
 17 dealing with issues not necessarily the personalities, but
 18 where issues or personalities trumps having to have to
 19 mention them I will gladly deal with that issue. So he
 20 wrote to the Commissioner and asked for an audience, an
 21 email in which I was then included. The reason why I wrote
 22 to the Commissioner directly is because an internal
 23 investigation at that point did not report to me. I was
 24 responsible for Enforcement, any Enforcement that is
 25 criminal investigation, so to the extent that whatever was

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1 going to be discussed will have involved criminal
 2 activities I will have had to pick that up from the
 3 criminal investigation perspective. So he was dealing with
 4 the Commissioner on this matter, yes I was involved. I
 5 asked, because the Commissioner said to me resolve this
 6 matter. I asked for Mr Denath to provide to me the
 7 information that he had been provided, he came back to me
 8 and say no the SSA contact is uncomfortable disclosing the
 9 information to SARS because they need to go talk to their
 10 legal people and all sorts of other things. He suggests
 11 that the Commissioner deals with this matter and he gave a
 12 name of the person the Commissioner must deal with. I
 13 forwarded that same email to the Commissioner to say please
 14 note the response from the SSA.
 15 The Commissioner responded back to say he doesn't
 16 deal with junior people because supposedly the person that
 17 Mr Denath had referred to was a junior person. I then
 18 followed that matter up with Mr Denath to say do we have
 19 progress on this matter because I would like to institute
 20 due process because you said the matter that you were
 21 raising were time sensitive which meant that we needed to
 22 act quite expeditiously. Mr Denath then came back to say
 23 nope they are refusing, the Commissioner must deal with
 24 that. The Commissioner he was not going to deal with the
 25 matter in the manner it was suggested. I then felt it was

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1 proper for me to then say to Mr Denath, particularly
 2 because he was not reporting to me, listen thanks for the
 3 information that you gave me, I'm unable to do anything
 4 with what I have because I have nothing. Let's wait for
 5 the Commissioner to come back and when the Commissioner
 6 comes back we can meet. I don't have a recollection
 7 whether that meeting ever happened or know what then
 8 happened with that particular issue, I don't know.
 9 MS STEINBERG: I wonder if I could ask
 10 you just to let me finish the chain of evidence and then
 11 I'll open up. I accept all of that, Mr Mathebula. My
 12 concern goes to the memorandum then on 10 August 2016. So
 13 that is a month after you have knowledge that the SSA has
 14 said we have evidence that Mr Mundie is in cahoots with a
 15 particular cigarette smuggler. Now my problem is this that
 16 this memo is from Mr Yegan Mundie to you and it's asking
 17 you, well it tells you that certain SARS officials
 18 including a couple on the list that Mr Moyane gave you, Mr
 19 Kumaran Moodley and Mr Yousuf Denath. Mr Mundie says these
 20 people are intimidating and harassing that self-same
 21 taxpayer, the self-same cigarette smuggler among others,
 22 that the SSA has told you are in cahoots with Mr Denath.
 23 So Mr Denath comes along and he says –
 24 COMMISSIONER: Are you in cahoots with Mr
 25 Mundie?

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1 MS STEINBERG: Excuse me, with Mr Mundie.
 2 So the memo said Mr Mundie is in cahoots with smuggler X.
 3 Mr Mundie comes along with a memo and says I have the
 4 evidence that Mr Moodley and Mr Denath are harassing
 5 smuggler X as well as other people in the industry. And
 6 therefore he says I want authorisation from you, Mr
 7 Mathebula, for four things. And those four things are as
 8 follows, the first is that the South African Police
 9 Services and State Security Agency should be informed of
 10 their members' involvement in illegal activity because he
 11 also implicates people outside of SARS in harassing
 12 cigarette smugglers and others. A criminal case should be
 13 registered with the South African Police Services for
 14 further investigations to be conducted is the second
 15 recommendation. The third is that disciplinary
 16 investigations should be conducted against the employees of
 17 the South African Revenue Services and those are the ones
 18 listed and we saw that Mr Denath then went through the
 19 process that the presiding officer said was a sham.
 20 [11:40] And Mr Moodley was put through his own process
 21 which I don't want to discuss because it's not complete.
 22 Then he says a new team of auditors should be selected in
 23 order to conduct a re-audit of the aforementioned
 24 competitors of British American Tobacco because as I
 25 explained this memo accused Mr Denath and Mr Moodley and

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1 others of colluding with British American Tobacco to
 2 disadvantage smuggler X and others. Now -
 3 COMMISSIONER: Sorry can I just go
 4 through that, I'm not quite sure that I follow the whole
 5 sequence. Was there a report from SSA saying there is an
 6 intercept of SARS official and a tobacco dealer that we
 7 think you should look at? Is that correct?
 8 MR MATHEBULA: No, it's not correct. So
 9 I was going to answer that. So, so when that matter, when
 10 Mr Mundie, ag Mr Denath asked for a meeting with the
 11 Commissioner to discuss a time sensitive matter no details
 12 were disclosed. So between June when that meeting that we
 13 were trying to facilitate and me requesting for the
 14 information which never came to me and 10 August when the
 15 memo came I wasn't aware that a, the people in the memo
 16 that was authored were the same people that were involved
 17 in the meeting of, with SSA, because that information was
 18 never provided to me.
 19 COMMISSIONER: Okay.
 20 MS STEINBERG: I -
 21 COMMISSIONER: Just a minute. The first
 22 question I want to know, is you say there was a request
 23 from SSA to SARS to, information from SSA to SARS saying we
 24 have got an intercept, a SARS official is talking to a
 25 Tobacco, alleged Tobacco smuggler and disclosing

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1 information, how do we know that?
 2 MS STEINBERG: We know that because have
 3 two sworn affidavits and they're accompanied by emails.
 4 Now the first affidavit is from the SARS employee with whom
 5 the SSA made contact and he explains that an agent from the
 6 SSA made contact with him to tell him that they had this
 7 very worrying intercept. He said I reported it to my
 8 manager. His manager then makes an affidavit and his
 9 manager explains that he then escalated the matter within
 10 SARS including to the Commissioner and that's where we get
 11 the emails, he attaches various emails. Now he says -
 12 MR KAHLA: Sorry is this manager Mr
 13 Denath?
 14 MS STEINBERG: No, it's somebody else.
 15 He says on 30 June 2016 Yousuf, that's Yousuf Denath and I
 16 had a meeting with the Commissioner and our chief officer
 17 Hlengani Mathebula where the contents of the intercepts
 18 were discussed.
 19 COMMISSIONER: Let's just stop there, is
 20 that correct?
 21 MR MATHEBULA: It spoke about time
 22 sensitive information not the contents.
 23 COMMISSIONER: So you disagree with him,
 24 he says the contents of the discussion.
 25 MR MATHEBULA: No the contents of the

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1 intercept were never provided. That's the reason why I
 2 wrote back to say can I have the information so that I can
 3 institute due process and as the emails go back and forth
 4 you will recognise that I say given that I've not been
 5 provided with this information I'm unable to proceed.
 6 COMMISSIONER: I understand. I just want
 7 to get back to the meeting though with you. Did they say
 8 at the meeting there has been an intercept according to the
 9 SSA?
 10 MR MATHEBULA: Yes.
 11 COMMISSIONER: And did they, I would
 12 imagine you said well what kind of intercept, what was it
 13 or not? Did you just -
 14 MR MATHEBULA: This is the information
 15 that was not provided.
 16 COMMISSIONER: You asked them what
 17 intercept this was?
 18 MR MATHEBULA: Yes.
 19 COMMISSIONER: What did they say?
 20 MR MATHEBULA: It, they said it involved
 21 illegal activities that Mr Yegan Mundie was involved in and
 22 that we needed to take steps immediately against Mr Yegan
 23 Mundie.
 24 MR KAHLA: So the mention of Mr Yegan
 25 Mundie was made.

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1 MR MATHEBULA: Yes.
 2 MR KAHLA: In the engagement with the
 3 Commissioner in relation to the intercepts.
 4 MS STEINBERG: You see my difficulty, Mr
 5 Mathebula is that you knew that the SSA had worrying
 6 information about Mr Mundie. Mr Mundie then comes to you
 7 with extraordinary allegations actually about Mr Denath and
 8 Mr Moodley and others and asks for your permission to
 9 discipline them. They're also on the list that the
 10 Commissioner has given you, they're also targeted. Now you
 11 tell us it was against your conscience and against policy
 12 to go after these people but in fact you signed the memo
 13 that triggered the disciplinary hearings against them based
 14 on a memo written by somebody you knew was worrying the SSA
 15 for one reason or another and I just wonder why you signed
 16 that memo.
 17 MR MATHEBULA: Can I respond?
 18 MS STEINBERG: Please.
 19 MR MATHEBULA: Okay so I think you
 20 connect things that are unrelated. The first one is that
 21 I'm saying I did not have information that would, I could
 22 not simply by a person saying listen there is this
 23 information about this particular person alleging
 24 criminality please suspend this person, take steps,
 25 whatever the steps is that I need to take, I need to be

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1 informed about the information, I requested information
 2 which was not provided to me, number 1. Number 2, is I
 3 think we need to make it very clear that at the time this
 4 happens these people did not report to me. They reported
 5 to the Commissioner, that's why they went to the
 6 Commissioner. Mr Yegan Mundie was not reporting to me,
 7 internal investigation was not reporting to me. My role
 8 was that of a chief officer of Enforcement which I will
 9 then have had to trigger investigation on matters that
 10 relates to criminal activity. I had nothing in my hand to
 11 do anything about that. Now let's park that for a second.
 12 Secondly, is that the memo of the 10th of August
 13 and I don't know till today I, and I will, you are a lawyer
 14 and there's a Judge here and few other advocates, you can
 15 really clarify me, when a person come and say there is this
 16 agencies, law enforcement agencies in this country whose
 17 competency is to deal with criminality and there is this
 18 information and all we are requesting is that we must
 19 engage into an investigation that will be led by the SAPS,
 20 in that they include the DPCI must be involved with SSA
 21 itself. And in respect of internal people we must then
 22 institute a proper disciplinary processes, I will, if I
 23 didn't support and this is another element we are going to
 24 have to deal with, if I didn't support I will have been
 25 found to have been an acting or defeating the ends of

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1 justice if in the event it were to be proven that indeed
 2 these people are involved in any criminality. What I
 3 supported was criminal cases must be reported. The SAPS
 4 must be told in respect of our internal people who must
 5 institute disciplinary hearings when we have been able to
 6 investigate.
 7 In that memo you are referring to there is
 8 pictures of, there's pictures of intercepts in itself,
 9 there's pictures of false IDs and all that. Now these are
 10 employees who, I'm just in August eight months in the
 11 organisation, who had been in the organisation for many
 12 years, they don't report to me. Their role is exactly
 13 that, to investigate. They were investigators of some
 14 repute in the organisation, I had no other information that
 15 suggest that these people necessarily could have been up to
 16 something else. So I think, I think my support and because
 17 I did not authorise, the people did not report to me, if
 18 they reported to me the final authority was on me. They
 19 didn't report to me, so mine is support. The final
 20 decision maker in that instance is the Commissioner.
 21 MS STEINBERG: But Mr Mathebula, you
 22 signed the memo not Mr Moyane.
 23 MR MATHEBULA: I supported.
 24 MS STEINBERG: But I'm asking you -
 25 COMMISSIONER: Just a moment there.

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1 MS STEINBERG: Knowing what you knew, now
 2 I accept you didn't know the details of what the intercept
 3 said about Mr Mundie, but you knew the SSA were worried
 4 about Mr Mundie, you also knew that these, some of these
 5 people listed were on Mr Moyane's hit list. I'm saying in
 6 the face of that why did you sign the memo?
 7 MR MATHEBULA: I will repeat again. I
 8 signed the memo supporting that cases be reported to the
 9 SAPS, that investigations be done, that internal
 10 disciplinary process, where people may have been found to
 11 have violated anything that we do should then be instituted
 12 that, it supposes that there's still more investigations
 13 that will be done in the organisation, there are HR
 14 policies, everyone will be subjected to a fair process. I
 15 had no information that would have suggested to me that
 16 nothing else, something else would be done other than what
 17 was in my disposal at that time. So let me just deal with
 18 the issue of Mr Denath because I was going to deal with it
 19 at some point.
 20 MS STEINBERG: I want to ask you a
 21 question first about what you've just said. What I can
 22 tell you as a lawyer is that the first principle before you
 23 say somebody must be investigated and suspended, before you
 24 sign off on allowing that process to happen, is you hear
 25 them. You call them in, that is the first basic principle

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1 of natural justice, that before you subject to people,
 2 people to a long disciplinary process you call them in and
 3 you say what is your version, did you do that?
 4 MR MATHEBULA: So that is correct. So
 5 that's correct. But you, we're saying -
 6 MS STEINBERG: I asked you if you did
 7 that? Did -
 8 MR MATHEBULA: Because it doesn't apply.
 9 MS STEINBERG: So I just want to, you
 10 didn't do that, you signed a memo ordering, authorising an
 11 investigation and a suspension into certain people but you
 12 didn't call them in first? Can I just get an answer to
 13 that?
 14 MR MATHEBULA: Advocate where do you see
 15 suspensions?
 16 COMMISSIONER: Sorry can you just, sorry.
 17 Let's just get an answer to the question because I would
 18 like to get clear answers and I think you know I've always
 19 in the courts and wherever the best rule to follow is that
 20 when you get asked a question, answer the question so that
 21 we know what the answer is and there's no dispute. If you
 22 want to say more about it then go on and do it. But we
 23 must get a clear answer to a clear question, is that in
 24 order?
 25 MR MATHEBULA: Ja.

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1 COMMISSIONER: So the question again.
 2 MS STEINBERG: So my question is this,
 3 the third recommendation is disciplinary investigations
 4 should be conducted against the employees of the South
 5 African Revenue Services, by the way it doesn't even say
 6 which, I'm just picking that up from the people named, I'm
 7 asking you before you authorised disciplinary
 8 investigations being conducted did you call those people in
 9 and ask them for their version of these events?
 10 MR MATHEBULA: I didn't call them to ask
 11 them their version of events because there were no versions
 12 to have been put to them. I can't call people and say to
 13 them there is going to be an investigations which led into
 14 disciplinary processes. So I didn't call them.
 15 MS STEINBERG: No, Mr Mathebula, you've
 16 just told me that there was evidence in this, there was
 17 evidence of fake IDs, that that laid the basis for your
 18 signature. Did you say to them look there's evidence of
 19 fact IDs, etcetera, do you have an explanation?
 20 MR MATHEBULA: So let me answer this
 21 again. The first answer is I did not call them but can I
 22 ask you to explain, can I explain to you, so that memo says
 23 there is information that has been obtained about people
 24 involved in illegal activities and these people are
 25 colluding which include members of the SAPS and our own

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1 staff. Alright. What we have asked them for is that
 2 criminal investigations or docket be opened where
 3 investigations will have been concluded, one. Two,
 4 investigations which may led into disciplinary processes be
 5 instituted. Now in this organisation Advocate, when there
 6 is an issue around a person needing to be disciplined they
 7 would have to be charged. Now you can't charge people
 8 before you investigate what you want to investigate. You
 9 have to start by investigating and then decide that there
 10 is something that warrant you to even try to discipline
 11 somebody.
 12 Nowhere in that memo that I supported, I didn't
 13 authorise, that I supported is there a suspension of
 14 people, nowhere and I wanted to say further Advocate that
 15 it, with reference to Mr Denath specifically that when Mr
 16 Makhanya came to me to want to suspend Mr Denath I refused
 17 because the information that I was, he then provided me to
 18 say on the basis of this information I want to suspend Mr
 19 Denath, I said to him no you can't suspended an employee on
 20 this information because this information he had already
 21 been subjected to some process before I even arrived in
 22 this institution. I refused. He left my office and went
 23 to my executive assistant and say would you support this,
 24 my executive assistant said no we're not going to support
 25 this, this information is old information. So in all

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1 instances, Advocate we and me in particular in this
 2 instance where an employee was either being dealt with
 3 unfairly and I had contrary information I have been able to
 4 say no this can't happen and Mr Denath is a case in point.
 5 MS STEINBERG: Well I don't agree in that
 6 at law when you are going to make a decision to recommend
 7 and authorise a disciplinary investigation into someone
 8 that just like a suspension is a decision that has adverse
 9 consequences for that person and it is proper to say to
 10 that person before I make the decision can I hear your view
 11 and that did not happen and there was then a chain of
 12 events that followed and I appreciate that you then tried
 13 to stop it. But I put to you that it's improper
 14 particularly in this context where it's coming from Mr
 15 Mundie to authorise an investigation into people without
 16 asking them for their side of the story.
 17 COMMISSIONER: I think you've answered
 18 that, you say you see it differently. Okay.
 19 MR KAHLA: But if you would help me
 20 Counsel just with a few things. I just, I need a bit of
 21 chronology clear here. Firstly there was a reference to
 22 the list that was provided to you by the Commissioner on
 23 persons to be investigated, I would need just the
 24 chronology, when was that done. The second point I would
 25 want to understand the approach by Mr Denath in relation to

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1 the application to get the intercepts from the SSA and
 2 thirdly the request by Mr Mundie for some of the, for those
 3 actions to be taken and if you would indulge me counsel, if
 4 you could also just go back to that memo of Mr Mundie and
 5 go through that list of the items that were required to be
 6 done because I would want to get clear answers from Mr
 7 Mathebula around each of those points, around which one was
 8 being supported or not supported in his version and finally
 9 what's on that memo we want to understand at the end of the
 10 memo there would probably be something around recommend to
 11 approve support if I could get what was set out in the memo
 12 in the conclusion of the memo relating to the
 13 authorisations, etcetera.
 14 MS STEINBERG: Certainly. There's one
 15 question I can't answer out of those. I don't know when Mr
 16 Mathebula was given the list.
 17 COMMISSIONER: Can you tell us, do you
 18 know, do you have a date when you were given the list?
 19 MR MATHEBULA: No I don't have -
 20 COMMISSIONER: I'm sure you can't get the
 21 exact date perhaps but the best you can.
 22 MR MATHEBULA: No, no I don't have a
 23 date. But it was very soon after I was appointed as the
 24 acting, a COO of Enforcement which will have been somewhere
 25 around April.

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1 MR KAHLA: So did it precede all of those
 2 other -
 3 MS STEINBERG: Yes.
 4 [12:00] MR KAHLA: The Denath matter and the
 5 Mundi matter.
 6 MS STEINBERG: Yes.
 7 MR KAHLA: That list.
 8 COMMISSIONER: Is that correct? No, no,
 9 I've got it.
 10 MR MATHEBULA: Yes.
 11 COMMISSIONER: And then the next -
 12 MS STEINBERG: First the list. Then came
 13 the intercepts and the discussion around them. That was in
 14 June and July 2016.
 15 COMMISSIONER: That would be correct is
 16 it, Mr Mathebula?
 17 MR MATHEBULA: Yes. That's correct.
 18 MS STEINBERG: Then the memo. The Mr
 19 Mundi memo. That is dated 10 August 2016, so that's the
 20 chronology. So we have list, information from SSA about Mr
 21 Mundi and then Mr Mundi's memo. Now -
 22 MR KAHLA: Then what I have asked in
 23 relationship that's where indulgences -
 24 MS STEINBERG: To the recollection -
 25 MR KAHLA: A repeat of each of those

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1 items was I would want to hear direct responses to each of
 2 those.
 3 MS STEINBERG: Of course.
 4 MR KAHLA: Of those items that were
 5 sought to be dealt with.
 6 MS STEINBERG: So the final paragraph
 7 says recommendations and there appear to be four. The
 8 first is the South African Police Service and the State
 9 Security Agency should be informed of their members'
 10 involvement in illegal activities. The second is a
 11 criminal case should be registered with the South African
 12 Police Service for further investigations to be conducted.
 13 MR KAHLA: Maybe just let's - on the
 14 first list around people to be reported to the SSA
 15 regarding members of the SSA who were involved in illegal
 16 activities, are those individuals named there in this memo?
 17 MS STEINBERG: The individuals -
 18 MR KAHLA: I don't need the names, I just
 19 want to know whether -
 20 MS STEINBERG: Yes. There -
 21 MR KAHLA: There is a schedule of that.
 22 MS STEINBERG: As I remember the
 23 individuals named are SARS people. The fact that the SSA
 24 and the SAPS are also involved is there but to the - as I
 25 recall those names aren't mentioned. But I stand to be

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1 corrected. I'll look through it again.
 2 MR KAHLA: Well, I need this. I need
 3 clarity around this because this is with reference to
 4 reporting people of another agency and I want to understand
 5 whether there was any understanding by Mr Mathebula around
 6 the individuals of those external agencies in respect of
 7 whom there had to be some reporting.
 8 MS STEINBERG: I'd like to give it
 9 another read but I do not recall any names being mentioned
 10 except the SARS employees who were said to be collaborating
 11 with British American Tobacco and who - the people who they
 12 were said to be intimidating, the taxpayers they were
 13 intimidating who we mentioned recently, Mr Kajee, Mr Lifman
 14 and Mr Edward Zuma. Those are the names mentioned. There
 15 - I have no memory of the SSA people being mentioned but I
 16 will check.
 17 MR KAHLA: I'm just trying to get to a
 18 sense of each of those items around you requested to do
 19 this in relation to item one and get a sense around what
 20 that - or the clarity around that and then each of these.
 21 Well, I just really to understand the response of Mr
 22 Mathebula I want to get on each of those items and also to
 23 understand the information that was provided to justify the
 24 request or recommendation in respect of each of those
 25 items.

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1 MS STEINBERG: Mr Kahla, let me just read
 2 the findings because the findings come just before the
 3 recommendation. The findings. "It is clear that members
 4 of the South African Police Service, members of the South
 5 African Revenue Services and members of the State Security
 6 Agency has transgressed by supply privileged information to
 7 SSS," that is the security arm of British American Tobacco,
 8 "in order for them to harass and hamper the trading of
 9 legitimate tobacco companies of South Africa. This gave
 10 BAT an unfair advantage in the trade of tobacco in South
 11 Africa. The activities of the members working for the
 12 respective enforcement agencies were illegal and should be
 13 reported to the South African Police Service for further
 14 investigations. The audit inspections of the competitors
 15 of BAT and Mark Lifman were done unfairly and with
 16 malicious intention." Those are the findings.
 17 Now the recommendations are no more specific so
 18 when they say people should be reported you have to try and
 19 pick up in the body of the report which people. Now the
 20 names I picked up are the SARS people and I didn't see
 21 other names.
 22 MR KAHLA: And those names of SARS are
 23 set out in the memo?
 24 MS STEINBERG: Well, they come up in the
 25 story of the so called evidence against these people. They

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1 are mentioned, those names are mentioned but nowhere does
 2 it say recommendation, these individuals be reported. The
 3 recommendations are general.
 4 MR KAHLA: Finalise with that list of
 5 four or so items?
 6 MS STEINBERG: Yes, yes. So we said one
 7 was that the police and the SSA should be informed of their
 8 members' involvement. As I recall those members are named.
 9 Two, a criminal case should be registered with the South
 10 African Police Service for further investigations to be
 11 conducted. Three, disciplinary investigations should be
 12 conducted against the employees of the South African
 13 Revenue Services. Four, a new team of auditors should be
 14 selected in order to conduct a re-audit on the
 15 aforementioned competitors of BAT including Mr Lifman who
 16 by the way it was said is not a competitor of BAT but in
 17 any event he's been harassed. Those were the
 18 recommendations and underneath that it says compiled by
 19 Yegan Mundie, acting senior manager, 10 August 2016, and he
 20 signs. And then under that there's an option, supported or
 21 not supported. Supported is ringed. Mr Hlengani Mathebula
 22 misspelled. Chief officer, Enforcement, 10 August 2016 and
 23 what appears to be Mr Mathebula's signature is there.
 24 MR KAHLA: Okay.
 25 COMMISSIONER: Perhaps I've missed

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1 something but did anyone then ever look at this – hear this
 2 intercept?
 3 MS STEINBERG: No. It's only now that it
 4 was obtained.
 5 COMMISSIONER: Yes. So let me get it
 6 correct then. There's the report that there is an
 7 intercept and you know that there is an intercept and what
 8 you are said the intercept is about is SARS people talking
 9 to – that's what you were told in your meeting with the
 10 Commissioner. We've had that.
 11 MR MATHEBULA: And on our – I was only
 12 told that there is some alleged criminality against Mr
 13 Yegan Mundie. The rest of the storyline I –
 14 COMMISSIONER: Yes, but there's an
 15 intercept. You knew that there's an intercept and it was
 16 alleged that you've learned through this intercept that
 17 there is criminality on the part of Mr Mundi and that then
 18 – and that after that we get Mr Mundi saying SARS people
 19 are harassing the tobacco dealers and Mr Lifman and you
 20 then recommend that that should occur. What happened to
 21 getting the intercept? As I understand you said earlier Mr
 22 – the Commissioner said I don't like your tone and
 23 therefore I'm not going to get the intercept. What
 24 happened to the intercept? Why has it only come out now?
 25 What year was it?

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1 MS STEINBERG: So this was in the middle
 2 of 2016. June 2016.
 3 COMMISSIONER: And has that intercept
 4 never been listened to by you or anyone else?
 5 MR MATHEBULA: Judge, it will not have
 6 been listened by me so I have never listened to it so –
 7 COMMISSIONER: Well, that's what I'm
 8 asking –
 9 MR MATHEBULA: - that.
 10 COMMISSIONER: Was it listened to by you?
 11 MR MATHEBULA: No.
 12 COMMISSIONER: Did you ever get it?
 13 MR MATHEBULA: No, I never got it which
 14 is the reason why my email said I was never provided with
 15 the information.
 16 COMMISSIONER: Sure.
 17 MR MATHEBULA: I am unable to do anything
 18 without an information.
 19 COMMISSIONER: But I don't quite
 20 understand why one set about disciplining or set about
 21 investigating without having got the intercept to see what
 22 was going on. I don't quite follow. I mean you're told
 23 there's an intercept, am I wrong? You're told that there's
 24 an intercept. You're told that the intercept indicates
 25 criminality on the part of Mr Mundi. You then say Mr Mundi

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1 says go and investigate these people and no one
 2 investigates Mr Mundi. I don't quite understand.
 3 MR MATHEBULA: Yes, so Judge, I think let
 4 me just again re-explain that sequence. So in June 2016.
 5 COMMISSIONER: Yes.
 6 MR MATHEBULA: Internal investigation did
 7 not report to me but I was asked to sit into a meeting.
 8 COMMISSIONER: Yes.
 9 MR MATHEBULA: In which conversations
 10 around time sensitive information.
 11 COMMISSIONER: Yes.
 12 MR MATHEBULA: Which was not disclosed to
 13 me.
 14 COMMISSIONER: Yes.
 15 MR MATHEBULA: And the Commissioner
 16 asking me to say can you deal with this matter.
 17 COMMISSIONER: Yes.
 18 MR MATHEBULA: And in dealing with the
 19 matter I write to Mr –
 20 COMMISSIONER: Sorry, let me stop you.
 21 MR MATHEBULA: Yes.
 22 COMMISSIONER: What do you mean by
 23 dealing with this matter? Doing what with what matter?
 24 MR MATHEBULA: Whatever time sensitive
 25 information it was.

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1 COMMISSIONER: Sorry, say again.
 2 MR MATHEBULA: Whatever the time
 3 sensitive information which amounted to some illegal
 4 activity.
 5 COMMISSIONER: Yes.
 6 MR MATHEBULA: On the part of Mr Mundie.
 7 COMMISSIONER: Yes. But now what did Mr
 8 – what did the Commissioner say to you about – what did he
 9 mean by deal with this matter?
 10 MR MATHEBULA: I assumed what he needed
 11 me to do.
 12 COMMISSIONER: Yes.
 13 MR MATHEBULA: Was to – that I must then
 14 investigate the matter.
 15 COMMISSIONER: But I mean then wouldn't
 16 you ask for the intercept?
 17 MR MATHEBULA: I did.
 18 COMMISSIONER: And did you get it? Why
 19 didn't you get it?
 20 MR MATHEBULA: They were not provided to
 21 me.
 22 COMMISSIONER: So who did you ask?
 23 MR MATHEBULA: No, I asked Mr Denath.
 24 COMMISSIONER: For the intercept?
 25 MR MATHEBULA: Yes.

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1 COMMISSIONER: But you had to ask the SSA
 2 for the intercept.
 3 MR MATHEBULA: No, Judge. No. So let –
 4 again let me clarify on this. I'm saying I asked Mr Denath
 5 -
 6 COMMISSIONER: Yes.
 7 MR MATHEBULA: To provide me with the
 8 information.
 9 COMMISSIONER: To provide you with the
 10 intercept.
 11 MR MATHEBULA: With the information. I
 12 didn't know whether that was the intercept but –
 13 COMMISSIONER: But let's just stop.
 14 Let's just – you know, I'm very slow. You've got to take
 15 it slowly with me, step by step. You're told that there's
 16 an intercept and the intercept implicates Mr Mundi in
 17 criminal activity. Did you ask for the intercept?
 18 MR MATHEBULA: Yes, I did.
 19 COMMISSIONER: And who did you ask for
 20 the intercept?
 21 MR MATHEBULA: Mr Denath.
 22 COMMISSIONER: But Mr Denath hasn't got
 23 the intercept. It's the SSA that's got the intercept. Why
 24 Mr – how does Mr Denath get the intercept from the SSA?
 25 MR MATHEBULA: So Mr Denath was dealing,

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1 or the person that reports to Mr Denath was dealing with an
 2 agent from the SSA that they were dealing together so his
 3 emails -
 4 COMMISSIONER: Yes.
 5 MR MATHEBULA: The email exchanges
 6 between them suggests that Mr Denath went back to say
 7 listen, because that was the person that we were
 8 interacting with, we will like to provide this information
 9 to our chief officer. The person responds back to say no,
 10 we are going to ask our legal department. After they have
 11 interacted they then say no, the SSA is uncomfortable.
 12 Maybe the Commissioner should ask Mr X to provide this
 13 information. I take that information, those emails, I give
 14 them to the Commissioner to say for me to do anything it is
 15 suggested that you must ask –
 16 COMMISSIONER: The SSA?
 17 MR MATHEBULA: You must ask the SSA for
 18 this information.
 19 COMMISSIONER: Yes.
 20 MR MATHEBULA: The Commissioner then says
 21 no, I don't deal with junior people and the matter rests
 22 there.
 23 COMMISSIONER: But –
 24 MR MATHEBULA: Remember again –
 25 COMMISSIONER: Sorry, he says I don't

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1 deal with junior people so I won't ask for the intercept?
 2 MR MATHEBULA: Yes. He doesn't say I'm
 3 not going to ask. He says I don't deal with the junior –
 4 with junior people which may suggest that he says I'm not
 5 going to ask that –
 6 COMMISSIONER: But there they – sorry.
 7 I'm sorry, I'm interrupting you.
 8 MR MATHEBULA: Yes.
 9 COMMISSIONER: I'm just trying to get
 10 this picture correct if you don't mind.
 11 MR MATHEBULA: But the issue here, Judge,
 12 is that I think I am the wrong person to explain this and I
 13 -
 14 COMMISSIONER: You're not the wrong
 15 person. I'm asking you and if you don't know things you
 16 tell me.
 17 MR MATHEBULA: Yes, I don't know why the
 18 Commissioner –
 19 COMMISSIONER: Just stop a minute. Just
 20 stop a minute. Just stop a minute. Let's go take this
 21 slowly step by step and let's get clear answers so we can
 22 move on. We've got a lot of work. We must move on. You
 23 were told there is this intercept.
 24 MR MATHEBULA: Yes.
 25 COMMISSIONER: You must deal with the

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1 matter.

2 MR MATHEBULA: Yes.

3 COMMISSIONER: You asked Denath for the

4 intercept and it comes back that the Commissioner must ask.

5 MR MATHEBULA: Yes.

6 COMMISSIONER: So you tell the

7 Commissioner he must ask for the intercept. I've got it

8 right?

9 MR MATHEBULA: Yes.

10 COMMISSIONER: Commissioner says I don't

11 deal with junior people and there the matter rests. Well,

12 why didn't you then do – say but we've got to get the

13 intercept, that's the first step. Why did you let it rest

14 if you know there's an intercept of conversations taking

15 place between alleged criminals and SARS?

16 MR MATHEBULA: Yes –

17 COMMISSIONER: That's what I don't

18 understand. Why did you let it rest. Sorry. Let it rest

19 and instead then go and ask for a disciplinary of Mundie or

20 an investigation of Mundie.

21 MS STEINBERG: No, not Mundie.

22 COMMISSIONER: Sorry.

23 MS STEINBERG: Denath.

24 COMMISSIONER: Denath. At the instance

25 of Mundi. It doesn't make sense to me.

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1 MR MATHEBULA: No, no, no, Judge.

2 COMMISSIONER: Okay, what –

3 MR MATHEBULA: And I'd suppose we'll let

4 it go but I'm saying –

5 COMMISSIONER: No, we'll let it go when

6 I'm – you know the problem with me, I hate mysteries.

7 MR MATHEBULA: Yes.

8 COMMISSIONER: So I keep on – I want the

9 pieces to fall into place.

10 MR MATHEBULA: So I'm saying that in this

11 instance this unit reported to the Commissioner, so

12 reporting to the Commissioner I then suggest guys, now that

13 there is this chain of command that must be followed which

14 excludes me, when the Commissioner comes back I will ensure

15 that the Commissioner calls a meeting between yourselves

16 and himself which I duly did. The Commissioner did not

17 call that meeting or if he did I was not involved. Now –

18 COMMISSIONER: Mr Mathebula, I must

19 interrupt you because you're not dealing with my problem so

20 we don't get anywhere. The Commissioner has said to you

21 there's an allegation that SARS people are meeting with

22 criminals. You deal with it, Mr Mathebula, by which he

23 means so you deal with it by saying well, I need the

24 intercept. You obviously thought you did need the

25 intercept. Correct? That's why you asked for it.

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1 Correct?

2 MR MATHEBULA: Yes.

3 COMMISSIONER: But you never got the

4 intercept.

5 MR MATHEBULA: Yes.

6 COMMISSIONER: You went to the

7 Commissioner and said well, you've got to ask for the

8 intercept. The Commissioner said I don't deal with that.

9 But you haven't dealt with the problem yet which he left

10 with you which is to get the intercept and that's why I

11 don't understand why you didn't do more to get the

12 intercept. Can you tell me –

13 MR MATHEBULA: Well, maybe I could have

14 done more but I didn't. But I asked the Commissioner to do

15 what he was asked of him to do because in this instance the

16 relationship between the SSA and SARS was then governed and

17 my assumption, Judge, when the Commissioner says I don't

18 deal with junior people and I'm going to refer to this at a

19 later stage, is that I know for a fact that the

20 Commissioner was in constant contact with the DG of SSA.

21 Now it would have meant that maybe he was going to be

22 dealing with that information in that regard. There was an

23 MOU between SSA and SARS and there were certain people that

24 were designated to deal with SSA and I was not one of

25 those.

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1 MR KAHLA: No, let me just understand.

2 The Commissioner says I don't deal with junior people. Is

3 there anyone who then suggests that write then to the DG

4 instead of the junior person or do you just then leave the

5 issue of seeking the intercepts at that point?

6 MR MATHEBULA: No, no, it is –

7 MR KAHLA: If the Commissioner doesn't

8 want to deal with junior people does it then end there or

9 is the suggestion well, you can contact the DG to seek this

10 intercept or is that the end?

11 MR MATHEBULA: The Commissioner was going

12 to talk to the DG.

13 MR KAHLA: On the intercept?

14 MR MATHEBULA: Yes, on that matter. He

15 was going to deal with the DG and this is the reference to

16 he doesn't deal with a junior person who is this person

17 that was referred to.

18 MR KAHLA: So according to that version

19 the intercept was not going to be sought from the NIA, from

20 the SSA by yourself, it was going to be by the Commissioner

21 through engaging the DG of SSA.

22 MR MATHEBULA: Yes.

23 COMMISSIONER: How do you know that?

24 MR MATHEBULA: No, no, because we have

25 had conversations about it.

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1 COMMISSIONER: Sorry?

2 MR MATHEBULA: Because we did have a

3 conversation about that because when he said –

4 COMMISSIONER: Sorry, did the

5 Commissioner say don't worry, I'll get it from the DG?

6 MR MATHEBULA: When he said I don't deal

7 with junior people I had a telephone conversation with him

8 to say how are you going to deal with this matter and he

9 was going to deal with it with the DG.

10 COMMISSIONER: Is that what he told you?

11 MR MATHEBULA: Yes.

12 PROF KATZ: Sorry, just one question, I

13 don't understand it.

14 COMMISSIONER: Just give me a moment.

15 I've just got to get this clear. So then he told you he's

16 going to get it from the DG?

17 MR MATHEBULA: Yes.

18 COMMISSIONER: And then did you then go

19 back to him and say have you got it from the DG?

20 MR MATHEBULA: No, I left the matter

21 there.

22 COMMISSIONER: You left the matter – so

23 you never followed that up.

24 MR MATHEBULA: No.

25 COMMISSIONER: And you didn't, you never

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1 asked the Commissioner what this intercept was about?

2 MR MATHEBULA: No.

3 COMMISSIONER: And then you just acted on

4 Mr Mundie's recommendation to investigate these other

5 people, is that right? And you didn't know what the

6 criminal activity was that Mr Mundie is alleged to have

7 been involved in?

8 MR MATHEBULA: Yes, I didn't know what

9 the criminal activity was, Judge, and when on the 10th when

10 this memo came and it's important to look at the

11 recommendations. The recommendation indicates that where

12 there is criminal – that SSA must be informed of their

13 members that are involved in criminal activity. The South

14 African Police must be involved. A criminal case must be

15 registered. I will have struggled not to support a

16 situation where somebody says I need to deal with law

17 enforcement agencies.

18 COMMISSIONER: I've just got a bit of a

19 problem here because earlier on you said to me the

20 Commissioner said I don't deal with junior people and you

21 said there the matter rested. Now you tell me that you

22 actually spoke to the Commissioner and said you must speak

23 to the DG and he said he would speak to the DG. Now which

24 one is correct?

25 MR MATHEBULA: On email.

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1 COMMISSIONER: Sorry?

2 MR MATHEBULA: On email.

3 COMMISSIONER: What?

4 MR MATHEBULA: The email said from the

5 Commissioner when he responded to what I said to him this

6 is the feedback from the team.

7 COMMISSIONER: Yes.

8 MR MATHEBULA: He responded to say I

9 don't deal with junior people.

10 COMMISSIONER: And there you said earlier

11 that's where the matter rested.

12 MR MATHEBULA: And I said in respect of

13 those – on those exchanges that's where the matter rested.

14 COMMISSIONER: No, that's not what you

15 said. Just look if you want to read – hear the record

16 again?

17 MR MATHEBULA: No, they –

18 COMMISSIONER: You said there is where

19 the matter rested, not where the email rested.

20 MR MATHEBULA: Yes, but can I finish,

21 Judge?

22 COMMISSIONER: Certainly.

23 MR MATHEBULA: So I – because me and the

24 Commissioner we used to converse and on this matter we did

25 converse.

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1 [12:20] And on this matter we did converse and I did

2 indicate so how would he then deal with this matter. And

3 he indicated he was going to deal with the DG because the

4 person that was referred to, to him was junior.

5 COMMISSIONER: Yes. Okay. You wanted to

6 ask him questions.

7 PROF KATZ: Sorry, just one, you said

8 that he asked you to deal with the matter. The Judge asked

9 you what was meant. If he was dealing with the DG why

10 would he ask you to deal with the matter?

11 MR MATHEBULA: It is in the beginning

12 that he asks me to deal with the matter, at the first

13 meeting when we were sitting when he said this information

14 was shared and asked me to deal with it. And in my dealing

15 with it I wrote to the staff member concerned to say can I

16 have the information so that I can then institute due

17 process. The employee comes back to me to say listen, SSA

18 is reluctant to give us the information. They are going to

19 consult their lawyers which is in the email and finally he

20 says no. SSA is not going to provide this information, the

21 Commissioner must ask it from Mr X to which I then take

22 that information, pass it to the Commissioner and the

23 Commissioner responds, I do not deal with junior people.

24 Supposedly this person who is Mr X that the Commissioner

25 doesn't want to deal with. I then had a conversation with

1 him later to say so how are you going to deal with the
2 matter and he said, no, he will talk to the DG of the SSA
3 and I do know that the Commissioner and the DG of SSA quite
4 often conversed, quite often the DG of SSA came to SARS.

5 MS STEINBERG: Where, so –
6 MR KAHLA: Now, I need to just another
7 follow-up. You don't get the intercepts for some time.
8 You don't know what the situation around what is the
9 contents of those intercepts. Mr Mundie comes and
10 recommends certain actions to be taken. Was there – did
11 you ever get to discuss why you would proceed with getting
12 advice or recommendations from Mr Mundie in relation to
13 actions to be taken against other people when you still not
14 have established what are the allegations concerning him as
15 set out in those intercepts. Was there ever a follow-up
16 around the intercepts particularly in light of now getting
17 the request by Mr Mundie to investigate others?

18 MR MATHEBULA: So my response to that, Mr
19 Kahla, I indicated that I did not.

20 MR KAHLA: The next question I just
21 wanted to have, just on your chronology, very earlier on
22 you got the list from the Commissioner around people who
23 were to be investigated. You were uncomfortable with that
24 investigation. Could you help me just understand the shift
25 from that moment to the moment of the Mundie email that

1 What turns, Mr Kahla, what turns is that it's what then
2 happens post the memo because when the unit now reported to
3 me from the 1st of September administratively and then later
4 in 2018, 2017 Mr Gobi Makhanya comes and say here is a memo
5 that I want to suspend Mr Denath about who is part of that
6 list. I then say to him look, Mr Makhanya, on the basis of
7 the information that you have I am quite aware that this
8 specific member or staff member was subjected to some
9 process in the past. I can't support this action to
10 suspend him. He then leaves and – he then leaves and go
11 where he has gotten the authorisation to then suspend Mr
12 Denath but I was not involved in that.

13 MR KAHLA: Just in the ordinary course I
14 want, I need to understand you've made a lot about what
15 you're suggesting that Mr Mundie at the time of memo did
16 not report to you.

17 MR MATHEBULA: Yes.

18 MR KAHLA: Why was your support sought on
19 this matter if you had, you are not in the line of command
20 around it?

21 MR MATHEBULA: Because there was going to
22 be issues around criminal investigations that will have had
23 to be done and criminal investigations fall, fell within
24 Enforcement.

25 COMMISSIONER: Let me just tell you quite

1 you, the Mundie memo that you then support? Because it
2 deals with pretty much the same individuals that you had
3 been asked previously to suspend or to take investigative
4 actions in respect of.

5 MR MATHEBULA: No, it doesn't. Not all.
6 Not all. So I said that I was given a list of people that
7 were supposedly part of the rogue unit and unless you
8 insist I'm not going to give the names. But I'm quite
9 happy to give you those names in camera and I did indicate
10 to the evidence leader. At that point I said to the
11 Commissioner, I'm uncomfortable based on the information
12 that you have given me and how you say you got it. I do
13 not have anything to go on to investigate these people.
14 When later people unrelated plus the ones that one or two
15 that may have been in that list are mentioned and the
16 biggest thing for me here is we will register a criminal
17 case. In my un-lawyer mind I'm saying when a person says
18 we're going to register a criminal case I can't stop a
19 criminal case being investigated. When a person says to me
20 we must inform the South African police of their members'
21 involvement in criminal activities I thought I need to
22 support that.

23 When a member says the SSA must be informed of
24 their member's involvement in criminal activity, at the
25 very least I can do is to support. And I supported that.

1 frankly, I find it astonishing that it's reported that an
2 Exco member and the Commissioner have had a report from the
3 SSA that they have an intercept by a SARS official engaging
4 in conversation with alleged tobacco smugglers and that
5 nothing happens. Now you might say to me well it's not in
6 my area of responsibility, well whether it is not, I mean
7 you're an Exco member and I've just read again you're
8 saying that you, we need to rebuild and preserve the
9 reputation of SARS and so forth. How can one do that when
10 an Exco members who knows of an intercept between a SARS
11 official and alleged smugglers does nothing? How do you
12 build the reputation of SARS on that? And you say the
13 answer is well it's not my responsibility.

14 MR MATHEBULA: So, Judge, I'm sure we'll
15 take, we can take this one incident, I think this one
16 incident –

17 COMMISSIONER: It's a very important
18 incident.

19 MR MATHEBULA: No, it is a very important
20 incident but I think we can take this one incident and then
21 test what my actions were subsequent to that particular
22 incident.

23 COMMISSIONER: Well your actions were
24 nothing as I understand it.

25 MR MATHEBULA: But I didn't participate

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1 in Mr Denath's suspension.
 2 COMMISSIONER: Yes.
 3 MR MATHEBULA: I actually opposed it.
 4 COMMISSIONER: Okay, thank you.
 5 MR MATHEBULA: I actually and Mr Denath
 6 can be recalled here, I actually offered Mr Denath and his
 7 lawyers a chance –
 8 COMMISSIONER: Yes.
 9 MR MATHEBULA: - and said to him if ever
 10 my name were to be used in your disciplinary process you
 11 must insist that I be called as a witness if my name were
 12 to be used. You can call him back, he will testify to that
 13 because I –
 14 MS STEINBERG: No, we accept that.
 15 COMMISSIONER: Shall we move on or not?
 16 We've got –
 17 MS STEINBERG: No, I just say we accept
 18 that. We don't need to call Mr Denath back. But your
 19 signature triggered the sham investigation against him,
 20 that's the only point I'm making. Not that you later
 21 suspended him. That signature set the chain of events in
 22 motion.
 23 MR MATHEBULA: So – no. What Mr Denath
 24 was finally suspended on, I'm, and what Mr Gobi Makhanya
 25 had brought to me seemed to have been entirely very

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1 different to this, to this what Mr Yegen Mundie was talking
 2 about. It may have included that but in the main it was
 3 very different. As I said those charges had been dealt
 4 with before and I was uncomfortable and I wouldn't support
 5 it. I was very clear about that and I didn't support it.
 6 MS STEINBERG: Okay. Well then let's
 7 carry on with the chain of events. You mentioned the 1st of
 8 September which was a fateful day. On the 1st of September,
 9 Judge and panellists, there is another memo from Mr Yegen
 10 Mundie to Mr Hlengani Mathebula and this is called tactical
 11 intervention unit investigations and the recommendation
 12 identified members to seconded to the DPCI project. Now
 13 what this memorandum, it says "the purpose of this
 14 memorandum is to request from senior management authority
 15 for identified members to work on a project which has been
 16 established by the South African Police Service in order to
 17 have a dedicated investigative capacity to investigate high
 18 level of corruption and fraud within the tobacco industry.
 19 A syndicate which consists of SAPS, DPCI, FSS, TISA, BAT
 20 and SARS officials colluded in victimising and hampering
 21 the trade of competitors of BAT by making use of state
 22 resources in illegal searches, audits, raids, illegal
 23 inceptive communication". The background it gives is, it
 24 says "due the complexity of the syndicate it's been agreed
 25 that members of the South African Revenue Service would

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1 form part of the task team to address the syndicates
 2 operating within the tobacco industry especially the SARS
 3 officials" and it would appear this task team is the
 4 tobacco task team we heard about a couple of days ago.
 5 It then goes on to a heading investigation and it
 6 says "statements were obtained and senior members of SARS
 7 have been identified that are part of the syndicate that
 8 are conducting illegal activities within the tobacco
 9 industry" etcetera and that I would imagine refers to the
 10 10th of August memo, those people were identified within
 11 SARS. "Media releases of affidavits and evidence through
 12 Twitter accounts, Tobacco SA Espionage has posted crucial
 13 evidence on a daily basis. A criminal docket has been
 14 registered to WIT Johannesburg Central" it gives the case
 15 number "where a SARS official has been implicated in
 16 serious transgressions and criminal offences. A project
 17 has been established with the following objectives. To
 18 gather information pertaining to criminal activities of
 19 SARS employees surround the tobacco industry. This
 20 includes mainly syndicated crime but also includes singular
 21 offences" and then there are other objectives about
 22 gathering information and establishing working
 23 relationships with the other law enforcement agencies and
 24 reducing human risk, human frailties and their negative
 25 impact.

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1 It says that the workload of the different
 2 government agencies and it says what SARS will do, what the
 3 MK will do and what SAPS will do. What SARS will do is
 4 this. "SARS criminal investigations (tax evasion) and
 5 internal investigations will be conducted and are being
 6 dealt with as long term criminal and disciplinary cases of
 7 SARS employees". The findings are that there should be a
 8 joint task team between the various enforcement agencies.
 9 Well it actually says it has been established. So that's
 10 already been established.
 11 The following team members have been identified
 12 from SARS to assist the team and it lists five people. And
 13 then it says "the following resources are required. Two
 14 pool vehicles, the cost of travelling of the task team
 15 members should fall within the cost centre of the chief
 16 officer. Enforcement for purposes of secrecy and security
 17 of the task team members and a boardroom at Riverwalk will
 18 be used in the interim until a safe house has been
 19 identified for the task team members. The recommendations.
 20 It's urgently requested that the resources be made
 21 available immediately since the aforementioned agencies
 22 have already started the project and it will be crucial for
 23 the SARS members to be part of the project from the
 24 inception. The project plan has been drafted by the SAPS
 25 and a copy will be made available for SARS. The prediction

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1 is that the project will take approximately 6 months to a
 2 year".
 3 COMMISSIONER: Alright, just remind me
 4 what is that memorandum?
 5 MS STEINBERG: What do you mean, Judge?
 6 COMMISSIONER: Just remind me, that
 7 memorandum is written by?
 8 MS STEINBERG: So that again is written
 9 by Mr Mundie and signed by Mr Mathebula.
 10 MR KAHLA: And the date?
 11 MS STEINBERG: 1st September 2016.
 12 COMMISSIONER: That is your memorandum,
 13 is it, Mr Mathebula?
 14 MR MATHEBULA: Ja. That is.
 15 MS STEINBERG: Well the question I,
 16 before we get on to you explanation, the question I put to
 17 Mr Lebelo yesterday which he said I should direct to you or
 18 agreed I should direct to you is this. That one year ago
 19 SARS had said that this kind of activity and purchasing
 20 this kind of equipment is unlawful and I'm interested to
 21 know how the same organisation one year later thought it
 22 wasn't unlawful.
 23 MR MATHEBULA: Which equipment?
 24 MS STEINBERG: So "two pool vehicles, the
 25 cost of travelling of the task team members should fall

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1 within the cost centre of the chief officer, Enforcement
 2 for the purposes of secrecy and security of the team
 3 members, a boardroom at Riverwalk will be used in the
 4 interim until a safe house has been identified for the task
 5 team members". Now you will recall that the so called
 6 rogue unit was said to be rogue because of secrecy, because
 7 of intelligence activities, etcetera. Now this suggests to
 8 me safe houses, secrecy, special vehicles, protecting
 9 identities, that this is setting up precisely the kind of
 10 intelligence unit that SARS had said the year before was
 11 unlawful.
 12 MR MATHEBULA: Okay. So I think we
 13 should just answer the issue around the comments as you
 14 ask. So there was no equipment that I have authorised be
 15 purchased. Two, pool vehicles are staff vehicles that will
 16 have been, would be accounted for by the SARS fleet. The
 17 cost centre being in the chief officer's cost centre, that
 18 will be on normal business because it will have, the cost
 19 centre will have to be controlled by a chief officer for
 20 purposes of making sure that what has been dispensed there
 21 the chief officer will know and to my knowledge unless
 22 something that I not know which was very unlikely, has been
 23 done there's nothing that untowards, that was done in that
 24 cost centre when I was in control of it. A boardroom at
 25 Riverwalk, a boardroom was actually at my insistence that

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1 this team can't operate anywhere else other than a SARS
 2 building where they can, their movements are known. So
 3 that was my insistence. The issue of the safe house, it
 4 was never a safe house that was utilised but that is beside
 5 the point. The point is that it was mentioned here and I
 6 think that was simply an oversight on my part.
 7 COMMISSIONER: No, but just, doesn't it –
 8 just read that again. It said a boardroom until you find a
 9 safe house.
 10 MR MATHEBULA: Yes, so –
 11 COMMISSIONER: So – no, just stop for a
 12 minute. I'm slow, Mr Mathebula. Please. A boardroom,
 13 not, you weren't going to use the boardroom always, we're
 14 just using it as a temporary thing and then we'll go to a
 15 safe house. Now I don't quite understand your answer that
 16 you insisted that it should all be or you should always
 17 have the boardroom.
 18 MR MATHEBULA: Ja. So, Judge, maybe let
 19 me give you a bit of background on this matter because I –
 20 COMMISSIONER: Sorry, could you just tell
 21 me what you meant by, you know which is correct? Was this
 22 going to be a boardroom that would be permanent or a
 23 boardroom until you have a safe house?
 24 MR MATHEBULA: It was a boardroom that
 25 the, that will be permanent that this team will have to

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1 operate from.
 2 COMMISSIONER: But it says until a safe
 3 house.
 4 MR MATHEBULA: Now that part I said that
 5 may have been my oversight and hence I'm saying if you
 6 indulge me I could give you a bit of an explanation on how
 7 –
 8 COMMISSIONER: Just a minute, you say it
 9 may have been an oversight, was it an oversight?
 10 MR MATHEBULA: No, it was an oversight.
 11 So if I, if you indulge me I can give you –
 12 COMMISSIONER: Yes, certainly. I just
 13 want to hear the –
 14 MR MATHEBULA: No. That's fine.
 15 COMMISSIONER: - answers to questions,
 16 you understand that.
 17 MR MATHEBULA: Yes.
 18 COMMISSIONER: It's very important that I
 19 should not get it wrong.
 20 MR MATHEBULA: Ja.
 21 COMMISSIONER: For your interests that I
 22 should not get it wrong so I should get clear answers from
 23 you.
 24 MR MATHEBULA: That's true.
 25 COMMISSIONER: Do you understand that?

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1 It's in your interests otherwise I make a mistake and then
 2 everyone says but you didn't listen to me.
 3 MR MATHEBULA: Ja, no that's true. So I
 4 made this explanation to Advocate Steinberg when I met with
 5 her to say that this memo in effect had been doing a to-ing
 6 and fro-ing between myself and the Commissioner for some
 7 time before I finally signed it on the 1st of September.
 8 [12:40] Now why was there need for this to-ing and fro-
 9 ing? It was because in the initial memo that there were a
 10 lot of things which I thought merit some of the things that
 11 I had read about in the media. And I insisted that that
 12 memo be changed drastically to reflect that which finally
 13 ended up being what I had signed. And the reason I'm
 14 saying it was an oversight is because that last part I
 15 potentially – I then did not see that because I had
 16 insisted, the rest of the other things had now been done in
 17 the manner that I had asked, so that one last sentence was
 18 not. And to mitigate that when the matter was then raised
 19 and this memo was leaked in the media I insisted that
 20 officers be found, I insisted that they are collocated with
 21 the internal investigation unit which Mr Denath and his
 22 colleagues had protested that they cannot be located with
 23 them and I insisted that there was no way that this team
 24 was going to operate anywhere else other than an identified
 25 SARS building.

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1 COMMISSIONER: Well that's my difficulty
 2 let me tell you is that this was foremost in your mind.
 3 You insisted on this and yet there's an oversight. I would
 4 have thought that is the one thing in the memorandum that
 5 there'd not be an oversight on. But anyway you say it's an
 6 oversight.
 7 MR MATHEBULA: It was.
 8 COMMISSIONER: Well you know, you've
 9 heard what I say it astonishes me, but do you want to say
 10 any more about why it was an oversight?
 11 MR MATHEBULA: No, no I can't say anymore
 12 other than the fact that the reason I say it went to and
 13 fro-ing and this is the part, Judge, that I said to you in
 14 my consultation with you that I will have been
 15 uncomfortable saying, but let me say it anyway because
 16 we're sitting here –
 17 COMMISSIONER: Sorry. Don't feel – say
 18 anything you feel uncomfortable about. I'm not asking you
 19 to put yourself in discomfort. Do you understand that?
 20 MR MATHEBULA: No, no it's important that
 21 –
 22 COMMISSIONER: If you feel –
 23 MR MATHEBULA: - because the other
 24 members were not there when we spoke. This memo for two
 25 weeks or so Yegan had come to me to say I must sign this

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1 memo and I was uncomfortable. And I said to the
 2 Commissioner because this unit really reports to you I will
 3 want you to sign the memo. The Commissioner on one day
 4 when we were sitting, I think it was after an Exco meeting,
 5 in his office here in Hilton, came to an office next to
 6 mine and said can we walk downstairs. We walked downstairs
 7 and he requested that we leave our phones and I walked down
 8 with him. I did not have any reason to doubt or to suspect
 9 anything or let me say I didn't suspect that there could be
 10 anything. We went, we sat in my car and the Commissioner
 11 called me by my clan name and said please sign that memo.
 12 And I said but why. He said sign, just sign the memo. I
 13 said I'm still uncomfortable, he said no they have included
 14 the changes you have requested, please sign the memo. I
 15 said but I'm uncomfortable. He said no please sign the
 16 memo. Then he related a story to me which I'm going to
 17 relate now. He said to me Makhuba I was with these people
 18 and these people said to me tell your kin that we know
 19 where he stays, we know where he comes from, we know which
 20 school he had gone to. That sent a chill down my spine on
 21 that day because it appeared a very ominous threat and that
 22 may explain the oversight that I later then had on the
 23 matter. But I can't excuse the fact that I had an
 24 oversight, but I need to explain that this memo had gone
 25 to-ing and fro-ing and subsequent to that conversation I

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1 then signed the memo. But the suggestion that I had put
 2 had been put –
 3 COMMISSIONER: Yes.
 4 MR MATHEBULA: - and that specific line I
 5 had not –
 6 COMMISSIONER: Well that suggests that
 7 you might have signed something you didn't want to sign,
 8 but it doesn't suggest that it's an oversight, quite the
 9 opposite. So was it an oversight, or was it – did you feel
 10 under duress to sign it? Which one is it?
 11 MR MATHEBULA: Look I'm saying that –
 12 COMMISSIONER: Sorry, I must insist, Mr
 13 Mathebula, that we get answers. The question is –
 14 MR MATHEBULA: I would say it was under
 15 duress then.
 16 COMMISSIONER: It was under duress, not
 17 an oversight. Correct?
 18 MR MATHEBULA: Ja.
 19 MS STEINBERG: But you said you were
 20 comfortable signing this earlier.
 21 MR MATHEBULA: Yes but I'm saying to you
 22 that this memo, the stuff that I had requested be included
 23 were included and having had the conversation that I'd now
 24 had everything that's here other than that specific line
 25 looked exactly as the thing that I had worked on. And this

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1 happens at the back of this specific conversation. So I
 2 was taking personal responsibility here when I'm saying
 3 it's an oversight on my part, but I need to make that
 4 within the context of what had happened earlier.
 5 MS STEINBERG: But that doesn't explain.
 6 You told the Judge you signed under duress. You say that
 7 actually the memo had been changed so that you were
 8 comfortable with it. Now it's either one or the other.
 9 MR MATHEBULA: The oversight relates to
 10 that sentence, that specific sentence. The Judge then says
 11 it then appears that you may have signed this under duress
 12 and it can't be both. So which is it going to be? And
 13 then I said well then I signed it under duress in that
 14 instance, but it's not what always I have thought about it
 15 as signing under duress. So that specific line I have
 16 acknowledged that I have taken a personal responsibility
 17 that no given that the rest of the things that are there I
 18 may have necessarily then missed that. But there is that
 19 background on this specific matter.
 20 MS STEINBERG: I'm afraid I don't
 21 understand.
 22 COMMISSIONER: Well that's the answer.
 23 Let's –
 24 MS STEINBERG: Okay.
 25 MR KAHLA: Judge, just a quick question.

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1 Did the Commissioner ever tell you why he saw fit that you
 2 should sign and not him?
 3 MR MATHEBULA: I had insisted many times
 4 that he must sign it because the team was reporting to him,
 5 but in this instance he insisted that I should be the one
 6 signing it.
 7 MR KAHLA: But did he ever explain to you
 8 why he was not going to be the one signing given that the
 9 team reported to him and not you?
 10 MR MATHEBULA: No, no in that instance he
 11 didn't. But if you then take into account what then
 12 subsequently happens I can fully understand why he wouldn't
 13 have.
 14 MS MASILO: Mr Mathebula, I'm struggling
 15 with a few things. I'm just going to go back to the issue
 16 of the intercept. My struggle there is the Commissioner
 17 gives you an instruction to deal with the matter as a chief
 18 officer of SARS, you deal with a junior person at SSA, you
 19 then send an email or forward an email to the Commissioner,
 20 I mean a response from the junior person saying the
 21 Commissioner must meet the contact, somebody from SSA. And
 22 so you didn't do what the Commissioner asked you to do, you
 23 didn't execute the instruction at your level. I struggle
 24 with it and with regards to this memo, I mean you said this
 25 memo had been going to and fro and it still had something

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1 that you don't like and you just signed the memo. I'm not
 2 belittling what you've just explained you know as to the
 3 pressure and all that, but I struggle with it as well.
 4 MR MATHEBULA: So back to the SSA matter,
 5 I didn't deal with this SSA member, I dealt with Mr Denath
 6 who was the manager. So he's the one that dealt with the
 7 person that the Commissioner classified as junior. I
 8 didn't deal with that person.
 9 MS MASILO: But the instruction was given
 10 to you by the Commissioner to deal with the matter isn't
 11 it?
 12 MR MATHEBULA: Yes but I subsequently
 13 reported back on the matter on how I was dealing with the
 14 matter. I requested – the information was not provided to
 15 me, there was nothing that I could do any further. And
 16 once it was suggested that the Commissioner, it was not
 17 suggested that the chief officer must, the matter now had
 18 been escalated to say the Commissioner must request the
 19 information. And remember these are people that have been
 20 in this industry for many years and I really have no reason
 21 to doubt what they are asking of me to do. And I then
 22 processed that information in the manner that I'm asked to
 23 do, that's number one in respect of that particular issue.
 24 In respect of this one and if you look at that memo you
 25 will see that I actually initialled it at the bottom

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1 because I thought that all the information that I had
 2 requested that be done is there. And yes I was off sighted
 3 on that specific one line. The rest of the information I
 4 can put my hand on my heart and say that information if you
 5 gave it to me today and said this is what needed to be done
 6 I would have done it other than that one aspect about a
 7 safe house.
 8 MS STEINBERG: Well I've got a couple
 9 more questions.
 10 COMMISSIONER: On this subject?
 11 MS STEINBERG: Yes. Did you, at the
 12 time, report to anybody that you had been threatened in
 13 this way?
 14 MR MATHEBULA: Report to anybody such as?
 15 MS STEINBERG: The Minister, the
 16 President.
 17 COMMISSIONER: That you'd been
 18 threatened.
 19 MS STEINBERG: That you you'd been
 20 threatened in this way. I mean your family had been
 21 threatened, did you tell anyone, did you take steps?
 22 MR MATHEBULA: No I actually didn't. I
 23 actually didn't in this regard, I mean that is something
 24 that I would not have fathomed that - the Commissioner
 25 didn't say he personally was threatening me, he didn't say

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1 he was threatening me. He said these people that he was
 2 dealing with and I asked to be provided with this
 3 information, he didn't provide me with that information of
 4 the people that he was talking about. But he was clearly
 5 concerned himself and that made for my fear around the
 6 issue, but I thought that's okay, this was the first
 7 incident. If you want to deal with whether I ever reported
 8 any matter around threats, yes I have.
 9 MS STEINBERG: No, no I'm asking that
 10 matter.
 11 MR MATHEBULA: This specific one –
 12 MS STEINBERG: Yes.
 13 MR STEINBERG: I didn't report it to
 14 anybody.
 15 MR KAHLA: And these people is that
 16 members of the tobacco industry or is it other people. Who
 17 is these people?
 18 MR MATHEBULA: I don't know, the
 19 Commissioner has never told me who those people were.
 20 MR KAHLA: You didn't find it puzzling
 21 that he didn't give you an indication around the people who
 22 have this information about you?
 23 MR MATHEBULA: Mr Kahla, the Commissioner
 24 was sufficiently or looked sufficiently scared himself in
 25 that instance. And I really did not process it further

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1 than the fact that the Commissioner had for over a period
 2 of two weeks pleaded with me to sign this memo and I had
 3 requested that certain changes be made and those changes
 4 had subsequently then been made but one line that I had not
 5 necessarily, upon my signing, I had not seen or I had not
 6 taken note of – had been this issue around the safe house.
 7 Only that I was off-sided on that and as I say, you could
 8 off side that or you could say, as the Judge indicate to
 9 me, that I was under duress, I will accept that.
 10 COMMISSIONER: No, no I didn't indicate
 11 to you, I asked you. I don't know, I wasn't there, I don't
 12 know who's doing what. I asked you to tell me was it
 13 because you made a mistake or because you felt under
 14 duress? Your answer was you felt under duress. Now please
 15 don't say I told you, you were under duress, I had no idea.
 16 MR MATHEBULA: That's right, that's okay.
 17 There would be other instances that will prove that anyway.
 18 MS STEINBERG: I asked a question which
 19 you haven't answered. My question was in 2015 SARS reached
 20 the view that it was unlawful for it to have any
 21 intelligence gathering capacity at all. And SARS spent
 22 millions and millions on this and as the whole country
 23 knows kicked out a whole lot of people, criminal charges,
 24 disciplinary charges. One year later there is a memo
 25 saying we need to set up an intelligence gathering

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1 committee. I just don't understand the contradiction and I
 2 wonder if you can explain it.
 3 MR MATHEBULA: There is no intelligence
 4 gathering committee here. There's a team that will look at
 5 the issues around tobacco. There's a team that must, who
 6 must protect their identity because they are going to be
 7 dealing with criminal syndicates, so you needed to make
 8 sure that this team you do not necessarily expose them to
 9 harm. And this is the reason why their movements needed to
 10 be controlled or monitored in a manner that would not
 11 expose them to harm.
 12 MS STEINBERG: No, no this memo says that
 13 the project as it's very first objective to gather
 14 information pertaining to criminal activities of SARS
 15 employees surrounding the tobacco industry. Now gathering
 16 information is what SARS had called intelligence
 17 activities. That's what intelligence is at the first
 18 level, gathering information and it goes on to say these
 19 people must be allowed to operate in secret. How is that
 20 different to what SARS said the year before was unlawful?
 21 MR MATHEBULA: I can't answer for what
 22 SARS had done a year before because I wasn't there. But I
 23 can say to you that this team was to join a team from the
 24 SAPS from the South African Security Agency which means
 25 that the intelligence work will be done by the South

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1 African Security Agency.
 2 MS STEINBERG: Well you know as we sit
 3 here today what we know from witness X is that that task
 4 team did not follow due process. It didn't even register
 5 the cases. We also know it didn't go after one member of
 6 the tobacco industry, it only went after people like Mr
 7 Denath. And as we sit here today we also know that not one
 8 member of SARS has been found guilty of any of these
 9 allegations. So I'm intrigued that you sit here today and
 10 you say it was all justifiable.
 11 MR MATHEBULA: No so again I say,
 12 Advocate, that if you look at the memo that was sent to
 13 Chief Officer Enforcement by witness X you will see that
 14 witness X does say that what I recommended, I did not
 15 recommend that things must not be registered on the SARS
 16 case -
 17 MS STEINBERG: Correct.
 18 MR MATHEBULA: - system and all that,
 19 what I recommended was justifiable in respect of criminal
 20 investigations which means the rest of the things that
 21 needs to follow needs to follow. As I sit here today there
 22 has never been an instance where anyone had come to me and
 23 say the memo you signed, the people who had ended up doing
 24 wrong things with it reported to me, no one did that. And
 25 to that extent, Advocate, when I have signed something that

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1 I think is lawful and the people then go and do something
 2 to the contrary to what they were authorised or supported
 3 to be done I will at least expect that people are able to
 4 say listen there is this thing that has been happening and
 5 it's happening under your name. That did not come to me.
 6 MS STEINBERG: How long were you the
 7 Chief Officer, the Acting Chief Officer of Enforcement,
 8 when did that end?
 9 MR MATHEBULA: It ended on the 30th of
 10 June.
 11 MS STEINBERG: 2017?
 12 MR MATHEBULA: Yes.
 13 MS STEINBERG: Because it's in that
 14 period that this task team went about its way disregarding
 15 governance and bringing these sham cases against internal
 16 employees. And in fact the one thing they didn't do was
 17 Enforcement in the tobacco industry. Now I'm saying that
 18 happened under your watch.
 19 MR MATHEBULA: No it didn't.
 20 MS STEINBERG: No these events took
 21 place, it was signed into being on the 1st of September
 22 2016. As the memo says we've already started. Now you
 23 were in charge of it until the middle of – for a good six
 24 months after that. It did a lot in that time.
 25 MR MATHEBULA: No, Advocate, on the 4th

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1 of April 2017 that – Mr Gobi Makhanya was appointed,
 2 slightly prior to that, but on the 4th Ms Mandisa Mbekeni in
 3 my office, wrote a memo to Mr Denath and witness X to say
 4 given that Mr Makhanya has now been appointed Acting
 5 Executive we now please note that you are now going to be
 6 reporting to him and the reporting lines was never to me.
 7 [13:00] So I can't, sitting here take responsibility for
 8 things that were being reported to the Commissioner, the
 9 operations or cases that these people were reporting to the
 10 Commissioner about or not reporting to the Commissioner
 11 about this team was under the control fully of the
 12 Commissioner. I may have for a very short period have been
 13 responsible for that team but the subsequent events and
 14 those events included, that's the reason why those people
 15 were taken away from me, included the fact that I would be
 16 given an instruction, and that instruction I referred to,
 17 please appoint Mr Gobi Makhanya as an executive and I said
 18 no we have to follow process, please appoint Mr Yegan
 19 Mundie as senior manager, I said no we need to follow, we
 20 need to follow process and when I couldn't conclude those
 21 processes that team was taken away from me and reported
 22 fully to the Commissioner. So anything they have done
 23 through that I can't answer for it unfortunately, the
 24 Commissioner can answer for that.
 25 MR KAHLA: When were they taken away from

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1 you, the period, date?
 2 MR MATHEBULA: That team in fact the,
 3 hence I'm referring to the memo of the 4th of April 2017.
 4 So that would have been the time that it totally moved
 5 because that's the date that Mandisa then gave the team
 6 back to the office of the Commissioner.
 7 MR KAHLA: I just need further clarity.
 8 There was a time this team was fully within the office of
 9 the Commissioner. Had no reporting lines to you, there was
 10 some co-location.
 11 MR MATHEBULA: Ja.
 12 MR KAHLA: With the team that Mr Denath
 13 was in.
 14 MR MATHEBULA: Ja.
 15 MR KAHLA: And I understand that at some
 16 point it moved from just a co-location, it moved into
 17 reporting to you, am i correct about that? Moved into
 18 reporting within Enforcement.
 19 MR MATHEBULA: No administratively only.
 20 It fully, fully reported to the office of the Commissioner
 21 and I make that, I make that in my submission.
 22 MR KAHLA: So functionally it stayed with
 23 the Commissioner.
 24 MR MATHEBULA: It stayed with the
 25 Commissioner.

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1 MR KAHLA: Administratively it was with
 2 you?
 3 MR MATHEBULA: Yes.
 4 COMMISSIONER: Yes, more?
 5 MS STEINBERG: Yes. I just note that the
 6 memo says the work had already started.
 7 MR MATHEBULA: Yes. That is from the
 8 side of the SAPS and the SSA.
 9 MS STEINBERG: I see. Just finally
 10 before we move off this I really, really don't understand
 11 SARSs change of heart about intelligence gathering and to
 12 round that off I must draw your attention to a press
 13 release 15 June 2017 and yesterday Mr Lebelo said that one
 14 of the wrongdoings of Mr Pillay is that he entered into an
 15 arrangement with the US Embassy in South Africa to get
 16 certain Enforcement equipment from them which they donated.
 17 Mr Lebelo said that was part of the evidence of the rogue
 18 activities that he was in charge of. Now funny enough that
 19 donation, the equipment that was donated was only received
 20 by SARS in June 2017 and it includes vehicle GPS units,
 21 field binoculars, night vision goggles, handheld thermal
 22 imagers and in June 2017 SARS proudly received that
 23 donation from the US Embassy, from the US government and
 24 this is the very same donation that year before SARS had
 25 said Mr Pillay had negotiated this and that was rogue. Can

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1 you explain that contradiction to me?
 2 MR MATHEBULA: No I can't. I was not
 3 involved. I don't know what you are talking about, so I
 4 can't.
 5 MS STEINBERG: Who do you think can
 6 explain -
 7 MR MATHEBULA: The Commissioner can.
 8 MS STEINBERG: The Commissioner?
 9 MR MATHEBULA: Yes.
 10 COMMISSIONER: Are you finished with this
 11 part?
 12 MS STEINBERG: This part yes.
 13 COMMISSIONER: Oh I would like to have a
 14 bit of a break.
 15 MS STEINBERG: To break.
 16 COMMISSIONER: And I think -
 17 MS MASILO: Can I -
 18 COMMISSIONER: Yes, no please.
 19 MS MASILO: Ms Steinberg I just need to,
 20 I just need clarity on something. With the alleged threat
 21 that had been made against your family and which resulted
 22 in you, I mean and the Commissioner asking you to please
 23 sign the memo which you then signed does that mean that
 24 that unit was formed as per the insistence or the
 25 instruction of the Tobacco industry to SARS?

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1 MR MATHEBULA: I would be lying if I said
 2 it as the Tobacco industry because I was never given the
 3 names. Whether it was the Tobacco industry or any other, I
 4 don't know. All I know is that the Commissioner came to
 5 me, looking quite concerned to say listen just sign this.
 6 So the Commissioner can be the only person that can answer
 7 that. I really can't answer that.
 8 MS MASILO: Thank you.
 9 COMMISSIONER: Okay we'll break. I don't
 10 carry a watch, what is -
 11 MS STEINBERG: It's now 5 past 1.
 12 COMMISSIONER: What time, 2 o'clock, we
 13 see Mr Lebelo at 2 o'clock, I had invited him -
 14 MS STEINBERG: Yes but I have more and I
 15 think Mr Mathebula also wants to say more.
 16 COMMISSIONER: No I understand that but I
 17 just think perhaps we had better just as a courtesy to Mr
 18 Lebelo just see him at 2 o'clock for a short while just to
 19 see where we are and where we're going to if you don't
 20 mind.
 21 MR MATHEBULA: No that's fine.
 22 COMMISSIONER: Is that okay and then
 23 we'll continue.
 24 MS STEINBERG: Okay thank you Judge.
 25 COMMISSIONER: Thank you very much.

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1 [INQUIRY ADJOURNS INQUIRY RESUMES]
 2 [14:04] COMMISSIONER: Thank you. Good
 3 afternoon, Mr Lebelo.
 4 MR LEBELO: Good afternoon, Judge.
 5 COMMISSIONER: You know we're running a
 6 bit later then we through we would and I would certainly if
 7 it's possible, it depends on what Advocate Steinberg tells
 8 me about how she sees things. It would be preferable to
 9 finish your evidence today if possible. So I wouldn't mind
 10 if you would remain to see how far we get. But in the
 11 meantime you said you wanted to say something and I said
 12 well you can say it at 2 o'clock. So if there's anything
 13 you want to say, are you happy to stay this afternoon, you
 14 know for a while?
 15 MR LEBELO: Yes.
 16 MS STEINBERG: Judge, may I remind you to
 17 swear the witness in.
 18 COMMISSIONER: Yes. You affirm that the
 19 evidence you will give will be the truth, the whole truth
 20 and nothing but the truth, if so say I do.
 21 EVIDENCE OF MR LEBELO
 22 MR LEBELO: So help me God. Thanks so
 23 much Judge. Ja, I think the issue that I want to address
 24 before the Commission is the issue that occurred yesterday
 25 in relation to how I felt I was treated. I had the benefit

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1 of watching all the, most of them but all the colleagues
 2 that came here to give evidence and I thought the way I was
 3 treated yesterday was very different and I wonder why was
 4 it different now. I'll start with the background. So you
 5 mentioned yesterday Judge correctly so that I came to your
 6 office quite a number of times, talking about my appearance
 7 and what was not said yesterday was that appearance was me
 8 pleading with the Commission that I'll prefer to come
 9 before the Commission and share what I said yesterday and
 10 what I said yesterday was the following. That there has
 11 been an established narrative and I wanted to clear that
 12 narrative and how I wanted to clear the narrative was to
 13 say at the time of the decision taken four years ago to
 14 prefer charges against the colleagues these were the
 15 processes and these were the facts and therefore by so
 16 doing convincing the Commission that with the facts that
 17 were there anyone who is the head of labour relations would
 18 have taken the same decision and of course things changed
 19 and other things became different but at the time of making
 20 a decision those were the facts. Of course I came to your
 21 office four times and after some conversations I committed
 22 that I'm so determined to come here and give evidence to an
 23 extent that I said I'm going to get files and I must say
 24 now that the other observation that I made is that even
 25 some of the colleagues were coming here without files, they

1 were saying what they want to say but they were never
 2 exposed to what I was exposed to yesterday. But I thought
 3 I would bring files and the intention was simple. The
 4 intention was to say these are the files that were before
 5 me at the time of making the decisions that I made. You
 6 asked me to meet with Advocate Steinberg I met with her,
 7 she asked me what do I want to present, I told her it's the
 8 files that are before her there. She didn't tell me that
 9 she wants to present anything.

10 I sent an email and I said I want to add two,
 11 three things, do you want to add anything and there was a
 12 response that says no, we'll add this from the Judge, I
 13 then sent, then I got a document from the, I mean the
 14 document from the advocate about the other documents that I
 15 wanted to speak to. I sent another email wanting to know
 16 is there anything that I must prepare or be given in
 17 advance and there was no response. It was only when I came
 18 back on Tuesday from the holiday that I found a file, an
 19 envelope in my office which envelop which is this document
 20 that is here, with all these documents that are here. I
 21 wrote an email and I said what is this document and I was
 22 informed that this document is what you are going to be
 23 asked in the Commission by Advocate Steinberg and I said
 24 I'm seeing legal opinions here that are referred to can I
 25 be preferred with those legal opinion as part of

1 preparation. I didn't get a response. The following day I
 2 repeated the same thing. I said please don't forget, I
 3 know you are busy, don't forget to send me the legal
 4 opinions that are you referring to in this document. What
 5 is surprising is that in this document, this file there
 6 were copies of invoices, legal invoices. I didn't know
 7 what those legal invoices do. Some of them, one of them is
 8 four years ago. One of them is two years ago. I didn't
 9 know what they mean, I didn't know what questions are going
 10 to be posed on me on those invoices. But what is even more
 11 surprising is that some of the invoices that are here the
 12 acting Commissioner of SARS asked me to ask the lawyers
 13 what are, what happened there when Mr Moyane was briefing
 14 people and the lawyers responded and CCd the Commission.
 15 So when I saw the invoice I didn't even know because I
 16 thought it was, and by the way the Judge responded to that
 17 email from the lawyers and said I'm fine with the response.
 18 Now I get to this Commission obviously because I've seen a
 19 lot of colleagues coming here, I never felt or sensed some
 20 intimidation or hostilities when other colleagues were and
 21 I must emphasise that they were here talking from oral
 22 evidence and I've never seen hostilities and I decided that
 23 I'm going to come here because there were no hostilities
 24 and I said yesterday that it was not a simple decision to
 25 come here. If I don't come here and clear my name I'll be

1 carrying this baggage of being called a hitman who
 2 suspended people. If I come here and speak I may be
 3 hurting people and I must say Judge I didn't say it
 4 yesterday, I said it between the two of us.

5 COMMISSIONER: Well be careful what you
 6 say about, between the two of us because I -

7 MR LEBELO: No, it's official.

8 COMMISSIONER: I'll also say a few things
 9 about, between us.

10 MR LEBELO: No it's official, it's not,
 11 but yesterday I said - but what I said is that I remember
 12 the night, the day, the afternoon when I was given the copy
 13 of the Sikhakhane report. The same night there was a
 14 breaking in my house. They stole my laptop and that report
 15 and they left money and my Tablet. Since that day my
 16 family and myself never had peace. There was a time where
 17 I had three private security cars that must fetch me, my
 18 wife and my kids. It continued for almost 2 years. SARS
 19 came to my office and installed cameras and those cameras
 20 never helped. The criminals continued coming into my
 21 house. I was provided security it never helped. I ended
 22 up leaving and buy an expensive house that I would not have
 23 bought because I needed an estate where my kids can be
 24 safe. It was a situation that every time if there is a
 25 noise in the yard my kids have to run under the table, I

1 mean under the bed and I know that Advocate Sikhakhane
 2 called me, actually Advocate Sikhakhane started complaining
 3 to us that he's under threat and he wrote us letters. We
 4 failed to help him. He told me that he received so much
 5 threats that he has to change residence, Advocate
 6 Sikhakhane, he's a senior counsel who investigated and I'm
 7 mentioning this not to seek sympathy, I don't seek
 8 sympathy, I'm mentioning this to demonstrate that contrary
 9 to the views, the process of 2014 to today was very
 10 traumatic. Very, very traumatic for all of us and that's
 11 why the Commission for us was an opportunity to speak. Now
 12 the difficulty with what happened yesterday is that I come
 13 here and I get interrogated, cross-examined with serious
 14 hostilities that somebody must prove that I'm wrong. I
 15 never thought that is what the Commission was meant for.

16 I thought the Commission was meant for you come
 17 and you share the evidence at the time, you are treated
 18 with trust, you are trusted until proven otherwise. But I
 19 was treated like a criminal or a murderer in a court who
 20 must prove his innocence and in that treatment my
 21 fundamental rights were violated and let me tell what is
 22 violated and unfortunately there is a big Commission that
 23 is taking place and I think that Commission helps us to
 24 also learn lessons. If Advocate Steinberg wanted to
 25 interrogate, to cross-examine on behalf of Mr Pillay,

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1 because that's what he was doing yesterday, he was cross-
 2 examining me on behalf of Mr Pillay's -
 3 COMMISSIONER: How do one, why do you say
 4 that? I've told you before she will examine on my
 5 instructions.
 6 MR LEBELO: Okay.
 7 COMMISSIONER: How can you make that
 8 allegation? It's unacceptable that you just make an
 9 allegation against Advocate Steinberg of gross impropriety
 10 and you simple put it out there. You've heard me say she
 11 is being instructed by this Commission, she works with the
 12 Commission and in the interest of the Commission and she is
 13 not working for Mr Pillay at all. Let's be clear about
 14 that.
 15 MR LEBELO: That's fine.
 16 COMMISSIONER: I'm tired of these
 17 allegations simply being thrown out of gross impropriety
 18 and I'm getting a bit tired of it. People must be careful
 19 what they say and they must not just insult people.
 20 MR LEBELO: That's fine. Judge, the
 21 point I'm making as I'm closing on my submission is that I
 22 should have put my evidence and somebody must apply to
 23 cross-examine me because in that cross-examination I would
 24 have had a right, I should have been informed that I'm
 25 going to be cross-examined so that I prepare myself for

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1 cross-examination, number 1. Number 2, I would have been a
 2 right to a legal representation. Even criminals who are
 3 cross-examined, the state provides them with legal
 4 representation and I was not provided with that, I was not
 5 even told that I'm going to be cross-examined. I met with
 6 Advocate Steinberg she never mentioned that I'm going to
 7 cross-examine you.
 8 Now I'm raising this issues in pain, in deep pain
 9 which pain I've raised before that I continue to struggle
 10 not to come to the painful conclusion that if you come to
 11 this Commission and you say certain things you are likely
 12 to be treated differently because those certain things are
 13 not palatable and I'm saying it with pain on my heart and
 14 the treatment of yesterday confirmed that. I said the
 15 following things as I close. I said I am here to detail
 16 what happened as a process and also I'm here to say what
 17 was in these file's evidence. I was never given a chance
 18 to say it because of hostile and very unreceptive cross-
 19 examination. Now what did I say, I said Sikhakhane did the
 20 investigation and said there is a unit that is unlawful.
 21 Martin Brassey, Advocate Martin Brassy did the same and
 22 preferred charged. Judge Kroon did the same and made an
 23 announcement and on the basis of that we had no reason but
 24 to prefer charges. Now I'm told that why do you think the
 25 unit was illegal. Is the three senior respected jurists

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1 including a retired Judge that came to that conclusion,
 2 it's not me. I wrote an email to the Judge and I said
 3 Judge if you want more details on this thing, call Advocate
 4 Sikhakhane, call Advocate Brassey, all of them because I
 5 didn't make the call.
 6 COMMISSIONER: Well let me tell you, I
 7 did call Advocate Sikhakhane and then I told that it was
 8 unlawful for me to do so. But there it is, you can't win
 9 here.
 10 MR LEBELO: Yes. So I'm asked why do you
 11 think the unit is unlawful. I didn't say the unit is
 12 unlawful, it's the investigation that's been instituted
 13 that says the unit is unlawful. I'm asked, did you ask for
 14 a legal opinion whether the unit is unlawful, I didn't ask
 15 for the legal opinion why the unit is lawful because three
 16 respected jurists came to that conclusion. I don't have
 17 the legal competency to say a unit is unlawful and it's for
 18 that reason that we have sourced those services to an
 19 institution outside.
 20 Now let me come to the ambush, trial by ambush.
 21 So I come here, I'm expected to respond, I'm asked to
 22 remember an opinion that was written four years ago. I'm
 23 not allowed to look at it I'm not allowed to read it. I
 24 was not sent, it was not sent to me when I asked for it,
 25 but I must sit here and respond to it and when I'm failing

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1 to respond to it the impression is created I'm called no
 2 you are selective in your thinking. In the last four years
 3 we have ran not less than 400 disputes in SARS. 230 almost
 4 of dismissals and you want me to remember what somebody
 5 wrote somewhere else. That is the one, the one and the
 6 explanation that was given by Advocate Steinberg doesn't
 7 hold water, she knows because if I had the opinions from
 8 this document why would I send two emails and ask for them.
 9 That is the first thing. The second thing it doesn't hold
 10 because you also had an opinion from Advocate, I forget the
 11 name, Trengove. Why didn't you send me the opinion from,
 12 you're sitting on the other side you are having an opinion,
 13 you're asking -
 14 COMMISSIONER: Are you talking to
 15 Advocate Steinberg or are you talking to us?
 16 MR LEBELO: No to Advocate Steinberg.
 17 COMMISSIONER: Well you're not allowed to
 18 talk to her. If you want to address the Commission you
 19 address the Commission.
 20 MR LEBELO: Okay. So there is a document
 21 by her side that I'm asked questions to respond to, I
 22 haven't been given the document, I've never seen it and
 23 under normal circumstances that is trial by ambush. You're
 24 ambushing me and when I don't answer you create the
 25 impression that he's forgetting and you create an

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1 excitement in the media, the media says that SARS executive
 2 can't remember his own document. Really now. In a
 3 democracy today. I get pained when I'm treated unjust and
 4 I can't keep quiet when there is injustice happening and I
 5 felt I was treated with injustice and I want to repeat
 6 Judge that I came here to tell the Commission what is the
 7 process that you have followed, what is in that file. The
 8 Commission can go and decide whether what I've said and
 9 whether in that file is correct or is not correct. I did
 10 not do the investigation. I was given a file with that
 11 says Mr A has committed the following things, my job is to
 12 implement the file. I don't have the competency, I can't
 13 question a retired Judge, I can't question a senior
 14 counsel, two senior counsels, I can't. Now this opinion
 15 that I was given yesterday, this one that was written by,
 16 that was said that it was written by Advocate Brassey, the
 17 impression that was given here yesterday was that this
 18 document was found in the SARS files and this morning Judge
 19 said no it was -
 20 COMMISSIONER: No, no, no you're quite
 21 wrong, which one is that?
 22 MR LEBELO: The one that Advocate Brassey
 23 -
 24 COMMISSIONER: Oh that Brassy, ja.
 25 MR LEBELO: So the Judge confirmed this

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1 morning that it was not found in the SARS files, it was
 2 found with Advocate Brassey. When I said yesterday I don't
 3 remember seeing that document I was called names. To date
 4 confirmed that I've never received this document. But
 5 already out there I'm an executive who cannot remember his
 6 own document in the public domain. I'm an executive who is
 7 incompetent and if that is the aim that aim has been
 8 achieved. But let me tell you about this document. This
 9 document doesn't say we must stop disciplining Mr Pillay.
 10 It doesn't say that. That is the impression that was
 11 created here yesterday. It's not true. I read this
 12 document last night, it's not saying that. It's saying
 13 something else. This document was, the next opinion of
 14 Trengove, the impression that was created here yesterday
 15 when I was refused to see the document was that this
 16 document says the activities of the unit was not, was not
 17 unlawful, it's not entirely correct. I read this document,
 18 I got it now at half past 11, I read this document, I
 19 finished it and it's not saying that. It's not saying that
 20 and I was put here under pressure to say that is what the
 21 document say, what are you saying, it's not saying that.
 22 Number 2 this document was written on the 1st of September.
 23 Mr Pillay resigned on the 6th of May. This document was
 24 written on the 1st of September, how am I expected to use a
 25 document that came in September to consider it for

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1 something that happened before because all that happened
 2 here was to prove my incompetence and I reject that
 3 incompetent. I'm not incompetent. I do my job with
 4 integrity at all times and I can prove that I do my job
 5 with integrity, if I'm given the opportunity by the
 6 Commission to do that. So I wanted to raise these things
 7 Judge -
 8 COMMISSIONER: Okay.
 9 MR LEBELO: Before we start and maybe
 10 even suggest, if the Commission allow that I rather be
 11 given an opportunity to present in October, if the
 12 Commission allow because the treatment that I got has made
 13 me realise that I may have to consult with lawyers because
 14 yesterday SARS offered me legal advice on Tuesday. I
 15 rejected it and I said to them you don't have to get legal,
 16 I don't have to get legal advice because where I'm going
 17 I'm just going to be presenting documents.
 18 [14:24] I think I must be given until October so that I
 19 meet again with the Commission and I am told whether I am
 20 going to come here and be and treated like all colleagues
 21 or I am going to come here and be interrogated and be
 22 exposed as if I'm incompetent. I'm not incompetent.
 23 Never. I've grown in this organisation in the last, I
 24 started here as a grade 7, I'm today a group executive
 25 through hard work and sweat. I'm well learned. I know

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1 what I'm doing. So I'll request that I'm given an
 2 opportunity in August, I mean in October to come, I'll have
 3 consulted my legal representative, I would've consulted the
 4 Commission, I'll know whether I'm coming here to present or
 5 to be cross-examined. If the Commission allows. Thank you
 6 so much.
 7 COMMISSIONER: Well let me just tell you
 8 one thing. Nobody comes to this Commission simply to make
 9 statements. They come here because this is a Commission of
 10 inquiry and you are welcome as you've been told so many
 11 times to come and present your files. But that doesn't
 12 mean that this Commission will not ask you questions about
 13 it. And if the questions don't get answered properly more
 14 questions will be asked and that will apply to every
 15 witness in which we are left with questions. It will apply
 16 to you, it will apply to everyone else because this is an
 17 inquiry and an enquiry is to inquire. And you know I went
 18 to look in the dictionary for the word, what it means to
 19 enquire because it seems that people didn't know what it
 20 meant and it said to ask questions and that's what we will
 21 do. There are many problems at SARS and we wish to get to
 22 the bottom of it and we will never get to the bottom of it
 23 if we just accept everything at face value although we've
 24 got questions. So you are welcome to come back and when
 25 you come back you are welcome to present what you want to

1 present but you will not expect that no one will ask you
 2 questions if we've got questions. So that's what you can
 3 expect from this Commission. That's what everyone can
 4 expect and if someone has given evidence here and no
 5 questions have been asked well then it's because we don't
 6 have questions. Nothing strikes us as something to ask.
 7 We've had something like 60 witnesses here and I've every
 8 time I've said it, if anyone wants to contradict this
 9 witness come and tell us. Now I've had a letter or two
 10 from after one of the two of the last witnesses, I'll deal
 11 with them. We said we'll contest that. Well we'll deal
 12 with it. I can't deal with everything at the same time but
 13 people will come here to give evidence and if there are
 14 questions to be asked they will be asked. So that's, if
 15 you don't want to come on that basis then don't come but
 16 it's not a platform for statements and whatever. People
 17 want to know what has been going on in SARS and the
 18 President has said please tell me and that's what we're
 19 trying to do. Let me just tell you about your files. You
 20 know at one discussion we had I raised with you because it
 21 had come out of the files this opinion from Brassey in
 22 which he had said you should only suspend a person if he's
 23 interfering with an enquiry and you must give him, as for a
 24 reason. I put that to you and then you said no there were
 25 other opinions. So you went off to your attorney, SARS'

1 attorney it seems, who then sent me a long letter, sent you
 2 a long letter copied to me, again it's a rather offensive
 3 letter but I've said so many times to you, how many times
 4 have I said to you, I don't care what people say about me.
 5 I really don't care. But there it is.
 6 A long letter and he'd obviously prepared I think
 7 two files on Mr Pillay, two files on Mr Van Loggerenberg,
 8 one file on Mr Richer I think and he went through those
 9 files and said this is what we had and he took and he went
 10 through each document, etcetera. And I read that letter.
 11 And I read all the files. So I know exactly what's in the
 12 files and I said well, Mr Lebelo has got his files he wants
 13 to come and tell us the evidence that you've, that you had
 14 on which you relied and you can come and you're welcome to
 15 come at any time again and you can tell us what is on your
 16 files so far as it's relevant. But certainly it's not
 17 going to be an opportunity to simply try these people again
 18 or to make wild allegations against them without some kind
 19 of proof and some kind of relevance. So you understand
 20 that as well. And I had said to you yesterday well do you
 21 really need all your files bearing in mind that I accept
 22 unreservedly that Advocate Brassey felt on the information
 23 he had been given at the time that there was a case to be
 24 made. But let me tell you what happens with that, it
 25 happens often with advocates. They are told by their

1 clients here's a whole a lot of facts, here's documents,
 2 here's witnesses and they draw claims or whatever the case
 3 may be. And it comes to the door of the court and they
 4 won't, witnesses won't give evidence. So it changes. So
 5 the fact that he had a reason to believe that there was a
 6 good case doesn't mean the case would've been proved. But
 7 I told you, I accept that there was at the time the charge
 8 sheets were drawn, I accept that there was in the view of
 9 Advocate Brassey and on what he had been told at that time,
 10 there was a case to meet. Now if you – I'm not sure why
 11 you want us to go through the files again once I accept
 12 that. But that's what you want, we'll see it in due course
 13 the relevance of that.
 14 But at the end of the day this is a big
 15 institution, a very important institution and you know I
 16 don't know why we're spending so much time on Mr Pillay,
 17 except for this that I see in your attorney's letter and by
 18 the way, I keep hearing about some narrative. I don't know
 19 what this narrative is that I'm supposed to be buying into.
 20 I don't know what the narrative is. I don't know, I've
 21 never met Mr Gordhan, Mr Pillay, Mr Van Loggerenberg, the
 22 first time I encountered them was in this Commission. I
 23 don't know these people. I don't know what narrative this
 24 is and what narrative I'm supposed to be coming to. But
 25 it's become clear to me since I've been here that there's

1 more intrigue than tax collecting here and I'm concerned
 2 about that. The importance of what happened then for this
 3 Commission is that we are asked to enquire into why senior
 4 people resigned and whether they were coerced and that's
 5 where it starts and that's what we'll enquire into. But
 6 we're not having another trial about a rogue unit. We want
 7 to know why it is they resigned and your evidence is
 8 important for that but it doesn't mean we're just going to
 9 accept everything because it's told us and if it's in
 10 conflict with documents or other evidence, we're going to
 11 ask about it. And when I say to you why is it illegal,
 12 it's because I'm trying to work out why because I went and
 13 read the statutes. You see I start from scratch. I don't
 14 build on what other people have done. I said let me start
 15 from scratch and I read the statutes and I couldn't find
 16 why it was unlawful and I thought maybe I'm wrong. Maybe
 17 I've missed something. So I asked you, Mr Lebelo, did you
 18 have advice from someone so I can see that advice and see
 19 if I'm wrong. I asked Mr Sikhakhane can you just explain
 20 your judgment to me because I can't see in there why it's
 21 wrong. I don't get a response. I asked Judge Kroon,
 22 phoned Judge Kroon and write to him and say, Judge Kroon,
 23 can you please tell me why you said it was unlawful. He
 24 says he can't. That's why I ask those questions because I
 25 want to ask the question was it in fact unlawful and no one

<p style="text-align: right;">Page 2777</p> <p>1 has been able to tell me why it's unlawful because I asked 2 everyone in case I'm wrong because lawyers can be wrong and 3 I can miss a statute or whatever. That's what I was a bit 4 concerned about.</p> <p>5 So all of these allegations that are made, all 6 start on the basis that there is some narrative of which I 7 am unaware that I am interested in, and I can see now why. 8 I was very naïve when I came into this Commission because 9 your attorney said my reasonable suspicion is based on the 10 ongoing lobbying to bring Mr Pillay back into SARS. So 11 that I look is what's going on here. People are afraid of 12 Mr Pillay coming back to SARS and I say well I don't care 13 if Mr Pillay comes back to SARS or anyone else for that 14 matter but that's what it's all about. You see there's 15 this undercurrent all the time of politics. I'm not 16 interested in it. Your – can we have him back in October? 17 Is that okay?</p> <p>18 MS STEINBERG: Yes, but I'd like to say a 19 few things about ambushes and process –</p> <p>20 COMMISSIONER: Yes, let me say something 21 about ambushes as well and that requires to just go through 22 this letter again where when I told you that I had found 23 this opinion of Mr Brassey saying you should only suspend 24 if he's interfering with the investigation and you must 25 give him a hearing. I said, gave you that. You nearly had</p>	<p style="text-align: right;">Page 2779</p> <p>1 opinion as was alleged and Judge Brassey, I can't remember 2 the other question, you've got the letters I think, and 3 that's where it came from.</p> <p>4 Now I ask myself how is it possible that an 5 opinion given in a case in which you are involved, an 6 opinion given by the lawyer to SARS is not seen by, it 7 doesn't come from your attorney's files. Apparently not on 8 your files. The only who's got it, it seems is Advocate 9 Brassey and that's why are asked about this. How is it 10 possible that advice given to SARS is not in SARS' file and 11 not in its attorney's files? So you can understand her 12 concern. What happened to this document? So these are the 13 things that we are going to discuss, Mr Lebelo, but seeing 14 you wish to make a long statement and you did, you're 15 perfectly welcome to do so but I don't think that Advocate 16 Steinberg should be expected to sit back and say nothing 17 and I'm not going to allow her to say anything unless she 18 tells me first because I don't think the Commission should 19 simply sit back and say nothing. Is there anything else 20 you want to raise, Ms, that you want me to raise with him?</p> <p>21 MS STEINBERG: No, I think you've covered 22 it. I'm just thinking about it but I think you've covered 23 it. I don't – I just don't want to be left with the 24 impression that there was an ambush.</p> <p>25 MR LEBELO: No.</p>
<p style="text-align: right;">Page 2778</p> <p>1 a fit. You told me there was another opinion that Brassey 2 had written saying that you must suspend him. I said well, 3 produce it for me because I didn't have it and that's when 4 your attorney wrote this long letter and he produced that. 5 The problem is what your attorney did not –</p> <p>6 MR LEBELO: He's not my attorney, it was 7 a SARS attorney.</p> <p>8 COMMISSIONER: SARS, well SARS attorney 9 but we've heard already that you are here to look after, to 10 establish your name, not SARS' name. You've told us many 11 times, you want to clear yourself. Now if it's SARS' 12 attorney that is being used for that that's fine. That's 13 got nothing to do with me.</p> <p>14 MR LEBELO: Well, Judge, I have to 15 correct –</p> <p>16 COMMISSIONER: No, you let me finish then 17 you can correct it. Make a note will you. So what came is 18 all those boxes of files and this long letter and this 19 other opinion which by the way Judge Brassey says he didn't 20 write. He agrees in general with the thing but it was the 21 attorney who wrote it. But what did not come with that, 22 strangely enough is the last opinion of Advocate Brassey's, 23 the advice on evidence saying I don't think you should go 24 ahead with that. That came to me when I contacted and 25 wrote to Judge Brassey to say Judge Brassey was this your</p>	<p style="text-align: right;">Page 2780</p> <p>1 MS STEINBERG: That we deliberately 2 withhold, withheld documents in order to pounce them on Mr 3 Lebelo.</p> <p>4 COMMISSIONER: Well I think that's fair 5 if you just look at what was asked for, an opinion from 6 Advocate Trengove SC, well that was asked for, correct, 7 afterwards but it was asked for by the Commissioner. I 8 would've thought that people within SARS knew about this, a 9 legal opinion in internally which agrees with the one at 10 number 1. That comes from the SARS files. I would expect 11 that if you had examined the SARS files for the purpose of 12 charging these people you would've seen it, a legal opinion 13 from Advocate Brassey that we cannot suspend or something 14 of the sort. Your attorney gave that to me, or SARS' 15 attorney gave it to me. So where is the ambush in this? 16 These documents were given to you in advance to tell you 17 they're going to be asked about. Well we're not going to 18 argue now, Mr Lebelo. You're going to come back in 19 October, you're welcome to. You don't have to carry on 20 today. If you want anything else look in your own files, 21 ask your attorney what's in his files and ask us if 22 necessary. We don't have original documents, we get them 23 from the files. So yes.</p> <p>24 MR LEBELO: Let me just, I must clarify 25 this thing of the narrative.</p>

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1 COMMISSIONER: No. Ja, I don't want to
 2 hear the narrative now. I really don't. We've got a lot
 3 of work to do –
 4 MR LEBELO: Let me clarify the official
 5 about the clearing myself because I don't think it's
 6 correct. The – I said that the information, let me not use
 7 the word narrative, is that I purged people and I said I
 8 want to come and show the process I followed. This is a
 9 SARS process that in the process it will clear – let me
 10 just – in the process it will clear my name. I was not
 11 saying I'm not here solely for that. So I don't think that
 12 is right. The lawyers that you're referring to, these are
 13 lawyers who worked on the files. So if you are looking for
 14 a document since you have arrived here we can't find, we
 15 ask them because they've got the that thrust. The ambush
 16 here is, and I've explained it and it's not complicated. I
 17 asked for every document that I'm going to be cross-
 18 examined on. There were two that were not given to me.
 19 When they were given to me yesterday and this morning I
 20 found that the questions that were asked to me is not even
 21 true in those files. That's an ambush. The last part is
 22 that you, Judge, called me in your office and say, no you
 23 said there is an opinion that Advocate Brassey said you
 24 must not suspend. I said I was not aware, I know the one
 25 that he said we must suspend. You said I must get it for

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1 you. I wrote an email to the lawyers and then say Judge
 2 says there is this opinion that says Mr Pillay must not be
 3 suspended. I know in my head that there was an opinion
 4 that he must be suspended. And then they responded to
 5 that. So they were not responding to me, they were not
 6 responding on my behalf –
 7 COMMISSIONER: No, they wrote to you with
 8 a copy to me.
 9 MR LEBELO: Yes. So they were responding
 10 on their own behalf. All I wanted from them was is it true
 11 that the last opinion we had was that Mr Pillay didn't be
 12 suspended. If it's true, why did we suspend him and then
 13 they sent that other opinion. So it was not about me. But
 14 I want to thank you, Judge, for the opportunity to raise
 15 the issues that I wanted to raise and indeed as you have
 16 stated that I will find the opportunity to come and meet
 17 and clarify whatever that I wanted to clarify so that when
 18 I come we are clear about what I'm going to do and what
 19 questions are going to be asked and all the documents will
 20 be with me before I come. But I want to really thank you.
 21 COMMISSIONER: Let's just get it clear
 22 because we had the same with Bain. They want to know in
 23 advance all the questions that will be asked. I don't know
 24 what questions will be asked.
 25 MR LEBELO: No, not questions, documents.

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1 Not questions.
 2 COMMISSIONER: Documents, okay. Vuyo,
 3 you wanted to say something?
 4 MR KAHLA: Thanks, Judge. Just in
 5 relation to these two opinions and I think we'll just start
 6 off with Brassey. I really would want to hear from you, Mr
 7 Lebelo, in which respect did counsel misrepresent what is
 8 set out in that opinion in relation to the questions that
 9 were raised yesterday in relation to the Brassey opinion.
 10 MR LEBELO: You can make your request but
 11 let me address those issues when I come back because then
 12 we'll get into a debate again. Because to answer that
 13 question I must answer it explaining the story there and
 14 then it brings us back to the debate. Let me give you
 15 another example. There is another –
 16 MR KAHLA: No, I just want, I just need,
 17 I mean I thought that you've read that opinion –
 18 MR LEBELO: Well let me –
 19 MR KAHLA: - to enable you to come to a
 20 view that the questions that were raised yesterday in
 21 relation to that opinion –
 22 MR LEBELO: Are incorrect.
 23 MR KAHLA: - misrepresent the actual
 24 terms of that opinion and this is in relation to that
 25 misrepresentation that I have an interest in understanding

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1 why you say that. It would help if you could point out
 2 that counsel said the following but the opinion actually
 3 says something different. I just want to start off just
 4 with Brassey opinion.
 5 COMMISSIONER: Vuyo -
 6 MR LEBELO: And, Judge –
 7 COMMISSIONER: - we're going into this
 8 now.
 9 MR LEBELO: - I want your guidance
 10 because I don't think - it will open up the discussion.
 11 COMMISSIONER: Mr Kahla's concern and it
 12 is a concern is that now it will, unless we go into all of
 13 this now it's going to go out that counsel misrepresented
 14 what's an opinion. Well we will deal with that later. Let
 15 me just say at the moment that I don't see it as any
 16 misrepresentation at all but it can be dealt with later.
 17 But I just want to be clear that that is Mr Lebelo's
 18 opinion and we'll debate it at another time. Let me just
 19 say something. Advocate Steinberg has a very courageous
 20 history. More courageous than most people and she has
 21 courage to continue now as well. Okay. We'll see you in
 22 October.
 23 [INQUIRY ADJOURNS INQUIRY RESUMES]
 24 [14:55] COMMISSIONER: Thank you. Can we get on
 25 with the work of the Commission now? Thank you.

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1 MS STEINBERG: Mr Mathebula, sorry about
 2 all the delays. You are still under oath. Mr Mathebula,
 3 just to finish this chain of memos that is concerning us,
 4 the next memo is 24th of October 2016 and it's from Mr Gobi
 5 Makhanya to Ms Carol van Wyk copying you but it appears
 6 it's for your approval, your authorisation. This is the
 7 email we discussed a couple of days ago in which you appear
 8 to have authorised the download of emails of a number of
 9 SARS officials but also a number of external entities and
 10 the background given to this memo is that due to the high
 11 level of corruption and media speculation with regards to
 12 corruption of members of SARS colluding with the forensic
 13 security services, the FSS, that's British American Tobacco
 14 in targeting local manufactures in order to provide an
 15 advantage to British American Tobacco in the cigarette
 16 industry.
 17 Statements have been obtained from witnesses
 18 which implicate SARS officials in releasing taxpayer
 19 information as well as a Twitter account, hashtag SA
 20 Tobacco Espionage has released information of SARS
 21 officials colluding with FSS in targeting local cigarette
 22 manufacturers. Then it says the following evidence was
 23 obtained in the investigation. There's a criminal docket
 24 that's been registered, a hard drive has been obtained from
 25 a witness where it was clearly shown that SARS officials

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1 are releasing taxpayer information to FSS and then it says
 2 the following SARS officials have been identified that
 3 interacted with members of the tobacco industry and there
 4 was a list of names and the following external entities
 5 have been identified with the following email addresses and
 6 as I mentioned the two I found most curious were Zaf Soni
 7 who was then the head of the SIU and somebody from the
 8 public protector's office.
 9 So the recommendation is it is recommended that
 10 the aforementioned e-mails and SARS officials' e-mails be
 11 downloaded since 2010, so that is for a six year period to
 12 date, an affidavit is required in order to be used during
 13 criminal and internal disciplinary proceedings if required.
 14 And it's compiled by Gobi Makhanya and it's signed by you
 15 in your capacity as acting CO, Enforcement. I have a
 16 number of questions about this. We heard from witnesses
 17 two days ago about the consequences of this memo. Did you
 18 see the evidence that this memo refers to, the evidence of
 19 SARS members colluding with the FSS?
 20 MR MATHEBULA: So I think the question is
 21 no. Okay. The answer, sorry. But can I proceed then to
 22 again once more reiterate that the task team that was led
 23 by Gobi and Yegan Mundie did not report to me so the
 24 details of their operation will have been sided to the
 25 person that they reported to. To the extent that I would

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1 have had to sign off cases that would be handed over to the
 2 NPA, criminal cases, I will then have had to be the person
 3 that had supported and I – Advocate Steinberg, I just have
 4 this concern that despite me insisting always that my role
 5 was that of supporting in that particular memo you will see
 6 that there's someone else that's actually approving there.
 7 Why that person approved I wouldn't know but it's
 8 approving after I had recommend – I mean supported and I
 9 have said in the instance of the past two memos that my
 10 involvement related to the fact that – to the extent that
 11 criminal investigations will have to ensue and a criminal
 12 case may have to be referred to the NPA I will have to be
 13 the person that will sign that because on a monthly basis I
 14 will probably sign over 300 cases that will be handed over
 15 to the NPA so yes, again, these memos follow the same
 16 trend.
 17 This particular evidence that have been found,
 18 there is a criminal case that has been registered and they
 19 will list a criminal case, criminal docket or case number
 20 and further investigation will have to be required. To act
 21 any differently other than supporting a case to be
 22 registered when an investigation has been done will be
 23 defeating the ends of justice. Again there is this thing
 24 about me having to defer to the ultimate authority in the
 25 line which is the person that this thing reports to and

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1 that we should – I needed to be able to defer to and this
 2 in this instance will have been the Commissioner. So that
 3 was one part.
 4 The second part that I just wanted to clarify,
 5 Judge, it is whether it is correct and you were – you could
 6 clarify me. I think on more than one occasion we have
 7 referred to taxpayers by name whether we are allowed to be
 8 referring in this sitting. There are a number of people
 9 here and I just don't want to get into trouble that we are
 10 calling out taxpayers by name in this sitting.
 11 COMMISSIONER: Well, I suppose I'm a
 12 taxpayer as well. It depends, you know, taxpayer
 13 information is information supplied to the revenue
 14 authority in fulfilment of your tax obligations, so I think
 15 that to refer to someone in business in one way or another
 16 is not necessarily a reference to taxpayer information. I
 17 can tell you that taxpayer information may be revealed to a
 18 Commission of inquiry. It doesn't mean that I'm going to
 19 share it with everyone who sits and listens to the
 20 Commission but we don't want taxpayer information meaning
 21 information submitted in pursuance of meeting your tax
 22 obligations but for the rest I mean we're all individuals
 23 and we hopefully all pay tax.
 24 MR MATHEBULA: That's my answer,
 25 Advocate.

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1 MS STEINBERG: You know, there's only one
 2 recommendation here. The recommendation is not to register
 3 a case with SAPS or to refer a case to the NPA. There's
 4 one recommendation and that is, it is recommended that the
 5 aforementioned e-mails and SARS officials' e-mails be
 6 downloaded since 2010 to date and affidavits required in
 7 order to be used during criminal and internal disciplinary
 8 proceedings if required. I guess there are two but you
 9 didn't say I'm authorising an affidavit, I'm not
 10 authorising the download of e-mails. You authorised the
 11 download of e-mails. Now whether or not they reported to
 12 you or whether or not the Commissioner then took charge of
 13 this you authorised the download of e-mails. I'm just not
 14 sure what you're saying about that.
 15 MR MATHEBULA: But I didn't authorise.
 16 Would you please read where I say I authorise. I didn't
 17 authorise.
 18 MS STEINBERG: But it says supported.
 19 It's recommended that this happens – supported or not
 20 supported. You cross out not supported and you sign.
 21 MR MATHEBULA: Yes, it says supported and
 22 if you look down on that memo there's somebody that
 23 approves.
 24 MS STEINBERG: Who approved. So you
 25 supported it?

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1 MR MATHEBULA: Yes, I did. Yes, I did
 2 say that, but I said again I did not authorise. I did not
 3 approve. I supported given the information that has been
 4 provided which has to do with issues around criminality if
 5 it is that and I tried to give some background. If it is
 6 that this matter will ultimately have to end up in a manner
 7 that I may have to sign off a case that will go to the NPA
 8 for processes or for purposes of prosecution that will have
 9 to be that is going to do that because as the acting head
 10 of enforcement on a monthly basis I used to sign cases.
 11 Sometimes could be 100, sometimes could be 300 cases that I
 12 would sign over to hand over to the NPA that will have -
 13 then have been investigated internally so I supported
 14 because the information has been provided that suggested
 15 that there's some criminality. An investigation has to be
 16 engaged into. That's all I supported.
 17 MS STEINBERG: Let's use your language,
 18 supported. You said information had been provided but then
 19 you said you actually didn't look at or ask for the
 20 information that's purported to be behind this, so is the
 21 information provided this information?
 22 MR MATHEBULA: I'm talking about the
 23 information in the memo, not any more than that.
 24 MS STEINBERG: So on the strength of
 25 these allegations and on the strength of evidence that

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1 comes from Twitter accounts you then authorised the
 2 download of six years' of e-mails from all these SARS
 3 people but from people outside of SARS. Did you get a
 4 legal opinion as to whether you're entitled to do that?
 5 MR MATHEBULA: I didn't get a legal
 6 opinion.
 7 MS STEINBERG: Is SARS entitled at law to
 8 download e-mails of third parties like the head of the SIU?
 9 MR MATHEBULA: I don't know.
 10 MS STEINBERG: Why was the head of the
 11 SIU a relevant person whose e-mails should be downloaded?
 12 MR MATHEBULA: That would have been a
 13 subject of investigation so I wouldn't be able to give you
 14 that information. I don't have that information at hand.
 15 MS STEINBERG: So you supported this
 16 without asking why these individuals' privacy be invaded in
 17 the extraordinary manner that it was?
 18 MR MATHEBULA: Advocate Steinberg, I have
 19 indicated I have people that – whose job is to investigate.
 20 I have people that – who has years of experience in this
 21 role. I have people that have been, reports to the head of
 22 the institution, that for purposes, for administrative
 23 purposes I have been handed over to and from a perspective
 24 of being responsible for criminal investigation they come
 25 and say this will need to be done in which case they are

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1 alleging some criminal activities. I then assume that at
 2 the end of that process a proper document will then have to
 3 be presented which will contain information that will be
 4 sufficient to take to the NPA for prosecution. That's the
 5 basis of supporting. Any other thing I wouldn't be able to
 6 tell you, Advocate.
 7 MS STEINBERG: So what I'm hearing is
 8 that you supported this memorandum without knowing if it's
 9 lawful, without knowing the underlying evidence on which it
 10 was based and without asking why these people outside of
 11 SARS might in any way be implicated including a chapter
 12 nine instruction, the public protector's office and the
 13 head of the SIU.
 14 MR MATHEBULA: I really don't want to get
 15 into that – into an argument.
 16 MS STEINBERG: But I'm asking you, yes or
 17 no.
 18 MR MATHEBULA: No, no, I want to –
 19 MS STEINBERG: Well, first tell me –
 20 MR MATHEBULA: I say it's no, but I don't
 21 want to get into an argument with you on which people
 22 potentially could not be able – must be excluded from an
 23 element of criminality and I'm not suggesting that those
 24 people were criminals. I'm saying that when people say we
 25 have reasonable suspicion that we must investigate certain

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1 things it's really not my place to start investigating when
 2 the investigator is saying we want to investigate and I
 3 think that's what has happened here. If it is that a – on
 4 20/20 vision that was a wrong decision I'm quite happy to
 5 be told, listen, that was a wrong decision and we can take
 6 it from there.

7 MS STEINBERG: Does the panel have
 8 questions here?

9 MR KAHLA: I just wanted to understand in
 10 this relation to your responsibility and you emphasised
 11 earlier round your fiduciary obligations to SARS. Did you
 12 consider that equally your responsibility to ensure that
 13 actions to be conducted in respect of investigations are
 14 conducted lawfully?

15 MR MATHEBULA: Yes, I did.

16 MR KAHLA: But did it not occur to you if
 17 there were to be these downloads that they needed to go
 18 through a lawful process?

19 MR MATHEBULA: My take was that if they
 20 will have to do these downloads so someone will have to
 21 approve that and the person that approves the downloads
 22 will have to make sure that they comply with all relevant
 23 statute that South Africa requires of them to comply to.
 24 At that point it's supporting. The person that has the
 25 final go is the one that is going to say now I'm approving

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1 for you to download and that person must ensure that all
 2 the relevant acts that relates to downloading of e-mails of
 3 people must ensure that that happens.

4 MR KAHLA: What in that email would have
 5 enabled Mr Makhanya to know that your authority is subject
 6 to a number of actions taken to ensure that whatever has to
 7 be done is lawful? Was that specifically set out either in
 8 an annotation of myself on the memo or you just assume that
 9 that would be the case.

10 MR MATHEBULA: No, no, I didn't just
 11 assume, Mr Kahla. It's a standard practice in SARS that
 12 memos have to have an approval and in this instance if
 13 you look at that memo that Advocate Steinberg is
 14 referring to there is an approval underneath.

15 MR KAHLA: I want to go back to why was
 16 it always critical that you be the supporter for this and
 17 I'm just trying to really just understand the value that
 18 was to be added by your supporting and I want to
 19 understand the context of when decisions are being made
 20 within SARS that absolute provides a support who supports
 21 or recommends is there some value in providing the support
 22 or could it go on without you supporting?

23 MR MATHEBULA: So I explained that this
 24 unit is not – this unit or task team did not report to me
 25 finally – functionally. It really had to do with the

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1 adversity of parts and my – the value only was to the
 2 extent that once they have found the person that has to
 3 approve if they came with that memo properly authorised
 4 they could be able to go to the head of criminal
 5 investigation who reported to me to say we are busy with
 6 this, we have now got an authorisation on this matter and
 7 now this are the next step that needs to be done in respect
 8 of the criminal investigators that we may or may not need
 9 in that instance but if it is that, that support had not
 10 been there the head, or the head of criminal investigation
 11 will have had to revert back to me to say what – this team
 12 has come, what then do we do?

13 MR KAHLA: But isn't it equally so that
 14 if you had signed off on not support.

15 MR MATHEBULA: Yes.

16 MR KAHLA: The matter would not have
 17 proceeded. Would it have to proceeded to the final
 18 approval without your support?

19 MR MATHEBULA: Well, it depends how
 20 strongly the person that was bringing the memo to me would
 21 have been. There have been many instances where I have
 22 said not supported and the matter has gone to the
 23 Commissioner and the Commissioner has overruled me.

24 MR KAHLA: Okay.

25 MR MATHEBULA: So it – I can give you

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1 plenty instances where one has not supported and that has
 2 been overruled by various commissioners.

3 MR KAHLA: But you felt comfortable to
 4 support in this instance?

5 MR MATHEBULA: In this instance I felt
 6 comfortable to support, yes.

7 MS MASILO: Mr Mathebula, did you
 8 consider it prudent to at least discuss the request which
 9 you were requested to support with the Commissioner seeing
 10 that before supporting it or before signing it especially
 11 in light of the fact that there was a name or there is a
 12 name mentioned of the head of the SIU?

13 MR MATHEBULA: I didn't discuss the
 14 matter with the Commissioner.

15 MS MASILO: You didn't see it necessary?

16 MR MATHEBULA: This matter was going to
 17 go to him for final approval so I thought it's going to be
 18 a normal process that he will have to apply his mind into
 19 that matter.

20 [15:15] MS STEINBERG: Why do you say it was
 21 going to go to the Commissioner for final approval?

22 MR MATHEBULA: Because this unit reports
 23 to the Commissioner, the operations of this unit rested
 24 with the Commissioner –

25 MS STEINBERG: So why isn't his name on

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1 the list of people who have to sign?
 2 MR MATHEBULA: Look, I wouldn't know,
 3 Advocate, all I'm saying is that that's how things work
 4 around here. There is a final approver and the final
 5 approver will be the head of that specific section. In my
 6 case my various junior people that reports to me, where
 7 they want my approval I will be the final approver as the
 8 chief officer where I have total control. If it is then an
 9 issue that would – I am recommending it will be have to be
 10 going to the Commissioner and this is normal practise in
 11 SARS where chief officers recommend.
 12 MS STEINBERG: On the face of it, it
 13 doesn't appear to have gone to him. As you say there's
 14 room made for your support and that's it, but we see
 15 underneath that in any event the acting GE of DIST who is,
 16 I presume in charge of the email server. It had to be
 17 downloaded, she approves, but there's no sign that the
 18 Commissioner saw or approved this.
 19 MR MATHEBULA: So the acting GE of DIST
 20 will signed on the basis of some authority and I don't know
 21 what that authority is because that memo never came back to
 22 me.
 23 MS STEINBERG: Okay.
 24 MR KAHLA: And he or she would not have
 25 signed on the basis of your support.

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1 MR MATHEBULA: No she would not sign on
 2 the basis of my support because in that instance then her
 3 signature will have come before mine. If it was that then
 4 my signature would have had to be below hers. So in this
 5 instance she would have been signing on the basis of
 6 someone having given her an instruction and I will venture
 7 to say you probably may need to ask her to explain that.
 8 MR KAHLA: But isn't the point you're
 9 making Counsel that that chief officer or Group Executive
 10 of DIST follows the chief officer's signature or support,
 11 how is it set out?
 12 MS STEINBERG: So in fact there are
 13 merely two typed spaces for signature. The one is the
 14 person making the request and in this case it's Mr
 15 Makhanya. Underneath that it says supported/not supported
 16 and not supported is crossed out and the space is made for
 17 Mr Mathebula's signature, that's all. But then you see
 18 over and above that, just handwritten, approved and the
 19 acting GE of DIST signs it.
 20 COMMISSIONER: Perhaps when you've
 21 finished with the document you could just hand it up and we
 22 can just see what it looks like.-
 23 MS STEINBERG: I don't have more
 24 questions on this document.
 25 COMMISSIONER: Could we just see the

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1 document? Right thank you, Ms Steinberg –
 2 MS STEINBERG: Okay.
 3 COMMISSIONER: Are we moving on?
 4 MS STEINBERG: Ja the next, it's a pair
 5 of memos, there's one that is written on the 11th January
 6 2017 and it's from senior manager Criminal Investigations,
 7 Ronel van Wyk to Acting Chief Officer Enforcement, Hlengani
 8 Mathebula. It CC's the Group Executive of Criminal
 9 Investigations, Neo Tsholanku and the reference is Yegan
 10 Mundie, Bedfordview with a CAS number. Now that's on the
 11 11th of the 1st 2017 and the recommendation on the front
 12 page is, conduct financial Investigation into allegations
 13 pertaining to the receipt of money and possible misconduct
 14 in terms of process and the release of undue refunds. Now
 15 it's a lengthy memo, in short it responds to a complaint
 16 Paul O'Sullivan made against Yegan Mundie accusing him of
 17 misconduct, receipt of money, release of undue refunds,
 18 etcetera. And having set that out what it recommends in
 19 part, I'm only going to read the relevant parts, is that a
 20 case be referred to internal investigations to conduct an
 21 investigation into inter alia, the following. The possible
 22 abuse or interference of in process in terms of releasing
 23 undue VAT refunds. By the way amounting to R93 million by
 24 Mr Mundie. This should include whether Mr Mundie was
 25 authorised to conduct an investigation into the tax affairs

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1 of a particular taxpayer, the subsequent release of various
 2 undue refunds and should also clarify his involvement in
 3 obtaining the abovementioned affidavit from Mr X and the
 4 purpose of the affidavit. The second recommendation,
 5 conduct an in depth financial investigation into the
 6 affairs of Mr Mundie to establish whether he received R9
 7 million as alleged in exchange for the refund.
 8 And it goes on, an affidavit should be obtained
 9 from the individual who claimed this etcetera. It's
 10 recommended to request financial information and analysis
 11 from the financial intelligence centre on both Mr Mundie
 12 and his brother because his brother is also involved in
 13 this. Information indicates that Mr Mundie's brother
 14 regularly frequents gambling establishments and carries
 15 large amounts of cash during these engagements. Then it
 16 says it's recommended to contact the SAPS official and
 17 who's named, as per the email received from Mr O'Sullivan
 18 in order to obtain relevant and lawful information in
 19 respect of the VAT around trips. And the involvement of Mr
 20 Mundie's brother in alleged illegal activities for purposes
 21 of further investigation. Fourth, that criminal
 22 investigation has been finalised and will be handed over to
 23 the NPA shortly. Once the matter has been discussed with
 24 SAPS and the NPA further discussion around the involvement
 25 of asset forfeiture unite will be arranged in order to

<p style="text-align: right;">Page 2801</p> <p>1 ensure the recovery of the money. So that is sent to Mr 2 Mathebula on the 11th of the 1st. It's copied to Group 3 Executive Criminal Investigations Neo Tsholanku. 4 COMMISSIONER: Is that correct, do you 5 know that document? 6 MR MATHEBULA: Yes I know about it. 7 MS STEINBERG: Two days later on the 13th 8 there's a memo from Neo Tsholanku to Mr Mathebula. Now 9 it's an exact duplicate of Ms Van Wyk's memo except for the 10 recommendations. The recommendations or the summary of it 11 is, there is no prima facie evidence to suggest the 12 involvement of Mr Yegan Mundie in illegal activities and as 13 far as the release of undue and fraudulent refunds 14 pertaining to taxpayer X and receiving R9 million in return 15 for the alleged illegal assistance in releasing said 16 refund. I don't think I need to read the recommendation in 17 full, but as I say it's word for word except that it comes 18 to the exact opposite recommendation. Mr Mathebula did – 19 COMMISSIONER: Who wrote the second – 20 MS STEINBERG: That is Neo Tsholanku. 21 COMMISSIONER: Addressed to? 22 MS STEINBERG: Mr Mathebula. So if you 23 remember the first one was copied to him. He then took it 24 and changed the recommendation. 25 COMMISSIONER: Well we'll ask him, did</p>	<p style="text-align: right;">Page 2803</p> <p>1 investigator arrived at a conclusion that says there is no 2 prima facie evidence to suggest that Mr Mundie has 3 interfered with issues around refunds. 4 MS STEINBERG: The same investigator do 5 you mean Ms Van Wyk? 6 MR MATHEBULA: I don't know if he had 7 given the through Ms Van Wyk because I referred to the case 8 to Mr Tsholanku so the genesis of this matter is that there 9 was a complaint that was sent to the Commissioner by Mr 10 Paul O'Sullivan. The Commissioner then said to me listen 11 there is this criminal case that has been opened you need 12 to get Criminal Investigations on this matter. Advocate 13 Tsholanku being the GE responsible for criminal 14 investigations. I then asked him to investigate the 15 matter. He then gave this matter to investigators, I don't 16 recall whether it was Ronel or it was somebody else that 17 investigated the matter. And then the conclusion was that 18 there was no prima facie evidence to suggest that Mr Mundie 19 was involved in this. 20 Now his reasoning for removing the paragraph was 21 that it didn't make sense that you can arrive at a 22 conclusion that says there's no prima facie evidence, but 23 at the same time you are looking for authorisation to raid 24 somebody's accounts. On the basis that there's no prima 25 facie evidence on what basis then do I continue to</p>
<p style="text-align: right;">Page 2802</p> <p>1 you change the recommendation. 2 MS STEINBERG: No, no, no, no I'm 3 certainly not accusing Mr Mathebula. No, Mr Neo Tsholanku 4 – 5 COMMISSIONER: He changed the 6 recommendation. 7 MS STEINBERG: He changed the 8 recommendation. 9 COMMISSIONER: And sent it back to Mr 10 Mathebula. 11 MS STEINBERG: So Mr Mathebula had these 12 two in front of him – 13 COMMISSIONER: Fired Mr Mathebula. 14 MS STEINBERG: And my first question is 15 did you sign one or either? 16 MR MATHEBULA: Okay so the two memos 17 arrived in my office and I called Advocate Tsholanku to 18 explain to me what made for the two different 19 recommendations. In fact the memos are identical okay in 20 background and one of the recommendations. So I called him 21 to say please explain to me why your memo has a paragraph 22 missing which is in the other memo. His explanation to me 23 was the following and you're welcome to call him to testify 24 in your next session, his explanation was yes I removed the 25 paragraph, I removed the paragraph because the same</p>	<p style="text-align: right;">Page 2804</p> <p>1 authorise a raid on this person's account when I have 2 already decided that there is no prima facie evidence. 3 That's the explanation I got and I thought the explanation 4 was plausible. I then proceeded to act on the basis of the 5 other recommendations that were in the email or in the 6 memo. 7 MS STEINBERG: But it's plain from the 8 face of Ms Van Wyk's lengthy memorandum that she did 9 believe there was a prima facie case. In fact she makes 10 out quite a convincing case that there is prima facie 11 evidence against Mr Mundie and his brother. It's incorrect 12 for somebody else to put those words in her mouth. She 13 came to the opposite conclusion. 14 MR MATHEBULA: I suggest you put that 15 matter to Mr Tsholanku, Advocate Tsholanku. You can ask 16 him to come and testify. 17 MS STEINBERG: You know there are two 18 issues that concern me though. The one is you already knew 19 that the SSA had said Mr Mundie is problematic, you didn't 20 know more than that. The second is that you repeatedly 21 told me that the reasons you signed other memos is you 22 merely triggering investigations, that's your job is to 23 allow people to investigate. Yet on this one you said 24 there wasn't enough evidence to investigate. This one 25 frankly has more evidence than the others. So I'm</p>

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1 wondering why the difference.
 2 MR MATHEBULA: But where do I say that
 3 there is no evidence? I have referred the matter to be
 4 investigated. The person I have referred the matter to go
 5 and investigate, who has asked his investigators under him,
 6 they have come back to him to say there is no prima facie
 7 evidence. I have a report, a memo that is sent to me that
 8 says listen there is no prima facie evidence, we recommend
 9 the following things. You must – we are going to write a
 10 letter for you to sign which will go to Mr Paul O'Sullivan
 11 to indicate to him that there is no prima facie evidence to
 12 suggest that Mr Mundie had interfered in refunds and the
 13 rest of the other recommendations. I have just indicated
 14 because that memo to me seems like it's been written by the
 15 same investigator other than the fact that Advocate
 16 Tsholanku removed that one recommendation in that memo. I
 17 have taken it upon myself to call him in and ask him to
 18 explain his rationale for removing that particular
 19 recommendation. He has given me an explanation that
 20 suggests that he did not believe based on what he was told
 21 by his investigators that there was a prima facie evidence.
 22 And therefore he found it difficult to have to authorise a
 23 raid or another investigation on the basis of that
 24 complaint which could not have been supported in the first
 25 instance. And Advocate, in this instance that's all that

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1 is there and if there is more that you would like to pursue
 2 I suggest you ask Advocate Tsholanku to explain.
 3 MS STEINBERG: No, no I'm asking you
 4 because all that Ms Van Wyk was asking was further
 5 investigations. She was saying the FIC has to investigate,
 6 other agencies must investigate. We're still at the level
 7 of investigation. She's saying there's reason to refer
 8 this on to other agencies. Now the memos we went through
 9 before you said all I was doing was allowing them to
 10 investigate. You didn't ask if there was a prima facie
 11 case, I suggest to you there wasn't a prima facie case, you
 12 said it's not my business to ask. I authorise
 13 investigations and it's just strange that when it comes to
 14 Mr Mundie you don't authorise the investigation. And may I
 15 say you call in the man who says there's no prima facie
 16 evidence, did you call in Ms Van Wyk who said there is
 17 prima facie evidence?
 18 MR MATHEBULA: So I didn't call Ms Van
 19 Wyk and the reason I didn't call Ms Van Wyk is because I
 20 referred this matter to Advocate Tsholanku to investigate
 21 and –
 22 MS STEINBERG: And you took his word for
 23 it.
 24 MR MATHEBULA: Why wouldn't I?
 25 MS STEINBERG: Mr Mathebula, I can tell

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1 you I wouldn't. When I look at the evidence that Ms Van
 2 Wyk has in this memo I would reach my own independent
 3 conclusion that there's a prima facie reason to further
 4 investigate.
 5 MR MATHEBULA: I wouldn't argue with you
 6 and I will leave it at that from where I'm sitting because
 7 I'm saying to you I have a memo which is identical –
 8 MS STEINBERG: Mm.
 9 MR MATHEBULA: - except for that part and
 10 here is a group executive, here is a lawyer and I know that
 11 if you put two lawyers in the room their opinions are going
 12 to differ, but here is an advocate that is saying to me I –
 13 this investigator that I have put on this case has found no
 14 prima facie evidence that this person has interfered with
 15 refunds and therefore I removed that. Now Ms Van Wyk
 16 reported to Advocate Tsholanku, Ms Van Wyk and Mr Tsholanku
 17 and Advocate Tsholanku could have dealt with these matters
 18 there. Here I am being given a report back and I took the
 19 report that, from a person that I had asked to investigate
 20 the matter and asked him to explain in the face of a
 21 different conclusion that had been come into. I did not
 22 refuse to investigate Mr Mundie, I investigated him, I
 23 instructed that he be investigated.
 24 MS STEINBERG: You refused the further
 25 investigation. That's what she was asking for the further

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1 investigation. She said there's things we can't do, we
 2 need the FIC and other agencies involved.
 3 MR MATHEBULA: So I will put back to you
 4 that on the complaint that Paul O'Sullivan had put there
 5 was a conclusion on it which was that there was no prima
 6 facie evidence that was found. There was no new complaint
 7 that I was dealing with here. So faced with two reports I
 8 went with the report of a person I delegated to report, to
 9 investigate the matter. When I found that there was other
 10 information that was not in his memo I took the reasonable
 11 step of asking him to explain. And he explained.
 12 MS STEINBERG: Did you study the body of
 13 the memo?
 14 MR MATHEBULA: Yes I did.
 15 MS STEINBERG: And in your view there
 16 wasn't any prima facie evidence suggesting a need for
 17 further investigation.
 18 MR MATHEBULA: So –
 19 COMMISSIONER: May I just ask it this
 20 way? What was your opinion when you read the body?
 21 [15:35] MR MATHEBULA: When I read the body of
 22 the memorandum because you have to read it until the end
 23 there were sections that will have been worrying, if you
 24 are reading that memo but you then reach at a point where
 25 there are things that are being said about how you wouldn't

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1 have been inter, you will not have interfered with the
 2 issues around stoppers because our position was that he had
 3 uplifted stoppers in the instances that were referred to
 4 and the answers that he will not have been able to have
 5 uplifted those stoppers and the final conclusion was that
 6 he could not have been, he could not have interfered and
 7 therefore there was no prima facie evidence.
 8 COMMISSIONER: Was that – sorry, was that
 9 your view that there was no prima facie case?
 10 MR MATHEBULA: I took what the
 11 investigator and the head of that unit had given me.
 12 COMMISSIONER: Now well –
 13 MR MATHEBULA: So yes, it was –
 14 COMMISSIONER: - sorry, let's get the
 15 question done. You said you read through the body
 16 yourself. Was your view that there was no prima facie case
 17 or that there was a prima facie case?
 18 MR MATHEBULA: I took a view that there
 19 was no.
 20 MS MASILO: Mr Mathebula, what was the
 21 reason, I mean Ms Van Wyk was a senior manager reporting to
 22 a group executive, Mr Tsholanku. The – I would understand
 23 the protocols to be for her to write a memo to her boss who
 24 is Mr Tsholanku who would then forward it to you or address
 25 it to you. So what was the reason for her to have written

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1 a memo directly to you copying her boss and then her boss
 2 sending you a different memo a few days later?
 3 MR MATHEBULA: At this time, Advocate
 4 Tsholanku was acting as the chief officer legal. So in the
 5 intervening period he had been asked to act as the chief
 6 legal officer and but this matter he had continued to
 7 oversee on it. So I assumed that potentially this matter
 8 could've been finalised and he, through discussions he
 9 might have been asked whether he could send, they could
 10 send to me report directly or not and whatever discussions
 11 they managed to have I wouldn't know and hence when I got
 12 the two memos I requested him to clarify to me what made
 13 for the discrepancies because that I thought there was a
 14 discrepancy that one memo with the same contents get more
 15 recommendations than the other one had less recommendations
 16 and I asked for clarification which I was given.
 17 MR KAHLA: I need some clarity, counsel.
 18 This memo, these two memos, the one that sets out all of
 19 the information that makes them suggest that there's a
 20 prima facie case to be made around the investigation and
 21 the one that suggests there isn't, what are the
 22 differences? Is the difference simply just in there's no
 23 prima facie case to be made or is there more to suggest why
 24 there's no prima facie –
 25 MS STEINBERG: No.

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1 MR KAHLA: - case to be made.
 2 MS STEINBERG: No. It is only the
 3 recommendation that –
 4 MR KAHLA: But all of the factors that –
 5 MS STEINBERG: They're identical.
 6 MR KAHLA: - are raised are identical.
 7 MS STEINBERG: Ja, it's a cut and paste
 8 until the recommendation section. I don't have more
 9 questions on this. Does the panel?
 10 COMMISSIONER: Thank you.
 11 MS STEINBERG: Just one, was it in the
 12 back of your mind that the SSA had alerted you to a
 13 potential problem with Mr Mundi? Did you factor that in at
 14 this moment?
 15 MR MATHEBULA: I received a complaint and
 16 –
 17 MS STEINBERG: I'm asking a question.
 18 Did you factor it in at that moment?
 19 MR MATHEBULA: You're asking me to go
 20 back on time, I wouldn't know.
 21 MS STEINBERG: You wouldn't know.
 22 MR MATHEBULA: I wouldn't know.
 23 MS STEINBERG: Okay. Just one more memo.
 24 I raise these memos really in response to what you were
 25 saying about not being able to sign things that didn't

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1 square with your conscience and I really ask you about all
 2 of this in the light of that comment. The final memo is a
 3 memo from the acting executive of fraud investigations and
 4 it's to the acting Commissioner, Mr Kingon. That's the 8th
 5 of August this year. At this stage Mr Mathebula was no
 6 longer the acting head of enforcement. The head of
 7 Enforcement, the chief officer Enforcement was Mr Mogola
 8 Makola who we saw yesterday. So she's copied in. And this
 9 memo is entitled review of tobacco task team's cases. So
 10 you will recall this is the team that these series of memos
 11 set up that Mr Mathebula's explained administratively
 12 reported to him but functionally reported to the
 13 Commissioner himself. And the acting executive of fraud
 14 investigations says "the purpose of this memorandum is to
 15 provide an update on the status of the investigations
 16 undertaken by the tobacco task team that was co-located
 17 with fraud investigations in early 2017 and request the
 18 closure of the tobacco task team".
 19 And she explains that she reviewed all the cases
 20 under investigation by the tobacco task team and she
 21 mentions 8 cases and she says "of these cases only two of
 22 the matters were registered as per the SARS case governance
 23 process" and as Mr Mathebula pointed out when asked about
 24 the authorisation to investigate the members produced two
 25 memos signed by Mr Mathebula and as you said, Mr Mathebula,

1 she said the memo support registration of criminal cases
 2 and disciplinary action, the memos do not indicate that the
 3 matters should not be registered as per SARS' governance
 4 process. She then goes on to say "subsequent to the
 5 meeting in April 2018 and registration of unregistered
 6 matters, it emerged during the investigation into Yegan
 7 Mundie that the following SARS members' emails were
 8 downloaded for investigation by the TTT" and she lists that
 9 whole list.

10 She says that Mr Mundie used what was downloaded
 11 to defend himself in an unrelated matter brought against
 12 him by the NPA and she says "the motivation given for the
 13 downloading of these emails is that all the above employees
 14 were linked to cigarette smuggling". She then says that
 15 the tobacco task team also handed, handled some ad hoc
 16 cases with no links to tobacco at all and she lists a
 17 number of individuals. Some of whose cases are still
 18 current. The rest are, have been dismissed. So she
 19 recommends that the tobacco task team as authorised by Mr
 20 Mathebula be closed and any new allegations against SARS
 21 employees that the SAPS may identify in their tobacco
 22 project will be registered as per normal SARS case
 23 governance process and allocated for investigation. It's
 24 requested by the executive of fraud investigations, acting,
 25 supported by the chief officer of Enforcement and approved

1 in part by Mr Kingon. I include that merely to show the
 2 end of this chain of evidence that I've led. What is
 3 apparent now as we sit here is that the tobacco task team
 4 never investigated the tobacco industry. Not one of their
 5 cases concerns the tobacco industry. We've heard from
 6 other witnesses that all investigations and all enforcement
 7 of the tobacco industry stopped at the end of 2014 and the
 8 team set up supposedly to do it did anything but that.

9 What they did was they –

10 MR MATHEBULA: They –

11 MS STEINBERG: - they caused disciplinary
 12 enquiries and other cases to be brought against some of
 13 SARS' criminal investigators and then also some non-
 14 related, tobacco related. That is the story of the tobacco
 15 task team.

16 COMMISSIONER: Do you wish to comment on
 17 that at all?

18 MR MATHEBULA: Yes, I do, Judge. And
 19 thanks, Advocate, for confirming that the normal process
 20 around as evidenced in that memo is that a chief officer
 21 support and the Commissioner approves. But equally I
 22 thought it will have been nice if we indicated that in that
 23 memo witness X does indicate that, and I don't have a
 24 proper recollection of how many, it may be two of the
 25 people that may have been found guilty if that is, it could

1 be 1 or may have resigned whilst under investigation. The
 2 others are still under process of investigation. So I
 3 think that sufficed to indicate that what one will have
 4 supported was not a fragrant disregard of rules but that
 5 where normal process will have had to then ensue to ensure
 6 the completion of that particular process.

7 The other thing that goes into that because I was
 8 asked a question earlier and unfortunately I didn't
 9 immediately recall what the process is, is that when there
 10 are investigations there is policies and processes in SARS
 11 that suggests that if anyone is to be investigated or which
 12 may lead into a suspension the Employee Relations
 13 department will have to sit with that particular staff
 14 member to indicate what charges may follow in terms of that
 15 and people then get to be given an opportunity to either
 16 defend themselves if ever they do get up charged. But the
 17 chief officer will not have been involved in that process
 18 ultimately because you can't then be the jury and the Judge
 19 at the same time. HR and in this respect the agent of HR
 20 being the ER department will have to had to take those
 21 issues up. And there's this view that everybody has to be
 22 presumed innocent until really they have been found guilty
 23 of some misconduct or the other and if it is that there are
 24 instances where people have been treated unfairly without
 25 due process, I can sit here and tell you that I was not a

1 party to that. So that is to the extent to which I will
 2 like to respond to that comment of Advocate Steinberg.

3 MR KAHLA: I just want to understand, Mr
 4 Mathebula, you indicated earlier that the only reason why
 5 you had drawn into the support for the establishment or
 6 approvals and listened to the various actions that were
 7 mentioned around these memos, particularly in respect of
 8 this task team was that you have, you had responsibilities
 9 then qua acting chief officer of Enforcement that included
 10 criminal investigations. So there was to be some value
 11 added to your space. Did you ever check why you were not
 12 getting anything coming up that was benefiting criminal
 13 investigations in relation to alleged criminal conduct in
 14 the tobacco industry and that none of that was actually
 15 coming up, no cases were being registered in relation to
 16 that. Did it, did that ever become an issue you raised and
 17 with the team concerned?

18 MR MATHEBULA: So I would, if
 19 functionally they reported to me I would, I will have
 20 raised that but because on the by-weekly basis I have one
 21 on ones with my team, I have a Manco meetings with my team
 22 and we review what is going on in the division. So every
 23 single aspect of what's going on within functionally that
 24 I'm responsible for I would. In the instance where the
 25 people don't report to me I will then assume that the

1 questions that then got asked get asked by the person that
 2 is responsible for that unit. Also I must indicate that I
 3 will on a monthly basis submit to the Commissioner the top
 4 100 cases that we will have been dealing within the
 5 Enforcement space. With – not with the exact details of
 6 what is going on there for his knowledge but with the
 7 progress that we may have necessarily have been making and
 8 whether the case was going into the NPA and where it is
 9 with the litigation or whatever, what has been finalised.
 10 To that extent I would then have been informing the
 11 Commissioner. In addition to that I would be processing
 12 the many other cases that are submitted to the NPA
 13 particularly where their cases may relate to tax issues.
 14 Where it did not relate to tax matters we will then have
 15 had to make sure that there is an element that the SAPS
 16 have to take over that matter and investigate. So yes, in
 17 this instance I didn't get feedback, I was never informed
 18 on what cases they worked on, that I could have approved or
 19 not approved or handed over to the NPA, that remains in the
 20 purview of the Commissioner.

21 MR KAHLA: Sorry –

22 MR MATHEBULA: Suffice to indicate as
23 well, going forward, suffice to indicate that the
24 establishment of this task team had every support of the HR
25 department. So if you look at the memos that asked for the

1 memo to say, listen, guys, now you need to – because this
 2 team simply were not cooperative. When we will request
 3 information they would remind me that they didn't report to
 4 us. So the reports were going to where they were reporting
 5 to and I think if you had put this same question to the
 6 chief officer Enforcement she will have given you the same
 7 answer that even her didn't have sight of the reports of
 8 this particular team and this is when I decided to say,
 9 listen, if there is no much work that I can be giving this
 10 team or even, and the only thing that I may have to be
 11 signing now and again will be a leave, a this and the
 12 other. Maybe you know what guys, administratively I can
 13 ask somebody to do that for me and without me having to –
 14 PROF KATZ: May I just ask, does any of
 15 this ever get to Exco? Does Exco not look what's happening
 16 in the total organisation, reports from departments to Exco
 17 and Exco would see that something's wrong, there's this
 18 isn't really functioning?

19 MR MATHEBULA: I think to be fair to
 20 Exco, Exco would discuss matters that an Exco member will
 21 raise or a submission that will have come. So in this
 22 instance it will mean that the Commissioner will have had
 23 to raise a matter around, surrounding this particular team
 24 and that was never raised and I think we need to be fair to
 25 Exco members in respect of that. So I don't think that

1 people to be seconded from all over the show, those memos
 2 will have been coming from the head of HR and the memos
 3 will be saying that this team is going to the office of the
 4 Commissioner. It's going to be reporting to the office of
 5 the Commissioner.

6 MS STEINBERG: I can confirm that, yes.

7 MR MATHEBULA: And so that, so in
 8 everything that have happened, I would personally have,
 9 with my eight months experience in the organisation, I
 10 wouldn't have had a reasonable suspicion that there
 11 could've been something that was going on except the very
 12 suspicion that I indicated in the beginning that being
 13 given a list of people to say these you must suspend, these
 14 you must do this, I thought that went against what one will
 15 think that anybody must be put through before they can be
 16 suspended or be moved to this other area or the other one.

17 MR KAHLA: So following the approval
 18 around the downloads for the emails, did you ever follow-up
 19 on what information was gathered from that that has a
 20 relevance in respect of your responsibilities then on
 21 enforcement?

22 MR MATHEBULA: So I didn't follow-up in
 23 respect of what we would have required. I recall, Advocate
 24 Steinberg, you will have had a testimony that there was a
 25 point where I'm, my executive office support wrote this

1 without any other information they would have been able to
 2 raise anything except that when the matter leaked there was
 3 a huge conversation around the Exco members, around okay so
 4 now what is this.

5 [15:55] And the response of the Commissioner was to bring
 6 in the SSA. So there was a team of SSA that came in there
 7 followed by the director general of the SSA and a cell
 8 phones, computers were imaged to check if anyone had leaked
 9 these memos and all that and the conclusion was that no one
 10 from our side had actually leaked those memos and that's
 11 really that, what's what happened there.

12 MR KAHLA: I just want to go back to
 13 understanding, I mean all of this information around Mr
 14 Yegan Mundie and bearing in mind that you state in your
 15 statement that by virtue of your portfolio and that you're
 16 responsible inter alia for governance and the reputation of
 17 SARS and that this was a significant fiduciary
 18 responsibility calling for care and diligence, did it
 19 concern you that on, you had heard one, an instance where
 20 it was suggested that there must be access to information
 21 which was with SSA relating to Mr Mundie and that later on
 22 there was a memo, maybe two memos now we hear, suggesting
 23 that there was some conduct in relation to Mr Mundie, one
 24 suggesting that there must be an investigation and the
 25 other later suggesting that there should not have been an

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1 investigation, did it concern you that the institution had
 2 failed to move on dealing with resolving the issues
 3 concerning Mr Mundie and the fact that the SSA had already
 4 suggested it had information which of course we deliberated
 5 on that earlier, before lunch but I'm just looking at all
 6 of this information now together and the fact that you were
 7 aware that there was a lot of mysteriousness around the
 8 work of this task, did it concern you that with all of this
 9 mysteriousness that nothing had been done to ensure an
 10 inquiry on the allegations that have been made around Mr
 11 Mundie?
 12 MR MATHEBULA: Yes, I did.
 13 COMMISSIONER: Sorry?
 14 MR MATHEBULA: I did.
 15 COMMISSIONER: You did what?
 16 MR MATHEBULA: It did worry me.
 17 COMMISSIONER: And what happened?
 18 MR MATHEBULA: It did worry me. The
 19 challenge there is that maybe it's what you want to focus
 20 on and not what my statement, because I had asked -
 21 COMMISSIONER: No we're coming to that,
 22 I'm sure.
 23 MR MATHEBULA: Some of these things are
 24 out there because this is precisely the reason why -
 25 COMMISSIONER: Sorry just a minute. Just

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1 a minute, if you don't mind. We're coming to it but I
 2 think it is quite important. I think you, would you agree
 3 for the integrity of SARS that one should understand these
 4 things, do you agree?
 5 MR MATHEBULA: No, no sure, I agree.
 6 COMMISSIONER: Could you answer Mr
 7 Kahla's question?
 8 MR MATHEBULA: Yes, I accept, yes it did
 9 worry me and I did raise this matter with the Commissioner.
 10 COMMISSIONER: And what was -
 11 MR MATHEBULA: And not only, nothing
 12 happened.
 13 COMMISSIONER: And that's what worries
 14 me.
 15 MR MATHEBULA: Yes.
 16 COMMISSIONER: Senior leadership raises a
 17 serious matter with the Commissioner, nothing happens and
 18 we just go on. I can't believe it. Am I wrong to not
 19 believe that this is, well maybe I do believe it happened
 20 but it's, I find it extraordinary. Would that be wrong for
 21 me to find it extraordinary?
 22 MR MATHEBULA: No, it wouldn't be wrong,
 23 Judge, but can I just say this.
 24 COMMISSIONER: Yes.
 25 MR MATHEBULA: You sit in your file that

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1 I've submitted with memo that include a suggested cabinet
 2 memo to review the powers or least the oversight of the
 3 position of the Commissioner, not the position, the powers
 4 that the Commissioner has, precisely because we had head
 5 butted on this matters with the Commissioner and when, and
 6 then when the issue arose where the Commissioner will
 7 decide look this is my authority and that's it, the
 8 Commissioner has the authority and SARS is the Commissioner
 9 or SARS is the Commissioner in respect of the powers that
 10 currently conferred to him and I must indicate that this is
 11 part and parcel of the things that has really cost me
 12 personally because at one of the engagement I had with
 13 Minister Gordhan.
 14 COMMISSIONER: Yes.
 15 MR MATHEBULA: This particular matter was
 16 raised and the Commissioner was not there, this particular
 17 matter was raised with Minister Gordhan and Minister
 18 Gordhan can confirm to you that he was one of the people
 19 that essentially alerted me after so many of the engagement
 20 that I was having with the Commissioner to say are you
 21 aware that you are actually under investigation, I wasn't
 22 aware. On two occasions and then that then followed up
 23 with more investigations on how he uncommitted or betraying
 24 the organisation that SARS is and you have seen in my
 25 statement the number of investigations, some that I've just

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1 highlighted and this is just the tip of the iceberg.
 2 COMMISSIONER: Well that's what, I'm
 3 going to interrupt because we want to get onto your
 4 statement I just want to say that it's not, it doesn't seem
 5 to be enough to just say well that's the Commissioner.
 6 There is a senior leadership who watches this and say well
 7 that's the Commissioner, what's it got to do with us. So I
 8 agree with you, when we come to governance issues we must
 9 ask ourselves who will be there to watch the Commissioner
 10 and who will be there to watch the leadership and make sure
 11 that they are asking questions. Would you agree that
 12 that's the kind of recommendation we should make?
 13 MR MATHEBULA: No, no sure, we should
 14 make that recommendation but I must state here that I've
 15 done what I could do.
 16 COMMISSIONER: Yes.
 17 MR MATHEBULA: And I've done to my great
 18 personal cost
 19 COMMISSIONER: Ja.
 20 MR MATHEBULA: And I needed to pick what
 21 is a battle and what is a war because I could have acted
 22 recklessly and found myself summarily dismissed or
 23 suspended and I would not have the muscle or the money to
 24 fight this institution.
 25 COMMISSIONER: No of course.

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1 MR MATHEBULA: At it is I have actually
 2 lost money with trying to find legal advice on a number of
 3 issues that this organisation has put me through.
 4 COMMISSIONER: No I quite agree, all of
 5 us in life must follow, must face moral questions at some
 6 stage. But you want to get on with your statement, is that
 7 okay.
 8 MR MATHEBULA: Alright. So we got stuck
 9 at 7.5.
 10 MS STEINBERG: I know we've gone on.
 11 MR MATHEBULA: Ja. 8.
 12 MS STEINBERG: 8, yes.
 13 MR MATHEBULA: So we're going into the
 14 outsourcing of debt collection. In one of the Exco Revenue
 15 meeting held on the 5th of March 2018 it was reported that
 16 SARS a portion of the debt collection to external debt
 17 collectors. At this meeting I flagged the concern which
 18 was raised with me by my team about the perceived conflict
 19 of interest between a senior SARS official and one of the
 20 service providers that was shortlisted for the provision of
 21 the planned outsourcing of the debt collection. The chief
 22 officer responsible for Enforcement seemed to be aware of
 23 the matter as she mentioned the alleged official by name in
 24 the same meeting. The Commissioner was unhappy that I
 25 brought up this matter at the meeting. The Daily Maverick

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1 publication reported on the matter on the 13th of March 2018
 2 following the article the Commissioner asked Exco members
 3 in a memorandum dated 5 March 2018, I think the date might
 4 be wrong there. To each confirm that they were not
 5 responsible for leaking the information to the media. Over
 6 and above the general email to Exco members I received a
 7 letter dated 12 March 2018 from the Commissioner which
 8 amongst other things suggested that I was suspected of
 9 being responsible for leaking this information to the media
 10 based on the fact that I raised a concern at the Exco
 11 Revenue meeting. I was suddenly under suspicion and the
 12 Commissioner cautioned me for allegedly divulging
 13 confidential information to the media. I responded to the
 14 Commissioner's letter by an email dated 12 March wherein I
 15 strongly protested at the suggestion that I may have leaked
 16 confidential information to the media.
 17 I further pointed out to the Commissioner that I
 18 solely raised the matter at the Exco Revenue meeting as I
 19 expected of my portfolio as the custodian of governance,
 20 risk, governance and risk at the institution and that the
 21 risk of the institution faced has actually materialised
 22 resulting in negative ramifications for the institution
 23 which is trying to win back taxpayer's confidence.
 24 So I say there you will find the various
 25 documents in risk the business unit that reports to me,

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1 responsible for risk in the institution conducting a risk
 2 assessment on SARS using various methods including the IMAP
 3 survey on semi-autonomous revenue authorities. This
 4 assessment revealed that the balance between the SARS Act
 5 and the Public Finance Management Act, PFMA with regards to
 6 amongst others the role of the accounting officer and the
 7 accounting authority is not aligned as SARS is listed in
 8 the PFMA as scheduled 3 public entity, section 49 of the
 9 PFMA provides that everybody public entity must have an
 10 accounting authority and that where there is no board or
 11 other controlling body the chief executive of the
 12 institution will be the accounting authority. From a risk
 13 perspective this obviously concentrates power on the one
 14 person in the role of the accounting officer and from the
 15 governance perspective may result undesirable consequences.
 16 As the chief officer responsible for governance
 17 and risk management at SARS I submitted the memorandum in
 18 which I pointed out the concentration risk occasioned by
 19 the legislation governing SARS designating the Commissioner
 20 as both accounting officer and accounting authority. This
 21 relates to a lack of independent oversight caused by the
 22 infusion of the first line of assurance with the fifth line
 23 of assurance. We categorise this as concentration risk.
 24 My expertise were that the Commissioner will engage and
 25 resultedly advise the Minister of Finance to amend the act

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1 to address this risk. Unfortunately I received no feedback
 2 from the Commissioner on this matter and various attempts
 3 to set up a session to discuss this matter went to no
 4 avail.
 5 Then I deal with various matters that relate to
 6 complaints that were laid against me. So the executive
 7 media relations matter, the executive media relations, is a
 8 SARS spokesperson who in terms a structure, in terms of the
 9 structure reports, reported to the GE partnership
 10 development and communications who in turn reported to me.
 11 On the 17th of November 2016 the Commissioner summoned me to
 12 his office to once more complain about the negative media
 13 coverage specifically is complaint related to the Flox
 14 Linton matter which attracted negative media coverage. The
 15 Commissioner had expected that I will have appeared on TV
 16 and radio to deal with this matter. I had indicated to the
 17 Commissioner that there was an official spokesperson and he
 18 should be allowed to do the work he was employed to do.
 19 Despite having employed the spokesperson of media relations
 20 the Commissioner expressed his lack of confidence in him to
 21 represent SARS on the matter and any matter that he thought
 22 was sensitive to his person. The Commissioner will often
 23 make very disparaging remarks about the executive media
 24 relations. He rather preferred that I lend credence by
 25 appearing on TV and radio on matters that were of negative

1 impacts to his person. After that meeting the
 2 Commissioner, with the Commissioner there I decided to
 3 address the matter with the GE of the portfolio and the
 4 team to try and understand what could have happened with
 5 the specific media inquiry and how they thought we had
 6 handled the matter. Of importance is the fact that the
 7 media statement issued on the matter was different from the
 8 version I had authorised, the statement issued had for
 9 instance grammatical errors.

10 At this discussion it became apparent that there
 11 was no team cohesion and the team had a general lack of
 12 respect for the leader. After discussions I excused the
 13 rest of the team from the meeting with the exception of the
 14 group executive, the executive and the HR business partner.
 15 I expressed my disappointment with the executive media
 16 relations, with his team and his overall media management
 17 and also echoed by the Commissioner.

18 The executive media relations accompanied the
 19 Commissioner to an event in and around November 2016. A
 20 few days later on the 22nd of November 2016 I received a
 21 long complaint from the executive media relations directed
 22 to the Commissioner, this had a hallmark of an instigated
 23 complaint in that it did not follow the normal SARS
 24 grievance process. An external law firm was appointed to
 25 investigate in this regard and the investigation found that

1 there was no evidence or credence to the executive media
 2 relation's allegations that I ridiculed or undermine his
 3 integrity. All the allegations against me were dismissed
 4 despite the recommendations by the investigators for the
 5 Commissioner to take certain steps, the Commissioner did
 6 not take the recommended steps. He allowed the situation
 7 to continue unaddressed for almost a year. By allowing the
 8 situation to continue the Commissioner created a situation
 9 where I could not manage the executive media relations
 10 (inaudible) performance improvement interventions that was
 11 necessary to improve the performance of the unit.

12 At a later stage the Commissioner resorted to
 13 removing communications from my portfolio to report to him,
 14 the details outlined in 8.3. The investigations into, of
 15 misconduct into the chief officer Finance. The chief
 16 officer Finance on or around 24th of July 2018 had a
 17 complaint that was raised against him by his staff member
 18 alleging some misconduct. Commissioner appointed an
 19 external law firm to investigate the allegations against
 20 the chief officer Finance. As the complaint was being
 21 investigated I was called upon to be interviewed by the
 22 investigators. I obliged to the interview. To my surprise
 23 on the conclusion of the investigation I was informed that
 24 there were findings against me. Yet I was not the subject
 25 of the investigation. I was informed that the

1 investigation concluded that the Commissioner's trust in me
 2 had broken down. The Commissioner supplied me with a
 3 portion of the report so that I could prepare my response.
 4 I directed my response to both the Commissioner and the
 5 service provider.

6 It's important to note here that the report had
 7 618 pages and I was given 459 pages. I then requested that
 8 I must be provided with the entire report so that I can be
 9 able to respond to the report. To this day I have not seen
 10 the entire report nor the information which served as the
 11 basis for the compilation and the conclusion of the report.
 12 Suffice to say that the conclusion of the report was a
 13 recommendation that the Commissioner must enter into
 14 confidential settlement negotiations with me for a mutual
 15 separation. This I resisted to my great personal financial
 16 cost as I had to engage lawyers in the process to defend my
 17 reputation and my professional integrity.

18 The letter to the standing committee on Finance
 19 and Minister of Finance, on the 31st of July 2017 an HR
 20 employee wrote a letter entitled, Breaking Silence and
 21 directed to the chairman of the standing committee on
 22 Finance of the Parliament of the Republic of South Africa
 23 and the Minister of Finance. In the letter she alleged
 24 that there was a known sexual harassment matter against me
 25 which the institution was failing to act on. I viewed this

1 matter as a smear campaign from a person who was well
 2 conversant with the HR matters. I proceeded to sue the
 3 employee who wrote the letter as there was no iota of truth
 4 to the allegations. The said employee responded to the
 5 letter from my attorney by indicating that a well-known
 6 case of sexual harassment was a mere typo.

7 Now I found this baffling that the entire
 8 sentence called sexual harassment can really be a typo.
 9 The matter remains with my lawyers and we are now waiting a
 10 court date. This is a further indication of the amount of
 11 smear that I was subjected to since joining the
 12 organisation. There was as well a matter of an executive
 13 that complained that I had spoken to him in an abusive
 14 manner and indicated quite strongly that my conduct had
 15 been unprofessional. This investigation, this particular
 16 complaint also was routed by the Commissioner and the
 17 matter was investigated, a date, a lawyer, an external
 18 lawyer was employed to come and chair the hearing. At the
 19 hearing this executive turned around to say no there was no
 20 such case, I did not make the statement only if I agreed
 21 that I will not follow through and take action against him.
 22 To which I protested that the allegations were quite
 23 serious and they were intended to tarnish my name and
 24 requested that both, in both instances of the executive
 25 media relations and this particular executive steps needed

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1 to be taken by the organisation but the organisation
 2 refused to take actions on those individuals. On the 13th
 3 of March 2018 my PS credenza was broken into. The incident
 4 was reported and footage of the area was requested in order
 5 to see what may have happened. However efforts to obtain
 6 the footage proved futile as there was no recording of, to
 7 this effect despite two functioning, functional cameras in
 8 the vicinity of her desk. My portfolio was broken down
 9 without reason being advanced creating uncertainties in the
 10 team. On the afternoon of the 29th of August at 20:17 I
 11 received a sealed envelope from the office of the
 12 Commissioner who was leaving the office for, on my way to
 13 the airport.
 14 [16:15] The sealed envelope contained a memo which
 15 outlines unsubstantiated dissatisfaction with my
 16 performance of my portfolio including the performance of
 17 the Communication Unit. This is despite the fact that no
 18 performance issues were raised with me during the various
 19 one on one performance sessions nor at the last conducted
 20 annual performance review in June 2017. Having taken a
 21 brief look at the memo then I decided that I was - I
 22 indicated that I was on my way to the airport on an
 23 official trip which was approved by the Commissioner. I
 24 requested time to study the contents of the memo in detail
 25 and respond accordingly. One of the concerns indicated was

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1 the alleged inadequate and appropriate preparation for the
 2 BRICS meeting that were scheduled to be hosted in South
 3 Africa in 2018. On my return I detailed a plan and
 4 interventions in the partnership development and
 5 communications space. I consequently engaged the
 6 Commissioner on the plans to address the concerns and in
 7 particular the implementation plans to host BRICS
 8 engagement.
 9 The engagement I thought were cordial and I
 10 thought that the Commissioner was satisfied with the
 11 implementation plans I shared with him. However, to my
 12 complete dismay the communication unit was moved out of my
 13 portfolio without any discussion and or preparation. The
 14 team were in complete shock and came to me for explanation.
 15 Unfortunately, I was not able to explain the move to the
 16 team satisfactory. For the record the BRICS meetings were
 17 successfully hosted for both tax and customs. The team has
 18 been congratulated by now acting Commissioner and the
 19 Deputy Minister for the work and for the successful
 20 engagement with BRICS tax and customs.
 21 As I indicated in paragraph 8.2 above the
 22 Commissioner registered his unhappiness with the negative
 23 media reports in SARS which started in 2014. His opinion
 24 was that the communication unit was not doing enough to
 25 profile SARS. Further on various occasions the

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1 Commissioner indicated that he was more comfortable with Mr
 2 Luther Lebelo to be spokesperson on various media issues as
 3 opposed to the executive media relations, the designated
 4 spokesperson of the institution at the time. My consistent
 5 approach was always that the executive media relations must
 6 be given the space to do the work that it was employed to
 7 do, that of being a spokesperson for the institution. The
 8 key issues that the Commissioner expressly wanted Mr Lebelo
 9 to address in the media were on the FIC, on Mr Makwakwa, on
 10 SARS matters, of KPMG, Judge Dennis Davis and the DTC and
 11 on the matters related to the revenue shortfall. A number
 12 of disengagements were in the media on television. The
 13 Commissioner clearly know that I did not support the
 14 positions he wanted advanced in the public space and as
 15 stated above. I had to out rightly refuse in certain
 16 instances to appear on television or radio to speak on
 17 these matters which I believed were not in line with my
 18 professional integrity in the best interest of the
 19 institution. The Commissioner continued to have Mr Lebelo
 20 speak on these issues despite my protesting on the tone we
 21 are being seen to adopt and its impact to the institution.
 22 MS STEINBERG: May I just -
 23 MR MATHEBULA: Let me maybe let me pause
 24 there because there is a specific matter I need to refer to
 25 that - your question?

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1 MS STEINBERG: No, no, carry on, please.
 2 MR MATHEBULA: Okay. So, this issue
 3 where I say I flatly refused relates to a specific
 4 conversation that the Commissioner had had a meeting with
 5 Mr Moegsien Williams who was the editor-in-chief of ANN7
 6 and the New Age if I'm not mistaken. I got a call from a
 7 Cecilia from ANN7 where she wanted me to come to television
 8 to debate the issues around Minister Gordhan and I wanted
 9 to understand what the issues were and the brief was I
 10 needed to come and clearly show out Mr Gordhan and I was
 11 going to be given a complete freedom and unedited time.
 12 So, if I wanted an hour I could have an hour. My view was
 13 it flew in the face of what I knew of media that your five
 14 minutes on TV will have been a huge amount of time. But in
 15 this instance, I could be given as much as an hour.
 16 COMMISSIONER: To do what? Wat did you -
 17 MR MATHEBULA: To discredit Minister
 18 Gordhan.
 19 COMMISSIONER: Who wanted you to
 20 discredit him?
 21 MR MATHEBULA: This was at the height of
 22 the -
 23 COMMISSIONER: Who wanted you to
 24 discredit him?
 25 MR MATHEBULA: Well, the Commissioner

<p style="text-align: right;">Page 2837</p> <p>1 didn't tell me this directly but Cecilia did and I have -</p> <p>2 COMMISSIONER: Sorry -</p> <p>3 MR MATHEBULA: Cecelia is from -</p> <p>4 COMMISSIONER: Can I just get this</p> <p>5 correct? Who asked you to be on television?</p> <p>6 MR MATHEBULA: The Commissioner had asked</p> <p>7 me to go on television but I then got a call from Mr</p> <p>8 Moegsien Williams to say no, there is this particular issue</p> <p>9 that are happening -</p> <p>10 COMMISSIONER: Yes?</p> <p>11 MR MATHEBULA: Around SARS. Cecelia is</p> <p>12 going to call you to arrange the exact dates -</p> <p>13 COMMISSIONER: So, Cecelia is from the</p> <p>14 television?</p> <p>15 MR MATHEBULA: Is from ANN7 and I</p> <p>16 subsequently then got a call and I have put up the WhatsApp</p> <p>17 communication and in the WhatsApp communication I protested</p> <p>18 that I wasn't comfortable to go into public to debate</p> <p>19 issues that really about personalities, not the institution</p> <p>20 and, number 1. Number 2, I indicated in the WhatsApp</p> <p>21 communication that the advocate has that I wasn't prepared</p> <p>22 to be drawn into political squabbles either between the</p> <p>23 Commissioner and the Minister but that from a professional</p> <p>24 prospective I think that this was just not working.</p> <p>25 I got budget for quite a long time to do this</p>	<p style="text-align: right;">Page 2839</p> <p>1 be able to respond on Mr Pillay because I honestly have not</p> <p>2 been in spaces where Mr Pillay was discussed or even an</p> <p>3 issue around him. But I can state things that I know to be</p> <p>4 true and that relates to the issues around Minister Gordhan</p> <p>5 because in that instance part and parcel of the complaints,</p> <p>6 if you go through my file -</p> <p>7 COMMISSIONER: I don't want to hear</p> <p>8 complaints about Mr Gordhan. I say what is here some sort</p> <p>9 of division in SARS about Mr Gordhan and Mr Pillay and his</p> <p>10 heritage and now Mr Moyane's. Is there a division of some</p> <p>11 kind in SARS of people on this?</p> <p>12 COMMISSIONER: Factions?</p> <p>13 MR MATHEBULA: I don't belong to any of</p> <p>14 those -</p> <p>15 COMMISSIONER: I didn't ask you if you</p> <p>16 belong to them. I -</p> <p>17 MR MATHEBULA: So, I -</p> <p>18 COMMISSIONER: Sorry.</p> <p>19 MR MATHEBULA: No, I just have an issue -</p> <p>20 COMMISSIONER: I didn't ask you if you</p> <p>21 belong to them. I want to know are there factions here in</p> <p>22 SARS?</p> <p>23 MR MATHEBULA: I'm not aware of that.</p> <p>24 COMMISSIONER: You're not aware of that?</p> <p>25 MR MATHEBULA: Ja, what I'm aware of is</p>
<p style="text-align: right;">Page 2838</p> <p>1 which was followed by a very stern email that I got from</p> <p>2 the Commissioner to say that I wasn't doing enough to</p> <p>3 profile the organisation and I mustn't refuse a request</p> <p>4 from ANN7. That is on an email that I have submitted. Now</p> <p>5 when finally, these portfolios were taken away from me I</p> <p>6 then contextualised that this may be had nothing to do with</p> <p>7 what we're not necessarily doing. This has everything to</p> <p>8 do with the fact that I flatly refused to be drawn into a</p> <p>9 fight that I didn't understand, one, two, that I just</p> <p>10 didn't believe that it was my space nor my role to fight</p> <p>11 with Minister Gordhan on this specific issues that were</p> <p>12 going on because I thought he was doing his work as the</p> <p>13 Minister of Finance and I was to respond.</p> <p>14 COMMISSIONER: Just as a matter of</p> <p>15 interest what is going on here about Mr Pillay, Mr Gordhan</p> <p>16 and so forth? I mean why is so much attention being put on</p> <p>17 Mr Pillay for example who left here four years ago and</p> <p>18 everyone wants to talk about Mr Pillay and Mr Gordhan I</p> <p>19 hear talked about? Tell me what is going inside SARS?</p> <p>20 MR MATHEBULA: So, I wouldn't be able to</p> <p>21 respond to you on -</p> <p>22 COMMISSIONER: No, but you've been here</p> <p>23 for long time. You're a senior man and you're an astute</p> <p>24 man. I know that you're an astute man.</p> <p>25 MR MATHEBULA: Ja, but Judge, I wouldn't</p>	<p style="text-align: right;">Page 2840</p> <p>1 that a principle stand has cost me as an individual from a</p> <p>2 perspective of my personality.</p> <p>3 COMMISSIONER: I understand. I'm not</p> <p>4 asking that. Why is it I'm starting to get a feeling after</p> <p>5 only three months here of this sort of factionalism in this</p> <p>6 place and you have been here for how many years?</p> <p>7 MR MATHEBULA: I've been here for 33</p> <p>8 months.</p> <p>9 COMMISSIONER: For?</p> <p>10 MR MATHEBULA: 33 months.</p> <p>11 COMMISSIONER: Ja, so am I wrong? Is</p> <p>12 there no factionalism here?</p> <p>13 MR MATHEBULA: Factionalism, I wouldn't</p> <p>14 be able to comment about that, Judge.</p> <p>15 COMMISSIONER: But why aren't you able to</p> <p>16 comment on that?</p> <p>17 MR MATHEBULA: Because I will have had to</p> <p>18 have proof of that and -</p> <p>19 COMMISSIONER: Do you have any sense of</p> <p>20 it here?</p> <p>21 MR MATHEBULA: No, no, I would have sense</p> <p>22 that there will be cliques or groupings of people but must</p> <p>23 I categorise that as factions? I wouldn't really be able</p> <p>24 to go there. But I'm quite comfortable to go on record on</p> <p>25 matters I know and that I have experienced.</p>

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1 MR KAHLA: But is there a general
2 attitude against Minister Gordhan within the institution?
3 MR MATHEBULA: What kind of attitude?
4 MR KAHLA: Well, I'm thinking if there
5 was for example to be a media campaign that was focused
6 around the attack of Minister Gordhan which of course as
7 you've indicated you turned down, I'm interested around is
8 there a prevailing sense of you've got to be fighting
9 Minister Gordhan and putting aside Pillay because you said
10 you've never had any issues said in relation to Mr Pillay.
11 Have you got an impression in relation to Minister Gordhan
12 that there is some attitude, there is a sense that he
13 should be - everybody should feel free to simply have an
14 attack on him?
15 MR MATHEBULA: I don't think that's even
16 a secret that the relationship between Commissioner Moyane
17 and Minister Gordhan was a very difficult relationship.
18 There is no doubt about that and I think I've experienced
19 both sides of the table. I've experienced the wrath of
20 Minister Gordhan when he thought I was on the other side as
21 much as I've experienced the wrath of Commissioner Moyane
22 when he thought I am on Minister Gordhan's side and the
23 truth of matter is that I owe no one allegiance, either him
24 or Commissioner Moyane. All I was doing I did my work as a
25 public servant and I believe that institution will outlive

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1 individuals and personalities and we have a responsibility
2 to preserve it for the future.
3 MR KAHLA: I mean putting aside the
4 impression that there might be no love lost between
5 Minister Gordhan and the Commissioner, what's your
6 impression about the institution and its attitude towards
7 Minister Gordhan? You say you don't have an idea on that?
8 MR MATHEBULA: No, no, but the - you see
9 when you start saying the institution -
10 MR KAHLA: SARS.
11 MR MATHEBULA: It will mean that there
12 will be a formal position that will be taken to say fight
13 Minister Gordhan. So, there is no formal position because
14 as officials we treated Minister Gordhan as a Minister that
15 we were responsible to. I'm responsible every month,
16 during the duration of his ministry, I was responsible for
17 producing a monthly report, quarterly report and that was
18 done. Every statutory responsibility was executed in that
19 regard. Every meeting that he called we attended. In most
20 instances I was in those meetings. On two of those
21 meetings and in one of those meetings he called me aside to
22 say listen, I'm worried about you. There is this campaign
23 that I had become aware that you are being targeted in that
24 institution, are you okay? And I wasn't aware that there
25 was a campaign at the time when he raised these issues with

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1 me. I said to him Minister, I do not know what you are
2 talking about and I think on the 15th of March he called me
3 and said to me, I might be incorrect with the date but it
4 was a Friday, he called me and said listen, I here you are
5 suspended? I said to him I don't know what you're talking
6 about. He said, where are you? I said no, I'm on leave.
7 He said you are, either you are suspended or you'll be
8 suspended on your return back to the office. said to him I
9 will discover when I go back on Monday. For my knowledge I
10 was not suspended. So, I'm grateful for him having taken
11 the time to alert me at the time when I was not aware but
12 equally I'm very aware that the fact that I was in
13 communication with him has cost me greatly because I then
14 got seen to be a person that was busy destroying SARS at
15 his instruction which was not true because I wasn't even
16 communicating with him around that. It was through his
17 initiation that he had spoken to me.
18 COMMISSIONER: Can I, go ahead?
19 MR KAHLA: Ja, I'm done.
20 COMMISSIONER: I just want to take up
21 with you a most extraordinary letter that I got.
22 MR MATHEBULA: Yes?
23 COMMISSIONER: Now thought it was Mr
24 Lebelo's attorney but he reminded me this morning that it's
25 SARS's attorney who writes this letter to me and I've

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1 raised certain queries and the last part he say "the
2 importance of a public rebuttal by the SARS, Mr Pillay is
3 being granted an opportunity by the Commission to tell
4 South Africans and the entire global community that he has
5 been purged out of the SARS and that the unit was lawfully
6 established and that this unit did not engage in any
7 unlawful activities. It is critical that SARS Human
8 Resources is given an opportunity to provide the SARS
9 version of events. There is no reason why the SARS HR
10 should not be given a platform. It is important that the
11 Commission does not only allege to be fair but that it is
12 seen as being fair especially after its given Mr Pillay an
13 opportunity to state his version." I will read out a few
14 paragraphs.
15 "In my view if the SARS HR is not given the
16 opportunity to be heard in an open and public forum like
17 the one afforded to Mr Pillay it would confirm my
18 reasonable suspicion that the Commission has already made
19 up its mind in finding that Mr Pillay was purged out of the
20 SARS, particularly the Commission has now decided to avoid
21 the allegations around the unit. My reasonable suspicion
22 is based on the ongoing lobbying to bring Mr Pillay back
23 into the SARS and this would be possible if the Commission
24 was to make a finding that Mr Pillay's purged and that
25 there is no prima facie against him. It appears to me that

<p style="text-align: right;">Page 2845</p> <p>1 this is likely to be the conclusion given the Commission's 2 glaring outlook to ignore existing prima facie evidence." 3 Now it's an extraordinary letter to be written by 4 SARS, by SARS's attorney, for him telling SARS that they 5 should go on the offensive and rebut this thing about 6 Pillay and so forth because there is a thing going afoot 7 about Mr Pillay coming back. I asked Mr Kingon this 8 morning, I said Mr Kingon, acting Commissioner who is SARS, 9 did you authorise this? He said ever heard of it. He said 10 most certainly I didn't authorise it and I asked - you knew 11 how he how he expressed to me when I asked about this whole 12 thing of Mr Pillay? You know why the attorney for SARS 13 should be writing a letter saying SARS must go on the 14 offensive to justify its actions against Mr Pillay? Do you 15 know anything about this letter? 16 MR MATHEBULA: No, I don't. So, there is 17 a delegation of authority in respect of who can instruct 18 the lawyers and that will be the head of Legal and the head 19 of ER, excuse me, in instances where the matters have an ER 20 related context. So, I don't know who did that and if the 21 Commissioner doesn't know certainly I wouldn't know. 22 COMMISSIONER: Okay, no, that's fine. 23 Just in that context of a letter being written on behalf of 24 SARS saying, the attorney says "my suspicion is based on 25 the ongoing lobbying to bring Mr Pillay back into SARS</p>	<p style="text-align: right;">Page 2847</p> <p>1 something with you before you move off the topic? You gave 2 me a file of media statements. 3 MR MATHEBULA: Ja. 4 MS STEINBERG: Thank you for that. I 5 think, if you'll confirm, that the statements that you 6 didn't want to write, you felt for the reasons given were 7 inappropriate, and ended up being written by Mr Lebelo, is 8 that correct? 9 MR MATHEBULA: Yes. 10 MS STEINBERG: Is there anything here - 11 it's just an opportunity - is there anything you'd like to 12 point out in particular here? 13 MR MATHEBULA: No, look, I mean I have 14 indicated to you that, Advocate Steinberg, that if you take 15 the media release in respect to the KPMG matter - 16 MS STEINBERG: Ja? 17 MR MATHEBULA: That media statement, all 18 of Exco objected to it and all of Exco did not know 19 anything about it and at the time communications was still 20 with me and I certainly was not involved because what the 21 media statement was saying was not even responding to what 22 KPMG had said. So, KPMG had never accused SARS of 23 incompetence, of incompetence or corruption or any kind of 24 those stuff an I recall I flagged that issue to say but why 25 are we writing things that have nothing to do with what</p>
<p style="text-align: right;">Page 2846</p> <p>1 which would be possible if this Commission was to find that 2 Mr Pillay was purged." What lobbying is this? Do you know 3 about some lobbying? 4 MR MATHEBULA: No, I don't know about 5 lobbying, Judge, and I wouldn't want to go into a 6 conspiracy theory - 7 COMMISSIONER: Nor do I. I hate 8 conspiracies but I want to know why an attorney for SARS is 9 writing about lobbying for Mr Pillay? So, is this lobbying 10 within here somewhere? You would know about that. You're 11 an astute man, Mr Mathebula. 12 MR MATHEBULA: I thought you have power 13 of subpoena Judge - 14 COMMISSIONER: No, look - 15 MR MATHEBULA: That you can subpoena that 16 person. 17 COMMISSIONER: Who shall I subpoena? 18 MR MATHEBULA: The lawyer. 19 COMMISSIONER: Well, maybe I will. 20 MR MATHEBULA: So, ja, look, I mean I - 21 look, I think the most important and crucial thing and I 22 know we've gone on for some time - 23 COMMISSIONER: Ja. 24 MR MATHEBULA: Would be that - 25 MS STEINBERG: Sorry, can I check</p>	<p style="text-align: right;">Page 2848</p> <p>1 KPMG has said? Why we're not tackling the issues that has 2 been raised and it appeared the Commissioner at that point 3 was welcoming of the comments that the Exco members were 4 raising until Mr Lebelo came in and said no, but this is 5 the statement that we are going to use. 6 [16:35] And we left the meeting, the boardroom with a 7 distinct impression that the Commissioner had taken our 8 view as Exco into account. Suffice to say that the 9 statement he read was precisely he one that we had objected 10 to as Exco. So that's the kind of stuff I'm talking about. 11 So if you look at the other media statements you will see 12 that there is as well the issue around Judge Dennis Davis, 13 I had cautioned against us taking the kind of adversarial 14 stance that we were taking around a Judge that was 15 appointed by the Minister to look at us or advise on tax 16 matters. But that is what it is. I've given you the media 17 statements and you can go through them and one of your 18 terms of reference relates to the media statements and I 19 have provided you that which I think may be of interest. 20 COMMISSIONER: Could you help me with 21 that, with, could you go through those statement, you know 22 our terms of reference are what statements were made that 23 are contrary to government policy. Do you think you could 24 go through those and assist me and flag those that you 25 think are contrary to government policy if any. I think</p>

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1 the Commissioner has already asked for work to be done with
 2 regards to that specifically.
 3 COMMISSIONER: Well could you help me and
 4 just make sure that it gets done and assist me in that
 5 regard.
 6 MR MATHEBULA: I will try.
 7 COMMISSIONER: Thank you very much.
 8 MR KAHLA: And the objection in relation
 9 to the statement prior to its release, I suppose it would
 10 be recorded in the minutes of that meeting, was it in an
 11 Exco meeting?
 12 MR MATHEBULA: No, no it was not an Exco
 13 meeting. What had happened is that it appears to me the
 14 Commissioner had already taken a decision to move media
 15 away from me because I had, I recall I was not well on the
 16 Friday, that this matter arose and when somebody sent me
 17 the media statement of KPMG I picked up the phone and the
 18 Commissioner said to me no, no you are not well it's fine,
 19 I'll get the matter attended to by your team. I drove back
 20 and asked the Commissioner if it is possible for me to see
 21 him, I wasn't able to reach the Commissioner that entire
 22 weekend. On the Monday morning I text the Commissioner to
 23 say Commissioner now that there is a press conference that
 24 has been called, and I didn't even know that there was a
 25 press conference that was called, the GE responsible called

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1 me and say hey I've been given instruction to call a press
 2 conference, now I had to pretend like I actually knew about
 3 this because how is the press conference being called and
 4 the person that's responsible for the area doesn't even
 5 know. I then said, I text the Commissioner to say
 6 Commissioner will you have an opportunity to brief us
 7 before the media conference. He responded to say that was
 8 my initial point. I will meet with you but he didn't do
 9 so. So I then text him at about half 7 to say Commissioner
 10 I'm going to the office would you care to meet with me. He
 11 then said no, no fine, it's a good idea let's meet. We met
 12 with the Commissioner and then I asked him are you going to
 13 take the team into your confidence, what statement is going
 14 to be issued because you are looking for us to sit in
 15 front. The Commissioner said to me no, no, no you are
 16 going to chair the media conference and you are going to
 17 field the questions. I said to the Commissioner no I
 18 can't. I don't have background, I don't know what these
 19 issues are. I haven't seen the statement but it will look
 20 bad if all of a sudden I'm not in the podium to chair this
 21 press conference, the media will pick that, that there is
 22 something going wrong. The least I will do for you is that
 23 I will chair the media conference and you can choose
 24 whoever, who you want to sit with you but I will stand in
 25 the podium and if you go and look at the recording of that

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1 specific media conference in fact I chaired the media
 2 conference and I had left straight when they were answering
 3 I will come and sit down instead of taking a chair in the
 4 podium. To me was a way of distancing myself from what was
 5 going on but I needed to do it in a professional manner
 6 without necessarily looking like a person that is just
 7 throwing his toys out of the cot. So it, from there I then
 8 asked Commissioner are you going to ask Exco for us to
 9 debrief. He responded in an SMS to say no we got busy,
 10 we'll call a meeting another time and then the next meeting
 11 that I called I got told communication is out of your
 12 space.
 13 COMMISSIONER: And it went into Mr
 14 Lebelo's space?
 15 MR MATHEBULA: Yes.
 16 COMMISSIONER: Shall we carry on, I'm
 17 sorry I've helped to interrupt.
 18 MR MATHEBULA: Alright no problem.
 19 COMMISSIONER: I get the feeling we could
 20 talk for days with you about SARS. So let's try and -
 21 MR MATHEBULA: As long as we are not
 22 fighting Judge. At least on this matter you are not, I'm
 23 quite happy with that. The appointment of the attaché is,
 24 Judge can I proceed?
 25 COMMISSIONER: Sorry, sorry I just wanted

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1 to clarify Mr Katz and I think I'm sure others.
 2 MR MATHEBULA: The appointment of the
 3 attaché is done in terms of an approved process which
 4 includes an open recruitment process and an approval by the
 5 Minister of Finance for appointment. The contract of the
 6 attaché in Brussels ended, the same goes for the one in
 7 Washington on the 31st of January 2018. Instead of
 8 following normal recruitment process which I had already
 9 started the Commissioner went ahead and extended the term
 10 without my knowledge or that of the International Relations
 11 team. In doing so the Commissioner also failed to obtain
 12 the approval of the Minister of Finance that was
 13 procedurally required in instances such as this. Further
 14 in early 2017 the Commissioner instructed me to stop the
 15 recruitment process for the attachés in Brussels, Beijing
 16 and Washington so that he can be part of the recruitment
 17 process. To date this positions remain unfilled and as
 18 such leading to serious reputational issues and financial
 19 cost to SARS. I attach the letters of extensions and why I
 20 raise these matters is because at some point there was an
 21 attempt to want to paint this to me until I said no hold on
 22 a second you can't do that. You stopped me from
 23 recruiting, saying you are taking over the process. I
 24 advised you that you can't because let's assume you run
 25 this process and one of the candidates is unhappy it means

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1 that person must appeal, who does that person appeal to,
 2 will have to appeal to the Minister because you are the
 3 financial authority in this instance. Then he return the
 4 thing back to me and said that's fine but there was an
 5 issue that they, the attaché in Washington had shipped his
 6 stuff back into South Africa and when he landed here now we
 7 were supposed to ship the stuff back into the US and that
 8 would have cost us about, in excess of about R1.25 million
 9 and I raised this sharply with Commissioner to say if the
 10 Auditor-General ever found, find this it will be wasteful
 11 expenditure and I would doubt if any Minister of Finance is
 12 going to approve this. To that extent maybe you want to
 13 rescind your decision. Fortunately the attaché managed to
 14 understand despite that he had a letter by the Commissioner
 15 that he has extended his contract by one year. We had to
 16 speak to him to accept that he may have to sit here. We
 17 are now in the process of recruiting and we will fill those
 18 positions in due time.

19 Consequent to the change of the portfolio of the
 20 GE PDC when committees were taken away the incumbent
 21 portfolio committee resigned. Upon his resignation I
 22 started recruitment process for this, for his replacement.
 23 In the process of HR obtaining the necessary signoff for
 24 the commencement of the recruitment process the
 25 Commissioner wrote to me in February, in the correspondence

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1 the Commissioner directed that the recruitment process
 2 should be stopped. I responded to him in writing
 3 indicating that it was challenging for me to discharge my
 4 responsibilities without the necessary human resources or
 5 the necessary support. The position remains vacant,
 6 however we are now, we have now commenced the recruitment
 7 processes.

8 My professional approach coupled with the belief
 9 that it is important to be honest and maintain one's
 10 integrity in the carrying out of the duties and
 11 responsibilities discharged in one's hand did not always
 12 auger well with the Commissioner. As such the speaking out
 13 on matters that are deemed not to be in the interest of the
 14 institution nor the country attracted negative consequences
 15 for me. The situation was so uncertain that by way of an
 16 example the Commissioner appeared before parliament in
 17 March 2017 before the standing committee on Finance, a
 18 member of the Democratic Alliance asked if I was still a
 19 member of Exco. In this instance the Commissioner had left
 20 me behind or excluded me from the delegation despite the
 21 fact that my responsibilities is actually that of strategy
 22 and reporting and almost all, and partnership and
 23 development. So stakeholder relations is with me,
 24 Parliament liaising is with me. But in this instance I was
 25 excluded.

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1 On the 15th of September 2017 the Commissioner
 2 appeared before the same committee again, this time around
 3 an invitation was extended to me by the Commissioner and I
 4 also attended the engagement. In this instance a member of
 5 the Economic Freedom Front inquired whether or not I was
 6 about to be suspended. In is response to the Commissioner
 7 indicated that I was not about to be suspended but insisted
 8 that I must personally respond. My response was I'm not
 9 suspended, I'm not aware that I was about to be suspended.
 10 However if I am to be suspended the process is still to
 11 come. When we came back the Commissioner was completely
 12 unhappy that I had responded and yet he was the one that
 13 had insisted that I respond.

14 Some issues that have been raised in this
 15 Commission, in June, when I joined SARS in January 2016 the
 16 implementation of the operating model was at an advanced
 17 stage. Ms Seremane was one of the employees that had been
 18 affected. It is important to note that she was an
 19 executive reporting to the GE Governance and Risk who in
 20 turn reported to me. The HR team worked with the GE at GRQ
 21 and tried to accommodate Ms Seremane by offering her a
 22 position within the division which she rejected. She
 23 proposed to be moved to roles that were outside my
 24 division. HR then instituted a stage 3 grievance letter
 25 that was sent to Ms Seremane. In my considered opinion Ms

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1 Seremane was afforded the same opportunity to be reasonably
 2 accommodated and in the instance where I was then asked to
 3 sign a section 189 letter it was not because I personally
 4 had been a, had fired Ms Seremane or any other. This was
 5 simply an administrative process that was designed that
 6 each officer, chief officer will sign the section 189
 7 letters. Ms Mthebule, Ms Mthebule mentioned in her
 8 testimony or statement to the Commission on the 28th of June
 9 that in one of the many positions she had applied for she
 10 received a regret letter from me relating to the position
 11 of GE Governance and Risk. I confirmed that I signed off
 12 the letter informing Ms Mthebule that she was not
 13 shortlisted for the role of GE Governance and Risk. As
 14 much as it is not set, a set HR practice to inform
 15 candidates for not being shortlisted I thought it
 16 professional courtesy to write a letter to Ms Mthebule to
 17 inform her of the outcome of her application, more so
 18 because she was once a senior employee who had also acted
 19 as a chief officer post.

20 Ms Nxolana. Ms Nxolana indicated, submitted his
 21 letter of resignation to me in my capacity as an acting
 22 chief officer Enforcement. I persuaded him to service a
 23 longer notice to ensure that the stability of the debt
 24 management portfolio was not affected. I would like to
 25 indicate that after going through the debt management value

<p style="text-align: right;">Page 2857</p> <p>1 chain I shared the team's view that the debt management 2 portfolio should not be split. It was at this point that I 3 requested Ms Nxolana to put together a case for not 4 splitting the portfolio as the subject matter expert. I 5 used the same memo in advancing the case for not splitting 6 the portfolio with my colleagues at Exco and as such the 7 split never happened. I raised this because I remember Mr 8 Kahla, you were the one that why were you asked to write a 9 memo and Mr Nxolana didn't seem to explain why he was asked 10 to write a memo. In this instance it's because he knew I 11 believe, he knew that I shared the team's belief that debt 12 management value chain shouldn't be broke and that's the 13 reason I asked him to write that. I made my submission 14 earlier and - 15 COMMISSIONER: Can we move beyond that. 16 I think we've - 17 MR MATHEBULA: That one you can move 18 because Advocate Steinberg has sat on that for long. 19 COMMISSIONER: Well I think both of you 20 did. 21 MR MATHEBULA: In conclusion Judge, I 22 must state that the past 33 months have been the most 23 difficult for me personally and for the organisation. 24 Maintaining my personal integrity and attempting to carry 25 out my responsibilities with care and due diligence came at</p>	<p style="text-align: right;">Page 2859</p> <p>1 that said to me, and I - 2 COMMISSIONER: Mr Mathebula, may I ask 3 you this. You've given us your, if you want to say, expand 4 upon them, give it to us in writing again, it is - 5 MR MATHEBULA: But can I just finish, 6 this is just two things that - 7 COMMISSIONER: No, if you'll let me 8 finish. It's getting late now. We've been sitting for a 9 long time and people have to go. It's, you know it's also 10 the Sabbath. So we would like to stop soon. 11 MR MATHEBULA: Sure. 12 COMMISSIONER: So may I just ask you to 13 give us a written submission and if you want to speak to it 14 later in October, you can do so. 15 MR MATHEBULA: Except that I would like 16 to have it on record, Judge. 17 COMMISSIONER: Sorry. 18 MR MATHEBULA: I'd like to have it on 19 record, it's really just two sentences that I'm going to - 20 COMMISSIONER: Okay well let's hear two 21 sentences. 22 MR MATHEBULA: So the SMS said, "stop 23 your shit or you are dead or leave SARS," and the last part 24 of that Judge because I just want to make sure that if 25 anything happens to me this Commission knows, which is one</p>
<p style="text-align: right;">Page 2858</p> <p>1 a very high cost. The environment did not provide for 2 sufficient space and support for one to effectively and 3 efficiently operate. The huge amount of interference 4 compromised optimal performance. Moreover it has been 5 difficult in some instances, almost impossible for one to 6 optimally contribute to the effective operation of the 7 organisation. The Commissioner will constantly walk to my 8 PA to ask her to explain why, to explain to him of my 9 whereabouts but he will not ask me. This is even in 10 instances where my travels have been authorised. So for 11 instance there was a time when I was in Limpopo to do a 12 revenue meeting and the Commissioner took serious exception 13 that I was not a meeting yet he had delegated me to go 14 there and indicated that consequences were to follow but 15 when I came back the Commissioner did not even raise it. 16 COMMISSIONER: I don't think we need to 17 go into all these detailed thing. You carry on with this 18 if you don't mind. 19 MR MATHEBULA: I have personally been 20 subjected to investigations which I call intimidations, 21 side-lining and threat to my personal and family security 22 at a point. I need to indicate this because earlier I was 23 asked whether I actually reported the matter of a threat. 24 I received an SMS which said to me, "you need to leave SARS 25 or you'll die." The SMS got followed up by another one</p>	<p style="text-align: right;">Page 2860</p> <p>1 day I was leaving this office very late - 2 COMMISSIONER: Mister - 3 MR MATHEBULA: And I got pulled - 4 COMMISSIONER: Mr Mathebula, I'm sorry. 5 MR MATHEBULA: You wouldn't like me to 6 mention this? 7 COMMISSIONER: I would like to just, 8 we're going to finish now. We've had a long submission 9 from you. 10 MR MATHEBULA: That's the last statement. 11 COMMISSIONER: And let's move on. 12 MR MATHEBULA: But that's the last 13 sentence. 14 COMMISSIONER: Well okay let - 15 MR MATHEBULA: I am sure you could care 16 about my safety. 17 COMMISSIONER: No, Mr Mathebula, I didn't 18 say you can't talk about it. I talked about - 19 MR MATHEBULA: So let me - 20 COMMISSIONER: Mr Mathebula, please don't 21 talk over me. You're welcome to talk about it, the 22 question is when. You understand, if you're not going to 23 be too long it's fine. But otherwise can we leave it for 24 another time to deal with and I'll give you the 25 opportunity.</p>

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1 MR MATHEBULA: I'm not going to be long.
2 Okay so I was leaving the office and I, on, as I left I got
3 flagged down by a blue light car. I stopped because I
4 thought it was police. Two gentlemen alighted from the car
5 with guns and they put a gun on my head and told me I must
6 leave this organisation and to that I leave it there,
7 Judge. At least you know these matters have been reported
8 to the police and the crime intelligence and the police
9 know about them.
10 MS STEINBERG: Judge.
11 COMMISSIONER: Is that, are we come, is
12 that the end, Mr Mathebula?
13 MR MATHEBULA: That's the end for me,
14 Judge.
15 COMMISSIONER: Thank you very much. Well
16 thank you for all your time and the amount of effort you've
17 put into it. Thank you very much.
18 MS STEINBERG: Thank you from my side
19 too.
20 COMMISSIONER: Okay that's the end of the
21 hearings for the moment.
22 MS STEINBERG: Yes.
23 COMMISSIONER: We've set new hearings for
24 the week starting the 15th of October.
25 MS STEINBERG: Ja, the 15th of October.

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1 COMMISSIONER: Yes.
2 MS STEINBERG: And we'll obviously send a
3 press release as to the line-up.
4 [INQUIRY ADJOURNED]
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