

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**30 NOVEMBER 2020**

**DAY 315**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 30 NOVEMBER 2020**

**CHAIRPERSON:** Good morning Mr Chaskalson, good morning everybody.

**ADV CHASKALSON SC:** Good morning Chairperson.

**CHAIRPERSON:** Yes are we ready?

**ADV CHASKALSON SC:** We are Chair but before we get to today's business I would like to correct an error I made in last week's questioning of Mr Ramosebudi.

On Friday evening it was brought to my attention  
10 that in my questioning of Mr Ramosebudi at the end of the session on Thursday the 26 November Thursday's session I unintentionally referred to McKinsey as opposed to Regiments in relation to kickbacks paid to shell companies set up by Salim Essa. And Chair the transcript reference to where I accidentally and incorrectly referred to McKinsey is Day 13 page 198 line 5. Day 13 page 198 line 5.

So I need to apologise for my error both to you Chair and of course to McKinsey and I need to set the record straight so I would like to do that and just make it  
20 very clear.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** There is a spread sheet on pages 590 to 597 of Annexure VV4. That was the spread sheet on which I was questioning Mr Ramosebudi.

That spread sheet is a spread sheet of revenue

generated by the Regiments advisory unit not the McKinsey advisory unit.

The kickbacks to Salim Essa's shell companies reflected on that spread sheet were kickbacks to be paid by Regiments and not by McKinsey.

In relation to that spread sheet I questioned Mr Ramosebudi on the SAA working capital contract and referred him to the kickback in respect of that contract reflected on page 596 of Annexure VV4.

10           Regiments worked on that contract with McKinsey but the commission has found no evidence to suggest that McKinsey was aware of any bribes or kickbacks being paid by Regiments in respect of that contract.

I just want to set the record straight on that.

**CHAIRPERSON:** Thank you. Thank you.

**ADV CHASKALSON SC:** Chair Mr Mpofu might I just have a word with Mr Mpofu?

**CHAIRPERSON:** Yes, yes.

**ADV CHASKALSON SC:** Who represented Mr Ramosebudi  
20 as well.

**CHAIRPERSON:** Yes, yes, yes.

**ADV CHASKALSON SC:** Mr Mpofu is – was just wanting to indicate that in his capacity as Mr Ramosebudi's representative he has noted the correction.

**CHAIRPERSON:** Yes okay no that is fine. Thank you.

Thank you. Thank you.

**ADV CHASKALSON SC:** Chair there quite a few legal representatives present today for today's evidence and for what was planned for today and I wonder if everyone might put themselves on record before I – I start today's proceedings. One of the representatives Mr Cockerell is here with us on Zoom.

**CHAIRPERSON:** Well I think let us take it step by step. I think your next application is for the postponement of the  
10 evidence of the other witness who was going to give evidence today Mr Williams I think and the other witnesses who were going to give evidence tomorrow and Wednesday and Thursday.

If there are legal representatives representing those then we can have those placing themselves on record before you move that application.

But those who may be representing certainly Mr Gordhan and whoever else in regard to Mr Gordhan's cross-examination or evidence then they can place  
20 themselves on record when we get to what is going to happen today with regard to Mr Gordhan's evidence.

**ADV CHASKALSON SC:** Thank you Chair. There are indeed representatives of the witnesses coming – Mr Williams and witnesses coming later or due to come later in the week.

**CHAIRPERSON:** yes.

**ADV CHASKALSON SC:** There are also representatives of interested parties.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** In relation to those witnesses.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** And I want to...

**CHAIRPERSON:** Yes let us have them placed on record.

**ADV CHASKALSON SC:** I wonder if they might place  
10 themselves on record at this point.

**CHAIRPERSON:** Yes. Yes. Well maybe you – okay ja you might do it from where you are if your microphone works. If it does not work you might have to come to the podium. Or maybe let everybody comes to the podium then.

**ADV MATHABATHE:** Good morning Chair.

**CHAIRPERSON:** Good morning.

**ADV MATHABATHE:** My name is Leago Mathabathe and I appear on behalf of Mr Sipho Masego.

**CHAIRPERSON:** Yes.

20 **ADV MATHABATHE:** He was an implicated party in Mr Williams' statement.

**CHAIRPERSON:** Yes.

**ADV MATHABATHE:** So we just want to place on record that we reserve out client's rights to cross-examine Mr Williams should the need arise.

**CHAIRPERSON:** Yes. Yes okay alright.

**ADV MATHABATHE:** Thank you Chair.

**CHAIRPERSON:** You will have to apply for leave?

**ADV MATHABATHE:** Yes, yes Chair.

**CHAIRPERSON:** If you want to cross-examine.

**ADV MATHABATHE:** Thank you Chair.

**CHAIRPERSON:** Okay alright. Okay thank you.

**ADV NGUTSHANE:** Morning Chair.

**CHAIRPERSON:** Good morning.

10 **ADV NGUTSHANE:** I am Advocate Patrick Ngoljana [?] I am here with Mr Athol Williams.

**CHAIRPERSON:** Hm.

**ADV NGUTSHANE:** We have been informed that there will be this application to have his evidence postponed today.

**CHAIRPERSON:** Yes.

**ADV NGOLJANA:** On account of the evidence leader who is not available.

**CHAIRPERSON:** Well. Yes.

**ADV NGUTSHANE:** To deal with his evidence today.

20 **CHAIRPERSON:** Yes okay. Thank you.

**ADV NGUTSHANE:** Thank you.

**ADV CHASKALSON SC:** Chair I see Mr Cockrell on the Zoom screen.

**CHAIRPERSON:** Oh okay. Mr Cockrell.

**ADV COCKEREL:** Morning – thank you Chair – sorry

Chair. I am on the Zoom feed but I cannot see you.

**CHAIRPERSON:** Yes.

**ADV COCKEREL:** May I just place myself on record I appear for Bain and Company South Africa Incorporated. It is one of the entities that is implicated in Mr Williams' evidence.

**CHAIRPERSON:** Yes.

**ADV COCKEREL:** You will note Chair my client has applied for leave to cross-examine Mr Williams and has  
10 also applied for one or two other things. So I may I simply place myself on record for the purposes of those applications? Thank you Chair.

**CHAIRPERSON:** Yes well I am not aware of the application for leave to cross-examine but that does mean the commission has not received it. Things start somewhere before they get to me but it is good if you make [00:07:47] to my attention.

**ADV COCKEREL:** Yes Chair. May I – sorry – I have been engaging with my learned Mr Franklin before he took ill and  
20 he is obviously well aware of that application.

**CHAIRPERSON:** Ja.

**ADV COCKEREL:** We had been discussing some of the logistics but obviously all of that has fallen away [00:07:50] health Chair.

**CHAIRPERSON:** Okay alright. Thank you. I think Mr



Mpofu wishes to – to speak to you.

**ADV MPOFU SC:** Good morning Chair.

**CHAIRPERSON:** Good morning Mr Mpofu.

**ADV MPOFU SC:** It looks like I am having a busy morning.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Chair we would also like to place on record that in relation to some of the witness' who were meant to be here for the rest of the week particularly Mr  
10 Van Loggenberg, Symington, Lakay and I think Mr Williams as well we – we were informed of some of them on time others only came last week. So we intend to apply for cross-examination.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** At this stage I am not sure if it is for all of them.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But I will discuss it with Mr Franklin.

**CHAIRPERSON:** Yes okay, no that is fine.

20 **ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Okay alright.

**ADV CHASKALSON SC:** Chair that then brings me to the business of the day and as several of the legal representatives have foreshadowed I need to ask for a postponement of the evidence Mr Williams that was due to

– to be called later today together with the evidence of Mr Vlok Symington who was due to testify tomorrow. Mr Van Loggerenberg who was due to testify on Wednesday and Mr Lakay who was due to testify on Thursday.

The reason for the requested postponement Chair is that the evidence leader of the commission who was dealing with all of these witnesses whose testimony relates to SARS is Mr Alistair Franklin SC and Mr Franklin has come down ill yesterday and is not in a position to come to  
10 the commission or to be present in the commission today and may well not be able to be present this week.

We would ask that the evidence of those witnesses be postponed until – well and to be set down at later dates as soon as we know what the condition of Mr Franklin is and when he will be able to take that evidence.

In – specifically in relation to the witness Mr Williams I would like to apologise for the very short notice that he received of this postponement application because he has in fact come up from Cape Town yesterday to be  
20 here today and he – he was not notified before he came up but I assure you Chair that that has – that this state of affairs happened only in the course of yesterday and the commission did its best to notify his attorneys as soon as it became clear that Mr Franklin was not going to be available today.

**CHAIRPERSON:** Okay no that is fine. I take it that all the other parties who will be affected by the postponement of the evidence of the witnesses you have mentioned have no objection to the postponement.

**ADV CHASKALSON SC:** None that has been communicated to me but maybe those persons present here can be asked if they have any.

**CHAIRPERSON:** Ja may just say if there is any of them who is opposing they can raise their hand. If they do not  
10 then I will take it that there is opposition. There is no hand being raised so there is no opposition.

**ADV CHASKALSON SC:** It has been confirmed to me that Mr Williams has no objection to the postponement.

**CHAIRPERSON:** Yes okay alright. So the hearing of the evidence of the witnesses that Mr Chaskalson has mentioned which was going to happen later today in the case of Mr Williams and tomorrow, Wednesday and Thursday in regard to the other witnesses is postponed and other dates will be fixed for them to come back and give –  
20 to come and give evidence. Okay thank you very much and all inconvenience to all concerned is really regretted but as Mr Chaskalson says the evidence leader who was going to lead those witnesses as fallen ill and we – that only happened yesterday. Okay. [00:12:40].

**ADV CHASKALSON SC:** Thank you Chair. Apart from the

evidence to be led by Mr Franklin Chair today was scheduled for the cross-examination of Minister Gordhan by Mr Mpofu on behalf of Mr Moyane.

**CHAIRPERSON:** Yes I see Mr Gordhan has joined us. He was I think not on the screen when I greet everybody. Good morning Minister Gordhan.

**MINISTER GORDHAN:** Good morning Chairperson.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Thank you very much.

10 **CHAIRPERSON:** Thank you. Thank you very much. Yes Mr Chaskalson.

**ADV CHASKALSON SC:** And Chair as this cross-examination is cross-examination by Mr Mpofu and not by Mr Franklin we do not seek any postponement of this cross-examination from today.

However Chair it will be necessary for me briefly to lead Minister Gordhan on his clarificatory affidavit which he filed after he testified and which has not yet been the subject of oral evidence.

20 And I ask because we now have the whole day open I ask that this matter might stand down until after the tea adjournment so that I might briefly prepare in relation to leading that evidence and confer with Mr Gordhan and his legal representatives to give them an indication of where I intend to go with that.

**CHAIRPERSON:** Well first of all I thank you Mr Chaskalson for stepping in to assist in the absence of Mr Franklin at least with regard to Mr Gordhan's evidence because if you – if nobody had stepped in we might have had to consider postponing the cross-examination obviously with everybody being heard first.

But the fact that you were able to step in at very short notice has assisted us to be able to continue with Mr Gordhan's evidence and his cross-examination.

10 But certainly I will grant you some time to look at issues that you need to look at and I confirm that all legal representatives affected by this have no problem with the matter being stood down – adjourned for some time for you to get that chance.

They have confirmed that to me. So we are at twenty eight minutes to eleven shall we say we will resume at half past eleven?

**ADV CHASKALSON SC:** Thank you Chair.

**CHAIRPERSON:** Okay fine. That is fine. Mr Mpofu that is  
20 in order? Yes Ms Le Roux? That is in order. Okay alright. Mr Gordhan we are going to adjourn until half past eleven. Mr Franklin who was going to be the evidence leader is not – is not well and Mr Chaskalson has stepped in to try and assist so that we do not postpone your evidence or the cross-examination. But he needs some time to look at

certain issues because he has not been involved in the matter until I think yesterday.

So we are going to adjourn until half past eleven.  
We adjourn.

**MINISTER GORDHAN:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Yes, Mr Chaskalson.

10 **ADV CHASKALSON SC:** Thank you.

**CHAIRPERSON:** I see we do not have Mr Gordhan on the screen as yet or that he is okay. Yes, Mr Chaskalson.

**ADV CHASKALSON SC:** Thank you, Mr Chair. Good

**MINISTER GORDHAN:** Good morning.

**ADV CHASKALSON SC:** Minister Gordhan, I am here, briefly to lead you on your clarificatory affidavit that you furnished to the Commission in response to a directive of the Deputy... of the Chairperson. Can I ask you to turn to page 781 of Bundle N3?

20 **CHAIRPERSON:** Before we do that Mr Chaskalson. He needs to take an oath or affirmation. Please, administer the oath or affirmation.

**REGISTRAR:** Please state your full names for the record.

**CHAIRPERSON:** I think he cannot hear you. Can you hear us Mr Gordhan?

**MINISTER GORDHAN:** I can hear you Chair but not the... I can hear Mr Chaskalson.

**CHAIRPERSON:** Oh.

**MINISTER GORDHAN:** [Indistinct] [Speaker is not clear.]

**CHAIRPERSON:** Okay. My registrar is going to be administer the oath or affirmation. We need to see you are able to hear him.

**MINISTER GORDHAN:** Yes, I can hear you. Let me try to hear the registrar.

10 **CHAIRPERSON:** Yes, okay alright.

**REGISTRAR:** Please state your full names for the record.

**WITNESS:** [No audible reply]

**CHAIRPERSON:** No, he cannot hear you. What is wrong with your mic today?

**REGISTRAR:** Please state your full names for the record.

**WITNESS:** Pravin Jamnadas Gordhan.

**REGISTRAR:** Do you have any objections in taking the prescribed affirmation?

**WITNESS:** No objection.

20 **REGISTRAR:** Do you still affirm that the evidence you will give, will be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say: I truly affirm.

**WITNESS:** I truly affirm.

**CHAIRPERSON:** Thank you. Okay alright. Okay

Mr Chaskalson.

**PRAVIN JAMNADAS GORDHAN:** (d.s.s.)

**EXAMINATION BY ADV CHASKALSON SC:** Thank you,  
Mr Gordhan.

**ADV CHASKALSON SC:** Can I ask you to turn to page 781  
of Bundle N3?

**MINISTER GORDHAN:** [Indistinct] [Speaker is not clear.]

**ADV CHASKALSON SC:** That is the first page of your... or  
can you confirm that the document that starts there and runs  
10 to page 791 is your clarificatory affidavit?

**CHAIRPERSON:** Let us just get the bundle right. I have  
got in front of me N3(a). Is that the one you are talking  
about?

**ADV CHASKALSON SC:** Chair, that would be... I have one  
consolidated N3 Chair. I image it would be N3(b) because I  
have been told...

**CHAIRPERSON:** Ja, I know his clarificatory affidavit is not  
in his bundle. It is on the other one. The other big one that  
has got some blue dividers.

20 **ADV CHASKALSON SC:** Sorry, Chair.

**CHAIRPERSON:** Ja. What is the page number?

**ADV CHASKALSON SC:** 781 is the page number that I  
have.

**CHAIRPERSON:** Say this one is N3(b) and the other one  
will be Bundle N3(a). Ja. Okay alright. Yes,



Mr Chaskalson.

**ADV CHASKALSON SC:** Minister Gordhan, if you can go then to page 781. It is in N3(b). And I would like you to confirm that the affidavit that runs from 781 to 791 is your clarificatory affidavit.

**MINISTER GORDHAN:** I confirm.

**ADV CHASKALSON SC:** And the signature at page 791 is your signature.

**MINISTER GORDHAN:** I confirm.

10 **ADV CHASKALSON SC:** And can you confirm the correctness of the contents of that affidavit?

**MINISTER GORDHAN:** I do.

**ADV CHASKALSON SC:** Minister Gordhan, I am going to take you briefly through certain parts of that affidavit. Can I ask you first to go to page 782, paragraph 5 where you explain the circumstances in which you furnished the affidavit. And can I ask you to briefly read into the record paragraphs 5 to 7?

**MINISTER GORDHAN:** Paragraph 5, Chairperson:

20 "I submit this affidavit as directed by the Chairperson of the Judicial Commission of the Inquiry into allegation of State Capture, corruption and fraud in the public sector, including organs of state (the Commission).

On 6 May 2019, requiring a short affidavit to clarify

“whether in stating in his statement of 11 October 2018 that Mr (Tom Moyane) (Mr Moyane) acted maliciously in laying charges against him and others. He meant that:

10 a) In laying the charges against Mr Gordhan and others, Mr Moyane was motivated wholly or in part by/or he sought an advance the objectives of State Capture or he was revealing a legal process for his own personal goals that had either nothing or little to do with a legitimate complaint relating to an alleged crime.”

Paragraph 6:

“The Chairperson’s directions go on to require that “I simply state what (I) meant when (I) stated that Mr Moyane had acted maliciously in laying the charges against (me) and others.”

At paragraph 7:

20 “At the outset, I emphasise that I have never alleged that Mr Moyane was motivated by [Speaker is not clear – transmission lost] when he laid the complaint that led to criminal charges in court against me which was subsequently withdrawn.”

**ADV CHASKALSON SC:** Can I then ask you, Minister Gordhan to turn to page 786 at paragraph 22 of your affidavit?

**MINISTER GORDHAN:** Yes?

**ADV CHASKALSON SC:** And there at the start of paragraph 22, you concede that you have no knowledge of Mr Moyane's state of mind when he laid the complaint. And then – so that you considered his explanation for his conduct that he provided to the Commission.

And from paragraphs 21 through to 27... Oh, sorry. It is 22.1 to 22.7. But you then set out, what I understand to be, the reasoning upon which you submit that the Commission  
10 should conclude that Mr Moyane sought to advance the State Capture Project.

Would that be a fair summary of 22.1 to 22.7?

**MINISTER GORDHAN:** Yes, that will be fair. And of course, if I may add Chairperson?

**CHAIRPERSON:** H'm.

**MINISTER GORDHAN:** That in all of these matters, it is Mr Moyane who is implicated in State Capture and he should give his version of various events to the Commission in addition to whatever emerges from my cross-examination so  
20 that the Commission has the full benefit of whatever he has to say.

But the advocate is right. Paragraph 22 and 22.1 to 22.7, he has presented as a fair summary.

**ADV CHASKALSON SC:** Can I ask you to read into the record paragraphs 22.1 to 22.7 so we – so the Commission

and the public hear what the core of your reasoning is in relation to the conclusions you want the Commission to draw against Mr Moyane?

**MINISTER GORDHAN:** I will do that. In the introductory lines under paragraph 22 Chairperson, the following is stated:

10           “To be clear, I have no knowledge of Mr Moyane’s state of mind when he laid the complaint and I have considered his explanation through his conduct that he provided to the Commission.”

At 22.1:

          “In essence, he said that he acted as a reasonable person in the circumstances in which he found himself as the Commissioner of SARS.”

At 22.2:

          “I, however, disagree with this and personally belief that Mr Moyane through his legal processors for reasons already explained in my evidence.”

At 22.3:

20           “I say this based on my experience of his defiant attitude and vilification of me following my reappointment as Minister of Finance, which I believe was then at forcing or pressuring me to resign from that position so that the Capture of National Treasury could proceed under a different

minister.”

At 22.4:

“To use the words of the Chairperson’s direction, I, therefore, do mean that Mr Moyane “was not motivated wholly or in part by or he sought to advance the objective of State Capture” and that “he was abusing a legal process for his own personal goals that either had nothing or little to do with the legitimate complaints to an alleged crime.”

10

At 22.5:

“I believe in Mr Moyane’s “personal goals” while he was SARS Commissioner included the advancement of a State Capture Project.”

At 22.6:

20

“This believe is founded on what we all now know about how “the failure of integrity and governance at SARS soundly evidenced by the change over four years has certainly compromised the performance of its core function of collecting tax to the detriment of the country at large” as found by Justice Nugent in the Commission of Inquiry into Tax Administration and Governance by SARS, what is called the Nugent Inquiry, pages 477, paragraph 19 of the final report of the Nugent Inquiry.”

At 22.7:

“I turn to highlight briefly certain relevant findings by Justice Nugent below which forms the basis of my belief that Mr Moyane’s actions as SARS Commissioner were a part of the State Capture Project.”

Just give me a second so that I can find the right page.

**ADV CHASKALSON SC:** Sorry ...[intervenes]

**MINISTER GORDHAN:** [Indistinct] [Speaker is not clear.]

**ADV CHASKALSON SC:** I do not need you to proceed  
10 beyond that point. You can go onto to quote certain passages from the report of Justice Nugent... Well, that report is a document which we all have.

I do want to take you to paragraph 28 which is at page 789 and there you state:

“In my statement to this Commission on the 11<sup>th</sup> of October 2018, specifically in paragraph 104 and 127 through to 127.4, I recorded numerous examples of the acrimonious nature of Mr Moyane’s rejection of my oversight while I was Minister of  
20 Finance and his insulting attacks on me following my reappointment as Minister of Finance in December 2015.

This provides the context to and the basis for my belief that he is laying of a complaint against me was something other than the actions of a

reasonable commissioner.”

Can I ask? Apart from the evidence to which you refer by cross-referring to paragraph 107 and 127 to 127.4 of your statement of 11 October 2018.

Are there any facts on which you rely in your clarificatory affidavit for the inferences you seek the Commission to draw that are within your own personal knowledge as opposed to the facts that are in the public domain?

10 **MINISTER GORDHAN**: Sorry, I did not hear the last part. As opposed to...?

**ADV CHASKALSON SC**: The facts that are in the public domain or facts that other witnesses may testify to that are not within your personal knowledge.

**MINISTER GORDHAN**: Chairperson, it is very difficult to draw the distinction between what might be in the public domain and what might be in my personal knowledge, because over the years, those two have in fact merged but I will try my best to address the question. During  
20 ...[intervenes]

**CHAIRPERSON**: Maybe I can assist? The reasons why Mr Chaskalson has drawn a distinction between what you may have personal knowledge of and what is in the public domain, is because facts that you have personal knowledge of.

Matters that, generally, you can testify about. Facts that may be in the public domain but of which you have no personal knowledge, you may not be able to testify in regard to whether they are true or not.

So I think that is the – that is why he is making that distinction. Is that correct Mr Chaskalson?

**ADV CHASKALSON SC:** That is correct, Chair.

**CHAIRPERSON:** Yes, okay alright.

**MINISTER GORDHAN:** I will certainly attempt to do that  
10 Chairperson. Thank you for your guidance.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I mean, one reference Chair that I could make is, the meeting that the Deputy Minister Jonas and I had with Mr Moyane sometime on the morning of the 14<sup>th</sup> of December 2015 when I left him with - and the deputy minister as well – I left him with ten guidelines and requests.

And amongst those ten, where firstly that the issue of governance over SARS must be a matter that we should discuss.

20 Secondly, that I would like the opportunity to review what was then being called the new operating model.

Now outside of my knowledge there is, of course, information about various meetings with and company at Nkandla and elsewhere, very much prior to Mr Moyane's appointment at SARS and the implications that could be



drawn, including – and this is again outside of my knowledge  
...[intervenes]

**ADV CHASKALSON SC:** Sorry ...[indistinct] ...[intervenes]

**MINISTER GORDHAN:** [Indistinct] [Speaker is not clear.]

**ADV CHASKALSON SC:** Minister Gordhan, I must ask you  
to confine yourself to matters within your knowledge because  
otherwise ...[intervenes]

**MINISTER GORDHAN:** Okay.

**ADV CHASKALSON SC:** ...the evidence and the cross-  
10 examination may stray far beyond the bounds of what will be  
helpful to the Commission.

**MINISTER GORDHAN:** No, thank you for the guidance. So  
the second matter, as I was saying, is the new operating  
model, which I said, I would like the opportunity to the  
opportunity to review.

Meaning, that this was something foreign to me and one  
would like, together with the deputy minister, to understand  
what the new operating model was and how it was going to  
be implemented and that various appointments that were  
20 intended to that privy, halted.

The third matter was the question of requesting that if  
SARS was involved or any person in SARS was involved in  
the leaking of information to, in particular at the time the  
Sunday Times, that should stop because that is not in the  
best interest of SARS.

Then the fourth element is that, as far as communications go, that SARS should limit itself to customs and related matters of administration.

And that it will be something next door, maybe that SARS will be required to comment on that consultation should take place with the Deputy Minister of Finance before SARS got involved in any other matters.

The fifth – the sixth issue was the question of endeavouring. That we should all endeavour to put in place  
10 a strategy to regain public confidence in the institution.

And I think it is fair to say that it is my personal experience in government that the standing of SARS and the capability of SARS in collecting tax and customer revenue and stopping illicit trade has been compromised over that period of time.

Then there was a request that SARS officials should not stray into political matters and should desist from political commentary.

And then a further request, that it was important that  
20 SARS officials familiarise themselves with broader economic issues because the relationship between SARS as an important fiscal institution and for example the work of the Treasury or the work of the Department of Trade and Industry or the economy more generally, is an important one to understand so that there is a context that officials at

SARS, for the kind of work that they do, in addition to – or to place into context the various administrative functions that they actually perform.

And lastly Chairperson. Me emphasise, the deputy minister and I, the importance of suggesting integrity. Again, referring to the theme that I made reference to earlier on.

So those were issues that were confirmed by Mr Moyane in an email that was discussed in the first meeting.

Apart from that, of course, there is a question of the  
10 alleged charges which in fact I have learnt more recently is a complaint that has been lodged – had been lodged by Mr Moyane at the Brooklyn Police Station.

And initially Chair, I will give you the reference if you need them, on your findings in the matter with the [background noise interference present – speaker unclear] judgment or ruling...[intervenes]

**CHAIRPERSON:** The ruling or judgment, ja.

**MINISTER GORDHAN:** You may Chair? I beg your pardon?

**CHAIRPERSON:** Ja, you can call it ruling or judgment. We  
20 know what you are talking about.

**MINISTER GORDHAN:** Okay. [laughs]

**CHAIRPERSON:** [laughs]

**MINISTER GORDHAN:** Alright. Thank you. Not being a lawyer is – I need to get my terminology correct.

**CHAIRPERSON:** [laughs] Yes. But there were two – you

may be referring to the first one. You must still tell us which one you are referring to.

**MINISTER GORDHAN:** Ja, it is the ruling of 2019.

**CHAIRPERSON:** Okay that will be your first one, ja.

**MINISTER GORDHAN:** Ja, in which the quotation from some document that Mr Moyane has submitted to the Commission in which he said that he did lay charges against several individuals.

And if I remember the quotation, he said – the quotation  
10 goes onto to say, “including Mr Gordhan or Minister Gordhan”.

But in his later affidavits, he then, of course, confirms that I was not amongst the names that he had indicated in that complaint.

Of course, I was none the wiser because we had no access to the actual documents lodged at the Brooklyn Police Station.

And secondly, that only became apparent when the documentation became available to the officers of the  
20 Commission itself.

So there is that discrepancy, if you like about whether, in fact – and the words, as you know Chairperson, complaint and charge gets mixed in various passages, in various documents as well but I believe the technical terminology is that was a complaint.

And the charges, actually, that followed, lodged by the NPA on the 11<sup>th</sup> of October 2016 and then withdrawn on the 31<sup>st</sup> of October 2016, were in relation to the pension fund and not the then investigation unit itself. So that is another set of facts that are not material, up to a point, in this context.

And the third is the fiscal implications of a revenue service that now has – or as a result of various actions taken during Mr Moyane's term of office as Commissioner of SARS.

10 And as a result further of dismantling of various capabilities and institutions that we had set out within SARS, which advanced tax compliance, generally in the country and led to increased revenues being collected.

That this dismantling of some of those or the reorganisation of some of those entities, actually resulted in loss of capabilities.

So I supposed the people at SARS, they can tell you how many auditors, how many debt collectors, how many expert in corporate taxation that were assembled over a  
20 period of time in the 2000's, had left SARS, either being forced to or not wishing to be associated with the current developments that were taking place.

The consequence of all of that Chair is that tax compliance is now lower than what it used to be, which means that what we used to refer to the as the Tax Gap,

meaning the gap between revenue due and revenue to be collected, grew rather than was being narrowed as it was during that period and after that period as well.

And so today, the new commissioner and management at SARS would have an additional task of in rebuilding the capability and capacity on the other one.

But on the other hand, encouraging quite a different level of tax compliance compared to the period when Mr Moyane was there as well.

10       And that has serious consequences in terms of, if one would like to say balancing the national books between what revenue comes in, what expenditure takes place and what borrowing has to happen in order to enable that expenditure to take place and the consequences are felt by ordinary people in South Africa at a day-to-day level. So that is a whole topic, you know, on that.

          In respect of what happens when – under the guys or one or other narrative, institutional deterioration takes places, not accidentally but with intention and possible  
20       through a misguided belief that those actions would serve a particular cause.

          In retrospect, it did not. It only served the course of what today we know as State Capture and institutional deterioration and destruction as compared or as opposed to actually helping the country to be in a better position to deal,

what we now know as a Covid pandemic itself.

I am going to pause there Chair because there might be many other things as well and so – I am not sure what Mr Chaskalson has in mind but those would be some of the things.

**CHAIRPERSON:** Yes, Mr Chaskalson.

**ADV CHASKALSON SC:** Chair, before I ask further questions. If I can just give one cross-reference...[intervenes]

10 **CHAIRPERSON:** Before you do that. Can I just confirm that the question you had posed to Mr Gordhan, to which he was responding, was whether there were any other facts of which he had personal knowledge on which he relied for his belief that Mr Moyane was pursuing a state capture agenda during his time as SARS Commissioner. Well, is that in effect the question?

**ADV CHASKALSON SC:** That was the essence of my question.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** To distinguish between the facts within his personal knowledge and facts ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** ...which he may have seen from elsewhere.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** And also, specifically related to the belief that he expresses that Mr Moyane was pursuing State Capture. I do want to draw that distinction Minister Gordhan because this Commission is concerned with whether Mr Moyane's actions were good or bad for SARS, it just concerned with the question of whether Mr Moyane's actions at SARS were motivated by a desire to pursue state capture, so I think it is very important to keep those issues separate.

10 **CHAIRPERSON:** But also I wanted to ...[intervenes]

**ADV MPOFU SC:** May I respond to that, Chair?

**CHAIRPERSON:** Before you respond to that please do not forget what you wanted to say, Mr Gordhan. In answering Mr Chaskalson's question did you understand the question to be the one that I have just articulated and which he has confirmed?

**MINISTER GORDHAN:** You have given it a bit more clarity, Chair, so I can add one or two elements and I would like to, if I may, comment on Mr Chaskalson's point about  
20 the Commission focusing on state capture and not what happened within SARS itself, if I may.

**ADV CHASKALSON SC:** Sorry, Mr Gordhan, that was not the distinction that I was seeking to make. It is a distinction between whether Mr Moyane was motivated via desire to pursue state capture which is what the



Commission is concerned with and what the consequences of Mr Moyane's actions were for SARS which, for the most part, is not an issue with which the Commission is concerned. Assessing whether Mr Moyane was good or bad for SARS is not primarily a focus of this Commission, certainly not a focus of today's cross-examination.

**CHAIRPERSON:** Yes, I think Mr Mpofu has been covered or has he not? He wanted to say something. Okay, let them sanitise before you – otherwise if you can speak – if  
 10 it is a brief point you could speak from where you were. Okay. Mr Mpofu?

**ADV MPOFU SC:** Good afternoon, Chairperson.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Yes. No, Chairperson, I wanted to just raise an objection. I do not know what is going on now. We are here the cross-examination of Mr Gordhan, I understood that there was a clarificatory statement that was going to be gone to so that it is part of the record which really should not take long but what is now  
 20 happening is a rehash of Mr Gordhan's evidence and him reading long passages from affidavits that are already before the Commission. No useful purpose can be served by that except to waste time and then Mr Gordhan goes on ready ten points from some email which has nothing to do with the question.

So if we are going to go at this rate – and then he only gets told after the long rambling that he did not answer the question. Then that is going to detrimentally affect the pace and progress of the cross-examination.

So, Chair, I mean Mr Gordhan has given this evidence here, he gave it for over two days. If the evidence leaders did not ask those questions so that they can focus his evidence which I charge they did not because they allowed him to go on and on. You cannot have  
10 another chance to do what was done in November 2018.

Secondly, Mr Gordhan has given this evidence of vilifying Mr Moyane, about his performance and business centres and what have you. He gave that evidence, you know, unabated at the Nugent Commission. So I do not know why he must give it for the third or the fourth time now. Thank you.

**CHAIRPERSON:** Maybe – okay, Ms...

**ADV MPOFU SC:** Sorry, Chair.

**CHAIRPERSON:** Okay. No, that is fine, let me hear what  
20 Mr Chaskalson has to say. I have noted that Ms Le Roux does not indicate – does not wish to say anything. Mr Chaskalson?

**ADV CHASKALSON SC:** Chair, I am right at the end of this process, I appreciate that the purpose of today is not to afford Mr Gordhan a new attempt to give evidence, it is

to – it is essentially to summarise his clarificatory statement which was not in the record already.

**CHAIRPERSON:** I must say that my understanding – I thought the reason behind your question was to see whether apart from saying he bases his belief that Mr Moyane was pursuing a state capture agenda, apart from saying that he bases his belief on Judge Nugent's findings whether there were also any personal matters or facts of which he had personal knowledge on which he was basing  
10 it and I thought that was connected with paragraph 28 because I was not sure whether that was meant to say well, that might not be in the findings of Judge Nugent but it is part of what informs my case. I thought that it was intended to clarify that.

**ADV CHASKALSON SC:** It was really to narrow – the purpose of the question was to narrow the ambit of today's hearing to facts that are within Mr Gordhan's personal knowledge.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** Upon which he bases his reasoning.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** As opposed to facts which the Commission will have to find elsewhere or not find elsewhere on which he relies.

**CHAIRPERSON:** Yes. Okay, alright. No, that is fine.

**ADV CHASKALSON SC:** But in addition to that – and the purpose of that question has already been served.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Mr Gordhan has identified what facts are within his personal knowledge. The last topic that I want to address with Mr Gordhan in ...[intervenes]

**MINISTER GORDHAN:** Sorry, Chair, may I intervene?

**CHAIRPERSON:** Yes.

10 **MINISTER GORDHAN:** No, in fact can summarise in six points. Maybe that would help, it will take a minute and a half.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** The point that Mr Chaskalson addressed and also to assist Adv Mpofu as well in relation to what he had to say. So the first point, Chair, which is also [inaudible – speaking simultaneously]

**ADV CHASKALSON SC:** Sorry, Minister Gordhan, before you carry on those six points?

20 **CHAIRPERSON:** Hang, hang, on.

**ADV CHASKALSON SC:** Can I ask you to confine yourself to facts within your personal knowledge?

**MINISTER GORDHAN:** Yes.

**ADV CHASKALSON SC:** That is the exercise that I want to...

**MINISTER GORDHAN:** Yes, I will. Yes, I will.

**CHAIRPERSON:** Yes. Go ahead, Mr Gordhan.

**MINISTER GORDHAN:** So the issue is one of state capture, Chairperson. Subsequent to my evidence in November 2018 I now have experience in various state owned enterprises and the kind of impact that activities related to state – what we today call state capture, what they result in, what the consequences are and if the Commission is interested we can talk about that, but there  
10 is a pattern as I indicated in November 2018 but that pattern reinforced by experiences subsequently. That is my first point.

My second point is in relation to the complaint/charges which I have already expanded upon.

My third point is the issue of accountability, simple matters like application for leave, etcetera, which I am sure Mr Mpofu is going to come back to.

My fourth point is in relation to SARS' operations and I do have personal knowledge of what was set up and  
20 what appears to be the changes thereafter.

The fifth point is in relation to what you refer to – or somebody referred to, Chairperson, the dismantling of certain entities like The Large Business Centre, I think Mr Mpofu referred to it. I did not give evidence as far as I can recall before the Nugent Commission on that, so he might

want to check his facts. I went through the presentation I made to the Nugent Commission last night and I merely explained how SARS worked in the various dimensions.

And my last point which will also, imagine, in the cross-examination is that Mr Moyane was in possession of various forms exculpatory evidence both in relation to the so-called pension issue and the investigating unit issue which did not make itself known or was no publicly opened up to until it was very late in the day, so to speak. So  
10 those are my six points, Chair, thank you.

**CHAIRPERSON:** Thank you. Mr Chaskalson?

**ADV CHASKALSON SC:** I am going to try and bring us back to the terms of reference for today which are set out in your ruling, Chair.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Where the Chairperson has identified the ambit of today's hearing to deal with five issues. The first is whether in laying the criminal complaint or charges against Mr Gordhan Mr Moyane acted  
20 maliciously. Now it now appears to be common cause that Mr Moyane did not lay a complaint against do you. Do you accept that?

**MINISTER GORDHAN:** Yes.

**ADV CHASKALSON SC:** (b) Again whether in laying the criminal complaint against Mr Gordhan Mr Moyane was

motivated wholly, in part, etcetera. It is common cause there was not a criminal complaint against you.

(c) Same story, it relates to a criminal complaint that was not laid against you, you have explained why you believe that there was one.

(d) Whether as Commissioner of SARS Mr Moyane sought to advance the state capture project, and

(e) Whether Mr Moyane's personal goals, while he was SARS Commissioner, included the advancement of the  
10 state capture project.

I would like us to emphasise (d) and (e) because it seems to me that at this stage that is what the ambit of today's hearing should focus on, no more and no less, because (a), (b) and (c) are based on a supposition which turned out not to be correct..

**MINISTER GORDHAN:** And probably – and, Chair, for the reasons that I have outlined it was not out of intent, there was lack of information that was available at that particular point in time, firstly.

20 And if I may repeat, the 27, so-called 27 questions that came from the Hawks prior to the 2016 National Budget made reference to a case number which is the same case number as the complaint lodged by Mr Moyane.

And my last point, which I have made before as well, is that the true nature of the complaint and the

persons indicated in that complaint only became apparent once the documentation was available through the Commission. Thank you.

**ADV CHASKALSON SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Thank you, Chair, those were all the questions that I wanted to ask.

**CHAIRPERSON:** Okay, thank you. Mr Mpofu, you now have the opportunity to cross-examine Mr Gordhan.

10 **ADV LE ROUX:** Thank you, Chair, good morning.

**CHAIRPERSON:** Yes, good morning.

**ADV LE ROUX:** When we were ...[intervenes]

**CHAIRPERSON:** Or good afternoon.

**ADV LE ROUX:** Good afternoon already.

**CHAIRPERSON:** Yes.

**ADV LE ROUX:** When we were in chambers you said that you would give an indication at this point.

**CHAIRPERSON:** Yes.

20 **ADV LE ROUX:** With respect to duration of the cross-examination.

**CHAIRPERSON:** Yes.

**ADV LE ROUX:** We had previously been advised that it was likely to be around two hours ...[intervenes]

**CHAIRPERSON:** Well ...[intervenes]

**ADV LE ROUX:** You said you would give an indication on



whether the further evidence this morning had changed that for you.

**CHAIRPERSON:** Ja. No, no, actually I ...[intervenes]

**ADV LE ROUX:** If we could just get that clarity we will be indebted.

**CHAIRPERSON:** The last thing I said was that after Mr Chaskalson has finished leading Mr Gordhan on the clarificatory affidavit I will adjourn and we would have a discussion about the duration in chambers. Maybe we  
10 should do that quickly. Mr Mpofu, is that fine? Ja, okay. Mr Gordhan, we are going to adjourn for a very short time, maybe five minutes to discuss the duration of the cross-examination and then we are going to resume after that. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** I see Mr Gordhan is not back on the screen yet, we will have to wait for him.

**MINISTER GORDHAN:** I am back Chairperson.

20 **CHAIRPERSON:** You are back, okay, alright. After discussing with the – all the legal teams with regard to the duration of Mr Gordhan's cross-examination by Mr Mpofu I have provisionally fixed two hours, which is not going to be rigid, I said that at the expiry of the two hours I will assess the situation and may have a discussion with the legal

teams as to whether it is not necessary to add and if so add how much. So that is what I have said.

So we are going to start now and then at one it will be lunch so Mr Mpofu's first hour will finish at half past two and then the second hour at half past three so roundabout half past three we will then look at the situation again. I also want to emphasize having discussed with the legal teams that the scope of the cross-examination is subject to what I will say just now set out in paragraph 28 of my  
 10 ruling of 25 November 2019, that is the second ruling. Mr Chaskalson did refer to this paragraph just before we adjourned, and I am going to read it for the benefit of everybody including the public. It said in 28.1, subject to 2 below but I won't go to 2 below it is not relevant for today.

"Mr Moyane is hereby granted leave to cross-examine Mr Gordhan on:

[a] whether in laying the criminal complaint or charges against Mr Gordhan Mr Moyane acted  
 20 maliciously;

[b] whether in laying the criminal complaint against Mr Gordhan Mr Moyane was motivated wholly or in part by or he sought to advance the objectives of State Capture.

[c] whether in laying the criminal complaint

against Mr Gordhan Mr Moyane was abusing a legal process for his own personal goals that had either nothing or little to do with the legitimate complaint relating to an alleged crime.

[d] whether as Commissioner of SARS Mr Moyane sought to advance the State Capture project;

[c] whether Mr Moyane's personal goals while he was SARS Commissioner included the  
10 advancement of the State Capture project."

As I understand the position Mr Gordhan has indicated that [a] to [c] as far as he is concerned have fallen away and I think as far as Mr Chaskalson is concerned in the light of the clarification that Mr Gordhan gave about how – what had happened Mr Chaskalson really as far as he is concerned what remains is [d] and [e].

Now Mr Mpofu has said that he will have some questions for Mr Gordhan in regard to [a] to [c] although they would not take a lot of time but other than that there  
20 is common understanding that the main issues are those that fall under [d] and [e] of paragraph 28 of that ruling.

Okay, Mr Mpofu did I capture that correctly as you understood it as well?

**ADV MPOFU SC:** Chairperson yes you did. If I may chair before you run the clock Chair just a few remarks, one is

that we don't accept implicitly that [a] to [c] have fallen away and I will deal with that in questioning Mr Gordhan to clarify.

**CHAIRPERSON:** Yes.

**MR MPOFU:** And then maybe I might address the Chair on that, but we do of course accept Chair that even when you gave your ruling the accent of your ruling was on let's say [d] to [e].

**CHAIRPERSON:** Yes.

10 **MR MPOFU:** In the sense that our approach is that the five things are completely inter-related, one cannot separate from them but in fairness he did say at paragraph 26 an allegation that someone performed his or her duties in order to advance the State Capture project is a serious allegation and those facing such an allegation should be given an opportunity to defend themselves against it, and you also said at 27 I consider that subject to one condition, it is the interest of the work of the Commission to grant Moyane leave to cross-examine, and then you went to say  
20 before this Commission it must rank as the most serious allegation or statement for it to be said that you performed your official duties in order to advance the objectives of State Capture and speaking generally such a person should a person should be granted leave to cross-examine, so at lease we agree on that part.

**CHAIRPERSON:** Ja, no that's fine, I used the words fallen away in regard to [a] to [c] but Mr Chaskalson might not have used that term, so ja okay.

**MR MPOFU:** Yes, but I know what the Chair means, and maybe I can clarify it as follows. Good afternoon Mr Gordhan.

**CHAIRPERSON:** Mr Gordhan can you hear Mr Mpofu? Oh, we cannot hear you Mr Gordhan.

**MINISTER GORDHAN:** Ja, I thought he was addressing  
10 Chairperson, good afternoon.

**CHAIRPERSON:** Oh, he has greeted you.

**ADV MPOFU SC:** I was addressing you Mr Gordhan. Okay where are you today?

**MINISTER GORDHAN:** I beg your pardon?

**ADV MPOFU SC:** Where are you?

**MINISTER GORDHAN:** I am at home.

**ADV MPOFU SC:** Okay, and is there a reason why you did not grace us with your physical presence today?

**MINISTER GORDHAN:** On medical advice.

20 **ADV MPOFU SC:** Medical advice, okay. Now I just want to clarify this point that the Chair was dealing with now, effectively, your thesis is that Mr Moyane was not vetted by, let's call it, State Capture motives in doing various things that you testified about in the Commission and elsewhere, correct?

**MINISTER GORDHAN:** So, Chair, if I may clarify that, in my evidence before the Commission in November 2018 at paragraph 11 onwards, I described what is State Capture and the point I'm making in sum is that there are various activities that constitute, ultimately, to be defined as State Capture. So we're talking about two things, the first is a concept called State Capture which I clarified in my evidence before you in November 2018 and what history has taught and the South African lessons have taught us  
10 about activities that constitute, ultimately, what became known as State Capture. So, if I look at the activities that were undertaken at the South African Revenue Service during Mr Moyane's term of office those activities came to match the activities that fall under the definition of State Capture.

**ADV MPOFU SC:** Okay, look, please if you are able to just answer yes or no when you agree with the proposition that will help us to save time. The question was...[intervenes].

20 **MINISTER GORDHAN:** When I can, Chair, I will certainly say yes or no.

**ADV MPOFU SC:** Yes, please do.

**MINISTER GORDHAN:** But where I think clarity is required, Chair, with your permission, I will add a line or two, it might help Mr Mpofu as well, thank you.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** No I don't need your help Mr Gordhan, I will ask you questions, if the question is clear you must just answer yes or no. Of course, if you want clarification the Chair will stop me if I try to block you. I asked you a very simple question, your entire outlook is that Mr Moyane was motivated by a State Capture motive in performing his duties, that's what you said in many affidavits, so a yes will do.

10 **MINISTER GORDHAN:** Yes, as I indicated earlier, Chairperson.

**ADV MPOFU SC:** Thank you, now, you also said, and Mr Chaskalson led you to this that you say that Mr Moyane's complaint that led to criminal charges was part of the State Capture motive, correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes, okay.

**MINISTER GORDHAN:** With the limited knowledge that was available then.

20 **ADV MPOFU SC:** No, no fair enough, the point is that, you were not really saying that it's the charges that he laid against you *per se* but that his complaint, which led – it was his complaint that led to the criminal charges, there may have been other things but it triggered a process that led to the criminal charges, correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes, so therefore the – and when he laid that complaint that was part of his official duties that he was performing, correct?

**MINISTER GORDHAN:** Can you repeat that please?

**ADV MPOFU SC:** When he laid the complaint against those people at Brooklyn Police Station it was part of performing his official duties, correct?

**MINISTER GORDHAN:** I don't accept that.

10 **ADV MPOFU SC:** Did he do it just as a person or as a Commissioner of SARS?

**MINISTER GORDHAN:** Well I think Mr Moyane is in the best position to explain himself when he gives his major evidence before the Commission, Chair.

**ADV MPOFU SC:** Well, okay, to your knowledge now – I accept that you say earlier you are not *au fait* with the facts. To your knowledge now, you know that he laid that complaint in his capacity as Commissioner of SARS, correct?

20 **MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you. Now, therefore, the artificial line that is said drawn between what you call – whether in laying the criminal complaint or charges and I do understand that it was not against Mr Gordhan it's against anyone but your view is that, in laying criminal



complaint, Mr Moyane acted maliciously, correct?

**MINISTER GORDHAN:** As I said earlier Chair, that he was acting – that was one action in amongst many others that constituted, in my view, his contribution to the State Capture process.

**ADV MPOFU SC:** Thank you very much. Okay, let's go to B and also in laying the complaint, again, we can take out the words, against Mr Gordhan, we say against X, Y or Z, Mr Moyane was motivated wholly or in part or he sought to  
10 advance the objectives of State Capture, do you stand by that? That in laying the criminal complaint he was motivated wholly or in part or he sought to advance the objectives of State Capture, correct?

**MINISTER GORDHAN:** It's correct in the context of all the other activities that he undertook yes.

**ADV MPOFU SC:** Yes, thank you and then the third one is, whether in laying the criminal complaint, again we take out the words, against Mr Gordhan, against those other people, Mr Moyane was abusing a legal process for his  
20 own personal goals that he had, either nothing – that had, either nothing or little to do with a legitimate complaint relating to an alleged crime, do you also stand by that?

**MINISTER GORDHAN:** Well, that's not my formulation, the concept of personal goals, Chairperson, how does one draw the line which has mystified me between what one

does as a person when holding a particular official position or any position and what one does by playing a role in that particular position. So, I don't know what the word, personal, means in that context but if you say that he as a person did certain things, yes, but I don't know about what personal means.

**ADV MPOFU SC:** No but, if you don't know what personal goals are – these are your words Mr Gordhan, if you go to page TSM787, the one that you read out in front  
10 of...[intervenes].

**CHAIRPERSON:** Just to confirm, we are still using the same Bundle, that was referred to?

**ADV MPOFU SC:** That's correct Chair.

**MINISTER GORDHAN:** Sorry what number Mr Mpofu?

**ADV MPOFU SC:** TSM-787 it's the one that you read out now to the Commission...[intervenes].

**CHAIRPERSON:** Actually, Mr Mpofu, we can just ignore TSM...[intervenes].

**ADV MPOFU SC:** We just use the number.

20 **CHAIRPERSON:** The number ja.

**ADV MPOFU SC:** Thank you.

**CHAIRPERSON:** What is the number?

**ADV MPOFU SC:** 787.

**CHAIRPERSON:** 787, okay, have you got it Mr Gordhan?

**MINISTER GORDHAN:** Again, Chair, this 22.4 is a

paragraph that Mr Mpofu is referring to, if I've got it correctly, is that the one?

**CHAIRPERSON:** Hang on one second, Mr Mpofu do you want to articulate your question again in relation to...[intervenes].

**ADV MPOFU SC:** Yes, thank you Chair. The witness said that he doesn't know what personal mean, so I was just pointing out that this – the words he used in a statement under oath. You said at 22.5,

10            "I believe that Mr Moyane's personal goals, while he was SARS Commissioner, included the advancement of the State Capture project",

And you did that under oath, do you remember?

**MINISTER GORDHAN:** Ja, absolutely, so Chairperson can I first draw your attention to 22.4 in which I say the following, may I quote that Chairperson?

**CHAIRPERSON:** Before you do that Mr Gordhan, Mr Mpofu maybe we should, just for completeness mention that in 22.5 personal goals is in quotes.

20    **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Yes, okay, alright, Mr Gordhan you wanted to say something about 22.4?

**MINISTER GORDHAN:** So, to – for the benefit of the public as well, this is what I say, and of course affidavits are under oath, I think most people understand that and I

quote,

“To use the words of the Chairperson’s directions I therefore do mean that Mr Moyane! was motivated wholly or in part or he sought to advance the objectives of State Capture” and that “he was abusing a legal process for his own personal goals that had either nothing or little to do with a legitimate complaint relating to an alleged crime”.

So, when you look at personal goals in that context  
 10 it is a person who is advancing the objectives of State Capture and the quotation, Mr Mpofu, is a quotation of the Chairperson so he should ...[indistinct – interference on audio].

**ADV MPOFU SC:** Listen, I know what a quotation is, I’m saying to you, in those two paragraphs, you voluntarily adopted those words even though they were originally used by the Chairperson, nobody forced you to adopt them, you used them in, both, 22.4 and 22.5 and therefore you can’t tell us you don’t know what personal goals are, correct?

20 **MINISTER GORDHAN:** So what I was doing here, Chair, is in the context of 22.4 and 22.5 explaining that the personal goals in this context as described through the quotation referred to yourself, Chairperson, is in the context of advancing State Capture. That’s the point I was making there but my earlier remarks were, if you like, in a

more abstract sense.

**ADV MPOFU SC:** Yes, okay.

**MINISTER GORDHAN:** Thank you Mr Mpofu.

**ADV MPOFU SC:** Yes, thank you very much. The question, really was whether you stand by the statement in C which was, whether in laying a criminal complaint Mr Moyane was abusing a legal process for his own personal goals that had, either nothing or little to do with a legitimate complaint relating to an alleged crime and you  
10 stand by that?

**MINISTER GORDHAN:** No, I stand by the fact that Mr Moyane, in his position was advancing State Capture and that one of the activities in that process was to lay the complaint.

**ADV MPOFU SC:** Thank you.

**CHAIRPERSON:** Maybe, just to make sure I follow, what was your understanding of the reference to personal goals in the Chairperson's directions?

**MINISTER GORDHAN:** Is that with reference to myself,  
20 Chairperson?

**CHAIRPERSON:** Yes, in 22.4.

**MINISTER GORDHAN:** It's as I explained, Chairperson

**CHAIRPERSON:** Sorry?

**MINISTER GORDHAN:** Sorry.

**CHAIRPERSON:** I just want to make sure I understand

what your own understanding was of what the Chairperson was referring to when he was referring to Mr Moyane's personal goals.

**MINISTER GORDHAN:** So, I'm just drawing a distinction, Chairperson, between an abstract concept of how does one distinguish between personal goal and, if you like, professional goal that was part A. Part B is with reference to 22.4 and 22.5 and there my understanding was, a person who advances of his own volition the objective to  
10 the State Capture as we know it today.

**CHAIRPERSON:** Okay, alright, Mr Mpofu?

**ADV MPOFU SC:** Thank you Chair. Chair, I just wanted, just for the sake of the record to correct you Chair. The words that the witness was using in his affidavit were taken from the Chair's directive, not from the ruling, remember the affidavit came before the ruling.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Just for the record.

**CHAIRPERSON:** Oh, was I the one who said ruling?

20 **ADV MPOFU SC:** Yes, you said when the Chair said in his ruling, yes.

**CHAIRPERSON:** Okay, no that's fine – ja it was from the directions yes.

**ADV MPOFU SC:** Thank you Chair. Anyway the point is that you stand by all the sentiments expressed from A to E

except of course the technicality that the charges were not laid directly against you but it was a complaint that led to the criminal charges, are we still together?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you. Right, now, - so let us – apart from that, I really had hoped that we were going to start on a positive note Mr Gordhan which is on things that, I think we agree on. You agree, and I know you gave a definition but you agree that this notion of State Capture is  
10 a political term or a South African term for crimes really, crimes like corruption, fraud, money laundering and so on?

**MINISTER GORDHAN:** Chairperson, this is not a South African term, State Capture has a long history in international literature on corruption etcetera that takes place largely through procurement measures and of course in paragraph 16 of my evidence, before you in November 2018 I say the following and with your permission I want to quote it,

20 “A useful conceptual framework for understanding events and the phenomenon of State Capture has been developed by the group of academics who published The Betrayal of Promised Report and the recent book, The Shadow of State, the politics of State Capture. It envisages various groupings that perform different roles in State Capture and pattern

its networks”,

And it goes on to – from 16.1 explain the key role players but if you look at the literature...[intervenes].

**ADV MPOFU SC:** Mr Gordhan...[intervenes].

**MINISTER GORDHAN:** Let me just finish...[intervenes].

**ADV MPOFU SC:** Hello.

**MINISTER GORDHAN:** May I just finish please.

**ADV MPOFU SC:** If you can just answer my question, I don't want your...[intervenes].

10 **MINISTER GORDHAN:** I'm answering your question

**ADV MPOFU SC:** No, the question is either you agree ...[intervenes – speaking simultaneously]

**MINISTER GORDHAN:** And the answer is ...[indistinct] is not just a South African term, secondly...[intervenes].

**ADV MPOFU SC:** Do you agree that corruption or fraud or crimes like that, yes or no?

**MINISTER GORDHAN:** I think, Chairperson, it might be very useful if Mr Mpofo wants yes or no answers then he must ask one question at a time please.

20 **ADV MPOFU SC:** That's one question, do you agree that ...[indistinct – parties speaking simultaneously] corruption and fraud.

**CHAIRPERSON:** Hang on Mr Mpofo let him finish I don't think he's going to take long to finish what he was saying ...[intervenes].



**ADV MPOFU SC:** I think he's going to take long Chair.

**CHAIRPERSON:** I'm not going to allow him to take long but just finish what you – how you were capturing State Capture as an international concept as you understand it Mr Gordhan, what was it?

**MINISTER GORDHAN:** Thank you Chair, all I wanted to say is that, it doesn't only have South African origins it has international origins and it largely started with people working at the World Bank many years ago who observed  
10 similar phenomena elsewhere in the world and there's a famous author called Professor Hellmann who authored some of the text, that's the first point I'm making. The second point is, the answer is yes, it relates to, amongst other things corruption and related activity.

**ADV MPOFU SC:** Yes, okay just for your own edification, when I say South African term, I meant that it is used in the context of this Commission. State Capture actually didn't even come from the World Bank it came from a gentleman called Lamien[?] who advances the theory of  
20 capturing the State but that's a discussion for another day but as far as this Commission is concerned, do you agree that it relates to things like corruption, fraud and money laundering, yes?

**MINISTER GORDHAN:** Amongst other things yes.

**ADV MPOFU SC:** And it involves, I think as you have

said, stealing from the poor and if you steal, for example, money that was meant for a hospital or a school, literally it can lead to people dying, it's a serious matter.

**MINISTER GORDHAN:** Chair, I'm not sure whether that's a statement or a question.

**ADV MPOFU SC:** It's a question, you can say yes or no.

**CHAIRPERSON:** Just articulate it again, Mr Mpofu, the question.

**ADV MPOFU SC:** When such corruption, fraud and theft  
10 relates to, for example, let's say stealing money that was meant to build a hospital, we could say that State Capture is such a serious thing that it could lead to people actually dying or suffering. In other words what I'm trying to say is, it's a very serious matter, yes?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you and actually if you look at it in the – in its proper context it – that idea of stealing from the poor would be – particularly in a country with a history like ours, tantamount to treason, correct?

20 **MINISTER GORDHAN:** I leave that to the lawyers, Chairperson.

**ADV MPOFU SC:** Well, it's a serious crime that, in many places, would even have a capital offence, in fact in other countries it does, correct, capital punishment?

**MINISTER GORDHAN:** Again, I leave that to the lawyers,

Chairperson.

**ADV MPOFU SC:** No, well to your knowledge you don't know that it's a serious crime?

**MINISTER GORDHAN:** No, it's a terrible thing to do that's why I imagine I mention ...[intervenes].

**ADV MPOFU SC:** That's not just for lawyers ...[intervenes]

**MINISTER GORDHAN:** Can I answer, Chairperson or is Mr Mpofu going to do all the talking, with the Chair?

10 **CHAIRPERSON:** Ja give your answer.

**ADV MPOFU SC:** You don't have to be arrogant Mr Gordhan.

**MINISTER GORDHAN:** The question as I understand it ...[intervenes]

**ADV MPOFU SC:** You don't have to be arrogant, I'm not going to do all the talking you are the one who is being cross-examined, so you do the talking, if you'll answer my questions.

20 **CHAIRPERSON:** Okay, Mr Mpofu, Mr Gordhan, just give your answer.

**MINISTER GORDHAN:** No, what I'm saying, Chairperson is that Mr Mpofu is absolutely right, that State Capture but more importantly the activities that take place under this umbrella is a very serious matter and that is a matter that, as Deputy Chief Justice and Chairperson of this

Commission you are charged with – to both investigate and evaluate both in terms of the actions taken by various people but also the consequences of the actions as well. So, clearly, in the South African context it's very serious, whether the stealing happens at a Municipal level, Provincial level, National level or indeed in the private sector as well, thank you.

**ADV MPOFU SC:** Thank you very much and therefore when we make an accusation against somebody that they  
10 are mired or they are practitioners of State Capture, it's a very serious accusation because you're accusing them of something that is, as you say, despicable, correct?

**MINISTER GORDHAN:** Well the formulation I used earlier, Chairperson is, that in this particular instance, the activities that took place at SARS under Mr Moyane was his contribution and those were my words as I recall them, earlier on to the phenomenon of State Capture and if I'm given the opportunity later I'll explain what I mean but yes, it's said in that context.

20 **ADV MPOFU SC:** You will be given an opportunity. If you just, please – it will help all of us, listen to the question and then answer it, I've not said anything about Mr Moyane yet, I will just now. I'm saying, since you and I agree that State Capture is such a serious and despicable thing, to accuse someone of being a player or a practitioner of State

Capture, then makes it a serious accusation, anyone, correct?

**MINISTER GORDHAN:** I imagine those are the people that must appear before this Commission and make their views known and be cross-examined, yes.

**ADV MPOFU SC:** Is that ...[indistinct]

**MINISTER GORDHAN:** Mr Mpofu I will try my best to answer yes or no but it depends on the formulation of your question.

**CHAIRPERSON:** The question...

10 **MINISTER GORDHAN:** I have just given you my answer.

**CHAIRPERSON:** The question is whether an accusation that somebody was engaging in certain activities in pursuit of state capture is a serious accusation that – whether you agree that it is a serious accusation. I imagine that you agree based on what you have said before?

**MINISTER GORDHAN:** Yes Chairperson as I have explained yes.

**ADV MPOFU SC:** Thank you.

**CHAIRPERSON:** Yes okay.

20 **ADV MPOFU SC:** Thank you very much. And therefore such a serious accusation is not to be likely made against a person even if you hate that person, correct?

**CHAIRPERSON:** Even if?

**MINISTER GORDHAN:** The last part of you said Mr Mpofu?

**MINISTER GORDHAN:** Even if you hate that person.

**CHAIRPERSON:** Oh. The question or the proposition is such as an allegation is not an allegation that should be lightly made even if you hate that person. That is the – that is the – the question is whether you agree with that proposition?

**MINISTER GORDHAN:** Is the – the word preceding that person is it hate? Did I hear you correctly?

**CHAIRPERSON:** Ja. Ja.

**MINISTER GORDHAN:** H-a-t-e.

10 **CHAIRPERSON:** Hate ja.

**MINISTER GORDHAN:** No I think there are two different issues here Chairperson. The first is yes it is a serious allegation, the second hate has got nothing to do with this. This is an objective exercise.

**MINISTER GORDHAN:** Okay.

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** Now – okay in the – and the performance of that objective exercise it would be important given the seriousness that before you accuse someone of  
20 state capture you better have evidence, correct?

**MINISTER GORDHAN:** No it could be evidence, it could be perception, it could be a conclusion. For example the public might think that Person X is involved in state capture but it is a collection of information rather than evidence that they have and they well – could well draw that conclusion. So in

some instances it is information in other instances it might well be evidence.

**ADV MPOFU SC:** Okay let me ask it maybe differently. Before you accuse someone under oath in a commission such as this or in statements of state capture being such a serious matter it would be better if you have evidence and not just relying on gossip, correct?

**MINISTER GORDHAN:** No gossip is a terrible thing to rely on.

10 **ADV MPOFU SC:** And you agree that you should evidence?

**MINISTER GORDHAN:** Oh there must be facts that are fitting the picture if you like.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** That you will base a conclusion on.

**ADV MPOFU SC:** Okay sorry Mr Gordhan I do not know why you have a problem with such a simple thing. If you accuse someone of a serious thing rape, murder, state capture under oath you better have evidence. It is a simple thing. Yes?

20 **MINISTER GORDHAN:** Yes obviously you must provide facts that lead to evidence being – the word evidence has legal connotations that is the only point I am making Chairperson. But all I am saying yes there must be a collection of facts and there will be other collections of information.

**ADV MPOFU SC:** Otherwise known as evidence?

**MINISTER GORDHAN:** I take your word for it.

**ADV MPOFU SC:** Thank you. Okay now one of the ...

**CHAIRPERSON:** Well I see we are at one Mr Mpofu.

**ADV MPOFU SC:** Well...

**CHAIRPERSON:** But if you have one more question to ask before we adjourn that would be fine or one or two that is fine. What do you ...

**ADV MPOFU SC:** Chair.

**CHAIRPERSON:** What would you like?

10 **ADV MPOFU SC:** Chair you know a cross-examiner's one or two questions can be – Chair I will concede when we get to a natural place I will indicate.

**CHAIRPERSON:** No, no that is fine.

**ADV MPOFU SC:** Just on this topic.

**CHAIRPERSON:** We can take even ten minutes or so if that is...

**ADV MPOFU SC:** Oh good – good.

**CHAIRPERSON:** But I just want to alert you.

**ADV MPOFU SC:** To alert me yes.

20 **CHAIRPERSON:** Ja.

**ADV MPOFU SC:** No Chair I will – in fact this thing I am just about to end it and then maybe we will stop even before the ten minutes.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Okay I was saying again coming to the



South African context one of the tell-tale signs of somebody involved in the kind of state capture activities that the Chairperson is investigating would be a meeting with Gupta's, correct?

**MINISTER GORDHAN:** I am not sure where that is going but ...

**ADV MPOFU SC:** Do not worry about where it is going just answer the question.

**CHAIRPERSON:** Just – for my benefit ...

10 **MINISTER GORDHAN:** Can you repeat the question for me please so I can understand what you said?

**MINISTER GORDHAN:** Whilst in South Africa context one of the tell-tale signs that we use to determine that someone was involved in state capture is if they had a meeting or meetings with the Gupta's or visited their compound. These are some of the tell-tale signs.

**MINISTER GORDHAN:** In visiting the compound might well be one of the tell-tale signs yes.

**ADV MPOFU SC:** Yes. I [talking over one another] that one.  
20 I knew you were going to go for that one. Why are you jumping the one of meeting the Gupta's?

**MINISTER GORDHAN:** Because meet the word meeting means many things as I have explained in my affidavit. What are the – ja my statement in November 2018 that there were for example New Age breakfasts that Ministers

including myself attended once or twice.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** When the President that was attending those in order to support him to answer questions if questions arose in a particular portfolio. In the second instance if you walk into a room and a Gupta person is present and you obviously are told here is so and so and then you meet the person. But there are other instances where you conspire with the Gupta's. That is a very different  
10 category.

**ADV MPOFU SC:** No Mr Gordhan please it will help you, me and the Chair if you listen to the question. I am not talking about you about meetings with – at dinners or what have you. I am saying do you agree or do you disagree that in South Africa one of the tell-tale signs that we use is to determine if a person had meetings with the Gupta's is that one of the tell-tale signs – not the only one – yes or no?

**MINISTER GORDHAN:** In depends on the context.

**ADV MPOFU SC:** Alright maybe let me put it this way. In  
20 Parliament you were asked many – by the DA if you had met with the Gupta's, correct?

**MINISTER GORDHAN:** Yes

**ADV MPOFU SC:** And you said you never met with them, correct?

**MINISTER GORDHAN:** In a particular context yes.

**ADV MPOFU SC:** Yes. Now all I am saying is I am not getting there now I am saying one of the reasons that the DA or any opposition parties would ask you that question it is because one of the tell-tale signs of people being involved in state capture in South Africa is meeting with the Gupta's. They were not asking you just for fun. Correct?

**MINISTER GORDHAN:** Well I do not know what their intentions are the DA must come and give their own evidence.

10 **ADV MPOFU SC:** What do you think – what do you think their intentions were when you answered their question?

**MINISTER GORDHAN:** I am not here to speculate.

**ADV MPOFU SC:** Okay well I am putting to you then that they were asking you because of what you are avoiding to answer which I do not understand but one of the signs is meeting with the Gupta's. But let us move on. So the – you made – you had to change your statement to commission to reflect that you did meet with the Gupta's correct?

**MINISTER GORDHAN:** Yes the reminder that I received from  
20 my then Chief of Staff who is currently is the DG of the Treasury Mr Mogajane.

**ADV MPOFU SC:** Yes. So like Mr Nene before you you had “forgotten” that you had met with the Gupta's, correct?

**MINISTER GORDHAN:** I am not interested in any analogies.

**ADV MPOFU SC:** Okay that is fine forget the analogy. You

had “forgotten” that you had met with the Gupta’s a number of times, correct?

**MINISTER GORDHAN:** There is no quote – unquote as far as I am concerned I did not remember I was reminded and I frankly disclosed that in Parliament subsequently and to the commission when I had the opportunity.

**ADV MPOFU SC:** No Mr Gordhan.

**MINISTER GORDHAN:** There is quote or unquote forgotten.

10 **ADV MPOFU SC:** Okay. No let us just be serious for a moment.

**MINISTER GORDHAN:** It is for emphasis.

**ADV MPOFU SC:** No that is fine. You answered the question of the DA and you said you did not meet with the Gupta’s correct?

**MINISTER GORDHAN:** Well I cannot precise formulation of the question but that is [inaudible].

**ADV MPOFU SC:** Yes but you denied. I am not interested in the [inaudible].

20 **MINISTER GORDHAN:** Chairperson perhaps during lunch time...

**CHAIRPERSON:** I am sorry

**MINISTER GORDHAN:** Can we just – Chairperson.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I do require some guidance from you.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** If you could reflect on this please.  
When I am answering a question.

**CHAIRPERSON:** Ja, no, no.

**MINISTER GORDHAN:** I expect to be given the opportunity  
to answer and not be interrupted

**CHAIRPERSON:** No, no I was – I was about to say Mr  
Mpofu must let you finish your answer. But I think we must  
take the lunch break now Mr Mpofu.

10 **ADV MPOFU SC:** No Chair can I just finish this – just the  
thing.

**CHAIRPERSON:** How much time will be required?

**ADV MPOFU SC:** Two minutes.

**CHAIRPERSON:** Two minutes?

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** I am just ...

**CHAIRPERSON:** But just remember when he answers.

**ADV MPOFU SC:** Ja, no.

20 **CHAIRPERSON:** Let him finish and when you ask questions  
he will also let you ask ja.

**ADV MPOFU SC:** Ja he must also let me finish.

**CHAIRPERSON:** ja.

**ADV MPOFU SC:** That is fine Chair. We are trying to rush  
against the clock here.

**CHAIRPERSON:** Yes no that is fine.

**ADV MPOFU SC:** And the reason why I am asking questions like this Mr Gordhan is to make it easier because when I frame the question it is because I do not want you know a long contract it is a way of trying to focus the cross-examination but that is fine. The – I am sorry if I interrupted you. The question I was asking you is that the – you denied meeting the Gupta's. I agree you cannot remember the exact formulation but when you answered the DA you denied,

10 correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you.

**MINISTER GORDHAN:** [Inaudible]

**ADV MPOFU SC:** Oh I am sorry.

**CHAIRPERSON:** Hang on yes.

**ADV MPOFU SC:** Carry on.

**CHAIRPERSON:** Carry on Mr Gordhan.

**ADV MPOFU SC:** Do you want to clarify that yes?

**MINISTER GORDHAN:** I have said Chairperson I have said  
20 yes and I have said that is on the record.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** And as I said previously I had no recollection of anybody from the Gupta family being present when I met Mr Ambani during that time. My Chief of Staff when I formulate – former Chief of Staff when I formulating

the statement for the November presentation to you 2018 he reminded me of this and I disclosed it to you.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** If I wanted to hide it I could have hidden it. But I disclosed it voluntarily.

**ADV MPOFU SC:** You see...

**MINISTER GORDHAN:** Just for the record. Thank you.

**ADV MPOFU SC:** You see Chairperson really I...

**CHAIRPERSON:** Yes.

10 **ADV MPOFU SC:** Ask the Chairperson to please control this witness.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Because if he is going to give unnecessary verbiage on top of the answer then I am going to be forced to interrupt him.

**CHAIRPERSON:** No ask your next question Mr Mpofu so we can break for lunch.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Ja.

20 **ADV MPOFU SC:** Thank you. When you did your first statement to the commission you still had forgotten meeting the Gupta's, correct?

**MINISTER GORDHAN:** I will check that during my lunch time and come back to you.

**ADV MPOFU SC:** But when you did your statement you have

been reminded you say?

**MINISTER GORDHAN:** As I said I will check during lunch time and come back to you.

**ADV MPOFU SC:** Alright. Now – okay when we come back Chair I am going to start with a theme but if I may – if the Chair allows me just to ask two questions?

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** So as just to – again in the line of – let us try to deal with the issues that you and I agree with. You  
10 would agree that the relationship between and Mr Moyane can be described as one of hostility, correct?

**MINISTER GORDHAN:** Not necessarily.

**ADV MPOFU SC:** Those were your words Mr Gordhan. In your evidence you said it was the evidence that...

**MINISTER GORDHAN:** Yes it later resulted – later resulted.

**ADV MPOFU SC:** So that is [inaudible].

**MINISTER GORDHAN:** Chair as I was saying there was no hostility.

**CHAIRPERSON:** Okay I am sorry Mr Gordhan are you  
20 saying it later resulted in hostility?

**MINISTER GORDHAN:** Ja I do not know who is guilty of verbiage here Chair but we will leave that aside for now. My response is very simple that I do not – I do not know Mr Moyane at all except that he was present at some meetings and he happened to wear the correctional services uniform



at these meetings prior to him being appointed as the SARS Commissioner. So why must I have hostility against somebody or should that person have hostility against me whom I did not actually know. What I am saying secondly and very clearly and emphatically is that as events unfolded during my tenure as Minister of Finance and his tenure during that time as SARS Commissioner hostilities developed.

**ADV MPOFU SC:** Yes thank you.

10 **CHAIRPERSON:** Yes okay alright.

**MINISTER GORDHAN:** Thank you.

**ADV MPOFU SC:** So – so when you said not necessarily what did you mean if the answer is yes? Yes hostilities developed. Not necessarily what kind of answer was that?

**MINISTER GORDHAN:** It is exactly what I have explained to the Chairperson.

**CHAIRPERSON:** You – yes Mr Gordhan I think there is something technically wrong you – we are not getting all the words from your answer. Do you want to repeat your  
20 answer?

**MINISTER GORDHAN:** So I said earlier Chairperson before Mr Mpofu repeated his mind – can you hear me clearly Chairperson?

**CHAIRPERSON:** Yes, yes we can hear you.

**MINISTER GORDHAN:** Right. So I was saying that I did not

know Mr Moyane prior to his appointment as the SARS Commissioner. That I knew who he was because he used to be for example what we had – what he call cabinet lekgotla.

**CHAIRPERSON:** Okay. I think we heard that part.

**MINISTER GORDHAN:** Wearing a correctional services uniform sometimes and I knew of him in that context.

**CHAIRPERSON:** I think we heard that Mr Gordhan.

**MINISTER GORDHAN:** Firstly. Secondly ...

**CHAIRPERSON:** The part was what you meant when you  
10 said not necessarily.

**MINISTER GORDHAN:** I am coming to that now Chair.

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** I am coming to that now.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** Which I have already said earlier on.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** But for your benefit I am repeating  
it.

**CHAIRPERSON:** Yes.

20 **MINISTER GORDHAN:** The second point that I am making is  
that you know in our first set of exchanges there was no  
hostility. The third point that I am making is that during his  
tenure as the SARS Commissioner which SARS  
Commissioner is accountable to the Minister of Finance  
hostilities did develop.

**CHAIRPERSON:** Huh-uh. Okay.

**ADV MPOFU SC:** You do not want to answer the question I take it?

**CHAIRPERSON:** I think we will – I think we will – let us break if you want to proceed after lunch then you should

**ADV MPOFU SC:** Yes we can break at that point – if you – if you might use the lunch break also to think about please answering my question what did you mean by not necessarily. Thank you Chair.

10 **CHAIRPERSON:** Yes we are going to take the lunch ...

**MINISTER GORDHAN:** Chairperson.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Chairperson – Chairperson.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Before you adjourn.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** May I address you please?

**CHAIRPERSON:** Ja – yes, yes you may.

20 **MINISTER GORDHAN:** I do not think Mr Mpofu is helping this particular set of exchanges by throw away remarks like that. I have just taken the time to repeat twice what I actually meant and said. And there are three elementary points. Can you think about that as well. Thank you Chairperson.

**ADV MPOFU SC:** Well Mr Gordhan listen before you go.

The – I obviously you cannot have hostilities with someone you do not know. We are not that infantile. All I was asking you is whether when you did have a relationship with Mr Gordhan it was hostile. I could not ask you about hostilities with somebody that you did not know. Think about that.

**MINISTER GORDHAN:** Well I do not know what – Chair with great respect I do not know what Mr Mpofu has in mind.

**ADV MPOFU SC:** Do not worry about what I have in mind. I will reveal it to you.

10 **CHAIRPERSON:** Okay. Let us do this. Let us adjourn for lunch and if Mr Mpofu wants to take this further or if you want to say something about it Mr Gordhan when we resume we will take it from there.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** I think Mr Gordhan – the technical problems – he might not have heard me. I see the picture is

**ADV MPOFU SC:** Yes it is frozen.

**CHAIRPERSON:** Ja. But when we – well I am sure when we come back I will – I will tell him what I said.

20 **ADV MPOFU SC:** Yes thank you Chair.

**CHAIRPERSON:** Namely.

**ADV MPOFU SC:** He is – not frozen now.

**CHAIRPERSON:** Okay I think it is – ja he will still frozen ja. Okay we are going to adjourn but he needs to hear what time we will come back.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Can you hear me now Mr Gordhan? No.

**ADV MPOFU SC:** He is still frozen.

**CHAIRPERSON:** Can you hear me? No he is still frozen.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** We will – will somebody in the legal team tell him what time we are coming back? We will – we will adjourn for lunch now and we will resume at quarter past two and if either Mr Mpofu or Mr Gordhan...

10 **ADV MPOFU SC:** Chair.

**CHAIRPERSON:** Wants to...

**ADV MPOFU SC:** Does that mean my request was not exceeded of...

**CHAIRPERSON:** I am sorry.

**ADV MPOFU SC:** The request I made in chambers of a shortened lunch break.

**CHAIRPERSON:** Oh no, no you remember you said either that or we end later.

**ADV MPOFU SC:** [Inaudible].

20 **CHAIRPERSON:** And I said we will end later if necessary ja.

**ADV MPOFU SC:** So we still take an hour?

**CHAIRPERSON:** Ja. Ja.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Mr Gordhan are you back?

**MINISTER GORDHAN:** Yes I can hear you Chair.

**CHAIRPERSON:** Did you hear everything that we have been saying because ...

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** Because from our side you were frozen like. You did hear everything?

**MINISTER GORDHAN:** No, no I can hear you.

**CHAIRPERSON:** Okay that is alright.

**MINISTER GORDHAN:** I can hear you.

**CHAIRPERSON:** Okay alright. We will resume at quarter  
10 past two.

**MINISTER GORDHAN:** Thank you.

**CHAIRPERSON:** We will take the lunch adjournment. We adjourn.

**ADV MPOFU SC:** Thank you Chairperson.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Okay. Are you ready Mr Mpofu?

**ADV MPOFU SC:** Yes, Chairperson.

20 **CHAIRPERSON:** Are you ready Mr Gordhan?

**MINISTER GORDHAN:** [No audible reply]

**CHAIRPERSON:** Are you ready Mr Gordhan?

**MINISTER GORDHAN:** Yes, Chairperson.

**CHAIRPERSON:** Yes. Mr Mpofu, your first hour will not end at half-past two. It will end at quarter to. Three and a

second hour, we will end at quarter to four.

**ADV MPOFU SC:** Quarter to four?

**CHAIRPERSON:** So I have added 15-minutes because we  
...[intervenes]

**ADV MPOFU SC:** We started a bit late.

**CHAIRPERSON:** Ja, ja.

**ADV MPOFU SC:** Thank you, Chair.

**CHAIRPERSON:** Otherwise, let us try and make the best of  
...[intervenes]

10 **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** ...of the time.

**ADV MPOFU SC:** Thank you, Chair.

**CHAIRPERSON:** And of course, on both sides, you will both  
try and give each other time to assess whatever you are  
saying.

**ADV MPOFU SC:** Yes, Chair.

**CHAIRPERSON:** Okay alright. Maybe I can say this to  
Mr Gordhan. While, on the one the hand, you may clarify  
and answer that you give in order to make sure that maybe a  
20 yes or no answer does not give a wrong impression.

Your counsel is here as well. I will give an opportunity  
after Mr Mpofo has finished to re-examine. That means, to  
ask you questions arising out of the cross-examination.

And in doing so, she will have kept an eye on some of  
your answers where she might think that your answer might

not have given the kind of perspective you would have liked to give.

So when she asks you questions during the re-examination, some of the things that might not have come out clearly during cross-examination, she will seek to get those to come out.

So I just mention that so that you understand.

**MINISTER GORDHAN:** No, I do Chair. And I will try to assist in everywhere possible.

10 **CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Be as brief as possible.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Sometimes it is not possible, as you know.

**CHAIRPERSON:** Ja. Ja-no ...[intervenes]

**MINISTER GORDHAN:** Answering yes or no.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** And I also want to add Chair because I am not here to hide anything.

20 **CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** I have nothing to hide.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** So let us proceed and I will do the best I can.

**CHAIRPERSON:** Ja.



**MINISTER GORDHAN:** And I just hope that counsel is cooperating in that regard as well.

**CHAIRPERSON:** Yes, okay alright. Mr Mpofu.

**CROSS-EXAMINATION BY ADV MPOFU SC:** Thank you, Chair. Thank you for that Mr Gordhan. Ja, what normally helps Mr Gordhan. If there is an answer to a question, you need to answer the question. And of course, sometimes, as you say, yes or no is not enough but you can say yes and then want to clarify it.

10        So as long as I am happy that you have answered the question, now and again you will have - obviously, you might need to clarify. Thank you.

          Alright. So we were at a point where we both agreed that, at least, the relationship was defined by hostility, at least at the point, at the relevant that we are talking about, which is the period that Mr Moyane was at SARS. Correct?

**MINISTER GORDHAN:** Yes, but I think it is important Chair to add that there was going to be, in fact, it started from Mr Moyane's end.

20        When I looked at my statements over lunch and it was insinuated that when I was Minister of COGTA and attorneys on behalf of Mr Moyane began to write to me and demand that I present evidence in the investigations that were taking place at SARS and there were one or two other instances as well, including the non-accountability which I am sure we will

discuss in time.

**ADV MPOFU SC:** Yes. Okay. No, we will get to mister... That is your version. We will get to Mr Moyane's version where the hostility came from, from his point of view. And I will put it to you and you can agree or deny.

But anyway. We know that, at least from your side, part of this hostilities were caused by your belief that he was part of State Capture. Correct?

**MINISTER GORDHAN:** By that time, the notion of State  
10 Capture was just beginning to emerge. So I cannot answer to that question.

**ADV MPOFU SC:** No, at some stage... Maybe, let me break it down. At some stage, you believed that he was conniving with some people to have you removed. Correct?

**MINISTER GORDHAN:** It was part of a pattern and he appeared to have a role in it, yes.

**ADV MPOFU SC:** Yes. And you also believed that he was... Okay. No, we will come to that. Let me put it this way. The line we note from your statements, the genesis of the alleged  
20 hostility and its connection.

I am not so interested so much in, you know, in some petty issues that might have a reason. I am more interested, as you might understand, insofar as the hostilities were related to the allegations of State Capture.

So if I refer to the other issues, it is just the context.

But let me tell you up front that Mr Moyane will – his version of where the hostility came from, has got five elements.

Firstly, he phased it as what was caused by your, what one might general arrogance towards him. And then he says, secondly it was caused by petty jealousies about his role at SARS.

And as I have said, those are issues. I will touch on it very briefly but those are not the core issues.

And then thirdly, he says it was also – it originated from  
10 your racism towards him specifically and maybe towards African people in general.

And then fourthly, he says it was motivated – and this is where we come closer to the meat – he says it was motivated by your desire to deflect from your own involvement in State Capture and corruption.

And then fifthly, he says it was because he blew the whistle on the last or failed(?) or illegal activities and corrupt activities that you left behind at SARS including the issue of the Rogue Unit and the alleged early retirement of Mr Pillay.

20 You understand those five issues? And of course, I am sure you do not agree with them but you understand where he comes from?

**CHAIRPERSON:** Maybe before he – Mr Gordhan indicates Mr Mpofu, I just want to make sure I have got them right. I did not hear the first one.

**CHAIRPERSON:** Ja?

**ADV MPOFU SC:** Was what we call general arrogance.

**CHAIRPERSON:** General arrogance?

**ADV MPOFU SC:** Arrogance, ja.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** Thinking highly of himself.

**CHAIRPERSON:** Okay. I got number two. The indication of jealousies.

**ADV MPOFU SC:** Jealousies, ja.

10 **CHAIRPERSON:** Number three racism ...[intervenes]

**ADV MPOFU SC:** Racism.

**CHAIRPERSON:** ...on the part of Mr Gordhan towards him, that is Mr Moyane in particular, and maybe African in general. Is that right?

**ADV MPOFU SC:** African. H'm.

**CHAIRPERSON:** Number three was, motivated by Mr Gordhan's desire deflect from...?

**ADV MPOFU SC:** To deflect from his own involvement in State Capture and corruption.

20 **CHAIRPERSON:** Okay. And the fifth was one, he blew the whistle on...?

**ADV MPOFU SC:** On the illegal and corrupt activities that he left behind at SARS including the Rogue Unit and the alleged early retirement of Mr Pillay. And maybe Chair, just to put context. That last part, it related to the charges or

complain that Mr Moyane laid at the police station.

**CHAIRPERSON:** H'm.

**ADV MPOFU SC:** Which is the core of the – which, according to Mr Gordhan, motivated the State Capture.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** That is it.

**CHAIRPERSON:** Mr Gordhan, I think Mr Mpofu was asking the question whether, even if you do not agree with these, you understand that these are Mr Moyane's reasons why  
10 hostility developed between the two of you.

**MINISTER GORDHAN:** Well, I do not think I am here to understand Mr Moyane, with due respect Chair.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** Let me first emphatically say, that all of those assertions have no foundations whatsoever.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** And to now throw around notions such as racism and my alleged involvement in corruption is part of the fact news narrative that right now seemed to be  
20 populating all over the show.

So I repeat. I emphatically deny all of those assertions and they are merely a cover up Mr Chairperson for what Mr Moyane really did.

And Judge Nugent, the first in his report when he says the day that Mr Moyane took office, were the calamity for

SARS. That is the implication(?).

The transition of SARS from what it was and what it became, were brought about by the events that are shocking.

**CHAIRPERSON:** H'm.

**MINISTER GORDHAN:** We think that what occurred in the early described as a premeditated offense against SARS from Mr Moyane to seize SARS. Those are not my words. Those are the words of the SARS Commission as you have referred to it. So I deny any charge of arrogance. I deny...

10 What do I have to be jealous about with Mr Moyne?

**CHAIRPERSON:** [laughs]

**MINISTER GORDHAN:** That is ...[indistinct] references.  
[Transmission distorted - speaker is not clear.]

Thirdly, as far as racism is concerned. For the last 50-years since joining the congress movement and affiliating with the Freedom Charter.

As I have pointed out in my statement in November 2018, I am emphatically a non-racialist and my record proves that, of course. All sorts of stones will be  
20 thrown at me but I suppose that is part of the course.

As far as negativity towards African people is concerned. The evidence is completely to the contrary, both within SARS given my tenure and elsewhere.

That this is a deflection from my role in State Capture. Well, again Chairperson. I must say that Mr Moyane must

come along and say that on the record in an affidavit before the Commission.

And let all of those who have an interest in cross-examining him, because he is the implicated person here, to have an opportunity to test his evidence, wherever that might be and you might or might not join the queue.

Blowing the whistle. There is nothing to blow the whistle about.

**ADV MPOFU SC:** I am sorry ...[intervenes]

10 **MINISTER GORDHAN:** The so-called has been repeatedly shown to be legal by various senior counsel at the bar in Johannesburg. Secondly, Mr Pillay's issue.

It has gone through all sorts of processes including court processes currently, I believe. And there is nothing illegal that was done and that is also proven for the record.

Those who want to believe the contrary, are welcome to do so but the facts do not support them at this point in time.

**CHAIRPERSON:** H'm.

**MINISTER GORDHAN:** So I note what Mr Mpofu has said.

20 Let us get on to the next question.

**CHAIRPERSON:** Mr Mpofu, I know you had not asked as yet what he has to say about this. You asked him whether he noted them, so to speak ...[intervenes]

**ADV MPOFU SC:** Yes, and you even repeated my question.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But now we got a lecture.

**CHAIRPERSON:** Yes. But in any event. He was going to have to deal with the question ...[intervenes]

**ADV MPOFU SC:** He was.

**CHAIRPERSON:** ...of what he needs to say. So ...[intervenes]

**ADV MPOFU SC:** He will deal with it ...[intervenes]

**CHAIRPERSON:** Okay you may proceed.

**ADV MPOFU SC:** Okay. Now you and I – you have agreed  
10 that – so certainly you are saying that you are denying that  
arrogance, self-opinionated, jealous, racist, who is corrupt  
and has a tendency to harm whistle-blowers who report on  
your unlawful activities? You deny that?

**MINISTER GORDHAN:** Absolutely.

**ADV MPOFU SC:** Thank you. Now, you and I have agreed... Well, Mr Moyane, unlike you, will back up these accusations with evidence, as you correctly say, when he testifies.

And just to assist you. If you read Mr Moyane's very  
20 first affidavit in December 2018. He, under oath, offered to give evidence.

**CHAIRPERSON:** 2019, I think?

**ADV MPOFU SC:** 2018.

**CHAIRPERSON:** Oh, 2018.

**ADV MPOFU SC:** It was after Mr Gordhan's....



**CHAIRPERSON:** Oh.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** H'm.

**ADV MPOFU SC:** Mister... and repeatedly, even myself here on this podium - well, not this very podium – he repeatedly said that he will gladly assist the Commission when required to do so. There is not even a need for a summons. He will come here willingly. So let us put that to bed.

So you have agreed that it is important not to go around  
10 making serious accusations when you cannot back them up?  
Correct?

**MINISTER GORDHAN:** No, no. There is enough evidence before... Chair, if I may respond? There are lots of evidence. I think one is the extensive work done by Judge Nugent to know what the evidence is in respect of SARS. There is also lots of evidence in relation the so-called complaint. And what is interesting Chair is, I looked at my file ...[intervenes]

**CHAIRPERSON:** Hang on Mr Gordhan. Hang on Mr  
20 Gordhan. I think both of you have got something wrong. Mr Mpofu, I think from previous answers, I think it is clear that Mr Gordhan takes the view – he did say – that you cannot go – make serious allegations unless you have got facts.

**ADV MPOFU SC:** Yes, that is all I was asking Chair.

**CHAIRPERSON:** Yes, and ...[intervenes]

**ADV MPOFU SC:** So what did I do wrong?

**CHAIRPERSON:** So that, from previous questions, that is clear. But also Mr Gordhan, you are not answering the question that – the question was more general. But you were seeking to answer the question in relation to Mr Moyane.

So I think Mr Mpofu was just looking for an agreement on the general propositions. But I am saying that, I think you have already said before that nobody should make  
10 serious allegations against somebody unless they have got facts. Is that correct?

**MINISTER GORDHAN:** No, that is correct Chair.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** And you come in hard but I mean, that was the purpose of the evidence that I presented before you in November 2018. And that is further enforced Chairperson by the findings of the Nugent Commission.

**CHAIRPERSON:** Yes, but what I am saying is. His question was general and not relating to Mr Moyane so - but as I say,  
20 you had made it clear in regards to his response to earlier questions, that you accept the proposition that once should not make serious allegations against somebody unless they have got facts. So I think we can move on Mr Mpofu.

**ADV MPOFU SC:** Thank you, Chair. Well, I just do not want that the Chair says I did wrong because ...[intervenes]

**CHAIRPERSON:** No, I ...[intervenes]

**ADV MPOFU SC:** ...after that, I said: Do you and I agreed that it is important not to go around and making serious allegations when you cannot back them up?

**CHAIRPERSON:** Oh, I thought you wanted him to answer again, whereas previous ...[intervenes]

**ADV MPOFU SC:** No, I am talking... because we are coming back from lunch now.

**CHAIRPERSON:** Yes, yes. Okay.

10 **ADV MPOFU SC:** To gear(?) up from my next question.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** That is why Chair, with respect, one sometimes does not know where – what Mr Mpofu really wants an answer to because he starts by saying Mr Moyane is willing to give evidence and he ends somewhere else. So if he could customise his questions better, it will make it easier to answer them. Thank you.

**ADV MPOFU SC:** Okay.

20 **CHAIRPERSON:** Okay, let us do our best.

**MINISTER GORDHAN:** Ja. No, thank you.

**CHAIRPERSON:** Let us do our best, ja.

**ADV MPOFU SC:** Thank you Mr Gordhan for trying to help me on how to ask you questions. So the question is – was very simple, actually. You and I have agreed that it is

important not to go around making serious allegations when you cannot back them up. Yes, no?

**MINISTER GORDHAN:** As a general proposition, yes.

**ADV MPOFU SC:** Thank you. And that is when you do so under oath, it is more than just not a good idea. It is also illegal because it would be a crime or perjury, correct?

**MINISTER GORDHAN:** I note what you say.

**ADV MPOFU SC:** Do you agree or do you not agree? If you...[intervenes]

10 **MINISTER GORDHAN:** I am not a lawyer. So I am not going to agree or disagree. I note what you say.

**ADV MPOFU SC:** You do not know the importance of taking an oath before God?

**MINISTER GORDHAN:** I have affirmed right at the beginning of this proceedings Chairperson. I am not sure what Mr Mpofu is pursuing here.

**ADV MPOFU SC:** Okay. I am saying that if you...[intervenes]

20 **MINISTER GORDHAN:** I took an affirmation. What else does Mr Mpofu wants?

**ADV MPOFU SC:** I asked the question here Mr Gordhan. You are just a witness. So just chill. Can you wait for the question, okay?

**MINISTER GORDHAN:** [No audible reply]

**ADV MPOFU SC:** I am saying to you. If you asked – if you

make statements that you cannot back up in – under oath, you might be exposing yourself to the crime of perjury. Yes or no?

**MINISTER GORDHAN:** As far as I am concern, there is enough evidence around. There is no issue of perjury. Thank you.

**ADV MPOFU SC:** Okay, I will not go back again. The Chair explained this to you many times.

**CHAIRPERSON:** Yes, it is... Ja, it was a general  
10 proposition.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** But I think you can move on.

**ADV MPOFU SC:** I will Chair.

**CHAIRPERSON:** H'm?

**ADV MPOFU SC:** I will give up on that answer. So but you do also agree that it is the height of arrogance to go around accusing people without evidence?

**MINISTER GORDHAN:** Chairperson, I need your guidance here. Are we here to engage in theory or are we actually – I  
20 am here to answer questions in the evidence that I presented before you in November 2018? Could I be guided by you, please?

**CHAIRPERSON:** Well, sometimes Mr Gordhan, counsel will ask question of a general nature in order to get an understanding of your own view what is right and what is

wrong and so on before coming to the evidence with regard to specific events.

So sometimes questions are of a general nature just to understand your own values, your own understanding of certain things in general without being specific. And at a certain stage, he might then be specific to certain things.

So when Mr Mpofu asks questions, you just always bear in mind whether you understand it to require just a general – to be a general question or whether it is specific.

10       And where you are not sure, feel free to say: Can I get clarification on this question?

**ADV MPOFU SC:** Or ask me to repeat the question.

**CHAIRPERSON:** Or ask him to repeat. But I think, maybe just repeat the question Mr Mpofu.

**ADV MPOFU SC:** Yes. Do you agree or do you not agree that it is the height of arrogance to go around accusing people of serious offenses without evidence?

**MINISTER GORDHAN:** That is now all the questions ...[intervenes]

20       **ADV MPOFU SC:** To anybody, yes.

**MINISTER GORDHAN:** Chairperson ...[intervenes]

**ADV MPOFU SC:** Any person.

**CHAIRPERSON:** For anybody. Not necessarily you. For anybody to do that. So it is a general proposition.

**MINISTER GORDHAN:** Well, if it is a general proposition,

let us say yes for now until we know where it is going.

**ADV MPOFU SC:** Yes. Thank you.

**MINISTER GORDHAN:** Ja.

**ADV MPOFU SC:** Well, maybe to assist you Mr Gordhan. You yourself were a victim of this view. Remember, that you are actually on some, what you call the intelligence report and that caused you a lot of anguish. Do you remember that?

**MINISTER GORDHAN:** There have been so many fake  
10 ones. So one does not know which one you are referring to. But again, as a general proposition, as the Chair says, I have been the subject of various forms of what you have described. So yes.

**ADV MPOFU SC:** Yes. And that is what I am saying. It is wrong to do that without evidence, for someone to say Mr Gordhan is wrong. [Indistinct] [Speaker is not clear.] to National Security or whatever without any evidence. That is painful and wrong. Correct?

**MINISTER GORDHAN:** Generally, yes. When it happens.

20 **ADV MPOFU SC:** Thank you. Ja, now, that is the point I want to make. And that is if you... The proposition I want to put to you is, that you have gone around accusing every public official who has ever made an adverse decision against you as a practitioner of State Capture without a shred of evidence. Would you agree with that statement?

**MINISTER GORDHAN:** No.

**ADV MPOFU SC:** Okay. You have no evidence that Mr Moyane was part of State Capture, do you?

**MINISTER GORDHAN:** As I said Chair ...[intervenes]

**ADV MPOFU SC:** Sorry Mr Gordhan. Sorry to interrupt you. In the mode of what – the way Mr Chaskalson was putting the questions to you. You have no personal evidence known to you that Mr Moyane was part of State Capture, apart from gossip?

10 **CHAIRPERSON:** Hang on.

**MINISTER GORDHAN:** Well, I am surprised ...[intervenes]

**CHAIRPERSON:** Before you answer Mr Gordhan.

**MINISTER GORDHAN:** Yes, Chair.

**CHAIRPERSON:** Mr Mpofu, if you say it in the context of a particular formulation, you might wish to go to that page so that he can also have a look.

**MINISTER GORDHAN:** Yes. No, no ...[intervenes]

**CHAIRPERSON:** But if it is not important.

**ADV MPOFU SC:** No, Chairperson. I am not ...[intervenes]

20 **CHAIRPERSON:** Ja, okay.

**ADV MPOFU SC:** I am not... I am paraphrasing.

**CHAIRPERSON:** Oh, okay alright.

**ADV MPOFU SC:** I am not quoting.

**CHAIRPERSON:** Okay. Just repeat.

**ADV MPOFU SC:** In fairness you Mr Gordhan, because of



what has exchanged, I will repeat the question. You have no evidence, direct or indirect, that Mr Moyane was part of State Capture?

**MINISTER GORDHAN:** No, I do.

**ADV MPOFU SC:** You do?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Good. Do you have evidence that President Zuma was part of State Capture or corruption?

**MINISTER GORDHAN:** That is not a relevant matter here.

10 **ADV MPOFU SC:** Answer the question. It is not for you to talk about relevance. Answer the question. You are just a witness. Do you have ...[intervenes]

**MINISTER GORDHAN:** That is not the point. Chair ...[intervenes]

**ADV MPOFU SC:** Do you have any ...[intervenes]

**MINISTER GORDHAN:** I do not think ...[intervenes]

**ADV MPOFU SC:** Listen. You have to answer the question. I cannot be doing this. Otherwise, we are not going to finish today.

20 **CHAIRPERSON:** Hang on Mr Mpofu. Bearing in mind the scope of today's evidence. I am not sure whether allegations about whether Mr Zuma was part of State Capture, whether it is part of what should be ...[intervenes]

**ADV MPOFU SC:** It is.

**CHAIRPERSON:** Unless you ...[intervenes]

**ADV MPOFU SC:** Yes, let me explain Chair.

**CHAIRPERSON:** You just wait... Ja.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** You will indicate and why.

**ADV MPOFU SC:** Well, according to the Gordhan theory on the State Capture issue. Mr Moyane who was appointed by President Zuma, appointed him, amongst other things, to capture the National Treasury.

And he gave evidence in this Commission about  
10 Mr Moyane was appointed by President Zuma. And obviously, the – and there are many passages I will refer you if you want Chair.

Where the link is made between the alleged disrespect and all that, owing to the fact that Mr Moyane had these connection in high places.

So Mr Moyane, in that analogy, is – let us call it one of the foot soldiers that the kingpin is former President Zuma. So if the kingpin – if you have no evidence on the kingpin, then it is unlikely to have evidence on the foot soldiers.

20 That is where I am going with this. So it is relevant directly to Mr Moyane. Do you have or do you not have that evidence?

**CHAIRPERSON:** I am not sure... Mr Chaskalson, do you have something to say and Ms Le Roux? Let me just...

**ADV CHASKALSON:** Chair, I do have a concern about this

for a different reason, which is...

**CHAIRPERSON:** Yes.

**ADV CHASKALSON:** And I do think it goes quite a long way away from the Terms of Reference. And normally, one might grant some latitude but there is a very different concern here, which is, Mr Mpofu is actually inviting the witness to make a series of allegations against President Zuma or former President Zuma, who himself has given no notice of that line of cross-examination.

10 **CHAIRPERSON:** H'm?

**ADV CHASKALSON:** And I am not sure that that is the process that we should...

**CHAIRPERSON:** H'm.

**ADV CHASKALSON:** It is not just a question of latitude of cross-examination. It is also to a third party who would not been appraised of Rule 3.3. rights and the like.

**CHAIRPERSON:** Yes, okay. Ms Le Roux... Okay, let me hear Ms Le Roux but they should just sanitise before you ...[intervenes]

20 **MS LE ROUX:** Chair, I will not touch anything. So we do not need to ...[intervenes]

**CHAIRPERSON:** Oh, okay alright.

**MS LE ROUX:** Chair, we do object to the expansion of the scope, not only because of the impact it has on Mr Zuma's rights but also because my learned friend, since the lunch

adjournment, has mentioned things about the so-called Rogue Unit, about racism and arrogance and acrimony about bias and hostility.

These are all topics that you ruled that he did not have leave to cross-examine on. And so we do need to ensure that the questions actually cover the five questions that you gave legal, which is whether Mr Moyane as SARS Commissioner advanced State Capture and whether, when he laid criminal charges, he was advancing the State  
10 Capture.

And because otherwise, we are going to undo your two rulings and that is the concern that I have.

**CHAIRPERSON:** Well... Mr Mpofo.

**ADV MPOFU SC:** Yes, Chairperson, yes. Look, I am not going to go to war on ...[intervenes]

**CHAIRPERSON:** On this one.

**ADV MPOFU SC:** ...on Mr Zuma.

**CHAIRPERSON:** Yes, okay.

**ADV MPOFU SC:** But I am saying. The issue is directly  
20 connected. And by the way. Just to go back to what the witness, when he denied that the issue of hostility and certain not... He says in his statement at 127.4...

**CHAIRPERSON:** At what page?

**ADV MPOFU SC:** That is page 47, Chair. I hope you are using the same bundle.

**MINISTER GORDHAN:** Which statement are you speaking of?

**ADV MPOFU SC:** That is the statement you made to the Commission in 2018.

**CHAIRPERSON:** That is not the clarificatory affidavit, is it?

**ADV MPOFU SC:** No, no, no. Chair, it is the original statement.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** There is no 7.4.

10 **ADV MPOFU SC:** It is 127 ...[indistinct] [Speaker is not clear.]

**CHAIRPERSON:** Is that the paragraph?

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Ja, on what I have been given there is no 127.4.

**ADV MPOFU SC:** Okay, let me read it out, Chair, just to save time. It says:

20 “Mr Michael Hulley attempted to mediate the dispute on behalf of the former President Zuma. However he, Mr Zuma, appeared reluctant to personally intervene to end the hostility and lack of accountability from Mr Moyane evident in our relationship.”

Ja, so this was part – this is just one of the areas where there is a relationship made between Mr Zuma’s alleged

inaction, so to speak. I think even the Chair commented later as to was there any intervention from Mr Zuma and the witness said no.

**CHAIRPERSON:** Yes ...[intervenes]

**ADV MPOFU SC:** But I can ...[intervenes]

**CHAIRPERSON:** I prefer your attitude that you are not going to go on war on this one, ja.

**ADV MPOFU SC:** No, I will not.

**CHAIRPERSON:** Ja.

10 **ADV MPOFU SC:** Because otherwise we are just going to be waylaid again.

**CHAIRPERSON:** Ja, ja, let us move on, ja.

**ADV MPOFU SC:** Ja.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** You have no evidence that Mr Moyane was part of that corruption. You said you do have. What is that evidence?

**MINISTER GORDHAN:** You might want to look at the report of the Commission, Chair, by Judge Nugent.

20 **ADV MPOFU SC:** No, if I were you I would stay away from the Commission chaired by Judge Nugent, I am saying before ...[intervenes]

**MINISTER GORDHAN:** You are not me, with due respect.

**ADV MPOFU SC:** Yes, I am not you, thank God. I am saying that ...[intervenes]

**MINISTER GORDHAN:** Thank God ...[intervenes]

**ADV MPOFU SC:** The Commission of Judge Nugent came in 2018, correct?

**MINISTER GORDHAN:** I do not know the precise date, Chair.

**ADV MPOFU SC:** Well, I can tell you, it was in May/June 2018. Before that you did not think that Mr Moyane – or actually, the report came even later in October/November. Before that he did not think Mr Moyane part of state  
10 capture.

**MINISTER GORDHAN:** As I explained earlier, Chair, so we seem to be going around the block on the same questions but let me answer that. I said earlier on that the real hostilities at the beginning I place at the door of Mr Moyane. However, counsel was briefed in this regard. He is the one who initiated what I refer to as the letter from his attorneys demanding certain things of me, firstly.

Secondly, post my appointment on the 13 or 14 December 2015 back as the Minister of Finance it is he  
20 who says that in respect of leave forms he will submit them to the Presidency. If he wanted time off he will discuss it at the Presidency.

When asked for certain types of information it would be not available. So there was on the question of the operating model, which I referred to earlier on, I said let us

review it and let me understand it, he went ahead with the appointments.

On the question of bonuses being paid, I said hold it, I think it was a Friday, let us discuss it again on Monday, he went ahead later that afternoon and instructed that those bonuses be paid. When he was challenged by the Auditor-General, who passed away recently, on that particular question he threatened to take the Auditor-General to court.

10           Now those are clear elements of evidence of somebody who is basically a Director General and operates at that level within government is basically saying I am not going to respect your office, not me, as a person, the office, I am not going to cooperate with you. On an elementary thing such as leave.

When Mr Nene was the Minister of Finance his leave forms were submitted to the Ministry of Finance for approval. As soon as I was appointed he said no, I will get my leave from the Presidency, I report to the Presidency.

20    **ADV MPOFU SC:** Yes, but I ...[intervenes]

**MINISTER GORDHAN:** So that is [inaudible – speaking simultaneously]

**ADV MPOFU SC:** This is not what the question was.

**MINISTER GORDHAN:** Well, does not rely – no, may I finish please? It does not rely upon Judge Nugent



...[intervenes]

**ADV MPOFU SC:** No, do not finish unless I have got another question. Do you remember what the question was, with due respect, Mr Gordhan?

**MINISTER GORDHAN:** You asked whether there is evidence.

**ADV MPOFU SC:** No.

**MINISTER GORDHAN:** There is evidence.

**ADV MPOFU SC:** That is not the question I was asking  
10 you, I knew you had forgotten the question, you are just  
rambling on.

**MINISTER GORDHAN:** Chairperson, Chairperson  
...[intervenes] The question was, before Mr Nugent –  
before Mr Nugent was aboard did you think Mr Monyane  
was part of state capture or not? Got nothing to do with  
leave forms. Yes or no?

**CHAIRPERSON:** Okay, Mr Gordhan, you wanted to say  
something while Mr Mpofu was speaking.

**MINISTER GORDHAN:** Ja, well the answer is yes,  
20 evidence of refusing to account within the normal  
framework that governed – operates with, by an individual  
who subsequently does whatever the Nugent Commission  
found which - some of which I referred to in relation to  
doing away with – destroying entities that were crucial to  
tax compliance which in fact is directly related to whether

poor people have hospitals, clinics or not at the end of the day. So that is my first point.

The second point, Chair, that I was going to raise earlier on is am I expected to return in kind the kind of comments Mr Mpofu is now allowing himself to make about rambling on. I am not rambling on, I am very precise about what I am saying.

**ADV MPOFU SC:** Precise? Okay.

**MINISTER GORDHAN:** Chairperson, with respect...

10 **CHAIRPERSON:** Hang on, Mr Mpofu. Yes, continue Mr Gordhan.

**MINISTER GORDHAN:** So all I am saying is can you leave that for the theatre later and can you stick to questions which I am ready to answer.

**ADV MPOFU SC:** Okay and can you stick to the answer.

**CHAIRPERSON:** Okay, let him testify.

**ADV MPOFU SC:** Do you – honestly, do you remember the question, Mr Gordhan?

**MINISTER GORDHAN:** You asked for examples of  
20 evidence of state capture. I gave you one set of instances.

**ADV MPOFU SC:** No.

**MINISTER GORDHAN:** If you want go back to my initial evidence before the Commission at paragraphs 9 onwards where I make reference to state capture and where there are examples of the classic signs of state capture and you

will find that there is a correlation between what happened at the Revenue Service and what the state capture concept attempts to capture.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** And that is, get rid of good people.

**ADV MPOFU SC:** Ja, okay ...[intervenes]

**MINISTER GORDHAN:** The [indistinct] 06.53 that actually work. Give, for example, VAT refunds to friends and family.

10 **ADV MPOFU SC:** Chairperson, you have to intervene now.

**CHAIRPERSON:** Okay ...[intervenes]

**MINISTER GORDHAN:** You are asked me a question, I am responding to it.

**ADV MPOFU SC:** This is not the question I put. [inaudible – speaking simultaneously] carry on with your own question.

**CHAIRPERSON:** Okay, Mr Gordhan, let Mr Mpofu say something about your answer whether you remember what  
20 the question was.

**ADV MPOFU SC:** Ja. Mr Gordhan, you know, the effect of what you are doing is that we are not going to finish this evidence today and we will have to come back because I am going to ask you these questions. That is not – you answered that question, I will come back to it, about

evidence, the effect of you going on like you are going is that you forget what I ask. I am asking the question for the third time. Before Judge Nugent's report, which was late in October/November 2018, did you believe Mr Moyane was involved in state capture, yes or no?

**MINISTER GORDHAN:** The indications were certainly there.

**ADV MPOFU SC:** Did you believe that Mr Moyane was part of state capture before the Nugent report? It is simple  
10 question, Mr Gordhan, really. We cannot have – you want to be comfortable [inaudible – speaking simultaneously]

**MINISTER GORDHAN:** Chairperson, Chairperson...

**CHAIRPERSON:** Yes, Mr Gordhan?

**MINISTER GORDHAN:** Can I respond?

**CHAIRPERSON:** Yes, yes.

**MINISTER GORDHAN:** In my statement at various stages, I am trying to find the right reference, I say at paragraph 14 on page 8, 14, and I quote:

20 "I must emphasise that my knowledge and my understanding of state capture like that of the rest of the country evolved over time."

In other words, as one begins to see certain activities and certain actions being taken ...[intervenes]

**CHAIRPERSON:** Yes, hang on, Mr Gordhan. The best way is to start by saying yes, I believed that Mr Moyane

had participated in acts of state capture and that is what you believed before the Judge Nugent report or you start by saying no, at that time I did not believe so and then you be asked from when you started to believe he had taken part in state capture. If you start the answer like that it helps to make it clear what the answer is and then if you need to clarify then you can clarify in due course.

**ADV MPOFU SC:** Thank you.

**MINISTER GORDHAN:** No, thank you for your guidance,  
10 Chair. I actually said that in my own words, I said that I certainly picked up activities and I gave examples of some, there are many others, which indicated that this was eventually what we call state capture of an institution known as the South African Reserve Service. Thank you, Chair.

**CHAIRPERSON:** Yes, but I think it is not clear yet because Mr Mpofu's question relates to – seeks to determine the time when you might have formed that belief. Was it before Judge Nugent's report? Maybe before that  
20 you suspected but it was not a belief. Maybe the belief came after or maybe the belief was there before the Judge Nugent report. I think that is what he is very interested in.

**MINISTER GORDHAN:** Let me try to get the chronology right, Chairperson.

**CHAIRPERSON:** Yes, okay.

**MINISTER GORDHAN:** If I – if you give me a minute?

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** Because recollecting when exactly some of these things happened is going to be a bit difficult.

**CHAIRPERSON:** Yes, well you ...[intervenes]

**MINISTER GORDHAN:** But the notion of state capture, Chairperson, for example at the funeral of icon Ahmed Kathrada on the 29 March 2017 I think South Africans  
10 began to realise on the memorial thereafter where a concept of connecting the dots began to actually emerge. So yes, I think the concept – the notion of state capture was beginning to gel prior to the Nugent report. Thank you.

**CHAIRPERSON:** Yes but you are talking in general, you are not talking about yourself. If you cannot remember as from when you started believing that Mr Moyane had pursued or was pursuing state capture at SARS then you say look, I cannot remember, I cannot remember from  
20 when. But if you do remember you say it was from that time.

**MINISTER GORDHAN:** Well, that is what I attempted to do by looking at the chronology, Chair, so ...[intervenes]

**CHAIRPERSON:** I think what you read to me with regard to the funeral of Mr Kathrada...

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** It was more about what you think - you say the people in South Africa began to believe whereas the question is more about your belief.

**MINISTER GORDHAN:** No, that is why I referred to the memorial, Chair, of the late Ahmed Kathrada which took place a day or two latter by Johannesburg City Hall when I referred to the concept of connecting the dots so that picture of what we eventually called state capture was  
10 certainly gelling in my mind at that point in time. Whether I called it state capture, I do not know.

**CHAIRPERSON:** Yes but the gelling, was it a belief at that stage or was it something less than a belief, number one. Number two, was it in relation – did it include a belief that Mr Moyane was one of the people who were pursuing the state capture agenda? I think that is the important part that Mr Mpofu is trying to establish because I think he wants to know from when you began to believe that his client was engaged or had been engaged in acts of state  
20 capture.

**MINISTER GORDHAN:** Certainly the activities that I began to see from 2016 personally at SARS when I was Minister of Finance led me to believe that Mr Moyane was engaging in activities that could be described as contributing to state capture.

**CHAIRPERSON:** Yes. Okay, alright. Mr Mpofu?

**ADV MPOFU SC:** Ja. So – okay, thank you, Chair. I am grateful to you, Chair.

**CHAIRPERSON:** Yes, maybe I should say this. I take that, Mr Gordhan, to mean that long before Judge Nugent's reports, when you looked at those activities on the part of Mr Moyane you associated them with what you later understood to be state capture, is that right?

**ADV MPOFU SC:** No, no, Chair, that is not ...[intervenes]

10 **MINISTER GORDHAN:** That is right.. That is right, Chairperson.

**CHAIRPERSON:** It [inaudible – speaking simultaneously]

**ADV MPOFU SC:** Okay, no, Chair, [inaudible – speaking simultaneously]

**CHAIRPERSON:** Just formulate it. Just formulate it the way you understand it, ja.

**ADV MPOFU SC:** Yes. It is very simple, actually, this should not have taken twenty minutes.

**CHAIRPERSON:** Ja.

20 **ADV MPOFU SC:** So the answer that you are giving is that you became aware of Mr Moyane's involvement in state capture around about 2016 and that is before the Nugent Commission, so the answer is yes.

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you.



**CHAIRPERSON:** Okay, alright, thank you.

**ADV MPOFU SC:** Thank you. Now – so if that is the case then your belief about Mr Moyane’s involvement in state capture cannot be sources from the Nugent report which came two years later and the point I want to make is that the – and I want to come now to your favourite subject about leave forms and so on. All that, the fact that he was not giving – asking you for leave and all that, in your mind means that he was involved in state capture. Is that what  
10 you are really – is that your evidence?

**MINISTER GORDHAN:** So, as I understand, Chair, Mpofo has asked two questions. The first is in relation to what I have just said about my knowledge and impressions prior to the Nugent Commission.

**ADV MPOFU SC:** Correct.

**MINISTER GORDHAN:** And which the Nugent Commission’s report, both the interim report in particular and the final report, amplified in detail about the kind of damage as Judge Nugent described was done by Mr  
20 Moyane which is described as a calamity for SARS.

So that is the first response in relation to – so what the Judge Nugent report did, it amplified and gave in a lot more detail what really happened at SARS which I presume is the task that he was given.

The second question is in relation to leave forms,

etcetera. Those administrative are merely one set of examples of the defiance and the hostility and accountability that Mr Moyane he had to the office of the Ministry of Finance.

**ADV MPOFU SC:** Yes, thank you. What on earth has that got to do with state capture?

**MINISTER GORDHAN:** Well, it has everything to do with it because part of – sorry, may I – have you finished your question?

10 **ADV MPOFU SC:** No, sorry, I thought you had finished your answer. Yes, what has it got to do with state capture?

**MINISTER GORDHAN:** No, part of state capture is to take control of an institution either at a board level or CEO level, so this is a CEO level.

Secondly, is to protect yourself from any interrogation or transparency in relation to the kind of damage that is caused within the institution, so the refusal to discuss the operating model, the question of bonuses all add up to that kind of refusal.

20 And the third is to then go about repurposing an institution or parts of the institution. So generally, for example, in state owned entities, the repurposing took place in two broad centres, procurement on the one hand and the treasury function on the other hand.

So from institution to institution, that might – the

*locus* of the repurposing might change. But what is clear is that within that general picture you had a Commissioner at SARS who ensured that he owed no accountability and therefore did not allow any transparency and therefore he would not allow any kind of interrogation or enquiry into what was really going on in the organisation.

**ADV MPOFU SC:** Ja, thank you.

**MINISTER GORDHAN:** Similar things applied too, for example, the FIC report, Chair, which the then  
10 Commissioner received in relation to Mr Makwakwa and the manner in which that handled.

**CHAIRPERSON:** Okay, I think you have given enough examples to show your understanding. Mr Mpofu?

**ADV MPOFU SC:** Ja. Well, you have given more than enough but you have not answered the question. You know, Mr Gordhan, my professional assistant sometimes does not come to ask me for leave and she takes leave without permission and she tries to take control of her office. I am asking you a question, that is just a question  
20 of maybe insubordination. What has all that got to do with state capture? Can you educate us? Let us assume Mr Moyane used the wrong process of taking leave for a minute. What on earth – what has that got to do with state capture?

**CHAIRPERSON:** Okay, Mr Mpofu, just to make sure that

Mr Gordhan is not going to deal with matters that you not have in mind, are you talking about the leave forms?

**ADV MPOFU SC:** Yes, let us do it bit by bit, let us start with the leave forms, yes. I think that is better, Chair, sorry.

**CHAIRPERSON:** Ja, so the question, Mr Gordhan, is what does Mr Moyane's refusal to give you leave forms or refusal to fill in leave forms have to do with state capture? Just the leave forms.

10 **MINISTER GORDHAN:** That is what I elaborated on, Chair, earlier on, so to save us time I will not repeat myself.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** That this is part of a pattern.

**CHAIRPERSON:** As I understood it, the part that certainly could relate to the leave forms is that you said – and I want you to confirm – that that refusal in relation to leave forms on his part was part of a refusal to account to you which would be part of what people who want to engage in  
20 state capture would do. Is my understanding correct?

**MINISTER GORDHAN:** In this particular instance, Chair.

**CHAIRPERSON:** Yes, okay. Mr Mpofu?

**ADV MPOFU SC:** Well, okay, then let us take it to that step, let us assume Mr Moyane refused to account to you, what on earth has that got to do with state capture? Is

that a criminal offence refusing to account to you?  
Because state capture is a criminal offence we know.

**MINISTER GORDHAN:** Well, in terms of the PFMA there is a particular set of accountabilities, so depending on which particular section of the PFMA you refer to it could constitute a criminal offence but I do not think that you want to – or rather, we should allow the impression to be created in the public mind that this is about the pettiness of a leave form. It is a lot more than that. Accountability  
10 is an absolutely crucial part of any democracy in the world, including South Africa.

**ADV MPOFU SC:** I agree.

**MINISTER GORDHAN:** So if there is an absence of accountability, which I explained earlier on and I will not repeat that because then you are going to say I am talking too long, but that is part a contribution towards repurposing an institution.

**ADV MPOFU SC:** Okay, I am giving up on that answer. I was saying – we will come back to this, I was saying that  
20 you – you have accused every public official who has ever adverse decision against you to be a practitioner of state capture and the examples I was giving, and I want you to comment, where I gave the example of President Zuma, which there was an objection, but other people that you have accused of state capture who have made adverse

findings against you include Mr Shaun Abrahams and the Public Protector, correct?

**MINISTER GORDHAN:** No, firstly, your general notion I do not accept. Secondly ...[intervenes]

**ADV MPOFU SC:** Specifically ...[intervenes]

**MINISTER GORDHAN:** Again, Chairperson, interrupting me while I am talking.

**CHAIRPERSON:** No, he just asking you to specify the general notion with which you do not agree that you are  
10 referring. You said [inaudible – speaking simultaneously]

**MINISTER GORDHAN:** Well, I do not have a transcription service, Chair.

**CHAIRPERSON:** Yes ...[intervenes]

**MINISTER GORDHAN:** His first comment was I accuse every public official who issues an unfavourable finding of state capture. I say that is the proposition I do not accept.

**CHAIRPERSON:** Okay, alright, yes.

**MINISTER GORDHAN:** Is that clearly understood?

**CHAIRPERSON:** Ja, continue. Yes.

20 **MINISTER GORDHAN:** Right, the second one he then raises is the former President on the one hand and Mr Shaun Abrahams on the other hand ...[intervenes]

**ADV MPOFU SC:** And the Public Protector.

**MINISTER GORDHAN:** Well, I think it is for the Commission ...[intervenes]

**CHAIRPERSON:** Oh, he was just adding that the Public Protector is another one that he mentioned but you can take them one by one.

**MINISTER GORDHAN:** So where relevant, Chairperson, I have indicated the kind of role that the former President has played in my evidence before you in November 2018. In relation to Mr Abrahams, I certainly believe that he played a role and it is now common knowledge and generally accepted amongst the South African public which  
10 is growing impatient by the lack of people involved in corruption and state capture not appearing in orange uniforms behind jail bars, that the NPA itself was compromised. I do not have details but it is well-accepted and I imagine the Commission will be looking at it in some stage.

in relation to the Public Protector, whatever I have to say is the lack of evidence before various courts. Thank you.

**CHAIRPERSON:** Mr Mpofu?

20 **ADV MPOFU SC:** So again you accuse all those people of being practitioners of state capture without any evidence or what you call – you do not have the details.

**MINISTER GORDHAN:** You did not ask me for details.

**ADV MPOFU SC:** I am asking you [inaudible – speaking simultaneously]

**MINISTER GORDHAN:** You asked me whether  
...[intervenes]

**ADV MPOFU SC:** Okay, what evidence have you got of  
the involvement of the Public Protector and state capture?

**MINISTER GORDHAN:** No, Chairperson, I think this is  
beyond the scope of what I am here for.

**ADV MPOFU SC:** The Chair is here ...[intervenes]

**MINISTER GORDHAN:** Those were matters before the  
relevant courts.

10 **ADV MPOFU SC:** Mr Gordhan, Mr Gordhan, please.

**CHAIRPERSON:** Hang on, hang on, hang on.

**ADV MPOFU SC:** I do not want to waste time, I sorry to  
interrupt you.

**MINISTER GORDHAN:** No, Chairperson...

**ADV MPOFU SC:** The Chairperson is here, he knows  
when the question is not fair. You said you are not a  
lawyer, your job is to answer the questions not to make  
rulings.

**MINISTER GORDHAN:** My job is also not to accept  
20 instructions from you, Adv Mpofu, with due respect.

**ADV MPOFU SC:** Do you have – you do not have  
evidence ...[intervenes]

**MINISTER GORDHAN:** I am not on trial here.

**ADV MPOFU SC:** That Adv [inaudible – speaking  
simultaneously] is involved in state capture?



**MINISTER GORDHAN:** I am – Mr Chairperson, let me make it absolutely clear that I am not on trial here. It is Adv Mpofo's client who must come and testify what he did at SARS, not me.

**CHAIRPERSON:** Okay, let us ...[intervenes]

**MINISTER GORDHAN:** That is the first point. The second point, Chairperson, I am appealing to you whether I must answer questions in relation to the Public Protector and whether that is the scope you intended.

10 **CHAIRPERSON:** Well, let us pause. Let us pause. Mr Mpofo, just repeat what your question was.

**ADV MPOFU SC:** Ja, it is a follow-up question, Chair.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Remember the proposition, because he said when we ask a question we start with a general and [indistinct – dropping voice] The question was whether he goes around accusing every public official who has made an adverse finding against him and he said no. Then I made examples and he dealt with each one of them. Now I  
20 am asking the third follow-up which is did he make the accusations against these people without evidence and that is it, it flows from the proposition I was making about him making such accusations against Mr Moyane without evidence.

**CHAIRPERSON:** Well, apart from the issue of the scope,

the issue that Mr Chaskalson raised earlier on becomes relevant, namely you may be inviting him now to put up in the public domain details of what he might consider to be evidence of state capture by people who have not been notified, they might be mentioned in that way ...[intervenes]

**ADV MPOFU SC:** No, but he has already done – I did not want to respond to that, what Mr Chaskalson was saying does not apply because the witness ...[intervenes]3

10 **CHAIRPERSON:** But I do not ...[intervenes]

**ADV MPOFU SC:** You have the witness – I am sorry, Chair, I am sorry.

**CHAIRPERSON:** No, I am saying I do not have that here that he has made, for example, allegations against the Public Protector relating to state capture. It is not something that I am aware of in front of me here.

**ADV MPOFU SC:** Yes but the witness is aware of it.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** And, Chair, with greatest of respect,  
20 part of cross-examination goes to the credibility of the witness, so I cannot be confined. If he has already answered the question, he should not have answered the question about those individuals. I cannot be stopped when it starts to hurt. I am simply asking the question of whether those accusations which he has testified here, not

in his statement, in front of you ten minutes ago, about Mr Abrahams and the Public Protector, he made them without evidence, it flows from his evidence now, not from anything else.

And as far as Mr Zuma is concerned, which is Mr Chaskalson's point, the questions I was putting flow from the evidence which was given in 2018 but I will come to that, that is why I said I do not want to go to war on that particular issue. But whether this witness has a propensity  
10 to accuse people without evidence, including Mr Moyane, cannot be said to be out of the scope, that (a) to (e) deals with exactly that.

**CHAIRPERSON:** Yes. Let me hear what Mr Chaskalson and Ms Le Roux have to say. Mr Chaskalson?

**ADV CHASKALSON SC:** Chair, I would repeat my earlier objection. The issue as to whether Mr Gordhan has evidence to support his allegations against Mr Moyane is the issue we are here to deal with today.

In relation to other individuals, at best it goes to an  
20 issue of credibility. But if it does then Mr Mpofu is bound by the answer of the witness and the witness said yes, he has got evidence. Mr Mpofu should not be allowed to go further than that because it is just an issue of credibility and it is also collateral to the central issues and one that is inviting a witness to implicate parties who have been

given no notice that potentially serious allegations are going to be made against them.

**CHAIRPERSON:** H'm, let me hear Ms Le Roux as well before – Ms Le Roux?

**ADV LE ROUX:** Thank you Chair, we would be obviously align ourselves with Mr Chaskalson's submissions. The – as I understand Mr Mpofu's – the thrust of the question is to say what you have done to Tom Moyane you have done to others. The witness has dealt with the others that were  
10 identified and we can surely move on to actually get back to Mr Moyane, rather than waste time on parties who are not here, have not been warned and quite honestly that evidence is not within the scope of what you ruled.

So I would ask that we get a ruling that we go back to why he says Mr Moyane was part of State Capture.

**CHAIRPERSON:** Mr Mpofu?

**ADV MPOFU SC:** Chairperson well firstly Ms Le Roux agrees with Mr Chaskalson but Mr Chaskalson is wrong, so must she be, because the answer that Mr Chaskalson is  
20 referring to was answer to a different question about Mr Moyane which was given, not to the question I am dealing with now about the others, and this is a matter of credibility, unless she is saying Chair the proposition, that is why I start with the proposition so that it is not – I don't – it is not mysterious where I am going with the proposition

and if the Chair rules that the proposition I put which is that this witness has a propensity to accuse people without evidence, if that is not relevant to [a] to [e] then I will move to another question but in my respectful submission it is.

**CHAIRPERSON:** Let us take a short adjournment and let me see Counsel in my chambers.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Ja, Mr Gordhan we are going to take a  
10 short adjournment for me to ...[intervenes]

**MINISTER GORDHAN:** Can I give one response to the ultimate issue raised Chair if I may, for just half a minute.

**ADV MPOFU SC:** No Chair ...[intervenes]

**CHAIRPERSON:** Hang on Mr Gordhan, let me just – let me talk to counsel and when we come back depending on what comes out it might or might not be necessary for you to say anything.

**MINISTER GORDHAN:** Thank you.

**CHAIRPERSON:** We will adjourn.

20 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** We will wait for Mr Gordhan to appear on the screen again. Okay Mr Gordhan.

**MINISTER GORDHAN:** Yes Chairperson.

**CHAIRPERSON:** The agreement between myself and

counsel on all sides is that this question is going to be parked and if the need still exists for it Mr Mpofu will come back to it later at the end of his questions and we can look at it then as to what should happen. It may be that I will need to be – argument might need to be addressed to me whether I should allow it or not but it will be parked so that we can make progress. He will – he will continue with other questions. And if as he continues there are other questions that might be problematic like this one also those will be  
 10 parked and then when he is done we can then apply our minds to all of those questions that will have been parked. You understand?

**MINISTER GORDHAN:** I understand Chair. May I just make one remark?

**CHAIRPERSON:** Yes, yes.

**MINISTER GORDHAN:** I just want to say for the record in response to the question about propensity or accusing people that that is not true. Thank you.

**CHAIRPERSON:** Okay alright. Let us continue. Mr Mpofu I  
 20 will bear in mind the five minutes or so of your cross-examination time that was taken by the meetings in chambers.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Ja okay alright.

**ADV MPOFU SC:** Right then the next issue was what I

called...

**CHAIRPERSON:** Firstly I am sorry Mr Mpofu. Obviously it is important that all concerned just note the actual question correctly so that when we come back to them we know exactly what the question was.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** Okay.

10 **ADV MPOFU SC:** Yes okay. Moving on the – again I said I will – I was hoping to move quickly through the what I call the – not the core stuff. Mr Moyane gives the following examples of what it was your pettiness and jealousies. That you – when he – you accept that he was the first Commissioner of SARS to collect a trillion rands, correct?

**MINISTER GORDHAN:** It might be correct I have to check the records.

**ADV MPOFU SC:** Well he was the first and the second trillion was also collected by him and the third one. But yes  
20 you can check your records. But when the first...

**MINISTER GORDHAN:** He might be – even that comment Chair.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Mr Mpofu might be I – might be misunderstood to say that we now – SARS now collects R3

trillion it does not. But I understand where he is going. So no that is – there is no dispute we can go on with that.

**ADV MPOFU SC:** Okay. No that is exactly what I mean. He was the first Commissioner not you who collected the trillion rand for South Africa. The – anyway I am saying that the – when he did that you did not even congratulate him. Do you remember that?

**MINISTER GORDHAN:** No I cannot remember that.

**ADV MPOFU SC:** Okay. The – and do you remember that  
10 you did not ask him – you asked him specifically actually not to come to the press conference for the budget which is a tradition in South Africa that the Commissioner of SARS attends that.

**MINISTER GORDHAN:** No I think there is a misunderstanding Chairperson on that question. It is – there are three or four people who are seated at the head table when these press conferences take place before the budget announcements at 2 pm on a budget day and it is a Minister's discretion as to whether for example the Governor  
20 of the Reserve Bank if there is something important to say on foreign exchange for example or if there might be relevant taxation questions to invite the tax SARS Commissioner to attend so it is not a right by any means.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** The Minister of Finance exercises



his or her discretion in each of these particular regards.

**ADV MPOFU SC:** Yes. No I accept that. It is not a right that is why I said it is protocol. All I am saying is that you using that Minister's discretion that you referred to you used the discretion to exclude Mr Moyane from that press conference, correct?

**MINISTER GORDHAN:** Not at the press conference that is why I differentiated Chair.

**ADV MPOFU SC:** What did you exclude him from?

10 **CHAIRPERSON:** I am sorry, I am sorry, I am sorry. Hang on, hang on. I just wanted clarification which year we are talking about when this happened?

**ADV MPOFU SC:** 2016 budget.

**CHAIRPERSON:** 2016.

**ADV MPOFU SC:** That would be February 2016.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** In other words for the year 2016/17

**CHAIRPERSON:** Yes. Okay. Okay Mr Gordhan Mr Mpofu says you used your discretion – Ministerial discretion to  
20 exclude Mr Moyane at that press conference and I think he says why did you use it to exclude him? Mr Mpofu do...

**ADV MPOFU SC:** Chair.

**CHAIRPERSON:** Confirm if I am right?

**ADV MPOFU SC:** Yes I confirm you are right Chair. If you ..

**CHAIRPERSON:** Oh okay [inaudible].

**ADV MPOFU SC:** I will even confirm more if you allow me to.

**CHAIRPERSON:** Okay I will allow you.

**MINISTER GORDHAN:** May I respond Chair?

**CHAIRPERSON:** Wait for him to clarify because I want him to confirm whether I got his question right.

**ADV MPOFU SC:** Yes you did Chair and yes I confirm – I just confirmed with the client.

**CHAIRPERSON:** Yes.

10 **ADV MPOFU SC:** That was the pre-budget –

**CHAIRPERSON:** 2016.

**ADV MPOFU SC:** Pre – ag press conference of 2016 where he...

**CHAIRPERSON:** Was excluded.

**ADV MPOFU SC:** Well – ja Mr Gordhan told the Deputy Minister Mcebisi Jonas to tell Mr Moyane not to attend.

**CHAIRPERSON:** Okay and you – part of your question was why did he use his discretion to exclude him?

**ADV MPOFU SC:** No just to confirm that he did?

20 **CHAIRPERSON:** Oh okay. Okay so basically Mr Mpofo wanted you to confirm that you did your Ministerial discretion to exclude Mr Moyane in the press – budget press conference of 2016 – February 2016.

**MINISTER GORDHAN:** That is only half correct Chair as I was explaining. There are two seating arrangements in the

GCIS venue at 120 Plein Street. The first as I have already explained is there are three or four chairs at the head table where normally the Minister, Deputy Minister and Director General and the Spokesperson present and then depending on the import of a particular question the Governor of the Reserve Bank might be there or the SARS Commissioner might be there. That is the head table. In the audience at the press conference there are probably 150 to 200 seats. May of them will be filled by the media but also officials that  
 10 are relevant on the Treasury or SARS or similar institutions like the Reserve Bank. All I did was to say it is not necessary for him to be at the head table because there were no relevant questions as far as I was concerned. But he could attend the press conference and take a seat like anybody else in the 150 or 200 seats. So that is the clarity I was seeking to provide.

**CHAIRPERSON:** Mr Mpofu.

**ADV MPOFU SC:** Chair if I can just have one second?

**CHAIRPERSON:** Ja okay.

20 **ADV MPOFU SC:** I am sorry Mr Gordhan. Okay so we agree that you used your discretion to exclude him whichever way you look at it?

**CHAIRPERSON:** From the head table but not from the conference I think.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Mr Gordhan am I correct? You accept that you used your discretion to exclude him from the head table but not from the conference?

**MINISTER GORDHAN:** Correct Chair.

**CHAIRPERSON:** Ja. Okay.

**ADV MPOFU SC:** Okay well that is not – Mr Moyane's evidence will be that you sent Mr Jonas to exclude him from the press conference itself actually for the first time at least in democratic history the Commissioner for SARS was  
10 excluded from that activity and he had to go to Parliament on his own not with the other colleagues.

**MINISTER GORDHAN:** I have no recollection of that Chair.

**ADV MPOFU SC:** Okay that is fine – well that is what happened anyway. I accept that you have no recollection of it. But..;

**CHAIRPERSON:** Maybe it might be important to Mr Gordhan to – to be clear whether you have no recollection even whether you excluded him from the conference as opposed to from the head table or whether you – what it is that you  
20 say you have no recollection of

**MINISTER GORDHAN:** The precise question I thought was that I sent Deputy Minister Jonas of that time to convey a message to Mr Moyane. I have no recollection of that.

**CHAIRPERSON:** Oh that is what you have no recollection of.

**MINISTER GORDHAN:** Secondly ..

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** And then reference is made to the democratic era. I was not present in press conferences from 1994 to about 2000 and something in the 2000's so I do not know whether that was a tradition. I think traditions changed over time because there were different Ministers of Finance. There was Mr Liebenberg if you recall Mr Keys before that immediately after 1994 elections. And then there was ...

10 **CHAIRPERSON:** Ja you do not know ja okay.

**ADV MPOFU SC:** Okay thank you. Now these are just some of the evidence of what he calls pettiness and petty jealousies as I said. So now let us come to the important stuff. You said that – I also said that he says one of your motivations is racism and you made some comments about that. So let me just take you through that accusation because as I said we do not believe in making accusations which are not backed up.

20 You should know – I am just as a South African again please distinguish between the general questions and the specific ones. You know some of the manifestations of racists etiquette I am sure that at some level you yourself might have been a victim of some form of racism. As a general statement you – as a South African accept that, correct?

**CHAIRPERSON:** Just repeat the proposition?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Do you know some of the manifestations of racist attitudes particularly in South Africa?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes thanks. And do you know that some of the most crass forms of racism would be – include to dehumanise the person you are talking to calling them monkeys and baboons and so on. Let us call that the  
10 [00:11:58] type of racism, do you know that?

**MINISTER GORDHAN:** I am aware of it yes.

**ADV MPOFU SC:** And you also know that another form is to insult a person directly or indirectly by mocking their hair or their lips or whatever. Let us call that clicks type of racism. You aware?

**MINISTER GORDHAN:** I did not hear the question could you repeat that please?

**ADV MPOFU SC:** Another form would be to insult a person directly by for example making references to their hair.

20 **MINISTER GORDHAN:** Okay.

**ADV MPOFU SC:** Or any other physical part of it.

**MINISTER GORDHAN:** Oh hair.

**ADV MPOFU SC:** Agreed?

**MINISTER GORDHAN:** Yes sure.

**ADV MPOFU SC:** And then another form of racism which is

more common in South Africa is to belittle particularly African people. It is probably the most annoying belittling calling them boys or girls. I mean calling an 80 year old person a boy or a girl. You know about that?

**MINISTER GORDHAN:** Ja with references to other groups in South Africa coolies or other things as well.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** So generally black people having subjected to racism I am sure of different forms yes.

10 **ADV MPOFU SC:** Yes no, no, I am – I know – I am specifically talking about African people. I know that there are other victims of racism and even sexism but I am – my question is just about racism against African people. So that form of the belittling is the one that as I say we will call it the what Mr Moyane would refer to as the Pravin Gordhan type of racism. Now you had – and that racism goes – all of those go to the attacking the dignity of the person and disrespecting them, correct?

**MINISTER GORDHAN:** No it depends which question you  
20 are asking Mr Mpofu. So Chair the first point is look the so called Pravin Gordhan forms of racism. I deny any form of racism or racist behaviour. The second question is about attacking. I do not attack people on the basis of race and the basis of their performance or their competence there may criticism of it. There might be questions asked and there

might be an inquiries made. And if somebody feels inadequate because they do not know their subject matter then I perceive it as belittling. But that is the normal exchange between an accountable person and the accounting authority in this case the executive authority as described in the PFMA. So it can easily be misunderstood but that is not my practice.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Mr Mpofu.

10 **ADV MPOFU SC:** Thank you Chair no I was actually in fairness to the question – to the witness I did attribute this to him.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** So if it was not a general question. The – thank you Mr Gordhan. The – the point that I am really coming to is that racism takes many forms and some of it – and is probably only understood by the victims. It might be just the tone of voice that somebody use against you. The – you know there are certain catch words like you know being  
20 called a boy or a girl or little person or being called cheeky. I mean some of us we have been cheeky kaffirs. It is those kinds of things. Sometimes it is the tone, sometimes it is words, do you agree?

**MINISTER GORDHAN:** Well I myself have called cheeky by the former security branch in the pre-1994 period.



**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** But that means you are not - you are not cooperating.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** I mean I do not know what the import of your question is but let me note what you saying and let us move onto the next question.

**ADV MPOFU SC:** Yes. No that is good.

**CHAIRPERSON:** I think – I think Mr Mpofu six confirmation  
10 from you whether you agree that sometimes when some people calls somebody cheeky it could be a form of racism.

**ADV MPOFU SC:** Yes in other words they ...

**CHAIRPERSON:** [Inaudible].

**ADV MPOFU SC:** Yes they might not say it – like the security branch.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Example is a good one.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** They would not say it to each other.

20 **CHAIRPERSON:** Ja.

**ADV MPOFU SC:** But they would say it to you. So it was a form of belittle you, you accept that?

**CHAIRPERSON:** Yes so I think that the general proposition he is putting for your comment.

**MINISTER GORDHAN:** No Chair I think there is cheeky as

in hostile and there is cheeky in the kind of context that you and Mr Mpofu seem to be describing.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** So I think you need to distinguish between the two and I repeat that none of my behaviour can be equated to racism.

**ADV MPOFU SC:** Yes. No fair enough.

**CHAIRPERSON:** Mr Mpofu.

**ADV MPOFU SC:** I am simply saying that you accept that  
10 those are some of the signals belittling, tone, using certain catch words like cheeky and so on. Those are just some of the tell-tale – it does not mean – I mean people can belittle each other even if they are both of the same race. I am just saying that those are some of the signs that you perceive as a victim. I am sure you accept that?

**MINISTER GORDHAN:** I accept that and at the same time that same kind of behaviour could well be as I said earlier on be a manifestation of lack of accountability. It could be manifestation of deliberate hostility and depending on the  
20 context when applies it then it could have different meanings as you say and I say.

**ADV MPOFU SC:** Yes thank you. Now if you can go to TSM109 page 109 sorry Chair I keep on referencing.

**CHAIRPERSON:** Yes okay before you proceed Mr Mpofu let me mention just for – so that we are on the same page. I

think we are three minutes away from quarter to four which would have been the end of two hours but I added fifteen minutes earlier on that five minutes so I think the two hours will end at five past four.

**ADV MPOFU SC:** Correct Chair.

**CHAIRPERSON:** And then we will take it from there.

**ADV MPOFU SC:** We will take it from there.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Thank you Chair.

10 **CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** Page 109 – are you there?

**MINISTER GORDHAN:** I beg your pardon.

**CHAIRPERSON:** It is page 109 of which bundle?

**ADV MPOFU SC:** Bundle TSM so that would be ...

**CHAIRPERSON:** There is M3B.

**ADV MPOFU SC:** It is called Exhibit M3 – M Chair.

**CHAIRPERSON:** M3 – oh they did not make sure that we all have the same things.

**ADV MPOFU SC:** Yes.

20 **CHAIRPERSON:** But I think there are only two that are being used so it must be M3A.

**ADV MPOFU SC:** Yes this is the one that was sent by the commission last week.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** So I am sure it is the latest one.

**CHAIRPERSON:** Okay alright. Mr Gordhan do you understand which bundle?

**MINISTER GORDHAN:** I am trying to find I have 104, 106, 107.

**ADV MPOFU SC:** Yes. It was the typed – they have both with the big typed numbers but there are also numbers written in Koki pen.

**MINISTER GORDHAN:** .Oh.

**CHAIRPERSON:** Is TMZ.

10 **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Annexure TMZ3 at page 109 is [00:19:23] conversation.

**MINISTER GORDHAN:** The easiest for me at the top the TSM number.

**CHAIRPERSON:** Okay ja we...

**ADV MPOFU SC:** In this case they are both 109.

**CHAIRPERSON:** Ja. It is TSM 109. I think all the page numbers are TSM but we do not – we just mention the page number.

20 **MINISTER GORDHAN:** I do not think I have it but let me hear the question and see if I can address it Chair.

**ADV MPOFU SC:** Is your – are your bundles – your files – lever arch files are they written on the spine TSM3? Are they written...

**MINISTER GORDHAN:** Have to find it – just give me a

moment?

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** Exhibit M3 that is the same one Mr Chaskalson took you to earlier where you were reading your affidavit at page 786.

**MINISTER GORDHAN:** Oh I see. Thank you. No but that was...

**CHAIRPERSON:** No I do not think that is the one Mr Mpofu.

**MINISTER GORDHAN:** No that is not the one.

10 **CHAIRPERSON:** That is not the one. I think Mr Chaskalson had one file – we have more than one.

**ADV MPOFU SC:** Yes but the [talking over one another]

**MINISTER GORDHAN:** Those start at 781.

**ADV MPOFU SC:** Mr – the transcript...

**CHAIRPERSON:** You see the one...

**ADV MPOFU SC:** Ms Le Roux is trying to help Chair.

**CHAIRPERSON:** Okay one second. The one where Mr Gordhan's clarificatory affidavit is – is the one we had before you referred us to this one. So the – if he has two lever arch  
20 files like me then he should not be looking at the one that has got his clarificatory affidavit. He should be looking at the other one.

**ADV MPOFU SC:** Yes. Now Ms Le Roux thinks it will help if I tell him that it is the transcript.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** It is the bundle with the transcript.

**CHAIRPERSON:** The bundle with the transcript Mr Gordhan?

**MINISTER GORDHAN:** Let me – let me find it Chair.

**ADV MPOFU SC:** The telephone call.

**CHAIRPERSON:** Yes we should all of us...

**ADV MPOFU SC:** The one with the transcript of the telephone conversation.

**CHAIRPERSON:** We should have all had the same files  
10 marked in the same way.

**ADV MPOFU SC:** Mr Chaskalson says it is in 3A. Ms Le Roux says.

**MINISTER GORDHAN:** It is 1040.

**CHAIRPERSON:** The page number is 109. The file is written on the spine N3A.

**ADV MPOFU SC:** Yes apparently it appears twice Chair so that the same.

**CHAIRPERSON:** Oh.

**ADV MPOFU SC:** Yes.

20 **CHAIRPERSON:** Okay.

**ADV MPOFU SC:** So we will use the Koki pen numbers because they correspond with the TSM numbers anyway. Yes that is the one Mr Gordhan. It is marked TMZ3 are you there?

**MINISTER GORDHAN:** Ja no the number I have is

TSM1040. It is a transcript of a telephone conversation between myself and Mr Moyane.

**ADV MPOFU SC:** Yes. Okay fine I will use – I will use those numbers.

**MINISTER GORDHAN:** We might all have different numbers but I think ...

**CHAIRPERSON:** Let us go to the same numbers otherwise we will get confused. Are you able to get them? Mr Mpofu are you using the other bundle?

10 **ADV MPOFU SC:** Yes Chair it does not really matter. I will use any bundle. I can use the numbering that the witness prefers.

**CHAIRPERSON:** It is just that in the one bundle the page number might be – the page numbers might be different and if you say page so and so I might go to a wrong page.

**ADV MPOFU SC:** I will use both Chair to save time.

**CHAIRPERSON:** Oh okay alright okay.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Alright you are ready Mr Gordhan?

20 **MINISTER GORDHAN:** Yes I am ready Chair.

**CHAIRPERSON:** Ja okay Mr Mpofu.

**ADV MPOFU SC:** Yes. So if you go to TSM110 which will be 1041 on your numbering.

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes. Then turn to the next page 111 which

is 1042.

**MINISTER GORDHAN:** Ja.

**ADV MPOFU SC:** Yes. Okay I will just read a few extracts and then I will ask you the questions afterwards. This is a conversation between you and Mr Moyane where you were shouting at him about some statement made about a Judge. We have the audio but this is a transcript thereof so if it is necessary to hand over the audio to the commission we will do so. But this should be sufficient.

10 **CHAIRPERSON:** We know what date it was just for the sake of completeness but if we do not it is okay.

**ADV MPOFU SC:** Chair in...

**CHAIRPERSON:** Of the conversation.

**ADV MPOFU SC:** Chair no, not readily but I will check on that Chair.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Because it was also an annexure to an affidavit in the High Court.

**CHAIRPERSON:** Okay.

20 **ADV MPOFU SC:** So it might have been dated in that document.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** I will check on that.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** Thank you Chair. Yes okay Mr Gordhan



just start at 111 which is 1042. It says there – firstly you – you participated in this conversation, correct?

**MINISTER GORDHAN:** Correct.

**ADV MPOFU SC:** Yes. Okay there you say Tom, he says

**CHAIRPERSON:** Tell us from which line you starting to read Mr Mpofu?

**ADV MPOFU SC:** It is 21 Chair.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** Why should I keep quiet when he makes  
10 that blasphemous statements about us says Tom.

And then it says Pravin: I just told you you are a public servant you are not God.

You remember that?

**CHAIRPERSON:** I am – oh okay now I see. That is around line marginally ...

**ADV MPOFU SC:** It is 21 to 24.

**CHAIRPERSON:** About 2 – about 20 – 23.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Line 23. Okay alright. Ja you can – may  
20 continue.

**ADV MPOFU SC:** Yes remember that one. I am asking the questions later. Then he says to you at 1043 or 112 against letter 12. He says I think Sir you also should treat me with respect you are shouting at me. Then Pravin says I am not shouting at you.

**CHAIRPERSON:** I am sorry, I am sorry. I can see where you – where Mr Gordhan says: I just told you you are a public servant you are not God.

**ADV MPOFU SC:** Yes that was the previous reference.

**CHAIRPERSON:** Yes but I want to find out whether in regard to that page is that all you wanted to draw my attention.

**ADV MPOFU SC:** That is all yes, that is all. I have moved to the next position.

**CHAIRPERSON:** Okay alright. Then the next would be on  
10 what page - next page?

**ADV MPOFU SC:** The next page – 1043 or 112.

**CHAIRPERSON:** Okay right.

**ADV MPOFU SC:** Lines 11 to 12 Chair. Yes. As I said if we have to play the audio we will but then he says: I think Sir you should treat me with respect you are shouting at me and it becomes inaudible. He says: I am not shouting at you. And then Tom says:

Tom: No that is fine.

Pravin: And if you start shouting then it does not matter.

20 Tom: That is fine.

Pravin: You keep using shouting as an excuse.

Tom: You are.

Pravin: No man grow up man – grow up.

Tom: You should also grow up Sir.

Pravin: I beg your pardon.

Tom: Yes who are you talking to you cannot talk to me.

Tom – Pravin: who do you think you are?

Let us just pause there. I said to you to say Mr Moyane and you are almost on the same age group, correct?

**MINISTER GORDHAN:** I beg your pardon Mr Moyane and I – sorry?

**ADV MPOFU SC:** Mr Moyane and you are almost in the same age group. I mean need or late 60's?

**MINISTER GORDHAN:** I am slightly above that.

10 **CHAIRPERSON:** The question is whether you accept that Mr Moyane and yourself are in the same age group, that is the question?

**MINISTER GORDHAN:** No.

**CHAIRPERSON:** Yes. Is that no that it is not so or no you do not know?

**MINISTER GORDHAN:** No, no we are not of the same age.

**CHAIRPERSON:** You are...

**MINISTER GORDHAN:** I will be 72 at my next birthday in April Chairperson.

20 **CHAIRPERSON:** Yes maybe Mr Mpofu when you say age group you should be indicating.

**ADV MPOFU SC:** Yes. I do not mean – I did not say you are the same age. I am saying you are in the same age group above 65?

**CHAIRPERSON:** Above 65?

**ADV MPOFU SC:** Would you agree?

**MINISTER GORDHAN:** For the purposes of progressing let us say...

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** We are in a similar age group yes.

**ADV MPOFU SC:** Yes thank you.

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** Yes ja. And something that it is – to say to a person who is almost as old as you that they must grow  
10 up is the same as treating them like children and belittling them, correct?

**MINISTER GORDHAN:** Not necessarily if given the context. So if I may elaborate Chair? Because every [00:28:34] start is at 10:41 line 3. With great respect we cannot be just choosing what lines. Let us provide the context. And there I am quotes as saying the following: Let me start at line 5 I say: Good afternoon Tom.

Tom: Good afternoon Sir.

Pravin: Thanks for returning the call. I am a bit worried  
20 about your attacks on Judge Davis. I do not think that is the right thing to do. You cannot attack a Judge in the way you guys are doing. We will discuss this on Monday when I see you. But please stop it.

He then says:

Tom: I am listening.

Pravin: No I am finished.

Tom: Okay.

Pravin: Are you going to stop it?

Tom: Stop what Sir.

Pravin: Stop the attacks on the Judge.

Tom: He has been attacking us.

Pravin: No he has written me an explanatory letter already.

Tom: Oh.

Pravin: Yes.

10 **ADV MPOFU SC:** If I may – are you going to read the whole transcript?

**MINISTER GORDHAN:** No I think it is very important Chair that you do not hear

[EVERYONE TALKING OVER ONE ANOTHER]

**ADV MPOFU SC:** Do you intend to read the whole thing that is what I want to know?

**MINISTER GORDHAN:** No, no. no. No, ...[indistinct] ...tend(?) to(?). [Transmission distorted - speaker is not clear.]

20 **CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I just want to go on a bit more, to raise my point. [Transmission distorted - speaker is not clear.]

**ADV MPOFU SC:** Go on.

**CHAIRPERSON:** Ja, continue Mr Gordhan.

**MINISTER GORDHAN:** “Well, he did not have the decency to explain

to me then.”

That is the judge explaining to Tom.

“Pravin:

Well, no. You should have the decency to call him. You cannot just attack anybody you feel like.

Tom:

10 Oh.

Pravin:

Just because you think you are a powerful person, that is not the way to conduct yourself. You have a huge responsibility as a public servant, moving and going around speaking on your behalf. Since when do we just go around attacking judges? Is there a reason for this?”

And then the rest goes on Chair. So that is the context.

20 The context is on SARS’ statement, issued – attacking Judge Davis. And I was cautioning Mr Moyane that public servants indeed, even a member of the public, should not attack a judge because of the view that they expressed.

That they should rather talk about this and come to an understanding. But in the meantime, until we meet on that

mandate that is indicated in the transcript please do not attack the judge again. That is all.

**CHAIRPERSON:** H'm.

**ADV MPOFU SC:** Thank you. But... Look, honestly, this is a waste of time.

**CHAIRPERSON:** I am sorry. Mr Chaskalson wishes to say something.

**ADV CHASKALSON:** Yes. Sorry, Chair. Reverend Mbuyiselo has brought to my attention that there are going to  
10 be great difficulties on the transcripts with the audio, people talking over each other.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON:** So would ask both Mr Mpofu and Mr Gordhan to try not to do that.

**CHAIRPERSON:** Ja. H'm. Okay alright ...[intervenes]

[Parties intervening each other – unclear]

**ADV MPOFU SC:** Okay. Well, I am trying to say time Char. When he rambles on, I have to say something. I am sorry. I cannot...[intervenes]

20 **CHAIRPERSON:** Hmm ...[intervenes]

**ADV MPOFU SC:** I will allow him. That is why I wanted to make ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** [Indistinct] Yes, yes. Let us avoid mister...

**MINISTER GORDHAN:** Chair ...[intervenes]

**ADV MPOFU SC:** Ja, okay.

**CHAIRPERSON:** I know what you are going to say  
...[intervenes]

**MINISTER GORDHAN:** That reference to rambling, is not  
acceptable Chair.

**ADV MPOFU SC:** Okay when ...[intervenes]

**CHAIRPERSON:** No, I knew ...[intervenes]

[Parties intervening each other – unclear]

10 **MINISTER GORDHAN:** When he goes on and talks about  
ramble.

**CHAIRPERSON:** Yes ...[intervenes]

**MINISTER GORDHAN:** And when I read from the transcript,  
it is ramble.

**CHAIRPERSON:** Yes. No, okay. Let us try and  
...[intervenes]

**ADV MPOFU SC:** Okay let me just ...[intervenes]

**CHAIRPERSON:** stick to the contents ...[intervenes]

[Parties intervening each other – unclear]

20 **ADV MPOFU SC:** Yes, thank you, Chair.

**CHAIRPERSON:** Ja, okay alright.

**ADV MPOFU SC:** Listen, Mr Gordhan. It does not matter if  
you are talking about a judge or the pope or whatever. In  
any context, is it acceptable to shout at somebody and to  
say to them: Grow up, man. Grow up.



It does not matter what the topic is. I am saying, that is belittling to the person you are talking to. Yes or no?

**MINISTER GORDHAN:** In this particular context, if a person does not want to provide a straightforward answer, I will not attack the judge until we discuss this matter on Monday and then the conversation goes on and what appears, even from the transcript, is open defiance.

**ADV MPOFU SC:** Yes, if it is defiance, you have a right ...[intervenes]

10 **MINISTER GORDHAN:** And lack of... Lack of respect for the minister.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** But he might have regard and, you know, voices being raised but it is neither here nor there.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** In the context, it is far more important than the form.

**ADV MPOFU SC:** Yes. No, that is good. So if you are defiant, you are a minister and more importantly to you, does  
20 that give you a right to shout at him and treat him like a child to tell him to grow up?

**MINISTER GORDHAN:** I did not treat anyone like a child. If it is in the context. I was merely saying to him, be responsible. You hold a responsible position as a senior public servant.

You cannot go around attacking a judge through your spokesperson. I have also accounted to a minister for about ten years. And I know the kind of relationship that a director-general/commissioner needs to have with the minister.

**ADV MPOFU SC:** Okay. Do you remember what the question was? If you are the director-general or whatever who is disobedient. Does that give you the right to belittle them and to tell them to grow up like a child because it is  
10 only children that have to grow up? Yes or no?

**MINISTER GORDHAN:** I am not sure... Again, if you read it in the context, this is not about belittling. This is about asking for cooperation from the Commissioner of SARS in respect of a judge.

**ADV MPOFU SC:** Thank you. So if I want cooperation from you, Mr Gordhan and I say: Grown up, man.

[Parties intervening each other – unclear]

**MINISTER GORDHAN:** [Indistinct] Mr Mpofu, in the context of... Can I finish? Can I answer?

20 **ADV MPOFU SC:** Yes, please.

**MINISTER GORDHAN:** If the context requires even the Chairperson will allow you, you can go ahead.

**ADV MPOFU SC:** And... okay. And if the Chairperson allows me and does not allow me but it will be belittling you. At least, let us agree on that.

**MINISTER GORDHAN:** Not necessarily. I have been “shouted at” Where I have been spoken to in an emphatic way.

**ADV MPOFU SC:** Hmpfh.

**MINISTER GORDHAN:** And that does not mean... It depends on the individual.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** As to how you interpret the particular matter. You can have many interpretations to your  
10 convenience as you like.

**ADV MPOFU SC:** Yes. Okay. Well, I put it to you that in the South African context, if you tell a grown-up man in his fifties or sixties to grow up, you are belittling him and it is a sign of racism and treating that person like a child, not as an equal. You do not say to your – when you talk to your fellow ministers or other people that you respect, that they must grown up.

**MINISTER GORDHAN:** Well, I reject your understanding and what you are putting to me.

20 **ADV MPOFU SC:** Yes. Okay. Then, if you go to the next page which is 113, 1044.

**MINISTER GORDHAN:** 1044?

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** Okay.

**ADV MPOFU SC:** You say ...[intervenes]

**CHAIRPERSON:** Hang on one second Mr Mpofu. Do not forget the question you wanted to put.

**ADV MPOFU SC:** Okay I will not.

**CHAIRPERSON:** We are... it is part of two hours. Let us talk about that. What is your sense of how much more you need?

**ADV MPOFU SC:** Chair, I am sorry. At the pace we are going and that is why I am trying to pace this up.

**CHAIRPERSON:** Ja.

10 **ADV MPOFU SC:** My sense is that we are not with – it is almost certain we are not going to finish but we can push as far as we can. I have got three topics to deal with. Let us deal with D and E.

**CHAIRPERSON:** Okay let us add an hour and see ...[intervenes]

**ADV MPOFU SC:** Yes, and see how ...[intervenes]

**CHAIRPERSON:** ...how we progress by then.

**ADV MPOFU SC:** Thank you, Chairman. I am indebted. I will try to be in time.

20 **CHAIRPERSON:** Ja. Ms Le Roux, you wanted to say something? Mr Chaskalson, you wanted to say something?

**MS LE ROUX:** Thank you, Chair. Other than just to note that I am not sure that, you know, the debate about when Mr Moyane tells Mr Gordhan to grow up and Mr Gordhan tells Mr Moyane to grow up. I am not sure that is progressing

your inquiry.

And I would ask if we move to the next topic, which Mr Mpofu indicated which was actually to get onto. Why Mr Gordhan thinks Tom Moyane progressed State Capture at SARS.

**CHAIRPERSON:** Well, you see Mr Gordhan said that part of what he associated – part of what makes him associate Mr Moyane with pursuing the State Capture agenda was, as he put it, his vilification of Mr Gordhan... I cannot remember  
10 what the other term was connected with the vilification.

And that, of course, seems to speak to hostility. And Mr Gordhan has a certain understanding of why there was that hostility. Mr Moyane has a different understanding why there was that hostility.

And as I understand it, this is where it comes in. So I am keeping an eye on the scope but – and allowing that there may be different understandings.

So I note what you are say. I am keeping an eye on it. Yes.

20 **MS LE ROUX:** Chair, I would then just note for the record that we certainly do object the duration going beyond today.

**CHAIRPERSON:** Ja. Mr Chaskalson, do you want to say something?

**ADV CHASKALSON:** Chair, I do not have anything to do.

**CHAIRPERSON:** Yes, okay alright. Mr Mpofu.

**ADV MPOFU SC:** Thank you, Chair. I will not comment on that.

**CHAIRPERSON:** Yes, okay.

**ADV MPOFU SC:** All I am going to say is that. Well, the pace of this cross-examination is totally dependent on the answers that I get.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** Thank you. At page... Where were we? And I do not agree with... Well, maybe Ms Le Roux, to her it is not important the issue of racism but – it was a sure(?) indicator. That was one of the big five issues by Mr Moyane as the real route. In the end the Chair will decide whether it is Mr Gordhan's version or Mr Moyane's version that must stand. But page 113, which is also 1044 Chairperson.

**CHAIRPERSON:** Yes?

**ADV MPOFU SC:** You say that:

“Pravin:

Because you work every day with the Hawks and so on you think you have the authority to talk to me – to talk like that to me. I beg your pardon. No DG in government talk to the minister like you do. Nobody. And the only reason you do it is because you know – because you have connections.”

Okay. We have already covered the part about no DG talks to a minister like that. But what evidence did you have

that Mr Moyane works with the Hawks every day?

**MINISTER GORDHAN:** That was a manner of speaker closely but certainly Chair there was gossip around at the time about Mr Moyane and Mr Abrahams possible meeting frequently or some other official from the NPA. And I suppose this is something that Mr Moyane would want to come and testify on himself.

**ADV MPOFU SC:** Yes, he will.

**MINISTER GORDHAN:** So that he also can be cross-  
10 examined about these matters. As you put it to me earlier on. These were all signs and manifestations and tell-tale signs, if you like ...[intervenes]

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** ...of State Capture. And I put to him whether his hostility and arrogance and defiance actually emerge from a place which said you have my backing and you can do what you like in respect of this particular minister.

**ADV MPOFU SC:** Yes.

20 **MINISTER GORDHAN:** [Indistinct] ...[intervenes]  
[Speaker is not clear.]

**ADV MPOFU SC:** I understand exactly what it means Mr Gordhan. I do not think anybody does not understand it. My question was a simple one. What evidence you have that he was meeting with the Hawks everyday and you have

answered that it was from gossip.

**MINISTER GORDHAN:** And information that was circulating at the time, which I cannot recollect where I got from.

**ADV MPOFU SC:** Okay. So it was from those two sources. Gossip and information that was circulating ...[intervenes]

**MINISTER GORDHAN:** I did not use the word gossip. I did not use the word gossip Chair.

**ADV MPOFU SC:** Are we going around?

**MINISTER GORDHAN:** I did not use the word gossip.

10 **ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** I was saying to the Chair that this was the information floating around at the time when people are seen at coffee shops and at various venues. That information gets circulated in one form or another.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** And my impressions comes from there. But the far more fundamental question for anybody to answer, in particular Mr Moyane, is where does this arrogance and hostility come from?

20 **ADV MPOFU SC:** Yes. So ...[intervenes]

**MINISTER GORDHAN:** And particularly, in the context to which you will find in the following line 5 on page 1044 and the following line 27, also on the same page as well. Which is nobody treats or talks to or deals with or relates to a minister in government in South Africa in this manner. So



what is so special about this gentleman called Mr Moyane?

**ADV MPOFU SC:** Yes No, thanks. No, that part I understand. That is what I call – let us call it insubordination which is not a crime. I am simply saying, I think he says that you had no evidence and I am sorry to use the word gossip.

The record will speak for itself. Maybe it is my ears. I am quite sure you said that but I can be wrong.

But let us cut the questioning to this. You had no  
10 evidence that Mr Moyane worked with the Hawks every day.  
Yes?

**MINISTER GORDHAN:** It was a manner of speaking.

**ADV MPOFU SC:** Yes, that manner of speaking  
...[intervenes]

**MINISTER GORDHAN:** But I am sure ...[intervenes]

**ADV MPOFU SC:** [Indistinct] ...[intervenes]

[Parties intervening each other – unclear]

**MINISTER GORDHAN:** But I am sure Chairperson, but I am sure it happened.

20 **ADV MPOFU SC:** You ...[intervenes]

**CHAIRPERSON:** Well... but Mr Gordhan. The question is  
...[intervenes]

**MINISTER GORDHAN:** I beg your pardon?

**CHAIRPERSON:** The question is whether you have evidence to back up the statement that Mr Moyane worked

with the Hawks every day.

**MINISTER GORDHAN:** As I said Chair. Firstly, there was information circulating at the time. Secondly, it is a manner of speaking when one talks about every day. And thirdly, I certainly do believe that there was collaboration between Mr Moyane and the then NPA.

**CHAIRPERSON:** Yes, but the question is, do you have evidence? That is the question.

**ADV MPOFU SC:** Yes.

10 **CHAIRPERSON:** Do you have evidence?

**MINISTER GORDHAN:** The evidence is the kind of information I have access to Chair or was I exposed to at that particular point in time? Yes. If there is something written on paper that I am required to produce. No.

**CHAIRPERSON:** H'm. I think it is more about whether you have personal knowledge that that was the position or you have any proof. I think it is more about that.

**MINISTER GORDHAN:** Yes ...[intervenes]

20 **CHAIRPERSON:** Do you have personal knowledge that that was the case or do you have any proof that that was the case? I think that is what Mr Mpofu is talking about.

**MINISTER GORDHAN:** Yes, I do have personal knowledge in the sense that people have observed such meetings at the time.

**CHAIRPERSON:** Mr Mpofu.

**ADV MPOFU SC:** Mr Gordhan, I must... Just let us be serious for a minute here. I have been asking a very simple question. It is either you do or you do not have evidence. I am not talking about rumours or what people say in the corridors. Do you, Pravin Gordhan, have any evidence of Mr Moyane working with the Hawks every day? Yes or no?

**MINISTER GORDHAN:** I think you should leave out some of your preambles, with respect. But the answer – the question what you are asking is what the Chair just asked and which I  
10 answered.

**ADV MPOFU SC:** Well, can you answer it again? Do you, Pravin Gordhan, have any evidence that Mr Moyane was working with the Hawks every day? I am asking for this the fourth time.

**MINISTER GORDHAN:** Let me then repeat for your benefit because you seem to be hard of hearing at this point in time.

**CHAIRPERSON:** Maybe before you answer Mr Gordhan.

**ADV MPOFU SC:** Mr Gordhan, you do not have to insult me about being hard of hearing.

20 **CHAIRPERSON:** Okay ...[intervenes]

**ADV MPOFU SC:** You know your job is to answer ...[intervenes]

**MINISTER GORDHAN:** [Indistinct] ...[intervenes]

[Parties intervening each other – unclear]

**ADV MPOFU SC:** Okay?

**CHAIRPERSON:** Mr Gordhan ...[intervenes]

**ADV MPOFU SC:** You are not going to take that ...[intervenes]

**CHAIRPERSON:** ...before you answer. Let me break it up. Did you ever see Mr Moyane working with the Hawks every day personally?

**MINISTER GORDHAN:** No.

**CHAIRPERSON:** No. Do you have somebody that you can bring to the Commission who can say: I did see Mr Moyane  
10 working with the Hawks every day?

**MINISTER GORDHAN:** I will certainly search my memory Chairperson and if I do come up with a name, I will let the Commission know.

**CHAIRPERSON:** H'm. Do you have any document that suggest that Mr Moyane was working with the Hawks every day?

**MINISTER GORDHAN:** Except for the processes around the charges for so complaining.

**CHAIRPERSON:** Yes.

20 **MINISTER GORDHAN:** No.

**CHAIRPERSON:** Okay alright. Mr Mpofu, I think breaking it up like that will probably help.

**ADV MPOFU SC:** Yes. Well, this was before the charges. This was on the 10<sup>th</sup> of March 2015 to answer your earlier question Chair. So the answer is that you do not have

...[intervenes]

**MINISTER GORDHAN:** The 10<sup>th</sup> of March...?

**ADV MPOFU SC:** 10<sup>th</sup> of March 2015.

**MINISTER GORDHAN:** In 2015, I was not in the  
...[indistinct] [Speaker is not clear.]

**CHAIRPERSON:** What are you referring to Mr Mpofu?

**ADV MPOFU SC:** The date of this affidavit(?). Remember,  
you asked me earlier Chair whether I could date the  
transcript.

10 **CHAIRPERSON:** Oh, yes. Okay, okay, okay. Alright. Yes,  
you say the date is 2015...?

**ADV MPOFU SC:** I am sorry. I was given 2015.

**CHAIRPERSON:** Oh.

**MINISTER GORDHAN:** That is wrong Chair.

**ADV MPOFU SC:** Ja ...[intervenes]

**MINISTER GORDHAN:** That date(?) is wrong.

**ADV MPOFU SC:** Sorry ...[intervenes]

**MINISTER GORDHAN:** I was at the COGTA Ministry at the  
time.

20 **ADV MPOFU SC:** Yes, thank you.

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Sorry, I got the wrong date. The point  
is... Okay anyway. The answer is that you do not have  
evidence of Mr Moyane acting – or rather working with the  
Hawks every day, bottom line?

**MINISTER GORDHAN:** Yes, I said to already.

**ADV MPOFU SC:** You did, ja. Thank you. And the next one was – you then said... Okay. Alright, firstly, let me just say. You have not right to say I am hard of hearing, okay? I am not your child or your ...[indistinct]. So you must not treat me like that. I am not one of those African that you can undermine. So ...[intervenes]

**MINISTER GORDHAN:** I beg your pardon Chair.

**ADV MPOFU SC:** Ja, do not even think about it.

10 **MINISTER GORDHAN:** Ja-no, do not talk to me like that.

**ADV MPOFU SC:** I am not that kind of person.

[Parties intervening each other – unclear]

**CHAIRPERSON:** Hang on one second. Mr Mpofu ...[intervenes]

**ADV MPOFU SC:** I am not your child.

**CHAIRPERSON:** Just make the point that you want to make and Mr Gordhan will keep quiet while you make that point.

**ADV MPOFU SC:** Yes.

20 **CHAIRPERSON:** And if he wants to respond, then he will respond.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Just make the point that you wanted to make.

**ADV MPOFU SC:** Thank you. Ja, and the next issue is you said the only reason you do it is you know it is because of

your connections. What were you referring to?

**MINISTER GORDHAN:** Which line is that Mr Mpofu?

**ADV MPOFU SC:** It is line 1,2, 3... After the DJ...

“No DG and government talks to their minister like you do. Nobody.”

And then you say:

“And the only reason you do it and you know it is because of your connections.”

What were you referring to?

10 **MINISTER GORDHAN:** So we are still on page 1042, am I right?

**ADV MPOFU SC:** That is correct. 1044.

**MINISTER GORDHAN:** I beg your pardon?

**ADV MPOFU SC:** I think it is 1044.

**CHAIRPERSON:** And on my bundle it would be?

**ADV MPOFU SC:** 113, Chair.

**CHAIRPERSON:** 113. Okay.

**MINISTER GORDHAN:** Okay 1044 and line number, please?

**ADV MPOFU SC:** The one about the Hawks was line 1 to 2.

20 And then ...[intervenes]

**MINISTER GORDHAN:** That is right.

**ADV MPOFU SC:** Then it is under the next – that next line.

Then on the third it says:

“And the only reason you do it and you know it is because of your connections.”

And my question is, what connections are you referring to?

**MINISTER GORDHAN:** Well, the connections to the NPA, the connections with the Hawks, which gave the 27 questions but as I said in the Hawks document, it makes reference to the same case number with the complaint was lodged to the Brooklyn Police Station by Mr Moyane.

And when it is convenient Chair, I would like to read paragraph 19 of the affidavit, accompanying that complaint  
10 into the record as well but we will come back to that.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** So those are the connections I am talking about. And perhaps also, whatever other apology(?) in South Africa that mandate of him, go ask him or suggested to him that he could behave in a manner herein referred to in line 6:

“No DG in government and talks to a minister like you do. Nobody.”

**ADV MPOFU SC:** Yes.

20 **MINISTER GORDHAN:** So that needs some explanation. That needs some explanation as to why one sees this extraordinary conduct from a DG level person in relation to a minister.

**ADV MPOFU SC:** No, that is correct. No, I accept... I also said that could just be a sign of subordination or just



ordinary petulance. That has nothing to do with State Capture or connections.

But anyway, the point is... and then he says to you:

“Which connections, Pravin? And it known amongst the public.

Tom:

Which connections are those?

Pravin:

It is known amongst the public.

10 Tom:

Which connections are those?

Pravin:

And you conspire.

Tom:

Which connections?

Pravin:

You have doing it for the last two years. Now what have you been – you have been conspiring with the Hawks for the last two years:

20 Which takes us to 2015.

**MINISTER GORDHAN:** So the question is Mr Mpofu?

**ADV MPOFU SC:** Which connection was he conspiring with for – between 2015 and 2017? You said that ...[intervenes]

**MINISTER GORDHAN:** Well ...[intervenes]

[Parties intervening each other – unclear]

**ADV MPOFU SC:** I am sorry. I spoke over you. I was saying, it is still not the question as underlined where he says you have been doing it for the last two years now.

**MINISTER GORDHAN:** Okay are you finished?

**ADV MPOFU SC:** Ja.

**CHAIRPERSON:** Ja, finished. Ja.

**MINISTER GORDHAN:** So Chairperson, I already answered that question that I believe that there was a relationship, so connection between what Mr Moyane was doing. The 27  
10 questions that appeared in February 2016 prior to this conversation, attaching the case number which refers to the complaint about Mr Moyane had launched.

And I was also referring to a press conference held by two ministers. I will give you the date – if we are going to adjourn in a short while – had which made reference to the activities at SARS and we talked about this complaint of Mr Moyane and about certain activities and equipment, which equipment, I believe, has never been found.

So if you bring all of that together, one sees a particular  
20 patterns emerging and that is where, once again, the notion of connecting different phenomena or actions i.e. connecting the dots, actually, emerges at that particular time.

And then that version, if you like, or that interpretation of events is totally justified as one sees, as I have indicated in my statement in November 2018 and attacked within

cabinet by Mr Zwane and others on the question of the Gupta bank accounts.

**ADV MPOFU SC:** [laughs]

**MINISTER GORDHAN:** Later on the 11<sup>th</sup> of October 2016, the lodging of the charges from – by Mr Shaun Abrahams and the withdrawal of the same charges on the 31<sup>st</sup> of October thereafter. So if you connect those and many other dots that were available at the time, there is a pattern and that is what I am referring to.

10 **ADV MPOFU SC:** Okay. So connecting the dots means that mambo-jumbo? Which two – who – which connections did he conspire with for two years Mr Gordhan?

**MINISTER GORDHAN:** I just answered the question Chairman.

**CHAIRPERSON:** I am sorry ...[intervenes]

**MINISTER GORDHAN:** I am not sure if you want me to go into that.

**ADV MPOFU SC:** No...[intervenes]

**CHAIRPERSON:** I am sorry Mr Gordhan. Mr Mpofu, just  
20 repeat that question about conspiring?

**MINISTER GORDHAN:** Yes. Chair, you will remember I read from line six ...[intervenes]

**CHAIRPERSON:** Ja, where it says about conspire ...[intervenes]

**ADV MPOFU SC:** So, yes. So there were two – I was trying

to kill birds with one stone. There is an issue of the connections.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And there is the issue of conspiring.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But the climax of it is that you have been doing it for the last two years.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** And that is why I then connected all those  
10 dots. That is what Mr Gordhan says. To say that who –  
which connections was he conspiring with for the past two  
years? In other words, from 2015 to 2017.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** And the answer is unintelligible  
...[intervenes]

**CHAIRPERSON:** Okay let us just make sure we understand.  
Mr Gordhan, the question is when you said Mr Moyane had  
been doing it for the last two years now. Mr Mpofu says he  
understands you to be talking about conspiring. First  
20 confirm whether that understanding of his is correct.

You see where you are talking to Mr Moyane? And you  
say: And you conspire. And he says: Which connections?  
You say: You have been doing it for the last two years now.

Is Mr Mpofu's understanding correct that what you are  
saying Mr Moyane had been doing for the last – for the

previous two years is conspiring?

**MINISTER GORDHAN:** Well, Chair I think I have explained that already Chair but let me briefly repeat what I said earlier on about...[intervenes]

**CHAIRPERSON:** [Indistinct] ...[intervenes]

[Parties intervening each other – unclear]

**MINISTER GORDHAN:** Yes, I believe that there were conspiring individuals in the Hawks, in the NPA and Mr Moyane. Number one. And number two, I explained that the  
10 27 questions ...[intervenes]

**CHAIRPERSON:** Okay hang on.

**MINISTER GORDHAN:** Just before ...[intervenes]

**CHAIRPERSON:** Hang on, hang on, hang on.

**MINISTER GORDHAN:** Yes, you recall that.

**CHAIRPERSON:** Just hang on. I want us to make sure that we make progress. What you have confirmed is that Mr Mpofu's understanding that in that sentence you are talking about Mr Moyane conspiring for the previous two years is correct.

20 **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Then if he wants to ask you the question of who he was conspiring with, then he can ask but you have confirmed that his understanding that you are accusing Mr Moyane of having conspired for two years, is correct. Is – you accept?

**MINISTER GORDHAN:** That is my belief.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Thank you.

**MINISTER GORDHAN:** That is my belief.

**CHAIRPERSON:** Yes, okay alright. Mr Mpofu.

**ADV MPOFU SC:** Thank you very much. Unfortunately, Chair. Mr Moyane – I think he will make a good advocate because he asked the next question that Chair(?) [laughs] talks about.

10                   “Tom:

Which ones? Be specific.”

I think he was more successful than us. And then Pravin says:

“All. The Hawks, NPA. I mean, these are all your pals, are they not? You conspire with them every other day.?”

We have already established... Here is the question now. We have already established that you have no evidence of this conspiring every day, correct?

20   **CHAIRPERSON:** No, no, no. Mr Mpofu, I think when you were asking him about every day, it was whether he had evidence that Mr Moyane had been working for the Hawks for ...[intervenes]

**ADV MPOFU SC:** Every day.

**CHAIRPERSON:** Every day.

**ADV MPOFU SC:** But he is saying ...[intervenes]

**CHAIRPERSON:** But it was working and it was the Hawks only.

**ADV MPOFU SC:** Okay, okay.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Thank you, Chair. Okay. Sorry, this – it was not working, it was conspiring with them, whatever the difference is. But do you have evidence that – you do not have evidence that he was working with them. Do you have  
10 evidence that he was conspiring with the Hawks and the NPA every other day?

**MINISTER GORDHAN:** You did notice at line 20 Chairperson, that is a question. And to which question – the next line says: Tom: Oh. And the next line 24, he says: Now I conspire.

**ADV MPOFU SC:** So ...[intervenes]

**MINISTER GORDHAN:** And then it goes on.

**ADV MPOFU SC:** No ...[intervenes]

**MINISTER GORDHAN:** So those were rhetorical questions  
20 if you like but I am firmly of the believe that when properly interrogated, there will be evidence emerging from both the Hawks and General Ntlemeza, who headed the Hawks at the time, and the then NPA hierarchy, that there were conspiracy arrangements in this particular regard. That is certainly my belief.

**ADV MPOFU SC:** Okay.

**CHAIRPERSON:** Well, I – as I understand this discussion between you and Mr Moyane here. It seems to me that Mr Moyane asked you which connections are those. And then you say: I just told you. And then he repeats: Which ones? Be specific.

Then you say: All. The Hawks, the NPA. It seems to me that up to that point you are giving him an answer because he is saying which ones. Be specific. And then  
10 what follows is what appears to be the question. I mean, you say – I mean, these are all your pals, are they not? So as I understand it and you must tell me if my understanding is correct.

It looks like you do give him an answer to the question he puts: Which ones? Be specific. And it seems you say the Hawks and the NPA. Having said that ...[intervenes]

**MINISTER GORDHAN:** It says so at line 5. It says so at line ...[intervenes]

**CHAIRPERSON:** Sorry?

20 **ADV MPOFU SC:** Line 5.

**MINISTER GORDHAN:** At line 5 on that page.

**CHAIRPERSON:** Okay, let me finish.

**MINISTER GORDHAN:** I report to Hawks.

**CHAIRPERSON:** Let me finish. Then you say – I mean, these are all your pals, are they not?



**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** “You conspire with them every other day.”

**MINISTER GORDHAN:** Ja.

**CHAIRPERSON:** But do you accept my understanding or do you not accept that you do give the answer as to who you say he was conspiring with.

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** And then the question relates to these  
10 are your pals, are they not, and you cannot conspire with them every day. You accept that, that understanding.

**MINISTER GORDHAN:** Correct.

**CHAIRPERSON:** Ja, okay. Mr Mpofu?

**ADV MPOFU SC:** Yes. Therefore your answer, the previous answer is a non-answer because the first part is a statement, all the Hawks and the NPA and even the one with a question mark:

“I mean these are all your pals under you?

That is a rhetorical question, you were stating that they are  
20 his pals. And then in any event the next statement is a statement, it is not a question.

“You conspire with them every other day.”

That is what I was asking you about.

“So it is the Hawks and the NPA, you conspire with them every other day.”

You do not have evidence of that. Yes? No?

**MINISTER GORDHAN:** I am sorry what is the question?

**CHAIRPERSON:** The question is whether you have evidence to back up the statement you made that Mr Moyane was conspiring with the Hawks and the NPA every other day.

**MINISTER GORDHAN:** Every other day.

**CHAIRPERSON:** No, obviously not, that was the manner I was speaking, Chair. And this is a telephone conversation,  
10 this is not an exchange of correspondence or something like that where there is precision in terms of what is going on but the general contention is yes, there was a conspiracy at the time.

**CHAIRPERSON:** Mr Mpofu?

**ADV MPOFU SC:** And you – I know that you said there was a conspiracy, I am asking you a different question. You – that accusation is one of your wild accusations, that is what I am saying. You do not have evidence. I do not know if you understand the notion of evidence. I mean, we  
20 can all have rumours and all sorts of innuendos and so on. It is very simple question, either you had evidence, someone said to you look, I have got a photograph of Mr Moyane meeting with the Hawks every other day or I have got information to that effect from Mr Moyane or from Mr Abrahams or you did not have that evidence and you relied

on gossip and rumours and all sorts of talks in corridors. It is a simple issue really. Did you have evidence, did you not? Then we move on. If you had it you will tell us.

**MINISTER GORDHAN:** Chair, I have answered that question earlier on. I said to you that at the time where people with information that such meetings did happened at particular coffee shops and so on. I also said to you that I have to rack my memory, this is what, four, five, four years ago and one would have to try to remember, if I can,  
10 who might have said what in that particular regard.

And then there was the question, I think you might have raised it, Chair, that can somebody come and testify to that effect? I said I do not know, let me reflect on that moment and come back to that particular point. So the direct answer to what Mr Mpofu is saying is that I did have information given to me that such discussions were happening, whether that constitutes evidence or not, I do not know, you decide for yourself but it was not just pulled out of the air, there were particular activities that were  
20 going on which led to that suggestion and understanding and I said I believe that that is the case.

**CHAIRPERSON:** Okay, Mr Mpofu.

**ADV MPOFU SC:** Yes, okay. Mr Gordhan, you know this is a very serious process about state capture in South Africa. You accept that ...[intervenes]

**MINISTER GORDHAN:** Yes, I am very aware of that, I am very aware of that.

**ADV MPOFU SC:** Yes, I am glad you are aware.

**MINISTER GORDHAN:** Particularly because of the [inaudible – speaking simultaneously] institutions of our country.

**CHAIRPERSON:** Hang on, do not speak over each other. Hang on, do not speak over each other.

**ADV MPOFU SC:** Ja, can I finish, Mr Gordhan, do you  
10 mind?

**CHAIRPERSON:** Ja, let Mr Mpofu finish.

**MINISTER GORDHAN:** Oh, okay, I thought that was the question, sorry about that.

**CHAIRPERSON:** Yes, okay. Mr Mpofu?

**ADV MPOFU SC:** The question is coming, do not worry. Do you expect anybody listening to your evidence now to take you seriously or this Commission to take what you are saying seriously that you were basing these accusations on what some people were saying and some - the mumbo  
20 jumbo that you have just giving us about intangible sources and, you know, gossip, as I call it? Can a Commission of Inquiry rely on such in your estimation?

**MINISTER GORDHAN:** Have you finished?

**ADV MPOFU SC:** Yes, thank you.

**CHAIRPERSON:** Yes, he has finished.

**MINISTER GORDHAN:** So there are three issues there, Mr Chairperson. The first is do I realise that state capture is a serious matter and the answer is absolutely, that is why there are so many progressive democrats throughout this country who want to and have opposed state capture and the implications of state capture and the damage that it has caused to this country over the last few years and I imagine that is why the Public Protector requested that this Commission be set up, the previous Public Protector. And  
10 it has damaged so many institutions, in this particular the Revenue Services, which is under collecting what it should be collecting at this point in time. Let me stop there.

The second question is do I expect people take me seriously? Of course. If one looks at the evidence that has been in my statement, number one.

Number the findings, of the Nugent Commission which described Mr Moyane's conduct at SARS in particularly harsh terms and the destruction that he caused in a fair amount of detail and if the public is exposed to  
20 that they will be very angry and very upset about the fact that this is what is done to an institution that was effectively collecting taxes.

The third question is should the Commission rely on what I have to say? I imagine that the Commission will connect its own dots, mine just being one very humble

contribution in that particular regard and will come to its conclusion, so I do not want to prejudge what the Chair is going to say but all of these matters that we are raising today are indeed in the context of the first question that you asked, extremely serious, must be enquired into and the people responsible for the damage caused to institutions must be held accountable.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** Thank you.

10 **ADV MPOFU SC:** Thank you. Well, I can tell you, Mr Gordhan, that so far your dots are only in invisible ink so they are impossible to connect. So I am saying to you that – and you keep on going to the Nugent Commission. I said we should not go there. You remember that you had a secret meeting with Justice Nugent?

**MINISTER GORDHAN:** Is that a question?

**ADV MPOFU SC:** What do you think?

**MINISTER GORDHAN:** Chairperson, may I respond?

**CHAIRPERSON:** Ja, you may respond. Well, the question  
20 is ...[intervenes]

**MINISTER GORDHAN:** There was no secret meeting, Judge Nugent issued a statement subsequently that there was that meeting and that similar meetings were held between that Commission and many other witnesses in order to understand what contribution each witness will

make to the kind of evidence that the Nugent Commission required. Certainly was no secret meeting.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** And in addition, Chairperson, Mr Mpofu did appear before Judge Nugent and had the opportunity to say and do whatever he felt was necessary at that point in time.

And thirdly, there has always put this – let me call it intent for now, by Mr Moyane to review Judge Nugent's findings and report and I believe to date, I am informed, nothing has quite happened.

**ADV MPOFU SC:** Yes, thank you. No, no, I agree with some of that. The point I am really making is that the meeting you had with Judge Nugent was only revealed after it was exposed by the media, so that is why I called secrete meeting. Maybe I should say an undisclosed meeting until it was revealed by the media but the issue of ...[intervenes]

**MINISTER GORDHAN:** With due respect ...[intervenes]

20 **ADV MPOFU SC:** I am sorry, sorry ...[intervenes]

**MINISTER GORDHAN:** Ja, with due respect, Chair, I think that is a matter that Mr Mpofu must resolve with Judge Nugent not with me.

**ADV MPOFU SC:** No, but he did not have a secret meeting with himself, you were there, I am resolving with

you.

**MINISTER GORDHAN:** Yes, I will give ...[intervenes]

**ADV MPOFU SC:** I will resolve it with him when I meet him.

**CHAIRPERSON:** Okay, Mr Mpofu, I am not sure how far we need to go with the question of the status of that meeting for our purposes.

**ADV MPOFU SC:** Well, Chair, I am sure as to why because this witness keeps on referring everything back to  
10 the Nugent Commission so it is my duty to demonstrate that that Commission's report is not worth the paper it is written on. So I am saying, Mr ...[intervenes]

**MINISTER GORDHAN:** Chairperson, may I intervene?

**ADV MPOFU SC:** Can I speak?

**CHAIRPERSON:** Hang on one second. Are you moving on to the next question, Mr Mpofu?

**ADV MPOFU SC:** No, I just wanted to say one thing, Chair, on this and then the witness can comment.

**CHAIRPERSON:** Ja, ja.

20 **ADV MPOFU SC:** Which is that they – I will put it as a statement to make it easy and then you comment, Mr Gordhan. I am saying if this Chairperson, for example, were to find out that he had a secret meeting or an undisclosed meeting with former President Zuma or any other important witness which is only disclosed after the



meeting comes to know about it then that would – we would not take this Commission seriously, would you agree?

**MINISTER GORDHAN:** No, I do not have a comment on that.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** If I can get to your earlier comments, Chairperson.

**ADV MPOFU SC:** Thank you, I am not surprised, ja.

**CHAIRPERSON:** Hang on one second, I think Mr Gordhan  
10 wanted to say something. I think we should move away from the status of that meeting after this, ja.

**ADV MPOFU SC:** He says he has no comment, Chair.

**CHAIRPERSON:** Did you still want to comment?

**MINISTER GORDHAN:** Chairperson, all I want to ensure is that we do not mislead the public in this regard. Members of the Nugent Commission I believe met many people including the evidence leader meeting people. Similarly, I was met with by Adv Paul Pretorius long before  
20 my appearance in November 2018. He is part of the Commission as a member of the legal team. Similar meetings I believe must be happening with other witnesses to formulate statements that will be helpful to the Commissioner.

Now are we going to throw aspersions at this Commission that some people are attempting to do, just

because those meetings/discussions/guidances actually provided by one component within the Commission, I would suggest no, that that in no way harms the integrity of this Commission or that of Justice Nugent as well. But that is my humble view, I leave the rest to you, Chairperson, to deal with this.

**CHAIRPERSON:** Okay, I think that is - let us move on, ja.

**ADV MPOFU SC:** Thank you. No, I will move on, Chair.

**CHAIRPERSON:** Yes.

10 **ADV MPOFU SC:** Save to say your humble view is wrong, a meeting with Mr Pretorius and having a meeting with the Chair are two different things. I think anybody watching this knows that he is just dodging the question. Okay, now let move on to page 1045.

**MINISTER GORDHAN:** Chairperson ...[intervenes]

**CHAIRPERSON:** Hang on one second.

**ADV MPOFU SC:** Let us move ...[intervenes]3

**CHAIRPERSON:** Yes, Mr Gordhan?

20 **MINISTER GORDHAN:** Chairperson, Mr Mpofu is casting aspersions that he does not have to. If he wants to continue in discussion, I mean - and I do not think it will take us too far.

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** Let him stick to the facts and he must refer to paragraphs in my statement so I know what

exactly he wants to talk about rather than travelling in the stratosphere.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** But please, he has no right whatsoever to cast aspersions on my integrity.

**ADV MPOFU SC:** Okay, I am putting it as a fact, you had a secret meeting with Judge Nugent, as a fact.

**CHAIRPERSON:** Let us – we have dealt with that, let us move on.

10 **ADV MPOFU SC:** Yes, anyway let us move on.

**CHAIRPERSON:** Let us move on, ja.

**ADV MPOFU SC:** The last portion at 1045, paragraph 114, this is where another display of your racism. You then say – it says – you say:

“What gives you the right to talk to your minister as you do.”

And I think you seem to have some kind of God complex about being minister and how people should talk to ministers. He says:

20 “What gives you the right to talk to your minister like this?”

And Tom:

“Now I conspired.”

Pravin:

“ What gives you the right to talk to your minister as

you do?:

Tom:

“I...”

And then you interrupt:

“Nobody else in government does it. So what gives you the right? What gives you the courage to do it? What gives you the arrogance to do it? You tell me. And the only thing is because you think you have certain things behind you. Nobody else is as  
10 cheeky – is cheeky like you.”

Remember that? Do you remember that transcript?

**MINISTER GORDHAN:** What is the question, Chairperson?

**ADV MPOFU SC:** Do you remember that? That is a question, the question mark at the end of that.

**CHAIRPERSON:** Oh, you want – you are asking whether he remember saying ...[intervenes]

**ADV MPOFU SC:** That part of the conversation, ja.

**CHAIRPERSON:** That conversation, okay.

20 **MINISTER GORDHAN:** It is in the transcript, Chair. So I accept the transcript as being correct and I want to continue along the lines that Mr Mpofu has started.

**CHAIRPERSON:** Hang on, hang on ...[intervenes]

**MINISTER GORDHAN:** Which was after line 5 on 1045, 8.40 ...[intervenes]

**CHAIRPERSON:** Hang on, Mr Gordhan. At this stage the question was whether you remember this conversation. The answer is yes. Let us see what next.

**ADV MPOFU SC:** Okay.

**CHAIRPERSON:** And of course your counsel is also watching and some of the things she will raise in re-examination but the question was whether ...[intervenes]

**MINISTER GORDHAN:** No, but Chair, let me correct what I said.

10 **CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** I did not say I remember the conversation. I said it is in the transcript so I take it for it is.

**CHAIRPERSON:** Oh, yes, ja, what you said is you accept the transcript as correct.

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** In the sense that it reflects what transpired between you and Mr Moyane.

**MINISTER GORDHAN:** That is correct.

20 **CHAIRPERSON:** Ja. Okay, alright.

**ADV MPOFU SC:** Thank you, Chair, no I am learning how to decode these answers, so that is a yes, that long thing. Okay, so there you use one of the words I spoke to you about which are condensing and belittling to African people, I can assure you, by calling another man who is in

your age group cheeky. Is that how you speak to people that you respect or is that reserved for African people?

**MINISTER GORDHAN:** Chair, as I have said several times in this process I reject with absolute contempt any suggestion that there is racism involved in my interactions, number one.

Number two, that word cheeky is about attitude, not the persona. So if I am met with a non-answer to my first question on the first stage of this transcript, the first issue  
10 I raise:

“Please do not do it again until we meet it on Monday.”

If you go through the transcript I do not receive any such assurance and that is why, Chair, I was going to point out line 10, 11 and 12 to you.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Right? Particularly 11 and 12 which says:

“Please do not – stop attacks on Judge Davis, that  
20 is the request to you.”

Not an instruction, that is a request to you. It is about mentoring somebody and guiding them on what is proper in the relationship between a public servant and a member of the judiciary. There is nothing to do with racism. To reduce it to racism is to take the easiest route out in order

to malign my character and that is actually something, as I said, I totally reject but I understand that desperation often leads to these sorts of adventures, so let me leave it at that.

**ADV MPOFU SC:** Okay. Well, grow up, Mr Gordhan, do not be cheeky. How does that feel?

**MINISTER GORDHAN:** Well, I think it is the way it comes, Mr Mpofu.

**ADV MPOFU SC:** Ja, well I can tell you how it feels for  
10 people like me, you must – let me give you advice, you must never again belittle African people the way you did in this conversation by telling them that they are ...[intervenes]

**MINISTER GORDHAN:** I did not – I did not ...(intervenes)

**ADV MPOFU SC:** That they are cheeky.

**MINISTER GORDHAN:** Chairperson [inaudible – speaking simultaneously]

**ADV MPOFU SC:** You must [inaudible – speaking simultaneously] okay?

20 **MINISTER GORDHAN:** Can I respond, Chair?

**CHAIRPERSON:** Okay, just one second. Ms Le Roux, I see you want to say something?

**ADV LE ROUX:** Yes, Chair. Can I just object to Mr Mpofu's editorialising on the answers, I understand he must ...[intervenes]

**CHAIRPERSON:** I am sorry, just repeat that sentence?

**ADV LE ROUX:** Can I just object to Mr Mpofu's editorialising on the answers he is getting from the witness. He may be frustrated but we now seem to be descending into a personal spat between the advocate and the witness and I do not think that is assisting the Commission in completing this cross-examination today. , I just want to note that objection.

**CHAIRPERSON:** Yes, I think they were – we were about  
10 to move on and make progress. I thought [inaudible – speaking simultaneously]

**ADV MPOFU SC:** Yes, thank you, Chair. No, Chair, I am not – there is nothing personal. Well, the racism is personal.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** But apart from that there is – I mean, I have no business being personal with Mr Gordhan.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** I mean, it really is – I am think I am just  
20 doing my job.

**CHAIRPERSON:** Mr Gordhan is it fine if we move on?

**ADV MPOFU SC:** It is either the words are in the transcript cheeky and you must grow up or they are not, it is not editorializing, it is here in black and white.

**CHAIRPERSON:** Mr Gordhan is it fine if we move on?



**MINISTER GORDHAN:** Chair, can we have a five minute bathroom break?

**CHAIRPERSON:** Yes, okay, alright.

**ADV MPOFU SC:** He wants to go to the ...

**CHAIRPERSON:** Mr Gordhan is asking for a short five minutes break. Let us have it otherwise we are 17 minutes towards the end of the third hour.

**ADV MPOFU SC:** Thank you, Chair.

**CHAIRPERSON:** So at the end of the third hour we will  
10 stop but we will add the five minutes.

**ADV MPOFU SC:** Thank you, Chair.

**CHAIRPERSON:** We will take a five minutes break. We adjourn.

**ADV MPOFU SC:** Thank you.

**MINISTER GORDHAN:** Thank you.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, we will wait for Mr Gordhan to appear on the screen. In the meantime – oh, okay, Mr  
20 Gordhan is back. We are at about what, eight minutes, nine minutes to five. What is your assessment of how much more time you need Mr Mpofu?

**ADV MPOFU SC:** Yes, Chair, I am sorry – yes I have just had a discussion with Ms Le Roux. At the rate we are going honestly there is not – I do not see my cross-

examination, the rest of it lasting for less than another two hours. So we thought maybe we go for another hour and then assess. We are all trying as much as possible not to come back, not to have to come back.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But if it can avoided, Chair.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Well, Chair, I am sorry to be so forward as to say that the fact that maybe other witnesses are not  
10 coming for the rest of the week might make it possible. Unfortunately, I am not available, for example, tomorrow but maybe we could slot in an hour somewhere later on.

**CHAIRPERSON:** Ja, let us – I would urge you to try and see whether if I give you another hour, which would be the fourth hour, whether you cannot finish.

**ADV MPOFU SC:** No, I will not.

**CHAIRPERSON:** And how much would be left after that.

**ADV MPOFU SC:** Okay.

**CHAIRPERSON:** Let me also ask Ms Le Roux. At this  
20 stage in terms of your assessment how much time would you need for re-examination?

**ADV LE ROUX:** Chair, I will obviously try to ...[intervenes]

**CHAIRPERSON:** I will not hold you to it at the end  
...[intervenes]

**ADV LE ROUX:** Do not hold me to it.

**CHAIRPERSON:** But I just want to ...[intervenes]

**ADV LE ROUX:** I will try to do it as quickly as possible but I would think 15, 20 minutes at the moment.

**CHAIRPERSON:** Yes. Okay, not that is ...[intervenes]

**ADV LE ROUX:** And certainly if we could complete.

**CHAIRPERSON:** Yes, yes.

**ADV LE ROUX:** And I understand the imposition on you and the kitchen staff to sit late tonight.

**CHAIRPERSON:** Ja, no I ...[intervenes]

10 **ADV LE ROUX:** I am sure every would prefer to finish.

**CHAIRPERSON:** Ja, I would like if possible to finish. That is fine. Let us – let me check whether – how much time Mr Chaskalson – or, Mr Chaskalson, in terms of your own re-examination you might or might not need it but it depends on what remains, but I am not sure whether you would come before – I think you would come first before Ms Le Roux. Have got any assessment or you are not able to make that?

**ADV CHASKALSON SC:** Chair, I do not have an  
20 assessment, I am sort of here standing in for Mr Franklin.

**CHAIRPERSON:** For someone else, yes.

**ADV CHASKALSON SC:** So I think it might be best for Ms Le Roux to go first.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** And then for me to possibly take

an instruction from Mr Franklin if he is watching and well or well enough to watch.

**CHAIRPERSON:** Okay, alright.

**ADV CHASKALSON SC:** But at present I would not imagine much re-examination.

**CHAIRPERSON:** Ja. Okay, alright.

**ADV LE ROUX:** Chair, perhaps – sorry, perhaps what we could also consider is if my learned friend finishes tonight and we have a twenty minute re-examination that we fit  
10 into your calendar because it is only re-exam between the evidence leaders and myself.

**CHAIRPERSON:** Ja.

**ADV LE ROUX:** Perhaps that is a way – then you do not have to worry about finding time tonight for re-exam. Mr Mpofu could finish today and then we find the re-exam time.

**CHAIRPERSON:** Okay. No, that is fine. I think let us - Mr Mpofu, let us say just make your best effort to see how much you can cover in the next hour.

20 **ADV MPOFU SC:** I will try, Chair.

**CHAIRPERSON:** And then we take it from there.

**ADV MPOFU SC:** Yes. Thank you, Chair.

**CHAIRPERSON:** Ja, okay.

**ADV MPOFU SC:** Thank you.

**CHAIRPERSON:** Mr Gordhan, you understand what we

are talking about, hey?

**MINISTER GORDHAN:** I do, Chair, but I may place some -  
record publicly that the next two weeks are particularly  
busy set of weeks for us to conclude both parliament and  
work of the executive.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** So please keep that in mind.

**CHAIRPERSON:** Yes. No, no, that is fine. If we do not  
finish today the probability would be that we – I would be  
10 looking at slotting your evidence during one of the  
evenings. That is what I would be looking at and you  
would be allowed to testify like you do today from where  
you are. So, in other words, the chances are that it would  
not be during the day as it was today and that might make  
things easier, I do not know.

**MINISTER GORDHAN:** We also have meetings in the  
evening.

**CHAIRPERSON:** In the evenings, ja.

**MINISTER GORDHAN:** No, I note that, Chair.

20 **CHAIRPERSON:** Yes, not that is alright, I think we  
...[intervenes]

**MINISTER GORDHAN:** May I clarify?

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** Chair, may I clarify?

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** That I think it is time for Mr Moyane to come and give his evidence. I mean, we are in your hands, I understand but this is a mere cross-examination some of which are telephone conversations and so on [inaudible – speaking simultaneously]

**CHAIRPERSON:** He cannot testify before you finish your cross-examination.

**MINISTER GORDHAN:** Okay.

**CHAIRPERSON:** So we have got to finish your evidence  
10 first and then he will come in due course.

**MINISTER GORDHAN:** Thank you, Chair, thank you.

**CHAIRPERSON:** Okay, let us continue, let us continue.

**ADV MPOFU SC:** And I am sure if you have cabinet meetings, as we know that this is an important process, the President will excuse you. No?

**MINISTER GORDHAN:** I am not going to provide any response to that right now, Chair. I will have to look at what our diaries required. There are votes in parliament for example on the budget and so on which can take an  
20 inordinate amount of time.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** So let us work on your pragmatic approach, Chairperson, and see what we can fit in.

**CHAIRPERSON:** Let me say this. If we are looking at within the next two weeks the date can be negotiated.

The days that we do not negotiate is when we give you a reasonable notice.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** So if we are talking about the next two weeks everybody will be consulted to see ...[intervenes]

**ADV MPOFU SC:** Ja, fair enough, thank you, Chair.

**CHAIRPERSON:** Ja. Okay, alright.

**ADV MPOFU SC:** Thank you. Okay, Mr – may I continue, Chair?

10 **CHAIRPERSON:** Yes, you may continue.

**ADV MPOFU SC:** Now Mr Gordhan the next topic I want to talk about is – going back now to the core issues of state capture. You are one of the ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Mpofu, can I put away this bundle now that we were looking at? Which one do ...[intervenes]

**ADV MPOFU SC:** Oh, the one of the transcripts? Yes, Chair.

**CHAIRPERSON:** Ja, the one with the transcripts.

20 **ADV MPOFU SC:** I am done with that, ja.

**CHAIRPERSON:** Ja. Okay, alright.

**ADV MPOFU SC:** Well, maybe just to wrap it up, I will just put a proposition. That exercise, Mr Gordhan, would demonstrate using the three signals that I referred you to, shouting down at a person, calling them to – telling them to

grow up, as if they were a child and calling them cheeky, those are the archetypical signals of a racist attitude. What is comment?

**MINISTER GORDHAN:** Chair, let me first say that racism works in odd ways and perhaps - and unexplored in this exchange of views is whether Mr Moyane is actually the racist in this bargain.

**ADV MPOFU SC:** Oh.

**MINISTER GORDHAN:** Because it is he who defies the  
10 authority of a minister who happens to come from a particular community. It is he that shows hostility in the first instance. It is he who attempts to dictate the terms. So I want to suggest that whatever the telltale signs are that Mr Mpofu is trying to assign me can well be even more strongly assigned to Mr Moyane and perhaps when he gives his evidence, he can be cross-examined on some of those as well. So I would argue that the real racist attitude is not from me because my history does not prove that, it does come from Mr Moyane.

20 **ADV MPOFU SC:** Okay, well maybe when he testifies you will also bring your own transcript. I am saying from this transcript there was no sign of racism from him, there was sign of racism from you.

**MINISTER GORDHAN:** I am basing this – Chairperson, I am not basing it on one telephone conversation during



which there was open deviance about the position of an member of the judiciary, a judge and a simple request, do not attack a judge. That is how the rest of it followed. Mr Mpofu has not even said that Mr Moyane concedes that he was wrong to attack a judge in whatever form.

**ADV MPOFU SC:** No, no, thank you, I do not know about Mr Moyane ...[intervenes]

**MINISTER GORDHAN:** So he wants to [inaudible – speaking simultaneously]

10 **ADV MPOFU SC:** I am sorry, Mr Gordhan.

**CHAIRPERSON:** Okay, you are talking over each other. Okay, Mr Gordhan, finish?

**MINISTER GORDHAN:** So that transcript does not prove anything except what are an exchange of views on a particular matter so the substance and the gravitas of the matter is do public servants go around attacking judges and is that the kind of value system and culture that we want to crate within our democracy? And I suggest no. So Mr Moyane must come and explain himself in relation to  
20 that transcript. But thank you, I end there.

**ADV MPOFU SC:** Thank you. No, thank you, Mr Gordhan, for your comfort, I do not care what Mr Moyane has to say about it, I can give you the assurance that if he attacked a judge he was wrong, there is no excuse for that. Like whatever – if he did, if he beat up somebody he was wrong

but none of that gives you a right to display racist attitudes against him. That is all I am saying. I am not justifying – whatever he did, he defied you, he did not bow before you and kiss your feet, that is fine, but the issue is that you had no right to be racist to him, whatever he had done wrong. Okay? Do you understand that?

**MINISTER GORDHAN:** So let me answer that finally, Chairperson, because it seems we are going around the same tree all the time. I reject any notion of racism in my  
10 behaviour and I now put it to you that Mr Moyane actually was the racist in this particular equation. But let us leave it at that. And I reject any suggestion whatsoever that my affinity to non-racialism as an important value both in the Freedom Charter and in our Constitution should be dealt with in any way.

**CHAIRPERSON:** Okay, let us move on.

**ADV MPOFU SC:** Yes, thank you. So I was saying the – you are one of the people who refers to the so-called nine wasted years, correct, of state capture.

20 **MINISTER GORDHAN:** Do not recall using that terminology.

**ADV MPOFU SC:** Are you sure?

**CHAIRPERSON:** He says he cannot recall.

**MINISTER GORDHAN:** I am not sure, I just said I – Chair, I just said I do not recall using that terminology but let me

help Mr Mpofu. There is no doubt that from about 2011 onwards when the first interventions began to take place in state owned entities as we now see it via hindsight it is clear that we lost a lot of value, we lost the gravitas that we had in many institutions, state owned enterprises and SARS being amongst them. We had a practice of chasing away black professionals who were honest and who had integrity and who refused to be manipulated in any kind of way either through procurement systems or other systems  
 10 and all of that follows a pattern that state capture, as concept, that really describes. So yes, these have been years in which as economists would say we have had a huge opportunity cost.

**ADV MPOFU SC:** Yes, thank you. And you also subscribe to the idea that – I think the Chair referred to this, he asked you towards the end of your evidence in 2018 about where were people when all these things were happening and what responsibility you take. So do you – you also subscribe to the idea that there are in the  
 20 governing party or the governing structures there were what we call devils and angels. In other words there were those people who were peddlers of state capture and then there were other angels who were trying to stop it, like you. Yes?

**MINISTER GORDHAN:** So where was I during this period?

I was in some of part a member of the executive and in other part of it I was a member of parliament.

**CHAIRPERSON:** I am sorry, Mr Gordhan.

**MINISTER GORDHAN:** Sorry.

**CHAIRPERSON:** The question is whether you subscribed to the notion that during those years or during that time there were those who were viewed and angels and those who were viewed – I think Mr Mpofu said the devils or those were seen as perpetrating state capture. Mr Mpofu, 10 did I capture it correctly?

**ADV MPOFU SC:** You did, Chair.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** And just to round it off, a nice way of putting it by Gogo Aubrey Matshiqi. He says to prove that everyone was really rogue, he says that there were devils with wings and angels with horns. So which one did you fall into?

**CHAIRPERSON:** Okay, well firstly you want to know whether he subscribes to [inaudible – speaking 20 simultaneously]

**ADV MPOFU SC:** To the notion, yes.

**CHAIRPERSON:** And then you can talk about whether he belonged to any of those categories?

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Okay, Mr Gordhan, you understand the

question?

**MINISTER GORDHAN:** Chair, with respect, I want to disagree with you. I am making crisp notes to the best of my abilities of what Mr Mpofu says. So the first question here is ...[intervenes]

**CHAIRPERSON:** Yes and I was not making [inaudible] so feel free to disagree.

**MINISTER GORDHAN:** Yes. No, thank you for the liberty. So the first question was where were you? The second  
10 question was what was happening in the governing party and then he changed it to governing structure and the third question is the one you referred to, the so-called devils and angels and then there's a quotation from a public commentator. So I am responding to the first question if I may, Chair?

**CHAIRPERSON:** Yes. .

**ADV MPOFU SC:** Okay, sorry, Mr Gordhan, let me just assist you. And I promise you I will give you a chance to respond, as you wish. But the issue of one of  
20 paraphrasing the chair, it was just a build-up to the question but if you want to deal with that where were you part that is also fine.

**MINISTER GORDHAN:** Yes, no, I think I want to briefly so that everybody who has an interest in this matter, Chair, can understand where we come from.

**ADV MPOFU SC:** Sure.

**MINISTER GORDHAN:** So I was, as I said, a member of executive and subsequently a member of parliament and then again a member of the executive and during that process, as I said very transparently in paragraph 14 of my statement in November 2018, which if you do not mind I am going to quote two lines:

10           “I must emphasise that my knowledge and my understanding of state capture like that of the rest of the country evolved over time. So as we began to understand...”

And I say we, I refer to progressive democrats in the governing party, in civil society and in other entities and structures within the state and beyond. The understanding of what was going on evolved over time and if one has to point to a particular moment it is certainly the reporting of investigative journalists, I think it said in the middle of about 2017 or so, Chairperson, who then reported on the Gupta Leaks, the emails which emails then exposed the  
20   roles of different people, it exposed the role of Bell Pottinger as a front, it exposed the relationship between certain South Africans who today parade around as if they are renewed democrats but they are the ones who concocted certain fake notions and narratives together with Bell Pottinger, had them involved into what ...[intervenes]

**CHAIRPERSON:** I am sorry, I am interrupting you, Mr Gordhan, I just want to follow. You have answered the question of where you were.

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** So which one are you answering now, I just want to follow.

**MINISTER GORDHAN:** The second says what was happening in the governing party and structures and beyond as well and I then sum up my point on so-called  
10 devils and angels.

**CHAIRPERSON:** Yes, okay.

**MINISTER GORDHAN:** Because devils and angels is not my notion, it is a notion that is being introduced by Mr Mpofu. So what I am – the main point I am making is that the understanding of what we today called state capture evolved over time, number one.

Number two, that when the Gupta Leaks happened many, many, many connections and the relationships became clear.

20 Number three, that there were outside agencies like Bell Pottinger which many people seem to have forgotten, that were hired in order to create particular narratives which are used politically even today.

And number four, within the governing structures clearly there were moments when – and this is as I said in

November 2018 as well, discussions that are happening in cabinet and instances when people who people that these were wrong things that were happening including myself who ensured that certain decisions were not made or went to court, for example, on the Gupta bank accounts to seek guidance on what was the proper thing to do to bolster one's position about whether a member of the executive could interfere in the relationship between an accountholder and the financial institution.

10           So there were certainly those who were doing that work and it was good work. That work continued through the parliamentary committee and the chair at the time of the inquiry, Ms Ranto, who is no longer in parliament, when we interrogated what was going on at Eskom and there is a proper report available in that regard adopted by the National Assembly which describes the malfeasance have continued and the capture of Eskom over that particular period of time and of course there were those in governing structures and in various political parties who  
20 were engaged in these corrupt activities and malfeasance as well. If you want to call them devils and angels you may do that but as far as I am concerned there were democratic activists like myself in plenty around South Africa who objected to what was going on and made their objection known in various forms.



**CHAIRPERSON:** Mr Mpofu?

**ADV MPOFU SC:** Thank you. In other words you were one of the angels?

**MINISTER GORDHAN:** No comment.

**ADV MPOFU SC:** Okay. Now there is a part – when you read paragraph 14 there is a part that you did not read, you said it evolved over time and so on and then you said:

“The significance under interrelationship of such events were revealed progressively and often only in hindsight given the state capture activities.”

Correct.

**MINISTER GORDHAN:** Yes, I referred to that in my earlier remarks now.

**ADV MPOFU SC:** Yes. And then you go on, you say:

“Repeated changes to cabinet.”

So these were some of the activities of state capture. Who are you accusing there of state capture? Who repeatedly changed the cabinet?

**CHAIRPERSON:** Well, maybe let us start with ...[intervenes]3

**MINISTER GORDHAN:** Well, I think ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Gordhan, let us start with this, repeated changes to – in cabinet, do you confirm that that is part of what was manifestation as far as you are concerned of state capture?

**ADV MPOFU SC:** Yes, that is the first component. There are other that follow in a paragraph.

**CHAIRPERSON:** Yes, okay, alright. Mr Mpofu, I think your question ...[intervenes]

**ADV MPOFU SC:** Yes, thank you. The question, ja, who in the state capture network, who did that first offence of repeated changes to cabinet?

**MINISTER GORDHAN:** Chair, with your permission, can I read the whole sentence so that the context is clear?

10 **ADV MPOFU SC:** No, we are talking it step-by-step. Believe we I will read the full sentence, I am just dealing with that specific issue.

**MINISTER GORDHAN:** Who makes the changes?

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** According to the Constitution all cabinet ministers are appointed at the discretion of the President.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** And serve at his favour.

20 **ADV MPOFU SC:** Okay, fine, so that will be President Zuma, correct?

**MINISTER GORDHAN:** At that time.

**ADV MPOFU SC:** Yes. And then – okay, the rest of the sentence which you want to go to, it says:

“To the boards of - in other words, repeated

changes to the boards of state owned companies and in the leadership of key institutions and organs of state often without rational explanation were done to take control of such institutions.”

So the motive for those issues, repeated changes to the cabinet and to the boards were done to control such institutions by the peddlers of state capture, correct?

**MINISTER GORDHAN:** Yes, Chairperson, the answer is yes.

10 **ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** And if you look lower down under paragraph 16.1 and what follows it explains how typically within this kind of conceptual framework different role-players play different parts. So where there are changes to the boards of SOEs or SOC's that will be led by a minister. In other instances, for example, the NPA, had effected changes of the head of the Prosecuting Authority. I think it is again the President who has that discretion as well.

20 **ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** And if one then looks this – this my last sentence, if one then looks at it, all of these issues retrospectively there is absolutely no doubt that control in one form or another, as I said many hours ago, is a crucial part and start of the progress of repurposing institutions.

**ADV MPOFU SC:** Yes. So at 16.1 you say you relied on the books to define state capture and you say:

“They are the patrons of resources, for example Zuma and the Guptas, and they sit at the apex directly responsible for the predation and exploitation.”

Do you remember adopting that quotation?

**MINISTER GORDHAN:** Yes, that quotation, just for everyone to know, is from the work done by a group of academics which called Betrayal of the Promise report.

**ADV MPOFU SC:** Yes.

**MINISTER GORDHAN:** And they – those words are, Chairperson, in quotations taken from that publication.

**ADV MPOFU SC:** Yes, which you adopted and put in your statement.

**MINISTER GORDHAN:** Oh yes – no, it is there, you are reading it, it is 16.1, yes.

**ADV MPOFU SC:** Yes, thank you. So now that we have gone through those parts I wanted to ask you – it is a question that I asked earlier, do you have any evidence that President Zuma was part of state capture?

**MINISTER GORDHAN:** What I have to say in relation to the former President is in my statement.

**ADV MPOFU SC:** Answer the question please, Mr Gordhan, it is late now. Do you have any evidence

whether that President Zuma was involved in state capture and that his repeated changes to cabinet was part of that ...[intervenes]

**MINISTER GORDHAN:** Chairperson, Chairperson, with great respect, I thought we had objections to this line of questioning but I see it is re-entering the scope. I am not here to account for my views on the former President, I am here to account for my views in respect of Mr Moyane and where that is in relation to the former President I will say

10 so.

The second point I am making is that that is exhaustively covered in my experience, for example the Nuclear Deal or non-deal, the question of the Gupta bank accounts and others have come before the Commission to give other pieces evidence as well.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** But to the extent that I am aware, those are contained in this affidavit.

**ADV MPOFU SC:** Okay, I will move on.

20 **MINISTER GORDHAN:** Under oath.

**ADV MPOFU SC:** Assuming you do not want to answer that first question. Okay, so ...[intervenes]

**MINISTER GORDHAN:** I have answered your question.

**ADV MPOFU SC:** Okay, thank you. So of the – or you say well, of the good guys, the people who were not for state

capture, that would be people like you, Mr Jonas, Mr Nhlanhla Nene, it would include those kinds of people, correct?

**MINISTER GORDHAN:** It depends on your vantage point if one wears a particular ...[intervenes]

**ADV MPOFU SC:** Not mine, sorry.

**MINISTER GORDHAN:** Let me repeat what I said in a different form, Chairperson.

**CHAIRPERSON:** Ja.

- 10 **MINISTER GORDHAN:** It depends on one's vantage point and one's political orientation and which hat or beret one might be wearing on a particular occasion. So yes, if you look at it one vantage point, these are all individuals amongst many, many others who took a stand on various issues. So in the case of the former Deputy Minister Jonas, according to the evidence he gave before the Commission, he was offered a bribe of R600 million and he turned down that bribe. So depending, as I say, where you stand, you know, you could be categorised in one way of
- 20 another depending on the hat or beret you wear.

**ADV MPOFU SC:** Yes, thank you for that, I will take that as a compliment, so – but now do you remember the question? The question is it has nothing to do with apparel, it is whether the people who were the fighters of state capture, to extend your metaphor, that apparel, the

fighters of state capture included you, Mr Mcebisi Jonas and Mr Nhlanhla Nene. Yes, no?

**CHAIRPERSON:** Well, I am ...[intervenes]

**MINISTER GORDHAN:** Each one of made a contribution, Chairperson, where we saw fit.

**ADV MPOFU SC:** Thank you. Alright, now you – and in the – do you take any responsibility for your role in the perpetration of state capture over those years?

**MINISTER GORDHAN:** No.

10 **ADV MPOFU SC:** None at all, okay.

**MINISTER GORDHAN:** No.

**ADV MPOFU SC:** Now – yes, do you accept that state capture essentially was about capturing the Treasury or let us call it the till, capturing the money.

**MINISTER GORDHAN:** Invariably that is what it amounts to.

**ADV MPOFU SC:** Yes. Thank you. And the ...[intervenes]

**MINISTER GORDHAN:** It could be that – Chairperson, it could be also facilitating tenders, procurement and  
20 contracts, it takes various forms and some people have done it at a municipal level, others have done it at an agency level, yet others at provincial and National Government level, so ...[intervenes]

**ADV MPOFU SC:** Yes, no, no, I accept that.

**MINISTER GORDHAN:** Depending [inaudible – speaking

simultaneously]

**ADV MPOFU SC:** Yes even – I am sorry, I am sorry, Mr Gordhan, I accept that and even in the private sector but my question is a specific one.

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Do you accept that at the centre of state capture would be a capture of the Treasury. That makes sense, if you want to rob a bank you must capture the vault, you know, the till. So to that extent do you  
10 accept that Treasury was at the nucleus of the project?

**MINISTER GORDHAN:** Well I wouldn't say nucleus but it was the respondent in order to misallocate certain things happening. I mean if that question has to be asked to those who actually designed the Capture strategy, because I am not one of them and they would know best what their strategy was, why they started with State owned entities, and in today's terms why some political parties started at the municipal level for example, but that is a question they should answer.

20 **ADV MPOFU SC:** Yes, I am sure you are referring to your political party, but I am saying that the - when it comes to the – if you – I am happy with your description that Treasury was like a key component, let's work with that. So the fact is that for more than seven of the nine years you and Mr Nene were entrusted with the Treasury with the



key component of State Capture by President Zuma, correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Thank you.

**MINISTER GORDHAN:** Buying under calculation but I will take your word for it.

**ADV MPOFU SC:** Well you can take my word, you were there for the entire five years from 2014 and 2019 that whole term that President Zuma put you in charge of the  
10 Treasury, the key component of State Capture, correct?

**MINISTER GORDHAN:** Correct.

**ADV MPOFU SC:** Yes, and then after that.

**CHAIRPERSON:** Sorry.

**ADV MPOFU SC:** Sorry Chair.

**CHAIRPERSON:** Was he not dismissed in 2017?

**ADV MPOFU SC:** No, no that was the...[intervene]

**CHAIRPERSON:** You said 2014 to 2019?

**MINISTER GORDHAN:** No I beg your pardon its 2009 to 2014, Chair.

20 **ADV MPOFU SC:** Yes 2009 to 2014. President Zuma put you in charge of the Treasury, correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** For the full term, that would be I think the fourth...

**MINISTER GORDHAN:** I beg your pardon?

**CHAIRPERSON:** The question is whether you confirm that from 2009 to 2014 a full term of 5 years that President Zuma had put you, had appointed you as Minister of Finance?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** After that you – in the second term you served another let us say one and half years when you were reappointed by President Zuma again to the Treasury which we have defined as the key component of State  
10 Capture, correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** And between that...[intervene]

**CHAIRPERSON:** Hang on one second Mr Mpofo.

**ADV MPOFU SC:** I'm sorry Chair.

**CHAIRPERSON:** I think you said as the key component.

**ADV MPOFU SC:** A key.

**CHAIRPERSON:** I think it should be a key in terms of what he had said.

**ADV MPOFU SC:** Oh no, no fair enough Chair.

20 **CHAIRPERSON:** Ja, okay.

**ADV MPOFU SC:** Yes, a key and between that re-appointment of yours the person who held the position in that key component was Minister Nene one of the angels, correct?

**MINISTER GORDHAN:** Minister Nene will have been

appointed after the 2014 elections.

**ADV MPOFU SC:** Yes, I'm sorry 2014 elections.

**MINISTER GORDHAN:** Can I finish please; can I finish?

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Ja sorry no I made a mistake, I'm just correcting myself, sorry Mr Gordhan.

**MINISTER GORDHAN:** So Minister Nene was the Chair after the 2014 elections until the 9<sup>th</sup> of December if I recall 2015 then he was summarily dismissed from that  
10 position and then that was followed by Mr Van Rooyen which is referred to as a weekend special and because of the reactions of the market and various concerns the people and the institutions I was approached as my statement says to you in November 2018 on the evening of the 13<sup>th</sup> of December 2015 to take up that position again and where I was requested that just to remind everyone, I said why not Mr Molokethi or Mr Jonas. I didn't accept the position immediately just for the record, thank you.

**ADV MPOFU SC:** No that's true and Mr Zuma said no  
20 those people are not acceptable to me I want you, correct?

**MINISTER GORDHAN:** Correct.

**ADV MPOFU SC:** Yes, now my question is does it make sense to you if President Zuma is supposed to be this kingpin of State Capture and he changes cabinet in order to enable it for him to appoint you for seven of the so-

called nine wasted years, you and Mr Nene to be in charge of the very, of a key component of the State Capture such as Treasury.

Do you think that would make sense to any neutral person observing that – it is like saying somebody wants to rob a bank puts the person at the vault who is most likely to stop the robbery if you get my metaphor, does it make sense?

**MINISTER GORDHAN:** Well it depends Chairperson, have  
10 you concluded Mr Mpofu?

**ADV MPOFU SC:** Yes, yes I'm done.

**MINISTER GORDHAN:** Okay. So Mr Chairperson it depends again on what phenomenon one is looking. So let us take the evidence that you have had before the Commission which I am not familiar with in absolute detail. I did some of it and I think the Director General of the Treasury maybe two Director Generals have done more in that regard. Mr Nene would have done somewhat in that regard as well in relations to the so called nuclear deal.

20 So that didn't take, it didn't originate in the Treasury, it wasn't processed in the Treasury. The first set of figures were introduced in the Treasury, in fact the Treasury as I recall it was excluded from that process and I think you have had details before you in that particular regard and various people put up, various forms of

resistance and some like Mr Nene paid the price for it and that deal as we stand today did not materialise.

So that is one example where you would have different agencies or different government departments engaging in particular activities that are not directly related to the Treasury. They will come to the Treasury when there are fiscal implications or financial implications or authority in terms of Section 54 of the Public Finance Management Act is actually required and then the Treasury  
 10 has in the case of Denel Asia would have a sight of what particular a department is doing and will be then able to respond in that particular regard.

So then your Finance Minister didn't mean that the Finance Minister had total control over everything that happened in government. I supposed if we did have that kind of capacity which we didn't and in law we didn't either, many more so-called deals could have been stopped or interrupted in the process as well but this is all in relation to the Treasury I'm not sure where Mr Moyane fits in.

20 **CHAIRPERSON:** Well the question is whether you think it makes, it made sense for Mr Zuma to appoint you and Mr Nene during the respective, your respective terms as Ministers of Finance during a time when you, when acts of State Capture were happening. I think that is the essence of the question.

**MINISTER GORDHAN:** Let me have them Chair.

**CHAIRPERSON:** In other words...[intervene]

**MINISTER GORDHAN:** It does make sense.

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** It does make sense.

**CHAIRPERSON:** Ja, continue.

**MINISTER GORDHAN:** It make sense because the Finance Minister and the Treasury and together with the Reserve Bank which have also been a target over a period  
10 of time are key institutions that foreign rating agencies, foreign lenders, local lenders and others who are interested in evaluating whether we have a stable investment plan within South Africa would be watching in order to make decisions that would be positive as far as South Africa is concerned. So it is absolutely plausible to have people who would be “respected in the market place” and Mr Van Rooyen’s position for example is a classic example of the opposite in this particular regard.

And for government to be able to borrow in the  
20 early years of 2009/10 when we had a very low deficit and a very low debt GDP level and it helped us to borrow because of the percentages or ratios at that time but increasingly because of the financial crisis the country had to borrow in order to sustain its level off expenditure and 10% of that borrowing maximum happened in foreign

currency and the rest was borrowed in local currency within South Africa's capital markets.

So it makes absolute sense to have people who would have credibility to the project whilst - and this refers to my earlier answer around the Treasury - all sorts of things could be happening, thank you.

**CHAIRPERSON:** Yes, well let me just say this, the two of you have been doing quite well about not talking over each other let us keep it that way I think we are making  
10 progress.

**ADV MPOFU SC:** Thank you Chair but I hope that is not condoning these long unnecessary answers because really that's not the question I asked but that's fine. The consequence would be it is going to take longer. So I'm no longer going to try and get the answers.

So okay now you accept that you said the four-day appointment of Mr Van Rooyen was an attempt again to capture the Treasury, correct?

**MINISTER GORDHAN:** Correct.

20 **ADV MPOFU SC:** Yes, now when that did not work out of all the 57million citizens of South Africa, you had a second choice to go to Treasury and even when you said no why do you not take Mr Jonas and this one President Zuma said no I want you, is that a true reflection what happened?

**MINISTER GORDHAN:** He requested me to take that

position.

**ADV MPOFU SC:** Yes, thank you. Now the only point I was making is and again this is just for comment is that to - I think to a neutral South African you would expect then President Zuma to put somebody there who is pliable and is part of the State Capture project because it would be foolhardy for him to put someone who is going to block his project and that is as you have said he had the sole right to change Ministers. He did not have to consult anyone so  
10 it is from that point of view that I am saying it was strange but if you do not find it strange then we can move on.

**CHAIRPERSON:** Do you want to comment on that proposition Mr Gordhan namely the proposition is that if Mr Zuma wanted to put in somebody who could, who would facilitate State Capture as Minister of Finance that is what he could have done but instead he appointed you and not somebody who would facilitate State Capture and it does not make sense that he put in somebody who would be against State Capture. Mr Mpofu you must tell me if I have  
20 not summarised it correctly.

**ADV MPOFU SC:** No, you have summarised it correctly Chair.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But if I can just can take a liberty Mr Gordhan and just to explain why I'm asking that question.



I'm asking that question in relation to Mr Moyane because you have accused him of - in his State Capture activities one of the motives was to try and remove you from being Minister of Finance and the gist of what I am saying is that that also does not make sense it is actually completely senseless because if Mr Moyane and or Mr Zuma wanted to remove you from being Minister of Finance the President would just remove you and nobody would ask him. So he did not need Mr Moyane's help. You understand your  
10 position you can comment on it?

**MINISTER GORDHAN:** The Chair will decide.

**CHAIRPERSON:** Are you - would you like to comment on that proposition?

**MINISTER GORDHAN:** Yes, because we misunderstanding what we saying.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Mr. Zuma, as a former President did actually appoint someone whose credentials were dubious, Mr Van Rooyen, in the first instance. He did fire  
20 somebody who gave South Africa that credibility, Mr Nene, and it is only the market reaction the fallen rand, the fallen increase borrowing cost for South Africa what happened within the stock exchange and those numbers are all available Chairperson and that was presented to you when I was with you in November 2018.

That shock actually woke everybody up and as a result the former President approached me because in somebody's explanation would then the governing party and elsewhere I would be able to stabilise or assist in stabilising the situation. So that attempt was made if one uses the other institutions as an examples in State owned companies you have evidence before you already I presume you going to get more. In the law enforcement agencies, I presume you going to go into that as well

10 Chairperson.

There are an abundance, abundance of examples of appointees of the top level who would do one kind of bidding or another either for themselves or for some associate or the other in the private sector or within government itself. So the appointment of Mr Moyane at SARS follows a pattern. So we not talking about every institution having the market sensitivity if one can use that terminology that a Treasury or reserve bank would have, other institutions were available for one or the other form

20 of intervention and if one looks at that picture then the proposition is not all that pliable that you only need pliable people within the Treasury. You needed pliable people elsewhere within the government system as well and perhaps equally pliable people in the private sector.

**ADV MPOFU SC:** Yes, thank you well in part of that

answer you said that the appointment of Minister Van Rooyen was or he was a dubious character that is also just an unnecessary insult on somebody. Mr Van Rooyen holds an MSC in finance economic policy and Africa studies from the University of London and a master's degree in public development and management from the University of Witwatersrand. So what makes his appointment dubious and not you, you are just a pharmacist are you not?

**MINISTER GORDHAN:** No, no I am a very humble  
 10 pharmacist and an activist and I do not really need to hide that and history will judge whether I made a valid contribution to the country's growth or not so the country and everybody else could decide. Secondly as far as Mr Van Rooyen is concerned certificates and credibility are two different concepts.

**ADV MPOFU SC:** Yes and while we are still on the question of qualifications. You also appointed your friend Mr Pillay at SARS, correct?

**MINISTER GORDHAN:** He went through a process.

20 **ADV MPOFU SC:** Yes, no I accept that but you appointed him – he does not have any qualifications above matric as well, correct?

**MINISTER GORDHAN:** No, I did not appoint him I was merely the Deputy Commissioner at the time.

**CHAIRPERSON:** Mr Mpofu.

**ADV MPOFU SC:** That is not the question I am asking.

**CHAIRPERSON:** Mr Mpofu I am sorry is the suggestion that to the extent that he may have appointed Mr Pillay with whatever qualifications he Mr Pillay had...[intervene]

**ADV MPOFU SC:** Or did not have.

**CHAIRPERSON:** Or did not have that was part of advancing State Capture or...[intervene]

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Oh is that the proposition?

10 **ADV MPOFU SC:** That is the proposition because okay let me take one step back. You understand that corruption which is State Capture takes many forms. It can be in a position, it can be fraud, it can be appointing your friends, it can be like you did in your current position appointing someone who does not have the qualification, who also then appoints her sister that all that is part of corruption and these are some of the signs of State Capture and these are the things that you, Mr Gordhan, are guilty of or that I am asking or I am outing it to you. But we were just  
20 dealing with the appointment of Mr Pillay the matriculant.

**MINISTER GORDHAN:** So Chairperson this is a real, how can I put it this is really an outcome of an event. So Chairperson...[intervene]

**CHAIRPERSON:** Just hang on Mr Gordhan your Counsel is on her feet.

**ADV LE ROUX:** Yes, Chair if I can just object to this line of questioning. I have listened carefully as my learned friend asked the last few questions.

**CHAIRPERSON:** Ja.

**ADV LE ROUX:** And we do seem to be straying very, very far from the rulings you have given on the permitted scope of this.

**CHAIRPERSON:** Ja.

**ADV LE ROUX:** Mr Pillay's appointment which was years  
10 and years before the period of time that your Commission is scrutinising hardly seems to be useful now, you know we are now heading for six hours of cross examination and I am not sure that it is either compliant with your ruling or actually going to get us to the questions that you have authorised namely the focus on Mr Moyane at SARS for the period of time that he is there many, many years after Mr Pillay.

**CHAIRPERSON:** Well Mr Mpofu I do not know what you want to say...[intervene]

20 **ADV MPOFU SC:** Chair I want to say...[intervene]

**CHAIRPERSON:** Ja. I would like you to use the remaining time quite fruitfully.

**ADV MPOFU SC:** No Chair I was – you know I accept that objection.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** I was saying that the issue was really provoked by the insults to Mr Van Rooyen.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But I was just saying that it is trick coming from somebody like Mr Gordhan.

**CHAIRPERSON:** Let us move on.

**ADV MPOFU SC:** Yes, but...[intervene]

**MINISTER GORDHAN:** Now Chair...[intervene]

**CHAIRPERSON:** Hang on Mr Mpofu and Mr Gordhan. Mr  
10 Gordhan your counsel has raised an objection to the question.

**MINISTER GORDHAN:** That is fine.

**CHAIRPERSON:** Mr Mpofu has accepted the objection so the question falls away. So I think we must move on.

**MINISTER GORDHAN:** But it does not fall away in the public eye Chairperson I need to rebut what Mr Mpofu has said.

**CHAIRPERSON:** Accept that when your counsel Mr Gordhan says this question should not have been asked  
20 and Mr Mpofu says I accept that the public does hear that.

**MINISTER GORDHAN:** No but I thought he also implied Chairperson forgive me for this that I was involved in State Capture. What is that?

**CHAIRPERSON:** But his with – he accepts that he should not have asked that question.

**MINISTER GORDHAN:** Oh okay, thank you.

**CHAIRPERSON:** Let us move on.

**ADV MPOFU SC:** Yes, in fact the only reference to Mr Pillay that is relevant relates to his retirement not his appointment. You do remember that one of the things that you were charged with was a so called early retirement of Mr Pillay, correct?

**MINISTER GORDHAN:** Yes, which was a trumped up charge.

10 **ADV MPOFU SC:** By among others Mr Moyane.

**ADV CHASKALSON SC:** Sorry Chair at this point I want to object because the terms of reference relates to the charge that was laid by Mr Moyane.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** It seems to be common cause now that Mr Moyane did not lay a charge against Mr Gordhan.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** So I am not sure where we going with this.

**ADV MPOFU SC:** Okay you will be sure just now. I explained this in the morning. Mr Gordhan made it very clear that his, the gist of his gripe against Mr Moyane is what he called the complaint that led to the criminal charges.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** In other words Mr Moyane's complaint sparked the criminal charges. Now I am saying one of those charges that were sparked by Mr Moyane related to the Pillay matter, yes or no?

**ADV CHASKALSON SC:** Sorry Chair I need to respond to Mr, that is Mr Mpofu's answer to my objection then with respect it is not good enough because whatever Mr Gordhan's original complaint was this cross-examination  
10 should be bound by the terms of reference set out in your ruling and your ruling does not relate to the charges in respect of Mr Pillay, it relates to national charge laid by Mr Moyane and we now accept that did not happen.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Well Chair again I don't know Mr Chaskalson maybe because he is just standing in for somebody else does not maybe he has not had an opportunity to read your ruling. Your ruling says Chair whether in laying the criminal complaint or charges and I  
20 have said I accept that we excise the words against Mr Gordhan, Mr Moyane did maliciously. Second one whether laying the criminal complaint...[intervene]

**ADV CHASKALSON SC:** Sorry Chairperson that is precisely the point we cannot excise the word against Mr Gordhan because that is what your ruling says.



**ADV MPOFU SC:** No.

**ADV CHASKALSON SC:** If we were going to excise, we now accept that there was not such a charge and whatever allegations Mr Gordhan made in relation to that were in fact ill-informed whether it was his fault or anybody else's fault is not for us to decide here but the issue that has been referred has become a non-issue.

**ADV MPOFU SC:** No, no Chair I am sorry Chair I asked Mr Gordhan the very first set of questions I asked him  
10 when we started here. Was whether he stands by those allegations even if they were excluded him and he said he stands by everything in A, B and C except that there was what we might call a clerical error of including him as one of the people. but to the extent that he was acting maliciously or that he saw to advance the objectives of State Capture or you will remember that debate about was abusing a legal process on his own personal goals that had the marking or little to do with a legitimate complaint relating to an alleged crime that he considered that he  
20 stands by those. So we cannot be bound by...[intervene]

**CHAIRPERSON:** I think I remember him saying that but I think Mr Chaskalson's point is in terms of that ruling there are certain - there are certain issues that I wanted to be dealt with today.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** And in so far as A, B and C is concerned I think what Mr Chaskalson is saying is those points I wanted those points to be dealt with insofar as they related to a charge against Mr Gordhan and once it is accepted that there was no charge against him then the issue that I wanted to be addressed insofar as A, B and C is concerned falls away.

If Mr Gordhan seeks to say well to say now even if they refer to other people I stand by that I think I am not  
10 looking at A, B, C now as we speak but I understand Mr Chaskalson to be saying but what I was interested in was insofar as Mr Moyane was alleged by Mr Gordhan to have laid that charge against Mr Gordhan.

**ADV MPOFU SC:** Ja, no Chair with respect that is unaccepted. With respect Chair firstly that is an artificial distinction and that is exactly why...[intervene]

**CHAIRPERSON:** Does A, B, C say Mr Gordhan, does it say Mr Gordhan and others?

**ADV MPOFU SC:** No Chair you know the record will show  
20 you that the first thing I did when I stood up here.

**CHAIRPERSON:** No I remember that part.

**ADV MPOFU SC:** Was that to say to Mr Gordhan do you still accuse Mr Moyane of these things in other words accepting that now the charges were not against you and that was because Mr...[intervene]

**CHAIRPERSON:** No, no I remember that.

**ADV MPOFU SC:** Sorry.

**CHAIRPERSON:** Okay things fall apart.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** That part I do remember you asking him and him confirming.

**ADV MPOFU SC:** Yes but that was because Mr Chaskalson of all people had said to him that the complaint related to, his complaint that Mr Moyane's that led to the  
10 charges and that is why I said to him if we accept that formulation do you stand by these accusations of State Capture even if we accept that you were not the person and he said yes. I did that deliberately to avoid this debate because if he had said no I do not accept that Mr Moyane was motivated by State Capture and all that I only accepted it if it was the charge against me. Then I would not be able to answer this questions but we are all bound by the answer that he gave which is...[intervene]

**CHAIRPERSON:** Can we park this question like the other  
20 one and then you exhaust others and then we can come back later on.

**ADV MPOFU SC:** Yes, Chair.

**ADV CHASKALSON SC:** Sorry Chair I just want to speak about a technical issue I am told that after the fall of the mic they may no longer be recording.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Can we take a technical two minute break just to check if it is.

**CHAIRPERSON:** Okay, alright.

**ADV MPOFU SC:** Thanks, Chair.

**CHAIRPERSON:** We take a five-minute adjournment to see whether everything would still be recorded if we continue.

**ADV MPOFU SC:** Yes, thank you.

10 **CHAIRPERSON:** We adjourn

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay we are at six o'clock. Before we adjourned I take it that the recording is fine.

**ADV MPOFU SC:** Yes it was fine Chair.

**CHAIRPERSON:** Yes. Before we adjourned I had asked whether if this question raises problems whether we cannot park it like the other one so that you use the time until we see towards the end.

20 **ADV MPOFU SC:** Chair I am sorry, I am sorry.

**CHAIRPERSON:** Yes. Yes you want to respond to that?

**ADV MPOFU SC:** Yes sorry Chair [00:00:36] I am sorry.

**CHAIRPERSON:** Alright.

**ADV MPOFU SC:** No Chair I wanted to say no this one I am afraid cannot be treated like that because this is quite a

crucial part as Mr Gordhan himself says you know what – what was out there in public domain that Mr Moyane laid the charges against anyone as I [00:01:01] with him with – for the purposes of

**CHAIRPERSON:** State capture.

**ADV MPOFU SC:** Advancing state capture. And I am afraid this is not one of those.

**CHAIRPERSON:** Let me ...

**ADV MPOFU SC:** Let me just explain Chair?

10 **CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Chair if you – if you go to the – the – okay put it this way. We know that the complaint was laid on a particular date and it said various things. According to Mr Gordhan that complaint led to the charges against him. So irrespective of whether his name literally was on that list but it is what led to the charges against him and that is the gist of his complaint. So it is very artificial to now try and dissect the minutia of the gist of the complaint. And the issue Chair is made very clear.

20 **CHAIRPERSON:** And just remind me again what the question was?

**ADV MPOFU SC:** Yes the question Chair was – oh you mean the one that I was asking now?

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Yes. It was – I had said Chair that I

concede that the objection about the appointment of Mr Pillay is valid.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** The issue that is relevant to the complaints that led to the charges.

**CHAIRPERSON:** Is the laying of the complaint?

**ADV MPOFU SC:** Yes is the – no is this retirement rather than his appointment.

**CHAIRPERSON:** Ja.

10 **ADV MPOFU SC:** Because the question of the retirement as you know Chair the so called early retirement was the – was one of the charges or part of the so called 27 questions which really is the gist of this entire cross-examination.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** So if we...

**CHAIRPERSON:** Just go back to the actual question about the retirement I just want to ...

**ADV MPOFU SC:** Yes okay Chair.

**CHAIRPERSON:** Ja.

20 **ADV MPOFU SC:** Maybe let me just address the Chair.

**CHAIRPERSON:** So that I can follow its relevance and so on ja.

**ADV MPOFU SC:** Just to give context. Chair if – if – let us two things. One is we accept Mr Chaskalson and later confirmed by Mr Gordhan's answer when I asked him that

really his issue was not so much who is charged or whatever. What he is saying is that the complaint laid by Mr Moyane led to him being charged. Okay that is – that is his evidence. It cannot be changed. So it could have been that Mr Moyane alleged that I stole his pen but if that alleging that I stole the pen led to Mr Gordhan being charged that is the – that is the gist of what he says. He says that complaint was motivated by state capture and that is what led to him being charged. So that is really the gist of this  
10 whole – entire exercise which is that Mr Moyane's activities of any nature including the laying of the charges led to Mr...

a. Led to Mr Gordhan's – being charged but

b. That was motivated by state capture.

**CHAIRPERSON:** Is – is what you are pursuing this that Mr Gordhan said if that is what he said in the morning that the laying of those charges by Mr Moyane irrespective of – despite the fact that it was not against him was in pursuit of the agenda of state capture.

**ADV MPOFU SC:** Advance the objectives of state capture –  
20 number 1.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** That he acted maliciously in doing that –  
number 2.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** And he was abusing a legal process for

his own personal goals.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** That had either nothing or little to do with the legitimate complaint relating to an alleged crime.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** And that is the – what I am addressing to say Mr Moyane and laying those charges he was addressing a – the [00:05:007]

**CHAIRPERSON:** A legitimate court issue.

10 **ADV MPOFU SC:** A complaint relating to an [00:05:09].

**CHAIRPERSON:** And that complaint relates to the retirement of Mr Pillay?

**ADV MPOFU SC:** Yes. Okay Chair it is even more complicated.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** The complaint at least I think Mr Gordhan explained this in 2018. The complaint and I have a copy here.

**CHAIRPERSON:** That was made ja.

20 **ADV MPOFU SC:** Yes there were two components of what Mr Gordhan was charged with.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Which was part of the so called 27 questions. One was the rogue unit which I am going to deal with.



**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And then the other one was the ...

**CHAIRPERSON:** Retirement.

**ADV MPOFU SC:** Early retirement. However Chair the complaint itself if you actually look at the statement physically it relates to the rogue unit but as Mr Gordhan said in one of his testimonies what has obviously then happened is that the Hawks ...

**CHAIRPERSON:** Came across?

10 **ADV MPOFU SC:** Yes expanded the scope.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But that – all that does not change the fact that it was all sparked by Mr Moyane's so called state capture complaint – state capture driven complaint so to speak.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Now Chair it is just an informal [00:05:21] comes in. The Chair you said at paragraph 28 no, no paragraph 28 is the ruling. The – sorry Chair I will just find  
20 the passage where you say you use the words...

**CHAIRPERSON:** You said to the extent?

**ADV MPOFU SC:** Yes. At paragraph 15 of your ruling you say Chair.

“Mr Gordhan also stated that his statement that Mr Moyane abused legal processes when he laid a complaint – a

complaint against him is based on his experience of Mr Moyane's defiant attitude and vilification of me following my reappointment as Minister of Finance."

So that is another link. Then he says:

"Mr Gordhan" –

You say Chair sorry.

"Mr Gordhan then states that he believes that Mr Moyane's defiant attitude and – sorry – and vilification were aimed at forcing or pressuring him to resign from that position so that  
10 the capture of National Treasury could proceed under a different Minister."

But the important part Chair is where the Chair says:

"He then says that in the following paragraph and that is on page 6 that 'this included' he used the word 'included' the filing of his criminal complaint against me in circumstances that Justice Nugent found 'unclear' and which were later withdrawn this [00:08:00] so the removal of many senior SARS officials creating the opportunity for Mr Moyane to appoint a new senior management at SARS and so on."

20 So these things are – sorry – are so inter-related that ...

**CHAIRPERSON:** But you want to ask Mr Gordhan questions with regard to...

**ADV MPOFU SC:** The charges.

**CHAIRPERSON:** The complaint that was laid by Mr Moyane.

**ADV MPOFU SC:** Which led to the charges.

**CHAIRPERSON:** Which you say led to at least one of the charges that related to Mr Pillay's retirement?

**ADV MPOFU SC:** Correct.

**CHAIRPERSON:** Alright. Okay alright.

**ADV MPOFU SC:** Thank you.

**CHAIRPERSON:** Let me hear Ms Le Roux.

**ADV MPOFU SC:** Thank you Chair.

**ADV LE ROUX:** Chair after all of that I am not sure where we are?

10 **CHAIRPERSON:** Yes well at least now my understanding is that Mr Mpofo wishes to ask Mr Gordhan questions about the fact that Mr Moyane laid a criminal complaint during whose investigation the Hawks came across the retirement issue of Mr Pillay. That is what he says?

**ADV LE ROUX:** Yes.

**CHAIRPERSON:** Okay.

**ADV LE ROUX:** So Chair let me just state for the record the facts as they stand in the affidavits that were filed with respect to cross-examination and as I have understood the  
20 cross-examination so far.

Mr Gordhan accepts that Mr Moyane did not name him in the complaint. That the complaint is about the unit and that the Hawks investigation produced 27 questions – 27 questions dealt with unit and pension. The charges announced by Sean Abrahams are pension related.

When my learned friend though says he now wants to ask questions about Pillay pension I object to that because that does not relate to what you have granted to cross-examine on. Because Pillay pension on both parties versions now that we have seen the documents when they were attached to Mr Moyane's January 2020 affidavit the first time we ever saw what he filed with his complaint.

It is now common cause that it does not mention Pillay pension. So I am concerned that we are going to  
10 waste time on the merits of Pillay pension's pay-out.

**CHAIRPERSON:** So you are saying if Mr Mpofu wishes to ask questions about charges or a charge that emanated or arose from Mr Moyane's complaint that he laid it is one thing. But if he wants to ask questions about the Pillay pension...

**ADV LE ROUX:** The merits.

**CHAIRPERSON:** That did not arise from the complaint.

**ADV LE ROUX:** No Chair it obviously did because of how the Hawks investigated it.

20 **CHAIRPERSON:** No when I say arise I mean...

**ADV LE ROUX:** If Mr Gordhan...

**CHAIRPERSON:** When I – maybe arise is the wrong word. The complaint that Mr Moyane had laid did not include any complaint about the pension.

**ADV LE ROUX:** Yes so you have given me on why Mr

Moyane laying a complaint.

**CHAIRPERSON:** Yes.

**ADV LE ROUX:** About rogue unit.

**CHAIRPERSON:** Yes.

**ADV LE ROUX:** Causes Minister Gordhan to say to advance state capture.

**CHAIRPERSON:** Ja.

**ADV LE ROUX:** That whole debacle.

**CHAIRPERSON:** Yes.

10 **ADV LE ROUX:** Pillay pension only comes up from the Hawks and from when Mr – when Advocate Abrahams announced and then withdrew the charges.

**CHAIRPERSON:** Yes.

**ADV LE ROUX:** So I do not see how Pillay pension can fit into a Moyane/Gordhan cross-examination.

**CHAIRPERSON:** Effectively what you are saying is there is no connection between – there is no connection between the fact that Mr Moyane laid the complaint that he laid and the fact that later on one of the charges included was a charge  
20 which was not included in the complaint/

**ADV LE ROUX:** Yes there is no connection for purposes of this cross-examination.

**CHAIRPERSON:** Yes ja.

**ADV LE ROUX:** To go into that migration by the Hawks and the NPA.

**CHAIRPERSON:** It might show that – it might be referred to; to support an allegation that the Hawks added that charge for state capture but you are saying it cannot be said.

**ADV LE ROUX:** But that is not what it...

**CHAIRPERSON:** That Mr Moyane who is responsible for its inclusion in among the charges that were ultimately brought.

**ADV LE ROUX:** Yes.

**CHAIRPERSON:** That is what you are saying?

**ADV LE ROUX:** Yes.

10 **CHAIRPERSON:** Ja.

**ADV LE ROUX:** Because we do not by now the sixth hour of today.

**CHAIRPERSON:** Ja.

**ADV LE ROUX:** We do not have any connection to use that word between Mr Moyane and the charges other than it is the same case number from the complaint he files about unit against other people. So I do not want us to waste time on the merits of charges.

**CHAIRPERSON:** Ja.

20 **ADV LE ROUX:** About Pillay pension where what the subject of this cross-examination is the complaint Mr Moyane filed about unit.

**CHAIRPERSON:** Okay no that is alright. Mr – I am sorry Mr Chaskalson?

**ADV CHASKALSON SC:** Chair I want to go even further

possibly because I want to get home tonight.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** Your ruling falls to be interrupted as any written document in accordance with its ordinary meaning and where the ambit of cross-examination that is allowed is – relates to three issues. Whether in laying the criminal complaint or charges against Mr Gordhan. All of them are prefaced with laying the criminal complaint or charges against Mr Gordhan.

10           Now it is common cause that that did not happen. So unless – I know that Mr Gordhan suggests that laying the charges against the rogue unit which were not charges against him may have had something to do with state capture.

          But unless this ruling is amplified to embrace then I think two things follow. The one is that no cross-examination on the issue can take place.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** And the second is that the  
20   commission or the evidence leaders cannot suggest to you that that is a relevant issue in relation to Mr Moyane's liability or non-liability for involvement in state capture because it will not have been an issue that is canvassed.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** If we are going to broaden it.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** To make it an issue that is canvassed it is a different story but until that happens.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** It is not an issue on which we have...

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** We will suggest or we could ever suggest that Mr Moyane had ever been at fault.

10 **CHAIRPERSON:** Yes I think I must – I must – I understand completely what Mr Mpofu said and what Ms Le Roux and yourself Mr Chaskalson have said now I want to know the question that Mr Mpofu wanted to put to Mr Gordhan because then in the light of what everyone has said I can see whether it is something we should go into or not.

**ADV MPOFU SC:** Yes. Thank you Chair. Chair really all I am saying is Mr Chaskalson correctly says that the – unless if the ruling is amplified as he calls it but the ruling was amplified by the witness. Because I asked him do you even  
20 though – even though that you accept that the charges were not laid against you? Do you stand by the rest of the accusation? Remember Chair we are not – this is not a game – a little game.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Of one word here or one word there.



**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** The gist of the accusation is that it is one continue on. Remember the evidence of the witness is that there is a conspiracy.

**CHAIRPERSON:** Mr Mpofu let us...

**ADV MPOFU SC:** With the NPA and so on.

**CHAIRPERSON:** Let us – let me hear formally the question you want to put to him.

**ADV MPOFU SC:** Yes Chair can I make another proposal?

10 **CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Yes just for the sake of progress. The – the – I am – I will come back to this to this question. So what I will do is I will start with the issue of the rogue unit which was the subject matter of the complaint and then we can come back to whether the Pillay issue can also be covered.

**CHAIRPERSON:** Okay alright. We can do that we are at sixteen minutes past six that I think means you have had – is your watch – does your – what does your watch say it does?

20 **ADV MPOFU SC:** My watch says well we started around about twelve and then we had ...

**CHAIRPERSON:** I think you have had six hours at least?

**ADV MPOFU SC:** No.

**CHAIRPERSON:** How much have you had?

**ADV MPOFU SC:** I am – unless if we had started at ten. It

is six now.

**CHAIRPERSON:** Well my watch says seventeen minutes past six.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Does yours say six?

**ADV MPOFU SC:** Six that is what I am – ja eighteen something.

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** The – so I am saying we started around  
10 about

**CHAIRPERSON:** Quarter past .

**ADV MPOFU SC:** Twelve – quarter past twelve and we had a one hour break.

**CHAIRPERSON:** No we started at half past eleven.

**ADV MPOFU SC:** No that was Mr Chaskalson.

**CHAIRPERSON:** Oh you mean yourself. Ja you started at...

**ADV MPOFU SC:** Ja, no when I say we I mean myself.

**CHAIRPERSON:** Ja yes ja okay no, no. What time was it?

**ADV MPOFU SC:** About quarter past twelve.

20 **CHAIRPERSON:** Quarter past twelve.

**ADV MPOFU SC:** Yes I do not want to mislead. And so let us say for argument sake take away the ...

**CHAIRPERSON:** Because I have compensated...

**ADV MPOFU SC:** Let us take away the break – the one hour break and take away the other small breaks then we can say

we started at half past one – let us say.

**CHAIRPERSON:** Well we – we did not count – I did not count the lunch break.

**ADV MPOFU SC:** The hour.

**CHAIRPERSON:** And whenever we had a break I added.

**ADV MPOFU SC:** No, no Chair I accept that.

[talking over one another]

**CHAIRPERSON:** Yes you accept that ja.

**ADV MPOFU SC:** Because the reality is that the time now is  
10 twenty past six.

**CHAIRPERSON:** Yes, yes.

**ADV MPOFU SC:** So I am saying if you – if you take away the one hour break from the twenty past six then you have – okay let us say it is quarter past six to make it easy.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** That would be six hours from quarter past twelve from when we started.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Then minus the one hour lunch.

20 **CHAIRPERSON:** Lunch.

**ADV MPOFU SC:** That is five hours.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And then minus the short breaks let us say they all total to – then it is about four – four and a half.

**CHAIRPERSON:** Okay I do not know [00:18:56] but I think

you...

**ADV MPOFU SC:** That all starts at...

**CHAIRPERSON:** But I think you – Ms Le Roux what is your understanding of how much time we have had? I just want us to be on the same page more or less.

**ADV LE ROUX:** Yes Chair it obviously feels much longer but it is probably about five [00:19:15] hours.

**CHAIRPERSON:** About five hours.

**ADV LE ROUX:** That we have used.

10 **CHAIRPERSON:** Okay alright.

**ADV LE ROUX:** But it feels longer.

**CHAIRPERSON:** Okay Mr Chaskalson do you also say about five hours?

ADV CHASKALSON SC: I am happy to go with everybody else's arithmetic Chair.

**CHAIRPERSON:** Okay alright.

**ADV MPOFU SC:** Well it is not about five hours Chair unless if you take away all the short breaks. It is five hours if you take away only the lunch break. So let us be clear. We  
20 cannot – it is impossible for it be five hours unless if we did not have those other short breaks.

**CHAIRPERSON:** Well if somebody – if we started at quarter past.

**ADV MPOFU SC:** Is we started at quarter past twelve.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And we came up to quarter past 6 it is 6 hours very simple thing – then it is six hours. Right.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** But accept that we took...

**CHAIRPERSON:** A lunch hour.

**ADV MPOFU SC:** A one hour break.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** One hour and a few minutes.

**CHAIRPERSON:** Ja.

10 **ADV MPOFU SC:** But that is fine.

**CHAIRPERSON:** So you say it...

**ADV MPOFU SC:** For lunch time. Then all the other breaks then subtract from the five so how can it be the five it is impossible.

**CHAIRPERSON:** Oh you say – you say it would be what?

**ADV MPOFU SC:** Four and a half hours.

**CHAIRPERSON:** The breaks ...

**ADV MPOFU SC:** I am rounding them off. The breaks and the over ...

20 **CHAIRPERSON:** It will be then – if on that approach it would be four hours.

**ADV MPOFU SC:** And a bit.

**CHAIRPERSON:** Either eight minutes or fifteen minutes or something like that

**ADV MPOFU SC:** Yes. So on four and fifteen minutes or

four and thirty I am happy to live with four and thirty.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** But I am raising that so that we can talk about the way forward.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** No Chair I accept that.

**CHAIRPERSON:** Yes. At this stage

10 **ADV MPOFU SC:** At least...

**CHAIRPERSON:** What is your assessment of how much more time you are going ...

**ADV MPOFU SC:** I am sorry Chair during the break I have got news. One thing I can assure you is that we are not going to finish today. Or at least I am not going to finish today.

**CHAIRPERSON:** Ja, ja.

**ADV MPOFU SC:** But I thought Chair we – I could – because of these other parked things including the one we  
20 have just debated.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** So I thought I could start with this topic because depending on the arrears and the other issues.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** This – this could be my last long topic.

So I thought at least I could start with it.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And see well depending on everybody.

**CHAIRPERSON:** What is your assessment of how long that topic might take?

**ADV MPOFU SC:** Chair you know despite what I have said I have been standing here since twelve fifteen. The – my assessment Chair – well depending of course on the answers.

10 **CHAIRPERSON:** Ja it depends on everything else ja.

**ADV MPOFU SC:** We could finish with that topic at seven maybe.

**CHAIRPERSON:** That is an hour and a half.

**ADV MPOFU SC:** No that is twenty minutes.

**CHAIRPERSON:** Oh I am sorry – that is yes – ja no, no I am wrong.

**ADV MPOFU SC:** That is forty minutes.

**CHAIRPERSON:** About forty minutes' time?

**ADV MPOFU SC:** Thirty nine now.

20 **CHAIRPERSON:** Ja forty minutes time. And then after – after that topic has been done would you be left with the two questions that have been parked or with another topic or other topics?

**ADV MPOFU SC:** I will be left with bits and pieces Chair but – and then with the – this other topic.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** The one we are debating now.

**CHAIRPERSON:** Whatever would be left you are – you think would take how much after you have done with a topic/topics?

**ADV MPOFU SC:** Chair please do not ask me.

**CHAIRPERSON:** I mean I am not going to hold you to the minute.

**ADV MPOFU SC:** No, no.

10 **CHAIRPERSON:** But I just want to have an idea?

**ADV MPOFU SC:** Can I just have a minute Chair?

**CHAIRPERSON:** Ja. Ja, ja.

**ADV MPOFU SC:** I think – I think an hour and a half Chair.

**CHAIRPERSON:** Well somewhere I might have to say this is all I am giving you.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Make the best out of it.

**ADV MPOFU SC:** Well Chair I hope we do not get there.

**CHAIRPERSON:** No, no I hope we do not get there.

20 **ADV MPOFU SC:** No I hope we do not get there  
Chairperson.

**CHAIRPERSON:** Because we should try and ...

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** But let me check maybe we could go up to seven and see if you cover that big topic if everybody agrees



because at this stage we have got to make – decide whether we continue for some time or whether we just adjourn for another – another day.

**ADV MPOFU SC:** Yes. Okay Chair I have another proposal.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Ready. I have – I have what one might call a – no because this is – I was going to call it a sub-topic but it is related to the main topic

**CHAIRPERSON:** Ja – yes, yes.

- 10 **ADV MPOFU SC:** Because I thought I – I could – I can try and do the sub-topic and then leave out the rogue unit issue.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** Completely.

**CHAIRPERSON:** Yes. Okay...

**ADV MPOFU SC:** Because if and when we come back then Chair and I am just trying to project for what I will certainly be left with either that topic.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Plus this one.

- 20 **CHAIRPERSON:** Ja.

**ADV MPOFU SC:** And of course depending on the ruling.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** It could be one or two or both yes.

**CHAIRPERSON:** Ja okay, okay.

**ADV MPOFU SC:** Thank you. Let me try and do that Chair.

**CHAIRPERSON:** Ja but let me just check where Ms Le Roux in terms of us going on this evening up to maybe seven to finish a particular topic and then adjourning or adjourning now where do you stand?

**ADV LE ROUX:** Chair.

**CHAIRPERSON:** We will all want it to finish today.

**ADV LE ROUX:** Chair I stand on the proposition that this cross-examination will fill as much time as you give it. At some point we are going to have to say no more.

10 **CHAIRPERSON:** Ja. Ja.

**ADV LE ROUX:** So I am certainly in your hands I am not sure if Minister Gordhan has any commitments tonight?

**CHAIRPERSON:** Ja I am going to check with him.

**ADV LE ROUX:** But I – we are – I am in your hands but we will at some point have to say no more time.

**CHAIRPERSON:** You have flexibility. Ja, ja. Okay alright. Mr Chaskalson do you want to say something?

**ADV CHASKALSON SC:** Chair I am neutral on this one.

**CHAIRPERSON:** Yes. Mr Gordhan what is your situation?

20 One option is that we might continue maybe up to seven and see how far Mr Mpofu goes with what he calls the big topic or other topics and then we adjourn to another date when he might then finish and then there would be a re-examination. How is your situation starting with going on until sevenish or there about?

**MINISTER GORDHAN:** So Chair we group of Ministers had a meeting at Nedlac at about six so I have missed that already on a very important topic. We could well continue until seven but I think that we have got to if I may respectfully say so not go perambulation I mean there are specific rulings that you have given. My – I think the counsel has argued that particular point and we cannot just have additions to the issues willy nilly. So under your guidance seven – seven fifteen is fine for me and we must get over with this. Thank

10 you.

**CHAIRPERSON:** Let us continue then Mr Mpofu and then maybe we will stop at seven.

**ADV MPOFU SC:** Thank you Chair. Well Chair I have just received instructions of which of the – as I said the main topic and the sub-topic. Unfortunately it looks like I have to start with the main topic and as the Chair says we will see how far we go.

**CHAIRPERSON:** Ja okay.

**ADV MPOFU SC:** Thank you. Mr Gordhan you – you – Mr  
20 Moyane's complaint which you say was motivated by state capture and all the conspiracy and so on with the NPA and the Hawks. The – before it was expanded you heard the debate that we had. Before it was expanded to deal with the Pillay retirement it was based on the rogue unit allegations. You agree with that?

**MINISTER GORDHAN:** From what I have read Chair it was in relation to what I call the investigative unit at SARS yes.

**ADV MPOFU SC:** Yes okay sorry I do not want us to fight about terminology. Your evidence is that the – the – that unit I will try to be as neutral as possible. Some people call it the rogue unit others call it the so called rogue unit but according to you it was called the Special Projects Unit when it was formed and then later it was called the National Research Group and then when you left it was called the  
10 High Risk Investigation Unit that is the same unit we are talking about?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes thank you. So as I say when I say rogue unit please do not take it as if I am being provocative. So I will try to use – just say the unit wherever I can. Okay. Now this is a very important issue because it deals with – at least it deals with the uncontroversial part of the Chair's ruling namely that the –the laying of the charges around the rogue unit was either motivated by state capture or it was  
20 what a reasonable person in Mr Moyane's position would have done putting aside the question of Mr Pillay. But it is also important because as you know this is a matter of general concern about – among South Africans there is a whole lot of contestation I think is the only neutral word I can think of now about the existence of the rogue unit in the first

place and secondly the lawfulness thereof. Would you agree with that summary?

**MINISTER GORDHAN:** I am not sure what is the question. Are you asking me to agree to what sorry?

**ADV MPOFU SC:** The question is would you agree with that summary? What are you not sure of?

**CHAIRPERSON:** Just [talking over one another].

**MINISTER GORDHAN:** In terms of the issue...

**CHAIRPERSON:** Just mention the summary again.

10 **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Or better proposition you...[intervenes]

**ADV MPOFU SC:** Yes, Chair. I was saying, it is important. It is two-fold. One, is the one that I have explained in that it will demarcate the real issue in this cross-examination, which is whether Mr Moyane in laying the charges was motivated by State Capture motive. Let us call it that. Which is your version.

Or that he was motivated by what any reasonable Commission of SARS faced with – with what he was faced  
20 with, would have done. So I said that is the first importance.

Then I said, the other importance is a more general importance which goes beyond you and Mr Moyane, which is that – this is the question that is of concern to South Africans. And there is a lot contestation about it.

And the third proposition is that that contestation

revolves mainly around two things. One, the existence of the unit. And secondly, it should exist its lawfulness. I know it is a long summary.

**CHAIRPERSON:** It is better... I was about to say, why do you not put each one.

**ADV MPOFU SC:** Okay.

**CHAIRPERSON:** And let him deal with each one. Ja, ja.

**ADV MPOFU SC:** Okay. But I am trying to save time.

**CHAIRPERSON:** Ja, ja.

10 **ADV MPOFU SC:** Do you accept that there is general interest in the activities, legal or otherwise, of the Rogue Unit amongst South Africans?

**MINISTER GORDHAN:** But I do not know about the generalisation Chair. If I can be helpful. The issues that Mr Mpofo raises. A, it is about lawfulness. B, there are the charges where it related to State Capture.

**CHAIRPERSON:** Hang on Mr Gordhan. I have just asked him to deal with one at a time because it can be confusing if there are too many propositions put at the same time.

20 **ADV MPOFU SC:** Yes. No, that ...[intervenes]

**CHAIRPERSON:** The first one that he has put to you is this one. He says. Do you agree that there is a general public interest or interest from the public in the activities of the unit? Whether those activities were legal or not legal, do you agree that generally speaking, the public is interested in

what that unit used to do?

**MINISTER GORDHAN:** Well, Chair what I will say to that proposition is that the real interest is, why was there so much fake news around this unit? Why were leaks taking place to the Sunday Times from SARS at various stage?

And why, when in the face of an opinion from Advocate Mefengo(?) and Khumalo dated the 1<sup>st</sup> of September 2015, in the possession of Mr Moyane, this narrative still continues?

So the concern, really, as I would formulate it, is why is  
10 there this repeated reference to the so-called rogue element?

And all the suggestions about rogue behaviour, perhaps except one, which is questionable, have been this proof. There has been – the issue of evidence have been ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** Hang on, hang on, hang on. We do not make progress when you do not answer the question that is asked. We make progress if you answer the question  
20 because then Mr Mpofu can move on to the next question.

His question was simply whether you accept the proposition that the public, generally, is interested in knowing about the activities of that unit, whether those activities were legal or not legal. Do you ...[intervenes]

**MINISTER GORDHAN:** No, I would not accept the

proposition.

**CHAIRPERSON**: You do not accept the proposition?

**MINISTER GORDHAN**: No.

**CHAIRPERSON**: Alright. Mr Mpofu.

**ADV MPOFU SC**: I am ...[intervenes]

**CHAIRPERSON**: Ja, Mr Gordhan does not accept the proposition that ...[intervenes]

**ADV MPOFU SC**: Yes, that the public has an interest in the rogue...

10 **CHAIRPERSON**: Yes.

**ADV MPOFU SC**: No, that is fine.

**CHAIRPERSON**: Yes. H'm.

**ADV MPOFU SC**: Chair, if I may? I apologise. My junior was just assisting me with something.

**CHAIRPERSON**: Yes.

**ADV MPOFU SC**: Just... You remember there was a debate when Mr Gordhan denied that he had used the word gossip?

**CHAIRPERSON**: Yes.

**ADV MPOFU SC**: Earlier on.

20 **CHAIRPERSON**: Yes.

**ADV MPOFU SC**: My team has checked the transcript. He did use that word.

**CHAIRPERSON**: H'm.

**ADV MPOFU SC**: So I thought something was playing with my ears.



**CHAIRPERSON:** Yes, okay.

**ADV MPOFU SC:** But anyway. That is maybe a matter of ...[intervenes]

**CHAIRPERSON:** Okay, I think... Ja. Mr Gordhan and his counsel can check as well.

**ADV MPOFU SC:** They can note it, yes.

**CHAIRPERSON:** Ja. Okay alright.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Mr Mpofu.

10 **ADV MPOFU SC:** Okay. Did you hear that Mr Gordhan, that you did say you relied on gossip? Can you deny it?

**MINISTER GORDHAN:** I hear what you are saying. But let us get back to the issue.

**ADV MPOFU SC:** No, that is the issue now. You – do you accept that you lied when you said that you did not use the word gossip?

**MINISTER GORDHAN:** I did not lie. I might have been mistaken. And if there is proof of that in the transcript, I will concede that.

20 **ADV MPOFU SC:** Thank you. Alright. Now... Okay ...[intervenes]

**MINISTER GORDHAN:** I do not have any reason Chairperson to lie.

**CHAIRPERSON:** H'm.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** Well, that is what they all say.

**CHAIRPERSON:** H'm.

**MINISTER GORDHAN:** Indeed.

**ADV MPOFU SC:** So... The... Okay the next proposition then was. Insofar as anybody is interested in the – or at least, it has been, as you say information and misinformation and you are quite correct, around the issue of the unit.

But do you agree with my second proposition that  
10 information, misinformation, even propaganda, I would go as far. These were two topics, namely the existence of the unit and if it is existed, its lawfulness.

**CHAIRPERSON:** I am sorry Mr Mpofu ...[intervenes]

**MINISTER GORDHAN:** Yes?

**CHAIRPERSON:** Hang on. I am not sure about the propaganda and whatever ...[intervenes]

**ADV MPOFU SC:** Ja, okay let ...[intervenes]

[Parties intervening each other – unclear]

**ADV MPOFU SC:** ...misinformation.

20 **CHAIRPERSON:** Ja,

**ADV MPOFU SC:** I will stick with the words of the witness. Ja, he says correctly that there had been a lot of information and misinformation.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** I do not have to add propaganda.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** So I am saying, as far as that information and misinformation, does he accept that it deals broadly with those two topics? In other words, existence and lawfulness.

**CHAIRPERSON:** Oh, okay alright.

**ADV MPOFU SC:** Thank you, Chair.

**CHAIRPERSON:** So your answer Mr Gordhan was yes?

**MINISTER GORDHAN:** Yes.

**CHAIRPERSON:** Ja, okay.

10 **ADV MPOFU SC:** Yes. So the – you – the unit did exist.  
Let us put that to bed once and for all. Correct?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** And you, Mr Gordhan played a major part in its formation.

**MINISTER GORDHAN:** No. I played a part in requesting  
Chairperson the then Minister of Finance to approve certain  
funding for a unit where the National Intelligence Agency, as  
they were called then, and SARS could cooperate on issues  
like the smuggling of cigarettes, abalone and other forms of  
20 illicit trade. That did not work out, as I have explained in my  
statement of November 2018.

Secondly, the threat of illicit trade exist today in South  
Africa very seriously, particularly those who smuggles  
cigarettes and making a lot of money out of it, which has  
happened under the pandemic. And ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** I am sorry. Is that connected with the unit?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** I am simply asking if it ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Okay. I am sorry Mr Gordhan.

**CHAIRPERSON:** What you are simply asking Mr Mpofu?

**ADV MPOFU SC:** Yes, whether – and I use the word large.

10 I am withdrawing it.

**CHAIRPERSON:** Oh, the ...[intervenes]

**ADV MPOFU SC:** I am saying whether you practise pressure(?) in the decision to establish the unit.

**CHAIRPERSON:** Oh, okay alright. Not the details whatsoever?

**ADV MPOFU SC:** Ja, the pandemic.

**CHAIRPERSON:** Okay. So I think Mr Mpofu says, all he is interested in at this stage is whether you played a large part ...[intervenes]

20 **ADV MPOFU SC:** No, I am doing away with large ...[intervenes]

**CHAIRPERSON:** No, not the large party?

**ADV MPOFU SC:** Ja.

**CHAIRPERSON:** You played ...[intervenes]

**ADV MPOFU SC:** Ja, whether you participated in the

decision to establish the unit.

**CHAIRPERSON:** You participated in the decision to establish the unit.

**MINISTER GORDHAN:** So Chairperson, be patient with me. You see he inter-uses the words like large. I begin to answer the question on the basis of the word large. Then the word is withdrawn and then I am accused of all sorts of things.

**ADV MPOFU SC:** No ...[intervenes]

10 **MINISTER GORDHAN:** So let me conduct the question ...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** Hang on Mr Gordhan.

**MINISTER GORDHAN:** Can I finish please Chairperson?  
Can I finish to the answer to a question ...[intervenes]

**CHAIRPERSON:** Before you proceed Mr Gordhan.

**MINISTER GORDHAN:** Chair?

**CHAIRPERSON:** I just want to say. I think Mr Mpofu, when he withdraws the word large, he tries – he is trying to say  
20 something that you are likely... Or rather, he is trying to reach a point where the two of you will meet because if he says large, you might: I played some part but it was not large.

So at least, he just wants to see whether you will say: Yes, I played some part. Whether you call it large or small,

let us not get into that but I played some part.

That is what - he is trying to avoid arguments about whether it was a large part or not a large part.

**MINISTER GORDHAN:** Happily Chairperson.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** So with respect. It started with the word large.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** The word is out. And the question  
10 is: Did I participate? Yes

**CHAIRPERSON:** Yes, okay alright. Thank you. Mr Mpofu.

**ADV MPOFU SC:** Ja. Thank you. Thank you Chair for your assistance. And you participated in the decision to establish the unit and when you did so it was in February 2007.

**MINISTER GORDHAN:** I cannot remember the dates  
Chairperson.

**ADV MPOFU SC:** Well, you said it was done in 2007 when you were answering the 27 questions. Does that help you?

**MINISTER GORDHAN:** Thank you for alerting me now.

20 **ADV MPOFU SC:** So you accept that you participated in the decision to establish the unit in February 2007?

**MINISTER GORDHAN:** Chairperson, if it appears in the answer to the 27 questions, I accept it. The only point I am making.

**CHAIRPERSON:** Yes?

**MINISTER GORDHAN:** Is that I cannot remember all of those dates and all of the activities.

**CHAIRPERSON:** Yes. Wait. So ...[intervenes]

**ADV MPOFU SC:** You cannot remember it now? That is ...[intervenes]

**CHAIRPERSON:** So your answer is. If that is what you said in one of your answers to the 27 questions, you accept that that would be the date?

**MINISTER GORDHAN:** Whatever date there is Chairperson.

10 **CHAIRPERSON:** Yes, okay.

**ADV MPOFU SC:** Yes. And the – at the time, the manager of the unit reported to the one and only we spoke about, Mr Pillay and Mr Pillay reported to you. Correct?

**MINISTER GORDHAN:** Correct.

**ADV MPOFU SC:** Yes. And the unit was intended – and I want to say this carefully. The intention when the unit was formed was that it should be housed at National Intelligence Agency. Correct?

20 **MINISTER GORDHAN:** No, as my recollection goes. The first answer is no. And the second is that, as far as my recollection goes, it was supposed to be a joint venture but I cannot remember whether there was a location in the NIA or with SARS itself.

**ADV MPOFU SC:** Okay.

**MINISTER GORDHAN:** I can look at the cabinet memo or

some document to confirm that but that is neither here nor there.

**ADV MPOFU SC:** Yes. Well, I will jog your memory because you have spoken about something else. I was going to go to, which was a request that you made to the Minister of Finance, Minister Trevor Manuel for the funding of the establishment of the unit. You remember that?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Okay. Do you at least accept that that  
10 funding was asked for on the basis that the initial intention was to employ and train the members of the unit and then to transfer them to NIA where they would continue to function as a unit in NIA dedicated to SARS?

**MINISTER GORDHAN:** I will not dispute it Chair but I cannot confirm it right now.

**ADV MPOFU SC:** Okay. You cannot dispute that that was the intention, or rather, the gist of the letter you sent to Minister Manual that you wanted money so that the... I am sorry Chair.

20 **CHAIRPERSON:** Okay.

**ADV MPOFU SC:** Yes. The letter I am referring you to is that – appears on 375 Chair.

**CHAIRPERSON:** In...

**ADV MPOFU SC:** Oh.

**CHAIRPERSON:** In which bundle?



**ADV MPOFU SC:** Maybe Mr Chaskalson can help us? In my bundle it is TFM-275. That is the bundle that was given by the...

**CHAIRPERSON:** Okay it must be the other bundle because this one does not have 375(sic).

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** Chairperson, I am not disputing what that letter says.

**ADV MPOFU SC:** I am ...[intervenes]

10 **MINISTER GORDHAN:** All I am saying is Chairperson ...[intervenes]

**CHAIRPERSON:** Ja, Mr Gordhan ...[intervenes]

[Parties intervening each other – unclear]

**MINISTER GORDHAN:** [Indistinct]

**CHAIRPERSON:** Mr Gordhan says he does not dispute what the letter says.

**ADV MPOFU SC:** Ja. Oh, no, no.

**CHAIRPERSON:** Yes, yes. So can we move on?

**ADV MPOFU SC:** No, no, no. It is fine. You said you  
20 cannot remember. I am reminding you. I am saying, you –  
the letter, it says: Dear Minister. It is from you, correct?  
Signed P Gordhan, Commission of SARS.

**CHAIRPERSON:** Ja, I think you must proceed because he said he is not disputing what ...[intervenes]

**MINISTER GORDHAN:** I am not disputing ...[intervenes]

**CHAIRPERSON:** ...about the letter.

**ADV MPOFU SC:** No, I am not interested in that.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** I am saying, was the letter sent by you to Minister Gordhan(sic)? To Minister Manuel.

**MINISTER GORDHAN:** No, no. To Minister Manuel.

**ADV MPOFU SC:** Yes, correct. And the heading of the letter at TFM-275 is: To fund an intelligence capability within NIA in support of SARS. That is the heading you put  
10 on your letter. Correct?

**MINISTER GORDHAN:** I accept that, if it is there.

**ADV MPOFU SC:** Ja.

**CHAIRPERSON:** What is the date of the letter?

**MINISTER GORDHAN:** It is... Chair, 275. It is dated... Or at least, Mr Gordhan signed it on the 02/02/2007 but... No, no, no. I am sorry. But Mr Pillay, I think.

**CHAIRPERSON:** That is eight ...[intervenes]

**ADV MPOFU SC:** Mr Gordhan filed it on the 8<sup>th</sup> of February 2007.

20 **CHAIRPERSON:** February 2007.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Okay. It is a letter Mr Gordhan you appeared to have sign on the 8<sup>th</sup> maybe of the second month, 2007 addressed to Minister Manuel. Yes, Mr Mpofu continue.

**ADV MPOFU SC:** Thank you. Well, let me – while I am at it, let me just – I will read the letter.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Yes.

“Dear Minister. To find the special capability within in NIA in support of SARS.

1. Purpose

10 To seek approval to fund special capability within NIA to supply SARS and law enforcement with the necessary information to invest illicit economy.

2. Discussion

Collecting tactical intelligence and variable means penetrating and intercepting organised crime syndicates.

This is an activity which SARS does not have the capability including the legislative mandate to manage and to understand activity.”

And then you say:

20 “Discussions are taking place within National Intelligence to supplement SARS in terms of capability.

NIA is willing to create a ring-fence capability. Provided funds are made available to cover personnel costs.

All other costs will be covered by NIA. NIA is willing

to formulise the departmental arrangement to an NAU.

We, therefore, request that NIA's budget be increased to fund the creating of this special capability.

The estimated personnel will cost R 13.1 million for 2007/2008, R 17 million for 2008/2009 and R18 6 million for 2009/2010."

And then again, you say:

10

"Recommendation:

Request to fund the creation of a special capability in NIA to support SARS. It is strongly recommended an approval from the minister is required."

And then it was signed by the General Manager. I think it was Mr Pillay. And then you. And then the Deputy-Minister, who was then Mr Moleketi. Signed.

But he said, supported.

"However, this is a strange way of executing what I regard to be an economic mandate of NIA.

20

It seems though it is an add on, rather than part of NIA's mandate."

But he approved it, subject to that. And then Minister Manuel also approved it. And... Sorry.

My question was simply that this is just to refresh your memory. Do you accept that the formation of the unit which

you were part of was intended to be a part of NIA. And I am sure now that the answer is yes.

**MINISTER GORDHAN**: Yes.

**MINISTER GORDHAN**: Thank you.

**CHAIRPERSON**: Yes. Thank you. Ms Le Roux.

**MS LE ROUX**: Chair, it is now my turn to read to you.

**CHAIRPERSON**: [laughs]

**MS LE ROUX**: Because in your 2018/2019 ruling.

**CHAIRPERSON**: Yes.

10 **MS LE ROUX**: Paragraphs 63 and 64.

**CHAIRPERSON**: Ja.

**MS LE ROUX**: Yes.

“Mr Moyane applied for leave to cross-examine on the alleged Rogue Unit...

What is called the Rouge Unit but...

“...the alleged Rogue Unit, its existence and lawfulness.

We noted the following. The applicant does not say under this theme what it is that Mr Gordhan said in  
20 his affidavit or evidence before this Commission that implicated him in State Capture or corruption in regard to the unit.

Interestingly, the applicant states in paragraph 30.1 of his founding affidavit under the theme, the issue play a central role in that the existence and

lawfulness of the (again) Rouge Unit...”

Perhaps that is the unit we should be looking at.

“...was repeatedly and independently exhausted. The likes of Minister Gordhan falsely assert that that is not the case.

In this regard, I attach a copy of the Sekukane report. I will soon provide a copy of the KPMG report in due course.”

That is quoting Mr Moyane. Then at paragraph 64, you  
10 make the following ruling:

“The question arises. If the existence and lawfulness of the alleged Rogue Unit has been repeatedly and independently exhausted, why is it necessary in the best interest of the function of the Commission to allow cross-examination on it?

In his apposing affidavit, Mr Gordhan points out that the SARS Commission considered those issues in regard to the unit, concluded the unit was lawful.”

And then this is the critical part:

20 “For the reason that the applicant does not state how and where in his affidavit and oral evidence Mr Gordhan implicated him in regard to the unit.

I am of the view that there is no proper basis for me to grant the applicant leave to cross-examine on the issue.”

So you already ruled at the existence and lawfulness of the unit is not for cross-examination because he never implicated Mr Moyane about it.

**CHAIRPERSON:** Well, you see ...[intervenes]

**MS LE ROUX:** So if we can move on to why he made the charges, rather than going back to 2009 and earlier and working out how the unit came. That is the very thing that you said we do not need to waste this Commission's time on.

**CHAIRPERSON:** You see, why we ...[intervenes]

10 **MS LE ROUX:** Because otherwise the ruling does not mean anything.

**CHAIRPERSON:** You see, you know how we got there Ms Le Roux? You know how we got there? Mr Gordhan in his clarificatory affidavit said things that he has not said earlier on and specifically said Mr Moyane had engaged in activities in order to pursue the State Capture Project.

And insofar as, if you are saying to me, that does not fall within the latest, the last ruling. If you say it does not fall within that, then that is – we can look at that.

20 But the allegations that Mr Gordhan made in the clarificatory affidavit, despite the fact that I had said in my earlier ruling, in the directions. This was not intended to expand what it had been said.

He made the allegations that he made because they were so important when he says somebody had been

engaged in activities of State Capture that was pursuing the agenda of State Capturing which is what we are looking at.

**MS LE ROUX**: Yes.

**CHAIRPERSON**: So that is how it came to be allowed to that extent.

**MS LE ROUX**: Yes, Chair. But the clarificatory affidavit and Mr Moyane's affidavit in response to that and your November 2019 ruling, setting out the ATE five questions on this topic, are still all narrowly focussed on when Mr Moyane  
10 lays charges.

Why did he do that and why does Minister Gordhan say that he was not a reasonable SARS Commissioner?

We are now... What we are traversing now is the entire unit's narrative and trying to resurrect it, using your Commission.

**CHAIRPERSON**: Ja-no ...[intervenes]

**MS LE ROUX**: And that is what I object to.

**CHAIRPERSON**: No, you see. If you say – if you look at the last ruling, it is so narrow and Mr Mpofu is now going  
20 wider. I think that would be legitimate to look at that and then you have to say what falls within the narrow ambit and what falls outside the narrow ambit of that.

**MS LE ROUX**: Yes, sir.

**CHAIRPERSON**: Ja.

**MS LE ROUX**: So I did not object when my learned friend



was asking questions about: Do you accept that the public has been interested in this idea that there is a Rogue Unit ...[intervenes]

**CHAIRPERSON:** Ja, yes.

**MS LE ROUX:** ...that came from the Sunday Times.

**CHAIRPERSON:** Yes.

**MS LE ROUX:** And do – are – you know, do you accept all of that?

**CHAIRPERSON:** Ja.

10 **MS LE ROUX:** That is arguable within your latter ruling.

**CHAIRPERSON:** Yes.

**MS LE ROUX:** So now go back and try to cross-examine on the question of existence and lawfulness of the unit, as opposed to, let us get to the time period ...[intervenes]

**CHAIRPERSON:** Okay, ja.

**MS LE ROUX:** ...where the Sunday Times is saying there is a Rogue Unit.

**CHAIRPERSON:** I understand your point, ja.

20 **MS LE ROUX:** And 12-days later, Mr Moyane goes and lays a criminal charge.

**CHAIRPERSON:** Ja, I understand your point.

**MS LE ROUX:** Let us focus on that, rather than we had a Rogue Unit ...[intervenes]

**CHAIRPERSON:** So I understand your point. I understand your point. Ja, ja.

**MS LE ROUX:** Thank you.

**CHAIRPERSON:** Mr Mpofo, you understand the point?

**ADV MPOFU SC:** I do Chair but it is a non-point. The – what I am – really, I do not even know why we are here. All I was asking Chair is a very simple question in the line that my learned friend says it is acceptable. It is just that the answer that I got was that the witness could not remember that the unit was actually to be housed at NIA.

**CHAIRPERSON:** Yes.

10 **ADV MPOFU SC:** So that is the only reason I had to go back and remind him.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** But the question is only that old one, which was when – does he accept that in 2007 the intention was that it must be housed at NIA? Which is there is nothing wrong with that because it is part of the... But in anyway, we are done with this now.

**CHAIRPERSON:** Ja, okay.

**ADV MPOFU SC:** I cannot – the question has not even  
20 been answered.

**CHAIRPERSON:** Okay let us move on then.

**ADV MPOFU SC:** Thank you, Chair. And I am  
...[intervenes]

**CHAIRPERSON:** But I see we are at five to seven. I am...

**ADV MPOFU SC:** Oh. Okay Chair.

**CHAIRPERSON:** [laughs] Ja, okay.

**ADV MPOFU SC:** I promise this will be the... I just want to – not to leave it hanging.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** So the point I am simply making is that the reason why you wanted it to be housed at NIA is because you knew that lawfully it could not be housed at SARS if it was to have the capacity to gather intelligence. Correct?

**MINISTER GORDHAN:** There are distinctions in the law  
10 Chairperson about the word intelligence and that is what brought the opinions I referred to. Advocate Mefengo(?) when ...[indistinct] opinion on the 1<sup>st</sup> of September 2015 [Transmission distorted - speaker is not clear.]

And a similar response in and analyses in the response to the 27 questions, draws that distinction. There are things that intelligence agency are responsible for but various government departments that [Transmission distorted - speaker is not clear.] collecting information/intelligence on operational matters that affect their particular mandate.

20 And that is the part that responsibility. [Transmission distorted - speaker is not clear.]

So what was intended was one thing. What emerged was another, which is working within the SARS mandate and prescripts. And the opinions are very clear ...[indistinct] came up with and has been around, it looks like for about

five years in that particular regard.

**ADV MPOFU SC:** Yes, okay. Mr Gordhan, I understand that. Believe me, I do not want to get into the advocates and so on. I am talking about you. When you – because you are the one who wrote the letter, not the advocate.

I am saying the reason why you asked for it in the manner which I have read it out to you, which is that it should be housed at NIA was because you knew that in terms of the National Strategic Intelligence Act of 1994, it  
10 says that that act prohibits the conducting of convert intelligence gathering by structures other than the National Defence Force, the South African Police Service and State Security Agency.

Hence, you were right in your letter to ask Minister Manuel to fund the unit that it must be housed at NIA. It is a simple thing. You – it was for that reason.

Otherwise, you would ...[intervenes]

**MINISTER GORDHAN:** [Indistinct] [Transmission distorted - speaker is not clear.]

20 **ADV MPOFU SC:** ...you would have done it at...[intervenes]

**MINISTER GORDHAN:** Can I explain Chair?

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I did not get involved directly into the discussions. I was part of the whole – the development

of an enforcement strategy and I describe that to you when I appeared before you in November 2018.

And the enforcement evolved over a period of time, firstly. Secondly, clearly, as I said – I have just completed my answer which says that there are two or many types of intelligence.

Let us call it intelligence that is the responsibility of an intelligence agencies in terms of that legislation and operational intelligence which vary(?) at the departments  
10 collect from time to time. And that is the distinction.

If the one collapse which is the first proposition, then we still needed information as to how this funding of cigarettes happen. Who is responsible? Where does it go? How does it get into the marketplace? And who are the key kingpins in this particular regard?

How does abalone smuggling happen out of this country? What do we lose in value? What are the routes that it actually travels?

Today, the Department of Environment, for example, at  
20 the fisheries looks into that matter. I do not know how they do it or what they do but I am just giving you another example, where in general terms, anybody who is law-abiding would want to oppose illicit trade of one kind or another because that kind of illicit trade damages the South African economy.

So when the NIA proposition appeared to collapse in discussions between SARS officials and NIA officials, we nonetheless, still required specialisation and the capability to understand the phenomena I have just described.

**ADV MPOFU SC:** Yes. Thank you Mr Gordhan.

**CHAIRPERSON:** We are at seven.

**ADV MPOFU SC:** Okay Chair. I promise. Can I just end off this topic? Just this point.

**CHAIRPERSON:** Well, I just want to - just bear in mind the  
10 terms of that paragraph 28 that says what Mr Gordhan would be cross-examination on.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** As you – ja, okay.

**ADV MPOFU SC:** Yes, no, no, I am mindful, Chair.

**CHAIRPERSON:** Ja, okay.

**ADV MPOFU SC:** And I am going to stick to that.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** The point I am making, Mr Gordhan, is a simple one, that the – you have confirmed the existence  
20 of the unit, we are now talking about its lawfulness, so to speak. And I am saying to you – let me put it this way, would you agree with this summary?

“It became apparent to SARS that it had to enhance the capacity to gather intelligence of investigating - and investigate organised crime.

“It...”

That is SARS now,

“...decided in about February 2007 to set up the unit to penetrate and intercept the activities of tax and customs-related crime syndicates. Its initial intention was to employ and train the members of the unit and then to transfer them to NIA where they would continue to function as a unit dedicated to SARS.”

10 We have covered that.

“The NIA, however, lost appetite for the project as a result of which SARS decided to retain the unit within its enforcement division.”

Is that what happened?

**MINISTER GORDHAN:** Just explain that, Chair.

**CHAIRPERSON:** Are you – where are you reading from?

**ADV MPOFU SC:** I am reading from his statement, Mr Gordhan’s statement.

**CHAIRPERSON:** What paragraph?

20 **ADV MPOFU SC:** It is paragraph 12.

**CHAIRPERSON:** So that he can have a look at it.

**ADV MPOFU SC:** Paragraph 12 of your statement to the – answer to the ...[intervenes]

**CHAIRPERSON:** Is that the 2018 one?

**ADV MPOFU SC:** No, Chair.

**CHAIRPERSON:** No?

**ADV MPOFU SC:** No, no, no, no, no, not the statement to the Commission, Chair.

**CHAIRPERSON:** It is answers to the questions.

**ADV MPOFU SC:** It is the answers to the 27 questions.

**CHAIRPERSON:** Okay, do you know where to find it?

**ADV MPOFU SC:** Have you got that, Mr Gordhan?

**MINISTER GORDHAN:** I beg your pardon?

**ADV MPOFU SC:** Do you have your answers to the 27  
10 questions?

**CHAIRPERSON:** Do you have your answers to the 27 questions?

**MINISTER GORDHAN:** No, I do not have it in front of me, no.

**ADV MPOFU SC:** Not in front of you . Okay, that part I read from – we can sort it out, that I read was from paragraph 12 of your answer.

**CHAIRPERSON:** Well, without him seeing it, it might be – unless you take it in bits and pieces so that he can  
20 understand, ja.

**ADV MPOFU SC:** Yes, okay. Yes, no, no. Mr Gordhan, really, this is my last question. I just want to round off this issue and I will take the Chair's suggestion. You say – and I am sorry, I thought you had the document in front of you. You say:



“It became apparent to SARS that it had to enhance the capacity to gather intelligence of investigating - and investigate organised crime.”

That is the first sentence. Do you remember that?

**MINISTER GORDHAN:** Yes, carry on.

**CHAIRPERSON:** Does that ring a bell? Ja.

**ADV MPOFU SC:** “It...”

Meaning SARS.

10 “...decided in about February 2007 to set up the unit to penetrate and intercept the activities of tax and customs-related crime syndicates.”

Do you remember that?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** And then the next sentence:

“Its initial intention was to employ...”

It is what you have just covered.

20 “Its initial intention was to employ and train the members of the unit and then to transfer them to NIA where they would continue to function as a unit dedicated to SARS.”

That was the gist of your letter to Minister Manuel, you remember that part?

**MINISTER GORDHAN:** Yes.

**ADV MPOFU SC:** Yes. Then here is the part. Then you say:

“Then NIA, however, lost appetite for the project as a result of which SARS decided to retain the unit within its enforcement division.”

And I am going to for the sake of progress – and I will withdraw it again if you object, to put the word there to say:

“As a result of which SARS unilaterally decided to retain the unit within its enforcement division.”

In other words because NIA lost appetite SARS decided on  
10 its own to retain the unit within its division, enforcement division. Is that what happened?

**MINISTER GORDHAN:** Not quite. So if I may explain quickly, Chair, so that it will not take up too much time.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I already explained, so somehow there is a communication issue, that they have different intelligence mandates.

Secondly, the different departments have different mandates.

20 Thirdly, that all of them would be doing information/intelligence collection.”

Fourthly, that the legality of this unit and its establishment is well proven at the SARS level.

And fifthly that once the NIA discussions between SARS officials and themselves collapsed, that was the end

of that matter and NIA did whatever it needed to do and generally, if I remember correctly, there would be collaboration between crime intelligence, NIA itself and possibly sometimes military intelligence in order to track down and deal with – I have been using cigarette 05.05 as a popular example but other forms of illicit trade as well which undermines the South African economy. So as far as the legality of the unit and the legality of its function is concerned, that has been repeatedly proven to be proper  
10 and correct.

Secondly, if I may sum up, the question of covert intelligence, which is the responsibility of an intelligence agency was not overlapping with what the SARS unit did.

**CHAIRPERSON:** But I think Mr Mpofu sought to establish from you whether the reason why the unit ended up being housed within SARS was that the NIA lost appetite. I think that is what he wanted to. Otherwise the intention was to have it housed at – with NIA.

**MINISTER GORDHAN:** I have conceded that already,  
20 Chair.

**CHAIRPERSON:** Okay, alright.

**ADV MPOFU SC:** Thank you. Chair, if maybe we should stop at this point.

**CHAIRPERSON:** Yes.

**ADV MPOFU SC:** It is unfair, I wanted to highlight one or

two other things from Mr Gordhan's statement but if does not have it in front of him it is just going to make it very difficult.

**CHAIRPERSON:** Yes, ja, ja.

**ADV MPOFU SC:** Chair, I am sorry ...[intervenes]

**MINISTER GORDHAN:** I do not mind going on, Chair.

**ADV MPOFU SC:** Okay.

**CHAIRPERSON:** I think we – your counsel also – okay, maybe let us go up to half past seven then.

10 **ADV MPOFU SC:** Okay.

**CHAIRPERSON:** Let us see how much we can cover [inaudible – speaking simultaneously]

**ADV MPOFU SC:** Okay, Mr Gordhan, I do sympathise, I do not want to – believe me, I will not put things from your statement that are not there and maybe what I can do is to try and get a copy of this, Chair, at least from one of my juniors just so that Ms Le Roux at least has got it because she is where with us.

**MINISTER GORDHAN:** No, we will find it, Chair, Mr Mpofu  
20 can ask any question he wants.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** If I am unable to answer I will say so.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** If that will help the Commission.

**CHAIRPERSON:** Ja, okay.

**MINISTER GORDHAN:** Thank you.

**ADV MPOFU SC:** Okay, fine.

**CHAIRPERSON:** I think whatever you can give to Ms Le Roux do give.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** But Mr Gordhan says in the meantime ask whatever question, if he is unable to answer he will say so.

10 **ADV MPOFU SC:** Yes. No, fair enough. I am really indebted to you, Chair, if I may organise it, Chair? Sorry, Chair, just one second? Thank you, Chair.

**CHAIRPERSON:** Yes, okay, okay.

**ADV MPOFU SC:** Okay, Mr Gordhan, Ms Le Roux has got a copy. It is signed by you dated the 30 March 2016. Just to ...[intervenes]

**CHAIRPERSON:** That is copy of what now?

**ADV MPOFU SC:** Of the answers to the 27 questions.

**CHAIRPERSON:** Oh, the answers to the 27 questions?

20 **ADV MPOFU SC:** Yes, yes, that is the document that unfortunately is not in front of Mr Gordhan.

**CHAIRPERSON:** I take it I do not have it either, hey?

**ADV MPOFU SC:** Chair, let me ask Mr – or the secretariat.

**CHAIRPERSON:** But I might be able to do without for now

and then I can get it later one.

**ADV MPOFU SC:** Yes, yes, Chair.

**CHAIRPERSON:** Okay, alright. If it becomes a problem we will take from there. Okay.

**ADV MPOFU SC:** We might be able to locate it, Chair, ja.

**CHAIRPERSON:** Okay.

**ADV MPOFU SC:** I am sorry about that. Yes, okay, my question was again a simple one that from your statement, if you assume that I am reading directly from it, are you  
10 now saying, that last sentence, is not what happened and let me remind you what it says:

“The NIA, however, lost appetite for the project as a result of which SARS decided to retain the unit within its enforcement division.”

**CHAIRPERSON:** He has conceded that, Mr Mpofu.

**ADV MPOFU SC:** Well, he said except for the last part. Okay, maybe I lost the second - have you conceded ...[intervenes]

**CHAIRPERSON:** No, I think he conceded that, I repeated  
20 it to him.

**MINISTER GORDHAN:** Three times.

**CHAIRPERSON:** He has conceded it, Mr Mpofu, that ...[intervenes]

**ADV MPOFU SC:** Did you or did you not say except for that last part?

**MINISTER GORDHAN:** No – well, I cannot recall but I have answered the question.

**ADV MPOFU SC:** Well, it is another – we will look for in the record, alright.

**CHAIRPERSON:** But at least he is accepting now that ...[intervenes]

**ADV MPOFU SC:** That is a change to his answer.

**CHAIRPERSON:** That is far as on behalf the unit when NIA had lost appetite.

10 **ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV MPOFU SC:** Now the proposition I want to put to you regarding that is that that is exactly the unlawful part that Mr Moyane was confronted with. Number one, it was that the establishment of the unit simply because NIA lost appetite and then you *sommer* decided to establish it without their involvement was a contravention of the Section 3 of the National Strategic Intelligence Act 39 of 1994 and that was the finding of Mr Sikhakhane, that was  
20 the finding of various other agencies that investigated this saga, it was also the finding of the Public Protector and the – it is a simple issue really, it is not – okay, I am sorry.

**CHAIRPERSON:** I think you have made your point.

**ADV MPOFU SC:** Yes, yes, I am going to – I will break it down yes, let me ...[intervenes]

**CHAIRPERSON:** So I think your point is – and you must just tell me if I misunderstand.

**ADV MPOFU SC:** Yes, Chair.

**CHAIRPERSON:** If it had been housed at NIA it would have been lawful but it being housed within SARS that made it unlawful.

**ADV MPOFU SC:** That is correct, Chair.

**CHAIRPERSON:** What do you say to that, Mr Gordhan?

**MINISTER GORDHAN:** Chair, I disagree.

10 **CHAIRPERSON:** Of course I accept we must remember that you are not a lawyer, I guess, but you might know about this, ja.

**MINISTER GORDHAN:** No, absolutely but I have actually repeatedly answered the same question in different forms. Well, let me try once more because I do not seem to be communicating the answer well enough.

20 So the first point I made already is that the first intention in relation to a relationship with NIA did not work out and therefore the relevant legislation did not apply in that context to the NIA employed individuals for which a budget allocation would have been made which was the purpose of the letter/memo signed by ourselves at SARS to Minister Manuel.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** Secondly, I described the different



types of intelligence/information.

Thirdly, what remained at SARS was not the original conception and I explained why it was necessary throughout the world, including – because benchmarked all of this at the time – it was necessary to have this kind of capacity. So if you go the World Customs Organisation, they will tell you that, that that – this is the kind of capacity that is actually required in order to effectively combat illicit trade in whatever commodity we are talking  
10 about. Currently it is cigarettes and alcohol because pandemics – the pandemic has cause limitations in that regard all over the world including South Africa itself.

The third point, Chair, is in relation to the various reports that Mr Mpofu makes reference to. Firstly, somewhere along the line, the mandate of ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Gordhan, you have said that you have dealt with this, I just want to make sure that this time one can understand it correctly.

**MINISTER GORDHAN:** Sure.

20 **CHAIRPERSON:** Can you start with the proposition whether what you say to the position that had this unit been housed at NIA it would have been lawful. The fact that it was housed at SARS is what made it unlawful. Are you able to say I do not agree with that and this is the reason and then ...[intervenes]

**MINISTER GORDHAN:** No, I cannot ...[intervenes]

**CHAIRPERSON:** Then you can elaborate.

**MINISTER GORDHAN:** No I do not...

**CHAIRPERSON:** You do not agree with that.

**MINISTER GORDHAN:** No, I do not agree with that, Chair.

**CHAIRPERSON:** Yes, oaky.

**MINISTER GORDHAN:** And I do not agree because in NIA it would have had one kind of mandate under the piece of legislation that Mr Mpofu made reference to. In SARS it  
10 had a different kind of mandate because it could not operate under the NIA legislation, it operated in the normal course of CAPS and Customs enforcement for which information about these matters is absolute critical. So, if you like, it is not the same unit we are talking about.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** The one unit, the original conception and when NIA became disinterested and a second conception of the unit developed so that it would be within the law and the point I have made earlier on as  
20 well, is that we have various legal opinions including a legal opinion obtained by Mr Moyane himself in September or thereabouts in 2015 in which it actually clarifies this concept or rather, this issue of where that intelligence legislation applies and where it does not apply and I also mentioned that in response to that particular component in

the 27 questions response that I gave, a similar explanation is given as well.

So as far as we are concerned, Sikhakhane was wrong and has been proven to be repeatedly wrong.

Secondly, Judge Cronin relied on Sikhakhane and he was wrong because he did not entertain other views on this particular matter and was misguided by some legal people that he had as part of his panel and he later apologised for the inferences that he drew at that  
10 particular point.

As far as the Public Protector is concerned, I am not sure where in the process we are but that is a matter before a High Court in South Africa at the moment.

**CHAIRPERSON:** Well, let me ask this question. From what one has read or heard it does appear that there may be some opinion, opinions saying it was lawful and they have made the other opinions saying it was not lawful, I am saying opinions or rulings by different bodies, or whatever ...[intervenues]

20 **ADV MPOFU SC:** Investigations, ja.

**CHAIRPERSON:** Now, if that is the case or maybe I should not say if that is the case, if Mr Moyane says look, I am not a lawyer but based on what I understood to be the position, rightly or wrongly, I formed the view that this unit was not lawful and thought that it was my duty to therefore

lay a complaint, what would be your attitude to that? Would you say no, he knew that it was lawful but went to lay a complaint about it because he was pursuing the agenda of state capture or would you say look, I accept that he could have thought that it was unlawful but he was mistaken about that and leave it at that or whether you would go one step further and say no, no, no, he knew that it was lawful but because he was pursuing state capture he went and laid a criminal complaint? Which is it?

10 **MINISTER GORDHAN:** Well, if one looks at the sequence of events, I am just looking for the chronology.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** I cannot find it right now. But if one looks at the sequence of events, on the 16 May 2015 is when Mr Moyane signs the complaint lodged at the Brooklyn police station. On the 1 September 2015, he has dated the report/opinion of the two advocates. So it must have been commissioned before the 1 September 2015.

20 So even if he thought he was right in May 2015 he had a legal – sound legal opinion before him which said that the unit is legal.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** Secondly, all of the Sunday Times so-called exposures were fake news. So there are supposed to be bugged calls(?) there are supposed to be

all sorts of buggings. No evidence is available on any one of those matters and the Sunday Times apologised for what it did under a particular editor sometime later on in this process.

So I would argue that by September at least of 2015 Mr Moyane knew that this unit was legal.

**CHAIRPERSON:** Okay.

**MINISTER GORDHAN:** And he could have withdrawn the complaint if he wanted to.

10 **CHAIRPERSON:** What is the date for the laying of the complaint because I am not looking at this...

**MINISTER GORDHAN:** 16 May 2015.

**CHAIRPERSON:** Okay, let us focus on May.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** Are you able to say in May he could not have thought that there was something unlawful about the unit or are you saying well, I do not know about May but certainly in September I think he knew. In other words, because, as I understand it, his approach – or as I  
20 understand Mr Mpofo is that well, if as SARS Commissioner he thought there was something unlawful he was entitled to law a complaint, maybe they would say even obliged.

**ADV MPOFU SC:** Yes.

**CHAIRPERSON:** The fact that he might – it might later on

turn out that he was wrong, he was mistaken, would be neither here nor there, he would have been acting *bona fide*, even if mistaken. What would you say to that as in May as opposed to September?

**MINISTER GORDHAN:** Is the question for me, Chair, or Mr Mpofu?

**CHAIRPERSON:** No, for you to say if we look at May when Mr Moyane laid the complaint, not in September.

**MINISTER GORDHAN:** Ja.

10 **CHAIRPERSON:** In terms of what you believe he knew would you say at that stage when he laid the complaint he definitely knew that there was nothing unlawful about the unit but then went ahead and laid the complaint because he was pursuing the state capture agenda or would you say he may have been *bona fide* in thinking there was some unlawful but he was mistaken at that stage. It is only in September where I say his pursuit of the complaint in September after he had got the following information about the opinions at that stage revealed that he was pursuing  
20 state capture.

**MINISTER GORDHAN:** He would have known, Chairperson, that the Sekhakhane report firstly was faulty in the sense that there was an original mandate to look into the question of the relationship as exposed in the Sunday Times between one SARS official and an outside

person and then Mr Moyane is appointed, as I recollect, and suddenly there is a turn in a different direction where the unit becomes the focus, but as I recollect that Mr Sekhakhane nonetheless says that this must be investigated further. That then results of the appointment of KPMG to investigate the matter and they have also disavowed some of their work in recent times although not properly yet and – so that work had to be completed by which time the September 2015 opinion would have been  
 10 available as well.

So if one looks at in sequence what one would find is that he probably pre-empted this whole process, firstly, and if one combines that with other observations made elsewhere, like the Nugent Commission in respect of – and I have suggest it as well - in relation to, for example, the organisational structure, the concentration of huge power in the hands of Mr Makwakwa, the concentration of all tax settlements which we have got lots of checks and balances in respect of [inaudible – speaking simultaneously]

20 **CHAIRPERSON:** I am sorry, Mr Gordhan ...[intervenes]

**MINISTER GORDHAN:** ... individuals would have absolute discretion.

**CHAIRPERSON:** I am sorry ...[intervenes]

**MINISTER GORDHAN:** So if you look at the context, I cannot accept the benign interpretation.

**CHAIRPERSON:** So is your answer that as far as – even in May when he laid the complain you say he knew that there was nothing unlawful about the unit and he laid the complaint because he sought to pursue the agenda of state capture. That is your position in regard to even May, is that right?

**ADV LE ROUX:** Chair, I am now in the invidious position of having to object to your question.

**CHAIRPERSON:** Ja, just hang, you object, I will disabuse  
10 of it, if necessary. Mr Gordhan, are you able to clarify?

**MINISTER GORDHAN:** Yes, no, I certainly believe that if you put all of these events in sequence. As I said earlier on, Chairperson, he pre-empted this process.

**CHAIRPERSON:** Yes.

**MINISTER GORDHAN:** And if you match it to other – I know you get impatient when I make references to other things but the reality of the matter is that one cannot see things in isolation, they have to be seen in relationship to other events. So forgive me for that.

20 **CHAIRPERSON:** No, no, no, no.

**MINISTER GORDHAN:** But when one sees it in that context there clearly is something wrong with lodging those charges in May 2015.

**CHAIRPERSON:** No, no, no, part of what I am doing is I need to understand exactly what you are saying.



**MINISTER GORDHAN:** Sure.

**CHAIRPERSON:** And some of the things, they have got certain nuances, some of the nuances are legal, others are different, so it is very important that I understand what you say in regard to certain issues because I do not want to attribute to you I misunderstood position. If I say you said when he laid the complaint this was the position I must be sure that that is what you said. Ms Le Roux? Yes, now you can express your – ja.

10 **ADV LE ROUX:** Chair, the objection just for the record is that the questions now being posed to Minister Gordhan ask him to identify what Mr Moyane knew when he laid charges. He cannot do that.

**CHAIRPERSON:** Yes, but ...[intervenes]

**ADV LE ROUX:** So all of the questions are phrased to say did Mr Moyane know? You know, did Mr Moyane – only Mr Moyane can tell us.

**CHAIRPERSON:** No...

**ADV LE ROUX:** So the reason why Minister Gordhan says  
20 the unit is lawful and there are – all of the opinions that Mr Moyane has pointed to have been discredited and found to be erroneous, all of the – then he also says there are all these opinions saying it is lawful that Mr Moyane seems to have ignored. But it is unfair to ask Mr Gordhan did Tom Moyane know that, you know, SARS had researched

legality when it found – like, he does not know.

**CHAIRPERSON:** Well, of course the first answer is, he can say well, I do not know what he, you know, but this is where it arises from. Mr Gordhan says – or rather, the order here says Mr Gordhan may be cross-examined on whether in laying the criminal complaint – I am saying against Mr Gordhan, against whoever, Mr Moyane was motivated wholly or in part by the objectives of state capture.

10 **ADV LE ROUX:** Yes, Chair, and so ...[intervenes]

**CHAIRPERSON:** Now Mr ...[intervenes]

**ADV LE ROUX:** So the question that says ...[intervenes]

**CHAIRPERSON:** Hang on, hang on. As I understand Mr Mpofu's cross-examination, it seems to be directed at saying if Mr Moyane in laying the charge, believed that there was something unlawful about it, then he could not have been motivated by the objectives of state capture which Mr Gordhan says was the case. So it is Mr Moyane's answer and I am seeking to establish what Mr Gordhan has  
20 to say to that answer to say if indeed Mr Moyane ought – there was something unlawful about the unit, even if he was wrong in thinking so, what would that do to Mr Gordhan's proposition that Mr Moyane was motivated wholly or in part by the objectives of state capture. That is what I was asking.

**ADV LE ROUX:** Yes, Chair. No, no and that formulation is within the cross-examination.

**CHAIRPERSON:** Yes, ja. Yes, yes, okay, alright, okay.

**ADV LE ROUX:** Thank you, Chair.

**CHAIRPERSON:** But we are at 27 minutes past so ...[intervenes]

**ADV CHASKALSON SC:** Chair, could I have my final say?

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** We have gone – we have taken  
10 one step beyond the terms of reference because we are  
now investigating not a charge against Mr Gordhan that  
was laid by Mr Moyane but a charge that was laid against  
some other people by Mr Moyane. We are about to embark  
on an even further departure from the terms of reference  
because Mr Gordhan is now wanting to address answers  
that are going to say – that are essentially, if I understand  
his answers correctly, saying well, I do not want to talk  
about what Mr Moyane did or did not know when the  
charges were lodged, I want us now to look at what Mr  
20 Moyane learnt in the period after and the problem is not  
that he – not that he lodged a charge against me, it is not  
that he lodged a charge against people other than me, it is  
that having found other material later he failed to bring  
that to the attention of me. So my submission is  
...[intervenes]

**CHAIRPERSON:** No I just, yes, no, no, no I think I understand what was your – well maybe part of it is it is late in the day.

**ADV CHASKALSON SC:** Yes.

**ADV MPOFU SC:** Chair?

**CHAIRPERSON:** Yes?

**ADV MPOFO SC:** Sorry could I just ...[intervenes]

**MINISTER GORDHAN:** You might also find that ...[intervenes]

10 **ADV MPOFU SC:** Wait Mr Gordhan.

**CHAIRPERSON:** Hang on Mr Gordhan.

**ADV MPOFU SC:** I want to reply to the objection.

**CHAIRPERSON:** Oh I thought the objection has fallen away in the light of the – of how I explained it.

**ADV MPOFU SC:** Oh, I thought it was resuscitated.

**CHAIRPERSON:** Of course Mr Chaskalson's one ...[intervenes]

**ADV MPOFU SC:** It had fallen away indeed but ...[intervenes]

20 **CHAIRPERSON:** The one, Mr Chaskalson's one ...[intervenes]

**ADV MPOFU SC:** That's why he wanted to breathe life into the dead body of the objections I think.

**CHAIRPERSON:** And I know Mr Chaskalson might not need to explain anything because I am not saying his one

has fallen away. I am not saying that, ja.

**ADV MPOFU SC:** Yes, no, no the one I was saying I have a right to address Chair. Let me start again with where I agree with Mr Chaskalson. The – and I agree also with the Chair's summation. Mr Chaskalson is of course right to say that anything that would have happened subsequent to ...[intervenes]

**CHAIRPERSON:** After.

**ADV MPOFU SC:** To the laying of the charges, whether it  
10 is Nugent or this one or that one, it is completely irrelevant to the real gist of what I am after. The Chair, I cannot put it better, the issue we are dealing with here is the state of mind of Mr Moyane as on that date of May 2015, and there is only one of two options, it is either as we have been saying and we said in the affidavits, any reasonable Commissioner faced with whatever he was faced with would have laid the charge and in fact my text topic is going to show that he actually he was obliged by the law, he would have been guilty himself criminally if he did not  
20 do so, but we are not there yet.

So it is either that version of Mr Moyane or as the Chair summarised either that all that and he just said look I don't – the summary is telling me that actually this thing is exaggerating the fact Chair. If someone says look actually this thing was actually ...[indistinct] so there was

no problem with it, and yet because he was pursuing State Capture he forged ahead with the charges, but those are the two competing issues, and – but I accept Mr Chaskalson's point that to now we must not allow it to go to Nugent and whatever.

**CHAIRPERSON:** Ja, okay, but I think we must stop now because we are past half past seven.

**ADV MPOFU SC:** Thank you Chair.

**MINISTER GORDHAN:** Chair you will remember me  
10 please.

**CHAIRPERSON:** Oh yes you wanted to say something Mr Gordhan?

**MINISTER GORDHAN:** Yes I thought it might be useful for the Chair to take note of this chronology, Mr Moyane is appointed on the 3<sup>rd</sup> of September – I beg your pardon, he is appointed on the 23<sup>rd</sup> of September 2014, of course Mr Sikakhane is appointed by Mr ...[indistinct] on the 3<sup>rd</sup> of September 2014. Then on the 5<sup>th</sup> of November 2014 Mr Sikakhane sends his report to Mr Moyane, then in  
20 December 2014 Mr Moyane appoints KPMG, as I referred to earlier on. The KPMG investigation is still going on and only about September, October 2015 is apparently a KPMG report presented to Mr Moyane.

So long before that process is completed as I said earlier on, on the 15<sup>th</sup> of May 2015 Mr Moyane lays the

various complaints at the ...[indistinct] Police Station and then what follows is the legal opinion that I referred to.

**CHAIRPERSON:** Ja.

**MINISTER GORDHAN:** So you might want to bear some of those dates in mind because they are not unimportant in this context.

**CHAIRPERSON:** Ja, no that is fine. I don't think ...[intervenes]

**ADV MPOFU SC:** Can I just ask one question Chair?

10 **CHAIRPERSON:** Ja.

**ADV MPOFU S:** Yes, Mr Gordhan yes we hear that, we will take it from there, do you accept at the very least that Mr Moyane that he had received a confession from some of the members of the rogue unit that forced him in terms of the – of BRICA, if he did, if he hadn't reported the confession, whether the confession was true or not, he himself would have been guilty of a crime.

**MINISTER GORDHAN:** Not necessarily because on the 7<sup>th</sup> of May 2015 Mr Moyane actually asks a certain gentleman  
20 involved in the unit to not present himself to a Mr van der Walt of KPMG and feign an illness for the question his wife, okay I am not sure about the criminal issue, that is for lawyers to sort out.

**ADV MPOFU SC:** Ja.

**MINISTER GORDHAN:** But these are strange

unexplainable events until Mr Moyane takes the stand and tells us what his state of mind is, thank you Chair.

**ADV MPOFU SC:** Yes and do you accept that the Sikhakane report has never been withdrawn until today, the one that says the unit was unlawful?

**MINISTER GORDHAN:** I believe that the SARS, organisation amongst others, is challenging that report.

**ADV MPOFU SC:** Well ...[intervenes]

**MINISTER GORDHAN:** And there are various  
10 ...[intervenes]

**ADV MPOFU SC:** Yes, but as of today ...[intervenes]

**MINISTER GORDHAN:** If I can finish.

**ADV MPOFU SC:** Sorry.

**MINISTER GORDHAN:** If I can finish.

**ADV MPOFU SC:** Yes, I said I am sorry Mr Gordhan yes.

**MINISTER GORDHAN:** So there are various alternate interpretations and certainly Mr Sikhakane and Ms Dragab who were involved in that panel, maybe others were as well, have been found to be basing their opinions on a  
20 misreading of the law as far as we are concerned, and as far as many other people who looked at these legal opinions are concerned as well, but as you said that is for the lawyers to look at.

**CHAIRPERSON:** Okay, alright.

**ADV MPOFU SC:** No that is not what I said, I said to you



accept that it might be a challenge but as for now it has never been withdrawn and that was what Mr Moyane ...[intervenes]

**MINISTER GORDHAN:** Oh it has – Chairperson if you want to get into the details I am sure there are witnesses who can come before you and explain to you how that report evolved, how the mandate of the secretary had changed and ...[intervenes]

**CHAIRPERSON:** No, no.

10 **MINISTER GORDHAN:** Can I respond please?

**CHAIRPERSON:** He was simply saying do you know whether – do you accept that it has never been drawn that is all that he was asking.

**ADV MPOFU SC:** That is all.

**MINISTER GORDHAN:** Yes, but I am also explaining that there is a lot of critiques available on the report for the benefit of the commission.

**CHAIRPERSON:** Yes, but he did not ask about that, he asked whether you are aware that it has not been  
20 withdrawn but what the effect of that is, that we can deal with some other time, and I guess that the position is that it has not been withdrawn, it has not been set aside, it is being challenged from what you say in the High Court, we don't know what will ultimately happen but I think we can stop here.

**MINISTER GORDHAN:** Sure, that was just for your information Chair.

**CHAIRPERSON:** No thank you very much.

**ADV MPOFU SC:** Thank you Chair.

**CHAIRPERSON:** I must thank everybody for being prepared that we sit till late, thank you Mr Gordhan for being prepared, thank you Mr Mpofu, thank you Ms Le Roux and your instructing attorney, Mr Moyane, Mr Chaskalson, Mr Chaskalson's instructing attorney in the  
10 Commission and everybody.

We are going to have to fix another date but probably we shouldn't fix it now because probably Mr Franklin would be involved and not Mr Chaskalson. If we seek to fix a date let's close, we will try and consult everybody to see if we can do that but we in all probability we might use an evening session. If we look at a date where everybody will get reasonable notice we might just fix the date and then take it from there, but thank you very much.

20 I would like to see counsel from all sides in my chambers before we disperse but thank you very much to everybody we will adjourn for the day.

For the benefit of the public the Commission will not have a hearing tomorrow, it might not have a hearing on Wednesday as well, but if it has a hearing on Wednesday

the public will be told. It will have a hearing on Thursday and on Friday.

We adjourn.

**ADV MPOFU SC:** Thanks Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 3 DECEMBER 2020**