IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA Ass. 2.

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

DELMAS

1986-01-11

DIE STAAT teen: PATRICK MABUYA BALEKA EN 21 ANDER

VOOR: SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRÜGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT: ADV. P.B. JACOBS
ADV. P. FICK
ADV. W. HANEKOM

NAMENS DIE VERDEDIGING: ADV. A. CHASKALSON
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACOOB
ADV. G.J. MARCUS

TOLK: MNR. B.S.N. SKOSANA

KLAGTE: (SIEN AKTE VAN BESKULDIGING)

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COURT RESUMES ON 11 FEBRUARY 1986.

IC 8 d.s.s. (Through Interpreter - In Camera)

FURTHER CROSS-EXAMINATION BY MR BIZOS: After your release from detention in October and whilst you were staying at Oupa's, accused no. 2's house did you write out a short note for accused no. 2? -- Yes in reply to his original letter he had written to me.

Yes. Can you recall what you said in your note? -- No I cannot recall what I was saying in my note.

Well did you say in your note .... (10)

COURT: Have you got the note?

MR BIZOS: No My Lord.

COURT: Yes?

MR BIZOS: Did you say in your note that you were called in by the police? -- No I did not say that.

Well what did you say in your note? -- Even though I cannot remember precisely what the contents of my note were but I did not say that.

Well can you remember anything that you said in that note? Or are you perhaps reluctant to tell His Lordship what (20) you said in the note?-- It is not a question of being reluctant in telling His Lordship what were the contents of that note. In whatever I have written I would not have made mention of the police because I knew that this person is in custody, or he is in jail, under detention or something like that.

Well, but a note had been smuggled to his family by him and did you not know that your note would be smuggled in to him? -- We knew that there was somebody who could do that, that is smuggling the note from him over to his people and which note had something to say about me. But then at the time of (30) my making a note to him we did not know when was this man

going/....

going on duty, that is the note smuggler, and what the situation is about his chiefs.

Well I am going to put to you that what you wrote in that note was the following, that you have been called in by the police, that you had been treated badly and you had been repeatedly accused of being responsible for the murder of Caesar Motjeane, that you repeatedly denied this and denied that you had any knowledge of it. Now did you say anything like that? -- No not in that note, I never said anything in that line or words to that effect. If he had received a (10) note where these things are being mentioned as put to me by the defence then it means that note was not the note written by me, it may have come from someone else.

And did you finish off that to the effect that, with the suggestion that if the same was happening to him he should stay strong and pray hard?

MNR FICK: Edele, die Staat maak beswaar teen hierdie tipe kruisverhoor. Ek het nie voor dit nou beswaar gemaak nie, omdat ek nie geweet het wat my Geleerde Vriend gaan sê hieroor nie. Ek wil u verwys na die saak van S v FFRENCH- (20) BEYTACH 1971 (4) SA 571 (T) op 572-A:

> "In this regard the general principle is that in matters which are relevant to the issue the answers of a witness in cross-examination may be contradicted by other evidence but that the answers to questions which are relevant solely to the witness' credit must be considered as final."

en dan verwys ek ook na ... (tussenbei)

HOF: Wag, wag, wag net 'n bietjie. Daardie beginsel soos ek dit altyd verstaan het, handel met die vraag of jy (30) getuienis ter weerlegging kan aanvoer van daardie getuienis;

met/.....

met ander woorde, as daar nou tetuienis sou kom om hierdie nota voor te lê, dan sou daar 'n beswaar wees op grond van FFRENCH-BEYTACH se saak en dit sou die einde van die saak wees, want daardie nota is irrelevant wat die punt betref wat ek moet beslis. Maar handel daardie vraag nou met kruis-ondervraging per se, handel daardie saak met kruis-ondervraging per se?

MNR FICK: Nee, dit is nie ... (tussenbei)

HOF: En sê dat 'n antwoord finaal is? As 'n getuie sê die hemel is blou en dit is nou nie direk ter sprake nie, moet die kruisondervraging dan maar aanvaar die hemel is blou? Kan hy ne sê daar is wolke nie?

MNR FICK: Edele, my submissie is dat hierdie is nie 'n direkte geskilpunt nie.

HOF: Nee, maar my vraag aan us is, is die gesag wat u aanvoer, gesag vir die stelling wat u nou maak?

MNR FICK: In die FFRENCH-BEYTACH saak was dit 'n geval van dat hulle 'n ander getuie wou roep.

HOF: Ja.

MNR FICK: Dit is so.

HOF: Ja, maar dan is FFRENCH-BEYTACH nie gesag nie. Wat is u ander gesag?

MNR FICK: HOFFMANN

HOF: Wat sê HOFFMANN.

MNR FICK: Dit is dieselfde:

> "In matters which are relevant to the issue, the answer of the witness under cross-examination may be contradicted by other evidence, but his answers to questions which are relevant solely to his credit, are final."

HOF: Ja, dit is heeltemal reg, maar dit is nie waar ons nou

mee/.....

mee besig is nie. Ons is nou besig met die kruisverhoor, nog nie met die weerlegging van die ding nie. Wanneer daar gepoog word om getuienis aan te voer van hierdie nota, ensovoorts, dan sal ek u weer hoor oor FFRENCH-BEYTACH se saak en daardie stukkie uit HOFFMANN.

MNR FICK: Soos die Hof behaag.

HOF: Die vraag wat gestel was: If the same was happening to him he should stay strong and pray hard. That it was put was the last portion of the note and I would like your comment on that. -- That is why I said if there was a note with those words, or words to that effect, then that note was not from me, it must have come from somewhere else. Though I admit to the Court I did discuss this with the sister to accused no. 2 and I used those words but not in a form of a note, this was an oral discussion.

MR BIZOS: Now in writing the note to the accused you were exposing yourself and the accused to certain risks? -- That is exactly the point why I say I would not have made mention of the police in that note, knowing that we the two, that is myself and him, are sort of involved in a thing where a danger can be anticipated. Therefore he is already in custody and should I mention something in that line it will be more dangerous for him who is already in custody.

No but did you not trust the go-between? -- Not at all because he is a policeman.

Well can you recall what you did say in the note? -- I cannot remember what I wrote in that note but what I can tell the Court is definitely not, I did not make mention of the police.

Well you told us that what I put to you you told to the sister and the wife of the accused? -- I said those

words/.....

words I discussed with his people, especially his sister. I did not make mention of his wife.

Yes. Now you then tell us that you said to the sister that you had been treated badly and accused of Caesar Motjeane's murder? -- That is so.

And that you had denied that you were responsible or that you knew anything material about it? -- That is so, at the time yes I did.

Did you tell the sister of accused no. 2, Oupa, the truth? -- That is so. (10)

Right now please I would appeal to you to tell us in what respects you were treated badly? -- It is not a good experience. Well alright I will talk about it if it is being said that I must talk about it. The people who were treating me in this fashion I do not know who they are except knowing that they are police. These people were assaulting me (the witness demonstrates his clenched fist and indicates his face), with a view, in fact saying to me that I must tell the truth about what happened there. I kept denying saying I had nothing to do or I was not at all involved in the killing of Caesar. (20) They then left me and fetched the others because we were many, although of course they would keep on coming back to me with questioning until they released me and let me go.

How many interrogation sessions did you have? -- I had no rest and therefore I am not in a position to tell the Court as to how many interrogation sessions I had because in that week I had no rest, I was just being interrcgated right through.

Are you perspiring at the moment? -- Well my face is fattish so I am just drying that up or wiping that off. (30)

During this week where were you kept? -- I do not know

what/.....

what is the name of this police station because all what happened was we went to Vereeniging but we just passed Vereeniging to that place.

Is it in a town or in the country? -- It is a country, it is not in town.

Any idea of the distance from Vereeniging to the place that you were taken to?

COURT: How does that help you Mr Bizos? And help me? Because I am not very much interested in this evidence except that you have made your point that he was interrogated for a whole week without rest. Now how does it help me to know where that was done? With the issues I have to decide in this case, in this case. Yes?

MR BIZOS: My Lord in view of the number of objections by the State and Your Lordship's remarks to me I would ask for leave to refer Your Lordship to a judgment of WESSELS, J. in the case of S v MDINGI 1979 (1) 309 (A) at 317 C-G, from about E-G the following is said by His Lordship in dealing with the credibility of a witness called Mdluli who had given evidence in a trial where he was warned as an accomplice before COETZEE, J. in the Witwatersrand Local Division where His Lordship had not taken into consideration certain of the evidence of a similar nature that has been extracted from the witness and His Lordship says, WESSELS, J. says the following:

> "Be that as it may I am of the opinion that the circumstances in which Mdluli came to be called as a witness cannot be overlooked. He was approached to make a statement to the police at the time of unrest in the Black townships. He appreciated that the police probably had knowledge of his association with appellant and

Radisi/.....

Radisi and that he had released appellant's motor car for the purpose of the journey to Swaziland. It appears from Radisi's evidence that he was well aware of the fact that he could be detained under the provisions of the Terrorism Act if he had information about terrorist activities and that such detention would be prejudicial to his business interests. He also stated in further cross-examination that he knew what sort of statement would safeguard his position in regard to his possible detention." (10)

And then His Lordship goes on, but that is the basis upon which a misdirection was found in crder to disbelieve the witness on appeal.

COURT: Because the Judge did not take that evidence into account.

MR BIZOS: Yes.

COURT: That is not the point I am dealing with with you. My question is having established that this gentleman was interrogated through that week, having established that he was kept at a place past Vereeniging which he does not know where (20) it is, having established that it is in the country on what basis are further questions to attempt to establish where it is relevant? How is it relevant to what I have to decided in this case?

MR BIZOS: In relation to this witness and other witnesses in the case. Let me appeal to Your Lordship in this regard. I do not know whether Your Lordship would want to excuse the witness because I must try and justify it as a general principle, what we are trying to do with this witness.

COURT: Very well, the witness can sit outside while this (30) argument is, because this argument will crop up time and

again/.....

again Mr Bizos and it is better that we have it now and have it finished and I will give a ruling on it.

MR BIZOS: As Your Lordship pleases. I rely on the circumstances under which a particular person comes to give evidence in court. It is highly relevant on his credibility. It is no different if our attorneys had got a bunch of witnesses in some ccuntry district, and I would remind Your Lordship of the witness' evidence that he was not alone, there are other witnesses who are in detention. I am appealing to Your Lordship in the interests of justice not to try and restrict the (10) cross-examination. I want to establish through this witness where this police station is because certain persons may be stationed at that police station and they may be witnesses on some other issue and I will be able to crcss-examine them in relation to that. Furthermore I can establish through other witnesses who are in detention, if they come along, if I get the names of the people that he said he was with, at which police station. I know that it takes time and that it may be tiring and it may extend the period of the trial.

COURT: Let us not deviate from the argument, whether it (20) takes time or does not take time. If it is relevant you are entitled to do it. The question we are dealing with at the moment is you have an answer, I have not stopped this evidence about him being interrogated, you have an answer, he was interrogated, you have an answer he was taken to a police station past Vereeniging, you have an answer that he does not know where it is. Now at some stage the cross-examination has to stop, we cannot go on and on about irrelevancies.

MR BIZOS: No My Lord, with respect, identifying the police station where a witness was kept for a week having drummed (30) into him that he was guilty of something which he denied is

not/....

not an irrelevancy, with respect, to establish where that police station was and to try and establish by description if he does not know the names who those police officers were. What would the State's attitude had been if that sort of evidence was given by a defence witness that our attorney had set up a room somewhere in the country at which he kept defence witnesses for a week? What would the State's attitude have been in wanting to get to the bottom of it, who is it who is behaving in this way which, if that evidence is true, is guilty of defeating the ends of justice. (10)

COURT: But that is not my concern at the moment Mr Bizos. My concern is to try these gentlemen on a charge of high treason and other charges.

MR BIZOS: My Lord on the evidence of truthful witnesses. If witnesses have been interfered with Your Lordship, with respect, is obliged to listen how they were interfered, where they were interfered with, in what manner they were interefered with, which other possible witnesses this witness may be able to identify and to hear fully, not because others may be guilty of defeating the ends of justice but because Your Lordship (20) will have to decide at the end what credence to place on the evidence of a witness such as this if he had been through that experience and there was a possible threat thereof.

COURT: Mr Bizos as I see it the purpose of cross-examination is to test the veracity of a witness. That is the purpose of cross-examination, not to go into a search for evidence or not evidence, or whatever it is. As long as you stick to the purpose of cross-examination, that is the testing of the veracity of the witness, you can continue. If you do not test the veracity of the witness any longer you cannot con- (30) tinue. Is that not the purpose of cross-examination?

MR BIZOS:/....

MR BIZOS: With respect My Lord Your Lordship is putting the purpose of cross-examination too narrowly when Your Lordship says that it is only for testing the veracity of the witness and of him alone, and let us test that proposition in this way. If a witness says that I am telling the truth but a person whose name I do not know was also there am I prohibited in cross-examination to try and get a description from that person as to what the other person looked like in the hope, through the information that I have obtained from the witness, to trace the other person and have an interview with him in order to gain information about the truthfulness or otherwise of the transaction deposed to by the witness? I submit not. So that when Your Lordship puts it that I must only direct questions in relation to the credibility of the witness and not try and establish other facts from which both his credibility may be affected and in addition that one of the parties to the case has not behave properly, Your Lordship will recall perhaps that Wigmore has got a whole chapter on where a party to the case has not behaved properly the evidence is admissible in order to show that he had no confidence in the strength of his case and on that basis any impropriety committed in relation to any witness extra-judicially is highly relevant to the main issue in the case.

COURT: If the State Prosecutor acted irregularly yes, then he had no confidence in his case. But this is a policeman.

MR BIZOS: But My Lord he is a party to this case, he is the investigating officer, he is in the position of our attorneys. Would Your Lordship exclude evidence if a defence witness said that an attorney ....

COURT: But there is no allegation that the investigating officer did it.

MR BIZOS: Is Your Lordship going to hold that these police officers were on a frolic on their own and they were, or at least let me put it this way, is Your Lordship going to rule that these persons, I cannot investigate the behaviour of this police officer in some unknown police station on the basis that they were on a frolic of their own and they were not connected with the investigation? Am I not at least entitled to try and ascertain which police station it was and who were they, did they not call each other by their Christian or pet names for the purposes of identifying them and can I not make enquiries as to whether they were assistants of the investigating officer or not? This is why, I submit with the greatest respect that this cross-examination has been allowed in numerous other cases without any of it being ....

COURT: Have you got any judgment on this? On how far the cross-examination can go in this type of case?

MR BIZOS: The nearest I could get is the statement of WESSELS, J. to the effect ...

COURT: Yes I do not interpret it in your way, I interpret that to say that the Judge there misdirected himself in not taking into account the evidence placed before him. I am clearly going to take into account the evidence placed before me in this case, there is no doubt about that.

MR BIZOS: But My Lord it is not, the judgment says "the circumstances under which a witness has come to give evidence." That is what WESSELS, J. says. Now is it or is it not part of the circumstances under which a witness has come to give evidence that he was locked up somewhere without sleep for a week at a police station?

COURT: He has told you that. I did not stop ycu Mr Bizos.

MR BIZOS: Now then, the mere fact that he has told me, I

am/.....

am entitled to establish who these gentlemen were, to try and establish who these gentlemen were, who the other people were that were with him.

COURT: The question we are at the moment debating is whether you should be allowed to ask him further questions about where this police station was. He says "I do not know, it was somewhere past Vereeniging in the country".

MR BIZOS: I submit, with respect, that as part of this broad enquiry as to the circumstances under which he and apparently other, or possibly other witnesses came or will come to give evidence before Your Lordship is highly relevant on the circumstances under which this witness, and possibly others, have come to give evidence. That is the basis of the relevance.

COURT: Mr Bizos if you get out of him that he has been kept there for a week and questioned fcr a week you have got that.

MR BIZOS: But My Lord I want more, with respect. I claim the right to ask him what questions were asked of him, whether he was asked to implicate any of the accused and whether he inculpated them or he exculpated them. Because the manner in which investigating officers behave viz a viz witnesses is a particularly, investigating officers and their assistants behave viz a viz witnesses, is highly relevant as to the circumstances under which witnesses come into court and I am asking Your Lordship to consider this, this witness is in detention, the, he has already told your Lordship that he was told that he will be kept there for as long as they want him to be. The dangers of relying on evidence obtained under this form of, albeit statutory duress, the dangers of such evidence has been emphasised over and over again. In order to be able to assess how much pressure there was and what pressure

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there may still be on that witness whilst he is in the witness box is highly relevant because he is still under detention, and any attempt, in our respectful submission, to curtail the gathering of information and placing evidence before Your Lordship as to the circumstances under which this witness, and possibly others, were treated at this police station may well lead to a miscarriage of justice, with respect, and we appeal to Your Lordship to allow us, subject, I am not asking for a carte blanche and I know that at times over elaboration by a cross-examiner is an occupational disease almost. I (10) will readily concede that to any practising advocate. But to say that this evidence is irrelevant in assessing the circumstances under which this witness has come before Your Lordship to give evidence is not correct, with the greatest respect.

COURT: Could I have that case please Mr Bizos?

MR BIZOS: It is only a passage in some heads of argument, which was lighter and more convenient.

COURT: Well I will get the case out and have a look at it.

COURT ADJOURNS. COURT RESUMES. (20)

MR BIZOS: My Lord looking through the heads of argument that I picked out last night from another case I have come across that I have actually quoted a couple of other cases there that have a bearing on the subject. I am sorry that I did not mention them.

COURT: Yes I would like to hear about them.

MR BIZOS: My Lord, they do not deal directly in point as to whether cross-examination should be allowed to take place because it is clear from the judgments that it took place fairly fully, it is the judgment of MILNE, J. in S v MADUNA (30) & OTHERS 1978 (1) SA 143. If my memory serves me correctly

that/....

that was a case in which an application for a discharge was made against a number of accused because the State witnesses had said that they had been treated in a similar manner to what the witnesses deposed to hear, namely assaults, and His Lordship deals at length as to what the evidence of the treatment was from which Your Lordship may infer something. I do not remember what the result was in relation to the application for a discharge but I think some accused were let off at the end of the State case and others were not. I am not certain. The other case is, if my memory serves me correctly (10) I have not got the name of the judgment, I believe my memory serves me correctly, that is it is LE ROUX, J. in the case of S v MALEPANE & ANOTHER 1979 (1) SA 1009 (T) at 1016 F to 1017 B. The other case where this whole question is dealt with, yes it is LE ROUX, J. in that case, I see that I have a note. There is an unreported judgment which I am able to give to Your Lordship, it is S v, I think if it is required I have a copy of it in my chambers, S v JOHN CHRISTOPHER HOFFMAN, Case no. 475/76 (CPD), unreported. The passage which I found necessary to quote in this heads of argument (20) reads as follows:

> "In this connection I feel compelled to remark that whilst one's sympathies are with the police where they are working at high pressure and find themselves faced with prospective witnesses who are reluctant to talk the mere possibility that the witness, and especially one falling into the class of accomplices, may have been threatened with detention if he does not produce a satisfactory statement is sufficient to tarnish him from the point of view of a Court required to do (30) justice according to our practice in a criminal case."

And/.....

And in the Appellate Division in the case of S v HASSIM 1973 (3) 443 (A) at 454 G to 455 B a passage of JAMES, J.P. is quoted with approval by VAN BLERK, J.A. The reference there, I recall, is that Your Lordship may recall that there were attempts by leading evidence of psychologists and psychiatrists that no credence should be given at all to witnesses who are under detention and who have been in what was sometimes called solitary confinement and at other times called social isolation. But in dealing, in rejecting that argument that no credence at all can be placed if my (10) memory serves me correctly a warning to trial Judges is issued, it is stated that one must be careful that one does not overlook whether there were pressures, and more particularly whether those pressures are still present at the time that the witness is giving evidence. So that I submit, by a process of reasoning, by a process of reascning, that Your Lordship is entitled and indeed I submit obliged to hear in detail the circumstances under which this person was treated from the time of his detention to the time that he has come into the witness box in order to determine two main issues, was there (20) compulsion, were there irregularities which would make the evidence unsafe to accept and to what extent inferentially do those pressures still exist in the witness box. Without the detail that can only be extracted by cross-examination Your Lordship will not be in a position to do so. Finally I want to refer Your Lordship to the case of S v MANDLA JAMES SIBISI in the Natal Provincial Division, I was in the appeal before HOWARD, J. and THIRION, J. There the treatment of witnesses was an issue, the magistrate took each witness on his own merits or demerits so to speak and did not take (30) into consideration the cumulative effects of the evidence.

The/.....

The ratio decidendi, in my submission, I will try and get the judgment for Your Lordship, was that the whole investigation of the case must be taken into consideration, because by the ordinary rules of logic if there has been interference with one witness there is a possibility or a probability that other witnesses may have been interfered with, and I do recall that in the judgment the following submission was accepted as correct, that ....

COURT: That is an unreported case?

MR BIZOS: It is an unreported case, yes, it is an un- (10) reported case. The judgment of HOWARD, J. I want to find early on what the misdirection of, I will find it in a moment, the question that was posed was, this was the question posed in the heads of argument and I remember well that His Lordship incorporated it in the judgment.

> "The submission was despite a magistrate's statement that he warned himself of the possible dangers in language copied from decided cases he does not pose the vital question."

And then the vital question was: (20)

> "How can the Court be reasonably certain that the four witnesses cn whom it is about to rely are not falsely implicating the accused as a result of the pressures, such as complained by the fourteen other witnesses, and the accused more particularly as the State chose not to rebut the allegations made against the investigating officers."

So that what I rely on that authority for is this, that I am entitled, when this witness has said that "we were many", who the others were. We know, with respect, that there (30) are other witnesses in detention that the State is going to

call/.....

call and this is something that a cross-examiner ...

COURT: Let us get a tabulation of what exactly you want to ask because the question which we have been debating is whether you should continue asking questions about the locality when he said "I do not know where it is". But it seems to me you want to have a ruling on about every question you are about to ask for the next two days and that is a bit difficult you know, in advance.

MR BIZOS: No My Lord I too am getting tired and I was hoping to finish today. But I will be completely frank, (10) the witness is not here, it may well be that once a description is given that the accused will be able to identify this police station. They too were detained for a long time, they too may be able to identify, I may be able to submit that the witness is not really telling the truth when he says he does not know the names. This is why we appeal to Your Lordship not to give us carte blanche but certainly not to restrict us in trying to get to the bottom of how these witnesses have been dealt with.

HOF: Mnr Fick wat sê u? (20)

MNR FICK: Die Staat sal graag ook iet te sê wil hê. Soos ek my Geleerde Vriend verstaan, is die rede vir die ondervraging wat nou gaan volg, nie omdat die Verdediging bewys het of getuienis gaan voorlê dat met ander getuies dieselfde gehandel is as wat hierdie getuie sê met hom gehandel is nie; die Verdediging weet nie eers wie is die mense en of die Staat hulle gaan roep nie. Met respek, die hele doel van hierdie kruisondervraging soos dit vir die Staat nou lyk, is 'n kwessie van visvangery. Die Verdediging wil weet gaan daar sulke getuienis wees; weet hy van sulke mense; was (30) hulle mishandel; en dit, met respek, is ver van die doel

van/.....

van kruisondervraging af. As my Geleerde Vriend kom sê ek het sulke getuienis en ek maak sulke bewerings jy was by toe hierdie man aangerand is, dit is iets anders, maar om net te kom sê hy het niks nie en hy wil nou uitvind is daar dalk mense gewees wat saam aangehou is wat dalk aangerand was, dit, met respek, maak die Staat teen beswaar.

COURT: Mr Bizos have you got other aspects that you would like to cover in your cross-examination, then we can leave this aspect in abeyance for a while and you can come back to it later and I will give you a ruling on it? I would like to (10) have a look at these cases but I do not want to adjourn every time and then look at the cases and come back again. So if you can start on a different line and reserve your rights on this aspect.

MR BIZOS: My Lord I can do that, I can do that. There is just one problem that I have with it though and that is this, Your Lordship will recall that the witness yesterday denied that he had been asssaulted.

COURT: Yes.

MR BIZOS: And this morning he admitted it. I am concerned(20) with this contradiction.

COURT: Well I have no difficulty in you pursuing this aspect. That was not my difficulty with your cross-examination.

MR BIZOS: No obviously not My Lord but what I am concerned with is this, I do not know who has access to this witness.

COURT: Well if you want to pursue that part of this aspect do so by all means and then go on to something else.

MR BIZOS: If I may, and then could I, Your Lordship may find these, where the cases are quoted there is a list, if Your Lordship is going to look into the question Your Lord- (30) ship will see that there is a list of cases that has some

bearing,/....

bearing, not all of them but that have some bearing, they may be of some assistance to Your Lordship in relation to ....

COURT: Yes thank you I would like to have a look at that as well.

MR BIZOS: As Your Lordship pleases. I will try and get, I think I was sent a copy of HOWARD, J.'s judgment.

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COURT: When you left us there was a debate about the admissibility of the last question. I will give a ruling on that aspect later and Mr Bizos will continue with other questions in the meantime.

FURTHER CROSS-EXAMINATION BY MR BIZOS: Yesterday afternoon when I put the question to you whether you had been assaulted and whether you had said this to the members of the family of Oupa, accused no. 2, you denied it. -- That is true, I denied that.

And this morning you admitted it? -- That is so.

Were you afraid to admit it yesterday afternoon? -- That is true.

What were you afraid of? -- Well because I said to myself it may be that in my admitting that that it can be repeated or I can find myself in the same situation in which I was at the time.

So that this morning you hesitated whether to admit it or not? -- That is true.

And you actually broke out into a sweat? -- That is true.

Now I want to assure you please that I am sure that once you are in the witness box you have a limited protection from His Lordship and I would appeal to you to give the answers from now on not for the, not out of any fear but in accordance with the truth. Now tell me did you make a written

statement/....

statement when you were detained the first time? -- No not during my first detention, I did not make a statement.

You also told us that they told you that they would keep you there for as long as they liked? -- That is so.

During the seven days of interrogation did anybody make any notes of what you were saying? -- Yes somebody was busy writing.

One of the accused wants to be excused for a very short while.

COURT: Can we continue in his absence? (10)

MR BIZOS: I think we can.

COURT: Yes we will continue in his absence. As long as this does not become a habit with him and others.

MR BIZOS: I think that Your Lordship has, yes apparently there is some sort of a stomach bug going around.

COURT: I see, yes well we will continue in his absence.

MR BIZOS: As Your Lordship pleases. Did you deny during the period of that interrogation that you had anything to do with the death of Caesar Motjeane? -- What I emphatically denied there was that I took part in the killing of this person. (20)

Yes. And did they believe you? -- On looking at them face value they did not appear to believe that.

And is that why you were assaulted? -- Yes they wanted me to tell the truth.

The truth or what they believed to be the truth? -- They wanted me to tell what they believed to be the truth.

Yes. And however much you protested that did not help? -- Not at all, until at the last when I left.

And did you persist that, did you persist in your denials right up to the end? -- That is so. (30)

On how many occasions were you actually assaulted?

-- For/....

-- For four days, that is not four following days. By that I mean the four days in the week that I was there but not necesssarily four following days.

COURT: Were you assaulted for four full days or on four days? -- That is true, I was assaulted on different days, that is four days with some breaks in between.

MR BIZOS: Yes. Now did you say to them that you were present at Caesar Motjeane's place? -- Yes. Because according to their questions there it was quite clear to me that they knew that I was there and therefore I admitted being there. (10)

Did they only want you to admit that you were there and took part or did they also want you to admit that others were there and took part? -- They wanted me to admit, especially about myself that I was present there and I took some part, although of course they were questioning me about other people as well but they were stressing on me personally.

Did they make it clear that you would not be released until you admitted it? -- They did not in fact utter words to that effect except that they said to me they can keep me there for as long as they like. (20)

Did they ask you questions about any of the accused whilst you were in detention during that week? -- Yes they questioned me a lot about Oupa Hlomoka.

Yes. -- No. 2 accused.

And did they allege or did they want you to admit that he too was responsible for Motjeane's death? -- According to their questioning it was to say, the statement was in the form of saying that he, Oupa, was also taking a part in that which I denied.

Was your denial believed? -- Well they ended up (30) believing that, not pursuing it any further. As I said they

in/.....

in fact were more interested in me at that time.

Yes. Did they mention the name of Gcinumuzi Petrus Malindi, accused no. 5? -- During that interrogation they mentioned quite a number of people's names. I therefore cannot remember whether he was one of the people whose name was mentioned there.

And Simon Tseko Nkoli, accused no. 13, was he mentioned?

MR KRUGEL: I beg your pardon, was he there?

MR BIZOS: No was he mentioned during the course of the interrogation. (10)

COURT: No. 13?

MR BIZOS: No. 13 My Lord. -- No not him, not at all.

Right. Now tell me when they mentioned the names of people and you said you did not know them or you did not know whether they were there or not were you believed by your interrogators? -- I will say they did not believe me because after some time that they had left me alone, that is by releasing me, I was picked up again by others. At this time it is then that I could see that they are busy taking a statement from me. (20)

COURT: Now just let us get clarity. The first detention was for a week in October? -- That is so.

Your second detention was when? -- It was in November. It was in November. I even know the person who took my statement because that person introduced himself to me as somebody.

Yes no doubt Mr Bizos will ask you about that but you must just stick to the questions as asked. How many weeks were you free before you were redetained? -- About three weeks.

Yes thank you. (30)

MR BIZOS: Let us just stay with the first detention for the

time/.....

time being, we will come to the second detention. When you, did you tell them, let us start with the fundamentals. Did you tell them that you had seen certain people killing Motjeane? Or that you did not see anybody? -- I told them that I saw a group of people taking a person out of a house. I could not recognise who the people were, that is the group, which were taking this person out of the house.

Yes. You did not say anything else to them? -- No not to them.

No. None of the detail that you gave to His Lordship (10) here? As to what you saw? -- Not to the first interrogators, no.

No. Now were you perhaps told during your first interrogation that if you gave them a statement in which you said that you were implicated and who else was implicated that you might be called as a witness? -- No.

Were you not told of any of the benefits of co-operating with them? -- No.

Incidentally when you told His Lordship yesterday that your teeth were broken, or your dentures were broken (20) because you pushed them out with your tongue was that the truth? -- No it was not the truth. It was not the truth, the reason being that I could not just have mentioned the cause of the broken denture because I thought of my previous experiences that it can happen to me again. Therefore I could not tell the actual reason, how this broke.

Now ...

COURT: And what was the cause? -- That was as a result of a blow with a clenched fist (indicated by the witness on his, as I now indicate). (30)

On the side of the head? On the side of the chin? -- On

the/....

the side of the chin. When that blow landed there it resulted in my dentures falling out of my mouth and then breaking.

Was this during your first detention? -- That is so.

MR BIZOS: And that fear of what the police might do to you if you say anything against their interests was still present in you yesterday afternoon? -- Yes, that should I make mention of that these people can still assault me, I still had that fear.

Who are these people that you are still afraid of or you were still afraid of yesterday afternoon? -- The people who (10) had to do with me during my detention, those that I have said I do not know what their names are.

Yes. Did they appear to you to be investigating this case or a part of this case? Or the case of the death of Motjeane? -- Yes. Yes specifically concerning the death of Motjeane.

And tell me over these seven days, or the days on which you were interrogated were you fed with information by way of question? -- I do not understand that question.

COURT: Yes neither do I. Are you putting to the witness (20) that something was suggested to him or are you putting to the witness that he was given direct information and told that this is the correct fact and you had better admit it?

MR BIZOS: I will clarify it. Could you judge from the sort of question that was being put to you what they wanted you to say in order to stop assaulting you? -- Yes I will say so, because the way in which they were asking me questions, for instance to say "Is it not that you were there too assaulting Motjeane", their questioning in fact was just like that. I would say it was in the form of a leading question, it was(30) not diplomatic.

And/....

And would they put questions like that to you in relation to other people, not just yourself? Like Oupa for instance, would they try and lead you, I am sorry Mr Interpreter, would they try to lead you into an admission that accused no. 2, Oupa, was there also? -- Yes, especially with Oupa. The questions put to me were such leading questions in the way that they were leading me to say I must admit Oupa's presence there, put him at the scene, and then even go further than that to say that while being there he did this and that and that.

And did they do that only in relation to Oupa or other people as well? -- Not only with Oupa, with other people as well, but they did not show much interest about the other people and the people they were interested in mostly there while interrogating me was myself and Oupa.

Now were they putting any leadings questions to suggest to you that not only the death of Mr Motjeane but the other disturbances in the area were really, the other disturbances came about as a result of the acts of the people taking part in politics?

COURT: Meaning by disturbances the arson ....

MR BIZOS: The murders.

COURT: The murders and what else? Not the protest march?

MR BIZOS: Well I will come to the protest march.

COURT: Arson, murders and damage to property?

MR BIZOS: And damage to property. -- No they were not interested in what was happening concerning other things as mentioned by the defence. They were more concerned about the death of Caesar during that time.

Incidentally was your denial about the contents of your note to Oupa this morning also a denial out of fear? -- No not with that. It is not because I was in fear of anything.

Alright./....

1C8

Alright. Now ....

COURT: Do you stand by that denial? -- Yes I do.

MR BIZOS: Now tell me, it is quite obvious from the way in which you admitted this assault this morning that this week was a complete nightmare to you? -- That is so.

COURT: That would now be the week in October, not the week we are busy with now? -- Yes I understand that.

MR BIZOS: Yes it is something that you have not forgotten about and you are not likely to forget? -- I will never forget that, that will remain history with me which I will pass over even to my children as history of my experience.

Yes. Now and obviously you had not forgotten about it during the second period of detention? -- No I had not.

Now do you remember a date on which you signed your statement from which Our Learned Friend Mr Fick was leading you this morning, not this morning, a long time ago.

COURT: Last week, or was it the week before?

MR BIZOS: The date more or less, when did you sign? -- No I cannot remember as to what the date was when I signed that statement.

Now can we please have whether it was days, weeks or months after your second detention? -- If this answers the question properly some three weeks after I was released from my first detention I was fetched. It is during when I was fetched for the second time when I was questioned about all the meetings referred to.

Yes. Now for how long were you questioned before you eventually signed a statement? -- I was in the security police offices in Vereeniging for a day, a whole day while they were busy taking my statement. And thereafter I was told to go.

Where did you go? -- I went home.

So/.....

So you made a statement without being detained? -- That is correct. When they were picking me up this time, for the second time, they made it clear to me there and then that all they want from me is my statement.

Yes, and did you make a statement on that day? -- I then related to them about all what I knew then, and including those in which I took part.

And you were not detained on that day? -- No I was detained later on another time, another occasion.

When were you detained? -- They detained me on 22 December 1984. (10)

COURT: How long after ... -- In fact I will tell you they could have done that even earlier than that date because now I lived in fear of them, I was playing hide and seek for them to find me. That is what delayed my detention. At some stage I even booked sick at work for two weeks but the very first day when I reported for work after having been sick they arrived there to pick me up.

How long was that after you had made the statement? -- Between three weeks, one month or a month and some weeks. (20) That is one month, plus or minus.

MR BIZOS: And then you were detained? -- Yes they detained me saying, telling me about Section 31. I did not even understand or know what does that mean.

Yes. Were you interrogated in your second detention? -- Yes during this second detention, from 08h00 to 16h00, some time including Saturdays they would just come and interrogate me on a Saturday.

Every day? -- That is so.

Over a period of how long? -- I think that stopped some (30) time in March/April of the following year.

For/.....

For about three or four months? -- Plus or minus four months.

COURT: You mean daily from 08h00 to 16h00 for four months? -- Yes daily.

Did not you and they run out of questions and answers? -- They at times were running out of questions and then during that period they would try and make good friends with me and start discussing general things with me, involve myself with them in that kind of a discussion.

MR BIZOS: One of the reasons why questioning lasts a long time, I might say from experience, is that to try and get the person to say what he does not want to say.

COURT: Did you then say what you did not want to say? Speaking from experience?

MR BIZOS: No, what the witness does not want to say, not I. -- Well that is the only experience, I do not know about it.

Well you see that during this interrogation for three or four months it could only have lasted so long if there were disagreements between you and your interrogators? -- I can agree with that.

You can agree. What did your interrogators want out of you that you were not prepared to say? All the things they wanted to know from me are those contained in my statement.

Yes. And do I understand that if you, if you had said everything that is in your statement freely and voluntarily and without any leading questions it could have been done in a day or two, or three possibly? -- I would not say that is correct is not but it will depend on the interrogator, how broad minded is that person in understanding things that are being put across to him by the person who is interrogating, therefore it will depend on his understanding solely whether

it takes long, or a short period.

COURT: Could I just get clarity on one thing. I understood you to say that the statement from which Mr Fick, the Prosecutor, led you in this court was taken at a time when you were not detained on the one day you went to the security police offices? -- There was probably a misunderstanding. What I mean to say is this a statement, or a portion of the statement which was taken on the day when I visited the police station for a day, and the most of that was not used but it was a portion used and then thereafter on my second detention, during the interrogation, another or other facts sort of came out which facts then were put together with the facts which were given during the first day when I visited the police station in order to lead me in court here as evidence.

Yes, so the initial statement was amplified during your detention? -- That is so. I heard the Interpreter using the word that I visited the police offices. I only hope it is not understood that I have gone there for a mere visit where I had to go and enjoy myself. That is not the idea.

I did not get that impression.

MR BIZOS: Now you say that a portion of the first statement, a portion of the first statement was used and portion was not used? -- Yes that combined with the facts after my detention.

COURT: Yes but now let us just get clarity first because I do not think that you and the cross-examiner are on the same wavelength. Is it correct to say that a portion of the first statement was rejected and substituted with something else? -- No it was accepted as a whole.

And then something was added to it? -- That is so.

MR BIZOS: Right, could you tell us how many pages your

C66 first statement was? -- That I do not know.

But/....

But now tell me can you remember whether the statement, the final statement from which Mr Fick led you, when that was signed by you? -- I remember signing it. Now to say during which month or when exactly was that when I attached my signature on that statement I cannot remember. All I can say it was during the year 1985.

After your daily interrogation was completed? -- Yes long after that.

Long after that. -- Yes.

And was the oath administered to you when this final (10) statement was signed by you? -- Yes it was.

And were you told that you were going to be called as a witness? -- After the completion of everything pertaining to the statement it is then that they told me that I must know that I am going to be called as a witness.

Yes. Did they tell you that you, did they remind you that you had taken an oath? -- Yes that is so.

Did they remind you what might happen to you if you departed in any way from that what was said on oath in that statement? -- I am not clear on that question. (20)

Did you, once you signed it under oath were you told or do you know what will happen to you if you depart from that statement? -- All they told me was that I must know that I am going to be called as a witness. I nearly objected to that, trying to find out the reason why.

COURT: The question actually is were you told that you have now taken an oath and that therefore something will happen to you if you deviate from your statement? -- Yes I was told.

MR BIZOS: What were you told would happen to you if you deviated from your statement? -- They said to me one thing (30) I must bear in mind is that should I deviate from my statement

for/.....

IC 8

for which I have taken an oath I must know that I can be kept in detention for a period of five years. Now thinking back about my family as a whole and thinking back about myself as a person, my health condition, I then decided that I will have to stick to what I have said in the statement.

Well would you like now to tell His Lordship that what you said, some of the things that you said in your statement are not true or are you still afraid of the five years detention? -- Now at this moment it has come to a point where I do not care. I came here to give evidence about what (10) I know and what is contained in my statement is the truth.

INTERPRETER: While interpreting the witness whispered something to me which he had not said before which was "I meant I did not care what will happen to me".

COURT ADJOURNS FOR TEA. COURT RESUMES.

IC 8 d.s.s. (Through Interpreter - In Camera)

MR BIZOS: My Lord accused no. 9 has had to be rushed to the District Surgeon. We do not believe that it is anything serious except this bug that is going around but we do apply formally to proceed in his absence in terms of the section. (20) We do have instructions from him in relation to the matters that the witness is speaking of.

COURT: Thank you, we will proceed on that basis. Any objection Mr Fick.

MR FICK: No objection My Lord.

FURTHER CROSS-EXAMINATION BY MR BIZOS: Now would you agree that if there was no difficulty between you and your interrogator your statement could have been taken in two or three days? -- Well that I will not know because all what I was telling him is what I knew about. (30)

Yes but you related your story in approximately one day,

if/.....

if my memory serves me correctly? Was there any reason why your whole story could not have been related to your interrogator in two or three days, or even a week? -- They will know why it took so long.

Yes. Well first of all let us ask you who were "they"? -- Who were "they" who?

The interrogators. -- The very first person who took a statement from me introduced himself to me as Captain Kruger. Then thereafter, after my detention, different people used to come to me. I will not be able to remember their names, (10) all of them, otherwise facially I can still recognise them should I see them again.

Were they under the direction of Captain Kruger during the period of approximately four months that your statement was being taken? -- That is so.

And did Captain Kruger himself ask you questions from time to time during this period? -- I last heard of him, or him questioning me, the very first day when he was asking me for the first time. He never came back to me.

COURT: So he only questioned you on one day? -- That is so. (20)

MR BIZOS: Why do you say that the people who were questioning you for four months were under his direction? -- Why I say that it is because he Captain Kruger, when I was picked up for the first time he told me that he is the investigating officer, so that is why I say they were working under him.

When you say the first time do you mean the very first time, even before the first detention? -- When I am talking about the first time I am talking about the day when I was there only for a day and I was let to go free.

I understand. Who told you that you would spend five (30) years in detention if you departed from your statement? -- One

of/.....

of the interrogators.

How many people interrogated you? -- They were alternating, I think they were five.

Do you not know the name of any one of them? -- I remember one or two of them by their names.

Could we have them please. -- One said he was van Niekerk, the other one was Bezuidenhout.

And do you recall their ranks? -- I cannot remember their ranks, but they were not captains.

Less than captains? -- Yes. (10)

Now whilst you were being interrogated over this period of approximately four months did you have the benefit of the companionship of any fellow prisoners? -- I was staying all by myself in a cell.

So if you were not being interrogated you were alone in your cell? -- Yes.

Every night, weekends? -- All the time.

During this period that you were being interrogated and kept alone in your cell were you allowed any visitors? -- No. (20)

Were you allowed any reading matter? -- They used to bring me some comics meant for young kids, just to keep myself busy.

Were you in despair whilst you were being, during this period of four months? -- That is so.

Now I would ask everyone present to respect what I, the privacy of what I am going to put to you but were you in fact contemplating doing away with yourself after your first detention? -- Yes I was in fact considering that, it occurred to me on many occasions. (30)

After your first detention? -- Yes even during the second

detention./....

detention.

Yes. Is accused no. 2's mother a traditional doctor? -- She is a prophet.

COURT: Not a herbalist? -- No not a herbalist.

MR BIZOS: Yes, I am sorry, perhaps I did not use the correct, and did you confide yourself, did you confide your fears to her after your first detention? -- Yes I did.

Well you know I do not want to go on for too long with this but will you agree with me that during the period of detention, your second period of detention, you would say or do anything in order to try and get out of that desperate situation? -- That is not so.

Well you know I am not unmindful of the pressures that there are on you now and I do not want to add to them. Do you not find yourself that as you are standing there in the witness box that you are really trapped? -- I do not understand that trapped, in what way?

Well if you concede that anything in your statement or in your evidence-in-chief, any material thing is wrong you must be afraid that you will go back to that miserable condition of loneliness in a cell all by yourself? -- Not really because I am at the present moment all by myself. From here I go to a cell where I am being locked alone.

Are you not anxious that it should come to an end as soon as possible? -- I am anxious, in fact from the beginning I was anxious that this must just be finished as soon as possible so that even if I have to wait for some time but then I must know after a certain period I will be free from the cell.

The conflict situation that made you think of doing away with yourself during your second detention was that as

a result of what was being put to you by your interrogators? -- No that is not so.

Was it the nightmare of the first detention? -- The reason why in fact it occurred to my mind to get rid of myself or to do away with myself was when I think of my children at that present moment, and the people who showed respect to me in the community are now pointing a finger at me saying "There is he in jail".

Now as you are standing there now in the witness box do you feel that you have done, that you had done anything wrong, that you had committed any crime in anything that you had done in your capacity as a member of AZAPO? -- Not at all, I do not feel like that.

Did you feel that everything that you did was above board and lawful? -- Even if it was not lawful I did not expect it to have created such a serious problem as this one in which I find myself.

Yes, what you mean lawful, that it is possible that the march may not have had permission to march or something? -- Yes that I meant by marching and for instance stopping people from paying their house rentals.

You never felt that you were guilty of treason in that you were taking part in activities to overthrow the State by violence? -- That question is not clear.

Did you feel that you had made yourself guilty of treason? In that you conspired with the African National Congress for the purposes of overthrowing the State by violence, did you feel guilty in relation to that whilst you were in detention? -- This question is very difficult for me to answer, the reason being that I am not clear exactly what is the question about because now there is some

involvement/.....

involvement of the ANC in the question and I am just not clear what the question is.

Yes. Let me try and simplify it. Did you agree ever with the ANC to overthrow the State? You personally? -- No not at all, not with the ANC.

Did you ever know of any agreement between AZAPO and the ANC, an agreement between AZAPO and the ANC to overthrow the State? -- No I know nothing about that.

You know nothing about it. Did you feel whilst you were in detention that you were responsible for any of the deaths of any of the councillors that were killed? -- What occurred to me while I was in detention in fact, which is one of the reasons which caused me to think about killing myself, is that this government will not look deep into the whole thing, they will just accept it on face value that we, the people who had a lot to say, are the people who caused by having a lot to say that the councillors be killed and therefore I felt it would be wise to kill myself.

Is that because that was the government feeling? -- Yes that is so.

Who communicated the government feeling to you? -- As I say I was all by myself there where I was staying and thinking about a lot of things. While thinking in that place where I was all by myself, that is one of the things which occurred in my mind.

Yes, well were the interrogators not saying to you that you and the other members of AZAPO and the VCA and the ANC were responsible for all this, was that not the line taken by the interrogators during this period of four months? -- At times in passing they would say that, yes.

They would say that. Were you told by your interrogators

that/.....

that you will only be released from detention if you made a statement which was to the satisfaction of the Commissioner of Police? -- No mention was made of the Commissioner of the Police or satisfaction to the Commissioner of the Police in my statement. All that was said to me was His Lordship the presiding Judge will be the only person who will decide later whether I satisfied the court and then he will take his own decision as to what is to happen to me.

Yes but this must have been after you were told that you would be a witness and when your statement was already (10) taken? -- About the Judge?

About His Lordship yes. -- Well about the Commissioner of the Police nothing was said to me.

But do you agree that the statement about the satisfaction of the Judge came afterwards, after you had made your statement and after you were told that you would be a witness? -- Yes after the completion of that, in fact after having finished completed everything they said to me "Look now it will be for the presiding Judge to decide whether he puts you in jail or what is happening to you, depending on the evidence."(20)

I see yes, but before we reached that stage of the completion of your statement did you get an idea from your interrogators that the more you resisted their suggestions the longer you would remain in detention? -- No such suggestions were made to me.

Did you not work it out for yourself? -- As I say I was thinking about a lot of things. Perhaps their coming to me so regularly all the time is because that they were not satisfied about what I was telling them.

Did you find in your loneliness in the cell more (30) ready to agree with your interrogators' interpretation of the

facts/....

facts as time went on? -- As I have already said I would rather die than to admit something which is not correct as a fact in something.

Well I am sorry to contradict you on that assertion but only yesterday afternoon you denied the facts about your assault. So please do not put it too strongly. -- I am going to explain it this way. To be assaulted and to be told to admit certain things that might have taken place those are two different things.

Tell me did you know for instance whilst you were (10) in detention that Mr Esau Raditsela was no longer available? -- I hear for the first time that he is no more on this country.

Well nobody said that he is no more in this country. I merely said that he is not available.

COURT: What does "not available" mean?

MR BIZOS: It happens that the witness is correct, and the next question will be how do you know that he is out of the country? -- I got that from the Interpreter when he was interpreting "He is not being available" and understood that(20) to be that he is not in this country.

Right. We will not spend too much time on that. But now were you ...

COURT: Is that in fact so?

MR BIZOS: Our instructions are that he is not because...

COURT: He is out of the country?

MR BIZOS: Those are our instructions.

COURT: Yes alright.

MR BIZOS: Now you see were you being asked questions by your interrogators about different people during the course(30) of your interrogation? -- That is so.

Including/.....

Including the accused, or some of the accused? -- That is so.

Did you believe that when you were being asked for the lack of a better term, when you were being asked about the politicians in the Vaal Triangle and the long speeches that they had made, did you feel that they too were innocent of the crimes that were being mentioned by your interrogators? -- Will you please be specific and make your question clear to me.

COURT: Who do you regard as politicians? Would you regard(10) the witness for example as a politician?

MR BIZOS: As a politician, as an AZAPO he is a politician.

COURT: Well one is not a politician merely because you belong to a political party.

MR BIZOS: Oh lots of people will not agree with that definition My Lord.

COURT: Well will you define politicians for the witness and then put your question.

MR BIZOS: Right, let us put it another way, but may I before I take up the question, let anyone suggests things (20) in relation to Mr Raditsela we had a telephone call from an attorney representing Mr Raditsela beyond the borders of the Republic wanting to give us instructions in relation to what he had read the witness having said, this is how we know about this. You told us that your interrogators believed that the trouble had come about as a result of the speeches that were being made, you recall that? -- Yes I do.

Now when I use the word "politicians" I mean that class of person, the class of person who was involved in the political life in the community generally. Right. You see, did (30) you get the impression that your interrogators believed, like

they/.....

they suggested to you, that they were responsible for the outbreak of the troubles because of the speeches that they had made and the acts that they had committed? -- From the meetings that I attended myself there are some of the people whom I also personally consider to have encouraged some of the acts which were committed.

Is that what you started believing whilst you were in detention? -- No even before my arrest.

Even before that. Well I am going to suggest to you that that is the trouble with detention such as you underwent. (10) That after four months of interrogation you finish up agreeing with those people who make the allegations. -- Prior to you coming to that conclusion I will be the happiest man if you ask me for reasons why I say that and who are the people I am talking about.

Yes we will come to that because we have your evidence-in-chief, we have not finished, we have your evidence-in-chief and you see ....

COURT: Well now let us just get clarity on the answer. You disagree that your answers here have been brought about by, (20) or you disagree that your view expressed about the causes or some of the causes of the trouble have been brought about by your detention? -- I disagree with that.

And you wanted to give reasons? -- That is so.

What are your reasons? -- In the first place let me for instance take Esau Raditsela in one of the meetings where he said "All Hell will break loose in South Africa". He did not explain that but a thinking person understand what is he driving at and those who were saying that councillors are to be killed, those are the people I am talking about. In fact(30) they are the people who caused us to be here today.

MR BIZOS:/.....

MR BIZOS: Which persons said that councillors are to be killed? -- I will again have to quote Esau from his speeches and the placards which were written for 3 September.

So other than Mr Esau Raditsela and the happenings of the morning of the 3rd you have no other basis to believe, you have no other reasons? -- And those that I saw acting at Caesar Motjeane's house, for instance setting it alight with the long sticks they had and those who took part in the killing of Caesar so to say.

Right, any other reasons that you want to give to His (10) Lordship for that view? -- That is all.

That is all. It is something that you have thought about for a long time and you have no other reasons? Now I wanted to ask you this, during your first detention did you tell your interrogators for the whole week that you saw a placard saying "Kill Mahlatsi", did you tell them that? -- No that I did not make mention of.

Did you make mention that he made a speech on the morning, that Mr Raditsela made a speech in the morning saying that "You must kill the councillors and destroy their property"? Did (20) you say that? -- I was only answering to questions that were being put to me by those people and not just giving details about something they did not ask for.

So you did not say anything about Raditsela's speech on the morning of the 3rd to your interrogators for a week on the first occasion? -- That is so because they did not ask me anything about that.

Was it your view then, during your first detention that there was a cause and effect between the speech made by Raditsela on the morning of the 3rd and the placards that (30) were there and the death of Motjeane? -- What is your question

on that, I am not clear.

COURT: It is a very involved question. I will put it much easier for you. Did you at the time of your first detention think that Esau's speech and the placards in some way caused the death of Caesar Motjeane? -- I did think of that prior to my first detention. In fact this occurred to me that day when this incident took place which resulted in my remarking about what was happening there at the scene.

MR BIZOS: You told us you did not mention this to the, your interrogators, during the period of a week in October? -- That is so.

Can we assume that you also did not mention it in the short statement that you first made to Mr Kruger on the first day of your second detention? I beg your pardon, the visit, what the interpreter wrongly called the visit, that you also did not mention it in your first short statement? -- Because he was asking about everything in general I did not tell him about that.

You said about this in your first statement? -- Yes that is so.

Did you sign it? -- No I did not.

You did not sign it? -- No I did not.

And Captain Kruger let you go? -- Well he let me go.

Yes, and let me see whether, did you mention to Captain Kruger, on the day that he let you go, that you heard the speech about Esau Raditsela, by Esau Raditsela? -- Yes that is so.

And you mentioned to him that there were, did you mention to him that there were two other people on the so-called platform with him? -- Which platform are you referring to?

Well where the speech was made, was Raditsela alone when

he spoke? -- No he was not alone, I related to him exactly as I related in that statement.

And without showing you any photographs and without investigating who were the people that might be there Captain Kruger let you go when you had such important evidence? -- He did let me go. I only saw the photographs later when I was locked up.

Yes, over the period of four months? -- That is so.

You saw the photographs of the accused and many other people? -- Yes. (10)

In albums? -- It was a file.

Alright. But now let us deal with the first detention when you did not mention this. Were those investigating officers trying to find out the people who were responsible for the death of Caesar Motjeane? -- I do not understand that question.

Your interrogators during your first detention of a week were trying to find out who was responsible for the death of Caesar Motjeane, a councillor in the Vaal Triangle? -- As I have already explained that they were asking direct ques- (20) tions, for instance to me a question being put as follows, "You were there at the time, do you agree with that".

You were shocked by the death of the late Caesar Motjeane? -- That is natural. If a person dies in that fashion while you people are looking, of course you will be shocked.

During the whole week, day and night interrogation, did you feel obliged to try and help these interrogators even though they had behaved badly towards you? Did you not feel obliged to try and help him .....

COURT: Was it a whole week day and night? (30)

MR BIZOS: That is how I understood it.

COURT:/.....

COURT: Or was it four days in the week?

MR BIZOS: I think he said that there was interrogation right, no that there was, he was not allowed to sleep right through but there was interrogation, for four days were the assaults. At any rate I can clear it up.

COURT: Yes well anyway I do not want you to go back on it.

MR BIZOS: Alright. During this lengthy period of interrogation did you feel that you owed it to your interrogators and to your conscience to be of assistance to them to try and find the people responsible for Caesar Motjeane's death? (10) -- In the first place the person wants some information, he wants to know something from you but the manner of approach and the way he uses of trying to get that information is that he is fighting you and again in trying to get an information from you, for instance, and then he takes some object like this glass and says "This is a glass and you know this is not a glass", then you keep on saying "This is not a glass". That is how it happened.

Yes. In order to even avoid further assaults on yourself why did it not occur to you during the first interro- (20) gation, the first detention, to say "I was not there but if you really want to get to the bottom of this go to Esau Raditsela, he made a speech saying 'Go and kill the councillors', there were people next to him, he has lieutenants, there are people close to him, go to them, please do not beat me up for nothing I am an innocent man"? -- It never occurred in my mind that I should say that to them. And secondly I was sick and tired with these people. I just felt I cannot cooperate with them.

Yes. Did you, I am going to suggest to you in view (30) of our instructions as to what was actually said by Mr

Raditsela/....

Raditsela on the morning of the 3rd, that the softer approach worked in getting you to make a statement which was not true about him? -- What I have said to this Court and alleged that it was said by Raditsela that is what he had said.

Yes. Now let us try and put the context in which you say Mr Raditsela said these things. I will come back to the details but as we are dealing with it now I am sure that His Lordship and the Learned Assessors will want to know what our version in regard to that is. Listen carefully. Did you arrive at the Catholic, Small Farms Catholic Church (10) with accused no. 2, Oupa? -- That is so.

Will you please tell us more or less what time this was? -- It was after 09h00, to 10h00, I am not quite sure of the time.

Well for a start I am going to put to you that you are completely wrong about the time. That you arrived before 09h00 and that the march was beginning to be on its way at 09h00. Are you prepared to admit or deny that? -- That we were there before 09h00, when we have left Zone 3 at about 08h00 on foot and only got a lift not far from the place, that (20) I do not agree with.

You do not agree. Would you say that it was nearer to 10h00 than 09h00 when you arrived at Small Farms? -- As I said it was after 09h00 but before 10h00.

Now would you agree that the hall, not the church at this place, there is both a hall and a church? -- I agree with you.

Do you say that the words that you attribute to Mr Raditsela were said inside or outside the hall? -- He said those words being inside, because he said "Now we are going out and we march to Houtkop". (30)

I just want to get absolute clarity that the words that

you/....

1C8

you have attributed to Mr Raditsela you say he said in the hall itself, in the hall? -- Yes in the building of the Roman Catholic Church, inside.

Inside.

COURT: Is that now the hall not the church itself, the hall?

MR BIZOS: Well could I remind you ....

COURT: No could we just get clarity from the witness. Is it correct that there is, on the same premises, a church and a hall? Two buildings? -- If my memory serves me well on the premises of the church there are three buildings. (10)

What are they? -- What I do not know is the building in which we were, whether this is being used for church services or is that the building which is being used as a hall.

MR BIZOS: I am going to put to you that it is the hall, for the sake of clarity as you are coming down the untarred road the building on the right-hand side. Are we talking about the same building? -- From which direction?

No from the direction that you were coming, from Zone 13.

COURT: Now can you not describe the different buildings. Has one got a spire or has the other one got a flat roof or ...(20)

MR BIZOS: My Lord this hall was once a church in fact and they are much of a muchness, with respect, the two buildings. The other is just a house and office. Look never mind, it was indoors, that is the aspect that we should concern ourselves with? -- Yes.

Did you go right into the hall that Raditsela was speaking in or not? -- On arrival there we got into the building and we in fact went as far as the stage.

You did not remain at the door? -- No.

Now I am going to put to you the things that Mr (30) Raditsela did in fact say and not what you say he said. Did

he/.....

he call for discipline? -- Did he or me?

Raditsela, did Raditsela call for discipline? -- He did not.

COURT: Is it put that he did?

MR BIZOS: He did, yes.

COURT: Yes but you do not put it that you are putting that he did so. You merely ask the witness. I am not clear what you are putting.

MR BIZOS: As Your Lordship pleases, I will ...

COURT: It is put as a fact that Raditsela called for discipline and that is denied. (10)

MR BIZOS: Yes, you say that he did not call for it? -- No.

Were you there from the beginning of Raditsela's speech? -- It will mean then he made another speech but in the speech which he made while I was there present he never did.

The question was .....

COURT: And you listened to that speech from the moment it started, you did not come in halfway? -- When he started addressing in that speech I was there, not that I found him already busy addressing. (20)

MR BIZOS: Right, you were there from the beginning? -- Yes from the beginning of his speech.

Do you recall that he said that the march is likely to meet the police along the way? -- It is not a question of me recalling or maybe forgetting. He just never said that in his speech.

Well I am going to put to you that he did. Just listen. -- I will keep on denying that.

Yes. Did he say that when they meet the police they must not divide up or disperse but that they should proceed straight to Houtkop? -- Those words yes he did mention. (30)

Must/....

Must go straight to Houtkop, yes.

COURT: What did he mention, only the going straight to Houtkop or also that when they would meet the police they should not disperse? -- He said should they happen to come across the police they must not disperse or divide themselves, they must stay together and proceed to Houtkop.

MR BIZOS: That they should not allow themselves to be provoked by the police? -- No he never said those words.

And that they themselves must not provoke the police? -- If ever he said that then he must have said it before I arrived there, otherwise as I said in the speech which started in my presence there he never uttered those words. (10)

Did he say that people should keep wet cloths with them to protect themselves should the police throw teargas at them? -- No that I did not hear him saying.

Did he, did you hear him say, as I put to you that he did say, that this was an important march and it was important to reach in Houtkop as a long and strong march? -- No I did not hear him saying that. What I heard him saying is what I have already told this Court about. (20)

We will come to what you have told us, which I am going to put to you is completely untrue. But let us get some other facts before we put that. How many people were there in this hall? -- There were many people there, I did not think of counting them.

Well if I were to suggest to you that there were approximately 200 people there would you quarrel with it? -- I do not want to pin myself down to something. All I can say is there were many people there, some were even standing.

COURT: Was the hall full? -- That was so. (30)

MR BIZOS: Now you gave your reasons to His Lordship this

morning/....

morning as to why you thought that there was responsibility on those who called for the killing of councillors. Would it be correct to say that what you say Raditsela said was completely out of character with whatever had happened at any other previous public meeting that you had attended? -- I do not understand the question, could you repeat the question?

Yes I will paraphrase it. This was the first time that you had heard these fighting words at a public meeting? -- It was the first time that I heard him, Esau, talking in that fashion in a public meeting. (10)

Had you heard anyone else speaking like that at any other public meeting? -- Not from the meetings that I attended, I heard nobody speaking in that way.

Now this proposed march of the 3rd was not kept a secret from anyone in the community? -- That is so.

The whole community had been invited to participate? -- That is so.

Access to his hall was not screened? -- That is so.

And if I were to put to you that in that hall there were members of the public who I will describe as pillars of (20) respectability would you agree? Such as ...

COURT: Respectability. But now can we not just get a bit of clarity what is a pillar of respectability? Can you not just say that there were respectable persons in the hall?

MR BIZOS: Yes, there were respectable persons in the hall? I will put it that way. -- I did not take a particular precaution to see whether there are respectable people or not. All I can say was I saw people in the hall.

Right. I am going to put to you that if need be dozens of people will be called before His Lordship to say that (30) Raditsela did not utter those words and that those words were

put/....

put by you into his mouth in order that you had to get, I am sorry. That dozens of people will say if need be that those words were not used by Raditsela. -- People who respect the truth and people who in fact likes the truth will come and tell this Court that Raditsela did speak that way.

Now did you consider yourself a peace loving man on that morning? -- That is how I consider myself every day.

And more particularly on that day? -- Every day, there is no day which I can put above the other days.

Yes. A peace loving man who would not take part in the killing of councillors? -- Like I did not play any part.

Not a person who would destroy the property of any councillors? -- I agree with you.

Not a person who would damage government or administration property? -- I quite agree with you.

Well then one would have expected you, if Mr Raditsela had said the things that you said to say, "A plague on Raditsela's house, I am running home"? -- I did not run home. Instead I marched with them and that does not mean in so doing that I am not a peace loving person.

How could you join a march where the leader and organiser of the march had called upon the killing of people, the destruction of their property, how could you have done that and still lived with your conscience as a peace loving man? -- A peace loving person is bound to go out in helping people who are not peace loving and bring them back to the line of living of a peace loving person. In fact that is why I uttered those words at the time when this incident was taking place.

You mean the death of Mr Motjeane? -- That is so.

Before we get there ... -- Well I was just explaining that.

But/....

But if your evidence is true you marched in a march where somebody was carrying a placard "Kill Mahlatsi and his brothers" or words to that effect? You were adding weight to this murderous crowd? -- That is true.

But how could a peace loving man join a march if one of the placards said "Kill Mahlatsi and his brothers", how could you join it? -- It is very easy for a human being to do that and be in there or amongst the people of that nature while he, that person, is not in line with what the group intends doing.

But I understood you to say that you actually acted as (10) some sort of a marshall? Did you? -- That is so.

A marshall to a procession in which the organiser had called for murder and destruction of property, and behind a placard "Kill Mahlatsi and his brothers"? -- I still say yes I was a marshall of that group with a leader who uttered those words.

And behind the placard "Kill Mahlatsi and his brothers"? -- That is so.

Tell me how did you dissociate yourself with what you say the purpose of the march was, by crossing your fingers?(20) -- What do you mean "diassociate", I am not clear on that.

To the outsider, if your evidence is true, if you acted as a marshall of a procession behind a placard "Mahlatsi and his brothers must be killed", would the outsider not say well here goes the marshall, the marshall of the people that are going to commit murder? -- People may have said that or they did say that, I do not know.

Did you not care? -- But because initially I was there when this thing started, at the beginning, I was therefore

C67 bound to go with them, even though I was not in the, in (30) line with the killing because my belief does not allow me

to/.....

to kill a person or to sin, or to kill his soul. Therefore my being in their company when they were marching there did not mean that I am one of the killers.

Tell me you have already told us that what Mr Raditsela said at the meeting was out of tune with what was being said at previous meetings that you attended? -- What I mean is to say that people must be killed and properties must be destroyed, to me I find it senseless.

Yes, and it was completely out of tune with what had been said at previous meetings, at which you were? -- Yes it was (10) out of tune in the sense that in this case it was being said that you must kill whilst in the previous meetings it was being said that you must boycott those people.

Yes. Now are you asking His Lordship to believe that of the one hall full of people that had come there to take part in a march there was not a single soul that was prepared to stand up and say to Raditsela "Hey Raditsela this is out of tune, this is not what we have been preparing for"? -- That is for the Court to decide, whether the Court believes that or not whether there was nobody who stood up and told, drew (20) Raditsela's attention to that. But what I am saying is nobody did that from the crowd which was there.

Tell me when did you see the poster that Mahlatsi must die for the first time? -- On 3 September 1984.

Right. Before you went into the hall or after you came out? -- At the time when we were moving out to march I noticed people carrying those placards.

Was it just one saying "Mahlatsi must die"? -- I have already told the Court that it was not only one but quite a number of them, a few were there. (30)

Saying "Mahlatsi must die". -- That is so.

How many would you say you saw? -- I did not count them, therefore I am not in a position to tell you in a number how many they were.

And was it obvious to you that they were not being made for the purpose of being held back as a secret but they were going to be up on a stick with the marchers to announce to the world that Mahlatsi must die? -- They were in fact being held high in a stick so that people could see them.

Right. Did you remonstrate with any one of the persons holding up this incitement to murder and say "Brother" or "Sister, this is a terrible thing that you are doing"? -- No I did not do that.

And did you see any peaceful and honest man going up to any of the bearers of these posters to say something like that? -- I did not notice that.

Yes. And were they being held up "Mahlatsi must die", in such a way so that the people living on the premises were able to see them clearly, living on the premises I mean living in the quarters of the Catholic Church compex? -- They were held in such a position that anyone could have seen them.

Anyone in that Catholic Church complex? -- The purpose of having those posters was because there was a march and therefore they were held in such a position that whoever looked in the direction would have seen them.

Right. Now you yourself, were you prepared to march behind such posters? -- I have answered that question many times that I did in fact march behind that.

Well knowing that these placards were being held? -- Yes because I saw them, I knew.

Now tell me is your case perhaps, or rather is your

evidence/.....

evidence that perhaps it was contrary to your nature to do a thing like that but it was the eloquence of Mr Raditsela that really persuaded you to do this? -- I understand you to be referring to all my evidence that I have given in this court or are you referring to a particular portion of the evidence?

No I am referring to this, the performance of this act which is so contrary to your nature, of joining a march, of joining a murderous march. -- It was not as a result of Mr Raditsela's eloquence that I joined the march.

Why did you join it? -- Well I went along because it (10) was said the march is proceeding to Mr Gans(?). So I deemed it fit that I also go. In fact this thing that people are to be killed I thought this was going to take place after we have been to Gans.

And you wanted to show Mr Gans the placard that you were going to kill Mahlatsi and his brothers? -- I did not have any placard in my possession to go and show him.

No but you were marching behind it. -- You understand my point, marching behind such a placard which you do not have yourself in your physical possession does not mean that you(20) are the one who is going to show it to someone else.

Well did you not, if that is what you, if that was your interpretation of Mr Raditsela's speech why did you not go and whisper to the people there and say "Listen brother, sister, put those away for the time being we do not want to advertise the fact to the police that we are going to meet on the way, to Mr Gans, to the other officials, you know sort of put them under the table for a while or under your jacket or something so that we do not advertise this murderous act that we are going to commit." (30)

COURT: That is a very long question, could you put it a bit

shorter/...

shorter?

MR BIZOS: Right. Why were no steps taken to hide those placards if it was intended that they should be used after you arrived at Mr Gans'? -- As to why the holders of the placards did not hide them that I will not know. It only occurred to me as an individual that probably what is going to happen is that Mahlatsi and the others were going to be killed after we had been to Mr Gans. So I am not in a position to tell why they did not hide the posters.

COURT ADJOURNS UNTIL 14h00. (10)

C68 COURT RESUMES AT 14h00.

IC 8 d.s.s. (Through Interpreter - In Camera)

COURT: We may place on record that accused no. 9 returned, I think he returned after the tea adjournment.

MR BIZOS: I did not notice that, but he is here now My Lord.

COURT: At some stage he was there.

MR BIZOS: I did not notice.

FURTHER CROSS-EXAMINATION BY MR BIZOS: Were you a keen participant in this march? -- No I was not in a keen participant but just marching with the people. (20)

Yes. Now I am going to start with the events of the beginning of 3 September, as far as you are concerned. You see the evidence that you gave in your evidence-in-chief was that you were a reluctant actor in this event and that accused no. 2 more or less had to persuade you to go to the march, is that evidence correct? -- I hear you mentioning persuade. I never said he persuaded me.

Yes, well because I am going to put to you that it was the other way around, that you came to Oupa's, accused no. 2's place, and he was awakened by his wife at your request? (30) -- That is not so.

And/....

And that whilst he was washing and dressing one Sekeneke, also known as Kenny...

COURT: Kenny?

MR BIZOS: Kenny, K-e-n-n-y, turned up and the three of you went to the shops of Zone 3? -- That is not correct. Although I will say about the shops that version is correct except that I went to his house and Kenny also arrived there while I was there, that portion is not correct.

And that at the shops you were met by Duke Mokgob? -- I do not know a person by the name of Duke Mokgob. (10)

Well would you agree that there were four of you that finished up walking together towards the Catholic Small, Catholic Church, Small Farms. -- We ended up being five people in all on our way to that place.

Can you name them? -- On our way we met a person who is only known to me by sight. I do not know what his name is.

Other than that? -- As I have already said Oupa came to me in the company of two strangers. Later we met this person I have just referred to, on our way. It can be maybe that that is the Duke, that is the person I know by sight. (20)

You arrived at the Catholic Church, Small Farms, the four of you I am putting to you, and on arrival there there were a considerable number of people, a crowd outside in the courtyard formed by the three buildings. -- That portion, yes is correct.

Would you like to give His Lordship some idea as to how many people there were outside? -- I am not in a position to say how many people were there though I am prepared to say they were many.

Yes. And would you say hundreds? -- As I said I will (30) not know how many people were there because I did not count

them./....

them. In fact I did not take into account to give them an estimation in number.

Right. That you arrived there, the four of you, shortly before 09h00? What do you say to that? -- We arrived there in a van. On our way we got a lift from a van driven by someone. In number on arrival there we were six, that is including the driver of the van.

Yes. -- We then got into the church building, or the hall referred to, when I talk about that I am talking about myself and Oupa. I do not know what happened to the other people who arrived there with us.

Listen to me. I am going to put to you that the people outside in the courtyard were busy preparing placards.

COURT: Preparing or repairing.

MR BIZOS: Preparing. -- As to what those people were doing there I have no idea.

Did you not see them, or did you not see some of them, I do not want to suggest that all of them were doing it, did you not see some of them preparing placards? -- I did not have that interest, that much of an interest to see what was happening to them in the courtyard. As I said we went into the hall.

Yes you are in too great a hurry to get into the hall because I am going to put to you that you did not go into the hall. That you and Oupa, accused no. 2, went up to the door of the hall but you could not get in? -- Me and Oupa, accused no. 2, paved our way until we reached the stage.

I am going to put to you that you stayed at the door? -- I dispute that.

Yes. And that at the time, at the time that you arrived at the door Mr Raditsela was finishing off what he

was/.....

was saying. -- On our arrival there after having been on that stage for a short whil Raditsela then started addressing the audience just before we left. If ever he had said something then he must have said it before I arrived there and I am not going to comment about that, I do not want to commit myself on that.

Listen carefully what I am putting to you. Mr Raditsela then came out of the hall behind some people that were coming out and ahead of others that followed him. Do you agree with that? -- That is true, after he had addressed the audience there in my presence it is correct as you have put it now.

And he came out and he called on the people who had been outside and not able to get into the hall. -- That is so.

And that he spoke to the people there gathered again briefly? -- Yes I quite agree with that, because that was the reputation of what he had said inside the hall, that is now when I can say he referred to that time as the second time of his address while I was there.

I am going to put to you that your version of what he said to the people outside is false, and what Mr Raditsela said outside was with fewer words more or less the same thing he had said inside, emphasising the need for discipline and for the march to remain intact until it got to Houtkop. -- I differ with you when you say that he did not utter the words which I have already mentioned to this Court. Again when you say he emphasised discipline to the people outside the hall I differ with you.

And that they must go to Houtkop intact? -- Pertaining to that that is correct, he did say that.

And not allow themselves to be provoked along the way? -- That I do not agree with.

You do not agree. Do you recall that after Mr Raditsela spoke outside, if your version is true whether any of the people outside there showed surprise or objected or withdrew from the crowd or dissociated themselves from this new way in which Raditsela was putting things? -- Whether there were people who were surprised by the utterance of those words by Raditsela or not that I did not notice, but all I am saying no one objected direct to the words which were uttered by Raditsela then.

Yes. And do you recall that after Mr Raditsela spoke, do you recall that accused no. 8 spoke? -- I cannot recall (10) him or I cannot recall seeing him speaking there.

At all? -- I personally did not see him speaking. Maybe in what you have referred to as having been said by Raditsela earlier before my arrival he may have said something, but not while I was there.

What I am putting to you is that accused no. 8 spoke outside? -- I did not notice nor did I hear him speaking.

Did you see or hear accused no. 17, the elderly gentleman who is not with us today that you saw earlier on here, did you see him speaking to the people outside? -- I did not (20) notice him as well.

You did not notice him. Well I am going to put to you that both of them spoke outside after Raditsela had spoken and that they both emphasised to the people, addressing particularly the people of their zones and their areas. -- I still repeat I did not hear them speaking nor did I see them.

Yes. And they emphasised that they should all remain together until they reached Houtkop which was the object of the march. -- As I have already explained that I did not (30) see them or did I hear them speak therefore I am not in a

position/.....

position to explain that.

Did you not see accused no. 8 at all there during that morning? -- I did see him.

Yes, where? -- At the church.

You mean inside, or outside? -- I saw him outside.

Outside. And accused no. 15? Did you see that man there at all on that day? -- Yes he was present there.

Where did you see him? -- I saw him outside when we were marching.

Now you see you did not remember your statement very well because in your evidence-in-chief you told His Lordship that you saw accused no. 8 and accused no. 15 on the platform whilst Mr Raditsela was speaking inside the church. Were you mistaken about that?

INTERPRETER: The witness has said something which I could not make out exactly what is he trying to tell me, therefore I do not understand what he is saying. The words used before I just reported to the Court. What the witness was saying was "I cannot remember making a mistake but now on that there is the possibility that I made a mistake though I do not remember making that mistake."

MR BIZOS: Yes. Well as you are standing there now were accused no. 8 and no. 15 on the platform or were they not? -- I am still trying to get this thing straight, proper. I remember saying that, in my evidence-in-chief, that is they were on the stage in the church or church hall.

Well can we now take it then that as you are standing there you cannot really tell His Lordship whether accused no. 15 and no. 18 were inside the church during the morning of the 3rd? -- 18?

I beg your pardon, no. 8 and no. 15. -- I remember that

they/.....

they were there and I even saw them outside. I beg His Lordship's pardon to have inconvenienced the Court by making that small mistake.

COURT: Now do you say they were in the church or were they not in the church? -- They were in the church.

MR BIZOS: Yes, whenever you have a choice and you do not remember you prefer the version that you gave in your statement.

MNR FICK: Edele die Staat wil net beswaar maak. Ek dink dat die stelling wat my Geleerde Vriend maak is dubbelsinnig. Ek verwys u na bladsy 776 van die notule en bladsy 777. Daar is die getuienis, ongeveer van reël 20 af. "U het toe daar op die platform gegaan. Was daar ander mense op die platform? Ja daar was baie. Van die persone wat u opgenoem het vantevore, die beskuldigdes, was van hulle daar? Ja van hulle was daar gewees. Kan jy hulle noem? Daar is van hulle wie se name ek nie ken nie maar ek sien hulle hierso. Kan u hulle uitwys?" Dan sê hy beskuldigde nr 8. "Is dit die persoon? Dit is die persoon. Beskuldigde nr. 5 is hulle die mense wat ek kan onthou wat daar was. En van die ander wat u nou hulle name ken, van die beskuldigdes, dit is nou die mense wat nie op die platform was nie. Dit is hulle name wat ek nie ken nie. Kan u hulle noem? Matlole was by die kerk, nr. 17. Wie nog? Dit is net hy wat ek kan onthou."

HOF: Ja mnr Fick ek het dit in die hoofgetuienis so verstaan dat hierdie twee op die platform was, op die verhoog en dat nr. 17 nie op die verhoog was nie. Dit is soos ek dit afgeskryf het en dit was in elk geval my indruk daar, want die klem het gegaan wie was op die platform.

MNR FICK: Dit is so, maar ek wil aan die hand doen as mens die rekord lees self dan is dit dubbelsinnig, of hy op

daardie/.....

daardie stadium bedoel is dit is hulle wat op die platform was en of hulle net daar was.

HOF: Wel dis nie soos ek dit destyds verstaan het nie mnr Fick, u kan die punt maak in betoog later.

MR BIZOS: The question was that whenever you have to make a choice, when your memory fails you and a contradiction is pointed out to you generally speaking you finally choose the one that you gave in your evidence-in-chief, presumably also in your statement? -- That is your own view of that. It is so naturally that a person can forget some things that he had said until, on further discussion that he gets the correct version by remembering what originally was said through further discussion on a point.

Did you consider the speech made by Mr Raditsela, according to your version, a most important bit of evidence that you gave? -- Not necessarily important version but I just took it as what he had said.

Yes. And which of the accused were there on the platform whilst he was uttering these wild words of violence must have been very carefully weighed by you before you gave evidence in your evidence-in-chief? -- I do not know this person's name.

Well just give us the colour of the clothing so that we can get on with it. -- Green blazer and that one at the back with P.O.P on his arm.

COURT: That is no. 8 and no. 15, yes? -- I have explained that I do not know the others and again it is difficult for me to identify these people while looking at them in that accused's dock because I do not know them like that, that is as they are in the dock. What I am driving at is I know them to be cleanshaven people on their faces and now I see some of

them/....

them have grown beards.

MR BIZOS: But ....

COURT: In preparation for winter.

MR BIZOS: They have been unfortunately in for more than one winter but let me ask you this, what you are saying now is nonsense. You had no trouble in your evidence-in-chief. -- It is true in my evidence-in-chief I never made mention of that but even now I am not justifying that as a reason, I am just mentioning that in passing.

I see yes. Alright. Now tell me what do you now say about the old man, accused no. 17, what do you now say about him? Where did you see him? -- I saw him in the church.

Well you see ... -- I do not mean in the church. I saw him the (the word used then can be ambiguous) it can be in the vicinity of the church, near the church or on the premises where the church is situated.

Right. Before My Learned Friend Mr Fick read out a portion of the record to His Lordship do you recall what you said about accused no. 17? -- Yes I do.

What did you say? -- I said he was on the premises where the church building is situated.

No that is not what you said. You said "I did not notice him".

COURT: How do you mean "I did not notice him". He gave evidence that no. 17 was there.

MR BIZOS: No a short while ago My Lord.

COURT: No, no, in-chief. You are now dealing with his evidence-in-chief.

MR BIZOS: No I am not talking about in-chief My Lord, I am talking, no I am not talking about the evidence-in-chief. I said immediately before My Learned Friend read the record.

COURT:/....

COURT: I understood you to say that "Do you remember what you said in-chief".

MR BIZOS: No My Lord, do you recall what you said immediately before the evidence was read out by My Learned Friend.

COURT: Your statement was, or question was, did you see or hear accused no. 17 speaking to the people outside and then the answer was "I did not notice him". It is not a question of whether he was there, whether he was speaking to the people outside.

MR BIZOS: Oh I am sorry, that is my mistake. I am indebted(10) to Your Lordship, that is my mistake, I am sorry. I had forgotten what the precise terms of the question were. Now you see one of the, I will suggest to you that the reason why you contradicted yourself in relation to the presence of accused nos. 8 and 15 on the platform is because accused no. 2's version is correct, that you really got as far as the door and no further? -- That, what accused no. 2 is saying about us having gone as far as the door or the doorway of the hall, it is a lie.

COURT: What do no. 15 and no. 8 say? Were they on the (20) platform or not?

MR BIZOS: I have not got a specific instruction and this is why I asked...

COURT: Well should that not be put now?

MR BIZOS: Yes well this is why I asked. I realise that, I want to do it for the sake of completeness. They did move, as I have already put that they spoke outside but I did not have a specific instruction as to whether they were on the platform or not. Well I am going to put to you that no. 8 and 15 were not on the platform. -- Even if they deny that(30) they were there.

And/.....

And that they were busy marshalling, I suppose is a good word, the people outside to form up into the march? -- Well yes maybe at the time just before we left. If that is their version.

Now what I am going to put to you on behalf of accused no. 2 is this, that as soon as you and he moved away from the door, as Raditsela was coming out and the crowd was coming out, that as far as no. 2 was concerned you disappeared. -- He is not telling the truth when he says we left from the vicinity of the door or the door when Raditsela was approach-(10) in the door and again I differ with him where he is talking about my disappearance.

COURT: Did you part, did your ways part at some stage? -- Yes at some time we did.

MR BIZOS: At what stage do you say that your ways parted? -- During the time of the march, after people had joined on the tar road, it is then that we parted.

Yes. Now....

COURT: Could I just get clarity on one thing. Were there different marches converging at a point and then becoming (20) one big march or was it only this particular march that started at the Roman Catholic Church at Small Farms? -- This was the only march from the Roman Catholic Church.

MR BIZOS: Yes, the only march from the Roman Catholic Church but I think what His Lordship asked you is this, was it intended that groups of people from other zones would join the march as it came towards them from the Roman Catholic Church, Small Farms? -- No I do not know about that kind of an arrangement, if there was such an arrangement that some people would be waiting at different points to join the main march, that (30) I do not know.

Yes./.....

Yes, well would it be correct to say that you had nothing to do with the arrangement of the march, personally? -- There you are telling the truth, yes.

And as far as you know AZAPO itself did not take any part in organising this march? -- I did not know whether any or some of the members of AZAPO had anything to do with the organisation of the march.

Yes. Right. Now in your evidence-in-chief, in your evidence-in-chief you mentioned accused no. 9. You mentioned him and then you cancelled it because I think you had con- (10) fused him with accused no. 8?

COURT: I think we had a bit of difficulty with the wrong person getting up or something.

MR BIZOS: Yes I am not trying to make any point of it, but I just want you to have a good look at accused no. 9, whether you recall him there whilst the march was being started? -- Concerning the march, even if he was there I cannot remember him.

Right. Because I am going to put to you that there were three people that were organising the front of the proposed(20) march, accused no. 9, the Reverend Jacob Mahlatsi and Mr Modise Mthombeni. Do you know the other two people? -- I know both of them, Modsie Mthombeni and Mahlatsi.

The Reverend Jacob Mahlatsi? -- Yes I know him as well.

Is it the name of the person that was supposed to be killed or is it the same name? -- No it is a different person.

MNR FICK: Edele met respek my Geleerde Vriend vra dubbel vrae. Hy maak 'n stelling dat daar drie mense voor geloop het en dan vra hy ken jy hulle drie. Hy vra nie die man se antwoord of die drie mense voor geloop het. (30)

MR BIZOS: I will split it up My Lord. I do not want any

misunderstanding/...

misunderstanding.

COURT: Yes.

MR BIZOS: You told us that you know these two persons whose names I mentioned? -- Yes I do.

Were they arranging the vanguard, the voorlopers of the march? -- That I do not know. All I know is who were the leaders.

Yes. Now did you see one, that is accused no. 9, or other of these three persons calling upon the people that had made makeshift placards to come to the front? -- I cannot remember that, even if it did happen I just cannot remember that.

Well is it then that you were not particularly interested in the formation of the vanguard of this march? -- I had gone there like one person, like any other person who had gone to march, and not to go and prepare anything for the march.

MR KRUGEL: Does vanguard mean the head of the march or the tail?

MR BIZOS: I beg your pardon? Vanguard is I believe the front, the voorlopers, that is why I, voorlopers, I think it was a good translation.

COURT: Well now while we have this little break. Was there a large crowd milling around on these church premises? -- Yes there were.

Were they quiet or was it a noisy place? -- They were making some noise, talking and doing other things, all those kind of things.

MR BIZOS: Now you see if this happened and there were any placards saying "Kill Mahlatsi and his brothers" accused no. 9, the Reverend Jacob Mahlatsi - in particular I would imagine - and Mr Modise Mthombeni could not possibly have

failed/.....

failed to see this incitement to murder? -- Even if they saw it it is again possible that they decided to put on some oogklaps in order not to see it. Oh blinkers.

Blinkers. Yes.

COURT: Well now where is this leading us because he has not admitted that they were there even. So this, once you have put them in the witness box to say they were there then we can argue about whether they should or should not have seen them.

MR BIZOS: Yes. Do you know whether the Reverend Mahlatsi is related to the mayor at all? -- I do not know that. (10)

COURT: Is Mahlatsi a common name or not? -- It is a common name.

MR BIZOS: Now I am going to take you through as to how this march progressed but I would like you to please tell us how long was the march at the time that it started off on the tarred road near the Catholic Church?

COURT: That is when the end of the march had left the premises of the Catholic Church?

MR BIZOS: That is so. From the front to the end of the march as it left the Catholic Church? -- It was a lot of people (20) taking part on that march and at the time when we left the church premises I did not really take note of it to check as to whether I can give an estimation of the length of the march from the front to the back.

COURT: How many people were walking abreast? -- They were many because they were covering the whole main road from that side to this side.

MR BIZOS: Shoulder to shoulder? -- Yes.

Now you have given us a distance between here and Checkers? -- Yes I remember that distance, that I am the one who gave (30) that estimation but it was not an estimation in which I gave

from/....

from, as a distance from the church premises. That is now from what you want me to tell you about.

Yes, no I did not suggest that it was but I merely reminded you that you gave that distance. At what stage was the march between here and Checkers? -- This was along the main road leading to Zone 11, from Zone 7. There is a kerb there. This estimation I gave was just at the beginning of the kerb on this main road to Zone 11, that is to go in line the distance between the kerb and Zone 11.

COURT: Yes we have put that distance as half a kilometre. (10)

MR BIZOS: My Lord in the interests of accuracy it is approximately 300 metres.

COURT: 300 metres?

MR BIZOS: From here to Checkers.

COURT: Agreed Mr Fick?

MR FICK: Agreed.

MR BIZOS: Right. Now where were you in relation to this procession when it was from here to Checkers? Where were you, in front, middle, the first quarter, the last quarter, at the back? -- Because of the duties that I was given to look (20) after the people not to move off from the road, that is supervising the march, I therefore had to go forward and back. I had no fixed position in the marchers to, I can tell a person I was at this part of the march.

Right, where were you in relation to this march when the chairs of the ticket office, you say, were damaged? -- I was approximately in the middle of the march, not very far but approximately in the middle.

You see, and did it happen more or less in your presence? -- What happened? (30)

The breaking up of the chairs? -- Yes I was looking at

them/.....

1 C 8

them when they were doing that.

I am going to put to you that your evidence in that regard is false, there was damage, listen to me for a moment, there was damage to that property during the afternoon by a group of youths and not at the march at all? -- If you are in possession of such evidence then you have got evidence which is not true, devoid of any truth anyway.

And what I am going to suggest to you is that the reason why you gave that false evidence is in order to corroborate yourself that there was a call for violence? -- Well I do not blame you for saying that because you are trying to talk on behalf of your people but what I am saying is it is just as I have now told the Court.

And it is how it is in your statement and you are talking in order to avoid another five years detention? -- To refer to the five years and the statement at this time and this moment here I have already said I am giving evidence and I do not care what happens, even that five years can come, I do not care what happens later.

Tell me .....

COURT: Would this be a convenient....

MR BIZOS: May I just ask one question which may assist us in some investigations. Tell me when you thought of the possibility of doing away with yourself whilst in your second detention did you seek any medical help? -- How?

Did you ask to see a doctor or a psychiatrist? -- Well not a psychiatrist, I had not told them that I wanted to see a doctor, a medical doctor, but at their own they took me to a doctor.

Just an ordinary doctor or a psychiatrist? -- No it was not a psychiatrist.

COURT ADJOURNS UNTIL 12 FEBRUARY 1986.