

TRC Amnesty hearing

ON RESUMPTION : 13TH OCTOBER - DAY 12

CHAIRPERSON: When we concluded yesterday, Ms Kearney had just concluded her evidence-in-chief. Ms Kearney I remind you you're still under your former oath. Mr Berger, do you have any questions you would like to put to Ms Kearney?

MR BERGER: Chairperson, we have no questions.

NO QUESTIONS BY MR BERGER

CHAIRPERSON: Mr Dehal?

CROSS-EXAMINATION BY MR DEHAL: Thank you, Mr Chairperson.

Is it correct that you were employed by Mr Davidson, Russel Garth Davidson, at some stage?

HELEN BLOSSOM KEARNEY: (s.u.o.)

MR DEHAL: And is it correct that he employed you as an employee within the Why Not bar?

MS KEARNEY: That is correct.

CHAIRPERSON: Was Mr Davidson the owner of the hotel?

MS KEARNEY: Yes he was at the time.

JUDGE PILLAY: And is he the one that employed you the way you described your employment?

MS KEARNEY: Yes it was.

MR DEHAL: And you mentioned yesterday that the band was confined to the Magoo's bar and there was soft music, only soft music in the Why Not?

MS KEARNEY: That is correct.

MR DEHAL: And therefore younger persons would have confined themselves to Magoo's and the more ...(intervention)

MS KEARNEY: I never mentioned that younger people went into Magoo's, it was from all walks of life, went into Magoo's. We actually had a "spider march" from 6 - 8 which was the cocktail hour and that brought in people from the age group of about 30 - 50.

CHAIRPERSON: Mr Jeffers who gave evidence who fairly regularly attended ...(intervention)

MS KEARNEY: Yes?

CHAIRPERSON: The bars, he said that generally speaking the younger crowd tended to go to Magoo's because it was more of an action bar whereas Why Not was more sedate and ...(intervention)

MS KEARNEY: Yes that is correct.

CHAIRPERSON: Would you agree with that assessment of Mr Jeffers?

MS KEARNEY: That is correct. Yes I do, that is correct.

CHAIRPERSON: Thank you.

MR DEHAL: Mr Davidson, the Russel Garth Davidson we spoke of, had testified in an earlier criminal trial of Mr McBride's. I don't think you know anything about that?

MS KEARNEY: No.

MR DEHAL: I just want to read a small portion of his evidence and I want to ask you to comment on it. This is the part of his evidence where he deals with whether non-Whites frequented the Why Not bar. He begins in his evidence on page 801 of Volume 6 by talking about Asiatics and Indians and things like that or that type of things not having frequented the Why Not bar. He said it was not a non-European bar. Would you agree with that?

MS KEARNEY: No I don't because we actually had a barman who was an Indian at the time, Benny, he was there 17 years.

MR DEHAL: Yes now he talked about that barman?

MS KEARNEY: That is correct.

MR DEHAL: But that was the only Indian he talked about.

MS KEARNEY: No and we had four waiters and one of them was Joseph and he was the funniest waiter and the people loved him, he used to get up on stage and sing.

MR DEHAL: Well now we're not talking about employees, we're talking of ...(intervention)

MS KEARNEY: Well this brought in a lot of different people and I must tell you that Mr Davidson was not always around, it was his hotel but he was not always there.

MR DEHAL: For what proportion of time would you say he was not there?

MS KEARNEY: Probably early in the morning and mainly on weekends.

MR DEHAL: Sorry, he would be there during that time or not there during that time?

MS KEARNEY: During?

MR DEHAL: Sorry, during the early hours of the morning and during weekends?

MS KEARNEY: Yes he was there in the morning till about 11 and conducted the business and gave orders and then he was back again in the afternoon or late in the evening and mainly the weekends.

MR DEHAL: That's because the Why Not bar and indeed the other bars that you talked about were most busy during those periods?

MS KEARNEY: Yes.

MR DEHAL: And that during the other periods when Mr Davidson was not there it's very slack?

MS KEARNEY: No at all it was still busy, the hotel was still busy.

MR DEHAL: In any case, Mr Davidson then goes on, on page 802 to say:

"Well it's not popular with that crowd"

meaning non-Whites and he chose the word non-Europeans.

"I mean they don't come in that often, they do come in as musicians."

MS KEARNEY: That's a fair statement but I'd like to just add that it was your choice, there was no choices saying you weren't allowed to come in at all.

MR DEHAL: Then he adds "it was predominant White.:

MS KEARNEY: Yes, I would say so.

MR DEHAL: Thank you. Did you make a claim for any funds from the State President's Fund?

MS KEARNEY: No, I tried to start a fund for the victims, I wanted to, I wrote to actually Mandela and the head office to start a fund about 12 years ago.

MR DEHAL: Sorry, I think Mr Richard wants to say something?

MR RICHARD: The interpreters have asked me if you could slow it down so that they can keep up and they've just called my attention to the fact that they can't operate at the speed we're going.

CHAIRPERSON: Yes, thank you. Mr Dehal, did you hear that? If you could just speak a little bit slower because of the interpreters? Ms Kearney, the interpreters, they have to interpret or translate simultaneously if you could just speak a little bit slower please?

MS KEARNEY: Will do, fine.

CHAIRPERSON: Thank you.

MR DEHAL: Sorry, bear with me Chair?

Sorry, the last part of your evidence I think was that you wrote to Mr Mandela some 12 years ago?

MS KEARNEY: That is correct and I wrote to the head office asking that I think it was only fair that the victims were compensated especially the families who had lost their loved ones whereas they had to pay for everything, the funerals etc and the psychiatrists and psychologists and I feel that was unfair that the State should have paid for it. To which I did get many replies.

MR DEHAL: Why did you write to Mr Mandela?

MS KEARNEY: Because nobody else would listen.

MR DEHAL: And the then State President?

MS KEARNEY: Pardon?

MR DEHAL: The then State President of this country, did you not write to him?

MS KEARNEY: We tried everywhere, I tried everywhere.

MR DEHAL: So you're saying you wrote to him as well?

MS KEARNEY: Everywhere and the only reply I got was eventually from Mr Mandela himself from the Cape Town offices.

MR DEHAL: Are you sure of that?

MS KEARNEY: Yes I have the letters here.

MR DEHAL: Was Mr Mandela not in prison then?

MS KEARNEY: No, he was very, very, towards the whole aspect of the matter.

MR DEHAL: You see, I want to put it to you that the facts are overwhelming and show quite obviously that Mr Mandela was in prison then, twelve years ago when you say you wrote to him?

MS KEARNEY: I have the letters here, I wrote - no, twelve years ago, I wrote to him, I have the letters in my - this was about 1992, 93, 96.

CHAIRPERSON: Well that's not twelve years ago?

MS KEARNEY: No, not twelve years ago, sorry.

CHAIRPERSON: I think that's what's the problem because twelve years ago I can assure you that Mr Mandela was still detained.

MS KEARNEY: No, I had that wrong, sorry about that.

MR RICHARD: I don't think the witness wrote to Mr Mandela twelve years ago?

CHAIRPERSON: That was the impression that was given.

MS KEARNEY: No, no.

CHAIRPERSON: So you say it was about '92?

MS KEARNEY: '91, '92, '93, I know, yes.

MR DEHAL: Sorry Mr Chair, just to have the records stated clearly, whilst I accept the correction at this stage, she certainly said twelve years ago she had written to Mr Mandela. Thank you.

Did you know that the then State President, that's in 1986, 1987, the then State President of this country pursuant to this Why Not bar bomb had set up a fund for victims?

MS KEARNEY: No, I knew nothing about it.

MR DEHAL: You were present - sorry, probably I'm going too fast? You were present at these hearings when Mr Jeffers talked about his application for funds?

MS KEARNEY: Yes.

MR DEHAL: From the State President's fund, you heard that?

MS KEARNEY: Yes.

MR DEHAL: Did this come to you as a surprise?

MS KEARNEY: Yes it did, I heard of nobody got compensation, not at all.

MR DEHAL: Did you not know Mr Russel Davidson applied for funds?

MS KEARNEY: I did hear and Garfunkel's applied for it.

JUDGE PILLAY: Mr Dehal, of what relevance is all this whether she applied to a fund or whether there was a pay out or anything?

MR DEHAL: Judge, I concede no direct relevance, it may bear on credibility later.

JUDGE PILLAY: To discredit her?

MR DEHAL: No, I'm just traversing lines that was hopeful to achieve certain things but I think ...(intervention)

JUDGE PILLAY: Well I have mentioned one, let's leave the fishing to the shores ...(indistinct)

MR DEHAL: Thank you.

Did you know of the Dunnattor Boys Club?

MS KEARNEY: Yes.

MR DEHAL: You mentioned that our understanding of the Dunnattor Club was incorrect?

MS KEARNEY: That is correct.

MR DEHAL: Did you not know of the SADF pilots that were bike riders with Mr Davidson?

MS KEARNEY: No, not at all, I'd never met them.

MR DEHAL: Sorry, bear with me? Thank you Mr Chair, there are no further questions.

NO FURTHER QUESTIONS BY MR DEHAL

CHAIRPERSON: Thank you. Ms Kooverjee, have you any questions you'd like to put?

MS KOOVERJEE: I have no questions, Mr Chairperson, thank you.

NO QUESTIONS BY MS KOOVERJEE

CHAIRPERSON: Mr Prior?

ADV PRIOR: No questions.

NO QUESTIONS BY ADV PRIOR

CHAIRPERSON: Mr Richard, do you have any re-examination?

RE-EXAMINATION BY MR RICHARD: One or two questions.

When did you write to a State President?

MS KEARNEY: I'd have to refer back to my ...(intervention)

MR RICHARD: Was it pre or post 1990?

MS KEARNEY: No, it was in the '90s.

MR RICHARD: Thank you. Regarding the colours of your patronage, was it exclusively White?

MS KEARNEY: No, I would not say exclusively White but I would say 90 percent White.

MR RICHARD: Thank you. Now was there a difference between employed by the Parade Hotel, the Why Not bar or the Magoo's bar?

MS KEARNEY: No, it was all one and the same.

MR RICHARD: Thank you, no further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Advocate Sigodi, do you have any questions you would like to ask?

ADV SIGODI: No questions, Chairperson.

CHAIRPERSON: Judge Pillay? Thank you Ms Kearney, that concludes your evidence.

WITNESS EXCUSED

MR RICHARD: The next victim to be called is Cher Gerrard.

CHAIRPERSON: Sorry, could you please tell me your full names?

MS GERRARD: Cher Gerrard.

CHAIRPERSON: Sorry, I didn't hear?

MS GERRARD: Cher C-H-E-R, Gerrard.

CHAIRPERSON: Yes, Mr Richard is going to give evidence.

MR RICHARD: Under oath.

CHER GERRARD: (sworn states)

EXAMINATION BY MR RICHARD: Ms Gerrard, when were you born?

MS GERRARD: I was born on the 24 April 1953.

MR RICHARD: Thank you. Where were you born.

MS GERRARD: I was born here, in Durban, South Africa.

MR RICHARD: And where did you grow up?

MS GERRARD: Here, in Durban, South Africa.

MR RICHARD: Now in and during the period '83, '84, '85, '86, did you ever visit the Parade Hotel?

MS GERRARD: Yes I did.

MR RICHARD: Was it on a frequent basis or seldom?

MS GERRARD: No, it was on a frequent basis, it was periodically on a Friday or Saturday evening.

MR RICHARD: When was your first child born?

MS GERRARD: My first child was born in 1984.

MR RICHARD: Thank you. Now on the occasions that you did visit the Parade Hotel, where did you go?

MS GERRARD: To Magoo's bar.

MR RICHARD: And were there any occasions during 1986 when you visited the Parade Hotel?

MS GERRARD: Once.

MR RICHARD: On that occasion do you recall whether it was quiet or busy?

MS GERRARD: It was always very busy, it was the place to be at that time.

MR RICHARD: When you say "the place to be" what do you mean by that?

MS GERRARD: Durban has a few pubs and restaurants and where the so-called in crowd hang out and that whole Magoo's, the Why Not and Garfunkel's was very busy and everybody used to meet and so call "hang out" there.

MR RICHARD: Now do you recall the exterior of the hotel on the occasions that you visited there?

MS GERRARD: Yes.

MR RICHARD: On the approach to it, would one be able to see or not see whether it was a place of activity?

MS GERRARD: Yes you could.

MR RICHARD: What would you see that would indicate that?

MS GERRARD: First of all the parking outside, there would be many cars outside, you could never find parking. What I could remember, you couldn't actually see because the glass windows had curtains in front of them as far as I can remember.

MR RICHARD: Now where were you on the 14th June 1986? The sound technicians are indicating.

MS GERRARD: Thanks, okay.

On the evening of the 14th June 1986 my family and myself were at my cousin's 21st birthday party.

MR RICHARD: Now were there any family members at any other place that evening?

MS GERRARD: Marchelle was the only person missing and she was at Magoo's which we found out later.

MR RICHARD: How did you find out?

MS GERRARD: My parents had a telephone call approximately half past twelve, 1 o'clock in the morning from a girlfriend of hers who couldn't find her. She was hysterical and said we cannot find Marchelle or she had gone to the bathroom when the bomb went off and on her return you can imagine what there was to be found, so.

MR RICHARD: Now, is there any other member of your family present in this hall today?

MS GERRARD: Yes, my sister Sharon Welgemoed is here.

MR RICHARD: Thank you. Now after the phone call from Marchelle's friend what happened next?

MS GERRARD: My parents got into their car and they drove down to the Addington Hospital and tried to find their daughter and there was blood everywhere and people running everywhere frantically looking for lost loved ones. They had actually opened the trauma unit for the first time, I believe.

MR RICHARD: And did you find your sister?

JUDGE PILLAY: Mrs Gerrard, did you go with?

MS GERRARD: No.

JUDGE PILLAY: So what you are telling us you didn't witness yourself?

MS GERRARD: No.

MR RICHARD: When did they find out what had happened to your sister?

MS GERRARD: The police contacted us and we were told three people had been killed and we had to go to the morgue in Gale Street to go and identify her body.

MR RICHARD: Now where was your sister Sharon at that time?

MS GERRARD: She was with me.

MR RICHARD: And what was the effect on Sharon when the news was discovered?

MS GERRARD: Sharon was devastated. We had to identify Marchelle's body through her jewellery because she was so badly burnt. It was first said that her body was that of a young Indian lady. Sharon took the event very, very hard.

MR RICHARD: Now before the event how was Sharon, was she a well, healthy woman?

MS GERRARD: Yes, we were a normal, healthy family.

MR RICHARD: Was she under any medication?

MS GERRARD: No.

MR RICHARD: What was the aftermath on her health of the loss of her sister?

MS GERRARD: The aftermath of the loss of my sister has changed my family life completely. My sister's now on anti-depressant drugs. She's still got so much anger, she feels we haven't done enough for the loss of Marchelle, she misses Marchelle very, very much, there was only two years between the two of them and they grew up together and spent basically all their time together.

MR RICHARD: Now has your sister, Sharon, been hospitalised?

MS GERRARD: Yes she has.

MR RICHARD: Now what do you do as a profession?

MS GERRARD: I work for an Internet based company that supplies the legal profession with documents.

MR RICHARD: Where did you study?

MS GERRARD: I studied at Durban University and then at UNISA.

MR RICHARD: Now during what years were you a student?

MS GERRARD: From about '73 to '76 and then I left the country.

MR RICHARD: Were you ever active politically?

MS GERRARD: Yes I did the normal university stuff that everybody does, I didn't agree with the apartheid government.

MR RICHARD: And when you say normal university stuff, what do you mean by that?

MS GERRARD: We used to hang around with a lot of people through the Catholic Church and we used to have so-called then barred meetings of coloured people all sitting together in a room.

MR RICHARD: Now why did you leave South Africa for Ireland?

MS GERRARD: I left South Africa for Ireland mostly because I fell in love with an Irishman and secondly I wanted to leave South Africa.

MR RICHARD: Was there any other reason besides the Irishman why you wanted to leave South Africa at the time?

MS GERRARD: I felt there was no real future here, people were going backwards as far as I was concerned.

MR RICHARD: Now when did you return?

MS GERRARD: I returned in 1979.

MR RICHARD: Thank you, no further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Thank you Mr Richard. Mr Berger, do you have any questions you would like to put to the witness?

CROSS-EXAMINATION BY MR BERGER: Very few, Chairperson.

Ms Gerrard, you said that the Magoo's bar was the place to be?

MS GERRARD: I did.

MR BERGER: But you hadn't frequented the bar for much of 1986, would that be correct?

MS GERRARD: That is correct, I had a young son of two years old and I was still studying part time at that stage.

MR BERGER: Would you agree that one's perception of what is the - of where the in crowd is depends upon which crowd you're in?

MS GERRARD: Definitely.

MR BERGER: For example there were other places, there was the London Pub?

MS GERRARD: Yes.

MR BERGER: Was also a place to be?

MS GERRARD: Yes.

MR BERGER: The Beach Hotel was also a place to be?

MS GERRARD: Yes.

MS GERRARD: Father's Moustache.

MR BERGER: I didn't know about that one. Thank you, I've got no further questions.

MS GERRARD: Thank you.

NO FURTHER QUESTIONS BY MR BERGER

CHAIRPERSON: Thank you Mr Berger. Mr Dehal, do you have any questions you'd like to put?

MR DEHAL: I have no questions, thank you.

NO QUESTIONS BY MR DEHAL

CHAIRPERSON: Ms Kooverjee, do you have any questions?

MS KOOVERJEE: I have no questions, thank you Mr Chairperson.

NO QUESTIONS BY MS KOOVERJEE

CHAIRPERSON: Mr Prior?

ADV PRIOR: No questions.

NO QUESTIONS BY ADV PRIOR

CHAIRPERSON: Any re-examination?

MR RICHARD: No re-examination.

NO RE-EXAMINATION BY MR RICHARD

CHAIRPERSON: Advocate Sigodi, any questions?

ADV SIGODI: No questions Chairperson.

CHAIRPERSON: Judge Pillay? Yes, thank you very much Ms Gerrard, that concludes your evidence.

MS GERRARD: Thank you.

WITNESS EXCUSED

MR RICHARD: Thank you Chair, the next victim is Sharon Welgemoed, nee Gerrard.

CHAIRPERSON: Ms Welgemoed you took the oath yesterday but I think if you could take it again?

SHARON WELGEMOED: (sworn states)

EXAMINATION BY MR RICHARD: Ms Welgemoed, you've prepared a written statement which was circulated yesterday. Has it been changed in any way?

MS WELGEMOED: Yes it has been changed slightly.

MR RICHARD: In what way?

MS WELGEMOED: I've changed it to reflect that it is my opinion that I'm expressing.

MR RICHARD: Thank you. Would you like to read the statement then?

MS WELGEMOED: Yes I would.

"I would like to thank this Committee for affording me the opportunity of being able to express my opinion here today. I am Sharon Welgemoed, sister of Marchelle Gerrard who was killed by Mr McBride in the Why Not bar bombing. She was only 28 years old with a bright, long future ahead of her which was robbed from her by Mr McBride. I therefore am opposing Mr McBride's application for amnesty.

I wasn't born into a family of wealth or status but just very hardworking, honest people. My parents both worked very hard to acquire anything in their lives, what little that was. My parents and us, as Marchelle's family, have suffered severe pain, anguish and sorrow for 13 years. My parents had to read about Marchelle's autopsy report in the newspapers over breakfast one morning. Because we were never told of her actual cause of death the authorities of the day never kept us informed of the original trial dates at that time or any other events relating to Mr McBride's trial for Marchelle's murder.

I would also like someone to address the fact that one Marchelle's death certificate, the cause of death still to this day, some thirteen years later, reads "under investigation". I would like her actual cause of death to be recorded on a death certificate. Surely after thirteen years the matter is still not "under investigation"?

Here is an account of Professor Nel's autopsy report who conducted the autopsy on Marchelle. She died of shrapnel wounds to the neck as well as a loss of blood. The fatal wounds were on the left side at the base of the skull where tiny fragments were imbedded. Two arteries supplying blood to the brain had been severed. She would have lost consciousness immediately and died a short while later. A horrifying and gruesome description.

Mr McBride, you are a murderer. A convicted murderer. You are no hero. The only heroes in this case are the three young ladies you killed and the other 69 victims you injured for it was them who gave their lives to further your cause.

Not every White South African is a racist and not every White person believed in apartheid. Many thousands of people suffered, died or were injured during the dark days of apartheid. My family and I sympathised with their families and friends for we to have had to endure the pain, suffering and sorrow that go with losing a loved one. However, those said realities should not deter this Commission from the task at hand, the Why Not bar bombing amnesty application. Justice, freedom and peace is the right of us all, not just a few select ANC members.

In 1983 White South Africans went to vote in a referendum in order that changes may take place in this country of ours. The result was that the majority of White South Africans wanted change. That change being to do away with apartheid. I also realised that whilst the outcome was not an ideal one, it was slowly starting to get things moving in the right direction. I also know there was a state of emergency imposed on us but surely innocent civilians didn't declare this so why make them pay the ultimate price, that is their lives?

Why also then some three years later was this bomb then targeted at innocent White civilians? Why not target the very people who were ultimately responsible for the state of emergency and apartheid, the government of the day?

My family and I know and realise Mr McBride has had his day in court and served only six years before being indemnified. However, how do we equate those relatively few years to a lifetime without Marchelle?

Mr McBride has everything to gain from applying for amnesty. For one thing we as victims may not sue him civilly and he has his reputation to clear, that is that he acted under instructions and that his actions were politically motivated. Mr McBride has stated that he was acting on instructions but what has come out at this hearing is that the choice of target was at his sole discretion so he alone should take the major responsibility for this horrendous crime along with the other two members who acted with him on that terrible night.

Mr Matthew Lecordier and Greta Apelgren as she was then known should both bear some of the responsibility for my sister's and the other two young ladies deaths as well as the injuries incurred by the other victims of the Why Not bar bombing. They knew there were explosives in their vehicle and that Mr McBride was going to plant a car bomb that could and did do grave harm to innocent people. They had many opportunities to point out that innocent victims may die as a result of Mr McBride's actions but chose to go along with him rather than question him about his ghastly deed or his motives on that terrible night.

He has also stated that military personnel frequented that bar. However, if you look at the names of the deceased and injured, not one was military personnel members or members of the Security Forces or SAPS, they were all civilians according to my knowledge and according to the press and the media, out for a night of entertainment.

In my opinion, what Mr McBride undertook to do was a cowardly, racist attack on innocent White people, people

who had no connection with the government or any other political inclination.

Excuse me, I need a glass of water.

Mr McBride has gained personally from all his dealings during the apartheid regime. He now holds the position of Deputy Director of Foreign Affairs as far as I know and has all the power, wealth and status that go with that position. His salary is paid by taxpayers' money and I abhor the idea that I am contributing to my sister's murderer's upkeep. I would also like to point out for the record that for the very first time we heard Mr McBride apologise was on an SABC special report on the 12/05/96 almost ten years later. I also don't know why he bothers to apologise, if he openly states to the media that he would do it all again. My understanding of the word sorry is apologetic, conscience stricken, guilt ridden, regretful and remorseful. Therefore, by his own admission, Mr McBride is not sorry.

Once again, I say this is extremely hard for us to cope with, so please Mr McBride, you are no hero because you say your cause was a just one. We know and understand your motivation for taking part in the struggle against apartheid but violence is violence and a human rights abuse is a human rights abuse, whoever commits it. Fighting for the majority of South African's human rights did not and give you others an open licence to rob others of their basic

human right, that being the right to life. When justice has been seen to be done in our view perhaps we too can also learn to forgive. So I say again, McBride, you are a murderer and how Mr Aboobaker Ismail can say he takes responsibility for something he had no knowledge of or details of is beyond me. He has also stated that had he known of the target beforehand, he would have done more thorough reconnaissance before planting the bomb there. Perhaps Mr McBride should have done the same. Marchelle was an important member of our family whom we loved dearly and missed terribly every day of our lives. May she and the other two innocent young ladies whose lives you took be made the heroes here today for it's only they who deserve it. I would also like all this and anything in connection with my sister's death to end after these hearings. I would like to put the past in the past where it belongs.

MR RICHARD: Thank you Ms Welgemoed. Do you want to take a break before being cross-examined?

MS WELGEMOED: No, I'm fine.

MR RICHARD: Now where were you on the night of the 14th June 1986?

MS WELGEMOED: I was in my home.

MR RICHARD: Then when did you receive news of your sister?

MS WELGEMOED: My parents knocked on my door after 1 o'clock that evening, they'd come straight from Addington Hospital and I opened the door and I saw by my parents face that there was something terribly wrong. My mother was in tears and my father was in tears.

MR RICHARD: Now had you yet confirmed that she had been in fact killed by the bomb?

MS WELGEMOED: No, I asked them what the matter was, what was going on and my father burst into tears and he told me that my sister had been killed in the bomb blast.

MR RICHARD: Now prior to that night had you ever frequented the Parade Hotel?

MS WELGEMOED: No I had not, I had a small son to take care of.

MR RICHARD: Did you know of the Why Not or Magoo's?

MS WELGEMOED: Yes I did.

MR RICHARD: What did you know of the establishments.

MS WELGEMOED: I knew that my sister went there and that it was a place of entertainment.

MR RICHARD: Thank you, no further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Thank you. Mr Berger, any questions?

CROSS-EXAMINATION BY MR BERGER: Thank you Chairperson.

Ms Welgemoed, why do you oppose the amnesty application of Mr McBride?

MS WELGEMOED: Because I believe that he chose the wrong target. I believe Mr McBride made a mistake. I believe if he had chosen a target such as a military base, a police station, a Security Branch office, even a member of parliament's home, that I could accept and that I could understand, but to choose a place where the majority of people were ordinary innocent civilians, I'm sorry I can't understand that and I can't forgive for that.

MR BERGER: And do you oppose the amnesty application of Mr Ismail as well?

MS WELGEMOED: No I don't.

MR BERGER: Why is that? Why do you draw a distinction between Mr Ismail and Mr McBride?

MS WELGEMOED: Because I believe Mr Aboobaker Ismail had no knowledge of the choice of target. I therefore don't hold him accountable.

MR BERGER: You've heard the evidence from both Mr Ismail and Mr McBride that the objective was to target security personnel?

MS WELGEMOED: Correct.

MR BERGER: But that Mr McBride raised the possibility that civilians could be injured or killed in the blast and that Mr Ismail said if that is the case, following the decisions, you've heard the evidence about the Kabwe Conference, then you must proceed with the operation, you've heard that evidence?

MS WELGEMOED: Correct but I still believe Mr Ismail didn't intend or as he stated he would have done more thorough reconnaissance on that specific target and I believe him when he says that and perhaps he would have changed the choice of target.

MR BERGER: But you accept that both Mr Ismail and Mr McBride realised the very real possibility before Mr McBride left Botswana, that civilians could be killed by that car bomb?

MS WELGEMOED: Yes and I understand and as I said to you, if it had been a member of parliament's house and perhaps his wife had got injured in the interim ...(intervention)

MR BERGER: Or killed?

MS WELGEMOED: Or killed, that I could even come to terms with, that I can learn to understand but I cannot understand my sister, an innocent person, civilian, in a place of entertainment losing her life.

MR BERGER: Okay, I'll come back to that. You say in your statement and I've only got the typed one but I noticed what you did, you moved paragraphs around and you added here and there. So I'm going to be referring to your typed statement accepting that you read it out in a different order, alright?

But you've read out everything that is in the typed statement, am I correct?

MS WELGEMOED: Yes I have.

MR BERGER: You say on the first page that in 1983 White South Africans went to vote for change. You accept that the change that was voted for was another racist parliament or don't you?

MS WELGEMOED: I don't believe it was an ideal situation but I believe it was a step in the right direction.

MR BERGER: You said that you were against apartheid, that you didn't believe in racism, you were against racism ...(intervention)

MS WELGEMOED: No, I don't believe in - I've never believed in apartheid, I believe people are people.

MR BERGER: Okay and this parliament that you say was a step in the right direction was a parliament that entrenched racism, you accept that don't you? Or don't you?

MS WELGEMOED: Yes I do.

MR BERGER: Do you concede that maybe you're wrong in your perception, maybe it wasn't a step in the right direction, maybe in fact what it was, was telling the vast majority of South Africans, Black South Africans, "you're not citizens of this country, you'll never have a right in this country, go to hell" isn't that what it was saying?

MS WELGEMOED: Perhaps it was yes, in hindsight, yes.

MR BERGER: And so perhaps you can understand the anger.

MS WELGEMOED: I do understand the anger and I understand Mr McBride's motivation for taking part in MK operations and belonging to the ANC, that I can fully understand.

MR BERGER: And perhaps you can understand Mr Ismail and Mr McBride's motivation in saying that there was still a war to be fought where people, the oppressed people of this country had to be liberated, despite in fact because of what had happened in 1983, because of the tricameral parliament. Do you accept that?

MS WELGEMOED: I believe they could have negotiated.

MR BERGER: Ms Welgemoed, I don't want to get into a whole long debate with you but you know that in 1983 - well, you know that the ANC had attempted to negotiate for 50 years before it was banned, before it turned to the armed struggle, do you know that?

MS WELGEMOED: No, I didn't.

MR RICHARD: I believe Chair that the questions are becoming argumentative?

CHAIRPERSON: Proceed but ...(intervention)

MR BERGER: Chairperson, I'm not questioning Ms Welgemoed for the purpose of attempting to ...(intervention)

CHAIRPERSON: I said you can proceed, Mr Berger.

MR BERGER: Thank you Chairperson. Ms Welgemoed, I'm not attempting to discredit you, I'm hoping that by my questions perhaps what I think is a misunderstanding or perhaps a misperception can be corrected and perhaps you can view things slightly differently, I understand your pain and your anger but maybe if you see the facts as they were, you might be able to move forward, that's the purpose of my questions.

MS WELGEMOED: No, I can understand them going on with the struggle, I can understand that because the majority of Black South Africans were excluded.

MR BERGER: Yes.

MS WELGEMOED: That I can understand.

MR BERGER: And at the time in 1986, the time of the bomb ...(intervention)

MS WELGEMOED: But why should innocent civilians pay the price for that, that is my question?

MR BERGER: Well you've already accepted that people, you spoke about the wife of a parliamentarian?

MS WELGEMOED: Yes, that I can understand because those people had a say in the running of the country.

JUDGE PILLAY: Ms Welgemoed, let me try to be helpful. Would your attitude be effected in any way if I were to put to you that those people who were responsible for the upkeep of apartheid shielded themselves amongst civilians and because there was a fight against apartheid and all those who upheld it, there was bound to be civilian casualties. What I put to you would it in any way effect your views?

MS WELGEMOED: I accept that, as I said, I can understand a member of parliament's wife being killed, but I cannot accept to specifically go out and target innocent White civilians, that I can't accept.

JUDGE PILLAY: No, maybe you didn't understand me, what if those responsible for upkeeping apartheid such as security policemen, soldiers etc., were deliberately shielding themselves by placing themselves amongst civilians, would that in any way effect your views?

MS WELGEMOED: If they were shielding themselves and abusing their power, yes.

CHAIRPERSON: Thank you.

MR BERGER: So Ms Welgemoed, you accept as a principle that in the fight between the ANC and the Security Forces inevitably there were going to be civilian casualties, inevitably?

MS WELGEMOED: Yes in hindsight I have to say I accept that.

MR BERGER: Okay and that was the - you've heard the evidence, that was the decision taken at the Kabwe Conference in 1985 after years of struggle and after years of fighting, the ANC, because of actions of the apartheid regime, you've heard about the raid on Gaborone for example where children were killed?

MS WELGEMOED: Yes I have and I abhor that.

MR BERGER: Ja and the ANC decided that it was time to intensify the struggle against Security Forces but that in the process civilians were going to get killed and you can accept the justification for that, am I right?

MS WELGEMOED: In certain cases, yes.

MR BERGER: Alright, now another misperception that perhaps I can put to rest, is you say that Mr McBride has everything to gain from amnesty, you recognise that he's being prosecuted and can't be prosecuted again, am I right?

MS WELGEMOED: Yes.

MR BERGER: But you say in your statement that if he gets amnesty you won't be able to sue him for damages?

MR BERGER: I must tell you that your understanding of the legal position is not correct and that your right to sue Mr McBride was extinguished many years ago, do you know that?

MS WELGEMOED: No I didn't.

MR BERGER: So you see that whether Mr McBride gets amnesty will not effect your right to sue him civilly, even if he doesn't get amnesty you won't be able to sue him civilly. I thought I should tell you that because it may effect your approach.

MS WELGEMOED: Well thank you for telling me because I didn't know that.

MR BERGER: The reason being in case you want to know is that three years after you become aware of the person whose responsible for your damage, if you don't do anything within three years then your claim is over?

MS WELGEMOED: I didn't know that.

MR BERGER: Now you say in your statement that - or you accept, I ask you, that Mr McBride acted under instructions?

MS WELGEMOED: Yes.

MR BERGER: And you also accept that he was politically motivated?

MS WELGEMOED: Correct.

MR BERGER: Have you - you seem to be under the impression that the Why Not bar was chosen at random and that it was a random attack on civilians, that seems to be your impression, am I right?

MS WELGEMOED: Well I haven't heard anything to the contrary.

MR BERGER: Well perhaps if I can remind you of some of the evidence? You recall that the whole context of this attack was initially supposed to be an attack on the Natal Command, did you hear that evidence?

MS WELGEMOED: Yes I did.

MR BERGER: And that for reasons that have been articulated, it wasn't possible to place a car bomb outside the Natal Command and that this was reported to Mr Ismail, you heard that evidence and that Mr Ismail then said "well then you must attempt to find other target where there's a concentration of security personnel." So it was in the context of trying to target the Natal Command that ultimately the Why Not was targeted.

MS WELGEMOED: But surely there were better targets than the Why Not where more security personnel would have been, only they would have been effected and less civilians. There are many police stations around, there were many security - I've got not idea how many I can't answer but I'm sure there were at that time there were many Security Branch offices around and places like that.

MR BERGER: Well you see Security Branch offices would also be located within civilian context as Judge Pillay has pointed out to you. The Security Forces shielded themselves within the civilian population but you remember that Mr Richard asked those questions about other places where bombs could be placed.

MS WELGEMOED: Correct.

MR BERGER: And you remember Mr McBride's answers about why those places were not chosen for various logistical reasons, do you remember that evidence?

MS WELGEMOED: Not clearly, no.

MR BERGER: You see the point that I'm making to you is do you now see that the Why Not was chosen within the context of an attempt, whether it was successful or not is another story but within the context of an attempt to go for Security Force personnel, that was the context?

MS WELGEMOED: I still can't accept that, I'm sorry.

MR BERGER: But you hear the evidence?

MS WELGEMOED: I hear the evidence.

MR BERGER: You say, if you look at the names of the deceased and injured, not one was military personnel or members of the Security Forces?

MS WELGEMOED: And I've changed that to read "according to my opinion", in my opinion and according to the press and the media at the time.

MR BERGER: Ja well, that's what I wanted to ask you about, there's really no evidence is there that there were no security personnel in the bar that night?

MS WELGEMOED: Because in the newspapers it wasn't reported Sergeant so and so or Detective so and so or Constable so and so or whatever was injured, it gave a list of everybody who was injured and their names were Mr or Ms or Mrs or whatever, none of them were given titles.

MR BERGER: Exactly, they didn't say Dr so and so, Advocate so and so, Professor so and so either?

MS WELGEMOED: No.

MR BERGER: So you don't really know what the occupations were of the people who were in the bar that night or who were injured that night, am I right?

MS WELGEMOED: No, but - I don't.

MR BERGER: And you also heard the evidence of ms kearney that - and i'll quote for you, she was asked whether security force personnel ever frequented the bar and she said a lot did frequent the hotel from time to time, you heard that evidence?

MS WELGEMOED: I unfortunately had to leave yesterday and didn't hear it.

MR BERGER: Well I can assure you said that.

MS WELGEMOED: I accept that.

MR BERGER: She said in fact that she knew about 20 regulars who were members of the Security Forces who used to come to the hotel and ...(intervention)

CHAIRPERSON: Push your button, I don't know what caused it go off.

MR BERGER: Thank you Chair. And she said that she not saying that those were the only security policemen or Security Force personnel who came to the bar. I don't know if you know that evidence?

MS WELGEMOED: I wasn't here when that evidence was given but I accept it.

MR BERGER: Does that surprise you?

MS WELGEMOED: All I can say is that my sister was not a Security Branch member, she wasn't a military personnel person and neither were her friends.

MR BERGER: I accept that.

MS WELGEMOED: And neither were her acquaintances and she had a group of about ten people that were there with her. They were there to celebrate her birthday which was four days previously and she was about to leave the country, she was supposed to leave the country four days later. She was going to America and they were there for her farewell and none of them were military personnel.

MR BERGER: You know we're told that on that night there were 180 people in Magoo's, 160 in the Why Not and about 200 people in Garfunkel's?

MS WELGEMOED: Correct.

MR BERGER: So it was very full that night. The point that I'm making to you is it would appear from Ms Kearney's evidence that there were indeed many security personnel?

MR RICHARD: With respect, Chair and with permission I don't think that is the proper question to put.

CHAIRPERSON: I think you're putting questions of argument here, she says she accepts what Ms Kearney said. I don't think she's every indicated that there weren't any, she hasn't said that there weren't members of the Security Forces present there at the Parade.

MR BERGER: Ms Welgemoed, you heard the evidence of Mr McBride that he got information from Mr Webster that the bar was infested, was the word used, with security personnel?

MS WELGEMOED: Yes. I don't believe that.

CHAIRPERSON: Did you know the Why Not and Magoo's?

MS WELGEMOED: Yes I did.

CHAIRPERSON: Did you used to go there?

MS WELGEMOED: No I didn't, I had a small son at the time that I was taking care of.

CHAIRPERSON: So whatever anybody talks about who frequented Magoo's and Why Not, you wouldn't know anything about it?

MS WELGEMOED: I only know from what my sister told me.

CHAIRPERSON: Yes. But I mean it's not the sort of thing somebody would say, you know, I go to the Why Not bar every Friday for a drink and no Security Force people ever go there?

MS WELGEMOED: No, no.

CHAIRPERSON: It's not the sort of thing one would say?

MR BERGER: I'm not asking you to say that, you know, whether you know that there were or there weren't but I'm just attempting to show you that the basis upon which you oppose Mr

McBride's application for amnesty is actually and I'm not minimising it at all, but it's emotional and it's not based on reason it's not based on ...(intervention)

MR RICHARD: I believe this line of questioning is argumentative, I don't see how the opinions of the witness take the matter further?

CHAIRPERSON: I think you can use this in argument, Mr Berger.

MR BERGER: As you please Chairperson, I just thought that it might be helpful.

You also heard the evidence of Mr McBride that besides the information he got from Mr Webster he did reconnaissance on the Why Not, my question to you is and that wasn't disputed, my question to you Ms Welgemoed is if it was as you claim, if it was simply a random racist terror attack, why do you think Mr McBride would have done reconnaissance of that particular bar?

MS WELGEMOED: Because White people frequented it.

MR BERGER: One didn't need to do reconnaissance, one could have targeted any bar, any pub on the Durban beach front. You recall earlier this morning the evidence about the London Pub and the Beach Hotel. My point is, that particular bar was reconnoitred and don't you think that perhaps there was a reason for doing that reconnaissance other than a simple random attack? That's just what I'm asking you to think about.

MS WELGEMOED: Well I can't answer for Mr McBride, why he chose that as a target.

MR BERGER: And you can't explain why he would have done reconnaissance if it was a simple random attack.

MR RICHARD: Again I think this line of questioning is argumentative.

MR BERGER: Ms Welgemoed, you say in your statement that one of the things that offends you is that Mr McBride said that he apologised but he would do it all again, you got that?

MS WELGEMOED: Yes. Yes.

MR BERGER: But isn't it correct that what you left out is he also said he would do it again if circumstances were the same, given the same circumstances and given the same oppression?

MS WELGEMOED: And I would object again. My sister didn't deserve to die like that.

MR BERGER: And then finally, Ms Welgemoed, you say that Mr Ismail says he takes responsibility but you say how Mr Aboobaker Ismail can say he takes responsibility for something he had no knowledge of or details of "is beyond me".

MS WELGEMOED: Yes, I did say that.

MR BERGER: Don't you realise that he takes responsibility because he gave the order?

MS WELGEMOED: But he didn't choose the target.

MR BERGER: No, that was left to his commanders on the ground.

MS WELGEMOED: And that's what I object to, the target.

MR BERGER: You know that Mr Ismail gave permission knowing that civilians were probably going to be killed and you have no problem with that?

MS WELGEMOED: As I said before if the choice of target had been different and innocent civilians had been caught, whether it had been a member of parliament's wife or - I'm just using that as an example, I could understand that and I could learn to live with that.

JUDGE PILLAY: Ms Welgemoed, would your views of attitude be any different had it been another hotel where your sister wasn't at?

MS WELGEMOED: No, I don't think so, I think my view would be the same.

MR BERGER: Ms Welgemoed, after all the questions that I've put to you, is it still your view that you don't oppose the amnesty application of Mr Ismail?

MS WELGEMOED: Yes it is.

MR BERGER: And is it still your view that you do oppose the amnesty application of Mr McBride?

MS WELGEMOED: Yes it is.

MR BERGER: Thank you, I've no further questions.

NO FURTHER QUESTIONS BY MR BERGER

CHAIRPERSON: Thank you Mr Berger. Mr Dehal?

CROSS-EXAMINATION BY MR DEHAL: Thank you Chair.

Ms Welgemoed, are you aware that Mr McBride had made approaches to meet with you during the course of these hearings?

MS WELGEMOED: Yes.

MR DEHAL: With a view to reconciliation?

MS WELGEMOED: Yes I am and my response to that was that after these hearings were completed, we would reserve our right to meet with Mr McBride after these hearings were completed.

MR DEHAL: You do concede that many persons have met with Mr McBride?

MR RICHARD: I object to the use of the word many, I think it's two or three.

MS WELGEMOED: Only two have met as far as I know.

MR DEHAL: Well there's been daily meetings between various victims, their family members with Mr Ismail and Mr McBride that you know of, don't you?

MS WELGEMOED: Yes I do.

MR DEHAL: And you say you've reserved your right to meet him after these hearings?

MS WELGEMOED: Yes.

MR DEHAL: You've been fairly vocal in the local press about your hatred of Mr McBride, calling him a murderer etc., you recall all that?

MS WELGEMOED: I wouldn't call that hatred but I've been fairly vocal, yes.

MR DEHAL: You've written letters to the press in which you've called Mr McBride a murderer?

MS WELGEMOED: Yes I have.

MR DEHAL: And I take it that you do all this because of the hurt you have on the death of your sister?

MS WELGEMOED: I've seen the pain and anguish and sorry that myself, that I personally had to go through and what my parents have had to go through and I cannot bear what it's done to my mother.

MR DEHAL: Yes. You have heard Mr Ismail and Mr McBride apologise for all of this?

MS WELGEMOED: I have, yes.

MR DEHAL: You don't accept their apology, do you?

MS WELGEMOED: As I said in my statement, I don't believe Mr McBride is sincere in his apology. If he says he's going to do it all again, why apologise?

MR DEHAL: Well, as Mr Berger had rightly pointed out, his statement to do it all again was within the context of a repetition of the apartheid evil, you recall that?

MS WELGEMOED: Yes I do.

MR DEHAL: And you said you still object.

MS WELGEMOED: Perhaps if he had done a bit more thorough reconnaissance his choice of target may have been different.

MR DEHAL: Yes. May I take you to that paragraph of your statement where you said Mr McBride has everything to gain from applying for amnesty, do you remember that?

MS WELGEMOED: Yes.

MR DEHAL: You then say: "for one thing, we as the victims may not sue him civilly?"

MS WELGEMOED: Yes, Mr Berger just pointed that out to me.

MR DEHAL: You now understand that you don't have a civil action?

MS WELGEMOED: Yes I do, now I understand, I didn't before but I do.

MR DEHAL: And you then say: "he was his reputation to clear that he acted on the instructions and that his actions were politically motivated?"

MS WELGEMOED: Correct.

MR DEHAL: Now you are aware that Mr McBride was tried in a criminal court, convicted, sentenced to death three times, one of the death sentences relating to the death of your sister?

MS WELGEMOED: Correct.

MR DEHAL: And that he served a long term of imprisonment, went to death row where he languished for a long time as well?

MS WELGEMOED: All in all it was over six years but as I said before, how do I equate those relatively few years to us for a lifetime without Marchelle?

MR DEHAL: Yes now the point I'm driving at is this, now that you know about your rights on the civil action, you understand and recall that Mr McBride was convicted on the murder of your sister as it was then put to him?

MS WELGEMOED: Yes.

MR DEHAL: Served his term, has applied for amnesty now, has apologised, do you take a different view on your objection to his application?

MS WELGEMOED: I don't understand what you mean by taking a different view?

MR DEHAL: Do you still persist in your objection?

MS WELGEMOED: Yes I do.

MR DEHAL: I just want to correct this understanding of yours, Mr McBride does not have everything to gain from this amnesty application. In the main in regard to most of the counts that he seeks amnesty on, he's been tried and convicted?

MS WELGEMOED: Then why did he apply for amnesty?

MR DEHAL: He's making a full disclosure, he wants to come up and tell the world what happened and for him ...(intervention)

MS WELGEMOED: Then he still has something to gain by it, he's clearing his reputation isn't he.

MR RICHARD: May it please, Chair, I believe this line is argumentative?

CHAIRPERSON: You may proceed.

MR DEHAL: And more importantly, Ms Welgemoed, for reconciliation so that he can meet with you, he can express his views and have you express your views as you are doing today in the hope that both of you from opposite sides can meet and reconcile so this country becomes a better place?

MS WELGEMOED: I agree this country needs to become a better place, I left here and got robbed and I broke my finger on the way home.

MR DEHAL: I'm sorry to hear that. Now that Mr McBride is here in this forum, now that you understand that despite his conviction, sentence etc., he has come in here with a view to reconciling with you has previously expressed his desire to meet with you and you understand as you rightly pointed out now that this country must go ahead, there must be reconciliation?

MS WELGEMOED: As I said at the end of my statement, I want this to be the end for me. It has been a lingering thing, I've had to deal with a lot traumatically, I lost my son previously to losing my sister. I had two deaths to contend with and it's taken me psychiatrists and medication and hospitalisation to come to terms with this, to be able to sit here today and even talk across the table to you as I am now. I want this to become at an end, I don't want to read about it in the papers again, I don't want to hear any more about it again, I want it to end. I want the past to be put in the past where it belongs.

MR DEHAL: And I'm sure you would agree that once you've met with Mr McBride, he has said to you face to face he is very sorry, he expressed his remorse and reconciliation takes place at that level, you would feel much easier to carry on with your life?

JUDGE PILLAY: Mr Dehal, let that process proceed and see what happens, you can't ask for a commitment on that score.

MR RICHARD: Thank you Judge.

MR DEHAL: Can I just confer with Mr McBride, Sir?

MR RICHARD: My comment is that as the victim has said, it's a process after the conclusion, not during.

MR DEHAL: Sorry, just two aspects finally. First a very factual aspect, for what it's worth, Mr McBride is not the Deputy Director, he is the Director of Foreign Affairs.

MS WELGEMOED: I apologise for that.

MR DEHAL: No that's fine, you said - actually you added the words which are not within your typed print "as far as you know", so I just wanted you to understand that.

MS WELGEMOED: I accept that.

MR DEHAL: Secondly, he certainly doesn't have the power and wealth and status that you think he has, on the contrary it's the very opposite. Is it not correct that your approach to the press and indeed the press approach to you, your expression, your vocal expressions of hatred towards Mr McBride, not wanting him to be released etc, was one that began at the time when Mr McBride was seeking reprieve whilst he was on death row and not before that?

MS WELGEMOED: We were never kept aware, we were never kept informed of the trial dates when it took place. The authorities at that time or the apartheid regime never kept us informed of what was transpiring when. We never knew what was going on. My objections only began at a much later date, I can't tell you exactly what date but at a much later date once he was indemnified, that's when my objections began.

MR DEHAL: Yes, that's the point but the trial of Mr McBride was well covered in the local press and the TV news.

MS WELGEMOED: Well that's where we had to read about it, in the newspaper as I said.

MR DEHAL: And at that stage of course you hadn't spoken to the press or gone and spoke as you are now.

MS WELGEMOED: No.

MR DEHAL: On your objections to Mr McBride?

MS WELGEMOED: Correct.

MR DEHAL: You did not make endeavours to meet, phone, call the prosecutor or the police in that trial?

MS WELGEMOED: Nobody contacted us or bothered to ask us if we wanted to give evidence at all.

MR DEHAL: Thank you and then lastly, in one of your paragraphs, you talk about Mr Matthew Lecordier, I think you only had Ernest Lekote Pule, you altered that to read Matthew Lecordier?

MS WELGEMOED: Yes.

MR DEHAL: And Greta Apelgren should both bear some of the responsibility?

MS WELGEMOED: Yes I did.

MR DEHAL: Whilst you say all that, do I understand you correctly that did not oppose their applications for amnesty?

MS WELGEMOED: I do oppose their amnesty applications.

MR DEHAL: You do know that Ms Apelgren, now known as Ms Narkedien was charged with the offences relating to the Why Not bomb operation and acquitted on all of those?

MS WELGEMOED: Yes I do.

MR DEHAL: By Judge Shearer?

MS WELGEMOED: Yes I do.

MR DEHAL: Do you accept that finding?

MS WELGEMOED: I accept that.

MR DEHAL: She's not making an application for amnesty relating to the Why Not operation.

MS WELGEMOED: Well then I can't oppose it.

MR DEHAL: Thank you. Mr Lecordier was a state witness in this trial of Mr McBride's in which as a security police witness he gave evidence amongst others on the Why Not operation. He said he had not known of the bomb, he has now applied for amnesty and he seeks amnesty on this Why Not operation as well and he said that his knowledge was limited to simply assisting Mr McBride in driving the car.

MS WELGEMOED: Can I just interrupt you for a minute, Sir?

MR DEHAL: Yes.

MS WELGEMOED: He said he went over the bump and Mr McBride told him there were 60 kilograms of explosives in the vehicle, so he was aware there were explosives in the vehicle.

MR DEHAL: Yes at that stage and he was also aware that this vehicle with the explosives was going to be delivered to another MK operative?

MS WELGEMOED: Yes at some stage he said he realised it was a car bomb attack.

MR DEHAL: Correct, that was when the pin was pulled out and shown to him, do you remember?

MS WELGEMOED: But at that stage why didn't he say something, why didn't he do something?

MR DEHAL: Wasn't it too late then, the pin having been pulled off?

MS WELGEMOED: He still had a chance to do something.

MR DEHAL: What could he have done?

MS WELGEMOED: He certainly could have tried to convince Mr McBride to do something else or to undetonate a bomb, I'm not familiar with bombs, unfortunately.

MR RICHARD: May I again object on the basis that this is argumentative?

CHAIRPERSON: We're getting into speculation now, Mr Dehal.

MR DEHAL: Sorry, just to get this last point clear, you said that the entire statement was based on your personal opinion?

MS WELGEMOED: Yes and my own opinion.

MR DEHAL: Yes.

MS WELGEMOED: I've changed it and I would read the top again when I say that I would like the Committee for forwarding me the opportunity of being able to express my opinion here today.

MR DEHAL: Yes and I think you've dealt briefly with your opinion on the deaths of civilians on cross-border raids by the then South African regime when Mr Berger questioned you?

MS WELGEMOED: I abhorred that, I would like to point out actually now as a matter of record that the very first time that I heard of such terrible atrocities taking place was when I testified at the very first Truth and Reconciliation Commission for Human Rights Violations which was approximately, if I remember, two years ago and I heard about what Security Branch people actually did and I was horrified, I cried for those people and I felt sick to my stomach to hear what had taken place. I never realised that such disgusting, despicable acts ever took place in this country of ours.

MR DEHAL: You had never been to the Why Not bar?

MS WELGEMOED: No.

MR DEHAL: Nor to the Magoo's?

MS WELGEMOED: No.

MR DEHAL: Nor to Garfunkel's?

MS WELGEMOED: I'd been to Garfunkel's to eat dinner there.

MR DEHAL: Was that before or after the bomb?

MS WELGEMOED: Before the bombing and after.

MR DEHAL: Thank you, no further questions.

NO FURTHER QUESTIONS BY MR DEHAL

CHAIRPERSON: Thank you Mr Dehal. Ms Kooverjee, do you have any questions?

MS KOOVERJEE: I have no questions, thank you Mr Chair.

NO QUESTIONS BY MS KOOVERJEE

CHAIRPERSON: Mr Prior?

ADV PRIOR: No questions.

NO QUESTIONS BY ADV PRIOR

CHAIRPERSON: Any re-examination?

MR RICHARD: No re-examination.

NO RE-EXAMINATION BY MR RICHARD

CHAIRPERSON: Advocate Sigodi any questions?

ADV SIGODI: Just one question.

Is there anything that you think that Mr McBride has not disclosed fully to this Committee insofar as the attack on the Why Not bar, how he went to get the arms from Botswana, how he brought them into the country and all that, is there anything else that you feel he might not have disclosed fully to the Committee?

MS WELGEMOED: I can't say.

ADV SIGODI: Thank you.

CHAIRPERSON: Judge Pillay any questions?

JUDGE PILLAY: Mrs Gerrard - or Welgemoed, sorry.

MS WELGEMOED: Not a problem.

JUDGE PILLAY: I want to talk to you on a personal basis. You know, a lot of disgraceful things have occurred in the course of the history of our country.

MS WELGEMOED: I agree with you.

JUDGE PILLAY: And many people died and suffered when they didn't deserve it.

MS WELGEMOED: I agree with you and I sympathise with those people.

JUDGE PILLAY: And during my travels doing this kind of work, it's my personal opinion that this area of the country needs more healing than the rest and I detect a bit of bitterness in you and I think it's understandable. Is it possible, because I think you can play a pivotal role in this and I'm not asking you to forget your sister ...(intervention)

MS WELGEMOED: I'm sorry I could never forget my sister.

JUDGE PILLAY: You can't but in order to facilitate what you yourself say this country needs, is it at all possible that you could consider forgiving those who caused the heartbreak? It's important to this country, not only yours, everybody else who have been hurt by the history of this country?

MS WELGEMOED: I understand people have been hurt and I sympathise because I know how they feel because I've been in the same situation so I do understand how they feel.

JUDGE PILLAY: But we got to carry on with life.

MS WELGEMOED: But life has got to go on and it's got to end somewhere and the past has got to be put in the past.

JUDGE PILLAY: Are you seriously considering that route?

MS WELGEMOED: Yes.

JUDGE PILLAY: Thank you.

CHAIRPERSON: Yes thank you Ms Welgemoed. I shall refer to the Reparations and Rehabilitation Committee to see if anything can be done about the death certificate of your sister.

MS WELGEMOED: I have a copy of it here if you'd like to have a look at it?

CHAIRPERSON: Yes well we have a copy attached to your statement, a photocopy, to see if they can get it amended to include the cause of death rather than just leaving it open by saying "being investigated."

MS WELGEMOED: Thank you very much.

CHAIRPERSON: That concludes your testimony.

MS WELGEMOED: Thank you Sir.

WITNESS EXCUSED

MR RICHARD: Chair, I have two further witnesses who have been waiting, I haven't yet had an opportunity to conclude what I need to say to them. Now I request a brief adjournment?

CHAIRPERSON: Perhaps we will take the tea adjournment at this stage, I see it's half past ten and then when we resume we will go through.

JUDGE PILLAY: Well Mr Richard, we to get some final - is this your last two witnesses?

MR RICHARD: To the best of my knowledge, yes.

JUDGE PILLAY: Well we've got to get some commitment.

MR RICHARD: I have two further witnesses that I wish to call.

CHAIRPERSON: Yes, we'll take the tea adjournment.

COMMITTEE ADJOURNS

ON RESUMPTION

ADV PRIOR: I thought Mr Dehal, that's why I came to call you, I see he's not?

CHAIRPERSON: I didn't notice his absence. Is he far away, Ms Kooverjee, do you know?

MR KOOVERJEE: I have no idea Mr Chairperson.

CHAIRPERSON: I think it would be better if we wait for Mr Dehal rather than starting with the evidence of another witness because that might just only result in the witness having to repeat.

ADV PRIOR: Mr Chairperson, may I just put something on record? I've been approached by various people, mainly victims, I know it's a difficult hearing we've been through and there's been a request that if the public could possibly also respect the dignity of the hearing. The complaint has been that some of the comments and some of the outbursts have been off putting and upsetting.

CHAIRPERSON: Yes, I would ask anybody in attendance please to respect the person giving evidence and not to comment with regard to the evidence while it's being given, it's fair that that should happen in keeping with the dignity of these proceedings as well.

ADV PRIOR: Thank you Mr Chairperson.

CHAIRPERSON: Mr Richard?

MR RICHARD: Thank you Chairperson, my next witness is Candice van der Linde, the daughter of one of the deceased.

CHAIRPERSON: Sorry, what's the first name, Candice?

MS VAN DER LINDA: Candice.

MR RICHARD: Ms van der Linda changed her mind very, very recently from not wishing to make any statement or give any evidence to giving evidence and she is prepared to be sworn.

CANDICE VAN DER LINDA: (sworn states)

EXAMINATION BY MR RICHARD: So as to prevent any comment on it later I was handed a copy of a hand-written statement during the adjournment which I have read through. Ms van der Linda has said that she would prefer it not to be distributed. I have copies here but I don't think it makes any matter whether she reads it and gets questions on it or people have copies.

CHAIRPERSON: Yes thank you. Proceed by leading her evidence.

MR RICHARD: Thank you Chair. Are you prepared to be sworn?

MS VAN DER LINDA: Yes, I'm prepared to be sworn.

CHAIRPERSON: She's been sworn in.

MS VAN DER LINDA: Okay.

MR RICHARD: Thank you. Would you please tell us when you were born?

MS VAN DER LINDA: I was born on the 8th April 1978.

CHAIRPERSON: Sorry Ms van der Linda, could you please speak louder, I'm having difficulty hearing you?

MS VAN DER LINDA: 8th April 1978.

MR RICHARD: And how old were you when your mother died?

MS VAN DER LINDA: I was 8 when she died.

MR RICHARD: Now you've prepared a statement of what you wish to tell the Committee, would you like to read it out?

MS VAN DER LINDA: Yes I'd like to.

MR RICHARD: Thank you, please proceed?

MS VAN DER LINDA: I direct this mainly to Robert McBride. Firstly the statement I make today ...(intervention)

JUDGE PILLAY: Mr Richard, before we proceed, have you seen that document?

MR RICHARD: As I've said Judge, I have seen it, I read through it during the adjournment.

JUDGE PILLAY: Are you satisfied that it's not going to cause us any trouble like before?

MR RICHARD: I believe that whatever is said in it is permissible in terms of Section 11.

CHAIRPERSON: Ms van der Linda, when you read could you just bear in mind that the - what you're reading is being simultaneously translated so if you could just keep the pace a little bit slower than normal?

MS VAN DER LINDA: Okay.

MR RICHARD: Pause in between.

MS VAN DER LINDA: Alright. Firstly, the statement I make today is purely my opinion of what I've heard at the Truth Commission over the past few weeks and the feelings that have grown over the past eighteen years as well as things I have heard and read in the media.

I feel that yesterday you may have overreacted to my aunt Claire Burton's statement and misinterpreted it. Maybe it was to make the victims seem unforgiving and insensitive. To be honest, I came here to the Truth Commission with my arms open and my heart and mind

ready to hear the truth and to forgive you but Robert, you alone have changed that. You have changed my mind completely and in my eyes you show no remorse and have made no effort to reconcile with me, personally.

So Robert McBride, I oppose your amnesty and I will go into further reasons why. I personally feel that your reconnaissance was not up to scratch and desired a lot more work. You blew up the Parade Hotel with the average of plus minus 500 people in the hotel that night and not one person was a military personnel, police force or Security Branch member. None of them were hurt or killed in the explosion. To me that doesn't make sense at all. You also did reconnaissance on an oil pipe which you blew up and it turned out to be a water pipe. I don't think the reconnaissance you did there was very accurate.

Also if the people you were helping, the people who were helping you to blow up the Parade Hotel did not have a clear and complete picture of what was going on and they were in frequent contact with you, how are your superiors to know what you were up to and even if they had less contact with you, I say superior as being Ismail. Surely to take responsibilities for one's actions you must clearly understand the actions of what that person has done and Ismail did not clear understanding of what McBride had done or what he had done.

On a more personal note, everyone focuses on the big picture of apartheid and I too disagree with it. I know about Sharpeville, I learnt about it at school and I do listen to the news even though I know very little about politics. I sat at school and spoke to Black girls in my classes and saw sometimes how they were beaten. I also heard about the townships and the violence in them. There were days when the girls couldn't get to school because of that violence. My heart bleeds for the children here left without families because of political violence. I wish they all had the opportunity I do to meet the person who killed their family members and give them a piece of their mind and in my case, oppose the amnesty. Please do not think for one second that I think that I am the only person here who has lost a loved one in the struggle for the freedom of the apartheid but I have been given an opportunity to face my mother's killer and I will take advantage of it.

I would now like to look at the smaller picture of my life. Robert McBride, you consciously killed my mother and in doing that you stripped me of my life and that point you destroyed the little bits of childhood I had left. You then left me to face the rest of my childhood and teenage years with aggression and anger to fuel my life and yet I originally came here to forgive you and as I've said before, you alone changed that. I face my life now and from the age of eight without a mother and I will continue to do so.

I always wondered if you knew what state the bodies of the girls were in when they died. Just in case you don't know, I'll tell you what I was told over the past two weeks. My mother was badly burned and she was decapitated and my mother's friend, Marchelle, was badly burnt. So bad, that they battled to identify her. Robert, have you ever seen any of your family members in that state? Have you? I wouldn't wish that upon anybody, I wouldn't want anyone to see any one of their family members in that state.

My grandfather saw the state of my mother and ten months later proceeded to die, that's how bad it was. The only thing that allows me to sleep at night is to know that my mother didn't feel much pain. Do you blame me for disliking you? Robert, you and I have been married in violence and the violence of your act and I now want a divorce. I'm tired of having you associated with me every time you're in the news. People seem to feel it's their duty to tell me

you were in the news, why you were in the news and how they feel about you and even though you have a crowd of people here cheering you on and slowly breaking us down, there are not many people out there in truth that really do like you.

My mother never got to scream out in pain or in shock so I feel that what I say here today to you, Robert McBride, is on behalf of my mother's unheard scream from the grave that has been waiting thirteen years.

The last thing I have to say is you were convicted of murder so whether you get amnesty or not, you are a murderer in my eyes and the only way you can make me forgive you for that is the way you decide to. You're the only one who can do it, it's really and truly up to you whether we, the victims and myself, forgive you.

I also read a long time ago that my face haunts you. Well if it did I hope it still does, so have a good long look at my face now, because it's been thirteen years and I went through the whole of my puberty in those thirteen years and I hope it haunts you until you eventually atone for what you've done.

MR RICHARD: Thank you. How old are you now?

MS VAN DER LINDA: I'm 21.

MR RICHARD: Now who brought you up after your mother's death?

MS VAN DER LINDA: My father.

MR RICHARD: And what is your contact with Ms Burton?

MS VAN DER LINDA: She's my aunt.

MR RICHARD: Thank you. No further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Thank you Mr Richard. Mr Berger?

MR BERGER: I have no questions thank you.

CHAIRPERSON: Mr Dehal?

MR DEHAL: May I just confer quickly with Mr McBride?

CROSS-EXAMINATION BY MR DEHAL: Ms van der Linda, you say that you arrived at these hearings having come here with a distinct impression to forgive Mr McBride?

MS VAN DER LINDA: Yes.

MR DEHAL: You then dealt briefly with what happened yesterday in regard to your aunt and Mr McBride's reaction to it?

MS VAN DER LINDA: Yes.

MR DEHAL: And is that what caused you to change your mind?

MS VAN DER LINDA: No.

MR DEHAL: What is then these proceedings that made you change your mind of forgiveness that you approach these proceedings originally with?

MS VAN DER LINDA: A person of forgiveness has a - or a person who wants forgiveness has a certain demeanour, they make themselves worthy of forgiveness, they approach people humbly, they don't become arrogant, they don't sit and gloat and glare at people, that's not right, they don't invite someone to come and speak to them and try and reconcile and sit and read a newspaper while doing so, they don't have their bodyguard there and tap their watch and say "times up", that's not right.

MR DEHAL: You say you've been watching Mr McBride and you observed him do all of these?

MS VAN DER LINDA: Yes.

MR DEHAL: And you talked about the victims and you said not - sorry, they were all civilians. You don't know that as a matter of fact, do you?

MS VAN DER LINDA: Well I don't know that for a complete and utter fact, no, but from what I do know and from what has been said and from talking to a barmaid who worked there for 9 years and a lot of the victims who were there, they personally didn't know of anyone who was military or police orientated.

I don't know for a fact no. There could have been one but what's one out of 600 people, really?

MR DEHAL: And there could have been more than one anyway, but you don't know that?

MS VAN DER LINDA: There could have but honestly, I don't see any record of being one and I don't see any record of there being none.

MR DEHAL: Lastly, you said to Mr McBride that he alone could make you change your mind?

MS VAN DER LINDA: He alone can, yes.

MR DEHAL: In what respects could he?

MS VAN DER LINDA: He must decide that, he is the one who murdered, not me.

MR DEHAL: Thank you, I have no further questions.

NO FURTHER QUESTIONS BY MR DEHAL

CHAIRPERSON: Ms Kooverjee, do you have any questions.

MS KOOVERJEE: None thank you Chairperson.

CHAIRPERSON: Mr Prior?

ADV PRIOR: No questions.

CHAIRPERSON: Any re-examination Mr Richard?

MR RICHARD: None Chair.

CHAIRPERSON: Any questions Advocate Sigodi, Judge Pillay?

ADV SIGODI: None.

JUDGE PILLAY: Ms van der Linda, was there any time during these proceedings that you were tempted to say well, I'm ready to forgive McBride?

MS VAN DER LINDA: I think probably when I walked in the first time.

JUDGE PILLAY: But I mean during the ...(intervention)

MS VAN DER LINDA: I'll be honest with you right now, I don't take what people say and put it to myself, I don't fall for peer pressure. Just because other people don't like him doesn't mean that I don't like him.

JUDGE PILLAY: No, I accept that. I'm just saying, I'm asking, were you almost persuaded during the course of what you heard during these hearings, attempted to forgive him?

MS VAN DER LINDA: No the opposite.

JUDGE PILLAY: Nothing. Did you meet with him during the course of this hearing?

MS VAN DER LINDA: Sorry?

JUDGE PILLAY: Did you meet with him?

MS VAN DER LINDA: No I didn't.

JUDGE PILLAY: You explained that in your view when somebody wanted to reconcile he should do so earnestly and not read a newspaper and check the time. Why do you say so? Did that happen?

MS VAN DER LINDA: It did happen to one of the victims, yes.

JUDGE PILLAY: Not to you?

MS VAN DER LINDA: No, not personally, no.

JUDGE PILLAY: Were you present when that supposedly happened?

MS VAN DER LINDA: No.

JUDGE PILLAY: Why did you change your mind about given evidence?

MS VAN DER LINDA: At first I didn't feel like anything I would say would make a difference, I didn't think that anything that I could say to him would make him understand how I feel. I've changed my mind, my aunt was totally hurt by the proceedings yesterday, she didn't mean it in the sense that they took it, or what she said and I feel that I have something to say now, purely on my own behalf and I say it to you.

JUDGE PILLAY: Thank you.

CHAIRPERSON: Any questions arising from what have been put to the witness?

Thank you Ms van der Linda, that concludes your testimony, you may stand down.

WITNESS EXCUSED

MR RICHARD: Thank you Chair, my last witness is Diane Erwin and I ask that the two swop?

DIANE ERWIN: (sworn states)

EXAMINATION BY MR RICHARD: Thank you. Ms Erwin, when were you born?

MS ERWIN: In 1949.

MR RICHARD: Thank you. Is it not correct that you came to the city of Durban during the early '70s, approximately 1971/72?

MS ERWIN: Yes, in 1971.

MR RICHARD: Thank you and where have you lived since then?

MS ERWIN: In Durban.

MR RICHARD: Thank you. Now where were you on the 14th June 1986?

MS ERWIN: I was at Garfunkel's having dinner with a friend.

MR RICHARD: Thank you. What time did you arrive?

MS ERWIN: We arrived approximately about 7 I think it was.

MR RICHARD: Now what did you do for the rest of the evening?

MS ERWIN: Well we had dinner and we were about to leave because I had to go and pick up my son from a do and that's when the bomb went off.

MR RICHARD: Thank you. Now was the restaurant busy?

MS ERWIN: It was fairly busy.

MR RICHARD: And when was it busiest?

MS ERWIN: Well it started getting busy from 8 o'clock onwards.

MR RICHARD: Was it full?

MS ERWIN: It was basically full, yes.

MR RICHARD: And what did the bomb do to you when it went off?

MS ERWIN: Well it's affected me badly but what it did, the bomb, it threw me on the floor and I got luckily not badly injured but I've never seen so much ...(intervention)

MR RICHARD: Sorry, you said you never saw so much?

MS ERWIN: But I've never seen so much blood in my life and there was a - who the victim was, she looked like if she was thrown in a swimming pool of blood, there wasn't anything that wasn't covered in blood, her clothes were soaked in blood and I climbed through the hole in the wall and I don't know how I got out but I eventually got out.

MR RICHARD: Now did you receive medical treatment for your injuries?

MS ERWIN: No I didn't, all I wanted to do was get home which took me ages to get home because the car that I got there was the fourth car from the bomb and the police impounded the car.

MR RICHARD: Now did you ever make a statement to the police?

MS ERWIN: No.

MR RICHARD: Did you ever report yourself as an injured person?

MS ERWIN: No.

MR RICHARD: Did you ever frequent either the Magoo's or Why Not bars?

MS ERWIN: Yes I have, it was sort of a new place that I started going to and I had been there about five times previously.

MR RICHARD: Was that Garfunkel's, or Magoo's or Why Not?

MS ERWIN: More Garfunkel's.

MR RICHARD: Now was it during the week or weekends that you went on those five or six occasions?

MS ERWIN: Basically the weekend.

MR RICHARD: Now on a typical Saturday night, what sort of attendance would there be at the hotel, would it be busy, quiet?

MS ERWIN: It was fairly busy, as the evening went on it always got busier later.

MR RICHARD: Now when you approached the hotel what would you see on a typical weekend night, would you see activity or no activity from outside?

MS ERWIN: I've seen no activities from the outside, it's basically inside.

MR RICHARD: Thank you. Now on that evening did you go into either Magoo's or Why Not?

MS ERWIN: No we went straight for dinner.

MR RICHARD: Thank you, no further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Mr Berger, any questions?

MR BERGER: No questions, thank you.

CHAIRPERSON: Mr Dehal?

MR DEHAL: None thank you.

CHAIRPERSON: Ms Kooverjee?

MS KOOVERJEE: None.

ADV PRIOR: No questions.

CHAIRPERSON: No questions. There'll therefore be no re-examination I'm sure. Advocate Sigodi, Judge Pillay?

Thank you very much Ms Erwin, that concludes your evidence.

WITNESS EXCUSED

MR RICHARD: Chair, I assume we will now proceed to argument?

CHAIRPERSON: If there is no further evidence, yes.

MR RICHARD: There is no further evidence unless ...(intervention)

CHAIRPERSON: We might as well then proceed to argument.

ADV PRIOR: Well just before we get there Mr Chairperson, I circulated yesterday an affidavit by Deborah Quinn, one of our investigators, concerning the victim lists. There's been no

objection to it and I proceed to hand it up as Exhibit T.

CHAIRPERSON: Prior to us looking at it have you seen this list?

ADV PRIOR: With two annexures, the one is the victim list and the affidavit explains the circumstances how the list was compiled and the second schedule is a schedule of incidents of sabotage and bombing over a period in KwaZulu Natal between January 1980 and April 1989.

CHAIRPERSON: Have legal representatives had sight of this document?

MR BERGER: We have Chairperson, we don't accept that the contents of list B are what they purport to be, we explained that to Mr Prior a long time ago, this isn't the first time that we've seen this list.

ADV PRIOR: I've indicated some time earlier in the hearing that we will be compiling this list and I've also placed on record and indicated to the Committee that a list, a more comprehensive list of the victims will be compiled.

JUDGE PILLAY: What's the purpose of this list, Mr Prior?

ADV PRIOR: The first list of victims, this Committee is going to have to refer victims to the R and R Committee which is one of the obligations of this Committee and it gives more details as to how names were obtained, where they were obtained from.

The second schedule gives an indication of the activity that prevailed in KwaZulu Natal over the period of eight years which indicates and I indicated to my learned friends that it gives an indication of the campaign that was waged over those years apropos a limited operation launched by particular applicants. It's information that's been extracted from the TRC's database and other source material.

MR BERGER: Chairperson, we're not taking issue with list A, I'm only confining myself to list B and as far as list B is concerned, Ms Quinn says herself "the table is self-explanatory and while it cannot claim to be a hundred percent accurate, a more exhaustive list does not exist. We do not know for what purpose Mr Prior is placing this document before us.

CHAIRPERSON: You can rest assured that we as Members of the Panel know that there was a lot of violence for a long period of time in Natal, which violence was - covered a wide aspect, bombings, shootings, stabbings, we know that.

MR BERGER: Indeed Chairperson, there were attacks by the ANC, there were attacks by the Security Forces ...(intervention)

ADV PRIOR: Mr Chairperson, sorry, I withdraw that schedule. There seems to be problems with it, I explained the reason why it was tendered, I see it's not being agreed to, I withdraw it.

CHAIRPERSON: ...(inaudible) the list of witnesses - I mean not witnesses, excuse me, victims?

MR BERGER: We don't take issue with that but Mr Dehal might have some comment.

MR DEHAL: Mr Chairperson, I have the same problem with the list as I did with the lists contained in bundle A1 for many reasons. Firstly, the affidavit of Ms Quinn is formulated on the basis that she's obtained this information from a few sources. We have not checked the correctness of those sources, our information shows otherwise and then the number has increased substantially in the next list as well, even more substantially than bundle A1. We do not take issue with the fact that there were injured persons and deceased but it is the number of persons and indeed the identity of those numbers.

CHAIRPERSON: Now would there be any objection for this list at the end of the day to be forwarded to the Reparations Committee? Not using the list as evidence in this matter to establish that in fact that these were in fact, all of them were in fact victims but for reference to the Reparations Committee who then in turn do their own investigation, they follow up and with a view to effecting reparation. If people are found not to be victims obviously they don't qualify but if they do, they do but that is a separate investigation performed by the Reparations and Rehabilitation Committee. This is one of the reasons why Mr Prior has submitted this, to facilitate the Reparations Committee in their work.

MR DEHAL: Mr Chairperson, we personally do not have any difficulty with that but I think what we should do then is remove this list as we did with annexure B from these proceedings and we'd have no difficulty with Mr Prior doing that outside the ...(intervention)

CHAIRPERSON: Well it's actually the Panel that's got to refer a list of witnesses. We know from the evidence that we've heard that there's no definitive list, a list that is agreed upon by everybody as being complete but we've got to make some reference to the reparations so we'll accept it on that basis only, that it will be received for that purpose only, for the Reparations Committee to do its investigation.

MR DEHAL: I have no difficulty with that except that we already have bundle A1 which has a list in it and I don't know to what extent this conflicts with that, I haven't studied it in detail.

JUDGE PILLAY: Mr Dehal, what's the big deal about this list, what do you feel?

MR DEHAL: Firstly, Mr McBride was concerned about the possible address from the other side, from Mr Richard and possibly from Mr Prior about the increasing number of persons and the gravity it may have.

JUDGE PILLAY: You can take my word for it that we won't attach the gravity in terms of casualties in deciding his application based on either of these lists. As Judge Miller said it's only for the purposes of referring these names for investigation to another sub-committee.

MR DEHAL: No I hear you Judge, my other difficulty is that at some stage there has to be some clarity about names of persons etc and as at this stage, in the trial that we had, there was no clarity. We pitched at the maximum of 69 injured and 3 dead and increasing with time is increasing lack of clarity on this list and we don't want to by simply conceding to this list to be seen to be lending credence to the list that in itself has no clarity.

CHAIRPERSON: There's about 83 names on here unless I've miscounted. Yes, but you wouldn't have any objection into these names being investigated?

MR DEHAL: None at all.

CHAIRPERSON: And we won't be receiving this as evidence in this matter and we won't be able to, on the evidence before us, arrive at a conclusion as to the exact number of victims.

MR DEHAL: I align myself with that submission.

ADV PRIOR: There's one other aspect, Mr Dehal, I discussed with him this morning before we started, indicated that he would place something on record regarding events that occurred yesterday. I don't know if this would be an opportune time before argument to address that particular issue?

MR DEHAL: Thank you Chair.

It is indeed correct that yesterday there was an exchange of words, a discussion followed between Mr McBride and the evidence leader, Mr Prior. Mr McBride has pursuant to the meeting with Mr Prior asked me to place on record, especially after our earlier meeting this morning with Mr Prior that he has no misgivings with Mr Prior continuing as evidence leader, he has not cast any aspersions on Mr Prior, professionally, personally or otherwise. Whatever comments might have been made yesterday pursuant to the issue raised on Ms Burton's statement was were comments made at a time when anger was at its height and were comments made in the heat of the moment. He withdraws those unequivocally and to the extend that there might have been any aspersions cast on Mr Prior, he apologies for that. Thank you.

ADV PRIOR: Mr Chairperson, I unreservedly accept what has been said and that puts an end to the matter as far as I'm concerned. Thank you.

CHAIRPERSON: Thank you, I'm pleased that this has occurred.

Argument?

MR DEHAL: Thank you Chairperson.

MR RICHARD: Before we comment, as might be gathered from the events of yesterday, I have various instructions as to what to argue. Now argument is argument and I'm not quite so certain that it will be heard as such by people in the gallery and present. Now for those reasons I believe it might be appropriate for me to prepare my argument in the sterile sanitation of writing rather than in an oral forum. I'd really would not like to have other misunderstandings like yesterday again. I believe that while it will be incumbent for me to argue various matters as to the nature of the attack, the motive, the purpose and make certain

inferences which are patently apparent from the evidence if there's going to be a performance like yesterday from my argument, I would prefer not to have it in a public forum but to do it in writing in the manner where it will be more conducive to the process of truth and reconciliation.

The further point is as I think is also apparent, is that a significant number of persons who align themselves with the various groupings within the victim class haven't been in attendance. The request of me is that I provide them with copies of what I argue by way of report. However, subject to the Committee's decision my request to submit my argument in writing remains and I ask permission to do so. However, if the Committee wishes, I will proceed but I would far prepared to do it by written heads rather than oral.

CHAIRPERSON: Yes.

MR DEHAL: Sorry Mr Chair, Mr Berger now would like to say a few things in response.

CHAIRPERSON: Yes?

MR BERGER: Thank you Chairperson. Chairperson, it was agreed between all the parties last week already in your presence that we would be presenting oral argument to you and that if we wanted to supplement our oral argument with written Heads at the same time we could do that. We have done that, we are ready to argue. Yesterdays proceedings with respect to Mr Richard have very little effect on the argument. Most of what was said yesterday and today was emotional and we understand why it was said and why it was led but really, from a legal point of view it has no relevance to the argument. So what happened yesterday is really irrelevant for the purposes of argument. We would ask that the matter be argued now in public and my learned friend must respond to the best of his ability. We need to know, we still don't know on what basis he's opposing the applications, we need to know the basis for the opposition and we will argue then he can argue and we will reply and that can be the end of the matter, with respect.

MR DEHAL: Mr Chairperson, I support the sentiments my learned colleague, Mr Berger, has expressed. I simply want to add to that. There has to be a level of transparency, these are TRC proceedings, it's not ...(intervention)

CHAIRPERSON: We know that Mr Dehal, I might just say it's not uncommon for written Heads to be submitted, it happens in many, many hearings so it's not a question of us, if we allow written Heads not being transparent.

MR DEHAL: Certainly that wasn't the insinuation, sorry, I'm couching that submission on the following basis that Mr Richard is concerned about a response somewhat parallel to the lines of yesterdays response pursuant to his address. Now I can't see how that could possibly take place, I mean Mr Richard is a lawyer, he's going to address, we'll be cold and clinical in our address, legal and submissions, there's not going to be any emotional argument, I can't expect that, but we need to hear what his address is and we need to respond and unfortunately we cannot tell him or anybody what our response is until we hear what he has to say.

CHAIRPERSON: Yes, you see Mr Richard, what we intended after having very briefly consulted with my colleagues, we'd intend that the applicants can present their argument as they intended to and supplement it later with Heads. You can do the same but I think it's not

unreasonable that they should at least know the basis of the opposition. You can make any submissions here very briefly. We're going to give everybody the opportunity if they so desire to supplement whatever they say here but I think it would be reasonable for them to at least know what the basis is precisely of the opposition. I suppose one can infer from the line of cross-examination etc what it might be but ...(intervention)

MR RICHARD: Certainly ...(intervention)

CHAIRPERSON: Sorry, just one thing further, if any written Heads are to be submitted either in supplementation of what has been said here or as a complete argument then there must be terms, we've got to have some sort of time limit.

MR RICHARD: I have no problem in putting myself under terms to submit them by the end of the weekend, that's not the problem. I know what I will argue. However yesterday, during the discussions in Chambers, various requests were made which I took serious note of. From my lines of questioning some of my arguments are apparent and I do believe that it would be in the interests of the hearing and of the interests of the process not to have it said in a manner whereby reactions like yesterday might happen and I believe it might be consistent with the requests made of me yesterday, to do it by way of writing in the sterility of written Heads.

CHAIRPERSON: What do you say about Mr Berger, Dehal and Mr Kooverjee arguing now?

MR RICHARD: If they wish to proceed and I reply in writing I have no problem by Monday next week and I equally have no problem in them replying further to me.

CHAIRPERSON: Yes because I think that they should certainly have the right to reply.

MR RICHARD: Naturally.

MR BERGER: Chairperson, with respect, we had an understanding between all the parties that it seems that everything we seem to do here becomes unstuck.

CHAIRPERSON: Perhaps we should take a short adjournment and if you can discuss it and come through to Chambers and let's rather sort it out there than in front but it seems that very often things don't go on as expected but we'll take a short adjournment before argument but whatever happens we're ready to listen to arguments that you wish to present and we'll see if we can sort this out. I don't quite know what the exact nature of the problem is.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: ...(inaudible) to be oral argument, which oral argument may be supplemented by written Heads, which Heads will be submitted by an agreed time and we'll therefore proceed with the oral aspect of the argument now commencing with the applicants. Mr Berger?

MR BERGER IN ARGUMENT: Thank you Chairperson. Chairperson, you should have before you a copy of our Heads of Argument, copies have also been distributed to everyone else.

Chairperson, these Heads of Argument are styled on behalf of the first to the fourth applicants for whom I act but you will notice from my Heads that there are many occasions when I referred to the applicants meaning to refer to all the applicants because it just seemed more appropriate to deal with them as a class.

Chairperson, we seek amnesty for various acts committed by the applicants, the first to fourth applicants, as members of uMkhonto weSizwe, the military wing of the African National Congress. It's common cause that MK was involved in a struggle to overthrow the apartheid state and to replace it with a democratic non-racial one. This particular hearing is concerned with operations which were carried out between 1981 and 1986 in this province by cadres of special operations, special operations being a special military unit of MK, established by the ANC in 1979 with its own command structure reporting directly to the president, that is the president of the ANC.

Chairperson, from paragraph 3 onwards, 3 to 6 of the Heads, I set out the various positions occupied by the first, second, third and fourth applicants. In paragraph 3 where I say by 1981 the first applicant was already commissar of special operations. The reason that I used the date 1981 is because that's the time period which we are concerned. The evidence was clear that Mr Ismail became commissar of special operations in 1979 but the point is that by the time these acts were carried out he had already been made commissar of special operations. And then for the purposes of subsequent operations, for example the attack on the Why Not bar and the escape of Mr Gordon Webster, that operations having been carried out in 1986, the first one in 1985, the other by that stage was already commander of special operations and that was the position that he had until 1987 which is after the period with which we are concerned. The reason that I do it in the order of the fourth applicant, third applicant and second applicant is because fourth applicant on the evidence worked with first applicant, third applicant was a commander, a commander of a Sub-Command and second applicant was his second in command. There can be no doubt then that the applicants all occupied fairly senior positions and in some cases the most senior position in special operations of MK so there can be no doubt about authority which is required in terms of the Act.

Then from page 3, paragraph 7 onwards, I deal with the acts for which amnesty is sought. There is a list in bundle A1 which is attached to the amnesty application of the first applicant, Mr Ismail, which sets out a whole series of operations for which he seeks amnesty. The reference is there, he was either commissar, commander or chief of ordinance at MK. Not all of those operations, in fact most of them are not relevant for the purposes of this hearing and have been dealt with in the other hearing in Pretoria.

We stress in paragraph 8 what is contained in the first applicant's application and that is that he says:

"I'm applying for all acts committed by me even those which don't appear in this application. Those acts which were committed by me and those under my command and which fell under the political authority, direction and leadership of the African National Congress and its armed wing, uMkhonto weSizwe."

JUDGE PILLAY: Mr Berger, in view of the decision in the Cape High Court, whether we agree with it or not, we're stuck with that decision. When an applicant makes application for what in effect is blanket amnesty, are we entitled to consider that especially where there's a lack of identification of a particular event?

MR BERGER: Chairperson - or Judge Pillay, this application, this hearing is different from the hearing that I think you're referring to, the one of the 37, because there was no context of a particular period in time. We are dealing with the period 1981 to 1986 in this province and we are saying we've attempted to identify each and every act that could be associated with the applicants but we may be wrong.

JUDGE PILLAY: And you are saying even if the first applicant had forgotten that with the passage of time, if an event occurred and he's taking responsibility for it because it occurred in a particular period and in a particular geographical area?

MR BERGER: Yes and the same goes for the second applicant and the third applicant, they in their amnesty applications also do not specify specific acts, but what happened in their case...(intervention)

JUDGE PILLAY: If you deal with what they apply for, I'm talking of the second to the fourth applicants.

MR BERGER: The fourth applicant was in a different position to the second applicant, the third applicant and the first applicant. The first, third and second applicants were in command positions and had units operating under their control so they tried to identify in the course of the evidence and in the documentation those acts for which they accept responsibility committed by units under their control. The fourth applicant, his application is different and...(intervention)

JUDGE PILLAY: Are you arguing then that if an event occurred, similarly to the first applicant, the second and third would take responsibility for it merely because of the rung?

MR BERGER: Yes, yes, that is my argument.

CHAIRPERSON: So in the evidence Mr McBride's unit was a special ops unit and he reported to the first applicant, he didn't really, he wasn't really or was he answerable to any of the other applicants that held a more senior position than he did in the hierarchy in Botswana for instance, he wasn't -he didn't report to them, did he?

MR BERGER: No, he did. He reported to the Botswana Sub-Command, he received political training from the Botswana Sub-Command, he received military training and he also received materials from the Botswana Sub-Command. From time to time the first applicant would come down to Botswana and he would also be present and for example in relation to the Why Not bomb he was present to give final instructions.

CHAIRPERSON: Yes.

JUDGE PILLAY: You see, Mr Berger, my problem and maybe it's not a problem, it would not be a problem after you've argued, as I remember second, third and fourth applicant make application for distribution of explosive materials etc. Now if Mr McBride and any of his operatives in that unit did not receive approval from either of the second, third or fourth applicants, then whatever that unit did could not be attributed to that level of command but rarely to the high command being the first applicant. They testify specifically about crimes or would be crimes that occurred outside the borders of this country. If those would be crimes the question then arises were those crimes, if committed, prosecutable within the borders. If

the answer is in the affirmative then yes it falls within our jurisdiction. If not, well then it doesn't and that's where my whole argument is leading because I need to clear it up in our mind as to what the position is.

MR BERGER: Judge Pillay, I did deal with that in my argument but I submit that there are two issues. The first is what are the crimes for which the applicants could be prosecuted and the second is, once having established those crimes are those crimes prosecutable inside South Africa or not and I'm dealing now only with what are the crimes and I will come on to whether or not they are prosecutable in a moment.

The fourth applicant, his amnesty application starts at page 97 of bundle A and he sets out at page 98 the various operations in which he was involved and relevant to ...(intervention)

JUDGE PILLAY: On what page in your Heads do you deal with this?

I just want to make notes next to the paragraph?

MR BERGER: I'm still on page 3.

CHAIRPERSON: The fourth applicant deals with the bomb at the Why Not bar at page 99 of his application and he's specific. The second and third applicant and this is dealt with in paragraph 9 of my Heads, firstly at page 89, this is the application of the second applicant, paragraph 9a(i) he says:

"During my time in exile I was active in special operations and I ensured that weapons were brought into the country. I participated in training cadres who were to be infiltrated into the country. I also trained people specifically in the preparation of car bombs and assisted in the procurement and preparation of materials to this end. I endorse the application made by the then commander of special operations, Aboobaker Ismail. Throughout the time I spent outside the country I was based in the front areas. A number of cadres were under my general command whilst they were based in the country in terms of communication, finance and the supply of weaponry."

He doesn't identify specific events in his application. Similarly, the third applicant at page 95. He says in paragraph 9a(i):

"I endorse the submissions made by the ANC and uMkhonto weSizwe to the Truth Committee on Human Rights Violations as well as the general NEC declarations submitted to the Amnesty Committee. I take command responsibility for all acts which took place within South Africa committed by units under my command from 1981 where these actions fall within the general policy guidelines of the African National Congress. I do not know at this stage whether all the operatives have applied for amnesty but hope that my submission will cover them if they have not. Detail regarding the task and mandate of special operations has been provided in the amnesty application of Aboobaker Ismail. I endorse this. If there are any operations for which I hold sole responsibility I will answer accordingly."

So again accepts, says "I was in command, I accept responsibility, I'm applying for amnesty for all acts and offences which are attributable to me" but he doesn't detail them.

There was then correspondence with the TRC between, well between the TRC and my instructing attorney and that is provided for in terms of the Act, Section 19 of the Act.

Section 18 deals with applications for amnesty. Section 19 says that the Committee can ask for further information which it did, ask questions like "who is Chris, who is Oupa, who is Teaman?" On the basis of all that information the first, second, third and fourth applicants were placed together in this amnesty hearing because their applications relate to activities which took place in this province.

I set out in paragraph 10 that the difficulties experienced by those who occupied command positions, first, second and third applicants, that they are not able to list each and every operation carried out by cadres under their command and I set out the reasons for that as we've already discussed.

Now I come to well, what offences have they committed?

What offences have been identified either in their applications or in the course of the evidence before you. We make the submission in 11 that there can be no doubt that the first to fourth applicants were involved in training, commanding, assisting and arming various units of special operations with the sole purpose of infiltrating those unit into South Africa so that they could carry out attacks on property and personnel. There can be no doubt about that.

CHAIRPERSON: Yes we know from the evidence that arms were supplied in Gaborone, packed in the boot of the vehicle, whatever and taken across. Taking that offence and taking into the account this latest decision. Have you seen the decision of Veenendal and Stopforth? It's a decision of the superior court of appeal. If one sees the second leg of the reasoning of the judges in that argument, I think the first section they distinguish quite clearly that the subject matter of that case was involved at that time South West African politics rather than South African politics, were attack against UNTAG and all that sort of thing and it didn't have anything to do with our conflict of the past but then they go and say in any event they conclude that it was not the intention of the legislature to grant this Amnesty Committee a bigger jurisdiction than the courts of law and unless the offence is prosecutable in South Africa we don't have jurisdiction. With the greatest respect I personally have difficulty with that reasoning, I personally believe that it was the intention of the legislature to include acts because they didn't deal with the civil liability etc, they just confined to criminal acts so I put it difficult but it is the appellate division. What do you say our jurisdiction is taking into account that decision and let's just at this stage restrict it to the acts of supplying and handling and dealing in arms in Botswana.

MR BERGER: Chairperson, that was the second leg. Let me go directly to that and then I'll come back. Whether or not one agrees with the Supreme Court of Appeal that the conflict in Namibia was not part of our conflict is debatable, that's what the SCA has said, I'll accept that for present purposes. The court said in that case and I'm reading from page 11 of the typed judgment, said that:

"In analysing the jurisdiction of the Amnesty Committee it is clear that a purposive interpretation should be given to the TRC Act."

And that was because the Act uses the words "any act within or outside South Africa" and the SCA said well, it couldn't have been that wide, that's absurd. At 12, paragraph 22, the SCA says:

"What appears from the preamble of the TRC Act is that amnesty is to be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past"

and then says that that conflict had to be conflict between groups within South African society.

JUDGE PILLAY: Aren't they right because the attack that we're talking about was against UNTAG?

MR BERGER: Well, Judge Pillay, if Veenendal and Stopforth had been forthcoming they probably would have said that the attack at UNTAG was directed at derailing the independence process of Namibia which would have had a domino effect on the processes in South Africa.

JUDGE PILLAY: That could be argued but strictly speaking it was a - it wasn't apparent that it was connected to a conflict of this country.

MR BERGER: And I'm happy to accept it on that basis for the purposes of my argument because Judge Olivier says that the constitution talks about reconciliation between people of South Africa and the reconstruction of society and this is at page 13 of the typed judgment and then says:

"It further states that amnesty shall be granted"

and then emphasises:

"in order to advance such reconciliation and reconstruction".

JUDGE PILLAY: Isn't the difference the distinction of that case, our present case as follows, that assuming that what happened in the then South West Africa was an attack independent of South Africa's interests and against UNTAG and what was happening in a foreign country whereas in this case the second, third and fourth applicant had every intention to consider themselves South Africans, by fighting an internal war outside because they were forced to and therefore falls within the jurisdiction?

MR BERGER: Judge, that's exactly the point I was coming to, yes. Judge Olivier emphasises again and again our South African past, our deeply divided society and then says in the middle:

"the envisaged amnesty must be given to reconcile opposing South African people"

and that's exactly what we are dealing with here, we're dealing with Committee

CHAIRPERSON: Yes I know that but take a look at paragraph 34 and 35, those are the ones which concern me, which I with the greatest of respect have difficulty with but which we are bound by.

MR BERGER: Chairperson, you are not bound by them.

CHAIRPERSON: Well I was going to ask, seeing we're not a court of law to what extent is this binding?

MR BERGER: No, it's not because you're not a court of law,

Chairperson, you're not bound by them because they arbiter. The court came to the conclusion in paragraph 33 and said for the above reasons the Amnesty Committee is not competent to grant amnesty to the appellants as sought by them and then goes on in the paragraphs, Chairperson, that you're concerned with, that there's an alternative way. It wasn't necessary for the court to make the finding in paragraph 34 onwards because the finding had already been ...(intervention)

CHAIRPERSON: Now do you agree with paragraphs 34 and 35 because if you are in agreement then we have no jurisdiction?

MR BERGER: No, I don't agree with paragraphs 34 and 35 but even if you were bound by them I have an argument there as well. The reason that I submit that if I can move to 34 and onwards, the principle of - if I can call it the judgment before paragraph 34, the ratio of the judgment, is that whilst the Act, its section 20(ii) 20(ii), speaks about an act which was advised, these are acts for which one gets amnesty advised, planned, directed, commanded, ordered or committed within or outside the republic and the court said we can't read within or outside the republic without qualification, we have to confine it to acts which affected our conflict, acts which were between South African actors if one can call it that. So ...(intervention)

CHAIRPERSON: In the first leg of the argument but not on 34 and 35, it goes much wider, he just says that it was never the intention of the legislature to give the Amnesty Committee greater jurisdiction than the court?

MR BERGER: Judge if I could just, the point about the ratio of the judgment, as far as the ratio of the judgment is concerned, it doesn't effect these proceedings, it doesn't hinder amnesty being granted in these proceedings. Alright, from there onwards, the alternative argument which I submit is arbiter. A South African court will only have jurisdiction - it says that the Amnesty Committee will only jurisdiction if a South African court had jurisdiction. I submit that that's not correct because the clear wording of the Act is that amnesty will be granted in respect of acts committed outside South Africa.

CHAIRPERSON: And also this reasoning here, it confines itself to criminal and it doesn't take into account the civil liability and surely if somebody would have their jurisdiction to sue somebody who caused him damages in the Eastern Cape for instance, if they both lived there and the damages were inflicted in Angola while they were out there on exile as MK cadres, let's say.

MR BERGER: Indeed, indeed Chairperson, that's the point that I had noted here and that is that as far as delicts are concerned, even if the act was committed outside the republic, one could sue a person responsible for that act inside the republic and one could give the South African courts jurisdiction by attaching property to either found or confirm jurisdiction.

CHAIRPERSON: Or if he resides here, the defendants place of domicile or residence would confer jurisdiction?

MR BERGER: Indeed so if there's jurisdiction then it falls within 34 onwards and if there's no jurisdiction, one can give the courts jurisdiction by attaching property to found jurisdiction but then Chairperson I submitted that even if I'm wrong in everything that I've said up to this point, the Supreme Court of Appeal speaks about treason as being an exception to the rule and quite clearly what Mr Ismail and the second, third, fourth, every applicant in this matter was trying to do was to overthrow the State so they're all guilty of treason against the apartheid.

JUDGE PILLAY: I don't know to what extent my following question helps, do you think the second, third and fourth applicants would have been triable or prosecutable for what they did had they been found in the country?

MR BERGER: Undoubtedly, undoubtedly they would have been tried.

JUDGE PILLAY: Would the defence that what they committed was outside the borders of the country have?

MR BERGER: No it wouldn't because they would have been convicted on the basis of the doctrine of common purpose and that was where I was going.

ADV SIGODI: Yes, but would they be triable under the new government?

MR BERGER: Yes, for the offence of murder, yes.

ADV SIGODI: But possession of arms only would they be triable under the new government if they possessed the arms outside the borders?

MR BERGER: No, if the offence is possession of arms only, no and that offence was committed outside the republic then as far as criminal prosecution is concerned, they would not be prosecutable inside South Africa. The distinguishing feature in my submission is one has to ask the question where are the effects of the crime felt? If it's possession *per se*, the effects are felt outside the country but when it comes to murder, attempted murder, malicious damage to property, the effects of the crime are felt inside the country and by virtue of the doctrine of common purpose which I deal with and particularly the case of State vs Nzo, which is not referred to in my Heads but it is referred to in a footnote in Lawser ...(intervention)

CHAIRPERSON: I'm sure a couple of years ago you wouldn't have agreed with this?

MR BERGER: Judge, I think that the wording of the judgment is - protocol constrains me to describe the wording as unfortunate but be that as it may, the principle is still part of our law.

JUDGE PILLAY: I think the way I see it, what they did was an important cog of the whole operation without which the operation would fail and therefore they must be included in the holistic view of what occurred?

MR BERGER: Indeed and once one takes that approach then the doctrine of common purpose attributes every act of one actor to the other and so the act of for example Mr McBride inside the country is attributed to applicants outside the country and therefore they can be tried and sued civilly.

JUDGE PILLAY: Mr Berger, we've got to deal with what they're actually applying for then because that's a bit mysterious.

MR BERGER: My submission then is that the judgment of the Supreme Court of Appeal in Stopforth and Veenendal is no bar to amnesty in these proceedings.

Then I come back to paragraph 12 which is the act, the actual act. With particular reference to the attacks with which this hearing is concerned, we submit there can be no doubt the first, second, third and fourth applicants all in one way or another have made common purpose with the unit commanded by initially Mr Webster and later the fifth applicant. The first applicant issued orders directly to Gordon Webster and to the fifth applicant Mr McBride to carry out attacks in South Africa against property and personnel. The second, third and fourth applicants gave further political and military training to Mr Webster and the fifth applicant and provided them with arms and ammunition to carry out such attacks inside South Africa. The second and fourth applicants packed the fifth applicant's vehicle with explosives that were used in the car bomb outside the Why Not. The third applicant gave the fifth applicant training in the construction of various explosives devices including a car bomb. In fact the third applicant would have packed the car as well with explosives if he hadn't been arrested so there can be no question of any act of ...(intervention)

CHAIRPERSON: How far do you take causation, you know I trained somebody in Russia, are those Russian trainers also now because they trained somebody liable for prosecution whatever because at some unknown time after the training one of their trainees who is now a trained person using his expertise gleaned from them commits an operation. Isn't that taking causation a bit, the link isn't it getting a bit tenuous now?

MR BERGER: Two points Chairperson. Firstly, for the doctrine of common purpose causation is not a factor.

CHAIRPERSON: Yes but I mean the fact that you train somebody, does that mean that you're going to be responsible for all the acts of everybody you trained for ever more?

MR BERGER: Chairperson, I don't fortunately believe I have to answer that one because the facts of this case of far more narrow. We have a situation where Mr McBride was recruited in 1985 and he was arrested in 1986. We're talking about a very short period of time relatively speaking. It was during that period time that he was in and out of the country to Botswana and back. The Sub-Command in Botswana were training him, arming him, ...(intervention)

CHAIRPERSON: So all these second, third and fourth, are you arguing because they trained him now they are entitled to amnesty in the blowing up of a pylon at Shangwene and a water pipe and the copper shop and all that?

MR BERGER: Yes, that was their specific purpose, their specific purpose was to train him, to arm him, to infiltrate him into the country so that he could blow up pylons, substations and attack enemy personnel and collaborators. That was their sole purpose and we're talking about in a period of nine months or less so I would submit yes, they are prosecutable for each and every one of the acts committed by Mr McBride and his unit and therefore they're entitled to amnesty for all of those acts.

JUDGE PILLAY: Mr Berger, the test for common purpose as I understand it when I long last read the criminal law and that the last time I understood is to be guilty on a basis of common purpose, he was either been present at the commission of the crime and psychically or physically contributed to the commission thereof. Now how does the second, third and fourth applicants comply with either physically or psychically contributing to the commission of the crime?

MR BERGER: Judge, they don't have to physically be there. They commanded a unit which they sent in into South Africa to blow up a substation. It is no different legally, I'm not equating the two, but it's no different legally from me or my arming Mr van den Berg on my right hand side to go and rob a bank, we're sitting in Durban and I send him up to Johannesburg to go and rob a bank. In the process he shoots the teller. I am liable - it's as if I pulled the trigger in Johannesburg even though I'm sitting in Durban and that is because I sent him up to Johannesburg for the purpose - I didn't know which bank he was going to but I knew he was going to go and rob a bank and I foresaw the possibility that someone could be injured or killed as a result and nevertheless I sent him up.

CHAIRPERSON: But if you taught him, he said okay, I want you to be part of my gang and you taught him how to fire a rifle, AK or whatever and then you never saw him again or if you saw him you saw him sporadically, would you then be responsible for each and every bank robbery that he committed, that you didn't even know was going to happen?

MR BERGER: Probably not but again unfortunately I don't have to go that far because - and the analogy is that I kept on sending him up to Johannesburg to rob banks and I kept on giving him a gun and I kept on arming him and I facilitated his entry up to Johannesburg and his exit from Johannesburg because Mr McBride went up, the evidence is Mr McBride went up to Botswana at least five times during that period. In fact Ms Narkadien said that they went up to Botswana almost monthly. So it's not just training, it's training, facilitating, arming, commanding, instructing and for a single purpose and that is to cause damage to property and personnel. Classically, it fits squarely into the definition of common purpose and I submit that if one goes back to what Judge Olivier said, that is precisely the purpose of this legislation, that's precisely the purpose for which the Act was conceived, was to - the reason the Act talks about within or outside South Africa is because the drafters of the legislation recognised that one side was outside except for the operatives of course who were inside but the entire command structure of MK was outside.

CHAIRPERSON: That's what gives me the difficulty in understanding this alternative in the judgment of Stopforth's case because you know they came to the conclusion that there was never the intention of the legislature to allow us to grant amnesty for offences that were committed outside.

JUDGE PILLAY: Is the Truth and Reconciliation Act in that section capable of any other interpretation?

MR BERGER: No, obviously the Act as I've already said, the Act wasn't intended to grant amnesty for possession of arms in Botswana because the Act doesn't bind the Botswana courts so whether or not we grant amnesty in South Africa, one could still be prosecuted in Botswana but it's for the consequences of those actions and because those actions then have results in South Africa. For example, the people who placed the bomb on board the airliner that crashed at Lockerbie, they were not in Scotland when they placed the bomb on the plane. The effects were felt in Scotland and that's why the Scottish authorities had the power to get them to come and stand trial in Scotland. It's - well, the compromise was in Scotland but the point is they were extraditable to stand trial ...(intervention)

CHAIRPERSON: By Scots in Holland I think.

JUDGE PILLAY: But then Mr Berger, then the application should on behalf of the applicants, second, third and fourth applicants cannot out of necessity be restricted to possession of arms and explosives but must be directed at rather the results as approved in South Africa.

MR BERGER: Indeed they're not limited to possession.

JUDGE PILLAY: But was limited to possession of firearms and arms and distribution thereof. I don't know where I got it, we've gone through so much evidence.

MR BERGER: No Judge, Mr Pule at 89 says:

"I ensured weapons were brought into the country, I trained, I infiltrated, I trained people in car bombs. These are the acts for which I seek amnesty."

The offences that those Acts constitute because the Act is a little vague on this, it says in Section 20(1) -

"If you comply with the three requirements, the formal requirements, political objective, full disclosure"

It says:

"The Committee shall grant amnesty in respect of that act, omission or offence."

The act, the act is the act of training, commanding, infiltrating or assisting. I say I did that and come to this Committee and I seek amnesty for that act. The offence that I've committed by that act is the offence of murder, attempted murder, or malicious injury to property by virtue of the doctrines that I've outlined. So if I get amnesty for that act or those acts of commanding, assisting, facilitating, I must of necessity get amnesty for the offences that those acts constituted.

JUDGE PILLAY: ...(inaudible)

MR BERGER: Indeed because otherwise one would have the absurd situation where one - I get amnesty for furnishing the weapons, I get amnesty for giving the instructions, I get amnesty for facilitating the return of the unit into South Africa.

CHAIRPERSON: But the actual act of training itself is not necessarily an offence, I mean if you teach me how to shoot a gun, it's not illegal, is it?

MR BERGER: It's the consequence of that action that one has to look at.

CHAIRPERSON: The actual training is not necessarily an offence?

MR BERGER: Well it would have been an offence inside South Africa if the authorities had captured Mr Ismail and brought him back to South Africa.

CHAIRPERSON: Yes.

MR BERGER: He would have been prosecuted for training and would have been prosecuted for a lot more. So to answer your question, Judge Pillay, there is nothing in the applications which restrict them to "I'm just applying for amnesty for possession." All the applications say: "I committed these acts and I'm asking for amnesty and I submit that the amnesty would be for murder, attempted murder and malicious injury to property.

JUDGE PILLAY: There's no actual provision in the application form to deal with the offences?

MR BERGER: No when it deals with - it just says "furnish particulars of the acts, omissions or offences associated with a political objective and then later on it says if you were prosecuted then you must give details of the prosecution.

Just to finish the thought on that point, it would lead to absurd results if the second applicant for example was given amnesty for training, facilitating, arming, etc., but nevertheless could still be prosecuted inside South Africa or more realistically could be sued civilly because the effect as the Committee knows, if I get amnesty for a particular act, that extinguishes any civil claims against me but it would be absurd if I could get amnesty for those acts and yet still I could be sued civilly. That isn't what the Act intended at all and that's why the Act says you get amnesty for particular acts because in getting amnesty for that act, you are then indemnified both criminally and civilly. I don't know if there's ever been any amnesty decision which says you're indemnified for the delict of assault.

JUDGE PILLAY: If you're granted amnesty the Act kicks in and includes everything?

MR BERGER: Precisely, yes.

13 deals with Mobil Refinery and that goes without saying.

We deal with the doctrine of common purpose in 14, the Lawser references are then and they include references to all the cases. It's interesting just to read in Lawser at page 135, it's part of paragraph 126, there's a reference to State vs Neary in footnote 4 and there's a quote there saying that the court stated at 791 (b) to (c):

"Each member of the gang must in such circumstances be taken to have conferred a mandate on other members to attack the Security Forces although separated from the main body and it is no answer that it would not be possible for them to know in advance the circumstances in which such murders might be committed by a separated member of the gang."

Again a very unfortunate wording.

JUDGE PILLAY: What page is that?

MR BERGER: This is again from paragraph 126 of Lawser as sighted in paragraph 14 of my Heads, it's at page 135 of the volume. I deal with the offences in paragraph 15, murder, attempted murder, malicious injury to property, treason and then in 16 I deal with delict and a quote there from, MacKenzie vs van der Merwe reads as follows, although on the facts of that case the result was different but the appellate division stated the law as follows, it was Solomon J.A. said:

"Under the *lex Acquilia* not only the persons who actually took part in the commission of a delict or held liable for the damage caused but also those who assisted them in any way as well as those by whose command or instigation or advice the delict was committed."

To a similar effect is a passage which was quoted from Grocious(?) that:

"Everyone is liable for a delict even though he has not done the deed himself who has by act or omission in some way or other caused the deed or its consequence : by act that is by command, consent, harbouring, abetting, advising or instigating."

I would submit that there is no doubt that the first four applicants fall squarely within that dictum.

Chairperson, dealing with then the requirements for amnesty, Section 20(1) sets out the requirements. We don't know on what basis they're opposed, my learned friend, Mr Richard, said at the beginning everything is in dispute, nothing is admitted. It will be clear from what I argued just now that my submission is that nothing is in dispute, everything is admitted it would appear.

There's been no suggestion that the applications themselves are not formally valid and I submit that that deals with Section 21(a). As far as political objective is concerned, one has to look at the provisions of the Act. There can be no doubt that the applicants were motivated by their desire to further the political struggle of the ANC. There can be no doubt that as commanders of special operations the first to the fifth and I include Mr McBride in this acted throughout within the course and scope of their duties and within the scope of their express or implied authority. There can be no doubt of that.

I deal in 22, Chairperson, with the point that we've already debated about conduct being inside or outside the borders of South Africa. I deal with the doctrine of common purpose in

22(i) and there within or outside in 22(ii). I'm not going to repeat the argument. So our submission then is that the first to the fourth applicants have satisfied the requirements of Section 22(a), (d) and (f) of the Act. I've never been able to determine whether (g) is still part of the law, some people say it's been deleted, others say it hasn't, but if (g) is still there (g) would be applicable as well but it's not necessary to go into that.

As far as (3) is concerned, we submit that we have satisfied those provisions. There can be no doubt that the acts for which we seek amnesty were committed by us as soldiers of uMkhonto weSizwe. We targeted the economic infrastructure of the country, we targeted Security Force personnel, we targeted collaborators.

We say in 25 that the applicants attempted to avoid civilian casualties but accepted that civilians could be killed or injured in the course of the operations sanctioned by them. This was in line with Kabwe.

It's opportune for me at this point, Chairperson, to refer to another amnesty decision. It's the decision of the Amnesty Committee in the matter of Masina, Ting-Ting, Masango, Potsane and Makura. I have a copy of the decision, I can make it available. Indeed the Ice Unit, sent into the country as an assassination unit ...(intervention)

CHAIRPERSON: Two of us sat in that, myself and Advocate Sigodi.

MR BERGER: Was that the ...(intervention)

CHAIRPERSON: In Mapapani and Odie, yes.

MR BERGER: Yes there was a continuation of that hearing at Telkom Park in Pretoria.

CHAIRPERSON: Okay now I sat in the Odie one with Advocate Sigodi.

MR BERGER: I was a little surprised Chairperson because I was at Telkom Park and I didn't see you there. I have a copy and I will make it available but one of the incidents there was the Silverton incident where a bomb was placed at a Whites only bus stop targeting the bus stop because it was a Whites only bus stop and at page 7 of the decision the Committee said:

"The applicant's unit decided upon this attack in the wake of what they referred to as the massacre of people in Mamelodi by members of the South African Defence Force during protests against rent increases. This incident moreover followed upon the ANC's Kabwe Conference during June 1985 where a policy decision was taken to abolish the distinction between soft and hard targets in the course of MK military operations. Under these circumstances, the unit identified the Whites only bus stop as an appropriate target for attack since it *inter alia* symbolised the system of apartheid. The intention was to focus the attention of Whites on the liberation struggle and the effects of the liberation war being waged by the ANC by inflicting casualties upon the White population the apartheid regime would be pressurised by and isolated from its electorate".

Then there's a description of what exactly what happened there and concludes:

"Having carefully considered the matter we are satisfied that the applicants comply with all the requirements of the Act. The incident clearly constitutes an act associated with a political objective as provided for in the Act and the applicants have made a full disclosure of all relevant facts. In the circumstances, amnesty is granted to all the applicants in respect of all the offences including attempted murder and malicious injury to property which resulted from the detonation of a limpet mine on 4 July 1986 at or near Silverton."

I make that available. This case, this amnesty hearing, I submit doesn't even go as far as the Silverton bomb. The facts of this case I submit are far closer to attacks on security personnel than the attack on the Silverton bus stop. We say in 25 that we must stress and this is in response to Mr Richard's continual cross-examination of would 5 be acceptable, would 6 be acceptable, what percentage would be acceptable? Mr Ismail says 50 percent, Mr Dumakude gives another percentage. We've all read the documents, the editorials, it's in the bundle of what came out of Kabwe, we've read the ANC's submissions about what came out of Kabwe and we've heard Mr Ismail's evidence. Kabwe did not stipulate what would be an acceptable proportion of civilian targets and we submit that that is important. Kabwe said the war is going to be escalated and the distinction between hard and soft targets is going to disappear. If in the course of attacking Security Force personnel, civilians are killed, that is the unfortunate consequence of where the struggle is going now.

The first applicant, Mr Ismail, confirmed that the assessment as to what was acceptable in any particular operation was left to the commander on the ground. So the 5 percent, 10 percent debate with respect, is irrelevant.

As far as the question of a revenge attack is concerned, we submit that this question is misconceived. Section 23(ii) "excludes those attacks which were committed out of personal malice, ill will or spite", I'm quoting, "directed against the victim of the act concerned". There has been no suggestion whatsoever that any of the applicants acted out of malice, ill will or spite. In any event, even if I'm wrong in all of that, we submit that the evidence of both Mr Ismail and Mr McBride makes it clear that the attack was not a revenge attack at all. So we submit that we've satisfied the requirements of Section 20(iii). If one goes through the various provisions of 20(iii) one can see that there's an answer for each and every provision, an answer which is apparent and I do not intend, unless Mr Richard has a specific problem with any one, I will then deal with it in reply but at this point I submit we satisfy them in all.

Then we come to full disclosure. Section 21(c) makes that requirement. I've made the point before in exchanges before the Committee and I can't stress it enough. Mr Richard did not suggest to a single applicant that they had not made a full disclosure. It was never put, one can search the records for a single suggestion, it's not there. In the as yet unreported decision and I have only an extract of it because it's a huge decision of the constitutional court decision in the SARFU matter ...(intervention)

CHAIRPERSON: I think that what is quoted there is trite.

MR BERGER: Thank you Chairperson. So we are then entitled to accept and we were entitled to accept after the applicants had testified that their evidence is not being disputed.

CHAIRPERSON: On that, Mr Richard didn't have much ammunition to dispute, I mean there wasn't really witnesses who could put facts into dispute, there wasn't any sort of opportunity for factual dispute.

MR BERGER: Well Chairperson, then the evidence stands uncontradicted and undisputed?

CHAIRPERSON: Then one must have recourse to, when one's looking at it, to probabilities etc.

MR BERGER: Indeed but even then if there were probabilities which were apparent, they should be put to the witness, they should have been put to the witness to say well I don't have facts to support - to say that you haven't make full disclosure but on the probabilities you can't be telling the truth on this point because of x,y,z so that the witness has an opportunity to deal with it.

CHAIRPERSON: And then of course one would also have to look at all the evidence and see if there's contradictions between ...(intervention)

MR BERGER: Between the witnesses?

CHAIRPERSON: Yes, the applicants.

MR BERGER: And that's what I deal with in paragraph 31. I say that to the extent that the first applicant and the fifth applicant differ in their recollection of a detail and that is supposed to be bold, a detail in their June 1986 discussion, the difference is irrelevant and the detail that I'm referring to is that Mr McBride says:

"When I spoke to Mr Ismail, besides all the things that I said, I also said I had identified possible targets which were pubs."

He speaks about - or a pub. Mr Ismail says:

"No, I don't recall that."

And that's the difference.

I submit that that is irrelevant and the reasons I say that are the following.

One, there's the passage of time and one cannot possibly expect people to recall every detail the same. It's not going to happen. But that's not important.

Mr Ismail testified that he would still ...(intervention)

JUDGE PILLAY: Are you saying Mr Berger that the allocation or choosing of a particular target for a bomb is just not any detail, it is the detail?

MR BERGER: Indeed, but that detail was never discussed, it's common cause between Mr Ismail and Mr McBride that it was not discussed that it would be the Why Not bar, it was not discussed that it would be on the Marine Parade, in fact the location of the target was not discussed at all. What was discussed and this is the important part is that I have done reconnaissance, I have reconnaissance on a location or several locations where there is a concentration of Security Force personnel. Mr Ismail says "good". Mr McBride says "but, I must tell you that that target or that potential target has the possibility if we attack it, it has the possibility of causing civilian death or injury". So he's unidentified, we're going for Security Force personnel but it's in very close proximity to civilians and that is the debate that occupies the mind of ...(intervention)

JUDGE PILLAY: That's common cause between the two witnesses?

MR BERGER: Indeed and that is what prompts the discussion about the Kabwe Conference because Mr Ismail says "we've now taken this decision, you can go ahead with the operation." I asked Mr Ismail, I said to him:

"If Mr McBride had said to you 'give me all the information, concentration of Security Force personnel, close proximity to civilians, the place is called the Why Not and it's situated on the Marine Parade', would you still have given him the go ahead for the operation?"

He said:

"Yes, I would have."

I deal with what's common cause between the parties between the applicants in 31(iii) and I submit that whether or not Mr McBride said it is a pub is not relevant because think about it, it's a concentration of Security Force personnel in close proximity to civilians and oh yes, the other point in agreement between the parties is that Mr Ismail said "whether on duty or off." So there's all sorts of possibilities, off duty policemen in close proximity to civilians. It could be a bar, it could be a restaurant, it could be a game, it could be a meeting but that it is in a civilian area or close proximity to civilians is common cause between the parties and that's the importance and Mr Ismail says "that's what was said at Kabwe, go ahead." So there can be no doubt that Mr McBride was given authority to proceed on the basis of a lack of information that he had given to Mr Ismail. Mr McBride had pertinently raised the problem of civilian casualties and Mr Ismail had said you can go ahead.

There's no reason to - oh I see, I've gone past one.

CHAIRPERSON: Finish your argument and then we'll have a half hour lunch.

MR BERGER: Thank you Chair. I'm just checking to see if there are any document I had to refer to. No there are not.

I make the submission in 31(iv) that there can be no doubt, there can be no reason to doubt Mr Ismail's evidence that he believed that the target of the car bomb would be one where there was a concentration of Security Force personnel in close proximity to civilians. Mr

McBride's previous operational record was more than sufficient to justify Mr Ismail's faith in him.

Similarly, there is no reason to doubt Mr McBride's evidence that he believed the Why Not bar to be infested with Security Force personnel. The only evidence that we have other than Mr McBride's evidence of whether Security Force personnel frequented the Why Not bar is the evidence of Ms Kearney. Her evidence was that a lot of Security Force people did frequent the bar, she knew of at least twenty and she said there could have been others who frequented the bar. Now Mr Richard will no doubt say well 20 out of 600 is not a lot and do the sums accordingly but I wonder if one actually thinks back to 1986, if one puts oneself in the position of going into an establishment and someone says to you "do you know that there are 10 security policemen in here tonight?" I for one wouldn't have stayed there very long. To have an idea that there are - Ms Kearney spoke about, I think it was a Saturday afternoon or Friday afternoon?

CHAIRPERSON: Fridays 3.30 plus minus.

MR BERGER: She remembered a specific incident on a Friday afternoon where there was five security policemen and three traffic officers and Chairperson, while this may have been the in place for certain people it was also the in place for Security Force personnel on the evidence that we have. C.R. Swart Police Station was nearby, they went there, whether they went there in droves is irrelevant, Mr McBride had information ...(intervention)

CHAIRPERSON: I think as far as your argument is concerned, I'm just putting this up, Mr Berger, let's just assume that an operative, let's move it from this case, came to Mr Ismail and said "look, I've done reconnaissance, I've got this information, this information, this information", told him a pack of lies, hadn't done anything whatsoever but told that to Mr Ismail, then Mr Ismail then says "well, that's acceptable to me, that's fine, go ahead." The fact that he hasn't done any recce work etc, would that effect Mr Ismail's application?

MR BERGER: No, as long as Mr Ismail could show that he was bona fide.

CHAIRPERSON: Yes, that's what I'm saying, so far as your clients are concerned it's not all that important, it sort of stops at the information given by Mr McBride to Mr Ismail and then he, acting on his past record etc. and on what he has told, gave the order or the go ahead?

MR BERGER: That is so Chairperson, but I submit that one whilst it might be correct to draw a line after applicant number four, one should look at the full picture. We know the full picture and we know that not only did Mr Ismail have reason to believe but was justified in accepting that information because one must look at it in the context as I tried to point out to Ms Welgemoed this morning, one must look at it in the context of initially an attempt to attack the Natal Command, everything that was done after that and before the bomb went off at the Why Not was within the context of not being able to attack Natal Command and we know that Mr McBride did do reconnaissance and he wouldn't have been doing reconnaissance if his aim was not to attack Security Force personnel and that I deal with in 31.6 and 31.7 and I say that's within that whole context that Mr McBride was instructed by Mr Ismail to do reconnaissance on other points where there were concentrations of enemy personnel whether they were on duty or off duty and it was in the context of that, that Why Not was selected as a target.

Chairperson, obviously it's for my learned friend, Mr Dehal, to take it further for Mr McBride. So we make the submission that the applicants, in particular the first to the fourth applicants have made a full disclosure of all relevant facts and for the acts and offences for which I have outlined above and before, we ask for amnesty. Thank you.

CHAIRPERSON: Thank you Mr Berger. I think this would be an opportune time to take the lunch adjournment. Would half an hour be alright so that we can make sure that we don't have to go across to tomorrow? Thank you. We'll take a half hour lunch adjournment.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Yes thank you. Mr Dehal?

MR DEHAL IN ARGUMENT: Thank you Mr Chairperson. Mr Chairperson and Honourable Members, my Heads of Arguments I presume are now placed before each of you, they were typed and that bundle is now before you. Much of what is contained in my Heads and indeed that which I intended to add thereto, particularly in the nature of legal argument has in fact been exhaustively covered by Mr Berger and in a manner and to an extent that covers the applicants I represent and indeed those that Ms Kooverjee represents. To that extent I think it would be futile for me to repeat them least there be an incorrect ...(intervention)

CHAIRPERSON: We don't need you to repeat anything that Mr Berger said we accept what you say.

MR DEHAL: I thank you, Chair. Mr Chairperson, I then will deal briefly with the Heads that I formulated. I begin by making the point that and this again Mr Berger made inasmuch as it's not a legal argument, that whereas originally the applicants Ms Kooverjee and I represent were of the view that most everything was an issue, it does appear at this stage in the proceedings that that is substantially different and then the second paragraph I make the point that the applicants, Mr McBride, Narkedien, Lecordier, have all through their very lengthy statements and indeed generally in their evidence made full disclosure and have shown that all the operations were associated with political objectives committed in the course of the conflicts of the past and it can hardly be said that the cross-examination of any of these applicants has controverted, negated any aspect of their application.

I then, Mr Chairperson, deal with (iii) of Section 20 of the Act and to the extent that each of those sub-sections are relevant. I deal with them briefly in paragraph 3 and I make the points that all are applicable positively in favour of the applicants. Briefly I say insofar as all the applicants are concerned and in particular as to the criteria to be referred to, to decide whether all their operations were acts associated with a political objective, it has not been controverted that (a) the applicants were all members of the African National Congress and in particular members of its armed wing known as uMkhonto weSizwe, (b) now relative to Section 20(3)(a), their motive in carrying out such operations was indeed to overthrow the apartheid State and to replace it with a democratic non-racial one. (c) Again in regard to Section 20(3)(b), such operations were committed in the course of or as part of the political uprising, disturbance or event or in reaction thereto. In regard to Section 20(3)(c), the applicants have made full disclosure and dealt fully with the legal and factual nature of the act including the gravity their acts in regard to which applicants McBride, Ms Narkedien

have been tried by a court of law, convicted on many counts, sentenced and who have served their sentence fully.

As to (d) of Section 20(iii), the object or objective of their operations were primarily directed at a political opponent or State property or personnel or against private property or individuals.

As to sub (e) of Section 20(iii) all their operations were committed in the execution of an order of or on behalf of, or with the approval of the organisation, liberation movement, MK, of which the applicants were members and or agents and are supporters.

As to (f), the relationship between the operations and the political objective pursued and in particular the directness and proximity of the relationship and the proportionality of the act to the objective pursued.

Mr Chairperson, more importantly, it has not been shown by any of the victims or by the evidence leader that any of the operations of any of the applicants falls within the purview of the provisions of Section 20(3)(i) and (ii), namely that any of the operations were for personal gain or carried out with a personal malice, ill will or spite directed against the victims.

CHAIRPERSON: Mr Dehal, just on the question of - I would just like to hear you on the question of proportionality. We know from the evidence what the intention was etc. etc. and the objective was to target members of Security Forces. We know that a number of civilians, we don't know how many but we don't know how many Security Forces, we haven't got any firm evidence on how many members of the Security Force were injured, what the ratio is between the number of Security Force injured and the number of civilians injured but we do know, I think I'll be correct in saying that it's common cause that a number of civilians, people who weren't members of the Security Forces and who weren't the direct target were in fact injured but that in fact happened. Now what you say about proportionality there, you go no matter what your intentions are, if the result is something different, does proportionality click in there or how should we approach it?

MR DEHAL: Mr Chairperson, I concede that proportionality is indeed a test within the Act and certainly is an aspect to be decided on but I submit respectfully that the enquiries or wider enquiry and if one has regard to Mr McBride's testimony it shows and it's uncontroverted by vigorous cross-examination, this point was never dealt with, it has never been suggested to him that it was disproportionate except for all those percentages, 95, 5 etc. But firstly, the point I want to make is, it is a subjective test, what Mr McBride thought of at the time is important, one must have regard to the reconnaissance that was carried out, indeed by himself and Mr Gordon Webster. Gordon Webster was his senior, a commander of another unit, had done the reconnaissance of this particular Why Not bar, had excepted it as a legitimate target, had informed McBride that it was infested with security police personnel and Mr McBride more importantly simply did not take that decision and follow it in the normal course. He decided in the nature of things that it would be prudent of him to do his own reconnaissance. He then goes to the centre, endeavours to enter it, of course unsuccessfully, on quite another occasion, he goes past on a social visit, he looks at this place and on quite another occasion, follows police personnel, police persons, from the C.R. Swart Square Headquarters. In one case they go past Why Not, in the other case they go into Why Not. Now ...(intervention)

CHAIRPERSON: What I'm asking and I'm asking it, with proportionality, do we take a look, do we place emphasis on what the intention was, what had been done prior or do we take a look at the results and say well, was the result, was what actually happened proportional to what the objective was? I mean am I correct in saying you're arguing that the important, most important element is what the intention of the applicant was, what he had done, what he had in his own mind prior to the actual blowing up?

MR DEHAL: Mr Chairperson, I submit you will have to look at both aspects, not just before or after and that if you look at the whole situation as a whole picture the clear distinct picture one gets on proportionality are the following. One, when you look at the bomb now after the event, you'll find that there's a hole immediately beneath the car on the street, the bomb was intended to go downwards. Secondly, you've got Mr McBride's evidence that the very nature in which the bomb was constructed, namely the SZ6 on the top is the first one that was detonated so that it would explode downwards ...(intervention)

CHAIRPERSON: You're being corrected Mr Dehal.

JUDGE PILLAY: ...(inaudible) blows downwards.

MR DEHAL: Sorry, the limpet on the top and the limpet blows downwards by its very nature, blowing downwards it would then get the other explosives beneath it, it would force the bomb downwards and not upwards. That there is evidence that the Parade Hotel had damage up to about the 5th floor on its structure with two ladies on the top with superficial cuts and bruises is an aspect that I think arose from the shockwaves. That again was not con...(intervention)

JUDGE PILLAY: Mr Dehal, we all know more or less there was extensive damage and casualties etc. I think what we're really interested in is are you able to argue or we want you to argue the point that was what was intended, directed at whoever, proportional to the complaint that we had against those targets? Do you follow what I'm saying?

MR DEHAL: Yes Judge, I submit yes it was proportional for a number of reasons and if you look at the events preceding the act you'll find that there were a number of other targets that were chosen. For various reasons on the evidence one could not place a car bomb there. The Natal Command is one that we talked about, there's the police stations where you could not place a car bomb, barracks and we also know there was a bomb placed at the barracks subsequently and the person was arrested.

JUDGE PILLAY: ...(indistinct) more directly, were policemen and members of the force targets such that it be justifiable and proportional to target then the bombs such that they would die? Was what the complaint, did the complaint justify the act?

MR DEHAL: Yes, I submit yes in both cases, yes. The political situation Kabwe all made that clear. The nature of the act - sorry, Judge - and the fact that we have evidence that this was a small car bomb, I think it's common cause that this was not one of those larger car bombs, it was a small bomb in comparison to car bombs and one must have regard to the fact that in the nature of things in those days, the Security Forces were killing our people, this was intended to be a legitimate target at that level.

Mr Chairperson, I deal briefly with that aspect in paragraph 17 of my Heads on page 10. I was hopeful to get to it but perhaps when later I do for the present on paragraph 5 on page 3 I submit that all the applicants have satisfied the provisions of Section 20(1) of the Act and that amnesty ought to be granted to each of them.

As to paragraph 6, sorry these Heads were formulated before Mr Richard had yesterday placed on record that the victim in the Klein incident does not oppose the application, so whereas in truth he recorded those three aspects, I've recorded in paragraph 6 as the incidents in which on motive he opposes the application, it would now be confined to (ii) and (iii), that's the Edendale incident and the Why Not operation.

Now in paragraph 7 I deal with each of the applicants separately and firstly with McBride, I said that McBride generally in regard to all the operations acted as a supporter of and/or agent of MK particularly on the arson attack of Fervale Secondary School and under the direct order of his commanders, first to fourth applicants for all the other operations.

Again (b) on the next page is irrelevant in view of Mr Richard recording that that incident is not being - sorry application for amnesty on that operation is not being opposed. (c), the Edendale operation was carried out with the consent, approval and support of Mr McBride's commanders, the first to fourth applicants. It was to save the commander of an MK unit and a soldier. That Mr Webster was a friend of McBride's was incidental to this operation. His friendship was not the single most important purpose.

(d), the Why Not bar operation insofar as the car bomb operation outside a bar intended specifically for the 14th June 1986 is concerned, was carried out with the full prior knowledge, approval, consent and support often indeed under the orders of McBride's commanders, the first and fourth applicants.

In paragraph 8 I submit that the Why Not operation it must be noted had the full support of the ANC, the ANC has subsequently accepted full responsibility for this operation.

Then in paragraph 9 I record some of the extracts from the further submissions and responses of the ANC in the 12th May 1997 booklet and various subjects in which the ANC's stance and attitude, expression of support of the Magoo's bar operation as they called it, in one case Why Not operation another case, is clear. Now I don't think it's necessary for me to read each and every one of those simply to say that further on page 17 at the conclusion, in its further submissions which I deal with under (g) (h) and (i), the ANC makes it very clear that it accepts responsibility for this operation and in amnesty applications of this sort as per (i), for acts of this sort.

Then I go to page 6 at the end of paragraph 10 where I quote what Mr Mac Maharaj had said during the first day of the Security Force hearings and this is a part that came off in the evidence, but then the proceeding paragraph the question by Mr Vally is also appropriate and ought to be read, would the evidence of Mr Maharaj and I recorded that in my Heads and makes clear reading and shows that Mr McBride's position on the Why Not bar operation is clearly one that has been fully accepted by the ANC and more importantly if there be any doubt expressed on the nature of the reconnaissance operation as to whether it might be naive or in any way immature etc, I think Mr Maharaj's evidence homes in on showing that at the level of it being a tactical reconnaissance it was accepted within the purview of Kabwe and the guidelines of the ANC as being sufficient.

In paragraph 10 I say that more importantly when the first applicant, Mr Ismail, was recalled, that's a point that Mr Berger had made, just to repeat it and in re-examination he conceded that he would have authorised the Why Not bar operation even if he were told that it was indeed the Why Not bar that was targeted, that it was on intelligence gathering, that it was frequented by Security Force personnel, that it is a bar on the Marine Parade in Durban and that civilians were very well being caught in the crossfire of the operation.

Now there are two other points that Mr Berger made which I want to reiterate at this stage and the one is this, why would there have been a need for Mr McBride to have done his reconnaissance on the Why Not bar if indeed as I suspect Mr Richard may well argue, his attack was intended on faceless Whites etc. Now there would have been no need for him firstly to secure a parking spot outside the Why Not bar, namely for Greta to park there, for him to return and get Greta out of the bay and then get his car into that bay. He intended it for the Why Not and secondly, there would have been no need for all this exhaustive laborious disciplined reconnaissance by Gordon Webster and himself.

CHAIRPERSON: Are you arguing that because they went through that process, getting the car, parking there, walking back, getting another car, that indicates that the Why Not was a specific chosen target because they could have just gone and parked it outside the Beach Hotel or any other parking at any other time or outside any other public place?

MR DEHAL: Indeed so Chair, but more than that, if one looks at Durban in South Africa within the context of 1986 the laws that operated then to the extent to which non-Whites were allowed in the Marine Parade or not, one knows that Durban especially in the Marine Parade on Saturday night was a popular White centre, there were very few non-Whites there.

CHAIRPERSON: Yes, I don't think it's - there's any evidence to suggest otherwise, it was an open public area but most of those hotels and bars and restaurants were frequented by Whites I'm sure.

MR DEHAL: The point I developing is simply this, if Mr McBride intended as I suspect maybe the submissions from Mr Richard that the bomb was intended for White faceless persons, he could well have parked that car on any spot on the Marine Parade, not necessarily in front of a hotel, in front of a bar, in front of a pub etc., just being on the Marine Parade on a Saturday night would have achieved the objective.

JUDGE PILLAY: Yes but I think his argument is going to go further, that because of the troublesome aspect of finding a particular parking bay he found this open space and what I can only think was not a parking bay on the corner of a street and parked it there. It doesn't follow then that he targeted any one of those restaurants but merely placed the car because it was a convenient parking space that he found. I think that's what the argument is going to go like.

MR DEHAL: If that be the argument Judge, then the submission I have is simply this, the Marine Parade and this came up during the trial of Mr McBride's, had various fire hydrants placed in front of hotels, buildings, strategically for these reasons. Now this car in front of the Why Not was placed directly in front of the fire hydrant and at some stage during the trial the question arose as to why in front of a fire hydrant and the evidence was it was never intended to be in front of a fire hydrant, it just so happened incidentally and the point that develops from that is this, if you go down the Marine Parade and you look for bays, you'll find enough

fire hydrants in front of many buildings and many parking spots available. So Mr McBride could well have parked in front of any one of those fire hydrants and not just this one.

Sorry, just bear with me Chair. Sorry, on instructions a further submission on that point is that if one has regard to the way, the mannerisms adopted by McBride and Ms Narkedien namely that firstly they get to the Marine Parade, Ms Apelgren then - sorry Ms Narkedien then parks the car in that spot, they secure that spot and that spot is in front of the Why Not. They return to bring the car bomb and park it in that spot namely the one drives out, don't allow another car to get in, as she drives out hurriedly get that bay. All of these go to show that the Why Not was intended as a target it was not just on the spur of the moment, a decision made to go for Why Not, it was a preconceived, well planned, premeditated, accepted, legitimate target.

Mr Chairperson, I then deal in paragraph 12 with the fact that Mr McBride and I make this submission because some of the victims have actually talked about him having a lot to gain, etc. The submission is that Mr McBride was tried in a court of law, convicted of many of these offences and sentenced heavily including three death sentences and has served a substantial portion of his sentence including imprisonment on death row, there is no motive ...(intervention)

CHAIRPERSON: It would seem the only gain from the granting of amnesty would be the expunging of the records.

MR DEHAL: Insofar as the acts for which he was charged are concerned but in regard to the other acts for which he makes open disclosure I think there are ten of those, it's to prevent prosecution, possible ...(indistinct). Thank you.

I now turn to Ms Narkedien, Greta Apelgren. Firstly, she was also tried, convicted of a few counts, sentenced and has served her entire sentence. She has no reason to lie nor seek amnesty.

Secondly, the acts for which Ms Narkedien seeks amnesty do not fall within the purview of gross violation of human rights and had she not been given notice to appear before this Amnesty Committee as an applicant, she would have elected to have her application heard in chambers. However, despite that option available to her she testified in these proceedings in good faith and I submit in abundant full disclosure.

Thirdly, Ms Narkedien was not cross-examined at all on any of the acts that she seeks amnesty for. The cross-examination was pitched, dealt principally with the Why Not operation, an operation that she does not seek amnesty on.

Fourthly, Ms Narkedien was acquitted on all the charges relating to the Why Not operation during her entire trial.

And fifthly I quote an excerpt from Judge Shearer's judgment on sentence where he says the following and I think it's important to take note of this. I quote:

"Ms Narkedien is a person with a social record of social work and concern for others, she is the lover of accused number one and he plainly had a powerful influence on her and her actions.

Her parts in the offences for which she has been convicted were comparatively minor. She is, I concede, a thoroughly good person and it grieves me that I have as I can see it that practical alternative that accords with the seriousness of the offences themselves, to sentence her to imprisonment. But I propose to suspend a substantial portion of the sentences which I pass upon her on each of the counts on appropriate conditions."

Now Mr Chair, I submit that the following two aspects which I have contained in (f) dealing with the disciplines within which the ANC operated and aspects that the trial court actually accepted, homes in on the level of activity Ms Narkedien played. It is important to note that Judge Shearer in his judgment on the merits considered and accepted the discipline that Ms Narkedien operated under when she participated in the carrying out of the various operations, particularly the Why Not operation and the Edendale operation, Judge Shearer had the following to say on page 1874 of his judgment:

"We are told and that there appears to be acceptance of this by all witnesses who are or were members of the ANC that two factors were stressed repeatedly. Discipline in the sense of absolute obedience and secrecy involved in the preservation of the latter was that a person performing a task was given a minimum of information concerning the overall objective. It is true that a pattern appears to emerge in which the driver of a vehicle taking members on an assignment is given as little information as possible about the task and the target. We suppose that such a code is always necessary in a clandestine enterprise against which plainly the authorities are perpetually vigilant.

Another point emphasised by the witnesses and the defence in argument is that since these activities take place at night, the presence of females in a vehicle will give plausibility to the notion that the expedition is social rather than sinister."

Now we've heard evidence that Mr McBride picked up Ms Narkedien for the purpose of going to the drive-in etc. That is not an operation on which she seeks amnesty but I submit even at that level it lends credence, it lends support, it lends much support to all of the applicants particularly Mr McBride insofar as Ms Apelgren's role play in this matter is concerned and at the level of these two disciplines and to the extent that they are defined and acceptable by the trial court, indeed to Mr Lecordier as well.

CHAIRPERSON: Perhaps that's the significance of his comment about the dress code that night?

MR DEHAL: Yes Judge. I paragraph G I say that Ms Narkedien's application for amnesty supported by her evidence in these proceedings remains unchallenged and I submit are to be granted. I've had discussions with Mr Prior, the evidence leader, and he has informed me that from the very inception he's had no problems with Ms Narkedien's application, he does not oppose or will not oppose her application.

I then turn to Matthew Lecordier and I submit one must have regard to the two disciplines Judge Shearer set out so laudably and accepted when dealing with the evidence of Matthew Lecordier.

Firstly, Mr Lecordier seeks amnesty since he was not charged for any of these operations, nor was he granted indemnity during the earlier trials in which he testified as a State witness. Despite thorough and on occasions vigorous cross-examination Mr Lecordier maintained his version without conceding an error or without contradiction of merit or material issues. He is plainly a witness who has suffered the psychological, mental and physical trauma at the hands of the security police and on occasions at the hands of the prosecutors and by his own feelings of guilt in being a State witness against his comrades and by reason of their associated fear of not being able to successfully merge with his community or the fear of death at their hands. Mr Lecordier featured prominently in most of the operations and has made full disclosure as his commander Mr McBride had done. His political objectives are clear and remain uncontroverted.

More importantly Judge Shearer's summation of Mr Lecordier on page 1872 of the judgment in Robert McBride trial on volume 14 is apt. It must be noted that on - sorry, that one of the main reasons that Mr Lecordier did not obtain indemnity as a State witness in the trial is because of the page of his statement and note that emanated during cross-examination and in which there was no reference to the aspect that he was earlier found to have refreshed his memory from. In this regard Judge Shearer has the following to say, I quote:

"He was as were the others a person detained in terms of the Internal Security Act. At one point in his evidence his reference to a statement prompted investigation under cross-examination. It appeared that he was not referring to his police statement but one which he made for himself during confinement in order to refresh his memory. It is difficult to give this any sinister significance but when he professed to have been reminded of something by that statement which was found subsequently to be absent from the relevant page of that statement which was produced and given to him, that is a different matter. His reliability was thus placed in question."

Now when I read the entire trial record and particularly the judgment, it seems crisply clear that the fact that indemnity was not given or the reason that indemnity was not given to Mr Lecordier was pitched, was couched, was dealt with principally at this level on this point relating to that statement. Now had it not been for this issue he would have got indemnity for Judge Shearer otherwise praises Lecordier, for example on the Edendale issue he praises Mr Lecordier's having been truthful and open. Now we've heard evidence that Mr Lecordier had during the recess received not his notes but that very police statement, that he sat with it, that he read just not one page, the page that is contained in this record but many pages thereof, that he was threatened at the time a noose was shown to him, a noose was placed around his neck, that prosecutors and security policemen had featured prominently in the execution of this exercise.

We've also heard that when under cross-examination it transpired that his memory was refreshed and it then appeared that he had been reading a statement, a request was made for the statement, that he was asked to lie that there was only page that he had read and we have

also heard that the reason they chose that one page was not because he refreshed his memory from it but because that one page has a sinister motive. It is the page that includes the paragraph that ...(indistinct) the political event. Now Judge Shearer also deals with that aspect and to an extent criticises Lecordier for being one who featured within the parlance of MK operations, as a person who thought about robbing a bank as well.

Now my submission is that one now has regard to the truth, one now knows what happened in regard to that statement. Had that been shown at the time of the trial, Lecordier would have got indemnity, there would have been no application for amnesty today. I deal with that in the next paragraph. Then below that in paragraph G I say:

"With regard to the Edendale expedition he was plainly at ease and truthful."

Now that is a statement made by Judge Shearer on page 1872 and 1873 of the judgment in the trial of State vs McBride and Greta Apelgren. Additionally, Mr Lecordier chose the target in the Klein incident and this was his evidence also during the trial, an aspect that the trial court accepted. The evidence in trial about Mr Klein being a police reservist and one who belonged to the Coloured Affairs was extenuated for obvious reasons whereas now, again for obvious reasons, it is being underplayed.

And finally on Mr Lecordier, the first applicant Mr Ismail as commander of special operations and indeed Mr McBride, the fifth applicant, as commander of the unit to which Mr Lecordier belonged, do both accept responsibility for all these operations and indeed the Klein operation as well. That Mr Klein may have been a police reservist although inactive as Mr Richard would have us believe and one who put on the Labour Party posters but was not a member of the Labour Party, now actively participated in the meetings is of little consequence. For as the evidence showed overwhelmingly, that Mr Klein was for various reasons on intelligence gathered a legitimate target but of course we've now heard that that operation - sorry, that incident is not being opposed on for applications - sorry, by the amnesty applications by Lecordier.

Mr Chairperson, I then deal with some documentation and here I deal with Exhibit D. I submit that little if any reliance can be placed on Exhibit D. Exhibit D is the one that ...(intervention)

CHAIRPERSON: The colours, the Russian one with the Afrikaans on it.

MR DEHAL: Yes, my submission there is that it must of necessity be seen as a document that was doctored for what evidential value it was handed in I do not know. Whatever the reason and whatever weight is going to be argued ought to be attached to it, I submit nothing can.

Additionally I say in the next paragraph:

"Little if any reliance is to be placed on the aerial photograph as this was never proved nor is a photograph taken at or near the time of the Why Not operation. The evidence has shown both in the trial and in these hearings that the place surrounding the Parade Hotel has substantially changed since the 14th June 1986 which was the date of the Why Not operation."

In paragraph 17 I deal with the reconnaissance of the Why Not bar. I dealt with this briefly earlier but just to deal with that again. As to the reconnaissance of the Why Not bar as a legitimate target I submit that it has been overwhelmingly established that this was not an amateurish or naive reconnaissance operation. On the contrary McBride has testified amongst other things that within the time constraints allowed him and given the limits of financial constraints, he had reconfirmed Why Not as a legitimate target well after his commander Gordon Webster had reconnoitred the Why Not bar and selected it as a legitimate target. Mr Webster, it is common cause, was a senior commander and one who worked with a respected precision, that he was to have carried out the car bomb operation originally is also not in question. The extent to which he carried out his reconnaissance was not dealt with but the fact that he selected this as a target and confirmed this with Mr Robert McBride must show that he would have done his reconnaissance well. In addition, Robert McBride who could well have simply accepted his commander's reconnaissance and acceptance of this as a legitimate target ventures to do his own reconnaissance and reconfirms this as a legitimate target. He does so on various occasions, he says that reconnaissance was a twenty four hour way of life for him and he cannot now in retrospect remember each and every incident when he so did the reconnaissance. However, he does remember that he endeavoured to personally enter the Why Not premises on a separate occasion walked past during a social outing and on quite a different occasion observed policemen from the police barracks near the C.R. Swart square go to the Why Not bar in the one case and passed it in another. His evidence is that the accumulative effect of all his reconnaissance operations including that of Mr Gordon Webster rendered this target as an unquestionably legitimate one. In any event his commanders had issued the instructions for a car bomb operation, supplied the necessary weapons for such an operation to be carried out, instructed that the car bomb operation ought to be carried out on the 14th June and understood that the operation would be carried out at one of the various targets that Mr McBride had by then selected and more importantly despite having been informed by McBride of the distinct possibility of civilian casualties authorised the operation to go ahead in view of Kabwe.

Mr Chairperson, the next comment that I made was just a matter of interest, it just seems so ironical that we sit here before the Amnesty Committee testifying on the various political endeavours on our parts as applicants, to bring to an end White oppression and White domination and oppression in the nature of the apartheid regime exactly a hundred years after the Anglo Boer War to the day. In fact Mr McBride testified on the 100th anniversary, the centennial anniversary of this Anglo Boer War.

In paragraph 19 I deal with chapter 4 and 5 contained within the ANC further submissions of the 12th May 1987. Mr Richard had actually dealt with this in cross-examination to some extent so I make the following brief submissions.

Firstly, all but two of the operations carried out by Mr McBride's unit are contained in appendix 4, being an accepted

list of MK operations. The Why Not bar operation falls within this category.

Secondly, the Klein incident and the hoax bomb at Pine Parkade are the only two operations contained in appendix 5. However, here it must be noted that firstly of course Klein is not being opposed to and secondly that appendix 5 deals with armed actions for which target category and/or responsibility is uncertain.

Thirdly, as the preamble to appendix 5 indicates, this list of operations were not excluded as MK operations. The preamble adds:

"In addition, we are uncertain as to whether these attacks were carried out by *bona fide* MK cadres."

Mr Ismail in his testimony under cross-examination highlighted this. Mr Ismail also accepted political responsibility for these two operations. Mr McBride and his unit members who carried out the Klein operation have testified in the pursuance of their amnesty application and I submit have strongly laid the foundation for compliance with Section 20(1) of the Amnesty Act. It is therefore submitted that the 5th, 7th and 10th applicants have satisfied all the requirements of the Act and their applications ought to be granted. Thank you Mr Chairperson.

CHAIRPERSON: Thank you Mr Dehal. Ms Koooverjee?

MS KOOVERJEE IN ARGUMENT: Thank you Mr Chairperson.

Insofar as the 8th and 9th applicant is concerned, I submit that their evidence stands uncontested. Their applications have not been opposed and that they have complied with the provisions of ...(intervention)

CHAIRPERSON: The sixth applicant, sorry you're talking 8th and 9th?

MS KOOVERJEE: The 8th and 9th applicants Sir. So they have complied with the provisions of the Act, both Mr Berger and Mr Dehal have addressed this Committee at length. Insofar as the 8th and 9th applicants are concerned, I align myself with their argument and submit that their applications are to be granted. That is all.

CHAIRPERSON: Thank you. Mr Richard?

MR RICHARD IN ARGUMENT: Thank you Chair. The victims that I represent have been here for most of the hearing and they have heard evidence on the various matters. Many are disposed of.

We start with the Klein incident. Mrs Klein has reconciled with the applicant concerned and I take that matter no further.

Then with regard to the infrastructural attacks on which they have heard evidence, there the victims record that they fully understand that those attacks were within the course of the struggle and no further comment is made upon them except to say that they understand.

The hoax bomb, well it's not a matter where I really need comment further except to say that questions can be asked, however, it takes it no further. The Engen Mobil Refinery, the victim in that matter is satisfied with the disclosure and leaves it rest. That leaves two acts where comment is needed.

The first one is the one relating to supply of weapons to self-defence units in the West Rand. My only comment there is that perhaps and I only say perhaps, the matter is out of context and should be seen and heard in the context of other matters pending which relate to incidents

on the East Rand where weapons were supplied which might well have been used by the ANC for the purpose of protection against attacks from the IFP. So that leaves us with one particular event which is in a class of its own, that is the attack on the Parade Hotel.

In relation to that I can start by making comments regarding the second, third, fourth applicants who were involved. There it would appear from their *ipse dixit* that they had no knowledge of the fact that the ordinance that they were training Mr McBride to utilise would be used for purposes of an attack on the Parade Hotel. They in fact in the train of events while correctly pointed out by the applicant's representatives might have acted in common purpose, their *bona fides* and political motive in as far as we accept their *ipse dixit* without anything to challenge it is accepted.

Now then we are confined in that resume that I have given to specifically what happened at the Parade Hotel on the Marine Parade and that leaves us with the first and fifth and the seventh and tenth applicants to debate. With regard to the first applicant the question there as the Chair correctly pointed out is if it were, so to speak, the case and I'm not saying that this is the case, I'm saying the example is appropriate that the fifth applicant had totally and deliberately misrepresented it and the situation to him, would he have been responsible? In this case however, due to the nature of the attack, I say it is not so simple and so therefore I turn immediately to the event itself. The event itself may be summed up in a few short words.

On the 14th June 1986 a car bomb was placed outside a beach front hotel which was popular at the time called Parade Hotel. The person who placed it there admits that he knew that the effects of a car bomb would be indiscriminate and random. The next factor we know from the evidence before us is that it was an exceptionally busy and popular hotel. It is important to note that Ms Kearney was not cross-examined on that aspect or challenged on her evidence in that regard.

JUDGE PILLAY: Mr Richard, is it true that it was admitted that it was an indiscriminate bomb?

MR RICHARD: That is what I recall the evidence regarding a car bomb to be.

ADV SIGODI: I think Mr Richard said that the effects of the bomb were to be indiscriminate and random, not that the bomb itself was indiscriminate.

CHAIRPERSON: Yes I think throughout the evidence it was common cause that when the bomb went off it wouldn't only hit Security Force people but that civilians would be in danger, I mean that's quite clear and to that extent it was indiscriminate.

MR RICHARD: It's important to stress at this stage that the uncontroverted evidence of Ms Kearney is that upwards of 500 persons would have been at the hotel.

The next factor is that at best for the applicants on Ms Kearney's evidence there were a floating group of 20 persons that she knew to be security personnel as discussed and that at best on any one particular occasion there might and I stress the word might, have been five in the hotel at once.

The next point is that on the night in question the fifth applicant concedes he had no idea as to who factually might be in the hotel. Now the bomb did explode and the result that was

inevitable happened. Numerous people were injured and three persons killed. Then in those circumstances I say the facts speak for themselves. At what was patently a civilian target an attack was committed. We turn then to the fifth applicants justification for his actions. There he has given evidence both before this Committee and before the Section 29 Committee which was substantially the same. In his evidence before this Committee it is my submission that nothing substantially more was added except perhaps his reference to Mr Gordon Webster and in this regard it is appropriate to point out that as was said by the fifth applicants legal representative, Gordon Webster was in communication with him and was available to be called by the applicants. It's not a simple question of whether Mr Gordon Webster wanted to participate or not, clearly he was a material witness upon which the fifth applicant relied in support of his version concerning the reconnaissance of the Parade Hotel. I don't think it's necessary to labour the law of evidence in this regard but when a party does not procure their attendance of a material witness an appropriate inference can be drawn and that inference is that that witness would not corroborate the version being put forward by the particular party. So we must not forget that a previous hearing of the Section 29 Committee did consider both Ms Kearney's and Mr McBride's evidence. That Committee did come to a finding. Their finding is very clear and unambiguous and appears at paragraph 28 of the chapter headed "The Liberation Movement from 1960 to 1990" volume 2, chapter 4. That's numbered paragraph and it says:

...(intervention)

CHAIRPERSON: Sorry, just on that - I'm not stopping you, that was the hearing of the - subsequent to the Section 29 hearing?

MR RICHARD: It was.

CHAIRPERSON: Yes so it's in no way binding at all and one has to take into account that the people who made that finding received evidence, not as much evidence as we've received and there wasn't cross-examination etc. etc., it was different.

MR RICHARD: There was cross-examination but certainly not as extensive and I'm not suggesting that it raised *judicata* but I am pointing out that on very similar evidence the finding was in the course of questioning at the hearing it became clear that Mr McBride's reconnaissance of the bar to ascertain whether it was frequented by enemy personnel was of a highly amateurish nature. My submission is that because on a perusal of the Section 29 record and a consideration of what has been said here I don't believe that there is much more or less to take into account and in that sense I argue that the finding recorded by the Commission at that paragraph is persuasive and highly persuasive.

Now to consider the reconnaissance I believe I've already dealt with the so-called claim that Mr Webster as a superior had already found that this particular hotel was infested. The applicants failed to call Mr Webster and I've addressed the Committee in this regard. Once that is eliminated I then add on, consider the reconnaissance in the light of what he must obviously have seen. To see a busy hotel certainly does not corroborate the deduction that there are security personnel inside. Then to be in and around the vicinity of the hotel when a person leaves, whether it be a security person or not who says "may the force be with you", that is certainly not a rational factor to take into account in a reconnaissance.

Then we turn to the next question. Much has been made of what might or might not have flowed from the Kabwe Conference and I see in Mr Dehal's Heads of Arguments on behalf of the fifth applicant much reference is made to the rhetoric and what has been described in other documents, provocative and inflammatory literature emanating from the ANC at the time. Now submission is on a consideration and I believe we all have considered both the Commission's final report, the various submissions made by the African National Congress to the Commission that it was not the policy of the ANC to conduct attacks on civilians. However, we hear something further which is rather surprising today that per Mr Berger that if out of the approximately the 500 people that were present it might perchance happen that there were four or five security personnel as contemplated in the definition given by the applicants then it would be considered to be legitimate on the basis of taking the struggle into the White areas to attack the remaining hundreds of civilians. If that is indeed what flowed out of Kabwe I believe, if I consider the various submissions, there should be a very specific public statement by the African National Congress to that effect.

Now what I have submitted so far in summary is that there was no proper reconnaissance. The effects of the bomb is admitted and the result foreseen happened. One then proceeds to the interpretation of (3).

CHAIRPERSON: Is this of Section 20?

MR RICHARD: Of Section 20, correct. There it is asked that whether a particular act, omission or offence contemplated in (2) is an act associated with a political objective should be decided with reference to the following criteria, the motive of the person who committed the act. Certainly, it might have been the motive to further the aims of the ANC and its struggle, but is that the only motive?

Further, if the only probable effect that can be inferred from the factors I've outlined and that have been outlined in the evidence is that civilians will be indiscriminately injured and killed and that knowledge obviously be imputed to the actor, that too must be a motive, the two aren't mutually exclusive.

The context, that's at B, was there ...(intervention)

CHAIRPERSON: Why do you say that it follows that it must be a motive?

MR RICHARD: The word motive means what moves, what motivates a person. Now none of us can judge another's particular motive except by factors external to their *ipse dixit*. A person's statement of their own motive it's almost valueless. Now if one considers the facts of the matter, a bomb outside a popular and well known hotel is to be planted and exploded, what motive can one infer? All motives? My point is it may well be that one of the motives is to further the cause of the ANC and the struggle, but I add on to that, what other motives equally can be inferred taking into account that there may be a mixture of motives and neither one exclusive of the other. If such a clearly inevitable consequence of the act is to follow and that is the indiscriminate injury and killing of civilians, well I believe that that motive must be imputed to the actor, in this case the fifth applicant. Judge, may I proceed?

JUDGE PILLAY: I'm listening.

MR RICHARD: Then the next factor. The context in which the act, omission or offence took place and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event or in reaction thereto. The context certainly is the armed struggle but in reaction much has been said about the fact that it was approximate to the tenth anniversary of the June 16th uprising and to the 14th June event when, as the victims agree, completely unjustifiable and illegitimate raid was committed onto a target in Botswana. To say that an attack on a civilian target in reaction to events either to ten years or one year is appropriate, or in context, I believe is a stretch of the imagination.

CHAIRPERSON: Mr Richard with regard to these criteria contained in Section 23, in some applications all the criteria might be applicable depending on the facts of the matter but it's not essential that in every application each and every of these criteria has to be applicable. You might, for instance, get an incident which justifies the granting of amnesty which is not for instance done in furtherance of an order or in reaction to a political event, so they don't all have to be applicable.

MR RICHARD: Chairperson, I'm not submitting that there's a hierarchy or a test which says that if one is not satisfied then it must fail or ...(intervention)

CHAIRPERSON: Why I mention it is my understanding is that from the evidence was that according to the applicants the prime motivation was to attack Security Force personnel but also it should be done on the 14th as a commemoration so it wasn't the sole, according to them, reason.

MR RICHARD: Well I will answer the point in two answers. That the attack should take place on the 14th, well we have nothing but their *ipse dixit* to go on.

CHAIRPERSON: And the fact that it did in fact take place on the 14th?

MR RICHARD: Yes. Then to say that it was in reaction to - well, it is correct that the evidence we have before us was that the instruction was that a car bomb be exploded on the 14th June. It is also correct to say as I think the preponderance of evidence establishes that the person, that is the first applicant who gave the direction, did not know it was the Parade Hotel. Now to relate it to (b) of (3), commemoration I think would be the correct word not reaction. Now when I look at the word reaction it contextualises if something was in reaction as was once said earlier in the hearing, one would expect the two events to be approximate in time and a tit for tat, you know, but in this case a year had separated the two events.

Now I've heard what the applicants have said about the next test, the legal and factual nature of the act, including the gravity of the act, omission or offence. It is my respectful submission in reply that the fact that the fifth applicant might have been tried and convicted of the offence which it constitutes has no bearing on the interpretation of (c). What (c) says that the Committee when considering a particular act it should evaluate how the legal and factual nature of the act might have been seen.

Now I don't think there's any doubt that if we were to apply the tests of the Geneva Conventions or the rules of war, the seriousness of this particular act would mean that this particular act would not pass muster and would be considered by those tests inappropriate and illegitimate. Now there I think when we consider the legal and factual nature of this act I lead onto the next point. It is completely disproportionate and inappropriate by any stretch of the

imagination, the mere fact that Kabwe might have said that civilians should not prevent an attack because they might be caught in the crossfire doesn't legitimise an attack which results in the indiscriminate injury and killing of civilians in the hope that there might be some security personnel in the midst of them. There's no evidence in this matter here before us to even suggest that the Magoo, Why Not, Garfunkel complex was in any way used as a place where security personnel, as they are spoken of, might be hidden amidst the civilians with the purpose of using civilians as a shield. Such a suggestion just cannot be brought out of anything that has been heard.

Now the factual nature of the act is that people would be injured and killed. The gravity of the act, it is the act of the utmost gravity, exploding a car bomb outside a popular hotel. Legally, at international law, it could only be described as illegal and failing to pass muster because remember, when we consider the comparative tests as the victims have pointed out themselves the fact that it is true that atrocities were committed by the previous government doesn't in any way alter the nature of an atrocity. This was an atrocity and also this Commission did find it to be a gross human rights violation and it is as such it must be judged and when one considers (c), I don't believe the intention of the legislature was to allow gross human rights violations of such gravity and such legal consequence and such serious factual nature to be condoned.

The next point is (d). The objective or objective of the act and whether the act, omission or offence was primarily directed at a political opponent, State property or personnel or against private property or individuals. Now we are asked to believe and I believe it cannot be believed that this attack was directed against State personnel. I have already argued that at best for the applicants the presence of State personnel would have been merely a hypothetical possibility, not even a probability. To say that potentially and I hearsay, whether it be five or ten or even twenty and I do not admit those as facts, State personnel in the mixture of 500 people which were clearly in and around that complex of venues that night would permit the attack to be considered an attack on State personnel legitimate I do not, in my submission, believe that this act can be construed in that manner. The relationship, which is the next test at F, between the act, omission or offence and the political objective pursued and in particular the directness and proximity of the relationship and the proportionality of the acts, omissions or offences of the objectives pursued. The victims with whom I have consulted and who have testified almost unanimously agree that the objective and support the objective of furthering the end of apartheid. However, we then have to look at the proportionality of the act. Again, without reverting to a description of the event itself, I believe that it simply cannot be considered as proportional. The killing on an indiscriminate and imprecise and random nature of a number of civilians and injuring to a varying degrees a large number of others. Now in relation to proportionality and the test applied thereto, I will hand in for the consideration of the Commission an article prepared by "Human Rights Watch" in relation to needless deaths and it will clearly spell out what is obvious and I simply paraphrase by saying the following.

One must consider whether, as an attack, there was any definite military advantage in the attack, clearly there could be none. The accidental ...(intervention)

JUDGE PILLAY: Mr Richard?

MR RICHARD: Yes?

JUDGE PILLAY: Had there been fifty members of the force that were either killed or injured as a result of that bomb?

MR RICHARD: I beg your pardon Judge?

JUDGE PILLAY: If there were fifty casualties of members of the force together with perhaps a hundred civilians who were injured and/or killed, would you say that was proportional?

MR RICHARD: If before the attack it was known that it was a military target and there were fifty military personnel within the complex.

JUDGE PILLAY: What is your answer?

MR RICHARD: Then on the fact that the soldier committing the attack actually knew what he was attacking, it might well be that it was a permissible target to attack that concentration of 50 percent but he would have had to have considered the target and known what he was attacking not merely attacked an obviously civilian target in the hope that somewhere in the mixture there might, on a hypothetical basis, be some.

JUDGE PILLAY: Is that how you understand the position?

MR RICHARD: So that means my answer is if there were 50 known soldiers in that then I might concede that there might have been a legitimate target.

JUDGE PILLAY: And is that how you perceive the position of the act?

MR RICHARD: I don't perceive the position of the Magoo's to be in that manner. There was no basis at all upon which ...(intervention)

JUDGE PILLAY: Mr Richard, please listen to me.

MR RICHARD: I am, sorry Judge?

JUDGE PILLAY: All I'm asking you is that the way you understand the act?

MR RICHARD: I am arguing that the act has to be interpreted that in relation to proportionality and objective it's not merely I hope that one might be lucky, one must having regard to the legal standards at international law and custom have a coherency, a legitimacy and a direct objective in relation to concrete facts, not amateurish reconnaissance before an attack is committed. So, it is my submission that if one takes the tests and examines each of the ones to A to F, on each ground one cannot be satisfied that a clear political objective may be decided with reference to any of the factors listed in (a) to (f) of (3).

Now it has been argued that the subject of perception of the act or operative at the time the act was committed is the test whereby a particular amnesty application should be considered. I submit that the act cannot be construed in such a manner. Nowhere in sub-section 20 (i), (ii) or (iii) can I find any authority for that proposition. The Act requires an act which would constitute an offence or a delict. Now we are not concerned with the law of delict, we are here concerned with crime, we are not concerned with whether reasonable care and diligence was exercised. Now on that basis, if we are to consider a crime I'm quite sure that the

necessary *mens rea* for a crime is established and to say that a subjective perception of the situation at the time in relation to the *mens rea* test would somehow alleviate the need to scrutinise the applicants' act I do not believe is correct. Now much has been said about the fact that under cross-examination their version was not contradicted without knowing facts as was pointed out beyond what is disclosed, how does one contradict? One contradicts by testing and then examining what other inferences may be drawn from the facts set up. I don't believe it is appropriate or necessary to argue with the witness as to whether an appropriate inference which might be drawn should be drawn. In fact I've never heard that that need be done. I have outlined the facts of this particular event and on that taking into account the time and context of when the act was committed, I submit that the inference drawn by some victims, and I stress not all victims, that this act that we debated this afternoon was an act which was committed with the intent to terrorise a portion of the civilian population and to attack their civilian morale can properly be drawn. The facts speak for themselves.

And then subject to what I outlined earlier and that is that I shall amplify as I'm indebted to the Committee the opportunity to do so by written Heads which I shall give to my learned colleagues, I rest.

CHAIRPERSON: Thank you Mr Richard. Mr Prior, do you wish to make any submission?

ADV PRIOR: Chairperson, I've considered the position of the TRC as represented by myself, there's ample argument before you and I bide with the decision of the Committee.

CHAIRPERSON: Thank you Mr Prior. Do you have any reply at this stage or would you prefer to wait for the written Heads that will be submitted by Mr Richard but bearing in mind also that of course as we mentioned earlier you will have the right to reply to those written Heads in any event should you so wish?

MR BERGER IN REPLY: Chairperson, I have a brief reply now. It shouldn't take very long and then we will consider what Mr Richard submits in writing.

I will deal with the points as Mr Richard made them. I note that he has conceded common purpose on the part of the second, third and fourth applicants and I leave it there. I leave for Mr Dehal the comments about the evidence of Mr McBride, I believe that my learned friend has not summarised the evidence correctly. The evidence of one of the victims that there was a floating group of 20 security personnel at the bar and at most five on any day is not correct, the evidence was that she knew of 20 security personnel who used to frequent the bar regularly. She said that there were others as well.

As far as the drawing of an inference is concerned, Mr Richard is not correct, with respect, the only time that a negative inference can be drawn in particular in the case of Mr Webster is where it is shown by the parties seeking to draw the inference that Mr Webster was available to give evidence and that is not the position and definitely has not been shown by Mr Richard.

The argument that the reconnaissance was amateurish, that the reconnaissance was not proper, contains within it a concession that reconnaissance was done and if reconnaissance was done then it undermines the proposition that the attack was directed at civilians and meant to attack civilians. If that it was random and indiscriminate, if reconnaissance was done, if that concession is made then obviously the place was reconnoitred, I think is the

correct word, for a specific purpose and the purpose was to determine whether there was indeed an infestation of security personnel. In other words, the attack was directed. Even on Mr Richard's argument the attack was directed at security personnel. Whether it ultimately succeeded is another point but the intention was to attack security personnel, that much would appear now to be clear.

As far as the decisions taken at Kabwe, I'm not going to repeat it, all I'm going to refer is to page 217 of bundle A1, there's an editorial of Setshaba there, it sets out precisely what decisions were taken at Kabwe.

The Geneva Convention, with respect, is irrelevant. If one wants to know what was ANC policy one has to look at what was decided. The most recent policy statement was the policy decided at Kabwe. If that is contrary to the Geneva Convention then it means that the ANC policy was contrary to the Geneva Convention. ANC policy wasn't determined by the Geneva Convention, ANC policy was determined by decisions taken by the NEC of the ANC, in fact taken by the whole conference of the ANC. I've argued that the attack on Why Not must be seen within the context of an attack on the Natal Command.

Proportionality, it would appear that Mr Richard has reduced it to numbers because he concedes that 50 out of 150 would be legitimate but ...(intervention)

CHAIRPERSON: But what I understood Mr Richard to say was that if it was known when the bomb was put there that there were 50 people in the restaurant then he might concede in relation to this question of proportionality but if a bomb is put there in what he termed a hypothetical hope that there may be somebody there then one cannot argue that it's being proportional. That was my understanding of Mr Richard's argument on this point and it wasn't just a numbers game.

MR BERGER: Chairperson, it would be impossible for anyone placing a car bomb anywhere to know what the actual position was at that time. It's physically impossible to know that, in fact it's physically impossible to know the time of any attack whatever means is used to carry out the attack what the actual numbers would be in that situation. The object was, the motive was, to kill or injure as many security personnel as possible recognising that in the process civilians would probably be killed or injured. We know that at the very least there were twenty regular security policemen attending at the Why Not. In an attempt to kill them and others, this infestation, three civilians were killed. That's the context, that's the numbers of what happened at the end of the day but I submit that proportionality must also be seen in the light of as Mr Dehal argued, were there other targets available and the evidence has been put before you which has been undisputed and uncontradicted that other targets were considered but were not available for some logistic reason or other for example the barracks would have injured children.

CHAIRPERSON: And the bar it was decided not to be too suitable.

MR BERGER: I don't know if I understood Mr Richard's final argument correctly but it goes to the crux of what was intended as opposed to what was the ultimate outcome and I understood Mr Richard to argue that subjective intention is not relevant, subjective intention is not catered for in the Act. If I'm correct then I submit that Mr Richard is incorrect because the whole of Section 20(2) is shot through with subjective intention.

20(2)(a) talks about acts committed *bona fide* in the furtherance of the struggle. 29(2)(d) talks about acts committed *bona fide* in the furtherance of the struggle. (f) talks about a person who on reasonable grounds believed and then 23 talks about motive. So subjective intention is crucial to an analysis of what was this act all about, what was the objective, in fact 23(f) talks about the objective pursued, the act is shot through with trying to understand what motivated the person to carry out the particular act. Subjective intention is clearly relevant.

At this stage we have no further submissions.

CHAIRPERSON: Thank you. Mr Dehal?

MR DEHAL IN REPLY: Thank you Chairperson, I also have a very brief reply.

CHAIRPERSON: Yes as mentioned earlier, you'll get the opportunity again if you so wish in writing to Mr Richard's argument, to reply again.

MR DEHAL: Thank you very much. In fact the aspects that I intended to take up as a brief reply have largely been dealt with again by Mr Berger but just to correct certain aspects.

Firstly, Mr Richard reiterated the analogy used by yourself, Chair, and this analogy relating to the possibility that if Mr McBride had lied to Mr Ismail, Mr Ismail in the acceptance of that lie, acting in good faith, would probably be correct in his stance that he had opted today but Mr McBride at the level of the lie, not. Now Mr Richard has taken the analogy and tried to argue that on an application of that analogy simplistically, Mr McBride faces a number of problems. I submit not, even on an acceptance simplistically of that analogy. One must have regard to what is factually correct, the evidence before us is this,

Gordon Webster was to have carried out that bomb, it was not McBride. It was preconceived notion that - preconceived accepted idea that Gordon Webster was to carry out the car bomb. It's only because Gordon Webster came to be arrested that the obligation to carry out the car bomb passed over onto Robert McBride who was next in command within the country so the level of lies there, I mean it dissipates itself when one accepts that.

CHAIRPERSON: I think when I put that I specifically said let's remove away from this application and then should an operative lie to Mr Ismail and should he give his consent on the basis of those lies and it turns out that would as long as the giving of the instructions was *bona fide*, etc. etc. it would be acceptable. I didn't in any way relate that example to Mr McBride.

MR DEHAL: No Chair, I accept that, the aspect I was addressing is Mr Richard's dissecting of that analogy differently.

Chair, in regard to Section 29 and the evidence on Section 29, Mr Richard indicated that there was cross-examination there, there was no cross-examination. It was firstly in camera, Mr Brian Currin represented Mr McBride, Mr Currin was not allowed to question Mr McBride to lead him or to clarify aspects. All that happened is that Mr McBride appeared before a Commission and members of the Commission simply questioned him. You can't call that cross-examination. If it took the line or nature of cross-examination, that's incidental, it was not cross-examination. The TRC report and its findings of naiveté and amateurish reconnaissance is, I submit, correctly one that was done pursuant to the Section 20 evidence

but not one that had been done after tested evidence as in this forum and I submit respectfully that your point, Chair, is in fact correct in that regard but even at that level, as Mr Berger argues correctly, if one accepts against us that the reconnaissance was amateurish or naive, at that level one is accepting that there was reconnaissance and then why was there reconnaissance is the question, it begs that question and the only answer can be for security police personnel, not for just Whites because the Marine Parade was full of them, most every other bar was full of them.

The other aspect that I'm concerned about is this submission by Mr Richard relating to Gordon Webster. I never at any stage made the point that he was available to testify, I always said he was not available to testify. I said that I was in touch with him only on one occasion on the telephone that he was unemployed, that he had no funds to come here, he did not receive the notice of this TRC, that notice was sent to me, I accepted the obligation to pass it over to him and I placed it on record that I failed to do so, for good reasons. I couldn't do so, I couldn't meet Webster, he's not within the Natal - oh sorry, KwaZulu Natal area. I then came to be in touch with a friend of his who telephoned me frequently and who said to me that he, the friend, failed to be in touch with Gordon Webster and he was hoping that Gordon would avail himself here but failed to. It's not as though this is an available witness to testify and in any case, apart from that, the obligation to show his availability is I submit respectfully not on me but on Mr Richard and he has certainly not shown that.

Just two aspects briefly, Mr Richard then ended up by saying there was no proper reconnaissance, to use his words. Now at the level of full disclosure, Mr McBride could well have come here and even at the Section 29 enquiry and said well I camped outside Parade Hotel night and day, I sat there, I watched them, I saw this security police enter, I saw that security police enter, there's nobody that can come here and gainsay that if he said so. He doesn't want to lie about it, he wants to say it honestly as it happened and at the level of that honesty I submit there's full disclosure there, there's reconnaissance there, it's conceded by the other side, and that must be accepted and in terms of that parallel argument let's look at this nuance of a difference between Mr Ismail and Mr McBride on whether the Why Not bar was referred to bar itself was referred to. Mr Ismail says no, Mr McBride says yes. There again both these parties could come in and either one lied to align himself to the other but they've decided no, this is how they remember it, we must be honest about it, let's say it as it happened or as we remember it to have happened and therein lies support for the submission that there is actual honesty at the level of full disclosure by these parties. Now to come in here and say there was no proper reconnaissance at the level of credibility their testimony must not be accepted I think is farfetched. I leave the rest for possible supplementary Heads. Thank you.

CHAIRPERSON: Yes thank you Mr Dehal. Sorry Ms Kooverjee, do you have any reply?

MS KOOVERJEE: I have nothing more to add, thank you Sir.

CHAIRPERSON: I think I take it you're not making any submissions Mr Prior?

Well ladies and gentlemen, that then brings this hearing to a conclusion. As you've heard the legal representatives have been given an opportunity and will submit certainly in the case of Mr Richard has indicated that he will be submitting written Heads of Argument. We will accordingly reserve our decision in this matter. Those written Heads will ultimately I think - what was the last date, I can't remember?

MR BERGER: Chairperson, the dates are as follows. Mr Richard to file his supplementary Heads, if any, by the 20th October and ...(intervention)

CHAIRPERSON: Any response by the end of the month?

MR BERGER: The end of the month I've worked out is a Sunday

so our response will be by the 1st November.

CHAIRPERSON: Thank you Mr Berger.

MR RICHARD: That is correct.

CHAIRPERSON: Thank you Mr Richard.

So we will then adjourn now. I'd just like to, before we adjourn, thank everybody who made these hearings possible. The sound technicians, the translators for their long hard work, thank you very much. Caterers, security people, the legal representatives for their assistance, logistic officers, my secretary, everybody, thank you and our decision is accordingly reserved and we will adjourn. Thank you.

HEARING ADJOURNS