

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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10

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DAY 82

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PROCEEDINGS HELD ON 12 APRIL 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: Before we start I just want to announce that my decision in regard to Mr Moyane's application for leave to cross-examine Minister Gordhan will be handed down on Tuesday next week at half past nine. Notification will be sent by the secretary, acting secretary to the parties. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Noted thank you Chair.

CHAIRPERSON: Are you ready?

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes we are ready Chair. May we continue?

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride before we adjourned yesterday afternoon we were at paragraph 27 of your statement.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You were explaining to the Chair that you had certain concerns that you wish to raise with the oversight body of IPID.

MR ROBERT JOHN McBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** The Parliamentary Portfolio Committee on Police. You said that you had contacted Mr Francois Beukman the Chair of the Portfolio Committee and requested that you be allowed to address them to clarify certain issues. You told the Chair that Mr Beukman declined your offer to speak to them and in support of his declining your offer he cited the sub-judice rule?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Whether that is an appropriate recourse to the rule of sub-judice is another question we need not go into with you now but is it correct as you said that subsequent to your request the Minister actually addressed the Portfolio Committee?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Would you tell the Chair about that please?

MR ROBERT JOHN McBRIDE: At some stage the Minister addressed the Portfolio Committee and also the media and dealt with his perception or understanding or version of the whole so called rendition saga. And he did a presentation to the Portfolio
10 Committee meeting and the angle of the presentation was to say that the lack of concern for the possible death of the Zimbabweans was an indication of insensitivity and undervaluing black lives. That was the presentation which was contained – it contained quite strongly there and words like dehumanisation and so on.

CHAIRPERSON: I just want you if you do not mind just to go back that sentence about what he said I just want to make sure I hear it.

MR ROBERT JOHN McBRIDE: Okay. If I could just go to the annexure?

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: The actual presentation.

CHAIRPERSON: Yes. Oh okay.

20 **ADV PAUL JOSEPH PRETORIUS SC:** It is at page 1333 in bundle Yd. It is the first documents in File D, page 1333 right in the front.

CHAIRPERSON: Did you say Yd Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: Yd.

CHAIRPERSON: Okay and page 133?

ADV PAUL JOSEPH PRETORIUS SC: 1333.

CHAIRPERSON: Oh okay.

ADV PAUL JOSEPH PRETORIUS SC: You go and help him.

MR ROBERT JOHN McBRIDE: Thanks Chair.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: So this is the presentation that the Minister did for the Portfolio Committee. So...

ADV PAUL JOSEPH PRETORIUS SC: Perhaps we should deal with the background before you get to the detail.

MR ROBERT JOHN McBRIDE: Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Just those first three paragraphs on page 1. If you could place those on record and then deal with the detailed answer that you give.

MR ROBERT JOHN McBRIDE: So his first point on background was that he was inundated with files over alleged misconduct, corruption and atrocities within the South African Police Services. And he says as the Minister with his oversight role over SAPS and DPCI derived from the constitution he felt duty bound that he could not ignore these allegations. In October he says:

“I establish a Reference Group to look into these allegations. The Reference Group provided me with the first draft report in 2014.”

20 Among the issues brought to his attention was the illegal arrest or unlawful deportation of Zimbabwean nationals. And his next point says:

“Two Zimbabwean nationals who were unlawfully handed over were subsequently murdered allegedly by Zimbabwean police.”

And then he says he was concerned that members of DPCI were involved in smuggling out from the Republic human beings whether South Africans or not in order for them to be tortured and killed outside the Republic. Then he says that would mean our

constitutional democracy is in danger and the rule of law subverted. He says he was reminded about the apartheid era cross border raids in which freedom fighters were abducted, kidnapped and killed without a trace.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride my invitation was just for the first page you can deal with the paragraphs that you want to deal with now. I am not sure it is necessary to go through the whole presentation unless of course you want to?

MR ROBERT JOHN McBRIDE: Not necessarily Chair.

CHAIRPERSON: Yes. From my part I just – you had made a – you had made a statement – a sentence in what you had said that I had not heard correctly and I just
10 wanted you to repeat that so that I understood it.

MR ROBERT JOHN McBRIDE: So on – Chair on page 1343.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: He gives a human rights background and institutional arrangements and he speaks to rights.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And then the – on 1344.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: He deals with the dehumanisation of blacks in general and Africans in particular and he speaks about the establishment of the act of
20 [indistinct] South African state as it developed. He continues on the next page covering colonialism, the land act, the racism and apartheid era practices and – and then he contrasts that to had the lives of white people the debate – in other words he is referring I would assume by extension to the guys that were illegally repatriated that if they were white people the debate and headlines would have been about human rights.

CHAIRPERSON: Hm.

MR ROBERT JOHN McBRIDE: And then he goes onto the defence of human rights and he quotes ironically enough later Helen Suzman and my issues have no problem with all of what he says. The context in which he says it.

CHAIRPERSON: H'm.

MR ROBERT JOHN McBRIDE: Is a very emotive emotional and painful issue for this country and to kind of extend that and somehow assume that Dramat and McBride are responsible for it. Being two freedom fighters who had served prison time for their commitment to the fight against apartheid and to indicate that against a background of the abuses and the dehumanisation of apartheid I think was very low and it also
10 showed a – a tendency by him to use any method necessary to have his way including innuendo and suggestions which paint a picture which is exactly opposite to the truth. And if I can just carry on that myself and Dramat were willing to lay our lives down to end dehumanisation and injustices and we were prepared to pay the ultimate price for that. And just whimsically in a spurious way we are now somehow made to be the personification of all that was evil with apartheid. It is not only malicious it is orchestrated and it was a good sign of things to come. Thanks Chair.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: That against the background in terms of which you were refused an offer to address the Portfolio Committee which is the direct
20 supervising body Parliamentary speaking of IPID, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Did you ever have occasion to confront the Chairperson of the Portfolio Committee afterwards and ask him how this so called sub judice rule could have prevented him from allowing you to address the committee but not prevented him

from allowing the Minister to deal with the same issue?

MR ROBERT JOHN McBRIDE: No Chair. What I did is to try and find out about his background. So I went to ask people who were his colleagues in the national party about him and would he perhaps agree to a sit down and discuss about it and they told me that the man is only for himself. So against that background there would be no way we could have a sensible human being discussion of what had happened, what had transpired.

ADV PAUL JOSEPH PRETORIUS SC: Can I ask you or may I ask you Mr McBride to go to Annexure J page 448 that is in bundle B. Yb.

10 **CHAIRPERSON**: What is the page number again Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: Page 448.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: I am told very sternly by my junior Chair that it is not J but I will check that independently.

CHAIRPERSON: Oh well all I can say is that I see a divider marked E. I am only saying what I see. Your junior is looking at you.

ADV PAUL JOSEPH PRETORIUS SC: Quite justifiably Chair.

CHAIRPERSON: As if to say you hear. Yes.

ADV PAUL JOSEPH PRETORIUS SC: Let us just go to J where is it?

20 **CHAIRPERSON**: Are you finding it Mr McBride?

ADV PAUL JOSEPH PRETORIUS SC: If you would bear with me a moment Chair?

MR ROBERT JOHN McBRIDE: Yes Chair I have just found it here.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Then I have got to go to 448. I will come back to those references Chair.

CHAIRPERSON: Okay so we should put them away for now?

ADV PAUL JOSEPH PRETORIUS SC: Yes please.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Let us go then for the moment to paragraph 29.

MR ROBERT JOHN McBRIDE: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: You talk there of your suspension by the Minister. Who replaced you in an acting capacity?

MR ROBERT JOHN McBRIDE: Mr Israel Kganyane replaced me in the acting
10 capacity.

ADV PAUL JOSEPH PRETORIUS SC: And would you tell the Chair please about how the Werksmans Report came into being?

MR ROBERT JOHN McBRIDE: Just in – there was – it is the Minister's office who appointed the Werksmans company I am not sure the exact sequence of events who did the actual appointing. But at the stage when Werkmans tried to contact IPID they attempted to circumvent myself at that stage before suspension as the Executive Director and on two occasions they sent an email with the wrong email of me whereas the email address for Mr Khuba and Mr Sesoko were correct. So with mine they instead of saying .gov they would say .co and after being alerted to the fact by Mr
20 Sesoko that they had put the wrong email address they then repeated it they just spelt the McBride in my name wrongly. So on two separate occasions in attempt to speak to Khuba and Sesoko my view was that there is an attempt to circumvent sending it through me. During that same period Mr Khuba got called from the Minister and the Minister's assistants directly to say he must speak to the Werksman company and that was after I was suspended and they were also instructed by Mr Kganyane to go to

Werksmans. For me it was necessary suspicious from my interpretation the way I viewed it as an attempt to cut me out of the process of Werksman and the fact that the Minister is getting involved himself in getting Mr Khuba to go to Werksmans. And on paragraph 36 I deal with that.

ADV PAUL JOSEPH PRETORIUS SC: Alright you fast forwarded in your statement to a significant degree. We will come back to that.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: If we could just follow the sequence in your statement.

10 **MR ROBERT JOHN McBRIDE:** Okay Chair.

ADV PAUL JOSEPH PRETORIUS SC: Particularly at paragraph 29. You refer to the Werksman investigation in the record of proceedings before the constitutional court, is that correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: So if we could go to page 875 please?

CHAIRPERSON: Is that in the same bundle?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: 875?

ADV PAUL JOSEPH PRETORIUS SC: 875.

20 **CHAIRPERSON:** Thank you. Well my last page in the same bundle is 4 something. Is it B? Okay. Yb. Are you able to find it? Look for ones that is written Yb Mr McBride.

ADV PAUL JOSEPH PRETORIUS SC: Yes it is Yb.

CHAIRPERSON: Ja page 875.

ADV PAUL JOSEPH PRETORIUS SC: Chair there seems to be a problem with the pagination.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: That may have been changed.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: And I would need to check that. I will come back to these references in due course.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So I will not go there now.

CHAIRPERSON: So we must not use them now.

ADV PAUL JOSEPH PRETORIUS SC: Yes please.

10 **CHAIRPERSON:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: You take issue in your statement with the compilation and outcome of the Worksmans Report?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you go in your statement to some detail and to some trouble.

MR ROBERT JOHN McBRIDE: Yex.

ADV PAUL JOSEPH PRETORIUS SC: To justify your view.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Of the Worksmans Report and its outcome?

20 **MR ROBERT JOHN McBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Now I am not sure whether from the point of view of the legal team that that detail is relevant to the bigger issues that you wish to place before the court because or before the Chair rather because they are in a sense your opinion of a written record?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: But I do not want to deprive you of the opportunity of telling the Chair what you want to tell the Chair. Do you have any comment on the division between the detail and the big picture?

MR ROBERT JOHN McBRIDE: Ja absolutely overall for me it is the pattern that happened – sorry.

ADV PAUL JOSEPH PRETORIUS SC: Your microphone please.

MR ROBERT JOHN McBRIDE: Okay my apologies. The aspect for me is the larger picture which I am testifying about the pattern that was witnessed in other departments with different law companies against a background of even auditing companies, law
10 companies and publicity companies getting involved in facilitating certain maladministration and perhaps criminal stuff in the entire administration of government including SOE's. My issues dealing with law enforcement in a broader scale so if anyone wants to take issue on the specific opinion I held about specific conclusions that I recorded at the time about Werkmans I am willing to deal with any of it but they – those are details. It is my opinion, it is a firmly held opinion and I placed it before the constitutional court and the high court. It was never challenged at any stage but I am willing to assist if anyone wants to enquire about the detail of that.

ADV PAUL JOSEPH PRETORIUS SC: Right. Paragraph 30 you talk about communications or attempted communications between Mr Khuba and a person in
20 Minister Nhleko's office. Would you tell the Chair about that please?

MR ROBERT JOHN McBRIDE: Thank you Chair. Mr Khuba reported having received multiple calls from Mr – from Minister Nhleko's personal assistant. And at some stage Minister Nhleko called Khuba and said he should come to Cape Town and the Ministry would cover the costs of his flight to Cape Town even on a weekend. And for me I found – I – when it was reported to me as I do note it was very strange and a sign of

desperation to somehow prove the – the lie that was being created to start a process and put pressure on people. Khuba would later be suspended, disciplined and dismissed on spurious grounds. And for a Minister and because in the culture in South Africa, in the culture in the civil service we respect seniority and we view a Minister with as the most senior in the department. Even if they were independent so we always give – we always defer to Ministers a lot and for the Minister then to misuse that to attempt to contact directly officials in the department is basically an abuse of the respect that civil servants show to seniority. And it could not have been for a good reason. It could not have been for some reasonable purpose. Why was he not just –

10 why was he not just happy to allow processes to continue? He has now appointed Werksmans – let Werksmans go ahead. Perhaps Khuba does not want to talk to Werksman that would have been his right. Why would the Minister want Khuba specifically to talk to Werksman?

ADV PAUL JOSEPH PRETORIUS SC: Alright let us just...

MR ROBERT JOHN McBRIDE: And then later on for the Werksman Report to be used against Khuba and Sesoko and myself not only in disciplinarians but as a basis for a criminal case against us. So the whole notion of respect for the rule of law and equality and fairness and avoiding dehumanisation of black people as per the presentation in parliament Minister Nhleko just throws it out of the window like this and respect for

20 processes and rule of law. Just like this without a blink of an eye he is willing to use processes to achieve his ends.

CHAIRPERSON: Just for the sake of completeness and for whoever may be listening who has not – or who might not be familiar with a lot of background to these things just state again what Werksmans mandate was; what had the Minister asked them to do? What was their brief in other words?

MR ROBERT JOHN McBRIDE: Chair if I can just find yes – actually the brief is somewhere in the bundle.

CHAIRPERSON: Oh but not necessarily that you need to be accurate in terms of how it is but your own understanding subject to whatever is written in black and white.

MR ROBERT JOHN McBRIDE: Thanks Chair. It was to in – there was a broad section to look at misdemeanours or misconduct in DPCI and there was a section to look at what happened, this is the Minister asking about the criminal justice system:

10 “What happened to a docket when it was at NDPP at the NPA, what was the process and what role did Khuba, Sesoko and McBride play in altering the report?”

And it is on the basis of this that we start running into trouble. I can deal with the details.

CHAIRPERSON: *Ja*, no I thought because you were - in your evidence you were criticising the Minister for not allowing process.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: To continue. It is important for everyone to know what the Werksmans mandate was at least as you understood it.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: *Ja*.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Chair we were to come to that but perhaps it is convenient that it be dealt with now.

CHAIRPERSON: Yes, okay.

ADV PAUL JOSEPH PRETORIUS SC: Just by way of background you are dealing in your evidence with two separate sets of facts. The one is the so called “rendition” saga?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Which ultimately led to the termination of services in one form or another of Generals Dramat and Sibiya?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you are testifying to that set of facts. You are also testifying to certain facts which led to the termination of service or the suspension of yourself and Messieurs Khuba and Sesoko?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That is a separate set of facts which revolves
10 around what IPID did or did not do in relation to its reports?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And that is separate from the Crime Intelligence investigation, the Crime Intelligence Reports, the NPA and what the NPA did with all the evidence. It seems that you were called to account for your participation in that chain of investigations and activities regarding the “rendition” saga investigation but those are two separate issues. The Werksmans Report as I understand it dealt principally with your role and function in relation to the IPID investigation or the IPID participation in the investigation or the IPID part of the investigation into matters related to the “rendition” saga?

20 **MR ROBERT JOHN MCBRIDE:** That is right.

ADV PAUL JOSEPH PRETORIUS SC: The terms of reference appear at page 1375 which is Bundle D.

CHAIRPERSON: That is YD?

ADV PAUL JOSEPH PRETORIUS SC: YD.

CHAIRPERSON: Page 17?

ADV PAUL JOSEPH PRETORIUS SC: 13.

CHAIRPERSON: 75.

ADV PAUL JOSEPH PRETORIUS SC: 75.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: They appear in paragraph 5 of page 1375.

MR ROBERT JOHN MCBRIDE:

CHAIRPERSON: I do not have paragraph 5 at page 1375 of EXHIBIT YD.

ADV PAUL JOSEPH PRETORIUS SC: Alright. My apologies Chair. You have paragraph 2 headed “Introduction”?

10 **CHAIRPERSON:** Yes, I do.

ADV PAUL JOSEPH PRETORIUS SC: And then paragraph 2.1 “Terms of Reference for the Investigation”.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then in “paragraph 5”. I am sorry I should have been clearer.

CHAIRPERSON: Okay - okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: Which reads.

CHAIRPERSON: Thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** “Your Terms of Reference in the Investigation...”

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: “...are the following”.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Would you like to put that on record please?

CHAIRPERSON: Have you found it Mr McBride?

MR ROBERT JOHN MCBRIDE: Yes sir I have.

CHAIRPERSON: Yes, okay.

MR ROBERT JOHN MCBRIDE: “Your terms of reference...”

This is Minister Nhleko to Werksmans.

“...who and under what circumstances was the original report altered or how the second report came about with both reports signed by the same person, Mr Khuba.”

And the second one.

10 “Were there any misconduct or offences has been committed and if so by whom? Whether there is a prima facie evidence of misconduct and criminal liability by Lieutenant Dramat.”

He says here:

“Major Sibiya and any other officers mentioned in the original report. The circumstances...”

That is four:

“...under which the report and the docket handed in the NPA and what happened to the docket whilst in the NPA’s possession. Any other matter that might come to your attention during the investigation which is relevant to your conclusions.”

20 **ADV PAUL JOSEPH PRETORIUS SC:** We can and it may be necessary because you have made.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Fairly strong allegations in relation to this report and the signatories to this report deal in some detail with the content of the report.

MR ROBERT JOHN MCBRIDE: Hm.

ADV PAUL JOSEPH PRETORIUS SC: We may have to go there.

MR ROBERT JOHN MCBRIDE: It is fine.

ADV PAUL JOSEPH PRETORIUS SC: We will consider it as a legal team, but just for the present to fast forward to page 1443.

MR ROBERT JOHN MCBRIDE: I have that Chair.

ADV PAUL JOSEPH PRETORIUS SC: In essence you have given evidence that further investigation was done and a complete report was signed by yourself and presented to the NPA or the DPP within the NPA. Do you recall that evidence?

10 **MR ROBERT JOHN MCBRIDE:** That is correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: And what Werksmans were asked to investigate and did investigate was essentially the differences between what has been termed the provincial first report and the second report.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And how that came about and whether there was any misconduct in relation to the changes between the first report and the second report and secondly whether there was any criminal conduct in existence in relation to the changes between the first and the second report or the additions.

MR ROBERT JOHN MCBRIDE: Yes, yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** At paragraph 6.4.5 on page 1443 you are mentioned?

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: The report concludes:

“In the absence of any information as to which of the three co signatories were responsible for the deletion of information

from the first report we recommend that Khuba, McBride and Sesoko be charged criminally for defeating the ends of justice or obstructing the administration of justice and that disciplinary charges be brought against them in their capacity as employees.”

What is your comment on that?

MR ROBERT JOHN MCBRIDE: What the report is saying is because we do not know let us charge all of them.

ADV PAUL JOSEPH PRETORIUS SC: Right. There may be some other basis but.

10 **MR ROBERT JOHN MCBRIDE**: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: It may be necessary to go to some detail into who is right and who is wrong.

MR ROBERT JOHN MCBRIDE: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: In the report.

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: Whether that affects the other evidence you have given at a higher level is open to debate.

MR ROBERT JOHN MCBRIDE: *Ja*.

20 **CHAIRPERSON**: So - but your comment Mr McBride is as you understand the effect of what they are saying here is.

MR ROBERT JOHN MCBRIDE: Hm.

CHAIRPERSON: We do not know.

MR ROBERT JOHN MCBRIDE: *Ja*.

CHAIRPERSON: Who among the three?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Altered the report?

MR ROBERT JOHN MCBRIDE: *Ja.*

CHAIRPERSON: But then they must all be charged both criminally and in terms of disciplinary steps. That is what you are saying. That is what you say it – it actually boils down to that paragraph?

MR ROBERT JOHN MCBRIDE: That alone Chair is a problem.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: But the other issues, whether it was changed lawfully or not is irrelevant to them.

10 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: Whether not to have changed it.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Would have been a bigger problem.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Is irrelevant to them.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The fact that something was changed.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** And from our investigation we cannot see who changed what.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: But unwritten word is well we cannot really name McBride here.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Even in our own misunderstanding.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Let us charge them all.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: We will cast the net wider.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Even from their own misperceptions.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Which and if you – if you also look at the other recommendations I mean they should not be involving themselves in what the NPA

10 does.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: As a private legal company. What the NPA does and a private legal company does not recommend criminal charges.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: To – to state officials whose job is – is to investigate.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So they are – they are double thinking the investigation. They are questioning the investigation carried out by an independent

20 body whose task it is to investigate with limited knowledge and in strange circumstances where they come onto the scene. Now I am quite aware that

Werksmans is an international company. It does a lot of good work. It is well respected and all of that but my view in this instance they got it wrong and they jumped to

conclusions and it clearly to me and now we can go into the details it was a hurried report and it appeared there is a timeline and things needed to be done on time and

that is why the Minister was even phoning Khuba. I was on suspension when I offered

to go before that panel of Werksmans and answer questions and the lawyers at Werksmans asked whether I would not require a lawyer and I said I do not need a lawyer. I have done nothing wrong but the tension in the room was palpable – you could feel. It was tangible and we based on how we reached the – myself, Khuba and Sesoko we were suspicious the whole Werksmans Report. This is just a process to ultimately nail us in the end. So we did go there with apprehension.

CHAIRPERSON: You did not say so expressly but I think from what you were saying you were confirming that my understanding of what you were saying about that paragraph that was read to you was correct. My understanding – I take you to be
10 confirming that what I put to you as your understanding of it or your comment on it was correct.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Yes Chair.

CHAIRPERSON: Okay, alright.

MR ROBERT JOHN MCBRIDE: I hear you.

CHAIRPERSON: Because I just wanted to make sure but you talked about it further but I want to know whether I was correct in understanding it. Can I also ask this? I think one of the things you have said is that they – Werksmans – seem not to have
20 bothered to ask the question to the extent that there may have been an alteration of the report. Was that alteration lawful or not lawful? That is one of the things that I think you are saying. Is that right?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: So you are saying they did not look into an issue that was critical because if the alteration was correct there would be no basis to say anybody – anybody

must be charged criminally or if – if the alteration was lawful there would be no basis to say somebody must be charged criminally?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: And you say on your understanding of the report they ignored that very important issue which they should have considered?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Chair in fairness to Werksmans of course it may be necessary to interrogate the whole issue in a little more detail.

10 **CHAIRPERSON**: Yes. No – no I accept.

ADV PAUL JOSEPH PRETORIUS SC: But we will come to that.

CHAIRPERSON: No, I accept that.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: I just wanted to make sure that I understand what his thinking is about the report.

ADV PAUL JOSEPH PRETORIUS SC: But just at the higher level your evidence relates to a - a matter of general import to the terms of reference of the Commission and that is the manipulation of procedures and processes in order to.

MR ROBERT JOHN MCBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: In essence you say in your evidence “Capture the Law Enforcement Agencies”. At a higher level the Werksmans Report was the basis for criminal charges against you?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What happened to those criminal charges?

MR ROBERT JOHN MCBRIDE: Chair they were withdrawn as the – and the words of

the prosecutor were to the effect there is any evidence to say sustain a prosecution.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: Why were we charged in the first place? In addition there is a disclaimer on the Werksmans Report. The author of the Werksmans Report refused to testify and his view was well it is hearsay of hearsay and I have got a disclaimer saying it is not to be used in any litigation. So ultimately what was the purpose of the report if it could not be used in litigation and even though there was that disclaimer those who decided they are going for us and they will charge us and discipline us did not care and so it was withdrawn against us?

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes. These events eventually also led to your suspension?

MR ROBERT JOHN MCBRIDE: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Not necessarily the Werksmans Report but the events which Werksmans investigated.

MR ROBERT JOHN MCBRIDE: Sir I was suspended before.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN MCBRIDE: The Werksmans interview.

ADV PAUL JOSEPH PRETORIUS SC: [Intervenes].

MR ROBERT JOHN MCBRIDE: I was on suspension when I did the Werksmans.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes. That is why I say.

MR ROBERT JOHN MCBRIDE: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: The events which were dealt with in the Werksmans Report.

MR ROBERT JOHN MCBRIDE: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: In fact led to your suspension although you

were suspended before Werksmans dealt with the issues in their report.

MR ROBERT JOHN MCBRIDE: No Chair. I was suspended before Werksmans Report.

ADV PAUL JOSEPH PRETORIUS SC: Yes. No, I understand that. That is what I am saying.

MR ROBERT JOHN MCBRIDE: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: So Werksmans dealt with certain events.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In their report. Forget Werksmans for the
10 moment. Those events led to your suspension. Are you following – am I making myself clear or am I not making myself clear?

CHAIRPERSON: Maybe let me assist. When Werksmans was asked to do what they were asked to do were you already on suspension?

MR ROBERT JOHN MCBRIDE: At the time they were requested to – when they were given this brief I was not yet on suspension.

CHAIRPERSON: You were not yet on suspension. Are you able to recall how long after they were given this brief you were suspended more or less? A month, two months, three months?

MR ROBERT JOHN MCBRIDE: A month.

20 **CHAIRPERSON**: About a month or so?

MR ROBERT JOHN MCBRIDE: *Ja*.

CHAIRPERSON: Before you were suspended had you had any interaction with them within that month or so after they were asked to do the work?

MR ROBERT JOHN MCBRIDE: No Chair except the purported attempt to make contact with me.

CHAIRPERSON: Through an email?

MR ROBERT JOHN MCBRIDE: Through a defective email.

CHAIRPERSON: Yes, okay and their report – how long after you went on suspension did it come out if you are able to tell? Three months, four months, five months, six months?

MR ROBERT JOHN MCBRIDE: It came out after the – the interview was in April.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And.

CHAIRPERSON: Your interview with them?

10 **MR ROBERT JOHN MCBRIDE:** That is correct sir.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And the report was leaked to the newspaper the weekend before I was going to appear in my first disciplinary.

CHAIRPERSON: Yes, okay. The events in connection with which you were suspended as you understand them. Were they some of the events that were dealt with by them in their report?

MR ROBERT JOHN MCBRIDE: That is correct Chair. It is – there is a – so I was suspended before an investigation.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE:** Yes.

CHAIRPERSON: Yes. Okay, alright. Mr Pretorius I do not know if that has helped.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Let us just summarise. You have testified about the “rendition” saga. You may revert to it in due course. Correct?

MR ROBERT JOHN MCBRIDE: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: IPID investigated that or was part of an investigation?

MR ROBERT JOHN MCBRIDE: Yes that is right.

ADV PAUL JOSEPH PRETORIUS SC: The “rendition” saga. During the course of IPIDs work a so called first report or preliminary report was prepared?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You have explained the circumstances in which a necessity for the preparation of a final report which you signed. Is that correct?

10 **MR ROBERT JOHN MCBRIDE**: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Whether by way of addition or whether by way of deletion, whether properly or improperly we know that the second report differed from the first report?

MR ROBERT JOHN MCBRIDE: Could you kindly repeat the last part?

ADV PAUL JOSEPH PRETORIUS SC: Okay. Let me put it this way. The second report differed from the first report?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: At issue is whether that was done properly and lawfully?

20 **MR ROBERT JOHN MCBRIDE**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. You have given extensive evidence to explain your view that it was lawfully, properly and necessarily done?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In fact you have gone so far as to say that had the second report not differed from the first report that would have been unlawful and

improper?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now that is an issue for debate which we may have to go into because there are different views on that. The investigation resulted in the first and second reports ultimately the facts relevant to that lead not only to criminal charges being brought against you but also to your suspension. Am I correct?

MR ROBERT JOHN MCBRIDE: Indeed Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. Now you have said that in relation to the criminal charges they were withdrawn because you say the prosecutor's view was
10 that there was no case. Correct?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now I am interrogating the suspension aspect, right. The suspension for the reasons that we have now clarified the suspension was ultimately declared invalid by the Constitutional Court for a number of reasons?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Principally that given the Constitutional independence of IPID the Minister of Police would have had no power to suspend you at all. Correct?

MR ROBERT JOHN MCBRIDE: That is correct, yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Right. Did anybody else then purport to take disciplinary action against you? In other words did the Minister say then I have been told by the Constitutional Court that I cannot suspend or discipline you but someone else will. Did anybody else take up the?

MR ROBERT JOHN MCBRIDE: Hm.

ADV PAUL JOSEPH PRETORIUS SC: The cudgels against you?

MR ROBERT JOHN MCBRIDE: No Chair. After the Constitutional Court decision the Minister attempted to scupper my return to – to IPID through two ways. One is the – in fairness – the provisions of the Constitutional Court judgment was such that independence does not mean insolation from accountability. So to make the whole process fair if there is a case for the Executive Director to answer we will give the Minister and Parliament 30 days – working days – to deal with any disciplinary that is required. Parliament did not deal with it. So that is the one issue. The second issue is the Minister made a complaint or sorry the Executive – Acting Executive Director made a complaint to the Public Service Commission about this matter and other matters in
10 which they then tabled their report of the Public Service Commission to Parliament. Ultimately that report and its recommendations was withdrawn by the Public Service Commission.

CHAIRPERSON: Mr Pretorius I do not know whether I missed something. We are now talking about what happened after the outcome of his case in the Constitutional Court. I do not remember us looking at the letter of his suspension, seeing what reasons were given by the Minister for his suspension, but also I want to know Mr McBride between your suspension and General Dramat's suspension which one came first?

MR ROBERT JOHN MCBRIDE: Hm.

CHAIRPERSON: Was it not Dramat's one?

20 **MR ROBERT JOHN MCBRIDE**: That is correct sir.

CHAIRPERSON: Yes. So also with regard to that I do not know what your plan may be. I would prefer that we deal with them in the sequence in which they happened and we exhaust them like we exhaust Dramat's suspension and then move to his and so on and so on.

ADV PAUL JOSEPH PRETORIUS SC: Chair indeed that is the plan and that is as it

appears in the statement. My concern was with some potential alteration in the numbering of those.

CHAIRPERSON: Oh, those.

ADV PAUL JOSEPH PRETORIUS SC: Next steps that I was going to put.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Particularly to.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Put Dramat in the proper sequence.

CHAIRPERSON: Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** But the purpose of this evidence is somewhat difference.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It is - or the purpose of the questions are somewhat different. It is just at a high level to place the Werksmans Report in its proper context. In other words to say that even given the Werksmans Report and even given the suspension and laying of criminal charges against Mr McBride they ultimately came to nought. That is just.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: The point I wanted to make.

20 **CHAIRPERSON:** *Ja.* No – no I.

ADV PAUL JOSEPH PRETORIU: It has taken a long time to get there but you will forgive me for that Chair.

CHAIRPERSON: *Ja.* No – no I understand that but from – from what he said to me when I asked him the questions that were meant to clarify what you were asking him. It is – it is clear that the actual report came after his suspension. So I am just saying for

me it would be very helpful if we deal with those events if possible the way they followed each other. Of course there may be good reason sometimes to change that. It is just that once we deal with what happened after his success in the Constitutional Court when we have exhausted how he was suspended, what the reasons were that were given it is a little difficult to follow.

ADV PAUL JOSEPH PRETORIUS SC: I understand Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: I understand.

CHAIRPERSON: Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** But the sole purpose.

CHAIRPERSON: But I understand your – your concern about sorting out the pagination that.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: That I understand. So as long as you are alive to my concern it is fine. Let us continue. At a certain stage it will help if whoever is listening can just see the sequence properly.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: And I think it is important to – it may be important to look at the sequence because of events which – which event came after which event because
20 there may be significance even in why that particular event happened after that one.

ADV PAUL JOSEPH PRETORIUS SC: The judgment of Prinsloo J in the matter between Helen Suzman Foundation and the Minister of Police at page 439 in Bundle YB is a useful record of the time sequence in relation to General Dramat

CHAIRPERSON: What page again, four?

ADV PAUL JOSEPH PRETORIUS SC: 448.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 10 the judgment which is a recordal of events and you would know these facts from your own knowledge. The judgment reads:

“On 23 December 2014 the Minister wrote to Dramat informing him that he was placing Dramat on precautionary suspension with full pay and benefits with immediate effect.”

MR ROBERT JOHN MCBRIDE: Sorry Chair I do not – I do not have the correct page.

CHAIRPERSON: Hm.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. Just help him out.

CHAIRPERSON: It is EXHIBIT Y, B for Beatrice and it is at page 447. Of course where we say 447 or did you say 448? 447 I think you said.

ADV PAUL JOSEPH PRETORIUS SC: 448.

CHAIRPERSON: Oh 448. I am sorry. We are leaving out the zero before four. So if you look at it, it will read 0448 but we are just saying 448.

MR ROBERT JOHN MCBRIDE: I have it Chair, thanks.

CHAIRPERSON: Do you want to repeat your question Mr Pretorius on paragraph 10?

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 10 – it appears that:

20 “On 23 December 2014 the Minister wrote to Dramat informing him that he was placing Dramat on precautionary suspension with full pay and benefits with immediate effect.”

Do you see that?

MR ROBERT JOHN MCBRIDE: (No audible reply).

ADV PAUL JOSEPH PRETORIUS SC: Are we on the same page? Apparently not.

MR ROBERT JOHN MCBRIDE: It is 447.

CHAIRPERSON: No, I am sorry 448.

MR ROBERT JOHN MCBRIDE: 448.

CHAIRPERSON: I got it wrong earlier. He said 447. It is 448.

MR ROBERT JOHN MCBRIDE: Okay, I have it. I have it. I have it now Chair, thanks.

CHAIRPERSON: Paragraph 10.

MR ROBERT JOHN MCBRIDE: I have it.

CHAIRPERSON: I think Mr Pretorius was referring to that paragraph and saying you would know those events yourself. You want to say something about what is said in paragraph 10?

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is it correct that the precautionary suspension was at least initiated on 23 December 2014 in respect of General Dramat?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Do you know from all the litigation and your own facts which or firstly whether the Minister relied on any IPID report and if so which?

MR ROBERT JOHN McBRIDE: According to the Minister he relied on an IPID report which could only have been the preliminary report.

ADV PAUL JOSEPH PRETORIUS SC: Do you know whether the Minister relied on the – at all on the signed report or the report signed by you as the final report?

20 **MR ROBERT JOHN McBRIDE:** He – there is no way he looked at it otherwise he could not have suspended him on the grounds of that recommendation report, the final one which I had signed.

CHAIRPERSON: Well unless having looked at it he thought, or he was not persuaded by it maybe, is that a possibility as you see the matter, or you think he definitely did not see it otherwise he would not have acted the way he acted?

MR ROBERT JOHN McBRIDE: Chair if I could be allowed to answer it differently.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: If he was concerned at all about the final report and if he had somehow received the preliminary report he could have called me in and indicated, I've read this report, the final one which you've given me upon my request, I notice it differs from the other one, kindly explain, since you provided me with this report.

CHAIRPERSON: And he did not do that.

MR ROBERT JOHN McBRIDE: He did not do that sir, in fact he never did that ever about the rendition issue.

10 **CHAIRPERSON:** Yes but do you – you have said that there exists somewhere a written proof that the second report was delivered to his office.

MR ROBERT JOHN McBRIDE: Yes that's correct Chair I've attempted to contact my former colleagues in IPID but without success.

CHAIRPERSON: Yes, okay I'm sure the commission will try and get that (indistinct) but you have no reason to – you know of no reason why, if he's office did get it why it wouldn't have been given to him.

MR ROBERT JOHN McBRIDE: No I have no idea sir.

ADV PAUL JOSEPH PRETORIUS SC: Now there will be direct evidence of this later Mr McBride but would you go to page 490.

20 **MR ROBERT JOHN McBRIDE:** Sorry Chair if I can just – before that...(intervention).

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: To follow it up, the Minister had requested the docket and the report and he'd given me two days to provide it.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: So there was a deadline, we took and we got notice, if

it was not received he would have asked me, I gave you two days why haven't you given me the report, if there was any chance he did not receive it.

CHAIRPERSON: Yes and if he put that kind of deadline it must mean it was very important for him that he receives it and that it was also urgent.

MR ROBERT JOHN McBRIDE: That's correct sir.

CHAIRPERSON: And one would have expected that if he didn't receive it he would have brought that to your attention in one way or another to say, what has happened.

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Perhaps before we return to the sequence of events I'm going to hop out of that sequence Chair to deal with the notice of suspension about which you've asked.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That appears at page 186 of the first bundle in which your statement is, Bundle YA.

CHAIRPERSON: What's the page number again?

ADV PAUL JOSEPH PRETORIUS SC: 186 Chair.

CHAIRPERSON: Thank you, have you found it Mr McBride?

MR ROBERT JOHN McBRIDE: Yes Chair I have yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright I'm going to ask you because although this is at a level of detail that may or may not affect the general points you are making in your evidence to read it onto the record and to comment on each paragraph that you wish to comment. I know it's going to take time Chair but perhaps it's necessary.

CHAIRPERSON: No that's fine.

ADV PAUL JOSEPH PRETORIUS SC: Would you start at paragraph one and deal

with it please.

MR ROBERT JOHN McBRIDE: “This notice serves to inform me that I intend placing you on precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days”.

ADV PAUL JOSEPH PRETORIUS SC: Right now this is some months this letter is sent, it appears on page 188 on the – or it was signed at least on the 10th of March 2015, some months after General Dramat’s precautionary suspension, you see that?

MR ROBERT JOHN McBRIDE: This is – in terms of sequence of events this is after Dramat was suspended.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Yes some months after.

MR ROBERT JOHN McBRIDE: That’s correct sir.

ADV PAUL JOSEPH PRETORIUS SC: Yes so if you could go back please to paragraph two on page 186.

MR ROBERT JOHN McBRIDE: “There are serious allegations which have been made against you, some in the media *prime facie* alluding to possible acts of serious misconduct by yourself as head of IPID”.

ADV PAUL JOSEPH PRETORIUS SC: Yes paragraph three.

MR ROBERT JOHN McBRIDE: “On 8th of March you were appointed as Executive Director of IPID in terms of Section 6 of the IPID Act of 2011”.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Right that’s 8 March 2014?

MR ROBERT JOHN McBRIDE: Yes he used the wrong date yes.

ADV PAUL JOSEPH PRETORIUS SC: Right if you could go to paragraph five.

MR ROBERT JOHN McBRIDE: He says, “during or about January 2015 you are alleged to have breached your statutory responsibility to act with independence and impartiality in that you informed Lieutenant General Dramat and Major General Sibiya

through their legal representatives, in writing, that they had been cleared by IPID – by the IPID investigation regarding IPID’s investigation into the illegal rendition of Zimbabwe Nationals by the officers employed in the DPCI”.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph six.

MR ROBERT JOHN McBRIDE: “When you did so you allegedly knew very well that IPID did not clear Lieutenant General Dramat and Major General Sibiya because you had in your possession the original report by IPID dated 22nd of January 2014 which recommended that Lieutenant General Dramat and Major General Sibiya be criminally charged with kidnapping and defeating the ends of justice”.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right and paragraph seven.

MR ROBERT JOHN McBRIDE: “When I invited you to explain your conduct regarding the aforesaid you failed to disclose to me that there were two IPID reports the conclusions of which were contradicting each other”.

ADV PAUL JOSEPH PRETORIUS SC: Right now let’s just stop there, what the Minister refers to here is a communication from IPID to Lieutenant General Dramat and Major General Sibiya, was such a communication delivered?

MR ROBERT JOHN McBRIDE: Yes their legal representatives were informed and at least one and possibly two of them had requested in terms of Access to Information Act what the status of their clients were.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right and your responded?

MR ROBERT JOHN McBRIDE: Yes and as the investigation had been completed and submitted there would be no prejudice in informing them of the status of their clients.

ADV PAUL JOSEPH PRETORIUS SC: Rightly or wrongly for the moment paragraph six, it’s apparent that the Minister was referring to the first report and in a sense relying on the first report.

MR ROBERT JOHN McBRIDE: That's – give me a moment sir. No if I can just say Chair, that's what – on six what he purports to say, if you remember the letter that he requested, the docket from me, if we go back there, he asks for preliminary as well as final reports on that matter. Now what he had in mind, whatever it was, we gave him the final report, whatever he had in mind there was no – he was quite clear that there was a series of preliminary reports, he was aware of that at that stage for some reason.

CHAIRPERSON: Now you are talking about – at what stage exactly was it at the stage he sent you a letter giving you two days within which to give him the report, is that what you are talking about?

10 **MR ROBERT JOHN McBRIDE**: That's correct sir.

CHAIRPERSON: Okay and you are saying that the communication whether it was – I think it was in writing you said.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Are you saying your recollection is that the letter made it clear that he was aware that there was a preliminary report and a final report or at least that there were two reports?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Yes you say, that letter made it clear that he was aware of that?

20 **MR ROBERT JOHN McBRIDE**: Subsequently in analysis we saw – now here is where he tripped himself up because when we responded we gave him the docket, the full docket and the final report as submitted to NDPP but his intention to say he was not aware that there was some preliminary report which I, at that stage, was not aware of because nobody had told me there was a preliminary report until almost nine months later when it leaked out that there was a report. At the stage we finalised the submission to the NDPP there was one report in front of me, so those...(intervention)

CHAIRPERSON: The final report?

MR ROBERT JOHN McBRIDE: That's all I had seen.

CHAIRPERSON: Okay maybe just so that we are – my impression yesterday was that when you prepared the final report you were aware that there was a report that had been sent to the NPA that had been signed by Mr Khuba only but what you are saying now is, as at the time of asking Mr Khuba to do further investigations and as at the time of signing the final report, you were not aware that there's a report that Mr Khuba had sent to the NPA. You were only aware that a docket had been sent to the NPA is that right?

10 **MR ROBERT JOHN McBRIDE:** That's correct sir.

CHAIRPERSON: And you have made the distinction that there's a docket and there's a report.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And I think yesterday I asked you whether, when they submitted the docket and the report are submitted at the same time but you made the distinction that there's the docket and then there's the report, the report is an opinion as you put it.

MR ROBERT JOHN McBRIDE: In addition Chair I had not know that in the verbal briefing that there were actually reports as a way in which IPID did things attached to dockets until that report that Khuba gave me and signed by Khuba and Sesoko so I was
20 not aware that there are reports that go in because I was new in IPID and that IPID does it this way never mind knowing about a preliminary report in addition to the docket can change its findings. It would just be a common sense thing later on that occurred to me and when I became aware this is how it's practiced.

CHAIRPERSON: So when Khuba gave you a briefing, remember you told us that you asked for an update on all high profile cases and Khuba among others gave you an

update on this so-called rendition matter, he did not say there was a report he had sent to the NPA already?

MR ROBERT JOHN McBRIDE: We spoke in terms of docket and where the investigation is.

CHAIRPERSON: Yes so – but he told you there was a docket that was sent to the NPA.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And it may be that in his mind if he talked about the docket it included the report as well.

10 **MR ROBERT JOHN McBRIDE:** Yes.

CHAIRPERSON: But your own understanding didn't include a report at the time.

MR ROBERT JOHN McBRIDE: At the time of the briefing there was no physical report neither was I aware that, that is the practice at that stage, this is my first week on the job.

CHAIRPERSON: Ja but you have said that the letter that came from the Minister where he asked – gave you two days within which to give him the final report, you have said that, that letter – the contents of the letter were such that it was clear that the Minister had in mind a preliminary report and another report – final report.

MR ROBERT JOHN McBRIDE: Yes.

20 **CHAIRPERSON:** Yes before complying – or was it asking that you should provide both reports to him, is that what it was asking?

MR ROBERT JOHN McBRIDE: He talks about all reports.

CHAIRPERSON: All reports.

MR ROBERT JOHN McBRIDE: And the only report I was aware of in November 2014 was the report I had signed.

CHAIRPERSON: Oh and then that's the only report you then gave?

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: So it said all reports and not necessarily preliminary report and final report?

MR ROBERT JOHN McBRIDE: All reports including preliminary and final reports.

CHAIRPERSON: Oh okay and then you just gave him what you understood to be the only report?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Yes and did you immediately check with Khuba whether there was
10 any report in the light of the letter of the Minister's talk about all reports?

MR ROBERT JOHN McBRIDE: Khuba's view was that they were talking regularly to Mohsing? and he was giving Mohsing regular updates. There wasn't an issue of a specific report so there were many updates given to Mohsing and many directives issued by Mohsing. My mind – in November when we prepared the package for the Minister it's a continuous process of engaging with the Prosecuting Authority.

CHAIRPERSON: Ja but let me go back to my question, did you talk to Mr Khuba to say, the Minister has asked for all reports, I just want to make sure that there are no other reports other than this one, are there other reports that you know of, did you ask him anything along those lines?

20 **MR ROBERT JOHN McBRIDE:** Not specifically along those lines my impression was there was that one report and there was correspondence and emails between them.

CHAIRPERSON: Yes, okay no thank you. Mr Pretorius I see we have gone...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes thank you Chair.

CHAIRPERSON: Yes let's take the short adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: You will bear with us Mr McBride the facts and the sequence of events as related in the various court applications in your statement and in the various annexures are to say the very least very complex.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: They involve as we have said two levels of issue one is the purpose of your removal that of Dramat and that of General Sibiya, right and why that occurred and what the outcome was. And then there is the complex set of facts underlying that. Unfortunately we have to delve to some extent in those sets of facts so we know that on the 22 December 2014 or thereabouts General Dramat was placed on precautionary suspension?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: I am going to come to that in a moment.

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps out of sequence because we fast forwarded now to March 2015 when you were suspended and we are dealing with your suspension letter.

20 **MR ROBERT JOHN McBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: And having glanced at your suspension letter there are a number of allegations made in that letter which do not seem to bear any relationship to the outcome of the Werksmans Report it seems that the issue is dealt with here I am not sure – form the basis of the recommendation and the Werksmans Report which led to the criminal charges. But be that as it may...

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Let us just go through the letter.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 7 the suspension letter says and the Minister says:

“When I invited you to explain your conduct regarding the aforesaid you failed to disclose to me that there two IPID reports the conclusions of which were contradicting each other.”

Now you have explained the sequence of events.

10 **MR ROBERT JOHN McBRIDE**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Culminating in the final report. Did the Minister speak to you before your suspension and invite you to explain your conduct?

MR ROBERT JOHN McBRIDE: No only with the Notice of Intention to suspend he asks for me to give reasons why not.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Then he refers to the Sunday Times breaking the story or dealing with the leaks. What is said in paragraph 8 if you could put that on record please?

MR ROBERT JOHN McBRIDE: Okay.

CHAIRPERSON: I am sorry Mr Pretorius before that let us go back to paragraph 7.

20 **MR ROBERT JOHN McBRIDE**: Yes.

CHAIRPERSON: Where the Minister says:

“When I invited you to explain your conduct regarding the aforesaid.”

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And then he says:

“You failed to disclose to me that there were two IPID reports the conclusions of which were contradictory to each other.”

I understand that two – I understand him to be saying that prior to him – prior to him taking maybe a provisional decision...

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: That you may have to be suspended?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Which would be before he may have writ – before he could write you any letter saying tell me why I should not suspend you? I understand him to be talking
10 about the period that would have preceded that time namely the time when he wrote you that letter saying: tell me why I should not suspend you or something like that? Is it true that he did invite you prior to that to explain your conduct regarding what he says the aforesaid?

MR ROBERT JOHN McBRIDE: No, no Chair he did not – he did not do that.

CHAIRPERSON: He did not do that?

MR ROBERT JOHN McBRIDE: No he did not do that. It is only in this – in the letter of ...

CHAIRPERSON: Inviting you to.

MR ROBERT JOHN McBRIDE: Notice of Intention to suspend.

20 **CHAIRPERSON**: Yes.

MR ROBERT JOHN McBRIDE: And the only – we had – he had had a number of meetings with the department.

CHAIRPERSON: H'm.

MR ROBERT JOHN McBRIDE: But at this stage it was a Reference Group.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: We had already given the report to the Reference Group.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: In particular Mtengwa – Advocate Mtengwa.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: About the status of this investigation and where it is at.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: It is a second half of 2014.

CHAIRPERSON: Yes.

- 10 **MR ROBERT JOHN McBRIDE:** Presumably the Reference Group gave the Minister a report. Whether the Reference Group gave the Minister the report of what we had conveyed to them or not I am not aware. But at that stage if the report was correct the Minister knew what IPID's position was and what it had submitted to the NDPP. It increasingly appears to be that – they did not care about that version. They did not care about that position they had made up their minds because we did not tell the Reference Group anything else than what we had submitted to the NDPP. I think to give context it is a first time ever a preliminary report went to a preliminary report before an investigation is completed went to the NPA.

CHAIRPERSON: Yes.

- 20 **MR ROBERT JOHN McBRIDE:** And it never happened again.

CHAIRPERSON: Yes okay. No no that is fine.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Just to – for – in terms of what I am really interested in in terms of my question. The Minister says: "When I invited you to explain your conduct regarding the aforesaid you failed to disclose to me bla, bla, bla."

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: So at this stage all I want to know is whether prior to him writing to you a letter along the lines that he was contemplating suspending you, make your representations had he invited you to explain any conduct on your part regarding what he had dealt with above?

MR ROBERT JOHN McBRIDE: No Sir – No Chair.

CHAIRPERSON: That had not happened?

MR ROBERT JOHN McBRIDE: That had not happened.

CHAIRPERSON: And you are sure about that?

10 **MR ROBERT JOHN McBRIDE**: Yes I am sure about that.

CHAIRPERSON: Okay in the letter where he was asking you to make representations is that is how he put it did he – did he include any complaint that he invited you to explain some conduct before and you did not explain anything? Was that included in that letter as far as you recall or you cannot recall?

MR ROBERT JOHN McBRIDE: Just – this letter is saying 10 March.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: This one I received on 10 March and suspended on the 25th.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN McBRIDE**: I do not recall any occasion where he asked me to explain things...

CHAIRPERSON: Oh no I am sorry this is the letter where he is asking you for representations I see at the end of the letter.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: This is the one – ja. So – so obviously when he says in paragraph 7

so this is not the letter of suspension. I thought it was the letter of suspension.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: This is not the letter of suspension this is the letter where he was in effect saying to you he was contemplating suspending you. He was inviting you to make representations?

MR ROBERT JOHN McBRIDE: That is correct.

CHAIRPERSON: So obviously in paragraph 7 when he says he invited you to explain your conduct regarding the above obviously he is talking about something that must have happened before that letter if it did happen but you are saying you are clear that
10 prior to this letter.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: He had never invited you to explain any conduct on your part to him?

MR ROBERT JOHN McBRIDE: No he did not.

CHAIRPERSON: Regarding – regarding the events he is dealing with in this letter?

MR ROBERT JOHN McBRIDE: No nothing on the rendition.

CHAIRPERSON: Okay alright thank you.

ADV PAUL JOSEPH PRETORIUS SC: To put the notice that we dealing with in proper perspective it appears from paragraph 6 that the Minister is saying there is one report which recommends criminal charges against Generals Dramat and Sibiya and there is
20 another one which does not recommend criminal charges and those are two self-standing reports purportedly of equal status. Your evidence as I understand it is that there was a progression of reporting and investigation ultimately and the final report as you put it effectively exonerated Generals Dramat and Sibiya, is that correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You also say that any changes in any

reports.

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: In the progression of reports.

MR ROBERT JOHN McBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: May well have been and in fact were perfectly justified by the results of further investigations?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you say that that fact has never been given proper consideration?

- 10 **MR ROBERT JOHN McBRIDE**: Yes. Just to add Chair when we received – the answer to after – after providing reasons and indicated to correspondent I do inform him on page 190 that we are going to court to deal with the issue for urgent application and we deal with this. And the court application is launched one or two days after the letter is received. And in the court application an unsigned report the first report is attached to it. So the first preliminary report is attached to the submission of documentation for the constitutional challenge in the urgent application. So it is not a signed one. The signed report of Khuba only arrives at the end of December and so the – just in terms of sequence events. So the engagement with the Minister is no longer via letters it is now through the courts. And that is – that is really the point I want
- 20 to make so there was now an understanding that there is an impasse we have to approach the courts. And so the communication between IPID and the Minister then was in effect after the launch of the application either on the 12th March I say in the last...

“I have accordingly instructed IPID’s attorneys’ page 190 and 6 to launch an urgent application for appropriate relief including

interdicting you from suspending me.”

So the sequence at this stage is very back to back.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN McBRIDE: I am only saying that for context of what is taking place.

ADV PAUL JOSEPH PRETORIUS SC: Yes. I am going to put a timeline before you which has been very usefully prepared for me.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: During the break.

10 **MR ROBERT JOHN McBRIDE:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: Just to put things in a time context to make all the evidence that you give from time to time more understandable but let us stick to the letter of suspension for the moment.

MR ROBERT JOHN McBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 8 the Minister refers to the Sunday Times story breaking about the existence of two IPID reports?

MR ROBERT JOHN McBRIDE: Yes, yes.

CHAIRPERSON: Mr Pretorius I made the mistake of thinking that this was the letter of suspension. The letter of suspension would be the one that actually suspends is it not?

20 This was a letter saying I am contemplating suspending you. I just do not want any reader to think when you are talking about paragraph 8 on this letter you are talking about paragraph 8 on another letter that actually does the suspending.

ADV PAUL JOSEPH PRETORIUS SC: Well I will bear that in mind Chair.

CHAIRPERSON: We need to – to make some distinction.

ADV PAUL JOSEPH PRETORIUS SC: And we will get to the next letter in due course

but this one sets out a number of reasons that are relevant.

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: Or not relevant as the case may be.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Or relevant in the sense that they are not relevant.

CHAIRPERSON: No that is fine. I am just saying be alive to avoid confusion.

ADV PAUL JOSEPH PRETORIUS SC: Yes I understand.

CHAIRPERSON: In case there is a letter of suspension later on.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Let us...

CHAIRPERSON: This is the one that we have talked about and paragraph 8 is at page 187.

ADV PAUL JOSEPH PRETORIUS SC: Yes to be absolutely clear Chair at page 186 or bundle Ya is a letter addressed to Mr McBride the Executive Director of IPID dated or signed on 10 March 2015 and it is headed Notice of Intention to place you on precautionary suspension with full pay. We will come to later correspondence later.

CHAIRPERSON: Yes ja.

ADV PAUL JOSEPH PRETORIUS SC: But the motivation for the issuing of this notice is what we are dealing with and have been dealing with short adjournment I hope that
20 clarifies it Chair?

MR ROBERT JOHN McBRIDE: Yes no, no, it does.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 8 the Minister says:

“When the Sunday Times broke the story about the existence of the two IPID reports in the Sunday Times of 1 March you addressed a letter to the parliamentary Portfolio Committee.”

What is the complaint there of the Minister? And I think this puts into perspective evidence that you gave earlier.

MR ROBERT JOHN McBRIDE: The complaint to the Minister Chair is that I wrote a letter to Parliament requesting to explain the existence of the impression of two different contradictory reports.

ADV PAUL JOSEPH PRETORIUS SC: Right. It reads:

10 “When the Sunday Times broke the story about the existence of
 the two IPID reports in the Sunday Times of 1 March 2015 you
 addressed a letter to the Parliamentary Portfolio Committee on
 Police requesting them to convene an urgent Portfolio
 Committee meeting in order for you to explain to them the
 existence of the two IPID reports.”

Is that correct?

MR ROBERT JOHN McBRIDE: Yes I did write such a letter of request.

ADV PAUL JOSEPH PRETORIUS SC: Right.

20 “When you addressed a letter to the Portfolio Committee
 aforesaid you knew that I had already commissioned Werksmans
 Attorneys to conduct an investigation on the existence of the
 aforesaid two IPID reports and your conduct was designed to
 undermine my authority and oversight responsibility as the
 Minister of Police. Further that such actions from your side put
 the commissioned investigation in jeopardy.”

Now one can argue objectively about whether your letter to the Portfolio Committee to give you an opportunity to explain to IPID’s supervisory body certain facts that had emerged in the press is improper interference with the separate investigation. I do not

want to go into that argument it is on the face of it, it can be dealt with quite simply. But what do you say about that?

MR ROBERT JOHN McBRIDE: Well firstly I was aware that there is [indistinct] but the whole of paragraph 8 is – is spurious and it is – there is not any misconduct. There is a commitment to account and Minister should have welcomed it.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: He seems to say in paragraph 8 if I understand him correctly. His complaint seems to be you should not have written to the Portfolio Committee about this issue while the investigation by Werksmans which he had commissioned was
10 pending. That is what seems to be his complaint. So in other words he might not be complaining about you writing to the Portfolio Committee as such but he seems to be saying while Werksmans had been asked by him to look into among others this issue you should not have done so.

MR ROBERT JOHN McBRIDE: Thank you Chair. I – I understand the distinction. I am not sure on either side on either distinction whether the Minister is correct. In fact I know he is not correct. Parliament represents the people IPID has to account to them. IPID is requesting to account to them if their perceptions of any wrongdoing or misconduct. In any event ultimately it is Parliament that must decide and we find it later
20 out in the – in the constitutional court pronouncement. But I am not sure what is – he is really – he is really unhappy with me obeying the law. Following through the due process of accountability with separation of powers. He seems to misunderstand his – his authority and how it is undermined by me engaging with the people's parliament. And for me I think it exhibits a bigger problem. And I am not sure in a generous interpretation in paragraph 8. The Minister did not understand the notion of independence of IPID. He did not understand where his authority begins and ends and

he did not understand the issue of openness. He preferred Parliament, he preferred Werksmans to Parliament. He preferred a process that a private law firm exercises oversight over an independent oversight body rather than Parliament which is the real oversight body of that independent body. Choosing a private law company whose job is not investigations or of holding people to account over Parliament for me indicates at very least, at very best a misunderstanding of how the state and government works.

CHAIRPERSON: So is part of your comment that arising out of the independence of IPID and the fact that it was duty bound to account to Parliament and that Parliament was – is different from the executive if there was an issue that you believed the
10 Portfolio Committee should be informed about as head of IDIP you were within your rights and maybe you will say you may have been obliged to actually bring it to the attention of the Portfolio Committee and ask for an opportunity to brief the Portfolio Committee. That is part of what you are saying.

MR ROBERT JOHN McBRIDE: Indeed Chair.

CHAIRPERSON: Hm okay.

ADV PAUL JOSEPH PRETORIUS SC: In a – put differently what the Ministers appears to be saying in paragraph 8 is that the duty that you have as head of IPID to report to Parliament in terms of the oversight mechanisms and the constitution is somehow suspended because he is conducting a private investigation?

20 **MR ROBERT JOHN McBRIDE**: Indeed Chair.

ADV PAUL JOSEPH PRETORIUS SC: And of course the chorology of the Minister's attitude is that he is entitled to interfere with that oversight process at his own behest by appointing a firm of private attorneys to conduct an investigation.

MR ROBERT JOHN McBRIDE: Indeed it is – he believes it.

ADV PAUL JOSEPH PRETORIUS SC: But anyway those are arguments we can...

MR ROBERT JOHN McBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: Deal with later. It is just that there are – those are the various sides of the story the Minister’s side and your side as I understand it.

MR ROBERT JOHN McBRIDE: Well – well no Chair. It is not my side. The constitutional court said so.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: That the Minister is wrong.

ADV PAUL JOSEPH PRETORIUS SC: Correct.

MR ROBERT JOHN McBRIDE: And ...

10 **ADV PAUL JOSEPH PRETORIUS SC:** And we will come to that in due course.

MR ROBERT JOHN McBRIDE: Yes Sir.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps I was unfair to you to say your side of the story. It is not a story of fact you rely on constitutional provisions and the application by the constitutional court in relation to those provisions.

MR ROBERT JOHN McBRIDE: Thank you Sir.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 9 he says that – oh and of course what is interesting is that although Werksmans has been appointed to provide a report on the very facts which are the subject matter of this letter this letter pre-dates and the conclusions in this letter pre-dates the issue of the Werksmans report?

20 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 9 a different matter is dealt with would you put that on record please?

MR ROBERT JOHN McBRIDE: He says here in paragraph 9:

“You are also alleged to have interfered with the investigation. I have commissioned – you have also alleged to have interfered

with the investigation I have commissioned by failing to grant Mr Innocent Khuba permission to meet with the investigators to assist them in shedding light on the existence of the two conflicting reports. Both of which were signed by him. You also instructed lawyers to inform the investigators that Mr Khuba will not meet with them. When you conducted yourself in the aforesaid manner you had intention to interfere with the investigation and given the fact that you are already conflicted because the second report dated March 2014 was also co-

10 signed by you.”

ADV PAUL JOSEPH PRETORIUS SC: I am not sure which investigation is being referred to here but perhaps you could explain your response and understanding of what is being said here?

MR ROBERT JOHN McBRIDE: He was referring to the Werksmans investigation. At this stage when Werksmans did not actually communicate with me although I was aware they were and then I – I indicated that Werksmans should come through me. I am not sure how did I do it but that was the – was the intention. It was Werksmans I – I had a problem about the independence of IPID. With a private company appointed by the Minister to be calling in individual investigators and in this case the Chief

20 Investigator of the matter behind my back. And it was also at the same time when the Minister was contacting Khuba and to actually even fly him down to Cape Town at his own expense. So it is in that context where I said they should come through to me and you are jeopardising the independence of IPID. So indeed I had initially refused Khuba to participate in whatever Werksmans was doing.

ADV PAUL JOSEPH PRETORIUS SC: Did he finally participate?

MR ROBERT JOHN McBRIDE: Indeed he did and so did I and later on in my letter in response I said I do not have a problem with that if that is the issue you are concerned about.

ADV PAUL JOSEPH PRETORIUS SC: Right so is it correct that you did not grant Mr Khuba permission to meet with the investigators?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: And you have given your reasons?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then paragraph 10 it says:

10 “During the week of the 15 February 2014 you visited the provincial offices of the DPCI in Gauteng and removed from Major General Sibiya’s office a device the description of which is yet unknown from safe where Major General Sibiya had kept it under locks.”

What is that allegation all about?

MR ROBERT JOHN McBRIDE: Okay thank you Chair. So at some stage during the process of suspending General Sibiya two superintendents or colonels I think they were then called arrived at Sibiya’s office in his absence and said they were sent by Mdluli that is General Mdluli to take away the encrypted facts in Sibiya’s office. So Sibiya’s
20 personal assistant contacted Sibiya either through lawyers or directly but in any event Sibiya called me and his lawyer Mr Nkwashu contacted me in essence to say a crime is about to be committed in his office. He is suspended, he does not have a say in his office but the person who he was investigating has now sent two people to his office to remove a device. He therefore requested that a crime is about to be committed can we as the body dealing with investigation of police conduct intervene and take custody,

take possession of that device for safekeeping. And that is what we proceeded to do and we indicated it is part of our investigation into systemic corruption and we went and handed over our letter and the police then handed over the stuff to us. It was a device, it was something that encrypts faxes. It is old technology. In any event prior to this letter reaching me I – and the exact timelines I will get right. The Minister summonsed me to Parliament to his office at Parliament, his Parliamentary office.

CHAIRPERSON: Summonsed who? I am sorry. Summonsed who?

MR ROBERT JOHN MCBRIDE: Myself Chair.

CHAIRPERSON: Oh, okay.

- 10 **MR ROBERT JOHN MCBRIDE**: When I arrived at the office I was made to wait outside and there were two other gentlemen with me. I could sense they were police but I did not know them. I did not – had not recognised them and then all three of us were then invited into the Minister's Office and the Minister's desk is about a distance away from his, from his board, boardroom table and as he got up he made us sit and wait a while. In fact coffee was ordered and he carried on there doing whatever he was doing on his table. Then he got up from his table and started verbally abusing me all the way until he reached the board table and sat down and continued to say anytime you conduct a raid you have to inform me beforehand. I listened through it all and then when he had finished and he had ventilated enough and he was out of breathe. I then
- 20 asked him who these gentlemen were in front of me that you are abusing me in front of and then he momentarily cooled down and said oh I thought you knew each other. This is General Ntlemeza. That is my first time meeting General Ntlemeza and we spoke and I explained the circumstances to him of how the device in General Sibiyá's office was taken and I explained to him that it was then handed over to the State Security Agency. He then seemed to relax and he said myself and General Ntlemeza must work

together. So General Ntsemeza gave me his phone number and I exchanged my phone number with him and it was at the period where I think it could have been a Thursday when I met with him and then the Wednesday there was – at Parliament there was a jamming of cellphones. Then he – as he was putting on his coat he made a joke to me and said I know what you have done with that device that you took from Sibiya's office. You went to Parliament and you jammed all the cellphones. So I had relief. I thought okay it has been resolved. It is a joke now. He accepts my explanation. The next thing was this letter. So it was – I thought it was okay. I was actually – I even went back to Mr Sesoko and said I think it is going to be okay now and very soon after maybe two or
10 three days this letter came, *ja*.

CHAIRPERSON: So are you sure therefore that in that meeting he did not extend to you the invitation that he talks about in paragraph 7 of the letter?

MR ROBERT JOHN MCBRIDE: Absolutely Chair.

CHAIRPERSON: He did not?

MR ROBERT JOHN MCBRIDE: He did not. He spoke only the raid and the device in Sibiya's office.

CHAIRPERSON: Yes. Okay.

MR ROBERT JOHN MCBRIDE: And he seemed to be happy and satisfied with my explanation.

20 **CHAIRPERSON:** Yes.

MR ROBERT JOHN MCBRIDE: When he left.

CHAIRPERSON: Hm. So if I understand you well the first part of what he said to you at that meeting was abusive?

MR ROBERT JOHN MCBRIDE: Absolutely.

CHAIRPERSON: But the last bit which he said to you was like he was just joking with

you?

MR ROBERT JOHN MCBRIDE: Yes sir. That was my distinct impression.

CHAIRPERSON: Yes, okay. Thank you. Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: The event described in paragraph 10 is alleged to have taken place during the week of 15 February 2014. Is that correct?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You were summoned to the office of the Minister together with General Ntlemeza and one other a few days before 10 March 2015 you say?

10 **MR ROBERT JOHN MCBRIDE**: That is correct. I might have the number of days not accurate but it was certainly in terms of sequence of events after the device was taken into possession and before this letter of 10 March.

ADV PAUL JOSEPH PRETORIUS SC: That is almost a year later. Am I correct or am I missing something?

MR ROBERT JOHN MCBRIDE: No sir. It is – he has made a mistake at paragraph 10. It should be 2015.

ADV PAUL JOSEPH PRETORIUS SC: Ah, okay. So.

CHAIRPERSON: Actually you were not – you had not started at IPID by?

MR ROBERT JOHN MCBRIDE: 2014.

20 **CHAIRPERSON**: February 2014?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Because you only started in March.

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Well that explains my own difficulty

there and in any event what is said in paragraph 10 is that it was your intention to tamper with evidence that might incriminate Major General Sibiya, yourself and/or it says Lieutenant General Dramat. Do you have a response to that allegation?

MR ROBERT JOHN MCBRIDE: There is no basis for it. It is – he had got my explanation when I gave him the explanation of the circumstances of taking into custody of this. I am not sure how would I implicate myself with General Sibiya in anyway. I was not at IPID when the invest - or ICD when the investigation into “rendition” started. Communication with General Sibiya was through his lawyers. I met him in 2014 once on a joint investigation in the company of other people in the boardroom. So I am not sure – there is no basis for this. I think that is – paragraph 10. He was again interfering in any event in the work of IPID.

CHAIRPERSON: When you explained to the Minister in that meeting when General Ntlemenza was there the circumstances under which you had taken possession of the device from General Sibiya’s office did he seem to have anything he was not accepting about that explanation? Did he seem to not to believe what you were saying? Did he seem to have any problem or did he seem to accept?

MR ROBERT JOHN MCBRIDE: Chair the person who got up from his chair and moved towards the boardroom table abusing me by the time he reached there and continued is a different person who left the room. So.

20 **CHAIRPERSON:** After you had given the explanation/

MR ROBERT JOHN MCBRIDE: Yes sir.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And my impression was that General Ntlemenza had

complained taking the, the device.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: From General Sibiya's office because perhaps they had wanted the device.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: For some purpose.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: But they should have done it and not get General Mdluli's people to do it.

10 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: And they should have provided paperwork like we did.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: To take possession of it. We even signed a receipt when we took the device.

CHAIRPERSON: Was that device relevant to the investigation that General Sibiya may have been conducting in regard to General Mdluli as far as you understood what you were told by?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Sibiya?

20 **MR ROBERT JOHN MCBRIDE:** Yes Chair because that was the concern from General Sibiya via his lawyer.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That that is - they are concerned about.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: That a crime is about to be committed.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: It certainly was in no way connected to IPIDs investigation into “rendition”.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Because the final report by February 2015 was already submitted.

CHAIRPERSON: Hm. [Intervenues].

ADV PAUL JOSEPH PRETORIUS SC: Your reply to the letter is dated 12 March 2015. Do you see that?

10 **MR ROBERT JOHN MCBRIDE:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: I do not want to go through the whole of the reply. It may be that the real issue here is that on whatever basis the suspension was found by the Constitutional Court to be undue interference in the independence of IPID.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That is the more general issue but in paragraph 3.3 of your letter or let us start with paragraph 3. You summarise your response in paragraph 3 and you refer to the affidavit that you have deposed to in court proceedings to contest the notice of suspension. Do you see that?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Paragraphs 3.1 and 3.2 are general denials of improper acts on your part.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But 3.3 you say:

“The Minister was at all relevant times fully aware of the existence of the preliminary and the final IPID Reports as more

fully set out in the affidavit. The Minister has chosen to rely on recommendations contained in a preliminary report. I remain available to address any concerns that the Minister may have in relation to the preliminary and final reports.”

On what basis were you able to say that the Minister was at all times fully aware of the existence of the preliminary and the final reports?

MR ROBERT JOHN MCBRIDE: If memory serves me correctly the affidavit that I had prepared for the High Court was also given to the Minister and that is why it refers to – and also the fact that in the Ministry we had sent an info note on my first week at work
10 as to the status of the report on “rendition”. So it was my info note that was given to then Minister Mthethwa. So there would have been in the Ministry that report but in addition I included in my, my application to the High Court which was launched on the same day and if I remember correctly I would have included, I would have included the affidavit to the Minister [intervenues].

CHAIRPERSON: I am sorry Mr McBride I am interrupting you.

MR ROBERT JOHN MCBRIDE: *Ja*.

CHAIRPERSON: But the question is you said in the letter that the Minister was aware at all times and the question is on what basis were you saying as at 12 March 2015 that he had been aware at all times of the two reports.

20 **MR ROBERT JOHN MCBRIDE**: One of the reasons was that in his letter requesting it a few months before – requesting a document he had referred to preliminary reports and, and final reports.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: In his letter.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: In November. I think it could have been 24 November 2014.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And also the fact that we, we attached this letter. So this letter is I see written there was an attachment to the affidavit.

CHAIRPERSON: In the High Court application?

MR ROBERT JOHN MCBRIDE: That is correct sir.

CHAIRPERSON: *Ja*, but the – if it was an attachment to the High Court affidavit it would have been written either before the High Court affidavit was done or on the same
10 day.

MR ROBERT JOHN MCBRIDE: That is absolutely correct.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Because the application.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: Was a few hours even simultaneously.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: With the letter to the Minister.

CHAIRPERSON: So what was contained in the High Court affidavit cannot explain the basis on which you said the Minister had been aware of the two. So I think what is
20 more important is to look at prior to the writing of this letter what it is that gave you the basis but you have said that his letter had said – maybe if that letter is here we should go to it once and for all.

ADV PAUL JOSEPH PRETORIUS SC: We are looking for it Chair.

CHAIRPERSON: Yes. Oh, okay alright. Is there anything else that makes you – that would have made you believe as at the time you wrote that letter that he was aware at

all times of the two reports or is it only what he wrote in his letter?

MR ROBERT JOHN MCBRIDE: There would be and I am just – I cannot remember specifics.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: But in the letter in which I am replying to he talks about two reports.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: He writes to me asking for two reports. The info note sent to Minister Mthethwa.

10 **CHAIRPERSON**: Yes.

MR ROBERT JOHN MCBRIDE: Talks about preliminary and final reports.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And the fact that the investigation is complete but the evidence has been finalised.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Now the Ministry is the Ministry. It is not the Ministry.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: In my understanding.

CHAIRPERSON: It is the same office?

20 **MR ROBERT JOHN MCBRIDE**: Yes.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: After Nhleko comes.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The practice is and we wrote what we call handover reports.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: We prepare for Ministers when it is.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: When there is a change of administration.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And there is a new person. It would have been included in there.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: What – this whole saga is to say they existed
10 preliminary or first reports and somehow attached a sinister motive for its existence.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And that is the narrative that has been pushed including through the media.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And that is the narrative we refer to when we make our joint statement that is Dramat, Ivan Pillay and myself.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: We talk about this modus operandi of.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** Which we explain in here and which occurred in other institutions, anti-corruption institutions. So *ja* in essence those would have been the reasons why I would and then would have come to the conclusion he knew.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: In any event he had received a report from the Reference Group.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Which we briefed about the final report.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And the communication with Mosing.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And what are they doing in essence Chair is clutching at straws even those straws, the straws do not exist.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So it is make an issue out of something. So initially
10 he used to write a letter to me about the “Rendition” Report. Later on he used to tell me
about a device that in the course of our operations were taken into possession.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: It is now as if they are making it up as they go along.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So, so find the reason.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And, and that is what and it grows.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Later on by the time I do disciplinary there are about
20 eight charges or something if I remember correctly.

CHAIRPERSON: Hm. Okay.

MR ROBERT JOHN MCBRIDE: So the initial reason which gave me notice of intention
to suspend me starts growing as in a very short space of time - two or three months.

ADV PAUL JOSEPH PRETORIUS SC: Yes. We could spend a long time debating the
merits or demerits of any particular charge or contemplated charge or reason for

suspension. I just want to return to the point. Were any of the reasons given in any notice of suspension or in any disciplinary charge or in any allegation in any report or in any finding of any report finally successful in relation to the termination of your services or the prosecution on a criminal basis of you?

MR ROBERT JOHN MCBRIDE: Never, never Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. In any event you say in paragraph 3.3:

“The Minister was at all relevant times fully aware of the existence of preliminary and final IPID Reports.”

MR ROBERT JOHN MCBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC**: You have been questioned by the Chair in that regard. You mentioned the Reference Group.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That group had access to and investigated all the documents relevant to the IPID investigation I presume including the docket in the possession of the NPA?

MR ROBERT JOHN MCBRIDE: I, I cannot comment on.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: What they knew or what they had access to the NPA.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes, but in any event on proper investigation one could have reference to the contents of the docket and everything is in the docket nothing is concealed in the docket?

MR ROBERT JOHN MCBRIDE: That that is correct. If I can just add also. There is also a misunderstanding about how the Criminal Justice System works. From the Minister and his people because the docket contains the evidence and exhibits and reference to the exhibits. That is the decision upon which to prosecute or not prosecute

rests and they are splitting hairs. They are trying to find something - and that is my impression anyway. So, thanks.

CHAIRPERSON: Just – so, so part of what you are saying is if one appreciates the distinction between the evidence that is in the docket which – the evidence that is put into the docket after investigation and the report.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: If one appreciates the distinction about the status of these two.

MR ROBERT JOHN MCBRIDE: *Ja.*

CHAIRPERSON: Whatever may have been done whatever a report says in the end
10 really should not make much different - and you must just tell me I am testing whether
that is what you are saying – should make one you know much difference if in the end
you look at the evidence in the docket and you are the person who must make a
decision because your decision must be based on the evidence and not so much on the
report?

MR ROBERT JOHN MCBRIDE: That is that is absolutely correct Chair.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That is my position.

CHAIRPERSON: Yes and that would be your position whether we are talking about the interim or preliminary report of the final report?

20 **MR ROBERT JOHN MCBRIDE:** That is correct.

CHAIRPERSON: Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: But in the end it is the evidence that must count?

MR ROBERT JOHN MCBRIDE: Absolutely.

CHAIRPERSON: And what is said in the report whether you are the prosecutor in the

NPA who must make a decision or you are the Minister in the end really your final decision about what should happen or what is being said should be what is in the docket by way of evidence?

MR ROBERT JOHN MCBRIDE: Yes that is correct. Regardless of what the opinion.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Of an investigator is.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: It is the evidence.

CHAIRPERSON: *Ja*.

10 **MR ROBERT JOHN MCBRIDE**: That decides.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: As I said earlier very often an investigator has a particular position.

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN MCBRIDE: As a final report.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The final report but the NPA does not agree with it.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE**: Or vice versa. In certain circumstances they say do not prosecute.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The NPA goes ahead and prosecutes.

CHAIRPERSON: And prosecutes.

MR ROBERT JOHN MCBRIDE: That is their job.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: So to answer your question directly it is the evidence upon which a decision is made.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Not the interpretation, misinterpretation.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Misunderstanding of the value of the evidence.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: By an investigator.

CHAIRPERSON: Hm. Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So just to summarise that point because it does deal with a lot of these questions at a level of principle and may allow us to spend less time on each and every detail in the report may, I stress may for the present. We will have to consider the position but in essence what you are saying is IPID collects evidence and provides for the use of the NPA an opinion which is the report on that evidence?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The responsibility for prosecution, the responsibility for assessing the evidence in the docket and the final decision on whether or not to prosecute remains with the NPA?

20 **MR ROBERT JOHN MCBRIDE:** That is correct Chair.

CHAIRPERSON: And, and as a general proposition do not blame me for my opinion.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: That is – make your decision on the evidence. If you want to have regard to my opinion have regard to it but in the end remember that you must make your decision on the basis of evidence.

MR ROBERT JOHN MCBRIDE: That.

CHAIRPERSON: That is part of what you are saying?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: And even to take it further. If I am incompetent as an investigator then I must get trained not persecuted. That is really the.

CHAIRPERSON: In other words you, you might have a situation where you do not agree with my opinion.

MR ROBERT JOHN MCBRIDE: *Ja*.

10 **CHAIRPERSON**: But that does not necessarily mean that I am wrong. That does not necessarily mean that you are right and it does not necessarily - it might not necessarily mean that my opinion is based on incompetence on my part.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: But there may be situations where the opinion I give is so bad that you think it reflects incompetence in which case you might be concerned about that and there may be a way as to how that should be dealt with?

MR ROBERT JOHN MCBRIDE: That is correct sir.

CHAIRPERSON: Hm, okay.

MR ROBERT JOHN MCBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Alright. In the following paragraph on page 190 of your response to the notice you deal with the instruction to your subordinates within IPID not to deal with the Minister's investigation. Do you see that in paragraph 3.4?

MR ROBERT JOHN MCBRIDE: I have it sir?

ADV PAUL JOSEPH PRETORIUS SC: In fact what you say is:

“The Minister’s investigation into IPID and the NPA is however impeding on IPID and the NPAs independence and expertise.”

And you say therefore you have acted responsibly.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So the Minister wants to prevent you from reporting to IPID and your response is well you are not going to cooperate with the Minister’s investigation?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Ultimately you did though?

10 **MR ROBERT JOHN MCBRIDE**: Yes, I did in that last sentence.

“I remained willing to engage with the Minister in respect of the investigation and specifically to ensure that there are sufficient safeguards to protect IPID.”

ADV PAUL JOSEPH PRETORIUS SC: Yes and ultimately Sesoko and others testified before Werksmans?

MR ROBERT JOHN MCBRIDE: That is correct. We, we were interviewed by Werksmans, Mr Khuba, Mr Sesoko and myself.

ADV PAUL JOSEPH PRETORIUS SC: Alright. If we may then deal with what I intended to deal with earlier and my apologies if it is out of sequence and in a moment I
20 will deal with the timeline drawn up in haste but expertly by my junior Chair. Let us go to page 448 and this is merely a resort of convenience to the summary of facts in the judgment of Prinsloo J relating to Dramat.

MR ROBERT JOHN MCBRIDE: Yes sir.

ADV PAUL JOSEPH PRETORIUS SC: The contemplating disciplinary action against General Dramat.

CHAIRPERSON: Have you moved to another bundle Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: I am sorry Chair.

CHAIRPERSON: Are you moving to another bundle?

ADV PAUL JOSEPH PRETORIUS SC: I am Chair. It is at page 439 Bundle YB.

CHAIRPERSON: Y, B for Beatrice, okay.

ADV PAUL JOSEPH PRETORIUS SC: It is the second bundle Chair. It should be.

CHAIRPERSON: The page number again.

ADV PAUL JOSEPH PRETORIUS SC: 448.

CHAIRPERSON: 448.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Well perhaps we should just place this in context and deal with page 439.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: I'm not going to go into detail in relation to the application, merely to refer to the facts summarised in that application, about which in any event there will be direct testimony in due course, but this is important for the major points that you wish to make at the higher level. At page 439 we have the judgment of Prinsloo, J in the matter between the Helen Suzman Foundation (applicant) The Minister of Police, Lt General Dramat, Major General Berning Ntlemeza and the National Commission of the South African Police Service, this was a challenge to the disciplinary proceedings or contemplated disciplinary proceedings against the second respondent, Lt General Anwar Dramat, is that correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: I just want to go back to paragraph 10 on page 448. At issue in this particular case, firstly, was the *locus standi* or the standing of the Helen Suzman Foundation to deal with these issues at all and that's largely where the

judgment goes but there's a summary of facts on page 448 and before and after but in paragraph 10, just to remind ourselves, on the 23rd of December the Minister wrote to Dramat informing him that he was placing him on precautionary suspension with full pay and benefits with immediate effect and then there's reference to the powers under which that is done which we needn't deal with at the moment but in paragraph 11 the case in summary of Dramat as at the 24th of December 2014 is set out. He says in a letter addressed to the Minister, amongst other things what is quoted in paragraph 11 of the judgment, he says,

10 "I have for several months reflected very carefully on the issues that have unfolded in front of me, I have consulted my legal representatives and I have been advised of my legal remedies. I respectfully point out that the tactical back-peddalling from the initial notice and the current reliance on the Public Service Act and Public Service Regulations and sms handbook is a clear indication to me that no matter what steps I take to defend my position, a decision had already been made from the outset to remove me from my position".

We needn't go into that background it will be explained in due course but it seems that at various times different statutory powers were relied upon by the Minister.

MR ROBERT JOHN McBRIDE: That's correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Paragraph four,

"Having seen our country enter into a democratic phase, I felt that I could contribute in a meaningful way and continue to develop the principles which I fought for and for which I was imprisoned, paragraph five, my appointment as the head of the DPCI, that is the Hawks, I perceived at the time was based on my credentials, my level of expertise and the fact that I respectfully

believe that I have always acted with integrity in the manner in which I deal with people and investigations. Paragraph six, no doubtedly, as it says you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me. Paragraph seven, I can unequivocally point out that I'm not willing to compromise the principles that I've always believed in, I am not willing to be agreeable or compliant insofar as I would be acting – I would then be acting contrary to my own moral principles and also contrary the position in which I was appointed. Paragraph 10.1 the quotes here skip a few paragraphs of the letter, the so-called Zimbabwean rendition investigation is a smoke screen there are no facts whatsoever that indicate that at any given time I've acted illegally or unlawfully, most certainly there has never been any evidence whatsoever that I have in any way interfered with any potential witnesses or attempted to jeopardise the investigation against me during the past few years".

And then he takes issue in the following paragraph...(intervention

CHAIRPERSON: Four years hey – four years.

ADV PAUL JOSEPH PRETORIUS SC: Past four years did I say few years.

20 **CHAIRPERSON:** You said few.

ADV PAUL JOSEPH PRETORIUS SC: My apologies past four years, then he reserves his rights, he contests the validity of the notice of precautionary suspension, he then says in paragraph 12,

"I am also aware that in the next two months there will be a drive to remove certain investigations that fell under my watch, reallocate certain cases and

that, unfortunately, certain sensitive investigations may even be closed down. This is something that I have to live with”.

He then comments again on the investigation into the rendition case and then he says that he wishes to reply to the National Commissioner to approve early retirement and then writes a joint consensus seeking process. Firstly, did you know of any investigations in which General Dramat had been involved which were of a sensitive nature at the time action was taken against him?

MR ROBERT JOHN McBRIDE: No I was not aware of that at that stage.

ADV PAUL JOSEPH PRETORIUS SC: Alright we will refer to another document
10 shortly which deals with that and do you know whether General Dramat ultimately accepted a deal involving early retirement?

MR ROBERT JOHN McBRIDE: Yes I became aware at some stage after it happened yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright, there's further evidence recorded in the judgement but I'd like, at the moment, to deal with another matter, although it's a press report it does refer to other correspondence and there will be direct evidence of these facts in due course but it's important to place them into context now. So would you go to page 490 please?

MR ROBERT JOHN McBRIDE: I have it Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** There's an interesting commentary there on matters raised in the opening, the demise of the Scorpions and the comparative performance of the later institution, the Hawks but under the heading “What is the story behind Hawks Chief, Anwar Dramat's suspension”, the reporter says at the end of paragraph two,

“Dramat was investigating high level corruption and was becoming an

inconvenience to those with something to hide. Dramat himself has argued that the accusations of illegal renditions is just cover for his investigations into high level corruption”.

There will be evidence in due course as to what General Dramat was investigating but let's go first to page 491, there is a quote from a Mail & Guardian article which states, in the middle of page 491, In his December 24 letter to Police Minister Nkosinathi Nhleko following his purported suspension, Dramat wrote

10 “ No doubt you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me. The report continues, new claims have emerged suggesting the controversial security upgrade at President Jacob Zuma's Nkandla homestead was at the apex of the investigations Dramat perceived as highly sensitive. AmaBhungane has been told by a source familiar with the matter, that in December 2014 Dramat called for the Nkandla dockets currently under the control of the Divisional Commissioner for detective services Venish Moono? to be transferred to the Hawks. The South African Police Services never denied this allegation, merely stating that National Commissioner Riah Phiyega and Dramat never discussed the Nkandla investigation. A Constitutional Court ruling, two weeks earlier made it clear
20 that Dramat alone has the authority to decide which cases the Hawks should take on. The source said that following his suspension, Dramat told colleagues that his first notice of the intention to suspend them arrived barely two days after he had asked for the transfer of the Nkandla dockets”.

Do you know anything about those facts?

MR ROBERT JOHN McBRIDE: I'm sure at which stage I was aware but I did become aware at some stage that, that was the position.

ADV PAUL JOSEPH PRETORIUS SC: Then there's reference to the litigation which followed which we needn't go into now but that is just to place, in context and in sequence the evidence which you have given and which will be given in relation to the rendition saga, the investigation into the rendition saga and the reliance on those investigations to deal with the employment of General Dramat that's a piece of evidence about which there will be testimony in due course. Chair if I may then intervene before we return to the statement to place before you, which may be useful, I

10 hope it is a timeline, the notice...(intervention).

CHAIRPERSON: I'm not going to make a note I assume you might hand something up that reflects that...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes we'll have it typed out and perhaps even by 2 o'clock...(intervention).

CHAIRPERSON: In due course, that's fine.

ADV PAUL JOSEPH PRETORIUS SC: It's not necessary to put it on record or do you want me to put it on record?

CHAIRPERSON: No, no I'm saying you can say it but I won't make notes here.

ADV PAUL JOSEPH PRETORIUS SC: Yes sure I understand.

20 **CHAIRPERSON:** Later on you can give me something that reflects that.

ADV PAUL JOSEPH PRETORIUS SC: Indeed Chair.

CHAIRPERSON: But you can just tell us.

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: On the 9th of December 20 – oh and by the way this doesn't purport to be a comprehensive chronology and perhaps it's a good

idea, Chair to prepare one for you so that all the evidence...(intervention)

CHAIRPERSON: Ja that will be helpful.

ADV PAUL JOSEPH PRETORIUS SC: Over time would be better understood and placed into a time sequence and context.

CHAIRPERSON: Ja that will be helpful.

ADV PAUL JOSEPH PRETORIUS SC: But for the present – oh I have a note here which says, I will update and type the timeline, so your mind was read.

CHAIRPERSON: Your junior is being very helpful to you, yes.

ADV PAUL JOSEPH PRETORIUS SC: On the 9th of December 2014 there occurred
10 the notice of intention to suspend Dramat on the 23rd of December 2014 the notice of suspension of Dramat was actually issued.

CHAIRPERSON: Ja it's very interesting it's around Christmas time.

ADV PAUL JOSEPH PRETORIUS SC: Yes two days before Christmas. On the 23rd of February 2015 Minister Nhleko appointed Werksmans to conduct the investigation. On the 10th of March 2015 there was a notice of intention to suspend Mr McBride, on the 24th of March 2015 the notice of suspension was actually issued. On the 31st of March 2015 Minister Nhleko visited IPID and addressed employees at IPID, we have a record of that, we will deal with that in due course. On the 17th of April 2015 Mr McBride was interviewed by Werksmans, on the 23rd of April 2015 Mr Khuba was
20 interviewed by Werksmans and the final report of Werksmans was issued on the 24th of April 2015. Thereafter criminal charges were laid against Mr McBride and on his appearance in court they were withdrawn but that is a chronology that will be expanded on and presented to you.

CHAIRPERSON: Ja thank you. We're going back to Exhibit YA...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes YA at page 7 Chair, the final event which

I've just mentioned to the Chair is dealt with in paragraph 31 to 33 of your statement.

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What happened on the 15th of March 2016?

MR ROBERT JOHN McBRIDE: If I remember correctly that's the day on which we were arrested.

ADV PAUL JOSEPH PRETORIUS SC: And what were the charges?

MR ROBERT JOHN McBRIDE: Fraud and defeating the ends of justice.

ADV PAUL JOSEPH PRETORIUS SC: You say here that those charges arose out of the recommendations of the Werksmans report, have we got the correct dates here, 15
10 March 2016 which is almost a year after the Werksmans report was issued.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: You say that – well our chronology says that the Werksmans report was issued on the 24th of April 2015.

MR ROBERT JOHN McBRIDE: That's right.

ADV PAUL JOSEPH PRETORIUS SC: And you were finally charged on the 15th of March 2016, is there any explanation for that delay, were you in litigation at that stage?

ADV PAUL JOSEPH PRETORIUS SC: If I can just explain, after Werksmans report was a disciplinary process immediately after so that would be May, maybe first week in May and Charges were laid in May, criminal charges by Minister Nhleko and a officer
20 from the Eastern Cape, Colonel Gwayi? then opened up an enquiry and he was from CATS, Crimes Against The State against myself, Khuba and Sesoko and it was – it took a year for this to be brought to court and during the period - I just need to mention it so the Commission can understand the invasiveness and the malice attached to what went on. At the same time, my understanding is that charges were also laid against – I'm specifically looking at timing in 2015 in the, I think it was March or May I'm not sure but

in that period I think even within 10 day period was laid against – and it's out of my purview but it's – Mr Gordhan at the same time, I'm coming back to the hypothesis which we developed amongst ourselves a consensus of affected people in terms of a timeframe, things had to happen by certain times. That was our impression and circumstances seemed to bear our suspicions out. In any event it was a year it took for us to be charge, there was a warrant of arrest issued for us before we had given warning statement and we were asked to give warning statements and to come into the Hawks' office. Now I just want to give context which might not see relevance now but what was in our minds. At the same period in which we were asked to come in and give

10 warning statements, it was roundabout the time where I think, the then – Minister Gordhan had said he's not going to give statements. So we were asked to come in at that same period but the warrants of arrest were already prepared for us between Mahema and Dr Torie Pretorius, indeed it is Dr Torie Pretorius who took the decision to prosecute us and we were unaware that there were warrants of arrest when we went to provide our warning statements and it could have been a Wednesday or a Thursday just preceding the day of a arrest and we provided the warning statement in the form of all the litigation that's taken place between myself – ourselves and the Minister and the disciplinaries and the fact that even the Labour Court had – or the Labour Court was seized with the idea of suspending disciplinaries until the Constitutional matter had

20 been resolved if I remember the correct sequence but we gave every document to General – sorry it was then Colonel Khlabi we gave him everything and in the warning statement, one makes provision for the warning statement, we referred to all of that, I think it was four or five lever arch files between myself, Sesoko and Khuba. So this is the context to understand that there is litigation about these issues and there's constitutional issues about this. So be aware of it and the explanations have been

dealt with in these various affidavits and you will find them there. By Sunday, a few days afterwards, in my experience and my view, insufficient time to go through four lever arch files, we were told we must appear on the Monday, that we will be charged and we went to court and we were told to go to the client/customer centre, previously known as the charge office where we were charged and put in cells until we appeared in court a few hours later. So it might seem like a wonderful nice thing to do and normal course of events but we were in essence the main stay of an independent organisation that exercises investigative oversight over the police of South Africa and this is what was done to us...(intervention).

10 **CHAIRPERSON:** And this was on the same day that you went in to give your warning statements, your arrest?

MR ROBERT JOHN McBRIDE: No Chairperson it was a few days after but we were notified on a weekend, on a Sunday but already the warrant of arrest was in their possession when we came and gave in our warning statement.

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: So in fairness it's about two or three days later we are given notice that we must make – we must present ourselves at the court, which we did. So I'm giving that context because it will appear to be a normal process of people that transgressed the law but in this instance there's a whole process DPCI supposedly
20 independent, the head is locked out, he's replaced with someone. The person who replaces the head of DPCI is ultimately the commander of those who then arrest us. So for us, the link, at least in our own minds, one can look at it objectively, is that causality between all these events and 2016 Dramat is out of the police he takes early retirement I'm assuming when he took early retirement everything was okay, he's gone he's out of the system and yet they still follow-up persecuting him with criminal charges

also which are later then – all these charges with all this drama with all of the arrest charges are withdrawn again and the basis of the charges against IPID people is reliance on the Werksmans report.

CHAIRPERSON: Are they withdrawn on the same day, first appearance or second or later appearance?

MR ROBERT JOHN McBRIDE: No Chair charges were withdrawn on 1st of November 2016.

CHAIRPERSON: Okay but you can't remember whether that would have been second, third or fourth appearance as such.

10 **MR ROBERT JOHN McBRIDE:** It would have been the fourth or fifth appearance.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Can we come back to paragraphs 31 to 33 after the adjournment Chair.

CHAIRPERSON: Yes thank you we will take the lunch adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride if you could go to paragraph 31 of your statement.

20 **MR ROBERT JOHN McBRIDE:** I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: Just to summarise you have told the Chair that you Messrs Sesoko and Khuba were charged with fraud and defeating the ends of justice and you say that that arose out of the recommendations of the Werksmans Report?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps you could closer to the microphone.

MR ROBERT JOHN McBRIDE: Thanks.

ADV PAUL JOSEPH PRETORIUS SC: You state your view which you have already told the Chair about in paragraph 32 but perhaps you better – you should place that on record and the relationship in time between the bringing of the charges and the constitutional court hearing.

MR ROBERT JOHN McBRIDE: The – I think the charges were made either immediately prior or on a – in and around about the same time we were charged criminally where the hearing at the constitutional court would take place. And later in
10 that year on September the constitutional court came to its decision. So in 2016 and around about the time of the constitutional court hearing the charges were made. So timing became important. Also it is after – after I was re-instated at work what the charges were then forced to be withdrawn because we had insisted on a trial and we were insisting on pleading. And that was 1 November later in that year 2016.

ADV PAUL JOSEPH PRETORIUS SC: When were the charges withdrawn please remind us?

MR ROBERT JOHN McBRIDE: 1 November 2016 Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. You mentioned that one of the reasons was stated to be that Mr July of Werksmans who had conducted the investigation would
20 not give evidence?

MR ROBERT JOHN McBRIDE: That is correct. The – on the 1 November Mr Sello Maema from the PCLU stated and I quote him here in paragraph 33:

“After consultations and the consultations here were with Doctor
Tori Pretorius it has been apparent to the state that the
prosecution would no longer be viable and we withdraw all

charges.”

ADV PAUL JOSEPH PRETORIUS SC: Now I just want to ask for your comment on the one of the reasons given about what you have testified was that Werksmans would not provide evidence. You have said that – you have already told the court that they had a disclaimer in regard to the use of their report in their report but my question is somewhat different. The evidence on which Mr July would have relied in order to produce his report and make his recommendations existed quite apart from anything Werksmans did or did not do, is that correct? In other words if Mr July had given evidence it would have inevitably been of a hearsay nature as to what he was told?

10 **MR ROBERT JOHN McBRIDE:** Indeed Chair. In fact it would have been hearsay of hearsay.

ADV PAUL JOSEPH PRETORIUS SC: Right. And all the evidence upon which he relied and on which a criminal court would have to rely existed quite apart from Werksmans itself. In other words the fact that Mr July of Werksmans did not or would not or could not give evidence would have been irrelevant to whether a successful prosecution could take place or not. Am I understanding it correctly?

MR ROBERT JOHN McBRIDE: My understanding that is besides Werksmans Report there existed no other evidence in which they decided to prosecute on.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Well except that Werksmans Report was based on evidence or not evidence or the absence of evidence. What I am saying is whatever Werksmans relied on existed in a docket or in fact somewhere else and its quality could have been judged by any criminal court if it had been worthwhile proceeding with the prosecution?

MR ROBERT JOHN McBRIDE: Absolutely Chair. It is – it would never had held water. In fact to follow through on my last words to Werksmans during the interview I said to

them that no court in South Africa will ever convict on Dramat and Sibiya because that is the reason that you say we are at fault but they will never and I have been proven right. But to answer the question directly there was – the evidence on Werksmans upon which the National Prosecuting Authority relied on was in any event based on interviews and not based on any other evidence.

CHAIRPERSON: Well I wanted to ask you something along those lines. Do you know or do you not know whether the police and the prosecutor in regard to the criminal charges against you had any statements from witnesses?

MR ROBERT JOHN McBRIDE: I am sure at this stage Chair because the Part B of the
10 docket was never given to us.

CHAIRPERSON: And I think you said either yesterday or today I think yesterday that you tried to obtain or you requested certain documents that are normally given to an accused person but these were denied to you, is that right?

MR ROBERT JOHN McBRIDE: That is correct.

CHAIRPERSON: Yes. So as you sit here you do not know who may have signed any statement that the prosecutor or the police was in possession of at the time? You do not know whether there were or there were no statements?

MR ROBERT JOHN McBRIDE: No as I sit here I am not aware Chair.

CHAIRPERSON: Yes. Okay alright. And you did ask for statements?

20 **MR ROBERT JOHN McBRIDE**: We did request it and it was refused.

CHAIRPERSON: Yes. And was the request in writing do you know?

MR ROBERT JOHN McBRIDE: If my memory serves me correct it was our legal team writing to the prosecution.

CHAIRPERSON: Yes. But it was as far as you know it was a written request rather than a verbal request maybe on the day of first appearance or anything like that or you

do not know?

MR ROBERT JOHN McBRIDE: If I can just add value. One of the postponements was due to not having received the requested parts of the docket.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And the post – the next – at the next stage when it would resume that would have been provided.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And so it is on record.

CHAIRPERSON: Yes.

10 **MR ROBERT JOHN McBRIDE**: At that stage it had not been provided yet.

CHAIRPERSON: YEs.

MR ROBERT JOHN McBRIDE: That is what I can recall now.

CHAIRPERSON: Okay. Okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: If we could go back briefly to bundle D.

CHAIRPERSON: Are you pursuing this part Mr Pretorius or it is another part?

ADV PAUL JOSEPH PRETORIUS SC: No it about documents and disclosure of documents.

CHAIRPERSON: In regard to the criminal charges or not really?

20 **ADV PAUL JOSEPH PRETORIUS SC**: In regard to confidentiality or non-disclosure of documents generally.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: But I can hold that back for the moment.

CHAIRPERSON: Okay maybe I should just say to the extent that Mr McBride may be saying that the criminal charges really had no basis whatsoever and that it was part of something more than just a genuine laying of charges by whoever. It might be good to

know exactly what was there.

MR ROBERT JOHN McBRIDE: In the docket?

CHAIRPERSON: Within – ja in the docket because obviously if there was nothing other than the Werksmans Report it might mean a certain thing but one would normally expect that there will be certain statements by some witnesses.

ADV PAUL JOSEPH PRETORIUS SC: We will attempt to obtain it.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: I will not say that I am not entirely hopeful at this stage but we will report back to you.

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

ADV PAUL JOSEPH PRETORIUS SC: Just finally in relation to the criminal charges the prosecutor what unit was he seconded to or ...?

MR ROBERT JOHN McBRIDE: The prosecutor was a Priority Crimes Litigation Unit.

ADV PAUL JOSEPH PRETORIUS SC: The PCLU?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You deal in paragraph 34 and following with the Werksmans Report. At this stage Mr McBride we need to deal with the report and the reason is not so much for all its detail and content but the fact that you have made certain allegations in relation to Werksmans and those facts therefore need to be
20 explored to the extent that Werksmans may wish to respond to your evidence. I take it that that will occur during cross-examination and you can deal with it then. But our concern as a legal team is that your allegations against Werksmans and their answer may not be directly relevant to our terms of reference. Because what is relevant to our terms of reference is at a much more general level which goes to the general reasons for prosecutions and the like. So if you would just bear that in mind when we got

through your evidence because I certainly do not want to restrict your evidence and we cannot do so but having said that just bear in mind that our terms of reference may not extend to whether you received emails or not and that type of matter. But there are certain things that need to be put. Your view is set out in paragraph 34, what is that view?

MR ROBERT JOHN McBRIDE: At 34 I say:

10 “I pause to reflect on the events that preceded Werks – the Werksmans Report which was commissioned by Nhleko in or about January 2015. This report which I maintain was material flawed was used by Nhleko to legitimise his unlawful actions. I also take issue with the conduct of Sandile July who compiled the said report.”

ADV PAUL JOSEPH PRETORIUS SC: Right. So apart from the last sentence what you are saying is that the report was used or misused by the Minister to justify the actions taken by the Minister, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC**: In paragraph 35 you say that Nhleko appointed Werksmans to investigate the two reports which he falsely alleged he had been given by IPID. What is the position there? And that is the Minister who had alleged he had been given two reports by IPID. What is your position there?

MR ROBERT JOHN McBRIDE: So my position is that at no stage did I give Nhleko a report at any stage that had been signed by Khuba alone.

ADV PAUL JOSEPH PRETORIUS SC: To whom had that report been given if anyone?

MR ROBERT JOHN McBRIDE: According to Khuba he had given it to Mosing.

ADV PAUL JOSEPH PRETORIUS SC: Of the NPA?

MR ROBERT JOHN McBRIDE: And Mosing also somewhere states that he found that signed report of Khuba in the cupboard when he cleaned Advocate Mohlatsi's cupboard after he had left the NPA. So even on – on Advocate Mosing's reported version that document was only found afterwards.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 37 you talk of attempts made...

CHAIRPERSON: I am sorry Mr Pretorius before you go there. Still in 35 you – you take issue with the allegation by Minister Nhleko that he had received the two reports from IPID.

10 **MR ROBERT JOHN McBRIDE**: Yes.

CHAIRPERSON: But I understood you earlier on before lunch when you gave evidence and we posed questions with regard to I think paragraph 7 of the Minister's letter to you about intention to suspend you.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Where you said – no, no I think we were dealing with our response to his letter.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Where you said he was always aware that there were two reports. You remember?

20 **MR ROBERT JOHN McBRIDE**: Yes.

CHAIRPERSON: We asked you questions what was the basis for you to say the Minister was at all times aware that there were two reports.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Now I understood you to be saying to us one to be saying among other things that you that is IPID had given the Reference Group everything that you

had given to the NPA.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: I undertook that to mean that therefore you would have given to the Reference Group documents which included the first report to the extent that the NPA may have had that. And if my understanding is correct then is the position not therefore that the Minister may have got that report from the interim from the Reference Group?

MR ROBERT JOHN McBRIDE: You are quite accurate there Chair. The distinction which I should have made was that the report that was included in the Reference Group and to Minister was not signed. I am referring to the one that was signed by Khuba.

10 **CHAIRPERSON**: Oh okay.

MR ROBERT JOHN McBRIDE: Because a word document email has no real status. Anyone can change it and so the value there was it was of Khuba's email that report that is not signed. The report that Nhleko made that relied on even though he uses it in intertwined way is the signed one because an unsigned report on a word document has no status at all whatsoever. And I think at the time when Mr Dlamini approached me with the media reports and I said but is that thing signed because what I know is there was a word report – email. And he said no it is not signed. Then he came back a few – one or two days later and said there is a signed one. That is when we called Khuba in and say it is signed what are the circumstances? So the distinction I should have made
20 was that the report until – the report is clearly was the signed one was given by the NPA because Mosing said he had it. And the one copy which was in Mohlatsi's cupboard that is – that distinction I should have made earlier.

CHAIRPERSON: But other than that the one that was given to the Reference Group was not signed was it otherwise the same report in terms of content as – or ...

MR ROBERT JOHN McBRIDE: Chair.

CHAIRPERSON: Or you did not have a chance to check the contents?

MR ROBERT JOHN McBRIDE: No Chair if I remember from the reports I was given that every progress report including the one given to Reference Group.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: And Minister by Khuba was – was different each time.

CHAIRPERSON: Okay, okay.

MR ROBERT JOHN McBRIDE: So there is and I think during our papers we make the point that there were various reports that was sent to Mosing each a little bit different as stuff was coming in. So it was not like the report and that is why we refer to it as a preliminary report because it was not signed. It is a word document that moves to Mosing. Mosing sometimes changes it and send it back Khuba. So it is – either way it is not complete. The one that Nhleko relied upon ultimately which is the only one he could have is the signed one by Khuba. And the reason why I make that qualification is because at some stage we made the point that if a word document is not signed it has no status. That was really the point.

CHAIRPERSON: Well this has now reminded me of a question I wanted to ask earlier. I hope I did not ask it and I am repeating it. Is there – was there anything in what we have been referring to as the first report now and from what you say it could be that it is a number of documents you know not just one document. Was there anything that if somebody read or saw in that first report that could tell him or her this is not final or this cannot be final? Or was there anything that one could pick up which could clearly say but this I cannot rely on this, this is not a final report? Or is it – or you are not sure?

MR ROBERT JOHN McBRIDE: I would answer it differently.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: To – to assist with the question you put.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: The fact that after that first report was signed by Khuba Mr Mosing wrote a report to his boss who was Advocate Jiba indicating there were still outstanding stuff. He also sends an email to Khuba and request that he must retrieve the docket to add the new evidence in. So Mr Mosing certainly from the NPA and I take him as the NPA was quite clear that it was not a final report.

CHAIRPERSON: YEs.

MR ROBERT JOHN McBRIDE: By his own actions.

CHAIRPERSON: Yes, ja.

- 10 **MR ROBERT JOHN McBRIDE:** And between IPID and the NPA if both of them relies that it was – could not have been and was not a final report and that there was additional evidence that needed to be added it could not mean anything else. And the context was – was quite clear what it is.

CHAIRPERSON: Ja okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps just to deal with that answer if you would go to page 1266. It is Chair it is in bundle Yc.

CHAIRPERSON: Exhibit Yc?

ADV PAUL JOSEPH PRETORIUS SC: Yes Exhibit Yc page 1266.

CHAIRPERSON: Yes.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** This is an email from Anthony Mosing of the NPA to Mr Khuba dated the 28 February 2014. Do you have that?

MR ROBERT JOHN McBRIDE: Sorry Chair I just have the printed paginated 1226.

ADV PAUL JOSEPH PRETORIUS SC: Sorry 1266.

CHAIRPERSON: I think 1266.

ADV PAUL JOSEPH PRETORIUS SC: 1266.

MR ROBERT JOHN McBRIDE: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: It reads:

“Dear Mr Khuba. In light of the fact that the matter has been referred to the DPP of South Gauteng for decision you are requested to file this evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or any other matter directly with him.”

I think you have dealt with this but the point is that in your contemplation there was further – there was always room for further evidence to be provided to the NDPP.

10 **MR ROBERT JOHN McBRIDE**: That is correct.

CHAIRPERSON: And that email seems to be dated what 20 May 2015?

MR ROBERT JOHN McBRIDE: It – Chair it is the 28 February 2014.

ADV PAUL JOSEPH PRETORIUS SC: It appears to be...

MR ROBERT JOHN McBRIDE: Almost a month after the so called final report.

CHAIRPERSON: Oh.

MR ROBERT JOHN McBRIDE: Of the first report.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Alright and it was forwarded later to another party on the 20 May. And then if you would go to page 1234 please.

20 **MR ROBERT JOHN McBRIDE**: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is where this email is referred to where Mr Khuba in an affidavit at paragraph 15 says:

“After I sent the January 2014 report to Mosing I continued to gather and analyse the evidence. On 27 February 2014 I sent Mosing the expert report on General Sibiya’s cellular phone data.

Mosing replied on 28 February 2014 and advised me to deal directly with the DPP of South Gauteng and to send any additional evidence directly to the DPP.”

That is Mr Khuba placing that email in context.

MR ROBERT JOHN McBRIDE: That is right Chair.

ADV PAUL JOSEPH PRETORIUS SC: If the court would – I mean if you would bear with me Chair for a second?

CHAIRPERSON: Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC**: My apologies Chair. It is the first time in a year.

CHAIRPERSON: Yes no that is fine.

ADV PAUL JOSEPH PRETORIUS SC: I think the point that you make or it appears that the point that you make in paragraph 35 if we can move on insofar as it is relevant to our terms of reference anyway.

CHAIRPERSON: Are you back to his statement?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: Sorry.

20 **CHAIRPERSON**: I am not sure if you did announce. I thought you were taking us to another page on Yd?

ADV PAUL JOSEPH PRETORIUS SC: No only that page.

CHAIRPERSON: ja.

ADV PAUL JOSEPH PRETORIUS SC: Only that paragraph.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: To put that email in context.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: If we may return to paragraph 35 then. Mr McBride I think the point you making is not whether or not two reports existed or who gave the Minister which report it is that the Minister said he had been given two reports by IPID and you appear to say that IPID gave the Minister only one report, is that what the point is?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. And the other report being the first or preliminary report whether the signed or unsigned version or whatever report in
10 sequence must have come from elsewhere?

MR ROBERT JOHN McBRIDE: No. Sorry Chair. The signed report is the one that we did not give. It is the only report that can be regarded as a report because it is signed. So the preliminary report, the word document was unsigned. So that is the distinction I am making.

ADV PAUL JOSEPH PRETORIUS SC: Well what report was – then I do not understand paragraph 35 and I think we may at odds with each other there. So let us just clarify.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Insofar as it is necessary to do so.

20 **MR ROBERT JOHN McBRIDE:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: The point you make in the first sentence is that whichever reports they were two reports were not given by IPID to the Minister. That is the first point.

MR ROBERT JOHN MCBRIDE: If you regard the unsigned Word document that was sent when he requested as a report then I agree with you but if the one that you had to

rely on which would bear any weight is one that is signed otherwise it is, it is not a report. Bearing in mind that reports were toing and froing on email between Khuba and Mosing and sometimes Mosing changed it and sent it back to Khuba. So the point is as I mentioned to the Chair the issue is the distinction between the signed report which to some extent corresponds to the unsigned one but the unsigned one having no status.

ADV PAUL JOSEPH PRETORIUS SC: No, but I am sorry Mr McBride. I am getting confused. Your sentence at the beginning of paragraph 35 says and I will read it:

“Nhleko appointed Werksmans to investigate two reports which
he falsely alleged he had been given by IPID.”

10 **MR ROBERT JOHN MCBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: So why is the statement that he had been given two reports false?

CHAIRPERSON: Maybe before he answers Mr Pretorius it is important for those who are not looking at the document to mention that the words “two reports” are in quotes.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN MCBRIDE: I think Chair that is that is why it was put in quotations. I am sorry I should have gone into greater detail making the distinction, but the report that he relies or could possibly rely on is only a signed one. That is why we say we do not refer to that one as a report. We put it in, in quotation marks. I should
20 have clarified that earlier and that might be the cause of some confusion.

ADV PAUL JOSEPH PRETORIUS SC: Well I understood it to read and that is what I understand the plain meaning to be that the Minister said he received two reports by – from IPID and you then say IPID only gave the Minister one report. Is that correct?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Then you say the report compiled by

Khuba had been given to the NPA. Which report was that?

MR ROBERT JOHN MCBRIDE: The signed one.

ADV PAUL JOSEPH PRETORIUS SC: Which signed one because there were two reports that were signed?

MR ROBERT JOHN MCBRIDE: But not signed me and Sesoko. The one signed by Khuba only.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So the report compiled by Khuba we must read that as the report compiled by Khuba - because he compiled both - and signed by all three signatories. Is that right the final report?

10 **MR ROBERT JOHN MCBRIDE**: Hm.

CHAIRPERSON: Well maybe, maybe let me say this because I hope I am right in thinking I understand this. Mr McBride we talked yesterday about first report and a second report and we said the first – when we are talking about the first report we are talking about one that was signed by Mr Khuba only?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: And we said that it was sent to the NPA?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: And there was then a second report which we also refer to as the final report?

20 **MR ROBERT JOHN MCBRIDE**: Yes.

CHAIRPERSON: And that one was signed by three people?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: It was signed by Mr Khuba. It was signed by Mr Sesoko.

MR ROBERT JOHN MCBRIDE: Sesoko.

CHAIRPERSON: Sesoko, yes and it was signed by you. So that one had three

signatures?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: That is the one that you regarded as the final report?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Yes and here in this paragraph you talk about two reports and you put that in quotes?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Saying that the Minister appointed Werksmans to investigate the “two reports” which you say he falsely alleged he had been given by IPID. As I understand what you are saying is you, you say – when you say that you gave the Minister, IPID gave the Minister one report you are talking about a report that was signed and the one that was signed that IPID gave to the Minister is only the one that was signed by three people, yourself, Khuba and Sesoko. That is the only signed report you gave to the Minister?

MR ROBERT JOHN MCBRIDE: Perhaps I caused the confusion with [indistinct].

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Chair the Minister received he asked for a preliminary report.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE**: And he received it.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And not the first report. There is a distinction.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: The first report is the one signed by Khuba only.

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN MCBRIDE: In January. So that one was included to the progress report, the preliminary report in the Minister's language. So the unsigned one which was on the email is regarded as a preliminary report. Whereas the Minister relied later on a signed report which to a large extent corresponds to the preliminary report, but it is not identical.

CHAIRPERSON: *Ja*, let us, let us leave out for now what the Minister, which one the Minister relied upon.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: So we know that you gave the Minister the report that had three
10 signatures?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Okay and that is the one you regard as the final report and that is the report that you provided to the Minister after he gave you a deadline of two days, okay. You have also said that you gave the Minister at the same time – I think – at the same time an unsigned report that came from Mr Khuba's computer?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

CHAIRPERSON: Is that right?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: And, but you said as I understood you earlier - I do not know now -
20 as I understood you, you were saying that you did not include the report that was signed by Mr Khuba only that bore his signature alone. That one you did not include when you were sending the final one to the Minister?

MR ROBERT JOHN MCBRIDE: That is correct sir, because I had not seen that one yet.

CHAIRPERSON: Yes and, and that is why you said at some stage to the extent that

the Minister may have received the report that was signed by Mr Khuba only. He could only have received that from the NPA?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Yes. Okay, now I understand. The only question I have arising out of paragraph 35 in the light of that is if as you say the report that was unsigned that basically came from Mr Khuba's computer which you sent to the Minister together with the final report.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: If as you seem to suggest it was really nothing to attach much
10 importance to why did you send it?

MR ROBERT JOHN MCBRIDE: Thank you Chair. It is because the Minister asked for a preliminary report and a final report in his letter to me on 24 November 2014.

CHAIRPERSON: But I would have thought that if your attitude was anything unsigned is - has no status as you say I would have thought that you, you would not wanted to send him something that has got no status. You would have, you would have said look the only report that really is official is this one that is signed by three people. Anything else is really, has no official status and there is no point in sending you anything like that.

MR ROBERT JOHN MCBRIDE: The fact is Chair is that it was sent.

20 **CHAIRPERSON**: Yes.

MR ROBERT JOHN MCBRIDE: Because he had requested it.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: It had no status but he had requested it.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And, and this is of course November.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: 2014.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: But the one which he then relied on dealing with me on.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Realising that that one has no status.

CHAIRPERSON: Hm.

10 **MR ROBERT JOHN MCBRIDE:** Someone must have advised him or we responded to it in.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: In the media that it is unsigned.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Was the signed one. So somewhere they had fished a signed one out from.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So his notion even that he was not aware that there existed some preliminaries is not, is not correct. I think that is the point I was making earlier.

20 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: On the preliminary reports, but in our own minds a report that is not signed does not have status, but if it is requested you give it.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And even at the stage where the signed one then surfaced I asked Khuba about it and Khuba said he had forgotten that he had sent a

signed one.

CHAIRPERSON: Hm, but to the extent that the Minister may have been saying he was given two reports by IPID to the extent that he may – he regarded or may have regarded the unsigned report that you sent him as a report when you said two reports if he meant the one with three signatures and the one with only two - with – and the one without any signature. Then he would be correct in that regard to the extent that in his own mind it was still a report even if it was not signed?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: Then it would be correct?

10 **MR ROBERT JOHN MCBRIDE**: That is correct.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: But he would not have been correct after.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: He started relying on the signed one.

CHAIRPERSON: Yes, but you said you did not – IPID did not give him the signed, the?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: The one signed by Khuba only but if he is talking about reports that he got from IPID.

MR ROBERT JOHN MCBRIDE: Yes.

20 **CHAIRPERSON**: His statement could only be correct if he regarded the unsigned report as also a report?

MR ROBERT JOHN MCBRIDE: Yes. Thank you Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright. My sympathies going out to anyone trying to follow this and it may be entirely the fault of the person who wrote your

statement down and paragraph 35 or entirely ours for not accurately following the evidence you have given. It seems that the Chairs ability to grasp after lunch on a Friday is far greater than mine. Let us take a step back. Which two reports were Werksmans or was Werksmans directed to investigate?

MR ROBERT JOHN MCBRIDE: To be fair to everyone I think Werksmans was not sure which one they were busy with.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN MCBRIDE: So by the time Werksmans started interviewing us the signed one had resurfaced which was a status that they as lawyers could place any
10 significance on. Bearing in mind they are doing an investigation on behalf of the Minister.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: To ascertain wrongdoing. They would not place any reliance on a document that is not signed.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN MCBRIDE: And went to [indistinct].

ADV PAUL JOSEPH PRETORIUS SC: But my question is not what Werksmans thought they were mandated.

MR ROBERT JOHN MCBRIDE: *Ja.*

20 **ADV PAUL JOSEPH PRETORIUS SC:** To do. Is as a matter of fact do you know which two reports Werksmans were asked to investigate.

MR ROBERT JOHN MCBRIDE: Okay. Thank you Chair. In my mind at the stage of them interviewing us they had the, the two signed ones. One signed by Khuba and one signed by the three of us.

ADV PAUL JOSEPH PRETORIUS SC: Right. Now as I understand what you are

saying in paragraph 35 or what has been said on your behalf and I do not wish to point fingers there at anyone. Nhleko appointed Werksmans to investigate the two reports. Let us accept the two signed reports. One signed by Khuba, one signed by three officials of IPID.

MR ROBERT JOHN MCBRIDE: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Which the Minister falsely alleged he had been given by IPID. Now you say that the signed report signed by Khuba and the signed report signed by the three officials had not both being given to the Minister by IPID?

MR ROBERT JOHN MCBRIDE: Yes, thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC:** And the Minister was incorrect at the very least when he said that that was the case?

MR ROBERT JOHN MCBRIDE: Yes. He was – sorry Chair if I can explain this.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And I am sorry to do this – to go back. The Chair made a point that the Minister could have thought that is not what he meant. Then why would he make such a fuss of it right from the beginning.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: So, so I am saying it is not only that he had a position on it. He was clutching at straws and - but the signed one of Khuba only he did not
20 receive from IPID.

ADV PAUL JOSEPH PRETORIUS SC: Right. So if the two reports that Werksmans was required to investigate which I understand to be the case were firstly the one signed by Khuba and secondly the one signed by the three officials. Then it is correct what you say he had not received both of those from IPID?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Let us move to the second sentence.

“IPID only gave Nhleko one report.”

Which report was that in your knowledge?

MR ROBERT JOHN MCBRIDE: The three – the one that was signed by three people.

ADV PAUL JOSEPH PRETORIUS SC: Right. The report compiled by Khuba had been given to the NPA. I take it that that is a reference to what we have referred to as the preliminary report or the report signed by Khuba before you came onto the scene?

MR ROBERT JOHN MCBRIDE: That is correct sir.

ADV PAUL JOSEPH PRETORIUS SC: Right and that is the only place you say in the
10 last sentence where Nhleko could have obtained that report from?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: So we are on the same page. It took some time, but.

MR ROBERT JOHN MCBRIDE: My apologies.

ADV PAUL JOSEPH PRETORIUS SC: I am perfectly willing to take all the blame for that. Let us move on to paragraph 36 then. You say that several attempts were made by July of Werksmans to interview the IPID National Head of Investigations, Mr Sesoko and IPID Lead Investigator, Khuba. Khuba was contacted by July and Khuba indicated his willingness to cooperate but asked that the request be sent via email and be
20 directed to me. He also provided the relevant email addresses. Now you have given added evidence in regard to that. That it was your instruction that Khuba should not at least at initial stages give evidence to Werksmans?

MR ROBERT JOHN MCBRIDE: That is correct sir.

ADV PAUL JOSEPH PRETORIUS SC: And you have given your reasons for that. So what we know from first sentence here is that Mr July made attempts to obtain evidence

from Sesoko and Khuba but they were directed to go through you and then you make some comments about emails and the addresses of emails. Again I am not sure whether our terms of reference extend to these details but you have said it and just tell the Chair what you say please.

MR ROBERT JOHN MCBRIDE: Thank you. Chair the, the point of this is my concerns which I raise in paragraph 34 is amongst others was based on firstly that Werksmans had tried to contact Khuba only and then when he was requested by Khuba to put it in writing and also address it to me the email was sent to Khuba and Sesoko using .gov.za but the one that was sent to me was .co.za and then Sesoko picked up on that
10 and alerted Werksmans and then they resent it and included me except misspelt my name. Now against the background of what has happened is Dramat is knocked out. Allegations are turned on us. The Minister is phoning Khuba directly. Sandile July is contacting Khuba directly and these problems with receiving the email to me we were under the impression and our impression has not been yet placated if I can put it that way and that was the importance of this and all I can say about this is that perhaps next time that any legal company gets an instruction from a Minister to investigate an investigation of an independent they should be more careful.

CHAIRPERSON: So you, you – is the position that you have reservations that the errors with the, your email address were *bona fide*. Is that what you are saying? You
20 think it was, it may have been more than a genuine error.

MR ROBERT JOHN MCBRIDE: Hm.

CHAIRPERSON: Because it could be a genuine error on its own. So I am just wondering whether, whether how much point you want to make out of it and I am not saying do not make whatever point you make and I understand the bigger picture of what was happening with you schedule but I just want to know ultimately how much

point you want to make about it. So that I know if there is quite some point or if you simply say I cannot go beyond simply saying I am putting a question mark. That is all or you might say no I go beyond that actually blah, blah, blah, blah.

MR ROBERT JOHN MCBRIDE: Chair in the bigger scheme of issues I, I raised what my concern was.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And I risked it.

CHAIRPERSON: And you do not take it beyond that?

MR ROBERT JOHN MCBRIDE: And I do not take it beyond that.

10 **CHAIRPERSON**: Hm.

MR ROBERT JOHN MCBRIDE: I just think the issue on the bigger level is private legal companies especially with a good reputation like Werksmans should not easily take upon cases that impinge on the independence of constitution created bodies. That is all I would say is just to exercise a bit more caution and circumspection. I will not take it further than that Chair.

CHAIRPERSON: Okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. I have been handed Chair two emails from Werksmans Attorneys but I need to investigate.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Their timing.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And the addresses which I am told are the correct addresses but I am not sure that they are.

CHAIRPERSON: Yes, okay.

ADV PAUL JOSEPH PRETORIUS SC: So let, let us investigate that and.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: I will deal with them later if necessary.

CHAIRPERSON: That is fine.

ADV PAUL JOSEPH PRETORIUS SC: Who was appointed – thank you for that Mr McBride and let me stress what the Chair has stressed. We do not want to prevent any evidence that you wish to give. We do want however to concentrate on matters within our terms of reference if that is okay.

MR ROBERT JOHN MCBRIDE: That is fine Chair and if I may add at some stage perhaps I will buy Mr July some coffee and we will talk it over.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Okay.

CHAIRPERSON: Yes. No, thank you.

ADV PAUL JOSEPH PRETORIUS SC: We will be very grateful to do that. Paragraph 37 you talk of the person appointed to act as Executive Director in your absence and due to your suspension. Who was that?

MR ROBERT JOHN MCBRIDE: That was Mr Israel Kgamanyane.

ADV PAUL JOSEPH PRETORIUS SC: Right and you say in paragraph 38 that in relation to the Werksmans investigation he took certain steps.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct?

20 **MR ROBERT JOHN MCBRIDE:** Chair just to add that he instructed then Sesoko and Khuba to attend the interview of Werksmans.

ADV PAUL JOSEPH PRETORIUS SC: Right and when did you testify or speak to Mr July as part of the investigation in relation to your suspension?

MR ROBERT JOHN MCBRIDE: It would have been in April. I think it would have been 17 April I think it is. I am not 100 percent certain. So it would have been – to answer

your question after my suspension.

ADV PAUL JOSEPH PRETORIUS SC: Right and what led you to change your mind?

MR ROBERT JOHN MCBRIDE: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It was indeed on 17 April according to our timeline.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair I have a rough draft. I do not know whether you wish to have it now. Perhaps we better prepare it a more final or less unfinal draft.

10 **MR ROBERT JOHN MCBRIDE:** I, I had a remote or I had the idea that there is a remote possibility that if I speak to them and give them context perhaps the undercurrents and feeling might be lessened and that is why I thought it is important to explain context, time and where different things happened at different stages. I, I clear did not explain it to them as well as I should have.

ADV PAUL JOSEPH PRETORIUS SC: In any event we know for present purposes at least that Werksmans produced a report and that report was strongly contested by you. [Intervenues].

MR ROBERT JOHN MCBRIDE: That is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Was it also contested by Messieurs Khuba and Sesoko?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Was the report leaked to the Sunday Times? Do you know or do you suspect?

MR ROBERT JOHN MCBRIDE: It was, it was leaked to the Sunday Times at the stage – we are not sure by who because Sandile July was approach by a journalist to say

why did you leak the report and he said no he did not. He gave the report to the Ministry and I remember during the period of the litigation there was some discussion between it. In any event the report did not include or refer to the transcripts of the conversation with Mr Sesoko.

ADV PAUL JOSEPH PRETORIUS SC: Are you referring – what transcripts are you referring to?

MR ROBERT JOHN MCBRIDE: Of the interview Chair.

ADV PAUL JOSEPH PRETORIUS SC: Of the interview.

MR ROBERT JOHN MCBRIDE: Interview of Mr Sesoko.

10 **ADV PAUL JOSEPH PRETORIUS SC:** With Mr July?

MR ROBERT JOHN MCBRIDE: With Mr July and his team.

ADV PAUL JOSEPH PRETORIUS SC: Were steps taking against Messieurs Khuba and Sesoko after the release of the report, the Werksmans Report?

MR ROBERT JOHN MCBRIDE: Indeed they were suspended.

ADV PAUL JOSEPH PRETORIUS SC: Just to assist you because it is a matter of record paragraph 41.

MR ROBERT JOHN MCBRIDE: 41.

ADV PAUL JOSEPH PRETORIUS SC: Of your statement.

20 **MR ROBERT JOHN MCBRIDE:** On 21 May Mr Khuba and Mr Sesoko were suspended by Kgamanyane on the instructions of the Minister of Police for allegedly altering the IPIDs Progress Report into “rendition”.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: And that that date should be 2014, not 2015.

ADV PAUL JOSEPH PRETORIUS SC: So the nub of the charges against Khuba and Sesoko were entirely the same or was entirely the same as the charges against you?

MR ROBERT JOHN McBRIDE: That is correct, Mr Kgamanyane was from IPID.

CHAIRPERSON: Yes, no, no I accept that but you say here it was the Minister who instructed him to suspend and my question is why would the Minister get involved in giving instructions what the Acting Executive Director who he should suspend and who he should not suspend?

MR ROBERT JOHN McBRIDE: Chair just in the context of everything that happened until this moment it then questions any reasonable explanation for the previous actions, and that that it, this is the completion and a repeat of what happened in DPCI, so knock-out Dramat, then knock-out Sibiya, knock-out McBride, knock-out Khuba and
10 Sesoko, and so this event during May 2015 and the Minister's involvement and my understanding is that when Mr Sesoko was suspended he recorded the conversation with Mr Kgamanyana, in addition Mr Sesoko prepared papers to do a Constitutional Court challenge on that provision that allows an Acting Executive Director to act in the way that Mr Kgamanyana had acted and in my challenge on the matter I only dealt with the issues dealing with the appointment of Executive Director and not on the process to appoint an acting and that the Minister's interference but Mr Sesoko did challenge that but at some stage we ran out of funds and he couldn't go ahead with the challenge but there have been a set of papers prepared, whether they were served or not I don't know.

20 **CHAIRPERSON:** But the – part of what you are saying is that Mr Sesoko wanted to challenge the role of the Minister in his suspension, is that part of what you are saying, as far as you understand?

MR ROBERT JOHN McBRIDE: Yes Chair it's both issues, 1) the Minister's involvement and secondly that Kgamanyana has an automatic right to carry out the Ministers instructions. I don't know if it's appropriate for me to ask – to mention this, on

my return to IPID after the Constitutional Court judgement I requested a hand-over report from Mr Kgamanyana explaining the circumstances in which various people were suspended, disciplined, dismissed and he refused to give it to me and said everything he did was with the support of his supervisor which I took to mean, in reference to the Minister.

CHAIRPERSON: But in terms of your saying that this was – the suspension of Mr Sesoko and Mr Khuba that, that was done on the instructions of the Minister of Police, were you basing that on what you heard from Mr Sesoko?

MR ROBERT JOHN McBRIDE: Yes Chair.

10 **CHAIRPERSON:** Talking to you about the conversation he had, had with Mr Kgamanyana, is that right?

MR ROBERT JOHN McBRIDE: That's correct and if I remember correctly he played me a recording of the conversation.

CHAIRPERSON: Oh so you could hear what the discussion said.

MR ROBERT JOHN McBRIDE: What Mr Kgamanyana said.

CHAIRPERSON: Okay, alright thank you.

MR ROBERT JOHN McBRIDE: And in addition Mr Kgamanyana's response to me when I requested a hand-over report from him.

CHAIRPERSON: Yes, okay thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Given the Constitutional independence of IPID and according to your knowledge of the Constitutional Court judgements and the judgements of the High Court that preceded that judgement would it be proper for the Minister of Police to direct that a Executive Director whether acting or otherwise of IPID, dismiss subordinates appointed by the Executive Director?

MR ROBERT JOHN McBRIDE: Thanks Chair, it would be wrong both for an

independent organisation like IPID for the Minister to get involved but any other government department in the Civil Service it would be wrong for a Minister to get involved in operational issues and issues of discipline.

ADV PAUL JOSEPH PRETORIUS SC: I'm going to move on to some other matters before we go further in your statement Mr McBride but in paragraph 42...(intervention).

CHAIRPERSON: Sorry Mr Pretorius what you have just said are you making two points, maybe one point with two bases namely that even if the Minister was not dealing with an entity that has a special status of independence such as IPID, it would have been wrong for him to get – even if he was dealing with any other government
10 department as Minister he would have known that it was – it would have been wrong for him to get involved in those operational matters but you say because of the special position of IPID in terms of its independence that it was not right, it should have been even much more obvious.

MR ROBERT JOHN McBRIDE: Absolutely Chair, Absolutely.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 42 Mr McBride that – consistently with evidence you've given to date that you did not know about the existence of the provisional report that was supposedly altered as it pre-dated your appointment as IPID Executive Director and I've added the word provisional just to
20 identify the report, that is correct is it?

MR ROBERT JOHN McBRIDE: Perhaps the language is clumsy here but the point I was making here is that at the stage in April 2014 when I signed the final report that had been signed by Khuba and Sesoko that's the report I was aware of in April 2014, so the previous reports were not known to me at that stage.

ADV PAUL JOSEPH PRETORIUS SC: Right okay but even if you had known of a first

report, word document, unsigned, a signed report that had been given to the head PA
what difference would that have made?

MR ROBERT JOHN McBRIDE: Chair I think it's a critical question you're asking. If I
was Mr Khuba, I was the investigator and there was evidence that was *exculpatory* I
would have changed the report to factor in the evidence that's *exculpatory*, that will
make it impossible to prove beyond reasonable doubt. So the actual changing of the
report is neither here nor there and if I had changed the report I would have said, I
changed it and these are the reasons why I changed it and I stand by the reasons why I
changed it. To that extent I indicated in my interview with Mr July that I stand by the
10 report that I signed.

ADV PAUL JOSEPH PRETORIUS SC: If after the issuing of the first report or the
provisional report by whomever signed even if it had been signed by the then Executive
Director, further evidence had come to light which fundamentally altered the
recommendation or the opinion in the report, would it have been proper to exclude that
and not address it?

MR ROBERT JOHN McBRIDE: Absolutely not Chair it would be – in that instance it
would be criminal not to add the evidence – the additional evidence which was material
in this case.

CHAIRPERSON: So given what the further investigation that Mr Khuba had done on
20 your instructions, given what he had got, what you are saying is that unless somebody
were to challenge what Mr Khuba got as fabricated or wrong, unless somebody could
challenge the correctness of that they should have not quibble with the fact that – with
the conclusion of the second report.

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: You should only quibble with it if you don't accept the correctness of

what Mr Khuba came up with in the further investigations.

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: Otherwise you're quibbling with the conclusion of the second report without challenging that, without saying that information is wrong, it's difficult to understand.

MR ROBERT JOHN McBRIDE: And Chair, just to add on, what you're saying is – I agree with completely but at that stage we even said to ourselves, have we missed something here, why do people not understand it. We then instructed attorneys to appoint a Senior Counsel to see if a different opinion could be obtained, that was the
10 extent we were willing to...

CHAIRPERSON: To consider that there may be something that you did not understand.

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: So we didn't believe we're infallible we looked at common sense but we went to the extent of getting another opinion whether we acted correctly and in addition that, even before the (indistinct) from the Minister we had discussed the matter with Mr Ngasana? The NDPP and some of the reservations we had, had with him in interaction corresponded to the reservations we had about the
20 possibility of sustaining a prosecution.

CHAIRPERSON: Well I would imagine that if you have, before you documents on the basis of which you must make a decision and somebody has given an opinion in regard to the information that is placed before you. You'd look at the opinion, you'd look at the information and you may agree with them you might not agree with them and you - particularly if you don't agree with them you try an understand their reasons for their

different view so that you can test that against your own and given that if having received an opinion in a certain direction subsequently there's an opinion that is in the opposite conclusion it seems that it will be natural for you to want to say, what's the basis for this different or latest opinion and therefore you look at the material on which it is based and you may agree with its – the conclusion of the second opinion you might not agree but you would need to look at that. If you just look at the opinion and you don't go beyond that, it will be strange. Do you know whether the Minister or Mr July who were questioning the correctness of the material that led to the second report, in terms of the discussions you had with Mr July in terms of any communication, correspondence with the Minister, did they ever say, but that information is incorrect on the base – which was obtained after you had arrived?

MR ROBERT JOHN McBRIDE: Chair not once did anyone ever question the validity or the material importance of that additional evidence which emerged from the analysis of the cell phone tower report.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Which was *exculpatory* – neither the Minister, that I'm aware of and certainly not to be and neither did Mr July put it to me that, that evidence that was obtained from cell phone records and analysed and attached to different towers at particular times was wrong or could even perhaps have been wrong no-one suggested that at any stage. So the evidence that was included in the docket was never questioned about its validity or its correctness or its material importance, ever.

CHAIRPERSON: That relates to the conclusion reached in the second report. If there was an alteration to the extent that there may have been an alteration, a physical alteration of the first report, if that alteration was meant to reflect the latest position after the second report there ought to have been no problem with that if nobody had a

problem with the basis for the second report's conclusion.

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: So in the interview that you had with Mr July what did he say, if he did say, he found wrong or he thought was wrong with the alteration in the first report?

MR ROBERT JOHN McBRIDE: The issue, Chair was that the report was changed at all that was the position of...(intervention).

CHAIRPERSON: (Indistinct).

MR ROBERT JOHN McBRIDE: That there was a change to the report that was the position whether it was a lawful change whether it was a material change whether it affected the possibility of sustainable prosecution and the impact that the new evidence
10 and a new report had, that was not the issue for anyone at any stage of this, it was that it was changed.

CHAIRPERSON: It was simply whether it was changed.

MR ROBERT JOHN McBRIDE: Yes that's correct.

CHAIRPERSON: Why it was changed, what grounds were there whether they were good grounds, that was not discussed or he did not – he was not looking into that?

MR ROBERT JOHN McBRIDE: Chair they questioned why certain parts of a report were omitted in the final report, not the evidence, the report.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN McBRIDE**: And the answer was that what was removed made no change to the conclusions reached because it was not of evidentiary value and that explanation, if my understanding serves me correct is what Khuba gave to Mr July. I can't remember verbatim my – what I said but with the benefit of time and over time reading documents and becoming more and more acquainted there is actually nothing that is improper or that was amended or changed that makes – that can ever knock-out

the importance of the exculpatory evidence, I think, in essence, that's it. The team we were dealing with, both in terms of prosecution, in terms of disciplinaries in terms of Werksmans they were all lawyers, surely the value of evidence and their judgements about this, that *exculpatory* evidence cannot be ignored or omitted in taking decisions.

CHAIRPERSON: Was the concern about the alteration of the first report directed at the recommendation, in other words was the concern more about in effect, I don't know whether other people said this but you see now, in the first report – in the first report you said prosecute now the second report says don't prosecute was that the focus or not really it was just the mere alteration or both?

- 10 **MR ROBERT JOHN McBRIDE:** Chair without meaning to appear to be opinionated the difference in circumstances between the signing of the first report and the signing of the second report was that the circumstances relating to the signing of the first report and the circumstances relating to the signing of the report where the three of us signed is that there was independence of IPID exercised in the signing of the second report whereas in the first report there was undue pressure placed on the investigator and sinister motives by the people that were involved including Crime Intelligence. Under my leadership of IPID I would have not allowed any interference and I would want, which I always did, is to have to cold hard facts and cold hard analysis and not to be influenced unduly or otherwise by outside forces and for me that – after everything is
- 20 said and done after all the court judgements after all the disciplinaries that is the main difference between the circumstances and the culmination in the two reports. One took place under interference and minimal independence and the other one took place under rightful independence.

CHAIRPERSON: And in this regard I remember that yesterday you said Mr Khuba said or either Mr Khuba or Sesoko said that the acting Executive Director at the time

before you had given instructions that Mr Sesoko should be bypassed, is that correct?

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: In relation to the so-called rendition investigation.

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair if we may just summarise then, you've referred to the circumstances surrounding the production and delivery of the two reports and you've given evidence that the first report, the provisional report or the one signed only by Khuba, however we define it that, that report was firstly informed
10 by Criminal – Crime Intelligence Investigations and was delivered under pressure from the NPA both of which would feasibly constitute interference in the work of IPID.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And that evidence is on record and Mr Khuba will confirm it and we will place that evidence before you as well.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: The second point that arises by way of summary is it's one thing to have said to you, Mr McBride you have the first signed report it was in all respects satisfactory, you then went out and fabricated evidence and produced a second report in order to *exculpate* Messrs. Dramat and Sibiya that would
20 be a different story here that would justifiably require criminal charges.

MR ROBERT JOHN McBRIDE: Yes indeed Chair in fact in one of Mr Khuba's interviews with Werksmans, with Mr July in response to some question he says, there was never a moment when McBride said change this or that to exonerate someone.

ADV PAUL JOSEPH PRETORIUS SC: Yes that's on record.

MR ROBERT JOHN McBRIDE: That's on record.

ADV PAUL JOSEPH PRETORIUS SC: In fact what happened between the first and second reports was that you directed an order to complete the investigation that the cell phone records be analysed.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And those cell phone records clearly had some impact on the contents of the final report.

MR ROBERT JOHN McBRIDE: The cell phone record analysis...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Sorry the analysis had some impact.

MR ROBERT JOHN McBRIDE: Was absolutely critical to the report which is the report
10 that I signed it was critical.

ADV PAUL JOSEPH PRETORIUS SC: In that respect has anyone ever alleged or put to you that, that cell phone record analysis was false or incorrect or questionable in any way?

MR ROBERT JOHN McBRIDE: Never.

ADV PAUL JOSEPH PRETORIUS SC: Had you withheld that cell phone analysis from any final opinion or report given to the NPA would you have been acting properly?

MR ROBERT JOHN McBRIDE: Chair it would have been improper and it would have been criminal.

ADV PAUL JOSEPH PRETORIUS SC: Alright, now there is some talk, finally by way
20 of summary that in the report statements might have been altered to the extent that parts were omitted, you've just referred to that now.

MR ROBERT JOHN McBRIDE: Not statements Chair, aspects of the report.

ADV PAUL JOSEPH PRETORIUS SC: Yes now that's a very important distinction that I'd like to put to you. If the report had contained a different review of statements in its second version from what had originally existed in the first version of the report would

the statements have remained in the docket?

MR ROBERT JOHN McBRIDE: Absolutely, all statements stayed in the docket including statements that were no longer sustainable after the receipt of the cell phone tower analysis...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: They were unchanged?

MR ROBERT JOHN McBRIDE: They were unchanged and they were left in the docket.

ADV PAUL JOSEPH PRETORIUS SC: And I take it the work of a prosecutor in the NPA who is diligent is not merely to piggy back on the opinion of an investigator but to
10 make an own informed decision based on his or her own reading of the statements.

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Alright let's just move on to another topic if we may and that is in fact...(intervention).

CHAIRPERSON: Sorry Mr Pretorius, Mr McBride I'm going to put a question to you just be careful when you answer it because you need to answer it, you need to be clear about answering it. Is your evidence that – does it go so far as to say that anybody who was aware of the additional evidence those – that cell phone analysis and had read it and who was not challenging it, who was not saying it was incorrect, who was not saying it was fabricated, could not really have concluded that there was a problem
20 with the second report or with the – with such alteration as may have taken place, if it was to reflect the outcome of the second report are you able to go that far or not really?

MR ROBERT JOHN McBRIDE: Chair there is absolutely no reasonable explanation for anyone ignoring that additional evidence and coming to a different conclusion that the report that I signed came to in respect of General Sibiyi, Generals Thoka, General Lebeya, General Dramat. The – the evidence is of a critical nature and if anyone had

regard to it the really importance is that where three people say they have placed someone on the scene that is unchallengeable evidence that the person was not there. And even I mean courts rely on that evidence both in terms of incriminating evidence and exculpatory evidence. So I have questioned myself over the years about could there be a bone fide misunderstanding of the importance of that evidence and I cannot draw the conclusion that there can be.

CHAIRPERSON: Okay. I think you – I think your last sentence you are quite careful about how you are putting it. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Just to go back a step if we
10 may before we move forward once more. In paragraph 39 at the top of page 9 of your statement you say that:

“The Sunday Times and the Sunday Independent ran a series of false reports to prop up Nhleko’s false narrative to discredit us publicly.”

It is not entirely clear but are you saying that the Sunday Times and Sunday Independent acted deliberately or they had false information given to them which they then reported on?

MR ROBERT JOHN McBRIDE: If I understand the question correctly is the Sunday Times in particular had been running this story for a long time. The fact that the matter
20 was leaked is improper conduct. And by whoever leaked it and for the me that fact that we were not even aware of what was contained in the Werksmans Report is significantly irregular. Now I am all for media freedom and a right to publish but I think even the right to expression and media freedom must go at some element of responsibility on the matter. And this was a scoop to be as open as possible the scoop was given to three papers and that is what led to some of the people who had received

the story as an exclusive for them on that Sunday to be resentful that they were not the exclusive and that is how the information then came back to us as to who leaked it because of that issue. So it was offered that information at a particular time as an exclusive to three media houses including the Sunday Times and the Sunday Independent.

ADV PAUL JOSEPH PRETORIUS SC: If we could just take a step back there please Mr McBride. It would be one thing if the Sunday Times had a leak report and based their reports on the contents of the Werksmans Report for example and you take issue with the contents of the Werksmans Report so to that extent you would take issue with
10 the content of the Sunday Times. But what is not clear from paragraph 39 is whether you are saying that the media reported on what they received and what they received by way of information was incorrect or false. Or whether you are saying they deliberately distorted information and created themselves a fictitious or false narrative. Do I make – is that clear?

MR ROBERT JOHN McBRIDE: Chair I understand your question. It is – it is a bit more ...

ADV PAUL JOSEPH PRETORIUS SC: Nuanced.

MR ROBERT JOHN McBRIDE: Serious than that.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

20 **MR ROBERT JOHN McBRIDE:** And the issue is that it was indeed the Sunday Times that started the story in 2010 or 2011. A lot had happened then and the Werksmans Report was therefore used by people who had an interest in proving the accuracy of the initial stuff which they had leaked and we are now aware of what has transpired afterwards and some people received awards and they were censored and there was apologies from the editors of these newspapers. So it is not and I am talking about

Sunday Times specifically. I cannot remember where whether the Independent ever ran with these stories but the Sunday Times definitely were both if I can put it this way they were the thrower of the javelin over the bar and they went and catch it on the other side. And no caution was exercised in dealing with this matter. This matter is dealing with – now we have General Dramat gone, General Sibiya gone, McBride is gone, Khuba – Khuba and Sesoko were not yet gone. But there is a disciplinary coming up next week and they – they then go with this. I think my date 46 might not be exactly the 21st but in terms of sequence events there was a lot going on. There is a whole wiping out of the anti-corruption independent bodies. Surely some caution should have been

10 exercised as the way in which firstly the report was handled before it was leaked to the media and for the media – in my view the media asked whether this has been – before you have leaked to me has it been considered by the Minister this report whether – can you back up what is being said? Just that we are not dealing with – now I know media likes a scoop and it is good that we have a free media in this country. But you should have an alarm bells ringing when you see independent anti-corruption institutions being wiped out. Something is – something should ask you to ask the questions, what is happening? Where are you getting your leaks from and why and where did you get your leaks from originally? Who leaked it to you? What was their agenda? We are in a free society people use the media for agendas or to carry out a particular narrative.

20 Now what I have learnt over the years especially in IPID is that narratives are repeated often and sometimes executive authorities will – will be happy with a particular narrative. But the narrative can run and be repeated over and over again it does not make the objective facts different. And journalists should have enquiring minds they should question. They should have and I say this with conscious of the irony. They should have a healthy Sinicism and suspicion like an investigator should have. Like we

exercised in IPID in assessing information. Journalists should do that especially in a contested terrain of ideas.

ADV PAUL JOSEPH PRETORIUS SC: So I understand from your answer Mr McBride two things. One that we can exclude the Sunday Independent from paragraph 39 of your statement, can we do that?

MR ROBERT JOHN McBRIDE: No, not that it was leaked to them they ran the story.

ADV PAUL JOSEPH PRETORIUS SC: Right okay.

MR ROBERT JOHN McBRIDE: It is just that they were not like the Sunday Times the initiator of the story in the beginning.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. And secondly I do not understand you to be saying that the media deliberately fabricated information and published it but rather they – that they acted in a way that you believe was irresponsible in merely publishing the leaks that they received. Am I correct?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Maybe you would use a stronger word than irresponsible but – or deliberately mischievous I do not know – I do not want to put words in your mouth but I just want to make that distinction clear.

MR ROBERT JOHN McBRIDE: Chair what I would say is that they did not exercise the necessary caution that any investigative journalists should have exercised.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Okay.

MR ROBERT JOHN McBRIDE: And the objectivity and standing away from it in particular the Sunday Times. And now we know that it was promised as an exclusive. But the Sunday Times on this case and they are not investigators like that – like IPID is should still have exercised the same Sinicism and healthy suspicion about reports and reason for leaks and a narrative. Even by the time that they wrote the story they were

aware that things had changed from what they had written initially and so I would say for media just exercise more caution in future. Do not be had, do not form part of an agenda. Critically assess what has been leaked and given to you. That is as far as I can go Chair.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. If we could go then to bundle Y or Exhibit Yb please at page 883. That is a transcript of your interview on the 17 April 2015 with Mr July.

CHAIRPERSON: What page again?

10 **ADV PAUL JOSEPH PRETORIUS SC**: Page 883 of Exhibit Yb.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: It is right at the end of that bundle Mr McBride.

MR ROBERT JOHN McBRIDE: Thank you Chair. I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: If you could just identify the document as the transcript?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right if we could go then to page 886 unless Chair you want me to take it slowly and deal with the preliminary matters.

CHAIRPERSON: No.

20 **ADV PAUL JOSEPH PRETORIUS SC**: It is probably appropriate to go directly to 886.

CHAIRPERSON: That is fine.

ADV PAUL JOSEPH PRETORIUS SC: On page 886 would you tell Chair what you said in the fourth paragraph?

MR ROBERT JOHN McBRIDE: Is it the one that starts with no?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: I will just read it our Chair.

“No I think initially from the beginning we had indicated that we do not require lawyers to be present but since I am suspended and they are acting on my behalf I obtained advice and guidance from them. The most important issue was you were not in contact with me either via the lawyer or anybody because I was not receiving this stuff. For me I was happy that at least you could make contact and sort out the legal issues between the lawyers. That was the most important thing.”

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. That seems to be the outcome or result of issued that you had raised with Mr July about the failure of communication?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That preceded your interview.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay. If we could go to page 888 please.

MR ROBERT JOHN McBRIDE: 888?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: Okay.

20 **ADV PAUL JOSEPH PRETORIUS SC:** There you raised with Werksmans the issue that a private law company is investigating a government investigative agency albeit an independent one before the National Prosecuting Authority has made any decision about the relevant matters subject of the report. Would you just read onto the record what you say there please?

MR ROBERT JOHN McBRIDE: I just...

ADV PAUL JOSEPH PRETORIUS SC: From – then also the fact.

MR ROBERT JOHN McBRIDE: Okay. From line 10?

ADV PAUL JOSEPH PRETORIUS SC: Line 8.

MR ROBERT JOHN McBRIDE: Line 8.

“Then also the fact that a private law company is investigating a government investigative agency albeit an independent one before the NPA had made a decision. Just to say that I would have expected that there would have been a wait for the NPA to make a decision it is neither here nor there but with the communication problem and then this it was a little bit of concern to me.”

10

ADV PAUL JOSEPH PRETORIUS SC: Alright. As I understand it you were raising with Mr July as you have stated in evidence IPID is an independent body subject to parliamentary oversight?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: It is not subject to the executive control of the Minister?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Yet what the Minister has done here he has appointed a private firm of attorneys to investigate IPID and actions of officers of IPID?

20 **MR ROBERT JOHN McBRIDE**: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. I do not want to take the legalities any further but what is clear from the constitutional court judgment which we will deal with in due course is that the Minister does not have the power to institute or take disciplinary proceedings against the executive director in IPID.

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that is a constitutional matter?

MR ROBERT JOHN McBRIDE: That is a constitutional matter ja.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Then at the bottom of page 888 you deal with the facts and you say:

“On my appointment that is as executive director of IPID I had asked for a briefing on all high profile cases and I think it was Cato Manor it was Ria Beetge’s matter and it was this one of Sibiya and Dramat.”

That is the rendition matter and then you mention some other matters, correct?

10 **MR ROBERT JOHN McBRIDE:** Yes that is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And then at the bottom of page 889 you say:

“My issue in the briefing and I cannot remember the exact sequence of events was firstly crime intelligence was involved in the case from the beginning.”

That is the one issue.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The second issue was that:

“My predecessor acting [indistinct] told Khuba, Mr Khuba just report directly to me do not report to

20 And then there is a space. What would you have said there?

MR ROBERT JOHN McBRIDE: That would have been Sesoko.

ADV PAUL JOSEPH PRETORIUS SC:

“Do not report to Sesoko.”

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And we know that Sesoko was the immediate

supervisor of Mr Khuba.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC:

“This is what I was told.”

You continue to say.

“Then he was also told and that is presumably Mr Khuba then also told that he must work with the crime intelligence guy and the crime intelligence guy also linked him up with Advocate Mosing.”

10 And then you say in paragraph 1 on page 890 at line 5.

“So for me already independence in the investigation was compromised the way it had been said. In other words bypass the head of investigations those were my issues immediately that was my concern.”

MR ROBERT JOHN McBRIDE: Sorry Chair I think I just lost you. Which page is that?

ADV PAUL JOSEPH PRETORIUS SC: On page 890.

MR ROBERT JOHN McBRIDE: Okay I have it. What line is it?

ADV PAUL JOSEPH PRETORIUS SC: From line 5.

MR ROBERT JOHN McBRIDE: Okay I have that.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Well line 1 to 10 basically, 1 to 9.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: If you would just read that confirm that is what you said and that is what you still told.

MR ROBERT JOHN McBRIDE: Yes.

“Then also that he must work with crime intelligence – with the

crime intelligence guy and the crime intelligence guy also linked him up with Advocate Mosing. So for me already independence in the investigation was compromised. The way it had been said in other words bypassed ahead of investigations. Those are my issues immediately that was my concern.”

ADV PAUL JOSEPH PRETORIUS SC: Alright. So by way of background you make it clear to Mr July that when you were briefed you had clear concerns based on facts that have never been disputed as I understand it you had clear concerns about the propriety of the investigation, its competence and its independence?

10 **MR ROBERT JOHN McBRIDE:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You also told Mr July at line 10 you say:

“I was also concerned because it became apparent that crime intelligence operatives were involved in the rest – in the it reads the rest of the Zimbabweans themselves.”

MR ROBERT JOHN McBRIDE: It should be arrest.

ADV PAUL JOSEPH PRETORIUS SC: Let us just pause there a moment. That rest as it is there r-e-s-t should presumably read arrest?

MR ROBERT JOHN McBRIDE: Yes it is possibly that I – I did not pronounce it properly there.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Or the transcriber might have picked it up but be that as it may that is not an issue of any import. It is clear that what one is talking about there is arrests. So you tell Mr July firstly crime intelligence was involved. Mr Khuba the investigator was told that he must not report to his superior and that he must work with crime intelligence operatives. And he must work also with Advocate Mosing of the NPA. On whatever version a direct manipulation and interference with the

independence of IPID?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You say then in line 10.

“You were also concerned because it became apparent that crime intelligence operatives were involved in the arrest of the Zimbabweans themselves.”

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: So insofar as crime intelligence was involved in the investigation they were to put it bluntly investigating themselves?

10 **MR ROBERT JOHN McBRIDE**: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: And some or one or more of the crime intelligence operatives had in fact been arrested, is that correct by Sibiya or am I wrong?

MR ROBERT JOHN McBRIDE: No that is correct. At some stage prior to this incident during the appearance of General Mdluli in court after having been arrested by – by General Sibiya I think he was Brigadier then some of the people who had made statements against General Sibiya now had actually been arrested by General Sibiya at some stage.

ADV PAUL JOSEPH PRETORIUS SC: Against that background had you simply said to
20 Mr Khuba, well you may have submitted or not submitted a report I am not sure but there is nothing more we can do? Would you have been acting independently and properly? Or how did you regard your duty as to investigate the IPID investigation?

MR ROBERT JOHN McBRIDE: If I understand you correctly Chair it is – I had requested after this briefing and I mention it in info note that Mr Khuba must review all evidence.

ADV PAUL JOSEPH PRETORIUS SC: Why did you say that?

MR ROBERT JOHN McBRIDE: Because the way in – the completed statements had reached IPID which were done by crime intelligence and the whole way in which it reached him and it is clearly some sinister motive. Why leave him out of the investigation, why leave ...

ADV PAUL JOSEPH PRETORIUS SC: Sesoko out?

MR ROBERT JOHN McBRIDE: Sesoko out of the investigation? Why only to work with crime intelligence? And so that was – it is the point I made earlier. There was undue and improper pressure on Khuba and if for example there was a prosecution and
10 these issues were known at any stage in the future this would put a question mark about the independence of IPID. This whole behaviour of Moukangwe, Kuki Mbeki the fact that crime intelligence is investigating themselves they are involved from the beginning. I mean I also raised an issue. Somehow I got the impression it was over about two weeks the whole process and I say it here to Sandile July and I think I spoke about it yesterday. Who was involved at what stage in this crime that you mentioned to me and to what extent? I said ...

ADV PAUL JOSEPH PRETORIUS SC: This is the questioning of Mr Khuba?

MR ROBERT JOHN McBRIDE: Khuba. That is correct Sir. What crime has been committed by whom and who was involved in it? What are the elements of that crime?
20 That is what it was basically that is how it was. Just me talking to – I am talking to July reporting what I said to Khuba on the first briefing.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Let us just summarise there before we hopefully conclude for the day. Basically you have a number of what on the face of it at least appeared to be genuine concerns about the propriety of the investigation concerning which you have been asked to be briefed?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: They involved concerns which seriously impact upon the independence of the investigation and its propriety?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So you go back to square one you say what is happening here?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What crime are we talking about, what are its elements? And it is on the basis of that that further investigation takes place on
10 specified topics and which ultimately culminates in the report signed by three IPID officials including yourself?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That is the background to your evidence to Mr July.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Chair it is well now four o'clock may we adjourn?

CHAIRPERSON: We will adjourn at four o'clock today but next week we will see sometimes we will take a – adjourn later than four o'clock sometimes start earlier. So I
20 hope that we will all be able to accommodate the various changes. Thank you very much. So on Monday shall we start at half past nine?

ADV PAUL JOSEPH PRETORIUS SC: I am in your hands Chair. What I was intending to do was to review our preparation as a legal team in relation to detail and to discuss it with the witness to see whether there is some way..

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Of making very sure that we finish on Monday.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: So there is preparation time involved but I am happy to start at 09:30 if you believing that is appropriate?

CHAIRPERSON: Yes, yes. Would that be fine with you Mr McBride if we were to start at half past nine?

MR ROBERT JOHN McBRIDE: Thank you Chair it would not be a problem.

CHAIRPERSON: Yes. Okay then on Monday let us start at half past nine. We will then adjourn until Monday.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS