

NAME: WILLIAM CHARLES CECIL SMITH

APPLICATION NO: AM5469/97

MATTER: PRIMA NAIDOO AND NEIL AGGETT

ON RESUMPTION: Yes thank you. Mr du Plessis?

MR DU PLESSIS: Thank you, Mr Chairman. I beg leave to call Mr Smith, as an applicant.

CHAIRPERSON: Mr Smith's application is, yes in the smaller volume, page 2?

MR DU PLESSIS: The smaller volume, yes, right at the beginning, page 2, from page 2 and it carries on until page 37.

CHAIRPERSON: Is Mr Pollock not here? Does anyone know where Mr Pollock is?

WILLIAM CHARLES CECIL SMITH: (sworn states)

CHAIRPERSON: Thank you. Mr du Plessis.

EXAMINATION BY MR DU PLESSIS: Thank you, Mr Chairman. Mr Smith will testify in Afrikaans.

Mr Smith, your application commences on page 2. You have summarised your personal service record from page 3 onwards and there are just a number of aspects that I would like to illuminate. On page 4 you state that you began at the uniform branch in Johannesburg in 1965.

MR SMITH: That is correct.

MR DU PLESSIS: And if we go over to page 6, in the middle of that page you state that you were at the Security Branch John Vorster Square, Johannesburg, in the Investigative Unit, from the 1st of August 1980 to the 20th of December 1982, is that correct?

MR SMITH: Yes, that is correct.

MR DU PLESSIS: And subsequently to 1996, you were stationed at the Security Branch, Thabazimbi.

MR SMITH: That is correct.

MR DU PLESSIS: Very well. If you would page to page 8, from that page onwards, up to and including page 26, is the section entitled: "General Background". Have you studied this now before the hearing?

MR SMITH: Yes, I have.

MR DU PLESSIS: Very well. And also at the stage when you compiled your application you studied this aspect carefully, is that correct?

MR SMITH: That is correct.

MR DU PLESSIS: Mr Chairman, before I carry on with the questioning, this section is a section which was included in all my clients' applications. Mr Bizos knows exactly what the position is with this, we have gone through ...(intervention)

MR BIZOS: I would appreciate it, Mr Chairman, if nothing is attributed by Mr du Plessis, let him conduct his case without any reference to what I might know from other places.

MR DU PLESSIS: Mr Chairman, I'm not going to react to any sort of interruptions of that nature. Mr Chairman, this section was included in all my clients' applications and parts of it may not be hundred percent applicable to Mr Smith, and I intend in the course of the evidence now, to indicate to you exactly which parts are applicable and which parts are not application to Mr Smith.

Mr Smith, do you confirm the correctness of what is set out from page 8, up to an including page 13, up to and including before "Actions of Activists", is this correct?

MR SMITH: Yes, it is.

MR DU PLESSIS: Then there is the heading: "Actions of Activists", do you confirm this as correct?

MR SMITH: Yes, that is correct.

MR DU PLESSIS: And then on page 14 there is a section pertaining to informers.

MR SMITH: That is correct.

MR DU PLESSIS: Later we will return to that, to the function that you performed at the branch, but can you indicate to the Committee what more-or-less, your functions were at the Investigative Unit of John Vorster Square during your period there.

MR SMITH: The investigation of security relevant investigations which would then pertain to the security legislation at that time.

MR DU PLESSIS: So were you a person who would have worked in that capacity, directly with informers? Would you have obtained information from informers?

MR SMITH: I would not have worked directly with them, it was if in the course of my investigations I could recruit informers, it would then have been suitable.

MR DU PLESSIS: So you were not a handler of informers?

MR SMITH: No, I wasn't.

MR DU PLESSIS: Let us just pause there for a moment. Could you sketch a broader background for the Committee regarding the functions that you had to perform at the Investigative Unit of the Security Police at John Vorster Square, when you were there.

MR SMITH: As I have already stated, I was an investigating officer and in that capacity I would have to investigate a crime that had been committed, from the beginning, with the objective on prosecution and conviction of the suspect.

MR DU PLESSIS: Could you distinguish the Investigative Unit at that Security Branch from the other units of the Security Branch which were working there?

MR SMITH: The Investigative Unit dealt only with the investigations within the Security Branch. It was aimed at investigating matters. It dealt with dossiers and it would make certain submissions for prosecution in court.

MR DU PLESSIS: Very well. Were there other Security Branch units which were working there? Amongst others, with terrorism, were any units divided into various divisions?

MR SMITH: Yes, there were other desks which dealt with various other functions within the Security Branch which were not investigated.

MR DU PLESSIS: I think the Committee has heard extensive evidence regarding the Northern Transvaal Security Branch. There was a so-called White Desk ...(intervention)

CHAIRPERSON: Sorry, are you talking about the Northern Transvaal branch now, not John Vorster Square?

MR DU PLESSIS: No, no.

There was a White Desk, there was evidence of a Black Desk, there was also evidence of a Coloured Desk, which was divided according to the principles of race. This was not the case at Johannesburg, was it?

MR SMITH: Not with the investigating team.

MR DU PLESSIS: Were there various units or desks or divisions at the Johannesburg Security Branch?

MR SMITH: Yes, there were.

MR DU PLESSIS: Could you generally explain to the Committee what distinctions there were and which different divisions existed.

MR SMITH: There was a section which dealt with trade unions, for example, who would also be a section which was involved with persons who had gone into exile. There would be a desk which dealt with suspects within the RSA, and conducted observation on such persons.

MR DU PLESSIS: Very well. If you would look at page 14, there are the following aspects that I would like to examine you on, beginning at page 14 under the heading: "Instructions", all the way through to page 17. Do you confirm those sections as correct?

MR SMITH: Yes, it is correct.

MR DU PLESSIS: Very well. Then we come to the heading: "Further Political Objectives of Acts", and this is a broader framework which was composed with regard to the actions of Security policemen in general, and there is a distinction among three categories, the political objectives with regard to elimination, with regard to bomb attacks and with regard to interrogations. You also submitted other amnesty applications apart from the one that we are dealing with today, is that correct?

MR SMITH: Yes, one other application.

MR DU PLESSIS: That is correct, one other application. You did not submit any amnesty applications with regard to bomb attacks?

MR SMITH: No, I did not.

MR DU PLESSIS: In other words, the section from page 17 up to and including page 26, which deals with bomb attacks, would not really be relevant to you, is that correct?

MR SMITH: Yes.

MR DU PLESSIS: The section with regard to eliminations is relevant to you but not for the purposes of this application.

MR SMITH: That is also correct.

MR DU PLESSIS: There is another application where it is relevant.

MR SMITH: Yes, that is correct.

MR DU PLESSIS: And then the section which is relevant to this application is the section pertaining to interrogations, is that correct?

MR SMITH: Yes, that is correct.

MR DU PLESSIS: If you would turn to page 24, from page 24 up to page 26 you deal with this. Were interrogations an important component of your activities as a member of the investigating team?

MR SMITH: Yes, it was very important.

MR DU PLESSIS: And there the objective of interrogations are described as intimidation and the acquisition of information.

MR SMITH: That is correct.

MR DU PLESSIS: Do you confirm what is stated on page 24 to 26 as true and correct when it comes to interrogations?

MR SMITH: That's correct.

MR DU PLESSIS: And which one of the two would you label as the more important aspect, intimidation or obtaining information?

MR SMITH: Obtaining information.

MR DU PLESSIS: Very well. And then on page 26 you state that any extensions with regard to your application will be made during your verbal evidence before the Committee, and that is what you aim to do now.

MR SMITH: That is correct.

MR DU PLESSIS: Very well. Mr Smith, before we proceed to the specific incidents for which you have applied for amnesty, could you just elaborate somewhat for the Committee, regarding the subject of interrogations, with specific reference to John Vorster Square during the time that you spent there. Did you receive any training in interrogation techniques?

MR SMITH: No, Chairperson, I did not. The interrogations which were conducted by the investigative staff was aimed at the thorough examination of the dossier under investigation, as well as obtaining any possible information, in order to achieve to greater clarity regarding acts which had been committed, which would then again be conveyed to the relevant divisions.

MR DU PLESSIS: Very well. The investigations which you conducted there as a member of the Security Branch, did this only have to do with political matters, or would it also have had to do with any common law offences?

MR SMITH: Political activities.

MR DU PLESSIS: Very well. ...(intervention)

MR BIZOS: I'm sorry, I didn't hear the last answer.

CHAIRPERSON: With political activities, it only had to do with political activities.

MR DU PLESSIS: Mr Smith, and if a person had been arrested for interrogation, was he usually detained at John Vorster Square, or would he be detained at another place? How did it function?

MR SMITH: It would depend, he could have been detained at various places, but more often than not the persons who we detained for our purposes of interrogation, would be detained at John Vorster Square.

MR DU PLESSIS: Very well. And they would be detained in terms of the Internal Security legislation, normally?

MR SMITH: Yes, that is correct.

MR DU PLESSIS: And was there a specific number of persons who would be involved in the interrogation of a subject, or how did that operate? Could you just elaborate for us on that. If you were investigating something against a person and he had to be interrogated, would there be a primary interrogator, or would there be a team of interrogators, could anybody interrogate such a person? How did that operate?

MR SMITH: It would vary from case to case, there were cases where you as the investigating officer would conduct the interrogation yourself, but if it was a case where you as the investigating officer did not have sufficient background and knowledge, other persons could then be assigned to assist you. Such persons would have a better background regarding the subject.

MR DU PLESSIS: What was your rank during your time at John Vorster Square?

MR SMITH: I was a Warrant Officer.

MR DU PLESSIS: And were you one of the more junior officers, or were you a senior officer there?

MR SMITH: In 1980 I was promoted to Warrant Officer.

MR DU PLESSIS: But were you more junior or more senior?

INTERPRETER: The Interpreter did not get the answer of the applicant, could he please repeat his answer.

CHAIRPERSON: Sorry Mr du Plessis, the Interpreter's indicated that she didn't get the answer, if you could just repeat your last answer please, Mr Smith.

MR SMITH: I was one of the junior officers.

MR DU PLESSIS: Could you give the Committee an indication of to what extent you were a junior officer.

MR SMITH: As I've stated, in that year, in 1980, I had just been promoted to a Warrant Officer. There were other members who had more service years to their credit and who had spent many years serving as a Warrant Officer, 10 years or more, and there were also other members who had higher ranks. There were Captains, Majors and so forth.

MR DU PLESSIS: Were any attempts made during interrogations, to attempt to recruit such persons for the Security Police?

MR SMITH: Yes.

MR DU PLESSIS: And on a broader basis, could you indicate to the Committee, with reference to the need-to-know principle, to what extent it was applied at John Vorster Square and more specifically, within the Security Branch there.

MR BIZOS: I'm sorry I didn't hear what principle ...

CHAIRPERSON: The need-to-know principle. He wants him just to explain the need-to-know principle ...

MR BIZOS: No, I didn't hear it. Yes, thank you.

MR SMITH: Chairperson, it would have been of sole application to the member or the members who would be involved in that particular investigation. The information in conjunction with this would have been conveyed to the persons for follow up investigation.

MR DU PLESSIS: Would there have been a general discussion among the members regarding the investigations that they were involved in? Would members of one investigating team for example, tell another team of what was going on if the tea-room together, for example? Could you explain that?

MR SMITH: Not in detail, Chairperson. During those years the practice was that a junior member could not make enquiries from a senior member or ask a senior member any questions regarding what he was busy with or what the investigation was about at that point.

MR DU PLESSIS: In other words, would you necessarily have known about everything that was going on at the branch during the period that you spent there?

MR SMITH: No, that would have been impossible.

MR DU PLESSIS: And if one considers the seniority and the command structure, would it have been possible for you to question your Commanders what they were busy with?

MR SMITH: No, that would definitely not have been possible. You simply kept to what affected directly.

MR DU PLESSIS: And as you recall, would any of the other persons and particularly the seniors who were involved in investigations have discussed these matters with you out of their own?

MR SMITH: The investigations that I were busy with, yes.

MR DU PLESSIS: No, I'm referring to those that you were not involved in.

MR SMITH: No, they would not have.

MR DU PLESSIS: Mr Chairman, before I carry on from page 27, may I perhaps just do something which I perhaps should have done right at the outset, to indicate to you what exactly Mr Smith is applying for.

CHAIRPERSON: Thank you, Mr du Plessis, we would appreciate that.

MR DU PLESSIS ADDRESSES: He is applying for assault and as far as I'm concerned Mr Chairman, the evidence I do not think will indicate assault with intent to do grievous bodily harm, but I will remain with that application insofar as the evidence may indicate that. And then for *crimen injuria* in respect of the six persons indicated on page 28, the first six, namely Benjamin Greyling, Gerhardus van der Werf, Prima Naidoo, Shirish Nanabai, Michael Jenkins and Ester Levitan. And then in respect of the Neil Aggett matter, and especially the investigation in the Inquest, he will apply for obstruction of justice and for perjury, relating to his evidence during that incident and during the Inquiry.

MR BIZOS: ...(indistinct - no microphone)

INTERPRETER: The speaker's microphone.

MR BIZOS: Is that indicated anywhere in the application, Mr Chairman?

MR DU PLESSIS: Mr Chairman, it is not indicated in the application as such, except insofar as there is a reference to Mr Aggett on page 29, and the evidence of Mr Smith will be that he wasn't involved in any interrogation of Aggett, but he was involved in the inquiry afterwards and he did give evidence there and that evidence that he gave under oath contradicts the evidence that he will give today in respect of the interrogation of Mr Prima Naidoo.

May I just enquire Mr Chairman, I don't know, I haven't had an indication from my learned friend if my client's application is opposed. They couldn't tell us during the pre-trial conference. I don't know if the application is opposed.

CHAIRPERSON: Yes, it might be difficult for Mr Bizos if he's just learnt now for the very first time what the details of the application are - but Mr Bizos, I don't know if you want to respond at this stage.

MR BIZOS ADDRESSES: Mr Chairman, we reserve right to oppose the application for defeating the ends of justice and perjury, because no such proper application is before you, firstly. Secondly, it would depend to a very large extent as to how responsive the applicant is as to - our client's

reserve the right to hear what he has to say, Mr Chairman, before deciding to give us instructions as to whether they will oppose the application for amnesty or not. But in relation to the perjury and the defeating the ends of justice, we submit that although it is relevant to the other issues as to what precisely he did and what he said, we reserve the right as to whether the Committee can grant ...

CHAIRPERSON: That will be a question of legal argument and we can hear that at the end.

MR BIZOS: We can argue at the end. Thank you, Mr Chairman.

MR DU PLESSIS ADDRESSES: Mr Chairman, may I perhaps just raise a problem that I have? I have to apply, and I didn't think it would be a problem, I have to apply for an amendment to the application to include the issue pertaining to defeating the ends of justice and perjury. But what I cannot do, Mr Chairman, I cannot await a decision on that until the end of the application, because if it is found eventually that the application could not be amended to include those two offences under the application, it will be detrimental my client, in the sense that the evidence that he presents then to the Committee, or has presented to the Committee, would not have been part of the amnesty process. That evidence could be potentially used against him and then I have to advise my client on that issue, Mr Chairman. So my request, Mr Chairman, is that I either be allowed to amend the application to include that and that it is then accepted that it forms part of the amnesty process and that my client is entitled to amend his application as such.

CHAIRPERSON: Can the application be amended at all in that fashion, Mr du Plessis? Why I ask is, it's clear from the provisions of the Act that amnesty had to be applied for a certain cut-off date, which date was on several occasions extended to finally be the 30th of September 1997. Now certainly we've dealt with, as an Amnesty Committee, with amendments of applications, but amendments in the true sense of the word. If the amendment involves the lodging of a new application, of one that wasn't mentioned, do we have the jurisdiction and authority to allow such an amendment?

MR DU PLESSIS: Mr Chairman, firstly may I respond to that? Firstly, I want to point out that the Act does not specifically require an applicant to exactly indicate the offences for which he applies for amnesty, firstly. Secondly, if I can refer you to page 8 of Mr Smith's application read together with page 26, you will see he refers there to the fact that he can remember certain issues in detail, other issues or facts he may not be able to remember, and he requests that the application should be dealt with in that light. And then on page 26, he states that he attempted to make the application as complete as possible and that: "any further elaboration on the facts contained herein will be done during the rendering of evidence before the Commission".

What he has done, Mr Chairman, is he has stated that he will, insofar as it is possible for him, expand on the facts contained in the application and in that sense, the evidence that he will give in respect of that will be a broadening of the facts stated on pages 28 to page 30.

Mr Chairman, this issue has come up previously in a number of amnesty applications. I can recall, for instance, one of the applications where one of my other clients was involved in, Mr Labuschagne, Mr Labuschagne did not have a paragraph in his application as the one that I referred you to. I didn't act for him when the application was drafted. Mr Wagener's client in that incident had such a paragraph and he was allowed to expand on his application and to expand on the facts and then apply for the offences appearing from the facts in such a fashion.

CHAIRPERSON: I think the same thing happened with Brig Schoon, where I wasn't personally involved, but also there was a similar matter where matters were allowed because of a type of dragnet clause in regard to Gen Nyanda's application, matters that weren't mentioned specifically were allowed. But then there are others where there's no mention at all and the nature of the

application is fairly limited and then to introduce a completely new matter where it hasn't been allowed. So there is a bit of flexibility and leeway, depending on the wording of the application and the nature of it.

MR DU PLESSIS: I understand that. Well Mr Chairman, may I just say that we are here before you and we are trying to make a full disclosure in this matter. We wish to apply for amnesty for those two offences and my application to you at this point in time, is to be allowed to expand the application to include those two offences. If, however, you should rule against me, Mr Chairman, then I will request an adjournment, a short adjournment just to consider my position then in that regard.

CHAIRPERSON: It's been pointed out to me by my colleague, on page 27 that:

"All other offences which may emanate from the facts."

MR DU PLESSIS: Yes.

CHAIRPERSON:

"All minor offences"

and then:

"Aanranding met opset"

is that ...

MR DU PLESSIS: Well Mr Chairman, yes that is included in the application and the question, with respect, that you have to decide is if that refers to the facts that may come out of the evidence presented to you during the hearing, or if that refers to the facts contained in the application. In my submission it must refer to the facts arising out of the hearing and therefore it includes all criminal offences which may arise out of the facts presented to the Committee during the course of the hearing.

Mr Chairman, we have had this in numerous matters, where a specific criminal offence was not identified in the application but eventually was included in the ...(intervention)

CHAIRPERSON: If I could just ask a question. Also in the number of applications, as you've said, we've had this situation but very often in cases where applicants have been involved in a huge number of incidents, so vast and over such a long period that they genuinely can't remember each and every incident and that's why you get them saying: "Well, there might be incidents that I've forgotten and if I have forgotten, it's been in good faith but if it comes up I ask that they be included in here". Is there any particular reason why the defeating the ends of justice and perjury were not included?

MR DU PLESSIS: Mr Chairman, I cannot tell you now, I haven't discussed that with my client and I cannot give you an answer. I'll have to obtain instructions from my client if he had remembered about the evidence that he had given there, or if his memory was spurred or what the answer is. I can't tell you. May I just say that you will recall my other client, Mr Hechter, who has that specific problem that you referred to. But Mr Chairman, I'm in your hands in respect of this application. In my submission, under the circumstances before you, unless you indicate to me that you want an answer on that question, then I would request a ruling from you, otherwise I'll obtain instructions from my client and I can tell you what the answer is.

CHAIRPERSON: Perhaps before you do that, if I could ask if there's any other person who wishes to make any submission in this regard? Mr McAslin?

MR McASLIN: No, Mr Chairman.

CHAIRPERSON: Mr Pollock?

MR POLLOCK: I don't think so. I've also sort of - in the ambit of my application, I said a similar thing because of the fact that I was involved for more than five years it was really also difficult for me to remember most things, especially the ones you would like to forget.

CHAIRPERSON: I think we'll deal with your matter when you are actually testifying, Mr Pollock, but do you have any submissions to make in regard to Mr du Plessis's application on behalf of Mr Smith?

MR POLLOCK: No.

CHAIRPERSON: Mr Bizos?

MR BIZOS ADDRESSES: Mr Chairman, the way I read the Act, which should be, I submit, the main guiding instrument and not what might or might not have happened in cases where there were different facts and different circumstances and we do not have to debate whether those decisions were correct or incorrect, we must with respect, apply the provisions of the section on a proper interpretation, having regard to the circumstances of this case. The act or omission that is being referred to in this application for amnesty is assault, assault with intent, or if not with intent, assault. That is an act or omission on which the applicant has come to court, and of course you are aware of the provisions of Section 20, that you have to examine the circumstances in relation to motive, in relation to full disclosure, in relation to the other requirements for that particular act. Defeating the ends of justice is a serious offence, as is perjury, committed, presumably, with a different motivation and with a different objective and in circumstances where the disclosure may be different to the fullness or otherwise of the disclosure.

I submit that on a reading of this application, despite the carefully guarded content, that there may be other things that I have forgotten about and if I'm reminded I'm going to tell you about it, may well apply if it's related to the assault, because that is a crime. It may be that if, for instance, this applicant has not given us an indication, we're waiting for the evidence, if he had said, for instance, that: "I assaulted X for this purpose, I hit him with my fists, I hit him with a broomstick, I slapped him on the face - oh, and by the way, I didn't put there that I also threw a cup and saucer at him, which landed on his chest", that would have been a matter for a proper amendment, because it's the same act, or a substantially similar act with a similar intent, which is really part and parcel of the offence as to how the offence was committed.

CHAIRPERSON: But what would you say to the case of an applicant who, just as an example, applies for assaulting persons in detention and lists 80 people that he might have assaulted and then says: "Look, I've tried my hardest, these are the people I can remember", he comes to the hearing and two other names come up and he says: "Look, you know I don't dispute that I'd assaulted these people, in fact now I remember"? About amending that to change it from the 80 to the 82?

MR BIZOS: I would submit that the Committee would allow an amendment there on another basis, because the effect of the evidence of such a person that was part of a group that assaulted a great number of persons, "so I am asking for amnesty in relation to that overall decision to assault people, there were so many of them" and I add a number, that that is a substantially similar offence committed with the same intent as part of the same overall intent. It is not a different

offence. What we have here is that there is an application to add by way of amendment, offences which are with a different intent, with a different motivation, committed not as part of the resgestae of an even broader transaction. So this is how I would distinguish where a person says that.

But whatever the position may be in relation to facts postulated by you, Mr Chairman, they most certainly do not apply to offences which are completely different in character and which are committed with a different motivation and for a different purpose, and they're completely different in character, Mr Chairman. So if an amendment is sought, it will be opposed on those grounds, Mr Chairman.

CHAIRPERSON: Ms Patel, do you wish to make any submissions?

MS PATEL: No, thank you Honourable Chairperson.

NO SUBMISSIONS BY MS PATEL

ADV BOSMAN: Chairperson, with your permission may I just put something to Mr du Plessis?

CHAIRPERSON: Certainly.

ADV BOSMAN: Mr du Plessis, on page 29 there is a list of persons that were detained by your client then towards the middle of the page he says:

"Neil Aggett was also detained and at a later stage committed suicide. I was, however, not involved in the interrogation of this person."

My question to you is, did he not in that sentence by necessary implication, exclude himself from any culpable action in regard to Aggett?

MR DU PLESSIS: Mr Chairman, the answer to that question and to my learned friend's argument relies on the content of the evidence which he had given at the post-mortem inquiry. The evidence there which he had given, related only to his assault on Mr Prima Naidoo, which forms the basis of the application for amnesty here. If I can take you perhaps to the specific page, if you will just bear with me for a moment, in the thick bundle ...(intervention)

MR BIZOS: Could we give an identity to this bundle?

CHAIRPERSON: Yes, this one is volume 2. I think we'll call the thin volume, volume 1. That hasn't got a label. That's the bundle with the applications of Messrs Smith, Bosch, Pollock, etcetera, that will be volume 1. And then we've got what we call the thick volume, it's already called volume 2, and then I've been given a supplementary bundle which I got late last week, I don't know if everyone has got this. This is called:

"Amnesty Application of Roelof Venter"

MS PATEL: Honourable Chairperson, that was merely handed over to the Committee as background in respect of Mr Venter's application that has already been heard and a copy of the Decision, but I do believe the decision is available on the Internet, for whoever wants to see it.

CHAIRPERSON: Thank you.

MR DU PLESSIS: Mr Chairman, you will find the part that I refer to on page 259 over to page 260. This is part of the Judgment of the Inquest, where Mr Smith's evidence is discussed and there is reference therein only to Mr Smith's interrogation of Mr Naidoo. It carries on from the bottom

of page 259 over to the bottom of page 260, and in the middle of the page you will see that in the Judgment it says that Mr Naidoo was never assaulted, ill-treated or threatened or insulted by him or in his presence. Now the application would relate only to that evidence and it therefore relates to evidence that this applicant intends to present to you in respect of the assault on Mr Prima Naidoo.

Now Mr Chairman, listening to my learned friend's argument, in my submission this would fall under the kind of application that my learned friend alluded to, where one would allow that, but under these circumstances I would submit to you that in the evidence, if my client has to make a full disclosure of all the evidence relating to the assault of Mr Prima Naidoo, he's going to have to testify about this evidence too. If this amendment is disallowed, obviously then I will have to reserve my rights and my client's rights to ask for an adjournment to consider my client's position pertaining to the whole application in respect of Prima Naidoo. Because, Mr Chairman, may I just submit that my client will then be in the invidious position that he would want to make a full disclosure, but the moment he does he incriminates himself and it would be in respect of evidence that doesn't form part of an amnesty application and I can't allow him to do that.

CHAIRPERSON: Any further submissions? Yes I think we'd like to just discuss this briefly outside, we'll take a short adjournment and come back and give a ruling.

COMMITTEE ADJOURNS

ON RESUMPTION

RULING

CHAIRPERSON: Thank you. We've considered the matter and I must say we did have a little bit of difficulty, particularly in regard, Mr du Plessis, to the application relating to Dr Aggett. When you made your application you said you wish to make an application in respect of the Neil Aggett matter. After deliberating, we are of the view that if one takes into account the wording used on page 27 of volume 1, that we would countenance and regard an application relating to perjury, but only in respect of Prima Naidoo.

If one reads your client's application, particularly with regard to Dr Aggett, he seems to distance himself from Dr Aggett, saying he knows Dr Aggett was arrested and he had nothing to do with it, and we believe that if an amendment were brought in to introduce Dr Aggett, then that would be a new matter that we wouldn't be allowed to do it on. So we'd only allow any amendment relating to perjury or defeating the ends of justice in respect of Dr Naidoo.

We are at a disadvantage in that we weren't involved at all, none of us, in the Dr Aggett Inquest. We just don't know why that evidence relating to Dr Prima Naidoo was led at the Inquest. If one reads the Judgment, it just seems to come and mention that he wasn't assaulted, etcetera, and then moves on to other matters.

So we would consider perjury and defeating the ends of justice in relation to Prima Naidoo, on the basis that he was assaulted and that it is another crime flowing from that assault, the denial of it. We would consider it. But not in respect of anything relating to Dr Aggett.

I don't know if that makes any difference, but we can't bring in defeating the ends of justice in respect of Dr Aggett.

MR DU PLESSIS: Mr Chairman yes, it may have certain ramifications, your decision in that regard. If it means that my client cannot receive amnesty for defeating the ends of justice in respect of the Inquest of Dr Aggett, if that is the meaning of your decision, then I have to consider

my position in that regard. And that's how I understand your decision. Unless I understood it wrong. I understand that you will allow an application in respect of the difference in the evidence between what the evidence at the Aggett Inquest and the evidence ...(intervention)

CHAIRPERSON: Yes, perjury relating to Dr Prima Naidoo, and also defeating the ends of ... it's getting very technical and legalistic, defeating the ends of justice on the basis that if somebody does commit perjury in a forum such as an Inquest, he is, just by nature of the offence, defeating the ends of justice. But it's difficult now to, for us to relate that to the Dr Aggett inquest which the application doesn't get close to at all.

MR DU PLESSIS: So may I just clarify that, Mr Chairman, with your leave? If the offence applied for would be for defeating the ends of justice in respect of the Inquest of Dr Aggett, that would fall outside the ambit of the application? That's how I understand your decision.

CHAIRPERSON: Yes.

MR DU PLESSIS: Alright. Well Mr Chairman, may I then with your leave, ask for an adjournment to discuss this with my client and the ramifications thereof. I see it is quarter to one, may I perhaps request a luncheon adjournment to give me ample time or enough time to discuss this?

CHAIRPERSON: Yes. Is there anything anybody else wishes to state?

MR BIZOS: ...(inaudible - no microphone) the Committee, Mr Chairman, because I was in that Inquest, to explain what the nature of the hearing was. The issue in the Aggett Inquest was, on the assumption that Dr Aggett did commit suicide, was he driven to it by a systematic torture administered by the persons who interrogated him? As part of an overall technique by the investigation team that were interrogating a group of approximately 55 people ...(intervention)

CHAIRPERSON: Sort of similar fact type evidence?

MR BIZOS: Similar fact evidence. In terms of the Magistrate's decision, similar fact evidence was admissible. Over 15 affidavits were filed that people were being systematically tortured at John Vorster Square, by this large team of interrogators. A certain number - we had to file affidavits to that effect. We did file affidavits where the system emerged according to the affidavits. Mr Prima Naidoo was one of the persons that filed such an affidavit. When we had called a certain number, if I remember correctly, six or seven, the Magistrate decided that he wouldn't allow any more similar fact evidence.

Mr Prima Naidoo gave evidence as to what had happened to him. In order to disprove the system, the applicant in this case and others gave evidence denying that any such system existed, denying that any assaults took place. The Magistrate came to the conclusion that he believed all these police officers who said that there was no such system and he rejected the evidence of all those who said that they were assaulted. And it was on that basis that Mr Prima Naidoo and the others gave evidence.

The applicants in this case was believed and Mr Naidoo was disbelieved, on the basis of his evidence. I can give you the references to the Judgment, because the Judgment is, if you want it, the Judgment is before you in the second part of the ...

CHAIRPERSON: Yes, we've taken a look at it.

MR BIZOS: So that is the background, Mr Chairman, of ...(inaudible). So that the evidence, by virtue of the fact that he's applying for amnesty for the assault on Mr Prima Naidoo, on necessity

would indicate that he gave evidence for the purposes of defeating the ends of justice in the ... (inaudible) and in fact succeeded in doing so, having regard to the fact that he was believed by the Magistrate. He believed all the policemen and rejected the evidence of all the people who complained ...(indistinct) assaulted.

So that is the background, Mr Chairman. I'm merely saying this, so that you as a Committee, can come to a decision as to how it came that Mr Prima Naidoo - he's not a doctor, by the way. Neil Aggett was a doctor and Dr Michael, one of the relatives, is also a doctor. So that is the background, Mr Chairman, I thought that I owed it to the Committee to disclose that fact, because it would appear that since I was in the matter I have this knowledge which I wanted to share with the Committee.

MACHINE SWITCHED OFF

ON RESUMPTION

CHAIRPERSON: Thank you. Mr du Plessis, will you then take instructions from your client during the lunch adjournment and we'll reconvene at 2 o'clock or if you're not read, so soon thereafter as possible.

MR DU PLESSIS: Mr Chairman yes, may I perhaps just clarify your decision a little bit further, because my attorney seems to understand you a little bit different from the way I do? I understand from you that in respect of the evidence pertaining to Mr Prima Naidoo, where there may be a contradiction and where it may become clear that that evidence during the inquest, in respect of Mr Prima Naidoo, was not the truth. My client's application is not amended to the effect that in respect of that evidence, insofar as that may be defeating the ends of justice in respect of the Neil Aggett Inquest, it would be included in the application. That's how I understand it.

CHAIRPERSON: ...(indistinct), yes. If any perjury relating to the attack or assault upon Mr Prima Naidoo, we would regard as being covered by that caveat, if I can call it a caveat contained on page 27, but not the crime of defeating the ends of justice in the Aggett Inquest, because we find that, if one takes a look at the application and we try to look at it as broadly as possible, that it's just too tenuous to see that that offence is covered in the application and even in the caveat, the two caveats contained on page 27.

MR DU PLESSIS: I understand, Mr Chairman. Thank you, thank you for the indulgence of explaining it to me. Thank you very much.

CHAIRPERSON: Thank you. We'll take the lunch adjournment now.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Mr du Plessis?

MR DU PLESSIS ADDRESSES: Thank you, Mr Chairman. Mr Chairman, I've had a long and detailed discussion with my client, Mr Smith, and he has given me specific instructions in respect of this matter. He has given me instructions to convey to you that he's withdrawing his application, Mr Chairperson.

CHAIRPERSON: The whole application?

MR DU PLESSIS: Well the whole application insofar as we're talking of this application before the Committee.

CHAIRPERSON: I mean this one ...(indistinct) just the Prima Naidoo, but the ...(intervention)

MR DU PLESSIS: Well the whole application as I've elaborated.

CHAIRPERSON: As would have been covered by this hearing?

MR DU PLESSIS: As it pleases you.

CHAIRPERSON: Thank you, Mr du Plessis.

MR BIZOS: ...(indistinct - no microphone) application withdrawn or the application for an amendment withdrawn?

MR DU PLESSIS: No, the whole application is withdrawn. The whole application.

CHAIRPERSON: The application that would have been heard at this hearing, we heard that there was other matters which aren't before this hearing.

MR BIZOS: Oh I see, so ... Well then there's nothing for me to say or do then, Mr Chairman, if there's no application before you.

CHAIRPERSON: Yes, thank you. Thank you, Mr du Plessis.

MR DU PLESSIS: Thank you, Mr Chairman. May we be excused?

CHAIRPERSON: Yes, certainly.

MR DU PLESSIS: Thank you.

APPLICATION OF WILLIAM CHARLES CECIL SMITH WITHDRAWN