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COMMISSION OF INQUIRY INTO CERTAIN ALLEGED MURDERS

REPORT

THE HONOURABLE MR JUSTICE L. T. C. HARMS

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THE STATE PRESIDENT

THE COMMISSION OF INQUIRY INTO CERTAIN ALLEGED MURDERS
HONOUR TO SUBMIT HERewith THE REPORT OF THE COMMISSION

REPORT

SIGNED AT PRETORIA DURING SEPTEMBER 1990

THE HONOURABLE MR JUSTICE L.T.C. HARMS

L.T.C. HARMS

CHAIRMAN AND MEMBER

LIBRARY OF PARLIAMENT



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A. INTRODUCTION

Felix qui potuit rerum cognoscere finem

At the Commission of Inquiry into Certain Alleged Murders and Acts of Violence established by the State President on 19 September 1989.

The terms of reference were the following:

THE STATE PRESIDENT

to inquire into and to report on the alleged occurrence of murders and other unlawful acts of violence committed in the Republic of South Africa

THE COMMISSION OF INQUIRY INTO CERTAIN ALLEGED MURDERS HAS THE HONOUR TO SUBMIT HERewith THE REPORT OF THE COMMISSION to the State President about any further any constitutional or political aim in the Republic of South Africa and in respect of which the judicial process has been completed or which have not been solved or in respect of which the investigations are, owing to lack of evidence, not progressing.

SIGNED AT PRETORIA DURING SEPTEMBER 1990 in murders and acts of violence were committed, to report on:

- (1) who or what bodies, institutions or organisations commit or cause or intend to be committed such murders or acts of violence as principal offender, accomplice or accessory after the fact, or have done so in the past;

L T C HARMS

CHAIRMAN AND SOLE MEMBER to finance or has financed any such person, body, institution or organisation.

to inquire into and to report on any other matter which, in your opinion, is relevant to the foregoing.

The Commission was also required to include an investigation into and a report on the allegation that one Anthon

A. INTRODUCTION

Felix qui potuit rerum cognoscere causas

A1 The Commission of Inquiry into Certain Alleged Murders was appointed by the State President on 2 February 1990.

The terms of reference was the following:

- "1. To inquire into and to report on the alleged occurrence of murders and other unlawful acts of violence committed in the Republic of South Africa (including the self-governing territories) in order to achieve, bring about or further any constitutional or political aim in the Republic of South Africa and in respect of which the judicial process has been completed or which have not been solved or in respect of which the investigations are, owing to lack of evidence, not progressing.
2. If it be found that such murders and acts of violence were committed, to report on -
 - (i) who or what bodies, institutions or organisations commit or cause or instruct to be committed such murders or acts of violence as principal offender, accomplice or accessory after the fact, or have done so in the past; and
 - (ii) who finances or has financed any such person, body, institution or organisation.
3. To inquire into and to report on any other matter which, in your opinion, is relevant to the foregoing."

The terms of reference was extended to include an investigation into and a report on the allegation that one Anton

Lubowski was a paid agent of the SA Defence Force's Military Intelligence Section.

A2 It soon became apparent that there exist serious misconceptions about the nature, powers, functions and abilities of commissions of inquiry. Unrealistic expectations were raised. The work of this Commission became politicised. Parties attempted to score political points. Parties became prescriptive and in the process ignored basic human rights, civility and the law.

The present Commission is not the first to have experienced such problems. Others in the same league were Van den Heever J.A. (1949), Lord Devlin (1959), Diemont J. (as he then was) (1960) and Lord Denning (1963)¹.

A3 The State President has the prerogative to appoint a commission to investigate and report on matters. A commission is no more than an advisory body and it advises the executive.²

¹ See Bell v Van Rensburg N.O. 1971 3 SA 693 (C) for a full discussion of the issue.

² S v Naude 1975 1 SA 681 (A) 697. See also the long title of the Commissions Act 8 of 1947 and Bell v Van Rensburg N.O. (*supra*) 706G. It was suggested in argument that this description cannot apply to the present Commission.

It is not a *quasi*-judicial body. It is not a court of law.³

A4 If a commission is appointed to investigate a matter of "public concern" ("openbare belang") the commission may be endowed with the powers specified in the Commissions Act 8 of 1947. Whether a matter is a matter of public concern is an objective question justiciable by a court of law. It should be clear that the purpose of a commission in finding acts is not simply to expose a member of the public or an official to moral censure or ridicule or to investigate matters interesting to the public or press in contradistinction to matters in the public interest. Commissions are not there to satisfy public curiosity or even the commission's own curiosity.⁴

A5 The words of the present Chief Justice in S v Naude (*supra*) remain appropriate:

"It is true that a commission of inquiry, with reference to which the provisions of the act have been declared by the State President to be applicable, is normally empowered merely to investigate a matter of public concern, to report thereon and, in doing so, make whatever recommendations it thinks fit. This is, indeed, the position in the case of this Commission. The Commission itself thus has no power, in the light of its findings,

³ 2 Lawsa paragraph 468; Ellison Kahn, Extra-judicial activities of judges 1980 D J 188, 203.

⁴ Mr Kuny SC, on behalf of the Lawyers for Human Rights, made the submission that it is not the function of the commission to make moral judgments. In general it conforms to views I have expressed earlier.

to take or initiate any action, whether it be against any person or body or merely of a general character; this is a matter for the executive, to whom it reports. In one respect, however, the Commission has the power to affect the rights of the individual: it can summon any person, whether willing or unwilling, to appear before it and require such person, under pain of penal sanction, to give evidence before it on oath. The exercise of this inquisitorial power makes an important inroad upon the right of the individual to 'the tranquil enjoyment of his peace of mind' ... and such privacy as the law allows him ... Normally, it is only before a judicial tribunal, exercising either civil or criminal jurisdiction, that a person can be summoned to appear and compelled to give evidence. The proceedings of such a court are regulated by means of various safeguards designed to protect the individual. A non-judicial tribunal, exercising inquisitorial powers, is not only something additional to this but also it is free to dispense with some of the safeguards which characterize proceedings in a court of law. Persons appearing as witnesses before such a tribunal may run the risk of having aspects of their private lives exposed, of damaging (perhaps sometimes unfounded) allegations being made against them and of their being made the objects of adverse findings and recommendations to the executive ... It is important, therefore, that an exercise of such powers by a non-judicial tribunal be strictly in accordance with the statutory or other authority whereby the powers are granted."

A6 It is advisable to repeat the last sentence of the quotation, namely that "it is important, therefore, that an exercise of such powers by a non-judicial tribunal be strictly in accordance with the statutory or other authority whereby the powers are granted."

This indicates that a restrictive interpretation has to be given to the terms of reference. The scope of the mandate is relevant only in the context of compelling witnesses to testify or to produce documents. In any other context the question is academic. Should a witness be tried for failure to testify or to produce documents, the court will interpret the terms of reference restrictively.⁵

For a commission to interpret its mandate extensively only to have a court of law interpret it restrictively would amount to a senseless exercise.⁶

A8 The terms of reference requires the Commission to enquire into and report on the alleged occurrence of murders and other acts of violence

- * committed in the Republic

- * committed with the intent to achieve, bring about or further a constitutional or political aim in the Republic.

It would seem that the emphasis is on the word "occurrence".

⁵ S v Mulder 1980 1 SA 113 (T).

⁶ 1982 Tydskrif HRHR 399

After having made the finding, the Commission is instructed to investigate the issues referred to in paragraph 2 of the terms of reference.

A9 It is necessary to emphasise that the Commission was not mandated, *inter alia*,

- * to investigate acts of violence committed outside the borders of the Republic;

- * to investigate the security arm of the state, the so-called Civil Cooperation Bureau or, for that matter, the ANC or the PAC;

- * to investigate acts of violence which were not committed with the necessary political intent, which political intent must relate to the Republic;

- * to investigate allegations of police brutality unaccompanied by the necessary political intent;

- * to limit its investigation to alleged state involvement in such acts.⁷

⁷ By the nature of things the main focus was on state involvement. The reasons are obvious: it was not alleged that the Commission is better placed than the S A Police to investigate the other instances, the apparent *causa causans* of the Commission was allegations of state involvement and there is an obvious greater "public concern" in state involvement.

A10 Paragraph 3 of the terms of reference is couched in very generalised language and may create the impression that the Commission had *carte blanche* to investigate whatever it wished to investigate. It is, however, a well-known canon of construction that such a clause must be interpreted restrictively. An extensive interpretation of that clause would have rendered the clause void for vagueness.⁸

A11 The powers of a commission are:

- * To summon witnesses.
- * To call for the production of books, documents and objects.
- * To administer the oath to witnesses.
- * To examine witnesses.
- * For purposes of the inquiry to enter and inspect any premises and demand and seize any document on or kept on such premises.
- * Make orders protecting the identity of witnesses.

A12 A commission of inquiry has no other powers. The fact that the commission is a so-called judicial commission does not alter the fact. A "judicial" commission is not a legal

⁸ See S v Mulder (*supra*)

concept: it means that the commission is chaired by a judicial officer, but a judicial officer can only exercise judicial functions in judicial proceedings.⁹ As stated above, a commission is not even a so-called *quasi-judicial* body. And, as Lord Denning stated, a judge, acting as a commissioner, has no special privilege or immunity.¹⁰

A13 A commissioner does not have the following powers:

- * To declassify classified material. In the present instance the chairman did obtain access to all classified material in the possession of the South African Police or the S.A. Defence Force upon request. All relevant security files were inspected for leads or possible corroboration. Documents in the possession of CCB which were relevant were not produced. The initial claim was that these documents were classified. It was later alleged they had disappeared.

In all instances where it was considered essential to the inquiry to obtain declassification, declassification was granted.

- * To make public statements made by persons detained in terms of section 29 of the Internal Security Act 14 of 1982. Some of the witnesses were detained prior to and in the course of the commission. Some made statements.

⁹ Erasmus v SAAN 1979 3 SA 447 (W)

¹⁰ Denning The Due Process of Law 1980 page 67.

In terms of section 29 such a statement may not be used or made public. Attempts were made by a party to obtain ministerial consent to gain access to these statements. The request was refused and rightly so. There was no legal basis for the request. Attempts were made during cross-examination to introduce parts of the statements. These attempts were likewise improper.

* To subpoena witnesses to testify or to ask questions of witnesses unless the evidence is strictly relevant to the terms of the commission.

* To search premises unless it has reasonable grounds to believe that relevant documents could be found on such premises.

A14 A number of offences have been created by the Commissions Act 8 of 1947 and the regulations promulgated thereunder. For purposes of the work of this Commission the following are of moment:

* The refusal to answer fully or satisfactorily any question lawfully put.

* The failure to produce any document in a person's possession or custody or under his control.

* Giving false evidence knowing it to be false or not knowing or believing it to be true.

* Disobeying an order to protect the identity of a witness.

* To insult, disparage or belittle the chairman or prejudice, influence or anticipate the proceedings or findings of the Commission.

A15 Once again the Commission itself cannot deal with these offences. Furthermore it is normally not desirable or practicable to refer alleged offences to the attorney-general before conclusion of the proceedings of the Commission. I have, in a previous Commission report, made certain statements which are apposite at this juncture.¹¹

"29. Die gemelde mediaberigte is nie die enigste wat 'n verleentheid vir die Kommissie geskep het nie. Daar was ook ander optredes, nie noodwendig in die openbaar nie, van betrokkenes en buitestaanders, wat vatbaar vir 'n afleiding was dat dit op 'n inmenging met die voer van die Kommissie se verrigtinge neerkom. As algemene beleid is sodanige optrede geïgnoreer. Die algemene beleid kon egter nie deurgaans toegepas word nie. Soms is gepoog, nie altyd suksesvol nie, om die aangeleentheid in der minne af te handel. Dit is miskien goed om die feit in herinnering te roep dat 'n kommissie (regterlik of andersins) nie die bevoegdhede van 'n regsprekende amptenaar het nie. Minagting van, inmenging met of die vooruitloop van die bevindings van 'n kommissie is aangeleenthede vir die strafreg en nie vir die Kommissie self nie. Die feit dat

¹¹ Verslag van Kommissie van Onderzoek na Sekere Moontlike Onreëlmatighede" 29 March 1989.

die hou van die Kommissie die geleentheid vir meerdere onoffisiële kwasi-kommissies geskep het, is ook nie 'n saak wat deur die Kommissie hanteer kon word nie."

"192 (a) Daar is vroeër in hierdie verslag na die feit verwys dat 'n kommissaris (selfs 'n regterlike kommissaris) geen regsprekende magte besit nie.

Dit beteken dat enige oortreding van die bepalings van die Kommissiewet of die regulasies wat op die Kommissaris van toepassing is, nie deur die kommissie self hanteer kan word nie. As daar byvoorbeeld 'n inmenging met getuies plaasvind of as daar mediaberigte verskyn wat met die werksaamhede van die kommissie inmeng en op 'n minagting van die kommissie neerkom, kan die kommissie nie die saak hanteer nie. Hy kan maar net geluide maak. 'n Getuie kan ook nie beveel word om 'n vraag te beantwoord nie. As die getuie weier om te antwoord, moet 'n judisiële orgaan die aangeleentheid oorweeg. Dit gebeur in 'n strafsak wat lank na die tyd volg. Die aangeleentheid is dan nie materieel nie omdat die Kommissie waarskynlik sy verrigtinge afgesluit het.

(b) Dit word aanvaar dat daar goeie redes is waarom 'n kommissie nie as regter in sy eie saak moet optree nie, maar dit is moeilik om te sien hoekom dit so in die geval van 'n regterlike kommissie moet wees. Solank die nodige beskermingsmaatreëls soos 'n hersieningsreg of 'n reg op appèl ingebou word, is daar weinig rede waarom die nodige magte nie aan die voorsitter van 'n regterlike kommissie gegee kan word om sy verrigtinge met dwingende gesag te kan hanteer nie."

Another problem, which was not raised in that report, is the fact that the criminal proceedings would normally place the presiding magistrate in an unenviable position since he has to sit in judgment upon the acts of a judge, albeit a judge sitting in a non-judicial capacity.

The Royal Commission on Tribunals of Inquiry 1966¹² dealt with the problem and found it an "intransigent problem to solve". The British procedure described therein is, at least, preferable to the South African.

A16 In this context it must be emphasised that a Commission is not entitled to investigate offences which, in its opinion, have been committed against the Commission. The Commission may therefore not call witnesses on such an issue. This explains the unwillingness of the Commission to call witnesses whose evidence would have related to such issue only.

A17 A witness is entitled to -

- * refuse to give self-incriminating evidence

- * claim any other legal privilege available to him

- * refuse to testify in respect of any matter which

- ** is, objectively, not a matter of public concern

¹² hereinafter referred to as the Salmon Commission

** does not fall squarely within the ambit of the terms of reference

** is irrelevant.¹³

A18 The privilege against self-incrimination is recognised in the Commissions Act.¹⁴ Certain witnesses refused to answer questions on this ground. In the end it did not really affect the work of the Commission since the Commission did have evidence *aliunde* relating to the matters on which the witnesses refused to testify. The only exception is the evidence of Van Deventer which will be dealt with separately.

The privilege became a matter of debate and it is necessary to consider the privilege as a legal issue. It should be borne in mind that the rules of a game remain the same irrespective of who the opponent is. So, too, irrespective of how popular or unpopular the cause or case of a person is who is the subject of an investigation, the rules must remain the same. The privilege against self-incrimination¹⁵ has its origins in antiquity and it is suggested that it pre-dates the Magna Carta of 1215. In the American constitutional history it pre-dates the freedoms of speech, press and religion. The principle is well entrenched in our law. The

¹³ S v Mulder (*supra*); S v Hertzog 1970 2 SA 578 (T).

¹⁴ Section 3(4).

¹⁵ see in general D.J.L. Kotze Selfinkriminasie in die Suid-Afrikaanse Strafprosesreg, doctoral thesis University of Pretoria 1988; S v Mabaso 1990 3 SA 185 (A) 207.

draft bill of rights, prepared by the S.A. Law Commission, accepts the privilege as axiomatic. I have previously recommended that the privilege be abolished in commission and insolvency investigations.¹⁶

At the same time I indicated that a protective measure could be considered, namely that the evidence may not thereafter be used against such a person in criminal proceedings. The recommendation was accepted in part and an amendment¹⁷ to the Insolvency Act 24 of 1936 was effected.¹⁸

It may be restated that, although a Commission acts inquisitorially it is not an inquisition in the Spanish sense.¹⁹ In conclusion it should be remembered that the abolition of the privilege is no guarantee that a witness will give truthful evidence and that false evidence is no evidence.

A19 It has been put by certain commentators that a commissioner should be invested with the power to grant a witness who testifies fully and honestly an immunity against future prosecution. I have serious misgivings about the propriety of such a procedure. It assumes that a commissioner can act

¹⁶ Report: Kommissie van Onderzoek na Sekere Moontlike Onreëlmatighede 29 March 1989.

¹⁷ Insolvency Amendment Act 89 of 1989/S3.

¹⁸ A similar recommendation was made by the Salmon Commission, paragraph 63.

¹⁹ Van den Heever J.A. quoted in Bell v Van Rensburg N.O. (*supra*)

as father-confessor who can grant absolution: simply by confessing a person becomes immune against prosecution. The whole object of the present Commission is to establish whether crimes have been committed so that exposed criminals can be prosecuted. In any event, since commissions are neither judicial nor *quasi*-judicial such a power would be out of place in commissions.

A20 The power conferred by section 205 of the Criminal Procedure Act on a magistrate to interrogate a person who, it is believed, is in possession of material information, is also of no assistance in solving the present deadlock because:

- * the witness may lawfully refuse to answer any incriminating question

- * it is improper to use the power in respect of a potential accused.²⁰

A21 Numerous parties were represented before the Commission.

More than one had dubious legal standing but was nevertheless allowed to participate in the proceedings. They did provide the officers of the Commission with independent input, whether by way of evidence or advice. Indulgences granted were sometimes perceived as rights and it is necessary to restate the obvious:

- * Only the person designated by the chairman may adduce evidence. In spite of this regulation parties were

²⁰ Hiemstra Die Suid-Afrikaanse Strafprosesreg 4th ed 438-440.

allowed to file affidavits and to lead, if the circumstances justified it, their own witnesses.

* Only the representative of a witness is entitled to be given the right to cross-examine. Nevertheless a wide ranging right of cross-examination was granted to counsel representing these parties. The Salmon Commission stated²¹:

"We consider that the tribunal should have a discretion to allow anyone to be legally represented who is not a witness, but who claims to be a person interested in the inquiry in that there is a real risk that he may be prejudicially affected by it. In order to succeed in his application to be legally represented such a person should have to satisfy the tribunal about the existence of such a risk."

"Such case would be rare indeed for it is difficult to imagine circumstances in which a person likely to be prejudicially affected by an inquiry would not be called as a witness."

According to Black²² "persons who are entitled to representation must have an interest in the inquiry apart from any interest in common with the public and the interest must be liable to be adversely affected by the evidence."

²¹ paragraphs 55 and 56.

²² 1980 NZLJ 425

Parties who were granted the right to cross-examine did not satisfy any of these tests.

* A witness may only be cross-examined by a party if the chairman deems it necessary in the interests of the functions of the commission. Nevertheless parties were granted wide ranging rights of cross-examination. The cross-examination was repetitious and attempts to limit the cross-examination sometimes gave rise to unpleasant debate.

* The commission and only the commission has to decide which witnesses are to be called.²³ Quite often advice on this matter was received. It was not always accepted. Some of the requests bordered on the ridiculous, others were politically motivated. Others dealt with matters deemed by the Commission to be irrelevant. The sense of what is relevant and what is not of the Commission and that of some parties did not, unfortunately, always coincide.

* No party has a right of access to information or documents in the possession of the commission and dissemination may not take place except in so far as it is necessary for the functioning of the commission. In spite of this affidavits and exhibits were, as a rule, supplied in advance to interested parties. Information

as to the results of inquiries was freely distributed.

Interrogatories were normally answered.

* Only the person designated by the commissioner may adduce argument, but all parties were granted the opportunity to do so.

A22 The regulations applicable to the Commission, in their original form, provided that

"whenever the Commission is satisfied upon evidence or information presented to it that the Commission's enquiry may influence pending, instituted or existing judicial procedures, evidence relevant to such procedures shall not be received or heard by the Commission until such time as such procedures have been completed."

In that form the regulations made it virtually impossible for the Commission to commence any investigation of any moment. The regulations were then amended to allow the Commission to deal with such matters. The amended regulation read as follows:

"Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's enquiry may adversely affect existing, instituted or pending judicial procedures or investigations which may lead to the institution of judicial procedures, evidence which is relevant to such procedures or investigations shall be dealt with by the Commissioner in such a manner as not to adversely affect such procedures and investigations."

A provision was also inserted enabling the chairman, at any time during the course of the Commission's activities, when he deems it necessary, to refer information or documents to the attorney-general or the South African Police for further investigation.

* The regulations provide a clear indication that the Commission was not appointed to overrule existing legal procedures or to take over the ordinary functions of the S.A. Police or the attorney-general.

* It also confirms the view that the main purpose of this Commission was to identify criminals in order to bring them to justice.

* The regulations also explain the fact why certain matters were not dealt with in open Commission and why certain witnesses have not been called.

Time Magazine²⁴ raised what it called "a troubling question" about extra-judicial congressional probes of the Oliver North scandal in these terms:

Did the law-makers' (*in casu*: Commission's) haste to hold sensational hearings guarantee that the culprits would go unpunished?"

It may also be noted in passing that in the United Kingdom commissions "have in the past and no doubt will in the future wherever practicable forebear from investigating any side

issues when it is known that a prosecution is in contemplation or may be brought in respect of them."²⁵ It is obvious that this general approach must yield to the terms of reference of any particular commission.

A23 "There are important distinctions between the inquisitorial procedure and the procedure in an ordinary civil or criminal case. It is inherent in the inquisitorial procedure that there is no *lis*. The tribunal directs the inquiry and the witnesses are necessarily the tribunal's witnesses. There is no plaintiff or defendant no prosecutor or accused; there are no pleadings defining issues to be tried, no charges, indictments, or depositions. The inquiry may take a fresh turn at every moment. It is therefore difficult for persons involved to know in advance of the hearing what allegations may be made against them."²⁶

A commission is not appointed to prove or make a point. It must gather the relevant evidence on an issue, whether cupatory or exculpatory.

Because of the political and emotional undercurrents of the present inquiry and since there were clearly opposing parties, the officers of this Commission were requested to act in a more or less neutral manner in examination of witnesses and argument and not to take part in the action to the extent they would have under normal circumstances. (This neutrality did not apply to the investigation itself.) The

²⁵ Salmon Commission paragraph 64.

²⁶ Salmon Commission paragraph 30.

proceedings had a hybrid character in the sense that the advantages of an inquisitorial procedure were, as far as possible, married to the advantages of the accusatorial procedure.

Although the exclusionary rules of evidence do not apply in commission proceedings, those rules of evidence which are based on logic and the experience of judges over the ages are taken into account since they take part in the mental processes of any lawyer.

A24 The Commission was taken to task for the fact that its officers conducted investigations "behind closed doors without the public being aware of this fact". The officers did in fact conduct such investigations, interviewed potential witnesses, perused documents and took statements of possible witnesses. If the investigation failed to produce any positive result, the facts of the investigation and its results were not made public. In a number of instances the legal representatives were, however, informed of the result of a particular investigation.

Prior to the appointment of this Commission I stated the procedure I had adopted in the past in commission proceedings as follows:²⁷

"There is, however, an inherent danger in leading all the available evidence in public, simply because it may

²⁷ Business Ethics and Morality, a conference presented by the Institute of Directors in Southern Africa 13 June 1989.

transpire that the evidence is baseless and that great personal harm has therefore been inflicted without any just cause. A clean bill of health in the eventual report may be but a small consolation.

The disadvantage of an *in camera* hearing is that it creates wrong perceptions about the work done, and the public does not have sight of the evidence actually given. It has to rely on the digested facts and not the raw facts for drawing its own conclusions. In parenthesis, it may be stated that it would appear as if the public and press reach their own conclusions long before the Commission reaches its.

It should also be remembered that before facts can be sought, it is necessary to believe that facts exist. A fact-finding body cannot act like an explorer stumbling upon a discovery. It must act as a general rule like a scientist who has a goal in mind and knows where to seek for this material.

The procedure we followed which was calculated to provide the necessary balance between these conflicting factors, was more or less the following:

Witnesses were interviewed and statements were taken from them by officers of the Commission. If a statement implicated someone he was informed of the tenor, though not necessarily the detail of the statements, and given the opportunity of setting out his version of the facts.

The statements were then considered and analysed by the officers of the Commission in consultation with the chairman, and an assessment was made whether the evidence is *prima facie* credible, fits in with the available objective facts, whether it falls within the terms of reference and is truly relevant. Only thereafter was evidence led in public. We wish to believe

that we were able to minimise the damage to innocent parties."

It has since come to my attention that the Salmon my attention shares my views in this regard. The report states:

"Further time in preparing for public hearing would also give the tribunal a better opportunity of discarding irrelevant evidence. It is of the greatest importance that irrelevant evidence should not be made public, particularly if it contains what are clearly groundless charges against anyone."

"From this it will be seen in our view it is essential for the tribunal to consider the evidence as collated by the treasury solicitor" (i e before the hearing).²⁸

In stark contrast to the views expressed are the views of counsel for the Webster Trust who submitted:

"During the proceedings before the Commission it emerged there were fundamental differences between the Commissioner's approach to the Commission and the approach of the undersigned. We regard to Commission's task as a fact finding one. In essence, the Commission is on a fishing expedition and must attempt to establish as many facts as possible."

"The Commission on the other hand repeatedly adopted the approach that no investigation would be undertaken unless there was a clear indication that such investigation would produce some tangible result, and questions which might have led the Commission to further evidence were disallowed because we could not indicate that the answer would of necessity be relevant to the Commission's task."

²⁸ The role of the treasury solicitor was fulfilled by the Attorney-General of the OFS, Mr McNally S.C.

Counsel misunderstood the position. The officers of the Commission did investigate but did not present the evidence relating to inconclusive, baseless and irrelevant matter.

A25 One can only agree with the statement by the Salmon Commission²⁹ that no commission should be set up to investigate a nebulous mass of vague and unspecified rumours. In a sense the terms of reference of this Commission requires it to investigate just that.

At the opening of the Commission a list of 71 alleged unresolved politically inspired murders was handed in as exhibit A1. That list emanated from the office of the Minister of Justice. The Independent Board of Inquiry into Informal Repression provided the Commission with a list of acts allegedly perpetrated against individuals and organisations who have been known to oppose the policies of the present government. The list consists of 42 murders, 7 instances of disappearances and more than 200 instances of other acts of violence. A similar list was received from the University of the Witwatersrand. The South African Police produced a computer print-out containing the names of 2 851 alleged victims of politically motivated murders. Since the appointment of the Commission further acts of alleged politically motivated violence and murders were reported and brought to the attention of the Commission.

Except for a handful of instances, which will be dealt with in the course of this report, these lists and allegations were provided without any supporting evidence. It was and could not be feasible for any commission to investigate even a representative sample of these allegations. In order to deal with the issue at hand in a sensible manner, it was ruled that should a party wish to bring a matter falling within the terms of reference to the attention of the Commission he must do so by means of an affidavit or solemn declaration in which the following are set out fully:

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) any other relevant information known to the declarant.

In other words, the mere allegation that the matter fell within the scope of the Commission's mandate did not suffice. Facts were required. The facts had to indicate that an investigation by the Commission could, reasonably speaking, produce some result. However, in spite of the ruling, each instance which was brought to the notice of the Commission and which had a kernel of evidence received its full attention. Certain matters were investigated by the Commission's officer on their own initiative. Some produced results, others did not.

A26 The Salmon Commission laid down six cardinal principles for the conduct of a commission. They are:³⁰

- "1 Before any person becomes involved in an inquiry, the tribunal must be satisfied that there are circumstances which affect him and which the tribunal proposes to investigate.
- 2 Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
- 3 (a) He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.
(b) His legal expenses should normally be met out of public funds.
- 4 He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
- 5 Any material witnesses he wishes to call at the inquiry should, if reasonably practicable, be heard.
- 6 He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him."³¹

An attempt was made to comply with these principles, except paragraph 3(b) over which the Commission had no control. It is especially rules 1 and 2 that must be respected. In this regard some of the parties insisted upon the calling and cross-examination of witnesses against whom no factual alle-

³⁰ Paragraph 32.

³¹ These principles were quoted (in translated form) with apparent approval in Bell v Van Rensburg N.O. (*supra*)

gations existed and in respect of whom no case could be put.

In due course I intend to deal with some of these instances.

A27 Lord Denning stated in his report on the Profumo³² matter the following:

"Such being the inescapable difficulties inherent in this form of inquiry,³³ I have come to the conclusion that all I can do is this: When the facts are clear beyond controversy, I will state them as objectively as I can, irrespective of the consequences to individuals: and I will draw any inference that is manifest from those facts.. But when the facts are in issue, I must always remember the cardinal principle of justice - that no man is to be condemned on suspicion. There must be evidence which proves his guilt before he is pronounced to be so. I will therefore take the facts in his favour rather than do an injustice which is without remedy. For from my findings there is no appeal."

To those who in consequence will reproach me for 'white-washing', I would make this answer: While the public interest demands the facts should be ascertained as completely as possible, there is a yet higher public interest to be considered, namely, the interest of justice to the individual which overrides all other. At any rate, speaking as a Judge, I put justice first."³⁴

32 CMND2512 Lord Denning's Report 1963 paragraph 8.

33 The form of inquiry did differ from the form of inquiry of this Commission but the points remain valid.

34 It fell strange on the ear to hear the Lawyers for Human Rights argue that in this commission the interest of justice to the individual must yield to the public interest.

A28 This statement invites a number of comments. The first relates to the question of onus. There is no onus in commission proceedings and the commissioner must make factual findings on conflicting evidence. It will be necessary, in due course, to evaluate the evidence and establish the probabilities. I have state previously:³⁵

"Die feitebevindings gemaak, is gemaak aan die hand van die maatstaf wat in siviele gedinge geld, naamlik 'n oorwig van waarskynlikhede. Ek is van oordeel dat dit nie nodig vir 'n kommissie is om bevindings bo redelike twyfel uit te bring nie. 'n Bevinding bo redelike twyfel is nodig vir 'n suksesvolle strafregtelike vervolging. In die lig van die maatstaf aangewend, beteken dit dat 'n feitebevinding van die kommissie nie noodwendig sal lei tot suksesvolle strafregtelike vervolging op daardie aspek nie. Dit moet ook in gedagte gehou word dat feitebevindings van 'n kommissie deels gebaseer kan wees op feite wat nie in 'n geregshof bewysbaar is nie."

It was stated, however, by the Salmon Commission³⁶ that a tribunal of this nature has a "natural reluctance to make any finding reflecting on any person unless it is established beyond doubt by the most cogent evidence." That may be an overstatement. I am, however, not prepared to make a finding that a person has committed a criminal offence unless I am satisfied in my own mind that there is a reasonable prospect that such person can be convicted in an ensuing trial.

³⁵ Kommissie van Onderzoek na Sekere Beweerde Ongerymdhede oor landsgrense heen, 1ste Verslag, 29 November 1988:

³⁶ paragraph 134.

It must also be borne in mind that when allegations of criminal conduct are considered the "reasonable mind is not so easily convinced - because in a civilised community there are moral and legal sanctions against immoral and criminal conduct and consequently probabilities against such conduct are stronger than they are against conduct which is not immoral or criminal."³⁷

A29 The second aspect touched upon by Lord Denning has led me to state previously that a commission is an unruly horse running a steeplechase race and that the ultimate dilemma is that if a commission implicates, it is accused of being an inquisition and if it exonerates it is accused of being part of a cover-up operation. Professor Ellison Kahn³⁸ states quite correctly that a judge is thrust into an alien area where he is exposed to the blast of the chill winds that sweep from the offices of the communication media.

A30 The last aspect to be gleaned from the quotation relates to the distinction between allegation, fact and suspicion. This is a distinction which during the course of the Commission was continually ignored. To give an example: It is often alleged that the murder of Dr and Mrs Smit was politically motivated. The allegation is based upon a suspicion and not any fact. Any fact finding body, be it a court of law or a

³⁷ Gates v Gates 1939 AD 150, 155.

³⁸ Extra-judicial Activities of Judges 1980 DJ 188 210.

commission, must base its findings on fact and not on allegations and suspicions. As Lord Denning said, no man is to be condemned on suspicion.³⁹

A31 Attempts were made from time to time to influence the Commission in the way it conducted the proceedings.

These attempts were made through or by the press or public pronouncements or allegations made during the course of argument. Such attempts are inherently counter-productive. A commission cannot allow itself to be swayed by any pressure.

A32 The Commission was informed by counsel for the Webster Trust and the Vrye Weekblad that these two parties are of the view that I have created the impression of favouring the organs of state. In their supplementary heads the same counsel deny however "that any criticism of the chairman was raised because of partiality and/or bias."

Counsel also refused to make the views of his clients his own submission. That puts an end to the matter.

³⁹ He went further when dealing with the question of rumours which are no more nor less than allegations. He was of the opinion that it is unjust to expect a minister who is the subject of a rumour to prove his innocence and said:

"It is bad enough to require anyone to meet a charge based on rumour - a charge in which there is no prosecutor, of which there are no particulars, where the witnesses speak often enough from hearsay ... It would be worse still if the individual affected had to disprove a rumour when there is no evidence against him." (ibid paragraph 296).

A33 At the opening of the commission I pointed out that it was a valid question whether it was proper to use police in the investigation, especially in respect of that part of the investigation which deals with the allegations involving police. I said that I had no other solution available and that in the absence of a factual basis one could not condemn the SAP as a whole. I then stated that should any facts be brought to my attention which reflect upon the ability of any officer to assist the Commission, immediate action would be taken. Not once was the ability of any officer questioned. No-one presented an alternative. I can say without fear of contradiction that the Commission would not have been able to function properly without its officers. Their dedication and behaviour were exemplary. They acted fearlessly irrespective of who the "adversary" was. At the argument stage it was submitted on behalf of the Independent Board that the officers of the commission could have done more to find implicating evidence in support of the Coetzee allegations. The submission was not substantiated by any examples which bore scrutiny. Counsel for Lawyers for Human Rights, on the other hand, did not support the submission.

B THE CIVIL CO-OPERATION BUREAU (CCB)

Ardua dum metuunt, amittunt vera viai

INTRODUCTION

B1 The activities of the Civil Co-operation Bureau came to the attention of the Commission as a result of certain statements made by Brigadier Mostert of the South African Police. These statements had been made under oath for the purposes of proceedings in the Supreme Court of South Africa. On 12 January 1990 he declared under oath:

"Since I became involved in the investigation of the murder of Dr Webster, as aforementioned, it has come to light that there is a secret organisation in this country with members from all levels of society, the general purpose of which is to sow fear among leftist radicals by violence and intimidation. This organisation is responsible for several acts of violence such as, inter alia, murder, assault, arson, etc. According to the information I have, the organisation is responsible for the murder of both Dr Webster and Advocate Lubowski, and my information is further that these murders were committed to achieve a political aim."

B2 On 12 February 1990 he followed this statement up, supplying the following additional facts:

"From the interrogation of Barnard and Botha I have established that the said secret organisation is in fact a unit of the South African Defence Force, which is known as the Civil Co-operation Bureau ('C.C.B.')."

He then goes on to say that he is relying on reliable evidence, that the organisation is an official organisation and

that the organisation commits its acts with the intent to achieve a political aim.

B3 It was ascertained that the CCB is in fact a covert organisation which operates under the wings of the Special Forces of the South African Defence Force. To give a clearer idea of the actions of the CCB, it is necessary to refer briefly to the structure under which the CCB falls.

THE SOUTH AFRICAN DEFENCE FORCE

B4 The structure and functions of the South African Defence Force are set forth in the Defence Act, 44 of 1957. The said act provides that the defence force or any member thereof may at any time be employed on service -

(a) in defence of the Republic;

(b) in the prevention or suppression of terrorism;

(c) in the prevention or suppression of internal disorder in the Republic; and

(d) in the preservation of life, health or property or the maintenance of essential services.

As the title of the Act indicates, the Defence Force is there to provide for the defence of the Republic of South Africa. It may be taken as axiomatic that -

- * on its own, the Defence Force is not competent to identify the enemy of the Republic;

- * the Defence Force or its members cannot act on their own in defence of the Republic or in the prevention or suppression of terrorism;

- * the employment of the Defence Force must be sanctioned by higher authority;

- * the identification of enemies is a political function, and the Defence Force may not interfere in the politics of the day;

- * although the Republic has been or is in a state of war in the eyes of many, the laws of the land have not been suspended;

- * military operations are not limited by the national boundaries;

- * the Defence Force and its members are bound by the law in force in the country.¹

¹ See, for example, End Conscription Campaign v Minister of Defence 1989 2 SA 180 (C).

SPECIAL FORCES

B5 Special Forces is a division of the South African Defence Force and falls directly under the the Chief of the South African Defence Force. Special Forces is usually under the command of a major-general. The only management directive issued to the general commanding Special Forces made available to the Commission is the one issued to General Joubert (probably during 1986). The responsibility of the general commanding Special Forces (and consequently the responsibility of Special Forces) is "to disrupt maximally the enemies of the state in support of other parts of the force and as directly ordered by CSADF".

The primary functions include the management of Special Forces: Intelligence.² The secondary functions include the planning and execution of all Special Forces operations. Among the objects of Special Forces are the following:

- * to make a contribution, by means of special operations, towards winning the war;
- * to provide a clandestine/covert capability within Special Forces.

² There is considerable confusion in the public mind regarding the State's intelligence systems. There are several of these and they are separate and distinct, although they do exchange information. A distinction must be drawn between:

- * NIS - National Intelligence Service
- * MID - Military Intelligence Division
- * The Security Police

In addition, each Defence Force unit has its own intelligence service. So, too, Special Forces.

Among the aims of Special Forces are the following:

- * to disrupt the SACP/ANC/PAC and other front organisations on an ongoing basis by means of external offensives;
- * to execute reconnaissance operations on an ongoing basis against Swapo's external facility;
- * to identify targets for actions.

From this it is evident that the so-called ANC-SACP alliance and the PAC were identified as enemies of the Republic. This identification is in any case understandable in view of the fact that those organisations have asserted that they are engaged in war against the Government of the Republic.³

CCB

B6 To find out how the CCB was brought into existence, when this happened and for what purpose, is very difficult. For some reason or other (the South African Defence Force alleges) there is no documentary evidence that refers to these matters. That there was in fact documentation appears from the evidence by one of the CCB members. According to him the

³ There is no indication that the political authority has employed the Defence Force on service against any so-called "rightist" organisation. This explains why there has been no action against such organisations.

documentation was in the possession of the CCB and this documentation vanished when the other allegedly incriminating documentation of the CCB vanished. It is hard to accept that the SA Defence Force would have authorised the establishment of an organisation that had a budget which, with the passage of time, was to amount to R27 million per annum without any documentation or written authority. It should therefore be understandable that the mere allegations regarding the origin and objects of the organisation are treated with some scepticism.

B7 As appears from the policy directive to Special Forces, the ANC was identified as an enemy, and authority was granted for the ANC to be maximally disrupted abroad and for covert organisations to be set up. The plan was to establish a covert organisation divided into regions and it had to operate in such a way that its operations could not be traced back to the SA Defence Force or the State. Approval in principle for such a covert organisation was granted by the Chief of the South African Defence and the Minister of Defence during 1986. As has already been said, there is no written proof of the plan or the approval. Be that as it may, this approval in fact led to the establishment of the CCB, which was a successor to an already existing covert organisation in Special Forces.

B8 From the personnel plan of the CCB it is evident that the organisation's object was "already contained in previous

documentation". As has been said, that documentation vanished like mist before the morning sun. However, it appears from the personnel plan that the CCB was to function on a private basis,⁴ but that the supreme political authority had to be obeyed. Members⁵ of the organisation were therefore required to subscribe to the policies of the ruling party and ensure that their operations did not conflict with those policies. The laws of the state had to be obeyed at all times.

B9 To return to the objects of the CCB, according to the SA Defence Force the CCB has the same functions as Special Forces and had to operate within the framework of the policy directive quoted. According to General Klopper, the chairman of the CCB (General Webb) and the managing director of the covert organisation divided into regions and it had to operate in such a way that its operations could not be traced back to the SA Defence Force or the State. Approval in principle for such a covert organisation was granted by the Minister of the South African Defence and the Minister of Defence during 1986. As has already been said, there is no written proof of the plan or the approval. It is that as it

⁴ This means that a member was financed by the CCB to set up and operate a private front company. In addition, the CCB's management was structured in accordance with ordinary private sector concepts. The chairman was at the same time the general commanding Special Forces. It would appear that he did not have too much to do with the management. Under him there was the managing director, a person with a rank equivalent to that of colonel.

⁵ That is, direct members, in other words, employees of the organisation. Use was made of indirect members. These are persons who were used for operations without their knowing that they were working for the CCB.

CCB (Mr Verster)⁶ "interpreted" the objects of the CCB as follows:

"The purpose of the CCB is to gather special information in connection with the enemies of the state as well as to execute operations against such enemies abroad where no other security forces have access. Operating against such enemies means throwing their plans into confusion to the extent that these plans cannot be carried into effect or that the execution of such plans is ineffective. It also involves support to other branches of the SA Defence Force in the execution of their operations. Operation is in all spheres in which the enemy is engaged."

B10 From this it appears that the CCB -

* had to gather specialist information;

* had to operate against the enemies;

* had to confine its operations to the enemy abroad.

B11 General Webb confirmed the above-mentioned task of the CCB,

adding that among other things the CCB had to do the following:

* infiltrate enemy networks (pipelines);

⁶ General Webb became chairman on 1 January 1989. His predecessor was General Joubert. General Webb's association with the CCB was suspended when the Commission commenced. Mr Verster was managing director throughout. Although he was also suspended, it appeared that he continued to exercise his authority over the CCB. Thus, for example, he remained in possession of the so-called foreign files and, until late in June 1990, controlled or tried to control access to documentation.

* process the information so obtained into intelligence and planning;

* disseminate intelligence along the channels laid down;

* the specific specialist execution of operations that cannot be executed by other branches of Special Forces.

He also alleged that the CCB's activities were directed towards operations outside the borders of the Republic.

B12 Mr Verster alleged that the aim of the CCB is to gather specialist information inside and outside the RSA relating to the enemies of the RSA and more specifically the ANC, PAC, SACP and Swapo. As far as the ANC is concerned it was more specifically the military wing of the ANC. The purpose was also to execute operations against the enemy abroad wherever no other security forces had access.

B13 However, the fact of the matter is that in 1988 the CO decided to create a domestic region. This region was known as Region 6.⁷ The question that arose was what the functions of Region 6 were. According to Mr Verster the task of Region 6 was the same as those of other regions, the only difference being that the field in which Region 6 had

⁷ The structure of Region 6 was as follows:

Regional manager	-	Burger
Co-ordinator	-	Brits
Cell members	-	Van Zyl, Botha, Maree
Unwitting members	-	e.g. Gordon, Hardien

to gather information was centred internally - in contrast with the field of other regions, where there was mainly a foreign focus. He also maintains that the operations of Region 6 were not internally focused. Since it will eventually be evident that it is common cause that Region 6 and its members did in fact "operate" within the country, the question arises why and to what extent.

B14 To answer the first question reference may for the moment be made to the evidence of the co-ordinator of Region 6. He alleges that the task of Region 6 was to penetrate some of the RSA pipelines to the enemy outside the RSA, from within the country. It was then necessary to monitor persons inside the RSA and with the aid of the knowledge so obtained, to try to infiltrate pipelines to other countries. This kind of action is of course legitimate. The intelligence obtained in this manner regarding the internal activities threatening the security of the State was normally brought to the attention of the SAP, but, as he says -

"In exceptional cases, however, it did happen that the way in which such information was obtained did not make it possible to pass the information on to the South African Police for action. For example, this was so when the identity of the source of the information could not be disclosed. The disclosure of information in such a case would then inevitably have resulted in it not being possible to act against such person in the normal way.

In such exceptional cases, where the enemy's own action necessitated this, the CCB, in good faith and in in the execution of its duty to ensure the security of the

state and its subjects, considered it essential to act against such persons itself."

The validity of this excuse could not be tested, because the witnesses concerned who resorted to this excuse refused to give particulars on the ground that such answers might incriminate them. In the light of the available information there does not seem to be much substance to this excuse anyway.

B15 Contrary to this "official" version, is that given by the witnesses Botha and Van Zyl. They were members of Region 6. They allege that Region 6 was established "to internally disrupt" the enemy. To this end, Region 6 was activated during January 1989. Although, on the one hand, Region 6 was an intelligence unit, it also had to gather information with a view to the maximal disruption of the enemies of the Republic internally. Such disruption was to be the main purpose of Region 6. Maximal disruption could conceivably consist in anything from breaking a window to killing a person, depending on the priority class.

B16 It is an objective fact that Special Forces operations have to be approved and authorised. The Chief of the SA Defence Force may, in given circumstances, grant approval for the execution of operations, but if there are political and strategic implications involved, the matter must be submitted to the Minister of Defence for final approval.

B17 The Commission has a serious problem about relying to any significant extent on any of the witnesses that gave evidence on the various internal projects of the CCB. On the one hand there are witnesses⁸ such as Verster, Christo Brits, Braam Cilliers and Shaun du Plooy, whose evidence is so vague or contradictory that at various points it is of no value. On the other hand there is the evidence given by accessories such as Van Zyl, Botha and Gordon, each of whom has or may have his own motives.⁹ Thirdly, there are witnesses such as Botes and Van Deventer who want to make money out of their evidence or are merely extortionists. In addition, Brigadier Mostert relied on information which he obtained while detaining some of the CCB members under section 29 of the Internal Security Act. Brigadier Mostert's recollection of what was said from time to time during those detentions is extremely suspect. Once again it is necessary to draw a clear distinction between allegations and evidence.¹⁰

⁸ These witnesses were allowed to testify in disguise. They alleged that they feared for their lives. In view of the fact that criminal proceedings are anticipated their identities are disclosed in an annexure. The disguise did not render findings as to credibility difficult: viewed as a whole, the witnesses were untrustworthy in any case.

⁹ Gordon was not called for cross-examination because this might have had too great an influence on a criminal prosecution. Van Zyl was not cross-examined on behalf of the CCB. There is a reason for this which cannot be disclosed. It is therefore not possible to draw any negative inference from this omission.

¹⁰ Other acts of violence with which the CCB is charged but regarding which no corroborating evidence exists include:

- * the poisoning of the Rev. F. Chikane
 - * the burning of Mr Roskam's motor-car
 - * acts of violence against trade unions such as Cosatu and TGWU
 - * acts of violence against the SA Council of Churches and
- continued on next page

THE ATHLONE BOMB INCIDENT

B18 There is sufficient evidence to show that the CCB and some of its members from Region 6 planted and activated a bomb at the Early Learning Centre in Athlone, Cape, on 31 August 1989. Whether the crime committed was sabotage, damage to property or attempted murder is not for the Commission to decide. The fact is that the incident took place.

This act was motivated by the allegation that the premises concerned were being used for meetings where acts of sabotage were discussed and planned.

ADV DULLA OMAR

B19 There is sufficient evidence that points to members of the CCB having been guilty of either the conspiracy to murder Mr Omar or an attempt to murder him.

The motivation for this operation was that Mr Omar was the regional secretary of the UDF in the Western Cape and that he was attached to the executive of various other prohibited organisations alleged to be front organisations for fomenting

continued from previous page
the SA Catholic Bishops' Conference.

The Ribeiro incident will be dealt with separately.

MR GAVIN EVANS

B20 Gavin Evans is a journalist and apparently a friend of one Hein Grosskopf. The latter is suspected of acts of terrorism. It is clear that at a certain stage the CCB decided that Grosskopf's friends had to be eliminated. There is prima facie evidence that there was at least a conspiracy or an attempt by members of the CCB to murder Evans.

MR MHLABA

B21 Mr Mhlaba is an attorney in Durban. A member of the CCB who operated in Swaziland and Mozambique alleges that he obtained information that Mr Mhlaba was controlling finances for the ANC, besides which he was procuring weapons for the ANC. Precisely what happened is not clear. What is certain, however, is that on 4 March 1989 Du Plooy prepared a document dealing with the elimination of Mr Mhlaba by means of poison. The poison was to be administered on 13 March 1989. The reasons for the elimination as set forth in the document are that Mhlaba is a senior ANC member in this country, that he has secret means of communication with members abroad, that he recruits couriers, that he supplies military members with funds for operations and is involved with the UDF. The

document is incomplete, and apparently there was an alternative plan to shoot Mhlaba. Nothing came of these plans. The reason why is doubtful in the light of the evidence. Who was responsible for proposing and evaluating an elimination is also doubtful. What is certain, however, is:

- * a member of an external region was involved in the possible elimination of a citizen of the RSA within the borders of the country;

- * the grounds for elimination are appalling since the intended victim, if convicted in a court of law, would have received a sentence of imprisonment for his actions;

MR MHLABA

- * the factual basis underlying the reasons for elimination is extremely shaky and suspect.

The problem regarding this document is that it may be indicative of an attempted conspiracy to murder. As the three persons¹¹ alleged to be involved are all untrustworthy witnesses, it is impossible to make any further factual findings concerning these events.

DR DAVID WEBSTER

B22 The late Dr Webster is described as a human rights activist who showed an interest in unlawful acts allegedly committed

¹¹ Verster, Botes and Du Plooy.

by the SA Defence Force. He was also a pacifist and alleged to be "a focal point in the left-wing community". On 1 May 1989 he was shot dead with a shotgun outside his home in Johannesburg. The South African Police came under intense public pressure to solve this crime. So great was the pressure that the police even wrongfully detained or arrested persons. Furthermore, the provisions of section 29 of the Internal Security Act were abused.

B23 In any event, as indicated at the beginning of this section, Brigadier Mostert declared under oath that he was in possession of reliable information that the CCB was responsible for the murder of Dr Webster. The Commission wished to check the correctness of this allegation. Brigadier Mostert refused the Commission access to his files because to his mind the matter did not fall within the Commission's terms of reference.

B24 In due course the officers of the Commission did inspect the police docket. I was told that the docket contained no information to support the allegations quoted. Upon enquiry, the Commission was repeatedly requested by the SA Police not to interfere in the Webster investigation because that would prejudice the investigation. In fact, persons called by the Commission to give evidence had been detained under section 29 and the Commission initially had to resign itself to this. Subsequently, however, it was decided to serve summonses for the detainees on the Commissioner of Police. The result of

this was that the detainees were released and that they had the opportunity of testifying before the Commission. I may just add that there is little doubt in my mind that the detention, also of these persons, under section 29 was without grounds.

B25 The Commission immediately began to search for documents, but was at first unable to identify the premises of the CCB. Brigadier Mostert assisted the Commission in this connection. The search, with warrants, produced nothing. Summonses duces tecum produced nothing. As the proceedings unfolded before the Commission, it appeared that the relevant documentation had either been destroyed or concealed by members of the CCB. Intervention by the State President, the Minister of Defence and the Chief of the Defence Force was to no avail. Documents were and still are missing. Officers of the Commission searched various premises and strongrooms, but in vain. Members of the CCB admit that the documentation is missing but plead ignorance. The question whether the documents are not being deliberately withheld from the Commission elicited the response that privilege against self-incrimination was invoked. The Commission was entertained to a preposterous tale of an emergency plan which was said to have come into operation. The irony is that when the documents were initially called for the CCB itself invoked the Protection of Information Act. Now it is alleged that, before invoking the said Act, the documents had already vanished. I have no

doubt that the persons directly responsible for the disappearance of the documents are Verster, Braam Cilliers and Brits.

B26 In view of these circumstances Brigadier Mostert was placed on terms to furnish the Commission with the information at his disposal pointing to the CCB's being responsible for Webster's death. More specifically, he was asked to substantiate the allegations quoted.¹² He first filed an affidavit which did not answer the question at all, but in which an attempt was made to suggest that the Commission was interfering with his functions and prejudicing his investigation. That affidavit was not convincing. The same question was put to him again, and he produced a second affidavit. In that affidavit he deals with various matters, but conspicuous by their absence are the facts on which is based his allegation that Dr Webster was murdered by the CCB. The result is that in the end he had to come and testify and explain under oath.

B27 In summary, what his evidence boils down to is that he believes the CCB to be responsible for the death of Advocate Lubowski,¹³ that an unknown person telephoned the Black Sash in Cape Town and told them that the person who killed Lubowski killed Webster and that this gives rise to his suspicion that the CCB was responsible for Webster's death.

¹² B1 and B2 supra.

¹³ See Section D infra.

These facts may have given rise to his suspicion, but what is certain is that, under oath, he misled the Court and the Commission in saying that he had reliable information that the CCB is responsible for Dr Webster's death. His evidence as a whole was unsatisfactory and contradictory, but he concluded on the note that he is convinced that those who were detained by him and were members of the CCB, namely Vazyl, Botha and Barnard, did not murder Dr Webster.

B28 If one considers the totality of the evidence it justifies the view, according to the argument of counsel on behalf of the Webster Trust, that "there is a strong likelihood that the CCB was responsible for David Webster's death or, in the alternative, that one or more of its members were responsible for his assassination." Unfortunately the facts upon which this submission is based do not lead to that conclusion. One cannot be blamed for suspecting the CCB of this murder particularly since the CCB has done nothing to allay such suspicion. All that the evidence shows is that the CCB might have murdered Dr Webster. There is, however, no prima facie evidence that elevates this suspicion to anything more than mere suspicion. But there is one fact on which a considerable number of witnesses gave evidence and which, if true, is an indication that the CCB as such might not be responsible for the death. This is the fact that the managing director, through whom an authorisation to launch such project had to be channelled, feverishly made enquiries to ascertain whether any member of Region 6 might have been

involved in the murder. He would not have made such enquiries if he had authorised the operation.

B29 Of course this fact does not exclude the possibility that individuals attached to the CCB killed Webster. However, no proven motive was suggested for individual action in this case. Some of the facts adduced by counsel in this connection should just be placed in perspective:

* It appears that a few days before Webster's death the co-ordinator procured or had to procure ammunition for Region 6. He alleges that it was 9 mm ammunition, whereas Webster was killed with a shotgun. Be that as it may, there are various indications that ammunition was procured for Region 6 on occasions where no connection was found between the procuring of that ammunition and an unlawful act. On the other hand, the co-ordinator's diary shows the procuring of a limpet mine a few days before the Athlone bomb incident.

* A list of members of the Five Freedoms Forum was found at the head office of the CCB. Webster's name appears on the list and his name is arrowed. In the same file, to which the press referred as a "hit list", there are hundreds of names of officer-bearers of several organisations. Only some of the persons on those lists were victims of alleged anti-left action. According to an affidavit filed, the arrow was inserted after Webster's death. Webster Trust's counsel indicated

that they did not wish to cross-examine the deponent. There is therefore nothing sinister about his mark. Other persons' names were marked in the same way, and nothing happened to them.

* The evidence led before the Hiemstra Commission as to who Webster's alleged murderer was was followed up, but this produced nothing further.¹⁴ No connection between the CCB and any of the persons there mentioned could be found. In accordance with regulation 14, the supplementary information was passed on to the investigating officer in the Webster murder to enable him to assess and correlate the information for himself.

* The suggestion that glimmers through here and there is that Barnard was responsible for the murder. In this connection the following, inter alia, are relevant points:

** At the time of the murder Barnard was either no longer in the service of the CCB or had been suspended from that service.

** Barnard in fact still received money from the CCB after Webster's death, but this was allegedly for the purpose of terminating the association.

¹⁴ The person there implicated in the murder was implicated by means of third-hand hearsay gossip based on speculation. I was not prepared to lend the story any credibility by allowing the so-called "witnesses" to testify in public.

** Barnard was in fact used by CCB members in spite of his having been dismissed or being on ice.

** One of counsel took it upon himself to submit second-hand hearsay allegations to the Commission regarding Barnard. These allegations were followed up and led nowhere. Some of these allegations were put as facts in argument. These facts in themselves take matters no further.

** Brigadier Mostert's present opinion is that Barnard was not responsible for the murder.

** No personal motive for such a murder was imputed to Barnard.

CRITICAL EVALUATION

B31 Although a commission does not normally express moral judgments, there is sufficient reason to do so in the case of the CCB.

* South Africa would like to be seen as, and tries to be, a state that subscribes to the rule of law.¹⁵ This means that the state must obey its own laws and will act against its subjects only in accordance with the provisions of its own laws. If any organ of state takes the

¹⁵ Blaau "The Rechtsstaat Idea Compared with the Rule of Law as a Paradigm for Protecting Rights" 1990 SALJ 76:

"The principle of legality has at its core that government should act in accordance with valid law. On the whole this component of the Rechtsstaat is upheld in South Africa. As a general rule government actions which encroach upon the rights and freedoms of the individual must be in terms of an enabling statute."

law into its own hands this principle, which is a cornerstone of any civilised form of government, is destroyed.

* In addition, the CCB arrogated to itself the powers to try, to sentence and to punish persons without those persons knowing of the allegations against them or having had the opportunity to defend themselves.

In addition, it appears that the information on which the verdict is based is inherently suspect and untested. The "penalty" imposed is also out of proportion to what would have been imposed in a civil court.

* The actions of the CCB have contaminated the whole security arm of the State. Their conduct before and during the Commission create suspicions that they have been involved in more crimes of violence than the evidence shows.¹⁶ These suspicions are not necessarily unfounded. The Commission has been unable to achieve one of its main purposes, namely to restore public confidence in a part of the State administration.

¹⁶ How easy it is to charge the CCB with anything now is evident from the case of Piet Ntuli, a Minister of KwaNdebele before his death. He was killed by a car bomb. According to a report in Vrye Weekblad Van Deventer, a former member of the CCB, said that the CCB was responsible for his death. Before the Commission he invoked self-incrimination and refused to answer questions. However, he suggested that his knowledge of Ntuli's death was derived from press reports. Incidentally, responsibility for Ntuli's death is proudly accepted by Hani, the leader of Umkhonto we Sizwe.

* There are sufficient indications that the CCB, or at least some of its members, had their own political agenda and that this agenda did not correspond to the expressed agenda of the political authority.

* There are also indications that the CCB puts its own interests and those of its members above the public interest or the interests of the State.

* The CCB neither knows nor recognises any higher authority. Orders by the State President (as commander in chief of the Defence Force), the Minister of Defence and the Chief of the Defence Force were simply ignored. Requests by Parliament, the Auditor-General and the Commission were treated with contempt.

* The CCB placed a monkey foetus in Archbishop Tutu's garden. Mr Verster shrugged this off as a "little joke". Whether this act was an attempt at intimidation is hard to say. It was certainly in bad taste and uncalled for. If it was intended as a sick joke, it was a joke that cost the Exchequer several thousands of rands.

* The CCB's staff policy is suspect. Persons with serious previous convictions (such as murder) or personality defects were employed in circumstances that point to

their being engaged specifically because of, and not in spite of, their previous convictions or defects.

B32 It did not lie within the Commission's terms of reference or powers to examine the structural, political and financial implications of the CCB. In response to a request by the Joint Committee on Public Accounts every possible assistance was given the Auditor-General, who will presumably report in due course.

Grounds for justification, motives and excuses were not addressed either.

Allegations that the CCB had ties with Inkatha and the Africaner Weerstandsbeweging were followed up but led nowhere.

The Inkatha connection was alleged in the Vrye Weekblad following a statement by Van Deventer, a person referred to earlier. He now denies under oath ever having said anything of the kind. On the assumption that he did say so previously his earlier statement would, in the light of his evidence, be false.

The AWB connection was also published by the Vrye Weekblad in the light of a statement by one Smith. Smith confirmed his allegation under oath and furnished a tape recording of a conversation with one Cornish to corroborate the statement. Cornish told Smith that he was a member of the CCB and that there were ties between the CCB and the AWB. Cornish admits

the conversation between him and Smith, but says that he was boasting and was not telling the truth. We were able to establish objectively that Cornish neither is nor was a member of the CCB. This so-called lead also died an early death. In any event Smith's allegations are at present the subject of a police investigation.

RESPONSIBILITY FOR THE CCB'S OPERATIONS

B33 It is normal for a defence force to establish and make use of a covert organisation. The question that arises is who is responsible if the covert organisation or its members do not abide by the prescribed rules or if they commit offences. It is not uncommon for employees and officers of the State to commit offences in the course of their service without someone else being responsible for such acts.

B34 The Minister of Defence is of course politically responsible for his department, and that includes the CCB. The nature and extent of the political responsibility is not a matter that called for the Commission's attention. The Commission was therefore not prepared to become a forum for political debate. It is not the Commission's function to assume the role of Parliament. The Minister's knowledge of the existence of the CCB as such therefore did not concern the Commission either.

B35 During argument considerable mention was made of what persons in authority should have known. In so far as the principle has political undertones, what has already been said applies. In so far as the principle applies to criminal law and the Commission's terms of reference is limited to criminal law - such a principle does not apply to crimes that have intent as an element. The offences in the terms of reference are all crimes that require an intent. The question to be answered under the terms of reference is who "committed or caused or instructed to be committed murders or acts of violence as principal offender". The question is whether the Commission is responsible if the covert organisation or its members do not comply with the prescribed rules or (or) accessories. It is not uncommon for employees and officers of the State to be accessories after the fact.

B36 Argument on behalf of the Webster Trust and the Vre Weekblad was often not based on facts and was aimed at the media rather than the Commission. An example is the submission that members of the CCB ought to be prosecuted or, inter alia, the following:

* Treason: Counsel did define treason, but did not adduce a single fact in support of the argument.

* Attempted murder. There are members who, in the light of the evidence, may be implicated in certain specific cases of attempted murder (or conspiracy to murder) but to implicate, for example, Van Zyl, Botha, Barnard,

Burger and Webb in the Mhlaba case, as counsel did, is disconcerting.

One can therefore hardly be blamed for treating the rest of the argument with a certain measure of circumspection.

B37 Argument regarding responsibility for the CCB's misdeeds may be summarised as follows:

* The End Conscription Campaign was a thorn in the flesh of the Defence Force.

* Many acts of aggression were committed against the ECC by persons unknown.

* "The Minister of Defence used the military to commit acts of aggression" against the ECC.

* "Through the abuse of the military might entrusted to the Minister of Defence and the senior officers of the SADF, a situation was therefore created which was fraught with the potential of escalating into violence and death."

* Members of the general staff "must have been aware of the policy of aggression against the ECC formulated by the Minister of Defence."

* The "general atmosphere of aggression against left-wing activists ... could not but develop into actual physical violence".

* Consequently the Minister of Defence and various members of the general staff are criminally or otherwise liable for these misdeeds.

B38 The problem with this argument is that there was no factual basis for the primary allegations, namely that the Defence Force perpetrated the acts of aggression against the ECC or that the Minister of Defence had a policy of aggression against the ECC.

B39 However, counsel based his argument on what had happened in the case of *End Conscription Campaign v Minister of Defence* (supra). In that case the ECC charged the Defence Force with numerous acts of aggression as well as other acts. Responsibility for all the acts of violence was denied by the Defence Force. The Cape Supreme Court found that it had not been proved that the Defence Force was responsible for those acts. Five other acts were, however, admitted by the Defence Force. Those acts are unlawful and in some instances even unsavoury, but it calls for something other than a fertile imagination to elevate the admitted acts to acts of violence.

B40 The acts admitted were, according to papers in that case, committed as part of an anti-propaganda campaign of the Defence Force against the ECC. It is inconceivable that - the said acts can be described as "acts of aggression";

* a propaganda campaign can be described as a "policy of aggression";

* a causal relation can be found between a propaganda campaign and the misdeeds of the CCB. After all, the misdeeds that were proved had no visible connection with the ECC.

B41 I would just add that learned counsel informed me that to his knowledge and belief the interdict issued in that case against the Minister of Defence and the South Africa Defence Force on 14 October 1988, which prohibited them from continuing the propaganda campaign, was adhered to.

B42 Admittedly counsel asked for the opportunity to question the Minister of Defence regarding the allegations on which the ECC application was based. As the court had already made a finding in that connection and as no new facts were presented to the Commission which would have enabled the Commission to reopen the case, the request was refused. In addition to that, the one party with an interest in the matter, namely the ECC, did not join the proceedings of the Commission or submit any request to the Commission.

B43 An alternative approach by counsel to the question was motivated as follows:

* The Minister of Defence and the then chief of the Defence Force adopted a plan during 1986 which meant that the ANC had to be maximally disrupted abroad and a covert organisation had to be established which was to be divided into regions.

* The CCB is the covert organisation that was established in accordance with this plan.

* Region 6 is an internal region and was envisaged when the plan was adopted.

* Members of Region 6 perpetrated misdeeds within the borders of the country.

* Members of Region 6 were promised indemnity from prosecution beforehand.

* Therefore the misdeeds were authorised by the Minister or the Chief of the SA Defence Force.

B44 Once again the argument ignores material facts and is based on false assumptions:

* The plan was, as repeatedly stated, to disrupt the ANC abroad.

* The policy directive of Special Forces, and therefore also of the CCB, contained an express restriction to the effect that offensive action was to take place externally.

* The command structure of the CCB was aware of this restriction, realising and understanding that it applied to the CCB.

* According to General Webb - and there is nothing to the contrary - no internal operations were submitted to any higher authority for authorisation.

* The allegation by Van Zyl and Botha that they were informed that Region 6 had to engage in internal offensive action cannot, in the light of available evidence, be traced back to higher authority.

* The allegation by Van Zyl and Botha that they were promised indemnity from prosecution was contested and in any case conflicts with the provisions of the personnel plan, which states in no uncertain terms that CCB members must obey all the laws of the land.

B45 In spite of his denial, counsel imputes knowledge of the existence of the CCB to General Badenhorst (Chief of Military Intelligence). Whether he had such knowledge or not is again

totally irrelevant. The only question is whether he had knowledge which made him principal offender, accomplice or accessory after the fact. Counsel did not argue this.

The basis of the argument was that General Badenhorst must have known about the CCB during his term of office as chief of operations and that he therefore knew about their operations. Of course, the one does not follow from the other. In any case, no alleged or proven misdeeds with which he CCB is charged were committed during the period referred to. As has been said, the uncontested evidence is that no authority was sought or obtained for any internal operations. The fact that General Badenhorst knew how the authorisation procedure worked is of no consequence because, as he himself puts it, the authorisation procedure applied to all Special Forces operations. The CCB is merely a part of Special Forces.

B46 The foregoing explains the Commission's view not to call the Minister of Defence as a witness. There were no facts available which indicated that his evidence would materially contribute to the proceedings. In fact, a consultation with him (as with many other witnesses) did not produce anything of assistance to the Commission.

THE MINISTER OF POLICE (MR A. VLOK) AS WITNESS

B47 The Minister of Police was not called as a witness in spite of requests by the representatives of the Vrye Weekblad and

the Webster Trust. These parties had no legitimate interest in the evidence of the Minister. From the perspective of public interest, and regard being had to the principles previously discussed, the Commission considered calling the Minister, but decided against this because there was no reason to believe that the Minister could give any relevant evidence.

B48 The facts are briefly the following:

- * The Vrye Weekblad reported, apropos of an interview with one Botes, that Botes had "fully" informed the Minister about the CCB at the end of August 1989.

- * Botes denied this and the Vrye Weekblad's counsel admitted to Botes that the word "fully" was a figment of the journalist's imagination.

- * Botes alleges that he told the Minister that he was working for the CCB, that Verster (his chief) had threatened him with death and that Verster had damaged his premises with a bomb.

- * Apparently Botes also informed the Minister that he was engaged in certain CCB activities in South West Africa.

- * Botes did not inform the Minister of any unlawful activities of the CCB in the RSA.

* The police investigation came to the conclusion that Botes very probably blew up his own premises.

* Botes is, according to his own evidence, a perjurious extortionist.

In spite of this background, the reason for the request to summon the Minister was given as follows:

"We would suggest that Minister Vlok was at least informed of the existence of a (sic) organisation within the military family bent upon attacking fellow South Africans."

B49 The request bordered on the absurd and was therefore rejected. During argument the request underwent a metamorphosis and it was then said that shortly after the event the Police knew what the CCB was about, that they perhaps communicated this to the Minister and that the Minister might have passed this on to the Minister of Defence. Ergo, the Minister of Defence knew, before December 1989, of the CCB's existence. As already said, the date on which the Minister of Defence became aware of the existence of the CCB is totally irrelevant for the purposes of this Commission. In any case, the argument fails because the basic premise is lacking. It was only during December 1989 that the police were able to establish that there was a link between the CCB, as an organ of the Defence Force, and illegal acts. After all, Botes's charge revolved around a private vendetta. The police docket concerning the Botes case does not even contain a reference to the CCB.

B50 The Independent Board argued, in another connection, that the Minister had to testify. Two reasons were given:

* The Minister had to indicate what orders he had given as to how matters were to be handled that were being investigated by the Commission. The answer to this submission is this: The Commission has handled its own investigation and has no reason to suppose that the Minister gave any instruction that was to impede the activities of the Commission. In fact, the Commission worked through the Minister's legal team, and the Commission had to put on the brake because the legal team would have inundated the Commission with information. Every enquiry was answered and every request complied with. For example, the officers of the Commission had free access to all the security files.

* The Minister had to give evidence on what knowledge he had of unlawful activities within his Department. As all the cases in which the police were implicated preceded the appointment of the Minister concerned, there was no substance to this reasoning.

FAILURE TO CALL ALL THE KNOWN MEMBERS OF THE CCB AS WITNESSES

B51 The appropriate test whether a witness should be called has already been dealt with and boils down to the question whether the Commission has reason to believe that he has

relevant evidence or that there is prima facie information to which he should answer. Maree was in fact a member of Region 6. An interview with him did not yield anything and he could not be confronted with any fact. Acheson was alleged to have been an unwitting member of the CCB and to have been involved in Advocate Lubowski's murder. He had been detained in Namibia for some months and then released because there was no provable case against him. During his detention he supplied no material information to the Namibian police. After his detention he did not set foot in the Republic. Notwithstanding this, the Commission is blamed by counsel for not summoning Acheson as a witness.

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C VLAKPLAATS

Cuncta fluunt, omnisque vagans formatur imago.

BACKGROUND

C1 From the late sixties the South African Police gave shelter to ex-members of the ANC who returned to the RSA and sided with the SA Police, on a property known as Vlakplaats near Pretoria. To these persons the name Askaris was given. In the course of time it was decided to use them as an auxiliary unit for the SA Police. The unit was formally established in September 1981. It had to help counter the mounting threat of terrorism in the RSA. It was to consist of White handlers, rehabilitated terrorists (Askaris) and ordinary Black members of the SA Police. It was divided into separate groups and was under the control of the Security Branch head office. The following guide-lines were laid down:

"(a) The posting and withdrawal of teams will be arranged by a senior officer of Group C with the divisional commander concerned.

(b) As soon as a team has been posted the senior member must immediately report to the office of the divisional commander.

(c) For the duration of its presence in a division the team will be under the command and control of the divisional commander concerned.

(d) The team must be used exclusively to assist in tracking down, arresting and identifying terrorists."

There is no indication that the aim and purpose of the unit was formally altered.

C2 From July 1980 to December 1981 the unit was under the command of Captain Dirk Johannes Coetzee. He left the Republic in November 1989 and joined the ANC. Shortly after his departure he made certain statements in Mauritius which enjoyed wide publicity. It is convenient to quote what he said in a statement he wanted to depose under oath but, owing to circumstances, was unable to:

"7. I was in command of a unit of the security police which consisted of 'rehabilitated terrorists'.

8. The unit was stationed at Vlakplaats - a 44-hectare farm situated seven kilometres outside Erasmia on the Skuweberg road. The farm was purchased by the security police to accommodate rehabilitated terrorists. The farm was purchased in about 1981.

9. The real purpose of the unit was to use the rehabilitated terrorists in tracking down and rounding up guerillas who had infiltrated South Africa.

10. The unit that was under my command was also used to kill and eliminate political and security opponents of the police and government. The operations were carried out inside neighbouring states as well as in the country.

17. Some time afterwards the five groups were established at Vlakplaats. In my group, myself excluded, there were: W O Paul van Dyk, Almond Nofemela, David 'Spyler' Tshikalanga and Joe.

18. This group eventually formed the nucleus of the security police hit squad."

C3 With this statement Coetzee gave credibility to allegations made from the death cell on 19 October 1989 by ex-Sergeant Butana Almond Nofemela. Nofemela was to be executed on 20 October 1989 for the murder of one Lourens. This murder was committed on 11 September 1986. The murder has nothing to do with the activities of this Commission or the Security Police and would, to use Nofemela's terms, constitute a "private enterprise". Be that as it may, Nofemela's statement basically contained the following allegations:

* He is not guilty of murdering Lourens.

* He was a member of the Security Branch's "assassination squad" under the command of Coetzee and various other persons in command.

* He was the leader of the squad which on official instructions killed Attorney Griffiths Mxenge in 1981.

* He was "during my stint in the assassination squad" involved in eight murders and numerous kidnappings directed against the ANC. These crimes had been authorised by higher authority and some were committed in some of the neighbouring states.

C4 Further corroboration of some of Coetzee and Nofemela's allegations was given by ex-Constable David Tshikalanga.

Originally he was Coetzee's gardener and later joined the police and eventually followed Coetzee abroad.

C5 Although some of the incidents to which Coetzee, Nofemla and Tshikalanga testify undoubtedly took place, the SAP and its members deny any involvement in the acts committed. I would be difficult in the extreme to prove the veracity of these allegations in criminal proceedings, and presumably these allegations and the consequent denial were an important reason for the appointment of this Commission.

C6 The central issue in this part of the inquiry is the credibility of the accusers and, on the other hand, that of the accused. The Commission was requested on behalf of lawyers for Human Rights not to analyse the evidence in any detail. The Commission should, so it was argued, only be satisfied in general that members of the SAP probably would commit violent crime for political ends. For the sake of the argument, counsel simply omitted to furnish a single reference to the record of the evidence.¹ However, the problem is that specific members of the SA Police were accused of specific acts. If the Commission does not address itself to the detail of the allegation, the impression will be created that the Commission regards those specific allegations as proved. Convenient though it may be, I do not consider it my function to paint organisations and individuals black or white with so broad a stroke of the brush.

¹ This does not apply to the Independent Board's counsel.

C7 The said argument should also be judged in the light of the fact that neither Lawyers for Human Rights nor the Independent Board argued that Coetzee, Nofemela or Tshikalanga were reliable witnesses. The argument was that "the core of (this) evidence is, on the probabilities, true and can be accepted as such". As I understand the allegations, the "core" of the allegations is that a hit squad consisting of Security Police and Askaris was formed at Vlakplaats for the main purpose of kidnapping and eliminating ANC members. However, counsel concede that the evidence does not corroborate such an allegation.²

² Coetzee's testimony contained many prevarications. His original allegations were quoted in paragraph C2. To those allegations may be added that he also attributed to the Vlakplaats unit all the unsolved crimes of violence that could not be attributed to the ANC.

L5 pp. 493-6: Before August 1981 there was no hit squad at Vlakplaats. After that there was one. It came into being as a result of an order to kill Mxenge for example. The term "hit squad" is a term coined by the press.

L6 pp. 513-4: There was only one hit squad in the Security Police, and it was ninety per cent controlled from Vlakplaats.

L6 pp. 618-20: His previous statement that the Vlakplaats group formed the core of the Security Police's hit squad is misleading.

L7 p. 701: The statements quoted in paragraph C2 that he was the commander of the SAP's hit squad, that it had to kill and eliminate political and security opponents and that Vlakplaats was the squads' headquarters, are false.

L9 p. 869: He backs out of the statement that all unsolved crimes of violence must be attributed to Vlakplaats.

Of particular importance as regards the Vlakplaats unit's alleged criminality is the following:

* According to Coetzee the Vlakplaats unit was involved in no authorised and in one unauthorised operation before August 1981.

* After Coetzee left Vlakplaats at the end of 1981, Tshikalanga was there for a further three years and Nofemela a further five and a half years. Tshikalanga was unable to testify to a single unlawful act during the further period of his service. Nofemela did give evidence on a few instances. As will be shown, his evidence on most of the instances is patently false.

* Several Askaris absconded from Vlakplaats, and at least some of them are back with the ANC. The Mnisi brothers were at Vlakplaats during the crisis period (7 October 1981 to 26 February 1982). I was asked to hear their testimony in London. I was later informed that they had no relevant evidence to offer. In London I was requested to hear the testimony of another Asari who had just absconded, but he did not materialise.

* The last operation of which Vlakplaats is accused took place in 1986.

C8 This argument is also placed in perspective by the following argument on behalf of Lawyers for Human Rights:

* The Commissioner should not be so naïve as to believe that police never utter untruths or commit offences.

* In the atmosphere of a so-called total onslaught members of the police were likely to fight back with gloves

* This is all the more so because conventional police methods were inadequate in the circumstances and members of the police would have taken drastic action out of necessity. Corroboration of this is found in the statement that "the South African set-up, in particular, lends itself to political foul play - to people doing morally repugnant things in secret - to achieve their political ends. Because there are such directly conflicting interests, almost every interest group at some stage or other thinks that its continued existence is threatened and that it must therefore take drastic measures to defend itself. It is then very easy to do things in a spirit of 'necessity knows no law' that would normally offend against all civilised norms."³

³ Heyns "Vuilspel en skynheiligheid" Insig May 1990 p.50.

* From this follows the probability that the allegations by Coetzee and others are true and that the denial by the police is false.

C9 I am not so naïve as to believe that all members of the SAP are angels. However it would be equally naïve to brand all members as devils. There is of course a general probability that members of the SAP may commit violent crime for political ends, given the general security situation in the RSA. This probability increases if it is taken into account that the ANC and the PAC have declared war on the SAP and the SADF and that their members have been identified as legitimate targets in the armed struggle.

In this struggle scores of members of the SAP have lost their lives or property.

This general probability does not, however, found any probability that a particular policeman committed a particular crime of violence for a particular purpose.

C10 Of course, the argument has its origin in Coetzee's evidence that the Security Police were above the law and had a culture of their own. According to him the Security Police enjoyed special protection because of the "twilight war", as he put it. Afterwards it appears that what he actually meant is that when members of the Security Police acted, they acted in such a way that they left no trace, with the result that the

SA Police could not suspect them. Because, as he says, if the matter could have been traced back to the Security Police, the member concerned would have enjoyed no protection.

C11 In weighing the evidence of all the witnesses there are a number of factors to be borne in mind:

* The material events took place mainly during 1981. The passage of time must necessarily play a part and lead either to faulty recollections or to a lack of recollections.

* There is a lack of documentation which could serve as proof of guilt or innocence. By regulation certain documents have to be destroyed after prescribed times have elapsed. The missing documents fall within the provisions of these regulations. In addition, the members of the Security Police do not keep diaries. According to Coetzee, all operations are in any case planned in such a way that no trace is left. Certain S and T forms did, however, remain extant. Likewise certain work sheets. After so many years, it is impossible to ascertain to what extent these documents are correct or incorrect. When it suited him, Coetzee appealed to these documents in corroboration of his evidence. When the documents did not fit in with his evidence, he dismissed them as forgeries. The documents

do at least give a *prima facie* indication of what the position was.

* In general it is easier for a witness simply to deny an allegation, and it is hard to prove that such a denial is false. On the other hand, it is also very difficult to furnish proof for a bald denial (which is true). Similarly, if the denial is true a witness can hardly do otherwise than deny the fact.

* The fact that a person tells one or more lies does not mean that the rest of his evidence is false and therefore to be rejected. The converse is also true: The fact that a witness tells the truth about one or more incidents does not mean that the rest of his testimony is true. On this basis the argument fails that the Commission could not make a proper evaluation of the credibility of witnesses with regard to the alleged internal operations unless external operations were also investigated. In a few cases where evidence of external operations could shed light on internal operations, the evidence was admitted.

* There is, in general, no reason for a person to incriminate himself or implicate himself in a crime. The motives of Coetzee, Nofemela and Tshikalanga therefore merit special attention. The denial by the Security Police, if false, would be more self-evident.

* The fact that there are contradictions between witnesses does not mean that both witnesses' testimony is untrue. It just makes it more difficult to make a finding of fact. There are important similarities and differences in the evidence given by Coetzee and Nofemela. The similarities can possibly be explained in the light of the fact that Coetzee always spoke or testified after having seen or heard Nofemela's statements or evidence. The differences, then, would not be explainable.

* If allegations about persons are based on the evidence of untrustworthy witnesses, the correct approach that has to be followed is to accept the evidence of such a witness "only where it was shown by reliable evidence or the surrounding circumstances to be probably true."⁴

COETZEE

C12 Coetzee was the main witness, and counsel gave his evidence the most weight. It is necessary first to consider his attributes as a witness. His personality is complex, and it is difficult to size him up. His own counsel sums him up, in euphemistic terms, as follows:

"We do not suggest that Coetzee can be represented as a shining example of a crusader for what is right and just

⁴ Per Nicholas, J.A., in Zwart & Mansell v Snobbery (Cape) (Pty) Limited AD 8 March 1984.

in a society, or as a person whose word and whose statements should simply be accepted at face value and without question, or whose evidence is reliable in every material respect. There are, in fact, many unsatisfactory features about his evidence and some of the details recounted by him."

C13 Coetzee is highly intelligent and has a remarkable memory.

In addition, he has a fertile imagination. Under grueling cross-examination he displayed self-confidence and saw himself the victor of the struggle.

C14 Parts of his evidence are inherently improbable. This may be ascribed to his being unconventional and a tendency towards irrational action. When an inherent improbability was put to him, he laughingly shrugged it off by as being "a case for method in my madness or madness in my method". He granted that some of his actions (which were supposed to have been well planned) were absurd in every respect. Although irrational action on his part is understandable, it is difficult also to impute improbable and irrational behaviour to each and every person who crossed his path.

C15 Coetzee describes himself as a killer, housebreaker, thief, liar, perjurer and illicit diamond dealer. Although some of the incidents can be traced back to his association with the Security Police (in the light of his evidence, other incidents have no connection with it. He says that he feels remorse about what he did. However, he shows no sign of remorse. Although he sees himself as the leader of a hit

squad, time and again he distances himself from the crimes and, on his own evidence, leaves the execution to someone else. He believes that because he has confessed his deeds his conscience is clear and that he can no longer be called to account. He is now entitled to a new life. He always put the blame for his own actions on others even if he himself had initiated or committed the deed. To sum up, he showed strong psychopathic tendencies.

C16 It appears from his own evidence that -

- * he had often committed perjury in the past;
- * he is prepared to give directly contradictory answers without batting an eyelid;
- * he had often fabricated evidence in the past and had also destroyed evidence;
- * he had falsely implicated others in crimes;
- * he had switched people's roles in incidents;
- * he had given someone a false alibi;

* when asked to explain why he had previously given false evidence, his answer to the question was "I just did it" and "because I did it".

C17 He says that much of his evidence is hearsay. Of course, he is also an accomplice and often the only witness. Apart from that, his evidence conflicts in material respects with statements he made in Mauritius in November 1989. His excuse is that he was under great pressure at the time. This excuse does not hold water. For some time he had been collecting material on alleged misdeeds because he wanted to concoct it into a novel. This fact immediately creates problems because the objective facts on which he gave evidence are published facts, with this one difference: he identifies doers. How much has he read or heard? How much is his own knowledge?

C18 These question marks loom larger if it is considered that since landing with the ANC in Lusaka he has been debriefed and also briefed by the ANC. He did not want to give particulars of this. That his testimony was tailored to fit the newly learnt facts showed through from time to time.⁵ Where he was ostensibly able to remember the registration number of a vehicle which he is alleged to have stolen more than ten years ago it is rather doubtful whether he relied on his memory only.

⁵ A good example is the fact that in April 1990 he already knew that the Botswana authorities were in possession of documents relating to the so-called Botswana incursion in November 1981. Although he had apparently not yet had sight of these documents, he obviously knew what they basically contained. The Commission only became aware of these documents in June. See L6 p.552 lines 10-14, 565 lines 3-12, 566 lines 1-2 read with B141. See also L6 p.573 lines 23-4, 613 and L5 p.467.

C19 An important episode in Coetzee's life that also throws considerable light on his personality is his disciplinary trial in 1985. The departmental charges against him are not relevant for the purposes of this report. Nor are the findings. What is important, however, is the fact that as a result of the findings he left the police an embittered man. Even more important is that Coetzee was of the opinion that -

- * the SAP were involved in a conspiracy against him;

- * consequently the trial was a farce;

- * the police had fabricated evidence against him; and

- * he is justified in fighting fire with fire and therefore lies with lies.

C20 On behalf of Coetzee medical evidence to the following effect was presented:

- * Coetzee has diabetes.

- * His condition is hard to control, and his brain function is affected.

- * His mental problems started in March 1981.

* As a result of his mental state he is irresponsible, aggressive and impulsive and he also has diminished responsibility.

* He is not fit for further duty as a policeman.

Coetzee does suffer from diabetes but he says the other findings by the physician are based on fabricated facts which he, Coetzee, gave the physician. Coetzee's object was to be certified unfit on the basis of this false evidence so that he could leave the SAP on a disability pension.

C21 This creates a dilemma. Either Coetzee is mentally unbalanced and not criminally responsible as testified by the medical practitioner, or he is a man who is prepared to fabricate evidence for a trial to achieve his own ends. The following extracts from his evidence speaks volumes:

"Either you are capable of being a policeman or you are capable of fabricating evidence to suit your circumstances ... Yes, I would put it the last way, that I am capable of fabricating evidence to suit me as the whole police force is at the moment (full) of chaps involved in these hit-squads."

C22 The question that remains to be answered is what were Coetzee's motives in -

* as argued by the SAP, falsely incriminating himself and thereby also several members of the SAP;

* leaving the country and joining the ANC.

There are many answers:

* Coetzee's hatred of the SAP runs deep and his grudge has roots in events that took place as long ago as 1979 to 1980. Although Coetzee initially wanted to pretend that this is not so, in time he was to admit his hate frankly.

* The basis of his grudge lies mainly in the belief that there was and is a conspiracy against him in the police. This fear or belief resulted in Coetzee's firmly believing, when Nofemela made his allegations, that the police were going to trump up a case against him around the Nofemela allegations and that he was going to be in for it alone.⁶

⁶ L9 p. 880:

"In other words, there was a risk that you could be the scapegoat - That's right.

On Nofemela's evidence - That's correct.

So you - you were concerned that you, you may be made a scapegoat. You may be prosecuted in the light of Nofemela's allegations - And all the others will get off.

L9 p. 881:

"That was the reason why you decided to leave the country ... What was this?

The possibility that everyone may turn against you as in the past and that you may be the only accused on Nofemela's allegations ... That's correct, that was one of the reasons."

- * This paranoia is also manifested in his view as to what Nofemela, according to him, would have given false evidence before the Commission:

"Almond talked the biggest load of shit I've ever seen in my life. I get the impression the Boer bribed him to stuff the case up."

"At stages he talks the biggest load of rubbish and tells lies that make sparks fly - this is now about stories before the murder and after the murder. Something is wrong there but we can't put our finger on it. It looks as if he is now deliberately making up stories about his internal operations and adding little bits. I wonder if the cops are not getting him mixed up in the head."

- * Coetzee also saw no future for himself in South Africa. As he himself says:

"Since I left the police force (in 1985) I have never been able to get a permanent job again. The jobs I have applied for have always needed some form of clearance or other. Time and again I've been discredited by the police, in spite of my clean criminal record."

- * To this must be added his delusions of grandeur and the fact that he sees a great future for himself in the ANC. He is confident not only that in due course he will have a high rank in the new police force but also that perhaps he will "one day be privileged enough to be chief investigating officer in South Africa's very own post-war Nuremburg trials". Although he at one stage wanted to pass these ideals of his off as a joke, there is

doubt that they reflect his sentiments. It should also be remembered that he was being used by the ANC's publicity department and is dependent on the ANC.

If these factors are considered in conjunction with his impulsive and irrational nature there would not be anything odd about his falsely incriminating himself or the SAP or leaving the country and joining the ANC.

NOFEMELA

C23 Nofemela is not such a complex character. He is highly intelligent and he also handled gruelling cross-examination with reasonable ease. Although he appeared to be a bit nervous at the beginning of his testimony, he afterwards testified with full self-confidence. He himself elected to testify in English, of which he has excellent command. At a stage when he was experiencing difficulties under cross-examination, a request was made on his behalf to allow him to testify through an interpreter. The request was not based on any inability to understand or to communicate. The request was refused. Nevertheless, an interpreter was available to Nofemela throughout and he never turned to the interpreter for any assistance.

C24 In the light of his own evidence the following appears:

* He is prepared to perjure himself if it suits him.

also
* In the past he had fabricated or helped to fabricate evidence.

* Previously he had been rejected in his own trial as a mendacious and dishonest witness.

* He has the ability to twist what he hears and to present it as fact.

* The first murder in which he became involved he committed for personal gain. The last murder he committed was also for personal gain.

* As a young constable he already committed crimes for personal gain, such as illicit diamond dealing and car theft.

* He falsely implicated others in incidents.

C25 As already indicated, Coetzee is of the opinion that Nofemela tried to mislead the Commission by deliberately giving false evidence. If Coetzee is right, I also have difficulty in understanding Nofemela's motives.

C26 Naturally, Nofemela has nothing to lose by implicating himself in the incidents. As he himself indicates, he would do anything to escape execution and he did not tell the whole

truth in his initial affidavit, because he was afraid that had he done so he would have been executed. He does say, and rightly, that the fact that he made a false statement under oath to avoid execution does not mean that his other allegations are not true. As already pointed out, this only makes it all the more difficult to separate the chaff from the wheat. In passing it may be mentioned that his own counsel argued that certain of his evidence was without doubt a fabrication. One could have treated his evidence with more sympathy if he had said that the incidents occurred so long ago that he could not recall exactly what happened, but placing himself in scenes and inventing incidents in a totally false manner cannot be attributed to the passage of time.

TSHIKALANGA

C27 Tshikalanga had a serious language problem. He is actually Venda-speaking and no Venda interpreter was available. He then elected to speak English. I have no doubt that he has a better command of Afrikaans than of English and that there were ulterior motives for his decision to testify in English.

C28 Tshikalanga was not a good witness. His demeanour in the witness stand did not inspire confidence. I am conscious of the fact that demeanour in the witness stand is a dangerous criterion for credibility, but in Tshikalanga's case I have

no difficulty in using that criterion. It is true that he is an epileptic and, so I was told, during the few days before his testimony he had epileptic fits three times. The epilepsy, it would seem, was triggered by tension. His epilepsy must be serious, because Coetzee on more than one occasion described him as insane.⁷ In addition, Tshikalanga is an alcoholic and under Coetzee's influence. He has several previous convictions that have no connection with his police career. Because of his misconduct and offences he was forced to resign from the police. There are also material contradictions between that which he is alleged to have told the Vrye Weekblad and that to which he testified. In any event because his evidence covers only a limited area it is not very important. At most he provides corroboration, and does not deal with subjects independently. To the question why he would falsely incriminate the police and why he would leave the country there is once again a simple answer. He firmly believes that there is a police conspiracy against him. Apart from that, when he was still in the service of the SAP he fled the country because he had allegedly allowed some other person to drive a police vehicle without authority and that person was involved in a collision. He, as a Security Police member, then fled to Swaziland. He says he believed the police would kill him. If he is prepared to act so irrationally his flight to the ANC is, in the light of Nofemela and Coetzee's allegations, by no means odd. It is

⁷ At one stage Coetzee backed out when the implication of his testimony became clear to him.

also important to note that Tshikalanga never implicated himself in any crime before he joined Coetzee in Lusaka. Before that he had been at most a bystander. His testimony that he did not discuss the matter with Coetzee and that he was not informed as to what Nofemela had testified is rejected.

THE POLICE WITNESSES

C29 Apart from the argument that the police has possibly conspired to give false testimony, neither under cross-examination nor in argument (with a few exceptions) were falsehoods or improbabilities pointed out in the evidence. An important exception centres upon the question whether Constable Joseph Mamasela was known to Coetzee and Nofemela during 1981 and whether he might therefore have been involved in the Vlakplaats operations perpetrated in 1981.

Coetzee, Nofemela and Tshikalanga testified that Mamasela was known to them during 1981 and that he took part in irregularities during that period. To a man, the police witnesses denied these allegations. The denial was based on the following:

* Mamasela was only appointed as a constable on 4 February 1982.

* Before that date he was a police informer and (the then Captain) Jan Coetzee was his handler.

* Police informers' identities are kept secret.

* Jan Coetzee was transferred to Vlakplaats at the beginning of 1982.

* Mamasela came to Vlakplaats with Jan Coetzee.

The error in this reasoning lies in the fact that Mamasela had already been exposed as a police informer before August 1981 when he and his companion were apprehended in Botswana by members of the ANC and his colleague was killed because they were suspected to be police informers. Therefore there was no reason to keep his identity as informer secret after that date. There is also sufficient corroboration for the fact that Coetzee, Nofemela and Mamasela went to Botswana together on 26 November 1981.

It is therefore possible to find, with sufficient conviction, that Mamasela's denial is false; that he had more than one travel document during 1981; and that the general denial by the police that he could have been known to Coetzee is false.

C30 It is not intended to deal with each individual case dealt with in the evidence. Counsel also simply left certain of the cases out of account because the evidence relating to those cases was inherently so improbable or untrue that no

argument could be based or centred upon it. Nor is it intended to deal in this report with every person implicated in the evidence. Only in those cases where I consider that the person was correctly implicated or that it is necessary to deal with the specific case will such a person be referred to. This means that allegations that have not been accepted in the report as proved should be regarded as not proved. The reason for this approach is that particularly Coetzee tended simply to link the name of anyone that occurred to him to an incident. An example of this is when he made out the wife of the Attorney-General of the Witwatersrand to be secretary to the Head of the Security Police and imputed certain actions to her. She was never in the service of the State. Apart from that, on several occasions he simply made wild allegations that had no foundation in fact.⁸

⁸ See for example L7 p.719: "I did say that if they would not discover that he (Pillay) was abducted he would not have been locked up anywhere, they would have disposed of him after the interrogation.

Where do you get that from? Where do you get that from, that he would have been disposed of? -- Well, that is why he was brought to Vlakplaats and not ...

But where do you get the fact from that he would have been disposed of? -- Sir, I think I have mentioned it to you earlier when you asked it to me.

No, you have not. You can answer now. Where do you get the fact from that he would have been disposed of? Are you not answering the question or don't you wish to answer the question or can't you answer the question? -- (No reply)."

CHRONOLOGY

C31 The following chronology is given in order to place the events in perspective. Dates followed by a question mark are the dates put to the probabilities and are not necessarily certain.

20 July 1980 : Coetzee to Vlakplaats.

19 February 1981 : Abduction of Joe Pillay.

10 March 1981 : Release of Joe Pillay.

19 May 1981 : Departure of Peter Dhlamini.

1 August 1981 : Vermeulen to Vlakplaats.

4 August 1981 : Van Dyk to Vlakplaats.

4 August 1981 : Theft of kombi.

10 August 1981 : Release of Kondile (Bloemfontein)

12 August 1981 : ANC attack at Voortrekkerhoogte.

3 September 1981 : Burning of vehicles at Rhodes.

13 September 1981 : Theft and burning of Audi at Port Elizabeth.

11 October 1981 : Release of Vusi at Brits.

12 October 1981 : Alleged abduction of Moabi Dipale at Johannesburg.

18 October 1981 : Arrest of Moabi Dipale at Ottoshoop.

18 to 22 October 1981? : Alleged murder of Peter en Vusi at Komatipoort.

- 20 October 1981 : Alleged poisoning and release of Mthimkulu in Port Elizabeth.
- 23 October 1981 : ANC attack at Ogies.
- 24 October 1981 : Shooting at Lindley.
- 11 November 1981 ? : Murder of diamond dealer at Lindley.
- 19 November 1981 : Murder of Mxenge at Durban.
- 23 November 1981 : Burning of Mxenge's car at Piet Retief.
- 26 November 1981 : Attack in Botswana.
- 31 December 1981 : Coetzee leaves Vlakplaats.
- 3 January 1982 : Captain Jan Coetzee takes command at Vlakplaats.
- 16 February 1982 : Ace Moema disappears in Eastern Transvaal.
- 16 February 1982 : Krugersdorp incident.
- 26 February 1982 : Mnisi brothers abscond from Vlakplaats.
- 12 February 1983 : Paris Mhkize assault at Piet Retief.
- 22 November 1983 : Alleged attack in Swaziland: Boshigo.
- 11 February 1985 : Tshikalanga suspended from SAP.
- 25 April 1985 : Theft and burning of Galeng's motor vehicle: Vryburg/Kuruman.

27 May 1985 : Murder of Warrant Officer
Tswane at De Wildt.

23 tot 24 September
1985 : Disappearance of Japie Mapony
- Krugersdorp.

12 August 1986 : Freeing of September in Swazi
land.

14 August 1986 : Amsterdam ambush.

11 September 1986 : Lourens murder.

FOREIGN OPERATIONS

C32 From the chronology it appears that the first year of
Coetzee's command at Vlakplaats only one operation was
carried out by Vlakplaats. This was when Askaris abducted
one Joe Pillay from Swaziland on 19 February 1981. He was
taken to Vlakplaats and detained there. Afterwards he was
taken to a military installation for interrogation. He was
then detained at Lothair under section 6 of the Terrorism
Act. As the Government of Swaziland objected to the deten-
tion Pillay was released in Swaziland on 10 March 1981.

The incident was raised for the following two consi-
derations:

- * To give credibility to Coetzee and to Tshikalanga.
- * To show that the SAP probably authorised unlawful acts
across the border.

As the essence of the events is common cause, they do not lend particular credibility to Coetzee and Tshikalanga's evidence as a whole. The submission that the operation was an authorised operation does not hold water. Both Coetzee's version and the official version are that the Askaris concerned acted without authority. Coetzee himself was in Pretoria at that stage. As he put it, Pillay was only identified as a possible future candidate for abduction.

It is also relevant to point out that this incident took place before the Vlakplaats unit was formally established. Although there is reason to suspect that Coetzee had planned his abduction, there is no proof of it. Coetzee did take it upon himself to detain Pillay wrongfully at Vlakplaats and use his gardener as a warder. Coetzee was unable to offer any explanation for this action. As this incident clearly falls outside the Commission's terms of reference and does not contribute to resolving any issue, it is not necessary to deal with the incident any further.

C33 On 22 November 1983 there was a hand-grenade attack on an ANC installation in Swaziland. Nofemela alleges that he and other members of Vlakplaats, among them one Bosigo, were involved in the incident. There is material corroboration of Nofemela's version that Bosigo sustained a foot injury on that day. On the other hand, the medical evidence shows that

Bosigo had probably not sustained any foot injury as testified by Nofemela.

This is a collateral matter raised by the SAP in an attempt to discredit Nofemela. As the matter is collateral and does not come within the framework of the Commission's terms of reference, I decided that Bosigo cannot be called as a witness and also that no other evidence in rebuttal may be presented. I have accordingly not used this evidence in my assessment of Nofemela's credibility.

C34 September is the MK pseudonym for a present member of the Vlakplaats unit. He had been detained by the Swaziland authorities and was relieved from prison on 12 August 1986. Nofemela alleged that this operation had been engineered by the SAP and that he had a hand in it. September, on the other hand, alleges that the SAP had no part in freeing him and that this was done by the ANC. According to him he decided to return to the RSA after being freed and to hand himself over to the SAP. The fact of the matter is that he fell into the hands of the SAP and was detained by them for a considerable time.

September had previously given evidence on this before Daniels, J. He was in the witness stand for about two weeks and was subjected to prolonged cross-examination. The honourable presiding judge accepted his evidence as true and correct. September briefly testified before the Commission

and was briefly cross-examined. The same improbabilities in his account as those put to him before Daniels, J., were again put to him. His version remained the same. Although I have no reason to differ with Daniels, J., my approach is that this incident is not relevant to my terms of reference, and accordingly it was not used for findings as to credibility. I may just mention that Major De Kock corroborated September's evidence and that his evidence on this aspect was not placed in issue by Nofemela's counsel during cross-examination.

It is true that Nofemela alleged that September was assaulted during his detention in the RSA. If September, as suggested, was a police agent, surely the police would not have assaulted him. As September denies the assault, there is no real point in taking this aspect further.

AMSTERDAM AMBUSH

C35 Acting on information received from September, members of the Security Police laid an ambush for a number of ANC infiltrators in the vicinity of Amsterdam on 14 August 1986. Five persons were killed in the course of the operation. One survived, was wounded and was arrested the next day. He was convicted of, *inter alia*, terrorism and is at present serving long-term imprisonment.

The infiltrators had to bring weapons into the country, hand these to their comrades here and then return to Swaziland. To be able to arrest their local contact, the Police had to allow the infiltrators to deliver the weapons and then ambush the infiltrators on their way back. The infiltrators did in fact make contact with their local comrades into whose vehicle rockets, hand-grenades, ammunition and explosives were loaded. The vehicle was stopped and the three occupants were shot dead during the ensuing shoot-out.

Two of the infiltrators moved back to Swaziland and were ambushed. One was shot dead and the other was wounded and escaped. He was arrested the next day. On 19 August 1986 he made a statement before a magistrate and also made a statement to the Commission. His version is that he was armed with a semi-automatic firearm for self-defence, but that he was shot without warning.

C36 That the police fired the first shot is common cause. According to Nofemela the shooting of the returning infiltrators was not in self-defence but because Captain De Kock had given orders beforehand that the infiltrators must be shot dead and not captured because he did not want to waste time on court cases. However, the police version is that Van Dyk did the shooting and that Nofemela could not have witnessed the incident. The orders supposed to have given by De Kock were also denied.

Again, Nofemela's counsel did not try to place De Kock's denial in issue. Nor is there anything to corroborate Nofemela's evidence in this respect. Even if it is accepted that De Kock did say what Nofemela alleged he said, the question remains whether the police acted in self-defence or whether they committed murder with a political motive. Even if it is accepted that the shooting was without warning, the circumstances at most show that the bounds of self-defence were exceeded. The argument that the counter-insurgency actions is a politically motivated crime in these circumstances simply does not hold water. Once again these incidents throw no light on the Commission's inquiry or in Nofemela's credibility.

LINDLEY SHOOTING

C37 An incident that does shed light on Coetzee and Nofemela's credibility is the shooting at Lindley. On 23 October 1981 there was an ANC attack on a caravan at Ogies in the Transvaal. This resulted in an intensive manhunt. At that stage Coetzee and Nofemela were either in the Eastern Cape or at Ladybrand and were summoned to the Transvaal. On 24 October 1981 there was a shooting of occupants of a vehicle near Lindley. The reason for the shooting was the allegation that the driver of the vehicle was under the influence of liquor.

Shortly after the incident Coetzee and Nofemela made statements under oath according to which they had travelled in

separate vehicles and Nofemela had fired the shots in order to force the drunk driver to stop. However, Nofemela was charged with attempted murder of the occupants at the beginning of 1982. The case was withdrawn and a consequent civil claim was paid by the SAP. The reason for withdrawing the case and settlement of the civil claim is that Coetzee and Nofemela alleged after the time that Mamasela had fired the shots. His identity had to be kept secret, presumably because Mamasela was an informer at that stage and was not allowed to carry a firearm.

It is not possible to establish whether Coetzee and Nofemela's initial statements were false or whether their subsequent statements in which they implicated Mamasela were false. Be that as it may, the relevance of this incident lies in the following:

* If Coetzee and Nofemela's second statements are correct, it would show that they already knew Mamasela at that stage and that he worked with them. In another connection I have already found that Coetzee and Nofemela knew Mamasela during 1981, and it is not necessary to give a final decision on this aspect in this connection.

* According to Coetzee he had already fired shots from Nofemela's weapon on the scene so as to create evidence that Nofemela, and not Mamasela, had done the shooting.

* Nofemela actively played along in the creating of this false evidence.

* Coetzee and Nofemela immediately made false statements under oath.

* The findings previously made in the light of Coetzee and Nofemela's evidence, namely that they are perjurious fabricators of evidence, are corroborated.

LOURENS MURDER

C38 Nofemela's untrustworthiness is also strikingly illustrated by the Lourens murder. Nofemela and a co-perpetrator murdered the deceased on 11 September 1986. The motive was robbery. They killed the deceased and tried to rob him, although they knew that he would hardly possess anything of value. Conviction of this murder led to the death sentence being passed on Nofemela.

Initially Nofemela confessed his involvement in the murder to the police but in that process he switched his role with that of his co-perpetrator. Subsequently, and also during the trial, he denied any complicity. He explained his initial confession to the police as follows:

"... I made up a story that they (the SAP) could accept and what they wanted."

He also deliberately made a false pointing out with the purpose of putting the police off the scent.

The day before he was to be executed he repeated his innocence under oath because, as he put it, he was afraid that otherwise he would be executed. Quite by accident in the course of his evidence before the Commission it appeared that he now admits his complicity in the murder and that the findings of the trial judge were correct in every respect.

PARIS MHKIZE

C39 Nofemela's ability to elevate hearsay allegation to fact and to exaggerate an incident is illustrated by the Paris Mhkize case. Paris Mhkize, a youth, was arrested at Piet Retief on 12 February 1983. Nofemela was involved in the arrest. After his release Mhkize alleged that he had been assaulted by members of the SA Police during his detention. In his statement he spelt out the detail of the assault. Among other things, he alleged that he was threatened with a welding flame.⁹ The District Commandant had misread his statement and notified the Divisional Commissioner that Mhkize had alleged in his statement that "afterwards he was

⁹ "In the room was gas which were lighted and I was threatened with the flame being passed very close to my skin. I was not burnt."

taken to a garage, assaulted again and burnt with a gas flame".

Clearly, Nofemela was aware of the contents of this letter.

He testified before the Commission that Mhkize was burnt with a gas flame in his presence and that he received serious burns¹⁰ on the chest and face. This evidence is patently

false. I am of the opinion that Nofemela thought there would be corroboration for his evidence and that he therefore made the story up. Nofemela added that Mhkize was thrown to the ground and that a shot was fired near his head to intimidate him. Mhkize does not refer to this incident in his statement.

It was argued that the rest of Nofemela's allegations regarding Mhkize may indeed be true and that the matter should therefore be taken further. Apart from the fact that the incident, if true, would amount to "ordinary" police brutality, there is no chance that any further investigation will produce anything material. The matter was fully investigated at the time, the medical evidence did not corroborate Mhkize's other allegations and the Attorney-General then decided not to prosecute. Mhkize sued the SAP for damages on the grounds of wrongful arrest and assault. The matter was settled on the basis that he abandon his allegations and claim regarding the assault. In addition, Nofemela had

¹⁰ "He was badly burnt".

already made a sworn statement at the time which directly contradicts his present evidence. All that has been added is that there is now evidence of someone who has already made a contradictory statement.

KRUGERSDORP INCIDENT

C40 Analogous to the Paris Mkhize case is the so-called Krugersdorp case. Nofemela testified that during approximately 1984, on orders given by Captain Jan Coetzee, he had to take part in an operation to kill certain UDF members. The plan was that the so-called UDF cell had to be infiltrated, that weapons were to be supplied to the members as having come from the ANC and that the people were then to be shot. As he was known in those parts, it was decided that he would not take part in the operation. Two of his colleagues then executed the operation and the people were killed near a mine at Krugersdorp. One survived and was admitted to a hospital for treatment. What is objectively certain is that three youths were in fact killed by hand-grenades near a mine at Krugersdorp on 16 February 1982. A fourth, who had sustained injuries, survived and was admitted to a hospital. The rest of Nofemela's story is patently false. It is not necessary to furnish the reasons for the finding, because neither Nofemela's counsel nor the Independent Board's counsel argued that there is any truth in Nofemela's testimony concerning this incident. Therefore, here we have to do with a case where Nofemela remembered half a story and then falsely

implicated himself and other members of the Security Police in the incident.

JAPIE MAPONYA

C41 Japie Maponya, an employee of the UBS at Krugersdorp, disappeared in 1985. His family has not heard of him since.

Because earlier his brother, Oderile Maponya, disappeared and joined the ANC, his father believed that Japie may have followed the same road. Nofemela, however, alleges that on orders from Captain De Kock he had to kidnap Japie Maponya to interrogate him and that Japie was assaulted during the interrogation and then blindfolded by De Kock and shot in the head. De Kock allegedly put the body in his car and got rid of it. As may be expected, Nofemela's allegations were placed in issue. The following facts are certain:

* Warrant Officer Tswane was murdered near De Wildt on 27 May 1985.

* At an early stage the SA Police suspected Oderile Maponya of the murder, and a search for him was mounted.

* Already on 29 May 1985 a member of the SA Police visited Japie Maponya to obtain information on Oderile. He was offered money and was paid to furnish information.

* Members of the Vlakplaats unit were used to track Oderile down, and Nofemela was probably called in from the Northern Transvaal. A photograph of Oderile was handed out to members of the police to assist them in their search. This is normal procedure. Nofemela took part in the search under Prinsloo.

* On approximately 13 September 1985 Japie was questioned by members of the SAP on Oderile's movements.

* Japie disappeared on 23 or 24 September 1985.

* The said S and T forms show that at that stage Nofemela was at Jozini in Natal and that Captain De Kock was in the Western Transvaal.

* Oderile blew himself up in a terrorism attack at Steynsdorp, Pretoria, in 1988.

C42 There is no reason to doubt the correctness of the S and T forms in this case. Nofemela confirms that on occasion he was involved at Jozini, that there was only one such occasion and that he had no recollection of that visit being interrupted. Nor would that visit have been interrupted just to have a chat with Japie. The search for Oderile took place immediately after the murder of Tswane. This also explains why Nofemela falsely gave to understand that Japie disappeared shortly after 27 May 1985.

A further problem is the motive for the killing. The motive of which De Kock was accused is that Japie might have recognised Nofemela. Incidentally, Nofemela imputed this same motive to another policeman in other circumstances. In addition, the kidnapping was quite unnecessary. Japie could have been interrogated without kidnapping him. He had already been interrogated twice before, and on one occasion he was taken away for that purpose. There is also evidence that before Japie's disappearance two people asked him to leave with them.

The only fact corroborating Nofemela's evidence is the fact that he had knowledge of the relationship between Oderile and Japie, of the place where Japie worked and of Japie's disappearance. It is probable that Nofemela was told at an early stage that Oderile and Japie were related and where Japie worked. It will be remembered that Nofemela was well acquainted with Krugersdorp. He could just as well have become aware of Japie's disappearance in the course of an investigation or through his knowledge of the people of Krugersdorp. Be that as it may, I am impressed by De Kock and Mbelo as witnesses and I have no difficulty in accepting their denial of these allegations.

DISAPPEARANCES

C43 A number of members or former members of the ANC disappeared during 1981 and 1982. According to Coetzee, they were killed by the Security Police and he usually had a hand in the incident. The persons referred to are:

Nkosinathi Peter Dhlamini

Vuyani Mavuso (Vusi)

Isaac Moema

Ginisizwe Kondile

Siphiwo Maxwell Mtimkulu

C44 The police account of these persons is briefly the following:

* Dhlamini left South Africa in about 1978 to study abroad. He was sent to Bulgaria by the ANC. In 1981 he applied to the South African Embassy in Greece for assistance and in April 1981 he was brought to South Africa at Government expense. On 23 April 1981 he was met by Brigadier Büchner at Jan Smuts Airport. He stayed at Vlakplaats for a few days. His baggage did not accompany him, and on 19 May 1981 it was handed to him at Jan Smuts Airport. No further contact was kept with him.

* Mavuso was arrested as an ANC infiltrator on 30 January 1981. He was detained until he was released at Bits on 11 October 1981.

* Moema was also arrested as an infiltrator and having expressed his willingness to co-operate with the police, he was transferred to Vlakplaats on 7 October 1981. On 15 and 16 February 1982 he and Vermeulen were on patrol in the Eastern Transvaal and during the night he absconded.

* Kondile was arrested at a border post on the Lesotho border on 26 June 1981. He was detained and was released on 10 August 1981.

* Mtimkulu was arrested on 31 May 1981 after sustaining a gunshot wound in the course of arrest. He was released on 20 October 1981. Shortly afterwards he showed signs of poisoning and was taken seriously ill. On 14 April 1982 he and one Topsy Madaka went to hospital and did not return. The motor vehicle was later found abandoned on the Transkei - Lesotho border.

C45 What strikes one immediately is that all these people were members of the ANC, were connected with the Security Police and disappeared during the period August 1981 to April 1982. Since then not one of them has been heard of by either his family or the police. This therefore leads to the submission that Coetzee's evidence that these people were killed by the Security Police is probably true. However, a factor that detracts from the strength of this argument is the fact that, with the possible exception of Mtimkulu, these people fall

into a category of persons who had to be eliminated in accordance with ANC policy. As traitors they would have been marked men, and the policy was that traitors and informers had to be killed. So-called official ANC publications from time to time actually claimed responsibility for the death of several alleged informers and traitors. Indeed, the Commission became acutely under the impression of this policy when the witness Constable Brian Ngqulunga was murdered in the course of the Commission's proceedings. It may be coincidental that he had already been branded as a traitor before, that a leaflet calling for his elimination had been distributed and that he expressed the fear before the Commission that he might be killed if his photograph was published.

DHLAMINI AND MAVUSO

C46 Coetzee is the only witness to the alleged murders of Dhlamini and Mavuso. He implicated several members of the Security Police in the commission of these murders. According to him Dhlamini was murdered because he was of no value to the police and had become a nuisance. Mavuso was killed because he did not want to co-operate with the Security Police.

In broad outline his account amounts to the following: He received orders to eliminate these two people. He was told to obtain poison from General Neethling, the head of the forensic laboratory. He then took the two to a Security

Police post on a farm at Kopfontein near the Botswana border. The poison was administered but it did not work. More poison was obtained in Pretoria and administered again, but again it did not work. For no accountable reason Dhlamini and Mavuso were then taken to Groblersdal. They were detained there for a while. On a Sunday he and Vermeulen went to Pretoria to get more poison from Neethling. From there they took Dhlamini and Mavuso to Komatipoort. In the presence of several members of the Security Police a soporific was administered to the two, who were then shot dead by Vermeulen and their bodies burnt.

C47 The problem with Coetzee's evidence is not only that it is flatly denied but also that it is riddled with numerous inherent improbabilities. On top of that, it does not fit the objective facts.

It is certain that Mavuso was released at Brits on 11 October 1981. Therefore Coetzee must have picked him up on that day and taken him to Kopfontein together with Dhlamini. According to Coetzee the last visit to Neethling to fetch poison was on a Sunday. On that Sunday he was busy in Groblersdal. That Sunday must therefore have been either 18 October or 25 October 1981. It is objectively certain, however, that Neethling was in Germany on 18 October and Vermeulen at Ottoshoop in the Western Transvaal (where he arrested Dipale). During the week after that Coetzee was either in the Eastern Cape or in the Southern Free State, because on

24 October we find him on his way from Ladybrand to Ogies via Lindley. This does not fit in with his movements at all.

C48 If one considers the probabilities it strikes one that it would not have been possible to use Dhlamini as an Askari. His security file shows that he received no military or similar training. He was trained as a teacher. Nor had he been to any ANC camps, and he could therefore not fulfil any useful function at Vlakplaats. It is therefore improbable

that he would have been at Vlakplaats after 19 May 1981.

Coetzee was unable to give any plausible reason why the trouble was taken to kill these two people. The motive for killing them is inherently suspect. Dhlamini could simply have been allowed to go. He was no danger to the Security Police and he had no knowledge that could compromise them.

No plausible reason could be given why these men were taken to Kopfontein first and then to Groblersdal and afterwards to Komatipoort to be killed. Nor could any sense be made of the evidence regarding where these persons were killed and their bodies burnt. It was near a main road next to a big town and was in a fire control area. It is also improbable that anyone of Neethling's experience would have given poison that would prove insufficient. Incidentally, there is also no evidence that either Dhlamini or Mavuso disappeared or died.

All that we know is that Dhlamini and Mavuso's present address (if they are alive) is not known to the SAP.

In any case Coetzee previously testified under oath that both Dhlamini and Mavuso went back to the ANC. He was unable to give any plausible reason for previously having given that evidence under oath. Coetzee's evidence on these two persons must therefore be rejected as false.

MOEMA

C49 There is no evidence that Moema was killed by the Security Police. The evidence that he was eliminated by Vermeulen is based on the following:

- * Coetzee alleges that Vermeulen confessed to him that he had killed Moema. Coetzee himself had no personal knowledge of the incident.

- * According to Moema's family he did in fact disappear and could not be traced.

- * An Askari who went back to the ANC shortly after Moema's disappearance, Jackson Mnisi, alleges that on the morning after Moema's disappearance Vermeulen's clothes were dirty and his face was red.

- * According to Coetzee the motive for the murder was supposed to be that Moema's heart was not in his job and that he was not trusted. According to Mnisi there was a change of attitude towards Moema in the Security Police when a certain Ephraim landed at vlakplaats and it

appeared that Moema had withheld information from the Security Police.

C50 It is improbable that Vermeulen would have made a confession of this kind to Coetzee. Vermeulen and Coetzee had nothing to do with each other after the end of December 1981. To lend credibility to the confession, Coetzee places Moema's disappearance during 1981 while he was in charge of Vlakplaats. He is very definite about this. However, it is certain that Moema only disappeared in 1982. Once again Coetzee had previously stated under oath that to the best of his knowledge Moema had absconded from Vlakplaats. Hee again, Coetzee was unable to give any plausible reason why he had previously made a sworn statement to that effect. The fact that Moema actually disappeared is common cause and fits in with both versions. It should also be borne in mind that his joining Vlakplaats and the information he had given to the Security Police would have amounted to treason. Moema's allegations take the matter no further. As Vermeulen had spent the night in the veld his clothes would probably have been dirty. In addition, Vermeulen has a strikingly dark complexion. As regards the alleged motive, an investigation by the Commission's officers did not succeed in tracing a person by the name of Ephraim in the documents of the Security Police. Furthermore, an examination of Moema's Security Police file contains no information additional to that furnished by Moema before October 1981. Again, the inevitable

conclusion is that there is no merit in Coetzee's allegation.

KONDILE

C51 Coetzee's evidence on Kondile amounts to the following:

Kondile was detained by the Security Police. During his detention he received brain damage when he fell through a window. A plan was then made to release him, kidnap him and then kill him. The plan was executed and, after being given a sopoforic, Kondile was shot and burnt.

The evidence is not always easy to follow, but the probable sequence of events is as set forth below:

Kondile was arrested by the Security Police on 26 June 1981 and detained at Bloemfontein. He was in possession of Chris Hani's (the present leader of Umkhonto we Sizwe) car. He had come by this vehicle before that in Lesotho. He did not cross the border at the border post. According to the police, Kondile was caught on his way back to Lesotho, but according to argument on behalf of Kondile's family the police abducted Kondile in Lesotho.¹¹ Kondile was transferred to the Eastern Cape and detained there. During his

¹¹ This submission is pure speculation and conflicts with the family's original statement of fact contained in an attorney's letter. When the letter was written the attorney, according to evidence, had already been furnished with the allegations regarding the alleged abduction. In any event it is not necessary to decide this point.

detention he helped to identify ANC infiltrators, among others, and passed important information on to the police, particularly about Hani and the ANC in general. However, the ANC members pointed out by him escaped the police. Meanwhile, the car had been kept hidden in Bloemfontein. According to the police documents and police evidence Kondile undertook to become a police informer and was brought back to Bloemfontein from the Eastern Cape, the car was returned to him, and he was allowed to go free. This happened on 10 August 1981. Since then nothing has been heard of him. His disappearance caused a sensation and questions were, for example, raised in Parliament about his detention and release. There were also numerous press reports about these events.

C52 The gist of Coetzee's version is that during or on approximately 13 to 14 September 1981 he had seen Kondile in detention at Jeffreys Bay. He was told that Kondile had brain damage and could therefore not be released. He was told about the plan to let Kondile go free and then to kidnap him. After the killing of Dhlamini and Mavuso (in other words after 18 October 1981) Kondile was taken from the Eastern Cape to Komatipoort. For the purpose of killing him, two senior officers of the Security Police travelled from the Eastern Cape to Komatipoort; Coetzee and others travelled from Pretoria with a soporific to be administered before the killing; and the local members of the Security Police turned up as spectators and co-perpetrators. An unknown member of

the Security Police then shot Kondile and the corpse was burnt. The group spent the whole night sitting around the fire.

C53 There is no corroboration whatever for any of Coetzee's allegations. The basic fact of Kondile's disappearance was common knowledge. Other information was obtained by Coetzee after November 1989 from the ANC. Coetzee's version is also inherently improbable and riddled with contradiction. Some aspects that strike one immediately are the following:

- * Coetzee testified that he saw Kondile's car at Jeffreys Bay. In his Mauritius statement, however, he said that he did not see the vehicle.

- * According to his testimony the brain damage occurred before 10 August 1981, and Kondile was kidnapped on 10 August 1981. If the Security Police were worried about Kondile dying in detention as a result of his injuries, surely they would not have detained him for a further two months, and then in a place where he was literally accessible to the public.

- * It is also inconceivable that they would have returned a car to a man with a serious brain injury for him to drive, and then to kidnap him afterwards.

* No plausible reason was given why Coetzee specially had to convey a soporific from Pretoria to Komatipoort for administration before the murder.

* No plausible reason was given why Kondile had to be taken from the Eastern Cape to Komatipoort to be shot by an unknown person. Coetzee said that the reason for this was that Kondile's car was to be left in Swaziland. That motive does not hold water. There was no reason for taking Kondile to Komatipoort. In any case Komatipoort is rather far from the nearest entry to Swaziland for people travelling from the Eastern Cape.

* The place and the manner of the burning are also inherently improbable.

C54 Kondile's actions would have qualified him as a traitor in the eyes of the ANC. He had disappeared with Hani's car, had identified ANC members and after a period of complete absence suddenly reappeared. It is not for the Commission to establish or to speculate upon what became of Kondile, but only to determine whether the Security Police killed him as alleged by Coetzee. It is certain that Coetzee's version is false.

MTIMKULU

C55 As has been said, Mtimkulu was arrested on 31 May 1981. He was released on 20 October 1981 and was apparently healthy at

that stage. Shortly after his release, however, he showed symptoms of thallium poisoning. He was seriously ill but began to recover gradually. In December 1981 he brought a claim against the SAP on the ground of alleged assault on him during his detention. On 2 April 1982 he instituted the claim against the SAP on the ground of poisoning. As has already been said, he left his house on 14 April 1982 in the company of Madaka in Madaka's vehicle. Later that evening Madaka returned alone to Mtimkulu's house and left again. On 18 April 1982 the vehicle was found abandoned at the Telle bridge on the border between Transkei and Lesotho. No trace has since been found of Madaka or Mtimkulu.

C56 The poisoning of Mtimkulu also caused a sensation at the time. Questions were raised in Parliament and the matter received considerable press coverage. Coetzee has also increased his knowledge of Mtimkulu since November 1986.

C57 Coetzee's version is briefly that while he was in Durban he received instructions to travel to Port Elizabeth to assist the planned kidnapping and killing of Mtimkulu. Mtimkulu was also to be released, kidnapped and killed. He travelled to Port Elizabeth via Lindley in the Free State. There he was stopped. After that Brigadier Van der Hoven allegedly travelled from Durban to Pretoria to fetch poison and take it to Port Elizabeth. The poison was administered on the day of the release, but was insufficient to kill Mtimkulu. Thereafter Mtimkulu was kidnapped and killed and his body hidden.

C58 The problems concerning Coetzee's evidence are manifold:

* Coetzee was in Durban only during the period 11 to 21 November 1981. By then Mtimkulu had already been poisoned. According to Coetzee's version the poison must have been administered during that period or later.

* When Mtimkulu was released, Coetzee was busy killing Dhlamini and Mavuso in the Eastern Transvaal and was nowhere near Durban.

* No plausible reason could be furnished why Van der Hoven would have travelled from Durban to Pretoria to take poison to Port Elizabeth.

* The planning and the administration of the poison are, in the light of Coetzee's evidence, at best a second-hand hearsay tale.

* In the light of Coetzee's first version, the kidnapping and killing of and doing away with Mtimkulu were guess-work, and according to his subsequent version second-hand hearsay.

* Coetzee was not even consistent about who the source of the hearsay was.

C59 In the light of the foregoing it is not surprising that it was not argued that Coetzee's version might be true. In argument it was assumed that this Commission can make no finding on the allegations of assault during detention. If Coetzee's version is ignored, we are back in 1982 and no additional facts have come to the Commission's knowledge. Mtimkulu might have been poisoned during his detention. The poison used is not freely available. The Commission is unable to identify a probable poisoner. Nor has it been possible to find a probable motive for the poisoning. The whole affair will shortly be unravelled in a civil suit and possibly those proceedings will provide the answer.¹² The scenario now presented to the Commission is also different from that painted by Coetzee. On the one hand it is suspicious that Mtimkulu disappeared shortly after the summons was issued. On the other hand the evidence on his poisoning already existed and would at the time have aroused - and did arouse - suspicions of police involvement. It is doubtful whether a policeman would have murdered him merely to frustrate the civil proceedings.

C60 To sum up, there is no evidence to support this suspicion. No available clues were found. Nothing could be found pointing to the possible existence of other outstanding clues. The conclusion is therefore that no finding can be made in respect of the poisoning and that, in respect of the

¹² If anything incriminating is found, the trial judge will probably make the necessary recommendations.

disappearance, there is no evidence that the Security Police were responsible for it.

argument it was assumed that this Commission can make no finding on the allegations of assault during detention. It

CAR THEFTS

C61 The Vlakplaats unit was involved in a number of car thefts and instances of damage to motor vehicles. The alleged motive was intimidation of the owners. The instances are the following:

* The theft on 4 August 1981 of a Volkswagen kombi at the Johannesburg Hotel. The vehicle belonged to a trade union in the Eastern Cape, namely NAAWU.

* The burning of three vehicles at Rhodes, Eastern Cape, on 3 September 1981.

* The theft and subsequent burning of an Audi 80 vehicle at Port Elizabeth. The vehicle belonged to a NAWU employee. This happened on 13 September 1981.

* The theft and subsequent burning 25 April 1985 of a motor vehicle belonging to one Hoffmann Galeng. He may be described as a political activist. The vehicle was stolen at Vryburg. It was found burnt out north of Kuruman.

The conclusion is therefore that the Commission can be made in respect of the poisoning and that, in respect of the

it is any other information is found. The Commission will probably make the necessary recommendations.

C62 Nofemela was alleged to be involved in all four of these incidents and Coetzee in the first three. Before going any further, the following should be noted:

* In the seventies already, Coetzee stole at least one motor vehicle in Swaziland and sold it in the RSA.

* According to his own evidence, Coetzee had and maintained close connections with car smugglers in Swaziland.

* Coetzee and Nofemela, according to their own version, stole a car from an unknown diamond dealer and sold it in Swaziland for their own gain. This would have taken place in about November 1981. This theft was unconnected with their Security Police activities.

C63 A NAAWU delegation was on its way from the Eastern Cape to Harare to attend a conference there. This trade union was a thorn in the flesh of the Security Police. The vehicle was stopped at Cradock and thoroughly searched by policemen. Nothing incriminating could be found and the vehicle drove off. The party spent the night in a Johannesburg hotel, and that night the kombi was stolen.

According to Nofemela, Coetzee had a similar kombi in his possession at Vlakplaats and told him that it was a stolen vehicle. Nofemela had to drive the vehicle to a destination for Coetzee. Nofemela himself was not involved in the theft.

Coetzee's evidence is that he received instructions to prevent the delegation from reaching Harare. He took a small group from Vlakplaats along, including Nofemela and Vermeulen. Coetzee's plan was for Nofemela to steal the vehicle. However, Vermeulen offered to perform the act of appropriation. The vehicle was stolen and subsequently sold in Swaziland.

The theft of the kombi was ostensibly politically motivated. However, theft is not a violent act and the theft in question falls completely outside the Commission's mandate. Nevertheless it can be said that on the probabilities Coetzee had a hand in the theft and sale of the kombi and that this was so because he had been requested by a member of the Security Police in Port Elizabeth to prevent the delegation from reaching Harare. In the light of his general untrustworthiness and his ability and willingness, falsely and without compunction, to implicate others in incidents it is not possible to find -

* who made the request to him;

* exactly what the request was;

* who his co-perpetrators were; and

* what became of the money.

Because Coetzee is the sole witness and is not available as a witness in a court of law, it is doubtful whether it will ever be possible to determine the facts of this incident.

C64 On the night of 3 September 1981 three vehicles parked in a street in Rhodes were set alight. One of these was a Volkswagen car belonging to a certain Grewer. Mr Grewer was a member of a community that might be described as a hippie commune. More than 300 metres from there two lorries were parked. One belonged to a local farmer, Mr Potgieter, and the other to Mr Sacco. Sacco was visiting someone in the neighbourhood.

The Vlakplaats contingent was active in the Eastern Cape at that time. Concerning this simple incident there are three versions before the Commission.

* According to Nofemela he, Coetzee and Tshikalanga had received instructions to kidnap a White farmer because he was supposed to be a member of the ANC. They went to the man's farm, but because there were too many dogs they were unable to carry out the abduction. Coetzee then gave instructions for them to set fire to the farmer's vehicle. They did this and made off. According to Nofemela a car or cars and lorries were set alight.

* According to Tshikalanga he, Nofemela, Makgaga, Coetsee and another White warrant officer went to a White person's farm to burn vehicles. He did not know what the motive was, but he believed that the person belonged to some organisation or other.

* Coetsee places the incident in Rhodes. According to him vehicles belonging to a hippie commune were burnt. He places Van Dyk, Nofemela, Tshikalanga and another unknown policeman on the scene. The object was to run the commune out of town.

It is striking that both Nofemela and Tshikalanga place the incident on a farm. As two of the vehicles were set on fire right in front of the post office, these witnesses could not be mistaken in this respect if they were on the scene. The only reasonable inference is that they heard that a farmer's lorry had been set on fire. The rest of the account was woven around that recollection. Coetsee, on the other hand, only remembers that a vehicle belonging to a member of the hippie commune was set alight. He forgot about the farmer and the stranger's vehicles that were also burnt. Each of them places a different set of people on the scene.

In view of these contradictions and discrepancies the probable inference is that the witnesses, while engaged upon counter-insurgency work in the Eastern Cape, received par-

particulars of the burning vehicles. Each remembered a different set of particulars. Around these particulars a personal involvement was woven. If, however, it is assumed that Coetzee, Nofemela and Tshikalanga were actually involved in the burning, the problem is that there is no evidence to corroborate the contradictory evidence as to who else was involved in the incident.

C65 In the light of the evidence the Audi stolen on 13 September 1981 was probably stolen by Coetzee, Nofemela and Tshikalanga. It is probable that either the owner or the vehicle was identified to them by a member of the Security Police in Port Elizabeth. There is no reason why, by sheer coincidence, they would have come across this vehicle.

The evidence regarding who was involved in the theft is contradictory, as is the evidence as to what happened to the vehicle after the theft. It is also difficult to fathom what was the motive for the theft. If the owner did not know who had stolen his vehicle or why, it is hard to see how the theft could intimidate him politically. Of course, it is possible that the thieves saw political activists as easy prey for their own criminal ends. Owing to the general untrustworthiness of these witnesses it is again not possible to make a more specific finding on this matter.

C66 There can be little doubt that Nofemela had a hand in the theft of Galeng's car. It is also improbable that he would

have been the only person involved in the burning of the vehicle. Further, it is probable that Galeng would have been identified to the Vlakplaats unit as one to be watched. Whether the vehicle was stolen spontaneously or whether the vehicle was stolen on instruction cannot be decided. However, because Nofemela was generally such an unreliable witness, the same applies to the question of who Nofemela's accomplice or accomplices were and to the question as to the motive behind the theft. However, there are sufficient grounds for recommending that the matter be referred to the Attorney-General for further investigation.

DIPALE

C67 The case of Ernest Moabi Dipale was raised because Nofemela testified that -

- * he was kidnapped by members of Vlakplaats;
- * he was presumably killed by members of the Security Police after interrogation and assault; and
- * his abduction was linked to a Security Police incursion and operation in Botswana.

What is certain is that Dipale was not killed by the Security Police. He did die in detention a year after the events, but there is no connection between his death and the events to which Nofemela testified. What is not so easy to determine,

however, is whether Dipale was kidnapped and, if so, why and by whom. It will not serve any purpose to sum up the evidence of the various witnesses. It is too contradictory and does not form a meaningful whole.

Even the key submission on behalf of the Independent Board is only that the evidence shows that a further investigation is warranted.

C68 According to Nofemela he and Mamasela received instructions from Dirk Coetzee to kidnap Dipale. The object of the abduction was to obtain the address of one Lilian Keagile in Botswana. Dipale was abducted and assaulted by several members of the Security Police on the Botswana border. An attack on Keagile's house in Botswana followed immediately and two people were shot. Presumably Dipale was then killed because he could identify those who had detained him. During the abduction false number plates were used and the identity of both Nofemela and Mamasela was not to be revealed.

C69 Certain facts are objectively reasonably certain:

- * Mamasela infiltrated the ANC in Botswana as Captain Jan Coetzee's police informer. He and a colleague were then suspected of being spies and kidnapped by, *inter alia*, Dipale, Phoshoko and Lilian Keagile. He therefore had more than sufficient reason to take revenge on those people.

* On 12 October 1981 Mamasela spotted Dipale in Soweto and passed the information on to Jan Coetzee. The latter distributed a telex request that Dipale be arrested.

* However, on 12 October Dipale was taken away in a motor vehicle that belonged to Nofemela. He was taken to the Western Transvaal. Phoshoko had been taken away on 11 October.

* On 19 October Dipale and Phoshoko were arrested by Vermeulen near Ottoshoop and shortly afterwards detained under security legislation. Mamasela was aware of the arrest and immediately notified Jan Coetzee of this fact.

* On 26 November 1981 there was an attack on Lilian Keagile's house in Botswana. Shots were fired and people were wounded. Dirk Coetzee, Nofemela and Mamasela were involved in the attack. At this stage Dipale was in detention in Johannesburg.

* Dipale was released from detention in January 1982.

C70 The problem is how to fit Nofemela's account in with the rest of the evidence. Of particular importance is that Dirk Coetzee has no recollection of the Dipale case. It is improbable that he would have forgotten anything of that nature. In addition, Dipale, Dhlamini and Mavuso must have

been detained together at Kopfontein from 12 October 1981. Then Nofemela must have had knowledge of the two persons last mentioned. Nofemela has no knowledge of these persons. Furthermore, according to Dirk Coetzee, Mamasela was with him at Kopfontein on 12 October when he, according to Nofemela, was engaged in the kidnapping in Soweto.

A further difficulty with Nofemela is that false number plates were not used and that Mamasela was known to the kidnapper, his family and friends. Therefore, there was no question of concealment of identity. It was anything but a planned operation. Besides, the Security Police had sufficient grounds for arresting Dipale and there was therefore no reason to kidnap him. On the other hand, it is certain that someone in Nofemela's car took him away on 12 October and that he was not arrested on 12 October. A probable (but not the only) reconstruction of the events is that Mamasela kidnapped Dipale with Nofemela's car in order to obtain information about the place where Lilian Keagile lived. Nofemela may have accompanied Mamasela. As he was unable to identify Dipale in a photograph, it may be doubted whether he ever saw Dipale. Dipale and Phoshoko were then released somewhere in the Western Transvaal so that they could be arrested by Vermeulen. It is improbable that Vermeulen arrested them by chance at Ottoshoop on 19 October 1981. The kidnapping was probably unauthorised, since otherwise Dirk Coetzee (Nofemela's officer) would have had knowledge of the

fact. After all, Nofemela does not allege that anyone other than Dirk Coetzee instructed him to carry out the abduction.

C71 The Botswana incursion also shows all the elements of reprisal attempt by Mamasela assisted by Coetzee and Nofemela. It is improbable that an authorised police operation would be planned in such a way that official vehicles are used. It is also striking that no S and T claims were handed in for this escapade. Also, it is perhaps not by chance that Dirk Coetzee never alleged that authority was granted for the operation or that he had instructions to carry the operation out.

Nor is there any independent corroboration to implicate the operation any of the individuals mentioned by the witnesses. At that stage Mamasela was not in the service of the SAP but only an informant. There is also a contradiction between Coetzee and Nofemela as to who was involved in the operation. Coetzee places Captain Jan Coetzee on the scene whereas Nofemela does not.

To sum up: On the assumption that Dipale was kidnapped by Nofemela, there is no corroboration for the allegation that it was an authorised operation. As Mamasela was not in the service of the police, an abduction by him could not have been an authorised operation either. As has also just been indicated, there is no evidence that the Botswana incursion was an authorised operation.

MXENGE

C72 The foregoing analysis shows the hazards of the evidence given by Coetzee, Nofemela and Tshikalanga. There are many moments of truth. However, the moments of truth do not show, as argued, that the rest of the evidence is true or probable. A conundrum to which reference has to yet been made and which may shed light on Mxenge's murder is the alleged murder of an unknown diamond dealer from Lesotho. Briefly, the evidence is that Coetzee, Nofemela, Mamasela and Tshikalanga were involved in an illicit diamond transaction. Coetzee provided the finance and Nofemela, Mamasela and Tshikalanga the labour. Coetzee, believing the diamond dealer to have duped them, gave instructions that Nofemela, Mamasela and Tshikalanga retrieve the money. They went to Lesotho, where they kidnapped the diamond dealer. They shot him dead at Lindley. They accepted his car in lieu of payment, and Coetzee later disposed of the car in Swaziland. In the light of the evidence these incidents would probably have taken place during the first half of November 1981. Although the only corroboration for the incidents is Coetzee, Nofemela and Tshikalanga's testimony their testimony (if true) shows that it did not take much for Coetzee, Nofemela and Tshikalanga to kill somebody and dispose of his car for their own gain. This certainly did not require state involvement or

instructions. However, there are a number of material differences between Coetzee's testimony and that given by Nofemela.

* According to Nofemela, Coetzee instructed that the diamond dealer be killed if he could not pay them back. Coetzee alleges that he did not give such an instruction and that the murder was committed spontaneously by the other three.

* According to Nofemela, he and Tshikalanga were involved in disposing of the corpse. Coetzee, on the other hand, alleges that Nofemela and Tshikalanga were not involved in this. He implicates other police officers.

* If Nofemela's version about the disposing of the corpse is correct, Coetzee's evidence that Brigadier Van der Hoven had knowledge thereof cannot be true either.

On the assumption that the incident did take place, it is not possible to determine whether Coetzee's account or Nofemela's account is true. There is no corroboration for either of the two versions and the one is not more probable than the other.

C73 Griffith Mxenge was a Durban attorney. He defended mainly ANC members but also PAC members. He was an active member of the ANC and because of his political activities he was detained more than once and also questioned by the police.

Be that as it may, on 19 November 1981 he was brutally murdered at Umlazi, Durban. Not only was his throat cut, but he had more than 40 stab and other wounds. Coetzee, Nofemela and Tshikalanga allege that the Security Police were responsible for the murder. Orders had come from higher authority.

C74 Mxenge's wife, Victoria, was also an attorney and was murdered on 1 December 1985. No evidence throwing light on her death is available. Nofemela testified that Coetzee told him that in due course he would receive instructions to kill Mrs Mxenge. However, he did not receive such instructions. Coetzee did not corroborate this evidence given by Nofemela. It is striking that Nofemela once again sought to implicate the Security Police in an incident without having grounds for doing so. According to a recent press report a member of the ANC alleged that Mrs Mxenge's killers were being detained by the ANC abroad.

C75 The murder of Griffith Mxenge caused a sensation at the time. The ANC placed the responsibility for the murder on the Government. There was even rioting during the funeral, and a member of the Security Police was killed there. On the other hand, the Commissioner of Police, in a press statement, implicated the ANC in the murder. The inquest did not identify the person or persons responsible for the murder more closely.

- C76 Some facts connected with the murder of Mxenge are certain.

In chronological order, they amount to the following:

* Because of ANC activities in Natal a large part of the Vlakplaats contingent went to Durban on 4 November 1981.

In particular, Nofemela, Tshikalanga and Ngqulunga went to Durban on that day.

* In Durban and surroundings the groups occupied themselves with ordinary tracing activities:

* Coetzee arrived in Durban on 11 November.

* Mxenge's dogs were poisoned with strychnine on the night of 18 November.

* In the early evening of 19 November Mxenge was killed next to a stadium at Umlazi.

* His body was found the next morning, but his car, jacket, watch and wallet were missing.

* The Vlakplaats unit was withdrawn from the Durban area on 21 November.

* Mxenge's car was burnt out near the Swaziland border on 23 November.

C77 There are material differences between the evidence given by Nofemela and that given by Coetzee regarding the events surrounding the killing of Mxenge. There are also parts of the evidence that are highly unsatisfactory. But there is one matter on which they are *ad idem*, and that is that Mxenge was murdered by Nofemela, Mamasela, Ngqulunga and Tshikalanga and that Coetzee gave the order for the murder.

Schoon's vehicle.

C78 In the sworn statement made by Nofemela the day before he was to be executed the following version of the murder is given:

* In Pretoria he received an order from Brigadier Schoon to eliminate Mxenge in Durban.

* The reason for the elimination was that Mxenge was involved in ANC activities.

He went to Durban to eliminate Mxenge.

* After that, but still in Pretoria, Coetzee repeated the order to Nofemela, Tshikalanga, Mamasela and Ngqulunga.

* These four then travelled to Durban together in a vehicle.

* Coetzee followed them in a separate vehicle a day or so later.

* Coetzee gave them a photograph of Mxenge so that they could identify him.

* Coetzee ordered them to do the killing with knives.

* Coetzee gave him poison to mix with meat and he threw the poisoned bait to Mxenge's dogs.

* The group kept Mxenge under surveillance for a few days before the murder.

* On the evening of the murder they parked their vehicle in the road, pretending that they were having trouble with the vehicle. Mxenge stopped, was overpowered by the group and taken to the Umlazi stadium.

* Mxenge was stabbed to death with knives and he died immediately. Nevertheless they kept on butchering him.

* They had to simulate a robbery.

* After the killing they returned to the C R Swart Police Station, where they met Coetzee and informed him of the murder.

* On the same night Nofemela and Coetzee travelled to Piet Retief in Mxenge's car.

* After being stripped, the car was burnt.

*Mamasela They then returned to Durban and from there travelled to Pretoria.

* Each of the four murderers received R1000 from Coetzee.

* The radio from Mxenge's car was fitted in Brigadier Schoon's vehicle.

In a subsequent sworn statement for the purposes of this Commission Nofemela confirmed the truth of this version but added that it was not necessarily complete.

C80 In his first statement Coetzee said briefly the following:

* He had received an instruction from Brigadier Van der Hoven in Durban to eliminate Mxenge.

* Members of the Vlakplaats group were still in Pretoria and were sent to Durban by Brigadier Schoon to assist in this mission.

* He, Vermeulen and Van Dyk "doctored" the meat with poison and gave it to Nofemela, Mamasela, Tshikalanga and Ngqulunga to poison the dogs.

* Instructions were given that Mxenge was to be killed with knives so that it would look like a robbery.*

* Some of the dogs were poisoned by Nofemela, Mamasela, Tshikalanga and Ngqulunga.

C81 In his first statement Tshikalanga said that they were busy in Durban when, without his being aware of an instruction, the others who were with him stopped Mxenge. He had not been present at the poisoning and although he witnessed the murder, he had no part in it.

C82 The contradictions between the witnesses are numerous. The contradictions relate mainly to the following:

* The original instructions

* The journey to Durban

* The work done in Durban

* The poisoning of the dogs

* The type of weapon

* The provision of the weapons

* The mode of abduction

* The manner of killing

* The reunion after the events

* The removal of the motor vehicle from Durban

* The burning of the vehicle

* The persons involved in the killing

* The payment for the killing

Some of the contradictions can be attributed to faulty memory. Other contradictions can only be due to the fabrication of the evidence. It is not necessary to deal with all the events and all the contradictions. However, the main events and the evidence concerning them will be dealt with.

As there is a dispute as to exactly who was in Durban during the relevant periods and could have had a part in the planning of the killing, the killing or the subsequent payment therefore, it is necessary to analyse the evidence on this.

At the time of the Vlakplaats group's visit to Durban Brigadier Van der Hoven was in command of the Security Police in Durban. It is also common cause that Coetzee, Van Dyk, Nofemela, Ngqulunga and Tshikalanga were in Durban during the relevant period and could have been involved in the planning and the execution of the murder.

As it has already been found that Mamasela was in fact known to Coetzee, he might also have been in Durban. However, there is no record of his presence in Durban. The evidence concerning his presence in Durban is also contradictory:

* According to Nofemela, Mamasela accompanied him and the other two to Durban on 4 November and they travelled in the same vehicle.

* According to Coetzee's original statement, Van der Hoven probably telephoned Schoon to ask him to send Nofemela and Mamasela to Durban. It is striking how vague he was and that he did not mention how Mamasela was taken to Durban.

* According to his evidence Nofemela was already in Durban and Mamasela was taken to Durban by Schutte. There is corroboration for the fact that Schutte could have taken Mamasela to Durban. Schutte was in Durban during the period 17 to 19 November. What is striking, however, is that Coetzee implicated Schutte in the affair only after perusing documents which showed that Schutte was in Durban during that period.

The fact that Mamasela knew Coetzee does not provide corroboration for the fact that he actually was in Durban, but only for the fact that he could have been in Durban.¹³ As has

¹³ Regarding false denials of this kind, see, in general, H.C. Nicholas "Credibility of Witness" 1985 SALJ 32 at 34 and 38.

been said, Schutte's trip to Durban does not provide the necessary corroboration either, because Schutte was implicated only after Coetzee had seen the work sheets. Coetzee's allegation that Mamasela was in Durban also followed upon Nofemela's allegation and was made with full knowledge of Nofemela's allegations. Nor should it be forgotten that Nofemela falsely implicated Mamasela in the so-called Krugersdorp incident. On the other hand, I accepted the testimony by Nofemela and Coetzee regarding Mamasela's involvement in the Botswana attack.

The documentary evidence corroborates Vermeulen's not being in Durban during this period. It was argued that the documentation in this connection is incorrect. On the assumption that he was in fact in Durban, Coetzee implicated him only in the poisoning of the dogs. It is important, however, to note that Nofemela does not implicate Vermeulen in anything that relates to this murder.

According to Coetzee, Braam du Preez must have been in Durban during the period 19 to 21 November. There is no corroboration for Coetzee's evidence. Not only does it contradict Nofemela's evidence, but the available documentary evidence shows that on the probabilities Coetzee left Durban on 17 November. It is improbable that this document would be incorrect, because otherwise it would mean that for no reason

Du Preez would have elected not to receive S and T for the period for which he would have been entitled to it.

C84 According to Nofemela's original two sworn statements, the instruction to kill Mxenge had already been given to him in Pretoria on or before 4 November 1981 by Brigadier Schoon and Coetzee. In the course of his testimony it appeared that this statement was false. Schoon had given no instruction in this regard and no instructions were given in Pretoria.

Coetzee confirmed that Nofemela's original version is false. In evidence Nofemela alleges that he received the instruction in Durban from Coetzee. He is clearly wrong as to what Coetzee was to have given him the instruction, but the error is not material. What strikes one is that he implicates not only officers other than Coetzee in the affair.

Coetzee's version is that in Durban he received an instruction to kill Mxenge from Brigadier Van der Hoven.

Tshikalanga's original version was that he had no knowledge of an instruction and that there was a degree of spontaneity in the decision to commit the murder. In evidence he said, however, that the team had received the instruction from Coetzee in the presence of Van Dyk. According to him Coetzee said that the instruction had come from Van der Hoven. There can be no doubt that this evidence was fabricated to fit in with Coetzee's version.

C85 During argument Van der Hoven's involvement in the killing of Mxenge was noted as probable because Van der Hoven testified that the first he heard of the killing of Mxenge was from press reports. In this he was mistaken because documentary proof exists that he already had knowledge of the murder before the first press report. However his error in evidence does not prove anything. The same document shows that he obtained the information concerning the murder through the investigating officer.

Mrs Mxenge telephoned Brigadier Van der Hoven on the morning of 20 November to enquire whether the Security Police were detaining her husband or not. Coetzee had knowledge of this telephone call. It was argued that Coetzee's knowledge of the call justifies some inference or other. What the inference is does not appear from the argument. At any rate, whatever the version, Mxenge's murder must have been sensational among the Security Police and the fact of the telephone call would probably have been conveyed to the members. It is also equally possible that Van der Hoven would have made enquiries about Mxenge as a result of the call.

The fact that Mxenge was a man in whom the Security Police were interested was also raised as corroboration for the alleged involvement of the Security Police in his murder. His security file was checked thoroughly and no indication was found that the Security Police would have been particularly interested in his death. There was an attempt to

ascertain whether the money he had at his disposal came from the ANC. However, no proof could be found. No statutory steps could be taken against him. Even if it is accepted that there is a probability that members of the Security Police would have liked to see him dead, that probability does not found a probability that a particular member of the Security Police would have given an instruction that he be killed. This type of probability is just as useful in solving the problem as the evidence that Mxenge received a threat shortly before his death because as an ANC member he represented PAC members.

To sum up, there is nothing in the evidence or circumstances that lends credibility to Coetzee's version with regard to Brigadier Van der Hoven.

C86 According to Nofemela, they kept Mxenge under surveillance before the murder. Although Tshikalanga denies this, on the probabilities one must assume that members of the Vlakplaats group did keep a watch on him from time to time during November. This is evident from the following:

- * Nofemela and Tshikalanga knew where Mxenge's house was.
- * They knew Mxenge's car.
- * Tshikalanga knew Mrs Mxenge's car, although Nofemela has no recollection of the vehicle.

It is not odd that the Vlakplaats group would have kept a watch on Mxenge. Mxenge was known as a source of money for ANC members. As the Vlakplaats unit was looking for ANC infiltrators, it would be reasonable to suppose that Mxenge had been identified as a possible contact and that he had to be watched. The evidence on how they obtained knowledge about Mxenge is contradictory, but these contradictions are not material. What is certain is that Coetzee conveyed the information to the unit.

C87 It is probably more than mere coincidence that Mxenge's dogs were poisoned on the night before his murder. There is therefore a probable link between the poisoning of his dogs and his murder. There are various versions of the poisoning of the dogs:

- * According to Nofemela, Coetzee gave him a piece of poisoned meat. Because it was not enough, more poison was given to him and he was told to sprinkle the poison on meat. This he did. He poisoned the dogs in the presence of Mamasela, Ngqulunga and Tshikalanga.

- * In his original statement there was no reference to his being given poisoned meat.

- * According to Tshikalanga, he had nothing to do with poisoning the dogs. Nor was he present.

* According to Coetzee's original statement, he, Vermeulen and Van Dyk "doctored" the meat with strychnine and gave it to Nofemela, Mamasela, Tshikalanga and Ngqulunga to administer.

* In evidence Coetzee takes the preparation of the meat upon himself and leaves Vermeulen and Van Dyk out. He says, however, that the dogs were poisoned by Nofemela in his, Vermeulen's and Van Dyk's presence. Mamasela and Tshikalanga were present, but he does not mention Ngqulunga.

* When Coetzee's inconsistent allegations were put to him, he said that he could not recall who was involved.

The poisoning of the dogs received wide publicity, and Coetzee even says that he might have read in the press that the attempt was successful. Nofemela's version of how he mixed the poison and meat is, objectively speaking, false because no dog would eat meat treated with strychnine in that way. The only consistency in the various versions is that Nofemela administered the poisoned meat to the dogs. If he did do that, it was not necessary for him to fabricate additional facts.

To sum up, there is no corroboration for any of these versions.

C88 It is a known fact that Mxenge's body was found on a dirt road right next to the Umlazi stadium. During the inquest it was generally accepted that he was not murdered at that spot but that his body was taken there.

Nofemela and Tshikalanga both testified that Mxenge was killed at the stadium. Nofemela says that he visited the stadium earlier that day because it had then already been chosen as the spot for the killing. Therefore, he must at least have known what the stadium and surroundings looked like. Nofemela was asked to describe the stadium and the spot where the murder was committed. This he did in detail. He did not say that he could not remember. In no respect does his description fit the true facts. He tried to describe an ordinary stadium with seats, a track and a fence. This stadium is nothing more than a stretch of veld surrounded by earth banks. He was shown a photograph of the stadium. Not only did he fail to recognise the stadium, but he also said that he had not been there before. The spot where the body was found, i.e. in a road, cannot be the spot where, according to his evidence, the murder was committed either. Nor is there, according to him, any possibility that the body would have been placed in the road after the murder.

Since, according to his evidence, Tshikalanga had not visited the scene in daylight, his inability to recognise the scene is more understandable.

To sum up, there is serious doubt that Nofemela and Tshikalinga were at the scene of the murder.

C89 It will be remembered that the murderers' instructions were to simulate a robbery. That was why they had to use knives. However, they were armed with firearms. The killing by no means simulated a robbery. It was also rather surprising to learn that the use of knives would simulate a robbery and that the use of a firearm cannot simulate a robbery.

A proper autopsy was performed on Mxenge's body. The deceased had 45 lacerations. All of these were knife wounds, except wounds to the head which had been inflicted with a blunt instrument such as a hammer. There was no other injury inflicted with a blunt instrument. The salient aspects of the murder are that -

* Mxenge's throat was literally cut off;
* his stomach was cut open;
* an ear was practically cut off; and

* the lacerations had been inflicted on the front of the body.

The state of his clothes and the position of the wounds show that he was probably assaulted while he was on his back on the ground.

Nofemela's sworn statements say that Mxenge was kicked and beaten until he fell to the ground. Then he was stabbed and butchered. The following are problematic:

- * His statement gives no explanation for the marks on the deceased's head.
- * The inquest offers no confirmation of the kicks and blows.

In evidence Nofemela ascribed the assault with a blunt instrument to the use of a wheel spanner. What apparently happened was that a knife stuck in the deceased's body and that the deceased extracted it himself and began to fight back. Nofemela then fetched a wheel spanner from the car with the purpose of stabbing the deceased but then just struck him on the head. The following problems arise:

- * This version is not compatible with his initial statements that Mxenge died immediately.
- * It is highly improbable that Nofemela would have considered using a wheel spanner as a stabbing instrument.

Further problems in connection with Nofemela's evidence are the following:

* He testified that he was unable to give any description of any of the deceased's wounds.

* He made no reference to the throat-cutting.

* He made no reference to the deceased's stomach being cut open.

* He made no reference to the ear being cut off.

Tshikalanga's evidence creates other problems:

* In his initial statement he said he was a mere on-looker.

* In his evidence he accepted responsibility for the stab inflicted with a knife, and incidentally this fits in with Nofemela's evidence.

* The rest of his testimony can make sense only if the deceased had numerous stab wounds to his back.

To sum up: Anyone who have read in a newspaper that Mxenge's body was found at the Umlazi stadium with multiple stab wounds and the head virtually severed could have given the evidence.

C90 On 23 November, the Monday after the murder, Mxenge's car was set on fire in a plantation near the Swaziland border in the

vicinity of Piet Retief and burnt out there. The evidence during the inquest showed that the vehicle was found burning during the late morning, near noon.

Extensive argument was built round the testimony given by Detective Sergeant Ntshangase. The gist of the argument is that on Monday 23 November Ntshangase had already been notified that Mxenge's car was found at Piet Retief. This evidence would then show that the evidence during the inquest that the car was still burning towards noon on 23 November was false or that the SAP knew that Mxenge's car was burning there before they could have checked the engine number. There is no substance to this argument. Ntshangase's record on the police docket regarding the finding of the car is dated 25 November. The evidence relied upon by counsel reads as follows:

"I think it was on Monday, I don't know whether I'm making a mistake."

Therefore, there is no reason to question the evidence led at the inquest.

C91 As pointed out above, Nofemela alleges that immediately after the murder he and Coetzee drove off to Piet Retief in the vehicle and that the vehicle was set on fire with the help of the local police. Coetzee, on the other hand, alleges that Nofemela had nothing to do with the burning of the vehicle, and his sentiments regarding Nofemela's testimony in this

regard have been quoted above. According to him the car was taken to the border by Van Dyk and Du Preez. He himself first went to Pretoria. There he received instructions to burn the car. He, Van Dyk, Vermeulen and Schutte then went to Piet Retief and set fire to the car. There are a number of difficulties with Coetzee's evidence.

* It has already been found improbable that Du Preez could have been involved in the affair at that stage.

* There is no corroboration for the fact that either Coetzee or Van Dyk was in Pretoria or in the Eastern Transvaal on 22 or 23 November.

* Coetzee placed the burning of the car in the early hours of the morning. As already shown, there is independent evidence that shows that this cannot be true.

* Coetzee initially indicated Brigadier Schoon as a possible recipient of the car radio. Later he said that he had deliberately done so falsely. His excuse did not hold water.

On the other hand, there is corroboration for his evidence in so far as Vermeulen and Schutte were in fact in the Eastern Transvaal on 22 and 23 November.

On behalf of Lawyers for Human Rights it was argued that Coetzee's testimony regarding the burning of the car must be

accepted and Nofemela's must be rejected. The argument was not substantiated, but was probably based on the fact that Nofemela was mistaken about the date of the burning of the vehicle. However, Coetzee also initially made a mistake with the date and at the end was still mistaken about the time.

C93 After Mxenge's death the members of the "hit squad" each received R1 000 from Coetzee. Coetzee says that he received the money from higher authority. This testimony differs in that Nofemela alleges that all four received money, while Coetzee and Tshikalanga allege that Ngqulunga did not share in the money.

Whether the money was paid over by Coetzee cannot be proved by any other means. Nor where the money came from. However, if Coetzee paid the money as he alleged, there is, according to his testimony, no good reason why Ngqulunga was not paid as well. The only reason that make sense is that Ngqulunga had no part in the operation. Ngqulunga, by the way, had no part in the alleged murder of the diamond dealer. There is therefore a probability that the money was these men's share of the proceeds of the diamond dealer's car. This probability is strengthened if one considers that these members from Vlakplaats had not received any additional remuneration for any other operation.

CONCLUSION

C94 To form an overall picture of the tangled skein of versions is not possible. As to the key question of who was responsible for the murder of Mxenge, there are several possibilities.

C95 The first possibility is that Nofemela and Coetzee's version as a whole was fabricated. The following count in favour of this possibility:

- * Previously, and again in the course of this Commission, the witnesses fabricated evidence several times. In these cases they even incriminated themselves innocently.

- * The witnesses gave materially contradictory evidence in the incidents.

- * Some of their evidence is untrue in the light of objective facts.

- * Nofemela and Tshiklanga's ignorance of the way in which the murder was committed and their inability to identify the locality physically also speak volumes.

An important factor that counts against the first possibility is the fact that there are correspondences in the witnesses' evidence which are hard to explain unless a conspiracy between them is presumed. Such a conspiracy must be ruled

out as a possibility. If there was a conspiracy, one would have expected fewer contradictions.

There are also a number of neutral factors:

- * Although the witnesses had special knowledge of certain incidents and circumstances (for instance, the poisoning of the dogs, where the house was situated, and the motor vehicles), these facts are consistent with the fact that they could have obtained that information in the ordinary course of their work.

- * Nofemela's inability to have foreseen that Coetzee and Tshikalanga would corroborate him is also of no value. He did not make his disclosures on the assumption that he would receive corroboration from them.

- * The knowledge of certain facts, for instance that the dogs were poisoned, that the corpse was found at the Umlazi stadium, the general nature of the wounds and the fact that the car was found burnt out at Piet Retief, is also trite. Any member of the Security Police with some interest in his work would have been aware of these facts.

- * The submission that these witnesses would not incriminate themselves has already been dealt with. It can therefore not be said that a probability exists that

they would not have falsely implicated themselves in this murder.

C96 The second possibility is that Nofemela and Tshikalanga (and whoever was with them) committed the murder as a so-called private enterprise. The factors favouring this possibility are the following:

- * Nofemela, Tshikalanga and Mamasela had committed murder for their own gain only a short while before.

- * At the same time they had also stolen the victim's car.

- * If they had been instructed to keep Mxenge under surveillance, he would have been easy prey.

- * Coetzee had accepted the murder of the diamond dealer with indifference, and therefore these persons could feel free to turn to Coetzee in order, for example, to dispose of the car against payment.

- * The car could conveniently serve as loot.

If this version is true, then it is also probable that Coetzee would have realised that this team had created hazard for themselves and he would then have taken steps to get rid of the vehicle. It was argued that this possibility is improbable since only a watch, a wallet and a jacket were stolen. As has already been said, the car was part of the

loot. In any event, afterwards the Lourens murder was to show that Nofemela was prepared to commit murder with robbery as a motive even when he knew that the possible loot would be minimal.

C97 The third possibility is analogous to the second. This is that Coetzee, of his own volition, gave the order to kill. In view of Nofemela's testimony on the diamond dealer such a possibility is not far fetched. Considering Coetzee's generally impulsive and irrational behaviour and his willingness to break the law in his own and possible even in the supposed national interest, this possibility is even stronger. On the other hand, one would expect Coetzee to have realised beforehand that it would be risky to steal Mxenge's car.

C98 The fourth possibility is that Mxenge was murdered by other persons. It is a myth to believe that in the South African society there are not private individuals who would, whether with a political or some other motive, commit such a crime. There is also the common phenomenon that vehicles are robbed or stolen and that certain parts are removed before the vehicles are set alight.

C99 The last possibility is that Mxenge was murdered by the group on the instructions of higher authority and with a political motive. This possibility is structured round the fact that Mxenge was a thorn in the flesh of the Security Police and could not be criminally prosecuted.

C100 The question, then, is whether there is reliable evidence that can elevate any of these possibilities to the level of the probable event. It is not sufficient to find that it is a probable version. It must be the probable version. The answer to the question is no. In particular, there is no reason to prefer the evidence given by Coetzee, Nofemela and Tshikalanga (with their shortcomings) above that given by the respective members of the Security Police (with their shortcomings). This does not mean to say that parts of the disputed evidence given by Coetzee, Nofemela and Tshikalanga cannot be true: it is just that those facts could not be established on a preponderance of probabilities.

D THE SO-CALLED LUBOWSKI CASE

D1 Following a statement during a joint session of Parliament on 1 March 1990, this Commission's terms of reference was extended to include an inquiry into and a report on the allegation that Anton Lubowski was a paid agent of the South African Defence Force's Military Intelligence.

D2 Advocate Anton Lubowski was a leading member of Swapo and was murdered in Windhoek on 12 September 1989. The allegation is made that the SA Defence Force, and more particularly the so-called Civil Co-operation Bureau, was instrumental in his elimination. Such an allegation was, for instance, made under oath by Brigadier F.J. Mostert, Commanding Officer of the Brixton Murder and Robbery Squad.

Prompted by this, it is believed, the Minister of Defence, General Magnus Malan, said, inter alia, the following in the House of Assembly on 26 February 1990:

"Allegations were made in respect of the involvement of the SA Defence Force in the murder of Mr Anton Lubowski. I want to disclose here today that Mr Lubowski was a paid agent of Military Intelligence. I have been assured that he did good work for the SA Defence Force. The Chief of Staff: Intelligence, Gen 'Witkop' Badenhorst, would consequently not have approved any action against Lubowski.

D3 During the joint session of Parliament on 1 March 1990 the State President said the following:

"In view of the controversy surrounding the alleged involvement of the late Anton Lubowski as a paid military informant of the SA Defence Force, and in view of the request made by the Minister of Defence in this connection, I announce that I have furthermore decided to expand the terms of reference of the commission as follows:

'To inquire into and report on the allegation that Anton Lubowski was a paid agent of the SA Defence Force's Military Intelligence.'

I have also taken cognisance of a statement made by Mr Theo-Ben Gurirab, Swapo's Shadow Minister of Foreign Affairs, in which an appeal is made to me to have an investigation instituted into the circumstances leading to the death of Anton Lubowski. At this stage I have decided against that. In my opinion it would be inappropriate to assign this matter as well to the commission, firstly because crime in Namibia does not fall under the jurisdiction of South African courts. Furthermore, according to my information, it is also apparent that the normal legal process of an investigation by the police in Namibia has reached such an advanced stage that warrants for the arrest of certain persons have been issued, and that a person is to stand trial on 18 April 1990. However, if facts were to emerge in the course of that case which are indicative of improper involvement by South African authorities I would consider expanding the terms of reference of Mr Justice Harms. In the meantime my instructions are that there should be the closest co-operation with the authorities in Namibia to ensure that the law takes its course there and that justice is done."

D4 In the light of this statement and also in the light of the wording of the Commission's terms of reference as a whole,

the Commission did not investigate who was responsible for the deceased's death.

The Commission's officers did, however, co-operate very closely with Advocate Miller, the Senior Public Prosecutor responsible for the murder investigation in Namibia. This co-operation was, however, subject to the provisions of the regulations that applied to the Commission.

D5 Owing to the limited scope of the new terms of reference, and as there were delays with other work, it was decided to give it priority. Limiting factors were, however, the fact that the next of kin of the deceased as well as representatives of his estate indicated that they wished to take part in the proceedings and repeatedly asked for an opportunity to collect such evidence as they might be able to offer or might wish to offer. This matter also lost its importance, and it was subsequently decided to deal with it in the main report of this Commission.

D6 The SA Defence Force lodged an application with the Commission to maintain the utmost degree of secrecy in the course of the inquiry. This application was substantiated partly in public in a sworn statement by Lieutenant-General Badenhorst. Further facts were submitted to the Commission in camera. I came to the conclusion that the utmost secrecy was essential because -

* existing information systems would be jeopardised;

* existing agents' freedom or lives could be exposed to danger.

The result is that the proceedings were conducted only by the Chairman and one officer, Advocate McNally SC. Even the SA Defence Force's legal representatives did not have access to the proceedings or documentation procured by the Commission itself.

D7 The dilemma in which the Commission found itself is described by Lord Denning¹ in similar circumstance:

"Now there is this inquiry which I have been entrusted with alone. It has the advantage that there can be no dissent but it has two great disadvantages; first, being in secret, it has not the appearance of justice; second, in carrying out the inquiry I have had to be detective, inquisitor, advocate and a judge, and it has been difficult to combine them."

When I accepted this part of the brief I was unaware of the fact that it would involve an in camera hearing and, more particularly, an in camera hearing of so special a nature. According to the Salmon Commission² a commission ought not to be appointed in such circumstances.

¹ In his so-called Profumo Report, paragraph 5.

² Paragraph 42.

D8 On 22 March 1990 I issued the following statement:

"After the affidavit by General R. Badenhorst, i.e. exhibit D1, the Commission received, inter alia, an affidavit from a senior staff officer stationed at MID in which the question is fully dealt with whether or not the proceedings relating to the question submitted should be held in camera. I, as chairman, and Advocate McNally, as senior officer of the Commission, having examined documents, have satisfied ourselves that not only may a disclosure of the facts submitted be prejudicial to the intelligence system of MID, but also that certain individuals' freedom and/or lives may be endangered. I am well aware of the fact that full disclosure is desirable, not only to ensure that justice is seen to be done but also to afford any interested persons the opportunity of submitting evidence in rebuttal or testing the evidence proffered. Upon weighing the two conflicting interests I feel obliged particularly to set the possible danger to life above the other interests. I do not intend, therefore, unless anything unforeseen is going to happen, to disclose more than is being disclosed hereby. If an interested person wishes to adduce evidence in rebuttal, that evidence may at the request of such a person be led in public. Consideration has been given, for instance, to making a full disclosure to counsel only, but because this would place an unreasonable onus on counsel as to how to deal with the information, it has been decided against.

The terms of reference of the Commission falls into two parts:

- (a) Did the late Advocate Lubowski receive money from the MID, and
- (b) if so, did he receive it as an agent?

With regard to the first question the Commission was afforded access to or took possession of the following documents:

- (a) Original cheques issued by the South African Defence Force, duly crossed and made out to an intermediary party.
- (b) The original requisition forms which led to the cheques being issued, showing that the amounts were intended as an advance to a collaborator and bearing an indication of the final bank account into which the funds had to find their way. The dates and amounts of the requisition forms correspond to those of the cheques under (a).
- (c) Proof of payment of the cheques into the account of an intermediary.
- (d) Cheques drawn on the account of the intermediary. The dates and amounts of these cheques correspond to those on the cheques referred to in (a).
- (e) Original deposit slip duplicates which correspond to the original deposit slips found in one or both of the following bank files:
 - (i) Paradiso Trust, a bank account held at Nedbank, St George's Street, Cape Town, account number 01009428144, on which the late Advocate Lubowski had sole signing powers.
 - (ii) The personal bank account of Mr A.T.E.A. Lubowski under number 1038018420 held at Nedbank, Windhoek.
- (f) Microfiches on which the deposits and the original cheques are shown.

Original deposit slips from the Paradiso Trust accounts dated 8 June 1989 - R40 000 and 28 June 1989 - R20 000 were handed in as exhibits. Likewise the microfiches. No other documents from either of the two bank accounts were handed in as originals.

As regards the intermediary, it is not disclosed whether there was one or more intermediaries. As regards (c) and (d), the plural is possibly appropriate but the complete chain was traced. The Commission also obtained evidence that the person or persons in control of the intermediary or intermediaries was or were unaware of the transactions through the account(s). Members of the MID had, and used, the necessary signing powers. The second question is to some extent, but not necessarily, dependent upon the answer to the first. In the meantime the evidence before the Commission is that the payments to Lubowski were made to him as an agent, in consideration of which he did certain things. Until facts to the contrary have been presented, the Commission does not intend to conduct a detailed investigation."

On 5 April the following statement was released:

"On 22 March I gave an account of the information obtained in camera. I stated that unless anything unforeseen was going to happen I did not intend to disclose more than was disclosed in the statement. It was also said that if an interested person wished to adduce evidence in rebuttal that evidence could at the request of such an interested person be presented in public. On 23 March I caused the following press statement to be issued:

'Certain media reports that have dealt with the disclosure of the in camera evidence in the Lubowski affair create the impression that the exposition of the evidence amounts to a finding of fact. This is incorrect. The purpose of the exposition was, in the first place, to elicit evidence in rebuttal, and in the second place, to make known what exhibits exist and where they are.

As is customary, the Commission's findings of fact will be contained in a report to the State President, and it is the prerogative of the State President to make those findings of fact known. At the request of the legal representatives of the Lubowski family and estate, they are being given time to collect evidence and the matter will only be returned to at the beginning of May.

Judging by certain press reports, it may be inferred that the press has become an alternative forum for the inquiry. Also, the identity of Global Capital Investments has been disclosed. Because of this, I have decided that the exhibits relating to the flow of money may be disclosed in due course. Meanwhile the legal representatives are being invited to inspect the original documents, which are with the secretary, on condition that they do not divulge the identity of any signatory. If any of the interested parties wish to have evidence presented, they are requested to have the necessary affidavits as well as the witnesses available by 7 May.

Then, just to conclude, the microfiches handed in will be returned to Nedbank."

D10 It was my expressed intention to disclose the exhibits concerned at that stage, but I was requested by the Lubowski family's legal representatives not to do so because it might interfere with their own investigation to obtain evidence in rebuttal. The continual postponements were also due to their request. Evidence in rebuttal was supposed to have been

available overseas. One of the consequences of these postponements was that the summons served on the executor's attorney lapsed because Namibia had become independent. Although the executor had legal representation before the Commission, the last that was heard of him was when his legal representative told the Commission that he would indicate on 6 May 1990 what his standpoint would be regarding further participation in the Commission.

D11 On 27 April 1990 Advocate Bertelsmann SC on behalf of the Lubowski family terminated their participation in the Commission in the following words:

"Before Adv. Maritz proceeds with the further examination of the witness, may I just make a formal announcement and to place on record that our clients, the Lubowski family, yesterday decided to withdraw from the Commission for the present. Their decision to do so is motivated firstly, by the fact that the Commission's present terms of reference do not include an inquiry into the murder of Mr Anton Lubowski. You held earlier that the terms of reference could not be given such an interpretation. Our clients then requested the State President to widen the ambit of your commission but unfortunately so far without success. Our clients still hope to be able to do so and to persuade the government otherwise, in which event they would participate in such an inquiry again. Regarding the allegation that Mr Lubowski was a paid agent of the South African Defence Force, the evidence presented to the Commission must remain untested, because of the Defence Force's unwillingness to allow this evidence to be subjected to public scrutiny and cross-examination. As this impedes our clients' ability to clear Anton Lubowski's name, they have decided to withdraw from further participation

in the Commission. Nothing is intended as a slight upon you or the Commission."

D12 Although it must be presumed that the Lubowski family has an genuine and earnest desire to establish who is responsible for the murder of Advocate Lubowski, it is striking that the withdrawal took place only after the original documents had been studied by the legal representatives and almost three months had passed within which two bank accounts had to be checked. What is wrong in the quotated statement is:

* It is the chairman who decided that the full information cannot be disclosed. The S A Defence Force merely put a request to the chairman.

* As early as 5 April the chairman offered to disclose the exhibits relating to the payment. It was at the request of the Lubowski family's legal representatives that this was not done.

* The documentation proves the payments beyond all doubt. The documents could not be subjected to cross-examination.

* Advocate Bertelsmann was afforded the opportunity by the SA Defence Force of questioning Mr Penzhorn in private, who, according to the Companies Office, had an interest in the intermediary, but this opportunity was declined.

D13 The sum of R100 000 was paid to the late Advocate Lubowski in three instalments during June 1989. The relevant facts concerning the second payment are the following:

- (a) On 15 June 1989 a requisition for funds was completed and approved for R40 000 to be paid by MID to a collaborator. This document was available for inspection.
- (b) On 16 June 1989 cheque 3670618 in the amount of R40 000 was drawn on Treasury by the SA Defence Force payable to Global Capital Investments (Pty) Ltd. On the same day the cheque was deposited in Global's account with the Standard Bank. The original was found in the possession of the SA Defence Force and was made available for inspection.
- (c) On the same day a cheque from Global (number 187) in the amount of R40 000 to A.T.E.A. Lubowski was drawn on the said Standard Bank account. The original cheque is in the possession of the SA Defence Force and was made available for inspection.
- (d) On 17 June 1989 the cheque in question was deposited at the Verwoerdburg Branch of Nedbank for the credit of A.T.E.A. Lubowski's Nedbank, Windhoek, account 1038018420. The deposit slip duplicate was found in the possession of the SA Defence Force and was made available for inspection.
- (e) Nedbank, Windhoek, is in possession of a microfiche containing a photograph of the cheque 187 in question, as well as the original of the deposit slip referred to above. In other words, this cheque was received in

Advocate Lubowski's personal account. The original deposit slip is probably in the possession of the deceased's executor.

It is certain that:

- * The account in question was in fact Advocate Lubowski's personal account.
- * The money was paid into his account.
- * All the documents aforementioned had been signed by members of the MID.
- * Global was used as a front by MID in several transactions.
- * The registered member of Global (which is in fact a close corporation), attorney E. Penzhorn, had long since made over his interest in Global to a third party and had no knowledge of the fact that MID was using Global as a business front.

D14 The other two payments were channelled through Paradise Trust's bank account. The relevant facts relating to the first payment are the following:

- (a) On 8 June 1989 a similar requisition was made out for payment of R40 000 to a collaborator codenamed Anto.

(b) On the same day a similar Defence Force cheque in the amount of R40 000 in the favour of Global was paid in at the Standard Bank on Global's account. Here again, the original was found in the possession of the SA Defence Force and was produced for inspection.

(c) On the same day a similar Global cheque (number 179) in the amount of R40 000 was made out to Paradiso Trust. The original cheque was also in the possession of the SA Defence Force and was likewise produced for inspection.

(d) On the same day the Global cheque was paid in at Nedbank, Kempton Park, on Paradiso Trust's Nedbank account in Cape Town number 1009428144. The duplicate deposit slip was found in the possession of the SA Defence Force and the original deposit slip in the possession of Nedbank, Cape Town, in Paradiso Trust's file. Again, these documents were available for inspection.

It is certain that :

* Advocate Lubowski had sole signing powers on Paradiso Trust's said account.

* All the said documents had been signed by MID personnel.

D15 On 28 June 1989 a final amount of R20 000 likewise found its way into Paradiso Trust's bank account and the remarks made there apply equally.

D16 It is therefore certain beyond any doubt that money that had its source in MID was paid to Advocate Lubowski or in favour of him. These facts are indisputable and, as has been said, cross-examination could make no difference to the facts.

D17 The next question is whether Advocate Lubowski received the money as an agent or in some other capacity. According to the evidence before the Commission, Advocate Lubowski was recruited because he had the necessary access to Swapo and because he was particularly vulnerable through having lived far above his income. At the stage when he was recruited (during the first half of 1989) he was desperately seeking funds to keep his overdrawn bank account below the limit allowed by the bank. The mortgage loans on his properties amounted to approximately R160 000. His bank account was overdrawn to an amount of approximately R75 000. A measure of corroboration of this evidence may be found in a report in Beeld on 1 March 1990. According to this report his executrix had said that the money in the deceased's bank account was not his own. Apparently the deceased did receive money for projects, but paid the money into his personal bank account to ease his "usually overdrawn account". She also said that there was a fairly large mortgage on his house and that the mortgage was not insured.

D18 The deceased indicated that he was willing to act as an agent for MID for a consideration of R100 000. Contrary to normal procedure, the money was paid in advance to get him out of

his predicament and, obviously, to compromise him. The arrangement was that the money would be laundered through Paradiso Trust so as to make tracing difficult, particularly since Paradiso Trust's bank account was in Cape Town. The second instalment, however, was paid directly because Advocate Lubowski was experiencing difficulties in getting money out of Paradiso Trust quickly and he needed the funds urgently.

D19 The particulars regarding the work done by Advocate Lubowski as a paid MID agent cannot be divulged. However, the fact of the matter is that his death on 12 September 1989 came as a serious setback to MID.

D20 Admittedly, of course, the above-mentioned evidence was not tested under cross-examination. As I said on 22 March, I did not intend to carry out a detailed investigation unless evidence in the rebuttal was available. No such evidence was presented and, clearly, no such evidence could be found before the withdrawal of the legal team took place. On 27 April 1990 counsel sought permission to present argument to the Commission in their personal capacity to show that Advocate Lubowski was not a paid agent of the MID. That permission was granted, but no argument was forthcoming. On 31 July counsel reported that the Lubowski family had just forbidden them to present such argument.

D21 In the absence of any plausible alternative, my inevitable conclusion is that Advocate Lubowski received the money as an agent of the MID.

D22 In conclusion, and to revert to the statement by the Minister of Defence which led to this inquiry:

* In my opinion the Minister erred in making the disclosure because the mere disclosure compromised certain existing information channels. Even before 22 March the Lubowski legal team already knew that Global was the probable intermediary between the MID and the deceased. Global's deposit slip in the deceased's bank account probably gave the clue.

* In so far as the statement was meant to convey that the fact that the deceased was an MID agent is proof of the fact that the SA Defence Force was not involved in his death, the premises are wrong. The CCB was suspected of the murder. The CCB acted independently of the MID. The MID probably did not even know of the CCB's existence. The CCB, in its turn, had no direct access to the MID. Without suggesting that the CCB was responsible for the act, the aforementioned facts do not show that the CCB was not responsible for the act.

E MISCELLANEOUS MATTERS

E1 In paragraph A25 reference was made to the list of acts of violence presented to the Commission by the Independent Board. The list does not contain acts of violence only. Be that as it may, less than half of the approximately 210 acts listed were reported to the police. Of the 42 murders on the list, 9 were not reported to the police or were unidentifiable. Some of the murders were solved, suspects were arrested and found not guilty, others were the subject of inquests, in some cases criminal proceedings are pending, and others were investigated by the Commission. To some extent the list is ill-considered. This is evident, for example, from the fact that in the course of an armed robbery one of the deceased had been shot dead as a robber by a night watchman. A further example is the case where it was found that the deceased was responsible for his own death. On one of the lists there is also the name of a person who died in a motor accident after ignoring a stop sign.

To determine whether it could assist in solving these cases, the Commission obtained a status report on each case. From these reports it appeared that it would serve no useful purpose to reinvestigate those cases, especially where the complainants did not even go to the trouble of bringing facts to the Commission's attention.

STANZA BOPAPE

E2 Miasha (Stanza) Johannes Bopape was politically active and was detained by the Security Police. He disappeared on 13 June 1988. His father requested that the circumstances of his disappearance be investigated and that the identity of the Security Police members concerned be disclosed to the attorneys. The reason for this request is that the family believed that the Vlakplaats unit might be responsible for his disappearance. The matter was investigated and it appeared that there had been a full police investigation of his disappearance. The information furnished by the family takes the matter no further. According to the police he escaped from custody at 00:40 on 13 July 1988. Three policemen and Bopape were travelling by motor car and the car had a flat tyre. While the police were changing the wheel Bopape escaped. He was positively identified by a witness as having been at the scene of a bomb blast at Ellis Park on 2 July 1988. According to a sworn statement by a police informer he was spotted at Kagiso, Krugersdorp, after his disappearance.

The matter was discussed with the legal representatives of Mr Bopape senior, and it was accepted that there were not sufficient grounds for this Commission to hold a hearing on the matter. It is not even possible to recommend an inquest.

MR BRIAN CURRIN

E3 Mr Brian Currin is an attorney who concerns himself with human rights affairs. On 4 December 1989 two SA Defence Force lieutenants unlawfully entered his premises at 20:00. The matter was referred to the Commission for investigation. It was ascertained that the two members were engaged upon an investigation into the alleged illegal use of a Defence Force vehicle by another member of the Defence Force. This person had stopped at a property near Mr Currin's, and during their observation of the vehicle the first-mentioned two Defence Force members entered various properties, including that of Mr Currin. Corroboration of this version was found in the fact that the Defence Force member who had been under observation admitted before a disciplinary committee that on the evening in question he illegally used a Defence Force vehicle in that vicinity. The Defence Force vehicle in question had also been observed on the scene by another independent witness. The suspicion that was expressed, namely that the two Defence Force members might have been attached to Special Forces or the CCB, was incorrect. Therefore, there was no *prima facie* indication that the entry was an act of violence with any political aim.

THE RIBEIRO MURDERS

E4 On 1 December 1986 Dr F. Ribeiro and his wife were murdered in Mamelodi by two unknown men. Dr Ribeiro can be regarded as a political activist. A preparatory examination was held and

in terms of section 135 of the Criminal Procedure Act the suspect, N.J. Robey, was discharged at the conclusion of that examination. He did not testify, but his defence was an alibi.

The relevant evidence may be summarised as follows:

* The murderers (probably two Black persons) shot the deceased dead with pistols or revolvers at their home.

* After the incident the murderers sped away in a red Opel vehicle with an NPN registration number.

* A number of witnesses followed the Opel vehicle from the scene to a point outside Mamelodi.

* Just outside Mamelodi the Opel stopped near a Land Rover. The occupants of the Opel got into the Land Rover, and a White man got into the Opel from the passenger side of the Land Rover. Both vehicles drove off.

* The registration number of the Land Rover was KYK 899 T.

* The registration number of the Opel was false.

* The Land Rover KYK 899 T was registered in the name of N.J. Robey and owned by him.

* An identification parade was held, but Robey was not identified. The persons who were identified had beards. Robey was cleanshaven. Previously (it is not known when) Robey had a beard.

* On 14 January 1987 two of those who had given chase pointed out Robey's vehicle as a vehicle similar to the vehicle involved in the swop-over.

The investigation by officers of the Commission brought the following facts to light:

* Robey was a member of the CCB at all material times.

* The Ribeiros could have been monitored by the CCB.

* The CCB paid Robey's legal expenses.

* This payment was authorised by the then chairman of the CCB, General Joubert, and the managing director, Colonel Verster.

* The administrator of the funds (Parsons, the security manager of the CCB) and Verster certified that the expenditure in question was incurred "for bona fide activities in the pursuit of the organisation's aims".

* The money was debited against project Checkers (a foreign project). Initially it was shown as unforeseen expenditure for services rendered, but afterwards it was changed to "project expenses".

* The expenditure was then transferred to another project file (project Le Roux), where it was hidden as expenditure on the purchase of furniture.

* Between Special Forces and the attorney R1 000 disappeared.

* Not only was the true purpose of the expenditure concealed from the Auditor-General, but the prescribed procedure for the payment of legal expenses of an officer of the State was not followed.

* A member of the CCB, Van Deventer, previously alleged that he knew about the CCB's involvement in Ribeiro's murder, but on being called as a witness he refused to answer any questions.

Further events that took place and may shed light on the problem as stated, are the following:

* General Joubert answered certain questions that were put to him in writing. When he was asked to elucidate, he refused to give any information to the Commission.

Later he changed his mind and also testified before the Commission.

* Van Deventer and Robey did work together and were employed by the CCB. Van Deventer's "fiancée" made officers of the Commission to understand that she had knowledge of the killing of the Ribeiros. As she refused to divulge the information, it was decided to subpoena her and to ascertain *in camera* whether in fact she had such knowledge. After the subpoena had been served on her, the CCB's attorney approached her with an offer to represent her before the Commission free of charge. She accepted. Just before the examination was to commence, it was pointed out to the attorney that there was at least a potential conflict of interest between his client and the witness. He withdrew. She then denied under oath that she had any knowledge of any activities of the CCB or that she had any knowledge of the Ribeiro murders.

* When the Ribeiro murders were committed, the CCB was not yet fully developed. At that stage Robey might have been acting as a member of the covert organisation

Barnacle.

* Verster was to testify before the Commission, and all the arrangements in this connection were made. Because Verster could not be reached in the ordinary manner, an

arrangement was made with his legal representatives that a request to them would be sufficient to make him available to the Commission as a witness. Hours before he was due to testify he was still in touch with his legal advisers and the arrangement was that he would be available. He did not turn up.

* Colonel Brits of the SAP was requested by the Commission to carry out certain investigations in connection with the Ribeiro case. In particular, he had to track down Black members of the CCB. He ascertained that a Black member of the CCB had died and that the only identifiable member was abroad. The Colonel's motor-car, with the Ribeiro docket in the boot, was stolen on 5 May 1990.

* The Commission's officers gained access to the CCB's strongrooms on 29 March 1990. On 30 March 1990 a large cash sum went through Robey's bank account, and his bank manager noted that Robey would be going abroad for six months. Despite extensive efforts, it was not possible to track Robey down. He is presumed to be in England.

In the light of the foregoing, therefore, there are grounds for believing that Robey might have been involved, in an official capacity, in the murder of Ribeiro. Whether his action was authorised or unauthorised could not be determined. However, there are sufficient grounds for the

Attorney-General to look into the matter again and to call for further investigation, and on these grounds the documents have been referred to the Attorney-General under regulation 14.

THE HIEMSTRA COMMISSION

E5 Concurrently with this Commission, the Hiemstra Commission heard evidence on financial irregularities committed by the City Council of Johannesburg. In the course of those proceedings, a number of matters that may have a bearing on this Commission were raised.

Evidence was given regarding an arson attack in Yeoville. The evidence given was sufficient to warrant criminal prosecution, and in terms of the regulations the matter was referred to the SAP.

It was testified that one Naudé was a source of the SAP Security Branch and that he occasionally went jogging with Dr Webster. The relevant security file was obtained, and it appears from it that -

* Naudé gave the SADF no information on Webster; and

* during the period before and after Webster's death Naudé gave no information to the SAP.

In addition -
* no connection could be found between Naudé and the CCB;
and

* in co-operation with the Hiemstra Commission no connection could be found between Naudé's information and the Webster murder.

LEBOWA

E6 The Chief Minister of Lebowa, Mr M.N. Ramodike, requested the Commission to investigate a number of cases of murder alleged to be politically inspired. Already on 27 February 1990 the Honourable Chief Minister was requested to submit facts that would indicate that the allegations fall within the ambit of the Commission's terms of reference. To date, the Commission has received no reply. On 11 April 1990 a firm of attorneys, acting on behalf of a number of unspecified clients, also asked the Commission to investigate the activities of the so-called "A-Team". No particulars were furnished. On 11 April the firm was asked, in writing and telephonically, for further particulars but to date the request has not been complied with.

In spite of the foregoing, General Van der Westhuizen was requested to investigate the five cases specifically mentioned by Mr Ramodike. His investigation brought the following to light:

* In the case of Peter Nchapeleng, who was shot dead on 11 April 1986, a proper police investigation was not carried out. The matter is now being investigated independently by Colonel Viljoen.

* Ngwako Ramalepe and Ben Koka: Suspects were identified, and the matter is now being considered by the Attorney-General.

* Moses Mogoai: Although the suspect was identified, the Attorney-General declined to prosecute. As in all the preceding cases, there was no indication that there was any political motive involved.

* Lucky Kutumela: Those involved were charged with culpable homicide, but were acquitted. No new facts are available to the Commission.

* The "A-Team": This is a sobriquet used of the riot unit of the Lebowa Police. Although the general allegation is made that this unit is guilty of wrongful acts, no facts or specific cases were presented to the Commission.

THE ANC

E7 It is common knowledge that the ANC has been involved in a revolutionary struggle against the South African Government

since the early sixties. The revolutionary struggle includes armed violence. The policy changed from time to time, but various targets were identified for the struggle. Among the identified targets are the following:

- * military targets
- * members of the SAP and the SADF
- * the so-called upholders of the present system
- * the existing power structures
- * so-called traitors such as state witnesses, informants and persons who have turned their backs on the ANC.

In 1985 it was decided that the distinction between hard and soft targets should be dispensed with. The discretion with regard to target selection was sometimes delegated to members. In the execution or supposed execution of this policy numerous murders and other violent crimes were committed. For some of these acts, responsibility was ostensibly claimed. As for others, the courts repeatedly found ANC involvement to have been proved. At any rate, no specific instance was submitted to the Commission for in-depth investigation by reason of the SAP being unable to handle the matter.

In spite of the foregoing PAC

E8 The PAC was waging a similar struggle against the government of the day, but because the PAC did not enjoy the necessary

support or have sufficient funds, there were few acts of which it was accused.

RIGHTIST VIOLENCE

E9 In 1980 a number of politically inspired acts of violence took place which were committed by the so-called "Wit Kommando". After that there was a period of relative calm. For the past year or so, however, there have been a considerable number of acts of terrorism attributed to rightist individuals or organisations. The so-called Wit Wolwe have claimed responsibility for a number of these acts. Barend Strydom, who was convicted of several politically inspired murders, asserted that he was a member of the Wit Wolwe. According to the evidence presented in that case, it was unlikely that such an organisation in fact existed. If there is such an organisation, its members have not yet been identified. Some of the acts are attributed to the so-called Boerestaat movement. Again, not one of these cases was submitted to the Commission for investigation. Nor was there any indication that the Commission could throw any light on any of these matters.

DR R. TURNER

E10 Dr R. Turner was murdered at his home on 8 January 1978 when at about midnight an unknown person fatally wounded him with a 9 mm firearm. Dr Turner was a restricted person in terms

of the Suppression of Communism Act. In 1972 his house was set on fire, and in 1973 the tyres of his motor-car were slashed. These two attacks also remained unsolved. His mother requested the Commission to investigate his death. She believes the State to be responsible for her son's death. She furnished no facts to substantiate this, but she did append a report by a private detective who investigated the matter on behalf of friends of the deceased. He reported that -

"at this stage, in time, I have no evidence indicating that a member of any of the governmental agencies could possibly be suspected."

Two suspects were identified. The first is Mr Martin Dolinchek. He is alleged to have had connections with the then Bureau for State Security. He was involved in the Seychelles invasion and was there sentenced to imprisonment. Upon his release he joined the ANC and he is abroad. He is not available to give evidence and in an interview with the deceased's mother he did not furnish her with any useful information. Roberts conducted an investigation at the offices of the National Intelligence Service, but was unable to find any relevant information.

A second suspect is known as a so-called rightist political activist. In 1979 he was convicted of offences relating to his political persuasions. The allegation that links him to the murder was already investigated by Advocate Kahn, SC, in

1985 and has led nowhere. As the Commission was not furnished with any supplementary facts and had no other clues, the matter was left at that.

MATTHEWS GONIWE

E11 Matthews Goniwe and four others were probably murdered on 27 June 1985. They were shot and their vehicle was burnt. They had been politically active in the Eastern Cape. The documents in this case were examined by officers of the Commission, but no clues were found. Nor did anyone submit any evidence to the Commission that would help to solve these crimes. A prisoner did allege complicity in or knowledge of this murder, but when he was interviewed it appeared that he had fabricated the matter and confused it with the disappearance of Champion Galela and two others on 8 May 1985.

Several persons in prison or standing trial for serious crimes furnished officers of the Commission with allegations. These allegations were either false or could not be corroborated. The Commission does not intend to give particulars of these cases.

L.J. ERASMUS

E12 Mr Erasmus lives in Pietermaritzburg and is politically active. On 17 May 1979 the Security Police searched his offices. On 20 May a hand grenade was thrown at his house.

According to Mr Erasmus the Security Police were the attackers and "Zionists" had ordered them to do this.

Mr Erasmus's allegations were checked, and it was established that the police had identified the probable perpetrators. Two of these persons are not in the RSA. In any case, no evidence is available to take the matter further. However, the suspects are not members of the Security Police.

They had been politically active in the Eastern Cape. The documents in this case were examined by officers of the Commission, but no one submitted

THE WATSON BROTHERS

E13 The Watson brothers stood trial on a charge of, inter alia, arson. In an affidavit their attorney alleges that a "hit squad" set fire to the house and he apparently suggests that the "hit squad" was connected with the Security Police. The affidavit by the attorney says nothing that was not said in the criminal proceedings. Although one of the brothers was convicted of arson in the regional court, the conviction was set aside on appeal. However, the court said:

"The appellant may consider himself fortunate that matters have turned out for him the way they have for there is strong suspicion that he was involved in the commission of the offence."

It also appears that the court was satisfied that the two State witnesses had set the fire, and there is no indication that they had any connection with the Security Police. Therefore there was no reason to investigate the matter further.

F CONCLUSION

Principiis obsta, sero medicina paratur

F1 A belief which in South Africa knows no bounds is the belief that political powerlessness can be overcome with violence.

A commission of inquiry is not required to establish that crime of violence with a political motive is rampant. It is so widespread that human lives are reduced to mere statistics. Moreover, value judgments are skewed:

* Only the death of a person who has a high political profile is still important.

* The bomb blast at Melrose House has greater news value than a bomb blast that claims human lives.

* Depending on political preferences, either "rightist" or "leftist" violence is condemnable and all violence is not judged in the same way.

Furthermore, the dividing line between unrest-related violence, thuggery and politically motivated crime is becoming increasingly blurred. A psychosis of fear is mounting. The misadventures of those who are possible targets for political violence are automatically attributed to political or State action. If the State can be linked to an act of violence, it leads to the inference that the State is or may be responsible for all other acts of violence.

F2 The Commission was not appointed to go into the political, economic, social or philosophical reasons for political violence. Furthermore, it lies beyond the powers of a commission to prevent violence.

F3 Judging by press reports, the Commission was appointed mainly because of two allegations:

- * That the SAP had established a hit-squad at Vlakplaats, and
- * that the late Dr Webster was murdered by a "rightist" organisation. The organisation was later identified as the CCB.

At the end of the proceedings the following appears:

* It is common cause that no hit-squad was established at Vlakplaats, although members of Vlakplaats have been guilty of common-law offences.

* There is no evidence that the CCB murdered Dr Webster. However, the CCB was linked to other crimes of violence.

F4 In the course of the Commission it also appeared that although allegations and accusations are rife as to who did what and why, there is a basic lack of evidential material that might put some flesh on the bones. In general, victims

failed to furnish information. Willing trustworthy witnesses did not come to the fore.

F5 A commission cannot take the place of the ordinary organs of state and is seldom in a better position to solve a matter than the police are. Naturally, a problem arises if for reasons good or bad the police are distrusted. This is a problem that must be addressed. Whether the problem can be solved in the light of the present circumstances may be questioned.

F6 In the nature of things politically motivated offences are usually well planned and difficult to solve. The motive offers very few clues, because so a large a group may have the same motive. The assassination of President Kennedy and Mr Palme illustrates the problem. The first was probably solved, but in spite of the commission under the chairmanship of the then Chief Justice Warren the curtain simply will not come down on this murder. In the case of Mr Palme's murder political heads and police heads rolled, and on appeal the person on whom the murder was pinned was found not guilty. In South Africa, moreover, there are so many shades of political persuasion and so many splinter groups that it is all the more difficult to identify the persons responsible.

F7 Owing to the security situation the dividing line between the functions of the Defence Force and those of the Police have become blurred and here and there even obliterated. Such a

situation creates dangers and there are grounds for considering this issue again.

F8 The CCB was disbanded on 30 July 1990. Therefore no recommendations are made regarding the CCB. The financial investigation of the CCB's affairs is being conducted by the Auditor-General, who will presumably report thereon.

F9 Covert organisations trust no one and are themselves distrusted. Every state needs or believes that it needs a covert organisation. A covert organisation with offensive capability or aims needs a strong control structure. Power should not be concentrated, and the greater the secrecy the greater the danger of irregularities.

Proper measures should also be taken to keep control over the money and documentation of covert organisations. The disappearance of the CCB's documents is unpardonable from several points of view. It happened in order to frustrate the Commission. The documents can now be used to blackmail persons or to expose organisations to danger. In the absence of documentation a proper audit is also not possible.

F10 It was argued that it should be recommended that the Vlakplaas unit be disbanded. In the light of the findings on the allegations by Coetzee and Nofemela such a recommendation

would not be justified. The centre of gravity of the allegations goes back to 1981. The last incident took place in 1986.

It is recommended, however, that the guide-lines as originally laid down for the Vlakplaats unit should be strictly adhered to and that it be ensured that only members of the SAP perform police functions.

F11 It could only be in the interests of the SAP if members of the Security Police also kept diaries. They need not carry their diaries on them and they can fill them in periodically. There ought to be a proper record of the whereabouts of members of the Security Police from time to time and of the functions they have performed. It is also essential that a proper record be kept of the activities of every member of a unit such as the Vlakplaats unit.

F12 In the course of the proceedings a number of cases were identified that can be referred to the Attorney-General for consideration of further investigation. Some of the documents have already been submitted to the relevant Attorneys-General. The following cases merit attention:

- * The Ribeiro murders
- * The Athlone bomb incident
- * Mr Gavin Evans
- * Mr Dulla Omar
- * Mr Mhlaba

F15 In conclusion I should like to express my thanks to the respective legal teams for their assistance. In this regard I would like to single out for special mention the Independent Board for Informal Repression and Lawyers for Human Rights. The officers of the Commission also deserve honourable mention. They are:

Advocate T.P. McNally, SC

Advocate L.J. Roberts, SC

Mr C.B.S. Erasmus, Secretary to the Commission

Major-General R.N. van der Westhuizen

Lieutenant-Colonel J.P. Wright

Mrs E.L. Roos, Secretary