

EXAMINED BY MR ROWAN :

Mr. Mhlungu, you are 24 years of age and you work as a clerk with the Kwa-Zulu Government? --- Yes, that is so.

And you reside in the Nqutu area? --- Yes.

You completed your Matric in 1973 at Umlazi near Durban and in November 1974 you were posted to Nqutu with the Kwa-Zulu Government service? --- Yes.

Do you know a person by the name of Nonhlanhla Mbatha? --- Yes, I do.

Who is she and how do you know her? --- We became (10) lovers in 1975 at Nqutu.

Did you meet her for the first time when you arrived at Nqutu? --- I first saw her in 1974 and we became lovers in the beginning of 1975.

MR MOERANE : My Lord, the defence has difficulty in hearing the witness speak. I wonder if the witness could be asked to raise his voice so that not only the defence but the others in Court may hear what he's saying.

THIRION, J : Will you speak a bit louder please and Mr. Orderly will you see to it that the noise outside Court (20) ceases.

MR ROWAN : Thank you My Lord, and did you court her during the year 1975? --- I started courting her in 1974 and we became lovers in 1975.

Do you see the accused before Court? --- Yes I see the accused.

Do you know him? --- Yes I know the accused.

What is his name? --- His names are Lucas Vusumuzi Mbatha.

How did you get to know him and when? --- I came (30) to know the accused through her sister, Nonhlanhla and that was towards the end of 1975

Through his sister?

INTERPRETER : I'm sorry, My Lord. I used "her" instead of "his". Through his sister.

MR ROWAN : Is this the same Nonhlanhla that we have been talking about? --- Yes.

Do you remember Christmas Day of 1975?

MR MOERANE : My Lord, I would that my learned friend does not lead this witness.

THIRION, J : What was the question?

MR ROWAN : Do you remember Christmas Day of 1975? --- Yes. (10)

Do you remember where you were and what events took place on that day? --- Yes.

Would you tell the Court about them? --- I was ... In 1975 I was at Nqutu at a place called Ondindini. That was on the 25th.

THIRION, J : Was that on the Christmas day of 1975 you were at this place Ondindini?

MR ROWAN : I'm sorry My Lord, I apologise. It is not '75 that is relevant to this case. Do you remember Christmas day of 1976, where you were and what events took place? --- I (20) remember the day. I was in nan area called Ondindini.

THIRION, J : Ondindindi? --- Yes.

Well now, a moment ago the prosecutor asked you where you were on Christmas day of 1975 and you then said you were at Ondindini. Now he's asking you where you were on Christmas day of 1976 and you say you were at Ondindini. Is that so? Were you mistaken when you answered that first question or were you at this place on both of these Christmas days? --- My Lord, on Christmas day 1975 I was at this place called Ondindini and also on Christmas day 1976 I was at that (30) place.

Very well.

MR ROWAN : Now, could you tell the Court where more specifically on the Christmas day of 1976, what particular place? --- Before noon on this day I arrived at Lucas' place and in the afternoon at about 2pm accused suggested that we should go out visiting and we went and entered one Khumalo's kraal.

How well did you know the accused at this stage? --- I then knew the accused very well.

When you went visiting at Khumalo's place what happened?

THIRION, J : Well, what happened at Khumalo's place? --- At Khumalo's place we found about five young men. I knew (10) one of the five young men. He was Peter Dlamini.

MR ROWAN : Yes, and what happened there? --- The kraal head was also present. There was then a discussion about politics and Communism.

Can you in broad outline indicate what was said during the discussion? --- The kraal head started the discussion by ...

THIRION, J : Who was the kraal head? --- His surname is Khumalo. I do not know his first name.

Well you say he started the discussion? --- Yes, (20) talking about Communism.

MR ROWAN : Do you remember if the accused said anything? --- Yes.

Did he say something? --- Yes.

Can you remember what he said? --- Yes.

Can you tell the Court? --- He said it would have been better here in the Republic of South Africa if the Europeans were not there and that only the Blacks were there.

Anything else? --- And that it would be better if they are attacked by means of weapons so that they should get (30) out of the Republic of South Africa.

Anything else? --- I cannot remember anything else.

Were .... /

Were you interested in politics at all at this stage?  
--- Yes, I was.

What was your attitude? --- I was against the discrimination which is present here in South Africa.

And did you also talk about this at the discussion? --- Yes, I also took part in the discussion. I talked about Bantu education.

Did you then, after you had spent the afternoon there, go home - you and the accused? --- Yes, we went back to the accused's home. (10)

And later on did you then part ways and you went to your home? --- Yes.

Were you going to see each other again? --- Yes, we were going to see each other again.

When and how? --- Accused said that he was going to visit me at Mondlo at any time that was going to be available to him.

Did he say why he was going to visit you? --- No, he did not.

THIRION, J : Were you at the time living at Mondlo? --- (20)  
Yes, I was living at Mondlo.

MR ROWAN : Did you in fact see each other again? --- Yes, we again saw each other.

Yes? --- At Mondlo. It was in the beginning of January 1977.

How did this meeting come about? --- He came to me.

Yes? --- Accused came to me in my room. On that day we did not have a lot to discuss but he then enquired from me if at all I was affiliated in any political organisation.

What was your answer to that? --- I replied and said (30)  
no, I was not affiliated in any organisation, but if I could get one I would affiliate myself in it.

Was it specified as to what sort of an organisation you were talking about? ---- No.

Was anything else said? --- He also told me that he had political books at his home.

What about them? ---- He said whenever he gets time he will come to me with them and show them to me.

Was there anything else said during this meeting? --- No, nothing further was said at that time.

Did you ever meet again after that? ---- Yes, we again met. (10)

When was this and where was it? ---- It was in February 1977 at Mondlo Township.

Whereabouts at Mondlo Township? ---- At house number 2830 where I live.

THIRION, J : 2830 Mondlo? --- Yes.

MR ROWAN : Did the accused come to you? --- Yes, accused came to me.

Now what events took place during this meeting? --- When accused arrived there he had in his possession a black briefcase. (20)

Yes? --- He found me at another house. We then proceeded to my place. Accused then told me that there was an organisation in which he was affiliated.

Did he say what this organisation was? --- He called it the People's Organisation Front for the Liberation of South African Blacks.

Did he tell you anything else about it? ---- He then told me about the aims of the organisation.

What did he say these aims were? ---- He said the aims were to obtain people who were going to go abroad in order to be trained in military training. (30)

Anything else about the organisation? ---- He said this organisation .../

organisation was a Marxist movement.

Yes? --- Which is based in Johannesburg, particularly in Soweto.

Anything else about it that he told you? --- He said it was brought into being by an Advocate Sobantu in 1967.

THIRION, J : What is the name of this person? --- Advocate Sobantu.

When? --- 1967.

1967? --- 1967, one nine six seven.

Yes? (10)

MR ROWAN : Yes, and was there anything else that he told you about it that you can remember? --- He then told me about the formation of groups.

THIRION, J : Well go on, tell us what he told you.--- He then produced three books or documents. It was "People's". Not "People's", "Sechaba", "Time Longer than Rope", "Communism Manifesto".

MR ROWAN : I'm going to show you three books which I have before Court and I want you to tell the Court whether you recognise them at all? --- Yes, these are the books which (20) have been shown me.

My Lord, although these are documents, would it be easier to list them as Exhibits 1, 2 and 3?

THIRION, J : How many other books have you got?

MR ROWAN : My Lord, there's a possibility of one further book.

THIRION, J : Then I think they should all be marked "A", "B", "C" and "D" instead of 1, 2 and 3.

MR ROWAN : As the Court pleases. My Lord, would they in fact be "B", "C" and "D" and the certificate in terms of Section 8 be Exhibit "A"? (30)

THIRION, J : No, that's not necessary to give the exhibit ... to give an exhibit number to the certificate. Are you

referring .... /

referring to the certificate in terms of Section 8?

MR ROWAN : Yes My Lord.

THIRION, J : Well, certain other certificates have already been handed in. These won't be given exhibit numbers.

MR ROWAN : Then with the leave of the Court My Lord, can the yellow book -- soft-covered book entitled "Sechaba" -- may that become Exhibit "A", the thicker book "Time Longer than Rope" Exhibit "B" and the document in a green cover entitled "Manifesto of the Communist Party" Exhibit "C"?

THIRION, J : Yes. (10)

MR ROWAN : You've told the Court that he brought these books to light. What happened with regard to these books? --- He then said I should get two or three people who were going to form a group.

THIRION, J : Mr. Interpreter, you'll have to speak a bit louder please. There's a lot of interference from outside Court. Can that door at the back not be closed and the windows on this side opened? What did he say about cells? --- He said I should get two or three people to form a group. (20)

Form a group. --- Accused then left two books with me -- that's "Sechaba", Exhibit "A" and "Time Longer than Rope" Exhibit "B" and he said I should then hand these books over to the two or three people forming the group whom I shall get. He left with the Manifesto, Exhibit "C" and said he was going to let me have it later.

MR ROWAN : Did he do anything with the "Manifesto", Exhibit "C", while he was with you? --- He paged through the book "Manifesto" and showed me the topics.

Did he say anything about it, Exhibit "C"? --- No, (30) he did not say anything else except that he said he was going to come back with it later and we were going to read it

together .... /

together.

The other books, did he say anything about them? --- No, except that after I had finished reading them, I should then hand them over to those I shall have already obtained.

Did you look at the books during this meeting at all?

--- Yes, I had a look at them.

And did you look at them subsequently as well? --- Yes. That was after we had parted company and when I was alone.

What can you remember about the book, Exhibit "A", this "Sechaba"? --- By asking me that do you want to know (10) from me whether I do remember anything about the contents of the books.

That's correct. --- I cannot remember because it's now a long time.

THIRION, J : Well, can you remember in broad outline the nature of the book? Is it a book about wild flowers or does it discuss any other matters? --- It comprises of political matter, particularly the wars in Angola.

MR ROWAN : Can you remember any of the other political matters? --- No. (20)

What about Exhibit "B"? Do you remember anything about that? --- Yes, I do remember something. I remember the Sharpeville crisis.

THIRION, J : Does it discuss the Sharpeville crisis? --- Yes, it discusses the Sharpeville crisis and also describes how the people were dying there when they were on strike at Sharpeville.

MR ROWAN : Is there anything else you remember about the book? --- I do not remember anything else.

Now you've said during this meeting that Norman (30) talked about forming groups. Sorry, that the accused talked about forming groups. What was the purpose behind the forming



of these groups? --- As I have already stated, that the aim ... one of the aims of this organisation was to get people to send abroad. These groups were also going to serve the same purpose.

How did this discussion actually take place between you and the accused? Can you indicate? Were things put to you or did you make suggestions? Just the general nature of the discussions? --- We were in fact sharing opinions. I had something to say and he had something to say, and our ideas were almost the same. (10)

Now your ideas, let's have it more specifically in relation to what? --- About politics. Political matters.

And what was the nature of the discussion with relation to the groups? Were you told anything, asked anything or was it just a discussion?

THIRION, J : Well, can't you tell us what the man said to you so that we can get down to the facts of this case? --- He said I should get two or three people who were going to form a group and after having got these two or three people I should then let them have these books. And also that (20) after we had formed this group every single member of this group could break away and form his own group so that there will be ... so that the number of the groups may be increased.

MR ROWAN : When he said you should do this, did he instruct you to do this, did he ask you to do it, did he plead with you or did he enquire whether you were interested in doing this? --- He did not instruct me. As I have already stated that we had mutual ideas. He merely stated ... He merely told me that I should form a group which was going to be sent abroad. (30)

THIRION, J : Now what was the idea? These groups, first of all, would they belong to an organisation or would it just be

a group in the air? What was it? --- It was going to be a group which was going to be in the People's Organisation.

MR ROWAN : Yes, and when the recruits went abroad? --- After they'd gone abroad they were going to undergo military training there and after they had been trained they will then come back to the Republic and attack the government of the Republic.

Attack it, you say? With the idea of? --- So as to overthrow the government and replace it with ... by a Black government. (10)

Was there ever any discussion about the political and economic and social ...

THIRION, J : Just a moment Mr. Rowan. As I understand the evidence which you are leading from this witness, you are dealing with one specific meeting, is that not so?

MR ROWAN : Yes My Lord, this is all at the same meeting.

THIRION, J : Between the accused and this witness?

MR ROWAN : Yes My Lord.

THIRION, J : Well then you should confine yourself to that. You shouldn't put a question like "Was it ever discussed". (20)

MR ROWAN : I apologise. Does Your Lordship then intend to convey that I should indicate "Did a discussion between you take place? Between the two of you at the same time"? In other words, confine myself ...

THIRION, J : You must make it clear at all times to the witness to which occasion you are referring, otherwise we're going to get confused because he might be talking about some other event.

MR ROWAN : I appreciate that and I apologise My Lord. On this occasion, this particular occasion that we've been (30) talking about, was there any discussion about the social, political, economic ...

MR MOERANE : My Lord, I object. My learned friend is now putting words into the witness. Why can't the witness tell his own story without being fed all this?

MR THIRION : Yes Mr. Prosecutor, I think there is merit in Mr. Moerane's suggestion. Let the witness tell us what he knows.

MR ROWAN : My Lord, I find difficulty directing the witness' attention to certain points without ...

THIRION, J : You've been talking about a meeting which occurred in February at your home at 2830 Mondlo Township?(10)  
--- Yes.

And the accused told you that he was affiliated to the People's Organisation Front for the Liberation of South African Blacks? --- That is so.

That you should form groups and that you should send people - or the intention being to send people abroad to undergo military training, to come back and attack the government so as to overthrow it and replace it by a Black government? --- Yes.

What other matters did you discuss? --- We discussed (20) that the government of the Republic of South Africa was not proper and that the capitalism here in South Africa wasn't properly constituted.

MR ROWAN : Yes? --- There is nothing else, apart from what concerns the books.

THIRION, J : And what ideas did the accused tell you about the matters which you discussed? --- He told me that the government of South Africa should not be reigning because of its discrimination. It would have been better if the Communist countries were in power. (30)

Right and then you parted company? --- Yes, we parted company on that day.

And you kept possession of the Exhibits "A" and "B"?

--- Yes.

What did you do with these books, Exhibits "A" and "B"?

--- Firstly, I handed "Time Longer than Rope", Exhibit "B", to my brother who is in Durban.

THIRION, J : What's his name? --- Ephraim Mhlungu.

MR ROWAN : How did this come about? Where were you? --- My brother had visited me at my place in Mondlo, house no. 2830 and that was during March, 1977.

Did you say anything to him? --- I did not explain (10) anything to him.

Is there anything wrong with your brother? --- Yes, he was once mentally sick.

Did your brother take the book with him? --- Yes, he took it.

THIRION, J : How did it come about that you handed the book over to your brother? --- My brother saw the book in the house or room. He looked through it. He became interested in the book. He then asked me if he could take it along with him to his home. (20)

With what object in mind? --- He said he just wanted to read what was in the book.

MR ROWAN : Right, and then you were left only with this "Sechaba"? --- Yes.

Did you do anything with this book? --- I showed some people this book and there was also one whom I tried to recruit. His name was Lucas Mhlungo.

THIRION, J : Did you say there was one person you tried to recruit? --- Yes. Yes, Lucas Mhlungo was the person I tried to recruit. (30)

Mhlungo or Mhlungu? --- Mhlungo.

MR ROWAN : Could you tell the Court how this came about? ---

I attempted to recruit him, but he was not interested.

THIRION, J : Well now, how did you attempt to recruit him?

Tell us what you did. --- I showed him the books and told him about the organisation.

What books did you show him? --- I showed him "Sechaba", "Time Longer than Rope". That was all.

MR ROWAN : Did you have the book "Time Longer than Rope" back in your possession at this stage? --- I attempted to recruit Lucas before March and before my brother had taken possession of the books. (10)

Can you remember more or less what your words were to Lucas? --- I did not have much to say to Lucas, because as soon as I started talking to him he just ignored me. Did not take notice of me so I left him there.

What were the things that you said to him that he was ignoring? --- It was when I told him about the organisation.

What did you tell him about the organisation? --- I told him that I was in an organisation called "People's Organisation Front".

Did you tell him anything about that organisation? (20) --- He ignored me so I did not continue.

Alright and then did you show these books, or any one of these books, to anybody else? --- There were others whom I showed these books.

Who were they? --- Fitzhappiness Khumalo.

THIRION, J : How do you spell Fitz...? --- F-I-T-Z-H-A-P-P-I-N-E-S-S.

MR ROWAN : Is that a female person? --- That's a female person.

Anybody else? --- Nompfi Gama, and Nonhlanhla Mbatha.

THIRION, J : Is that person your girlfriend, the sister (30) of the accused? --- Yes.

MR ROWAN : Now why did you show them these books? --- I was

just exhibiting them ... I was exhibiting the books to them.

With what purpose? --- There was no specific purpose in mind.

These are all females aren't they? --- Yes.

Right, was there anyone else apart from these people that you showed Exhibit "A", "Sechaba" to? --- Yes, there was one I showed the book in April 1977 for the purpose of recruiting him. He was Allan Lesala.

THIRION, J : Allan Lesala? How do you spell that first name?

--- A-L-L-E-N (10)

Allen? --- Yes.

MR ROWAN : Would you tell the Court all about how this took place and what was said? And who was present? --- I went to my room with Allen Lesala. It was somewhere in the afternoon. I then showed him the book "Sechaba" and told him about the organisation.

THIRION, J : About what organisation? --- The People's Organisation Front for the Liberation of South African Blacks.

MR ROWAN : What did you tell him about this organisation? --- I told him about the aims of the organisation. (20)

Were these the same aims that you've already discussed earlier? --- Yes.

And what else? --- I then requested him to join the organisation.

Yes? --- I told him that he was going to join this organisation and after joining this organisation he'll have to uphold the aims of the organisation and he would proceed abroad.

What for? --- In order to undergo military training.

Did you tell him what for? In other words, receive (30) the military training? --- Yes, I did. --- I told him that

after .... /

after he had undergone military training he was going to come back and he was also going to participate in the overthrow of the South African Government.

LONG ADJOURNMENT

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ON RESUMPTION : APPEARANCES AS BEFORE

NORMAN NKOSIPHEZULU MHLUNGU, Still under former oath :

CONTINUATION OF EXAMINATION BY MR ROWAN :

Mr. Mhlungu, before we adjourned for lunch, you were talking about Allen Lesala and your discussions with him? (10)

--- That is so.

Now, before you parted company with Allen Lesala, did you say you showed him this "Sechaba", Exhibit "A"? --- Yes, I showed him the book.

And did Allen do anything with it when you left? --- He took it and left with it.

Did he indicate to you what his attitude was, what his feelings were? --- He did not indicate whether he was interested or not, but he took the book and left with it.

Did you ever get the book back from him? --- Yes I (20) got it back.

When was this? --- It was in April, I think two weeks after he had taken it from me.

THIRION, J : This is now the "Sechaba" book? --- The "Sechaba" book.

MR ROWAN : Sorry My Lord, Exhibit "A". And how and under what circumstances did it come to be returned to you? --- Lucas, accused, approached me. He told me that there was something he wanted to look up in the book. He wanted to have it back to him, so I approached Lesala and took it from (30) him.

Now, do you know ...

THIRION, J : Well did you then return it to the accused or not? --- No, I did not.

MR ROWAN : Do you know a person by the name of Michael Khumalo? --- Yes, I do.

Can you tell us all about Michael Khumalo and whether anything took place between you and Michael Khumalo? --- We were on friendly terms and I did not know whether he had any ideas about political matters. He came to me, I think it was the end of April or the beginning of May, I am not too sure. I showed him the book "Sechaba", Exhibit "A", and I also (10) told him about the People's Organisation Front for the Liberation of South African Blacks.

What did you tell him about the People's Organisation Front for the Liberation of South African Blacks? --- I told him everything that was connected with the organisation as well as the aims of the organisation.

Were these more or less the same things that you had told Allan? --- Yes. The same thing that I had told Allen.

Was this in turn the same as you had discussed with the accused? --- Yes, the same things. (20)

What was Michael's attitude or reaction? --- He did not come out explicitly whether he was interested in joining the organisation but he took the book and left with it.

When did you see him again after that? --- After some time I saw him again at a certain house where Lucas Mbatha, the accused, was living.

Who was all present? --- It was myself, himself, the accused. That was all.

When you say "himself", was Michael there, I take it? --- Yes, I am referring to Michael. (30)

Just the three of you? --- Yes.

Now what happened on this occasion? Did any discussion



take place? --- Yes, we had discussions there and we were trying to persuade him to join the organisation.

Who is we? --- It was myself and the accused.

THIRION, J : Who were you trying to persuade to become a member? --- Michael Khumalo.

MR ROWAN :. And who was doing the talking? --- It was myself and the accused, but I cannot remember what each of us said.

What were the sort of things that either one of you were saying? --- It was about the organisation, that he should join the organisation so that he could go abroad. (10)

Yes? Abroad for what? --- To undergo military training.

And then? --- And come back and assist in the fight against the South African Government.

MR MOERANE : My Lord, there appears to be a misinterpretation of what the witness said.

THIRION, J : What is the misinterpretation?

MR MOERANE : My Lord, I heard the witness say that he would join the organisation, go abroad for military training and then come back and assist the government. (20)

THIRION, J : And assist the government?

MR MOERANE : That's correct My Lord, and my instructing attorney confirms this.

THIRION, J : Now, will you tell us again then. Did you say this man was to go overseas for military training? --- Yes.

And then come back? --- Yes.

And assist? --- Yes.

In doing what? --- In fighting with the Government of South Africa.

In fighting with the Government of South Africa? (30)

--- To fight against the Government of South Africa so that it can get out and be replaced by the Black Government.

MR ROWAN : And what was Michael's reaction to all this? --- Michael said he does not see what this can help because there is in the book we have handed over to him does not say anything that is of help. It only deals with the wars in Angola.

Is this this Exhibit "A", this "Sechaba"? --- Yes.

Did he say anything else? --- He did not say anything else apart from that he said he was still going to think the matter over and would let us know what his attitude was.

After this did you have any more dealings with Michael Khumalo? --- No, we did not have any further dealings with him. (10)

What happened to the "Sechaba"? --- Michael Khumalo took possession of "Sechaba". He never brought it back until he was transferred to Hammarsdale.

THIRION, J : Did he then bring it back? --- He did not.

You mean up to the time that he was transferred to Hammarsdale, he had not brought it back? --- Up to the time of his transfer to Hammarsdale he had not brought it back.

And did he bring it back thereafter? --- He did not bring it back. (20)

So he never brought it back? --- No.

MR ROWAN : So did you never see Exhibit "A", this "Sechaba" again? --- No, I did not see it again.

And the other one, Exhibit "B", "Time Longer than Rope"? --- I also never saw Exhibit "B", "Time longer than Rope" again since my brother had left with it.

What happened after that? --- That was all but after some time the accused approached me and questioned me about the books, as to what happened to them. I told him that I handed one to my brother and I told him that I was going to let him have the other one later. (30)

Did you continue to do this work you had set out to do? --- I did not continue it because I did not have the books any longer because the books were going to assist me in recruiting.

Just finally, had you in fact become a member of this organisation, People's Organisation Front, or did you regard yourself as a member? What was the position in connection with this? --- I had associated myself with it and regarded myself as a member of it.

NO FURTHER QUESTIONS BY MR ROWAN (10)

MR MOERANE : My Lord, in view of the fact that this is a material witness and possibly the chief witness for the prosecution, I think it would be advisable My Lord, to apply for an adjournment and take full instructions on his evidence and also to ask for a copy of "Time Longer than Rope" which is not ...?... the defence, have a look at it and begin cross-examination tomorrow.

THIRION, J : Is there another witness whom we can go on with in the meantime?

MR ROWAN : My Lord, not at Court at present. (20)

THIRION, J : But for heaven's sake Mr. Rowan, I'm not going to sit in this Court and sit for a few minutes every day and then have to be confronted with this request for an adjournment.

MR ROWAN : My Lord, with respect, we anticipated that the cross-examination would continue until most of the afternoon. It can be arranged ... If the Court would bear with me for one moment. My Lord, I have no objection to the cross-examination of this accused standing down until tomorrow. (30)

THIRION, J : He's not an accused.

MR ROWAN : Sorry, of this witness - until tomorrow and that

the .... /

the case be adjourned until tomorrow. My Lord, the State ...

THIRION, J : Well, I have every objection to that. The Court must get through its business. This is not the only case that this Court has got to deal with this year.

MR ROWAN : With respect My Lord, it is not the State, <sup>who</sup> have applied for this adjournment.

THIRION, J : It doesn't matter. You are in charge of the State case and you've had more than a week to arrange for the conduct of this case.

MR ROWAN : Yes My Lord. I did not anticipate that the (10) defence would require an adjournment until tomorrow in order to ...

THIRION, J : But you must judge the length of your examination-in-chief?

MR ROWAN : My Lord, I submit with respect, in any event that there have to be cogent reasons that exist for the cross-examination of a witness to stand down while other evidence is lead.

THIRION, J : Mr. Rowan, you yourself said that you would have no objection after a witness has given evidence (20) to the defence having time ... having an adjournment to deal with the witness' evidence.

MR ROWAN : I did say that My Lord.

THIRION, J : Now, as far as the Court is concerned, such a procedure is sometimes unavoidable, but it should be restricted as far as possible because it leads to confusion and witnesses have to come back and be lead out of turn and be dealt with piecemeal, which is undesireable.

MR ROWAN : My Lord, I do appreciate that.

THIRION, J : But, be that as it may, Mr. Moerane will (30) be given an opportunity to consult with the accused. Mr. Moerane, can't you ask questions of an exploratory nature

so that we do not have to waste another hour and a quarter?

MR MOERANE : My Lord, to assist the Court, I can ask questions of an exploratory nature.

THIRION, J : If you could that would perhaps be advisable because there are many matters about which the witness has testified which can be clarified or dealt with without having instructions on them.

MR MOERANE : That is correct My Lord. My Lord, before I cross-examine the witness I have a request to make. I have instructions about this witness and I submit it would be (10) in the interests of justice if his evidence under cross-examination were conducted in the absence of members of the security police, in the absence of them in Court.

Some of them are witnesses in this case My Lord, and I submit that he will speak freely if they are not in Court.

THIRION, J : What do you say to that application Mr. Rowan?

MR ROWAN : If the Court would bear with me for one moment My Lord. My Lord, I find this an unexpected request on the part of the defence. Initially I'm disposed towards objecting to this procedure being adopted. Whether the (20) security police are present or not, it seems would make no difference because whatever the witness says would in any event be made available to the security police at a later date anyway and whether they are here and hear it now or whether they are outside and hear it later, I submit, My Lord, makes no difference.

THIRION, J : Who is your investigating officer?

MR ROWAN : My Lord, the investigating officer in this matter is Warrant Officer Potgieter.

THIRION, J : Is he in Court? (30)

MR ROWAN : He is sitting behind me on my right My Lord.

THIRION, J : Now, isn't it sufficient for the conduct of

your .../

your case to have this one officer in Court? Why should people who are ordinary witnesses have the benefit of hearing what another State witness is saying?

MR ROWAN : I take Your Lordship's point. Then the other members of the Security Branch, I've no objection to them not being present.

THIRION, J : Mr. Moerane, have you any objection to this Mr. ... What is his name, Potgieter?

MR MOERANE : My Lord, I do have an objection to Detective Warrant Officer being in Court because he is implicated (10) in these allegations. There is precedence for this course which I ask the Court to adopt, My Lord, where there were allegations of ill-treatment of State witnesses. The Court did order that the security officers involved in that particular case leave the Court while the witness gives evidence.

THIRION, J : Can you refer me to that case?

MR MOERANE : It's the State vs Maduna & Others.

THIRION, J : Have you got it in Court here?

MR MOERANE : My Lord, I do not have the report, but it (20) was a case dealt last year by His Lordship Mr. Justice Milne in Durban. It involved the students at the University of Zululand.

THIRION, J : Was the decision reported?

MR MOERANE : The case is reported in certain respects My Lord.

THIRION, J : But in this respect, on this application?

MR MOERANE : My Lord, I do not have the report at hand but my firm were instructing attorneys in that case. My Lord, the report deals with the question of calling by the (30) State of evidence to anticipate evidence to be lead by the defence of alleged ill-treatment by the security police.

That .../

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That is what that particular decision deals with, but during the course of the trial the security police were asked to remain outside while the State witnesses were being cross-examined.

THIRION, J : Was that a blanket decision while State witnesses are under cross-examination, the security police have to be outside Court?

MR MOERANE : My Lord, particular witnesses against whom certain allegations - in respect of whom certain allegations are going to be put concerning the security police. And (10) My Lord ...

THIRION, J : Are you going to make any allegations against the Warrant Officer, because he's the only person we are dealing with at the moment?

MR MOERANE : My Lord, I would have to take instructions as to the identity of the particular security police officer. I believe he is involved too, but I wouldn't like to commit myself on this at this stage. I would have to take instructions from the accused on this.

THIRION, J : Well, can you do so now? (20)

MR MOERANE : As the Court pleases. (Mr. Moerane consults with accused) My Lord, I'm indebted to the Court for the short adjournment. My Lord, my instructions are that the investigating officer was part of a team which was interrogating this particular witness at the time so ...

THIRION, J : Well, I would be surprised if he had not been, but the point is whether you are going to make any allegations of ill-treatment or undue pressure against the Warrant Officer, the investigating officer.

MR MOERANE : My Lord, the allegations actually arise from (30) a report made by this witness to the accused. As far as the identity of particular officers are concerned, I can't

put .../

put a direct assertion that in fact he was assaulted by W/O Potgieter, but I submit with respect My Lord, as this witness is actually under the detention of the security police - he's still within the power of the security police - I submit, with respect My Lord, that it will be in the interests of justice if cross-examination is conducted in the absence of even Detective W/O Potgieter and as I say, there is precedent.

THIRION, J : Well you see, it's unusual to exclude an investigating officer from a court case. After all he (10) is the person in charge of that case as far as the police are concerned and at the moment I cannot quite see any reason for excluding him from the Court.

MR MOERANE : My Lord, I did not make this request when the witness was giving evidence-in-chief because then I thought that the investigating officer might assist my learned friend in presenting the evidence-in-chief and advise him of any matters which had been left out in examination-in-chief but under cross-examination, My Lord, the argument is not that strong. Under cross-examination. That's all I have (20) to say My Lord.

THIRION, J : You've no objection to the other police officers being excluded?

MR ROWAN : I've no objection to that My Lord.

THIRION, J : What is the name of the Warrant Officer in charge of the ...

MR ROWAN : Potgieter My Lord.

THIRION, J : Warrant Officer Potgieter. The members of the Security Branch of the police, with the exception of Warrant Officer Potgieter, are excluded from the Court room while (30) this witness is giving his evidence.



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