



## **Media Strategy Working Notes**

There are three inter-related narratives that can be developed and expanded upon by the media. They are:

1. The Commission lied to the public and hid evidence of corruption;
2. The Commission made no attempt to investigate serious allegations of corruption put before it by failing to access information abroad;
3. Closely related to this, the record reveals new allegations of corruption that have previously been unpublished, and which the Commission failed to investigate.

### Narrative 1: The Commission Lied to the Public and Hid Evidence of Corruption

#### *EXAMPLE 1: The Light Utility Helicopter Contract*

Briefly: Paul Holden and Andrew Feinstein, in their joint submission to the Commission, informed the Commission that that representatives of Bell (the losing bidder) had told them that Chippy Shaik (brother to Schabir and the Chief of Acquisitions during the Arms Deal) had demanded that they give contracts to a company called Futuristic Business Solutions (FBS) in order to win the helicopter contract. Holden and Feinstein also pointed out that the winning bidder, Agusta, had given contracts to FBS and that the Scorpions had instituted an investigation into this.

The Commission, in its final report, said that they approached Bell Helicopters to ask them about the allegations. The Commission said that Bell informed them that they had no information related to bribery in the contract.

The record shows this is a lie. The record includes notes of a meeting between Commission staff and Bell helicopters staff in the US. During the meeting, Bell confirmed that Chippy Shaik had introduced the company to FBS, and that FBS had tried to get business from Bell (which Bell rejected) related to the offsets program. The Bell representative also affirmed the content of a media article in which a Bell employee said that Chippy Shaik had 'strongly suggested' that the company use FBS.

None of this detail was included in the final report, and Chippy Shaik was not asked about it in detail when he appeared before the Commission.

#### *Example 2: The German Investigation*

The Commission was told by former investigators from the Scorpions that the investigation into the Arms Deal required that the Commission get access to evidence abroad, particularly in Germany and the United Kingdom.

In the Commission's final report, the Commission writes that they attempted to get access to documentation in Germany by submitting an MLA, but that the MLA was unexecuted throughout the life of the Commission. This created the clear impression that the Commission had tried to access this information but that the German had sat on their hands and failed to deliver the documents required, and that this ended the investigation.

The record shows that this is an inaccurate representation of events. The record also shows that the Commission left out key details from its final report that, if it were included, would have shown that the fault lay with the Commission and not the German authorities.

The record shows that while the Commission submitted an MLA in 2012, this MLA was deficient and went unexecuted. As a result, the Commission submitted a new MLA in 2014. This MLA was never mentioned in the final report, which led the public to believe that the Germans had failed to respond to the 2012 MLA until very late – we now know that the Commission only submitted this MLA three years into the life of the Commission.

The record shows that the Commission's 2014 MLA request left out key information, which was required by German law. The Commission had already been told about these requirements in 2012, but was so inattentive to detail that it failed to include it in the 2014 request. The Germans told the Commission about these problems, but it took the Commission over six months to respond and provide the required three page declaration. They only sent it in March 2015, three months before the end of the Commission's investigative period – and only after they had been sent a reminder by German authorities.

This example shows that, not only did the Commission not properly investigate allegations of corruption by failing to get access to documentation abroad, but that it misled the public about this in the final report in such a way that it had the Commission's multiple failings in accessing the record.

## Narrative 2: The Commission Did Not Properly Investigate Allegations of Corruption and Lied About Their Efforts

### *Example 1: The UK's Serious Fraud Office*

The Commission was told early in its life by former Scorpions investigators that the Commission needed to get information held by the UK's Serious Fraud Office (SFO) in order to undertake a proper investigation. In the end, the Commission failed to get access to any documents from the UK.

The Commission's final report acknowledges that they did not submit a formal Mutual Legal Assistance request to access the SFO's information. Instead, the final report states that they were told by the SFO that the SFO had already given South African

authorities all of its information relevant to the Arms Deal and had put this information into the SFO's 2008 affidavit that the Scorpions used to raid the properties of Fana Hlongwane and John Bredenkamp.

The record shows that the Commission knew that this was incorrect, and that the Commission had already requested information that they knew the SFO had but was not in the 2008 affidavit. The Commission was also given evidence by witnesses that came from the SFO, but which was not included in the 2008 affidavit. This includes letters emanating from BAE Systems that showed that BAE had agreed to offer a job to Stella Sigcau's daughter during the Arms Deal. Stella Sigcau was a member of the Cabinet sub-Committee overseeing the Arms Deal.

The record shows that the SFO actually went out of its way to try and help the Commission access documents. In December 2012, the SFO suggested that the Commission submit keywords and phrases that the SFO could use to identify documents that it could then share with the Commission. The Commission totally failed to take up this offer.

Because of this, the applicants suggest that the Commission lied about what the SFO had said to them, and that it was implausible that the SFO would have made the claim that it had no information outside of the affidavit. It was implausible because, over the previous years, both the SFO and the Commission had referred to evidence that was not included in the affidavit.

### Narrative 3: New Allegations of Corruption (that the Commission failed to investigate)

#### *Thabo Mbeki and Seth Phalatse*

The record shows that the Commission had been given documents from the Scorpions/Hawks investigation into the Arms Deal. In the documents was correspondence between the Scorpions and the UK's Serious Fraud Office. The record shows that this correspondence included evidence related to Thabo Mbeki and Seth Phalatse.

In particular, the SFO told the Scorpions that they had evidence that Thabo Mbeki, Seth Phalatse, Diliza Mji, Richard Charter and Niall Irving had an 'intimate dinner' in 1998. This was the period in which the Arms Deal selection process was happening.

- Richard Charter was an overt and covert agent for BAE Systems, who was secretly paid £26m by BAE's Red Diamond offshore company, including a payment of \$4m on the 2<sup>nd</sup> of December 1999, the month the Arms Deal contracts were signed. He was also a director of BAE Systems South Africa.
- Seth Phalatse was a director of Armscor, and his wife would become a Deputy DG in Mbeki's office when he was made president. Phalatse would also earn money from BAE's offset program. He was briefly made Chairman of Armscor in

2001 but was forced to resign after it was alleged that he had accepted a bribe while at the Strategic Fuel Fund.

- Niall Irving was a BAE employee and in charge of their campaign in South Africa to sell Hawks and Gripen
- Diliza Mji was a director of BAE's South African subsidiary

It was totally inappropriate for Mbeki, who was heading the Cabinet sub-Committee overseeing the selection process, to be meeting privately with agents and employees of BAE Systems. It was equally inappropriate for Seth Phalatse, who was then at Armscor.

The Commission made no attempt to investigate this fact or allegation. Mbeki was not asked about this at all during his appearance. Seth Phalatse and Diliza Mji were never called. This allegation is not mentioned at all in the Commission's final report.

The record also shows that the Commission had been told that Seth Phalatse had paid bribes to a Department of Trade and Industry official, Siphso Zikode. This was done so that an offset project involving BAE Systems was given a generous number of 'offset credits'. Seth Phalatse was a director of the company that benefited from the project – GEMCO. BAE was the sole investor in the project, in which they invested \$20m (about R160 million at the time). GEMCO was sold in 2010 with only seven employees on its staff, even though it was initially projected to create over 2000 jobs.

The record shows that Phalatse had written to the DTI to request that BAE Systems get a favourable 'multiplier' related to GEMCO that would grant it a large number of offset credits. In the end, BAE Systems was granted a 17.5, i.e. they were granted \$350m investment credits for their \$20m investment. The multiplier appears very generous as BAE had initially requested a multiplier of 10.

The Commission made no attempt to investigate this matter at all. Seth Phalatse was not called. Siphso Zikode was called to give evidence, but was not asked a single question about GEMCO or Seth Phalatse.

GEMCO, Phalatse and this allegation are not address at all in the Commission's final report.

#### *Payment to Julekha Mohamed*

The record shows that the Commission was in possession of documents from Liechtenstein related to the BAE contract. Authorities in Liechtenstein initiated an investigation into money laundering by John Bredenkamp and his associates (the 'Bredenkamp organisation') after they had received millions of pounds from BAE Systems via BAE's Red Diamond offshore subsidiary.

The documents show that money went from Red Diamond to the accounts of Bredenkamp's associate Julien Pellisier, and from there \$258 000 was paid on the 6<sup>th</sup> of September 2002 to an account under the name of a Julekha Mohamed at UBS in Switzerland. The Liechtenstein authorities were unable to confirm which Julekha

Mohamed this was, but it is difficult to believe it would be any other than *the* Julekha Mohamed that is well known in South Africa.

Julekha Mohamed served as Jacob Zuma's representative. Her offices were raided as part of the Scorpions' investigation into Zuma. Julekha Mohamed was also in business with Chippy Shaik. She was a director of a company called Enable Mining in which Chippy was also a shareholder. Enable Mining received investments from the Arms Deal company Ferrostaal. Mohamed was also a shareholder in Illima Community Financial Services with Moses Mayekiso, which also received money from Ferrostaal. Ferrostaal employees, however, apparently complained that paying Illima was actually just a means to pay Chippy Shaik.

The Commission made no attempt to investigate this allegation. It did not request any information about the bank account from Switzerland or Liechtenstein. It did not call Julekha Mohamed or any member of the Bredenkamp organisation to give evidence.