

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

31 JULY 2020

DAY 242



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 31 JULY 2020

CHAIRPERSON: Good morning Mr Hulley, good morning everybody.

ADV HULLEY SC: Good morning Chairperson.

CHAIRPERSON: Are we ready?

ADV HULLEY SC: Thank you Chairperson we are ready to proceed.

CHAIRPERSON: Yes.

ADV HULLEY SC: Mr Chair if I could mention the matter of
10 Major General Zinhle Mononopi who was testify today.

CHAIRPERSON: The heater or the noise seems to be quite high today – this morning but I think they will attend to it you just raise your voice.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Mr Chair this is the matter of Major
General Mononopi. As I understand the position there is an application for a postponement in respect of Major General Mononopi. I understand that the basis of the postponement
20 is twofold.

In the first instance there is an allegation supported apparently by a report by a medical doctor to the effect that she is suffering from – she is suffering from depression and that is the one basis upon which the application is brought.

In the second instance it is – there is a report to the

effect that she has tested positive for Covid-19. We have indicated insofar as the first ground is concerned obviously insofar as the second ground is concerned the report is what it is. It is only come in very recently. We are not in a position to challenge it. We do not oppose the application so far as it goes.

We do however say that insofar as the first ground is concerned that she suffers from depression we would like to have her tested by our own – the commission's own medical expert and I have spoken to Mr Khumalo who appears on behalf of Ms Mononopi. His indicated to me is that they are agreeable to such an arrangement.

CHAIRPERSON: Okay. No, no that is fine. I think that will be important because I do have a distinct recollection that it is not the first time that she provides the commission with a medical certificate when she is supposed to appear which says she is suffering from depression.

ADV HULLEY SC: That is correct Mr Chairman.

CHAIRPERSON: It may be once, it may be twice before but I think sadly it is not the first one and it is concerning.

ADV HULLEY SC: It is yes concerning.

CHAIRPERSON: If each time she is required to appear she suffers depression. But you will look into the issue.

ADV HULLEY SC: We are making arrangements to investigate the issue.

CHAIRPERSON: Ja.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay no that is fine.

ADV HULLEY SC: If Mr Khumalo would like to address you.

CHAIRPERSON: Mr Khumalo ja.

ADV KHUMALO: Thank you Mr Chair. My instructions are I confirm with my colleague he said and I confirm also the instruction that we will oblige to the request.

CHAIRPERSON: Yes.

10 **ADV KHUMALO:** And to my colleague.

CHAIRPERSON: Yes.

ADV KHUMALO: And then my instructions are to liaise with the Registrar.

CHAIRPERSON: Yes.

ADV KHUMALO: In connection with it.

20 **CHAIRPERSON:** Okay no that is fine. No it would be helpful if there will be cooperation because if she is genuinely depressed then that is fine. It is just that it is not the first time that it happens so one is bound to be concerned. So – but you have indicated that she will cooperate and I think that is important.

ADV KHUMALO: As it pleases the Chair.

CHAIRPERSON: Yes. Otherwise I understand the – the – certainly the issue of Covid-19. There are many people who are affected so I think that is the main basis on which we will

postpone.

ADV KHUMALO: As it pleases.

CHAIRPERSON: So the application for the postponement of the hearing of the evidence of I think it is Major General is that right? Major General Zinhle

ADV HULLEY SC: That is correct Mr Chairman.

CHAIRPERSON: Mononopi. It is Major General of Major General Zinhle Lutricia Mononopi is granted and the hearing of her evidence is postponed to a date to be determined.

10 **ADV KHUMALO:** I am indebted to the Chair.

CHAIRPERSON: Thank you.

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: And you are excused.

ADV KHUMALO: Thank you.

CHAIRPERSON: Mr Khumalo.

ADV HULLEY SC: Thank you Mr Chair. Mr Chair that brings us to the testimony of Mr Sandile July. He is a director at Werksmans. He was one of the authors or the author of the so called Werksmans Report which is dated 24 April 2015. It
20 has been testified to on several occasions before. He has been implicated by Mr McBride, Mr Sesoko and Mr Khuba in respect of the report that he has compiled. You have granted him leave to come and testify before the commission. Thank you Mr Chair.

CHAIRPERSON: Actually, I think we asked him to come

rather than had – I think he did not ask to come – we asked him to come and he obliged.

ADV HULLEY SC: Thank you that is in fact so.

CHAIRPERSON: Yes. Yes.

ADV HULLEY SC: He simply placed his affidavit before the commission.

CHAIRPERSON: Yes.

ADV HULLEY SC: We have asked him to come and testify.

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** In support of it.

CHAIRPERSON: No that is fine. Thank you. Oh yes I think Mr Ngcukaitobi you need to place yourselves – yourself on record yes.

ADV NGCUKAITOBI: Yes. Thank you Mr Chair. I act for Werksmans and Mr July together with my learned friend Ms Talc that as Your Worship knows the practice, I will only play a role only at the end.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI: Indeed.

20 **CHAIRPERSON:** Yes, no that is fine. That is fine. No thank you. Hm. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR JULY: My name is Sandile July.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR JULY: I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR JULY: Yes I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

MR JULY: So help me God.

10 **REGISTRAR:** Thank you.

CHAIRPERSON: Thank you Mr July for coming to give evidence when asked to do so. Thank you very much. I – I do not think that we should take more than two hours at most three hours with Mr July's evidence if we focus simply on the real issues.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: So I am just mentioning that so that everybody has an idea what kind of timeframe I have in mind. Obviously, the issues must be dealt with – we must do
20 justice to them but I think the issues are rather narrow.

ADV HULLEY SC: They are fairly narrow Mr Chair.

CHAIRPERSON: Ja there may be a lot of files. I see a lot of lever arch files behind you and I see a lot of files in front of Mr July but the issues I think are rather narrow.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Okay thank you.

ADV HULLEY SC: Mr July just for the benefit of the record you are a director at Werksmans Attorneys is that correct?

MR JULY: Yes I am.

ADV HULLEY SC: And you have been in practice for how long?

MR JULY: I have been in practice for 24 years.

ADV HULLEY SC: Now you compiled a report – you together with certain other members of your firm compiled a
10 report.

MR JULY: Yes.

ADV HULLEY SC: In relation to a certain letter of instruction that was given to you by the former Minister of Police Mr Nkosinathi Nhleko on the 23 February of 2015.

CHAIRPERSON: One second Mr Hulley. My Registrar opened one of Mr July's supplementary affidavits. I thought that I need to look at the main affidavit – his main affidavit.

ADV HULLEY SC: His main affidavit appears Mr Chair at Exhibit Y8[B].

20 **CHAIRPERSON:** What is the bundle?

ADV HULLEY SC: Pardon me Mr Chair.

CHAIRPERSON: Number.

ADV HULLEY SC: Mr Chair this is Bundle LEA1. I trust by now your...

CHAIRPERSON: Well it is the right bundle. That bundle the

top.

ADV HULLEY SC: So to...

CHAIRPERSON: The top affidavit is that of Mr Nhleko, is that right?

ADV HULLEY SC: It is Mr Nhleko. Mr July's affidavit is the second exhibit in that bundle and that appears at page 189.

CHAIRPERSON: 189?

ADV HULLEY SC: 189 Mr Chair.

CHAIRPERSON: Hm. Ja.

10 **ADV HULLEY SC:** You will see this is a response.

CHAIRPERSON: Oh okay.

ADV HULLEY SC: To the affidavit.

CHAIRPERSON: No, no I think I am – I was mistaken. I think I read answering affidavit as supplementary affidavit. So.

ADV HULLEY SC: Yes.

CHAIRPERSON: It says answering affidavit.

ADV HULLEY SC: Correct.

CHAIRPERSON: That is the main affidavit.

20 **ADV HULLEY SC:** Correct Mr Chairman.

CHAIRPERSON: Ja okay no that is fine.

ADV HULLEY SC: Thank you Mr Chair. To place you in the complete picture as far as this affidavit is concerned it is one of three affidavits that has been filed by Mr July. The other two affidavits relate in succession to Mr Khuba and to Mr

Sesoko. They also form part of the file. Much of the evidence is incorporated in this particular affidavit Exhibit Y8[B] but a lot of the information that relates specifically to the other two witnesses appears separately in a separate affidavit. Mr July we were dealing with the fact that you had compiled a report pursuant to instructions that had been given to you.

MR JULY: Yes.

ADV HULLEY SC: By the former Minister of Police, is that
10 correct?

MR JULY: That is correct.

ADV HULLEY SC: Thank you. And the affidavit that – you in fact filed three affidavits in this matter. One appears in Bundle LEA1.

MR JULY: LEA1. Yup.

ADV HULLEY SC: I think take it out. I would like you to turn with me to page 189.

MR JULY: 100 and?

ADV HULLEY SC: 189 of that bundle.

20 **MR JULY:** Yup.

ADV HULLEY SC: And that is the first page of your affidavit. If would turn to the end of that document which is at page – page 100 and – sorry 376. You have that?

MR JULY: I am almost there. Yup page 376.

ADV HULLEY SC: And that is your signature is it not?

MR JULY: Yup it is my signature.

ADV HULLEY SC: Now I will take – I might take you successively to the other affidavits to confirm them as well. They are in the bundle.

MR JULY: Yup.

ADV HULLEY SC: But I would like to take you at this point in time if you will...

CHAIRPERSON: Just one second Mr Hulley. I just want to say Mr Ngcukaitobi your team should feel free to create more
10 social distancing. There is enough space even behind. Ja. We do not want anybody blaming the commission if anything happens after this. Yes thank you Mr Hulley you may proceed.

ADV HULLEY SC: Thank you Mr Chair. The specific report that was compiled by – that has become – or that has been referred to as the Werksmans Report if you would turn with me to a preceding exhibit at page 113 of the – sorry 114 of the same bundle. This Mr Chair is an annexure to Mr Nhleko's affidavit. It is Exhibit Y8[A].

20 **MR JULY:** 114 yes I am there.

ADV HULLEY SC: And if you would then go to the end of that document which is at page 187 of the same bundle.

MR JULY: Yup I am there.

ADV HULLEY SC: Now it indicates over here that this report was signed on the 24 April of 2015 at Sandton. This is in

fact the complete report, is that correct?

MR JULY: Yup.

ADV HULLEY SC: Thank you very much. Now just to get to the Terms of Reference that were given to you insofar as this is concerned and if you – if you do desire, we can go through – you can go through the specific document is you like. But I would like you to – and I have indicated to you that perhaps you should have thirty minutes just to explain how this entire event came about? How you got – were briefed and ultimately how you handed up the report? What was your interaction with the Minister and specifically the aspects that you – you filed three affidavits as we have indicated and specifically the aspects that you think ought to be highlighted before I ask you certain questions relating to the report and to your various affidavits?

MR JULY: Mr Chair I – can I exercise a right to use my thirty minutes if I am allowed?

CHAIRPERSON: Yes, no, no I am.

MR JULY: At the end. At the end of the cross-examination.

20 **CHAIRPERSON:** That is fine.

MR JULY: I am doing so because I am mindful of the fact that you want the space time – I mean this – the – you have got time pressures.

CHAIRPERSON: Yes. Yes.

MR JULY: And you want to deal with the facts.

CHAIRPERSON: Yes, yes.

MR JULY: And I am not – I am not here to deal with peripheral issues.

CHAIRPERSON: Yes, yes.

MR JULY: So I will deal if necessary.

CHAIRPERSON: Ja at the end.

MR JULY: I do not want – yes if necessary.

CHAIRPERSON: Yes.

MR JULY: I want to deal with the facts.

10 **CHAIRPERSON:** Yes no thank you. Ja thank you.

ADV HULLEY SC: Very well. The – you have obviously listened to – no doubt read the transcript and looked at the allegations that have been made against you by Mr McBride, Sesoko and Khuba, is that correct?

MR JULY: Yes, Yes, no I did.

ADV HULLEY SC: Now obviously the aspect that troubles – certainly troubled them most is the fact that you came to a conclusion which is that they were guilty based on the investigation that you had conducted, the witnesses that you
20 had – the witnesses that you had interviewed and a consideration of the [indistinct 00:17:07] papers you came to the conclusion that they were guilty of – sorry – that one of the three of them might be guilty of the crime of defeating the ends of justice or obstructing justice.

MR JULY: Yes.

ADV HULLEY SC: Is that correct?

MR JULY: That they are concerned about that?

ADV HULLEY SC: Pardon me?

MR JULY: You are saying I did not hear the first part.

ADV HULLEY SC: Okay let us go to page 186 to look at what your conclusion is.

MR JULY: No, no I know my conclusion.

ADV HULLEY SC: Yes.

MR JULY: I am saying you said – a statement there is
10 something that you said.

CHAIRPERSON: I did not hear the whole question.

ADV HULLEY SC: They – you would be aware that Mr Sesoko, Mr Khuba and Mr McBride had expressed unhappiness.

MR JULY: Correct.

ADV HULLEY SC: Particularly about the fact that you came to the conclusion as expressed in paragraph 6.4.5 on page 186 of the – of your report that you recommended that one of the three of them.

20 **MR JULY:** Yes.

ADV HULLEY SC: Was guilty – maybe guilty and 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.

MR JULY: That is one of the concerns but of course when

they came to the commission, they said a lot of things.

ADV HULLEY SC: No that is no doubt true but that was their primary concern that you had come to that conclusion.

MR JULY: Yes. But there is also a concern why Werksmans was appointed.

ADV HULLEY SC: Yes.

MR JULY: It is an issue that was must be dealt with as to why Werksmans was appointed as a private law firm. So I do not want to limit this to what you already know.

10 **ADV HULLEY SC:** Okay.

MR JULY: It is more than that.

ADV HULLEY SC: Now let us consider – let us consider the conclusion that you have come to. You came to the conclusion that...

MR JULY: And what page is that?

ADV HULLEY SC: Page 186 of the same bundle.

CHAIRPERSON: Page 186?

ADV HULLEY SC: 186 Mr Chair.

CHAIRPERSON: Okay.

20 **MR JULY:** Yup.

ADV HULLEY SC: You say at paragraph 6.4.5.

“That in the absence of any information as to which of the three co-signatories were responsible for the deleting 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.”

MR JULY: Yes.

ADV HULLEY SC: Now let us just consider that.

MR JULY: Ja.

ADV HULLEY SC: If you could take us through how you came to the conclusion that they were guilty of those – of that specific charge or rather that you recommend – made a
10 recommendation that one of the three of them may be guilty of that charge.

MR JULY: Chair the question is going to be – the answer is going to be a long answer. But I will try...

CHAIRPERSON: Ja try to...

MR JULY: I will try...

CHAIRPERSON: Try to –

MR JULY: I will try to be short.

CHAIRPERSON: Ja to be – to be – ja give the gist.

MR JULY: Chair you would –

20 **CHAIRPERSON:** Ja.

MR JULY: I think we are all lawyers here. The mandate the co-mandate of IPID is stipulated in Section 28. That is the co-mandate. Anything else that they do it is secondary to the co-mandate. And co-mandate tells you what is it that they are supposed to do. They are supposed to do the

investigation. And what do they do with the investigation you come up with a report.

Now the question now is what is it that they were investigating? Khuba was investigating rendition. What is that rendition? I know McBride wants to make a rendition an American concept. Rendition is rendition. And it is an illegal transportation of fugitives from one country to another country.

When you supposed to do that you supposed to do it
10 through normal processes which is legal processes. There must be extradition of a person from one country to another country. You do not do it by just arresting people and put it – and hand over to other people – I mean to another authority that belongs to another country.

Not only that you also allow the police from another country to come and do policing in South Africa. So for anyone to be able to understand why we recommended what we recommended you need to understand the issue of what is it that was being investigated? Was there anything wrong
20 with what was done? And we know that – they conclude by saying – when I am saying they conclude I am talking about the 18 March report which was signed by McBride on the 9 April which says: “Only one person” They are not saying there is no rendition but they saying only one person is responsible for that. And that person is just a captain. And

that captain was able to amass such resources that took over – that operation took over two months – actually three. It was November, December and January. Although two happened in November you needed serious resources that you cannot just as a captain you have them.

So that is where the issue comes. We need to talk about where does the legality start or illegality start? The illegality start with the rendition. And the question is who was involved? At what level were they involved? Right. And
10 you then say what then did IPID do? The IPID then did the investigation. At what point was the recommendation which was made on the 22 March was changed? I can tell you now Chair they did not because of McBride's employment at IPID we would be having a 22 January report. We would not be here.

We would be talking about the 22 January report. And for anybody who comes here and want to tell this commission that those reports mean nothing those people do not deserve to be in IPID. Because the investigation that is
20 done by IPID is done in terms of Section...

CHAIRPERSON: No, no I do not think anybody has said those reports mean nothing. I do not think anybody has.

MR JULY: They said they do not have any legal status Chair.

CHAIRPERSON: Well that might be something else.

MR JULY: Yes.

CHAIRPERSON: But I am not sure that that necessarily means.

MR JULY: They said they may be ignored.

CHAIRPERSON: They mean nothing. You know.

MR JULY: By nothing there is a context here Chair. This says we make reports and these reports they do not have to be considered. I have met a number of prosecutors who said to me that is him now Khuba. I met a number of prosecutors
10 who said to me they do not even consider these reports.

CHAIRPERSON: Well that – that I – that somebody did say. I think something along those lines.

MR JULY: Yes.

CHAIRPERSON: Yes. Yes. I think the impression I have at least from one or more of the witnesses is that they were saying or somebody said we make these recommendations.

MR JULY: Yes.

CHAIRPERSON: But the prosecutors, the NPA looks at them but they must – they are not bound by them. They look at
20 them and I am paraphrasing now.

MR JULY: Yes Chair.

CHAIRPERSON: Make – make out of them what they make.

MR JULY: Yes. Yes.

CHAIRPERSON: But we make them. I got the impression what they – that what they are saying is if the NPA takes a

different view we accept that.

MR JULY: Yes.

CHAIRPERSON: If the NPA goes along with what we recommend that is fine. We do not fight over the recommendations to say we recommended this why do you do something else? That is the impression I got from the evidence.

MR JULY: Yes Chair. Chair I can respond there. They are saying two things. They are saying exactly what you are
10 saying about recommendations. Recommendations are recommendations. They can be accepted they cannot be accepted. But we accept – we are at the same page. But the second part is a person comes here and proudly tells you that he meets other prosecutors who tell them. They do not even look at these recommendations. And you work for the institution which has been recorded here and which I agree with that is a constitutional body established in terms of Section 206 of the Constitution. Only for that purpose to do investigations. And those investigations must have reports.
20 And you want to make those reports to look like it is something that – and you proudly say that. Chair and you do not see anything wrong about that.

CHAIRPERSON: Well you see we have got to make a distinction as to what the legal position may be about those reports.

MR JULY: Yes.

CHAIRPERSON: And what may be happening at a practical level between IPID and prosecutors. It may well be that it is true those who say they have heard a lot of prosecutors who say they do not even consider them. Maybe that is true. Maybe a lot of prosecutors do not place much weight on them.

MR JULY: Yes.

CHAIRPERSON: But whether that is their right to do that or
10 not that might be another issue. So it might simply be that at a practical level there may be a certain attitude towards those reports by certain prosecutors probably not all at a practical level.

MR JULY: Yes.

CHAIRPERSON: Ja.

MR JULY: Well Chair the context – the design why that answer is given is given to give the impression that why are you making an issue about a report? As if this report binds somebody else when these people can just decide to ignore
20 these reports. I am saying even if that is true it is wrong for a person who is employed to do that job comes here to this commission in order to justify what he wants to say seem to aligning himself with that type of conduct. That is all what I am saying Chair.

CHAIRPERSON: No, no I understand what you are saying

and – and obviously I have to look at what you are saying.

MR JULY: Yes.

CHAIRPERSON: But I do not want us as lawyers and judges to forget that certain people who are put in certain positions may not have the benefit of the legal knowledge that we have when they are not lawyers.

MR JULY: Yes.

CHAIRPERSON: They may be adopting certain positions and dealing with matters to the best of their understanding.

10 **MR JULY:** Yes Chair.

CHAIRPERSON: Which might or might not be correct but they just reflect what they understand to be the position.

MR JULY: I understand.

CHAIRPERSON: So that is the only part I want us to remember.

MR JULY: I understand Chair.

CHAIRPERSON: Ja okay.

20 **ADV HULLEY SC:** Thank you Mr Chair. If I understand you correctly and certainly, I think in your affidavit you have articulated it quite well you have spoken about the importance of the IPID Reports.

MR JULY: Yes.

ADV HULLEY SC: And to paraphrase as closely as I recall your statement in your affidavit you have said the IPID reports means something.

MR JULY: Yes.

ADV HULLEY SC: And when you say that you – of course you making the point that as a matter of law.

MR JULY: Yes.

ADV HULLEY SC: They have got weight and you making the point that they have got to be taken into account. Because – as a matter of law.

MR JULY: Yes.

ADV HULLEY SC: Now the – and without delving too much
10 into the legislation per se if I understand you correctly you basing that on your reading of the IPID Act?

MR JULY: Yes not only that Chair there is an IPID Act 2011 Act. You have regulations. You have SOP the Standard Operations Procedures. The Act will tell you that there must regulations. And the regulations in the same Act it tells you that in Section 34 of that Act there must be standard operations procedures. So when you look at these instruments in totality the procedure explains what the investigator should be done. That is the regulations. The
20 Act explains to you how do you go about appointing the investigators and what are their responsibilities. The SOP then tells you what then internally although it is an internal document it is an internal document which comes out as a result of the Act which sets out how the investigation goes and who has the powers to sign the report. And I am saying

when you look at this issue of the report you cannot avoid to look at how did this report come about? What happened to this report? What was the reason for it to change? Then all those issues cannot be just issues of common sense, are issues that must be answered by looking at the legislation.

CHAIRPERSON: Yes.

MR JULY: So it is not just the Act.

ADV HULLEY SC: Sure.

MR JULY: Yes.

10 **ADV HULLEY SC:** So if I understand you correctly, you are looking at three instruments?

MR JULY: Ja.

ADV HULLEY SC: The Act, the regulations, the SOP?

MR JULY: Yes.

ADV HULLEY SC: And the process by which these reports, the first report was amended, as you say, to give rise to the second report?

MR JULY: The first part is how it was produced.

ADV HULLEY SC: Yes.

20 **MR JULY:** And what makes it a final or complete. Because I want to be very careful. Because people can hear and use terminology which is not there. I want to be careful about that because we talk about completed report or preliminary report, right?

ADV HULLEY SC: Sure.

MR JULY: So I mean... Sorry. Completed investigation or preliminary investigation. And we talk about... there are three types of reports in IPID, Chair.

Three types of reports. The first report is an interim report. There is no such thing as a provisional report in IPID. There is no such thing as a preliminary report. There is no such thing as a draft report. You have an interim report. What the interim report does, it becomes what we call the final investigative report.

10 The other report is what they call closure report. That closure report talks about the archiving of the document within IPID.

Now the investigation is complete, the courts have made their decisions on the matter. Now the question is, how do we close this file? Who has the powers to give the final say on the closure of that file?

Those are the three reports. Anybody who comes up with another term of a report and talk about draft report and talk about preliminary report, provisional report... I do not
20 know where that comes from.

CHAIRPERSON: Okay. You say it is an investigate... it is an interim report?

MR JULY: Yes, Chair.

CHAIRPERSON: Then after the interim report, which one comes?

MR JULY: It is the final.

CHAIRPERSON: The final...

MR JULY: It is final investigative report.

CHAIRPERSON: Yes, yes.

MR JULY: Those are two reports in ...[intervenes]

CHAIRPERSON: Yes, they are two reports.

MR JULY: ...in closure.

CHAIRPERSON: The closure is something else.

MR JULY: It is an eternal document.

10 **CHAIRPERSON:** Ja.

MR JULY: Yes.

CHAIRPERSON: Yes, just to say ...[intervenes]

MR JULY: Yes.

CHAIRPERSON: ...officially we have nothing further to do on this matter.

MR JULY: Exactly.

CHAIRPERSON: Ja, ja. Now, the reference to interim and final. Is that in the legislation or in the act or regulations?

MR JULY: It is in the Standard Operations Procedure.

20 **CHAIRPERSON:** Yes, can we go there?

MR JULY: It goes... if you go to the definitions in the Standard Operations Procedure.

CHAIRPERSON: Mr Hulley should be able to direct us.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: But if you are able to remember, that is

fine.

ADV HULLEY SC: The first thing is. If I can be of assistance. We can turn to pages ...[intervenes]

CHAIRPERSON: Mr Hulley, your mic is rather far from you.

ADV HULLEY SC: Pardon, Mr Chair.

CHAIRPERSON: So when it is far from you, I cannot hear you well.

ADV HULLEY SC: Pardon me, Mr Chair.

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** Just for your benefit Mr Chair and for the benefit of Mr July, is a legislation bundle that has also been part of the Exhibit Y Series. Of course, it does not bear an exhibit number and that ...[intervenes]

CHAIRPERSON: Ja, I think somebody must assist Mr July to find the level arch file that has got legislation. Oh, are you able to see it?

MR JULY: You just said?

ADV HULLEY SC: It is the legislation bundle. It would have on the spine Legislation and Authorities. It is likely to be at
20 the extreme right.

MR JULY: Thank you.

CHAIRPERSON: Yes, I have got the act. It is at ...[intervenes]

ADV HULLEY SC: And then at page 148 is the ...[intervenes]

CHAIRPERSON: Ja, 148. Oh, those are the regulations at 148, is that so?

ADV HULLEY SC: No, these are the... this is the statute.

CHAIRPERSON: Oh, this is the statute. Oh, I see down... about the middle, it is saying Regulations under this Act.

ADV HULLEY SC: Pardon me, Mr Chair?

CHAIRPERSON: No, I was seeing where it says in the middle of page 148 Regulations under this Act. That is why I was thinking it is regulations.

10 **ADV HULLEY SC:** Yes, I see that. I am actually not sure why that is so. That is will have to editors.

CHAIRPERSON: Well, at 150 it says “in this act unless context indicates otherwise” [laughing]

ADV HULLEY SC: Correct.

CHAIRPERSON: So it must be the act ...[indistinct] something.

ADV HULLEY SC: That is so Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: Then ...[intervenes]

20 **CHAIRPERSON:** I think we are looking at... we should be looking at the regulations, should we not be?

ADV HULLEY SC: The regulations... if you would turn with me Mr Chair to the file Divider 19 at page 445.

MR JULY: I have got it.

ADV HULLEY SC: Of the same bundle.

MR JULY: Yes.

ADV HULLEY SC: You have got it?

MR JULY: The number?

ADV HULLEY SC: 445.

CHAIRPERSON: Did you say 405?

ADV HULLEY SC: Double four five Mr Chair.

CHAIRPERSON: 445?

ADV HULLEY SC: That is so.

CHAIRPERSON: Yes.

10 **ADV HULLEY SC:** And then, as far as the Standard Operating Procedures are concerned. If you would bear with me, I will locate it specific because there is incomplete Standard Operating Procedures. I want to provide you with the complete set Mr Chair.

CHAIRPERSON: Sorry. You say this is... these regulations are not complete?

ADV HULLEY SC: No, these regulations are complete.

CHAIRPERSON: Are complete, ja.

20 **ADV HULLEY SC:** So you want to look at the three instruments that the witness has referred to. It is the Act, the regulations and the Standard Operating Procedures.

As far as the Standard Operating Procedures are concerned, the copy that I had was incomplete. I want to provide Mr July with a complete copy. If you will just bear with me?

CHAIRPERSON: Well, the part relating to Standard Operating Procedures, is it part two of what is not there?

ADV HULLEY SC: Pardon me, Mr Chair?

CHAIRPERSON: The part that deals with the standard... oh, but I think the part that we are looking for in the Standard Operating Procedures is the one that talks about what types of reports are contemplated.

ADV HULLEY SC: Correct.

CHAIRPERSON: Is it not in what we have?

10 **ADV HULLEY SC:** It is not the... because the other witness has referred to additional aspects.

CHAIRPERSON: Oh, oh.

ADV HULLEY SC: I understand Mr July is also going to refer to the additional aspects.

CHAIRPERSON: Oh.

ADV HULLEY SC: So ...[intervenes]

CHAIRPERSON: But Mr July, do you happen to have the relevant parts from....? Maybe he should just read to us the relevant part.

20 **MR JULY:** [Indistinct] [Microphone not turned on]

ADV HULLEY SC: Yes.

CHAIRPERSON: Ja, switch on your mic and you can keep it on Mr July. Ja, keep it on for the time. Ja.

MR JULY: Oh, okay.

CHAIRPERSON: Maybe you can just read us... to read the

relevant parts of the ...[intervenes]

MR JULY: The ...[intervenes]

CHAIRPERSON: ...the interim and the final reports?

MR JULY: It says Chair:

“The case investigative report refers to investigative report that include the interim case ...[indistinct] ...[intervenes]

CHAIRPERSON: And you are reading from what part of the Standard Operating Procedures?

10 **MR JULY:** Ja, the Standard Operating Procedures.

CHAIRPERSON: They have like ...[intervenes]

MR JULY: But no one... it is not ...[intervenes]

CHAIRPERSON:not like paragraph or anything.

MR JULY: [Indistinct] ...[intervenes]

ADV HULLEY SC: The definition clause.

CHAIRPERSON: Oh, okay. Alright.

MR JULY: The definition clause.

CHAIRPERSON: Okay.

MR JULY: Yes.

20 **CHAIRPERSON:** Okay. Alright, alright. Just read, ja.

MR JULY: And it talks about the interim report, final case, investigate report, as well as, closure report. That is what it says.

CHAIRPERSON: Yes, yes, yes.

MR JULY: So the point I was making in addition to that

...[intervenes]

CHAIRPERSON: Yes?

MR JULY: ...you will not read any word here even if it is not included here which talks to the preliminary report ...[intervenes]

CHAIRPERSON: Or provisional report.

MR JULY: ...which talks provisional report, which talks to the draft report.

CHAIRPERSON: Yes.

10 **MR JULY:** You will know where to find it.

CHAIRPERSON: Do the Standard Operating Procedures define what an interim report is?

MR JULY: I think it does Chair.

CHAIRPERSON: What is final.

MR JULY: It does.

CHAIRPERSON: Do you want to just read that point there?

MR JULY: I will do that.

CHAIRPERSON: Ja, please. Ja.

MR JULY: Then it defines the interim report Chair to mean...
20 let me go there.

“Interim case presentative investigative report means a case investigative report where the investigations have been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports. However, recommendation may be

made to the SAPS...”

I think that is where I need to explain to you now Chair.

CHAIRPERSON: It is fine.

MR JULY: When IPID investigates, there are two possibilities. They investigate a criminal part. They also investigate the misconduct part.

So when they investigate the misconduct part or both and they have got an interim report, they cannot make recommendation on the criminal part. Then that report will
10 qualify as an interim report because it does not have recommendations. It is the interim report.

But the one... that very interim report can be regarded as a final report for misconduct purposes. That is why it goes to SAPS for SAPS to discipline its own employees.

CHAIRPERSON: Yes.

MR JULY: Yes. So interim report can be used for two purposes. One, it is a reporting without recommendations which does not go to the DPP or even if it goes but it remains an interim report.

20 **CHAIRPERSON:** Ja.

MR JULY: Yes.

CHAIRPERSON: Okay. Now, I hope somebody in your team Mr Hulley will be working to get us ...[intervenes]

ADV HULLEY SC: Yes.

CHAIRPERSON: ...the Standard Operating Procedures.

ADV HULLEY SC: I will provide you with it shortly Mr Chair.

CHAIRPERSON: Ja. I just want to make sure I understand the definition Mr July. For many of us here in the room, interim means provisional in the sense that we think about an interim order.

MR JULY: Jip.

CHAIRPERSON: It is an order that may be... that may need to be confirmed later or discharged, you know.

MR JULY: Yes.

10 **CHAIRPERSON:** It does not represent a final view.

MR JULY: Yes.

CHAIRPERSON: Okay.

MR JULY: I agree Chair.

CHAIRPERSON: That ...[intervenes]

MR JULY: That is... I agree Chair.

CHAIRPERSON: Because of our legal background.

MR JULY: Yes, yes.

20 **CHAIRPERSON:** Okay. Now, what I am trying to understand is whether that is the same meaning that is contemplated about an interim report in the Standard Operating Procedures or whether interim report does not carry that meaning.

In other words, it may be called interim for all intense and purposes it is final. That is what I am trying to understand.

MR JULY: No ...[intervenes]

CHAIRPERSON: In terms of the Standard Operating Procedures.

MR JULY: Not. No, it is final insofar as it relates to misconduct part.

CHAIRPERSON: Yes.

MR JULY: Insofar as it relates to the criminal part of the investigation, it is not final.

CHAIRPERSON: Yes, okay.

10 **MR JULY:** It is interim. It does not even have recommendations.

CHAIRPERSON: Yes.

MR JULY: You do not even know what is this person's *prima facie* vision.

CHAIRPERSON: Yes.

MR JULY: It could mean that you have just collected the information, we have got evidence and it is still called a report.

CHAIRPERSON: Yes, yes.

20 **MR JULY:** Because it does not have recommendations.

CHAIRPERSON: Yes.

MR JULY: Yes.

CHAIRPERSON: So as you understand the Standard Operating Procedures, the provisions relating to interim report, the only thing that makes it interim is the absence of

the recommendations?

MR JULY: Yes.

CHAIRPERSON: Yes.

MR JULY: Yes.

CHAIRPERSON: And does it... as you understand those provisions in the Standard Operating Procedures, do they seem to restrict an interim report to the criminal part of the investigating of the report?

MR JULY: Yes.

10 **CHAIRPERSON:** Therefore, in other words, it does not contemplate that a report that does not have recommendations or in regard to misconduct, would also be... would also fall within the definition of interim report?

MR JULY: Yes.

CHAIRPERSON: Is that how you understand it?

MR JULY: This is how I understand it Chair.

CHAIRPERSON: H'm.

20 **MR JULY:** There is information that would be missing. It does not just become interim because I want to call it interim. What that information that would be missing, is mention, that they could be technical reports that are outstanding.

Because the technical report is outstanding, then it remains an interim for criminal purposes because there is not technical report.

But that very report, you can make recommendations without a technical report to the SAPS for purposes of misconduct. Yes.

CHAIRPERSON: But for purposes of the criminal part, you cannot make a recommendation ...[intervenes]

MR JULY: You cannot.

CHAIRPERSON: ... at that stage.

MR JULY: You cannot.

CHAIRPERSON: Yes.

10 **MR JULY:** You cannot.

CHAIRPERSON: Therefore, it is interim.

MR JULY: It is interim.

CHAIRPERSON: Yes, yes.

MR JULY: Yes.

CHAIRPERSON: If and when you get to the records ...[intervenes]

MR JULY: The ...[indistinct], yes.

CHAIRPERSON: Then it can be... it seizes to be interim, once you have got that and made... and then you put in your
20 recommendation.

MR JULY: Yes.

CHAIRPERSON: Or... ja.

MR JULY: Then it becomes the final report.

CHAIRPERSON: Then it becomes the final report.

MR JULY: Once you have that outstanding information

which is specifically mentioned which is the information that is outstanding which makes a report an interim, the Standard Operating Procedures makes it very clear what type of information is that. It is only a technical report.

CHAIRPERSON: A technical report. Yes, yes.

MR JULY: That makes it interim.

CHAIRPERSON: Okay.

MR JULY: And so ...[intervenes]

ADV HULLEY SC: Mr Chair... sorry, for your benefit.

10 **CHAIRPERSON**: Ja?

ADV HULLEY SC: The relevant document is at page 1542. This is of LEA4.

CHAIRPERSON: Okay.

ADV HULLEY SC: LEA4 and it is at page 1542 of that bundle. It is part of annexure... or Exhibit Y8D.

CHAIRPERSON: So let us continue Mr July while I am looking at that.

MR JULY: Yes.

20 **CHAIRPERSON**: At least on your understanding, if IPID provides a report and in regard to... and the report deals with the criminal part and the disciplinary part, if in regard to the criminal part there is a technical report still outstanding, then that report is interim.

MR JULY: Interim, yes.

CHAIRPERSON: But does... do the provisions contemplate

that you referred to that report as interim even if in regard to the disciplinary matters it is final?

MR JULY: It seems to suggest.

CHAIRPERSON: Ja.

MR JULY: That because there is an outstanding report for the purposes of ...[intervenes]

CHAIRPERSON: The criminal part.

MR JULY: ...for purposes of criminal part.

CHAIRPERSON: Ja.

10 **MR JULY:** But you can still make recommendations for the purposes of ...[intervenes]

CHAIRPERSON: A disciplinary.

MR JULY: ...of a disciplinary hearing.

CHAIRPERSON: Yes, yes.

MR JULY: Misconduct, yes.

CHAIRPERSON: Yes, yes. So once there is outstanding information in relation to the criminal part and the information that is outstanding is information as contemplated in the definition of interim report, namely a
20 technical report, then that report is interim?

MR JULY: It is interim.

CHAIRPERSON: It does not matter that in regard to the disciplinary matters, there is nothing outstanding?

MR JULY: Yes.

CHAIRPERSON: And on your understanding, if in regard to

the criminal part there is no report outstanding, technical reports outstanding and there is a recommendation but in regard to the disciplinary matters, there is still something outstanding and there is no recommendation on the disciplinary matters, would that on your... would that report on your understanding fall under interim or where would it fall?

MR JULY: It will still be interim.

CHAIRPERSON: It will still be interim?

10 **MR JULY:** Once it does not have ...[intervenes]

CHAIRPERSON: Everything?

MR JULY: ...recommendations.

CHAIRPERSON: Once it does not have the recommendations.

MR JULY: Have recommendations.

CHAIRPERSON: Ja.

MR JULY: Even for the purposes of disciplinary.

CHAIRPERSON: Yes.

20 **MR JULY:** If it does not have recommendations, it will remain an interim.

CHAIRPERSON: Yes, yes. Okay, okay.

MR JULY: Yes.

CHAIRPERSON: Thank you.

ADV HULLEY SC: Thank you, Mr Chair. I think for your benefit Mr July, the paginated document that you are

referring to is at page 1549.

MR JULY: 1549, same bundle?

ADV HULLEY SC: Part of Bundle LEA4.

MR JULY: One... you said page?

ADV HULLEY SC: 1549.

MR JULY: 1549.

ADV HULLEY SC: And this Mr Chair for your benefit is Exhibit Y8D. It is the response. It is an annexure to the response of Mr Sesoko to the affidavit of Mr July.

10 **CHAIRPERSON:** Okay.

MR JULY: Ja.

ADV HULLEY SC: The document starts on page 1542. I think the definition you were referring to is at... is on page 1549.

CHAIRPERSON: Well, the final one is at 1548 and then the ...[intervenes]

MR JULY: Yes.

CHAIRPERSON: It says interim case investigative report. It means:

20 “A case investigative report where the investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports. However, recommendation may be made to the SAPS...”

Well, on that definition, as I understand it. Mr July, it

seems to me that you may not have been accurate or correct when you said, as I understood you, that even if something is still missing on the disciplinary part it could still be interim.

From this definition, it appears to me that what must be missing is a recommendation to the DPP. And obviously, the DPP has nothing to do with misconduct issues.

MR JULY: Yes.

CHAIRPERSON: Am I right to think you were not accurate?

10 **MR JULY:** Chair, no. I think ...[intervenes]

CHAIRPERSON: Or did I misunderstand you?

MR JULY: I think Chair will insist that I am accurate.

CHAIRPERSON: I may have misunderstood you.

MR JULY: Yes.

CHAIRPERSON: Yes, okay.

MR JULY: What I am saying Chair. If you read that definition, the first part, it says it is an investigation which has been completed which is something that we are going to deal with.

20 **CHAIRPERSON:** Ja. Yes.

MR JULY: What does it mean an investigation is completed?

CHAIRPERSON: Yes.

MR JULY: Then it says but where a recommendation cannot be made. So investigation is one thing. Now we are talking about the report. But it says investigation is completed,

alright. But that completed report on investigation, lacks technical reports.

CHAIRPERSON: Reports. Yes.

MR JULY: Right. But the investigation is completed.

CHAIRPERSON: Yes.

MR JULY: But it lacks technical report.

CHAIRPERSON: Yes.

MR JULY: So that report that you are writing is interim.

CHAIRPERSON: Yes.

10 **MR JULY**: Yes.

CHAIRPERSON: No, no. I accept that.

MR JULY: Yes.

CHAIRPERSON: I thought when I asked you the question whether if the criminal part has got a recommendation of the report ...[intervenes]

MR JULY: No, no, no.

CHAIRPERSON: ...but there is no recommendation in regard to disciplinary matters, whether it would still be an interim report?

20 **MR JULY**: No, I misunderstood you Chair.

CHAIRPERSON: Oh, okay.

MR JULY: No, I misunderstood you.

CHAIRPERSON: Oh, okay. Okay, okay.

MR JULY: Because immediately it has recommendation, it changes completely.

CHAIRPERSON: Yes. Okay, no.

MR JULY: Yes, it changes.

CHAIRPERSON: No, because I wanted to see ...[intervenes]

MR JULY: No, no, no.

CHAIRPERSON: ...the only thing that makes it interim in terms of this, is the absence of a recommendation because of outstanding technical reports and so on.

MR JULY: Yes.

CHAIRPERSON: Okay. No, this point I understand now.

10 **CHAIRPERSON:** Then the... at page 1548, the definition of final investigative report.

MR JULY: Yes.

CHAIRPERSON: It says, that means:

“An investigative report which documents the entire investigation and contains the conclusion, summary of affidavits and technical reports, written recommendations to SAPS, DPP with regard to the actions to the SAPS, MPS member concerned...”

MR JULY: Yes.

20 **CHAIRPERSON:** And I see there is a definition of full investigation just below that. It says:

“That refers to where a case-worker takes over a docket/copies of the docket from the SAPS. Conduct an independent inquiry and assessment and proceed with any other search inquiry for further evidence to

enable him or her to make a finding...”

Okay. Alright. So a final case investigative report, you must... the report must be documenting the entire investigation.

MR JULY: Yes.

CHAIRPERSON: And must contain the conclusion, summary of affidavits and technical reports and must have reached recommendation to SAPS, DPP with regard to the actions of SAPS and MPS member concerned.

10 **MR JULY:** Yes.

CHAIRPERSON: Okay. Alright.

MR JULY: So you will notice Chair there are two issues that makes this report that you have just read, it different from interim.

CHAIRPERSON: Ja. Yes.

MR JULY: One is that, that outstanding information, which is a technical report, is included in the final.

CHAIRPERSON: Yes.

20 **MR JULY:** And not... and the other thing that has been included now is the recommendations.

CHAIRPERSON: Yes.

MR JULY: Once it has the recommendation... once it has technical report, it becomes a final report.

CHAIRPERSON: Yes, yes.

MR JULY: Yes.

CHAIRPERSON: Of course... an important part of your evidence relates to the question whether the investigation was complete ...[intervenes]

MR JULY: Yes.

CHAIRPERSON: ...at the time that ...[intervenes]

MR JULY: Yes, exactly.

CHAIRPERSON: ...the report of the 22nd of January was submitted.

10 **MR JULY:** Yes.

CHAIRPERSON: And it seems from this definition that that is important because if the investigation has not been completed, then it would not fall within the definition of final. Is that right?

MR JULY: Yes. Mr Chair, can I clarify something?

CHAIRPERSON: Yes, yes, yes, yes.

MR JULY: There are two issues here.

CHAIRPERSON: Ja.

20 **MR JULY:** And we need to deal with them correctly. And the terminology, we must get it right.

CHAIRPERSON: Ja.

MR JULY: What we are busy talking about is the report and the final report. When we talk about investigations, we are going to deal with that separately because ...[intervenes]

CHAIRPERSON: No, no, no. Mr July ...[intervenes]

MR JULY: Yes?

CHAIRPERSON: The definition of final case investigative report that we have just looked at, refers to an investigative... it says that is an investigative report which documents the entire investigations.

MR JULY: Yes, I agree.

CHAIRPERSON: An entire investigation seems to me to refer to a completed investigations.

MR JULY: Yes, yes.

10 **CHAIRPERSON:** Would you go along with that?

MR JULY: But the draft of the SOP, they felt it was necessary to make a distinction between the actual report that you write and the investigation itself.

CHAIRPERSON: Yes.

MR JULY: So they distinction here. That is why I want us... I agree with you Chair that in any event when you have the final report, you would have completed your investigation.

CHAIRPERSON: Yes, yes, yes.

MR JULY: But I am saying, the SOP, they decided the draft
20 ...[indistinct] That we are going to have these two terminologies. The issue about the report defines differently from the actual investigation.

CHAIRPERSON: Yes, yes.

MR JULY: So that is why they have got a term called completed investigations.

CHAIRPERSON: Yes.

MR JULY: Preliminary investigation. But of it, of course, it will end up to a final report or an interim report.

CHAIRPERSON: Yes, yes, yes.

MR JULY: So that is why I was saying, when we deal with them, we must first talk about whether the investigation was completed because you must remember Chair what is the allegation.

10 First is, that the allegation is that the investigation itself was not complete and which is the reason why the docket had to be requested to come back to complete the investigation.

Now this SOP explains what is a complete investigation and what is a preliminary investigation. So I am saying, we may have to go back.

As much as we are on report, but we may have to go back to deal with the terminologies to what does it mean to be completed.

20 **CHAIRPERSON:** No, no. That is fair enough. I think we might not be at cross-purposes.

MR JULY: Ja-no, we are not.

CHAIRPERSON: We might not be at cross-purposes.

MR JULY: Yes.

CHAIRPERSON: Because as I see it, you cannot be said... you cannot document in a report the entire investigation

unless the investigation has been completed.

MR JULY: Is completed. Yes.

CHAIRPERSON: You see?

MR JULY: Yes, I agree.

CHAIRPERSON: So that is where I am coming from.

MR JULY: I agree Chair.

CHAIRPERSON: Ja, if you are going to complete the investigation, whatever the document, it is not the entire investigation.

10 **MR JULY:** Yes.

CHAIRPERSON: Okay. Alright.

MR JULY: Thank you, Mr Chair.

CHAIRPERSON: Mr Hulley.

ADV HULLEY SC: In fairness to you Mr July. I think you were trying to wrap up or to explain these definitions with reference, obviously, to the body of the SOP. How you can apply it in the context of the SOP. Perhaps you can just ...[intervenes]

MR JULY: Do you want me to ...[intervenes]

20 **CHAIRPERSON:** Well, I just want to say... I am sorry. I am sorry.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: I know that I probably took Mr July off his track but I think I took him off his track to another very important ...[intervenes]

MR JULY: Very important, yes.

CHAIRPERSON: So this discussion, I think, has been very important but I am quite happy that you take him back to track.

ADV HULLEY SC: Thank you, Mr Chair.

MR JULY: Yes, yes.

ADV HULLEY SC: Mr July, to be fair. I mean, you are welcome, if you think you have been diverted, you are welcome, of course, to go back to where you thought you
10 were going but I thought you were going to take these definitions and you were going to plug them in to the body of the SOP.

MR JULY: Yes. Now Chair, now before I go to the SOP, I would then have to say, to make a reference to a report. You will recall Chair that there were two reports. The one report is dated the 22nd of January 2014.

The other one has got two dates, of course, in it but it is what is commonly referred to as the 18 March report, right. We can call it March or April, but there are two reports.

20 **CHAIRPERSON:** Ja.

MR JULY: Now, how did the first report come about? That is the question. The first report, you will recall, what happened in November 2013. Khuba conducted the investigation and came with the report in 2013, and he submitted that report to Mosing. What I do know, what I

had been told is that all this investigation, most of them, they are so-called prosecutorial investigations, there would also always be a prosecutor involved. Now he does the investigation, Khuba, comes up with a report and if you look at that report, Chair, it does not have recommendation. That is the November report.

CHAIRPERSON: Yes. On the 22nd and they prosecutor who was assigned to Khuba then write a memo, the same year, November, and stating what is outstanding in that
10 report, right? That in January, Khuba goes with what he considered to be a final report. He takes it to the prosecution authority, with the docket and says here is my report. So you guys, you must proceed with whatever you want to do because the reason why it goes for the Prosecution Authority is because there is something wrong that has happened. Otherwise, if you make no recommendation to the Prosecution Authority, there is no reason why the docket should go there, right?

It goes there because there is a recommendation.
20 He makes a recommendation, then it gets to Mosing and Mosing says no, no, no, Khuba, there is something missing in this report and you will notice, Mr Chair, the report that I am talking about had 25 pages. 25 pages and Mosing writes on that report, it is dated 22nd, Draft, and say to Khuba, Khuba, please go and include your own statement.

We need to know how did you go about to produce – how did you go about you producing this report? So those statement must be included in this report. Khuba goes with the report.

What he then does, he comes back with the report after two days. Now I am quoting what Mosing says. Mosing says Khuba comes back with a report after two days. So two days is 24 January but now with that report has got 30 something pages because Khuba included his
10 statement. Again, it is signed. You remember he signed the first one thinking that there is no need for anything, it has his signature. Mosing write “Draft”, so you will have two draft, a November one, which was a draft which was interim in nature, then you have what was considered by Khuba as final report, being written “Draft” because it led Khuba’s statement.

Then Khuba include the statement, it comes back on the 24th but what has not changed is the date of the 22nd. We call it the 22nd January report when in fact the
20 report, which had Khuba’s statement which was outstanding, was submitted on the 24th and Mosing said I did not feel it was even necessary to ask Khuba to change 22nd to 24th. So that report is the final report. Why I am saying it is the final report, it had one, the recommendations. Once it has recommendations, it had

the technical report. So that is what makes it a final report.

On the basis of that, in February – I think around the 8 February 2014, Mosing writes a memo and say now the investigation has been finalised, please find the following. Now that memo is going to DPP, Chauke, in Johannesburg, for a decision whether to prosecute or not to prosecute. But the state of that report, Chair, is final. It is final in every respect.

10 So he list the documents that are there. You have been told that normally – but let me not rush and get to what was missing because I will tell you the versions that have been given about that report, various versions.

CHAIRPERSON: Yes. One second? There is a file that - two which I referred during Mr Nhleko's evidence that I am looking for, the one that has got handwritten notes of it. You need water – they did not give you water.

MR JULY: I need some water, Chair.

CHAIRPERSON: They should have put some water...

20 **MR JULY:** That is Mr Hulley's strategy towards me.

ADV HULLEY SC: He asks for it and then complains when I give it to him.

MR JULY: [Laughs]

CHAIRPERSON: Oh, okay, no that is fine. Well, we are about to take the lunch break.

ADV HULLEY SC: The tea adjournment.

CHAIRPERSON: Not lunch break, tea break.

ADV HULLEY SC: Mr Chair, perhaps I could be of assistance, which bundle are you looking for, Mr Chair?

CHAIRPERSON: Well, I do not know the name of the bundle but I can deal with – I deal with this. There is a memo and maybe the one you are referring to is the one.

MR JULY: Yes.

CHAIRPERSON: That was written by Adv Mosing.

10 **MR JULY:** Yes, Chair.

CHAIRPERSON: To Mr Chauke.

MR JULY: Yes.

CHAIRPERSON: And to Ms Jiba.

MR JULY: Nomgcobo Jiba.

CHAIRPERSON: Yes, Nomgcobo Jiba. Where, as I understand it, he says something that suggests to me that the report – there was still something outstanding here that he wrote, I think in terms of the notes I made here, which I also read to Mr Nhleko, it is the memo of 13 February 2014

20 and in paragraph 6.3 of his memo I say:

“Mr Mosing said in part when talking about his view that Major General Sibiya did not appear to have been involved.”

MR JULY: Yes.

CHAIRPERSON: He said the following and I quote:

“The cell phone evidence, however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert has been procured to analyse the cell phone data. This could not be done by the time of writing this report despite it being pointed out to the investigating team.”

MR JULY: Yes.

CHAIRPERSON: So when I read this, the impression I
10 had was well, Mr Mosing is saying there is a need for an expert to analyse cell phone records.

MR JULY: Yes, yes, yes.

CHAIRPERSON: I have told the investigators to get that done but they have not got that done.

MR JULY: Yes, yes.

CHAIRPERSON: And if that is factually true, my inclination would then that report of the 22nd could not be said to be final. What do you say to that?

MR JULY: Let me tell you why that report was final.

20 **CHAIRPERSON:** Yes.

MR JULY: That report was final, one, recommendations. You will see in the list of the documents that Mosing is forwarding, he writes – there is a handwritten report that he is referring to there. That handwritten report is the report that was provided but in handwritten that you cannot

locate Sibiya in Diepsloot. That information is known to Khuba, is known to Mosing but is in handwriting, right?

He writes it in the list of the documents that he is submitting but now here is an issue, he then says we may have – we cannot be held back by this. Now the context of that statement – and Mosing should be called – the context of that statement, you have got two witnesses – I think three witnesses, the two witnesses who were part of the investigation, Campbell and someone else and one of the
10 civilian – the victim, one of the people who were victims, the family members, who claimed that they have seen Sibiya. Now Mosing says this issue we cannot conclude it but here is the report, it is handwritten, it says Sibiya was not in Diepsloot.

So let us go to the March, just to visit March for the purposes of this, you go to the March report which they considered now to be final. What is different in terms of analysis, it is the same, but the difference is that it is typed. That is all, it is that same report which says Sibiya
20 was not in Diepsloot although the witnesses, two or three witnesses say he was there, but that report, Khuba collects it, it is now a typed report. You are not going to find anything in the March report which tells you as a result of an analysis, what was submitted has changed is the same information which says Sibiya was not involved in

Diepsloot.

CHAIRPERSON: Okay. Now I think we seem to be on the same page with regard to the principle that if there is still a report outstanding, then you would accept that the report is not final.

MR JULY: I would accept that, Chair.

CHAIRPERSON: Ja, you would accept that.

MR JULY: I would accept it.

CHAIRPERSON: I think that is important. So what then
10 remains is that you are saying there was no report
outstanding here.

MR JULY: Yes.

CHAIRPERSON: The part that I have read from Mr Mosing's memo is that – actually, he puts it as there is still analysis to be done, you know? Now you would then say, based on your evidence on what you have said, you could say, I imagine, he is wrong to say, that is analysis to be done because you say the analysis has been done, it is contained in the handwritten report.

20 **MR JULY:** Yes.

CHAIRPERSON: Whereas he says the analysis is still to be done. I do not know whether in your investigation you deal with him – you kind of confronted him with it to say how could you say the analysis outstanding because the analysis has been done and if you did, what did he say?

MR JULY: If I remember well, Chair, the context was explained which is you have got two versions. One, you have got an analyst's report which is handwritten which says Sibiya was not in Diepsloot. You have got witnesses that says Sibiya was in Diepsloot but the report which says Sibiya was not in Diepsloot, it is there. therefore, the statement that he makes, it cannot be divorced from the context. I could be that he wanted to address how do we deal with this issue that there are witnesses that would
10 have seen Sibiya but we have an analysis which says Sibiya was in Pretoria when this happened.

CHAIRPERSON: No, I understand that part.

MR JULY: Yes.

CHAIRPERSON: I am asking the different question whether during your investigation when you had to interview Mr Mosing and being aware of this part of his memo whether you did say to him but how can you say in this memo that there is analysis outstanding from a technical expert or whatever because here is the analysis,
20 it just happens to be in handwritten form.

MR JULY: Yes.

CHAIRPERSON: Is that something you raised or not really?

MR JULY: No, not in that fashion.

CHAIRPERSON: Not directly.

MR JULY: Not directly in that fashion.

CHAIRPERSON: Not directly, okay, okay.

MR JULY: Because we picked up what he was explaining.

CHAIRPERSON: Yes, yes.

MR JULY: That no, no, no, his understanding, which is why he was saying it is final, you must look at how he starts.

CHAIRPERSON: Yes.

MR JULY: His memorandum.

10 **CHAIRPERSON:** Yes.

MR JULY: He starts by saying now it is final, the investigation has been finalised.

CHAIRPERSON: Yes, yes.

MR JULY: And now it is for you to take a decision.

CHAIRPERSON: Yes.

MR JULY: And you remember, Chair, we are talking of a very experienced Advocate.

CHAIRPERSON: Yes.

20 **MR JULY:** Who has been allocated dealing with specifically with this special project who was chosen deliberately to deal with this matter. So he knows what he is doing. So when he says this issue can still be dealt with – and that is exactly the attitude that was adopted by Adv Baloyi and Mzinyathi when they were given the same reports by Mr Nkhosani because Mr Nkhosani was also

confronted by the same thing, for these two reports. So what do we do?

CHAIRPERSON: But, of course – well, I do not know how experienced Mr Mosing is, of course, but I take what you say that he is an experienced, you know, prosecutor or advocate precisely because he is experience and precisely because he seems to have been part of this investigation from its inception.

MR JULY: Yes.

10 **CHAIRPERSON:** It kind of surprises one if he says there is analysis still outstanding, if in fact that is not so.

MR JULY: Yes.

CHAIRPERSON: You understand that?

MR JULY: I understand that but I am saying, Chair, you cannot read that paragraph in isolation.

CHAIRPERSON: Just say that again?

MR JULY: I am saying that paragraph cannot be read isolation.

20 **CHAIRPERSON:** No obviously, it should not be read in isolation, it should be ...[intervenes]

MR JULY: Yes. And we also had the benefit of speaking to him.

CHAIRPERSON: Yes, yes, yes. Yes, you see, this particular issue, what I am saying, it is just that it is important to come to a point whether at a factual level he

was correct in saying there was analysis still outstanding because I think you and I have agreed that if factually he was correct then the report of the 22 January was not final but you have said he was not factually correct because there was analysis that he was talking about, it just happened to be in handwritten form. That is what you said.

MR JULY: And that view, Chair, is confirmed even by the subsequent report.

CHAIRPERSON: Yes, yes, yes.

10 **MR JULY:** That there was no analysis.

CHAIRPERSON: Yes, yes.

MR JULY: There was no further analysis that was done.

CHAIRPERSON: Yes, yes. Yes, not that is why it becomes important to – that you tell me what you can tell me.

MR JULY: Yes, Chair.

CHAIRPERSON: To show that there was no analysis that was outstanding.

MR JULY: Outstanding at all.

20 **CHAIRPERSON:** And then, the next question would be to say one, you may – it may be legitimate for you to say well, the report of the expert may have been in handwritten form but I think the fact that it is not typed does not make it – does not render the report not final.

Maybe Mr Khuba, maybe Mr McBride, maybe

somebody else might say well, that is where we differ, we think it makes a difference. Then we know where the differences are.

MR JULY: Yes.

CHAIRPERSON: So it is a question of just – so identifying where the difference are.

MR JULY: Yes.

CHAIRPERSON: Okay.

MR JULY: You see, where they fail, they do not show you,
10 Chair, they do not show this Commission after that analysis what other analysis did they get after the handwritten one. For them to be able to produce the 18 January because if it was outstanding, they should be telling you, Chair, and say we then obtained, after the 22 January, an analysis which was outstanding, which informs the report of March.

CHAIRPERSON: Ja.

MR JULY: There is no such thing.

CHAIRPERSON: Okay, alright. Mr Hulley, I am sure you are looking at both of us and saying we are having this
20 conversation by ourselves but ...[intervenes]

ADV HULLEY SC: No, Mr Chair.

CHAIRPERSON: After the tea break, I will let you continue.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: It is just that for me these are some of

the really important issues.

MR JULY: Yes, Chair.

CHAIRPERSON: And I want to be sure that I understand exactly where Mr July stands.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: And I raise my own issues with him.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: So I think let us take the tea break, we are at twenty two minutes past eleven. Let us take a break
10 and return at twenty to twelve.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue, you may proceed, Mr Hulley. Your mic.

ADV HULLEY SC: Pardon me, Mr Chair. For the benefit of the witness and for yourself, Mr Chair, there is a bundle which is marked as EXHIBIT Y6, that is one the historic
20 bundles that does not follow the current formatting and the specific document that we are referring to is at page 322 of that bundle.

CHAIRPERSON: Yes.

ADV HULLEY SC: It would perhaps be useful if we all spoke on the same page.

CHAIRPERSON: Yes, okay.

MR JULY: Yes, thank you, Mr Hulley. Chair, can I before Mr Hulley takes me back to where we were, to deal with that page, because I wanted to address this issue about the outstanding information.

CHAIRPERSON: Ja, ja.

MR JULY: If you read paragraph 2 ...[intervenes]

CHAIRPERSON: Okay, which bundle?

MR JULY: Y6, 322.

10 **CHAIRPERSON:** The one that has just been handed up to me.

MR JULY: Yes.

CHAIRPERSON: Okay, what page?

MR JULY: Page 322.

CHAIRPERSON: 322. Yes. Oh, ja, that is the memo to which I was referring.

MR JULY: Yes.

CHAIRPERSON: Yes.

20 **MR JULY:** They start by giving the purpose of the memo, I am not going to read that. Then paragraph 2, it gives the background. He says:

“The investigations...”

Supposed to say investigation.

CHAIRPERSON: Ja.

MR JULY: “...has now been finalised.”

CHAIRPERSON: Yes.

MR JULY: "...and a report from the IPID has been submitted for purposes of considering the merits of the case."

CHAIRPERSON: Yes.

MR JULY: "The case docket comprising of two lever arch files together of other files containing the cellular phone data and evidence obtained from the computer belonging to the DPCI is also enclosed."

10

So I want to Chair to bear in mind when we talk about that cell phone, that it is going come up every now and then.

CHAIRPERSON: Ja.

MR JULY: Because that is the issue.

CHAIRPERSON: Yes.

MR JULY: Whether the cell phone data, what is it.

CHAIRPERSON: Yes.

MR JULY: That was outstanding, [inaudible – speaking simultaneously]

20 **CHAIRPERSON:** Yes, ja, okay. Maybe we can just for the sake of completeness, if we can identify the one that I also mentioned, I think – ja, 6.3. It is at page 327.

MR JULY: Yes.

CHAIRPERSON: Says:

"The involvement of other senior police officers

could not be established beyond reasonable doubt including the head of the DPCI, Gauteng, Major General Sibiya who, it is alleged, was present during the first two operations but the evidence is not conclusive. He is also responsible for the [indistinct] **03.23** in Gauteng and it is unlikely that the operations were carried out without his knowledge. The cell phone evidence, however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert witness has been procured to analyse the cell phone data. This could not be done by the time of writing this report despite it being pointed out to the investigating team.”

10

Okay, I just was saying for the sake of completeness.

MR JULY: Yes.

CHAIRPERSON: Mr Hulley, proceed.

ADV HULLEY SC: Thank you, Mr Chair. Now just to be clear, as far as this is concerned, Mr July, if I understand correctly, what Advocate Mosing is saying – said to you in an interview is that at this point in time, i.e. 22 January 2014 or 24 January 2014, to be more specific, the analysis of the cell phone records was complete except – then the only difference between what was in existence at that point and what was in existence at the later point, i.e. 18 March

20

2014, was the fact that the report was compiled or the analysis had been done in a handwritten form and subsequently it was done through a typed document. Do I understand that correctly?

MR JULY: No.

ADV HULLEY SC: Okay.

MR JULY: Mosing does not talk about even during our interview, he does not talk about the handwritten and the typed version. Mosing, during our interview, says they had
10 the phone unlisted which says Mr Sibiya – General Sibiya was not in Diepsloot but there is this evidence by these witnesses which say he was there. As we understand, when we spoke to him, that issue is an issue that can still be dealt with at a later stage and even – I was about to talk about Baloyi, Baloyi and Mzinyathi, they say the same thing, they say when they realised that there are witnesses that have seen Sibiya but the cell phone record places them somewhere. They said it is in the nature of the prosecution that you will never – but until you go to court
20 be in a position conclusively say the investigation is completed because they will always be that information which would be required. So the point that I am trying to make is, although there was this contradiction, if that contradiction is not resolved at some point, that they will have to decide what they do with that.

ADV HULLEY SC: Yes. Now, if I understand ...[intervenes]

CHAIRPERSON: I think the answer to your question because, I mean, Mr July did answer it but I think partly because he – you asked him whether Mr Mosing said a certain thing to him during interview, he said no, that is not what he said and I think that is correct. But I think what he made clear earlier on, Mr July, was that the context was different when they had a discussion, it was not a question
10 of asking him directly, how do you – why do you say there is analysis then outstanding because here is the analysis, he did not ask him directly but they were focusing on the fact that there were certain witnesses who said they had seen Mr Sibiya there and yet the cell phone records suggestion something else.

ADV HULLEY SC: Thank you, Mr Chair. Now in this particular memorandum of the 13 February 2014, he speaks of – on paragraph 2, the paragraph that you referred to on page 322, there Mr Mosing's or Advocate
20 Mosing, I believe it is, speaks to the cellular phone data and evidence obtained from a computer so he seems to be speaking there of data as opposed to which implies that it may be raw data, as opposed to an analysis of that data. Do I understand that – do I misunderstand that?

MR JULY: No, no, I think you understand it very well but I

do not know what is it that you want me to answer, but you understand it very well, it is a phone, cell phone data.

This is what I meant, Chair. Khuba asked for all your telecommunications – your cell phone companies, Cell C, Vodacom, MTN, took provide with information, he has got the information. He takes the information to people to analyse that information. They look at the cell phones who called who and who SMSed who. They finalised that. That issue is finalised. That there is a number of SMSes on the
10 5 November 2010 that were from Maluleke to Sibiya, from Sibiya to Dramat and Lebeya, right? That is a data. That is one form of analysis. The other analysis was to locate the people who are implicated.

Where was Sibiya at the time precisely on the 6 November 2010? Where was Sibiya? That is the information I am saying was in handwritten, it was present, it was known to anybody, to everybody, and was put in the list by Mosing in the document and listed the documents that are submitted as handwritten, I do not know which
20 paragraph.

ADV HULLEY SC: Are you referring to specific document now?

CHAIRPERSON: You are looking for the handwritten...?

MR JULY: Where it says handwritten, where Mosing ...[intervenes]

CHAIRPERSON: Oh where it says draft?

MR JULY: Where is listing, yes, where is listing the document that is ...[intervenes]

CHAIRPERSON: That is attaching, is enclosing.

MR JULY: There is no attachment.

CHAIRPERSON: Ja.

MR JULY: But is listing.

CHAIRPERSON: Oh.

MR JULY: It could be that, yes. But that document was
10 attached, that that document – that is why he comes to the
conclusion.

CHAIRPERSON: Yes.

MR JULY: That we know now that Sibiya was not there.

CHAIRPERSON: Yes.

MR JULY: And you cannot do that by analysing SMSes,
no, you cannot.

CHAIRPERSON: Yes, yes.

MR JULY: You have to do another analysis.

CHAIRPERSON: Yes.

20 **MR JULY:** For you to be able to say there was Sibiya at
the time.

CHAIRPERSON: Ja.

MR JULY: So that was done.

CHAIRPERSON: Yes. Yes, okay.

ADV HULLEY SC: Thank you, Mr Chair. I think just

moving ahead. So you have got the 22 January report, here are in fact three 22 January reports, as you are aware of.

MR JULY: Yes.

ADV HULLEY SC: The one has got the word draft on it, one was in fact emailed by Mr Khuba to Mr Sesoko.

MR JULY: Yes.

ADV HULLEY SC: And the third one is the one that you say was ...[intervenes]

10 **MR JULY:** Signed, yes.

ADV HULLEY SC: Delivered to Adv Mosing.

MR JULY: Yes.

ADV HULLEY SC: On the 24 January.

MR JULY: Yes.

ADV HULLEY SC: Now, the first one which has the word draft on it, the word draft is inscribed there by Adv Mosing.

MR JULY: Yes.

20 **ADV HULLEY SC:** And that is because, according to Adv Mosing, according to the interview that you had with Advocate Mosing, he says he wrote draft there because the statement of Mr Khuba had not been – as the investigator, had not been included.

MR JULY: Yes.

ADV HULLEY SC: Now at that stage, i.e. on the 22 January when it seems everybody, it is common cause, as

between Mr Mosing and – or Adv Mosing and Mr Khuba that he delivered the 22 January report, you are saying that that report was not a final report, if I understood you correctly in your discussion with the Chairperson.

MR JULY: Which one is that?

ADV HULLEY SC: The one that had draft on it.

MR JULY: The one that had draft on it, yes, that is what I am saying, that is the version of Mosing and I think it does say that even in his affidavit.

10 **ADV HULLEY SC:** Sure.

MR JULY: Yes.

ADV HULLEY SC: So – but I am trying to understand what you are saying, you are saying that it was not a final report.

MR JULY: Can I explain this? That report was not final because, as we have read, Chair, the final report requires recommendations, so there were not recommendations, so Khuba was asked to go and add recommendations so that is why it took him just two days to go and add
20 recommendations, comes back with recommendations which is the same report but it did not have recommendations, then it became a final report because it has the same date.

ADV HULLEY SC: Sure.

MR JULY: Of the 22nd.

ADV HULLEY SC: I think, least we be confused, perhaps we should turn to the document of the bundle which is marked LAE2. That is correct?

MR JULY: Ja.

ADV HULLEY SC: And you have attached several documents to your affidavit. It is part of your affidavit.

MR JULY: Yes.

ADV HULLEY SC: Which is EXHIBIT Y8B. If you could turn with me to page 645.

10 **MR JULY:** 645? I am there.

ADV HULLEY SC: Is that the document that you are referring to?

MR JULY: Yes.

ADV HULLEY SC: And you would see the word draft inscribed in manuscript.

MR JULY: Yes.

ADV HULLEY SC: And the top of that page. Now if you would turn with me to page 670 of the same bundle. Have you got it.

20 **CHAIRPERSON:** 600 and...?

ADV HULLEY SC: 670, Mr Chairperson.

CHAIRPERSON: Oh, at the end.

ADV HULLEY SC: That is right. Do you see that, sir?

MR JULY: 670?

ADV HULLEY SC: Yes, have you got the page?

MR JULY: Oh, yes, yes, yes. And if you look at the heading which is on the preceding page, which is at page 669, can you read that heading to us?

CHAIRPERSON: I am sorry, what did you say he must look at?

ADV HULLEY SC: There is a heading at the foot of the page.

CHAIRPERSON: 670?

10 **ADV HULLEY SC:** On the preceding page, which on page 669.

CHAIRPERSON: Yes, okay.

MR JULY: Recommendations?

ADV HULLEY SC: That is right. And if you could go over to page 670?

MR JULY: Yes.

ADV HULLEY SC: Can you read that into the record?

20 **MR JULY:** “Based on the available evidence the independent Investigative Directorate, comments that Lieutenant General Dramat, Major Sibiya, Maluleke, Constable Radebe, Captain S Nkosi, Warrant Officer Makoe be charged criminally of kidnapping, defeating the ends of justice, assault and theft only applicable to Captain Maluleke, Warrant Officer Makoe, Constable P M Radebe and

Captain S Nkosi.”

ADV HULLEY SC: And it is signed, is it not?

MR JULY: Yes.

ADV HULLEY SC: So this document was in fact signed and it had a recommendation.

MR JULY: Yes.

ADV HULLEY SC: The only point I am making is that you nevertheless regarded this as an interim report. Or do I misunderstand you?

10 **MR JULY:** I think you are missing the [indistinct – dropping voice]

ADV HULLEY SC: Was this a final – I asked you if this was final report.

MR JULY: It was a final report.

ADV HULLEY SC: Oh.

MR JULY: Because it had recommendation according to Khuba.

CHAIRPERSON: Maybe let us get this – there may be a I misunderstanding.

20 **MR JULY:** Ja.

CHAIRPERSON: Mr Khuba gave Mr Mosing a report.

MR JULY: Yes.

CHAIRPERSON: Which, as you understand the position, Mr Khuba, regarded as final.

MR JULY: Yes.

CHAIRPERSON: And there was nothing further to be done by him, as you understand the position.

MR JULY: Yes.

CHAIRPERSON: Mr Khuba – no, Mr Mosing identified that the report did not include Mr Khuba’s statement as the investigator.

MR JULY: Yes.

CHAIRPERSON: And then asked Mr Khuba to submit his statement and he wrote on the report “Draft.”

10 **MR JULY:** Yes.

CHAIRPERSON: And you say, as I understand the position, the reason, the only reason why Mr Mosing wrote or could have written “Draft” ...[intervenes]

MR JULY: It is Mr Mosing.

CHAIRPERSON: Was because of Mr Khuba’s outstanding statement.

MR JULY: Statement, yes.

CHAIRPERSON: And the next question must therefore be at the time that Mr Mosing asked Mr Khuba to submit his
20 statement, was this report that he marked “Draft”, did it have a recommendation?

MR JULY: Yes.

CHAIRPERSON: It did, ja.

MR JULY: It did.

CHAIRPERSON: Ja, ja, so ...[intervenes]

MR JULY: These are recommendations [inaudible – speaking simultaneously]

CHAIRPERSON: So it ...[intervenes]

MR JULY: Yes.

CHAIRPERSON: This report that we are looking at now is exactly the report that Mr Mosing wrote “Draft” on.

MR JULY: Yes, yes.

CHAIRPERSON: It had a recommendation already, the only thing that was outstanding as far as Mr Mosing was
10 concerned was Mr ...[intervenes]

MR JULY: Khuba’s statement.

CHAIRPERSON: Khuba’s statement.

MR JULY: Yes.

CHAIRPERSON: And, as you understand the position, did Mr Khuba in two days submit their statement and that statement would have been made part of the report?

MR JULY: Yes.

CHAIRPERSON: Ja, okay.

ADV HULLEY SC: Thank you. Sorry, I was actually
20 asking you from your perspective because I understood, correct me, of course, if I am wrong, I understood you to be saying this was not a final report and I was trying to understand that response. Now I might have of course – I might have interpreted what you were saying to me that it was an interim report but I am asking you again, was this a

final report, not from Mr Khuba's perspective, from your perspective, that is what I am asking.

MR JULY: Chair...

CHAIRPERSON: Yes.

MR JULY: We have defined what the final report is.

CHAIRPERSON: Yes.

MR JULY: The final report with recommendations.

CHAIRPERSON: Yes.

MR JULY: It is a final report.

10 **CHAIRPERSON:** Yes.

MR JULY: But what was missing with this final report is Mr Khuba's statement.

CHAIRPERSON: Yes.

MR JULY: So it was a final report.

CHAIRPERSON: Yes.

MR JULY: But what was missing was Khuba's statement.

20 **CHAIRPERSON:** Yes, I think what you want to say is, from your point of view it met the requirements of the definition of a final report in the standard operating procedures.

MR JULY: It did, it did.

CHAIRPERSON: Is that is right?

MR JULY: I did.

CHAIRPERSON: That is what you are saying. So from that point of view it was final.

MR JULY: It was final.

CHAIRPERSON: But you accept that according to Mr Mosing Mr Khuba's statement was not there.

MR JULY: Yes.

CHAIRPERSON: But you are saying if you look at the definition of a final report in the standard operating procedures it met those requirements, that definition.

MR JULY: Yes. Because, you see, what I can understand was missing to Mr Mosing is that you come to this
10 conclusion but you do not tell us, give us your statement. Give us your statement, tell us what did you do. Who did you consult with?

CHAIRPERSON: H'm.

MR JULY: Who did you take statements, that is what ...[intervenes]

CHAIRPERSON: What may be – and Mr Hulley might be intending to deal with that, to the extent that the definition of final – I think it is called Final Case Investigative Report to the extent that it says such a report must document the
20 entire investigation. I think the question might be whether as long as the investigator's statement is not there.

MR JULY: Yes.

CHAIRPERSON: Whether that part is met. What would you say on that?

MR JULY: Chair, it would see that ...[intervenes]

CHAIRPERSON: Of course it would have become complete.

MR JULY: Yes.

CHAIRPERSON: In two day's time.

MR JULY: Yes.

CHAIRPERSON: It might not have been ...[intervenes]

MR JULY: It seemed that is a question of practice.

CHAIRPERSON: Yes, yes.

MR JULY: Practice as compared to what constitute a final
10 report.

CHAIRPERSON: Yes, yes, yes.

MR JULY: What constitute a final report are
recommendations.

CHAIRPERSON: Yes, yes.

MR JULY: But the people who read recommendations,
they are saying no, no, no, no, for practice purposes we
want to know from you how did you go about doing the
report.

CHAIRPERSON: Yes. But just to go back on our
20 understanding because I do not want to confuse you in
terms of what you are saying.

On the definition of final case investigate report as
it appears in the standard operating procedures, would you
say that if this investigator's statement is not there, the
report is complete, is final and meets the requirements or

would you say no, it does not meet the requirements but when Mr Khuba submitted his statement then that report met all the requirements or the definition of final case investigate report, that is when it became final.

MR JULY: Chair, it says if you want to deal with issues of recommendation, because it has recommendations and it has got all the information that is required then it becomes a final report. Khuba makes the analysis, he comes to the conclusion and he makes recommendations. So it is a final
10 report.

CHAIRPERSON: Even without the investigator's statement?

MR JULY: Even without the investigator's statement in terms of the definition.

CHAIRPERSON: Ja, okay.

MR JULY: But it would seem they have got a practice.

CHAIRPERSON: Ja.

MR JULY: That the report, which has got a recommendation, must have your own statement.

20 **CHAIRPERSON:** Yes.

MR JULY: Yes.

CHAIRPERSON: Ja, okay. Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chair. Now insofar as the investigation was concerned, the – we had three reports which were dated the 22 January. There was a

report that had been emailed to Mr Sesoko, which had also been – was also dated the 22 January of 2014 and that had been emailed to him on the 23 January of 2014, according to the investigations you had done, is that correct?

MR JULY: I know of that report that Khuba says he referred the report to Sesoko but the report that was signed is the report which was signed on the [indistinct – dropping voice]

CHAIRPERSON: Do not speak away from mic.

10 **MR JULY:** Oh, Chair, I am saying I am aware of Khuba saying he emailed a report on the 23rd to Sesoko for the purposes of the secretariat because they are required to give to the secretariat and as we can know, I think I would take it as common cause that we know that this investigation was conducted in terms of Section 28H and the 28H makes a reference to that it is a kind of a report which investigation must happen as a result of a referral either by the Executive Director, initiated by the Executive Director or is initiated by the MEC or the Minister or the
20 Secretary and the Secretary is the Secretary of the Secretariat for the Police and this was referred to IPID already with a case number.

So Khuba was obliged in terms of the law to give that report to the Secretariat. So Khuba does say, of course, in his affidavit that he filed, something that he did

not mention to us when we interviewed Khuba, you can go through the interview that we had with Khuba, we had three interviews with him. We only pick up the issue of the report which was emailed to Sesoko which is dated the 23rd, which we will talk about that another time, whether Sesoko knew about the report, whether he knew or he did not know about the first report.

ADV HULLEY SC: Very well. Now at the time of the – when the first report is complete – I am talking now about
10 the 22 January report.

MR JULY: Yes.

ADV HULLEY SC: And we know that there are three reports, two of which are signed, one of which is emailed. You say it was emailed on – sorry, it was emailed on the 23rd and you say the second 22 January report which contains the investigator’s statement is in fact given to Adv Mosing on the 24 January.

MR JULY: Yes.

ADV HULLEY SC: So it should probably be referred to as
20 the 24 January report but we have referred to it throughout as the first report.

MR JULY: Ja.

ADV HULLEY SC: So when you refer in your affidavit to the first report you are referring to the second signed report ...[intervenes]

MR JULY: The signed – the one with the statement, yes.

ADV HULLEY SC: Correct. Now at that stage, of course, the – quite apart from the issue relating to the data analysis or it is the cell phone data analysis, quite apart from that issue, there are several statements that are outstanding, warning statements that are outstanding, is that correct?

MR JULY: When?

ADV HULLEY SC: As at the 22 January, whether it be on
10 the 22 January or the 24 January, as you say.

MR JULY: Yes. To the warning statements, Chair, I do not want to deal with – there were several warning statements.

CHAIRPERSON: Just say that again. Come closer?

MR JULY: I am saying, chair, I do not want to deal with several warning statements, I want to deal with what Khuba said was missing.

CHAIRPERSON: Okay.

MR JULY: The statements that were missing, not several.

20 **CHAIRPERSON:** H'm.

MR JULY: He says – Khuba – what was missing was the warning statement of Sibiya, was the warning statement of Maluleke, was the warning statement of Leon Verster. It was the warning statement which is not the warning statement at the same time of Qoboshiyane and

Qoboshiyane, I must remind you, Chair, is the secretary of the Secretariat.

So Khuba says these are the warning statements that were missing. Let us deal with the warning statement of Sibiya. The warning statement of Sibiya, after the submission of the report on the 22nd, somewhere on the 13 February, out of the blue, Khuba writes a letter to Sibiya. He says to Sibiya, based on your conversations that you had with Sesoko, I am writing to you to provide me with a
10 warning statement and here are the questions.

The warning statement comes back, it is now the 28 February.

CHAIRPERSON: What date? 28 February?

MR JULY: 28 Feb.

CHAIRPERSON: Ja, okay.

MR JULY: Yes. That one, that is the first warning statement. What we do know ...[intervenes]

ADV HULLEY SC: Sorry, just to be clear, we are talking about 28 February 2014.

20 **MR JULY:** Ja, 2014. That is the first warning statement. The second warning statement, I do not know the circumstances on which it was obtained but what we know is that it says nothing, it is silent. Maybe I should go back to Sibiya as to what does it say.

CHAIRPERSON: Whose one is that one?

MR JULY: That this one is Maluleka.

CHAIRPERSON: Okay.

MR JULY: Yes, Maluleka says nothing, he says, I exercise my right to remain silent. Then Sibiya, what does Sibiya say, Sibiya says exactly what he said in 2011 in a nutshell. You will recall, Chair – maybe you will not recall because there are certain things that were not told which is 2011, there's an internal process by the SAP to know about this rendition who exactly was involved in this unlawful
10 rendition and that investigation, as a result of the Sunday Times report of October. Sunday Times, around October publishes an article, an article which says, people have been killed...[intervenes].

CHAIRPERSON: Hang on Mr July I'm not sure whether we need to go too far on that because of the question. I think you wanted to simply say you'd like to focus on the specific warning statements.

MR JULY: The importance, Chair, the problem – I may sometimes come across as a person who – because there
20 are certain questions, I mean answers that would want you to go back ...[intervenes].

CHAIRPERSON: No, no I understand that, no, no I understand that.

MR JULY: So, now you have these four warning statements the other witness statement, I'm not sure if the

Leon one was obtained then there's the Ncubshiane one, and if you read the Ncubshiane statement, all what Ncubshiane says, she says this thing, after 2011 I was asked by the Minister to determine what are the legal implications for South Africa, both internationally and locally for this rendition, what – the reason why – what are the implications of this unlawful of this rendition. So Ncubshiane – that's the statement of Ncubshiane. So, you tell me, Ncubshiane's statement, what has that have to do
10 with the conclusion whether Sibiya, Dramat must be charged? A person who decides to remain silent, how can that have an impact on the recommendation. The statement by Sibiya, it's confirming what he's already been saying, which is, I did not get myself, I was never involved in the rendition but what Sibiya is accepting though is accepting that he provided personnel to undergo the operations. Sibiya accepts that he was being briefed and that statement – that's the one that I emailed to Mr Galli last night because I looked for it in the docket that was
20 provided, I couldn't find it and you will see in the report it's summarised, it's a one-liner or two sentences which says, Sibiya denies having been involved but Sibiya writes a statement through the lawyers and then through the lawyers and then he sends another statement which is written, conclusion. So, all the – all of that, when you read

it, they don't have impact on the recommendation.

CHAIRPERSON: Hmm, Mr Hulley?

ADV HULLEY SC: Thank you Mr Chair. Now, you make the point that these statements and the – or rather the activity on the part of Mr Khuba, by writing to Ms Ncubshiane by writing to Sibiya, you make the point that, that is out of the blue. I just want to understand what you were referring to, what the implication was, as far as that's concerned?

10 **MR JULY:** For me, Chair, I start my affidavit by saying...[intervenes].

CHAIRPERSON: Remember not to move away...[intervenes].

MR JULY: Oh, I started my affidavit by saying I'm not a truther and I explain what a truther is and a truther is a person who is a conspiracy theory, right but I've got my own reservation.

CHAIRPERSON: Hmm.

20 **MR JULY:** The out of the blue, is the reservations that I have about, around the 13th – there's now an issue about the warning statement because McBride is coming, they know that McBride is coming on the 3rd so McBride will come on the 3rd and say, the investigation was still outstanding.

CHAIRPERSON: Hmm, hmm.

MR JULY: That's the whole reason why ...[intervenes].

CHAIRPERSON: But what is the factual basis for you to say that they knew that he would come and say that?

MR JULY: Chair this is informed by what, then happens, when McBride starts on the 3rd of March, what does he do, when he start on the 3rd of March...[intervenes].

CHAIRPERSON: No, no, no as I understand the statement you just – you made it is that prior to Mr McBride starting at IPID, they knew that he would come and take this
10 position. So, my question is, what is the factual basis for you to say that?

MR JULY: They knew, that they knew that he was coming.

CHAIRPERSON: Before he came, ja remember...[intervenes].

MR JULY: Remember the appointment, Chair, was already confirmed somewhere in December 2013.

CHAIRPERSON: No, no I understand that, but the part that I'm interested in is, if I understood you correctly, is – suggests that they knew what position he would take on
20 this case once he arrived.

MR JULY: Yes.

CHAIRPERSON: So, I'm asking what is the factual basis for saying that?

MR JULY: Chair, I'm saying if you look at what, then happens when Mr McBride get to IPID you cannot ignore

the activities of what happened after the report was already considered by the person who was submitting it, considered to be final.

CHAIRPERSON: Hmm, maybe let's go back, when you say, they knew, who are you talking about before...[intervenes]?

MR JULY: I'm talking about Sesoko.

CHAIRPERSON: About Sesoko?

MR JULY: Yes.

10 **CHAIRPERSON:** And Khuba yes.

MR JULY: Yes, I'm talking about the two of them.

CHAIRPERSON: Yes, okay no, I just wanted us to clear that.

MR JULY: Oh yes, sorry Chair that's what I meant.

CHAIRPERSON: But what is it that you can tell me that informs your statement that before Mr McBride arrived at IPID, they knew that, upon his arrival he would take a particular position on this case?

20 **MR JULY:** Chair, you have to read and understand what happened when he came in. He's on record, Mr McBride and all of them, saying, when McBride arrived at IPID, he asked for high profile matters. There were three high profile matters at that time, it was Marikina, it was Cato Manor, it was this rendition. What happens, these people were called to a meeting to say we want you to give me the

update but you won't hear anything, no update about the other two. Not even to the person who was called to come to give evidence – I mean to give update about Cato Manor, that person, when we interviewed him, nothing did he say, according to Mr Angus about Cato Manor. All what he talked about, he was asked to take over this rendition because McBride suspect that there was something, not right which was done by Khuba at the time. That's what he says, right. When you look at Anna's and say, what is it
10 then that the update we were supposed to give, there is no update. Mr Kgamanyane who was doing Marikina and other investigators, we know now, that those reports were filed with IPID, I mean with NPA.

CHAIRPERSON: Yes but you see Mr July, I would have a certain understanding if you say to me, it's interesting then, upon arrival at IPID, Mr McBride behaved in the following way, that's one way but it's different when you say Sesoko and Khuba knew, before Mr McBride arrived at IPID that when he arrived at IPID he would take a
20 particular position on the matter. So that's the part I was actually listening to say, what's the factual...[intervenes].

MR JULY: I hear you, there might be a disjuncture, maybe I should not approach it in that way then.

CHAIRPERSON: Yes.

MR JULY: Maybe I should then stick on it

was...[intervenes].

CHAIRPERSON: On the factors you said earlier on.

MR JULY: Let me address then, why, the out of the blue, on the 13th of...[intervenes].

CHAIRPERSON: I'm sorry, just say that again you looked at him and I didn't hear.

MR JULY: Oh, I was saying, let me then address the, out of the blue.

10 **CHAIRPERSON:** I'm sorry, what is the out of the blue part.

ADV HULLEY SC: I'd asked earlier on why the witness had indicated previously that the letters...[intervenes].

CHAIRPERSON: Oh, the warning statement?

ADV HULLEY SC: That had been written to Ms Ncubshiane to Mr Sibiya – General Sibiya, why did he consider that to be, out of the blue and...[intervenes].

20 **CHAIRPERSON:** Oh, yes but let's get – let's move out of this area in a proper way. Can I accept that you don't have a factual basis to say, Mr Sesoko and Mr Khuba knew before Mr McBride came what position...[intervenes].

MR JULY: What position he was going to take.

CHAIRPERSON: Okay, alright.

MR JULY: That is very interesting to note that.

CHAIRPERSON: Yes, okay, Mr Hulley?

ADV HULLEY SC: So to take that to its logical

conclusion, the fact that a – or specifically that Mr Khuba had attempted to get these additional statements from General Sibiya – from Ms Ncubshiane, that you're not suggesting and you can't suggest, as a fact that Mr McBride had factually got involved in the investigation before the 3rd of March, in other words before his arrival?

MR JULY: I can't say as a matter of fact but whether it happened – ja can't say as a matter of fact.

ADV HULLEY SC: And you have no evidence, as I
10 understand it from your affidavit, you have no evidence – there's nobody's that's told you that, that happened, you've not seen an email to that effect?

MR JULY: we are not even dealing with that in my affidavit.

ADV HULLEY SC: Yes, yes.

MR JULY: I'm not even dealing with that but I'm raising it here because we are talking and people have been allowed, like McBride to say things that were not in the affidavit.

20 **CHAIRPERSON:** I must say that I do wish us to go to the question of the actual findings at some stage.

ADV HULLEY SC: Pardon me, Mr Chair?

CHAIRPERSON: I would like us to go to the findings of the Werksmans report as soon as you are able to in terms of – because as I see it, I mean, the one point is that this

Commission is not looking at whether his findings were correct or not correct, that's not what we are doing and it may well be that they may be unjustified and – or justified, that might still not, you know take us anywhere but one is looking at whether there's anything that shows anything beyond that but it's just that, in order to get there, sometimes you have to look at...[intervenes].

ADV HULLEY SC: Preceding events?

CHAIRPERSON: Ja, ja.

10 **ADV HULLEY SC:** Thank you Mr Chair. Remember my initial question to you was, how you came to the conclusion that you did, you've explained quite a bit.

MR JULY: Yes.

ADV HULLEY SC: What I was really interested in was actually how you came to that conclusion with reference to your report, if you could take us through that process, that was the question I was very interested in.

MR JULY: Okay, the conclusion – there are a number of conclusions that we are making, Chair, in the report.

20 **CHAIRPERSON:** No, I think we won't be interested in all of them, we'll only be interested in some.

MR JULY: Yes.

ADV HULLEY SC: I'll refer the witness specifically to a conclusion in relation to the, defeating the ends of justice.

MR JULY: Yes, Chair, how we come to that conclusion...[intervenes].

CHAIRPERSON: I'm sorry which one is that?

ADV HULLEY SC: So, Mr Chair, if we can turn to page 186 of bundle LEA1 it's Exhibit Y8(A) and it's the Werksmans report and specifically at page 186 of that bundle.

CHAIRPERSON: Oh, okay I am at the – on the last page of the report you want me to go to page?

10 **ADV HULLEY SC:** Mr July if you look at the spine, you'll see Y8, you're looking specifically for LEA1.

MR JULY: I don't seem to have...[intervenes].

ADV HULLEY SC: Remember that's the Bundle that has the affidavit of Mr Nhleko in it.

MR JULY: Yes.

ADV HULLEY SC: I believe you had it previously when I referred to it.

MR JULY: I've got it in the small Bundle.

CHAIRPERSON: Would somebody help Mr July please.

20 **MR JULY:** Oh, hears it and you said page?

ADV HULLEY SC: Page 186.

MR JULY: 1-8-6.

ADV HULLEY SC: Now we've read the conclusion, we don't have to repeat it and I was specifically concerned with how you came to the conclusion that one of the three

of them, in terms of your recommendation might be guilty of the charge of defeating the ends of justice or obstructing the administration of justice.

MR JULY: Yes, Chair, you would recall the evidences – we interviewed Mr Khuba and we interviewed Mr Khuba three times then we interviewed Mr Sesoko and we interviewed Mr McBride. When we came to the issue of the deletion of information in the report, in particular, with Mr Khuba, Mr Khuba understood his analysis and say, I had to
10 change my analysis of the report because I was convinced otherwise, right. Then Mr Sesoko says, I have never seen the report. Mr McBride adopts the same attitude that, I've never seen the report. So, there's the denial of the existence of the first report, there is denial by all of them, even here they came to this Commission, not even a single one of them said, we deleted the information. What you going to be – are told is that the analysis was changed because we reconsidered the evidence because the evidence was unsustainable, that's what you are told but
20 that part cannot be divorced to the fact that the report that was filed on the 22nd, if you accept that the one that was filed on the 22nd was final, you will make that conclusion, Chair, having read the statutes and everything. If it was final, now the question should be, why was it retrieved, to do what? Now when you look at the conduct of what

happened when it is retrieved, not only is the analysis that is being changed. I have no issue when a person changing his mind because he has been influenced or convinced, genuinely so, otherwise but I've got an issue with a person that's going to delete evidence in order to justify the analysis. Let me give you an example of the deletion of evidence, Matalonge is dead, nobody doesn't know that he's a dead man. You can't go and delete information that was said by Matalonge without Matalonge's permission and
10 you can't get it because he's dead. So that information will sit there but you may have a different view and understanding and analysis when you look at Matalonge's statement, leave it the way it is, don't tamper with that evidence because it is evidence.

CHAIRPERSON: Well I'm happy that we have got to this point, it's one of the important points about this matter.

MR JULY: Yes.

CHAIRPERSON: My understanding when the IPID witnesses gave evidence and my understanding up to now,
20 and I raised it with Mr Nhleko a few days ago was that when you talk about alteration and changing of the report, the discussion about alteration or changing of the report does not include interfering or changing anything in the statements of witnesses and I just want to check whether that's your understanding as well or you have a different

understanding?

MR JULY: I listened to them misleading you Chair.

CHAIRPERSON: Yes.

MR JULY: I listened to that, misleading you that all what they changed was their analysis.

CHAIRPERSON: Yes.

MR JULY: They were lying.

CHAIRPERSON: What they did, they went to the statement of Matalonge, Matalonge said, I pick up a phone, I phoned
10 my bosses to say, here are the Zimbabwean Police, they want to get into the country, do I allow them, they're saying they want to go to Dramat. These bosses, they say, no, no, speak to – please call him, they give him permission, he calls Dramat and he says, there are people who want to come and see you in the country, that on its own is a problem because if you are coming to the country you must produce documents not a call, you don't call people right. You come with the valid documents you must go through the police. Now, there's a call, that information, Mr Chair,
20 is deleted and it's said by Matalonge it's not an analysis.

CHAIRPERSON: Well when we go in the bundles to the see that part – but maybe before you go to bundle, Mr Matalonge's statement that you say they changed, was it handwritten or was it typed?

MR JULY: Matalonge had three statements, the one

statement Matalonge made, when in 2011, during the internal disciplinary hearing and that statement is the statement that Khuba says, I called Matalonge I said, Matalonge you're lying, this information that is contained in this statement is a lie. I've got a warrant of arrest, I'm going to arrest you for lies, Matalonge says, no you can come let's talks, Matalonge goes and speaks with Khuba. The statement that was taken by Khuba now, it's the typed one, that second one. So, you have a 2011
10 statement...[intervenues].

CHAIRPERSON: Which is handwritten.

MR JULY: Which is handwritten.

CHAIRPERSON: Ja.

MR JULY: Then you have a 2011 which is typed.

CHAIRPERSON: Yes.

MR JULY: And then you have another one, where Matalonge says I am confirming that the landline that you mentioned – that's towards the end, the landline that you mentioned in this – in the – I think during – the number
20 that was used that, that landline is the landline that he used to call Dramat, so you've got three.

CHAIRPERSON: But the one that is typed, which is, I think you say that's the one that was changed.

MR JULY: Yes.

CHAIRPERSON: Did Mr Matalonge sign that one as well?

MR JULY: He signed.

CHAIRPERSON: He signed it?

MR JULY: He signed all the statements.

CHAIRPERSON: Ja, were they – that particular one, because you say that's the one that was changed, did he initial every page or only sign the last page?

MR JULY: Chair this happens, the statement, it's written, it's copied because that's what they do, they copy the statements to the report right. So, you copy the statement
10 to the report and then when the new – the second report was written you go to the statement that has been copied to the report – remember now you don't have to go to the statement itself and delete the statement. You now go to the report and in your report where you mention that this is what Matalonge said, he said 1, 2, 3, 4 you then say in the second report he said 1, 2, 4, 5 you leave out 3, right.

CHAIRPERSON: Yes but – I understand that but I'm still at the point of saying, the typed statement for Mr Matalonge did he sign every page or you don't remember whether he
20 did or not?

MR JULY: I think he did.

CHAIRPERSON: You think he did, okay we can check in due course.

MR JULY: I think he did.

CHAIRPERSON: And if he did the only way in which

anybody could change that statement, I guess, would have to be by hand.

MR JULY: Ja.

CHAIRPERSON: By hand, that's now what happened.

MR JULY: No, no, no.

CHAIRPERSON: That's not what happened?

MR JULY: No, no, no, Chair, that's why I was saying Chair.

CHAIRPERSON: Ja.

10 **MR JULY:** I write a statement, I type it, whether it's handwritten or it's typed.

CHAIRPERSON: Ja.

MR JULY: I give it to whoever. That person copies the statement to the report.

CHAIRPERSON: Ja.

MR JULY: He writes the report and says, Sandile says he was at the State Commission on the 31st of March.

CHAIRPERSON: Yes.

MR JULY: I mean of July – 31st of July 2020.

20 **CHAIRPERSON:** Yes.

MR JULY: Right, you write that in the report.

CHAIRPERSON: Yes.

MR JULY: Because there's a statement which says that.

CHAIRPERSON: Yes.

MR JULY: But now – because the 31st of July I've done

something somewhere, you want to remove the 31st in the report now, not I the statement.

CHAIRPERSON: Ja.

MR JULY: You remove it in the report and you write 29.

CHAIRPERSON: Ja okay, no, no I think we are getting too the important part. So, it looks like we are moving back to what I thought, what I understood to be the position. So physically the typed statement of Mr Matalonge is not interfered with.

10 **MR JULY:** It's not, no, no it's not interfered.

CHAIRPERSON: Yes, but has happened is that there's a change of what Mr Khuba says in his report.

MR JULY: Yes.

CHAIRPERSON: About what the statement says.

MR JULY: Yes Chair.

CHAIRPERSON: And you say, he stops referring to certain parts of the statement.

MR JULY: Yes.

20 **CHAIRPERSON:** Okay, no that's fine so as I see it, tell me what you say to this. So, the objectionable conduct, from your point of view is actually that in his report Mr Khuba doesn't give what you consider a fair summary of Mr Matalonge's statement.

MR JULY: Yes.

CHAIRPERSON: That's it, yes.

MR JULY: Yes.

CHAIRPERSON: And that's where the issue is?

MR JULY: That's where the issue is Mr Chair.

CHAIRPERSON: Yes, okay, Mr Hulley?

ADV HULLEY SC: Thank you Mr Chair. So, if I understand correctly, your true complaint, relates, not to the fact that the docket was in any way tampered with or any statement within the docket was tampered with. Your true complaint relates to the fact that the two IPID reports, 10 what we've referred to as the first report and the second report that insofar as the first report was concerned the information capturing or summarising what was contained in the docket was not – had been removed and was not accurately reflected in the second report.

MR JULY: Chair I will respond by saying you know when you read the documents you will realise how Khuba used to write his reports. He would put the statement the way it was said to him. And the way you know read what is the statement says. He would write exactly what that person 20 says. It may be in a summary form but it contains exactly what that person says. Now the complaint is that Khuba – they – although they did not touch the docket and I will tell you why they could not touch the docket. They could not touch the docket because it would seem that they were running out of time.

CHAIRPERSON: They were running?

MR JULY: Running out of time.

CHAIRPERSON: Okay.

MR JULY: This issue was being outstanding Chair this issue comes from 2010.

CHAIRPERSON: Hm.

MR JULY: Even long before Minister – the former Minister.

CHAIRPERSON: Minister Nhleko.

MR JULY: Mr Nhleko.

10 **CHAIRPERSON:** Ja.

MR JULY: 2010.

CHAIRPERSON: Hm.

MR JULY: That is when this whole thing started. And Parliament raising issues. What happened to the killing of the people of Zimbabwe?

CHAIRPERSON: Hm.

20 **MR JULY:** Right. Then what then happened is Khuba changes the statement in his report because they could not be able to remove the information. Why I am saying they were running out of time.

CHAIRPERSON: Hm.

MR JULY: On the 7 March the docket is collected.

CHAIRPERSON: Hm.

MR JULY: From Van Zyl. In fact let me say Van Zyl because it was sent to Advocate Chauke. Advocate Chauke

give the docket to Van Zyl who happens to be his junior.

CHAIRPERSON: Hm.

MR JULY: Van Zyl is looking – before he looked at the document the document the docket has been collected. Remember Chair you asked a question to Mr McBride.

CHAIRPERSON: Hm.

MR JULY: When you were briefed McBride were you briefed verbally? There was no information that was given to him. McBride said, I cannot remember.

10 **CHAIRPERSON:** Hm.

MR JULY: When I have got opportunity, I will deal with that issue. Now talking back to the docket. You asked a question when the docket comes back to you did it have the report? He says, I cannot remember. You persist with the question.

CHAIRPERSON: Hm.

MR JULY: No. The docket – the report when it goes to the NPA – when the docket goes to the NPA has the report. You asked that question. And you said but when it comes back
20 is it not that the report must be there? He says no it was not there.

CHAIRPERSON: Hm.

MR JULY: That is the vision that – so – the – on the number – from the 7th March then you have an information note on the 10th March, 3 days after the docket has been

received. It is an information note to Minister Mthethwa saying Minister the investigation is complete.

CHAIRPERSON: Would – it would have been Minister Nhleko at that time.

MR JULY: No Mthethwa. Nhleko started May.

CHAIRPERSON: Is it not 2014? Is it not in 2014? Oh in March.

MR JULY: March.

CHAIRPERSON: Oh okay. Okay.

10 **MR JULY:** Minister Mthethwa. March it is still Mthethwa.

CHAIRPERSON: Yes okay yes ja.

MR JULY: Yes. He writes to Minister Mthethwa to say the investigation is now complete. All what we are busy doing we are analysing the evidence.

CHAIRPERSON: Analysing?

MR JULY: The evidence.

CHAIRPERSON: The evidence yes.

MR JULY: So meaning that we are still going to submit the report now the investigation is complete.

20 **CHAIRPERSON:** Ja.

MR JULY: This is the person who said I ordered Khuba and Sesoko to do further investigations.

CHAIRPERSON: Hm.

MR JULY: He says that to you in the 17/18 – I mean when he was here in April. I think he was here in April 11/12 –

13th April. He says to you, I ordered Khuba and Sesoko to do further investigations. So that further investigation Chair would have happened in the 18th and the 19th because on the 10th McBride unequivocally says the investigation is complete. McBride does not show you anything which says this is what we investigated during the time alright. It is the same docket. Now it goes to the importance of the report. Because you are told these reports are being ignored. But these reports are informational Chair. They are informational in a number of reasons. Because the person even if you read the docket you decide to read the docket you cannot avoid to say what is IPID saying? What is IPID saying? So if the NPA can take a decision with – and that decision is not because they are bound by the docket – I mean by the report they can take a different decision because the recommendations are not binding. Why not leaving – why do you not leave that docket and the report of the 22nd January? Because NPA is going to be able to determine that this evidence is unsustainable. NPA can reach that conclusion that the report that is submitted by Khuba which say we must charge these people is unsustainable. Why does it take you to go and take the docket to analyse when that very analysis that you are doing is going to be done again by the NPA?

CHAIRPERSON: Well...

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: I have – I actually asked a much simpler question I am not sure that my question was in fact answered. I was trying to summarise what I understood to be your case insofar as the defeating the ends of the justice was concerned. My question was specifically if I understand correctly you are not making the point that anything in the docket itself had been deleted or tampered with. That is
10 point number. Correct?

MR JULY: That is the ...

ADV HULLEY SC: Your assessment of the situation as outlined in your report is that the defeating of the ends of justice stems from the fact that the two reports – the first report accurately captures the docket whereas the second report has information that has been taken out and does not accurately capture the docket. Is that correct?

MR JULY: Yup.

ADV HULLEY SC: Now on your understanding of course it
20 would be – if that amounted to defeating the ends of justice and we will get to how you get there in a moment but if that were accurate it would mean that if an investigator were to give an inaccurate account of what is contained in the docket – forget about – I am talking generally – he gives a final report but it is not – it is not an accurate reflection. It is not

a fair reflection of what is contained in the docket and he comes to the conclusion that there is no case to be met or no charges to be brought against the person who is being investigated.

MR JULY: Hm.

ADV HULLEY SC: On the argument that you now presenting it seems to suggest that that would amount to defeating the ends of justice as well. Is that correct?

MR JULY: Then you deliberately intentionally remove
10 information which would assist the person who has to make a decision. That is misleading. There is an intention and that – what is the justice that is supposed to happen? The justice that is supposed to happen is that people who are involved in the rendition must be brought to book. That is the justice. Now when you want – you do something to defeat that end of justice to happen you write a report much as the report is a recommendation but you deliberately write information which seeks to mislead the person who is going to make a decision. That Chair it is a problem. Remember I
20 started by saying this was Section 28 investigations. They are not just any type of reports. Yes.

CHAIRPERSON: Well let me put to you what I put to Mr Nhleko. Where the investigator places before the NPA his report part of which seeks to summarise, what is in the statements of the witnesses and the docket but places – but

has in part at least wrongly or inaccurately or inadequately summarised the contents of statements in the docket. But he makes available to the NPA those statements as well.

MR JULY: Yes.

CHAIRPERSON: Which have got the information that he has not correctly or adequately captured in the report and he knows because I take it they know that the decision maker at the NPA is going to read the statements in the docket which have – which has got the information that he might not have
10 correctly captured in his report. And therefore, the decision maker will still have a complete picture.

MR JULY: Yes.

CHAIRPERSON: How do you say that person intends to defeat the ends of justice?

MR JULY: No Chair you started by saying a person inaccurately summarises the report.

CHAIRPERSON: Yes, yes.

MR JULY: But I am saying that was not an accurate recording of the summary of the statements. It was an
20 intentional deletion of information with the intention to mislead.

CHAIRPERSON: Yes.

MR JULY: That is the conclusion that we came to.

CHAIRPERSON: Yes.

MR JULY: We said this was done intentionally. It is not a

person who is writing the report because it happens. We do record things sometimes not accurately. I have no problem – I have no qualms with that.

CHAIRPERSON: Yes. Yes.

MR JULY: But if you look at the pattern.

CHAIRPERSON: Yes.

MR JULY: How it was done the intention was to mislead.

CHAIRPERSON: Hm.

MR JULY: Now here is the part.

10 **CHAIRPERSON**: Hm.

MR JULY: Do you do that successfully?

CHAIRPERSON: Hm.

MR JULY: You cannot say when you are found to have been misled you say now simply because there were statements that were included. You did not succeed to mislead. But you were misleading in your report.

CHAIRPERSON: Hm.

20 **MR JULY**: Chair we came to the conclusion – another person can come to a different conclusion. We came to the conclusion starting from why was it in the first place retrieved – the docket? Why was it retrieved? And not be left with the NPA to make their own decision and read the very information and come to a conclusion. You decide to take it in order to sanitise the report.

CHAIRPERSON: You see you may be right in how you view

it.

MR JULY: Yes.

CHAIRPERSON: You might not be right.

MR JULY: Yup.

CHAIRPERSON: If the decision maker if to the knowledge of the investigator the decision maker at NPA was going to rely only on the report and the statements would not be there I think there would be quite a strong case. Now I am not saying there is no case for what you are saying but I am exploring.

10

MR JULY: Yes.

CHAIRPERSON: How as I understand the position at the – the decision maker at the NPA would not be expected to make a decision without reading the statements.

MR JULY: Yes.

CHAIRPERSON: He may read – he or she may read both the report and the statements but I do not believe they would read the report without the statements. I think they would rather read the statements.

20 **MR JULY:** Yes Chair.

CHAIRPERSON: Without the report.

MR JULY: Yes.

CHAIRPERSON: If they were pressed for time or anything like that.

MR JULY: Yes.

CHAIRPERSON: Because their decision must be – must take into account the statements.

MR JULY: Yes.

CHAIRPERSON: Now what I am saying is when you know that the decision maker will see all the information that is in the statements how can we intend whatever you do in your report because you know he will read the statements how can you be intending to make him arrive at a wrong decision by not telling him information that he will see anyway in the
10 statements. That is what I would like you to deal with.

MR JULY: I know Chair that is problematic.

CHAIRPERSON: Yes.

MR JULY: But the question could be as well.

CHAIRPERSON: Yes.

MR JULY: What could be the reason then for a person to delete that information? You already have it in the report.

CHAIRPERSON: Yes.

MR JULY: What you need to do is to analyse.

CHAIRPERSON: Yes.

20 **MR JULY:** Your report and change your analysis.

CHAIRPERSON: Yes.

MR JULY: But leave the information. The question should be why deleting it in the first place?

CHAIRPERSON: No, no I accept that one may have to look at why was it deleted? But I think you must tell me if I

misunderstand you. I think you and I are – are quite close in terms of saying on the face of it at least if he knows that the decision maker will read the statements therefore the decision maker will see all the information that he might not have included in the – in the report.

MR JULY: Yes.

CHAIRPERSON: On the face of it one would expect that he would say but there is no point in deleting this information in order to influence him to arrive at a certain decision when he
10 is going to see this information in the statements anyway. You know. Of course, if you deal with somebody that you know he is not going to read the statements.

MR JULY: Yes.

CHAIRPERSON: He is just going to read your report that might be different.

MR JULY: I was going there Chair.

CHAIRPERSON: Ja.

MR JULY: To say we do not know.

CHAIRPERSON: Yes.

20 **MR JULY:** We do not know.

CHAIRPERSON: Yes.

MR JULY: Anything is possible.

CHAIRPERSON: Yes.

MR JULY: Anything is possible because there is no reason why I would want to delete information if I do not think that

at some point this person may decide to read only my report.
Because my report summarises the statements.

CHAIRPERSON: Hm.

MR JULY: Of these people. Otherwise there is no reason
why I should delete this information.

CHAIRPERSON: Hm.

MR JULY: If I do not think that my report is going to
influence you, I would not even delete it.

CHAIRPERSON: Ja. Ja.

10 **MR JULY:** But if I believe that at some – you may look at my
report and be convinced by my report.

CHAIRPERSON: Ja.

MR JULY: I came to the conclusion another person can
come to a different conclusion.

CHAIRPERSON: Yes.

MR JULY: How did the conclusion based on the facts that
were before me.

CHAIRPERSON: Yes. Well of course whether that –
whether the – the reason for changing the relevant – that
20 part of the report or deleting certain information in the
report. Well the reason was the one that you concluded was
the reason or is another one that one might involve looking
at the actual information deleted and hearing what the
reason is that was advanced. But I think through this
discussion we – I certainly understand I think you

understand.

MR JULY: Yes.

CHAIRPERSON: Where I was coming from.

MR JULY: I do. I do.

CHAIRPERSON: Yes. Okay. Thank you. Mr Hulley we –

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: I see we are at one. I am not always very good with estimating time about how long anything would take.

10 **ADV HULLEY SC:** Yes.

CHAIRPERSON: But the one thing I think has happened is that we certainly have covered quite important parts as far as I am concerned.

ADV HULLEY SC: I think so as well Mr Chair.

CHAIRPERSON: It might not be it is everything but certainly quite some part. We – I think we should take the lunch adjournment. Mr July and Mr Ngcukaitobi there is a matter coming up at two. It is an application – it is a certain application. When we come back maybe I could just deal
20 with that because I do not think it should take long and then we continue. But I might be told something that might suggest that we should finish first and they – they should argue that application after. Is that fine with you?

MR JULY: Not a problem Mr Chair.

ADV NGCUKAITOBI: It would be fine for us Chair.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI: Is their intention to finish Mr July's evidence this afternoon?

CHAIRPERSON: Yes, yes certainly from my side but having said that you know what I have just said about my poor estimation skills.

ADV NGCUKAITOBI: No the only reason I ask is whether we should make a provision to be...

CHAIRPERSON: For tomorrow?

10 **ADV NGCUKAITOBI:** Well for Monday.

CHAIRPERSON: Oh no – oh today is Friday.

ADV NGCUKAITOBI: Yes.

CHAIRPERSON: No I do not think you should.

ADV HULLEY SC: Monday is out of the question.

CHAIRPERSON: No I do not think so. I do not think you should. If you ask me and again, I warn that my – sometime my estimation is bad. I do not see that we should take after – take an hour after – well I – with him after lunch. I am looking at Mr Hulley.

20 **ADV HULLEY SC:** I am keenly aware of your stare Mr Chairperson.

CHAIRPERSON: Yes.

ADV HULLEY SC: It is difficult to estimate because I would thought that we would take no more than two and a half hours at most.

CHAIRPERSON: Ja.

ADV HULLEY SC: Possibly even including with the potential re-examination.

CHAIRPERSON: Ja. Ja.

ADV HULLEY SC: But that clearly has not happened.

CHAIRPERSON: Yes.

ADV HULLEY SC: I had a number of questions that I wish to ask.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** We have begun to delve into matters relating to the content of the report.

CHAIRPERSON: Ja.

ADV HULLEY SC: That were not necessarily part of my initial questioning.

CHAIRPERSON: Of course, as I said the commission is not here to determine whether he is conclusions and findings are right or wrong. That kind of thing so that ought to shorten the proceedings but we do need to look at what needs to be looked at properly.

20 **ADV HULLEY SC:** Thank you Mr Chairman.

CHAIRPERSON: But I – I certainly think we will finish today. I hope we do not have to go up to four o'clock to finish. So ja

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: Thank you. Okay let us take the lunch

adjournment now and then we will resume at two and then I will then indicate whether I will hear the argument in that matter or whether we complete and finish first with this one. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

INQUIRY RESUMES

CHAIRPERSON: We are interrupting the hearing of Mr
10 July's evidence to enable me to deal with an application that is... that was set down for two o'clock that was brought by Judge Makhubele for me to consider or reconsider... consider amending a directive that I issued on Friday last week for her to file certain affidavits by Wednesday this week and to appear in person before me on Monday at ten o'clock. Mr Soni? Yes, switch on your mic.

ADV SONI SC: Chairperson, you will... as you have indicated on Friday, last week, that is the 24th of July. You issued a directive and the effect of the directive was that in
20 respect of the affidavits filed by Ms Ngoye, Mr Dingiswayo, Mr Makaswa and Mr Achmat.

Judge Makhubele was to have filed her answer, her response by Wednesday, the 29th of July. DCJ, what happened thereafter is, we have received nothing on the 29th but in the early hours of Thursday morning, that is the 30th,

we received an affidavit together with annexures from Judge Makhubele but not from her attorneys, and that affidavit has been placed before you.

Subsequently, we also received a notice of motion. The effect of that application read together with the notice of motion is that Judge Makhubele requires that... or requests that the directive be varied amended, effectively not be in the terms that it is.

And she asks that she be given until the 3rd of August to
10 file her responding affidavit and that she only appears on the
8th of August before you Chairperson.

That is the application that she filed. The Commission filed a responding affidavit in which we oppose the application. I just want to point out ...[intervenes]

CHAIRPERSON: Let us call it the Legal Team of the Commission filed ...[intervenes]

ADV SONI SC: I beg your pardon.

CHAIRPERSON: Ja.

ADV SONI SC: It was the Legal Team. Basically... may I
20 just point out the... just for record purposes? Judge Makhubele's affidavit was 77 pages long.

Our affidavit is five pages long and we say that she did not really address the issue before... that she should have, this issue, namely, on what basis is seeking a variation of the order or the directive that was granted last week. And so

we persist in our opposition to the relief that she seeks.

CHAIRPERSON: The appearance for her or is she here?

ADV SONI SC: DCJ, what happened... Chairperson, what happened next is that after we filed our affidavit, after the Legal Team filed its affidavit, it was served on the attorney and Judge Makhubele.

We did not hear anything from them until about ten o'clock this morning when we received an email from the attorneys, saying that they are withdrawing as attorneys of
10 record for Judge Makhubele.

We then communicated with them telephonically to say that they should, given the lateness of the hour, they should formally seek your leave before they withdrew.

They phoned about 15-minutes ago to say that their counsel is otherwise engaged. Their junior counsel is not available and they are unable to attend. So that is the position.

The secretariat also phoned Judge Makhubele about half-an-hour ago, informing her of the fact that the... her
20 attorneys had withdrawn and her approach was that she could not be expected to be here.

So effectively in answer to your question DCJ, there is no appearance in support of the application and what you have is simple an application on paper with nobody motivating why the relief she seeks, which is quite far-

reaching, to be granted.

CHAIRPERSON: H'm. Well, I did read Judge Makhubele's affidavit. You said it was 77 pages.

ADV SONI SC: It is, yes.

CHAIRPERSON: I think you meant with the annexures.

ADV SONI SC: Without the annexures.

CHAIRPERSON: Oh.

ADV SONI SC: The affidavit itself is ...[intervenes]

CHAIRPERSON: The affidavit without the annexure is 47
10 pages.

ADV SONI SC: I beg your pardon. It is 47 pages.

CHAIRPERSON: Yes.

ADV SONI SC: Yes, Chair.

CHAIRPERSON: And then there are annexures. By this stage, we do not know whether she... whether she could be available at any stage later this afternoon assuming that she could not be here because she was involved in some matter in court or because she had expected her lawyers to be here. One does not know when she might have got to know
20 that the lawyers withdrew.

ADV SONI SC: Yes.

CHAIRPERSON: We do not know that, hey?

ADV SONI SC: No, Chairperson.

CHAIRPERSON: Ja. In court what one would do is strike the matter off the roll.

ADV SONI SC: Indeed.

CHAIRPERSON: I think that what we will do is that, I am... I propose not to... I propose to deal with this matter in this way. One, not to change anything in the directive.

I do not... Ja, not to change anything in the directive at this stage and unless I decide otherwise, the position would remain being that the directive issued on Friday stands which means, on Monday Judge Makhubele must appear here.

10 Now when I read her affidavit, she makes it clear that on Monday, the judge president has released her from her work commitments and actually for the rest of the week.

So she is available on Monday but she was asking that she be given a chance to file the affidavits that she should have filed on Wednesday to get a chance to file them on Monday and she wanted that we move the date for her appearance to Friday.

But in the affidavits, she does not give any reason why if she files the... her affidavits on Monday, why the... her
20 evidence should only be heard on Friday.

If I recall correctly, her counsel had indicated last Friday that she was undertaking to file her affidavits by end of this week.

ADV SONI SC: By today.

CHAIRPERSON: Ja.

ADV SONI SC: Yes, Chairperson.

CHAIRPERSON: The directive said she must file on Wednesday. So one would have expected that she would have been able to meet her own deadline that she had undertaken.

It seems to me that if one has regard to the fact that she has had these affidavits on the basis of which she will be asked questions, she has had some of them for the past six months and the last batch of only two that she has had for
10 two months.

She would have had enough time to familiarise herself with all the issues. I think that the position that will remain will be that she must come on Monday.

Then if she has got her affidavits when she comes, then the question of whether or not she had sufficient cause or a proper explanation for not having filed them on Wednesday, is a matter that can be dealt with then or thereafter, depending on what I direct.

So the affidavit that she has filed can still be used by
20 her to seek to justify why she was not able to file the affidavits on Wednesday but she will have been prepared by then.

And if she does not have the affidavits by ten o'clock, that does not mean her evidence cannot be heard. She can give her evidence. She can be questioned.

It may well be that when she delivers... when she makes her affidavits available, whether before Monday or on Monday morning, it may be that the Legal Team of the Commission might take a view that they need time before the matter can proceed.

But it may well be that the Legal Team would be able to proceed, maybe needing an hour or even two hours to look at those affidavits and then we can proceed.

So I think what we will do is postpone this application to
10 Monday but the directive issued in terms of Regulation 10.6 of the Regulations of the Commission issued last Friday will stand in the meantime.

If on Monday we are able to proceed, we should proceed. So briefly then, this application is postponed for Monday. That is number one.

Number two. In the interim and unless I decide otherwise between now and Monday, the directive issued in terms of Regulation 10.6 of the Regulations of the Commission on Friday, last week, stand and Judge
20 Makhubele must appear in person before the Commission at ten o'clock.

ADV SONI SC: Yes.

CHAIRPERSON: And I think it will be important that this be communicated to her.

ADV SONI SC: Yes.

CHAIRPERSON: Okay. Thank you.

ADV SONI SC: As it please the Chairperson and
...[intervenes]

CHAIRPERSON: Thank you.

ADV SONI SC: ...we appreciate being accommodated in the
middle of the evidence of Mr July.

CHAIRPERSON: Yes, yes. No. No, thank you. You are
excused.

ADV SONI SC: As it pleases.

10 **CHAIRPERSON:** And then we can continue with Mr July's
evidence.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, are we ready?

ADV HULLEY SC: Thank you, Mr Chair. We were still
discussing the question of the defeating the ends of
justice, now you had come there, you dealt with that, Mr
July, and what we were examining was towards the tail end
of that, we were examining the question of what you
20 regarded what they had done wrong.

If I understood your evidence correctly and please,
do correct me if I am wrong, but if I understood your
evidence correctly, what you in essence say is that if they
did not express their honest opinion on the content of the
docket. In other words, they did not capture the content of

the docket accurately. In order to absolve somebody, that would amount to defeating the ends of justice.

So, if I understand your argument correctly, there is two elements to it, the one is the failure to capture the content of the docket accurately and the second is an intention to do so in order to absolve somebody from liability.

MR JULY: Yes, that is my...

ADV HULLEY SC: And if I understand your argument
10 correctly, what you are saying is that in the present case, in relation to Mr McBride, Sesoko and Khuba, that is precisely what they appear to have done and that is why you recommended that they should be charged.

MR JULY: Yes, *prima facie* that is what we found and then we found *prima facie* that they have committed the – defeated the ends of justice. And, of course, when we do so, Chair, the NPA will have to take over from there and the report was to the Minister, it was not to the NPA. So once the NPA decides that no, this guy is - there is this
20 *prima facie* view, then they must do their own investigation. That is it, ja.

ADV HULLEY SC: No, fair enough. So just to understand correctly, what – insofar as the present case is concerned the report that they had compiled, they had obviously come to the conclusion, at least in your mind, as expressed in

the second report, which was the report of the 18 March of 2014. That report differed with the report of the 22 January 2014 and it was not the fact that they had a different opinion, it was a fact that they had a different opinion because, in your view, they dishonestly removed information from what was contained in the first report.

MR JULY: Of course, it was not just a matter of opinion but the opinion is to be taken into account what informed the changing of the opinion, not just the changing but what
10 informed the changing of the opinion.

ADV HULLEY SC: Yes.

MR JULY: If you were to change ...[intervenues]3

CHAIRPERSON: That is the reason for changing is what you are [inaudible – speaking simultaneously]

MR JULY: Yes, the reason for changing.

CHAIRPERSON: Ja.

MR JULY: That is practically...

ADV HULLEY SC: And of course you are not suggesting that only Mr Khuba was guilty because he held one view,
20 one in respect of the first opinion but a different view in respect of the second, you are suggesting that any person, including Mr McBride and Mr Sesoko, if they had expressed the opinion that is contained in the second report, that in itself was sufficient to make them liable for defeating the ends of justice.

MR JULY: Yes. We say so, Chair, because if you look at if we are right that the information is deleted and we want to know who deleted the information, Khuba does not know. He says I do not know, what I do know is that I worked on my analysis. You ask Sesoko, Sesoko said I have never seen that kind of a report. You go to McBride, McBride says I have never seen that report. That there is a common factor which is, all of them, they have looked in the information analysis of the evidence and they come to
10 the conclusion.

So if three people were in possession – which, Chair, maybe it will be easier if I can explain whether indeed McBride was right to say he has never seen the report. It is not true that he did not see the report. We came to the conclusion that he saw the report.

Sesoko, it is not true that he did not see the report. We came to that conclusion that he saw it, McBride, why we came to that conclusion. You will note that on the 3rd when McBride started, the evidence is that McBride asks
20 Sesoko that he wants the update and in fact when we questioned Mr Khuba, it is very specific, he wanted the report, not the update.

And then Khuba emailed the report to Sesoko. Sesoko prints the report and gives it to McBride. It is on record that Sesoko printed the report. But you will see

somewhere the version changes again and say no, no, no, I have never seen the first report, but he forgets that, Sesoko, that when Khuba emailed the report, he emailed to Sesoko, Sesoko printed it, it is on the record, when we interviewed him and he gave it to McBride and when Khuba came the following day, because there was a meeting - that was suggested, that there must be a meeting the following day, Khuba says when I met McBride it was a person who knew what was in the report and we ask a specific
10 question, the report that you gave to McBride, is the same report that you filed with the NPA because you filed a hard copy? He said yes. Unequivocally, yes, it was the same report but it was a soft copy. Right?

So even the questions that he was asking, you could tell, that is what Khuba now says, that is the person who read the report. So one of the issues, for instance, was the involvement of Crime Intelligence. You will get conflicting version as to who raised that issue.

Khuba says McBride asked me why did we involve
20 Crime Intelligence? But Khuba says here, he comes here, he says no, no, no, no, when I got there I told McBride, when I was briefing him, that Crime Intelligence was involved. Then McBride got concerned. But that is not what he told us. There is a difference in most issues that Khuba said here and what he said to us in preparation of

the report. Depending on finding out whether how much do you know, then Khuba will tell you what he thinks you must know. So that is the problem that we are faced with.

So you have, in our conclusion, three people who were in possession of the report, who do not want to acknowledge the existence of the report, two of them. Then three of them, all of them, they do not want to acknowledge the deletion. If that deletion was innocent, why can you not? Why can you not say yes, we deleted, it
10 is because you cannot delete evidence.

CHAIRPERSON: Well, you are right in saying when asked if they had seen the report, that is Mr Sesoko and Mr McBride, if in fact they had seen the report but they deny having seen the report, you have to enquire why are they denying ...[intervenes]

MR JULY: They are denying it.

CHAIRPERSON: ...having seen the report when in fact they have seen the report. Now I am just coming – looking at it from your angle.

20 **MR JULY:** Yes.

CHAIRPERSON: To say it is legitimate to ask that question.

MR JULY: Yes.

CHAIRPERSON: If, as a matter of fact, you are convinced that they saw the report...

MR JULY: Yes.

CHAIRPERSON: But they are denying that.

MR JULY: Yes.

CHAIRPERSON: Because the denial could throw light on something.

MR JULY: Yes.

CHAIRPERSON: To say if the – leaving aside whether or not, the question of whether or not, putting their summary or analysis the way they did in the second report whether it
10 amounts to defeating the ends of justice or anything like that, what would be legitimate as to say if they had seen the report one would expect them to acknowledge that they had seen the report and if they had changed the analysis or summary because of an acceptable reason one would expect that they would give that reason openly.

MR JULY: Yes.

CHAIRPERSON: So that part, I think it is legitimate to look at it that way. But, of course, a very important part is the one about whether when they said they had not seen
20 the report, that is Mr Sesoko and Mr McBride, whether that was actually true.

MR JULY: H'm.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you, Mr Chair. Now just to clear up one issue, you have referred interchangeably to

deleting information and deleting evidence. To be fair there was no evidence that was delete3d.

MR JULY: Okay.

ADV HULLEY SC: There was information or rather, a recordal of what was in the docket that was removed.

MR JULY: Yes. That is semantics, Chair, because if I say to you – like I said, I was here on the 31 July 2020 and that 31 July 2020 is not recorded in your report because it is an important date for you to come to a particular
10 conclusion that Sandile indeed on that day, then there is a deletion of the evidence which was already in the report. You remember the evidence is what you have been told. It can be verbal, it can be in writing, and when you take that evidence, you put in your report, it does not change its nature, it is just that it is in another form, in the form of a report.

So I am not suggesting that they erased what was the psychical statement. No, I am not saying that but that evidence was imported to the report and now it is deleted.
20 That is what I am saying.

CHAIRPERSON: Ja, I think what Mr Hulley raises is something that also I was looking at when they were giving evidence and I just think it is important particularly because the charge, as I recall, said they altered and I think your report was also based on saying the whole issue

is about the alteration of the report.

MR JULY: Of the report, yes.

CHAIRPERSON: Ja. Now if two people are given the same material, let us say statements in a docket, and they asked separately and not in collaboration with each other to prepare a report based on those statements, they are likely to come up with two different reports.

MR JULY: Yes.

CHAIRPERSON: That might have the same substance.

10 **MR JULY:** Yes.

CHAIRPERSON: But the wording obviously would be different, you know, how each one is not going to be identical because then once it is identical they must have copied, one must have copied from the other. Or maybe through some technology it might be done without copying.

But you might have this one person whose report you look at and say but this is not an accurate summary of these statements. I have looked at the statements, I have read them, this leaves out some important facts, so I am
20 unhappy about it because of that.

And then there is this other one, you have read the statement, you say this is the one that really accurately summarises what is in the statements. Okay.

Now if the first one, whose report you find not to be satisfactory, did not see the other report, I expect that all

you would say is, he is not good at summarising things, or something like that, you know? But you might not think of anything else, you know? And this one whose report you are happy with, you might say he is good at making sure that his summary contains all the important information.

So, therefore, one asks one the question whether the moment we all accept that they did not – this alteration did not entail physically changing anything in the statements, whether we are not dealing with a situation
10 where while Mr Khuba was without Mr Sesoko's contribution and Mr McBride's contribution to the first report and with the contribution with whoever may have contributed to the first report, he summarised and analysed the statements in a certain way but once there were three people now, working on the second report, they are bound to have different views and they are bound to attach different amounts of weight on different aspects. Whether you are not dealing of that kind of situation because now there are three people who are all going to sign this report
20 whereas the other one, only one person is going to sign it even though he was contributions Mr Mosing and somebody else, so that there is that. What do you say?

MR JULY: You know, if – ja, if under ordinary circumstances, Chair, I will agree with you.

CHAIRPERSON: Yes, yes.

MR JULY: But here you have a situation first whether there is a denial of even having seen the report.

CHAIRPERSON: Yes, yes, yes.

MR JULY: But that report looks exactly, they were the same report that was not seen.

CHAIRPERSON: Yes.

MR JULY: That creates a problem.

CHAIRPERSON: So would I be right in saying what really changes or changed or influenced the way you say the
10 matter was that you believed that they – Sesoko and
McBride had seen the first report. That is what
...[intervenes]

MR JULY: Ja, that is exactly what, Chair, yes.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you, Mr Chair. Now, of course you had consulted, interviewed Mr Sesoko, you had interviewed Mr Khuba, you had interviewed Mr McBride, is that correct?

MR JULY: Yes, I interviewed all.

20 **ADV HULLEY SC:** Would it be fair to say that Mr Khuba informed you that he had never been instructed to exonerate anybody, he had never been instructed by Mr McBride to exonerate anybody. Would that be fair to say?

MR JULY: Mr Chair, he says McBride did not expressly said I must change the report but he says, in the same

breath, it was due to the influence of McBride, he would not have changed the report. He says that. He says I told Sesoko I said all what I needed to do was just to go and attach the information that I received, there is no need for picking up the docket. That is what he says and we come then to the conclusion that you would think that McBride is going to expressly say that. He does not have to. He does not have to. It is the conduct that speaks for itself.

CHAIRPERSON: Of course, there is nothing – there would
10 ordinarily be nothing wrong with Mr McBride influencing Mr Khuba as to certain part of the report.

MR JULY: Yes, yes, that is true.

CHAIRPERSON: It is – as long as he was not forcing him to do something dishonest or something like that, as long as it was within legitimate bounds. But I guess that what you – your view was that it was not within legitimate bounds.

MR JULY: It was not.

CHAIRPERSON: Yes.

20 **MR JULY:** It was not.

CHAIRPERSON: You are saying that he wanted to – he wanted the report to exonerate General Dramat.

MR JULY: Yes and Sibiya.

CHAIRPERSON: Ja.

MR JULY: He even goes further, Chair, and say I became

happy when my boss was happy.

CHAIRPERSON: Ja.

MR JULY: He says that, it is on record, saying I became happy when my boss was happy because this report was making me sleepless nights, it was to and fro, until Sesoko said to me the boss is happy, then I became happy.

CHAIRPERSON: But, of course, does Mr Khuba not somewhere say that he was not aware of the so-called deletions? Does Mr Khuba not – did he not at some stage
10 say to you during the interviews that you had with him, did he not at some stage deny having been aware of some of the changes?

MR JULY: Yes, he did.

CHAIRPERSON: Yes.

MR JULY: The only thing that he touched on was the analysis.

CHAIRPERSON: Ja.

MR JULY: He said having been influenced, Sesoko being a lawyer and Sesoko who did law, I must now influence Mr
20 Sesoko. But that also is problematic because that very debate with Sesoko, he told us that it took place before McBride came into the picture. But he was never convinced by Sesoko, he was never convinced because he believed that General Dramat went to Zimbabwe on the 5 August 2010 to attend a meeting of the region. Then on

the 6th had a side meeting with the Zimbabwean police and the issue of the fugitives was discussed in that meeting.

After that, they agreed to meet after three months. Now in three months, if you count three months from August to November, I mean to November the 5th, they meet of 5 August, 6 August, it is exactly three months when they come here on the 4 November. And so, Chair, when you come here on the 4 November, it is what happens then.

Now, when they were at Beitbridge, that information
10 is critical. If you remove that information where Madilonga says I then called – you then say it does not matter even if he called, but we do not know what he was talking about. That is fine, that is what he merely says, but do not put it as if that call did not happen.

CHAIRPERSON: Well, what is the factual basis for you not accepting that in summarising the evidence or summarising the statements or analysing the statements in the way in which they did in the second report reflected their honest opinion because – I may be asking you in a
20 different way what Mr Hulley might have asked earlier on.

MR JULY: Yes.

CHAIRPERSON: Because I take it that you would accept that provided in making the changes they were acting honestly, even if wrongly, if they were acting honestly then there would be no defeating – they would not be said to be

guilty of defeating the ends of justice. So what is the factual basis for you not to accept that these changes they put in, in the second report, were put in honestly even if, in your view, wrongly?

MR JULY: Yes. The one, Chair, starts with the retrieval. It starts with the retrieval of the docket itself.

CHAIRPERSON: Yes.

MR JULY: Right, that is where it starts.

CHAIRPERSON: H'm?

10 **MR JULY:** Then now you have the report, you deny that you have seen this report, but this report has been changed. You do not want to accept that you have changed the report, say what was change was the analysis. Nobody owns up in the deletion. Nobody owns up in the deletion of the other particular party, everybody talks about the analysis, when we realise that the evidence was unsustainable. The unsustainable evidence must be left there. Yes.

CHAIRPERSON: Would this not have been a situation
20 where if you are convinced that the recommendation that General Dramat should be charged is correct, you need to have this information because then it will link.

MR JULY: Yes, Chair.

CHAIRPERSON: But the moment you are convinced that that conclusion, that recommendation is wrong, it is not

justified, then that information does not make much sense because now it was there to show that this recommendation is justified.

MR JULY: Yes.

CHAIRPERSON: But if you have changed the recommendation that information does not make sense.

MR JULY: You must deal with the information.

CHAIRPERSON: Ja. Is it not that situation?

MR JULY: No, no, the situation, Chair – I hear what you
10 are talking.

CHAIRPERSON: Yes.

MR JULY: You are talking about an ordinary situation.

CHAIRPERSON: Ja, I am – yes, yes.

MR JULY: You are being general.

CHAIRPERSON: Yes, ja.

MR JULY: I am saying we took a lot of things into
account.

CHAIRPERSON: Into account.

MR JULY: To come to that conclusion.

20 **CHAIRPERSON:** Yes, yes.

MR JULY: It was not just a question of deletion.

CHAIRPERSON: Yes.

MR JULY: We started from the fact that McBride had no
reason to ask for the docket or even for the docket to be
collected in the first place.

CHAIRPERSON: Ja.

MR JULY: The second one is that there is no reason for McBride to sign the docket. Nothing in law. Yes, he is not breaching the law by doing that. But he takes it and comes and say to you it is because the law requires him to sign. That docket, that report was irregularly given to NPA because it let signatures of two people, the head of investigations and him, being the Executive Director.

He then justified that by saying in Section 7.4 of the
10 IPID, the Executive Director has got powers to sign, is required to sign the report, which is the reason why that report of Khuba was not a report in accordance to the prescripts of the NPA.

So we took all those things into account to say why should we be lied to, because he had no reason, he had no business with this report. And again, this is the person who said he has never seen the report. So I am trying to also demonstrate the inconsistencies in the evidence.

CHAIRPERSON: There was – I do not know whether it is
20 Regulation 5, there seems to be reference to a report being approved by the Executive Director but I think I got that from your report.

MR JULY: Yes.

CHAIRPERSON: If I am not mistaken. And it did not seem to be complete. In terms of the Act and the

Regulations, is such a report not required to be approved by the Executive Director?

MR JULY: No.

CHAIRPERSON: What is the reference to approval, as you understand it? What does it refer to, that I am talking about.

MR JULY: Okay. Where we need to start then, Chair, we need to start what was the nature of this investigation because all of them are categorised in terms of Section 28.
10 It says – even Khuba in his report does say it is 28F and H, right? The H part is the part which says it was referred, but the question is, who referred it? Khuba tells us in his report that it was referred by the Secretariat to do what, to investigate be Qoboshiyane made a report in June 2012 where the investigation was done on this issue. But he said this is bigger than us, we do not have investigative capacity. So we proposed two things.

One, we propose that Judge Pillay, who at one stage sat as a – I do not to do what at the DPCI – must sit
20 and look at the matter and come to a conclusion on this matter.

Alternatively, let us take this matter to IPID to investigate criminal – to do criminal investigation because what has been told to parliament, it is lies. He concludes that.

Then this report is then take on the basis of Qoboshiyane, which is the Secretariat, is given to IPID. That is 28H. But what does the 28H say? When you receive a report that has been referred by either the Secretariat, you then use Regulation 7, right? When you go to Regulation 7, Regulation 7 says for you to be able to deal with this investigation you must first determine the nature of the offence committed, offences contained in Regulation 4 and 5. In fact, those regulations in 4 and 5
10 are the same offences that are in Section 28A to 28G.

Then 28 of the Act, 28A and B, deals with a murder, the killing of people as a result of the action by the Police, right? So both A and B cover the murder. So what then happened is that when you look at 4, within 4 you find two scenarios. When the commission of murder happens immediately, where IPID can go and do the same inspection. That is 4.

CHAIRPERSON: But remember, just look at approval, when – what is your understanding of whether approval is
20 required at any stage?

MR JULY: No, it is not required, nowhere.

CHAIRPERSON: Ja, that reference to approval that I am talking about, you know what I am talking about in Regulation 5?

MR JULY: Regulation 5? I do not know ...[intervenes]

CHAIRPERSON: Regulation 5, I thought I got it from the Werksmans' report but it was not quoted ...[intervenes]

MR JULY: I know we do make reference to Section 5.

CHAIRPERSON: Yes, well this – because I have got the report in front of me, if I am right in saying I must have seen it – yes, it is at page 127 of the bundle. You say, that is paragraph 14 of the report itself, Regulation 5(i) to the Act states:

10 “After collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the offence to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service for criminal prosecution of such member.”

20 It says – so maybe there is no approval as such here, but it says:

 “Submit the report on the investigation of the offence to the Executive Director.”

MR JULY: Yes.

CHAIRPERSON: Ja.

MR JULY: Yes.

CHAIRPERSON: Would that apply to this report?

MR JULY: No.

CHAIRPERSON: Or, if not, why would it not apply?

MR JULY: No, it does not apply to this offence.

CHAIRPERSON: Ja, why not?

MR JULY: It does not apply, Chair, because Regulation 5 deals with issues of assault.

CHAIRPERSON: Oh, okay.

MR JULY: Yes, Regulation is strictly ...[intervenes]

10 **CHAIRPERSON:** But was there not assault in this rendition thing?

MR JULY: There was an assault, Chair.

CHAIRPERSON: Yes.

MR JULY: But the issues of assault – when they dealt with it, it was - the emphasis was on the murder part.

CHAIRPERSON: Ja.

MR JULY: So because you have two, you have the assault, you have murder. Of course, murder comes number one. And when McBride was asked here by
20 Advocate Paul Pretorius, you can look at the record, it starts from the investigation that was done, was about murder because that was the issue. It was even the issue that was raised by parliament that why were those people killed? And the specific question was asked, was Dramat of Sibiya involved in this rendition? So the real section,

which was used, on the fact that it was murder.

CHAIRPERSON: Okay.

MR JULY: Yes.

CHAIRPERSON: Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chair. Just to get back to what I was asking you about previously and what you testified on, you were testifying that Mr McBride had put pressure on or had influenced Mr Khuba to change the report. I was just trying to listen and you were looking in
10 the direction of the Chairperson but I did not catch what was the influence – I know said that at one stage he was very happy.

MR JULY: Yes.

ADV HULLEY SC: But what was the influence by Mr McBride?

MR JULY: No, Khuba says I took the docket, then after taking the docket I went straight to McBride, right? And then from McBride I went to the office.

ADV HULLEY SC: Yes.

20 **MR JULY:** With Sesoko. Then he says we opened the report, then the three of them worked on the report, right? So he then says – he says that I was influenced that the report was influenced – I asked the question would this report have changed if Mr McBride was not – did not require you to relook at the report? Khuba's statement is

no, it would not have changed. And I asked a question, this information that you say was outstanding, these warning statements that you are talking about, what impact did they have in the report? He says none.

ADV HULLEY SC: No, but I think we might be talking at cross-purposes. Tell me, what is it that Mr McBride did, did he put an iron on his hand?

MR JULY: No.

ADV HULLEY SC: Did he threaten you with a gun?

10 **MR JULY:** No.

ADV HULLEY SC: What was that act that he did?

MR JULY: This is what Khuba says, that he was influenced by McBride. What would ...[intervenes]

CHAIRPERSON: You never got to know he influenced him, ja.

MR JULY: We did not know, we did not. You remember, Chair, what we ask, we look at the totality of this. Why Khuba started saying he wants now to go and comment at the docket. That he comes back with the docket, right?

20 And then they look at the evidence, the same evidence that he looked at, when he submitted that, the same arguments that were raised by Sesoko because this issue of the analysis was there even before the existence of the docket. Suddenly that evidence, that analysis, becomes critical.

And can I say this, Chair – and I am saying this in my affidavit, we had a number, if not about three off-record talks with Khuba, and one of the things – and he even mentioned it himself in the transcript. He says you remember what I said to you off the record? If you were to ask me, is this person suitable for this position, I reserve my comments for that.

But the other things that he said off the record was that he was scared of McBride and he was scared of
10 McBride and he – he said many things, Chair, some of them I do not even remember, but he does – he did say that he was scared of McBride. Then he talks about the political history, his history and all of that and says afraid of him.

So when he says do not take it lightly when a person says – when he says he is happy, I was happy. So the influence sometimes, you do not have to tell a person. A persona formulate a view, whether that, him being scared of McBride was justified, we do not know, but he said that.
20 But, of course, he did not say those things on record. And we do say that in our affidavit.

ADV HULLEY SC: Oh, you have said that in your affidavit.

MR JULY: Yes.

ADV HULLEY SC: What I want to understand, so

according to him, he was afraid of McBride.

MR JULY: Yes.

ADV HULLEY SC: This is off the record discussion, according to him he was afraid of McBride. As I understand correctly reading your affidavit, he was afraid of him because of his struggle credentials.

MR JULY: Yes.

ADV HULLEY SC: Now he did not say that he was afraid physically for his physical wellbeing, if I understand
10 correctly.

MR JULY: No, no, no, you cannot just be afraid of a person of – you will be afraid of Nelson Mandela then.

ADV HULLEY SC: Pardon me?

MR JULY: I am saying struggle credentials only, that is not what was communicated to us, Chair, it was a person who is scared. Scared, scared of this person. We do not know what he said to him, we did not bother because that is not what we were there for but we could take that evidence what he said off the record because what he said
20 off the record.

Chair, I would request yourself time, you read how Khuba, how his evidence – I mean, when we interviewed, his narration keeps on changing. You will see that at some point he was to tell the truth, at some point he remembers that my boss told me the following, right? Because there

is no doubt, you can tell that they must have met somewhere and the issue of the docket or the report, McBride not having seen, was discussed.

You know, we are dealing with 2015, we are dealing with this thing in 2015 when the changes have already occurred. The changes have already occurred in 2014, now they must come and explain why the changes. The first thing would be, from McBride's side, I have never seen the report. As a result, during the interview, we did
10 not even discuss the second report – the first report with McBride.

So Khuba's being scared of McBride, we spoke to Khuba, we had the benefit of looking at Khuba and we believed him. We believed him, that he was scared of him.

ADV HULLEY SC: Now just to round off that particular theme, you spoke to Mr Sesoko as well.

MR JULY: Yes.

ADV HULLEY SC: And Mr Sesoko, he said that Mr McBride had not instructed them or had not given them any
20 indication that they are to amend the report in any way.

MR JULY: No.

ADV HULLEY SC: Would that be fair?

MR JULY: No, no, no, you see, Sesoko – I hope you have gone through Sesoko's ...[intervenes]

CHAIRPERSON: You have lowered your voice.

MR JULY: Oh, sorry.

CHAIRPERSON: And you are away from the mic.

MR JULY: I hope you have gone Sesoko's transcript. Sesoko was a very difficult person to – of all the people that we interview. Difficult, he was – even where he agrees with you, the difficulty that we also we had, you will see where Sesoko is caught up. He will use "H'm" so you do not know whether he is agreeing or he is acknowledging what you are saying and I ended up even saying you are
10 not going to waste our time, to Sesoko, so we need to proceed.

So anybody who thinks that McBride would have told them that let us change the report, that is not what is going to happen, let us change the report because I want to achieve a particular goal. It is the conduct, you look at the conduct and what has happened and we came to the conclusion. Yes.

CHAIRPERSON: But, of course, I go back to what we discussed earlier and I raised it with the Minister as well,
20 all of these three IPID persons, as I understand the position, were people with quite some experience in investigation, is that not so?

MR JULY: I am not sure about that, Chair.

CHAIRPERSON: Ja.

MR JULY: I am not sure about that.

CHAIRPERSON: Ja. Well, that is my understanding, not that I know anything. Yes. You are not sure about that?

MR JULY: I am not sure about that.

CHAIRPERSON: Okay.

MR JULY: I am not sure about this experience of an investigation.

CHAIRPERSON: Yes.

MR JULY: But whether Khuba was an investigator, yes.

CHAIRPERSON: Yes.

10 **MR JULY:** Remember the history of IPID is ICD.

CHAIRPERSON: Ja.

MR JULY: There was not investigation at ICD.

CHAIRPERSON: Okay.

MR JULY: Because ICD was housed within the police, so ...[intervenes]

CHAIRPERSON: Yes, so what I am looking at is certainly Khuba gave in his statements talked about the history of the two organisations.

MR JULY: Yes, yes,

20 **CHAIRPERSON:** Ja, he talked about that and then of course he was in charge of Limpopo, is that right under IPID.

MR JULY: Yes, yes.

CHAIRPERSON: He was in charge of Limpopo, my understanding is that, being in charge of Limpopo would

mean that he was in charge of, also Provincial investigations with Limpopo falling under IPID would that not be correct?

MR JULY: No, Chair, that is another issue about – I'm saying Chair the issue of Khuba and the position that he was holding as a Provincial Head.

CHAIRPERSON: Yes.

MR JULY: Before IPID.

CHAIRPERSON: No, no I'm talking about...[intervenes].

10 **MR JULY:** Of course, he had some experience but I dispute this thing because I heard you Chair, that same comment, when Nhleko – Mr Nhleko was here.

CHAIRPERSON: Yes, yes.

MR JULY: You made that comment and said, those guys are very experienced...[intervenes].

CHAIRPERSON: Yes, no I take it that they are experienced but you have to say, look, on what you know, you don't think that they all have that experience or whatever.

20 **MR JULY:** No, they don't, Khuba might have...[intervenes].

CHAIRPERSON: What's your understanding about their investigative experience?

MR JULY: Khuba...[intervenes].

CHAIRPERSON: Let's talk one by one ja.

MR JULY: Khuba was an investigator.

CHAIRPERSON: Ja.

MR JULY: Sesoko was not an investigator and he was never head of investigations, if you look, Chair...[intervenes].

CHAIRPERSON: Well there's a question of acting Head or what?

MR JULY: Chair there are four units.

CHAIRPERSON: Ja.

10 **MR JULY:** That fall – at the head office, four, one of them is the office of the Executive Director, the other one is Corporate Services Unit, the third one is Investigations and Information Management Unit, the last one is the Legal Services Unit. Sesoko was made – was appointed to act as a Head of Investigations and Information Unit. That unit, all what it does is administrative. You come up with all things that have to do with investigation and if the investigation is completed you take the report which comes from the Provinces, you summarise it for the Executive
20 Director for the Executive Director to go to the Minister. He was never the Head, if you look at the SOP's the Head of Investigations reside at the Provinces...[intervenes].

CHAIRPERSON: I thought there was a Head of – as I understood it, National Investigations.

MR JULY: No, no that's a unit.

CHAIRPERSON: That's a unit?

MR JULY: Which is purely administrative.

CHAIRPERSON: Yes, but there is a unit called that?

MR JULY: There is a unit call Investigations because your SOP's will also come from that unit.

CHAIRPERSON: Okay.

MR JULY: Right and how do we conduct investigations and all those things but the report, the person who has the final say on the report, there are two people in terms of the
10 Act, now I'm talking the Act, it's Provincial Head or the Director Investigations those are the only two.

CHAIRPERSON: Okay, now who was the Director Investigations at the time when this second report was done, as you understood, then the position if you do?

MR JULY: Yes, the Investigating Director – the Director Investigation was Khuba.

CHAIRPERSON: Okay.

MR JULY: He was also a Provincial Head.

CHAIRPERSON: Yes.

20 **MR JULY:** He was wearing two hats.

CHAIRPERSON: Okay.

MR JULY: This is what happened, Chair, the complaint comes to the head office, in terms of Section – I think it's Section 2 – ja I think Section 2 or 5, I think it's 2, which says, once you receive at the head office, you receive this

complaint, then you must determine which Province, the relevant Province. The reason why it was given to Mr Khuba is because Mr Khuba, the issue was about Beitbridge because the rendition, the handing over of the Zimbabweans happened in Limpopo, that is the reason but there is a question there of appointment and who appoints the investigator. The investigator is appointed by the Executive Director, in this case, Khuba would have been appointed by Mr Beekman who was there in 2012 right but
 10 that's the first appointment, appointing him as an investigator.

CHAIRPERSON: Okay, but going back to the issue I raised. So, what you are saying is, you are saying Mr Sesoko may have been Executive – may have been Director Investigations but that doesn't necessarily mean that he had investigative experience?

MR JULY: Yes, let me tell you why...[intervenes].

CHAIRPERSON: Or a lot of it.

MR JULY: Yes, how Sesoko becomes, as I understand,
 20 Koeki Mbeki would come and testify, I don't know why he has not been here yet because all this things could have been sorted out. how, I understand is that, the position of Provincial Head, under ICD when they did whatever they did in terms of evaluations and the changing of the Act, that position was higher than the position that Khuba and

Sesoko used to occupy and then because of the Act they had to take the positions that are immediately below the provincial heads because they did not qualify, I'm told, for the position of Provincial Heads. They then got appointed, not even appointed they were confirmed because they were already in the system as Director Investigations right. So, the position of Sesoko, without even having investigated anything was then that of Director Investigations but appointed to act in the position of – in the unit which is
10 called Investigations and Information Unit but he's not called a Head he's called Programme Manager.

CHAIRPERSON: Okay.

MR JULY: I think we need to get that terminology clear he's not a Head, there's no such things as Head of Investigations and Information Unit, you've got a Programme Manager.

CHAIRPERSON: But in their evidence didn't they refer to Head of National Investigations.

MR JULY: Yes.

20 **CHAIRPERSON:** They did.

MR JULY: They called him a Head.

CHAIRPERSON: Yes.

MR JULY: They said he was a Head.

CHAIRPERSON: When people who come from that organisation, use that terminology, you understand, ja.

MR JULY: No, they did, they did.

CHAIRPERSON: Thank you let's proceed.

ADV HULLEY SC: Thank you Mr Chair...[intervenes].

CHAIRPERSON: We are at ten past three on my watch.

ADV HULLEY SC: We're making very slow progress Mr Chair.

CHAIRPERSON: Huh?

ADV HULLEY SC: I say, we're making very slow progress.

10 **CHAIRPERSON:** Well I can tell you that in terms of what I am interested in, we've made a lot of progress.

ADV HULLEY SC: Yes, but the – in terms of the two and a half hours that I'd estimated we way beyond that.

CHAIRPERSON: Well we may be, we certainly are way beyond that but what Mr July has dealt with, since this morning, covers quite a substantial part of the matters that I have identified as matters that I'm really interested in but there may be others that you have picked up which I might not have picked up.

20 **ADV HULLEY SC:** What – I've dealt with Mr Khuba, I've dealt with Mr Sesoko, as I understand correctly, Mr Khuba felt that he was pressurised into changing the report, he hasn't identified specifically but you know that he was approached, so that deals with Mr Khuba, insofar as Mr Sesoko is concerned, he too indicated that he had not

been pressurised or that there was no instruction from Mr McBride to change the report but you're not satisfied you dismiss what Sesoko says, sorry.

MR JULY: I think you think that I made that recommendation because they were influenced by McBride, no. I'm not saying Sesoko should have been influenced by McBride I'm saying they were all participants, whether influenced or not at the end of the day you take a decision to be party to that. So, Sesoko does not need to be
10 influence, nor Khuba does have to be influenced.

ADV HULLEY SC: Ja but the only point I'm making is that between the two of them, and I've dealt with two people. I've dealt with Mr Khuba, we've parked him, I'm dealing now with Mr Sesoko, I understand that in your interview with him, he had indicated that he had not been pressurised there had been no pressure brought to bear upon him to change the report in any way by Mr McBride.

MR JULY: You remember Sesoko denied even having seen the report so he can't go – he can't even say, I was
20 not influenced by McBride to change the report, because he denies the existence of the report, he said he has never seen it.

ADV HULLEY SC: Okay let's do it slightly different.

MR JULY: Yes.

ADV HULLEY SC: Would it be fair to say, from your

interview with Mr Sesoko that he denied that Mr McBride had brought pressure to bear upon him or upon Mr Khuba to exonerate anybody, would that be fair?

MR JULY: No, no, no I don't remember anything which has to do with influence because we could not ask such a question because Sesoko – although at first he said he received a report from Khuba and made a copy and gave it to McBride, he later denied the existence of the report and from there he was consistent even the papers that he filed
10 in Court, he denied but he contradict himself because he also accept that on the 23rd of January 2014 he was given a report to prepare it for the secretariat. So, I don't recall anywhere where Sesoko will have to deny having been influenced by McBride because he didn't know...[intervenes].

ADV HULLEY SC: Not to change the report, I've changed that because of your statement to exonerate anybody, that's my question.

MR JULY: No even that one.

20 **ADV HULLEY SC:** Okay.

CHAIRPERSON: Just put the full question.

MR JULY: Even that one.

ADV HULLEY SC: So the proposition – the question at least is, was it discussed with Mr Sesoko whether Mr McBride had put pressure on, either him or Mr Khuba to

exonerate anybody for that – for him to – or to answer that question does it require him to acknowledge that the pre-existence of another report, it simply deals with whether he's required to exonerate somebody in this report?

MR JULY: No, you see, on what basis would w have asked that question if he says he doesn't know anything about the first report.

ADV HULLEY SC: Now, if I understand your testimony, and I am touching on something that I've dealt with before,
10 the essence of your complaint and why it amounts to – why the conduct might amount to defeating the ends of justice, relates to the importance of this report and the fact that it's so important that it has to be taken seriously in terms of the IPID Act, in terms of the regulations and in terms of the standard operating procedures.

MR JULY: Not only that, it's because that report is in terms of the act. Section 28, that's the core of IPID the core mandate of IPID is to produce the reports. The do the investigation they don't just investigate and say, okay we
20 have investigated, they investigate and then they must make reports and those reports will say, prosecute and if you say a person must not be prosecuted you are defeating the ends of justice if I were to find that you did something to influence that decision.

CHAIRPERSON: Just remember, Mr Hulley what I said

earlier on, that the Commission is not to assess the correctness or otherwise...[intervenes].

ADV HULLEY SC: Indeed, Mr Chair, and I'm mindful of that.

CHAIRPERSON: ... of these conclusions, actually if you like you can ask questions that are based on assuming that his report – his conclusions were wrong and ...[intervenes].

ADV HULLEY SC: We're not entirely concerned with that.

CHAIRPERSON: So if you want to approach – you can
10 approach it that way but you know the Commission is not about whether his conclusions are wrong but it's looking to see whether there is any evidence suggesting that there was some other agenda about the investigation and the report and whether they improperly enabled the – maybe for lack of a better word, harassment of persons who stood – who were against corruption and who wanted to do the right thing.

ADV HULLEY SC: Thank you Chair.

MR JULY: Could I – on that comment Chair, I know it's
20 not a question, rather a comment.

CHAIRPERSON: Yes, yes.

MR JULY: And you're making a comment, that whether our report would have been used for – or we assisted in our report to fulfil the ulterior motives of other people.

CHAIRPERSON: Yes.

MR JULY: Chair, if our report, which is based on facts is then used by somebody who has an ulterior motive...[intervenes].

CHAIRPERSON: There's nothing you can do about that.

MR JULY: That has nothing to do with us.

CHAIRPERSON: Yes, ja.

MR JULY: That has nothing to do with us.

CHAIRPERSON: Ja, ja.

ADV HULLEY SC: Of course, the argument or the answer
10 that you've given in relation to the importance of the
report, it certain is, of course it is a very important
argument that is raised in your affidavit but I must confess
I've searched through your report to look for that argument
and I don't see it in the report. That it was because of the
importance as a – from a legal perspective. Now I might
be wrong but if you'd like to refer to – well deal with that
issue.

MR JULY: The fact that I don't mention it, it doesn't mean
that we didn't consider it.

20 **ADV HULLEY SC:** Sure.

MR JULY: We may not have mentioned Section 28 but we
knew what was the common link and existence of IPID.

ADV HULLEY SC: Do you agree with me, though, that it's
not in the report itself?

MR JULY: But it doesn't change then even if you were to

mention it now, it's not going to change.

ADV HULLEY SC: In fact, what you say, if you'll look at ...[intervenes].

ADV TEMBEKA NGCUKAITOBE: Ja I just want to ask what the imputation is that is not contained in the report, I just want to make sure I understand?

CHAIRPERSON: Hmm, just repeat the question Mr Hulley because I'm also – I'm not sure if I understood the question.

10 **ADV HULLEY SC:** The argument, as I understand it, and it's an argument that is dealt with in the affidavit. I understand what Mr July is saying, is that the, defeating the ends of justice emanates from the fact that the IPID officials – official or officials have amended a report in circumstances where it doesn't express their honest belief and what he said is, that is – constitutes defeating the ends of justice because that report is so important and it's important as a matter of law. It's important because of the provisions of Section 28 of the IPID Act, it's important
20 because of the regulations and it's important because of the standard operating procedure. Those factors are all legal factors which demonstrate why that report is so important. The proposition that I'm putting is, that when I go through the Werksmans report I don't see that argument being raised here in fact there's a different reason being

given as to why it constitutes defeating the ends of justice, so that's the proposition.

CHAIRPERSON: Now that may be an important issue to raise, maybe with regard to whether the conclusions, recommendation they reached were correct or justified isn't it but the question is whether it takes us to the kind of issues we are looking at.

ADV HULLEY SC: Well I want to get onto the reasons that are given over here I just wanted to confirm that I
10 understand correctly that it's not in the report because I don't want to be unfair to the witness.

CHAIRPERSON: Yes okay.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Mr July is it in the report irrespective of whether it should have been or shouldn't have been?

MR JULY: No, Chair we would not have said, because of the importance of Section 28, no we would not have said that.

CHAIRPERSON: So, it is not?

20 **MR JULY:** Yes, we would not have said that. We would have said, of course that there is an illegal rendition, the question is, who is responsible for that illegal rendition which is an unlawful act. So, if you protect those people, whether it's because of 28 or whatever but you are defeating the ends of justice, ends of justice meaning that

people who commit unlawful act must be arrested it has nothing to do with Section 28.

CHAIRPERSON: Well you said something much earlier about – you said something that I believed to be that you were saying your investigation would – was looking at whether *prime facie* people – somebody might be guilty of criminal offence or misconduct.

MR JULY: Yes Chair.

CHAIRPERSON: Which suggests to me that if what you
10 are saying is reflected in your report and I don't know if it is but if it is, it would suggest to me that you were not saying, conclusively, they are guilty that would be left to another process. You are saying on the basis of what you have found during the investigation there seemed to be a case to answer, is that correct?

MR JULY: That's exactly...[intervenes].

CHAIRPERSON: You were not going beyond that.

MR JULY: And in addition to that Chair, this is a recommendation to the Minister of Police there should be
20 no confusion here, it's the Minister of Police, not NPA. What NPA does with the report, they must do their own investigation and decide whether they want to prosecute or not.

CHAIRPERSON: So, am I right to say, you are, therefore saying, whatever we make of your report and your

investigation we mustn't judge it and we mustn't judge you on a wrong basis and the wrong basis being as if you were required to establish conclusively whether somebody was guilty or not guilty. You say we must remember that you were required to form a *prime facie* view whether there seemed to be a case for somebody to answer, either criminally or in terms of disciplinary matters, that's what you are saying?

MR JULY: And in both instances Chair it was the case,
10 whether misconduct, people must go to disciplinary hearing, nobody was dismissed based on the report no. Nobody can be charged on the report and say, here's the evidence it's this report.

CHAIRPERSON: Yes.

MR JULY: You can't do that.

CHAIRPERSON: Yes, but you – the point that I'm clarifying with you is that, in effect, you're reminding everybody that you were not the forum that would make findings.

20 **MR JULY:** Decisions.

CHAIRPERSON: The decision, you were seeking – you were looking at everything on a *prime facie* basis.

MR JULY: *Prime facie* basis yes.

CHAIRPERSON: Yes, which could mean, once there was proper evidence or evidence led, the situation could

change.

MR JULY: It could change Chair.

CHAIRPERSON: And the people could be found not guilty.

MR JULY: Yes.

CHAIRPERSON: Ja okay.

ADV HULLEY SC: Now you, in fact, had access to several prosecutors, amongst which were Advocate George Baloyi, Advocate Mzinyathi if I recall correctly.

MR JULY: Yes.

10 **ADV HULLEY SC:** Advocate Chauke, Advocate Mosing, Advocate Jiba...[intervenes].

CHAIRPERSON: I'm sorry Mr Hulley, let's – I just want us to have an idea of how far we might be going. Is it fine if I give you 15 minutes to try and wrap up?

ADV HULLEY SC: A minimum of 30 minutes if I can just some propositions to the witness.

CHAIRPERSON: Okay, try 15 if not I'll give you a little bit...[intervenes].

20 **ADV HULLEY SC:** Thank you. Would it be fair to say that, of those Advocates, those Prosecutors who expressed an opinion on this issue, each of them made it clear that they have no regard at all to the reports insofar as they assess whether a crime has been committed or not?

MR JULY: Not even a single one of them. All what I know, I spoke to Baloyi and Baloyi makes a comment and

say, what I did, when I looked at the docket when it was sent to me, I started by just looking at the evidence and from the evidence I looked at the report and then, I was then, while looking at the report, I was then provided with another report because it would seem the second report came after and then he looked at the two reports but he says, I've already formulated a view but to say there was not a single Prosecutor who said to me, we don't even look at the reports.

10 **ADV HULLEY SC:** No, not misunderstanding, my question is, would it be correct to say that not a single Prosecutor indicated that they look at the report to determine whether a crime has been committed?

MR JULY: No, I didn't ask, I didn't ask that question.

ADV HULLEY SC: No, I think maybe we're speaking at cross-purposes I'm not asking you whether you had asked, what I'm asking you is a slightly different question. I'm asking you whether anyone had indicated to you that they considered the report in order to arrive at their conclusion
20 that a crime had been committed and I'm referring now – when I refer to the report, I refer, of course to the IPID report.

MR JULY: You must remember Chair, we were asking – different procedures does different questions for instance when we went to Chauke – we're starting with Mosing,

Mosing is because he was involved in the investigation so he would tell us everything about the investigation, that is one. So, when we go to Chauke, it's because there is a memo by Mosing to Chauke right, when we spoke – we spoke about the memo to Chauke, when we asked Chauke, now that you've received the docket, what happened with the docket. He says, I looked at the docket but I must be honest, I didn't even read it, I hand it over to Mr van Zyl and Mr van Zyl – we spoke to Mr van Zyl over the phone, 10 Mr van Zyl explained to us that, even before I look at the docket these two guys came and say they want the docket and they will bring it back, I then, gave them the docket. So those are the kinds of question in those procedures does. Nomgcobo Jiba, all what we asked was to confirm, did you receive the memo from Mosing, she confirmed the meeting with Nomgcobo did not even take five minutes, not even an hour with all these procedures that we are talking about except of course Mosing. So, we then went to Pretoria to meet with Mzinyathi and Baloyi. In that meeting 20 the issue of looking and not looking, only in the meeting where the issue of looking at the report was said but there's a context in that, he was saying, I did not look at the report first I first looked at the evidence, that's what he said.

ADV HULLEY SC: Can I ask you to turn with me to Bundle

LEA3, Chair this is part of the – this is attached to the affidavit of Mr July, if you would turn with me to page 1052. Now this is an interview or this is a transcript of an interview between yourself and Mr George Baloyi and Mr Sibongile Mzinyathi and there are a number of people that are present from Werksmans including you, including Ms Kerry Biddell, Mr Zandile Thom and Mr Kwazi Buthelezi, is that correct?

MR JULY: Yip.

10 **ADV HULLEY SC:** Now if you'll turn with me to page 1074, I'd like you read from line 15 of that particular page.

MR JULY: The one that starts with, I must say?

ADV HULLEY SC: Yes.

MR JULY: "I must say from the beginning, when I received the docket as the DPP mentioned it had this email report – no it has the email report, the second report but I never had a look at the report and I mentioned to the DPP that I might be taking a radical view, there is so much made about the first and the second report but I did not look at the reports, that's not evidence. When I read the docket, I'm looking for admissible evidence...[intervenes]".

20

ADV HULLEY SC: Now, sorry let me just change that, he says, "when I read the docket, I'm looking for admissible

evidence, these reports are not evidence”, he says.

MR JULY: Yes.

ADV HULLEY SC: So, he’s talking about, generally he says, when I read reports I do not look at – sorry when I read dockets, I do not look at reports, he goes on to say that the report itself is not evidence. Now, what you refer to as the semantic argument is actually not a semantic argument because the report itself is not evidence...[intervenes].

10 **MR JULY**: I don’t dispute that, I’ve never said a report is evidence all that I’ve said is that the report is produced in terms of Section 28 and it cannot be ignored.

ADV HULLEY SC: And the – so if you would turn with me to page 170 Bundle LEA1, this is where the Werksmans...[intervenes].

CHAIRPERSON: I’m sorry, please don’t forget your question Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair.

20 **CHAIRPERSON**: Don’t forget your question, I’m just picking up on this, don’t forget what you were looking for, also, Mr July, don’t forget what you were looking for.

MR JULY: Yes.

CHAIRPERSON: Because I’m interrupting you

MR JULY: Okay Chair.

CHAIRPERSON: You see the report is there but the – Mr

Baloyi must be right that you can't say as a prosecutor, I've made my decision on the basis of this report for – so for purposes of Court proceedings it doesn't mean anything, the report what matters is the evidence. The report may be convenient to the prosecutors in that before, maybe, you go to the statement it gives you an idea of what to expect in the statements but in the end you will go to the statements and your decision will be based on that, I think we are together on that.

10 **MR JULY**: No, there we are together.

CHAIRPERSON: Yes.

MR JULY: But this specific docket and report, it has got a history.

CHAIRPERSON: Yes.

MR JULY: When you receive this document, you are asked by the NDPP to look from the document which a history of it, it has gone to Gauteng, it comes back – it goes back to IPID, when it goes back to IPID it doesn't go back to Gauteng it goes back to the National office and then the
20 National office takes it to where it does not belong, in the first place, but is asking for recommendations. So, that is the history, so ordinarily I don't know how he operates but he says this one he looked – because he knows the history, he looked at it there's a specific reason why it's given to them and there's a reason why they don't make a decision

they make recommendation.

CHAIRPERSON: Yes.

MR JULY: Yes, but in principle I agree with you Chair.

CHAIRPERSON: Yes, yes.

MR JULY: In general, what you are saying.

CHAIRPERSON: And maybe Mr Hulley was going to that point as well.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Namely, if one accepts that it's that the
10 prosecutor will base his decision or her decision on the
statements then it seems to me that the idea of the IPID
investigator defeating the ends of justice by how he or she
summarises her report or analyses, loses more force.

MR JULY: Yes.

CHAIRPERSON: Ja okay.

ADV HULLEY SC: Thank you Mr Chair. In fact, as I was
referring you to sir at page 170 of Bundle LEA1 this, Mr
Chair is...[intervenes].

CHAIRPERSON: I'm sorry I think Mr July is looking for
20 something.

ADV HULLEY SC: Yes, I think he's trying to find LEA1, it's
the same bundle as Mr...[intervenes].

CHAIRPERSON: Somebody must help Mr July.

MR JULY: Oh, I've got it, I found it.

CHAIRPERSON: You found it?

MR JULY: I found it.

CHAIRPERSON: Okay.

ADV HULLEY SC: Thank you Mr Chair. If you would turn with me, sir to page 170 of that Bundle.

CHAIRPERSON: 1-7-0?

ADV HULLEY SC: That is correct Mr Chair, this is Exhibit Y8(A) and it's your Werksmans report. Now paragraph 5.1.7 – sorry have you got it sir?

MR JULY: Yip.

10 **ADV HULLEY SC**: You say,

“Each of the co-signatories to the second report deny effecting the deletions, we are of the view that deletion of material evidence which is likely to affect the decision of the NPA in determining or not certain individuals should be prosecuted is a criminal offence and specifically defeating the ends of justice or obstructing the administering of justice”.

20 Now you've been told by Mr Baloyi that this is not evidence, we, generally speaking I don't look at the report in order to decide whether a crime has been committed, I look at the report afterwards. In fact, what you convey in 5.7 is exactly the opposite of what Mr Baloyi has told you.

MR JULY: Can I explain that Chair.

CHAIRPERSON: Hmm hmm.

MR JULY: The same reason why that report had to be collected otherwise if those report had no influence nobody could have just left that report there because they are going to read the evidence.

CHAIRPERSON: Well it might not be – it might be a question of how we put it. I think we are all agreed that – we are agreed about certain things, one, is that it would not be proper for a prosecutor to base his or her decision, simply on a report, that’s point one. Point two there would
10 be nothing wrong if a prosecutor based his or her decision on the statements without reading the report, there’d be nothing wrong with that either.

MR JULY: Yes.

CHAIRPERSON: Three, but a prosecutor may – we would be agreed also about this, may, in addition to studying the statements also study the report okay. What I’m not sure about, and this is where you might come in, is whether one can go – okay let me put it this way. I’m not sure what else one could put in this equation, the context of this
20 remark I’m making is your statement earlier, that the NPA can’t – I think as I understood you, you must tell me if I’m wrong, can’t just ignore the report. Now – but of course if we say, as I think we have all agreed, a prosecutor who makes his or her decision on the basis of the statements without reading the report would not be doing anything

wrong. If we accept that, that necessarily means he or she can ignore the report.

MR JULY: No.

CHAIRPERSON: So, I'm saying I'm not sure that one can say it's – there's nothing wrong if he looks at the statements only and still be able to say, but he must look at the report the two are in conflict.

MR JULY: But Chair – yes, they sound mutually exclusive but they're not.

10 **CHAIRPERSON**: Ja okay.

MR JULY: They're not mutually exclusive, you're not looking at the report, as I understand, is not ignoring it at all.

CHAIRPERSON: I'm sorry?

MR JULY: By not looking at the report I don't mean that you just don't even look at all.

CHAIRPERSON: Yes.

20 **MR JULY**: You may look at it for the purposes of confirming whether your view is correct and in the same breath, that report, what he has just read, Mr Hulley, the evidence, the report itself it's not evidence but what is contained in the report might be material evidence, what you are saying. For instance, I put a statement which is said by Matalongwe, that report is not material evidence but what I'm saying about Matalongwe is material.

CHAIRPERSON: Well let's look at what the report is supposed to contain.

MR JULY: Yes.

CHAIRPERSON: To the extent that the report seeks to summarise the evidence in the statements, to the extent that the report seeks to analyse that evidence and it seeks to make a recommendation based on the summary of the statements and the analysis of the statements, it seems to me, that you would lose nothing as a prosecutor if you
10 studied the statements thoroughly and arrived at your decision, okay. It may be that when you've arrived at your decision and you have more time, you take the report, you say, oh, it was also making – it arrived at the same conclusion as me, so it's fine you know but if, in the report, you have something that doesn't seek to summarise or analyse the contents of statements but seeks to tell the NPA something else that, that might be different but then that something else, I would imagine, would not be of any legal importance if it is not evidence but if it is evidence,
20 even if it's evidence by the investigator, then it would be. So, it seems to me that we might be able to agree that insofar as the report seeks only to summarise the contents of statements and to analyse the contents of those statements and come up with a recommendation, a prosecutor who doesn't look at it but studies the

statements properly and thoroughly and makes a decision is likely to do his or her job properly but it may be that it's advisable to have a look at the report.

MR JULY: But how would the prosecutor then, Chair, comes to the conclusion that I agree or I do not agree with the report, I know that the decision is theirs but that person must be in a position to say, I don't agree with the report, how do you do that?

CHAIRPERSON: But is there a law – is there a
10 requirement that the prosecutor must indicate whether he or she agrees with the report.

MR JULY: No.

CHAIRPERSON: Because if there is no requirement, that nobody – she's not required to do that and it would seem to me, subject to what you might have to say, it would seem that the report might be helpful....

[your last paragraph below so you type up to 1.30.00]

20 **CHAIRPERSON**: ...the report might be helpful and maybe very useful to a prosecutor who decides to read it, but if a prosecutor says look I have a lot of cases, I don't have time, I will look at what really matters, I will look at the statements, and I will apply my mind properly and make my decision. As long as I make my decisions on the basis of

the statements I will be fine.

MR JULY: Yes. That Chair I understand.

CHAIRPERSON: Yes.

MR JULY: But now what do you do with the intention of the person who is preparing that report? They also know what you are saying.

CHAIRPERSON: Ja.

MR JULY: But if my intention of changing the report is to influence you.

10 **CHAIRPERSON:** Ja.

MR JULY: The fact that I did not succeed to influence you you decided to ignore the report. Does the intention go away?

CHAIRPERSON: No, no I think you are now on another – on another issue. I am not – I am on a different one. I am looking at – I am looking simple at the question of the value, the legal value of the report.

MR JULY: Yes.

20 **CHAIRPERSON:** Is it – that is what I am looking at to say what is the legal significance or the significance in law of this report? And particularly in the light of the fact that we all agree that the prosecutor needs to base his or her decision on the statement.

MR JULY: Yes.

CHAIRPERSON: If he or she has had the benefit of the

report before making the decision that is fine. But as long as her decision or his decision is based on the statements nobody could you know have a problem with that.

MR JULY: Yes. Chair you must also bear in mind that when we look at it we are looking at it not from the end of that it is not going to be read.

CHAIRPERSON: Hm.

MR JULY: We are looking at it from the intention of the person who is drafting the report.

10 **CHAIRPERSON**: Hm. Hm.

MR JULY: And I am not going to accept that a person who does not succeed in his attempts to make that influence simply because the prosecutor failed to read the report and therefore that person had no intention to defeat the ends of justice.

CHAIRPERSON: Well the – Mr Hulley you might wish to look at this and take this further. But there is the question which I raised in the morning.

MR JULY: Yes.

20 **CHAIRPERSON**: To say it seems difficult to accept that if I know that before you make your decision you will look at this file – File A. Because you must make your decision on the basis of – of what is in File A.

MR JULY: Yes. Yes.

CHAIRPERSON: If I give you File B that is supposed to be a

summary or analysis of the contents of File A and I change certain things not to be consistent with what is in File A if I know that you will start at File A it seems difficult to – to think that I would think that I will successfully influence you.

MR JULY: Yes.

CHAIRPERSON: Because I know you are going to look at this and when you look this you will see that I have – I have not given – I have not dealt with certain information.

MR JULY: We have not looked from that angle of success.

10 **CHAIRPERSON:** Yes.

MR JULY: Whether they will succeed or not. We looked at the whole conduct and the intention and we found the intention there.

CHAIRPERSON: Hm.

MR JULY: Whether what they did they believed in their minds that they were going to succeed and whether indeed they succeeded that is another issue. But at the time of changing the report otherwise there is no reason. No reason for it.

20 **CHAIRPERSON:** No I understand what you are saying but do you not say when you look at his or her – his intention that is now the investigator who does this. Do you not accept that the fact that he knows you will – before you make a decision you will look at File A and you will see exactly everything that including whatever he might not have

included in File B does seem to weaken the force of the argument that says, he had an intention to influence.

MR JULY: I accept that Chair.

CHAIRPERSON: Ja.

MR JULY: Because people who go and steal even if they know that to get access, they might be difficult.

CHAIRPERSON: Yes.

MR JULY: But they would go there in any event.

CHAIRPERSON: Yes.

10 **MR JULY**: With the hope that they are going to succeed it.

CHAIRPERSON: Ja.

MR JULY: So if they do not succeed it does not change the crime.

CHAIRPERSON: So in other words, you are saying...

MR JULY: That was the intention.

CHAIRPERSON: That they might be taking their chances.

MR JULY: They were taking chances.

CHAIRPERSON: In case the decision does not...

MR JULY: What if the other – Chairperson ...[intervenes]

20 **CHAIRPERSON**: Read the statements.

MR JULY: What if the other prosecutor did not look at the report?

CHAIRPERSON: Okay. Thank you.

MR JULY: Yes.

ADV HULLEY SC: Thank you Mr Chair. If I can move on?

CHAIRPERSON: Yes.

ADV HULLEY SC: Because we have spent much time on this.

CHAIRPERSON: Yes I see we are at six minutes to but I know Mr July – I have occupied Mr July for quite some time.

ADV HULLEY SC: If I can...

CHAIRPERSON: How much time do you think you need? I ...

ADV HULLEY SC: If I can just go through and put a series
10 propositions to Mr July?

CHAIRPERSON: Ja.

ADV HULLEY SC: He can deal with the propositions and then we could wrap up Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: As I look your report and I know that you have spent quite a bit of time analysing the first report, analysing the second report and you have almost done – you have done a table where you have mirrored the two reports against each other in order to – to demonstrate how the two
20 reports differ from each other.

MR JULY: Yes.

ADV HULLEY SC: In deciding which of the two reports is the correct report – which other report. Two reports has come to the correct conclusion understand that you – you come to the conclusion that the first report comes to the

correct conclusion on the basis of the available information, is that correct?

MR JULY: Yes.

ADV HULLEY SC: And if I understand correctly when doing that exercise you went through – you simply looked at the summary or the report itself you were not investigating or looking at that report and comparing it to what was contained in the docket.

MR JULY: Where?

10 **ADV HULLEY SC**: Were you?

MR JULY: We also looked at the docket.

CHAIRPERSON: You did?

MR JULY: We had to look at the docket.

CHAIRPERSON: Ja.

MR JULY: Chair. We were provided with the docket.

CHAIRPERSON: Ja okay.

MR JULY: So we had to look at the docket which is why we also came to the conclusion in other respects to confirm. For instance, when you delete whether the Success Report
20 where they – we will look – we will go and look that no these reports are here why is it reported that there was no Success Report? When there is physically there is a report. You go and delete where it says Success Report was sent to so and so and then you delete that part. But the Success Report when you look at them there are emails they are sent to so

and so but that part is deleted.

ADV HULLEY SC: Now what I – when I went through your – through your report one thing that struck me about the report is that the report appears to summarise you – and I am talking now about the Werksmans Report appears to summarise the first report in explaining why it is that the conclusion is correct. It does not appear to summarise the docket.

MR JULY: No, no.

10 **ADV HULLEY SC:** Am I – do I misunderstand that?

MR JULY: No, no you misunderstanding it. You need to go through the whole report.

ADV HULLEY SC: Okay.

MR JULY: You need to go through the whole report. That report summarises – we first start with what the report says. You should also remember Chair the first report and the second report that is why we come to the conclusion that there is no second report.

CHAIRPERSON: Hm.

20 **MR JULY:** In fact, what happened is the people amended the first report which they deny that it existed. Right that is what we are saying.

CHAIRPERSON: Ja.

MR JULY: So we looked at it.

CHAIRPERSON: Yes.

MR JULY: And we say what he says because remember some of the things that are in Khuba's report he repeated them when we interviewed Chairperson yes.

CHAIRPERSON: Hm. Yes well it is – it is interesting that you just use the word amended.

MR JULY: Yes.

CHAIRPERSON: Because earlier on I wanted to put to you that maybe what happened was effectively that the first report was effectively amended.

10 **MR JULY:** Ja.

CHAIRPERSON: So which sounds more acceptable to me than the alteration and so on but you must remember that in a way when you amend you alter.

MR JULY: No Chair.

CHAIRPERSON: But somehow it seems to – to sound less strange than the idea of alteration.

MR JULY: Yes.

CHAIRPERSON: Because alteration just seems to give me this physical alteration.

20 **MR JULY:** Two things.

CHAIRPERSON: Ja.

MR JULY: In fact I am using amendment in relation to the recommendations.

CHAIRPERSON: Yes.

MR JULY: Yes. But in terms of deletion of information.

CHAIRPERSON: Yes, yes.

MR JULY: That is another issue.

CHAIRPERSON: Yes.

MR JULY: When you talking about the amendment...

CHAIRPERSON: Do not speak too far from the microphone.

MR JULY: No, no when I talk about the amendment Chair I am making reference to the recommendations.

CHAIRPERSON: Yes. Yes.

MR JULY: Yes.

10 **CHAIRPERSON:** Yes. Yes.

MR JULY: But in fact the – they were deletions to justify the amendment.

CHAIRPERSON: Hm. You know sometimes how these things sound in ones ear and in one's mind is very strange because in the end when you look at – when you amend – when you amend you – you change and when you delete something in a document you effectively change in the sense that the document no longer has the same things that it had before.

20 **MR JULY:** Yes.

CHAIRPERSON: So – so...

MR JULY: But you would also want to know.

CHAIRPERSON: Now I understand you.

MR JULY: You will also want to know what is the justification for that deletion.

CHAIRPERSON: Ja. Ja.

MR JULY: Yes.

CHAIRPERSON: No that is fine ja.

ADV HULLEY SC: Now just with so far as the – if I can move over to the offences that General Dramat and General Sibiya.

MR JULY: Yes.

ADV HULLEY SC: Because obviously the allegations also that the Minister was and that is the allegation that has been
10 made by Mr McBride, Mr Sesoko and Mr Khuba.

MR JULY: Yes.

ADV HULLEY SC: That in fact there was no wrongdoing on the part of Mr Dramat – sorry General Dramat.

MR JULY: Yes.

ADV HULLEY SC: And General Sibiya and there was – the evidence did not support such a finding. And the suggestion is that by using Werksmans the Minister had in fact sought an opportunity to reinvent a case against the General Dramat and General Sibiya one that had already found by IPID to be
20 – to have been without merit. You familiar with the – with the argument? I am talking about the argument of Mr McBride, Sesoko and Khuba.

MR JULY: Oh that – that Minister wanted to use the Werksmans Report.

ADV HULLEY SC: Well wanted to Werksmans he had

appointed Werksmans in order to come up with a report that would have the effect of reinstating – if I can take you back just to give you some context. So there is this report which is dated the 22 January which makes a finding.

MR JULY: Yes, yes.

ADV HULLEY SC: And as the – as the theory goes and I am putting just theory – the theory goes that report would be sufficient if relied upon.

MR JULY: Yes.

10 **ADV HULLEY SC:** To get rid of General Dramat and General Sibiya because it comes to the conclusion they would be suspended and of course pursuant to their suspension the argument is that Mr or rather that General Ntlemeza then can then move into General Dramat's position.

MR JULY: Oh.

ADV HULLEY SC: You follow?

MR JULY: That – that we were not even interested in.

CHAIRPERSON: Yes you would not know anything about that.

20 **ADV HULLEY SC:** No, I am not saying that you are part of that.

MR JULY: No, no I am saying when we were given two reports we were not interested.

CHAIRPERSON: Ja.

MR JULY: What it is intended for.

CHAIRPERSON: And you will not have been told.

ADV HULLEY SC: Yes.

CHAIRPERSON: If there was such a purpose you would not have been told about it anyway.

MR JULY: Yes. Yes.

CHAIRPERSON: Ja.

ADV HULLEY SC: I do not want to touch upon that necessarily but the point is I am trying to give you context as to why the case against General Dramat and General Sibiya
10 was so important. And of course you come to the conclusion that there was sufficient information in the docket to show prima facie that they had committed the crime.

MR JULY: That?

ADV HULLEY SC: That they had committed several crimes. I am talking of General Dramat and General Sibiya.

MR JULY: That they did not?

ADV HULLEY SC: They had. You came to the conclusion.

MR JULY: Yes. That they had committed.

ADV HULLEY SC: Correct.

20 **MR JULY:** Oh yes.

ADV HULLEY SC: And that there was sufficient information prima facie.

MR JULY: Yes. Yes. No that is true. That is true Chair.

CHAIRPERSON: Ja.

MR JULY: That is what the conclusion that we reached.

CHAIRPERSON: Yes.

MR JULY: And you want to know why we reached that conclusion?

ADV HULLEY SC: Well I do not want to necessarily go through all of these things.

CHAIRPERSON: Yes.

ADV HULLEY SC: I want to just take you through otherwise if we were to do that we would be here for another day.

MR JULY: No but I think – no, no, no I am not talking about
10 telling you blow by blow I am saying why having said after
the analysis said Sibiya was not at Diepsloot. We did not
instead what we did we agreed with the analysis. We said
we are not going to say.

CHAIRPERSON: Yes.

MR JULY: Anything about the analysis.

CHAIRPERSON: Ja.

MR JULY: Let us accept the analysis.

CHAIRPERSON: Ja.

MR JULY: These two guys – three guys who said they saw
20 Sibiya is their own problem.

CHAIRPERSON: Ja.

MR JULY: But what we then say there is a responsibility here. There is no way that Sibiya being a head of TOMS and having agreed to provide the personnel and we have already had an evidence which is contained in the docket by Mr Leon

Verster – Ms Verster – I think it is Verster saying...

ADV HULLEY SC: It is Verster.

MR JULY: She – this Maluleke was no longer reporting to me. She – he is my subordinate but he was taking instructions from Sibiya.

CHAIRPERSON: Hm.

MR JULY: Right and we also took into account Chair the fact that they went to Zimbabwe. They come to South Africa. The evidence by Madilonga is still there. We then say but
10 the conclusion cannot be right because these people have to be held accountable. Whether they were physically that is not our issue. We said they should be accountable. Chair just to remind you rendition has been declared one of the crime against humanity. It is an international thing. We are part of the Human Rights – Declaration of Human Rights. Para declaration and all these other declarations we are part of that. And now what happened is that in terms of rendition you may not pinpoint this – they were soldiers, people who commit that. Sometimes do that because of the instructions.
20 Now how do you hold people up there who are accountable? You look at their knowledge before and after. What we know is that before it is not a coincidence that the people – the police officers now that came into the country it is because there was an understanding that there would be that assistance. Right. The second thing is now the sending of

the photos that were sent to Sibiya and they were also sent to Dramat. Right. Now we concluded that – and there is an evidence which says Dramat came to a meeting where these people were co-regulated. We considered all of that and we said because of that responsibility the position that they occupy there is no way that they did not know about this rendition. Then that is how we came to the conclusion that they should be accountable.

ADV HULLEY SC: You see the – as far as the photographs
10 are concerned the photographs were never sent just to answer a few questions that you have raised or issues that you have raised. Photographs were never actually sent to General Dramat as I understand it.

MR JULY: To the PA.

ADV HULLEY SC: They were in fact sent to his PA.

MR JULY: Yes.

ADV HULLEY SC: And as I understand it it was sent to his
PA

MR JULY: Not for his purpose.

20 **ADV HULLEY SC:** For the purpose of printing it and to give it back to ...

MR JULY: No, no.

ADV HULLEY SC: Do I misunderstand?

MR JULY: Because look now we understood it. Not – that is not how we understood it. It was not for the printing. Even

if it was for the printing why could they not print themselves? Maluleke and them. The fact of the matter we had evidence that indeed he came to the meeting but what was in dispute is what he said when he left the meeting. Whether indeed he said that meeting must not be talked about that he was there. Because there were conflicting versions there. There is one who said yes he was there but I do not know about this part where he said we must not talk about him having attended a meeting. That is the only thing. But insofar as us
10 being told not differently that he was in that meeting he knew about the presence and not only that there was a meeting of the 5th November when the operation took place on the 5th in the early hours of the morning of the 6th. So that meeting is also not disputed. What is being disputed is to analyse – the analysis then says, you do not know what was discussed in that meeting. But nobody say the Zimbabweans were not there. There is ample evidence that the Zimbabweans that operated there – they were Zimbabweans who met with Dramat in the office.

20 **CHAIRPERSON:** Tell me Mr July maybe as a matter of interest did you ever look into the question of why people in the position of General Dramat and Sibiya would have wanted to be party to an illegal extradition of Zimbabweans when otherwise they could get Home Affairs to deal with them and then they could be extradited in – in a lawful way.

MR JULY: Yes in fact Chair this issue is raised by the Zimbabweans in a meeting that they had on the 6th. They raised the issue that we have a problem with South African government.

CHAIRPERSON: Hm.

MR JULY: People who commit crime in Zimbabwe when they run to South Africa, we do not get them easy.

CHAIRPERSON: Get them back.

MR JULY: They claim political asylum. That is one. Right.
10 So we have a problem with that. Not only that Chair you will remember I am not sure with the cases that we have quoted where you were part of those judgments that we cannot even when we use extradition extradite people of Zimbabwe or Botswana to those countries if the punishment is going to be capital punishment. We would seek undertakings as this country that those people will not be sentenced to death.

CHAIRPERSON: Hm.

MR JULY: So we will never as this country extradite a person who is going to be sentenced to death that side. But
20 in this case it was an agreement to hand them over. Here is the thing what happened. Coincidentally after that meeting in September a superintendent was killed. They desperately wanted to get the superintendent. And it is stated that much in the Success Report. It is not something that we dream up. Maluleke says that in the report.

CHAIRPERSON: Okay.

MR JULY: It is not what we think. Yes.

CHAIRPERSON: Yes. Mr Hulley.

ADV HULLEY SC: Now – thank you Mr Chair. The important thing.

CHAIRPERSON: We are at ten past four.

ADV HULLEY SC: If I can just have a few more minutes just to wrap up Mr Chair.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** Just quickly to deal with some of the things.

MR JULY: Yes.

ADV HULLEY SC: And to correct some of the propositions that you might have made earlier on. It is important that you make the point now that in September of 2010 that is when the Zimbabwean superintendent was apparently killed.

MR JULY: Ja.

ADV HULLEY SC: This operation in fact took place in November and possibly in the following year of 2010 into
20 2011, correct?

MR JULY: Yes.

ADV HULLEY SC: But the meeting between Mr Dramat or General Dramat and the Zimbabwean officials was on the 6 August.

MR JULY: Was on the 6th yes.

ADV HULLEY SC: The 6th August the proposition that you have advanced is that the purpose of that meeting.

MR JULY: No.

ADV HULLEY SC: If I understood correctly you were – you were accepting the proposition that the purpose of that meeting was to get hold of Zimbabwean criminals in relation to that crime.

MR JULY: You got me wrong.

ADV HULLEY SC: Did I misunderstand you?

10 **MR JULY:** No you misunderstood me. I am saying they were talking about fugitives in general in that meeting of the 6th. It was about fugitives in general coincidentally which it so happened that the superintendent was killed in September. And in that meeting they agreed that in three months they must get together and that the person who was took from both sides two people who had appointed to coordinate this issue. So when they came here it was exactly three months based on the meeting that at the same time, they have got this superintendent who was killed.

20 **ADV HULLEY SC:** That is all you got to say?

MR JULY: No I am finished.

ADV HULLEY SC: Are you complete?

MR JULY: No I am finished.

ADV HULLEY SC: Sorry the – as I understand it the Success Report if you would turn with me to bundle LEA14.

MR JULY: Yup.

ADV HULLEY SC: The Success Report as I understand it was sent to several people, is that correct?

MR JULY: Ja it was sent to several people including Dramat that is how they do it.

ADV HULLEY SC: Yes and do you recall who the other people were that it was sent to?

MR JULY: I cannot remember.

ADV HULLEY SC: Okay.

10 **MR JULY:** I cannot recall. I cannot recall. We can go there.

ADV HULLEY SC: If you would turn with me to page – I have got it down over here as 1320.

CHAIRPERSON: At twenty five past I will stop you.

ADV HULLEY SC: Thank you Mr Chair.

MR JULY: Yup page?

ADV HULLEY SC: Just bear with me I seem to have the wrong – the wrong document. The – if you just bear with me. It is in fact in Bundle LEA13 Mr Chair.

20 **MR JULY:** 13?

ADV HULLEY SC: That is right my apologies. If I called – recall correctly that Success Report had been sent to amongst others to General Lebeya as well.

MR JULY: Hm.

ADV HULLEY SC: You recall that?

MR JULY: Page – what page are you in?

ADV HULLEY SC: I am looking for page 1329.

MR JULY: Okay we can talk about this I know. I looked at the documents.

ADV HULLEY SC: But my pagination system seems to have gone. Do not worry about that. But you will recall that it was sent to General Lebeya as well. Now my recollection is that you did not make a recommendation that General Lebeya should be charged.

10 **MR JULY:** Are you sure?

ADV HULLEY SC: And we tried to

MR JULY: Are you sure about that?

ADV HULLEY SC: That is my recollection but you correct me if I am wrong.

MR JULY: No you can yourself and read the reports that say that. Notwithstanding that Lebeya says this is how we receive – I would have written noted because that is what I do. But it does not mean that but we said he must be charged.

20 **ADV HULLEY SC:** Okay.

MR JULY: And that is a prima facie view that we have. Whether NPA charges or not.

ADV HULLEY SC: Yes.

MR JULY: It is up to them. And if they charge they must know their story.

ADV HULLEY SC: Okay. Then – and for the sake of – for the sake of speeding up this thing I am not going to go through that for the present purposes. If you – if you consider the different – the different reports for instance the photographs there was no evidence that as a fact General Lebeya – sorry General Dramat received the document and if I recall correctly there is no recommendation at all that the – that the secretary or the PA should be – should be investigated and a statement obtained further or anything to
10 that effect.

MR JULY: We can for the purposes of that document we can just remove the issue of the photographs there without recommendations stand yes. Knowledge – because all what we are saying knowledge and we state out why we said he was aware of this. That is all you had to say. We might have been wrong. That meeting which was held on the 5th and on that very same day and Leon Verster has also made an affidavit which is in the docket where he says, I came
20 back with other people from an ATM bombing somewhere around twelve midnight. When I get to the office there were cars, a lot of cars. That office that he is talking about is the office of General Dramat. So ...

ADV HULLEY SC: Sorry so what is your point?

MR JULY: So the point that I am trying to make I am answering the issue of knowledge. Knowledge is not about

photographs – not about photos.

ADV HULLEY SC: Yes. But what we are concerned with is not knowledge that an operation had been conducted.

MR JULY: Yes.

ADV HULLEY SC: But rather knowledge that the operation was an unlawful one.

MR JULY: No it was unlawful. It starts...

ADV HULLEY SC: No we are not asking whether it was unlawful. If you do not mind. We talking about whether
10 there was knowledge that it was unlawful.

MR JULY: No.

ADV HULLEY SC: That is the point I am referring to.

MR JULY: No. Chair if the operation was a lawful operation because you need first for you to be able to implicate Dramat and then you need to give the legal status of the rendition. It was unlawful. If you leave the statement of Madilonga how does Zimbabwean police get into the country was unlawful to the fold. You allow the police of Zimbabwe that you – were met – you seemed to be in a meeting on the 5th to do the
20 policing in the country in South Africa. And people get arrested and some of those people who got arrested are handed over and again the handing over happens – there is an allegation because it is confirmed by Home Affairs from Orlando Police Station that these people were moved direct from Orlando straight to Beit Bridge. Right. So all what I am

saying is the whole transaction – the whole operation was unlawful starting from the call that was made.

ADV HULLEY SC: Thank you Mr Chair. Insofar as the unlawfulness of the entry into South Africa is concerned I must confess I have never seen anybody say that before.

MR JULY: No.

ADV HULLEY SC: You seem to – and it seems to be the first time that it is being said now that there was a breach of the law just entering into the country. Just explain that to us?

10 **MR JULY:** So it is a mind-bending logic to say a person can come into the country through the call. When a person comes to this country you produce documents that I am getting in here. I have got – we are using I do not know what they use – is a passport. Yes that is all what you need. That your papers are in order. The reason why they had to enter into the manner in which they did because they did not know they must be in – they are in the country. That can be the only logical conclusion.

20 **ADV HULLEY SC:** And I must confess I do not recall seeing a recommendation that that crime had been committed.

MR JULY: No, no.

ADV HULLEY SC: Of allowing people to unlawfully enter the country. I understand about unlawfully leaving the country.

MR JULY: No.

ADV HULLEY SC: As part of the rendition.

MR JULY: Sir we did not have to say that. But we knew that you cannot get into the country by a phone call.

CHAIRPERSON: So – so – so in effect on the – on the information that you gathered during the investigation.

MR JULY: Yes.

CHAIRPERSON: It was clear to you is that what you are saying?

MR JULY: Yes Chair.

CHAIRPERSON: That the entry into South Africa.

10 **MR JULY:** Yes.

CHAIRPERSON: By the Zimbabweans.

MR JULY: Yes.

CHAIRPERSON: Was illegal.

MR JULY: Was illegal.

CHAIRPERSON: And then – and I guess once the entry was illegal the – maybe that also influenced the illegality of leaving the country.

MR JULY: That is exactly the case.

20 **CHAIRPERSON:** Because if you are going to make your departure from South Africa.

MR JULY: Yes.

CHAIRPERSON: Lawful you have got to report yourself to the authorities.

MR JULY: Exactly.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now of course there is and I say this respectfully. There is nothing in the – in any of the information – any of the statements that demonstrates that the sole basis on which they obtained entry into the country was on the basis of the phone call. The various statements as I understand it correct me if I am wrong – the various statements as I understand it are dealing with the question not of whether the person has committed the crime of unlawfully entering into the country but rather with the
10 question of the rendition and what happened – and the assaults and so forth. So what happens here and what happens going out? Nobody actually makes the point that they did not present their passports.

MR JULY: They may – the fact that we do not make that point does not mean that.

CHAIRPERSON: I am sorry the fact that?

MR JULY: The fact that we do not make that point does not mean that we did not consider the fact that you cannot get into another country by making a phone call.

20 **CHAIRPERSON:** Yes but I.....

MR JULY: We considered that issue.

CHAIRPERSON: I think maybe Mr Hulley's point is a slightly different one namely you were informed that they – a call was made to General Dramat, is that right?

MR JULY: Yes it is in the report.

CHAIRPERSON: And that after that call they were allowed to get in.

MR JULY: Yes.

CHAIRPERSON: But the question to put it differently is do you know as a matter of fact that those Zimbabweans were not in possession of the necessary documentation to enter the country lawfully?

MR JULY: The logical conclusion Chair is based that I do not know as a matter of fact that they did not have but what I
10 do know for them to get into the country it was because of a call. And I do not understand people getting into a country because they phoned someone else.

CHAIRPERSON: No that I understand. You see it is important to make a distinction if you do not know as a matter of fact.

MR JULY: Yes.

CHAIRPERSON: Whether they did have the necessary papers. Because of course you – you might recall the evidence – the details of the evidence better because it may
20 well be that entry into the country was not on the basis of the call but they did have the documentation. I am just saying it could be. But for them to make arrangements – certain arrangements it might have been necessary to phone a particular person. So – but once you say as you have said that you do not know as a matter of fact whether they had

the documentation that makes the distinction it could be that they did not have but it could be that they had or some of them had.

MR JULY: Yes.

CHAIRPERSON: Ja.

MR JULY: Chair Madilonga even goes further and talk about when they returned.

CHAIRPERSON: Ja.

MR JULY: On the 8 November.

10 **CHAIRPERSON:** Ja.

MR JULY: It is not just the entry.

CHAIRPERSON: Yes.

MR JULY: When they returned.

CHAIRPERSON: Ja.

MR JULY: When they – they called him Madilonga so he says. Right.

CHAIRPERSON: Ja.

MR JULY: So he assisted them and also he assisted Maluleke to hand over these people to the Zimbabweans
20 when they were out the sight of the border.

CHAIRPERSON: Hm.

MR JULY: So it is not just a question of...

CHAIRPERSON: In that event if they did not have the documentation it would not mean that the border authorities actually colluded with...

MR JULY: No, no.

CHAIRPERSON: With either the Zimbabweans or General Dramat to achieve the crossing of these people from South Africa to Zimbabwe without the documentation the necessary documentation.

MR JULY: Yes.

CHAIRPERSON: If they did not have the documentation.

MR JULY: Yes.

CHAIRPERSON: You agree?

10 **MR JULY:** That is...

CHAIRPERSON: In other words the border authorities.

MR JULY: Yes.

CHAIRPERSON: They were required to say produce the necessary documents.

MR JULY: Yes.

CHAIRPERSON: And these people if they nevertheless crossed the – into South Africa without such documents and out of South Africa into Zimbabwe without such documents there would have had to be some cooperation of some kind
20 from the border authorities.

MR JULY: I agree with that Chair.

CHAIRPERSON: Ja.

MR JULY: Because Madilonga remember is from that border.

CHAIRPERSON: Ja.

MR JULY: He was sort of the guy who assisted them.

CHAIRPERSON: Ja okay.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: I know I took some minutes.

ADV HULLEY SC: Not at all.

CHAIRPERSON: But we are at an end. I give you one minute to wrap up

ADV HULLEY SC: Thank you Mr Chair. So effectively the – and the reference to the email with the photographs Mr Chair
10 is at Y14[A] that is Exhibit Y14[A] it is part of Bundle LEA11.

CHAIRPERSON: Yes.

ADV HULLEY SC: And it is at page 439.

CHAIRPERSON: Yes.

ADV HULLEY SC: We can consider it separately. The – what is clear having regard to – to the different statements that were in the docket it is clear that and I am talking now about the rendition docket that the people who had implicated General Dramat and General Sibiya were

20 a. Where not in agreement even although they were – they were speaking about in some instances the same event it was clear they were speaking about the same event and at the same time they were present at the same time and yet some mentioned that there was apparently that General Sibiya was present and a participant in the assault.

MR JULY: Yes. Yes.

ADV HULLEY SC: Others mention that he was present.

MR JULY: Yes.

ADV HULLEY SC: But did not mention that he participated in the assault and others did not even mention that he was present at all.

MR JULY: Yes. Which is the reason why Chair then we did not even entertain the issue of assault. Because we concluded that no, no we do not think that we can agree with
10 anything here let us not – let us leave as if Mr – General Sibiya was not there.

CHAIRPERSON: Hm. Okay.

MR JULY: So the assault thing is not – he was not charged for assault.

CHAIRPERSON: Okay

ADV HULLEY SC: And insofar as the...

CHAIRPERSON: That was the last question.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Yes thank you. Mr Ngcukaitobi do you
20 have re-examination?

ADV NGCUKAITOBI: Yes Chair I wonder.

CHAIRPERSON: Do you have an idea how much time you need?

ADV NGCUKAITOBI: How much you would be willing to give me?

CHAIRPERSON: The – the re-examination is meant to be for clarification.

ADV NGCUKAITOBI: Yes.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI: I intend only to clarify Chair.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI: I am not going to waste time.

CHAIRPERSON: Ja okay alright.

10 **ADV NGCUKAITOBI:** But I just want to know the maximum end time.

CHAIRPERSON: Well I am hoping that you will not go beyond five.

ADV NGCUKAITOBI: Yes indeed.

CHAIRPERSON: Is that fine?

ADV NGCUKAITOBI: I definitely will not go beyond five.

CHAIRPERSON: Yes. No that is fine.

ADV NGCUKAITOBI: Thank you. Thank you.

CHAIRPERSON: You – you can do it from there I understand it is not comfortable when you are there.

20 **ADV NGCUKAITOBI:** Yes I – it is definitely not comfortable where I am standing.

CHAIRPERSON: Ja.

ADV NGCUKAITOBI: So perhaps I should then move across.

CHAIRPERSON: Yes they will sanitise.

ADV NGCUKAITOBI: Mr July I want to start by – there has been a debate between you and the Chair around whether or not the finding that you came to about the defeating or obstructing the ends of justice was a legitimate or not legitimate finding. I know the commission does not have to make a decision on that but we have to test your own assessment. The definition according to Batchel [?] and Milton of the crime of defeating the ends of justice is the following. It say:

10 “Defeating or obstructing the course of justice consists in unlawfully doing an act which is intended to defeat or obstruct and which does defeat or obstruct the due administration of justice.”

And then it continues:

“It is immaterial whether the allege conduct has merely a tendency to defeat or obstruct the course of justice or is even capable of defeating or obstructing the course of justice.”

Do you have any comment on that particularly on the last
20 past that the onus does not have to – the result does not even have to be capable.

MR JULY: Exactly. Yes. I agree – I agree with that. No I think that is exactly what I have been saying that you look at the intention.

ADV NGCUKAITOBI: Yes.

MR JULY: Of the person – the outcome is something else.

ADV NGCUKAITOBI: But also, the question of whether you are even capable.

MR JULY: Yes.

ADV NGCUKAITOBI: Thank you. Now I want to then go back to the nature of your evidence. I only have five topics Chair. The first one is on the illegality of the rendition.

CHAIRPERSON: Yes.

ADV NGCUKAITOBI: Now my understanding of the issue of
10 the illegality is that if you look at both reports both the January and the March reports of Mr Khuba. In both of those reports he came to the conclusion that the rendition was illegal.

MR JULY: Yes.

ADV NGCUKAITOBI: Even in the final report of March he still came to the conclusion that rendition was illegal.

MR JULY: Yes. Except that he says only one person.

ADV NGCUKAITOBI: No, no I understand that but the rendition itself as a practice.

20 **MR JULY:** Yes.

ADV NGCUKAITOBI: That was undertaken was found to be illegal.

MR JULY: Yes.

ADV NGCUKAITOBI: The difference was whether or not Mr Dramat and Mr Sibiya should be held liable.

MR JULY: Yes.

ADV NGCUKAITOBI: Your analysis was that on the evidence that was before him he should have concluded that they were also liable.

MR JULY: Yes.

ADV NGCUKAITOBI: On his version certainly the second version he found that they were not liable.

MR JULY: Yes.

ADV NGCUKAITOBI: Yes. Now the reasons that he has
10 cited why the rendition was an unlawful rendition. I just want to summarise them. They are contained if you want to have a look at them at page – in the first report at page 477 to 482 and in the second report at page 522 to 5 – sorry to 553 to 560. Now I want to summarise those reasons and see if you agree with them. The reason he said those were unlawful

1. Is because this was not an extradition.

MR JULY: Yes.

ADV NGCUKAITOBI:

20 2. South African had an agreement with the Zimbabwean government in relation to illegal immigrants in this country.

MR JULY: Yes.

ADV NGCUKAITOBI:

3. The officials of Home Affairs were not involved.

MR JULY: Yes.

ADV NGCUKAITOBI:

4. This amounted to kidnapping.

MR JULY: Yes.

ADV NGCUKAITOBI:

5. There was an attempt to hide what happened.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Yes. Now in the first report, he

found that the people involved in these activities included Mr

10 Dramat and Mr Sibiya.

MR JULY: Yes.

ADV NGUCKAITOBI SC: In the second report, he found it

was only Mr Maluleka.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now this is really the point of your

criticisms. It is, who was involved?

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now, if you look then at your

report. The reasons why you said Mr Dramat was involved is

20 contained at page 172. You can look at your own report.

MR JULY: Yes.

ADV NGUCKAITOBI SC: At 172, 173, 174 and 175.

MR JULY: Yes.

ADV NGUCKAITOBI SC: It is... ja, I am just... it is called

Exhibit Y8, Nkosinathi Phwayinkosi Nhleko.

MR JULY: Ja.

ADV NGUCKAITOBI SC: So the reasons why you came to the conclusions that Mr Dramat was also involved, starts at 172, 173, 174 and 175, correct?

MR JULY: Yes.

ADV NGUCKAITOBI SC: First reason, and this was debated with the evidence leader. The first reason that you give is his knowledge of the presence, in other words, the entry into the country.

10 **MR JULY:** Yes.

ADV NGUCKAITOBI SC: And that is what you gave at 531511 of your report.

MR JULY: Yes.

ADV NGUCKAITOBI SC: It is the phone call.

MR JULY: Yes.

ADV NGUCKAITOBI SC: That is the first reason. So when it is put to you that the phone call issue makes no appearance in your report that in fact is not accurate?

MR JULY: H'm.

20 **ADV NGUCKAITOBI SC:** The second reason is the 531512. There you refer to the success report.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So he knows of their presence.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Because that is the phone call but

he also knows of the success report.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Both of those two, you then summarise at 173.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And you say that if he knows of the presence and he knows of the report, he must take liability.

MR JULY: H'm.

ADV NGUCKAITOBI SC: And then, at the following page at
10 173, you explain again that he received communication during and after the commission of the rendition.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So it is not only the entry, it is also as and when the rendition is occurring which we have now established, on their own version, it was an unlawful rendition.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And then the last... not, the last. The second last reason, is when he said he congratulated
20 the members of Crime Intelligence.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Yes. And then the last one is the... at 174, where you say he wrote a statement to the acting National Commissioner of the Police.

MR JULY: H'm.

ADV NGUCKAITOBI SC: And in that statement, he also confirmed his knowledge.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now, these five elements, they all appear on objective documentation, not necessarily on word of mouth, these are objective documents presented to you. In relation to Mr Sibiya, the difference between you and the second report is that you say Mr Sibiya should held liable.

MR JULY: Ja.

10 **ADV NGUCKAITOBI SC:** Now here is where the distinction is which sometimes it felt as if it was being overlooked in your cross-examination/evidence-in-chief.

MR JULY: [No audible reply]

ADV NGUCKAITOBI SC: It is put to you that there is no evidence that Mr Sibiya was present at the crime scene.

MR JULY: [No audible reply]

ADV NGUCKAITOBI SC: You accept that there is no such evidence or at least even if it exist, you did not take it into account. Your reason ...[intervenues]

20 **CHAIRPERSON:** I am sorry. Mr July, I think you are not but there will be no record if you are nodding.

MR JULY: [laughs]

ADV NGUCKAITOBI SC: [laughs] In fact, Chair. Mr July complains that Mr Sesoko tended to nod. [laughs]

MR JULY: [laughs]

CHAIRPERSON: [laughs] So is he following suit now?

ADV NGUCKAITOBI SC: [laughs]

MR JULY: Yes.

CHAIRPERSON: You want to repeat your answer to the question.

ADV NGUCKAITOBI SC: Now let me repeat the question.

CHAIRPERSON: Or repeat the question.

ADV NGUCKAITOBI SC: Yes. Remember that what... there was a debate about where exactly does the liability from
10 Sibiya come in?

MR JULY: Yes.

ADV NGUCKAITOBI SC: One point that was put to you is about his presence at the crime scene.

MR JULY: Yes.

ADV NGUCKAITOBI SC: In other words, when the kidnapping is happening, right?

MR JULY: H'm.

ADV NGUCKAITOBI SC: Now your case is, you do not know whether he was present or not because the evidence on that
20 score is contradictory.

MR JULY: Yes.

ADV NGUCKAITOBI SC: But you did not take that into account.

MR JULY: Yes.

ADV NGUCKAITOBI SC: What you did take into account is

at 175. These are the reasons you gave.

MR JULY: Yes.

ADV NGUCKAITOBI SC: You looked at the reports to establish a *prima facie* case. And then you said he was head of TOMS Unit.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And that... this is where... it says... Sibiya stated as follows:

10 “The reality of the matter is that the operation in question was conducted under the auspices of the DPCI national head office and they requested the services of my team because of the training and capacity...”

MR JULY: Yes.

ADV NGUCKAITOBI SC: He himself acknowledges his knowledge.

MR JULY: Yes, yes.

20 **ADV NGUCKAITOBI SC:** And then he says... this revelation by Sibiya confirms his knowledge of the operation that led to the rendition of Zimbabwean nationals.

MR JULY: Yes.

ADV NGUCKAITOBI SC: He provided Tom’s Personnel to assist the DPCI to carry out the rendition.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now, did you need anything more

than his own acknowledgement of his knowledge and the fact that he seconded employees?

MR JULY: No.

ADV NGUCKAITOBI SC: Yes. Now if we sum-up where we are on this evidence is that you are faced with objective evidence of the involvement of Mr Dramat. Objective evidence of the involvement of Mr Sibiya. And that is why you have come to the conclusion that they should face the wrap.

10 **MR JULY:** Yes.

ADV NGUCKAITOBI SC: And none of these are actually disputed, even in your evidence-in-chief of what has been put to you. Now, in your report, how is this issue then dealt with? I want to move then Mr Chair to the second element of my re-examination.

CHAIRPERSON: Ja.

ADV NGUCKAITOBI SC: Which is how the writers of the second report deal with these key elements of the liability and this again is contained in your report from page 147.

20 **MR JULY:** Yes.

ADV NGUCKAITOBI SC: So the first thing they do, which is on page 147 at the top ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: ...page 34 at the bottom. The first thing they do is tampering with their recorder of the

statement of Mr Mahlongwa.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Remember that they first recorded the statement in full?

MR JULY: Yes.

ADV NGUCKAITOBI SC: And the next thing they do, they cut out, that clumsy cutting out of passages from that statement.

MR JULY: Yes.

10 **ADV NGUCKAITOBI SC:** And that you say at 147 and 148. So the portions that are cut out are the portions that implicate Mr Sibiya and Mr Dramat.

MR JULY: And Dramat. Yes.

ADV NGUCKAITOBI SC: Which we have shown on the objective evidence, that is how you concluded.

MR JULY: H'm.

ADV NGUCKAITOBI SC: And the next is at 149. If you compare on the left and the right ...[intervenes]

MR JULY: Yes.

20 **ADV NGUCKAITOBI SC:** ...you will see precisely what has been cut out.

MR JULY: Yes.

ADV NGUCKAITOBI SC: The next is at 150 on the right. You see there, when it comes to the issue of the emails, it says on the left, which is the original report, it says:

“The emails were sent to the PA of Dramat, Phumla, Zimbabwe Police and members of Crime Intelligence...”

MR JULY: H’m.

ADV NGUCKAITOBI SC: But in the portion that has now been cut out, the clumsy cutting out ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: What they say is he sent the email to the Zimbabwean Police. The person that is omitted there
10 is the PA of Mr Dramat.

MR JULY: The PA, yes.

ADV NGUCKAITOBI SC: But as an objective fact, that email was sent to the PA of Mr Dramat.

MR JULY: The PA, yes.

ADV NGUCKAITOBI SC: And then the same appears in the following section where under the underlined portions, you say:

“The letter was generated the same day indicating in August 2013. General Sibiya and General Dramat
20 went to Zimbabwe...”

If you compare that with the clumsy cutting out, the cutting out. It says:

“This letter was generated the same day, indicating the trip to Zimbabwe, to discuss matters of cooperation...”

MR JULY: Yes.

ADV NGUCKAITOBI SC: You see there the cutting out is Sibiya and Mr Dramat.

MR JULY: Yes.

ADV HULLEY SC: I am so sorry Mr Chair.

ADV NGUCKAITOBI SC: Alright. Sorry. [laughs]

ADV HULLEY SC: Obviously... sorry, I just want to raise, not an objection per se but as I understand it, my learned friend ought to be re-examine, it should be to seek clarity. I
10 am not sure if he is seeking clarity or merely reading and summarising what is contained in the report of Werksmans.

CHAIRPERSON: H'm. Okay. Well ...[intervenes]

ADV NGUCKAITOBI SC: Thank you. I will take that up.

CHAIRPERSON: Ja.

ADV NGUCKAITOBI SC: No, I will take the statement ...[intervenes]

CHAIRPERSON: Yes, the report.

ADV NGUCKAITOBI SC: ...into account. Now the same appears at page 151, 152, 153, 154. It goes on and on until
20 the last is at 158. But the theme is the same, is it not?

MR JULY: Yes.

ADV NGUCKAITOBI SC: It is taking out the evidence in the statement and then putting the evidence that removes those references. So that is what you have said in your report?

MR JULY: Yes, that is exactly right.

ADV NGUCKAITOBI SC: Now ...[intervenes]

MR JULY: Chair, can I just add?

ADV NGUCKAITOBI SC: Yes, please.

MR JULY: And say, before we were instructed in the main instruction in the legal sense not being taint ...[intervenes]

CHAIRPERSON: Ja. Ja... but, ja.

MR JULY: Not being told what to do.

CHAIRPERSON: Yes. Ja.

ADV NGUCKAITOBI SC: Yes.

10 **MR JULY:** That has to be very clear.

CHAIRPERSON: You were given the brief.

MR JULY: Because what happened is that, there were... not known to us. It is something that we picked up now. Shuman... Hermann(?) Suzman(?) from ...[indistinct] produced a similar report.

We do not know for what purpose but it is an article which was written on the 26th of February 2015. We were instructed on the 23rd of April.

20 If you look Chair in that report, it does exactly the same thing that we did but at the time we did not know that there was such an article.

CHAIRPERSON: Is that report in the bundle or is it ...[intervenes]

MR JULY: It is not in the bundle Chair.

CHAIRPERSON: Oh, okay.

MR JULY: It is not in the bundle Chair. It is something ...[intervenes]

CHAIRPERSON: Some ...[intervenes]

MR JULY: ...that we just in due course got.

CHAIRPERSON: Oh.

MR JULY: And it is a link and it talks exactly about the two reports.

CHAIRPERSON: Yes.

MR JULY: Yes.

10 **CHAIRPERSON:** If it is something you would like to make available to the Commission, you may do so, either now through your counsel or later on if you can send it to the evidence leader.

MR JULY: Yes, we will do so.

CHAIRPERSON: Ja.

ADV NGUCKAITOBI SC: Yes. Thank you, Mr Chair. If we can further go to my third topic. We have now seen the illegality of the rendition and the cutting out of names in the so-called second report.

20 **MR JULY:** H'm.

ADV NGUCKAITOBI SC: We then come to the issue. Remember there was a discussion that you had with the Chair and the evidence leader about whether or not this was consequential at all, the fact that the second report removed information from the first report. There was even a

suggestion that the report itself is not evidence.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Of course, we need to clarify this a little bit. My understanding is that a report may be evidence if it records the observations of the writer from his own personal interactions.

MR JULY: Yes.

ADV NGUCKAITOBI SC: But it may also contain secondary evidence, which is sometimes called hearsay.

10 **MR JULY:** Hearsay.

ADV NGUCKAITOBI SC: When they recording something else that was said to this.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So it is not as if a piece of paper that contains the report is always not evidence.

MR JULY: H'm.

ADV NGUCKAITOBI SC: Good.

MR JULY: I agree.

20 **ADV NGUCKAITOBI SC:** Now on... in relation to this particular report, its significance is in fact... you remember that it was put to you that you were told by Mr Baloyi or Advocate Baloyi that in general we do not look into these IPID reports.

MR JULY: H'm.

ADV NGUCKAITOBI SC: But what I want you to explain to

the Chair is the specificity of this particular report how it happened. Now I want to show you where it is dealt with. It is in the evidence of Mr Mosing ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: ...who testified before you.

MR JULY: Yes.

ADV NGUCKAITOBI SC: At... the particular paragraphs are at page 982. They start at 982, 983, 984. I want to go through those paragraphs about what he said in relation to
10 this report and why on these facts this was a consequential report.

MR JULY: Yes. 982...

ADV NGUCKAITOBI SC: 982. It is marked as Volume 2. So I do not know if that makes any difference to you? But it is the transcript of your meeting with Mr Mosing.

MR JULY: Mr Mosing. H'm.

CHAIRPERSON: Is it on the same bundle?

ADV NGUCKAITOBI SC: Yes, it is ...[intervenes]

CHAIRPERSON: In the same bundle?

20 **ADV NGUCKAITOBI SC:** ...the same bundle Chair.

CHAIRPERSON: Then if you tell me the right number. Right at the top of that page.

ADV NGUCKAITOBI SC: Yes, the number at the top is Y8NPN0982.

CHAIRPERSON: 0982?

ADV NGUCKAITOBI SC: 82. Yes, Chair.

CHAIRPERSON: Oh, that means it is page 982.

ADV NGUCKAITOBI SC: Yes.

CHAIRPERSON: No, it will not be in the same bundle that I am having. Pardon me. Do you think by listening and just noting where it is in the bundle, I should be able to find it?

ADV NGUCKAITOBI SC: Indeed Chair.

CHAIRPERSON: Ja, okay.

ADV NGUCKAITOBI SC: And I also hope to do this part
10 quite quickly.

CHAIRPERSON: Ja, okay. Proceed, ja.

ADV NGUCKAITOBI SC: Yes, thank you. Now the first thing that Ms Mosing says because he, in this portion, he asked specifically why was this report important and why were the alterations consequential. That was your question.

MR JULY: Yes.

ADV NGUCKAITOBI SC: But for him, why was this important, this report important. He says:

“Yes, they recommend...”

20 Now he is talking about the recommendation of the January 2014 report.

MR JULY: Yes, yes.

ADV NGUCKAITOBI SC:

“...but I am saying our role in the matter... we made it clear to them...”

In other words, they made... Mosing from the NPA side, they made it clear to Khuba from IPID side.

MR JULY: Yes.

ADV NGUCKAITOBI SC:

10 “...that this report is not given to me so that I can make a decision. We have submitted it to the relevant DPP office who took it and we were merely guiding that investigation and assisting them. As I said, we had continuous discussions with the investigation team...”

So at no stage did he disagree, really, as to what was happening. So the first thing I want to put to you there for your comment is that Mr Khuba knows that this report is being prepared for submission to the DPP.

MR JULY: Yes.

ADV NGUCKAITOBI SC: It is not a report that is being prepared in order to be by the way.

MR JULY: Yes.

20 **ADV NGUCKAITOBI SC:** What did the DPP do about it? This is... and then he continues. He says:

“I think there was a lot of pressure as well as to terminate the investigation to move over to arrest. We basically had to say make your investigation complete first. Make sure you have got all the evidence which, at least, indicates a *prima facie* case

so that a prosecutor can take it forward and at least is assured of getting a conviction...”

MR JULY: Yes.

ADV NGUCKAITOBI SC: Do you want to comment on this?

MR JULY: Chair, what is important about that is. Khuba claims that the first report was not the final report.

MR JULY: Yes.

ADV NGUCKAITOBI SC: But he was there in February to demand the arrest.

10 **MR JULY**: Yes.

ADV NGUCKAITOBI SC: On the basis of that report. So that is very critical because you cannot demand arrest on the basis of the so-called provision.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And or/or preliminary report or a drafted report.

MR JULY: Yes, yes.

20 **ADV NGUCKAITOBI SC**: Good. Now if you look at the following page, at 984. [Indistinct] continues given you the evidence. He says:

“Based on this report which we understood to be the final report with the investigation being final.

As far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to a prosecutor anyone or not...”

Billy Moeletsi and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, Advocate Jiba, attaching... let me just say, get to that report first of all.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And then you ask:

“You prepared the memorandum to the Deputy National Director? And I think you were looking for it...”

10 And then he continues.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So we know two things about what Mr Mosing told you. One is that Mr Khuba was told that we need this report so that we can act on it.

Number two. Mr Khuba also knows that once I submit my report, a decision would be made based on it. As a fact, what we know is that the NPA prepared a memorandum based on the recommendations and the findings and the assessments of the evidence of the report.

20 So the idea, somehow, that this report can just be prepared for fun is not found in relation to what happened here and Mr Khuba is put directly ...[indistinct] as knowing full well what will happen to his report.

MR JULY: Yes, yes.

ADV NGUCKAITOBI SC: Now...

MR JULY: Yes.

ADV NGUCKAITOBI SC: So now that is in relation to Mr Khuba. I want to move on Mr Chair to the fourth topic. Now we have dealt with the rendition and the reasons you came to the conclusion that Mr Sibiya and Mr Dramat were involved.

And the reason you criticised, it comes the cutting out and the fact that, in fact, the first report was regarded, even by Mr Khuba in discussion with Mr Mosing as final. In fact,
10 they acted upon it.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So we have covered that part. But you then continue to say that Mr McBride, Mr Sesoko and Mr Khuba should also take responsibility for that.

Now their responsibility, as I understand it, is not in relation to the rendition per se. But it is in relation to the IPID report.

MR JULY: The IPID, yes.

ADV NGUCKAITOBI SC: So first point... we have already
20 made that point, is that the IPID report was consequential because it was the basis on which a prosecutorial decision was taken.

MR JULY: Yes.

ADV NGUCKAITOBI SC: It is not as if the prosecutors ignored it. As a fact, they looked at it and they based their

memorandum on it.

MR JULY: Yes.

ADV NGUCKAITOBI SC: The seventh thing is, Mr Sesoko... I remember that there is this whole thing about what exactly was Mr Sesoko's role.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now I want to take you to evidence in relation to Mr Khuba. What Mr Khuba told you. You remember that question that Mr Khuba... I want to find the
10 Khuba testimony about how he put this whole thing to you.

Yes, I have got this. So it is... it is called here Volume 3.

MR JULY: What is the number there? What...?

ADV NGUCKAITOBI SC: It is 2291, the portion I want to refer you to.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now look at the explanation that is given to you by Mr Khuba. And I know that your evidence is that his explanation subsequently changes et cetera but let
20 us look at what he said at the interview.

So we know that Mosing has told you this is a very important report. In fact, we took a prosecutorial decision based on it.

MR JULY: Yes, yes.

ADV NGUCKAITOBI SC: 2291, in the middle at 15. 15 is on

the right. It is line 15 and it has got McBride. He says... this is where he summarises. You have asked him a question:

“If Mr McBride had not arrived, would you have changed it?”

He says:

“If Mr McBride did not join, would it have been changed? My view without even being convinced by Sesoko, I would not have changed it...”

10 **MR JULY**: Yes.

ADV NGUCKAITOBI SC: This is Khuba telling you that his view would not have changed it. Mr McBride’s presence had influenced the change. And then he continues:

“Because my understanding is that when we deal with such people, they are very senior and to get a little thing where you can point fingers at them, is not... because it means you will not get anything...”

Now the senior people he is talking about here is Mr Dramat and Mr Sibiya. He said I cannot accuse senior
20 people without evidence but here I was so confident that I could accuse them.

At page 2292...[intervenes]

ADV HULLEY SC: Mr Chair, sorry. I think we have actually... it has got to the point where I need to now object.

CHAIRPERSON: Yes.

ADV HULLEY SC: What simple been put is a series of... not only of what the information actually contained, the document is, but also my learned friend's interpretation ...[intervenes]

CHAIRPERSON: Yes. No, I was going to say Mr Nguckaitobi, put questions to the witness to clarify.

ADV NGUCKAITOBI SC: Thank you, Mr Chair. Let us go back to the last question because that seems to be the one that is causing the concern.

10 **CHAIRPERSON:** Ja.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Let us reply that question. So I have pointed out to you the portion where Mr Khuba answers. The question is: "What would have happened if it was not for Mr McBride?" And bearing in mind this answer, what is your answer?

MR JULY: H'm.

ADV NGUCKAITOBI SC: Yes, you can put in your own words, not in mine.

20 **MR JULY:** Chair, you will recall I did say this without even looking at the record that I did ask Mr Khuba would he have changed the report and he said no he would not have changed it.

ADV NGUCKAITOBI SC: And was that evidence that he gave you at the interview?

MR JULY: Yes, it was the evidence that he gave at the interview of the 13th of April 2015.

ADV NGUCKAITOBI SC: Now, do you remember also that there was the question as to how, in fact, the changes were made?

MR JULY: Yes.

ADV NGUCKAITOBI SC: Now this is dealt with at 2294.

MR JULY: Yes.

ADV NGUCKAITOBI SC: At 2294, after line 15, this is where
10 he explains how the changes happened. He says:

“The relevant ...[indistinct]

He is talking about Mr McBride:

“Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things. I was doing thing but whether that part was cut out by him or by me, I will not say but I do not remember removing it...”

And he says, “deleting it”. And then he says:

20 “No, no, no. I do not remember thinking to say I am deleting this part because I had nothing to benefit by it. In fact, it is something that would have made me feel bad to have investigation and to make me have sleepless nights, and yet, not all the things are going into that. But the way we worked on that report, I emailed it to Mr Sesoko. I do not know how Mr

Sesoko dispatched it to him...”

MR JULY: Yes.

ADV NGUCKAITOBI SC: You remember?

MR JULY: Yes, Mr Sesoko then confirms that in date, on the 4th of March 2014, he received the email from Khuba, he made a copy and then he gave it to McBride.

ADV NGUCKAITOBI SC: Yes, but in relation to the... where in the changes were made... remember, that the answer you had given in your evidence earlier was that Mr Khuba himself
10 told you that he did not know these changes were ...[intervenes]

MR JULY: No, no, no. He did. He said he did not know. The only part that he made mention of ...[indistinct] deletion, he does not know about that.

ADV NGUCKAITOBI SC: Yes, alright. But... Chair, thank you. I am now into my last topic. You will be very pleased.
[laughs]

CHAIRPERSON: Yes, yes. I am pleased. [laughs]

ADV NGUCKAITOBI SC: [laughs] Now ...[intervenes]

20 **CHAIRPERSON:** It has been a long day.

ADV NGUCKAITOBI SC: Thank you. Thank you, Chair. Now, you remember that... I want to come back now to the summary of how you concluded that a case had been made for defeating the end of justice. Now we know as a fact what the NPA did with your report because we know that from Mr

Mosing.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Yes. Now, my understanding of this... what was... what you were criticised about is that in your report you did not mention the regulations, the act and the Standard Operating Procedures. Can I ask you to look at your own terms of reference? I mean, because my understanding is that you appointed under specific terms of reference.

10 **MR JULY:** Yes.

ADV NGUCKAITOBI SC: Which is at page 11... sorry. I think it is 118 if I am not mistaken. No, one, one... yes, 118 at the top.

MR JULY: Yes. Yes.

ADV NGUCKAITOBI SC: And there are five items.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And were you asked anything there to look at regulations, standard operating procedures?

MR JULY: No.

20 **ADV NGUCKAITOBI SC:** And did you answer those terms of reference?

MR JULY: Yes, we did. In fact, we did look at all these issues.

ADV NGUCKAITOBI SC: Yes, yes, yes.

MR JULY: Yes.

ADV NGUCKAITOBI SC: So the mere fact that they are not expressly referenced, does not mean that you did not look at it?

MR JULY: No, no, no.

ADV NGUCKAITOBI SC: And then in sum, what were the reasons why you believed that a *prima facie*, on the basis of what we have looked at the definition under... in Milton and ...[indistinct] , what were the reasons for the conclusions you came to?

10 **MR JULY:** Yes. Chair, like it was indicated. It stands with the... what Mr Nguckaitobi referred to as the clumsy deletion of the information.

The second one is, it stands with the various reasons, excuses that are been given as to why the report was changed.

One. Mr McBride start by saying he does not know anything about the report but there is ample evidence to demonstrate that he knows about the report.

20 So his denial of knowledge of the report... he says, "All what I did was to do grammatical errors. I changed grammatical mistakes from the report".

But we know, Khuba does say, when we met with him. "If there is any person who read that report extensively is Mr McBride.

And we know that that report was made to him. It is

confirmed by Sesoko. It is confirmed by Khuba that he did email. He did email.

And so there is also another issue. That you ignore, deliberately ignored the regulations. You ignored the SOP which is the Standard Operating Procedure. Because it is very clear Chair, the head of investigations is director investigations.

The only people, two people who signed the report... in the absence of the director investigations, it would be the provincial head. Khuba signed as the provincial head on the
10 report.

But if you look at the witness statements that he took and he signed... or he commissioned, he signs as a Director Investigations, right.

So there was no role for Sesoko at all. It is a lie. And they come here. They tell you that Sesoko was Head of Investigation when Sesoko was a Program Manager.

If you go to SOP's, it sets out what are the functions of the executive director. What are the functions of the programme manager. You will not see any approval of the
20 report.

The legislator decided to create independence within the IPID. They are protecting... they were protective of the investigation in so... such that, they exclude the executive director because they do not want the executive director to

influence the decision.

On what basis do you sign an investigative report when you do not even conduct the investigation? It does not make sense. And so ...[intervenes]

ADV NGUCKAITOBI SC: Ja. Third last question. You remember that one of the criticisms against the firm, Werksmans, is, according to Mr McBride that you cannot as a minister ask a private law firm to investigate independent organ of state. What is your comment?

10 **MR JULY:** You see, Chair. I forgive Mr McBride. He is not a lawyer. But I have a problem with when those things have been said, led by a lawyer, then they are not challenged.

Because there are two branches of law. You have got the public law. You have got the private law. Both laws, the branches of law, they have got sub-branches.

Those sub-branches would be, you have got civil and criminal. And employment issues falls under civil. So when the minister comes to me... I am a labour lawyer and that is all that I know is labour law.

20 So when he comes to me and say, "Here is my employee..." You must recall Chair that McBride was an employee of IPID and accountable to the minister.

And the constitutional court does actually say that, that he is accountable to the minister and accountability should not be equated to interference.

When he has to account to the minister, how does the minister take a decision to discipline McBride without satisfying himself as to what is happening with the two reports?

The worse that he could have done was just to take two reports and say, "I am dismissing you on the basis of the existence of the two reports". He would have been criticised.

Now he comes to the law firm, which is Werksmans, and
10 it happened to be me at Werksmans, who does that and he then act on the basis of the advice given to him.

I never heard anything... because there was a suggestion here which I heard that we were doing criminal investigation. We cannot even if we like to do that.

There is no private law firm that can conduct a criminal investigation. For all that we did is an employer/employee relation that we were dealing with.

ADV NGUCKAITOBI SC: Second last question. We have debated the issue of the status of the IPID report. We know
20 what Mr Mosing said but Mr Khuba also did not say these reports were inconsequential.

In the affidavit which is from page... it starts at page... I will refer you to the relevant portion. It starts at page 1499. Sorry, Mr Sesoko, not Mr Khuba.

Mr Sesoko... his affidavit starts at 1499 but at 1520, he

deals with the status of the IPID reports.

MR JULY: It is 1499?

ADV NGUCKAITOBI SC: Yes, from... yes, that is where it starts but the relevant portion is 1520.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And particularly at 1521. Now here it says that the IPID reports have got two types of relevance.

MR JULY: Yes.

10 **ADV NGUCKAITOBI SC:** One is relevant to NPA. NPA is not bound, right? Nowhere does he say that NPA can disregard in the sense that they can simple not read it.

MR JULY: Yes.

ADV NGUCKAITOBI SC: And we know that in this particular instance the NPA wanted it.

MR JULY: H'm.

ADV NGUCKAITOBI SC: But I want to take you to the second relevance which is at page fourteen point... sorry, paragraph 14.6. He says:

20 “From the above, it is clear that the legislator intended that the disciplinary recommendations of IPID to SAPS are enforceable and cannot be ignored...”

MR JULY: Ja.

ADV NGUCKAITOBI SC: Now, what do you say to this?

Because your recommendation, if we look at your terms of reference ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: ...was to make disciplinary recommendations ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: ...which are employment related, as well as, civil or criminal recommendations.

MR JULY: Yes.

10 **ADV NGUCKAITOBI SC:** But on the disciplinary side, what do you say to this?

MR JULY: Chair, that is exactly what we did.

ADV NGUCKAITOBI SC: Yes.

MR JULY: We made recommendations and it was up to the minister, even from us, to say, “What do I do with these recommendations?”

ADV NGUCKAITOBI SC: Yes. No, Mr July, ...[intervenes]

MR JULY: [Indistinct] ...[intervenes]

20 **ADV NGUCKAITOBI SC:** ... I am trying to ask you about the binding nature of the IPID report to SAPS for disciplinary purposes.

MR JULY: No, the binding nature, it is binding.

ADV NGUCKAITOBI SC: Yes.

MR JULY: It is binding. When they sent a report to SAPS and a report which is signed by IPID, they have to act on

that. So if ...[intervenes]

ADV HULLEY SC: Mr Chair, if I could be of some assistance as well? I think, if I understand the evidence of Mr Sesoko correctly, what he is saying is that that first report never went to the minister.

So there was no recommendation insofar as the first report is concerned in respect of disciplinary proceedings and once can consider them.

MR JULY: H'm.

10 **ADV NGUCKAITOBI SC:** Thank you. That is appreciated.
Thank you.

CHAIRPERSON: I think the question is about the binding nature. Whether it is binding or not, hey?

ADV NGUCKAITOBI SC: Yes, precisely. Thank you, Chair.
You have got the point exactly.

CHAIRPERSON: H'm. H'm.

ADV NGUCKAITOBI SC: I want to move on Mr July. There is no need to respond to the evidence leader. But if it is binding and there has been tampering and deletion
20 ...[intervenes]

MR JULY: Yes.

ADV NGUCKAITOBI SC: ...in the sense that you have recommended or the report has made findings against Mr Sibiya and has made findings against Mr Dramat
...[intervenes]

MR JULY: Findings against...

ADV NGUCKAITOBI SC: ...what are the consequences?

MR JULY: The consequence, if you...[intervenes]

ADV HULLEY SC: Mr Chair, if I might? And I really do hate to interject. The point is that... which is what my fear was in the first place. The point is that the first report was never sent to the minister.

It was sent to the Deputy National Director of Public, or rather, to the NPA and it did not have a disciplinary
10 recommendation. That is the only point I wish to make. That is the point.

CHAIRPERSON: Okay.

ADV NGUCKAITOBI SC: It is a wholly irrelevant point.

MR JULY: H'm.

ADV NGUCKAITOBI SC: And please answer Mr July. What are the consequences of removing information which makes findings against a particular employee?

MR JULY: It is a misconduct.

ADV NGUCKAITOBI SC: Ja.

20 **MR JULY:** And it is a misconduct for which a person must be disciplined for. There must be consequences.

ADV NGUCKAITOBI SC: Final question. In the same affidavit of Mr Sesoko, he summarises why he believes that Werksmans is involved in state capture at page 1536 at... and it goes on to 1539.

MR JULY: Yes.

ADV NGUCKAITOBI SC: It starts with paragraph 17.1. There he talks about what Minister Nhleko wanted to achieve.

MR JULY: Yes.

ADV NGUCKAITOBI SC: Correct?

MR JULY: [No audible reply]

ADV NGUCKAITOBI SC: Did you have any meeting whatsoever with Mr Nhleko to discuss anything of the sort?

10 **MR JULY:** I have never met Mr Nhleko. Never met. Never spoken to him. I do not know. I know of him. We have never met with Mr Nhleko.

CHAIRPERSON: Did you just get a letter or did you get a call from his staff to appoint you?

MR JULY: No.

CHAIRPERSON: Or did you get the ...[intervenes]

MR JULY: I got the instruction that was in an envelope.

CHAIRPERSON: An envelope?

MR JULY: Yes.

20 **CHAIRPERSON:** Okay.

MR JULY: But I have never had a talk to mister ...[intervenes]

CHAIRPERSON: You have not even spoken to him?

MR JULY: Never spoken to him.

CHAIRPERSON: Yes.

MR JULY: But I must indicate Chair. Even if I spoke to Nhleko... because when you get instructions from client, you must speak to client. There is nothing wrong in speaking to client.

CHAIRPERSON: No, no. There is nothing wrong about speaking ...[intervenes]

MR JULY: But what I am not going to do is to change to facts to suit the outcome of there. What you must do when you criticise my report, you must look at the facts, not on the
10 motive of Nhleko. Assuming he had his own motive.

CHAIRPERSON: Ja.

MR JULY: I was dealing with the facts.

CHAIRPERSON: Ja, ja.

MR JULY: So it is neither here nor there, whether I have met with him but I can categorically say I have never met him.

CHAIRPERSON: Okay.

MR JULY: There was no reason in this case to even met with him.

20 **CHAIRPERSON:** Ja, you ...[intervenes]

MR JULY: They have provided us ...[intervenes]

CHAIRPERSON: A clear brief.

MR JULY: ...with a whole report.

CHAIRPERSON: Ja.

MR JULY: The docket, the two reports. It was up to us to

deal with that thing. If there was a need for anything that we wanted from Nhleko, we would have consulted with him.

CHAIRPERSON: Ja, okay.

ADV NGUCKAITOBI SC: Yes, yes. Now the criticism there is, Mr Nhleko had certain ulterior goals that he wanted to achieve. You have explained what your answer is. Now the time where your name features is at 1539, paragraph 17.7. Now this is the bullet thing why Werksmans is being accused of being involved in state capture.

10 **MR JULY:** One, five...?

ADV NGUCKAITOBI SC: 1539. That is paragraph 17.7. You are looking for the basis for why they say that Werksmans has done something wrong?

MR JULY: Yes.

ADV NGUCKAITOBI SC: This is what they say:

20 “The Werksmans report authored by July was used as a catalyse to achieve Minister Nhleko’s goal of getting rid of us and replacing us with more complying individuals. This is the ultimate end-point of state capture against Werksmans...”

What is your comment?

MR JULY: [laughs] But Chair, if Nhleko use my report or Werksmans report for his... I have been saying this thing throughout the day. For his ulterior motive that has nothing ...[intervenes]

CHAIRPERSON: You have nothing to do with those motives.

MR JULY: ...to do with us.

CHAIRPERSON: Ja, you did what you were asked to do and you ...[intervenes]

MR JULY: Yes. And again... not that I am not... I am not Nhleko's spokesperson but again if Nhleko looks for information to get rid of people and he finds it, what must he do with it?

CHAIRPERSON: H'm?

10 **ADV NGUCKAITOBI SC:** Now Mr July, my only concern is, factually, whether or not you had anything to do with the usage of your report subsequent to its production.

MR JULY: No, all that we did. We have prepared the report for the purposes of the minister. What he does with it, it is his ...[intervenes]

CHAIRPERSON: Ja, that was none of your business.

MR JULY: We were never involved after the submission of the report.

CHAIRPERSON: Ja, okay.

20 **ADV NGUCKAITOBI SC:** Chair, I want to thank you for the patience. [laughs]

CHAIRPERSON: [laughs]. No, thank you Mr Nguckaitobi. You took a reasonable amount of time.

ADV NGUCKAITOBI SC: [laughs] Thank you, Chair. That will be the end of my re-examination.

CHAIRPERSON: Thank you very much. I have got only one question arising out of this Mr July.

MR JULY: Yes.

CHAIRPERSON: I thought that during your evidence earlier, I thought had understood you to say to accept the proposition that the NPA is not bound by the IPID report such as this one but when your counsel asked you a question on the binding nature of such a report, I understood you to say it is binding. Did I understand your correctly?

10 **MR JULY:** The IPID. I am not sure if the question was in relation to the IPID or the SAPS

CHAIRPERSON: Oh, well ...[intervenes]

MR JULY: It was binding ...[intervenes]

CHAIRPERSON: Well, you can clarify. I thought he was talking about ...[intervenes]

MR JULY: No.

CHAIRPERSON: ...about an IPID report be binding.

MR JULY: It is a SAPS. It is a SAPS.

CHAIRPERSON: Yes.

20 **MR JULY:** The binding effect is in relation to the misconduct.

CHAIRPERSON: Oh, in relation to the misconduct.

MR JULY: Yes, yes.

CHAIRPERSON: Not in relation to the criminal part.

MR JULY: Not the criminal part, no.

CHAIRPERSON: Oh, okay. Okay thank you. Thank you very much Mr July for coming to give evidence. And thank you very much to your counsel and everybody. We have come to the end. It is quarter past five but I think we are done.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Thank you. On Monday, the Commission will hear evidence relating to PRASA and Judge Makhubele will be giving evidence with regard to the time she was
10 chairperson of board of PRASA.

And then for the rest of the week, I will be hearing evidence relating to... or the Free State, Tuesday up to Friday.

So I make this announcement for the public and the media about what is happening next week in the Commission. We adjourn.

ADV HULLEY SC: Thank you, Mr Chair.

INQUIRY ADJOURNS TO 3 AUGUST 2020