

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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10

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DAY 83

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PROCEEDINGS ON 15 APRIL 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair. Morning Mr McBride.

MR ROBERT JOHN McBRIDE: Morning Chair.

ADV PAUL JOSEPH PRETORIUS SC: Chair just two matters before we commence with the evidence once more. The first is we have referred in evidence to two reports, the preliminary or first report from the IPID to the NPA and the second or final report which – both of which have
10 been a matter of some controversy particularly the differences between the two.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The first report appears at page 191 that is the January 2014 report of the bundle, Exhibit Y.

CHAIRPERSON: That is Exhibit Ya.

ADV PAUL JOSEPH PRETORIUS SC: Ya yes. And the second one appears in the same bundle or same exhibit at page 227.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: The second matter that required
20 mention Chair is on Friday I said that I would consult with the witness in order to determine at what level of detail it was necessary to continue and whether matters of general import and general principle could be dealt with in such a way as to exclude debates about the rights and wrongs of the many issues raised by the witness.

CHAIRPERSON: H'm.

ADV PAUL JOSEPH PRETORIUS SC: On consideration and because there is no fixed determination made clearly by yourself yet Chair nor by the legal team as to what actually occurred and why it occurred and because of the need to hear all the evidence first and then only make an assessment as to why Law Enforcement Agencies acted as they did whether they were deliberately, actively or passively part of any state capture project that you might find to exist. It is necessary to hear the detail first and not to cut out any of the detail so that all the facts are before you when you need to make a final assessment. There are
10 various possible explanations for what occurred but first we have to show in details what did occur because what is beyond doubt Chair is that the acts or the lack of action on the part of Law Enforcement over the past ten years at least to central to the inquiry that you must make.

CHAIRPERSON: Ja no that is fine. I think we have had a number of people including some of the witnesses who have testified saying that the Law Enforcement Agencies had lost credibility and that they have no confidence in them that is why they did not report or do certain things and – and the nation might need to know whether there is a basis for that in regard to the Law Enforcement Agencies or whether
20 those beliefs and perceptions really had no basis because Law Enforcement Agencies plays such an important role in society. So we might have just – I think you are right to say let us hear all the details it might be a quite a challenge but it may be necessary if a credible determination has to be made at the end one way or another.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: So all we know for the moment is that the evidence that has been given under the rubric of Law Enforcement Agencies is critical to the terms of reference to understand what happened and why it happened and how it could be prevented from happening again. And – but in order to determine the precise nature of the role without any pre-conceptions we have to hear all the evidence in its detail sadly and you will bear with us in that regard Chair.

10 **CHAIRPERSON:** Ja no, no, no that is fine. It also – the role of Law Enforcement Agencies exactly what they did and what they did not do and to what extent they may been influenced or affected by state capture might also be relevant to the question of the levels of corruption that have happened where we are.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Because if they are not acting the way they should act in regard to corruption then corruption may have reason because...

ADV PAUL JOSEPH PRETORIUS SC: Yes

20 **CHAIRPERSON:** Of among other things the fact that they were not acting, they were not seen to be acting or people who were busy with acts of corruption knew that the Law Enforcement Agencies were not going to enforce the laws.

ADV PAUL JOSEPH PRETORIUS SC: Yes that is precisely the point and that is particular reference to 1.5 and 1.9 which directs the Chair to examine the nature and extent of corruption.

CHAIRPERSON: H'm.

ADV PAUL JOSEPH PRETORIUS SC: Across a range of state owned entities and at all levels of government.

CHAIRPERSON: Ja thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride if we could go to paragraph 43 of your statement it is on page 9 of Exhibit Ya.

MR ROBERT JOHN McBRIDE: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: We – we will deal with the
10 Werksmans Report as part of your evidence this morning in such detail as may be appropriate but before we do that you will recall at paragraph 36 of your statement you raised the issue of the failure of communications between Werksmans on the one hand and yourself on the other.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: I have been given two emails by the representative of Werksmans I presume in response to those allegations and the allegations regarding the incorrect addresses which were used as you state in paragraph 36. Chair these will be handed
20 up, copies will be made in due course and they will be included in the bundles. Just by way of background when you physically leave the offices of IPID in 2015?

MR ROBERT JOHN McBRIDE: It was the – my last day was the 24 March 2015.

ADV PAUL JOSEPH PRETORIUS SC: Prior to that any communication

addressed to you at IPID would have been received had it been correctly addressed?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The communications you referred to in paragraph 36 of your statement. When would those have occurred?

MR ROBERT JOHN McBRIDE: Well...

ADV PAUL JOSEPH PRETORIUS SC: Or not occurred because the communications were never received by you because you say incorrect
10 addresses were used?

MR ROBERT JOHN McBRIDE: These would have occurred for I was suspended because after I was suspended I would not have access to any documentation.

ADV PAUL JOSEPH PRETORIUS SC: Yes. So the two emails that were handed to the legal team are dated respectively 13 April 2015 and 2 April 2015. Just for the record would you look at them please and see if those are addressed correctly subject to of course the next question which is; were you there at all?

MR ROBERT JOHN McBRIDE: Thank you very much. Thanks Chair.
20 The one dated 13 April is directed to the acting executive director and executive assistant and they are the correct email addresses. And the one dated 2 April is addressed to me and it is a correct address of course but I am not there at this stage.

ADV PAUL JOSEPH PRETORIUS SC: Yes you were no longer there. But it is shortly after that that you actually had an interview with

Werksmans?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So the incorrect communications that you refer to in paragraph 36 would be relevant the period before you left?

MR ROBERT JOHN McBRIDE: That is correct Chair. It would have been helpful if copies of that email were sent by Werksmans.

ADV PAUL JOSEPH PRETORIUS SC: The second issue I would like to deal with before we start again with your statement you testified to a
10 press statement made by yourself in conjunction with Mr Pillay and Mr Dramat?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Would you look at the documents now being shown to you please. Chair I will again hand up a copy to you.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: It will be included in the bundle.

CHAIRPERSON: That is fine.

ADV PAUL JOSEPH PRETORIUS SC: We may deal with this at some
20 stage or we may just place it on record and deal with it in submissions or you may be recalled at some stage to detail the analysis that is begun in this article. But in this article I understand there is an analysis of the state of play within Law Enforcement Agencies the similarities in various fields of investigation or non-investigation and an analysis of the possible causes and directions that the acts of NPA are

talking?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Much of it you already mentioned in your evidence but the question asked by the Chair which I ask you now is – is this a direct recording of your statement or is it extracts including commentary by the reporter?

MR ROBERT JOHN McBRIDE: Chair is a verbatim statement that was released by the three of us. It is not commented on it is just – it is just published on this website.

10 **CHAIRPERSON:** Now is the one that we are talking about? I know that I have been given some document and the witness has been given some document. I do not know if it is the same document, do we have the same document?

ADV PAUL JOSEPH PRETORIUS SC: It is the same document Chair.

CHAIRPERSON: It is the same document.

ADV PAUL JOSEPH PRETORIUS SC: About which you raised questions earlier.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** It is there it will be paginated and included in the bundle.

CHAIRPERSON: Okay no that is fine. Ja.

ADV PAUL JOSEPH PRETORIUS SC: But just to highlight some aspects of the article. On the first page of the article the comment is made:

“The events that the Directorate for Priority Crime

Investigation DPCI or Hawks IPID the South African Revenue Service, Crime Intelligence and the SAPS, the State Security Agency, Denel and the National Prosecuting Authority are not unrelated. There appears to be a remarkable coincidence in the methods used to remove officials from these institutions and the players involved and their intersecting interests.”

Do you stand by that view?

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

ADV PAUL JOSEPH PRETORIUS SC: It continues:

“In our view a tax on individuals in these institutions are aimed at undermining the fight against corruption. A key part of all our mandates was to investigate cases of corruption. In reviewing our individual experiences over recent weeks we have discovered a convergence in the cases that we were working on.”

Do you stand by that?

20 **MR ROBERT JOHN McBRIDE**: Yes I stand by that Chair.

ADV PAUL JOSEPH PRETORIUS SC: A few lines on – well let us just continue that paragraph before we get to the next:

”

“A common thread is that cases under investigation involved individuals or entities with questionable

relationships to those in public office. Most of these cases involve state tenders of some kind that were awarded due to patronage within influential individuals in public office.”

Do you stand by that thesis?

MR ROBERT JOHN McBRIDE: Yes that is correct.

MR ROBERT JOHN McBRIDE: The next paragraph reads:

10 “The manner in which officials were removed has followed a similar pattern. Internal documents or allegations from within institutions are leaked to selected journalists working in tandem with anonymous sources, facts are distorted in the media.”

Now we dealt with that briefly last time you gave evidence on Friday but I take it and there has been and will be evidence that there were press releases in relation to the rogue unit relevant to SARS, in relation to the Cato Manor incident. Mr Booysen will testify to that and you have testified to the rendition saga that is three examples.

MR ROBERT JOHN McBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Is that correct?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then you state that it is incorrect – it is uncertain how the leaks happened. Over the page you say in paragraph 5:

“In all institutions cited here the affective top

leadership was removed and replaced. The replacements then institute far reaching structural and operational changes in the institutions.”

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In the next paragraph:

10 “But one it continues where matters have gone to court the courts have consistently found in favour of the affected officials with cost orders against their institutions only for them to be suspended again and investigated on a new slate of allegations. This was so in the matters of Robert McBride, Ivan Pillay, Peter Richer, Anwa Dramat, Shadrack Sibiya, Johan Booyesen and Glynnis Breytenbach amongst others.”

And then towards the bottom of the page the analysis continues:

20 “Corruption is the biggest threat to our constitutional democracy. This cancer has turned former comrades against each other. People who shared the same trenches in the fight for liberation are now at each other’s throats for the sake of protecting corrupt activities.”

Is this statement one you stand by and is it consistent with the analysis that the three of you engaged upon?

MR ROBERT JOHN McBRIDE: Yes indeed Chair and I would go further and say a lot of what happened in this period that we identified has continued and is still continuing.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Now of course this is a high level analysis that you together with Mr Pillay and Mr Dramat have embarked upon. It is something that the commission is investigating and will only make its own conclusions at the conclusion of all the evidence that it is to hear. Insofar as your assistance may be required or the assistance of any other witness I take you quite happy to cooperate with the commission?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: And we know that at the very
10 least Mr Dramat and Mr Booysen together with many others to give evidence in relation to the same theme of conclusions?

MR ROBERT JOHN McBRIDE: Yes indeed Chair including my own colleagues – former colleagues from IPID in particular Mr Khuba and Mr Sesoko.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Well in the end an analysis of various events that occurred and why they occurred, the way they did and why they occurred at the time that they occurred you know will be important particularly in relation to the Law Enforcement sector. I do not know
20 what I will make of this analysis at the end but I am quite interested in the analysis that was made by people who were involved in the events in one way or another at the time. So Mr Pretorius has said that you may be – you may have to be of assistance I think that it will be important at some stage that as a witness who was party to the writing of this analysis that I get the benefit of hearing how you saw things and

you be questioned on your analysis and you are able to defend it if you want to defend it and engage in a discussion of how justified that analysis is because I think it is quite important. Of course as Mr Pretorius says there may be other who – who were party to writing it the same would go for them. It would be important at some stage to look into – into those issues and – and give an opportunity to discuss the analysis and see how justified it was and you all get a chance to so to speak defend it or promote it or advance it so that at the end of the work of the commission it can be taken into account in the knowledge
10 that it is – it has been tested.

MR ROBERT JOHN McBRIDE: Thanks.

ADV PAUL JOSEPH PRETORIUS SC: Yes. And in the meanwhile we have to test the patience of the Chair and the public out there and deal with the detail.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: If we can refer then to your statement before Werksmans and the statement is contained in one of the bundles; it is bundle B I think is it? Exhibit Yb Chair. We had begun with your statement on Friday and we were busy dealing with
20 extracts from your statement before Werksmans. You raised a number of points which we have already traversed Mr McBride. And amongst those points was the propriety or lawfulness of the investigation as a whole and you have told the Chair your views in that regard. Some of – if not all of which were vindicated by the constitutional court judgment which later followed. But for the present let us just deal with page 888

of Yb.

MR ROBERT JOHN McBRIDE: Thanks Chair have it.

CHAIRPERSON: You talked about his statement did you mean the interview?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: My apologies Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: It was – this is a transcript of
10 the interview which it seems common cause as a correct transcript. Is
that correct Mr McBride?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Up to page 888 as you have told
the Chair and just to place your further evidence in context you have
raised two issues. One was the issue about communications between
yourself and Werksmans prior to your conducting this interview or
agreeing to this interview with Werksmans. The second appears on
page 888 where you say at line 8:

20 “Then also the fact that a private law company is
investigating a government investigative agency
albeit an independent one before the NPA had made
a decision.”

And then you expanded on that. Do you recall?

MR ROBERT JOHN McBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: You said:

“In essence IPID is accountable to parliament. It is a constitutionally independent organisation and disciplinary proceedings may not be initiated by the Minister and that is – that principle is dictated by your constitutional independence.”

And your further issue that you raised was:

“That this is not an official state agency of oversight making the investigation but a private company.”

MR ROBERT JOHN McBRIDE: That is correct.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Those were the issues you raised. If we can go then please to the judgment of the constitutional court to see how Acting Justice Bosielo came to his conclusions and to give an overview of the conclusions he reached in the constitutional court judgment in regard to the independence of IPID and the powers of the Minister. It is bundle C Chair, page 1301.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Exhibit Yc I should say.

CHAIRPERSON: What is the page number again?

ADV PAUL JOSEPH PRETORIUS SC: 1301.

- 20 **CHAIRPERSON:** 1301?

ADV PAUL JOSEPH PRETORIUS SC: 1301. 1301 Chair. It was a unanimous judgment of the constitutional court. The cover page is at page 1301. I do not intend to take the Chair through the whole of the judgment but to go to paragraph 8 on page 1309. Paragraph 8 read: Central to this applica – well perhaps we should just remind all

concerned of the nature of the application. It was an application in which you were the sole applicant, is that correct?

MR ROBERT JOHN McBRIDE: Yes at that stage but at the genesis it was the organisation and myself. This will become important the distinction I make now.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: About that. So it was IPID and myself.

ADV PAUL JOSEPH PRETORIUS SC: Right. And the respondents were the Minister of Police and the Minister for Public Service and
10 Administration?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Because it is not clear at all times what power the Minister was relying on, is that correct?

MR ROBERT JOHN McBRIDE: Yes that is correct and also that the Public Service and Administration regulates departments within the public service.

ADV PAUL JOSEPH PRETORIUS SC: Right. And as friend of the court amicus curiae the Helen Suzman Foundation was also a party that made submissions?

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

ADV PAUL JOSEPH PRETORIUS SC: It dealt with your challenge to your suspension, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. If we could go to paragraph 8 then. Paragraph 8 reads:

“Central to this application is a crisp question whether in the light of the applicable statutory framework IPID enjoys adequate structural and operation independence as envisaged by Section 206(6) of the Constitution to ensure that it is affectively insulated from undue political interference.”

The background then is set out in paragraphs 9 and following. Paragraph 9 is summarised or summarises some of the background. It

10 reads:

“At the time when Mr McBride took office on 3 March 2014 there was a political storm brewing over the alleged unlawful rendition of four Zimbabwean Nationals in November 2010 and January 2011. Lieutenant General Anwar Dramat the then head of the Directorate for Priority Crime Investigation and Major General Sibiya then the Provincial Head of Gauteng were allegedly implicated in these unlawful renditions.”

20 Correct?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you have stated that the investigations were first initiated under Crime Intelligence?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 10:

“IPID initiated an investigation into this matter
overseen by Advocate Mosing of the National
Prosecuting Authority assisted by
Mr Innocent Khuba the Provincial Head IPID
Limpopo. On 22 January 2014 IPID issued its first
report the January Report which concluded that
General Dramat and General Sibiya were involved
in the illegal renditions of the Zimbabweans. It
recommended that criminal charges be brought
10 against them.”

That is qualified by your evidence which says that prior to the
investigation by IPID Crime Intelligence had conducted its
investigation?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then paragraph 11:

CHAIRPERSON: I am sorry. Actually as I understood you they kind of
handed over to – Crime Intelligence handed over to IPID to say
continue?

MR ROBERT JOHN MCBRIDE: Yes Chair. I think for the purposes of
20 the judgment and the Constitutional challenge the exact details were
not brought.

CHAIRPERSON: [Intervenes].

MR ROBERT JOHN MCBRIDE: Before the court.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: And hence Judge Bosielo is raising the

issues as is evident and in front of you.

CHAIRPERSON: *Ja.* No, no that is no that is fine. I think, I think Mr Pretorius and I were not asking because we were saying this is no accurate but to say we have had the benefit of more details from you.

MR ROBERT JOHN MCBRIDE: Thank you Chair.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 11 reads:

10 “Mr Khuba explained in his affidavit that because he
regarded the January Report as provisional he
continued with his investigations. His
investigations gave birth to a second report dated
18 March 2014. The March Report which was
signed by Mr Khuba, Mr Matthews Sesoko Chief
Director IPID Investigation and Information
Management and Mr McBride. Contrary to the first
report the second report concluded that there was
no evidence implicating General Dramat and
General Sibiya in the illegal renditions of the
Zimbabweans. As a result it recommended that no
20 criminal charges be brought against them. This
report was submitted to the National Director of
Public Prosecutions for a decision on possible
prosecution on 13 April 2015.”

Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You have testified in addition to the matters dealt with by the Constitutional Court with the distinction between the report on the one hand and the statements contained in the docket or case files on the other?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: We do not need to address that again.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Although the report being the
10 March or second report differed from the first report. All the underlying evidence remained unchanged in the case file or docket?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 12:

“Faced with the glaring discrepancies in the two reports the Minister suspected serious tampering. As a result he commissioned Werksmans Attorneys to investigate the two reports. Relying on the January Report and the investigation by Werksmans the Minister invoked these powers in terms of
20 Section 66 of the IPID Act, the Public Service Act and Chapter 7 of the Senior Management Services Handbook and placed Mr McBride on precautionary suspension on 24 March 2015. Acting on the strength of Section 66(A) of the IPID Act read with the provisions governing disciplinary proceedings

under the Public Service Act and the IPID Regulations the Minister served Mr McBride with a notice to attend a disciplinary inquiry.”

And then reference is made to the High Court judgment and the findings made by the High Court which to a greater or a lesser extent were confirmed by the Constitutional Court. Paragraph 13 reads:

10 “The Minister’s actions stung Mr McBride into a defensive mode. Mr McBride instituted an urgent application before the High Court firstly for an interim interdict to restrain the Minister from suspending him and secondly for an order declaring certain sections of the IPID Act.”

Well let me read directly.

“Section 63(A) and Section 66 of the IPID Act, Regulation 13 of the IPID Regulations, Sections 16A(1), 16B, 17(1) and (2) of the Public Service Act only insofar as they apply to the Executive Director of IPD.”

And I am going to elide the quote a little.

20 “Certain paragraphs of the SMS Handbook declaring them constitutionally invalid and setting them aside. In addition Mr McBride sought an order to review and set aside the decision by the Minister to suspend him as the Executive Director of IPID and to institute disciplinary proceedings against him.

The Minister then opposed the application.”

Paragraph 15 if we can skip a few – at least one paragraph.

“The High Court found that the independence of IPID is expressly guaranteed and protected guaranteed and protected under 206(6) of the Constitution which is significant and decisive.”

That is a quote from the – the words significant and decisive are a quote from the High Court judgment.

10 “Furthermore the High Court reason that given that IPID performs overlapping anti-corruption functions with the DPCI – that is the Hawks – it must be afforded at least the equivalent protections that the Constitution requires for DPCI. In Glenister – that is another judgment of the Constitutional Court – Glenister II this court found that the independence of the DPCI was an implicit constitutional requirement flowing from Section 2 of the Constitution and the threat to South Africa posed by endemic corruption.”

20 **CHAIRPERSON:** I think Section 7(2) Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: I am sorry Chair.

CHAIRPERSON: I think you read Section 2 flowing from Section 2.

ADV PAUL JOSEPH PRETORIUS SC: Did I? It is Section 7(2). I am sorry Chair.

CHAIRPERSON: *Ja*. Section 7(2), *ja*.

ADV PAUL JOSEPH PRETORIUS SC: “The High Court found that inasmuch as the DPCI is independent despite there being no expressed constitutional infringement of its independence by parity of reasoning “the effect of the constitutional infringement of the independence of IPID is that the operational and structural independence of IPID must be at least as strongly protected as that of the DPCI.””

10 Do you see that?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You have given evidence Mr McBride of a range of incidence and occurrences which the legal team will consider and your contention is that on several fronts the independence of IPID was interfered with both in respect of investigations of IPID and in respect of proceedings instituted against yourself and other officers of IPID. Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And that was the basis upon
20 which you went to the Constitutional Court?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Specifically in this case in relation to disciplinary proceedings?

MR ROBERT JOHN MCBRIDE: That is correct. Against in particular myself.

ADV PAUL JOSEPH PRETORIUS SC: Then paragraph 16 reads:

“The High Court went further to hold that IPIDs constitutionally guaranteed independence requires more stringent protection. This is because unlike the DPCI which is situated within SAPS – the South African Police Services – IPID is institutionally and functionally independent from SAPS.”

And then at the end of paragraph 16 the Constitutional Court makes the following further comment on the High Court judgment.

10 “In this regard the High Court held that IPIDs oversight role over the DPCI would be compromised and might create room for political interference to seep through and render the DPCIs independence nugatory.”

It appears that the observation made by the High Court quoted by or referred to by the Constitutional Court was that the independence of IPID on the hand and the Hawks on the other are interrelated and functionally both need to be protected in order to guarantee the constitutional independence of each of them. Is that correct?

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

ADV PAUL JOSEPH PRETORIUS SC: And then paragraph 17: crucially the High Court held that the various sections of the various pieces of legislation I have referred to are inconsistent with Section 206(6) of the Constitution in particular and I quote once more:

“This was based on the fact that the impugned

sections do not provide for parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director and that they afford the Minister unilateral powers and the sole discretion to terminate the Executive Directors tenure.”

Apart from the more general observations that is a narrow issue considered by the Constitutional Court. Then if we can move to paragraph 24 where the Constitutional Court made the following remarks:

10 “IPID is an independence police complaints body established in terms of Section 206(6) of the Constitution. Section 4(1) of the IPID Act requires it to function independently of the South African Police Services. This is to ensure that IPID is able to investigate cases or complaints against the police without any fear, favour or prejudice or undue external influence. Section 4(2) of the IPID Act requires that each organ of state assist the Directorate to maintain its impartiality and to

20 perform its functions affectively. Importantly Section 2 of the IPID Act requires IPID to play an oversight role over SAPS and municipal police services. Given the nature, scope and importance of the role played by police in preventing combatting and investigating crime IPIDs oversight

role is of cardinal importance. This is aimed at ensuring accountability and transparency by SAPS and the municipal police services in accordance with the principles of the Constitution.”

MR ROBERT JOHN MCBRIDE: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And your evidence if it is to be summarised in a single concept is that that independence was on a number of occasions testified to by you. It did not occur?

MR ROBERT JOHN MCBRIDE: That is correct yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Then if we can go through to paragraph 39 please? The Constitutional Court remarks here:

“To subject the Executive Director of IPID which the Constitution demands to be independent to the laws governing the Public Service to the extent that they empower the Minister to unilaterally and interfere with the Executive Director’s tenure is subversive of IPID’s institutional and functional independence as it turns the Executive Director into a public servant subject to the political control of the Minister.”

20 Paragraphs 40 and 41 which I intend also to read onto the record expand upon this point. Paragraph 40 reads:

“Without adequate independence, it would be easy for the Minister to usurp the power of the Executive Director under the guise of exercising political accountability or oversight over IPID in terms of

Section 206(1) of the Constitution. In this case acting unilaterally the Minister invoked the provisions of Section 16A(1) of the Public Service Act and placed Mr McBride on suspension and instituted disciplinary proceedings against him. Undoubtedly such conduct has the potential to expose IPID to constitutionally impermissible executive or political control. That action is not consonant with the notion of the operational
 10 autonomy of IPID as an institution. Put claiming it is inconsistent with Section 206(6) of the Constitution. It follows that it is invalid and must be set aside.”

It may be and we will address this issue and it may be rather an obvious conclusion to draw that the Werksmans investigation which we are dealing with at present fell within the ambit of those suspension and disciplinary proceedings and should accordingly also be disregarded for the purposes of obeying the constitutional independence precepts of the Constitution.

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

ADV PAUL JOSEPH PRETORIUS SC: And that was the point you raised?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 41 reads:

“All this should be seen against the extensive

powers IPID has to investigate the police. Section 28 of the IPID Act authorises the Directorate to investigate a whole variety of matters.”

They are then mentioned. You have testified to those in your evidence.

It continues further down:

10 “Section 28(1)(g) authorises the Directorate to investigate corruption within the police while Section 28(2) empowers the Directorate to investigate systemic corruption within the police force. There have in recent years been alleged instances of police brutality and killings perpetrated against civilians. Undoubtedly these are very serious matters which affect the public. Naturally the public has a direct interest in seeing these matters being vigorously pursued and properly investigated. IPID has given this responsibility. It is cast in the role of a watchdog over the police. It is therefore necessary to its credibility and the public confidence that it be not only independent

20 but that it must also be seen to be independent to undertake this daunting task without any interference actual or perceived by the Minister.”

Then if I may go finally to paragraph 43 Mr McBride. It reads:

“To my mind the accumulative effect of the impugned sections has the potential to diminish the

confidence the public should have in IPID as the *amicus curiae* emphasised in its submissions both the independence and the appearance of an independent IPID are central to this matter. The manner in which the Minister dealt with Mr McBride demonstrates without doubt how invasive the Minister's powers are. What exacerbates the situation is that he acted unilaterally. This destroys the very confidence which the public should have that IPID will be able without undue political interference to investigate complaints against the police fearlessly and without favour or bias. IPID must therefore not only be independent but must be seen to be so. Without enjoying the confidence of the public IPID will not be able to function effectively as the public might be disinclined or reluctant to report their cases to it."

The conclusion is based on the above exposition and this is paragraph 44. I conclude that:

"The impugned sections do not pass constitutional muster. It follows that the order of constitutional and invalidity by the High Court must be confirmed."

And then as a result of that analysis in paragraph 58 certain sections of the various statutory provisions or statutes were declared invalid. Paragraph 4 on page 1329 of EXHIBIT YC reads:

“It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.”

And paragraph 6 reads:

“It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride which was to commence on
10 21 May 2015 is invalid and is set aside.”

That was the outcome of the judgment. So insofar as the disciplinary proceedings instituted as the consequence of a decision by the Minister – the relevant Minister were set aside that would inevitably cast a shadow over the part of the investigations leading up to your recommended dismissal conducted by Werksmans at the instance of the Minister.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that your understanding of the matter?

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

ADV PAUL JOSEPH PRETORIUS SC: If we can then return then to your statement or rather the transcript of your interview before Werksmans. You say - it is recorded that you say in the paragraph at the bottom of page 888 and we are back now (advocate moves away from mic).

CHAIRPERSON: Yes, I have got it.

ADV PAUL JOSEPH PRETORIUS SC: On page 888 of the transcript you are recorded as having said:

“On my appointment I had asked for a briefing on all high profile cases including the matter of Sibiya and Dramat, the rendition saga.”

You see that?

MR ROBERT JOHN MCBRIDE: That is correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: You explain that to Werksmans,
10 Mr July as you have already testified to the Chair. Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: At the bottom of page 889 you and because these are your words perhaps you should place them on record. What did you tell Werksmans concerning the investigation by Crime Intelligence? If you could just read the first few lines of the last paragraph on page 889 of EXHIBIT YB.

MR ROBERT JOHN MCBRIDE: The second issue.

ADV PAUL JOSEPH PRETORIUS SC: No, the first issue.

MR ROBERT JOHN MCBRIDE: Okay.

20 “My issue in the briefing...”

And I cannot remember the exact sequence of events.

“...was firstly Crime Intelligence was involved in the case from the beginning. [Intervenes].”

ADV PAUL JOSEPH PRETORIUS SC: The second issue you raised.

MR ROBERT JOHN MCBRIDE: “The second issue was that

my predecessor acting Ms Mbeki had told Khuba –
Mr Khuba just report directly to me. Do not report
to.”

ADV PAUL JOSEPH PRETORIUS SC: Do not report to.

MR ROBERT JOHN MCBRIDE: And.

ADV PAUL JOSEPH PRETORIUS SC: There is a word missing. What
would that word be?

MR ROBERT JOHN MCBRIDE: Sesoko.

ADV PAUL JOSEPH PRETORIUS SC: Right and then at line five you
10 make certain further remarks.

MR ROBERT JOHN MCBRIDE: “So for me already
independence in the investigation was compromised
the way it had been said. In other words bypassed
ahead of investigations. Those were my issues
immediately that was my concern.”

ADV PAUL JOSEPH PRETORIUS SC: So right at the outset it appears
you raised two issues before Werksmans. The one was the general
complaint really a constitutional issue as it turned out.

MR ROBERT JOHN MCBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** That the Minister should initiate
these proceedings against you at least further to the extent of
employing a private law firm – Werksmans – to conduct the
investigation.

MR ROBERT JOHN MCBRIDE: Thanks Chair and also just to say in the
interview with Mr July I am reporting on my first meeting with Mr Khuba

and the immediate concerns that I raised with him when being brought up to date with the circumstances in which this case arrived at IPID.

ADV PAUL JOSEPH PRETORIUS SC: Right. So not only are you raising the – let us put it – the external concern that the Minister had initiated this whole process.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And we have dealt with the Constitutional Court judgment in that respect but also the receipt by you of issues that concerned you about the internal independence of
10 the whole investigative process not only the fact that Crime Intelligence had conducted the investigation as we know into its own members and, but secondly that even within IPID the independence of the investigation seemed to be compromised. All those issues were placed before Werksmans?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And what you are also saying to Werksmans as I understand it is that when you asked for your report and you received the report on your assumption of office these matters were related to you and they were of some concern to you about the
20 proprietary of the whole investigation that led to the issuing of what may be termed the first report. Am I correct? That is the remark you have just made.

MR ROBERT JOHN MCBRIDE: Yes. That is my, my concerns about how the document reads, the docket reads. IPID, how it was prepared by Crime Intelligence and the involvement of Crime Intelligence and the

exclusion of the National Head of Investigations and sinister secrecy attached to what was expected of Mr Khuba which Mr Khuba raised also with me initially that he himself was concerned but was put under undue pressure.

ADV PAUL JOSEPH PRETORIUS SC: Then you raised a further issue at the top of page 890. Would you place that on record please? From line 2.

MR ROBERT JOHN MCBRIDE: Yes.

“This is what I was told. Then also that...”

10 **ADV PAUL JOSEPH PRETORIUS SC:** By Khuba?

MR ROBERT JOHN MCBRIDE: Yes. That is right sir.

“Then also that he must work with the Crime Intelligence guy and the Crime Intelligence guy also linked him up with Advocate Mosing. So for me already independent investigation was compromised the way it had been said. In other words bypassed the Head of Investigations. Those are my issues immediately. That was my concern.”

ADV PAUL JOSEPH PRETORIUS SC: Continue then at line 10.

20 **MR ROBERT JOHN MCBRIDE:** “I was also concerned because it became apparent that Crime Intelligence operatives were involved in the arrest of the Zimbabweans themselves. They were also involved in the illegal repatriation. Those are my concerns. Then I questioned because there were many people

involved who was involved at what stage in this crime that you mentioned to me and to what extent. I also asked what crime has been committed by who and who was involved in it. What are the elements of that crime? That is what it was. Basically that is what it was.”

ADV PAUL JOSEPH PRETORIUS SC: Just before you go on it appears as we have already remarked to the Chair that Crime Intelligence were in effect investigating their own members?

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

ADV PAUL JOSEPH PRETORIUS SC: Have any of the members of Crime Intelligence being arrested?

MR ROBERT JOHN MCBRIDE: They have been arrested prior to this incident.

ADV PAUL JOSEPH PRETORIUS SC: By whom?

MR ROBERT JOHN MCBRIDE: By some of those making statements which were brought to IPID had been arrested by General Sibiya on a previous occasion when General Mdluli was appearing in court subsequent to having been arrested by General Sibiya. General Sibiya
20 and his team then arrested some of the same Crime Intelligence people who were dressed in plain clothes and were putting the DPCI Team under surveillance and they were then approached by General Sibiya and his team and were arrested on suspicion of about to commit a crime.

ADV PAUL JOSEPH PRETORIUS SC: Right. So against the

background of what you were told by Mr Khuba in relation to the independence in various respects of the whole investigation relating to the rendition or saga and your concerns about the independence of the IPID investigation and the propriety of the investigation you then say to Werksmans you decided to go back to square one as we said last week and deal with the essential elements of any crime that might have been committed to do two things, one to review the whole investigation to date, arising from your concerns, and two, to complete the investigations by reference to further evidence including an analysis of
10 the cell phone data, is that what you in effect told Werksmans?

MR ROBERT JOHN McBRIDE: Yes I also indicated to them, I'm not sure where it is in the transcript that I had asked that Cecil could be involved in all aspects of the supervision of the review and completion.

ADV PAUL JOSEPH PRETORIUS SC: Then if you go to page 891 at line 4 what did you tell Werksmans there?

MR ROBERT JOHN McBRIDE: 891 we were dealing with the General Piyaga matter, and on this matter of the Hawks Rendition and Crime Intelligence, if my memory serves me correctly there was some outstanding statements or warning statements at the stage when they
20 spoke to me. If I'm not mistaken it could be Sibiya's warning statement.

ADV PAUL JOSEPH PRETORIUS SC: And then against line 15 you are asked a question by Mr July, what was that question?

MR ROBERT JOHN McBRIDE: He says can I also clarify this, in that meeting did Khuba indicate to you that on the 22nd of January I

submitted the report to the NPA.

ADV PAUL JOSEPH PRETORIUS SC: And your answer?

MR ROBERT JOHN McBRIDE: I answered as follows:

“No, no, no, no what he did tell me was that he was in discussions with Advocate Mosing.”

No he didn't tell me and I don't think he would have, and I don't want to think on his behalf because the investigation was not complete as there were outstanding statements. In face I think there was a statement from Jenny Irish Koboshiyane in that thing. I can't remember the
10 context of it ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: You don't have to go on because that's not entirely central to the questions that we need to deal with. At the bottom of page 892 you make a remark concerning your knowledge, at least at the time about whether you would see each and every report or whether the Executive Director would see each and every report that goes through to the NPA, would you just explain the position then, I'm referring to your statement at line 22.

MR ROBERT JOHN McBRIDE: Chair if I can just go back to the previous one, I am already expressing to Mr July the absurdity of
20 placing reliance on a preliminary report when there are still outstanding statements and other evidence to be included in the docket. In that 891 in the way I answer there, it's – that's why I'm actually giving him a long explanation, it was already obvious that the fact that there was an existence of another report and that it was changed removed the basic common sense from all those who had been involved in it, in

investigating this investigation, that actually everything that had taken place was lawful and that the changes that were later made in the report did not affect the evidence in its totality in the docket, but there seems to be an obsession with the existence, the mere existence of another previous preliminary report. It was for me – and it blinded people from seeing that actually of that was in order and that the additional evidence had to be put in.

Basic issues even myself not as a lawyer know that all evidence has to be considered in its totality, and other people who are
10 lawyers were just missing it.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You – what is the position with reports, is it true that on occasion Provincial Heads in IPID would send reports directly to the NPA without them going past you?

MR ROBERT JOHN McBRIDE: Chair often they don't – they wouldn't even reach Mr Khuba because the Provincial Heads within the Province are appointed there precisely to engage with the NPA in completion of investigations and the regulations and the SOP's I can't remember ... (intervention)

20 **ADV PAUL JOSEPH PRETORIUS SC:** Standard Operating Procedures?

MR ROBERT JOHN McBRIDE: Procedures yes, which one specifically deals with this, but Provincial Heads must then submit to the NPA.

ADV PAUL JOSEPH PRETORIUS SC: But how does that then gel with the statutory requirements that the Executive Director must sign

reports. It seems that there's a mismatch there.

MR ROBERT JOHN McBRIDE: Ja, the issues relates to when it's an investigation driven from the National Office, then the appropriate person to send it to the NPA would be me, in terms of the regulations and part of the Act, and if it involves more than one province as was the situation in this case.

ADV PAUL JOSEPH PRETORIUS SC: I must say I didn't when we dealt with the statutory requirements didn't understand the statutory, to make that distinction between Provincial and National Report, it
10 seemed to be a blanket provision that all reports to the NPA and I presume that means final decisive reports, must go through the Executive Director, that's as I read the statute, but perhaps I'm wrong and perhaps you can correct me.

MR ROBERT JOHN McBRIDE: Yes the issue says the Provincial Head or the Executive Director, as the case might be, that's the legislation in the Act, or it's – Regulation 5 ja, it mentions both.

ADV PAUL JOSEPH PRETORIUS SC: We will just check that. Then on page 893 you deal with further material before Werksmans in regard to your knowledge of what reports provisional or otherwise had gone
20 through to the NPA and at line 5 ...(intervention)

CHAIRPERSON: I'm sorry Mr Pretorius I don't know whether maybe it might be worthwhile just mentioning what the statute says in regard to that issue because at least Section 7(4) to the extent that that is the provision we are talking about, it doesn't also refer to a report, it simply says the Executive Director must refer criminal offences

revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such a referral. Would that be the provision that we are talking about when we talk about the requirement that the Executive Director is the one who must refer matters to the NPA, or that would be another one?

MR ROBERT JOHN McBRIDE: Chair indeed it is that provision that is within the Act and the relevant regulation.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: And the Standard Operating Procedure
10 read together so there's a specific one dealing with that.

CHAIRPERSON: Including reports, talking about reports for example in terms of the regulations or that's where reference to reports might be.

MR ROBERT JOHN McBRIDE: That's correct Chair, on my first day of testimony we covered it, and I read it out that provision which deals with.

CHAIRPERSON: Okay, okay.

MR ROBERT JOHN McBRIDE: And also to understand the practicality of every report come through the Executive Director, it will be a bottle neck.

20 **CHAIRPERSON**: Ja.

MR ROBERT JOHN McBRIDE: And hence that's why the Provinces deal with the relevant DPP.

ADV PAUL JOSEPH PRETORIUS SC: How many reports approximately per year would the IPID transfer to the NPA?

MR ROBERT JOHN McBRIDE: It would be thousands Chair, it would

be thousands.

ADV PAUL JOSEPH PRETORIUS SC: Alright but the overall duty to refer or to ensure that referral takes place I suppose possible to read into 74 is that of the Executive Director?

MR ROBERT JOHN McBRIDE: Yes correct. In fact if I can just clarify, the Werksmans' report for whatever it's worth, extracts that particular provision that it, I think it's a Regulation 3 (5)(i) in the report which deals with this aspect.

CHAIRPERSON: Okay.

10 **MR ROBERT JOHN McBRIDE:** Ja, so we dealt with it on my first day of testimony.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: And the regulations which appear at page 62 talk of the investigation of criminal matters, that's 62 of Exhibit YH. The investigation must be done in accordance with regulation 5, the Executive Director or the relevant Provincial Head must designate an inspector and then regulation 4(e) reads:

20 "If the Executive Director or relevant Provincial Head as the case may be determines that a full investigation is warranted the investigator must as soon as is practicable but within 24 hours after determination ..."

And then I go to (e):

"after collecting all evidence, statements, technical and expert reports..."

And I stress

“after collecting all evidence, statements, technical and expert reports if applicable submit a final report on the investigation to the Executive Director or the relevant Provincial Head as the case may be containing recommendations regarding further action which may include disciplinary measures or criminal prosecution of a member.”

So it appears that as far as the regulations are concerned the Provincial Head may act in addition to the Executive Director being obliged to submit referrals in terms of the legislation.

10 **MR ROBERT JOHN McBRIDE:** And that would be specifically with offences committed within that specific Province.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: It's not clarified like that but it's taken, that's the purpose of the Provincial Head.

ADV PAUL JOSEPH PRETORIUS SC: In any event quite separately from that you were making two points to Werksmans, in fact in accordance with your evidence more but the two principal points for the moment were that you weren't aware of an original or provincial report?

MR ROBERT JOHN McBRIDE: At that stage?

20 **ADV PAUL JOSEPH PRETORIUS SC:** At that stage.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So you became aware later.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The second point you make is that at the time you received your report from Khuba in January of 2014

you were satisfied that the investigation was not complete.

MR ROBERT JOHN McBRIDE: Just ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: You ordered a review and the procurement of further evidence?

MR ROBERT JOHN McBRIDE: Ja, that was in March upon my arrival, in March 2014.

ADV PAUL JOSEPH PRETORIUS SC: Sorry March 2014, that was when the report was made, my error. Then in paragraph, well the first paragraph on page 893 from line 5 what did you say to Werksmans?

10 **MR ROBERT JOHN McBRIDE:** So I'm doing this interview with Werksmans in 2015, 17th of April and I say to them at this stage what I know is there's one report I have seen which I have signed, the only issue on that report was that it was badly written, there was spelling errors, grammar and stuff like that, there were no other issues.

ADV PAUL JOSEPH PRETORIUS SC: And then the question put to you at line 14 what was that question?

MR ROBERT JOHN McBRIDE: This is Mr July?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE:

20 "Let's make this supposition, if you knew about the existence of the report which had been given to the NPA would you have asked for that report which had gone to the NPA?"

My response:

"Well the investigation was not completed."

That was my impression, if you recall from the papers we had briefed

Minister Ntsetwa on the status of various of these high profile cases, it was just a status report and it was soon afterwards, I think I indicated it in that report that these cases were in the process of being finalised. It's in that information note that you will see, just as my memory serves me now, as you ask me questions I am being reminded, therefore the investigation was not complete because in the info note I mentioned that the investigations were in the process of being completed.

ADV PAUL JOSEPH PRETORIUS SC: Then again you are asked a question at line 7, what was that, of page 894?

10 **MR ROBERT JOHN McBRIDE:** Okay, Mr July:

“If Khuba says the investigation was completed but there was new evidence that came up would he be right in that?”

ADV PAUL JOSEPH PRETORIUS SC: Aside from the logic in that question just continue.

MR ROBERT JOHN McBRIDE: Ja, he said and he quotes Khuba now:

“I had completed the investigation but there was this new evidence about the cell phones in relation to Sibiya which needed to be tightened up.”

ADV PAUL JOSEPH PRETORIUS SC: And then your answer?

20 **MR ROBERT JOHN McBRIDE:** Chair he is actually contradicting himself in his question, because he is saying:

“Khuba says the investigation is complete, but there's other evidence that needs to be dealt with.”

Therefore whatever Khuba said, whatever Mr July says Khuba says the investigation cannot be complete if there's still additional evidence to

add to it, it's just illogical. I'm not sure why such a stark contradiction is not picked up.

ADV PAUL JOSEPH PRETORIUS SC: Yes that's – it says what it says, and in the first sentence Werksmans say to you:

“Khuba says the investigation is complete but there's new evidence, the investigation is complete but I've got to investigate further matters.”

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: We will see what Khuba said in
10 due course and if necessary hear Mr Khuba, but the logic is open
...(intervention)

MR ROBERT JOHN McBRIDE: Chair ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: ...at least on the face of it to question.

MR ROBERT JOHN McBRIDE: Chair it's painful to look at this because the more I go back to it I see it was quite obvious even to Mr July, it should have been, that actually what they were on about was a non-event. Why they still persisted becomes stranger and stranger, as I go back through this transcript.

20 **CHAIRPERSON:** Is it possible to look at it this way, that Mr Khuba when he submitted the first report regarded the investigation as complete at that stage, and that whatever new evidence came up, came up later, which might strictly speaking have meant that once there was new evidence it should thereafter no longer have been regarded as complete, but from his point of view prior to new evidence coming up is

it possible that that's what they are talking about, you know the situation much better than I do because you've looked at all of these things and dealt with them.

MR ROBERT JOHN McBRIDE: Chair in my engagements with Khuba initially on the first day and subsequently and even until recently he has never on one occasion told me that that January report was a completed report. He also has indicated to me that he made this known to Mr Mosing, but one has to place it in the context of being pressured by Nxlamasa and by Mosing and even though indicated to Mosing it
10 hasn't been signed by my Executive Director Mosing insisted that it comes to him.

CHAIRPERSON: Hmm, hmm.

MR ROBERT JOHN McBRIDE: So that has been Khuba's position for ever since the first day.

CHAIRPERSON: Yes, so these, so what Mr July was telling you I think he started by saying suppose, I'm not sure whether that's – but to the extent that he was telling you that Mr Khuba's version was that that first report the investigation and that first report was final and that investigation was complete to the extent that that's what he was saying
20 Mr Khuba told him that was news to you. You had not heard that from Khuba or anybody before?

MR ROBERT JOHN McBRIDE: Chair not only was it news to me, I had not heard that, I immediately became suspicious because I had never been told that, I last came across this strategy of but they said this and if they said this which would be to put a falsity to you, I last came

across this while I was being detained and tortured under Section 29 in 1986, is to force a confession out of you on a false supposition which is then put to you so that's what it reminded of and my suspicion became heightened, by why say something to subsequently a number of issues which Mr July put to me about that Mr Khuba said, Khuba actually in his various statements subsequently says he didn't say and actually draws our attention to aspects in his interview with Mr July where he says things which are opposite to which Mr July put as purporting to come from Mr Khuba to us, so that was a major concern during the interview
10 and it's ...

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: You just for reference purposes Chair you deal with this at page 1018 at one of your affidavits where you say in the court application, to which we've referred at paragraph 32, to avoid overburdening the papers in this matter I do not attach copies of the full transcripts of the interviews conducted by Werksmans with Khuba, Sesoko and Mosing, I attach only the pages that I refer to in this affidavit and then you offer to provide the full transcript to the Court, but then in paragraph 33 you say:

20 "In the light of the facts attested to by Khuba and Sesoko and regardless of what Mosing, Mokanqwe or Khuba may have believed at the time it is clear that the January 2014 report was not a final report."

This is because, and you talk about the outstanding evidence, warning statements and other matters, including compliance with the

regulations. Those are all summarised there, we've referred to them I think in evidence, but what I want to do is go to page 30, page 1020 of the same affidavit and that 1020 is in Bundle ...

CHAIRPERSON: I think Mr McBride say it's Exhibit YC.

ADV PAUL JOSEPH PRETORIUS SC: YC correct Chair, paragraph 34.

CHAIRPERSON: What's the page again?

ADV PAUL JOSEPH PRETORIUS SC: 1020.

CHAIRPERSON: 1220?

ADV PAUL JOSEPH PRETORIUS SC: No 1020 Chair.

10 **CHAIRPERSON:** 1020, okay thank you. Yes?

ADV PAUL JOSEPH PRETORIUS SC: Reference is made to what Mosing said in his interview with Werksmans but can you recall from your own memory of reading the transcript, we're going to check the transcripts now and there may be a discrepancy between what is said here and what Mr Mosing said and we are checking that and we will deal with it after the tea adjournment but you say in paragraph 34 here of the affidavit:

20 "Mosing explained in his interview with Werksmans that he wrote the word "draft" on the January report on receiving it from Khuba because the report was not complete and you attached the relevant pages of the transcript as RJM3."

Do you recall anything about that?

MR ROBERT JOHN McBRIDE: Yes, I remember that.

ADV PAUL JOSEPH PRETORIUS SC: Was it not an earlier October report that Mosing was referring to?

MR ROBERT JOHN McBRIDE: I think the issue here is the January report at all times for the query, and it is that report, so Mosing advances this, he volunteers that he wrote draft on it, why he advances it I'm not sure. The moment you write draft on anything it means it cannot be a final report, whatever it is, whatever creative explanation he gives, he volunteers, I'm not sure, he should answer why he volunteered it but he wrong draft on the report and he then goes on to explain why he wrote draft in quite a creative way, but in any event from his explanation from memory on that interview he is dealing
10 with additional evidence or statements, whilst he understates them in his explanation he does give an explanation that something is outstanding.

ADV PAUL JOSEPH PRETORIUS SC: In any event ...(intervention)

CHAIRPERSON: I'm sorry Mr Pretorius, Mr McBride you are emphasizing the status of that first reports quite a lot, and I just want you to confirm that you emphasize its status as having been a preliminary report or not a final report, or the investigation relating to it not having been completed because the part of the point you make is that the moment it's accepted that that report was not final, the moment
20 it's accepted that that investigation was not complete this whole thing about the charging of people falls away, and should have fallen away, the problem is why it was not recognised that that investigation was not complete and that that report was a preliminary report, that's part of the point you make.

MR ROBERT JOHN McBRIDE: Chair that is part of the point, the

second point would be, and this is hypothesis, assuming it was regarded by some people and I make it in this affidavit, as completed, the fact that there was additional evidence which was not factored in the first one, and that the changes that were made to the report, and not the evidence in the docket, were lawful and were proper and were necessary, also escapes all this range of lawyers in the process.

If you take the factors perhaps in an isolated fashion each of the reasons that we are speaking about one could come to some reasonable but not acceptable explanation. If you put the sequence of events together for me in my opinion there is a determination to find 10 guilty, or to find scapegoats so that you can deal with your original aspect of getting rid of Dramat, so ultimately that's the plan, whether everybody downstream knew exactly what the higher level plan was it's up to them to explain and I think it would be helpful if they do explain, but if you take all these different aspects into account and the sequence of events and the failure for proper common sense to kick in with legally trained minds for me it's problematic it's difficult to find, to even understand perhaps an unacceptable explanation.

CHAIRPERSON: Thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Perhaps it is correct Mr McBride that we are focussing too much on the extent to which other people focussed too much on the word "draft" or "provisional" or "final". The truth of the matter is you raised when you were briefed in March

2014 serious questions about the independence of the IPID report that was then in existence but – or the investigation rather that was then being conducted. You say you were not aware of a formal report. But notwithstanding the existence of a formal report – you had concerns which you have raised now which we have dealt with from time to time in your evidence.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And those were serious concerns about the independence of the investigation and the manner in which it
10 was conducted. You therefore ordered a review of the investigation and the finalisation of the investigation in regard to warning statements and in regard to cell phone record analysis, correct?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You then signed a report that took account of the further investigations directed under your command, is that correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And then you submitted that. So it seems that it is at least arguable that whatever the status of the so
20 called first report or provisional report by whomever it was signed and whatever its purpose all including Advocate Mosing knew that there was further work to be done?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: And whatever opinion was recorded in the various reports it is still incumbent upon the prosecutor

to make his or her own decision not on the basis of IPID's opinion but on the basis of the original evidence and the report?

MR ROBERT JOHN McBRIDE: Absolutely Chair absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Or in the file. And that was never interfered with?

MR ROBERT JOHN McBRIDE: In fact to go further Chair is that the – all statement including the dodgy statements as I refer to them that could not be substantiated were included in a docket. So all evidence incriminatory and also the exculpatory evidence, so all was there and a
10 prosecutor applying their mind could have come to a decision based on what was there. And none of that was altered.

ADV PAUL JOSEPH PRETORIUS SC: And would have been obliged to come to an independent conclusion?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Given the responsibilities of a prosecuting authority?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Did any – did anybody ever say to you including Mr
20 July or challenge or question your right to ask Mr Khuba to do further investigations when you asked him after your appointment as Executive Director? Did anybody ever question whether there was anything wrong in you saying to Mr Khuba 'just do further investigations here', as you understood then?

MR ROBERT JOHN McBRIDE: Chair nobody questioned my right but

nobody in all this process reflected on it. That would be a normal common sense thing to do.

CHAIRPERSON: H'm.

MR ROBERT JOHN McBRIDE: To get an update on what are the key investigations this independent investigative directorate is busy with. It is – it would – it is logical. Somewhere along the lines in the tone or whatever there was some dissatisfaction and a reading in at least in their minds and in which I interpret it as that Khuba was called to my office almost as if it was as if me coming in – I summons people to my
10 office and it was not right for a number of reasons including the fact that Mr Sesoko had Mr Khuba's number. I did not even have Mr Khuba's phone number and I spoke – I arranged for Mr Khuba to come to the office via Mr Sesoko. So that is what happened. But there was this notion of Khuba says he was called to the office but the tone from memory was here was this new guy just ordering people about.

CHAIRPERSON: H'm.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: You see it would have been important it seems that at least Werksmans, Mr July they look at that question whether you were
20 entitled to ask Mr Khuba to do further investigations because if one accepted that you did have that right and Mr Khuba did further investigations whatever he got out of that investigation – further investigation whether it was against General Dramat or in his favour in terms of prosecution had to be taken into account. In this case you say it happened to be in his favour and if it was in his favour it had to be

taken into account as well.

MR ROBERT JOHN McBRIDE: Right.

CHAIRPERSON: And I imagine that there is an argument to say to the extent that Mr Khuba may in his earlier report have reached a conclusion that was inconsistent with the outcome of the further investigation. He may well have been entitled to say well I cannot maintain that position in the light of what I have found out now.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: So the question is, if the minds were directed to these
10 issues maybe certain conclusions would not have been reached and the question is, I think from what you say is why they were – they escaped these issues as [indistinct] people?

MR ROBERT JOHN McBRIDE: So thanks Chair. I just want to – I want to add something else. There was – and I even feel uncomfortable to say it now. There was this notion that myself and Dramat are from the same background therefore I felt a sense in me to want to help him whatever the circumstances or merits of the investigation. Where that sense or allegation came from I do not know. When I said to them I myself I do not know Dramat, Dramat was on Robben Island he was in
20 prison with my father. I then found later – read in a newspaper as like innuendo here – in fact McBride's father and Dramat were together on Robben Island. And that is how it was said. So every time you said something to show that actually bear this mind whatever you think the way you put it that I actually personally do not know General Dramat. And I think I make the point in the interview. I met him when I was –

for the first time at IPID and in engaging with him as a – as an official in an assisted department. That is then taken and misconstrued and fed to journalists as if it is still a sin and an offence to have been part of the liberation struggle. So there was this – I do not know if it was the only way to say it and I say it on days when I am not so irritated about it. I say it is like some people got struggle envy. I cannot help it if people were not born at different stages. I mean I cannot have Rivonia envy. I was not born here yet when former President Mandela and them decided to embark on that. I – for me I revered them. They
 10 gave us light. But for me to start having resentments about them would – is a foolishness and a sense of inadequacy that I can – I cannot understand.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Chair is this a convenient time and may I ask that because I need to traverse a particular issue that has now emerged as to what Advocate Mosing might have said about the earlier report being a draft report. I just need to check something with the witness if I may in relation to transcripts and the bundle. I do not want to spend too much time on the detail of the label attached.

20 **CHAIRPERSON**: If you can avoid it.

ADV PAUL JOSEPH PRETORIUS SC: To the first and second reports. What is clear is that further investigation needed to be done and if it had not been done there would have been a serious problem laid at Mr McBride's door. But I do want to just place one piece of evidence in this regard before you and then move on.

CHAIRPERSON: Yes. Are you asking for...

ADV PAUL JOSEPH PRETORIUS SC: The short adjournment.

CHAIRPERSON: A longer tea break?

ADV PAUL JOSEPH PRETORIUS SC: Say twenty minutes Chair or twenty-five minutes?

CHAIRPERSON: Twenty minutes. Twenty-five minutes altogether?

ADV PAUL JOSEPH PRETORIUS SC: Yes please.

CHAIRPERSON: Okay alright. That will take us to twenty to twelve?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

10 **CHAIRPERSON**: We will adjourn until twenty to twelve.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We had to extend our break by a further 10 minutes at the request of Mr Pretorius so that he could attend to something relating to the evidence. Thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Thank you Chair. Let us go to page 894 please.

MR ROBERT JOHN MCBRIDE: Thanks Chair.

ADV PAUL JOSEPH PRETORIUS SC: Of EXHIBIT YB. This is a continuation of the transcript of your interview with Werksmans. At page 894 line 14 you say what further investigation or work needed to be done. That was a new analysis or an analysis of cellphone records.

Was it an analysis of a new analysis of cellphone records?

MR ROBERT JOHN MCBRIDE: In essence to make the distinction it was specifically an analysis related to towers.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR ROBERT JOHN MCBRIDE: As to the.

ADV PAUL JOSEPH PRETORIUS SC: But an analysis had to be done. I do not want to go into too much detail.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And additional statements and
10 warning statements you say?

MR ROBERT JOHN MCBRIDE: That is correct.

CHAIRPERSON: I think the emphasis behind Mr Pretorius earlier question may have been to seek to establish whether what was new was an analysis of information that had been in existence already or whether it was new information with new analysis.

MR ROBERT JOHN MCBRIDE: Chair it was – if I can put it this way - as far as I am aware there was, there was not any information related to cellphone analysis yet.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE:** In the docket.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: But some cellphone analysis was done but it involved as to who called who.

CHAIRPERSON: Okay, okay.

MR ROBERT JOHN MCBRIDE: But the issue relating to the towers.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That is where this phone was on a particular day.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Or on a particular set of dates.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Had not been done. It now had been obtained and needed to be.

CHAIRPERSON: Okay.

10 **MR ROBERT JOHN MCBRIDE:** Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Then on page 896 you are asked - I just want to clarify this point. At one stage you gave the docket to the Minister and you say yes 14 April 2014. Is that correct?

MR ROBERT JOHN MCBRIDE: Ja. During the interview I, I might have got the, the actual date wrong. We are still awaiting the date of confirmation when the [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: Well you say 14 April 2014 the date it was signed. Is that the docket?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And you say later down the page that it was in November 2014 that it was given.

MR ROBERT JOHN MCBRIDE: That it was given to the Minister yes.

ADV PAUL JOSEPH PRETORIUS SC: And then over the page you say at line 10 that is page 897 of EXHIBIT YB that of course later on it became clear that the Minister disagreed with your report and that the

Minister said as much in Parliament and we know said as much to IPID itself in March 2015.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And it was in Parliament that you told the Chair earlier last week that you approached the Minister and said that you had made a mistake and there was a way to deescalate the issue?

MR ROBERT JOHN MCBRIDE: Not in Parliament. It was at the stadium on [intervenues].

10 **ADV PAUL JOSEPH PRETORIUS SC:** At the stadium in Cape Town. Alright. Whatever Mr Khuba or Mr Mosing - Advocate Mosing - might have said to Werksmans we deal with separately. They can account for what they said, but your evidence is or your interview with Werksmans is summarised at page 900 lines 3 to five. Where you say:

“All I know is three is one report with one set of dockets which I signed. There is only one report I know.”

You see that?

MR ROBERT JOHN MCBRIDE: (No audible reply).

20 **ADV PAUL JOSEPH PRETORIUS SC:** Page 900 lines 3 to five. You see that.

MR ROBERT JOHN MCBRIDE: Yes, I got that.

ADV PAUL JOSEPH PRETORIUS SC: That is what you said to Werksmans. Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And then at the bottom of the page it is put to you:

10 “What you are saying you had with you at the time
 was an inclusive report. You then say no, no I am
 not saying that. Mr July please let us be honest
 with each other. I did not say that. I said I got the
 one final report or I got – I said I got one final
 report which I signed. I did not say it was an
 inclusive report.”

CHAIRPERSON: Inconclusive hey?

ADV PAUL JOSEPH PRETORIUS SC: “I did not say it was
 inconclusive report.”

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So let me just repeat. I may
have got it wrong or not being clear. It is put to you at the bottom of
page 900:

20 “What you are saying you had with you at the time
 was an inconclusive report and you say no, no I am
 not saying that. You have got one final report
 which you signed. I did not say it was an
 inconclusive report.”

There seems to be a possibility of confusion there about final or
inconclusive reports in between the first and the second report.

MR ROBERT JOHN MCBRIDE: I am not sure why Mr July was confused at that stage and why he put it to me that I spoke about an inconclusive report that I had signed. It is a – it does not fit in the context.

ADV PAUL JOSEPH PRETORIUS SC: And then if we can go to page 904 please. On several occasions during this interview you make it clear that you were aware at the time of a single report which was in your view the final report which you signed which contained the additional investigative results which you had directed. That you
10 repeat several times but on page 904 line 10 you say in relation to a question from Mr July which reads as follows at line 4 on page 904:

“In the same breath then we cannot ask you about
the inconsistencies that exist between the two
because you do not know anything about that.”

MR ROBERT JOHN MCBRIDE: Chair if I can just come in here. That is very critical about the confusion of time and its passage because what I had indicated earlier is that in March on arrival in IPID I did not know about the report. A year later Mr July suggests to me well then a year later after everything and after signing the final report you cannot
20 speak about inconsistencies between the two reports. Whereas a year later I would have seen all relevant reports relating to the subject but I think his, his question there is - basically expresses his confusion with the passage of time which I made a point on, on I think Friday to that one must be conscience of the passage of time and different things happen at different stages.

ADV PAUL JOSEPH PRETORIUS SC: Well as at the time of the interview 17 April 2015.

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: You do say at line 10 on page 904:

10 “I do not even think there are inconsistencies. There is additional evidence. One report is longer than the other. One report has additional information to the other one. One report has an analysis of cellphone records and it has warning statements which is a normal thing. So I would not say inconsistencies. I would maybe say a change of analysis. I know in one case they had to send a statement to be analysed to say whether the guy was truthful or not because of evidence which came out from a cellphone.”

And it goes on.

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: At the bottom of the page 904:

20 “Then they had to look at other people’s statements again and analyse.”

It should read then. It is correct that aside from the additions or further evidence the final report which you signed differed from the first report in that witness statements were quoted in the second report and those quotation differ from the quotes in the first report. Am I correct?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Those are fully analysed in the Werksmans Report in a spreadsheet.

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: You are aware of that?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The statements themselves you have repeatedly said remained in their original form?

MR ROBERT JOHN MCBRIDE: That is correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** It was an analysis of the statements contained in reports?

MR ROBERT JOHN MCBRIDE: Exactly and particularly what was the evidentiary value against the background of the new evidence. So what had been said initially could – no reliance could be placed upon it.

ADV PAUL JOSEPH PRETORIUS SC: So were certain quotations in the first report omitted from the second report?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: What was the reason for that?

20 **MR ROBERT JOHN MCBRIDE:** According to Khuba they were of no evidentiary value.

ADV PAUL JOSEPH PRETORIUS SC: Right and we will see what Khuba says about that.

MR ROBERT JOHN MCBRIDE: Yes and even now if you read what was removed it is of no evidentiary value in terms of the.

ADV PAUL JOSEPH PRETORIUS SC: Can you give one example to

illustrate the point? I am not going to go into a full analysis of all the transcripts.

MR ROBERT JOHN MCBRIDE: I think in one.

ADV PAUL JOSEPH PRETORIUS SC: Because we made the general points about the report.

MR ROBERT JOHN MCBRIDE: *Ja*, in one statement someone reports about someone going to a liquor store to buy some liquor. In the scheme of things it is kind of irrelevant. So Khuba leave it out and adds more relevant stuff. So in terms of just stating from the original
10 statements taking large, large chunks of quotations. In the second statement he is more particular about what the value is and stuff that sort of adds up the report with no evidentiary values removed.

ADV PAUL JOSEPH PRETORIUS SC: We can put away that bundle for the moment then.

CHAIRPERSON: Before you do that can I just establish was it ever established who had made the alterations on that first report?

MR ROBERT JOHN MCBRIDE: I.

CHAIRPERSON: Or you do not know?

MR ROBERT JOHN MCBRIDE: No, it is established.

20 **CHAIRPERSON:** *Ja*.

MR ROBERT JOHN MCBRIDE: Mr Khuba said he had made the necessary changes.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Based on the new evidence. So it was never in doubt that Mr Khuba said he had worked with Mr Sesoko.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: On Mr Sesoko's.

CHAIRPERSON: Not Mr Sesoko. Mr Sesoko? I thought he had been given instructions not to.

MR ROBERT JOHN MCBRIDE: Oh, in the first.

CHAIRPERSON: In the first one. I am talking about the first one.

MR ROBERT JOHN MCBRIDE: [Intervenes].

CHAIRPERSON: The one that was said to have been altered.

MR ROBERT JOHN MCBRIDE: I am not aware of that. That the first
10 one.

CHAIRPERSON: Okay. Let me repeat. Maybe I have confused you. You know when we talk about alterations to a report, to the report here. As I understand it that is a reference to what we have referred to as the first report or preliminary report. Now that is the report that had been done by Mr Khuba?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Before you were appointed Executive Director.

MR ROBERT JOHN MCBRIDE: Yes Chair.

CHAIRPERSON: So I seem to get at some stage when I read some of
20 the documents that it seemed to be unclear as to who may have effected certain alterations on that first report. So my question was whether as far as you know it was ever established as to who had effected those alterations.

MR ROBERT JOHN MCBRIDE: I think it is common cause between Mr Khuba and Mr Mosing.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That they would send the reports.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Of those preliminary reports to each other and on occasion Advocate Mosing would send it back to Khuba again.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: With some alterations on whatever the issue was at that stage.

10 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: But it is not in dispute that that was taking place and that there was.

CHAIRPERSON: No, I accept – I understand that because you did say that I think last week insofar as one talks at a general level.

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: I am just talking about the specific alterations that Werksmans and the Minister were talking about which were from the basis of you being charged to say certain alterations were made. They were made with a certain motive or intention whatever. So those
20 specific alterations those are the ones I am talking about whether it was established whether Mr Khuba had made them or Mr Mosing or was it never – was it in dispute as to who had effected them as far as you know?

MR ROBERT JOHN MCBRIDE: Thanks Chair. If I am understanding you correctly it would be - and to respond – it would be the report that

was done during, after the review and the addition of the new evidence is the, the second report which Mr Khuba then changed the analysis – the emphasis of analysis on the report under the supervision of Mr Sesoko and they had worked on Mr Sesoko's computer.

CHAIRPERSON: Oh, okay.

MR ROBERT JOHN MCBRIDE: *Ja*.

CHAIRPERSON: Okay. So, but the actual alteration was said to be on which report?

MR ROBERT JOHN MCBRIDE: Well in essence the first report,
10 preliminary report was changed.

CHAIRPERSON: *Ja*.

MR ROBERT JOHN MCBRIDE: By Mr Khuba.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: To accompany the docket.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: *Ja*.

CHAIRPERSON: Yes. So it was the first report?

MR ROBERT JOHN MCBRIDE: That was - that was changed, yes.

CHAIRPERSON: *Ja*, but it was changed after there was the final
20 report?

MR ROBERT JOHN MCBRIDE: The final report effectively changed.

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN MCBRIDE: That preliminary report.

CHAIRPERSON: Yes. Okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: In that regard perhaps we could

go to page 1237 of EXHIBIT YC. This is a statement by Khuba on affidavit in the litigation to which you have referred.

MR ROBERT JOHN MCBRIDE: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 21 reads:

10 “After Sesoko and I were tasked by McBride with
 finalising the report. I would visit the Pretoria
 Office from Limpopo whenever I could. I would sit
 at Sesoko’s computer to make changes to the draft
 as we discussed them. Sesoko and I, we evaluated
 all the evidence and debated what findings could
 reliably and sustainably be made on the evidence.
 I would then effect the changes to the report on
 Sesoko’s computer.”

Paragraph 22:

20 “Sesoko’s input was important because he has a
 prosecutorial background. So has a good
 understanding of what findings a prosecutor would
 accept as sustainable. He also brought a more
 objective perspective to bear on the evidence
 because he had not been involved in the
 investigation.”

And the next paragraph reads:

 “In finalising the report and presenting the final
 report to McBride for authorisation we thought to
 conduct a thorough critical and objective review of

the totality of the evidence and to present only recommendations that were supported by credible evidence.”

And then he goes on to contest the views of the Minister who criticises the acts of IPID in regard to the amendments. If they could be called amendments to the first report. Is that consistent with your understanding of the [intervenes]?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You would bear with me Chair.

10 **CHAIRPERSON**: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The first or the cover page of that affidavit just for record purposes is in Bundle YC – EXHIBIT YC at page 1225. Just go to 1145. Also in Bundle YC at page 1145 is Khuba’s statement during the course of the Werksmans interview that he held where he said at line 15:

20 “The issue there was not even a single time where McBride said to me change the report to suit Dramat. He might have made input. He might have queried how things were done. Sometimes the issue most especially the issue of having a Crime Intelligence member he had a concern about it to say are you people not independent.”

It seems that what Mr Khuba is saying there is that you took Khuba to task in relation to the independence of the investigation and he is also saying that you never told him to change the report to suit Dramat.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 43 of your statement if we can go back to page 9 at last you say:

“A critique of the Werksmans Report was filed with
my papers when I challenged my unlawful
suspension in the High Court.”

MR ROBERT JOHN MCBRIDE: One second Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 43 page 9 Bundle A.

CHAIRPERSON: Are you going back to the statement?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Bundle YA page 9.

CHAIRPERSON: Does that mean you are done with the Werksmans Report or you will come back to it?

ADV PAUL JOSEPH PRETORIUS SC: Well that depends on the answer to the next question.

CHAIRPERSON: Oh, okay. No that is fine. Then I will wait.

20 **ADV PAUL JOSEPH PRETORIUS SC:** But we may have to go to.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Beginning page 1017 which is still in Bundle C. So perhaps if you could keep it at hand Chair. The affidavit that you prepared for the purposes of the High Court application which later was dealt with by the Constitutional Court is

Annexure G in Bundle YC and I am referring to not your founding affidavit for present purposes, but I am referring to your replying affidavit because in the answering affidavit the Minister relied to a large extent on the Werksmans Report. So if you could go to page 1007 of Bundle YC please.

MR ROBERT JOHN MCBRIDE: I have it Chair.

CHAIRPERSON: Please repeat the page number Mr Pretorius on EXHIBIT YC.

ADV PAUL JOSEPH PRETORIUS SC: Page 1007.

10 **CHAIRPERSON:** 1007, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Do you have that affidavit before you?

MR ROBERT JOHN MCBRIDE: Yes sir.

ADV PAUL JOSEPH PRETORIUS SC: To place this replying affidavit in its proper context it appears that in the answering affidavits in the matter before the High Court where you challenged your suspension the Minister had relied to some extent on the contents and findings of the Werksmans Report.

MR ROBERT JOHN MCBRIDE: Yes that is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And in reply then you dealt with the Werksmans Report?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Now we have dealt at some length with issues related to the Werksmans Report and your critique at a high level and at a detailed level with the contents of that report.

Perhaps it may be necessary at some stage to do a thorough analysis of the record, because the record is there as it stands. We have been provided by Werksmans with all the transcripts of evidence save of one person who is Advocate Mosing. Is that correct?

MR ROBERT JOHN MCBRIDE: No that is not correct Chair. It is Mr Sesoko's entire interview and transcript has always been absent from the Werksmans Report.

ADV PAUL JOSEPH PRETORIUS SC: Alright, sorry. I got that wrong. It is Mr Sesoko's transcript that is not contained but other than that we
10 have been provided with the terms of reference, the report and the transcripts of evidence of all who participated in interviews save for Mr Sesoko?

MR ROBERT JOHN MCBRIDE: *Ja*. In fact with the - during the litigation period we relied on Mr Sesoko's own recording he made which it was transcribed and authenticated and we made use, use of that but Werksmans does not refer to it at all.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: And they do not supply it even though Mr Sesoko was interviewed by them.

20 **CHAIRPERSON:** As a matter of interest do you know whether there is a reason why a transcript for interviews with other people are available but the one with him is not available or is that something that was not canvassed - they were not asked?

MR ROBERT JOHN MCBRIDE: I do not remember it in detail now Chair, but Mr Sesoko is, Mr Sesoko is very legally minded and very

direct. So he would have put legal status of everything immediately on the table and from memory he indicated to me and I might have seen it in a transcript – he inquired to Mr July as to whether he was a suspect in anything.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And Mr July replied in the negative.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Which would reflect very poorly on Mr July.

10 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: On the fact that Mr July makes recommendations.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Subsequently at the end of his report to indicate that Sesoko should be amongst those charged and disciplined. I'm not sure what the ethical aspects of that is, but Sesoko reported that to me.

CHAIRPERSON: But you also referred to the use of some recording that Mr Sesoko himself had made, was that a mechanical recording or
20 just notes that he took, do you know, do you remember?

MR ROBERT JOHN MCBRIDE: Yes I do remember Chair, it was a electronic recording, either on his phone or on a dictaphone or something.

CHAIRPERSON: Yes, yes, but you say that was transcribed.

MR ROBERT JOHN MCBRIDE: Yes sir it was.

CHAIRPERSON: Yes, okay, alright, thank you.

ADV PAUL JOSEPH PRETORIUS SC: To get back to your replying affidavit and your critique of the Werksmans' report, we have dealt with a number of issues both in detail as regards to the particular submissions or contents of the interviews as well as your high level critique of the fact that there was an investigation by Werksmans at all under the direction of the Minister. Your critique is recorded at page 1017 and following of the replying affidavit, it's a matter of record. Is there anything you wish to add to that?

10 **MR ROBERT JOHN McBRIDE:** Chair I think it's sufficient as it is captured in the affidavit I'm sure that Mr Khuba and Mr Sesoko will give further details which will held the Commission come to its conclusions.

CHAIRPERSON: Yes thank you.

ADV PAUL JOSEPH PRETORIUS SC: But to put it at its highest you were critical of the content of the report, the analysis of the evidence and the outcome of the report, is that correct?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Chair I don't know if you require us to go into further detail on that, it may become relevant later as
20 matters progress but then we can address it then but to go into it page by page analysis of all the evidence, all the detail, I think will not be productive at this stage.

CHAIRPERSON: No, no that's fine. Mr McBride during your interview with Mr July in whatever way or terms you may have put it, did you ever say or ask him something along the lines, what's the whole point about

this alteration of the report when there is new evidence, what's the whole point, you know, if it's altered because there's new evidence what's wrong with that?

MR ROBERT JOHN McBRIDE: I think Chair just to respond directly and from what I can recall, my last – amongst my last statements of the interview I indicated to him, in an attempt to answer your question, that I stand by the report that I signed and I also made the point that no court in South Africa will, based on the evidence, that I'm aware of, will ever be able to convict General Sibiya or Dramat and I expressed it as

10 a confidence we had in the analysis and the exculpatory evidence which, in April 2015, I was now aware of fully and I expressed that to him but it did not resonate at all. With the team that was sitting there the moment I said I stand by my report that I signed everybody started feverishly writing, taking notes, they exchanged glances and started writing, as if somehow I admitted shock and horror some unspeakable deed. For me that was an indication of some kind of prior misunderstanding because for the first time they exchanged glances with each other, when I said I stand by the report that I signed and I don't know what – they can explain for themselves but that's what I

20 picked up and I express throughout the interview, subsequently in testimony here also that it was just crazy from the beginning the fuss that was made about it. So I have expressed it specifically with Mr July, I'm not sure if I specifically said it but I had indicated it yes.

CHAIRPERSON: Did Mr July or anybody who may have formed part of his team where during his – your interview with him, did they – did

anybody ever say, but the recommendations you people made in the final report are not justified by the evidence that you are relying on or anything to that effect or did they express criticism of the final report based on evidence that was available?

MR ROBERT JOHN McBRIDE: Chair no, at no stage – at all stages including in the written report was just a fact that a report recommendation and opinion had been changed.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: No criticism of the final report, in fact,
10 increasingly – well it's now common knowledge that all charges against General Sibiya and General Dramat were withdrawn on this matter.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: So even the NPA who decided to prosecute us for the recommendation we made in the final report, now has withdrawn charges against General Sibiya and General Dramat.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: If, just for the sake of completeness we could then go to Bundle YD – yes YD at page 1443 and subject to any need that might arise for a more in-depth and
20 complete analysis we can end here to repeat the finding and comment on it para 645 of the Werksmans report.

CHAIRPERSON: Did you say the pages 1443?

ADV PAUL JOSEPH PRETORIUS SC: Yes of Exhibit YD.

CHAIRPERSON: Thank you, you may proceed.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 6.4.5 is the

recommendation that concerns yourself it reads, “In the absence of any information as to which of the three co-signatories were responsible for the deletion of information from the first report we recommend that Khuba, McBride and Sesoko be charged criminally for defeating the ends of justice or obstructing the administration of justice and that disciplinary charges be brought against them in their capacity as employees”. Just a number of remarks arising from your evidence and then we’ll conclude this part of the evidence Mr McBride, it seems that what Werksmans concentrated on was the deletion of portions of the

10 statements quoted in the reports. So not the deletion of the original or any alteration of the original statements which remained intact but those passages that were quoted in the first report and the second report.

MR ROBERT JOHN McBRIDE: That’s correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You’ve explained to the Chair that an analysis was done, and we’ve referred to Mr Khuba’s evidence in that regard with the assistance of Mr Sesoko, because we now know that Mr Sesoko was assisting for the first time, he had been excluded in relation to the first report.

20 **MR ROBERT JOHN McBRIDE:** Chair I don’t mean to be flippant but I think I need to make a point that even if the second report was completely taken and torn up and thrown into a bin and only the docket submitted with all the evidence there would be nothing unlawful about that. So even if we removed the entire report, did not add a report and we threw it in the bin and only sent the docket with all the evidence,

there would be nothing unlawful or untoward. SAPS detectives do that every day when they submit their dockets to the NPA they don't attach opinion recommendations.

ADV PAUL JOSEPH PRETORIUS SC: There are no findings here it seems, in relation to the necessity for the additional investigative results contained in the second report it simply seems to concentrate on the deletion of information in the report.

MR ROBERT JOHN McBRIDE: Yes that's correct.

ADV PAUL JOSEPH PRETORIUS SC: What if it is put to you that the
10 deletion of the information was deliberately calculated to mislead the recipient of the report or the second report?

MR ROBERT JOHN McBRIDE: All the evidence is in the docket, none of the quoted statements in the report were designed to mislead or to misdirect anyone. The key element and difference of the two the reports as I indicated earlier, was the conditions in which they were done. It would be thumb-suck to say – and there would be no basis on which to say the removal of quotations in a report from a statement there was anything untoward about it or improper it's just whoever invented that, clearly didn't understand processes that are involved in
20 the situation and it appears that, that misunderstanding, wilful or inadvertent permeates the entire process downstream that eventually led to us getting suspended and criminally charged and it just seems to have its own infectious nature about that misunderstanding, it appears to be contagious.

ADV PAUL JOSEPH PRETORIUS SC: It seems then, in summary what

you are saying is that to accord the so-called first report with a quality that it can never be changed or commented on or subjected to a further investigation is factually and legally incorrect you say?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Secondly you say that the assessment that gave rise to the report in its final form including the decision as what quotes to retain and what quotes to omit from the witness statements, is a matter of judgement by the authors of the second report and there was nothing untoward in the exercise of that
10 judgement, that's how I understand your evidence.

MR ROBERT JOHN McBRIDE: I'll go further Chair and say it's a matter of professional judgement and opinion.

ADV PAUL JOSEPH PRETORIUS SC: Yes and that Mr Khuba makes clear because he consulted with Mr Sesoko and they can come and give their evidence about that.

MR ROBERT JOHN McBRIDE: Absolutely and they have experience in doing this.

ADV PAUL JOSEPH PRETORIUS SC: Right, thirdly you say that had you not done the work in relation to the investigation that resulted in
20 the production of the second report, you would have been acting improperly and unlawfully.

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: So Mr McBride as far as you can recall, and I didn't pick this up on the Werksmans report but you have looked at it much more closely I think over some time. As far as you recall it never

addressed or addresses the question of saying, if the alteration came about as a result of the further investigation that was done, what was wrong with it, what was – was there anything unlawful about changing it in order to be in line with the later investigation, it doesn't address that as far as you recall?

MR ROBERT JOHN McBRIDE: No Chair it's completely ignored, that aspect.

CHAIRPERSON: You know it's – by the way we'll hear, you know, other witnesses but you mustn't feel bad about emphasising some of
10 the points you have been emphasising about this report because if anybody is going to recommend, you know, that people be criminally charged they really need to apply their minds properly to issues because people being charged criminally is not a small matter.

MR ROBERT JOHN McBRIDE: Thank you Chair.

ADV PAUL JOSEPH PRETORIUS SC: You've already made it clear to the Chair in that regard that as far as IPID is concerned that although it makes its own comments and gives its own opinion the duty on the prosecutor to determine the fate of a persons, whether they should be charged or no would be, obviously to examine the full contents of the
20 docket and those were never tampered with.

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Finally if I could just ask you to look at – and I mean finally for this aspect of the evidence at page 1152 of Bundle YC, you will recall that the attitude of the Minister the attitude of those that took IPID to task including yourself was the first

report somehow had a status that could not be tampered with it appeared that, that might have been well the motivation of Werksmans and making its recommendations but would you look at 1152 please.

MR ROBERT JOHN McBRIDE: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: This is a communication from the Director of Public Prosecutions Gauteng Local Division, a Mr Roberts SC.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: It's dated the 23rd of April 2015,
10 almost a year after the second report was filed.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And it's addressed to the acting Executive Director Independent Police Investigative Directorate.

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: That would have been who at the time?

MR ROBERT JOHN McBRIDE: It would be Mr Kgananyane.

ADV PAUL JOSEPH PRETORIUS SC: And in relation to the rendition cases are these the same rendition cases or are they different?

20 **MR ROBERT JOHN McBRIDE:** It's the same case Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right, it says in paragraph 1, "the following further investigation must be taken or must be done before a decision can be taken", and then there are a number of sub-paragraphs which talk about an expert analysis of cell phone data in relation to Major General Sibiya in relation to his alleged presence at

the crime scene, it talks about transcript of sms messages sent or received by Lieutenant Colonel Malaleke, Major General Sibiya and Lieutenant General Dramat during the period of the operations. It talks about further cell phone records and on page 1153 is a long list of other matters to be investigated. The letter concludes at paragraph 2 on page 1154, “the matter must be regarded as urgent as the investigation must be completed on or before 12 May 2015”. So that it seems that despite everything and despite all the allegations and evidence including those that led to your suspension and criminal
10 charges being laid against you that even on 23 April 2015 the investigation was hardly complete.

MR ROBERT JOHN McBRIDE: But Chair there’s an additional problem which has only struck me now a lot of with what Advocate Roberts is asking for should have been in the docket there and it was part of the docket and if from memory, and Mr Khuba can – at this stage Mr Khuba and Mr Sesoko are not yet suspended, Mr Angus takes over the case under the direction of Mr Kgamanyane but it appears that some – the point that you are making that even then after I’m gone, they’re still looking for additional information, I’ll agree with that but it appears that
20 some of the information they’re looking for from memory was in the docket. As I look at them, I hadn’t looked at them line by line and these are issues that Mr Khuba had included so there’s an additional problem in addition to the one which you raised to me that it was not yet complete after I’ve been suspended in any case.

ADV PAUL JOSEPH PRETORIUS SC: On the moment – for the

moment rather the letter seems to indicate that further investigations were necessary before a prosecutorial decision could be made but you add the concern that certain information may have been removed from the docket but the best person to comment on that would be Mr Khuba I presume?

MR ROBERT JOHN McBRIDE: Yes sir, that's correct.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 44 you repeat aspects of your critique in relation to the report and you then talk about...(intervention).

10 **CHAIRPERSON:** Are you back to the statement?

ADV PAUL JOSEPH PRETORIUS SC: Back to the statement sorry, paragraph 44 on page 9 of Exhibit YA. You talk about the costs to the state of the whole rendition saga and you estimate the cost to the state to being in the region of 17million rand according to a reply to a parliamentary question put to the Minister in 2017, is that correct?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 46 on page 9 that Khuba and Sesoko were suspended by Kgamanyane, the then acting Director of IPID on 21 May 2015. You say that, that was on
20 the instructions of the Minister is that correct?

MR ROBERT JOHN McBRIDE: Yes Chair, just to add that Mr Sesoko, on his suspension and being informed by Mr Kgamanyane made a recording of Mr Kgamanyane saying that he's been given instructions, which instructions can only come from the Minister to suspend him. In so in Sesoko's application or preparation of papers, at a stage when we

ran out of funds to challenge the decisions that Kgamanyane took, Mr Sesoko has a recording and a transcript of that conversation with Mr Kgamanyane.

ADV PAUL JOSEPH PRETORIUS SC: You were suspended for what period of time?

MR ROBERT JOHN McBRIDE: I was suspended from the 24th of March 2015 and I returned to work on the 19th of October 2016, so it's approximately 18 months.

ADV PAUL JOSEPH PRETORIUS SC: Right in broad summary what did
10 you find on your return in relation to issues relating to restructuring, transfers, dismissals and appointments? Don't go into the detail yes we're going to go into the detail but just to introduce this topic in a line or two.

MR ROBERT JOHN McBRIDE: I think just for context and the purpose I should start by saying that one of the first decisions taken by Mr Kgamanyane was to terminate IPID's brief to lawyers to challenge the Minister Constitutionally so immediately that brief was withdrawn.

ADV PAUL JOSEPH PRETORIUS SC: Is that why you explained that in the Constitutional Court it was only you, prior to that it was IPID?

20 **MR ROBERT JOHN McBRIDE:** That's correct.

ADV PAUL JOSEPH PRETORIUS SC: IPID and you?

MR ROBERT JOHN McBRIDE: Yes, so the issue is, his first decision as Executive Director was to ensure that IPID does not act in the interest of protecting the independence of itself, that's the first decision he took as acting Executive Director. Now the rest of the stuff

was a lot of bazaar transfers, suspensions...(intervention).

CHAIRPERSON: Before you go – you deal with those Mr McBride, just to understand because you did mention earlier also that you and I think Mr Sesoko ran out of funds at some stage. Now the application that you made to the High Court yourself and later the matter went to the Constitutional Court, the applicants there were reflected as yourself and IPID is that right or was it only you?

MR ROBERT JOHN McBRIDE: It was only me sir.

CHAIRPERSON: At the time you went to the Constitutional Court was
10 it only you?

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: In regard to that same matter about which you went to the Constitutional Court were you the only applicant at the High Court level as well?

MR ROBERT JOHN McBRIDE: Yes I was the only one and then I was joined by the Amicus.

CHAIRPERSON: Amicus okay but wasn't there an application that was brought by you and IPID, there was such?

MR ROBERT JOHN McBRIDE: Yes during the urgent application on
20 12th of March 2015.

CHAIRPERSON: Oh okay but that's how far IPID went?

MR ROBERT JOHN McBRIDE: That's correct Chair.

CHAIRPERSON: So the protection of the independence for IPID that ultimately the Constitutional Court confirmed is effectively protection that was confirmed, not just for yourself but also for future Executive

Directors of IPID and for IPID on your own so to speak without the institution itself?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And you paid for all of that.

MR ROBERT JOHN McBRIDE: Yes Chair.

CHAIRPERSON: And IPID did not pay.

MR ROBERT JOHN McBRIDE: No IPID did not pay, I'm including the Labour Court aspects, the disciplinary, in the Labour Court matter we approached the Labour Court for an interdict to stay the disciplinary
10 until the Constitutional Court had made its pronouncement on the matter and that also was from my pocket and the process of the initial disciplinary – so all of that it was...

CHAIRPERSON: Out of your pocket.

MR ROBERT JOHN McBRIDE: Yes and so the same issue with Mr Sesoko and Mr Khuba and their disciplinaries and they are still in the process of paying back money now.

CHAIRPERSON: Yes, in regard to the matter that went up to the Constitutional Court I would imagine you got reimbursed went a cost order was made against the Minister?

20 **MR ROBERT JOHN McBRIDE:** Yes there was a reimbursement.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: For that matter.

CHAIRPERSON: For that month?

MR ROBERT JOHN McBRIDE: And after taxation.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: We then received the after taxation I think is a legal term.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: Subject to taxation.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: Yes we did receive it.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: Now – it would be okay if the matter left there.

10 **CHAIRPERSON:** Yes.

MR ROBERT JOHN McBRIDE: Chair but we also had the need to utilise money in the criminal case.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: To defend ourselves.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Which it is only now that IPID is considering reimbursing Mr Sesoko and Mr Khuba. I have never been reimbursed for the criminal case.

CHAIRPERSON: H'm.

20 **MR ROBERT JOHN McBRIDE:** So – and that is the – I mean that is...

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: The tragedy of all of this.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride perhaps it needs a slight degree of clarification. The original Notice of Motion and the

application to the high court concerning your suspension is at page 143 of bundle of Exhibit Ya. But let me just put the sequence as I understand it from a review of all the papers. An urgent application was brought in regard to the suspension to which you have referred. In that application there were two applicants, the Independent Police Investigative Directorate and yourself?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That application had two parts. Part A for interim relief on an urgent basis regarding your suspension.

10 Part B a declaration of unconstitutionality and we have been to – into that detail. Part A the urgency the judge found that it was not urgent?

MR ROBERT JOHN McBRIDE: The judge reasons if I – was that I had not been suspended yet. It was in pending there is no harm done, one of his reasons.

ADV PAUL JOSEPH PRETORIUS SC: Yes but anyway Part A relief was refused?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That was the application for urgent relief?

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

ADV PAUL JOSEPH PRETORIUS SC: Quite how it was phrased. It is not necessary to debate that now. Part B then continued later and at that stage you were the only applicant, is that correct?

MR ROBERT JOHN McBRIDE: Chair let me just go back. In Part B in the judgement of Judge Fabricius he indicated that Part B words to the

effect 'stands a chance, it has merit' and which he said which he did not have to say.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: But he did say it in his judgment in turning down the urgency.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: So it was identified at first go by Judge Fibricius even though he turned down the urgency aspect.

ADV PAUL JOSEPH PRETORIUS SC: Yes. But Part B eventually
10 ended up in the high court.

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And then went onto the constitutional court.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But when Part B was determined you were the only applicant?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: In regard to Part B was IPID – or let me first ask. In
20 pursuing Part B were new papers prepared or was use made of the papers that had already been filed in the urgent application, do you remember?

MR ROBERT JOHN McBRIDE: I cannot remember.

CHAIRPERSON: You cannot remember.

MR ROBERT JOHN McBRIDE: Exactly now ja, ja.

CHAIRPERSON: Okay but it was one applicant and that was you.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Leaving out the amicus and so on?

MR ROBERT JOHN McBRIDE: That is correct because...

CHAIRPERSON: Okay.

MR ROBERT JOHN McBRIDE: By the 1 May – by the 1 April IPID if I remember the dates correctly IPID had – had terminated its brief. So I think we only submitted in August or September the final papers for the high court.

10 **CHAIRPERSON**: Okay.

MR ROBERT JOHN McBRIDE: Of that year.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Again just to complete that line of questioning. In the original application in which IPID and yourself were applicants your founding affidavit traverses all the issues that finally came before the constitutional court?

MR ROBERT JOHN McBRIDE: That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC**: That affidavit is at page 148 of bundle Ya. But let us return to the point which we have arrived at. You say you were suspended for a period of eighteen months. You came back and you found that things had changed?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you are now going to tell the Chair of how they had changed particularly in relation to restructuring appointments and dismissals and transfers, am I correct?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay. In your absence how many senior managers were suspended or transferred? You deal with that in paragraph 47.

MR ROBERT JOHN McBRIDE: It is at least...

ADV PAUL JOSEPH PRETORIUS SC: Suspended or transferred?

MR ROBERT JOHN McBRIDE: At least eight senior managers.

ADV PAUL JOSEPH PRETORIUS SC: I am sorry. I interrupted you I am sorry.

10 **MR ROBERT JOHN McBRIDE:** Chair ja in terms of at least eight senior managers were affected in one or another either by transfer or a suspension. It might – it might even be more than the eight. Because some were transferred mainly to fill gaps that were left at those – of those who were transferred seemingly for what – let...

ADV PAUL JOSEPH PRETORIUS SC: We will come to the detail later.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Or some detail later.

MR ROBERT JOHN McBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Just a question before the long adjournment. Do you recall the analysis that you did together with Messrs Pillay and Dramat?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The notion that a senior officer bearing some responsibility in a state institution is removed and that is followed by an overall restricting and other dismissals and

appointments. Was that unique to IPID?

MR ROBERT JOHN McBRIDE: No Chair it – we had noticed the same pattern in DPCI and we had noticed the same pattern in SARS.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Chair may we adjourn?

CHAIRPERSON: Yes we will take the lunch adjournment and we will resume at two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON**: Yes you may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Chair during the long adjournment we gave consideration to the necessity perhaps to clarify one or two issues in regard to matters dealt with before the long adjournment.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: My apologies Mr McBride. If I can take you back please. The Werksmans Report appears at page 1371 of Bundle YD that is EXHIBIT YD. Would you turn to that please?

MR ROBERT JOHN McBRIDE: I have it sir.

20 **ADV PAUL JOSEPH PRETORIUS SC**: You will recall just by way of background to my question which follows that at all times we have spoken of a provisional or first report signed by Mr Khuba and a second report signed by yourself, Messieurs Sesoko and Khuba. Is that correct?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The second report differed from the first report?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. Now that - an analysis of those differences appears at page 1404. Leave aside the additional matters about which Werksmans makes comment as to whether it was necessary or desirable at all. That is a different issue, but at 1404 is analysis of what is referred to as IPID Report 1 and IPID Report 2. Do you see that?

10 **MR ROBERT JOHN MCBRIDE:** Yes, which is incorrectly titled “Deletion of Evidence” at paragraph 1 on top of the page.

ADV PAUL JOSEPH PRETORIUS SC: Yes. No evidence was ever tampered with or deleted?

MR ROBERT JOHN MCBRIDE: No.

ADV PAUL JOSEPH PRETORIUS SC: The evidence always remained in the form of witness statements in the docket?

MR ROBERT JOHN MCBRIDE: Absolutely and perhaps it is instructive from this why they misunderstood what was going on or that is.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

20 **MR ROBERT JOHN MCBRIDE:** A possible reasonable explanation.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN MCBRIDE: Because they saw the report and the changes in the report and the omission of certain aspects of the report, their opinion as evidence.

ADV PAUL JOSEPH PRETORIUS SC: Right but in any event it appears

from page 1404 that the statement of Ndanduleni Richard Madilonga had been quoted in the first report?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And the quotes from that statement in the second report differed. Correct?

MR ROBERT JOHN MCBRIDE: (No audible reply).

ADV PAUL JOSEPH PRETORIUS SC: And Khuba explains that in his affidavit. I will come to that in a moment. The same category of observation is made in the report right through to page 1415. Do you

10 see that?

MR ROBERT JOHN MCBRIDE: [Intervenes].

ADV PAUL JOSEPH PRETORIUS SC: From 1404.

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: To 1415. Now I am not going to go into the detail. At a particular level we will be here for several weeks if we do that.

MR ROBERT JOHN MCBRIDE: Yes sir.

ADV PAUL JOSEPH PRETORIUS SC: Save to say the issue taken by Werksmans appears properly regarded not to be any alteration to
20 evidence but merely to what Mr Khuba and Mr Sesoko thought as relevant quotations to the report. What is your explanation for these “changes”? Just at a general level.

MR ROBERT JOHN MCBRIDE: The changes according to Khuba, to Khuba as I said earlier is based on in terms of his analysis what was removed was no of evidentiary value and served no real purpose

according to him for the changes at that stage.

CHAIRPERSON: Well here is a starting point where any inquiry into what the Minister had asked Werksmans should have started. In the terms of reference which from the Minister to Werksmans which is quoted in the Werksmans Report at page 1375. The first term of reference which is 5.1 says:

10 “Your terms of reference in the investigation are the following: 5.1 who and under what circumstances was the original report altered or how the second report came about with both reports signed by the same person.”

It seems to me that what follows in 5.2, 5.3, 5.4 and 5.5 is all [indistinct] on whether the original report was altered. Who and under what circumstances was the original report altered? Now my impression was that if you go to the – what he refers to as the original report which is the first report or preliminary report. If you went to the first report prior to the so called alteration you would have found it to look in a certain way. If you went to it after the alteration you would then find that it looked different – differently because some sentences
20 maybe had been deleted from it or had been crossed out or some things had been added to that report by somebody. Now the evidence that has been given and some of the things seem to suggest that that may not necessarily be correct. Now can you clear that? When there is talk of the alteration of the report we can see from the terms of reference that the Minister’s concern was about the alteration of what he calls the

original report which we said is the first report. So forget about the second report. Was there – did the first report physically look different in terms of what it contained after the alleged alteration than it looked before the alteration?

MR ROBERT JOHN MCBRIDE: Chair to answer your question I think I now understand your earlier question.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: On this issue which perhaps I did not answer correctly.

10 **CHAIRPERSON**: Hm.

MR ROBERT JOHN MCBRIDE: Or specifically to answer your question. There are a number of reports.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Which start from perhaps what I am aware of is 2013, October.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Then it changes in November.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Because things are added or and.

20 **CHAIRPERSON**: Ja.

MR ROBERT JOHN MCBRIDE: It is sent to Mosing, sent back.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: By the time it comes to January, the 22nd the so called first report.

CHAIRPERSON: Ja.

MR ROBERT JOHN MCBRIDE: It has already had some evolution in it.

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN MCBRIDE: Because of the discussion between Mosing and Khuba.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And their working together.

CHAIRPERSON: Yes, yes.

MR ROBERT JOHN MCBRIDE: And presumably acquiring.

CHAIRPERSON: Yes.

10 **MR ROBERT JOHN MCBRIDE:** For the statement.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: So it will be between Khuba and Mosing.

CHAIRPERSON: Ja, yes.

MR ROBERT JOHN MCBRIDE: And perhaps Moukangwe.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: It is in a period where Sesoko was forbidden to be part of the process.

CHAIRPERSON: Yes.

20 **MR ROBERT JOHN MCBRIDE:** And it is in a period where I had not arrived yet at IPID/

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: So it is between Khuba, Mosing and Moukangwe.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Who would know exactly who and I do not know if they will be able to recall after so many years who changed what when and the rationale for it. In that report that became now – is now known for sake of convenience as the first report and I am not sure what the Minister means by the original report in his term of reference.

CHAIRPERSON: But in terms of – I mean you know what the discussions were between yourself and Mr July during the interview. At least assuming that what they were talking about reflected what the Minister had in mind. When they talked about the alteration as you

10 understood the position were they talking about a report that contained certain things at a certain time but after a period those things or some of those things had been altered in that report as opposed to different views or recommendations being made in another report. In other words if a report was one page were they talking on a basis that look this report which is one page before it had this sentence. It now does not have that sentence. Before it had this paragraph now it does not have that paragraph. Before it did not have this sentence but it now has a new sentence. That is what I am trying to establish whether this reference to alteration because that is the meaning it gives me as

20 opposed to a situation where you say somebody has in a certain report – let us call it in a first report has expressed certain views and then in another and later report he has expressed different views. Now if you ask me if a person expresses different views or recommendations in a second and later report. Views that are different from the ones he has expressed in the first report. That is not altering the report. That is

expressing different views in a later report but for me that is not altering the first report. I mean it is true that – it may be true that the effect is that recommendation A which was in the first report is no longer the recommendation that stands but that is not because it is being altered in the first report. It is because it is over written by a later report where there is a different view.

MR ROBERT JOHN MCBRIDE: Absolutely.

CHAIRPERSON: So I am trying to establish whether in truth there was ever any alteration of the first report in the sense that I understand
10 alteration to mean as opposed to there were simply a change of views, a change of mind on the part of for example Mr Khuba who might have expressed a certain view before in the first report. In the second report he associated himself with a different view or recommendation because of a new investigation and then when it comes to – when it came to you and Mr Sesoko you had never expressed any view in regard to the first report you were expressing your views and recommendations for the first time in the second report.

MR ROBERT JOHN MCBRIDE: That is that is correct. An example off the top of my head was that some stuff of the so called first report
20 would be repeated in the second report.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: But some qualification added on to it.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: To say this can no longer be the case because we have not proven X, Y and Z. For example I remember a

success report. Did the success – someone sent a success report to amongst others General Dramat.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And therefore from the information that was available then without the benefit of analysis and review was at somehow by sending the report to Dramat he therefore knew something was going on.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: It later transpired that it is not even
10 clear whether the report was actually sent. There is an electronic copy on someone's computer but whether it was actually sent or not is not, is not known. Whether it was actually received and whether it was actually read and whoever – if he had knowledge of it was, was of any consequence at all of the arrest.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: The success report is to the arrest.

CHAIRPERSON: Hm, but to go back to my question. Is it your understanding that what was an issue was never really about anybody going to the so called first report and changing sentences and crossing
20 out somethings and adding somethings into that report as such? As far as you recall what was an issue was that in the second report in - the final report views were expressed your recommendations were made that differed from the views and the recommendations made in the first report. Is that your, is that your understanding of what the whole issue was about?

MR ROBERT JOHN MCBRIDE: For me my understanding is that there was a change at all to the first and that anything [intervenes].

CHAIRPERSON: I am sorry just repeat that sentence. Just repeat that sentence. Your view is that there was a change or no change?

MR ROBERT JOHN MCBRIDE: The obsession with Werksmans the Minister and all the advisors was that there was a change of the first report and they elevated the first report to a status which logically it could not enjoy and that it was inviable. It can never change under any circumstances.

10 **CHAIRPERSON:** Yes, but hang on. I am sorry to interrupt you.

MR ROBERT JOHN MCBRIDE: *Ja.*

CHAIRPERSON: Your understanding, is your understanding that one nobody could talk about you or Mr Sesoko having changed your views or recommendations about anything because you never participated in the first report. Is that correct?

MR ROBERT JOHN MCBRIDE: That is correct yes.

CHAIRPERSON: You never participated. You had no role to in the first report?

MR ROBERT JOHN MCBRIDE: Absolutely none.

20 **CHAIRPERSON:** To the extent that anybody could talk about a change of recommendation or anybody changing his view or her view that would only apply to Mr Khuba because in the first report he had expressed certain recommendations. Those recommendations were different from the recommendations made in the second report which he co-signed?

MR ROBERT JOHN MCBRIDE: That is correct yes.

CHAIRPERSON: That is correct. So, so I am trying to establish whether this whole thing was about why Mr Khuba changed his view that these people must be prosecuted. Was it about – why did he change his view or was it about why did he go to the first report physically and cross out certain sentences or paragraphs or add things that were not there physically?

MR ROBERT JOHN MCBRIDE: From the evidence and from the affidavits and from engagement Mr Khuba is on record as saying he sent a draft at some stage in 2014 to Mr Sesoko's computer and it is on
10 that draft whatever it was whether it was the same a correspondent to the first report or not they worked on that draft and that is where there were changes. If I would say that the second report is perhaps an enhancement on the facts or emphasis that was contained in the first report. So that is all I can say. I am not sure what transpired between – to give rise to the existence of the first report and whatever changes took place there.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And what was in the first report at the stage when I co-signed with Khuba and Sesoko and now known as the
20 second report.

CHAIRPERSON: You do not know?

MR ROBERT JOHN MCBRIDE: I do not know.

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Well perhaps without any presumption what the DCJ is putting to you is this. The first report was

always there on file?

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: No one took that first report added, deleted, changed the recommendation, threw the original first report away and put the second report on file. Two reports were always on file. One in one form, the other in the other form.

MR ROBERT JOHN MCBRIDE: Thank you Chair. In fact when the Minister requested all of this information both reports were given to the Minister.

10 **CHAIRPERSON:** Hm.

MR ROBERT JOHN MCBRIDE: So there was no attempt to mislead the Minister by only showing one, one report.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Both reports are with the bundle that was sealed and given to the Minister on 26 November 2014.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Okay and what appears to have escaped perhaps the Minister's attention and Werksmans attention is the fundamental issue you raise with the first report that it was largely
20 the project – the product rather – of the Crime Intelligence investigation.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And so that first report far from being incapable of alteration or supplementation or being subjected to another view it is arguable that no regard should been had to it and you

should have started again.

MR ROBERT JOHN MCBRIDE: Which Chair is indeed what Khuba proceeded to do to review everything that was there at that stage and the relative evidentiary value. The way it – it can never stand up in court now that all the facts are – it could never ever based on – of the shenanigans that took place before it arrived at IPID in any event.

ADV PAUL JOSEPH PRETORIUS SC: If necessary the report maybe subject to further analysis and debate but just to highlight the approach of Mr Khuba it appears at 1236 of EXHIBIT YC. You have testified that
10 Khuba was doing an investigation into the rendition saga under the supervision of Mr Mosing – Advocate Mosing – of the NPA?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And Khuba had inherited the docket for want of a better word from Crime Intelligence?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Khuba had a number of concerns which he highlights in his affidavit but in paragraph 19 on page 1236 he says:

20 “While I convey these concerns to Mosing he told me that I must nevertheless sign the January 2014 Report and send it to him as the investigation had been going on for two long.”

He states elsewhere that he was under pressure from the NPA to produce the report.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Leave aside whether that also interferes with the independence of IPID or not. His explanation is summarised in paragraph 20. He says:

“I firmly deny that there was any improper motive on my part, Sesoko or McBride in the changes that were made to the Renditions Investigation Report in March 2014.”

He also is caught up in the, in the use of language that refers to changes in a report rather than the production of a second report. He

10 said:

“There was no attempt on our part to exclude any material evidence from the report. The changes were made to reflect what we considered to be credible evidence that would withstand scrutiny in court.”

Is that your understanding?

MR ROBERT JOHN MCBRIDE: That is correct, yes.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 23 over the page, 1237 he says:

20 “In finalising the report and presenting the final report to McBride for authorisation we sought to conduct a thorough, critical and objective review of the totality of the evidence and to present only recommendations that were supported by credible evidence.”

That is his explanation. He will come here to tell the Chair about that.

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: But as far as you are aware that was the correct approach?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In any event to just make it clear what Werksmans found at page 1427 at paragraph 5.1.5 they find:

10 “In the absence of a valid explanation for the deletions by the cosignatories the only logical conclusion which can be drawn from the circumstances detailed above is that the second report was created for the purpose of exonerated the higher ranking officials specifically Dramat and Sibiya who were implicated in the first report.”

The implication and that is EXHIBIT YD page 1427 and paragraph 5.1.5 is somehow that evidence was created or fabricated for an ulterior motive. Was that ever put to you?

MR ROBERT JOHN MCBRIDE: No.

20 **CHAIRPERSON:** The reference to deletion there would be more accurate to say they are actually talking about a failure to include in the final report something that was in the first report as opposed to deleting something that is in a certain document, on your understanding?

MR ROBERT JOHN MCBRIDE: On my understanding it would be a conscience decision not to include after review anything that was of no

evidentiary value.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And if somehow non-evidentiary value quotations crept in initially there was a conscience decision not to include them, but in any event whatever was there in the first report was known because it was included with the package given to Minister Nhleko and there was no attempt to hide anything or remove it for ulterior motives or anything like that. I cannot take it much further than that.

- 10 **CHAIRPERSON:** Well it may well be, it may well be that if you have got a hard copy of the first report but you have got the same report in electronic form and in preparing the second report you use the electronic version of the same report and then what you want to include in the second - in the final report you delete somethings and maybe that is the deletion they are taking about the deleting what is in the electronic form as opposed to deleting what is in the hard copy.

MR ROBERT JOHN MCBRIDE: Chair the way you put it now would be accurate is what I expect would have happened.

CHAIRPERSON: Hm.

- 20 **MR ROBERT JOHN MCBRIDE:** I do not expect that they would have started a report from scratch.

CHAIRPERSON: Ja.

MR ROBERT JOHN MCBRIDE: When there are some objective facts.

CHAIRPERSON: Ja.

MR ROBERT JOHN MCBRIDE: That do not affect it either way.

CHAIRPERSON: *Ja.*

MR ROBERT JOHN McBRIDE: So they would have cut and paste it.

CHAIRPERSON: Yes, yes, but the difference of course would be this, that as long as the hard copy, if there was a hard copy, I assume there was a hard copy that had been given to the NPA, if that hard copy remained as it was it represented what had been given and it had not been interfered with and what you had produced by copying and pasting if you want was another report, but you – that hard copy still stood as it was before?

- 10 **MR ROBERT JOHN McBRIDE:** Yes, and just to take it further, to show that there was no – there wasn't any untoward motive. The case in all its facets was discussed with Mr Ngwasana, the pro's and con's and suppositions and scenarios, and different aspects and the consensus in discussion with him is that you cannot sustain a case on Dramat and Sibiya, it is just impossible, and all possible angles were covered. Now I note in the Werksmans report, they take issue that Mr Ngwasana refused to speak to Werksmans. My view is that Mr Ngwasana was right he was protecting the independence of the Prosecuting Authority and as to why Mr July will take offence to that and, basically suggests
- 20 that Ngwasana was the only one who could do something and therefore some disciplinary processes must take place on this issue, indicates a clear lack of understanding of – and for the Minister of Police to suggest decisions taken by the NPA are his business at all, I don't know if we can blame that on lack of knowledge of importance of the – of Constitution – the Constitution and the Constitutional Democracy and

independence of institutions or whether it was wilful ignoring of whatever principles that underpinned this democracy, I don't know.

ADV PAUL JOSEPH PRETORIUS SC: Let's perhaps change the focus of debate to a higher level and I don't mean any (indistinct) judgement on the debate that's taken place but what you deal with now is in fact what happened as a result of the whole rendition saga and the manner in which it was handled, leave aside whether it was dealt with properly or not you've given your evidence but you now tell the Chair of the outcome the demise of certain officials, the changes in personnel in the
10 IPID and of other consequences that occurred as a result of the manner in which the rendition saga was handled. Firstly let's go to paragraph 50, what post did Mr Sesoko hold prior to his suspension as a result of the renditions investigation?

MR ROBERT JOHN McBRIDE: Thanks Chair, he was the National Head of Investigations or I would say Chief Director of Investigations and Information Management, he was the head of all investigations conducted by IPID.

ADV PAUL JOSEPH PRETORIUS SC: Did he support your application to challenge the Constitutionality of certain sections of the IPID Act and
20 other sections when you challenged your suspension?

MR ROBERT JOHN McBRIDE: That's correct he supplied a confirmatory affidavit or supporting affidavit.

ADV PAUL JOSEPH PRETORIUS SC: Right when was he suspended, do you recall?

MR ROBERT JOHN McBRIDE: A few weeks after he had supplied the

supporting affidavit.

ADV PAUL JOSEPH PRETORIUS SC: And he was also charged with altering what we now refer to as the first report, is that correct?

MR ROBERT JOHN McBRIDE: No I've never mentioned Mr Sesoko in sections of the first report...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Well look at line 5 – 4 & 5 of paragraph 50 of your statement. Remember that Werksmans made a recommendation that you and Sesoko as well as Khuba be charged because they didn't know who did what?

10 **MR ROBERT JOHN McBRIDE:** Ja so – yes but the way you phrased it he was altering the first report which...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: No I don't want to get caught in the same terminology and to give any validity to the substance of the charge but what was the nature of the charge against Mr Sesoko?

MR ROBERT JOHN McBRIDE: He was charged with altering the report.

ADV PAUL JOSEPH PRETORIUS SC: Right leave aside whether that charge was properly formulated in the light of the evidence and questions that have now transpired in your evidence here, that was the
20 nature of the charge, correct? In fact the charge reflected the views of Werksmans and the Minister in relation to the fact that there was one report that was the final report and you couldn't actually do anything about that through later investigation or analysis, correct?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Who came in as the acting

Executive Director under your suspension?

MR ROBERT JOHN McBRIDE: It was Mr Kgamanyane.

ADV PAUL JOSEPH PRETORIUS SC: What did – to your knowledge what did he do as soon as he took office, you deal with this in paragraph 50?

MR ROBERT JOHN McBRIDE: He asked for a number of cases including the Panday case, he also enquired from Mr Sesoko about the cases involving Ntlemeza and General Mabula.

ADV PAUL JOSEPH PRETORIUS SC: Alright now before you go on,
10 tell the Chair briefly, there will be evidence to follow your evidence, but very, very briefly what was the Panday case all about?

MR ROBERT JOHN McBRIDE: Panday case involved corruption relating to the 2010 world cup in which a number of police officers were in a corrupt relationship with a businessman in Durban and police officers also involved the Provincial Commissioner.

ADV PAUL JOSEPH PRETORIUS SC: Right now that case, was it investigated by IPID?

MR ROBERT JOHN McBRIDE: It initially was investigated by DPCI...

ADV PAUL JOSEPH PRETORIUS SC: General Booysen?

20 **MR ROBERT JOHN McBRIDE:** General Booysen at some stage we received a complaint from General Booysen about interference in the case its – I think it could have been roundabout 2014 October/November when we received a complaint.

ADV PAUL JOSEPH PRETORIUS SC: Right and did IPID then do some work in relation the case?

MR ROBERT JOHN McBRIDE: Ja IPID did work right until the time I was suspended and until time that Sesoko and Khuba were suspended.

ADV PAUL JOSEPH PRETORIUS SC: Right you tell the Chair that your successor or acting successor called for that file or case?

MR ROBERT JOHN McBRIDE: Yes that's correct.

ADV PAUL JOSEPH PRETORIUS SC: We will deal with that in more detail but was that case ever put on the Court role for prosecution?

MR ROBERT JOHN McBRIDE: To my knowledge there was one appearance on one of the cases, there were about four cases relating
10 to Panday but the one which we worked on together with the National Prosecuting Authority in preparation for trial was a very simple one, it was the one relating to bribery and all accompanying evidence was made available and Advocate Gerrie Nel was appointed to prosecute the case by Mr Ngasana and the case was supposed to be enrolled, and in fairness there was a request at some stage, I'm not sure for which particular case that the accused make representations on the bribery case because the decision was that the bribery case is quite clear cut and if the bribery case is successfully prosecuted, the question is therefore begged, what was the bribery about which would
20 automatically lead to the bigger corruption that was taking place.

ADV PAUL JOSEPH PRETORIUS SC: Involving police officials?

MR ROBERT JOHN McBRIDE: Yes that's correct.

ADV PAUL JOSEPH PRETORIUS SC: Right just before we continue, you have told the Chair that the case file was requested by your acting successor Mr Kgamanyane and that, as I understand your evidence,

there has not been a successful prosecution, despite your view that there is evidence on file?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: There's been no successful prosecution or there has been no prosecution at all or what is the position?

MR ROBERT JOHN McBRIDE: There's been no prosecution on the bribery case yet.

CHAIRPERSON: On the bribery case there's been no prosecution?

MR ROBERT JOHN McBRIDE: Yes, on one of the other prosecution
10 cases Chair, on one of the other corruption cases there was one appearance at some stage.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Could we put it another way, no case involving the issues to which you've just referred has been finalised.

MR ROBERT JOHN McBRIDE: Absolutely not.

ADV PAUL JOSEPH PRETORIUS SC: And then you refer to other IPID investigation files that were requested and you mentioned Major General Mabula and is it General Ntlemeza?

20 **MR ROBERT JOHN McBRIDE:** Yes, the one of Ntlemeza, Mr Kgamanyane travelled to Limpopo, Mr Khuba was already suspended. Mr Kgamanyane called Mr Khuba back from suspension to discuss the Ntlemeza case that IPID had begun investigating. In relation to General Mabula case which involved the death of a suspect in custody and by the evidence that was available it involved torture. Mr

Kgamanyane requested documentation about that case from Mr Sesoko.
On my return to the office ...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: After your suspension?

MR ROBERT JOHN McBRIDE: After my suspension an important piece of information that had been given to the Provincial Head of North West – of IPID went missing could not be located, it was a recording of a conversation where a suspect admitted involvement in the torture which led to the death of a suspect which, against the background of these changes it was very strange. Fortunately a copy was kept of it so the
10 case was then resuscitated upon my return and all the evidence and dockets and evidence put together – because there was some trick in the way the case was reported also.

ADV PAUL JOSEPH PRETORIUS SC: Who was the official within IPID who was dealing with all these cases, Panday, Ntlemeza, Mabula and the like?

MR ROBERT JOHN McBRIDE: Before his suspension it was Mr Sesoko ultimately that would be in charge.

ADV PAUL JOSEPH PRETORIUS SC: Right, we get now at notionally to paragraph 51 of your statement but I don't want to deal with it now, I
20 need to intervene Chair to deal with a matter that has received considerable publicity and to clarify from our point of view what we understand the position to be notwithstanding what has appeared in the press. To take a step back Mr McBride made certain comments in his statement in regard to the findings of your younger brother Advocate Mxolisi Zondo in relation to the disciplinary hearing of Mr Sesoko, not

his disciplinary hearing Mr Sesoko.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In his statement Mr McBride expresses a very narrow opinion of what occurred at that enquiry in relation to sick notes submitted to Advocate Zondo on Mr Sesoko's behalf and whether these should or shouldn't be taken into account, there's an opinion expressed. When this matter was raised before you at the beginning it was stressed to you that there's a record, that the record is complete and comprehensive, the record involves, not Mr
10 McBride but another witness and any assessment of that record can, in due course be made by whomever might be appropriate. In relation to those circumstances, really what Mr McBride can or cannot say amounts to no more than an opinion and doesn't really count for anything other than Mr McBride's view. Presented to you was a comprehensive piece of research and documentation prepared on behalf of the legal team. That was the only written submission you had before you, it was placed before you and never detracted from because I recall saying at the very end, that when this matter comes to be considered finally, we will deal with the issues and the report presented
20 to you or the submissions presented to you rather would remain intact and relevant and as I understand it you accepted that at some state you would reconsider or consider all those elements in that report or those submissions placed before you on behalf of the legal team.

Now I – in order to allow the evidence to proceed I intervene to say, well it's an opinion it's no more than an opinion you could hear

that and in due course you could make a decision in regard to your attitude towards this and other evidence and that was where it rested. I might have said I was speaking on behalf of the legal team, I did say that all the views were not...(intervention).

CHAIRPERSON: I don't think you said you were speaking on behalf of the legal team, I think you said the views expressed in the document that you put up were not unanimous.

ADV PAUL JOSEPH PRETORIUS SC: Yes that's what I said and I took it upon myself to offer a way through, I didn't purport to change what
10 the legal team had said, in fact it remained (indistinct) before you and I think you understood it...(intervention).

CHAIRPERSON: Well it remains before me it's available to me to read, I have – before that I had a look at least parts of it and you did say it's not unanimous and you did – whatever you said is on record...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes but I did offer a way forward for which I take full responsibility and that was because of the nature and extent of the evidence because there's a full and comprehensive record it's not necessary for you to make any final
20 decision now, you can make a decision later and to hear the opinion of an individual who was not directly involved in a factual basis would not detract from any decision that you might make in the future but the situation has now become more complicated Chair.

CHAIRPERSON: Okay maybe before you tell us about the situation becoming more complicated I must just repeat that what I said was,

maybe let's not have a situation where we must adjourn Mr McBride's evidence because we – the Commission doesn't have a lot of time. Let me hear his evidence but I still indicate that probably the way forward should include that submissions be invited from legal professional bodies, I may have mentioned one or two other people or institutions to make submissions before any decision can be made as to what should happen with regard to any evidence that might relate to my younger brother and my plan is still that unless something that – unless something else happens my plan is still that I should invite certain legal

10 professional bodies, I haven't finalised in my own mind who else to make submissions so that at a certain stage I can then, if need be, make a decision whether – what should be done, you know, the – it's an unusual situation because if I was sitting in Court as a Judge it may have been very easy but I'm sitting here as Chairperson of the Commission and to make things more complicated the Commission wasn't appointed in the usual way in which Commissions are appointed. There was a remedial action from the Public Protector who prescribed – made certain prescriptions, there was a High Court decision which gave effect to the Public Protector's remedial action as to the selection of the

20 person to be – to Chair the Commission. So all of those things will need to be looked at so that if I am the one who must make the decision as to what should happen to it I make it with the benefit of submissions from different bodies. I don't know whether it's a matter which – I think there was reference to a possibility to – I think it's in the memo or note that was written that was – that we talked about

earlier, there was reference to the possibility that maybe the President could be asked to amend the terms of reference...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Or the regulations.

CHAIRPERSON: Ja or the regulations so there are all kinds of things and certainly if I'm the one that must make the decision I would like the benefit of different submissions from professional bodies but I certainly accept that the note you put up is there, it's available to me to read in full – ja.

ADV PAUL JOSEPH PRETORIUS SC: So Chair before we get to the
10 complication, in the light of the various press reports, all of which I've not read and may not be accurate, just to summarise McBride originally intended to express an opinion on someone else's disciplinary enquiry and the circumstances prevailing in that enquiry that there is a written record upon which any informed judgment can be made in due course, that's not before you save perhaps in some annexure where the ruling of Mr Zondo exists that in order not to delay proceedings unduly it was decided as an interim measure and pending any decision you make, after hearing representations, not only from other professional bodies but also from the President's office you mentioned, you will make a
20 final decision and that it would not affect that process if you merely had reference or heard the opinion in relation to those facts of Mr McBride but the situation has now – oh and also the submissions of the legal team remain before you for your consideration, unaltered and those were the only written submissions before you. The situation has become a little bit more complex now because we were informed this

weekend, Chair, that Mr Booyesen also wishes to make reference to an enquiry in which Mr Zondo presided or didn't – may not have continued I don't know the full facts and the extent to which the enquiry continued or didn't continue but it involved General Booyesen himself so it's direct and Mr Sesoko may come to give evidence, again he will give evidence which is direct as opposed to opinion. In that – in the light of that, and I've discussed it with Mr McBride perhaps everything, opinion and everything else should be pended, pending a full consideration of all the evidence together to see what to do because I would imagine that
 10 the evidence of Mr Sesoko, which is direct and the evidence of General Booyesen which is also direct will be decisive of this issue rather than what Mr McBride might or might not have to say and Mr McBride is quite willing, I understand, and he can confirm it, to pend his evidence in relation to paragraph 51 of his statement until further notice.

CHAIRPERSON: I would be inclined to say let's get more information if General Booyesen has something to say as well, let's hear what he has to say before any decision can be made and if McBride is happy to pend that part of his evidence there is no problem, Mr McBride do you confirm, what's your position?

20 **MR ROBERT JOHN McBRIDE:** Yes sir I have no objection.

ADV PAUL JOSEPH PRETORIUS SC: So just for clarity sake because one doesn't know how this will be understood by the media there was little prejudice to the overall process still to be considered by yourself by hearing the opinion indirectly of Mr McBride. We have subsequently learnt that there are at least two pieces of direct evidence that deal

with the same matter which really overtakes the consideration of Mr McBride and in relation to that it requires full and comprehensive consideration for a decision by yourself on the strength of, amongst other things, the submission the legal teams have made to you.

CHAIRPERSON: No, no that's fine I think that's – that is the way to go because assume that the decision was to say, well if one looks at what Mr McBride has to say about Mr Mxolisi Zondo in regard to Mr Seseko's disciplinary hearing if one were to say, when one has regard to the nature of what he has to say in the scheme of everything I should hear
10 it then there would be a problem, if later on, General Booyesen or somebody else comes up with something else so it might be better to say – because if in the end the decision would be in the light of what General Booyesen may say in the light of what someone else may say, I should not hear it then I may as well not hear the part of it that comes from Mr McBride. So it's more convenient to say, let see exactly what's in – what every witness comes up with.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Thank you Chair.

CHAIRPERSON: Ja thank you. But there is no evidence that should be heard that will not be heard. It is a question of who must hear it. If it is
20 evidence that should be heard it should be heard. It is a question of who should...

ADV PAUL JOSEPH PRETORIUS SC: It will indeed be heard in the form manner and by the person ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That ultimately has decided...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: At least under your initial direction.

CHAIRPERSON: Ja, ja.

ADV PAUL JOSEPH PRETORIUS SC: Maybe that the person who finally hears it is appointed by someone else.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: If that is possible at all.

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC**: It is a complex ...

CHAIRPERSON: It is a very complex...

ADV PAUL JOSEPH PRETORIUS SC: Matter.

CHAIRPERSON: Matter I think I have had time to reflect on it. It is complex because in terms of – not just in terms of reference in terms of a high court decision giving effect to the Public Protector's remedial action evidence relating to matters that fall under the terms of reference as they stand they need to be heard by this commission. Is the question if now it is somebody is it still being heard by this commission?

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes.

CHAIRPERSON: If it is being heard by somebody else. But at the same time there may be situations where what – however you look at it I should not hear certain evidence. I do not know. I know that in the constitutional court we have dealt with matters even where a colleague of ours is involved and we deal with them and we deal with them in the

best way we can. But it is not always the best situation. So – so it is not an easy matter. It is a matter that needs proper submissions to be made.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: So that in the end there can be nobody suggesting that any evidence that should have been evaluated in a certain way was not evaluated in a certain way, in a proper way or was – evidence was heard by somebody who should not have heard it. So we need to look at everything properly.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** To be fair to all concerned particularly yourself Chair to have heard the contents of paragraph 51 the opinion there would not have affected any final decision that you might have made. The situation is now different.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Where there is further direct evidence.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: That requires a fresh approach to the problem.

- 20 **CHAIRPERSON:** Yes, yes, no that is fine.

ADV PAUL JOSEPH PRETORIUS SC: And for that purpose you have the submissions of the legal team.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: And any further submissions that the legal team might make.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Plus submissions of outside.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Bodies including the Presidency.

CHAIRPERSON: Ja. Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 52 Mr McBride you say that Sesoko also faced criminal charges together with Mr Khuba and yourself?

MR ROBERT JOHN McBRIDE: That is correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** For fraud and defeating the ends of justice?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you have already said that those criminal charges were withdrawn on the 1 November 2016?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You then returned to office?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What happened to Mr Sesoko?

20 **MR ROBERT JOHN McBRIDE:** Mr Sesoko had taken the matter to the Labour Court or the Bargaining Council I cannot remember precisely. But in the process and in the absence of a handover report by Ramonyane the reasons given for the – his dismissal and a decision to discipline him were not available. In addition to that there was no basis for IPID as an organisation never mind myself to actually oppose any action that Sesoko sought for redress on his situation. As such a

department had to settle with Mr Sesoko's legal team which resulted in his return to IPID.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You say at paragraph 53 Mr McBride on page 11 of your statement 11 of Exhibit Ya that you made a certain discovery or observation on your return to office in relation to the statistical performance of IPID as it had been reported in your absence. What is your evidence in that regard?

MR ROBERT JOHN McBRIDE: Yes it was brought to my attention by Mr Sesoko and the team that – and that the Auditor General had also
10 queried a number of issues relating to the way in which cases were closed. One particular which is quite strange and stark was a case of a complaint that was laid in my absence against General – General Phahlane and at some stage a duplicate of the same case made under a different case number in the IPID case control system was made and subsequently both cases were closed because they were duplicates of each other.

ADV PAUL JOSEPH PRETORIUS SC: Yes just to illustrate the point. You have one case.

MR ROBERT JOHN McBRIDE: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Docket investigating a particular police official?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: You have a duplicate file implicating the same person on the same investigation?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: So the two are in essence copies of each other?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The one is withdrawn because it has a duplicate?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the other is also withdrawn because it had a duplicate?

MR ROBERT JOHN McBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So both disappear?

MR ROBERT JOHN McBRIDE: So in the IPID's system both cases are closed.

ADV PAUL JOSEPH PRETORIUS SC: Yes. But to – you deal with that later in your evidence. To deal with the general point you make in paragraph 53 how was the performance of IPID in your absence reported including to Parliament?

MR ROBERT JOHN McBRIDE: Thanks Chair. For us it was reported that IPID's performance had gone up since the appointment – well since the suspension of the Executive Director and the appointment of an
20 Acting Executive Director and ...

ADV PAUL JOSEPH PRETORIUS SC: Was this accurate?

MR ROBERT JOHN McBRIDE: No, no. It was – it was not accurate and it was untrue and the manipulation of statistics and the closing of cases under a provision which is called Special Closure is what was utilised to come to that conclusion. It is important to add that there

was a criminal case opened up on this matter and disciplinaries which resulted in one person being dismissed and another very senior person who was responsible resigning from IPID.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So in summary in your absence after the change of leadership.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In IPID it was reported you say falsely that the performance had improved. This was a device that was used or there was a device used to manipulate statistics to achieve an
10 apparent result which was not an accurate result?

MR ROBERT JOHN McBRIDE: Yes. And the practice was quite widespread across provinces and an instruction had been given at some stage the exact nature of the instruction Mr Sesoko could attest to but it also occurred within for example KZN I am aware of and Gauteng just from the reports that were coming in and from memory. So it was not an isolated case it was a number of cases on Special Closure. In fact it – that loophole in definition we then forced the following financial year to change the definition of what a completed case is and how it is handled. If I remember correct that also resulted
20 in a new standard operating procedure.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN McBRIDE: Which was then signed.

ADV PAUL JOSEPH PRETORIUS SC: Okay. In summary what has happened is that the leadership of a Law Enforcement Agency institution or a government institution is removed and replaced by other

leadership. It is then reported that under the new leadership performance has improved. Is this occurrence unique to IPID at around the time?

MR ROBERT JOHN McBRIDE: No Chair in the period – General Ntlemeza indicated that performance of DPCI had gone up after General Dramat's removal and he to that position – he had been appointed to that position. Similarly in SARS the then Commissioner Moyane made the same comment that performance and collection in SARS has gone up.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. The Chair will in due course consider all evidence placed before him and make a finding in relation to whether these are coincidences or whether there was a design behind them. Let us go on with your statement. Tell the Chair please what the fate of Mr Khuba was? Was he also suspended on the 21 May 2015?

MR ROBERT JOHN McBRIDE: That is correct. Mr Khuba was suspended and then as we have covered already Mr Khuba was – Mr Khuba did a plea bargain with the department.

ADV PAUL JOSEPH PRETORIUS SC: Before you go there we will deal
20 with that in due course in the following paragraph.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: But just to complete what you say in paragraph 55 if we may? The reasons for his suspension I understand were the same as the reasons for your suspension and Mr Sesoko's suspension?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Dealings with the Rendition Report?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Did he also submit an affidavit on your behalf and your court challenge to your suspension?

MR ROBERT JOHN McBRIDE: Indeed he did yes.

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 56 you refer to certain events that took place before his dismissal which followed.

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

ADV PAUL JOSEPH PRETORIUS SC: Tell the Chair about that please.

MR ROBERT JOHN McBRIDE: Ja so some of the stuff Chair I had covered earlier when discussing my engagement with Werksmans and that I had raised some of these concerns. But after six months of suspension Mr Khuba reached a plea bargain agreement to the department. He would admit nonspecific wrongdoing on a Wednesday and the following Monday he would be back at work. Khuba explains that in one of his affidavits somewhere as to what pressure were on him and why he needed to come to that – to that plea bargain. In any event
20 he did the plea bargain, he was told to report back for duty on Monday. He then made an affidavit on the Friday. In that affidavit he covers his plea bargain, his reasons and that in his affidavit he did not infer any guilt or implication to McBride and Sesoko. He then arrives at work on Monday. On Monday he gets a call from Mr Ramanyane to tell him that he should give him within 24 hours reasons why he should not be

dismissed because his plea bargain and his affidavit on the Friday that is between the Wednesday and the Friday are – are in contradiction to each other and I think Mr Khuba made some written representation. In any event Tuesday morning he was dismissed without a hearing or any further explanation.

ADV PAUL JOSEPH PRETORIUS SC: The emphasis in paragraph 56 of your statement Mr McBride is somewhat different where you say he was dismissed after he refused to falsely implicate yourself and Sesoko and upon his refusal he was dismissed with immediate effect. I understand
 10 you to say now that no the real reason for his dismissal was a contradiction between his contents of his plea bargain and his supporting affidavit to you.

MR ROBERT JOHN McBRIDE: Chair I purposefully answered like the way in which I did and it is not different to what is here and I will explain to you why and then when Mr Khuba can testify for himself. When he signed the plea bargain what he was agreeing that he had done wrong he just admitted he was doing wrong. Separate from his signature on the plea bargain a set of charges was added onto him with allegations onto the paper which was not what he had signed and – and
 20 this was done in the presence of the – of the Advocate. But Khuba says he did not – he was not aware of that attachment and that is why I answered but the discussions with Ramanyane was that why does he – does he say he did wrong but he does not go further in saying McBride and Sesoko did wrong. So indeed the last sentence or the last two sentences within a week Khuba was summarily dismissed after he

refused to falsely implicate me and Sesoko. And it then – it follows up what is in 57 because 57 then goes into detail how the same attempt to get him to falsely implicate us continues after he is now dismissed and sitting at home.

ADV PAUL JOSEPH PRETORIUS SC: Let us deal with 57 then. Thank you.

MR ROBERT JOHN McBRIDE: Thanks. So after Mr Khuba is dismissed he was approached by officers from DPCI and promised his job back on condition he made a false statement saying that I had
10 forced him to change the Rendition Report. He was visited over a period of a number of days on this occasion and on the last of that – of those series of visits he recorded a phone call after these visits had taken place of one of the people who had visited him. And the recording is with the commission and so is the transcript of the recording. And in the recording Khuba is then informed by Colonel Mhlongo that General Mtlemeza will not forget him if he says what was discussed he will be restored to his position and that the general is his friend and will not leave him and will not dump him. And the general in the context according to Khuba is General Ntlemenza. So the point of
20 57 is that Khuba is dismissed unfairly in a very un-procedural way. Whilst he is sitting at home he is not left alone. They come to him and offer him his job back to be restored. They come right into his house but he must do XY and Z which includes implicating in their words and it is on the recording.

ADV PAUL JOSEPH PRETORIUS SC: Alright before we go on with the

leave of the Chair we want to play the recording if we may? It is very brief.

CHAIRPERSON: Yes alright.

ADV PAUL JOSEPH PRETORIUS SC: And there is a transcript

CHAIRPERSON: Yes I think that – let us do that if – ja let us do that.

ADV PAUL JOSEPH PRETORIUS SC: May I just say and ask the witness. The recording is an isolated communication that happened after a series of communications, a series of visits you say?

MR ROBERT JOHN McBRIDE: That is correct yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** In fact according to – if Mr Khuba does give evidence and according to your evidence Colonel Mlongo visited Khuba on a number of occasions?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And this telephone call is the last one of the last in these series of communications whether personal interactions or telephonic?

MR ROBERT JOHN McBRIDE: That is correct. The ...

ADV PAUL JOSEPH PRETORIUS SC: The point I wish to make is that one can only understand the full import of the transcript and the
20 telephonic recording if one understands all that preceded it?

MR ROBERT JOHN McBRIDE: Absolutely Chair.

ADV PAUL JOSEPH PRETORIUS SC: So – and you will point this out to the Chair after hearing the recording.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The recording has been

transcribed I am told not instructed Chair I am told accurately.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And it is in bundle D, Exhibit Yd at page 1456. Is that right?

CHAIRPERSON: Yes but we – for now you will play the recording. Hey Mr Pretorius?

ADV PAUL JOSEPH PRETORIUS SC: Sorry Chair do you have a question?

CHAIRPERSON: It is okay it is taking over – it is overtaking – it has
10 been overtaken by events.

ADV PAUL JOSEPH PRETORIUS SC: Sorry hold it. I am sorry Chair.

CHAIRPERSON: Okay not it has been overtaken by events it is okay. Okay alright let us hear the recording.

[LISTENING TO RECORDING] [NOT AUDIBLE TO TYPE]

ADV PAUL JOSEPH PRETORIUS SC: I am informed Chair of two things. I am not a linguistic expert Chair by any means but I informed that the language is used are a combination of Setwana Sesotho and perhaps Sepedi as well and I am also...

CHAIRPERSON: And some English as well.

20 **ADV PAUL JOSEPH PRETORIUS SC**: I am also informed that – I am sorry Chair.

CHAIRPERSON: And some English as well. Some English.

ADV PAUL JOSEPH PRETORIUS SC: Some English yes. That I did understand.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Chair the – I am also informed that the transcript is an accurate transcript. That may be subject to debate in the future.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But perhaps we should have it officially transcribed.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: In due course but for the moment my information is that it is safe to proceed on the basis of the
10 translation contained at paragraph – at page rather 1459 in Exhibit Yd.

CHAIRPERSON: 1459?

ADV PAUL JOSEPH PRETORIUS SC: Well 1458 it begins but the...

CHAIRPERSON: Oh yes.

ADV PAUL JOSEPH PRETORIUS SC: The parts that we will seek to place on record are at page 1459 and following.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But let us just place this telephone conversation in its proper context please Mr...

CHAIRPERSON: Well before we do that let us talk about how far we
20 will go today. It appears to me subject to you and Mr McBride being agreeable so that we should try and not finish before five. What is your attitude I know you have been standing there for a long time?

ADV PAUL JOSEPH PRETORIUS SC: Chair if we continue to five that may help, but I am not sure in the end it will make much difference.

CHAIRPERSON: A difference.

ADV PAUL JOSEPH PRETORIUS SC: Because in any event we will not finish today and we are in for tomorrow as well.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So whether we finish at four or five.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: I do not think it makes a material difference ultimately because as discussed with you over the long adjournment.

10 **CHAIRPERSON:** Hm.

ADV PAUL JOSEPH PRETORIUS SC: It is unlikely that we should call the next witness who is also.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: A witness whose evidence is of some length.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: So.

CHAIRPERSON: The only thing of course is that if we add more time today we enhance our prospects of finishing tomorrow with him.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes.

CHAIRPERSON: And maybe even earlier than later. That would be the case if we do not add more time. That is the on

ADV PAUL JOSEPH PRETORIUS SC: That is.

CHAIRPERSON: That is the only consideration.

ADV PAUL JOSEPH PRETORIUS SC: *Ja.* That is entirely in order

Chair. Thank you.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: If we may just take a break.

CHAIRPERSON: Well I would like.

ADV PAUL JOSEPH PRETORIUS SC: At some stage between now and five.

CHAIRPERSON: Ja. I think after finalising what we will do beyond whether we proceed to five then we can take a break and then resume.

ADV PAUL JOSEPH PRETORIUS SC: Well I thought that we had
10 reached “an agreement” on the issue Chair.

CHAIRPERSON: No.

ADV PAUL JOSEPH PRETORIUS SC: We would proceed today till five [intervenes].

CHAIRPERSON: Well I have not asked Mr McBride.

ADV PAUL JOSEPH PRETORIUS SC: Sorry.

CHAIRPERSON: Mr McBride what is your situation about proceeding to 5 o’ clock?

MR ROBERT JOHN MCBRIDE: I would prefer if we did not have to.

CHAIRPERSON: Oh, if we did not have to, but you remain available
20 tomorrow?

MR ROBERT JOHN MCBRIDE: Yes. In addition Chair there is an aspect in terms of the first affidavit which I signed.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: Which we have not consulted on yet.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And which means it is unlikely even tomorrow.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: That we will finish.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: And it is quite important, but I have not discussed it with.

CHAIRPERSON: With Mr.

MR ROBERT JOHN MCBRIDE: Mr Pretorius.

10 **CHAIRPERSON:** Mr Pretorius.

MR ROBERT JOHN MCBRIDE: Advocate Pretorius yet.

CHAIRPERSON: Yes.

MR ROBERT JOHN MCBRIDE: But I am - in the back of my mind it is there.

CHAIRPERSON: *Ja.*

MR ROBERT JOHN MCBRIDE: And it has been submitted last year to the.

CHAIRPERSON: *Ja.*

MR ROBERT JOHN MCBRIDE: Commission.

20 **CHAIRPERSON:** Well, but if we finished at half past four then you would be fine?

MR ROBERT JOHN MCBRIDE: It would not inconvenience me.

CHAIRPERSON: It would not inconvenience you. Okay. Well I am trying to strike a balance. Finish at four and five, but half past four is fine with you?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Yes. Okay. Not that is fine. I think let us take a break now rather than later. It is about 26 minutes to four. Let us say we return at quarter to. Is 10 minutes fine?

ADV PAUL JOSEPH PRETORIUS SC: At.

CHAIRPERSON: Quarter, 10 minutes?

ADV PAUL JOSEPH PRETORIUS SC: Quarter to four, yes.

CHAIRPERSON: Should it be 10 to? Quarter to four is fine.

ADV PAUL JOSEPH PRETORIUS SC: 10 to Chair.

10 **CHAIRPERSON:** 10 to. Okay. We will adjourn and resume at 10 to four.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you may proceed Mr Pretorius.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Mr McBride at page 1458 is a translation of the transcript, or the transcript of the telephone conversation that we have just heard. I don't want to go into too much detail because Mr Khuba can give original evidence as to what happened in the telephone call.

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And if the Chair is to rely on any evidence finally it will be that of Mr Khuba.

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: What this shows for present purposes to place it into context and into the context of your evidence is that on the face of it Mr Khuba was offered or promised a promotion if he cooperated?

MR ROBERT JOHN McBRIDE: He was promised restoration to the post from which he was dismissed.

CHAIRPERSON: In other words reinstatement?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Yes, the later transcript will
10 deal with the offer of a promotion, am I correct, or is that someone else?

MR ROBERT JOHN McBRIDE: That is another person, another recording.

ADV PAUL JOSEPH PRETORIUS SC: Yes, alright so for the present the offer is that his job will be restored provided certain action is taken by him?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Right, to support General Ntlemeza is friend and not to support his enemies?

20 **MR ROBERT JOHN McBRIDE:** That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And this will be placed into full context once we have evidence of the full sequence of interactions between Colonel Mahlangu on the one hand and Mr Khuba on the other.

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Then it's hearsay for the

moment but Mr Khuba will come to testify to the extent that it may be put in dispute but what do you say in paragraph 58 in relation to a communication between General Ntlemeza and Mr Khuba?

MR ROBERT JOHN McBRIDE: Ja indeed Mr Khuba has attested to this in a warning statement which he signed at the time at which we were arrested and charged on the rendition matter. He spoke about this interaction with General Ntlemeza in that statement.

ADV PAUL JOSEPH PRETORIUS SC: What was that interaction?
Chair we're obtaining the warning statement, we just haven't got it yet.

10 **CHAIRPERSON:** Yes okay.

MR ROBERT JOHN McBRIDE: Well he indicated that at some stage in November 2013 General Ntlemeza who was known to him through the interaction in investigations of police and who was Deputy Provincial Commissioner for Limpopo had approached him and the exact sequence and discussions we would have to look at the statement again to get it as accurately as possible but the key element which was there which I'm drawing attention to here is that Ntlemeza was interested in the rendition investigation in 2013 already before I arrived at IPID, so there was an interest and the interest was you're holding me back in my
20 progress and my career, and during the same period within a matter of a few weeks at least from documentation and evidence Advocate Mosing also placed pressure on Khuba to finalise his report and on the Rendition matter, so that's the context in which this conversation took place.

ADV PAUL JOSEPH PRETORIUS SC: Then Mr McBride from what you

say and it must be common cause Mr Khuba has since been restored to his position through an order of the Labour Court.

MR ROBERT JOHN McBRIDE: Yes Chair before I go there, there was a follow up meeting almost a year later, between General Ntlemeza and Mr Khuba in ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: In 2014?

MR ROBERT JOHN McBRIDE: In 2014, a year later so I am IPID, the Minister has asked for all the information in November, this conversation is taking place just prior to General Dramat receiving his
10 letter of Notice of Intention to suspend him from Minister Nhlegu, so that's the context, it's General Ntlemeza, he raises his interest in where the rendition investigation is going, a year later General Ntlemeza is also aware that something is going to happen with General Dramat and that Mr Khuba should watch the media.

ADV PAUL JOSEPH PRETORIUS SC: And is it your evidence that the context of the statement you make in paragraph 58 is that General Dramat's removal would facilitate General Ntlemeza's career advancement?

MR ROBERT JOHN McBRIDE: Yes Chair and the two instances and
20 the subject matter discussed in both conversations there are no way to de-link them, they are linked.

ADV PAUL JOSEPH PRETORIUS SC: Ja, well Mr Khuba will come and give that evidence.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Then I understand Mr McBride

that you have time constraints and that if possible we should try and proceed with your evidence without detracting from its content too much as rapidly as possible.. I was informed that during the most recent break, am I correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 60 through to paragraph 75 ...(intervention)

CHAIRPERSON: Well Mr Pretorius if the time constraints to which you refer are such that, if they affect today as well as opposed to other
10 days I will understand if there's a request that we should not go to half past four, I just want to check whether adding that 30 minutes might just be an unnecessary inconvenience.

ADV PAUL JOSEPH PRETORIUS SC: Yes I speak entirely against interest Chair but it may require us to go further today because the problem is tomorrow.

CHAIRPERSON: Oh, okay, okay. Mr McBride so is your position that we should cover as much as we can today?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Yes, okay no, thank you.

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

ADV PAUL JOSEPH PRETORIUS SC: From paragraph 60 of your statement on page 12 of Exhibit YA you deal with what you discovered on your return in regard to what happened to senior personnel within IPID, correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And you deal with the case of Felicia Ntshangase, the case of Nmkozi Netsayanda, the case of Mahoca, the Director of Litigation Services, the case of Moses Dlamini, the case of Mapachu, the Director Executive Support in the Office of the Executive Director and then you deal with restructuring the case of Vinesh Budu, Marianne Morwaswe, Suziwe Pale, Ndukule Qongo and Mamodishe Malope, all those cases, are you able to summarise generally what happened in this regard? The detail is there in your statement, the Chair has your statement, it's on record, what do you
10 say about firstly the restructuring or transfers or dismissals generally and secondly the period of time over which this took place and whether this took place and whether this was normal or abnormal?

MR ROBERT JOHN McBRIDE: I think essentially the affected officials, that's now in addition to myself, Mr Khuba and Mr Sesoko, were all senior personnel in IPID and were in key critical positions. Ntshangase was Provincial Head, Gauteng and just to contrast it Mr Kgamanyane, who was acting as Executive Director, was a Provincial Head, Free State, so we have Mr Kgamanyane moving to the National Office, Ms Ntshangase I think being suspended or I can't remember the exact
20 sequence of events, and then we have Ma'am Morwaswe who is the Chief Director, Legal Services who is then moved to the Provincial Head in Northern Cape the Head of Northern Cape is then transferred as Head of Legal, the CFO, Linda Gudlu Ncomo, is transferred as Head of Corporate Services, Gauteng. The Head of Supply Chain Management, Suziwe Qwele, is transferred to Gauteng. Mamodishe

Malope, the Head of Stakeholder Management is transferred as Provincial Head, Mpumalanga and a key one is Ma'am Pargu, he is basically the institutional memory of the Department, he is in the office of the Executive Director, he is in effect transferred to Stakeholder Management. Another key person who is moved is Mr Mahoka who is Director, Litigation Services, that is he is responsible for preparation of all documentation including the documentation that dealt with the constitutional challenge, he is the immediate subordinate to Ma'am Morwaswe.

10 So these are the circumstances, where key people are moved, there's no rational or reasonable explanation why it was done, and no explanation was ever given except that it was done and I've got orders from my principals, my supervisor indeed which is the Minister, and I am doing it. This is not unlike what happened in the other two institutions that I mentioned.

ADV PAUL JOSEPH PRETORIUS SC: What effect did these transfers and this restructuring have on the viability or ability to control IPID?

MR ROBERT JOHN McBRIDE: I think the context of transfers and uprooting someone who is at head office for example to Northern Cape
20 besides the effect on the functionality of the Department it immediately instils fear, immediately instils fear, others they have children, they are single parents, they must leave their kids and go to another Province.

ADV PAUL JOSEPH PRETORIUS SC: What happened to the person who was transferred to the Eastern Cape, would you tell the Chair about that?

MR ROBERT JOHN McBRIDE: That was Mr Vinesh Budu who was a Deputy Head for Gauteng, the Provincial Head in Gauteng after Ma'am Ntshangase was suspended comes from Northern Cape and he's a Deputy at Northern Cape and he comes to be the Acting Provincial Head in Gauteng and immediately you have two people of the same level, both Deputy Heads of respective provinces and now the one is senior to the other. There's immediate tension between the two as to how things must be done. To fast forward a number of the special closures are supervised by the Deputy Head of Northern Cape who is
10 now the Acting Head of Gauteng, and eventually after disagreements how matters were done Mr Budu was then transferred to the Eastern Cape, and he couldn't question it. He then left the Department because separation from his family he couldn't tolerate it any further. He has since reapplied for a position in IPID and before my departure was appointed to that position, so he is back at IPIC.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: But he is one example of those uprooted and sent somewhere else.

ADV PAUL JOSEPH PRETORIUS SC: Over what period of time did
20 these transfers under this restructuring occur? Was it months, days, weeks, years?

MR ROBERT JOHN McBRIDE: The exact dates I'm not sure but this would be a period of at least nine months.

ADV PAUL JOSEPH PRETORIUS SC: You refer in paragraph 75 to a report of the Auditor General dated 31 March 2016, was this a report of

occurrences within IPID and the performance of IPID during the period of your suspension?

MR ROBERT JOHN McBRIDE: Yes, I think it covered the 15/16 period which is a period upon also half of the year which I returned during October, but it covered a significant part of when I was absent, but if you're head of the organisation you have to take responsibility for everything.

ADV PAUL JOSEPH PRETORIUS SC: The report appears in Exhibit Yd at page 1464 and there's an extract at page 1475, paragraph 27, if
10 you could place that on record please.

MR ROBERT JOHN McBRIDE: Is that d Chair?

ADV PAUL JOSEPH PRETORIUS SC: D, small letter d, Exhibit Yd, page 1464 is the first page of the Auditor General Report and the extract is at paragraph 27 of 1475, if you could just place that on record please.

MR ROBERT JOHN McBRIDE: I have it Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right, just read that onto the record please, and comment if you will.

MR ROBERT JOHN McBRIDE: Four officials in top management
20 position have also been suspended or transferred which has compounded leadership effectiveness problems, ethical issues in the dealing of the Department have also been identified which forms part of the ongoing leadership instability. And this it's dated 22nd of July 2016.

ADV PAUL JOSEPH PRETORIUS SC: Is that the passage to which you wished to refer the Chair?

MR ROBERT JOHN McBRIDE: Yes, that's correct.

ADV PAUL JOSEPH PRETORIUS SC: You returned to office you say in your statement at paragraph 76 on the 19th of October 2016?

MR ROBERT JOHN McBRIDE: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you requested a handover report?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Did you receive such a report from Mr Kgamanyane?

10 **MR ROBERT JOHN McBRIDE:** No I did not. In fact I did not see Mr Kgamanyane at work ever again, or any time since.

ADV PAUL JOSEPH PRETORIUS SC: Your requests for a report on his response are in the bundles, do you need to refer to them?

MR ROBERT JOHN McBRIDE: No, not necessarily Chair.

CHAIRPERSON: You say you didn't see Mr Kgamanyane at work again.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Before your suspension he was Provincial Head in the Free State isn't it?

MR ROBERT JOHN McBRIDE: That's correct Chair.

20 **CHAIRPERSON:** He did go back there or you don't know?

MR ROBERT JOHN McBRIDE: No Chair he was transferred to DPCI. Now usually when a person is transferred both Departments have to agree to the transfer.

CHAIRPERSON: Yes, and certainly the Head of the organisation from which he comes should be informed or should have been consulted.

MR ROBERT JOHN McBRIDE: Yes Chair but the transfer was effected by Minister Nhlegu, so it was not done by me, it was done between Minister Nhlegu and General Ntlemeza.

CHAIRPERSON: In the meantime General Ntlemeza had become, had taken General Dramat's position as head of DPCI?

MR ROBERT JOHN McBRIDE: I think perhaps at that stage he was already permanently appointed to that position.

CHAIRPERSON: Oh, either he was acting or he was permanently appointed, ja.

10 **MR ROBERT JOHN McBRIDE:** That's correct, that's correct yes.

CHAIRPERSON: Okay, but you were not consulted, your views were not sought and you did not – you were not asked for your consent or anything like that?

MR ROBERT JOHN McBRIDE: Absolutely not Chair. If I can just add on at a stage when the consideration of disciplinary processes against Mr Kgamanyane it was at that time that he completed his move to DPCI, in fact he took leave for a few weeks upon my arrival – in fact the day before the Minister approved his leave for two weeks because it was known that I would come back on the 19th of October and I think it was
20 the Friday I think 19th could have been a Tuesday so it was a day before, the 18th, there's a leave form which I found which the Minister had approved his leave to be away from the office.

CHAIRPERSON: Mmm.

ADV PAUL JOSEPH PRETORIUS SC: The communication we've just referred to and that is Mr Kgamanyane's response to your request for a

handover report is dated the 27th of October 2016 and it appears at page 1554 of Exhibit Yd, would you mind going there please and just tell the Chair very briefly if there's anything in that you believe bears emphasis.

CHAIRPERSON: Page 1554 you said?

ADV PAUL JOSEPH PRETORIUS SC: 1554.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: That reply should be read in the context of your request at 1552.

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

ADV PAUL JOSEPH PRETORIUS SC: Where you said in paragraph 3 the Exco has directed that the following aspects should be covered in your presentation.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: What were you seeking to establish or find out about?

MR ROBERT JOHN McBRIDE: I had indicated that there's some explanation in the financial transfers of the Department and the Department in general, financial implications of what happened. The
20 Executive Committee of the Department had a meeting and as a result of that meeting it was decided that the following information is required and that it is proper and correct to have a handover report so that decisions that were taken by the Acting Executive Director some rationale could be provided for them.

ADV PAUL JOSEPH PRETORIUS SC: And there are various other

matters in respect of which you requested information, is that so?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright, I'm not sure that it's necessary to go into any detail, but did you receive a cooperative response, and I'm referring to page 1554.

MR ROBERT JOHN McBRIDE: So in particular I will refer to page 1555, which basically sums up the attitude, it's the end of the sentence.

10 “For the record I accounted to whoever who appointed me to
act for that particular period and any issue, matter and
uncertainty that you are having you are more than welcome to
take it up with him as He (with capital letter H as one refers to
the Good Lord) He is the one who suspended you and
thereafter appointed me.”

But that summed up the attitude.

ADV PAUL JOSEPH PRETORIUS SC: You requested information on various operational matters?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And you say the response you received was to put it mildly not entirely helpful?

20 **MR ROBERT JOHN McBRIDE:** Ja, it did not assist at all.

ADV PAUL JOSEPH PRETORIUS SC: Right, can we go please to page 18 of Bundle YA, your statement, at paragraph 77. Is it correct that Mr Kgamanyane faced disciplinary action for what occurred in IPID during his period of control?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Do you know what happened to that matter?

MR ROBERT JOHN McBRIDE: The discipline reaction?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR ROBERT JOHN McBRIDE: It fell away because he transferred to another department.

ADV PAUL JOSEPH PRETORIUS SC: Alright, let's go then to the next topic you deal with on page 18, and that's the infiltration of IPID by Crime Intelligence. You've told the Chair that during the period of your
10 suspension three members of Crime Intelligence became employed within IPID.

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Would you like to comment in that regard?

MR ROBERT JOHN McBRIDE: Yes I noticed upon my return that there were – thanks Chair.

ADV PAUL JOSEPH PRETORIUS SC: Take your time, it's in paragraph 78.

MR ROBERT JOHN McBRIDE: Ja, Brigadier Cloe Gommo had been
20 appointed Director Investigators and he had come from Crime Intelligence. In effect he was the Acting Head of National Investigations in Mr Sesoko's position. He returned to Crime Intelligence soon after my return to office. My next encounter with Gommo was in Parliament where he was part of General Phahlane's team to come to IPID Investigations. Gommo would later approach IPID

investigators, Mandla Mahlangu and Cedric Ncabende to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing, and then I refer to a recording made by Mahlangu about his conversation or phone call with Gommo and such an offer is made and there is accompanying statements to those recording made by Mr Mahlangu. He confirms to Mahlangu, that is Gommo, that he is working with the Northwest team led by Major General Jan Mabula, it was actually not necessary to even confirm that because I had seen him in Parliament on General Phahlane's side.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Let's take that step by step because you've just given a lot of evidence in a very short period of time. The first point that you make in paragraph 78 is that Gommo and others during your suspension became employed by IPID.

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Shortly after your return went back to Crime Intelligence.

MR ROBERT JOHN McBRIDE: That's correct.

CHAIRPERSON: Was he employed on a permanent basis during your absence or it was it was just a temporary arrangement?

- 20 **MR ROBERT JOHN McBRIDE:** It was – thanks Chair. It was a permanent appointment at IPID.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: I want to deal with the recording. If you could go to Annexure Q which is at page 1557 of Exhibit Yd.

CHAIRPERSON: Just give me the page again?

ADV PAUL JOSEPH PRETORIUS SC: It is at page 1557 Chair.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Again the full import of this recording can only properly be understood when direct evidence is given as to its contents and Mandla Mlongo in order to place it before the Chair would have to give direct evidence as to what occurred during the telephone conversation.

MR ROBERT JOHN McBRIDE: That is correct and the context in which it occurred and...

10 **ADV PAUL JOSEPH PRETORIUS SC:** And what preceded and subsequently occurred after the conversation?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And as a party to the conversation Mandla Mhlongo can also give evidence as to the circumstances under which the recording was made.

MR ROBERT JOHN McBRIDE: That is correct and which the accompanying affidavit to the recording was made.

ADV PAUL JOSEPH PRETORIUS SC: Right that is all to...

20 **MR ROBERT JOHN McBRIDE:** In a particular criminal case investigation which was opened as a result of this.

ADV PAUL JOSEPH PRETORIUS SC: So it is a matter of public record already is it?

MR ROBERT JOHN McBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Right. Just ask that it be played. Chair this transcript which shows the words in the original

language used and then the translation follows.

CHAIRPERSON: Yes thank you.

ADV PAUL JOSEPH PRETORIUS SC: Could you play it please. Sorry before you start playing. The transcript refers to a person by the name well not by then name by the title of male, m-a-l-e, who is that?

MR ROBERT JOHN McBRIDE: That is Mr Mlongo.

ADV PAUL JOSEPH PRETORIUS SC: And then male 1 who is that?

MR ROBERT JOHN McBRIDE: It is Brigadier Gomo.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Would you play it please?

10 [LISTENING TO RECORDING]

CHAIRPERSON: Is that the end?

ADV PAUL JOSEPH PRETORIUS SC: No it continues I am told.

CHAIRPERSON: The technicians are looking at you.

[LISTENING TO RECORDING]

ADV PAUL JOSEPH PRETORIUS SC: Thank you. Once again we will check the translation Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: For the moment just to place on record there will be independent evidence in regard to this
20 conversation including a participant in the conversation.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: I say that provisionally because I do not have the final agreement but we will endeavour to place it before Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The second point perhaps this should be dealt with you by – dealt with by you Mr McBride. The telephone conversation appears to have taken place on the 21 June 2018 that is sometime after your return to IPID, after your suspension, is that correct?

MR ROBERT JOHN McBRIDE: That is – that is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right at that time ...

CHAIRPERSON: I think he just looking for something before you...

MR ROBERT JOHN McBRIDE: Chair I am not – I am back on my ...

10 **CHAIRPERSON:** You trying to look for something that will help you with the timing?

MR ROBERT JOHN McBRIDE: My statement here. I think on the – we need to just double check the date on which it happened in particular the year. My – if my memory is right it was in 2018. It could have been – it could have been 2017 as this was one continuous process I will have to double check on that in terms of sequence of events ja. I do not have independent recollection now.

ADV PAUL JOSEPH PRETORIUS SC: Well the heading to the recording says 21 June 2018 I presume that can be independently
20 checked by our own investigators.

MR ROBERT JOHN McBRIDE: My only concern is perhaps the day on which the transcription was made I am not – I am not really...

ADV PAUL JOSEPH PRETORIUS SC: That may also be correct.

MR ROBERT JOHN McBRIDE: Because there are number of errors in the transcription. For example reference to Mr Sesoko is reflected as...

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

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You say this could have happened in 2017?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In any event – what position did you occupy at the time?

MR ROBERT JOHN McBRIDE: I was the Executive Director of IPID.

ADV PAUL JOSEPH PRETORIUS SC: After your return from
10 suspension?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Mr Mlongo what position did he occupy at the time?

MR ROBERT JOHN McBRIDE: He was a principle investigator.

ADV PAUL JOSEPH PRETORIUS SC: With IPID?

MR ROBERT JOHN McBRIDE: Yes. He was – he was handling a number of sensitive investigations.

ADV PAUL JOSEPH PRETORIUS SC: Alright. When you say sensitive investigations can you name one or two?

20 **MR ROBERT JOHN McBRIDE:** Well the obvious one and for this particular discussion and what I have testified to a little bit earlier it was the investigation into General Phahlane.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN McBRIDE: Initially Mr Mlongo was the head investigator.

ADV PAUL JOSEPH PRETORIUS SC: Right and Mr Gomo what position did he occupy at the time?

MR ROBERT JOHN McBRIDE: He was a Brigadier in Crime Intelligence.

ADV PAUL JOSEPH PRETORIUS SC: Had he gone back to Crime Intelligence by this time?

ADV PAUL JOSEPH PRETORIUS SC: By the time of – yes that is correct Chair. At the time of him making that phone call he was in Crime Intelligence.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. So what we have here is a conversation between a senior officer in Crime Intelligence and an investigator in IPID Mr Mlongo. Mr Mlongo was at the time engaged in a number of sensitive investigations involving members of the South African Police Service?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Including General Phahlane.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

20 **CHAIRPERSON:** And sensitive in this context has a lot to do with the positions in government or society of the persons who were affected by the investigations?

MR ROBERT JOHN McBRIDE: Chair that is...

CHAIRPERSON: Part of it?

MR ROBERT JOHN McBRIDE: Part of the considerations.

CHAIRPERSON: Yes. The other part was exactly what was being

investigated?

MR ROBERT JOHN McBRIDE: Absolutely Chair.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Firstly from what you have testified about the independence of IPID regardless of the detail should a conversation of this type ever have taken place between a senior official in Crime Intelligence and an investigator in IPID?

MR ROBERT JOHN McBRIDE: Chair if – if the context is – even if the context is not given in this conversation the contents are improper. As
10 there is clearly offers of a job. In fact jobs are just offered out.

ADV PAUL JOSEPH PRETORIUS SC: Yes we know that. But my point – we will get to the content in a moment. My point is that this is a senior officer in Crime Intelligence talking about job offers to a person in IPID who is doing investigations into members of the police force.

CHAIRPERSON: I think Mr Pretorius your question was such that I think he had to think whether the conversation irrespective of who it was between whether it was proper or not.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: So his answer that at whatever level it was improper.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes.

CHAIRPERSON: Maybe should be understood in that context.

ADV PAUL JOSEPH PRETORIUS SC: Yes I am – I am just dealing with a different point apart from the content and that is that this is Crime Intelligence talking to IPID.

MR ROBERT JOHN McBRIDE: Chair to answer that in its fullest is that

it cannot be purely improper for a conversation to be held with two former colleagues if I can put it in that way. The context here is that they discussing investigations and that at that stage Brigadier Gomo was in charge of Internal Security nothing to do with anti-corruption stuff and that why he is – his appearance in 2017, 16 May at Parliament with General Phahlane and his team was already problematic. There is – clearly the investigation – the – I mean – aspects of the statement say well and subject to confirmation. We do not want to detective work because detective work is busy wasting time chasing criminals. There
10 is a kind of orientation here which is for me is disturbing.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Let us go to the content then.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And I will return to the question later. It appears that at page 1558 and following and in summary the discussion takes place and it may even be termed an offer on closer examination of a post for Mr Mlongo, is that correct?

MR ROBERT JOHN McBRIDE: That is correct Sir.

ADV PAUL JOSEPH PRETORIUS SC: And on page 1560 the rank is
20 discussed first Brigadier then Colonel?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Now in relation to the post occupied at the time by Mr Mlongo would this have been a promotion, would it have been a transfer at the same level of seniority, what is the position?

MR ROBERT JOHN McBRIDE: So it is a – it represents a promotion quite a substantial one exceeding a few levels and jumping a few levels.

ADV PAUL JOSEPH PRETORIUS SC: So we know then that the two in the conversation are discussing a substantial promotion and a transfer. If we can go then to page 1561 Mr Mlongo says but look is this not favouritism or corruption of some sort, will it not be viewed like that? And the answer is, no, no that is nothing to do with corruption you resign at IPID and then you work where you like.

10 **MR ROBERT JOHN McBRIDE:** I mean I – I think ...

ADV PAUL JOSEPH PRETORIUS SC: You do not need to comment.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The validity of such a statement is ...

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Apparent on the face of it or its lack of validity. But what I would like to do is ask you about what you know of the conversation at the bottom of page 1561. In other words on the one hand there is talk of a transfer or a termination of
20 employment and reemployment at a much more senior level. That is what we have established so far.

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: But at the bottom of page 1561 the translation reads:

“Remember here you are with us now and we

discussed the things that well where your service
fellow is going down.”

What is being said there?

MR ROBERT JOHN McBRIDE: That the context is given on page 1562
and exactly what it means. It came over on the – on the recording.
Here it is stated in the fourth line as indistinct. So Mr Mlongo asks
Brigadier Gomo why would and what is indistinct there is ED we going
down. Because of what?

ADV PAUL JOSEPH PRETORIUS SC: Who is ED?

10 **MR ROBERT JOHN McBRIDE**: ED was me I was Executive Director.

CHAIRPERSON: So ED was basically E for Executive D for Director?

MR ROBERT JOHN McBRIDE: That is correct yes.

CHAIRPERSON: Ja.

MR ROBERT JOHN McBRIDE: Reference to me.

CHAIRPERSON: Ja. Okay.

ADV PAUL JOSEPH PRETORIUS SC: Then in the context firstly of
what appears on the face of it at least to be an offer of a senior
position in Crime Intelligence. Secondly in the context of a
conversation where the Executive Director that is you is quote “going
20 down”. Evidence is then discussed in the middle of page 1562 where
Mr Mlongo says:

“All those questions I received I know nothing about
them. You see I am going to be a useless 204.”

And then the response from Brigadier Gomo is:

“No those questions whether we know them or we do

not know them is irrelevant.”

What is – if you could just give some explanation of that in the context of what you know?

MR ROBERT JOHN MCBRIDE: The key issue is they are discussing Section 204. That line before that says Section 4, but.

ADV PAUL JOSEPH PRETORIUS SC: It is 204 of the Criminal Procedure Act?

MR ROBERT JOHN MCBRIDE: *Ja.* It is when an accomplice witness testifies against his, his co perpetrators as it were. Now what is being
10 offered and what has been explained is that by Khomo is you will be the 204 and Mahlangu is saying I will be a useless 204 because I do not know anything about those questions that were posed to me. Referring to some previous occasion which, which they can explain directly what it is and Khomo’s position is regardless of whether you know about the questions or not and in – so then the subject is changed about where he is driving but the issue is regardless of whether you know or not you will get promoted and obviously the other witness - Mr Mahlangu - would have to give context to that directly, what it meant or what it could only have meant or whether it could mean anything else. Maybe
20 there is an innocent explanation for it.

ADV PAUL JOSEPH PRETORIUS SC: For the moment what needs to be explained is a conversation between a senior officer in Crime Intelligence speaking to an investigator in IPID who is investigating a number of sensitive cases. An offer of employment at a level far more senior than that being held at the time by Mr Mahlangu. You the

Executive Director “going down” evidence to be given in a case where you are to be an accused and he is to be presumably an accomplice that appears on the face of it to be the case.

MR ROBERT JOHN MCBRIDE: Well Chair there was an attempt to do that when the Mabula Team actually charged and I am sure we will get to it later. Paul O’Sullivan, Sarah Trent, Binang one of the lead investigators and Mr Mahlangu.

ADV PAUL JOSEPH PRETORIUS SC: And yourself.

MR ROBERT JOHN MCBRIDE: No I was not charged.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Were you not charged with entering premises?

MR ROBERT JOHN MCBRIDE: No, no I was not there at all. I think when we consulted I covered that.

ADV PAUL JOSEPH PRETORIUS SC: In a counter investigation.

MR ROBERT JOHN MCBRIDE: No, I was not there on the scene where they were charged and what he is discussing is the strategy to now include me also because now I am going down as the charge from entering premises evolves and snowballs and miraculously becomes racketeering later on.

20 **ADV PAUL JOSEPH PRETORIUS SC:** But you were the subject matter of that charge at a stage?

MR ROBERT JOHN MCBRIDE: No, I was not. I was not [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: Then I misunderstood what you have told me previously, but we will get there.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The people involved seem to be those referred to at the top of page 1565. Is that correct?

CHAIRPERSON: Before you proceed Mr Pretorius. Mr McBride a few minutes ago I wanted to ask you whether you are still comfortable. Are you still okay?

MR ROBERT JOHN MCBRIDE: Yes Chair. I am good.

CHAIRPERSON: Okay, alright. Thank you. You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Page 1565. Well let is go to
10 1564 before we get to 1565. 1564 Mr Khomo says:

“Yesterday you said you are going to...”

Sorry not Mr Khomo. Mr Mahlangu says:

“Yesterday you said you are going to include...”

It reads Mr Setsubi, but I think we all heard it is not him. It is Mr Sesoko is that correct?

MR ROBERT JOHN MCBRIDE: That is right.

ADV PAUL JOSEPH PRETORIUS SC: And then at the bottom of the page Mr Mahlangu – is that Mr Khomo says:

20 “But there is not anything wrong he did thus far but
if we can find a way like we discussed that day like
finding that laptop. We could find the case that he
committed.”

What is the context there?

MR ROBERT JOHN MCBRIDE: I am not sure whose laptop they are looking for. I assume it is Mr Sesoko’s in the context of the discussion.

ADV PAUL JOSEPH PRETORIUS SC: But what is being discussed here is the context of the promotion, you are going down is the fact that one of the persons to be added to the list they do not have anything against him thus far but they are looking for a way of finding a case against him. Am I correct?

MR ROBERT JOHN MCBRIDE: Chair let me, let me answer this question because it needs a proper answer not that and I should be less reticent to just say it as it is. All of this is a ruse to start a sham investigation against IPID to scupper the Phahlane investigation. That
10 is what all of this is about. This is a plan hatched how to counter IPIDs investigation. That in essence that is it. It is nothing, it is nothing else. They can come and explain maybe if they have an innocent explanation. In the context of what took place in litigation between ourselves as IPID and the Phahlane Team and Mabula Team who in any case are suspects and the two judgments of Prinsloo and Stockton forbids this counter investigation to take place.

ADV PAUL JOSEPH PRETORIUS SC: I understand that but perhaps what we should do is deal with your evidence on the counter investigation.

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

ADV PAUL JOSEPH PRETORIUS SC: First.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Then this will make sense.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But for the moment it appears on

the face of it that this conversation is talking about a potential case against seven accused?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Included in this conversation is the prospect of joining Mr Sesoko as one of the accused. Correct?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: At the bottom of the page there appears to be a statement:

10 “But there is not anything wrong that he is done but
 we can find something wrong.”

Do you see that?

MR ROBERT JOHN MCBRIDE: Yes and also in the middle of the page when Khomo speaks about or Mr Mahlangu speaks about Mr Sesoko he says:

 “Yesterday you guys said you are going to include
 Mr Sesoko as well and Khuba.”

So it is a context in which that – that comment or response by Khomo at the bottom which you just referred to is said.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Well Khuba is mentioned over
the page. It is spelt K-H-U-W-A, but I think it should refer to Khuba not Khuwa. Do you see that?

MR ROBERT JOHN MCBRIDE: Yes Chair. I am on page 1564 in the middle.

ADV PAUL JOSEPH PRETORIUS SC: Yes, Khuba is mentioned on 1565.

MR ROBERT JOHN MCBRIDE: That is.

ADV PAUL JOSEPH PRETORIUS SC: Not on 1564. Where?

MR ROBERT JOHN MCBRIDE: On 1564 he is mentioned.

CHAIRPERSON: [Intervenes] Khuwa.

ADV PAUL JOSEPH PRETORIUS SC: Oh I see that yes.

CHAIRPERSON: It must be Khuba on.

ADV PAUL JOSEPH PRETORIUS SC: So.

CHAIRPERSON: 1564.

ADV PAUL JOSEPH PRETORIUS SC: Setsubi who is Sesoko and
10 Khuwa who is Khuba. Yes I see that. Is that the one you are referring
to?

MR ROBERT JOHN MCBRIDE: And the importance of that Chair is
that:

“Yesterday you guys - meaning Khomo - arbitrarily
added Mr Sesoko and Mr Khuba to the suspects.”

And that is that is and then Khomo says:

“No he is not there.”

But clearly there has been some discussion in the – yesterday which
Mahlangu must give context to but that is the context in which it is
20 here.

ADV PAUL JOSEPH PRETORIUS SC: Right and there is the question
of finding evidence at the bottom of page 1564.

MR ROBERT JOHN MCBRIDE: It says.

ADV PAUL JOSEPH PRETORIUS SC: “But if we can find a
way like we discussed that day like finding a laptop

we could find the case that he committed.”

MR ROBERT JOHN MCBRIDE: Chair just in terms of – this is not unlike the hullabaloo about the rendition.

ADV PAUL JOSEPH PRETORIUS SC: No I understand.

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: I am just dealing with what is said in the transcript.

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: For the moment rather than.

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

ADV PAUL JOSEPH PRETORIUS SC: Commenting too widely on it. It is [indistinct] – it is clear what is being said here. Correct?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: The last question I would like to deal with for today and then we can come back to this refreshed tomorrow. At the top of the page mail that is Mr Mahlangu says:

“Oh okay oh yeah, the others it means it is me, the
ED, Paul and then it is indistinct and Nkabinde,
Binang and Prince.”

20 Now unfortunately we are dealing with this conversation before we deal with the counter investigation which will explain all of this but who were all those people?

MR ROBERT JOHN MCBRIDE: The only person I am not sure is Prince who they are referring to and I cannot work out even when I heard the recording who Prince is. So I am not, I am not sure who that is but.

ADV PAUL JOSEPH PRETORIUS SC: What is the name of the secretary of Paul O'Sullivan?

MR ROBERT JOHN MCBRIDE: Trent.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So she was also part of?

MR ROBERT JOHN MCBRIDE: She was charged initially with Mahlangu and Binang and O'Sullivan.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So the people here and we will give context to this later, who are they?

10 **MR ROBERT JOHN MCBRIDE:** Yes. So Mr Nkabinde is a person who was also approached at some stage to change his evidence and when he refused to own up to it he was kicked off the Task Team. I am just going through it quickly and then made complaints to the present Minister of Police after being kicked off the Task Team and then Binang was one of the initial accused of the counter investigation which was conducted by General Mabula and his team. In fact it becomes even worse. Binang and it was a subject of [indistinct] judgment. Binang was investigating General Mabula and his team for a range of tortures spanning - some of the tortures date back to 2006, 2010 and some of
20 the team of General Mabula appeared in court in 2012.

ADV PAUL JOSEPH PRETORIUS SC: Let us not go into the detail. We are coming there I promise, just the people. That is Mahlangu, the ED who is yourself. Paul I presume is Paul O'Sullivan.

MR ROBERT JOHN MCBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: And Nkabinde, Binang and

Prince.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You do not know who Prince is. Now just to foreshadow what you will tell the Chair tomorrow is that IPID officials were investigating a number of police officials?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In response to that investigation there was what you will refer to as a counter investigation?

MR ROBERT JOHN MCBRIDE: That is correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** You say on – you will say as I understand it on spurious grounds a whole investigation was conducted as a response and that went to court and was the subject matter of a judgment by His Lordship Mr Justice Stockton which we will deal with tomorrow.

MR ROBERT JOHN MCBRIDE: That is right.

ADV PAUL JOSEPH PRETORIUS SC: This is an appropriate time Chair. I think we all need a break.

CHAIRPERSON: Yes we can take the – can adjourn for the day. So tomorrow at half past nine I will deliver my decision in
20 Mr Tom Moyane's application for leave to cross-examine. I will not just hand down. I will give full – read the decision. So that might take maybe 45 minutes. I previously said we would start at half past nine. So I think that certainly in terms of resuming the evidence of Mr McBride I do not think we would resume it before 10. So I think Mr McBride you do not need to be here before 10.

MR ROBERT JOHN MCBRIDE: Thank you Chair.

CHAIRPERSON: *Ja* and then once we have finished delivering the decision then we might take a break and then resume or resume immediately. So we will adjourn until tomorrow. So with the evidence it will be after the delivery of the decision in the other matter.

INQUIRY ADJOURNS TO 16 APRIL 2019