

IN THE HIGH COURT OF NAMIBIA

INQUEST: THE LATE A.T.E.A. LUBOWSKI

Heard on: 1994/04/18 - 1994/05/19; 1994/05/23 - 1994/05/31;
1994/06/06 - 1994/06/07

Delivered on: 1994/06/23

FINDINGS

LEVY, J.: This is an inquest into the death of the late Anton Theodor Eberhard August Lubowski who was shot and killed on the night of 12 September 1989 at approximately 8:30 p.m. as he was about to enter his home at 7, Sanderburg Street, Windhoek. The inquest is held in terms of the Inquest Act (Act No. 6 of 1993) Section 18(2) whereof provides as follows:

"At the close of an inquest the judicial officer holding the inquest shall record a finding as to:

- (a) the identity of the deceased person,
- (b) the cause or probable cause of death,
- (c) the date of death
- (d) whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person."

From the foregoing it is apparent that the Inquest Court is

not required to find any person guilty of any offence whatsoever. Various judges have from time to time said that the judicial officer presiding at an inquest should guard against conducting the inquest as if it were a criminal trial. One of the many reasons for this approach is that a criminal trial may be instituted as a result of an inquest. A finding by the Inquest Court, particularly in respect of the credibility of a witness, could be prejudicial to an accused in the ultimate criminal case arising from the inquest, when the accused person is in fact represented and is present in court and has an opportunity to contest allegations and inferences and to call witnesses and to give evidence. Conscious as I am of this situation there are in this particular inquest contradictory affidavits and evidence and in order to discharge my duties, I shall be compelled to make credibility findings.

An inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into all the circumstances of the death.

In an Inquest, however, the investigation is inquisitorial and not adversarial. Although anyone with an interest is entitled to be present and to participate in the inquest, and interested party does not have those rights and privileges, he or she would enjoy if the proceedings were adversarial. Furthermore, there is no summons containing a detailed charge and there are no further particulars. There are no pleadings and there is no discovery of documents.

The accepted laws of evidence are not applicable. The participation of an interested party is controlled strictly by the presiding officer and must relate to the issues set out in Section 18. The issue set out in Section 18(2)(d) as already stated is whether the death was brought about by any act or omission "prima facie involving or amounting to an offence on the part of any person."

Attention is firstly drawn to the word "or" in that provision. The word is not "and". Secondly attention is drawn to the phrase, "prima facie involving" as opposed to the phrase, "prima facie amounting to an offence". The provision is disjunctive and not conjunctive. The words "prima facie" clearly qualify both "involving an offence" and the words "amounting to an offence". However, evidence "involving an offence on the part of any person" differs from evidence "amounting to an offence", as will be seen later.

Generally the findings of the Inquest Court go through to the Prosecutor-General who will exercise his discretion in deciding whether the evidence justifies a prosecution. If the evidence at the end of the day, "prima facie involves" or "amounts" to an offence, the Prosecutor-General may well prosecute. The Prosecutor-General may well come into possession of evidence not available to the Inquest Court which may influence his discretion one way or the other and despite the finding of the Inquest, he may decide not to prosecute. The Inquest Court must therefore confine its decision only to the evidence and documentation before it

and it must not speculate as to whether such evidence may or may not be believed in a subsequent criminal trial.

Accordingly, the crisp question is what is meant by the words "prima facie", as the phrase is used in Section 18(2)(d). It is obviously less than the degree of proof in an actual criminal trial where the accused must be found guilty beyond reasonable doubt.

In South Africa there is legislation similar to that which we have in Namibia and a provision similar to our Section 18(2)(d) has enjoyed the consideration of certain judges.

In "The Inquest of the Death of Dr David Joseph Webster" where certain witnesses alleged that the deceased was gunned down by members of an organisation known as the Civil Co-Operation Bureau (CCB), Stegman J came to the conclusion that their involvement had to be proved beyond reasonable doubt. Zietsman J.P. considered this in "The Inquest of the Death of Matthew Goniwe and Others". Zietsman J.P. rejected the reasoning of Stegman J and I respectfully agree with the reasoning of Zietsman J.P. Stegman J was obviously incorrect and to repeat the arguments of Zietsman J.P. would be an exercise in superfluity. However, I respectfully do not agree with Zietsman, J.P. when he says in respect of the words "prima facie" that "the test envisaged by the Inquest Act is whether the judicial officer ... is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable." For reasons I have already stated there may be no criminal

trial. The judicial officer is required on the evidence and documentation submitted to him to decide whether or not a witness is "credible and acceptable" and if he is not his evidence must be rejected. If the judicial officer rejects that evidence, he may nevertheless be left with some remaining evidence "prima facie involving" a person or "amounting to an offence" by a person. If the person so incriminated gives evidence in the Inquest Court which is acceptable to the judicial officer and which gainsays the "remaining evidence", there is then no prima facie evidence involving or amounting to an offence. Should the evidence not be acceptable to the Inquest Officer the remaining evidence may well "prima facie involve a person or "amount to an offence".

This particular inquest is not a simple question of who killed a man whose name was Lubowski. This inquiry must be considered in context. That context involves a consideration in considerable detail of who Lubowski was, who would want to kill him, why he should be killed and how he was killed.

These questions must be considered against the historical political and economic background not only of Namibia but also of the Republic of South Africa. Volumes can be written on this aspect but that would go far beyond what I am required to do and what is practical to do. I shall focus on those relevant circumstances which I shall call the "liberation struggle" both in Namibia and also in the Republic of South Africa and the role Lubowski played

therein. I shall also take into account all other relevant material placed before me which relates to his death.

It will be seen later, and I will be dealing in great detail therewith, that one Donald Acheson was arrested and charged with the murder of Lubowski. When the matter was called before Mahomed A.J. in the High Court of Namibia on the 18th April 1990, Mr Heyman, the Prosecutor-General who appeared for the State, applied for an adjournment of the case. The adjournment of the case was refused and thereafter the State withdrew the charge of murder against Acheson.

The Inquest Act (Act 6 of 1993) does not require me to give reasons, neither written nor oral for any of my decisions. However, since the withdrawal of the said charge against Acheson a number of affidavits have been made by different people, particularly by people who claim to have been in one or other of the units of the police operating in Namibia, alleging a conspiracy by members of the police to assassinate Lubowski and that the assassination was executed by a certain police officer W/O White.

Persons who have made such affidavits have testified before me and have been subjected to vigorous examination and cross-examination save for one person Jacob Louw who appears to be deliberately avoiding coming to Court to be examined.

Affidavits which led to the arrest and prosecution of Acheson were also submitted to me and some of the deponents

who made those affidavits have also testified.

Affidavits or rather translations into English of certain affidavits made by or concerning persons who have been described as belonging to an organisation known as the Civil Co-Operation Bureau (hereafter CCB) have also been submitted to me.

I have also received a large number of affidavits and unsworn statements and documents which need not be specified while certain people were subpoenaed and compelled to testify.

Inasmuch as every single aspect of this matter must be considered including not only factual matter but also the credibility of witnesses and the reliability of all affidavits, unsworn statements and documents, it is desirable that detailed reasons for my decision be given.

Before considering the circumstances which I have mentioned above, there are certain preliminary matters to be dealt with.

From documents submitted to me it appeared as if certain institutions or organisations which may have existed or which may still exist in South Africa could perhaps have an interest in the proceedings. A letter was accordingly sent to the Interest Office of South Africa in Windhoek and the said Office was advised to this effect and invited to have representation at the hearing. To this communication there

was no response.

Each and every person or organisation which may have an interest in the proceedings was obviously not known to me in advance and some names and organisations were only mentioned as the Inquest progressed.

Set out hereunder are the names of the persons who eventually participated in the Inquest and the persons and organisations they presented:

Adv. J R Walters, the Prosecutor-General

Mr W H Trengove S.C. assisted by Adv D Smuts and C Kahanovitz, the family of the deceased.

Attorney H Barnard, the Assistant Inspector General Badenhorst, Deputy Commissioner Smit, Deputy Commissioner Nel, Commissioner Naude, Inspector E Benade, Inspector W Lloyd, all of the Namibian Police, Mr R White, formerly a Warrant Officer in the Namibian Police, Mr T van der Merwe, formerly a Sergeant in the Namibian Police and Mr Desmond Radmore former Colonel in the Namibian Defence Force.

Mr J D Buys the "Youth with a Mission".

I have already referred to the fact that one Acheson was arrested on 13 September 1989 for the murder of Lubowski, that the State on the 18 April 1990 applied for an adjournment of the case and that this was refused and that the State then withdrew against Acheson.

I emphasise that Acheson was not called upon to plead.

Accordingly he was not found guilty nor was he found to be not guilty.

Criminal proceedings had, however, been instituted.

(c.f. S v Mbonge 1988(2) SA 391 (and the cases therein relied upon where the SWA Court considered the question of when criminal proceedings "commenced")

The question for decision at this stage is whether or not there can now be an inquest in terms of Act 6 of 1993.

Section 6 of the Inquest Act specifically provides that where criminal proceedings are not instituted in connection with the death or alleged death of a person such inquest shall take place.

The literal meaning of Section 6 is that an inquest is only held where criminal proceedings have not been instituted and as against Donald Acheson criminal proceedings were in fact instituted.

The usual situation is that where criminal proceedings are instituted the proceedings continue until the court which is seized with the matter gives a verdict. The draughtsman of the Inquest Act obviously had this usual situation in mind.

In the interpretation of statutes, the golden rule is that ordinary English words must receive their ordinary meaning

unless this leads to an absurdity.

(See: Maxwell on Interpretation of Statutes p. 43, 12th ed.; and the well-known case of Becke v Smith (1836) 2M & W 191 at p. 198).

It would indeed be absurd if by allocating to the aforesaid section, its literal meaning, the effect would be to frustrate the intention of the Inquest Act. The intention of the Act is summed up in the preamble as follows:

"To provide for the holding of inquests in cases of deaths or alleged deaths apparently occurring otherwise than from natural causes; and to provide for matters connected therewith."

Furthermore it would be contrary to public policy to have no investigation into the circumstances of the death of a person because of a restrictive interpretation of this nature being placed on Section 6 of the Act.

The death of any person concerns society. Where that death is due to sickness or natural causes such is usually certified, by a qualified medical practitioner. Where it is not certified, that death must be fully investigated in public. If there is no criminal case there must be an inquest open to the public. The public is entitled to know. It is not possible for all members of the public to attend and observe at such an inquiry. In modern society the

public's eyes and ears have become the press and the radio.

In S v Leepile & Others (4) 1986(3) SA 661 (W) Ackerman J (who subsequently sat on the Namibian Supreme Court) quoted Chief Justice Burger of the United States of America in Richmond Newspapers Inc v Commonwealth of Virginia (US Supreme Court Reports Vol 65 Lawyers 2nd ed. at 973) where the learned judge was dealing with a different point but the principle supports my contention that public publicly requires a full investigation into the death of Anton Lubowski and to restrict the meaning of Section 6 would be contrary to public policy as well as absurd. The learned judge said:

"People in an open society do not demand infallibility from their institutions but it is difficult for them to accept what they are prohibited from observing Instead of acquiring information about trials by first hand observation or by word of mouth or from those who attend it, people now acquire it chiefly through the print and electronic media. In a sense this validates the media claim of functioning as the surrogates of the public. While media representatives enjoy the same right of access as the public they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard. This 'contributes to public understanding of the rule of law and to comprehension of the functioning of

the entire criminal justice system' ..."

The rule of interpretation relating to absurdity and public policy requires that Section 6 must therefore be interpreted to mean that where criminal proceedings are not instituted or if they are instituted they are withdrawn prior to a plea by the accused, there shall be an inquest.

One further preliminary matter which is of vital importance in this Inquest relates to the nature of the evidence which can be placed before an Inquest Court. The section dealing therewith in the Act is clear and unambiguous and because I shall be relying thereon I quote the section in full:

Section 15 provides:

"15(1) A document purporting to be a statement under oath or affirmation by a person in connection with any death of alleged death in respect of which an inquest is held, or a certified copy thereof, shall, if it is produced at the inquest, at the discretion of the judicial officer holding the inquest be admissible as proof of the fact stated therein.

(2) Notwithstanding the provisions of subsection (1), the judicial officer may admit any such statement even though it

was not made under oath or affirmation,
or a certified copy of such statement,
if, having regard to -

(a) the form and contents of the
documents in which the statement
is contained;

(b) the availability of the person who
made the statement;

(c) the probative value of the
statement;

(d) any prejudice to any person which
the admission of the statement
might entail; and

(e) any other circumstances which the
judicial officer considers
relevant, he or she is of the
opinion that such statement or
certified copy, should be admitted
in the interests of justice.

(3) The judicial officer may cause a person
by whom a statement contemplated in
subsection (1) or (2) was made to be
subpoenaed to give oral evidence at the
inquest or may cause written

interrogatories to be submitted to such person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquest.

- (4) Any person who in any written statement under oath or affirmation contemplated in subsection (1) makes a false statement knowing it to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for the crime of perjury."

While I am not bound by the recognised and established rules of evidence, I should be careful not to disregard completely that code which has been built up over the years to ensure justice and fair play and I approach my task with the necessary caution.

I turn now to the relevant historical, political and socio-economic circumstances surrounding the assassination of Anton Lubowski.

By its very nature history constitutes hearsay evidence. Judicial notice may, however, be taken of facts of an historical or sociological character and both South African

Courts and South West African Courts have in the past taken judicial notice of facts concerning the German occupation of South West Africa.

(See: Consolidated Diamond Mines of SWA Ltd v Administrator of SWA 1958(4) SA 572 (A) at 609).

In any event I have been greatly assisted in considering pertinent historical matters and pertinent current affairs by an historian of standing, Prof. Andre Du Pisani of the University of Namibia, by affidavits and statements from members of the activists in the Civil Co-Operation Bureau (CCB) and by extracts from the Inquest into the Death of Dr David Webster and from extracts from the Inquest into the Death of Matthew Goniwe and Others and evidence given by Deputy Commissioner Smit of the Namibian Police and his investigation concerning the CCB.

Germany who was a late-comer to the historical phenomena known as the "Scramble for Africa", in 1884 established a military presence in that area then known as German South West Africa and which today is included in the Republic of Namibia. The German military might enabled Germany to stamp its authority on the territory. Almost simultaneously, Afrikaans-speaking people started to arrive from the Transvaal Republic, Orange Free State and the Cape Colony. By the turn of the century there were more Afrikaans-speaking settlers in German South West Africa, than Germans.

The new-comers both German and Afrikaans speaking simply acquired for their own use whatever land they wanted pushing the indigenous population further and further afield keeping on their farms or in shanty towns selected persons and using only those members of the population whom they required as labourers. A socio-economic pattern was evolving which over the next century would shape the lives and destinies of millions.

Clashes between White and Non-white culminated in a military campaign by General von Trotha which decimated the Herero and killed half the population of the Nama. But the liberation struggle had started.

The outbreak of the First World War terminated German rule in South West Africa. Between April and July 1915, 43 000 South African Troops occupied the country. This, however, did not improve the lot of the indigenous population. The official South African attitude to the local population was little different from that of the Germans.

The Germans had built railway lines and introduced trade. Ships from Europe called at Swakopmund and Lüderitzbucht. The apparent prosperity however did not reach the indigenous people who laboured for minimal wages and were subject to harsh laws. A law for instance permitted a creditor, whether farmer or trader, to attach the person of his debtor when the debt was not paid and the debtor was then forced to work for his creditor until payment had been effected.

The indigenous people who had hoped that the South Africans would bring relief were soon disillusioned. In fact initially the conquest of German South West Africa brought financial and economic chaos. Disputes immediately arose whether debts were to be paid in pounds sterling, or in German marks or in "Seitz notes" (Seitz notes were issued by the Governor of the time and are named after him). The authorities closed down the civil courts and they remained closed until 1920. Six thousand Germans were repatriated to Germany and were allowed to take approximately eight thousand pounds sterling with them without paying any of their debts. South West Africa, financially bankrupt, turned to the Union of South Africa in the economic field as well.

In 1920 the newly created League of Nations gave South Africa a mandate to rule the territory "to promote to the utmost, the material and moral well-being, and the social progress of the inhabitants of the territory".

South Africa responded by crushing a revolt in 1922 of the Kwanjama and then with brutal methods chased the Bondelswart Community from their land killing about 100 people in an air attack.

Although South Africa introduced into South West Africa partial self-government based on a system of white adult suffrage in 1926, South African legislation was extended in many matters to the Mandated Territory and South Africa set about trying to incorporate the Territory into South Africa

as a fifth province.

In 1945 the South African Government approached the remnants of the League of Nations to approve of incorporation but this was rejected. In 1948, the National Party came into power in South Africa and the de facto policy of apartheid which had existed there became institutionalised and as such exported to South West Africa.

The indigenous population endured but did not endorse white domination. There was organised resistance by, for example the Owambo Peoples Organisation (OPO of 1957) and the Owamboland Peoples Organisation. The South West African Peoples Organisation (SWAPO) emerged in 1960 and random skirmishes and political demonstrations were replaced by a sophisticated national resistance campaign.

Meanwhile in South Africa the liberation struggle appeared to be stuttering in the face of draconian apartheid laws. While more and more people black and white resented and rejected the apartheid policy, in order to stay in power and quash opposition, the National Party caused to be enacted so-called security and anti-terrorist legislation. This legislation enabled South African authorities inter alia to arrest and detain people without trial. South West Africa applied and enacted similar legislation.

In order to avoid arrest but to continue the struggle many members of SWAPO left South West Africa. A group of exiled members set up external headquarters in Dar-es-Salam and

seminal decisions concerning the liberation struggle were soon to be taken there.

The demography and geography of Namibia is such that the majority of the population at that time and even today, reside in the northern reaches of the country. The terrain made it possible for SWAPO fighters (known as Plan, the peoples liberation army) to gather, strike, scatter, gather again and strike again. It became the main but not the only operational area and South Africa despatched its army to South West Africa in a concentrated effort to destroy and to subjugate. While the South Africans were failing in their purpose, SWAPO was growing stronger and stronger. In South Africa from an early stage in the liberation struggle the ANC had been declared an "unlawful organisation", as had been other organisations which supported the liberation struggle. SWAPO, however, was never declared an unlawful organisation. While the external wing of SWAPO planned the battles in the north of Namibia, the internal wing kept up the morale and the resistance in the rest of the country. Members and supporters of SWAPO white or black were liable to be arrested, detained, interrogated and harassed by the Security Forces whether South African or South West African.

✓ At an early stage Anton Lubowski identified himself as a fighter in the liberation struggle and at great personal sacrifice fought fearlessly for the cause. As an advocate he was involved in a large number of so-called terrorist cases. He, however, took a leading part in the political struggle as well. He addressed meetings and marched with

demonstrators. He represented SWAPO in 1984 at the Peace Summit in Lusaka and announced his membership of SWAPO encouraging other white people to follow his example. Within a month he was detained by the Security Police. In all he was detained six times including a time of solitary confinement in 1987, until released by the Supreme Court of South West Africa now the High Court of Namibia.

In 1920 it was enacted that the common law as practised in the Cape Province was to be the common law of the Mandated Territory of South West Africa. It must be emphasised that the enactment did not provide that the common law of the Union of South Africa was to be the common law of the Territory. By 1920 the common law of the Cape had been administered and influenced by the British for almost 120 years and furthermore as at that time the indigenous people of the Western Cape were on a common voters roll with the whites.

The British tradition at the Cape included the British concept of the independence, integrity and fearlessness of the judiciary, the administration of justice and the police. Many Afrikaans and indigenous persons joined the police and the administration of justice and this tradition which was well and truly ingrained, was perpetuated and taken over in South West Africa.

The apartheid legislation cut deeply into this tradition in both countries and many particularly those in the Police found themselves torn between two loyalties. To ensure

efficiency in the "anti-terrorist" field there was developed in South Africa and South West Africa a separate unit known as the Security Police. The ordinary police force could and did, carry on with their normal duties, which of course, included investigating common law crimes such as murder, assault, rape, theft and many other crimes while the security police concentrated on applying those statutory laws which it was believed in South West Africa, would secure the country from SWAPO. They spied on the population bugging telephones and opening correspondence, and monitoring and questioning the movements of innocent residents. They arrested and detained without trial, placing people in solitary confinement and questioning them acting sometimes on flimsy reports of field workers or telephone tappers.

Traditionally both in South Africa and South West Africa, the Army and the Police are totally separate organisations under different commands and with totally different objectives. The officers of one unit have no say whatsoever over members of the other unit. The military had and still have their own separate military intelligence section trained for military purposes.

The escalation of the liberation struggle both in South Africa and in South West Africa caused those in charge to resort to whatever means they could think of to combat or even to contain such struggle. In South West Africa a Police unit under separate command known as the Task Force was established. The essential objective of the Police is

to control crime and the object of the Task Force, according to the evidence of Deputy Commissioner Smit, was to give the Police "back-up" where the crime or crimes were beyond the means of the police, e.g. where there was in a particular area a riot or strike, the Task Force would then be rushed to that area to control such riot or strike. The Task Force indeed was a police unit under a separate command but completely separate and distinct from the Army. ✓ A special unit, referred to as a police unit, and known as Koevoet (crowbar) was established. This was a ruthless killing machine also under its own command. It was para-military in that it took the initiative as to who should be killed or not and very many were indeed killed without any justification whatsoever. ✓

The fear and reprehension probably evoked by Koevoet, but not necessarily only by Koevoet, spread throughout the population so that people were so intimidated, as testified to by Mr Danie Botha in this Inquest, that they feared expressing any views lest such views be interpreted as being in favour of SWAPO. According to Botha a photograph of a white person with a black person could be interpreted as subversive and the average person did not distinguish between the various Police units and the Army.

Notwithstanding this morass of iniquity there were still cases where the South West African Police despite overwhelming opposition from the South African Defence Force and Koevoet managed to do its duty. One of these cases was frequently referred to in this inquest as the Shifidi case.

In that case Immanuel Shifidi while attending a political meeting on a football field outside Windhoek was killed. The evidence was that twenty-six soldiers from Battalion 101 in civilian clothes arrived with primitive weapons at the meeting broke up the meeting killing Shifidi. As a result of the publicity given in the English language newspapers and the vigorous cross-examination and investigation of human rights lawyers Adv Bryan O'Linn and David Smuts, six soldiers were identified and prosecuted for murder. On the morning of the trial President P W Botha tried in terms of Section 103 ter of the Defence Force Act, to stop the trial by issuing a certificate but the Supreme Court (as the High Court was then known in those days) set aside President Botha's certificate and ordered the case to continue. A similar situation arose in the Mweuhanga case when as a result of police investigation three soldiers were arrested and prosecuted for murder and again President Botha unsuccessfully tried to stop the prosecution. This must not be read as meaning that there was a prosecution arising out of every murder or even assault committed at that time. It merely illustrates that the Police did at times manage to do its duty. There were certainly members of the police who were committed to the South African philosophy and cause and who would and probably did consider that a priority. The police did not, however, trust each other. The police spied and reported on each other and the South African Security system in South Africa and South West Africa became unreliable as far as the ruling powers were concerned. In 1969 the Security Police Bureau was established by Prime Minister Vorster and one Hendrick van den Bergh. This was

known as "Boss". It too was an unscrupulous organisation spying and scheming in respect of the public and police. In 1978 when Vorster fell from grace the National Intelligence Service replaced it.

✓ In all those countries surrounding South Africa, the shackles of colonialism had been broken and independent countries were emerging. In South Africa, particularly those in control of the military decided that the enemies of apartheid should not only be fought within the borders of South Africa but also beyond the borders. As far as the South African military was concerned a total war was being fought and everything was permissible. An organisation was evolved to eliminate the opponents of apartheid wherever they may be found and to engage in any activity which would destabilize those countries or those organisations which this particular organisation chose as a target. ✓

✓ The number of unsolved murders of opponents of apartheid attributed to South African authorities were increasing dramatically not only in South Africa itself but in neighbouring countries as well, and anti-apartheid organisations in South Africa and abroad were becoming more vociferous and concerned about such increases. I have no intention of recounting the names of those murders where there were no solutions but there was a certain similarity in the murder of activist attorney Victoria Mxenga gunned down in her driveway in Durban on the 1st August 1985 and David Webster gunned down outside his Troyeville home in Johannesburg on the 1 May 1989 and Anton Lubowski gunned

down outside his home in Windhoek on 12 September 1989. In 1981, Griffiths Mxenge, husband of Victoria Mxenge and also an activist attorney had been brutally murdered in Durban. All these murders were unsolved but when Batana Almond Nofomela a security policeman was about to be executed for the murder of a white farmer he claimed that he belonged to a right-wing death squad chosen to eliminate opponents of the state and that he killed Griffiths Mxenge for such death squad. One Dirk Coetzee who claimed to be a captain in the special death squad unit then confirmed Nofomela's statement and gave additional details. Another witness David Tshikalanga confirmed this. ✓

✓ The murder of Anton Lubowski was far too similar to those of other activists merely to be a co-incidence. Furthermore Resolution 435 of the United Nations was being implemented in South West Africa. A United Nations Transitional Assistance Team (UNTAG) was from the 1 April 1989 active inside the country occupying military bases and monitoring certain police activity. An election which would be free and fair was to be held. In this atmosphere the death of Anton Lubowski attracted international attention. Furthermore the investigations into this murder by Deputy Commissioner Smit who himself was being monitored by UNTAG took him to South Africa where his interviews with the Brixton Murder and Robbery squad, and where his interviews with certain persons referred to later in these findings as members of the CCB and where difficulties were placed in his way with the interviews of others, could not be ignored by South African President de Klerk. ✓

The President of South Africa, de Klerk, appointed a judicial commission inquiry under the Honourable Mr Justice Harms to investigate and report on "murder and acts of violence allegedly committed with political motives". According to the evidence given at the Commission, the South African Defence Force, as opposed to the Security Police ran a covert branch known as the Civil Co-Operation Bureau (CCB) and members spied not only on opponents of the government but also on the security police, and on the police itself. When Harms J issued his report he rejected most of the allegations made by Dirk Coetzee and absolved the police from death squad activities. He pointed out that on at least a dozen occasions the CCB itself refused to provide him with information which would enable him to get to the truth while on several other occasions individual members of the CCB had refused to divulge important information. I have read the record in respect of certain witnesses who testified at that commission and from affidavits I have seen and evidence placed before me, it is abundantly clear that South West Africa was regarded as a vital area for the operations of the CCB. At a later stage I shall deal in greater detail with the CCB.

✓ I have already said that the State's case against Acheson was withdrawn. Although the investigating officer Col Smit gave evidence, he was not asked to deal with the affidavits which were taken from witnesses and which had led to the arrest of Acheson. The Prosecutor-General had not filed these affidavits with the Court. No explanation was given by the State for withdrawing the case. The public did not

know why the case which had been instituted had suddenly been withdrawn. U

V What was indeed known was that for many years Lubowski had been harassed by the authorities of the day. The public did not distinguish between the South African Defence Force, the South West African Defence Force, the Security Police or the ordinary Police. The word Police was convenient, to describe anyone in authority who had clashed with Lubowski. It was rumoured that the police were involved in this murder. The rumour festered like a sore and burst on 17 May 1993 when "The Namibian" newspaper published information supplied to it by Willem Rooinasie, a former member of the Task Force, of Police involvement. "The Namibian" had and has built up a reputation of fearlessness and integrity. It was in the public interest that the information supplied to it, be published. The publication attracted so much interest and concern that Inspector General Andima deputed two persons to investigate the allegation namely W/O Saunderson and Sgt. Neumbo. When police are required to investigate the conduct of other police officers, the choice of an investigator is extremely difficult. Such an investigator must be a dedicated, experienced policeman who will be thorough and above all honest and objective. Whether the investigators who were chosen had these qualities, is questionable. Sgt. Neumbo had been a member of the South West African Security Police during the Colonial period but his work was confined to tapping of telephones and the opening and reading of private correspondence. He seems to have had little if any

experience in actual crime detection and the taking of statements. Saunderson was not a member of the Security Police and he appears to have had more experience than Neumbo. His objectivity was however doubtful. He had had a personal clash with Brigadier Badenhorst of the Namibian Police. The pros and cons of that clash are irrelevant save that as a result thereof Saunderson was moved to Rundu and may well have borne Badenhorst a grudge. Furthermore Saunderson's wife was a colleague and an associate at her work of Munango who was to become Saunderson's main witness.

Namibia had only been independent for three years when the choice of such investigators had to be made and the question was where to find them. Most of the police who had held office during the colonial regime were still in office and a real difficulty existed particularly because of the nature and the surrounding circumstances of the assassination. Namibia, however, was very fortunate in that an Englishman who had been an officer in the Police Force in Great Britain, and who had considerable experience and all the qualities I have mentioned above was acting as a special advisor to the Minister of Home Affairs, Minister Hifikepunye Pohamba, and was available for consultation with and guidance to whomsoever the investigator may be. This man is David Pickover MBE.

Mr Pickover was one of the last witnesses to be called. By the time he testified the investigating officers Saunderson and Neumbo had been heard. They mentioned Pickover's name and I had read their investigation diary and their

recommendations. The two main witnesses from which they took statements and who implicated senior police officers in the assassination of Lubowski namely Munango and Rooinasie had made more than one affidavit and had also given evidence. There were many instances of inconsistency in their affidavits and evidence. I will analyze these in great detail at a later stage. I required certain explanations for what appeared to be inexplicable variations and modifications of their affidavits and evidence. The evidence of Saunderson and Neumbo was also not satisfactory and inasmuch as they themselves had referred to Pickover in their evidence, it became essential to hear him. Mr Saunderson had testified that when their instructions from their superiors were received their mandate was not clear. Saunderson said they had not been given specific direction (riglyne). The innuendo was that had this been done their investigation would have taken a different course. This in itself required elucidation.

The effect of Mr Pickovers evidence was that Saunderson and Neumbo undertook their investigating with preconceived conclusions and then made assumptions and drew inferences and caused witnesses to make and even to change affidavits to fit the pre-conceived conclusions.

This does not relieve me of my duty to analyze the evidence of Munango and Rooinasie and to make up my own mind. This as I have said I shall do in great detail. I do this also in spite of the fact that when the evidence had been concluded and I had to be addressed by Counsel representing

the different interests, Counsel representing the Lubowski family who are keen to solve this crime as well as Counsel for the State said that no reliance can be placed on the evidence of Munango and Rooinasie.

It is, however, convenient to illustrate at this stage the lack of experience of investigators Saunderson and Neumbo and their manner of projecting their conclusions.

✓ They concluded before they had the evidence to substantiate the conclusion that W/O Adriaan White had shot Lubowski. The abbreviated form of Adriaan in Afrikaans is "Riaan" and as a fact White was known amongst his friends as "Riaan". The Afrikaans word for "rain" is "reën" which rhymes, (as pronounced by certain people), with "Riaan". At the autopsy of Anton Lubowski, a photograph was taken by Dr Liebenberg of Lubowski's left hand and on the back thereof according to the investigation diary of Saunderson was the word "Reën" written with a ball-point pen. Saunderson reasoned, having concluded that Riaan White shot Lubowski, that Lubowski had been forewarned of his assassination and wrote the name of his assassin. When it occurred to Saunderson that the word written on the back of Lubowski's hand was not "reën", (as he had recorded in his diary), he examined the enlargement which had been made of the photograph and decided that the word was "Rain".

This too supported his theory because Lubowski may merely have misspelt "Riaan". However, the enlargement of the photograph which Saunderson looked at had an arrow

surrounded by a circle superimposed on the photograph to draw attention to the word written on the hand. The line of the circle unfortunately crossed over an "S" which was the last letter of the word making the word on the hand "Rains". The original print excluding the circle and arrow when examined under a strong magnifying-glass indicated that the word was probably not even "Rains" but "Bains".

Mr Pickover had pointed out that the "R" looked like a "B". Dr Liebenberg who did the autopsy in evidence said the word was in fact "Bains". The Inquest Court examined the photographs using the magnifying-glass the doctor had used and found that the word could have been "Bains" or "Rains". In any event neither finding supports Saunderson's conclusion. In favour of the investigating team I point out that the doctor who did the autopsy omitted in her original evidence to mention the photograph of the hand. The photograph was not in the courts possession at the time and could not be shown to the doctor. The investigators had found it. When the photograph became available Dr Liebenberg was recalled and admitted that the hand was the hand of Lubowski and that she had overlooked mentioning it originally. The finding of the photograph was good investigating but unfortunately the consequence was an example of bad investigating. What Saunderson and Neumbo had done was to look for evidence which would justify their conclusions. This form of conjecture went further. The investigators having decided the word was "Riaan" misspelt asked themselves the question who would have warned Lubowski so that he should write his murderers name on his hand, and

came up with another unsupported theory.

That afternoon of 12 September 1989, at the SWAPO offices where Lubowski was working apparently on matters relating to the pending general election which was due to be held in November 1989, there was also one Leon Raath. Raath was a chartered accountant who in that capacity did SWAPO's books. Something had cropped up and he was heard to say that he wanted to talk to Lubowski about something important but Lubowski had apparently brushed him aside as Lubowski did not have time. Raath is at present in South Africa and he is not available to testify. Saunderson reasons that Raath was in on the plot and had warned Lubowski. Consequently Lubowski wrote the name of the assassin on his hand. That an educated man should write Bains or Rains when wanting to write Riaan is nonsense. But equally nonsensical is that a person would write the name of his intended assassin on his hand!

One of the factors which had to be considered was the question of whether the assassin was tipped off that Lubowski was on his way home from the SWAPO offices and then hastened to Lubowski's home to shoot him there. Originally Munango had said in his affidavit and in Court that the tip off had come from Ms Clayton who was at the time in Lubowski's house. I shall deal with this in greater detail when I analyze Munango's evidence. By the time Saunderson gave evidence, Munango had been discredited and so had Neumbo, particularly as to whether the Security Police tapped Lubowski's telephone at the time and as to whether

he, Nuembo, who had been in the Security Police tapping telephones had been responsible for the allegation in Munango's affidavit. The evidence was that UNTAG (the United Nations Transitional Assistance Group) had moved into South West Africa in April 1989, that South Africa was pulling out and that UNTAG had in June 1989, ordered the cessation of the tapping of telephones. In that case, if Lubowski's telephone was not tapped at the time, Nuembo's evidence that one Riaan Smit also in the Security Police had made a written record of the tapping he Nuembo had seen, was false. Saunderson therefore said that he concluded that Leon Raath had telephoned the assassin to tell him that Lubowski was on his way.

The question then is would Leon Raath have warned Lubowski and also tipped off the assassin to enable him to kill Lubowski? This is unlikely but in any event if Lubowski had heeded the "warning" and survived what would have happened to Leon Raath? There were several other examples of speculation in the evidence of Saunderson as well as that of Nuembo. Soon after Saunderson started giving evidence he made a statement which is fundamental to this Inquest.

Saunderson said that in his discussions with Munango (that is his star witness) he formulated the impression that Munango knew nothing of the CCB and that he had never met Staal Burger who was reputed to be in charge of CCB operations in Namibia and only knew his picture from the newspaper. If that were so then there is absolutely no substance whatsoever in Munango's evidence. Staal Burger

was one of the essential figures in Munango's description of the plot in which 14 leading members of the police plus Col Radmore of the Defence Force, Danie Botha a SWAPO member of Parliament, two mysterious Mosambicans and he, Munango, all conspired to kill Lubowski on the night of the 12 September 1989.

Notwithstanding this complete change of face of the investigator Saunderson, I shall as I have said analyze the evidence of Munango and will show in my analysis that Munango's evidence is in any event completely void of any truth.

The motivation which Saunderson and Neumbo may have had in their investigations, is not the subject of this Inquest. The affidavits which they collected from Munango and Rooinasie show a conspiracy by the police to kill Lubowski. Inasmuch as the entire alleged police conspiracy revolves around them (that is Munango and Rooinasie), I shall deal only with the affidavits of these two persons in that respect.

I shall now analyze the evidence of Munango.

Romanus Frans Munango was warned that he need not answer questions which may incriminate him. Munango made three affidavits.

On 18 May 1993, a handwritten statement taken by Warrant Officer Willem Saunderson was sworn to by Munango. The

statement was in the Afrikaans language a language Munango said he understood and spoke. He subsequently made two affidavits in English which language he also understood and spoke although not as well as Afrikaans. One affidavit purports to be a translation of the Afrikaans affidavit but it contains certain differences some of which were referred to by counsel as being substantial! Indeed one of the variations was most material. In the Afrikaans affidavit in one particular respect there was no reference to Col. "Jumbo" Smit the police officer who investigated the case against Acheson but the English translation implicated him in a manner not suggested in the original Afrikaans version. The investigating officers could give no explanation for this. It would appear that the translator added these words with malicious intent. The affidavits were read in court by Mr Walters while Munango was in the witness-box the Afrikaans one being translated. It is unnecessary to set out the affidavits word for word; I shall merely refer to certain essential matter. I will not follow the sequence of the affidavits either.

Munango said he was a former Namibian police officer having been recruited by W/O Maritz of the Detective Branch in Rundu. In fact his entire case rotated around the fact that he was a member of the South West African Police on 12 September 1989 when Lubowski was killed. If he was not a member, his evidence is false.

Munango said he became active in political work collecting information in connection with SWAPO activities which he

passed on to Badenhorst of the Security Police. His activities were, however, not confined to the gathering of the information. He said at times he shot people, apparently members of SWAPO, and even persons who were not SWAPO supporters in order to win the confidence of SWAPO so that they would impart information to him. He committed, he said, various acts of sabotage in South Africa and had on one occasion thrown a hand-grenade into a crowded hostel at Soweto injuring three people. He could not remember if he had killed anyone in Cape Town where he was for a considerable period of time. He said he had not killed anyone in Durban but he had done "strange" things there.

He said in order to give him a front or "disguise", he was sent to study theology at a mission school known as "Youth with a Mission" which is a small evangelical institution in Klein Windhoek. On 2 December 1988 he received two certificates as proof that he had attended the course and then as a pastor he went to Rundu in January 1989 earning R300,00 per month where he gave lectures at the Kapako Biblical College and apparently ministered to the local inhabitants for two or three months. He subsequently conceded he must have been there in March 1989 as well.

In actual fact he said his main reason for attending "Youth with a Mission" was to study espionage particularly "SWAPO's activities, business and its command structure". He mentioned the names of several other people who had been trained as spies at the Mission. He said his tutor was Mr Don Price who had introduced himself as a captain in the

South African Defence Force. Mr Price testified. He made a special trip from South Africa to do so. I found him glib with a somewhat "superior" if not disdainful attitude. However, I do not doubt his theological sincerity and his truthfulness. Mr Price denied that he was a captain in the South African Defence Force of that he was serving at that time in the Defence Force and he said at no stage did he tell Munango that he was a captain in the Defence Force. Saunderson's investigation diary described Price as a Colonel. I believe Mr Don Price. Munango had therefore lied both to the Court and to Saunderson. This was one of many lies which Munango told. Furthermore Price said at no stage were people trained in espionage at the Mission. The nature of the theology taught at the Mission came somewhat more clearly from witnesses Hilda Basson and Danie Botha and I shall comment thereon at a later stage. However, Munango not only said that he himself was trained there to be a spy but others were also so trained and he named them. When cross-examined in this respect and the shoe began to pinch Munango said only he and another person (whom he did not name) were trained there and eventually driven into a corner he qualified even this. He said only he was being trained and that training came only from Koos Basson a lecturer who is now in Zimbabwe and from no one else. I have no doubt that Munango was never trained as a spy but received the same religious training at the Mission that any other student received. He was lying in this respect as well.

After spending three months as from January 1989 as a pastor in the North around Kapako and engaging in espionage,

Munango said he went to Hammanskraal in South Africa for six months for additional training in espionage where he learnt to make hand grenades and letter bombs (this would take him to the end of September 1989), and from Hammanskraal he went to Cape Town for a few months for "practical training". At one stage he said he was in Cape Town for four or five months and later qualified this to meet certain pointed questions put to him. When his own evidence was analyzed and put to him and he was shown that by simple arithmetic, he could not have been in Namibia at the time of Lubowski's death, he immediately tried then to modify the various times he had spent at Hammanskraal and Cape Town. Even then on his own arithmetic, he was not in Namibia at the time of the assassination but at best for him he was in Hammanskraal or Cape Town.

His personal diary in which he said he did not write anything which related to the Lubowski murder but only his innocent day to day activity, has the following entry on the 13 September 1989 the day after the assassination:

"Moet na Windhoek vertrek of gaan."

The English: "Must leave or go to Windhoek."

This shows that he was not in Windhoek on that date. His explanation was that on the night of the murder he and two friends were flown from Keetmanshoop to Cape Town (He contradicted himself as to how he got to Keetmanshoop - I shall deal with this later) and he made the entry the following day (although he had previously said he did not

make entries which in any way related to the assassination). He tried to explain this by saying that he was waiting to return to Windhoek in two weeks time. In fact he said he was in Cape Town for about two weeks. However, the entry on 14 September 1989 (two days after the assassination) while he was supposed to be in Cape Town reads as follows:

"Moet Mev Vorster gaan spreek te Swatac Windhoek.

Mev Kok nie beskikbaar sal wees nie.

Die name van erfgename volg order te kry."

(Briefly the English is:

"Must speak to Mrs Vorster at Swatac Windhoek.

Mrs Kok will not be available. To get the names of heirs and order of inheritance).

He told the Court that the entry concerning "Swatac" was a false entry to put anyone off the track if they should find his diary. He said there was in fact no person by the name of Vorster. When the Court said to him surely he would not be that stupid to put a false name there as this could be checked, he changed his story and said there was such a person but she was not in Namibia at present.

References on other pages of his diary show that he made frequent visits to the organisation SWATAC and had many dealings with Mrs Kok. I mention only two hereunder to illustrate the point:

"5 May 1989: Moet Swatac Windhoek skakel i.v.m.
boedel wyle F Andre. Mev Kok of

Hough. Tel 226125.

Mev Kok geskakel meegedeel dat op Junie sal die tjek op hulle kantoor wees. 1 Julie dan sal hulle die boedel afbetaal by die eiser;"

31 May 1989: Moet Windhoek Swatac telefonies skakel Tel. 226135 Mev Kok of Mej Hough vra of die boedel van wyle A Ndiwu by hulle kantoor aangekom of nie."

The English translation is:

5 May 1989: Must phone Swatac Windhoek in respect of the estate of the late F Andre, Mrs Kok or Hough. Tel 226135. Phoned Mrs Kok informed that in June the cheque will be at their office. 1 July then the estate will be paid out to the claimant.

31 May 1989: Must phone Windhoek Swatac telephone 226135. Must ask Mrs Kok or Miss Hough if the estate of the late A Ndiwu has arrived at their office".

Munango may well have been in Namibia (despite his own lies

about being in Hammanskraal and Cape Town) on 12 September 1989 but he was certainly not in Windhoek. His entry on the 13 September 1989 shows he was coming to Windhoek after that date and the entry on 14 September shows the reason why he was coming. He admitted at one stage that his occupation was to contact the relatives of deceased soldiers. It is clear that this was in fact his occupation at the time, and there are other entries in the diary which confirm this, that is that he was working for Swatac at that time. Furthermore his own diary is proof that he was not serving in the Police Force in the year 1989 when Lubowski was killed. Again Munango was lying: This lie destroys his entire story but I shall continue analyzing his evidence.

Munango tried to convey the impression that he was at all material times employed by the Namibian Police particularly in September 1989 at the time of the murder. However, the certificate of his service record which he obtained from the District Commissioner at Rundu on 24 March 1992 which he said he wanted as a reference to apply for a job and which he said was correct reveals that he was in the police for the following periods only:

1980/11/21 to 1984/11/25 (His number being 903293E)

and

1985/08/22 to 1987/11/25 (His number being 804433).

Investigating officer Neumbo in evidence said he accepted at

the time and still accepts this certificate as being true and correct. (And I point out that the last date therefore on this document is the 25th November 1987).

According to this document which Munango used as a reference to get work with Lewis Stores in April 1992 his service with the police was terminated on 25 November 1987. On 12 September 1989 therefore, when Lubowski was assassinated he was not in the police on his own showing. He told a strange and weird and unconvincing story of a person by the name of Slang van Zyl who lived in Cape Town and who obtained work for him with Lewis Stores before he received his reference from the Police but conceded that he showed Lewis Stores this reference to get his job and said that Lewis Stores still had a copy of the reference. He seemed suddenly to realise that to link Slang van Zyl a well-known CCB operative with his employer may prove detrimental to his employer and to himself and he then tried to wriggle out of his evidence disclosing once again what a transparent liar he was.

Mr Barnard showed him a different record of service, which, as far as is material hereto, showed that he was discharged from the Police (SWA) on 20 May 1988, more than a year before Lubowski's murder.

In the circumstances the crisp and fundamental question is "How could Saunderson and Neumbo believe that Munango was in the Police at the time of the assassination".

According to the Investigating Diary of W/O Saunderson, Munango told Saunderson that the last time he received salary from the Police was in 1993. He told this Court that he stopped receiving his salary in 1992 apparently when he joined Lewis Stores in April 1992. This was another obvious lie.

Inasmuch as Saunderson's wife and Munango worked together at Lewis Stores, the entire investigation is suspicious.

Soon after Munango commenced to testify the Court asked him if he had ever served in the army. His reply was that he had never been in the Defence Force. He repeated this to the Court on several occasions. The Court asked (I quote from the record) "Never a member S.A. Defence Force nor the South West African Defence Force?"

To this he answered:

"No, Your Honour, never. I was only a member of the police force."

This was another lie.

When Mr Walters put it to him that he had been in the army and said to him: "That's my question were you actually part of the Defence Force with a rank number?"

Answer by Munango: "That's right Your Honour, I was. I was a soldier and I was sent to Rundu Sector 202, and I was also given a number". He also claimed that he was in a Unit known as Recce 5. However, when shown the various emblems of the units, he could not identify the emblem of Recce 5. This was another lie and clearly he knew nothing about Recce

5.

In two affidavits in both whereof he had sworn that he understood the contents of the affidavits and swore that the contents were correct he said that he "worked together with the South African Police" and also received a salary from them which they the South African Police deposited on his behalf into a banking account No. 02238470 at the First National Bank, Parow, and paid his house rental in Cape Town. This was according to the affidavit of Munango prior to and at the time of the Lubowski murder on 12 September 1989 and it was to that house that he had fled after the murder. However, when the bank account was handed in, it was clear that it had only been opened in 1990. He then said he had a second account with the Standard Bank which he had given to the Police Officers who took his statement W/O Neumbo and W/O Saunderson. I have little doubt that he had had at one time or another an account with the Standard Bank but this does not alter the statement which he gave under oath to Neumbo and Saunderson. Furthermore, and this must be emphasised that although he had sworn on two occasions that he was employed by the South African Police, he changed this in the witness-box to the South West African Police and said furthermore that he himself had opened the bank account. When W/O Neumbo testified he said he only wrote down what the witness told him. Munango had clearly lied in this respect as well. During his evidence he tried to distance himself from the South African Police or Defence Force and tried to place all blame for all his brutal and dishonest activities which were

anti-SWAPO and against the liberation struggle, on the shoulders of certain officers in the Police Force particularly Brigadier Badenhorst who Munango described as being the "head" or chief of the Security Police. Badenhorst was indeed in the Security Police but he was never the head or chief thereof. Badenhorst had indeed been involved in apprehending and detaining persons including Lubowski, in terms of their so-called security legislation or terrorism act. Munango had during his limited experience with the police, come in touch with most of the police officers and it was therefore easy for him to rattle off their names. Where he knew and where the entire public knew of a particular plot or activity whether Munango participated in it or not he could substitute names of police officers and even invent situations involving them. Sometimes, however, he overplayed his hand. A good example of this was the Shifidi assassination (to which I have already referred). He says he remembers this and that Badenhorst "launched" the operation with a meeting attended by Badenhorst, Col "Jumbo" Smit, Col Flip Nel and Inspector Benade (Task Force), Col. Radmore Defence Force and an unknown Corporal. Why a corporal should be allowed to attend a meeting of high ranking officers in planning an operation of this description is beyond comprehension. When he related this at the beginning of his evidence he did not say something which apparently occurred to him at a very late stage in his evidence and that was that he was sent to Oshakati by car to fetch six people who would kill Shifidi. His car however broke down en route, he was late for his appointment and the people he had to collect had already

left for Windhoek. As a fact the record of the case shows that 26 people, all soldiers and not police, came to break up the meeting.

Shifidi was a member of SWAPO and an outspoken critic of the colonial regime. He was at a political rally held on a football field on the outskirts of Windhoek. At the rally he was murdered. At the inquest which followed as read with an application subsequently brought in the Supreme Court, it became obvious that the operation to disrupt the political rally was perpetrated by the army Battalion 101 and not by that section of the police who may have been commanded by Badenhorst whatever his rank may have been. The inquest record does, however, disclose that in the police investigation which followed, the police appeared to be hesitant and dragging their feet at first but due to the vigorous cross-examination (as I have already said) of human rights lawyer Bryan O'Linn and persistent investigation of David Smuts and critical publicity in the English newspapers, the police did eventually identify six people all soldiers whom they arrested and who were charged for the murder of Shifidi. Munango's evidence that the police organised the disruption of the meeting and the murder of Shifidi when in fact it was the police who investigated and made the arrests, is illogical. Had the prosecution of the alleged assassins taken place this whole matter would have been cleared up but on the morning that the prosecution was due to start President P W Botha of South Africa issued a certificate in terms of Section 103 ter of the Defence Force Act which had the effect of stopping the prosecution. This

is additional proof that it was the SADF which was involved. The Supreme Court of South West Africa (the predecessor of the High Court of Namibia) set aside the certificate of President Botha and ordered the trial to continue. For the sake of completeness I point out that the trial has as yet not taken place. However, this was not the fault of the local Police who made the arrests and eventually brought the prosecution. For additional reasons set out hereunder Munango's purported role in the Shifidi murder is unacceptable. He originally said that the incident took place in 1985 but later he changed this to 1987. In fact, Shifidi was murdered on 30 November 1986, a year after or a year before he says he participated therein. Furthermore Munango said he still had in his possession a list of the names of the people whom he was told to kill in the Shifidi operation. How he was to identify these people in a crowd, he does not say. When the Court asked him for these names he said they were in a box in his house in Parow. When he realised that this excuse may not be sufficient, he said that the South African Police had raided his house and removed the box. At first he said W/O Saunderson and Neumbo had accompanied him to Cape Town, knew about this and went with him to the South African Police. He quickly changed this when he realised that they may not support him about going to the police and said he went on his own to the police and subsequently he changed this and said he phoned a friend of his in the Police in Cape Town, Patric Shiale, who warned him not to come to the Police Station as he would be arrested. Why he would have been arrested is not explained. Firstly Munango is as a fact a South African

with a South African passport and secondly according to Munango he had not done anything wrong. He told Neumbo and Saunderson a similar story and they went with him to retrieve the box in Parow. Neumbo told the Court the box was not there and that Munango eventually had had a telephone conversation with someone and thereafter reported that the police had taken the box. This was hearsay but Neumbo confirms that he and Saunderson did not go to the Police while in South Africa.

It is interesting to note that Saunderson recorded in his Investigation Diary that Munango told him that he took part in the Shifdi affair in 1987. As stated this was a year after Shifdi was killed. Why did Saunderson not record this inconsistency? His alleged participation in the Shifdi affair was a calculated lie. But there was far more to come.

Munango said that Brigadier Badenhorst had told him he could "trust" certain persons "with anything which I could send through or say to him (i.e. Badenhorst)". (These are Munango's own words). He then gave a list of names. They were all policemen except for Col Radmore and one Danie Botha. When Botha read in the newspaper what Munango said in Court he contacted this Court and was immediately called as a witness as he was due to go abroad.

Danie Botha testified that he, Botha, is a member of SWAPO and a member of Parliament. He had previously been in the theology department of the Academy in Windhoek. Unlike the

teachers at the "Youth with a Mission", he did not believe that SWAPO was Anti-Christ. During the occupation of Namibia he in fact took an active part in trying to counter South African propaganda that SWAPO was communist and that the success of SWAPO meant the destruction of Christianity. In this regard he was a thorn in the side of the colonial regime. Under no circumstances would a person in the security police particularly Badenhorst, trust a man like Botha. He had in fact never met Badenhorst or had anything to do with him. Badenhorst confirmed this when he gave evidence. Badenhorst would certainly never tell another policeman or secret agent as Munango claimed to be that he could trust him or "send through or say to him" anything that he would tell Badenhorst. Again Munango had lied and such lie was directed again at implicating Badenhorst and on this occasion a person who had nothing to do with the police, Danie Botha.

As already stated Munango's evidence was interrupted for Botha to testify. According to Botha while Munango was at the Mission, Munango approached him and their discussion was of a theological nature. From time to time Botha had tried to convince the Mission members that SWAPO was not Anti-Christ. Except with Hilda Basson, Botha said he had little success. He said Munango told him that he, Munango, had been attached to a unit of the South West African Police or Defence Force and that he, Munango, had killed many innocent people. However, Munango told Botha that he had reformed and repented and Botha, as befits a good Christian, tried to comfort Munango. Botha, however, found that Munango was

asking questions more in keeping with a police agent than a theology student. He began to distrust him and after he discovered that certain innocent photographs taken by Munango of himself (Botha) with others were missing he slammed the door on Munango and he refused to have anything more to do with Munango. Munango apparently stung by this treatment has sought his revenge. He is maligning and falsely incriminating an innocent man.

Munango had said he believed and accepted whatever Badenhorst said, and Badenhorst, according to Munango had said that he could trust Botha. But he conceded in cross-examination that he had asked Danie Botha questions, very many questions, all of which were completely inconsistent with trust and he conceded that he had never ever said to Botha that Badenhorst had told him "you can trust Botha". His efforts in trying to falsely implicate his erstwhile acquaintance did not stop there. When describing the plot to assassinate Lubowski he was told by the police officers when they were planning to kill Lubowski that Botha had attended the last but one meeting in this regard. He subsequently forgot that he had said that he had been told this but made a positive assertion in evidence that Botha had in fact attended such meeting. This was not only a lie but an act of malevolence. Not only was Danie Botha not a policeman but even on Munango's own version played no role in the murder. Botha had not met Badenhorst and was in fact pro-SWAPO and had identified himself with the liberation struggle. This was another evil lie of Munango's.

What is particularly frightening is that investigating officers Saunderson and Neumbo had never confronted Botha with Munango's statement. Regrettably this is not the only mistake that these overzealous and inexperienced investigators made.

I now come to Munango's description of the plan to kill Lubowski. From time to time depending on the cross-examination descriptions of the planning and preparation for the killing changed.

Munango's first description was that in 1989 (and I quote his words (verbatim), "I can still remember this was early in the year, or in the beginning of the year", Badenhorst summoned Munango to his office where a meeting was held concerning the plan to kill Lubowski. On Munango's own evidence he was not in Windhoek early in the year or in the beginning of the year. He was either engaged in pastoral work in Kapako many hundred miles away or at Hammanskraal or even in Cape Town. At a subsequent stage in his evidence he says the first meeting took place in June or July 1989. This is substantially at variance with his sworn affidavit and again on his own evidence he was not at that time in Namibia. He says a second meeting was held at Suiderhof Base when apparently it was decided that Sgt. White would shoot. He subsequently changed this to a third meeting. He then says all those persons previously mentioned by him attended the meeting at Suiderhof Base. The speaker on this occasion was Col Naude (whom it appeared subsequently was a quarter-master that is, a man in charge of stores and not a

military man) who had a sketch-plan on a black board of Anton Lubowski's home and he informed the meeting that Anton Lubowski had to die. A decision was taken that Sgt Riaan White would shoot Lubowski. On the first occasion that he related the scheme, and this is supported at his affidavits, it was at this meeting that Sgt White, Staal Burger and Munango were instructed to photograph the house, (remember Staal Burger was the man that Saunderson said he was sure that Munango had never met). At a later stage in the cross-examination he said the photographing took place prior to the Suiderhof meeting and the photographs which had been taken were also on the board with the map. This again is a substantial variation but there were far greater variations to come. The photographing subsequently took place after he and Burger met at Eros. I deal again with this later, in detail. He says these photographs were developed by a private firm a retail photographic shop open to the public - an unlikely situation when the police had their own department for developing photographs.

He constantly changed the details of the assassination plan depending on the questions put to him. Finally he settled on three meetings which he attended. The first one occurred according to Munango when Badenhorst told him that Lubowski was no longer "working for us". The second meeting was in a motor car at SWAWEK which was months before the assassination but he says on this occasion the 12 September 1989 was already fixed as the date and Badenhorst told Munango that Lubowski had to be killed. Why Munango was chosen to attend special meetings where only one

or two sentences were spoken at strange places, Munango never knew. The third meeting attended by Munango, which was the final meeting at which the photographs and plans were put on a black-board and which was held at Suiderhof Base became a barbecue (braaivleis) with people walking in and out to get their meat grilled on the fire. (At that time Suiderhof was under the control and in the hands of UNTAG but to this I shall also return later).

An important part of the plan at Suiderhof base was that he together with others particularly Staal Burger had to take photographs of Lubowski's house, and two vehicles set off to do this. Staal Burger took the photographs.

This version conflicted with the version given by him in his statement dated 2 June 1993, when he said Burger contacted him a week before the murder at the Thüringer Hof Hotel and they met in the park at the Kalahari Sands Hotel where they agreed to meet the following day at the Eros Post Office from where they set off to photograph the house.

At one stage Munango was confused as to how many vehicle were involved in the photographing. He eventually became definite that the photographing was done by Staal Burger shortly before the assassination. Assuming in Munango's favour that it was done before the final meeting at Suiderhof Base, it must then have been used in the planning at the Suiderhof Base. At first in his evidence no reference is made by Col Naude to the photographs but at a later stage when cross-examined Munango puts a photograph on

the board where the map was.

At one stage Munango said Theuns van der Merwe had to wait at a stop street to shoot Lubowski when he stopped there. If this was before White was to shoot, no previous mention had been made by Munango of this. But Munango subsequently changed this to put van der Merwe at a stop street where Lubowski would according to Munango stop should White be unsuccessful. It is highly unlikely that Lubowski would have stopped at a stop street after White had attempted unsuccessfully to assassinate him.

He then says White with "reliable Task Force" members was patrolling the area when "someone informed them over the radio that the girl-friend" (Ms Clayton now Figueira) "had telephoned that Lubowski was on his way to the house. He subsequently enlarges on this and says as he did not know that there was a woman involved, he asked Burger about her. He said he told Burger that he heard over the radio that evening that the girl-friend of Anton had said that Anton was on his way. He said this appeared to him that the woman worked with them. He says Burger smiled and said the woman would receive or would share in the million rand. This story of the information supplied by Ms Clayton is completely inconsistent with what Munango says at a later stage in the same affidavit and is an obvious lie. It is a lie which implicates not only Ms Clayton but also Nuembo himself as will be seen hereafter.

Munango says he and Francisco Gonsalves waited down the road

at a stop sign in a Volkswagen Combi as "back-up". (No mention whatsoever at this stage is made of Pedro D'Almeida, who he says accompanied him to Keetmanshoop, but he mentioned a man Patrick Shiale.) Apparently, and this also comes out later, if Lubowski drove away they i.e. Munango and those with him were to blow him and his car up. At a late stage in his description of the plan he had a weapon that could do this but at one stage he said he had only had a snipers rifle. However, and this is important, he says Staal Burger, Riaan White (who was to do the shooting) and another in the hired red Golf, kept watch at the SWAPO offices where Lubowski was (and had been working for some months) with a radio to notify them, that is, the rest of the plotters, when Lubowski left. If that was the case then a message from Ms Clayton was not necessary. In fact the whole plot would have failed if it depended on a phone call from Ms Clayton and if she did not have information to give. There could be no shooting without White and White was, according to Munango, in the car outside SWAPO offices apparently following Lubowski on his way home. For supplying this unnecessary information Clayton would receive according to Munango R1 000 000,00. I have no doubt the story concerning Ms Clayton was another lie. The first question is where did he get her name from. He refers to her as "now Figuera". It was long after the assassination that she married and became Figuera. Nuembo, when he took Munango's statement knew this but apparently Munango himself did not.

Ms Clayton gave an affidavit to Col Jumbo Smit that Lubowski

had phoned and asked her to make a dinner appointment. Only Col Smit of the police knew of this phone call other than the person who may have tapped the telephones if telephones were still being tapped. Riaan Smit who according to Nuembo was also a phone-tapper had made a written report but the report was destroyed. Nuembo says he saw the report before it was destroyed but on his own evidence, this would only have been on the following day.

Nuembo testified that he was a member of the security police at the time of the murder and that his work was to tap telephones. He says he tapped Lubowski's phone but he went off duty on the 12 September at 16:00. Apparently the person who came on duty in his place was Riaan Smit. The persons who came on for the night shift according to Nuembo merely changed the tapes. They did not listen to the conversations. The following day, however, the night shift had to record in written reports the content of the conversations of the night before recorded on the tapes. The security police could therefore on Nuembo's evidence not have known of this vital phone call until after the assassination.

According to Nuembo all the records were destroyed but he had seen the written report of Riaan Smit. Riaan Smit had nothing to do with the taking of Munango's affidavit. Nuembo who was the only other person who knew of that phone call, took Munango's affidavit and he also knew that Ms Clayton was "now Figuera". Subsequent evidence disclosed that UNTAG who controlled vital institutions as from

April 1989 had forbidden phone-tapping and in September at the time of the assassination there was no tapping at all.

It would appear that inexperience in investigation and questioning of a witness may inadvertently have led to the allegation concerning Ms Clayton being inserted in the affidavit. According to Munango's own evidence, he was not in Windhoek at the time. I have no doubt that Munango did not hear on the radio that Ms Clayton had made a phone call as alleged and these words must have been put into his mouth.

Munango says after he heard shots the red Golf came in his direction and they then "parted" and they drove to Kapps Farm. Evidence by persons who heard the shots and immediately looked from their houses state that other than the red car, there was no traffic on the road. If the plan was to shoot Lubowski after he had parked his car and walked to his gate, Munango's "back-up" story of blowing up Lubowski in his car is nonsense. Lubowski would not have been in his car. In any event Munango says he and Fransisco and Patrick Shiale drove to Kapps Farm. Although he had sworn twice that it was Shiale (and never mentioned D'Almeida) he subsequently changed this to Pedro D'Almeida. He says that from Kapps Farm they were driven to Windhoek and from there to Keetmanshoop from where they flew to Cape Town. He later, however, changes this story as well and says that they drove directly from Kapps Farm to Keetmanshoop. As outlined by him, if he played any part, and if Fransisco and Pedro played any part at all, this was

a very minor part. One asks why were they flown out of Windhoek and not the others who were more active. He subsequently says that the aeroplane which flew them to Cape Town, had to refuel at Warmbad. When it was pointed out to him that there was no night-landing facilities there, he said they burnt tires so that they could land. Subsequently an opinion given by human right lawyer Soggot was handed into Court. Munango told Soggot that they had stopped and refuelled at Van Rynsdorp and not Warmbad.

In an affidavit which is dealt with in evidence in great detail, Munango describes a meeting in the parking area at the swimming pool in Windhoek immediately prior to the shooting, at which White and Burger were present. He said two "weapons" were taken out of Theuns van der Merwe's Cressida and van der Merwe placed them in a red Golf. In evidence he further said it was the boot of the vehicle which he corrected and then said they were placed on the back seat. He had told the Court that the red Golf had white stripes on either side. This is important because a witness Wynand P Vermaak had told the Court that he rushed out of his house immediately he had heard the shots and saw a red Toyota Conquest which has no distinctive white stripes, drive away. This meeting at the swimming pool Munango said took place at 18:00 or 18:30 but Burger and White were according to Munango outside the SWAPO office monitoring Lubowski. They could not be in both places at the same time. Munango contradicted himself on this vital issue. He says the weapons were wrapped in black canvass. He said he himself took two weapons out of the Cressida and

put them into the Combi. He took two AK 47's and one RPG 7. This furthermore was a substantial variation with an affidavit made by him where he said Staal Burger gave him a Snipers Rifle only. When confronted with this conflict the witness, Munango, went to pieces as will be seen hereunder.

Munango in his affidavit had said that in terms of the plan he and Fransisco Gonsalves (no mention I repeat at this stage of Pedro D'Almeida) had to wait at the lower end of Sanderburg Street "... equipped with a sniper's rifle fitted with a night telescopic sight and which had been handed over to Staal Burger by Brig. Badenhorst" in his (Munango's) presence. In evidence he said Theuns van der Merwe and not Badenhorst handed out the weapons at the swimming-pool. He was questioned very carefully by the Court as regards this and other inaccuracies in this respect and there were very many. He said that where there were inaccuracies, particularly in this regard but also in other instances, he had pointed these out to W/O Saunderson who had taken his affidavit and Saunderson told him not to worry about these inaccuracies because he could correct them in Court.

If Munango was telling the truth in this regard I find it very strange that a Police Officer can take an affidavit which he knows contains many inaccuracies on essential matter and inform the deponent that he need not "worry" about it because those inaccuracies can be corrected in Court. The officer would know that he would be suborning the witness to perjury and furthermore that it was calculated to mislead the Court. Saunderson denied that he

told Munango this. If Saunderson is telling the truth, and I believe him on this issue, then Munango is unquestionably a cunning and grotesque liar.

According to Munango Lloyd and van der Walt had to move in after White had done the shooting to see if Lubowski was dead. If he was not they had to finish him off while Col Smit had to delay the ambulance. Munango said he had heard on the radio that Lloyd and van der Walt were "moving in". The evidence, however, of Lubowski's neighbours particularly Meeuw who in an affidavit said he rushed to the scene immediately the shots were fired gives the lie to this. Folkert G Meeuw said his wife is a doctor and he returned home to fetch her and she immediately examined Lubowski. It was Meeuw who summoned the Police. Furthermore he says there were no other cars at the scene.

An interesting situation in the history of Namibia was that once there had been a cease fire and South Africa had agreed to a general election, all military bases passed into the hands of UNTAG. This appears to have been from April 1989. One of these bases was in fact Suiderhof. At the time Munango says this dastardly deed was planned at Suiderhof as a fact UNTAG was in charge of the Suiderhof Base. This, however, appears not to have been known to Munango. Assuming that one or two former officers could have entered the base for social purposes, according to Munango at least fourteen top ranking officers in the police and army attended this planning session which was accompanied with photographs plans and maps on a board for all to see and

furthermore there were no guards placed by the conspirators or attempts made to keep the meeting secret. Even Munango was nonplussed when told that UNTAG was in charge of Suiderhof at that time. He could not think of an answer.

Finally, Munango said that a week before Lubowski's death he received a cheque of R4 000,00 which was referred to as his "pension" - This was a strange pension because from this he was to pay R3 000,00 for some person's hotel account. This person was according to Munango to be arrested by Col. Smit and this person would accept responsibility for the murder. This person he said was Acheson. He did not tell the Court how Smit was to identify Acheson nor where he could be found. As a fact Acheson was arrested by Col Smit but as a result of information furnished by witnesses Mr and Mrs Ratzke on whose premises Acheson resided; Acheson was not living in an hotel. Furthermore Acheson certainly did not accept responsibility as Munango said he would.

Munango left in a blazing inferno of lies. He consistently denied that he was ever employed by the South African Police or Defence Force.

He was, however, confronted with an agreement dated 27 March 1990 which he admitted he had signed. When some of the terms were read to him he said he had signed the agreement when he was drunk. There was no mistake concerning this agreement. It had annexed to it for identification purposes the Identity Card of Munango which only he could have supplied and he had already admitted his

identity number. The agreement was concluded by Maj. B J Beukes of the South African Police and Munango and in terms thereof the latter (that is Munango) was to be paid in equal monthly instalments, R10 437,00 per year. In terms of this agreement Munango was a "fieldworker" gathering information for the South African Police. While Munango may well have been drunk when he signed every page of the agreement, he accepted his remuneration and endeavoured to do the work prescribed. However an affidavit dated 29 April 1994 was faxed through to Windhoek from the South African Police at Woodstock Cape Town signed by Lt. Col. Liebenberg wherein he refers to this contract which Munango admits he signed and says that the Police were concerned with weapons being smuggled from Northern Namibia to South Africa and one of the reasons for engaging the services of Munango was to get information and to control such smuggling. He says as a fact Munango proved to be unreliable and a liar. However, the Police paid the salary they had undertaken to do.

There is some relevance in this to recent events involving Munango and Saunderson.

In this Court Munango was questioned as to his recent activities in Northern Namibia and as to how he first met Saunderson. Munango admitted that he worked in Northern Namibia with a certain Pienaar and he said that they were engaged in smuggling across the border. He also admitted that he gave certain Xhosa women a lift from the North of Namibia to the Southern Border and at Noordoewer the women were arrested for trying to smuggle illegal weapons into

South Africa. Munango says that Saunderson told him of the fact that these women were arrested but Munango says no statement from the police was taken from him. It was his motor-vehicle in which the weapons were smuggled and he had chosen to travel 1 500 km but no statement was taken. He gives no reason for his journey.

A faxed affidavit from Munango's business associate Pienaar was produced and handed into Court.

One of the matters referred to in the affidavit related to the motor-car Munango had been driving. He said Pienaar sent him to Windhoek in respect of a diamond smuggling transaction and on his return the car broke down in Otjiwarongo. Pienaar was therefore obliged to pay for repairs. He Munango had collected R50 000,00 for Pienaar in respect of the diamond smuggling transaction and it was pointed out to him that he therefore had sufficient money to pay for repairs which only came to R400,00. The diamond smuggling story was obviously a lie and Pienaar had annexed to his affidavit a writ of attachment in respect of the car. Munango according to Pienaar tried to pay Pienaar with counterfeit American dollars and Pienaar went to the Police. I do not comment on whether this is truthful or not but I point out that the entire matter involves Munango and is suspicious.

Mr Munango was also asked whether he had been arrested in Cape Town for the theft of a car. He tried his best to avoid answering questions concerning his arrest but

afterwards he had to concede that he had been arrested but had been granted bail. He said he believed that the case against him had been withdrawn.

Mr Munango one way or another appears to have been involved in a large number of questionable transactions. No mention is made of any of these by the investigating team and again I put this down to inexperience. Although Munango told them, and this appears in the affidavits, that he worked "with" the South African Police who paid his salary, they did not approach the South African Police concerning Mr Munango's activities. Had they done so a different picture may have emerged.

Munango told very many lies to this Court. I have only mentioned some of them. He was completely discredited in cross-examination and by his own documentation. On his own evidence, he was not in Windhoek on the night of the murder and on his own evidence he was not in the police at the time. I have no doubt Saunderson was right when he said Munango never knew Staal Burger. Not a single thing he (Munango) said can be relied upon.

This Court must find who killed Lubowski and whether there was a conspiracy to kill him. Munango gave a graphic but distorted picture of how certain prominent police officers planned and conspired to kill Lubowski and that Warrant Officer White was the person who shot Lubowski. I have no doubt that this plan is a figment of the imagination of a brazen and evil liar and there is no prima facie evidence in

Munango's version of such a conspiracy or that Warrant Officer White shot Lubowski.

Statements some of them sworn to by one Willem Rooinasie were submitted to Court. He was also called to give evidence.

He like Munango alleged that there was a police conspiracy to kill Lubowski and that W/O White was to do the shooting.

His evidence differed dramatically if not diametrically from that given by Munango. Because I have dismissed Munango's evidence as a pack of lies, I must nevertheless consider each and every allegation made by Rooinasie. His evidence must be analyzed independently of that given by Munango.

Willem Rooinasie is at present in jail where he is serving 20 years imprisonment. He was sentenced on two different occasions. In respect of a case of robbery and attempted murder he received 8 years imprisonment. In respect of housebreaking with intent to steal and theft and arson, he was sentenced to 12 years imprisonment.

During the period May 1983 to 7 April 1992 Rooinasie was a member of the Namibian Police, Task Force Unit. He testifies to three other acts of dishonesty while he was a member of the Task Force.

In the first case he admits he was guilty of fraud in that he used his brother's school certificate altering it to enable

him to gain an advantage he would otherwise not have had. He also admits it was W/O White who caught him. He also on two occasions took police vehicles without permission on one occasion using it to do 250 kilometres while on another he did more than one thousand kilometres. He is therefore a man not only of violence, a man who will rob for gain and attempt to murder, but he is also basically dishonest. He says he was not punished for these dishonest acts as White was afraid that he, Rooinasie, would report his (White's) role in the Lubowski murder. Records however of the Task Force handed into Court prove that his misdeeds were dealt with officially and departmentally.

He belonged to a unit of the South West African Police known as the Task Force. It was not an ordinary police unit. It was a unit which was rushed from one area to another to quell by force anything which may have resembled anti-government activity. He says he was trusted by his superiors because he obeyed orders. He was a member of this unit and participated actively in their anti-SWAPO activity. He can therefore speak with conviction of some of the ruthless deeds that his unit engaged in and mention names of all the Police Officers he saw, met or heard of and army personnel.

Because of his dishonest character his inherent violent nature, and his intimate knowledge of the Task Force I must approach his evidence with great caution. I must also warn myself that Rooinasie may be seeking revenge against W/O White because White was the first person to catch him and

detect his dishonesty. Apart from this distrust there is always the risk of what Wigmore called the "promise of expectation of conditional clemency". One must keep in mind that Rooinasie is serving 20 years imprisonment and may believe that his evidence could bring him some advantage.

The first written statement which he made he said he made while in "hiding". He went to see the Permanent Secretary Petrus Damaseb who told him to make his statement to one of his secretaries. He was therefore making a statement which was not made in reply to questions by investigating officers who could suggest things to him. He admits having made this written statement and having signed it.

This written statement is our starting point although prior thereto he spoke to Inspector Kakwambi and General Andima. There are three essential factors in this written statement which require attention.

Firstly he says Mr Lubowski was shot by W/O White on the orders of Col Radmore. Secondly he says on 12 September 1989 before the assassination his group were sent to Otjiwarongo where they remained for two weeks.

These two allegations are completely inconsistent with every statement subsequently made by him including his evidence.

Firstly in his subsequent statements he says W/O White volunteered to do the shooting and was not ordered by Radmore. Secondly he says in all subsequent statements that

the morning early after the shooting he and his group returned to Windhoek from Otjiwarongo.

I shall deal hereafter in greater detail with these inconsistencies.

In a sworn statement he says he was allowed to attend a meeting of Police Officers with Col Radmore of the army. Why he, Rooinasie, who was not an officer should have been allowed to attend this meeting he could not explain except that he said he always "obeyed orders". In any event, he says at this meeting Col Radmore asked for volunteers as to who would shoot Lubowski and White volunteered raising his hand. This is a material and substantial difference with what he told the secretary of Damaseb. It cannot be brushed aside as a mistake or a misunderstanding. It is possible that Rooinasie realised that his first statement was a practical impossibility, or someone told him so. Radmore was a Colonel in the Army and could not order a policeman to do anything let alone shoot a private citizen. He therefore tried to amend his statement by saying that Radmore asked for volunteers and White volunteered. Even this is a practical impossibility as an army Colonel could not call for volunteers from the police.

The second allegation to which I have referred and which Rooinasie made to Damaseb's secretary, is one which is not only inconsistent with future statements of his but is one subsequently amended so as to confirm White's guilt and Police involvement. In his first statement Rooinasie says

specifically and clearly that on the day of the assassination he and his group were sent to Otjiwarongo and at midnight they were advised of Lubowski's death. He says that they stayed in Otjiwarongo for two weeks. He amended this allegation by saying that they returned from Otjiwarongo in the early hours of the morning following the assassination and that day they were all present except White who, for some inexplicable reason arrived late, and when he arrived everyone applauded him while some shook his hand for having killed Lubowski. The inherent untruth in this statement is firstly that it is inconsistent with his first statement and secondly that after the assassination the murderer was being widely sought. The shooting would therefore have been kept secret and this blatant behaviour is completely inconsistent with the discipline one expects to find in the police.

In a large part of his statement Rooinasie deals with Task Force raids on peaceful and lawful meetings, which were attended by Lubowski, in the course of the liberation struggle when the Police either broke up political meetings, arrested Lubowski, threatened and assaulted him or tried to shoot him. It certainly gives the lie to Rooinasie's subsequent allegation that Lubowski was working for the South Africans. According to his account it was just luck that enabled Lubowski to escape with his life. If this were so, it is unlikely that the police would treat one of their own informers in this way. This actually is subsequently confirmed by Investigating Officer Neumbo. It is certainly unlikely that Lubowski would have worked for someone or a

country which did these things to him. I have no doubt that the Task Force did assault and break up SWAPO meetings and that Rooinasie was in the forefront of such activity. This, however, does not prove that on 12 September 1989 when a cease-fire had been called and the parties were getting ready for a democratic election that the Task Force or any South West African Police unit was involved in the killing of Lubowski.

In his affidavit Rooinasie describes the meeting attended by several high ranking police officers, Col Radmore and himself. I have already pointed out that he can give no rational explanation for his own presence, why he should have been allowed to attend the meeting. The discussion as described by him which took place at this meeting is even more inexplicable. He says Col Smit who was in the ordinary police said he had offered Lubowski R5 000 to become an informer. This was refused as well as an offer of R10 000. He says Col Radmore then offered Lubowski R20 000 which was accepted. Col Radmore was in the army. Lubowski had nothing to do with SWAPO's military activity and certainly could not give Radmore information. When Radmore testified he categorically denied that allegation of Rooinasie. In any event Rooinasie subsequently changed this figure as well.

Assuming that all this was discussed at the meeting, Rooinasie then says that Col Smit said that if it is found out that Lubowski was a South African spy "it would cause problems". Firstly, if Lubowski was a spy, it is unlikely

that most of the Task Force would be discussing this. Secondly, it is not clear who would have had "problems" and what these "problems" would be. Although questioned Rooinasie could not elucidate. Rooinasie says when it was announced at the meeting that this would "cause problems", immediately Col Radmore said it would be better to shoot "your own informer". No logical reason other than that "it would cause problems" is given for shooting Lubowski. On Rooinasie's version if Lubowski was not a spy for South Africa, there was no reason for shooting him and Rooinasie's entire story is then a fabrication.

Inspector Neumbo who had previously worked for and in the Security Police of S.W.A., and whose duties included listening to Lubowski's telephone conversations and reading correspondence, said in evidence that he had no doubt that Lubowski was not a spy. Furthermore he admitted that one respected and looked after one's informer. It was therefore highly unlikely that Rooinasie's version of events was true.

During Rooinasie's evidence it became unclear at which meeting W/O White volunteered to do the shooting. He eventually admits there were three meetings.

At first he said "This planning was done on the morning of 12 September 1989". This date was repeated on several occasions in his various written statements. However, when he discovered or when it was pointed out to him that this did not tally with other events referred to by him and with factual events put to him, e.g. that he was in Otjiwarongo

on that date, he changed the date to the 10th September 1989. He said he told Neumbo who took the statement that it was the 10th or 11th September and later repeats this and later he denies telling Neumbo that it was the 12 September. Neumbo said he only wrote down what Rooinasie said and Rooinasie had said the 12 September. Lubowski of course was murdered on 12 September. How could there be any doubt concerning this date? Later Rooinasie said the mistake was his and that he had re-thought the date. He, however, in evidence specifically says that on the 10th September 1989 his section drove to Otjiwarongo.

At one stage of his evidence, Rooinasie says three meetings were held and the first meeting was when the Prime Minister returned to Namibia from Angola. The last meeting he says on reflection was on 10 September 1989. This he admitted was the day immediately after the second meeting but later said the first and second meetings were on successive days. But he said he could not remember how many days there were between the final and the second meeting but it could have been a week, a month or two or three months and at one stage he said he could not remember how long it was between the first and the second meeting.

He was then faced with his affidavit which he had previously said was "totally correct". In this affidavit he described how the Task Force had gone to the airport to meet the plane bringing the Prime Minister and others and that they had to search their baggage. When returning to the Combi which had

brought them certain officers had made derogatory remarks about the SWAPO leaders. From the airport they went to the Task Force offices. He was called in immediately to attend a meeting by W/O van Wyk. At first he said the meeting next to the Combi at the airport was not a meeting but subsequently he said it was the first meeting and that night at the Task Force offices the second meeting occurred. There were two meetings on successive days and the third and last meeting was on the 10th September 1989. All three meetings therefore took place on the 9 and 10 September. It was at the second meeting that is, the evening at the Task Force Office, that White volunteered to do the shooting but Rooinasie at one stage became confused even as to when this occurred.

Eventually he said he was given the keys by White and he then took the rifle an SVD to White's car. This was also changed and at one stage he said White took two AK 47 rifles, two pistols of a certain type and three pistols of another type to the car. His oral evidence and his written statements did not agree on this issue. The evidence of Jacob Louw which also dealt with this issue as well as the meetings, were substantially different in almost all respects from the evidence of Rooinasies. The motor car eventually changed from a red Golf to a red Nissan Langley.

When the questioning returned to the meetings Rooinasies was adamant on the sequence namely first the airport, then that evening and the final meeting on the following day, the 10th September 1989. Rooinasie was then faced with an

affidavit by the Prime Minister himself who said he arrived in Namibia on the 18 June 1989. Rooinasie was therefore three months out. Rooinasie was beyond doubt fabricating.

I have already pointed out that Rooinasie originally said that he and his group were in Otjiwarongo for two weeks after they had arrived there either on the 10th September or on the night of the assassination. He changed this. He says they returned the following morning early after the assassination and it was then that White was congratulated by the members of the task force applauding him and shaking his hand. I have already dealt with this.

I am satisfied that Rooinasie has in fact fabricated the entire account of the murder of Lubowski. I am satisfied that there was no conspiracy by the Police and that W/O White did not shoot Lubowski.

It is unnecessary for me to say any more about Rooinasie. However, in view of his own unsolicited statement concerning the alleged killing by W/O White of his friend Wandera and the conspiracy of the police to cover up this incident, it is necessary and my duty to analyze his statement and to comment thereon.

After the various written statements which Rooinasie had made, had been read in Court and after he had made certain changes thereto, he said he would like to add something. He then gave an account of an alleged event which took place when his friend Abuid Wandera who was also a member of the

Task Force was shot and killed. At first glance this appears to have nothing to do with the Lubowski murder and I would have ignored it. Rooinasie, however, introduced this with the object of showing that W/O White was a cold-blooded killer and that the police were involved in this instance as well in a cover-up and conspiracy and would do the same in the Lubowski murder. He said he was alongside White when White shot Wandera in the back and that Wandera was ten paces from them. He then said the police forced members of the Task Force to make false statements to UNTAG concerning the incident and threatened those who did not do so with death so that UNTAG had made a finding in this investigation exonerating the police. This story destroyed whatever credibility and respectability Willem Rooinasie may have had.

He told the Court that he and his group left Windhoek for Uis a town in the north for certain tracking duties and while returning they came to Okahandja where they were told goods had been stolen from a train. They went to the Oshona base outside Okahandja and parked their casper and went on foot towards the railway-line. He says they were running towards the line, Abuid Wandera leading the group and Rooinasie was alongside W/O White who then shot Wandera in the back and killed him. He gave a graphic description of the events and consequences and stressed how the police insisted on false statements, to cover up and make it appear that UNTAG was responsible.

He conceded in cross-examination that the unit had been

involved in the Uis operation for some days but would not commit himself as to the number and on returning from Uis the unit had taken part in this operation at Okahandja. After a vigorous cross-examination he conceded that he could not dispute what was written in the occurrence book of the unit. He also admitted that while changing a wheel on a vehicle he had seriously injured one or two fingers and that these were in plaster-of-paris. It was shown to him that this had occurred on 1 December 1989, and that he had only reported to the doctor on 5 December 1989 and that he had been put off duty. Furthermore there was evidence that a vehicle was booked out to him on that day. In fact while others left Windhoek for Uis and Okahandja he remained behind and was sleeping in and looking after the house of one of the members of the unit, having been put off duty because of his broken fingers. His friend Abuid Wandera was killed on the night of 6 December 1989 and he, Rooinasie was not in Okahandja at the time and had not taken part in the operation which he had described. It was proved that he was in Windhoek on that occasion. His entire story was a figment of his imagination.

His efforts to discredit White and the police-force, backfired and destroyed him completely. He conceded Lubowski was not his friend while Wandera was. He had reported Lubowski's death but had never breathed a word to anyone of this friend's death until now. However, when pressed by the Court on this he said he told Inspector Neumbo but he then withdrew that and said it was Saunderson that he had told.

Munango incriminated Col Radmore of the army, Danie Botha and several high ranking police officers. Rooinasie incriminated Col Radmore and only certain of the police officers incriminated by Munango. Their stories differed substantially the one from the other. I have analyzed the evidence of both Munango and Rooinasie and shown that neither of them is telling the truth. Their affidavits were false and so was their evidence. No reliance whatsoever can be placed on anything either of them said. Accordingly, as Mr Walters acting for the Prosecutor-General said, had this been a criminal trial, there was no case for those who were incriminated to meet. Notwithstanding each one of those incriminated (save for those not in Namibia) testified. They were questioned by Counsel and the Court. I am satisfied that not one of them was involved in a conspiracy to kill Lubowski and I am satisfied that W/O Adriaan White did not shoot the deceased.

It is with some interest that I subsequently discovered that Adv Soggot who had been briefed by the State had come to the same conclusion as I have come to in respect of both Munango and Rooinasie. Adv Soggot is a human rights lawyer who had appeared in Court on several occasions for persons involved in the liberation struggle including members of SWAPO. He has written an authoritative book on Namibia and is recognised as a sound lawyer.

It is not my function to deal with the question of "secret funds" but insofar as such evidence came from Neumbo and Saunderson and implicated the police in order to show that

certain persons could be part of an alleged conspiracy, I have no hesitation in saying that such evidence cannot be relied upon. The evidence appears to come from a person called Dippenaar, who is himself a fugitive from justice. He is wanted by the police for theft of substantial amounts and he is at present in hiding in South Africa. Evidence before me was that he was also mentally unbalanced.

Indeed in their investigations Saunderson and Neumbo scraped the bottom of the barrel. I also reject their evidence against Dennis John Morsbach as being totally void of truth. Morsbach testified that he did not know either Badenhorst or Staal Burger and that he had not seen nor told the investigating officers that he had seen them together.

The question which remains to be answered is who was it who killed Lubowski and whether there were accomplices involving his assassination. If there were accomplices who were the people involved?

On 18 April 1990, Acheson appeared in the High Court of Namibia charged with the crime of murder. It was alleged in the indictment that he had shot and killed Anton Lubowski on the 12 September 1989.

Mahomed A.J. (as he then was) was on the bench and the State was represented by Adv H. Heyman the Prosecutor-General.

According to the record, the Prosecutor-General applied for a postponement and that the accused be remanded in custody.

In support of the application for a postponement, Mr Heyman called the investigating officer, Col J. Smit to testify. From the documentation placed before the Court and the evidence which Mr Heyman led through Col Smit the following facts emerged: (I quote from the judgment of Mahomed AJ):

- "1. The accused (Acheson) was arrested on the 13th of September 1989 and he has been in continued custody since that day.
2. Although the initial arrest on the 13th of September 1989 was on the allegation of murder, he was on the 15th September 1989, detained as a prohibited immigrant in terms of the admission of Persons to the Republic Regulations Act of 1972.
3. An application to set aside the accused's detention in terms of this Act was successful in the Supreme Court on the 6th November 1989, but the accused was immediately arrested again on the allegation that he had murdered Mr Lubowski.
4. An unsuccessful application for bail was made to the Magistrate on the 13th of November 1989. An appeal to the Supreme Court against that refusal of bail also failed.
5. On the 10th of January 1990 the accused again

appeared before the Magistrate, and the accused pleaded not guilty pursuant to the provisions of Section 19 of the Criminal Procedure Act of 1977.

The State requested a postponement until the 15th of February 1990 , so as to enable the Attorney-General to make his decision as to the further prosecution of the matter in terms of Section 122 of the Criminal Procedure Act.

The defence objected to such a lengthy postponement, whilst the accused was to be kept in custody and the Magistrate decided to adjourn the matter until the 25th January 1990.

6. On the 25th January the accused again appeared before the Magistrate. The prosecutor informed the Court that the Attorney-General had decided to arraign the accused on the charge of murder in the Supreme Court on the 18th April 1990.
7. The accused was thereafter served with a formal indictment, charging him with the murder of Mr Lubowski, together with a summary of substantial facts and a list of witnesses to be called by the State.

8. On the 2nd of February 1990 and before the independence of Namibia (which took place on the 21st of March 1990), Colonel Smit procured warrants for the arrest of one Burger and one Maree whom he suspected of complicity in the murder.

He could not locate these persons before the date of Namibia's independence, notwithstanding the apparent co-operation of the South African Police. After the independence of Namibia, Burger who is the former head of the Brixton Murder and Robbery squad of the South African Police, but has apparently taken the view that he is not amenable to the processes of the foreign state.

9. On the 8th April, the Namibian Police served a subpoena on one FERDINAND BARNARD at Roodepoort in South Africa, requiring him to attend this trial as a witness for the State. Although statements had previously been obtained from Barnard, it was later intimated to Colonel Smit that Barnard did not wish to attend Court and did not wish to get involved.
10. Similarly witness subpoenas were served on one CALLA BOTHA and one ABRAM VAN ZYL (also

known as "SLANG" VAN ZYL) on the 9th April care of their advocate, Mr Etienne Du Toit at Schreiner Chambers in Johannesburg. Although van Zyl had previously made a statement to the police and Botha had undertaken to do so, the information given to Colonel Smit was that neither of them were willing to give evidence.

11. The same applies to one Detective-sergeant W.B. Knox on whom a subpoena was similarly served in South Africa on the 9th April 1990. He also made a previous statement to the police.
12. Maree, Burger, Van Zyl, Botha and Barnard, were apparently at some time or another all members of the Brixton Murder Robbery squad of the South African Police.
13. According to the evidence of Colonel Smit the Civil Co-Operation Bureau, (also known as the "CCB"), is alleged to have been involved in the assassination of Adv Lubowski. The CCB is a division of the Department of Defence of the Republic of South Africa.
14. Colonel Smit conceded in cross-examination that the possibility of getting Burger and Maree into Namibia to be joined as co-accused

was extremely remote.

15. Colonel Smit was also asked what the prospects were of getting to Namibia the four South African witnesses who had been subpoenaed by him. He said it was difficult to answer that question. He thought Barnard and Botha and possibly Knox would not attend, but Van Zyl might. He said that the only way in which the evidence of these witnesses could be facilitated, was through diplomatic co-operation between the Governments of Namibia and South Africa."

In considering the law which was applicable the Court said in its judgment that there were two basic requirements where an adjournment was sought in order to call witnesses. These are:

"Firstly: Are the witnesses whom the party seeks to call on the adjourned date material witnesses?"

Secondly: Is there a reasonable expectation (not a certainty) that the attendance of such witnesses will be procured on the adjourned date."

The Court then considered these questions and other factors relating to the postponement. In the course of his judgment

Mahomed A.J. said:

"Mr Heyman submitted that the evidence which he sought to lead from the absentee witnesses was material evidence and he said in this regard that this evidence which show that the accused had a motive to kill Adv Lubowski, because, he said, it would show that the accused was connected with the CCB, which it is alleged had an interest in the elimination of Mr Lubowski. Mr Heyman also contended that the joinder of Burger and Maree was important to strengthen his case against the accused, because it would render admissible against the accused certain additional evidence on the basis of the doctrine of common purpose."

The Court then debated the mechanisms available for obtaining the attendance of these absentee persons, Burger and Maree as accused and the others as witnesses. The Court pointed out that the success of these mechanisms involved successful "diplomatic initiatives" between Namibia and South Africa. The Court granted a short adjournment to enable the State to show what "diplomatic initiatives" were being engaged in but the State could place nothing positive before the Court.

In the course of his judgment the learned judge made the following apposite statement concerning the murder:

"Firstly, the murder of Adv Lubowski is a matter

of very fundamental public importance. It is common cause that Mr Lubowski was a prominent public figure who was a member of the present governing party and was during his lifetime generally perceived to be a vigorous proponent of the right of the Namibia people to self-determination and to emancipation from colonialism and racism - ideals which are now eloquently formalised inter alia in the preamble to the Namibian Constitution and Articles 10 and 23.

His cold blooded murder is a serious matter. The vigorous prosecution of whoever might have been responsible for this deed is clearly in the public interest and crucial to the administration and image of Justice in Namibia.

That image and that interest might prejudicially be impaired if there ever follows a perception in the public (legitimate or otherwise), that justice was defeated by procedural complexities, by legal stratagems, by tactical manoeuvres or by any improper collusion. The general community of Namibia must be able to feel that every permissible avenue to pursue the prosecution of whoever might be the killer of Mr Lubowski was followed."

My last quotation from the judgment is the following:

"The only issue which I have to decide is whether I should forthwith order the State to proceed with the trial and to abandon the prosecution if it cannot do so, or whether having regard to what Mr Heyman has said, I should give to the State a short adjournment, not for the purposes of actually procuring the attendance of the absentees concerned, but only for the limited purpose of having an opportunity of obtaining some tangible and specific evidence of diplomatic initiatives, which would enable the Court to decide whether a long adjournment should indeed be granted or considered."

The learned judge ordered the proceedings to be adjourned to 7 May 1990 in order to enable the State to produce inter alia evidence of diplomatic initiatives to procure the attendance in Court of the aforesaid absentees. The Prosecution could not produce such evidence and on the said date withdrew the charge of murder against Acheson.

During the testimony of Col Smit the learned judge had put to him certain questions to which he replied. I quote the questions and answers:

"COURT: Now if you've got a case against Maree and Burger, or either of them, why can't that case proceed independently? Why must Mr Acheson have to wait? --- My Lord, I think that's for the Prosecutor General to answer that but I think

there could be a common purpose, I think that would be the answer."

COURT: Yes, but whatever evidence you have against Mr Maree and Mr Burger, could be the subject matter of an independent trial. Why should Mr Acheson have to wait until you're ready to proceed against them? --- Again that would be the decision of the Prosecutor General but I don't foresee that there will be a problem, that could be independently."

It is clear from this as read with the judgment that Mahomed A.J. invited the State to proceed against Acheson on his own, and that Col Smit thought this was possible but that this was for the Prosecutor General to decide.

Although the indictment against Acheson contained a summary of facts and a list of witnesses not one of the affidavits made by these witnesses was placed before the learned judge.

In fact all that was alleged in the charge sheet was:

"At about 20h30 on 12 September 1989 the deceased, a senior member of the South West African People's Organization, arrived at his home in Sanderburg Street, Windhoek.

Shortly thereafter the accused shot the deceased with an automatic rifle as the deceased was about to enter the premises.

The cause of death was a bullet wound in the head."

Not a word was set out about affidavits which Col Smit had collected and which led to the arrest of Acheson.

The indictment is under the hand of the "Acting Prosecutor-General" Mr Heyman but read into the record is the following letter written by Mr E Pretorius who was then the Attorney General. This letter is written to the Chief Magistrate and reads as follows:

- "1. In accordance with the provisions of Section 122(2)(1) of the Criminal Procedure Act, No. 51 of 1977, I have decided to arraign Donald Acheson before the Supreme Court at Windhoek from the 18 to 30 April 1990 as a summary trial on a charge of murder.
2. The indictment and summary of substantial facts will be duly served on the accused in accordance with the provisions of Section 144(4)(a)(i) of the Criminal Procedure and Evidence Act.
3. The provisions of Section 122(3) of the act must be complied with.
4. Please provide this office with two, and the Registrar, Supreme Court, Windhoek with the

original three certified copies of the record of the proceedings in the magistrate's court."

As I have said thereafter the summons was issued under the hand of the Prosecutor-General.

The conclusion is that Mr Pretorius the Attorney-General and Mr Heyman the Acting Prosecutor-General, independently came to the conclusion that there was a prima facie case that Acheson had shot Lubowski. This was based on the affidavits that Col Smit, as he was at the time, took from witnesses.

When Heyman applied to Mahomed AJ for a postponement of the case, he chose not to put any of these affidavits before the presiding judge and chose not to lead Col Smit in respect of the contents of the affidavits.

Despite being invited by Mahomed A.J. to proceed against Acheson individually and despite the evidence of Col Smit that it could be done ("... I don't foresee that there will be a problem"). Heyman elected to withdraw the case.

I shall now deal with those affidavits. I set out the important and relevant content of those affidavits and also refer to the evidence given before me.

The first person was Wynand Petrus Vermaak who had made an affidavit which he confirmed at this inquest. He said that on 12 September 1989 he resided at 133 Gobabis Road, Klein

Windhoek, and at 20:30 hours, he was sitting in the kitchen of the house where he resided watching television when he heard the sound of a rifle. He immediately ran out of the house to see what was going on. He said he looked towards the crossing of Gobabis Road and Eadie Street. Sanderburg Street enters Gobabis Road at this crossing. Vermaak saw a vehicle stopping. The person put the lights off and then with his lights on park, drove past him. The car was a red Toyota Conquest. Vermaak says he has always been enthusiastic about and interested in motor cars and he is sure that it was a Toyota Conquest. He said the driver was a white person and his hair "was a little bit light". He says he did not pay attention as to whether there were any other persons in the vehicle. The witness explained that Eadie Street and Sanderburg Street (the street in which the deceased lived) joined together at Gobabis Road and that was where he saw the vehicle. He was positive that the vehicle was a red Toyota Conquest and that it had put its light off and then put on its parking lights.

The witness said that he was approached by Col Smit now Deputy Commissioner Smit for a statement. In other words Smit sought him out. This is consistent with a proper investigation and not with a police officer trying to avoid making a proper investigation.

The witness said this was the only car at the time in that vicinity which also gives the lie to Munango's version.

Mr Walters on behalf of the State read an affidavit made by

one Olaf Krause who is at present in Germany but his name appears on the list of witnesses and I must assume that he was available at the time of the trial. The deceased lived at 7 Sanderburg Street and was gunned down in front of his house. Mr Krause lived in 6 Sanderburg Street at the time. He said he knew deceased as Anton Lubowski and he lived across the road. He too, at about 20:30, was watching television. He was in the sitting-room and from the balcony in front of the sitting room he can see the deceased's house and Sanderburg Street running down into Gobabis Road. He heard the sound of a machine gun being fired. He estimated about 8 shots. He ran on to the balcony and saw a red vehicle pulling away towards the intersection of Gobabis Road (that was where Vermaak saw it). He thought the vehicle was a red Volkswagen. He said he was sure that the vehicle "had a connection with the shots". He said it was the only vehicle in the street which also gives the lie to Munango's version.

An affidavit by Folkert Gert Meeuw was also read to the Inquest Court. He was not available to testify as he too is now in Germany. His name is not on the list of witnesses for the trial and I assume that as at 18 April 1990, he had already left Namibia. He made his affidavit to Col Smit on the 13 September 1989 which again is consistent with a proper investigation by Col Smit.

According to his affidavit he was residing in Frieden Strasse about 250 metres from Lubowski's house which was in a straight line opposite his house an empty field being

between the two houses. He heard the shots and immediately looked out and saw a red car which could have been a Volkswagen Golf. He saw it moving down Sanderburg Street. He drove to Lubowski's house and saw someone lying in front of the house. He immediately drove back to his house and telephoned the police and took his wife who is a doctor back with him to Lubowski's house. His wife examined Lubowski and pronounced him dead. He says he was the first there and there was no one else until the neighbours arrived. Inspector Lloyd was one of the police who arrived in response apparently to his telephone call.

None of these witnesses support Munango's version of the presence of Munango in a Combi, Theuns van der Merwe in a car at the stop street or Lloyd and van der Walt, who had to inspect the body "to finish Lubowski off".

Acheson was arrested by Col Smit at 13:00 on the 13 September 1989 as a result of reports made to him by Mr and Mrs Ratzke. This couple gave affidavits and were on the list of witnesses who were to testify at the Acheson trial.

Mrs Waltraud Elfrieda Ratzke said she lived at 3 Arend Street, Klein Windhoek. Behind the house wherein she and her husband lived she leased out a flat which also had a telephone. She says that Donald Acheson hired the flat from 27 July 1989 to 31 July 1989. He again hired the flat from 17th August 1989 to 18th August 1989. He left on that day but did not give up the flat taking occupation again on 20 August 1989 and remaining therein until 27 August 1989.

He returned on 28th August 1989 and stayed until 3 September 1989. She says he then stayed from 4 September to 6 September 1989. On 10 September 1989 he returned for the last time and stayed until the Police arrested him there on the 13 September 1989.

Mrs Ratzke said she did not know where he came from and where he went to, when he came and went from the flat. He paid her cash for the rent and telephone. She says he never had transportation of his own except on the last occasion. He usually used a taxi or was given "a lift" by them. On the last occasion, that is, the 10 September 1989 when she arrived home she noticed he had a white Volkswagen Fox but this was replaced by a red Toyota Conquest CA 183000.

On one occasion only did somebody visit him, a white male. Acheson said this was his "boss". Acheson told her that he was a journalist working for Time magazine.

On the 12 September 1989, while she was working in her garden Acheson who had arrived in the red Toyota Conquest had a brown object with him which she says he appeared to try to conceal from her vision. When he left the flat that day to return to the car he was carrying a dark coloured hessian bag with something heavy in it. It was larger than the thing he took into the flat. The one he took in was a narrow parcel. She said she thought it was a jack for a motor vehicle but it was at least ½ metre long. She described the pattern it made. She said she wondered at the time that if it was a jack why Acheson carried it from the

car to the flat and back again surreptitiously. She says she left the house to go to work at 14:40 and returned at 18:30. She cannot say if Acheson was in the flat.

Later that evening when she went to wash her hands in the bathroom she heard "shots" or reports, about four to six of them.

She and her husband then watched television. From where she sat she could see the entrance to their property. The front door is glass and the curtains covering the door was slightly open and she could see out. While looking in that direction she saw Acheson stop his car in front of the house. For some reason he slammed the door hard on a few occasions as if to attract attention. She saw him walk to the flat with nothing in his hands. She and her husband returned to bed and she then heard someone walk in the direction of the gate. Acheson had left the flat again. He returned later. Her husband went to the window to observe Acheson climbing over a wall so as not to be seen. She picked up a key next to the wall of the house the following day. The incidents involving Acheson were reported and Acheson was then arrested by the Police. She says after she heard of the murder she thought he had had a rifle in the bag.

Mrs Ratzke said that considering the charges, the telephone calls could have been long-distance calls.

The husband of Mrs Ratzke has also made an affidavit and he

also testified. In the main he supported his wife and I need not repeat what he said. His statement concerning Acheson's movements on the night of 12 September 1989 were particularly significant as Acheson denied them according to Col Smit.

Acheson had arrived at the house after the shots were heard and slammed the doors of the car. He then went to the flat but after a while left again. Later that evening at 22:40 Ratzke and his wife had heard someone outside the house and Mr Ratzke looked through the window to see Acheson returning from the car but instead of following the usual route to the flat, he climbed over the garden wall and went to the flat from the rear. Acheson had denied this but Deputy Commissioner Smit confirmed that footprints were found at the fence and that was also the place where the key was picked up. Why did Acheson deny climbing over the wall!

It was established that Acheson had originally hired a white Volkswagen Fox from Imperial Car Hire but had returned that vehicle and replaced it with a red Toyota Conquest. Dennis Nautoro who worked at Imperial Car Hire made an affidavit and testified that his job at the firm concerned inspecting, cleaning and reporting on the condition of all cars hired and returned. He said the red Toyota Conquest hired to Acheson was in a good condition without bumps or scratches except for a slight bump and scratch on the right back door and when it was returned it had distinct scratches on the roof above the driver's seat and similar marks on the roof above the left back seat. There was also gum known as

"wondergom" on the back number plate. None of these had been there when the car was hired to Acheson. The number of the car was identified as CA 183000.

When Detective Marius Visser testified he said that he was at that stage the Branch Commander of the Criminal Investigation Department in Windhoek and on the 13 September 1989 he accompanied Col (as he then was) Smit to 3 Arend Street where Acheson was arrested and the car CA 183000 was seized. He said the wonder gum on the back number plate was consistent with someone putting a false number plate over the original number plate. He said this was a common procedure in respect of car thefts. Mr Visser also testified that the marks on the roof of the Toyota Conquest were consistent with the marks made by the butt of a machine gun resting on the roof while being fired. He said this occurred to him when he saw the marks and attracted his attention. He thought the marks indicated that a person had lent on the roof firing in a slightly rear direction over the roof, that is towards the left of the car. The marks on the back left looked similar but would indicate that someone had fired in a different direction. He said he had experience of firing an AK 47 and that the spent cartridge cases at the scene indicated that it was an AK 47. Subsequent evidence showed there were 12 spent cartridge cases all fired by the same gun. There was an affidavit to support this.

Evidence as to where the bullets had struck Lubowski and the garden wall, if fired from a short distance indicated that

the person who shot was not a particularly good shot. Subsequent evidence by Deputy Commissioner Smit estimated the distance as roughly 6 to 9 metres which is close.

An affidavit and verbal testimony supported by written documentation was made and given by Bartlomeus Barend Burger who works for Civic Affairs. He was in 1989 and is now the Chief Immigration Officer.

He said according to Acheson's passport Acheson visited Windhoek arriving at the airport on three occasions twice prior to 10 September 1989.

He gave the following information some whereof was irreconcilable.

22 July 1989 entering Jan Smuts

2 August 1989 leaving Windhoek

8 August entering Swaziland

5 August leaving Swaziland

5 August 1989 Oshoek Pos entering RSA from Swaziland

17 August 1989 entering Windhoek

4 September 1989 enter Jan Smuts

7 September 1989 entering Swaziland

9 September 1989 entering Jan Smuts

7 September 1989 departure

9 September 1989 departure Swaziland

10 September 1989 departure Jan Smuts

10 September 1989 entering Windhoek

On the "Immigration Form" which Acheson signed on the 10 September 1989 when he entered Windhoek for the last time the address given by him where he would be residing is 42 Gever Street, Ludwigsdorf. This was false. The person who resides at 42 Gever Street was Mr Brand and he gave an affidavit and testified that Acheson did not reside at that address nor could he have resided there as at that time Mr Brand was in fact on holiday overseas.

In fact we know from the affidavit of Mr and Mrs Ratzke that Acheson resided in a flat behind their house and their address was Arend Street no. 3, Klein Windhoek.

There was an affidavit made by a businessman carrying on business as Thurstan Salt Estates at Windhoek. He also testified. He said about fourteen days or less before the death of Lubowski an English speaking person approached him at Wecke and Voights Coffee Bar and said he was from "Newsweek" - (a well-known magazine) - and asked him if he knew of accommodation. This person was Acheson. After that Salt, the businessman said he met Acheson frequently and Acheson asked him if he knew Mr Anton Lubowski and what he should do to get an interview with him. Salt said he referred Acheson to SWAPO head office and told him to arrange his own meeting. He said Acheson always behaved suspiciously, looking from side to side and said he was keeping an eye on a certain CIA member. On one occasion while Salt was with Peter Kenny who was associated with a certain local newspaper, Kenny told him that he knew the people who worked for Newsweek and that Acheson was not one

of them.

On the 7 November 1989, Salt saw a report and a photograph of Acheson in a local newspaper and immediately contacted the police and made an affidavit on the following day.

In cross-examination Salt replied that Acheson knew well who Lubowski was and referred to him as the white SWAPO Political leader.

These allegations were particularly surprising in view of an affidavit made by Hilda Basson on 30 March 1990 wherein she said Acheson had made a statement to her on 13 September 1989 (that is the day after the murder) which indicated that he (Acheson) did not know who Lubowski was.

At the time Hilda Basson was the Secretary of a welfare organization known as "Youth with a Mission". She said that for the payment of a small amount, persons could sleep at the Mission. In July or August 1989 Donald Acheson arrived at the Mission having been referred to them by Estate Agents Joseph and Snyman where apparently Acheson inquired for accommodation. Basson said he slept there on two nights, left the Mission and returned a little while later for one night. He told her that he was a journalist working for Time Magazine and that he was a Canadian.

She said he frequently used the public telephone. She said on 11 September 1989, Acheson arrived at the Mission driving a white Volkswagen Fox. This was the first occasion he had

driven a vehicle and he showed her a photograph of the intersection of Gross Barmen and Karibib and asked how to get there. The following morning, that is the morning of the 12 September 1989, he arrived at the Mission, driving a red Toyota Conquest. He left the Mission at about 18:30. The following morning at about 8:00, that is the morning of the 13 September 1989, he arrived at the Mission and Hilda Basson says he was nervous. She said she asked him whether he was aware that Lubowski was shot. She said that Acheson replied that he had heard this on the news and then added "Who is Lubowski?"

She made a subsequent statement on 23 June 1993, which is not relevant at this stage to the point I shall be making.

A witness Lusa Thobush also made an affidavit and testified. Her evidence does not take the inquiry very much further. She worked in the second house from the house where Lubowski lived. On the night in question she went to the shop called the "Mini Mark" in Klein Windhoek. It is some distance from the house. On her way a red car pulled up in Sanderburg Street. It looked like a Volkswagen Golf but she did not notice if it had stripes on the side. Subsequent evidence given was that all red Golfs had broad white stripes on the side. The most that can be said therefore is that she saw a red car.

After it stopped a man got out and walked to the back of the car and bent down. He was she thought light in colour and she thought there were other occupants in the car. When she

returned from the Mini Mark, there were people walking around Lubowski's house and she found he had been shot. It was estimated that when she saw the car it was about 190 paces from Lubowski's house. The evidence does not take the case much further.

Deputy Commissioner Smit said he left paper with Acheson while he was in his cell and subsequently under the mattress found a statement written presumably by Acheson but not signed.

The statement describes in very vague terms how he came to be in Windhoek. Briefly, he said that while in Johannesburg he was approached by someone called Van Staden and asked to go to Swaziland to meet someone called Derrick who would give him money. He received money before going to Swaziland and again in Swaziland and then left for South West Africa. He stayed at the Mission for two nights and then at an apartment. He said "I had to contact my people and give them a telephone number where they could contact me". They contacted him and he was required to return to Swaziland. Again he met Derrick in Swaziland who gave him R5 000 and told him to return to S.W.A. He had received a phone call (presumably from his people) and as a result met someone called Campbell. Thereafter he was ordered back to Swaziland given another R5 000,00 and told to return to S.W.A.. He rented a white VW Fox which he changed for a red Conquest. Campbell gave him a photograph of an intersection (presumably of Gross Barmen and Karibib as testified to by Hilda Basson), and he went there as arranged but there was

no one there he says and he telephoned Derrick to tell him this. He said he went to the Mission where he stayed until 6:15 pm. and then went to the Central Cafe to eat but was not served until after 7 pm. He then went to his car and from there to the Spur restaurant (why he went to the Spur if he had already eaten at the Central Cafe is not clear). The Spur, he says, was full and he then returned to his flat. When read with the evidence of Ratzke's and Hilda Basson, it is evident that his so-called visit to the Central Cafe was for something to eat which he had at about 7:00 pm. and his visit thereafter to the Spur took place on 12 September 1989, when Lubowski was shot. When application is made by the State for a lengthy postponement such application must be motivated either by affidavits or by evidence. The Prosecutor-General chose the latter course. I have already said that he put Col Smit into the witness-box but the latter was not led in evidence in respect of the affidavits he had of Acheson's activities in Windhoek and which I have set out above.

None - not one - of the affidavits I have referred to were placed before Mahomed A.J. Smit was only asked by the Prosecutor-General to give evidence on his attempts, to serve the summonses on L.A. Maree (Chappie Maree) and D.F. Du Toit Burger (Staal Burger) and to serve subpoenas on prospective witnesses Abram van Zyl, Calla Botha, W. Knox and Ferdi Barnard and on the interviews he had in Johannesburg.

Briefly the Prosecutor-General had vital evidence in his

docket, a statement by Acheson himself as to how many times he had visited Windhoek in the space of a short period of time and that he was given at least R10 000 for doing so. There was the evidence of the Chief Immigration Officer to support his frequent visits to Windhoek and evidence that on the last occasion when he arrived on the 10th September 1989, he gave a false address. There was evidence by Hilda Basson that on 12 September 1989 he drove a red Toyota Conquest. There was evidence that a red car was seen immediately after the shooting coming down Sanderburg Street into what was then Gobabis Road. It is true some of the witnesses thought it could be a Golf but one witness who was a motor-car enthusiast described it definitely as a red Toyota Conquest and said it had switched off its lights and then drove off on park. When the car a red Toyota Conquest was inspected after Acheson was arrested it was found to have a type of gum on the rear number plate used for covering up number plates with other or false numbers. This gum according to evidence was not there when the car was hired to Acheson earlier that day. Furthermore above the driver's seat on the hood there were scratches and indentations which were not there before. Above the back left hand door of the hood were similar marks. The evidence given by a person who knew about arms said that a machine-gun such as an AK 47 has a recoil (kick) and if someone had rested the butt on the hood while firing the rifle, it could have made such marks. Too much reliance cannot be placed on this. An experiment would have to be conducted if certainty were to be obtained but it certainly is prima facie evidence. There was evidence by Thurstan Salt that Acheson

had falsely said he worked for Newsweek and by Hilda Basson that he said he worked for Time Magazine. Both said he was lying. There was evidence by Salt that Acheson knew well who Lubowski was and even wanted an appointment to meet him while Hilda Basson gave evidence that when she saw Acheson on the morning of the 13 September 1989, he was nervous and when she told him Lubowski was shot, his reply was "Who is Lubowski?"

There was evidence by Mr and Mrs Ratzke of Acheson's strange conduct at the house where he resided. Firstly Mrs Ratzke testified that that day, that is the 12 September 1989, Acheson carried something to his car in a sack which he tried to conceal from her. She said from the shape and contours she thought it was a jack but it could have been a rifle. Both she and her husband described how Acheson returned to the house at a time which would have been soon after the shooting, how he left the house surreptitiously when they had already retired to bed and how he had returned again surreptitiously climbing over the fence so as not to be seen. Acheson denied that he had done so and said he had not left the house a second time but foot tracks were found exactly at that part of the fence by Col Smit which confirmed the evidence of the Ratzke's and above all showed prima facie that Acheson was not telling the truth and that he had a lot to explain.

This was the evidence which the Prosecutor-General had and which apparently caused Pretorius the Attorney-General and then Mr Heyman himself to charge Acheson with murder. At

the time he issued summons, the Prosecutor-General must have believed that he had a prima facie case against Acheson. Judging from the answers given to Mahomed A.J. Col Smit also thought so:

I am satisfied that as at 18 April 1990 and on 7 May 1990 there was a very strong prima facie case against Acheson. Yet Mr Heyman, the Prosecutor-General withdrew the charge.

The Inquest Court asked Mr Walters who represented the Prosecutor-General at this inquest, whether any other evidence had come to light which could have influenced the Prosecutor-General to change his mind and to withdraw the charge and he replied in the negative. The Court asked him if he had an affidavit from the Prosecutor-General explaining why he withdrew the charge and he replied again in the negative. When this was queried by the Court he said the Prosecutor-General believes that he has the sole discretion whether to institute a criminal case or whether to withdraw a charge and that he is not obliged to give an explanation to anyone for his decision. It is according to Mr Heyman, in his sole and absolute discretion. On the evidence available to Mr Heyman, if there had been a trial and if Acheson had chosen not to give evidence, a verdict of guilty would probably have been justified. If Acheson had given evidence he would have had to explain a great many strange things that happened including the contents of the statement written by him and found under his mattress.

There was a strong prima facie case against him justifying

a prosecution.

Assuming that a Court having heard the evidence decided to acquit Acheson, a trial having taken place, justice would have been done. Furthermore had he been tried and acquitted the ghost of a Police Conspiracy would have been laid and there would have been no Munango and Rooinasie fabrications. A lot of money, time, prestige and reputations may well have been saved.

Prima facie an acquittal of Acheson was extremely doubtful at the time.

The exercise by Mr Heyman of this very strange discretion and his failure to place the affidavits before Mahomed A.J. or even to allude to them is the height of incompetence.

About a year after the charge of murder was withdrawn, on 14 January 1991 Donald Acheson made an affidavit at Bedfordview in the Transvaal.

The affidavit contains much of what was already known as at 18 April 1990. The affidavit confirms that the object of the CCB was to kill. Acheson says that he had served in what was then Rhodesia and after independence of that country, he came to Johannesburg. He was caught shop-lifting in O.K. Bazaars in May 1989, and detained at the Cleveland Police Station. The charge was withdrawn and he was then recruited by Sgt Willie Knox to go to S.W.A. to "monitor" the elections there. While talking to Knox,

Ferdie Barnard arrived. Barnard showed him his SADF badge and after a discussion he realised he was being recruited to work for the intelligence section of the South African Defence Force. He was required to furnish them with his CV (Curriculum Vitae) which he did a few days later. I refer to this CV hereunder when I discuss the Wouter Basson diary. Again Ferdie Barnard spoke to him and told him that he would have to go to South West Africa to monitor the elections and Acheson says Barnard asked him if he would kill. Acheson said he would not do so in South Africa but apparently South West Africa was not considered part of South Africa and he says "I agreed to work for them". Barnard gave him R500 and told him he would be contacted by a different person. As a fact a person known as Derrick contacted him and he says he subsequently learnt that Derrick was L J (Chappie) Maree. Maree gave him R500.

They arranged to meet at the Ascot Hotel in Norwood and in fact met in a room at the hotel where Chappie Maree gave him certain instructions concerning Namibia and also his, Maree's pager number. Subsequently there was evidence that members of the CCB tried to steal the register of the Hotel lest it be used as evidence to prove that Maree had a room that day at the hotel.

Acheson says in his evidence that he arrived at Windhoek as instructed stayed two nights at Kalahari Sands Hotel and then at the Mission (Youth with a Mission). He received calls from Maree at the Mission which corresponds with the evidence of Hilda Basson.

In August Maree ordered him to Swaziland and from there he entered South Africa via the Oshoek Border Post. This ties in with his passport and the evidence of Mr Burger. Pursuant to instructions from Maree he returned to Namibia on the 17 August 1989 and booked in at the Mission and he contacted Maree through the pager. As arranged with Maree he met a certain Campbell at Kalahari Sands who gave him R4 000 and certain photographs which included a photograph of an intersection. By arrangement he moved to the flat at 3, Arend Street behind the house of the Ratzkes. About two days later Maree arrived at the cottage. This corresponds with the evidence of Mrs Ratzke who said someone visited Acheson and he described this person as his boss.

Acheson says Maree said the elections were to be disrupted and he gave him explosives to put under vehicles.

Originally he had no transportation and used a taxi. This is also confirmed by Mrs Ratzke. He says Maree told him to "monitor" Gwen Lister of The Namibian and Lubowski's motor car.

On 7 September 1989 he was recalled to South Africa and then sent to Swaziland. Again Burger and the passport confirm this. Maree gave him R5 000 and he flew back to Johannesburg and then to Windhoek where he landed on 10 September 1989 (and gave the false address of 42 Geveer Street, where he said he was staying. This he does not say in his affidavit).

He met Maree in Windhoek again and Maree told him to hire a motor car and gave him R1 000 to do so. He hired a car from Imperial. There is evidence to confirm this. Acheson says Maree gave him poison to put in the toothpaste of Gwen Lister or on her tampon. He hired a white VW Fox which he exchanged for a red Toyota. See evidence of Hilda Basson.

He says when he arrived back at the cottage he "found" a parcel containing an AK47 and two magazines. He said Derrick (Maree) told him to take the "parcel" to Kalahari Sands between 20h00 and 21h00. Acheson forgets that in the same affidavit he said he had bought rubber gloves so as not to leave finger prints on the AK47. He could only do this by removing the rifle from the parcel. Why would he have to do this? His mission was to poison Gwen Lister not to shoot her. Who was he going to shoot? Why did he not want to leave fingerprints on the AK47?

At a later stage I discuss the evidence of one Charles Neelse and Chief Inspector Terblanche and the person he was to shoot is obviously Lubowski.

He says he failed in his mission to poison Lister and threw the poison away. As instructed he drove with the AK47 to Kalahari Sands between 20h00 and 21h00 (which covers the time of the assassination) but he says there was a large number of police about so he went out on the airport road and buried the AK47. He heard on the news about the assassination and he telephoned Maree who said:

"..... I was not to worry about it, but to sit tight in the cottage for a few days. He said that he had to leave and that I must go to Lusaka in a few days where he would meet me."

I point out that this statement corresponds with the entry in the Wouter Basson diary to which I refer hereunder.

He says in his affidavit that he suspects his legal fees were paid by the CCB. He realises that he and Maree worked for the CCB and after his release he went to Swaziland where he received R20 000 and when he went to Athens thereafter, he received 4 000 American Dollars.

He says that he expected to receive more from the CCB because while in detention in Windhoek, he was promised R250 000,00.

In various parts of the affidavit he introduces material obviously untrue and with the object of obfuscating. For instance he says Ferdi Barnard told him that Calla Botha had shot Webster and he, Barnard, drove the car. It may be true, it may not be true but he obviously tries to take the spotlight off himself. Ferdie Barnard also told him that the CCB continued to exist but under a different name.

It is clear from this affidavit that Acheson was recruited by an organisation which is known as the CCB to kill SWAPO-leaders. Acheson was asked if he was prepared to kill and he agreed. He received an AK47 obviously for that purpose.

Acheson's affidavit makes it quite clear that the entire organisation which paid him and his legal expenses had as its purpose the disruption of the elections in Namibia and the killing of leading SWAPO personalities.

I have already mentioned that the growth in South Africa of the liberation struggle led to various methods being invoked by the South African Defence Force to destroy or contain what they perceived as the enemy. The enemy was no longer someone who wore a uniform and carried arms. The enemy was anyone who threatened the established apartheid order by deed or by word.

Consequently persons who attacked apartheid in writing prose or poetry or in speeches whether in lecture rooms at the universities or at political rallies, were deemed to be enemies of South Africa. It made no difference whether such persons were within the borders of South Africa or within the borders of foreign countries. Machinery was developed to silence such persons. The machinery became sophisticated and with this sophistication came sophisticated terms. I have already pointed out that the organisation which was developed for this purpose was known by the euphemistic name of the Civil Co-operation Bureau - the CCB. According to the evidence at this Inquest the purpose of the CCB was the "maximal disruption of the enemies of the Republic of South Africa", or, the "destabilization" of neighbouring countries who were considered to be "unfriendly" to South Africa.

One of the active members of the CCB was Abram (also known

as "Slang") van Zyl. In an affidavit made by him he described the organisation of the CCB. It is unnecessary to go into detail. I shall deal only with those facts I found to be proved and which show the CCB's link with Acheson.

The existence of the CCB, its objects and its activities are part of the history of the liberation struggle. Inquests and Commissions have heard evidence concerning the CCB and it is unnecessary for me to cover the same ground.

According to Slang van Zyl there were two types of members working for the CCB. There were full-time members working for the Defence Force referred to as "aware" members and there were "unaware" members who were not full time and who did not know that they were working for the Defence Force (or for the CCB). The Chairman of the CCB was a member of the South African Defence Force General Staff and he was overall in command. There were, however, regions with Regional Managers who fell under the Managing Director. Instructions came from the Regional Manager or the Managing Director.

Members had code names for secrecy purposes and each member had a blue plan and a red plan. A "blue plan" involved a legitimate business front while a "red plan" was a plan for furthering CCB objectives. Appropriate paggers were used. The rule was that no conduct was to be traced back to the South African Defence Force.

As can be expected some of the evidence given by members of

the CCB at the Harms Commission and the Webster Commission was that the CCB was a legitimate agency, an intelligence gathering agency and an agency to act against enemies beyond the borders where no other state means would have access. However on closer analysis the evidence of Van Zyl and that of Calla Botha disclosed that the object of the CCB was the maximal disruption of the enemy which could consist of the breaking of a window to the killing of a person. South Africa was divided into "Regions" and Namibia, then South West Africa was Region 6 but sometimes called Region 8. The evidence given both at the Harms Commission and the Webster Inquest was placed before this Court and from the statements of Calla Botha and Slang van Zyl, it became obvious that the maximum disruption of the "enemy" in 1989 in Namibia included assassinations and any unlawful operation which would disrupt the pending general election.

Any doubt which the Prosecutor-General Mr Heyman may have had as to Acheson's guilt must certainly have been removed by Acheson's own affidavit made on 14 January 1991 at Bedfordview in the Transvaal, after the charge of Murder had been withdrawn.

The reference in the written statement found under his mattress to "my people" whom he had to contact is expanded in the affidavit and it becomes clear that they were members of the CCB for whom he was working after being recruited by Sgt Knox and Ferdie Barnard and that his "handler" at the time was Chappie Maree (Derrick).

When the bubble burst, the CCB managed to destroy or hide most of their documents. A diary which purports to be the diary of one Wouter Basson was, however, seized. This diary had certain vital pages torn out which were apparently destroyed but sufficient entries survived to explain the planned assassination of Anton Lubowski by the CCB and link Acheson therewith. Col Smit was at the Webster Inquest and testified in respect thereof. Col Smit testified at this inquest that in the latter part of 1989 and January 1990, his own investigations into the Lubowski assassination had taken him to South Africa where he had interviewed four persons. Statements taken by him from Ferdinand Barnard, Abram (Slang) van Zyl read with the evidence given at the Webster Inquest, Goniwe Inquest, the Harms Commission, Acheson's affidavit and his statement left under his mattress and the aforesaid diary, confirm that South West Africa was designated as Region 6 by the CCB and that in 1988 about a year before the assassination of Lubowski Colonel "Staal" Burger who was then the officer commanding the Murder and Robbery Unit of the South African Police at Brixton Transvaal, Abram van Zyl, Chappie Maree and Calla Botha, all policemen, were recruited and assigned to Region 6. They occupied the following positions:

Regional Manager: Staal Burger.

Co-Ordinator: Wouter Basson (who kept the diary referred to hereunder and who had the code name of Christo Brits)

Financial Clerk: Nick Nienaber (which also appears to be a code name)

Cell members: Abram van Zyl, Calla Botha and Chappie Maree
whose code name was Dereck.

According to Smit's evidence Burger was answerable to the Managing Director of CCB, Joe Verster, who was answerable to Major-General Eddie Webb, Head of the South African Defence Force Special Forces and Chairman of the CCB.

In his affidavit Slang van Zyl gave a graphic description of how the CCB operated. I refer here only to what he said about the procedure when a particular "project" was identified. There would then be an "in house" meeting with the person who had put forward the project. He would explain it and it would be discussed by the Managing Director and Co-ordinator in great detail including logistics and escape routes.

With the assistance of the evidence given by Col Smit at this Inquest it was possible to piece together the entries in the diary of Basson the Co-ordinator of Region 6 i.e. South West Africa. The first entry is the 25 April 1989 where reference is made to Nico Bessinger the present Minister of Environment and Tourism. On 8 May there is an entry of "Project Imperial" which appears to be a project initiated by Staal Burger to collect "information" in Region 6. Evidence given at the Inquest by one Johan Niemoller and Charles Neelse (who had previously made three affidavits) shows that at about this time Neelse and Niemoller were making videos in Windhoek and the surrounding area including videos of the home of Lubowski. Niemoller admitted frankly

that he had been a member of the CCB but he was adamant that it was not a sinister organisation. He admitted that while on a visit to London, he had been arrested and questioned in respect of alleged intended kidnapping of certain ANC members. There was no prosecution in respect of that matter. He also admitted that the South African Military Intelligence had paid him R600 000 for a tip off he gave them concerning a coup on the Seychelles. He says he repaid this amount. Since it had been given as a reward, it is strange that he should have done so. Charles Neelse who worked for him and still works for him admitted monitoring and taking a video of Lubowski's house, with Niemoller. The very fact that Niemoller at first tried to deny this, made this act extremely suspicious. Under tenacious cross-examination it became obvious that he was well-aware of the video of Lubowski's house and environs. This act ties in not only with the diary of Wouter Basson, the Co-ordinator of the CCB in Region 6, but it ties in with the policy of the CCB as explained by Slang van Zyl to Col Smit. One can piece together the evidence of those who have given evidence before other tribunals, affidavits, Smit's evidence and the diary aforesaid that the policy of the CCB was when a project had been identified to

- (i) draw instructions and guidelines for the making of a preliminary study;
- (ii) Present the preliminary study plan to the Managing Director;

- (iii) Collect facts;
- (iv) Evaluate the plan;
- (v) present and make adjustments at an in-house meeting;
- (vi) present the plan to Chairman;
- (vii) execute the plan.

It is strange to find entries in the diary of Wouter Basson which do not relate to South West Africa but nevertheless they are there e.g. on 9 May appear entries indicating the intended assassination of Adv Dulla Omar then of the Cape Bar, now South African Minister of Justice, Bruce White and Gavin Evans a journalist. Next to each name is a code name of a CCB member. Significantly it appears that Slang van Zyl was allocated a project relating to SWAPO while Staal Burger (code name inter alia "Bert") was specifically allocated Bjorn von Finckenstein (spelt Finkelstein) a prominent SWAPO member.

The entries in the diary are made in Afrikaans. I intend setting out some of the entries as they appear in full in Afrikaans on certain days and then commenting only on certain of them. The entries in the diary are abbreviated and are in code-form.

"10 July 1989

"NAMIBIAN TAXI SERVICES - 32 vrte - olie ontwrig
A.S.

ZIM min. afgestaan om te help - vind uit wit

Nie die plek afbrand verkiesingsdatum nie uitstel.

Ontwrig Swapo vergaderings - waar - Tendens - kom
met voorstelle

Ontwrig Swapo luidsprekers

Slange bekom

Siekte in kampe versprei - Frans/Heiner

CHIEF INSPECTOR THORNBURY - maak hom kwaad."

I translate this as follows:

Namibian Taxi Services - 32 vehicles

"Olie ontwrig", means "oil dislocation" there was evidence
of a large number of cans of oil found at the caravan park
of the Safari Motel which were diluted with acid. Niemoller
admitted using the Caravan park.

"Ontwrig Swapo vergadering" - Disrupt Swapo meetings.

"Slange bekom" get snakes - later the intention of releasing
snakes at Swapo meetings became known.

"Chief Inspector Thornbury - maak hom kwaad" - Annoy
Thornbury. He was one of Untags leading representatives in
Namibia supervising the general election.

"11 July 1989

Doopdag - Str 8 - (ALLES ASOF SWAPO) - (WITMAN SE
HAND UITHOU)

- Projek Gemik of 6 Nov (Korttermyn)

- Dolf - Statiese Koörd
 - Werf lede vir Swapo underground
 - Heiner monitor
- Bert - STOP en rig na Str 8
- Rig Pro Swapo sosiale geleenthede (roetine) -
plek en aksie."

There is some confusion in that occasionally South West Africa is referred to as Region 8. "Doopdag" - Baptismal. This referred to the concentrated effort on Namibia.

"Witman se hand uithou". It appears that activists had to make it appear to the indigenous population that the white man was magnanimous and generous.

This must be read with the evidence of Professor Du Pisani who said that the South African Government was concerned with the election and supported those parties fighting Swapo and contributed to the extent of R100 million.

"Werf lede vir Swapo underground" - recruit persons for Swapo underground.

"Bert" (Bert Brummer code name of Staal Burger) stop whatever you are doing and concentrate on Namibia. It will be seen later that Charles Neelse whose handler was Niemoller was handed over to Staal Burger about this time and Burger became Neelse's handler.

14 July 1989

It is unnecessary to set out what appears in the diary for this day but although it is in a sort of code it elucidates a full scale effort to disrupt the coming election.

The entries in the diary for the 27 July and 3 August are highly significant. By this time the CCB had identified Lubowski as "Client 2" - "Kliënt 2".

"27 July 1989

Meisies soos Bessinger naby Chongarera kan - 2 weke na Hamatenja val

- Monitor aksies van kliënt 2.
- kom met voorstelle"

"3 August 1989

- Bepaal opsies rondom kliënt 2
- vriende
- bewegings
- amptelike programme
- soos bedrywighede

OPSIES

1. Toordokter (ANTON)
2. Medies
3. Karbon
4. Naby aksies
5. Afstand skei?

Kliënt No. 1 voor einde Aug.

2 middel Sept.

Kliënte saam ondersoek? Jack bespreek."

My comment on these entries is simply that Bessinger Tjongarero and Hamutenya were all prominent SWAPO members and are today Ministers and that they too were on the "hit-list". The entries on 27 July 1989 call for suggestions on how Lubowski is to be monitored but by 3 August 1989 the CCB activists had to come forward with options which could be employed to kill Lubowski. The first part of the entry refers to a consideration of options involving his friends, movements and official programs while the second part of the entry specifically requires discussion with "Jack", (Jack van Staten code name of Joe Verster, the Managing Director of the CCB) whether Lubowski should be killed in the middle September (he was assassinated on 12 September 1989) by a "medicine man" (or a witch doctor), a car bomb, nearby action or distant action. A medicine man (or witch doctor) could have meant a hired assassin.

"22 August 1989

Riaan - CV vir Jack onus"

I have already said that Jack was the code name of Joe Verster (the Managing Director). At the Webster inquest the evidence was that "onus" was a code name for a project by Chappie Maree (remember Derrick). I now again refer to the affidavit made by Acheson on 14 January 1991 when he says his CV was taken by Dereck which was the code name of Chappie Maree and Chappie Maree was the designated "cell member" of South West Africa and the appointed "handler" of Acheson. In the handwritten statement found under Acheson's

mattress in his prison cell in Windhoek appeared the following:

"It all started in Johannesburg, outside my apartment that's when I met van Staden. He asked me to go to Swaziland and meet someone by the name of Derrick."

It is clear from this that Acheson was recruited by the CCB but there is some confusion with code names.

I shall digress at this stage, but for the sake of making the picture complete point out that Slang van Zyl in one of his affidavits (Exhibit 003) refers to an "in-house" meeting and says that on 1 September 1989 he met with Staal Burger (Regional Manager), Christo Brits (Code name for Wouter Basson the Co-ordinator whose diary I have analyzed), Chappie Maree (Acheson's handler), Calla Botha and Nick at the Rosebank Hotel in Johannesburg where Chappie Maree admitted to van Zyl that the "project" concerned Lubowski. Van Zyl, however, was ordered out of the room and can contribute nothing as to what happened at the meeting.

Significantly the top of the page for 1 September is missing from the Wouter Basson diary and pages for the 2, 3, and 4 September are torn out as well as the page for the 12 September 1989, i.e. the day of the murder. However, when one writes on a page a slight indentation is made on the page immediately behind the page written on. Forensically reconstructed the following was written on

12 September 1989:

"Vermom. Nie bel, kleredrag verander, nuwe klere, slegs volgens plan optree, nie pager gebruik, nie persoonlik kontak na job, alibi om na Zambië te gaan, langer agterbly, twee dae, versterking nie by adres gewees nie."

The translation of this shows this entry in the diary to be an instruction to someone who is or has been involved in something wrong or who has something to do with someone who has to lie low and go to Zambia. The translation word for word is the following:

"Disguise. Do not phone. Change clothes, new clothes, act only according to plan, do not use pager, do not contact personally after job, alibi to go to Zambia, stay behind longer, two days, strengthening not having been at address."

In Acheson's affidavit of 14 January 1991 made at Bedfordview more than a year after the assassination, although Acheson does not admit to shooting Lubowski, Acheson says that on the night of 12 September (that is after the assassination) he contacted Chappie Maree by telephone and;

"He said that I was not to worry about it, but to sit tight in the cottage for a few days. He said that he had to leave and that I must go to Lusaka

in a few days where he would meet me. He did not say where in Lusaka I was to go. I told him that I did not like waiting around and he repeated that I must stay in the flat for a few days."

After 12 September 1989, there is no reference in the diary to Region 6. A statement by Calla Botha which was intended to be an affidavit but was not sworn was handed in to the Inquest Court (EXHIBIT 004). By virtue of the provisions of Section 15 of the Inquest Act (which I had pointed out in the beginning), I am entitled to take this statement into account. Botha had refused to come to Namibia to give evidence against Acheson. I have no doubt that he would not come for the inquest. In his statement he says that when Acheson was arrested an emergency meeting of Region 6 was held in the Rosebank Hotel. Botha says everyone present was worried about Acheson's arrest. They were clearly concerned about what he may say particularly Maree and Burger who were instructed to disappear. Consequently when Col Smit tried to find them he could not do so.

The evidence relating to Acheson which was available on 18 April 1990 to the prosecution prima facie showed conduct on the part of Acheson which amounted to an offence. His own affidavit made at Bedfordview more than a year subsequent to the assassination makes it quite clear that Acheson worked for the CCB and came to Namibia to murder. In his affidavit he says he came to Windhoek to poison Gwen Lister, the editor of "The Namibian" a newspaper which supported SWAPO in the pending election. He says he had a

syringe with the poison which he had to put in her toothpaste or on her tampon. If this was his purpose, he would not have had to have a machine-gun. However, in his affidavit, he is swept away by his own verbosity and admits that he had such a weapon and what is more he admits it was an AK47. The forensic evidence was that all the spent cartridge cases at the scene of the murder were fired by an AK47. This confirms the evidence of Mrs Ratzke who said in her affidavit and in her testimony that the contours or shape of the thing in the sack that he surreptitiously carried to his car on the day of the assassination looked like a jack or a rifle. In his affidavit Acheson said that very night after he saw the police lights flashing he quickly buried the rifle on the airport road. I have quoted other parts of his affidavit which correspond to the diary of Wouter Basson, the Co-ordinator of the CCB in Namibia.

Acheson's affidavit therefore confirms the prima facie case which the Prosecutor-General already had against him for murder and when read with the evidence which I have analyzed it also confirms Acheson's statement in the affidavit that he was working for the CCB.

Acheson himself had no personal reason to kill Lubowski. The acknowledged policy of the CCB was to destabilize Namibia and to disrupt the elections in Namibia and even to assassinate leading figures. The evidence which I have analyzed shows a prima facie involvement on the part of this organisation the CCB to participate in and in fact to initiate the murder of Lubowski.

In addition to the foregoing there were certain extracurricular admissions made by certain members of the CCB of the involvement of the CCB in the assassination. There is hearsay evidence given by Deputy Commissioner Smit that Brigadier Floris Mostert of the Brixton Murder and Robbery Squad informed him that Joe Verster (the Managing Director of the CCB) had informed him, Mostert, that the CCB was responsible for the assassination of Lubowski.

According to the record of the Webster Inquest as read with the evidence of Deputy Commissioner Smit who attended the Inquest, General Jakob Joubert who was the then Deputy Chief Detective for South Africa testified that when he left a meeting he had had on 29 November 1989 attended by General Witkop Badenhorst, the then Head of the Division of South African Military Intelligence and Major General Webb, the Chairman of the CCB, he had no doubt that Lubowski had been a CCB project. He would not have said this if the Lubowski assassination had not been discussed.

Counsel for the Lubowski family have asked me to comment on the role played by each of the members of the CCB in the assassination. I have already pointed out that an inquest is not a criminal court and I am not required to do any more than the Inquest Act requires of me. According to my analysis and my findings, there is a strong prima facie case that Donald Acheson murdered Anton Lubowski. It is my finding that when he was recruited by Ferdinand Barnard on behalf of the CCB he was asked if he "would kill" and on his own showing he agreed to kill Gwen Lister. On the analysis

of the evidence he in fact shot Lubowski and was paid for so doing. On my analysis the CCB as an organisation was responsible for this. The words common purpose are well-known in the criminal law and connote that there is a purpose shared by two or more persons who act in concert to do something which constitutes a crime.

It is not necessary for a mandate to have been given or agreed upon in advance although in this inquiry there has been ample evidence of what the objects or "mandate" of the CCB were and what the CCB did. I have no doubt that every member of the CCB knew that one of the objects of the CCB during 1989 was to disrupt the elections in Namibia and that disruption included the assassination of SWAPO leaders. The diary of Wouter Basson clearly shows that even car bombs and poisoning were options which members could engage in. All members of the CCB subscribed to the policy of the CCB and as such they are all accomplices to the murder of Lubowski. This does not necessarily apply to so-called "unaware" members.

There were according to Slang van Zyl "aware members" of the CCB, and "unaware members". Aware members were active members who knew what the CCB stood for, they were paid regularly and organised or participated in one way or another in projects of the CCB. Such people clearly have a common purpose and are accomplices. However, "unaware members", were recruited to perform certain projects and were not on the permanent payroll. They were remunerated for their particular work in each instance. The term

"unaware member" is not entirely correct because the person concerned may or may not have known that he was engaged in a particular project to kill but may well have been fully aware that he was in fact working for an illegal organization irrespective of what the name may be. In this regard I intend analyzing the part played by Charles Neelse, Chief Inspector Terblanche and Johan Niemoller. Neelse may not have known that the organization which employed him was known as the CCB but as will be seen hereunder, he knew full well that the object of the organisation was to kill Lubowski.

Charles Neelse gave three affidavits and testified. He back-tracked on his affidavits when he gave evidence. He was found to be a liar in several instances and his evidence must be approached with caution. I have previously referred to evidence given by him and by one Niemoller, who was, and at present is, the employer of Neelse. Niemoller admitted in evidence that he was a member of the CCB but maintained that he was a businessman and that the CCB was helping him to get established. He had innocently suffered financial loss while working for South Africa. Niemoller said that his work in Namibia required him to have detailed knowledge of the countryside and of various towns or cities. Accordingly he engaged Charles Neelse to help him make videos. Neelse was employed by Niemoller from early 1989 until about the middle of the year when he was employed by Staal Burger. Staal Burger's role in the CCB need be recounted again but it may be recalled that his code name at one stage was Bert Brummer and Wouter Basson's diary

specifically calls on "Bert" to concentrate on Namibia. When Burger took over the handling of Charles Neelse, Burger's code name in Namibia became Nick Verbeeck. Niemoller bought pagers for himself and Neelse and also a motor vehicle for Neelse. In view of the type of work he was required to do for Niemoller it is not clear why Neelse had to accompany Niemoller to Krugersdorp and Pretoria but he did this and photographic equipment was purchased at Krugersdorp. Why there, we do not know save that Neelse gave Chief Inspector Terblanche a phone number at Krugersdorp where there was a place called the "nest" (nes), and where he could contact Nick Verbeeck (Staal Burger) and Verwey (Ferdie Barnard).

The evidence was that Neelse was paid R1 500,00 to "gather information and observe SWAPO meetings and members".

Together with Niemoller he made video recordings of the road and installations between Tsumeb and Windhoek. Why two people were required for this is not clear. Niemoller's explanation was that he was interested in mining and he wanted to make sure that the road could carry his trucks. Obviously a video even of a bridge could not achieve that purpose. In any event Niemoller admitted that he videotaped buildings and installations as well.

Charles Neelse stated in one of his affidavits that he had made a videotape of Lubowski's house for Niemoller and that Niemoller accompanied him in doing so. Neelse confirmed this in cross-examination and Niemoller's attempts to deny

this were transparent lies.

I have already referred to the preparation of planning that preceded a CCB project. Such videotaping is consistent therewith. In any event when regard is had to an affidavit by Chief Inspector Terblanche (as well as his evidence) as read with the relevant affidavit of Neelse, the latter (Neelse) knew that that assassination of Lubowski was imminent and that he had played a part therein.

Neelse's services were dispensed with at a late stage by the CCB and he appears to have disappeared from the scene but today he is working for Niemoller having changed his name to Wildschudt. Niemoller conceded in cross-examination by the Inquest Court that Neelse had no particular qualifications to justify his re-employment and that when they parted company originally, they did so under a cloud. At present there exists a close relationship between them e.g. Neelse arrived at the Inquest Court in Niemoller's private aeroplane and is represented by Niemoller's attorney. This relationship did not exist when Neelse gave his three affidavits to Col Smit. It is not surprising that Neelse now denies almost anything which he previously said and which could implicate Niemoller.

Neelse's handler in mid 1989 became Staal Burger (Nick Verbeeck) whom Neelse identified by way of photographs and who strangely not only paid him the same salary as Niemoller had but his job description remained the same. According to Neelse, Burger said "carry on the way I was working for

Niemoller", and that he too could be contacted on a pager. Neelse said Burger also instructed him to sabotage SWAPO motor vehicles.

In his affidavit Neelse said that Burger had said to him while referring to Tjongarero and Lubowski that "he wanted their testicles on the table". It was agreed that if this had been said what was meant was that Lubowski and Tjongarero had to be killed. Attempts in evidence to withdraw the statement was unsuccessful. In his affidavit Neelse said he had received R15 000 from Burger with which he purchased a taxi but in evidence this was also denied. A new handler took over Neelse namely Ferdie Barnard who used the code name Verwey. Again pager printouts proving their relationship were produced in Court.

For some reason, Neelse and Ferdie Barnard (Verwey) took another videotape of Lubowski's home. Neelse hired the camera from a firm Edmeds and this was confirmed in evidence. On this occasion in terms of his affidavit when the videotape was taken Barnard said "Now we will show Lubowski". Neelse in evidence denied this.

Neelse stated that on one occasion he and Barnard together with a man with a stocking over his head went to survey the houses of Lubowski and Tjongarero.

For some reason Neelse fell out with the CCB. It may well be that all that had been required by them for him to do was for him to make video tapes of Lubowski's house and having

done so his services were terminated. In any event in his affidavit he told Col Smit that he had seen on television a picture compiled by "identity kit" concerning the killing of a United Nations Security Guard at Outjo. This occurred before the assassination of Lubowski and Neelse said that he told Chief Inspector Terblanche that he could identify one such person. He also told Terblanche that he received instructions from Barnard and Burger (he used their code names) to sabotage SWAPO vehicles and even "silence" leaders including Lubowski. He admitted in cross-examination that to silence meant to kill. It is clear from the affidavit from Chief Inspector Terblanche that he (Neelse) had told Terblanche that Verbeek (Burger) and Verwey (Barnard) were involved in the assassination of Lubowski.

It is unnecessary for me to deal with Neelse's diary which was handed in and analyzed.

I am satisfied that Neelse knew he worked for an organisation which was campaigning in Namibia against SWAPO with the object of sabotaging SWAPO vehicles and killing SWAPO leaders including Lubowski. I am satisfied that he knew that the video taping of Lubowski's house was an act of preparation for the assassination of Lubowski.

Neelse's employer as I have said was Niemoller. Niemoller testified at the Inquest and had given an affidavit to Deputy Commissioner Smit. Although Niemoller tried his best to deny the statements in the affidavits of Neelse that Neelse and he had videotaped Lubowski's house, Niemoller was

clearly lying. He admitted that videotaping of the house by the CCB would have been done as reconnaissance of a target and his employee Charles Neelse certainly knew that Lubowski was in fact a target (he had told Terblanche that).

Niemoller had clearly handed Neelse over to Burger who was to be his handler when Burger was assigned to Region 6, by the CCB.

Niemoller admitted his connections with the CCB and that he had received R600 000,00 for a "blue plan", that is, to re-establish himself as a businessman.

This Court is satisfied that Niemoller and Neelse laid the ground for the assassination of Lubowski by taking videotapes of his house. While Acheson may not have seen such tapes, prima facie they must have been used at the "in-house" meeting at Rosebank on the 1 September 1989 when Maree presented his project to the CCB. Armed with this knowledge Acheson would have known the location of the house and the best escape route which was the route eventually successfully taken by him.

In view of Neelse's admissions to Terblanche, there is substantially stronger direct evidence against Neelse than Niemoller but if one accepts that the CCB as an organisation orchestrated the assassination of Lubowski, Niemoller as a member is unquestionably an accomplice. He certainly did participate in the videotaping of Lubowski's home.

There was evidence that Neelse reported to Chief Inspector Terblanche prior to the assassination that he had been recruited to work for an organisation and that there was to be a killing of SWAPO leaders and Lubowski was mentioned by name.

It is necessary to set out verbatim portions of what Terblanche said in his affidavit:

"Wat hulle (Terblanche is referring to Neelse and his accomplices) moes doen was om sekere voertuie te saboteur en ook om prominente leiers stil te maak. (Hier het hy (Terblanche is referring to Neelse) 'n teken gegee soos wanneer iemand se keel afgesny sou word). Die naam van Adv Anton Lubowski was pertinent genoem.

Alhoewel daar op genoemde stadium toe alreeds 'n deurbraak was in die Outjo saak het ek nie sy storie so lekker geglo nie maar het nogtans uitgevra. Hy het die name genoem van 'n Johan Verwey en 'n sekere Niek Verbeek as synde sy kontak persone en aan my gesê hulle kan gekontak word by Tel. 011-7953539 by 'n plek bekend as die "Nes" in die omgewing van Krugersdorp."

The English translation of this is as follows:

"What they had to do was to sabotage certain vehicles and also to silence certain prominent leaders (here he gave a sign which one would give

when slitting someone's throat). The name of Adv Anton Lubowski was pertinently mentioned.

Although at that stage there had already been a break-through in the Outjo case, I did not entirely believe his story but I nevertheless questioned him. He mentioned the names of John Verwey and a certain Nick Verbeek as his contact persons and told me they could be contacted at Tel. 011- 7953539 at a place known as the "Nest" in the surroundings of Krugersdorp."

I point out that Niemoller and Neelse had made a special trip to Krugersdorp where they "purchased" photographic equipment.

Having been given this amazing information, even names and a telephone number, one would expect Chief Inspector of Police Terblanche, to follow this up. But as a fact Terblanche did nothing. In his affidavit he says:

"Toe die Outjo saak begin rigting kry het ek basis hierdie inligting vergeet."

Translated this means:

"When the Outjo case began to get direction, I basically forgot about this information".

This is a strange statement when he had already said that there had been a breakthrough in the Outjo case. He then

continues:

"Die eerste keer wat ek die inligting weer begin oproep het was nadat Adv Lubowski geskiet is."

Translated this means:

"The first time that I recalled the information was after Adv. Lubowski was shot."

When he Terblanche appeared before the Inquest Court he told a completely different story. He said that when Neelse gave him this information he reported it to Col Badenhorst (as he then was). When Badenhorst testified he denied that Chief Inspector Terblanche had reported this to him.

Terblanche was obviously telling this Court a lie. In his statement he not only did not mention reporting the matter to Badenhorst he specifically said he forgot about it and only recalled it after the assassination. Even then after the assassination he did nothing about this vital information. As a policeman he knew Col Smit was investigating the murder and he knew he should contact him and give him the information he had. He had names and a telephone number. He kept quiet and it was only when Col Smit approached him on 20 April 1990, two days after the case against Acheson was called that he gave his affidavit.

The conduct of Terblanche is highly suspicious.

His conduct before this Court confirms his implication. As a Chief Inspector he knew he had no reason whatsoever to report the matter to Col Badenhorst. The information which was given to him should have been given to his own superior or in view of his own status, he himself, could have investigated it. Furthermore if he could not investigate it himself or report to his own superior he should have reported this information to the ordinary crime unit, or, to Badenhorst's superior. He certainly had no reason to pick one policeman out of the entire force, Badenhorst, and say that he had reported the information to him. He knew UNTAG was monitoring the Police. He could have reported to UNTAG.

Why did he pick on Badenhorst? The reason is obvious. By the time Terblanche testified at the Inquest, it was known that Munango was implicating Badenhorst. Terblanche knowing full well that his failure to have reacted to the information of Charles Neelse was not only a dereliction of duty but probably criminal, picked on Badenhorst as he was the most vulnerable.

The next question to be asked is why did Charles Neelse seek out Terblanche to give him this information and the information concerning the indentikit of someone in the "Outjo Three" murder? The evidence is that at that time Chief Inspector Terblanche was associated with the unit dealing with motor vehicles. Terblanche says that Neelse had approached him on three or four occasions concerning vehicle clearance certificates. According to the evidence we know of an occasion when Niemoller bought a Combi for him

(that is for Neelse) and then from Neelse an occasion when he received R15 000 from Burger and bought a taxi. This constitutes only two occasions. Secondly why should a Chief Inspector deal with clearance certificates. This appears to be the administrative work of a clerk or of an ordinary policeman. Assuming, however, that Neelse wanted some special favour he could have swapped information to get that favour. I have no doubt that Terblanche did not tell a soul neither Badenhorst nor anyone else of the information which Neelse gave him. The reason for saying this is that immediately the murder took place, there was a wide search for leads. Terblanche who was a Chief Inspector knew Deputy Commissioner Smit was investigating the case and that it was his, Terblanche's duty to inform Smit of what he knew but this he failed to do. He could have told Smit that he had told Badenhorst. He says what he did was to try to get hold of Neelse. He may well have tried to get hold of Neelse to warn him to leave Namibia. The question then is why did Terblanche not tell anyone before the murder nor after it? The reason may well be that he knew that Charles Neelse was involved in certain sinister activity, (he himself had cleared three or four cars for Neelse) and, he did not want to have his association with Neelse investigated.

In S v Jonathan & Others 1987(1) SA 633, the Appellate Division of South Africa considered the law relating to an accessory after the fact. Part of the headnote reads:

"The act of being an accessory after the fact is an intentional act which serves to protect the

person who commits such act. In suitable circumstances, a false declaration could amount to the commission of such act and a priori the giving of false evidence."

In S v Morgan & Others 1993(2) SA (Cr) 134 at 174, Corbett, C.J. approved of Jonathan's case and accepted for the purposes of Morgan's case that dolus eventualis was sufficient for a conviction of being an accessory after the fact.

(See also R v Gani 1957(2) SA 212)

At the commencement of my findings I discussed the meaning of Section 18(2)(d) of the Inquest Act. I pointed out that the legislature had drawn a distinction between an act "prima facie involving an offence" and an act "prima facie amounting to an offence". The section, however, also provides for an "omission" which "prima facie involves or amounts to an offence".

If a person becomes aware that another person who is a stranger to him is about to be murdered, he is under no duty to tell the police or to do anything to stop the murder. Where, however, he is in law under a duty to stop the crime and he deliberately omits to do so in breach of his duty, the question is whether his omission has caused or contributed to the death of such person. A police officer is under a duty to stop crime. If he is aware that a crime is about to be committed and he can stop it but he omits to

try and stop it, the facts may disclose that he is an accomplice. If he does genuinely take steps to stop the crime but the steps he takes are not successful, he is not an accomplice to the crime although depending on the facts he may be guilty of some offence under the Police Act.

Where, however, a murder has been committed and the police officer deliberately and in breach of his duty and in order to protect the person who has committed the crime, omits to take steps which will lead to the murderer's arrest, he will be guilty of being an accessory after the fact to murder. This actually amounts to an offence as opposed to involving him in an offence.

In respect of Chief Inspector Terblanche we have two separate stages. Prior to the murder he was given information in his capacity as a police officer that the assassination was being planned and was imminent. He was even given names and a telephone number of the persons involved. He did not disbelieve his informant. According to his affidavit, he did not entirely believe him despite all the detail and asked further questions. As a policeman, particularly with his rank, it was his duty to investigate or cause an investigation to be made. In my view, failure to perform the duty incumbent in law, could constitute

the dolus which is required to be an accomplice. He says with his involvement in the Outjo case, he forgot about this information. Had he left it there, there may well have been no dolus, but he tells a deliberate lie in evidence involving Badenhorst. This lie does not provide the dolus

but confirms that he knew it was his duty to try to stop the murder. In any event he says he was reminded of Neelse's warning after the assassination. Quick action then may well have led to an arrest of one or both the persons mentioned by Neelse. He did nothing until approached by Col Smit nearly eight months later. In the entire context an inference can be drawn that Terblanche did not want the murderer arrested and refrained from doing his duty and enabled the murderers or accomplices to escape.

Prima facie Chief Inspector Terblanche could be involved as an accomplice and prima facie he is an accessory after the fact.

Briefly the position in respect of accomplices is that one of the objects of the organisation known as the CCB was the assassination of leaders in the liberation struggle which included leaders of SWAPO. Lubowski was one of such leaders and clearly a target. Therefore all those aware members who took part in the CCB are accomplices. Those persons like Charles Neelse (Wildschudt) and Chief Inspector Terblanche who were not members of the CCB are nevertheless prima facie accomplices or accessories for the reasons I have set out above.

Hereunder I set out seriatim the requirements of Section 18(2) of the Inquest Act 1993, and my findings.

"At the close of an inquest the judicial officer holding the inquest shall record a finding as to:

(a) the identity of the deceased person

ANTON THEODOR EBERHARD AUGUST LUBOWSKI
generally referred to as Anton Lubowski

(b) the cause or probable cause of death

multiple shots with AK47, one shot in the
head.

(c) the date of death

12 September 1989

(d) whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person

(i) Prima facie Donald Acheson shot and
murdered the deceased.

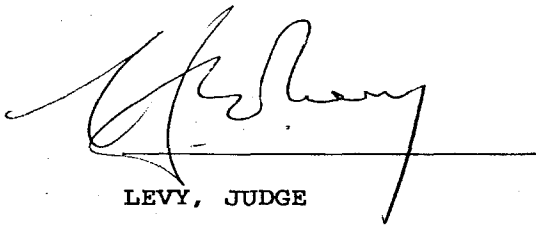
(ii) Prima facie the Civil Co-operation
Bureau (CCB) initiated and is involved
in the said murder and in addition the
acts of the following members of the CCB
prima facie amount to the acts of
accomplices to kill the said Lubowski:

- (a) Ferdinand Barnard
- (b) Leon André Maree
- (c) Daniël Ferdinand Du Toit
(Staal Burger)

- (d) Wouter Jacobus Basson
- (e) Johan Niemoller
- (f) Carl Castelling (Calla) Botha
- (g) Pieter Johan Verster
- (h) Abram van Zyl

(iii) Prima facie the acts of Charles Neelse also known as Charles Wildschudt amount to an offence, in that he is an accomplice to the murder of the said Lubowski.

(iv) Prima facie the omissions of Chief Inspector Willem Ignatius Terblanche involve him in the murder as an accomplice alternatively they amount to the offence of being an accessory after the fact.



LEVY, JUDGE