L. Bowman

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NUMBER: 30/76. PRETORIA.

T H E S T A T E

versus

JOSEPH MOLOKENG AND SIX OTHERS

VOLUME 25

(Pages 1 218 - 1 290)

LUBBE RECORDINGS (PRETORIA)

VOLUME 25

THE COURT RESUMES ON THE 17th MAY, 1976.

MR ALLAWAY: When this matter was adjourned last Friday, I was dealing with the question of Gilbert Dhlamini - Godfrey Dhlamini and I was about to submit to Your Lordship the reasons why in any event his evidence should not be believed, regarded to its content, it should not be believed. The first criticism in his evidence is that his evidence is in conflict with the further particulars supplied with reference to accused No. 1 and likewise is in conflict with the further particulars (10) supplied with reference to accused No. 5. M'Lord will recall this witness said nothing about accused No. 5. His evidence about the circumstances under which his statement was taken varies with that of the State witness Cronwright and also varies with another member of the club, that was James Majola.

BY THE COURT: Which one said they were all questioned together?

MR ALLAWAY: This witness said they were all questioned together, Godfrey Dhlamini.

BY THE COURT: And James said they were questioned separately.

MR ALLAWAY: The relevant passages are page 538, line (20) 17 to 22 and again page 538, lines 28 to 30. With that must be compared the evidence of Captain Cronwright, page 540, line 15 and page 603, line 5.

BY THE COURT: What does he say?

MR ALLAWAY: He says this. He is asked, page 603:

> "Do you think it is good or bad for these investigations to take a group of people from a place and question them together? In the hearing of each other. -- This most definitely did not happen in our office ... (30)
>
> Well, you heard what the witnesses said.

--/...

-- I heard one witness say that. All the other, if I remember correctly, said they were separated.

He is not speaking the truth as far as you are aware in relation to your ...

-- Evidently he is making an error somewhere."

BY THE COURT: In other words, Captain Cronwright says they were questioned separately.

MR ALLAWAY: Yes, he says: (10)

"This most definitely did not happen in our office."

We have already given your Lordship the reference in James Majola's evidence.

The important point here is that Captain Cronwright must necessarily be giving a form of hearsay evidence. The witness said it was Smith who questioned them together and of course Mr Smith was never recalled, and never dealt with it. That is the important point, with respect.

Dealing with the law on this subject, it is a (20) convenient stage, with respect, to give Your Lordship a note of the various decided cases, may we ask M'Lord first to look at the Act itself, Section 2(1)(b) to see what conglomeration of words parliament sought to put into this Act. The mischief aimed at is any person within the Republic or elsewhere, undergoes or attempts, consents or takes any steps to undergo. So the first, as it were, group of conduct that Your Lordship is concerned with on the charge as particularised is whether it has been established by the State that anyone consented - consents to undergo - the requisite form of training. (30) That is the first phrase Your Lordship is concerned with.

Then/...

Then the second type of conduct which Your Lordship is concerned with, is whether there was - whether any of the accused incited anybody to undergo this type of training. The next word that is dealt with or the next verb is 'instigate' but we believe on the evidence there is no evidence at all of instigation. Instigation connotes conduct which produces the result, when you have instigation of someone reacts to what you have done. Command is in the statute but it is not in the charge. Aid is in the statute and in the charge, but again that is an academic enquiry. Advises is another verb Your Lordship (10) is concerned with with reference to the evidence.

BY THE COURT: Advise or encourage.

MR ALLAWAY: Or encourage, yes. The last verb is procure, but we do not believe, on the evidence, that that is a matter which Your Lordship need be detained with.

BY THE COURT: Where did the State in its further particulars come across the word 'entice'?

MR ALLAWAY: I do not know.

BY THE COURT: In the further particulars, paragraph 13, it is alleged that they 'in terms of the enticing, incitement,(20) advice, encouragement'.

MR ALLAWAY: There is no enticement, but what is said is that it incited and advised. The first case we referred to, it is a hardy annual in dealing with the question of interpretation, is Consolidated Diamond Mines of South West Africa Limited v. The Administrator of South West Africa, 1958, (4) S.A. A.D., 572 and we read from what is said at page 599 by His Lordship Mr Justice Fagan, then the Chief Justice:

"Since words have to be read in their context and in their application to the (30) subject matter to which they relate,

legal/...

legal principles may well affect the meaning of words in relation thereto. When we find in a judgment statements which attack meanings to particular words or phrases we must remember that the judge is dealing with those words and phrases in the context in which they occur and with reference to the subject matter to which they relate. Beyond that a statement as to the meaning of a word or a phrase would be over to dictum." (10)

Now, we point to that authority because it is important to observe here that parliament appears from its choice of verbs to distinguish between incitement and for example advice, incitement and encouragement, these are words which are used individually as verbs in the Act and therefore on the Standard Rules of Interpretation one does not include the other. They are to be considered as denoting separate sorts of conduct.

Dealing firstly with the question of consent to undergo, it is our submission that in this statute this does not equate to a statement of willingness to undergo. In its context it means an agreement to undergo and that if parliament had intended to hit at a statement of approval or willingness, it would have said so in different language, because the words 'consent to undergo' are in the connotation of ideas involving undergoing, attempting, taking any steps. And they seem to go <u>pari passu</u> with the notion of doing something positive, more than a mere utterance of a statement of mind. We refer in this regard, I think it is probably better to deal with it in the case for itself. (20) (30)

Dealing/...

Dealing with cases which might be helpful, there is now available a legal dictionary published by His Lordship Mr Justice Claassen, entitled "Dictionary of Legal Words and Phrases", there are only two volumes which have come out and fortunately those two volumes encompass the letters of the alphabet with which we are concerned with in this case. What it is, it is to replace Bell's legal dictionary and as the learned author said, he has done no more than give a useful collection of cases, he does not purport to be absolutely comprehensive about it. (10)

In the case with which he deals with in the first volume, at page 308, what the learned author has done is to repeat exactly what was in Bell's dictionary. He says 'consent - to agree to be in accord with'. Then he goes on to give a list of the cases. Now the case which makes in our submission this matter quite clear is of all things a case concerned with the Adoption Act. It is an Appellate Division decision. It is - I will spell it, I have got the case here - D-h-a-n-a-b-a-k-i-u-m v. S-u-b-r-a-m-a-n-i-a-n and Another, 1943, Appellate Division Reports, page 160. The (20) relevant part of the judgment of His Lordship Mr Justice Tindall, is to be found at page 167 of the judgment. That does not appear from the dictionary but that is where it is. It concerned the question of consent to adoption and Counsel had argued in the case that all that was required was an intimation of the mother's inclination in the matter and the Court said no, an intimation of my inclination, my thinking, is not enough, it is something more than that, and this is the way His Lordship expressed himself:

"In support of this argument Counsel drew (30) attention to the use of the words 'consent'

in/...

in paragraph (e) which require the consent of the child. Mr Knox on behalf of respondent argued that the word 'consent' in paragraph (d)(i) of the section means no more than an intimation of the mother's inclination in the matter and that therefore the legislature could not have intended that the mother must either be competent to contract by virtue of being a major or, if she is a major, must be assisted by a guardian. I cannot agree, however, that the word 'consent' is used in paragraph (b) in the sense contended for. In consenting to an order of adoption, a parent not only takes a step which is of great importance as regards the welfare of the child, but also agrees to give up important rights."

So in the contents of that statute, the interpretation was there must be agreement and we say that by parity of reasoning, if one is going to impose a minimum sentence of 5 years upon conduct in the nature of merely saying I am in favour of military training, then the word 'consents to undergo' in the context in which it appears .. (intervenes)

BY THE COURT: I am going on military training.

MR ALLAWAY: That is a statement of what I intend to do. It is not taking a step.

BY THE COURT: When I raised this point initially, I did not so much raise it in the context of consent, as I did raise it on the question of when I address a meeting and I say

to everybody present I am going to go for military training and come back and kill the Whites. Is that not a form of exhortation, a form of - not incitement, but a form of encouragement to the others?

MR ALLAWAY: We have considered that with reference to the word 'encouragement'. In our submission no, unless Your Lordship knows an awful lot more about how it was said. Digressing from the chronology of the argument, dealing with the point now, encouragement may be given, for example, to a cricketer who is about to go out to bat, one says: good (10) luck; that is encouragement. But encouragement could take place merely by gestures. A thumbs up sign could be encouragement, a victory sign, the traditional V for Victory sign could be an encouragement as it was in the last war. But a mere statement of what I am going to do, without Your Lordship knowing from the evidence, there is a lacuna in the evidence, the evidence does not say this was said with a view to urging men themselves to go and neither accused No. 5 nor accused No. 7 in their cross-examination was it ever suggested to them that that is why those words had been (20) said; said in the context of a pouring encouragement.

BY THE COURT: If you are correct to regard the consent on the face of it, I am more or less inclined to agree with you that you cannot consent with yourself. I think what they had in mind in the statute was that I say to you you must go for military training and you consent. Then you committed an offence and I have committed the offence by encouraging you and you committed the offence by consenting. That may well be what the statute means there. But both those elements become completely irrelevant if I accept the evidence (30) of the persons who say that they were encouraged or incited

or told by the other witnesses to go - by the accused to go.

MR ALLAWAY: You will find in the cross-examination it was put to them were you encouraged or - I used another verb in the Act - and no witness said yes, I was encouraged.

BY THE COURT: But that does not matter. I am not concerned with what the witness - I am concerned with the man who does the encouraging, I am not concerned with the man who received the encouraging.

MR ALLAWAY: Not with response. But on the evidence as we understand it .. (intervenes) (10)

BY THE COURT: No, but first, I am not on the evidence now, I am asking you do you agree with that proposition that consent and the question of encouraging by saying I am going become irrelevant if it transpires from the other evidence that they did in fact encourage some people whether those people were willing or not does not make any difference. Then these arguments become academic.

MR ALLAWAY: These do. I think a point which Your Lordship might recall. One of the witnesses said accused No. 5 said this at a meeting 5 or 6 times, just the words you (20) whould go for military training. Well, I would of course, being objective, that if that is repeated 5 or 6 times at a meeting, that must fall into the character of encouragement.

BY THE COURT: Even if it is said once only, you must go and if you do not go, we will kill you after we have killed the Whites, then this becomes academic.

MR ALLAWAY: Another, on the question of consent, what the learned author Claassen refers to here with regard to rape cases. We have got the authority here, it is Taylor's case and other cases, mere submission is not consent, and (30) by parity of reasoning, mere submission in the sense I am

prepared/...

prepared to submit myself for military training, does not mean I have consented to undergo, in that sense.

The word 'incite', we believe in order to give Your Lordship a proper assistance in the matter, it is desirable to look at the build-up of cases to a decision in the Appellate Division, Nkosiyana's case, but we are going to build up to that. I have got an extra copy of Nkosiyana's case for Your Lordship because I would have thought it is the high-water mark for the State. It is their case.

The first helpful case dealing with incitement (10) is that of Rex v. Sibiya, 1957 (1) S.A. The report starts at page 247 and it is a decision of His Lordship Mr Justice Bressler. May we just give M'Lord the page and alphabet references because it is a helpful case. It is page 248.F where he says:

> "The word 'incite' has been considered and defined many times and it has been held to be capable of the following meaning namely to rouse, to stimulate, to urge, (20) to spur on, to stir up, to solicit, to persuade, to provoke and in an old English case it was held that there must be solicitation or incitement and not merely a wish or a desire to constitute the crime."

He refers to English cases. Gardiner and Lansdown say:

> "An incitement connotes some element of persuasion, argument, authority, pressure or inducement and it is conceivable that a ...(?) .. unaccompanied by such an (30) element might fall short of incitement."

At/...

At F and H. Then the learned judge goes on to deal with argument put up by Counsel for the Crown in this case at page 250.A.

"Mr Howard for the Crown has relied first on the submission that a request is enough, but secondly and I think more strongly, on the contention that the circumstances present in the case before us is sufficient to constitute the crime charged."

And then further down the page at F: (10)

"It is clear that the courts have refrained on the whole from binding themselves. It is clear from the judgments of Van den Heever, J.A., in Zeelie's case, that no technical meaning should be assigned to the word 'incite' which must be seen in the light of the 'doelmatige handeling'. The present case in my view goes further than a bare request." (20)

Then the next case of importance is a decision R. v. R., the Immorality Act seems to have given rise to a lot of cases of this kind. 1958 (3) S.A. 145, a decision of His Lordship Mr Acting Justice Galgut, sitting in a full Bench with His Lordship Mr Justice Dowling. His Lordship Mr Justice Galgut says this, he refers to Zeelie's case and he goes on to say, dealing with the words 'entices, solicits or importunes', he says:

"The words used in Act 23 of 1957 are, as already pointed out 'entices, solicits or importunes." (30)

That/...

That is probably where 'enticement' got into the indictment.

"Comparison of any of these words of the meaning of incitement suggests.."

Did I give Your Lordship the reference? Page 147.H:

"A comparison of the meaning of these words of the meaning of incitement suggests that the legislature in drafting Section 16 of the Immorality Act intended to cast the net as wide as possible, because he views the words 'entices, solicits and importunes as wider than 'incitement'. It seems that conduct which would not amount to incitement, might well amount to entice- ment or soliciting." (10)

BY THE COURT: Mightn't you just as well add there 'or encouraging'?

MR ALLAWAY: Yes.

"Because of the view I take of the facts in the present case, it is not necessary to decide exactly what was intended by the legislature." (20)

He then goes on to give an .. (speaking so fast that I can hardly follow) ... dictum:

"The conduct ....."

but this was approved by Schreiner, J.A. in a later case:

"The conduct of the accused in the present case does not in my view amount to enticement."

BY THE COURT: Well, once again I come down to the - to what I consider to be the nub of the matter and that is: (30) forget about incitement, forget about procuring, forget about everything/...

everything else and let us get down to encouraging or advises. If I say to a person: look, you should go on military training, surely that is advice.

MR ALLAWAY: On the lack of authorities which we have, the answer with respect, appears to be no. Advice is more than just a statement, you should. Advice involves considerations and more than just saying to a person .. (intervenes)

BY THE COURT: If my doctor says to me you should take more exercise, isn't that advice?

MR ALLAWAY: It is his view. (10)

BY THE COURT: But surely it is advice. There I am against you. My opinion, and the lack of authorities to the contrary, I am prepared to say that a person who says you should do this, that and the other, is giving advice.

MR ALLAWAY: May we just complete the authorities because in Nkosiyana's case it could be argued in favour of the State and I think we ought to .. (intervenes)

BY THE COURT: Yes, certainly I do not want to stop you. You see I am not so much concerned about, I am inclined to agree with you as far as incitement is concerned. It (20) goes a bit further, but seeing that the Act and the indictment uses these other words which are very, very wide, advises, encourages, it is much less than an instigation or an incitement or a command, it is advice.

MR ALLAWAY: You should go on military training.

BY THE COURT: Yes.

MR ALLAWAY: If you do not go for military training, we will come back and kill you. That certainly takes it within the Act.

BY THE COURT: Yes, it must take it within the Act. (30) But as I said before, I think that if you say to a person:

you/...

you know, you should do this, then he is obviously giving him advice.

MR ALLAWAY: I will get onto this when I deal with advice. It depends entirely upon the way in which it is said. If this is said in a discussion, you should go on military training, that is not advice. If it is put on this level: you should go on military training. It depends entirely upon the circumstances in which it is said.

BY THE COURT: If I say to you: Mr Allaway, you should not continue with this point, isn't that giving you advice? (10)

MR ALLAWAY: It is not, it is expressing your views. It is an expression of view. It is equally consistent with I think, I take the view that you should go on military training. It is not advice. I take this view. Not that I am advising you to do it. I take the view that you should go on military training.

BY THE COURT: And if I say: look, I am going on military training and I am going to come back and kill the Whites, and you should do the same.

MR ALLAWAY: No question about it, but no one said that. (20) No question about that. That would be an incitement in my view, with respect.

BY THE COURT: It goes even further than that.

MR ALLAWAY: You are incensing his mind, or urging him. You are saying: look, I am going and if you don't do it, this is what is going to happen to you.

BY THE COURT: If a teacher says to his children: you should do this, that and the other in the class, isn't that giving them advice?

MR ALLAWAY: If a teacher says: you should do more (30) homework, he is saying I think that is what you should do.

The/...

The trouble with just the words is that many of the witnesses said, particularly the first man whose evidence we analysed, that was Gilbert. Many of the witnesses just say the speaker said: you should go for military training. Now that is equally consistent when one is concerned with proof beyond reasonable doubt, with I think this; not I am telling (forgive the personal pronouns) I am telling you to do it. I think this.

BY THE COURT: You talk about proof beyond a reasonable doubt. If I come to the conclusion that the word 'advise, encourages' includes the conception of: you should do this, that and the other, then of course you do not argue proof beyond a reasonable doubt because then I find that should is advice.

MR ALLAWAY: Indeed, if Your Lordship holds that the mere use of the verb 'should' unequivocally connotes advice, that is the end of the matter.

BY THE COURT: Under the circumstances, you are addressing the youth club and you are telling the youths there you should do this, that and the other, you are speaking from a position of authority, that alters the position in my view.

MR ALLAWAY: Where you say: I think you should go for military training.

BY THE COURT: Either advice or encouragement. Isn't it encouragement if I, as a person in authority, who is looked upon as a person in authority, says you should do this, that and the other?

MR ALLAWAY: I do not think anyone suggested that accused No. 7 was in authority.

BY THE COURT: Well, he was a speaker to a group of young people, the Eku Khanyani Youth Club.

MR ALLAWAY: I forget the age of accused No. 7, but as far as I recall he was not much older than some of his compatriots who gave evidence in this case and certainly the same can be said for accused No. 5. But most of accused No. 7's activities were on street corners, playing soccer, according to the State.

BY THE COURT: Stop playing soccer and go on military training and come back and kill the Whites.

MR ALLAWAY: That is advice, yes. Stop playing soccer, that is advice. The next case is an Appellate Division (10) decision, R. v. J., 1958 (4) S.A. 488, a decision of Schreiner, A.J. and His Lordship Mr Justice Schreiner deals on page 491 with what His Lordship Acting Mr/Justice Galgut had to say in the case which we have just referred Your Lordship to. This is at marginal letters E to H. The first of these cases is not reported, but we were furnished with a typed copy of the judgment of Galgut, A.J. delivered when sitting with Dowling, J. who concurred and now it is reported. The case they referred to is R. v. S., the charge is laid under the Immorality Act, it was held that the facts did not disclose the commission of (20 the offence. The discussion in the judgment as to the meaning of entices, solicits and importunes is largely reproduced in the second case which was decided by the same two judges. The magistrate found the appellant guilty on the alternative count. The Transvaal Provincial Division held on the fact that the appellant was not guilty of enticing, soliciting or importuning the complainant, but that he was guilty on the main count in that he attempted to have intercourse with her. The relevancy of the decision to the present matter is that the appellant had there said to the complainant and (30) another native female: "wil julle nie genaai nie", which

seems/...

seems like a fairly fair invitation. He invited them into his car. Those were the circumstances. The words in question apparently amount to an invitation to have intercourse , says His Lordship Mr Justice Schreiner, not taking judicial notice of the matter. And he goes on to say:

"In those cases the words to be construed and applied were (this is another set of cases) incite, instigate, command or procure as in Section 15(2)(b) of Act 27 of 1914. Following what he understood to be the effect of those two cases, Galgut, A.J. held that for incitement there must be more than a proposal readily accepted. There must be some messure of reluctance or hesitation (I am now going on to the next page, page 492) which is overcome by persuasion. Whether that view is correct in relation to the word incite, need not be decided. Since the wording with which Galgut, A.J. had to deal, did not include the word 'incite' is a .. (inaudible) He went on to express the view that in using the words 'incite, solicit and importune' parliament intended to cast the net as wide as possible and he continued it seems that conduct which would not amount to incitement may well amount to enticement or soliciting."

(10) (20)

BY THE COURT: Or advice or encouragement I may add between brackets.

(30)

MR ALLAWAY: "So far I am in agreement with the Learned /...

Learned Judge",

so His Lordship there is in agreement with him.

BY THE COURT: The Immorality Act obviously does not - maybe I am making a mistake - does not contain words like 'advise or encourage'.

MR ALLAWAY: It does not. It was entice and solicit. That is what I call the Vice Squad set of words. There is another case, I haven't got the report here, it is called Lasie's(?) case, I have got a synopsis of the report.

BY THE COURT: Have you actually got anything on the (10) words 'advice or encouragement'?

MR ALLAWAY: Nothing that seems to help Your Lordship very much. I have got dictionary and that is all. I have looked at all the cases. There is nothing in the words and phrases.

BY THE COURT: Well, I may indicate to you here that - of course I am not dealing with the evidence, I am dealing with the legal interpretation of the Act and authorities to the contrary., I am satisfied in my own mind and subject to correction hereafter by either authority that the words 'advise and/or encourage' would include any statement by (20) a person at a meeting to the people present at the meeting: you should do this, that or the other.

MR ALLAWAY: May we just complete the argument by referring to Mkosiyana's case because the State may argue, I do not know what they have got here, that Mkosiyana's case brings the conduct within incitement, because certainly His Lordship Mr Justice Holmes watered down, lowered the hurdle.

BY THE COURT: What is that reference?

MR ALLAWAY: It is S. v. N-ko-s-i-y-a-n-a and Another, 1966 (4) S.A. 655. I have got a spare copy of this which I would (30) like to give to Your Lordship. The first point we would like

to/...

to refer to is that in the argument on page 656, at the very top of the page, R. v. M. and R. v. J. were referred to by Counsel appearing for the appellant. Furthermore further down the page just before argument began for the State ...(?) Sibiya's case was also referred to. The fact upon which the charge was based - it is the sort of case that we are concerned with here, it is matters said at a meeting - the facts appear at page 657, starting at F and proceeds through to the second page, page 658. It concerns statements made with reference to the idea of killing Kaizer Matanzima and (10) M'Lord will see on the next page the Act under which the accused were charged is set out, page 657, that is marginal letters F and G 'incite, instigate, command or procure'. And then the accused in this case had said it had various conversations with the appellant over a period of several months, as the facts were not in dispute and the appellants did not give evidence. Sufficient to summarise the findings in the trial court, the discussions as follows: the first appellant .. (inaudible - speaking too fast to follow) the idea of killing Kaizer Matanzima for political reasons and said that for (20) this purpose his people were prepared to raise a large sum of money by way of levy. In January, 1966 he told Dunn, it being decided the deed should be done, the blood money to be R200 and the facts are there further set out. One can see that the facts there fall into a totally different sort of compass from the sort of somewhat scanty references in the present case. But His Lordship Mr Justice Holmes deals in particular with Zeelie's case and the dissenting judgment of His Lordship Mr Justice Van den Heever and goes on at the foot of the page at letter H, to say: (30)

'Hence it seems to me proper to hold that

in/...

in Criminal Law an inciter is one who reaches and seeks to influence the mind of another to the commission of a crime. The machinations of criminal ingenuity being legion to approach the other's mind may take various forms such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or the arousing of cupidity. The list is not exhaustive. The means employed are of secondary importance. The decisive question in each case is whether the accused reached and sought to influence the mind of the other person towards the commission of the crime. Where the intended influencing does not reach the mind of the respective incitee, the crime may be one of attempted incitement. Furthermore Janet, J.P. rightly pointed out it is the conduct and intention of the incitor which is vitally in issue and I reiterate that the purpose of making incitement a punishable offence is to discourage people from seeking to influence the minds of others towards the commission of crime."

Now, if His Lordship had left it at that, no problem.

BY THE COURT: Yes, but here comes the sting.

MR ALLAWAY: "Hence depending on the circumstances there may be an incitement irrespective of the response .. (inaudible) .. the person sought/...

sought to be ..." .. (intervenes)

BY THE COURT: Influenced.

MR ALLAWAY: And nowhere does His Lordship expressly disapprove what was said in R's case or what was said by His Lordship Mr Justice Schreiner in J's case.

BY THE COURT: I am indebted to you for referring me to this case, because it seems to be, with great respect, my line of thinking too. Where His Lordship says:

"The machinations of criminal ingenuity being legion, the approach to the other's mind may take various forms such as suggestion..." (10)

You should go on training.

MR ALLAWAY: The Learned Judge is not there saying suggestion equals incitement, request equals incitement.

BY THE COURT: It may take various forms.

MR ALLAWAY: The form of trying to approach the mind.

BY THE COURT: The mind of the other one. Now that is dealing with incitement, which is a much more serious thing than encourage or advise. If incitement can envisage this type of conduct, then how much more must advise or encourage not envisage it. (20)

MR ALLAWAY: The operative word as will be seen from the later judgment of the Judge President in this Division, the operative words here are 'seeks to influence'. One is concerned with the action of the man doing the thing, not with the person he is talking to, unless he is talking to a deaf-mute, then he does not reach his mind. Why I say it lowers the hurdle is because it would seem to put within a conceivable actus reus conduct amounting no more to a suggestion or a proposal or a request, but the problem is (30)

that/...

that in order to constitute the incitement, the person making this request or proposal must be seeking to influence the mind and that depends upon the circumstances. But where the case is noteworthy, is it does not overrule, even suggests that it overrules any of the earlier decisions. It is a re-statement of the law rather than a creation of any new law.

There is a later case in this Division, it is reported in the reports, S. v. ffrench-Beytach. I thought it would be more convenient to bring a spare copy because it often helps.

BY THE COURT: Yes, it does help because I prefer to see it myself.too. Now what is the next one? (10)

MR ALLAWAY: S. v. ffrench-Beytach, 1972(1) S.A. 630. This is the dean's case in the court a quo. The matter did not arrive on appeal, save that in the argument Counsel referred to this aspect. We will refer to that presently. The report is one of the very scant reports in the Law Reports and we have not been able to get His Lordship Mr Justice Cillié's actual judgment, but the report reads as follows. It is in the second half of what appears as a block where this follows:

"Where it is alleged that the accused incited or encouraged people to commit unlawful acts..." (20)

Now here we are concerned with the very act in terms of the Terrorism Act -

"it is sufficient to say that the accused would have committed an act of incitement if by his communication to another, he had reached and sought to influence the mind of that person to the commission of the prohibited act. The character of the meeting or of the person listening to the (30)

alleged/...

alleged incitor is an important consideration when deciding what value must be given to the words used and what the true intention was."

And here is the rub:

"There is an incitement when those to whom the communication is addressed, are urged to do something."

The word 'urged' of course goes further than - the Learned Judge correctly, with respect, 'influence is more than mere suggestion'. One cannot properly say I am trying to influence M'Lord's mind by just suggesting something. I try to influence M'Lord's mind by urging something on M'Lord, which is far stronger than mere suggestion, because the connotation of the word 'influence' is .. (intervenes)

BY THE COURT: When you said to me earlier in this case you should follow the Natal decisions, wasn't that urging me to do something?

MR ALLAWAY: It is the way I said it. I said I come from Natal and you should follow the Natal decisions. I said it with a little amount of .. (inaudible). With great respect, if the record disclosed to Your Lordship that a man said: you should go for military training, that is not enough incitement, even at the level of Nkosiyana's case.

BY THE COURT: It is not incitement, but it is advice or encouragement.

MR ALLAWAY: Now we come to that. To complete the law on this question is one later case which adds nothing, it is .. (inaudible) .. Rhodesian(?) decision, I do not think we need to trouble Your Lordship what that.

BY/...

BY THE COURT: No, I do not think you need ... (intervenes - both speaking simultaneously)

MR ALLAWAY: They merely followed in Nkosiyana's case. But on the facts in that case the letter in question was a letter written by a gentleman in Rhodesia, obviously had the element of urging in it. The learned textbook writers have dealt with this since in Nkosiyana's case because Gardiner and Lansdown have stated firmly it must involve persuasion. The learned textbook writers have taken up the call. (10)

BY THE COURT: What you have been doing in the last day and a half or so, hasn't that been urging me to do something?

MR ALLAWAY: I hope it has, with respect, but the evidence in this case does not .. (intervenes)

BY THE COURT: Whether you reach my mind or I am responding is irrelevant, is it not?

MR ALLAWAY: I am trying to influence Your Lordship's mind. Whether Your Lordship responds is irrelevant. But the evidence does not disclose that what was done at these meetings is in the nature of what Counsel has been endeavouring (20) to do in this court in the course of addressing argument to Your Lordship. On to a word which in our view must have a far broader scope application, the word 'advice'. This again, being entirely objective, must in our submission have a - it is an antibiotic of a far greater cross spectrum than incite. We mention this because we cannot really throw out anything that is of great value.

BY THE COURT: That is what troubles me too is that the two words 'advice' and 'encourage' to me would mean that if I say to a person you should go by bicycle and not by motor (30) car, I am advising him. Whether it is good advice or bad

advice does not matter.

MR ALLAWAY: We submit it is not every expression of opinion that qualifies for advice.

BY THE COURT: If I said I think you should, then you might be correct, but if I say you should, I cannot see .... (intervenes)

MR ALLAWAY: The way Your Lordship said the last statement clearly shows an enjoinder to be so advised, but again it is a question of attention to detail as to how it was said. It is not the ipsissima verba themselves that constitute it, (10) it is the manner in which those words were spoken. One witness said it was repeated four or five times every Sunday at the meeting. If M'Lord believes that evidence, that must be advice. We cannot claim that a statement made on one occasion in a meeting, you should go for military training, in the course of a discussion, amounts to advice, but we cannot claim that if that is repeated over and over again that it does not qualify for advice. It would be absurd to put up such a contention.

A case which I am sorry to say, I thought I brought (20) it up with me from Durban, but I haven't and we will have to ask Your Lordship to look at it yourself, I beg Your Lordship's pardon. The word 'advice' is dealt with in it, it is South African Warehousing (Pty.) Limited v. South British Insurance Company Limited, 1971 (3) S.A. 10. I regret that I do not have the authority with me. On my reading of it, it was not very helpful, but it may be that there is a construction in it which is of assistance to Your Lordship on the question of advice.

The dictionaries, the legal dictionaries, Claassen (30) says this at page 59:

"Counsel's/...

"Counsel's advice and opinions are not the same thing. Perusing these and the question of taxing(?) considered in ex parte Whitely.."

that was concerned with whether the attorney could charge for advice or an opinion but it does bring out the dissension that advice and opinion are two different things and the words said, you should go for military training, might amount to nothing more than an expression of opinion and not advice.

The dictionary were unable to find any other (10) cases dealing with advice. There are the words 'advise' and 'advice' as dealt with in Stride(?) in English cases, but they are not - the Short Oxford English Dictionary says that the word 'advise', the verb, 'to look at, consider also, to watch for, to consider together, to offer comfort, to give advice'. If we go back to the word 'advice' the word 'advice' means this, according to the shorter dictionary 'opinion given .. (background noise) .. action'.

BY THE COURT: That would fall within the ambit of what I say 'advice' means. (20)

MR ALLAWAY: Yes, M'Lord. You should go for military training.

BY THE COURT: That is my opinion and I am giving you the advice.

MR ALLAWAY: It then says 'to take counsel' and you get a whole string of things. We looked up the larger dictionary too, but one is thrown back into what was parliament trying to prevent in using the word 'advice'.

BY THE COURT: That people should not say to other people: you should go for military training.

MR ALLAWAY: I wish they had said so. Suggested is the (30) widest possible antibiotic, it has got the broadest possible

prospects/...

prospects and that is why, if they had merely used the words 'solicit, suggest, request', there is no doubt in the matter, but they had come with 'advice', it throws into this thing the question of does one stop an expression of opinion or must it be at the level of counsel, this is something you should do. Anyway, so much for 'advise' and the word 'encourage'. We submit that 'encourage' means this, you encourage someone who is already committed, encouragement can only apply where the person is committed to the course of conduct. Then you give him encouragement. (10)

BY THE COURT: This becomes academic when I am of the view that advise includes the expression, you should go.

MR ALLAWAY: On cases dealing with the word 'encourage' there are more cases, but the dictionary and the cases are unhelpful. There is Adam's case which I do not think we even need to cite out of, I have got it here. It says the words advocated by the ..(?) .. or encourages in the Suppression of Communism Act contemplates a communication to an audience. Well, so what. Of course it does, it must do. One is thrown back again and again to try to see what parliament intended (20) here, but we do believe on the authorities, that the word 'encourage' means, according to His Lordship Mr Justice Cillié, in the ffrench-Beytach case which was referred to, he says, this is the case which is most in point and deals with the Act in question, was intended to mean:

> "to stimulate a person by assistance or by reward or by expression of favour or approval."

That is the law on the subject that we have been able to find, with respect, and we now may we sum the matter up with (30) regard to these witnesses. It might be convenient to sum

things/...

things up with regard to them.

Gilbert Ngobese, we sum him up, and this is dealing only with the question of the content of the evidence, not with its quality at the level of whether Your Lordship ought to or ought not to believe it; it is on the basis of if it is believed. We say with regard to accused No. 5, nothing that he said, that Gilbert Ngobese said, bring accused No. 5 within the Act as charged. And the gravamen, the basis for saying that is where this witness uses the word 'should' he says it was an expression of an idea for debate used (10) in neutral terms. We have given the references, but that is - M'Lord will recall the argument, that is the reason for saying it. If you would like the references to the actual words .. (intervenes)

BY THE COURT: No, you have given them once already. I just want to see if I can find them.

MR ALLAWAY: 283, 23 to 285 line 4. He uses the word 'should' as an idea for debate.

BY THE COURT: I have got that submitted is that there was a debate but not incitement to military training. But you (20) did say that he does incriminate Nos. 5 and 7.

MR ALLAWAY: Incriminates them if you take, with respect, his evidence deals with 5 and 7, but we say the content of it, if 'should' means 'advice' in Your Lordship's legal opinion we say where he says 'should' he tells Your Lordship what he means by 'should' and it takes us out of the level of 'advice'.

BY THE COURT: I have a note here, page 280 line 18, Nos. 5 and 7 advised the whole club of which at least four members are mentioned in the particulars and the whole club must include the individual members. (30)

MR ALLAWAY: Yes, this is the level at which the argument is

addressed/...

addressed. We concede the part is included in the whole, but when this witness is cross-examined, he says when they say 'should' go for training, they said it as an idea for debate.

BY THE COURT: That is a question of opinion of the invitee.

MR ALLAWAY: Yes, he is saying what he .. (intervenes)

BY THE COURT: Yes, that is his .. (inaudible - both speaking simultaneously) .. he may be completely have misconstrued the position. If I say the words: you should go for military training amounts to advice, it did not matter to me (10) one iota what Gilbert thought they meant by it.

MR ALLAWAY: The only advantage that he had over Your Lordship, with respect, is he was there and one must, with respect, recall that the evidence was given through an interpreter who delivered it up as should go.

BY THE COURT: Perhaps I can express myself better by saying this, that your argument is that 'should' amounts to an expression of opinion. Gilbert may have thought along the same lines as you do and I may still think that both you and Gilbert are wrong. (20)

MR ALLAWAY: The only difference is he was there and we were not. Because for example if No. 5 stood up at the meeting and said people should go for military training, debated the idea at that level, some sort of academic level, not in the sense of advising them to go, then it would not be hit by the Act. It is talk, it is talk, talk, talk.

BY THE COURT: Well, having heard particularly No. 7 in the witness-box, I do not think that he would know what a debate is.

MR ALLAWAY: One does not begin to suggest that he is given to erudition of any sort. As far as No. 7 is concerned, (30) we have made our submissions that this witness involves No. 7.

BY/...

BY THE COURT: He does, and No. 5.

MR ALLAWAY: And No. 5. And again, summing the matter up for Your Lordship, this witness says he was interviewed by Captain Cronwright. He told Cronwright what No. 7 had said.

Then Frank Nakumba, what he said definitely involves accused Nos. 5 and 7 in the Act as charged, provided you can believe him. He was the delayed starter.

BY THE COURT: Frank Nakumba clearly brings in No. 7. Shall I put it that way, he brings him in.

MR ALLAWAY: Then again summing the matter up, this witness says at page 322, that he was interviewed by another policeman, neither Cronwright nor Smith and that a Zulu police officer was present and he was shown No. 7's statement. That is at page 322.

BY THE COURT: As far as the next witness, James Majola is concerned, you conceded that his evidence brings Nos. 5 and 7 within the indictment.

MR ALLAWAY: Quite clearly. He brings them both in and the reference to Smith, he says that he was in fact - it was Mr Smith who interviewed him and told him that No. 7 had made a statement involving him.

BY THE COURT: Is that your criticism in regard to why his evidence should not be accepted.

MR ALLAWAY: Johannes Ngobese again he was .. (intervenes)

BY THE COURT: As I said earlier on I can ignore Johannes Ngobese. And this will help Nos. 5 or 7 if I accept James Majola and Frank Nakumba.

MR ALLAWAY: Yes. Gilbert Dhlamini does not involve No. 5.

BY THE COURT: No, he does not. Godfrey Dhlamini you mean.

MR ALLAWAY: Godfrey Dhlamini.

BY THE COURT: He involves No. 7.

MR ALLAWAY: He only involves No. 7.

BY THE COURT: And you also conceded that if his evidence is accepted, then No. 7 is in - falls within the indictment.

MR ALLAWAY: I believe I did, excuse me?

BY THE COURT: You said, Godfrey Dhlamini gives evidence regarding No. 7 only and you concede that if Godfrey's evidence shows that No. 7 advised him to go for military training, it is the same point about 'advise' again, then No. 7 falls in the indictment re both time and offence.

MR ALLAWAY: That is right. Because what he says is this, after that he said to me he would like that I should go along with him, we should all go. If that all amounts to advice, that is the end of it, if Your Lordship believes it.

BY THE COURT: Just to eliminate any possibility of a misunderstanding, I do not want to force you to make any concessions. You will not make them, obviously, if not correct. I understand it on this basis then: if Frank Nakumba is believed, if James Majola is believed - if Frank Nakumba is believed the very least No. 7 is in on his evidence.

MR ALLAWAY: Yes.

BY THE COURT: If James Majola is believed, then Nos. 5 and 7 are both in on his evidence.

MR ALLAWAY: Both, yes.

BY THE COURT: If Godfrey Dhlamini is believed, then No. 7 is in on his evidence.

MR ALLAWAY: Yes.

BY THE COURT: So actually, assuming I accept the evidence of James Majola, then there is no need to find, on the evidence of the other two, but I can find on that because one - if James Majola is believed, Nos. 5 and 7 are in.

MR ALLAWAY: Yes.

BY THE COURT: And it makes matters no better or no worse if No. 7 is in on Frank Nakumba's evidence and if No. 7 is also in on Godfrey's evidence. Because once he is in on one count, it does not matter - it becomes academic how many others he is in on.

MR ALLAWAY: One instance there/is only one count and one instance covers the count.

BY THE COURT: It covers the count, yes. That is the way I see it.

MR ALLAWAY: Short of arguing the whole case again, (10) Frank Nakumba - this is on the basis one believes him, that is entirely correct, what Your Lordship has just put to me.

BY THE COURT: And you have given me very good reasons why you say I should not believe him, so you need not go into that again.

MR ALLAWAY: In considering these five witnesses, we make this submission: none of them corroborates any of the other of them with regard to any specific occasion. There is no corroboration.

BY THE COURT: The possibility of course - that may be (20) a criticism, but the possibility of course is that they were addressed at different times.

MR ALLAWAY: Yes. We are saying that the State cannot claim we have got an instance now which is corroborated by another credible witness. In other words, when one considers this man Majola, he stands on his own with regard to the occasion he speaks about.

BY THE COURT: He is not an accomplice.

MR ALLAWAY: No, M'Lord. It is merely this point, the State cannot claim a corroboration one witness .. (intervenes) (30)

BY THE COURT: Where one witness said - where James for instance/...

instance said: yes, I was present when he spoke to Frank or Franks says: I was present when he spoke to James.

MR ALLAWAY: There is no corroboration and the other features of the case .. (intervenes)

BY THE COURT: But what is the law about single witnesses if they all talk about one man having done a similar thing on various occasions? Isn't that some form of corroboration?

MR ALLAWAY: This is the other feature we mentioned. The State cannot claim a dissimilar fact evidential assistance. I haven't got the case, but .. (intervenes) (10)

BY THE COURT: Yes, that is clear, I know that...(intervenes)

MR ALLAWAY: .... case, His Lordship Justice Harcourt deals with it very well there. It sets out all the law relating to similar facts Gokool decided in 1965 in the S.A. Law Reports. There is no evidence of a peculiar system here. No. 5 says things at meetings, No. 7 is said to have said one thing at a meeting. One witness says No. 5 repeats everything five times, several times at every meeting. Another witness says he mentioned it once.

BY THE COURT: Other witnesses said they only heard (20) him once.

MR ALLAWAY: Only heard him once, only say it once at the meeting.

BY THE COURT: Yes, but they do not tell you at all the meetings where the other one heard it.

MR ALLAWAY: No, and in regard to No. 7 there is no peculiar way. I mean, he did not like the man who used to seduce the servants, come into the kitchen dressed in a particular way and make his proposal in a particular way. The sort of cases where one boy is importuned for immoral acts, that the (30) accused had a particular system or a particular..(intervenes)

BY THE COURT: No consistent course of conduct or something like that.

MR ALLAWAY: No, nothing that the State can claim here(?). One is concerned with saying, looking at this man's evidence by itself, can one say affirmatively yes and reject the accused's evidence.

Then we deal with the question of No. 5's confession which the State relied upon.

BY THE COURT: Relied upon but faintly.

MR ALLAWAY: Indeed, if that is so, then it saves a lot of the argument because .. (intervenes) (10)

BY THE COURT: Yes, I see Mr Swanepoel is nodding his head in affirmation. I think he merely passed the confession off on the basis of yes, of course then there is a confession, but he did not take it any further than that. I do not want a long-winded argument on the evidential value of the confession. Subject to what the State has to say to me and I am glad this is all being recorded, because if this matter goes further I need not reiterate this type of statement in my judgment. Otherwise my judgment is going to be as long as the record, over 1 000 pages. Therefore I am making interjections now. Unless the State advances very good reasons, I do not propose in any way relying upon the confession because as I indicated when I ruled it admissible, although it was strictly admissible in evidence, its probative value was very questionable because of the suggestions made to No. 5 by the various officers. I do not say it is reprehensible on their part, but it affects the evidential value and unless the State addresses me specifically in that case, I am not going to look at the confession as in any way corroborative of what the accomplices said. I am (20) (30)

going/...

going to decide the question of the credibility on a question of the credibility of the accomplice.

MR ALLAWAY: Of the witnesses.

BY THE COURT: Of the witnesses, I am sorry. In the one case of the accomplice, in the other case of the witnesses. And if then the matter should go further, then the State can argue the question of the probative value of the confession elsewhere. I am, in the circumstances of having the whole background of the case, I am proposing to ignore the confession as being corroboration of anything. That of course (10) gives the State a chance to reply on that, but I doubt whether they will because Mr Swanepoel in his argument-in-chief indicated more or less that he was not going to rely to any extent on the confession. I am making this statement now so that the State can correct my impression if I am wrong.

MR ALLAWAY: Just to get one thing on the record. Your Lordship said when giving the ruling that we had asked Your Lordship to speculate, because there had been no evidence from accused No. 5. Of course now accused No. 5 has given evidence. There is an important feature about this. (20) Accused No. 5 gave his evidence and he was not challenged in cross-examination at all on what he said about the confession. You will find at the very beginning of his cross-examination, I have got the passage reference, all that was put to him:

"What you told the magistrate was a pack of lies. -- Yes.

Why? -- Because I had to do it."

But as to what occurred and how the confession came to be taken, he was very wisely, with respect, not cross-examined on that at all and in the light of the cases .. (30)

(intervenes)

BY/...

BY THE COURT: No, you do not have to quote any cases. In the light of what I feel about the confession which I indicated perfectly clearly, I have done so on several occasions, I do not attach any probative - I do not propose attaching any probative value to the confession. Is that sufficient for your purposes?

MR ALLAWAY: Indeed.

BY THE COURT: Subject to what the State may argue and it would surprise me if they argue anything in this regard, in which case I shall give you a full chance and a full opportunity to reply on the question of the confession. I am merely trying to shorten proceedings, if I understand, if my feeling is correct, I do not think that the State will try and rely on the confession to any extent at all. I might as well ask Mr Swanepoel now. Is that correct, Mr Swanepoel?

MR SWANEPOEL: That is so.

BY THE COURT: Mr Van Jaarsveldt, am I correct in saying that you did not rely on the confession?

MR VAN JAARSVELDT: No, we will not.

BY THE COURT: Well, in that case Mr Allaway can forget about the confession.

THE COURT ADJOURNS FOR TEA. THE COURT RESUMES.

BY THE COURT: Mr Van Jaarsveldt, I understand from the operatrix that the last statements made by you and Mr Swanepoel were not properly recorded, so I shall repeat the question. Am I correct in understanding that the State is in no way relying upon the confession by No. 5 accused, namely EXHIBIT S, in any way?

MR VAN JAARSVELDT: That is correct.

MR ALLAWAY: M'Lord, we were making submissions of a general nature with reference to the State case; we have made

two/...

two of them. One was the question of no corroboration of a specific occasion and the other one was there is no evidence of a peculiar system.

The third and final general submission about the State case - these are the general submissions, we had analysed the specific witnesses. Our third and final submission is that the investigational system used in this case makes it unsafe to convict.

Captain Cronwright spoke of the system. The first reference is at page 105, starting at line 10.. I think 10 is too far down the page, it would be better to say starting at line 4.

"Each member of my staff that has been given the task to interrogate somebody or to question somebody is given a free hand without interference from my side. It is the procedure in my office that when somebody is being questioned and he is prepared to give evidence or make a statement he is given a pen and paper and if he is able to write in either English or Afrikaans, to write in his own words what he is prepared to tell us. Thereafter I usually take these papers in the company of the accused or the person being questioned, when he then sits at my table opposite me, I then read over what he has had to write and when I further question him on what he has written, it is to clarify certain points.". This did in fact happen in the case of accused No. 5.

He goes on to say further down the page he wants to have clarification, but he is there speaking about the general system.

Then M'Lord on the next page, starting at line 10, page 106 line 10 to 20: What he says with regard to accused No. 5 and again he is explaining the system. He says practically

the/...

the whole day was spent questioning him. "Late in the afternoon a statement was handed over to me. Accused sat right opposite me at my table. Detective-Sergeant Caswell Mkora

was present in my office at the time, Detective-Sergeant Smit was also present in my office at the time. I read the statement to the accused and after having read it to him I asked him whether he was satisfied with the contents of the statement and whether this was all he wished to say."

Then the next reference to the system is at page 117, line 18 to 119, line 10. The witness makes it perfectly clear/ here (10
that "All you are trying to do is to get clarification?"
Reply: "That's right".

"You are not trying to alter the sense of the thing?"
Reply: "No".

"Because you wouldn't dream of doing that?" Reply: "No."

"It is unfair, isn't it?" Reply: "I wouldn't say it is unfair, we just want the truth out of the accused".

"Now you have heard Mr. Smit's evidence, didn't you?"
Reply: "I heard his evidence". (2

"Were you paying attention to it?" Reply: "I was paying attention to each and every witness who was testifying".

"You talk of considerable reason. Now did you hear him say that you instructed him to take your comments and your alterations on that statement and to take a new statement from the accused?", the witness says on page 118: "He had to use that statement which I had corrected as a guide-line", and this word crops up again. "..as a guide-line to a statement which he was to take".

"But how could you give the guide-line?" Reply: "I (5
didn't give the guide-line...", a very clear statement: "I

didn't/...

didn't give the guide-line. The statement was written by the accused and we corrected a few errors."

And then the witness went on to say what he corrected.

Then on the question of a satisfactory statement, this is on the same page, page 118 line 18 through to page 119 line 10, he is asked this:

"Well, whether you had it in your mind or not, you wanted satisfaction with the statement. You wanted a satisfactory statement?" Reply: "That is right".

"And I suppose in the course of investigation that (10
had preceded the date when No. 5 was taken into custody you came to certain views about the matter", he says: "On the case in general".

"I suggest that you had come to the conclusion that there was a case for saying that people were going out to go for military training and there was a case for saying that people were preparing for sabotage". Reply: "That is quite right". That was his view.

"And in your view you regarded that as probably being the truth?" Reply: "Quite correct". (20

"And of course what would satisfy you would be the truth as you honestly and reasonably then understood it?" Reply: "That is right".

"So in deciding what was satisfactory, it is unavoidable that you had to adopt a subjective approach". Reply: "I just wanted the truth".

Then My Lord if one compares that evidence that we have just quoted from as to the procedure, mere corrections, not altering the sense, may we just give My Lord the passages without reading them out. (3

Compare that with the cross-examination of this witness about/...

about EXHIBIT 'T'.

BY THE COURT: Exhibit..?

MR. ALLAWAY: It was EXHIBIT 'T', that was accused No. 5's handwritten statement, which had writing on it which Captain Cronwright had corrected.

The references are page 121 line 30 to 122 line 30; 123 line 20... sorry, I beg Your Lordship's pardon. 123 line 10 to 124 line 15. 125 lines 13 to 20, 127... I will refer to them all in due course. 127 line 7 to 130 line 15, Your Lordship will see that Captain Cronwright had to concede that he had altered the statements to what was opposite of what had been previously said. In all those passages that appears. So mere corrections and guidelines hold no water against the real evidence which is EXHIBIT 'T' in the handwriting of Captain Cronwright.

BY THE COURT: EXHIBIT 'T' in whose handwriting?

MR. ALLAWAY: On EXHIBIT 'T' there was Captain Cronwright's own handwriting.

BY THE COURT: EXHIBIT 'T' is in No. 5's own handwriting with Captain Cronwright's corrections.

MR. ALLAWAY: When I say the real evidence, I say EXHIBIT 'T' where Captain Cronwright's handwriting is on, that is the real evidence.

My Lord without being in any way unsavoury, those alterations in that handwriting are like the seminal stains which prove themselves, they are like the entries in the insolvent books of account. The insolvent can say what he likes about whether he kept the correct set of books of account or a falsified set. That handwriting in Captain Cronwright's handwriting makes his evidence about guidelines and corrections quite unacceptable.

My Lord, again on the question of the system, at page

590 Captain Cronwright on a further return to the witness-box gave evidence about the system, and this dealt with EXHIBIT 'K'.

My Lord, I will be referring to this in greater detail in another leg of this argument. It is probably as well to read it all now: Page 590 line 20 to page 591 he says this down to line 27:

"Was he.." that is Jairus Kgokong "...informed against whom he was going to testify?".... "was he informed". Reply: "At that stage we had two cases in mind that were being investigated, the one presently now before Court and another case under the name of Charles Mtombeni and Others, but during January, 1976, we decided that we would only use him in the case against Joseph Molokeng and the six other accused. We did notify him accordingly. As far as EXHIBIT K is concerned, I would just like to give an explanation to M'Lord..." and he then goes on to explain EXHIBIT K, I am going to read it later, so may I avoid reading it now My Lord to avoid repetition. It is of more relevance with reference to another argument, but it does affect the question of the system that was being used, because he says at line 11: "Therefore to my one interrogator, Sergeant Smit, I wrote it specifically down for him that he should know when it comes to anything on military training, he must find out for what purpose and if it was for the purpose of overthrowing the South African government, that he write it in the proper sequence and if it was Marxist studies also for the purpose of bringing about a social or economical or political change in South Africa, he was to put that sequence down. This is why it was written down, the man is not very fluent in English and therefore I wrote this down as a guide-line for him in all his interrogations, not only specifically Jairus Kgokong."

Then My Lord, the next reference was at page 598, he talks/...

talks about systems at the top of the page to line 11:

"We have different systems of investigation. When we start interrogating people we work on the statements which we obtain from people earlier on in our investigation and also at stages from information received from outside sources and these are the things which we normally use put to people under interrogation. It is not to say that we are always using a statement. It may be a piece of information which we received in a report which looks like a statement, but it could be information received. This is all I have to say about that without going too deeply into highly secretive things in the Security Branch".

On page 600, something more about the system. This is at line 15, where the cross-examination starts:

"Would you condone a system of investigation whereby the investigating officer said to an accused person or a suspect or a detained person: Look, this is the statement of another man and it incriminates you whereas in fact that other man had made no such statement?" Reply: "Should it happen in my office, I would probably condone that".

"You would condone that?" Reply: "I would probably condone it".

"In other words, if somebody tried to trick somebody into believing something, you would condone that". Reply: "That is so".

BY THE COURT: Before we go any further, isn't there a section of the Code which actually makes evidence obtained by perhaps not strictly legal means, perfectly admissible in evidence?

MR. ALLAWAY: Concerning the admissibility, yes, but concerning the weight, no. My Lord, for example..(indistinct) there is the pointing out, is an example.

BY THE COURT: But there is a special section, I can't quite think of it at the moment, where it says that even if evidence is obtained illegally...(intervenes).

MR. ALLAWAY: Unlike the American system where if I don't as a police officer produce my wallet, read the relevant amendment to the relevant section of the constitution, anything I find out after that is inadmissible. In our law it is admissible.

BY THE COURT: It is admissible.

MR. ALLAWAY: We are dealing with the weight.

BY THE COURT: I will put you another problem, Mr. Allaway. In your experience, have you not come across it that very often cases are solved by the police employing what I may call a bluff system, in other words, they say to a suspect: Look it is no use your talking and saying no, we have information from so and so that you did so and so and so, when in fact they have nothing of the kind?

MR. ALLAWAY: Yes, M'Lord, with respect the police form a very important branch of our system of administration of justice and if they were to have to in every case honour the Queensberry Rules to the letter, there would be a lot of unsolved crime. I am the first one to say that. Often to catch a thief, you have got to act a little deviously, that we accept, but the point we are developing now: Captain Cronwright says: "I will condone it if Smit did that".

We want to read to you what he says later. He says Smith wouldn't do that because he is an honourable man. That is what we don't understand. Captain Cronwright is in effect saying: Well, Smith didn't do that because he is an honourable man, there is evidence on record that he did... well, we don't know what Mr. Smit did, because he never told Your Lordship

what/...

what he did.

BY THE COURT: Well, there is evidence on record that he confronted one of the witnesses with a statement allegedly made by one of the accused.

MR. ALLAWAY: Now the danger with that, it might be a good tactic to say...(indistinct) investigating a case, we know all about it. Your accomplice has spilt the beans and then the man comes out, but what the inherent danger of going to people like the Eku Khanyeni Youth Club and saying to them: This is No. 7's statement, he says you agreed to go for military training, and it is not true, it immediately gives them a motive to lie about him, the reaction is: He said that about me? That's not true, he tried to recruit me and I didn't agree to go. That is the danger, it immediately gives the witness a motive to lie. And that is why .. PAUSE ..

What My Lord put to us, with respect, one has got to be realistic about these things. The policeman says so and so spilt the beans and that induces an accused person, a person who is about to be accused as a criminal of making a damaging admission to the policeman or even making a confession. My Lord, it is a different kettle of fish where one is dealing with a witness because witnesses might then have a motive falsely to implicate the man concerned.

My Lord on the next page, page 602 at line 10 through to - right the way through My Lord to page 603 line 15. Captain Cronwright deals with the system, he says:

"Were you present when Detective Sergeant Smit adopted that tactic as a process of investigation?" Reply: "I cannot recall it".

"As far as you are concerned, that would have been perfectly acceptable police practice." Reply: "It would have

been acceptable to me".

"To tell a lie to a person?" Now here is the answer M'Lord, and this is very important to our argument: "Not a lie. Should he have had a statement where the names were written in or a report, to me it would be acceptable".

Now it is in those circumstances that it is acceptable. He must have some information.

"Yes, but you see, I suggest to you, I do not know what your police methods - I do not know what standards you adopt in the course of them, but I suggest to you that if he in fact said something that was absolutely false in the sense that he had no such statement at all, would you condone that?", then he seems to go back on what he said previously. "I would condone it but I cannot see Sergeant Smith doing a thing like that, he is an honourable man", by parity of reasoning I am not.

And then because the witness has said should he have a statement where the names were written he was then asked:

"And according to you of course you keep record meticulously since you took over these investigations in August?" Reply: "From the time that I took over".

"Yes, of every piece of paper that would have anybody's name on it." Reply: "That is right. Statements and reports that we receive".

"The sort of reports that Detective Sergeant Smith might have read out to these witnesses and said that they were in fact the statements of accused No. 7?" Reply: "That is right".

"Do you think it is good or bad for these investigations to take a group of people from a place and question them together in the hearing of each other?" Reply: "This most definitely did not happen in our office.."

But/...

But of course My Lord, there is absolute silence from Smith as to what he used and that is why the State was on the horns of a dilemma here and couldn't call him. If there was no such document.. one would have thought if there was such a document available, that Smit would have gone into the witness-box and said: Yes, it was a report, it was a statement, this is what I read out. I acted in good faith, etc.

But of course if there is no such document available then Smit is in fact, if the witnesses are correct, he has committed all the elements of the crime of fraud, he has made a(10 false statement to them, knowing it to be false, inducing them to act. All the ingredients of fraud are present.

BY THE COURT: Yes, but I again say to you that I don't know of anything which prohibits a police officer obtaining evidence by means of a trick or a fraud.

MR. ALLAWAY: No, My Lord, there is nothing, but one would have thought that if there was such a statement then Mr. Smit was the best person to say that...(intervenes).

BY THE COURT: But assuming there wasn't. Assuming that he had information in some other way in his head and he then said: (20 Look, I have got all this information, here it is, had the document he had written out himself, and he then proceeded to sing as a canary as it were, that does not make the evidence inadmissible.

MR. ALLAWAY: No, My Lord, I am not concerned with the admissibility of the evidence, it is perfectly admissible, but you give it very little weight My Lord.

BY THE COURT: As I said again, I wonder how many crimes have been solved by that sort of trick and by them...the witness... I have heard an accused, not once in my life but quite a (3 few times in my life, saying... going into the box and complaining bitterly/...

bitterly that he had told the truth but it had been tricked out of him.

MR. ALLAWAY: Yes, it is hard luck. But the trouble here is that Mr. Smit didn't go into the witness-box and tell Your Lordship what he did and I don't believe he could because I don't believe he did it. With reasoning of the argument that the witnesses were lying, and that would have been a very material contradiction for the State.

The State can't have it both ways, M'Lord.

Then the witness says on page 611 at lines 28 to 30: (10 "I have never in my entire 26 years of policing forced anybody to say anything".

My Lord, compare that with page 607, lines 17 to 21, he says:

"And do you deny his evidence..." meaning Jairus Kgokong's evidence "...that everything in his statement had to be given to you to approve because you had dealt with Black organisations?" Reply: "I am not there to approve or disapprove statements made to us while people are under interrogation; it is for Pretoria to do that. I just go through the statements to see whether (20 it would be satisfactory for Pretoria".

And then M'Lord, page 621 lines 16 to 22, and this is the farce of Section 6 with respect. The witness has said that many witnesses will refuse to give evidence.... refuse to give statements at least.

"How did you manage to get statements from them in those circumstances?..", because in the previous sentence I have asked him "in several instances you have told His Lordship that people refused to give evidence from the very beginning".

Reply: "It was put quite clear to them that unless they (30 made a statement to the satisfaction of the Commissioner of

Police/...

Police they will sit there indefinitely".

"Is there any purpose in getting a statement if a man tells you I am not going to testify?" Reply: "Most definitely there is a good purpose behind it."

So M'Lord whilst I am not for one moment saying with regard to Captain Cronwright's previous experience that in 26 years he hasn't... he is not correct when he says: I have not forced people to say things. It is obvious from the fact that he told Your Lordship that he formed a view of what the truth was and that would be satisfactory. These people were told: You sit until you make a statement to the satisfaction of the Commissioner of the Police, with the police offering the guidelines as to what would be satisfactory.

Now that's the way in which information gets into police statements which witnesses don't regard as being the truth, that is the danger. And this argument is given with respect, tremendous weight if one examines the various people who gave evidence for the State and what they said.

The first man was Jairus Kgokong, I have got all the references for Your Lordship. The effect of what he said was this: I was compelled to put things into my police statement with which I didn't agree, and Your Lordship will see...(intervenes).

BY THE COURT: That is a double-edged argument, because if he.. if your argument is correct, then the same thing applied to all the other Eku Khanyani witnesses for instance. Then why did they not adopt the same attitude as Jairus adopted?

MR. ALLAWAY: Because they weren't under Section 6 detention. My Lord will recall they were just taken in for a day and then released, they weren't under Section 6 detention, they went in and went out. The complaint about them is either they are

correct/...

ARGUMENT
MR. ALLAWAY:

correct in saying they were questioned together, which is highly undesirable and although the evidence is admissible it must affect the weight Your Lordship gives to it, or they were tricked into believing that No. 7 had made a statement which incriminated them and they then had a motive to incriminate No. 7, which also affects the weight of their evidence.

But the unfortunate feature of this case with regard to... is that people came forward and told Your Lordship they had been forced to say things and we can give My Lord all the references, to Jairus Kgokong. It is our argument that his evidence is with respect to be believed. And that Captain Cronwright where he dealt with EXHIBIT K gave to Your Lordship a set of answers which varied from occasion to occasion from which he gave evidence. There are outright contradictions in Captain Cronwright's evidence which we can quote chapter... (intervenes).

BY THE COURT: The State is not relying on any of Captain Cronwright's evidence in seeking a conviction.

MR. ALLAWAY: No, but we are saying that where Jairus Kgokong said: Things were forced into my police statement with which I didn't agree...(intervenes).

BY THE COURT: Non constat it happens in every case. Even if I accept Jairus in that regard.

MR. ALLAWAY: And Captain Cronwright denies it, and we are able to show Your Lordship that his denials are at variance, I am happy to do it, to give Your Lordship the passages which Your Lordship will see that when the Captain first went into the witness-box immediately after Jairus had given evidence, this was his explanation. EXHIBIT K, this is something I dictated to Smit. I also caused what I wrote in my handwriting to come upon the paper, which was his way of expressing it. "That

happened/...

happened after we had taken Jairus in, this happened in October".

When he next gave evidence, EXHIBIT K had nothing to do with the case under investigation. When he first gave evidence it was to do with this very case under investigation. When he next gave evidence it had nothing to do with the case under investigation. He examined the details about the dates, in his evidence they just don't tally. When he next gave evidence he told Your Lordship he hadn't even read EXHIBIT K on the reverse side, when he first gave evidence. My Lord, in the light of what he told Your Lordship when he first gave evidence, that is unacceptable, and with regard to EXHIBIT K he says.. he gives the explanation that he put these words on the paper because Smit was not good at English. At a later stage he said he didn't want to interrupt Smit, he was too busy, that is why he wrote it out.

My Lord, they are all there, and I don't want to... (intervenes).

BY THE COURT: Yes, I know, Mr. Allaway...(intervenes).

MR. ALLAWAY: I don't want to take up Your Lordship's time but I don't want to abandon the point, it may be that it is a very important point and I am not abandoning it when I say this with respect. Kgokong gives evidence in conflict with...(intervenes).

BY THE COURT: Kgokong is the man whom the State discredited.

MR. ALLAWAY: Yes, M'Lord...(intervenes)

BY THE COURT: He made previous conflicting statements. How can you ask me to believe what he said in the box?

MR. ALLAWAY: I can ask Your Lordship to believe him on the probability that what he said in the box was true, and that was in the statement was something he had been forced to make.

He/...

He gave Your Lordship a lucid and cogent account of why those things got into his statement, where Captain Cronwright seeks to explain it.. his evidence falls to the ground when tested in cross-examination. Kgokong...(intervenes).

BY THE COURT: And because of that you want me to infer that in respect of all the other witnesses they were also asked to make false statements.

MR. ALLAWAY: There is that danger. How can M'Lord with respect exclude it?

BY THE COURT: I can test them on their credibility on their demeanour on other things, Mr... it is an argument based on a hypothesis. I don't believe a word of Jairus's evidence. I have said it again: I don't believe a word of his evidence.

MR. ALLAWAY: That may be so, but as I say, I don't want it ever to be suggested that we didn't argue the point...(intervenes).

BY THE COURT: Yes. No, no, you have argued it, but I am not believing a word of Jairus's evidence. It may be equally possible that the statement he made to the police was a truthful one because it was on oath and that the statement he made in the Court which was also on oath, was an untruthful one. I cannot say which way and therefore I am ignoring his evidence.

MR. ALLAWAY: My Lord, then look at the woman, Elizabeth Skosana who was called from detention, had been in detention, in communicado and came to Your Lordship,... her statement...(intervenes)

BY THE COURT: And made a statement which was not on oath.

MR. ALLAWAY: Made a statement which was not an oath, which has got the ring of truth about it. She uses the word "guide-line" she says: She and Captain Cronwright used accused No. 5's statement as to what they said was a guide-line. Where did she get that from?

She/...

She said: "The statement which I was forced by the Security Police to read...(intervenes).

BY THE COURT: Can I have any judicial regard to the statement of a witness who refuses to take the oath and just simply talks?

MR. ALLAWAY: My Lord, it is curious that this woman who has been in detention, gives evidence of a system...(intervenes).

BY THE COURT: She does not give evidence, Mr. Allaway.

MR. ALLAWAY: Well, she makes a statement to Your Lordship.

BY THE COURT: If somebody at the back of the Court there gets up at the moment and makes a statement, am I supposed to take notice of that?

MR. ALLAWAY: No, because that person has not been in Section 6 detention and can't get... suck these ideas out of their thumbs.

BY THE COURT: But this evidence was... this statement wasn't made on oath, she was allowed to make it because I was.. I was good enough to let her make the statement because she merely addressed the request to me to make a statement. She made the statement, but it is not on oath.

MR. ALLAWAY: She says to Your Lordship: I want to tell My Lord why I am not prepared to testify. I am not prepared to testify because I was forced to say things. But what she speaks too is strangely enough, consistent with what Kgokong says happened to him...(intervenes).

BY THE COURT: Well, Mr. Allaway, I may be completely wrong. If so you know what your remedy is. I am not going to take the slightest notice of her evidence. She refused to take the oath and a person who refuses to take the oath, I am not prepared to listen to.

MR. ALLAWAY: Then there was the person Abel Khase who gave evidence and he told Your Lordship about what had happened involving Captain Cronwright.

BY THE COURT: Is this the one who...(Mr. Allaway intervenes).

MR. ALLAWAY: He was discredited by the State.

BY THE COURT: Yes.

MR. ALLAWAY: There again one sees an investigational system that doesn't fit in with the ipse dixit of the police officer: We don't put things or force them to say things they don't want to say. There again it is there. There is clear evidence of a system here.

BY THE COURT: ..From a discredited witness?

MR. ALLAWAY: My Lord, if one says that one is chasing the tail. Once the State says he is discredited because of being able to produce a statement in which he gives evidence at variance with that statement. He says: My explanation for this is that this is what I was told, this is the way I was urged to make this statement.

BY THE COURT: What is the law about a witness who is prepared to take the oath on two different conflicting statements? Isn't it to the effect that you disregard his evidence?

MR. ALLAWAY: No, with respect no My Lord. That is not the law as I understand it. One doesn't put a blue pencil.. and I think it is something which arose in the course of arguing the case. And we said that doesn't mean that you put a blue pencil through all his evidence because one has got to look at the reasons he advances and decide whether he is correct.

BY THE COURT: In other words, I am entitled to decide whether a man who has made a previously inconsistent statement on oath whether that is false or his statement on oath in the Court is false?

MR. ALLAWAY: You are entitled in considering what he says in Court, My Lord is entitled to give his... to look at his reasons in Court for why he made the previous inconsistent statement,

to see to what extent his evidence in Court is acceptable.

BY THE COURT: That is a novel argument to me, Mr. Allaway.

MR. ALLAWAY: Well, anyway M'Lord, the case is...(intervenes)

BY THE COURT: If I cannot say whether the statement he previously made or his statement on oath in the box is the truth, how am I going to say: Oh, but he has given me what ... (indistinct) might be a very good reason for his previous inconsistent statement. If I cannot believe him, how can I believe his reason for having made the previous inconsistent statement?

MR. ALLAWAY: My Lord, with respect, is it just coincidence (10 that Ngokong, Abel Khase, accused No. 5, accused No. 2, all give evidence under oath...(intervenes).

BY THE COURT: Yes, if they are all accomplices, there is a very good reason why they give that evidence.

MR. ALLAWAY: No, but they give evidence which isn't just that I was forced, it is evidence that I was forced in a particular way. These people...(intervenes).. aren't able to speak to each other.

BY THE COURT: By a trick?

MR. ALLAWAY: No, not by a trick in their case, their (20 evidence is that they were told: You must put this in your statement otherwise you are not getting out of here. And that is consistent with the probabilities.

BY THE COURT: That didn't apply to the other boys because they weren't Section 6 detainees.

MR. ALLAWAY: No, that does not apply to them.

BY THE COURT: Well, it does not affect their credibility. But you are asking me to infer because it happened to the Section 6, prisoners the same thing happened to them.

MR. ALLAWAY: No, what I am asking to infer from this is that (30 one can't as the (inaudible) of the jury put one's hand [illegible] one's

heart and say: I am satisfied that everything that has been given up as evidence in this case is acceptable, because it has been investigated in a proper manner.

BY THE COURT: But am I entitled to find that it may well have happened with the Section 6 witnesses who were discredited or refused to give evidence whereas with the Eku Khanyani Youth Club there is no evidence that they were under the Section 6?

MR. ALLAWAY: My Lord, that is so, but with the Eku Khanyani Youth Club the question arises here: Can one say one is entirely satisfied for example, that the idea of incriminating accused No. 5 wasn't put into that witness's head?

BY THE COURT: No, but I am... I don't think you follow my question to you: Is there not room for a distinction that it may well be that in regard to the people under... held under Section 6 they may have had a very strong motive to have written down or confessed to what the police told them to confess? But that motive does not apply to the Eku Khanyani Youth Club because they were not detained under Section 6 and the possibility therefore exists that the same motivation did not apply in their case?

MR. ALLAWAY: The possibility existed that the same motivation does not imply, but it is legally possible that it did apply. There is a reasonable possibility that it did apply.

BY THE COURT: You are asking me to speculate, Mr. Allaway. Anyway you can ask me to speculate.

MR. ALLAWAY: So for those reasons we submit that the whole system of police investigation into this case makes it unsafe to rely upon the evidence of the Eku Khanyani Youth Club witnesses.

My Lord, dealing with the accused...(intervenes).

BY THE COURT: Just a moment.. - PAUSE -

BY THE COURT: Yes?

MR. ALLAWAY: My Lord, dealing with accused Nos. 5 and 7 as witnesses. Accused No. 5 was barely cross-examined. His cross-examination starts at page 954 and without any disrespect to the cross-examiner, no attempt with respect was made save to just challenge him and say: You say this, so and so says that...(intervenes).

BY THE COURT: Well, he made two conflicting statements under oath.

MR. ALLAWAY: Accused No. 5? (10

BY THE COURT: Yes. EXHIBIT S and his evidence in Court.

MR. ALLAWAY: EXHIBIT S wasn't... but he had given Your Lordship a reason.

BY THE COURT: That does not matter. He has made... as far as the State was concerned, all they had to show was he has made a previous statement... incorrect... which I know is onconsistent with his evidence..(inaudible)..

MR. ALLAWAY: Well then unless My Lord rejects his... unless My Lord rejects his evidence, as to the circumstances under which he made the previous inconsistent statement, if that is (20 rejected, then of course one says: He has made two conflicting statements...(intervenes).

BY THE COURT: I am again back on the point: There is a fact, never mind the reason that is given for that fact, that he has made two conflicting statements on oath which must affect his credibility, whatever his reason may be.

MR. ALLAWAY: Well, our submission is that if one examines the evidence, accused No. 5's evidence as to why he made the other statement on oath, EXHIBIT S is in fact acceptable and true, when weighed against the evidence of Captain Cronwright and (30 Mr. Smit.

The/...

The basic line of attack in cross-examination of this witness and the witness..(intervenes).

BY THE COURT: Yes, I want you to get down to that, is why blame the youths for being drunkards and having a grievance against them when not anything of that kind was ever suggested to them.

MR. ALLAWAY: Well, My Lord, there are two things. Firstly on a line of authority, in TSUDA's case and later cases, there is no point to be made from the fact that an accused can't find a reason as to why X is lying about him.

BY THE COURT: But they found a reason, and a very good one which was never advanced in cross-examination.

MR. ALLAWAY: My Lord with respect they were not asked, neither accused No. 5 nor No. 7 was asked: Did you give those instructions to your Counsel?

BY THE COURT: Oh, yes they were.

MR. ALLAWAY: No, only No. 1 was asked that. Not No. 5 or No. 7. This point can only be used by the State if the witness is asked: Did you instruct your Counsel, because he might say: Yes, I did, then it is his Counsel's fault. His Counsel may think that it is a perfectly unacceptable reason to find that because somebody criticised somebody...(intervenes).

BY THE COURT: All right, on that point now, if I find that it is a completely unacceptable reason, that it is nonsense, what then?

MR. ALLAWAY: Well, My Lord, this... you see, this is a line of questioning which in the English courts of law is not allowed because it is an invitation to argument. There is a case.. it is in the (inaudible) Law Reports, BORM's case, I may be wrong about the actual name of the authority My Lord...(intervenes).

BY THE COURT: Mr. Allaway, need you refer me to the English courts/...

courts, I am clear on what our law is on this point.

MR. ALLAWAY: Well, look in Tembu's case. This shows the fallacy of this line of cross-examination. It is third-rate with no disrespect to... it is the line of cross-examination not a question of my Learned Friend. In Tembu's case. One of many cases.

In cross-examination this is a traffic inspector, he says: I passed the other vehicles, I passed the car going, there is an island... etc. The magistrate in his reasons and in Tembu I can give the reference on the record. 56(4) (10 South African Law Reports, page 335.

The magistrate in his reasons for judgment obviously takes the view that if the evidence of the traffic inspector is accepted then the accused is guilty of driving in a dangerous manner to the public. In coming to the conclusion that that evidence is to be accepted, he said that the inspector either saw the accused drive as he says he did, or he came to Court to commit perjury... through an interesting process of logic, it is certainly proved.

"That is not the correct approach" says the Judge. (20 The remarks of the late BIRRELL, J. in SCHOLZ's(?) case, a judgment delivered on the 8th June, but not reported, are very pertinent to this point. "It is a wrong approach in a criminal case to say why should a witness for the prosecution come here to commit perjury. It might equally be asked why does the accused come here to commit perjury. True, an accused is interested in not being convicted but it may be that an inspector has an interest in securing a conviction. It is therefore quite a wrong approach to say: I ask myself whether this man has come here to commit perjury and I can see no reason (30 why he should have done that. Therefore his evidence must be

true and the accused must be convicted. The question is whether the accused's evidence raises a doubt. I will assume and I have no reason to think otherwise that the traffic officer in the present case was telling the truth. I assume further that what he saw was in his opinion an example of reckless and negligent driving. If one looks at the evidence it is noticeable that he gave no satisfactory reason for coming to the conclusion that the accused was driving (inaudible) negligently."

What the cases say is this, it is no reason to convict a man because he is unable to give a reason why X is lying.

BY THE COURT: No, that case is.. the approach mustn't be why should he commit perjury. That isn't the approach I am adopting either. The approach is if I come to the conclusion that some portion of the evidence of the accused... it must be untrue on all the probabilities. That is the approach, not that...(intervenes).

MR. ALLAWAY: I know, but one can't say because an accused can give no reason or gives a false reason, or gives an unsatisfactory reason as to why the State witness is not telling the truth, that therefore that makes the State witness a truthful...(indistinct).

BY THE COURT: Oh, no, but it affects the credibility of the accused. It does not make ...(both speak simultaneously)... (intervenes).

MR. ALLAWAY: How does it with great respect My Lord affect the accused's credibility?

BY THE COURT: I beg your pardon?

MR. ALLAWAY: How with respect does it affect the accused's credibility?

BY THE COURT: Look Mr. Allaway, it is not for you to ask me questions/...

questions if you please.

MR. ALLAWAY: No, My Lord, I am trying to meet the point.

BY THE COURT: The point is that if a man goes into the witness-box and lies even on an irrelevant factor it must have some affect on his credibility.

MR. ALLAWAY: Firstly the State has not... what the State is seeking to say is this: Because this was not put in cross-examination, therefore this witness has lied.

BY THE COURT: That is how far the State takes it, I don't take it that far.

MR. ALLAWAY: Well, My Lord...(intervenes).

BY THE COURT: I say the probabilities are if the main motivating factor as accepted by accused No. 5 and No. 7 was the fact that these Youth Club members bore a grudge against them it is astonishing that it was not put to them in cross-examination. That is how far I take it.

MR. ALLAWAY: My Lord because... well, firstly the witness is not asked: Did you tell your Counsel. You can... My Lord can look through the evidence of the accused...(intervenes).

BY THE COURT: No but it is not necessary because if that was the main motivating factor for the witnesses to come here and lie against them, it is inconceivable to me that that... it is not as if it is a side-issue, it is the main issue. Why should they come... it is the first question anybody asks: But why should these people say this to you? If that were true it would have been told to Counsel and I am sure it would have been asked in cross-examination. That is what the State says. Thatis the State's argument, and I don't think it is an invalid argument.

MR. ALLAWAY: Well, My Lord I can say this from the bar as I do say that I was certainly given instructions that people

at/...

at the Eku Khanyani Youth Club used to drink and they were scolded for it but not at the level of being told: Well, that is why they should come and tell lies about us. I didn't put that in cross-examination because I didn't think it was a very bright reason... it didn't appear to me to be relevant.

BY THE COURT: ... it doesn't appear to me to be a very bright reason either.

MR. ALLAWAY: It didn't occur to me My Lord that they would ever...(intervenes).

BY THE COURT: I think your argument about whether they were induced to make a statement of this particular type against the accused because of the system of investigation, that I think is a better argument than the one that.. the reason was that because they were cross because we told them they mustn't drink.

MR. ALLAWAY: My Lord, I couldn't... I can't, but it may be that other ethnic groups have a different process of thinking but to me I find it unacceptable that because a person is told on occasion one: Look you drink too much, you must stop drinking, or why did you burn the tent down, that that would motivate him in December, 1975, to say that he was incited to go for military training. What amazes me is that one's (inaudible) of reasoning are different from other people's.

BY THE COURT: Well, in the end doesn't it amount to this is a question of accused No. 5 and accused No. 7's word against one or two or more of the Eku Khanyani Youth Club... a question of how I assessed their evidence, how I assessed their demeanour how I assessed their credibility.

MR. ALLAWAY: Indeed My Lord, but what as Counsel I do want to with respect make quite clear. It would be with respect unfortunate if Your Lordship was to say of them that their

evidence/...

evidence is untrue because this was not put in cross-examination.

BY THE COURT: I will never go that far Mr. Allaway. I'll use it as a consideration as I am entitled to.

MR. ALLAWAY: Because as far as that aspect is concerned we certainly did receive instructions about the youths drinking and being scolded for it, but it had never occurred to me... (intervenes).

BY THE COURT: Every one of these?

MR. ALLAWAY: My Lord, I got a note from accused No. 5 about that...(intervenes). (10

BY THE COURT: Every one of the youths?

MR. ALLAWAY: No, just the youths were scolded for drinking. But it never occurred to me at the stage of cross-examining the members of the youth club that that was a motivating reason as to why they should tell lies about military training.

BY THE COURT: Well, the accused then blew it up to the motivating reason.

MR. ALLAWAY: Well, the Prosecutor then says: Why should they lie about you? And the witness says: Because I scolded him. (20 The witness is then constrained as the English cases make clear to give an opinion. He is expressing an opinion, nothing more. He may be absolutely wrong. He is being asked to delve into the minds of the State witnesses to find a reason as to why they should incriminate him, so he says, well.. in the box, this is all I can think of. I scolded them. And I think No. 7 accused said that somebody burnt a tent down. Well, that was news. Certainly as Counsel we didn't hear that. But the cases make it clear that the question: Why should so and so come and give... tell lies about you, is an invitation (30 to argument, it is not a question of fact.

BY/...

BY THE COURT: Oh, Mr. Allaway! Surely you are making yourself guilty of a euphemism there. The cases are to the effect that if a witness says the reason why he is giving evidence against me is because last week I hit him over the head with a bottle..

MR. ALLAWAY: Yes. Now My Lord...(intervenes).

BY THE COURT: That isn't inviting an opinion, that is an expression of fact. I hit him over the head with a bottle and he is trying to get his revenge...(intervenes).

MR. ALLAWAY: The witness goes...(intervenes). (10

BY THE COURT: Just a moment please, Mr. Allaway. And if that is not raised in cross-examination, it is certainly in my view a valid criticism.

MR. ALLAWAY: Indeed. If your client is going to go into the box and give that evidence that so and so has got a motive for falsely implicating me, then you lead that evidence-in-chief and you put it in cross-examination. It is the woman... in the paternity suit. You blame X because you loved Y and you want X to pay the money, that sort of thing, where there is a clear reason. (20

So here, out of the blue comes the question: Why should they incriminate you? Well, we scolded them for drinking liquor. My Lord, it is a make-weight when one is assessing their credibility.

My Lord, as far as No. 5 is concerned as a witness, with respect his demeanour was satisfactory...(Court intervenes).

BY THE COURT: Not to me it wasn't Mr. Allaway.

MR. ALLAWAY: Well, the impact of demeanour is... it was no less satisfactory than that of the Eku Khanyani Youth Club with respect. As far as No. 7 is concerned, his demeanour was... (50

BY THE COURT: Demeanour is a question for me, Mr. Allaway, not

for/...

for you. You can make submissions on it. You have submitted that his demeanour was good.

MR. ALLAWAY: Yes.

BY THE COURT: I have just told you that I didn't think his demeanour was good.

MR. ALLAWAY: And My Lord with regard to accused No. 7, we don't claim that he makes any great claims to a medal for demeanour.

BY THE COURT: Well, No. 7 is a different kettle of fish. No. 7 is obviously not an erudite man and I am taking that into account as far as he is concerned.

MR. ALLAWAY: No. He is not a well educated man, and he is a man of ....(intervenes).

BY THE COURT: No, I think any lack of demeanour on his part is attributable to other causes, not to...(intervenes).

MR. ALLAWAY: As My Lord pleases. My Lord, that concludes our argument. Thank you.

BY THE COURT: Well, I may say Mr. Allaway, I thank you for your very cogent and lengthy argument, not lengthy in a nasty sense. You have given me a great deal of thought and you are still going to give me a great deal of thought and I am indebted to you for the very careful manner in which you have analysed the record. Whether I agree with you in the end or not of course is a different matter.

MR. ALLAWAY: Well, that is the advantage of.. with respect, that is what legal argument is all about, and we...(intervenes).

BY THE COURT: No, well I am indebted to you for your very detailed argument. You have given me all the references, as you said, both sides of the coin and that I find very helpful.

MR. ALLAWAY: As My Lord pleases.

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DEUR DIE HOF: Ja, mnr. van Jaarsveldt?

MNR. VAN JAARSVELDT: Soos dit u behaag Edele. Daar is net so 'n paar puntjies wat opgeduik het.

Die eerste punt waarna ek wil verwys is die tegniese probleem waarna my Geleerde Vriend verwys het na Johannes Ngobese se getuienis, dat sy getuienis nie die...(Hof tussenbei).

DEUR DIE HOF: Dit is nie tegnies nie, dit is 'n baie groot tegniese probleem.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele. Dit is duidelik dat die man nie weet wanneer die datum was wat dit plaasgevind het nie maar indien 'n mens na die ander getuienis kyk veral na beskuldigdes Nr. 5 en 7 se getuienis dan word dit in die tydperk geplaas.

DEUR DIE HOF: Dit is nie jou groot probleem nie. Jou groot probleem sover Johannes en Nr. 2... sover Johannes betref is dat (agtergrond geraas).. die kredietwaardigheid van sy getuienis. Hy is die een wat teen Nr. 1... die enigste getuie teen Nr. 1, Johannes.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele. Die enigste kritiek wat teen hom daar ingebring kan word is dat hy nie die datum kan onthou nie.

DEUR DIE HOF: Nee, daar was ander kritiek gewees, mnr. van Jaarsveldt. Ek is bereid om te aanvaar dat hy praat oor dieselfde tydperk, ten gunste van die Staat. Ek het ander probleme met sy getuienis, sover sy geloofwaardigheid betref.

MNR. VAN JAARSVELDT: Edele, die punt is net die regsaspek wou ek net opklaar dat indien 'n mens na ander getuienis kyk dan word sy getuienis so geplaas dat dit wel...(albei praat gelyktydig).

DEUR DIE HOF: Wel, as jy jou bes daar gee moet net nie... dit is 'n afleiding wat ek moontlik kan maak.

MNR./...

MNR. VAN JAARSVELDT: Dit is soos dit u behaag Edele.

DEUR DIE HOF: Dit is 'n moontlike afleiding, maar is dit die enigste redelike afleiding?

MNR. VAN JAARSVELDT: Edele, my betoog is dat dit is, dat dit wel is.

DEUR DIE HOF: Die enigste is, ja. Dat dit is. Dit verstaan ek ja.

Maar hy is net belangrik sover Nr. 1 betref.

MNR. VAN JAARSVELDT: Een en vyf, Edele.

DEUR DIE HOF: Ja.. 1 en 5. As ek hom uitskakel op 1 moet ek hom uitskakel op 5 ook.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele.

DEUR DIE HOF: En dit is nie... jy het hom nie nodig nie, jy het hom nie nodig sover as wat 5 betref nie.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele.

DEUR DIE HOF: Jy het nog vir Godfrey Dhlamini en jy het nog vir James Majola en jy het nog vir Frank Makumba, sover 5 en 7 betref.

Wat ek jou eintlik wou oor hoor, meerendeel is op die feite weer, dit is op die feite wat jy my moet toespreek sover soos Johannes Ngobese betref. Jy sê dit val binne die tydperk en ek moet hom as 'n geloofwaardige getuie bevind alhoewel hy die enigste getuie is teen Nr. 1.

MNR. VAN JAARSVELDT: Dit is die enigste punt wat die Staat wou gemaak het, nie op feite nie, dit was op die regsaspek, of sy getuienis binne die tydperk val wat in die klagstaat gemeld is.

DEUR DIE HOF: Nou maar goed, ek kan... soos ek sê, dit los nog nie die probleem op of hy.. as 'n enkele getuie bevredigend in iedere materiële respek was nie.

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR/...

DEUR DIE HOF: Dit is goed. Los dit maar daar. Ek sal aanvaar dat jy reg is en dat dit binne die tydperk val.

MNR. VAN JAARSVELDT: Soos dit u behaag. Ek dank u.

DEUR DIE HOF: Maar dit is sover Mr. 1 betref. Nou wat sê jy sover Mr. 2 betref met die regspunt dat daar nie bewys aliunde is van die pleging van die misdaad nie, en dat Vusi 'n enkele medepligtige is?

MNR. VAN JAARSVELDT: Edele, my betoog staan nog steeds dat... (tussenbei).

DEUR DIE HOF: Soos dit voorheen was? (10

MNR. VAN JAARSVELDT: Soos dit voorheen was.

DEUR DIE HOF: Jy het niks om by te voeg nie?

MNR. VAN JAARSVELDT: Niks om by te voeg nie.

DEUR DIE HOF: Nou maar goed, dan laat ons dit daar.

Nou wat sê jy van al hierdie dosyne punte wat mnr. Allaway tereg ten gunste van Mrs. 5 en 7 geopper het in verband met dat dit gevaarlik sou wees om die Eku Khanyani seuns se getuienis te aanvaar omdat klaarblyklik was daar dinge in hulle mond gelê en daardie tipe van ding?

MNR. VAN JAARSVELDT: Edele, my betoog is ek sal nie kommentaar (20 lewer oor die manier van ondersoek nie, maar die ondersoek is sodanig in dié tipe van saak dat 'n mens.. 'n mens kan feitlik kort gaan om te sê enige manier kan gebruik word om relevante getuienis uit persone uit te kry, en hulle het by hulle weergawe gehou, dit is aan hulle gestel: Maar kyk, is dit nou nie die rede nie, omdat jy geïmplementeer was dat jy nou weer terugkom en.. verskoon die Engelse woord "retaliate"... against No. 7.

Edele, dan 'n punt wat die Staat u nie toegespreek het nie, ek het gedink die posisie was duidelik gestel aan die einde van die Staat se saak, is die verdere besonderhede. Toe die (30 verdere besonderhede opgestel is en veral met verwysing na

paragraaf/...

paragraaf 13, is daar so wyd moontlik aan die verdediging gestel wie sou beweer word het die verskillende persone gemeld..(tussenbei).

DEUR DIE HOF: Ja, ek weet maar ek dink as ek mnr. Allaway reg verstaan op daardie punt, is sy punt nie dat.. omdat dit beweer was dat Nr. 1 sewe persone beïnvloed het en daarna net een getuienis teen hom gegee het dat dit derhalwe alles van die rekord afgeslaan word nie.

Wat hy gesê het is dit affekteer die saak in dié sin dat party van die getuies wat ook volgens die nadere besonderhede Nr. 1 sou implisseer het en wat wel getuig het, dit nie gedoen het nie.

MNR. VAN JAARSVELDT: Edele, die verduideliking daar is toe die verdere besonderhede... ek probeer nie nou getuienis gee nie, ek sal u net die agtergrond...(tussenbei).

DEUR DIE HOF: Ja, mnr. Allaway het ook op daardie basis 'n bietjie getuienis gegee in verband met die dronkenskap van die Eku Khanyani Youth Club.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele.

MR. ALLAWAY: My Lord with respect we would accept any statement made from the bar which my Learned Friend...(intervenes).

BY THE COURT: Yes, yes, we are all trying to get at the truth Mr. Allaway.

MNR. VAN JAARSVELDT: Edele, toe die verdere besonderhede opgestel was het ons getuienis gehad dat 1, 5 en 7 het hierdie jeugvereniging bygewoon en in agtergrond van wat ander getuies wat nie getuig het nie sou gesê het dat hulle saamgesweer het in 'n sel om mense te werf, en dat tydens die vergaderings het Nr. 1 begin praat van hoe sleg die Swart mense behandel word. En dan gaan Nr. 5 aan en dan gaan Nr. 7 aan, en dit is op dié basis wat die Staat 'n "common purpose", 'n gemeenskaplike doel

(tussenbei/...

(tussenbei).

DEUR DIE HOF: Ek het dit so verstaan. Die ding was eenvoudig soos ek gesê het dat ek het dit so verstaan dat hulle het almal die Eku Khanyani Youth Club toegespreek en die idee is as jy vir almal uitnooi, as daar 'n uitnodiging was, om te gaan militêre opleiding ontvang, dan die groter hoeveelheid sluit die minder hoeveelheid in.

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR DIE HOF: As die woorde gebruik was "or he told our whole club to go", dan sou dit al daardie lede insluit. (10

MNR. VAN JAARSVELDT: Soos dit u behaag Edele.

En dan indien die Staat dan verdere besonderhede verskaf het en sê by enige van dié persone, Nr. 1 uitgeskakel het en dat daar wel getuienis was dat hulle wel as 'n groep opgetree het, dan sou die Staat nie kon betoog het dat Nr. 1 deel was nie, want dan was die verdediging nie daarvan in kennis gestel in die verdere besonderhede dat dit wel beweer sou word dat Nr. 1 deel was van die groep nie, en dit is met dié rede dat Nr. 1 in alle relevante gevalle genoem is.

DEUR DIE HOF: Op die ou einde en afgesien van jou betoë, (20 jou en mnr. Swanepoel se betoë dit is ten opsigte van Mrs. 1 en 2. Sover Mrs. 5 en... Mrs. 1 en 2 is meer op die regsgronde en daardie tipe van ding maar sover as Mrs. 5 en 7 betref, is dit heeltemal 'n geval, 'n uitsluitlike geval, korrigeer my as ek verkeerd is, van geloofwaardigheid.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele.

DEUR DIE HOF: Geloofwaardigheid van die twee beskuldigdes en die geloofwaardigheid van die vyf lede van die Eku Khanyani Youth Club.

MNR. VAN JAARSVELDT: Dit is korrek, Edele. (30

DEUR DIE HOF: Ek glo nie daar is veel sprake van wetspunte daar nie/...

nie.

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR DIE HOF: Dit is net 'n geval van wie om te glo, maar sover 1 en 2 betref is dit natuurlik heeltemal 'n ander storie.

MNR. VAN JAARSVELDT: Die Staat het reeds betoog dat u 5 en 7 se getuienis moet verwerp teen die agtergrond van die Staatsgetuies.

Edele, dan in verband met...(tussenbei).

DEUR DIE HOF: Al wat Nr. 5 en 7 kom sê het natuurlik is... al sou hulle die waarheid praat, al wat hulle kan doen is natuurlik om dit te ontken.

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR DIE HOF: Ja.

MNR. VAN JAARSVELDT: Edele, dan in verband met die woorde wat gebruik is in die klagstaat.

DEUR DIE HOF: Net 'n oomblik, mnr. van Jaarsveldt, ek wil jou nog antwoord. O, ja, jy het klaar geantwoord sover die.. al die... jy gee toe dat daar moet aliunde stawing van die (onhoorbaar).. pleging van die misdaad wees sover Nr. 2 betref?

MNR. VAN JAARSVELDT: Dit is korrek.

DEUR DIE HOF: Ja.

MNR. VAN JAARSVELDT: Edele, my Geleerde Vriend het u toegespreek oor "consent". Ek gee toe dat sy argument daar korrek is. Dit is hoe ek dit...(albei praat tegelyk).

DEUR DIE HOF: Dit moet korrek wees. Jy kan nie met jouself "consent" nie.

MNR. VAN JAARSVELDT: Dit is korrek, Edele.

DEUR DIE HOF: Net so 'n oomblikkie.

MNR. VAN JAARSVELDT: Behalwe as jy nou die Afrikaanse weergawes kyk wat sê "ingewillig".

DEUR DIE HOF: Ja, soos ek jou verstaan berus die Staat...

miskien as gevolg van wat ek gedurende argument gesê het op die feit dat dit..(onduidelik) neerkom op "advises" of "encourages".

MNR. VAN JAARSVELDT: Dit is korrek, Edele.

DEUR DIE HOF: Ja.

MNR. VAN JAARSVELDT: Dit is toe.. my Geleerde Vriend aangehaal het, neem ek aan hy sal met my saam stem dat die meeste van die begrippe wat gebruik daar is is "entice", soos ek ook onwetend probeer het in my verdere besonderhede verskaf. "Uitlok", die 1966(4) beslissing, dié van M'kosinjane(?) se saak om na die Staat se kant toe geinterpreteer te word, maar...(tussenbei).

DEUR DIE HOF: Maar was die "uitlok" nodig? Het jy uitlok nodig as "you-should go" neerkom op "advice" of "encouragement" dan is dit mos genoeg vir jou?

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele. Dit is mos nou net wat...(tussenbei).

DEUR DIE HOF: Jy hoef dit nie verder te bring as dit nie.

MNR. VAN JAARSVELDT: Ek wil u nie verder belas met "uitlok" nie aangesien my submissie is dat dit wel onder "aangeraai" of "aangenoedig" val.

DEUR DIE HOF: Al wat jy moet sê is al is dit nie "incite" of "instigate" of "command" nie of (onhoorbaar) nie, dit is minstens "advice" of "encourage".

MNR. VAN JAARSVELDT: Dit is korrek.

DEUR DIE HOF: Wel, dit is genoeg vir jou, jy hoef nie die moeilike een in te bring nie.

MNR. VAN JAARSVELDT: Soos dit u behaag, Edele. Ek weet nie of.. (tussenbei).

DEUR DIE HOF: Soos ek vir mnr. Allaway gesê het, as ek vir jou sê: Mr. van Jaarsveldt, stop arguing now. Is dit nie

vir/...

vir jou raadgee daardie nie?

MNR. VAN JAARSVELDT: Dit is korrek, Edele. Dit is soos ek dit ook insien.

DEUR DIE HOF: Ek hoop en vereenvoudig nie die ding nie maar myns insiens is dit definitief raadgee.

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR DIE HOF: Is die woorde geuiter is, dit is die groot vraag, kan ek getuienis aanvaar dat daardie woorde geuiter is?

MNR. VAN JAARSVELDT: Edele, die Staat sal u vra om dit wel te doen. (10

Ek weet nie of u my op enige ander punt wil aanhoor nie.

DEUR DIE HOF: Nee, ek het... u het nou toegegee dit was nie "consent" nie, want kyk nou as Mr. 5 en 7 gesê het: "We are going" en jy kon geargumenteer het dat dit "consent" was, dan is daar nog 'n stuk getuienis in jou guns daarso.

MNR. VAN JAARSVELDT: (Onhoorbaar).

DEUR DIE HOF: Maar jy gee toe dat jy kan nie daarop staatmaak nie?

MNR. VAN JAARSVELDT: Dit is korrek.

DEUR DIE HOF: Dit kom neer op die ou einde kan ek hierdie (20 vyf lede van die Eku Khanyani Youth Club glo en kan ek die getuienis van Mrs. 5 en 7 verwerp, dit is wat dit op neerkom, en mnr. Allaway het dit met 'n fyn kam deurgegaan en my gewys waar daar hier en daar en ander plekke teenstrydighede is en so aan en ek moet besluit of daardie teenstrydighede noemenswaardig is of nie, en of dit te verwagte is en soos ek mnr. Allaway verstaan en of ek kan aanvaar dat hulle nie die woorde in die mond gelê is nie.

BY THE COURT: In view of the fact that the balance of the evidence which has been recorded, still has to be typed or is (30 being typed and will not be available until at the very earliest

tomorrow/...

tomorrow afternoon I assume, and as I require it obviously for the purposes of my judgment in order to deal with the points it seems to me that I will not be able to give judgment until Thursday morning.

If I only get them tomorrow afternoon, it is Tuesday and I have to motivate whatever I am going to find in this matter, I require Wednesday I should imagine for that, and I think I am doing it very fast if I do it on Wednesday.

MR. ALLAWAY: My Lord, I know I shall not be available on Thursday morning, that is not a consideration. I am certainly very interested in My Lord's judgment. If it wouldn't affect Your Lordship's convenience, would Friday be erring on the side of caution. It gives Your Lordship a longer period of time in which to consider matters and I shall certainly be available.

MNR. VAN JAARSVELDT: Edele, dit sal die Staat ook pas. Donderdag is ek ook nie...(tussenbei).

DEUR DIE HOF: Nou ek dink nie, ek... Donderdag is wat, dit pas ook nie vir die Staat nie?

MNR. VAN JAARSVELDT: Donderdag is ek persoonlik ook nie beskikbaar nie.

DEUR DIE HOF: O, nou in enige geval, ek sal u sê natuurlik ek het probeer almal help deur... ek sal my moet doodwerk om dit klaar te kry in een dag.. Woensdag. Ek meen daar is baie nuwe punte wat mnr. Allaway nou geopper het. Ek het probeer byhou maar hy het 'n hele klomp nuwe punte vandag geopper byvoorbeeld.

MNR. VAN JAARSVELDT: Soos dit u behaag Edele, ons waardeer dit.

DEUR DIE HOF: Ek weet nie, ek dink in alle regverdigheid teenoor almal het ek minstens twee dae nodig om die saak...

MNR. VAN JAARSVELDT: Soos dit u behaag.

DEUR DIE HOF: En ek sal vandag se rekord eers Woensdag kry, waarskynlik, in enige geval.

MR. ALLAWAY: My Lord, with respect that is on the basis that Lubbe sticks to their promises.

BY THE COURT: Yes, I can expect at the very earliest today's transcript on Wednesday afternoon some time.

MR. ALLAWAY: To do justice to yourself with respect My Lord, Friday will probably be better.

BY THE COURT: Well, in that case, the Counsel then say I should take until Friday.

MR. ALLAWAY: We believe that. Would it be convenient to start a little earlier on Friday? (10

BY THE COURT: Yes. We can start Friday at 9 o'clock.

MR. ALLAWAY: As My Lord pleases.

BY THE COURT: Well, at the request of both the State and the Defence, I thank them for their consideration for me, at my own request also, we adjourn until Friday.

MR. ALLAWAY: As My Lord pleases.

COURT ADJOURNS UNTIL FRIDAY, 21/5/76

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