

AD 1901/59.3

IN DIE LANDDROSHOF VIR DIE DISTRIK PORT ELIZABETH

GEHOU TE PORT ELIZABETH

GEREGTELIKE DOODSONDERSOEK:

OORLEDENE LUNGILE TABALAZA

Nr. 204/78.

—oOoO—

VOOR:

MNR. J.A. COETZEE

NAMENS DIE STAAT:

MNR. P.J. STRAUSS
MNR. J. LUTGE

NAMENS OORLEDENE SE FAMILIE:

DR. W.E. COOPER, S.A.
MNR. KIES
MNR. POSWA

NAMENS DIE POLISIE:

MNR. J.P.W. ERASMUS
MNR. A. HOPMEYR

—oOoO—

KONTRAKTEURS: LIEBE OPNAMES

VOLUME III
(Bladsy 239 - 347)

ON 20th SEPTEMBER, 1978:

COURT: The Deputy Attorney-General, Adv. Strauss, does not appear any longer to assist the court in questioning the witnesses. At my request the Public Prosecutor, Mr. John Lutge will assist the court in the further examination of witnesses.

APPEARANCES AS BEFORE.

AANKLAER: Soos deur u gelas, is daar verdere verklarings geneem, kopieë is beskikbaar gemaak aan die geleerde vriende en ek roep dan die eerste getuie, dit is Dr. Rossouw, Pieter (10) Johannes Rossouw, edelagbare.

—ooOoo—

PIETER JOHANNES ROSSOUW v.o.e.

ONDERVRA DEUR AANKLAER: U is die distriksgeneesheer van Uitenhage? -- Dit is korrek.

MR. COOPER: Your Worship, before the witness continues, I would like to indicate our attitude to the evidence of this witness in particular what, according to his affidavit, as alleged to have transpired between him and the person Jali. Now I don't know whether you wish to hear me on this point. (20) My submission is that such evidence would be inadmissible and should not be received by you, sir. I don't know whether you want me to address you at this stage, or whether you would want him just to give that evidence first.

COURT: Well, I have the statement available. What portions do you say are inadmissible?

MR. COOPER: Your Worship sees that paragraph 4 says -

MNR. ERASMUS: Mag dit edelagbare behaag, daardie verklaring is nie deur ons ontvang nie. Mag ek u vra vir 'n kort verdaging, onssal dit ook graag ter insae wil hê. (30)

HOF: Adv. Erasmus u versoek word toegestaan, ons sal 'n

afskrif/.....

afskrif van die verklaring aan u beskikbaar stel.

HOF VERDAAG / HOF HERVAT:

HOF: Mnr. Erasmus, u het nou 'n afskrif van die verklaring te siene gehad. Kan ons maar voortgaan? Dr. Cooper?

MR. COOPER: Your Worship, our contention is that all the evidence which Dr. Rossouw will give in terms of this affidavit is inadmissible. We refer you, sir, first of all to the rules that apply at an inquest, you have been referred to them already at a previous occasion and Section 8 of the Act says, sub-section 1 says:

(10)

"A magistrate who is to hold an inquest may call to be subpoenaed any person to give evidence or to produce any document or thing at the inquest. (2) Save as is otherwise provided in this Act, the Law of governing criminal trials in Magistrate's Courts shall mutadis mutandis applied securing the attendance of witnesses at an inquest their examination, the recording of evidence given by them, the payment of allowances to them and the production of documents and things".

(20)

My submission is that you, sir, are bound therefore by the rules as to the admissibility of evidence which normally apply in a Magistrate's Court'trial. Those rules are the same as apply in the Supreme Court.

Now why do we contend that what Dr. Rossouw has to say is inadmissible in these proceedings? The inquiry before you, sir, is how and why Tabalaza met his death in the street adjacent to Sanlam Building. And sir, with respect, what transpired between a witness Jali and this person is not going to help you in any way and has no direct bearing upon how it came that Mr. Tabalaza met his death on the day in question.

(30)

What/...

What happened between the witness Jali and this witness in our submission is a classic case of a collateral issue. Jali has given his evidence, he says that he was slapped in the face At Sanlam Building. He says that when he was taken to the doctor he complained that he wasn't feeling well. He says furthermore he doesn't understand Afrikaans very well, he speaks it very imperfectly, and that in fact he spoke English to this person.

Now as I see it this evidence in fact is being led or has the effect of contradicting Jali and it is a Rule of Evidence that a witness cannot be contradicted on a collateral issue. My submission is that accordingly whatever transpired between Jali and this witness is not receivable by you, sir, because it is inadmissible. (10

It may very well be contended that Jali had alleged that he mentioned that he was unwell, he wasn't feeling so well to this witness. That may not be true, so it may be contended, and that the doctor be given an opportunity to put the record straight. My submission is Your Worship is not concerned with that issue at this instance. You are concerned with what basically happened in Sanlam Building, and unless evidence is directly relevant to that, Your Worship is not entitled under the Inquest Act to receive that evidence. (20

In Pienaar's case the Court did refer to the difference between an inquest and a criminal trial and referred to various differences including the informality. One of the aspects of informality is that you, sir, in your discretion may decide to merely rely upon an affidavit and you have a discretion then whether or not to allow the deponent to be called so that he could be cross-examined. There are other aspects/.. (30

aspects of informality and differences between an inquest proceedings and a criminal trial which shall manifest.

Our submission however is that those aspects of informality which pertain to inquest proceedings do not permit you, with respect Your Worship, to relax certain basic principles. At the bottom of page 291 in Timol's case the position is put as follows:

"It is also because of the informality of inquests that the presiding magistrate again in his discretion follows an informal procedure with less rigid rules. This he may do provided his rules and procedures are not in conflict with the provisions of the Act, or with those principles which ensure that justice will be done, or that they do not make it impossible for him to perform his functions properly as a judicial officer holding an inquest." (10)

Then the learned Judge President went on:

"Some of the provisions of the Act from which he may not depart are those which deal with the acceptance of evidence^{produced} by way of affidavits and those making certain rules pertaining to a criminal trial applicable to inquests." (20)

I repeat:

"Some of the provisions of the Act from which he may not depart are those which deal with the acceptance of evidence produced by way of affidavits and those making certain rules pertaining to a criminal trial applicable to inquests. These last mentioned provisions however do not mean that the hearing must be conducted as if it were a criminal trial; some of the important (30

differences between an inquest and a criminal trial should not be ignored".

And then the Judge goes on, "We've already referred to the question of informality, of that there can be very little in a criminal trial. Furthermore, at an inquest there is no accused person and even if there is a suspected person, he may be absent and not represented and he should not be prejudiced as may be the case in a criminal trial by his silence. At an inquest there are normally no opposing parties and the State is not attempting to prove a case against an accused. A magistrate must guard against conducting an inquest as if it were a criminal trial; nevertheless the inquest must be so thorough that the public and the interested parties are satisfied that it has been a full and fair investigation into the circumstances of the death."

(10)

My submission, Your Worship, is that the contentions of mine should obviously be upheld because it is in accordance with the expressed provisions of the Act. Moreover, are we now going to receive an affidavit from the nurse who filled out the form because the form indicates that Jali's age is 18 whereas he claims that he is 17 years old, and that he told her his age was 17 but she said no, no, we will put in 18 or words to that effect. We will get entangled in all these collateral minutiae once there is a departure from the basic principle and the basic principle, sir, is that it is competent for the officer presiding at an inquest to depart from the rules of evidence, and one of the rules being that it is not competent for a witness - for the court to indulge in investigation on a collateral issue which I submit this is, totally collateral what transpired between the witness Jali

(20)

(30)

and/.....

and the witness now who has taken the oath and is about
 ?
 to read his supervision. My submission is that our objection
 and our objection is that it is the totality of his evidence
 which is inadmissible and not just certain features thereof.

HOF: Mr. Lutge, wil u eerste - wil u die hof toespreek?

AANKLAER: Edelagbare, dit is vir my nou moeilik hierse
 as u verteenwoordiger om teen u beslissing te gaan.

HOF: Maar ek het nog nie - (onvoltooid)

AANKLAER: Nee, u het besluit om hierdie getuie te laat
 roep, u is die enigste persoon wat dit kan doen. Ek moet (10

eintlik sê edelagbare, dat met alle respek stem ek saam met

Dr. Cooper dat feite parallel tot die geding kan nie in

'n nadoodse-onderzoek ingebring word nie. Daar word in

Timol se saak verwys na "information, evidence and infor-
 mation", maar ek dink daardie "information" is ook tot die

geding, nie feite parallel, m.a.w. ons maak A 'n leuenaar,

ons bring vir B om om B 'n leuenaar te maak, ons is naderhand

in die Kaap in terwyl die man hier in die Baai... Ek voel

eerlik, edelagbare, dat 'n mens moet versigtig wees met die

toelating van hierdie feite wat parallel is tot die geding (20

en nie op die punt af by die geding pas nie.

MNR. ERASHUS: Daar is net een aspek, in die geheel is my
 geleerde vriend, Dr. Cooper se siening natuurlik totaal korrek.

Behalve dat ons sit hier met 'n ietwat ander situasie. Ons

sit met 'n ondersoek na die dood van 'n persoon Tabalaza.

Ongelukkig is dit so dat hierdie hele situasie gekoppel is

met ene Jali deurdát twee persone saam gearresteer was, een

waarvan dood is. U gaan gevra word om afleidings te maak

uit die getuienis van Jali. Daar kan geen ander doel gewees

het vir die kruisverhoor van Jali wat nie beperk was ongelukkig

tot die dood van Tabalaza nie. Sy kruisverhoor en die vrae

wat/.....

wat aan hom gevra was, was beperk oor die hele atmosfeer, die hele aangeleentheid waaronder die polisie opgetree het. Die polisie-optrede in geheel was onder 'n kalklig geplaas wat Jali en Tabalaza betref.

Nou is dit so dat daar toe getuienis gevra was van hierdie persoon wat hy in die getuiebank weerspreek het wat hy voorheen onder eed gesê het en waarin daar weereens gepoog was om uit hom uit te kry 'n sekere aanranding op hom.

As my geleerde vriend korrek is vandag dan verstom dit my dat hy gevra het oor wat die polisie in Sanlam-gebou (10 met Jali gedoen het tensy 'n mens daardie optrede wil koppel aan die dood van Tabalaza. Sou dit nodig gewees het om dit te dek?

Nou is daar een ander aspek en dit is dat op kollaterale aspekte kan 'n hof normaalweg nie ingaan, maar waar 'n getuie direkte - (tussenbeikoms).

HOF: Mr. Erasmus, was daar nie onlangs 'n Natalse saak wat anders beslis het nie? Daar was die saak van - ek onthou hom nou - die beskuldigde se naam was ook toevallig Cooper. Ek dink dit was in die Kaapse Hof waar hulle wel so beslis (20 het, maar het die Natalse Hof nie onlangs.. ek dink dit is in die heel.. dit is in 1978 Wetsverslae anders beslis.

MNR. ERASMUS: Op watter aspek?

HOF: Op hierdie aspek van kollaterale getuienis.

MNR. ERASMUS: Ja, dit mag so wees, edelagbare, maar ek wil u eintlik - (tussenbekoms).

HOF: Dit is waarvoor die punt nou eintlik gaan.

MNR. ERASMUS: Ja, ek wil u eintlik na 'n ander aspek verwys en dit is dat ons het eintlik hier te doen nie soseer 'n ondersoek na kollaterale sake nie, maar ons het eintlik hier (30 te doen met 'n getuie wat gekonfronteer word met 'n voorafgaande verklaring/...

verklaring wat verskil van wat hy in die getuiebank gesê het. Indien 'n getuie in 'n getuiebank kom en op 'n sekere aspek getuig, is iedereen geregtig om te sê "jy het 'n voorafgaande verklaring gemaak wat verskil van wat jy nou sê" en daardie voorafgaande verklaring kan jy voor 'n hof plaas. Dit is nie kollateraal nie want u moet die geloofwaardigheid van hierdie persoon Jali baie spesifiek en baie daadwerklik oorveeg.

So met die grootste respek is my betoeg aan u dat op daardie aspek sal u hierdie getuienis aanvaar. Veral - (10
(tussenbeikoms)

HOF: U betoeg is dat hierdie getuienis is nie kollateraal nie?

MR. ERASMUS: Dit is nie kollateraal nie. In hierdie aan-
geleentheid is dit noodsaaklike getuienis. Want ons het
hier voorafgaande getuienis wat gemaak was en ons het teen-
strydige getuienis en bewerings en 'n verklaring wat gemaak
is deur dieselfde persoon. Kan ons dit dan van die hof
weethou waar Jali se getuienis aangebied word met 'n baie
spesifieke doel? Direkte getuienis op wat plaasgevind het (20
op daardie spesifieke dag. Die getuienis wat aangebied
word, is bloot oor 'n verklaring wat Jali gemaak het met
betrekking tot die gebeure in Sanlam-gebou. Dit maak nie
aan my saak of Dr. Rossouw Jali 'n uur lank ondersoek het en
of hy net na hom gekyk het nie. Wat vir my saak maak, is
wat Jali gesê het wat gebeur het in die Sanlam-gebou. En
met respek dit is die belangrike aspek.

COURT: Dr. Cooper, do you want to reply?

MR. COOPER: My learned friend puts it as if it would only
transpire in cross-examination that questions arose about
whether or not Jali had been assaulted. I want to point out
sir/....

sir, that you will recall that Jali in chief made the allegation first of all that at New Brighton he saw "trane in die oë" of the deceased, that was still while Mr. Strauss who was leading his evidence was asking him questions. Secondly, in chief our notes show that he referred to the fact and alleged that he had been beaten. So these were issues that were actually raised by Jali himself in his testimony before any cross-examination, and obviously we were entitled to question him about what had happened and what he alleged had happened in regard to these various aspects because in fact they never appeared in any affidavit and they could very well have linked up and had some bearing possibly as to what may have happened to Tabalaza. (10)

Now there is a distinction, sir, between what can be put to a witness in cross-examination to an extent one may say - (interrupted)

COURT: Is there such a thing as cross-examination in an inquest?

MR. COOPER: Well, if we are going to have regard to the criminal procedure in Magistrate's Courts, then I suppose it is envisaged that questions may amount to cross-examination and that in fact - although the Inquest Act refers to the questioning of witnesses - it amounts to the same thing. It really doesn't really matter - (interrupted) (20)

COURT: Isn't that decision in Timol's case different from what you are now saying?

MR. COOPER: No, with respect not. Timol's case says very clearly: "...some of the provisions of the Act from which he may not depart are those which deal with the acceptance of evidence by way of affidavits and those making certain rules pertaining to a criminal trial applicable inquests".

COURT: Don't the Judge also say there that certain formalities have to be followed at a different place in Timol's case?

MR. COOPER: Yes, it does deal with another aspect, I think Timol's case basically deals with the aspects ^{of} what role does the Prosecutor play at an inquest when he has been requested by the presiding officer to lead the evidence. What Timol's case says is that the Prosecutor cannot determine how the inquest will be run, which documents should be given to interested parties. These are all matters (10) which are solidly and only within the hands of the Presiding officer. That was basically what Timol's case decided, because there the Prosecutor - you will remember in Timol's case - had refused to give representatives of the next of kin certain documentation, and the Court held that the magistrate, it was the magistrate who had to exercise that discretion and not the Prosecutor. And that is one of the aspects and the main aspect which was decided in Timol's case. But Timol's case makes it quite clear from the passage that I've read that there are certain rules (20) from which there can be no departure, and one of these rules relates to the evidence and the acceptance of certain evidence.

It is perfectly true that witnesses can be contradicted in certain respects, but there is even a limit to that. Let me give your Worship a very good example. If Jali had said that he was sitting in a back of a court whereas there were 20 persons available to prove that Jali never was in the back of the court, he had never been in the back of the court, obviously your Worship would, ^{not} be entitled to receive those (30) 20 witnesses because that would be a purely collateral issue,

collateral to the proceedings, in effect only a question of credibility. Now similarly here it is not suggested that the deceased was examined by this doctor. What the deceased had said to the doctor, would have obviously been of the greatest moments. Your Worship would immediately say "Now I want to hear what the doctor says, whether the deceased made any complaint". Because the inquiry here is as to what happened to the deceased, why did the deceased plunge to his death? What the other witnesses have to say which have some direct bearing, obviously, is admissible as to Jali says that he saw the deceased at Sanlam Building, what he says happened to the deceased at Sanlam Building, all become relevant and important depending upon the question of credibility naturally, whether you ultimately believe Jali or not. (10

But then the question is: what happened to Jali a day after the deceased had already met his death? What happened between Jali and this witness? How can it have a legal relevance to what happened on the 10th? With respect it obviously can't, and with respect, this witness cannot, evidence cannot be brought to show a ^{con-}cause of duct. If it is contended that because Jali wasn't assaulted therefore it is probable that the deceased wasn't assaulted and that seems to be a contention which could have been advanced originally on his affidavit. But Jali had said the opposite now. He departed from his affidavit and he added - he said why. (20

One can't now start calling another witness to say that Jali on another occasion made another statement, because that would be purely collateral. As I've said it would be collateral, as much collateral as if the nurse who was in the doctor's/..... (30

doctor's surgery and who appears to have written on this document were now called to say why she had written 18 and not 17. I think, if I may say so, my learned friend who is leading the evidence has taken a perfectly proper attitude in this regard and there is reaction to my objection. I submit that Your Worship will rule that the testimony of this witness should not be received.

COURT: At this stage the court will adjourn for a few minutes. There are two decided cases that I have already mentioned when Mr. Erasmus addressed the court that I wish to consult. (10)

COURT ADJOURNS / COURT RESUMES:

H O F:

Toe mnr. Erasmus die hof toegesprek het, het ek aanduiding gegee dat die hof bewus is van twee sake waarin hierdie punt min of meer besprek was in die Hooggeregshof. Die sake is naamlik die S.v. Cooper & Others, 1976(1) Suid-Afrikaanse Wetsverslae bladsy 932, dit is 'n Transvaalse saak.

Die ander saak is 'n meer onlangse saak, dit is die S.v. Maduma and Others, 1978(1) Suid-Afrikaanse Wetsverslae (20) bladsy 143, dit is 'n Natalse saak. Hierdie saak verskil in sommige opsigte van Cooper se saak. Regter MOON se byvoorbeeld op bladsy 149:

"It appears to me therefore that the evidence is inadmissible because it is relevant to specific testimonial qualities, namely the ability or otherwise of the witnesses accurately to recollect or impartially to narrate evidence directly relevant to the facta probanda. It does not appear that the learned Judge in Cooper's case was referred to the authorities dealing

with/....

with this line of argument, and it seems that his attention was confined solely to the question whether the evidence was relevant to the facts which had to be proved by the Prosecutor or put before the court by the Defence."

Nou soos ek hierdie saak van Maduna verstaan, is dr. Rossouw se getuienis wel relevant in hierdie saak deurdat dit die waarskynlikhede aangaande die omstandighede van die oorlye van die oorledene mag affekteer.

Die hof se beslissing is dan dat hy dr. Rossouw se getuienis gaan aanhoor. (10)

Ja, mnr. Lutge, u kan maar aangaan. Dr. Rossouw u is nog onder eed, u is ingesweer.

ONDERVRAGING DEUR AANKLAER (Vervolg): U is die distriksgeneesheer te Uitenhage? — Dit is korrek.

Op die 17de Augustus 1978, het u 'n beëdigde verklaring gemaak aan kaptein Strydom? — Dit is korrek.

Ek toon aan u bewysstuk EE — is dit die beëdigde verklaring? — Dit is korrek.

Sal u dit asseblief uitlees, bevestig en inhandig as deel van die getuienis? (Getuie lees verklaring uit aan hof) (20)

HOF: U het toe die verklaring beëdig? — Ja.

U handig die verklaring in as bewysstuk EE.

AANKLAER: EE. Dr. Rossouw, ek toon nou aan u bewysstuk N, is dit die vorm J.88 wat u ingevul het in verband met Jali? — Dit is korrek.

Dokter, u was ten volle bewus van die ondersoek wat u moes hou op die liggaam.. of waarom u die man moet ondersoek nê? — Ja, dit was aangaande 'n aanranding, 'n beweerde aanranding.

Ek probeer nou nie snaaks wees nie, maar het u 'n deeglike (30) ondersoek gedoen? — Ja.

Elke liggaamsdeel behoorlik ondersoek? — Ja.

Het u gekyk vir kneusplekke sowel as oop wonde? — Ja.

Aan die arms, aan die bene? — Die hele liggaam.

In die mond? — Die hele liggaam.

Het Jali aan u gesê dat hy nie lekker voel nie? — Nee, hy het van niks gekla nie.

Het hy met u gepraat? — Hy het met my gepraat. Ek het vir hom die vraag gestel of hy enige pyn, enige seerplek het, enige beserings. Op daardie stadium het hy van geen beserings melding gemaak nie. (10

Watter taal het u met hom gepraat? — Ek het met hom Afrikaans gepraat.

Hoe het hy met u gepraat? Watter taal? Watter taal het hy u geantwoord in? — Hy het met my Afrikaans gepraat.

Hoe was sy Afrikaans wat u betref? — Swak.

Verstaanbaar? — Dit was verstaanbaar vir my, dit was net 'n paar woorde wat hy met my gepraat het.

Die ouderdom van 18 jaar wat op die vorm voorkom, dit is skynbaar geskryf deur 'n ander persoon, Jali het ook so gesê. — Dit is korrek. (20

Ek wil net by u weet, u het daar gesien 18 jaar oud ingeskrif reeds, het u ook vasgestel of hom weer gevra wat sy ouderdom is? — Ek kan nie onthou of ek hom spesifiek gevra het of hy 18 jaar oud is nie.

Maar as u nou kan terug dink, het hy vir u gelyk soos 'n persoon van ongeveer 18? — Ja, op die oog af beskou; ek het hom nie ondersoek spesifiek vir sy ouderdom nie.

Dankie, edelagbare.

CROSS-EXAMINED BY MR. COOPER: Dr. Rossouw, I put my questions to you in English, and if you have any difficulty — I am not suggesting you will — but please just make it clear to the Court/...

Court. Dr. Rossouw, initially we had exhibit N given to us, a copy of exhibit N furnished to us. Do you have exhibit N before you? — Ja.

The document has writing in ink on it, is that correct? — Ja.

But appears that there are two handwritings, the handwriting of two persons on this document? — Hier is nie net twee nie, hier is drie handskrifte op die vorm.

First of all who are the three persons that wrote on this document? — U kan bo sien Murder and Robbery Staff, (10 P.E., Dr. P.J. Rossouw, distrik (?) Uitenhage - dit is alles - nie deur ons Nie-Blanke ontvangsdame ingevul nie. Dit was op die vorm ingevul gewees, toe die vorm daar gekom het.

HOF: Dit is die eerste twee reëls, dokter, of - (tussenbe-koms) — Ja, al wat sy ingevul het, is die adres, Kerkstraat 5, die ouderdom het sy ingeskryf en dan Uitenhage 11/7/78 onder, dit is al wat sy geskryf het.

MR. COOPER: Who are the other persons who wrote on this form? — Dit weet ek nie; dit is waarskynlik die polisie (20 wat hom gebring het.

You obviously filled in certain information on this form? — Wat ek ingevul het, is met swart pen ingevul.

The words "goed, geen, geen, geen, geen, normaal"? — Normaal en die tyd onder.

The time and your signature? — Dit is korrek.

Is it then correct as Jali had told this court that at your surgery or where you examined him, you had a Non-White woman in your employ? — Dit is korrek.

When Jali was brought there and she obtained the (30 information which you say she wrote down on this form, were you/.....

you present or were they alone? — Nee, ek was nie teenwoordig nie.

So you are not in a position to say why your employee wrote down his age as.. apparent age as 18 years? — Nee.

On this form you did not fill in what hour you commenced your examination? — Nee, ek het die tyd hier onder ingeskryf.

What does that time at the bottom of Exhibit N indicate, 13h45? What does that indicate? — Dit is die tyd toe ek die vorm ingevul het ná die ondersoek.

Had you completed the examination when you wrote 13h45? — Ja. (10)

How long in fact did the examination last? — Ek sal sê omtrent 5 minute, nadat hy vir hom uitgetrek het.

In your affidavit you said "I was requested to determine whether Jali had injuries on his body, or that he had possibly been assaulted"? — That is correct.

Who made the request to you? — ^{Ek} Dit was per telefoon deur kaptein Strydom gebel, hy het my gebel uit P.S. uit en gevra of hy 'n persoon, beweerde aanranding, kan deurstuur vir 'n ondersoek en 'n invul van die J.88 vorm. (20)

From what captain Strydom said to you, did you deduce that it was being alleged that Jali had been assaulted? — Ja, hy het net gesê dit is 'n beweerde aanranding..(tussenbeïkoms).

It was an alleged assault? — Ja.

On Jali? — Dit is korrek.

Did you therefore treat Jali as a complainant in an alleged assault? — Dit is korrek.

Did you ascertain who was alleged to have assaulted Jali? — Ek vra nooit,.. en ek vul baie van hierdie vorms in, (30
wat ek doen by die ondersoeke en ek het agterna eers verstaan

dat die persoon volgens bewering deur die polisie aangerand was. Op daardie stadium was ek nie bewus wie hom aangerand het nie omdat dit eintlik nie vir my aangaan nie.

When did you ascertain, learn that it was alleged that this person had been assaulted by the police? How many days after the examination? — Ek dink dit was die volgende dag.

From whom did you ascertain that? — Ekskuus?

From whom did you learn that? — Toe het ek eers vir die eerste keer eintlik gehoor van 'n persoon wat uit die venster uitgespring het in die Baai, toe het die ding vir my in perspektief geval hoekom hulle die persoon deurgebring het. In elk geval ek het toe eintlik van 'n landdros op Uitenhage wat toevallig in die spreekkamer was, het dit vir my genoem dat die twee persone een of ander verbintenis gehad het. (10

Doctor, are you requested to examine many complainants in assault cases? — Ja.

In July how many would you have examined approximately? — Ons is vier vennote, dit is moeilik maar persoonlik, dit hang af watter dag van die week ook, ek sal sê so gemiddeld 5 op 'n Maandagoggend; so 10 'n week. (20

About 10 a week. How many did you examine on this Tuesday, the 11th of July, would you imagine? — Hierdie was eintlik buite die spreekure gewees, soos u kan sien dit was kwart voor 2, ons Nie-Blanke spreekure is 9 tot 10 in die oggend en die was 'n versoek wat deur die oggend ingekom het en hulle het gevra wanneer kan hulle die persoon bring. Toe sê die spreekkamer sal ongeveer.. sal klaar wees half 2 se kant, hulle moet maar sorg dat hy daardie tyd daar is.

Hy was allenig daar gewees.

Did you treat this request as a matter of urgency?
? — Wel hy het.. hulle het gevra omdat die persoon uit
P.E. uit sou gebring word en die ander persone kom in die
oggend, hulle weet wanneer die tyd is.

Did Jali have much to say? — Nee.

As far as you can recall? — Baie min.

Was he quiet? — Baie stil.

You considered that Jali was a complainant? — Ja.

He was accompanied by a sergeant Topkin. Do you know (10
Topkin? — Ek het hom die eerste keer gesien op daardie
stadium, ek ken hom gladnie.

Would you not have thought it advisable to have the
examination privately done without Topkin being present? —
Ek sien niks hoekom hy nie kan by wees nie.

Really, what concern was it of Topkin your examination
of Jali? — Hy het die persoon ingebring en gesê dit is 'n
gevangene, soos hy dit daar gestel het en as die polisie
byvoorbeeld by ons van die selle persone inbring wat
beweerde aanrandings is, dan is hulle altyd by. (20

It did not occur to you that Topkin's presence may have
inhibited Jali from telling you how he had been assaulted,
or whether he had been assaulted? — Dit is moontlik.

Wouldn't it have been desirable in the circumstances
for you to have been alone with Jali so that he could talk
freely to you? — Ek het vir hom gevra "het jy enige
beserings aan jou" en daar was geen beserings te vinde
nie. Ek kan nie sien dat hy vir my sal sê.. as daar 'n
wond is, sou hy dit wegsteek nie, kon wegsteek nie.

That is not an answer, doctor, to my question. Wouldn't
it have been desirable for Jali to have been alone for you?

So that he could talk freely, without any possible fear?

— Ja, dit is moontlik.

You remember precisely what you asked Jali? — Dit is standaardvrae wat ek stel. Dit mag varieer 'n bietjie van een persoon tot die ander, maar die eerste wat 'n mens gewoonlik vra "waar het jy seer, waar het jy seergekry". Soms: "wat het gebeur, is daar enige pyn op plekke". Dit is maar die vrae waarop hulle antwoord en daarvolgens skryf ek die goed neer en volgens die ondersoek.

Was Topkin actually present when you asked Jali? (10)
Did he hear you? — Ja, hy was bygewees.

Did Topkin have anything to say? — Nee.

You say Jali's Afrikaans was poor? — Ja.

Precisely what Jali says, he also says his Afrikaans is poor. Is it possible that he spoke to you in English? — Nie sover ek kan onthou nie; dit was nie 'n gesprek eintlik gewees nie. As jy 'n persoon vra het jy seer iewers, ja of nee. Dit was nie dat ons gesels het oor enigiets nie. Dit was kort vrae en kort antwoorde.

Is it possible that his replies to your questions were (20)
in English? Because he says he spoke to you in English, he replied in English. — Nie sover ek kan herinner nie.

You are not prepared to be dogmatic on that point?
(Geen hoorbare antwoord nie).

Did Jali speak loudly, or did he mumble? Did he speak softly? — Nee, normaal gepraat.

Is it possible that he told you that he didn't feel well? — Ek sou dan 'n aanmerking gemaak het as hy enigiets gekla het teenoor my.

You asked him, you say, whether he had been beaten? (30)

— Ek het vir hom die vraag gestel of hy enige beserings het/.....

het, of hy geslaan is, so dit is so.

Why did you ask him whether he had been beaten? -- Dit is 'n aanranding, die meeste van die aanrandings is geslaan. Die ander is weer met die klip gegooi byvoorbeeld is die ander storie.

But he didn't allege that he had been injured in any way? -- No.

You didn't see whether there were any injuries? -- Daar was geen beserings nie.

Would it be correct to say that people, particularly (10 some from simpler (?) have a way of saying I am not feeling.. "ek voel nie baie lekker nie"? -- Ja.

Whereas there is nothing to indicate, the source of injury or the cause of not feeling well? -- Ja.

You've often had that, haven't you? -- Dit is korrek.

And is it not possible that Jali also said I am not feeling well, but in view of your.. the external examination you had done, that you had found nothing to substantiate that allegation that it was of no importance to you? -- Dit was nie net 'n eksterne ondersoek nie; sy longe is (20 geluister en die buik is ook ondersoek omdat 'n mens soms beserings kry van die buik waar jy nie uiterlike tekens kan waarneem nie.

Quite doctor, in view of your fact that externally - that internal examination which you did, didn't indicate any injury? -- Dit is korrek.

If Jali had said to you that he wasn't feeling well, this wouldn't have had any significance for you? -- Nee.

After Jali had said that he had not been beaten according to you, did you consider it necessary then to do an external examination? -- Ek moet dit in elk geval doen om seker te maak/....

maak dat dit nie ou wonde is of vars wonde. Dit is waarvoor die vorm daar is en waarvoor die ondersoek aangevra is.

You in fact didn't make any notes of any old injuries this man had? — Daar was geen merkbaar nie.

Were you surprised when Jali said to you, or replied in the negative to your question whether he had been assaulted, whether he had been beaten? — Ja, want die persoon word gestuur vir 'n aanranding, vir ondersoek en dan verwag 'n mens dat hy wel aangerand is. Dit is eintlik (10) vir my tydmors as hulle mense bring wat onnodiglik moet ondersoek word.

In fact after that reply, didn't you think that this examination was basically a waste of time? — Ek het so gedink.

Apart from being a district surgeon, you are in general practice? — Dit is korrek.

And you are a busy practitioner? — Redelik.

You have how many partners? — Ons is vier vennote.

You are 3 partners? — Ja, "3 partners".

What I want to suggest to you: if Jali had said to you during this examination that he wasn't feeling well, you wouldn't have taken much notice of it? — Nee, aangesien hy geen beserings gehad nie. (20)

In view of — (tussenbeikoms)

H O F: Aangesien hy geen beserings gehad het nie? — Hy het geen beserings gehad nie.

MR. COOPER : In view of that you would have taken no notice? — Nee.

You wouldn't have even made a note of it? — Nee.

Dr. Rossouw, you were in fact asked to give an affidavit (30) for the first time on the 17th of August, 1978? Is that

correct? -- Ja.

That is according to the copy that we have here. --
Dit is korrek.

That was over a month after the examination of Jali?
-- Dit is korrek.

So you had seen quite a number of complainants in
assault cases between the 11th of July and the 17th of
August, is that so? -- Dit is korrek.

And you had no reason to remember what you had said
to Jali and what Jali had replied to you after you had (10
completed your form, Exhibit N? -- Nee, hierdie is 'n geval
wat vir my uitgestaan het omdat dit buite my bestek geval
het, buite my distrik en ek gedink het daar is iets nie lekker
aan die saak vir my nie omdat hulle nou vir my uit die Baai
uit bel, dat ek as 'n buite distriksgeneesheer hierdie
ondersoek moet doen.

Did you think that was unusual? -- Dit is buitengewoon.

Doctor, but in point of fact you were asked for the
first time on the 17th of August, what you had said to Jali
and what he had replied? -- Ja, dit is kapt. Strydom wat (20
my gebel het en gevra het dat hy 'n verdere verklaring wil
hê aangaande die ondersoek, of die persoon.. wat gebeur
het tydens die ondersoek, of die persoon heeltemal uitge=
trek het en so aan.

He also wanted to know about what you had said to Jali
and what Jali had said to you? -- Ja.

At that stage had Jali already given evidence at
the Inquest? At that stage when you made your affidavit
on the 17th of August, 1978, had Jali already given evidence
before His Worship? -- Ek weet gladnie, ek was nie hier nie.

Had you read in the newspapers that he had testified? --

Nie/.....

Nie wat ek van weet nie; ek kan nie onthou of dit alles (onduidelik).

Had Captain Strydom indicated to you that Jali had already testified? — Al wat hy vir my gesê het, is daar is 'n bewering dat hy nie ondersoek was nie, dat ek hom nie ondersoek het nie. Dit is waarvoorhy gesê het waarvoor hy die verklaring..... ek het toe vir hom gesê maar ek het die 88 ingevul.

You say Captain Strydom alleged Jali was alleging that he had not been examined, properly examined by you? (10
— Ek weet nie wie het beweër dat hy nie ondersoek is nie, maar hy het net vir my gesê daar is beweër dat hy nie ondersoek is nie.

HOF: Dat hy nie ondersoek is nie? — Ja.

MR. COOPER: When Captain Strydom spoke to you to obtain this additional.. or this affidavit which you swore to on the 17th of August, 1978, did you immediately recall having examined Jali? — Ja.

Did Captain Strydom tell you that Jali had said that he had told you at the time of the examination that he didn't (20
feel well? — Nee. Al wat hy my oor geskakel het en gevra het of ek nog daarby 'n verklaring moet aflê wat tydens die ondersoek.. wel die ondersoek gedoen het en dat die persoon wel... hy het my gevra of die persoon heeltemal uitgetrek het, ek het hom gesê ja. Toe vra hy of hy dan so 'n ver-
klaring kan kom afneem.

Did he also ask you what language, or whether you spoke in Afrikaans to him? — Ja.

Just one thing, in your affidavit you say, that is at your approach to Jali: "Hy het my verstaan en het ook met (30
my Afrikaans gepraat". What did you mean by that statement:

"en/...

"en het ook met my Afrikaans gepraat"? — Hy is gevra of hy beserings het, of hy enige pyn het iewers en daarop het hy bevestigend of ontkenkend geantwoord.

"En het ook met my Afrikaans gepraat"? — Ja, ek meen as jy iemand 'n vraag vra en hy antwoord jou in dieselfde taal terug, dan neem jy aan hy praat ook dieselfde taal as jy, ek meen hy kan dit praat. Hy hoef nie 'n lang gesprek te voer nie.

Apart from saying no, did Jali say anything whatsoever to you? — Nee, ek het gesê hy het nie veel gepraat met my (10) nie.

Can you tell us ^{what} precisely Jali did say to you? — Dit was net op betrekking op die ondersoek.

Can you tell us today what Jali said in Afrikaans? — Hy het nee of ja geantwoord; ek het vir hom gevra of hy geslaan is, daarop kon hy nee antwoord.

I have no further questions.

DEUR MNR. ERASMUS: Dr. Rossouw, by hierdie tipe ondersoek, dit is vir u natuurlik belangrik om vas te stel die agtergrond van die persoon wat dan nou gebring word, wat het gebeur? (20)

— Ja, ons moet — soos ek sê 'n mens vra gewoonlik hoe is jy beseer, omdat as 'n persoon geslaan was, sou 'n mens sekere merke verwag. As hy met 'n klip gegooi is, dit gee vir jou 'n idee van watter tipe wonde daar is.

— Ja, en hy kan ook vir jou die liggaamsdeel aanwys wat jy dan moet ondersoek? — Dit is korrek.

Jy sê sy Afrikaans was swak maar — (tussenbeikoms) —
hy
Maar, kon my verstaan.

Kry u dikwels dat nie-blankes se Afrikaans swak is? — Ja.

Doen u dan moeite om u verstaanbaar te maak? — Ja. (30)

Is u oortuig dat hy het u verstaan? — Ja.

Het/.....

Het hy gereageer op u vrae? — Ja.

Was die reaksie 'n intelligente reaksie soos iemand wat verstaan? — Ja, sover ek kon aflei.

Byvoorbeeld toe u hom vra om uit te trek, het hy hom uitgetrek? — Dit is korrek.

So uit die aard van die saak toe u hom gevra het "is jy geslaan"? — Dit is gevra vir hom.

En sy antwoord daarop was? — Was nee.

Nee. Het u dit eienaardig gevind dat hier 'n man gebring word vir 'n ondersoek wat sê "maar ek was nie aangerand nie"? (10
— Ja.

Kry u dit dikwels, dr. Rossouw? — Biae min. Ek kan nie onthou — (onvoltooid)

Toe hierdie saak — (tussenbeikoms) — Dit staan vir my heeltemal uit omdat dit was vir my 'n snaakse ding om iemand kry, die polisie sê hy is aangerand, hyself sê hy is nie aangerand nie.

Kom ons vat nou die eienaardighede in hierdie saak:

1. dit is buite u distrik? — Dit is korrek.

Nr. 2 die polisie sê ondersoek hom vir aanranding en hy sê vir jou "ek is nie aangerand nie"? — Dit is korrek. (20

So dit sou hierdie saak in u geheue vestig? — Ja.

En die volgende dag verneem u boonop dat hy gebonde was aan 'n sekere persoon wat deur 'n venster gespring het? — Dit is korrek.

So u het goeie rede gehad om die saak te onthou? — Ja.

Gebeur dit dikwels, dokter, dat u mense ondersoek wat beweër hulle is aangerand sonder dat u tekens kan vind? — Ja.

Ek wil u nou net vra, onder op die vorm is daar 'n plek "remarks", is dit reg? — Dit is korrek.

As u soiets kry, 'n persoon sê "kyk, ek was geklap", op sy

kop of iets van die aard en u kan geen letsel kry nie, maak u 'n aantekening daarvan? — Ja. Dan skryf ek hier onder by die opmerkings gewoonlik, waar hierbo invul alles meegedeel is, die persoon kla byvoorbeeld van pyn in die heup en in die rug, soiets van die aard. Net om 'n aanduiding te gee dat daar wel 'n klagte was.

As daar enige klagte was, teken u dit daar onder aan?

— Ja.

Kom ons veronderstel.. hy het nou net vir u gesê ek was geklap maar ek het nie nou meer seer nie, sou u daardie (10
aanmerking ook daar onder teken? — Nee.

Dan sou u nie sê nie? — Nee, dit is waarvan hy kla op hierdie oomblik nog terwyl hy ondersoek word.

Terwyl u hom ondersoek. — Ja.

Want dit is gebruikelik om seker te vra "was jy geslaan, indien wel waar"? — Dit is korrek.

In hierdie geval omdat hy so uitsonderlik was, onthou u dit baie goed? — Dit is korrek.

Dankie.

HOF: Dankie dokter, u kan maar gaan. (20

GEEN VERDERE VRAE NIE.

—ooOoo—

HOF: Mr. die Aanklaer, wat is die probleem?

AANKLAER: Edelaagbare, die hof het nou beslis dat die getuienis van dr. Rossouw gelei kon word nadat daar beswaar gemaak was. Edelaagbare het later verdere verklarings van my gekry van Topkin en van mnr. Scheepers en van nog 'n paar ander mense, Lokwe ensovoorts wat ook betrekking het op Jali se getuienis alleenlik. Nou ek wil net veet voor ek begin lei dat daar nie elke slag beswaar gemaak word, argument, beswaar maak, argument.. is die hof se beslissing nou finaal dat

al/.....

al die verklarings toelaatbaar is?

HOF: Ek het net oor dr. Rossouw se getuienis beslis op die oomblik.

AANKLAER: Ek sien.

HOF: Ek weet nie, die ander verklaring is tot die beskikking van die advokate wat namens die naasbestaendes en die polisie verskyn. Of is daar miskien van die verklarings wat u nie gekry het nie?

MNR. ERASMUS: Nee, ek het hulle vanoggend gekry, edelagbare, ek het hulle. (10)

COURT: Dr. Cooper, are you going to raise an objection against the evidence of -

PROSECUTOR: ..Lokwe, Oliphant, Topkin, Scheepers.

MR. COOPER: Topkin - my submission is that Topkin, I could raise the same objection to Topkin's evidence as I've raised to the doctor.

COURT: I don't think that the evidence of Topkin is necessary, the Court will concede Topkin is not a necessary witness.

PROSECUTOR: Scheepers?

MR. COOPER: May I just look - (20)

COURT: You'll remember, Dr. Cooper, that Jali said that Scheepers was present at New Brighton when he and the deceased was there.

MR. COOPER: My submission is Scheepers is also collateral.

AANKLAER: Nee, my argument daar is anders, edelagbare, met respek - (tussenbeikoms).

COURT: Lokwe, Dr. Cooper, can we have...?

MR. COOPER: May I just have a look at his statement again.

COURT: Do you want a short adjournment?

MR. COOPER: I think.. may I just have a short adjournment?

COURT RESUMES:

COURT: Did you have a look at the statements, Dr. Cooper?

MR. COOPER: Your Worship, the affidavits which we have before us are one by one Benjamin Jacobus Topkin. Our submission is this - (interrupted).

COURT: Yes, well I have already ruled - (interrupted)

MR. COOPER: You've ruled already on that. As far as Scheepers is concerned, Coenraad Frederik Scheepers, we can't object to his evidence being led.

COURT: So he'll be called then, yes. And what about (10
the others, Lokwe..(interrupted).

MR. COOPER: My submission is that Lokwe and Oliphant's evidence should not be led.

COURT: Mr. Prosecutor, what do you say about Lokwe and Oliphant?

PROSECUTOR: My submission is that I am also calling Colonel Van der Merwe on the Court's request. There is no new affidavit in his case, Exhibits E and V are applicable, my submission is that I am going to call him.

COURT: But can we deal with Lokwe and Oliphant? (20

PROSECUTOR: Lokwe I agree we can leave.

COURT: Oliphant?

PROSECUTOR: Oliphant I agree we need not call.

HOF: Mr. Erasmus?

MNR. ERASMUS: Ek stem saam daarmee.

COURT: Then the Court rules that Lokwe and Oliphant need not be called; their statements are not taken as part of the record, that also goes to Topkin. Will you then call your next witness, Mr. Prosecutor?

PROSECUTOR: Yes sir, I call Coenraad Frederik Scheepers.

COENRAAD FREDERIK SCHEEPERS, v.o.e.

ONDERVRA DEUR AANKLAER: Speurder adjudant-offisier in die Suid-Afrikaanse Polisie te Port Elizabeth? — Korrek.

Op 18 Augustus '78 het u 'n beëdigde verklaring gemaak? — Dit is korrek.

Ek toon aan u bewysstuk FF — is dit die beëdigde verklaring? — Dit is korrek.

Sal u dit asseblief uitlees, inhandig en bevestig as deel van die getuigenis? (Getuie lees verklaring)

Mr. Scheepers, het u ook by Sanlam-gebou gewerk? — (10)
Ons werk vanaf daarse.

Op watter vloer? — Op die 5de vloer.

Die oggend toe u daar weg is, was daar al begin met traliewerke op hierdie vloer? — Korrek.

Aan die vensters en aan die deure? — Aan die vensters.

Toe u die aand terugkom, hoe ver was die gebou toe al voltooi wat die veiligheids-making daarvan betref? — Ek het nie die aand teruggegaan na die kantore nie, ook nie die volgende oggend nie. Toe ek veer die dag daarna by die kantore was, was die vensters versterk gevees. (20)

Toe is al die.. die hele vloer versterk? — Nie die hele vloer nie.

Net die vensters van..? — Sekere kantore, ja.

U sê u het geen draad by u gehad nie en u het ook geen by Nel gesien nie? — Dit is korrek.

Indien hy sou gehad het, sou u dit gesien het? — Ja.

Met ander woorde hy het dit nie gehad nie? Is dit wat u bedoel? Hy het nie 'n draad gehad nie? — Daar was niks van so 'n aard selfs waar hy gestaan het nie.

Dankie edelagbare. (30)

deur MNR. COOPER: Adjudant-offisier, u sê u is 'n speurder

in/...

in die Suid-Afrikaanse Polisie. Is u eintlik 'n lid van die Veiligheidspolisie? — Ons is verbonde aan die Veiligheidspolisie, maar ons is 'n ondersoekspan.

Hoelank is u nou verbonde aan die Veiligheidspolisie? — Sedert Oktober verlede jaar.

Die persoon waarna u verwys as sersant Nel is hy ook 'n lid van die polisie verbonde aan die Spesiale Onluste? — Dit is korrek.

Span. — Onderzoekspan.

Hoelank is hy daaraan verbonde? — Sersant Nel is sedert 1976, Augustus 1976 verbonde aan die ondersoekspan. (10)

Is u nog verbonde aan die ondersoekspan? — Ja.

Is sersant Nel nog verbonde aan die ondersoekspan? — Nee.

Sedert wanneer is hy nie meer verbonde aan die ondersoekspan nie? — Ek meen - ek spreek onder korreksie - dat speurdersersant Nel sedert 1 Augustus by 'n ander afdeling werksaam is.

Was Sergeant Nel moved as a result or following the death of the person Lungile Tabalaza? — I beg your pardon? Can you just reframe the question in Afrikaans please? (20)

Was sersant Nel verplaas ná die dood van Tabalaza? — Tabalaza is voor die 1ste Augustus oorlede.

Was dit as gevolg van Tabalaza se dood dat Nel verplaas is? — Ek sal nie vir u kan sê nie.

Who arrived at New Brighton Police Station first on the morning of the 10th of July, 1978? — I beg your pardon? Could you reframe the question in Afrikaans please?

Don't you understand my English? — We may not use the same terminology as far as the evidence is that I have already given in Afrikaans and the evidence..(interrupted).

No, I appreciate that, but it is a matter of convenience for/...

for people who understand English, I am using English.

Who arrived at New Brighton - (objection)

MR. ERASMUS: Ek maak beswaar daarteen, edelagbare. Ek kan nie sien hoe my geleerde vriend daardie (onduidelik). Hy het te doen met 'n Afrikaanssprekende getuie en sekerlik as 'n persoon voel hy verstaan dit beter in Afrikaans en hy antwoord dit beter in Afrikaans, is dit die getuie se prerogatief. Dit is sekerlik nie vir 'n lid van die Balie om te sê ek gaan die taal gebruik wat ek wil en die getuie kan maak daaromtrent wat hy wil nie. Dit is nie eens noodsaaklik om 'n tolk te kry vir sulke doeleindes nie. Dit is een van die ampstale wat die getuie praat. Indien dit 'n ander taal was, kan ek wel 'n tolk verstaan, maar ek ten strengste beswaar daarteen dat hierdie versoek van die getuie ge-ignoreer word. Hy is geregtig om dit in sy taal te kry, die vrae en hy is geregtig om sy antwoorde daarvolgens te gee. (10

COURT: Dr. Cooper, it is a convenient stage now to adjourn. This point can be taken further after the adjournment.

COURT ADJOURNS / COURT RESUMES: (20

COURT: Mr. Cooper, I am afraid the choice of the language medium is of course the choice of the witness. And if he wants to be addressed in Afrikaans, then I am afraid I'll have to allow that he be addressed in Afrikaans.

MR. COOPER: With respect - (interrupted)

COURT: My trouble is we can try and get an interpreter, but it would be rather difficult.

MR. COOPER: With respect, may I just make certain submissions, sir? I don't want to.. this matter to be more important than it should be. There are two basic principles. There are two official/..

official languages in the country. A practitioner has the right to use either language in a court of law; a witness is entitled to use either language in a court of law. I've never heard, with respect, suggested that a witness can dictate to a legal practitioner which language he should use when cross-examining him. With respect, I found it an astounding proposition where a witness should feel entitled to say to a person who is questioning him that he should use a particular language; naturally the witness is entitled, sir, as would be the person putting the questions to say to the court "I would like to have my questions translated for the witness" or the witness may conversely say that he wishes the questions translated to him. That is, with respect, as I see the legal situation. (10

From the practical point of view I intimated to Your Worship from the beginning of these proceedings that I was requested by my client to use English and that is that reason insofar as it is necessary for me to explain, I have done so. I have made it also perfectly clear that if a witness does not understand me, that he must first say so immediately and then obviously he is entitled - and it is not ^{as} of right - to an interpreter to assist him and to interpret to him and he is entitled obviously to answer in whichever language he chooses. (20

With respect sir, I strongly contend and take this attitude that a court cannot direct a legal practitioner which language to use. It is contrary to a basic principle, and I submit that I am entitled to put my questions in English and obviously, if the witness has difficulty and he wants an interpreter, then he must make the request to Your Worship and I am sure Your Worship will then make the arrange=/. (30

arrangements.

HOF: Mr. Scheepers, die hof wil nou nie hê dat hier van nou 'n vreeslike saak gemaak word van die taalmedium nie. Is u bereid om voort te gaan as dr. Cooper die vraag vir u in Engels vra en u verstaan nie die vraag na behore nie, om hom te vra om dit in Afrikaans te herhaal en die wat u maklik verstaan, dan net in Afrikaans te antwoord? — Ja.

Is u bereid om so aan te gaan? — Soos dit die hof behaag, ja edelagbare. (10)

Will that be in order, Dr. Cooper?

MR. COOPER: Yes, certainly.

COURT: If the witness says that he wants a question to be repeated in Afrikaans, will you please do that?

MR. COOPER: I will try to translate it for him.

COURT: Please go on with your examination.

MR. COOPER: Thank you, sir.

Warrant-officer Scheepers, was it then purely fortuitous that you were at New Brighton? Ebot per toeval dat u by New Brighton was? — As I have said in my evidence in chief (20) I went to take a message to detective sergeant Nel. In regard to certain documents that were required for Regional Court.

HOF: U kan maar in Afrikaans antwoord.

MR. COOPER: You see it is clear that you received a telephone call from Sergeant Ngwence, that is correct? — Dit is korrek ja.

What did he tell you? — He told.. hy het aan my gesê dat twee persone gearresteer was weens roof en die brand van 'n voertuig en dat hulle gearresteer was en dat hulle by die New Brighton polisiestasie aangehou word. (30)

And what did you do when he told you this? — Ek het

vir/.....

vir sersant Nel gesê om aandag aan die aangeleentheid te gaan gee omrede ek nie myself daarheen kon gaan nie.

Was sergeant Nel at Sanlam Building when you gave him this instruction? — Dit is korrek.

And did sergeant Nel then leave Sanlam Building? — Ja, hy het na New Brighton gegaan.

You also left Sanlam Building that morning? — Ek het later ook die plek verlaat en na New Brighton gegaan.

Did you go to New Brighton to speak to sergeant Nel? — Dit is korrek. (10)

And how long after sergeant Nel left Sanlam, did you go to New Brighton? — Ek kan nie met sekerheid sê nie, dit sal ongeveer drie-kwart uur of 40 minute daarna gewees het. Of 'n halfuur, ek is nie seker nie.

You say you went to New Brighton to discuss with sergeant Nel certain documents, is that correct? — Ek het nie gesê bespreek nie; ek het gesê om hom te gaan sê van sekere dokumente wat benodig word by die Streekhof.

Your affidavit actually says: "Om ongeveer 10 uur het ek by New Brighton aanklagte aangedoen om sersant Nel te spreek in verband met sekere dokumente". That is what your affidavit..(interrupted) — Ja, te spreek. Sersant Nel te spreek in verband met die dokumente, nie om die dokumente met hom te bespreek nie. (20)

Fine. Why couldn't you have had that discussion at Sanlam Building before he left? — Die rede was daar omdat die Staatsaanklaer my gebel het nadat sersant Nel alreeds weg was.

Just for the record, how long did it take to go from Sanlam Building to New Brighton Police Station where you saw Nel? — Plus/minus 10 na 15 minute. (30)

When you got to New Brighton, who did you see? —

Ek het heelwat persone daar gesien; ek het Ngvence daar gesien, ek het Jali daar gesien, ek het die ander man gesien wat saam met Jali gesit het en ek het ook vir sersant Nel gesien. Ek het ook vir sersant Gerber daar gesien, ek het ook die oorledene daar gesien.

When you arrived at New Brighton, was the first person you saw Ngvence? — Ja.

Did he speak to you? — Ja.

Where was Nel when you arrived at New Brighton? In the charge office? — Nee, hy was nie in die klagtekantoor nie, hy was in 'n ander kantoor gewees. (10

Did you go to that office? — Ja, ek het na daardie kantoor gegaan.

Was anybody with Nel in that office? — Die oorledene was saam met Nel in die kantoor.

How long did you stay with Nel in this office? — Saam met sersant Nel kon ek plus/minus 2 of 3 minute gewees het. Dit kan 5 minute ook wees, ek het nie spesifiek daarop gelet hoelank ek met hom gepraat het nie. (20

And when you left the office, did Nel leave the office with you? — Nee.

Tabalaza not leave the office with you? — Nee.

Ngwenze what did he say to you when you arrived? — Ek het vir Ngwenze gevra waar is sersant Nel.

And what did Ngwenze say? — Hy het my toe na die kantoor verwys waar ek sersant Nel gekry het.

Is that all that Ngwenze said that you've told us about? — Ek kon hom ook gevra het vaar die mense is wat gearrester was, ek is nie seker daaromtrent nie. (30

Ngwenze says in an affidavit "I today identify Bantu male/...

male Bendix Toto Jali to Captain Strydom and also the photograph of Lungile Tabalaza as the two Bantu males I handed to Detective Sergeant Nel and Detective Warrant-Officer Scheepers". What is your comments about Sergeant Ngwenze's statement that he handed two Bantu males to Detective Sergeant Nel and Detective Warrant-Officer Scheepers? — No, I think he is making a mistake, but he did not hand them over to me. Because he couldn't have handed them over to me because I left Port Elizabeth soon after I left New Brighton and went to Kinkelbos. (10

You see we haven't only got his affidavit, but Jali says that you together with Nel took Tabalaza to a room? — No, that is not correct.

It is curious that Sergeant Ngwenze should say that he handed over Tabalaza and Jali to Nel and to you? — Yes, it does - (interrupted).

If in fact you only arrived there three-quarters of an hour later? — It is, it surprises me too.

It is inexplicable, isn't it? — I can't understand him saying that. (20

And you see it is equally curious that Jali should be corroborated by Ngwenze because Jali says that you and Nel arrived at the police station and that you and Nel took Tabalaza into an office. — Ek glo nie Jali praat die waarheid nie want die eerste keer wat ek met Jali gepraat het, was twee dae nà hy gearresteer was.

My recollection, Mr. Scheepers, is that Jali doesn't allege you spoke to him on the 10th of July 1978, he doesn't claim that to be the case? — Ek het ook nie gesê dat ek met hom gepraat het nie. (30

Sure, so there you are ad idem. You didn't speak to

each other. What he does say is that you went in together with Nel into the office with Tabalaza. — I was in the office where Tabalaza was.

There is a delay of some 45 minutes, not so? — Laat ek dit nou vir u duidelik stel, ek weet nie watter tyd sersant Nel Sanlam verlaat het nie. Ek weet ook nie wanneer sersant Nel by New Brighton aangekom het nie, maar ek weet wanneer ek daar aangekom het. Ek weet ook nie hoelank sersant Nel voor my op New Brighton aangekom het nie. So ek kan nie sê dat hy was 45 minute voor my by New Brighton gewees nie. (10

That is perfectly correct, but let's see what Nel has to say in this regard. We have his affidavits and they might assist us on this particular point. I don't think it helps us on this point at all.

What was Nel doing when you went into the office at New Brighton Police Station? — He was talking to Tabalaza.

How did Tabalaza appear? — Hy het normaal voorkom.

Did Tabalaza say anything in your presence? — Ek het nie met hom gepraat nie. (20

Did Nel say anything to Tabalaza in your presence? — Ja, Nel het gepraat.

You use the word "hulle", you said they spoke. So was Tabalaza and Nel conversing there? Were they conversing? — Toe ek die kantoor binnegekom het, ja.

What did you hear them say to each other? — Nee, ek kan nie nou vir u sê nie.

Were you not interested, were you not curious? — Nee, ek was nie geïnteresseerd in wat hulle gepraat het nie; ek het geen belang daarby gehad nie. (30

Well, you said that you had no interest, but surely the

complaint against Tabalaza and the other man was that they had been guilty of robbery and setting fire to a vehicle. — Dit is korrek.

These are matters which are investigated by your squad? — Nee, u maak 'n fout.

Well, doesn't this type of crime indicate a riot, unrest and that is why you have this special squad investigating this type of crime? — Nee, ek sal nie sê dat waar twee of drie of slegs vier persone deelneem aan die brand van 'n voertuig en die roof van 'n bestuurder neerkom op 'n (10 oproer nie. Dit is in my opinie gladnie 'n oproer nie. Ons het ander belangstelling gehad by Tabalaza, nie - (onvoltooid)

It may be an ill omen of things to come, not so? — Nee, ek sal dit nie sê nie want die onluste was op daardie stadium besig gewees om af te koel.

Did you not ascertain from Nel what Tabalaza said in response to these allegations of robbery and burning a vehicle? — Soos ek u reeds gesê het die brand van voertuie en die roof van persone deur enkellinge het ons nie by belang nie. (20

Well, what was Sergeant Nel doing there in the first place? If you are not interested in that type of crime. Why did he go out to New Brighton? — Die rede waarom sersant Nel soontoe gegaan het, was om te gaan vasstel of hierdie man betrokke was by vorige dade van oproer.

Did you not then say to Nel "But has this fellow been involved in previous acts of violence, of unrest"? — Nee, ek het hom nie gevra nie.

Did Nel not volunteer the information to you whether or not Tabalaza admitted being involved in previous acts (30 of violence? — Hy kon gesê het wat hy wou, maar kyk, die

doel van my besoek van Nel was nie in verband met Tabalaza nie, of met die ondersoek wat hy daar gedoen het nie. My doel om Nel te gaan sien, was 'n spesifieke doel. Om 'n opdrag aan hom te gaan oordra in verband met sekere dokumente wat benodig word by die Streekhof.

Well, you see the impression, before we received your affidavit, created on these papers certainly that you and Nel went together and that in fact you were at least present when Tabalaza was being interrogated at New Brighton? — Ek het vir Tabalaza gesien terwyl Nel met (10
hom gepraat het en ek het nie saam met Nel daar aangekom nie.

Now the first time you made an affidavit, was on the 18th of August, 1978, isn't that so? — Dit is korrek, dit is nadat Jali my uitgewys het aan die hof.

In fact did you hear Jali give evidence? — Nee.

But you were aware that he was testifying? — Laat ek dit vir u so stel: ek was bewus van die nadoodse-onderzoek in hierdie hof en ten tye van daardie nadoodse-onderzoek was ek 'n getuie gewees in 'n siviele saak in die Hooggeregshof wat ook op dieselfde persele is. (20

You were aware also, either from the newspapers or from other members of the police, that Jali was giving evidence before His Worship? — Ja, ek het dit gelees, ek het dit gesien.

And you were also aware that Jali alleged that both you and Sergeant Nel had - what he described as - pieces of wire in your hands when you arrived at New Brighton Police Station? — Ek is bewus daarvan ja.

You deny that you had anything in your hands at all? — Ek het nooit gesê dat ek niks in my hand gehad het nie. (30

Well, what did you have when you got to New Brighton-?

— Ek het my aktetas by my in my hande gehad.

One couldn't mistake that for a piece of wire, obviously? — Nee, hy kan nie.

Jali had testified that after he had been taken to the office by sergeant Nel and he said you were present, returned to the charge office that he had tears in his eyes, are you aware of that allegation? — Toe ek vir Jali gesien het, het Jali in die klagtekantoor agter die tafel van die aanklagtekantoor gesit. Hy het geen tranes in sy oë gehad nie.

(10)

No, no. Jali alleges that Tabalaza was taken to an office or somewhere, that when he returned he, Tabalaza, had tears in his eyes. Did you hear that allegation in August? — Ek was ongelukkig nie in die hof nie, ek weet niks daarvan nie.

Did Captain Strydom not ask you when you made this affidavit "Do you know whether Tabalaza had tears in his eyes"? — Kaptein Strydom het my niks gevra daaromtrent nie. Ek het my verklaring uitgeskrywe, dit was getik, ek het dit geteken en ek het die eed geneem daarna.

(20)

Actually you drew up this affidavit, this statement which became an affidavit on your own? — Dit is korrek ja.

At whose request? — Ek was opdrag gegee deur kaptein Strydom.

What was his request to you? — Hy het vir my gesê ek wil 'n verklaring hê van jou; dit word beweer dat jy was by New Brighton gewees en dat jy het drade by jou gehad. Dit is die rede waarom die getuie Jali jou in die hof uitgeken het.

At which office were you when you drafted your statement? — By die speurderskantore in Hoofstraat.

(30)

Is that Sanlam Building? — Nee. Sanlam-gebou is in Strandstraat.

Are you sure that there were three Blacks at New Brighton Police Station when you arrived there? Three Blacks that were involved in the allegations of robbery and burning a vehicle? — Nee, ek het geweet van twee.

You only knew of two. That doesn't accord with your affidavit. — In my verklaring het ek gesê Jali het saam met 'n ander man gesit en ek het Tabalaza gesien; ek het nie gesê dat daar drie mense betrokke was by die roof en die brandstigting van die trek nie. As ek miskien 'n fout gemaak het dan vra ek omverskoning, maar volgens my getuienis is dit wat ek gesê het. (10)

Who did you think was concerned with or connected with the charge of robbery and setting fire to a vehicle? — Ek dra geen kennis daarvan nie. Ek weet nie, ek het gladnie met hulle gehandel nie.

Did you not even ask Nel which are the people that were supposed to have committed this robbery and being involved with the burning of the vehicle? — Ek staan my voor dat ek hom daarna gevra het daarentrent, maar soos ek reeds gesê het, het ek nie Nel gesien voor twee dae daarna nie. (20)

But I am talking - (interrupted) — Die dag van die 10de was ek nie daar nie en die dag van die 11de het ek nie vir Nel gesien nie. Toe ek weer vir Nel gesien het, was Jali alreeds skuldig bevind en voor die hof gewees.

I want to get certain things perfectly clear. Sergeant Ngwenze 'phoned you, spoke to you on the telephone? — Dit is korrek ja.

He reported to you? — Dit is korrek. (30)

That there were Blacks who had been arrested, on a charge of/..

of robbery and a charge of setting fire to a vehicle? -- Dit is korrek.

Did he tell you how many Blacks? -- Ek kan nie onthou nie.

When you went to New Brighton Police Station, you did not ask Sergeant Ngwenze who these Blacks were? -- Nee.

You did not ask Sergeant Nel who the Blacks were that were involved in the robbery -? -- Nee.

The reason for these answers, I want to suggest to you, is because you arrived with Nel and Sergeant Ngwenze handed these two people over to you? -- Ek is baie jammer, dit is 'n verkeerde afleiding wat u maak. (10

It is not a conclusion that I am making. I am relying upon the sergeant's own affidavit. Why should he make that mistake? -- Ek weet nie hoekom dit so gestel is nie.

After all, Ngwenze, made his affidavit on the 13th of July, 1978, that was three days after the events. Presumably his recollection of the events was better than yours. -- Ek kan nie sien dat hy dit kan sê nie want Nel het met 'n heeltamal ander voertuig gery en saam met 'n ander speurder. Ek het in 'n heeltamal ander voertuig gery met 'n heeltamal ander speurder. Die speurder wat vir my bestuur het en die speurder wat saam met Nel gery het, is twee verskillende persone. Ons het twee verskillende motorvoertuie gebruik. (20

Who was the "speurder", the detective that went with Nel? -- Gerber.

Who was the detective that went with you? -- Speurdersersant Momborg.

I have no further questions.

DEUR MR. ERASMUS. Mr. Scheepers, u sê saam met sersant Nel was Gerber? -- Ja. (30

Saan met u was Momberg? — Ja.

Word hierdie goed aangeteken, mnr. Scheepers? — Nee.
 Al aantekening wat daar sal wees dat ek en Momberg saam was, sal in dokumente wees op Kinkelbos Polisiestatie waar ons 'n persoon gespreek het wat aangehou was in terme van die Veiligheidswette en daar word sekere dokumente gehou dat wanneer ons daar is dat ons 'n inskrywing moet maak dat ons hom gespreek het.

So dit sal daar wees? — Dit sal daar wees.

Nou u was nie die bevelvoerende offisier van die onlus- (10
 te-eenheid nie? — Dit is korrek.

Wie was die bevelvoerende offisier? — Maj. De Jongh.

Die feit dat u hierdie oproep gekry het van Tabalaza en Jali dat hulle aangehou word by New Brighton, was dit bloot toevallig dat u die oproep gekry het? — Ek het per ongeluk of per toeval die telefoon geantwoord.

So dit was nie spesifiek vir u geskakel en gesê u, mnr. Scheepers, is die man wat die oproep moet kry nie? — Dit is korrek.

Het u tyd gehad om aandag daaraan te gee? — Ek sou (20
 aandag daaraan gegee het as ek tyd gehad het, maar ek het ander opdragte gehad om uit te voer.

En is dit hoekom u toe vir speurdersersant Nel gevra het? — Dit is korrek.

Nou die onluste was besig om af te neem op daardie stadium? — Dit is korrek.

Ten spyte daarvan was u nog druk besig? — Ja.

Was daar baie ondersoekwerk? — Ja.

Het u as sulks enige belang gehad by Jali en Tabalaza
 ? — Nee. (30)

Mr. Scheepers, vertel ons so 'n bietjie van die werksaam-

hede van die onluseenheid? U kantore was vroeër in New Brighton? — Dit is korrek ja. Laat ek dit so stel die kantore van die ondersoekspan was in New Brighton.

New Brighton. — Maar ek het nie vas op New Brighton gewerk nie.

Ek sien. — Ek het ander ondersoeke gedoen in Cradock, Somerset-Oos, Uitenhage en nà my terugkeer, het ek na Sanlam-gebou gegaan.

U ondersoek was oor 'n wye area gewees? — Die ondersoekspan wat die onluste ondersoek, het al hierdie plekke gewerk. (10)

Hierdie ondersoekspan — as ek dan sê die ondersoekspan, nou nie u spesifiek nie — het kantore gehad te New Brighton? — Ja.

Was hierdie fasiliteite van hulle weggeneem aan einde van Maart van hierdie jaar? Die New Brighton fasiliteite? En is hulle toe Sanlam-gebou toe? — Ek weet nie wanneer die fasiliteite te New Brighton gestaak was nie, maar Maj. de Jongh en ander lede wat op die ondersoekspan was, het lank nà my by Sanlam-gebou aangekom. (20)

Lank nà u by Sanlam. In Julie vanjaar, toe hierdie insident plaasgevind het, het hulle toe fasiliteite gehad te New Brighton? Kan u onthou? — Nee.

Was die enigste fasiliteite wat toe beskikbaar was die 5de vloer by die Sanlam-gebou? — Dit is korrek ja.

Nou is dit so, mnr. Scheepers, dat Veiligheidspolisie het ander fasiliteite by die Sanlam-gebou? — Ja, hulle is op die 6de vloer.

En die onluseenheid hulle was fasiliteite gegee op die 5de vloer? — Dit is korrek. (30)

Sintlik het die onluseenheid apart gewerk van die persone

op die 6de vloer? -- Ja, ons werk heeltemal as 'n aparte eenheid.

Nou as u kan onthou, kan u vir my sê -- as u nie kan nie, sê u maar net u weet nie -- op die 6de vloer was natuurlik.. was daar tralies aangebring? -- Ja, die hele vloer is so te sê versterk op die 6de vloer.

En die fasiliteite wat u gekry het op die 5de vloer op daardie stadium, Juliemaand, begin Julie, was dit toe net besig met versterking daar? -- Hulle was besig gewees om versterkings op te sit.

(10)

Maar as ek sê, mnr. Scheepers, is ek reg dat versterk of onversterk dit is al wat u gehad het, die 5de vloer? -- Ja, dit was ons kantore waarvanaf ons gewerk het.

Op daardie betrokke dag die 10de Julie, was hulle besig om te werk die oggend, die persone wat die versterking aangebring het? -- Ja.

Het hulle van 'n kant af begin werk? -- Dit is korrek.

Wat was die omstandighede daar? Het hierdie manne saggies gewerk, stil gewerk? -- Nee, dit was 'n groot geraas gewees daarso; die mense het met elektriese bore en baie harde betonmure ingeboor en met hamers geslaan om die (?) te laat pas.

(20)

Nou mnr. Scheepers, u kan miskien net vir ons u indruk gee, ek is meegedeel dat dit eintlik baie moeilik was om per telefoon te praat so 'n geraas was daar? -- Dit is korrek.

En was daar baie mense op die 5de vloer, werkers en andere? -- Daar was werkers en daar was die skoonmakers, wat gedurig daarso is.

En, was lede van die onluseenheid? -- Lede van die onluseenheid.

(30)

Dankie edelagbare.

GEEN VERDERE VRAE NIE.

---ooOoo---

JOHANNES MARCUS HERMANUS VAN DER MERWE v.o.e.

ONDERVRA DEUR AANKLAER: U is 'n kolonel, Suid-Afrikaanse Polisie? -- Reg.

En watter amp beklee u? -- Afdeling speuroffisier.

Van? -- Afdeling Oostelike Provinsie.

Die hele Oostelike Provinsie? -- Ja.

U is eintlik in bevel van al die speurders van die hele Oostelike Provinsie? -- Dit is reg. (10

Hou u het 'n beëdigde verklaring gemaak, dit is nou daar voor u, ek dink dit is genommener bewysstuk E? -- Dit is reg.

Hierdie beëdigde verklaring was alreeds aan die hof uitgelees deur adv. Strauss, so u hoef nie weer dit te lees nie. Bevestig u daardie verklaring soos wat dit daar is? -- Ek bevestig dit.

U sal ook merk dat by u lê nog 'n beëdigde verklaring, bewysstuk V? -- Reg.

Is dit die verklaring van ene Jali? -- Dit is.

Gemaak aan? -- Aan my. (20

Aan u. Nou daar is reeds 'n ander beëdigde verklaring van Jali ingehandig, so 'n kortetjie, bewysstuk U. Kan u net vir edelagbare sê waarom het u bewysstuk V geneem? -- Dit was deel van die ondersoek.

Deel van watter ondersoek? -- Die dood van Tabalaza.

Was u in bevel van die speurders wat die dood van Tabalaza ondersoek het? -- Ek was.

Is dit korrek dat indien daar by die Veiligheidspolisie iets gebeur wat aandag geniet of polisie-ondersoek geniet, dan word dit gedoen deur die speurtak en nie die Veiligheids- (30 polisie nie? Korrek? -- Ja.

En /..

En is dit die rede hoe u in die gedrang gekom het
? -- Ja.

Kan u nog onthou die dag toe u die verklaring van
Tabalaza geneem het, kolonel? -- Ja.

Het u baie verklarings geneem of neem u baie verklarings
self? -- Baie selde.

Die dag toe u vir Tabalaza, die verklaring van hom
geneem het, waar was u gewees? -- By die moord- en roofkantore.

Giddy's Gebou, Hoofstraat? -- Ja, Giddy's Gebou,
Hoofstraat. (10

Was u in u kantoor saam met 'n tolk, ene Oliphant en
met Tabalaza? -- Ek was.

Net julle drie? -- Ja.

Sorry, Jali. Het Jali gestaan of gesit? -- Hy het gesit.

Op 'n stoel of op die grond? -- Op die stoel as ek reg
onthou.

Het u self met hom gepraat partykeer? -- Ja, ek het.

In watter taal? -- In Afrikaans.

Het hy met u gepraat? -- Hy het.

In watter taal? -- Ook in Afrikaans. (20

En hoe was sy Afrikaans gewees vir u? -- Hy praat redelik
goed Afrikaans.

Kyk, hier het 'n geneesheer getuig dat hy dink, hy weet
nou nie of die man goeie Afrikaans praat nie, maar hy het
hom net 'n paar vrae gevra. U het natuurlik baie meer vrae
gestel aan Jali in Afrikaans en baie meer antwoorde gekry
in Afrikaans nê? -- Ek het baie.

U het ^{meer} 'n hele gesprek met hom gevoer? U het meer 'n gesprek
met hom gevoer partykeer nê? -- Ja.

En kon u en Jali mekaar duidelik verstaanbaar maak? --
Duidelik.

Wat was Jali se houding teenoor^ugewees toe u met hom gepraat het? Aggressief, normaal, bang? — Nee, hy was op sy gemak en die gesprek het normaal gevloei.

Ekskuus tog net, was hy toe alreeds gevonniss? — Ja, ek dink so. Ja, hy was gevonniss.

Ek wil net een ding (onduidelik). Wie het op die verklaring bewysstuk V geskryf daar, as ek nou reg onthou, "ek is gevonniss weens sabotasie"? — Ek het maar geneem soos hy dit aan my gesê het.

O, ek sien. En toe u die verklaring nou neem en om seker te maak dat die feite korrek is, het u toe van die tolk gebruik gemaak? — Ja. (10)

Het u alles neergeskryf wat die tolk gesê het? — Ja, ek het.

Het u gemerk of daar enige woordewisseling of stryery, hetsy in Xhosa of in 'n ander taal, tussen die tolk en tussen Jali was? — Nee, daar was nooit enige stryery nie.

Ek wil dit so aan u stel: indien Jali iets sou sê en die tolk sou hom stop om dit te sê, sou u dit agtergekom het? — Ek glo beslis so. (20)

U sou dit nie toegelaat het nie? — Nee.

U is 'n senior kolonel. Moes u enige vorm van dreigement aan Jali of enigiets om hom op sy gemak te kry? — Nee, hy was baie op sy gemak.

Hoe het sy verklaring gevloei? Was dit gewees dat hy nou gehakkel het hier, gehakkel daar of het hy taamlik 'n vloeibare storie aan u vertel? — Nee, baie vloeibaar.

Ek sien die verklaring - (tussenbeikoms) — Besonder vloeibaar.
vloeibaar
..afgeneem. Is dit ongeveer soos hy met u gepraat het?
? — Ja.

Ek wil vir u een ding noem, Jali het gesê vir edelagbare dat hy het vir die tolk gesê dat Nel vir Tabalaza aan die kraag gegryp het. Hy het verder gesê dat die tolk dit vir u gesê het en dit is nou nie op daardie verklaring nie. Nou het die tolk vir u soiets gesê? — Kan ek dit net weer regkry?

Jali het gesê dat hy het vir die tolk gesê dat Nel het daar by Sanlam-gebou vir Tabalaza aan die kraag geruk, getrek nê, gegryp. Hy sê ook dat die tolk het daardie stelling aan u getolk en dit is nou nie op die verklaring nie, sê ek nou vir u. Was daar soiets? — Nee.

(10)

As daar so 'n stelling gelees was, sou u dit afgeskryf het? — Ek sou.

Het u enige rede gehad om soiets te verberg? — Nee, beslis nie.

Ek dink nou net daaraan, terwyl ons daarvan praat, dit toon ook aan u dat Jali wel Afrikaans kan verstaan as hy dan kan verstaan wat die tolk aan u sê nê? — Ja.

Dankie edelagbare.

BY DR. COOPER: Colonel, I intend putting my questions in English to you. If you have any difficulty would you just intimate to me? Obviously you have liberty to answer in whichever language you like. You understand the position, don't you? — Goed.

(20)

Colonel, so do we understand that you are the most senior officer in the detection division in the Eastern Cape? — Van die Speurtak ja.

And that was the reason why you were called in on the 10th of July, at four o'clock that afternoon? — Dit is so.

Colonel, who 'phoned you, who contacted you? — As ek reg onthou, is dit maj. Fischer.

(30)

What did he tell you? — Hy het aan my gesê dat daar 'n prisoner van die 5de vloer by 'n venster uitgespring het.

Did he tell you who the prisoner was? — Nee, nie op daardie stadium nie. Dit mag wees dat hy my gesê het, maar ek kan dit nie onthou nie.

Was he merely reporting the death of this man to you, or was he requesting you to do anything in regard to his death? — Hy het my net die voorval aan my gerapporteer.

(10)

What had become your duty to do then? — Om ondersoek in te stel na die omstandighede.

What time did you arrive at Sanlam Building that afternoon? If you have any notes which may be of assistance to you, I am sure his Worship would not object to you using it. — 'n Paar minute voor 4 uur die middag het ek daar aangekom.

And did you go into the building, or did you meet anybody outside the building? — Nee, ek het opgegaan na die 6de vloer.

(20)

We know there was a body in the street below Sanlam Building. Had the body been removed when you arrived there? — Die lyk was reeds verwyder.

Now you went to the 6th Floor, and which member of the South African Police did you meet on the 6th Floor? — 'n Hele paar, mnr. Fischer.

Any others? — Ek is toe geneem na die 5de vloer toe.

Who took you there? — Nee, ek kan nie meer onthou wie het my daarnatoe geneem nie.

Was Sergeant Nel there? — Ek het hom daar gekry.

(30)

Did you speak to Sergeant Nel? — Ja.

What did you ask him? — Ek kan nie onthou wat ek spesifiek vir elkeen daar gevra het nie.

According to you.. your affidavit, you familiarized yourself with the facts of the case? — Dit is reg, ja.

What do you mean by that statement? — Ek het baie vrae gevra vir baie mense en presies wat ek nou vir elkeen op daardie stadium gevra het, kan ek nie nou vir die hof sê nie.

Did you ascertain that Tabalaza had been interrogated that day by Nel? — Ja. (10

Did you ascertain that Tabalaza had been taken to a magistrate that day? — Ja.

Did you ascertain that what Tabalaza had said to the magistrate had been reduced into writing? — Ja.

Were you shown the document? — Ja, ek was.

Did you read the document? — Ek het dit gelees.

And did you read.. you knew from this document that the deceased had just come back from the magistrate, or let's put it this way, shortly after he had returned from the Magistrate, he plunged to his death from Sanlam Building? — Ja. (20

Did you read in his statement to the magistrate Tabalaza had said "ek is bang dat as ek nie 'n verklaring maak nie, dan sal ek geslaan word as ek teruggaan na Sanlam se gebou toe". Did you read that? — Ek kan nie die presiese woorde nou onthou nie; ek het nie die verklaring voor my nie. Iets tot daardie effek het ek wel gelees, ja.

What was your reaction to reading this statement by Tabalaza? — Ek weet nie, dit is deel van my ondersoek; ek kan nie sê wat my reaksie daarop was nie.

As an investigator what was your reaction? As a very (30 experienced, senior police detective? — Dit is 'n aspek wat

ek/..

ek in gedagte gehou het met die ondersoek.

What did you think, colonel? — Nee, ek weet nie..

Did you find it a tragedy - (interrupted) — Dit is 'n aspek.. ek het onmiddellik beseef dit is 'n aspek wat ek in gedagte moet hou by die ondersoek van die aangeleentheid.

Did you not think at that stage it is a tragic coincidence that within the hour of this man's death from Sanlam Building, he had told a magistrate that he feared being beaten if he didn't make a statement? ...tragic coincidence that he should have made this statement within the hour of being dead? — Ek herhaal dit is 'n aspek wat ek.. 'n belangrike aspek wat ek in gedagte gehou het by die ondersoek van die saak. (10)

Didn't you think it was a tragic coincidence that this man should make this allegation and within, I think, 20 minutes of returning to Sanlam Building he is dead? — Ek kan maar net herhaal wat ek alreeds geantwoord het op hierdie vraag.

You say - you could say, colonel, that you considered that this was an important aspect, that statement made by the deceased shortly before his death? — Dit is reg. (20)

Why did you consider it an important aspect? — Dit is van belang want hy het tot 'n mate vrees uitgespreek kort voor sy dood.

Why did you consider it important, an important aspect? — Ek kan net weer herhaal, ek het reeds hierdie vraag beantwoord.

What inference did you draw from this statement that the deceased had made very shortly before his death? — Die vraag is net op 'n ander manier aan my gestel; ek kan maar net herhaal wat ek reeds gesê het. (30)

Did/...

Did you draw the inference that the deceased may have jumped out of the building because of the fear of a police assault? — Wel dit is so moontlik, dit is ook moontlik dat hy kon gepoog het om te ontsnap. Uit vrees.

Did you consider it - in view of the deceased's statement - as a possibility that he had jumped out of the building because he feared a police assault? — Ek het dit oorweeg.

What did you do about it, this important factor? What did you do about it? — Dit is in gedagte gehou deur= (10
gaans deur die ondersoek van die hele saak.

Did you take this up this aspect of Tabalaza's statement with any of the policemen in whose custody he was at the time that he died? Did you or didn't you? — Daar is so baie aspekte bespreek. As ek nou vir die hof moet sê presies met wie ek dit bespreek het, dan weet ek nie.

Well, you still haven't answered my question. Did you or did you not discuss this very serious allegation that Tabalaza had made in his statement to the police with any of the policemen in whose custody he was shortly before (20
his death? — Dié aspek was beslis bespreek tydens die hele ondersoek.

With whom did you personally discuss this aspect?
— Omtrent met almal wat betrokke was by hierdie ondersoek.

Did you discuss it with Nel? Detective Sergeant Nel, I am sorry, I should give him his full title. — Ja, ek het.

When did you discuss it with him? That day? — As ek reg onthou dieselfde dag en ook tydens die neem van sy ver=
klaring.

Did you interrogate Detective Sergeant Nel? — Yes, ek het. 30
For how long was your interrogation of Detective Sergeant

Nel/...

Nel? — Die betrokke dag?

Yes, — Die was nie baie lank gewees die dag nie.

Op 'n latere stadium het ek wel 'n langer onderhoud met hom gehad.

The first time that you questioned Detective Sergeant Nel about Tabalaza's statement, how long did that questioning last? — Dit was seker so — dit was nie 'n onderhoud vir lank gewees nie, dit was onderbroke onderhoude gewees wat ek met hom gevoer het die dag.

But how long would you say? — Alles tesame seker so, (10
wel ek kan dit maar net skat, edelagbare. Seker so twintig minute.

What did you ask Detective Sergeant Nel on the 10th of July, 1978 about Tabalaza's statement? — Ek het hom gevra om my te vertel alles wat hy weet van die oorledene, sy aanhouding en sy dood.

Did you write down what Detective Sergeant Nel told you? — Nie op daardie tydstip nie.

Did you ascertain from Detective Sergeant Nel that Lungile Tabalaza, the deceased, was in his custody at the (20
time and that Nel was responsible for Tabalaza at the time when Tabalaza went through the window? — Ja, ek het vasgestel dat hy in sy bewaring was; dat Majoer de Jongh ook in sy teenwoordigheid was.

Did you at that stage when you spoke to detective Sergeant Nel consider that Detective Sergeant Nel may have done something which had caused the deceased to plunge through the window, plunge from the building? — Kan u die vraag herhaal?

When you spoke to Detective Sergeant Nel, did you consider (30
that Detective Sergeant Nel may have done something which had/..

had caused the deceased to jump out of the window? — Ja, ek het dit in gedagte gehou.

You considered it very important to get a statement from Detective Sergeant Nel, didn't you? — Onder andere, ja, one of the

But he was most important persons from whom you wanted a statement, isn't that so? — Ja, dit is so. Een van die belangrikstes.

Wasn't it important to record Detective Sergeant Nel's answers to your questions that very afternoon? — Nee, ek sal nie so sê nie. (10

Why not? Why wouldn't you say so, colonel? — Daar was baie om te ondervra in 'n kort tydperk.

But here Detective Sergeant Nel was practically an eye-witness, not so? — Ja.

..investigation. — Ja, dit is so.

According to him he just hardly turned his back when Tabalaza jumped out of the window, not so? — Dit is so.

Did you consider him a suspect then? — Vir wie?

Detective Sergeant Nel? — Wel tot 'n mate wel.

Particularly in view of the statement which Lungile Tabalaza had made to the magistrate that very day, isn't that so? — Nee, ek sal nie so sê omrede daardie verklaring nie want dit was geen aanduiding van wie hy eintlik vrees nie. (20

Well, would you like to look at that statement, I don't want you to feel that you are at a disadvantage. In that statement you'll see the question which the magistrate asked Tabalaza was this:

"Het jy vantevore 'n verklaring van dieselfde aard afgeleë en indien wel wanneer en aan wie?"

And his answer is: "Ja, by die kantoor van mnr. Nel, vandag". (30
Nel is mentioned in the statement, exhibit DD. — Ja, Nel was sover/..

sover my betref, was hy 'n lid van 'n ondersoekspan.

But the statement went further:

"Mr. Nel het gesê ek moet hier dieselfde verklaring kom gee".

This was important, wasn't it? — Ja, dit is so.

Because this showed an association between Nel, Detective Sergeant Nel and Lungile Tabalaza, not so? — Nel was 'n lid van 'n ondersoekspan en 'n ondersoekspan het met die mense gedeel.

But colonel, as far as Tabalaza was concerned, he wasn't (10 dealing with an "ondersoekspan", he was dealing with Detective Sergeant Nel, isn't that correct? — Ek kan beslis nie saamstem daarmee nie.

But you can say that because read the statement. Would you like to see the statement? — Nee, ek sal aanvaar wat daarin staan.

He was asked "het jy vantevore 'n verklaring van dieselfde aard afgelê en indien wel wanneer en aan wie", in response to that question the deceased said: "ja, by die kantoor van mr. Nel vandag"? — Dis reg. (20

Sure, and he goes further, and he says: "Mr. Nel het gesê ek moet hierdie selfde verklaring kom gee", not so? Again it is Nel? — Dit is so, maar Nel is ^{nie} die enigste man wat sover my betref met die man gewerk het nie.

But as far as you were concerned and you've already told us, Sergeant Nel was the person in whose custody the deceased was at the time the deceased met his death? Correct? — Saam met Maj. De Jongh het ek gesê.

Together with Major De Jongh. — Ja.

And that Nel ^{who} was together with De Jongh, ^{were} responsible for the safety of Lungile Tabalaza? Were they not? — Dis reg. (20

And you knew that before you spoke to Detective Sergeant Nel on the very day on which Tabalaza had met his death? You knew that. — Nee, die deel het maar uitgekóm met die ondersoek.

But that very afternoon? — Ja, dit is.

And you knew that Tabalaza had said shortly before his death "ek is bang dat as ek nie 'n verklaring maak nie, dan sal ek geslaan word as ek teruggaan na Sanlamse gebou toe". — Dit is reg.

And Nel was using Sanlam Building that day while he (10) interrogated Tabalaza, wasn't he? — Nel en die hele ondersoekspan.

But that day you ascertained that Nel was the only person who interrogated Tabalaza, didn't you? — Ek sal nie sê die enigste persoon nie; ek weet dat hy het hom ondervra, ja.

Who else do you suggest had interrogated Tabalaza apart from Nel? — Nee, ek antwoord die vraag wat aan my gestel was dat ek dit daardie dag vasgestel het dat Nel hom ondervra het.

Did anybody else interrogate Tabalaza on the 10th of (20) July, 1978? — Sover ek vasgestel het later nie.

And you ascertained that on the very afternoon that Tabalaza died? — Ja.

Sure, this was a very simple fact, wasn't it? — Ja.

You considered the death of Tabalaza in a very serious light? — Ja.

You considered Nel in a sense to be a suspect? — Dis reg.

And it was important for you to get a statement from Nel at the earliest possible time? — Ja, dit is so.

And you knew you wanted a written statement from Detective (30) Sergeant Nel? — Nie noodwendig op daardie selfde dag nie; ek

wou n verklaring uit hom kry van die omstandighede wel, maar - (onvoltooid)

If Nel had been charged with murder that day and he had given you a statement, would you have written it down? -- As ek die rede daartoe gehad het, ja.

It is a simple question. If Nel had been charged with murder that day and he had given you a statement, would you have written it down? Obviously you would have written it down, colonel? It goes without saying. -- As ek rede.. ek sê mos as ek rede daartoe gehad het, ja. (10)

What reason would you have? -- As ek rede gehad het om hom te verdink van moord, beslis.

Sure. In other words, had he been a suspect? -- As hy n besliste verdagte was, ja.

Colonel, you at the time when you went to Sanlam Building on the 10th of July, 1978, you knew that Sanlam Building had acquired a certain notoriety, not so? -- Kan u net die vraag herhaal?

When you went to Sanlam Building on the afternoon of the 10th of July, 1978, you knew that Sanlam Building had acquired a certain notoriety? -- Tot n sekere mate, ja. (20)

And you knew for instance that a man by the name of George Botha had met his death in the well of that building? -- Ja.

Did you investigate that death? -- Nee.

Who investigated that? -- Nee, ek weet nie.

And you knew that Biko, Steve Biko, had received injury while being interrogated in that building, it is common cause that he had received injury? -- Ja.

And you knew that he had died as a result of those injuries, it is also common cause? -- Ek weet dat hy dood is ja. (30)

Were you not very critical of any statement made to you that afternoon by anybody who had anything to do with the deceased's detainee? -- Ek was.

And from your experience too you know that people sometimes, who are not revealing the truth, contradict themselves, not so? -- Ja.

And that on one day they may say one thing and on a subsequent occasion they may say a different thing? -- Dit is so.

And that is one of the reasons why it is necessary to (10
take down the various statements, ^{made} by a person who is called upon to give an explanation for something? Isn't that so? -- Ja, dit is so.

Can you really tell his Worship now why you didn't take (end of belt)

..was one of the last persons who had seen Tabalaza alive, in whose custody he was? -- Daar was baie mense om te ondervra. Wat die een net so belangrik soos die ander een mag wees.

But there was nothing to prevent you from actually to (20
have taped your questions and Nel's answers, on a simple tape recorder? -- Ek het dit nie tot my beskikking gehad nie en daar was - ek herhaal - daar was baie mense om te ondervra.

Did you ask Mr. Fischer whether they didn't have recording equipment at Sanlam Building? -- Nee.

Colonel, did you just accept what Sergeant Nel said to you? Did you take it at face value? -- Ek het geen rede gehad om sy verklaring te bewtwyfel nie.

Despite the fact that half an hour possibly, before his death, the deceased had expressed a very serious fear about

what/.....

what might happen to him upon his return to Sanlam Building, you had no reason whatsoever to doubt what Sergeant Nel had ^{to} tell you? — Dit is so.

That is incredible. It is incredible that a senior officer should be prepared to accept at face value what Sergeant Nel said to you, when the only other man who has made a complaint was dead and couldn't tell you what had happened and why he had gone through the window? — Ek het absoluut geen rede gehad nie.

Did you question Nel as to what had happened between him and Tabalaza that Tabalaza could make, could express this serious fear to the Magistrate? — Nie op daardie stadium nie. (10

So on the 10th of July, 1978, you didn't ask Sergeant Nel why this man should have feared an assault at Sanlam Building after his return there? — Ek kan nie sê of ek presies daardie vraag aan hom gestel het of nie. En op daardie stadium nie.

Was it not an obvious question to ask Detective Sergeant Nel? — Ek sê mos ek kannie onthou nie. Dit is moontlik dat ek wel daardie vraag aan hom gestel het. Maar ek kan nie onthou of ek presies daardie vraag die dag aan hom gestel het nie. Die vraag is wel aan hom gestel. (20

And indeed if this question had been put to Sergeant Nel on the 10th of July, 1978, and he had given a reply, isn't it an answer that you would obviously have remembered even today? — Nee, dit is so.

Let us just try and clarify the position. Do you say today that on the 10th of July, 1978, you asked Sergeant Nel why Tabalaza had told the Magistrate that he feared being assaulted if he didn't make a statement and that he feared being/. (30

being assaulted when he was returned to Sanlam Building?

— Ek het nou reeds gesê ek kan nie onthou of ek spesifiek daardie vraag so aan hom gestel het nie; ek het wel ingegaan oor die rede waarom hy sou.. probeer vasstel wat die rede sal wees waarom hy so aan die landdros gesê het. Probeer vasstel of hy aangerand was.

Do you agree with me that this is a question of the utmost importance why the deceased expressed this fear to the Magistrate? — Ja, dit is. Wat van belang was op daardie stadium was om vas te stel hoekom het die man so gesê.

(10)

Sure. — Was daar rede daartoe.

And one of the persons that could help you was Detective Sergeant Nel, not so? — Dit is so.

Ja. Now that afternoon did you ask Sergeant Nel why the man had this fear about an assault at Sanlam Building or didn't you ask him? — Ek kan nie onthou of ek die vraag op daardie manier gestel het aan hom nie. Wat ek kan onthou, is dat ek aan hom vrae gestel het oor enige redes, aanrandings, ensovoorts waarom die man so 'n bewering sou gemaak het aan die landdros.

(20)

Do we now have to conclude from what you have said, colonel, that on the 10th of July, 1978, you did specifically ask Sergeant Nel, Detective Sergeant Nel why did this man tell the Magistrate that he feared if he didn't make a statement he'd be assaulted upon being returned to Sanlam Building? — Ek het hierdie vraag baie duidelik geantwoord, ek dink so.

Colonel, I want to suggest that in fact your answers are vagued in the extreme.

(30)

MNR. ERASMUS: Die vaagheid kan ek nie sien nie, u sal dit

moet/....

moet beoordeel, maar dat hy op meer as een geleentheid beantwoord was, is korrek - ek het getel 5 keer. Hoeveel keer moet een vraag dan herhaal word en 'n antwoord herhaal word? Die vaagheid is vir u om te besluit. Ek vind niks vaag in die antwoord nie. Werklikwaar as een vraag herhaal en herhaal en herhaal moet word, wanneer gaan ons ooit klaar kry met hierdie aangeleentheid en is dit billik teenoor 'n getuie?

COURT: Do you want to reply to this argument, dr. Cooper?

DR. COOPER: No, Your Worship. I wish to continue with ^{next} my question. (10)

COURT: Will you continue with another question?

DR. COOPER: Yes, I'll continue with another question.

COURT ADJOURNS / COURT RESUMES:

—ooOoo—

HOF: Die verrigtinge word om 2 nm. hervat. Kolonel, u verstaan dat u nog onder eed verkeer? — Ja.

AANKLAER: Ekskuus tog, voordat ons begin met die verdere ondervraging, dit het onder my aandag gekom dat die hof se aandag afgelei was op 'n paar geleenthede deur lede van die publiek agter, nadat daar sekere vrae aan die kolonel gestel is. Dit het duidelik geword dat u gesteur word deur hierdie en miskien moet u daardie waarskuwing herhaal wat u verlede keer aan die publiek gerig het in die verrigtinge. (20)

HOF: Mr. die Tolk, tolk asseblief wat ek sê. Ek het reeds by twee vorige geleenthede 'n waarskuwing in die hof uitgespreek dat die publiek nie moet geluide maak wanneer getuies hulle getuienis aflê nie. Vanoggend kon ons ons werk rustig voortsit, die publiek het hulle baie mooi gedra. Maar vandat kolonel Van der Merwe in die getuiebank was, het dit meer as eenkeer gebeur dat daar geluide deur die publiek uitgegaan/..... (30)

uitgegaan het. Ek wil weereens die versoek aan die publiek rig om stil te sit in die hof. Daar moet 'n rustige atmosfeer in 'n hof wees. As dit nie so is nie, kan die hof nie sy werksaamhede rustig voortsit nie. Ons is hier om die waarheid te bepaal. Indien daar dus weer geluide uit die gehoor sal kom terwyl 'n getuie sy getuienis aflê, sal ek nie anders kan nie as om te gelas dat die publiek die hof moet verlaat. Ek hoop ek het die saak nou duidelik gestel.

Please continue your examination of this witness, (10

Dr. Cooper.

DR. COOPER: As Your Worship pleases.

Colonel, when eventually you asked Detective Sergeant Nel for his explanation why the deceased feared being assaulted upon his return to Sanlam Building, what explanation did Detective Sergeant Nel give you? -- Nee, hy kon nie 'n verduideliking gee nie.

Did you consider his inability to give an explanation satisfactory? -- Kan u daardie vraag herhaal asseblief?

Did you consider his inability to give you an explanation satisfactory? -- Onder die omstandighede ja. (20

Why did you consider it satisfactory? "Onder die omstandighede"? -- Ek kan nie van hom verwag om 'n ander man se gedagtegang te lees nie.

Now another person who interrogated the deceased was a major, is that correct? According to your evidence as I understand it? -- Nee, ek het nie spesifiek so gesê nie, maar hy was wel in bevel van die ondersoekspan.

That was Major de Jongh? -- Ja.

Did you question him about this? -- Ja. (30

..fear that the deceased had expressed to the Magistrate?

-- Ek/..

-- Ek het.

When did you question the major about that? -- Ek kan nie presies sê wanneer nie, op watter stadium nie. Dit mag dieselfde dag gewees het, maar ook hy kon nie vir my enige lig werp daarop nie.

Did you consider that satisfactory? -- Onder die omstandighede beslis.

Did you discuss this with any senior.. this aspect of Tabalaza's statement with any senior officer, security officer ? -- Ja, ek het. (10)

With whom? -- Kol. Goosen, ek glo amper met Maj. Fischer ook.

Did you investigate whether other allegations had been made of force being applied to the detainees at Sanlam Building? By other detainees? -- Ja, ek het.

Did you investigate? -- Ja.

Which other detainees had alleged that they had been assaulted at Sanlam Building? -- Ek dink ek het die vraag verkeerd verstaan. As die vraag is of ek klagtes, bewerings van aanrandings deur aangehoudenes ondersoek het, dan sê ek (20) nee. As dit die vraag is wat hy gestel het.

HOF: Nee, dit is die vraag. -- Ja nee, dan -

Of u klagtes van aanrandings op ander aangehoudenes by Sanlam-gebou ondersoek het? -- Nee.

DR. COOPER: Didn't you think it would be necessary to establish whether there were other detainees who might be able to assist you to get to the bottom of this fear which Tabalaza had expressed shortly before his death? -- Ja, ek het dit van belang geag.

In view of the fact that you considered this of impor= (30) tance, what steps did you take in this regard? -- Dit is deel

van/.....

van die rede waarom ek Jali self persoonlik ondervra het en sy verklaring geneem het.

Did you take a statement from Jali to ascertain whether he had been assaulted? -- Ja, beslis.

Is that the reason why you took a statement from Jali? -- Een van die hoofredes waarom ek self sy verklaring geneem het.

In fact how many questions did you ask Jali about a possible assault upon detained persons? -- Hierdie aspek, hoeveel vrae ek hom daarvoor gevra het, weet ek nie maar hy is deeglik daarvoor ondervra. (10)

Did you question any other detainee, persons who had been detained in Sanlam Building to ascertain whether there was any truth in this suggestion made by the deceased that he feared being assaulted at Sanlam Building? -- Nee.

Why not, colonel? -- Omdat sover ek kon vasstel hierdie aangehoudene die enigste ene is wat op die 5de vloer die dag was.

HOF: U bedoel hierdie twee? -- Ja, dit is die oorledene en Jali. (20)

Jali en die oorledene. -- Ja.

DR. COOPER: Did you not attempt to ascertain whether complaints had been made of assaults on other occasions? -- Is dit nou deur ander aangehoudenes?

Op ander aangehoudenes. Klagtes wat deur hulle -

HOF: Op watter datums? -- Nee.

DR. COOPER: Did you not think it was necessary? -- Nee.

(End of belt) tricked into making statements to members of this unit of which Sergeant Nel was a member? -- Ja, daar was ander bewerings gewees. Maar so is daar teen ander eenhede ook.

Did you not think it necessary to investigate whether an allegation of assault at Sanlam Building was part of a cause of conduct? — Nee, ek kan nie sien dat dit betrekking sal kan hê op hierdie aangeleentheid nie.

Did you not attempt to ascertain whether an assault at Sanlam Building was part of a cause of conduct? — Ja, dit is wel in gedagte gehou, die moontlikheid, maar ek kan nie sien dat dit my kon gehelp het met hierdie ondersoek nie.

Did you never in fact apart from speaking to Jali, you never interviewed any other detainee at Sanlam Building (10 to ascertain whether there were complaints of assault? — Nie persoonlik nie.

Did you ask Captain Strydom to do so? — Nee.

Why didn't you? — Ek herhaal wat ek gesê het, ek kan nie sien dat dit betrekking kan hê op hierdie aangeleentheid nie.

It might lead to explain the deceased's, Tabalaza's fear if there had been allegations of this nature in the past? — Ek kan gladnie sien dat dit enigsins betrekking kan hê op hierdie aangeleentheid nie. (20

Your evidence that on previous occasions.. let's assume for the moment, detainees had been assaulted at Sanlam Building on the very floor on which the deceased was interrogated, do you think it would have been relevant and important to place it before His Worship? — Dit was moontlik, maar ek kan maar net sê dat die 5de vloer was - ek dink daardie besondere dag vir die eerste keer gebruik.

Let's not quibble about floors, any floor in the Sanlam Building. — Die ondersoekspan was nooit by die Veiligheidskantore werksaam nie; ek dink hulle het daardie dag vir die (30 eerste keer iemand ondervra op daardie vloer.

Sover dit my kennis strek.

HOF: Waar was die ondervragings vantevore gedoen, kolonel?
? -- Alle vorige ondervragings was by New Brighton gewees.

DR. COOPER: We were led to believe by a witness this morning, and if I am wrong I would stand corrected, that this March of that year or April of that year, the "onluste eenheid" in fact occupied offices in the Sanlam Building, it was elicited this morning from a witness. -- Ek dink my Agbare vriend is verkeerd as hy verwys na die onluseenheid, Hierdie is 'n ondersoekspan. Die onluseenheid is iets anders, (10
maar dit is so dat hulle het die vloere ek dink van gedurende Maart êrens betrek, maar dit was nooit gebruik vir ondervraging van aangehoudenes nie.

Well, let's leave ^{it} at that. Would it be correct therefore you took, you accepted the major's denial that there had been any assaults in the building? You took it at face value? -- Ja, behalwe dat ek myself tevrede gestel het deur ander ook te ondervra.

But you in fact didn't interrogate Major De Jongh, did you? -- Ek het. (20

When? -- Dieselfde dag.

For how long? -- Nee, ek kan nie sê vir hoelank nie.
Dit was ook onderbroke.

Did you take any statement from him that day? -- Nee.

Did you ever take a statement from Major De Jongh? -- Ek het.

When was that? -- As ek reg onthou, was dit die Woensdag daarna.

Did he take the oath before you? -- Ja.

When you say it was a statement which you took, did you (30
actually write the statement down, or did Major De Jongh actually
have/...

have his statement typed out and did he bring it to you?
 -- Nee, ek het dit geskryf en daar is aangevul en dit is
 laat tik in sy kantoor terwyl ek daar gewag het, in die
 Veiligheidskantore terwyl ek daar gewag het.

And Sergeant Nel? -- Dit was dieselfde prosedure.

Did you actually take his statement from him, or did
 he provide you with it? -- Ek het sy verklaring geskryf met
 my eie handskrif.

Sergeant Nel was on the 13th of July and Major De Jongh -
 (interrupted) -- Dieselfde dag dink ek. (10)

The 12th of July. -- 12de, o ekskuus tog.

Colonel, apart from talking to various people that afternoon,
 did you actually investigate yourself or rather ascertain where
 and how deceased plunged from the building? -- Ek het.

Who explained to you how the deceased had managed to
 get out of the building and land on the tarmac below? --
 Daar was niemand wat dit.. n ooggetuie wat ek kon opspoor
 nie behalwe 'n man wat van buite gestaan het.

Did you interview him, or did he interview you? -- Ek
 het hom laat spreek. (20)

When did you get to know about him for the first time?
 -- Dieselfde middag, dieselfde aand.

And who interviewed this man? -- Nee, ek kan nou nie..
 ek dink dit was kaptein Strydom. Hy het in alle geval die
 opdrag gekry om 'n volledige verklaring te neem van die persoon.

Did this man claim to be an eye witness? -- Ja, ja.

Is he Mr. Gerber? -- Dit is reg ja.

Ek know that Jali made a statement to Detective Sergeant
 Nel while he was in detention, did you know that? -- Ja.

Did you ever see that statement? -- Dit was een van die (30)
 eerste aspekte van die ondersoek wat onder my aandag gebring is.

From what you tell.. from your answer I infer you did actually see the statement that Jali made? -- Ek het.

To Detective Sergeant Nel. Do you know what happened to it? -- Wie nou?

The statement made by Jali to Detective Sergeant Nel? -- Ek het onmiddellik 'n fotostaat laat maak.

We know that on the 13th of July, you saw Jali? -- Ja, dis reg.

Now whose idea was it that you should see Jali on the 13th of July? -- My eie. (10

Did Captain Strydom arrange for Jali to be brought to you? -- Nee, hy het nie.

Who arranged for Jali to be brought to you? -- Ek het hom gaan sien waar hy was.

When you went to visit Jali, did you know that Jali had already made an affidavit to Captain Strydom on the 11th of July, 1978? -- Ja.

Obviously this statement had been shown to you by Captain Strydom? -- Ek is - (tussenbeikoms)

Would you like to look at the statement? -- Ja, ek sal bly wees, dit nou lees, as ek dit net kan sien. (20

...easy. You have there exhibit U before you? -- Ek het.

And is that an affidavit by the witness Jali? -- Dis reg.

It was taken by Captain Strydom? -- Dis reg.

You had seen that affidavit? -- Ek het.

Before you spoke to Jali on the 13th? -- Ja.

And according to that statement he had never seen Lungile Tabalaza being beaten? -- Ja.

According to that statement he, Jali, had also not been hurt? -- Ja. (30

And according to Jali while he was being interrogated in

Sanlam/.....

Sanlam Building he never heard anybody scream? -- Dis reg.

So he wasn't making any allegation of mal-treatment, was he? -- Dis reg.

Either of himself or the deceased. -- Ja.

On the 13th of July, you decided you were going to talk to Jali? -- Ja.

Did you know that Jali - before you went to Jali that Jali had been taken to court on the previous day, the 12th of July, 1978? Being charged with certain offences and being convicted? -- Ja.

(10)

In view of the fact that Strydom had taken an affidavit from Jali on the 11th of July, 1978, and Jali had quite unequivocally said that he had not seen that Lungile had been beaten and that he had not been hurt, why did you think it necessary to take another affidavit on the 13th of July? -- Ek wou myself verseker dat daar nie dalk die moontlikheid was dat hy wel aangerand was of dat hy kennis dra van 'n aanranding op die oordele en dit nie aan kaptein Strydom gemeld het nie.

Captain Strydom is an experienced, efficient police officer? -- Hy is.

(20)

You had no reason to doubt, did you, that the affidavit made on the 11th of July, 1978 by Jali to Strydom was the truth? -- Ja, behalwe vir die moontlikheid dat die getuie dalk iets kon verswyg het.

So that was the reason why you wanted to speak to Jali? -- Ja.

To find out whether he was concealing any assault which may have been committed upon a deceased or upon himself? -- Ek sou eerder sê verswyg het, nagelaat het om iets onder ons aandag te bring.

(30)

The major part of this statement, the affidavit, exhibit V takes on the 13th of July, is not concerned with assault at all, is it? The first page is not at all concerned with any assault upon either Mr. Jali or the deceased? -- Dit is so, maar dit was deurgaans - deurgaans was dit in ag geneem, die moontlikheid van Erens langs die pad 'n aanranding, Of dreigemente.

But look, why did you want to take down from Jali on page 1 of exhibit V what had happened on the morning of the 10th of July, 1978? -- Dit is my funksie as 'n ondersoek= (10 beamppte om die waarheid te bepaal, die hele waarheid en niks anders as die waarheid en dit voor die hof te lê. Jy kan nie op 'n ander manier te werk gaan nie. As om 'n deeglik, volledige verklaring te neem nie.

Colonel, by the 13th of July, Jali had already been sentenced of robbery as we know and malicious injury to property. He was serving his sentence already on the 13th of July. So why was it necessary still to get from him what had happened on the morning of the 10th of July, 1978? -- Daar kon vroeër die dag al 'n aanranding of dreigemente (20 van aanranding gewees het.

Why was it necessary to set out the details of the offence in respect of which - it appears from this affidavit - he had been convicted and sentenced? -- Ek ag dit nodig.

Or was it because you wanted to show Tabalaza in a bad light? -- Tabalaza het niks met hierdie ondersoek te doen nie.

well, Tabalaza - (interrupted) -- Sy karakter het niks hiermee te doen nie.

But aren't you asked.. doesn't it mention in exhibit V (30) Tabalaza? Tabalaza is not mentioned by name, but he is referred/.....

referred to as the "oorledene". Why was it necessary to narrate it in the affidavit, exhibit V? — Ek het dit nodig geag.

But why did you consider it necessary? — Ek herhaal langs die pad êrens kon bewerings van aanranding gevees het op hom.

But you see when you deal with paragraph 3 of exhibit V there is no suggestion here of any assault by the police? — Paragraaf³ handel ook oor sy arrestasie.

Sure. But you are not suggesting that because either deceased or Jali had been roughly handled that morning during, (10 while being arrested by the police, that that would have a connection with Tabalaza jumping out of a window 3 o'clock that afternoon, are you? — Ek weet nie, dit kon gevees het.

Very well. This statement that you took, in fact starts off incorrectly? — Soos?

Didn't it start off incorrectly? — Nee, ek sal graag wil weet waar is hy verkeerd.

Would you like to know really? — Ja.

"Ek is op 12 Julie 1978 in Streekshof nr. 1 skuldig bevind op 3 aanklagte van sabotasie"? — Dis heeltemal reg. (20

Is dit 'n korrekte stelling? — Beslis. Dit is wat die getuie aan my gesê het en ek het geskryf soos wat die getuie sê. Of hy nou van enige ander misdaad skuldig bevind is of enige ander vonnis opgelê is, dit is nie ter sake nie. Ek het geskryf wat die getuie aan my gesê het.

But colonel, that is an incorrect statement. — Dis heelvaarskynlik so.

But it is not — (interrupted) — Maar dit is nie vir my om die getuie reg te help in daardie opsig nie.

You see colonel, you knew the man was going to be (30 taken to court on the 12th of July, 1978, didn't you? — That

Jali/.....

Jali was going to be taken to court? -- Ja, ek weet.

And you knew what the charges were against him? -- Ja, dis korrek.

Did you think the charges were sabotage? -- Ek kan nie anderste skryf nie, ek vra vir die getuie was jy in die hof, dan sê hy ja; was jy skuldig bevind, dan sê hy ja en dan vra ek vir hom waarvan en dit is sy vertolking van waarvan hy skuldig bevind is.

But this statement is not in the form of question and answer. -- Nee, hy is nie in die vorm van -

(10)

Sure. -- Maar dis hoe die verklaring geneem word.

But in fact you knew - did you or didn't you - that the charges against Jali were robbery and malicious injury to property? Or didn't you know that? -- Ja, ek was nie presies seker waarvan hy eers aangekla was nie.

Did you assume that he had been charged with sabotage? -- Dit was nie vir my van belang sover die neem van hierdie verklaring betref wat die man voor aangekla was nie of wat sy vonnis was nie.

But colonel, sabotage is a most serious crime, isn't it ? -- Ja.

(20)

There is a minimum sentence of 5 years for sabotage, isn't there? -- Daar is, dis reg.

And it is most serious for an accused person to be associated with, be charged with the crime of sabotage? -- Ja, dit is so.

I just don't understand that you could take a statement here that the man had been convicted of three charges of sabotage and been sentenced to 6 months imprisonment, 6 months imprisonment and 18 months imprisonment. This doesn't make sense. -- As hy vir my gesê het hy was aangekla van
verkragting/....

verklagting en was dit sy vertolking van wat in die hof met hom gebeur het, dan sou ek dit ook so geskryf het.

You know Jali was a person with very limited background, isn't it so? What education did he have? — Ja, ek dink ek kan saamstem.

I think he had Std. 5 education? — Ja.

But he has told this court and it would seem to be acceptable that he doesn't know what sabotage is? — Ek aanvaar dat hy weet nie.

And I am going to suggest to you that he never used the word "sabotage". — Nee, hy het beslis; dit was sy vertolking van waarvan hy aangekla was. (10)

Now in point of fact, when you took the statement, exhibit V, Jali spoke in Xhosa? — Dis reg.

What Jali said he spoke to the interpreter? — Dis reg.

And the interpreter interpreted to you? — Dis reg.

You don't know Xhosa? — Nee, ek ken nie Xhosa nie.

So it may very well have been the interpreter? — Maar ek kan net hier byvoeg, ek kan net byvoeg ná elke keer wat die tolk getolk het en voordat ek geskryf het, het ek die stelling weer in Afrikaans aan Jali gestel, dan het hy my in Afrikaans geantwoord. Elke keer. (20)

What did Jali say to you in Afrikaans? Or was it merely an answer of yes or no? Ja of nee? — Nee, nee, hy het 'n redelike gesprek gevoer in Afrikaans.

Well, we've had this morning another witness who spoke to Jali who said that he thought his Afrikaans was very poor? And that is what Jali's evidence is. — Nee, sy Afrikaans is redelik. Ek wil net miskien dit by sê dit is moontlik dat hy nie presies weet wat sabotasie beteken nie, ek sal nie dit betwis nie. (30)

And that this is the Interpreter's formulation of what he was saying to the Interpreter? -- Ja, dan ook sy herhaling dan daarvan, in Afrikaans.

Once the Interpreter has said this, you were found guilty of sabotage, and he went along with it? Is that correct? -- Dis moontlik so, ek sal dit nie betwis van hierdie woord nie.

You see, let's take the second paragraph. Do you have exhibit V before you, colonel? -- Ja.

"Een van die klagtes waarop ek skuldig bevind en (10
gewonnis is, hetvoortgespruit uit die roef op 'n bestuurder van 'n bakkerij, afleveringsvoertuig in Msimkastraat, New Brighton op 78-07-10 teen 08h00."

-- Dis reg.

You are not telling his Worship that that is what Jali said to you? That is not the Afrikaans that Jali spoke to you?

-- Nee, dit is so.

Obviously this is your formulation of what the Interpreter was saying to you Jali had said to him? -- Dis - nee, en ook van wat hy ^{vir} my in Afrikaans gesê het. (20

Do you think that Jali understood the word "voortgespruit"?

-- Nee, nee, ek sal nie dit sê nie.

So in fact he was (?) to words, the meaning of which he didn't know? Isn't that correct? -- Ek kan u net verseker dat wat hy aan my gesê het, het ek so nougeset moontlik op skrif gestel het.

But it is what initially the Interpreter said to you Jali had said to you that you wrote down? -- Dis reg ja.

And what Jali was saying to the Interpreter, you could not understand, the Xhosa language that Jali was using? -- Nee, (30
nee, ek kon nie.

And what the Interpreter was saying to Jali in Xhosa, you couldn't understand either? — Nee, dit is so.

And do you agree with me, colonel, that when you use an interpreter then it is really a three-cornered conversation that goes on at times, not so? — Dit is so.

And you cannot say today what the Interpreter said to Jali from time to time while Jali was making this statement? — Nee, ek kan nie sê nie.

COURT: You have concluded your examination of this witness, Dr. Cooper? (10)

DR. COOPER: Yes, Your Worship.

DEUR MNR. ERASMUS: Kolonel Van der Merwe, as Afdeling Speuroffisier is ek reg as ek aanvaar dat u nie normaalweg ondersoekwerk doen nie? — Nee, ek doen nie.

U het verskeie speurafdelings onder u? — Ja.

Onder andere die moord- en roofofenheid? — Ja.

Is Kapt. Strydom hoof van daardie afdeling? — Hy is.

In u ervaring, kolonel, is hy 'n ervare en betroubare speuroffisier? — Dit is waarom hy die pos beklee.

Hierdie is 'n belangrike pos? — Ja. (20)

Kan ek dit so aan u stel dat dit 'n uitsoekpos is werklik, die moord- en roofofenheid? — Ja.

En normaalweg aan die hof van so 'n eenheid word van jou beste manne aangestel? — Ja.

En aanvanklik in hierdie aangeleentheid daar was gladnie aan u gerapporteer dat daar 'n moord^{was} of iets van dié aard nie? — Beslis.

Tog het u Kapt. Strydom belas daarmee? — Ja.

Is dit die beste ondersoekspan wat u gehad het? — Beslis.

En uself het persoonlik belanggestel hierin? — Ja. (30)

Kolonel, is ek reg as ek aan u stel dat die rede hiervoor

is dat van overheidsweë en van polisieweë daar streng gelet word op polisie-brutaliteit? — Ja.

Keur u dit persoonlik af? — Beslis.

Keur die Departement dit af? — Ja.

En hierdie afkeuring is baie duidelik gemaak? — Baie duidelik.

Alle polisie weet daarvan? — Alle polisie.

En is dit duidelik gemaak dat as daar enige sweem van polisie-brutaliteit is dat dit ongeag die persoon ondersoek sal word en opgetree sal word? — Ja. (10)

In die praktyk word dit gedoen? — Dit word.

Die dood van 'n aangehoudene, ongeag die omstandighede — ? — Dit is so.

Ag u dit belangrik? — Ja.

Ag die Departement dit belangrik? — Ja.

En is dit hoekom u hierdie intensiewe ondersoek gelas het in hierdie omstandighede? — Dit is die rede.

Nou wil ek u net oor sekere stellings wat u gemaak het, vra, kolonel. U het aan my geleerde vriend toegegee dat daar aan die Sanlam-gebou tot 'n sekere mate 'n berugtheid gekleef het. Ek vind dit eienaardig dat daar aan 'n gebou kan berugtheid kleef, sekerlik aan sekere persone. — Ek dink dit is maar weens die vorige publisiteit. (20)

Verstaan u wat ek bedoel, kolonel? — Ja.

Die gebou kan tog niks doen nie? — Netso.

Dit is die persone? — Nee, dit is so.

En hier was twee name rondgegooi in die hof: Botha en Biko? — Dit is reg.

Het u vasgestel of majoor de Jongh, speurdersersant Nel of enige ander persoon van hierdie eenheid enigiets met Biko of Botha te doen gehad het? — Ek het. (30)

Was hulle daarby betrokke? — Nee.

Is ek korrek as ek aan u stel dat hierdie twee persone, sersant Nel en Majoor de Jongh, het niks hoegenaamd met die ondersoek van ðf Biko ðf Botha te doen gehad nie? — Dit is reg.

Die Veiligheidskantore in Saalam-gebou, kolonel, is op die 6de vloer? — Dit is reg.

HOF: U bedoel die Veiligheidspolisie se kantore?

MNR. ERASMUS: Die Veiligheidspolisie se kantore.

Hierdie onluseenheid het die 5de vloer betrek? — Dit (10
is reg.

HOF: Ek wil dit net duidelik kry, die kolonel het net nou al vir dr. Cooper reg gehelp. Hierdie was nie die onluste-teenheid nie. Hierdie was die ondersoekspan - (tussenbeikoms)

MNR. ERASMUS: Die ondersoekspan van die onluseenheid.

HOF: Is dit reg so, kolonel? — Ja, ek begin dit ookal... dit is reg.

MNR. ERASMUS: Ja, ek is jammer, edelagbare, dit is wat ek bedoel. Dit is die ondersoekspan, hulle het die 5de vloer (20
betrek? — Dis reg ja.

Kolonel hierdie ondersoekspan van die onluseenheid, hier was getuig dat hulle op daardie stadium geen ander fasiliteite gehad het nie, is dit korrek? — Ja.

Nou kolonel, u het op die 10de Julie van '78, u het opdrag gegee dat dit ondersoek word deur hierdie ondersoek-teenheid? — Dit is reg.

Is ek korrek as ek sê, kolonel, dat daar was eintlik niks om Tabalaza en Jali te verbind met die onluste nie? — Nee, daar was nie. (30

Was u opdrag dat hierdie ondersoekteenheid dit moet ondersoek
bloot/....

bloot om die moontlikheid van skakeling met die onluste na te gaan? — Dit is so. En dit is ook gegee voordat dit onder die aandag gekom het dat Tabalaza en Jali gearrester is.

HOF: Ek wonder kolonel, kan u vir ons net sê hoekom u so 'n opdrag gegee het dat hulle die moontlikheid moet ondersoek? — Dit is nou duidelik dat die opdrag het ek gegee voordat ek geweet het daar is arrestasies, daar is iemand gearrester. Nou die rede daarvoor was maar net bloot omdat die voertuig aan die brand gestee is, net bloot om seker te maak dat dit nie verband hou met die onluste nie. (10)

Met hernude uitbreek van onluste nie? — Ja.

Is dit nou omdat daar voertuie tydens die onluste aan die brand gestee was? — Ja. Omdat die voertuig nou beroof was, maar dieselfde tyd ook aan die brand gestee was, het ek net die opdrag gegee dat hulle dit moet ondersoek, net die moontlikheid dat dit dalk met die onluste betrekking mag hê.

Om duidelikheid te kry, kolonel, is dit omdat daar tydens die onluste ook dieselfde soort van ding gedoen was, net deur meer mense? — Dit is reg. (20)

MNR. ERASMUS: Die onluste het gepaard gegaan met brand? — Dis reg.

Konstant. Kolonel Van der Merwe, die afkeur wat daar bestaan in die Departement self oor polisie-brutaliteit ensovoorts, usê dit was onder die aandag van alle polisie gebring? — Ja. En dit word gereeld gedoen — elke 3 maande.

Nou wil ek u vra ten spyte hiervan, veral in onlussake wat voorgekom het, word daar gereeld bewerings gemaak van aanrandings? — Voortdurend. (30)

Word hierdie sake ondersoek? — Hulle word.

En waar dit moontlik blyk dat daar gronde kan wees word hierdie persone aangekla? — Hulle word.

Nou kolonel, u was gevra oor u belangstelling daar by die toneel die middag. Is dit gebruikelik dat 'n polisie-beampte met 'n bandopnemer in sy sak rondloop? — Nee.

Het u al ooit een geneem as u na 'n ondersoektoneel gegaan die eerste keer? — Nog nooit.

Is u bewus van enige ander polisie wat dit doen? — Nee.

Toe u geskakel was en gesê 'n man het deur die venster gespring, het u enige verdagte in gedagte gehad toe u soontoe gery het? — Nee. (10

Wanneer het u vir Kapt. Strydom opdrag gegee? — In dieselfde wyl wat ek op pad was na die Veiligheidskantore het ek hom persoonlik opdrag gegee. Per radio.

Omdat iemand dood was? — Ja.

En was hy die beste wat u aan kon dink op daardie stadium om hierdie ondersoek vir u waar te neem? — Ongetwyfeld.

Was hy teenwoordig by Sanlam-gebou daardie namiddag van 10 Julie? — Hy was.

Wat was u opdragte aan hom gewees? — Kort en bondig om hierdie hele aangeleentheid te ondersoek. (20

Alle aspekte? — Alle aspekte deeglik te ondersoek.

Nou u was gevra kolonel, hy het nou op die 11de van Juli 'n verklaring geneem, hoekom het u dan nou weer op die 13de ook 'n verklaring geneem. — Ja.

As ek u reg verstaan, sê vir my, is ek reg as ek sê dat as Speurhoof wou u uself tevrede stel in alle opsigte? — Dit is so.

As 'n speurder hom skuldig gemaak het aan wangedrag, wou u dit weet? — Ek wou dit weet. (30

Wou u ook, kolonel, sou dit nie vir u belangrik gewees het,

u soek ook na 'n rede vir die oorledene se optrede, vir Tabalaza se optrede? — Dit is so.

Sou u met my saamstem, om 'n moontlike optrede, 'n moontlike rede vir sy optrede te soek dit ook noodsaaklik is om op sy agtergrond in te gaan? — Ja, beslis.

Dit was aan u gestel dat dit blyk dat bewysstuk V se derde paragraaf daarop uit is om net vir Tabalaza swart te smeer. Maar was hierdie feitlike bewerings aan u gemaak? — Hulle was.

Nou ek beseft dit is onmoontlik om vas te stel wat in die oorledene se brein aangegaan het, maar was dit vir u belangrik om uit te vind of hy 'n agtergrond as misdadiger het ten einde 'n moontlike rede te bepaal? — Ja, dit was. (10

Is dit waarom u alle aspekte deeglik gedek het? — Ja.

Nou kolonel, u weet nou reeds hy het aan kapt. Strydom ontken dat daar enige polisie-brutaliteit was, u was nie bereid om dit sondermeer te aanvaar nie, u wou uself tevrede stel? — Ja.

Was die feit dat hy reeds skuldig bevind is iets wat u in gedagte gehou het, dat hy nou makliker sou praat want hy is reeds gestraf? — Ja. (20

Het u hom op sy gemak probeer stel? — Ek het.

Het u onder sy aandag gebring dat hy nie bevrees hoef te wees nie, u ondersoek die aangeleentheid en as polisie verkeerd opgetree het, sal u optree? — Ja.

Wie was die tolk, kolonel? — Oliphant, 'n Swart speurder.

Het u hierdie tok geken? — Ja, ek ken hom.

Het u enige rede gehad om te twyfel aan sy bekwaamheid? — Nee.

In u ondervraging van Jali het u hom enigszins probeer woorde(30 in die mond lê of hom probeer beïnvloed in sy antwoorde? — Nee,

nie in die minste nie.

So die weergawe soos geneem in bewysstuk V dit is sy weergawe soos gegee aan die tolk en soos deur u neergeskryf? — Soos gegee aan die tolk en soos gegee aan my in Afrikaans.

Was u alleen by hom gewees, u en Oliphant of was u vergesel van iemand anders? — Oorspronklik was ek by kaptein Strydom in sy kantoor waar ek hom eers ondervra het. Daarna was ek met hom in 'n kantoor saam met Oliphant alleen.

Die verklarinkie wat u gesien het wat Jali - as ek net mag terugkom, kolonel na die 10de Julie by die Sanlam-gebou nou. U sê die verklaring wat Jali voor die landdros gemaak het, was aan u getoon? (10)

HOF: Die oorledene het 'n verklaring aan die landdros gemaak.

MNR. ERASMUS: Ag, ek is jammer, jammer edelagbare. Die verklaring wat die oorledene gemaak het, was aan u getoon? — Ja, hy was.

Is hierdie tipe bewering in 'n verklaring 'n seldsame verskynsel? — Nee.

Het dit al dikwels gebeur? — Ja.

U het gesê u het dit as belangrik beskou nê? — Ja, ek het. (20)

Omdat 'n man dood is? — Ja, dis reg.

So indien daar 'n verdagte was, dan kon dit net mnr. Nel gewees het, speurdersersant Nel volgens daardie verklaring? — Ja, 'n mens kan dit so aflei.

Het u op u voorlopige ondervraging daardie middag daar enige rede of gronde gehad om hom as 'n verdagte te beskou? — Nee.

Majoor de Jongh was ook die middag teenwoordig? — Hy was.

In u ervaring is majoor de Jongh 'n ervare polisieman? — Ja.

Betroubaar? — Ja. (30)

En ek neem aan u het seker die aangeleentheid deeglik met hom/..

hom bespreek? — Ek het.

Het u die Swart polisiemanne daar ondervra die middag?
? — Nee, nie die Swartes nie.

U het hulle nie ondervra nie. Of kan u nie onthou nie?
? — Ek staan my so voor, maar ek is nie baie seker daarvan nie.
Ek is gladnie seker daarvan nie. Ek het hulle wel., ek het
wel met hulle gepraat, maar ek kan nou nie onthou of dit
dieselfde aand was nie.

Kolonel Goosen was hy teenwoordig? — Ja, hy was teenwoordig.

Is hy 'n baie senior polisie-offisier? — Hy is. (10

Is sy kantore in die Sanlam-gebou? — Dit is so.

Ek praat van ten tye van die voorval, dit is so nê? — Ja.

Het hy enige navrae gedoen alreeds op daardie stadium? —

Ek glo so.

Het u die aangeleentheid met hom bespreek? — Ja.

Wat u betref kolonel, kon u slegs gelei word deur wat
majoor de Jongh, sersant Nel, kolonel Goosen en majoor Fischer
vir u gesê het? Daardie middag? — ^{Ja,} En werkers wat daar was
op die toneel.

Werkers op die toneel ook. Het u met hulle ook gepraat &20
? — Ja. Hoofsaaklik is dit., is dit die.,

Was daar enigiets wat u agterdochtig gemaak het? — Nee.

Is ek dan reg as ek sê dat u latere optrede is bloot
inherente versigtigheid om dubbel seker te maak dat daar niks
verkeerd was nie? — Dit is so.

Weet u dat Jali na 'n geneesheer gestuur was? — My opdrag.

U het geen klagte van 'n aanranding op hom gehad nie? — Nee.

Sou ek reg wees as ek sê dat net weereens was dit absolute
versigtigheid om sekerheid te kry? — Dis reg.

Dat hy nie miskien uit vrees iets sou wegsteek nie? — Ja,
dit is so.

Kolonel Van der Merwe, in u hoedanigheid as afdelings=
speuroffisier van die Afdeling Oostelike Provinsie, het u
die hele provinsie onder u? -- die hele Oostelike Provinsie, ja.

Waar was u eie kantoor in Julie vanjaar? Waar was u
kantore? -- In Hoofstraat, Commercial Gebou.

Commercial Gebou, Hoofstraat? -- Ja, dit is daar naby
Sydenham Hotel.

U was nou gevra hoekom u nie ander aangehoudenenes onder=
vra het by die Sanlam-gebou nie. Dra u kennis normaalweg (10
van hoeveel persone daar aangehou word, of gaan die polisie
aan, die werk vloei, u het nie elke dag kennis daarvan nie?
-- Daar is nie aangehoudenenes daar nie. Daar was geen aan=
gehoudenenes daar nie. Hulle word elders aangehou.

So al wat daar was, was ondervraging van Tabalaza en
Jali deur die ondersoekenaar van die onluste-afdeling? -- Die
betrokke dag so^ver ek kon vasstel.

En as die ondervraging klaar was, sou hulle weggeneem
geewees het? -- Dis reg.

Kolonel, nà wat vasgestel is van Tabalaza en Jali, sou
die ondersoekenaar van die onluste-afdeling hulle enigszins (20
verder ^{met} hierdie twee persone bemoei het? -- Nee, ek glo dat
hulle sou gevra het dat ons weer die dossiere oorneem, die
speurtak.

Die speurtak? -- Ja, as hulle dit gedoen het, sou ek
so opdrag gegee het.

Hulle het nie die gewone loop van misdaad ondersoek nie
? -- Nee.

Roof en diefstal, messteek en die tipe goed nie? -- Nee.

Is dit korrek dat Jali was daardie selfde dag weggeneem
van die Sanlam-gebou af? -- Ja. (30)

Nou kolonel, u het aan ons getuig dat u om 'n moontlike
rede/...

rede vir die optrede van Tabalaza te vind, dit ook nodig geag het om sy agtergrond te ondersoek, te kyk of hy skakel met ander misdade? Iets wat hom moontlik kon beïnvloed om hierdie stap te neem? — Ja.

Het u getuienis gevind wat hom gekoppel het aan ander misdade?— Ander behalwe wat in die verklaring genoem word?

Ja. Ek praat van die oorledene, nie Jali nie. — Ja.

U het?— Ja.

....gevind? — Ja.

So het hy 'n misdadige agtergrond gehad wat u betref? — (10)
Wat my betref, ja.

Sou u sê dat ná die arrestasie van Tabalaza met deeglike ondersoek daardie misdadige agtergrond of ander misdade oopgevlék kon gewees het?— Beslis.

MR. COOPER: Your Worship, I question the relevance and the propriety of this line of cross-examination. Tabalaza is dead, he is not an accused. He is not facing these charges that are now levelled against him which have never been proved in a court of law and to which he can't reply. The effect ^{of it} is merely (indistinct). (20)

HOF: Ja, mnr. Erasmus?

MNR. ERASMUS: Mag ek net antwoord, edelagbare, die rede is bloot om te kyk.. ons sit met 'n situasie waar 'n man dood is. Ek gaan nie verder nie, ek gaan nie sekere misdade teen hom probeer bewys nie, ek wil dit nie bewys nie. Maar 'n man is deur 'n venster - om welke rede? Wat is die rede? Moet ek belet word om moontlike redes voor die hof te lê? Die enigste rede en die relevantheid daarvan is dat as daar iets in die agtergrond van hierdie man is waarvoor hy bang was, wat dit ookal mag wees, kan ek dit seersekerlik voor die hof lê. (30)
Om welke rede kan ek dit nie doen nie? Ek beskuldig hom van
geen/.....

geen spesifieke misdaad nie, ek weet nie. Ek dek dieselfde moontlikhede wat my geleerde vriend gedek het. Dit kan geen ander doel dien nie as om bloot 'n geestestoestand, 'n motivering te openbaar. Ek gaan dit nie verder neem as wat reeds getuig was nie. As u voel dit is irrelevant, dit behoort geskrap te word, sal ek daarby rus.

HOF: Mr. die Tolk, dr. Cooper maak beswaar teen die vrae - sal u net tolk asseblief? - wat adv. Erasmus stel. Die vrae is daarop gemik om aan te dui dat die oorledene se naam ook met ander misdrywe gekoppel word. Dr. Cooper voer (10 aan dat dit niks te doen het met sy afsterwe nie. Mr. Erasmus antwoord dat hy nie hierdie vrae vra om die oorledene swart te smeer nie. Die doel van hierdie vrae is om te kyk of daar nie 'n motief was waarom hy by die venster uitgespring het nie. Aangesien daar in Timol se saak gesê was dat Geregtelike Doodsonderzoek "a full and fair public enquiry" moet wees, voel ek dat die vrae wat tot duster gevra was, toegelaat moet wees en dit bly op die rekord staan. Ek weet nie of adv. Erasmus baie verder daarmee gaan nie. Ek sal verder oordeel as hy verdere vrae vra. U kan maar voortgaan, (20 mr. Erasmus.

MR. ERASMUS: Dankie, edelagbare. Soos ek reeds aan u getoon het, edelagbare, ek is nie van plan om dit verder te neem as wat reeds deur die getuie gesê is nie.

Kolonel, ek wil net vir u 'n stellinkie maak wat my geleerde vriend aan u gesê het. Hy het aan u gesê - en ek het syvoorrede afgeskryf - "various witnesses had at various times said that they were forced or tricked into making either confessions or statements" en u het gesê ja, dit is so nê? -- Oor die algemeen, in die verlede?

Oor die algemeen in die verlede. -- Ja.

En ek neem aan hierdie was spesifiek gedoen op u navraag van mnr. Nel, speurdersersant Nel? Wat daardie stelling aan u gemaak was. -- Nee, ek het nie die vraag so verstaan nie.

U het dit nie so verstaan nie nê? -- Nee, beslis nie.

Hierdie tipe bewering in u ervaring kom dit dikwels in hofsake voor? -- Ja.

Word dit getoets deur die hove? -- Dit word.

As u as senior speuroffisier sou hoor dat een van u speurders 'n man deur bedrog op deurwalse voorwendsels 'n ver- (10
klaring laat maak het, sal u optree daarteen? -- Beslis.

Sou 'n speurder wat soiets doen se loopbaan in gevaar wees? -- O ja, beslis.

Sal u dit ondersoek as u soiets hoor? 'n Onderzoek gelas? -- Ja, seker.

Kom ons bepaal ons nou by speurdersersant Nel. Hy was lid van die ondersoekseenheid van die onlusafdeling? -- Dis reg. Van die ondersoekspan.

Van die ondersoekspan. -- Ja.

Sou ek reg wees as ek sê, kolonel, dat hy was eintlik (20
een van die manne waarom die hele spil gedraai het? -- Dit is so.

Sou ek reg wees as ek sê dat hy het geweldig baie ondersoeke waargeneem? -- Hy het.

Hy was ontsaglik bedrywig en besig? -- Dit is so.

En het hierdie man onder uitsonderlike moeilike omstandig- hede gewerk? -- Ja, dit is so.

Sou u met my saamstem dat hy weens sy ywer besonder baie van die sake opgelos het? -- Ja, sy ywer en sy kennis. Van die Khosa taal. (30

Ek wou daarby kom, hy praat die Khosa taal goed? -- Vlot.

Sou ek ook dan reg wees as ek sê dat omdat die man die Xhosa taal goed praat, omdat hy ywerig is, omdat hy hardwerkend is, daar al hoe meer werk op sy skouers gelaai was? -- Dit is ongelukkigso.

Tot so 'n mate so dat in feitlik elke saak wat voor die Hooggeregshof of ander hove van hierdie afdeling gekom het, speurdersersant Nel by betrokke was? By die meeste van hulle? -- Die meeste van hulle.

En as daar bewerings te make was teen 'n polisieman -- ? -- Dan moet dit teen hom wees.

(10)

Dan moet dit teen hom wees nê? -- Ja.

En hierdie bewering was getoets en ondersoek? -- Keer na keer.

Ek wil aan u stel tot vervelens toe, kolonel? -- Dit ^{kan} so gestel word.

En dit was ontbloot van waarheid elke slag? -- Nog elke keer.

Dankie, edelagbare.

HOF: Kolonel, daar is net een saking wat ek asseblief duidelik moet oor hê. U sê dat toe u die verklaring van mnr. Jali geneem het, het die tolk aan u gesê wat die getuie sê dan het u dit geskryf en dan het u dit weer aan Jali herhaal en dan het hy bevestig dat dit reg is? Is dit so? So het ek vir u verstaan? -- Die tolk het getolk en onmiddellik as ek die antwoord het, dan stel ek dit aan hom in Afrikaans en hy antwoord my terug in Afrikaans en dan skryf ek neer.

(20)

O, ek verstaan ja. -- Ja.

Die verklaring is in redelik geleerde Afrikaans afgeneem. Het u die verklaring in dieselfde tipe Afrikaans aan Jali gestel of het u dit in 'n laer, plat Afrikaans..(tussenbeikoms) -- Nee, op 'n baie lae vlak, op 'n baie lae vlak. Ek kan maar

net/...

net na die woord "afleveringsvoertuig" verwys dan sal hy praat (ek noem nou net 'n voorbeeld) van die "bakery lorry". Dan sal ek vir hom vra is dit die "lorry" wat die brood elke dag aflewer? Dan sal hy sê ja, dan verstaan ek nou watter voertuig hy bedoel.

Met ander woorde u het dit aan hom in Afrikaans gestel wat u gedink het hy kan verstaan? -- Hy kan verstaan.

Nie in die Afrikaans wat u geskryf het nie? -- Nee, nie in die Afrikaans wat ek geskryf het nie.

U kan nie daardie plat Afrikaans eintlik skryf nie, dan sal dit nie mooi wees nie? -- Nee, dan sal dit.. dit sal nie mooi vloei nie. GEEN VERDERE VRAE.

S.A. Op hierdie stadium kan ek die hof inlig ek begin mōre die privaat persone roep, die ooggetuie en die ander mense wat in die plek was. Ek vra op die stadium vir 'n verdagting tot mōreoggend asseblief.

HOF VERDAAG TOT MōRE om 9v.m.

OP 21 SEPTEMBER 1978:

DUNCAN JEFFREY GERBER, v.o.e.

ONDERVRA DEUR AANKLAER: Mr. Gerber, op die 12de Julie 1978 het u 'n beëdigde verklaring gemaak in verband met die aangeleentheid wat 'n persoon van die gebou geval het by wyse.. by Sanlam-gebou nê? -- Ja.

Ek tron aan u met die hof se toestemming bewysstuk GG, is dit die verklaring wat u gemaak het? -- Ja.

Het u dit onderteken? -- Ek het dit self onderteken.

Op bladsy 2? -- Bladsy 2., bladsy 3 dink ek, neem ek aan ja.

Sal u asseblief die verklaring uitlees, inhandig as deel van die getuieis.

HOF: Getuie lees nou die verklaring uit.

AANKLAER: Nou mr. Gerber, dit is ongelukkig 'n menslike

gevoonte dat 'n mens partykeer goed rekonstruktueer, dat jy partykeer dink van dinge wat gebeur het. Ek wil u vra dat in hierdie geval, as u nie seker is van 'n vraag wat ek aan u stel nie, om vir my te sê u weet nie, maar moenie probeer om te rekonstruktueer in u brein wat u dink gebeur het nie. Wat was die beweging wat u aandag getrek het daar by die venster? -- Dit was 'n beweging op die 5de vloer. Ek was op die proses om om te draai, toe het iets my linker oog getref, toe het ek opgekyk.

Wat was die iets gewees? Kan u - (tussenbeikoms) -- (10
Dit is 'n venster wat oopgegaan het.

En nadat die venster oopgegaan het? -- Dit het so gou gebeur dat die persoon al klaar in die venster gewees het.

Het hy dus vinnig uitgeklim? -- Hy het vinnig uitgeklim, in my oë het hy homself uitgeskiet. Hy het hom weggedruk van die gebou af, van die vensterrame af.

U het ook vir die hof gesê dat dit het gelyk of hy hom van die venster af weggedruk? -- Hy het hom weggestoot soos ek sê..(tussenbeikoms).

Sal u net asseblief vir sy Edelagbare 'n klein demonstrasie (20
gee, net daar by daardie - u hoef nie deur die venster te spring nie, net daar by die muur te staan en aan te dui het hy so op sy hande gedruk of sê weg van die venster af? Met ander woorde met die gesig na die venster of met sy rug na die venster? --getuienisbank (nie in mikrofoon nie) venster hier wat so oopmaak.. (nie in mikrofoon nie) vorentoe gebeur, sy voorkant was na my toe in ander woorde, was straat se kant toe. Nee, hy het nie met sy rug so uitgeklim nie, hy het sê uitgeklim.

Hy het nie met sy rug agteroor geval met ander woorde nie? -- Nee, hy het met sy voorkant, sy voorkant, in die proses wat/...

wat hy geval het, so het hy gebuig geraak. Met ander woorde dit het gelyk of hy hom skiet, hy het homself so geskiet soos ek alreeds aangedui het.

Of hy momentum wou kry? -- Ja.

U is nou die enigste man en die laasteman wat die man gesien het daar op daardie tydstip. Is daar iets aan die oorkant van die straat waarnatoe hy kon gespring het? -- Daar is 'n gebou aan die oorkant, maar ek glo nie hy is in staat om sover te kan spring nie.

Dit is wanneer u op die grond is, dan lyk die pad breed (10 m) -- Die pad is nou wanneer jy op die grond is, dit is nie 'n baie breë straat wat - hoe kan ek sê - gelykstaande aan 'n straat gewoonlik wat jy kry in 'n oop buurte nie.

Nou die val self, u sê dat hy het so 'n ent getrek en toe so half gebuig? -- Hy het gebuig, hy het sy balans verloor. In myoë het ek gedink hy het probeer om op sy voete te lande te kom maar in die proses, hoe sal ek sê, ná hy die venster verlaat het in 'n sekere distansie, het hy sy ewewig verloor en toe het hy geswaai.

Net om een punt op te klaar, u sê dit het vir u gelyk of (20 m) hy op sy voete te lande wil kom? -- Ja, want die proses wat hy uitgespring het, die posisie wat hy uitgespring het, en sy wete was in 'n posisie om te kan land.

Soos 'n valskermspringer? -- Ja.

U sal gesien het as die bewegings was van iemand wat duik deur 'n venster? -- Hy kon definitief nie geduik het nie want hy was reeds in die venster op 'n stilstaande posisie voor hy uitgespring het.

Nou ek weet dit is moeilik vir u om te sê, maar na u skatting hoelank wat so 'n val? -- Ek sal u sê soos ek vir (30 m) die.. toe ek ondervra was, het ek gesê dit is baie gou. U kan/...

kan vir uself aanneem as jy 'n sak mielies of iets uitgooi by 'n venster of 'n voorwerp uitgooi, die tydperk wanneer dit die venster verlaat tot op die grond is 'n paar sekondes. Dit hang af van die gewig ook, van die persoon, dit was baie gou.

Die persone wat na die man toe wat daar geval het, gegaan het, het hulle iets aan hom gedoen wat u van weet? -- Hulle het hom gehelp, hulle het hom bygestaan.

Het hulle hom omgedraai? -- Nee, hulle het hom nie omgedraai nie. Dieselfde tyd toe hy geval het, het hy so gelê, hulle het gekyk.. (tussenbeikoms) (10)

Hoe het hy gelê? U sê hy het so gelê? -- Hy het gelê met sy linkerkant af in die straat, sy linkeroor. Op sy regteroor, eksknus, ek herhaal sy regteroor. Waar die bloed uitgekom het.

Kyk asseblief na foto 6 en foto 7.

HOF: Bewysstuk T nê.

AANKLAER: Bewysstuk T, edelagbare.

HOF: Foto nommer?

AANKLAER: 6 en 7, edelagbare. -- Dit is so. (20)

Wat is so? -- Die posisie wat hy gelê het, met ander woorde sy regterkant het af stasie se kant toe gewys, waar die bloed uitgekom het uit sy regteroor uit.

Soos hy nou op foto 7 lê - ? -- Op foto 7?

Is dit hoe hy beweeg het nadat hy met die grond kennis gemaak het? -- Dit is op die stilstaande posisie.

Dit is die stilstaande posisie. Dankie edelagbare.

BY MR. COOPER: Mr. Gerber, I'll be putting my questions in English, if you don't understand anything, please intimate to his Worship and if you prefer to reply in Afrikaans, you are obviously entitled to do so. -- It is quite alright.

Thank/..

Thank you very much. Mr. Gerber, after the ambulance arrived as you deposed to in your statement, what happened to you? -- What happened to me?

Yes. -- I stayed behind on the corner and I was talking to passersby there and Non-European people in dust coats of Greatermans told me it was the Security Building. I didn't know at all it was the Security Building. While I was talking there, a gentleman asked me did you see it and I said to him yes and I went over to, the Security people came to me and he showed me his card and I gave a statement out of my free will to him. (10)

Was that the very afternoon..? -- That very afternoon, I only gave my address to him.

Do you know who he was? -- No, I don't know at all. He only showed me his card, I didn't read the card, I saw the emblem.

And after that did you catch your train? -- Yes, I caught my train.

Now Mr. Gerber, you've given certain fairly precise times in your statement. For instance you say that at about 10 past 2 that afternoon, 14h10, you were at -- M.S.L. Building. (20)

At M.S.L. Building. Did you have any reason to look at the time? -- There was a clock in the place, I saw it on a lady's arm.

Were you wearing a watch at the time? -- Yes, I was trying because I've got no transport to Uitenhage, I had to work out the time for a train.

And now you left M.S.L. Executive Placing? -- Pardon?

You left M.S.L.? -- Yes, I left M.S.L. Building.

And where did you go to then? -- Down to the main station because I could have caught a train on the North End station but/..

but the next train was only 4:15 and there was no place for me to stand around or hang around, so I decided to walk down Swartkops Street as I have said before.

So you were actually whiling away the time? -- Ja, to get the time 4:15.

When you were in the vicinity of Rodney- and Strand Streets again you looked at the Campanile? -- Campanile.

To see the time? -- Yes.

Would you explain to us where you were when you were looking at the campanile? -- I was in the middle of the two main overflowing (?) in between the "dings" you can see the campanile. I had to check the time not to be late for the train. (10

When you looked at the clock, what was the time indicated? -- It was 12 minutes.. it was between quarter to and 10 to three.

And after you had seen the time, where did you go to? -- I crossed over to Rodney Street, corner.

To the Rodney Street corner. When you talk about the Rodney Street corner --? -- It is the bottom corner, the sea corner. (20

The sea corner. And that's on the opposite side of the street in which Sanlam Building is? -- Yes.

When you were on the corner, can you give us the precise position, or an approximate position? Was there a pole nearby..? -- There is no pole nearby, it is the corner of a building.

No pole there at all? -- No pole, I didn't see any pole. I was standing with my back to this angle,.. this against..

So would we say that your left side --(Interrupted) -- My right side was showing towards the station and the campanile and my left side was showing towards the Sanlam Building.

Was/...

Was there any activity ^{around} in the street? -- It was very quiet. There was only activity in Strand Street, passersby walking past.

Before this fatal plunge did anything happen that attracted your attention? -- Nothing because I was.. because actually there is a little bit of noise of cars passing, but I was thinking how to get my time passed and a train whistled on the other side and I remembered I must make up time for my train.

You didn't know a friend or a casual acquaintance (10 to pass the time of the day with you? --No, in the centre of the city.

Very well, you noticed you say a movement? -- Yes, a movement.

On the Sanlam Building? -- Yes.

How far from the top of the building was that movement? -- How far or how many storeys?

How many storeys, how many floors? -- 5 floors, the 5th floor; actually if you got to count the ground floor, even 6.

When did you discover that? -- While I was standing (30 there, I looked up. You can take it for yourself, it is granted those 6 floors.

were you counting the floors while you were standing there? -- Afterwards I counted the floors.

Did you actually go into the building afterwards? -- Into the front entrance they took me.

Were you actually taken into the building and taken to the room? -- No.

Where this man must have been? -- No.

You weren't taken up -? -- I was taken the same, very same day when they showed.. the certain person unknown to me, security police, showed me his card and he took me in and _{he}..

he asked if I was right to make a statement, ..got anything against making a statement, so I told him no.

Very well. You say it was on the 5th floor because that is how you counted the floors after the occurrence, and this movement that you saw, could you describe the movement? -- I was standing on the corner, I was on the spur of the moment of turning around and walking up Rodney Street when something caught my eye, and I looked up and I saw this: the same time the window opened and this man standing in the window. It was very, very fast. (10

And you say you saw the man standing in the window? -- In a crouched position like this.

Was he holding onto the window cill? -- No, not the window cill, the window frame.

The window frame? -- Frame, yes.

On which side of the window was he? On the inside, that is on the room side of the window? -- He was in the window frame, standing in the window frame, crouched like that.

Was he standing on top..(interrupted)-- On top of the window frame. (20

Was he standing on the window frame? -- Frame yes, the window frame. It is a wall portion there. Usually a building has got a wall portion.

It is not necessary to be indignant about it, we are trying to find out what you saw, you see. He was standing on the window frame? -- He was standing on the window frame with his hands on the, not on the window, on the window cill, on the part of the building, the structure of the building.

On the side? -- His feet were still on there.

Were his feet together? -- No, his hands were on the window frame -

On the side there? -- Yes, that keeps the window, the glass portion in.

In what direction was he looking? -- He was looking straight forward.

Now was he in a crouching position, or was he standing up? -- He was in a crouching position like this and at the same time, it was very fast, he jumped.

Did he hesitate before he jumped? -- As I have said before it was very fast, I couldn't notice if he hesitated or what. The only thing I saw, he pushed himself out and he jumped. (10

You said also in your affidavit that it appeared to you as if he, or you thought (those are your words) -- Ja, I thought.

That he was a window cleaner? -- Ja.

Who had lost his balance? -- Ja, he was in the window, but I memorized it for myself when already he fell, it was so very quick that I couldn't understand what he was doing actually.

You didn't understand it because it was an unusual position to see a person? -- Actually it is not an unusual position, you get a window cleaner or people looking out of a window.. anything. (20

You didn't give ^{me} an opportunity of finishing my question. It is an unusual position for a person to be in except if he is a window cleaner? -- Ja.

And that is why you saw this man initially? -- Ja,... a window cleaner.. (interrupted)

He may have been a window cleaner? -- Ja, that is what I thought. (30

But in fact the movement you saw was a jump? -- A jump, a man/..

man..(interrupted)

Jumping down into the street? -- Diving..?

I didn't use the word "diving". -- Oh.

Please listen to my question. -- No, it is quite alright.

But only speak a little slowly that I can follow.

Well, if you speak a little bit slowly too, we'll get somewhere. -- No, that is quite alright.

You saw this figure crouched? -- In a crouched position, yes.

You saw this figure push himself and jump straight down (10
? -- Straight down.

Into the road? -- Into the road.

..the street below. -- Street below.

HOF: Ag mnr. Gerber, ek dink u moet liever wag tot die vraag klaar gestel is en dit dan antwoord. U moenie elke deel van die vraag herhaal nie. -- Reg.

MR. COOPER: Did you, from the moment that you saw the movement in (end of belt)

-- .. plunge noise when he struck the ground.

So would it be correct to say that you had your eye on (20
the deceased? -- Yes.

I call him the deceased, from the moment that you saw the movement at the window, until the deceased hit the ground?
-- Hit the ground.

Again you demonstrated just now that the deceased was in a semi-crouched position, would that be correct to say semi-crouched position? -- Could I ask you what do you mean by semi-crouched?

Half-crouched. -- Half-crouched, yes.

With his head slightly forward? -- Actually I'll be honest with you, there was no time for me to have a good look in what/..

what position his head was in; ^{only} I noticed he was in a crouched position.

But the way you demonstrated it, it was as if -
(interrupted) -- He was in a crouched position.

Yes, as if he was in the crouched position, his head was slightly forward. -- Yes.

So the position in which the deceased was, he must have been able to see the street below him? -- Yes.

It must have been obvious? -- It must have been obvious.

And it must have been obvious that he was jumping into a street? -- Ja. (10)

It never occurred to you that this was a man who was jumping from one building to another? -- No.

You didn't get that impression? -- No, I didn't get that impression.

In fact, according to your observation, which part of the deceased struck the road surface first? -- He was in a semi-circle position, a half circle position when he struck the ground. His right leg and his head came down, I can't say for sure his head struck the ground first or his feet. But he came down straight away in that position. (20)

Could we possibly record the description that you have given? You pointed with your finger in a kind of -
(interrupted) -- He was in a horseshoe shape.

In a horseshoe shape, with his head one end of the horseshoe and his feet the other end? -- Feet the other end.

Was it in that position that he struck the surface of the road? -- Yes, he struck the surface of the road.

Is it correct to say - as you did say - "hy het nie direk op sy bo-kop geval nie"? -- No, he didn't fall on his "voorkop", on his top portion - (interrupted)

What do you mean by the "bo-kop"? -- The top surface, this surface.

The top of his head. "Maar meer op die kant van sy kop", but more on the side of the head. Would you just show his worship? -- On the side of his head, actually from the tip of his ear to the top portion.

Now on which side, the left or the right side? -- The left side.

On the left side. Have you given an accurate description now, to the best of your ability? -- To the best - (interrupted)(10

Of your observation? -- Yes, but the only thing is what I saw, I saw in a very, very limited time. It was very quick.

And what did the body do when it hit the ground? -- It made a thump noise when it hit the ground.

And did it lay perfectly still then? -- Turned lopsided in other words, he turned, yes.

Now again you have demonstrated, Mr. Gerber, would you just kind of say which side turn? -- He turned from his left side to his right side, that is why his right ear was skwing down to the sea as I have said before. (20

So did he actually turn over so that his stomach was upwards? -- Upwards.

Would we describe that, Your Worship, as an anti-clock wise movement? -- Clockwise.

Clockwise or anti-clockwise? I thought clockwise is this and anti-clockwise is that? You say clockwise.

Would you look at the photograph, exhibit T.7, have you photograph T.7 before you? -- Yes. T.7 or photo 7?

It is 7, you see it is exhibit T and all the numbers are following on. So it photo no.7 of exhibit T. We see a man (30) lying here on the surface of the road, and somebody is holding the/..

the shirt and the hand is also holding.. what appears to be the chin portion. Was this the position of the body after it had come to rest? -- That was the position when the blanket was thrown over him, he was lying there ready for the ambulance to take away.

Now were you actually close to the body? -- I was close.. I was standing on the corner; when he struck the ground, it was about 15 yards from me.

15 yards. But did you actually get closer to the body? -- I was closer, but when I saw the blood, I turned back. (10

It was obviously a sickening sight. -- Because I don't like blood.

Who went to the body first? -- The people from.. there were so many people coming out of different directions, out of a building, that I don't know. People from the.. I didn't pay attention who it was or anything because they were helping him, to stand him by.

Well, it was obvious to everybody that he was beyond all human help? -- Ja.

..pretty soon. -- Ja. He was not moving or anything. (20

Did you see anybody take photographs of the deceased as he lay in the street before he was removed by the ambulance? -- No, I didn't see anybody at all.

Were you there the whole time? -- I was there until the ambulance took him away.

As you saw the body land in the street and I'll ask you to look at photograph 6 of exhibit T, if we were to take Rodney Street and draw a.. divide it in half, then he fell in the half - (interrupted) -- Portion, section, he fell where he was lying at the moment.

He fell in the half closest to Sanlam Building? -- Ja, on the/...

the portion that is tarred, not on the pavement.

I am not sure whether you made the observation, but his feet - how far were they, if you can tell us, from the curb stone on the Sanlam side?— I didn't pay attention to that. I was more concentrating what the people were doing.

Thank you Mr. Gerber, I have no further questions,
Your Worship.

DEUR MNR. ERASMUS: Mnr. Gerber, u het nou reeds aan sy Edelagbare vertel hoe hierdie man deur die venster gekom het. As ek u reg verstaan, was dit nà hy gehurk het in die venster, is dit reg? — Ja, wat ek hom gesien het. Toe die venster oop is, het ek hom in die hurkende posisie gesien in die venster. (10

En toe het hy gespring? — Ja.

— Hy het hom weggestoot van die venster af soos ek al herhaal het.

Ja, hy het hom weggeskiet vanaf die gebou? — Vanaf die gebou.

Uitwaarts? — Uitwaarts, ja.

So asof hy wou so ver as moontlik wegspring van die gebou af? — Ek sal nie sê so ver as moontlik nie, maar hy het gmeen om van die venster weg te spring. (20

Weg te spring vanaf die venster nê? — Ja.

En ek neem aan nà hy daar op die straat geval het, dit was seker binne - ? — Dit was baie gou.

Maar binne 'n baie kort tydperk was daar seker baie mense gevees? — Dit was.. u kan sê onmiddellik nà die slag wat hy die grond gevat het, het die mense uitgekom.

Was daar baie mense gevees? — Daar was heelparty, ek sal sê ten minste 10 en meer gevees wat daar was, maar hulle het opgebou daarna.

Ek kon nie hoor nie, mnr. Gerber? — Nà., hoe kan ek sê, 'n paar oomblikke nà die persoon geval het en die eerste mense by hom gekom het, het die nuuskieriges saangedrom daar.

Dis reg, toe drom die nuuskieriges saam? — .. die nuuskieriges.

En u het 'n entjie nadergegaan..(tussenbeikoms) — Ek het nadergegaan sê plus/minus 5 - 6 treë, maar toe het ek die bloed gesien en teruggestap na die posisie waar ek gestaan het. (10)

U is toe weer hoek toe nê? — Ja, ek is weer hoek toe want ek hou nie van bloed nie.

U kon nie elke individu daar dophou, elke mens nie? — Nee, ek kon nie. Ek het wel twee persone gesien wat sy polste vasgehou het.

Maar daar kon maklik iemand met 'n kamera gewees het.. (tussenbeikoms) — Ek het nie, ek het geen kamera gesien nie. Ek het nie mense gesien met 'n kamera nie.

Mnr. Gerber, wag net so 'n klein bietjie, dat 'n mens net die vraag klaar aan u vra. U het hulle nie gesien nie. — (20) Ek het hulle nie gesien nie.

Maar dit is moontlik dat daar iemand was dat u dit gesien het in dardie gewoel? — Ja, dit is moontlik dat daar iemand gewees het.

Het iemand miskien die liggaam beweeg wat u gesien het? — Hulle het sy arms beweeg, die mense wat sy polste vasgehou het.

U het nie ander bewegings..(tussenbeikoms) — Ek het geen ander bewegings gesien nie.

Mnr. Gerber, u het aan ons gesê dat die beweging wat u (30) aandag getrek het, is toe die venster oopgaan? — Oopgaan.

Ek kan wel nie sê die venster was toe.. dit was 'n hele oop beweging nie, maar dit was 'n beweging van die venster wat oopgegaan het. Hy kon half oopgewees het.

Maar dit was 'n beweging van die venster? — Ja, die venster.

En u het toe onmiddellik opgekyk? — Ek het gekyk toe, ja. Onmiddellik nê? — Ja, onmiddellik.

En u het net een persoon daar gesien? — Ek het net een persoon daar gesien.

Geen ander beweging..(tussenbeikoms) — Ek het geen ander (10 beweging, geen ander persone in die venster.. in die gebou gesien daar nie want ek kon nie.. daar kon langsaan persone gewees het in ander vensters, maar ek het direk gekyk na die venster waar die persoon gestaan het.

Ons praat van daardie venster. — Ja.

Daar het u geen ander beweging, niks waargeneem nie? — Ek het geen ander beweging..(stem raak weg).

GEEN VERDERE VRAE.

—oo0oo—

JACOB DANIEL SCHOLTZ, v.o.e.

(20

ONDERVRA DEUR AANKLAER° Mnr. Scholtz, op die 12de Julie 1978 het u 'n beëdigde verklaring gemaak aan kapt. Strydom?

— Dis reg.

Ek toon aan u met die hof se toestemming bewysstuk HH, is dit die beëdigde verklaring wat u gemaak het? Kyk na die handtekening onder? — Ja, dit is hy.

Sal u dit asseblief nou uitlees, inhandig, bevestig as deel van u getuienis?

HOF: Getuie lees nou die verklaring uit.

AANKLAER: Ek het aan u net een vraag. Wat is die gewig (30 van hierdie tralies? Hoeveel veeg hulle omtrent? 'n Stel.. nie

'n stel nie, 'n enkel - ? -- Wel ek kan nou nie presies sê
nie, maar ek sal sê meer of min omtrent 20 na 25 kilogram.

Is dit nou vir 'n stel nê? -- Ja, dit is nou een venster
s'n.

Ja. Hierdie kontrak wat u gehad het, was dit van
Publieke Werke gewees, Openbare Werke, Departement Openbare
Werke of van die Polisie? -- Ek dink dit is van die -
P.W.D.? -- Ja.

Wanneer het u daardie vloer voltooi, klaar gemaak? --
Wel ek het daardie more, ek het op die 10de daar begin en ek (10
het die volgende dag klaar gemaak daar.

Toe is alles klaar? -- Ja, toe is alles klaar.

Dankie edelagbare.

BY MR. COOPER: Mr. Scholtz, I'll put my questions in English.

If you have any difficulty whatsoever, would you kindly
inform his Worship and me, obviously you are entitled to
answer my questions in whichever language is suitable for
you and there is the Interpreter as well.. for help as well.
-- I will try my best to answer it in English for you.

We appreciate it very much. (20

HOF: U kan in Afrikaans ook antwoord as u wil. -- Baie
dankie edelagbare,

MR. COOPER: I can assure you my questions will be of a
very straight-forward nature, they will not be complicated
and I hope you'll understand me.

Now Mr. Scholtz, you and your two assistants, did you
only work on the 5th floor that day? -- Ja, we only worked
on the 5th floor that day.

To get to the 5th floor you had to go up in a lift,
had you not? -- That is correct. (30

And when you got to the lift to get into the part of the
floor/.....

floor which was occupied on which you worked, did you have to go through a gate, or was there no gate there? -- There was no gate, I was supposed to put a gate up there.

You were supposed to erect a gate? -- That's right.

Now the rooms on which you worked, ran along Rodney Street, no/so? -- Ja, Rodney Street and.. no, no, not Strand Street because.. ja, it was Rodney Street and on Strand Street side as well.

Strand Street side. And where did you start your work there? -- Well, I started in the room next to the one which that Black man jumped out. (10)

You were told a Black man jumped out of room.. which one was that? -- I couldn't remember the room's number.

If we gave you a plan, would that help you? -- That may be would.

Your worship, is there a plan that I can show to the witness? It is exhibit [?] S. Would you place that exhibit S before you so that Rodney Street is at the top? -- I beg your pardon?

So that Rodney Street is at the top. Just take your time, look at the plan. Do you see Rodney Street? -- You want Rodney Street to the top? (20)

Yes? -- That's right.

Because that is easier, isn't it? -- Ja, it is easier.

Now you can visualise in your mind the building? -- Ja,

The Sanlam Building above Rodney Street? -- Ja.

And Strand Street on - according to this plan - which side would it be? On the left or right? -- Strand Street will be on my left.

On your left, fine. -- Ja.

Now - I'll immediately assist you - where you see a big

"B"/....

"B" -- can you see the big "B"? -- That's right.

That is alleged to have been the room from which the deceased plunged to his death. Is that also the room that you were shown? -- Ja.

And told afterwards that the man had been in that room before his death? -- Well, the man had been there when I walked through there.

Was that the room in which you saw a man as well? -- Ja.

Now you will see that there is a room no.C and then there is room no.D, marked D, that is to the right of C. (10
 -- Ja, I see this marking.

Then if you let your.. take your eye down to the bottom right hand part of exhibit S, the plan, you see E? -- That is correct.

And can you now in the middle of the plan see where the lift is? -- Ja, you can see where the lift is.

And can you see also where the entrance is to the floor? -- Ja, you can see that.

You can see that. Do you understand the plan now? -- Ja, I do understand that plan. (20

How many rooms did you fit that day? -- Altogether I fitted 1, 2, 3 and then one rail to the one room only, and then that big door.

We want to first of all.. you fitted three rooms and which were those rooms that you fitted? -- It was B and the one next to it which hasn't got a mark in it.

That is one to the left? -- One to the left of B.

Well now, you fitted that one? -- That one and then, you see I had a certain time to start this room which is also not marked, on your left hand side at the bottom, the second one from the bottom. That one.

Is that just below the entrance? -- That is just the below the entrance.

To the left of the entrance? -- To the left.

I think we understand you, -- You see I only had from half past 10 to I think 12 o'clock to do these windows because they were busy with some other work in there, you see. I wasn't allowed to work there while they were busy working there. So they asked me to come after half past 10 to finish this room off before I go to the other rooms again.

Which room did you work in after half past 10? -- Well, (10) when I finished this, I started working on this big gate, you know, as you come out of the lift, I started fixing that first.

Mr. Scholtz, which rooms did you work on first that day? -- I started on this room which I have just mentioned, the one left of B.

Left of B? -- Ja, left of B, it hasn't got a mark there.

Did you actually fit these iron bars to the windows? -- That is correct.

Of the room adjacent to B? -- That's right. (20)

To the left of B? -- To the left of B.

Did you finish that job? -- No, I did not finish because I had to go to this other room to go and finish that first.

The other room that you are referring to is the one, is to the left of the entrance? -- That is correct.

And when did you go to that room? -- To which room? The one on the left from the entrance?

Yes, to the left of the entrance. -- Just after half past 10.

And until what time were you there? -- Approximately till (30) about half past, I'd say half past 11, quarter to 12.

And while you were at this room which is to the left of F - could we call it G, sir?

COURT: Yes, mark it G.

MR. COOPER: Mr. Interpreter, would you mark it G please?

HOF: By daardie kamer wat u eerste gedoen het, u het Getuie:—
hom gemerk met 'n G, O, die een wat ek eerste gedoen het.

O nee. Which one was to be marked G?

MR. COOPER: Dit is die een wat u eerste gedoen het, ons noem hom maar G.

HOF: Maak die een eerste G. (10

MR. COOPER: En dan die tweede kamer, the second room which is next to the left of the entrance, we call that H. Thank you, Mr. Scholtz.

Now Mr. Scholtz - (interrupted) -- Excuse me, I forgot, after I did room H, I fitted a single one in this other room, you know just.. before you go into room H, you pass room H and you turn to your left, there is another office there, like a little store. I fitted that one before I went to this big door.

Shall we just recapitulate? You first of all did room G? -- Ja. (20

Which you didn't complete? -- No, I did not complete room G.

Then you went from room G and you went to room H? -- That is correct.

Correct? -- That's correct.

And you were at that room until about - ? -- Until about half past 11 I'd say.

Half past 11. -- Ja.

And you thereafter worked on bars to windows of a little room..(interrupted) -- That's correct. (30

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