

SAAKNOMMER: CC 482/85

DELMAS

1986-02-12

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST E

ASSESSORE: MNR. W.F. KRUGEL

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)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

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KONTRAKTEURS:

LUBBE OPNAMES  
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VOLUME 22 (IN CAMERA GETUIE)

(Bladsye 1023 - 1098)

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC 482/85DELMAS

1986-02-12

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

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J U D G M E N T

VAN DIJKHORST, J.: During the cross-examination of the present witness, who is detained by the police and who was also warned by this Court in terms of Section 204 of the Criminal Procedure Act as an accomplice, it transpired that he had been assaulted by the police who wanted him to tell the "truth", namely that he had been involved in the killing of Mr Caesar Motjeane, which allegation he persisted in denying. He testified that at the time he was a detainee, that he (20) had no rest and that he was interrogated right through the week of his detention. He was kept at a place in the countryside beyond Vereeniging. He did not know the name of the place nor the names of the police who had assaulted him.

Mr Bizos, for the defence, thereupon pursued a line of cross-examination which was intended to establish where the place was and, so I was told during argument, also to establish who the policemen involved were. The question thereupon arose whether this line of cross-examination should be allowed. I was told that this line of cross-examination might reveal (30)

facts/.....

facts which might enable the defence eventually to piece together which police station was involved and possibly which policeman. This would then enable the defence to cross-examine any policeman from that station and any other witness held at some stage at that station on the basis of the evidence of the present witness. It was furthermore suggested that this line of cross-examination also tested this witness's credibility.

For the sake of clarity it should be added that the witness was released from detention after a week and that the (10) statement from which he was led in chief was taken some time later: initially when he was not detained at all, but later amplified when he was re-detained. The evidence was that he was not assaulted during his re-detention and it appears that other police officers and another police station were involved the second time. Whereas the first questioning was directed at the witness's involvement in the death of Mr Caesar Motjeane the second interrogation ranged much wider and covered the aspects on which his evidence was led in chief.

As stated by HENOCHSBERG, A.J. in CARROLL v CARROLL (20) 1947 (4) SA 37 at 40:

"The objects sought to be achieved by cross-examination are to impeach the accuracy, credibility and general value of the evidence given in chief, to sift the facts already stated by the witness, to detect and expose discrepancies or to elicit suppressed facts which will support the case of the cross-examining party. Hence leading questions may be asked and point-blank questions may be put with the object of discrediting the evidence given for the other side or of supporting the cross-examiner's own case." (30)

One/.....

One is naturally reluctant to interfere with the cross-examination of counsel. There is an important principle at stake, that is that the truth must be found. A vital tool in this search for the truth is the skilful probing of the adroit cross-examiner. Yet there are limitations to the questions to be allowed. The Court must guard against its proceedings wandering beyond the broad path of permissible cross-examination and getting unduly side-tracked to become bogged down in the mud of irrelevancy.

A guideline was laid down by the Appellate Division in (10) S v CELE 1965 (1) SA 82 (A) at 90H to 91G. WILLIAMSON, J.A. stated the position as follows:

"The difficulties which sometimes arise in a trial in regard to a limitation of the right of cross-examination, relate more usually to attempts by counsel to cross-examine a witness on matters merely collateral to the issues being tried, the purpose being to undermine his credit as a witness. Particularly when the attack is directed to a witness's credibility can the ambit of such an examination tend to become unduly extensive (20) unless properly controlled. That the judicial officer presiding at the trial has both a discretion and a duty to control undue or improper examination, has recently been restated both in this Court and in the Court of Appeal in England; see S v GREEN 1962 (3) SA 886 (AD) at p. 888B, quoting JONES v NATIONAL COAL BOARD (1957) 2 All ER 155 at p. 159G. That discretion, it must be emphasised, is one that should, however, be exercised (30) with caution and with a full awareness of the vital role that cross-examination plays in our system of evidence. As was said by Prof Wigmore in opening his chapter

on/.....

on the subject of cross-examination in his work on Evidence (see Volume V para 1367):

'the belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience. Not even the abuses, the mishandlings and the puerilities which (10) are so often found associated with cross-examination have availed to nullify its value.'

That incompetent or prolix cross-examination can be aggravating to even the most patient of judicial officers, must be recognised. Yet nevertheless it is with patience and discernment that the problem of curbing any cross-examination must be approached. I would like to adopt the words used by BROOME, J.P. in his judgment in the case of DONGWA v THE ASSISTANT MAGISTRATE OF DURBAN, (NPD 10 December 1951 (the case is unfortunately un- (20) reported but the judgment is quoted in extenso in May South African Cases and Statutes on Evidence, 3rd Edition, paras 560 - 564) ) where in setting aside on a review the proceedings of a magistrate's court criminal trial, he said inter alia:

'Judicial officers, particularly in criminal trials, frequently have to endure long and tedious cross-examination. In my opinion a cross-examiner ought not to be obliged to demonstrate beforehand the relevance of every question he wishes to put. (30) It is the duty of the judicial officer to allow

a/.....

a certain measure of latitude in the cross-examination and to avoid even suspicion that the defence is muzzled. --- The discharge of the judicial function requires endless patience. Circumstances, it is true, may occur and undoubtedly do sometimes occur in which judicial patience is tried almost to the point of exhaustion. In such a case the danger must always be present that the accused is unconsciously made to suffer for the shortcomings of his representative."

See also S v MNGOGULA 1979 (1) SA 525 (T) at 526. (10)

On what is relevant and what is not one may refer to the dictum of SCHREINER, J.A. in R v MATHEWS & OTHERS 1960 (1) SA 752 (A) at 758A-B:

"Relevancy is based upon a blend of logic and experience lying outside the law. The law starts with this practical or commonsense relevancy and then adds material to it, or more commonly, excludes material from it, the resultant being what is legally relevant and therefore admissible."

See also LETSOKO & OTHERS 1964 (4) SA 768 (A) at 755. (20)

When there is a sufficient link or nexus between the fact in issue and the fact sought to be proved for an inference as to the occurrence of the fact in issue to be drawn then the evidence will be relevant. See GOSSCHALK v ROSSOUW 1966 (2) SA 476 (C) at 482.

Even similar but unconnected facts can be relevant if, in proximity of time, in method or in circumstance there is a nexus between the two sets of facts. If these are absent no inference can safely be deducted therefrom and they are irrelevant. S v GREEN 1962 (3) SA 886 (A) 894F; (30) S v HASSIM & OTHERS 1972 (2) SA 448 (N) 453.

A case where the Court refused cross-examination on the grounds of irrelevancy of unrelated issues was S v COOPER & OTHERS 1976 (1) SA 932 (T). In that case the defence sought to cross-examine a police officer on alleged assaults on an accused in order to establish that accomplices who testified that they, the accomplices, had not been assaulted were untruthful. BOSHOFF, J. stated as follows at page 939:

'The question whether the accused were assaulted or whether unlawful pressure was brought to bear (10) on them by members of the police while being interrogated is not a fact in issue, either on the charge against them or on possible defences they may rely upon. There is consequently no nexus between the evidence proposed to be led by the accused and the issue or issues before the Court. The purpose of the evidence is to enable the defence to use it in order indirectly to attack the credibility of the three accomplices in respect of evidence which according to the defence is false (20) because it is evidence forced down their throats by interrogators who believed in the truth of such evidence. In my view there is not that nexus between the evidence proposed to be led by the defence and the facts in issue before the Court as to render it legally relevant. In any event, apart from the facts in issue in the present case there is not sufficient evidence of a concerted modus operandi as far as the accused and the accomplices are concerned to provide a nexus in (30)

proximity/.....

proximity of time, in method or in circumstance between the facts testified to by the accused and the facts testified to by the three accomplices from which any inference can safely be deduced.'"

The Learned Judge found that as there was no modus operandi the cases of S v LETSOKO supra and GOSSCHALK v ROSSOUW supra were not in pari materia.

It remains to apply the principles set out above to this case. The accused stand arraigned on a charge of treason with alternative charges of terrorism and subversion under the (10) Internal Security Act No. 74 of 1982 and six counts of murder. The answers sought to be elicited by this line of cross-examination cannot, by any process of inferential reasoning, help this Court to decide those issues. At best for the defence there is a possibility that the answers might furnish some information for future cross-examination if perchance a witness is called who has some connection with the police station in question, either as a policeman or as a detainee, and then only will this information be of use if the conceivable prospective witness has knowledge of this witness and of the (20) circumstances of his detention. For that contingency I am asked to listen to this type of cross-examination. I decline to do so.

Insofar as it was argued that these questions test the credibility of the witness I differ. The witness has stated that these names are to him unknown. There is no suggestion that he is lying. Clearly the purpose of this line of questioning was not to test credibility and if it was it was ill conceived. The question is disallowed.

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AWAITING RETURN OF REVISED JUDGMENT

PAGES 1023 TO 1029.

MNR FICK: Edele terwyl ons wag vir die getuie kan die Staat meld dat ek het aan my Geleerde Vriend oorgedra ook reeds dat die Staat dan geen formele beswaar sal maak teen BEWYSSTUKKE AAP tot AAPQ(4). Die afskrifte kan met die toestemming van die Staat ..

HOF: Kan ek net die nommers kry weer? As u nou AAP to AAQ soveel sê dan het u BEWYSSTUK 25 ook onder hulle? Is dit die bedoeling?

MNR FICK: Nee Edele net AAP tot ....

HOF: Daarom dink ek moet u liever net die nommers gee. (10)

MNR FICK: Ja.

HOF: Wat is die nommers?

MNR FICK: AAP, AAQ(1) ...

HOF: AAP, AAQ(1), (2), (3) en (4).

MNR FICK: Dit is korrek.

HOF: Dan is nog 'n AN(13) tussen in wat ook behandel is. AN(13).

MNR FICK: Die Staat het daarteen geen beswaar dat die afskrif daarvan ingehandig word. Die Staat sal van sy kant af ook die dokument van gebruik maak. Dankie. (20)

HOF: U geen beswaar hou in dat u geen beswaar het teen die feit dat in plaas van die oorspronklike dit fotostatieskopieë gebruik word?

MNR FICK: Dit is korrek.

1C8 d.s.s. (Through Interpreter - In Camera)

MR BIZOS: Whilst we are recording admissions it may be a convenient stage for Your Lordship to note that the correctness of the translation of the pamphlet that was referred to by the witness is also admitted, AN(15).

COURT: That is the English translation? (30)

MR BIZOS: AN(15).

COURT./.....

COURT: Because there are various languages used, I think there are three languages.

MR BIZOS: Yes but the ....

COURT: The English translation.

MR BIZOS: But there is only one minor aspect as to whether it was "child" or "children" but I do not think it is sufficiently material in the circumstances.

COURT: Thank you Mr Bizos.

FURTHER CROSS-EXAMINATION BY MR BIZOS: You will recall that we were dealing with the march? -- Yes I do recall that. (10)

I want to deal with it in general terms and then we will come back to the individual accused. Do you recall that as the march was proceeding along people were joining it, both individually and in small or larger groups? -- I do remember that there were people who joined the march while it was in procession.

Yes both individually and in smaller or larger groups? -- I would not say in large groups but they were joining individually and some were sort of standing along the road in groups and they would also join the march. (20)

Yes, and these groups that joined the march, did they do it in a completely orderly fashion of first come first serve and go to the back or would they move into the march at the most convenient place that they found themselves in? -- They were joining it from anywhere, anyhow.

Anyhow. And did some of the groups that were joining go towards the front or even to the front itself? -- I could not see what was happening right in front of the march. I could only see in the immediate vicinity where I was.

Yes. And this song "siyaya", that is really a song (30) which is appropriate to marches is it not? -- That is so.

COURT: /.....

COURT: Does that mean it is a marching song?

MR BIZOS: Well with the qualification that I am about to make. It is a marching song but at a slow tempo, not a marching song like the military people do at a fast tempo? -- Though it fits in with marching but it is not specifically for marching.

Yes, but is it a slow tempo? -- Yes it is, it is not very fast.

It is not very fast. And would it be correct to say that this was the only song that was being sung whilst the march was proceeding? -- Though it was sung many times it (10) was not the only one.

Would you say that it was the main song that was sung? -- Yes that is so.

And was it sung on the basis, "Siyaya e Houtkop"? -- Yes they did sing it in those words of saying "Siyaya e Houtkop" but otherwise the correct wording of that song is "Siyaya epedole(?)"

Yes but on this occasion the destination of the march was being identified by the song that it was Houtkop? -- That is so. (20)

Now do you know where a place that is called Fowler's, presumably like the dictionary, F-o-w-l-e-r, bus terminus is, do you know where that is? -- Yes I do.

Is that some distance before the place that the late Mr Caesar Motjeane lived? -- It is not very far though it is before you reach Caesar Motjeane's residence.

Could you give His Lordship some idea of the distance between Caesar Motjeane's place of residence and the Fowler bus terminus? -- In metres I am not able to give an estimation as to approximately how many metres from this Fowler's (30) bus terminus to Caesar's residence but what I can say is I estimate/.....

estimate the distance to be from the witness stand where I am in now to the yard of the police station outside the court across the road.

Yes, about 60 metres, 60 or 70 metres My Lord.

COURT: Mr Fick?

MNR FICK: Nader aan 150, 100 of 150.

MR BIZOS: Well we will settle at about 100 metres. I do not think that it is so ....

COURT: Yes.

MR BIZOS: But it is in the vicinity. Now do you agree that (10) Fowler bus terminus is by its very nature the meeting place, the meeting place of people that would want to come onto the tarred road from Zone 11 and Zone 12, on both sides of the tarred road? -- Yes that is correct.

Yes. That, and that even irrespective of any organised march in the vicinity of the Fowler bus terminus there would in the ordinary course of events be many people? -- I quite agree with that.

And would you agree that the Fowler bus terminus is near the cross roads that are not at right angles but on a wide (20) V? -- That is so.

And that the one road leads, if you turn to the left leads to the stadium.

COURT: Just a moment, before this is interpreted. I had this difficulty with the previous witness, or a previous witness, that counsel is cross-examining from a map. Has the State or the defence not got a proper map that can be placed before the Court by agreement as to what the place looks like and it will go much quicker in this case. We have not got an idea, it all has to be described to us. Is this not (30) an aspect that can be agreed upon because we are going to

deal/.....

deal with this protest march for a long time it seems to me?

MR BIZOS: As Your Lordship please. We, well my personal experience taught me to expect for Your Lordship and ourselves something from the State right at the beginning. We have not had it but if it is going to assist Your Lordship we could, in a couple of minutes, make a photostatic copy of what we have so that Your Lordship may be, it may be of some assistance to Your Lordship.

COURT: Well I would prefer it to be placed before the Court by agreement so there is no difficulty about it later on. (10) I am not in that much of a hurry but it will crop up time and again and it will make it much more convenient for everybody concerned if we have a map. Will you enter into an agreement with the State?

MR BIZOS: We will My Lord, with respect we will find, there are suitable maps which we have but unfortunately we made notes on the ones that we have but we will certainly do that because I think that Your Lordship is entitled to such assistance.

COURT: Thank you. Please continue. (20)

MR BIZOS: Now you recall that if you turn to the left you go to the stadium? -- Well it will depend, you are going towards your left from which direction?

The way, assume that we are, yes I am glad that you are so careful, assume that you are going in the direction in which the march was moving. -- That is so.

And if you go to your, it is half-left to the stadium and if you go half-right you go to Houtkop, the main road?

COURT: You go to?

MR BIZOS: To Houtkop. Past the Post Office on the way (30) in the main road to Houtkop? -- Now I am not clear about what you/..

you are saying. You were talking about the direction of the stadium and now all of a sudden you are talking about the direction of Houtkop. Now I am not clear.

Yes, let me make it clear that if you take a half-left you go to the stadium and if you take a half-right you go to the Post Office and from there on to Houtkop? -- You see you are confusing me now by talking about half-left and half-right. I think if you could give me that map so that I can see what you are talking about I will be able to tell you.

COURT: The witness has the same difficulty as the Court. (10)

MR BIZOS: As the Court. Well My Lord could we make photo-static copies of this. I think that it may be of assistance to Your Lordship.

COURT: Yes. Yes will you leave the topography aside for a while.

MR BIZOS: For a while yes. How far from the Fowler bus terminus were you when the march reached the bus, the front of the march reached the bus terminus? How far were you behind? -- At that stage I was not very far from the front of the march. (20)

How far from the front? -- Approximately from the witness stand to that wall behind the State Advocate.

Oh I see, so you were quite near the front.

COURT: About ten paces?

MR BIZOS: About ten paces. Well it may be a little less.

COURT: Well my Assessors feel it might be a bit more but a little over ten metres.

MR BIZOS: We will settle at that. Yes, you were fairly near the front? -- That is so.

Were there groups of people at that intersection before (30) the march reached the intersection? -- The group of people which/.....

which assembled there was on your left, that is when you take the direction to the stadium.

Yes. -- Otherwise there were quite a few people in that immediate vicinity.

Let us deal with the group that was on the left. Were you on the left-hand side of the march, were you walking on the left-hand side of the march? -- Yes I was on the left of the march.

And for, at that stage when you saw the group on the left can you give us some idea of the size of the group? -- It (10) was not a big group, it was about twenty to twenty-five people, that is a rough estimation.

That is the one group that you saw? -- That is so.

What is your height by the way? -- Unfortunately in metres I do not know but it is five foot six inches.

Yes. Now, and you were not in the march itself you told us, did you continue being a sort of marshall on the left of the march? -- That is so.

Now are you able to admit or deny in the circumstances that there was also a fairly large group on the right-hand (20) side? -- I am not going to pin myself down to saying I agree with that or I do not agree with that. I will rather stay neutral on that.

You will stay neutral on that, good. And would you also stay neutral that there was a group, there was a group on the road if you had taken a right turn, not towards the stadium, opposite the stadium? The stadium road, there was another group ...

COURT: Not opposite the stadium?

MR BIZOS: No on the right .... (30)

COURT: On the right-hand leg of the V, actually it is a Y.

MR BIZOS: /....



MR BIZOS: It is a Y, yes it is a Y. On the right leg of the Y was there another group there? -- Not that I am aware of. As I have said I was on the left and there were many people there, that is now I am referring to people who were in the march.

And what you are saying is in relation to the specific, the specific fact that I am putting you also remain neutral as to whether there was a group on the right-hand side as you were marching up? -- That is so.

I see. And your march now must have, had your march (10) doubled itself from the time that it had started at Small Farms? -- Yes it was in fact quite well increased.

Yes. And at this bus, or beyond the bus terminus would you be able to admit or deny that there was a group of approximately 300 moving towards the march as it was approaching the base of the Y.

COURT: From which side?

MR BIZOS: From the right.

COURT: From the right, out of the right-hand V in the road?

MR BIZOS: V or Y, in the road they were approaching the (20) front of the march? -- I do not want to pin myself to that, I did not see that.

Yes. And also you will also remain neutral because you told us your height and you were on the left-hand side and there were a lot of people around? -- It is not a question of being neutral on that. I did not observe that group.

Yes and you are not in a position to say that they were not there? -- Yes much as I am not in a position to say they were there or not.

That is what I meant by remaining neutral. It is a (30) convenient way of expressing it. Now you also told His

Lordship/.....

Lordship that, oh the map is there so we do not have to give any more descriptions. My Lord I am going to ask Your Lordship to ignore certain of the scratchings on and positions and merely view it as a map because there are certain vantage points. Could I appeal to your Lordship to ignore the notes on it, they have notes on which the accused made from time to time but I ask Your Lordship to ignore it but merely for the purposes of, I have another copy. Six copies were made of the wrong one. We will make another one.

COURT: Yes well can we continue in the meantime. Will (10) this be an exhibit Mr Bizos?

MR BIZOS: As Your Lordship pleases.

COURT: AAQ(5).

MR BIZOS: Now do you, have you got a copy there? -- Yes.

Do you agree that the little drawing of the structure, of the structure on the left-hand side is where the late Caesar Motjeane's house is?

COURT: I am sorry, where are you pointing to?

MR BIZOS: This here My Lord.

COURT: Just hold it up. (20)

MR BIZOS: This structure here.

COURT: Is it below the words "To stadium"?

MR BIZOS: To the right of the words "To stadium".

COURT: Yes, there are a couple of structures, there is one near the corner and then one beyond it and then one further.

MR BIZOS: I believe that is the one with the small parallel lines.

COURT: The shaded one?

MR BIZOS: Yes.

COURT: Yes. Well if the witness agrees we can give it a (30) mark or a number of something.

MR BIZOS: /.....

MR BIZOS: Would you agree that that is the late Caesar Motjeane's house? -- That is so.

Yes.

COURT: Yes. You have got nine numbers on this map it seems to me.

MR BIZOS: Yes I ask Your Lordship to ignore those numbers entirely.

COURT: Well shall I strike them out then?

MR BIZOS: As Your Lordship pleases, it was merely for....

COURT: So we will add a new number, make it number 1 which(10) we will ring.

MR BIZOS: One in a ring.

COURT: One in a ring is Caesar Motjeane's house.

MR BIZOS: Now do you agree, do you agree that the Y is properly shown there as it is? -- That is so.

And do you agree that although you said that the road in which Caesar Motjeane's house is parallel to the main road, I am not blaming you for it, it is not an entirely correct description. -- I did say that yes but if you look at this diagram there that place where Caesar's house is marked is a(20) street just behind the main road. As you can see looking at it further down towards the bottom that is a street running parallel with the main road on the other side, that is why I say ...

No I am not saying it as a criticism but do you agree that it is correctly shown on the plan? -- Yes that is so.

COURT: Could I just ask a couple of questions before you continue Mr Bizos. Do you in general agree with this plan, without pinning you down to particulars? -- Yes except for one thing there is somewhere where I am not satisfied with(30) this. For instance the curving of the road to the left is

rather/.....

rather too sharp, the angle of it is too sharp. They should have at least let it out a bit more inside than out.

Yes, anything else? -- Now to that other question again when you were talking about a group of people approaching the march from the right. Now that you have the map which was drawn by your people I think we can discuss it better from what I see here.

Yes, after I have had my say. Could you tell me where is north, south, east and west on this map? -- From this map if I were to say the north is on the top part of the map as (10) I am looking at it.

As you are holding it? -- As I am holding it, yes.

Well will you put the north on my map please. You need not write it down, just use the letter N for north. -- Those are the markings, that is how I know that area geographically.

MR BIZOS: No My Lord.

COURT: Not?

MR BIZOS: No My Lord. On our instructions north is this point here. Can we leave the compass out and have a proper map in due course My Lord? (20)

COURT: I think it is about time we got a proper map by agreement with all the points of the compass on it. Yes, thank you.

MR BIZOS: Can we continue using left and right having regard to the direction of the march?

COURT: Yes, may I have my map back please? How far do you deviate from my north?

MR BIZOS: About seventy degrees.

COURT: Well anyway when the witness speaks of north you know where he is going. (30)

MR BIZOS: As Your Lordship pleases yes. We will continue

using/.....

using left and right in relation to this Y so that there is no confusion. Now just ....

COURT: Now just before we continue further, sorry to interrupt you Mr Bizos. On this map did you start outside this map or did you start on the map, is the church on the map or is it off the map? -- No it is not on the map.

It is off the map on the bottom side as you were holding it? -- It is on your left on top, that is the direction past the area marked Zone 12 to your left.

So did you come from the direction of where the words (10) are "To Zone 73 Evaton"? -- Yes we came from that direction.

And then past the BP garage? -- That is so.

And then you came past Fowler's bus stop and entered the Y? -- That is so.

And then in which direction did you then proceed? -- I was in the group which went through that passage, as you can see there is a passage there leading to Caesar's place. This is the passage referred to by the witness.

Yes I have it now. And the direction of the procession, did that move off to the left beyond Fowler's bus stop? (20)  
-- When we deviated into that passage leading to Caesar's place, after passing Fowler's bus stop I did not see whether the other group proceeded further on in marching or what happened to that.

Well let me just get clarity now. If you look at the words "To Stadium" there is an arrow there, does that arrow point in the direction the procession had to go to get to Houtkop? -- The march was supposed to have proceeded along the tarred road, that road there marked "To Stadium" with an arrow, it is a dirt road towards the stadium. (30)

Is the direction of Houtkop then past the words "Zonel

Bus/.....

Bus stop", "Zone 11 bus stop"? -- That is so.

Okay now I will put an arrow on this map. I have put two arrows on this map, on the right-hand side I have written down "To Houtkop", on the left-hand side "To Roman Church Small Farms". Will you see whether that is correct? No not Mr Bizos, the witness.

MR BIZOS: I am not to be understood with saying it is incorrect by refusing. I think that that is common cause. -- That is correct.

COURT: Thank you, now I know the story. (10)

MR BIZOS: Now what I would like you to please tell His Lordship is give us some detail about this space which some people call a passage and some people call a lane, leading from the Y toward the late Caesar Motjeane's house. When you were on the left-hand side of the Fowler bus terminus, on the left-hand side of the march at Fowler bus terminus were you able to see into this passage, into this passage leading to the late Motjeane's house? -- As I have already indicated to the Court that in fact that curve is rather too closed. They should have left it a bit wider open, then in that (20) case while being at that position one can see the beginning of the passage or the lane from where the bus terminus is.

PROF. JOUBERT: Mr Bizos may I just ask a detail there. You have said a passage leading to the late Caesar's house?

MR BIZOS: Yes.

PROF. JOUBERT: What do you mean by a passage, not a properly made road or what?

MR BIZOS: Not it is really, I think that the proper description is a lane, a sort of sanitary lane that we had in the old suburbs of some of our towns. (30)

PROF. JOUBERT: Now the detail, does Caesar's house face this lane?/....

lane?

MR BIZOS: No, you have to go up the lane if you ...

PROF. JOUBERT: And turn left?

MR BIZOS: And turn left in order to go to the house, but there is this lane, this lane that leads to it, a sort of old type sanitary lane.

PROF. JOUBERT: I see. -- That is so.

MR BIZOS: Now are you in a position to either admit or deny that before the march reached the bottom of the Y there was a group of persons in the lane and in front of the late (10) Caesar Motjeane's house? -- In my evidence here this morning I said while we were approaching the beginning of the Y in that direction I noticed a group of people in the immediate vicinity of this lane referred to by still in the Y, which group I said was about twenty people or more and then beyond those people I noticed some few people again, also still in that lane.

Yes. This was even before ..... -- Just a minute.

Sorry. -- In that, what I am explaining is I cannot tell whether there were other people right in front of (20) Caesar's house or not because then from where I am with these people I have mentioned my view was obscured, I could not see what was happening in the immediate vicinity of Caesar's house.

COURT: Could I just get a bit of clarity. We see on this map Caesar's house. Have other houses been left out or is there an unobstructed view from Fowler's bus stop to Caesar's house? -- There are certain houses which have been left out.

MR BIZOS: Well let us get it on record that there are houses at regular intervals and you cannot see Caesar's house at (30) all from any position in the Y? -- Yes I quite agree with you there./.....

there.

PROF. JOUBERT: Mr Bizos we keep on referring to the Y. The Y consists of three arms. Could we perhaps say the Y intersection and draw a circle and name it no. 2 so that we know that point from where you look across towards Caesar's house if you can see it, the Y intersection I think would be a clearer thing than the Y because we are confused all the time by what is meant by a Y.

MR BIZOS: Well could I, for the purposes ....

COURT: Could we refer to it as the intersection, unless (10)  
otherwise qualified.

MR BIZOS: Unless otherwise, yes I will talk about the base of the Y.

COURT: Yes.

MR BIZOS: From the intersection you cannot see Caesar's house? -- That is so.

Right. Now, and you saw this group of twenty or twenty-five people and you do not know how deep that group may have been before the procession came to the base of the Y, the beginning of the intersection? -- Just repeat that. (20)

Just look at the map. You were at Fowler Bus terminus?  
-- Yes.

Near the front? -- Yes.

At the time that the procession, the front of the procession reached the base of the Y, and in order to identify it I have put a red line.

COURT: It is the base of the V, the base of the Y is on the right-hand side of this exhibit.

MR BIZOS: The base of the V.

COURT: Why do you not just call it the intersection and (30)  
entering the intersection or getting out of the intersection?

I/.....



It is making it very difficult speaking of bases.

MR BIZOS: Right. Before the front of the procession reached the intersection itself you saw this group of twenty-five people or so in the ...

COURT: Intersection?

MR BIZOS: In the lane or near the lane that you have described? -- I said these twenty plus people, that is the group, was in the street, that is the street turning off towards the stadium, the dirt road there, when I later noticed that there were quite a few people in the lane referred to which leads (10) to the direction of Caesar's residence.

Were they there before the procession reached the intersection? -- That is so.

In addition as soon as the front of the procession reached the intersection did other groups, did other groups either from the left or the right or from the lane or from anywhere else merge, join the front of the procession? -- Yes the people I referred to, that is the group of twenty plus, are the only people who joined the march in which I was on our reaching that intersection because that street referred to (20) there as the Stadium street is the only street joining that intersection from that side of the road.

Right. And it follows that you, from what you have already told us that you do not know how many, if any, people joined the front of the procession from the right-hand side, from the Zone 11 side? Zone 11 and Zone 12 side? -- Though I said there were people there in that vicinity but whether they joined or not I am not in a position to tell you that, the reason being that there is no side street from the direction on your right, that is from Zone 12 through which people (30) could have joined the march. What I mean is in the vicinity  
of/.....

of the intersection.

Yes. But now why could not people have walked to join the front of the march in a direction opposite to that which was intended for the march to take? -- Well if that is the case then I cannot comment on that. If you were putting it to me that there were people who came from the right the way you have just described I cannot dispute that.

Right.

PROF. JOUBERT: Mr Bizos your question means whether people came from the Houtkop side down that road to join the front?(10)

MR BIZOS: Yes, our evidence, let me put it specifically, will be that there was a group of approximately 300 who were waiting to join the march and they came to the intersection and joined the march in front of the march, from the right-hand side.

PROF. JOUBERT: Can you for our sake clear up this with the witness because he mentioned Zone 12, which is behind.

MR BIZOS: Zone 12 is a big area, and it stretches over to the right from where it is written.

PROF. JOUBERT: But if I understood you exactly what you (20) want to know is whether people came down this road from the Houtkop side and joined at the intersection?

MR BIZOS: Yes, we put it specifically that a group of approximately 300 came and joined the procession at the intersection at the front of the march at the intersection.

PROF. JOUBERT: Whether they came from Zone 12 is a bit irrelevant to the clarity of this thing. You want to know, if I understood you correctly, whether they came down the street from the ....

MR BIZOS: No we say that they were on the street and they (30) joined the front of the march as the march was entering the intersection./.....

intersection. -- Now you have explained exactly what you are driving at and what is it that you want me to answer on. If that be the case I differ with you entirely.

Why do you say that? -- The reason is even though there were people taller than me in the march from the direction we came and the way you have described the people to have been waiting from it was possible for me to have seen a group of 300 plus people waiting there for the march to reach them because according to you they were coming from the front in the opposite direction towards us. (10)

No they were not coming from the front of you. Listen for a while, listen for a while. You told us that you could not see what was coming from the right-hand side? -- Yes. That is my evidence, I could not see what was happening on my right there.

Now just listen to me for a moment. Do you know whether in fact there were three hundred odd people on the tarred road near the intersection? -- That is exactly the point on which I differ with you because if that big group of people was there, about 300 people, I was supposed to have seen (20) them.

You were supposed to have seen them but I am putting to you that I do not know whether you saw them or not but they were there not as a tightly formed group but spread over the unmade pavements and over the road, they were apparently waiting near the intersection to apparently join at the intersection. Are you able to admit or deny that? To join the procession. -- I quite understand your question, that is exactly what I am trying to say I dispute because such a big number of people milling around there I was going to notice that (30) there was a big group of people and they would not be on the right/.....

right only, that is another thing.

Because I am going to put to you that this intersection, that this intersection was full of people as the procession was approaching the intersection. -- If the defence counsel was there at the time of the incident I would have agreed with him on what he is putting to me happened there. But what he is putting to me is what he was told by other people who are trying to remove themselves from a certain point or at a scene and therefore I am talking about what I saw happening while being at that scene, that is the difference. (10)

COURT: Now can I just put something to you. Look at that map please. When one walks along the road past Fowler bus stop from Small Farms one gets to a bend which is to the right? -- Yes.

Is it a very sharp bend or is it a very slight bend, is it correctly depicted on this map? -- As I have already said here it was made according to the drawing a sharp bend. It is not, it is a gentle bend according to me. It was supposed to have been in line, for instance the curve there was supposed to go straight up towards the Zone 11 bus terminus (indicated (20) by the witness), that is the outer line of the bend on the right should have gone straight to that Zone 11.

Yes thank you.

MR BIZOS: Now you see I am going to put to you what you have just said about where I get my information from and what I am trying to do, that you too are trying to speak to a pre-conceived idea which was pumped into you during the four months of interrogation. -- I do not agree with you, you are not telling the truth. (30)

Well let us just deal with some of the details. Nobody had/.....

had gone to work that morning? -- That is true.

Nobody had gone to school? -- That is so.

And I am going to put to you that under those circumstances, irrespective of any march, that intersection would have been peppered thickly with people even in the ordinary course of events? What do you say to that? -- As I have already said I did not see that group as referred to, was the group there I would have seen it.

No what I am putting to you is not that. What I am putting to you is that in the ordinary course of events that is a (10) very busy intersection and on a day on which people have not gone to work and have not gone to school it would in any event have carried hundreds of people in that vicinity? -- It was in fact supposed to be like that but unfortunately, or fortunately, it was not like that.

But if in the ordinary course of events there would have been hundreds of people there why should they have been absent on a day on which a march was marching up the hill?

COURT: Is it uphill?

MR BIZOS: Slight, slight incline if I remember it. -- Maybe (20) prior to our reaching that point, that is the intersection, there were people there but at the time when we came there there was no group of people. It can be that because of the police who were also present in that vicinity that they had to disperse or give way for the police. I do not know.

When were the police in that vicinity? -- This is in the immediate vicinity of the place where one of the councillors lived and the police were there to protect the councillors. It may be that the police happened to be there on their duty of protecting the councillors, that the group which was (30) already there had to disperse on noticing the police in that

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vicinity./.....

vicinity. Which is in other words at the time when we arrived at the intersection is during the period when the group had dispersed, before it came together again.

Tell me during your four months of interrogation did anybody suggest to you that the police were there earlier before the arrival of the march in the vicinity? -- No there is no such.

Well where did you get this idea from that the police must have been there and the group that, and the people that would in the ordinary course of events have been at this (10) busy intersection would have dispersed? Where did you get this idea from?

MNR FICK: Edele die Staat maak beswaar teen hierdie tipe vraag. My Geleerde Vriend het vir hom gevra vir 'n verduideliking. Hy kom met die idee wat hy sê wat moontlik kan gebeur het. Nou is my Geleerde Vriend nie tevrede daarmee nie.

HOF: Wel basies het die getuie meer gesê as wat hy gevra was en nou word hy gevra oor dit wat hy meer gesê het as wat gevra het. Hy het homself daarvoor te blammeer, die getuie eintlik. En nou vra die advokaat hom oor wat hy gesê het. (20) As hy sy nek uitsteek dan kry hy dit in die nek. Gaan voort. -- Kan you repeat that question?

MR BIZOS: Did you have any information which you gained during your interrogation that the police were there earlier that morning? -- My interrogators neve made mention of that to me during the time of interrogation. In fact like a human being naturally while we are talking about this issue I also think and therefore in my own thinking I came to this conclusion that that can be possible. That is why I said maybe.

Now tell me this, is it the habit, from your experience (30) is it the habit of people who are dispersed by the police in the/.....

the townships to regroup in the place where they were originally? -- Yes a lot of people do that.

Yes, because I want to tell you that in fact your deduction, if it was mere deduction, was correct. Because the evidence is going to be that even long before this march started off at Small Farms there was police presence and difficulty outside Caesar Motjeane's house. Do you know anything about that? -- I would not know about that because I was not there at that time.

And although you do not, you will probably not be (10) able to comment on it what I want to put to you for the benefit of, I was going to say alerting, alerting the Court in relation to the happenings is this that there was in fact a police visit early that morning at Caesar Motjeane's house and that according to our information that excited much excitement in the people living around that area. What do you say to that? -- As you have already said it I am not going to comment about something which happened in my absence.

Yes. And that there was in fact an attack on his house before this march started off, unbeknown to the people that (20) down at Small Farms. -- I have already said that I am not going to comment on something which took place in my absence.

And that there was shooting by Caesar.

COURT: That is before the march?

MR BIZOS: Before My Lord. -- Well from all what you are saying those are things that happened before I was at the scene. Therefore I am not in a position to answer that.

I am putting them to you so that I can come to the conclusion of the incorrect picture that you are trying to paint. And I am going to put to you that you must have heard after (30) that day that the people in the township said that Caesar, in shooting/.....

shooting at the people that attacked his house earlier on, they were saying this, had shot a child. Did you hear that after the events? -- I did not hear that after all that, until we arrived there then you can ask me about what happened while I was there.

No but what had happened before may be relevant to what you are saying happened afterwards. -- I am not in a position to distinguish whether it is relevant or irrelevant because I do not know about it.

And what I am going to put to you that because of this(10) rumour, because of the police presence, because of the late Caesar Motjeane's shooting early in the morning his immediate neighbourhood was, to use an expression, up in arms against him? And the lane, or passage, the lane or passage and the road in front of his house were full of people before the march entered the intersection. -- At the time of our arrival in that vicinity, that is the march, if I understand you well in saying it was full of people then they were not full.

You told us that you heard someone saying "Here is (20) the dog's place" or words to that effect? -- I still repeat what I said. A person shouted saying "Here is the dog", "There is the dog".

Now you have already told us that that person was not part of the marching group? -- That is so.

Was he part of the group that was in the immediate vicinity of the spot where the lane joins the intersection? -- It was a person from the group which was joining our group, that is the group which was on the side there.

COURT: That is now the group in the dirt road that leads(30) to the stadium? -- That is so.



MR BIZOS: How far away from the lane was this group? -- It was not far from the lane.

Was it next to the lane? -- Yes. Just on the dirt road next to the lane.

And how, was any portion of that group on the dirt road? Or were they on the tarred road? -- They were on the dirt road.

Right.

MR KRUGEL: Excuse me, which one is the dirt road now?

MR BIZOS: The one to the stadium, the one towards the (10) stadium. Now the number of people that were already in that lane, or were in front of the late Motjeane's house when this person made this remark you are unable to tell us? -- I am not in a position to tell how many people were there.

Nor are you in a position to tell us whether such people as were there were quiet or whether they were making a noise? -- I cannot tell.

Yes. Were thousands of people in the procession singing? -- I do not know whether it was thousands but they were quite a big number. (20)

COURT: Why do you not put the question were the people in the procession singing because we are now being sidetracked. That is what you want to know.

MR BIZOS: The people in the procession were singing? -- Yes from my group.

Yes, the procession. Were you at the bus terminus when this person made this derogatory remark? -- Yes we were at the bus terminus at that stage.

No you were at the bus terminus? -- I went past the bus terminus, I was not right at the bus terminus. I went past (30) it and then stood there.

Yes, /.....

Yes, careful now that you do not put yourself right in the beginning of the march because that has not been your evidence up to now, right in front of the march. -- I have not said that and I will never say so.

And did this person who made this derogatory remark say it confidentially or did he shout it out for the world to hear? -- He said it very loud.

Did he point to any place when he did that? -- Yes he did.

To what place did he point? -- In the direction of Caesar's residence, Caesar Motjeane's residence. What I (10) am doing now I am trying to indicate to the Court that from where he was standing the direction was on his left as demonstrated by the witness.

Yes. Now, and did his group, and what did you do once he said that? -- After he had done that, that is shouting and then pointing in the direction, I then came back, my attention was focussed on the people at the bus terminus to see what was happening there. Then thereafter I looked away, joined, or followed the people in the lane, that is the people who were already on their way in the direction of Motjeane's (20) house.

COURT: When you saw that person shouting "There is the dog" was he informing his own group of that fact or was he informing the procession of that fact? -- I would say he was telling the people in our march because his group at that stage must have known already where the dog was.

MR BIZOS: Because I am going to put to you, I am going to put to you that as soon as this march entered the intersection the orderliness of the march, the orderliness of the march was lost in front because different groups came and joined the (30) march in the front? -- If you are saying the order or the

orderliness/....

orderliness of the march was disrupted by the people who went into the lane or at that stage when people decided to go into the lane I would understand but I do not understand when you say the orderliness of the march was disturbed by other groups which joined the march at this intersection.

Yes, because what had been the vanguard of the march up to the time that it was approaching the intersection was no longer the vanguard because of the people from the left and the right and the lane that had come into the intersection, so that there was confusion in that intersection as the (10) march was approaching the intersection. -- I do not agree with you in saying that because of the groups which joined the march from the right or from the lane then the orderliness of the march was disrupted, it is not correct.

Now you see because I am going to put something else to you, that you as a result of your interrogation for four months are trying to put a picture before the Court which is incorrect. And one of the reasons why I am putting this to you is that the march had gone past other councillors houses on its way up, which would have been nearer to where Caesar is, (20) may I just make it clear My Lord, I do not want to say that they were on the road, but if there was intention to attack councillors' houses there were houses on the way of the march, taking a short detour in order to go to councillors' houses long before they reached ....

COURT: That is a very very difficult question. What is put to you is that the march had passed other councillor's houses which were nearer to the route of the march than Caesar Motjeane's one, and nothing had happened. -- That is quite true, I agree with that. (30)

MR BIZOS: May I just, although the witness has given an answer/.....

answer completely in our favour may, I do not want to be misunderstood, that it is not a suggestion that the other houses are as near as Motjeane's is to the main road but there are other houses along the route nearer the starting point. So if there was an intention, if the intention of the march was to attack councillors houses you would have expected the march to take a detour at an earlier stage? -- As I have already said, I do not know I will label this person as the leader or the person in charge of the march, had already given a word about what is to be done to such people and their (10) properties prior to the march beginning.

COURT ADJOURNS FOR TEA. COURT RESUMES.

MNR FICK: Edele ek het 'n taamlik onaangename taak. Die getuie het gerapporteer ncu toe die Hof verdaag het, hy is nog nie in die hof nie, dat hy geintimideer word deur 'n beskuldigde.

HOF: Watter beskuldigde?

MNR FICK: Hy het nie aan my uitgewys nie. Ek het nie met hom gepraat nie, ek wil net aan die Hof gerapporteer en dan kan die Hof ...

HOF: Maar hoe word hy geintimideer? In die hof of buite (20) die hof?

MNR FICK: Net na die verdaging.

HOF: Na die verdaging.

MNR FICK: Terwyl hy uitstap uit die getuiebank was sekere opmerkings teen hom gemaak.

COURT: Will you take this up with the accused, I do not want to make an issue of it here.

MR BIZOS: My Lord I will most certainly mention that but I do not know whether it did happen or, but I will most certainly indicate that it is not to happen and I will see to it (30) that nothing is said or done. One does not know what might

or/.....

or might not have been said or how it may have been interpreted, or what happened. But it is as well if they keep apart.

COURT: Yes.

MNR FICK: Ekskuus Edele dan net 'n ander aspek. My Geleerde Vriend het gevra, weer 'n dubbele vraag gevra aan die man. Hy het gesê hy stel dit aan hom dat die rede waarom hy die getuienis gee dit is omdat hy vier maande aangehou was en toe gaan hy aan met die tweede deel van die vraag. Die rede is want daar was mense ...

HOF: Ja maar toe is daar nie 'n antwoord gewees op daardie (10) vraag nie want ek het die vraag geherformuleer en ek het die eerste gedeelte uitgelaat en daarop is toe geantwoord. So daardie eerste deel is nie beantwoord nie. Wat is die beswaar?

MNR FICK: Die Staat wil weet ....

HOF: Wil u 'n antwoord op die eerste deel hê?

MNR FICK: Dit is reg, dit is net 'n stelling wat op die rekord gaan van my Geleerde Vriend wat vertaal mag ....

HOF: Wel as dit net 'n stelling is van mnr Bizos beteken dit mos niks. Dit is nie getuienis nie.

MNR FICK: Dit is korrek maar .... (20)

HOF: U kan in herverhoor daardie vraag vra. Dit is 'n onbeantwoorde vraag wat in die lig gelaat is. Dit is u reg om dit in herverhoor op te klaar as u dit wil doen. As mnr Bizos wil oorvra kan hy oorvra. Ek het daardie vraag uit mekaar gehaal sodat dit nie twee vrae is nie maar een vraag.

1C8

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

FURTHER CROSS-EXAMINATION BY MR BIZOS: Now you see let us just test your evidence. You remember standing up in your evidence-in-chief and giving a list of the things that had to be destroyed? -- Yes I do remember giving that list. (30)

And you even said that the crowd was so taken up by this  
speech/.....

speech that they were ready to eat people up.

COURT: Not eat people, "n byt afkou".

MR BIZOS: Yes chew them up.

COURT: "Byt afkou".

MR BIZOS: Bite or chew them up.

COURT: Not up, just bite or chew.

MR BIZOS: Bad enough. Now tell me this the march, did it not shortly after its formation at Small Farms and when the incitement was still so very fresh in its mind pass the Evaton Commissioner's offices, also known by the population (10) as Masengeng? -- It went past there at Masengeng.

It was not attacked? -- No it was not.

Why, had the effect of the incitement subsided? The instructions of Mr Raditsela not carried out? -- I will answer that question in saying according to my view it was not a place belonging to the community councillors, the police or VTC. It was just a mere structure belonging to the Commissioner.

Was there not any mention of the property of Native Administration?

COURT: By whom where? (20)

MR BIZOS: Was there no mention by Raditsela to destroy...

COURT: At the meeting?

MR BIZOS: At the meeting. -- No he only spoke about things belonging to the Administration Board.

Oh I see. So was the Commissioner's office excluded from the incitement? -- Esau counted the places I have already mentioned. This one was not included.

Not included. And was the crowd so, was the crowd not sufficiently incited that it was able to distinguish whether it belonged now to the State because it was the Commissioner's (30) office and not the Administration Board's? -- Even if they

were/.....

were so much taken up beyond that I am not the one who can tell as to why they decided not to do anything to that.

I see. This is a place at which passes are issued and regulated? The Commissioner's office? -- I know the issuing of reference books to be done at the offices in Houtkop and even the regulations of the reference books are being done there.

Now did anybody try to attack the Commissioner's office which was on the way, and did the marshalls perhaps stop them? -- Did the marchers? (10)

Did any of the marchers try and the marshalls perhaps stop him? -- No I did not notice that.

COURT: Could I just get some clarity please. The Commissioner's office, was that easily accessible or was it fenced off? -- They are fenced.

By a security fence? -- No it is an ordinary fence.

And the Post Office? -- That is not fenced.

Motjeane's house? -- It is fenced.

How, what type of fence? -- It is a wire fence.

High or low? -- I do not know the other sites but (20) from the site where I was it was high.

As high as your head? -- Just slightly above my head.

And the Administration offices, where they fenced? -- It is far above my head.

A high security fence? -- Yes.

Yes thank you.

MR BIZOS: Now if I were to put to you that the fence around the Commissioner's office is 1.5 metres high and that it was in a state of disrepair before 3 September would you be able to admit or deny it? -- I do not agree with it being dis- (30) repaired or the height of the 1.5 because the last time I

saw/.....

saw it it was just normal.

Well do you say it was much higher than 1,5 metres? --  
I may not be clear about as to what is, how high is 1,5.

It is about your chest height? -- No just below my chest  
is the one I know.

Yes very well. You hardly ever agree with me even if it  
is by inches.

COURT: Mr Bizos do you want an answer to that because you have  
also been arguing with the witness a lot, you do not expect  
him to agree with everything you say do you? (10)

MR BIZOS: No but I would have thought up to the chest and  
just below the chest was a comment which was called for.

COURT: Well actually to be quite correct it was just below  
his lowest rib that he pointed out.

MR BIZOS: No I merely thought that I would draw attention  
to the negative attitude of the witness.

COURT: No I did not interpret this, and that is why I am  
taking it up, as a negative attitude. He is correcting you  
on a point where he wants to be precise and he is entitled to  
be precise. (20)

MR BIZOS: As Your Lordship pleases. Now is there a bus shed  
or a ticket office, or anything belonging to VTC in Zone 7?

-- That is so.

Was that destroyed? -- Not at that time.

Not at that time. Right now is that on the road? -- Yes  
quite so.

Was that one of the targets which Mr Raditsela had iden-  
tified for the wrath of the marchers? -- That is so.

Any reason why that was not attacked if those were the  
instructions and the marchers were in that mood? -- I will(30)  
not know what the reason is why they did not attack it.

COURT:/.....



COURT: Was the VTC building a ticket office or a shed? -- It is a ticket office with a shed.

You mean the shed being just a shelter against the rain?

-- That is so.

MR BIZOS: Is there no ticket office in Zone 7?

COURT: Well he has just explained to you, there is a ticket office and a shelter in front of it to keep the rain out.

MR BIZOS: Oh I am sorry, I only heard the last part. Is Councillor Migwani's house in Zone 7? -- I do not know that councillor so I will not know where his house is. (10)

Are you able to admit or deny that there are at least four houses belonging to councillors in Zone 7? -- I am not going to dispute that because I know each and every zone has a councillor.

Or more than one councillor living in one particular zone? -- That is so.

COURT: We know that some councillors have a high profile, public profile and some do not have high public profile.

What would you say about Caesar Motjeane? -- In the community?

In the community yes. -- Caesar was a well known person (20) to the community.

Yes.

MR BIZOS: What about Councillor Mohejane? -- I do not know him.

Or Councillor Buthelezi? -- Nor do I know Buthelezi.

Or Jan Mokoena? -- I only hear about that one.

What do you hear about him? -- That there is a councillor with that name.

And Councillor Mikwane? -- I cannot remember hearing anybody talking about a person called Mikwane in the (30) councillors.

But/.....

But tell me, if the people who gathered at Roman Catholic Church, Small Farms, the natural thing for them, the natural people to gather there en masse are the people living nearby? -- No people came from different places far, even far from this place, some from Small Farms. Like for instance Zone 7 and we came from Zone 3.

Yes. The people from Zone 7 were likely to know the councillors in that area? -- That is so.

Did you know Mr Caesar Motjeane before his death? -- Yes quite well. (10)

Personally? -- Yes very much personally, yes.

You had personal dealings with him? -- He was one time my chairman of the supporters club belonging to a certain club, he was my chairman.

Yes he was particularly well known to you? -- Yes for the fact that he was my chairman. It simply means that he was well known to me because we used to meet very much, or frequently.

Yes. Alright. Now was there any reason why the first bus shed or bus stop shed and ticket office was not attacked (20) at Zone 7? -- I have already explained that to your previous question by saying if there was any reason why I do not know what the reason is.

Right. And if I were to suggest to you that the reason why these councillors houses were not attacked, the Commissioner's office was not attacked, the bus shed and ticket offices were not attacked was because that was not the purpose of the march? -- I will differ with him there because one of them was attacked and again it was said that those places are to be attacked. (30)

Yes. Now you say you cannot think of any reason. Have  
you/.....

you forgotten your evidence some time ago that the way you understood the instruction was that there should be no attacks until you got to Houtkop and attacks should only take place after you had been to Houtkop?

COURT: Just before the witness answers, is it correct to say that there were no instructions, was it not that that was the impression that the witness gathered from the exhortation?

MR BIZOS: Well that is how he understood the instructions.

COURT: Well do not call it instructions, the exhortation.

MR BIZOS: I am happy to adopt Your Lordship's word, but (10) I do not think it makes any, if anything it may make the question more pointed, for which I thank you My Lord. Now did you understand the exhortation of Mr Raditsela to mean that you were only to attack after you had been to Houtkop? -- Raditsela did not explain that nor was he specific in saying that these places are to be attacked on our return from Houtkop. That occurred in me as a person individually, that probably that is the idea that the places are to be attacked after we had been to Houtkop.

Well I am going to suggest to you that your evidence (20) was clear in this regard, that your understanding of the exhortation was that there should be no attacks before you got to Houtkop. -- If that is what you understood from the evidence then you misunderstood it, you did not understand what I was saying.

Well I am going to put to you that your words will speak for themselves and that they were that your understanding of it was that there would be not attacks until you got to Houtkop and thereafter there would be attacks, that is what you said. (30)

MR KRUGEL: What the witness said yesterday is exactly what he/.....

he said today. I have not got it, I cannot find it but...

MR BIZOS: I have My Learned Friend's note which reads as follows, I read it ....

COURT: When was that, yesterday or today or the day before?

MR BIZOS: Yesterday, we think.

COURT: Yes?

MR BIZOS: I will try and read one or two questions before, I want to give it in complete context because I submit that is, "Were you yourself prepared to march behind such posters? I did in fact do so. Well knowing the placards were being (10) held? I saw them, I knew. Is your evidence that perhaps it was contrary to your nature but the eloquence of Raditsela that persuaded you to do this, your act of joining a murderous march? Not as a result of Raditsela's eloquence that I joined the march. Why did you join it? I went along because it was said the march is proceeding to Mr Gans. So I deemed it fit that I will also go. In fact this thing that people are going to be killed would take place after going to Mr Gans." Did you say that? -- I said I thought, or it occurred to me this way, that these people and the properties will only be (20) attacked after we had been to Mr Gans. Not that I understood the speaker to be saying that.

COURT: Yes that is my note as well Mr Bizos.

MR BIZOS: Did you say "I went along because it was said the march was to proceed to Mr Gans"?

COURT: I will read my notes to the witness and to yourself. "I went as it was said the march is proceeding to Mr Gans. I deemed it fit to go. I thought the killing would take place after we had been to Gans".

MNR FICK: Edele kan ek dit net op rekord plaas ek het (30) verbatim dieselfde.

COURT: /....

COURT: Yes.

MR BIZOS: Now do you agree that you uttered those words as read out by His Lordship? -- Yes that is exactly what I am saying now.

And did this thought come to your mind as a result of what Mr Raditsela had said? -- That is so.

Did Mr Raditsela have any difficulty in expressing himself eloquently? -- Whether he had a difficulty or not that I cannot tell. All I am saying here is based on what he said at the time. (10)

Have you any reason to believe that the thousand or so people that were on this march right at the beginning understood his statement any differently to what you understood it? -- It is difficult for me to tell this Court as to what other people thought was meant by this person at the time.

Right. If your understanding of the exhortation was correct then the attack on Caesar Motjeane's on the way to Mr Gans was contrary to the exhortation as you understood it? -- According to me and my understanding it was different and my sort of interpretation of this, it was different from (20) what I expected it to happen. According to my mind.

What happened was contrary to your understanding as to what Mr Raditsela exhorted the marchers to do? -- What I am saying is what happened there was the direct opposite of what occurred in my mind that I thought was going to happen.

Right. But now was there an instruction, or an exhortation or a request that you should in an orderly fashion go all the way to Houtkop? -- No all that was said was that we are now marching to Houtkop.

Yes. Was the purpose of the appointment of marshalls, (30) such as yourself, not to ensure that the march reached Houtkop?

-- All/.....

-- All that I had to do there was to see to it that people are walking in the road and not off the road.

Right. Going up this lane towards Caesar Motjeane's house would have been contrary to your instructions? -- I quite agree, it was against the instructions with a reason of course.

And if anyone in the, in front of the march diverted the route of the march to Caesar Motjeane's house and not on the tarred road that too would have been contrary to instructions?

-- I quite agree with you as it happened. (10)

Yes. But now did you as a marshall try and take any step to call the march to order at the intersection so that it could turn right on its rightful way? -- No I did not do that.

Did you personally instead go up the lane towards your soccer supporter chairman's house? -- That is so.

And in doing so did you pass the people who had been leading the march up to then? -- My evidence was a certain portion, or a group of the march, had deviated in the direction of Caesar's residence in that lane. I also followed that group which had already deviated. And again I agree with (20) you that there were people who deviated into that passage and I agree with the reason again that you put forward for my group to have deviated into that direction.

Do you agree that the people with the placards, the people with the placards remained on the road? -- I do not know what happened to them.

You did not see them going up the passage? -- I did not see whether there was anybody carrying a placard into that passage.

COURT: Just a minute. Could you just give me clarity. At (30) a stage you left the procession to run or go up the lane?

At/....

At that stage when you left the procession was the procession still moving or was it standing still or milling around?

-- It was moving.

Moving. Normally? -- Yes normally as we were walking before.

Now at the moment when you left the procession where was the front portion of the procession, where were the leaders? In relation to the lane were they beyond the lane or on this side of the lane? -- That was just before they passed the lane.

Yes thank you.

(10)

MR BIZOS: Now let me, when you say that they passed the lane is that the leaders that moved over to the right onto the tarred road?

COURT: No wait a minute. This procession had all the time been on the tarred road, it did not move onto the tarred road. Which group are you referring to?

MR BIZOS: No I am referring to that group, may I rephrase the question?

COURT: Yes.

MR BIZOS: I will start at the beginning. Where the people (20) carrying the posters in front? -- Not right in front, they were just in between other people according to my judgment.

Do you say that there was not a group of people carrying the posters in front of the procession so that people could see what the procession was about? -- The people who were known to me as leaders of the march from the beginning there did not have any placards with them.

Were they surrounded by people holding placards? -- Yes they were.

You told us that you did not see any placards going (30) into the passage? -- That is what I said.

Would/....

Would you be in a position to deny that the people carrying the placards and the people around them took a right turn on the tarred road when they approached the intersection, or they came into the intersection? -- You said something about turning to the right?

The moment you entered the intersection the intention was to turn to the right? To go to Houtkop? -- No the intention was that we were going to walk along the tar road not turning to any right.

COURT: Yes, Mr Bizos I think you and the witness are at (10) cross purposes. What Mr Bizos is attempting to put to you is that when the leaders of the procession came to the intersection they kept on following the tarred road but that tarred road slightly veered to the right.

MR BIZOS: Thank you My Lord. -- That is correct, I understand the question now. They were supposed to have gone in that direction.

And they did go in that direction? -- Yes but some of them were present at Caesar's house.

We will come to the people that you say were present, (20) but the procession as a whole, did it follow the tarred road? -- The last I saw of this procession was when I deviated into the lane with the other group which also broke off from the procession into that lane. As to whether the other people proceeded along the tar road or not I cannot tell. Until I reached Caesar's house, that is the only thing I can tell you.

Now before the front rank of the procession entered the intersection I am going to put to you that there was general confusion in the intersection, because of the different groups that had come to the intersection from different directions. (30) What do you say to that? -- As I have already explained what

is/.....



is being put to me I am inclined not to agree with that.

Yes. Right we will leave it at your inclination. Did the people who were there, I know that you are inclined to disagree about how many there were, did the people who were in the intersection also sing when they formed in groups in order to join the procession? -- As to about their singing I am not in a position to tell whether they were singing or not.

And would you agree that even before the vanguard of the procession reached the intersection small groups, instead of joining behind the procession, became the vanguard of the (10) procession themselves? -- The group that I saw did not join the procession right in front and nor did they take any part of the vanguard.

No I am not talking only about the group that you say you saw at the intersection. Let me take you back to the garage, to the BP garage. Just listen to me for a short while and I will try and describe what was happening. At the garage for instance would there be a group of ten, fifteen, twenty people waiting for the procession to come? -- Yes at the garage I agree because from the direction we came it was a (20) sort of a slope down then we were right on top. I could see what is happening at the garage. There was a group of people milling around in the vicinity of the garage.

Yes. And then what would happen is that as the vanguard of the procession comes along this loose collection of people at the garage would form themselves into a group, start singing "Siyaya" and join the march as a group? -- At that stage, that is while heading for the garage, in view of the fact that I was moving up and down supervising the people there I did not see that group joining the vanguard of the (30) march.

What/....

What I want to put to you is that that was by way of example, that as the procession was moving uphill small groups would join the march and quite a lot of them would want the honour of being in front? -- Until at the stage when we just passed the garage the people who were in front are those that I have already mentioned.

And I am going to put to you that as the procession proceeded towards the intersection there were, by the time the front rank of the organised procession had reached the intersection, hundreds of people in front of them? -- I do not (10) agree with that.

You do not agree with that. And that this intersection, by the time the front rank, or what was the front rank at Small Farms, with the poster carriers reached the intersection there was almost a mass meeting of people in this intersection? -- I still maintain that the only group of people I saw is the one I have already mentioned to the Court.

Now why did you break ranks, why did you go to Mr Motjeane's house? -- It is because we wanted to go and see the dog that was being referred to as "There is a dog". (20)

Now come, who was being referred to as a dog? -- At that stage I did not know who the person is referred to as a dog, until we reached that house.

COURT: Now could we just pause there a moment. This term "dog", when somebody is referred to as a dog, what does it mean to you? -- Once a person is referred to as a dog by someone the person referring to the other person as a dog indicates that what is, the person he is talking about is to him something that he does not want, something that he hates, something he does not in fact would like to have to do any- (30) thing with.

Does/.....

Does it mean that that is something that has to be destroyed? -- Yes it only depends how one puts it, the context in which the word is used. For instance in this case the manner in which this person had put it that is the interpretation.

So when you heard "There is the dog" or whatever it was, did you then know that something was going to happen to somebody? -- Yes I came to the conclusion that it must be that something is going to happen.

Yes thank you.

(10)

MR BIZOS: Now before His Lordship asked you that question you said you wanted to see the dog. Who was being referred to as the dog? -- Yes that is so.

Well did you expect to see a Councillor merely because he was referred to as a dog? -- Yes I was expecting to see a Councillor and secondly expecting to see which is the dog that is being mentioned here.

Well that the dog according to you, just with those words had to be a councillor? -- Yes because they were targets.

You see I am going to put to you that you are again (20) giving answers as if you were, as you must have been taught during the four months interrogation. Let me say it this way in ordinary speech if somebody kicks a child do not the African people say he is a dog, if he does any reprehensible act?

INTERPRETER: I beg your pardon, that is rather too long, I could not catch everything.

MR BIZOS: If anybody commits any reprehensible act is he not referred to as a dog?

COURT: No, no you started off by saying if somebody kicks (30) a child. Now let us deal with that first and then take

the/.....

the next one.

MR BIZOS: Right, if someone kicks a child would you not refer to him as a dog? -- Now refer to who as a dog, the child as a dog or the person who is kicking a child a dog?

No I think that you are too intelligent to ask that question. If somebody kicks a child would you not refer to the kicker as a dog? -- Well with us, the Sothos, as you have referred to Africans, that Africans are doing that, that is exactly what is happening with us.

Yes, so this person might have kicked a child and that (10) is why he was being called a dog? -- Not only in respect of a child, even a grown up person, I can kick that person and call that person I kicked dog.

Yes, and if somebody steals money from his co-employees is the thief not called a dog? -- It is called a dog.

Yes, and if he uses foul language in front of elderly people for whom you have such respect is he not called a dog? -- That is so.

Yes, calling a person a dog is not literally meant, it is not a target? (20)

COURT: Well that is two questions.

MR BIZOS: Right, is not literally meant.

COURT: Calling a person a dog cannot be literally meant.

MR BIZOS: As Your Lordship pleases. You see what I am going to put to you that your answer to His Lordship is a deliberate attempt to mislead the Court. -- No that is not the way, the way you think it is.

Yes. Now according to you this person in this group was not in the march? -- That is so.

You could not reasonably have expected him to have (30) been part of the audience when Mr Raditsela had been speaking?

-- For/...

-- For the fact that we have seen him there it would be stupid of me to say that this man was present at the address by Raditsela.

Yes, therefore he would not have known anything about targets mentioned by Mr Raditsela? -- He uttered that word and those who knew about that then rushed in that direction.

If he did not know what Raditsela had said why should the word dog not have been interpreted in any other sort of a way? Why do you confine it to councillors? -- In the Vaal Triangle, that is in the area where I live and where I (10) move about, the community there, the people use that word with reference to councillors most of the time. Because we take them to be using people's moneys more than necessary. This one when he uttered those words, because of the knowledge by the other people of this particular word in that area, then they reacted on that.

Tell me did you break ranks going to look for a target? -- Break ranks from? You mean at the intersection or where?

Did you go away from the march in order to look for a target? -- We broke away from the march at this stage when (20) this man was pointing at a direction saying "There is the dog".

Did you personally go away from the march looking for a target? -- No not me personally, I did not go away from the march with a view of looking for a target.

C71 Did the people who either were in front of you who had been on the march or behind you who had been on the march go up that lane looking for a target? -- I do not know what you want from that because it is difficult for me to testify about what other people thought were going to do at the time. (30)

Well then could we put it that way that you went there  
for/.....

for curiosity sake? -- I went there because I wanted to go and see.

Yes. For curiosity? -- Well curious to know and see what is what.

Yes. And you have no reason to believe that any other person who may have been on the march went there for any other reason? -- As I have already said I repeated again it is difficult to read other people's minds.

Right. Now the evidence will be that whilst the vanguard of the march was coming into the intersection, and may I (10) explain when I say vanguard the original vanguard of the march.

COURT: That is now the leaders?

MR BIZOS: The leaders, the planned leaders from the beginning. Was coming into the intersection, smoke was apparent from the direction of the late Caesar Motjeane's house. -- If that is the evidence you have of which was given to you I repeat it, you got a wrong part or wrong version of the whole thing. It is not true evidence.

And I am going to put to you that the smoke, the move-(20) ment of people in the lane and the noise that was coming from the late Motjeane's house induced people out of curiosity to go towards it to see what was happening? -- I quite agree with you when you say the smoke and the noise from the direction of the late Motjeane's house was the cause that people were curious to go and see what was happening but that happened only after our arrival and the place was set alight.

The people in front, the new vanguard, the new vanguard of the marchers, that is the people that had joined the head of the original people, had already taken the turn, or had(30) followed the tarred road past the lane when the smoke first

appeared?/.....

appeared? -- I repeat about the smoke, the smoking started already after already we had been there, that is while being there at the time, then there was the smoke. To add to that it is after this man had shouted about a dog which was there and people rushed in the direction indicated by this man.

Now if you in fact were present when the vehicles and the house of the late Motjeane were put on fire, you must have gone ahead the original vanguard of the march? -- I differ with that.

Yes. Now could you please tell us the group that was actually attacking, how big or small was it in relation (10) to the great number of people who were spectators?

COURT: That is the group attacking the house?

MR BIZOS: The house and the vehicles.

COURT: Stoning the house first?

MR BIZOS: Stoning the house and then lighting the fire.

COURT: Yes but, no they are different concepts here. A number of people attacked the house. Only one, possibly two, seemed to have been involved in the light of the fire.

MR BIZOS: As Your Lordship pleases. Could you please tell us how many people were throwing stones at the house? -- (20) It will be difficult for me to say they were five or ten people. All I can say it was a group of people.

Well more or less how many would you say? -- I did not pay much attention as to be able to give an estimation of more or less how many because at the time of the stoning the person inside or persons inside were busy shooting.

So that there was presumably no large crowd in front of the house in the line of fire from the people who were shooting from inside the house? -- At that stage yes because we were all trying to get away from the line of the bullet in order (30) not to be hit.

Tell/....

Tell me was the stone throwing from people in the street or at the fence or were they throwing stones from behind their own fences, from their own yards? -- Those that I saw at the time were those who were in the street.

Was there any stoning from the yards? -- I did not notice that as to whether there was any stoning from different yards.

As soon as the shooting started would the natural place to take cover, if you were a spectator, be to move either towards the stadium or towards the lane in order to be out of the line of fire? To move away from the front of Caesar's (10) house? -- If you talk about a stadium then you are sort of misleading me because we are very far from the stadium there.

Yes, the direction of, I am sorry I did not intend to mislead you I merely wanted it to both directions. Did people scatter in both directions away from Caesar's house? -- That is so.

Did many of the would be spectators of what was happening at Caesar's house run into the lane? -- Yes there are those who ran into that lane.

In fright, in fright and making noises? -- That is so. (20)

Did you come onto the scene whilst the stone throwing was taking place? -- Yes I arrived at this scene while they were busy throwing stones.

And also the shooting? -- That is so.

How many people would you say you saw in the vicinity of the deceased's house at the time that you went there the first time? -- It was a group which I am not able to tell in number as to more or less how many people were there.

Well would you say that if you came there when there was stone throwing and shooting there could not have been (30) many many people in front of the house? How many more or less?/....



less? -- I did not count how many people were there.

A dozen, two dozen, five, six, how many? -- I do not know how many people were there. All I can say there were more than two.

PROF. JOUBERT: Mr Bizos may I just ask this little detail at this stage?

MR BIZOS: Yes of course My Lord.

PROF. JOUBERT: How far is the front wall of that house from the street, from the fence on the street? -- I would say the distance between the wall in front and the fence which (10) separates the yard from the street is about from the corner of this table here where the court orderly is seated to this corner of this table.

COURT: The corner on my side or .... -- The corner on your side My Lord.

It is about two or three metres.

MR BIZOS: Yes. You see you say that there were more than two? The attack at this stage when you first got there was by a small group of persons, you say more than two, make it two, make it five, make it ten, that is the sort of attack there (20) was? -- I said I did not count them as to how many there were who were attacking. All the same they were a small group which I am not able to describe whether they were a dozen, two dozen or how many.

It gives us an idea, thank you for trying. It would most certainly be wrong to suggest that there was a group of a thousand people in front of his house when you got there? -- Yes the number of the group which was there at the time of the shooting was increased after the shooting had stopped. It is only then that it could have increased up to a thou- (30) sand plus.

Right./.....

Right. Now do you know, I am sorry I will change the question. Had the stone throwing and the shooting started before you got there? Before you got in front of Caesar's house?

COURT: Was he in front of Caesar's house?

MR BIZOS: I will change it again, thank you My Lord. Did you get anywhere near the front of Caesar's house whilst the stone throwing and the shooting was taking place? -- From where I was standing, that is the next door yard, what happened is on our arrival there the crowd uprooted the fence (10) as a result of which then we gained access into the next door yard through the opening which was uprooted and from where I was standing in the next door yard I could see the front of the house.

Now could you please tell us whether in the houses next to Caesar's house on the left and on the right, and in the houses opposite, whether those yards were full of people at the time that you got there who had taken cover from the shooting? -- Opposite meaning the back opposite?

No .. -- The house at the back or which? (20)

No across the gravel road. Across the road from Caesar's. -- What I can say is from the next door where I was standing while watching this incident I was not alone, then about the other next door on the other side, that is, on the other side meaning the left side I could not see and therefore I cannot testify about that.

Well are you able to deny that these yards were full of people who had been in front of Caesar's house and that who took cover in the various yards in the immediate vicinity as soon as the shooting took place? -- I cannot dispute that. (30)

And for the sake of completeness I am going to put to

you/.....

you that even before the march came even near to the intersection there was a large group of people outside Caesar's house who were threatening, swearing at Caesar and blaming him for an earlier shooting in which a child had died? -- I cannot comment on that because that happened in my absence as you put it.

Yes. Would it be correct to say that if this unidentified person had not shouted that "Here is the dog" you yourself would not have gone up that lane? -- That is so.

You see would you agree that the use of firearms (10) against crowds of people, more particularly by one Black man against other Black people, incenses crowds very badly? -- Prior to this day in question it was not like that.

How does the Black population as a whole regard people who are armed with firearms, Black people who are armed with firearms?

COURT: Can he speak on behalf of the Black population as a whole?

MR BIZOS: No My Lord. Have you got any perception, how do you feel towards Black people that walk around with fire- (20) arms? -- A Black person who is also a human being, a person too, carrying a firearm with him in his person and not doing funny things with it, just keeping it with him I do not see anything wrong in that.

And if the rumour is spread, true or false, if the rumour is spread that a Black person has shot a Black child what is the attitude of such a person in the community that you live in? -- Fortunately for me I have never come across such a rumour where a Black person was being blamed for having shot a child in order to experience my own feelings how I (30) would feel about that person in order to be able to answer

that/.....

that question today.

Right, I can understand your objectivity. What I want to put to you though is this, that on that morning the neighbours and the people living near the late Motjeane's house were incensed against him before the march came anywhere near his house. Are you able to comment on that? -- No comment because those are things that happened while I was not there. I do not have any evidence to what transpired.

How many shots did you hear? -- I was not able to count as to how many shots were fired because I had a fright for (10) my own life, though I am able to say I heard more than three shots.

Was there a sort of mass voice of anxiety about these shots after they were fired? You know you can feel the people around expressing their surprise, their shock, their... -- Except for the sound that I have just made which I heard no other words did I hear people making.

COURT: The sound the witness made was hoo, hoo, hoo. I do not know how that will come on the record.

MR BIZOS: Did you notice that as soon as it became appa- (20) rent that the ammunition was run out that people started jumping over the fences of the adjoining houses, adjoining and neighbourhood houses? -- From the yard where I was standing right at the corner while the shots were still being fired, though you have not asked me about this, I noticed that youth who had with him a long stick and a plastic bucket.

You have told us about that. My question did not relate to that. -- That is why I first said even though you have not asked me about that. By that I am trying to explain to you that people did not start jumping after realised or having (30) drawn the inference that this man has run out of bullets.

While/.....

While the fire was still on this one was active, that is what I am saying.

Yes this may be that this one was active. Are you able to admit or deny that as soon as people realised that the fire, the shots had ceased, that the people in the house did not have any more ammunition, that people who had taken cover in the surrounding houses did they jump over the fences onto the street in front of the late Motjeane's house? -- Again I do not agree with that because while the firing was still on from the house somebody jumped into the yard of Motjeane.(10)

Now this may or may not have happened, why do you not try and answer the question. That people who had taken cover in the various yards jumped over the fences as soon as the fire stopped, onto the street and came to the front of Mr Motjeane's house? -- I understand the question very well but there are two answers to this question. Those are there is one person who jumped into the yard of Motjeane before the firing of the shots had stopped and then there are those who emerged after the shots had stopped.

Yes. I am talking about those who emerged after the (20) shots had stopped. Did you see people climbing over fences from the adjoining yards, coming to the front of Motjeane's house? -- Yes those that I saw are those who were jumping the fence from the house of the back yard, to Caesar's house.

COURT: Were they jumping into the street or were they jumping into Caesar's yard? -- They were jumping into Caesar's yard.

MR BIZOS: Is that, are those the people from the yard that you yourself were in? -- No I am talking about the people from the back opposite. When I am talking about the back (30) yard I am talking about a back opposite.

A/.....

A back opposite. But what about the houses on the other side of Caesar's house and the houses opposite Caesar's house? Were you in a position to see how many people, if any, jumped over those fences? -- From opposite the house of Caesar or from the left of the house of Caesar I did not see anybody jumping a fence from those yards. When I talk in terms of an opposite I am talking about a front opposite now.

I am going to put to you that people emerged from the back yards and front yards of the houses around and opposite Caesar's house? And people who had taken cover by leaving (10) the front of Caesar's house and coming back into the lane started moving towards Caesar Motjeane's house? -- Yes that is correct about the people who came from the lane and those who came from the street. It did happen that they came in front of the house.

COURT: Mr Bizos I would like to take the adjournment now. I just have a small remark and that is we have wasted virtually half an hour on this part of the cross-examination whereas you could have put to him immediately did people emerge from all over the place and start moving to Caesar's house after (20) the shooting stopped and I am sure the answer would have been yes.

COURT ADJOURNS UNTIL 14h00.

C72 COURT RESUMES AT 14h00.

~~1C8~~ d.s.s. (Through Interpreter - In Camera)

FURTHER CROSS-EXAMINATION BY MR BIZOS: You saw a person being killed, was that person Caesar Motjeane? -- I could not see whether it was Caesar at not at the time of the killing because there were many people around him or next to that person. (30)

How far were you? -- I was not very far.

How/.....

How far? -- I was at this distance when he was being killed from the place where he was being killed to where I was standing.

COURT: Pointed out approximately six metres.

MR BIZOS: Six metres.

COURT: Next time will you please point out in that direction, it makes it easier.

MR BIZOS: Now, but were there not any exclamations or anything in relation to the identity of the person who was being killed? -- If there were any exclamations I would have been(10) sure of the person who was it that was being killed.

But did you not see him trying to run away or being dragged or anything happening to him? -- This person was surrounded by the group from the doorway of the kitchen, that is Caesar's kitchen, so this person had no chance of trying to break loose and run away.

Or even for you to see his features so that you could tell His Lordship whether this was the late Caesar Motjeane or not? -- I was not able.

Did you leave without knowing whether the late Caesar (20) Motjeane had been killed or not? -- When I left I was not aware that the person killed there was Caesar Motjeane or who the person was.

And did the crowd disperse after this person was killed? -- Yes they dispersed after I had left, I was not there at the time.

You will recall that you put certain of the accused near that place? -- That is so.

Please tell us again just the numbers or the names so that we can get on. -- Those next to the fence were Simon (30) Nkoli and Gcina Malindi.

COURT: /....

COURT: The numbers were?

MR BIZOS: 5 and 13 My Lord, oh the other way around, 13 and 5. Who else? -- The third person there who was seated diagonal opposite the place was Oupa Hlomoka.

COURT: No. 2.

MR BIZOS: No. 2. Now I am going to put to you that none of those three accused were in the vicinity of the house at which this person was killed. Do you deny that? -- I will deny that in the sense that they were in the vicinity but at the time of the killing, actual killing of this person, I did (10) not see where they were.

I am going to put it even further that they did not go up that lane towards Caesar's house. Do you admit or deny that? -- They were there.

Right. Now I am going to suggest to you that you have, that you have a tendency to place accused no. 13 and 5 in that order at places where they were not, not only in relation to the events of 3 September. I will give you four examples. You told His Lordship right at the outset of your evidence-in-chief that you met these two accused, accused (20) no 5 and accused no. 13, at a writers association and thereafter at the Vaal Youth Congress and you said to the Court when that happened. I am sorry My Lord at a conference, a COSAS meeting and they introduced him to the Vaal Youth Congress.

COURT: Now let us start all over again.

MR BIZOS: Sorry. That you then said you meet them at a COSAS meeting and they asked you at that meeting to join the Vaal Youth Congress, do you recall that? -- Yes I do recall that. (30)

And you placed that as February 1983? -- That is so.

And/.....



And was this not a discussion about the formation of the Vaal Youth Congress? -- I did not say that we were discussing that. I said they were talking about that to me.

Well I am going to put to you that you have the timing of that completely wrong. -- It is exactly like I have told this Court. There is no other way.

And that there was a meeting at which no. 5 was in June 1983 which was a commemoration service by COSAS. -- Just repeat that.

That you met accused no. 5 at this commemoration meet- (10) ing in June and not in February 1983.

COURT: Is it put that this was in the Roman Catholic Church at Small Farms?

MR BIZOS: Yes My Lord. -- That I met him in June?

Let me put it this way. Were you at a meeting of, a commemoration meeting in June 1983 at Catholic Small Farms? -- No I did not attend.

YOU did not attend it. Now I am going to put to you that if you were not at that meeting you could not have had any discussion either with no. 5 or no. 13 in relation to the (20) formation of the Vaal Youth Congress because the idea of having such a congress was only conceived at a commemoration meeting in June 1983. -- It is just as I have told this Court, for instance about what transpired during February 1983. I even remember the date, it was 12 February 1983. That is when they wanted me to join the Vaal Youth Congress. Whether it was formed by then or not that was not what I knew about but it can be or may be they only wanted members for the formation. But my evidence is as exactly that I told the Court.

And you remember the date, 12 February? -- Yes I have (30) a reason why to remember that.

Yes./.....

Yes. Do you remember what day of the week it was also?

-- It was a Saturday.

Yes. And you are just as confident of that as you were that 25 January 1984 was a Monday? -- That is so.

You know I am going to suggest to you that the confidence with which you drop out dates is evidence of the parrot manner in which you must have learnt some of your evidence. Will you please have a look at a diary and tell us, according to the diary, what day of the week 25 January 1984 was? It is a Hortors diary My Lord. Just tell us what the day of the (10) week was please? -- Yes here I see it was a Wednesday.

Right, do you recall how you stood there trotting out dates, what the 25th was and what you were doing on the 24th and precisely what you were doing on the 23rd and you remembered the days of the week and the dates. Was that a lot of nonsense? -- Not with undermining or with any strings attached to undermining the defence but I am going to ask him to use proper words and not swearing words.

Well I am sorry that you consider nonsense swearing words. But leave that aside for the moment. Do you agree (20) that your evidence was contrived, manufactured, in view of what the diary shows about the day of the week that the 25th of January was? -- I quite agree that, alright I do not know how to put it but I do not want to use a word which can be vulgar. That day, the 25th was on a Monday as you asked me now, pertaining to the days of the week I admit having made a mistake, not in other respects.

You see nobody can blame, in these courts, anyone for making a mistake about a date. What I am suggesting to you is that the confidence with which you say things which can (30) be proved to be wrong shows how you convince yourself about  
your/....

your infallibility. -- I am not saying I am infallible and it will never occur in me to say I am infallible.

Right thank you. I want to put to you that at this meeting where there was the suggestion of the organisation for the first time, at the commemoration service, that accused no. 13 was not there at all.

COURT: Just a moment now. He says he was not at the commemoration service in June 1983.

MR BIZOS: Yes.

COURT: Now whether no. 13 was there or was not there what (10) does it matter?

MR BIZOS: Well My Lord I am merely putting it for the sake of completeness lest it be understood that it is admitted that there was talking about this congress by both 5 and 13.

COURT: Well should you not put to him that, whether no. 13 was at the meeting in February 1983, the COSAS meeting?

MR BIZOS: No My Lord, the accused ....

COURT: Say there was not such a meeting.

MR BIZOS: The accused do not recall such a meeting or the discussion of such a .... (20)

COURT: Very well if you are going to put something about this meeting where he says he was not just put it all in one shot for clarity sake and get it over with.

MR BIZOS: Thank you My Lord. You see I am going to put to you that at the meeting where there was talk about the formation of this organisation, accused no. 5 was there, accused no. 13 was there and furthermore this organisation never came into being. -- I never said there was a formation of this organisation nor did I say we were discussing the formation. What I said in evidence is that on 12 February is the day (30) when they spoke to me about my joining the organisation.

Yes./.....

Yes. -- If they say they cannot remember that day I can remind them by mentioning some of the things that happened there and what happened thereafter and where we proceeded to from there.

Yes. Well I am going to suggest to you that that is the accused's version in relation to that and that you are as wrong about that as you were about 25 January being a Monday. Or for that matter having heard My Lybon Mabaso and Mr Saths Cooper in April 1984. 1983 I beg your pardon. Thank you for your denial. I would like to proceed. (10)

MNR FICK: Edele ek maak beswaar teen hierdie tipe kruis-verhoor. Die man het nog nie geantwoord nie dan sê hy dankie vir sy denial.

MR BIZOS: My Learned Friend can ask him in re-examination if he wants to give the reasons.

MNR FICK: Met all respek as my Geleerde Vriend n vraag vra dan moet hy wag tot hy n antwoord kry.

HOF: Dit was nou oor Mabaso en Cooper. Is dit die punt? Well you should wait for the answer but you did traverse this field previously and he did deny it. (20)

MR BIZOS: Yes.

COURT: So I was a bit surprised that you brought it up again.

MR BIZOS: No merely as examples of his own infallibility.

COURT: Well it cannot be an example until he has been proved wrong. And that is still to come.

MR BIZOS: We are fairly confident that it will. Now tell me where else do you recall where else you placed accused nos. 5 and 13 as having played a position of prominence? Where else in your evidence-in-chief, where else did you place them as having played a position of prominence? -- That was in (30) the meeting of the formation of the VCA.

Now I am going to put to you directly that accused no. 13 was not there at all. What do you say to that? -- I say he was there.

And I am going to put to you that accused no. 5 came late to this meeting, between 16h30 and 17h00, after he returned from the wedding of his friend Siphon Radebe? -- He was there as I have already explained.

Can you recall whether those two were in the immediate company of anyone else at that meeting? -- They were not (10) in the company, they were not in fact moving. There was some singing going on on the stage.

COURT: Just a moment, you say they were not moving? What does that mean? -- I may have not explained it clearly. What I mean is, the question is from Mr Bizos, do you remember in whose immediate company were they.

Yes well were they in the immediate company of anyone else? -- They were with other people on the stage.

MR BIZOS:

Who in particular? -- I have explained to the Court that I cannot remember the other people with whom they were on (20) the stage though Amos Malindi was also there.

COURT: Amos Malindi is number? You are referring to an accused? -- The one right at the end there.

Stand up please. Accused no. 12.

MR BIZOS: Yes, anyone else? -- Even if I am trying to think back I cannot remember all of them who were on the stage with these people.

You see because I am going to put to you that in fact accused no. 14, Mr Petrus Amos ....

COURT: 13 or 14?

(30)

MR BIZOS: 12.

COURT: /.....

COURT: No 12 yes.

MR BIZOS: No. 12 was there but not on the stage and not leading the singing. -- He was also singing on the stage.

No, not a question of singing. Do you say that he was leading the singing? -- He was amongst the leaders of the singing.

Right. I am going to put to you that that is incorrect. -- I say that is so.

You cannot remember any other one of the accused being there? (10)

COURT: Apart from those already mentioned?

MR BIZOS: Apart from those already mentioned. At this meeting where you say there was singing? -- Jerry Tlhopane was present.

Yes you now remembered him, that is accused no. 14? -- That is so.

Was there any reason why you had forgotten about him until your attention was specifically drawn? -- That is natural that a person can forget and then again remember something while he is thinking about it. (20)

Do you remember seeing him selling newspapers outside? -- I cannot remember seeing him selling newspapers outside.

I am going to put to you that although he was in the vicinity of the meeting he was selling newspapers right up to the election time when he managed to come up to the door. -- I say he was present with the group which was singing on the stage. In fact he was one of the people who were leading in that singing.

Incidentally would you agree that at these meetings the songs very often are started by groups in the audience? (30)  
-- There are times when that happens, yes.

And/.....

And I am going to put to you that that is the general rule rather than the exception? -- From the meetings that I attended I do not know that as a general rule as it is being put now.

Was it your experience at some of these meetings the chairman had difficulty in stopping the singing in order that the speakers should get on with it? -- Yes that is correct.

Yes, because the people in the crowd, especially if they think they have got good voices, want to go on and on? -- That I do not know, whether those people think they have got (10) good voices. I am not able to explain that.

And another example of you introducing, and I will immediately grant it to you that you corrected yourself, that you put accused no. 5 at another meeting you recall on 19 February? -- Yes I do.

Having put to you that these three accused were not, they were not in the vicinity even before ...

COURT: Now let us just recapitulate, that is no. 5, no. 13 and no. 2.

MR BIZOS: Yes My Lord. (20)

COURT: Yes, because we have been mentioning no. 14 as well.

MR BIZOS: I have now returned to the march.

COURT: They were not in the vicinity of the house of Mr Motjeane at the time of the killing?

MR BIZOS: At the time or shortly before as he says, he does not put them there at the time of the killing. I do not want the Court to be left under any misapprehension. We have no direct knowledge but our investigations so far show that the killing that the witness is describing was not Motjeane, but that it was Phineas .... (30)

COURT: His bodyguard.

MR BIZOS: /.....

MR BIZOS: His bodyguard, yes. None of the ....

COURT: Well let us just get clarity what is put to the witness. Is it put to the witness that accused no. 2, no. 5 and no. 13 were not in the vicinity of the house of Motjeane at, or that day at any stage when any of these occurrences took place?

MR BIZOS: Precisely so My Lord. -- Malindi, namely Gcina Malindi, and Simon Nkoli, were inside the next door yard looking at the group which was dragging this person out of Caesar Motjeane's house. The only person who was not in (10) that immediate vicinity of the house of Caesar Motjeane is Oupa Hlomoka, the one I said was seated somewhere diagonal opposite.

Right. Did you, were you specifically interrogated during your first and/or second interrogation about accused nos. 5, 13 and 2? Jus yes or no please? -- I was about no. 2, yes.

Were you not interrogated about accused no. 13 and no. 5? -- During that time I was not interrogated about Malindi and Nkoli. (20)

COURT: Could we just give the numbers, is that no. 5 and 13?

MR BIZOS: 5 and 13. Now is this neither in the first interrogation nor in the second interrogation, about Malindi and Nkoli? -- I was interrogated about the two during my second interrogation because some photos were brought to me.

Yes. Right. Did you realise during your four month interrogation that the more information you gave to the police the earlier your possible release from social isolation might be? -- I did not know that, nor was I told about that.

Yes, very well. On the 3rd when you left the vicinity (30) of Caesar Motjeane's house did you go back to the crossroads,

to/....



to the intersection? -- I walked along an inside street until further on where I joined the tarred road again.

Do you mean that you did not come down the lane to the intersection? -- No I did not.

Did you walk to the, on the street which is parallel to the tarred road towards the direction of Houtkop? -- That is so.

How many streets joining onto the tarred road did you pass before you turned right in order to come onto the tarred road? -- None, the very first street in which I turned was (10) the street which was the first one turning to the tarred road.

Yes, you took the first road to the right and walked down to the tarred road? -- That is so.

Yes. What had happened to the march? -- There were still a lot of people along there and some of the people came with me from Caesar's place.

What was my question? -- The question was what had happened to the crowd.

To the march.

COURT: Was the procession still going on? -- Yes we continued.(2)

MR BIZOS: When you got to the main road what was the position of the march? -- At the time when we came to this tarred road I looked further on and noticed that there was some people milling around along the tarred road and looking from the direction from where we originally came I noticed that the march was still coming on towards me at this point where I was.

COURT: So is it correct to say that when you re-entered the tarred road the vanguard of the procession was still in the Small Farms direction from the scene from you? -- That is so.(30)

So you had got onto the tar at a spot that had not yet  
been/.....

been reached by the vanguard of the procession? -- The original vanguard which was in charge of the march initially was with me at Caesar's place when the incident took place there while I was present. Therefore at the time when I joined the tarred road, that is when I am talking about the march which was still coming with the vanguard, I am talking about a new vanguard which had taken over the march while we had gone to the scene of this incident in question.

MR BIZOS: I am going to put to you that that piece of evidence is false and the original vanguard of the march did not go (10) anywhere near Sitjeane's house. -- Who is Sitjeane now?

COURT: Caesar Motjeane.

MR BIZOS: Motjeane, I beg your pardon, I made a synthesis of the two names, Motjeane. -- They were there.

COURT: Is it put that the procession proceeded on its way normally while these disturbances took place at Motjeane's house?

MR BIZOS: Yes.

COURT: And that therefore he could not have got in front of the procession? (20)

MR BIZOS: That is so My Lord. -- The vanguard of this march, some of them were present in the immediate vicinity of Caesar's place, that is namely the next door yard to Caesar's house, when the incident took place there. If ever there were any other members of the vanguard who had passed the point where I came through to the main road, after having been to Caesar's place then it would mean those were other members of the vanguard.

Do you say that the persons that you mentioned, namely (30) accused no. 2, accused no. 5 and accused no. 13, were in the vanguard/.....

vanguard of the procession? -- Yes that is when we left Small Farms.

And is that why you say the vanguard of the procession came to Caesar Motjeane's house? -- That is so.

Well I am going to, I have already put to you that all three accused will deny that. -- I have already said that they were there even though they can deny it.

Right. Did the procession continue along the tarred road after you joined it a block away from the lat Caesar Motjeane's house? -- That is so. (10)

Was the procession as large or larger than it had been up to the time that it had reached the intersection when it continued after you joined it, rejoined it? -- The people were quite many there though I did not think of comparing whether this was now a big number compared to the procession prior to our reaching this intersection or not.

Yes. Well did you resume your task of marshall? -- No I did not.

I see. What, did you join the procession? -- That is so.

Why did you join the procession? -- The aim was to get (20) to Houtkop.

Yes. And can you give His Lordship some idea as to how much further from the crossroads did you travel before the march came to an end? -- I heard you talking about crossroads, which is the crossroads now?

Near Mr Caesar Motjeane's house, the intersection.

COURT: Well let us get back to where we started. We have been talking for a long time about an intersection. Now how far from that intersection was it when the crowd was dispersed? -- It was quite far. (30)

MR BIZOS: Well comparatively speaking would you agree that  
you/.....

you marched three or four times more than you had marched before you reached the intersection? -- I do not understand, does that mean from Small Farms?

COURT: Yes from the Roman Catholic Church to the intersection. Is that correct?

MR BIZOS: I had the map upside down, I am sorry My Lord.

COURT: Is it now one quarter or one third?

MR BIZOS: I am sorry, I had it wrong, I am sorry. It is as well that I am corrected by my able assistant. It is about a third more than they had already marched. (10)

COURT: No, no not a third more, a third of the distance covered?

MR BIZOS: Already covered.

COURT: Yes, what is put to you is that one third of the distance between the Roman Catholic Church, Small Farms, and the intersection was covered from the intersection until the march was dispersed? -- Yes that is so.

MR BIZOS: Yes. And to give His Lordship some idea you certainly travelled more than one kilometre after the intersection? -- That is so. (20)

Was the procession orderly? -- No it was not orderly.

Yes, except for the attempt that you spoke about at the Post Office was there any other attempt to do any damage to anything? -- No nothing more than that.

Nothing more than that. And was the procession, during this last kilometre of it, was the procession as long as from here to Checkers as you have spoken to us? -- Then, even though there were many but they would not have been that long, that is the distance from here of the march to Checkers.

I am going to put to you, well do you agree that (30)  
Zones 11 and 12 are thickly populated areas?

COURT: /.....

COURT: Just before that is put, the distance from here to Checkers, you agreed on 300 metres?

MR BIZOS: Yes My Lord.

COURT: Did you in fact measure it?

MR BIZOS: On a car ....

COURT: Because it was measured by one of the Assessors who got 500 metres. Will you please have a walk after the Court adjourns and measure it yourselves.

MR BIZOS: We did it on a car ....

COURT: Well have some exercise next time. (10)

MR BIZOS: Thank you My Lord, I should have carried out the original plan.

MNR FICK: Edele ek kan vir u sê ons het dit gemeet, dit is 500 meter. Ek sal voorstel my Geleerde Vriend en ek gaan nie jag hierdie jaar nie. Ons sal probleme optel.

HOF: Het u ook 500 meter?

MNR FICK: 500.

MR BIZOS: Well let us take it.

COURT: Well we take the distance from Checkers to this court as 500 metres. (20)

MR BIZOS: Would you say, would you agree that Zones 11 and 12 are particularly thickly populated areas? -- That is so.

And would you agree that after you went over the intersection that we have been speaking about other people and other groups joined the march? -- It is possible that that could have happened.

But why do you put it that way, were you not on the march? -- The reason is the question was after the intersection whether there were other groups or other people who joined the march. Why I say that is because I did not go past the intersection, (30) I deviated from the march first to Caesar's place, that is why

I/.....

I put my answer in that fashion.

Thank you, and I apologise for the detail that I overlooked, after you joined the intersection, after you joined the march did other groups join the march for the kilometre or so that you were on the march? -- Yes there were people who were joining, not all the people who were in the vicinity but some of the people did join.

We are not suggesting that everybody did but do you agree that the march became even longer than it had been whilst it was coming up the incline to the intersection? (10)

PROF. JOUBERT: The procession.

MR BIZOS: The procession grew even larger as it was coming up to the, than it was coming up to the intersection?

INTERPRETER: The question is now not clear, after the intersection it increased?

MR BIZOS: Yes it became larger, the procession became larger than it had been coming up the hill? -- As I have already said that even though there were people joining the procession after the intersection I did not pay any particular attention as to sort of compare whether the people in the procession (20) now are much more than the people who were in the procession prior to our reaching the intersection.

What position did you take in the procession after you rejoined it? -- I was just in the middle at that stage.

COURT ADJOURNS UNTIL 13 FEBRUARY 1986.