

DATE: 16-02-2000

NAME: EUGENE FOURIE

MATTER: DE KOCK 6 - VARIOUS INCIDENTS¹

MR LAMEY: Thank you, Chairperson.

INTERPRETER: The speaker's microphone is not on.

EUGENE FOURIE: (sworn states)

EXAMINATION BY MR LAMEY: Mr Fourie, you have applied for amnesty for various incidents in which you as a member of the South African Police and the then Security Police were involved, is that correct?

MR FOURIE: Yes, that is correct.

MR LAMEY: And some of your applications have been heard and you have given evidence before other Committees?

MR FOURIE: Yes, that is correct.

MR LAMEY: Mr Fourie, in these proceedings you then also apply with regard to your involvement emanating from the abduction and detention of Mr Glory Sedibe, with the MK name September?

MR FOURIE: That is correct.

MR LAMEY: Mr Fourie, if we study the bundle, is it correct that there was an initial application which you yourself completed and which was signed on the 1st of December 1996 at Groblershoop?

MR FOURIE: Yes, that is correct.

MR LAMEY: And the person who served as the Commissioner of Oaths there was Dr J P Pretorius.

MR FOURIE: That is correct.

MR LAMEY: Is it correct that Dr Pretorius is a member of...

MR FOURIE: Which page are you referring to?

¹ Source: <https://www.justice.gov.za/trc/amntrans/2000/200216pt.htm>

MR LAMEY: Page 55 Chairperson, I beg your pardon, I omitted to refer you to the appropriate page. The initial application commences on page 53, up to and including page 61 or 62.

MR FOURIE: Thank you.

MR LAMEY: Mr Pretorius was at that stage a senior member of the office of the Attorney-General.

MR FOURIE: Yes, that is correct.

MR LAMEY: You were also a state witness in the de Kock trial?

MR FOURIE: That is correct.

MR LAMEY: And from there then you made statements to the investigating team from the Attorney-General's office. Can you briefly tell the Committee what the circumstances were surrounding the signing of your initial amnesty application? How did this come about?

MR FOURIE: Dr Pretorius contacted me and told me that he was on his way from Pretoria to Cape Town and that he would visit me at Groblershoop which is near Upington. That he was going to take that route to Cape Town in order to take a statement from me or to fetch my application so that he could take it to Cape Town because then it would not be necessary to send someone else to Groblershoop. He also asked me to submit a brief amnesty application and he visited me that morning and I made the statement and filled up the form. Everything was done very briefly and very quickly. I didn't have any legal representation and it all took place very quickly so that the application could be submitted as soon as possible.

MR LAMEY: In other words then, Mr Fourie, you ask us to take notice of your improved and later application?

MR FOURIE: Yes, that is correct.

MR LAMEY: We will do so. With the indulgence of the Chairperson, the reason why I am leading you about this is because there are apparent contradictions with paragraph 3, if you look at page 57 where you say:

"I was present during the interrogation and assault of Glory Lefosike Sedibe, MK September, after he was abducted from Swaziland and brought to Piet Retief"

and later when we come to your supplementary application, it would appear that there was no assault during the interrogation that you present?

MR FOURIE: No, he was not assaulted during my presence. There were marks on his face and on his body which emanated as a result from the assault which took place during his abduction.

MR LAMEY: We will come to that later. Would you describe your choice of words there as unfortunate?

MR FOURIE: Yes, that is correct.

MR LAMEY: When we come to your supplementary affidavit which is on page 74 onwards, page 74 Chairperson, is it correct, Mr Fourie, that at this stage or at that stage you were a member of Unit C 2 at Security Head Office Pretoria?

MR FOURIE: That is correct.

MR LAMEY: Could you tell the Committee very briefly and in general what your duties at Section C2 involved?

MR FOURIE: Section C2's function was the interrogation and identification of arrested terrorists and the identification of terrorists abroad by means of photo albums as well as the research of terrorism.

MR LAMEY: And who was your Commander at that stage?

MR FOURIE: Col Martin Naude.

MR LAMEY: In your statement, paragraph 2, you say that you cannot recall precisely whether you departed from Pretoria to Piet Retief with the express purpose of Mr Sedibe's interrogation or whether you were working at Piet Retief at that stage. You were also involved in the Nersden incident, is that correct?

MR FOURIE: Yes.

CHAIRPERSON: Mr Lamey, for which charges is the applicant applying?

MR FOURIE: Perhaps I could refer you.

CHAIRPERSON: No, that's fine, you can just tell me off- hand.

MR LAMEY: It has been set out on page 76 and 77 and it boils down to the fact that Mr Fourie was a policeman at that stage. When he became involved in the interrogation of Sedibe, he was aware of the circumstances of his unlawful detention, he was also aware of his abduction. He was also aware of the signs of assault that he had witnessed on the body of Mr Sedibe and it can be argued that he was an accessory to this incident because he omitted to fulfil his duty as a policeman to reveal these conditions. If one examines the potential legal duty that he had to fulfil at that stage, it can be argued as such.

CHAIRPERSON: Are you referring to defeating the ends of justice?

MR LAMEY: What I mean is that if, under the circumstances, it was his lawful duty to expose the abduction to the appropriate authorities...

CHAIRPERSON: Do you mean that as a policeman he may have had an obligation or a duty to assist an abductee out of that situation, or at least to report such an offence? How that would have assisted the abductee under such circumstances I'm not certain of, but at least he had a duty to do so and when it comes to that aspect or that charge, what else could it be other than defeating the ends of justice?

MR LAMEY: I think that his omission may lead to accessory after the fact with regard to assault and abduction.

CHAIRPERSON: But I don't know about the assault because he maintains that he wasn't present. Those wounds which were incurred by Mr Sedibe could have been incurred by other means.

MR LAMEY: That he has stated that he heard that Mr Sedibe was injured during his abduction.

CHAIRPERSON: Do you mean by that then that he would be an accessory? Are you satisfied with that? I am debating this matter with you and I'm not very certain what the position is, I haven't really thought about it. Are you satisfied that it would be accessory to abduction or kidnapping and then the assault?

MR LAMEY: I will lead the evidence with Mr Fourie as to whether or not he was aware prior to the abduction that this abduction would take place.

CHAIRPERSON: Very well, but I would like for you to address me on this matter at the end of his evidence and enlighten me as to exactly what he is seeking amnesty for.

MR LAMEY: If we could then return. You say that you cannot recall precisely whether or not you departed from Pretoria to Piet Retief with the express purpose of his interrogation or whether you were coincidentally working in the Piet Retief area at that stage? After we've heard the evidence about Nersden incident that he was abducted during that time and the fact that you were working in that area, what would you say was the position? Were you working there or did you actually depart expressly for Piet Retief?

MR FOURIE: At that stage I was working in the Piet Retief vicinity. I was involved with the interrogation of two detainees who were detained in Piet Retief.

MR LAMEY: At any stage before the abduction of Mr Sedibe took place, did you hear that it was going to take place? Were you privy to any planning or any knowledge of this abduction that was going to take place?

MR FOURIE: No.

MR LAMEY: And then in paragraph 3 you confirm that shortly after Sedibe was brought from Swaziland to the house on the small-holding outside Piet Retief, you saw him there.

MR FOURIE: That is correct.

MR LAMEY: Can you recall whether it was during the day or during the night that you saw him for the first time?

MR FOURIE: It was during the day.

MR LAMEY: And then, could you just say with regard to paragraph 4, when you saw Mr Sedibe for the first time, in what condition did you find him?

MR FOURIE: When I entered the room, it was quite a large room with several beds inside, Mr Sedibe was bound to a bed with his one hand and I would imagine that he was also wearing leg irons.

MR LAMEY: Did you observe any signs of injuries?

MR FOURIE: I saw that there were raw marks on his nose, his eyes were swollen and there was a dry bloodiness on his face.

MR LAMEY: And with regards to the rest of his body?

MR FOURIE: I can recall that there were chaffing marks on his wrists where the cuffs had been fastened.

MR LAMEY: You say that there were clear signs on his face as well as the rest of his body, what other than the chaffing do you recall?

MR FOURIE: I did not see his naked upper body but I saw that he also had chaffing as a result of the leg irons. I saw the marks on his one hand as a result of the cuffs and the marks on his face.

MR LAMEY: Can you tell the Committee, the first time when you interrogated him, did you attempt to do this by means of the photo albums? Not only by means of the photo albums but also with individual photos of persons whom he had mentioned?

MR FOURIE: Since my first meeting with him, he provided his full co-operation.

MR LAMEY: How much time did you spend with him?

MR FOURIE: Probably an hour or two on that first day.

MR LAMEY: No, I'm referring to the first time, not in total, but the first moment of contact with Mr Sedibe.

MR FOURIE: It would have been an hour.

MR LAMEY: And you say that he provided his full co-operation?

MR FOURIE: Yes, that is correct.

MR LAMEY: And then you say that Sedibe was a prominent leader. Is this what you understood from the other members?

MR FOURIE: I knew Sedibe from the photo album. I knew that he was a prominent ANC leader in Swaziland as well as MK and the Transvaal Machinery.

MR LAMEY: Very well. And you also knew that he would have possessed important information regarding hiding places of infiltrators as well as infiltrations?

MR FOURIE: That is correct.

MR LAMEY: And the interrogation was aimed at obtaining this information?

MR FOURIE: That is correct.

MR LAMEY: And then you say that as far as you know, while you were present he was not assaulted?

MR FOURIE: No, he was not assaulted at Piet Retief.

MR LAMEY: The day after his abduction, was that the first time that you spoke to him, the only time that you spoke to him in order to obtain information?

MR FOURIE: No, there were several occasions thereafter.

MR LAMEY: No, let us just refer to Piet Retief.

MR FOURIE: The following day I also had a discussion with him, thereafter I undertook a thorough photo identification with him at Vlakplaas.

MR LAMEY: Were there any other political detainees with whom you also conducted similar discussions, identifications and interrogations?

MR FOURIE: Yes, there were two.

MR LAMEY: Did you hear that he had resisted tremendously during his abduction?

MR FOURIE: Yes, I heard that he had resisted his abduction and I also heard that the marks that were on his body were as a result of his resisting his abduction from Swaziland to South Africa.

MR LAMEY: And when he was at Vlakplaas, did you also interrogate him?

MR FOURIE: I did not interrogate him, I undertook photo identifications with him.

MR LAMEY: And did he provide his full co-operation?

MR FOURIE: Yes, he co-operated completely.

MR LAMEY: Then you state that you later heard during your evidence at the De Kock trial that Sedibe had died and that he had allegedly been poisoned?

MR FOURIE: Yes, this is what I heard according to rumour.

MR LAMEY: And then paragraph, at the bottom of page 76 going over to page 77, do you confirm that?

MR FOURIE: Yes, I do.

MR LAMEY: And then as well as with regard to the political objective, page 78, 79?

MR FOURIE: Yes, I do.

MR LAMEY: Chairperson, with your leave, I would later address the Committee with regard to the potential offences. I do not know if there is anything else that you wish me to continue with.

NO FURTHER QUESTIONS BY MR LAMEY

CROSS-EXAMINATION BY MR HUGO: Mr Fourie, singular aspects. I would just quickly like to deal with the nature of the injuries to Mr Sedibe. If I understand you correctly, you saw Mr Sedibe directly after the abduction, the next day.

MR FOURIE: That's correct.

MR HUGO: In daylight?

MR FOURIE: That's correct.

MR HUGO: What time was it approximately?

MR FOURIE: I would not be able to judge the time precisely, but I would say it was approximately 11 or 12 o'clock.

MR HUGO: You say there were wounds or injuries to his face?

MR FOURIE: That's correct.

MR HUGO: I did not - was there also dry blood on his face at that stage?

MR FOURIE: There was not lots of blood, but there was little blood that had dried on his face, yes.

MR HUGO: Was this observable?

MR FOURIE: Well, I was sitting close to him when I spoke to him and I saw it.

MR HUGO: So are you saying that from your experience, any person who spoke to him at that stage had to have noticed these injuries?

MR FOURIE: Yes.

CHAIRPERSON: What of his clothing? Can you recall his clothing?

MR FOURIE: Chairperson, I cannot recall whether he was wearing his shirt or not, but I did not see, or I cannot recall any marks to his body.

CHAIRPERSON: Well, please tell me, there is something that concerns me and you must please assist me because in the whole hearing there is one thing that concerns me, it is that this person, a member who was highly placed in the ANC, was questioned and detained under Section 29 and he was not assaulted at all. I'm not saying it's impossible, I'm not saying

it's not true, but I would just like to find out. If he was not wearing his shirt, why would that be so if he co-operated because that was one of the tactics that was used by the police, to humiliate a person and to break him down. We know from experience and from the stories we have heard that this is what happens and one of the things that had taken place back then was to undress a person, to humiliate him and to break him down. Why - and I do ask it in that context - I know you are saying that you cannot recall, but if he was bare chested, why would he have been such if he had given his co-operation?

MR FOURIE: Chairperson, the only thing I can speak of and as I have heard, that there was a great struggle at the police station in Swaziland, that he must have sweated a lot and had an odour about him and he might have wiped his nose, if his nose was bleeding, with his shirt.

MR FOURIE: Very well. Continue.

MR HUGO: May I just ask you as follows: To you as a policeman who saw him there for the first time, you saw clearly that he was assaulted?

MR FOURIE: The signs were those of assault, but I would imagine that he must have put up a fight and it was not with the intent of just assaulting him, but it was a fight to get him outside. I can imagine that it was his need for survival and his fight not to be abducted. He must have been shocked when he saw that white people wanted to abduct him, so he would have fought back. I would not say that he was physically just assaulted.

MR HUGO: But may I ask you as follows? There was no way upon which someone could have spoken to him and not have seen immediately that this man was involved in some confrontation?

MR FOURIE: Yes, that's correct.

MR HUGO: I have no further questions thank you.

NO FURTHER QUESTIONS BY MR HUGO

CROSS-EXAMINATION BY MR PRINSLOO: Mr Fourie, when you saw Mr Sedibe, was there any problem in extracting information from him, or did he give his co-operation voluntarily?

MR FOURIE: Entirely voluntarily.

MR PRINSLOO: And when you saw him there the first time, you say it was approximately at noon, did it appear to you that he had received any medical attention, or medication to care for his injuries?

MR FOURIE: I don't know.

MR PRINSLOO: But did you see anything?

MR FOURIE: No, Chairperson.

MR PRINSLOO: Thank you, Chairperson.

NO FURTHER QUESTIONS BY MR PRINSLOO

MS VAN DER WALT: No questions, thank you.

NO QUESTIONS BY MS VAN DER WALT

MR LEOPENG: No questions Chairman.

NO QUESTIONS BY MR LEOPENG

MS PATEL: Honourable Chairperson, just perhaps one aspect.

CROSS-EXAMINATION BY MS PATEL: Sir, can you tell us at the time that you interrogated Mr Sedibe, was he still tied to the bed at that time?

MR FOURIE: Yes.

MS PATEL: Right. Were you and he alone in the room, or were there other people there?

MR FOURIE: I think there were always other people in the same room, black police officers.

MS PATEL: Can you recall which black policemen were there?

MR FOURIE: If I recall correctly, I am not certain but I think Koole was there.

MS PATEL: Can you recall if Nofomela was there?

MR FOURIE: No, I cannot.

MS PATEL: Okay. So it was just the other black policemen, there was no one else present.

MR FOURIE: The people were moving in and out from that room the whole time, so no one specifically sat still all the time with him.

MS PATEL: Can you perhaps explain why people were in and out all the time, if you were busy with him? Were they waiting to interrogate him as well, or what was the procedure there?

MR FOURIE: No, everybody was present in the room in the building and they were just moving in and out. As someone had questions, they would come in and ask the question. Because he had so much information and he was such a prominent member, there was something that always came up that someone wanted to ask. They would quickly come in, ask him the question and then leave again.

MS PATEL: Okay.

CHAIRPERSON: It seems like they were queuing up, Ms Patel.

MS PATEL: It seems that way, Honourable Chairperson. Do you have any idea more or less how many people would have interrogated him before you got there?

MR FOURIE: No, I have no idea.

MS PATEL: Okay. And how did it come about that you arrived there? Who told you that he was going to be there and how did you come there?

MR FOURIE: I imagine the Branch Commander, Freek Pienaar, at Piet Retief told me that Glory had information which he wanted to supply and he mentioned some names and I had a set of photos of about 7 000 people who had left the country and if he mentioned the names, he wanted me to see if I could find a photo of that person with me, so that we could show it to him and see if this was the person he was referring to.

MS PATEL: And then just finally, during ...

JUDGE KHAMPEPE: May I interpose on that point, Ms Patel? So you came to that house in Piet Retief at the instance of Mr Pienaar? He's the one who contacted you, is that what you're saying?

MR FOURIE: If I recall correctly, I worked at the Piet Retief Security Branch at that stage. I was doing photo identifications and I imagine that Freek came to the office and took me along to the farm. We went along with Freek.

JUDGE KHAMPEPE: So you were requested by him to come to the farm or to the house when Mr Sedibe was arrested?

MR FOURIE: That is correct. He was not arrested there, he was detained there.

JUDGE KHAMPEPE: In terms of Section 29?

MR FOURIE: I don't know.

JUDGE KHAMPEPE: Did Mr Pienaar ...

CHAIRPERSON: But under Section 29 he had to be in a correctional facility or a cell, he couldn't have been held at a, on a farm.

MR FOURIE: Yes, but I did not know whether he was officially charged, or what the circumstances of his detention was.

CHAIRPERSON: At best to the police, he was still an abducted person?

MR FOURIE: Yes, I assume so.

JUDGE KHAMPEPE: So it wasn't as a result of you having been informed by Mr Naude that you went to the house where Mr Sedibe was being held?

MR FOURIE: No, Mr Naude did not tell me to go to that house. I don't think he knew of the house.

JUDGE KHAMPEPE: Thank you.

MS PATEL: Thank you Honourable Chairperson. Sorry, if you would just grant me a moment.

JUDGE KHAMPEPE: If I may just make a follow-up on that. What appears therefore on page 74 of your written application, would that be incorrect? That's paragraph 2.

MR FOURIE: Yes, what I meant by this is that upon instruction of Col Naude, I went to Piet Retief to conduct a questioning and after Sedibe was abducted, Head Office was informed that he was abducted and Col Naude told me to help with the photo identifications of Sedibe, but he did not know where he was being detained, he did not tell me to go to such and such a house to question him, he just told me that to assist Eastern Transvaal with identification of people that he mentioned because Head Office was already aware that he had been abducted.

JUDGE KHAMPEPE: Ms Patel.

MS PATEL: So are you saying that you knew before the abduction that he was going to be abducted and that you were told to be on stand-by for when - or am I misunderstanding you?

MR FOURIE: No, before that I was working in Piet Retief where I did some identifications with two detained people who were detained at Piet Retief and this incident just took place coincidentally during that period of time, but I did not know beforehand of the abduction.

MS PATEL: You state, just for you to clarify on 76, page 76 of the Bundle, you say that, that's towards the end of the first paragraph on that page, Honourable Chairperson, you say:

"He had already been calmed at the stage when I became involved in the questioning."

MR FOURIE: I would imagine that someone who was abducted from another country by white police officers, would be extremely shocked, he would be in a state of shock, but at that stage he was calm.

MS PATEL: Okay. Thank you Honourable Chair.

NO FURTHER QUESTIONS BY MS PATEL

CHAIRPERSON: Any re-examination?

MR LAMEY: Just to clarify one aspect if it's not yet perhaps clarified.

RE-EXAMINATION BY MR LAMEY: The thing with Col Martin Naude and Mr Pienaar, you were there with the approval of Mr Martin Naude during the interrogation or the abduction, he told you to assist with the questioning but Freek Pienaar fetched you from there in order to help with the information that they had and help with the photo identifications.

MR FOURIE: That's correct. When I worked at any Security Branch, I was under the command of the Commander of that Security Branch.

MR LAMEY: When you worked in that area?

MR FOURIE: Yes.

MR LAMEY: Thank you Chairperson, no further questions.

NO FURTHER QUESTIONS BY MR LAMEY

ADV BOSMAN: No questions thank you Chairperson.

JUDGE KHAMPEPE: Thank you. Mr Fourie, you say that you first had contact with Mr Sedibe on the morning of his arrival in Piet Retief.

MR FOURIE: That's correct.

JUDGE KHAMPEPE: How late was it? Can you estimate?

MR FOURIE: I said I cannot recall, but I think it was between 11 and 12.

JUDGE KHAMPEPE: Now you also stated that during your interrogation, you obtained his full co-operation.

MR FOURIE: Yes, that is correct. I experienced it as the truth that he gave me his full co-operation.

JUDGE KHAMPEPE: Now what I want to know is, what important and invaluable information did Mr Sedibe provide you, that convinced you that you had obtained his full co-operation?

MR FOURIE: When I showed him a photo, he would identify the person and tell me who the person was, where the person was and where the person was trained abroad and I regarded that as his full co-operation.

JUDGE KHAMPEPE: So your interrogation was around the photo album?

MR FOURIE: Yes.

JUDGE KHAMPEPE: And nothing outside the photo album?

MR FOURIE: No.

JUDGE KHAMPEPE: How long did you say this interrogation lasted?

MR FOURIE: I suspect about an hour.

JUDGE KHAMPEPE: And during your presence in that house, did you notice Brigadier Visser around?

MR FOURIE: I cannot recall if I saw him there.

JUDGE KHAMPEPE: Did you see Mr de Kock around?

MR FOURIE: Yes.

JUDGE KHAMPEPE: Was your interrogation only on that morning, or did you proceed to interrogate him also the next morning?

MR FOURIE: The following day or the day thereafter, I undertook some photo identifications with him once again. What happened, as the people of the Eastern Transvaal questioned him, because they were more aware of his movements in Swaziland, he mentioned names to them and I tried to obtain photos from the photo album that he had identified and then I would show the photos to him so that he could tell me whether this was the person he was referring to.

ADV BOSMAN: Mr Fourie can you - the purpose of showing him the photos, was this to verify whether he was speaking the truth or did you try to put names to photos that you did not know the people of?

MR FOURIE: No, the idea was, the people whose names he mentioned, we wanted to get a photo of that name and then to ask him, is this the specific person whom you refer to because we knew what the MK names were and what their movements were.

ADV BOSMAN: So in short, you wanted to verify that this man was giving you the correct information, he was not trying to mislead you?

MR FOURIE: That is correct.

ADV BOSMAN: So at that stage with regard to you he did not add anything new? You would just want to determine whether this man was speaking the truth?

MR FOURIE: With regard to the photos, yes.

ADV BOSMAN: Thank you.

JUDGE KHAMPEPE: And it is because of that that you then became convinced that you had his full co-operation?

MR FOURIE: That's correct.

JUDGE KHAMPEPE: That he was not misleading you.

MR FOURIE: That is correct.

JUDGE KHAMPEPE: You also stated that during your arrival there you were informed of the injuries that he sustained after his resistance, during his abduction. Can you tell us who informed you of this resistance and the injuries that he had sustained during certain abduction?

MR FOURIE: I simply saw the injuries, but nobody told me that he had been assaulted on such and such a place or in such and such a manner. I assumed that it must have been during the altercation at the police station when he was abducted and I cannot recall whether it was Paul van Dyk or Mr de Kock who said that he had put up a tremendous fight at the police

station in Swaziland, that they had struggled to get him into the car in order to bring him to South Africa. I assumed that as a result of that altercation there, that he had injuries on his face, but nobody told me precisely how he had sustained his injuries. I assumed that it was ascribed to the struggle that he had put up at the police station in Swaziland.

JUDGE KHAMPEPE: Yes, I had a different impression of your evidence. I thought you had heard from someone that certain injuries had been sustained during his resistance.

MR FOURIE: Simply because it was said that there was an altercation, I assumed within myself that injuries would naturally be sustained during such a heavy struggle.

JUDGE KHAMPEPE: Yes. Thank you Chairperson, I have no further questions for Mr Fourie.

CHAIRPERSON: Mr Fourie, you state that you had approximately 7 000 photographs.

MR FOURIE: That is correct.

CHAIRPERSON: Of persons who were involved in the struggle. All of these persons were refugees. These were persons who had left the country and who found themselves abroad, but Mr Piet Koornhof's photos would certainly not have been there and he was also abroad. Now what I want to know is, what was so special about those persons in those albums?

MR FOURIE: These were person who had obtained military training abroad who had either joined MK or APLA.

CHAIRPERSON: Very well. Now you said that you knew where they were, these persons, that you were aware of certain details pertaining to these persons?

MR FOURIE: That is correct.

CHAIRPERSON: All 7 000?

MR FOURIE: The majority of them.

CHAIRPERSON: Now the majority of these, were they in Africa or all across the world?

MR FOURIE: All across the world.

CHAIRPERSON: What interests me is where you obtained these photos from.

MR FOURIE: The photos were obtained in houses, from families who had reported their children as missing, from the old Bantu Identification Bureau where photographs had been stored, from informers, from an assortment of places.

JUDGE KHAMPEPE: As well as from funerals of some of the activists that were killed internally inside the country, is it not so?

MR FOURIE: Well we didn't have photos in that album of local persons who were sympathisers and so forth, these were all persons who had left the country illegally and who had obtained training.

JUDGE KHAMPEPE: Yes, but I'm saying some of your sources emanated from people who had, before their departure, before they left the Country, had attended some of the so-called high-profile funerals ...(indistinct - speaking simultaneously) had had access to those funerals and had taken photographs.

MR FOURIE: Yes as well as farewell parties, a number of occasions. We had photos from numerous functions. School photos as well, soccer club photographs, many.

CHAIRPERSON: When you came to him, did you ask any of your colleagues who were entering or exiting the room and say to them: "This man has been abducted only 24 hours ago. Why is he co-operating? Did you hit him? What happened to lead to this?"

MR FOURIE: I had a reasonably extensive of experience when it came to interrogations and there were certain individuals who would co-operate immediately. Then there were others who refused to speak until they went to jail, but he was the kind of person who gave his co-operation immediately because it was in his best interests. People differed in that respect.

CHAIRPERSON: Why would it have been in his interest?

MR FOURIE: Well, he was probably afraid that he may have been further assaulted if he didn't provide his co-operation. He didn't know what was going to happen to him. He was removed illegally, nobody was aware of his absence. Anything could have happened to him.

CHAIRPERSON: Including death?

MR FOURIE: Yes, it was a possibility.

CHAIRPERSON: Because at that stage many people had disappeared and as a result of the process that we are in now, it has emerged that many persons were in fact murdered.

MR FOURIE: Yes, that is correct.

CHAIRPERSON: You see the reason why I'm asking you about the assault is because it appears to me as if an assault will be a central point in the evaluation of this matter and I wanted to determine whether or not you could assist us particularly due to the fact that you came to him at a later stage and I wanted to determine whether you knew why he played along particularly when one takes into consideration that he was a highly placed ANC person, one would not have expected something like that to take place so swiftly after the abduction, that someone like him would co-operate so easily.

MR FOURIE: I can only thing that he was someone who was much bigger in stature than you yourself, Chairperson and it would have taken tremendous effort to get him from the cells at the police station into the vehicle which was used for the abduction so that could explain the injuries. I am sure he realised in his own interests and in the interests of his wife and his family, that it was vital for him to co-operate. He must have considered the possibility of his own death. He himself had worked in an Intelligence Department, they had interrogated and

killed persons themselves as well, so he knew what the possible outcome could be, even there in Swaziland they had killed persons whom they had suspected of being collaborators or informers for the Security Police and he must have realised that if he co-operated his road would be easier.

CHAIRPERSON: Yes, thank you. You are excused.

WITNESS EXCUSED

MR FOURIE: Thank you Chairperson.

MR LAMEY: That is then the - my applicants Chairperson, thank you.

CHAIRPERSON: It seems as if we're finished with all the applicants now. As was indicated yesterday, there are no further witnesses on behalf of the applicants to be called. Mr Hugo? Mr Lamey? Mr Leopeng, have you got any witnesses?

MR LEOPENG: No, Chairman, the next of kin, that's the wife and the brother, decided not to testify, so I don't have any other witness to call.

CHAIRPERSON: Ms Patel have you got any witnesses?

MS PATEL: No thank you, Honourable Chairperson.

CHAIRPERSON: Mr Hugo, do you have any argument?

MR HUGO: Thank you Mr Chairman.

MR HUGO IN ARGUMENT: As you know we are acting for applicant De Kock and we respectfully submit that he has complied with all the formal requirements of the Act in that it was - the application was timeously submitted etc., etc. I'm not going to dwell on that particular requirement.

Mr Chairman, as far as a full disclosure of all the relevant facts is concerned, we humbly submit that Mr de Kock's evidence was a shining example of what the Act had envisaged when they enacted this particular act. I think he gave you all the details and all the particulars that were necessary. There were, I think, two aspects where - well the third one I'll deal with a little bit later, but the two aspects on which he was contradicted. The first one was the initial approach in Swaziland, that's the approach to the police station where Mr Koole said that he was initially sent in to approach the guard and to reconnoitre. Mr de Kock's recollection was a little bit different. I once again humbly submit that nothing turns on that particular point.

As far as the other problem is concerned, that was the contradiction between Mr de Kock's version and Brig Visser's version, I would ...(intervention)

CHAIRPERSON: Which one are you talking about?

MR HUGO: I'm talking about the meeting or the so-called meeting at the border post.

CHAIRPERSON: Yes, let's talk about that and I mentioned yesterday, perhaps my Afrikaans isn't so good, but really and I speak for myself, as it appears in the written applications of certain of the other applicants, the reference mark was the border post. It cannot be argued, in my view, in that context, that other side the border post may mean Piet Retief. A simple and direct translation in a contextual manner means just other side the fence. What do you say about it?

MR HUGO: That's exactly how we understood it as well, Mr Chairman. In fact I just went through the papers and you'll see Mr Visser says in his written application, that is on - just bear with me.

CHAIRPERSON: Are you talking about Visser?

MR HUGO: Brigadier Visser yes. Well it starts on page 101 and then he deals with the fact that, that's 102 he says:

"I also went to Nersden to ensure that the operation continued."

Now that, he says, I take it that was an initial step before the operation was launched, but what's more interesting is in the following - not the following, two paragraphs down the page he says:

"This particular incident is also described in the amnesty application of Christo Petro Deetlefs and I associate myself completely with his version thereof."

Now if you look at what Mr Deetlefs says about this, he says exactly what Mr de Kock has testified.

JUDGE KHAMPEPE: What about Mr Deetlefs' *viva voce* evidence? Have you had an occasion to revisit his *viva voce* because he has been very precise on this issues in his *viva voce* evidence.

MR HUGO: That's exactly the point that I want to make Mr Chairman. Gainsaying that is the evidence initially of Mr van Dyk and he initially wanted to deviate substantially from what he was saying in his written application and then after having been pressed by Judge Khampepe, he then insisted that his initial application, the written application was actually the true situation.

CHAIRPERSON: About Mr van Dyk, something strange occurs to me. He says look, he's sticking to his evidence but he's not disputing what Mr de Kock says now. Both can't be correct.

MR HUGO: Yes. Mr Bosch testified, he said that as far as he could remember the meeting was actually a little bit further down the road. Having said that, Mr Bosch also I think, conceded that his memory was very vague as to what happened there.

CHAIRPERSON: Well, Mr Hugo, because of the lapse of time we must accept that all the people's memory as to detail would be affected.

MR HUGO: Yes.

CHAIRPERSON: But one doesn't expect it to be affected so drastically as to say that it didn't happen or that it happened substantially distant from where the allegations say.

MR HUGO: Mr Chairman, what was peculiar was obviously the fact that Brig Visser couldn't remember any markings or bruises on the face of Mr Sedibe when he saw him, be it at the border post or Piet Retief, but it was interesting to note that when Mr Fourie testified this morning, he said that these things were quite patent and clear and that there was still dry blood on the fact. He also said ...(intervention)

CHAIRPERSON: But Mr Hugo, sorry to interrupt you, is it not possible that Mr Visser had forgotten?

MR HUGO: Well that is exactly the next point that I wanted to make. I think Mr Chairman, and I'm not here to offer explanations, but for me it would appear that that could have happened and that could have been the case especially bearing in mind that it was actually testified here by Mr Visser that he had this brain problem, that he had this operation and that he suffers from memory lapses, so if you were to choose between Mr de Kock's version and Brigadier Visser's version and the other witnesses' version, I humbly submit there's absolutely no doubt that Mr de Kock was very clear on this issue.

CHAIRPERSON: Of course eventually you will find out about our concerns about Mr Visser's evidence on its own, that's not for you to answer. I appreciate that point.

MR HUGO: I've got a difficult enough job as it is, I don't want to argue Brig Visser's situation. Mr Chairman, then as far as the requisites and other factors mentioned in Section 22, it's clear that Mr de Kock was a member of the SAP when this particular operation was launched. It was, we humbly submit, directed against a publicly known political organisation. It's become clear that Mr Sedibe was a high-profile member of the ANC at the time and Mr de Kock obviously has contained in his supplementary submissions *bona fide* acted with the intention of resisting the struggle, as it was known at the time.

CHAIRPERSON: Was he convicted on this case?

MR HUGO: No, Mr Chairman, he was not convicted on this case. As far as the criteria in Section 23 are concerned, the motive, Mr Chairman, we submit that the motive was plausible within the context of the struggle at the time. It was certainly done to resist the struggle. As far as the context is concerned, Mr Chairman, we're saying this was really done during the height of the armed struggle and all the problems that were associated with that. The legal and the factual nature Mr Chairman, we're saying that bearing in mind all the other applications that we've dealt with, that the gravity and the severity here was of a relatively minor nature. Having said that, we obviously understand and concede that abduction is in itself a serious offence. I mean if you compare that to the heinous murders that were committed, this is of a relatively minor nature.

CHAIRPERSON: But Mr Hugo, I don't say this is going to carry much weight in ...(indistinct) operations, but to abduct another person from a different sovereignty and then to reduce him to an item within the context of your own institution and to reduce his image as

far as the place where you'd like to be, is in itself a terrible thing to do, where he has no place to escape, it's ...

MR HUGO: I readily concede that Mr Chairman and he was put in an envious situation.

CHAIRPERSON: He could just as well have murdered him.

MR HUGO: Yes, you're absolutely correct and I concede that. The object of the act itself, Mr Chairman, we say it's very clear from the evidence that it's definitely primarily directed at a political opponent at the time. Then Mr Chairman, I think Mr de Kock's situation is also a bit different in the sense that it was clear from the outset that he was acting on instructions and he was executing an order. Now Mr de Kock's situation, we submit, is akin to that of a soldier having been given orders and just carrying out those orders. You would recall that I asked Brigadier Visser what the situation was and he readily conceded that Mr de Kock was under his command and the evidence and information that was gleaned from Mr Deetlefs was then passed on to Brig Visser. Brig Visser then took an informed decision and it was relayed to Mr Pienaar who in turn then arranged for Mr de Kock to partake in this particular incident, so we say as far as this particular operation is concerned, that Mr de Kock was in the situation of a foot soldier, just carrying out orders from a higher ranking officer.

Mr Chairman, as far as proportionality is concerned, we also say that we are of the humble opinion that it was certainly proportionate to the objective pursuit. There is I think well without any doubt, no evidence whatsoever of personal gain, personal malice, ill-will or spite.

Now Mr Chairman having said that, we must obviously look at the situation as to what we're applying for amnesty for. Now it is not as simple as it would appear on the face of it in that I have no doubt that you're aware of the Stopforth Decision and I don't, I have made copies of that particular decision. If you want me to, I can hand it up to you but I'm sure ... (intervention)

CHAIRPERSON: No, I'm aware of that.

MR HUGO: Yes. What we would suggest, Mr Chairman, is that this particular Committee is not in a position to grant amnesty in respect of offences that were committed in Swaziland. We submit that on a proper construction of that particular Judgment, you are only enjoined to grant amnesty in respect of delicts committed in Swaziland and having said that and if we're correct in saying that then we're just asking for amnesty in respect of delicts committed in respect of the abduction, the unlawful arrest and detention and the assault that took place within the sovereignty of the Swaziland territory, but we are however, Mr Chairman, asking for amnesty in respect of the abduction because it was a continuous offence that took place after they had re-entered South Africa, the unlawful arrest and detention was similarly a continuous offence, we submit that we don't need to ask for assault, common assault in the sense that that stopped as far as Mr de Kock is concerned, before they re-entered South Africa. We might, maybe just casting the net a little bit wider and say that we should include it in the sense that the unlawful detention could be assault as well on a sort of a narrow interpretation of the definition.

CHAIRPERSON: The abduction is included there, isn't it?

MR HUGO: Yes.

CHAIRPERSON: We needn't split hairs.

MR HUGO: Yes. Mr Chairman, we're then also asking for, well the unlawful possession of firearms we're asking for as well. Then initially I thought that we should also ask for the pointing of a firearm which took place in Swaziland as well, but we submit that you're not in a position to grant amnesty as far as that is concerned. Mr Chairman we're also asking for amnesty in respect of a forgery, that's the using of false passports, to cross the border and the theft of a rifle and Mr Chairman, then obviously all delicts ...(intervention)

CHAIRPERSON: The theft of course would be continuous into South Africa.

MR HUGO: That's correct. Then obviously all delicts that were committed in Swaziland and here and that are covered by the facts and the evidence in this particular matter.

CHAIRPERSON: In respect of Mr Sedibe?

MR HUGO: That's correct, Mr Chairman. Unless there's anything else that you want to hear me on, these are our submissions.

CHAIRPERSON: Do we have to make the distinction in the abduction because it is a continuous crime, or in this case was a continuous crime, do we have to make the geographical distinction? Is it necessary?

MR HUGO: Mr Chairman, I don't think that it really is necessary, especially in the practical implications, it would make no difference whatsoever, so I don't think it's necessary to make that distinction.

CHAIRPERSON: Maybe the assault is a bit different. I hear what you've got to say on that. We'll consider that. Is there anything else you'd like to mention?

MR HUGO: Nothing else, thank you Mr Chairman.

CHAIRPERSON: Mr Lamey.

MR LAMEY: Thank you Chairperson.

MR LAMEY IN ARGUMENT: Chairperson, I would like just to start off where Mr Hugo ended with regard to his submissions as to points of law and that specifically pertaining to the assault. My submission is, although the assault was committed physically within the territory of Swaziland, the applicants must have foreseen when the decision was made to abduct and that decision was made in the RSA, that there could be resistance and that assault is at least a possibility, a foreseen possibility at that stage. Chairperson also the fact that you take a person physically, although it's abduction, it's also in a sense assault, but I would submit that this Committee should also consider and I submit have jurisdiction by virtue of the fact that the planning

and decision to abduct which included the foreseeability of assault which was done within the RSA borders, should also extend amnesty, should they be granted ...(intervention)

CHAIRPERSON: In respect of the assault, wouldn't that be a bit of a "sameswering"?

MR LAMEY: Ja, well ...

CHAIRPERSON: Rather than actual assault? The actual physical assault did not take place in South Africa.

MR LAMEY: Yes, no sure.

CHAIRPERSON: But the planning did.

MR LAMEY: Yes, I think it would include at least a conspiracy to assault.

Chairperson, if I may start with Mr Fourie, the last applicant, I submit that his role, before I make my submissions as to Mr Fourie's application, there was previously argument before other Panels by Adv Visser and I also think by Adv Jansen who appeared, I was present when that argument was made before your brother Judge Miller in East London, as to what - how should the Amnesty Committee approach this aspect of granting amnesty to specific offences. Must the Amnesty Committee perform the function? What the Attorney-General would do when he looks at a docket and tries to extract from the facts before him specific technical offences from which he would prosecute a person, is that really the function of the Amnesty Committee and the submission which was made was ...(intervention)

CHAIRPERSON: Maybe I can help you to save time, my approach is not to adopt a prosecutory approach, but in deciding what amnesty must or in respect of what crime amnesty must be granted. One must necessarily have to look at the facts and the criminal law.

MR LAMEY: Yes.

CHAIRPERSON: As we did now in respect of conspiracy and actual assault. My approach is I'm happy to go that far but whether the Attorney-General is going to prosecute or not is not my concern. If that helps you, that's my personal approach.

MR LAMEY: For instance, what I have in mind is for instance the question of crossing the border. We all know that crossing the border with a false passport is an illegal act. The question is, should the Committee go and search for the relevant specific Statutory provision in order to grant the amnesty, or would it suffice to say that as far as that is concerned, word it in more broader terms, say any statutory offence which could be deduced from the act of illegally crossing ...(intervention)

CHAIRPERSON: Mr Lamey I must be quite honest, I would have preferred to do that, possibly it saves me a lot of p.t. in the library, but in view of this well-known ANC 39 Indictment, what you are suggesting is a sort of quasi blanket amnesty and we're not allowed to do that. We must be specific and we must be specific in terms of the request. If you asked for amnesty or apply for amnesty for assault and the evidence disclosed fraud also and you haven't applied for fraud, then we're not entitled to grant because it hasn't been applied for. Do you follow what I'm saying? Our interpretation of that Judgment and indeed we're forced to regard it as policy, is that there must be specific crimes applied for and while I sympathise with you, while it will be much easier for us to do that, we cannot and unfortunately that is the policy and the Judgment.

MR LAMEY: As it pleases you, Chairperson. Chairperson, I won't take the matter further then, suffice to say that I think it - clearly the intention of the Act was not to grant a blanket amnesty for anything that might have happened, without giving some facts pertaining, but what the applicants do is, they give you the facts before you and they state what obvious crimes, common-law crimes are to be deduced from these facts, but I don't think that prevents the Amnesty Committee from making a - giving amnesty in terms of, for example, abduction, which is clear, conspiracy to assault, the delict of unlawful detention and deprivation of ...(intervention)

CHAIRPERSON: If there's an application for murder and the evidence produces the conclusion that it was an attempted murder, attempted murder may not have been applied for, but we'll grant it because murder is essentially the crux of what was applied for. I've got no problem with that, but if a substantially different type of crime is evident from the evidence and it had not been applied for, then I'm afraid we're stuck with what was applied for, but where we've got a *sui generis* type of crime that can be gleaned from the facts, we've got no problem with granting that, as long as the facts substantiate it.

MR LAMEY: Yes. Chairperson, I would then like to turn to the application of Mr Fourie. I think from his position as I say, strictly from a legal point of view being a policeman, I would submit that he was an accessory after ...(intervention)

CHAIRPERSON: Mr Lamey, I don't think you need to argue on Mr Fourie.

MR LAMEY: Thank you. Chairperson then with regard to ...(intervention)

CHAIRPERSON: I just want to check with you. You would have applied for accessory after the fact of abduction and assault.

MR LAMEY: And assault.

CHAIRPERSON: No, assault, he says he didn't - nobody told him about assault, he concluded that himself.

MR LAMEY: But now he's in a position that he doesn't have first-hand knowledge where that assault took place. It could have been for argument sake in the RSA. At what point in time it took place is his danger.

CHAIRPERSON: And can he say ...

MR LAMEY: But the point is, what he sees is, sorry to interrupt Mr Chairman, what he sees are clearly signs of assault and he refrains to do anything about that.

CHAIRPERSON: No, he doesn't see signs of assault, he sees wounds.

MR LAMEY: Yes, but he ...(intervention)

CHAIRPERSON: Does he know it is an assault, because assault implies a crime. He sees wounds that may have been inflicted, not by way of a crime.

MR LAMEY: Yes, but what comes to his knowledge is the following. Mr Sedibe was abducted, he has seen the wounds, what comes to his knowledge afterwards is he was assaulted.

CHAIRPERSON: No it doesn't come to his knowledge, he himself testifies.

JUDGE KHAMPEPE: Yes.

CHAIRPERSON: Nobody told him that.

JUDGE KHAMPEPE: ...(indistinct) he said anything, that's his own - that's my deduction.

CHAIRPERSON: That's his own version. I made particular note of it because of the explanation you gave before he testified.

JUDGE KHAMPEPE: Yes and I questioned him on that and he was very specific.

MR LAMEY: Chairperson, I'm sitting thinking myself in his position having all legal knowledge, it comes to my knowledge Mr Sedibe has been abducted. Whatever resistance Mr Sedibe has made to overcome that resistance, is unlawful. I see signs of assault. I see injuries. In my mind I come to the conclusion that these injuries were sustained during this abduction in order to overcome resistance. That boils down ...(intervention)

CHAIRPERSON: Are you guilty of ...(intervention)

JUDGE KHAMPEPE: That's speculation, isn't it, Mr Lamey?

MR LAMEY: No, no that is a realistic, reasonable conclusion, not speculation. I see the signs, I know of abduction and it's obvious it's logic from my background where I come from, that this guy must have been assaulted during the course of his abduction somewhere.

JUDGE KHAMPEPE: Yes.

MR LAMEY: And now I do nothing about that. Am I not, as I say, as a reasonable probability or a possibility, not guilty by refraining in my omission to report that to the authorities if ...(intervention)

CHAIRPERSON: What are you going to report?

MR LAMEY: Firstly, we've got a person here who's been abducted.

CHAIRPERSON: Ja.

MR LAMEY: In terms of the law of the country. I see signs of injuries, obviously the person must have sustained these injuries, in all probability, as a result in the process of his abduction to overcome resistance, which means assault and I refrain from reporting that to the proper authorities. If the immediate proper authorities don't want to do anything about that, my Officer Commanding or the people around me, I should use other avenues and from a strict legal point of view, should you refuse to do that, you can be held liable by the Attorney-General or be prosecuted by the Attorney-General ...(intervention)

CHAIRPERSON: For what?

MR LAMEY: For accessory after the fact.

CHAIRPERSON: But you can only be found guilty or even prosecuted for a crime that you know about. In this case he didn't know about it.

ADV BOSMAN: Mr Lamey, if I may Chairperson, just put it to you this way. I haven't made up my mind yet, but let's assume the Director of Prosecutions decides to prosecute Mr Fourie for an accessory after the fact in respect of the assault and the evidence is led in Court that he was told that he was abducted, he knew he was unlawfully abducted and evidence there that he saw these injuries, are you arguing that the Court may then say the only inference that I can draw if I apply State v Blom is that you knew this man had been assaulted because there was no other inference to be drawn? Is that more or less what you are arguing and therefore you ...(intervention)

MR LAMEY: There's no other reasonable inference under those same ...(indistinct) that can be drawn, that that person must have been assaulted. It's, with respect, logic. It is logic that must have been ...(indistinct) on Mr Fourie and that is what he is saying.

ADV BOSMAN: So you say a Court would say that is the only inference to be drawn? Not only that, Mr Fourie was the only - it was the only inference for him to be drawn, but you say a Court would say, in law in applying State v Blom, the only inference the Court can draw is that he was assaulted and therefore that was the only inference that you could have drawn in the circumstances, is that your argument?

MR LAMEY: Yes.

CHAIRPERSON: Proceed.

MR LAMEY: Chairperson and then as far as Mr Fourie is concerned, then any delict which may be inferred from the facts. Chairperson, Mr Bosch, his role was that of supporting nature. He wasn't physically involved in any assault but he clearly, amnesty should be granted with my respect also with regard to a total association with regard to abduction and the role makes him a co-perpetrator in this regard to abduction and then also any other delict that may be inferred from the ...(intervention)

CHAIRPERSON: He didn't see the assault?

MR LAMEY: No, I think he testified that he was not in a - he didn't see it. Chairperson Mr Koole in his case what I've said in the beginning, clearly abduction then also in his position, he also must have been, must have foreseen the possibility already in the RSA side that assault could take place if there's resistance and I would submit in his case also, I think he was one of the people who was asked to get his passports ready. There was evidence that it was a false passport. I would submit, I must confess I haven't checked up the exact ...(intervention)

CHAIRPERSON: Did he testify to having a false passport?

MR LAMEY: I think Mr de Kock ...(intervention).

CHAIRPERSON: No, did he? Did he know he had a false passport?

MR LAMEY: He testified that Mr de Kock ordered them to get their passports ready.

CHAIRPERSON: No, I accept that.

JUDGE KHAMPEPE: Not false passports.

CHAIRPERSON: Did he know he had a false passport?

MR LAMEY: Chairperson, you would recall that at the request of the Committee, I tried to shorten the leading of evidence and only to focus on those aspects where we differ and I didn't really get hooked in leading his evidence on the question of false passports because we conceded that what Mr de Kock said was the correct aspect. In general terms, these are the ways that the Vlakplaas members operated and I - we didn't really intend not to say that, we could have said that easily Chairperson.

CHAIRPERSON: Fair enough.

JUDGE KHAMPEPE: But before you proceed, Mr Lamey, that aspect of evidence was covered in his written statement and the written statement did not make reference to any false passports having been used. I thought you didn't cover it because you wanted us to take what was in his written application.

MR LAMEY: Yes, I did concede that he didn't mention the specific false passport, the point is, Chairperson, in view of Mr de Kock's evidence which we didn't dispute, we conceded that it was a false passport and I don't think there's any intention here to not - not to disclose that. It can't be inferred from that Chairperson.

JUDGE KHAMPEPE: No, I'm not suggesting that we are going to make any inference. It probably was a slip on your side not to have touched on it.

MR LAMEY: I must have perhaps highlighted that Chairperson, I accept it just as common cause, Chairperson.

JUDGE KHAMPEPE: It definitely can't be common cause because what Mr de Kock was saying was contrary to what was in his written application, but we won't take it any further than that, we accept what you are saying.

MR LAMEY: As it pleases you Chairperson.

Chairperson and then I would ask on his behalf then amnesty for statutory offence, any statutory offence connected with the illegal crossing of the borders of the RSA. That would pertain to the using of the false passport and then also to the other point which the border was crossed, not through the proper border post, when they came out of the country.

CHAIRPERSON: Well nothing was proper about this trip.

MR LAMEY: Exactly Chairperson.

Chairperson, then on Mr Koole's version, there were differences between him and the other applicants. One, I submit that one must bear in mind as you have, with respect, correctly pointed out that we have a time factor here which plays a role. You've got applicants who all made their applications as far as the different teams are concerned independently. You can clearly see from the context of the application of Mr Koole that it was made 1997, independently. One would expect in fact Chairperson, the differences which came about here which I would describe as lesser differences which don't really bear on a negative credibility finding, Chairperson. In fact he mentioned aspects which he can remember, which the other applicants didn't mention in their written applications, but which they conceded thinking back, did happen, such as the strangling and the strap and the tie, those details, Chairperson. Also the other quotes that appear from his written application. Chairperson at a certain stage Mr Koole was questioned about the events in the car. Chairperson, and he was cautioned to make a full disclosure. Chairperson, my submission here is Mr Koole did make a full disclosure at the best of his recollection and ability. I would submit that why would he have any intention, disclosing the question of the time which was conceded by Mr van Dyk, disclosing his role as to the assault before hand, the severity of that assault, the severity of the resistance that they encountered, what happened in the police station. Why would he now come to the Committee and down-play his role in the assault in the car? Clearly Chairperson, the assault in the car, what happened there could never have been, on all probabilities, of the same nature as what happened before.

CHAIRPERSON: But Mr Lamey, someone has either exaggerated what happened in the form of Mr de Kock's evidence, if that is so, or other people have underplayed it, but the twain can't meet, isn't it?

MR LAMEY: Chairperson I'm asking - yes, but it's perhaps also a difference of recollection, which does not necessarily reflect an intention here.

CHAIRPERSON: I have difficulty with that submission, Mr Lamey, because people don't seem to remember blood, bruises, obvious marks on the nose ...(intervention)

MR LAMEY: Chairperson, yes ...(intervention)

CHAIRPERSON: It just doesn't gel.

MR LAMEY: No, I'm arguing here from the vantage point of Mr Koole. He told you what injuries Mr Sedibe suffered from. He told you how serious the assault was, but there was, he did testify verbally, that there was this scuffle and struggle in the car which he conceded, but certainly that must have been from all probabilities, could never have been anything in comparison to before that. Mr de Kock testified that he was tied in the car, so he conceded, Koole, that there was a scuffle again in the car and he - but he didn't do anything about that. He was - apparently that scuffle was ...(intervention)

CHAIRPERSON: A private matter between the other person ...(intervention)

MR LAMEY: It was handled by Mr Mogadi and must have been settled at that stage by Mr Mogadi.

JUDGE KHAMPEPE: You will recall Mr Pienaar's evidence. he didn't say the assault which took place inside the car was not as great as the one that had taken place prior to Mr Sedibe

being forced into the car. I mean in weighing what Mr Koole is saying, one has to consider also the evidence of Mr Pienaar.

MR LAMEY: Yes.

JUDGE KHAMPEPE: On the assault which took place inside the car.

MR LAMEY: Yes well exactly and from looking at it from all probabilities, it could never have been of such a nature as was prior, there were more people involved in the beginning. My impression of the whole fact is that 80% of the resistance of Mr Sedibe was overcome prior to him being loaded into the car on route, as Mr Koole testified, yes there was something, but it must have been, him being tied, they must have been objectively, in all probability, been in a position to suppress that resistance very quickly and effectively in the car. If it wasn't like that Chairperson, there must have been total turmoil in the car and - which is just unlikely, Chairperson, that it must have been anything in comparison to what happened before, but the point is Chairperson, Mr Koole coming and telling you everything of his participation, why on earth, if he tells you he kicked him, he assaulted him several times, someone strangled him with a tie, would he come and tell you now if he isn't honest about that: "In the car I became aware of the scuffle and I gathered that Mr Mogadi did something, but I didn't do something in the car". It's just - I can't see really any motive or intention on his part to deliberately down-play that. I can't really, with all due respect, see that, Chairperson.

CHAIRPERSON: Well, that's the point I was making when I said that someone or some people are either down-playing this whole business or Mr de Kock is exaggerating, but the two versions can't meet. Now you ask why would someone down-play it. There's no other reason but the truth. The same can be asked in the reverse, but never mind, we have to grapple with this.

MR LAMEY: Yes. Chairperson, I - ja, Mr de Kock's version as I said and the circumstances where he was tied, according to Mr de Kock's version, in the car is something objectively speaking could not have been anything close to the assault prior to him being loaded in the car.

Chairperson, I would submit that the applicants, all the three applicants that I represent, have made a full disclosure to the best of their recollection and ability, without any motive or intent not to do that before this Committee and I submit that what they have done was done in their positions of much more lower ranking police officials, acting under orders and against a person who was, which is common cause, which was a prominent leader of the struggle against the Government and all actions were aimed to counter that struggle in a broader sense by trying to get - to abduct him to get information which would benefit - which the Government of the day and the Police Services, the Police Force at the time, could benefit from countering the struggle.

As it pleases you Chairperson.

CHAIRPERSON: Mr Prinsloo.

MR PRINSLOO: Thank you Honourable Chairperson.

MR PRINSLOO IN ARGUMENT: Chairperson and Members of the Committee, I do not wish to reiterate what my Learned Friends Mr Hugo and Mr Lamey have already submitted to you, but with regard to singular aspects with regard to Mr Deetlefs application, Mr Deetlefs is the person who started the entire process and there appears to be no dispute regarding the person whom they abducted, namely Mr Sedibe as well as the reason for his abduction. In as far as it concerns the abduction itself,

including Mr de Kock's evidence that this whole operation took place very swiftly and taking into consideration that the persons then hastened towards the border in order to leave the country as soon as possible, I wish to argue with respect that it is clear that Mr Sedibe was quite badly handled from the cells to the vehicle. There is no doubt about that. This is also reflected in the evidence of Mr Pienaar and Mr Deetlefs.

Furthermore with regard to the arrival in Piet Retief and what happened to Mr Sedibe, questions were put to Mr Deetlefs and at a certain stage, in terms of questions which had been put, it appeared that there was no application for Section 29 Detention. I listened to the tapes and on the tape it appears that Mr Deetlefs testified that they applied for his detention in terms of Section 29. It appears that there may have been a misunderstanding regarding that aspect. I just want to submit to the Committee that I initially missed it, but my colleague pointed out that they indeed said so and I listened to the tapes and it appears to be the case.

Then there is another aspect concerning the askari and on tape 1540 the Honourable Chairperson, Honourable Judge Pillay, asked Mr Deetlefs:

"Let us say in the hope of becoming an askari."

And it was from that point onwards that the askari aspect was incorporated. It would appear that if one listens to the evidence, that the askari aspect was something that was more of a future option rather than an immediate idea. That is the impression that is created from the evidence given by Mr Deetlefs. I don't think there is really much about that, except for the fact that he later became an askari and he was detained in terms of Section 29. Therefore there is no contradiction in Mr Deetlefs's evidence.

CHAIRPERSON: Just one thing that I wish to clarify.

MR PRINSLOO: Certainly, Chairperson.

CHAIRPERSON: I ask the question in order to assist the witness because he was not prepared to explain the options at that stage. They had abducted somebody and he was asked for what reason, what was supposed to happen to him and he referred to options but he wouldn't disclose the options and one of the options in my experience was to turn this person into an askari which he admitted was indeed an option.

MR PRINSLOO: That is correct, Chairperson.

CHAIRPERSON: So the point is that the aspect of the askari emanated from me and it may be so, but within the context of his evidence which he indeed admitted to.

MR PRINSLOO: I appreciate what you have said, Chairperson.

CHAIRPERSON: I do not wish for anyone to say that I placed words in the witness's mouth.

MR PRINSLOO: With respect, that is not what I am arguing. What I do wish to submit is that the primary objective was to get the person to provide information. That was the primary purpose and not the option. It would appear that there was a misunderstanding with him and that is why I need to indicate this to the Committee. I do not wish to suggest that you placed words in his mouth or that you had any other intention with your question, I just wished to clarify it for the Committee, that is why I went to listen to the tapes. Thank you Chairperson.

CHAIRPERSON: And one other thing, did Mr Deetlefs say that when he heard that the person had been arrested, it occurred to him that he could take this person to co-operate with the police because he had knowledge of what was happening within the inner circles of the ANC?

MR PRINSLOO: That is entirely correct, Chairperson. That co-operation and the various options that existed, you indicated that he could be an askari or work under cover. I am mentioning this for the purposes of clarification, it is not that there is something more to this, it is just to clarify his full disclosure.

I would like to submit, with respect to the Committee, that Mr Deetlefs in his evidence was sincere and honest and disclosed all relevant facts to the Committee, did not withhold any information from the Committee pertaining to the matter and anything that occurred after the incident. I wish to argue that he made a full disclosure, that his evidence is substantiated and I wish to argue, with respect, that the fact that it is suggested in anywhere that an assault would have been carried out against Mr Sedibe after he was in the hands of the police in Piet Retief, cannot be substantiated. There is nothing to support this. From Mr Fourie's evidence it is clear that he co-operated. With respect, Chairperson, Mr Sedibe was indeed at that stage or immeasurable value to the South African Police. He testified in the Ebrahim and Maseko and Nhlanhla matters and in those cases he was the most prominent witness who provided the most extensive information which is on record and can be studied, but that is not of direct application to the case at hand.

With regard to the offences I wish to argue that they receive amnesty for abduction which is a continuous offence committed from the point when the person was removed from Swaziland, that is where it finds its origin and it proceeds through his detention, which was also unlawful, continuously which was also unlawful continuously, if one studies the Judgment in the matter of State v Ebrahim, it is clear that there was no jurisdiction over Mr Sedibe by the Courts which adds to the continuity of the offence.

CHAIRPERSON: I agreed with Mr Hugo in the sense that this is what the Judgment would present and this is not the first time that the matter was mentioned to me, but I'm not certain whether the advocate and attorneys are correct in their interpretation of that Judgment. The point that you are making is arbitrary.

MR PRINSLOO: If one then at least takes it from the point of entry into the Republic, it is common cause that he was abducted against his will.

CHAIRPERSON: You see that case deals with South African and I don't know how to phrase this, not really policemen, in English one would refer to them as mercenaries, at that stage they entered South West Africa and interfered in something which took place in that country

and also got involved with UNTAG and the point that the Judges make there is that what they did there had nothing to do with South Africa and was not in the interests of South African politics. Do you understand?

MR PRINSLOO: Yes, I understand.

CHAIRPERSON: In this case, the abduction was conducted in the interests of South Africa and in my opinion that is the difference between that case and this case. I will re-read it, but I am not entirely certain that the advocates who used that point were correct in doing so. In either event, please proceed.

MR PRINSLOO: If one studies the case of Ebrahim in terms of the jurisdiction of the court, because he was abducted from Swaziland to the Republic, the Court did not possess any jurisdiction over him because this person was unlawfully detained, continuously and I wish to argue that there's an analogue here in terms of Mr Sedibe. He is abducted from Swaziland, against his will, which is kidnapping and he is then detained. The kidnapping would be abduction in its essence because it emanates from an abduction.

CHAIRPERSON: But we are not busy with that point. In the Ebrahim matter, the Judges said that it was wrong to abduct him in order to stand trial and technically and jurisdictionally that was problematic. In this hearing we are discussing a matter where a charge of abduction could possibly appear in our Courts. The point that you are making is that it cannot appear because it took place in Swaziland, due to the Judgment according to your interpretation, the Judgment that you have referred to. I am not really certain that you are correct, because I think it may be in the preamble of this Act where they refer to foreign actions.

MR PRINSLOO: Correct.

CHAIRPERSON: Now that is the principle of the law. The Act includes cross-border operations, that is the intention.

MR PRINSLOO: That is correct.

CHAIRPERSON: It may be that the Attorney-General may have, or the Court of Appeal may have thought differently, but they did not make that decision, they commented on it as arbitrary. The primary point there, I think that the name of the person was "Slang" who went to do something in South West, in either event the point was that what they did there was not in the interests of South Africa and that is why it does not fall within the framework of the Act.

MR PRINSLOO: With respect, Chairperson, if we look at the moment that Sedibe arrived on the South African side of the border, he was in control of, or under the control of the persons who had abducted him and continuously remained in their hands and was detained by them and that is what I wish to argue. This is abduction. The person is detained against his will by means of violence, in their hands and that at least from that very moment onwards it would be abduction, although Mr Hugo's argument was that it was continuous and I agree with that. It is the right of this Committee...(intervention)

CHAIRPERSON: Over and beyond that, it may be that it was abduction from the moment that they were in Swaziland.

MR PRINSLOO: What we must consider is whether or not there was a conspiracy because there had to have been a conspiracy which fell within their jurisdiction to commit this offence.

CHAIRPERSON: I think that that is common cause.

MR PRINSLOO: On that basis we would then say that there was a conspiracy to commit the abduction. They must have known. There was *dolus eventualis*. They must have known that they would have used violence or force to detain this person at all times. It is clear that this was against his will, under those circumstances.

With respect Chairperson, to summarise his offences, I would respectfully request for abduction, pertaining both to Mr Deetlefs and Mr Pienaar, then there is also defeating the ends of justice. They did not disclose the circumstances of Mr Sedibe's arrival and detention here in South Africa and then thirdly in the case of Mr Pienaar he testified during the trial and committed perjury in his evidence and in conjunction with that, I wish to submit that the cover-up of all of this could be included in defeating the ends of justice. There were direct statements which were made in contradiction to the truth. There was a consistent handling of Mr Sedibe. These matters are connected with one another. They cannot be divided. The reason for bringing him here, they say that it was for the purposes of obtaining information. The assault was clearly committed beyond the borders of the Republic and there is no evidence that an assault was committed within the Republic against him, but to detain someone against his will, would then also fall under the abduction offence.

CHAIRPERSON: But he is also guilty of assault in the sense that he knew that he was part of a group, he knew that an assault could take place, or could have taken place. He was also a member of the conspiracy and in terms of this, it is not really important whether or not he participated physically, the fact is that he knew about it.

MR PRINSLOO: What happened in Swaziland, I agree with you that there was a conspiracy to commit an assault because there would be the logical understanding that if one is going to abduct somebody there would be resistance. Mr Sedibe would have been entitled to defend himself against their methods of abducting him. And with regard to the delict, Mr Hugo has addressed you sufficiently. I will not repeat this. If there is anything further, I will be more than willing to assist you. Thank you.

MS VAN DER WALT IN ARGUMENT: Honourable Chairperson, I will kick off with Brigadier Visser because all the cross-examination and questioning by the Honourable Committee was around the fact that Mr Visser, that he said that he did not

see the injury. Mr Visser came and told the Honourable Committee that he takes responsibility because he was the one who gave the instruction and he goes as far as to tell the Committee that he gave the instruction without informing Head Office of it, because this operation had to take place quite quickly. It was quite urgent. Why would a person who places so much blame upon himself, that he initiated all this, he initiated this operation, would come to you and try to beat about the bush with you by saying that: "I did not see any marks". If it is going to be argued that he did not make a full disclosure, that does not make sense. What Brigadier Visser said during his evidence and the Honourable Committee has to consider that Brig Visser continually with all the evidence was present, he could have come here and told you: "I did see the marks" even though he cannot remember it. But he was

under oath and continually during his evidence he said that: "My memory does not allow me to recall it". He did not say that it did not take place, because if he had said that, then he had to lie because everyone spoke of these injuries, but he said: "My memory does not allow me to recall this." And he also testified and I would like to request of the Honourable Committee, last night I gave instructions that the Neurologist who operated on Brig Visser when the tumour was removed from his brain and treated him afterwards, would supply a report to the Committee. Unfortunately I am not able to give it to you today but I will obtain it as soon as possible and give it to you.

Furthermore I would like to ...(intervention)

CHAIRPERSON: Of what value will this be to us?

MS VAN DER WALT: To confirm that what he had said to you that his memory is not so good anymore.

CHAIRPERSON: But what of the right of the cross-examinations of the advocates and attorneys?

MS VAN DER WALT: Would they not believe this, that he had forgotten? But there's no one who disputes it. Mr Hugo said that it was a possibility.

CHAIRPERSON: I do not refer to whether anyone disputes it. If that reports comes here and says that this was the problem, this was the nature of the operation and these are the consequences of the operation including his forgetting certain aspects and let us say, Mr Leopeng's instructions are that it cannot be, or he finds another doctor who says it is not so, what of Mr Leopeng's right to cross-examine on that point? Can I rely on a report that was not tested, or that could have been tested if it was available and the doctor could testify?

MS VAN DER WALT: Then at this stage, Chairperson, I would request the Committee that the matter be postponed so that I can place that report before the Committee and that all the legal representatives have it available to them. I know Mr Visser only testified about that yesterday and last night I gave the instruction that it be obtained and Mr Visser came in later after we had started.

CHAIRPERSON: Ms van der Walt, when did you find out that this was the position?

MS VAN DER WALT: I know for a long time that he had the operation but I did not think that the point would be taken up because of the fact that he says that his memory does not allow him to recall. I did not think that his whole application would be jeopardised by this. It was only when I saw the Honourable Committee's viewpoint about it and everyone who cross-examined him upon it, I realised that if I did not do this because in many Committees I sat where the applicant comes and hands up things and says: "I cannot recall" and then it's over. I only heard that Mr Visser will not do this and try his best to tell you what he can recall, but I then think it is very necessary. I do not want to disadvantage Mr Visser in any manner and it would be necessary to ask the Honourable Committee to postpone the matter, but before I make that request to you, I would like to address you further because I would like to tell you that Brig Visser went further than that, he said that: "My memory does not allow me to recall", but he said: "I shall not dispute it" and that was his evidence. he says: "I accept that when a person is abducted against his will, then resistance would be offered and force

would have to be used." He says: "I foresaw it." It is not that he tries to shy away and say: "I do not want to have anything to do with this". That was his evidence.

CHAIRPERSON: When was that operation?

MS VAN DER WALT: I would have to take instructions. I do not know exactly. But I would like to point out his evidence to you. He did not try to beat about the bush with you and say: "These other people are not speaking the truth". He says: "My memory does not allow it and I foresaw that if resistance came, then force would be used." He went further and he said that many times coercion was used by the police because Brig Visser has several applications before the Amnesty Committee. It is not that he is trying to hide anything.

CHAIRPERSON: Ms van der Walt, would you please tell me something. I do not want you to unnecessarily disclose it, but I am just referring to the written application. I cannot right now as I read through Mr Visser's application, I cannot see whether he met these persons close to the border after the man was abducted. Did he say this in his statement?

MS VAN DER WALT: He did not say that.

CHAIRPERSON: The closest he comes to that is paragraph 3 on page 102. On that aspect, let us just confirm whether he said this in his application or not.

MS VAN DER WALT: The only thing that he says: "I went to Nersden to make sure that the operation goes successfully" and I would like to argue that that was before the time, if I read it in context.

CHAIRPERSON: So who is the other person whom you appear for?

MS VAN DER WALT: It's Mr van Dyk. I would like to address you on that.

CHAIRPERSON: Mr van Dyk in his application says or uses words to the effect that it was just on the other side of the border.

MS VAN DER WALT: May I read it to you?

CHAIRPERSON: What page is that?

MS VAN DER WALT: It's page 129 paragraph 5:

"We took Sedibe from the cells and the same evening we went across the border fence in the vicinity of Nersden border post to the RSA."

This is the reference to the border post. The Honourable Chairperson, during leading of evidence said I should not play with words, but I would like to point out to you that the vicinity of Nersden border post is referring to the border fence.

CHAIRPERSON: To what?

MS VAN DER WALT: To the border fence where they crossed. "On the RSA side, Brig Visser waited for us and we went to Piet Retief."

Then I would like to refer you to Mr Bosch who played an entirely different role than any of the other applicants.

CHAIRPERSON: Before you refer to Mr Bosch's evidence, both Visser and van Dyk are your clients. I don't know if you went through the statements with them, but one would have expected that this aspect which they dealt with and which was led and if it was done, then it would have come about there that possibly Mr Visser has trouble with his memory, because would that aspect have earlier been touched upon in his evidence, is that not so? It's not even stated in his statement.

MS VAN DER WALT: With respect, I think the whole point is being missed here. I have to say that, with great respect. The point here is, and that is what van Dyk testified about, is that under these lights at the border post, as Mr de Kock has referred to them, I do not want to argue with Mr de Kock, we are all here to apply for amnesty for these police officers. Mr van Dyk testified and the statement that I made on behalf of Mr Visser was that at the border post under those lights, they did not stop and that Mr Sedibe was not removed there so that Mr Visser could see him. That is what Mr van Dyk had testified about and that is what Mr Bosch, who plays an entirely different role, he's even in another vehicle,...(intervention)

CHAIRPERSON: Let us leave Mr Bosch there for the moment.

MS VAN DER WALT: I know, but I have to bring Mr Bosch in here.

CHAIRPERSON: I am not satisfied with your explanation. Here Mr van Dyk says:

"On the South African side Brig Visser informed us and we went to Piet Retief."

Forget about what is the intention here or whether it was two kilometres down the road or just right next to the fence, that's not the point. What did Mr Visser say about that?

MS VAN DER WALT: He did not say anything about it.

CHAIRPERSON: That's the point. In his *viva voce* evidence?

MS VAN DER WALT: He said that he saw him in Piet Retief.

CHAIRPERSON: Yes. In other words, that did not happen on the way or close to the fence.

MS VAN DER WALT: No you cannot draw that inference because in his application he says, in his last paragraph, on page 102, he says that Deetlefs' statement has to be read along with his. He does not say that: "I did not see him anywhere." He did not testify that.

CHAIRPERSON: I refer to his oral evidence.

MS VAN DER WALT: I did not say that he said this.

CHAIRPERSON: But he was asked about it, whether he waited for them or not.

MS VAN DER WALT: No that is my problem. It was never put by Mr Hugo to Mr Visser that he waited for them at the border post. If it was put to him then Mr Visser would have been able to react, but we were caught off guard when Mr de Kock testified about this, where this person was pointed out to him.

CHAIRPERSON: Please help me to recall. On the last aspect of Mr Visser's evidence, why was it only brought out then that he had trouble with his memory and that he had had an operation?

MS VAN DER WALT: Honourable Chairperson it was about the injuries that he could not see.

CHAIRPERSON: Was it only that?

MS VAN DER WALT: No statement, and I think Mr Hugo can confirm it, no statement was put to Mr Visser that he had seen him at the border post. If that was so, then I would have cleared up that point. That is my problem and I would submit to you that Mr Visser did not try to mislead you because the most important aspect of the instruction he says, why would he leave out such a small point? Why would he try to mislead you about such a small point? It would have been justified towards Mr Visser if this aspect of the border post was put to him when he testified, then this long argument would not be necessary.

CHAIRPERSON: Ms van der Walt, I would just like to ask something of you. Both my colleagues are of the opinion that this was dealt with with Mr Visser but because of the fact that you deny it, we are now not certain whether it is the case. What would be the position if the record proves that it was taken up with Mr Visser?

MS VAN DER WALT: Then I would have to consider myself a liar. I can assure you ...(intervention) I think Mr Hugo would assist us.

CHAIRPERSON: You are convinced?

MS VAN DER WALT: I would listen to the tapes because it is necessary, because I cannot think that if that statement was made to Mr Visser that he would not have reacted upon it.

INTERPRETER: The speaker's microphone is not on.

MS VAN DER WALT: It is not even in Mr de Kock's application because I would have dealt with it with Mr Visser. Mr De Kock's application on page 5 says:

"We however succeeded in breaking out Sedibe and then we escaped across the border and handed him over to the Security Branch of Piet Retief and more specifically to Col Visser."

MR HUGO: Mr Chairman, may I just come in here one second? I readily concede that during my cross-examination of Brig Visser it wasn't put to him. I'm pretty sure that the record will bear me out there.

CHAIRPERSON: No, we've got no squabble about that.

MR HUGO: Yes. What is actually more important is Mr de Kock then testified in chief. He then testified about this particular incident. He was then - Mrs van der Walt was then given the opportunity to cross-examine, to put her client's version. What's more important is that Mr - Brig Visser was actually called back at a later stage and he came to testify, lo and behold not about this particular point of dispute, but just about his memory lapse and that in itself, I think, is ...(intervention)

CHAIRPERSON: Significant.

MR HUGO: Significant.

MR LEOPENG: Chairman, can I also come in?

CHAIRPERSON: Well, I'm going to ask you about it. I don't want everybody to talk. I was just going ...(intervention)

MS VAN DER WALT: I am sorry but Mr Hugo is incorrect, Mr Visser was not recalled.

CHAIRPERSON: We will get the record.

MS VAN DER WALT: May I just say that Mr Visser was not recalled. I recalled Mr de Kock and put a statement to Mr de Kock because my cross-examination was concluded and then there was an adjournment. I went outside and spoke to Mr Visser. I asked him: "What was this thing, were you at the border post? I have to take instructions." And I returned and I went to Mr Hugo, I said: "Can we recall Mr de Kock once again" and then I put it to Mr de Kock that he never saw him at the border post. Mr Visser was not called, he testified in his evidence-in-chief, or in his cross-examination or re-examination about his memory. I want Mr Hugo to correct that.

MR HUGO: She is correct. It was in re-examination.

CHAIRPERSON: Please continue.

MS VAN DER WALT: I am still in the dark whether I can have the matter postponed.

CHAIRPERSON: Let us hear what the other people have to say.

MS VAN DER WALT: May I just argue Mr Visser's evidence? Mr Visser's evidence was brief. He confirmed Messrs Pienaar and Deetlefs evidence. He said he could not recall the injuries. He said he gave the instruction and he will take full responsibility and he says furthermore; "I reported to Head Office and further testified that Mr Sedibe was placed under Section 29." He explained to you why he was placed under Section 29 and I would argue that except for this aspect, and I want to argue that even though Mr Visser said: "My memory does not allow me to recall it, I do concede that it could have happened" and it is not that he

wants to say it did not happen, that he does not want to accept responsibility for it. He said that he will take responsibility for this whole operation because it took place under his instructions. With regard to Mr van Dyk, I would submit that Mr van Dyk told you that no such meeting took place at the border post and he also said that he could not recall entirely but when reference was made to his application, he said it was not at the border post, it had to be at another place. And then once again, you told me not to refer to Mr Bosch. I would like to point out that Mr Bosch said it was asked of him by Mr Hugo, and I think it was done in a very professional manner, "After you crossed the border, did you ever stop?" And I think it was a wonderful manner in which it was asked and an honest answer was given by Mr Bosch and I think Mr Lamey might confirm it. Mr Bosch never sat inside here, he was outside, so he did not know what it was about. "We did stop on our way to Piet Retief on the tar road. We did stop. He then passed" and he said he does not know why they stopped and that confirms, I would submit, Mr van Dyk's evidence that the meeting that had taken place there was not at the border post but it had to have taken place a ways from there.

CHAIRPERSON: What does Mr Visser say about this?

MS VAN DER WALT: I tried to get instructions. He says he was at the border post when the operation was launched and he says he cannot recall that he met them on the road but he says that he had another officer with him during this operation, but he cannot even recall who it was. It is vague to him. He can recall that he saw him in Piet Retief for a brief period of time and I would like to address you on that point. Much was made of the fact that he did not see the blood, but no time was attached as to when Mr de Kock gave the clothing to Mr Sedibe that he had bought in Piet Retief. It may be that Mr Visser saw him after he had dressed in his new clothing and Mr Fourie said he was not clothed when he saw him, or he was without a shirt and Mr Visser says that he cannot recall that he saw anything to that effect.

If I may return to Mr van Dyk, Mr van Dyk came and disclosed all the facts with regard to the assault to you. He was the person who strangled Mr Sedibe with the scarf. He was the man who had hit him with his fists and who had brought him under control and what further happened in the vehicle, Mr van Dyk would not have known of because he was the driver of the vehicle and as I understood the evidence of Mr de Kock, they left there at high speed and he did not testify any more about that. He was not tasked with the questioning and I know and I represent him and I know that the following day he was involved in the Nersden incident and I would submit to you that he definitely had nothing to do with Mr Sedibe. My Learned Colleague next to me would have given you a date, the exact date when this incident had taken place was the 13th of August 1986. I say this because last night I perused the documents of the Nersden incident and the post mortem inquest was done and the death of those persons is given as 14th of August and this would have been the evening before that then.

I would also submit that Mr Visser as well as Mr van Dyk complies with the requirements of the Act, Section 20(a)(b) and 20(ii)(f).

With regard to the offences, you have already been addressed completely or fully with regard to these offences. I agree with the Honourable Chairperson that if amnesty should be granted to these persons or to my two clients, it would indeed be for abduction and I think it has to be read along with it, but specifically with Mr Visser and the persons who were on the other side of the border, Mr van Dyk, definitely had already conspired on the South African side to abduct Mr Sedibe and furthermore I would submit to the Honourable Committee that both my

clients should be granted amnesty for assault and although Mr Visser said he did not see it, he said that he foresaw that with such an operation force would be used.

With regard to Mr van Dyk he said that he was involved in the assault and furthermore Mr van Dyk was in possession of an illegal firearm. We request amnesty for that and ammunition as well and then the illegal crossing of an international border when he returned. He was also in possession of an illegal passport and this would also include fraud although it may resort under certain crossing of the borders, but that would be all then. Thank you.

MR PRINSLOO: May I just mention, I forgot to mention to you that Deetlefs and Pienaar had also crossed the border illegally when they returned. Thank you, Honourable Chairperson.

MR LEOPENG IN ARGUMENT: Thank you Chairman. Very briefly, it is clear that there are two different versions from what the applicants said in relation specifically to the assault. Mr Visser, under cross-examination, denied having noticed any cut on Mr Sedibe's nose, whereas Mr de Kock, Mr van Dyk and Mr Pienaar testified that that could have been possibly noticed because it was an open wound and that Mr Sedibe had a swollen eye. In relation to the assault of Mr Sedibe, subject - I'm sorry, under correction it would seem that Mr Fourie and Bosch do not admit having assaulted Mr Sedibe, as a result I submit that

amnesty for assault should not be granted in favour of them and in relation lastly to the issue of whether Mr Visser was at the border post on the arrival of de Kock and the others, I specifically asked Mr Visser what time did he see Mr Sedibe and the Honourable Judge Khampepe took the matter further and he said: "The same morning." That was the first time when he saw Mr Sedibe. So the second ...(indistinct) whether he saw Mr Sedibe at the border post or at the house at Piet Retief. On the basis of the aforesaid, I submit that there is no full disclosure on the whole incident of abduction and assault and that amnesty be refused.

ADV BOSMAN: Mr Leopeng, are you submitting that Mr Visser denied that Mr Sedibe was assaulted, or are you submitting that he denied having seen the specific bruises and marks?

MR LEOPENG: Thank you Chairman. He denied having seen the bruises and further that it could have not been possible for him to have been assaulted.

CHAIRPERSON: I just want to understand your argument, Mr Leopeng. Is your argument that look, we have two versions as regards the assault. Furthermore there's two versions as regards whether Mr Visser was at or near the border post when Mr Sedibe was brought in and because of these two versions, nobody should get amnesty.

MR LEOPENG: Well, I would specifically say yes.

CHAIRPERSON: I just wanted to find out if I'm understanding your argument correctly. You are saying that we are in no position to determine who's telling us the truth?

MR LEOPENG: Yes, that's so.

CHAIRPERSON: Anything more?

MR LEOPENG: Nothing further, Chairman.

CHAIRPERSON: Ms Patel.

MS PATEL IN ARGUMENT: Thank you Honourable Chairperson. I don't have much to add to what has already been said by all my Learned Colleagues here, except to perhaps express my humble opinion in respect of the application of Mr Visser in respect of whether he has in fact made full disclosure to us. I am fully apprised of the concerns raised in respect of his memory. I would however, in that respect, like to submit that Mr Visser, didn't he rely on his lack of memory when he testified in respect of the meeting at the border post and in respect of seeing the injuries? In fact he went further when questioned - cross-examined about whether he in fact saw the injuries or not, he said clearly not because he would have then taken the matter further and also you will recall to my amazement, also testified that when persons were interrogated by him, his standard procedure was that no-one would be assaulted and he says after being in the Police service ...(intervention)

JUDGE KHAMPEPE: Not interrogated by him, but it was standard policy not to use any kind of violence.

MS PATEL: That is correct, but then also went further that when he was involved in interrogations, that assaults were never acceptable as part of the process and so my submission in that regard is whether or not he had an operation subsequently is irrelevant to the determination of whether he has made full disclosure to us or not and further, to support that, I will also draw your attention to the contradictions by Mr van Dyk's testimony in respect of whether they were met by Mr Visser prior to the meeting at Piet Retief or not. I will not take you through your cross-examination on - the Committee's cross-examination and the subsequent capitulation in a sense that we should abide by his written version and his written version is in fact supported by some of his co-applicants as well. I will take the matter no further than that. Thank you Honourable Chairperson.

CHAIRPERSON: What's your view on the fact that he refers and asks us to read, as if it's incorporated in his application, the application of Deetlefs?

MS PATEL: To that extent, there is a clear contradiction, Honourable Chairperson.

CHAIRPERSON: If we read Deetlefs' application as read in Visser's application, then it's self-contradictory.

MS PATEL: Absolutely, absolutely and given the manner in which he was - the paragraph is phrased in respect of whether ...(intervention).

CHAIRPERSON: Which paragraph?

MS PATEL: I'll refer you to that now. Okay, if one looks at Deetlefs' application page 129, that's paragraph 5 in respect of what "aan die RSA kant" means, what that specifically means, I think we're splitting hairs in respect of whether it was at the border post or a kilometre or two away from the border post, but my understanding of this, or my interpretation of what is written here, that it is clearly a meeting prior to the meeting at Piet Retief, there can be no dispute about that.

CHAIRPERSON: What does Visser say about that?

MS PATEL: His recollection is that, or his testimony to us is clearly that the first time he met Sedibe was at Piet Retief in the morning and that flies in the face of - we have no evidence on record regarding the consultation between my Learned Colleague Mrs van der Walt and her client in respect of whether ...(intervention)

CHAIRPERSON: Surely we're not entitled to that? Whatever happened between the two of them is privilege.

MS PATEL: Certainly but that was not evidence that was led before us and her intimating to us that he had told her that he was at the border post during the operation and that he had not see Mr Sedibe at any stage prior to the meeting at Piet Retief, with respect is something we cannot take cognisance of. If you want me to go to Mr Pienaar's application in respect of also that same - ja, Mr Pienaar also states at 142, the exact same paragraph 5, if one looks at - ja, I've gone through them all, I've given you all the references, Honourable Chairperson. There's a clear contradiction there and the contradiction in my submission, Honourable Chairperson, goes to the heart of Mr Visser minimising his role and the ambit of his authorisation in this operation. Thank you, Honourable Chairperson.

CHAIRPERSON: Yes. We are not able to give Judgement yet. Let me ask all the representatives, should we receive a written report as to the condition of Mr Visser, would it - you insist on being in a position to cross-examine the doctor, or what is the position? Mr Hugo?

MR HUGO: Mr Chairman, from our side, my impression is that on the face of it we wouldn't have an objection to that depending on what it contains obviously, but on the fact of it, I don't think we would object.

CHAIRPERSON: So you can only tell us when you get the document?

MR HUGO: Yes.

CHAIRPERSON: Is that your position also Mr Lamey?

MR LAMEY: Yes, Chairperson, I don't foresee that from my applicants we really have an interest as far as the evidence unfolded before you, really in that aspect but my submission would be in general that that report be distributed to everybody

CHAIRPERSON: And that you reserve your rights.

MR LAMEY: And that everybody's rights be reserved to cross-examine on that, Chairperson or that anybody should explicitly inform the Committee whether they want to exercise that right or not.

CHAIRPERSON: Mr Prinsloo.

MR PRINSLOO: Chairperson, I agree with Mr Lamey and his submission to the Honourable Committee that we receive the report and if we concur on the matter we can notify the Committee as to our position and then the matter can be taken further, but with respect, I wish to submit to you that it is appropriate for you to take receipt of such a document. It has been done in previous cases.

CHAIRPERSON: Mr Leopeng, what's your attitude?

MR LEOPENG: Chairman, I share the same sentiments as Mr Lamey. However, I wish to state the following that even if we can read the report, what remains, the same is that, I'm talking under correction, Mr Visser specifically never said: "I can't remember" when I specifically asked him whether he did see the cut on Mr Sedibe's nose, he said: "No, I did not see it". He never said: "I can't remember", so I'm not sure what relevance is the report going to serve. If he ...(intervention)

CHAIRPERSON: No, generally the position is, Mr Visser's evidence has short-comings which could possibly be explained by a lack of memory resulting from an operation. I'm not saying that that is the conclusion we're going to draw, but certainly he's entitled through his advocate, to draw our attention to reports and if necessary, to hear evidence on it and to that extent I'm asking, would you agree with Mr Lamey's suggestion?

MR LEOPENG: Yes.

CHAIRPERSON: Ms Patel.

MS PATEL: Same here, Honourable Chairperson.

CHAIRPERSON: Madam, how long do you think it will be before we can take receipt of such a document?

MS VAN DER WALT: Mr Visser will have contacted Dr Slabbert. I just want to find out from him, but I can obtain it as soon as possible.

CHAIRPERSON: Two weeks?

MS VAN DER WALT: Yes, very definitely.

CHAIRPERSON: What would be the date in two weeks time? By the 30th.

MS VAN DER WALT: I will assure you.

CHAIRPERSON: Will you send it to Ms Patel?

MS VAN DER WALT: Yes.

MR LAMEY: Chairperson, this month has got 29 days.

CHAIRPERSON: And the other advocates as well, please.

MR PRINSLOO: The 29th of February is the last day of the month.

CHAIRPERSON: Oh so it is still February? Very well, the 29th and another two weeks for you to say what you will do. Mr Leopeng is that in order? Is that fair?

MR LEOPENG: Yes, and I'm available.

CHAIRPERSON: No well aside from being available, I'm giving Mr Visser and his advocate two weeks to submit it to the Committee and to all the representatives and I'm giving the representatives a further two weeks till about the 14th of March, to indicate to us in writing what they propose to do or what they want to do about that.

MR LEOPENG: Yes, that's in order.

CHAIRPERSON: Okay. Then this hearing or this session of hearings is adjourned till Tuesday morning half past 9.

HEARING ADJOURNS