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SAAKNOMMER: CC 482/85

PRETORIA

1987-11-05

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRÜGEL

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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COURT RESUMES ON 5 NOVEMBER 1987

MR BIZOS: My Lord Your Lordship may have been informed that accused no. 2, Mr Hlomoka, arrived a couple of minutes before 11h00 here yesterday. He was the first to be here this morning. We would ask Your Lordship in terms of Section 67(2)(b) to cancel the provisional cancellation of the bail and forfeiture of the bail money and Your Lordship has to be satisfied that this was not due to the fault of the accused. I think that I would suggest, with respect, subject to what Your Lordship's view may be that Your Lordship should hear (10) him from the witness box.

COURT: Yes, he should take the oath and give evidence.

MR BIZOS: As Your Lordship pleases.

OUPA JOHN HLOMOKA: d.s.s. (Through Interpreter)

EXAMINATION BY MR BIZOS: You were late for court yesterday Mr Hlomoka? -- I do not know whether this is now the position, may I ask the Court that I explain before being led by Mr Bizos what happened, what caused me to be late?

COURT: Yes, please? -- In the first place I am very sorry about what happened yesterday. I apologise to His Lordship(20) about what happened to me yesterday because this has never happened before to me in my life, namely that I was not in time for a place where I was supposed to have been at a certain time, that is being late for any kind of an appointment, an important place for instance like the court of law which I was to attend. The reason is the previous night I was not very well, I was suffering from a headache as a result of which I took some tablets. It is something usual with me that I suffer from headaches, especially during hot periods or seasons. Because of my being experienced in that and (30)

knowing/....

knowing exactly what happens to me I made arrangements with the people where I live to wake me up, that means that they were to telephone me at 06h00 which they did and when the telephone rang I responded to that by answering the telephone. Unfortunately I again fell asleep. When I woke up again, that is from the sleep, it was 09h15. At that time our bus we are using for transport purposes had left. When I got up that time I panicked for time to be here and I could not even phone and secondly I did not have the telephone numbers. I left that place at about 09h20, 09h25 and tried to find the (10) other person who lives there who is a journalist. He is the owner of a vehicle, with the view that that person must drive me to Pretoria. I could not find this person as a result of which then I rushed to the taxi rank. On arrival there the taxi which was due to leave was still empty. I tried to explain to the taxi driver what my problem was on which he said he can take me provided I paid for all the seats, that is paid for all the seats as if they were occupied by passengers, then he can take me. This taxi I am referring to is a 16 seater and if I am not mistaken his calculations were (20) about R64 was the money I was supposed to have paid to get the taxi leaving that rank without the other passengers. In the vicinity of this taxi rank there is an AZAPO office which is in Lekten house, Wanderers Street. I rushed there where I found a Mr Molala who immediately brought me here. When I reported here it was 10h57. I tried my utmost that this must not happen again by arranging for two telephone calls, that is at 06h00 and another one at 06h15. And I made another arrangement with accused no. 3 that he is to phone me at 06h30. And I also made an arrangement with my co-accused (30)

that/....

that if for instance I am not there, I am not seen at the point, they must check on me before leaving. I have convinced myself that I will see to it that this will not happen again. I apologise about what happened.

MR BIZOS: Do you live alone? -- Yes I live alone in that house.

And this arrangement to be woken up at 06h00 was this just done for this one day or is it a regular arrangement?

-- No this was a regular arrangement since 3 August when I moved in there.

(10)

Yes. Had it ever happened to you before when you had an important thing to do, that you were woken up and that you, despite the important thing you fell asleep again. Had that ever happened to you before? -- No it never happened.

Did you have a proper night's sleep during the previous night Mr Hlomoka? -- No not at all.

You have told His Lordship that you took medication? -- That is so.

What medication did you take? -- Disprins.

How many did you take? -- I took two Disprins before going into bed. Again during the night when this headache continued I took another two.

(20)

Thank you My Lord.

COURT: Mr Jacobs?

MR JACOBS: No questions, thank you Sir.

COURT: Mr Hlomoka I have listened to your version. I accept your version but I wish to impress upon you and upon the accused the seriousness and that it is imperative that they attend this court when the court starts, unless excused, and that the absence of an accused without being excused by the

(30)

Court/....

Court is viewed by this Court in a very serious light, and you and the other accused must bear in mind that in future you may not find that I am so lenient. The order which was made yesterday is recalled. -- I thank you My Lord.

Yes, thank you, you may stand down.

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KEVIN ARTHUR ROBERT HARRIS: d.s.s.

FURTHER CROSS-EXAMINATION BY MR JACOBS: My Lord before I start with the questioning of this witness can I make certain alterations to EXHIBIT CA.18. (10)

COURT: CA.20?

MR JACOBS: CA.18, the big, so for the convenience of the Court, there is not many, I have reprinted CA.18 and marked the alterations in red on it so that it can be followed easily.

COURT: Yes thank you. We will number this exhibit CA.18(a).

MR JACOBS: As the Court pleases.

COURT: And when the cross-examination is on its way we will probably tend to forget about the (a) so it will not matter too much. (20)

MR JACOBS: As the Court pleases. And then EXHIBIT CA, in accordance with this CA.19 is also corrected in the same way. The alterations are represented by red.

COURT: CA.19(a) then.

MR JACOBS: As the Court pleases. Mr Harris did you the day before yesterday in the presence of Brigadier Jansen go through the film material, that is EXHIBITS 38 and 39, 38 and 37? -- 37 and 38 that is correct, yes.

And did you use the schedule or the exhibit CA.18?

ASSESSOR (MR KRUGEL): CA.18(a) now? (30)

MR JACOBS:/.....

MR JACOBS: At first CA.18. Did you have CA.18? -- As a reference, yes.

And did you check right through it on all the numbers and so on? -- I am not sure that we checked out every one. We started at the beginning and went through and there was a pattern developing, but we basically went through the material and looked at the queries that were coming up in general.

And did you find certain discrepancies and was that then rectified? -- That is correct.

Did you note them, all the discrepancies that you found(10) and were they ... -- We found some discrepancies and we noted them, yes.

And are the discrepancies as now reflected in EXHIBIT CA.18(a)? -- Can I just explain the procedure, we went through with Brigadier Jansen referring to the chart and designating which point we should go to and then I checked that point and we went through it ...

COURT: Well the chart is CA.18? -- The original chart, that is correct yes.

That is this big sheet? -- That is right, yes. (20)

Yes, that is CA.18. You went through that? -- We went through that, not necessarily in the order that this is in, taking firstly the EXHIBIT 37 and working through that, referring it to the chart, and then going through EXHIBIT 38. I cannot just say offhand whether these, I assume that these are Brigadier's Jansen's calculations and I would accept those.

Well what do you accept now? Do you accept that CA.18(a) contains in there certain alterations which were arrived at and brought about by the examination of yourself and Brigadier Jansen together on Tuesday? -- I would have to check these. (30)

Yes./....

Yes. -- Could I just ask whether we are going to go through this point by point, in other words ...

Well it may be that we can reach a conclusion in general terms. -- Yes.

I do not know in what way the cross-examination is going but ... -- Because if we are going to go through it point by, well what I am saying is I did not make alterations to my sheet. I made notes as to be able to answer the questions in terms of discrepancies.

Well you had sheet CA.18? -- That is correct. (10)

Now did you agree with what was on CA.18 except in certain respects? -- That is correct.

What are those respects? -- I just wish to clarify, my intention of looking at the material on Tuesday was to become familiar with what the discrepancies were, in other words that had originally given rise to those issues being brought up in court. I did not make a note of the specific numbers of frames, etcetera. We worked from this chart and Brigadier Jansen and I worked together on this. We looked at a point and we discussed what the discrepancy was, where there were alterations according to this Brigadier Jansen made those alterations that were of importance to him. I made notes in terms of the questions that I, the explanations that I would have to give before Court here. So what I am saying is I am not in a position to say yes ... (20)

Yes well let me just get clarity as to whether there is a material difference between your, or whether it is merely a slight difference. An example. It is stated somewhere that 44 slides were missing or, yes frames, were missing. Do you say none were missing or do you say I did not count them, (30)  
they/....

they were of the order of 44 but they may have been 43 and they may have been 45. Is that the sort of answer that you would give? -- Yes, that is the sort of, yes.

Well then with the qualification that the figures here are of the order correct, not necessarily exact according to you because you did not look at it but of that order, with that qualification do you go along with CA.18? If not to what extent do you not go along with it? -- No I accept that.

You accept it? -- Yes.

MR BIZOS: Although we say My Lord CA.18(a). That Your Lord- (10)  
ship intended.

COURT: CA.18(a), the amended one.

MR JACOBS: Mr Harris and yesterday you had the opportunity of going through EXHIBIT 36, the last part of it, that was supposed to be virgin tape? -- That is correct.

Now do you agree that there is only one switch off point or pulse at the end of the recording, just before you start with the virgin piece of tape? -- I listened on the equipment provided by Brigadier Jansen which amplified extensively the hiss levels, the noise levels, on the tape and in terms of (20) identifying exactly what caused that particular pulse or hiss in answer to your question Mr Jacobs ...

No I did not ask you, I am sorry, what caused it Mr Harris. I asked you did you find the one switch off pulse or click at the end of the recording? -- The recording comes to an end, yes.

With a click where it was, the machine was switched off? -- I cannot say that the machine was switched off. The recording comes to an end, that is how I would define it.

And when you listened to it did you hear the click at (30)

the/....



the end of the recording? -- No I heard the recording coming to an end.

COURT: In what manner? Do you say that the recording, the sound was taken up and at a stage it stopped? -- That is correct.

Now the sound being taken up was that the sound of voices or music or that sort of thing or was it merely the sound of a tape running with nothing being recorded? -- Not it is the sound of what was being recorded, in this case it would have been what, in other words what was recorded at the meeting came to an end at that point. (10)

I understood it that, I may have been wrong, that after that end of the recording of the sounds of the meeting one can still run the tape and then there is a sound which is called a hiss and then at a stage that hiss diminishes and it becomes a slighter hiss. Unless I have it entirely wrong? -- Yes that is the diagnosis on the tape, that is correct.

Now did you find that? -- Yes that I found, yes.

Now when the sounds of the meeting come to an end the first louder hissing sound what is the duration thereof? -- It is I believe approximately, we did not measure it but (20) I would accept what Mr Jacobs proposes initially, I think it was four and a half minutes, is that correct?

Well the suggestion to you was? -- Four and a half minutes, I think initially it was led on Monday that that was the...

Well would you say of the order of? -- Yes.

And then the sound diminishes but there is still sound? -- That is correct. There is still a, the hiss level drops.

For how long? -- Until the end of the tape, well with qualification, there is a short section at the end of the tape which I understood had been used as a test that had (30)

been/....

been bulk erased and that is for a couple of seconds. So up to that point it is consistent at a lower level.

MR JACOBS: And the burst of sound after the switch off point, did you ...

COURT: Now just a moment Mr Jacobs, do you call the diminishing in the hiss sound, that point where it diminishes a switch off point or do you call the switch off point the end of the sounds made at the meeting?

MR JACOBS: Sir what I am putting to the witness is that there is after the meeting, the recording of the meeting (10) came to an end where it came to an end there is a click where a machine was switched off.

COURT: That I think the witness goes along with. Is that correct? -- With respect, no. The point I am making I am not, I cannot say that there is a click where the machine was switched off. I am saying that yes what was recorded at the meeting.

Stops? -- Stops there, yes. And that from that point on there is ....

A hiss. -- This level of hiss. I am just taking what is on the tape. Up to that point there is the recording of a (20) meeting and from that there is, and then there is a level of hiss, then there is a transient noise and then there is another level of ...

And then a drop? -- A drop, yes.

I see yes.

MR JACOBS: And is it correct that after the recording of the sound at the meeting that there is no sign or any switch on, any click to show that that particular machine was switched on again? Is that correct? -- Yes that is correct.

Do you agree that from the point where the recording (30)

of/....

of the meeting stopped onwards then there is a hiss or the residual noise going on?

COURT: Well we had that. The sounds of the meeting come to an end, a hiss continues and the hiss diminishes at a stage.

MR JACOBS: Yes. And that after the recording came to an end, the point, after about three minutes and fifty seconds there suddenly a strong burst of noise? -- Firstly I would accept that timing of three fifty. We did not measure it but I accept that it was about that. And secondly your definition of a burst of noise, just for the sake of being as precise (10) as we can to me I would call that a transient, in other words it is more a transient swishing sound.

Was it suddenly louder and you can hear it? -- Yes. YOU can hear it, yes. You can certainly hear it.

COURT: You call it a swish? -- A swish, a transient swish.

A swish, a transient swish? -- That is correct.

MR JACOBS: That is ...

COURT: Yes, yes, now, well it will not help if you make it because we cannot put that on record but it might help us.

-- Yes well that is how it goes ..(witness makes sound). (20)

That is if you amplify it, that is I think the sort of sound that one hears. It is a sort of a transient swish that is high amplitude and ...

An S sound with an increasing intensity and a higher sound? -- Which then goes down.

And then down. -- Which then sinks down, yes.

MR JACOBS: And that after this sound described by you just now and the sound is going down the level of the hiss sound is going down lower than it was before this sound? -- Yes the hiss level drops consistently. (30)

And/....

And this, and do you agree that this lower level of hiss then continues until the end of the tape where you find the place where it was bulk erased, the last short portion? -- That is correct.

And do you agree that after this point where the sound suddenly increases you heard three different points clicks can be heard on that portion? -- Yes there are clicks.

COURT: Three clicks at three points?

MR JACOBS: It is not three, three places where clicks can be heard. -- There are audible click sounds which ... (10)

COURT: At three points clicks can be heard? -- A click.

Not necessarily, a click? -- A click.

So there are three clicks in all at three different places? -- That is correct.

MR JACOBS: Is it not so that after this sudden increase in the sound and then the drop, after that for twenty four seconds after that that you can hear a group of four clicks together? I understand to be, in fairness Mr Harris, that the ear will hear it as one but on analysing it you will see four clicks there? (20)

COURT: What does one call a group of four clicks, a clickety click?

MR JACOBS: Yes sir, and then ...-- I mean, to answer that question for me the clicks were not significant if I may, I mean yes there, they were there.

COURT: Well according to you were there more than one click but it sounded like one, or is that incorrect? -- Well I said I thought I heard clicks.

Clicks? -- I thought I heard, but as I say at three different points and not necessarily together. (30)

No/....

No what counsel seems to be putting to you is that at three different places there were clicks. -- Yes.

But whereas you said one click at each place at this first place which he is now dealing with it seems that the one click was actually a group of clicks close together. Could that be or is that incorrect? -- It could be but I cannot say.

MR JACOBS: And then the second click after this first one is one minute fifteen seconds later on the tape?

COURT: Fifteen seconds?

MR JACOBS: One minute fifteen seconds after the first click. (10)

COURT: Is there one click?

MR JACOBS: There is one click then. -- I am slightly confused on that. As I say I heard clicks on the tape as you are referring to.

At different points? -- At different points. I do not really recollect how far away or ...

Do you accept that it is one minute fifteen seconds later? -- It could well be.

And then the third click that you heard is after one minute later again, there is a space between the second and (20) the third of more or less one minute? -- It could be. I cannot be conclusive on that.

And then in the last part that was bulk erased the hiss sound markedly decreased? -- That is correct. May I ask you for a definition of "bulk erased" please?

Mr Harris ... -- Or just what process was used. Was it a magnetic bulk eraser as such or was it just wiping the tape on a record head? -- It was a magnetic bulk eraser.

COURT: Magnetical, magnetic bulk eraser was used?

MR JACOBS: Yes that was used. -- Was that piece of tape (30)

cut/...

cut off and placed into that bulk eraser and then put back on?

I understand what was done was the reel was rolled off, the reel kept one side and only this last portion then was put into the bulk eraser. -- Then it was continuous in other words?

Continuous.

COURT: Still being part of the tape? -- Part of the tape and at a certain point the bulk erasing stopped it in other words. At the end of the bulk erasing machine.

MR JACOBS: Yes. (10)

COURT: Does that affect your answer? -- Not at this stage.

MR JACOBS: Is it also correct Mr Harris that while you were testing it yesterday that over this last part, the so-called virgin tape in EXHIBIT 36, you could also hear a noise of a regular repeating rhythm which disappeared altogether where the last part was bulk erased?

COURT: Just a moment now. That is, are you putting that between the end of the sound of the meeting and the physical end of the tape or the beginning of the bulk erased portion of the tape? (20)

MR JACOBS: Yes, the portion between the end of the meeting and the portion where the bulk erasion started, between that, in that whole portion you could also hear the noise of a regular repeating rhythm. I do not know how to describe it otherwise but it was observed yesterday by you and Dr Jansen? -- That was not there over the bulk erased section, is that what you are saying?

Yes and after the bulk erased section that was not on the tape? -- I am not sure, I would need clarification. It was pointed out to me when we were listening. Brigadier Jansen(30) said/....

said that this machine was generating a rhythmical noise, that you could hear on this machine but on the machine that he had played it on previously he had not heard it. Is that the noise that you are referring to?

I do not know. Did you observe the noise in that portion, this regular repeating rhythm noise? -- There was a repeating rhythm noise, yes.

And is it correct that in the portion this regular repeating rhythm noise ended and is not heard on the last part, the part that was bulk erased? -- I am sorry I cannot (10) say that because it was not, I never heard it like that, that was not pointed out at the time. I heard the diminishing level of hiss and that is what we were, what was being pointed out and that is what I heard. Whether that rhythm continued into that section or not I am afraid I cannot say.

COURT: One cannot have a rhythm without a noise, that is how I have it? -- Yes.

Now what kind of noise was there that caused the rhythm? Is it the hissing going up and down? -- There is the hiss level, but there is a sort of a ... (20)

Still in the hiss, in the louder hiss and also in the lesser hiss there was a sort of a pattern? -- An overriding...

And overriding pattern? -- Sort of soundwave, you know, yes rhythmical ...

Up and down hiss? -- Not a hiss, perhaps a more, more in the category of a rumble.

Rumble? -- Yes.

MR JACOBS: Mr Harris Dr Jansen said to describe it like an old Ford car idling? -- That is close enough to a rumble, yes.

COURT: Does this not apply to an old Chev? -- That is a (30) point./....

point.

MR JACOBS: And that this rhythmic noise did decrease in the bulk erased part? -- I am afraid I cannot answer that.

COURT: Just a minute, are you putting that it was not there or are you putting that it decreased?

MR JACOBS: It was not there but I am just asking when he listened where the noise was to ...

COURT: No, no, no, no. I must have clarity. Either it was there but decreased, that means to a lesser extent, or it terminated when the bulk erasure began. (10)

MR JACOBS: It terminated where the bulk erasure began. -- I am afraid I cannot answer conclusively on that.

Do you agree Mr Harris that this last portion and all these noises it is possible that they could have been recorded on that last part of the tape when the tape was in the machine..

COURT: The last part of the tape I want clarity on. Was it the part of the tape between, well your case is it is not virgin, so do not call it virgin. Is it between the end of the meeting and the physical end of the tape?

MR JACOBS: Yes, that last..... (20)

COURT: And what are you putting?

MR JACOBS: The last part of the tape between, I am referring to the last part of the tape between the end of the recording of the meeting and the end of the whole, the physical end of the tape, that portion. I put it to you that all these sounds and what was described here can only come onto that tape when the tape was in the machine, at that stage where the recording mode of that machine was on up till the total end, the physical end of the tape? -- It would appear so, yes.

Now Mr Harris then there is something else I want to (30)

get/.....



get clarity on. When you are synchronising or when you were synchronising EXHIBIT 38 with the sound in order to make EXHIBIT 40 what procedure did you follow? -- YOU say what, how did I manage to synchronise, is that what you are saying?

Yes. -- Well let us start from the beginning. I said earlier that when the original material, the film material, the film negative is filmed on the day it is in 400 foot rolls. Those rolls then go to the laboratory and they are processed.

No I ... -- Ja, sorry I am sorry, I just wanted to make sure, set a solid basis for this. And a positive print of (10) of each of those rolls is returned. So unless something has gone wrong, if there is a break in the negative or something like that one will get back, let us say in this case where we shot I would say three rolls of film one would get back three rolls of positive and most likely to be on each roll, in the order in which they were exposed on the day. So initially the most of the, most of the visual on each roll there is a consecutive order that coincides with the consecutive order in which the consecutive bursts of camera exposure happened. Secondly if you listen to EXHIBIT 36 and also you hear it (20) on 39, which is the 16 mm soundtrack, these are the two respective soundtracks, you will hear my own voice at, periodically where I am describing to myself what we are filming at the time. So that again gives me a reference point with all this material. And thirdly, and just looking through the material again with Brigadier Jansen I picked up, and I had omitted to introduce this as a possibility, but particularly on one occasion, and I think this may have been the only occasion, where one is recording the sound and the camera is recording at the same time and I have that second (30) microphone/....

microphone in my hand, which is a rifle microphone, if the situation allows it the cameraman turns the camera to me and I place the microphone in front of the camera and on the end of it I tap it like if I tap this microphone and that gives me a tap sound on the tape, when you look at the picture you can see me physically doing that and if you match those two points that is a synchronising point.

COURT: Why is that done? -- It is a means of giving a visual and a ...

To get a reference point? -- Reference point to, and (10) that is that can be refined down to one frame where you hand makes contact with the diaphragm of the microphone is virtually on a one or two frames base so that one can get it to within the tolerance of a frame.

So what you do is you hold the microphone up in the air and give it a tap? -- That is correct. You can see that happening on the picture itself. And in keeping with that idea then throughout the meeting different things happen, scenes change, there were various crescendos there were various different types of sound and one can identify those (20) points with what is happening on the visual image and one can then pull those two in synchronism. The camera itself has a crystal inside it which enables it to run to a perfectly controlled speed. The Nagria(?) sound machine, which is the machine for recording the sound, being totally separated from the camera has a similar crystal mechanism which ensures that that machine runs at a specific constant speed. So once you find a point where you can synchronise the sound, and this is after the meeting when you are in fact in the synchronising process, once you find a point and you are able to synch the (30)

two/....

two together that point will hold until either the camera is switched off or the recorder is switched off. The master soundtrack, in this case EXHIBIT 36, is then sent to a post production house and that entire tape is transferred onto 16 mm sprocket sound. This enables one, when one is editing and synchronising, to work on an editing desk because you must work to the gauge of 16 mm. Your picture is a 16 mm and your sound is 16 mm, and you can then start synchronising the two. So when I start synchronising I would start with the first roll of positive film as I can identify from the (10) three rolls that have come back, I know roughly what the beginning of the meeting looked like as opposed to the end and I would then start with the first section of when the camera filmed, if that was synchronised sound, in other words one must make a small distinction here as well for clarity, not everything, and I think I did mention this in my evidence-in-chief and on Monday, not everything that is filmed is dependent on the synchronised sound. In other words there are a number of shots that we take which we call cut aways and in a sense those are mute, in other words they are not dictated (20) to by any sound that is happening within the room. A typical example here I am talking, what I am saying would be needed to be recorded if you are filming me but if you were filming anybody else watching me it is just a picture of a face watching or faces watching and that can be used as cut away material. It is not dependent on the sound going on at that time. So we have synch material and we have cut away material. In order to then assemble what became EXHIBITS 38 and 39, the picture assembly and sound assembly, I then started at the beginning of roll 1 and worked through each section where (30) the/...

the camera filmed and I synchronised that to the corresponding soundtrack, relying on any of the methods that I have laid out before and plus relying on lip reading, lip synching, that kind of technique. Working through, right through until the end. The cut aways, which are those pieces of material that are not dependent on the sound, I would have placed in most instances between the two reference points on either side. In other words there are two, any two, where the last section of synchronised film and sound where I had synchronised that, then I got to a section of mute cut aways there would in (10) most cases be recorded sound, well there was more recorded sound than film. So there would be a long space of recorded sound which I would probably have had to put picture spaces in before I got to the next section of synchronised sound film and in that section I would have placed in these mute cut aways. Because they are not one hundred percent dependent on the sound at that time and I worked through it like that and that is how I synchronised it.

MR JACOBS: So if we take EXHIBIT 18(a) at the top there, start of portion one ... (20)

COURT: CA.18(a)?

MR JACOBS: CA.18(a). AT the start, the heading there "Start of Portion One of EXHIBIT 38 and 40", now for 1 544 frames you did put in some spacing or filling up material that was blank?

COURT: What you say is that for 1 544 frames we have sound but no visual material?

MR JACOBS: Visual material. -- Right.

COURT: Which was not filled up by cut aways? -- By visual material, that is right. That was, that would be spacing.

MR JACOBS: And then at the same time while you were (30)

measuring,/....

measuring, I suppose you, it was necessary to measure this portion of 1 544 frames? -- When you say measure ...

In order, well you cannot put in say 50 frames, you must put in a certain amount of frames to measure up with the soundtrack and to get to the next point where you have got visual material? -- Yes.

So in every time where any spacing was done you had to check on certain of your marks that you described in court here and to synchronise that marks with the sound, again at the beginning or at the end of each spacing? -- That is (10) correct.

And what is interesting to me Mr Harris when your film is running in synchronisation as you said with this, what do you call it, this ...

COURT: Soundtrack.

MR JACOBS: The soundtrack, but this other instrument that keeps them ... -- On the editing desk, yes.

... on the same speed, the crystal control? -- That is the camera and the Nagra, that is when we are, on the day when we are filming. (20)

COURT: That is history by the time he is editing.

MR JACOBS: Yes but I just want to find out from you if you got that why would you cut out certain portions now to go and measure and do that, this other portions that you said that is other parts of the audience or something like that? Why would you cut that ... -- Why would I cut it out? I am not quite clear?

You said that is, did you cut out any portions ...

COURT: Just a moment now. Let us not get the thing mixed up. Were you explaining to us your normal procedure when (30) you/....

you make a film like "The Struggle from Within" or were you explaining to us what you did when you made EXHIBIT 40 which was made for the purposes of this Court? -- I am explaining the normal procedure that I would adopt ...

When making a film? -- Yes, in other, yes when making a film when one gets back the raw material that you have filmed before you select from it what you are going to, in other words to enable you to synchronise and put everything in place so that you can then look at it backwards and forwards, assess it, find how you are going to edit the sequence, (10) what material you are going to pull out of there to put in your film which you are making yes. This is all the material that is available to you from that incident or from that meeting or from that sports event, or whatever and that is, you need to see it all, synchronise before you, to know what you have got in other words.

But now to know what you have got why do you have to cut away? Can you not leave your film as is and your sound running because there was sound in any event at the time when you took the audience or when you made a picture of a (20) banner, why can you not just have the film and have the sound? -- Well you would have to put in ...

It would be synchronised to a certain extent? -- Yes, but you would have to shift it either one way or the other or put spacing in one side or the other. You might put in too much spacing, it is a purely random thing. And it is also quite common practice to remove your cut aways because your cut aways are used as a device in the sense like for "The Struggle From Within".

Filling material? -- Yes, you know in the spacer for (30)  
example/....

example in "The Struggle From Within" where I portray this particular meeting I think that sequence last for a minute and a half. In that minute and a half you are trying to convey as much visual and audio material, information, as possible. So let us for example say the main focus of the meeting might have been Father Moselane speaking but I would not hold on Father Moselane for the whole one and a half minutes. It would be necessary to cut away from him to show the people listening, to show, to give an idea of his relationship between him and the size of the hall. So while he is speaking on that (10) continuous soundtrack one uses these cut aways to try and paint the picture that was there on the day, and there is whatever one had. And that is how you use cut aways. It is a very standard practice.

MR JACOBS: Well I can understand Mr Harris that you used that when you made the picture for the SACC but in this case we are more interested in this specific exhibit, EXHIBIT 38. When you made that film for the purpose of the Court, did you cut away certain parts? -- It would appear from analysing ...

No I am asking you specifically did you cut away? -- I (20) do not understand what you mean by did I cut away.

Parts that is not based on the speaker? -- I am sorry I still do not understand what you are getting at.

Did you cut away any parts of this and fill it up with blank spacing? -- Well let me rather answer it this way. What I did was I was at pains to make sure that whatever was synch material, in other words where you could see the visual matched with the soundtrack that that was matched up to, as far as is humanly possible. The so-called cut aways that happened in between those sections would have been placed, (30)

as/....

as I have tried to indicate, as near to within the synch points on either side.

Yes, you see I cannot, tell me if I am wrong Mr Harris. Say for instance at point A you had the synch point as you call it by tapping the microphone and it is shown on your film? -- Right.

Then you focus on the speaker. -- Yes.

YOU got that. And then while he is speaking you shift it to show the people in the hall, and say this runs for 100 frames. So it will be unnecessary to cut out any part of (10) showing the people in the hall for any reason at all because you have got the fully synchronised portion from where you got the tapping till the end of the 100 frames, is it not so? -- No not quite because what would happen would be we would be filming the speaker, alright. The sound recorder would be on, we would be filming synchronised picture with sound. I would say to my cameraman when I felt "Okay cut" we have enough on what he has. Okay let us take up 2 and 3 and look around for some cut aways. I would turn around to the audience as we are here and we would select, line up shots of (20) people's faces, take that person's face first, that person next, etcetera, etcetera, etcetera, and then turn around, assess the situation and perhaps go back onto the main speaker which would then be again synch picture with synch sound. But in that period of time a lot more soundtrack has been recorded of the main speaker speaking. There is a piece at the beginning that is on film that should be synchronised to the beginning of that section, there is a piece right at the end of that same speaker which should be synchronised at the end. And in between we have taken shots of cut aways. Now it is (30) impossible/....



impossible to say at which particular point exactly those cut aways should fit in. So therefore I would put spacing in somewhere to fit those cut aways in between those two points.

But then you will fit in cut aways, fit in spacing at the points where you switch off the camera in order to take a picture of the people? -- Yes, most likely yes. That would be ....

So it is not necessary ....

COURT: Or you do not switch off the camera to take a picture, you switch it on. (10)

MR JACOBS: In order to go to another point and to take a picture and then you switch it on again.

COURT: So in fact it is a stop-go procedure? -- That is correct. That is random in a sense.

At random? -- That is right.

And eventually you attempt to make some sense out of it for your own purposes? -- Correct.

MR JACOBS: So, and will you get then say for instance you will get the starting point, the person speaking, there will be then a blank space where you filled in some spacing for say (20) a couple of frames and then it will start again with a picture of the audience? -- Of somebody's face, yes. And then maybe..

So all this will be ... -- .... a bit of spacing and then another person's face and so you go, so the main thing being that when you get back into the speaker that you have put in enough spacing to bring you back in synchronism.

And that will mean that all the visual material taken by you at this particular meeting was included in EXHIBIT 38? -- Except for, and this seems to be illustrative pattern of why your discrepancies arose, is that between, if I can just (30)  
place/....

place on record as well something that I was wrong with. I believe that I said in my previous evidence when the camera is switched on and switched off that there is a run down period and a start up period. In other words where the camera runs down from speed and again where it runs up again from speed. Now I indicated that that would probably be of the order of a couple of seconds. This used to be so on the older model, the Ariflex BL for example camera, but with the cameras that we use today that run up period is about two frames, two to three frames. I just wish to place that on record in case (10) there is any confusion on that. But to get back to your point Mr Jacobs, no not, yes everything that was filmed in terms of visual image if one wanted to capture was placed in EXHIBIT 38 but why there are frame numbers missing from the positive that are in fact in the negative is that between these cut away shots or after most, many many, if not most of the shots, there is a section of waste, of positive waste material which is when the cameraman takes the magazine, runs the camera forward to clear the material out of the way so that it will not exposed, he then takes the magazine off the back of (20) the camera, he then checks the gate of the camera, which is the mechanism through which the film runs before the light passes through to the lense and so that, all that, and then he puts the magazine back on an dhe will run the camera again and if there is a problem, if there is a scratch being detected he will continue to do that until that problem has been eradicated. So there are periods of waste positive material and when we were looking at this, this seemed to be, to tie up with your queries about why there was material on EXHIBIT 37 which is the negative which had not appeared on (30)

EXHIBIT 38./....

EXHIBIT 38.

Mr Harris can we have more particulars about this question of waste. Will you describe the waste, more particularly will it then be blank ... -- Yes it tends ...

... frames or will it be black ... -- It tends to be blank frames or else, in other words over exposed frames because we are not worried about the exposure. I believe that the cameraman normally opens right up on this occasion, so you know if he is looking through the camera he does not, as well call it stop down. You know get, he does not adjust(10) the aperture to the correct exposure before he, if he is looking for shots as it were. He looks for the shot and finds it first, giving himself the maximum visibility through the eyepiece which means it is wide open. Okay? And then when he is happy with that he then stops the aperture down to the focus which makes the eyepiece go, what he sees through the eyepiece go a lot darker. But he has seen the image basically so he is happy. So what I am saying is that during these gate check periods the aperture is normally wide open. So when the camera runs you are over exposing totally these sections. (20) So they tend to appear as just clear frames, sort of burnt out frames. Unless also what does happen often is the cameraman to indicate to the editor that this is waste material should not be considered as important he would put his hand in front of the camera so you would get an image of a black hand with fingers or whatever across it, and that is the nature of this waste material.

So the waste will be, will always then be either clear frames or black frames? -- That is correct.

I just wanted to be clear on that. And Mr Harris is (10)

it/....

it correct, and did I understand your evidence to be correct that you started recording at the beginning of this meeting?

COURT: Can we deal with that aspect after the tea adjournment?

COURT ADJOURNS FOR TEA. COURT RESUMES.

KEVIN ARTHUR ROBERT HARRIS: d.s.s.

FURTHER CROSS-EXAMINATION BY MR JACOBS: Mr Harris we started that I referred you to your evidence and it was to the effect that on 28 June, 26 June 1984 at that meeting you started recording at the beginning of the meeting. -- Is (10) that the question?

Yes. -- Yes, yes more or less, yes.

What do you mean now by more or less Mr Harris? -- Well the meeting....

Did you start recording at the beginning of the meeting or not? -- Could you define the beginning of the meeting please.

Well that was your evidence. I am asking you on your evidence Mr Harris? -- I understand Mr Jacobs. I am just trying to get it as clear as possible. And on that basis (20) yes I did start at the beginning of the meeting.

And it was your evidence that on that particular day, that is 26 August 1984 and at that meeting you recorded the sound on EXHIBIT 36 almost continuously? -- That is correct.

And that on that particular day and at that particular meeting you recorded until there was nothing happening? -- In other words to assess when I switched off, are you talking about the reasons when I switched off or are you talking about the end of the meeting?

Well is it correct that you gave evidence to the (30) effect/....

effect that you recorded until there was nothing happening and then you switched off? -- Are you talking about the whole meeting Mr Jacobs? I mean are you saying I recorded until there was nothing happening, in other words everybody had gone home, or that there was very little happening?

During, nothing happening during the meeting, that is as I understood your evidence. -- No I do not think that is what I meant entirely. I was describing or I was asked how did I, at which stages did I switch off and switch on again and I was, my answer was that when there was nothing of interest (10) happening, there was a lull, the kind of thing if there was nothing that I determined to be significant happening then I switched off the machine, yes.

ASSESSOR (MR KRUGEL): That is now the sound machine? -- That is the sound machine, yes.

MR JACOBS: And then you elaborated on this and you said that if there was a lull or people just moving about or another speaker coming up and taking his time or where people were just discussing things then you would switch off the recording machine? -- That is correct. (20)

And also that you gave evidence to the effect that you were trying to capture the essence of this meeting? -- That is correct.

YOU said that at that particular day that you did not know what was coming and you were trying to anticipate what was coming? Is that correct? -- I had no, yes I had no prior knowledge of the course of the meeting, that is correct. I think it was my intention to anticipate and to capture the significant essence of the meeting.

Yes, and when you said that if you had a speaker who (30)  
was/...

was speaking in a sort of prosaic monotonous way you recorded him in this fashion and when you had enough of him you switched off the recording machine? -- Correct.

That is what happened? -- Correct.

And that on this particular day that if at a later stage the same speaker comes back to the podium but was then speaking at a higher pitch of voice or a lot more emotionally you would then put on the machine again and record his speech? -- I do not recall saying that if he came back onto the podium. What I said definitely yes was that if the emotional pitch was (10) heightened in the speaker's voice or in other words if it seemed as though he was now getting to something which felt important, he was getting emotional about it, he was stressing the urgency, then although I might have recorded him earlier on in that same speech or earlier on in the meeting yes certainly then obviously I would switch on again.

I put it to you Mr Harris that is not what you told the Court and that you were emphatic in your evidence that if a speaker during his speech changed the tone of his speech you did not switch on the recording machine again during his (20) speech, and that was on the question of His Lordship? -- You just said the complete opposite now. You said I did not switch on. I did switch on, yes.

But that was not your evidence. I put it to you that was not your evidence. You answered His Lordship that you will switch it on again if he comes back at a later stage again for some reason or other to the podium and in that speech he is more emphatic and more emotional? Then you will record it? -- I would like clarification on the actual point that we are disputing here Mr Jacobs. (30)

COURT:/....

COURT: What is the reference?

MR JACOBS: I will just get it sir. On page, that is Volume 228 on page 12 113 the Court asked you the next question:

"What you wanted is to convey a mood, the mood of the speaker and the mood of the meeting and once you had caught that you would switch off until the mood changes and then you would switch off again?"

And then you said:

"Unless ... "

-- Switch off again. How can I switch off again if I am (10) already off. It is a misprint or something, it does not make sense.

No you would switch off until the mood, and the Court put it to you that you would switch off until the mood changed and then you would switch it on again. -- Switch on, not off, yes.

And your answer was:

"Unless the speakers change."

COURT: But this is what the witness has been telling us.

MR JACOBS: But unless the speaker changes he will not put it on again. -- No not at all. (20)

COURT: I do not interpret this necessarily as a conflict.

MR JACOBS: I will leave it at this stage and go on. And is it correct that you also gave evidence that the same procedure was followed with recording the visual material? -- Is there any qualification on that?

No I am asking you. -- Well it does, no as it stands no the same procedure was not adopted. I made it very clear that the same idea in determining when to record was yes but obviously the cost of film material is a lot more expensive than sound material and hence the number of times that the (30) camera/....

camera would be operating would be a lot less than that when the sound was rolling. There are all those considerations in your question.

And your evidenc was also to the effect that the filming will start a little later than the recording of the sound because as you said you would have had your first line of defence. -- Yes I used that expression, that is correct.

So is it then correct that every speaker speaking at this meeting, the beginning of his speech was recorded? -- Not correct, no. (10)

I beg your pardon? -- That is not correct, no.

And that in every case the second, a few seconds after that you would start the recording of the visual material? -- That is not correct, no.

What was the correct position then? -- Well that was not the correct position.

COURT: Could I now get clarity. You are saying that it is not correct to say that a sound recording started when the speaker started and a visual recording started when the speaker started? -- I am trying to interpret what Mr Jacobs (20) is setting out a pattern that was adopted every time. This pattern was most certainly not adopted every time.

Not every time? -- No.

Are you saying that not every time the first words of a speaker were recorded? -- I am saying, yes that it is quite possible, yes.

And not every time the first appearance when the speaker started speaking was visually recorded? -- That is correct, yes.

What specific pattern was followed by you? -- There (30)  
was/....



was a general pattern.

No I am not asking you generally Mr Harris. I am interested in what happened at the meeting of 26 August 1984. I am not interested in general patterns. -- Well to give you a specific pattern I would have to recall what happened each minute of the day on the 26th and I cannot do that. I have tried in my evidence-in-chief to give a general pattern and if you refer to the EXHIBITS 36, 37, 38, 39 and 40 then you will see the specific pattern or closer to the specific pattern. (10)

So you cannot tell the Court what pattern you followed?  
-- No I can but I can tell ...

Specifically on that. -- I can tell the Court a general pattern Mr Jacobs, I cannot, because I cannot remember specifically, and I have said that, when I switched on or when I switched off. But as I have said it was my intention to capture the essence of the meeting, to convey the most important things, the significant things that happened at that meeting and to do this I followed a general pattern and that general pattern was to record as a master soundtrack on the (20) quarter inch soundtape, switching, keeping it running for most of the meeting, right, switching it off where I felt there was nothing significant happening and where I would not be missing anything that could be of significance to the meeting and then using that as my back up, my basis, my reference for the whole meeting then to film following a similar pattern, trying to anticipate what was going to happen and to film and to capture the significant moments of the meeting.

Mr Harris as I understood your evidence you were trying to capture the essence of the meeting? -- That is correct. (30)

And/....

And that while you did not understand the language or languages used by the speakers or people at that meeting? -- That is correct.

Now did you have anybody to assist you in interpreting during this period? -- On the day of the meeting?

Yes. -- No.

So how can one then assess the pattern of the meeting just by not knowing what is said at the meeting? -- Well if you recall after the meeting I held a short informal interview with the two main speakers, Father Moselane and I think it (10) was Mr Hlubi, where I specifically asked them to give me a crystallise version of what had been discussed at the meeting and what motions had been passed etcetera.

But Mr ... -- It was my intention, the reason I was at that meeting was to capture the essence of what was happening there and then to portray in, as I have said I think it was possibly one and a half minutes a general impression of what took place at that meeting for my film "The Struggle from Within". So it would be necessary within that edited sequence to convey visually as much information in terms of a cross-(20) section of what took place at the meeting, and over that would be the third informational dimension which would be the narration which actually states for the viewer what the meeting was all about, what was discussed and basically what happened at that meeting and what came out of that meeting.

ASSESSOR (MR KRUGEL): Well did you at that time know that you were looking for one and a half minutes of material? -- I knew that I was looking for, I would say at the most five or ten minutes material, edited material.

MR JACOBS: But that Mr Harris is after the fact, it is (30)

after/....

after you have already shot the whole meeting? -- That is correct.

So during the meeting how would you know what was of importance and was conveying the essence of the meeting? -- Well as I said before I did not know what sort of procedure, I mean what would, there was no order of meeting or anything like that, there was nothing handed out which said this speaker would be followed by that speaker or this will happen and that will not happen. What I did know was that the issue to be discussed was around rent increases. (10)

Yes. -- I knew that there was a podium at which people who were considered important will address the meeting. I also knew that there could be interchanges between people in the audience and people on the podium. Armed with that we set up our equipment and the meeting began. From my point of view I was concerned to get anything that would try and convey the emotional kind of state of the meeting and that is why I would record any singing that took place. So the meeting, it is a reasonably informal kind of situation that there is not somebody who indicates that the meeting has now started, in (20) a sense. People are, people drift in, they take their places, there is, people at the podium are getting ready and the opening song is sung and one then understands that this is the opening song and as I say I am interested in recording, that to me is an emotional aspect of the meeting so I then recorded that song and we filmed a section of that song. But if I then later on in retrospect, having seen the whole meeting if that song was the most important song or if it conveyed, for example, an important message and tells you what that meeting was all about I would have used a piece of that song in "The Struggle (30)

From/....

From Within". As it was the end anthem, which is the singing of NKosi Sikelele iAfrika has a lot more significance in terms of the the songs that occurred at that meeting and that is why I used Nkosi Sikelele in the firm "The Struggle from Within". So what I am trying to say is one has to take this progressively. One assesses it as one is going along and one uses one's discretion and one's judgment.

COURT: Could I get clarity please on "The Struggle From Within". Is the language used in "The Struggle From Within" English? -- The narrated language, yes. (10)

The narrated, so you have a narrator ... -- Speaking English.

.... that explains everything. The film is for overseas publication I take it, use overseas? -- For local and overseas.

So they would not understand any other language used at all these meetings apart from the English? -- That is correct.

So it would not serve your purpose to have lengthy discourses in Zulu or Xhosa or Sotho in your film, is that correct? -- Yes unless you were just using that as a backdrop, that you were explaining this. (20)

Well that would then be soft while your narrator ist talking? -- That is correct, yes.

So that is not very important. -- Right.

What would be important to you is the visual material, the inside of the church or the meeting, banners and the singing which would then be in the original language? -- Yes.

That would be part of your ... -- If I could just make one proviso there. I mean for example, I means something that Father Moselane spoke about a lot and one picked this up, occasional English words are used, court interdict for (30)

C.1001

example/....

example was something that came up over and over again and at the end when he discussed what has happened during the meeting and he told me that they had decided that they must try and get a court interdict. That was one thing, so in "The Struggle from Within" I do use that section. You know for example we see Father Moselane talking about a court interdict but, so what I am saying is it does relate. But that is more a, because I wanted to strengthen that point yes. So it can relate. It is not vital to the understanding of the material. (10)

So apart from the singing and because when people speak visually you have to have some sound coming out of their mouths the content of the speeches was rather immaterial to you? -- Unless they were gesticulating quite animatedly, yes.

Yes.

MR JACOBS: Can you tell the Court, can you remember any aspects where the audience during this whole meeting became agitated or which indicated to you the essence of the meeting, the mood of the people? -- Yes there were sections where obviously the pitch of the meeting did rise and fall, rise (20) and fall. And, but the thing was that as I think I said earlier was that one became aware of the focus of the meeting was, and at the podium was Father Moselane and Mr Hlubi and the consistent thing that came through was that Father Moselane placating the people and getting the meeting back onto course, where people were getting off or appeared to be getting involved in side issues or whatever the meeting was kept back on course. So that in a sense is a thread. The only real outburst or change in pattern occurred when a young man, he definitely seemed younger than the rest of the speakers (30)

and/....

and he stood up from the, one side of the congregation, the audience, and it became very apparent that he was, if I can use the word it looked like he was agitating. That was the man who has later been identified as a Mr Botha I believe, and as you can see in the exhibits we filmed on him on two occasions. The one occasion is in "The Struggle from Within" because I am satisfied that in that instance we captured what was the most significant emotive agitative thing that came from Mr Botha and apart from that there were occasional responses of Amandla from the audience and then at the end, (10) after Nkosi Sikelele it built to a pitch with again cries of Amandla after the singing of Nkosi Sikelele.

Mr Harris how could you tell the people were side-tracking on side issues if you could not understand the language? -- Well for example if there was a discourse going on between the man at the podium, say Father Moselane, with somebody who has asked a question from the floor and this gets out of hand and the people start picking it up and the dialogue starts happening away from the person, well if the meeting becomes out of order, that is what I am trying to say. (20)

Did this meeting become out of order on this particular day? -- In that way occasionally, yes.

And was it recorded? -- Yes.

And the sound as well? -- Yes.

You see I find it, is it correct that EXHIBIT V.31, that is the transcript of the soundtrack on this particular video ...

COURT: V for Veronica?

MR JACOBS: V for Veronica, 31. -- Could I just check with Mr Bizos? I mean that is where, if that is the exhibit (30)

then/....

then that is the exhibit. That is fine. It says here "Nuwe Transkripsie". Does that there was one before it?

Yes that is correct.

COURT: Where is the one that says "Nuwe Transkripsie"?

MR JACOBS: It is only my note on that one sir, I can scratch it out on that.

COURT: Well so it is, it is not a new one is it?

MR JACOBS: No, no it is not a new one, an altogether new one. It is only mine that was marked when we handed it in like that. (10)

COURT: Yes, now what are you asking?

MR JACOBS: This transcription, you marked out the places where you find visual material on this, by this solid line at the side and is that correct or not? -- Correct.

YOU also marked out all the stoppages or interruptions on this document? -- Correct.

Now I see from this document that on page 1 P. Thapedi, he was opening with a prayer and then he was giving a speech and you did not record that visually. -- Correct.

WAS that not important? -- Beg your pardon? (20)

Was that not important, also to capture the feeling of the people, him ... -- As I say we had just filmed the opening hymn and I was happy with that and I obviously felt no reason to record Mr Thapedi.

Then we got on page 3, we got the speech of Peter Hlubi. -- Yes.

That was not recorded visually, is that correct? -- That is correct.

And that goes on till, well we have got it here that in his speech the audience was reacting to him. -- Yes. (30)

Was/....

Was that not necessary to record for your purposes? --  
Not at that time, no.

This goes on till page 4. -- Yes.

And on page 4 we find the only visual part in his speech  
where he is announcing the next speaker? -- Yes.

Was it not necessary to tape the rest? -- Take the rest  
of what?

Of his speech? -- There is visual and sound here.

No for the rest, it is only this small part visual when  
he was introducing somebody else. -- Yes but the rest is on (10)  
sound.

And on visual material? -- No there is that section on  
Mr Hlubi correct.

Now what is there in this part that you recorded on page  
4 that is bringing out the mood of the people or the mood of  
the meeting? -- This is at the very beginning of the meeting.  
I felt it necessary to just get something on Mr Hlubi in terms  
of identifying him. If this was going to be, I had not felt  
that what had materialised at that point was significant in  
terms of emotion and if this was going to be Mr Hlubi's last (20)  
speech I should at last record him in case he turned out to  
be a very important speaker for the context of "The Struggle  
from Within", in which case I would have visual and sound  
material of him addressing the meeting and I could then  
include that in the edited sequence, stating just that, that  
he was one of the speakers and there you have him speaking to  
the meeting.

Yes, and then his speech is going on till page, no then  
the next speaker is Mr Hlomoka and for the whole period of  
his speech you did not record anything? -- That is correct. (30)

Was/....



Was it not important, he was the guest speaker there, he was announced ... -- As you said I did not understand the language. He was another speaker at the podium, yes. But as I say taking it progressively I obviously saw nothing in his tone of voice or what he was doing up there that would indicate that we should film it.

You did not deem it necessary in his case also, as in the case of Mr Hlomoka, Mr Hlubi, to get him on record only? -- Apparently not. Mr Hlubi was more of a key person in terms of that he kept coming back. He was a kind of chairman. (10)

Well on pages 6 and 7 you did not film the speech of Mr Hlubi again. -- That is correct.

And this was continuing up till page 8, no on page 7. But on page 8 there was a woman speaking about children and violence of children. Did you not deem it necessary to take that on film? -- You say that as if I understood what she was saying. I have said I did not understand the language and in retrospect there was actually other sections where the violence of children or children in the struggle was the issue and I have that. (20)

So even Moselane when he appeared on the scene on page 8 going on up till page 9 you did not record anything of his on visual material? -- Well it would have been silly to record Reverend Moselane there because he was explaining to the people who we were and that we were not from the SABC, as I had asked him to do, and just to ask them to carry on, explaining why we were there just to put them at ease to proceed with the meeting as normal. And so there would be no purpose in me recording Reverend Moselane talking about myself.

Was he, the whole period that he was talking about you, (30)

that/....

that you did not record him? -- I beg your pardon.

Did you only not record him while he was speaking about you? -- No, I knew that as we could pick up words SABC, Council of Churches etcetera, and I had asked him that he should, as I said, let the people know who we were, why we were there and that we were not going to interfere and they should just continue and so I did not record that first section where he was speaking to the people.

Now was it not necessary to at least, for eight pages, and I suppose that was for quite a lengthy period, of nine (10) pages, to take some of the incidents on visual material? -- Well we did have some yes. We had the opening song, we had the opening hymn.

In all the speeches? -- I beg your pardon?

In all the speeches after the opening hymn? -- What is the question?

Did you not find it necessary, was there nothing happening in this meeting to record, in order to bring out the tone or the mood of the meeting? -- I should mention one other thing that obviously the meeting could go on for hours. (20) One had no idea of how long this meeting was going to be and so one would have proceeded with a certain amount of caution initially because it is no good rolling off all your film stock in the first half hour and then suddenly you realise that in fact the meeting has not really started in terms of what is going to transpire. So I can only say that one was proceeding with caution initially. As I said what was of interest to me particularly Father Moselane was not there yet and that is another factor. He was the only person whom I knew would be at the meeting. So I proceeded with caution. I recorded, (30)

I/....

I wanted the hymn, I recorded that. I recorded a burst of Peter Hlubi and then the next on page 9.

Will you have a look at page 12 Mr Harris and there we have got the speech of Mr Mkhwanazi. Why did you in his speech particularly start three times to shoot visual material? On page 12? -- If you look at the whole of page 12 you will see that it is interspersed with audience response.

Well we had audience response earlier. I ask you specifically ... -- No I am talking about this, I am not talking about before. I explained before, why I did not record (10) that. I am talking about here is a section of a man, Mr Mkhwanazi, who quite a dynamic speaker, he speaks with strength, okay we are into the meeting and there is an interchange going on and I am attempting to capture some of that. There is clapping of hands and background noises, yes yes, speak, clapping of hands, that is coming from the audience. I think that indicates ...

And at other places when the audience responded you did not record that? -- Well we have taken, as we have done, referred to specific instances and I will try and answer (20) your question Mr Jacobs.

And on pages 15 to 18, that is during the speeches ...  
COURT: Before you come to 15 to 18 could you have a look at page 12 please. Why would one have such short bursts of visual material, virtually the interruption of a second or so? Of the same person? -- I can only think that we were on Mr Mkhwanazi and that we were trying to capture audience response at this stage. I mean we had been on, we had a section of Mr Mkhwanazi and at this stage we were on the audience and we were just waiting for the reaction, whether (30) it/....

it be people standing up and cheering or Amandlas or whatever, and that is what we were trying to anticipate and to capture that we can then ...

But would one then not turn the camera to the audience and still have the reel going, still taking? -- Yes.

So one would not have an interruption but you would have a different picture? -- No one, if the camera is not rolling, in other words we are on the audience and we are waiting for the audience to react to Mr Mkhwanazi and we are trying to anticipate when, and so we sort of start rolling (10) while he is still speaking and you know as I said it is a kind of a random thing but one is trying to anticipate what is happening, I think in this case it is the audience and we were trying to capture that.

Yes, thank you. Yes you were at page 15.

MR JACOBS: 15, and it seems as if on this page we also have four in this one short page, four instances of visual material, is that correct? -- That is correct, yes.

Now why are such short portions of visual material on this Mr Harris? -- Well at the top of the page there what you have got is the clapping of hands at the tail end of I see a Mr Mogema(?), of his, what he is saying to the audience. Now without being able to refer specifically to the material because I do not know what exactly is on the image there but I would assume that we were filming on the audience for that tail piece there and hence we captured the audience responding with clapping of hands etcetera. Then Reverend Moselane takes the podium and it is possible that while he was getting up there there was still activity in the audience which we then did a short burst on. And the same ... (30)

Only for a ... -- Because these, it says here unidentified male voice, it looks as though this is coming from the audience. So we are still on the audience trying to capture what is happening there and then I would assume that Reverend Moselane then gets into something here and we turn around and we film on Reverend Moselane.

Yes and the same goes on on page 16. -- Yes.

Then it is for, you have got visual material and then for a short burst no visual material at all, then visual material and then no visual material and then a lengthy period of (10) visual material. Why was that? -- Well it is as I say an attempt to capture perhaps a long or a lengthy uninterrupted strong seeming address from Father Moselane.

Was that the actual position? Was that the factual position on that particular day? I am not, I want the facts there. -- Then you must give me the material and I must look at the visual material and then I can tell you what we were filming. I cannot tell you what we were filming from this. I am trying to explain to you the possibilities.

So there is no reason whatsoever for this short (20) interruption on page 16? -- Yes there is a reason and the reason is that we were attempting to capture what we feel is relevant in terms of the mood, in terms of the speakers that we deem relevant.

Is that Mr Moselane's speech? -- This as it says here is Reverend Moselane, and we capture, it could appear if we take the possibilities that at the end of page 15 there is the unidentified male voice speaking which would be from the audience. So I would assume, because it is one of the definite possibilities that we may be on the audience, so(30)

we/....

we may be recording with the camera the audience. Okay. Father Moselane then starts speaking. We then cut the camera at the top of page 16 after rotunda(?). We then turn around possibly onto Father Moselane and attempt to start, and we start rolling again at "We must be reliable" and we record Father Moselane until he is interrupted where he says "I do not hear. I did not hear" and there is background noise etcetera. And then when he gets talking again we then start to film again and we record him down the page. And then Mr Mkhwanaze comes on and we film him. On page 17. (10)

Then why the short interruption in his speech again? And then card filming? -- Well we had a good paragraph on him then, he probably looked quite good, he probably spoke well, it seemed as though he was not stumbling etcetera, he knew what he was talking about, we cut the camera and then he carried on talking and I obviously decided that I should get more of him so I started rolling again.

ASSESSOR (MR KRUGEL): Possibly because Mr Mkhwanazi is apparently under the misapprehension that the sewerage system was done away with and electricity was installed. -- I can, as (20) I say I did not understand the language.

At page 17, page 17 the cut there. -- Yes whether it had anything to do with the sewerage system ....

COURT: So it is either the one or the other.

MR JACOBS: Now also in the sound material we find a lot of stoppages. Pages 11 and 12.

COURT: Of what document?

MR JACOBS: The same document, that is EXHIBIT V.31. That is in the speech of Mr Mkhwanazi and the speech running from page 11 to 12 there are no less than four stoppages of the (30) recording/....

recording of the sound material and the restarting again.

That is .... -- Which page is that?

11 and 12 . -- 11 and 12.

It will start with stoppage no. 4 at the bottom, stoppage no. 5, the next page, page 12. -- Yes.

Then stoppage no. 6 and then stoppage no. 7. -- Right.

And at the end of his speech there is again a stoppage of the sound recording. -- Right.

So why was it necessary to stop so many times during his speech the recording of the sound? -- Well I can only (10) assume that at that stage, because this is the pattern it looks like, we were once again concentrating on audience reaction. We were, the camera was lined up on the audience and we were waiting for a response because I see here you know the audience is responding on page 12. It says "Audience they shout speak" and there is clapping of hands. Later on they shout "Yes, yes". Down the page there is the clapping of hands and background noises. So I think, I think we looked at this just now. As I said I think we were focussed on the audience and our intention was to try and capture some of (20) this audience reaction that had started to build up and it was becoming a general pattern, and that is why we would roll and then roll the camera and feel maybe we have captured it, then try again and try again and we did that one, two, a couple of times here. But I would say that that would be the explanation for that. And it goes right to the top of page 13, again where you have got this unidentified male voice and then the Reverend Moselane comes in, comes onto the podium or stands up or talks.

I see on page 11 that you did not record the beginning, (30)

it/....

it seems like it, of Mr Mkhwanazi's speech because he started with "Because we have given him money" and he was referring to something that he has already said before? -- No we, those points with the asterisk 3, 4 etcetera, no. 3 there that indicates a break in the recording, it does not indicate, in other words this is a transcript of everything that was on the tape, EXHIBIT 36, correct. So this is a transcript of the recording so there was sound being recorded there. Is that what you are asking me?

No I am asking you the beginning of his speech is not (10) recorded, is not on the tape. -- Yes it is.

Or it seems as if he has said much more and that he was elaborating here with the start of his speech is shown here on page 11. -- Oh are you asking me if he said something, if he said additional things to what is here that may not be here in fact?

Yes, and you did not ... -- Which we did not record on the sound tape.

Yes? -- Yes that is quite possible.

Was it not your method of recording then as you have (20) explained at the start of the speech that you will start recording the sound as well? -- Mr Jacobs I think I have explained a number of times that that was not my method.

Then on pages 13 and 14, in that part of the speech of Moselane on top of page 13 you have got two stoppages of recording the sound, why? -- Mr Jacobs I think the, okay stoppage 8 on page 12 is a voice ident, in other words that is myself speaking into the tape indicating where we are.

Just pause a minute there or a second there Mr Harris. Why is it necessary for you to stop the tape in order to (30)

make/....



make a voice identification? -- Right. It is an interruption. In other words what I am saying is I thought it would be of interest or of, I mean of importance in terms of this document if I made a record of where I spoke on this tape as I could hear it.

But you could speak on the tape without stopping it? -- Yes I could, yes.

So why must it be stopped, that is what I want to know. -- No I am just trying to be quite clear on this and I assume that, all I am trying to remember here is whether I included (10) voice idents as stoppages or whether, in other words what I am saying is I considered voice idents to be interruptions on the tape, in other words where I spoke into the machine it was something that needed to be placed on record like this. I see I have got at the top of the page there, no. 5, I have said again "voice ident" and I have said there "to change where the camera roll" which indicates very clearly why we stopped there. I am just trying to work out the no. 8. I think to answer your question Mr Jacobs it is not necessary to stop when one does a voice ident. What happened most (20) probably is that while we were stopped and I was waiting, assessing the situation, I then rolled the tape and gave an ident as we went into the sequence that we were going to continue with. That was taking advantage of the fact that we were stopped already, the tape was stopped and just identifying it and then we rolled this again.

Now when, why did you stop then when you got visual material of the reaction of the people in the meeting, why did you stop on that? -- Where is this?

At stoppage 8 to which you referred just a minute (30) ago./.....

ago. -- Stoppage 8, well we have got, we finished it, we got it, in other words they finished clapping. We have captured what we set out to capture. We were aiming the camera at the audience waiting for them to respond to Mr Mkhwanazi. We anticipated the response, we rolled the sound and the camera and we had a very good recording of the audience as they responded clapping their hands and we then terminated, switched off the camera and the sound once they had finished.

I still cannot understand and you have not answered (10) yet why you stopped two times during the speech of Moselane starting on page 13. -- Well we will come to that now. I have been dealing with the one before that. Well as you can see at the top of page 13 there seems to be a degree of audience reaction continuing, that it could be intermittent or whatever, and I would say that we are still endeavouring to get more of that.

Well Mr ... -- It seems as though we captured a cry of Awethu, then I switched off and then I possibly anticipated that something might be starting again and I switched on (20) again but switched off immediately thereafter and then Reverend Moselane starts to speak and we start to film with the sound, there seems to be an interruption there at which point I stopped the sound recording, possibly there is a slight bit of confusion between myself and the cameraman but I see we stopped again immediately thereafter and we record during that section and we seem to settle down once we get into Reverend Moselane speaking again.

Mr Harris you have not answered my question yet. -- What is the question Mr Jacobs? (30)

I/....

I asked you why did you stop two times and let us take the first one, that is stoppage no. 10, after the words "Now I hope we should", there you stop recording the sound. -- That is not the first one, that is the third one.

Is that during the speech of Mr Moselane? -- It is the third interruption on page 13 to which you have been referring so, so it is interruption 11.

COURT: It is interruption no. 11.

MR JACOBS: 11 then, that is the third one yes. So why did you stop then? -- Why did I, well there is a pattern here, (10) if we look at what has just preceded. We had been filming on the audience, we had been filming the audience reaction as at the bottom of page 12, which we have got some of. It seems as though there is more of this going on. It appears that we are still trying to capture some more of that. Hence why we are recording at the tail end of that, the second line on the top of page 13 where we seem to capture a shout of Awethu, then I stop and it would seem it is at break no. 9, it would seem I am watching and waiting. I anticipate something and I switch on, and I switch off again because it did not happen. (20) That is break no. 10. Reverend Moselane starts to speak, we start rolling and I am recording and then possibly at no. 11 there is, it says there "Interruption, audience speaks at the same time making a lot of noise". It would appear that we continue, the camera keeps rolling but there is a slight bit of confusion between myself and the cameraman. I cut the tape recorder and I start rolling again. As I say ...

I cannot understand your confusion there Mr Harris because you were recording and then you stopped recording his words and this interruption only occurred after you (30)

start/....

start rolling again, start recording again? -- Yes. It is quite normal Mr ...

So you could not have known at that stage of any interruption or the audience ... -- No it is during a period of, it is a period of obviously there is something happening, in other words as I have said there has been quite a lively response from the audience.

Well then I would expect Mr Harris for you to have recorded, because there was something now that was giving the mood of the meeting to you and everything like that, that (10) you would have kept on recording at that stage, at that place? -- At that place. No as I have, if you look at the page before there is a whole pattern of this kind of thing. With which we are dealing with here on page 12 that we have been busy with for the last who knows how long in terms of minutes. In other words we have been setting out to capture this kind of reaction from the audience, we have been trying to focus on that because we feel it is happening and it is happening. We want to capture that because it is an inherent part of the emotional level of the meeting at this time and (20) we want to capture that and it is all part of that, it is a continuation of that which is happening in bursts, in spurts and as I read it here it then settles down again when Reverend Moselane starts to speak and we are able then to decide that we have got what we were going for and then we continue to roll for longer periods of time.

And then what is going on after you start recording again at break no. 12? Where is the rest of what Mr Moselane said because he did not stop speaking after he said the increased rental, he was going on, where is .. -- It would (30)

appear/....

appear he did stop speaking.

Because you started recording and there is no stoppage so there must have been recording of what he said, of what he is saying. -- Well if you see, sorry? The question is where is the rest of what he said?

Yes. -- There is, that is what he said. The increased rental, pause, dot, dot dot, somebody shouts from the audience, he then ...

No there is nobody who shouts from the audience. Where is that, where do you find that Mr Harris? -- Unidentified (10) male voice interrupts, "Ja".

Yes? Is it not so, okay on page 14 still in the speech of Mr Moselane which starts at, which goes on at the end of page 13 you have got interruption no. 14, why was that? -- Again it appears as though it was at a point where it was between a response from the floor and Reverend Moselane speaking.

So you are only surmising it? -- I have to, unless you show me the material in front of me and we talk about it section by section and frame for frame I can show you what (20) we were filming there and I can answer your question then empirically. I can only try as much as is humanly possible according to this and how it is broken down to give you the possibilities of what happened in terms of why we stopped and why we started.

Well in this portion on pages, from page 13 to 14 we have got then stoppages no. 14, 15, 16, 17 and 18, that is again five of them in a very short space mentioned here, why so many stoppages and restarting? -- Well I would think that again it is part of this pattern we have seen in the (30) preceding/....

preceding pages where you have got, if we look it is not just Father Moselane standing up and giving an uninterrupted sermon. There is interchange between the floor and the speaker.

Mr Harris that is why I am asking you, you said to the Court on different occasions that you wanted the reaction and the mood and the essence of this meeting and you wanted the reaction of the people listening at the meeting. So this was giving to you the reaction of the people and the people speaking to Reverend Moselane and the interchange of wording, why did you cut that out? -- No I did not cut it out Mr (10) Jacobs, at all, I did not cut it out. I was focussing, I have one camera. I can be either on the speaker or I can be on the audience reacting. I cannot be on both unless I go behind the speaker which I do do on occasions to show over the speaker's shoulder the audience but then I cannot see the speaker's lips. Similarly I can go into the audience and show over their shoulders the speaker. But other than that in terms of getting for close up action, synchronised action, I can only be on the speaker or else I can be on the audience reacting.

Yes but I am referring now to the recording of the (20) sound and not the visual material. -- Right, so at some stage, at some stage Father Moselane speaks a lot in the meeting, okay. So I would focus, I would make a decision that I am going to focus on Father Moselane to record him speaking and I do that until I am happy with a portion that I have got of Father Moselane speaking that I feel indicates the kind of way he was speaking generally throughout that meeting. Okay. If he happened to be raising his fist a lot during the meeting then that would have been obviously something important and I would have filmed that. But he was speaking and the way he was (30) speaking/....

speaking and what, and the kind of things that he was saying, as I have indicated to keep the meeting on course those were the sections that indicated the way Father Moselane was behaving at that meeting. So I would set out to capture sections of that and then I would also want to capture at periods the mood of the audience, which would mean I would then, a general pattern would be happening in the audience at that stage which I would need to capture because it was not necessarily the same pattern that had happened earlier on, or there was a different level of emotion or whatever. So I (10) could only be on the speaker or on the audience. And that is why at these, there are breaks between because I am, the section before as I say indicates to me that we were on the audience. Here again, as I said it is an interchange, Father Moselane is speaking and he speaks for reasonable periods of time and then there is a response and then he continues to speak and then there is a response and so it goes. Now I am trying to just work out. I would feel here that we were on Father Moselane.

Can I go on or do you still want to say something? -- (20)  
I am not sure whether it is clear.

Then let us go to page 15, very very short period, there are no less than five stoppages. -- Yes.

So how do you account for that Mr Harris? Why is it necessary to stop and restart so many times in such a short space? -- I, well to answer that again it is, there is, something is happening here between the speaker and the person on the floor and at this stage we were either on the speaker, we were wanting to capture what he is saying or else we were on the audience and we were trying to capture (30)  
their/....

their reaction. And as you see the stops and starts are very close together which would indicate to me that I am standing with a hairtrigger, finger on the machine ready to capture what I anticipate what we are looking for is going to happen.

So you...

ASSESSOR (MR KRUGEL): Why do you say the stops and starts are very close together? -- If you see here in terms of, like 21 occurs and 22 and 23 are actually, there is, in other words 22 and 23 indicate that I have actually switched on (10) but switched off and then switched on but switched off. I am sorry switched off and on, off and on. In other words there is nothing that I have recorded in between.

If you switch off the machine and you switch it on again any time may elapse in between. You cannot say from the tape itself how long that switch off has been? -- That is correct.

So you cannot say that you switch off and you switch off, are close together? -- I am talking in terms of the reference, of the master tape that we have. In terms of the duration (20) of the meeting yes it could be any period of time.

But is this not the master tape that we ... -- It is the master tape.

... that we worked from? -- But the master tape is what we recorded on the day and which was recorded by stopping and starting.

And that was switched on and off? -- Oh yes, switched on and off.

And on again? -- And on and off, as indicated by these breaks.

(30)

But/....



But you cannot say how long the time lapse in between was or what was said in between? -- No I cannot.

MR JACOBS: Mr Harris without going to the rest of them I am going to put to you now that this, as far as we have gone so far, clearly proves that your evidence that you almost continuously recorded on the day of the meeting is not correct? -- That is not true.

Well if you were recording the sound at the meeting almost continuously how then do you explain this? -- Well it depends on your definition of "almost". I mean it is almost con- (10) tinuous, as I understand it I was, one has to go back to the reference point of my intentions on the day. My intentions on the day were to record the meeting, to capture the essence of what happened there and to enable me to draw from that material to portray an overall picture of the significant important events that happened on that day and if you interpret that as "almost" in terms of what you are saying that the tape is almost continuous then it is almost continuous.

So what is your definition of "almost" then just to get it clear? -- I think as I stated in my evidence-in-chief (20) I did not use the word as a short definition. I explained the procedures according to which I did this and then that to me would clearly indicate to me what I mean by almost continuously.

Mr Harris I would like to refer you to stoppages 9 and 10, that is on page 13, then stoppages 22 and 23, that is on page 15 and stoppages 24 and 25 that is on page 15. -- Sorry what was the last?

I think I made a mistake in the last page, oh yes, that is where you got the double stoppages. -- Yes.

And I would like to put to you that in these places (30)

what/....

what actually happened was that the machine was playing a tape, the same tape and another machine was used to record the same tape and these happened where both machines, somebody tried to switch off both machines at the same time. That is why you got a double switch off point at these places? -- Are you saying this happened on the day, on the 26th, we had two machines?

No after the 26th? -- After the 26th. Could you be a bit more explicit what happened.

By rerecording on EXHIBIT 36. -- What happened? (10)

That the machine transmitting at that time, that was used to make a rerecording on EXHIBIT 36 ... -- Sorry how many machines do we have?

Two. -- So it is machine 1 and machine 2.

Machine 1 was transmitting, was playing a master tape. -- Which you say is the tape we recorded on the 26th.

Yes. And EXHIBIT 36 was a rerecording of that tape and the second machine was used for that, and when the, at these places when both machines were switched off for one or other reason that is how you got the two switch marks here, the (20) switch off marks. -- That is absolutely not true.

COURT: No, just clarity please. Why would one have two switch off indications because you have two machines, because one is recording and the other one is producing sound? So if you switch on and off on the recording machine you get that on the new tape. But if you switch on and off on the old machine, the new tape will keep on running on the one machine.

MR JACOBS: And I would like to put it that they are not fully synchronised when you push the two buttons, the transmitting machine switched off first and that is recorded on (30)

the/....

the second machine, the rercording; the machine that is still recording at that time. And then its own switch off mark is when it switches off itself then that switch off pulse is also recorded on the tape. -- And what happens when you switch it on again? There should be a third pulse then.

Mr Harris I am not here to answer your questions. I am here to ask you and that is what I am putting ... -- No I find this, you know, I mean, yes I have answered the question, that is not so.

COURT: But now just a moment now. We are not dealing here (10) on EXHIBIT V.31 with pulses. We are dealing with interruptions ...

MR JACOBS: The interruption, is it correct the interruptions found here are switch off points? -- There are switch off and then switch on again points. In other words what that indicates is that this is where the machine was switched off and then switched on again.

COURT: I am sorry, let us take for example 22 and 23. If there is one interruption it means you have one switch off and one switch on. Now if you have two interruptions as indicated(20 at page 5, 22 and 23, it means a switch off, a switch on, a switch off and a switch on? -- That is correct.

All in one sort of motion? -- Yes. Consecutive ...

Consecutive, but consecutive to that extent that in between there is nothing? -- Very, I mean you cannot determine what is being said and there is, in other words if you switch off and switch on, I am sorry can I just get this quite clear. Yes there was an interruption, there were two interruptions in the tape, that is what we are saying, with a very short space of ...

(30)

It/....

It must be so short that one cannot get half a word in otherwise the half a word would be typed. -- That is correct. It may just have been half a second of noise or that, but there was nothing discernible that one should type.

MR JACOBS: Well is it possible that it could be like that that two machines, on a rerecording, say for instance generally now on a rerecording that it is possible to get on two switch on switch off pulses shortly one after the other? -- I cannot see how that can happen, no.

You cannot see that? -- No. If you could describe it. (10)

Well if you use two machines at the same time, you switch them on, off and then not switching off exactly at the same moment there will be a short distance out and the same applies when you then again switch on.

COURT: But now I am sorry Mr Jacobs let me just get clarity. This would mean that within your first machine's interruption period where you have a switch off and a switch on your second machine would fall, having a switch off and a switch on. If you have this type of thing you will not have two interruptions. (20)

MR JACOBS: What I am trying to put sir is when the second machine is recording what is transmitted from the first machine, the tape in the first machine, and when you try to switch them off the first machine switches off first. That switch off will then record on the second machine. -- As what sort of sound?

COURT: Yes, you will not, in the transcript it will be called an interruption because there is an interruption in the sound of the meeting, that is what we are recording here.

MR JACOBS: Yes.

COURT: So whenever you switch off your second machine it (30)  
will/....

will then show, not on the transcript and you will not have two interruptions.

MR JACOBS: No it will show on the second, my submission sir is that it will show on the second tape, the re, the first tape, the rerecording will register and record the first switch off of the first machine and when it is is switched off itself it will also register a pulse there.

COURT: Yes.

MR JACOBS: And then when it is transcribed from the re-recording then you will have two pulses. That is what I (10) am trying to put to him. On the rerecording tape, and if that is used.

COURT: Yes very well.

MR JACOBS: Used for the transcript. Mr Harris what this ...

COURT: So what is put to you is that at page 15 opposite the inserts 22 and 23 where the word is typed "interrupting" in brackets there was a switch on, a switch off of two machines but not instantaneous or simultaneous. -- The answer is no.

MR JACOBS: Mr Harris I would like to refer you to page 15 again, of EXHIBIT V.31. On this document, this exhibit, it (20) seems as if Mr Moselane started speaking at the bottom of the page. Is that correct? Have you got it? -- Apart from the paragraph he spoke in the middle of the page?

Yes but I am not interested in others, I am going to page 16. -- 15, yes.

Yes we start at page 15, then he is speaking on page 16 right through the page, is that correct? -- That is correct, yes.

Then we have got on page 17 on top we have got Mr Mkhwanazi speaking and it seems as if his speech is running the whole (30)

of/....

of page 17. -- Yes.

And going to page 18 in the middle. -- That is correct.

Did you synchronise the two people speaking here when you synchronised the EXHIBIT 38 and the sound? -- Where I had been filming on the speaker, yes.

Because both of them were identified here as speakers when the film was showed, when the video film was showed. Afterwards you can see Mr Moselane speaking there and he is speaking this. Now what I cannot understand Mr Harris is that that is an impossibility to have happened like this as (10) is depicted on the pages just mentioned to you.

COURT: Why is it impossible?

MR JACOBS: And I put it to you it is impossible because this part of the speech of Mr Mkhwanazi starting on page 17 should have been at the top of page 16. You remember that part that is not in sequence and I would like to refer you also, to give you the full picture to EXHIBIT 18(a).

COURT: Before we get to 18(a) what exactly is put? Are you saying that the words "Certain are certain things termed luxuries" and what follows at page 17 top were not spoken (20) by Mkhwanazi or are you saying that they are out of sequence and they should be at page 16, somewhere in between where Reverend Moselane speaks?

MR JACOBS: Somewhere in between, I do not know precisely where but that is correct. And if he synchronised it correctly and as the people, as we have seen them on the video and if as they have been identified in order to transcribe it then you could not have synchronised this part, this part is out ... -- You were going to give me a reference from ...

On EXHIBIT 18(a), that is the part on page 2 of that, (30)

of/....

of EXHIBIT CA.18(a) where you got the frames numbers in columns 4 and 5 of nos. 3742 and 3772, that is out of sequence and should have been ...

COURT: Just a moment now, where are you, F what?

MR JACOBS: F 3742 and the last number F 3772. That is near the bottom of it ...

COURT: Just above the red portion at the bottom of page 2, just to the right of the 540, just above that you get 3742, F 3742 to F 3772. Now what are you putting to the witness?

MR JACOBS: I put it to you that this should have been (10) in actual fact should have been in in the space where the X marks is on top there, that is 4 lines on top, and next to where there is page 16 in column 9. It is also indicated ...

COURT: I am sorry Mr Jacobs I have missed you now. This bottom one has to be up where? Where the X's are?

MR JACOBS: Where the X's are and the page page 16.

COURT: You mean that is out of sequence?

MR JACOBS: It is out of sequence.

COURT: What do you say to that Mr Harris? -- I have a note here that that specific shot that we are talking about is (20) a, we are dealing with, we are situated, if you, let us take the position if you are facing the podium we are situated with the camera on the right-hand podium side and that is where we are situated. We are filming across the audience and we are doing shots on the audience. What we are doing during that speech is doing what I call a panning shot. It is a shot that moves, that starts at this end of the room and goes right across the whole area and it pans across the whole area to show everybody who is sitting in the hall. And in this corner over here there is a notepad being passed around in which (30) people/....

people are signing petitions and that section, 3742, is a close up shot of the people writing on that pad, or of a person writing on that pad and the camera follows it to the next person. That as such is a non-synch shot. It is a mute shot, it would fall into the category of the cut aways that I described earlier and hence exactly where it is placed I accept the fact that it was placed out of order with the shot before it and that was an error on my part but in terms of its significance in this argument it does not indicate at all that that speech did not occur there because that (10) speech is non-synchronous with the film material being filmed at the time.

MR JACOBS: Mr Harris can I have a look at that note please?

-- Certainly.

What note is, where did you get that note from? -- This note?

Yes. -- When Brigadier Jansen and I were sitting down on Tuesday and he was going through the material and referring to discrepancies I made myself some notes.

COURT ADJOURNS UNTIL 14h00.

(20)

C.1002

COURT RESUMES AT 14h00.

KEVIN ARTHUR ROBERT HARRIS: d.s.s.

MR BIZOS: Before My Learned Friend continues, I do not want to interrupt his cross-examination, in relation to the cross-examination the investigating officer has agreed that two of the accused, subject to Your Lordship's concurrence, should be able to visit the Vaal during the forthcoming weekend. The proposed amendment to the conditions have been reduced to writing and they have been signed by Captain Botes and we would ask Your LOrdship to please alter the conditions (30)

accordingly./....



accordingly.

COURT: Are the conditions of departure from the bail conditions identical in both cases?

MR BIZOS: Yes My Lord, I ...

COURT: They would appear to be.

MR BIZOS: It would appear except the address where they are to live I believe, that should be different.

COURT: The address is also the same.

MR BIZOS: The address then is also the same.

COURT: Any objection Mr Jacobs? (10)

MR JACOBS: No objection sir.

(20)

(30)

ORDER/...

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC. 482/85PRETORIA

1987-11-05

THE STATEversusPATRICK MABUYA BALEKA & 21 OTHERS

(10)

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O R D E R

VAN DIJKHORST, J.: The following amendment is granted to the conditions of bail of accused no. 10, Bavumile Herbert Vilakazi and accused no. 15, Serame Jacob Hlanyane: In accordance with paragraph 2 of the conditions of bail both of them are granted permission to visit the Vaal for the period 6, 7 and 8 November 1987 subject to the following conditions:

1. They depart to the Vaal on 6 November 1987 after the Court's sitting and report at Sebokeng Police (20) Station on their arrival in the Vaal on the same day and thereafter between 06h00 and 09h00 on 7 November 1987, between 18h00 and 21h00 on the same day, between 06h00 and 09h00 on 8 November 1987 and again immediately before their departure from the Vaal on the same day.
2. They report at Jeppe Police Station as usual between 18h00 and 21h00 on 8 November 1987.
3. During their visit to the Vaal they limit their movements to houses 592045 and 552041 Zone 3, (30)

Residencia/...

Residencia, the house of Mr Ramotshesha in Hamilton Road, Evaton, the Evaton cemetery and their reports to the Sebokeng Police Station.

4. They do not enter the residential areas of Boiphatong, Bophelong or Sharpeville during the abovementioned period.
5. All other conditions of bail stand and are strictly to be adhered to.

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PAGES 17 777 AND 17 778 - AWAITING RETURN  
OF REVISED ORDER.

FURTHER CROSS EXAMINATION BY MR JACOBS: Mr Harris the part of the film material at the bottom of page 15 of EXHIBIT V.31, and that is representing frames no. F 3698 to F 3741 on page 2 of EXHIBIT CA.18(a) must have been....

COURT: I am sorry Mr Jacobs could you just repeat the numbers. What are you saying?

MR JACOBS: I said the part of the film material starting at the bottom of page 15 of EXHIBIT V.31, and this film material refers to frames F 3698 to F 3741, as it appears on EXHIBIT CA.18(a) must have been synchronised with sound (10) and picture otherwise why would it have been necessary to have 54 filler frames just before this point? Do you agree to that? -- Not necessarily.

Was it not synchronised? -- I do not know, I do not know if I have a reference to what that material is, if I could just have a look.

Have you got the bottom of page 15? -- Yes I have got the reference on V.31 and I have your, I am just trying to see if I have an explanation, whether it is some ...

ASSESSOR (MR KRUGEL): How many filler frames do you say (20) Mr Jacobs?

MR JACOBS: 54.

ASSESSOR (MR KRUGEL): The last question was how else would the filler frames be explained?

MR JACOBS: I said this portion must have been synchronised with sound and picture otherwise it would not have been necessary to put in 54 filler frames just before this portion, at this point?

ASSESSOR (MR KRUGEL): Yes but then the witness said that he does not necessarily agree with you? -- That is right. (30)

MR JACOBS:/.....

MR JACOBS: And he said he wants to see his note on that.

-- I do not have a specific reference to it so I do not know what that material is. But it would hold if that was synchronised material, if that section, 3698 to 3741, was filmed on the speaker with matching soundtrack. If it was a section of cut away material then as I have explained before it could have been arbitrarily placed within two synch points and hence the spacing would in fact have come before or after.

Well Mr Harris I am only a layman and between the readings 3673 and 3697, then you start again at 3698 it seems (10) as if all the frames were accounted to at this stage, is it correct? -- I do not follow you I am sorry.

Have a look at the reading F 3673 and then the last reading in column 5 is 3697. -- Yes.

Then the next frame is 3698, which runs to 3741. -- Yes.

So it seems as if between frames 3697 to, and 3698 that all the frames were accounted for? -- All the frames were accounted for.

So there was, so it is not a question of any material being cut out at that ... -- That would appear so, yes. (20)

COURT: Just a moment now I do not follow. I can follow the sequence of the number of the frames and I can follow that that indicates that no frames are missing but if I look at column 1 and if I interpret correctly what you say there were in fact 54 frames missing. Can that be?

MR JACOBS: No it is not 54 missing. -- It is spacing is it?

That is spacing part. -- In other words what you had was, reading it like this you had one shot or a series of shots going from 3673 to 3697 and then you had the camera stop and then you had a different shot starting with 3698, but in (30)

terms/....

terms of the time period or whatever 54 frames of spacing had been put in in between those points.

COURT: To match the sound to the visual material. -- No my point is that I do not know what is on that visual material of 3698 to 3741. If it is synchronous material then yes it would have required, the 54 frames would indicate the number of frames required to put that into synchronism. If it was a cut away as I have explained what a cut away is, then that material need not actually be in synchronism.

MR JACOBS: But why ... (10)

COURT: No just a moment. YOU were concentrating on the point made by counsel that exactly 54 frames were need to synchronise sound and visual material? -- Right. Because afterwards, if I read this correctly and I understand this correctly, after 3698 to 3741 there is another 90 frames of spacing, is that correct?

Well we will come to that, I am busy at the moment with this. -- Ja no it just helps me understand the, because my point is within those two points there are a total of 90 plus 54 frames of spacers. If that material 3698 to 3741 was (20) in fact a piece of cut away material then you need not have had 54 frames before it and 90 frames after it. You could have had any combination that would add up to a total of 54 and 90 because within those two points that cut away material had to fall.

But ...

ASSESSOR (MR KRUGEL): But could I just get clarity on this please Mr Harris. One could have cut away material which will not affect synchro at all. -- Correct.

That is the type of cut away material where you start (30)

from/....

from a synchronised point, for instance where you have got the speaker saying "Hello people" and it moves from his face and it covers the people and it covers the building and whatever, without the camera stopping at all? -- No, not correct. The camera, that cut away material is in other words, that is what I am saying. This section illustrated here by F 3698 to 3741, that is a grouping of images. Now if that is, if the image there is of the speaker speaking, in other words what we hear on the soundtrack then yes 54 frames would indicate that it was necessary to put 54 frames before that to put that (10) into synchronism and then 90 frames afterwards to then pick up the synchronism for the next point. But what I am saying is if that portion of material is not on the speaker but was a cut away of the audience for example, or whatever, then it could fall anywhere between, in other words we need not have 54, we need not necessarily, it was not necessary to pick 54 frames of spacing, to then put this and then put another 90 frames of spacing to keep it in synch with the next point. We could have had any combination of 54 and 90, a total of 54 and 90 over that whole period with those frames in it to enable (20) the beginnign point and the end point of the next and prior piece of material to remain in synchronism.

And not affect the sequence of the numbers of the film material at all? -- It would not affect it at all.

MR JACOBS: Mr Harris is it correct that between the numbers 3697, that where you got the splicing there, where there was a cut and a splicing and then you get the next frame is 3698, that was joined by the splicing to just after 369, was joined after the spacing, is it correct? -- That is correct.

So between 3697 and 3698, the frames, there is no (30)

cut/....



cut away at all because you have got both frames? -- That is correct. We have 54 frames of spacing as is listed here.

And is it then correct Mr Harris as you have told the Court this morning when you synchronise you will used, go up till the reading of 3697 and then you will stop and then you will calculate how many frames must be put in to synchronise the sound of the next portion of the film? -- If that next portion of the film is synchronous film, if it is not synchronous film one is concerned with the next synchronous point that occurs which may be for example further down (10) on your table here but what I am saying is what would appear to be the important thing here is that between that whole section there are a total of 54 frames plus 90 frames, plus the number of frames in that segment F 3698 to 3741, that must be a constant. Whatever spacing comes before and after, if it is a cut away piece of material it is not important.

And is it correct Mr Harris, just to get it on record then, that after the reading 3698 to 3741, after that and between 3773 you had to put in spacing material of 90 frames? That is correct is it not sir? -- Yes. (20)

Now I put it to you that the part of the film starting in the second line of page 16 which corresponds to the section F 3773 and F 3812 must have been synchronised otherwise why would you use 90 filler frames? -- I will start again.

COURT: Sorry Mr Jacobs, between F 3773 and F 3812 there was nothing to synchronise because that is one piece of film. So you do not need any spacing in between.

MR JACOBS: No after 3812 and 3813.

COURT: You mean between them?

MR JACOBS: Yes between them there is a filling of 300, no (30)

let/...

let me start again. The first one that I referred to was between 3697 to 3698, that is the 54 frames that was used. Then between 3741 and 3773 90 frames were used, filler material. And then between 3812 and 3813 300 frames were used. -- That is right.

Now I put it to you ...

COURT: Now just a minute, is that correct Mr ... -- As it stands here yes.

Well roughly 300? -- Well yes I ...

According to you. -- I am reading this. I cannot (10) recall that there are 300 frames but I would take it that this is accurate and that reading this this is how we understand it.

Now would that then mean that between F3812 and F 3813 there was splicing again? -- I am not sure, what do you say Mr Jacobs?

MR JACOBS: If I understand the evidence correctly each one of these on the pages are segments and the end number in column 5, that is the number, in this case 3913, after each of these end numbers there is splicing? -- There is a splice.

Each and every one of them. Now Mr Harris is it also (20) true that in order to remove the portion 3742 to 3772 you had to physically cut out that piece of film where it was originally on EXHIBIT 38? -- No when I compiled EXHIBIT 38. I did not cut it out of EXHIBIT 38. When I compiled it in EXHIBIT 38, before it got into 38 it was placed out of sequence like this.

Who placed it in that sequence? -- I did.

So in order to place it in this sequence, in the wrong sequence you had to cut it out of the right place and remove it from there and put it in at the wrong place? -- I did (30)

not/....

not cut it out of EXHIBIT 38. I am just making a distinction.

Where did you cut it out from? -- I cut it out of the film roll from which I was assembling and from which I was taking the material to make the positive assembly for EXHIBIT 38.

ASSESSOR (MR KRUGEL): That is the positive prints that you had made originally? -- That is correct.

And you cut those up to get your film made? -- That is correct.

MR JACOBS: I understood that you made an assembly of the missing parts and the synchronising from EXHIBIT 38? -- No (10) EXHIBIT 38 is the final result of that. I did not, EXHIBIT 38 did not exist until I made it.

I do not understand your evidence now. Was there then another positive, now in that other film, where is that film or what did you use, what do you call it? I am not a technical man I do not understand you. What did you use in order to make EXHIBIT 38 then? -- EXHIBIT 38 I used a positive print.

Of? -- EXHIBIT 37.

Yes? And from that material I made a positive assembly (20) together with a sound assembly which we, was handed to the Court as 38 and 39 respectively.

And what, where is this positive print that you used for this purpose? -- It is in EXHIBIT 38.

Well I am afraid I do not understand it Mr Harris. You did not use EXHIBIT 37? -- EXHIBIT 37 is the negative. From the negative we have printed a positive.

A positive. -- From the positive....

And that positive is not before the Court? -- Yes it is. In, it is, EXHIBIT 38 is made up from that positive. (30)

Now/....

Now which positive, what is the exhibit number of that positive? -- It does not have an exhibit number because it was never exhibited in three rolls straight from the laboratory or in one long roll straight from the laboratory.

Now where is that positive now? -- It is ...

ASSESSOR (MR KRUGEL): Perhaps Mr Harris would this be a short recap of your evidence-in-chief, that you sent away the original rolls of negative and you had positive prints made from those, that you then cut out of those positive prints those parts that you wanted to use for "The Struggle from (10) Within", correct? -- Correct.

That the remnants, what was left over, remained with you? -- Yes.

And that when you were requested to make or to reconstitute the film that you took at the meeting you had only those portions made that you had cut out before, you had them remade from the negative? -- No I had the entire negative remade.

Oh did you have the entire negative remade? -- I had it reprinted and I started from the beginning, because, to make sure that nothing had gone astray or whatever. I, and I (20) started from the beginning and using my initial assembly as a reference I went through and recompiled this positive assembly from ...

No, no we are not talking about a negative now. -- No, no.

We are talking about the positive prints. -- Yes the positive, I compiled for the purposes of submission to this Court what is EXHIBIT 38. I took that positive print that had been made off EXHIBIT 37.

Alright but they were in cuts now, they were in .. (30)

-- No, /....

-- No, there were sections missing.

Yes? -- Which were in "The Struggle from Within". Right, and those sections are also missing from the original negative, which is EXHIBIT 37 because they have to cut that negative to lift those sections out to put into the negative for "The Struggle from Within". Right. So they would then join up where the cuts have been and they reprinted all the positives from that negative. So that, we printed the positive, it contained everything excepting the positive of what was in "The Struggle from Within". (10)

So you had to remake those sections from "The Struggle from Within"? -- Yes, I took a print of "The Struggle from Within". I cut out the edited sequence of the Sharpeville meeting and I repatched those pieces into EXHIBIT 38, to give a complete picture of, well a positive assembly ...

Negative and positive? -- No 38 just has positive. 37 is the negative.

That is right, yes.

MR JACOBS: And I see Mr Harris that at the top of page 16 at the stop no. 27 you had a voice identification? -- Yes. (20)

And also on the part of the speech of Mr Mkhwanazi on page 17, at the end of that at stoppage no. 29 you had a voice identification? -- Right.

Now I put it to you Mr Harris in order to reassemble this portion of the film you had to synchronise it by putting in certain, not certain, specific frames, 54, 90 and 300 and in order to match that up with the sound you had to synchronise it? -- Only if any of that material was on the speaker.

Well I understood your evidence this morning to the effect that where, every time where you had to put in some (30)

spacing/....

spacing that you synchronised your sound material with the visual material? -- I also explained at some length the difference between synchronous material and what we call cut aways which are mute shots which are not dependent upon the recorded sound at that particular time, and I explained that as such they are not dependent on the soundtrack to the point that you actually have to match them up to the exact frame and I explained that what I tried to do in most cases was to put it within the area that it occurred, and not specifically synchronised. (10)

Does it mean then Mr Harris that for a distance of 54 plus 890, plus 90 frames, plus 799, plus 300 frames, plus 2013 frames, plus 619 frames you did not synchronise on this specific exhibit? -- I can answer your question if you show me the material, then I can answer your question. I cannot answer your question because I do not know what the, I tried to explain that if it was on the speaker it would be synchronised.

If it is not on the speaker it will not necessarily be synchronised. So I cannot answer that question because I do not know what that section of material is. (20)

Now can you tell the Court then how, on what basis did you decide to put in only 54 frames of filler up material? -- Yes I can give you the possibilities.

Not the possibilities, we want your answer. -- Well you show me the film and I will tell you exactly what I did.

You had the film Mr Harris ...

COURT: That is a bit difficult Mr Jacobs. The witness says that if it had to be synchronised I would have synchronised it and if it was synchronised it was 54 frames that was necessary. If it was a space between this speaker and that(30) speaker/....

speaker but in between there is a cut away the cut away can float, it can come here or it can come there. Which means we can have 20 on this side and 80 on that side or we can have 80 on this side and 20 on that side. It does not matter at all. And if there are a number of cut aways then the float can be much wider and there can be much more variation in between. But if we do not know what his points of reference are and he cannot tell you now what his points of reference are then we do not know what is synchronised and what is just put in by way of a float. So you are getting nowhere unless (10) you go, if it is very important you will have to go and show him the film.

MR JACOBS: I will carry on in the meantime and put a proposition to you Mr Harris. It is, and I would like to put it to you that the explanation, if there was proper synchronisation that, the proposition that the only explanation was that the interruption no. 26 on EXHIBIT V.31 at the top of page 16, a part of the original soundtrack was omitted when making the sound rerecording and because of this the wrong sequence portion could no longer be fitted in here and had to be (20) moved to a different position? -- That is totally incorrect, and in fact the piece that you referred to earlier is a satisfactory explanation and Brigadier Jansen and I sat down, we both saw it and we understood it exactly to be what it was that this piece of material had purely been put in the wrong place so that coming before it had been put after and it is, as I said, I described the shot, I showed you my notes. It is a shot of people writing on a pad and it is not dependent on the dialogue of the speaker at that point and hence it is not necessary to put that into synchronism. That is all (30)

I/....

I can say about this section.

And I put it further to you that according to EXHIBIT V.31 that Moselane was identified on page 15 as the speaker because he was appearing in the visual material and that...  
-- That does not follow Mr Jacobs. These identifications are not, these are not, when this transcript was done it was transcribed from the original quarter inch sound, it was not transcribed from picture information. It was transcribed from voices and the voices were identified and then later clarification was got where required on the visual. It is not (10) true to say that where it says Reverend Moselane on the left-hand side that the camera is filming on the Reverend Moseland, that is not true at all.

Do you say this is not made from the video EXHIBIT 40.  
-- I am saying that initially it was compiled from EXHIBIT 36. EXHIBIT 40 may have been used for clarification during the process. I cannot recall. I can recall specifically, what I am trying to say to you is that it is wrong to assume that where it says the various speakers names in the left-hand column of V.31 it is not implying that the camera is (20) on that person speaking at that time. It is saying that the corresponding dialogue that is written out there is coming from those people.

Who made the transcription, do you know? Did you do it?  
-- No I did not.

Do you know from what EXHIBIT V.31 was made? -- I assume it was made from 36, from the original soundtrack, yes.

Did you supply, it was in your possession before you handed it in to the court, that is EXHIBIT 36? -- Yes.

Did you hand it over to somebody to make a transcription(30)  
from/....



from that before you handed it in to Court? -- Yes I handed it over to the defence to make a transcription.

And you say that transcription was not made from EXHIBIT 40? -- That was the first step, the first step was to make a transcription. So it was not made from 40, the transcription was made from 36. 40 may have been used at some stage for further clarification, if they could not identify a voice or whatever and they wanted to try and see. I do not know, you would have to ask the defence that.

Mr Harris I will go to another point at this stage, (10) we see from EXHIBIT CA.18(a) that from EXHIBITS 37 and 38 the following frames were cut out and it is not part of the two exhibits, and I will give you the numbers and, the numbers of frames, that is 70 frames ..

COURT: Where are you?

MR JACOBS: I have taken all the places where frames or material was missing out of EXHIBIT 37 and 38 and on EXHIBIT CA.18(a), that the first one is at the reading ...

COURT: Just give us the column first.

MR JACOBS: The column ... (20)

COURT: Have you added up the totals in column 6 or have you done something else?

MR JACOBS: I have added up the columns where I, I have not added them up but I took each and every one out of it. So on page ...

COURT: And what did you do when you took it out of it?

MR JACOBS: I just want, and then I got it all together and to put it to the witness.

COURT: I want to know whether the total that you are going to put to the witness is the sum total of the figure set (30)

out/....

out in column 6. If it is not tell me where it comes from.

MR JACOBS: It comes from column 3 and the remark in column 10 next to every place, that in column, the numbers appearing in columns 4 and 5 of numbers 4393 and 4479, next to it ...

COURT: Now just a moment Mr Jacobs. I thought that the purpose of Schedule CA.18(a) was to indicate without reference necessarily to the numbers of the various frames the total of the frames cut out in each segment. Now that is set out under column 3, if I have it correctly it is also set out under column 6.

MR JACOBS: And it is not always in column 6, if you would, (10) if Your Lordship will have a look at page 3, in the middle there there are 40 frames missing, missing on 37 and 38. It is only mentioned in column 3.

COURT:

Well there is a 40 in column 3?

MR JACOBS: Yes, and in column 2 but not in 6.

COURT: Now what is your, what exactly is it you are putting to the witness?

MR JACOBS: Sir then I will refer him to each and every one, and I want to ask him when I have shown it to him all that he can remark on that and answer certain questions. (20)

COURT: Well before you go and take each and every individual number set out on this exhibit can you not ask him a general question and see whether we can reach the end without this circuitous route?

MR JACOBS: As the Court pleases. Mr Harris you explained to this Court that waste was cause by holding your hand or something like that before the camera for a period and then you will get black and white frames? -- Right.

And you said the reason for this was, one of the reasons was in order to protect what you have taken on the previous (30)

part/...

part, the face of the person or the person, is that correct?

-- Whatever the image may be that you have been filming, yes.

Now the black and white frames, were they all cut out of this EXHIBIT 38? -- 38.

And 37. -- 38 and 37, not not necessarily out of 37 but they were mostly cut out of 38.

What do you mean by mostly, were they all cut out or not? -- Well if we go and look at the material I can take you through it and if we can find some there we will know. But the point is that generally speaking I did not, did not (10) feel it necessary to, or it would confuse the Court if perhaps these spaces of visual material were left in. So as a general pattern I did remove them unless I actually used them inherently as spacing themselves.

Why did you not leave them all as spacing? -- If I had been asked to I would have Mr Jacobs. There was no set requirement at the time. I was purely building towards assembling submissions for the Court. There was no instruction about that kind of thing. I was using my own judgment at the time. (20)

Did you cut out all the other, all these parts out of EXHIBIT 37? -- No I did not, I did not work with EXHIBIT 37 after I got the print back from the laboratory, that was the negative.

Do you know whether, did you instruct the laboratory to cut out any of these portions? -- Of these portions themselves?

Yes. -- No not specifically, no.

And if you are not giving them instructions to do that they will not do it, is that not correct? -- Unless there is damaged material, that is right. (30)

Now/....

Now is it correct that at different places quite a number of frames were cut out, both out of EXHIBIT 37 and EXHIBIT 38? -- That is correct, yes.

And at these different places where frames were cut out of both exhibits is that in regard, in all cases in regard to waste material being cut out? -- No.

COURT: Is the answer yes? -- No. The answer is no.

MR JACOBS: And I see some of the material cut out, the one with the most frames is for 387 frames. -- We appear to have identified that as the start of a new roll as such. In (10) other words the edge numbers between rolls are not consecutive. You do not necessarily get given by the manufacturer, although it is desirable, the same batch or the consecutive rolls from the same batch and hence that is why you find edge numbers here listed from A 621 for example, 4586, and then you will find a reference which has an F prefix which is totally different. So on the rolls, the edge numbers on each separate original roll do not necessarily follow. Now if I am not mistaken when Brigadier Jansen and I came to this point we established that in fact this was the end of a roll. (20) So the 380, so those frames in fact were not missing. It was just a jump in possible edge coding.

Now will you have a look at EXHIBIT CA.19(a). There is part of that appearing on that document.

ASSESSOR (MR KRUGEL): But Mr Jacobs did you say, the statement that you put to the witness was that that the most frames missing at one particular spot was 387 or 78?

MR JACOBS: That is correct.

COURT: Does that tally with CA.19(a)?

ASSESSOR (MR KRUGEL): Or with CA.18(a). (30)

MR JACOBS:/....

MR JACOBS: It is on top of page 3 of EXHIBIT CA. ...

ASSESSOR (MR KRUGEL): We have got that, but the statement that it is the most frames missing at any one spot?

MR JACOBS: One spot.

COURT: What do you say about CA.19(a), the column, the first column under EXHIBIT 37 where you find 590, 690 and 1234?

ASSESSOR (MR KRUGEL): No we must look at the one on 38.

COURT: Are you dealing with 38?

MR JACOBS: On EXHIBIT CA.19(a) it is indicated that (10) missing out of EXHIBIT 37 is 590 but it is not altogether missing out of EXHIBIT 38. In EXHIBIT 38 there are 567 frames.

COURT: Yes. The point you are being taken up on Mr Jacobs is that you put to the witness that the most frames that were missing were 387 in one batch.

MR JACOBS: That is correct.

COURT: The witness agreed with you. It does not seem to us, unless you can clarify it for us, that that accords with EXHIBIT CA.19(a). -- I am sorry I did not actually, I misunderstood that. (20)

Well did you or did you not agree? -- No I did not agree, I am sorry.

Right, then you are on your own Mr Jacobs. Could you now clarify it for us.

MR JACOBS: What is the most frames missing from both exhibits? -- From both exhibits, at any one time?

At any one time. -- Should we not check with your C chart to make sure that that is true.

And you will find that on EXHIBIT CA.18(a) page 3, the third entry from the top. -- The point I am making is yes (30)

I/....

I acknowledge that they are missing and I have explained why. I am not, I am in your hands as to whether that is the most that were ever missing any any one stage.

And then, can I put it like this to you Mr Harris, you said, can you explain all the missing parts out of EXHIBITS 38 and 37 that were cut out of that? -- Yes.

You have explained one now. -- Well you have only asked me one. Could you just, you have asked me one yes.

Yes, can you explain why they were cut out, if they are not wastage? Or wasting as you called it? -- Could you (10) just rephrase the question please Mr Jacobs?

COURT: The question seems to be that according to EXHIBIT CA.19(a), if you look at that one for starters, comparing the left-hand column in the top part, frames missing, with the right-hand column frames present in 38, if you take for example the 387 which you find about two thirds down missing in 37 and if you look under frames present in 38 they are not there, they are not present. So the difference is 387 that is clean missing. Now if you look at the next one, 230, there are 230 missing in 37 and in 38 there are only of those 230 211 (20) present. So there is a difference of some 129 frames. That is one of the instances which you are requested to explain. The next one also has a slight difference and so on and so forth. That is what is being asked.

MR JACOBS: And on top as well sir, 70 missing in EXHIBIT 37 and 17 missing in EXHIBIT 38, 170 missing in EXHIBIT 37 and also missing in EXHIBIT 38. Then you get 90 missing in EXHIBIT 37, also 90 missing in EXHIBIT 38. Then 78 missing in EXHIBIT 37, also 70 missing in EXHIBIT 38. 51 missing in EXHIBIT 37 and 51 missing in EXHIBIT 38. Then you got 114 (30) missing in EXHIBIT 37 and you have got 204 in, so that one  
you/...

you can leave out. Then 44 and 70 missing both in 37 and 38. I want ...

COURT: Now the question was clear initially. Is it still clear? -- No it is not. Because it says here frames present in EXHIBIT 38. Not frames missing in EXHIBIT 38.

No, no, if it says frames present and there is a dash it means that those frames were not present, so they are missing. You see? -- Yes.

If you start off with 37 and you look at that column the first item there is 70. -- Right. (10)

70 are missing. Ask yourself the question are they present in 38, there is a dash so they are not present. -- Right.

So the missing, missing in both is 70 frames. -- I see.

And so on and so forth down this column. -- Right.

Now you are asked to explain that. -- Okay the first question is if they are missing from 37 and they are not missing from 38 why is this so?

MR JACOBS: No, they are missing. I am just referring to those that are missing out of EXHIBIT 37 and those missing (20) out of EXHIBIT 38.

COURT: So if they are missing from 37 and not present in 38. -- They are missing in both.

They are missing in both. -- Yes, they are missing both in 37 and they are missing in 38.

Yes. -- Right.

It is not the easiest way I have ever come across of putting a proposition but it does hold water once you look at it clearly. -- Yes. I understand now. Well the, yes the answer would be that those sections should be in "The (30)

Struggle/....

Struggle from Within". Because the material that is in "The Struggle from Within", that original negative were removed from that original negative and they are not in EXHIBIT 37 as I think I have said a couple of times before. So if they are not in EXHIBIT 37 then when the positive was printed from EXHIBIT 37 they would not have appeared on the positive and hence they could not have appeared in EXHIBIT 38. And that is why they are missing from EXHIBIT 37 and are missing from EXHIBIT 38, you go by edge numbers.

MR JACOBS:

So does it mean then that they are still in this other(10) picture of yours? -- They are still in the other picture, yes.

And you did not remarry them to have them all before the Court? -- I did remarry them but they will not have the edge numbers that you require here. If you would like me to explain that I will.

I put it to you Mr Harris to make it sure only the numbers where you find the no. 204 frames out and 114 still missign in EXHIBIT 37 where you find the numbers in the last column there of 211 and in the column on EXHIBIT 37 ...

COURT: Sorry, let me now get clarity please Mr Jacobs. (20)

Is there material in EXHIBIT 40, the video, which if you take it back to the original will not have an edge number on it? -- That is correct.

And is that material material which comes from "The Struggle from Within"? -- That is correct.

Now can that material be pinpointed on any of these exhibits? -- Yes.

It can? -- Yes.

In what way? -- I mean I have notes as to those particular ....

(30)

You/...



You have notes? -- Yes I have notes as to those particular points to which it could apply. And also generally speaking there would be the edge number missing but there would be the composite audio sound, optical soundtrack on those pieces of film, on those sections.

MR JACOBS: To make it short Mr Harris is it not the position that those that were taken out of the other film and remarried had the optical soundtrack? -- That is correct.

And they have not got the edge numbers? -- That is correct. (10)

And those represent, these entries nos. 4523 and 4530, 204 frames, and it is also indicated with the remark, the explanation and remark on EXHIBIT CA.18, where it is remarked there is no edge numbers and there is optical sound. -- You are asking me specifically now, a specific question.

I am putting it to you ... -- You are asking me a specific question about section A 4523 to A 4530.

And I put it to you that only those parts in EXHIBIT 38 which appear under the column "Frames present in EXHIBIT 38", that is 204, 211, 567, 650, only those were taken out of (20) the other film made by you and that you remarried again? -- Just those sections.

Just those sections. And that in regard to all the others you were wrong, that in regard to all the others where there were no frames present in EXHIBIT 38 there were also no frames present in EXHIBIT 37. --I do not understand your question Mr Jacobs. I understand part of it but I do not understand the last part.

COURT: What I understand is this that where in the column, in EXHIBIT CA.19(a), the column headed "Frames Present in (30)

EXHIBIT/....

EXHIBIT 38" we find a number, any number. -- Yes.

That comes from "The Struggle from Within". -- Well I would have to take the specific references ...

Well that, let me just see whether I can formulate it correctly. -- Sorry.

Where there is no figure set out there and just a dash there is a missing portion which is equivalent to the number set out in the left-hand column under EXHIBIT 37 and has so far not been accounted for by you? -- I see.

That is the question. Is that correct Mr Jacobs? (10)

MR JACOBS: Yes sir.

COURT: Are you sure?

MR JACOBS: I am sure of that.

COURT: Yes well now you are asked, you have been asked to account for those. -- Right. Now we would need then to take specific cases. So if I can find the reference.

Have you got notes that could help you. -- I will try to link something here. Well okay I have a note on, in the left-hand column there are 51 frames under, sorry EXHIBIT 19(a), the left-hand column 51 frames. The section A 4579 (20) to A 4583, and I have a note here that it is missing from both EXHIBIT 37 and EXHIBIT 38, as, which would concur with this. I have a note here that there is a laboratory splice in that section and that the shot that we are talking about is a close up shot of a woman in the audience with a beret on her head which then goes into a group cut away shot. So that would indicate to me that one thing is certain that the laboratory made a splice there. Now for what reason, it could only have been if that piece of material was taken out by the laboratory with the intention of using it for "The Struggle (30) from/....

from Within".

MR JACOBS: To use it for? -- "The Struggle from Within". Or else there was a negative break in that section which they then repaired. What I can establish is that the shots on either side of that splice, the one is a close-up of a woman with a beret on her head and the other is a group cut away shot, that they are cut away shots. That I can establish.

COURT: But this would mean then that it was cut away for the purpose of using it in "The Struggle from Within" but not used in that film? -- If, yes because if it was used in (10) that film ...

It would be ... -- We should have the section ...

... accounted for under the last column if it was used in that film. -- According to this yes.

Provided CA.19(a) is correct. Yes? Now on the basis, taking for the moment that CA.19(a) is correct if it was cut away by the laboratory for the purpose of the film can it be that it was cut by the laboratory but not used for the film, or would that be unlikely? -- It would be unlikely.

MR JACOBS: Is it not also that it is unlikely that the (20) laboratory would cut out cut away material in your film? Because they are not knowing if it is cut away or not, it is going to be cut away material or not? -- It is unlikely as I have said, yes. They would not choose that piece of film and say let us cut this piece of film out.

Now can you explain the others, any of the others? --  
Alright.

Is it possible or not? -- It just takes time, we can go through it point by point and I can look and see what I have got here as a reference. And I shall be happy to do that. (30)

So/....

So you cannot account for this 51 that finishes off?

-- Which 51?

That you have been referring to now? -- No I have explained what I, what we saw when I examined the material, and I have offered an explanation for it.

Yes go on, that is the one, 51. -- Let us go from the top. 4430 to 4434.

COURT: That is the 70? -- That is the 70, yes. That is approximately three seconds. It, and the content of the material is from the back of the hall, it is an over shoulder(10) shot, a wide shot taken from behind Father Moselane at the podium and the congregation in front.

MR JACOBS: So there must have been visual material on this portion? -- That is correct.

And can you explain why this is not in either of the exhibits? -- No, from this information I cannot.

The next one?

ASSESSOR (MR KRUGEL): Is that the 44?

MR JACOBS: 44. -- Yes I have a record that that is, it is 44 frames, it is about 2 seconds. It is a group shot, it (20) is a cut away shot of women listening to the speaker. I have a note here that there is not a very clean splice in EXHIBIT 37 and it could be ascribed to negative damage on either side of that cut that has necessitated them trimming that section, or that shot.

That is visual material in, is it correct? -- I beg your pardon?

That is also visual material for 44 frames? -- The visual material is a group shot, a cut away shot of women listening to the speaker, that is correct. (30)

But/....

But you said that it is unlikely that the laboratory will cut away any cut away ... -- Unless it was damaged.

... portions. -- Unless it was damaged.

Do you say then that this was a damaged portion? -- Yes I am saying that there could have been damage on either side, yes, and that is why they removed it.

On what grounds do you say it was damaged? -- I am trying to see, it is possible that this shot, in other words that the sprockets are damaged when it is running through the machine or anything like that. (10)

On what grounds can you say that, that is what I am asking you. -- No I am saying it can happen, that is what I am saying.

So that is only speculation on your part, you cannot account for it? -- I cannot say that that is what definitely happened, no I can offer you an explanation which is that.

And 114 frames, the next one? Oh no the next one, the 51 you have already, I am sorry the 51 you have already explained. Then the 78 frames? -- I do have a note on that 114 frames. (20)

Yes? -- That section 4523 to 4530, in fact because the last printed edge number is 4521, that we found, then we have 46 clear frames which would indicate a gate, camera gate check. Then there is a splice 15 frames before edge no. 4530 which is a shot of Father Moselane speaking, which would indicate to me that should be in fact in "The Struggle from Within".

That should be? -- That should be in "The Struggle from Within".

And the 78 frames at the nos. 4586 to 4591? -- That (30)  
again/.....

again, the visual material that that contained was a cut away of a group watching the speaker, and that as well should be with "The Struggle from Within".

COURT: You say Mr Jacobs that it is not in "The Struggle"?

MR JACOBS: I say it is not before the Court and I am asking him to explain, he said all the visual material taken in that meeting is before the Court. That is his evidence and he said he remarried all the parts taken out of this film, out of this negative and used by him in this other document and he remarried them afterwards again. So that is not altogether (10) then the correct position, is it not so Mr Harris? -- Sorry could you repeat that?

Is it not so that all the visual material is not before the Court? In EXHIBIT 38? -- That all the visual material is not before the Court in EXHIBIT 38. What I am saying Mr Jacobs is that all the visual material that I had at my disposal and to my best intention I placed before this Court, that is what I am saying.

COURT: Mr Jacobs says that his list CA.19(a) indicates that in respect of the 78 frames which are missing from 37, (20) they are also missing in 38 and if you say that they should be in "The Struggle from Within" then that means that you did not take everything out of "The Struggle from Within" and put it back. -- That would imply that, yes. I am just trying to find an explanation. I mean that would imply it.

So can he be correct if he puts it that way? -- If it not in "The Struggle from Within" then it is not before the Court, that is right.

No, no, what, I do not understand your answer. -- Yes.

You say that it should be in "The Struggle from Within" (30)

-- Yes./....

-- Yes.

Mr Jacobs says well then you did not take everything that is in "The Struggle from Within" back and put it back into 38. -- Yes.

Are you conceding that that is possible? -- I feel unhappy conceding it because I am sure I did. But I can find no explanation for this other than ...

There is no other explanation? -- Well unless the laboratory removed material, these shots, or pieces of shots as they are and it never came back with the original material. (10)

MR JACOBS: Is it also correct then in the other cases here, the 90 frames, the next is the 90 frames, then would be the 170 frames and 70 frames, is that also applicable what you have explained that it must be in "The Struggle from Within"? -- With a specific instance of that reference, the 90 frames on the left and the section F 3373 to 3379, what had happened there is there is a frame, there is a shot of 90 frames duration which is an over shoulder shot of Father Moselane.

Also visual material? -- Also visual material, yes.

COURT: Was it put into "The Struggle"? -- It was put into (20) "The Struggle", yes. But it was used as a mute cut away for 90 frames.

MR JACOBS: And the 90 frames was not again remarried to the exhibits before the Court? -- Yes it is. But it is used as a mute cut away on that particular sequence and hence the discrepancy of 90 frames.

I do not understand what is a mute cut away? -- A mute cut away is that you have two options, you either film synchronised visual image with sound, a mute cut away is that shot that we take which is not dependent on the synchronised (30) sound./....

sound. It is a mute cut away.

COURT: Well if it was put back it was not put back where it should have been put back? -- It was put back in the wrong place, that is right. It is there but it is in the wrong place. In other words it is used as a mute cut away before we cut into, that is how it is used, that is how it is edited on "The Struggle from Within" and in putting it back I did not separate it and find its original position in the whole assembly. I put it next to the piece of film that it was joined to in "The Struggle from Within" which is also ... (10)

You mean it was attached in "The Struggle from Within" to a bit which we call synchronised and it just remained attached to that? -- That is correct.

MR JACOBS: Do you mean that it was used as filler up material? -- No it was used as a mute cut away.

Now I put it to you Mr Harris that that is not the position because the film was examined frame by frame and it was never picked up. All the other places were picked up where you brought in material from this other film and it was picked up and it was also shown on the exhibits before (20) the Court. -- I will happily take you to an editing desk and we can run to the point in question and I will show you exactly, Brigadier Jansen will agree with that.

And the 170 frames, can you explain that? -- Are you happy with that Mr Jacobs?

I cannot argue, I put to you what I thought.

MR BIZOS: My Lord I could not help noticing Brigadier Jansen interrupting My Learned Friend whilst he was trying to put the last question. A challenge has been made by the witness and I think in fairness to the witness if the challenge is (30)

being/....



being persisted on Your Lordship should be informed, or if in fact Dr Jansen in fact corrected him I think My Learned Friend ought to know what to do.

MNR JACOBS: Kan ek net presies uitvind wat is aan die gang Edele? My Lord the 90 frames here is, it was put in with the 204 frames and that will then balance that total. It is part of the two and that is why there is a difference between 204 and 114. -- Thank you.

Now the 170?

COURT: Just a moment now. Do you accept that Mr Harris? (10)  
-- Yes I do, that is what Brigadier Jansen and I worked out.

MR JACOBS: And the 170 frames? -- This is a shot of the, it is taken from the front of the hall facing towards the podium and it is a shot of a group of men and they are busy signing this petition. Now there is a splice on the negative here and there is a shot of this nature in "The Struggle from Within" and this is what gives me a problem with this generalisation about if it is, you know about 19(a), it is because I can identify very definitely here that a shot of that nature is in "The Struggle from Within", that you say it is not, (20) according to 19(a) it is not in "The Struggle from Within".

Yes. -- So I have it wrong then.

Let us get it first, this 170 frames represent visual material taken during the meeting on 26 August 1984? -- Yes it does.

And you cannot account what happened to this part of the visual material if it is not included in EXHIBITS 38 and 37?

-- If it is not in 38 or 37?

And 37. -- I am saying that I am trying to rationalise this and work it out and I am saying, what I am saying is (30)

that/....

that there is a shot of that nature in "The Struggle from Within". What your chart says is that there is not that shot in "The Struggle from Within" and that is a conflicting point and I do not have ...

Mr, no I think you are at cross-purposes here. My chart is saying that frames nos. so and so, and that being 170 frames, is not accounted for in EXHIBIT 37 and 38. I do not know what is standing on it, you are the one telling me now ... -- I am telling you what is standing on it, what is on it is a shot of these men at the back of the hall signing this (10) petition. Again it is a non-synch mute cut away. But that is not necessarily relevant. What I am saying is what concerns me at this point is that I know that there is a shot like that in "The Struggle from Within" but according to your chart that shot is not in "The Struggle from Within". So my explanation would be that this shot that is not on 37 and 38, the explanation is that it is in "The Struggle from Within" but your chart says that it is not in "The Struggle from Within".

Mr Harris I just want to something clear. You said (20) from our chart saying it is not within "The Struggle from Within"? -- Yes.

How can we say? We have not examined that. -- Well I thought that what you inferred earlier was that the only, what you inferred earlier was that the only pieces from this chart that are from "The Struggle from Within" are these ones that have numbers in the extreme right-hand column. Is that not what you said earlier?

I said to your Mr, and the Court made it also clear to you although I could not do it as properly as the Court, (30)

that/....

that what was averred was that in respect of these, that we have been dealing with now, they do not appear in EXHIBIT 38 and they do not appear in EXHIBIT 37. -- I see.

They were either cut out or something was done but they are not in that exhibits? - - And with no reference to "The Struggle from Within" whatsoever, or inference about that?

COURT: Yes there was a reference to "The Struggle from Within". -- Yes there was a very definite reference.

MR JACOBS: And the reference from ...

COURT: Those numbers that are set out in the extreme right-(10) hand column are, as I understood it, frames that also were in "The Struggle from Within" and have been brought back.

MR JACOBS: That is the last, the 204 and the last few on that list.

COURT: That is what has been clear from the beginning. Now you were repudiating that.

MR JACOBS: No that is clear still but I mean in respect to these numbers that he is dealing with now.

COURT: Yes well we are now dealing with numbers in respect of which there is no equivalent in the extreme right-hand (20) column.

MR JACOBS: And we do not know ... -- So my point is, my point as far as I am concerned we do know where those, that material is. It is in "The Struggle from Within".

So if that is your answer then I am satisfied. You can tell the Court. -- Thank you.

And it was not then again remarried to either EXHIBIT 37 or 38? -- Yes it was but you had not picked it up.

And the last one, the 70 frames, F 4034 to 4038, our contention is Mr Harris that that is not appearing in (30)

EXHIBIT/....

EXHIBIT 37 or 38? -- Yes I agree it does not appear in EXHIBIT 37 or 38. It is a variation of the shot before. This is a close up of the man at the back signing the petition and from my experience I would say, and also because there is a splice on the negative there. So there is a splice on the negative there, a laboratory splice, it indicates that the laboratory took a shot out from there. So for me, and all things being equal I am happy because I know that that shot, there is one that exists like that in "The Struggle from Within" so as far as I am concerned the reason that this piece of material (10) is not in EXHIBIT 37 or EXHIBIT 38 is because it is in "The Struggle from Within".

COURT: Is that not the 387 or the 70? -- It is the 70.

70 opposite F4034? -- 4034 to 4038, yes.

MR JACOBS: Mr Harris I want to put it to you generally then that there are visual material which is not before the Court, either in EXHIBIT 37, either in EXHIBIT 38 or either in EXHIBIT 40? -- Yes I would have to concede that.

And can you tell the Court why it is not placed before this Court then? -- Well the only reason, technical reason (20) why this material, well let us deal with 37 because that is the reference because that was the negative material. So if sections of 37 are not there it is likely that the corresponding section of 38 would not be there because it would have been printed off the negative. Now the reasons for the negative, for pieces of the negative, small pieces of negative not being present therein would chiefly, or the most prominent reason would be that those were the pieces that were cut out by the laboratory for inclusion in "The Struggle from Within". What also is quite likely that around those pieces or in (30)

the/....

C.1003

the vicinity, the immediate vicinity of where they removed those pieces, there could have been negative damage because when they, if they lift a sequence out to put into a film they do not always splice it back, splice the two exposed ends as it were, back scientifically. They put a piece of tape across and that is how they do it. So it is possible for those edges when it is being run through a machine like an editing desk that the initial sprockets on either side of that original cut could become damaged. So small pieces could in fact be missing like that. The other possibility is the one (10) I mentioned before of a negative break, in other words while the laboratory is handling the material the negative can break in which case it depends on how long that negative has run on the machinery before they noticed that it is broken and so the damage on either side of the break can vary at random. But they will have to excise the damaged sprockets and then join the negative again. And that is the explanation.

Mr Harris when you were asked to prepare EXHIBIT 38 and 40 you were told that you had to prepare them for court (20) purposes, is it correct? -- Yes.

Were you also asked at that stage to prepare them and to come to the court and to give evidence? -- I was asked to do that, yes.

And were you also asked to, did you explain to the defence counsel or the attorneys who saw you that you had taken out some parts of the negative or the positive that you got afterwards and used that in the other film "The Struggle from Within"? -- That is correct, yes.

Were you then asked to remarry all the portions used (30)

by/....

by you in the other film with the material still available to you for the court purposes? -- Yes I was asked to prepare an assembly of all the visual material, of all the material that I had recorded on that day for presentation to the Court.

And when you gave evidence-in-chief you told the Court that all the visual material of what was happening at the meeting of 26 August 1984 was before the Court? -- That is correct.

I put it to you Mr Harris that was not the truth? -- That was not the? (10)

The truth. -- It was the truth as far as I was concerned Mr Jacobs, I had done everything in my utmost power, my intention was to present to this Court what I had photographed and recorded on the day, on 26 August 1984 as a presentation to the Court. If there are omissions I have tried to explain what the possibilities are but my intention was to make every piece of material available to this Court.

I put it to you Mr Harris that you, when you prepared the exhibits for the purpose of the Court you took out 1500 frames of visual material between readings nos. A 4924 and (20) A 4999. -- That is correct.

And that you deliberately cut out or took out of this exhibits that are before the Court? -- No the term deliberate I think is incorrect. It was an oversight on my part. Those are all mute cut aways and I have them here present with me which I would be happy to give to the Court for their inspection.

Is it not so Mr Harris that you did deliberately have to cut it out from where it was part of your positive film and that you had to splice up after this cut out the other parts(30) again?/....

again? -- As I have indicated this is mute cut away material. It is material that is not dependent on the synchronised sound and I would remove it, yes, and in looking for the next point of synchronised sound it was assembled on a different roll and it was an oversight on my part.

This appears, just for the record purposes this cut out portion appears on EXHIBIT C.A.18(a) at page 3 more or less in the middle, next to the reading in columns 4 and 5, the readings of the frames in columns 4 and 5 where the reading is A 4999 to A 5012, the 1500 shown there in column 3. -- (10) No the actual missing frames are 4925 to 4999, it is between those two, it is from 42, the reading before.

Yes. And the part, the cut out between, yes what you have said, the reading, the last reading on top of that of 4924 and 4999.

COURT: So can I just get an explanation for this. This was not part of "The Struggle from Within"? -- That is correct.

It is not part of "The Struggle". It was not part of EXHIBIT 38? -- No but it was on 37.

It was on 37. -- It was on 37 but it is missing from 38. (20) In other words it has not been cut out of the negative but it was not in the assembly.

MR JACOBS: Is it correct when you received the positive from the laboratory after you had it processed this was part of the positive received by you from the laboratory? -- That is correct.

And between frames 4924 and 4999 you had to physically cut the film, the positive film you received? -- Yes.

So I cannot understand that Mr Harris, why you had to cut it there, fill up that portion with 271 frames of filling in material, why was that necessary? -- Well it is not (30)

uncommon/....

uncommon practice as I think I may have said earlier, that when one is, my prime concern was to identify the synchronised sections because those were the anchor sections, those were the key points, that everything else hangs on.

Mr ... -- The section between the other footage, there are sections of mute cut away that are not dependent on the sound itself. There is, it is necessary to put spacing in between the consecutive synchronised sections. I could quite easily have, so it would be necessary for me to physically cut the positive print after the last synchronised section. (10) I would be, need to fill in spacing, to see how much I needed before the next one and that positive section could quite easily be assembled on a separate roll and be omitted in that way.

Mr Harris ...

COURT: That was omitted in the reassembly? -- In the assembly process.

But was it, could I just have clarity again, the position was that you got EXHIBIT 37 back, or did you have a print made of 37 as it was after pieces had been cut out for "The (20) Struggle"? -- That is correct.

Now having got that print of 37, the positive of 37, of which certain portions then had, for that had been omitted from the film, the big film, why did you then make any cuts in the, in 38, that is the positive of 37? To get cut outs? -- Because initially....

Because for that purpose, for your new purpose it was not necessary? -- Because initially when I, not before there was any thought of court. When I was synchronising the positive print to the 16 mm sound transfer I would pull out the (30) mute/....



mute cut aways. It could happen for a number of reasons, because they were in between the stuff that I needed to synchronise. As I said they are not really material to what is happening there, in terms of affecting the synchronism. If I was at the same time seeing shots that I thought I could use I would pull those out as well. So there was quite a lot of material that would have been on a separate roll which was what we call mute material, which is not, as mute cut away material which is not synchronised. So you would have your roll of synchronised, with all the dialogue, the synchronised(10) sequences with spacing in between, synchronised to your master soundtrack. You could also have a number of rolls of mute cut aways. In other words you start to break down the material because that is the way you are finally going to use it. You are going to edit for the film "The Struggle from Within", you are going to select from that major compilation synchronised sequences of the people speaking etcetera, and then you are going to look for ideal filler cut away material. So that already you start to put on another roll. So it is not uncommon that those would be broken down. So when I (20) reprinted for the purposes of the Court EXHIBIT 37 to get a new positive print I started from the beginning again because I was not sure, I wanted to make sure that I had not left out, using that already synchronised compilation that I had made for myself as a guide I then started to reassemble for the Court and to then put in, and to leave in the mute cut aways, within the cornerstones, synchronised cornerstones within which they fell. But as Mr Jacobs has pointed out on this occasion there are two other pieces which I, it became apparent to me when we looked at the material with Brigadier Jansen,(30) that/....

that this had occurred and so I went home and I looked through all the material, the off cuts and the, what remained, what remains from my original compilation and I found these three missing sections, as I say, which I have compiled here which the Court, I would be happy to submit to the Court.

MR JACOBS: Did you not look through all your material, available material, when you were asked to make this film and, this positive film EXHIBIT 38 and 40? -- Yes I did.

Why did you not find it then? -- I made a mistake.

No it is not you made a mistake, I ask you why did (10) you not find it? Why could you not find it then? -- Because I made a mistake. I omitted it, it was an error that occurred, I have described the process, one has got to assemble different rolls, one is dealing with two different rolls and as I say this is mute cut away material, it is not synchronised sound material which was, as I say, the key, the anchors for this whole process and I made a mistake.

Mr Harris I can understand you working in that way in the normal making of a film, that I can understand, when you are preparing it for the people. But you were specifically asked (20) to remarry even other parts and to bring to the court all the material. Why did you cut out this then, why did you not leave it in? -- Because as I have said I was using my original as a reference point in an attempt to make sure that I did not omit any of this and I did omit it, I made a mistake. And the point, further the fact is that it is easier to make a mistake with this material because it is non-synchronised material. In other words the implications of it are less significant than that which is actually married to the recorded sound and that could also influence it. (30)

The/....

The portion ending at no. 4924 that was already synchronised at that stage, is that correct? -- It was already synchronised at that stage?

Yes. -- It was after a synchronised portion, yes. But itself from there on it was a mute, a series of mute cut aways.

And you told the Court that you had a machine, the camera and the other machine you used had a crystal that automatically synchronised them running up to the stage where it was necessary to do some synchronising again? -- No the crystal and everything is at the meeting ... (10)

So I put it ... -- It is not at the synchronising stage.

No but I am ... -- There is a different machine.

I am speaking when you were preparing EXHIBITS, ...  
-- Yes it has got nothing to do with the crystal in the two machines.

... your assembly was set up in order to make exhibits, to make EXHIBIT 40, at that stage it was not necessary to cut out this 1500 frames in order to synchronise because your machine was running like that that it was synchronising it automatically, it was in synchronisation automatically? -- (20)

No you misunderstand me Mr Jacobs. It is synchronised up to that point and from then on we are into mute cut away material which can go anywhere. And that is why, it is not dependent, the next section is not, it can be replaced by spacing, it is not what is happening on the visual is not dependent on what is happening on the soundtrack.

Is your evidence then that you can cut up the positive material as you like to do it and then you reassemble it again to your own satisfaction? -- No that is not my evidence.

So then I cannot understand why it was necessary to (30)

cut/....

cut out 1500 frames at this specific spot and only to put in at the same place only 270 frames, that would have put out your synchronisation quite a lot? -- Well let us go through the procedure.

It is not the procedure, what you were doing in this specific case. -- Well yes, well I am trying to explain so that you understand Mr Jacobs. We are assembling the material with the picture and the soundtrack. We get to the end of a synchronised point. The soundtrack will continued. On the visual, on the camera we have not shots, mute cut away (10) shots that are not dependent on the soundtrack. Does that make sense to you?

No. -- What do you not understand?

Because as I understand that while you got at that stage the voice, the person speaking will go on speaking, the film will be one solid, it will be one solid part of film in that spot, well according to this it was a solid film running there ... -- Yes but the camera ...

... at number, where you cut it at no. 24 and from thereon. -- It was a different shot. The edge numbers may be consecutive but that means I did not cut out, when I cut out, or at the beginning of, at 4925 there is a section of waste which is attached onto the mute material. In other words, or a couple of frames where the camera has run down. Because we have come to the end of that sequence which was in synchronism, which was on a speaker, which was filming a speaker and it was synch material. We came to the end of that point. We stopped the camera but the soundtrack did not stop, the soundtrack carried on. We then filmed mute cut aways for that 1500 frames and hence when I was synching it up on the editing desk/.... (30)

desk I get to the end of the point where it is synchronised material and the camera is stopped. But from then on I must either put in spacing or something to fill up those gaps so that I get to the next point where we are filming something in synchronism I can bring it back into synch. So it is not all that strange that I would splice, cut at the end of that point and start introducing spacing to see where my next, and then see where my next synch point was and it was in that procedure that that sequence of mute cut aways was removed and not put back. (10)

COURT: We will take the adjournment now Mr Jacobs.

MR BIZOS: My Lord before Your Lordship takes the adjournment I wonder whether Your Lordship would consider that the three pieces of film that have been tendered by the witness, whether Your Lordship's Registrar could take charge of it.

COURT: Yes, in the meantime he can hand it to my Registrar. Whether it becomes an exhibit or not depends on whether it is handed in by either one or the other counsel as an exhibit.

MR BIZOS: As Your Lordship pleases but I submit that in view of the latest finding it is as well that it should (20) come into Your Lordship's Registrar's hands as soon as possible.

COURT: Yes, well it can be handed to my Registrar immediately.

MR BIZOS: As Your Lordship pleases.

COURT ADJOURNS UNTIL 6 NOVEMBER 1987.