

# Leaking in the Public Interest



a Presentation to the Ad-hoc Committee on the Protection of  
Information Bill

*M&G Centre for Investigative Journalism*, a non-profit initiative  
to enhance capacity for investigative journalism in the  
public interest



Examples to follow: Public interest served by disclosure of info that would likely be classified and its disclosure criminalised under the Protection of Information Bill.

Need for a public interest defence to be included in the POI Bill

*Example 1*

*US in Iraq*

*Baghdad, 2007*

US military choppers take out 12 “insurgents” in a public square.

Among killed: Reuters news employees Saeed Chmagh and Namir  
Noor-Eldeen.

Some men in square appear to have been armed -- but none in  
offensive posture.

When a civilian van came to wounded Chmagh's aid, it got taken out too.

Two young children in the van were seriously wounded.

Reuters failed to get US authorities to release a classified military recording of the incident.

This year the recordings appeared on the internet and beyond,  
exposing the callousness of US forces as they mistook civilians  
for targets, killed indiscriminately, and joked about it.

A US soldier has been charged with leaking the recordings.

Judge for yourself whether it should have been leaked ...



See video at

<http://www.collateralmurder.com/>

With acknowledgement to WikiLeaks and the Sunshine Press

- Public interest: sparked NB debate on US rules of engagement and soldiers' impunity
- US soldier who allegedly leaked it arrested, facing charges under US military law -- should he?
- POI Bill unique: would penalise not only the alleged leaker, but WikiLeaks who first posted it online and others down the line



*Example 2*

*Browse Mole*

*May 2007*

In 2006, the Scorpions composed their Special Browse “Mole” report.

It claimed Zuma was funded by Angola and Libya and that his supporters were planning anti-Mbeki insurrection.

In May 2007 it was leaked to Cosatu, and from there to the media.

Mbeki was forced to order an investigation under the auspices of the National Security Council that same month still.

Had it not been leaked to Cosatu and beyond ... would it have been investigated at all?

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Top Secret.

Page 1

7/12/2006

**SPECIAL BROWSE "MOLE"**  
**CONSOLIDATED REPORT**

**INTRODUCTION**

The conclusion reached as a result of the present browse, is that there are strong indications that former Deputy President Jacob Zuma's presidential ambitions are fuelled and sustained by a conspiracy playing out both inside South Africa and on the African continental stage.

Inside South Africa, as is well known, groupings, like the South African Communist Party, the ANC Youth League, the SACP's Youth League and Cosatu, seemingly disaffected from the presidency of Thabo Mbeki, have largely thrown in their lot with the former Deputy President; along with these there exist elements within the Security and Intelligence Services that appear to be considering the subversion of the apparatus of State in support of a

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- Leaking of Browse Mole a tipping point, allowing Scorpions' opponents to argue unit was politically motivated
- Public interest served: Scorpions' apparently illegal intelligence activities exposed, national debate fuelled
- Likely to have been classified under POI Bill
- Without public interest defence, Cosatu officials, members of media could be in jail for possession and disclosure



*Example 3*

*Scorpions survival meet*

*July 2007*

In the course of the National Security Council's investigation into Browse Mole, it approached Scorpions KZN head Mrwebi.

Mrwebi told them about a meeting called by Scorpions boss McCarthy to counter an ANC proposal to disband Scorpions

Mrwebi composed an affidavit containing an account of the meeting and gave it to the state security task team.

Within days, a version of his to secret affidavit found its way to Zuma supporter Yunis Shaik, and from there to the media.

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*Case Analysis  
Division*

*vic t&A...*

**ABBREVIATED MINUTES FOR THE DSO SPECIAL  
MANAGEMENT MEETING HELD CAD BOARDROOM VGM ON  
25 JUNE 2007**

**PPP**

**1. PRESENT:**

*093301-6471*

*Lead*  
**Adv McCarthy**

Adv Mngwengwe

Adv Mrwebi

Adv Nel *gerne*

Adv Mopp

Adv Vabaza

Adv Roothman

Mr NVE Ngidi

Adv Welch

CSI Jonker

CSI Leask

Adv J Fick

Salome van der Rhyn

*0824473793*  
*Stang...*

*Arthen*

*Jacob Fick*

*NPA-PA-012 8456 000*

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*201400*

Head of DSO (Chairperson)

Investigating Director

Regional Head KZN

Regional Head Gauteng *Gen+Kad -0128421400*

Regional Head WC *021 487 9000*

Acting Regional Head EC

Acting Regional Head FS

Divisional Head CAD

Divisional Head OPS

PMO

SNPU

Head Office

Head office

*Lucinda*  
*PR - DSO*

The Chairperson further outlined four matters which he said he regarded as problematic for the DSO being the following:

- (a) The Zuma matter
- (b) The Mac Maharaj matter
- (c) The Ramatlodi matter
- (d) The Bad Guys matter (Aggloti/Kebble)

handling of  
these will affect  
New behavior - not  
see it's  
year 2014

He said in our discussions we need to comment on how these matters need to be handled more so in view of the upcoming ANC National Conference in December as these are the matters that may define or affect the future of the DSO. He actually needed advice on how these matters need to be handled before the December ANC National Conference.

*Case Analysis  
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- Adv Roothman
- Mr NVE Ngidi
- Adv Welch
- CSI Jonker
- CSI Leask *Jacob Fick*
- Adv J Fick
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*0824473793*

*Arthen*

*Man...*

- Head of DSO (Chairperson)
- Investigating Director
- Regional Head KZN
- Regional Head Gauteng *GenitKad - 0128421400*
- Regional Head WC *021 487 9000*
- Acting Regional Head EC
- Acting Regional Head FS
- Divisional Head CAD
- Divisional Head OPS
- PMO
- SNPU
- Head Office -
- Head office -

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*Lucinda  
PR - DSO*



- This was another key event informing public debate on the Scorpions' and McCarthy's alleged political agenda -- public interest served
- Likely to have been classified under POI Bill -- made in course of top secret investigation.
- Even if not classified, POI Bill would prevent disclosure as it was a "state security matter"
- Yunis Shaik, ANC officials, media members may well have been jailed



*Example 4*

*McCarthy tapes*

*Apr 2009*

In the run-up to Polokwane, Scorpions head McCarthy had series of conversations with i.a. his former boss, Ngcuka, a strong Mbeki supporter in the ANC succession battle.

Unbeknown to Ngcuka and McCarthy, McCarthy's phone was tapped by one or more intelligence agency.

A person within one of these agencies took these intercepts to Zuma's lawyer, Hulley.

The intercepts showed serious political interference in the  
Scorpions' investigation of Zuma.

Were it not for the leaking of the intercepts ... would Zuma have  
been our president?

**BN:** As long as you don't do it this weekend

**LM:** If we hold it back, it will be because the clever people like you and others are saying to us that the country needs cool heads but I would hate to have be seen to be wrong later

**BN:** just don't do it this weekend

**LM:** it might change

**BN:** I cant keep an open mind, you can't do it this weekend, our minds wont change

- NPA drops Zuma prosecution days before election
- Serious abuse of prosecutorial process exposed -- public interest served
- Was classified (as are all intercepts)
- POI Bill would classify it
- If no public interest defence: Spy who leaked it + Hulley in jail ... and Zuma prosecution not called off



*Example 5*

*Ngqula sued*

*July 2010*

This week the board of SAA announced it was suing former CEO Ngqula for R30-million wasteful expenditure.

This followed a KPMG forensic investigation -- sparked by leaks from union members at SAA to Public Enterprises Minister and media

Noting how the KPMG investigation came about, the board said it would “continue to encourage a culture of whistle blowing within SAA”



Were it not for brave union members who gathered internal documents and passed it on ... would Ngqula still be bleeding our national airline?



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Ms Cheryl Carolus  
Chairperson of the Board  
South African Airways  
Private Bag X13  
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Johannesburg International Airport  
1627

Our ref L21007-17981

15 July 2010

Dear Madam

**Summary of key conclusions from the forensic investigation conducted at the instance of the SAA Board in respect of certain matters**

**Introduction**

Following a directive from SAA's shareholder to investigate various allegations which had been made against primarily the company's former Chief Executive Office, Dr K Ngqula, the Board appointed KPMG to investigate these various allegations as well as ancillary issues arising therefrom.

- NB example of action taken against allegedly corrupt parastatal CEO -- public interest served
- POI Bill would have classified material leaked: unusual provisions allowing parastatals to classify + for commercial info to be classified
- As CEO, Ngqula would have classified it!
- Under POI Bill with no public interest defence, brave union whistleblowers and media could have been jailed for disclosing



## IN SUMMARY

- Exposure of classified information may be in the public interest
- Each of these examples: whistleblowers, intermediaries and members of the media could be jailed under POI Bill
- Solution: Include a public interest defence



THANK YOU