

Sishi and accused No. 6 were friends and colleagues, serving together on the executive bodies of the Community Guard and the local Inkatha organisation. The evidence of accused No. 6 on this particular aspect of the case withstood the test of cross-examination, but the weight to be given to his denials depends inter alia upon his general performance as a witness. Looking at his evidence as a whole, and comparing his performance with that of Sishi, his demerits and Sishi's merits as a witness are beyond question. Why would Sishi perjure himself to incriminate an innocent friend and colleague? The reason suggested by accused No. 6 is that Sishi was persuaded by the fear of possible detention to agree with a false story suggested to him by the police. Having carefully observed Sishi in the witness box we regard this suggestion (which, incidentally, was never put to him) as being entirely fanciful. We remain convinced that Sishi spoke the truth, and we reject the evidence of accused No. 6 to the contrary.

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Having dealt with the allegations against him in the unsatisfactory manner already indicated, accused No. 6 proceeded to describe his detention and interrogation in the minutest detail. He said that he was first taken to the Loop Street police station where he was interrogated for some four hours. He complained that he was forced to stand throughout this period, with the result that his legs were becoming numb and his ankles were swelling. Then he was taken to the Wartburg police station where he was kept in solitary confinement /.....

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confinement and interrogated daily (except for Sundays) from the 6th to the 24th December 1975. Late one afternoon during this period he was taken back to Loop Street for an interrogation which lasted all night and part of the next day, leaving him confused and exhausted. On this occasion his interrogators operated in relays and forced him to keep awake. His daily interrogations at Wartburg were conducted by Sgt. Driemeyer. He was never assaulted or threatened with violence, but was told from time to time that unless he co-operated he would remain in custody until he rotted. On the other hand if he agreed with what Driemeyer was telling him he would quickly be reunited with his family. Driemeyer also tantalized him by withholding food parcels, and upset him by saying that he was acting like an old woman. On one occasion Driemeyer told him that he had seen his wife at the police station and that she was weeping - thereby causing him great anxiety through implying that his wife might be detained. Driemeyer perplexed him by assuming a pleasant manner at times and being antagonistic at other times. Although he attempted to paint a somewhat different picture in his evidence-in-chief he was eventually constrained to admit, in effect, that the conditions under which he was detained at Wartburg were perfectly reasonable and proper. He remained there until the 8th January 1976 when he was transferred to the Pietermaritzburg prison. He was kept in solitary confinement in the gaol, under conditions which were much worse than those at Wartburg. His cell was infested by cockroaches and the light was left on /.....

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was left on at night until he complained to Col. Beukes about it at the end of January. He also complained to a magistrate who visited him that he was being forced to write a statement! Towards the end of March he was visited by one Potgieter of the security police, and Potgieter tried unsuccessfully to persuade him to give evidence for the State. He claimed under cross-examination that Driemeyer also tried to induce him to become a State witness.

The gravamen of the evidence of accused No. 6 regarding his detention and interrogation was that his interrogators persistently fed false information to him and insisted that he incorporate it in his statement. For example, they wanted him to admit that accused No. 3, Khuzwayo, Zulu, Mkhize, Ngcongco and Mdingi attended the meeting on 10th August 1975, and that he had incited Sishi to recruit people for military training. However, he contradicted himself about what the police told him with regard to Sishi. He appeared to be lying on that point, and to be consciously exaggerating when describing his treatment at Wartburg. Even if the police did tell him what they wanted him to say there is nothing to warrant a finding that he agreed to incorporate any falsehoods in his statement or would have given false evidence had he been called as a State witness. In common with the other accused who gave evidence about their detention and interrogation, he was careful to avoid disclosing the contents of the statement he made to the police. Moreover, when cross-examined on the point he insisted that if he had been called as a State

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witness he would not have given false evidence.

Mr. Muller claimed that accused No. 6 suffered prejudice because the State's version of his interrogation was not adequately put to him in cross-examination. In our opinion the claim is completely unjustified. Junior counsel for the State, Mr. Engelbrecht introduced his cross-examination on this aspect as follows :-

"Voordat ek jou vrae vra oor jou aanhouding wil ek dit aan jou duidelik stel dat ek nie in detail alle bewerings wat jy maak sal be-twis nie alhoewel die gravamen daarvan betwis sal word."

As will appear from a perusal of the next twelve pages of the record, counsel proceeded to question accused No. 6 in some detail - and with considerable effect - on his allegations relative to his detention and interrogation. It is true that counsel did not traverse every detail but we think that the gist of the story about improper methods of interrogation and treatment in detention was fairly challenged.

The magistrate who saw accused No. 6 at the Pietermaritzburg gaol was Mr. van der Merwe. He denied that accused No. 6 made any complaint to the effect that he was being forced to write a statement. We have no doubt that if accused No. 6 had made such a complaint Mr. van der Merwe would have recorded it. He did not do so, and we are satisfied that there was no such complaint. Col. Dreyer and Lieut. Coetzee gave some evidence about the interrogation of accused

No. 6 but we /.....

No. 6 but we do not think it necessary to set it out. The main rebutting witness was Sgt. Driemeyer. His evidence traversed virtually all of the material allegations made by accused No. 6 and proved to our complete satisfaction that there was nothing unreasonable or improper about the manner in which the interrogation was conducted at Loop Street police station on the 5th December and thereafter at Wartburg. He denied that accused No. 6 was forced to stand during the initial interrogation at Loop Street, and said that in fact the accused was seated when he took part in the interrogation. (10) He also denied the allegations to the effect that he told accused No. 6 what to incorporate in his statement and tried to induce him to co-operate by making veiled threats about his wife or holding out the prospect of an early reunion with his family. It is common cause that accused No. 6 was interrogated throughout the night of the 15th December and that Driemeyer was one of the interrogators. Driemeyer testified that the accused was subjected to this prolonged (and impermissible) form of interrogation because of the need to obtain information about the crisis which was expected to occur the next day. (20)

We do not consider it necessary to recount Driemeyer's evidence in any further detail. It satisfies us that the statement which accused No. 6 made was not the product of the so-called DDD syndrome or any improper treatment or suggestive questioning. Driemeyer was such a good witness, and accused No. 6 was such a blatant liar, that we have had no difficulty in determining where the truth lies in regard to this /.....

to this issue. We are convinced that the allegations to the effect that the police had accused No. 6 with false information and put pressure on him to incorporate it in his statement were fabricated for the purpose of supporting the defence case on the existence of an investigational system.

Accused Nos. 3 and 4 were the next to enter the witness box. Accused No. 3 lives at Sobantu Village. In 1959 he was assistant secretary of the Sobantu branch of the A.N.C. He was also a member of a trade union affiliated to SACTU and did organisational work for SACTU. He received (10) a two year banning order which expired in May 1975.

Accused No. 3 denied that he attended the meeting at the house of accused No. 1 on 10th August 1975. He said that accused No. 1 told him about the meeting when they met by chance at the Market Square towards the end of September. Accused No. 1 said that he had been looking for him as he had wanted him to attend the meeting. It was then that accused No. 1 told him about the correspondence with Mabhida concerning the revival of SACTU and asked him to assist in obtaining recruits for training abroad as trade union organ= (20) isers. He confirmed that he suggested Mandla Sikosana, and described how he arranged the meeting that took place later between Mandla and accused No. 1. Thereafter, pursuant to instructions received from accused No. 1, he arranged for the first party of recruits to spend the night of the 29th October at the home of his brother-in-law at Macibisa preparatory to leaving for Swaziland the next morning, and he duly informed Mandla of these arrangements. On the 29th October Mandla came to /.....

came to the house of accused No. 3 at Sobantu accompanied by Edgar Zondi, Mtu Khumalo and Madi Ntombela, and when accused No. 3 saw them there Philemon Mokoena was also with them. On learning that there were only four recruits travelling to Swaziland the next day he suggested that Mokoena go with them, and told Mandla to inform accused No. 1 that he had requested that Mokoena be given a lift. He explained that Mokoena had frequently discussed his problems with him, expressing the wish to go to Swaziland to work for his friend Panana Ngubane, and that he had promised to do what he could to get Mokoena a lift to Swaziland for that purpose. There was no question of Mokoena being recruited and sent to Swaziland for any other purpose.

Accused No. 3 took the party of five young men (including Mokoena) to Macibisa. He discovered that his brother-in-law was not at home and it then occurred to him to ask accused No. 4 for accommodation for the night. Accused No. 4 was unable to accommodate them at his place but spoke to one Oscar Mathonsi who in turn arranged for the party to spend the night at Thulani Ndawonda's place. Ndawonda's place was a room which he hired from the Mathonsi family at premises not far from the Tembilishle Garage. Accused No. 4 accompanied them to Ndawonda's room and spent some time drinking with them before returning to his home. Twice during this period accused Nos. 3 and 4 went out together to obtain fresh supplies of liquor from a nearby shebeen, and after accused No. 4 left the party accused No. 3 went to the shebeen alone for the same purpose /.....

purpose. Accused No. 3 said that at about 4.30 a.m. he left the young men at Ndawonda's room and went home to Sobantu. He denied Mokoena's evidence to the effect that he accompanied them to the garage at daybreak, and also denied that Stanley Msibi was present at any stage that evening. We are not prepared to accept Mokoena's evidence where it conflicts with that of accused No. 3, but the denial that Stanley Msibi was present that night stands on an entirely different footing. In the first place it cannot be reconciled with what was put to Stanley and what was left unchallenged in cross-examination on this aspect of the case. Accused No. 3 airily dismissed Stanley's account as a dream, but it cannot be accepted that he dreamt of details such as the fact that accused Nos. 3 and 4 went out on two occasions to look for beer, and that accused No. 3 addressed one of the people in the room as Mandla. We are convinced beyond any shadow of doubt that Stanley was present with accused Nos. 3 and 4 and the others at Ndawonda's place (which he described as Oscar Mathonsi's place) on the night before the first abortive trip to Swaziland, and that his account of what happened that night is substantially true. The false denial that he was present that night is a material one, for his account of why he was present and why he slipped away when the opportunity arose cannot be reconciled with the defence case as finally presented to the Court. Judging by the cross-examination it would seem that when Stanley gave this evidence its significance had not yet been fully appreciated by the accused.

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According to accused No. 3 he learned of the failure of the first trip when Mandla and the others turned up at his home after dark on the 30th October. On or about the 10th November accused No. 1 visited him at his place of employment, informed him that the next trip was scheduled for the 13th November, and requested him to arrange for the party to be accommodated at Macibisa on the night of the 12th. He saw Mandla later the same day and instructed him to go and ask accused No. 4 to provide the necessary accommodation. As a result of the arrangements which were made the party of recruits comprising Mandla Sikosana, Edgar Zondi, Mtu Khumalo, Vicky Khumalo, Madi Ntombela and Caiphas Nene assembled at accused No. 3's home on the evening of the 12th November, and he took them to accused No. 4's place at Macibisa. From there they went to Ndawonda's room where they drank and conversed until other tenants complained about the noise they were making. Accused Nos. 3 and 4 then arranged for them to move to Frans Kunene's place, and they remained there until about 5 a.m. when accused No. 3 took a bus to town while the recruits went to the garage to board the taxi.

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The evidence of accused No. 3 regarding the departure of George Mkhize and Mlungise Mthlane was to the following effect. On the 14th November accused No. 1 came to his place of employment to make arrangements for George to leave for Swaziland on the 21st November. Accused No. 1 instructed him to arrange for transport and handed him R150 to cover the expenses of the trip. He told accused No. 1 that before leaving /.....

before leaving George wanted to say goodbye to his girl friend who lived at Mount Partridge, and in order to facilitate this accused No. 1 undertook to arrange for George to spend the night before his departure at Khanyile's place. As accused No. 3 did not know where Khanyile's place was accused No. 1 said that he would ask accused No. 4 to show him the way to it. Thereafter, when accused No. 3 told George of the arrangements for his departure on the 21st he learnt that that date was unsuitable, because George refused to leave before receiving his salary, holiday pay and bonus which were to be paid on the afternoon of the 21st. Accused No. 3 therefore abandoned the arrangement <sup>which</sup> he had made with accused No. 1 and did not go to accused No. 4's place on 20th November. He did not communicate with accused No. 1 about the matter until the 22nd November. On that day they made fresh arrangements for George to be accommodated at Mount Partridge on the night of the 26th November and leave for Swaziland the next morning. On the 26th November Sipho Kubheka visited accused No. 3 at his place of employment and told him that he had spoken to accused No. 1 about transport to Swaziland for his friend Mlungise Mthlane. It was agreed that Mlungise would be conveyed for R50, which amount Kubheka paid to accused No. 3 at his home that evening. After the payment had been made Kubheka, George and accused No. 3 left the latter's house at Sobantu and went to Imbali where they picked up Mlungise. From there they went to accused No. 4's place at Macibisa. Accused No. 3 explained to accused No. 4 that Mlungise was not a recruit but was going with George /.....

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with George to Swaziland, and asked accused No. 4 to take them to Khanyile's place at Mount Partridge. Accused No. 4 obliged by procuring transport and taking George and Mlungise to Mount Partridge while accused No. 3 and Kubheka waited at Togo's place. On his return accused No. 4 reported that the taxi driver who had taken him and the other two to Mount Partridge was not prepared to undertake the trip to Swaziland the next day, and it therefore became necessary to find another taxi for that purpose.

Accused No. 4 asked accused No. 3 to look for (10 Oscar Mathonsi or Stanley Msibi at a wedding which was in progress in the neighbourhood, because they knew the local taxi drivers and he wanted one of them to accompany him when he went to hire a taxi for the trip to Swaziland. Accused No. 3 went off with Kubheka, and in the course of their search they passed by Frans Kunene's place. Accused No. 3 asked Frans if he had seen Mathonsi (whom he called Sipho) but Frans could not help them. Thereafter they met Joseph Dhlamini (Zihluzi) who took them to Stanley Msibi's house. Stanley accompanied them back to Togo's place. There accused No. 4 (20 asked Stanley to help him look for a taxi driver but Stanley declined to do so, saying that he was tired and wanted to go and sleep. Then accused No. 3 went to call Douglas Nide (also known as Mginga or Phungula) but did not find him at home. Shortly thereafter accused Nos. 3 and 4 happened to meet Nide in the street, and he agreed to help accused No. 4 to find a taxi driver. Stanley had in the meantime gone home. Accused

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No. 3 went back into Togo's house while accused No. 4 went off with Nide to find a taxi. Accused No. 4 and Nide returned to Togo's place some time later in Mdubane's taxi. Accused No. 3 and Kubheka boarded the taxi and they all proceeded to Mount Partridge. It will be noted that this evidence derives some support from Kubheka's somewhat garbled version of the same events. However, there are striking differences, the main one being that according to Kubheka the entire party (including George and Mlungise) went to Mount Partridge together.

They left accused No. 4 and Nide at Khanyile's (10 place, and Mdubane drove accused No. 3 and Kubheka to Sobantu. According to accused No. 3 he paid half of the R5 fare which Mdubane charged for the trip to Sobantu. As to the amount of R150 which he had received from accused No. 1, he had given George Mkhize R50 before they left his home on the afternoon of the 26th November, and handed the balance of R100 to accused No. 4 in order that he might pay the taxi driver. He said that he was present when accused No. 4 agreed to pay Mdubane R80 for the trip and handed over the money. Mdubane received the entire R100 from accused No. 4 but accused No. 3 instructed him to pass (20 R20 of it on to George Mkhize. Accused No. 3 said that on the following day he handed to accused No. 1 the amount of R50 that Kubheka had paid for Mlungise's fare.

Accused <sup>No. 3</sup> testified that it was not he but Mandla Sikosana who actually recruited George Mkhize for training abroad, and there is no evidence to the contrary. He and accused No. 4 undoubtedly assisted in sending George and Mlungise

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Mthlangane out of the country, and they were also associated with the departure of Mandla and the five other boys who went with him. The crucial question is whether these young men were recruited and sent abroad for military training! If that was the object behind the operation there can be no doubt that accused No. 3 was privy to it, for there is no suggestion that accused No. 1 withheld information or deceived him about the purpose for which the young men were to be sent abroad.

For reasons already indicated, we do not consider that the evidence for the State justifies a finding that accused No. 3 recruited or attempted to recruit Philemon Mokoena or Michael Bhi Gumede for military training. As Gumede's evidence is unreliable it is unnecessary to expatiate on accused No. 3's version of what transpired between them. He said that he spoke to Gumede and others about the revival of SACTU and the necessity for sending people abroad for training as organisers, and expressed the view that Gumede would be a suitable candidate for such training, but did not actually invite Gumede to go abroad for training. He flatly denied speaking to Gumede about reference books or destroying any such books in his presence.

That, in broad outline, was the evidence of accused No. 3 relative to the charges against him. We shall deal later with his evidence about his detention and interrogation. He was very touchy under cross-examination, often bristling at the prosecutor and treating his questions with unwarranted suspicion. He displayed a reluctance to answer

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questions directly on several topics, and was downright evasive at times. For example, he was deliberately evasive when the prosecutor tried to ascertain whether he saw Mandla before or after he saw accused No. 1 on the 10th November. Another example of evasion is the manner in which he dealt with questions designed to ascertain whether he knew the carrying capacity of the motor vehicle which Mdubane was going to use for the second trip to Swaziland. He evaded the issue by claiming that Mdubane had many vehicles and that he had not seen all of them, but when he realised that these answers had led him into difficulty he tried to retrieve the situation by contradicting one of his earlier statements that for all that he knew Mdubane might have a Kombi amongst his vehicles. A perusal of the passages to which we have referred will suffice to show that accused No. 3 was not a frank or satisfactory witness. It must be acknowledged, however, that his performance in the witness box was not such as to demonstrate that he was being untruthful on any material issue.

Accused No. 4 denied that he had ever been a member of the A.N.C. He was never a member of SACTU or any trade union either, although he said that he liked trade unions. During 1973 he was engaged as an organiser for the Metal and Allied Workers' Union but could not take up that post because he was placed under a five-year banning and house arrest order. Except for about a month when he worked at a supermarket, he was unemployed from the time he received the banning order to the time of his arrest on 30th November 1975. He said that

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he had known accused No. 3 for about 20 years, and accused No. 1 for more than ten. He did not know accused No. 5 at all and could not have told him that he wanted to meet Sipho Kubheka. On occasions when he went to Edendale Hospital for treatment he saw Kubheka who was employed there as a cashier, but he did not introduce himself to Kubheka or tell Kubheka that accused No. 1 had instructed him to do so.

Accused No. 4 admitted meeting Frans Kunene in a shebeen during September 1975 and inviting him to come and visit him together with Stanley Msibi. He explained that Frans and Stanley were his friends, that they had visited him in the past and that he wanted to see them again because Togo was away and he was lonely. He confirmed that Frans and Stanley visited him during September, and that the topics which they discussed on that occasion included draughts and card games, football, girls, the news that they heard on the radio and a broadcast by the Local Health Commission to the effect that unemployed persons found loitering in the streets would be conscripted for military service. He denied that he ever tried to recruit Frans and Stanley for military training abroad or told them to listen to the radio on the SW 321 wavelength or wrote that number down for them on any piece of paper. He could not remember what was discussed on the occasion of their next visit but said that football was probably the main topic. As to the conversation he is alleged to have had with Frans on the 1st October, he denied that the Amazulu team was playing in Johannesburg that Saturday or that there was any question of his paying for /.....

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his paying for Frans to travel to Johannesburg to see the match. He accordingly denied that he made any suggestion to the effect that if he went to see the match Frans should remain in Johannesburg and then go abroad. Accused No. 4's evidence that the match involving the Amazulu team was not played in Johannesburg on Saturday the 4th October but in Durban on Sunday the 5th is borne out by the evidence of Raphael Miya and is undoubtedly correct. According to Miya's evidence the Amazulus did play a match on the Witwatersrand on the 28th September 1975. In any event, as Frans recanted his evidence there can be no question of a finding that accused No. 4 did try to persuade him to go to Johannesburg and remain there for any purpose whatever.

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We depart from the chronological sequence at this stage to deal briefly with accused No. 4's evidence of what transpired between him and Mandla Phungula and Tholani Ntombela respectively. As we cannot rely on the evidence of either of these witnesses it is unnecessary to set out the accused's version in extenso. He said that it was Phungula who tried to persuade him to go and fight in Angola: he did not attempt to recruit Phungula for military training in Mocambique. He admitted speaking to Tholani about work opportunities on a couple of occasions in November 1975 outside his home, and again on a later occasion when he invited Tholani to have a drink with him at Mavundla's shebeen. He denied inciting Tholani to undergo military training or telling him that he had sent others away for that purpose, and said that /.....



said that what they did discuss at Mavundla's place was the rumour which had its origin in the Local Health Commission broadcast about the conscription of loiterers. The fact that there was such a broadcast is borne out by the evidence of Mr. L.J. Simelane, a member of the Edendale Bantu Advisory Board. He stated that during June or July 1975 the Board was informed that soldiers would be undergoing a training exercise in the Macibisa area. Simelane was charged with the task of telling the people in the area about this exercise and reassuring them that the soldiers would do them no harm. He used a mobile broadcasting van for this purpose, and took it upon himself to announce that if the soldiers found people loitering in the streets they would take them away and make soldiers of them.

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Accused No. 4's account of what occurred on the night of the 29th October was similar to that given by accused No. 3. He said that when they arrived at his place that evening accused No. 3 told him that the five young men who were with him were due to leave for Swaziland the next morning to undergo training in trade union matters. Like accused No. 3, he denied that he saw Stanley Msibi that night, and for the reasons already stated we are satisfied that this was a false denial. Stanley's evidence as to how he came to join the party and while he slipped away while accused Nos. 2 and 3 were out looking for beer had the ring of truth. So did his account of the conversation with accused No. 4 the next day: when the accused asked him why he had run away and he made the excuse that /.....

excuse that he had toothache. We cannot accept that Stanley or the police might have fabricated details such as that.

Accused No. 4 confirmed that on the 10th November Mandla Sikosana gave him accused No. 3's message that accommodation was required for the night of the 12th November. He arranged for the party to stay in Ndawonda's room as on the first occasion, and his account of what occurred that evening was substantially the same as the one given by accused No. 3. After the party had moved to Frans Kunene's place he went home to bed. He admitted that during the third week of November he came upon Joseph Dhlamini and others playing football in the street. He said that he called Joseph aside and, with reference to the Local Health Commission broadcast, warned him of the danger of being conscripted for military service.

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According to the evidence of accused No. 4 it was not until the afternoon of the 20th November that accused No. 1 spoke to him about the final trip to Swaziland. It was on that occasion, apparently, that accused No. 1 informed him that accused No. 3 would be coming with George Mkhize and asked him to take them to Khanyile at Mount Partridge. Accused No. 1 also told him that a person called Sipho Kubheka who worked as a cashier at the hospital had approached him with a request for transport to Swaziland for a friend of his, that Kubheka would bring the friend to his home, and that he and accused No. 3 would have to decide whether the friend could go and how much he would have to pay for the conveyance. In his evidence-in-chief accused No. 4 said that accused No. 1 told him that Kubheka's friend /.....

Kubheka's friend was Mlungise Mthalane, but he contradicted this under cross-examination, stating that accused No. 1 did not inform him of the friend's name. Accused No. 1 allegedly told accused No. 4 that Kubheka had introduced the matter by saying that he had heard that certain boys would be leaving for Swaziland, and that he (accused No. 1) had confirmed that this was so. Accused No. 1 told accused No. 4 that he was surprised that Kubheka had found out about boys going to Swaziland, that he was suspicious about the matter and distrusted Kubheka. This made accused No. 4 uneasy, and somewhat resentful of the fact that he was being required to deal with a man whom accused No. 1 himself distrusted. It was therefore under protest that he agreed with accused No. 1 that he and accused No. 3 would see to it that Kubheka's friend was provided with transport and paid for it.

The story that accused No. 1 expressed suspicion and distrust about Kubheka's approach for transport for Mlungise is quite inconsistent with the evidence of accused No. 1 himself. It will be recalled that accused No. 1 rejected the suggestion that he might object to Mlungise using his transport, and said that there was no objection because Kubheka knew the man. The story that accused No. 4 told in this connection provided an explanation for the admitted fact that when Kubheka did bring Mlungise to his place on the 20th November he said that Mlungise could not take his suitcase with him to Swaziland. According to accused No. 4 he told Kubheka that there would not be room for the suitcase in the car. He knew very well that /.....

well that there would be room for it but said this to discourage Mlungise from undertaking the journey, because he distrusted them on account of what accused No. 1 had said. It did not have the intended effect. At Kubheka's suggestion some of Mlungise's clothing was transferred from the suitcase to a plastic bag which he had also brought, and Kubheka left with the suitcase. As Kubheka was in a hurry to leave, and as the amount of Mlungise's fare could not be fixed at that stage because accused No. 3 had not yet arrived, they arranged that Kubheka would leave Mlungise with accused No. 4 and then see accused No. 3 the following day about payment of the fare. After Kubheka left Mlungise remained with accused No. 4 for some time and then also left when it became apparent that accused No. 3 would not be coming that night.

The defence evidence relative to the proposed trip on the 21st November contains several serious inconsistencies and improbabilities, some of which have already been mentioned. If accused No. 1 was paying for the transport and had no objection to Mlungise using it we cannot understand why it would have been left to accused Nos. 3 and 4 to decide whether he could go and what he would have to pay. If George Mkhize was the sole recruit leaving that day there would obviously be room for Mlungise, and if accused No. 1 required Mlungise to pay for his conveyance he would obviously have fixed the amount himself. However, if arrangements were in progress for another batch of recruits to leave that day it is understandable that those charged with the arrangements would have to /.....

would have to decide whether there was room in the car for Mlungise, and it would be natural for accused No. 4 to say that there was no room for his suitcase. As already pointed out, accused No. 1's evidence of what he said to Kubheka on 20th November is totally inconsistent with the story that only George Mkhize was due to leave for Swaziland the next morning. When I drew the attention of accused No. 3 to this inconsistency he proffered the faintly ridiculous explanation that when accused No. 1 told Kubheka that boys were due to gather at accused No. 4's home preparatory to leaving for Swaziland in the morning he may have been referring to George Mkhize and accused No. 3 himself.

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Reverting to accused No. 4's account of the relevant events, he said that he saw accused No. 1 on the 21st November and told him that the trip had not taken place. They met again the following Monday and he was informed of the arrangement for the 26th November. He confirmed that accused No. 1 picked him up at the Mabulala bus stop and gave him a lift to town on the 26th November, but denied that accused No. 1 drove him and Kubheka to Mount Partridge that day. Accused No. 3 arrived at his place that evening with Kubheka, George and Mlungise. He confirmed that he took George and Mlungise to Khanyile's place, after which he returned and informed accused No. 3 of the necessity to find another taxi for the trip to Swaziland. His account of the steps which they took to that end was similar to that of accused No. 3. He eventually went off with Douglas Nide to see a taxi owner by the name of Pangase /.....

of Pangase. Pangase could not assist them but put them on to Mdubane who agreed to undertake the trip. Accused No. 4 and Nide got into Mdubane's taxi and he drove them to Mount Partridge, picking up accused No. 3 and Kubheka on the way.

Accused No. 4 denied Kubheka's evidence that when they arrived at Mount Partridge they chose George Mkhize as the leader of the group of three who were leaving in the morning. Before accused No. 3 and Kubheka left he negotiated a fee of R80 with Mdubane, using the argument that this trip was only to Pongola which was not as far as the previous trips that he had undertaken. Mdubane said that he did not want the money until the following morning when he came to collect the passengers. Accused No. 3 had handed R100 to accused No. 4 and when the fare of R80 was fixed he instructed that the balance of R20 he handed to George. Thereafter accused No. 3 and Kubheka left with Mdubane to return to Sobantu, leaving accused No. 4 and Nide to spend the night with George and Mlungise at Mount Partridge. According to accused No. 4 it was the following morning, and not in the presence of accused No. 3 that he handed the R100 to Mdubane and the latter passed R20 of it on to George Mkhise. After Mdubane had received the money he drove off with George, Mlungise and Nide in his car. Accused No 4 said that Nide was not going to Swaziland but was simply being given a lift to Maqinase so that he could go home. Accused No. 4 himself did not ask for a lift because the taxi would pass the home of a certain security policeman. He went home later on foot.

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Accused /.....

Accused No. 4 was a better witness than accused No. 3. From time to time during the course of a long and meticulous cross-examination he adopted an aggrieved attitude, and on one or two occasions his replies to the prosecutor were disdainful if not plainly insolent. However he did not appear to lack sincerity and was not shaken on any material point. As in the case of accused No. 3, the crucial question concerns the purpose for which the young men were recruited and sent to Swaziland, for there can be no doubt that accused No. 4 was aware of the object behind the operation. (10) As already indicated, that question can only be decided on a conspectus of all the relevant evidence in the light of the probabilities and our impression of the witnesses. We have adverted to several inconsistencies and improbabilities in the defence case which point to the conclusion that the true object of the exercise was not that stated by the accused but military training. There are further factors arising from the evidence of accused Nos. 3 and 4 which tend to point to the same conclusion, and it is convenient to discuss these now.

There is no reason to doubt that the third boy (20) who boarded MdBane's taxi at Mount Partridge on the 21st November was Douglas Nide. Although the indictment alleges that accused No. 4 recruited him for military training the prosecution did not see fit to call him as a witness, and he has been described as a small child of about 12 years old who could hardly have been considered for military training. Supported as it is by the evidence of MdBane, the defence version of how Nide /.....

how Nide came to spend the night at Mount Partridge and why he boarded the taxi the next morning may well be true. He probably did alight at Maqinase as accused No. 4 expected him to do, and MdBane's impression that he was destined to go with the other two to Pongola could easily have been the product of a misunderstanding. We are therefore not prepared to find that accused No. 4 recruited Nide for military training or took any steps to send him out of the country. However, the evidence regarding the purpose for which the other young men were sent abroad stands on an entirely different footing. (10)

Kubheka's direct evidence that Mlungise Mthlane was recruited and sent away for military training is not only corroborated by Buhle Mthlane but also derives indirect support from the evidence of Stanley Meibi and MdBane. Stanley's evidence that accused No. 4 wanted him to leave with George and Mlungise is significant because there was no suggestion of his going to Swaziland for training as a trade unionist or any other innocent purpose. If accused No. 4 wanted Stanley to go with them it could only have been for military training as Stanley testified, and his evidence therefore (20) tends to support the inference that the other two were going for the same purpose. MdBane's unchallenged evidence that his passengers had no luggage is consistent with their going away for military training but difficult to reconcile with the notion that one of them was going to attend a trade union course for a few months and the other was emigrating to Swaziland. His unchallenged evidence to the effect that accused No. 4 gave him /.....

No. 4 gave him the R20 for both of his passengers is inconsistent with the defence story that the accused were not responsible for financing Mlungise's trip and Mdubane was accordingly instructed to hand the money to George. Moreover, it seems improbable that George would have been provided with R70 for his expenses over and above the taxi fare to Pongola, and accused No. 3 was in some difficulty trying to explain why he was given so large an amount. When cross-examined about the matter he indicated that George would need the money because Swaziland was not his final destination, but then said that he had not thought at the time that George would travel further than Swaziland, and suggested that the money was for travelling expenses in that country. When questioned by the Court he explained that George was provided with the money because he was going on his own and might become stranded, but then conceded that he thought that Mabhida would have made adequate arrangements for payment of his expenses in Swaziland. These varied explanations were unconvincing, and we doubt that George received more than his fair share of the R20 that accused No. 4 handed to Mdubane. It was never put to Kubheka that he paid any amount to accused No. 3 for Mlungise's conveyance, and we do not accept that he did so. However, in view of Kubheka's unreliability we cannot rule out the possibility that he did hand R50 (or possibly R40) to accused No. 3. His statement that he gave R40 to Mdubane for the trip is probably false, but if he handed such an amount to accused No. 3 it is no less probable that the money /.....

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money emanated from accused No. 1 (as Kubheka stated) than that it came from Kubheka's pocket or from Mlungise or Buhle Mthalane. In view of the unsatisfactory nature of the evidence on the point we cannot make any positive finding on whether any amount was paid specifically for the conveyance of Mlungise. However, the fact that Kubheka probably made a false statement in this connection is not an insuperable obstacle to the acceptance of his other evidence to the effect that Mlungise was recruited and sent away for military training - provided, of course, that evidence is shown to be true beyond all reasonable doubt. If that was the true purpose for which he went to Swaziland there can be no doubt that accused Nos. 1, 3 and 4 were aware of it.

It is clear from their evidence that the parents of the seven young men who went to Swaziland allegedly for trade union training were not consulted about the matter or even told that their sons were leaving. Accused No. 3 said that the recruits were expected to conceal the matter even from their parents, for fear that their departure or their return after training might come to the knowledge of the police and lead to their being banned. It is difficult to believe that the parents would not have been let into the secret if these young men were only going away for a few months to undergo training as trade unionists. The story that they left for that purpose postulates that they would return after a few months and embark upon careers as trade union organisers, in which event their activities would almost inevitably /.....

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almost inevitably become known to their parents. On the other hand, if they were being sent away for terrorist training it is natural that their departure would be kept secret from their parents.

Before leaving the evidence of accused Nos. 3 and 4 we must deal with the question whether they attended the meeting at the home of accused No. 1 on 10th August 1975. It will be recalled that Nxasana testified that two of the persons who joined the meeting while he was busy reading were introduced as Xaba and Nene, and that he identified accused No. 3 as being one of the persons present but did not recognise accused Nos. 4, 5 or 7. That is the only evidence on which the prosecution can rely for a finding that accused Nos. 3 and 4 attended the meeting - against the denials of those accused and the others who admittedly were there. We cannot rule out the reasonable possibility that Nxasana was mistaken about the attendance of accused Nos. 3 and 4, and we are not prepared to find as a fact that they were present at the meeting. Their names could easily have been mentioned by others who were present, in which event Nxasana could conceivably have formed the erroneous impression that persons with those names were present. It is unlikely that he erred in the case of accused No. 3 whom he positively identified, but there is always a danger of mistaken identification even by honest and otherwise reliable witnesses, and in this case the witness was unable to identify other persons whom he did meet on the same occasion./.....

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occasion.

We now turn to examine the evidence relating to the detention and interrogation of accused Nos. 3 and 4, both of whom were arrested during the early hours of Sunday, the 30th November 1975. Accused No. 3 said that the security police arrived at about 2.30 a.m. and, after conducting a search of his house for nearly two hours, took him and his wife to their offices on the top floor of the central police station building in Loop Street. He said that in the car en route to Loop Street W/O. Lamprecht informed him that they had shot two and captured four people from Swaziland, that Mandla Sikosana was one of them and had admitted that he (accused No. 3) had sent them abroad for military training. Lamprecht advised him to think very carefully over what he was going to say about this matter when they arrived at the police station. On arriving at Loop Street accused No. 3 was taken to an office where he was confronted with some ten white policemen, including Col Dreyer, W/O. Lamprecht and Sgt. van Rooyen. (He positively identified van Rooyen who was sitting in the Courtroom). Dreyer allegedly removed his spectacles and threw them on a table, and demanded that he tell them everything he knew about recruiting people at Sobantu. Then, according to accused No. 3, the policemen proceeded to hit and kick him. In the course of this assault they carried him to a window and threatened to throw him out of it, indicating that he would suffer the same fate as one Timol. He had been injured by this stage and was bleeding from the nostrils. He could not say which of the policemen took part in the assault, except that

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Lamprecht /.....

Lamprecht was one of them whereas Dreyer definitely did not take part and he could not say that van Rooyen did so either. After they had threatened to throw him out of the window one of the policemen read out the names of Mandla Sikosana, Edgar Zondi and Mađi Ntombela from a written list, told him to supply the other names himself, and said that he should write a statement about these people having gone for military training. He was also informed that the release of his wife was conditional upon his agreeing with what they said. He presumably refused to co-operate, because the next development, according to his evidence, was that one of the policemen grabbed him by the lapels of his overcoat and banged his head against the wall. Then all but one of the policemen left the room, and apart from a verbal threat by the man who remained with him he was not molested for the next 30 or so minutes. This white man was relieved by a black policeman called Sokela, and when Sokela entered the room he heard the voice of accused No. 4 crying out in distress from some other part of the building.

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Accused No. 3 said that after Sokela had been with him for about 10 minutes approximately six white policemen entered the office. They included Lamprecht and a man who said that he had come from detaining accused No. 1. The last mentioned policeman stated that accused No. 1 was a communist, that he had been deceiving accused Nos. 3 and 4 and they should therefore talk about his activities. Lamprecht questioned him again without success, and he was assaulted once more. /.....

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more. On this occasion gravel was put in his shoes and he was forced to do an exercise that involved bending the knees and stretching the arms above the head. He was forced to do this until he was too exhausted to continue, after which they hit him again. They eventually left him and went out of the room, only to return later with accused No. 5. This was at about 10 a.m. on the Sunday. They took accused No. 5 away after ascertaining that accused No. 3 knew him, and Lamprecht interrogated accused No. 3 for the rest of the day, i.e. until about 5 or 5.30 p.m. when W/O. Crous took over. Crous continued with the interrogation for the whole of the Sunday night, questioning accused No. 3 and writing down everything that he said. At about 8 a.m. on the Monday he was taken to another room to rest for the next two hours. He found accused No. 5, Mdubane, Stanley Msibi, Frans Kunene, Tholani Ntombela and another small boy in the room, and ascertained that accused No. 5, Frans and Tholani had also been assaulted. Accused No. 5 was apparently unable to walk because he was suffering from sore feet as a result of having stones put in his shoes, and Tholani was weeping. Frans said that they had hit him in order to make him admit that accused No. 4 had been recruiting boys.

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After the two hour rest period accused No. 3 was taken back to the office. Lamprecht said that the statement taken from him during the night was nonsense and tore it up. Then the interrogation was recommenced from scratch, and it continued until 8 p.m. Lamprecht was questioning him about the recruitment of Mandla and the other Sobantu boys and his dealings/.....

his dealings with accused Nos. 1 and 4, and said that they had admitted everything. He also said that although accused No. 3 had not been present at the meeting on the 10th August he would procure a witness to say that he had been. At one stage during this session Lamprecht left the room with what he had written down and then returned with other policemen. They allegedly said that what he had stated was nonsense and proceeded to assault him once again. During the same session Philemon Mokoena was brought into the room and asked whether accused No. 3 was the person who had sent him away for military training, to which he replied that he had never gone away for that purpose. Accused No. 3 said that it was obvious from Mokoena's appearance that he had recently been assaulted. He also said that he had seen Michael Bhi Gumede at Loop Street on the Sunday and had heard him shouting at one stage.

When the interrogation ended at 8 p.m. on the Monday accused No. 3 was locked in a cell at Loop Street. He said that he was sore, confused and exhausted by then. He was given food but could not face eating it, and he had likewise refused an offer of food the previous evening. The cell was dirty and smelled because there was no water to flush the lavatory cistern. The blankets were very old and infested with lice and fleas. He was not assaulted again. On the contrary, the security police did not come near him for the next two weeks. The uniformed police brought him food and took him out to wash at a tap every morning, but he was not provided with any soap. He was in solitary confinement with no reading

matter or /.....

matter or anything else with which to occupy himself. He complained about the conditions of the cell, but to no avail. At the end of the two weeks Col. Dreyer came and threatened to keep him in detention there for years. He was given writing materials and told to write down what he knew, but he wrote nothing at all. The security police visited him from time to time thereafter and tried to persuade him to make the statement they wanted, promising to use him as a State witness if he co-operated. He told them that he would not become a State witness. At the end of December he was moved to the Burger Street gaol where he remained in solitary confinement until his appearance in Court. It was not until March 1976 that he was provided with reading matter. During this period he was visited by a person who described himself as a magistrate. His evidence-in-chief was that he complained to the magistrate that he could not get in touch with his family and also about the gaol food and the fact that he was being kept in solitary confinement, but the magistrate was only concerned with complaints of assault in the gaol. Under cross-examination he said that he told the magistrate that he had been assaulted at Loop Street, but the magistrate replied that he was not prepared to go into that, that he was not interested in what had occurred at Loop Street and did not concern himself with the affairs of the security police.

That is the story that accused No. 3 told about his detention and interrogation. We now proceed to examine it in the light of the rebutting evidence and endeavour to decide where the truth lies. His account of the assaults is /.....



assaults is inconsistent with his particulars of claim (Exhibit "EE") dated 11th November 1976. That document contains allegations to the effect that he was assaulted on a number of occasions between 30th November 1976(sic) and 14th May 1976 at Loop Street prison and/or the Burger Street prison by a person or persons whose names are unknown to him.

Capt. Wolhuter gave unchallenged evidence that it was he who arrested accused No.3 at his home and that W/O. Lamprecht was not present at the arrest. This is supported by the evidence of Sgt. Gold and accused No. 4, to the effect that Lamprecht was a member of the party of policemen who arrested accused No. 4 at Macibisa at 3 a.m. the same morning. It completely refutes the allegation by accused No. 3 that on the way to the police station Lamprecht told him that Mandla Sikosana and others had been captured and Mandla had admitted being recruited by accused No. 3. Wolhuter testified that accused No. 3's wife was not arrested but was questioned at Loop Street and allowed to go the same morning. In answer to counsel for the accused he said that from the beginning accused No. 3 was willing to answer the questions they asked him. The story of the first assault, when accused No. 3 was allegedly hit and kicked and carried to a window, is refuted by the acceptable evidence of Col. Dreyer. He denied removing the accused's spectacles and throwing them on a table, or saying anything about recruiting people at Sobantu. He said that he saw accused No. 3 arriving at the offices of the security police and went into the office

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to which the accused was taken. The other policemen present with accused No. 3 in that office were Lamprecht, Potgieter and Brooks. Dreyer explained the provisions of sec. 6 to accused No. 3 and then left the room. He denied that accused No. 3 was assaulted in his presence. With regard to the allegation that Sgt. van Rooyen was one of <sup>about</sup> ten policemen present in that office, he said that van Rooyen was not even in Pietermaritzburg on the 30th November. He telephoned van Rooyen at Matatiele that evening and ordered him to report for duty in Pietermaritzburg the next day.

The prosecution did not tender any evidence which directly rebuts the evidence of accused No. 3 that he thereafter suffered further assaults at the hands of the police. Lamprecht would have been the obvious witness to call, but we do not know whether his evidence was available to the prosecution or why it was not led if it was available. However, there is indirect evidence which casts serious doubt on the allegations of assault. Firstly, there is the evidence of Wolhuter that accused No. 3 was co-operative from the beginning, and Dreyer's evidence refuting the allegation that the accused was assaulted in his presence. Secondly, he made no complaint about any assault when he consulted the district surgeon, Dr. Hetherington at the Loop Street surgery on the 4th December. W/O. Crous took him to see the district surgeon that day because he was complaining of an old back injury. Dr. Hetherington confirmed that accused No. 3 complained of backache, and had a vague recollection of prescribing anti-inflammatory drugs/.....

anti-inflammatory drugs and pain killers for it. Mr. Muller put it to the witness that accused No. 3 complained of a headache as well as the backache, and asked him whether accused No. 3 had told him that his head was sore because it had been knocked against the wall. Dr. Hetherington's reply was that accused No. 3 did not tell him that. He had no recollection of the accused complaining of a headache, and denied that there was any complaint of assault. He made no notes of this consultation, and said that he would definitely have made a written note of any complaint that the prisoner had a headache (10 because his head had been knocked against the wall. Thirdly, the chief magistrate, Mr. van der Merwe made no note of any complaint that accused No. 3 had been assaulted, and we are satisfied that he would have noted such a complaint if it had been made. Mr. van der Merwe's evidence refutes the allegation by accused No. 3 that he told the visiting magistrate that he had been assaulted at Loop Street and the magistrate replied that he was not concerned with the affairs of the security police or what had occurred at Loop Street. All of the relevant visits to detainees in Pietermaritzburg were made (20 by Mr. van der Merwe, with the exception of the visits on 15th December and 2nd January which were made by his deputy, Mr. Friend. None of the detainees that Mr. Friend saw had any complaints, and in any event counsel for the accused put it to him that he never saw accused No. 3.

W/O. Crous testified that he took over the interrogation of accused No. 3 from Lamprecht at about 6 p.m. on the /.....

6 p.m. on the 30th November. Accused No. 3 was busy writing a statement at that time and he continued doing so until about 2 or 3 a.m. when he was allowed to go and rest. Crous said that at about 10 a.m. on the 1st December he fetched accused No. 3 from the cells for further interrogation. This, of course, is totally inconsistent with accused No. 3's version that Crous interrogated him the whole night, that he was taken to another room to rest for two hours from about 8 a.m. to 10 a.m., that he was with accused No. 5, Mdubane, Stanley, Frans and Tholani in that room, and that he was taken from (10 there back to the office for further interrogation by Lamprecht. Crous stated that he visited accused No. 3 daily in his cell from the 2nd to the 11th December, and that he took him to the office and interrogated him on certain of those days. He thus refuted the allegation that the security police did not go near the accused for two weeks as from the evening of the 1st December. Crous said that apart from the complaint of backache accused No. 3 made no complaints to him during this period. At the request of the accused he delivered (20 messages and dirty washing to his wife and brought him clean clothes from home. Crous was completely at ease in the witness box, and his evidence was clear and satisfactory in all respects. We are quite satisfied that he told the truth.

The allegations to the effect that accused No. 3 was kept in filthy, degrading conditions at Loop Street were largely refuted by another good witness whose evidence was hardly challenged in cross-examination. This was Mostert, the charge office /.....

the charge office sergeant at Loop Street during the relevant period. He testified that the cell occupied by accused No. 3 was 3,6m x 2,5m in size and that it had a private exercise yard of about the same size. Mostert worked eight hour shifts, and when he was on duty the door from the cell to the exercise yard was never locked. He said that there was a tap in the exercise yard and that each detainee was provided with soap and a 20 litre bucket so that he could wash himself whenever he chose to do so. The cells were visited every hour, and at least three times per shift by the charge office sergeant himself. Mostert said that none of the detainees ever complained to him, and it was not suggested in cross-examination that accused No. 3 complained to him about the lavatory cistern, the condition of his blankets or anything else. Mostert was not aware that the lavatory cistern in accused No. 3's cell was not functioning properly, and he said that as soon as any cistern does become defective the cell is vacated until it has been repaired. He stated that the detainees were given the best blankets that were available at the time and that they were in "fairly good shape". He saw the blankets whenever he visited the cells, but of course he would not necessarily have detected that they were infested with lice and fleas. The food for the detainees came from the mess for white members of the police at Alexandra Road barracks.

We do not believe that accused No. 3 was assaulted or ill-treated in any way while detained at Loop Street. /.....

Street. We are satisfied that he lied about Lamprecht feeding him with information on the way to the police station, about being assaulted in Dreyer's presence, being interrogated all night by Crous, and being locked up for two weeks without the security police coming near him. He also lied about making a complaint of assault to the magistrate, and we have no doubt that his complaints about his living conditions at Loop Street were grossly exaggerated. Under these circumstances we cannot rely on any of his evidence about assaults, threats and improper methods of interrogation, although we cannot rule out the possibility that some of his allegations are substantially true. Thus, in the absence of direct evidence to contradict it, the evidence that Lamprecht and others put gravel in his shoes, made him do exercises and assaulted him on the Sunday, and the evidence that Lamprecht tore up his statement and joined with others in assaulting him again on the Monday, cannot be rejected as false beyond all reasonable doubt. We do not believe it but we recognise the possibility that it may be true. In any event, even if it were to be accepted at its face value, the evidence of accused No.3 provides no basis for the conclusion that the police induced him to incorporate any falsehoods in his statement.

The story that accused No. 4 told about his experiences in detention was in some respects remarkably similar to the one told by accused No. 3. He said that he was arrested at home at 3 a.m. by a party of security policemen that included Sgt. Gold, W/O. Lamprecht and Major Botha. He was taken /.....

was taken in handcuffs to one of the offices at Loop Street. When they got there Lamprecht told him that they had arrested Togo and asked him what they should do with her. Togo was pregnant at the time, expecting a child by accused No.4. After the enquiry about Togo his handcuffs were unlocked and he was then handcuffed with his hands behind his back. Gold lit a cigarette for him and helped him to smoke it, but pulled it from his mouth and put it out after he had had only two puffs. Then Gold read out a list of names, including those of the eight young men who had been sent to Swaziland, and questioned him about them. At that stage Col. Dreyer entered and, having been told that accused No. 4 was not speaking the truth, punched him on the left cheek. As a result of this blow his head struck the wall and he sustained a small cut over the right eyebrow. He was then hit and kicked by the other policemen present, with the exception of Gold who never assaulted him. He fell down but was kicked and ordered to get up. When he did so Dreyer informed him that what he had experienced was only a foretaste of worse to come, that he was being detained in terms of section 6 and would be locked up for successive six-monthly periods until he talked. Before leaving the room Dreyer gave orders that he was not to receive food or water. Then Botha proceeded to interrogate him, pulling his beard and telling him to name the people he had recruited for military training, and saying that Mandla and his companions had been recruited for that purpose. Gold was present but went out at one stage and returned to say that accused No. 3 /.....

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accused No. 3 had already informed them that he (accused No.4) had recruited people for military training. At a later stage Sgt. Nyoka entered with a rag with which he wiped blood off the wall and accused No. 4's shoe, and also tried to wipe away bloodstains from his shirt. Nyoka told him that accused No. 3 had told them everything. Then Gold asked the others to leave the room so that he could speak with accused No. 4 in private. Gold tried to persuade him to talk, and eventually warned him that as he was not prepared to do so other persons less gentle than he would be taking over, that his refusal to talk would not avail him and that he would eventually admit that he had recruited people for military training. He was then left alone for a short while, after which Lieut. de Kock and Sgt. Driemeyer took over the interrogation.

According to accused No. 4 de Kock put gravel into his shoes and told him to stand with his heels on a box and his toes on the floor. When he refused to do so de Kock and Driemeyer punched him and pushed him towards the window, and in this instance too there was a reference to Timol. He cried out and sat on the floor, whereupon he was kicked and told to stand up. Then they took him to the strongroom where de Kock showed him firearms allegedly taken from terrorists and told him that he would be shot if he did not talk. In the meantime Driemeyer was jerking the handcuffs up and down behind his back, punching him and knocking on the top of his head with his finger. At one stage Driemeyer prodded his chest and told him to open his heart to them. While Driemeyer jerked the /.....

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jerked the handcuffs de Kock punched him, tore open his shirt and struck him between the shoulder blades with a plank. On two occasions while this assault was in progress Col. Dreyer opened the strongroom door and looked in. de Kock and Driemeyer left him eventually but Lieut. Coetzee and W/O. Gernt-holtz (whom the accused called Garrington) took over from them. The treatment he received from these two was no less violent and cruel than that which he had experienced at the hands of de Kock and Driemeyer. He was still in the strong- room and still had the pebbles in his shoes. Gerntholtz (10 spent his time jerking the handcuffs up and down, punching him and knocking with his bent index finger on his head and chest. Coetzee pushed him against some shelves, slapped and punched him in his face and hit him until he was exhausted. By this stage accused No. 4 had been reduced to a pitiable state : hungry and thirsty, bursting to go and relieve his bladder, unable to stand properly, and groaning because he was no longer capable of crying out. He was prevented from sitting or leaning against anything, and when he requested permission to go and urinate he was told to do so where he stood. Coetzee said that when they had finished with him (20 he would be sent to Madadeni Mental Hospital, gave him a karate-type chop at the back of his neck, and then proceeded to throttle him with his shirt collar. He fainted three times. While in a state of semi-consciousness he heard someone enquiring whether he was dead, after which he was kicked and forced to struggle to his feet again. At one stage /.....

stage during this brutal assault by Coetzee and Gerntholtz, Col. Dreyer opened the strongroom door and looked in for the third time.

Accused No. 4 testified that at some stage after the assaults in the strongroom had come to an end he was in an office with various security policemen, including de Kock, Driemeyer, Gerntholtz, Crous and an Indian, Sgt. Naidoo. In the meantime Douglas Nide had been brought to Loop Street and Lieut Coetzee went out to speak to him. When he returned he told accused No. 4 that he was making fools of them. This (10 was the prelude to another assault, this time at the hands of Sgt. Naidoo. Thereafter he was taken to Macibisa to show the police where Frans Kunene and Stanley Msibi lived. Before they went he was at last allowed to go and urinate, and when he did so he took the opportunity to drink two pints of water. Before he went to relieve himself de Kock took off his shoes to see what the gravel had done to his feet. Then de Kock put the shoes back on his feet, still with the gravel inside them. However, the gravel was removed when he came back from the lavatory. At Macibisa he pointed out Frans (20 and Stanley and they were arrested. On their return to Loop Street he was taken to an office, given a pen and paper and told to write. He wrote until dawn, supervised firstly by Botha and thereafter by Driemeyer. They wanted him to write about military training, and they were tearing up what he did write because they said it was nonsense. During this session Sipho Kubheka was brought into the room and held by the scruff of /.....

the scruff of the neck. Lamprecht alleged that Kubheka had said that accused No. 4 had recruited him for military training

Accused No. 4 said that he was not given any food until about 9 a.m. on the Monday. After breakfast he was allowed to rest for less than 30 minutes. Thereafter the interrogation continued until nightfall, the main interrogator being a white policeman who said he was from Durban. He was locked in a cell at Loop Street that night and remained there for some hours before being taken out for further interrogation. He was eventually taken to the Howick police cells, (10 on Wednesday the 3rd December he thought. He was taken there by the same white man who said he was from Durban, and on the way this man told him he would be released if he co-operated with the Government but would be sent to Robben Island for 20 years if he elected to work with the A.N.C.

Accused No. 4 was detained in solitary confinement at Howick until the 18th March 1976 when he was transferred to the Burger Street gaol. At Howick he was interrogated by Gerentholtz, but the interrogation ended before Christmas. Gerentholtz was kind to him while he was at Howick, (20 providing him with medicine, tobacco and soap and attending to any complaints he had about food. At one stage Gerentholtz realised that his memory was failing and provided him with frozen fish, fruit and milk in an endeavour to restore it. Among the medicines which Gerentholtz procured for him was something for injuries to his wrists, which injuries had been caused by Driemeyer and Gerentholtz <sup>himself</sup> jerking his handcuffs as alleged /.....

alleged and already described. He said that on one occasion at Howick he was examined by a doctor, but he did not show the injuries to the doctor or complain to him about the assault because the doctor was accompanied by two security policemen named Moore and Mathonsi. He was visited by magistrates at Howick and at the gaol but made no complaint of assault to them either, because he considered that it would be better to consult his attorneys about the matter. When giving evidence he did exhibit marks or scars on both wrists which could have been caused by handcuffs, and he also produced a shirt (Exhibit 7) which was discoloured here and there. He claimed that he was wearing this shirt at the time of the assaults and that the discoloured patches were bloodstains. (10

While he was at Howick accused No. 4 allegedly communicated with Stanley Msibi and Frans Kunene who were also detained there. He said that Stanley reported that the police had assaulted him in the course of interrogating him about military training, though not as seriously as they had assaulted Frans. Stanley also managed to throw a newspaper cutting into his exercise yard, containing a report that (20 Judson Khuzwayo had been released from detention. Frans told him that he had been assaulted under interrogation but had been helped by Sgt. Nyoka who was related to him. He also reported that while in detention at Hammarsdale the security police had given him liquor before questioning him about what accused No. 4 had said when visiting him.

After his transfer to the gaol accused No. 4 remained /.....

remained in solitary confinement until his appearance in Court. He had the Bible to read, and copies of the Reader's Digest on rare occasions. He complained about the food and his cell was dirty. Because he had so little to occupy his mind he became attached to the cockroaches that infested his cell.

We have set out the story told by accused No. 4 in detail because it is prima facie incredible that he could have been subjected to such savage and sadistic treatment at the hands of the police. De Kock, Driemeyer, Coetzee and Gertholtz would have to be inhuman fiends to have tortured the man as he alleges they did, and it would be a grotesque commanding officer who not only tolerated such conduct but actually encouraged and supervised the torture. The first obstacle to accepting the evidence that accused No. 4 was assaulted is that it does not square with the allegations in his Particulars of Claim dated 11th November 1976 (Exhibit "FF"). According to his evidence he was only assaulted on the 30th November at Loop Street, and Sgt. Gold never laid a hand on him. The Particulars of Claim contain allegations to the effect that he was assaulted on a number of occasions between 30th November 1975 and 14th May 1976, at Pietermaritzburg and/or Howick, by one or more of the following : Sgt. Gold, Col. Dreyer, Lieut. de Kock, Lieut. Coetzee, "Gully" or "Jaw Breaker" (i.e. Gertholtz) and others whose names were unknown to him. He confirmed having pointed out the errors to Abraham when he signed the power of attorney but could not explain how they /.....

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how they came to be made in the first place. He said that he gave his attorneys the full story for the purpose of drafting the Particulars of Claim and he was not responsible for the incorrect allegations. In view of the various names mentioned in the document it may be accepted that the attorneys were furnished with a detailed story, but in the absence of any satisfactory explanation we find it difficult to believe that the details were the same as those disclosed by the evidence. Although the record does not show that his evidence was inconsistent or otherwise unsatisfactory, and although his demeanour cannot fairly be criticised, we had the feeling that he was lying about the alleged assaults.

Dreyer, Gold, Coetzee, de Kock, Driemeyer, Crous, Gertholtz, Moore and de Necker all gave evidence to refute the allegations that accused No. 4 was assaulted, threatened or otherwise improperly treated during his detention and interrogation. Their evidence on this aspect of the case was clear and satisfactory in every respect, and they corroborated one another in numerous respects. We have already indicated the impression that Dreyer, Gold, Coetzee, de Kock, Driemeyer, Crous and Gertholtz respectively made on us while they were in the witness box. Moore and de Necker were equally impressive witnesses. As the evidence of these witnesses consisted mainly of denials of the allegations made against them by accused No. 4 we do not propose to set it out in any great detail.

Gold confirmed that on arrival at Loop Street the position of /.....

the position of accused No. 4's handcuffs was changed so that he was handcuffed with his hands behind his back instead of in front. Gold was convinced that they were his handcuffs and that it was he who put them on the accused and later changed their position, but he fairly conceded that this may have been a mistaken recollection on his part. He explained that the position of the handcuffs was changed to the back to prevent accused No. 4 from attempting suicide or attacking his interrogators, and not to add to his discomfort. He knew the accused well and was on fairly amicable terms with him. His recollection was that he undid the handcuffs when he gave accused No. 4 a cigarette and he denied that he pulled the cigarette from the accused's mouth. Gold did not take part in the actual interrogation of accused No. 4 but he remained in the office while Col. Botha did so, until they handed over to de Kock and Driemeyer. While Gold was in the office with Botha and accused No. 4 Dreyer came in to take the accused's particulars and explain the provisions of section 6 to him. Dreyer confirmed this, and denied that he punched accused No. 4, or threatened him, or gave orders that he was to be deprived of food and water. Both Dreyer and Gold denied that accused No. 4 was assaulted in any manner whatever in their presence. Gold also denied that anyone spoke about Togo's arrest or the fact that she was pregnant. He conceded that he might have picked up a list of names at one time or another, but denied reading names out or questioning accused No. 4 about them. At no time was he alone with accused No. 4, and he did not /.....

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he did not ask other people to leave so that he could speak to the accused in private. A perusal of the record will show how careful and fair-minded Gold was in the evidence which he gave. He was not prepared to be dogmatic about matters of detail where his recollection might have been faulty because, as he put it, "those were hectic days" and the events were no longer fresh in his mind. He was a completely reliable and trustworthy witness.

De Kock confirmed that he took over the interrogation of accused No. 4 at around 9 or 9.30 a.m. Driemeyer was with him for about the first hour and then went to perform other duties, leaving him alone with the accused. Driemeyer confirmed this, although his recollection was that he was with de Kock and accused No. 4 for only about half an hour. He left accused No. 4 alone with de Kock and did not see him again until the evening when he took over the duty of watching him while he wrote a statement. The fact that de Kock continued interrogating accused No. 4 on his own is further corroborated by the evidence of Coetzee and Gertholtz, both of whom testified that Driemeyer was not present when they took over the interrogation from de Kock at about midday. Both de Kock and Driemeyer denied that they assaulted accused No. 4 by putting gravel in his shoes, punching or kicking him, pushing him towards the window or in any other way. Driemeyer denied jerking his handcuffs or going into the strong-room with him at any stage.

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The fact that de Kock was left to interrogate accused No. 4 /.....



accused No. 4 on his own is important, because he testified that during that period he did take accused No. 4 into the strongroom for a few minutes while he looked at a file which was kept there - which explains why the accused was able to describe the interior of the strongroom. De Kock explained that he needed certain information contained in the file and had to take accused No. 4 with him because there was no one else to guard him. He left the door of the strongroom open while he looked at the file, and then returned to the office with the accused to continue with the interrogation. He denied the entire story about accused No. 4 being threatened, assaulted and interrogated in the strongroom, and further denied that Col. Dreyer opened the door and looked in while they were in there. This is corroborated by Dreyer, who denied seeing accused No. 4 in the strongroom at any time.

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Mr. Muller complained that accused No. 4 had not been apprised of the details of the police version of his interrogation in the course of cross-examination, and had thereby been denied the opportunity of dealing with it and possibly giving additional evidence to refute it. In particular, he submitted, the failure to put to the accused that de Kock took him into the strongroom had deprived him of the opportunity to indicate whether there were other persons available to guard him while de Kock went to look up the file. In our opinion the point is without substance. Accused No.4 had made it perfectly clear that there was another person available to guard him, in that both de Kock and Driemeyer were assaulting /.....

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were assaulting him in the office and both of them took him to the strongroom to continue assaulting him there. For the rest, the police version amounted to little more than a denial of the numerous allegations of assault, and the accused was fairly apprised of the fact that those allegations were disputed. It is our duty to arrive at a proper decision on all the relevant evidence, and I do not consider that this is affected by the prosecutor's failure to traverse and specifically challenge the evidence of the accused on relatively unimportant matters such as precisely what Sgt. Gold said to him and whether de Kock (whom he admittedly knew) was introduced to him as his attorney.

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Mr. Muller submitted that de Kock's evidence of the circumstances under which he took accused No. 4 to the strongroom should be rejected because: (a) it is improbable that he would have taken the risk of the accused attacking him while they were alone in the strongroom and his attention was concentrated on perusing the file; and (b) he gave untruthful evidence to the effect that accused No. 1 showed no signs of being tired or sleepy on any of the three occasions when he interrogated him during the period from 12th to 14th December. In our view the risk of attack was negligible. The man was handcuffed with his hands behind his back, the door was left open and they were only in the strongroom for a few minutes. We have already expressed our reservations about de Kock's evidence relative to the interrogation of accused No. 1, and we would have had similar reservations about his /.....

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about his evidence on this issue had it been improbable or inconsistent or otherwise unsatisfactory. In fact it is corroborated in material respects by the evidence of truthful and reliable witnesses and it withstood the test of cross-examination. We are convinced that it is true and that the evidence of accused No. 4 to the contrary is false.

Coetzee and Gerentholtz denied that they were ever in the strongroom with accused No. 4 or that they assaulted him as alleged or at all. Having carefully observed both of these men we think that it would have been quite out of character for either of them to mete out the savage treatment that accused No. 4 allegedly suffered at their hands. There is a good deal of evidence - including the evidence of accused No. 4 himself regarding his treatment at Howick - to confirm our impression that Gerentholtz is a compassionate person. Coetzee may fairly be described as a gentle giant. He was also an exceptionally frank witness. He admitted that at one stage he caught hold of the accused's arm, tapped him on the chest and said "Come Nene, tell us the truth, open your heart", or words to that effect. However, the accused was smiling as he did this. Coetzee and Gerentholtz denied threatening accused No. 4 or refusing to allow him to relieve himself, and they were not aware that he had any gravel in his shoes. The allegation that accused No. 4 was assaulted by Sgt. Naidoo is also refuted by the evidence of Coetzee and Gerentholtz. They denied that Naidoo was in the office with them at the time when Coetzee saw Douglas Nide and told accused No. 4 /.....

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accused No. 4 that he was making fools of them. Their evidence is that, with the possible exception of Const. Zondi, there were no other policemen in that office at the time; and Driemeyer, Crous and de Kock denied that they were there.

Driemeyer said that it was at about 10 p.m. or later that evening that he relieved Col. Botha and sat with accused No. 4 while he wrote a statement. He waited in silence until the accused had finished, and then went through the statement with him to clear up uncertainties in it. This took until dawn. Driemeyer denied telling accused No. 4 what to write or tearing up anything that he had written. He said that the original statement was still available. We should mention that the police evidence generally is to the effect that accused No. 4 was not fed with any information or told what to say.

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Sgt. de Necker testified that he only questioned accused No. 4 for about 20 to 30 minutes during the early evening on the 1st December, thereby disputing the accused's story that he commenced at about 9.30 a.m. and continued all day. De Necker confirmed that it was he who took accused No. 4 to Howick on the 3rd December. He denied any conversation with the accused on the way to Howick, or telling him that he would be released if he co-operated but would be sent to Robben Island if he did not.

Gerentholtz agreed that he provided accused No. 4 with medicines, foodstuffs and cigarettes. He also gave the accused an old jersey of his own when he complained that he was /.....

that he was cold. It never appeared to him that accused No. 4 was losing his memory, and he rejected the quaint allegation that he gave the accused fish, fruit and milk to restore it. He said that he never saw injuries on the accused's wrists and did not give him medicine for any such injuries. W/O. Moore said that he arranged for accused No. 4 to see a doctor, and that he and Mathonsi waited in a passage outside the room in which the medical examination took place. Moore said that accused No. 4 saw Dr. Landman because he was not feeling well. Dr. Landman confirmed that he examined detainees at Howick during December, although he could not identify them. He could not remember seeing any external injuries on them, and claimed that if there were any such injuries he would have seen them. The assistant magistrate at Howick, Mr. Jelinek gave evidence to the effect that he visited accused No. 4 in his cell on 22nd December 1975, that he looked for visible injuries on him and saw none. Finally, the station commander at Howick, W/O. Beck testified that he visited the detainees at his station daily, that none of them complained of any assault, and that he never noticed any visible injuries on their persons. (10) (20)

Mr. Muller submitted that the stains on the shirt (Exhibit 7) and the marks on the accused's wrists are strongly corroborative of his allegations of assault. They are certainly consistent with the accused's story and must be given due weight, but they are by no means decisive. The marks on the wrists could have been caused in a variety of ways other /.....

ways other than the pressure of handcuffs, and it is quite possible that they existed before accused No. 4 was arrested on 30th November 1975. Assuming that the discolourations on the shirt are bloodstains, it does not follow that the bleeding occurred on the occasion or in the circumstances described by accused No. 4. The evidence which the prosecution led to refute his allegations of assault, ill-treatment and improper methods of interrogation is overwhelming. In the light of that evidence and the various other factors mentioned we are satisfied - beyond any doubt that may be classed as a reasonable one - that accused No. 4 was not assaulted, threatened or ill-treated by the police. We are convinced that his story was fabricated to support the defence case on the existence of an investigational system. (10)

We now turn to examine the evidence of accused No. 7. At the time of his arrest he was a bus driver employed by the Pietermaritzburg Municipality. He was a shop steward and a member of the branch executive of the Transport and General Workers' Union. It is clear that he has been a keen trade unionist since 1960 when he was working for Scottish Cables and joined a trade union which was affiliated to SACTU. It was then that he got to know accused No. 1, through attending SACTU meetings and other workers' meetings which accused No. 1 addressed. Pursuant to an arrangement which they had entered into in 1974, he used to solicit dry-cleaning business for accused No. 1, and the latter used to call twice a week at the bus depot to collect clothes for dry-cleaning /..... (20)

dry-cleaning and return them after cleaning. When they met on these occasions they used to discuss trade union affairs, and thus it came about that at the beginning of August 1975 accused No. 1 invited accused No. 7 to the meeting at his house on Sunday, the 10th of that month.

Accused No. 7 said that he arrived at the meeting shortly after 10.30 a.m. at the stage when accused No. 6 was busy reading Mabhida's first letter to accused No. 1. It is clear from his account of what transpired there after that accused No. 7 had not missed much by arriving late. (10) He participated in the discussion which ensued after the letters and documents had been read and accused No. 1 had addressed those present, and he stayed for lunch after the conclusion of the meeting. Except for one material contradiction, his account of the proceedings was substantially the same as that given by accused Nos. 1 and 6. The contradiction concerns the question of where the recruits for trade union training were to be obtained. It will be recalled that according to accused Nos. 1 and 6 the recruits were to be obtained from various places, with only two of them being recruited in Pietermaritzburg, and there was no mention at the meeting of places to which the recruits would be sent after they returned from training. On the other hand, when accused No. 7 was first asked where the twelve trainee organisers were to be recruited his answer was "There was no specific place mentioned (in the discussion) but if they were obtained in Pietermaritzburg they would be sent to different places." /..... (20)

places". When asked how he reconciled this with what accused No. 1 had said he reiterated that in the discussion it was said that the organisers would be sent to various places but there was no mention of any particular place where they would be obtained. It was not until he was re-examined on the point that he indicated that the suggestion that the recruits be obtained from the various towns was contained in accused No. 1's letter to Mabhida, and that when they discussed this accused No. 1 said that the recruits could be obtained anywhere. As will appear later, this accords more or less (10) with the evidence of accused Nos. 5 and 8. However, the claim that it was in his letter to Mabhida that accused No. 1 suggested the places at which the trainees were to be recruited is difficult to reconcile with the relevant portion of that letter which counsel for the accused purported to quote verbatim when cross-examining Nxasana. The passage in question reads as follows :-

"Do you remember the letter saying 'you must get a minimum of twelve organisers who will organise all industrial sectors in Natal as follows : Newcastle 1, Lady-smith 1, Estcourt 1, Pietermaritzburg 2, Pinetown 2, Durban 2, Hammarsdale 2, Empangeni 1.' — No, I do not remember. It went on to say 'We require a minimum of R14000 to undertake this project'. It ended 'If you approve of this idea we would be happy if you would arrange to train these cadres abroad where they could return /..... (20)

could return thereafter to start their work'. Do you remember? --- No, I do not remember."

We suspect that it was realised that accused Nos. 1 and 6 had damaged the defence case by making it clear that only two recruits were to be obtained in the Pietermaritzburg area, and that accused Nos. 5, 7 and 8 dishonestly attempted to repair the damage.

According to accused No. 7 those present at the meeting agreed that it was a good idea to send recruits abroad for training as organisers, but no decision was taken to do anything in that connection. It was decided that they would get in touch with the workers about the revival of SACTU, but accused No. 7 understood that accused No. 1 would recruit the trainee organisers himself. His version of the discussion which gave rise to the Empangeni trip did not differ materially from accused No. 1's version. He said that the purpose of the trip was to see Mkwanazi about reviving SACTU and recruiting a trainee organiser from that area. He stated that it was he who suggested that the recruits be drawn from the ranks of trade union members, and that suitable recruits might be found at Scottish Cables and Nestlé's. He denied Nxasana's evidence to the effect that he had reported on visits to Scottish Cables and Alcan in connection with trade union affairs, and further denied having said that he was drowsy and wanted to sleep. He produced his time sheet (Exhibit "GG") and called the evidence of one Delport of the Municipal Transport Department to prove /.....

Department to prove that he did not work a night shift during the weekend of the 9th/10th August 1975. We accept that he did not work a night shift, but the point is not material and does not affect Nxasana's credibility. Nxasana was in no way dogmatic about what accused No. 7 said in this connection, his precise words being "It appears as if he said that he had worked night shift." His statement that accused No. 7 said he was drowsy and wanted to sleep was not challenged in cross-examination. In any event, nothing turns on the point. It is no more material than the fact that Delport contradicted the evidence of accused No. 7 that Sunday, the 10th August was his day off.

We are satisfied on the evidence as a whole - some of which is yet to be discussed - that the meeting on the 10th August 1975 was mainly concerned with reviving the A.N.C. and recruiting and sending people abroad for military training, that those of the accused who attended the meeting conspired with one another to do so, and that all of them have lied about what went on at the meeting. Mr. Muller submitted that the evidence fell short of proving that accused No. 7 was a party to such a conspiracy, and he relied in this connection on what Nxasana said about accused No. 7 being drowsy and wanting to sleep. In our judgment, however, the notion that accused No. 7 was uninterested in the proceedings and did not understand or assent to what was discussed and decided upon is refuted by his own evidence as well as the evidence of accused No. 1.

Accused No. 7 /.....

Accused No. 7 testified that on Monday, the 18th August accused No. 1 came to the bus depot to fetch dry-cleaning as was his custom. On that occasion accused No. 1 asked him to look for three recruits for training abroad as organisers, i.e. three recruits from the members of the Transport and General Workers' Union. Accused No. 7 said that he tried to recruit a couple of the young bus drivers but failed. When he saw accused No. 1 the following Thursday he reported that he had been unsuccessful and was asked to look for recruits in a wider field. Accused No. 1 said that the recruits need not belong to a trade union provided they were educated, in the sense that they had passed J.C.(i.e. Junior Certificate or Std. VIII). Thus it came about that during the same month of August accused No. 7 attempted to recruit William Zondi for training abroad as a trade union organiser.

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As we have rejected Zondi's evidence it is unnecessary to give more than a broad outline of accused No. 7's answer to it. On the first occasion during August he put the proposal to Zondi, explained what sort of work he would do when he returned from training abroad, and told him to go home and seek his parent's permission. He saw Zondi at his home on the next occasion, asked him whether he had obtained permission from his parents, and received the reply that Zondi had not yet spoken to them about it. They met again about a week later, and again Zondi said that he had not yet asked his parents for permission to go abroad for training. On this occasion Zondi said that if he went abroad he would like to study engineering.

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Accused No. 7 /.....

Accused No. 7 explained that engineering was a difficult subject and that such a course of study would take longer than six years. The fourth and last occasion upon which accused No.7 spoke to Zondi about the matter was when they were travelling on a bus together at about the end of October or the beginning of November. Accused No. 1 had in the meantime told accused No. 7 that sufficient boys had been obtained and he could drop his recruiting activities. He accordingly told Zondi on this occasion that sufficient recruits had been obtained, and added that he thought they might already have left.

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We accept that accused No. 7 did tell Zondi to ask his parents for permission to undergo training abroad. Zondi himself testified that when they met on the second occasion accused No. 7 asked whether he had spoken to his parents about the matter. In our view this affords strong support for the conclusion that accused No. 7 attempted to recruit Zondi for training as a trade union organiser, and not for military training. Accused No. 7 said that it was his own idea that Zondi should consult his parents about the matter, because he considered it right and proper for any young person to ask his parent's permission before leaving home to embark upon a career. Of course this is in marked contrast to the case of the seven young men whom accused No. 1 admittedly sent abroad. Their parents were not consulted, and according to accused No. 3 the parents were not to be let into the secret. In our view it would be perfectly natural for a boy's parents to be consulted if he was going away for training as a trade unionist; and equally /.....

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and equally natural for them to be kept in the dark if their son was recruited for training as a terrorist. The fact that accused No. 7 stipulated a minimum level of education (Std. VIII according to the accused, and Std. IX according to Zondi) is a further indication that he was recruiting for trade union rather than military training; and it provides another significant factor to distinguish Zondi's case from that of Mandla Sikosana et al. Of course, our conclusion that accused No. 7 probably tried to recruit Zondi for training as a trade union organiser is no obstacle to a finding that other young men (10) were recruited for military training pursuant to a campaign which was discussed and approved at the meeting on 10th August 1975. Nor does it affect the conclusion that accused No. 7 was a party to the conspiracy we have mentioned. One need look no further than Exhibit "L" to see that the activities of the A.N.C. and SACTU are complementary, not mutually exclusive. It is clear from the evidence that quite apart from any revival of the A.N.C. and intensification of the armed struggle there were moves afoot to revive SACTU, inter alia by having organisers trained abroad, and that accused No. 1 was interested in (20) these moves.

If accused No. 7 tried to recruit him for training as a trade union organiser and nothing else why did Zondi testify that it was for military training? Zondi was 17 years old when he gave evidence in October 1976. He was not detained in terms of sec. 6 of Act 83 of 1967. One day in December 1975 one white and one black security policeman took him to  
the Loop Street /.....

the Loop Street police station, questioned him and took a statement from him. He was at the police station from 9 a.m. to 2.30 p.m. The police told him to tell them everything that accused No. 7 had said to him, and he began by explaining that they were supporters of rival football clubs and used to discuss football. The police said that that was unimportant, that what they were interested in was political conversation. They eventually told him they wanted to know what accused No. 7 had said to him about sending boys overseas for military training, and it was only then that he disclosed what had transpired between them in regard to that topic. He said that he was very frightened when the police took him to Loop Street, that when questioning him they indicated that they knew a great deal about the matter, and that he believed whatever they said. He believed them, he said, because they were the security police. Under these circumstances the probable answer to the question posed at the beginning of this paragraph is that when telling the police about accused No. 7's approaches he substituted military training for trade union training because he thought that that was what they wanted. If that did occur it has fortunately not resulted in a failure of justice, for the simple reason that Zondi's evidence was shown to be unreliable. However, it is this - more than anything else we have heard in this case - that has alerted us to the danger that other State witnesses who were apparently truthful and reliable might have made false statements in the belief that by <sup>so</sup>doing they would satisfy the police. It is for this reason that we have  
refused to rely /.....

refused to rely on the evidence of some of the State witnesses even though the doubts we entertain in regard to their veracity might not ordinarily be classed as reasonable doubts.

Accused No. 7 confirmed that he got Robert Zuma to join the Transport and General Workers' Union. As to their alleged conversation in December<sup>1974</sup> about freedom fighters, he said that Robert introduced the subject by referring to a newspaper report on the civil war in Angola. Robert could not understand why the Angolan people were still fighting if they had obtained their freedom. Accused No. 7 explained to (10 him that different factions were fighting amongst themselves in Angola, and predicted that the same could happen in South Africa unless the existing organisations united and spoke with one voice. That was his version of the conversation, and it was not challenged in cross-examination.

Accused No. 7 was arrested at about 4 p.m. on Friday, the 5th December 1975 by W/O. Crous and another white security policeman. At the Special Branch offices in Loop Street one Sithole acted as interpreter while the whites interrogated him. They alleged that he had been engaged by accused (20 No. 1 to convey Mandela and other recruits to the Swaziland border and tried to persuade him to make a statement incriminating accused No. 1. Then he was forced to flatten himself against the wall, facing it, with his arms outstretched so that they were horizontal to the ground. He claimed that he was forced to maintain that position for some three hours, from between 5.30 and 6p.m. to 8.45 p.m. When he became exhausted and lowered /.....

and lowered his arms he was ordered to put them up again. He was given no food, and the questioning continued unabated while he stood there with his arms outstretched. Then he was locked up in a cell at the Loop Street police station, a cell which he continued to occupy until he appeared in Court. Shortly before being locked up he was told that he had been detained in terms of section 6, that he could be confined for six months without seeing anyone, that his attorneys would not be able to do anything and that if convicted his sentence would be not less than 15 years. He received his first meal at (10 breakfast the next morning, and was thereafter taken to the offices for interrogation by Crous and Sithole until late in the afternoon. They did not assault him or make him stand against the wall again, but addressed him in loud and angry tones. He was afraid of them because of newspaper reports he had read of detainees dying at the hands of the security police. He felt helpless in their hands, and confused by the false allegations they made, and frustrated by not being able to satisfy them with his replies. He was not interrogated the following day, which was a Sunday, but the interrogation was (20 resumed on Monday, the 8th and continued on Tuesday, the 9th December. On the Tuesday W/O. Crous was accompanied by Sgt. Mbatha, and the proceedings commenced with them tearing up the statement which he had made up to that stage. Crous then left the room and while he was out Mbatha tried to persuade accused No. 7 to make a satisfactory statement, threatening him with prosecution and conviction if he did not, and promising /.....



promising freedom and proper treatment if he did. When Crous returned to the room he produced photographs of various persons, including accused No. 2, Khuzwayo, accused No. 3, Zulu and accused No. 4. The police alleged that all these people had attended the meeting on the 10th August, and Mbatha instructed accused No. 7 to study the photographs of Khuzwayo and accused No. 2 carefully so that he would be able to identify them in Court. After the interrogation on the 9th December accused No. 7 was left in his cell until about the 14th December. On that day Crous and Mbatha interrogated him until about 4 p.m. (10 when they were relieved by Langa and a white policeman whose name he did not know. This pair played the fool with him until about midnight when they returned him to his cell. He was not taken out for interrogation again until the 23rd January 1976, and on that day he was only asked one or two questions about William Zondi. Then he was returned to the cell and remained there until some time in March when a policeman named Mathonsi took him out to see a white policeman who wore spectacles. This white policeman read a statement out to him. When accused No. 7 disagreed with the contents of the state- (20 ment the white policeman became angry and ordered Mathonsi to take him back to the cell. He was left alone again until the 9th April 1976. On that day he was taken to an office where he met Lieut. Wareing who introduced himself as Jansen. Wareing wanted him to become a State witness, and he indicated his willingness to do so provided he was not required to testify in accordance with the statement that the police had concocted for him, /.....

for him. Wareing proceeded to take another statement from him, returning the next day to complete it. However, Wareing was not satisfied with this fresh statement and there was no further talk of his being a State witness.

That is the story of accused No. 7's interrogation. He also gave a graphic account of the conditions under which he was kept in solitary confinement and the effect that this had upon him. He said that when he first entered the cell it was dirty and the blankets were infested with lice and so old that they were disintegrating. The cell (10 had a private exercise yard leading off it, but the door to the yard was kept locked until January 1976, with the result that he was deprived of exercise during December. Until the door to the exercise yard was opened he was also deprived of proper washing facilities because the tap from which he drew his water supply was situated in the yard. During December he was only allowed a dish of water in the cell, and was therefore unable to wash his body before getting access to the tap in January. His body hurt all over, and he suffered from confusion and loss of memory. He was never allowed any reading matter. In order (20 to occupy his time he placed pieces of meat on the floor to attract ants and developed an intense interest in the ants. He conceded that the food was very good, and agreed with a leading question to the effect that it improved progressively while he was kept in detention.

According to accused No. 7 he was visited by a magistrate every other Thursday. On the occasion of one of these visits /.....

these visits he allegedly complained to the magistrate about the conditions under which he was kept and the manner of his interrogation. The magistrate said that he was not concerned with the manner in which the interrogation was conducted, and became angry at the indignant manner in which accused No. 7 complained about the state of the blankets, the lack of exercise and so forth. The accused was also angry, and the interview was not a success. On the occasion of the next visit he apologised to the magistrate for his behaviour, and he thereafter received good blankets.

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Accused No. 7 was an articulate and apparently intelligent witness. His demeanour was neutral, in the sense that we could not detect anything about it to indicate positively that he was either lying or speaking the truth on any material point. However, we felt that much of his evidence regarding his detention and interrogation was the product of invention or deliberate exaggeration. This feeling gradually became a conviction as we listened to the rebutting evidence of W/O. Crous, Dr. Hetherington, Sgt. Mostert and Mr. van der Merwe.

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W/O. Crous confirmed that he was present at the arrest of accused No. 7 at about 4 p.m. on the 5th December, and that he interrogated the accused until about 9 p.m. that evening. He noted at the outset that accused No. 7 was prepared to co-operate. During the interrogation he allowed accused No. 7 to remain seated or stand as he pleased. He emphatically denied that accused No. 7 was forced to stand facing the /.....

facing the wall with his arms outstretched as alleged, and disputed that any normal person could maintain that position for three hours. He had tried to do so himself by way of an experiment and had not been able to keep his arms outstretched for more than twenty minutes. We have no doubt that this was the truth, and we are satisfied that the allegation that accused No. 7 maintained the position described for some three hours was false. Crous denied that he said anything to accused No. 7 about conveying Mandla to the Swaziland border, and pointed out that he had no information that accused No. 7 had done anything of the sort. He admitted that he explained the provisions of section 6 to accused No. 7 but denied saying anything about any sentence which he might receive if convicted under Act 83 of 1967. As Crous had not had supper before the interrogation commenced that evening he ordered food from a nearby cafe both for himself and accused No. 7. He accordingly denied the allegation that accused No. 7 went without food that evening.

With regard to dates, Crous had refreshed his memory by reference to certain statements, but it is not clear that these were statements that he made or took himself, with the result that in this respect his evidence may be based to some extent on hearsay. He said that he did interrogate accused No. 7 on Sunday the 7th December during the afternoon. At that stage he was the only white person concerned with accused No. 7 but either Const. Sithole or Sgt. Mbatho acted as his interpreter during interrogations. He denied that he and /.....

that he and Mbatha interrogated accused No. 7 on Tuesday, the 9th December, but recalled that on that day he visited the cell to hand over fresh clothing which he had caused to be fetched from the accused's home. Accused No. 7 was taken out of his cell and interrogated again on Wednesday, the 10th but Crous did not see him on the 11th December. As the result of a report received from Col. Dreyer, Crous went to the cells again on the 12th December and discovered that accused No. 7 was suffering from sores on his skin. He took accused No. 7 to see the district surgeon, Dr. Hetherington at the Loop Street surgery, and was present when Dr. Hetherington diagnosed the complaint as Natal sores and prescribed medicine for them. It was put to Crous by counsel for the accused that accused No. 7 made no complaint about sores but only about his eyes. Crous admitted that accused No. 7 did complain about his eyes on occasion and that he provided him with eyedrops, but reiterated that his complaint on the 12th December was about sores. This is corroborated by the independent evidence of Dr. Hetherington. He remembered examining accused No. 7 at the police surgery, Loop Street during December and said that he was complaining of septic sores.

Crous denied that he ever tore up any statement that he had taken from accused No. 7. Whilst admitting that he showed accused No. 7 photographs of various persons, he denied telling him who the persons were or suggesting that they had attended any meeting. He denied seeing accused No. 7 on the 14th December, and denied that he ever became angry with him.

He said /.....

He said that accused No. 7 never complained to him about conditions in his cell, and when he visited the cell he observed that the door to the exercise yard was open. In this respect his evidence is corroborated by that of Mostert. Mospert testified that the cell occupied by accused No. 7 was 4,3m x 3m in size and that it had a private exercise yard of about the same size. He said that when he was on duty the door from accused No. 7's cell to his exercise yard was never locked. As already indicated, his evidence was that there is a tap in the exercise yard and each detainee was provided with soap and a 20 litre bucket, so that accused No. 7 could wash himself whenever he chose to do so. We have already recounted Mostert's evidence about the blankets and food the detainees were given. He said that accused No. 7 never complained to him about the conditions under which he was being held. As already indicated, Mostert was an excellent witness whose evidence was hardly challenged in cross-examination.

It will be recalled that the magistrates who visited detainees in Pietermaritzburg were Mr. van der Merwe and Mr. Friend, and that there were no complaints when Mr. Friend made his visits on 22nd December 1975 and 2nd January 1976. It was put to Mr. Friend that on the occasion of one of his visits accused No. 7 told him that his eyes were sore, but he did not think that there was such a complaint. It was put to Mr. van der Merwe that accused No. 7 complained to him about the conditions under which he was kept and the manner of his interrogation. Mr. van der Merwe denied that accused

No. 7 made /.....

No. 7 made the complaints alleged. He was able to say, by reference to his official records, that he first saw accused No. 7 on 15th January and that the next visit was on 30th January 1976. On neither of these occasions did accused No. 7 have any complaints. It was suggested that accused No. 7 did complain about the state of his blankets, the lack of exercise and the manner of his interrogation, and that Mr. van der Merwe did not record these matters because he did not consider them to be legitimate complaints. The magistrate was adamant that he would have recorded complaints of the kind (10) alleged but did not do so because there were no such complaints. There can be no question of his having forgotten the complaints and incidents alleged by accused No. 7, and it is unthinkable that he was consciously misrepresenting the true position. Moreover, if accused No. 7 had complaints about the manner of interrogation and about the blankets, etc. he would surely have voiced them when Mr. Friend visited him, and not waited until the 15th January 1976. On his own showing the interrogation had virtually ceased by the 14th December, and he had access to the exercise yard and washing facilities in January (20)

Having carefully considered all the relevant evidence we are satisfied that: the story accused No. 7 told about his ill-treatment during interrogation and the degrading, unhygienic and debilitating conditions of his confinement was false in several important respects. He undoubtedly lied about being forced to stand with his arms outstretched for three hours, about the condition of his blankets and being deprived of exercise /.....

of exercise and washing facilities, and about making complaints to the Chief Magistrate. It is true that counsel for the State did not put it to accused No. 7 specifically that his allegations would be contradicted, but we consider that the accused was fairly apprised of the fact that his story was not acceptable. We cannot agree with Mr. Muller's submission that the accused suffered prejudice as a result of the prosecutor's failure to deal more specifically with his allegations. As I have indicated elsewhere, W/O. Crous impressed the Court as a truthful and reliable witness. His evidence relating to (10) the detention and interrogation of accused No. 7 is corroborated in material respects by that of Dr. Hetherington and Sgt. Mostert, and derives support from the proven fact that this accused made no complaints to either of the magistrates who visited him. We are quite satisfied that the allegation that he tried to induce accused No. 7 to include false information in his statement is devoid of truth. As Lieut. Wareing was not called to refute the allegations it is possible that he did take a statement from accused No. 7 in April 1976 and suggest that he give evidence for the State, but we do not believe that (20) any part of the original statement had been concocted by the police. The evidence of accused No. 7 on this aspect of the case was obviously designed to show that the police subjected him to the so-called DDD syndrome in a deliberate attempt to have him give false evidence against certain of the other accused. For the reasons given we are certain that the evidence in question was dishonestly fabricated for that purpose, and we accordingly /.....

we accordingly reject it.

The next defence witness was accused No. 8. He was trained as a cobbler and used to manufacture leather goods for his own account. Accused No. 6 had two houses in Mpumalanga township and accused No. 8 used a room in one of these houses as a workshop. When accused No. 6 went hawking vegetables or madumbies accused No. 8 sometimes accompanied him for the purpose of selling his leather goods. As from March 1975 accused No. 8 carried on his leather manufacturing business in his spare time, because at that stage he was also (10 working as chief clerk for Rainbow Chickens at Hammarsdale. He was also interested in trade unionism, having joined the General Workers' Union in 1958 when he was employed in Durban. This union was affiliated to SACTU.

The defence story of how accused Nos. 6 and 8 came to attend the meeting at the house of accused No. 1 on 10th August 1975 has already been set out. In this connection accused No. 8 told substantially the same story as accused No. 6. His version of the meeting itself was largely a repetition of earlier defence evidence, and it is unnecessary to record it in (20 detail. A few points should however be noted. He confirmed that in the course of the general conversation before the meeting proper commenced it transpired that Zuma had borrowed some money from a lawyer in Durban. He said that the two matters of importance which were discussed at the meeting were the revival of SACTU and the Luthuli commemoration service. With regard to the revival of SACTU, he agreed with the proposal that recruits /.....

proposal that recruits be sent abroad for training as trade unionists. The proposal was contained in accused No. 1's letter to Mabhida: to the effect that twelve persons would be recruited in various places in Natal, one in Newcastle, one in Ladysmith and so forth, and then be sent abroad for training. When first questioned on this point accused No. 8 stated that during the discussion there was some objection to the recruitment having to be carried out in the various centres mentioned in the letter, whereupon it was said that the persons could be recruited anywhere but would be sent to those centres after (10 their training. However, when I raised the matter again after his re-examination he said that no one had objected to the recruits being obtained from the various centres, that accused No. 1 had simply volunteered in the course of the discussion that they could be obtained anywhere and not necessarily from the centres specified in his letter. As already noted, this does not square with the evidence of accused Nos. 1 and 6, and we think that it was a dishonest attempt to trim the defence case. Accused No. 8 also contradicted accused No. 1 in another material respect, by stating that it was clear from one of (20 Mabhida's letters and from the discussion at the meeting that arrangements had been made for the recruits to be trained at Ruskin College. This contradiction is perhaps not as significant as the other one, because accused No. 8 could possibly have misunderstood what was said in this connection. Accused No. 7 said that Mabhida had written in one of his letters that he had made preparations for the recruits to be trained at an institution /.....

institution which was similar to a certain college in London. Accused No. 7 could not remember the name of this college but it could well have been Ruskin College.

Dealing with the allegations against him on Count 2, accused No. 8 denied that he attempted to recruit Stanford Ngidi for military training and stated that in fact he tried to get him to join the Mpumalanga Community Guard. Accused No. 8 said that he was the assistant secretary of the Community Guard in Unit 2 of the township. In that capacity he took part in June 1975 in a door-to-door campaign to re= (10  
cruit members for the Community Guard. In the course of this recruiting drive he called at the home of Ngidi and tried to persuade him to join. He told Ngidi that young people such as he should join the Community Guard, that the organisation was of great help to householders in the township, that Ngidi would be an asset to the organisation and, as a member, would be able to protect his family. Ngidi's only reaction to the proposition was to say that he would think about it.

Accused No. 8 made it clear under cross-exam= (20  
ination that he did not specially select or seek out Ngidi as a candidate for membership of the Community Guard. Ngidi was merely one of many residents that he approached in the course of the general recruiting campaign, and all of those whom he approached were in favour of the organisation. It is also clear from his evidence that the occasion described above was the only one on which he tried to persuade Ngidi to join the Community Guard, and that Ngidi was sober on that occasion.

Under these /.....

Under these circumstances the suggestion that Ngidi misconstrued the approach to join the Community Guard as an invitation to become a soldier and terrorist is extremely tenuous. And the suggestion that it was the police who put the idea of soldiering and terrorism in his head seems equally far-fetched. With the example of William Zondi in mind we have carefully considered whether Ngidi would have fallen in with any suggestion by the police that accused No. 8 tried to recruit him for terrorist training when in truth he was but one of many who were invited to join the Community Guard. Ngidi is not a young (10  
boy like Zondi. In the witness box he revealed enough of his character to convince us that it would require a great deal more than suggestive questioning by the security police to persuade him to fabricate evidence against the accused. In any event, there is no evidential basis for the suggestion that his interrogation was suggestive, let alone that he was subjected to any coercive persuasion.

According to his evidence accused No. 8 was present at only one drinking party which Ngidi also attended, and this was at the beginning of 1975. However they used to (20  
meet and converse from time to time thereafter, as they lived in the same street. In the course of conversation accused No. 8 learnt that Ngidi was working for the Kwa Zulu administration in a capacity which did not match his educational qualification, and for a meagre wage. Thus, when a suitable vacancy occurred at Rainbow Chickens during the last week of November 1975 he suggested to Ngidi that he apply for the job. He did not know what the outcome was because he was arrested before he saw

Ngidi again /.....

Ngidi again.

Accused No. 8 denied that he attempted to recruit Churchill Nteta for military training. He said that the need to establish a trade union at Rainbow Chickens was frequently discussed when the workers met in the refectory, and that Nteta took part in the discussions. He recalled the occasion when the topic of black soldiers cropped up in the course of conversation during the tea break, but claimed that this was on a Sunday in June 1975, not in October as Nteta stated. In the course of the discussion on that occasion (10 Nteta gave his views on certain policies of the Kwa Zulu Government, and accused No. 8 expressed his approval of these views when he went out with Nteta after tea to put petrol in his van. He denied Nteta's evidence to the effect that while attending to the van he offered to arrange transport for Nteta to go and learn to be a soldier.

According to accused No. 8 the next relevant discussion involving Nteta took place in the refectory on an occasion during August or September, after he had attended the meeting at the home of accused No. 1. They were discussing (20 the dismissal of a driver named George Dada, and the general opinion was that his dismissal could have been prevented if there had been a trade union to protect his interests. In the course of this discussion accused No. 8 mentioned that he had met some people who wanted to revive SACTU and were taking steps to send people abroad for training as organisers. There was no discussion about recruiting people for such training, and he did not /.....

he did not say that recruits were still being sought, but did say that when the organisers returned from training and a union had been established at Rainbow Chickens they should affiliate with SACTU.

On a subsequent Sunday, during or about October, Nteta allegedly told accused No. 8 that he would like to go abroad for trade union training. Accused No. 8 said that he was putting petrol in Nteta's van when he (Nteta) made this announcement and asked how long the training course lasted. Nteta went on to say that he had been arrested on a (10 dagga charge, that he was on bail of R50, that his case would be heard the following Thursday and that he wanted to avoid standing trial. Accused No. 8 replied that he was not concerned with sending recruits away for training and that he did not think the people in charge of the project would accept Nteta as a recruit if he was doing it to evade the dagga trial. He testified that he saw Nteta again after the conclusion of the dagga case and learnt that he had received a suspended sentence of imprisonment. There was no further talk then about Nteta going away for training as a trade unionist. (20

We do not believe the evidence of accused No. 8 about what transpired between him and Nteta. We have no doubt that in furtherance of the conspiracy already referred to accused No. 8 attempted to recruit Stanford Ngidi for military training, and it is entirely in accordance with the probabilities that he tried to recruit Nteta too. Nevertheless, as Nteta is an accomplice who was coached by the police and as his evidence /.....

his evidence was neither satisfactory in all material respects nor corroborated in any material respect, we consider it unsafe to make a positive finding that accused No. 8 recruited or attempted to recruit him for military training.

It remains to consider the evidence of accused No. 8 relative to his detention and interrogation. He was arrested at home about 3.30 p.m. on 5th December 1975. After searching his home and his workshop at Mpumalanga the police took him to the Loop Street police station. At Loop Street W/O. Olivier informed him that he had been detained because he had recruited people, that he (Olivier) was to investigate his case, that he did not wish to quarrel with him but required him to reply to all questions to his satisfaction. After some questioning by Olivier at Loop Street accused No. 8 was taken to the Greytown police station. They left Pietermaritzburg at about 7 p.m., stopping at a tea-room on the way to purchase food for accused No. 8 and his police escorts. The policemen who went with him to Greytown were W/O. Olivier, a white man from Kokstad (probably Sgt. Randall), one Qwabe and Sgt. Ziqubu. After the accused had been booked in at the Greytown police station he was taken to an office upstairs and interrogated until about midnight. Olivier said that they knew everything that had occurred at accused No. 1's place and that he (accused No. 8) should tell them everything he knew. Olivier threatened him with prolonged detention if he did not make a satisfactory statement, and indicated that he would earn a quick release from custody if he did co-operate. When the interrogation ended that night /.....

interrogation ended that night he was locked in a cell and provided with blankets which were old, soiled and smelly.

The interrogation continued the next morning, Saturday the 6th December, and he was also interrogated on the Sunday morning and all day on Monday the 8th. Olivier and Ziqubu conducted the interrogation in the mornings, and Randall and Qwabe in the afternoons. On the Saturday he complained to Olivier about the condition of his blankets, only to be told that if he did not co-operate he would have no blankets at all. When Randall and Qwabe questioned him on the Saturday afternoon he was not allowed to sit down. On the Saturday and Sunday the interrogation was conducted in the same office upstairs in the main police station building, but on the Monday they moved to what accused No. 8 described as a storeroom at the back near the garages. On that occasion Olivier said that he had been to Pietermaritzburg and obtained all the evidence about accused No. 8, that everything he had told them up to then was "bullshit", that they would start from the beginning again and he now had to speak the truth. Olivier went on to call out the names of persons who had attended the meeting on 10th August, including those of accused Nos. 3, 5 and 7. Two security policemen from Greytown joined him for a while and accused No. 8 was subjected to a good deal of verbal pressure, including a threat by Olivier that if he did not co-operate he would take steps to have his wife detained.

Accused No. 8 said that on Tuesday, the 9th December /.....



December Qwabe and the white man from Kokstad (i.e. Randall) took him from his cell to the storeroom. Ziqubu arrived there and Randall went out, leaving accused No. 8 in the store= room with Ziqubu and Qwabe. Thereafter, according to accu= sed No. 8, the two black policemen assaulted him in a brutal and sadistic manner. They put gravel in his shoes and forced him to perform an exercise which involved assuming a sitting position and flexing his fingers. When he eventually col= lapsed from exhaustion they pulled him to his feet and stood him against the wall. They were on either side of him, each (10 of them standing on one of his shoes to grind his feet into the gravel in the shoes. They also jabbed their fingers into his stomach and repeatedly slapped his face. Eventually, when he was wet with perspiration, they desisted and told him to take off his shoes so that they could remove the gravel. When Randall returned to the room he asked what had happened, and laughed when told that accused No. 8 had been doing exercises. During the course of the morning interrogation he threatened to use an instrument called the "impundulu" on accused No. 8 if he did not co-operate. (20

According to accused No. 8 he was interrogated again on the Wednesday and Thursday and was then left alone un= til Monday, the 15th December. On the Wednesday Olivier told him that all the others were talking, that he was the only one holding out. He also purported to pass on a message from W/O. Potgieter (whom accused No. 8 knew) to the effect that if he made a satisfactory statement he would not be charged but used as a witness. /.....

as a witness. By the time he was returned to his cell on the Thursday accused No. 8 was suffering from a severe headache. He complained about this to the station commander and was visited a couple of days later by a white man who claimed to be a doctor, and a black man who acted as his interpreter. The white man examined him, using a stethoscope, but said that he could find nothing wrong with him. He explained that the headache was probably due to the fact that the accused was in solitary confinement and said it would pass. He did not pre= scribe any medicine for it. Accused No. 8 made no complaint (10 to this man about the alleged assaults. When asked to explain why he did not take this opportunity to complain he said that he had thought at the time that they were security policemen masquerading as a doctor and his assistant. His reason for thinking that they were policemen was the fact that the "doctor" ascribed the headache to the conditions under which he was being detained and neither explained the nature of the headache nor gave him any analgesic for it. We do not consider that to be a valid reason for the alleged suspicion, and our im= pression was that accused No. 8 was being untruthful in this (20 respect. His failure to complain about it to the doctor casts doubt on his story that he was assaulted, and we think that he invented a false explanation for failing to complain.

Accused No. 8 said that he was interrogated continuously from the morning of Monday, the 15th to the after= noon of Wednesday the 17th December. Three pairs of interro= gators acted in relays, namely Olivier, <sup>and</sup> Ziqubu, Randall and Qwabe /.....

Qwabe, and a captain who was also accompanied by a black policeman. Accused No. 8 said that he was kept awake throughout this period and was not allowed to sit down at any stage except when taking meals. When this marathon interrogation ended he was locked in his cell and left alone until Friday, the 19th December. On that day Lieut. Coetzee showed him a series of photographs of people and asked him to point out the photographs of those who were present at the meeting on 10th August 1975. When he had done so he was returned to the cell and Olivier gave him a Bible to read and a parcel containing fruit and (10) clothing. There was no further interrogation, and he was transferred at a later date from Greytown to the gaol in Pietermaritzburg.

The magistrate of Greytown, Mr. Hickman visited accused No. 8 at the police cells on the 18th and the 31st December 1975. He testified that on the first occasion accused No. 8 informed him that he had no complaints, but he had one request. His cigarettes were being kept by the police and only given to him at intervals, and his request was that he be allowed to keep them in his cell. Mr. Hickman said (20) that on this occasion, Thursday, the 18th December, he observed that accused No. 8 appeared to be physically and mentally fit. This evidence was not challenged, and it casts grave doubt on the story that the accused had until the previous evening been deprived of sleep and kept standing while being interrogated for three days and two nights at a stretch. Mr. Hickman's evidence was that on the occasion of his second visit accused No. 8 again /.....

No. 8 again said that he had no complaints, but requested a more balanced diet. He explained that he was only being fed with soft porridge and that he wanted vegetables. He told the magistrate that he had been given a Bible but this was not of much use because his spectacles were in the charge office. The only part of this evidence that was challenged in cross-examination was that relating to the complaint about the porridge. It was put to Mr. Hickman that the complaint was made on the occasion of the first visit and was that the porridge was sour in the morning. It is common cause that accused No. 8 (10) did not complain to the magistrate that he had been assaulted or kept standing or deprived of sleep. When I asked why he failed to do so he explained that he was not sure that Mr. Hickman was a genuine magistrate, and suspected that he might inform the security police of any complaints he might make, with the result that he might have to undergo even worse suffering at their hands. That is a possible explanation, but it seems more likely that he told the magistrate that he had no complaints for the simple reason that he had none.

The other witness who gave evidence in rebuttal (2) of accused No. 8's allegations of assault, etc. was Sgt. Ziqubu. He said that he acted as interpreter whenever W/O. Olivier interrogated the accused, and also performed the same service for Sgt. Randall occasionally. The interrogations were normally conducted in the mornings only, but he confirmed that accused No. 8 was interrogated until after midnight on the 5th and all night on the 15th December. He also confirmed that they moved /.....

they moved from the office in the main building to a store= room in the old barracks. He assumed that this was because the office was required by others, and denied that they took the accused to the storeroom to assault him, or that Qwabe and he did assault him in the storeroom. He said that they used to buy meals for accused No. 8 at a tearoom, that he was allowed to sit down when they interrogated him, and they gave him Lexington cigarettes to smoke. With regard to the interrogation itself, he denied that the names of accused Nos. 3, 5 and 7 were called out as alleged, or that there were threats (10 such as the one to have the accused's wife detained, or that the accused was told that he would be released if he talked. He frankly admitted telling accused No. 8 that he should speak the truth, and conceded that he might have told the accused that he had been a member of the security police for nine years. Although he did not remember doing so he also conceded the possibility that he had told accused No. 8 that time was no object, that they would wait until he volunteered the information they wanted. So far as Ziqubu was aware, accused No. 8 was given adequate time to tell his story and was never pressed for (20 information. On no occasion when he interpreted for Olivier was accused No. 8 asked to become a State witness. Ziqubu said that accused No. 8 never complained to him about the state of his blankets. He saw the blankets when he went to the cell and did not notice anything out of the ordinary about them.

With regard to the alleged non-stop interrogation from Monday the 15th to Wednesday the 17th, Ziqubu testified that /.....

testified that at about 3 p.m. on the Monday accused No. 8 was returned to his cell and told to rest, because they intended to interrogate him through the night. He was awakened at 6 p.m. and interrogated by Olivier and Ziqubu until about 10 p.m. They were relieved by Randall and Qwabe, and a certain captain and his interpreter also took part in the interrogation. According to Ziqubu this captain came to Greytown on only one occasion and slept overnight. He was there for one or two days. Ziqubu said that the interrogation was over by 6 a.m. on the Tuesday and accused No. 8 was left alone (10 that day. He knew this because he served the accused with meals in his cell at 6 a.m. and 12 noon that Tuesday. Ziqubu had no personal knowledge of any further interrogation on the Tuesday and Wednesday, but thought that accused No. 8 was interrogated again on the Wednesday morning. He did not know why accused No. 8 was interrogated throughout the Monday night. Although there is no direct evidence on the point it seems probable that the interrogation that night was concerned with the information the police had received about a possible uprising on the 16th December. It is entirely in accordance (20 with the probabilities that the interrogation was terminated when the day of the expected uprising dawned.

The Deputy Attorney-General did not see fit to lead the evidence of Olivier, Randall or Qwabe in rebuttal, presumably because he considered that the evidence of Ziqubu and Mr. Hickman was sufficient. It might have been better to have more evidence on this issue, but Ziqubu was such a good witness /.....

witness that we do not think that any further evidence is necessary. His evidence was given frankly and fairly and was not shaken in the slightest when tested under cross-examination. His denial of the alleged assault is supported by the fact that accused No. 8 made no complaint about it to the doctor or the magistrate, and his denial of the marathon interrogation derives some support from Mr. Hickman's evidence regarding the accused's appearance on Thursday, the 18th December. As against this we have the evidence of accused No. 8 who has undoubtedly lied to the Court on other material issues. (10 Under all the circumstances we are satisfied that he lied on this issue too, and we reject the evidence of ill-treatment, assaults, threats and related pressures while under interrogation at Greytown. In any event, even if there were some truth in these allegations his evidence falls short of providing any basis for a finding that the police forced him to incorporate any falsehoods in his statement.

Before leaving the evidence of accused No. 8 we should mention that we have given due consideration to a submission by Mr. Muller that he was prejudiced by the prosecutor's alleged failure to challenge his allegations and put the police version of the events in question to him. We think that the accused's story was adequately challenged and that the submission is unfounded. (20

We now turn to examine the evidence of accused No. 5. He has lived at Sobantu since 1954, is married and has six children. He is reasonably well educated, having completed/.....

completed Std. IX at school and passed the Senior Certificate examination by dint of studying part-time at home. He professed an abiding interest in education and trade unionism. He commenced working in April 1963 for the Bantu Administration Department, and in the same year joined the General Workers' Union which was affiliated to SACTU. He changed his employment from time to time over the years, and at the time of his arrest was working at the Edendale Hospital as a learner caterer.

Accused No. 5 said that he got to know accused No. 1 in 1963 when he joined the trade union, and was thereafter in the habit of visiting accused No. 1 to chat about matters of mutual interest with him and Sipho Kubheka and one Rogers Shange. He had known Kubheka since boyhood. He lost contact with accused No. 1 after a while, but met up with him again in 1972 when he was selling insurance. From the time he commenced working at the hospital in 1973 accused No. 5 saw accused No. 1 more frequently. When accused No. 1 called at the hospital to collect or deliver laundry and dry-cleaning they used to meet and discuss trade unionism and other matters of interest, and sometimes Kubheka or Lawrence Ngubane or other fellow hospital employees joined in the discussion. In 1975, at the instigation of accused No. 1, both accused No. 5 and Kubheka allegedly became members of the Trade Union Advisory and Co-ordinating Council (TUACC). In the course of their discussions accused No. 1 warned them to conduct their trade union activities secretly lest they be dismissed /..... (10 (20

dismissed from their employment or silenced by the police, and advised them to organise only a few people at a time. If accused No. 5 is to be believed Kubheka displayed great interest in trade unionism, even expressing a wish to attend Ruskin College and become an expert in that field.

It is common cause that Kubheka sometimes accompanied accused No. 5 on visits to Moses Bhengu. According to accused No. 5 they would exchange books and discuss trade unionism and other topics, but he flatly denied that there was any question of their forming an A.N.C. cell. At one stage he had a book of Kubheka's called "The War of the Flea" and when he had finished reading it he passed it on to Gerald Mdlalose. He denied that he ever gave Exhibit 3 to Kubheka. His version is that Kubheka told him about this book and said that he would get it back from Mazwi Msimang and lend it to him. In general, accused No. 5 denied the incriminating evidence of Kubheka and the witnesses who were called to corroborate Kubheka. He admitted going with Kubheka to see Arthur Majola at his place of employment, and confirmed that he was not within earshot when Kubheka spoke to Majola. Although he did not hear their conversation Kubheka had told him that they were going to discuss the revival of SACTU.

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For reasons stated earlier in this judgment we are not prepared to rely on the evidence of Kubheka, Bhengu, Mdlalose, Msimang and Majola for any finding that accused No. 5 established an A.N.C. cell with any of them, incited any of them to establish cells or recruit people for military training /.....

training, or received and distributed any subversive literature. It does not follow, of course, that we reject all of the evidence of these witnesses or that we believe the accused's account of his dealings with them. For instance, we are quite satisfied that accused No. 5 did tell Bhengu that the discussion at the meeting he attended at Edendale (i.e. the meeting of the 10th August 1975) had concerned the resurrection of the A.N.C. and SACTU. We reject the evidence of accused No. 5 that all he told Bhengu was that they had discussed the revival of SACTU and the need to train organisers abroad. Bhengu's version of what he said accords with Nxasana's evidence that the meeting dealt with A.N.C. as well as trade union activities, and there are other factors which demonstrate that in this respect Nxasana told the truth.

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Accused No. 5 testified that he was invited to the meeting on the 10th August to "discuss trade unions". He only arrived at about 10.45 a.m. or later, by which stage accused No. 6 was reading the letter about the Luthuli commemoration service. In the course of the summary which he made after the reading of this letter accused No. 1 allegedly reiterated that it was necessary to obtain twelve recruits to be trained abroad as organisers, mentioned the various towns from which they ought to be obtained, and said that if they could not be obtained from those towns they could be recruited from anywhere in Natal. For the rest, accused No. 5's account of the summary was remarkably similar to the account of /....

account of accused No. 1 himself - so similar, in fact, that either accused No. 5 has an exceptionally good memory or his evidence was well rehearsed. When cross-examined on the point accused No. 5 attempted to blur the distinction between the alleged summary and the general discussion which ensued, so as to reconcile his evidence with that of accused Nos. 7 and 8 to the effect that it was during the discussion - not the summary - that accused No. 1 said that the recruits could be obtained anywhere. According to accused No. 5 no decisions were taken at the meeting but there was general agreement on the views expressed. The obtaining of the recruits was left in the hands of accused No. 1, and he never asked accused No. 5 to do any recruiting. However, all those present at the meeting were at liberty to speak to other people about the matter.

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Accused No. 5 said that on an occasion subsequent to the 10th August he told Lawrence Ngubane about the meeting, saying that they had discussed the revival of SACTU and the training of organisers abroad, and that the people required for such training should have a knowledge of English and arithmetic and an educational level of Std. V or better. Although he did not ask Ngubane to go for training as an organiser he did propose that he join a trade union and do some secret recruiting for trade unions at Imbali. Accused No. 5 gave his own version of his general discussions with Ngubane, explaining how topics such as the A.N.C. and its activities /...

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its activities cropped up in the course of the discussions. He denied asking Ngubane to establish an A.N.C. cell at Imbali. He claimed that Ngubane had perjured himself, and suggested that he had done so because "he was told by the Special Branch and he wanted to get out of detention".

According to accused No. 5 he was on a bus with Douglas Ngcobo and others on an occasion in April 1975 and did alight from the bus at the same place as Ngcobo. However, he had no private conversation with Ngcobo on that occasion and certainly did not request him to "organise three boys" who could go abroad for military training. What actually happened, according to accused No. 5, was that people on the bus were complaining about their wages and working conditions and he said that they ought to establish trade unions and thereby organise the workers to fight for their rights. He parted from Ngcobo when they alighted from the bus, and did not see him again before his arrest. Accused No. 5 said that Ngcobo had given perjured evidence against him, but did not suggest that the police were responsible this time. He said that Ngcobo had perjured himself to settle a grudge which was based on an unfounded suspicion that he (accused No. 5) was in love with Ngcobo's mistress. Apart from the fact that it was never suggested to Ngcobo that he bore the accused any grudge, this appears to be a totally inadequate and improbable reason for him to have given false evidence to incriminate an innocent man.

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A variety of reasons was suggested to explain why, /.....

why, according to accused No. 5, the numerous witnesses who gave incriminating evidence against him had perjured themselves. We have already adverted to the reasons that counsel suggested in cross-examining Sipho Sokabase. Accused No. 5 suggested that Bhengu had lied about what he (accused No. 5) had told him concerning the meeting of the 10th August because "he was wanting to get out of detention". Elijah Buthelezi allegedly perjured himself because he was afraid of the police, and because he works for the Government and was afraid of being dismissed from his employment. (10) When asked why Hansford Madlala had given false evidence against him the accused said "Madlala also works for the Government, therefore he must go along with them". Mandla Hadebe was afraid of being arrested and of being dismissed from his nursing post, and Bekumuzi Hlabisa perjured himself because he feared the police.

Accused No. 5 admitted having a conversation with his brother Jabulane, Sipho Sokabase and Elijah Buthelezi on an occasion during July 1975. He said that he went to the enclosed portion of the verandah which Jabulane used (20) as a bedroom, because he had heard Jabulane laughing and suspected that he might be entertaining a girl in his bedroom. Thus he discovered that Jabulane had Sipho and Elijah with him. Jabulane showed him a newspaper report of people who fled from Rhodesia to Mocambique to join Bishop Muzorewa's African National Council, and proceeded to ask questions about it /.....

about it. Accused No. 5 allegedly told the boys about the fighting in Rhodesia and said inter alia that it had arisen because the Whites there denied the indigeneous people the opportunities to which they were entitled. Then - true to form - he told the boys that trade unions should be established to fight for the rights of the workers. However, he told them not to concern themselves overmuch with these affairs but to concentrate on their education. He denied that he attempted to recruit them for military training.

With reference to the evidence of Mandla Hadebe, (10) accused No. 5 said that they were in the habit of discussing political events reported in the press. On one occasion while they were travelling on a bus together Hadebe (who is something of a firebrand) said that the Blacks were cowards, that they should form suicide squads as the Arabs and Japanese had done. Accused No. 5 disagreed and - true to form once again - expressed the view that they should organise the workers in trade unions in order that they might fight for better working conditions. However, Hadebe's reaction to that suggestion was that the regulations prohibited nurses (20) from concerning themselves with trade unions, that there were many spies about and he might be dismissed if he did so. Accused No. 5 denied suggesting that they go overseas for military training.

With regard to the allegation that he attempted to recruit the witness Bekumuzi Hlabisa, the story told by accused No. 5 was substantially that which was foreshadowed by the /.....

by the cross-examination of Hlabisa. Accused No. 5 denied asking Hlabisa to go abroad to be trained as a soldier, and reinforced his denial by describing Hlabisa as a roisterer with whom one could not discuss such a serious matter.

It will be recalled that Hansford Madlala testified that accused No. 5 showed him a newspaper cutting with pictures of armed soldiers, pointed out that he was of the same age as the soldiers, and tried to persuade him to undergo military training. The accused's version of the episode was that they were looking at pictures of armed M.P.L.A. soldiers in Zondi's copy of the Ilanga newspaper, and it was Madlala himself who commented that the soldiers were of his age group. Madlala asked where Angola was and what was going on there. Accused No. 5 told him what he wanted to know but did not make any suggestion to the effect that he should become a soldier, or say anything about boys being sent to Mocambique. Mr. Muller then asked the accused whether on the occasion when they were looking at these pictures he said anything at all about any subject other than soldiers, and received the reply :

"I said that boys were wanted like he with some education and I said that, if he liked he could go."

That left us wondering why accused No. 5 should have raised the question of trade union training in the context of a discussion about Angolan soldiers. It seems that counsel also saw "....."

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also saw the point, for his next question was introduced with the following :

"When we adjourned we were about to go on to the time when you asked Madlala about trade union training. Before you go on to that I want to go back again for a short while to the occasion when there were pictures in the newspaper".

The accused thereafter made it clear that it was not on the occasion when they looked at the newspaper pictures that he allegedly spoke about trade union training, but on a different occasion which was "round the middle of November", some two weeks after the newspaper episode. When cross-examined he refused to acknowledge the obvious inconsistency in his evidence on this question of when he spoke to Madlala about trade union training. He said that he told Madlala that recruits were required for trade union training, that they wanted people with a J.C. certificate or "even people with lesser education who knew arithmetic and English", and that he (Madlala) could go for such training if he liked. All of this may be contrasted with what Mr. Muller put to Madlala in cross-examination, viz. :-

"Now I am putting it to you that early in November 1975 accused No. 5 spoke to you and asked you whether you would like to go abroad to train as a trade union organiser ---- No, I never said so /....."

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so.

He said that there was a need for persons with at least a Junior Certificate to go out and learn to organise trade unions --- No, I never said that." (My underlining).

Of course that cross-examination took place before the prosecution led the evidence of Vera Sikosana, Jane Ngcobo, Emily Zimu, Lydia Khumalo, Samson Zondi, Samson Nene and Annie Mkize to establish that the seven young men who were admittedly sent abroad did not have anything like the necessary educational qualification for training as trade union organisers. When that fact had been established the defence case was tailored by reducing the educational qualification to accommodate recruits who had not progressed beyond Std. V or VI at school. Accused No. 1 set the ball rolling when he claimed that he had written in his letter to Mabhida that the recruits would have to have a knowledge of English and arithmetic and a Std. V or VI level of education; and he also drew a distinction between the qualifications for organisers doing office work and field work respectively. Accused No. 5 assisted in this dishonest attempt to trim the defence case. He said that in the course of his summary at the meeting on the 10th August accused No. 1 had mentioned that the recruits should know English and arithmetic and have an educational level of from Std. V to Std. IX. If that is so why did accused No. 5 mention the Junior Certificate when speaking to Madlala? The obvious inference is that he was dishonestly /.....

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dishonestly attempting to reconcile the altered defence version of the educational qualification with what had been put to Madlala in cross-examination. We are quite satisfied that the story that he tried to interest Madlala in trade union training is a tissue of lies.

Accused No. 5 was unsettled and evasive at times, particularly when questioned about whether he had read the record of <sup>accused</sup> No. 1's evidence, and when the Court questioned him about the instructions he gave his attorneys for the purpose of instituting action against the Minister of Police. Apart from that his general demeanour was neither unfavourable nor convincing. Bearing in mind that he is a man of some education and experience, there was a certain *maivete* which permeated his evidence and deprived it of an authentic ring. Examples of this are afforded by the reasons he suggested to explain why the various witnesses had given perjured evidence against him, by his refusal to acknowledge that he had made a mistake about the occasion on which he allegedly spoke to Madlala about trade union training, and by the manner in which he attempted to reconcile his evidence with that of other defence witnesses by blurring the distinction between accused No. 1's summary and the general discussion which followed it. Further examples are afforded by his evidence concerning alleged assaults and ill-treatment that he suffered at the hands of the police. As will appear from the discussion of the evidence on that issue, we are convinced that accused No. 5 fabricated the allegations of assault /.....

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assault to support the defence case on the existence of an investigational system.

The evidence against accused No. 5 is overwhelming. Having regard to all the relevant circumstances - including the content of the evidence, our impression of the various witnesses who gave it, and the demonstrable falsehoods that the accused told - we are satisfied beyond all doubt that he attempted to recruit Sokabase, Buthelezi, Hlabisa and Madlala for military training. We believe that he also tried to recruit Hadebe for the same purpose, but for reasons expressed earlier we consider that it would be unsafe to rely on Hadebe's evidence for a positive finding to that effect. We do not think that it is in the least inconsistent or improbable that accused No. 5 approached Sokabase, Buthelezi and Hlabisa during July, before the meeting of the 10th August. On the contrary, it is perfectly consistent with Nxasana's evidence that at the meeting accused No. 1 enquired about "parcels" and was informed by some of those present that they had made contact with various prospective recruits. We are likewise satisfied that accused No. 5 tried to persuade Lawrence Ngubane to establish an A.N.C. cell at Imbali, and that he tried to involve Douglas Ngcobo in A.N.C. activities connected with military training. However, for reasons already stated we are not prepared to make a positive finding that he incited Ngcobo to establish an A.N.C. cell or recruit persons for military training.

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It has thus been proved beyond reasonable doubt that accused /.....

that accused Nos. 5, 6 and 8, all of whom attended the meeting on 10th August 1975, engaged in activities which included attempts to recruit young men for military training and inciting others to do such recruiting. In our opinion this affords further corroboration of Nxasana's evidence regarding the matters with which the meeting was concerned. Conversely, Nxasana's evidence of what transpired at the meeting - from which it is clear that accused No. 1 was conducting a campaign to recruit and send people away for military training - affords corroboration of the other State evidence, both direct and indirect, that the seven young men whom accused No. 1 admittedly sent abroad were recruited for military training.

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Accused No. 5 was arrested on the 30th November at work by Sgt. Gold who was accompanied by Sgt. Nyoka. He claimed that at the Loop Street police station he was threatened, assaulted and tortured, mainly by a certain white policeman who was eventually identified as Sgt. Gold. After arriving at Loop Street they introduced him to Col. Dreyer as "one of them who recruits terrorists". Dreyer asked him how he could do such a thing when their sons were dying at the border, punched him in the stomach and told them to take him away and make him talk quickly. All of this was denied by both Dreyer and Gold, and we are satisfied that it did not happen. The notion that so senior an officer as Dreyer behaved in this fashion in the presence of his subordinates is grossly /.....

is grossly improbable; and it seems equally improbable that Gold told him anything about the accused recruiting terrorists. As Dreyer pointed out, it was he who ordered the arrest of accused No. 5.

Accused No. 5 went on to tell the by now familiar tale of being punched and slapped, having gravel put in his shoes, being forced to do exercises and being refused permission to relieve himself. He added a few refinements. For instance, Gold caught and threw him against a filing cabinet at one stage, and thereafter continued assaulting him until he was tired and perspiring, whereupon Nyoka said "Let me hit him, sir. I can see you are exhausted." After putting gravel in his shoes and forcing him to stand on his toes with his heels against the wall for an hour or so, they allegedly selected larger pieces of stone, put them inside his shoes and his socks, and continued with the treatment. At one stage they allegedly took him to another room and confronted him with accused No. 3. According to accused No. 5 they asked accused No. 3 whether he knew him and what he was saying about him. Accused No. 3 replied but, incredible though it may seem, accused No. 5 simply could not remember what he said. Then accused No. 5 was taken back to the first office and the interrogation continued until the late afternoon when he was at last allowed to go and relieve his bladder. Gold had earlier been tugging at his beard until the hair parted. He said that during the period that Gold and Nyoka were mishandling him Lieut. de Kock came in and went /.....

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in and went out from time to time but did not do anything to him.

In his evidence Gold dealt with and denied each of the accused's allegations to the effect that he threatened, assaulted, tortured and otherwise ill-treated him. He also denied that accused No. 5 was threatened by Nyoka or was confronted with accused No. 3 at any stage. Gold thought that he interrogated accused No. 5 for a couple of hours that morning but emphasised that his recollection on this point was not clear. He said that accused No. 5 adopted a defeatist attitude. He gave the accused a pen and paper and asked him to write his whole story. His recollection was that the accused had already written a considerable amount when W/O. Moore took over the interrogation, and that he handed what the accused had written to Moore. This does not square with Moore's evidence that Gold did not hand him any notes when he took over at about midday, but the discrepancy is explicable on the basis that one or other of them was mistaken. Gold denied an allegation by accused No. 5 that they tore up what he had written, saying that it was all nonsense. Gold's evidence <sup>is</sup> corroborated by that of de Kock, who confirmed that he entered the office at one time or another while the interrogation was in progress and stated that no one assaulted accused No. 5 while he was there. It is unnecessary to repeat what we have said elsewhere regarding the impression that Gold made on us. We unhesitatingly accept his denial of the wild and grossly improbable allegations that accused /.....

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that accused No. 5 made against him.

Accused No. 5 claimed that it was not only Gold and Nyoka but Moore as well who assaulted him on the day of his arrest. He was referring to Moore when he said :

"After they had torn this up a white person wrote and he was asking the questions and I was answering. This continued some while until he became angry and he said that this was only lies. He became angry. When he questioned me and I answered he said it was all nonsense and he caught hold of me here. (Witness indicates his throat). He was holding me there and on some occasions he was banging me against the wall. This continued. When it was the middle of the night he no longer did this." (10)

Moore said that he interrogated the accused and recorded what he said from about midday to 8 or 9 p.m. They were both seated at a table during this period and their relationship was cordial. Moore denied the allegations of assault and was not cross-examined on the point. (20)

Moore took accused No. 5 to the Howick police station the next day, and the accused was kept in a cell there until the 8th January 1976 when he was moved to the Pietermaritzburg gaol. It is common cause that while the accused was at Howick Moore interrogated him daily until the 18th December. (The accused said that it was for two weeks and some days). According to Moore the interrogations lasted eight hours a day until the 9th December, and thereafter for only an /.....

only an hour or two each day. He emphatically denied allegations to the effect that in the course of the interrogation he threatened the accused and indicated what he was required to incorporate in his statement. We do not intend to recount all of the allegations which the accused made in this connection, but we should mention one which was manifestly a figment of his imagination. At one stage, according to the accused, Moore referred to relatives who were dying at the border and was so overcome by emotion that he wept about it. He rounded on the accused and said that he should be stood up against a wall and shot, and then sent him outside with Const. Mathonsi. Having observed W/O. Moore in the witness box we think that such histrionics would be quite foreign to him. Although he did not say that any falsehoods were incorporated in his statement, accused No. 5 did claim that Moore asked him to become a State witness. Moore's version was that on an occasion when he visited him in his cell at Howick the accused himself asked whether he would be a witness or an accused at the trial, to which he replied that the decision would rest with the Attorney-General. (20)

Accused No. 5 complained that for the first two or three weeks at Howick he had no soap with which to wash himself, notwithstanding that he made frequent requests for soap. According to Moore, however, it was on the second day that the accused told him that there was no soap in his cell, and he thereupon obtained some from the station commander and gave it to the accused. And the station Commander,

W/O. Beck /.....

W/O. Beck gave unchallenged evidence that the detainees were regularly provided with soap. The complaint that the accused was deprived of soap appears to be as false as his other complaint that the food was bad. The evidence of Moore, Beck and Dreyer establishes conclusively that the food he received was particularly good.

Notwithstanding his claim that the soles of his feet took many days to heal, that he could not walk properly, and that his wrists, jawbone and head were painful, accused No. 5 admittedly made no complaint of assault to the doctor or the magistrate who visited him at Howick police station. His reasons for not complaining to the doctor or the magistrate were somewhat naive. He said that he was afraid to complain to the doctor because Moore and Mathonsi were present when the doctor came on his first visit, and uniformed policemen were "about" on the occasion of his second visit. He was afraid to complain to the magistrate because he was accompanied by people and he "did not clearly distinguish who they were". Under cross-examination he said that he was afraid to complain to the magistrate "because it is difficult to differentiate between people". His claim that the magistrate was accompanied by other people is refuted by Mr. Jelinek's evidence that the interview took place in the cell and no other person was present. A further factor which casts doubt on the allegations of assault is the inconsistency between the evidence which accused No. 5 gave in that connection and the allegations contained in his

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Particulars of Claim /.....

Particulars of Claim (Exhibit "JJ"). As already indicated, he was uncomfortable and evasive when the Court tried to ascertain precisely what instructions he gave his attorneys for the purpose of drawing the Particulars of Claim.

For the reasons indicated, we consider that it has been proved beyond reasonable doubt that accused No. 5's allegations of assault, ill-treatment and improper interrogation are false. In arriving at this conclusion we have not overlooked Mr. Muller's submission that the accused was prejudiced by an alleged failure by the prosecutor to challenge his evidence and afford him an opportunity of dealing with the police version of his treatment while in detention. While it is correct that Mr. Rossouw did not specifically say to the accused that his allegations of assault were false, we think he made it perfectly clear that they were in dispute. The accused was closely cross-examined on the story he told, and we cannot accept that he suffered any prejudice.

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We now proceed to examine the defence case relative to the activities of accused Nos. 9 and 10 in March 1976. As accused No. 9 elected not to enter the witness box the State evidence relative to the recruitment and departure of the two groups of boys who went to Swaziland on the 11th and 18th March 1976 stands uncontradicted. That evidence proves conclusively : (a) that the group of seven who went to Swaziland on the 18th March were in fact destined to undergo military training abroad, with the object of returning to participate /.....

to participate in revolutionary activities in South Africa; (b) that accused No. 9 and Zuma received them at the border and took them to Dhlomo; and (c) that accused No. 9 participated in this operation with intent to endanger the maintenance of law and order in the Republic, in that he knew full well what its object was. It has likewise been established beyond all reasonable doubt - partly by means of direct evidence and partly by way of inferences which must inevitably be drawn from the proved facts - that the group of four who went to Swaziland on the 11th March 1976 were recruited and sent abroad for the same purpose as the group of seven, that accused No. 9 and Zuma received them at the border and took them somewhere in Swaziland, and that accused No. 9 did so with intent to endanger the maintenance of law and order as aforesaid. (10

The uncontradicted evidence of Lukele also satisfies us that on 18th March it was agreed that he would return to the same place the following Thursday with such further boys as Mdluli managed to recruit. Accused No. 9 was present when this arrangement was made, and when he went to the border fence with accused No. 10 to keep the appointment on the 25th March he must have been expecting to receive further boys - i.e. boys who had been recruited for the same purpose as those he had received on the 11th and 18th March. Lukele testified that in the course of their conversation at the fence on the 25th March accused No. 9 asked him whether he had any boys. He replied that there were seven, and accused No. 9 /..... (20

accused No. 9 said that it was all right, he could bring them. Accused No. 10 gave a different version of this conversation, but even his version tends to confirm that accused No. 9 went to the border fence that night for the purpose of receiving recruits. His version is that when they met at the fence Lukele asked why they were so late and accused No. 9 explained that they had lost their way. After being told who accused No. 10 was and where he came from Lukele asked where Zuma was, to which accused No. 9 replied "Zuma is not here today - he is being delayed by something". Then accused No. 9 asked Lukele whether he had heard about the death of Mdluli. Lukele replied in an agitated voice that he had not heard about it, and went on to say :- (10

"Now, wait a little bit, there are some people who I want to go over into Swaziland, and when they have crossed over into Swaziland then we will have time to speak properly."

Having said this Lukele allegedly went back to the road, where he stood and shouted for the people in the Kombi to come to him. According to accused No. 10 he waited at the fence with accused No. 9 while Lukele did this, and it was only when the police from the Kombi came running towards them that accused No. 9 backed away from the fence. On this version of the incident accused No. 9 was obviously going to wait for the people to go through the fence into Swaziland before continuing his conversation with Lukele, and the clear inference is that he was /..... (20

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