



Memoirs of George Bizos

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Memoirs of GEORGE BIZOS

(With emphasis on his legal career)

As related to Thomas Karis and Gail Gerhart

New York, October 1989

Day 1: October 7, 1989

[Nonverbatim: At the time the Germans occupied Greece in 1941, I was at school in Kalamata, which is near my home town of Vasilitsi, near Koroni in the south of Greece, where my father was a prominent citizen, having been the mayor at one time. In 1941 I was thirteen. Seven allied soldiers from New Zealand were being sheltered in our home town, and we were warned that there might be reprisals against my father. He arranged for someone to get a permit to take a boat out of the harbor, and with others we set out for Crete. My mother was reluctant to see us go, but we had always heard tales of how the Turkish janissaries pressed men from the conquered territories into their armies, and she feared the Germans might do the same. The rest of the family came to join us in South Africa only in the 1950s.

Whilst preparing to set out to sea, we saw German aircraft going over. They had black crosses painted on their undersides. We didn't know that they were heading for Crete. On the third day at sea we saw a large fleet of war ships, and one of the soldiers on our boat signalled to them with a mirror. We were off course to the west. One of the ships veered over and picked us up. It was the British fleet. They told us that Crete was about to fall to the Germans.

They took us to Egypt, where we stayed about two months in mid-1941. My father was housed in a camp at the sports club on Gezira [Zamalek] island in Cairo, and I was sent to stay at a Greek orphanage in Alexandria, where I stayed for about a month. Refugees were being moved out, with single people being sent to India and families being sent to South Africa. We went by train to Suez and travelled on the Ile de France to Durban. I had a taste of violence on the train when some Gurkha troops threw one of their officers out of a window and the train had to back up to get his body. I was impressed by the sight of strange men with turbans.

When we landed at Durban there were African men at the docks with rickshaws. To me they seemed like men doing beasts' work. Later when my children were small and we holidayed in Durban, the rickshaw men were all dressed up for tourists and my sons wanted to go for a ride, but I refused to let anyone go. Somehow I could not bring myself to tell my sons then what I have said to you now.

We were taken by train to Johannesburg. Some Greek families looked after for us for a few months. I still remember the imposing facade of the Johannesburg station, though the place where we got off the train was in Braamfontein. I went for a few days to a school where I was laughed at because I couldn't speak English, so I quit and started working behind the counter in a Greek shop. My father got a job at an ISCOR munitions factory in Pretoria, while I remained in Johannesburg, living first in a YMCA, then in a small room near the shop. I worked in the shop for about a year before I went back to school.

Nearby there was a bicycle shop, and the daughter of the owner was a sixth grade teacher at a predominantly Jewish school. Her name was Cecilia Feinstein. In September 1941 the Sunday Times had run a story on my father helping allied troops out of Nazi-occupied Greece. There was a photo of my

father and me (in a cap); the title of the story had the word "Odyssey" in it. This teacher had seen the picture and took an interest in me. I started in her school.] (Verbatim transcription now begins)

I had missed six months of school in Greece, and almost eighteen months in South Africa, so I was about eighteen months to two years older than the rest of the class. But it didn't matter. I continued to live in the room and work after school in the shop. I caught a tram to school everyday. My English by then was enough to be able to participate. In fact, her concern over me was so great that my relationship with the class was such that I was viewed as the teacher's pet. I was held out as an example of what a chap could do if he really tried. This was a school in a poor area. Most of the students' ambitions were to become tradesmen. The school only went up to Standard eight.

I remember Miss Brown taught us English, an emotional woman, in retrospect I think a great admirer of the British Empire. One time she was reading aloud to us from *The Prisoner of Zenda*, and she read out a sentence "I'll bet you a crown he'll never be crowned." And I laughed. She threw the book down and she said she's sick and tired of teaching this class. Here is the only foreigner in the class and he's the only one to catch the pun. She had to explain it to the rest of the class. This didn't make me popular with the rest of the class.

Cecilia Feinstein gave me lessons. She lived on top of a hill between the school and the shop where I was working. I would go for math and English lessons. She would give me a light slap when I would lapse into Greek in reciting the multiplication tables. It's very hard when you learn them by heart in one language to then recite them in another. Later she got married and left the area. But meanwhile she arranged for me to go to a predominantly Jewish high school, Athlone Boys High School, where I did my last three years of school. My English improved, and I even almost got a part in a play, *The Barretts of Wimpole Street*. I had a lot of self-confidence. I was also a sort of a hero in that school because I was a refugee from the Nazis. I was happy there. I was still working in the shop.

While I was at school, my father left his job and did what all Greeks do in South Africa and tried his hand at business. Though he had no experience. He opened a cafe. But what was significant about it was that it was directly opposite to the offices of Die Vaderland . It was on Plein Street in Johannesburg, near the corner of de Villiers, near the station. My father's shop was directly opposite the loudspeaker which broadcast during the 1948 election campaign (in Afrikaans): "Come vote, ladies and gentlemen, vote for a white South Africa! Vote National!"

My father's business didn't go well. I finished school in 1948. My father wanted me to do medicine, but when I applied I didn't get in. The places were being given first to returning soldiers. So it was decided that I would first do a year in arts, then reapply when the pressure from the ex-servicemen was lower.

[How did you first become politically conscious?] In Greece I remember political rallies with my father and his friends participating and throwing their caps in the air when the local MP came. But I did not really understand much. Zionist socialism was probably the first political activity that I came across. Most of my schoolmates were Zionists, and the establishment of Israel was very high up for them. In fact my best friend left South Africa as soon as he got his matric certificate and went to Israel. There were meetings held regularly at the school, and I sometimes went there, about the plight of the Jewish people. And these same people were interested in South African questions; they were very concerned about the plight of the black people.

[When did you first meet a politically articulate black?] Only later. But perhaps my perspective should be seen in the context of that time. My generation was too young to fight in the war, but old enough to know and understand what we were told the war was being fought for, equality and self-determination, and so on. In fact we got copies of the Atlantic Charter, and there's quite an interesting story about that.

In those days there was a "basic English" movement, which wanted to reduce English to a basic vocabulary that everyone could understand. Only 850 to 1000 words. And this would enable you to communicate. And as an exercise, on very nice rice paper, when I wanted a copy of the Atlantic Charter, all I could find was one in this basic English, with the actual charter printed on the other side. It was to show that you could express the loftiest ideals without using highfalutin language.

So we actually believed that with the end of the war a better world would actually come. In addition, the City Hall steps in Johannesburg, particularly on a Sunday evening, was a meeting place, and from time to time I went there and heard people like Hilda Watts, (Hilda Bernstein), who had been elected to the City Council for the Communist Party, and Solly Sachs. And there was a man whose name I've forgotten who was the most romantic figure of all. He would come to the City Hall steps on a horse. He was I think a Georgian, that is a follower of Henry George who said that no value should be placed on land. There was a time, earlier, when meetings were broken up on the steps, but by the time I started going that was no longer so. Nazism and fascism had become so unpopular,

and the Ossewabrandwag had disbanded, so there was no violence. You even sometimes saw black people using the ad hoc platform of the steps.

Quite by accident, I met Dr. Xuma one time. No white doctor would actually see a black person. The cleaner in the shop where I was working got ill. He was a fine, tall Zulu who had been taught by the people running the shop some Greek freedom songs, quite unwittingly. They never thought he would understand them or relate them to his own situation. Anyway, he became ill, and nobody thought of calling the doctor that would have looked after any of us. But somebody had heard that there was a black doctor, so we telephoned him and he came in his white coat. So I met him. Then I was just what in South Africa would be called the picannin, the young one who led him to the room. I didn't really know anything about the ANC or the Youth League or anything like that. It would probably have been during the period of his presidency of the ANC, but it meant nothing to me.

[Did your father's political interests in Greece carry over to South Africa?] No. My father never had much money. For him the transfer to the new country didn't go very well. Even the few pounds we had been paid by the British for the loss of our boat had been stolen from us. My father never learned English well, and he wasn't successful in business. The only thing he became very involved in was trying to save a certain Greek church in Pretoria from demolition. Eventually it was torn down, but not till there had been a court case. Some others in the Greek community tried to prevail on me to restrain him in the matter, but I declined because he (unlike more typical Greek fathers) had never tried to restrain me from doing what I did as a student radical at university. When people told him he should speak to me, he just shrugged and told them I knew what I was doing and if I made mistakes I would learn from them.

At the University [of the Witwatersrand] most of the student leaders had fought in the war. There was George Clayton who was a brilliant fellow, and others. Some very substantial people. They were mainly older, some with families, and they took their lives seriously. They also considered the contribution and sacrifices they had made, and expected a better world. I benefitted from being associated with such people.

I did a course in political theory with Livingstone, who was quite good. But the professor was a very conservative man called White. He thought that the most noted twentieth century philosopher was Walter Lippmann, and we had to study him. His lectures consisted of what does Lippmann say about this.

I did a six-year course, three for a BA, then three for the LLB. You couldn't start law till you had a first degree. I went to university in 1949, and I became a member of the SRC [Students Representative Council] in 1950. University politics were fairly well controlled by an amorphous body called "the left". I was never really in the inner circle of that body. The inner core was probably Marxist. The titular leader when I got there was Harold Wolpe. He was a law student while I was an arts student. He was the first

SRC president I served under. The nominations were discussed. One of the reasons the left swept the board always was that the vote wasn't split. They were good politicians.

Without ever being part of the inner circles, I think I first made my mark when it was being discussed what we should do about the Nationalist threat. Should the university be closed to black students because they had come to power in 1948? And I made a speech, and I made sure that I was heard. And with my youthful enthusiasm and my over-confidence, I actually said that talking was not enough! And that we should tell the government that if they introduced this measure (to segregate universities) that we would not come to classes. We would go on strike. This was the first time that anybody had ever suggested anything like that. It became a much talked about thing.

So Lionel Forman from the SRC, who was then a law student, called me in, singled me out. He was with three others whom I don't remember. They told me they liked my spirit, but I was too much of an individualist, and didn't appreciate tactics. Before introducing a measure like mine, the ground had to be prepared and so on.

There was a nomination meeting to which I was invited. All the seats had been assigned, but there was still one vacancy on the 'left' slate, and there were two aspirant candidates, me and Jeff Levinson, who's now a judge. Jeff said let's vote on it. But Harold Wolpe who was chairing said there's not going to be any vote. We have other business; the two of you go outside and sort it out. Let one try to persuade the other. I persuaded Jeff that he should withdraw. So that group of progressives was elected; eight candidates were put forward, and eight were elected.

What kept me out of the inner circle was my next action. There was a vote of no confidence in this SRC moved, and a show of hands was called for at a big meeting. When the votes were counted, the motion of no confidence was defeated by only 14 votes, out of the 1100-odd people present. It was 540 to 554 or so. I don't remember precisely what the issue was. It was some tactical issue where it was suggested that the SRC had overstepped its bounds. The allegation was that the SRC was out of step with student opinion. The reason was that the election procedure was unfair. You voted by faculty; each faculty elected a representative. But you would find that the progressives, or the left, or call them what you will, had one candidate, and there would be say 300 votes for that candidate. Then there would be three other candidates who would each get 250 votes. The ostensible issue was something about voting funds for the rugby club, but during the no confidence debate the movers of the motion complained about the electoral procedure and were urging a system of proportional representation. The greatest proponent of this was Michael O'Dowd. Very brilliant, matter-of-fact, prosaic, unemotional, he sort of chopped away. He also had been humiliated by moving a previous motion which had trouble getting a seconder.

When the vote was such a narrow one of only 14 votes, it looked like that was that. And I don't know what got into my head, but I stood up and said I'm a member of this SRC, and I'm not prepared to continue being on the SRC by such a narrow vote, and that there should be a referendum. When I said that, although the meeting was about to break up,

there was absolute joy and they would not allow the chairman to go away. He should now take a vote on whether the matter should rest there, or be put to a referendum. So the meeting voted for a referendum, and this was absolute disaster. Over 3,000 voted for a scrapping of the electoral process, and only 1,600 voted confidence in the system. The SRC had to resign. There was a chorus of discontent. (I don't know if Michael O'Dowd remembers that). Michael is a most uncommunicative fellow, though we sit on the same board at the Centre for Applied Legal Studies. He's very aloof and maybe shy. He hardly greets me or for that matter anyone else.

But the same people except for maybe one or two, got the nominations for the new SRC and were reelected. Which actually showed how good the electoral system was if used by a well-organized group. The SRC at that time was not recognised by the statute or charter of the university. Later there was

statutory recognition. A new constitution was drawn up with a changed electoral system. Our SRC was reelected under the old system, in which the constitution said if there's a vote of no confidence within so many days there will be new nominations etc. And there was no objection to my submitting my name again for nomination for the progressive group.

Because I had to work, I never sought executive position. But I then became a sort of front-bencher in moving resolutions, and I worked in close association with the other leaders, Godfrey Getz, Dan Goldstein, and others. I was elected leader of our delegation to NUSAS in 1953, and things like that. But I believe that I was thought to be too undisciplined.

There were very few black students in the SRC. There was one there ex officio, with whom I became quite friendly though our contact was limited. He was a science student, and the leader of a student residence. The leader of each residence was an ex officio member of the SRC. There were some black medical students. The year after there were two black students on the SRC. One was Abraham Mashugane, who actually still works at the university. He's one of the fellows who found a haven, he just became part of the furniture. He works in the library.

I knew Motlana, who had a scholarship established by the SRC, but the Youth Leaguer with whom I really became friends was Duma Nokwe. That was part of my education. In addition, Ismail Mahomed was a brilliant young man. He was elected onto the SRC and in his first year became minute secretary and was pushed up. He was able to express himself particularly powerfully. He actually showed what sort of material we were keeping out (when blacks were excluded). And there were other people, Peter Mofokeng, and others.

But I can't say that I had any really meaningful contacts with black people until I met Duma Nokwe. He used to come study in my room, when I finished my arts course and was in the law faculty.

Probably the best teacher we had in the law faculty was Professor Hahlo. He was a German Jew who had converted to Catholicism. He really wanted to become part of the English upper crust in South African society. People he had known in Germany came as refugees and worked in garages and later came to the law school, but he wouldn't speak German to them. Like he just wanted to forget them. He also became very unpopular with Jews because he had written a book whilst in Germany called *The Shortest Way for the Jews*, which was assimilation. He became the dean in the late 1940s at Wits Law School.

We had eight black students in the law school. There was an annual dinner to which judges and prominent lawyers were invited. And for the first time, at my inciting and this time in consultation with the others, we said to all eight of them to put their names down for the dinner. It was contended that in academic matters there was integration, but this was social. There was always trouble at the SRC budgeting meeting because people questioned why we were voting a hundred pounds for a social event where students would just eat and drink. We always managed to justify it by saying it was part of the professional training, to eat dinner with judges. But the SRC was divided, and it tended to slip through because there was just a precedent for giving the hundred pounds. Harry Nestadt, who's now on the court of appeal, was the secretary of the Law Students' Council. He took the list of who was to come to the dinner and noticed the blacks.

Hahlo called me in and told me to have the names of the blacks withdrawn from the list. The dinner would be held at a licensed premises which would be breaking the law if it served alcohol to blacks. It wouldn't do to put the judges in a situation where they had to close their eyes while an offense was being committed. So the blacks then came to us and me in particular and reported what had been said. I said that the SRC vote was coming up in three weeks time, and if any pressure was put on any black student to withdraw, it probably wouldn't be possible to get the money voted since it was problematical every year.

The guy who would have to get it through was named Worrall, probably related to [Dennis] Worrall, and I said he'd have a tough time.

At this time I was already in the law faculty but I was a hold-over on the SRC from the election which took place when I was still an arts student. At the end of my seminar with Hahlo, he said with his Germanic accent, "Mr Bye-zose, will you see me in my office please". And he tried to soft soap me. He said he understood that I was an influential man on the campus, and he then started a big spiel about the brotherhood of the legal profession. We are all brothers and we must stick together. And I must now forget that I was elected by another faculty, I am now a law student, and my loyalty must be to the law faculty. He hears if I oppose the hundred pound grant, then it has no chance of getting through. He's obviously been told that if the left or the progressives cut it out, that was it. He said that the blacks didn't belong at a social event. I did not budge.

But they came. Ramsbottom was the senior judge, and he didn't say anything. In fact in the hour of drinks before the dinner, Ramsbottom, who was a liberal, spent most of his

time asking the black students about their background, how they had come to the university, how they were managing, and that sort of thing.

Incidentally, there was a lot of controversy while this was going on. I remember one meeting where some law students were arguing over why we should follow tradition in the matter, that is the tradition of segregation in social matters. Others said this wasn't the tradition. Then a young student named Arthur Chaskalson stood up. I had only known him as a very good commerce student, completely unpolitical, didn't take part in things except to be the best goal keeper the soccer team had had, and the best wicket-keeper the cricket team had had. He was noted for wearing glasses stuck down with plaster. I didn't know him. He stood up and said in this impatient way which he sometimes uses, "Mr Chairman, I don't like one bit what is going on in this meeting. We're all quarreling and arguing about what is the tradition. Why don't we talk about something else, like what's right and what's wrong?" And that's all he said. It cut right through all the rubbish on the question of whether the black students should attend the dinner and similar matters. This was 1952.

(Topics discussed at lunch, which were unrecorded): [NUSAS was split at one point in early 1950s over whether to disaffiliate from the IUS, the pro-socialist International Union of Students. Albie Sachs's reference to his UCT falling out with Benjy Pogrand referred to this because Benjy was opposed to Wolpe's pro-IUS position. The NUSAS president was a woman named Pat Arnett who later married Michael O'Dowd. George was never an office holder in NUSAS. Some students were against being made "dupes of communism," others said some were "dupes of the CIA." John Didcott accepted an invitation to tour the far east from some Brussels-based student organization that was pro-west, and later he joked about finding out he'd been a dupe of the CIA when the whole student thing broke open in 1967.]

Later I shared chambers with Duma Nokwe. From the time he came to the bar in 1956, very shortly before he was arrested on a charge of treason, until 1962 when he left South Africa. His being able to have chambers was a big thing. There was an attempt to split the bar, in which John Vorster took part. He was a member of the Johannesburg bar for a short while, before becoming Minister of Justice. And some of the members of the bar allied themselves with his attempts. The fact that I shared chambers with him, and that it was unlawful for him to occupy chambers in the building, led to a lot of trouble and a lot of division among members of the bar. It was illegal in terms of the Urban Areas Act, and also the Group Areas Act, because he was a disqualified person.

How did I get away with it? The bar was led by Issy Maisels at the time, Walter Pollak, Morris Franks, Bill Trollip, and other people who were sympathetically disposed towards Nokwe. The most prestigious group of advocates at the time was Maisels' group, which Maisels and Pollak and Trollip were in, and I was given chambers in that group. Very difficult to get in, but I got in. This was a group just for

purposes of arrangement of the chambers. You're not in a firm; you're independent, but you have a common pool of typists, a telephonist and a clerk, and you occupy your own

office. Also if you were a junior you had to share an office with more than one desk. And if you had people to confer with, the one who was not conferring would go out.

And Nokwe's name was put up on my door. This of course angered Vorster and others. Nokwe was the first African to qualify for the bar, and he was good. He handled himself well in court. He didn't have any hang-ups. He could cross-examine.

[How much time did he spend with the ANC?] Before the Treason Trial started, he would clear off just after 4 o'clock to go to meetings. After he qualified and became a member of the bar-- When did he become secretary? After Sisulu he became acting secretary-general. He was certainly an assistant secretary by the time he was in my chambers. He did a lot of the secretarial work. [In 1955 he was elected to the ANC national executive committee and became secretary of the working committee. In December 1958 he was elected secretary general.]

In one of Nokwe's first cases he was briefed by a leading mining house. He showed me the brief. It was to hold an indaba with a tribe where the mining house wanted to acquire the mineral rights. And he was very concerned about it. He had asked his political colleagues what was the right thing to do, and they could come out with no clear answer. And he discussed it with me, and I took him in to Walter Pollak. Walter Pollak was close to me because he had taken a ten months sabbatical and this is really how I got into the group, through the back door. He allowed me to use his room whilst he was away, with a marvelous library and marvelous facilities, rent-free, oncondition that I helped him index his opinions.

And I took Duma into Walter Pollak and he smiled and said, well, you have an important brief, you're obliged to take it. But you must seriously consider to say to the tribe or whoever you meet that you are the lawyer for the mining house, that you are representing their interests, and they were free to do what they wanted and he was not there to give them advice, but that it would be best for them if they sought independent legal advice. And he should tell his client, the mining house, that this was how he was going to do it. And he got a fee, at the sort of hourly level, which was about three guineas at the time. So he was paid, but that was the last time he heard from any client of that sort.

He was beaten up in the middle of the night coming back from a party. The Treason Trial of course cut badly into his practice. But for me he was a very good friend. We actually had very good and detailed discussions about how he saw the situation and the struggle. Hewas the first real ANC person that I had anything to do with.

[Was he a close friend of Joe Matthews?] I don't know that you would call them close friends. Joe was at the University in my time, but not in the law faculty. It was always very hard to find out precisely what Joe Matthews was doing. I have no recollection of their being close friends, and I actually doubt it. (It may be that they were at St. Peter's together in earlier years), but their life styles and their attitudes were quite different inthe late 1950s. Joe didn't appear to be short of money. He always was well dressed. And at

the time he didn't really throw himself into any activity. But it may be because his sojourn at the university in Johannesburg was a brief one.

As law students we had our classes starting from 4 in the afternoon up to seven. We then went out and had dinner, and some of us would then come back and study together and discuss the readings until the library closed at 11:30. A problem for the nonwhite students (as we then called them) was that there were no restaurants that would serve them, and also they had to leave early to catch the last train to Soweto about 9:15. One evening I grabbed a very quick dinner at the cafe where I usually ate, and came back about 7:20 to the room where we studied. And Nokwe was sitting alone in the room eating some fish and

chips. He seemed embarrassed that I should find him there. We got to talking and I began to see how difficult his life was. He had been a teacher but had lost his job because of opposition to Bantu education. So had his wife. He had a family, several children.

I asked him the usually question of those times, about what tribe he came from. And he explained that one of his parents was Xhosa, one was Sotho, and their common language was Afrikaans.

And of course he was friendly with Mandela and Tambo whom I had not known at the university because they were there in earlier times. This very same Hahlo had forced Mandela out of the LLB faculty by refusing to let him sit a supplementary examination. And he had to be satisfied with a lesser degree. Hahlo believed that law was a social science and was not a fit subject for black people, because it required savoir faire. He later left South Africa and moved to McGill. And I heard he let it be known that he left South Africa because he couldn't stomach apartheid, but that was after Sharpeville.

And incidentally the man who's writing a history of Wits has found a letter from Mandela to Hahlo, asking him for the opportunity to write the one subject that would have allowed him to get the degree. And he told me to ask Nelson whether he had ever received a letter from the historian wanting to know whether Mandela felt that his not having completed the Wits degree was a result of racial prejudice. Nelson did not reply. But he did receive the letter from the Wits historian. He decided not to reply, and it's characteristic of him that he said Wits is doing a good job at the moment. Let the historian decide what the position was without my comment. I don't want to go down on record at this stage with anything against Wits.

But this has side-tracked me from the Nokwe story. Nokwe knew Mandela and he knew Tambo, and he was employed as a clerk by Harry Bloom, who wrote Transvaal Episode. His firm was Bloom and Warner, and he would say "there's no Warner, but it sounds nice". Duma was working for him. And he was well treated and well trained. And as soon as I qualified, he introduced me to Nelson and Oliver, which was a very useful introduction. Because as a young barrister I required the support of attorneys. This was in 1954-55. Nokwe later in exile had a drinking problem, but not then.

[Michael Parkington, who had very strong opinions about people, was utterly contemptuous of Nokwe. Why?] Who was he in favor of? [Lutuli, Bram Fischer but not Julius Lewin]. Michael Parkington was a tremendous attorney, and much of the legal work in the Treason Trial was done by him. He was an eccentric character, but also eclectic in his likes and dislikes. And he could actually be cruel to people. I was having lunch with him and a woman joined us who had been recently widowed. And she joined us, and she told him that she was going to remarry; and he said don't you think you should wait for the funeral beads to get cold? The woman burst into tears right in the restaurant. So I don't know by what criteria-- Here was Nokwe, an accused in the Treason Trial, and having to look after a family, and possibly not jumping to Michael's demands. He was a man of great likes and dislikes. I used to discuss peripheral matters with him. I wasn't involved in the Treason Trial.

Joe Slovo was at the university before my time. I hadn't met Joe. He had entered without the usual qualifications. He was older, and had worked for a pharmaceutical firm. When he got back from the war, he was exempted from getting a school qualification. The university had a provision that they would exempt you from matric if you got a degree. He did very well and got the advocate's prize, a top prize for students in his class. But that was before my time.

A lot of people ask how I came to be involved in (political defense work). A lot of people want to know what is your intellectual or theoretical or ideological base for what you have done. I think that in my case it's a little complicated.

I came to the bar in 1954. And one of the first cases that I did of a political flavor was for Eli Weinberg. There was a meeting at Freedom Square in Sophiatown. And Eli had just been banned from attending any gatherings. And he anticipated that he would be dealt with. He was a trade unionist before, and he'd become a professional photographer. And he went with Michael Harmel to Sophiatown, and what they told me was that -- It was considered a case of not very great importance at the time, although it could have had disastrous consequences for Eli. But for some reason or other the case was sent to me. And we didn't get paid for this sort of case. It was breaking a banning order. He then told me what had happened. That he was banned, and Michael Harmel was banned. But they wanted to cover this meeting. It was part of the lead-up to the Congress of the People. This was one of the first lot of meetings that were taking place at various places. And they told me that they were actually on the roof of a shack adjoining the square in Sophiatown. This was in 1954. I was admitted in March, this probably happened in April.

And they stood on the shack and Harmel was taking notes and Eli taking photographs. And I developed an argument that they were not attending a gathering. They were on the roof of a shack, away from the people. Even making notes wasn't attending the gathering. And Eli got worried, and he said I don't trust the bastards. They're going to say that I was in the square itself. And of course there was no one better to crack down on a policeman's evidence than Vernon Berrange. And Eli couldn't have been very comfortable with the case being taken by a greenhorn like me and the policeman coming along and lying. So he thought perhaps a more senior man. Well, Vernon Berrange had been a comrade of Eli

Weinberg's. He went and spoke to Vernon, and I agreed to be his junior. And I worked up an argument on the basis of the fact that being on the rooftop was not attending, and I had finished up with a line that had a bit of flare, that whereas Eli and Harmel were not attending the meeting, actually they were "conspicuously absent".

Now Vernon didn't know me, and he didn't know anything about my student background. But this phrase "conspicuously absent" took his fancy. He says if Eli says he wasn't in the crowd, then he wasn't in the crowd, and if we have a dozen policemen come to say he was in the crowd, we'll smash them up, come along. And we went in, and in fact the police didn't say that. And the case was decided on Eli's facts, by a good magistrate called O'Brien, and he gave a nice judgment, and picked up the phrase about the "conspicuously absent".

[Was Berrange at all concerned about whether you were politically in tune with the accused? Or did he just want someone who would be effective?] No, I think that he would not be interested about political attunement. In South Africa, as far as law practice is concerned, the dividing line is are you for or against apartheid. Although there may be some lawyers who try and project their narrow ideological commitment into their cases, broadly they will try to avoid that. It doesn't matter.

[Isn't there a question in a big case like the Delmas case, whether the emphasis should be on rather narrow legal grounds in order to save the accused, or should it be like Vernon Berrange's big speech at the beginning of the preparatory inquiry of the Treason Trial, a political speech somewhat like the speech at the Reichstag fire trial. I remember Maisels and Kentridge once saying that ideally every one of the 156 accused should have had his or her own lawyer, but of course that was unrealistic. So they were going to try to focus their defense as far as they could on these individuals; but Berrange's approach was a much more political one. Maybe this was a dispute among different kinds of lawyers in that particular great case. But I've wondered since then whether lawyers like Maisels are in a different category of advocates from people like Berrange. TK]

In fact, I've given it as an exercise for the class. I've taken your article on the Treason Trial and annexed Vernon's preparatory examination opening remarks reproduced in Helen Joseph's book *If This Be Treason*, and asked them to contrast the styles of Pirow, Maisels, and Berrange. Of course in a political

trial, to be completely out of sympathy with an accused's political thinking and aspirations would be counter-productive. On the other hand, there doesn't have to be complete accord.

The answer to your question may perhaps best be explained by the situation in the Delmas trial. There we had accused from the UDF-affiliated group, the Vaal Civic Association; we had the chairman of AZAPO from the Vaal triangle; we had three persons who were alleged to be members of AZAPO, although they denied it. They did admit their black consciousness orientation; that was Tom Manthata, Jeff Moselane, and Patrick Baleka, who was from AZANYU. There was talk at the beginning of the trial

about having these people separately represented, whether they'd be better off with separate representation. I was asked about this. Most of the discussions had taken place before the 12th of June 1985 when they came to court, and the 5th of August when I came back from Greece and was offered the case and had my first conference. I got a quick insight into the indictment. There was going to be what I call a Socratic defense like the Treason Trial was in 1956-61. We would admit most of the facts but then you say far from committing any crime, I have done my patriotic duty and shouldn't be punished.

[Doesn't the defense also focus on the policy of the organization?] Yes, you say this is the policy of the organization, and you try to turn the tables by showing the government policies are wrong rather than what the accused have done.

The question of different representation came up in the Delmas trial, and if there was to be separate representation it would be along the lines of ideological commitment, with the AZAPO and black consciousness people being differently represented.

[Could there be an apolitical defense?] In a case like the Delmas trial it would be absolutely disastrous to have anybody who actually believed in the validity of the tricameral system doing the defense case. With what sort of enthusiasm would you delve into the illogical and sometimes nonsensical provisions? With what alacrity would you cross-examine witnesses, or search for information?

[But does it make a difference whether a lawyer is sympathetic to, say, black consciousness or the ANC?] I would think not. And I can illustrate that by the Delmas trial. They wanted separate representation, the accused were considering separate representation, and they were concerned with which attorney was going to do what. There were four firms of attorneys in at the time, dealing with separate accused. The question was which counsel would be briefed for whom. Ismail Ayob's clients' parents had asked him, usually the families go along to the attorneys. Then they select the advocates. And all the attorneys and advocates then treat it as one case. There was a question of whether although they had separate attorneys, there should be one counsel or set of counsel who'd take the case for everybody. Or whether some counsel would be acting for some accused, and some for others.

[If that happened, how would it affect the operation of the trial?] It's much longer, you spend a lot of time trying to find common cause, the planning is more difficult, and if in fact there are fundamental differences between the accused and in their approach to the trial, it may be necessary to have separate counsel. But what I contended, and prevailed on everyone concerned to accept, is that where you are charged with a conspiracy to overthrow the state, and the UDF people deny it, the AZAPO people deny it and the black consciousness oriented people deny it, and the Vaal people deny it, what do you need different counsel for?

[If there were separate counsel, wouldn't there be a temptation for one counsel to sharpen the differences between his accused and the other accused?] That could very well arise. You could have in a criminal case a situation where one person says yes, I placed the

bomb, but you have others who are said to have assisted to place the bomb. And they say no, we didn't give any assistance at all. But under those

circumstances it may be obligatory to have separate counsel so that you are not identified with the person who actually admits it.

But ideological splits are different. In the Delmas trial during the course of consultation, I discussed the advantages of having a unified defense. And I also put it directly to the defendants themselves, who know the attorneys, in the hope of forging that unity. The accused who are not prepared to fall in should really make common cause. I can only do my best if they do. What happened was that I said I'm not unmindful of ideological differences between AZAPO and UDF, but I actually persuaded them that it would be good to have one set of counsel pointing out the differences. And they themselves could give evidence about the differences, and incidents around which their disagreements flared up. Because the fact that there were such disagreements would help to negate the assertion that there was a conspiracy. The state actually alleged that there was a conspiracy between the UDF and AZAPO! And we were able to lead evidence that on the national level that there was rivalry. There had been complaints that one had sent very low-grade rank of representatives to unity talks, people without any authority. When the UDF sent a high-power delegation, the AZAPO people sent an even lower--

Also there were suggestions that the "charterist" group that had formed the UDF had stolen the idea of forming it from the National Forum.

[Even if you argue that all these groups had more in common than they had not in common it still doesn't prove there's a conspiracy]. It's not conclusive either way. You're dealing with probabilities. It creates probabilities against there being a conspiracy. And you were able to point out on the local level how the AZAPO guys had booked a church hall for the 16th of June commemoration. The idea was that these dates should not be monopolized by one or another organization, but that clergymen and others should take the initiative and have a united commemoration service. So the Vaal Civic Association and the youth groups in the Vaal didn't have a hall, and they went to the AZAPO people with whom they made common cause, and they said they'd have a joint commemoration.

They kept on looking for a hall, and once they found one, they arranged their own meeting; on the same day, same time. And did a dirty one, because they went and plastered the place with handbills that the meeting at the first hall had been cancelled. When the AZAPO people turned up at the first hall and there was no one there because they said everyone had gone to the other hall. And they said at least let us ask our own supporters to come back and have our own meeting. They were told you are disrupting the meeting, go away. Now when they put up a witness in camera that there was a secret meeting in which the conspiracy to do the things which happened in the Vaal between UDF and AZAPO, and AZAPO had at a meeting authorized this-- This meeting was supposed to have happened within a week of this dirty trick having happened. And I mean you ask the witness "Did anybody at this AZAPO meeting, when they said let's

cooperate, did they say you can't trust them? So you were able to use their quarrels to prove what you wanted to prove.

[How often is the question of a united defense versus a particularized defense a serious question?] It is a serious question. What I think you originally had in mind is this: there was an undercurrent in the Treason Trial that there was a substratum of the more militant left that were really taking the other people along, further than they intended to go. And I think people like Issy Maisels and Sydney Kentridge had certainly expressed that it's a pity this had happened. And although some of them had greater admiration for classical ANC-- the Lutuli type -- they regretted that they had to have a man like Robert Resha or others whom they suspected of taking their cue from other ideological sources. Or just simply being bloodier. The "kill, kill, kill" remark of Robert Resha was unfortunate and difficult to explain.

But in the final result, the unified defense presented in the Treason Trial was assisted by having a single representation. Because if you're separately represented, Lutuli's explanation and his evidence that if

Robert Resha did say this, it was certainly not the policy-- And Resha himself said that. And when it was put to Z. K. Matthews about Resha's words, he was being cross-examined by Hoexter I think, --"oh they're just words, words". So you have a senior man dismissing a younger man. From the point of view of a trial lawyer, to have a straightforward and ideologically consistent and very nice and likeable people is very nice. But life is more complicated. When you get lots of accused who are in a group, it's inevitable that you will like some more than others. And there may be some who you don't like at all. But your job is to try to defend each one of them to the best of your ability, and not to allow your personal likes or dislikes to play a role. Certainly you must not sacrifice anybody. (Bringing out differences between people's points of view may help you negate the case the state's trying to make for a conspiracy.)

[And it sheds light on the nature of the ANC]. Absolutely. And that was a very good example. You always dread that you'll get that sort of thing. [Resha's "kill" speech]. Tom Manthata denies that he called for murder in Sharpeville, and I have no doubt that he's telling the truth. But even had that been true, it wouldn't have prevented the others from saying if you said that, it was not part of our policy.

[Regarding your motivation for taking cases. If you contrast yourself or Sydney Kentridge with say Bram Fischer, you could easily cite his motivation because of his political commitment. But Maisels, eg, had not previously done political cases, before 1956. And when asked why he got into it, he said once in your life you have to do a case like this. As if it was a public duty.] I wonder if public duty isn't just a handle you hang things on. You know my story about my bridge friends? I was a bridge player before the Rivonia trial. And I fell out of the bridge school. We played social bridge on Tuesdays, and competitive bridge in Johannesburg at the bridge club on Mondays. And I fell out and my partner had to find another partner. One night they were stuck for the social bridge and they phoned me and I said yes. And one of them came up to me and said,

George, we've been worried about you. This was a woman living in Helen Suzman's constituency in Houghton; her husband was a big businessman. I said, what have you been worried about? This Rivonia case, she said. I pressed her, and finally she said she was thinking, "Is George a red?" But others had said, "Don't be silly, George will do anything for money." She said she was relieved! I didn't go back to bridge.

A trial lawyer is a complicated being. There are elements of the showman, the professional boxer, the matador, the executioner if you like. You become involved with people. Let me tell you about my earliest involvement. You know about father Huddleston's cultural clubs during the Bantu education campaign. Children who had boycotted classes were not allowed to come back. Father Huddleston started what were called cultural clubs because they could not be schools. They were taught by teachers who had lost their jobs because of Bantu education.

The first prosecution of someone for running an unregistered school was a man in Alexandra township. And I defended him successfully. This was almost immediately after I had come to the bar, just after the Weinberg case. I became pretty involved. Speaking about ideological commitment, no Greek child grows up without an old Greek nursery rhyme appealing to the moon to come out, to light the child's way to school. Your grandmother will teach you, this is the first nursery rhyme. To go to school to learn to read and write, and to get God's other good things. And it rhymes in Greek. This was a terribly emotional experience.

[How did you get that case?] In those days there was really no Defense and Aid; it was always on the basis of who did you know. I don't really remember whether it was Duma who said we'll get an attorney to send you a brief. Duma hadn't really started with me in 1955, but I'd been an activist at the university and they know who to approach. And naturally you wouldn't get any assistance from any attorney, and you can't take work directly from the public.

So I worked up a tremendous argument, with all the dictionaries of what a school was, the systematic imparting of instruction, making a plausible argument, delivered with great gusto. And it was in the newspapers, there was an overseas newspaper report, and the magistrate was taken aback, and anyway, we won. Not guilty and discharged.

Then I defended other "clubs". In the Alex case I had gone to the township and inspected the premises, which was a garage that didn't have a blackboard. [Was Alexandra an eye-opener for you?] Yes, to a very large extent, this was an eye-opener, because although I was active in university politics my knowledge of the black areas was very limited. I had been to Soweto once or twice, to Duma's house, and you needed a permit, and I didn't ask for a permit because you knew that that would create problems.

Also of course I had another terrible fear, an underlying fear because for a long time I was not a South African citizen, that sooner or later they might say to get out of the country.

[When did you become a citizen?] That in itself is a long story. I didn't become a citizen until 1972. I was refused twice. And I had this underlying fear. And it may be that many of the things that I have done were attempts to prove to myself that I wasn't really scared. There was one stage when I was actually sent messages from Vorster that my rein was getting shorter. In Afrikaans it doesn't relate to hanging [like rope]; it's like a leash.

Later I did other school cases, in Benoni. I was going to tell you that I'd never been to Alex before. I had been to District 6 in Cape Town and had been to Malay restaurants there. But I had very limited experience. I had never been to Enver Kassim's house (a law school friend).

[What about inviting blacks to your house?] Well, I had this room, and you couldn't have a party there or anything.

[Where you literally living on your own from the age of 13?] I never lived with my father, except for a short period whilst he had this business (opposite Die Vaderland).

In the first school case there was an acquittal. But there was another where it actually took about nine months because they went to the Attorney General, and got advice on how to beat the defence. They actually got a youngster, a young black policeman, a rookie who put takkies on, to go and join the "club". He gave evidence. In fact they called the inspector of education to say that this was marvellous school material. And he was going to suggest that the material should be adopted at the next meeting of inspectors!

I remember one very well. You couldn't teach geography, but you could tell stories. So they'd say " Once upon a time and long ago there was a King of Egypt, and the Kings were called pharaohs. And he was fond of going duck hunting with his daughter on the banks of the Nile. And the Nile has its source at such and such a place and discharges so many megalitres of water into the Mediterreanean Sea! " I'm sorry I didn't keep some of this material. It was marvellous.

Now if I may round off this school question, only this year I was asked to speak at a conference held by NADEL (National Association of Democratic Lawyers). And there was a quarrel going on when I got there, with a young man whom I didn't know and the person who was supposed to preside over the session that I was going to speak at. And this young man wanted to preside, and he won the argument, and he sat next to me. And he said, I'm very glad to be presiding over this session, and he gave me his name, which I don't remember. And he said, my mother's told me a lot about you. You defended my father. For what? For running a school in Alexandra township! And he'd spoken about his mother only. And I thought, should I ask about his father? I don't remember if I asked directly or it came out, but I said

I'd really like to talk to your father about how he felt at that time. Oh, he says, he's the [ANC] Ambassador to Germany!

[Senti Thobejane has a relative named after you]. But it's a nickname. He's too old to have been named for me. But there's a Bizos in Roodepoort. They pronounce it Beezaws, someone from the Krugersdorp Resident's Association.

Then of course the thing that really put me on the map was the Lichtenburg trial. That came up during the preparatory stage of the Treason Trial. I had in the meantime met Joe Slovo. We used to play poker together, with Ruth refusing to stop her work to make tea for us. She'd say, no, you stop and make tea and bring me a cup! That was Ruth [First], a tough cookie. So she came along and she said there was an anti-pass march in Lichtenburg and there were arrests. And they needed someone to defend them who could stand up and say that far from being guilty of public violence, the police were guilty of the most brutal cold blooded murder. It was about 120 miles out of Johannesburg, and I didn't even have a car at that stage.

So Ruth and Joe Gqabi and I went going off to Lichtenberg. And there were about 15 to 20 accused. There were 16 policemen that came to give evidence in this case, plus a few other witnesses. I cross-examined them. The magistrate was Allen, the one who took the first Fischer trial in the 1960s. He disbelieved the policemen and gave quite a strong judgment. And a man named George Oliver wrote quite a long and accurate piece in the Rand Daily Mail about this trial. It went on for weeks, and they were acquitted, and the police were criticized.

Vernon Berrange read the report, and he congratulated me and wanted to know about the cross-examination. And he had a marvellous chuckle, and was really supportive to all of us. He also was relieved, because he had been offered this case and had refused it, and he felt badly. So he put his arm around me and said, "Bizos, you socked them!"

[Was he your role model?] Not only that. He began to show so much affection for me that he actually directed remunerative nonpolitical work to me as his assistant. And he would charge large fees and I would get two-thirds as his junior, and it was much more than I would charge. And people who really wanted a policeman broken down would go to Vernon Berrange. He helped me quite a lot.

[Do younger lawyers learn a lot from observing such people?] Not only observing but working with. Karel Tip now feels much more confident in a courtroom as a result of this exposure [in the Delmas trial]. [Has he adopted some of your----] Oh yes, they do. It's almost inevitable. You learn all the time. It's a form of apprenticeship.

[How were Tip's tasks defined in the Delmas trial?] If you use a junior properly, you don't use him as a skivvie. You use him as a sounding board. A good senior doesn't sit on top of you and tell you how to do the job. You discuss beforehand what the line generally should be, then you say okay, it's over to you from time to time.

[TK-When I sat for several evenings with the Pietermaritzburg defense team, when there was some thought that I might appear as an expert witness, it seemed that Ismail Mahomed was a very tough task master, very impatient]. Well, one's personality is

inevitably a factor. Generally speaking, the leader has to be a good listener. If you impose your own personality and you are impatient,--- Very often a line of questioning has come from the most junior member of the team, and even sometimes from the accused himself or one of his relatives. Because however well you may know the facts, the man who's actually sitting on the hotseat, if he's an intelligent person, -- and very often people in political case are -- have

their own ideas and appreciation of the facts. And they may be able to put two and two together. Very often some things are irrelevant that they raise, but if you cut them off, they won't--

[I remember that you made a special point in the Delmas trial of giving the defendants homework to do. They were busy reading everything and writing. And was this done just for their morale?] It's both. Someone who's in custody can so easily become depressed, and forlorn. And there's a grave danger of his lawyer dominating the scene. And he may not even be conducting the case in accordance with the client's own innermost wishes. This is why, as a matter of practice, my initial requests to members of the team, and to the accused, is to become involved. The accused in particular should become involved.

They can be of great assistance. I'll tell you how they can be. Although the material witnesses are kept a secret, it's almost inevitable that as a result of talk in the community that they will know who has been detained, which of the detainees is likely to become a witness. And from the nature of the interrogation they themselves can determine who it is that may have given information. So the first thing they've got to do is make a list of who they think the witnesses will be, and write down everything they know about them. Then I say to them I don't want half a page. Don't write half a page then go back to your cell and play cards. Which they do, by the way. Or you're going to dream about the day you're going to get off. Let's take practical steps about your really getting off. I want a pen picture of every one of those witnesses. Nothing that you know must be left out. About their thinking, about what they have done in the past, what makes them tick, what their sex lives are, girlfriends and so on, whether or not they're homosexual. I want to know everything about their relationships, everything.

So they usually come up with a page and a half or two pages. And I give it back and say no, it can't be, can't do. I ask them to do it independently if there's more than one person. I want a picture of the witnesses before the witness gets into the witness box. And I'm able to discuss with other colleagues what the best approach to this witness is.

[A merely technical defense would also involve this, but wouldn't be concerned with the morale of the accused. Is that too sharp a distinction?] Well, I don't know. I think so. Every advocate wants to win, even the technician wants to win. Also, technicians who take a case like this, after a while find their emotions very deeply involved with the people they're defending.

[What's the mix of wanting to win for your side and wanting to beat the people on the other side?] Too complicated, too complicated. But it's a question that leads me to

another aspect of what eats us up. The more prominent you become, the greater the desire appears to be by the people on the other side to win. This isn't only in relation to political cases. Everybody wants to be able to say I had a case against Sydney Kentridge and I beat him. And they will work harder, and will try harder. In a way it's a compliment.

[This may also put the judge on guard to be as professional as he can]. This is right. But take it from the point of view first of the man who has become prominent. There are tremendous pressures on him, imposed by himself. Don't let it be said that I'm unprepared. Don't let it be said that I overlooked anything. Because for Kentridge to have pointed out to him that he overlooked a previous decision---. He'd probably make headlines.

You've also got, and especially in South Africa, that many of the top lawyers who do political trials are the seniors in their areas, and in experience, to many of the judges. It creates another unfortunate dimension. These are the people who say that I was not offered an appointment or I would not take one even if I was offered-- . I've appeared before a judge who was my junior in a case. And here he sits, on top of you; he really wants to show you that he knows a thing or two that you don't know. It's very difficult. Can you imagine the feelings of a recently appointed judge, a man who's say forty five, having a

man like Maisels appear before him? A man who really should be on the Court of Appeal in South Africa?

[What's happened to Maisels?] He's still around. Every afternoon if I'm in a controversial case, before I go to my own chambers, I must go and say hello and give him the latest news, because he wants to be the first to have heard.

[One thing people often wonder is whether lawyers should even participate in this system Don't they legitimate it? Why don't they leave the country, like Joel Carlson? Have you ever had any accused who simply did not want a legal defense and did not cooperate or who thought it was hopeless?] I have not had such an accused yet. And you know the attorneys primarily choose the counsel. And rightly or wrongly, in the last ten years or so, the cases that I am asked to take are those where it's believed that such talents as I may have are best used to get the accused off. So obviously the accused want to cooperate. They're looking for a particular type of counsel. So the people like the Sharpeville six, with Mogale who I see you've got here on your list, the student leader who was charged with murder, and his predecessor who was charged in the Edelstein murder, the UDF people. They said we want someone to help us show that we are not guilty.

[How often do you put the accused on the witness stand? And how much do you have to coach them to deter them from saying something they shouldn't say?] Well, generally speaking, in cases where you want an acquittal, you have to put the accused in the box, if they have what's called a prima facie case.

[In the Delmas case, did everybody take the stand?] Of the twenty two, three were acquitted at the end of the state case, so it was not necessary. Although one of them, having been acquitted was actually called as a defense witness. But of the nineteen left, sixteen actually gave evidence.

[Why not the others?] Our assessment was that there wasn't sufficient evidence to put them on the defense. Also there were things that they may have to explain that would not advance their case. They may have been good witnesses, in fact I have no doubt that one of them in particular would be a particularly good witness. He was one of the most intelligent of the young people on the trial. Our decision was justified as the three who did not give evidence were acquitted.

[How do you prepare your witnesses?] There are certain things that you've really got to bear in mind. Firstly, my injunction to them is don't sit in that dock and sleep. Listen to what the witness has to say during the evidence in chief, and tell us what he says which you disagree with. Secondly, listen to me when I am cross-examining, because I am putting your case on the basis of what you have told me. Don't go into the witness box and say that I made this up, because you never told me so, or because there's been a misunderstanding between us. Even though it's inevitable that some detail may go wrong. But you first of all must become an active witness. You must know what the record says about you. You must know what the documents that have been produced as exhibits say about you.

[That requires a certain degree of literacy on their part]. The attorneys have to do this. Generally speaking, it's not been a problem. Most of the accused in political trials are literate. There are a couple of instances where either the co-accused has to do it, or one of the junior people, an attorney, has to. But you must read, you must understand, you must be careful about the standards and techniques of cross-examination. These are well known to us. We know what our prosecutors' approach will be. We know that if you deny that you are a member of the ANC and the issue is whether you are or not, the prosecutor will start with questions about your attitude towards the ANC, your attitude toward Mandela. He'll ask you whether Mandela is your leader. And very few people in South Africa are prepared to say on trial that Mandela is not their leader. So there are these things they should know. They should not be taken by surprise.

You have to explain that the mere fact that I am-- That there's a difference between saying I'm in favor of the ANC, which would then be used against you, -- and you'd have to say that what you really mean is that you want the things that the ANC is asking for, and you're prepared to work for their achievement in your own way. But knowing that the ANC is unlawful in South Africa, you are not prepared to work for the ANC, and you disagree with the ANC's policy of violence. Isn't that your attitude? Now please bear this in mind. And he'll find that this sort of verbal egg-dance is a little difficult, for most people! It's very difficult to do this egg-dance. But you see we're not actually coaching them; we're not telling them to tell untruths. What you are really telling them is: are you a member of the ANC? No, I'm not a member of the ANC. Stick to that. You've got to explain these things. But the ANC's in favor of trade unions. Are you? Oh yes, I'm in

favor of trade unions. The ANC's in favor of mother-love, and you're also in favor of mother-love, but you're not a member of-- Oh yes, now I understand.

[Didn't someone say there was a particular problem with Mrs. Sisulu. She wasn't prepared to make that sort of distinction.] Albertina didn't go into the witness box in the Pietemartitzburg treason trial. She did not have to, as the case against her collapsed before she had to go into the witness box. It was in Rose Mbele's funeral speech for which she was sentenced to four years imprisonment. Now putting Albertina in the box, she would be asked-- You know, this is a woman of few words, but she would find it difficult to deny what has been so important to her and to her husband all their lives.

[How can you speak confidentially to your clients when you're in the court buildings. I assume these meetings can be taped. Ismail Mahomed was completely certain one time because of what the prosecution said one day that they had taped his conversation with the accused the night before.] There is a danger of that. Although it has been somewhat lessened-- You have to be careful. The prosecution now has to be particularly careful as a result of what happened in Windhoek. They got the switchboard operator working for a leading firm of attorneys in Windhoek to give them information. And the conviction was set aside, on the basis it was such a fundamental departure from the rules. So I think prosecutors have become a little more wary of that happening. Most prosecutors I think even though security police reported to them, they would not use the information. But of course if the police heard what the strategy of the defence was going to be, they would say: how are we going to counter this strategy of the defence without actually disclosing the source? They may just say that it was detective work or intuition or inference.

[Maybe this is also a false issue because a smart prosecutor can pretty much figure out the case-- and the strategy]. It would help him a lot. With the adversary system it would help a lot to know what goes on in your opponent's chambers. But we have a way of making notes on a piece of paper with keywords.

[Why keywords though? Couldn't you actually write a note, show it to me and put it back in your pocket?] Because that's too long. Assuming you wanted to discuss it with the accused. The room may be wired. The way you do that is you write six or seven words on a piece of paper: "witness box", "charged," "cross-examination," "advantage". If anyone is recording they'll hear this: "If you go - - - (pointing to words "witness box"), this - - (pointing to word "judge") may -- (pointing to other words, etc). . . ." [laughter] And what can they do about it?

Have you got Joel Joffe's manuscript? [It's on microfilm.] Well, there he describes something that we did which really served Yutar right [in the Rivonia trial]. Having decided that Nelson Mandela wouldn't go into the witness box, we handed in six or seven volumes of the Treason Trial record, more particularly Nelson Mandela's cross-examination in the Treason Trial, and told the warder "please make sure that Mr. Mandela gets this, because it may be needed for his court evidence, and he must read it." And we have pretty cogent evidence that shortly thereafter Yutar called for the volumes of the Treason Trial and spent his time poring over it !

And when Bram Fischer said "my lord, Mr. Mandela, Accused number one, will make a statement from the dock", Yutar was absolutely flabbergasted. He said "my lord, my lord, you mean he's not going to give evidence? Please tell him that not much weight is going to be attached to his evidence unless he gives evidence." So De Wet, who didn't like Yutar much, smiled and said "I'm sure he knows that, Mr. Yutar."

[What's happened to Yutar?] He's now practising at the bar. In fairness to him, he does most things in an enthusiastic way, including the work he's doing now. He led the evidence in the Cillie Commission when Winnie was implicated, after 1976. The South African Council of Churches was represented by Sydney Kentridge, and I appeared to cross-examine the witnesses for Winnie. And Yutar came up to Winnie and said "Hello. And how is dear Nelson?" He was no longer the Attorney General. And she said "It's Mr Mandela to you. He's well, thank you."

Another thing I wanted to say about the sequence of events at that Lichtenburg trial, which showed the attitude to the defense. They didn't have a cell big enough for our consultation, so they put us in the yard for the consultation. In those days I was a heavy smoker, and I had an almost full large package of cigarettes. When I left, I left my packet of cigarettes behind. Later, Chris Peewman from the Bar Council came to me and said there was a complaint against me at the Bar Council. And this is a frightening thing when you'd been at the bar for eighteen months, to have the secretary of the Bar Council say there's been a complaint. In fact, there was a letter from the Attorney General. Our Attorney General is the director of prosecutions, who said "it would appear from a docket placed before me that Advocate Bizos is guilty of violating section such-and-such of the 1913 act which prohibits the introduction into any prison of any liquor, dagga, other habit-forming drugs, or tobacco. I have exercised my discretion not to prosecute on this occasion, but please bring to the notice of your members that --". And I was encouraged by Chris's response when I asked what the Bar Council had said. Do they want an explanation? No, they all burst out laughing! And they did not ask me to ask you for an explanation. But the thing that makes you feel uncomfortable is when the police think that you're not such a --

The other is that by that time, during the course of the trial my father had borrowed money to buy a secondhand Morris Minor. So I had a car. Lichtenburg was a rich farming area. Parking spaces were marked with a small white circle in the middle of the parking space. And the regulations provided that your shoulder should be against that white circle which was the midway point of the parking space. This was to avoid the people with big Buicks and Chevrolets stretching into each other. But you could actually get three Morris Minors into one of those spaces, and I wasn't going to worry about this spot. I went right to the front of the space. And I got a summons, parking not in accordance with the regulations.

But on the other side, I actually caught a policeman going through my brief in the tea adjournment. It was marked with indications of which accused had been identified. I came in and he was looking at that, (and admitted it). And when he went into the witness box, I said he was looking at my brief. He said yes, he had never seen an advocate's brief

before, so out of curiosity he looked. And this was my first experience, and really there were a lot of side issues. And I get a letter from a major, that it would appear -- (I didn't make a complaint to the magistrate once I had put it in the cross-examination) -- it would appear that this happened. We are holding a disciplinary inquiry into the matter and will you please be here at 8:30 to give evidence. I wrote him a letter and said I wasn't pressing charges. His whole behavior when I came in and his answer sounded convincing to me, and I don't think there was any malice in his conduct. Anyway I got a letter back saying they were going to caution the man, that he mustn't do this again. And they asked me if I would be happy with that. And of course I said I would.

This Lichtenburg trial was really my first major political trial. A man named Potgieter came in the witness box, and said that he knew Setswana well. And he heard Solomon, the first accused, say in Setswana

"Come come, let's kill the police." I wanted to test this witness, but all we could find in Setswana were phrase books where everything was stated in the imperative. The only other book was the Bible in Setswana. So we opened the Bible, and by chance a passage from "Morena" or Kings was selected. And I said read this, and tell us what it says. He said I said I could speak it, I didn't say I could read it. So I got the interpreter to come and read, and he proceeds to read like a lay preacher. And the man was absolutely blank. I then put to him two passages written by the interpreter, the one meaning "come, let's go or the police will kill us," and the other "come, come, let's kill the police." When read to him by the interpreter, he couldn't tell the difference.

Solomon was the local chairman of the ANC, and he spoke in the old way in the cultural tradition of speaking in the third person. He said, "Mr Bizos is very good; but this interpreter is also very good. The way he read that, even my grandfather would not have understood it!" And he winks, and says "he's our man, you know!" Interpreters are very important and they're in a delicate position. They have to work very closely with the prosecutors, and they have to live in the community. There's a lot of conflict.

[Have you always done mainly political cases?] I have always done other cases. In fact about two-thirds to seventy-five percent of my income over the years has been from non-political cases. They pay much better. And the time would be well over fifty percent. If you add Delmas, it would play havoc with the average. During Delmas I didn't do other cases, except carry-over from the past.

[What about the allegations one hears that political lawyers these days make a great deal of money from them?] With very rare exceptions, I think that most lawyers doing political cases make a financial sacrifice, and finish up with overdrafts at the end of long political cases. For the busy practitioner, political cases are unremunerative.

[What's the basis of this allegation?] Firstly, the basis may well be that there are a number of cases where attorneys have to go outside the panel usually doing political cases. When they go outside that panel, because the counsel has particular talents, or because one of the usual panel is not available, they may say that they're not prepared to do it for

anything other than commercial rates, not from a tariff that's either fixed or the general custom. The tariff is about 50% of the fees that one can command on commercial cases. If you don't do it for this fee, then the amount of work which would be done by a senior man is such that ordinary commercial fees would give astronomical figures.

Also, during times of great upheaval, like after the 1976 uprising, or after the crackdown of 1984-85, there are just not enough people and you have to go to the marketplace. And the attorneys may not have the contacts to approach people to do it for less. Also there has been some criticism that there are some people who haven't got work, who cannot command the sort of fee they charge in political trials for any case, because they wouldn't get a major case anyway. But out of necessity, because there are no people available, these people get some of this work.

[Does this apply to some black lawyers?] There may well be some such cases, but by way of contrast I know many black colleagues who make sacrifices in order to do political cases on a reduced basis, and work very hard. You take a man like Pius Langa; he's not short of work. Or Dikgang Moseneke, who's not short of work. And men who incidentally have tremendous family obligations. And I know what it's like, because I've had to borrow money. My children had to have bank loans for their education. At the end of the Delmas trial, I earned in four days in a commercial trial more than I earned in a month for a full month's work, fourteen to sixteen hours a day, in the Delmas case.

[Is the amount of money paid something that is controlled by the attorneys?] It's no secret that there's a fund that comes from the Scandinavian countries, West Germany, from churches giving money to the

SACC. And attorneys distribute this. There have been complaints about lack of control, and there have been a few lapses, but they have been put right.

[Does the government threaten to stop this?] Yes, all the time. But they must be a little ambivalent, I think, because it brings in foreign exchange. I was almost tempted when I asked for foreign exchange when I was coming to Columbia for the semester to say would they please take into consideration that I'm a net foreign exchange importer!

[What proportion of the money in political trials comes from abroad?] Most of it comes from abroad. Although when people can't afford it, there have been some very good examples, especially-- There was a group of students where the daughter of a rich man was involved, white students, where he actually insisted--. I was told by Raymond Tucker, who was the attorney, that he actually made a contribution to the costs. It wasn't a major trial.

The government has threatened to cut off funds, but it's very difficult for them to do it. What are they going to say? Are they going to prevent Mrs. Tshabalala from writing to someone in London, say, saying now my son is up on a charge, could I please have some money? They could only complicate things. But unless they're prepared to say that no money must come in at all-- .

During this earlier period that we're talking about, the attorney that did most of the political work, while others were tied up in the Treason Trial, was Shulamuth Muller. Shulamuth Muller had children, she lived in an almost unfurnished house. We did those cases, even though they might last for months, for 12 pounds ten a day. And she got even less per day.

[She was a sort of female Bram Fischer.] Well, I don't know to what extent-- She was married to a trade unionist, a radical Afrikaner, an early edition of the breed. And she was dedicated. Ruth Hayman did a lot of work. And a little later Raymond Tucker, who gave up a very promising partnership rather than be hindered from doing political cases. And there really wasn't the money available. The first time that real money became available, and it was possible to mount the sort of defense that it would have been impossible to mount, was the Bishop's fund for the Treason Trial. [Bishop Reeves]

Mandela and Tambo at the time had become a household name throughout South Africa with the black people. There was a tremendous sense of pride. Here were people who had identified themselves with their political aspirations, and they were attorneys. And you must remember that there were white witnesses who refused to answer questions from black attorneys.

I got quite a lot of work from them. Because they were on trial, they had clerks. They had Douglas Lukhele, they had Godfrey Pitje, and a number of other clerks who were actually running the practice, but obviously couldn't appear in cases because they were not yet qualified. And young counsel like myself would be briefed to appear. And they actually got into quite a bit of financial difficulty because they would brief counsel, and even though we would charge very small fees, the clerks were not careful to collect even the very small fees which the partnership was obliged to pay.

And you would be briefed on any sort of case. I remember that I was briefed to defend a woman for creating a nuisance in a public place. And she denied that she'd created a nuisance. She said it was the policeman who was aggressive. And the policeman came into the witness box and said that she was shouting and screaming. I asked what was she shouting and screaming about? "I didn't know what she was shouting and screaming about, because she was speaking in the vernacular." I said well, it may have been with good reason. It couldn't have just been for creating a public nuisance. He said, "I warned her that if she didn't stop shouting I would arrest her." And then she shouted at the top of her voice "You don't dare arrest me, because my attorney Mr Mandela will fix you up in court!" So this was their reputation.

But in order to give you some idea of what the situation was for black practitioners, even with their standing at that stage, Mandela had been admitted as an attorney a number of years before 1955. His admission had created a situation where they actually asked that he be removed from the roll because he was convicted of defying the laws of the land in the Defiance Campaign. And the court refused to do it, because they said that there was no moral turpitude in his actions. So the fact that there was a man called Mandela who was one of the first black attorneys could not have been lost.

He phoned me one day to say he wanted to see me. It was actually in 1954 when we were living still in the house of my erstwhile employer. But he came to see me and told me a very sorry tale. And he wanted me to take a case the next day, because of the difficulties he had encountered with a magistrate by the name of Dormell. He appeared before Dormell for a clerk for some sort of bribe-taking at municipal offices. It had nothing to do with politics. And when he said he appeared for the accused, the magistrate asked "who are you?" So he said "I'm Nelson Mandela, an attorney." "And where is your certificate that shows you have the right to appear?" And he says well, I don't usually carry it with me. But you can phone the registrar. So he says it's not my business to phone anybody like that. This case will be adjourned until you can prove that you are an attorney entitled to speak.

And the magistrate asks the prosecutor to give him a date for the postponement. And the prosecutor said the 22nd. And Nelson then turned to the prosecutor and said I'm not available the 22nd, I have another case. Could we make it the 21st or the 23rd? The prosecutor said, okay the 21st. But the magistrate turns around to the accused and says your case is postponed to the 22nd. Nelson stood up and said but we agreed it should be the 21st because I'm not available on the 22nd. And the magistrate told him to sit down and said you've no right to appear here. And the prosecutor said he had agreed. And the magistrate said to the prosecutor that he didn't have to agree on anything. As if Mandela was a nonperson. So he had come to me on the day before for me to take the case before this Dormell fellow who wanted to see his certificate, so that he could do the case to which he was committed. Well, in my youthful exuberance, I said Nelson, let's think of a way. Don't let's let him get his way. What's this other case? Let me take that one, and you go back there with your certificate. So we discussed that, and we had to spend a lot of time for him to fill me in on the case that had already started so that I could continue. So he comes back, and I come back. I don't even remember what the case that I took over was about. It was uneventful.

But he now reports to me at the end of the day what had happened in Kempton Park. He produced his certificate. They said very well, let's proceed with the case. And the prosecutor led his first witness, and Nelson cross-examined him. And on about the third or fourth question, the magistrate said "you can't ask that." And he said, with all due respect, I can. No I'm going to rule you can't ask that. Next question. You can't ask that. Nelson stood his ground when the man said "you can't do that." Start recording what I'm asking, and record that you refused to allow me. In those days there was no electronic recording, so the magistrate wrote out-- But he said "you're accusing me of not keeping a proper record? That's contempt of court, you know. You'd better be careful what you say."

So that passed. Next question, he says you can't ask that. So Nelson says, you know your worship is making it very difficult for me. The magistrate says "just a moment." Then he wrote a few things down. He turns around to the accused and says to him "your attorney has withdrawn." Nelson jumps up and says "I didn't withdraw!" "You sit down. You've got no more locus standi in this case. Sit down. Your attorney has withdrawn. You have the right to conduct your own defense henceforth, or if you want to apply for a

postponement we'll consider your application so that another attorney may proceed with the case."

Nelson started protesting that he did not withdraw, and the magistrate said "if you don't sit down, I'm going to count to three, and if you don't sit down I'll have you cited for contempt and have the constables remove you from the court." And the constable moved in his direction. And Nelson threatened the

constable that he better stay away if he didn't want any trouble. And he told the magistrate that he's behaving badly. And the accused said okay, let's set another date for my case. And he was telling me about it. And we decided that he couldn't take this lying down. And we thought of a remedy, despite our youthful inexperience. That we would get the client to make an application to the Supreme Court, to complain about the magistrate. That it was his choice to have Mr. Mandela as his attorney, and that he wanted to be defended by him, and that the impression had been created that he was not prepared to have him as his attorney, and he could think of no reason other than that he was black. And he wanted the magistrate to recuse himself.

So this was filed with the registrar of the Supreme Court, and a man who thereafter became a judge, Myburgh, representing the magistrate, said that they required a postponement in order to answer Mr. Mandela's allegations, which were completely wrong. The judge to hear the case was Judge De Wet, the very man who presided almost ten years later at the Rivonia trial. Having read those papers, he sent the registrar to find out who counsel was. And he found out who counsel were and De Wet said to Myburgh, what does your client say about this? Because we had also cited the Attorney General, going for a public prosecution, and his counsel was there. This was in chambers. De Wet said "what does your counsel want a postponement for?" "Well, to say what Mandela says is not correct." "What part of it is not correct?" "Well, he'll admit that he asked him for his certificate. But the reason he asked him for his certificate was not because he was black, but he genuinely did not believe that he was an attorney, because he walked into court with such arrogance." He didn't believe an attorney would walk like that. And what is he going to say about not asking the attorney to ask questions, what's he going to say about that? He said he's going to deal with that later.

And whatever could be said about De Wet, he was a man who had respect for individual justice. Never mind about political justice, the broader aspects. But on an individual basis, person to person, he had a strong and developed sense of individual justice. And he expressed himself very strongly. He said you can have a postponement if you want, but I suggest that you tell your client to get off that bench and recuse himself and let someone else do this case. We judges wouldn't like to hear any more about this matter. So he said okay, and they got back on the appointed day. And the magistrate said (very brusquely) "I recuse myself", and he ran off. And Nelson said to me, now you can do the case! And I did the case.

[Attorneys can appear in magistrate's courts. Did Mandela and Tambo do a lot of that?] Yes, quite a lot. Before the Treason Trial, and even during the adjournments. This was

their living. African lawyers have to do this, take criminal cases-- They have no real estate work, for example. But they also had clients. Nelson's reputation as a lawyer was great, of course, because of his bearing, because of his standing. He dressed well. And also people charged with serious common law crimes would want to be defended by Mandela and Tambo.

One case that comes to mind was a case of robbery, where Yutar was prosecuting, in Johannesburg. And you know police were not accustomed to the sort of craftiness of black accused. The two accused were charged with robbery from a shopkeeper on a mine property, at a concession store. They dug a ditch across the ground and flagged him down, robbed him of the money. And they were so notorious in the district that as soon as thereport of the crime was made, the policeman said it must be Vark and Banda. These were two notorious characters, and the police immediately went to look for them. They couldn't find them until the next day. And they found them the next day with a Mandelaand Tambo receipt for 50 pounds, paid to Mandela and Tambo.

[And it was a legitimate interrogation?] They said if you are innocent, why did you go and pay 50 pounds to retain an attorney for? The policemen had obviously heard of Mandela and Tambo, and that they claimed political rights, and this very smart fellow thought oh, there's some profit here. He was explaining that the reason why they went and paid it was because their relatives told them that the police were

looking for them and they wanted theirattorneys to have a deposit so that they could get them out on bail and represent them. And where did you get the 50 pounds? And they started beating them up, and where is the money, we know that you've got it. And during the course of this unlawful interrogation and in between assaults, they were saying "your kaffir attorneys Mandela and Tambo must be involved."

And so this one chap says, okay I'll tell you the truth. The money that we stole, we gave to Mr Mandela. Are you prepared to make an affidavit?Oh, yes... Did Mr Mandela know that the money was stolen? Yes...and in fact, you must take me with you. You will never find the money. It's in a secret place that I know, in his very office is where he puts this sort of money. You take me with you, and Iknow the combination to the safe, and I'll open it for you and you'll find all the money. So the policeman falls for this, and he takes this man to Mandela's office. And as soon as he's in Mandela's office, he says "I'm sorry to have done this to you Mr Mandela, but it was the only way I could stop the assaults on me. These people are beating me up. Do something!" And he dispatched a district surgeon-- And all this was brought up in the trial, much to the embarrassment of Dr. Yutar. It must have been in 1955-56, or in one of the adjournments between the commencement of the preparatory examination when they were on bail. They would come back and work. And there was also a very long break between the preparatory examination and the (Treason) trial while the state was trying to get -- . As a result of our personal contact in that sort of case, we became quite friendly.

[What was the very first time you met him?] The very first time was on some very ordinary sort of case that Duma brought into our office in 1954. It was before Duma had

come there; he was working for Harry Bloom. But Nelson also used to come to the chambers to pay his respects to Walter Pollak, who was a great liberal and a man of tremendous integrity who left the country at the end of the 1950s after some very heavy words. He said the pessimists in Nazi Germany finished up in England and America, the optimists in Dachau, and he was getting out. But Walter Pollak had taken Nelson's case when they wanted to disbar him as an attorney because of his role in the Defiance Campaign.

[Was Mandela in serious danger of being hanged in the Rivonia trial?] Yes, I think that Joel Joffe deals with that very fully. When he said I'm prepared to die, it wasn't just words. In fact, what we really directed our attention to was to avoiding that.

[Can you tell us about Mandela's trial speech? Anthony Sampson says he had a hand in it.] Well, I think with due respect to Anthony that he's given himself more credit than he's due. In fact, it is Nelson's document. The drafts were done-- He's very, very careful. He's a careful draftsman. And he wrote the statement out himself. Phrases here and there were added or suggested, and one or another of us would say what about dealing with this or that; a completely acceptable procedure.

When I was in the Rivonia trial, Bram [Fischer] and Vernon [Berrange] would go in and out. Arthur [Chaskalson] would go in and out. Joel Joffe and I were the continuity, the only ones there all the time. Joel was the attorney. That was the only case he had. He was there every day. He was ready to leave for Australia, as he says in his memorandum. Normally the attorney is there every day, though lots of attorneys are not. Joffe behaved like a proper attorney. He was ready to go to Australia, and they refused his visa as a result of -- . And that's why he went to England instead. And he became a millionaire. I had a marvellous dinner with him when I went to Oxford.

But when the statement had been put together-- I actually have an insecurity about elementary grammatical mistakes, especially with some of the niceties of prepositions. I sometimes use the wrong preposition, and very often I show important work done by my clients or by myself to someone who has real feeling for language to see that there's nothing which a grammarian or a literateur would find fault with.

At about the same time, Nadine Gordimer, who's always been a good friend, had been asked, from notes made by the accused themselves, to write pen-pictures of the accused for public relations purposes, which she did. [We have those.] Those were written out by the accused, and some of them wrote things their own way, and what we wanted was --

[Were those ever published?] They were published. They were handed to newspaper people, and somebody put a pamphlet out and that sort of thing. Well, that was Nadine's work. We wanted these for public relations purposes. At the same time, Nelson was preparing his statement. I took it with me and I asked Nadine to please have a look through it, check the grammar just in case, or if she had any other suggestions. Nadine did that.

Anthony Sampson was a guest in Nadine's house, and he showed very great interest in the statement. And I remember his words. He said you chaps don't know how newspapers run. What do you mean by that? He said you've got no idea. You're putting the biographical stuff in front, but that's not the way to attract people who write newspaper copy. There are certain things that the world wants to know. First of all, is he a communist or is he not? He had dealt with that, but it was on page 10 or 15. He said if a newspaper person doesn't see what it is in the first 3 or 4 pages, he loses interest. So let me give you some advice. These are the things that you must bring to the forefront. And make that part of it racy, good newspaper copy. We said thanks very much, we're always open to advice. And I went to Pretoria prison the next day as was my habit, and with our consulting technique that I have described to you, with pieces of paper, I said "this requires -- (pointing to the paper), and that a great newspaper man, a friend of Nadine's, had-- . So Nelson said, well thank you very much, that's good advice. Let's do this. And he sat down and rearranged his statement.

Have you got a copy of the statement? I think it will bear me out, though I haven't looked at it for many years. Yes, here's the second paragraph: "At the outset I want to say that the suggestion made by the state. . . that the struggle in South Africa is under the influence of foreigners or communists is wholly incorrect." Bang! Right at the beginning. You see, we took Anthony's good advice. "I have done whatever I did, both as an individual and as a leader of my people because of my experiences etc." Then you see we have interspersed personal detail with --. "I must deal at some length with the question of violence." This was also something that Sampson suggested. "I don't deny that I planned sabotage, but I did not plan it in a spirit of recklessness or because I have any love of violence. I planned it as a result of a calm and sober assessment. . . In the statement which I am about to make I shall correct certain false impressions which have been created by the state witnesses. . ." This is what's really --

[Didn't Sampson advise you to have some sentences that were highly quotable?] Yes, well on the ending I have another story to tell. Now, could I claim credit for something? When he had originally written this, and up to about a day before he was going to deliver it, the last paragraph read as follows: ". . . I have cherished the ideal of a democratic and free society in which all persons . . . have equal opportunities. It is an ideal for which I am prepared to die." I claim responsibility for saying Nelson, surely you want to see it accomplished. And then he wrote "it is an ideal for which I hope to live and to achieve, but if needs be. . ." That is the sort of suggestion.

[You told me that once before.] Well, then, I think I'll be a good witness, because I'm consistent !

[And what was his explanation of the Rivonia document called "How to be a good communist" that was in his own handwriting?] Well, I remember what he said, and it's incorporated in the statement. It was that Rusty [Bernstein] had given him a document written by a Chinese called "How to be a good communist," And in the time that he had available at Rivonia, he was interested in reading. And he's also a man who writes a lot. He enjoys writing, and he's got a very good handwriting. Copperplate. [From Fatima

Meer's book it's clear he does a lot of letter writing, in a rather nineteenth century kind of eloquence, literary

writing.] That's right. And in order to really understand what it was that this Chinese person was saying, he started writing out portions of this book. He didn't intend writing a book on how to be a good communist. He doesn't claim to have a theoretical knowledge. And the notes were -- He wrote out about two or three pages.

[The full text of that was reproduced in the Congressional Record at the request of Jesse Helms. And in reading it, it's clearly something by this Chinese writer. And yet there are parts of it which have explicit references to South Africa.] It may well be that he tried to translate this into the South African situation. But his general attitude was clear from Bruno Mtolo's evidence, who was not a favored -- who was a turncoat. Where he actually told a secret meeting of Umkhonto that the last thing in the world that I want you to be divided about is who is a communist and who is not. I myself am not a communist, but our people require the help of everybody, and we'll take help from communists. And I want to tell you and warn you, don't waste any time on this. So although it may be that the document is something which may indicate I don't know what -- I remember reading it at the time.

[Did the defense produce the original from which he had copied?] I don't recall. I don't know. [The original is a well known document.] There's no doubt that it exists. Rusty Bernstein was not the sort of fellow who would indulge in petty perjuries.

[There's no question about that.] It was a book. I don't remember whether I myself saw it at the time or not. But nobody suggested that there wasn't such a book or that there wasn't substantial similarity between -- That there was some copying from one to the other.

[At the end of a speech by Botha maybe two years ago, he appends to the speech as it was reproduced in some government pamphlet, he quotes the whole thing.] Yes, well this has been-- The book I took away from you, is it Pike? If I write something, there are certain things I want to throw in Yutar's face. Sisulu's passion for the ANC, that nothing that would bring the ANC into bad light should be left unchallenged. There was evidence that stood out subsequently as false, because I heard in a subsequent trial where the actual broadcast came from, not from Rivonia as some of the witnesses said whom Yutar put up to convict Rusty Bernstein. They tried to make out a case that Rusty Bernstein was responsible for the technical arrangements of the broadcast from Rivonia, which would have made Rusty guilty. But the evidence was not accepted, and correctly so, because it was shown afterwards that it was actually from a house at the bottom of Hillbrow. By the very people who did it, who were convicted of doing it.

But then I asked Walter [Sisulu] why was he so concerned that this evidence should be challenged? As to whether it was from there or not? As to whether Rusty was there or not? It was irrelevant for the rest of the case, because he himself admitted that he had broadcast, and it didn't matter for purposes of the case whether it was from one place or the other. And he said you don't understand. My organization, the African National

Congress, we have supporters out there. I cannot be accused of ever having done any irresponsible act. If the impression is created that I actually made the broadcast from there, they'd say what a bloody fool. He goes and makes a broadcast from his hiding place. So their concern that this was a national liberation struggle, I think was paramount. Whether they had any secret association I can't say.

[There's no problem at all about working closely with communists, or there being people who maybe were secret members of the party for a while and who are no longer members. But if it turned out that X, who had expressly denied being a member of the party, turned out to be a member of the party, it would just be grist for all kinds of criticism.] Well, yes, absolutely.

[Karis: Here's how I ended the background chapter on Rivonia, in From Protest To Challenge, vol 3, p. 680-1: "Expert students. . .also nationalists." Edward Feit in his book Urban Revolt, which I once went through very carefully in order to write a nasty footnote about it, from Bruno Mtolo's evidence indicates

that Sisulu was among CP members at various meetings. But he could have been at such meetings and it didn't prove that he was a member of the party. They were reaching out to--] They were partners. It mattered more, I think, to Americans in the cold war and immediate post-cold war period than it would have mattered to any of-- They would not want to apologize for being in the company of Bram Fischer or Joe Slovo or anyone else. After all, who besides the communists made the sacrifices that they did?

--- End of Part 1 ---

Memoirs of George BIZOS – Part 2

Oct 18, 1989

Side 1

The 11th of October was the day on which a resolution, unanimous or nearly unanimous, was passed in 1963 at the United Nations, calling for the release of the political prisoners, especially those charged in the Rivonia trial. I was recently asked to speak at the UN at the 89th meeting of the committee, and after Perez de Cuellar spoke rather formally, the president of the Assembly, General Garba, spoke about how long he's been involved in calling for the release of political prisoners in South Africa. And he specifically referred to October 11, 1963. And he regretted that so many years later, no progress had been made. Even though he had just heard about the news that eight people would be released (Sisulu et al), he still found there were lots of other prisoners, particularly Nelson Mandela. There was also a speech by the chairman of the UN Trust, the ambassador from Sweden, also bemoaning that the UN had not managed to move Pretoria over the span of years.

And I was one of the guests who were to speak. And I thought it appropriate to say that they were being too hard on themselves, because it did help. And I alluded very briefly to the incident that occurred early in the morning of 12th October, 1963, the day after the resolution was passed. The Rand Daily Mail had banner headlines about the resolution, and that there was a call for the release of the Rivonia people. I believe it was shortly before the indictment was quashed for lack of particularity. And Bram Fischer came to me about 5:30 in the morning in his shorts and sandals, and found me up in the vegetable patch. He had brought a copy of the Rand Daily Mail. He knew I was going over to Pretoria to see the Rivonia people. And he flashed the newspaper in front of me, and exclaimed "Take it with you, show it to them. They dare not hang them now!"

I took the newspaper to them, imitated Bram's gesture of flashing it on the table, and although there was no great exuberance, you could actually see an expression of tremendous relief and suppressed joy on the faces of all. Because as I said there was real fear that they would be sentenced to death. And I've always been certain that the response of the UN and the international community really made a difference.

[US diplomats also made private representations.] Well, Hilda Bernstein in her revised book says that I did public relations work. I don't know precisely what she intended to convey, but there was a tremendous interest in diplomatic circles, particularly after the indictment was quashed and the new indictment was to be formulated. And diplomats sought us out, wanting information to report to their governments. And I was to a certain extent seconded to this task on behalf of the team. And that's how really I came to know you, Tom, and Gwen Carter. Because that was part of my job, to inform people about what it was about.

[May we just start at Rivonia and take this list of subsequent cases and just get your reflections on them briefly, then we might come back to some of them. Could we start with the "second Rivonia case", the one with Mac Maharaj, Mkwazi, Kitson et al. There are also some cases which don't appear on the list in your c.v., since they aren't noted in the South African Law Reports. Perhaps you could try to assess the political highpoints, and also tell us about some of the important accused.]

Yes, shall we start with the David Kitson trial, or the "little Rivonia" trial, as it was called? As you know, Joel Joffe was about to emigrate to Australia as soon as the Rivonia trial finished. Wilton Mkwazi, Kitson, Maharaj, Matthews and Chiba, I think they were five. They came up for trial, because they were arrested, and Joel Joffe was persuaded, as the Australians were giving him trouble about an entry visa, to stay. And he asked that I should do the trial. And the relief of there not being a death sentence in the first one made it less traumatic as a trial. Because we thought that if you don't sentence to death the leaders of

an organization, particularly those who had started Umkhonto we Sizwe, how could you possibly still do that to the second rank of leadership? Well, this group of accused was one that one might call a not entirely homogeneous group.

[How did it happen that they were together?] Well, because of the amendments to the Criminal Procedure Act, that even though you may not have known each other you could still be deemed to be co-conspirators because of the overall Umkhonto conspiracy. And you had Kitson and Matthews, you had Chiba and Maharaj, and you had Wilton Mkwayi or "BriBri", that's his nom de guerre. [Meaning?] If I ever found out, I don't remember.

[Were they just not at Rivonia at the time of the raid?] Mkwayi was at Rivonia. But he was the one fellow who could give them the slip. You will recall that he was one of the accused in the Treason Trial. He gave them the slip at the Treason Trial. At Rivonia he escaped. He was there.

At the Treason Trial at the emergency stage, he was there. And they surrounded the accused and the co-conspirators that happened to be there, and they were going to detain them. And they did detain them. There was a particularly short man -- I've forgotten his name. He played the part of the ice cream seller in "King Kong". I remember that about him. A very funny man. He had a part of selling ice cream and saying "mayibuyee" every time he made a sale.

He was a co-conspirator in the trial. They went to arrest him, and the police had formed a ring around the group they wanted to arrest. And some policeman was pushing this small man around. And Wilton Mkwayi, who was about six-foot two or six-foot three, and as broad as a heavyweight boxer, went and told the policeman to leave him alone. And the policeman said, "it's none of your business, you get away from here." And he said, okay, if that's how you feel . . .

[And he left the country?] This is how he left the country, and they didn't get him. He was at Rivonia, but he was dressed properly for the occasion. He happened to be outside and not in the meeting at which they were found. He was wearing a gardener's overalls for a disguise. So when he saw what happened, he was just a gardener and he just walked away. And they didn't see him again for some time. He then took control of MK work in South Africa. And there were witnesses who gave evidence of how he had taught them to make gunpowder and things like that. He had lots of notes of how to make things which were found, using homely similes -- like that you had to stir the mixture that makes gun powder in a pan until it has the form of stiff porridge, which is a very well known substance in the townships.

In fact during the course of the argument on sentence in the Moubarris case, when the prosecutor actually pressed for very heavy sentences if not for the death sentence, or for a life sentence, he quoted as an example the sentences passed by the very judge, Boshoff, that the judge had passed a life sentence on Wilton Mkwayi and asked for a similar sentence for the people in the Moubarris trial. Boshoff said no, that case was very serious. Serious consideration was actually given to the possibility of sentencing Wilton Mkwayi to death, because on the evidence the judge thought that he had taught half the population of Soweto how to make gun powder. Which is a much more serious set of circumstances than those which prevailed in the Moubarris case.

[Who is John Matthews?] John Matthews was an elderly gentleman who was a bookkeeper. He admitted to being a member of the Communist party, if my memory serves me correctly, although I'm not sure.

[Is he black or white?] He's white. He was a bookkeeper for one of the businesspeople on the left, and he was not a very well known person. He was actually used as a -- I'm sorry I use the word "used", because people sometimes use it in a derogatory sense-- But his function was to use his employer's big safe for the funds which the underground used. He had a bookkeeper's mind, and he kept the money. And also he kept

some of the parts out of which the transmitter was made on which Sisulu had broadcast on the 26th June -- Was it the 26th June? Probably. He kept those parts. So his role was really a peripheral one. I think he admitted to being a member of the Communist party, or maybe the Congress of Democrats, I'm not sure.

[And what was Mac Maharaj like in his younger days?] Well, Mac Maharaj had been very very badly tortured by this man Swanepoel, the one called "Rooi Rus", the Red Russian, because of his red face. And who is now in his retirement an aspirant politician for the Conservative party. He was very badly tortured. He was very bitter about it, and he insisted on talking about it to the lawyers. He didn't take the stand, but he made a statement from the dock, in which he referred to what had happened to him.

He was the intellectual that one knows to be. He took a very active part in the preparation of the defense. But to a large extent the defense was not a denial, because of the overwhelming evidence available to the state. It was the sort of case in which participation was not really denied. The cross-examination was really only for the purposes of doing away with the aggravated circumstances and cutting down some of the false propaganda that the state wanted to put across. And also to explain the motivation of the accused.

[I've been told that Mac Maharaj grew up in the streets, and was self-educated. At that time, did anything strike you about him?] In the absence of my notes I can't recall about his background. He did write his background for us. Other than him referring to that sort of tough background, and also I think the sacrifice that his family had made, more particularly one of his brothers in relation to his education--

[What was his function within the movement?] Within the group, he and Kitson were really the more articulate of the group, and took quite an important role as to the form of their statements at the end of the trial. They all made brief statements, giving some of their personal background and also what motivated them to do what they had done.

[Next, you obtained a rare habeas corpus order for Israel Heymann. A police order frustrated his release?] Yes, that was an important happening. Bram Fischer was underground. We knew that he would be interrogated and tremendous pressure would be put on him, to disclose what information he had which might lead to the apprehension of Bram Fischer. We looked at it very carefully. And a new type of detention had been

authorized by the amendment of the act, and it said that the detention would be subject to the regulations published by the minister.

Ruth Hayman and I, the attorney, no relation to Issy Heymann, Ruth and I looked into the question of what are these regulations. And we couldn't find any regulations. We went to the librarian, Miss Furse; and if she couldn't find it, it didn't exist. And she said no, there were no regulations. We then decided that if there were no regulations, the detention was unlawful. Obviously her phone, or mine, or both, were being listened to. We prepared an application for habeas corpus. We both thought it correct that we should approach a leading member of the bar whose standing was beyond reproach, to lead this application. And we chose Noam Philips, who was a careful advocate, rather reluctant to get into the fray but rather good once he got into it. He became my senior.

In parenthesis, we might say that women play an important role. I went to his house to urge him to take the application. He examined me at great length. And he always prefaced his question, "well, what do I tell the judge if he asks this--". And I would give an answer. Then at about 11 o'clock, his wife, Joan Philips, a clinical psychologist, was sitting in the lounge hearing what was going on in the study. When he asked the question "what do I tell the judge", she shouted out "what he's been telling you for the last three hours!" Well, he took it, and we set off for Pretoria early the next morning. This must have been 1965.

I phoned Ruth very early in the morning and said let's go to Pretoria and serve the papers on the commander of the police station where he was, and let's set it down for 10 o'clock in the morning. You can serve it as early as possible. We got there, they said they were not ready at 10 o'clock and it came on in the afternoon. And there were two judges, Cas Bescer and Kotsee ? And the police were represented by the present Judge President of the Transvaal Provincial division, Judge Moll. I'm giving you this detail because it has lots of consequences.

They obviously decided as soon as they got the application that they were going to promulgate the regulations. And they were really playing for time. And on instructions from his clients, they said that the application was unnecessary, and should not have been brought, because Mr. Bizos and Ms Hayman were told that if they waited at the police station they could see Heymann. But they said they were in a hurry and they would not wait. And I blurted out that that's a lie. Well, Moll objected to my interjection, and he came back afterwards and he actually told the court that it was a misunderstanding, and that it didn't happen. But the court had no trouble in making an order. Having made an order, we then went along and said release him, we want to talk to him. And they ordered him to be released.

Well, we went along, and they said, oh, he was not available because he was out on an investigation with the investigation officer. We learned from Mrs Heymann subsequently on his release that he was actually taken for a ride around Hartebeestpoort dam, which is an artificial lake thirty kilometers outside Pretoria. He was just having a joy ride with Swanepoel who was his interrogator. And once they published the regulation, they came

along and said, oh, the detention is lawful. And the judges were very angry, and they said well, now we have no jurisdiction to order his release. But in order to express their disapproval, they granted attorney and client costs, which is the highest form of disapproval that the court can express against an unsuccessful party.

But it was a pyrrhic victory. Although Issy Heymann did not know where Bram was, he was under tremendous compulsion, and was able to say who might have known where he was. Shortly after that, Violet Weinberg, the wife of Eli Weinberg, the very person for whom I had done the first political trial, was taken in. She broke down very badly. She broke down, and in her delirious state, it is believed that she said things which led the police to Bram. This had a terrible effect on her after her release. She was called to give evidence and refused, and was sentenced to a term of imprisonment together with Leslie Schermbrucker.

And the morning on which the Rand Daily Mail had a banner headline "Bram Fischer caught" and the picture of Bram in disguise and Swanepoel in shorts triumphantly leading him on, I was busy with the trial of Wilton Mkwayi and the others. It is perhaps significant of Arthur Chaskalson's insight into things that he thought it necessary to come and tell me that I must just go into court and try to smash up whatever witness they put on the stand, and I shouldn't allow Bram's capture to affect me.

I just want to finish this, that whilst I was in this trial, Swanepoel turned up at the trial, obviously to make his presence felt. And the court interpreter, a white man, went up to him in my presence and congratulated him on his arrest of Bram Fischer. And Swanepoel could not resist the remark in Afrikaans, meaning "yes, we now know why some people get up in the middle of the night and bring applications to court", referring back to the Heymann application for his release.

[There are now four or five books on Fischer, and it would be useful to be able to have more detail with which to make an evaluation of these, perhaps in a footnote in Volume 5 of From Protest to Challenge.] The definitive biography is being written by Steven Clingman, isn't it, [now at the University of Massachusetts.]

[Can we go now to the Fischer trials? Was he the only accused?] Yes, in the second trial. [What about the first?] I was not involved with that. That was Harold Hanson, Denis Kuny, Ismail Mahomed . The accused included Fischer, Eli Weinberg, Schermbrucker, Costa Gazides and a couple of women. And in the course of that trial, Fischer disappeared and left a letter for the magistrate that he could no longer serve justice. We were not in touch with him during the period that followed.

Well, later he was arrested, and we were very concerned that he would be kept in detention for a long time. As soon as he was arrested, we were very worried. And Arthur Chaskalson and I and a couple of other legal people got together as lawyers and we decided that something should be done, because we were really worried about what might happen to him in detention, fearing that he might be treated badly. And Arthur

Chaskalson went to see General van den Bergh to get an assurance that he, van den Bergh, would see to it that nothing untoward happened to Bram.

[Did he get that assurance?] Well, you must get Arthur to describe that. But as far as I recall from Arthur's report, it was a sort of clever policeman's retort, that well, what makes you think that anything will happen to him? But Arthur describes very graphically what happened. And I then was called in. Joel Joffehad either left or was about to leave, and a new firm of attorneys, a sort of family firm of attorneys, were brought in, Edward Nathan, Friedland, Mansel and Lewis. A young man called Rob Wise was appointed, and the senior partner was a friend of Bram's.

And I started my consultations with Bram, started visiting him in Pretoria Local prison. I remember that on the first visit, I asked him whether his abandoning his profession and his family was worthwhile, having regard to the fact that he got just under eight months of underground activity. And as gentle as he was, the answer showed that he was somewhat irritated by the question. And he very earnestly asked, George, did you put the same question to Nelson? Was his family and his legal practice any less important than mine? Insofar as it might have been a polite rebuke it's important. But what I think may be of importance is that Bram feared above all a race war in South Africa between black and white. I think that his life was dedicated to trying to avoid that. When he saw that I was taken a little aback by the rebuke he added that the jails couldn't just be filled with black men in the struggle. That really, I believe, was his motivation.

Side 2

[What led up to his speech from the dock?] Well, we had a good example of a speech from the dock by Nelson before that, and maybe somebody should make a study of the similarities or otherwise. [I used to give that as an exercise for a course I taught.] They're both concerned about the danger of a racial war. He worked hard at this. He wanted it to be known what it was that prompted him. There's a paragraph in it saying why he did it.

[Was he particularly obsessed with being an Afrikaner, having to prove something about that?] Afrikaner nationalism was something that he grew up with. There can be no doubt from the things that he told me where the sympathies of his father lay during the 1914 rebellion. He told me that his father came home and wanted to burn his counsel's robes because the judge -- I think it was Maasdorp -- a Hollander of Dutch origin, who according to his father had sold out to the "red necks", the English. And he was giving burgers, citizens of the Free State, three years imprisonment for treason, which was just unheard of. How could you treat burgers in that way? It was not worthwhile practising. His father, of course, went on to become judge president of the Orange Free State.

[And his grandfather was Prime Minister.] Prime Minister of the colony. Also, in order to ridicule Bram, one of the charges against him was that of fraud, in that he opened a banking account in the name of Black instead of Fischer whilst he was in hiding. We sort of pooh-poohed that. They called a man to say

that if he had told them that he was Bram Fischer, they would not have opened an account in his name. And that of course would have been the potential prejudice necessary to lead to a conviction of fraud. Bram's wry comment to that was he wondered what his grandfather would say, because he had actually helped to found that bank.

[Did he take very long to write that speech?] Well, he didn't have very much to do, because he did not really have to come to terms with lots of the evidence that was given.

What happened on the day of his sentence, by the way, was well described in fictionalized form by Nadine Gordimer in *Burger's Daughter*. Well, I have reason to remember it because I was the lawyer who was there in the role that the lawyer plays.

[When he delivered his speech, how long did it take? And what was the atmosphere in the court? Could you say something about the reactions, of the judge and other people?] Well, the judge sat there completely disinterested, and looking patently bored. It was never explained to me precisely what it was between Bram and Boshoff, the judge in the trial. In my first interview with him or shortly thereafter, I said you know, Bram, I can't see any judge from the Transvaal provincial division taking your trial. They would probably bring in some judge from one of the provinces that doesn't know you personally, that you haven't appeared before as counsel, in order to try him. He looked at me and smiled. This happened certainly before any suggestion as to who the judge was going to be. And he said, don't worry George, there will be volunteers. And one in particular who will volunteer to take my trial. He hadn't done the Rivonia trial. Boshoff had done the Kitson, Maharaj, Mkwazi trial. He said Boshoff is going to volunteer. And that was it.

[Can you tell us a bit about Boshoff?] Boshoff was a judge who was particularly intelligent, fairly articulate. He was, however, a man of I believe limited vision. He was counsel in Pretoria, then a judge in Pretoria. He was one of the judges who were appointed shortly after the Nationalist Party came to power. In discussions with him, he was friendly and well disposed toward counsel.

[Had he ever had any personal interaction with Bram?] There must have been something in the thirties between the two of them. I have heard it said that Boshoff was related in some way to a man called Du Toit, a member of the bar who became a member of the Communist party. And Du Toit was in some way related to Boshoff, but I'm not sure of this. I don't know what Clingman has found out. And Bram may have been blamed for Du Toit's recruitment to the Communist party. That is a possibility, I'm not sure. But there was certainly no love lost between the two of them.

[Is it naive to think that someone of Bram's history and pedigree might shake up someone like this?] Certainly not Boshoff. Boshoff was a man who was capable of being compassionate on a personal level. I have a good example of his of his compassion, in the sentence passed on Robert Adam later on, when he actually told me privately afterwards - He asked me who the people at the back of the court were who were there everyday, and were they his parents. And they were obviously very loving parents showing great love and affection for their son. And he could identify with those parents.

[Robert McBride?] No, Robert Adam. He got ten years. He had plans to blow up the television station in the early 'eighties. So he could identify with those white parents. But I think that his relationship with black people was the typical white South African one, confined to the relationship between master and servant, and on the farm. So he couldn't really identify with Bram Fischer or anything that he had to say. He couldn't identify with him because the attitude to communism in the 'sixties in South Africa was analogous to the attitude of I suppose the majority of Americans to communism in the McCarthy era.

[A bad infection for which you had to be treated as a patient?] Well, it was a terrible thing to admit that you were a communist. This was the end; it was worse than the plague. So it would be very difficult for a man like Boshoff to identify with Bram Fischer.

[Can you tell us about the strategy of the defense?] It was not really a defense trying to avoid responsibility. It was really similar to Nelson Mandela's statement in the sense that I had no option but to do what I did, without actually using the expression as far as I remember, that history will prove me right.

[What about the mitigation strategy? Was it to avoid the death penalty?] Well, we never thought by that time, not having had death sentences in the Rivonia trial and in the Mkwazi case, it had receded. I never expressed the view that there was any possibility. But you know, personally, Nadine correctly describes in her fictional account how the lawyer turns back to look at Bram. In a way, there was a moment for me personally, a moment of release. Because the atmosphere was terrible in the 'sixties. And although we did not discuss it as a feasible sentence, the way it was in the forefront of our minds in the Rivonia trial, I still had a needling suspicion at the back of my mind that something theoretically could happen, and that you couldn't really relax.

[How long did the trial last?] A few weeks. Sydney Kentridge was the leader who cross-examined some of the witnesses. He wasn't there for the sentence.

[So much of the time was spent with the prosecution listing that he had done all these things?] Yes, that he had done all these things. Without us putting it at issue, except some of the things that Hlapane had said.

[Did they go much into his political life or his life before he went underground?] No, the prosecution confined itself to what he did whilst he was underground, and what he had done before that Ludi was able to describe.

[When you know that something's going to be a show trial, does it affect the way you plan your defense? Do you try to maximize the teaching of political lessons, to have a sort of demonstration effect?] Well, the Rivonia trial was one in which that sort of question came about. Joel Joffe deals with it at some length. The circumstances in the Fischer trial were such that not much of that could be done. It had been done at the Rivonia trial-- That he would get life imprisonment was on the cards.

[Even given his distinguished record at the bar, and his age?] Doubtful. We might have argued it or thought it, but there was no reasonable prospect. But I think an important part of the political trial is the sort of decision that has to be made about what it is you want to do and what it is that you want to gain. Joffe describes very carefully -- and his is a contemporaneous writing -- the conflict that there was in the team itself as to whether the accused should give evidence or not. The nature of the dispute was this. If you gave evidence, you would be cross-examined by the prosecutor only about the things that you had done. And you could only make the case worse for yourself. Joffe records, if you'll forgive the lack of modesty, correctly, that I was alone in the team in saying that it was necessary for the accused to give evidence. For Nelson to make one statement, in the grand heroic style, but that the other accused should actually give evidence. It was common cause that Nelson should make a statement only. The argument of the more careful lawyers, including Bram and Arthur and Joel Joffe was that there's nothing to be gained because the prosecutor will dismiss them out of the box very quickly and will not cross swords with them.

[Mandela was not a witness?] He did not go in the witness box. He made a statement from the dock. He was not cross-examined. If you make a statement from the dock, you're not cross-examined. He was cross-examined at length in the Treason Trial. There are marvellous passages which I've seen in a book and which I'm going to use in my class.

My perception was that everything that Yutar, who was the prosecutor, had done up to then indicated that not only did he want a conviction but he would try to politically try to ridicule the accused. And everyone of us had confidence that they could handle the political cross-examination. The question was whether the prosecutor would fall for the bait or not. I insisted that Yutar would fall for the bait. Hilda Bernstein, in her second rendering of her book [The World That Was Ours] says that I probably did that because I understood Yutar better than the others. There may be some truth in that, because I had actually done a number of cases against Yutar before. So had Vernon Berrange, but not very recently. And I contended that the political debate would really begin when they went into the witness box.

And they said well, there's nothing to be lost; let's try it out. We'll put Sisulu into the witness box. He was the first to give evidence under oath. Sisulu went into the witness box and gave some evidence about the background of the ANC, what they had done and how long they had knocked at the door, etc. And that the decision to go over to violence was not lightly taken. And explained some of the documents drawn up by Goldreich on things that were not within the policy of the ANC.

Very early in the cross-examination Yutar turned around and said, Sisulu, let us now look at the so-called grievances of the African people that you purport to be speaking on behalf of. There was a little distance between Yutar's seat and Walter's witness box. And Walter spread his arms out from the witness box and he leaned forward. And he said, Dr. Yutar, I understand you have a teenage son. My teenage son came to court this morning. He was arrested and I don't know where he is at the moment, but he must be in some cell

because as a fifteen year old he did not have a pass with him. Having said that, Dr. Yutar, let us now discuss what you call the so-called grievances of the black people. I think that it was Max Sisulu--

Yutar showed his complete ignorance when he said that Sisulu lied when he said that hospital services are not free. You have to pay a half-crown. I think this was Govan Mbeki. He said many poor people haven't got the half-crown to send their children to the hospital.

Well, he really gave Sisulu an opportunity to hit him for sixes, back and forth, because he said, Sisulu, you're suggesting that you told them that the members of Umkhonto we Sizwe were to be careful not to explode things that would risk life. What training did you give them to assure that this would not happen? And Sisulu of course was a completely old hand at this. He said, how much training do you give a policeman before you put a revolver in his hand? He was very quick to come back.

Yutar described New Age as the organ of the ANC and the Communist party. He said, come, come, Sisulu, an independent paper? Sisulu said, yes, independent, like Die Vaderland, which was the Nationalist party's mouthpiece.

[Did you try to breakdown the testimony of Hlapane?] Oh, yes. Bram's private description to me of Hlapane was that he was a dedicated man who was really a pleasure to work with. But his conversion when he was in detention to the police side had made him a mean and cheap liar. Although he may have given correct evidence about Bram's activities in the Communist party, which Bram admitted anyway, he indulged in a lot of petty perjury in order to discredit Bram and the Communist party and to make himself part of the anti-Congress propaganda that was going on. That he had sold out spiritually, completely. And that he had no remorse, and no thought of what would happen.

[Edward Feit relied on Hlapane's testimony in his book Urban Revolt, where he has a footnote that listed Sisulu as having attended a particular Communist party meeting, which proved he was a member, and that kind of thing.] Well, I would be very careful about Hlapane's evidence. After all, we were able to show that in a number of cases he had perjured himself. And also, to use the colloquial expression, that he had

sold out emotionally. This happens to people when they are involved, and they decide they are going to cooperate with the police. They very often say the sort of thing that would please their interrogators.

One of the things that the police would be wanting to show, both in the Rivonia trial, in which he did not give evidence, but in the Bram Fischer trial, and in the Izzy Heymann trial, where he gave evidence and I cross-examined him, he would be keen to support the propaganda elements which are not relevant to the innocence or guilt. To give you an example, a man would come into the witness box and he was precognized that sooner or later he's going to be asked what made him decide to give evidence. And you would have the stock answer: oh, because our leaders in the ANC live in five star hotels, travel first

class on planes, lead the good life, and let us starve and they do not look after us, and that sort of thing. Then you'd ask him, do all the leaders do that, and he says, yes, all the leaders in the ANC. No exceptions? No exceptions. What about Mr. Mandela on Robben Island? Is he also living in a five star hotel? Then they would have to say that he's an exception.

These people are really seeking for--They have a fundamental need to justify their own action in giving evidence, firstly. And secondly, they know if it isn't directly suggested to them by their interrogators, they certainly know what will please the interrogators as a result of the discussions that they have had.

[Was Bruno Mtolo also like that?] Mtolo was an interesting case. Mtolo's defection played an important role in the breaking up of Umkhonto. There's even the suggestion that it was he who actually pointed out Rivonia. He didn't remember the precise house, but he had been taken there twice. He didn't know the precise address, but the police must have taken him a number of times, and he remembered the general area, and it was kept under observation.

But Mtolo was a criminal, with ordinary housebreaking convictions. And one of the police officers in fact told one of the people that that he had interrogated that you chaps made the biggest mistake of your lives when you decided to include Mtolo in Umkhonto. But I remember asking or discussing how it came that Mtolo was actually included in the ANC, and an explanation was given to me. They said, here we were, a group of intellectuals, having become committed ideologically that it was the right thing to commit sabotage against symbols of apartheid. But we had no idea how to do it. They would sit there and talk about explosives, and people would have weird ideas, like let's write overseas, let's have a submarine come and let it float in. That's the sort of discussion they had. And Mtolo would say, "just give me a crowbar!" There was a contractor doing some blasting, and he had explosives kept in some sort of wooden outhouse near the blasting site. And he would go and break the door of the explosives room open, and he would help himself to dynamite.

[Mtolo didn't have much of a political track record when he came into Umkhonto.] No, he didn't. Except that he had settled down to a job. He didn't try to hide his criminal activities. At that time, he was actually a reformed character.

[Why did he join Umkhonto? Wasn't he recruited by Ronnie Kasrils?] Yes, Ronnie Kasrils. He's the one who was also sold on this idea of running down political leaders. That he defected to the police after his arrest because of the way leaders behaved. Their high life and things like that.

Side 3

(Digression to discuss current defiance campaign.) The security forces are really in disarray. You know the security police must be very confused at the moment. [Some think if de Klerk tries to go too far to liberalize, he will be stopped by the securocrats.] I

believe that. I can imagine the security police and others telling de Klerk that they will not be prepared to take responsibility for the situation in the country unless he does what they tell him to. And that in a sense would make him prisoner to the people he and his

colleagues have given such tremendous power to. This is the line which I have worked out on historical experience, that the last prisoners of a powerful police force are the people that gave them power.

[Will perestroika confuse them about who the enemy is?] That's right. I mean, who are these people? Here is a colonel who probably ordered his men on a number of occasions to disperse crowds with batons, teargas and rubber bullets, and now he is told to welcome them and say hello to their leaders, and receive a petition. You know, what's going on?

[Isn't it like the two interrogators--the nice one and the nasty one?] Yes, but that's a game that he played privately. That's a game that the police play privately; but this is exposure. This is exposure.

[You don't think the Soviets' own disarray will change the nature of the situation for them?] Well it might be. But whenever you are asking people to do things that are contrary to what has become second nature to them, it must of necessity lead to confusion.

[If it's the NIS that is most concerned with communism, won't that be where the confusion will mostly be?] Yes, but I think that the NIS is staffed by people who are a little better informed than the average police officer. And they would be concerned about these ideological questions, but I think they'll both probably suffer for believing their own propaganda. That had it not been for the communists, things would be okay. Judging by some of the people that teach revolutionary warfare, and propaganda techniques at some of the universities, in particular this man Pruis, whom we had as an expert in the Delmas trial--

[From where?] From the University of the OFS. He took over the job of the man that was appointed Head of the NIS, Neil Barnard.

Well he is an absolute disaster. He has learned things off by heart, such as certain extracts from Mao and certain extracts from Lenin and a couple of extracts from Che Guevara, the man who was the intellectual side kick of Che Guevara, what was his name? Regis Debray. Tom Lodge was my tutor for the purpose of cross-examination, and the man was an absolute disaster. He didn't know that Debray had changed his mind after serving imprisonment, and had written a book published by Penguin. He quoted from the earlier work as the gospel, without knowing at all that there was this other book. And this is the man who is in charge of the doctrinal program of the University of the OFS. He also didn't know who John X. Merriman was, or what Vichy France was.

He didn't know about Nehru. His thesis was that you cannot really have a fundamental change without revolution. We were concerned to give examples of changes that have

come about without a violent revolution, and he didn't know who Nehru was. And I said well, don't you know that far from fighting he was actually having dinners with Lord Mountbatten? And the interjected "and getting on very well with Lady Mountbatten".

[You told about that in the talk on the Delmas trial that you gave at the CUNY Graduate Center in 1987.]

[Before we leave the Fischer case, could you make any observation or comment about Ludi. How he was compared to the other infiltrators?] Well, you know Ludi really had his heyday with the first Fischer trial that I was not involved in. So I can't really say very much about him. His evidence was minimal in the second trial. The second trial really concerned itself primarily with what happened after Bram went underground.

[Would you say among all these infiltrators that Williamson was the most effective?]. He got fairly high. But I think Ludi probably did a bit better because he was in the inside. Williamson was with the other

agency [IUEF] but there's no suggestion that he got into the inner council of the ANC or any other organization. Ludi did. He was always inside the country.

[Did you do Baruch Hirson's trial?] No. Arthur [Chaskalson] was there. The African Resistance Movement. Hugh Lewin was in that.

[Where are we? The next one on the list is Samson Ndou and 18 others , which is connected to Ramotse and others . The name of Rita Ndzanga is spelled wrong.] She died, didn't she? She was a tough cookie, a really tough cookie. That trial started off without Ramotse. And then Ramotse was joined to it for reasons which I'll explain.

In the Ndou trial, it was fairly clear from the indictment and the further particulars that attempts were made to revive ANC activity within the country. And Ndou, Winnie Mandela, Joyce Sikakane, Peter Magubane, "Chairman" Elliot Goldberg Shabangu, Matshaba and others were involved in some way or another. Although Peter Magubane I think was only peripherally involved. It was also clear from the indictment and the particulars that the group had been infiltrated by a man called Skosana, who was a policeman. And they were able to give chapter and verse of what had happened. But there was also an English trade unionist whose name I have forgotten who was detained and who had given a fair amount of information.

Shanti Naidoo was a witness, Winnie's sister was to be a witness, and a fine Xhosa woman who had worked with Govan Mbeki, we were told, was called to give evidence. She was quite a remarkable woman. I think we'll trace her name. This was the first trial in which any form of ANC activity was suggested. It was 1969.

People were detained, and there were a lot of shenanigans as to who was going to take the case. An unknown in political quantity in political circles called Mendel Levine was actually persuaded by someone, it was thought to be people close to the police, to

actually take the trial. And he was going to brief Fred Z. Warrenstein and others including myself. He wrote for money, including to Gwendolen Carter by the way, and there was quite a bit of trouble about that. There was a suggestion that the people in detention had done a deal to plead guilty, and there were all sorts of shenanigans going on. Anyway, on the day when they appeared in court, Joel Carlson turned up and they all adopted him as their attorney, and they all went and pleaded not guilty. The trial was remanded to the supreme court. And Mendel Levine was dropped.

Before Toss Becker. Judge Becker was one of the three judges in the treason trial of 1956-61. He was probably one of the most humane of the judges that we've had in South Africa. You recall that he was actually the one that asked many of the questions of Nelson Mandela and others, to see whether he could find the motives within these people in cross examination while they were in the witness box, rather than being overly concerned with their legal liability for treason. He was genuinely interested in the possibility of a settlement, or something less than one man one vote.

Well, they were anxious because of the agitation of the number of people in detention to be released, to call the witnesses that were in contention to come to court. And they called them. And naturally we asked them about their treatment and how they came to be giving evidence. Now the police and the prosecutors have always considered that as an irrelevant sort of question, and that it was really done for the purpose of besmirching the good name of the South African Police, and good decent counsel would never stoop so low as to do this sort of thing in court.

[They said that publicly?] This was their general feeling, but they would not express that publicly. But whenever you asked a witness how she was treated in the witness box, the prosecutor would stand up and say, "What is the relevance of all this?" Now you really have to as counsel have a very careful approach to this sort of witness. It's no good shouting at her about why she came to give evidence. She has lived a life of fear in detention. And one of the approaches is to really be understanding, to lead her along the way. Well, there must be good reasons as to why you broke. Even if what you say is true about the conspiracy that you entered into, why did you find it so easy to speak about it. And eventually out comes this thing of how she had been treated.

When that objection comes, the attitude of the judge is very important , vital. Because if the judge says yes, what does this have to do with it, Mr. Bizo? that is a clear message to the witness, whether wittingly or unwittingly, as to where the balance of forces really lie. If on the other hand, you behave like Judge Becker who as soon as Liebenberg objected, that he quashes it and he says, "Mr. Liebenberg, I am very interested in hearing what this witness has to say, would you proceed please, Mr. Bizo." Well, that is an invitation to the witness to really speak her mind.

And this is precisely what was happening in this case. Because the witnesses would be called, and they would be completely frank and forthright about what had happened to them in detention, and the press that they were getting was very, very bad. And we took the Christmas vacation. When we came back in February, all of a sudden the Attorney

General himself, Mr. Moodie, all of a sudden came to court. He just turned up early one morning, nothingmore, and stood up before Becker and said we withdraw the charges against the accused.

This came as an absolute surprise. The judge said, do you realize that I will have to find them not guilty and discharge them? If you withdraw after a plea, you are entitled to a verdict. Yes, said Moodie, but as the highest officer of the state in charge of prosecutions, I'm doing this deliberately.

Well, when the court adjourned the people were redetained. I tried very hard to get the judge or the attorney general to intervene, because they had copies of their statements, which were privileged information and it was going to get into the police's hands. The judge said he couldn't do anything about it. And the attorney general couldn't do anything about it.

Now the acquittal and re-detention was something that really excited a lot of people. And in fact some of the young people, especially the whites, that became involved in Nusas activities in the 1970s, gave it as a stark example that had been responsible for politicizing or shocking them. Well, we have a double jeopardy rule, that you can't be in jeopardy more than once.

[That was exactly at the juncture when SASO was walking out of Nusas, so if you were in Nusas in January-February 1970, you were going through this terrible soul-searching anyway.] Absolutely. This was quite a thing. The reason why they did this, I think, was because of the judge's attitude. And also this woman from the eastern Cape whose name I've forgotten, his attitude to her was quite interesting. She came along and it was not very fashionable then to refuse to give evidence. Violet Weinberg and Leslie Shermbrucker had done it, but it was not very fashionable. But this woman had come up, and this is really what the judge's attitude-- [Mrs. Mamkahle] Mamkahle is it.

She came along and she said, I've been kept in detention in comunicado, and I don't want to give evidence. So the judge said well-- But the prosecutor knew she wasn't going to give evidence, and he was ready with the section that she should be sentenced to imprisonment. This was before the December holiday. Most judges would just have dealt with it and sentenced her to a term of imprisonment. Judge Becker did what every judge ought to possibly have done. He saw me looking agitated, and he said what do you have to say about this, Mr. Bizos. And I said, well, I think we better keep out of this. I said we

representing the accused. He said, I am not asking you as representative of the accused; I'm asking you as counsel, as an officer of the court. What am I to do in these circumstances?

I said well, the appellate division has held in Heymann's case-- Issy Heymann had been called as a witness in the Kitson case, and he had refused to give evidence. He asked for legal advice, and it was refused, and he won on appeal. The adjournment for legal advice was refused by Boshoff, and he won on appeal that he was entitled to legal advice. So I

said, the appellate division has held that a prospective witness in her position was entitled to legal advice. He said, is that so Mr. Liebenburg? He said yes, and he actually had the case there, Heymann's case. He says you're entitled to legal advice. Well, says the judge, you've heard what has been said you are entitled to legal advice. Would you like it?

I have no money she said. We will appoint a pro deo counsel to advise you. Pro deo counsel? she says, who pays him? He said you don't have to worry about that; the state will pay. She says, this is a very strange situation. The state locks me up for months, and now they want to pay for counsel to advise me. I don't think I want that. So the judge says, well what am I to do then? She said, I have a proposal to make. As of tonight I haven't communicated with my family since I was arrested, and I suggest that I am given an opportunity to write a letter to my family. My family will see to this.

So the judge says, that is a very good proposition. Mr. Liebenberg, will you see to it that she is given writing materials. Well, the next morning Jack Unterhalter and a junior were there, because there was publicity about this event. The family got in touch, and she was represented, and again the judge said that her excuse was not a lawful excuse, that she was liable to a term of imprisonment, but he was not going to impose this term of imprisonment. He was going to order her imprisonment until the day in which he would adjourn the court which was the first of February. In the hope that in the meantime she might change her mind. So that was his attitude. That was probably one of the reasons why they did this. Well, we thought that this was absolutely terrible.

[What happened to her when they were redetained?] I'm not sure what happened. I think they just dropped it and let her go. But what may appear to be absolutely brilliant legal thinking, so you get some idea of how these things happen, there was this terrible agitation in editorials about this redetention and recharging, because there was a provision in the Terrorism Act that if you were charged with terrorism and acquitted of terrorism, you could still be charged with a lesser offense. For instance if you damaged property and you were charged with terrorism, even though you are acquitted of terrorism, you could still be charged with damage to property, although with different intent.

But I think that they misread this, and they thought that if you're charged with the Unlawful Organizations Act or with the Suppression of Communism Act and you were acquitted, you could still be charged with terrorism. So they now think that they are going to charge them with terrorism, and in order to make it look even better they charged Benjamin Ramotse, who had been kidnapped in Botswana.

Now Ramotse himself of course was an interesting man. He was the one who was actually charged with being in the company of a person who blew himself up, when the first acts of sabotage were committed on the 16th of December 1961. That one died, he remained to be charged. The same investigating officer, van Wyk, the one in Rivonia, he put quite a bit of pressure on Ramotse to spill the beans, which Ramotse didn't do. They then charged the ANC conspiracy, and Ramotse as accused number one, and gave all the particulars that he did. And then took all the particulars of the Unlawful Organizations

Act of the Ndou case and shuffled the allegations, like paragraph 6 (a) (iii), became paragraph nineteen 4 (iv) b, to make it look different, to make it look like a new case.

Oh yes, I was going to tell you whilst this agitation was going on, we were thinking what the hell are we going to do about this. Agitation in the newspapers, editorials, student demonstrations on Jan Smuts

avenue. I was walking down the passage in Innes Chambers and Issy Maisels, who never likes to be left out of anything, said "George, I don't suppose you read the English weekly reports?" I said no, I'm busy with other things. Well, you better have a look at it. There is a judgment of Lord Morris of Borty Guest which examines the question of double jeopardy very very carefully. You may find something there, and you'd better have a look at it.

[Some nineteenth century thing?] No, no, very recent. It looks very very promising. If you rely on the same conduct, and you change the name, it doesn't matter, it's still the same jeopardy. So Joel Carlson has actually written this up quite well in his book.

We then decided to bring in a clever young junior, Mike Kuper, in order to research the law in English cases. And we sat a whole weekend working out an argument, and it looked good. I thought that we really need a top man to argue this. I suggested Sydney Kentridge. We went to see him. He's not given to great enthusiasms. So he read this argument, and he said, " George, its unanswerable." I said "Are you sure". He said, "Nobody can get out of this."

Anyway, we worked the argument out. And Sydney was absolutely brilliant in presenting it. Because he can really turn the knife quite well. Viljoen, who was then a judge in the Transvaal provincial division and later in the appellate division, was the judge. And Sydney before him, took the schedules that we had prepared in order to show that despite the jumble you could find six a, little three and such. Instead of merely handing in the schedules and saying, you know, it's the same charge, he insisted on reading every bit of detail, and comparing one with the other, and saying this was in the original, this is what you would find. [Overkill] And also you see he would pepper it with whatever the number it was really outrageously different. And he would say, "of course, m'lord, we would not be so bold as to suggest that this shuffling was deliberately done. I didn't share, to be quite honest, Sydney's enthusiasm that the judge of first instance would actually hold for us.

But there was no doubt about it. He upheld the plea of autrefois acquit , which is previously acquitted, therefore you cannot recharge us. The poor people in the dock, having been redetained there once, didn't know what to do. You know they just continued sitting there.

[Was this day one of the new trial?] No this was not day one, about day six, because in the meantime there was the argument and the few days taken to give the judgment. So whenever the judgment was given, after the judgment saying, they understood what the

judge said but they didn't know what to do. They just sat there. I remember Sydney, who also is not given to great demonstrations in court, looking around impatiently and these people just docilely sitting in the dock, and sort of waving with his arms, with a tremendous stage whisper, "Let them go!" And they went.

[This says that Ramotse got fifteen years] Well, Ramotse, the plea was not taken on his behalf. The plea could only be taken on behalf of those already acquitted. Ramotse was separately represented by Noam Philips, the man that had done the habeas corpus application. But again, Joel Carlson deals with that rather well in his book.

Whatever happened to Joyce Sikakane, does anyone know? I know that she's in exile. At one stage I heard that she was helping edit Sechaba. The woman jailor didn't know how to deal with women. This may be of some importance. You know, people in the local jail in Pretoria who had political prisoners over the years had really learned to appreciate the ease with which they could deal with political prisoners in prison. Because they would appoint a committee, and say "we know it's your job as a warder to prevent us from escaping. We don't have to make your job more difficult and you don't have to make our lives more difficult."

But a wardress called Zeelie didn't know how to deal with the women at all. Mrs Mandela, Joyce Sikakane, and Rita Ndzanga were not the easiest of customers. They were not going to respond to their cracking the whip. At one of the first consultations in the winter of 1968 or '69, she wouldn't make a room available. And slap bang in the middle of winter, she said that we could consult in a south-facing passage. Outdoors, where these prisoners would shiver. And I refused to consult that way, and I went to the head of the of the prison and said this is unacceptable. So he said okay, how long will you be at the man's prison? I had gone to the man's prison and from there I had phoned. He said go back in about an hour. So we got back. and there was an office with a blazing fire!

And poor Zeelie broke down, and said she was divorced and she had children to bring up. My complaint to the colonel may jeopardize her job. You know she was almost in tears. Did I know how difficult it was, that they would not cooperate with her. And the coup de grace as far as she was concerned, she actually produced it for me-- Joyce Sikakane had been working on the Rand Daily Mail. She had actually lost a job. She did something or other to assist someone in the movement and this led to her conviction. But being in jail, she wrote a little descriptive piece of a wardress Zeelie, in a most uncomplimentary terms. Her swaggering walk. Anyway, I won't go into details. It had been found in a search. How would you feel? It was actually quite funny, about how she didn't wear a bra and how her breasts and her buttocks swang diametrically as she walked down the passage.

[Zeelie was appealing to you by telling you this?] She showed me! She showed me how insulting it could be. That is really part of life, and I actually felt sorry for her because she must be a good person. She didn't lose her job, and her relationship actually improved as a result of the cathartic effect.

[Is there a way of analyzing prison relationships, because there must be a lot of history now of contact with very different types of people?] Well, you know I must tell you another anecdote, because it might be of some general use. Elliot Shabangu is colloquially known as "the chairman." He was the chairman of some branch of the ANC before it was banned. He is still around, in trade unions, a fine man, of tremendous presence and everybody refers to him as the chairman. His middle name is Goldberg, because he was born on Mr. Goldberg's farm. And because of it he got an extra slap from his interrogator, who called him a Jew. He had written a little advice which was produced as a pamphlet which was an exhibit headed "how to recognize an informer."

He said, firstly, he doesn't have a job. Secondly, he has a motorcar. He hasn't got a job, but he's got money. And he volunteers for jobs. Those are the tell-tale signs. So I said, "Chairman, tell me, what job did Skosana have?" He said he told us he was working with the garage. "Did anybody check whether he had the job?" (Skosana was identified as the informer.) Did anybody check? He said no, now that you mention it. "And when the decision was taken to send the pamphlets you'd printed down to Port Elizabeth, how come he was sent down with Winnie's sister to establish contact with the people in New Brighton? And he said, he volunteered. I said, "Chairman, did he ask for any petrol or traveling expenses?" He opened his mouth wide, and said "ha! That was a mistake!" And we've laughed about that ever since. He said the theory was right, but failed in the application.

[He is still around?] Oh yes, he is still around. He's got a job with an insurance company as some sort of a representative. I see him on the corner where the newspaper sales are and there's a very active game of drafts. It's a variation of drafts that is played very quickly by the people on the pavement at lunchtime. He usually watches this performance when I buy the paper.

Side 4

One other man in charge of security of political prisoners was a Brigadier Aucamp. We heard quite a lot about him from political prisoners. He was the man who really bluffed us, by telling us that people could

see their relatives at the prison after the conviction in the Rivonia trial. When he knew that he'd made arrangements to fly them all out in a Dakota. And he's the one who made the life of Nelson and others absolutely miserable, out of sheer malice.

But in order to give you some idea of who was in charge of political prisoners, I want to relate this. We managed to get the men and women to have joint consultations in the Ndou case. It was November, and we were having one of these joint consultations. And there was a man named Breedt, an old fashioned warder, but he let prisoners know where they stood with him. He came to me as I was consulting with a mixed group and he said that Brigadier Aucamp wanted to see me in his office. I had that morning taken a large basket of peaches taken down by the children early in the morning from the trees. These were early-ripening peaches when peaches are very very expensive. And the arrangement

was that I would leave the basket of fruit in Breedt's office, and I would always tell him, please help yourself. And Peter Magubane was the head of the committee for prisoner-warder relations, and Peter would take them and share them among the group.

So Aucamp says, I'm putting an end to this consultation, and there will be no more consultations with men and women mixed up. I said, why do you do that? And he said a love letter was found in the cell of one of the women and it was written by one of the men. And this was against prison laws. And obviously it could only have been passed during the course of the consultation, and he would stop the consultations. Well, I said, Brigadier, I don't know what you're going to do about it, but I would strongly advise you against stopping the consultations because this trial is going to start next Monday. And I will have to tell the judge why I'm not ready. And you will have to explain why you stopped the consultations. And I would have to tell the judge that you prevented me from doing my work properly.

He became very angry. And he said "your work?" You talk about "your work?" And he took two of those peaches in his hands and he actually crushed them, and he said "is this part of your work?" And I said, Brigadier, I really don't know what's the matter with you. I believe in having a proper relationship with the people that I defend. And if my fruit trees are overladen with fruit I consider part of that proper relationship to ask my children to get the fruit down from the trees, and tell them why they're getting it down from the trees, and putting it into this large basket, and I consider that part of my work, yes. And I really don't know why you are behaving in this disgusting fashion.

And then he went on the defensive and he said, oh, you people think that you are the only people capable of behaving in a humane manner. And why are you only concerned with this group of prisoners? I think there were nineteen. What about the thousands upon thousands of prisoners that we have to worry about? Why are you not worried about them? And he went on to harangue me about how difficult his job was, and how I had no right to accuse him of not treating people humanely.

But from the reports we got from people on Robben Island-- He was in charge of security of all political prisoners throughout the country, and his relationship even with a person like Nelson was a very unhappy one, unlike Nelson's with some other officials. When I saw Kathrada on my recent return to South Africa from Columbia [in November 1989] he related to me that Aucamp told him that the cell next to his was reserved for me. There was no love lost between us.]

[What can you tell us about Samson Ndou?] He was a trade union leader, quite a force. He was either a patron or on the National Executive of the UDF. He was an ANC stalwart, and a trade union stalwart. He had a job with the Anglo-American Corporation. At the time of his arrest he was actually working for Anglo-American.

[Is "stalwart" a polite word for someone who doesn't actually do the thinking?] Well, you know I can't really judge him on that basis, because I've never really been in the councils of any of these organizations

to be able to judge them. My experience with him was only limited to that trial. But he must be a man of considerable substance to have reached the position that he has. He was a co-conspirator in the Delmas case. It was mentioned that he had an office in Khotso House.

[Can you say anything about Winnie Mandela at that stage, as a political figure? This is before she really becomes a leader in her own right.] I don't think that Winnie has ever been just a wife. I think that she had a personality of her own. And I think it may well be time when we should discuss my first contact with her in the late 'fifties.

Winnie has to a certain extent always been her own person, even though she has tried hard and I believe she succeeded in the main with reflecting Nelson's leadership whilst he was in jail. More particularly during the difficult years of the 'sixties and up to the middle 'seventies. She took part in the anti-pass campaigns, and my first contact with her was after Nelson telephoned me and said with a chuckle that he required my professional services. I said yes, what is it. He said, well, he had married trouble. I said, what do you mean? He said "Winnie's said to have hit a policeman." Well, that was the first time I acted for her in the late 'fifties, shortly after their marriage. A policeman came to arrest her for doing something in the anti-pass campaign. And she said to him, okay, you've come to arrest me; get out of my room. Wait there. I want to dress, then you can take me to prison. And obviously this policeman had not been spoken to by an African woman this way, and caught her by the hand and said "Come on!" He wasn't going to be told by a "maid" what to do. And he took her by the arm and tried to drag her. She resisted, and one thing led to another, and she gave him one on the face that actually caused him to fall.

And then of course the pass offense became the less serious of the offenses. She relates this incident, though I think she has the year wrong, in the book that the German woman did on her. And I seem to remember what she says, that I advised her before going into court that she must appear as a lady and not as an amazon when she comes into court. The defense of self-defense and resisting force that the policeman exercised in the circumstances succeeded, and she was acquitted. She then decided that I would be her counsel for the future. We sort of got on together, and she's always considered that a triumph that she slapped this policeman and was found by the court to have been justified in doing it.

[There was a great scene on US television not long ago where she was surrounded by a group of female police officers, and she's saying "get your hands off me" and pushing them away.] Typical of her attitude, that she will not submit to any assault or insult to her dignity.

Then of course she was banned, both before and after this Ndou case. And there were a number of cases in relation to the banning: communicating with other banned people, receiving visitors, and others. And we managed to keep her out of prison, except on one occasion for communicating with Peter Magubane who was himself a banned person, and she served a short term of imprisonment for that.

We had a large measure of success in those charges. She then of course was the target of a number of dirty tricks, in a way. Women with close contacts with the police would allege that she committed adultery with their husbands in divorce cases. There would be some publicity of this, and this was calculated to hurt Nelson, because newspaper cuttings of these allegations would be put into his cell by the people, to really hurt him.

And then of course, as we all know, she was banished to Brandfort. Brandfort was a failure from the point of view of the government, because they soon realised that Brandfort would not change Winnie but Winnie would change Brandfort. I went to visit there about three weeks after she was banished, and it was a cold little house in the middle of winter. And whilst the coal stove that she lit in order to make lunch was smoking, we walked out and the sun was shining in the South African winter and we leaned against the car in the yard. And there would be eight or ten-year olds passing by, and the minute they saw her up

went the hand with a clenched fist. And I think that they decided that to take her somewhere else wouldn't solve any problems, because they would have the same problems anywhere. The best solution was really to get her into prison.

And they put a stupid man called Prinsloo, who did nothing else but watch. And they finished up with twelve charges against her for breaches of her banning order. I went to Bloemfontein district court, not the court of appeal, in order to defend her, and the charges really fell to the ground. Prinsloo was shown to be an out and out untruthful person. This must have been in the late 'seventies. When was she in Brandfort? Shortly after Soweto.

Of course the other important matter that they tried to get her on was that statements were taken from people in detention which explicitly said that there was a meeting at her house on the night of the 15th of June 1976 to plan the violence of the 16th of June. The statements were read to the Cillie Commission. The Rand Daily Mail complained bitterly in an editorial about the commission being used for the purposes of condemning people that had no right to be heard. Cillie immediately responded that the Rand Daily Mail was wrong, and that if specific allegations were made against people or organizations he would give the people an opportunity to respond.

[Wasn't it true though that for sometime before the uprising it was true that young people were politically attracted to her?] Oh yes, absolutely. She made no secret of it; but that was not the case that was put before the commission, that she had planned the violence the night before. And Sydney Kentridge, then I think the Council of Churches was in some way involved, or someone high up in the Council of Churches. And Sydney went to cross-examine these witnesses in relation to that. I was busy defending one of the youngsters who as it turned out were falsely accused of killing Dr. Edelstein, a social scientist who was actually killed. But days were arranged for me to go and cross-examine these witnesses on behalf of Mrs. Mandela before the Cillie Commission.

And of course their whole thing fell apart, because these persons retracted those statements and said that they were made under compulsion. And Percy Yutar, who had been a prosecutor in the Rivonia trial, was leading the evidence before the commission. And at the end of it all, Yutar adopted a friendly stand and came to me and told me that he would use his good offices that these people would not be charged with statutory perjury, having made the statements under oath and then having retracted them under oath. And I said yes, that would be a good thing, because they said that he knew from them that the statements were taken under duress before he led them. And in fact one of them said, Dr. Yutar, you know what you told me at John Vorster Square, that nobody would be affected by these statements, and that I would not be cross-examined or got into trouble by these statements, and that it was really a private matter. And I come here and what do I see? I see Mr. Bizos, and I see Mrs Mandela sitting behind him. And under these circumstances our agreement just doesn't hold water any more.

Well, no adverse finding was made by the commission against Winnie Mandela. But it is perhaps of some significance that Yutar in his address to the court in the Rivonia trial had referred to Nelson and his colleagues as "this motley lot" who actually thought that they could take over, overthrow the state. And whilst he was talking to me, Winnie was next to me, and Yutar said "hello Winnie. How is dear Nelson?"

And she immediately snapped back: "Mr. Mandela to you is well, thank you."

[Is she going to be charged in this Stompie Moeketsi murder?] I doubt it. There is really no evidence, I believe, other than her being present during-- On the evidence that they have, that she was present at one of the early assaults on these people who were taken away from this Methodist home for young children. [So she won't be involved in the case?] Well, she may be mentioned in dispatches during the course of the evidence. And I don't think that they will be able to show anything more than that people around her,

whatever their own motives were, whether they were self-appointed or appointed protectors, let her down badly. Very often supposed protectors are not --

[Could that have been a set-up from the beginning?] It's difficult to say so. I don't think she believes that. She actually discounts that as an idea. She just thinks things got out of hand. But she also believes that some of the allegations are just not true. That insofar as there were irregularities, it was the young people getting out of hand through lack of discipline.

[Someone told us that the reason they let her leave Brandfort and come back to Soweto was that they just knew that they were giving her rope and she was going to hang herself.] There probably is some truth--

[It's consistent with your saying they wanted her in jail somehow.] They wanted her in jail somehow, and they did not want her in Brandfort. Because good Nationalists in Brandfort said "what the hell did you bring this woman here for? Why are we being punished! Servants don't listen to us anymore, and they talk about trade unions. . ."

[Didn't she also attract a stream of visitors?] Well, absolutely. People would go to the location even if they were complete strangers. The threat of going to the location without a permit was not a great threat. Also the post office. Winnie didn't have a phone, so she would be at a public telephone outside the post office every day at 11 o'clock, and it became an international meeting place.

It is some evidence of the vindictiveness of the police that the woman who worked at the post office almost lost her job for telling Mrs. Mandela where she could buy coal which she didn't have to break up, which was the right size for her stove. One of the charges was attending a social gathering with this woman working at the postoffice. A black woman. The conversation at the social gathering was "where can I get this coal? This is where--" And then a witness came in and he brought a chicken to the post office woman. Because on Thursdays a farmer came in with eggs and chickens. And Mrs. Mandela saw this chicken and she said "Oh, this looks like a good chicken. How much did you pay for it?" He said two rands. "Oh, two rands, this is a marvelous chicken for two rands. Will you please every Thursday buy me a chicken?" And it was a social gathering because three people were present.

And the prosecutor during the course of the trial was asked by the man from the New York Times , "sir, I don't want to be impertinent, you know..." This was during the adjournment. "But don't you feel silly asking so many questions about a chicken?"

[It could have been a secret code.] Poor Botha who was the prosecutor felt quite uncomfortable. And also one of the charges was that she received her sister as a visitor. She had asked the magistrate for permission to allow her to receive her sister, and the magistrate said no. And she then told the magistrate, "I do not mean to defy your authority, sir, but my sister has come and she is not going to sleep out in the veldt. She has come to visit my daughter, and I will allow her to visit my daughter. And you have my word that I will not communicate with my sister. I will not receive her; my daughter Zindzi will receive her. But she will not sleep out in the cold. "

So the prosecutor cross-examined her and said,"Mrs Mandela, you've told us you did not want to defy the authority of the magistrate." "That's correct." He then said, "Then could you explain why you come to court every day dressed in the colours of the ANC?" And without a moment's hesitation she said, "Of the very limited rights available to me, the choice of wardrobe every morning is still mine."

[She can really be very majestic.] Oh yes, absolutely. And you know she would even go back on the things I had precognized her about. One of the charges was receiving Priscilla Jana as a visitor. One of the exemptions was that she could receive an attorney. But they went and found out that Priscilla Jana was

only a clerk at that stage, not a qualified attorney. So they charged her for receiving a visitor. The defense was that she believed that she was entitled to see Mrs Jana, because when she was a prisoner in the Fort, detained shortly after the '76 troubles, only attorneys

could visit her. And Mrs Jana had visited her, and nobody raised any objection. Her state of mind was an issue, and if she could count her as an attorney at the jail--

So we agreed that when she was asked about this she would say she did not believe her rights at Brandfort were any less than they were at the Fort, in prison. So I asked her in court "Did you believe that your rights were any less in Brandfort than they were in the Fort?" No, she said, I knew about my rights. "What did you know about your rights?" I knew that my rights in Brandfort are non-existent! Even some of the rights I had in the Fort are non-existent here in Brandfort, and she went on about the disabilities that she suffered in Brandfort.

[She was willing to scuttle the legal argument for the sake of making a political point.] For the making of her little speech. But it did not in fact scuttle it. She was acquitted.

[Has she changed at all in that respect?] I don't think that she has changed fundamentally. I think fundamentally she is the same person. I think that constraints have been placed on her by the movement.

[Fatima Meer says that at heart she is really a social worker, and that helps explain her attitude toward these 'lost' boys; on the other hand she can be very imperious and arrive late at a mass meeting at the Wits great hall with her entourage, sweeping in.] To say that she's just a social worker is an oversimplification. She has been the subject of house-burning, her house was attacked in Soweto. And here you had a group of youngsters who say "we will protect you." The temptation to accept that sort of offer must be fairly great. Also, she sees herself as a leading figure, and this is a sort of guard of honour. People are complicated. There's never a simple explanation.

[If we can go back to the question of constraints on her by the movement. Were those always there before but she resisted them?] It was a back and forth process. But I think that the constraints became more drastic as a result of the football team situation.

[But now she seems to be almost politically rehabilitated.] Yes, I think that's correct. I think that the young, and in some respects "quick-action" people, who said that no democratic lawyer should act for her, and condemning her, was an over-enthusiastic response to the situation. I myself made a point of arranging a flamboyant visit to my own office almost immediately after that press conference when Naidoo and Morobe and Barayi -- She came, with members of the family, all dressed up, to the office. And she can't come into Innes Chambers without enough people noticing to form a crowd, and to say "there's Winnie." When she comes to the office it's almost a state visit. And they know that she's coming to see me. And I made no bones about the fact that I thought it was completely wrong for her to be spoken about in those terms. It was an unfortunate incident, but it's over.

[What can one say about two things that she did that seem to display such poor judgment--the involvement with Brown, the black Republican, and her agreement to write an introduction to the Swedish edition of that ridiculous book called The Solution by Louw

and Kendall. She was quoted praising it in Time Magazine.] I didn't see that book or what she said, so I can't really comment on that.

[One important historical question will be what this episode shows about the movement as a whole and its ability to deal with such a problem. What does it reveal, and have they learned any lessons from it?] Well, there are a series of acts, for each one of which there may be an explanation. There's the off-the-cuff remark about "we have our matches", which is recorded and I have seen it. If you take that in context, she

was really challenged by the man from Agence France press. "You talk about bringing down this government and the end of white rule, but surely you're being quite unrealistic about it all."

Now I have seen the film, and knowing Winnie as I do, if you watch her face, she did not intend to say that we are going to gain our freedom with matches and necklaces. She was rather hoping to ridicule the question. I know that it's difficult to explain. But knowing her thought processes, that she caricatured--she didn't know who this person was-- and it was the clever thing to make an off-the-cuff remark. Look at it, we are feared because of this. When I saw it, I said that was a typical Winnie Mandela remark. But it is very difficult to explain, and for people to accept. And I must be one of the very few people that can interpret it in that way. To me, she could very easily have said to an American newspaper person, "Well, we're cannibals, aren't we?" Tongue in cheek, if he said there is too much violence in Pietermaritzburg. And if she thought he was a hostile person to her thinking, she could say, "Don't we eat people up?" The poor judgement lies in making that sort of remark. And in fact that reporter actually resigned from Agence France press. I don't know whether you know that. He said he just put it on at the tail end of his report as an off the cuff remark, but when it reached there it became the lead part of the story. And he himself was very disappointed. But it felt slap bang into the middle of--. But I agree that if you have to explain your remarks, and they accumulate, then you are in trouble. President Reagan said some outrageous things as a result of forgetting, or not being in tune; but he's protected by all sorts of people. This is really the situation.

[Mary Benson once said Winnie needs someone around to protect her against herself.] Well, she calls me a father figure, but she doesn't always listen.

[Motlana told us that she's always being asked what her husband thinks, and she wants to express what she thinks, and that explains the Louw and Kendall episode.] There may be an element of that. I don't know about the Louw and Kendall book. I don't know if she read it--

Side 5

[The American edition didn't have the right to print her, but they quote her on the cover from the Swedish edition.] "Here lies hope for a shattered nation". This is not Winnie. [These are extreme free marketeers. They have American connections, and they've been trying to push this around the United States] I wouldn't be at all surprised if Arenstein got

her to do this, or someone like that. [But he wouldn't be for this extreme free enterprise approach] No, he would not. [Would she listen to him?] She might. If they come along and they flatter her, and they say this is a good book and suggests this, that or the other.

But this business of Brown. She was actually persuaded. She believes that a lot of people are making money out of the Mandela name. She genuinely believes it. And again, she believed that this was an opportunity for her to get something for herself and her family, and there was nothing more than that.

[It wasn't only to stop other people?] To stop people. She resents people making money out of the Mandela name. She resents that.

[But financially she's really had a great inflow of money hasn't she?] Yes, but she spends a lot of it.

[I think we'll skip the Namibian case. Can we look at the NUSAS trial, which started in April and ended in December 1976? They were detained in December 1975.] Let me have a look at Nusas. I think Nusas is an important trial. The nature of the defense was that we did what we did irrespective of any organization. We did our own thing. Okay, well, what do you want to know about the Nusas trial?

[It's a very stellar group of people who've gone on to great things.] Yes, and all of them have made their mark. Glenn Moss is now producing Ravan Press. Before that he did Work in Progress.

[Did he ever become a lawyer?] I'm not sure. He is one of the people who really became radicalized as the result of the double jeopardy case. It was his first real-- Charles Nupen is now a busy lawyer. He has left the Legal Resources Centre, he is now the head of this conciliation body, what's it called? Where they appoint facilitators to settle disputes outside of the courts. He's doing a marvellous job. They're actually training people. They have their own organization and they train lawyers. In fact, he's promised to train me to take part in this. When I expressed an interest, he flattered me by saying that if I was prepared to attend one of the courses, I was certainly welcome. He said that my authority in any particular dispute would be tremendously beneficial.

[Because you would scare people?] I hope you didn't mean that. He said that there are a lot of people who would trust me and that would give me tremendous authority to sort of bring them together because what they do is they don't really give a judgment; you get people to agree, to accept, to enter into their own agreement. But you've got to be absolutely trusted. You've got to go to the two sides and ask "what is your minimum?", "What is your maximum?", and keep it absolutely confidential. Don't go and say to Gail that that is your minimum, just so she can offer you the minimum. And you say, okay, I now understand what the parameters are. Both sides have got to trust you. Now let me see what I can do to bring you up or to bring you down, and Gail up in order that the two of you can actually get an agreement. It can be very quick also, and less expensive. But you must be trusted by the boardroom and you must be trusted by the trade union.

Cedric de Beer of course came into this through the University Christian Movement. The state was charging that they furthered the aims of the Communist Party. He was the first witness of the accused, and we knew that these prosecutors had a habit of asking anybody whom they suspected of being a communist whether he believed in God. Because they had this in the first Fischer trial. They asked someone, I think it was Eli Weinberg who actually was the conductor of a synogogue choir, they asked him if he believed in God, and he said no. And they said why did you take the oath? He said it was just a convention. The magistrate was very angry and shocked.

[Do they do that often?]. Yes they do. The atheists or the agnostics would hedge. As predicted, Jacobs, who was also the prosecutor at the Delmas trial, asked him, "Mr de Beer, do you believe in God?" And he said, "Yes, do you?" You know, that was the last time that question was asked. Karel Tip of course has become a member of the Johannesburg bar. He was my junior in the Delmas trial. We were the fixtures there. And Edward Webster has become a professor at Wits.

[What does de Beer do now?] I don't know what happened to him. He's involved with some education thing . Eddie Webster's father when the acquittal came exclaimed three times, "Glory be to God!" He is a very staunch Methodist, I think. He really thought that Chaskalson and I had very little to do with his son's acquittal!

[Did the state really think they would get a conviction in this trial?] This trial was really puttogether by Coetzee, the man who became commissioner of police. He is the man who hated students. Hated in the sense that he thought they really shouldn't be doing he things they were doing in Cape Town and elsewhere. He also was the intellectual member of the police, who had done a doctorate on the politics of the left, who was responsible for arresting Professor Blacking and Dr. Desai with a charge of immorality. He was really the intellectual guru of the police. And he put this trial together. He himself gave evidence, and it was my unhappy lot to cross-examine him. He actually went into the witness box and said that the Freedom Charetr was drafted by a communist cabal in Cape Town. I asked him on what basis he made that statement. Are you sort of drawing that conclusion as an expert? He said it was historical fact. Then I

said, what did Professor Z. K. Matthews say about this, and he didn't know anything about Z. K. Matthews.

[He knew who he was though?] Oh yes, that he was in the Treason Trial. Hewas a shorthand writer that had made notes of some of the speeches. He was actually the most accurate in recording the speeches in the Treason Trial. And I had a brief curriculum vitae of Professor Matthews during the course of the cross-examination. And he felt sufficiently confident to turn the tables around and say, then one of the greatest frauds that has ever been committed in South African history was perpetrated. Because the Congress says that nobody really drafted it, and that it was really a collection of demands made by the Congress of the People.

Be that as it may, the woman from the Transvaler came to me the day after this cross-examination in tears. She was a woman with university training. And she was in tears, and she said she wanted to show me her notes, that it was not her fault what had appeared in the Transvaler that morning. It said that Mr. Bizos had put it to Colonel Coetzee that he was wrong that a bunch of communists had drawn up the Freedom Charter, and said he had drawn it up! So she was in tears, and she went to her editor in tears; and he said, tell Mr. Bizos that we will apologize and we will print a retraction.

And I said, my dear, if your editor wants to mislead his readers, I have no objection whatsoever. Please tell him that he doesn't have to change anything. And the record in the Transvaler so stands! I remember her appearance particularly well. She was a striking young woman with very long, blond hair; but I don't remember her name.

The other thing about that was that we want to see and have a consultation with everyone that is involved in one way or another in a case. And I asked her whether arrangement could be made for me to speak to Craig Williamson as a potential defense witness. He had been vice president of Nusas.

[Nationally?] Yes, it is really scandalous. He was best man at Nupen's wedding. And Charles always felt that there are certain limits that one-- And Charles's wife, who was actually nurtured as a young bride by Williamson's wife, just couldn't bear the thought of the betrayal. But when I suggested that I should consult with him, Glenn Moss pulled me aside and said, "have nothing to do with him. He is a police informer." And this was long before he went off to Geneva, and there were complaints that Glenn Moss was an autocratic Stalinist.

[Complaints by whom?] There were complaints by students in the student body. [Did he resign at some point?] They resigned at some point. Also that Moss was a lone president that didn't even consult with his executives. He said, yes, that is quite right; because I had Brune and I had Williamson on the executive.

[Who was the first one?]. Brune, Lieutenant Derek Brune, another policeman, and he became the treasurer of the SRC at Wits. And everyone agreed that never were the books of the SRC so carefully kept as when Brune kept them. Arthur said it was because he had proper police training, that you actually make an entry of everything.

[Enugu Reddy, who headed the UN Center Against Apartheid for many years, became well acquainted with Williamsom, and he said he cooperated with him, gave him various kinds of information because he felt he had been cleared by the ANC] Then they should have listened to Glenn Moss. [But Glenn Moss should have followed up on this] Well, he expressed his view, and having isolated the man himself, there was nothing much he could do.

[Was this a harassment trial, or did they really think they could convict them?] They actually thought that they could convict them. They thought they would get a three to five year sentence. They thought that

they would discredit Nusas completely, that was an attack from the black consciousness movement and from the white establishment. It even turned a man like Alan Paton against Nusas, who was previously one of its patrons. Because of the trial, and because of the things that came out. [What came out that would affect Paton?] Well, you know, that they had contracts with all sorts of people. It is interesting to see how it affected. It's on record. Something that really alienated certainly all the people in Nusas, alienated Paton from all those persons.

[Pike's "history of communism in South Africa" describes Paton as quote "an extreme leftist" who was demolished by Yutar when he spoke in mitigation at the Rivonia trial. That he "slinked away from the chair."] Well, we can't get away from the Rivonia trial. I precognized Paton for his evidence in the trial.

[What is that word ?] Precognized, to inform him of what he should expect. Although most of the questions that I suggested to him were asked, there was one thing that I never thought Yutar would do. And I hope he now lives to regret it, because Yutar actually said in the opening remarks, "Let me unmask this gentleman." And the "unmasking" was the following: that before the ANC had come out with the announcement that it would go over to violence, Alan Paton in a visit to Canada had said that violence was going to come to South Africa, as a prediction, a prophesy, an analysis. Yutar chose to take this as an entitling him to make a suggestion that he, Paton, must have been party to the conspiracy, which absolutely shook Paton.

You know writers can't really deal with this sort of thing, as Nadine Gordimer couldn't deal in the cross-examination with the suggestion in the Delmas trial as to whether she was in favor of the ANC. And she said, yes, she was in favor of the ANC. And therefore you are in favor of Umkhonto? Yes, of course, I must be, she said.

They can't deal with-- They have inner spirits wanting them to be intellectually honest, which doesn't give them the nimble footedness that is really required in order to deal with cross-examination. And poor Alan was absolutely devastated. I had taken him to court in my car and brought him back to his house host, the British consul, what was his name? Leslie Mitford?

[Who predicted that a day would come when every black person in Johannesburg would choose to go back to Soweto, and that would be the end. I never thought such a knowledgeable man would say that]. Well, Alan was very upset, he didn't know what was going to happen as a result of this suggestion. He was sad all the way back to Johannesburg. He thought that he had not done any good, and also he was not prepared for this frontal attack. He has written about himself. And I remember when I took him to the house, as soon as we walked in their faces showed their concern for Paton, who was a writer and an observer, and was obviously much more qualified to deal with that. He said, have you heard? And they said, yes, we have heard on the radio that it was suggested that you were party to this conspiracy. Of course once such good friends and good people were-- They were shocked by the suggestion. I am sure they would not have believed that about Paton, but their shock actually transferred to Alan Paton.

[Yutar actually said that Paton's predictions were equivalent to advocacy?] Yes, he said, you couldn't have said this without knowing. You were party to this. You knew, you talked to them, you knew about this and this is why you have come to give the evidence now. And I am going to unmask you!!

[It's shabby logic]. Well, I think that it is actually improper.

[Pike says Yutar "wiped out" Paton with his "devastating logic", and he left a "beaten man."] Well, he left a beaten man because he was unjustly and improperly accused. [He should have fought back]. What can he do? What goes through his mind is, have I come here to defend myself or have I come here to do some good.

[What if he took a tough line, saying that is rubbish and so forth]. If he'd been given time to think about it in his study, he probably would have done that. In order to deal with this sort of cross-examination, you have to be a bit of a street fighter yourself, and Alan Paton isn't. I felt very sad about it, because I felt that I had failed to properly recognize him. I never would have anticipated that Yutar or anyone else would suggest that Paton would have supported the decision to go over to violence. How far must you go? I had terrible feelings of guilt about it, but he himself was very generous in discussing it in the car on the way back. He said that it wasn't my fault, and he started thinking of how he should really have responded.

[How long was he on the witness stand?] Not more than half an hour. But you see this flurry of, "Let me unmask this gentleman." This is where Strydom got the title of his book, Rivonia Unmasked.

[Here he says that when Yutar spoke on the last day, the atmosphere in the court was "electric."]. Well, I suppose that would be a correct description, because the courtroom, in fact, that last day was packed three-quarters full with security policemen and their relatives, in order to avoid too many supporters of the accused filling the benches.

[So in the Nusas trial you think that they really wanted to send these guys to jail?] Send them to jail, discredit Nusas. You see, they had Nupen, who was the president. Karel Tip was the president and Eddie Webster, who had done nothing more than deliver a paper to a Nusas conference at an apple farm. They considered him as the sort of adviser, when he was more senior, and this was said of him. There had been such a campaign against Nusas.

[It had been declared an "affected organization".] Yes. Also Karel Tip had been detained, the others had been detained. This would have given legitimacy to all the activity. It was clearly a complete propaganda trial. The gravamen of it was that you supported the ANC's campaign to free political prisoners, you supported the ANC's campaign for trade unions. What he did there was really substantially similar to what had been done in the Treason Trial in 1956 to 1961, when we did in the Delmas trial and that was : we have done nothing wrong, we did what we did out of our own innermost convictions, and not in furtherance of the objects of any unlawful organization. In fact, we were able to call very

cogent evidence. We had tied them down as to when the ANC campaign to release political prisoners really started. They took a stand on a particular date, and we were able to show that a woman called Laurine Platzky of the Surplus Peoples Project --she was the first defense witness, even before the accused. It was foremost in her mind ever since she was in primary school, when her mother was taking her to school, that she saw Robben Island and she asked what was there, and her mother had explained this. And ever since then she felt aggrieved by the fact that there were political prisoners there. And when she was the chairman of the SRC at Cape Town she didn't need any instructions from the ANC or the Communist Party nor anyone else to call for the release of political prisoners. In fact, the resolution that had been adopted preceded the date when the ANC actually called for the release of political prisoners.

[Did all the accused in this trial take the witness stand, and if they did, how well did they do? What was the like?] This was a magistrate, a Mr. Steyn. He actually behaved in an exemplary manner. He is a very good magistrate. He still is a magistrate

[A magistrate's court can give a sentence up to five years?] No, they can give up to ten. He behaved in an exemplary fashion. He actually paid Arthur Chaskalson a tremendous compliment. He is still around, and when Arthur went to the Eastern Cape to do an inquest of the Goniwe and Calata people -- the people who were found butchered -- he sent a message to Arthur. He had very fond memories. He actually was, you know, very impressed by the defense team and Arthur Chaskalson in particular, and the logic of the arguments. And also impressed by the accused. They all gave evidence except Karel Tip, because there was hardly any evidence against him.

[It seems surprising that they wouldn't go to a higher court.]. Well, what I think is that they wanted a quick conviction and get them out of the way, and legitimize the whole question.

[About how long did it take?] About nine months, I think. There were breaks. I think we took the winter vacation. This was a major trial in many respects. They also called right from the beginning-- Their first witness was a doctor from Hungary, Dr. Recsey.

[To what effect?]. To the effect that he had read the Wits Student and some other publications, that he was satisfied from having read them that there was a communist conspiracy, and this was how communism spoke in order to overthrow the state. He also said that he was a refugee from Hungary, and he proceeded to tell us how bad the communists were. In order to illustrate the differences between Arthur Chaskalson and me, there was an audible disagreement between Arthur and me. Arthur wanted to take a kinder approach to cross-examination and I wanted to get into the fray right away.

[During the Treason Trial there was a very famous Marxist analyst who was going to give evidence]. Yes, from Poland, who eventually didn't give evidence.

But I sort of took it upon myself to start the cross-examination right away. It couldn't have gone any better than anyone could possibly have thought. My first question was,

what was the tradition of democracy in his country? He said that it had democracy for two and a half years, from 1945 to 1947. I asked him when was he a student? And he was a student in the 'thirties. I asked him whether his country was then ruled by a tyrant, and he objected to the word "tyrant." But he seemed to be the sort of fellow who would have known the true meaning, that it was not someone there by the will of the people. And he said yes, this was so. I asked him whether as a student he had done anything to oppose this tyrant ruling his country. He said no, he didn't. And I said well you know you have come here to talk about the role of the student in society. Is that how you learned, from the fascists, what the role of the student is? Tell me when the Russian tanks rolled in, what did you do, did you condemn the students that actually picked up the stones and stoned the tanks? No, he hadn't condemned the students who did that.

[Is that a level of argument that Arthur's uncomfortable with?] No, he wasn't uncomfortable. He didn't know what was coming. Arthur's style is to systematize it, not get into the bullring and slug it out. What turned out to be the coup de grace was: having told us all this, Dr. Recsey, are you surprised that your country has such a poor record for democracy?

[The opportunity to question such people must be among the great pleasures.] Absolutely, because the present after the acquittal at a party at Arthur's house was a wonderful bottle of malt whiskey, because Arthur really warms up at eleven o'clock at night after he's had a good liqueur or whiskey, and he starts asking questions and works until one thirty or two o'clock in the morning. My present was a knife, they said "for cutting up Dr. Recsey". The students actually applauded at the back with the final question: Are

you surprised that. your country has ? Arthur actually came back last year, when he came back from

America, with a copy of Time Magazine. And he said, "I never thought I'd see this in print." Some Hungarian leader had visited the United States and said that his country's failure was due to their poor record for democracy.

Side 6

[So one of the satisfactions in political trials is the opportunity of being able to examine so-called expert witnesses.] Yes, especially as is almost invariably the case in South Africa they operate on false assumptions. They are really trying to defend the indefensible. You must have seen this in your analysis

of Professor Murray in the Treason Trial. You have to show that the acts are part of a communist conspiracy. The defense has no difficulty showing that each one of the acts is not evidence of any communist or other conspiracy, because practically everything that the people in South Africa have striven for are what democrats throughout the world have striven for. So they are driven to a silly syllogism which I have actually summarized in the cross-examination of this man de Vries and this man Pruis. I never cross-examined

Murray; Arthur did, in the Nusas trial. Arthur actually just pulverized him. They never dared to call him again.

What they're really saying is this. You want to find out whether you can infer from the act performed whether there was a communist conspiracy or not. So they would say: "If the Pope says unless you do the right thing for Italian workers, there will be a revolution", that's okay. If Enrico Belinguer says "if you don't do the right thing for Italian workers, there will be a revolution", that's a communist conspiracy. Because you know that Enrico Belinguer is a communist. When you have Tom Karis before you and you inquire whether what he said was in furtherance of a communist conspiracy and you don't know whether he's the Pope or he's Enrico Belinguer, you then have to rely on all sorts of nonsense and all sorts of guesswork, like what sorts of books did he have on his shelves. And then we say well, Bertrand Russell had the New Testament on his shelves. What does that prove? And he speaks about "people's power." Well, what is the difference between "people's power" and "the people shall govern" and American democracy? And you know how to complete that. And they have no answers to any of these. So they make cross-examiners look good, not because we are good but because they are really trying to propagate the indefensible.

[Has every trial that depends on proving a communist conspiracy been a failure?] This is generally speaking correct. In the absence of evidence-- Unlike in the Barbara Hogan case where they actually had evidence that she tried to establish a trade union on behalf of the unemployed, and she actually admitted that she did this on behalf of the ANC, with their approval and at their direction. Okay, she was convicted. She shouldn't have been convicted of treason, but that is another story. But if you can actually prove that the unlawful organization did it, then in terms of the law that's fine.

And the distinction has been made very clear, of course, by Trollip in the Nokwe case. That the mere fact that the object that you're trying to achieve is similar to that of the ANC doesn't mean that you're doing it on behalf of the ANC. And Didcott and others have developed it. So that you've really got to show that it's almost exclusive to the ANC. And Brian Louw in another case said that the only exclusive object of the ANC, you could see in the evidence before you, is that the ANC wanted to overthrow the state by violence. And if you wanted that, then you furthered the aims of the ANC. But if you wanted trade unions and motherhood and good health and everything else, well so does everyone else.

[In the Delmas trial, did the judge conclude that the accused had furthered the aims of the ANC?] He actually, in order to justify the conviction, inferred, and that's why he convicted the three UDF accused, that there was an "inner core", which he does not identify, which was not part of the case. There was an inner core of the UDF that actually did whatever they did for the purposes of furthering the objects of the ANC. And he said these three were part of the inner core. Popo Molefe, Terror Lekota, and Moses Chikane.

[Those who were not part of the UDF constellation were those who were not convicted?] Right, those were not convicted. Although they were convicted of terrorism if they had

lesser objects, though they were not in the core. But it would let people like Bishop Tutu, Beyers Naude -- because they were alleged to be co-conspirators. So what this judge did really, in order to convict these three, he inferred, without there being direct evidence. They had three hundred witnesses in three years, and they didn't produce a single witness that there was any contact with the ANC. And the only documentary evidence that they had

was really an ANC document found in the light meter in the toilet of the floor used by the UDF in Khotso House.

And what they do is they say, look what the ANC wanted in Sechaba, and look what these people wanted. And Sechaba uses this language, and the accused used this language. And you used songs which praised the ANC leaders, and although you yourself may not have sung them, you presided at meetings where such songs were sung. Therefore you--

So this is really the reason why these trials have failed. They are attempts at proving the impossible and the illogical. Because in truth and in fact, the fundamental fallacy is that the government will never yield to nonviolent pressure.

[It seems that the Delmas judge was satisfied that there was a conspiracy.] That judge said that there was an inner core, and he doesn't know who was in that inner core, but that these three were.

[Could this become a precedent for future trials in this respect?] It's not a legal but a factual finding.

[But it might be an encouragement to--] Yes, but I think we've had the last of this type of trial.

[Perhaps you saw the article by Glenn Moss in *Work in Progress*, the last issue of 1988, which reviewed 1988 and said the day of political trials is coming to an end; that they've been to impress the outside world, but now they feel they can accomplish what they want with individual suppression.] And detention. And I don't think they impressed the outside world. I would agree with that. First of all, the nonsensical situation of keeping a judge there for three or four years, with an indictment covering this sort of period. And what we have not heard, but I'm sure is said, is that you've got lawyers who'll outlast the prosecutors and the judges. And I'd like to think that there's some truth in that.

[How many lawyers are there, in absolute numbers, who'd be willing to devote most of their efforts to a case that goes on up to three years? Ten? Twelve? Fifteen?] I don't know. But there are new ones coming up every day. And they're there. The erstwhile chairman of the General Bar Council, Henry Viljoen, has become involved in a civil case, but with very clear political implications. Where the police are sued for damages, for breaking up the KTC squatter camp or allowing vigilantes to do it.

[Does that involve work day after day?] Henry actually jokingly complains that he's not a George Bizos, that how could you have got me into this? But he's doing it, and he's not going to be beaten. And he's doing the marvellous job that one would expect from the leader of the profession and a great advocate.

[Is there funding coming from outside?] I don't know what the particular financial arrangements are. But I'm sure he's taking a tremendous financial loss. But it actually becomes a bit of a challenge, and you're prepared to take the financial loss when it becomes a challenge. But here are, in his belief, the police who behaved in a manner unbecoming any police force in the world. And that they allowed vigilantes to burn down the humble homes of many people. You say how many lawyers are there. Two years ago, I would not have included Henry Viljoen in this category. Today you would probably put him on the top of the list.

[How long has that trial been going on?] About two years. It hasn't got the drama, but it has tremendous consequences. An attempt is being made to hold the police responsible. The defendants are the Minister of Police, taking civil responsibility for damages. A shack is worth some money. The radio that was in the shack is worth a bit of money. The makeshift bed was worth some money. The eiderdown was worth some money. The maximum result could be a few million.

And also Henry Viljoen did another case where he actually saved the lives of people. Because the command that he has as an Afrikaner to put it to an Afrikaner policeman that look, this man that you call a terrorist was alone in a very large, open field. There were eight or ten of you. As an ordinary policeman, your obligation was to arrest him for whatever he has done, not to shoot him dead. And why did you shoot him? And he hahs and he haws. But in the hahing and hawing, eventually he has to admit that he shot him because we're really at war with these people. When we see the enemy, we kill them.

[He was a prisoner of war?] Well, he wasn't a prisoner yet. And international law doesn't tell a belligerent when to take a prisoner and when to shoot. But leaving that aside, which may be a moral issue, or moot--Certainly it's a moral obligation, and certainly a moot point in public and international law-- He was able to round off his cross-examination that it's really a war. And the effect of it is that it enables him to argue that those who survived and are in the dock don't deserve to die. Even if you don't give them prisoner of war status. Because they were from the other side, behaving in a substantially similar manner as this policeman who actually ordered his squad to mow down this man who was in the middle of a field and who could very easily have been taken as a prisoner.

[It's like the whites in the 17th century who shot the bushmen as if they were vermin.] Well, I don't know. That was common to many colonialists. We're very fond in South Africa of saying "including Americans."

So when you ask about the legal profession and its function, this is what happens. You had a young man who happened to be present in court, a young counsel, in Nelspruit at the height of the trouble in 1985-86, who actually stood between the police and the crowd

that the police wanted to disperse and shoot at. And he actually made a public statement immediately about police brutality. I think his name was Nugent.

[Do you ever try to lure nonpolitical lawyers into taking political cases?] No, I don't try to do that. Among the young people, the people who do this work are already inclined to that sort of direction as a result of their attitudes having been formed at the university, or at work, or because they have friends, or because of the firms of attorneys they have worked for. But it sometimes happens that you actually have people just emerging.

It certainly happened to Arthur Chaskalson, and Joel Joffe. During the Poqo period, a number of youngsters came into the city, and they were alleged to have come into town because they wanted to kill people as they came out of the cinemas in Johannesburg. It was the Letsoko case. Confessions were made to this effect, youngsters. And he and Joel Joffe were young members of the bar, and as part of their duty they did this case on a pro bono basis. And they were exposed to this.. And I have no doubt -- I think I told you the story about his stand at the university earlier on -- there can be no doubt what his attitudes were. But Arthur worked for a very pukka commercial firm. Denys Reitz, which was a top firm. He has acquired a brilliant career in insurance and commercial and appeal work. He was junior to the most fashionable advocates.

But I think he was influenced tremendously by what happened in the Letsoko case. Joffe was also part of this. And by the time the Rivonia case came, Arthur was in Bram Fischer's group, the group of advocates. And in looking around for people for this case, they thought of Arthur and me as the juniors. I'm reasonably certain that in my case it was Vernon Berrange who really wanted me as an assistant, and Bram probably wanted Arthur. Because Bram also did that sort of work, by the way, commercial work. Mineral rights was one of his specialities. He appeared before the Privy Council for Bayer, the pharmaceutical company.

[In the US it's said that Brandeis wanted to become a millionaire before he would get into public service law.] Well, it just happens to people.

[In Arthur's case, what is it that gives him satisfaction in these cases?] An overdeveloped sense of duty. He is the nearest to the saintly figure that you can really get. He is completely unselfish. He has tremendous support from Lorraine as well. But the sacrifices he made in giving up a very lucrative practice and going into the Legal Resources Centre I think is unprecedented. And also it's fairly clear that had it not been for a person of Arthur's stature, the Legal Resources Centre, which cuts across most of the rules that were considered sacrosanct by the established profession, would never have got off the ground.

[What is his motivation? To preserve a certain legal system? To create some vision of a better future?] He believes that fundamentally men and women are good, given an opportunity. We did an inquest together of a man that was killed in Crossroads. The man that actually pulled the trigger said that it was in self-defense. He was frightened, and as the deceased emerged from under a bush, he thought he was going to attack him.

Although Arthur's my junior in years, he took silk long before I did, and I've always insisted on calling him my leader. And he asked about this, and I said that he was the most important in the case, and he must cross-examine the policeman. My Afrikaans is not very good, but Arthur has not had as much experience in cross-examining policemen as I have, and this person happened to be English-speaking. He reluctantly agreed to do it.

He had to suggest to this man, on the evidence before us and on our instructions, that he had actually deliberately killed this man. He agonised about it, genuinely agonised, that might he not be doing this man an injustice. That here he says this as a policeman who was on a raid, just a simple man. He has a gun, and he says that a man emerged from the bush. There is no real evidence to the contrary, other than a lot of circumstantial evidence that there was indiscriminate shooting. But that was the only death. And he agonised about this, what if this man--

[He also finds the question of sanctions very agonizing.] Well, that's right. Life is difficult and complicated, and there are no distinct lines to be drawn. I mean, who would find the question of sanctions to have an easy answer? Unless you have become committed to an organization that takes a decision, then you have to plug the line. And Arthur is not a person to become a good organization man or to plug a line.

By way of contrast, I would not have agonised about the cross-examination of this policeman. Here it is, it's an instruction, it's a plausible theory, it's to be inferred. But Arthur would say the man's got a family, he's got children. It will be in the newspaper that Chaskalson SC suggested to their father that he's a murderer.

[What did he do?] He did what he had to do, and suggested that he was guilty of murder.

[You could hedge it around--]. No, that would be doing his work apologetically. Having done it, he then would go into a gloomy--

[Are other advocates at LRC in his same mold? Moral anxiety and so forth?] Geoff Budlender is a good carbon copy. Chris Nicholson in Natal is a good chap. A couple of the others.

[In murder cases there are always extenuating circumstances; explanations can always be found.] There's obviously truth in that, but it's a question of how you come to terms with that. And Arthur's way is that way. Kimon, our eldest son, sums it up, as hard as it may be to believe, even after thirty years of experience, the first day of a trial is a very traumatic day. Also when you have to cross-examine a witness, and it's a matter of life and death. If this witness is believed, your client may be strung up. The pressure of

that makes a different man of you. And there are crises during the course of a trial. My nervous reaction to this is to have a sneezing bout.

[How does that help?] Well, it doesn't. But it happens. Arthur actually spends a lot of time sneezing throughout. And Kimon, who has observed this, calls us "the sneezing team".

[Interruption]. . . apropos of this, the ups and downs of a case, when we thought that we had had the worst of the false evidence in the Delmas trial -- because there were really attempts to get particularly Terror Lekota -- But towards the end of the state's case in the Delmas trial, Fick, one of the prosecutors, came and said nonchalantly, "oh, we have another important part of the case to do." This was in private conversation. "And young Malindi", that was accused number 5, Gcina Malindi, "will have the taste of the necklace in another form with our evidence against him, that he was actually present at the killing of one of the councillors and he took a leading part, and he incited the crowd." Well, this is one of the most lovable young men in this trial. One actually becomes a friend after such a long time. He was a chap who would always remember what was said in the record, would always look up references for you, would always volunteer to do checks and documents, and you could rely on him. Here they tell you that they're going to try and hang him. Well, your life does not become an easy one after that. In the middle of the trial. As it turned out, the thing really fell out long before they came to court. Because they called the vital witness in another case, a man called Gordon from Natal who had come up to be a witness in another case of murder, and they smashed him up. So there was no point in relation to that case, and they never called him in our case.

[He was going to give the same evidence as he had given in the other case?] Well, what happened was he fingered one of the accused in that trial in the role which he had placed on Malindi in his statement. And the prosecutor was an honest man in that trial, and in fairness to that accused in the dock that had been wrongly fingered by him, he produced the statement that he had attributed to the conduct of Malindi. Well, then he was finished as a witness. You know, if he fingers the wrong man in a trial here, who's going to believe him when he goes back to his other statement and says it was Malindi. Had he been called first in our trial, and fingered him with the thing, our judge could very well have believed him. So these are some of the things that you have to live with.

[What about some of the inquests you've been involved in?] Well the Timol inquest and the comatose condition of young Essop are really to be taken together. One was an inquest and the other was an application to court, restraining the police from torturing Essop. These really are very important and I think the two taken together really turned the tide in the thinking in South Africa that the police could do no wrong.

[Do you mean the application to stop torture was actually effective?] Well, the publicity given to it very often has this effect. I think I should give you some of the background in relation to Timol and Essop. Timol was arrested, as was Essop who was a young third or fourth year university student. Timol's death was something that really brought out circumstances which made it very difficult for the general public, including a substantial portion of the white population, to believe that the police version was true. That he was being politely interrogated by a tenth floor window, and all of a sudden he jumped out of it. The inquest showed that things were not at all well. Because there were a number of

injuries. And we called very cogent evidence to date the injuries, thjat they could not have been inflicted in the fall. You can actually date injuries, whether they are hours or days or a number of days old. And we were able to show forensically that some of these injuries were old. Maisels led me in the case, and he is a great man. We even had the drama of the brigadier or colonel who was the investigating officer actually collapsing in the box during the course of cross-examination.

[Due to what?] Well, I don't know what it was, but he collapsed, fainted flat out. And also the way Maisels could pooh-pooh the idea of the police version.

But shortly after the death of Timol, and before the inquest took place, Mr. Essop, the father of young Essop who had been arrested with Timol, got a report to the effect that his son wasunconscious in the Verwoerd Hospital in ward number so-and-so. The father went there, and found a bed and two chairs on the bed blocking the door of the ward in which he had been told his son was. He got onto the bed, onto the chairs, looked through the fan-light, and saw his son on a bed, obviously unconscious and with what appeared to him to be injuries on the face and chest.

We then brought an application to restrain the police from interrogating or in any way doing anything to him, and we gave out information about his son. The evidence was very very strong. Eloff, who's now the deputy Judge President, was there for the security police, and Margo was the judge. Margo made it quite clear that he was concerned about the public outcry -- because the allegations were published, and there was a petition -- about how terrible it was about the father not being allowed to see his unconscious son in hospital, and that he would be compelled to make an order that they'd better take some steps to satisfy the father about his son's life.

The police said that only one man could really decide this. Although Pelsler had been appointed Minister of Justice and Police, Vorster as Prime Minister was really the man who called the shots in the Timol inquest. This was shortly before the inquest began. The case was Timol vs Magistrate , 1972. Eloff went to speak to Vorster as to whether this case should be settled. Vorster said let the judge do what he must do. And it became quite clear that if he settled, then the police would say the Prime Minister has let us down. But if the court found it-- So let the court decide, then you can always say the court was wrong.

Well, Margo granted an order and he postponed the matter for further evidence to be provided. And this is where wereally excelled ourselves, and Ismail Ayob, who was a clerk to the Cachalia partnership, really excelled himself. You know Ismail Ayob is one person who even in that situation did not find his blackness an impediment. He is London-trained, and he had self-assurance which lots of other people, black and white, didn't have. And our instructions to him were go and trace everybody that would have had any contact with young Essop in this condition. So he went to all the possible doctors, all the possible nurses, in the black hospital in Johannesburg, and everyone else. And everybody had instructions not to cooperate or give him any information. And the mystery was why was he taken from Johannesburg to Pretoria? Because one of the judges

eventually said, what was wrong with the doctors in Johannesburg? Why was he brought to Pretoria?

Side 7

No one wanted to speak. They had instructions not to do so. But we went along and we wanted to know who the nurses in this ward were. And also whether he had been in the hospital in Johannesburg. And we actually established that he had been in the Johannesburg hospital. And the nurses of the Johannesburg hospital refused to speak, including the superintendant of the black hospital who kept Ismail Ayob waiting for an hour and a half to tell him that she wouldn't talk to him.

[So why was he moved to Pretoria?] For security reasons. They really can't trust the people in Johannesburg. But what turned out eventually was that the conspiracy of silence really showed how the system operated. Having gone to sixteen or eighteen people who refused to tell him anything, we then made use of a procedure that if a person refuses to talk to you but has material information, the court can authorize a subpoena for that person to come and explain to the judge why they don't speak out. And if he doesn't, he's guilty of contempt of court. Eloff took the point that there is a provision in the act that

nobody is entitled to information about a detainee. And we said that the condition of a detainee can't really refer to this; there was no such privilege.

We also got a tip off that whilst in Johannesburg he had been seen by a brain surgeon. The identity of the brain surgeon was made known to us, so we issued a subpoena for the brain surgeon to come. He refused to talk to us. Maisels excelled at this. The surgeon goes into the witness box. And this is now the international press, everybody is there. And Maisels says, Mr so-and-so, the brain surgeon, did you see Essop? He said, "yes." Completely cold, without knowing what the answer was going to be, "did he have any injuries?" He said, m'lord, I can do no better than make available to your lordship the document drawn by Dr. Kemp, the Johannesburg district surgeon who referred him to me. Because Dr. Kemp feared that there may be brain damage as a result of the condition that he found young Essop in. And it listed sixteen injuries. The judges thought it was so important that they actually constituted a full bench of three judges to hear this -- Bekker Kowie Marais, and Cillie, two or three judges. Certainly Bekker and Marais. And I tugged Maisels and whispered, "get them to authorise a telephonic subpoena for Dr. Kemp." "Yes, a telephonic subpoena on Dr. Kemp, m'lord."

So the registrar finds Dr. Kemp and tells him to come to Pretoria right away. He described his injuries, described that this man was comatose, did a number of tests, couldn't actually find any serious brain damage, but the injuries were there. Then the fat was in the fire. We had nurses coming along saying how he had been brought there secretly, how he had been picked up, how Dr. Kemp had been called to the security police headquarters on the very tenth floor. And seeing that he was comatose he had immediately ordered him to be hospitalized, and immediately ordered for him to be seen

by the brain surgeon. And that they were responsible for this condition and that they tried to hide it was obvious to everyone.

Then it came to their turn to give evidence. And the man in charge of John Vorster square at the time was a Colonel Greyling. He wasn't really up to the task of dealing with Maisels, because he's a great cross-examiner. He gave evidence that this man was alright, that he wasn't mistreated, and he doesn't know how the injuries came. You know that these people pretend. He was a malingerer, and there was nothing wrong with him. He just called the doctor in because he was so terribly worried that the wrong sort of thing-- All these lies told by the English language newspapers about them mistreating people are quite false.

And Maisels started his cross-examination. I'll never forget it. He said, tell me, whilst he was there being examined by Dr. Kemp, in a passage, collapsed, at John Vorster Square-- He had already asked Kemp whether Colonel Greyling or anyone wanted to ask Kemp any questions, and Kemp said no, nobody asked him any questions. I ordered him to be hospitalized. And Greyling said, "you know, we really treat these people as if they were our own children." So the next question by Maisels was, "tell me, colonel, did you ask Dr. Kemp any questions? He said, no, I didn't. What question does Mr. Maisels suggest I really should have asked, m'lord? Greyling was speaking Afrikaans, Maisels was speaking English. But this question he put in Afrikaans. He said, well, colonel, you could have asked him "wat mekeer met my kind?" (what's wrong with my child?) Well, there was very loud laughter in court. They were found liable, costs were awarded, and everything.

[Punitive damages?] No punitive damage. In fact, in fairness to the police, eventually when Essop sued for damages, there was no corroboration of his story that he was beaten up, that he was urinated on, that he was abused, that he was threatened, and that he just collapsed and didn't know what happened. There is a well known condition of hysterical unconsciousness, when you can no longer bear the treatment that is meted out to you, you can actually get hysterically unconscious without any actual brain damage. You can shut out the whole world. The human body apparently is capable of this. Anyway, he didn't get damages. But as a result of that, there was a lot of public outcry.

And there is one other bit of detail I want to tell you, because it has some bearing to the medical profession. In the affidavits that were filed, there was one by a doctor called Heronymus Koch. He was a district surgeon or the chief pathologist in Pretoria. He filed an affidavit saying he had examined Essop and he had not seen any of the injuries alleged by the father in his affidavit. Full stop. He now went into the witness box, and he had to admit that what Kemp had described as injuries, were there. He had seen them, and he had told counsel about it, he had told the legal representatives of the police about it, but the legal representatives said that it was not his duty to give the injuries that Essop had; he was only called upon to deal with the allegations of the father, that there was an injury on the left cheek and there was an injury on the chest -- and there wasn't an injury on the left cheek, and there wasn't an injury on the chest.

Well, this had its aftermath. A very well known judge of appeal when I went to Bloemfontein asked me to go into his chambers, when there was a lot of speculation as to why Biko died. He either knew or inferred that I knew something about the Biko matter. Then he asked me whether the things that had been leaked to the Rand Daily Mail about serious injuries, brain damage, was true or not. I said, Judge, not only what was in the Rand Daily Mail is true, but there is worse still to come. He was a judge in the Transvaal provincial division, not the one who heard the Essop application, but he was one of the judges in that division. And he made the following interesting remark. "Well, we on the bench knew that Dr. Heronymus Koch had deliberately lied. If we had dealt with him as we should have at the time, it may be that Biko would have been a different story."

[Before the Biko case, had there never been a doctor publicly embarrassed like that?] No, no. The nearest that we've ever got was this Dr. Koch. But there was no fuss made, there was no report to the Medical Council, you know. It was just left there.

So that's the Timol inquest. The effect of it all was of course -- when you have a high profile inquest like the Timol one -- the police are a little careful for awhile, especially in the division in which the thing happened. For a year or two. And also, deaths in detention tend to slacken off.

But you know there had been a previous window death earlier on, of Saloojee. I wasn't involved in that. With Swanepoel the investigating officer, and this notorious picture of him standing on top of the body as it fell on the cantilever, just above the ground. But that didn't create the furore that the Timol inquest created.

[Was there a Saloojee inquest?] There was. But what I think was reflected in people's minds was the living example of Essop, as what must have happened to Timol who was not hospitalized.

[Could you compare some of the differences about the inquests on Timol and others, like Biko and Aggett?] Well, the next inquest that I was in was Biko. But there were other inquests that were also high profile, like the inquest of Looksmart Ngudle. That was done by George Louwen and Ernie Wentzel, where they came very close to establishing in the public's mind, though not to the magistrate's satisfaction, that the man actually had an injury to his toes which clearly showed that he had been shocked by electricity. But of course the most dramatic of all was the Biko inquest.

[How is it decided whether there will be an inquest?] Whenever there is an unnatural death, there has to be an inquest. Even if someone dies in a car accident. Let me amend what I've just said; whenever there is an unnatural death and no criminal prosecution is brought, there has to be an inquest.

[And whether it becomes a public thing just depends--] The family is entitled to be represented. The prosecution is represented, and they can stop the inquest at any time and bring a prosecution if they want to. But the family is entitled to be represented, the attorney general is entitled to be represented, and

anyone who can show a substantial interest can be represented, including the police if allegations are made against them.

[If the family can't afford this, what do they do?] What happens is that the affidavits are filed as to how the death occurred. If nobody takes any interest, and it looks to the magistrate as if it's straightforward, having notified the family and the family turns up without an attorney, then he says "do you want to read the affidavits to see the circumstances under which your relative died?" They may say yes, they will read them. Having read them, they may shrug their shoulders and say it was an accident, there's nothing we can do about it. But if they suspect that somebody has killed him, they can engage a lawyer and they can say, no, we want these people examined. The magistrate then has the discretion whether to bring witnesses to be cross-examined by the legal representative of the family.

[How would you characterise the position of the state, which presumably would have an interest if there's misconduct by the police. The state is not a defendant--] Theoretically, the state's and the family's interest should really coincide on the side of truth as to what happened. In practice, of course, this is not always the case.

[If the police are under suspicion of misconduct, who pays for their representation?] The state attorney pays for that; it's not pro bono. It's from the taxes that we pay. If no charges have been brought, then the state starts from the position that there is no evidence apparent to us to bring a prosecution. They make a preliminary investigation. The investigating officer has got to collect all the information available. Then he puts it before the prosecutor. The prosecutor then has to make a choice whether to prosecute.

[And if he decides that there isn't any grounds for a prosecution?] Then he has to have an inquest.

[And in effect the state becomes the counsel for the defense?] No, they are not supposed to be that. Theoretically they are supposed to keep their eyes open and their ears pricked in order to hear whether anything comes out, in order to change their minds. And in fact, when the inquest is completed, the magistrate can express an opinion as to whether anyone is responsible or not.

[Since the state is paying legal costs, it's really a rather ambiguous procedure.] Well, when the suspects are police officers it is. But theoretically the prosecutor should be independent of the police department, and he sometimes prosecutes them.

[Aren't they all in the department of Justice?] Well, they were at that time, but they've now been separated. The department of Justice is now separated from the department of Law and Order. But at that time they had the same political boss.

[But it's not like the US, where they go out and get an independent prosecutor.] No, only when he refuses to prosecute. Then you are entitled to bring your private prosecution, as

they have now brought in the wooden horse case in Cape Town. That's going on as a private prosecution.

[What was your role in the Biko inquest?] I was Sydney Kentridge's junior. Sydney did all the questioning. I did the preparation of the case. Shun Chetty was the attorney. We established an important principal at the Timol inquest which makes the family's task a very easy one. In the Timol case, the magistrate refused to give us the statements made by the police and other witnesses. We made an application which forced the magistrate to hand over the statements to us. Which gives you an opportunity to prepare.

[In the US that would be called a discovery procedure.] We don't have a discovery procedure in criminal cases. But generally speaking, statements made to the police for the purposes of a prosecution are

privileged. But we argued in the Timol case successfully that whilst the Attorney General, having made a decision to have an inquest, means that the privilege of the statements has disappeared. Because there was no prosecution pending. The privilege only arises at the time when there is a prosecution pending. So we had this tremendous advantage in the Timol case and subsequently on the Biko case. Except that we had an even greater advantage in the Biko case, because the principle having been established in the Timol case, we got the statements almost as soon as they were ready.

[When was the death of Ngudle in detention?] Ngudle was in the sixties. Looksmart was said to have been-- One of the reasons for the suicide suggested was that he had betrayed his friends in the Rivonia trial. So that was long before.

We had a long time to prepare the cross-examination, to prepare ourselves for the Biko case. Because we had these statements. And of course, anybody that carefully reads the record, or even our heads of argument, which are available, will satisfy themselves that the police story was just too impossible to be true. The police story was that he was fighting with them, and during the course of the fight he hit his head against the wall, fell flat on the floor and immediately got up and continued to fight. But the unanimous view of the doctors, including Dr. Loubsher who was the chief state pathologist, was that the injury on Biko's brain would have led to unconsciousness immediately for at least half an hour, or probably an hour or more. And it made sense that they called the doctor, they told him that he was suffering from a stroke, and that they behaved as if it was a matter of urgency, because they had a person who was unconscious on the floor.

[The police knew the doctor had said that but they still held to their story?] They got the doctor, they got Lang, this pitiful man, to give them a false certificate. And when Sydney came back three days before the inquest actually started, when I had these facts marshalled and prepared for him, he refused to believe it. That a doctor could actually behave in this way. And he's got tremendous nervous energy, and he was pacing up and down in his study and in his passage, actually clasping one hand against the other with absolute disbelief.

[Like the doctor in A Dry White Season.] Well, yes, this putty really. And Goosen, you see, who was the colonel, the policeman, was very clever. He got him to write out a statement that Biko was okay. If Biko had lived and complained of any assault, they would have said, look, we've got a doctor's statement. But once he died, things turned sour for the doctor. And Sydney was very depressed when the magistrate said that there was no one to blame. And my comforting words to him were that the magistrate may have made that finding, but the world jury had made another finding. Perhaps that was what really mattered.

[When Kentridge was here a few years ago, I remember him expressing amazement that the people who had killed Biko were so well known yet were still walking around. That no one had tried to avenge Biko's death.] I've heard Sydney on a public platform say that that was one of the most cynical and disgraceful things that ever happened. Not only were they not in any way punished, but shortly after these matters had been made public, Goosen was actually promoted to Brigadier. He was a friend of Jimmy Kruger's.

--- End of Part 2 ---

Memoirs of George BIZOS -- Part 3

Oct 30, 1989 [Steve Ellmann present for part of the afternoon]

Side 1

[Have blacks developed a disrespect for law as a result of their bad experiences with it?] Well, it's inevitable. In days gone by, many people have said it's not in any sense a matter to be ashamed of to have been in prison if you're a black in South Africa, because you can go to prison for such conduct as not having your pass with you, or being in an urban area. And it has been said that the crime rate may be as high as it is as a result of the lack of respect for the law. More particularly imprisonment, which is some evidence of serious wrongdoing in most societies, is not evidence at all of that in South Africa.

[Do you know if this has ever been studied by a social scientist, say questioning children about attitudes that they develop at an early age?] I know of no study, but I have read and heard lots of anecdotal evidence in that regard.

But I think what is happening now may be a little different. The Defiance Campaign of 1952, was organized and deliberate breaches of the law took place. But a comparatively smaller number of people than is happening now were involved in such actions. The Defiance Campaign was killed in the early 1950's; it ran out of steam. Also with the tremendous increase in penalties. You'll recall imprisonment for up to five years, and corporal punishment, and fines. So, it petered out for a number of reasons. Although the numbers were thought to be very great at the time, in retrospect, they were small.

What I think is happening now is a continuation of what the trade unions have been doing. The trade unions have shown a calculated disrespect for some of the legal

restraints that there were, in relation to gatherings, and unlawful strikes. No steps were taken against them because of the muscle that the trade unions could flex. If you arrest us, we are just going to sit in prison and what are you going to gain? The factory floor will be at a standstill, and that's not in your interests. Therefore don't try to enforce this law.

I think that has been extended by the realization that if enough people, in their thousands, break the law, you can't really enforce it. Once people in unison, in their thousands, or hundreds of thousands, say you can go to hell -- how do you deal with it? Now that Walter Sisulu has been released and the others that served a quarter of a century of imprisonment, what are you going to do? What sanction do you have?

[Last week you were saying that it is a fallacy to believe that the government will never yield to nonviolent pressure. This was a common view among Africans at a certain stage, that if there is no violence, the government will never give up ground. And what you are saying now is clearly contrary to that, that they can be forced to give up ground under nonviolent pressure if there are enough people defying.]

Well, there was a school of thought in about 1961, that the government would not yield about meeting violence with violence. I don't know if the document ever became available to you. But the handwritten document by Duma Nokwe, that the time has arrived to meet "V" with "V" was prepared for a meeting of the underground ANC and he was found in possession of that document. It led to his arrest and charge. It was in order to really avoid that charge that he went into exile.

It is well known that Nelson Mandela dealt with it, that that was the thought at that time. But it has never been suggested that nonviolent means are not effective. In fact, what Molefe and the others had tried to persuade the court to believe in the Delmas trial is exactly that, by internal and external pressure.

[There was a time when many people said "we tried nonviolent civil disobedience and it didn't work" and they thought particularly of why the Defiance Campaign collapsed. Therefore they posed a simple dichotomy. Once you prove that that doesn't work, the other alternative is violence, as if there wasn't any possibility of pursuing the two in tandem.] I have always understood the statement that "it did not work" not only in regards to the Defiance Campaign of the early 1950's, but rather the total effort of the ANC over the whole period. But I don't think that the ANC literature that was produced for instance during the Delmas Trial, (and we had lots of it-- we had every Sechaba, and every Mayibuye,) ever said that other methods are to be shunned. On the contrary, they speak of a catholic effort to do what ever one can.

[These deliberate efforts to defy laws, do those bring laws in general into ill-repute? Or are they seen as a special tactic that doesn't necessarily mean laws must be disrespected?] Well I think that, without becoming technical or jurisprudential about it, what is happening now is not likely to make people disobey laws which have a moral content. They are not going to start stealing, robbing, or defrauding elderly widows. I don't think that will start happening. If anything, it will have the opposite effect, in distinguishing

between laws which have a moral content and which are for the benefit of society as a whole, and the laws which are there to protect the political privileges of the minority.

But it has other effects. The police force has been trained to respond to what is manifestly illegal. It must have an effect on their morale and it must make them question what their real function was. It may also have some dangers that some of them may doubt the political wisdom of the government in allowing this to happen, or tying their hands behind their backs and not giving them a free hand as they have had in the past.

[Were you surprised that Lieutenant Rockman came forward in the way that he did? Or does it surprise you that this does not happen more?] I think that it's the beginning of a tendency. I'm not sure of the precise percentage but I know a very substantial portion of the police force is black. Whilst they were in the lower ranks only and accompanied by white officers, or at a stage when they wore different uniforms, and the white police officer, irrespective of rank, had authority over the black police officer, once that was done away with, it is, I suppose inevitable that you will get officers whose intelligence and courage will lead them to behave in the manner of Rockman.

[And of course he wasn't even in the security branch. He was just a law and order policeman.] Well, blacks in the security branch of late were only in the very menial tasks. There were even charges of spying. One of them was sentenced to something like fifteen years, and that was a security policeman who had infiltrated the security force on behalf of the ANC. So I don't think their prospects of promotion were so high in the security force. But eventually you will have to deal with the police force as a whole.

Members of the police force live in the townships and in the communities; they are subject to the pressures by their children in school, their wives in the wider community. And as they see their role as assisting those who are perceived to be oppressing the community. And the more successful the attempts of the political organizations are to show that there is real strength in numbers, their own ideas, the policemen's morale, will of necessity be affected.

Doubts must set in as to whether or not they have been doing the right thing all this time, and what is going to happen to us if fundamental changes take place. I know that the expression "balance of forces" is a highly politicized phrase, but I think it is a convenient one. The more the balance of forces tends to favor the disenfranchised, the more you are going to get police officers to be less loyal to their employers. Once you implement the policy of promoting them to officer rank, you are going to get people who are of a caliber to decide for themselves that being kicked out of the police force is not the end of the world.

[That's the subject of the play called "Bopha" by Percy Mtwa. Maybe we should outline the terrain for today and see if it is realistic to finish this roster of cases.]

The case of Gavin Anderson and Siphon Kubheka, this was the beginning of trade union activity as a result of what was known as the NUSAS Wages Commission on trade

unions. These two were young men. The trade union [MAWU] was small at that stage, but they were very hard working and very enthusiastic. It is an important case because it had very wide publicity in South Africa and also showed the extent to which employer-employee relations were not to be treated in the manner in which they had been treated by the police and employers in the past. Heinemann is a German company, and the South African company is a subsidiary doing a tremendous amount of business. With the stoppage of work, there was a dispute as to whether it was a strike or a lockout. It started in the bachelorette (?) section of the factory. B is a type of plastic that conductors are made of. It was a quarrel really between the foreman and a workman which led to the walking out of a small number of about thirty people to start out with. It was also a factory in which the government created institutions of liaison committees which weren't working at all. But the trade union was making an impact.

The managing director was a man called Wilkens who had come to South Africa in the 1950's. One of the shop stewards, if not the chairman of the shop stewards, was a man called Kumalo, an elderly man who eventually became an organizer of the trade union. Some 800 people gathered outside the factory gates. Wilkens didn't come to work on that morning. A colonel was there and the police force, dogs, and they confronted the workers at the gate, called in by the company and the inspector of labour. The workers were charged, physically by the police with batons.

There was a photographer who took some sixty pictures. One of the reasons for the police not liking photographers and t.v. cameras is because they really show up what they do. They charged the accused with incitement of public violence, inciting a strike, -- threw the book at them -- and justified their own actions by saying there was a murderous crowd about to attack the factory. Well, the photographs showed a completely different picture. And the cross-examination of the colonel was really an absolute fiasco for them. They were really seen hitting men and women whilst they were trying to get into their cars and bakkies and minibuses.

The story that they had given was that it would have been suicide for any white man to go inside the gates, because you would have been killed by this murderous crowd. In fact, John Brand, who was the police solicitor, the attorney in the case, always relates this story of how we had planned, in cross-examination, to get double-marks out of the photographs showing a white man in the black crowd. And we correctly foresaw that the police would say that no, he was a newspaper man who was known to be friendly with them and that's why it was all right for him to be there. He fell for that bait, and was quite shocked when we pointed out to him that he was actually one of the German technicians who was accustomed to trade union activity and thought he would be on the side of the workers.

The magistrate acquitted them of most of the serious charges but convicted them and imposed a nominal fine for the incitement for the continuation of the illegal strike. The magistrate showed quite a lot of sympathy, actually, because he had heard and seen the people and the photographs showing how the police had beaten them.

[Who brought the photographer there?] Oh, presumably the trade union or the workers. He was a press photographer. A couple were published. We had the batch developed.

[Did you have to give them to the state prosecutors?] We didn't have to give the pictures to the state beforehand; we could cross-exam them cold. In fact, a judge, George Coleman, wrote a book on cross-examination, and he has a chapter on the cross-examination of the colonial governor, how he was cross-

examined with the use of photographs. It is in fact a cross-examination based on the cross-examination of the police officers in the Sharpeville shootings. I deliberately read that chapter and used this technique in order to discredit these policemen in this particular case.

Paul Wilkens was called and he couldn't explain why he stayed at home that morning. After all, he was in charge of this factory. The one thing that he was not prepared to say was that he was told by the police and by the labour inspector to stay away and that they would deal with the matter. Well, I actually put it to him and perhaps I used heavy sarcasm by asking how many cups of coffee he remembered having and how many calls he received from his secretary to appraise him of what was happening at the gates of his factory.

But what emerged was that the 800 were dismissed and were asked to reapply, subsequent to the gate incident. And they were asked to fill in a form when applying for the job. But there was, even in terms of the South African legislation, an illegal question on the form: "Who do you think the ringleaders supporting the union are in the factory?" Well, the labour inspector, when I read him the statutory provision prohibiting discrimination on the grounds of union membership, was only prepared to go as far as saying he had seen it, had done nothing about it, and although it was sailing very close to the wind, he didn't see it as an offense.

The other important aspect of that was that during the course of the management's doings, the trade union got in touch with a trade union in Germany. I think it was the beginning of this fraternal relations and support, because telexes were going to and from saying "What are you doing to our fellow workers?" in Germany. And of course the parent company put pressure on the South African company. For all practical purposes, most -- except one or two -- of the workers were reinstated and reemployed.

[What about paying for the defense of these union leaders? Was there money coming from abroad?] I think that there was at that stage from the Council of Churches and others. It lasted quite a number of days. Anderson's arm was deliberately broken by a police officer. A woman lost an eye, and some eighteen in all people brought an action against the police. [Successfully?] Yes.

My opponent, Henry Shakanovsky [?] behaved quite cleverly. We had a pretrial conference and we fixed the amount of damages. I also did the damages case. We fixed the amount that each person would be entitled to in the pretrial conference. It is a

procedure which we adopt, that you can separate the question of liability. If they are liable this is what they would get and you wouldn't have to call a lot of doctors and things like that. Well, we had a long debate where the legal representatives of the police showed and they were really concerned about rands and cents that would be paid for these people and argued about how much. But once we agreed how much each person was going to get, we were very confident that we would be able to show that the defense stating that property or people were in danger, was a lot of nonsense, particularly with the use of the photographs. Henry S , acting for the Minister and the Police, phoned and said that he had authority to tell me that the amounts agreed upon would be paid and that it would not be necessary to have a trial. So it never went to court.

Gavin Anderson of course was hated as a white man who had betrayed the white man's cause, and that must have been the cause of the malice that led the policeman to deliberately break his arm. He was out of the NUSAS [group]. He was a close friend of Neil Aggett.

[What has become of him?] He has really found a niche for himself. He is in Botswana. He started off in a small village where he organized the whole village into operating a furniture factory and using local materials and local techniques. And he is now a director of cooperative efforts in Botswana. He is really a very charismatic man who really understands the people he works with. He has become absolutely fluent in Setswana, and he is very happy there.

[Is it part of the Botswana Brigades?] I haven't heard of the Botswana Brigades. They are commercially viable, self-help schemes, and small industries. He would sort of negotiate that the making of desks for schools don't have to go to tender but they would make the desks at a competitive price. Things that can be done for the department of public works don't have to be done so that high profits are made by people. So this is what he has done.

And Simon Kubheka, of course, has become an important man in trade union circles. [Still in MAWU?] No. I think that these people move in order to organize other unions. I think that he is now in paper, pulp and allied-- In fact, I finished up as counsel for the furniture industry, for whom I had a retainer for many years with its quarrels with the building industry. He was rather surprised that I took the case for the industrial council for the furniture industry. Ernie Wentzel was his counsel, and they won! But both of them were heavily restricted after this case. Gavin Anderson had a tough time of it. He really had to go to Botswana because he would most certainly have been detained at the time that Dr. Aggett was detained.

[What about the Cillie Commission where you represented Mrs. Mandela] Yes. The commission had been going on for some time. And suddenly there was this dramatic evidence given by witnesses who had been in detention that Mrs. Mandela and Dr. Motlana had a meeting the night before and had told young people to try to bring about what happened on the 16th of June, 1976. If my memory serves me correctly, it was said that the young people gathered in Mrs. Mandela's home the night before the 16th. The Rand Daily Mail wrote a strong editorial drawing attention to these allegations, and the

allegations which had been made against others -- I think against the South African Council of Churches. And the editorial said that this was really an unfair procedure because people were being mentioned in dispatches, so to speak, without having had an opportunity to defend themselves. They were public figures, and was the commission going to make findings of fact on these issues without even a hearing or asking them to give evidence?

Well, Judge Cillie, who was sensitive to that sort of criticism, immediately made a public statement saying that he had every intention of drawing the attention of the people mentioned in this evidence, and giving them an opportunity to cross-examine the witnesses. The secretary of the commission telephoned Ismail Ayob and asked him to bring the allegations to the attention of Mrs. Mandela, which he did. The witnesses had given evidence in semi-camera. The press could publish their allegations towards others, but their own identities could not be disclosed. In fact, I am not even sure that I can now mention the names of any of those witnesses, although one of them is particularly well known.

[Can you characterize those witnesses?] Well, they were, as the newspaper report says, young people involved in the Black Consciousness Movement who themselves had been detained. They said that they had personal knowledge. We had the advantage of the record of what they had said, and worked on it, and we were able to show that the evidence was completely false. It was not very difficult, in fact, to get them to go back on their statements and to say that their statements had been procured by torture and around the clock interrogation.

Of course when a witness does that, he may be charged with statutory perjury, of having made the statement under oath and repeated it in court and now repudiated it. But of course there is a rule that whoever wants to charge them with statutory perjury would have to show that both statements were freely and voluntarily made. Their task in this particular case would have been an easy one, because it wasn't just a statement that they had made to the police, but they had come to the Cillie commission and said to the judge in semi-open court that their statements were correct.

[They came voluntarily?] This was really the issue. [You said they came to the judge on their own initiative?] No, they were still in detention. [So they were summoned.] Not even summoned; the police

just brought them there. Their evidence was a curious way-- They were not really asked to tell their story. Yutar, who led their evidence, merely, in most instances, read out chunks of the statement and the witness was asked to say if this was so. And when he re-examined the most prominent of these witnesses, he, in an accusatory fashion, said: "well, you told me that your statement was correct."

And the witness came back with a very strange statement, "Yes, I did tell you that, but you remember the circumstances under which we met. You came to John Vorster Square, and you told me that you just wanted me to repeat what was in the statement. You said

that I must not worry, for no one would be affected by it, and that it was just really for background information, and that I should really give it. You knew that I was in detention and that I was not a free agent. You told me, Dr. Yutar, that no one was going to be affected, and that was part of our deal. But what do I see here now, I see Mr. Bizos sitting here, I see Mrs. Mandela sitting behind him, and Dr. Motlana. Now what is going on here? Have I got to answer Mr. Bizos's questions? Then I've got to tell him-- " Well, at that point, it was not necessary to put either Mrs. Mandela or Dr. Motlana into the witness box to deny any of these allegations because the information was really discredited as obtained under duress.

Other than having an expression of thanks for assisting the commission, as one of the number of advocates that appeared for various people, that's the only reference in the commission report about this whole incident. Everything else was ignored.

[Was this all in one day?] I don't think this went into a second day. I think it was done in one day. [You never even cross-examined these mystery witnesses?] Yes, I did, in order to show that their statements, as the report suggests, were involuntary and that they were not true. And it was not a very difficult task. They saw the people concerned sitting there, and they were not going to face a cross-examination. And of course, this whole story that there was a meeting at Winnie Mandela's house to arrange what happened the next day was just a lot of nonsense. The young people at that time had their own momentum and their own ideas.

[They were of course meeting with Winnie Mandela.] Well, some of them, out of necessity would have met over the Afrikaans issue, there can be no doubt. But the idea that there should be violence the next day and that there was a specific meeting to plan that, that was nonsense.

[What is your evaluation of her role?] I don't think she really had a very important role to play in '76. This was really the young people doing their own thing. I think the witness correctly describes in the newspaper cutting you have there that the police felt the kids could never have done this, which I think is quite the wrong perception.

[Sometimes it appears that some of these student leaders would seek out veteran ANC people who were around. What is your sense of that?] I have no knowledge of that. It wouldn't surprise me if young people did that. There is a fair amount of hero worship among young people. Whenever I meet young people, particularly black youngsters, they say you've known the greats; sit down and tell us about them.

[Do any names come to mind of fairly important ANC veterans who were around then?] If there were, they certainly kept quiet. Because until the 16th of June, although the period of heavy repression and fear of detention from the 1960's was receding, people were keeping to themselves.

[Do you have any reason to believe that Motlana was politically influential before June 16th?] Politically influential as a symbol, of what people had done in the past and ought to

be doing in the future. But I don't think he was organizationally involved. I don't know what he himself would say, but I have no evidence that he was actually consulted on the 1976 issues specifically. The politics of Soweto at the time were fairly low key.

Motlana's own evidence in the Delmas trial may be instructive on this, because he does deal with this period. Their efforts were really directed at that stage toward nonparticipation and discrediting the UBC. Motlana's evidence and the evidence of another man, Leonard Mosala, may be interesting on what was happening in Soweto prior to 1976. In fact, the young people felt betrayed by their elders, that they were not doing anything to assist them in their problems in education. They were just running along with the wishes of the government. I think there was a strong feeling that young people wanted to do their own thing rather than be guided by their elders.

[Can I go back to Winnie Mandela for a minute? One impression I have gotten from speaking to some of the 1976 generation people is that they felt Winnie Mandela was very sympathetic to the mood and ideology of Black Consciousness. And that's one reason why they never saw it as in conflict with the ANC's ideology, even though it is in conflict, because she seemed so in tune with them: very anti-white in her thinking, very racially oriented.] I think that all of that is ex post facto reasoning myself.

[Somewhere she used the word "Azania".] Yes, but you see "Azania"-- I don't know if it was originally the invention of the Black consciousness movement. It was the PAC which originally used it, and it was used by the kids in 1976. The Azania slogan was really a SASO slogan. Once it is used by university students, it is likely to be used by younger students.

[Just to get back to what Gail was saying before about the thinking which was characteristic of Winnie Mandela at the time--] I really don't believe that the young people who were busy doing this would have sat down and deliberately analyzed the position of Winnie Mandela. She was her own person. She was a defiant person, who mirrored the image of Nelson Mandela in prison. I have a strong belief that the mass of students acted out of a sense of grievance without analyzing ideological or movement differences. You were either on their side or you were not on their side. And they would have seen people like Mrs. Mandela on their side. They would not sit down and have an intellectual discourse as to whether you were this that or the other. I also think that this idea that Winnie Mandela was anti-white or more black consciousness, I think that the whole debate is misguided.

I don't believe that Black consciousness was a phenomenon of the late '60s or early '70s for the first time. The idea of not thinking of yourself as inferior because you are black goes further back. People like Mandela, Tambo, Duma Nokwe, Sobukwe, could not be accused of not articulating what black consciousness articulated just because they did not call it black consciousness. The fact that it became a movement with a label during the late 60's and early 70's is clear.

I'm thinking of the 159 youngsters that we defended. Have we spoken about them? They were, I believe, the cream of the crop. This was in September 1976. The defense was later, but the march that they took part in was in September 1976. About 1000 of the senior pupils at the best known schools of Soweto, Morris Isaacson, Orlando West, and a couple of the others, got together and said we must show that the police are behaving inconsistently. If you march in Soweto, you get shot at, gas canisters thrown at you, innocent people suffer, people standing by get shot, babies get gassed in their little cots. Let's go march in Johannesburg and see what happens! So it must have taken quite a bit of organization, because they took the police completely by surprise. One thousand of them came, apparently independently into Johannesburg, and started off a march from the station.

Brigadier Swanepoel's squad came in (I think he was only a colonel at that stage; this is the notorious Swanepoel), and they managed to catch 159 of these people. They dispersed and ran when the police came, but there was no gas. Ismail Mahomed was for some of them, and I was for others, but it was going to be a joint defense. Well, those youngsters, I spent a lot of time with them because I was particularly interested in their outlook and what it was that they wanted. And they varied in age from 15 to about 21 or

22. I never got any impression that there was black consciousness in the sense of being anti-white, or black consciousness in the sense of considering themselves apart from the ANC ideologically, or being against the Freedom Charter.

They were very clever, very articulate, and very determined young people. They had a committee. They dealt very handsomely with the prison authorities. They were really model prisoners, and they made quite an impression on even the warders.

[What were they charged for?] Well, they were charged with public violence, and with pick pocketing, and everything that happened in Johannesburg on that day. And I said, "who pick-pocketed?" They said no one pick-pocketed but there were five pick-pockets on that day. I said on an ordinary day in Johannesburg, how many pick-pocketings are there?

One of them in particular made a tremendous impression. The first time I went into meet them, he said he wanted to ask me a question. The attorney, by the way, was Sheila Camera, who is now a Nationalist Party member of parliament. She was from the firm of Gilfillan(?), a firm that did quite a bit of this work. Well, she made a decision, but she was a University of Cape Town type of liberal in those days. Her husband is an influential businessman of German origin. She is not an Afrikaner. She is the granddaughter of Durant, a man who was a United Party politician. But that's quite by-the-way. She took me there, and I spoke to them.

And young Cyril Ndlovu, who I remember to this day, wanted to ask me a question. "Can a prosecutor wear a gun in court?" I said, "you mean ? He said no." "Well, when the prosecutor in our case when we go to court for remand--the postponement of the case--wears a gun. What are you going to do about it? " I refused to believe it. I said that maybe

there will be a policeman there with a gun, but the prosecutor cannot. He said, "No, no, you will see."

Well, we went to court, and here was this prosecutor and if I remember correctly, his name was van der Walt. He was a tall man whose expertise, I was told, was to do faction fighting in Natal! He had this gun, like a cowboy, with straps on his hip. I wasn't prepared to talk with him in the magistrates court. Incidentally, their trial was taking place in the school hall of the Catholic School in Protea, adjacent to Soweto, which was closed down shortly after the Bantu Education Act and converted into a police station. It's a fine building. The tragedy of it was plain: students on trial in a school hall. They used it because it was big enough for 150 people.

I wouldn't speak to the prosecutor. I went to his superior, who said that he saw nothing wrong with his carrying a gun. I went to the magistrate who was presiding in the trial, and he said that he didn't see anything wrong with a prosecutor carrying a gun in court since he needs to protect himself, to protect him (the magistrate), and he said, "even possibly you, Mr. Bizos". [From these wild youngsters]. In fairness, I don't think he would have said "these wild youngsters" but you know, Soweto is a "dangerous place".

In order to get to the court once the young accused were brought in, you had to break the line of policemen with automatic weapons under the command of Colonel Swanepoel, in uniform. The parents of these people had collected into the school courtyard. There must have been 500-600 of them there. They were waiting, and in the meantime, there was a quarrel going on between the prosecutor, the magistrate, and myself, that if he didn't take his gun off, I would refuse to appear, and I would like it to be said in open court why.

Well, while these things were going, someone got wind of what was happening and the chief magistrate of Johannesburg showed up. And he came to me and thanked me for raising the matter privately because if I had raised it publicly, the image of the administration of justice would have suffered. The prosecutor

was ordered to take it off, and was told by the chief magistrate that he could go and complain to the Public Service Commission.

Having been on the court side of the proceedings, and with a row of policemen between me and the parents in the courtyard, I had to break the line in order to speak to the parents and explain to the parents what was happening. But they wouldn't let me through. Colonel Swanepoel came over and insisted that I required protection and I must remain on this side of the line. I eventually persuaded them that I should break the line and they should let me through. Then, the police indicated that I should stand on the elevated platform that they were standing on and talk as if I was giving a speech. But they really got shocked when I stepped down among the parents and they naturally all surged. They were very concerned about their children, and wanted to know what it was about. I spoke to a small group, and they passed on the word.

The case had a happy ending because Ismail Mahomed was operating on another level. He persuaded the chief magistrate to use his good offices. These were youngsters and the only thing that they had done was to take part in an unlawful march. It was done on a plea-bargaining sort of level, with the judiciary being sounded out as to what was likely to happen. All the serious charges were withdrawn and they pleaded guilty to taking part in an unlawful demonstration. Those who were 16 and under were cautioned and discharged; 16 to 18 had to pay 5 rands; and those over 18 had to pay 10 rands or 25 rands. There was only one youngster who they kept back because they said he had bottles which smelled of petrol at the time of his arrest. That's another story altogether. They actually tried to frame him, but eventually he got off.

But this was a very interesting group and I think quite representative of the leadership of the students. They were independent.

[What was their attitude towards the leadership of the SSRC?] They did recognize the SSRC. At the time there was Mabasa, was that the first chairman? [Mashinini] But by this time Mashinini had left. Anyway, they were completely independent minded. They had made statements to the police that "we took part in this march and this is why we did it, and we did nothing wrong. We don't want Afrikaans, and we want proper schooling." They made quite radicalized statements.

When we would explain to parents that their children would plead guilty to participating in this march, you saw a marked difference between the attitude of the teenagers and the attitude of the parents. The mother would say, "My boy, Mr. Bizos, is a good boy. He didn't go to this march. I sell apples for a living and I'd sent him into town to buy apples." And you'd say, "your mother says you came in to buy apples." And they would just smile. I think they had actually given up the older generation as a bit of a bad job, that had not really done what was needed.

But of course there were exceptions. And I think a person like Winnie Mandela was probably held with some respect. You must have a record of when she said, "If we don't do anything, they will spit on our graves." Was that before or after the 16th of June? Was it later? But that was the sort of attitude. But generally speaking, I don't think this was something planned either by the elders, or BC theoreticians, or ANC older statesmen. I actually believe that you will see precisely that sort of thing happening on the 3rd of September, which was really the beginning of the Delmas Trial, but we will come to that.

[Anything notable about the case of Raymond Suttner?] What year was that? [1975] Well, it was at the time when there was hardly any overt activity within the country. He was really working very hard in Natal with a very small group. [Do we know the group] Yes, it was the group that testified against him. A man called Lawrence Kuny, and Anne Roxburgh. He himself worked very hard with tremendous

industry, getting 10,000 copies of the Freedom Charter out, really doing a tremendous amount of work. He made a statement, which under the circumstances was a heroic one.

[Was there a text of that published any where?] The Rand Daily Mail published it almost in full. I remember being told by Ernie Wentzel that Benjie Pogrand was not anxious to run it in full, but Ernie told him that he must forget some of his prejudices. And if I remember correctly it was published in full. But he himself must have made a copy of what he said.

[If he returns to South Africa, he has promised to help with documents.] I doubt he will do so, because his is a case where they will not hesitate to prosecute.

He was tried in 1975 by the judge president of Natal, James [?]. The thing that I remember well which does not appear in the records is that the judge showed the lack of sensitivity that many South African judges show. He congratulated the investigating officer, I think it was Captain Wessels, for his tremendously good detective work, saying, if I remember the phrase precisely, that "at times it bordered on intuitive brilliance," in getting all the witnesses to testify against Raymond Suttner. He should have known that what you do is you take a person like Suttner, you lock him up in solitary confinement, and you pressurize him. If not by assault, as Suttner said that he was tortured-- You may not believe that, but he was actually coerced in one way or another to give you the names and addresses of where he bought the duplicating machine, where he bought the paper, and where he got the envelopes, who helped him and who didn't help him, and everything else.

And then the only thing you have to do is to milk him dry and then go and pick up the people, and that's primarily the investigation. There is no intuitive brilliance in that. The only bit of detective work is how they actually got to him. And that's because of the very limited resources that he had, he realized that instead of buying envelopes here, there and everywhere, it would be cheaper if he bought them from the university stores. So he went and bought a few thousand envelopes from the university store, cheap, and they found lots of them with the Freedom Charter and other pamphlets in them. Then they were able to find out where the envelopes came from since they were specially made for the university by the one or two envelope makers in Durban. And it has always struck me and I've given it as an example of how really out of touch with the realities of interrogation and detention some people are.

Raymond of course has a marvelous mother who played a very important role. Sheila Suttner, who had been South African Woman of the Year the previous year. She's not a business woman, I think she was in social work. [She worked for the Institute of Race Relations for a while] She did research for them and a lot of social work. I think, primarily she was a social worker. And then she became the dean of the main residence of the University of the Witwatersrand. She was a particularly distinguished South African who has now gone off to Australia. Her concern about Raymond and the steps she took to publicize his plight, and to protect him as much as she possibly could, were notable.

The other notable thing about that, was that when I when to James(the Judge) to say good-bye, as is almost inevitable in political cases, we started discussing politics. James

was exposed to this sort of thing for the first time, and particularly Raymond's statement, and the contents of the documents. He made a remark which stuck in my mind, coming from a conservative man such as himself. He said, "we better do something quickly otherwise we whites have had it."

[Was there any sense that someone like Suttner from the far left could be dismissed as just a fringe element?] It may be that that was the view of the average white, but certainly not the attitude of James. His remark to me afterwards really showed that he was concerned and he was affected by what had been said.

[How much of an effort was there to establish that he and his collaborators were involved with the CP? Has it ever been publicly acknowledged that he was a member of the CP?] I don't recall that. He wouldn't have denied he was sympathetic to them. He didn't give evidence; he made a statement from the dock, admitting that he had done these things for the ANC and the Communist Party. Yes, it was both. Certainly that was the belief at the time.

[What about the trial of Molefe Pheto, the poet who was charged with aiding someone to leave the country?] It was a very short trial. I think Pheto himself was surprised that the acquittal came so quickly. But what is of some importance was that the Rand Daily Mail made an editorial on December 12, criticizing detention under the Terrorism Act. He had spent about nine months in detention before his acquittal. And what was also significant was that he told me that he was asked a few questions on the first day, and then they just forgot about it. They never really interrogated him. It was just a waste of time. He was from MDALI [a cultural group]. He was a BC man.

[Do you want to refresh yourself on this one, Mogale and Mabaso?] This was an important case. The two cases, Mogale and Mabaso, really should not have been charged together. But they were. Mabaso didn't really have a defense, and it was fairly clear that he was going to be convicted. But the case of Linda Mogale has become quite an important case in the history of South Africa's legal history.

The onus is on the state to prove that a confession was freely and voluntarily made. [It is not in the law reports.] No, it's not in the law reports because the judgement was really given eventually on the facts, that he had proved that it was not freely and voluntarily made. But the law was changed, placing the onus on the accused to show that it was not freely and voluntarily made if he had repeated the confession before a magistrate. If the confession was made before a police officer, the state still had to show that it was freely and voluntarily made. If the police managed to get him repeat it before a magistrate, then it was for him to show that it was done involuntarily. The burden of proof changed. The amendment was shortly before this. This was one of the first cases where the state relied on the confession made before the magistrate and then onus was placed on the accused to show that the confession was not freely and voluntarily made - an almost impossible task. You can call the police force to say that the statement was freely and voluntarily made. It was also one of the cases that arose out of the 1976 uprising.

I was also involved in the case where the people were accused of killing Dr. Edelstein [on June 16, 1976]. The police really wanted to show that the student movement in Soweto was a violent and irresponsible group of people. At the time when the SSRC was being banned and hounded, Linda Mogale had for awhile become the president of the SRC. Now, the case was brought before F. S. Steyn, a man who was not highly regarded as a judge, even by his brethren on the bench. He had been an attorney that was acting for the Nationalist Party, and when Van Wyk, de Vries, Malan and Steyn, that firm broke up, or he left it, he became Ambassador to Belgium, I think. He came back and went into politics, and it was thought he was being groomed for high political office in the Nationalist Party, and that he was a conservative man, to the right of John Vorster. It was rumored that he was actually appointed to the bench in order to neutralize him from joining the HNP, which had broken away from the Nationalist Party. It wasn't the happiest choice for a judge.

Linda Mogale was a very articulate and highly intelligent young man. He made two confessions, one on a tape taken by a Captain von, and one to a Captain Andries Struwig. And Struwig had taken him to a

magistrate and he had repeated the confession, that he was party to a group that went and threw a bomb at a school principal's home in which an number of innocent people were killed. Raymond Tucker and Kathy Satchwell were the attorneys and I was assigned to the case. He had previously been represented for a short while by Debbie Dyson, a very courageous young woman who moved about with great difficulty. She had trouble with both her legs, and she walked with assistance. Debbie had seen him. He had told her that he had made a confession on tape and told her that he was tortured, showed her that two

front teeth had been broken in the process of being pulled. And he said don't worry because what I said there was such a lot of nonsense that we can prove it was wrong. Then they redetained him and Struwig managed to get him before a magistrate to repeat this confession.

Well, they also got witnesses to give direct evidence against Linda Mogale that he had taken part in this. They didn't go very well. One of them went back on it, and medical evidence was led that the stubs on his teeth were consistent with his story that he was actually lying on the ground and they were pulling his teeth with a pair of pliers. The doctor, the Wits lecturer in dentistry who gave evidence-- and they called a man from Pretoria who eventually had to concede that the man from Wits was right -- he said they had seen this often before; that the first extraction that any dental student tries to do, finishes up with that result. Because they don't know how to do it, and the person knocks his head back in pain and this is how it breaks. They grab it too low down.

It was a terrible case. And a terrible ordeal for me, because I knew the judge was going to convict him. And eventually I actually wanted to say well, it is not worthwhile going on with this case. I went to discuss it with Sydney Kentridge who cooled me down, and said you just have to carry on along this path and follow it up with an appeal, and that is what happened. [He was hanged?] No, no, he was acquitted on appeal. No, the judge actually

only sentenced him to seven years in prison and that was set aside altogether with an appeal on the ground that he knew the conviction was no good. It was one of those compromises. It was a ridiculous judgment.

[He was acquitted because the confession was not considered valid?] No, the appellate division found as a fact that Mogale had proved on the balance of probability that he was tortured and that his confession was not freely and voluntarily made. [Despite the possible accuracy of the confession?] No, in fact, one of the reasons why it was shown that it could not have been freely and voluntarily done was because we were able to establish that a number of things in it were false.

But Mogale himself has an interesting history. I say this because he started off his first confession in the tape, "I want to thank Captain von for the consideration that he has shown me and for showing me the light and the error of my ways. I was a savage without a shirt on my back and the white man showed me the ways of God." And so it went on. Well, this made relevant his background. His maternal grandfather was the man that started the World Newspaper. What was his name again? Whoever it was, I don't remember the name. His mother was a teacher of English at one of the schools, who gave evidence by the way that she saw him shortly after he made this confession and that she had pointed to his teeth.

To get some idea of the judge's attitude, one of the complaints that was articulated by Mogale about the education was that they were taught by teachers who were not really properly qualified. And the prosecutor asked him, what do you mean by that? And he said, well, they don't have university degrees. When his mother gave evidence, the judge felt it necessary to ask the mother what her qualifications were. She had a teachers training college diploma and not a degree. And he sort of shook his head and said well, her qualifications were not thought to be sufficient by her son, to teach at school.

The finding by the appellate division that that statement was not freely and voluntarily had an effect on a subsequent trial. When Auret van Heerden sued for being tortured, one of the persons involved was Captain Struwig, the very person that had taken Mogale to make a statement to the magistrate. In fact the partial success of Auret van Heerden, which was very limited, depended on the fact that Struwig, Cronwright, and one other police officer, couldn't really go into the witness box to give evidence to contradict what van Heerden had said. Because they were disbelieved, in particular Struwig was disbelieved, by the Appellate Division in the Mogale case.

Mogale was involved in a quarrel with someone over parking in front of his gate, and was shot dead in the course of that quarrel. It was some years after that trial. It was not a political matter at all.

[Next is the trial of Seatlholo and Loate. One of the questions was how to deal with witnesses who refused to testify, because there were no less than seven witnesses who were jailed for refusing to testify for the state. Another was the comment of the judge that he decided to give Seatlholo a short term because he doesn't want to make a martyr out of

him. I wonder if you could comment on the notion of how a judge, when sentencing, decides what's an appropriate sentence.]

This question of avoiding martyrdom has been used from time to time in an attempt to justify what is said to be a more lenient sentence. It was first used by Yutar in his address to the court in the Rivonia Trial. He did it in a somewhat indirect way. He even suggested that the Communists and others actually wanted Nelson Mandela to be sentenced to death so they could have a martyr. Which was of course nonsense. I don't think anyone wanted Nelson Mandela to be sentenced to death. But it is used as a reason from time to time. It may well emanate from the Afrikaner experience. Of course the greatest martyr to the Afrikaner was Jopie Fourie, who was executed on General Smuts' orders. Well, he was sentenced to death and Smuts refused to commute it to a sentence of imprisonment. And of course the idea of martyrdom may come from there, even though judges are very keen to draw very special distinctions between brave Afrikaners who took to the field in revolt, and people who can conspire in dark rooms to commit acts of terror in the present. But it may have its origins there. I don't know.

[George, I assume that when a witness refuses to testify, the judge sentences him without any charge or further proceedings. Would a judge have the authority to decide on a punishment?] Yes, he has to have an inquiry and give him an opportunity to explain whether or not he has a valid reason for not giving evidence. The fact that they are relatives of his, or his political colleagues, or because the statement was forced out of him -- are all regarded as non-reasons for refusing to give evidence. They say you must take the oath and give evidence, and we'll take everything into consideration, but you must not refuse to give evidence.

[Are there constraints on the amount of the sentence?] Five years is the maximum. The usual sentence is three years. It is not usual to impose the five years maximum. Of course that is something used by the security police, by persuading the prosecutors to call people against whom they have no evidence or who are very peripherally involved. And they bring them in, well-knowing that they will refuse to give evidence, in order to get a jail sentence.

In this very case, Loate was a young, inexperienced, enthusiastic woman who actually, for no apparent reason, took people who had come from outside and established contact with her, to Zwelakhe Sisulu. Zwelakhe for all practical purposes didn't know Loate and didn't know the people, and as would be expected, he was probably suspicious of the whole situation and turned the people away. Well, when she was detained she told them that she had taken people to Zwelakhe Sisulu and this led to Zwelakhe's detention. He, of course, would have found it most embarrassing to give evidence in a trial. And John Coker, who was for the man, Seatlholo, and I persuaded the prosecutor, who was acting quite professionally, that we don't really acquire the evidence against Sisulu to prove anything and it really isn't your function to put Sisulu up for the purposes of getting him a term of imprisonment. The court is really used for the proving or disproving of offenses. He accepted the argument and he caused Zwelakhe to be released. But he was a decent

prosecutor, and I think the moral pressure that we put on him was successful; but it doesn't always happen that way. That provision is used to punish people.

[One curious thing in the case was that she had joined AZANYU, one of the PAC surrogates, and she at the same time was subscribing to this "third force," exiled black consciousness group, SAYRICO. Do you have any sense of the connection between these two groups?] I think, with due respect to her memory, she

was really a somewhat embittered and confused young woman. I think that she was probably rejected, as sometimes happens. We have instances where people are not welcome in the Charterist movement, sometimes for good and sometimes for bad and irrational reasons, where you have to rely on who you think is an informer or who is reliable, this sort of thing can happen.

[Another thing about the judge in that case, at the end, is that he reprimands the spectators in the court for becoming a bit raucous at some point in the trial. The magistrate reprimanded the spectators and warned them that if they were going to behave like that, they would have to bring their own lawyers to the courtroom!] That they might be convicted of contempt and might require a lawyer. Very often, there are exclamations in court, especially when a witness says the evidence was extracted by force, people sort of react. They give vent to their feelings. You have a very good scene describing that in the film Cry Freedom. The audience doesn't remain quiet and neutral in this sort of situation. Of course, the law has now been amended. Well, a new provision has been made that you can not have demonstrations outside of the court or even in the passages. You've heard of people charged with the offense of contravening this statute, for shouting "amandla" at the end of a trial, things like that.

[At the Delmas Trial, did the minister, Rev. Moselane, continue to stand up and address the court ?] He didn't keep it up until the end. [How often did he do it?] He began daily, and then it was every Monday, and then after a while it was given up. He did it on the day of judgment. [Did the judge ever object to it?] He started doing it before the judge came in. But it was very embarrassing when he did it when the judge and the prosecutors were there. We stood up as soon as he began to try to pray, and the prosecutors didn't know what to do.

[Was he in the audience?] No, one of the accused was a priest. Geoffrey Moselane. In fact, the judge really smiled. He was a person who showed himself quiet harmless in the witness box. And when applying for bail for him, I pooh-poohed the idea that the ANC would get him away. I said, "What do you suggest the ANC is going to do with him, appoint him as chaplain?" He was BC oriented, but he insisted that he never joined AZAPO. [Someone was saying that in one of his prayers he called on people to bless the judge and the prosecutor.] Yes, to bless everyone and to see to it that justice is done.

Since we are on this, once Bishop Tutu came, as he did fairly often. He was interested not only in the trial but Tom Manthata, who was his assistant who accompanied him to Oslo and was one of the accused, and Moselane was one of his priests. Easter 1985, he went

downstairs to where the accused were in the cell, and he came up again, and all the accused came up. And they all had a white looking cross on their temple. And of course, you see, the Protestants in the trial, like the prosecutors, policemen, and the judge, just didn't know what this was. They immediately came to the conclusion that the Bishop must have gone down and done some sort of witchcraft, some sort of ritual. It took a good Greek Orthodox like me to explain to them that it was Ash Wednesday.

[The day I was there with you at Delmas, I remember at the end of the day, everyone turned to the gallery because Manas Buthelezi was there and he said a prayer.] Yes, Manas Buthelezi. Well, Manas, is of course, in many ways, a very charismatic man. He gave evidence for us as well in the Delmas Trial, very good and effective evidence, although he had to explain a draft from a meeting in Geneva in which Frank Chikane had said something about the Council of Churches running an alternative government in South Africa. In context, what it really meant, it was really shorthand that we have taken over functions in relation to welfare work which the government would ordinarily do. But also they were really applying for money and outlining the kind of work they were doing. But they were also sometimes helping people to get out of the country, or go into hiding because they were wanted. And the prosecution made much of that. But the man is very, very strong on describing the feelings of the black people, particularly towards Mandela and the other ANC and Rivonia leaders.

[He seems to have faded away as a prominent personality. You never read about him any more, his comments on--] Well, that's his style. His style is not a flamboyant one. He also has a very important position in the Lutheran Church which really takes up a lot of his time.

[He's certainly no more important than Desmond Tutu]. It's question of different style. [He said to me, "I'm not like Desmond]. Well they are completely different personalities. But in their own way, I think that they are both very effective as leaders.

[It was once suggested to me by someone that Manas Buthelezi would be more active if someone in the government wasn't blackmailing him. Does that seem farfetched to you?] I know nothing that would give credence to that and in fact, I think that he has never refused to put his neck out. He most certainly did that in 1976, and certainly when he gave evidence in the Delmas Trial. And how is it consistent of his taking up the hot seat of the chairmanship of the Council of Churches? At the time, when the Council of Churches was thought to be the black sheep by the government, there was talk of banning it at the time, cutting off its funds. This was after the Eloff Commission. At the time when it was thought that as a result of the recommendations of the Eloff Commission, that the South African Council of Churches would be under tremendous strain. The Eloff Commission's recommendations were too far-fetched even for the South African Government. They were really the recommendations of the Security Police, and more particularly General Coetzee, who wanted to put an end--. By dealing with the Council of Churches they would have dealt with many things: political trials, support for political prisoners, and many other things.

[Back to the roster here. Adam and Themba, who were accused of taking pictures of Brixton Tower with a view to blowing it up. (side 3 ends).] Rob Adam is a man with a degree who went overseas to study. He was recruited and came back. He had no defense to a charge that he actually reported on the lack of security in the Johannesburg T.V. station as a possible target for a sabotage attack. They called someone to say, in order to aggravate his sentence, that people in the vicinity would have been hurt, in regard to the manner in which he suggested that this should be done. David Soggot and I were both working on this case. David is much more technically minded than I am, and he found an expert witness to say that this state expert didn't know what he was talking about. [You can have a clean sabotage?] Yes, you can have a clean sabotage.

The inevitable question, to which we knew the answer, but which we didn't ask -- we left it for the prosecution or the judge -- was where did (this witness) get all this experience from? It created a little sensation. He was a Rhodesian saboteur. He had been in the white security forces in Rhodesia. He said he was prepared to say what experience he had had, but he was not prepared to say where and under what circumstances, but his training was in the Rhodesian forces. I don't know how David Soggot actually found him.

[What kind of family did Adam come from? Where did he get his training?] He had a degree in science and he was trained in London, I think probably by Ronnie Kasrils. He also came from a distinguished family. He was a grand nephew of Rose-Innes, the first Chief Justice of the ...

[Did you try to make something of that in the trial?] It was mentioned in passing, you know that this was a man with university training, whose roots were in South Africa, who acted out of a sense of patriotism. Also, his parents were retired and were very loyal to their son, and were in court every day. Boshoff, who was the presiding judge and who gave him a comparatively light sentence [10 years?] Ten years, a comparatively light sentence for his training, and for the plan that he had set afoot. Boshoff asked me who the people were at the back of the court. He correctly judged that, yes, these were his parents. He could actually identify with his poor parents. He could identify with them as parents, and I think that it influenced the comparative leniency that he extended to Adam.

[No one was hurt though?] It never got beyond the planning stage. [It's equivalent to the Renfrew Christie case. He got ten years.] That's correct, but that was afterwards, and maybe they used Adam's sentence. And his was, I think, even more remote, Christie's thing. But Adam is connected with the Barbara Hogan case.

[Well, let's turn to that one.] Poor Themba served his five years. I thought that he had a good defense. He said that he just went along with the photographer and didn't know why he was taking the pictures. [At night?] No, they had a guided tour. [They took pictures secretly.] No, there was a guide and they took the pictures openly. [Well, that's a lesson for a future saboteur]. The guide didn't know anything about it. It was the result of capture of documents which Rob Adam sent out. They learned about this and traced back who the photographer was, and the guide who actually gave evidence. He was very embarrassed.

[How did he send the pictures out?] They were using dead letter boxes to send them out, and among those documents which fell into the hands of the police, was the list of people that Barbara Hogan was reporting to the ANC who were either active or would be prepared to work with her. This was a list of sixty odd people, which led to the detention of a tremendous number of people including Dr. Aggett, and Liz Floyd, and others.

[This was a written list?] It was written. Barbara Hogan had been recruited by the ANC in Swaziland. She was complaining that she was not getting any directives or any instructions as to how she was going to do things, or if they were sending her reports, or what was happening. She then gave a report, together with a list of people, to Rob Adam to send to the ANC out of the country. That was intercepted by the police.

[Was the list of people a list of prospective, possible contacts, or people who had already been active?] The list was divided into two parts, those who were active with her and those whom she could call upon for assistance above ground, without their knowing it. Incidentally, Aggett and Floyd were in the above ground list, but it didn't help them.

[Wouldn't the prosecution need much more evidence than that in order to go after the above ground people?] Not to detain them. They were detained and there was this terrible period of detentions and much public concern. And it led to the formation of the Detainees Parents Support Committee. The Coleman children's names were on the list.

[How many on her list of 60 were whites?]. Practically all of them. [Why would she give a list of names to someone?] The tenor of her letter was, "Look at the resources that I can put at your disposal." [She could say that I have sixty names.] You go and ask her. This is it. It had disastrous consequences for herself. [How long was she sentenced?] Ten years. But she also had a terrible time in detention. [Does her sentence include the detention time?] No, ten years.

[Wasn't she convicted for being a member of the ANC?] Well, we contended that that's all she would be convicted of, but it has become a case in which the law of treason has been extended, that any assistance you may render the ANC in terms of that judgment is treason. In fact, the whole legal question is the subject one of the assignments [in our course at Columbia Law School]. Perhaps when it is over you may look over the assignments. Maybe there will be some information for you.

[So, assisting the ANC could mean a number of things. I mean even waving the ANC banner.] Well, yes. In terms of that judgment, you can't say I'll support the ANC only on its nonviolent program. Once you render it any assistance you are guilty of knowing of the fact that one of its objectives is to overthrow the state by violence. Then you are guilty of treason.

[Was she the first person in the 1980s to be charged with treason?] I think she was not the first person, because I think some of the MK people in Natal under the auspices of a prosecutor there who became Attorney General, Cecil Rees, he began charging the MK people with treason. But she was certainly the first to be charged with treason and not

"furthering the objects" [of a banned organization] who had really done nothing more than "furthering the objects."

[No sabotage or terrorism?] No sabotage or terrorism. She, in fact, made it quite clear in the documents and in her evidence that she was not prepared to commit any act of violence. [She was only going to collect information.] To collect information, and she was going to work in various fields including the formation of a trade union for the unemployed, if that is not a contradiction in terms. The problem was that every time there was a strike, and 800 people were discharged, the unemployed people would come in and take the work. And, if I remember correctly, at the time there was a strike in the post office or something, and this served as an example of the sort of thing that could be done amongst unemployed workers.

[What sort of person was she? Was she politically naive? Or simply naive about what she was up against when it came to the special branch?] She was a determined person. The sending out of the list or committing the list to writing, she herself in retrospect could describe as naive. But she was a member of the white left, and felt very strongly about the situation in South Africa.

She was a friend of David Webster. He gave evidence in mitigation for her, but I think the judge was really very annoyed. I don't know who was responsible. But we had lots of evidence about ANC colors and everything else, but whilst we were presenting the plea in mitigation, someone went and bought several bunches of yellow chrysanthemums and gave one to everyone. The men had a yellow chrysanthemum in their top jacket pocket, and the women had a similar flower in their blouses. [In the gallery?] Yes, everyone in the gallery, practically. I had consulted with David Webster about the evidence he was going to present about her, what a peace-loving, nice person she was. I hadn't noticed this spread of Van Gogh at the back of the courtroom. Or did Van Gogh do sunflowers? I saw this and I thought that with this judge it's going to go down very badly. And it did. So I consider her one of the most cruelly punished of all the political prisoners that I have actually defended.

[I'm just curious, do you have any sense of how she is doing in prison?] She is doing reasonably well. There was one time when she was alone, or for all practical purposes alone, and also I understand that Helen Pastoors was with her at one stage, and she was not an easy person to get on with.

Ever since the conviction of Marian Sparg, she is together with Marian Sparg, and I think it is quite bearable for her. I thought that I would intervene on her behalf when the offer was made that anyone who's prepared to renounce violence-- I thought I could go and see her and speak to her. Well, to say, you know, you're a non-violent person, so it's not something you have been inconsistent about. Because I really thought the ten years is absolutely ridiculous. But Kathy Satchwell said she would discuss it with her and come back to me, but nothing really got off the ground. Maybe she feels that her date of release is nearby anyway, and she might as well not--

[It seems strange that you wouldn't want to take advantage of anything you could.] Well, one doesn't know to what extent her ideas might have modified under the rigors of...

[Now she's violent whereas before she wasn't. Was Pastoors released?] Yes. You know the Belgians were sitting on Pik Botha's back stoop and making a lot of noises. [Was it her husband who was in the Belgium Embassy?] Yes. Her ex-husband [de Jonge]. He escaped and then left.

Of course, Barbara Hogan had it very badly. She herself brought the charge against the police for beating her up during the course of her interrogation. They defended themselves. The counsel for the police cross-examined her on the document that was supposed to have been found in her possession, saying among other things how to respond to interrogation. You must tell lies against the police if you are an activist. Can you imagine anyone putting out a pamphlet out like that? But, this was in fact, a pamphlet which was printed without ?

She was arrested in September- October, and the police said this is when they found the pamphlet at the time of her arrest. The same policemen that were acquitted at her trial, where the doctor also bashed his evidence up, a Dr. Jacobson who didn't really tell it as it was. She complained to him. She went and said that she hadn't been assaulted, and the doctor said I don't believe you, you have been assaulted, look at these marks. She gave him some silly reason because she didn't want to implicate the police while she was in detention. [She felt intimidated?] Absolutely.

[Were they assaulted by women or men?] Men. Barbara then had an opportunity, or rather we had an opportunity, to investigate the provenance of this pamphlet and we traced it. It was done in Cape Town, three or four months after Barbara's arrest. So, it couldn't possibly have been found, and also that it was forged by her adding some of the things in. We made it an issue at the trial, and they then thought up a fantastic explanation. We pointed out that it could not have been the pamphlet that had been found, because there were events described in the pamphlet which occurred after Barbara's arrest. They then made a very complicated story that the pamphlet that was found in her possession was, in fact, not the pamphlet found in her possession. It was a similar pamphlet, which they produced which had the ex post facto events deleted from it. They made a mistake- -they handed in the wrong pamphlet. It was quite obvious that once it was brought to their attention about these ex post facto events, they fixed up this other one and an explanation. With photocopying machines, it is very difficult to really use expert evidence of that nature, but from the circumstances--. Why should anyone add or subtract those things? More especially when we called the person who did the pamphlet, and it was poor Jenny Schreiner, who is now on the charge of terrorism in Cape Town. It was she and a group of other people at the University of Cape Town who had really put this pamphlet together.

[Back to Barbara Hogan] I invited the judge specifically to say that he was very worried about this, and he said he was worried during the course of the argument, but he made nothing of it in his judgment. The investigating officer, of course, was Major Kronwright,

the man who was really responsible for the overall interrogation of this whole group, including Aggett and Liz Floyd. And on whom there is a very good article in the Christian Science Monitor saying that he was a newborn Christian, but he was on a-- ...That came out about the time of all these detentions in the Hogan trial, the Aggett inquest, the Adam trial, at about that time.

[This UCT manual on detention was put out in March 1982. Her trial begins in August 1982, but she was actually arrested the previous year in Oct.] That makes sense, yes.

The reported judgment is attached to the assignment given to the students in the Hogan case. It's rather interesting from the legal point of view.

[How about Albertina Sisulu and Thami Mali in 1983, for what she said at the funeral for Rose Mbele. Who is Mali?] Mali was a young man who fled the country when he was admitted to bail having been sentenced to five years imprisonment. But whilst out on bail, he did lots of other things including calling a strike in November 1984 which caused quite a bit of confusion. He was said to go off on frolics of his own; but he was quite an articulate and radical speaker. He had taken over the arrangements for the funeral of the late Rose Mbele. He had approached Mrs. Sisulu to speak. He made a speech of considerable length and tough political talk with the trappings that became a common occurrence thereafter, with the

ANC colors being shown and freedom songs being sung, and ANC people being mentioned. I don't know where Mali is now.

Anyway, I know that the prosecution in this case was actually authorised by Jacobs, the prosecutor that we had in the Nusas trial way back, and the Delmas Trial. He is the type of prosecutor who likes the sort of prosecution on "furthering the objects" [of banned organizations.] We also had Isaac de Vries, the man from Rand Afrikaanse University. By the time I cross-examined him, he had already been cross-examined once by David Soggot in another case. David had really cut him up to bits. I had a copy of that record and was able to assess the man and prepare my cross-examination accordingly; and he didn't fare much better in this case.

The other important thing about the case was that he refused to go through the process we were going through at the time of our asking the questions in English and his answering in Afrikaans. We sometimes, under pressure, would do it in Afrikaans. But we obviously are at a disadvantage. And depending on the nature of the case, we sometimes cooperate and sometimes we don't.

But, of course the most dramatic noncooperation in that regard was Sydney Kentridge in the Biko inquest where the magistrate said, "I thought all our senior counsel would be able to speak Afrikaans," and Sydney came back with the very forcefully uttered answer, "It is not that I am unable to, it is that I do not choose to ." Now with the Biko case, with 4-500 young black consciousness people at the back, and with the issue of Afrikaans, you could actually hear that "Oooo--", that tremendous sound of approval.

Well, on a much lesser scale, I insisted on asking my questions in English of de Vries. But he advanced a very good reason for not wanting to go through this process of my asking the questions in English and his answering in Afrikaans. He said that he had given evidence before, referring to the case in which David Soggot had questioned him, and it's been reported to him that his evidence was not well received, but it was no fault of his. It was because of this confusion that arises over the use of different languages. So, I stood my ground and said that "you have the right to speak Afrikaans and I have the right to speak English. I don't want your answer translated to me. If you want my question to be translated, you call for an interpreter and let the interpreter interpret my question." So it was a test of wills.

And the magistrate adjourned and obviously phoned various places, and he came back. And he said he had heard me speak Afrikaans to good advantage in many cases, and he couldn't understand why I had taken up this unreasonable attitude. But the most important people in this trial were the accused, and although he finds my attitude an unhappy one, nevertheless, the interests of the accused were paramount and under the circumstances, he would allow me to do that. The interpreter went on to the scene, and it was quite clear that although he was a good interpreter, he couldn't do it at the speed that I was asking the questions, or that de Vries could give the answer. And the interpreter really added to the confusion, and he finally gave it up. Anyway, his evidence was a complete mess.

The magistrate said how much sympathy he had for Mrs. Sisulu, who made quite a moderate speech and couldn't really be said to have furthered directly the objectives of the ANC. What she really said was that Rose Mbele was with us when we marched to Pretoria, she was a staunch person and a proud mother. You know, the sort of eulogy that one would give at a funeral. But, he stressed that it's no good closing our eyes; we know that she is the wife of Walter Sisulu, and she must have led this long, lonely existence without the benefit of the comfort of her husband. Nevertheless, he gave her four years imprisonment, 2 years suspended. He had refused bail and poor Albertina had spent quite a bit of time awaiting trial, though I don't precisely remember. After the conviction, we had to go to the Supreme Court to get bail for her. But whilst out on bail, she was arrested in the Pietermaritzburg trial for treason. I became involved in the Delmas trial and the record collected a lot of dust.

Thami Mali, in the meantime, fled the country, and he couldn't appear because he jumped bail and then you forego the right to have your appeal presented. But Mrs. Sisulu's appeal was successful. She was convinced that she was going to prison, so she took a trip to Pollsmoor to say good-bye to Walter. She came back to give me Walter's regards, shortly before the appeal, and it's one of the things that we have to live with, really. Walter, without knowing what the prospects of success in the case really were, I'm sure, was just saying this for encouragement, "don't worry; if George is in charge of the case, you'll be alright." And although she left Johannesburg to go to the Cape very gloomy, she came back and she said, "No, no, no, Walter says it will be okay, because you have the case." And it was okay. The judges had no difficulty in setting her conviction aside.

[So, she never served her prison sentence.] She didn't serve that prison sentence. I don't know if she has served in any of the other prison sentences. She has been detained from time to time.

Also the magistrate was afraid. Rather, he was angry, very angry that I read a poem about Jopie Fourie which someone gave me out of a book used in the prescribed book for Afrikaans schools, really calling Jopie Fourie a hero and bemoaning the fate that the bullet struck his skin. It is a very emotional poem. We made it relevant to the issue by saying that when Mali had mentioned as one of the heroes of the people, Solomon Mahlangu. The mere fact that you were convicted for murder didn't prevent you from becoming a hero of the people, because Jopie Fourie's platoon was responsible for 26 deaths or something when he rebelled. And the magistrate dismissed the contentions with contempt. He said that it was not a sort of legal argument that you can make in court. It is only used by those who are interested in making political propaganda.

[Do you think it was a mistake that you did this?] No, not really. [Another judge might have been affected by it.] Well, that's right, I mean some judges have said that when you look at what blacks have done, you have only to turn over the pages of history to see what our own people have done. One of the charges I had when the Rivonia people went off to prison, I had to promise that if the wives ever got into trouble, I would be around to help. I was called upon to defend both Winnie Mandela and Mrs. Sisulu, and I didn't do too badly. I don't think it's such a bad record. Winnie went to prison only once. That was for breaking her banning order.

[The police used a video tape in this trial. Was that the first time it had been used in a trial?] It was the first time that we had a video used in order to describe what happened at a funeral. Certainly not the first time a video was used in a case. Video was used way back in the '50's in Rustenburg and Major Wright who was the investigating officer of the people in Zeerust, having been cross-examined by me about who was doing what, there was a meeting outside Zeerust after that trial which he went and had filmed. There were no videos at that time, there were eight millimeter cameras.

And it's not always the big cases that are of importance. I always refer to this trial [of the Zeerust meeting] because of its content. I don't even remember the man's name, but I suppose if I looked up in some of my diaries I could find out. He was charged with conducting a meeting at a time when meetings could not be held in that area, the reserve area, except for tribal meetings and religious meetings. The meeting was a Sunday morning, and it was a religious gathering.

They said may we refer you to the charge sheet here. You made a speech, running down passes, calling for a pound a day. He said, "Well, you have to talk about contemporary affairs when you preach a sermon." I said, "By the way, what was your text." He said, "Yes, yes, there was a text. Jeremiah's Lamentations, chapter 5." I said, "Well, you'll forgive me but I don't remember-- ." Well, I've never forgotten those lamentations, chapter 5, "O Lord, why have you forsaken us? Why have we been made to be treated as

strangers in the land of our birth? Why have been reduced to hewers of wood and drawers of water? O

Lord, why do you not hear our cry?" So, I thought maybe this defense might have something in it. We'll try it.

So we went there, and Major Wright welcomed me. He was very friendly. He was a man who had served in the forces. And he had avoided bloodshed in Zeerust to a certain extent when others would not have dodged it. And before the trial started, he said, "Mr. Bizos, knowing the way you operate, can't we save a lot of time? I know that I will have to answer a lot of questions and a lot of them might be on this cinema picture that I took. I have got the machine here and I've got the 8 millimeter film developed. Can't we just have a look at the meeting because we kept our distance and we just observed, and took a reel. Just let's have a look at it."

Well, I immediately came to the conclusion that it was not a religious gathering, even though Jeremiah's Lamentations Chapter 5 were mentioned. Because I would ask the chap, "How do you explain the sale of New Age at the service?" And he didn't--

Well, Jeremiah's Lamentation's of course became quite popular. It is the favorite text at many of the meetings. [Along with Ahab's vineyard. Is this described in Charles Hooper's Brief Authority?] The Zeerust and Major Wright were in Brief Authority. But not this incident; this is post-Zeerust. It wasn't in Hooper's area, in was in an adjacent area. But Hooper's book is a very good book. [We actually skipped over that] Well, it's so well documented in that book that I really think that-- I am frightened by some of the things I am recorded as having done. When you are young and enthusiastic, your judgment is not clouded by caution. You do things that amaze you a little while later in your life, but they seem to be the right thing at the time.

[Has the citizenship question become more of a constraint on you as time has gone by?] No, it was ever-present. Yes, it was present there. My first refusal of citizenship was on technical grounds in the early '50's. You see, I had applied for citizenship and it was refused. But they had a good technical ground for refusing it in the early '50s. I didn't realize that the five years residence that they introduced--they lengthened the period of residence as soon as the Nationalists came into power to five years. Although I had been there for 12-14 years, a lot of my period was on a refugee temporary permit and not on a permanent residence certificate. They said that the period that I was there on the refugee permit didn't count as the period of residence. So, it was a fear.

[You told us before that there was a gap in time in which you didn't take political cases in the late 1970's. You said it was really financial.] Yes, well it was a combination of things. Firstly, I became a Senior Counsel, twelve years ago, 1977. The day Jimmy Kruger was kicked out, I applied for silk. I wasn't prepared to apply for silk while Jimmy Kruger was the Minister of Justice, and for good reason. He would probably have refused to recommend me to the President and I wasn't prepared to even ask for this honour whilst he was minister for a number of personal reasons.

I had quarreled with him badly over the use of a telephone when he was a member of Parliament, before he became a minister, in the bar common room in Pretoria which was not very serious. But I went on record, and it hurt him badly, because he did two things. At the Timol inquest in the early '70s there was a pamphlet purporting to have been issued by the Communist Party, and the last paragraph said "with comrades such as Archbishop Hurley, Issy Maisels, Vernon Berange, George Bizos, David Soggot, we can only go forward...." The thing was obviously manufactured by the Security Police as a dirty trick, to embarrass Maisels in particular, who had taken on the Timol inquest. It also said in the preamble that you must lie to the police and you must commit suicide rather than give up your comrades, in order to justify the behavior of Timol, that he had committed suicide for no reason whatsoever by jumping out of the tenth floor window.

Fannie Cilliers ?, an honorable member of our profession, who represented the police, looked at this document, shouted to Issy Maisels and me, and said he is not satisfied about the providence of this document and he is not prepared to use it in the Timol inquest, more particularly as it affects the honour of colleagues. And that was the end of the matter, as far as that inquest was concerned.

Soon after that Jimmy Kruger became Minister of Justice, and he stands up in Parliament and he reads out this paragraph with one difference. They had deleted Archbishop Hurley's name! It was the Second Edition! In thinking it over, they didn't know that we had seen the first one. Maisels took exception to this, and wouldn't have anything to do with this. And we went on record and made it quite known that this man Kruger, who was a member of the bar, wasn't fit to be a member of the bar if this is how he is prepared to behave towards other members of the bar. We really made a tremendous fuss about it.

The document was then used against me by members of the Security Police, by asking a detective in Port Elizabeth, after the Biko inquest for instance, because it was sent to all the police stations---. When the detective went in to deny that he had tortured people, he asked the man, "Are you surprised that the accused is now making these falsifications against you?" Seeburg ?, was the man; he was a the detective who was part of the interrogation team of Biko. He said, "Well, yes and no." And he put his hand into his pocket, and said, "According to a pamphlet that we have issued by the Communist Party, people are told to lie about the police." [Q--who were the accused?]

I immediately realized that this was the same pamphlet. I stood up and made a vitriolic attack on the policeman before he produced it, and his minister, and said that it had been referred to in Parliament and this is why I know about it. And I said, "if the intention is to embarrass me, it will not embarrass me, because for that purpose it can go in--my name is on it. But they have no right to use it against the accused because it wasn't put to the accused that this is why they lied, and there's no evidence that he ever saw it. And if they think they're smearing me, they can do it without trying to introduce it as evidence. This, of course, must have got through to Kruger.

Then the last one will amuse you. Buthelezi visited Kruger. [The famous meeting.] Yes, the famous one. And Kruger said, do you mind if we tape record the meeting? And

Gatsha said, "no, we have no objection; but do you mind if we also do?" Gatsha tape-records everything. There is a sentence there which incensed the Greek community. Jimmy says, "Chief, you must realize, that your people in Soweto are just like the Greeks. They're here today, and tomorrow they're gone. They're here on sufferance."

Some of the Greek people actually took exception to this, for being compared to the Zulus, for racist reasons. Apart from that, there were some of us who objected to being told that we were there on sufferance. I knew a Greek woman whose English wasn't too good and she looked it up in the dictionary and it said, "tolerated but not welcome." And that is the attitude. So, I made a statement to the Rand Daily Mail which was given quite a bit of prominence, that ethnicity is introduced by the South African government as an excuse for depriving people of their political rights. We Greeks are as proud of our ethnic origins as I am sure the Zulu people are, but Mr. Kruger is completely out of tune in suggesting that either the Zulus or the Greeks are here on sufferance. That this country belongs to the Zulus as much as it belongs to us. He was under tremendous pressure, including from Gerrit Viljoen, who was then the leader of the Broederbond.

[Who carried the ball for you in Parliament, Helen Suzman?] Yes, Helen made a strong speech in which she said that this was disgraceful, and that he was also hiding behind the skirt of parliamentary privilege by making use of this; and then he tried to defend himself on the basis that "I have a lot of respect for all these gentlemen, well..." Yes, Helen Suzman took up the cudgels on behalf of particularly Maisels, with whom she was very personally connected. He was the leader of her constituency committee -- he lived in her area -- and a very prominent citizen.

And Kruger came back with a silly answer in relation to the use of this scurrilous pamphlet. He said, "They are all honorable men, we know them as leaders of our profession and we would not say anything disparaging about them" ---not really answering Helen's criticism that this document was obviously manufactured by the Security Police, that an attempt was made to introduce it in the Timol inquest and it was rejected. Then he became very upset because he tried to make it up to Maisels, but Maisels has got the justifiable arrogance of a real leader. "Who is this little twerp who wants to make up with me? To Hell with him! He behaved like a dishonest man, let it stay there. I am not prepared to talk to him." A rebuff from Maisels was quite a rebuff.

Shortly after that, he made this remark that Greeks are like Zulus that they are here on sufferance. And my going on record saying that neither Greeks nor Zulus, although they may be proud of their ethnic background, are not prepared to accept lesser political rights because of our ethnic origins. Well, as a result of pressure, I know from Gerrit Viljoen who among other things was Professor of Greek at the Rand Afrikaanse University, the leader of the Broederbond, who, by this time, was already being prepared for big political office, and pressure must have been put on Kruger.

He didn't apologize publicly. He wrote a letter to a man, who was particularly friendly and had some leadership position in the Greek Community, thanking him for his letter (the Greek had written to him). So, Kruger had written back and said, "thank you for your

letter and how characteristically charitable you are in placing this interpretation in my remarks -- putting up a fantastic interpretation of the remarks --which was precisely what I meant. But insofar as it may have offended members of your community, I am sorry." So, The Rand Daily Mail phones me and asks what do I think of the apology. And I was very brief and to the point. I said, "I don't think it was much of an apology to Greeks. But in any event, I prefer to believe that men express their innermost feelings when they speak the first time." He correctly interpreted that as a rejection of a minister's public retraction and apology; and he complained bitterly that Bizos really lacks elementary courtesy.

So, I wasn't going to apply for silk. Arthur Chaskalson took silk ten years or so before me, but he would have taken it anyway. Mohamed took silk before me. I behaved like a Senior in the sense that I didn't go to court alone, I always insisted on a junior appearing with me. Sydney Kentridge said, and it was very generous of him, that the only thing that distinguishes you from a silk is that you refuse to wear this gown. But, as soon as he went out of office and Schabusa was appointed minister of justice, I put my application the next day. The Bar Council recommended it right away and the Judges Conference approved it within a week or so, and it came back almost by the next post. There was no trouble about it.

And to explain why there is this gap in my political cases, my being appointed as silk partly explains it. Because in most of the cases at the time, it was suggested that you should not have two counsel unless it was really warranted. So the Loate case, for instance, if it came up after I had taken silk, would not have been offered to me. With silk, you always have to have an assistant. [And that would then decrease the number of cases you would have?] No, it would decrease the number of cases you would be offered because you would only be offered the more serious cases. First of all, you become more expensive. Secondly, most of the people who offer you political cases are really your friends.

It was rightly felt that I had to be given an opportunity to establish myself as a trial lawyer, as an appellate division lawyer, in cases outside the political sphere. I myself wanted that because it is highly remunerative work, and you were quite right earlier in your remark that the children were in college, and I was broke, and political cases only pay about 50% of the fees. Many of my cases, such as my stint for Bram Fisher for three and a half months for example, was for nothing. It's difficult if that is the only source of income. You can hardly ever catch up.

So during that gap, I became very busy and earned quite a bit of money straight forward from about '79 up to about the time of the Delmas Trial. There was only Hogan, Adam, Mrs. Sisulu -- you wouldn't refuse Mrs. Sisulu. I don't think I outright refused any case. But there was an understanding that I should be given an opportunity to catch up which was most welcome.

Of course, the first case when I knew the honeymoon was over, was Ismail Ayob, who came with the Sharpeville Six. No, your records are quite right, I didn't do the Sharpeville

Six. I went to see them and had one consultation with them, and then the Delmas accused came up. Ismail Ayob was one of the attorneys, and he said the 22 is a more appropriate case for you. And I then went out of the Sharpeville six and started Delmas.

[Can we just look briefly at Sejang, 1985, before we go to Delmas?] Yes, I remember that it was in Bloemfontein. I see that you've underlined here that the security policeman broke down and wept in court.

[Was that the first time that ever happened to you?] No, but the poor woman that reported this break down of the policeman, Swanepoel, breaking down and crying, was called in-- Not "the" Swanepoel; this was another Swanepoel. They thought that they had Sejang completely tied up, about 15 acts of sabotage. They were surprised that the plea of not guilty. They had got him not only to confess that he had committed the acts of sabotage, and unfortunately a woman was actually killed at the pass office where he had put a bomb, and they actually got him to confess on a tape -- on a video tape -- and also to show an army captain who was an expert on explosives, how he had been trained in the making of bombs at an ANC house in Lesotho. This was in the heyday before the expulsion of the ANC people in Lesotho.

This detective had done one of the most marvelous jobs you've ever seen. He was an investigating officer, and he had special ribbons in different colors and files, and I never had a case be better prepared than Sejang's case. They really thought that here was a sure death sentence. Sejang denied that he was in any way involved. He admitted going to Lesotho from time to time, and he had reasons for going there. But he explained the video particularly well, because he said next to Swanepoel's office there was the office of another police officer. That was a room in which the police kept the guns and the explosives, and in fact the room had a pirate's symbol -- the crossbones and skull -- on the door. And he said that a lot of his interrogation took place in there. And insofar as he was familiar with the putting together and taking apart an AK-47 that's shown in the video, that's where he learned, in that room. Because they taught him how to do that. The captain actually asked him if the particular explosive that the captain had shown him -- he actually takes it up and smells it, Sejang, and the captain takes it up and he says yes, it smells good. On the tape he says they never had anything like that in Lesotho. This was the sort of thing he was taught by this man, Booyens or some one, in this room, who was the explosives expert of the security police. You must realize that this was a very difficult question, a very difficult case to defend!

Sejang had described to me how everything that had been in this room of Booyens was put into a wooden case with a handle on top. All the explosives were put in there. And he was taken by car from the security police headquarters to the army camp where the captain was, and where the video tape was made. And Swanepoel was carrying this wooden case. Anyone who's had anything to do with South African mining -- I haven't, but even peripherally involved -- knows that explosives are carried in a nonferric case, a wooden case. You don't put explosives in -- The case was taken there. The army captain, quite innocently, had let out that when the police contingent arrived and before he had actually started video taping and examining Sejang on his knowledge, he saw one of

them -- he wasn't sure if it was Booyens or Swanepoel -- bringing out a wooden box. In Afrikaans hout casie? is synonymous with explosives, like you'd say the filing cabinet is steel over there, is an explosives case.

Well, once I had that from the captain in the army, this man had to explain: if there is nothing in what Sejeng is saying, what was taken in this wooden case from the police headquarters back to the army

camp, and why was it at the police headquarters? And was he to be believed, that there was no explosives training, or no explosives were shown to Sejeng before he was taken to the army captain at the army camp? He really became completely muddled, and I pressed him as to why. He was getting into more and more trouble. And I then said, well what about this room that was adjacent to his, with the thing on it. Was there such a room, and did it have such a sign on it? And he said, yes, there was such a room, and it did have such a sign on it; that the wooden box had been brought-- But merely Sejeng saying that the box had been brought is self-corroborating. It wouldn't carry--

[Did you believe him?] Well, you've got to work with the basis-- But the most far-fetched things often turn out to be of some use! But once the army captain says that it was there, then the judge isn't going to disbelieve the army captain that there was a wooden case. And here was this terribly controlled, hardworking detective who had put all this claptrap of ribbons and everything else up, sort of becoming less and less confident about his case. And he couldn't understand--

You must understand Bloemfontein. Here is a man who speaks Afrikaans with a heavy accent. Where the hell does he come from, and why the bloody hell is he being put into all of this? And that's probably the sort of thing that goes on in the detective's mind. Very often, you see, he can understand my hostility towards him and wanting him to become a liar. But very often, just a single question by the judge added to it really destroys a witness.

Because I then asked him in relation to this crossbones thing on the door, and why was it there at all? And he got into all sorts of difficulties as to why these crossbones were there on the door. And then the judge asked him a devastating question: what dangerous qualities did Mr. Booyens possess? Because he was holding out that this was nothing more than Mr. Booyens' office. That, of course, was a clear indication for him that the judge was a little skeptical about this.

Well, as it went on, and he saw his case not being the sure case that he had prepared, he became more and more diffident. And then he started the usual defense: well, I hear all these things happened to this man. I was not present at all of his interrogations. I was the overall investigative officer. Please don't ask me what might have happened whilst he was in the immediate custody of my colleagues. By the time he says that, he is already backtracking.

Incidentally, with some basis of truth, some of the beating up is done by black policemen, in the absence of white police. Very often, some of the threats, or promises, are made by the black policemen. They say, listen man, why are you holding out, they're going to beat you up to pulp, why don't you help yourself? You'll be detained for the rest of your life. All those things can make a confession inadmissible. And the white security police can't really trust the black police to be good witnesses on this. They would rather win a case without exposing their case to the risk of black policemen being cross-examined, whom they consider their inferiors.

Well, when he saw this thing sort of not going according to plan, and he started saying well I can't be held responsible for what happened, and the pressure piled on, he started crying. Because he lied ? through the whole thing. I know from another context, an interview by one of the American students that came to interview Colonel Stadler, that Stadler considered Sejeng the most successful and most deft saboteur. It took them fifteen months to find him, and when they found him, he slipped out of the net. So it was an important case from their point of view.

[I don't understand. They had tortured him, then they had forced him to make this video tape?] Yes. [And he was just saying that they had forced him--] to do everything. And the knowledge which he exhibited was knowledge he had acquired not as a result of-- Anyway, the thing got so bad that the deputy attorney

general got up and abandoned the charges, which meant he was entitled to a finding of not guilty on this charge, to great jubilation, of course to some of the people in Bloemfontein.

The young woman who wrote about the policeman crying in the newspaper, called The Friend which was, I think, the oldest newspaper in South Africa-- it's closed down, by the way, in the past 2 or 3 years in the "rationalization" of the newspaper industry that we heard about. It was really a good traditional paper from way back, at least 75 years old, a respected newspaper. She wrote this, you see, and this was a headline, and it was picked up by the Johannesburg papers.

[This was probably good for your reputation.] Good for my reputation, of course. But it was not good for the young woman who reported it, because van der Merwe, who was then in Bloemfontein who is now chief of the security police, called her in and made it quite clear that this is not the sort of thing that a patriotic reporter reports.

I did another case, the Ribeiro case. I think you've missed that case, Dr. Ribeiro. [Sobukwe's brother-in-law, the doctor in Pretoria.] I think this was before that; it may have been after, I'm not sure.

[Some people were charged with his murder?] No, Ribeiro himself was charged, and acquitted. He was acquitted of terrorism. [For treating those people?] No, he was charged and acquitted and thereafter murdered.

I was doing a case in Pretoria and here is the young woman, you see, from Bloemfontein. I'd forgotten about her. She gave me a big hello, and told me "Remember Sejeng?" And then she told me what happened between her and the chief of the security police. I think she would report it again, but she was obviously shaken by this. It was she who told me that the newspaper was closed down in Bloemfontein. [Did the other papers then pick it up?] Yes, the other papers picked it up.

Sejeng disappeared as soon as he was acquitted. He gave a newspaper interview claiming all the credit for his acquittal. He didn't give evidence, it wasn't necessary. But I understand he's somewhere in Africa at the moment. I'm not sure. But it is an example of, you know, how it doesn't matter how good a case looks on paper or on video, the moment you start relying on self-incriminating statements, and your hands are not completely clean, something is going to come unstuck. It lasted seven or eight days. It wasn't an easy task.

Side 6

[There was a witness in the trial who was an ANC defector, a woman.] Yes. She was the daughter of a well known politician from the Eastern Cape who had gone out of the country. Hers was a very sad story, and I remember thinking at the time that it sounded very convincing. She was called to say that Sejeng had been seen at what was known as an ANC house in Lesotho, at which one of the commanders of the ANC welcomed people from South Africa, and took them to the room adjoining the place where she sat, and she didn't really know what was going on in that room. But the suggestion was that that was where the training took place.

She didn't really finger Sejeng to the extent that the police hoped that she would finger him. And if she had fingered him with malice, he would have probably not have gotten away, even though his confession may have been rejected. The direct evidence may have got him into trouble. But the fact that she was not prepared to say more than she had seen, and the fact that she was not prepared to be supportive of the state case convinces me that what she was telling was the truth. And it does from your point of view, I think, indicate the situation in Tanzania. That's where the headquarters of the Organization of African Unity are? [The OAU Liberation Committee.]

She got a job as soon as she left, at the Organization of African Unity's place in which the ANC and the PAC keep their material, and get their assistance from the OAU and do whatever. The OAU apparently says "you're from the same country, here are your offices", and their offices are, according to her, are one, or adjoining, or I don't know what, but there's very close proximity. And the OAU says you either cooperate or you don't get any assistance from us. And she was working in close contact with PAC people, even though her background was very solid ANC.

She became involved with a PAC man, and the ANC people didn't like this at all. But he didn't treat her properly either and she broke up the relationship. Then she became involved with some officer in the ANC who was transferred to Angola and she went to

Angola. She wasn't very happy there, and eventually she decided that she would get back to Lesotho, and from Lesotho, come up.

She did, she was arrested, she was interrogated, and they decided to use her as a witness. She presented an unhappy picture, because she was really a child in her late teens or very early twenties when she went out. She was very pretty. But she obviously became a victim of the attentions of some of the senior men, both in the ANC and the PAC, and there was, although she herself didn't say so expressly, a little bit of football was played with her as the football, being kicked around.

[Was she a witness in more than this trial, or in other trials too?] I heard that she was called in the Eastern Cape, but I'm not sure. But she was not a vindictive witness or a witness that would be programmed to say things that she didn't know about, or would say accommodating things to the state. I don't think that she was useful material to them. You know, if they make a traveling witness it's one who is able to really able to hit the bulls-eye with his or her evidence. She wasn't that sort of person.

[I wish I could remember the name of the woman who testified in the Denton hearings in Washington. She had quite horrendous stories to tell about her experience in the ANC and so forth. Kave. Does that name ring a bell with you, George? I wonder whether she was a witness in any political trials.] Is that the same hearings as Bartholomew Hlapane? [Yes.] I think that Hlapane's evidence, and the evidence according to others, was broadcast at length on our television, and I looked at it because of my professional interest in Mr. Hlapane. There were a couple others I don't remember. If she had given evidence in other trials and if I knew about her I would have connected it . I only remember Hlapane.

[Were Hlapane's killers caught?] No. [Nobody ever claimed it?] The ANC claimed responsibility for that.

[When I was in South Africa the television showed a picture of Hlapane's daughter in rather bad shape in the hospital. She's a paraplegic, yes. They came in and killed Hlapane and his wife in bed, and the daughter, so it's a pretty botched up job by the ANC. Surely they could have killed him without killing his wife and daughter.] In Soweto houses are not very large and if you turn an AK-47 onto a double bed -- I don't know where the daughter was. Sometimes they ricochet. I don't know what the intention was, but Hlapane was high up on the list, and it was said that it was not because he had given evidence against Bram Fischer or Issy Heymann or any of the others, but rather because he continued to expose himself as an enemy of the people, to use the language of Sechaba. By going and speaking to Denton, still being used and flouted instead of -- [interruption]

[You weren't asked, or it was generally decided that you should not be part of the Sharpeville appeal team. I was interested in the reasons, and to know whose job it is to allocate this scarce resource of advocates among the many cases that you could all be working on.] Primarily, the choice of counsel is the attorney's, in consultation with his clients. Theoretically, counsel ought not to take part in the decision. In the Sharpeville

case, where I had had a consultation, I would've been assured that my release from that case was with the consent of the clients. If the clients had insisted, presumably, I would have been bound

to do it. At the time of the appeal, there was no shortage of counsel in doing it, because, if anything, there were lots of people and Sydney Kentridge eventually did it, and they could not have done any better. But the discussion during the course of it was whether perhaps Arthur or I might become involved in the appeal process.

But we thought that would be bad, tactically, because one of the charges against the Delmas people was the murder of Dlamini and his body guard on the morning of the 3rd of September 1984. The Sharpeville Six were said to be directly responsible. The members of the Vaal Civic Association and the UDF were said to be vicariously responsible because their statements and their publications and the calls at meetings amounted to call for violence against the councilors. Therefore, to use the translation of the Afrikaans expression, was that there was the creation of a climate that made the killings possible.

We've always thought that that was too vague a concept to really found a conviction of murder on. What was the bomb throwers, the anarchists in the first part of the century, where in a mining dispute -- I don't remember the name -- but there was an early case. [In the Haymarket case some people were executed simply because they were anarchists, but there wasn't any direct evidence.] I don't remember where I read it. It may have been in Clarence Darrow. I've read quite a bit about Darrow, and I also have his speeches edited by a man called Weinbrun, something like that. The sort of speeches made by labor leaders really incited the throwing of a bomb. I don't remember the circumstances.

[So Ayob thought that although it would have been great to have you on the Sharpeville case, you were even more needed on the Delmas case. Is that something that he would have put to his clients?] He ought to have, and I'm sure that he did. In fact, I saw the Sharpeville Six people when they were on trial in Pretoria. They were quite friendly, and I sat in whilst Jack Unterhalter and his junior were consulting with them and we were consulting with the Delmas people. This was before they were taken to Modderbee Prison in Delmas at the end of 1984. They were still held in Pretoria.

The Sharpeville Six people certainly didn't appear to be unfriendly. I don't know whether they had any feeling of being let down and it would be arrogant of me to suggest that that was so. But they certainly didn't give any indication. But as for the scarce resource, as we are talking for historical record purposes, we might as well put this on record as well. There is a competition among attorneys as to who should get the cases.

[Why?] Well for some attorneys, this is remunerative work. I'm not suggesting that it's not remunerative work for some counsel, and I don't want to exclude myself entirely from that class, but there is also prestige. If there is a high-profile political case coming up, the attorney believes that his or her prospects of keeping the clients, becoming the principal attorney in the case -- because very often the funders also say there are eight accused and

six attorneys. We don't need six attorneys in this case; they must agree to rationalize the defense. One or two attorneys must undertake the work in order that we may save some money.

What some attorneys do is, as soon as a high profile case breaks, they phone counsel X, Y, or Z who may be thought to be favored by people in custody, and known to people in custody as counsel who might do well in their cases. And they are able to say to their clients, sometimes correctly and sometimes not entirely correctly -- because you say if you become available, I'll take the case, or if it's not too long, I'll take the case. But they will tell the clients, I've got X to do this case, as if we're really on a leash. Well that creates a plus for that attorney, if the other attorney can't say that they've got X.

There are unfortunate elements of that nature, but by and large, it's quite straightforward, the best suited people for the best types of case, because there are different types of cases. There may be cases where X may be better than Y, and in another case it may be the other way around.

[Are there certain gross kinds of categories where everybody knows if you say it's an X type of case?] Well, yes, the choice seems to work out in sort of a way.

[You mentioned that Denis Kuny maybe takes more dissident cases than others.] No, well it was partly said in jest. Dennis is the most recent of the people to take silk other than David Soggot, who took it after him. But he takes important cases. He's taken the very important case of, the one that we had the judgment, and the people in the treason trial in Bophuthatswana. I don't want to devalue his services.

[He's also representing SWAPO and defending SWAPO against the civil suit by a parents' committee in Namibia.] [What do you mean by dissident?] It was really a joke, because he said if you do so-and-so, who was something out of the way, politically out of the main stream, and I said no, Denis is the fellow who really goes in for that sort of thing, more as a joke.

[If you turn that upside down, perhaps you might be more desired by ANC people since you've had so many ANC cases.] No, I have been very careful not to refuse people with black consciousness background, and PAC background. There's one man I remember, for 12 years, during this quiet period of mine, I've forgotten the name, I've got a record of it somewhere. His was a particularly interesting case, which we could perhaps deal with. I was going to deal with it when we said that he went out and was rejected by the ANC in Botswana and came back.

But in relation to Steve's question, given the choice, if the attorney has a case of two or three Umkhonto chaps against whom the evidence is overwhelming, or they're found in possession of firearms, then the case is a Mandela type of thing. We did what we did, and we had no option but to do it, and that's all that really has to be said. And really to try and avoid death sentences. Generally speaking, I am tempted to be kept out of that case because, rightly or wrongly, the people who hand out the work believe that my time

should be spent in cases where people are actually saying I didn't do it, or I did it but it's not an offense; it's my political right to do that. I also, rightly or wrongly, have acquired a reputation if a confession is going to be tendered, I should really take it. So attorneys that actually chose wisely would choose who is the best man to choose.

Lives were saved by Henry Viljoen, for instance, who had hardly ever done a political case. But because of his background as the chairman of the General Bar Council, because of his impeccable Afrikaner background, because of his professional integrity, he was able to save the lives of people where deaths actually had occurred, by cross-examining the police officer that had had a guerilla surrounded by a dozen of his men in the open veldt. And he said well, why didn't you just ask them to just surrender to arrest?

And he got him. It didn't matter how much hedging there was. He had to admit to a man of the authority of Henry Viljoen that "this is a war. You really don't play in terms of surrender or don't use excessive force or something like that." It's true that others have been wounded or captured or have flown over the Botswana border while this man was alone in the white veldt, and we're doing it because we are at war. Well, that gives you an opportunity to say well, if the captain is prepared to do this, and this is the standard that he applies, why should we apply a different standard for the guerillas who have been trained on the same basis that they are doing their patriotic duty, that it's war, and in war, when you capture people you don't -- Well, it worked. And it was a very wise choice to have a man of that caliber and stature to do that case, and if the occasion arises it would be the same.

My identification as counsel for Mandela, and Sisulu and others, for me to stand up and say "don't sentence this man to death," I don't think is as weighty as a man such as Henry Viljoen saying "don't sentence this man to death." But they have to listen to me, I think, when policemen have to answer the

questions as to how the confession came to be made. And if they're acquitted, it doesn't really matter what the judge thinks of me.

[Let's begin on the Delmas case. We have the transcript of your talk on the trial at CUNY in 1987, though I haven't had a chance to reread that.] Well, that would have been what the charges are and what the nature of the defense is. Perhaps we can use those notes as to what the case was, and I don't know if there are any highlights you want to pursue. Let's leave the first part of it out, read it, and if you have any queries, we can arrange to discuss it later.

But let me then start with the nature of the defense. We know as a result of the subsequent events that the judge did not expect us to give evidence. Because it was his view that we could not explain the documents and our conduct, and that we would only make submissions of a technical nature as to why the accused ought not to be convicted. He was quite wrong about that, because it was our intention to put at issue many of the allegations that were made. One of the reasons that the state cases lasted as long as it did was because no less than eighteen to twenty witnesses were put up in order to give

evidence of actual calls for violence in the Vaal triangle, and by Terror Lekota elsewhere, in Tumahole and in the Eastern Cape, something which the accused denied emphatically.

None of the witnesses except two in relation to Tom Manthata were believed that there was an actual call for violence in any of the meetings in the Vaal triangle, or elsewhere. The reason why the state case lasted that long was because about fifteen of those eighteen witnesses were very well precognized to give very cogent evidence against the accused, which would in effect have made them guilty of not only treason, terrorism, but murder. Because the evidence was that at meetings from the nineteenth of August onwards -- there were meetings held on the 19th, on the 26th, and on the 1st, and the 26th of August and the 1st and the 2nd of September -- people actually called for councilors to be killed and property to be destroyed. And we had to cross-examine those witnesses.

The cross-examination did sufficiently well for the judge not to be able to rely on their evidence. All the Vaal accused were acquitted on specific allegations of violence. Those who were convicted of terrorism were convicted on the basis that the calling of the stayaway and the taking part in the march must have-- [interruption].

Well that, coupled with the number of witnesses that we called-- Once we learned from the assessors' affidavit that the judge was going to believe the state witnesses, we made a deliberate decision that we would try and put onto the scale a sufficient number of witnesses to deny what the witnesses from the state had said, to make it very difficult for the judge to find that they were telling the truth. And that is why the defense case lasted so long, because those witnesses were subjected great cross-examination. But we proceeded along on this basis: that if the state called two people to say that the meeting on the 26th of August was when the stayaway was called and the march was proposed and agreed upon, there was no reason for us not to call the accused to deny that that happened. Also, once there were 1200 to 1800 people there, there were various estimates, that we should really call people who were present at the meeting and who would say that that did not happen, deliberately. Nonpolitical people, people who could not be challenged. The first witness at the meeting was the caretaker of the hall, of the church hall.

[How many potential witnesses did you interview before selecting?] The attorneys must have interviewed out of the 40 that we called, they must have interviewed over a hundred. If a chap had been detained, if he had made a statement to the police, if he was a very active trade unionist, we would say, we love you, but they will say that you are prejudiced in favor of the accused, so we will not call you. The people concerned, and more particularly Caroline Heaton-Nicholls, I don't know if you know her, she really is a marvelous person. She interviewed literally hundreds of people. She had paralegal assistance.

And we finished up with people like the caretaker. We finished up with her quite by accident. There was a choir practice at the church, and we finished up, you know, there were 26 members of the choir and we called 4 or 5 members of the choir. Because the fact that you decide to go to such a meeting in itself shows a certain amount of preselection. But if you happen to be a member of the choir, then you don't have to

explain. You hear people singing and you are a chorister, and you say what is going on in there? And they are talking about rent, and they're talking about stayaways, and things like that.

These people were very good witnesses. It's true that the judge hardly believed any of them and found what we believe to be inadequate reasons for disbelieving them. And the tactic was really to work on the basis of our discussion. On the Sunday evening we always had a weekly preplanning meeting, over and above meetings that were taking place in the car between Delmas and the court. The judge can find reasons for disbelieving one witness, two witnesses, three witnesses. By the time he has to find reasons for disbelieving 120 witnesses, he's going to run out of reasons.

[Is the judge required, in his judgment to say who he believes and why?] Yes, otherwise the court of appeal on fact cannot judge whether or not -- there is such a law in our procedure -- cannot judge whether or not he has grounds for disbelieving, and if in fact he has misdirected himself in some of the reasons, that is sufficient grounds for setting aside his decision.

So the cross-examination really only showed the minuses. They were not paying rent. And they had perhaps facetious reasons for not paying rent. They said that they were going to increase the rent, and then they said that the rent would not be increased, but that they didn't tell us how much it was that we had to pay. Or that the office that we usually paid rent in was closed and it never reopened. Well, if nobody was paying rent anyway-- But the judge actually started this line of questioning, and we argued very strenuously that you can't really disbelieve millions of people in Soweto and the Vaal Triangle and wherever else the rent isn't being paid. Because you don't pay rent, and people don't pay rent for all sorts of reasons.

And he says well, I challenge the judge as to why he was asking these questions. And he said he wants to see what sort of person he's dealing with. Well, we tried to turn the thing around. What about the councilors who gave evidence who'd charged that four times the amount of rent for the space occupied by a house than they charge for the square meter of space occupied by them for a shop to sell liquor. What sort of people are they? Is this what we are going to deal with? What moral turpitude is there in not paying their rent?

The other was well, why did you stay at home, and why didn't you go to work on the morning of the 3rd of September? Well, that didn't cut much ice either, because most people had an explanation, whether there were no buses running, some of them could have said well, I would've gone to work, but then they would have said I'm a member of my community. If my community says that I must not go to work, I will not go to work. I don't know how much prejudice that really shows.

The other element of the defense was that the UDF people had agreed on what they called fourteen campaigns. And they said we were really doing the bidding of the ANC by participating in each one of those campaigns. The campaigns consisted of release political prisoners, housing, high cost of living, not have any repression, not have any

forced removals, allow trade union activity, pay proper wages, etc. And they said you see, the ANC says in Sechaba and Mayibuye that this was what they were doing, and look what you were doing. They have a campaign for the release of political prisoners; you have a campaign of political prisoners. Look at the language they use; look at the language that you use. Therefore, you must have been doing the bidding of the ANC. Therefore you are guilty of treason. Because of a judgment by Didcott in Natal, that you've got to show that in order to draw an inference that you are furthering the objects of an unlawful organization, there has to be an element of uniqueness in the

object of the unlawful organization. If they want to saddle you with furthering its objects by doing a similar thing.

This deliberately -- you see the judge always wanted to finish this trial very quickly and convict us -- but he wasn't going to have it his own way. The tactic was well, let us show you how many people other than ourselves who run campaigns of a similar nature in South Africa, speak in substantially similar language, who are doing it openly, and who are not said to be furthering-- Or at any rate there is nothing unique in the calling for the release of political prisoners. The other important one that I've left out was that we were really running the campaign in order to destroy the education system of the country.

[You were building on this Didcott principle?] We were going to run a case that there's nothing unique about this. Everything that you accuse us of which you say tends to show that we were dancing to the tune of the ANC is incorrect. We are dancing a democratic tune of what good democrats do.

And one of our first witnesses-- Well the accused themselves dealt with all these things, they had to give evidence first. But one of the first people where really the judge realized that his patience was going to be taxed was Sheena Duncan. Now she came along with a mass of documents that size, about two feet high, she came along and introduced herself as head of the Black Sash. And the campaigns were said to have had their origin in the fourteen resolutions passed at the conference forming the UDF, on the 20th of August, 1983. You must have those fourteen resolutions on record, it was on the UDF declaration, and they put out about a 40 page document with the declaration, the resolutions, the main speeches, who the patrons were, who the executives were, and the constitution. Now those are the fourteen campaigns. So what we did was that we were going to have evidence that this was nothing unique

Side 7

. . .the Black Sash had addressed, perhaps not all fourteen, but at least a substantial number of those very issues. From way back, long before the formation of the UDF. And Sheena Duncan would, in her Churchillian style, read this: "And this is the resolution that we passed in 1968, and this is the resolution that we passed in 1969. . . Although you might be able to detect differences in style, and some of the phraseology, it was much of a piece. Well, she is a very tough cookie, and very difficult to cross-examine, and very

difficult for even this judge to intimidate her, because he tried a couple of times, and he got a mouthful. So they didn't get anywhere with her, you see.

One other important campaign was to discredit the black local authorities and this council business. Well, there we had lots of people. We started with Leonard Mosala, who himself had become a member of the UBC. And he said that he eventually got out of it, and we sort of suggested that councilors got out of it from the beginning on the basis of intimidation. And he said no, it wasn't intimidation, because I myself having worked within the system, came out and coined the expression that the UBC stands for the "Useless Boys' Club." It was very difficult to cross-examine him, although they tried, uphill and down dale.

And we called Ellen Khuzwayo. And we called people like Motlana, in order to show that the Soweto Civic Association, a very important affiliate of the UDF, had never been-- That the suggestion that the affiliates of the UDF were doing the work of the ANC. Motlana said I know nothing about it, I have nothing to do with the ANC. I was the president of the Soweto Civic Association, so please tell me how the Soweto Civic Association did the ANC's doing. Here I am; please tell me, put it to me, I know nothing about it. What conspiracy is this if the president of the main conspirator doesn't know anything about it? Where's your evidence? Here I am, cross-examine me.

The most that they could put was well, he had met Tambo somewhere. He said yes, there's no secret about it, he said yes, I had met Tambo, we were very old friends, we were in the Youth League together, and we said hello. But it was that time for this purpose, it had nothing to do with this, no conspiracy.

Well, we called up Ken Hartshorne on education, who had really lived it -- You know, he was the administrator of the Bantu Education Department, he left it, and was actually able to speak from personal knowledge how this inferior education that was being offered would lead to trouble, how he had warned Dr. Treurnicht about the Afrikaans issue, that Dr. Treurnicht was-- And insofar as our resolution, you see we would call on these witnesses and say now please read this resolution. What does this resolution say to you? I mean is this ANC? You are a man of education, take the resolution on education. He said well let me take the de Lange-- And this was really the most insulting bit of evidence, especially as we had a member of the Broederbond as an assessor. But Hartshorne took the resolution of the UDF, and the de Lange report on education -- de Lange was chairman of the Broederbond at the time he was actually conducting this commission. Hartshorne was a member of that commission, and what he did was to take the three-quarters of a page resolution, and the conclusions of de Lange, and actually show that practically everything that the UDF said was recommended by the Broederbond! Can you imagine now? "It's true that the ANC said it as well, but look at de Lange! " So it went on.

That is how the defense was planned and how it was presented. The accused were also charged with being responsible for everything that happened in what was called thirty-

two areas, from Craddock to Somerset East, to Tumahole in the Free State, to Terror Lekota's home ground in Klerksdorp, all over the country.

Then we said, is that so? What their evidence had been was to call a policeman to say that we found a pamphlet of the UDF on such and such a date on the street. On such and such a date, sometimes before, sometimes afterward, sometimes it didn't really matter, there was trouble in the township. Therefore, the state argued, it was the UDF campaign that-- Let's take an example. They called a man from Pretoria. Which is the township that Dr. Nkomo was in? I don't remember which one. [interruption]

So they would say that there were meetings at which Dr. Nkomo presided. Look at the pamphlet, the meeting was called. I don't really know whether he presided, but he must have presided because the pamphlet said that he was going to preside. And I watched the people who were coming out of the meeting, and they were riotous when they came out. These were the cops testifying. What I mean by that is they were singing and dancing. No damage was done, but two months later a school was stoned and something happened. The inference that was sought to be drawn was that that because Dr. Nkomo held meetings of the Atteridgeville Civic Association, or whatever his association was called, therefore the Civic association which was affiliated with the UDF was responsible for the damage. The fact that schools closed down must have been this, because in a statement made to the press by Dr. Nkomo, he said that the gutter education is really no good for our children. And that sort of thing.

So we said okay, we will go back to Pretoria, we will call Dr. Nkomo. He is also the chairman of a very important affiliate. He would know nothing about the conspiracy with the African National Congress. And he would say, well, it's true that I presided at these meetings, but I want to tell you what happened at these meetings. There would be no evidence to the contrary from anyone. He would say, "Well, we called for peaceful means, peaceful opposition, that is what I said. And lead him for an hour and a half, and he would be cross-examined in two days to no particular end, because you know, what could they say to Dr. Nkomo? We called the Skweyiyas's cousin from Craddock, a most impressive man with a tremendous sense of humor. All the Skweyiyas look alike, by the way. You know here is a man from Craddock, sort of an elder statesman. He is older than Lewis and his brother who was on the ANC delegation. That is his brother-- the man who read the paper on land. He would explain, "What? Cradora telling people not to go to school? That is the biggest lie that was ever told! Not a single person said that. We loved Goniwe. Not a single pane of glass. Goniwe tell people to break windows? He is singing the praises of Goniwe who by

then had been unhappily murdered. With the steps that they really took to have him returned. If only they had listened to them-- So what we did in relation to each of those thirty one areas was to show that there were deeply felt grievances.

[You actually went through every one of them?]. Every one of them. Every one of them. I want to confess that even my stamina weakened a little, and I did a couple of odds and

ends in between, and poor Karel Tip had to carry on. But I was called back very quickly, because the judge was actually playing very rough with the younger people in the team.

[Just in terms of organizing the defense witnesses. First you took the thing about violence being planned before the fourth of September--] Yes, dispose of that. [Then the thirty-two areas?] Because the accused have to give evidence first. Then we took the UDF accused and dealt with the UDF part of the case. Then we dealt with the thirty one areas. Then we dealt with some general evidence, depending on the availability of witnesses such as Hartshorne and others. There was a system to it; it was compartmentalized. We worked in teams. What we would do is I would call a witness, be in court, Karel would be outside, precognizing a witness, would come in and he would lead the witness that he had precognized, and we really ran a relay system.

Well, each big or small area had its own story to tell. For instance, Huhudi in Vryburg, they put up a chap to say that this was a UDF idea. We actually showed the deeply felt hurt that the attempt to transport the people from Huhudi to Bophuthatswana and all the troubles that had taken place, long before the UDF was formed and the great feeling against-- And that the UDF really came along and merely supported them in their campaign, but certainly nothing that the UDF did affected their-- in order to suggest that this was not part of the conspiracy.

How we were charged with the attempt to assassinate a councilor. We actually established beyond any doubt whatsoever that the reason why he was attacked was that he ran over a child with his vehicle. And in a spontaneous outburst, people broke his house down.

And in order that you may understand, by this stage we knew that the judge was prejudiced, from the assessor's affidavit. One of the witnesses that had come to give evidence was cross-examined by me as to whether there was a vigilante group, and the witness said, what is a vigilante? He asked me, the cross-examiner, what is a vigilante? The judge got in quickly, as to what the judge thought a vigilante was. And the judge said that a vigilante, in relation to Huhudi is a person who comes together with others in order to protect his personal property. And he said, yes, there is such a group. But of course this was part of the state's case.

It has been suggested that I have the memory of an elephant for the things that I want to remember. When a Mr. London ?, a furniture salesman, who was on the committee of the Huhudi Civic Association, who was giving evidence that while he was out of the country trying to sell bits of furniture to earn some commission, his house in which his wife and his 5-year old son were sleeping in the middle of the night, was fire-bombed and burned to ashes. I said do you know who did it, and he said yes, the vigilantes did it, because of my membership of the Civic Association. I said tell me, Mr. London, what danger did your house, your wife, or your 5 year old son carry for the vigilantes? That didn't make things any better between me and the judge, who also has a very good memory.

That is the sort of defense. So that if the case is won in this appeal, on the grounds that the proceedings were irregular because of the sacking of the assessor, in a way, we -- I'm certainly speaking for myself -- will be disappointed that we will not been given an opportunity to argue some of the things that the judge found proved in the court of first instance. And of course he became very angry when we asked him for leave to appeal. We pointed out many of the things that we thought were wrong with his judgment. One

of the things that we specifically raised was that the Appellate Division may consider it highly improbable that we, like Diogenes, did not manage to find an honest man or woman to give evidence for the defense, having disbelieved a hundred and twenty of our witnesses, because the state had captured them all beforehand. Well, he understood the allusion, I think, even though he is not Greek.

[This was in your application for leave to appeal?] Yes. The accused were not there at the time, but I think its an anecdote worth repeating. When I went to Robben Island, to speak to the people who were sent there, Terror Lekota had read the transcript of my application for leave to appeal, at the bottom of the record, in which we pointed out something like 560 what we said were improper interventions by the judge during the course of the trial. And he tried to justify some of them, and I would respond to his attempt to justify them. Patrick Lawrence described it as a "gloves off contest", limited only by legal propriety. I don't know what exactly he meant by that, but anyway, that's the way he put it.

But Terror Lekota, having read this, smiled his characteristic smile, and he said it seems to me that you have learned of the wisdom of the African people. I said I don't know what you mean by that. He said well, you know, throughout the trial, we were absolutely amazed how you managed to keep your absolute cool. You were over polite even though ironic to the judge; you angered him, but you were unwilling to become angry or do anything. But here I see that you really gave it to him, George; you really gave it to him. I said, yes, you must do what you have to do. He says, you know what the wisdom of the people is? I said, no, what is the wisdom of the people? "Don't shout at a crocodile if you're still in the water."

That was at the stage of still asking for leave to appeal. But here he couldn't do anything more about it.

[Could you just say a little about the main accused in the Delmas trial? You own personal sense of them as people?] Yes, Lekota is a gregarious man, a man who as you know started off in Black Consciousness, in SASO. But in his speeches outside court, of which transcripts are available, and in court itself, he makes no apologies for having learned his real politics at the knees of Nelson Mandela whilst on Robben Island. And he gives many examples of how Nelson was the one man who was not concerned as to the tendency you came from. He was interested in you as a person, how you came to be there, and what contribution you could make to the struggle.

He is a natural platform speaker. He believes, like Nelson Mandela -- he's obviously learned the lesson very well that his task in life is to mobilize the black people, and at the

same time reassure whites that they have nothing to fear from a democratic form of government in South Africa, which he would support. He loses no opportunity to reassure everyone concerned; he even tried to persuade the judge that he, the judge had nothing to fear. But it's obvious that the judge had different views about it, because although he's the most likeable fellow of all, the nastiest bits of judgment are reserved for Terror Lekota in his reasons for disbelieving him and not accepting him and criticizing him.

{ Why?} Well, first because of his previous conviction, in the SASO trial. He would have thought that should have been a warning to him to keep out, that if you go to Robben Island you should learn your lesson and come out and keep quiet and not behave in the manner in which he did. Secondly, he was the one who beyond all others who really used the witness box as a speaker's platform. For the press, local and international, and the people at the back of the court, and that the judge didn't like one bit.

But he went as far as to single out Popo Molefe as a person who has an important role to play in the future of South Africa. I don't know whether you've seen that. The judge said that as he sentenced him. For a person who has an important part to play, sending him away for ten years is another matter. But he didn't say that about Lekota. He didn't like him. Whereas Molefe is a different type of person.

[What's he like?] Well, let me quote Lekota on this. In the middle of cross-examination, quite out of the blue, "no, I didn't do that; the chief did that." Molefe is a younger man, he's junior in year, junior in political experience; but he was the secretary-general. And he didn't say it with any touch of irony, and when he was asked what he meant by the chief, he said the secretary-general, Molefe; he was the chief. He wasn't doing it in a manner of trying to pass the buck. He actually acknowledged the ability of Molefe.

Have you got copies of Molefe's evidence? You will read about his background, which is pathetically impressive, that he has become what he has become despite everything that has happened to him. But above all, he is a man who is a very hard-working, highly intelligent organizer and clear thinker. There are elements of Walter Sisulu in him, and I've told him so. He has a reflective intelligence, and he is determined. He's not a public - - although he's articulate -- he is not a public speaker. He in fact writes better than he speaks. Having met him in consultation, one of our number predicted that the state may suggest to Molefe that the correspondence and the memoranda under his name were not written by him. They must be written by somebody else. This is not an uncommon thing for people who underestimate black people in South Africa. The person in our team who suggested that wasn't saying he was incapable of doing that, but comparing how he comes across when you speak to him and how he writes, there seems to be a disparity. Because he's not a platform man; that's the long and the short of it. As time went on, and as he started drawing memoranda for us, it became patently clear that this man is really a trained mind. A trained mind that is able to organize ideas.

[Trained in what sense? Not formal education.] That was in my mind as I was articulating what I have just said. But if he's drawing a memorandum, you cannot fault it, that there is a pattern to it, that there is a logical sequence in it, that it's well expressed.

[Was his father a preacher? Is there anything in his background that would help explain this?] No, you will see in his evidence that he was abandoned by his family and brought up by an aunt in Soweto, and didn't really have any schooling until he was twelve years old. I don't know what it is that makes people, despite their hardships, be what they are.

[Is he an ambitious person?] He expresses no ambition. Not a pusher.

[What about Lekota?] Well, there can be little doubt that both Lekota and Molefe would be prepared, they would use the words, that they're prepared to put themselves at the service of the people. And this, I think, may be difficult for us to understand. Remember my telling you, and even you were surprised, that I persuaded Jeff Levison that he should withdraw his nomination so that I could get onto the ticket (for the Wits SRC). We had people in the Vaal triangle, like Vilakazi, who had really organized a meeting on the 26th, men of tremendous ability, tremendous organizing ability, and he finished up being elected assistant secretary of the civic association. And there was some suggestion that there was something sinister about this, that he was really going to operate behind the scenes. Because we actually called him as the first witness from the Vaal triangle, because he was the most articulate, he was the person with the best memory, the person who could really deal with the issues cold, and that sort of thing. And he, quite genuinely, said, having taken an active part in organizing this meeting, it was not for me to take a senior position, and I refused nomination, because my people would think that I called this meeting not for the purposes of protesting the rent, which was my real purpose, but that my purpose in getting twelve or eighteen hundred people together was in order to get elected, and I didn't want that to happen.

[He was only 23 years old in 1986, so he was only 21 years old in 1984.] No, that's Malindi. [Not Simon Vilakazi?] No, this is Bavumile Vilakazi (another accused, age 30 in 1986). That's a cousin, the young cousin who got off (Simon). And the judge will never forgive himself for letting that fellow off, because he gave evidence for the defense, and he was the one person who they were able to cross-examine for

having some contact with the ANC. He had ANC publications and things like that, which really would have served him very badly. But he was acquitted, the young Vilakazi.

To return to the question of ambition, you can be ambitious but you must not push yourself. It's a cultural thing, that it's only opportunists who go and volunteer, even to be members of the council. You stay back; it's for other people to nominate you and push you up. You must have your greatness thrust upon you and not seek it yourself. They would consider the nomination campaigns that go on here as something not done.

But obviously, when Arthur who led Molefe, asked -- You see, Molefe is like Arthur. Slow, deliberate, thorough, to the point, minimum of rhetoric, that's it. And that's why Arthur didn't volunteer. And we said to Arthur that you've got to lead Molefe, because we were also part of this discussion, rather than me leading him. Because they had this similar--

[Arthur said Molefe was one of the most wonderful people he had ever known.] Well, this is right. The two of them are very much like one another, very much. Whereas I could feel more at home with Lekota, even though my relationship with Molefe is a very close one. But Arthur is the person who in many respects is the mirror image of Molefe.

[Are there any similarities in background? Hard-luck childhood?] Quite the contrary, though Arthur lost his father when he was a very young boy.

[What about Manthata?] Tom found himself in the position of Horatio, in a sense. Tom had a difficulty in this case. He believed that the Soweto Civic Association was not properly affiliated to the UDF, on legalistic grounds. When the resolution in Cape Town on August 20, 1983, was passed, everyone that had delegates here, and Manthata was a delegate there, their organization would have been deemed to have affiliated unless within such-and-such a period they wrote back and said we don't want to affiliate. For a man of Motlana's experience, the formalities-- He came back and reported to the Committee of Ten in Soweto, he assumed, because of his background, who would not want to affiliate to the UDF? And who would want to write to these people repudiating his action at the rally? So he just assumed the affiliation.

And throughout the minutes there are -- Tom was the secretary -- there would be entries like "why is the UDF sending their publications? We are not affiliated properly. The matter must be taken to a general meeting to decide." For all practical purposes he was ignored. When the Transvaal UDF was formed, his signature appears as having been present. But he said that he was only there for about twenty minutes; he had business at Khotso House where his office was. He saw this thing going on; he went and signed and went in and stayed only about twenty minutes. He was never on the Transvaal council of the UDF.

[Was he actually opposed to the UDF such that he wouldn't have wanted to affiliate?] He found himself in a difficulty. He was one of the organizers of the National Forum, which had taken place before. He had actually allowed his name to be used on the paper read by Lybon Mabasa, full of bombastic cliches. He had to apologize about that as well, that although it was under his name he didn't really write it. He only had a discussion with Mabasa about what should be said, and Mabasa really put it together, and the words were not his.

He was asked by Moselane to come and speak at the meeting on the 19th of August, and there a security policeman and a secret agent gave evidence, I am convinced, falsely, that Tom called for the death of councilors. That's false. But anyway, here is the one person that the state actually framed. And I feel a sense of responsibility, because although I think I tried my best, I think that a properly constituted court would have rejected the evidence, and would have accepted the evidence of eleven witnesses and a videotape, taken by a man called Kevin Harris on the 26th, the following week, in which a woman who

was present at the meeting on the 19th, Mrs Mokate -- this is the sort of witness that we actually had --says the following. Now how a judge can really--

Mrs. Mokate says at the meeting on the 26th, on film and on a soundtrack, "Mr. chairman, I don't know what has happened to our children. How many times have we told them that the question of rent is not for them. And it's not for them to commit acts of violence. We spoke very nicely last week when we were here. And didn't we say this, and didn't we say that, and didn't we say the other, says Mrs. Mokate to an audience that must have been predominantly present at the meeting on the 19th. She says, on the film of the 26th, that didn't we say that this is a matter for adults, and we must go to the councilors and tell them that this is nonsense that they increased the rent, and that if they don't agree to drop the increase in the rent, we will have to boycott their shops. What happens on the Monday morning of the 20th, immediately after the 19th? I want to catch a bus to go into town, and what are the children doing? They're not at school, they're at the bus stop, throwing stones at the bus. What is happening to our children? What is happening to our society?"

And I led her in her evidence in chief, and I said, Mrs. Mokate, you were there and you heard Mr. Tom Manthata speak. Yes. If he had said "go kill the councilors", what would you have said? "Eh? What you said? He said that? What nonsense is that? I'd have gone up to the platform, taken him by the hair ?, and said, listen, you go back to Soweto, you've got no business here!"

The point is, that's exactly how she was speaking on the tape, so nobody could-- Well, the judge says that he can't disbelieve her, but that she probably didn't hear him properly on the 19th. Can you imagine arguing this on the appeals team ?

So here he finds himself, poor Tom, denying that he's a member of AZAPO; he never joined AZAPO. Denying that he was a member of an organization

SIDE 8

...denied that he was affiliated to the UDF. And on top of it he had to deal with evidence-- So if there was an uncomfortable seat for an accused, or a defendant as you call them in America, it was poor Tom. And he has a problem with his eyes, as you know; he suffers from an advanced stage of glaucoma, which makes it necessary for him from time to time to actually close his eyes in order to find some comfort. And he looks as if he's actually asleep. But the discomfort of the pressure in the eyes leads to terrible headaches.

So it was not a happy trial for him. There can be little doubt that in his work he reached a very high position. He was a confidant of Bishop Tutu, doing very important work for the South African Council of Churches. As you already know, he was a very talented teacher who was really forced out of the teaching profession. He did a lot for political prisoners, by going about and finding out what their wants were and persuading the Council of Churches to give them aid. It has never been suggested that he favored either the one tendency or the other in the help that was meted out by the Council of Churches.

Whereas all the other accused had a personal connection with others in the group to interact -- Molefe and Lekota were a natural complement; Moses Chikane was also a senior UDF person who was also able to exchange experiences. The Vaal people, who were more or less an homogeneous group, although of different ages and educational backgrounds, but the geography and common experience of living in the Vaal triangle brought them together. The position of Tom was a more difficult one, even though he participated in all the decisions. But he was operating under difficult circumstances.

[Was getting a coordinated defence a constant problem?] We settled that very early on. It was suggested that there should be separate representation between the AZAPO and Black consciousness people and the UDF people, and possibly even the Vaal triangle people. I saw them for the first time on the fifth of August [1985] when I returned from Greece. I had been given some inkling of the differences of opinion among some of the attorneys and some of the accused. And there was even some suggestion that there was some kind of jockeying for position, if there was going to be a different defence for each group, who would represent whom. People had ideas.

Well, we scotched all that. I went over with all the attorneys, and although I didn't use the word "ultimatum", I think the message was put over quite clearly, that I thought that the defence could only be run properly if it was a joint defence. That the same team represented all the accused. And explained very carefully that if there was any difference between one group of accused or an accused and anyone else, if anyone was going to say "I didn't do this, but my co-accused number 7 did it," and counsel had to cross-examine that accused that he was responsible-- But if there were not going to be counter-recriminations, there was no need for a different defence. Firstly because of the question of costs, and secondly, tactically. Different teams very often, my unhappy experience is, spend a lot of time arguing among themselves about what is the correct tactic. And although no one wants to limit discussion, very often you find yourself spending most of your time in this process--

And I also explained that the mere fact that they come from a different tendency or movement did not mean that they had to submerge their differences. In fact, in a conspiracy trial where they had been brought together, it may work out in their favour if they were able to say "this is what we wanted to do, but there was no conspiracy such as you suggest. We all wanted an end to bad education, and we didn't want the community councils and we didn't want the tricameral system. But we proceeded from a different starting point.

[You already told us about the dirty trick that showed rivalry between AZAPO and UDF.] That's right. We actually tried to work that out to our advantage, by giving detailed evidence of what differences there were. Once it was explained in that fashion, oddly enough -- and it shows the extent to which I had become a commercial lawyer during this period -- although I had apparently spoken to Popo Molefe on the telephone, I had not met him. Until that meeting in custody on the fifth of August, 1985. He was the one who struck me by standing up and saying he's got a couple of questions. They said they wanted to discuss it among themselves; we went out for tea or whatever, then we

came back and they said we want to ask a couple of questions. They wanted to know what this joint team means; how does it operate? And the attorneys had put the thing together, of Arthur Chaskalson, Karel Tip, Zac Yacoob, Gilbert Marcus and myself. With Arthur and Gilbert floating as needed, and others on a permanent basis.

And I said well, are we in business as a team, or are we not? And Molefe spoke and said, "it's not for you to ask a question. We want to ask a question." I said what question? "Are you happy with the team?" I said yes, I'm very happy. "Then we are happy with the team. Let's just carry on." That was typical of him. We never really had any difficulties throughout the proceedings.

[When the defendants needed a spokesperson to speak collectively on their behalf, was it generally Molefe?] This is an important aspect of the people. They would actually discuss who would say what on practically everything. And sometimes it was a great surprise. Not during the proceedings in court, but during the process of consultation. If we would give them a problem and say "these are the options", would you please discuss it overnight with yourselves. The next day you would either get Molefe coming up, or you would get Terror coming up, or you would get Tom, or even young Malindi--

Or more particularly a man who was acquitted, Thabiso Ratsomo, who was accused number 22. He is a very, very smart young man, a journalism student at Rhodes. He's now studying to become a lawyer; I

insisted, actually. If a question arose after three years of who had said what, I'd say "M'lord, I have a recollection that somebody said -- Yes, said the judge, I do seem to remember--" Andup would come a note from Ratsomo, "Petrus Tshabalala, page so-and-so." One of the reasons for his acquittal -- I didn't put him in the box -- he had been quite a ; you know what a is? A demonstrator, a sort of activist, at the university. He was found with a lot of documents and things. And he would have had to explain a lot of things, things that didn't really have anything to do with this case. But despite his age, he had been elected treasurer of the Vaal Civic Association, and he was their minute secretary at the founding meeting. What happened was that he would come along with notes, you see, he would record what the decision is. He really is outstanding.

Or even Malindi would convey it, and they would say: this is the collective decision. This person would read the collective decision. But it wasn't only in relation to that. If it was somebody's birthday, something which they're religiously correct about, about the birthdays of your family, not just your own birthday. I actually had that; they organized the party for my sixtieth birthday.

[Were they ever on bail?] Some were. The Vaal people were, but the UDF people never were. Then you would get who would congratulate me on my sixtieth birthday, who would welcome Arthur back from America, was a matter of great surprise to us. Because each one would actually be given something to do, some task, some honour to perform. None of this business of "I am the boss" and hierarchical sort of thing.

[Do you have any sense that out of this trial and this group could have emerged any sort of nonpartisanship in terms of the different tendencies? Could this be the nucleus of some future united front?] Certainly I think there are lessons to be learned from the trial. The top AZAPO man, Oupa Hlomoka, number 2, the way he was speaking at the end I think he would have been ready to cross the bridge. I don't know what has happened since his acquittal. He was acquitted. The ones who were convicted were Chikane, Molefe and Lekota, Manthata and Malindi (the young man). So that you have some idea-- The top leadership of the UDF, and then the Vaal accused who took part in the decision and in the execution of the march on the morning of the third of September, 1984. They were seven who were actually convicted: Gcina Petrus Malindi, that's the one who's on the Island. David Mputhi was convicted, Nkopane, Ramakgula, Mokoena, Hlanyani, and Matlole, those seven.

Hlomoka, who was the head of AZAPO, was acquitted on the basis that the evidence that he called for violence at the same meeting at which Tom called for violence, was not accepted, and he was acquitted. Even though there was evidence by these two gentlemen who said "I agree with everything that Manthata has said." But the judge said well, maybe he didn't hear everything. And what saved him was that although there were interruptions in the film, in the soundtrack there were no interruptions -- it was common cause and they subjected it to the most strict procedures in the police laboratories -- every word that Oupa Hlomoka, the leader of AZAPO, said on the 26th was recorded in a continuous recording.

So nobody could have added, and nobody would have subtracted. The man who said "let's kill the councillors" on the 19th, and "I agreed with everything that Manthata had said", was recorded verbatim on the 26th on the sound recording, not on film because only portions of it were filmed, but a continuous soundtrack was made, for him. "We agreed last week that we would boycott the councilor's shop. How is the boycott going? And it was the usual thing with such meetings; some say it's working and some say it's not working. He says, "I am disappointed to hear that it's not working. And I can understand" --he's a young man -- "that the mothers and fathers here find it difficult to boycott a shop, because the councilor who has the shop may even be their friend, from whom they have bought for many years past. And they may think, how can I pass by his shop where I have been buying over the years? He'll think I'm angry with him personally and that I don't want to be friends with him. Now I want to tell you that we must make it known that we have nothing against them personally. We do not wish them any harm. The only

thing we want is that their decision to increase the rent hurts us personally, and they themselves must be hurt personally by losing some of the profit. That's all our boycott really means. And I ask the mothers and fathers at this meeting not to be afraid to boycott, because it's important to do so. And we will only achieve our aims-- And you see, this is why the judge, among other reasons, hates me. I said, "Did everybody then stand up and say Mr. Hlomoka, how dare you speak with two tongues. Last week you told us that you agree with everything that--" So the judge says, "Mr. Bizos, there is no need for that leading question." "Leading question, m'lord? Where is the leading? I am

only putting to him a question to which he can say yes or no, whether anybody accused him of being a hypocrite, with one tongue on the 19th and another tongue on the 26th. Where is the leading?" He was taken aback. "Ah, he says, I got it. It's the tone of your voice!"

Well, one of the complaints over the recusal application, though this came later, was that although his questions may look innocuous on the record, the tone of his voice-- And then, to make things worse, I said, "M'lord, I want to apologize. I agree with you fully that the tone of my voice, in all probability, gave this witness a clear indication as to the answer I wanted. So I said I promised to try not to do that again.

[When I was there during this case, I remember the money running low. What can you tell us about that?] There was a crisis in about '86. Were you there in '86? [No, May-June of 1988.] Well, in '86 there was a crisis. Because of the amount of work, the funders were finding it very difficult, because of the number of political trials that were going on, the number of applications that were going on during the emergency. And the number of people who were really political widows and orphans, with the main breadwinner in custody. And the funders made it quite clear that economies had to be instituted. Not only in relation to the Delmas trial, but right across the board.

And we did take some steps. The number of attorneys involved in the case was reduced, and also a different scale of fees was made, particularly for the attorneys. The funders did not have any reservations about the fees charged by counsel, in this case. They had some reservations about the fees charged in other cases. And steps were taken, and by the time you came in 1988 I think that a tariff was actually instituted, which was based to a large extent on what we as counsel were charging in the Delmas trial, and attorneys could not agree to pay counsel higher fees without a special sanction from the funders. Now the system is working reasonably well.

[Can you say anything about the impact of a trial of this enormity in terms of the likelihood of the government bringing such cases in the future?] I think that there is almost unanimity-- Our own judge complained bitterly about the ambit of the indictment and also about the conduct of counsel, including counsel for the defense in the case, and has suggested various remedies, none of which I think would be adopted. Especially if his court is held to have not been properly constituted. But Judge van der Walt in the Mayekiso case warned that charges of treason should be very carefully thought out before they are brought. And I believe that the state is not likely to try to start this sort of case again, within their immediate living memory. One would have thought that they would have learned from the Treason Trial in 1956-1961, and to a lesser extent the Nusas trial in 1975, and more particularly the Pietermaritzburg trial, the Delmas trial, the Mayekiso trial, that bringing in under the charge of treason or terrorism subversion may get you some convictions along the way, like it did in the SASO trial, but they have been counterproductive. They have cost a tremendous amount of money; they have tied down tremendous resources in the police force and the attorney general's staff, judges, recording mechanisms, use of court space. They have also been very expensive in taking up the time of many of the accused, tying them up, away from their work, away from

their political activity. But some might say that the education process of the courts on the public at large may be some compensation for that loss. But on balance I'd say that the state has not come out very well in these long trials where the Socratic defense is put up, the defense that I did what I did because I had a right to do it, and you mustn't punish me, you must give me a medal for doing my patriotic duty. It's not a popular defense with governments, but that's what they really amount to.

[So if there's going to be another crackdown, in the face of the government's losing control in the next couple of years, how do you predict that they would effect that crackdown? Just detain people?] It may well be that they'll take a small group of people, depending on what happens, and charge them with a statutory offense. Maybe terrorism. I don't think that they will try treason.

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