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S. US WK MBETE (52 OTHERS.
53

DATE: 27 MAY 1980

IN THE MAGISTRATE'S COURT FOR THE REGIONAL DIVISION
OF (TRANSVAAL) HELD AT JOHANNESBURG

BEFORE : MR F Z KRYNAUW

THE STATE VERSUS : W L MBETE AND 52 OTHERS (53)

CHARGE: UNLAWFUL GATHERING
(READ WITH VARIOUS SECTIONS)

PLEA: COUNT 1 - NOT GUILTY
COUNT 2 - GUILTY

FOR THE STATE: MR A E BRITS
MR S G NEL

FOR THE DEFENCE: MR BARRETT
MR REYNOLDS
MR AYOB & MR UNTERHALTER
MR GUSH

INTERPRETER: MR KUMALO & MR MOOKO

TRANSCRIBER: LUBBE RECORDINGS (PTY) LIMITED
JOHANNESBURG

DATE: 27 MAY 1980

THE STATE VERSUS : W L MBETE & 52 OTHERS

PROSECUTOR: Your Worship, to put on record, the State is ready to continue with the case today, but on request of the Defence the case will be remanded. A date is arranged with the Defence. It will be the 1st of July 1980, court 14, and it is for trial and all the accused released on warning.

BY THE COURT: Is there any appearance on behalf of the accused?

MR BARRETT: Your Worship, my name is Barrett. I have been asked to address Your Worship on behalf of my colleagues. 10

BY THE COURT: Is that on behalf of all the accused?

MR BARRETT: Correct. The arrangement as outlined by the Prosecutor is correct and we agree with it.

BY THE COURT: Under the circumstances this case is remanded to the 1st of July 1980 to court No. 14 for trial. All the accused are warned to be here at court No. 14 on that day at 8.30 a.m. They are all warned to be here.

MR BARRETT: As the Court pleases.

- CASE REMANDED UNTIL 1 JULY 1980 - 2

ON RESUMING: ON 1 JULY 1980:

PROSECUTOR: Before I put the charge sheet, there are a few formalities to be handled. Seventeen of the 53 accused paid admission of guilt. They are accused Nos 2, 3, 10, 13, 15, 16, 18, 23, 25, 27, 32, 37, 43, 46, 47, 48 and 51. Accused No. 8 is no more in the Republic of South Africa and the case is withdrawn against him in his absence.

CHARGE:

COURT 1 - UNLAWFUL GATHERING
(READ WITH VARIOUS OTHER SECTIONS)

COURT 2 - PREVENT, HINDER OR
INTERRUPT THE FREE AND PROPER
PASSAGE OF TRAFFIC ON A PUBLIC
ROAD 3

(PROSECUTOR/...

(PROSECUTOR PUTS CHARGES TO ACCUSED)

MR AYOB. At this stage it might be possible for the Defence to place on record whom they represent?

MR UNTERHALTER: I appear with my learned friend Mr Peter Levenberg for all the accused, save the accused Nos 1, 6, 39, 40 and 42. In respect of accused Nos 50 and 52 we are instructed by Messrs Webber Wentzel and Company. In respect of all the other accused whom we represent we are instructed by Messrs Bowens. My name is Jack Unterhalter and I appear with Peter Levenberg.

BY THE COURT: So you appear on behalf of all the accused, except Nos 1, 6, 39, 40, 42, 50 and 52?

MR UNTERHALTER: No, Nos 1, 6, 39, 40 and 42. We appear for accused Nos 50 and 52, instructed by Webber Wentzel and Company and for the others instructed by Bowens.

MR AYOB: My name is Ayob. I appear for the following persons. I want to confirm their names. The Reverend Mbetse who is No. 1 on Your Worship's list; the Reverend Begbie who is No. 6; the Reverend Dippenaar who is No. 39; the Reverend Langeveld who is No. 40 and the Reverend Solomons who is No. 42. My name is on record. I have furnished my learned friend with a list.

PLEA:
COUNT 1 - ALL ACCUSED NOT GUILTY
COUNT 2 - ALL ACCUSED GUILTY

BY THE COURT: May I just ask from the learned legal representatives, are these pleas in accordance with your instructions?

MR UNTERHALTER: That is so. Your Worship, I may say to the Court at this stage that I have informed the Prosecutor in respect of count No. 1 that the accused whom we represent will/...

will make certain admissions and in respect of count No. 2 we will beg leave in due course, which will be presently, to hand in to the Court a written statement in terms of section 112(2) of Act No. 51/1977. In respect of the admissions relating to count 1, the accused whom we represent will admit that they attended the gathering alleged at the time and place alleged, namely on the 26th day of May 1980 and at or near Sauer Street, Johannesburg. The accused will also admit that that meeting was one prohibited by the Minister of Justice in terms of Government Notice No. 594 of Government Gazette No. 6895, dated the 28th of March 1980. And the accused will also admit that that gathering was a gathering with a common purpose in terms of the definition under Act No. 17/1956.

In respect of count No. 2, in order that the Court may be satisfied pursuant to the terms of section 112(2) of Act No. 51/1977 that there are facts to establish that guilt, the statement that has been prepared reads as follows: 'The accused admit that on the 26th May 1980 and in Sauer Street, Johannesburg, they were marching and thus unnecessarily prevented the free and proper passage of traffic on the said public road. The numbers of the accused are placed at the bottom of the statement and I beg Your Worship's leave to hand it in.

BY THE COURT: All the accused involved must please sign this form.

MR UNTERHALTER: At the appropriate time may it be done, in order not to hold up the proceedings now. We will arrange to deliver it to the Court.

BY THE COURT: Do you wish to say anything, Mr Ayob?

MR AYOB/...

MR AYOB: Insofar as the persons represented by me, no admissions are made.

BY THE COURT: Are the accused prepared to reveal the basis of their defence on count 1?

MR UNTERHALTER: In respect of count No. 1 the accused will make a statement - I am not certain as to what the Prosecutor proposes to do in respect of the evidence he wishes to adduce for the State, but we have in our brief the statement which the accused wish to place before the Court and it is proposed with the - in due course to deliver it duly sworn and if the State so wishes, the accused may be cross-examined on it. I don't know if, at this stage, Your Worship would perhaps like me to read out what that statement is? 10

BY THE COURT: Yes, I'll first enquire from the Prosecutor whether he is satisfied with that.

PROSECUTOR: Your Worship, I don't know what is the contents of that document. I would like if it could be put on record.

BY THE COURT: Well, according to Mr Unterhalter the accused are going to give evidence. But it is - if you insist on it, they must reveal their defence, if they want to do it. 20

PROSECUTOR: I would like it if they want to do it.

MR UNTERHALTER: This is the statement that it is proposed to place before the Court under oath from the witness box in due course. Each of the witnesses, the accused, will say the following: 'I accept that a law is desirable to control public gatherings that pose a threat to life or property or the public peace. But I regard the Riotous Assemblies Act, read with the Minister's Notice as going further than would be necessary in a normal society. Whereas the act limits the powers of a magistrate to prohibit gatherings, it gives

the/...

the Minister administratively unlimited powers, powers which are normally reserved to Parliament. The Minister has used this law in a particularly wide way for four years to control all outdoor gatherings that are not of a sporty nature. The extent of the prohibition has become ridiculous. No South African can be clear in his mind as to whether he is contravening this act, or not, because the prohibition is so wide. It has been applied to prevent peaceful public debate and protest on issues of public concern. Despite considerable effort I failed to establish effective communication with those in positions of authority, or to have my fears allayed and there remains therefore little, but to publicly demonstrate solidarity with the Reverend J F Thorn in the way I did. I wish to assure the Court that this action was only taken after careful deliberation and prayer. My action stems from my conviction that so many of our laws are oppressive and deny hope and dignity, particularly for Black people, who are the most affected. The reasons for the walk to John Vorster Square are set out in the following statement, which we presented to the Chief of the Security Police on the Witwatersrand. We, Ministers of the Church of Jesus Christ, do hereby protest against the detention of the Reverend John F Thorn, without reasons being given or any charges preferred. We respectfully submit: (1) That the Reverend John Thorn, in identifying with the legitimate aspirations of the young people permitted to his pastoral care has acted in obedience to God and in the service of his people. (2) That in all his dealings with the students, the parents and the teachers, the Reverend John Thorn has consistently upheld Christian standards of justice and truth. (3) That as a respected leader/...

leader of the church and the community, the Reverend John Thorn has always advocated change by peaceful means. He is a man of peace and has exercised a restraining and reconciling influence during the recent unrest in the schools.

(4) That the detention of the Reverend John Thorn could exacerbate the volatile situation which prevails in Black education at the present time. (5) As Ministers of religion we, like our brother John Thorn, are bound by our commission to serve God and the people committed to our pastoral care. If, in the exercise of his ministry, the Reverend John Thorn 10 is guilty of any offence which warrants detention, we, as his fellow ministers, are guilty of the same offence. In the exercise of our ministry our first loyalty must always be to God and the justice of His kingdom. We, therefore, hereby express our solidarity with the Reverend John Thorn in the work and witness of the Christian ministry. We believe that he has based his work and witness on the following biblical principles, on which we take out stand as the only basis for this action and our total pastoral and social responsibility: Love the Lord your God with all your heart, 20 with all your soul, with all your strength and with all your mind, and your neighbour as yourself. St Luke 10:27. What is it that the Lord asks of you? Only to act justly, to love mercy and to walk humbly before God. Mica 6:8. Is not this what I require of you, to loose the fetters of injustice and to set free those who have been crushed. Isiah 58:6. We must obey God rather than men. Acts 5:29. We hereby call for the immediate release of John Thorn from detention. (6) We have decided to plead not guilty, because we cannot morally accept the arbitrary powers given to the Minister by this 3

law/...

law."

BY THE COURT: Thank you, Mr Unterhalter.

MR AYOB: My instructions are to confirm what Adv. Unterhalter has said and my clients may wish to elaborate further on this, but at this stage it will be a confirmation of what has been said already.

PROSECUTOR: Your Worship, on this defence I am sorry, but you know what is the position. I have to ask for a short adjournment.

BY THE COURT: In order to do what, Mr Prosecutor? 10

AANKLAER: Agbare Heer, hierso word die bevoegdheid van die Minister aangeval en 'n wet kom hierso ter sprake van 'n Minister en 'n wet die word hierso aangeval en u weet wat is die opdragte daaromtrent.

BY THE COURT: As the Court sees the basis of the defence, the Court must admit the Court does not fully understand it. The charge is a simple one and we are in a court of law and we are dealing with legal matters, not with religious matters. The charge against the accused on count No. 1 is that they attended a gathering which had been prohibited by the Minister of Justice. Either they didn't know about the prohibition - and that they cannot tell the Court now, because they have already admitted that they knew about the gathering - or they must show reasons why they acted wrongfully and unlawfully. Are those the reasons? 20

MR UNTERHALTER: Those are the reasons. Our instructions are that this is the statement that will in due course be made to Your Worship under oath from the witness box. With respect to Your Worship, Your Worship is perfectly correct. The admissions that we have made in effect indicate to the 3

Court/...

Court that there has been an attendance at that meeting. The Minister's Notice is not challenged in the least and as Your Worship has very correctly and with respect stated, there cannot at this stage be any intimation to the Court that it wasn't known, because in terms of the act itself, once the notice is published in the government gazette, knowledge of the accused is presumed. But Your Worship will notice that the plea that has been entered, is a plea of not guilty, which means that as far as the accused are concerned they have elected to avail themselves of the right which is their's in law to say to the Court: 'We plead not guilty'. Nevertheless, having informed Your Worship that they attended the meeting and that it was a meeting that was prohibited by the Minister, Your Worship is at liberty, on the basis of those admissions, to give whatever finding of fact or law Your Worship deems appropriate in the circumstances and I am not at this stage submitting any argument whatsoever to Your Worship. I am only intimating to Your Worship what it is intended to say. 10

BY THE COURT: Yes, yes, and after all is said and done, they needn't have revealed if they didn't want to. 20

MR UNTERHALTER: That is so.

BY THE COURT: Mr Prosecutor, I don't see any reason for the adjournment.

PROSECUTOR: As the Court pleases. I am ready to continue.

(AL DIE GETULES WORD GEVRA OM DIE HOFSAAL TE VERLAAT)

DIE STAAT ROEF:

THEUNIS JACOBUS SWANEPOEL: beëdig verklaar:

ONDERVRA BEUR AANELAER: U is 'n brigadier in die Suid-Afrikaanse Polisie en u is afdelingsbeuroffisier van die Witwatersrand,

is/...

is dit korrek? --- Afdelingsinspekteur.

Afdelingsinspekteur? --- Ja.

Op 26 Mei van hierdie jaar, die oggend, as gevolg van inligting wat u ontvang het, het u gegaan na die hoeke van Breë- en Sauerstrate hier in Johannesburg? --- Dit is korrek.

Aldaar aangekom, in u eie woorde kan u stadig, tog duidelik, aan die hof verduidelik wat het u daar aangetref en wat het daar plaasgevind? --- Ja. Ek het met my aankoms op die hoek van Breë- en Sauerstrate het ek 'n groep persone ..

MR UNTERHALTER: I am sorry to interrupt the witness. May I 10
just take instructions as to whether the accused would like to have the evidence translated into English in a clear voice so that they can all hear it? I am not certain at the moment what has taken place.

DEUR DIE HOF: Sal u asseblief net stadig praat, dat dit oorvertolk kan word in Engels, né?

MR UNTERHALTER: If Your Worship would perhaps kindly instruct the interpreter to translate every sentence clearly in English, so that all assembled may hear it, please.

BY THE COURT: Yes, no, our interpreter has a beautiful 20
voice, he will do that. You will hear him just now. Mr Mooko, please tell them that the witness is a brigadier in the South African Police, divisional inspector, Johannesburg. On the morning of the 26th of May 1980 he went to the corner of Breë and Sauer Streets, Johannesburg. Right. U kan nou aangaan?

HOOFGETUENIS:(verv.) --- Met my aankoms op daardie reeds genoemde hoeke het ek 'n groep persone gesien wat met Sauerstraat stap. Hulle was toe besig om Breë te kruis. Hierdie persone het op die oostelike ryvlak van die straat beweeg. 30

Die/...

Die persone in die optog het op die oostelike ryvlak van Sauerstraat beweeg in 'n suidelike rigting. Sauerstraat is 'n eenrigting noordwaarts. Die persone was die meeste gekleed in togas en dit was vir my duidelik dat hulle 'n groep geestelike persone is.

Brigadier, kan u net aan die hof net omskryf die wyse waarop hulle geloop het; in 'n groep, of hoe het hulle beweeg? --- Die mense het in 'n groep beweeg. Die groep was gelei deur biskop Tutu, wat aan my bekend is.

As u praat van biskop Tutu, dan verwys u na beskuldigde nr 4? --- Dit is so. Skuins langs hom het beskuldigde 5 - sy naam was nie op daardie stadium aan my bekend nie, hy het later homself aan my geïdentifiseer as ene Wing. Langs mnr Wing het eerwaarde Begbie geloop, wat ook aan my bekend is. Die groep het twee-twee persone en in sommige gevalle drie-drie geloop. Op daardie stadium het hulle in stilte gestap. Hulle het - op daardie stadium het hulle in stilte voortbeweeg. Soos hulle voortbeweeg het en die verkeer tot stilstand gekom het, het hulle 'n geelkleurige pamflet aan passasiers in voertuie en voetgangers op die sypaadjie uitgedeel. 20

Die geel pamflet wat u van praat, kyk na hierdie dokument wat ek nou aan u toon, is dit die pamflet waarvan u praat? --- Dit is. Dit deel met 'detention of the Reverend John F Thorn.

Maar is dit die dokument wat u van praat, die geel dokument? --- Dit is die geel dokument wat hulle aan die voetgangers en motoriste oorhandig het.

Dit handig ek in as BEWYSS'UK A. Gaan voort? --- In sommige gevalle het ek gemerk dat hulle ook 'n pienk pamflet oorhandig.

Kyk na hierdie pienk dokument wat ek nou aan u toon, is dit die pienk dokument waarna u verwys? --- Dit is.

Dit sal heet BEWYSSTUK B.

MR UNTERHALTER: May we have a sight of EXHIBIT B. It is not in our brief.

HOOFGETUIENIS:(verv.) U kan voortgaan? --- Vandat die persone oor Breëstraat beweeg het kon jy agterkom dat die atmosfeer besig is om op te laai en dat daar opgewondenheid onder die voetgangers en toeskouers begin toeneem.

DEUR DIE HOF: Ja, u moet so 'n bietjie - herhaal net bietjie. 10
U weet, die tolk moet tolk. U moet maar dit in gedagte hou? --- Ek is jammer. Ek besef ek maak die taak moeilik vir die tolk. Vandat die persone oor Breëstraat beweeg het kon ek opmerk dat die voetgangers, toeskouers, begin opgewonde word. En die toeskouers op die sypaadjie het vinnig in getalle toegeneem.

TOLK: Kan die getuie net herhaal, asseblief. Ek is jammer. Ek staan ver hiervanaf en ek moet by die beskuldigdes staan.

DEUR DIE HOF: Herhaal 'n bietjie, asseblief?

HOOFGETUIENIS:(verv.) Brigadier, herhaal net wat u nou gesê 20
het? --- Ek is nou nie presies seker waar ek gewees het nie.

DEUR DIE HOF: Die toeskouers het toegeneem in getalle? ---
Ja, die toeskouers het op daardie stadium vinnig in getalle begin toeneem; toeskouers en voetgangers, op die sypaadjie.

TOLK: By die groep aangesluit? --- Nee, nee. Die toeskouers en voetgangers op die sypaadjies het vinnig begin aanwas, of begin toeneem in getalle.

HOOFGETUIENIS:(verv.) --- Ek het op die hoek van Pritchard-
straat en Bauerstraat het ek die groep persone voorgekeer.
Dit was vir my duidelik dat as ek die mense verder laat

voortgaan/...

voortgaan, ons ernstige probleme sou ondervind. Ek het die groep persone voorgekeer en hulle per luidspreker meegedeel dat ek hulle in hegtenis neem onder die wet op oproerige byeenkomste, omdat hulle aan 'n onwettige byeenkoms deelgeneem het. Die groep het onmiddellik tot stilstand gekom. Hulle het toe begin sing, gewyde liedere.

BY THE COURT: The Court just wishes to object now. There is too much laughter in this court. As the Court said at the beginning, this is a court of law and we are busy with extremely serious matters. You people must please view and see it in that light. 10

HOOFGETUIENIS: (verv)--- Ek het die persone gesê om nie die kolom te verlaat nie. Ek het hulle ook laat omsingel deur ander lede van die mag. Ek het transport laat kom. Die persone wat in die groep was is almal in polisievoertuie gelaai. Die groep self het geen teenstand gebied nie.

Geen/...

Geen buitestaanders het by hierdie groep aangesluit na-
dat ek hulle gearrester het nie, daar het ook geen per-
soon die groep verlaat nie. Die toeskouers egter, veral
die Swartes, het tot so 'n mate samegedrom en voorwerpe
na die polisie begin gooi, dat ek opdraggegee het dat
hulle uitmekaar gedryf moet word.

DEFENCE : Your Worship, I understand one of the accused
wishes to communicate something to me. May I have the
leave of the Court to go to him ?

BY THE COURT: Yes.

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DEFENCE : Your Worship, one of the accused is temporarily
indisposed, it will only be for a few moments. May she
be permitted to leave the Court ?

BY THE COURT: Yes.

Herhaal net bietjie vir die tolk, die toeskouers,
veral die Swartes ? --- .. het so saamgepak en aan die
Westekant in Pritchardstraat is voorwerpe na die polisie
geslinger. Ek het opdrag gegee dat die toeskouers uitme-
kaar gedryf moet word en dit was gedoen. Die beskuldigdes
het nie deelgeneem aan hierdie insident nie.

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HOOFGETUENIS (verv.) U bedoel nou hierdie laaste insident
van die toeskouers ? --- Van die toeskouers, hulle het nie
deelgeneem aan die insident van die toeskouers nie.
Ek het die beskuldigdes na John Vorster-plein vervoer.

Brigadier net om dit duidelik te kry, u verwys nou na
die beskuldigdes, om dit duidelik te kry - u het gepraat
van 'n 'groep'. Wie is die 'groep' wat u van praat wat so
geloop het ? --- Dit is die beskuldigdes nou voor die Hof.
In die selle by John Vorster-plein het Mnr. WING my versoek

Is dit BESKULDIGDE 5 ? --- Ja dit is BESKULDIGDE 5, 30

/om..

om 'n petisie aan die Veiligheidshoof te oorhandig.

Beskuldigde 5 het my versoek dat hy 'n petisie aan die Veiligheidshoof van die Polisie wou oorhandig. Beskuldigde 5 het ook aan my gesê dat dit die doel is waarom hulle na JOHN VORSTER -PLEIN masjeer het. Ek het beskuldigde 5 gesê dat Kolonel OLIVIER, die tweede-in-bevel van die Veiligheidstak te Johannesburg, dat hy daar by my was, en of dit aan sy versoek sou voldoen indien hy dit sou oorhandig. Beskuldigde 5 het toe 'n dokument, soortgelyk aan BEW.'A', die geel dokument Edelagbare, ek is nie seker of dit in BEW.'A' is nie. 10

DEUR DIE HOF: Wil u daarna kyk ? --- Nee Edelagbare, ek is bewus, dit is soortgelyk aan BEW.'A'

Dit is BEW.'E'. --- Dit is soortgelyk aan BEW.'A', aan Kolonel OLIVIER oorhandig.

HOOFGETUIENIS (verv.) Brigadier as ek u getuienis reg verstaan, dan het hierdie hele optog te SAUERstraat het dit plaasgevind, in die straat, in die opelug, of waar was dit gewees ? --- Dit is 'n Publieke straat, dit is in die opelug Edelagbare. 20

Brigadier, hierdie optrede was dit enigsins gekoppel aan 'n georganiseerde sportbyeenkoms' ? --- Nee Edelagbare, dit was nie.

DEUR DIE HOF: Brigadier het u gesê nee ? --- Nee dit was nie gekoppel aan enige sportbyeenkoms nie.

GEEN VERDERE VRAE.

BY THE COURT: Who wants to cross-examine first ? Mr. Ayob ?

MR. AYOB: Your' Worship, may I take an instruction please ?
I won't detain the Court.

BY THE COURT: Yes. Just a second is that other accused /present... 30

present again ?

INTERPRETER : Not yet Your Worship.

BY THE COURT: I might say, if some of the accused are getting tired, they may come and sit in the accused dock, there is room for five.

CROSS-EXAMINATION BY MR. AYOB : Your Worship, just one question with the leave of the Court ?

Brigadier, I take it that this DOCUMENT EXH. 'A' was handed over at JOHN VORSTER SQUARE ? --- Ja, dit is korrek Edelagbare.

NO FURTHER QUESTIONS.

NO QUESTIONS.

GEEN HERVERHOOR.

DEUR DIE HOF: Het verkeer tot stilstand gekom, en was daar 'n belemmering van verkeer, as gevolg van hierdie optog' ? --- Ja, Edelagbare, dit het ernstige probleme veroorsaak.

Bedoel u daarby verkeersknope ? --- Ja Edelagbare.

Was of is Sauerstraat 'n een-rigtingstraat ? --- Sauerstraat is 'n een-rigting van suid na noord, en beskuldigdes het van noord na suid, teen die een-rigting-verkeer beweeg.

Brigadier, u het die situasie daar besigtig, u was teenwoordig daar. Was daar 'n potensiële gevaar vir lewensverlies as gevolg van motorongelukke ? --- Dit kon Edelagbare, die spoed waarteen verkeer normaalweg beweeg is 60 km./p.u. en indien 'n botsing sou plaasvind, en daar kon botsings plaasgevind het, sou dit lewensverlies kon ge-eis het.

Was daar ander roetes wat die beskuldigdes kon volg

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om by JOHN VORSTER PLEIN uit te kom? --- Ja.

Veiliger roetes ? --- O ja daar is baie meer veiliger roetes.

Goed dankie, u kan maar gaan.

AANKLAER: Agbare heer, daardie horlosie is bietjie agter, ek merk dit is feitlik teetyd. Sal ons maar op hierdie stadium eers verdaag vir tee ?

BY THE COURT: Do you have any objection ?

(NO OBJECTIONS)

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The Court will adjourn until strictly quarter-past-eleven.

-COURT ADJOURNS UNTIL 11,15 A.M.-

ON RESUMING:

- S T A T E C A S E -

BY THE COURT: Yes .Mr. Unterhalter ?

MR. UNTERHALTER: Your Worship, the accused are in a certain order, and ACCUSED No.1 is represented by my learned friend MR. AYOB. I do not know if Your Worship would perhaps permit the accused whom we represent to give their evidence in the order in which they are, or whether Your

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Worship wishes it to proceed in strict chronological order?

BY THE COURT: I think in strict chronological order.

MR. UNTERHALTER: As the Court pleases.

MR. AYOB: Your Worship may I call REVEREND MBETE ?

WALTER MBETE, sworn states :

EXAMINED BY MR. AYOB: Mr. Mbete , you have heard what Mr. Unterhalter read out a little earlier this morning, and do you confirm what was said in that statement ?

--- I do.

/And...

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And you have something further to add to that statement ? --- Yes, I have something further to add to that statement, and what I wish to add to that statement is simply a moral understanding of Law, Your Worship. As a Minister of Religion, I believe I am called to proclaim the Gospel of Jesus Christ to God's People, and all of God's People, and as the circumstances of my appointment by my Church go, I am appointed to proclaim this Gospel to the Black People of ORLANDO, and Your Worship it is in the process of proclaiming the Gospel which as Jesus Christ declared it in LUKE IV, Versus 18 and 19, that the Spirit of the Lord is upon me because He has appointed me to preach good news; to the poor, he has sent me to proclaim release to the captives, and recovering of sight to the blind, and to set at liberty those who are oppressed, and to proclaim the acceptable year of the Lord. It is in the context of the Gospel, as I understand it Your Worship, that one feels and believes that a Law like the one I am charged under, namely THE RIOTOUS ASSEMBLIES ACT, is a Law that is morally indefensible. A Law which, in a situation in our Country where there seems to be greater polarization between the People, is a Law which creates more harm rather than us feelings of peace and goodwill amongst the People. And as a Minister of the Gospel Your Worship, I believe that I am an Agent of Peace and as much as I would love to obey all the Laws of the Country, but I also feel I stand constrained by God to voice out and appeal against those Laws which will lead our Country to chaos, and this is why Your Worship that I was part of the march, which was

/in...

in my opinion a very peaceful march, that could not be described under any circumstances as having been RIOTOUS. Thank you Your Worship.

NO FURTHER QUESTIONS.

BY THE COURT: Just a second. What Church do you represent ? --- The METHODIST CHURCH OF SOUTHERN AFRICA.

Do you believe in every word of the Bible ? ---

Yes, Your Worship.

Do you try to live according to the Bible ? ---

Yes, Your Worship.

Why did you people choose to march in protest in a one-way street ? --- It was the only way we saw open

Your Worship.

But, weren't there other roads ? --- There could have been, we did not consider those.

Why not ? --- In our mind it was our nearest way to get to JOHN VORSTER Your Worship.

Do you live in Johannesburg ? --- Yes, Your Worship. In SOWETO.

Do you realise that to walk in protest and march in a one-way street, may cause trouble, traffic congestions? Etc. ? --- Maybe yes Your Worship.

And didn't you think of that ? --- I didn't think of that Your Worship.

Why not ? --- Because we obeyed as we walked traffic Laws of stopping at robots when they are closed, and moving with the flow as circumstances permitted.

Didn't you think of the inconvenience caused to other Road-users, by having marched in a one-way street ? --- We didn't encounter any inconvenience Your Worship, and

and we didn't experience as we marched inconvenience to other Road-users.

But when you were arrested, weren't you a long way off from JOHN VORSTER SQUARE ? --- We were still a long way off yes Your Worship.

RE-EXAMINATION BY MR. AYOB: Mr. Mbete, you heard the evidence of the State Witness ? --- Yes.

Do you recall him saying that you, when he came upon you, you were walking in two's and in some cases - three's ? --- Yes. 10

Is that correct ? --- Not entirely correct, we were walking in two's.

Do you recall the State witness saying that you were on the one side of the road ? --- Yes.

Is that correct ? --- That is correct, we were on the left-hand side as we walked.

NO FURTHER QUESTIONS.

NO QUESTIONS BY MR. UNTERHALTER.

DESMOND TUTU, sworn states: (ACCUSED 4) 20

EXAMINED BY MR. UNTERHALTER : Bishop Tutu, of which Church are you a Member ? --- I am a Member of the CHURCH OF THE PROVINCE OF SOUTHERN AFRICA.

And what position do you hold in that Church ? --- I am a Bishop of the Church, I hold an honorific position as Assistant Bishop of Johannesburg.

Bishop you heard me read out to His Worship a statement. Do you adhere to that statement ? --- I adhere to that statement.

Yes, is there in addition to that statement anything /else.. 30

that you would like to say ?--- No sir.

NO FURTHER QUESTIONS. NO QUESTIONS BY MR. AYOB.

CROSS-EXAMINATION BY PROSECUTOR: - NO QUESTIONS.

JOSEPH WING, sworn states :

EXAMINED BY MR. UNTERHALTER: REVEREND WING, of which Church are you a Member ? --- The UNITED CONGREGATIONAL CHURCH OF SOUTHERN AFRICA.

And what position do you hold in that Church? ---

I am the General Secretary of the Church. 10

Reverend Wing you heard me read out to His Worship the statement. Do you adhere to that statement ? ---

I adhere to that statement Your Worship, and I would like to add that the first part of that statement which is in the first person, it refers to contacts having been made with Officers of the Security Branch of the Police, and I was the one who actually made those contacts on behalf of the Group, and therefore I think I must accept responsibility for having attempted to make those contacts.

Yes, and is there anything in addition to what I read out to the Court that you would like to add in this matter ? --- Your Worship, I wish to add that the UNITED CONGREGATIONAL CHURCH felt a special responsibility in this matter, because the REVEREND JOHN F. THORN who had been detained , is a Minister of that Church. He is a former General Secretary and Chairman of that Church, and in taking the action that we did take to secure his release from detention, we were supported by our Sister Churches, and in that sense we took the initiative in this regard. 20

Is there anything else you would like to add ? --- 30

--- There is nothing further that I wish to add.

NO FURTHER QUESTIONS.

NO QUESTIONS BY MR. AYOB.

NO QUESTIONS BY PROSECUTOR.

CECIL BEGBIE, sworn states :

EXAMINED BY MR. AYOB : Mr. Begbie, what position do you hold in the METHODIST CHURCH ? ---I am the Minister of the METHODIST CHURCH and my Official title is Superintendent Minister of the Rand Central Circuit which constitutes the area of Cornationville, Western Township, Newclair, Bosmond, Riverley, Fleerhof, and I even have Members as far as Eldorado Park which comprise about 4 000 people sir. 10

Mr.. Begbie you heard Advocate Unterhalter read a statement, and do you affirm the contents thereof ? --- I do.

As if you have read it yourself ? --- I do.

And you wish to add to that statement ? --- Yes.

Your Worship, I first of all like to state a basic principle which formed the motivation for my joining the procession, and then secondly, I would also like to give a little bit of the background which led to this , and which might be helpful to the Court. 20

First of all my general principle - The fact that I had taken part in this procession to JOHN VORSTER SQUARE, does not mean that I do not have respect for good and moral Laws which are necessary for the ordering of life in Society, but I cannot obey Laws which are in conflict with the Law of God and therefore with my Christian conscience. The Bible says as Jesus said, "Render unto Caesar the 30

things which are Ceasar's when he was handling a coin in his hand, and that is exactly what I have done today. I have admitted guilt to the traffic offence because I believe that that is rendering unto Ceasar the things which belongs to Ceasar. That same text in the Bible says : "But render unto God the things which are God's, and I believe that the things that belong to God is JUSTICE, MERCY, FREEDOM FOR ALL, RECOGNITION OF EACH MAN'S HUMAN DIGNITY, and where State Legislation violates these Laws of - GOD, I have no option, but to obey GOD rather than man, as the early Apostles of the Christian Church also had to do before the Law Courts of their day, - that is recorded for example in the Acts of the Apostles chapter V, where St. Peter when he was brought before the Law Court, gave an answer for his actions for having caused a disturbance within the CITY OF JERUSELEM, he said "Well I must obey GOD, rather than man" That is the general principle. And then with regard to the background to this Your Worship, when I first heard about the news of Rev. Thorn's detention, while I was doing my Pastoral visitations in Riverley, which is one of my Congregations, and merely what I felt is I was shocked, because immediately questions came to my mind "What is the Security Police now up to?" Why do they take this man, and particularly this man because the REV. John Thorn and I were involved in the students' boycott in the sense that we felt first of all, that it was necessary for us as Ministers of Religion and Men of Peace, to be present wherever the students were gathering, and also where the police was present in order to see that there was no violence, either from the students,

/or...

or from the police, and Your Worship in that context that is that Brigadier Swanepoel came to know me, because I was constantly in negotiation with him, and also with Colonel Venter of the Newlands Police Station, and so our main aim then for our presence was to maintain peace. And also when we felt that the students had now made their point, and that the Authorities had listened to their cries, in other words their cry was for a just and equitable system of education for all people in South Africa, and the Prime Minister has responded and also Mr. Marais Steyn 10 responded , the Rev. John Thorn and I specifically went back to all Institutions of Education in order to encourage the students to return to their schools, and we started with the RAND TEACHER'S TRAINING COLLEGE, and there the students then agreed to go back. We then went to the BOSMOND HIGH SCHOOL, and they agreed to go back, and then the WESTBURY HIGH SCHOOL also agreed to go back, and then fourthly, THE CORONATION HIGH SCHOOL I personally addressed the school principal invited me to address them, and then encouraged the students to return to school at 20 that point, and therefore it became then quite a shock for me that after we as Ministers, and in particular Rev. John Thorn, I normalised the situation. The Security Police came then to arrest REV. THORN and also for information, they also called at my door that day to detain me as well and two other Ministers who are the accused here. Now this then called for an emergency meeting from the religious leaders in the Community. and in that meeting, we first of all prayed earnestly about this matter, and we also realised what bitterness this could engender within the Community 30

/when...

when a Minister of Religion is now in detention, and arising out of a prayerful meeting, we then felt that we were guided by GOD to through His Holy Spirit, to take part in this procession, particularly in the light that all possible efforts were made to communicate with the Head of the Security and also as Joseph Wing has already testified to the Commissioner of Police in Pretoria, and he even 'phoned the residence of the Minister of Justice in Cape Town. Out of all these attempts I personally contacted a Magistrate friend of mine to communicate with the Head of the Security just to find out what REV. THORN's position is, when he would be released, and the answer which came from Colonel Olivier was that I know about the arrest, but I do not know the details, and he might be able to tell us on Monday. Now that I found very strange Your Worship that a person like Col. Olivier, and with the rank that he has, could not pick up the telephone and 'phone John Vorster Square and find out the details and communicate that to me, and that would have helped us in our decision as to what we should do. This in fact might - this march in fact might not have been necessary if the Security Police was a bit more helpful on this score.

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Is there anything further you wish to say ? --- No, Your Worship.

NO FURTHER QUESTIONS.

NO QUESTIONS BY MR. UNTERHALTER.

CROSS-EXAMINATION BY PROSECUTOR: - NO QUESTIONS.

MICHAEL CARMICHAEL, sworn states :

EXAMINED BY MR. UNTERHALTER : Of which Church are you a Member ? --- The Church of the PRDVINCE OF SOUTH AFRICA.

And what position do you hold in that Church ?

---The title given to the office I occupy is EXECUTIVE OFFICER OF THE CHURCH.

You heard the statement that I read out to His Worship earlier ? --- I did.

And do you adhere to it ? --- Completely.

Is there anything that you would like to add ? ---

No thank you.

NO FURTHER QUESTIONS.

DEMETRIS PALOS, sworn states :

EXAMINED BY MR. UNTERHALTER: Of which Church are you a Member ? --- Of THE METHODIST CHURCH OF SOUTHERN AFRICA sir.

And what position do you hold in that Church ? ---

I am a Minister in that Church.

And did you hear the statement that I read out to His Worship ? --- I did sir.

And do you adhere to that statement ? --- I do sir.

Is there anything you would wish to add ? --- Not with regard to that statement sir, but just a couple of clarification points sir with regard to evidence that was led earlier to say that I believe we were all walking in two's, at least as regards The Reverend Begbie was walking alongside me, and not alongside the first two in the procession, and that while I pleaded guilty on the first charge sir...

On the first charge - on the second charge ? --- On

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the second charge sir, with regard to the traffic offence, I understand that this is so with regard to the technical nature of that particular offence. I don't believe we were impeding the traffic to the extent that seems to have been indicated, in that we were walking yes up a one-way street which seems to be the wiser one in attempts of facing the traffic sir, and that we were keeping very far to the left hand side, and that there was no impedence of the traffic that was really noticeable until we were stopped by the police. That is all sir.

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NO FURTHER QUESTIONS.

CROSS-EXAMINATION BY PROSECUTOR : You heard the evidence of Brigadier Swanepoel that the traffic came to a standstill?

--- Yes sir but this happened at the point when we were in fact stopped by the police. Up till then there was no noticeable impedence. I was second from the front in the procession.

It is for that that his evidence was not denied in any way, is that correct ? --- I wasn't cross-examining sir.

NO FURTHER QUESTIONS.

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BY THE COURT: Just to repeat, what was the purpose of the process ? Why did you people walk and not travel by cars or other transport ? --- Sir from my understanding of it, it would be that it would be a Public Procession, it was a Procession through to the John Vorster Square on foot, because we saught to communicate to the police, and in a sense to the Public of our City that we were concerned, we didn't see it as a Riotous Assembly in any kind of way. That is my understanding of the purpose of the procession.

But then again, why did you prefer that street ? ---

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I don't think serious consideration was given to a route in any particular way, except that when we came to the fork off the bridge which led the one-way, it seemed more sensible to me that we should go along Sauer Street which was a wide road with something like four or five lanes for traffic, and one in which one walked against the flow of the traffic which is for me the common sense way to walk facing traffic oncoming.

Yes, but now didn't you appreciate the fact and realise that people would congregate, members of the Public 10 would come and look at you people and see what was going on and that would cause congestion ? --- Sir we had walked - I don't know how far, but possibly 1½ - 2 kilometers already, and no such congestion had occurred to that point.

Yes but you were then very far from the City ? --- We had walked through Braamfontein sir, which is fairly populated, and through a portion of the City already to Pritchard.

What did you want to show to the Public ? ---Sir, our first concern was to present the petition to the Autho- 20 rities.

Yes, but what did you want to show to the Public, did they know about the arrest of Mr. Thorn ? --- I don't know whether it had been publicised at that point.

Well what did you want to show the Public ? ---That we were concerned with regard to the detention of a colleague.

Yes but did they know about it ? --- Well this was part of the purpose of the procession.

/Yes..

Yes but I know if you want to show somebody something, you want to show him that you are not satisfied with something. If you had said "Look we march here because we don't like the arrest of Rev. Thorn, the Court can understand, but how did you people know that they would understand the reason for your procession? --- The leaflets that were handed out sir explained that, that is EXH.A ? on the yellow page sir, when anyone asked a paper was handed to them which explained that sir.

And did you not seek, as the Court will call it, you wanted to defy the Laws, didn't you seek confrontation with the Authorities ? --- I didn't understand it in that way at all sir. With regard to this, I am aware that there is THE RIOTOUS ASSEMBLIES ACT, I am aware that one may be charged for that, but as has been stated in the statement already sir, the paths are so wide-ranging that one could almost have been declared to be doing that just in coming to Court this morning sir.

MICHAEL STUART VAN WYK, sworn states :

EXAMINER BY MR. UNTERHALTER: Mr. Van Wyk, of which Church are you a Member ? --- Church of THE PROVINCE OF SOUTH AFRICA.

What position do you hold in that Church ? --- I am the RECTOR OF THE PARISH.

And did you hear me read out to His Worship the statement this morning" ?--- I did.

And do you adhere to that statement ? --- I do.

Is there anything you would wish to add ? ---

I do not.

NO FURTHER QUESTIONS.

NO CROSS-EXAMINATION.

JOHN ROY KNIFTON, sworn states :

EXAMINED BY MR. UNTERHALTER: Of which Church are you a Member ? --- I am a Christian Member I hope of THE CHURCH OF THE PROVINCE OF SOUTH AFRICA.

And what position do you hold in the Church ? --- I have a general licence at present with the dyarcis of Pretoria. 10

Yes, did you hear the statement that I read out to His Worship this morning ? --- Yes, I did.

And do you adhere to that statement ? --- I do indeed.

Is there anything you would wish to add ? ---

No thank you.

NO FURTHER QUESTIONS.

DANIEL VAUGHAN, sworn states :

EXAMINED BY MR. UNTERHALTER: Of which Church are you a Member ? --- The Baptist Church. 20

And what position do you hold in that Church ?

---I am a DEACON.

And did you hear the statement that I read out to His Worship ? --- I did.

And do you adhere to it ? --- I do.

Is there anything you would wish to add ? --- No sir.

NO FURTHER QUESTIONS.

NO CROSS-EXAMINATION.

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NOMALISO TUTU, sworn states :

EXAMINED BY MR. UNTERHALTER: Mrs. Tutu, of which Church are you a Member ? --- I am a Member of the ANGLICAN CHURCH. THE CHURCH OF THE PROVINCE OF SOUTH AFRICA.

And could you tell His Worship very briefly the principle work with which you are concerned ? --- I am Director of the domestic workers employers' project of the South African Institute of Race Relations.

You heard the statement that I read out to His Worship ? --- I did.

And do you adhere to it ? --- Completely.

And is there anything you would wish to add ? --- Only that Your Worship I joined the march because I support fully what my husband was doing, and secondly...

Who is your husband ? --- My husband is Bishop Tutu, and secondly because the REV. JOHN THORN is doing exactly the same job that my husband is doing, and being arrested and not being brought to Court, meant that the next day it would be my husband, and I was protesting against this detention of the clergy.

Is there anything else you would like to add ? --- No sir.

NO FURTHER QUESTIONS.

NO QUESTIONS BY MR. AYOE.

NO CROSS-EXAMINATION BY PROSECUTOR.

BY THE COURT: When was this Mr. Thorn arrested ? --- It was a week, he was arrested on a Saturday.

Yes, and when was the march ? --- The march was on Monday.

Now when was he to be brought before Court ? ---

Well I didn't think it was necessary for a person of Mr. Thorn's stature to be put in prison in order to appear the next day in Court.

Why not ? --- Because he is not a criminal.

How do you know that ? --- I know that, because he couldn't have been a Minister of the Church and a Leader in his Community if he was. I mean the State

Are you serious" ? --- I am very serious Your Worship.

You say he can't be a criminal because he is a Member of your Church ? --- Not because he is a Member of my Church, because he is a Member of - he is a Leader in the Community and a Minister in the Church. 10

And that is the reason why he can't be a criminal ?

--- Well, he hasn't been proven as a criminal.

No but, as you say he was arrested on the Saturday

--- Yes.

And you objected and joined the march because he wasn't brought before Court. Now the Court only wants to know on what day should he have been brought to the Court on the Sunday ? --- Well he should have been detained in the first place, I mean if had a criminal record, but - the Court wanted to try him on, he could have been told to appear in Court on the Monday, as indeed it did happen later on. 2

What about the other people, other people who get arrested on a Saturday, do you think they must also be brought to Court on a Sunday " --- It depends very much on who the people are. If it is a known criminal, and if he has a criminal record, I wouldn't have trouble with that one.

Well perhaps you don't know, but in Law we don't 30

discriminate between people who belong to Churches,
or street peoples. --- But Your Worship..

Thank you, you may go.

WOLFRAM KISTNER, sworn states :

EXAMINED BY MR. UNTERHALTER: Mr. Kistner, of which
Church are you a Member ? --- Of the ^{LUTHERAN} YOUTHEN CHURCH.

And what position do you hold in that Church ? ---

I am a Minister who has been seconded to THE SOUTH AFRICAN
COUNCIL OF CHURCHES.

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And did you hear the statement that I read out to
His Worship ? This morning ? --- Yes.

And do you adhere to that statement ? --- Yes.

And do you wish to add anything ? --- No.

NO FURTHER QUESTIONS.

NO QUESTIONS - Mr. Ayob.

NO CROSS-EXAMINATION.

ERNEST CLAUDE WILLIAMS, sworn states :

EXAMINED BY MR. UNTERHALTER: Mr. Williams, of which Church
are you a Member ? --- The Methodist Church of SOUTHERN AFRICA. 20

And what position do you hold in that Church ?

--- I am a ordained Minister of Religion.

And did you hear the statement that I read out to
the Court this morning ? --- I did sir.

Do you adhere to it ? --- I do sir.

Is there anything you would wish to add ? --- Yes sir.

I simply want to add that the part of the statement which
is to me important and one which I need to underline, is
the clause of Conscience by means of which we adhere to a

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Higher Law, in fact sir I would want to submit that that Law is the very one which has just been practised as I have raised my right hand, and I want to say that particularly with reference to what was said earlier in the Court, whereby we were informed as a Court, that we are concerned not with morality, but only with Law. And I believe sir that it is necessary for me, in conscience to say that there is Law in terms of legal aspects, but also in terms of GOD himself, before whom I have been called to swear. That is all sir.

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Anything else you would like to say ? --- That is all sir, no thank you.

NO FURTHER QUESTIONS.

NO QUESTIONS - Mr. Ayob.

NO CROSS-EXAMINATION.

BY THE COURT: When you mentioned Higher Law, to which Law do you refer ? --- I refer to the Law of GOD.

As expressed in the Bible" ?--- Yes sir.

Both the Old Testament and the New One ? --- That is how I understand the Bible sir.

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But do you refer to both parts as Higher Law ? --- Yes sir.

EDWARD KEITH SMITH, sworn states :

EXAMINED BY MR. UNDERHALTER: Mr. Smith, of which Church are you a Member ? --- I am a Member of the METHODIST CHURCH OF SOUTHERN AFRICA.

And what position do you hold in that Church? --- I am an ordained Minister within the Church, serving in the Suburb, or the Town of RANDBURG.

You heard the statement that I read out to His
Worship ? --- I have.

And do you adhere to that statement ? --- I do.

And do you wish to add anything ? --- Yes, I do.

Please do so ? --- Your Worship, simply to support
what has been said and possibly to add to what has been
said by previous witnesses, as a witness as well as an
accused, present at the time of the arrest, I wish to
affirm that in my estimation that there was no Public
disturbance, either of the traffic or of the pedestrians 10
or people, until such time as the police arrived on the
scene. Then I also wish to state that what I did , I did
certainly in obedience to my conscience, and certainly
not as has been implied by certain News Media, namely
S.A.B.C, and the CITIZEN NEWSPAPER that what we did, we
did not under our own motivation, but motivated by outside
forces. That is all sir.

Outside forces? --- Sinister forces from outside,
was the word used to describe our action sir.

BY THE COURT: The Court wants to know what you mean by 20
'sinister' ? --- I think it is the duty of the newspaper
concerned which implied that sir to explain those forces.

MR UNTERHALTER: Is there anything else you would wish to
add ? --- That is all I wish to add sir.

NO FURTHER QUESTIONS.

NO QUESTIONS - Mr. Ayob.

NO CROSS-EXAMINATIONS.

JOHN STUBBS, sworn states :

EXAMINED BY MR. UNTERHALTER: Mr. Stubbs, of which Church are you a Member ? --- CHURCH OF THE PROVINCE OF SOUTH AFRICA.

And what position do you hold in the Church ? ---
I am Layworker..

And did you hear the statement that I read out to His Worship ? This morning ? --- Yes sir.

And do you adhere to that statement ? --- I do.

Is there anything you would wish to add ? --- 10
Only to say that I saw no object being thrown, if I understood the phrase used by the Brigadier earlier, I saw no objects being thrown at all.

NO FURTHER QUESTIONS.

NO QUESTIONS - Mr. Ayob.

NO CROSS-EXAMINATION.

FREDERICK CHRISTOFFEL BELL, sworn states :

EXAMINED BY MR. UNTERHALTER : Mr. Bell of which Church are you a Member ? --- THE LUTHERAN CHURCH. 20

And what position do you hold in that Church ?
--- I am an ordained Minister of RELIGION.

And did you hear the statement that I read out to His Worship this morning ? --- I did.

And do you adhere to that statement ? --- I do.

Is there anything you would wish to add ? --- No,
thanks.

NO FURTHER QUESTIONS.

NO CROSS-EXAMINATION.

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