

**TRUTH AND RECONCILIATION
COMMISSION**

REPORT

**TO THE AMNESTY COMMITTEE
AND
TO THE HUMAN RIGHTS VIOLATION
COMMITTEE**

THE MURDER OF ADV. ANTON LUBOWSKI

HRV APPLICATION NR.

**AMNESTY APPLICATION NR.
4792/97**

**GAUTENG INVESTIGATION UNIT
JOHANNESBURG
ADV. F. MALAN
22 SEPTEMBER 1997**

ANTON LUBOWSKI INVESTIGATION

GENERAL INDEX

Volume 1	see separate index	arch lever file
Volume 2	"	"
Volume 3	"	"
Volume 4	"	"
Volume 5	Harms report into JALC Holdings	
Volume 6	Lubowski Inquest: extracts of oral evidence:	
	B.B. Burger	p. 521
	Johan Niemoller	p.528; also 745.
	D J Price	p. 723
	Dennis J. Morsbach	p. 2172
Volume 7	Court Recorded:	JA Niewoudt vs. Min. Defence
Volume 8.1	Court Record:	Riaan et. Al vs. Min. Defence
Volume 8.2	Court Record:	PJ Verster vs. Min Defence
Volume 9	Court Record:	State vs. Acheson application for remand
Volume 10	CCB Front Companies: documents of registration	

OTHER DOCUMENTS: see separate index of Cape Town's documents
in Vol. 1

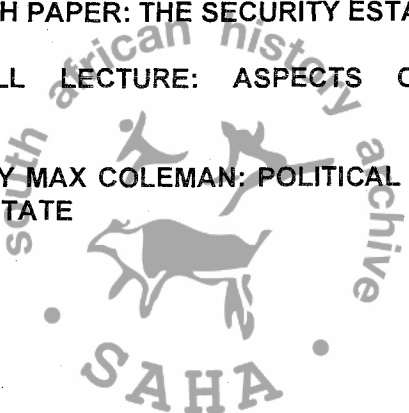
2 BROWN ENVELOPES CONTAINING 6 BANK MICROFICHE
CASSETTES ---received from Piet de Jager SC

20. P. J. BOTES --- AFFIDAVIT (to Harms Commission)
21. H. KLENZ --- AFFIDAVIT (part of amnesty application)
22. V.R. PALAZZOLO DRAFT AFFIDAVIT
23. ATTORNEY PRISMAN --- LETTER re Palazzolo
24. JOE VERSTER ---- summary of s 29 hearing
25. INQUEST JUDGMENT 23.6.1994 BY LEVY,J



INDEX TO VOLUME 2

1. AFFIDAVIT BY CDRE LOUW (under cover of du Plessis letter)
2. AFFIDAVIT BY SANDRA NOLAN ----- on DCC in general
3. MEMORANDUM : THE SECOND INQUEST....
Unsigned document of 53 pages of unknown origin
4. FILE OF PRESS CLIPPINGS (unsorted, 1988 - 1990)
5. ORAL QUESTIONS IN HOUSE OF PARLIAMENT
6. 3 CCB FLOWCHARTS
7. TRC RESEARCH PAPER: THE SECURITY ESTABLISHMENT
8. IVOR POWELL LECTURE: ASPECTS OF PROPAGANDA OPERATIONS
9. LECTURE BY MAX COLEMAN: POLITICAL VIOLENCE OF THE APARTHEID STATE



INDEX TO VOLUME 3

STATEMENTS BY CCB MEMBERS TAKEN BEFORE OR DURING THE
HARMS COMMISSION 1990

AS RECEIVED, WITH OWN INDEX

STATEMENT B5 BY VAN ZYL NOT ON FILE

STATEMENT B6 BY VAN ZYL INCOMPLETE



A 29

VOLUME 3

contributions

I N H O U D

VERKLARINGS VAN AANGEHOUDENES
INGEVOLGE ARTIKEL 29 VAN DIE WET OP BINNELANDSE VEILIGHEID
DIE OORSPRONKLIKE VERKLARINGS IS BESKIKBAAR

<u>NAAM VAN VERKLAARDER</u>	<u>LÊER VERWYSING</u>	
1. Ferdinand Barnard	JVP-VP 129/89 - B10	✓
2. Ferdinand Barnard	JVP-VP 129/89 - B17	✓
3. Ferdinand Barnard	JVP-VP 129/89 - B18	✓
Ferdinand Barnard	JVP-VP 129/89 - B22	✓
5. Carl Casteling Botha	JVP-VP 136/89 - B1	✓
6. Carl Casteling Botha	JVP-VP 136/89 - B2	✓
7. Abram van Zyl	JVP-VP 34/90 - B1	✓
8. Abram van Zyl	JVP-VP 34/90 - B5	X
9. Abram van Zyl	JVP-VP 34/90 - B6	incomplete
10. Isgak Hardien (Voor Art. 29 aanhouding)	JVP-VP 35/90 - B1	✓
11. Isgak Hardien.....	JVP-VP 35/90 - B2	✓
12. Edward James Gordon (Nie onder Art. 29 aangehou nie.....)	JVP-VP 34/90 - B2	✓
13. Edward James Gordon (Nie onder Art. 29 aangehou nie.....)	JVP-VP 34/90 - B3	✓
14. Kol. van Coller - Onderzoekbeampte...	JVP-VP 34/90 - B4	✓
15. Theunis Erasmus Kruger	JVP-VP 38/90 - B1	✓
16. Theunis Erasmus Kruger	JVP-VP 38/90 - B2	✓
17. Theunis Erasmus Kruger	JVP-VP 38/90 - B3	✓
18. Pieter Johan Verster Voor Art. 29 aanhouding).....	JVP-VP 39/90 - B5	✓

- 19. CHRISTO BRITS
- 20. FLORIS MOSTERT
- 21. FLORIS MOSTERT
- 22. RUDOLF BADENHORST
- 23. STREEK 6 pay slips seized by Harms

C 26
C 20
unnumbered
unnumbered



INDEX TO VOLUME 4

1. LUBOWSKI INQUEST DOCKET - Windhoek CR 388.9.89

Donald Acheson	JBS 14
Donald Acheson	A 28
Abram van Zyl	B 5
Abram van Zyl	C 10
Ferdinand Barnard	A 26
Ferdinand Barnard	A 21
William B. Knox	A 18
Johann Niemoller	CC
Johann Niemoller	CC 1
B.B. Burger	BB
John Niemoller	Z 7
Dennis J. Morsbach	NN 1
Carl C. Botha	JBS 7
Clive Plasket	TT
Genl. AJA Joubert	A
Abram van Zyl	UU (D 1)
Abram van Zyl	UU 3
Pieter Johan Verster	JBS 8
Abram van Zyl	AA 17
Charles Neelse	A 25
Charles Neelse	A 28 Z 1
Charles Neelse	A 28 Z 1
Col. JF Hattingh	JBS 15

2. JULIAN KNIGHT - ASSORTED CORRESPONDENCE in re Lubowski Family vs. SADF

3. BANK STATEMENTS - of Lubowski accounts

4. LOUISE FLANAGAN - hand written and typed notes, coverage of Lubowski case in 1990

THE MURDER OF ANTON LUBOWSKI

FINAL INVESTIGATION REPORT

INTRODUCTION

The murder on 12 September 1989 of advocate Anton Lubowski in Windhoek ranks as one of the most notorious in the history of our country in the period considered by this commission. Chris Hani, Steve Biko, and others such as Griffiths Mxenge, Matthews Goniwe and Stanza Bopape were political or community leaders with a high profile, who all fell prey to assassination. Lubowski must rank with them, as he was the most important political figure assassinated in any of the front line states. His murder raised both national and international attention which has not subsided until this day, for until this day the perpetrators have not been brought to book.

Relatives, the press and the public at large have followed the TRC's engagement in this case with interest. The amnesty process presented the TRC (and the country) with a unique new platform for launching investigations into hitherto unsolved crimes. It provided a process not available to regular law enforcement. Its strength was the encouragement of voluntary surrender of information by all sectors of society. But unlike in the cases of the other victims mentioned above, the TRC has not received amnesty applications for the murder of Lubowski (with the exception of Nielsen, dealt with below) The regrettable result has been that, unlike those cases where the identity of the perpetrators has been established, there is in the Lubowski case no ultimate proof who pulled the trigger and who gave the order.

There was some progress; certain suspicions and speculations can probably today be laid to rest; but a finding beyond reasonable doubt is in my view not possible.

On the other hand, that will not prevent the Commission from fulfilling its obligations in the narrow sense: to make findings on the HRV application and the one relevant amnesty application.

PREVIOUS AND ADDITIONAL REPORTS

The Lubowski matter has received attention from an early stage in the life of the Commission. Initially the National Investigation Unit started the process; apparently toward the middle of 1996 the case was referred to the Gauteng Investigation Unit (Andre Steenkamp, Kate Pitman). On 2 May the present writer joined the TRC and "inherited" the matter from Ms. Pitman. In the meantime the case also received the ongoing attention of the National Unit in Cape Town.

Ms. Pitman wrote an undated report prior to May 1997. I wrote a second report dated 29 May 1997. The reader hereof is advised to peruse those reports in conjunction with this one, as they contain background information and comments not repeated here. Perhaps they also afford a glimpse into the difficulties this case presented to everyone involved.

This, and the previous reports, of necessity reflect the work done by the GIU, and my personal views. It is therefore subject to amplification by the Cape Town - based investigators on matters perhaps omitted by me. That is left to their discretion. They have, for instance, amassed bulky documentation. An updated index, and perhaps evaluation thereof, should be enclosed in this file. Mr Maghadla was appointed as liaison with NIA. To my knowledge no statements from any NIA personnel has been obtained and Mr Maghadla can perhaps add on that aspect.

STRUCTURE OF THIS REPORT

There are both amnesty and HRV applications pertaining to this incident and this is a report to both committees. The amnesty application will be dealt with first. It is my view that the committee might find, after reading this report, that it is not necessary for them to consider the massive documentation compiled by the TRC, but that the Nielsen application - regarding Lubowski - can in fact be dealt with in chambers.

The report to the HRV committee follows. It will look into the case more comprehensively. There is a general overview, with regard to section 4 (a) of the Act; thereafter a summary of the newly acquired evidence. This should assist the HRV Committee to access the information in a purposeful manner.

DOCUMENTATION AND INDEX

This report is accompanied by the documentation currently held by the GIU. A general index has been prepared, and some volumes have also been indexed individually. Volume One contains an index of material held in Cape Town, which is perhaps a little dated.

Volume One contains most of the new and important material. By and large volumes 2 to 4 contain the most important material which predates the TRC. The other volumes contain material of secondary importance.

REPORT TO THE AMNESTY COMMITTEE

THE APPLICANT

The amnesty applicant Derrick Nielsen, No. 4792/97 has applied for amnesty for both the Lubowski murder and the murder of David Webster. A

quick glance at his application will dash any raised hopes for major revelations. The application itself asks for amnesty for the "assassination of Anton Lubowski" without furnishing any further detail. Nielsen then wrote two letters to the Commission. In the one letter, dated 4. 12. 1996 he offers this, in connection with Lubowski :

" Furthermore, I supplied an AK 47 for a hit which was to be carried out by an associate of Ferdi Barnard's. Three days later, when I met Ferdi Barnard at the Royal Park Hotel in Hillbrow, he bragged that they had got rid of a kaffir boetie in Windhoek. The name Anton Lubowski was mentioned."

The remainder of the letters deals with other matters.

Nielsen also handed an unsigned, hand written statement to Chandre Gould, titled "**The Life of Ex - CCB underdog**". This is much more comprehensive regarding other matters but makes no reference at all to Lubowski. It is nevertheless an important indicator of the role of politics in his thinking and his actions.

EVALUATION

The following submissions are tendered to show why the amnesty committee may find itself able to quickly dispose of this application:

1. What Nielsen really requests amnesty for is the illegal possession or supply of a firearm. This is of course not a petty offence; but it is far removed from the Lubowski killing. There is no proof that at the time he knew of the purpose this rifle was ordered for. In a legal sense his statement does not incriminate him in the murder. Therefor the matter may be dealt with in chambers as an offence under the Arms and Ammunition Act.
2. Nielsen's motivation was on his own admissions mercenary and not political, as far as the supply of a rifle to Barnard was concerned.

Investigating Nielsen's allegations has proved difficult. He is currently in prison for motor vehicle theft. We visited him repeatedly in Pollsmoor. Nielsen tried to bargain: information in turn for a speedy release. A memorandum on the matter is on file. The outcome was that the TRC members (Chandre Gould, Mike Barnardo and myself) were unable to obtain more information from Nielsen than his statement "The life of CCB underdog". He refused to say more.

The veracity of his claim is therefor difficult to assess. The circumstantial picture which Nielsen paints is quite possibly true. It is known, for instance, that Barnard liked to go around and brag about his exploits as a killer, that he was involved with diamond trafficking and drugs, and that the Oribi Hotel is one of his regular haunts.

For the supply of this specific weapon, however, there is no extraneous proof, and if it was supplied, nothing links it to the Lubowski murder. Lubowski was shot with an AK 47. During the Harms Commission of Inquiry Barnard was linked to the suspected assassin, Acheson by Acheson's own statement. Acheson has claimed that he was supplied in Windhoek with an AK 47 (albeit not to shoot anyone but merely as an intermediary). But Nielsen could have gleaned all this information from news reports. Barnard himself has at all times denied any involvement in the Lubowski murder. There was any number of other AK 47s available in Namibia at that time. (CCB Director Pieter Botes told the Harms Commission that he once buried a bakkie-load full outside Windhoek. Eugene de Kock collected truckloads full at Oshakati).

A decision on this issue therefore will have to be based on the evidence of Nielsen alone. With respect, nothing much seems to hinge on the decision one way or another. This is not a case the Attorney - general is ever likely to prosecute, if amnesty should be refused.

REPORT TO THE HRV COMMITTEE

THE APPLICANTS

The amnesty applicant herein is Mr Wilfried Lubowski, father of the deceased. The reference number is . But regard should also be had to a lengthy submission made by Mr Julian Knight, the attorney of Mrs Gabriele Lubowski (the deceased's divorced widow). It was accompanied by a large volume of material which Mr Knight had compiled during the sitting of the Harms Commission, where he also acted for the deceased's family. Since then he has been attempting to lay a foundation for civil legal proceedings against the SADF. Doubtless he has hoped that the TRC would help to accomplish this for him.

THE VICTIM

Anton Lubowski was an advocate practising in Windhoek. He had become famous mainly as one of the first white persons, and certainly at that time the most eminent, to join SWAPO. He acted for SWAPO activists in their criminal prosecutions. He joined their protest marches, he spoke in their cause on the public stage, raised funds overseas and at the time of his death held the post of their treasurer. The entire SWAPO election fund, worth R 70 000 000 was held in his personal account, according to one affidavit (Klenz).

This earned him the hatred of most white countrymen who thought he was a traitor. He also became subject to constant monitoring by the security police. In Johannesburg the police tried for instance to obtain photographic evidence of his affair with a certain Ms. Sussen, to embarrass him with it before his

wife (Bellingan). On six occasions he was incarcerated under one pretext or the other (said by Julian Knight). Before his death the CCB had also begun to collect information about him (see eg. Inquest judgment).

As a person he seems to have been quite flamboyant, with an impressive outgoing personality. He lived somewhat in the fast lane, and his bank balance was allegedly usually in the red. This is important, for Military Intelligence claims that his financial difficulties became the lever they used to recruit Lubowski as their spy.

He was married, but his wife Gabriele had taken the two minor children and moved to Cape Town. The indications are that before his death the couple was well on the way towards reconciliation and that Lubowski intended to step out of politics (the onset of disillusionment with SWAPO?) and the hectic public life, and to join his family in Cape Town (unrecorded conversation with a friend of Gabriele).

There are unconfirmed allegations that Lubowski had lately fallen out of favour with SWAPO. The one version holds that he opposed an intended deal between SWAPO and one of the largest companies in Namibia, Stocks & Stocks. The company wished to donate a multi-million Rand building to SWAPO (this deal later went through). Lubowski is said to have opposed this deal, as it would indebt the party to the company and open the door to all kinds of undesirable practises (unrecorded conversation with Julian Knight). Another unconfirmed story goes that there were irregularities around the election fund, vast sums of money had disappeared, and Lubowski was under suspicion (Klenz).

THE POLITICAL CONTEXT

1989 was a watershed year in Namibian history. On April the first UN Resolution 435, the blueprint for the transition process towards independence, was initiated. UNTAG forces numbering 9 000 , both civilian and military ,had moved into the country to monitor, safeguard and assist the preparations for the first general election scheduled for March 1990.

It was generally believed that SWAPO had by far the best chances of all parties to secure a majority. The RSA had fought against SWAPO on the battle field for many years, and was of course reluctant to concede defeat even at the polls. Thus while officially the RSA was a signatory to Resolution 435, it tried covertly to manipulate the outcome of the election. If SWAPO could not be defeated outright at the polls, at least a two thirds majority had to be averted. The whole exercise was at the same time a practise run for the South African first general election, which by then was ever more an inevitability. Namibia had become the testing ground of South Africa's future, and a big effort was made to retain political control.

Namibia also represented a big capital investment by South Africa. Its economy was more or less wholly owned by South African companies. The fishing and mining industries were particularly lucrative. Under a SWAPO government the continued economical benefit of Namibia to South Africa was likely to diminish. There was accordingly also a strong economical reason to fight for a good result at the polls.

A sum of about R 180 000 000 was made available by the RSA government to influence the outcome of the election. It was used within the framework of covert operations by both the security police and the SADF known as operation AGREE and operation VICTOR. Some of the tactics that were used were information gathering, the spreading of disinformation, intimidation, disruption of political gatherings, and outright sabotage of SWAPO or UNTAG property. The press carried stories about an alleged campaign to spread cholera in the drinking water in Ovamboland. (newspaper clippings). The media were manipulated by people like undercover military intelligence man Nico Basson. This enabled the Pretoria government to portray events locally and abroad with an anti SWAPO, pro DTA slant. (See on the whole issue the special report by Jan Ake Kjellberg - not on this file).

The CCB , an operational clandestine unit of the SADF, had designated Namibia as "Region 8" and had a team of regular regular operatives there. In 1989 they put in operatives from other regions (regions 2 and 6) as well to step up activities. Various segments of military intelligence (DCC, GS 2) also had their operatives in place. They spied on SWAPO, foreign agencies, UNTAG and apparently also on each other.

At the same time there was a "mobilization" of the white right wing, which formed an organization called Aksie Kontra 435. They enlisted the help of the South African AWB on at least one occasion. The white population had a fear of an all-out civil war, and some preparations such as collecting arms were made to meet this threat (Klenz). Simultaneously the SWAPO fighters started to come back into the country, supposedly after disarmament by UNTAG, but to the minds of many people this influx of battle-hardened fighters was an unknown and destabilizing factor in the equation.

A perusal of the SSC (State Security Council) minutes of that time shows that the RSA politicians attached great significance to the role of Lubowski (unrecorded communication by John Daniel). Unlike several SWAPO leaders he had had the benefit of a good education, and was an able campaigner and opponent. But equally important were the perceptions which tend to crystallise around men in his position; for instance, his SWAPO membership seemed to indicate that it was O.K for whites to join SWAPO, and that SWAPO had to have something going for it if a man such as Lubowski joined ranks with them. The RSA government could safely rely only on the white electorate, and a leading white SWAPO member was potentially undermining this base.

It is against this background that the assassination of Lubowski on 12 September 1989 must be assessed. Namibia was tense and turbulent and large stakes were on the table. Lubowski had enemies among the people, the RSA government, and possibly SWAPO and big business (Stocks & Stocks). There was any number of security policemen, CCB members and intelligence staff in Windhoek. The motive and the means to eliminate Lubowski were not hard to find.

THE HUMAN RIGHTS VIOLATION

On 12 September 1989 during the early evening Mr Lubowski was returning to his home in Zanderberg Street 7, Windhoek. No eye witness report on what exactly happened there is available to the TRC. Various neighbours were alerted by the sound of shots, and some of them saw a red sedan vehicle speeding away from the scene. When the police arrived they found that Lubowski had been shot dead in front of his entrance gate. He had several wounds to his back, and 11 spent AK 47 cartridges were found in the vicinity.

INVESTIGATION OF THE MURDER

In my previous report something is said about the investigations resulting from the murder. To summarise, SWAPOL arrested one Donald Acheson the next day, but he was never brought to trial. The Attorney - general withdrew charges when South Africa failed to surrender other persons he wished to prosecute jointly with Acheson.

In 1993 there followed an inquest by Namibian judge Levy. It placed culpability on the CCB. That judgment is 144 pages long and gives an overview of all the evidence available at that time.

In South Africa, in 1990, the Harms Commission took an interest in the case, but its brief was limited to the consideration of the question whether Lubowski had been a paid informer for military intelligence. This had been claimed by Magnus Malan in parliament, in an effort to quell constant allegations that SADF hit squads were on the loose and had killed Lubowski. The Harms Commission found that beyond any doubt Lubowski had supplied information in return for money to DCC (Directorate of Covert Collections, part of Military Intelligence). It did not make a finding on who had committed the murder but merely pointed out that the military was not free of suspicion merely because Lubowski had been its agent.

The TRC is in fact the first South African institution to attempt an investigation of the Lubowski murder.

THE PERPETRATORS

The questions of motive and the identity of the perpetrator(s) are inextricably linked. To answer one is to answer both. My view that the evidence does not allow a finding that would satisfy the onus in a criminal trial has already been stated. But then that onus does not apply to the question whether Lubowski was a victim of political violence.

Judge Levy held, after considering documentary and verbal evidence, that the CCB had killed him. The investigating officer, Col. Jumbo Smit, has filed an affidavit in which he expresses the view that it was a political killing. The political context sketched above certainly ties in with this view. Do the TRC investigations throw new light on the matter? The following overview shows in what respects they do:

- ◆ Numerous documents were collected to confirm the background to the murder, i.e. the state of politics in Namibia, and the modus operandi of the CCB and MI. There is no longer any doubt that the CCB did kill if required to do so, and that they did monitor Lubowski. His house was photographed, he was followed, and his telephone was bugged.
- ◆ the existence of operation VICTOR and of operation AGREE has been confirmed;
- ◆ The presence of military intelligence officials and a large contingent of CCB members in Windhoek has been confirmed;
- ◆ it has been confirmed, as far as is possible, that Lubowski did spy for MI;
- ◆ for what it is worth, the amnesty applicant Nielsen is a new witness to boasting by Ferdi Barnard that he knew of or was involved in, the assassination; by inference it was a CCB job, because Barnard himself worked, and had recruited Acheson, for the CCB;
- ◆ the affidavit by Clive Brink refers to a red VW Golf, probably the only one of its kind in Windhoek, which belonged to MI and was available to the CCB. This may have been the car used by the killer.
- ◆ There is an amnesty applicant, Kevin Trytsman, who used to hang out with Ferdi Barnard. He claims that Barnard told him the murder had been committed by the CCB. Also, he and Barnard together collected Donald Acheson from Jan Smuts airport after he had been released by the Namibian police, in 1990. While Barnard has never denied that he had recruited Acheson, who was thereafter handled by CCB member Chap Maree, this statement nevertheless confirms that link.
- ◆ CCB chairman Joe Verster was subpoena'd to testify before the TRC in terms of section 29. He refused to talk at all about the Lubowski matter. He took the stance that he was not going to talk about any CCB operation in any foreign country, even at pains of going to prison. The other CCB member, Van Zyl, took the same attitude.
- ◆ Rich Verster is another person who expresses the view that the CCB is to blame.

- ◆ Pieter Botes, an ex CCB regional director, admits that he once had to do an elimination and explains how the CCB went about it.

Are there other serious perpetrator candidates ?

The rumour that money rather than politics was involved has two sources. Julian Knight, the attorney, passed on in a conversation the rumour that Lubowski was opposed against the Stocks & Stocks deal (see above). This is unsubstantiated hearsay.

Another amnesty applicant, Klenz, who happened to be in the Windhoek gaol at the same time as Acheson, and who claims to have shared a cell with Acheson, states under oath that Acheson denied to him any involvement in the Lubowski killing. Instead, he claimed to have been set up by his CCB handlers. (Note however, that Klenz himself is implicated by another Verster in a hearsay statement).

Klenz goes on to say that the policeman who investigated the murder for which Klenz had been arrested had told him that the entire SWAPO election campaign fund had disappeared. This suggests a strong motive for SWAPO to have killed Lubowski, the treasurer in charge of the fund. Again both claims are hearsay, and particularly the latter allegation would certainly have led to a massive investigation. It seems impossible that such a story would successfully have been kept quiet for so long.

SUMMARY OF MATERIAL AVAILABLE BEFORE 1996

It is suggested that the inquest judgment by Levy, J summarizes all the evidence available before commencement of the TRC. A perusal thereof will show why the Judge concluded that the murder had been a CCB operation. The index of this file shows which of the documents referred to in the judgement are available to the TRC. Of these, the most useful are perhaps the affidavits by Col. Smit and the affidavit by Slang van Zyl.

COMMENT:

The picture is by no means complete, and the Levy judgement has been criticised for making too many inferences to bridge the gaps. It cannot be denied that the available pieces of the puzzle can all be neatly fitted together in the manner Levy, J has done. A court of law would have to ask if they could not also be formed into another pattern consistent with innocence. In my submission the leap from all known facts to the inference that the CCB engineered the murder and executed it either through Acheson or its own operatives is not a large one. There was planning around Lubowski (see Christo Basson diary, Slang van Zyl affidavit) and a first stage of

implementation, namely surveillance. A hired killer was put in place. This points quite logically to an elimination CCB style - see eg the amnesty applications of Slang van Zyl et al for the intended elimination of Dullah Omar in the same way. Lubowski was assassinated. What are the odds that at that precise moment some unknown third party by accident pre-empted the CCB?

SUMMARY OF NEW MATERIAL

VITO PALAZZOLO

The previous report will show that it was not clear, since the days of the Harms Commission, whether there were any ties between the murder under consideration and the person of Vito Palazzolo. Palazzolo had met with Lubowski in Switzerland several weeks prior to the murder, and it was speculated that he may have been the source of the R 100 000 paid into the Lubowski accounts in June 1989. (This was the money which Military Intelligence claimed it had paid to Lubowski).

Mr Kooijmans and I conducted a two hour interview with Palazzolo and his attorney, Mr Prisman, which established that they both deny any link whatsoever between Palazzolo and the murder or the money. Up to now Palazzolo has failed to furnish a signed affidavit, and we have only a draft affidavit based on our meeting. Mr Prisman has also written a letter which contains additional information.

COMMODORE LOUW

In 1989 he was in charge of Military Intelligence: Directorate Covert Collections' desk for the Western Theatre, which included Namibia. He claims to be the officer who (through unnamed intermediaries) handled Lubowski as agent. His statement is comprehensive and makes the following points:

- ◆ Lubowski was in financial difficulties;
- ◆ MI exploited this to recruit him as an agent;
- ◆ MI paid him in June 1989 the sum of R 100 000. This was done through the use of an MI front company, Global Investments;
- ◆ Lubowski did provide information but those reports have since been destroyed. Some of them were shown to Judge Harms;
- ◆ MI did not kill Lubowski and he does not know who was responsible;
- ◆ When Magnus Malan claimed in parliament in 1990 that Lubowski was a paid MI agent he was telling the truth;
- ◆ He is prepared to undergo a lie detector test, as he cannot think of any other way to confirm that he is being truthful;
- ◆ In addition to the documents attached to his affidavit he has also supplied the original microfiche of the bank clearing house which processed the MI cheques. These show that the payments were indeed made in the manner and at the time as he claims.

COMMENT

The money payment has been controversial since it was first alleged in 1990. A sum of R 100 000 was paid into two accounts in June 1989. The SADF cited this as proof of payments by them for information received from Lubowski. Mr Julian Knight still refuses to accept that and offers various other possibilities:

- it was made by MI as an anticipatory cover - up, a prepared alibi for the intended assassination:
- it was made by MI as a subsequent cover -up;
- it was not made by MI.

His reluctance to accept Cdre Louw's statement is due to the fact that it is apparently inconceivable to those who knew Lubowski to imagine him as a collaborator with the forces he so vehemently opposed. Another argument is that if Lubowski was so cash strapped why did he leave the money untouched for two months?

Scepticism about Louw's story is also expressed by Rich Verster, who claims that Louw presents forged material as proof, and by Clive Brink, who bases his view on his general knowledge of MI type operations. Another person who disbelieved Magnus Malan's claim about Lubowski was Nico Basson, who was a military agent working against SWAPO through the media in Windhoek. He alleged that had been asked to recruit Lubowski for MI but had failed. All this is criticism out of the own ranks, so to speak. Notably, Brink states that moneys were often paid into the accounts of enemies so that later they could be compromised in various ways.

In the end we wish to know who killed the man, whether or not he was a spy. We have to ask if Louw helps us to answer that main question. What would Military Intelligence accomplish by lying? If we knew for certain that MI has in fact falsely claimed that Lubowski was their agent, this would not really bring us nearer to a solution of the murder. One could argue that they would only have found it necessary to (falsely) distance themselves from the murder if they were somehow part of it. But then the general assumption is anyway that the CCB, also part of the military, committed the murder, and it seems safe to assume that before they went into action there would have been an order from the top, and co-ordination of intelligence. Louw's affidavit, true or false, does not alleviate this thinking. If it was intended as a cover-up or red herring, it failed. In fact, it only succeeded to focus attention where previously there was none for no one had pointed a finger at MI.

This argument leads me to the view that to claim falsely that Lubowski was an agent never made any sense. When Magnus Malan made the claim the evidence against the CCB was already on record and his statement did not alter it. It only made sense if it was true - which does not mean that it was convincing. The SADF remained under suspicion through its CCB branch. But

at least it makes sense that the Minister tried (in vain) to take the heat off the SADF by revealing the true fact of Lubowski's ties with MI. Not only on logic, but also on the available evidence it is hard to dismiss Louw's claims. On face value, he presents indisputable proof; but one cannot corroborate it, as Louw refuses to divulge the names of Lubowski's handlers and says that the documents concerning Lubowski have been destroyed.

Louw's critics express opinions which are cogent but are not supported by hard evidence. In reply one could argue that either Lubowski's financial problems may have been sufficient to compel him to trade information for money, or that he did not know who he was dealing with. This possibility is left open by Louw. If Lubowski was an informant, this would have been treated on a need to know basis, and someone like Brink would not necessarily have known.

One other possibility does also occur: the money was paid into the Lubowski accounts to compromise him at some future stage - e.g. to create the impression that he was an under cover collaborator, and thereby to weaken SWAPO before the elections. In this case, Lubowski might not have known of the money or might have been too suspicious to use it. After his death, the payment was used with a slightly different slant. But the unsatisfactory point here is that the payment was unnecessary, in fact a dead loss, if there was to be an elimination.

A final answer need perhaps not be given by the TRC. To do so would require further investigations, starting with a further debriefing of Verster, and a debriefing of Rob Coleskie (who tried to recruit Lubowski according to Brink), and Nico Basson. Verster is in a British prison; the whereabouts of the other two is not known.

CLIVE BRINK

He is an ex DCC member, who provides background information on DCC activities in Namibia during 1989. He is sceptical of Cdre Louw's claim.

RICH VERSTER

He was also a MI agent and was present in Windhoek when the murder occurred. A transcript of an interview between Verster and Mr Ntsebeza of the TRC is on file. He admits that he had done surveillance on Lubowski, but says that he was caught by surprise by the murder. He says there is little doubt it was a CCB operation, but also believes that MI did not run Lubowski as an agent and make this claim only to escape suspicion.

SANDRA NOLAN

She is a commandant in DCC. Her affidavit provides a good general overview of the DCC structure and its functions. She also explains how DCC made use of front companies. She has no information on the Lubowski murder.

MICHAEL BELLINGAN

He was a Captain in the SAP engaged in STRATCOM operations. He is an amnesty applicant in various other matters. He offers the hearsay opinion that Ferdi Barnard boasted that the CCB was responsible. (Barnard said as much in his second long affidavit, but here is confirmation yet again that he told it to anyone who would listen. Barnard himself is of course ultimately also speculating).

JOE VERSTER

As stated above he refused to speak about the Lubowski case. A short memo on the s 29 proceedings is on file. It is open for discussion whether this refusal to speak is an incriminating fact in itself. The point is that Verster denied any involvement of the CCB in the Webster murder, which has also consistently been laid at their door, but did not outright deny involvement in the Lubowski case.

HORST KLENZ

This member of the white right wing has supplied some hearsay about Lubowski - that SWAPO may have killed him. He also helps to paint the political scene in Namibia at the time.

CONCLUSION

The TRC investigators used the Lubowski case, together with that of David Webster, as a focal point for the collection of information on the CCB, Military Intelligence and operations in Namibia. Much of the material collected in this way is more of use to Research, and a discussion thereof is omitted here.

Two main difficulties were experienced. Firstly, we are dealing with a murder in a foreign country. Those that could be approached for information in this country were approached, but a full investigation would have required a visit to Windhoek. Up to now, this has not been authorised although the Attorney - general has extended an invitation to the TRC. The reasons appear from the correspondence on file.

Liaison with Namibian authorities was not satisfactory in 1989 when lack of co-operation bedevilled the prosecution of Acheson. It is sad that this should once again have hampered the investigations. Particularly the probabilities of allegations that SWAPO or private enterprise may have been behind the murder need to be canvassed with the local authorities. Also more needs to

be known about Lubowski's loyalties to SWAPO at the time, and his financial position. Then there is also a possible eye-witness to the shooting whose statement should be obtained. Clive Brink has offered other leads which are interesting.

But perhaps the greater problem has been that the security establishment is involved, and has not been co-operative. The Louw statement is detailed but was not volunteered and had to be extracted with some patience, while the CCB (Joe Verster) flaunted the TRC outright. Spreading disinformation is an accepted way of life in security circles. There is by the nature of things a lack of transparency which breeds rumours, and in the Lubowski case the borders between rumour and speculation, and hard evidence remain obscure.

Most other HRV applications are decided on the strength of Low Level Corroboration. If the same measure is applied here it should not present difficulties to make a finding whether the murder was political.

If on the other hand final answers are ever going to be sought, either a full scale police investigation or a properly empowered, bi-national Commission will have to be appointed for the investigation.

ADV. F. MALAN
JOHANNESBURG
16 SEPTEMBER 1997



ANTON LUBOWSKI SECOND INVESTIGATION REPORT

The present investigator took over this file from Ms. Pitman on 2.5.1997. She has dealt with this matter from the beginning, I believe, with the assistance of Supt. Swart. She has drawn up a memorandum (undated) which contains her investigative proposal. Much of the proposed investigation has already been done. This memorandum is intended to outline the history of the case more fully, to consider the present level of investigations, and to suggest further action.

THE INCIDENT

Anton Lubowski was an advocate of the Namibia Supreme Court and lived in Windhoek. He seems to have been a well-known public figure, mainly due to his membership and active role in SWAPO. He defended in so-called terrorist cases, participated in SWAPO demos and was incarcerated six times under security legislation. Those that knew him say that he was deeply committed to the SWAPO's cause. On 12 September 1989 he was attacked by unknown gunmen outside his home in Klein Windhoek. At least eight shots were fired at him from his rear with an AK 47. The fatal wound was to the back of his head. The assassins made their get-away in a red car. He died on the scene, at about 20h30. The details of the shooting are not known.

At the time of his death Namibia was in a state of transition to independence, and the elections were being prepared. UNTAG had already moved in on 1 April 1989, but the RSA was still in charge and had a vested interest in the outcome of the elections.

NAMIBIA INVESTIGATIONS

CRIMINAL TRIAL

On 13 September, after a tip-off from the people with whom he was lodging, Donald Acheson was arrested. He is an Irish National. While in police custody, he made statements which revealed that he was operating in Windhoek as a clandestine agent at the instruction of South Africans who later were revealed as CCB operatives. The case was investigated by Col. Jumbo Smit. The investigation culminated in the arraignment of Acheson on a charge of murder. The evidence available to the A.G. is set out fully in the inquest judgment of Levy, J at pp.78-106. Levy J concluded that there was a very strong prima facie case and that an acquittal would have been extremely doubtful.

On 18.4.1990 Acheson appeared in court for trial. The A.G asked for a postponement, in order to obtain the extradition of Chap Maree and Staal Burger from the RSA, in order to join them as co-accused. He also wanted to secure the presence of F. Barnard, Slang van Zyl, Willie Knox and Calla Botha as witnesses. In this he failed. On 15 May an application for further postponement for the same reasons was denied by Mahomed, J and the charges were thereupon withdrawn. Acheson was thereafter deported to the RSA.

INQUEST

In May 1993 a newspaper report, based on allegations by the former Task force member Rooinasie, led to a new police investigation. A docket was prepared and eventually a formal inquest was held before Levy, J. On 24.6.1994 he delivered judgment.

Rooinasie and another askari presented a story that Lubowski had been killed by a conspiracy of senior Namibian police officials. They were however exposed as utter liars and this story was rejected in toto. (judgment pp.27-78).

The judge then considered the evidence which the A.G. had had available against Acheson and concluded that there was a strong case against Acheson. (pp. 105-106). It is clear that he doubted the correctness of the A.G's decision.

Next, he dealt with new evidence obtained after the aborted trial. This included the affidavits which the SAP had obtained from Barnard et al during their detention in the Webster case. He also had available the Harms Commission findings and the diary of Wouter Basson, which described in veiled terms a CCB operation at the time of the murder and fitted in with Acheson's statement. While this provided no new evidence on the execution of the murder itself, it did corroborate that the CCB was involved in dirty tricks in general and with Acheson in particular. (pp. 106-127).

Further, there was oral evidence by one Charles Neelse and Johan Niemoeller to the effect that they had spied for the CCB in Namibia and among other things had photographed Lubowski's house. Before Harms, evidence had been led that in an action against a target there was a preparatory phase including the monitoring of the target's movements. Their handlers were Staal Burger ("Nick Verbeek") and Barnard ("Verwey").

The inquest judgment concluded:

- cause of death: multiple shots with an AK 47, one shot in the head;
- prima facie Donald Acheson shot and killed the deceased;
- prima facie the CCB initiated and was involved with the murder, and the following CCB members were accomplices:

Ferdinand Barnard;
 Leon Andre Maree;
 Daniel Ferdinand du Toit Burger;
 Wouter Jacobus Basson;
 Johan Niemoeller;
 Carl Casteling Botha;
 Pieter Johan Verster;
 Abram van Zyl;
 Charles Neelse;
 Chief Inspector Ignatius Willem Terblanche.

Because Acheson is now believed to be in Europe, and the other perpetrators are in the RSA, no further prosecution has been initiated in Namibia.

RSA INVESTIGATIONS

POLICE INVESTIGATION

Four months prior to Lubowski David Webster had been murdered in the RSA, in a similar way. It was at the time of these investigations that Col Jumbo Smit of Windhoek came to Johannesburg to investigate Acheson's claims. He spoke to Ferdinand Barnard and his previous employer Willie Smit and learnt that Barnard had claimed to be a hitman and that he had killed Webster. He conveyed his findings and suspicions to the Webster murder

investigator, W/O Rousseau. Rousseau knew that Barnard and Botha had been arrested a short time ago for keeping observation on an activist Bruce White. In view of this, and Acheson's disclosures, he decided to arrest Barnard, Botha, Maree, Burger and Verster i.t.o.s 29 Act 74/ 82. While in detention, or when threatened with detention (Verster) they made statements and in this way the police discovered the existence of the CCB for the first time.

The SAP did not investigate the Lubowski murder as such, but the material they provided assisted the inquest hearing in Namibia, as shown above. They did not uncover any leads.

HARMS COMMISSION

This commission into alleged irregularities, e.g. hit squad activities by RSA security forces was instituted by FW de Klerk after mounting public pressure: within a short time frame disclosures had been made about Vlakplaas operations (Nofomela) and the CCB (Acheson). It started its work in January 1990. Inter alia it raided various CCB premises and thoroughly exposed that organization. Initially it was not tasked to investigate cross-border activities, but later its brief was extended to investigate whether Lubowski was a paid MI agent, but not how he had been killed. Magnus Malan had made the claim that Lubowski was an agent in parliament on 26.2.1990 and 1.3.1990, and claimed that therefore the military would not have killed him.

The military (Genl.Badenhorst) made submissions in camera to the commission. Most of what was said is secret to this day, but Judge Harms did make public which documents had been submitted to him to prove the payment to Lubowski of certain informer's fees. Somehow it had been made public that the alleged payments to Lubowski had been made through the CCB Front Company Global Investments, and the need for secrecy had fallen away. Judge Harms was convinced that Lubowski had in fact worked for MI, and had received in June 1989 as a reward the sum of R 100 000. This finding is disputed to this day by the lawyers for Mrs. Lubowski .

Judge Harms was not asked to investigate the murder; significantly, however, he specifically found that although Lubowski's murder had been a setback to MI this did not absolve the CCB, which operated independently and was probably unknown to MI.

TRC INVESTIGATION

With the appointment of the TRC a new opportunity arose to look into Lubowski's death, and it has been seized by his family. Although we do not (yet) have a victim statement by the (divorced) widow we do have a comprehensive submission by her lawyer, Mr. Julian Knight in which he requests a thorough investigation of both the murder and the alleged spying activities of Lubowski. He is of the view that these allegations are a lie and form part of a cover-up of unknown facts. He has also provided a long list of suggested investigations, on which Ms. Pitman has relied heavily. It should be mentioned that Mr. Knight wishes to institute an action against the Minister of Defence for compensation.

The TRC Investigation team has obtained many documents. A summary would include:

- ◆ S vs. Acheson: copy of bail application;
- ◆ S vs. Acheson : application for remand.
- ◆ inquest: copy of Niemoller's evidence;
- ◆ inquest: copy of judgment;
- ◆ inquest: copy of RSA documents submitted to Levy,J;

- ◆ copy of CCB members' court action for better retrenchment deals. This includes Verster, Niewoudt and 21 applicants applying under aliases;
- ◆ documentation on Jalc Pty Ltd, a CCB(?) operation in Ciskei/Transkei;
- ◆ documents from the Registrar of Companies on various CCB front companies;
- ◆ CCB : file on its establishment, guidelines and procedures in general;
- ◆ file of press clippings;
- ◆ Notes by Julian Knight, Louise Flanagan;
- ◆ various general papers on clandestine activities;
- ◆ affidavit (from Goniwe inquest) by Genl. AJM Joubert: HSADF knew of CCB.

The team has also endeavoured to obtain the full banking record that allegedly proves payment to Lubowski of MI money. The bank claims it no longer has such records. It has obtained a useful statement by a highly-placed DCC officer on the general structure and use of Front Companies for the CCB and DCC.

ANALYSIS OF EVIDENCE

PERPETRATORS

1. At the inquest hearing a theory was put forward that police officials of Namibia were responsible. This was thoroughly discredited.
2. The only other possible perpetrators implicated by available evidence are those mentioned by Levy, J and listed above. Their participation, briefly stated, was probably as follows:
 - ◆ Acheson: part of actual hit squad;
 - ◆ Barnard: recruited Acheson; handler of Neelse; claims he was in Cape Town at time of murder;
 - ◆ Maree: Acheson's handler; probably part of hit squad (no evidence); in charge of operation;
 - ◆ Burger: Maree's regional commander, and part of planning, possibly execution;
 - ◆ Basson: CCB co-ordinator for region 6 (RSA); Harms seized his diary which was referred to above. Part of planning, subsequent instructions to Acheson;
 - ◆ Niemoller: paid CCB "unconscious" member, spied on Lubowski, probably unaware of assassination plan but may have suspected it;
 - ◆ Botha: cell member of Chap Maree. Involvement unknown;
 - ◆ Verster: CCB director, had to approve all CCB operations, only link between lower ranks and SADF command structure;
 - ◆ Van Zyl: cell member of Maree. Involvement unknown. According to E. de Kock he was in Windhoek at the time of the murder and knows all about it;
 - ◆ Neelse: employed by Niemoller as driver and part of spying activities. Used by CCB via Niemoller and also directly. Paid agent. Assisted Acheson with info, transport before murder (?);
 - ◆ Terblanche: Policeman who had been informed by Neelse that he knew of efforts to kill SWAPO leaders, including Lubowski. He failed to act on this info and is guilty by omission.

not this man

MOTIVE

The true motive is unknown, but the evidence points to an assassination plot by the CCB. They had kept Lubowski under observation because he was a key SWAPO member. His death conceivably was part of a larger plan to disrupt SWAPO in its run-up to the election.

Other CCB actions were petty acts, such as burning or sabotaging UNTAG vehicles. What precisely was hoped to accomplish is not clear, and in my view there may in fact have been poor information, groundwork and thinking behind the murder. There is hearsay that Lubowski had had a fall-out with SWAPO, that they suspected him of fraud' and that he was becoming disillusioned with them. If any of this is true he was no key figure. Certainly there were more prominent SWAPO leaders that were not harmed.

EVIDENCE

1. Against Acheson:

There is sufficient circumstantial evidence against him to warrant a prosecution, though none that places him on the scene itself. This is dealt with in Levy J's judgment. For our purposes it is important that he himself revealed the CCB link to the Namibia police. That was the first break in the CCB security shield. While in s 29 detention, Barnard and others admitted that Acheson was initially recruited by Barnard and thereafter handled by Maree. Acheson admitted the spying but denied the killing. He also admitted attempts to poison a newspaper editor Gwen Lister and assistance in vehicle sabotage by explosives.

2. Against CCB members:

The only evidence to link them with Lubowski is the following:

- ◆ Acheson's allegation that the CCB were his employers;
- ◆ Niemoller and Charles Neelse's allegations that the CCB used them as unconscious members for spying on Lubowski;
- ◆ Barnard's admission during detention that he recruited Acheson;
- ◆ other s 29 statements that Lubowski was one of Maree's projects and that he was Acheson's handler;
- ◆ a claim by Eugene de Kock (amnesty application pp.754-756) that on the day after the murder Sakkie van Zyl (we think this is Abram van Zyl) called him from Windhoek, saying that he should look at the news and that they were busy with operations there. De Kock found this call strange as it came out of the blue.

In summary there is no hard evidence, just a string of allegations, mostly denied afterwards. I will compile a more complete list of who said what and when and to whom if it comes to public hearings.

AVENUES OF FURTHER EXPLORATION

1. The Namibia police proceeded in their investigation from the scene of the murder in routine fashion. In this they had success, but the judicial system failed when the RSA did not co-operate with the A.G. Namibia by extraditing perpetrators and witnesses. In hindsight one might argue that their A.G made a serious error of judgment in not prosecuting Acheson. That offered the best, indeed the only chance Namibia had to get at least at part of the truth.

Retracing the steps of that investigation serves no purpose. There is no reason to suspect a cover-up, and in any event all key-players are in Namibia. I am told, however that there is an eye-witness now living in Namibia who was contacted by the then National investigation unit. I do not know with what result. This might warrant further steps.

x
No - by
AG

2. The suspects have not applied for amnesty in this matter (they admit between them 4 other incidents: an Athlone bombing, an attempt on Minister Omar's life, the monkey fetus placed in Archbishop Tutu's garden and monitoring Gavin Evans). At this moment I have not yet received their applications. For these other acts they claim to have received an earlier indemnity. They have thus declared their hand and are unlikely to reveal the full extent of their knowledge at this stage. They have been described as accomplished and unabashed liars (Goldstone) and are trained, one presumes, in disinformation.

3. A second possible approach is to try and unravel the CCB involvement. Most of this was done by the Harms Commission and later by the Goldstone commission. They have painted the broad picture. What is lacking is detail on specific operations. The CCB was disbanded finally in 1992 and all known premises were raided. Their front companies, as far as they were known have been disbanded. Their task has reverted I believe to the DCC^o, which has always co-existed with the CCB. Thus there is no address to turn to today. The suspects have all spoken to or filed statements with the Harms Commission where they denied all involvement. Links found between the CCB and Lubowski's death along this line were Basson's diary, and the link Barnard-Acheson.

4. A third possible approach is to focus on the angle of Lubowski's alleged MI involvement. This is the approach taken by the TRC team. A brief summary of the current state of affairs follows.

- The claim that Lubowski worked for MI was made by Magnus Malan on 26.2. 1990 and 1.3.1990 in parliament;
- it was proved to Judge Harms to his satisfaction, but in camera and to the dissatisfaction of every-one else;
- the full extent of what Harms was told has been kept secret;
- what he revealed was the existence of three cheques, totalling R 100 000, paid in June 1989 into two separate Lubowski accounts, allegedly as payment by MI for services rendered. The money was channelled through a CCB front company. We have only copies of those cheques, with partly blanked out information. He was also shown original requisition forms, and deposit slips and microfiche.

In evaluating this evidence several possibilities have to be considered:

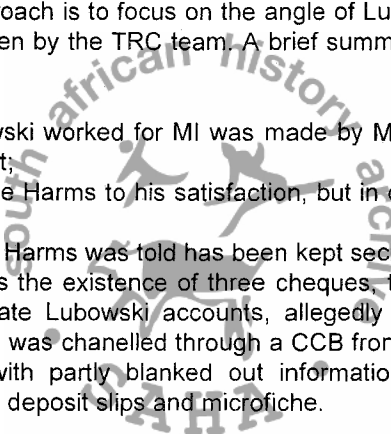
1. The payments were never made but were later faked as part of some cover-up. In this case the finger points at MI involvement in the murder.
2. The payments were made. Here a number of possibilities arise:

2.1 The payment was made by MI. It could have been for unknown services as agent. It could have to do with Vito Pallazolo for whom Lubowski tried to obtain a residence permit and who might have links with MI. In this scenario he might still have been killed by the CCB, because they did not liaise directly with Mi and unwittingly acted at cross-purposes. It also does not follow that MI did not want him dead for a number of possible reasons;

2.2 The payment was made on the alleged dates by MI but only with the intention of framing Lubowski or as smokescreen. Since MI and the CCB operated completely separately it would have required high-level synchronization to achieve this.

2.3 The payment was made, but not by MI. It could have been payment for services by a client - Vito Palazolo? In this case MI, looking for a smokescreen became aware of the payment and manipulated it to their advantage.

*info gathering -
get not eyes -
R pps.*



2.1 strikes me as the most straightforward explanation. The other possibilities smack of over-elaborate deviousness. Why use a money transaction as a smokescreen? Why not simply keep silent? Why drag MI into the scandal of the day at all when no-one even thought of them? Certainly it did little to bail out the CCB. If it was not a MI money transaction, why was the true payer never discovered? Why would MI accept the risk that the true payer might come forward and expose them? Would the banks collaborate to present false deposit slips? On the face value all paperwork was in order. MI volunteered the documents. Why look for elaborate cover-ups in the first place? The reason is that everyone agrees it was most unlikely that Lubowski would ever assist MI, who were part of a system he openly despised.

This leads to the question whether MI did not use (and pay) Lubowski with or without his knowledge for work other than spying. This is where the **Palazzolo** brief becomes relevant. Palazzolo, according to press reports had been in a Swiss gaol on serious drug charges. He was suspected of being an influential Mafia member. Reputedly he had connections in several Secret Services. This shadowy figure was seen by Lubowski in prison with a view to arrange residency for him in Ciskei, which he subsequently obtained. This led to a scandal also investigated by Harms, as Nat MP Peet de Pontes had assisted in procuring the permit. Palazzolo's millions may have been the incentive.

The thought now occurs that MI undertook to pay Lubowski on behalf of Palazzolo. The briefing attorney Prisman of Cape Town says he did not handle the payment. Nothing is known about a connection between MI and Palazzolo, but the press speculated along these lines.

The possibility referred to above, that MI had nothing to do with the payment - or Palazzolo - but used the transaction for their own purposes, seems as farfetched as a real link.

Investigating the so-called paper chain may or may not reveal an MI angle to the affair. But it will not throw light on the actual murder, unless new leads are uncovered. It may serve to clear Lubowski's name of MI slander, as the relatives see it, but that is not the aim of the TRC. It may throw light on the extent of military involvement in dirty operations, and that might fall within the ambit of the TRC brief.

PROVISIONAL CONCLUSIONS

1. Lubowski was killed in a CCB action. The details are not known, but the evidence is strong enough to use this as working hypothesis in our investigation. The list of perpetrators includes some or all of those listed by Levy, J supra.
2. MI may or may not have been involved. Involvement is likely if Magnus Malan's claims are found to be false, i.e. if the payment of R 100 000 is not what it purports to be. In this case the CCB were not originators of the plan, but its executors. The idea came not from the bottom up (Maree) but from the top down (DMI).
3. While in this shadowworld all is possible, the most logical conclusion in my view is that MI was not involved and bona fide tried to prove this to judge Harms. The reasons are given above. Another reason is that the CCB action seems to have been rather unsophisticated in some way. MI surely could have done a clean professional job leaving no clues.

INVESTIGATION PROPOSAL

1. I consider a new proposal necessary in order to re-assess our strategy because
 - ◆ Time is running out;

- ◆ Much time has been spent on the paper trail: as regards the CCB, by establishing a picture of their front companies; as regards MI, by establishing the veracity of the R100 000 payment. I do not see how this will take us much further.;
- ◆ I suggest we short-circuit that avenue by going directly to the source, where we will have to go eventually anyway.

2. I suggest that we hold s 29 hearings and issue subpoenas to the following:

- the CCB members Verster, Burger, Maree, Barnard and van Zyl;
- DMI as he then was;
- Vito Palazzolo;
- attorney Prisman;
- Mrs Lubowski;
- Genl. Eddie Webb.
- If the need is felt to go into the CCB again, we might add to this list attorney Penzhorn, Magnus Malan and others.

3. I further suggest that these hearings are preceded by the following investigation:

- obtain all CCB members' amnesty applications;
- a last attendance on Standard Bank to obtain an affidavit;
- interview with Capt. Louw, DMI. This has already been arranged;
- attend on A.G to see if they have useful documents or info;
- interview with Palazzolo and Prisman;
- interview with the unknown Namibia witness;
- interview Veenendal who has info, according to Kobus ;
- establish the role of Veenendal and Horst Klentz in the matter. We have no documents on this angle at all, if it is an angle.

4. Follow up as necessary from these investigations.

This report is submitted for discussion and authorization.

ADV. D. F. MALAN
29 May 1997

**THE CIRCUMSTANCES SURROUNDING THE DEATH OF ANTON
LUBOWSKI - INVESTIGATIVE PROPOSAL**

**OVERVIEW OF EVENTS AND ACTION TAKEN FOLLOWING LUBOWSKI'S
DEATH**

Advocate Anton Lubowski was a leading member of Swapo and was murdered in Windhoek on 12 September 1989.

The Namibian Police Force conducted an investigation into the murder, and were assisted in this endeavour by their South African counterparts. The investigation resulted in criminal prosecution. One Donald Acheson was charged with murder and brought before the Supreme Court of Namibia in 1990. The link which the investigation established between the accused and the Civil Co- Operation Bureau resulted in warrants of arrest being issued against certain members of the CCB based in South Africa. A conviction of Acheson could not be secured because the Namibian authorities were unable to obtain the extradition from South Africa of the relevant key witnesses and role player members of the CCB. It seems that the matter was postponed indefinitely with Acheson being released from custody.

The result of the inquest into Lubowski's death was handed down by Judge Levy on 1994/06/23. The findings were that prima facie Donald Acheson shot and murdered Lubowski and prima facie the CCB initiated and were involved in the murder and acts of members of the CCB amounted to acts of accomplices to kill Lubowski.

The South African Defence Force and South African Police against whom a civil claim, on behalf of the dependants of Anton Lubowski, was instituted, have consistently denied any responsibility for his killing, and have done so notwithstanding the findings of the Levy inquest.

Furthermore the Defence Force has stated that even if it could be proved that CCB members were involved in his death, then they deny that the CCB activities were in fact sanctioned by the ministers concerned.

Allegations made that the SA Defence Force, and more particularly the CCB, were instrumental in his killing prompted General Magnus Malan in parliament to disclose that Anton Lubowski was a paid agent of Military Intelligence ('MI') and that consequently the Chief of Staff: Gen Witkop Badenhorst would not have approved any action against Lubowski.

The Harms Commission subsequently investigated certain payments made to Lubowski via the Military Intelligence Front Company, Global Capital Investment ('GCI'). The commission concluded that the money paid to Lubowski had its source in MI and that Lubowski received money as an agent of MID.

However the evidence presented to the commission in this regard was untested because of the Defence Force's unwillingness for the evidence to be subject to public scrutiny and cross-examination. Furthermore, the terms of reference of the Commission did not include an investigation into the circumstances leading to the death of Lubowski.

To date the government has not provided any of the official files which would exist in the event of Lubowski having been a paid agent. These include Anton Lubowski's code name, his source number on the central register of sources, his recruitment file or his production file.

In order to investigate the payments made to Lubowski and the allegation that he was an agent, the TRC must request various documentation from Military Intelligence, listed below.

Further, in order to conduct investigations into the activities of the CCB and the Military Intelligence Fronts as well as their financial positions, documentation and information listed below will need to be obtained from the Registrar of Companies and the Standard Bank.

It is hoped that by following "the paper chain" we might be placed in a position to understand some of the anomalies surrounding Anton Lubowski's death (See Julian Knight's submission for some of these anomalies) and ultimately establish who or what entity was behind the planning and initiation of his murder.

INVESTIGATIONS:

CURRENT STATUS

- 1. During last year I obtained a set of documentation relevant to this case from Julian Knight, the attorney representing the Lubowski family in the civil claim on behalf of the dependants of Anton Lubowski.*
- 2. Various additional documentation has been received by the TRC over the past year from different sources. An Inventory of all this documentation was prepared by Cees Kooimans.*
- 3. An in depth study of all the documentation has been made.*
- 4. Wilson Magadla, Cees Kooimans and I met with Tori Pretorius of the Attorney Generals office . We requested an indication of the status of their investigation into the murder of Lubowski. Pretorius advised that they had witnesses who could testify concerning both the allegations of Lubowski being an agent and the circumstances leading to his death. He gave no detail and gave no indication of pending arrests or prosecutions.*
- 5. I contacted and interviewed a Mr Guy Pudney in an attempt to obtain information concerning the front company, Global Capital Investments and its one time sole owner Mr EJV Penzhorn.*

I obtained the following information:

Pudney was a partner at Mac Robert de Villiers Lunnon & Tindall Attorneys of which Mr Penzhorn was also a partner. According to Pudney, the company Goudoes (Reg No 763745) was formed in 1976 by three partners of the firm and was founded mainly to do business as a property company. In 1980 eight other attorneys of the firm, including Penzhorn, joined Goudoes. In October 1984 Goudoes applied for a change of name and the name Global Capital Investments was approved.

Also in October 1984 ten directors resigned and Penzhorn remained the sole director of GCI. The following year Penzhorn approached Pudney and asked him to attend to the conversion of GCI into a close corporation. Pudney effected this conversion.

Some time after this, a friend of Pudney's, a Mr Gibson, who was a medic with the Military, asked Pudney about Penzhorn & GCI. Gibson explained that he was interested because he had knowledge that the Military were buying military vehicles through the entity GCI.

This incident raised the suspicion of partners of the firm and they conducted a search of Penzhorn's office to try and obtain further information. They found nothing, but certain partners were none the less intent on having Penzhorn removed as a partner because of the suspicion surrounding his connections with the Military. However the then senior partner of the firm, a Mr Schoeman, (who was & is apparently a close friend of both P W Botha & FW De Klerk), is also Penzhorn's uncle & he protected Penzhorn from dismissal.

In March 1990, after Anton Lubowski's death, when the press named the firm of attorneys in connection with Goudoes & GCI, the firm obviously confronted Penzhorn concerning GCI and its activities . Penzhorn contended that he had originally been asked by some friends in the military to set up the cc, and that he had long since(1986) made over all his rights and interests in the cc to some one else. When Pudney went to check the file at the companies office he was told that the file had on request been withdrawn from public scrutiny.

Pudney subsequently, through a connection at the companies office was able to establish that Penzhorn had in fact been lying since he only transferred the cc to 'Rikka Marie Roux' on 28/03/90. On the strength of this information, Penzhorn was asked to leave the firm.

It is interesting to note however, that this is the same date as its de- registration and it is a date during the Harms commission, at which Penzhorn gave evidence. It is further interesting to note that the CK2 document signed by Mr Penzhorn, giving over the rights, title and interest to Rikka Marie Roux retains PO box 276 Pretoria as the postal dress for Rikka Marie Roux, which is in fact

the address of Mac Robert De Villiers Lunnon & Tindall of which Penzhorn was a director at the time.

Standard bank has furthermore confirmed that the account of GCI was in the name of Mr EJV Penzhorn and was closed on 5 May 1994 some years after the company was in fact de registered.

Pudney also confirmed that another of the senior partners of the firm , Mr Radloff, had close connections with Armscor. (His farther was chairman.) He also said that he suspected that Radloff, Schoeman & Penzhorn met regularly with an elite "political circle of influential political players". This, he said was entirely speculation.

6. *I contacted and interviewed a Mr Alan Lintner who has former links with Military Intelligence. I obtained the following information: Lintner was involved in providing training to intelligence agents, in the Ciskei. This bought him into contact with Jan Anton Nieuwoudt and the activities of Paaic.*

Paaic apparently supplied the financing for operational aspects of CCB. Sandra Nolan was the principal administrator of Paaic and Arac . According to Lintner, she would have knowledge of the activities of Paaic and Arac as well as who would have been in charge of the Namibian desk. (Nolan is presently at the Air Force staff college at Voortrekkerhoogte)

Bob Wishart was in charge of the Ciskei/Transkei desk. His code name was Rawhide. Tolletjie Botha, who was assisted by Mariette Hartley (nee Muller) were also involved at a senior level in Paaic and Arac and would have information.

(Tolletjie lives on a plot outside Pretoria and Mariette works at Foreign Relations, Vermeulen Street)

7. *The TRC has received a letter from the attorneys David H Botha, Du Plessis & Kruger who are representing the following persons in their amnesty applications:*

D.F. Du Toit Burger (Alias Staal Burger)

A Van Zyl (Alias Slang Van Zyl)

L. A. Maree (Alias Chappies Maree)

C. C. Botha (Alias Calla Botha)

Their attorneys have indicated that their clients are willing to assist the TRC voluntarily. Although they have not mentioned the Lubowski case as one in respect of which they will be applying for amnesty for, we have contacted the attorneys by letter concerning obtaining information from their clients on the Lubowski & Webster cases & the activities of the CCB. We wait to hear from them.

PERSONS STILL TO BE CONTACTED:

The following persons are likely to have further information relevant to our investigations. We may wish to approach some of them informally and subpoena others.

Persons mentioned 1-8 should have information on the MI Front Companies. It would appear that there was a very close working relationship between Paaiic, Arac & the CCB. Interestingly, when the Goldstone Commission raided Momentum Mews, it found a contract of employment with Ferdi Barnard of the CCB(who is implicated in Lubowskis assassination) in the offices of Arac & Paaiic.

- 1. Sandra Nolan : Former principal administrator of Paaiic.*
 - 2. Mariette Hartley : Assisted Tolletjie Botha at Paaiic.*
 - 3. Tolletjie Botha : Paaiic*
 - 4. Bob Wishart : Ran Ciskei/Transkei desk for Paaiic*
 - 5. Eugene De Kock : Apparently he was also on the Paaiic pay list/ involved with Paaiic.*
 - 6. Radloff and Schoeman : Have information on Penzhorn and probably on the front companies*
 - 7. EJV Penzhorn : Should be subpoenaed/ questioned on GCI as well as on Paaiic & Arac (When the Goldstone Commission raided Military Intelligence's offices at Momentum Mews in Pretoria, they found the two front companies, Paaiic & Arac which were both registered by Penzhorn at the time he was a director of Mac Robert De Villiers Lunnon & Tindall.)*
- We should also obtain details from the Ministry of Department of Foreign affairs and the Ministry of defence about Mr Penzhorns work for them.*
- We should attempt to obtain a record of the discussions held between Mr Harms & EJV Penzhorn as well as the members of MI , which records were suppressed from the commission.*
- 8. Ernst & Winney- auditors of GCI : Obtain details of the accounts and the audits for GCI.*
 - 9. Vito Palazzolo :Regarding the allegations of Lubowski having been a paid agent for Military Intelligence and the surrounding suspicious nature of his trip to consult with Vito Palazzolo in Switzerland (set out in the submission to the TRC prepared by Julian Knight) : We should interview Mr Palazzolo, who is presently a wine farmer in Franshoek as to what arrangements were made with him for the payment of Adv Lubowski's account .*
 - 10. Cyril Prisman, the attorney who instructed Adv Lubowski in this matter could also be contacted for questioning. He is presently practising in Cape Town.*

ORGANIZATIONS IN POSSESSION OF INFORMATION

The Registrar of companies and the Standard Bank both have relevant documentation and information. We should probably initially approach them informally and if they do not co operate, there after, issue subpoenas.

REGISTRAR OF COMPANIES

We need to obtain from the Registrar of Companies :

- 1. All documentation relating to the file Global Capital investment CC, the names of its members and their interests as well their date of registration and/or resignation.*
- 2. All documentation relating to the company file, Goudoes (Pty) Ltd*
- 3. Copies of the company files Paic, Arac and Grayitas.*

STANDARD BANK

We need to obtain from Standard Bank :

- 1. A complete statement on the Global Capital Investment Account no 010252215 in the name of EJV Penzhorn, held at Standard Bank Pretoria, which was closed on the 5 May 1994.*
- 2. The names of the authorised signatories on the account number 010252215 .*
- 3. The mandate cards authorising different signatories on the Global Capital Investments Account at Standard Bank.*
- 4. Who opened the account number 010252215 and on whose instructions was it closed ?*
- 5. Information on whether or not the global cheques made payable to Lubowski were ever drawn on the account.*
- 6. On closure of account number 010252215 on 5 May 1994, were the proceeds of this account transferred to the account of a certain Mr Esterhuizen held at the same branch?*
- 7. What legal action, if any, did Standard Bank take against EJV Penzhorn and or others for misuse of the Global Account (Payments made against Mr Penzhorn's account had been unauthorised)*