It was not the state case that there had been such incitement at the meeting of 12 August 1984 in St Cyprians Anglican Church. It was not alleged in the indictment and no witness was called by the state in respect of this meeting.

It was reported to have been a tense, emotion charged meeting where councillors were roundly condemned and urged to resign. The meeting resolved not to pay the increase of the rent and to circulate a petition against it. Exhs DA.1 and DA.10. Accused No 3 testified that the reports were accurate.

The gravamen of the state's case in respect of incitement to violence at the Sharpeville meetings is the meeting of 19 August 1984.

The state alleged in its indictment that accused No 16, Nosipho Myeza and accused No 1 incited the audience to violence and that accused No 2 identified with accused No 16's speech.

The state called two witnesses, sergeant Koaho and ic.9.

Sergeant Koaho testified that accused No 3 opened the proceedings in the church by offering a prayer and reading from the bible about the Israelites and Egyptians whereupon he compared them with the community and the councillors who were the oppressors.

Accused No 16 was introduced by accused No 3 as of the Committee of Ten and the Soweto Civic Association. Accused No 16 commenced his speech by shouting Amandla giving the black power salute. He spoke against the oppressor-councillors and said that the youth did not choose them. The councillors had bribed the old people with blankets to vote for them and he compared the situation of Black pensioners with that of their White counter parts. He said "You have the power but you don't know how to use it. It is time you use your power. must make these councillors resign. We asked them to resign, we asked them not to increase the rent but they did not listen." He then tore up a notice of increase of rent saying "This is actually just as good as setting it alight". The audience rose and shouted Amandla. He then called for a boycott of the businesses of councillors and said "It is now time that we kill the councillors as they refuse to resign. They should be attacked with stones and set alight." The audience got up and shouted Amandla. He then said all should join organisations as those would look after them.

Accused No 4 thereupon introduced accused No 2 who called for a boycott of councillors' businesses and associated with the speech of accused No 16.

Accused No 4 then introduced accused No 1 as from the Soweto Students' Organisation. He had come to assist the people of Sharpeville in their struggle. Accused No 1 recited a poem about

Africa and then stated that they did not want councillors, adding

"We must show them how powerful we are by what we can do. We must

make them resign." He stated that the councillors had long been oppressing the people. It was now time that they show them that they

did not want them. He called on the people to unite and fight and

told them that the youths can fight. When the youths start fighting

the older people must follow. "Let's face the music". He called on

the students to tell their teachers they wanted SRC's at the schools.

Mahlatsi (referring to the mayor of Lekoa) will have to pay the

increased rent as the people do not have money. He can send his dogs

(referring to the administration board's police) to throw people out

of their homes "but we will get them".

Nosipho Myeza then spoke. She warned people breaching the boycott that they would be killed and their houses set on fire. The audience was excited, ready to fight.

At this stage sergeant Koaho and the witness ic.9 left.

The evidence of the witness ic.9 is materially the same as that of sergeant Koaho. He does not know the name of the woman who spoke. He says that accused No 16 said that councillors should be killed if they don't resign. On this aspect sergeant Koaho was not certain whether the statement had been conditional or not.

We discuss these witnesses in annexure Z.

Sergeant Koaho and probably constable Letsele who also attended this meeting made written reports to captain (now major) Steyn about this meeting on 20 August 1984. It is common cause that major Steyn, local chief of the security police, called accused No 3 to his office on 31 August 1984. He told accused No 3 that he knew about protest meetings in his church on 5, 12, 19 and 26 August, and that he had information that at the meeting of 19 August 1984 there had been incitement to violence against the persons and property of members of . the Lekoa town council. It had been stated that they be killed and their properties burnt down. He further told accused No 3 that according to his information violence had occurred in Sharpeville on 20 August 1984. He warned accused No 3 against the proposed protest march and the violence which would ensue. (His reference to the meeting of 5 August is incorrect. That meeting was a meeting of councillors. This is immaterial for our present purposes.) His evidence that he mentioned the names of accused No 16 and Nosipho Myeza as the inciters was disputed in cross-examination but when accused No 3 came to give evidence he was uncertain about it and no longer disputed it. We find that major Steyn's evidence is correct.

This evidence is admissible as proof of the content of the report by sergeant Koaho (and constable Letsele) and not of the correctness of the report. It is used to indicate that the evidence of sergeant Koaho was not contrived.

The ostensible dispute is in any event not material as that which is common cause leads to the same conclusion.

// The defence_relied heavily on the fact that two newspaper reports of that meeting do not mention the calls for violence. They are reports in the Rand Daily Mail and Sowetan. Exhs AAQ.6 and AAQ.7. We are not impressed by this argument. A comparison between these two reports shows that the writers were partisan, the one in favour of Black consciousness speeches and the other in the so-called "progressive" camp.// They introduced organisations which were not \cdot represented (according to the defence evidence). $\slash\hspace{-0.4em}$ The contents of the two differ to such an extent that only in the mention of date and place is there any similarity. Reporter Nkabinde was not called as a witness. He has passed away. Reporter Raboroko told the court that it was not their policy to publish material that might be subversive. That seems to be general policy. The SABC has the same policy. Incitement to violence is given no publicity. We set out our criticism of Raboroko in annexure "Z". Apart from that, one has to bear in mind that these papers, staunch supporters of the liberation struggle, would hardly write or admit that a leading figure in that struggle, accused No 16, had called for violence. // Eventually when they gave evidence the accused differed materially from these .

reports.

The defence called as witnesses on this meeting accused No 3, accused No 2, accused No 16, Nosipho Myeza, Mbatyaswa, Mrs Mokate, P Nhlapo, Msimanga and Raboroka. On sheer numbers the defence case outweighs that of the state by far. It is, however, quality and not quantity that counts. There the defence witnesses fail—hopelessly.

With the exception of senior citizens Mrs Mokate and Mr Msimanga they were not above telling deliberate untruths. Msimanga's memory is wholly foggy on that meeting. Mrs Mokate is totally dogmatic even when totally wrong and reconstructs that meeting. We find that she is averse to violence and lawlessness and would not knowingly fave participated in a revolutionary meeting. This is borne out by the video of the meeting of 26 August 1984 which will be dealt with later. This video also shows, however, that she did not take umbrage at the attitude of accused No 3 on violence - which conflicted with hers. She even omitted to mention it in her evidence. It seems that it made no impression on her.

We are fully aware of the fact that it is not the answer to find that the state witnesses were credible. We have to find that each defence witness gave false evidence on the material aspects. We have set out our reasons for this conclusion in annexure Z. Some of these may be high-lighted here:

No acceptable reason was advanced why these meetings were co-organised and presided over by trade unionists whereas they were intended to be a parish matter.

No acceptable reason was advanced why outsiders like accused No 1, accused No 2, accused No 16 and Kehla Mthembu spoke at these meetings.

As time went on the defence case changed: initially exh AAQ.7 was put to witnesses as correct. When later the accused gave evidence the residents were no longer "angry", the meeting was not "emotion charged", no songs were chanted (they became hymns), there was no "scathing attack" on councillors by leaders of "the UDF, AZAPO, AZANYU, Soweto Civic Association and trade unions".

It had been put that accused No 16 told the meeting that if they were unhappy with the councillors they should re-elect others. This statement was so contra naturam of accused No 16 that when he later gave evidence it became in effect that they should not re-elect other councillors as these had no powers. Thereby accused No 16 came into conflict with the newspaper report (exh AAQ.6) which had been put as correct on his behalf.

On the whole the defence evidence on this meeting was so poor and contradictory that it is wholly unreliable.

The defence submitted that it was improbable that accused No 16 who is a public figure who works for the SA Council of Churches and is closely associated with Bishop Autu, and has a non-violent publicing image would incite people to murder.

We have no reliable evidence of accused No 16's public image.

The evidence proves that he is a radical Black activist with a long history of activism. He was vice-president of the South African Students' Organisation in 1974. He was on the national executive council of the Black Peoples Convention till 1976. Both these bodies were banned in 1977. He was detained for varying periods during 1974, 1975, 1976, 1977 and 1978. He was the secretary of the Committee of Ten of the Soweto Civic Association till December 1984. He is a foremost adherent of the Black consciousness philosophy. He was the Master of Ceremonies at the Steve Biko funeral.

Documents of which accused No 16 is the author or which were found in his possession refute his alleged non-violent stance. A paper by Lybon Mabasa "In search of national unity" to which he contributed (exhs B.6, C.10) is a document that expressly espouses Marxist revolution. We dealt with it when we discussed the policy of AZAPO. In accused No 16's possession was found an invitation by Frank Chikane to a protest conference and rally of civic organisations and representatives of rural and resettlement areas on

12 August 1984 (exh AL.13) together with a draft position statement for adoption at this meeting. Exh AL.149. The aim was to "raise" the "voice" of those affected by the "Bantustan system and the Black. local authorities which are the basis for the new constitution. The meeting will be an historical event which will turn the tide against this evil system." The position statement in the most strident language attacks the new constitution, states that the government is illegal and declares that there will never be peace in South Africa as long as the majority of the oppressed are not involved; that those that have chosen to participate in the Tri-cameral parliament have henceforth crossed the battle line (like all participants in the Bantustan system and the Black local authorities) to join the White minority in the oppression of the Black majority; that those who vote side with the enemy against the oppressed majority and will be taking the blame for the blood that will be shed in South Africa after August 1984. This document was drafted by Frank Chikane. Accused No 16 had a number of copies in his possession. It was adopted by the Soweto Civic Association on 5 August 1984. Exh AX.14 pp.60 and 67.

The papers of a Soweto Civic Association workshop of 8-10 June 1984 (exh AM.24) found in possession of accused No 16 explain that change is certain, it will be brought about by the masses led by the Black workers who are the most oppressed and exploited. This must be brought about by organisation whereby the discontent of the people is channelled and political consciousness is raised by linking bread and

butter issues to politics. The first level organisations like civics are linked to the UDF which challenges every aspect of political domination and economic exploitation of the Black people. The enemy—is "the bosses and the state".

المستقب الشاعب في المعالج المستعيد الما العرابية

Amongst further papers found with accused No 16 were papers on liberation theology with a Marxist base, books on Marxism, a book on the struggle for Zimbabwe with a foreword by Robert Mogabe dealing with the revolutionary war in that country, a book on Mogabe himself, a report of the SACC calling for economic sanctions against South Africa and expressing itself in favour of civil disobedience and conscientious objection to military service, explaining terrorism as provoked by the South African government; a notice of the Soweto branch of AZAPO of its annual general meeting of 2 February 1985 addressed to revolutionaries and comrades; a book on violence in revolutionary change, a report on Black theology and the Black struggle and a paper on the theory and practice of Black resistance to apartheid with reference to the ANC, PAC and Black consciousness.

The documentation shows an interest in Marxism and revolution which in exh B.6, to which we referred at the outset, becomes propagation thereof.

Reliance on his South African Council of Churches' position does not further the probabilities in his favour. The president of the SACC, bishop Manas Buthelezi, could not explain to this court what the "underground congregation" was for which funds had been requested by him from the World Council of Churches.

It was also argued by the defence that as in the case of accused No 16 it was equally improbable that accused No 1 would have used. inciting language at this meeting. Short thrift can be made of this argument. Exhs AAU.1-5, the photo's of him in action at the funeral of Joseph Sithole on 23 September 1984, together with brigadier Viljoen's evidence demonstrate clearly that he is one of the leaders of the activist youth and on the forefront where the action is. documents found in his possession (exh. A0.1 items 1 and 2) are in the same style as his alleged speech. They are inter alia for his funeral oration. According to this draft speech national liberation can only be achieved through united force for which purpose unity between the student force, the youth force and the masses is required. African nationalism is the only liberatory creed that can weld the masses into a sound, disciplined and united fighting force. The struggle in South Africa is part of the great struggle throughout the continent for the restoration to the African people of the effective control of their land.

The presence of accused No 1 at this meeting remains wholly unexplained. Accused No 1 did not testify though it had been put to a witness that he would and accused No 3 could give no reason.

The defence sought to refute the evidence about accused No-161s incitement by arguing that as he was only arrested on 15 February 1985 it could not probably be true. This argument does not take into account that shortly after this meeting the Vaal erupted in riots and later many other areas. The police had their hands full for the rest of that year. And apart from accused No 16's own evidence we have no evidence on his accessibility. Many activists were on the run at the time. Sergeant Koaho's evidence is that the contents of his report of 20 August 1984 was submitted by his superior to headquarters (which is situated in Pretoria) and that major Steyn awaited their permission to arrest accused No 16. That instruction came in October That is also the time when sergeant Koaho made a full 1984. statement and when the witness ic.9 was approached by sergeant (now captain) Heystek for information as they were looking for corroboration. Constable Letsele, a former member of COSAS, was murdered on 1 September 1985. We are not aware whether he had made a statement or when. He probably did.

This defence submission is without substance.

The defence submitted that the versions of Koaho and the witness ic.9 were total fabrications. It relied on the fact that the state

did not produce the written statement allegedly made by sergeant

Koaho to major Steyn shortly after the meeting in order to refute

this accusation. There may have been substance in this submission

had there not been a meeting between major Steyn and accused No 3 on

31 August 1984. The fact of this meeting arranged on the strength of

the reports of sergeant Koaho and constable Letsele and the complaint

made there with reference to accused No 16 and Myeza and the specific

mention of the nature of the incitement refutes any suggestion that

the evidence of sergeant Koaho and the witness ic.9 was contrived

after the riots. No reason has been suggested and we can think of

none why sergeant Koaho should fabricate his version of the

proceedings immediately afterwards and give a false version to his

commanding officer.

This theory of fabrication involves that two policemen (as constable Letsele was with them at the meeting) should at the instance of warrant officer Moagi concoct a story between 19 August and 20 August and dish it up to major Steyn whereby they would place their whole careers in jeopardy without any advantage to themselves. This is beyond belief.

Probably in an attempt to lessen the odds counsel submitted that the witness ic.9 was not even at the meeting. This was never put to this witness or sergeant Koaho. The case was that in so far as his evidence differed from the defence case it was procured by warrant officer Moagi.

Counsel sought to base his submission on certain contradictions between the evidence of these two witnesses pertaining to their seating, notes taken, what they recalled of the speeches (especially in cross-examination), etc. We do not think that these contradictions amount to more than faulty recollection on the part of the one or the other. They are not material.

The defence submission further entails that an ex-school principal who now has a very senior post, with the South African Broadcasting Corporation would perjure himself to support a case in which he has no interest and wherein he does not even know the investigating officer, major Kruger.

Counsel for the defence did not suggest that major Steyn was part of a plot to frame accused No 16. It was never put to major Steyn and in any event the fact that major Steyn placed his cards on the table during the discussion with accused No 3 and openly told him what his information against accused No 16 and Nosipho Myeza was negates any suggestion of a conspiracy on his part.

It was suggested by defence counsel that sergeant Koaho and the witness ic.9 were drinking cronies of warrant officer Moagi who later participated in the arrests of Rina Mokoena and possibly some others in the Vaal. He had according to accused No 16 previously unsuccessfully prosecuted accused No 16.

Warrant officer Moagi did not testify and it was never suggested that he could give any relevant evidence. The state can hardly call every-policeman to whom counsel in his-flights of fancy ascribes a persecution mania. In any event, why would Nosipho Myeza and accused No 1 then be dragged into the matter. It was not suggested that warrant officer Moagi had ever heard of them. Neither warrant officer Moagi nor major Steyn were ever investigating officers in the case. It was handled by major Kruger of Krugersdorp and captain Heystek. There has never been any suggestion that either of these police officers had any axe to grind with accused No 16.

We have had due regard to the fact that warrant officer Moagi and the witness ic.9 had recently become neighbours, had been to school together and were very good friends. This information the witness ic.9 volunteered frankly.

We were very impressed by the witness ic.9, as we mentioned in annexure Z. He is not the type of man who would prejudice his reputation and important career and put his own safety in jeopardy by giving evidence in this case and on top of that perjuring himself, in the process framing an innocent man with whom he has no axe to grind. He has nothing to gain thereby.

The same reasoning cannot apply to the defence witnesses. Their defence of accused No 3 and accused No 16 will enhance their stature // in large sections of their community and false evidence will practically speaking not place them on risk.

The defence sought to apply the following reasoning to draw a conclusion that the evidence of sergeant Koaho and the witness ic.9 of incitement at the meeting of 19 August 1984 was improbable: As there was no state evidence about the meetings of 12 August and 26 August and as the defence evidence was that there was no incitement at all at these two meetings, therefore it is unlikely that at the meeting of 19 August there would have been inciting language.

This reasoning leaves out of account two considerations.

Firstly, the evidence about these meetings comes from the same witnesses that have been found unreliable in respect of the meeting of 19 August 1984. Secondly, this reasoning can only be correct if it is used to disprove a pattern. As accused No 1 and accused No 16 were not at the other two meetings this reasoning cannot apply in respect of them if they were acting on their own and had not been invited to speak for the purpose of furthering violence.

Furthermore, this line of reasoning is not supported by the attitude displayed by accused No 3 in respect of the burning of buses at the meeting of 26-October 1984, which is dealt with elsewhere.

It was further submitted that it was improbable that violence would be preached where possibly there were members of the police force in the audience. This argument looses its weight when one takes into account the documentary revolutionary propaganda that was in fact disseminated at the time in South Africa and the revolutionary speeches made at similar meetings, as evidenced by the videos before court.

We find that accused No 1, accused No 2, accused No 16 and a woman used the words attributed to them by the state or words to that effect. Sergeant Koaho stands alone on whether the name of the woman who spoke incitingly was Nosipho Myeza, and we make no finding in this respect.

The words by I so the state of the woman is the service of the woman in this respect.

Para 73(7) of the indictment sets out that at the meeting of 26
August 1984 in the church of accused No 3 at Sharpeville the audience
was incited and indoctrinated against the councillors and a call was
made not to pay the rent. It was insinuated that if people had
already paid, that would fan the wrath of the masses.

The state led no evidence about this meeting and the defence witnesses denied that there had been incitement to violence. Their merits and demerits are discussed in annexure Z.

The defence relied heavily on a video and sound-track of this meeting taken by Mr Harris who at the time was collecting material

for a film commissioned by the South African Council of Churches titled "The Struggle from Within". The transcript thereof is exh V.31.

Although we have very-serious criticism against this video (as set out in our comments on the evidence of Kevin Harris in annexure Z) there are a number of aspects which we find sufficiently reliable for our purposes.

In his speech accused No 2 <u>inter alia</u> stated that by the boycott was not meant that they hated the councillors or that there must be a fight. It was a method to effect their resignation as they (accused No 2 and the audience) no longer wanted councillors. They were not fighting councillors. The Whites used councillors to dispossess Blacks of their money. The council system was a trap by the Whites to oppress Blacks indirectly.

Peter Hlubi likened the councillors to dogs sent by the government to do their bidding. It was a scheme deliberately evolved by the government to make Blacks hate each other.

Mrs Mokate told the meeting that she had reprimanded the children that week not to destroy buses (as had happened on 20 August 1984) and spoke out against fighting.

Accused No 3 in introducing the camera crew of Kevin Harris told the meeting that the church was on the side of the poor and oppressed and persecuted and that the SA Council of Churches would like to spread the message of oppression. Referring to activities of school children accused No 3 said he hoped what they were doing was lawful—but even if it were, justice is not done anyhow. The law in South Africa is not the law of the Blacks. Secondly he did not want to call it destruction adding:

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"It is not destruction, because it is not mine. They are not what encourages the Black nation to progress. Anyway we know that the VTC is in the township to exploit the people. Therefore, those buses are not helping us with anything.

Whether they burn I do not care. They are not mine."

Amazing words coming from the mouth of a priest! He then called on the children to give the parents a chance to investigate whether the Lekoa town council could be taken to court.

Mkwanazi after telling the meeting that a coward dies many times, stated that the children were not needed now as it was a minor matter, the boycott of the councillors' businesses. The children could join them with the struggle, but not now. The time was not yet right to force their children to accompany them.

The sound-track thereafter has interruptions to such an extent as to cast doubt on the contents. What is certain is that one Motofela Mokgema's reference to an impimpi (informer) caused and uproar and that he spoke about people sneaking off to work on 3 September 1984 in contravention of the stay-away. He stated that these sneaks would board buses and taxi's. All buses and taxi's would be stopped from coming into the township till after the discussion of the rent issue with the authorities.

There was talk of a court interdict and if that failed a petition against the rent increase, and of the election of block committees for the purpose of circulating it.

Towards the end of the meeting one Botha got it all wrong and referred to submitting the petition to the VTC (Vaal Transport Corporation) to stop the buses from entering at a date in the future. He prematurely asked the question what should then happen if the buses do enter. This was ruled out of order, it seems.

In respect of this exhibit, produced by the defence and over the reliability of which looms a huge question-mark, the following matters are worthy of mention:

- 1. The reckless spirit of indifference in respect of the property of a public utility corporation like the Vaal

 2. Transport Corporation in utterances of a leader of the Sharpeville community like accused No 3.
- The fact that participation of children in the liberation struggle is considered.
- 3. The fact that as early as 26 August 1984 the prevention of entry of public transport into the township to make the stay-away effective was discussed.
- 4. What was cut out of this sound-track we cannot guess.
- 5. The presence of the TV crew may also have had a dampening effect on speakers.

The fact that a petition and court interdict were discussed leads to the conclusion that one cannot exclude the possibility that these meetings were not arranged for the purpose of fanning the wrath of the people into rage against the council system but that there was an intention to do something legal to attempt to have the rent increase rescinded. We cannot find that mention of the petition and court interdict was a mere smoke-screen, as the state submitted.

The finding that this may have been a Sharpeville effort to do something on its own, disposes of the state's argument that there was a conspiracy between the Sebokeng and Sharpeville meetings. The substratum falls away. There was no similarity of plan of action.

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There was no mention of the stay-away and boycott and even the march at this meeting. One cannot conclude that there was a conspiracy between the organisers of these events and the organisers of this meeting.

Para 73(8) of the indictment deals with the meeting of 2 September 1988 in the church of accused No 3 in Sharpeville.

الدورون بين مورود و في يونيون الدورون المستقيدة الدورونيين الدورون الدورونية المستقدة المراوية المستقدين المرا والمواسعة والمواسعة المواسعة الي وجوي المراوية الي المعاولة الي المعاولة الدورونية المواسعة المستقدة المراوية

The state called only one witness on this meeting. This was the witness ic.8.

He testified that he arrived late and while standing at the door, heard accused No 3 say: "It is now time that Mahlatsi and company be shown that they have played on our heads too long. He has come to his last station. Away with councillors. Away with the high rent." The next day they would march to Houtkop to have a conversation with Mr Ganz, the director of the Orange Vaal Development Board.

At the end of his speech the audience and accused No 3 gave the black power salute and the song Siyaya was sung.

There were many placards in the church bearing the slogan "Away with councillors, away with high rents".

Accused No 2 spoke about the stay-away on Monday 3 September

1984 and the march to Houtkop. He said they would not pay rent and ended with a shout of "Mabafe". That means "let them die". He was referring to the councillors. The audience became emotional and gave the Black power salute and again sang Siyaya.

Kethla Mtembu, office-bearer of AZAPO, spoke on rent and the stay-away on Monday and added that the audience should not be concerned about being dismissed by their employers or arrested as AZAPO would provide the defence.

The meeting resolved to march to Houtkop on Monday 3 September. Mtembu stated that they should start from the church of accused No 3 and others could join along Seiso Street, the main road.

The witness stands alone on the words of violence.

Against him are arraigned the aforemention defence witnesses. We have dealt with their merits.

The version of accused No 2 shouting "Mabafe" is not in line with his attitude at the meeting of 26 August 1984. All defence witnesses denied that he had used that word. All denied that accused

No 3 had uttered the words about Mahlatsi and denied Mtembu's words.

All denied that the march was ever discussed. They said that there had been no resolutions on a stay-away or march.

The defence evidence was that the stay-away was merely raised by a member of the audience, one Nana, who had in her possession a pamphlet (exh AN.15.2) setting out the resolutions taken at the meeting at Small Farms on 26 August and advertising a meeting there for 3 September. She proposed adoption of these resolutions but the audience was divided and no resolution was passed.

Accused No 2 then suggested that those who participated in the stay-away should come to the church on 3 September to see what could be done on the rent issue. The petition could be taken up then.

State counsel mentioned a number of criticisms against the defence version. It serves no purpose to evaluate them in detail.

Even if we accept that they are all valid the state case remains dependent on the evidence of the witness ic.8 alone. We have set out our approach to his evidence previously. There is no corroboration thereof.

We find therefore that it has not been proved that violence was preached at this meeting of 2 September 1984.

DELMAS TREASON TRIAL 1985-1989

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