

AFFIDAVIT IN TERMS OF SECTION 4 OF ACT 58 OF 1959

JAN DE BRUIN SMIT, DECLARES UNDER OATH

1.

I am a deputy-commissioner in the Namibian Police. I am the district criminal investigation officer for the Windhoek police district. I am the investigating officer in this matter.

On 12 September 1989 at 20h50, I drove to Zanderberg Street 7, after I had received a report.

2.

Upon my arrival I found a number of persons in the street in front of the said premises. I found a person known to me as Adv. Anton Lubowski, lying in front of a gate giving access to the premises, as indicated in photographs no. 6 and 7 of the photo album in the docket compiled by me. I examined the body and found several gun shot wounds on the body of the deceased. Various spent cartridges were found on the scene, spread over a wide area.

3.

I also noticed that the deceased still had a briefcase in his left hand. To the left of the gate, I found a bunch of keys. A white BMW S.W. 48200, was parked in the street as indicated on photo no. 9 of the photo album. I know that this vehicle belonged to the deceased at that time. I left the scene undisturbed, cordoned off the area and arranged that the scene be guarded through the night. I arranged with W/O Sass to remove the body of the deceased to the mortuary. I made inquiries on the scene and a Mr. Olof Krause and a certain Mr. Meeuw, who were on the scene at the time, made certain reports to me. I took their particulars and affidavits were later obtained from them during the course of the investigation and filed in the docket. The affidavits are marked A3 and A1 respectively.

4.

On the 13th of September 1989 I attended the post-mortem examination which was held by Dr. Linda Liebenberg at 8h30. I had photographs taken, which are photos no. 16 to 20 in the photo album. Thereafter I returned to the scene of the crime which I found guarded and as I had left it the previous night. I examined the scene once more and found eleven (11) spent cartridges in various positions as indicated on photo 1 of the photo album. Clear bullet marks were visible in the gate and on the wall as indicated in photo no. 2 of the photo album. I was able through experience to ascertain that the cartridges were those fired by an A.K. -47 assault rifle. I then left the scene of the crime.

5.

On the 13th of September 1989, I went to 3 Arend Street in Windhoek as a result of certain information I had received. I went to a flat situated on the premises behind the main dwelling. There I found a male person, who identified himself to me as Donald Acheson. I want to add that the information which I followed up is essentially that contained in the affidavit of Mrs. W.E. Ratzke, which I filed in the docket and which is marked as A8. I identified myself to Mr. Acheson and searched the flat. I found nothing which tended to implicate Mr. Acheson in the commission of the crime. According to his passport he was a citizen of Ireland. I examined the passport and established that he had entered Windhoek on various occasions, having entered the country from Swaziland on each occasion. The dates were the following:

On 22 July 1989 he entered through Windhoek airport.

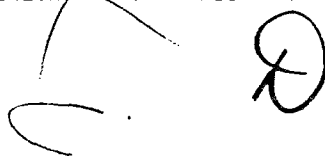
On 31 July 1989 he left Jan Smuts airport for Swaziland.

On 17 August 1989 he entered through Windhoek airport.

On 6 September 1989 he left Jan Smuts airport for Swaziland

On 10 September 1989 he entered through Windhoek airport.

There were a large number of stamps in the passport and it was not possible to compare arrivals with departures. I found R3 500,00 in a suitcase on his bed and a further R500 00 in his wallet. These amounts were made up entirely of R50, 00 notes. I questioned Mr. Acheson at the

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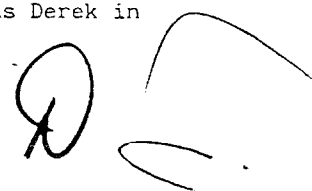
flat and he told me that he was a reporter employed by "Time" magazine.

6.

A red Toyota Conquest motor car with registration number CA 183 000 was parked in front of the premises. Mr. Acheson told me that he had rented the vehicle from Imperial Car Hire. I examined the vehicle and found scratch marks on the right front and left rear of the roof. I also examined the registration plates and found that grease had been applied to the front registration plate. On the rear registration plate I found marks of a type of glue similar to "Wonder Glue". I identified the glue by its appearance and colour. I surmised that it could have been used to attach a false number plate temporarily. I decided to detain Mr. Acheson as a suspect, because of the information then to my disposal as well as further information provided to me by Mr. Ratzke which is contained in his affidavit filed in the docket as A10. Mr. Acheson continuously denied the facts disclosed by Mr. Ratzke. I followed up the information disclosed by Mr. Ratzke and found some confirmation thereof inasmuch as foot prints and the telephone key for the phone to the flat, was found at the garden wall behind the flat. I also established later that day or the next day that a warrant for Mr. Acheson's arrest had been issued in South Africa, for his deportation from that country.

7.

Mr. Acheson was detained at the Windhoek police cells and questioned. During his questioning he revealed a number of different explanations for his presence in Namibia. He alleged initially that he was a reporter for "Time" magazine. He later he admitted that he was not. He then alleged that he was a cartoonist doing free-lance work for different newspapers. This allegation he later retracted. He then alleged that he came to Namibia to explore the possibility of immigrating to this country. He then said that he was a professional shoplifter and that he was in Namibia to form a shoplifter's syndicate in Windhoek. He then said that he worked for a person known as Derek in



an organization known as "National Party of Broadcasting", and that Derek had sent him to Windhoek to find a "safe" house. I also questioned Mr. Acheson about his whereabouts during the evening of 12 September 1989. He alleged that he had gone to the Spur Restaurant for a meal. It was closed and he then went to the Central Cafe where he had a meal. After that he did window shopping for a while and after that he returned home. I made enquiries at the Central Cafe but nobody could confirm or deny his presence there at the time. I also established that when Mr. Acheson entered Namibia on 10 September 1989 he gave a false address as his residence namely 42 Gevers Street. This address is the address of Mr. Brand who did not accommodate Mr. Acheson. I attach the arrival form completed by Mr. Acheson hereto, marked J.B.S. 1.

While in detention at the Windhoek police cells Mr. Acheson was detained in a cell on his own. I provided him with paper and writing material. On 14 September 1989 the immigration authorities detained Mr. Acheson further in the Windhoek prison, as an illegal immigrant. I thereafter searched the police cell in which Mr. Acheson had been detained and found two papers of writing which I attach hereto marked J.B.S. 2.

8.

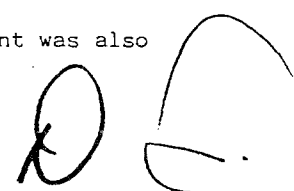
During the days following the incident, my office was inundated with people ostensibly having information. All the information received was followed up with negative results.

9.

A person by the name of Vermaak came forward with information about a red car he had allegedly seen in the vicinity of the scene at the time of the incident. An affidavit was obtained from him and filed in the docket as A4. A road map was also drawn up to place his evidence perspective and filed in the docket as A33.

10.

An affidavit as to the events at the scene shortly the incident was also



obtained from Lucia Thobusch and filed in the docket as A2.

11.

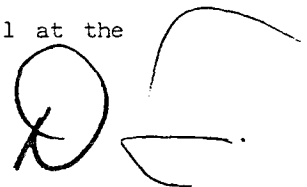
The questioning of Mr. Acheson continued on a regular basis. On 29 September 1989, Mr. Acheson then told me the following story:

He said he was of Irish descent born and bred in Belfast. He left Ireland and eventually came to Rhodesia where he joined the Grey Scouts, an army unit. After the independence of Rhodesia he left the country and moved to South Africa where he settled, without applying for a residence permit. He became friendly with a female, Cynthia Lee, and lived with her at 604 Southport, Bedfordview, Johannesburg. He was arrested for shoplifting on two occasions. During the beginning of 1989 he was arrested for shoplifting for a third time. The policeman who investigated the case was a person named Willie, who arranged that the case was withdrawn. Willie asked him if he was interested in employment.

He said that he was. Willie introduced him to a certain van Staden. The meeting took place in front of the building where he was living. Van Staden gave him a radio page number, 3313561, channel 784, code 18. He could contact van Staden at this number. He later met a person named Derek. The latter gave him a radio page number 3313561 channel 1200-18. Derek gave him pocket money and sometimes paid the rent for his flat. At some time he was requested to go to Swaziland. He met Derek at the Swazi Sun Hotel, who gave him R5000.00 and requested him to go to Windhoek, where he had to get a "safe" house and make contact with a certain Shipanga of Swapo D. On his arrival at Windhoek he stayed at Youth with a Mission (Y.W.A.M).

12.

He supplied Derek with the number of a call box at the mission. Derek would contact him there with further instructions. He later moved to the flat in Arend Street. Derek summoned him to Swaziland. In Swaziland he met a stranger who handed R5 000 00 to him. He was ordered to return to Windhoek. In Windhoek he met a certain Campbell at the



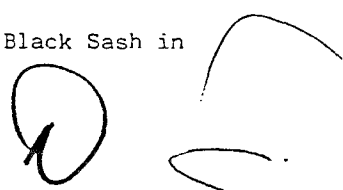
Kalahari Sands Hotel, but received no instructions. Somebody also visited him at the flat. (He later conceded that the person was Derek). Derek wanted him to get a home in Central Windhoek. Thereafter he did not see Derek again. He received an instruction to return to Swaziland where he again received R5 000 00 and instructions to return to Windhoek. He was instructed to hire a vehicle in Windhoek. He hired a white Volkswagen Fox at the airport on 10 September 1989. On 11 September he was ordered to go to an intersection near Okahandja where he was supposed to meet a person in a Kombi. This person did not turn up for the meeting. He exchanged the Volkswagen for the Conquest on 12 September 1989. He met Mr. Ratzke in the garden. He denied Mrs. Ratzke's allegations that he had a bag with him when he met her. At 17h00 on 12 September 1989 he went to Y.W.A.M. because he expected a telephone call. He received no call and left at about 18h30 to go to the Spur. The restaurant was full and he left for the Central Cafe. He then did some window shopping at the Gustav Voights Centre and he returned home where he watched television. He mentioned the film "Heart to Heart."

I obtained from the N.B.C. the time when the broadcast of the film commenced and finished. (See A.9 in the docket). He refused to have his statement reduced to writing.

13.

I had always suspected that the killing of the deceased was probably politically motivated. Following the statement made by Mr. Acheson, my suspicions in this regard were strengthened and I began to suspect that the origins of the killing were in South Africa, and possibly connected with some political movement. I then took Mr. Acheson to South Africa to investigate this aspect further. Mr. Acheson was questioned jointly by myself and members of the Brixton Murder and Robbery Squad, who were also investigating politically motivated murders in South Africa of which the murder of the late Dr. Webster was one.

I already had in my possession a telefax sent to me by the Black Sash in



South Africa, (A22 in the docket), which hinted at this aspect as well. Nothing new emerged from the questioning of Mr. Acheson at that stage.

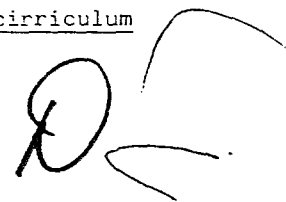
14.

I visited the firm Executive Communications in Johannesburg, where I established that the pager with code 784 was hired by a certain H.J. van Staden, 11 Rose Street Florida (A25) and that the pager with the code 1200 was hired by J. Malherbe 75 th Villiers Street, Joubert Park. This address belonged to a hotel. A Malherbe had booked in there and gave an address in Kurgersdorp. The Krugersdorp address was fictitious.

The person van Staden was unknown at the Rose Street address.

I then visited the accounts department of Executive Communications where I established that the pager of van Staden was paid for through the cash account of a certain Ferdinand Barnard. I also established that Ferdinand Barnard previously conducted a business from the Rose Street address. I looked for and located Ferdinand Barnard. I will henceforth refer to him as Ferdi. Ferdi was interviewed at the Brixton Murder and Robbery offices and he told me the following story.

He was discharged from the prison in Pretoria during 1987. He thereafter worked as an assessor for a certain Willie Smit. A person approached him and made an appointment to meet him in Pretoria at a hotel. The person introduced himself as Hans. He met Hans at the hotel. Hans told him that he worked for a group of businessmen. Ferdi was offered employment. His duties were to obtain contacts to monitor different political organizations. Information had to be obtained to enable the businessmen to safeguard future investments. Ferdi was considered as suitable because he had many contacts in the underworld. He would receive a monthly salary and a motor vehicle. His work was of a clandestine nature. He accepted the employment and received an amount of R27 000 00 with which he bought a car. Hans told him to hire a pager. He hired one under the name of H.J. van Staden. He then heard of a person named Donald Dolan, an Irishman. He obtained a curriculum



vitae from Donald Dolan after which he had no further contact with Donald Dolan (He admitted to me that the person he knew as Donald Dolan was the same person as Donald Acheson).

Ferdi also admitted that Acheson contacted him at times through his pager but later it stopped. He denied that he knew a person named Derek or a person named J. Malherbe. He also denied knowing what Acheson was doing in Windhoek. Despite repeated attempts he would not give further information on the person Hans. I had some reservations about the truth of what Ferdi told me.

My suspicion that some organization was behind the whole issue was strengthened further when I learnt that a firm of attorneys in Johannesburg were acting for Acheson. Mr. Acheson confirmed to me that he did not instruct anybody, nor did the Irish Embassy where I made enquiries. The firm of attorneys made every attempt to secure Acheson's release. Due to the efforts of the attorneys I was instructed to return to Windhoek with Mr. Acheson immediately. I could therefore not continue with my investigation in South Africa at that stage.

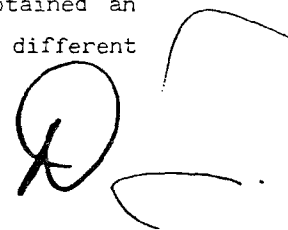
An application for the release of Mr. Acheson who was still detained in terms of the immigration laws was granted on 6 November 1989. I immediately arrested him for the murder of adv. Lubowski and he appeared in court on the same day. The court ordered that he be detained in custody despite several bail applications.

15.

I then obtained information from a Mr. Thurston Salt and an affidavit was taken from him verifying the information. (A 6 in the docket.)

16.

Meanwhile Ferdi was arrested and detained in South Africa in terms of Section 29 of the Internal Security Act: On 27 November I obtained an affidavit from Ferdi (A23 in the docket), in which he gave a different



account of the events. He then admitted for the first time that the organization he worked for had a military connection. He also mentioned the name of a person, Louis, who was the same person he had referred to as Hans previously. He also admitted that the organization required information about a certain Mr. Lubowski in Windhoek. This was revealed to him by Louis, who also mentioned that SWA/Namibia was a matter of priority. He also revealed details of certain operations undertaken by the organization in Namibia. He also revealed the name of a person Charles who was in Windhoek. He also mentioned the name, Niek Verbeek as the person who was then in charge of the operation in Namibia. He also mentioned that it was revealed to him that "doctored" oil would be used to sabotage vehicles. All operations were directed against Swapo. I might add that during the course of subsequent investigation several cans of oil were found in a caravan at the Safari Hotel. The "oil" was analysed and found to contain acid. Nobody could be connected to this find.

17.

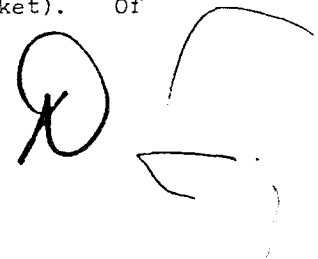
Ferdi also handed a pager and a bunch of car keys to me. According to him the pager had been hired in Windhoek and the use thereof was safe.

18.

At that stage of the investigation the identity of the organization could not be established. A further difficulty centred around the identification of specific individuals, because it was apparent that aliases or organization names were used freely.

19.

Upon my return to Windhoek I attempted to locate the person Charles, mentioned by Ferdi. By making enquiries at the firm Telecall where the pager had been hired, I managed to locate Charles Neelse on 6 December 1989. I obtained an affidavit from him (A27 in the docket). Of importance is that he admitted that



- 19.1. He worked for the military, having been introduced by a certain Johan Niemoller of Upington.
- 19.2. He met a person who identified himself as Niek Verbeek through his work.
- 19.3. He thereafter had regular contact with Niek Verbeek.
- 19.4. He was later employed by Niek Verbeek.
- 19.5. He met a person named Johan Verwey.
- 19.6. Together with Johan and another person, the homes of one Tjongarero and Adv. Lubowski were visited.
- 19.7. Johan instructed him to sabotage vehicles belonging to Swapo.
- 19.8. He hired a video camera at Edumeds, whereafter he and Johan made a video recording of the home and surrounds of Adv. Lubowski.
- 19.9. Niek Verbeek told him that he, Niek Verbeek wanted "Lubowski se ballas op die tafel".
- 19.10. Johan Verwey and Niek Verbeek were connected.

20.

I followed up the information provided by Neelse and obtained an affidavit from Morkel Vermeulen of Telecom (A34). I also established that a Johan Verwey had stayed at the Continental Hotel. I also established that the pager handed to me by Ferdi was the one he said had been hired from Telecom for Johan Verwey.



21.

On 21 December 1989 I again interviewed Ferdi Barnard and obtained a further affidavit from him (A23 (b) in the docket). He then revealed the names of the following person as members of the same organization now revealed to me as the Civil Co-Operation Bureau (C.C.B.). They were:

- 1) Calla Botha
- 2) Staal Burger
- 3) Andries van Zyl
- 4) Leon Maree

They formed a group known as Streek 6 of which the co-ordinator was one Christo Brits. Again the name Christo Brits was an alias. The other names were real. He also revealed that Mr. Acheson had been enlisted by him but that Acheson was later controlled first by Calla Botha and later by Leon Maree. He also alleged that a Calla Botha told him that Adv. Lubowski was killed in pursuance of C.C.B. operations handled by Leon Maree, using the alias "Derek". He also revealed that his car was at the Windhoek Airport on 12 of September 1989 and was fetched at a later stage.

22.

I ascertained that on 12 September a person H.J. van Staden (Ferdie's organization name) was booked into the Holiday Inn in Cape Town for the period 12 September 1989 - 14 September 1989 which on the face of it confirmed Ferdi's version as to his whereabouts on the day of the crime. I attach hereto a copy of the hotel documents marked J.B.S. 3 and J.B.S.4 respectively. I also established that Staal Burger was booked into the Belville Holiday Inn on 11 September and left at 10h05 on 12 September 1989. I attach the documents pertaining thereto marked J.B.S. 5 and J.B.S. 6 respectively. I received information that Burger had travelled to Windhoek under the alias Gagiano. A person with that surname did indeed travel to Windhoek on 12 September. I followed this

information and established that the person Gagliano worked for an aviation firm and had travelled to Windhoek under his own name and for business purposes.

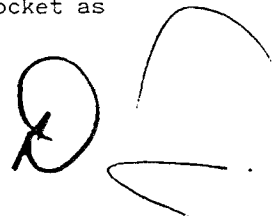
23.

I contacted Neelse again on several occasions. I had in the mean time obtained some photographs (A27 in the docket). The person on photo 5 is Leon Maree and the person on photo 6 is Staal Burger. Neelse identified the person on photo 7 as Niek Verbeek. He mentioned some similarity with the person in photo 6. The person on photo 7 is one D/W/O Rousseau of the Brixton Murder and Robbery squad. I might add that the identification was done in poor conditions of light. I also obtained a further affidavit from Neelse (A27 in the docket). I thereafter obtained better photographs all of which are marked A.28. I showed the photographs to Neelse in better conditions and he identified the person on photographs 3 and 6 as these of Niek Verbeek. Photo 3 and 6 are in fact photos of Staal Burger. I obtained a further statement from him (A28 in the docket)

Since Neelse alleged that he had been to the home of Adv. Lubowski, I asked him whether he could point out the home of Adv. Lubowski. He did this without any difficulty.

24.

By this time the existence of the C.C.B. was public knowledge in South Africa and police investigations were under way. The Harms Commission of Enquiry also commenced its duties at about this time although I can not be sure of the exact date. Calla Botha was detained in terms of Section 29 of the Internal Security Act. Following a successful application his detention was lifted and I had no access to him. He avoided any attempt to contact him. I did however have insight to a statement he had made. I filed a copy of the statement in the docket as A.30.



25.

Based on the facts available at this stage warrants for the arrest of Calla Botha, Staal Burger and Leon Maree were issued. With my next visit to Johannesburg I requested General Joubert, the deputy C.I.D chief of South Africa and Brig. Mostert, commander of the Brixton Murder and Robbery squad, to assist me with the arrest of these persons. I was informed that if they were arrested they would be detained in terms of Section 29 of the Internal Security Act. I continued my search for these persons but was unable to arrest any one of them.

26.

On 6 February 1990 Andries (Slang) van Zyl was arrested in South Africa and detained in terms of Section 29 of the Internal Security Act. I had a brief interview with him that night and he informed me that he could help me a great deal in this case. I intended to take an affidavit from him the next morning. I was informed, however, the next morning that by virtue of his detention, I was not allowed access to him. I regarded him as a important witness because he had told me that he was present at the meeting where the final planning was done around the assassination of the deceased. I pointed out to Gen. Joubert that this was vital evidence, and that I needed to obtain an affidavit. My request to see van Zyl was denied, although I was informed that information would be made available to me, if possible. I discussed my problem with Adv. Pretorius, the Attorney-General. In support thereof I made an affidavit attached hereto and marked JBS 7. Adv. Pretorius undertake to try and secure access to Slang van Zyl. That access never materialized. Adv. Pretorius then told me that he was unable to secure access.

27.

I was unable to interview Calla Botha and was only able to interview

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Andries van Zyl on 22 March 1990 after he was released. I then obtained an affidavit from him (A26 in the docket). The salient points emerging from this affidavit are:

27.1. He was a member of the CCB allocated to area 6.

27.1. He was instructed to monitor Adv. Lubowski.

27.2. He was present at the meeting where Cristo Britz, Staal Burger and Leon Maree were working on the presentation of a project. He was ordered to leave at same stage but heard prior to leaving that the issue dealt with Adv. Lubowski.

28.

I contacted the person Johan Niemoller and obtained an affidavit from him on 8 March 1993 which was supplemented on 9/3/93 (See A.30 in the docket). Apart from confirming some aspects of Neelse's allegations, he was in my view reticent and not always honest.

29.

The criminal case against Acheson was set down for trial in the High Court for the period 18 to 30 April 1990. Namibia was due to become an independent country on 21 March 1990 which in fact it so became.

30.

After the 21st of March 1990, and shortly before the trial, Ferdi Barnard, Calla Botha, Abram van Zyl, Willie Knox and indeed the witness from Executive Communications refused to come to Namibia to testify and because of this fact the State was forced to withdraw the case against Acheson, whereafter he was released.

31.

The investigation in this matter continued nonetheless to try and secure further leads and obtain further evidence to try and solve the issue. I want to deal with these aspects as follows:

31.1. Same corroboration for existence out street and notice of the C.C.B., its interest in Namibia and its activities here came to light during the course of the hearings and investigation of the Harms Commission of Enquiry. I obtained some documents handed and at the enquiry, I attach hereto the following:

31.1. Affidavit by J.M. Verster marked J.B.S. 8.

31.2. A transcript of the evidence of Christio Brits given to the Harms Commission of Enquiry, marked J.B.S. 9. I refer respectfully to pages 1371 and 1375-1378.

31.3. A copy of the diary kept by Christo Brits marked J.B.S 10. There are several references in the diary connected with Namibia. The entries in the diary should be read in conjunction with the evidence tendered at the Harms Commission and the evidence given by Brits at the inquest into the death of the late Dr. Webster. An extract of the relevant portions of that evidence is attached hereto, marked J.B.S. 11.

31.4. The evidence given by Abram van Zyl at the Harms Commission of Enquiry, marked J.B.S. 12

31.5. The evidence given by Staal Burger at the Harms Commission of Enquiry J.B.S. 13.

31.6. A copy of the a statement made by Mr. Acheson long after his release, which I obtained at the inquest into the death of the late Dr. Webster, marked J.B.S. 14.

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31.7. An affidavit by J.L. Hattingh, J.B.S. 15. This should be read in conjunction with the evidence of Christo Brits, and deals with the page of 12 September 1989 in the diary of Christo Brits.

32.

I conclude by saying that I have followed up all the available leads and gathered all the relevant information. I believe that the CCB was responsible for the death of the deceased. I am satisfied further that the investigation cannot proceed further because from now on members of the organization must testify against one another, a fact which is not reasonably possible. They will not implicate one another. In any event the witnesses are all in South Africa and will not testify in Namibia.

Signed at WINDHOEK on 3rd MAY ~~April~~ 1993.


J.L. SMIT



1. Do you know and understand the contents of this declaration.

Reply-----Yes-----

2. Do you have any objection to taking the prescribed oath.

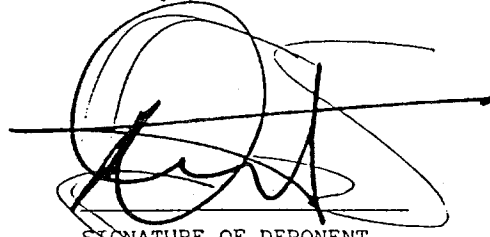
Reply-----No-----

3. Do you consider the prescribed oath as binding on your conscience.

Yes.

A. I certify that the above-mentioned questions were put to me and that thereto as reflected above were written down in my presence.

REGISTRAR OF THE HIGH COURT OF NAMIBIA
- 3 MAY 1993
PRIVATE BAG 13179
WINDHOEK



SIGNATURE OF DEPONENT


Jan Hendrik Joubert

REGISTRAR, HIGH COURT OF NAMIBIA, WINDHOEK

Q

B. I certify that the deponent has acknowledged that he knows and understand the contents of this declaration which was sworn to before me and the deponents signature was placed thereon in my presence.

REGISTRAR OF THE HIGH COURT OF NAMIBIA
- 3 MAY 1993
PRIVATE BAG 13179
WINDHOEK



JUSTICE OF PEACE

Jan Hendrik Joubert

REGISTRAR, HIGH COURT OF NAMIBIA, WINDHOEK

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