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DELMAS

1987-06-25

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

VOLUME 244

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HOF HERVAT OP 25 JUNIE 1987.

SIMON TSEKO NKOLI, v.o.e. (Deur tolk)

MR BIZOS : My Lord, Your Lordship granted leave yesterday for accused no. 16 to go to an ophthalmic surgeon. We also have a request for accused no. 21, Mr Chikane, to attend the Benoni Hospital today, at a time which is apparently not a specific time, but at a time which is convenient for the police and they will possibly take them together.

COURT : Very well.

MR BIZOS : They will remain here until such time, because(10) the appointment in Johannesburg is only for 12h00.

MNR. JACOBS : Op die oomblik is al die beskuldigdes teenwoordig.

VERDERE KRUISONDERVRAGING DEUR MNR. JACOBS : Mnr. Nkoli, jy sê dat op 3 September 1984, die oggend, het jy van jou huis af gegaan deur die woonbuurtes na die kerk toe? -- Dit is so.

Soos jy beweeg het deur die woonbuurtes, het jy baie mense gesien wat besig is om op te beweeg, rond te beweeg of na vaste punte toe? -- Daar was mense gewees wat ek raak-(20) geloop het op pad.

Groepies mense? -- Ek sal hulle nie beskryf as groepies mense nie. Ek sal u sê, daar is gevalle waar ek drie mense teëgekomp het wat saam gestap het en dan partykeer twee of n persoon alleen teëgekomp. Die persone het in verskillende rigtings beweeg.

En soos jy beweeg het, het jy gesien polisiepatrollies wat daar deur die woonbuurtes beweeg het? -- Nee, nie in die roete wat ek gevolg het nie. Ek het geen polisievoertuie gesien nie.

(30)

Toe/...

Toe u by die kerk aankom, by die perseel, was daar saam met jou toe n hele klomp mense wat buitekant gewag het? -- Op die perseel van die kerk was daar baie mense gewees buite, maar by die hek waar ek gaan staan het, was daar net n paar mense gewees, maar terwyl ek nog daar gewag het, het van die mense ook toe daar gekom.

Toe jy nou by die hek gaan staan het, jy sê julle was n paar, was dit net twee gewees? -- Nee, ons was nie net twee gewees nie. Daar was mense wat ook daar gekom het.

Hoeveel was julle omtrent wat daar gewag het? -- Nie (10) meer as twintig nie.

En jy sê daar het nog gekom wat by julle aangesluit het terwyl julle daar wag. Hoeveel het nog bygekom? Hoeveel was hulle? -- Ek weet nie hoeveel mense sal ek sê het toe daar gekom terwyl ons gewag het nie, want toe die optog ook nou maar weggegaan het daarvandaan, het die mense nog bly aankom daar.

Ek wil weet hoeveel was julle voordat die optog uit die perseel gekom het wat daar gewag het? -- Wat ek wel kan onthou is die getal wat ek genoem het nou. Dit was net (20) meer as twintig persone. Alhoewel daar nog mense bygekom het, is ek nie in staat om n skatting te gee hoeveel daar nog bygekom het nie.

Jy kan tog sekerlik vir die Hof sê of daar nog baie bygekom het wat daar gewag het? -- Ek kan vir die Hof sê ja, dat daar wel mense bygekom het, maar ek is nie in staat om vir die Hof te kan sê hoeveel mense daar nog bygekom het nie.

En jy sê daar was baie mense binne-in die perseel. Was hulle orals op die perseel gewees of waar was hulle gewees? -- Die mense was by die plek wat in hierdie hof beskryf (30)

was/...

was as h "court-yard."

Het hulle rondom mense gestaan, soos iemand wat met hulle gepraat het of wat was die posisie? -- Hulle het op die manier gestaan daar wat vir my h aanduiding was dat hulle nou alreeds sal begin wegloop.

HOF : Was hulle opgestel in h optog? -- Ja.

MNR. JACOBS : U sien, hoekom ek vir u vra, beskuldigde nr. 9 het vir ons gesê hy was juis na die hek toe gestuur om die mense wat daar by die hek is te sê om in te kom, nie om buite te staan nie. Hulle moet inkom sodat die mense op die (10) perseel is en binne is? -- Ja, toe ons daar gekom het, het ek gesien dat beskuldigde nr. 9 mense laat ingaan het, maar met ons aankoms by die hek het beskuldigde nr. 9 die volgende gesê "Dit lyk vir my asof ek nooit sal klaarkry om mense te laat ingaan nie. Die beste wat ek nou gaan doen is, dat julle nou hier by die hek sal moet wag." Dus het hy ons daar by die hek laat wag.

Ek wil dit aan jou stel ook dat beskuldigde nr. 9 dit nie sou gedoen het nie, want hy moes toesien dat die mense kom soos wat hulle opgestel word in die optog? -- Wat ek (20) sê wat deur beskuldigde nr. 9 gedoen was, is dat hy vir ons gesê het om daar te wag sodat ons later by die agterkant van hierdie optog kan aansluit.

Die optog, toe hy begin beweeg het, het hy van die vierkant af beweeg na die hek toe? -- Ja, dit is so.

Wie was heel voor gewees aan die optog toe hy nou van die vierkant af wegbeweeg? -- Ek het beskuldigde nr. 9 gesien daar wat aan die voerpunt was van hierdie optog tesame met twee ander persone wie aan my duidelik was as mense wat daar opgetree het as die "marshalls". (30)

Nadat/...

Nadat beskuldigde nr. 9 julle dus gesê het julle kan nie nou meer ingaan nie, het hy julle verlaat daar by die hek? -- Ja, hy het ons daar agtergelaat.

Is hy toe na die optog toe? -- Ja.

Hulle was nou heel voor aan die optog. Wie was agter hulle gewees? -- Die plakkaatdraers.

En die plakkaatdraers het die res van die mense wat die optog gevorm het gevolg? -- Ja.

Was hulle toe ook reeds opgevorm in gelidvorm soos julle geloop het? -- Ek weet nie wat die reëling was nie, maar (10) ek kon sien dat die mense in 'n orde daar gevolg het.

So geledere agter mekaar, die rye mense? -- Ek sal nie kan sê nie. Ek het nie opgelet of die mense nou so gereël was dat hulle miskien langs mekaar op 'n lyn gestap het nie, maar wat ek wel aan die Hof kan sê is dat mense agter mekaar gestap het.

Maar jy was mos daar. As jy dan opgelet het na enigiets moet jy mos vir ons kan sê of hulle so geloop het, want hulle moes verby jou so geloop het? -- Dit is presies wat ek sê wat ek daar opgelet het. Ek sê die mense het mekaar gevolg. (20) Of die mense mekaar nou gevolg het in die vorm van 'n lyn, kan ek nie sê nie.

HOF : U bedoel 'n lyn van voor na agter of praat u van 'n dwars lyn? -- Ek praat van die dwars lyn.

MNR. JACOBS : Het die mense toe as 'n eenheid so begin uitbeweeg, voor die drie persone, direk agter hulle die plakkaatdraers en direk agter hulle het die mense begin wegstap daar en so agtermekaar uitgeloop by daardie hek? -- Ja, wat ek wel opgelet het daar is dat dit in 'n goeie orde gedoen was.

Het die "marshalls" toe ook al langsaan, soos die (30)

mars/...

mars uitgegaan het, uit na die hek toe beweeg het, langs die mars ingeval? -- Ja, op daardie stadium was dit alreeds duidelik gewees dat van die mense hier optree as die "marshalls". Hulle het posisies ingeneem as "marshall".

Jy sien, hoekom ek vir jou vra is, die getuienis van beskuldigde nr. 9 dat daar voor die hek was dit gesê die leiers moet eerste uitgaan en toe het hulle uitgegaan en ander mense het nog binnegebly? -- Maar ek het ook net so gesien dat hulle voor was en dit dus die eerste persone is wat uit die perseel gegaan het. (10)

Hulle het nie so daar van die vierkant af met die hele mars so geloop volgens sy getuienis nie. Hy sê hulle is uitgeroep buitekant toe. Daarna is die plakkaatdraers uitgeroep en gesê hulle moet gaan staan agter die leiers en daarna is die mense gesê om uit te gaan en daar aan te vul.

HOF : Wat u dus aan die getuie sê is dat die optog nie opgestel is op die vierkant nie, maar dat die optog in die straat opgestel is?

MNR. JACOBS : In die straat opgestel is.

HOF : Is dit dieselfde? (20)

MNR. JACOBS : Dit is waar dit op neerkom. -- Volgens wat ek daar gesien het, was die optog alreeds gereël gewees toe hulle die perseel verlaat het in hierdie volgorde. Die optog gelei deur die drie persone wat ek alreeds genoem het, agter hulle is die plakkaatdraers, onmiddellik gevolg deur die ander mense in die algemeen. Ons het later by hierdie optog aangesluit. Dit is na hulle, dit wil sê die optog, die perseel verlaat het dat ek alles nou duidelik kon sien dat daar mense is wat aan die kante van die optog beweeg en dit is die mense wat ek dan beskou as die "marshalls". (30)

Ken jy vir Esau Raditsela? -- Van sien, ja.

Het jy hom daar gesien? -- Ja, ek het hom gesien.

Waar was hy? -- Ek het daar bewus geword van sy teenwoordigheid toe hy daar uitgegaan het en deelgeneem het as een van die "marshalls".

Was dit nog voordat jy aangesluit het by die opmars?

-- Dit is voor ek by die optog aangesluit het.

En as hier getuienis in hierdie hof aangebied was dat Esau Raditsela en nog ander mense, beskuldigde nr. 17 en nog n ander persoon sou agtergebly het om te kyk of die (10) kerk eers toe is en agterna gekom het nadat die mars weg was en daarby aangesluit het, is dit ook nie die waarheid nie? -- Ek sal nie so sê nie. Ek het getuig oor wat ek gesien het van wat daar gebeur het. Ek het bewus geword van hom net voor ek by die optog self aangesluit het en na ek hom daar gesien het vir die eerste keer het ek hom nie weer gesien nie.

HOF : U het by die optog aangesluit deur by die hek te bly staan totdat die agterpunt van die optog by u verby is? --

Ja, dit is so.

(20)

MNR. JACOBS : So, as ek jou getuienis reg verstaan dan was jy omtrent heel agter aan die opmars? -- Ek was heel agter by die agterpunt van die opmars toe ek daar vertrek het.

U sal net een ding duidelik moet verstaan. Ek sê terwyl die optog daar uitbeweeg het, het ek bewus geword van die persoon se teenwoordigheid en onmiddellik nadat ek hom daar gesien het, het ek toe nie later verder bewus gebly van wat die persoon doen nie en of hy nog by die optog was of wat verder met hom gebeur het nie. Dit kan ek nie sê nie.

Jy sien, as die getuienis dan ook verder is dat hulle(30)

opgehang/...

opgevang het met die opmars en aan die agterpunt van die opmars gekom het, dan is dit ook nie reg nie? -- Ek sal nie betwis wat ander mense gesien het nie. Ek praat van wat ek daar waargeneem het. Miskien praat die mense hiervan dat hulle hom so gesien het omdat hulle hom gesien het dit doen. Of praat hulle hiervan omdat hulle bewus was dat hy veronderstel was om dit te doen, maar wat ek hier vir die Hof vertel is wat ek waargeneem het.

Het jy beskuldigde nr. 17 by die opmars gesien? -- Ek het hom nie gesien nie. (10)

En beskuldigde nr. 8? -- Ek het hom ook nie gesien nie.

Jy het gesien dat Esau Raditsela is besig om op te tree as 'n "marshall" daar. Het hy daar bly staan of het hy aanbeweeg saam met die opmars toe jy hom gesien het? -- Op die stadium wat beskuldigde nr. 9 ons genader het daar by die hek en 'n gesprek met ons gevoer het, toe ek in die perseel gekyk het het ek opgemerk dat hy, Esau, op die perseel was en hy het beweeg na verskillende punte toe waar die optog alreeds gereël was en toe die optog die plek verlaat, het ek hom weer opgemerk dat hy aan die een kant van die optog was (20) waar ek sê waar hy aan my duidelik as 'n "marshall" opgetree het.

Het jy aan die agterkant van hierdie optog gebly al die tyd tot hy uitmekaar gegaan het lateraan? -- Nee, my posisie het verander. Dit was as gevolg van die feit dat mense by hierdie optog van agter af, dit wil sê aan die agterkant aangesluit het en van die mense het sommer tussenin aangesluit, met die gevolg dat ek teruggeval het as mense voor my aangesluit het. Dus het dit my posisie beïnvloed en dit het my posisie verander. In die loop van die tyd tydens (30)

die/...

die optog daar, het ek gevind dat ek op 'n stadium in die middelste deel van die optog is.

Toe die opmars daar begin het by die kerk, kan jy vir ons aandui hoe lank was hierdie opmars gewees? Dit is toe jy nog aan die agterpunt was? Omtrent na Checkers toe? -- Ek weet nie eers waar is Checkers hier nie. Ek was nog nooit na buite toe nie.

Jy ry nie hierso in die dorp - jy het nog nie hier in die dorp gery nie?

HOF : Ons gaan nou net deurmekaar raak. Toe die agterpunt, (10) toe u aansluit by die hek by die perseel aan die agterkant van die optog, waar was die voerpunt toe? -- Dit was om en by in die onmiddellike nabyheid van Selbournestraat.

Dit is byna die lengte van die grondpad vanaf die hek tot by Selbournestraat? -- Ja, dit kan wees.

MNR. JACOBS : Ek wil dit aan jou stel om aan te sluit by gister se vrae dat as hierdie mense gesing het en die opmars redelik lank was, dat jy op die plek waar jy was, was dit onmoontlik gewees, kon jy nooit gehoor het of iemand sê "Daar is 'n hond" of nie sê "Daar is 'n hond" nie? Jy kon (20) dit nie gehoor het nie? -- Dit het afgehang in watter posisie die persoon is wat die woorde besig.

As dit by die voerpunt rond gewees het, dan kon jy dit nie gehoor het nie? -- Ja, ek sou nie in staat gewees het om 'n persoon te hoor wat by daardie punt is vanwaar ek is nie.

Die mense wat jy daar voor jou gesien het op 'n stadium, waar presies was hulle toe jy hulle gesien het?

HOF : Watter mense voor hom?

MNR. JACOBS : Die interseksie, wat hy daar gesien het.

HOF : Die groep? Die groterige groep?

(30)

MNR. JACOBS/...

MNR. JACOBS : Die groep, ja. -- Ek het bewus geword van daardie klomp by die plek wat hier in die hof beskryf word as n "intersection". Dit is waar ek opgemerk het dat daar daardie klomp is.

Het hulle daar rondgestaan of rondbeweeg op die interseksie self? -- Met die punt waar ek was op hierdie optog die distansie vanaf die voerpunt, sou ek nie in staat gewees het om te sien wat die mense daar doen nie, behalwe om net bewus te word van n klomp mense by daardie punt en dit is wat ek gesien het. Volgens my waarneming daar, het dit (10) vir my gelyk of hierdie mense vanaf ons teenoorgestelde rigting gekom het.

Kon jy sien dat hulle loop? -- Ek kon sien dat daar n beweging was.

Dit is n snaakse ding om te sê n beweging. As n man sy arm in die lug swaai is dit n beweging? -- Ja, die beweging wat ek van praat. Ek het opgelet dat die mense plakkate gedra het. (Getuie dui beweging aan)

Die beweging van plakkate? -- Ja, dit is juis die beweging van die plakkate wat gemaak het dat ek bewus word van (20) die mense se teenwoordigheid daar.

So, as ek jou reg verstaan was jy op daardie stadium n redelike ent van die voerpunt van die opmars af? -- Ja, ek was redelik ver, want dit is voor ek by die BP Garage was.

En wat meer is, daar was baie mense tussen jou gewees wat gemaak het dat jy nie presies kon sien wat daar in die interseksie aangaan nie? -- Ja, dit is korrek, maar as gevolg van die feit dat hierdie pad daar n draai maak en ek is aan die regterkant van die optog, was ek dus na die (30)

optog/...

optog die draai geneem het daar in staat gewees om daar voor te sien vanaf die posisie waar ek was, veral as ek dit nou met die klomp persone noem. Dit is hoe ek sê.

Ek verstaan nou nie wat jy bedoel nie. Met ander woorde, moet ek dan verstaan julle optog het alreeds na regs gedraai toe jy hierdie mense gesien het? -- Nee, ek sê ek was aan die regterkant gewees waar ek beweeg het op hierdie optog van ons en toe ek die eerste keer bewus geword het van hierdie klomp was voor ons voorpunt die interseksie binnegegaan het en wat my in staat gestel het om te sien dat daar 'n klompie(10) mense was daar is omdat daardie pad daar 'n draai maak. Dit wil sê die draai het dus my kans gegee om aan die verste punt van die draai te kan sien.

In die eerste instansie wil ek aan u stel dat daar is nie 'n draai nie. Daar is 'n effense wyking na regs, maar nie 'n draai nie? -- Miskien is my gebruik van die woord "curve" swak. Dit is reg, die pad maak 'n effense draai.

En die tweede aspek wat ek met jou wil behandel, volgens 'n nota wat my kollega gehou het hier het jy gister vir die Hof gesê jy het aan die linkerkant van die optog jou plek(20) ingeneem?

HOF : Drie plekke of vier plekke vanaf die regterkant van die optog wat ongeveer tien man breed was.

MNR. JACOBS : Dan is my nota verkeerd. Om tot by hierdie interseksie te beweeg, wil ek dit aan jou stel, dat u moes in daardie hele gebied verskeie plekke gesien het waar dik kolomme rook opgegaan het in daardie omgewing van Sebokeng vandat julle begin het tot julle daar by die interseksie gekom het? -- Nee, die enigste rook wat ek van bewus geword het, is dié wat ek sê wat aan my linkerkant was in die (30)

nabyheid/...

nabyheid van BP Garage, dit wil sê net voor ek by BP Garage gekom het.

Ek wil dit aan u stel selfs voordat u nog by die kerk gekom het, moes u rookkolomme gesien het in daardie woonbuurt?

HOF : Daardie woonbuurt is watter woonbuurt?

MNR. JACOBS : In die onmiddellike nabyheid en omgewing van die Roomse Kerk? -- Ek het geen sulke rook gesien in die nabyheid van die Roomse Kerk nie.

Toe u daar by die interseksie self kom, volgens jou getuienis nou, het jy probeer vasstel wat se soort is daar (10) wat so 'n digte rookkolom daar is? -- Ek was verbaas gewees om daardie groot rookkolom te sien, maar op daardie huidige oomblik het ek nie vasgestel wat die oorsaak daarvan was nie.

HOF : Vandat u by u huis weg is die oggend totdat die optog uitmekaar gejaag is, is dit die enigste rook of rookkolom wat u gesien het wat buitengewone rook was? -- Ja, dit was die eerste keer.

ASSESSOR (MNR. KRUGEL) : Terwyl u met hierdie onderwerp besig is, mnr. Bizos het vir u gevra hoe die atmosfeer die oggend in die woonbuurt was. U het hom toe geantwoord met die (20) strekking dit was asof die mense by die huise was en vuur gemaak het? -- Ja, dit was my antwoord gewees. Ek het gesê dit was misserig gewees. Eintlik het dit gelyk of daar mis was en as 'n mens nou met ondervinding praat omtrent die lokasies, hoe dit daar lyk as mense vuur gemaak het, was dit die toestand gewees.

Ek wou eintlik graag vir u gevra het, watter soort dag was dit gewees? Wind stil, winderig, 3 September, sonskyn? -- Ek kan dit soos volg beskryf. Dit was 'n lekker koel oggend maar sonder wolke. Dit was 'n sonskyndag, 'n normale dag wat (30)

n/...

h mens kan toeskryf aan Septembermaand se dae.

HOF : En die wind? -- Ek kan nie meer met sekerheid sê nie. Ek kan nie meer onthou nie, maar wat ek wel vir die Hof kan sê is dat ek herinner my dat ek h bosbaadjie van my aangetrek het om die warmte te behou in my liggaam.

MNR. JACOBS : Net om by hierdie aan te sluit toe u nou geloop het van die huis af op pad na die Roomse Kerk toe, jy het nou deur die woonbuurtes geloop, het u opgemerk of daar by huise se skoorstene baie rook uitkom of nie? -- Ja, ek het dit gesien, ek het dit opgemerk, want selfs by my (10) huis was dit kort na ek vuur gemaak het in die stoof dat ek vertrek het.

By die interseksie, toe u nou daar gekom het, het u mense gesien daar op die interseksie self wat nie aan die optog behoort nie wat daar rondbeweeg? -- Ek het mense opgemerk terwyl hulle in die optog was. Eintlik ook vroeër, voor ons by hierdie punt van die interseksie gekom het. Mense wat sommer daar gestaan het as toeskouers van die optog.

Maar ek vra nou spesifiek by die interseksie, was daar mense wat daar rondbeweeg het wat nie aan die optog behoort (20) het nie? -- Dit is h bietjie moeilik vir my om vir die Hof presies te kan sê wat die posisie was daar. Soos ek alreeds vroeër gesê het voor ons by die interseksie gekom het, as ek bewus gewees van toeskouers wat langs die pad gestap het. Selfs met die ingang by die interseksie, het ek opgemerk dat daar mense was in die interseksie, maar nou vir my om vir die Hof te kan sê of die mense daar rondbeweeg het of wat die posisie was, wat my betref, is dit logies dat daar toeskouers sou gewees het by die optog.

Nee, ek wil dit aan u stel dat hierdie feit dat jy nie (30)

vir/...

vir die Hof kan sê wat daar by die interseksie gebeur het toe jy daar gekom het nie, is omdat u op daardie stadium by Caeser se huis was. U was nie agter aan daardie optog gewees nie, u was aan die voorpunt gewees? -- Ek was agter gewees op die optog. Ek was glad nie by Caeser se woning gewees nie.

Nou hoe is dit dan dat jy nie vir die Hof kan sê wat daar gebeur het by die interseksie, of daar mense gestaan het op die interseksie en rondbeweeg het nie? -- Ek is nie in staat om dit te kan sê nie, omdat ek sê by die verskillende plekke was daar mense gewees wat langs die pad gestaan (10) as toeskouers. Dus kan ek nie vir die Hof sê watter tipe mense naby die interseksie gestaan het of daar rondbeweeg het nie.

Daar was bewerings gemaak deur die verdediging dat daar aan die linkerkant, die pad wat aan die linkerkant na die stadion toe gaan, op daardie interseksie, daar het 'n groep mense ook gestaan? -- Ek sal nie met mense wat dit gesê het stry nie. As u nou oplet wat ek sê, is dat ek het aan die regterkant van hierdie optog beweeg en die manier waarop hierdie optog opgestel was, dit wil sê die mense wat dig (20) in die optog gevorm het, was dit nie moontlik vir my gewees om met een kyk na die linkerkant toe te kan sien wat gebeur daar nie.

HOF : Weet u van 'n stadion daar in daardie gebied? -- Ek het net daarvan gehoor dat daar 'n stadion is in Gebied 11.

Waar het u dit gehoor? -- My broertjie hou daarvan om 'n toeskouer te word by 'n sokkerspan. So, hy het af en toe vir my gesê dat hy 'n toeskouer gaan wees by 'n sokkerspan wat hy aan behoort.

By die interseksie, kom daar vanaf die linkerkant, (30)

soos u gestap het, die laantjie in wat na Caesar Motjeane se huis lei? U weet daarvan? -- Ek was nie daarvan bewus nie. Ek het eers daarvan begin hoor in die verloop van hierdie huidige saak.

Maar u weet nou van watter laan ons praat? -- Ja, op die huidige oomblik weet ek.

Op daardie interseksie kom daar ook 'n groterige pad in aan die linkerkant voordat 'n mens by die laantjie kom, maar byna op dieselfde punt? -- As ek reg verstaan praat u van hierdie pad wat na bewering die pad is na die stadion toe? (10)

Dit is wat ek wil weet of dit die pad is na die stadion? -- Ja, in die verloop van die verhoor in hierdie saak het ek so verstaan.

MR BIZOS : Your Lordship can take that as an admission

COURT : Yes, we were just wondering where the stadium is. I think we have spotted it on the aerial photograph, but we might get some agreement on that.

MNR. JACOBS : Ek wonder of ons nie op die oomblik terwyl ons daarmee besig is, dit kan afhandel nie.

HOF : Druk dan maar 'n speld op die plek waar u sê die (20) stadion is en dan wys u dit vir mnr. Bizos. (Plek word aangedui) I put the number 70 in the middle of the stadium and added it to the index as stadium in Zone 11.

MNR. JACOBS : Daar by Caesar se huis, het jy nie hulp verleen daar aan 'n persoon wat geskiet was in die omgewing van Caesar se huis nie? -- Nee, ek het niemand gehelp wat geskiet was nie.

En gehelp dat hy vervoer kry, dat hy verwyder word na 'n hospitaal toe nie? -- Ek het niemand gehelp daar om hospitaal toe geneem te word nie. (30)

Toe jy daar by die steeg kom, volgens jou getuienis, het jy nie gekyk wat is nou die oorsaak van hierdie rook en in die steeg opgekyk nie? -- Ek het wel 'n oog in daardie rigting gegooi om te sien of ek dalk iets kan sien wat die oorsaak is van die rook. Ongelukkig kon ek nie sien wat presies die oorsaak daarvan was nie. Eintlik, ek sal u sê die meeste van die mense in die optog in my nabyheid het ook terselfdertyd die oog saam met my in daardie rigting van die steeg gegooi om te sien wat daar gebeur het.

Kan ek dit dan eers so kry, die rook was dit omtrent (10) aan die verste punt soos julle verby beweeg het van daardie steeg?

HOF : Die steeg loop dood aan die einde van 'n blok.

MNR. JACOBS : Ja, in die omgewing waar hy doodloop.

HOF : Is dit waar hy doodloop?

MNR. JACOBS : Waar hy doodloop.

HOF : Waar hy 'n T-aansluiting maak met 'n ander straat.

Is dit wat u vra?

MNR. JACOBS : Ja, dit is reg, in daardie omgewing? -- Ek sê ek het 'n oog in daardie rigting gegooi om te sien wat die (20) oorsaak van die rook was. Op daardie huidige stadium was ek nie van hierdie steeg bewus nie. So, ek is nie hier in die hof in staat om vir die Hof te kan sê wat ek bepaal het met betrekking tot die steeg nie.

Het u mense gesien op en afhardloop tussen huise daar in die rigting van die rook? -- Mense wat ek bewus van was was dié aan my regterkant terwyl ek aan die optog deelneem en tweedens, ek was bewus van die "marshalls" wat deelgeneem het aan die beheer van hierdie optog.

ASSESSOR (MNR. KRUGEL) : Aan die linkerkant waar daar so (30) ongeveer/...

ongeveer ses mense diep - voordat u by die einde van die optog sou kom, aan u linkerkant vanwaar u geloop het? -- Behalwe die mense wat deel gehad het aan die optog self aan my linkerkant, kan ek my nie voorstel dat ek ooit ander mense gesien het aan my linkerkant nie. Tweedens, ek is nie seker nie, ek sê nie dat daar ses mense was aan my linkerkant nie. Ek sê daar was mense gewees wat aan my linkerkant was wat deelgeneem het aan die optog en hierdie optog was dig gewees van mense wat deel gehad het daaraan.

MNR. JACOBS : Toe u nou gekyk het na die rigting van die (10) rook, toe u daar by die interseksie kom, toe kon jy niks sien nie, is jou getuienis, omdat die mense almal voor jou was? Die mense aan jou linkerkant? -- Ja, my uitsig was aan my linkerkant versper. Die rookkolom was hoog genoeg bokant die hoogte van die mense wat my uitsig versper het om deur my gesien te word.

Die mense het tog seker nie so opmekaar geloop dat daar nie spasie tussen die rye gewees het wat jy in was en die ry voor jou of die ry agter jou nie? -- Ek sê die mense was daar naby mekaar gewees. Hulle het net toegelaat dat h (20) mens kan beweeg en tweedens, ek het nie veel belang gehad in die ander dinge nie. Hier is ek op h optog en hier word gesing. So, ek het meer belang gestel in die singery as enigiets anders.

Maar dan kan jy tog vir die Hof kom vertel van mense wat voor was terwyl daar baie meer mense voor jou was, h groep mense wat voor gewees het? -- Ja, dit het ek gesien. Die pad maak effens h opdraand daar en tweedens maak dit h effense skewe draai na regs. So, met hierdie toestand was ek in staat gewees om daardie klomp te sien. (30)

As/...

As jy sê effens na regs, beteken dit dan die mense, toe jy hulle gesien het, was hulle nie op die interseksie nie, maar verby die interseksie op daardie deel wat na regs effens afwyk? -- Die klomp mense wat ek van praat was volgens my verstaan van hierdie interseksie in die onmiddellike interseksie gewees en by hierdie punt waar die pad effens na regs beweeg. Ek het dus bewus geword van hierdie mense volgens my terwyl hulle, as ek reg verstaan het, in die interseksie was.

Ek wil dit aan u stel dat u was op die voerpunt van(10) hierdie optog, u het ingegaan by Caeser Motjeane, die steeg na sy huis toe en u was daar toe die aanval geloods was op sy huis? -- Ek ontken dit, want dit is nie so nie.

Hierdie dokument BEWYSSTUK AV1 wat u gehad het is h lidmaatskapskaart. Is dit reg?-- Ja, dit is reg.

Van die liggaam Release Mandela Campaign Committee?

HOF : Waar staan die "committee"?

MNR. JACOBS : Ek vra dit vir hom? -- Nee, op hierdie kaart van my staan geskryf Release Mandela Campaign.

Maar sal u saamstem dit word bedryf deur die Release(20) Mandela Campaign Committee of Release Mandela Committee? -- Dit is aan my verkoop deur Sediso Matone. Ek weet nie of hy h lid is van die Release Mandela komitee nie.

En in die Vaaldriehoek self was daar ook h tak van die Release Mandela Committee? -- Ek het nie so h kennis nie. Ek het ook nie vantevore daarvan gehoor nie.

Ek wil dit aan u stel dat dit nie h dokument is wat verkoop word soos u sê nie, maar dit is h aansluit en h lidmaatskapsertifikaat hierdie? -- Dit is nie so nie.

Hier word selfs h lidmaatskapsnommer vir jou toegeken(30)

nommer/...

nommer 009223? -- Dit is nie so nie. Met die Hof se toestemming, mag ek verduidelik hoekom ek sê dit is nie so nie?

HOF : Ja? --

MNR. JACOBS : U Edele, net voor hy antwoord, ek sien dat beskuldigde nr. 16 nou geneem word. -- Ek sê dit is nie so nie, want Sediso, die persoon wat hierdie dokument aan my aangebied het te koop, het aan my gesê dat dit verkoop word met die doel om fondse in te vorder. So, ek het dus aanvaar dat dit die geval is en onder daardie omstandighede het ek toe hierdie dokument gekoop. (10)

HOF : Wat het u met die dokument gemaak nadat u dit gekoop het? -- Ek het dit saamgeneem na my kantoor toe.

En toe? -- Dit was na 'n paar dae dat hierdie transaksie plaasgevind het tussen ons, dat ek besluit het om die besonderhede wat daar staan op hierdie dokument aan te bring.

Wat het u daarna met die dokument gedoen? -- Ek het dit daarna toe gehou as my eiendom.

In u laai of in u sak? -- Ek het 'n beursie by my gehad. Dus het ek altyd hierdie kaart in hierdie beursie van my gehou. (20)

Is dit 'n portefeulje wat jy in die bosak van jou baadjie dra? -- Ja, dit is reg.

'n "Wallet"? -- Ja.

MNR. JACOBS : Sal u met my saamstem 'n mens sal so 'n ding gedurig net saam met jou dra soos hierdie bewysstuk as dit vir jou belangrik is? -- Ja, ek het dit daar vir my gehou omdat dit belangrik was vir my.

En vir een rede waarom dit belangrik is dat jy dit byderhand het as jy die vergaderings van die Release Mandela Committee wil bywoon, dan kan jy vir hulle wys jy is 'n (30)

lid/...

lid daar? -- Nee, ongelukkig was ek nog nie genooi om by enige vergadering te wees deur hierdie mense nie, maar ek sê dit was vir my belangrik gewees omdat ek daarvan gehou het as my eiendom. Een van die redes hoekom ek daarvan gehou het, is ek hou daarvan om ander tale te leer en dit bevat meer as een taal. Partykeer as ek tyd het, het ek dit gelees en nagegaan om h taal te leer deur middel van gebruik te maak van hierdie kaart.

As jy dit net wou gehad het om te leer en tale te leer, hoekom het jy jou besonderhede op hom ingevul? Jou adres(10) en besonderhede? -- Dit was met die doel dat indien ek dit verloor om wie dit ook al optel in staat te stel om dit terug te besorg aan hierdie adres en dat ek nou hier geskryf het en gesê het dat ek die kaart geneem het omdat ek iets wou geleer het, is eintlik nie een van die dinge wat h mens baie belangrik kan beskou nie.

K794

Nou wat beskou jy dan as baie belangrik, hoekom die dokument vir jou belangrik is? -- Dit was vir my belangrik gewees omdat ek geld betaal het met die doel om by te dra vir die invordering van die gelde en tweedens dat ek (20) eintlik die beroep ondersteun wat hier gemaak word "I support the call for the release of Nelson Mandela and all other political prisoners".

As ek u getuienis reg verstaan het, het u in hierdie tyd op 12 Junie 1984 permanent in Johannesburg gewoon? -- Ja, ek het permanent in Johannesburg gebly.

Hoekom sit jy dan nie jou Johannesburg adres in as jy wil hê die mense moet dit terugstuur na jou as hulle dit optel nie? Hoekom sit jy jou Sebokeng adres in? -- Ek het besluit op hierdie adres, want dit is my moeder se adres. Eintlik(30)

is dit my permanente adres.

So, is dit eintlik jou adres hierdie een? -- Daar is n verskil hierso. Hierdie is my permanente adres. Indien dit miskien gesê word om daardie plek te ontruim waar ek tans woonagtig is, dan moet ek teruggaan na hierdie adres toe. So, dit is die enigste adres waar ek in staat is om na toe terug te keer.

Ek wil dit ook aan jou stel dat hierdie adres is gegee omdat u baie meer aktief en baie meer in die Vaal was as wat u vir die Hof hier gesê het? -- Daar bestaan nie so iets (10) nie.

HOF : Wat staan hier, want dit is baie dof?

MNR. JACOBS : Ek sal dit vir die Hof lees en hy kan dit miskien bevestig. Die nommer wat daar gegee word by adres ek weet nie of die naam uitkom duidelik nie, Tseko Nkoli. Is dit reg, dit is wat daar staan by die naam? -- Ja, dit is reg.

HOF : Is dit nie verkeerd gespel nie?

MNR. JACOBS : Ek het na dieselfde ding gekyk. As n mens na sy handtekening kyk onder-... (Hof kom tussenbei) (20)

HOF : Ek vra vir die getuie. -- Dit is verkeerd gespel, ja.

Hoe spel u u eie naam verkeerd? -- Ek het n probleem met die spel van hierdie naam. Ons het die ou en nuwe manier van spel in my taal. Gewoonlik in die ou outografie skryf ons n "d" met n "l", maar partykeer in plaas van "l" gebruik ek n "d", wat dieselfde is as n "l" in die taal wat ek hier geskryf het.

Wat is die adres? -- 18909 Zone 14 Sebokeng 1982.

MNR. JACOBS : Wat is die 1982? -- Dit is die poskode.

Die "date of issue" wat hier ingevul is is 12/6/84. (30)

Is/...

Is dit reg? -- Dit is die datum wat ek hier geskryf het.

h Ander rede hoekom hierdie kaart vir jou so belangrik is en hoekom jy hom by jou gedra het, is omtrent hierdie "important dates in the struggle"? -- Ja, ek is daarvan bewus wat die datums hier beteken. Ek stem nie saam met die stelling wat gemaak word dat dit belangrike datums is nie, want van die datums wat hier genoem word, is datums wat nie goeie geheue is nie. Dit is datums wat te doene het met gebeure wat nie goeie gebeure was nie.

HOF : Bedoel u nou iets wat h mens al vergeet het of (10)
iets wat h slegte ding is? -- Sad days.

MNR. JACOBS : Hoeveel van hierdie dae is van die herdenkings-
dae wat belangrik is in die stryd, "in the struggle"? --
Die datum van 8 Januarie 1912 het ek nie h goeie kennis van
nie, behalwe van wat ek daarvan lees. Die datum van 30
Januarie 1981 weet ek ook nie van nie.

Is dit nie twee dae wat julle herdenk op herdenkings-
dienste nie?

HOF : Kon ek net verstaan wie is "julle", want as ek die
antwoord het "ons", dan weet ek nog nie wie "ons" is nie. (20)

MNR. JACOBS : Die Swartmense wat deelneem aan die stryd
en in die verskillende organisasies waarvan, toe jy in COSAS
was, COSAS ook gehou het? -- Terwyl ek h lid was van COSAS
was niks gedoen met betrekking tot hierdie datums nie.

HOF : Moet hulle nou nie almal een vir een vat nie. Sê maar
net vir ons as u dit so deurkyk watter is nou dae waarop daar
iets gedoen word of waarop iets herdenk word? -- 21 Maart,
16 Junie. Dit is die twee dae wat ek van weet. As u verder
onder kyk waar September geskryf staan, daar is iewers waar
ek met h gewone pen geskryf het die syfer 3 en dan verder (30)

geskryf/...

geskryf "Vaal unrest". Ek sê dit is nou die datums waar daar herdenkingsdienste gehou moet word, dat daar gebid moet word met die oog daarop dat daar herdenk word die mense wat oorlede is, want volgens my, die mense wat hulle lewens hier verloor het, was ongelukkig gewees. Dit is hoekom ek nou in my gedagte die gedagte het dat sulke mense herdenk moet word en dus namens hulle gebid moet word.

MNR. JACOBS : 16 Desember, is die nie ook 'n dag wat herdenk word as 'n dag, 'n belangrike dag in die stryd nie? -- Ek weet nie wat daardie dag beteken nie. Al wat ek van weet is dat(10) daardie dag 'n vakansiedag is.

Is dit 'n dag wat julle herdenkingsdienste hou en dienste hou in COSAS, toe jy 'n lid van COSAS was? -- Nee, ons het nie herdenkingsdienste gehou op hierdie datums nie.

Of vergaderings daardie dag? -- Nee, ek kan nie onthou nie.

Is dit nie so nie dat 16 Desember word genoem en herdenk as "Heroes Day" omdat dit eintlik Mkhonto we Sizwe Day is en die "heroes" wat daar geloof word is die mense van Mkhonto we Sizwe? -- COSAS het nog niks gesê oor hierdie datum nie.(20) en nog nooit gesê of daar enige herdenkingsdienste gehou moet word, hetsy vir die stigting van Mkhonto we Sizwe of vir enige ander doel nie en ek sien nie 'n rede daarvoor nie.

Sê jy 3 September het jy spesifiek self ingeskryf in hierdie dokument in? -- Ja, dit is so.

So dat die onluste in die Vaal bejeën jy as 'n belangrike dag in die stryd van die Swartmense? -- Ek sien hierdie dag as een van die dae wat deur my beskou word as slegte dae, want my gevoel is dat wat dié dag daar plaasgevind het, moes eintlik nie plaasgevind het nie.

(30)

Maar/...

Maar jy ontwyk die vraag. Dus, jy het dit ingeklassifiseer hier onder die opskrif "Important dates in the struggle" en jy ag dit as 'n belangrike dag in die stryd? -- Die geskrif hier van "Important days in the struggle", ek verskil daarmee want van die datums wat daar genoem word onder die onderhoof sien ek nie as belangrike datums nie. Miskien sal dit wees omdat ek nie goed verstaan wat bedoel word hier met die gebruik van die woorde "important days in the struggle" nie.

HOF : Weet u was is "the struggle"? -- Ek weet nie presies wat dit is nie, maar my verstandhouding daarvan is dat (10) dit is 'n manier waarop mense probeer om hulle lewens te verbeter. Byvoorbeeld, terwyl ek nog 'n skolier was, het ek mense gehoor sê "they struggle in order to make it in passing examinations." Dit is in daardie sin wat ek die woord "struggle" verstaan.

MNR. JACOBS : COSAS was 'n politieke organisasie, is dit reg, waaraan jy behoort het? -- Ek sou COSAS op die volgende manier beskryf het "Partially political."

En as 'n politieke organisasie het COSAS deelgeneem aan 'n stryd vir die vryheidverkryging van al die Swartmense (20) soos dit gestel word in hierdie politieke organisasies? -- In my tyd gedurende die tydperk wat ek 'n lid was van COSAS was niks gedoen om die stelling wat u nou gemaak het hier te regverdig nie.

Maar dit was gesê, dit was die beleid van COSAS gewees dat hulle deelgeneem het aan 'n vryheidstryd om die bevryding van die Swartmense, die sogenaamde bevrydingstryd? -- Wat ek verstaan het wat die doel van COSAS was om die volgende te bereik, 'n vrye onderwys, is een, tweedens dieselfde standaard van onderwys wat gegee moet word. (30)

Maar/...

Maar ek stel dit aan u COSAS het verder gegaan as dit?

-- Ek weet nie daarvan dat COSAS verder as dit gegaan het en hoe ver nie, maar in my tyd by die area waar ek was, het ons te doene gehad met die probleme wat die studente van daardie area geraak het.

Ek sal terugkom hiernatoe. Ek wil dit net aan u verder stel van hierdie "struggle" wat u hierso noem en wat hier genoem word in die dokument wat u sê, het u - en dit het u nie netnou my vraag beantwoord nie, u het 3 September as 'n belangrike dag beskou in die "struggle", nie as 'n treurige(10) dag nie, maar as 'n "important" day. U het hom daar ingeklassifiseer as 'n belangrike dag? -- Nee, ek beskou hierdie dag as 'n baie slegte dag in die gebeure wat daar plaasgevind het op hierdie dag. Dus my siening van hierdie dat is dat ek moet of by die huis bly of by die mense gaan aansluit waar hulle besig is om te bid in die kerk met die oog daarop dat ek herdenk wat daar gebeur het. Omrede ek op die 3de daar was en toe later verneem het wat daar gebeur het, het dit my, as 'n persoon, gevoelens geaffekteer.

En jy het hom hier ingeskryf as 'n belangrike dag (20) van die stryd nie om eksamens deur te kom, 'n "struggle" om eksamens deur te kom nie? -- Nee, maar toe ek dit genoem het, het ek 'n voorbeeld gemaak van wat ek verstaan onder die gebruik van die woord "struggle". Ek weet nie hoe ander mense dit verstaan nie. Dit is my verstaan van die gebruik van die woord.

As dit net 'n voorbeeld is, wat is dan die werklike betekenis van die woord "struggle" volgens jou siening daarvan? -- Ek sê ek verstaan dit op hierdie manier. Ek weet nie wat die skrywer hier in gedagte gehad het nie, maar dit is (30)

wat/...

wat ek verstaan, dat dit datums is wat belangrik beskou word deur mense wat iets probeer het om iets te bereik van wat hulle wou gehad het.

Sal jy saamstem dit is belangrike datums van 'n politieke sin? -- Dit kan so wees, ja.

Maar dit is so, volgens wat dit hier staan. Dit is nie wat dit kan wees nie. Ek stel dit aan jou soos dit hier staan is dit belangrike datums in 'n politieke sin? -- Ek sê dit kan so wees, want alleenlik die skrywer hiervan sal beter kan sê wat dit is. (10)

U wil tog werklik nie hê die Hof moet glo dat jy kan nie sê dit is nie waar jy deelgeneem het aan politieke aktiwiteite nie? Waar jy spesifiek deelgeneem het ook aan herdenkingsdae wat hier ingesluit is? -- Ek ontken nie dat ek al 'n herdenkingsdiens bygewoon het op die datums soos hier vervat nie en ek ontken nie dat ek ooit aan 'n organisasie behoort het nie. Wat ek sê is dat ek is net nie in staat om te verduidelik wat die skrywers wou oorgedra het aan die lesers toe hulle hierdie onder die hoof van die "important dates" van die "struggle" geskryf het nie. Miskien het ek (20) 'n kans gehad sou ek hulle gevra het, byvoorbeeld om 'n vergadering by te woon. Dan sou ek hulle gevra het daaromtrent. Dan sou ek miskien hier in hierdie hof in staat gewees het om 'n goeie antwoord hieromtrent te kan gee.

Dit is seker so dat u het verskeie herdenkingsdienste bygewoon? -- Die enigste herdenkingsdienste wat ek kan onthou wat ek bygewoon het, is die een van Maart en die een van Junie, die 16de.

HOF : Van watter jaar? -- Dit was in die jaartal 1980 toe ek in Maartmaand 'n herdenkingsdiens bygewoon het. (30)

ASSESSOR (MNR. KRUGEL) : 21 Maart? -- Ja. Dit was in die jaar 1980 wat ek 21 Maart se herdenkingsdiens bygewoon het. Ek was van voorneme om die een van 16 Junie by te woon, maar dit was verban gewees, dus het ek dit nie bygewoon nie. In die jaar 1981 was ek nie in staat gewees om beide die herdenkingsdienste by te woon nie.

HOF : U het nie een van hulle bygewoon nie? -- Nie een van hulle het ek bygewoon nie.

En dit is al? -- In die jaar 1983 is ek na die Metodiste Kerk toe waar h biduur gehou was. Dit was in Johannesburg. (10) Dit is die twee wat ek kan onthou wat ek bygewoon het.

En dit was Junie of Maart? -- Junie.

GETUIE STAAN AF.

HOF VERDAAG .

HOF HERVAT.

SIMON TSEKO NKOLI, nog onder eed

MNR. JACOBS : U Edele, beskuldigde nr. 21 is gedurende die pouse dokter toe.

VERDERE KRUISONDERVRAGING DEUR MNR. JACOBS : Mnr.Nkoli, ek sien u het genoem van 1980, 1981 en dan 1983. Wat van 1982? Het jy enige herdenkingsdienste bygewoon? -- In die jaar (20) 1982 Junie het ek nie h herdenkingsdiens bygewoon nie, maar ek kan nie meer onthou oor Maartmaand nie.

Sal u met my saamstem, hierdie sogenaamde herdenkingsdienste is almal politieke vergaderings? -- Ja, die vergaderings word georganiseer deur organisasies wat ek noem "political organisations".

Die toesprake wat op die vergaderings gehou word is heeltemal net politieke toesprake? -- Ja, dit hang af by watter vergadering die toespraak gemaak word, maar ek beskou dit as politieke toesprake. (30)

Die/...

Die 21 Maart vergaderings is gewoonlik vergaderings waar die mense wat in Sharpeville in 1960 doodgeskiet is, dat daar politieke toesprake gemaak word dat hulle in die vryheidstryd van die Swartmense gedood is deur die Blankeregering? -- Ja, dit is presies wat daar gesê word in die toesprake.

En dat ook die vryheidstryd wat dan gevoer word waarna verwys word daar is die vryheidstryd van die Swartmense om hulle sogenaamde vryheid te bereik deur h regering van die Swartmense te stig? -- Nee, ek verstaan dit op dié manier, dat daar gepraat word van die vryheidstelling dat mense in(10) vryheid sal gaan lewe.

Hoe lewe h mens in vryheid? -- Die mense wat so leef is mense wat by h plek leef waar daar nie h verskil gemaak word as gevolg van die kleur of rasse nie en mense wat dieselfde tipe onderwys kry en mense wat in staat is om orals te gaan woon net soos hulle wil en mense kan gaan werk by enige plek waar hulle verkies. Selfs na plekke toe kan gaan om die lewe te gaan geniet volgens hulle keuse. Dit is wat ek van praat as ek nou praat van die vryheidstelling.

En ook h vryheid van keuse van die Regering wat hulle(20) wil hê, stemreg? -- Ek sê die vryheid moet behels dat hulle in staat kan wees om te gaan stem vir h persoon wie hulle op besluit het.

In die sentrale parlement? -- Ja, dit is my siening van dinge, hoe dinge gedoen moet word of gedoen behoort te word.

En die "struggle" waarna hier in AV1 verwys word, is presies hierdie "struggle" wat jy nou vir die Hof beskryf het? -- Alleenlik die skrywer hiervan sal weet watter stryd hy hier na verwys. Dit kan wees dat dit miskien die een is wat ek beskryf het. Ja, ek sê byvoorbeeld wat die datum (30)

van/...

van die 21ste betref, dat dit was 'n dag waar die mense die gevoelens bekendgemaak het aangaande die bewysboeke en ongelukkig is daar op hierdie dag met daardie gebeure mense dood. So, ek beskou dit dat dit 'n dag is wat belangrik is herdenk te word.

HOF : U praat van 21 Maart? -- Ja.

MNR. JACOBS : Geld dieselfde ook vir 16 Junie? -- Dit is so.

En dan 3 September wat jy self ingeskryf het beskou jy ook as 'n belangrike dag in hierdie stryd wat jy nou genoem het? -- Ja, op dieselfde manier, toe ek hierdie inskrywing(10) hier gemaak het, het ek alreeds besluit en gevind dat dit 'n belangrike dag is en ek het gevind dat daar mense dood is onverwags, dat hulle gedood kan word. Ek vind dit as 'n belangrike datum want hierdie dag het die mense bekend gemaak wat hulle gevoelens was met betrekking tot die verhoogde huur. Ongelukkig aan die einde het die mense daar lewens verloor.

En die onluste in die Vaal is ook 'n belangrike dag in die stryd omdat daar ook die raadslede doodgemaak is op daardie dag? -- As ek praat van ongelukkig het mense hulle lewens(20) verloor, sluit dit in die raadslede wat ook dié dag lewens verloor het.

En die raadslede het nie ongelukkig hulle lewens verloor nie. Daar is doelbewus na hulle huise toe gegaan en daar is hulle aangeval in hulle huise? -- Ek weet ongelukkig nie van die doelbewus wat hier na verwys word nie. Ek is wel daarvan bewus dat van die raadslede gedood is as gevolg van die aanvalle deur groepe, maar ek dra geen kennis daarvan dat dit beplan was, of daar enige besluit in die vorm van 'n resoluë geneem was om dit aan te gaan nie.

(30)

En/...

En n ander aspek wat ek net aan jou wil stel, ongelukkig, soos jy dit stel is die mense nie aan die einde van die onluste dood nie, maar juis aan die begin van die onluste is die raadslede gedood? -- Ek sal nie met u staan en stry oor die gebruik van die woorde aan die einde of aan die begin van die hele ding nie. Al wat ek hier vir die Hof sê is dat op hierdie datum hierdie dag het mense hulle lewens verloor.

Ek sien een van die ander dinge wat hier genoem word as n belangrike dag in die stryd is die stigting of die loodsing van UDF? -- Ja, dit is so. Dit staan so daar (10) geskryf. Ek sien dit so.

En jy beskou dit ook as n belangrike dag die loodsing van die UDF in die stryd? -- Ek het nog nie n besluit geneem of ek dit nou beskou as n belangrike dag of datum onder die UDF stryd nie. Ek aanvaar dit as enige ander dag.

Dit is n eienaardige antwoord want jy was self by die loodsing van UDF op 20 Augustus 1983? -- Ja, ek was daar gewees.

Wie het jy daar gaan verteenwoordig? Watter organisasie? -- Ek het geen organisasie daar gaan verteenwoordig (20) nie. Ek het net daarheen gegaan as n persoon.

Is dit nie so dat jy nog altyd daardie dag aan COSAS deelgeneem het nie? -- Nee, in die jaar 1983 was ek nie bemoeid met COSAS nie.

Wie van die beskuldigdes was saam met jou op die UDF se stigtingsvergadering?

HOF : Beperk u die vraag tot die beskuldigdes uit die Vaal of al die beskuldigdes?

MNR. JACOBS : Ek sal spesifiek met die Vaal eers handel. -- Niemand van hulle was saam met my daar nie. Ek was in die (30) geselskap/...

geselskap gewees van die mense van Johannesburg.

Was beskuldigde nr. 22 op daardie stigtingsvergadering?
-- Ek het hom nie gesien nie. Daar was baie busse gewees en ek was in die geselskap gewees van die mense van Johannesburg.

En Gcina Malindi, beskuldigde nr. 5, was hy op daardie vergadering? -- Ek glo nie dat hy daar was nie. As hy daar was, sou ek hom gesien het.

Beskuldigdes nrs. 19, 20 en 21 was natuurlik daar. Is dit reg? -- Ek het hulle nie daar gesien nie.

Is dit moontlik dat jy daardie konferensie of daardie(10) stigtingsvergadering bywoon en jy kon nie beskuldigdes nrs. 19, 20 en 21 daar sien nie? -- Ja, dit kan gebeur, want toe ons daar kom, was ons voorgekeer en gesê dat net die afgevaardigdes sal toegelaat word in die saal, as gevolg waarvan ek en my vriende toe weggegaan het, dit is die vriende van Kaapstad om nou ander dinge te gaan doen.

Dit is vir my baie eienaardig, want die vergadering was oor twee dae gevoer en in hulle geskryfte roem UDF daarop dat dat so baie, nie net afgevaardigdes nie, ander mense gewees het wat daardie vergaderings bygewoon het? -- Ja, dit is wat(20) u sê, maar nadat ons daar gekom het, nadat ons eers verdwaal het in Kaapstad met die bus, het die mense daar wat die toegang beheer het vir ons gesê dat alleenlik die afgevaardigdes toegang verleen word. Hulle het aan ons verduidelik dat daar 'n "rally" gehou gaan word, ons kan by die "rally" teenwoordig was.

Was u toe teenwoordig? -- Nee, ek het nie gegaan nie.

Hoekom nie? -- Ek was al beïnvloed deur dit wat ek daar geniet het by die plekke waar ek aangedoen het.

Jy doen al die moeite om spesiaal van Johannesburg af(30)

te/...

te ry Kaapstad toe om die stigtingsvergadering by te woon en dan noem jy dit nie?

HOF : Sou dit nie ook vir u 'n moeilike keuse gewees het nie, tussen die "rally" in Kaapstad nie?

MNR. JACOBS : Ek weet nie. -- Ja, dit is so, maar u weet, dit is baie moeilik vir 'n mens om party van die dinge te aanvaar. Na ek my tyd spandeer het en soontoe gery het en met my aankoms daar word ek gesê net die afgevaardigdes word toegelaat, beteken dit dus dat ons moet wag tot die tyd van die "rally". In daardie wagtyd het ek goed gedink en gesien(10) nee, man, ek moet iewers heen gaan waar ek die lewe kan geniet om myself bly te hou. Ek het toe besluit om pad te gee.

Jy sien, dit is vir my eienaardig dat jy ry twee keer Kaap toe na vergaderings wat daar gehou word, die een van die UDF se "launch" en dan hierdie ander een van COSAS se konferensie, dog jy woon hulle nie een by nie?

MR BIZOS : No, he did not go to the conference according to his evidence - to the COSAS conference. He said he had other business there and whilst at other business, he visited the conference. There is a distinction between the two (20) in his evidence.

MNR. JACOBS : Wat het jy in Kaapstad gaan maak toe die COSAS konferensie aan die gang was? -- Ek moes my ander vriende daar ontmoet het saam met wie ons besig was om 'n organisasie van ons eie te stig. Dit het ons in gedagte gehad om te noem MACT.

ASSESSOR (MNR. KRUGEL) : Waarvoor staan dit? -- Men of All Colours Together.

MNR. JACOBS : Het jy afgereis Kaapstad toe met al die afgevaardigdes van COSAS? -- Ja, daar was afgevaardigdes (30)

van/...

van COSAS wat saam met ons was.

HOF : Die bus was gereël vir die doel van die COSAS kongres?

-- Dit is so, ja.

MNR. JACOBS : Jy erken darem jy het die vergadering bygewoon van Soweto Youth Congress op 31 Julie 1983? -- Ja, ek het.

Op die vergadering was daar heelwat gesê oor hierdie sogenaamde vryheidstryd. Is dit reg? -- Baie dinge was daar gesê, maar ek het nie 'n onafhanklike herinnering van wat daar gebeur het nie.

Ek wil dit aan jou stel dat daar is heelwat gesê oor (10) die stryd waarin die Swartmense gemoeid is, is 'n vryheidstryd en dit is die stryd wat algemeen aanvaar is as die vryheidstryd? -- As gevolg van wat ek alreeds gesê het dat ek nie onafhanklik kan onthou wat alles daar gesê was nie, kan ek nie met u daar stry nie.

Ek wil net vir jou 'n paar plekke voorlees uit BEWYS-STUK V25 wat 'n transkripsie is van daardie vergadering. -- Sal u vir my 'n kopie leen sodat ek ook kan kyk waar u lees?

Ek het ongelukkig net een kopie. Ek sal vir u lees.

HOF : Miskien kan ons een daar leen. Het u 'n ekstra een, (20) mnr. Bizos?

MNR. BIZOS : Nie 'n ekstra een nie, maar ons ken die storie.

MNR. JACOBS : Kyk op bladsy 5 heel onder aan. -- Ja, ek het dit.

Ek sal vir jou lees "It is a historic moment because here, as the MC has already said we are seeing a process of harnessing the youth in the country in Soweto and to play a major role in the struggle for emancipation." Dit is wat Kunick Ndlovu gesê het op die vergadering.

HOF : Dit is nie wat Kunick Ndlovu gesê het nie. Dit is (30)

wat Eric Molobe gesê het. -- Ek kan nie meer onthou wie gepraat het nie. Selfs dit wat u nou hier vir my lees, die woorde self, kan ek nie meer onthou nie. Dus sal ek nie daarvoor stry dat dit nie gesê was nie.

MNR. JACOBS : Op bladsy 20 word daar verwys in die onderste paragraaf ook weer na "Chairman addresses audience." Daar word verwys na "Braam Fischer, starworts in our revolution whose contribution to the struggle to this day has not been equalled regardless of the fact that Braam Fischer was the son of an Afrikaner Aristocrat. His contribution to our (10) struggle for liberation still remains." Kan jy dit onthou? -- Nee, ek kan dit nie onthou nie, maar ek betwis nie dat dit wel daar gebruik was nie.

Op bladsy 21, kan ons daar in die middel kyk, die sesde reëltjie van bo af "The unlimited stamina and keenness to work of men like Sisulu, O.R. Thambo, Nelson Mandela, Duma Nokwe, starworts of our revolution, may be possible for us to go into campaigns like the 1952 defiance campaign and many other campaigns have followed in the fifties and it is of interest to know that the young chaps of those days used (20) to run around, organising all those things, are today the giants of the starworts for revolution." Stem u saam dit is gesê? -- Dit staan so geskryf in hierdie transkripsie. Ek kan nie daarmee stry nie.

So, u kan ook nie stry nie, dat die algemene persepsie, die algemene begrip van die vryheidstryd is 'n stryd teen die Blankeregering om sogenaamde vryheid te verkry? -- As u stelling bepaal word op dié vergadering wat u na verwys, sal ek sê dit is u stelling wat u maak, maar ek as 'n mens sê my gevoel is dat apartheid as 'n regering word nie deur my (30)

aanvaar nie, of die bevordering daarvan word nie deur my aanvaar nie. Ek is net nie in staat om namens die organisasies enige kommentaar daaromtrent te lewer nie.

Ek wil net n paar ander aspekte aan jou stel ook. Gedurende Meimaand 1979 het jy n uitnodiging gekry na n konferensie in Wilgerspruit omtrent die stigting van die beweging COSAS? -- Nee, ek het nie.

Het jy nie daardie konferensie gaan bywoon nie? -- Nee, ek het nie die konferensie bygewoon nie.

Was jy in Pretoria gearresteer op n stadium? -- Ja, (10) dit het gebeur.

Wanneer was dit gewees? -- As ek nog reg onthou was dit in Aprilmaand in die jaar 1980.

Was jy toe aangehou vir n tydperk? -- Ja, vir sewentien dae.

Waarvoor was jy gearresteer gewees?

MR BIZOS : With the greatest respect, we had this before and I did not object until it became clear. I do not know what is behind this, but I would just note a note of caution. A person comes to defend himself on an indictment for a (20) particular period. We have had in this case cross-examination of persons about their beliefs, about their doings, about their arrests on other matters. I am not unmindful that under certain circumstances it may be admissible, but so far all these attempts have been for no other reason other than to possibly prejudice Your Lordship and the learned assessor and I would ask that these sort of questions be put with due caution and the fairness that a criminal procedure guarantees an accused person.

MNR. JACOBS : Die bedoeling is nie om u bevooroordeeld (30)

te/...

te maak teen die getuie nie. Ek toets sy geloofwaardigheid op dié aspek dat hy vir ons vertel dat hy eintlik redelik onaktief was in die politiek en dit is waarop ek dit aan hom stel en ook met die stigting van COSAS. My submitisie is dat hier - nie die stigting nie, die stigting van COSAS in die Vaal het dit direk te doen gehad waar hy dan op die eerste keer gekies was.

HOF : Ja, maar hy het vir u gesê hy was gekies op die stigtingsvergadering of in Oktober van daardie jaar van die stigting was hy gekies as sekretaris. Wat wil u dan nog (10) verder weet?

MNR. JACOBS : Die wyse waarop hy gekies is en wat aanleiding gegee het tot die kiesing daarvan kom uit hierdie aspek uit. Dat dit nie op 'n herdenkingsdiens gevra was nie.

HOF : Wel, vra die vra, laat ons kyk waarnatoe dit gaan.

MNR. JACOBS : Ek sal dit so stel, was jy daar om 'n sekere standbeeld of grafsteen te gaan onthul?

HOF : In Pretoria?

MNR. JACOBS : In Pretoria? -- Nee.

Wat het jy in Pretoria gaan doen en wie is saam met (20) jou na Pretoria uit die Vaal uit? -- Ek is alleen Pretoria toe en by 'n vriend van my gaan kuier.

Ek wil dit aan u stel dat op daardie stadium was u die sekretaris van COSAS gewees?

HOF : Wat is daardie stadium?

MNR. JACOBS : Toe u in Pretoria gearresteer is? Ek is jammer, dit was voor die stigting van die COSAS in die Vaal.

HOF : Wat stel u nou aan die getuie? Het dit iets te doen met die arres of het dit nie iets te doen met die arres nie?

MNR. JACOBS : Dit het te doen met die arres. Ek wil dit (30) aan/...

aan u stel dat u gearresteer was omdat u 'n sekere persoon wat skuldig bevind was as 'n terroris se graf gaan regmaak het en gaan skoon maak het saam met ander mense? -- Dit is iets nuuts vir my. Ek het nog nooit 'n graf gaan skoon maak nie.

Ek wil dit aan u stel dat daar toe 'n optog daar was daarna en dit is waarvoor u gearresteer was in Pretoria? -- Nee, ek was op pad na Denneboom stasie toe tydens my arrestasie.

Ek wil dit aan u algemeen stel dat u baie meer poli-(10) ties aktief was in die Vaaldriehoek as wat u hier vir die Hof te kenne gegee het in jou getuienis-in-hoof? -- Kyk, as u stelling beperk is tot die twee jare, dit is 1980 en 1981, veral na Oktober 1980 tot en met einde 1981, kan ek tot 'n mate met u saamstem, want in daardie tydperk was ek betrokke gewees met COSAS en daar is sekere dinge wat ek uitgevoer het.

Nee, ek stel dit u was nie net daardie tyd nie, maar ook tot en met jou arrestasie was jy aktief gewees in die politiek? -- Nee, dit is nie so nie. (20)

Kan u onthou dat in September 1983 het mense van UDF 'n vergadering gehou in die Vaal wat jy bygewoon het? 18 September 1983 in die Rooms Katolieke Kerk Small Farms, Evaton? -- Nee, ek was nie daar nie.

En ek stel dit aan jou jy het selfs deelgeneem aan daardie vergadering?

HOF : Wat bedoel u met deelneem? Gepraat?

MNR. JACOBS : Gepraat? -- Nee, in die jaar 1983, September-maand het ek geen UDF vergadering bygewoon nie.

Op daardie spesifieke vergadering, stel ek dit aan (30)
jou/...

jou het beskuldigde nr. 19 nog h toespraak gelewer daar in die Vaal? -- Nee, ek kan geen kommentaar lewer oor daardie vergadering nie, want ek was nie daar nie. Ek hoor vir die eerste keer van u omtrent daardie vergadering.

Ek wil dit aan u ook stel dat op 12 en 13 November 1983 het jy in die Rooms Katolieke Kerk Small Farms, Evaton h nagwaak of h herdenkingsdiens bygewoon ter ere van die studente wat in Zoeloeland gesterf het? -- Nee.

En dat jy het daarso h toespraak gelewer op daardie nagwaak? -- Nee, ek het geen so h diens bygewoon in November (10) 1983 nie.

Ek wil dit ook aan jou stel dat jy h vergadering bygewoon het op 19 November 1983 in die Rooms Katolieke Kerk Small Farms, Evaton waar dit sou gegaan het oor die stigting van h Vaal Youth Congress? -- Ek was nooit by so h vergadering gewees nie. Ek het nie eers te hore gekom dat daar so h vergadering gehou gaan word waar die stigting van so h tipe organisasie gaan plaasvind nie.

En jy het selfs, ek stel dit aan jou, deelgeneem aan daardie vergadering? -- Daar bestaan nie so iets nie. (20)

En daarna weer op 23 November 1983 was daar weer h COSAS vergadering gehou en dit was by jou huis gehou? -- Nee, in 1983 was ek nie met COSAS betrokke nie.

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Dit is darem dat ek dit aan u stel. Dat u vir die Hof vertel u was nie betrokke gewees by COSAS nie, is nie die waarheid nie? -- Ek wil vir u sê dat indien dit inligting is wat u daar het, waarop u nou u stellings baseer, is dit baie verkeerde dinge wat u gestel het. Sulke goed soos deur u gestel het glad nie plaasgevind nie. Dit verbaas my en ek weet nie eers daarvan nie. (30)

Ek/...

Ek stel nog een aan u dat op 8 Januarie 1984 is daar 'n COSAS vergadering gehou waarop jy aan die mense verduidelik het omtrent - waar jy op die vergadering aan die mense verduidelik het omtrent die Vaal Youth Congress wat gestig word, wat hulle pligte is en hoe hulle saamwerk met COSAS? -- Nee, daar is nie so iets nie.

Het jy iets te doen gehad met die "Detainees Parents Support Committee"? -- Ek het niks daarmee te doene gehad nie.

En ek stel aan jou op 12 Maart 1983 het jy ook 'n vergadering bygewoon in die Rooms Katolieke Kerk Small Farms Evaton? -- Word dit beweer dat daardie vergadering die Detainees Parents Support Committee se vergadering was?

Ja en dat jy daarmee te doen gehad het en dat jy ook 'n spreker was op daardie vergadering? -- Ek het 'n vergadering bygewoon in Maartmaand. As my geheue nog reg is, het dit te doene gehad met die herdenkingsdiens van Sharpeville. Behalwe daardie een het ek geen ander vergadering bygewoon nie.

En het u lateraan in Februarie - het jy al in Februarie (20) 1981 op 'n Detainees Support Committee vergaderings bygewoon in Johannesburg?

HOF : Detainees Parents Support Committee?

MNR. JACOBS : Die verkorting is DESCOM? -- Ja, DESCOM. Nee, daardie tyd het DESCOM nog nie bestaan nie.

En dat Edith Lethlake saam was op daardie vergadering? -- Luister nou mooi wat ek sê. In 1981 na ek vrygelaat was in Juniemaand by die tronk, het ek eers in Januariemaand daarna dit te hore gekom dat daar so 'n organisasie bestaan het, naamlik die Detainees Parents Support Committee, (30)

naamlik/...

naamlik DESCOM. Dit is die Detainees Parents Support Committee en DESCOM.

HOF : Waarvoor staan DESCOM? -- DESCOM is Detainees Support Committee. Ek het eers in Januarie 1982 daarvan begin hoor dat daar so iets bestaan het.

En wat is die verskil tussen die twee komitees? -- Ek het nie 'n goeie kennis daarvan nie, maar my siening, as ek dit nou moet vertolk is die volgende. Detainees Parents Support Committee het ouers wat betrokke is daarin. Die ander een DESCOM het vriende van die aangehoudenes betrokke. (10)

MNR. JACOBS : COSAS is 'n organisasie wat onder skoliere wat nog op die skool is ressorteer? -- In die tyd wat ek nog in COSAS was, het hulle lidmaatskap toegelaat dat skoliere sowel as die kollegestudente ook daar kan aansluit.

En in die Vaal, al die skole wat daar was, was hulle verteenwoordig op COSAS Vaal? -- Ek sal nie sê al die skole het verteenwoordigers gehad nie, maar wat ek wel kan sê is dat daar van die skole is in die Vaal wat lede was van COSAS.

Was dit beperk tot hoërskole of primêre skole? Wat was die posisie? -- In my tyd toe ek nog 'n lid was van COSAS (20) was dit beperk gewees tot die hoërskole en kolleges.

En was al die skoliere van 'n skool wat, noem dit dan geaffilieer was tot die tak in Vaal, COSAS Vaal, was die skoliere self lede van COSAS? -- Nee, dit was nie die posisie nie.

Die ledetal, was dit nie outomaties lede - skoliere van 'n skool wat lid is van COSAS, is ook al die skoliere is lede van die hele groot organisasie nie? -- Nee, dit is nie hoe ons gewerk het nie.

Hoe het julle julle lede dan gekry van COSAS? -- In die tyd wat ek die sekretaris was van COSAS, het mense my genader (30)

en/...

en vir my gesê dat hulle belangstel om aan te sluit as lede van COSAS. Dan het ek aan die mense verduidelik wat die prosedure is. Ons het lidmaatskapkaarte gehad waarvoor h mens 50c moes betaal het. Dit het ek ook aan hulle verduidelik. Eers na die prosedure gevolg is, sal daardie persoon dan h lid word van COSAS.

Ek wil aan u stel ten finale dat die feit dat jy aan die optog deelgeneem het was omdat jy nog aktief deelgeneem het aan die politieke aktiwiteite in die Vaal? -- Daar is nie so iets nie. (10)

En dat die dag van die optog het jy ook deelgeneem aan die voorpunt van die optog en die hele doel van die optog was gewees om op te tree teen die raadslede? -- Nee, dit is nie so nie. Dit is nie eintlik wat ek te hore gekom het nie.

En dat jy het deelgeneem aan die aktiwiteite by Caesar se huis en daarna het julle weer gaan hergroepeer en verder gestap?

MR BIZOS : The evidence is not that he took part, other than that he was present in the vicinity. (20)

HOF : U moet dit stel dat hy daar was.

MNR. JACOBS : Dat hy daar was? -- Daar is nie so iets nie. Ek het nie eers probeer om by Caesar uit te kom nie. Ek was aanhoudend die hele tyd deel van die optog gewees tot en met die uiteengaan van die optog.

Was dit die eerste keer dat jy te doen gehad het met h protesoptog? -- Ja, dit was die heel eerste keer dat ek deelgeneem het aan h optog.

In 1980, 21 Januarie 1980 - 21 Oktober 1980 terwyl jy sekretaris was van COSAS in die Vaal, was daar nie deur (30)

COSAS h optog gereël in die Vaal nie, in die omgewing van daardie tyd? -- Wat ek wel kan onthou wat betrekking het op die datum om en by soos u dit noem is dat COSAS beplan het om h optog te reël na die Administrasiekantore toe met die oog daarop om dit bekend te gaan maak aan die owerhede daar dat COSAS teen die verhoging van die huur was, maar dié besluit was nie deur die vergadering van ons aanvaar nie. Die vergadering het toe besluit toe die mense wat die vergadering daar bygewoon het die vergaderplek verlaat het om te sing en later in die nag het die polisie by my woning (10) opgedaag waar die polisie aan my gesê het dat ek deel gehad het of deel geneem het aan die optog wat gehou was, verwysende na die gehoor wat gesing het.

En die gehoor wat jy nou sê wat so gesing het, het ook geloop met plakkate? -- Ek weet nie daarvan nie. Die rede daarvoor is dat na die vergadering gesluit het, vroeg na dit, is ek weg. Dus het ek ander mense daar gelaat by die plek waar ons die vergadering gehad het. Wat in my afwesigheid daar plaasgevind het, weet ek nie.

Het u ooit in die tyd wat u in die Vaal was gehelp om (20) plakkate te maak? -- Nee.

Nooit nie? -- Ek heg nog nooit h plakkaat gemaak nie.

RE-EXAMINATION BY MR BIZOS : No questions.

• NO FURTHER QUESTIONS.

MR BIZOS : My Lord, the length of accused no. 3's cross-examination and the comparative brevity of this cross-examination has left us in a difficult position. We were hoping to get through at least one other accused, namely accused no. 16 during this session, but there is very little time/...

time left. There is this unfortunate event that he has gone off to the doctor. He is not a witness who is going to finish next week even if Your Lordship were to take some extra time as Your Lordship indicated that Your Lordship may have been prepared to do. Having regard to the fact that Your Lordship has fixed Monday as the date on which the bail application is to be argued, we are constrained to ask Your Lordship for an indulgence at this stage to adjourn the trial until Monday morning. There is no other short witness that we can call. The next witness that is going to be called (10) is going to be a particularly long witness and I also have this difficulty that neither Mr Tip nor I are going to lead him. So, that there will be a change of ... (Court intervenes)

COURT : But now who is going to lead him? .

MR BIZOS : Mr Chaskalson.

COURT : But is he not available tomorrow? Today is out because he has gone to the doctor.

MR BIZOS : Yes. I do not know precisely what - no, I am going to lead no. 16. So, if we start tomorrow with (20) no. 16 we will just get to a portion of his evidence-in-chief.

COURT : At least that will be on record.

MR BIZOS : But is it fair to allow a witness in the witness-box over the long vacation?

COURT : It does not so much if you give him the record at the end of the vacation.

MR BIZOS : We would submit with respect that there is an additional reason. We have arranged for Mr Molefe, accused no. 19, to be called on the first day of the resumption. (30)

He/...

He has been prepared for the witness-box by Mr Chaskalson and Mr Marcus. They have made that time available. We are going to be in difficulty if we call accused no. 16, because then we will have to continue during the period that they themselves have made available and I know that they are, particularly Mr Chaskalson is available for only the period that has been estimated that it would take to lead accused no. 19 who has to go through - Your Lordship knows the amount of documentation there is.

COURT : He would not wait for the cross-examination? (10)

MR BIZOS : No, he would not. As presently advised ... (Court intervenes)

COURT : He has not got that patience?

MR BIZOS : He has an arrangement which was made over a year ago and he has to be away towards the end of August. The evidence-in-chief is going to last well over a week and we have this problem that if we do start with accused no. 16 then we will have to continue with him and the time that as been set aside is going to throw the carefully drawn program out of joint, so to speak. So, that we would ask Your (20) Lordship to adjourn the trial until Monday. It is unfortunate that an hour and a bit today and tomorrow's hearing is going to be wasted, but we can use the time usefully to prepare the bail application and to get the papers and see what they are about and also to do a quick reply if one is called for.

HOF : Wat is u houding, mnr. Jacobs?

MNR. JACOBS : Dit tref my net dat mnr. Chaskalson en mnr. Marcus, die here wie op die oorkonde hier aangegee word as die leier van die span, van die verdediging en ook een van (30)

die/...

die advokate van die ding, dat hulle net op sekere tye beskikbaar kan wees. Ek sou dink in hierdie saak wat so lank al aangaan, waar ons nou al so baie tyd het dat hierdie mense darem seker ten minste beskikbaar sou wees het om voort te gaan met hierdie saak, dat ons nie sulke tipe oponthoude kry nie. Met alle respek, waar die Staat getuienis moes gegee het, kon ons aangegaan het en die getuienis gebring het al die pad. Mens sou verwag het dat die verdediging ook kon deurgaan en die getuies lei op 'n deurlopende basis. Ek wil nie graag moeilik raak en in die mense se weg staan nie, (10) maar ek dink darem ons verloor baie tyd as ons nou 'n hele dag môre verloor oor hierdie feit dat die getuies nie kan aangaan nie. Ons weet nie wat kan Maandag en Dinsdag aangaan nie, maar ek sou voorgestel het dat ons soveel getuienis neem as moontlik voordat ons begin met die reses.

COURT : I have this difficulty, Mr Bizos, the point taken by Mr Jacobs has some merit. One would expect counsel to be available during the trial, especially the leaders of the trial and the further difficulty arises, say for example the bail application takes only Monday, because we all have (20) read the papers and it would not be necessary to read to me pieces and parts of the application. Then we lose in fact tomorrow and we lose in fact Tuesday which would be utilised otherwise as a witness. Have you not got another short witness available which you can put in the witness-box this afternoon?

MR BIZOS : If we had such a witness available we would most certainly have called him and this is why we had no. 13 ...
(Court intervenes)

COURT : What about accused no. 14 for example and these (30)

people?

MR BIZOS : I think that we indicated in the opening that as presently advised he would not be giving evidence and the same with accused no. 22 which would be in the same sort of category. May I just reply to the question of the availability of Mr Chaskalson. In a case such as this, postponements are very often sought in order to prepare the defence case. One of the reasons why we have not asked for postponements is because we do work in teams and in order to assist each other for the proper running of the case (10) and Your Lordship must have noticed that there are different attorneys here at different times and we are here most of the time, but I submit having the services of the leader of the team in the manner in which we have of Mr Marcus, has really not impeded the progress of the case, but rather, I would submit, it has prevented us from being compelled to make applications for postponements for the purposes of preparation. The State was granted indulgences during the State case from time to time when they found themselves in a situation. We planned the case in a manner in which we (20) had hoped that accused no. 16 - we worked out that it days five or six days of cross-examination for each one of the accused and we planned that accused no. 16 would have been finished and we are going to appeal to Your Lordship to possibly even sit on Wednesday to finish accused no. 16, and this is how we had planned the case. We never anticipated that accused no. 3 having gone in on 3 June, would only finish on 24 June and that is really what has upset our planning. Our planning has been calculated to run the proceedings smoothly and I submit with respect that in the (30)

last six months it has run smoothly. We have not had reason to ask for Your Lordship any indulgence at all. It has run very smoothly indeed. We did not ask for any interruptions as the State did during the presentation of its case during afternoons or during days or from Thursday until Monday. What I am appealing to you what to do is this. That we have worked very hard in order not to have interruptions. Due to an unforeseen circumstance Mr Jacobs having been entitled to take the time that he did take with the cross-examination of accused no. 3, I do not want to debate that, but as a (10) result of that we find ourselves in a situation, calling accused no. 16 is going to spoil a carefully drawn up program as to how the evidence is going to be led and we are going to find ourselves in cross-examination taking the first week at any rate of all this which has been specially set aside for a specific purpose in the cross-examination of accused no. 16 and it has two major disadvantages. Firstly that he himself will be in the witness-box over a period of five weeks, during the vacation and this time will be taken up with this period and it will make it very, very difficult(20) for us to re-organise the time-table that we have. The probabilities are that although there is a theoretical possibility depending on the pace which obviously can be set by Your Lordship in relation to an argument on paper, that Tuesday may be wasted, but with the greatest respect having regard to the diligence with which we have been ready throughout this period, it is comparatively a small loss in relation to the numerous (sentence is not completed)

MNR. JACOBS : As u dit gaan uitstel na Maandag toe, dan sal ons sorg dat die borgpapiere wat ons môre voor 13h00 moet (30)

inhandig/...

inhandig dat dit by u huis afgelewer word. Mnr. Hanekom sal by u en die geleerde heer aflewer en ek neem aan dat mnr. Bizos sal seker mōre iemand hier kan hê dat ons dit by hulle kan kry.

MR BIZOS : Yes, we will arrange that.

CASE REMANDED UNTIL MONDAY, 29 JUNE 1987.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

I 2.12 Vol 245 p 13032-13088

SAAKNOMMER: CC 482/S5

DELMAS

1987-06-29

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST E

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

VOLUME 245

(Bladsye 13 032 - 13 088)

ISMAIL AYOB & ASSOCIATES

COPY

FOR YOUR INFORMATION

COURT RESUMES ON 29 JUNE 1987.

MR BIZOS : All the accused are before Your Lordship this morning. We handed to Your Lordship's registrar a final set of papers. We have also prepared written heads of argument to expedite the matter. They are in two sections. One with the law and the other we are going to address Your Lordship on. Although Your Lordship had has this before, we have had additional copies made of the judgment of the Full Bench that may not have been readily available.

COURT : Well, I got it out myself, I have got it here, but(10) I would like to have it separately. Before you start, I spent the best part of this weekend stretching from Thursday afternoon when we adjourned until Sunday to have a look at the documents. I worked through them and I am au fait with the contents thereof. This argument can take a week and then this means that we will not have a judgment before the adjournment. If there is to be a judgment, there is to be a judgment tomorrow morning and that means that I will have to curtail your argument and the argument of Mr Jacobs. I think it is advisable that there be a judgment before (20) we adjourn for the month of July. I suggest that I curtail you to up to tea-time, that I curtail Mr Jacobs up to lunch and that you - barring injury time on both sides - can reply after lunch.

MR BIZOS : I think that is fair. I think that Your Lordship will see that our heads of arguments have been done in a way which would facilitate this expeditious procedure.

COURT : So, I would suggest that you do not read to me what is in these papers, because I have read it. If there is anything that I am not clear on, I will tell you and we (30) can/...

can look it up then.

MR BIZOS : We welcome that indication.

MNR. JACOBS : Kan ek net sê mnr. Fick sal die argument vir die Staat doen, want hy het navorsing gedoen en alles gedoen.

HOF : Dit beteken dus, mnr. Fick, wat u betref, dat u ook die hoofpunte moet uitlig en uself n bietjie moet beperk.

MNR. FICK : Soos dit die Hof behaag. Terwyl ek op die voete is, kan ek net op rekord plaas dat die oorspronklike dokumente is nie almal aan u oorhandig nie. Ons het fotostate oorhandig van die oorspronklike dokumente, van sekeres. (10) Party van die oorspronklike dokumente is plakkate. Ons het fotostate gemaak daarvan. U is in besit daarvan. Ek wil net graag die oorspronklikes ophandig.

HOF : U kan dit aan my griffier gee.

MR BIZOS : We are going to start with the accused's main heads of argument and what we submit to Your Lordship is this that the main submission on behalf of the applicants is in the absence of a certificate in terms of Section 30 of the Internal Security Act, no. 74 of 1982, the Court's jurisdiction to admit accused persons to bail remain un- (20) fettered. Although due regard may have to be had to the opinion of the Attorney-general, the weight to be attached to his opinion may vary, according to the circumstances of each case and more particularly the stage which the case has reached and we submit that, generally speaking, applications for bail are brought when the Court has heard no evidence on the merits. It has to rely on the seriousness of the charge taken at its face value, the accused's defence in general terms and the personal circumstances. Neither side discloses its evidence, the names of its witnesses or (30) the/...

the basis of its expectation in the trial. If bail is refused it is unusual for a second or subsequent application for bail to be made because most trials are of a comparative short duration and the final result will be known shortly after the commencement of the trial. We say, unhappily, ours is not a trial falling into this category. It is likely to go on for at least another year.

We then set out the history. The accused were first brought to court in June 1985. A certificate was issued by the Attorney-general in terms of Section 30 of the Internal(10) Security Act. The history of the certificate's invalidity is to be found in the S v BALEKA AND OTHERS 1986 (1) SA 361 (T). The certificate having been set aside, the application for bail was nevertheless refused for the reasons set out in the judgment of the Deputy Judge President on behalf of the Full Bench. In his affidavit the Attorney-general said that the security situation in the Vaal and in the country was such that the release of the accused would endanger the maintenance of law and order. He advanced other grounds why the accused should not be granted bail including inter-(20) ference with State witnesses and the fear that the accused would not stand their trial. We refer Your Lordship to pages 2 and 3 of the judgment which I handed in to Your Lordship this morning.

COURT : You can skip until page 4 because that is history.

MR BIZOS : What we say on top of page 5 is the following. That even more significantly we submit, as part of the history, accused nos. 2, 3, 5, 6,7, 8, 9, 10, 11 and 13 had given evidence. The Court is therefore in a much better position to assess the nature of the case, its strength or weakness,(30)

the/...

the position of each of the accused, both personally and in relation to the case as a whole. The accused and we, their advisers, considered the leading of evidence sufficiently important to delay the filing of the reply so that this purpose may be achieved. Of the ten accused that the Court has heard, it must have necessity, we submit, have come to the conclusion that they differ considerably in age, standard of education, commitment to political causes, degree of participation in local and political spheres, intelligence and general ability. In paragraph 11 we say that in his (10) first affidavit the Attorney-general did not distinguish the position of any individual accused, including the three that were acquitted at the end of the State's case. In his affidavit made in February 1987 no attempt is made to make any distinction save for a passing reference to accused nos. 19, 20 and 21. Your Lordship will recall the statement that 19, 20 and 21 did not resign their positions in the UDF and in reply we say - there is an explanation given in relation to that. No response was made by the Attorney-general to their explanation and in paragraph 12 for what weight is (20) to be placed on the Attorney-general's statement, we need go no further than the Full Bench judgment in the present case at this state of the argument. We may say that in the other section we have a useful collection of cases for Your Lordship which we do not intend reading to Your Lordship but we hope that the references and the extracts of the cases will be of some assistance to Your Lordship should Your Lordship wants to refresh Your Lordship's memory from it. I do not intend, except for one or two possible cases, to read to Your Lordship the law on the subject which is in the (30) other/...

other section and that is why we did it in a separate section as well.

Then we submit in the middle of page 6 that it is evident that the Attorney-general is not better informed than the Court at this stage and the Court is as good in a position, if not in a better position, to assess whether or not the accused should be admitted to bail.

Then in paragraph 13 we say that the affidavit of the Attorney-general does not answer the two points made by the accused in their founding affidavit and those two points are (10) that numerous persons named as co-conspirators have not been detained or restricted or released on certain conditions and (b) that the release of the other six accused by consent.

Those were two matters which we raised specifically and we say in the middle of page 7 one would have expected the Attorney-general to try and distinguish the position of the applicants from the numerous co-conspirators holding high office in the UDF and also the position of individual accused compared to those who either completely or relevatively free.

I would like Your Lordship's indulgence to give Your (20) Lordship a case here which is not referred to because we consider that it is fundamental to the application. It is the case of R v FOURIE 1973 (1) SA 100 (DC) 103 A. I would like to emphasise the words used there.

"The likelihood of conduct by the accused which may endanger the security of the State or public safety has been held to constitute an exception to the general principle that an accused person should not be denied bail unless the administration of justice would be prejudiced by granting it."

(30)

So/..

So that in order to refuse bail to accused persons, it will have to be shown that it is likely that their conduct, by the accused, not by other persons, and if I may say so, the fact that somebody puts up an ANC sign in Cradock is not a particularly relevant issue as to whether accused in Delmas should be granted bail or not. What we submit in the middle of paragraph 7 is that one would have expected the Attorney-general to try and distinguish the position of the applicant's from the numerous co-conspirators holding high office in the UDF and also the position of the (10) individual accused compared to those who are either completely or relatively free and what we are going to submit to Your Lordship is in due that Your Lordship is been given an ipse dixit by the Attorney-general and Your Lordship being in the position that Your Lordship is in now, will not follow it.

The submission made in paragraph 2.8 of the State's heads or argument on pages 21 to 22 does not bear critical examination. That is a statement that, relating to the granting of bail by consent to the six accused. They say (20) that they felt that although there was a prima facie case against them that the accused was weaker against those persons than the others and that is why they consented. We will deal with that in due course, but what we say it is firstly bad in law that it should be left to the Attorney-general's representatives in court to decide the question of bail by reference to their view of the strength or weakness of the State case, where the Court itself is in as good, if not a better position than they are. Secondly we submit that a comparison of the merits of demerits of the State (30)

case against individual accused show that there was a measure of arbitrariness in the State selection and we give an example. Let us take very briefly the position of accused no. 8. He sits sandwiched in this court between accused nos. 7 and 9. I do not intend canvassing the evidence at length.

COURT : Sandwiched is not entirely correct. I always thought there was enough room in the bench.

MR BIZOS : Let me take his position. He became the chairman of a zone committee on 26 August almost by accident on the evidence. He acted as a - he attended the meeting on the (10) 2nd. He acted as a marshall on the march. Accused no. 7 had been the vice-chairman of an important zone committee headed by Lethlake for a very much longer period. He attended the meeting of the 26th where the decision to have the stay-away and the march was taken. He, accused no. 7, attended the meeting of the 2nd where the decisions were made and handed a memorandum. He fortuitously was not in the first part of the march because of his concern for his bicycle if Your Lordship will recall. He is out on bail, accused no. 7. Accused no. 9 led the march on the afternoon of (20) the 2nd. He moved about on his own evidence advertising the stay-away and the march and urging people not to go to work and to take part in the march. Accused no. 9 is on bail, accused no. 7 is on bail. Accused no. 8 is not. As far as accused no. 7 is concerned, he is a bachelor, accused no. 8 has an advantage, because he is a married man with children. What persuaded the State to consent to accused nos. 7 and 9 going out on bail, but saying that the case is stronger or that there is a greater likelihood. If there was any distinguishing feature one would have (30) expected/...

expected the Attorney-general or his representative or the investigating officer to say so. No where have the said so.

Then Your Lordship heard accused no. 13. He was the most reason person. If we compare his position to the degree of participation of those who are on bail, 7, 9, 15, 22 and 1, what is there that persuades the Attorney-general He is as young as 1 and as unattached as 1, as no. 1 and if anything, he has an advantage in that he was in regular employment at the Institute of Race Relations in a responsible position. He has a mother and two relatives in the (10) Vaal and accused no. 1 appears to be at a loose end somewhere in Soweto, being a Transkeian citizen. When we say that it does not bear comparative examination, it does really on the facts, as Your Lordship now knows them. Had this been at the beginning of the case, if the State said, well, they can go out, Your Lordship would have had to shrug Your Lordship's judicial shoulders and say well, I do not know about the case, they know about the case from the statements that they have, therefore I must assume that they have made a studied and bona fide decision, but here (20) it does not make sense.

Let us take the position of accused no. 5 in relation to accused nos. 7, 9, 15 and 22. Why is the position of accused no. 5 any better or any worse than any of those who have been admitted on bail? He has not been shown to be a member of any management structure in contra-distinction to accused nos. 7, 9 and 15 and why should he remain in custody? It does not make sense.

Then let us take the position of accused no. 17. His position in relation to accused nos. 7, 9 and 15 is (30) comparable/...

comparable, except that he is almost a septuagenarian and where is he going to go, if he does not stand his trial?

Then the position of accused no. 10 in relation to 7, 9 and 15 is a stronger position, because he was not in the Vaal during the vital period that the unfortunate events occurred. What explanation has Your Lordship been given in relation to that?

And the position of accused no. 14 in relation to accused nos. 1, 22 et cetera. We will refer Your Lordship in due course to the position of accused no. 14. In fact (10) Your Lordship will see that we say later on that he was in custody from 21 August till 26 September and this is subject to negotiation for an admission to be made between Mr Tip and Mr Fick. It is a matter of record, but we will give Your Lordship that a little later on.

Then we say in the middle of page 8 the first affidavit related to everyone. The second affidavit to everyone still in custody. To give effect to the ipse dixit of the attorney general would in our respectful submission reduce the Court's function to that of a rubber stamp and that is (20) not our law and I submit that Your Lordship will never countenance that attitude to an attitude to bail.

Then the submission in the State's heads of argument that since the Court has ruled that there is a prima facie case, the probability is that the accused will not stand their trial is not well-founded. Too many times in Your Lordship's experience has a prima facie been defeated by a mere denial. In this case not only have there been denials, numerous witnesses are to be called in support of their version.

(30)

The/...

The submission at 2.10 paragraph 22 that there is a plan by the ANC to help them not to stand their trial does not bear critical examination. It was not even put to any of the accused that they were in any way connected with the ANC and we emphasise this, because some reliance is placed that Stompie did not - Stompie Mokhele did not stand his trial, but the allegation against him was that he was a courier between Lesotho and South Africa for the ANC and a senior ANC member who gave evidence before Your Lordship, Your Lordship will recall it from the application for the (10) recall of that witness, gave direct evidence. Now, he may have had very good reason not to stand his trial and also he may have had very good connections in order to spirit him away, but in relation to these accused there is nothing of that. No where in the second affidavit has the Attorney-general nor indeed anyone else said that the so-called ANC plan has been amended to exclude the six that were released on bail.

Let us take a practical approach. The decision to let those six out on bail was made ad hoc by the State's (20) representatives here in court shortly before the adjournment. We all know that and if there was this sort of plan, why was it not for everybody? Why were those six allowed to go out? Has the ANC amended its plan? And also Your Lordship having seen these persons, as we submit in the middle of page 9, having seen and heard some of the accused, we have considerable doubt in our submission that the ANC would be interested in having them in their ranks. What are they going to do with Mr Matlole, accused no. 17? Pay the medical bills that the State is burdened with from time to time nor is (30) there/...

there any suggestion that the ANC is looking for a chaplain general in seeking the services of accused no. 3, but the generality that there is a plan by the ANC to spirit these accused persons away, it may well be that someone has whis- pered this information to some investigating officer who in turn formally put it before the Attorney-general, but Your Lordship cannot in the absence of it making sense on the facts as Your Lordship know them, be taken seriously at this stage.

EXHIBIT E on pages 179 to 182 is a consolidated list of co-conspirators. Mistakes crept in and we are sorry for (10) those, because certain names are duplicated, then we give the numbers, but let us leave that out for a moment.

It is common cause that 118, a considerable number, of 128 people referred to have not been in detention or custody of any kind and are in fact free. So, we have 128 co-con- spirators free. Some of them are restricted, investigations are being made with a view to prosecution in relation to others. The Attorney-general is considering what to do in relation to certain others while the reluctance of the police to reveal information about informers ensures that (20) yet others remain free.

Of the ten remaining people seven are free but sought by the police while they are in custody or detention for one reason or another. Three are in custody.

And then particulars of those free but sought by the police are set forth below and we give Your Lordship their names. I do not want to go through them, because they are there in fairness to the State.

And then we set out in paragraph 21 particulars of those in detention or custody. (30)

But/...

But let us go to the bottom of page 11. Those people who are free, that is of the 118, and unrestricted include the following: The two presidents of the UDF, namely Gumede and Albertino Sisulu, the current chairman of the national executive committee of the UDF Kernich Ndlovu, the current national treasurer of the UDF namely A. Katjalia, the two national treasurers of the UDF up to April 1985, that is to say during the period of the indictment, that is Saloojee and Ramgobin, a patron of the UDF Dr Yassad, two persons whose documents are relied upon extensively in the case, (10) that is Professor I. Mohammed and Curtis Nkondo.

May I pause here for a moment. Your Lordship has seen these persons on video and Your Lordship could not have noticed that from time to time they paid courteous visits to Your Lordship's court and they sit at the back of the court. We submit that one's sense of justice is offended that people who are said to be members of that conspiracy and who in the main played minor roles while in custody on the ground that it is against the - that the maintenance of law and order will be jeopardised if they are released on (20) bail conditionally.

We deal with paragraph 23 that Lucy Meyer is free despite the fact that she has refused to give evidence in a terrorism case in the Ciskei.

Then on page 13 the State papers and various allegations must be read with caution in the light of the error concerning Frank Chikane. It is first stated that Mr Chikane left the country without a valid travel document according to information. It is thereafter conceded that the information was incorrect and that he travelled on a passport issued to him (30)

in error, so it is said. I may say that the error is deposed to by Captain Botha. I do not know why they say that it was an error, but let us, although, speaking personally I was tempted to say well, how can a mistake like this take place. I think in fairness to Captain Botha he got a letter from the director of Inland Revenue which is annexed in the papers and in the age of computers and in the age of checking and double checking we get a fundamental mistake like that, that - it is placed before Your Lordship that a leading personality - a wellknown person in the political circles gets a (10) passport and then we say that he was given a passport in error. There is nothing to support it, but Your Lordship does not have to go any further than this submission in the middle of page 13 that the State's incorrect assertion in this respect again shows the danger of relying on untested information conveyed to the Attorney-general by the police and other officials. Had a proper hearing been given, then perhaps we could have said well, Mr Chikane has got a valid passport.

The applicants in their general memorandum state that (20) there are changed circumstances in comparison to November 1985. There is no allegation anywhere in the State papers that the security situation remains materially unchanged.

There are comparative figures, but nowhere does it say that is unchanged. The occurrence of violence is an important indicator of the state of security. There are repeated concessions that violence has abated, namely Botha, in his first affidavit gives comparative statistics relating to the first and second half of 1986 from which it is clear that violent acts have dropped considerably. Botha's last (30) affidavit/...

affidavit makes it clear that there has been a further reduction. Conradie in an affidavit made in January 1987 concedes that violence has abated in the Vaal. This concession concerning the Vaal is repeated by Conradie in an affidavit sworn to during June 1987.

Then we say on top of page 15 affidavits by Colonel Pretorius and Lieutenant Colonel Nel provide certain particulars of the nature of the violence in fifteen townships on the East Rand without furnishing any meaningful comparison of the number of incidents and what we want to submit in (10) relation to that is that bearing in mind the number of townships and the period involved, these affidavits indicate sporadic acts of violence in the East Rand during the period 10 March 1986 until 12 June 1986 in the case of Colonel Pretorius and 1 July 1986 until 12 December 1986 in the case of Colonel Nel.

Again here I would ask Your Lordship to pose the following question, posed in the FOURIE case, the reference to which we gave Your Lordship this morning. What conduct of the accused - what conduct of any of the accused has (20) any bearing on what happens in the East Rand?

We have 118 co-conspirators free. Are these accused to be held hostages, so to the speak, whilst their trial goes on for a another year or even as long as eighteen months just because some people decide somewhere in South Africa, be it in the East Rand or in Cradock or elsewhere to throw stones at police vehicles. Does the State not have to show that the conduct of the accused, if they are released on bail, on proper conditions will endanger the maintenance of law and order. (30)

Then/...

Then we say on page 15 violence in Cradock is dealt with by Warrant Officer Hough in two affidavits and we give Your Lordship the periods that this is dealt with.

Finally, the affidavit by Lieutenant Prinsloo provides information about violence in the Vaal Triangle area for a period of 1 January 1987 to 17 June 1987.

We submit that the figures furnished in that affidavit must be considered in the light of the size of the area and the period concerned. Regard must also be had to the affidavit of Captain Conradie to the effect that violence has (10) abated.

For the rest the affidavits put up by the State refer to the distribution of ANC pamphlets in certain areas. Let us pause there for a moment. There has not even been a suggestion that any of the accused was responsible at any stage with distributing ANC pamphlets. If during a period of eighteen months of the indictment they did not do it, what likelihood is there that they will do it if they are released on bail on proper conditions? The distribution of UDF and affiliate publications and pamphlets, yes, that (20) was done, but on the condition that, although - may I pause here for a moment in relation to the UDF.

Your Lordship reads newspapers. Your Lordship must of necessity have seen a full page advertisement in the Star popularising I think that My Learned Friends would use the word, the Freedom Charter by the UDF. What the State suggests here is that the maintenance of law and order would be adversely affected if the accused were sent out on bail and Your Lordship imposed a condition that they should not take part in any organisation's activities but theoretically (30) clandestinely/...

clandestinely one of them may distribute UDF pamphlets, whilst the UDF places full page adverts in the Star newspaper. That is not a ground for refusing people bail.

The creation of alternative structures. This is something entirely new. The evidence is that there were no alternative structures in the sense in which the ANC uses this expression before the accused's arrest and there is no reason for Your Lordship to believe that conditions that this should not - the conditions would not be observed.

May I say that what we say earlier on, we skipped this (10) part of the history, that Your Lordship must of necessity be impressed with the exemplary conduct in relation to attending trial of the six accused who have been released on bail. I myself at the time that they were released on bail was a little afraid that one or another of them may be late on a particular morning, but their behaviour has in fact been exemplary.

Then in paragraph 29 we say that there are indications that a great measure of success has been achieved in consequence of the state of emergency and submit that this (20) must mean a material change in the security situation. We refer Your Lordship to the references in that.

Then in paragraph 30 on page 17 we say that the accused have all said that they have no personal knowledge of nor do they have any responsibility for any of the developments in the country and the Vaal Triangle since their arrest. All the affidavits put up by the State to which the Attorney-general has had access, rely on the facts that organising and mobilising, continuous to go on and that there is a revolutionary climate in the country, with the UDF and (30)

its/...

its affiliates especially undertaken a policy which entails the creation of liberated zones, alternative structures, people's courts, alternative police structures, alternative defence structures or so-called no go areas. It is also alleged that the UDF intends to make the country ungovernable and to conduct the people's war. The accused have no knowledge of this and the UDF denies that this is its policy and this is the affidavit of Katjalia. It is also clear that Isizwe does not reflect the policy of the UDF.

We also refer to the statement - Weekly Mail I am (10) sure was annexed for another reason than of the interview, but Your Lordship will see that in it on page 684 there is a statement by Mr Gumede who is the president of the UDF.

May I pause here for a moment. The State tell your Lordship in these affidavits that if the accused are released on bail they will do these things. Your Lordship reads in the Weekly Mail annexed by the State that its president has been invited by the President's Council to have talks as to whether there can be negotiations between the government and the UDF. So, we have a situation that we have 118 major (20) co-conspirators roaming the country freely and doing their business whatever they decide that they want to do, 118 of them. Important officials talking to members of the President's Council but other people being refused bail because they may carry out the activities from the UDF.

Then the up to date situation is dealt with in the annexures to Mr Dyason's affidavit and because Your Lordship probably has not had an opportunity of studying those as carefully as the other documents, because they were only handed in this morning, I want to refer Your Lordship only (30)

to/...

to those passages which we really rely on in order to spare Your Lordship the burden of reading.

If Your Lordship has a look at page 981 to 982. What we say about this is that it is really an explanation of the State President's imposition of the new state of emergency of 12 June. On page 981 to 982 perhaps one should really start on page 981. Mr Robinson asks the question "It is very important that we have to do it because of the following instance. It goes about the hearts and minds of people. That is true. But have you done it? Well, I think we (10) have achieved tremendous success over the last year in that regard. I must say that I think that the spirit of resistance is still there. It is true, and for that reason we believe that we have to maintain the state of emergency because we are confident according to the evidence we have that if we should not lift the state of emergency at this stage, we would actually go back to the kind of violence that we have experienced a year ago. That is a possibility." We rely on that as a statement from the highest authority. Your Lordship will have seen that Mr Meyer is the deputy minister (20) of Law and Order and also more importantly the chairman of the security council consisting of various departments. "For that reason, we have to go with the present situation as far as that it, but at the same time I think that through the development that took place over the last year and through the efforts of the national management system, we have achieved also a lot of success in terms of a change of heart. I mean you are standing in Alexandra." We have the tape. We do not want to show it. It is available in the sort of before and after situation in Alexandra township but it deals (30)

with all sorts of other questions. It is available if Your Lordship wants it.

COURT : I think that was on the television, that bit of Robinson standing in Alexandra. I noticed that.

MR BIZOS : If this is the same interview.

COURT : I do not know.

MR BIZOS : "I mean you are standing in Alexandra. You were telling is you could not have done this a year ago. I think you are absolutely right as far as that is. I think we have seen the same thing last week when the President visited (10) Lekoa and through this we are also seeing a change of heart which is I think very necessary not only for those communities but for the sake of South Africa."

Now, I want to make a submission here. One could not help noticing that the obvious questions were asked by the members of the Court of some of the witnesses. There can be no doubt that we are a divided society, but the questions are unnatural questions to ask. What is it that there has to happen in order that there should be reconciliation in the country? It is a question that worries one, whether he (20) is a member of the court or whether he is counsel or whether he is a business man or whether he is a prosecutor or whether he is a policeman. I submit that this paper shows that there is a spirit of reconciliation emerging and it would be a pity in our respectful submission if that spirit was not given effect by we steadfastly continued in this case to oppose bail on the basis that there is a danger that these persons will endanger the maintenance of law and order.

We submit in paragraph 30,2 that the Court has heard evidence relevant to the significance of June, the 16th and (30)

it/...

it has been generally accepted that June, 16th was a peaceful day. We have again annexed papers. Your Lordship will see from page 993 to 997 from the newspaper cuttings that - it is only up to 996, that there has been an important day such as that when emotions run high, which passed peacefully. In fact one has the situation that the co-operation of organisations and the police force is favourably commented on in order to thank them for co-operating and letting that pass as a peaceful day.

In paragraph 31 we submit that the position of the (10) UDF vis-a-vis the ANC is one of the issues on which the State has failed to produce any cogent evidence. That the UDF is a lawful organisation carrying on an acceptable political activity has been conceded by Minister Stoffel van der Merwe in a statement on the SATV. We give Your Lordship that where on page 990 it is said "Eventually we say for instance we would decide together that an election must be held. Then the UDF is a legal organisation in South African and it will be able to participate in those elections and if the people then elect such UDF members, then they are apart, then what (20) is the people decided."

Then we have a situation which we say a further statement by Mr Van der Merwe which we have annexed at page 992 and I particularly want to read to Your Lordship the second last paragraph of the left-hand column onwards. "Van der Merwe conciliatory approach reflects a significant shift in government thinking about negotiations with Black leaders and organisations. The government now seems determined to initiate discussions with the Vaal via derange of Black people and organisations than ever before, including (30) organisations/...

organisations strongly opposed to government policies.

Van der Merwe said that although Nelson Mandela, the jailed ANC leader, was a bit of a special case, he had no objection in principle to talking to people in detention or in jail. He said I have a job to do and it is part of the job to talk to someone in jail or detention and that the mere fact would not stand in my way and he was not going to present a note to a guy which one has a sign which says I hereby recounce all violence before I start talking to him, but he would think twice before speaking to someone who has publicly (10) committed to violence. He would speak to elements to the UDF because 'Frankly if one would rule out any person who has a connection with the UDF, one would be silly.'

We have a situation that a minister makes a statement of that nature but we are told that people as lowly as being on an area committee of an affiliated organisation must be refused bail because they are - they will endanger the maintenance of law and order.

Then finally, the State's attempt to rely on a supposed admission by the ANC that it was responsible for the founding (20) of the UDF is negative by the evidence of Lodge, the public statements of the ANC representatives and Archie Gumede. I do not know whether Your Lordship has had an opportunity ... (Court intervenes)

COURT : I read all that.

MR BIZOS : Then I do not have to read it to Your Lordship.

We then deal with the next section with the personal circumstances of the accused without actually listing them, but merely giving Your Lordship the cage numbers of the - we say that the personal circumstances of accused no. 2: (30)

It/...

It is submitted that it is clear from the nature of his evidence and what was put to him, he will not endanger the maintenance of law and order or state security if he is released on bail on appropriate conditions similar to those imposed on his co-accused.

I want to pause here for a moment, because I think that this is a case in which Your Lordship has heard the evidence and I want to make the sort of submission which really applies to the other accused as well.

Mr Jacobs accused the Full Bench in the first applica-(10) tion for bail that there was a very strong case against each and every one of the accused on the case of treason and more particularly of the murder of the four councillors. Your Lordship has heard the evidence. Your Lordship cannot give judgment on the evidence in midstream. We know that people stand their trials if they believe that they have a good case. They are often wrong in their belief as to whether they have a good case or not, but a belief that one has a defence to a case, is the best guarantee that one will stand his trial and I want to pause just for a couple of minutes (20) as to how accused no. 2 may be seeing his prospects in relation to this case, because I submit what I say in relation to him, will be of equal application to others.

There is the evidence of two witnesses that he incited violence on the 19th and that he incited violence on the 2nd of September. He has denied that. There are newspaper reports that do not report that. He was supposed to have said it in front of hundreds of people and we have already indicated to Your Lordship that witnesses will be given.

I want to leave that aside for a moment and ask Your (30)

Lordship/...

Lordship to contemplate on EXHIBIT V31. I know that Mr Harris has not been yet cross-examined but on the face of that exhibit, accused no. 2's speech on the 26th is complete. There is no interruption.

What the State will have to persuade Your Lordship at the end, they might succeed in doing it, but what they will have to persuade Your Lordship at the end of this case in relation to accused no. 2 is the following. He said let the councillors be killed on the 19th. He said Mabafe on the 2nd of September. But he made a conciliatory speech on (10) the 26th in which he said we are not really angry with these people, we just want them to be taught a lesson that we do not buy in their shops.

Your Lordship is going to have the grandmother who was very concerned as a citizen that buses were stoned on the 20th, saying we spoke nicely last week. The State will have to persuade Your Lordship that this grandmother who was so concerned about the stoning of the buses on the 20th, was able to say we spoke nicely last week and Your Lordship has a contemporary recording of that, when she on the State(20) version had heard that people should be murdered on the 19th. It does not make sense, but I say that Your Lordship does not have to make a finding in relation to that, but Your Lordship will assess the situation, what is the accused's feeling in relation - he may be correct and he may be incorrect - what is the accused's feeling, what are his legal advisers' feelings with that evidence before the Court thusfar and other evidence to come. Let us take it further.

The other part of the case in relation to accused no. 2 is that he was party to the organisational conspiracy (30)

because/...

because he is an admitted office bearer of AZAPO. Again, we have Mr Libon Mabaso and Mr Satch Cooper coming to visit him in court. They are free to run the affairs of AZAPO on a national level, but Your Lordship is asked to hold that it would be against the interests of the administration of justice because the maintenance of law and order will be endangered if accused no. 2 is released on bail and is prohibited by conditions from doing any of the things that he was doing in the past, but Mr Satch Cooper and Mr Libon Mabaso can go about doing them. It does not make sense to(10) anybody in our respectful submission and the Attorney-general's opposition to accused no. 2 being admitted to bail, if it does not make sense in relation to one, how can Your Lordship rely on the ex parte and secret information that he has put before you in relation to anybody and this is why we submit with the greatest respect, that the time has reached when Your Lordship will not ignore but certainly not be guided by the view of the Attorney-general and his representatives on the question of bail.

I want to deal with the next accused and that is (20) accused no. 3. We submit that his age, his family ties, his calling, his commitment, make it most unlikely he would endanger the maintenance of law and order or state security if he is released on bail on appropriate conditions.

We are not unmindful of the fact that Your Lordship may have some reservations in allowing him to go back and doing his priestly duty at St Cyprians having regard to some of the State evidence in this case, but the probabilities are, if Your Lordship releases him on bail, that he will find accommodation either with his bishop or someone else(30)

in/...

in Johannesburg or elsewhere and if he is prohibited from going to the Vaal, he will continue coming to this trial until it is completed and that will be the end of it. In what way can he endanger the maintenance of law and order? He has not been shown except on what we will submit undoubted evidence of IC.8 to have been a member of any of the management structures on the organisational conspiracy. So, we submit that there is no reason why he should not be admitted to bail.

As far as accused no. 5 is concerned similar questions- (10) similar matters arise. He is not shown to have been a member of any of the management structures and also there was a specific allegation in relation to him earlier on that he actually physically took part in the attack on Liphoko. Your Lordship will recall that and about which there is not a tittle of evidence and that of course changes the position as far as he is concerned.

I have already given Your Lordship the personal circumstances of accused no. 8 or the comparative circumstances of accused no. 8. Here is a furniture salesman with a (20) family who found himself or furniture shop clerk - who found himself in a situation of chairmanship granted to him. May I just refer back to accused no. 5. Your Lordship will recall that in argument earlier on Your Lordship said where there is nothing to keep some of these young men here. The State itself has negatived that fear by allowing accused no. 1 out on bail. Why should accused no. 1 be out on bail and no. 5 not?

No. 5 has brothers and a family, was in a regular job in an electrical company at the time of his arrest, why (30)

should/...

should he be kept in jail?

Similarly with accused no. 11. I beg Your Lordship's pardon. I must deal with accused no. 10. Accused no. 10 was not there during the vital weekend. He is in a very responsible job as a trade unionist. He can be prohibited from taking part in any trade union or other activities, lest it is thought that his exposure to a number of people may in some way do this, but he will not add to the thousands of other trade unionist who are allowed to do their work freely. As far as the strength of the case against him, (10) his position is a better one than accused no. 7 and no. 9 who took part and led the march respectively.

Accused no. 11 is a young person, but again, why should he be distinguished from accused no. 1 and why should he - the question of the management structure in his case is doubtful, because it was really an ad hoc situation that arose in Boipatong at the time.

Your Lordship heard accused no. 13. What case is there really against him? And why should he not stand his trial? And why should he not go back on one of the programs of the (20) Institute of Race Relations as a clerk?

Accused no. 14. In relation to this accused, I am going to invite Mr Fick to tell Your Lordship that what we are saying is correct. We said that, in the opening address, he was not going to give evidence and that a formal admission is being sought from the State that this accused was in detention between 21 August and 16 August 1984. What is he going to give evidence about? On this basis he will have gone a long way to prove his lack of participation in the various incidents that have loomed large in this case. Captain (30)

Botha/...

Botha in his third affidavit annexes a document concerning the meeting about the stay-away. Your Lordship will recall that Your Lordship rejected that as evidence in the case. This document which is contained on page 520 of the papers reflects the names of one Hlopane which is not spelt the same way as having attended this meeting. Accused no. 14 denies that he attended this meeting and says that he was again in detention in terms of Section 29 from 21 October 1984 to 3 November 1984.

Botha in reply contends himself with the bold alle- (10)
gation that according to his information the person mentioned in 01 is the same person as accused no. 14, but it is a question of record as to whether a person was a detainee in terms of Section 29 or not. If the State does not admit it, we will be able to call a jail authority to say that he was in safe custody during these periods. I hope that it will not be necessary, but it was raised with Mr Fick as soon as we started our case.

It is true that he was put on his defence probably he had some sixty or seventy COSAS membership cards, which (20)
only shows that he was a member of COSAS at some time or another. What sort of prima facie is that once these facts, the other facts of detention are proved? Why should he not stand his trial?

Then he goes further in the last lot of pages and says that the person who was really in charge of his detention was the investigating officer in this case. What better information could there be to confirm that he was in fact in custody?

This again, like the Chikane papers, is a clear (30)
indication/...

indication of the ease with which ground for opposition is put up and Your Lordship will have considerable doubt as to whether Your Lordship will rely on it any more.

We then deal with accused no. 16. His personal circumstances are set out. Unfortunately we did not get enough time for him to give evidence but he will be giving evidence. Your Lordship will recall that he was the secretary of the Soweto Civic Association. The president of that or the chairman of that is Dr Motlana and here again we have an anomolous situation. That Dr Motlana remains at large (10) and free to go about his day to day business. Your Lordship has seen him on tape and Your Lordship has no doubt seen him at the back of the court. This is common cause, subject to the qualification that certain matters are being investigated against Dr Motlana by the Attorney-general, we are told. Dr Motlana is mentioned as being free to go about his normal business. This is not disputed but it is suggested that certain investigations are being made against him and that he was found in possession of an ANC pamphlet. This affidavit is dated 4 February 1987. In an affidavit (20) filed four months later and signed on 22 June 1987 Captain Botha says the decision of the Attorney-general is still being awaited.

However, there is no evidence that accused no. 16 was involved in the process of organising or mobilising anywhere. At best for the State, he spoke at the meeting at which he is alleged to have propogated violence. Two witnesses have denied that this has happened. That is accused no. 2 and no. 3 already. The interests of the administration of justice in our respectful submission may require that he be prohibited(30) from/...

from addressing public meetings or taking part in the activities of the Soweto Civic Association.

But there is also, and I want to assure Your Lordship that there is going to be evidence that in fact - I am sorry, I have note, I will deal with that with I am finished with accused no. 16.

But here we have a situation that accused no. 16 was no longer the secretary after December 1984. He was not re-elected. He was arrested in April 1985, some nine months after he is alleged to have made the speech calling for (10) violence on 19 August.

He has every reason to believe in our respectful submission that he has a good defence and he will be supported by the tape on the 26th, because the probabilities that the State will have to persuade Your Lordship that murder was called for on the 19th and peace on the 26th and no one of the 800 said "Hay, how can you speak like this having regard to what you were saying last week?" He can face this case with confidence. He believes he has a good defence. There is evidence before Your Lordship as good (20) as the evidence for the State thusfar, we would submit, but Your Lordship does not have to express an opinion in relation to that, that he is going to be acquitted.

As far as the organisational conspiracy is concerned, again we have the situation. He was a member of the Committee of Ten. His chairman, Dr Motlana, is out. Members of his committee are out. The Soweto Civic Association is continuing carrying on its activities. The person who was not elected to secretary in December 1984 must be kept in jail in the interests of State security, because he may do (30) something/...

something which Dr Motlana and the other nine may not be able to do. Again in our respectful submission that does not make sense.

Accused no. 17 is in a special position. Your Lordship will recall the evidence of accused no. 7 that he does not remember from one day to the next what has happened. That evidence was not challenged. One does not need medical evidence in order to assess this person's situation. I submit that Your Lordship's observation from him in the dock must paint a picture of a pathetic elderly gentleman who really(10) sits there trying to follow the proceedings.

The Attorney-general lumps him together with all the others, that his release will endanger the maintenance of law and order and that he will not stand his trial. We submit that there is no basis for that.

That leaves accused nos. 19 and 20 whom I want to deal with together and no. 21. The personal circumstances of accused no. 19 are set out. The allegation by the Attorney-general that accused no. 19 continues to be a part of the UDF management structure is disputed. The reasons have (20) been given in the papers as to why, for sentimental and other reasons, they do not want to deprive a person who is detained and who is standing trial of a post to which he has been elected and that it is only in name only but an appropriate condition can take care in our respectful submission of this situation.

Then there is an allegation that they emerged from hiding. They explained that and I would urge Your Lordship to draw a distinction between a person who is a fugitive from justice and a person who wants to avoid being detained(30)

by/...

by any police officer and that is what the emergency regulations provide for. Any police officer may detain anybody. Not for the purposes of charging him, not for the purposes of bringing him to court, but for the purposes of detaining him at his discretion. If that is the law, then people cannot, with the greatest respect be compared to fugitive from justice if they take steps to keep out of the way of police officers, who can on the drop of a coin detain them and his release on bail, which will make it necessary for him to attend court daily to prepare for his case and to (10) be giving evidence as already indicated to Your Lordship that subject bar any accidents he is going to be the next witness to be giving evidence, there is no reason to believe that he will not stand his trial.

Besides, the point is made in the affidavit. The secretary general and the publicity secretary of the UDF are on trial. So, in a sense is the UDF. Your Lordship has not heard them, but the documents must have given Your Lordship a clear indication of the commitment. Your Lordship may disagree or the police may disagree or the Attorney-(20) general may disagree as to whether they are right or wrong in what they are speaking, but their commitment to the country, to the organisation, to themselves, is not to be doubted. These are people who have taken a public stand. Are they likely believing that they have a good defence to the charges and they may be right and they may be wrong, but believing that they have a good defence, are they going to give the public of South Africa the opportunity to say that they became outlaws, that they became fugitives from justice, because they were not prepared to face their trial?(30)

In what way are they different to the people who were out on bail in Pietermaritzburg? In what way is their position any different from the 118 co-conspirators who are walking the towns and streets of South African freely? We submit that these persons are the sort of persons that are referred to by Mr Van der Merwe and we are going to have a situation that the Minister of State and charged with constitutional development says that it would be silly not to speak to persons such as this, but in Delmas the State will have Your Lordship persuaded that they are dangerous people who (10) should not be allowed out on bail because the maintenance of law and order is going to be endangered. I submit that that sort of - the two attitudes cannot be reconciled. They are both men with families here. There is no reason in our respectful submission why they should not stand their trial.

Unfortunately this case is going to last some time. Accused no. 19's statement which we have proved is about the size of those two files before Your Lordship. If accused no. 3 was kept in the witness-box from the 3rd of June till the 25th June, Your Lordship can imagine the (20) position of accused no. 19, no. 20 and to a lesser extent accused no. 21.

COURT : You should bear in mind my retirement date.

MR BIZOS : Your Lordship has an advantage over me because I think I can give Your Lordship a number of years and I do not intend being on my feet for ever either. Even bearing that in mind, it is manifestly unfair in our respectful submission that these persons should remain in custody whilst this is happening.

It may well be that at the end Your Lordship will (30)

find/...

find that there is some case on some of the charges against one or other of the accused. But I submit that these persons for too long have they been on trial and they are going to be in court for too long in the future. Accused no. 19 has had a child born whilst he was in custody. For how much longer must their families come to Delmas when their very young children in order that there may be some contact between the two of them? When in truth and in fact we submit no sufficient grounds exist why they should be kept in custody. (10)

Accused no. 21 is also in this category with accused no. 19 and 20 with this difference. I am informed that the papers contain an error in relation to the month. He was not re-elected to a position. It says April, but in fact it should be March. He was not re-elected to the structure in the elections of March 1985, but his position is a fortiori to that of nos. 19 and 20, but I want to say something in relation to all the accused, but before doing that I want to correct something in relation to accused no. 14. I have a note where it says on page 24 that it (20) was under Section 29. I am now informed that it was actually in terms of Section 50 of the Act. It does not really have any material bearing.

There is one other aspect on page 31 and that is that accused no. 21 will deny in paragraph 13.4 that he was at the meeting. Your Lordship will recall that this is a suspected document when it was first drawn to Your Lordship's attention, but he will deny that he took part in that meeting.

I want to say something generally. I submit that Your Lordship will give effect to the case that has been put up (30) that/...

that in fact there is no causal connection shown between any of the isolated acts of violence that have recently taken place and any of the accused. Nor is there any likelihood on the evidence before Your Lordship that if they are released on bail that they will indulge in, take part in any of the acts which are offensive to the State. Obviously as far as crimes are concerned by advocating the achievement or objects of the ANC I leave that aside because there is no evidence.

As far as the UDF is concerned, appropriate conditions(10) can meet the case and we submit with the greatest respect that a case has been made out, there has been a material change in the security situation which now freeze Your Lordship from the decision of the Full Bench decision and is no evidence to contradict the overwhelming probability put up the accused's papers that they will stand their trial and that the case will not be in any way prejudiced by their admission to bail.

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I do not want to read any of the cases to Your Lordship. I submit that the principles are wellknown and we have (20) only put them there for Your Lordship's convenience, should Your Lordship require it.

Your Lordship will see that there is both a historical overview of the authorities and the up to date situation and also Your Lordship will see that a distinction is to be drawn where people are alleged to be members of unlawful organisations like - the probabilities are that there is a prima facie case that the person has been a member of an unlawful organisation such as the African National Congress or the Communist Party. The likelihood of his not standing(30)

his/...

his trial is obviously greater than others, but the authorities are there in our respectful submission.

The thread that one right through the case sees that there have to be cogent reasons why people should be kept in custody.

I am indebted to Your Lordship for a patient hearing.

MNR. FICK : U Edele, ek wil net een aspek eers duidelik stel, die kwessie in verband met die erkenning. Ek kan glad nie so iets onthou dat ek sou onderneem het om 'n erkenning te maak na aanleiding van beskuldigde nr. 14, Jerry Tlhopane, (10) nie. Met respek, dit is die eerste keer dat ek daarvan hoor.

HOF : Ja, maar laat ons die ding nou prakties benader. As die verdediging van plan is om daardie aspek te bewys, dan kan die verdediging dit bewys deur eenvoudig die beskuldigde te roep, alternatiewelik kan die verdediging die hoof van die gevangenis roep. Dit is tog 'n onnodige soort van opont-houd. Dit is 'n soort van feit wat vasstaan en dit is soort van feite wat ek in hierdie saak probeer het, nie altyd met sukses nie, om by wyse van ooreenkoms voor die Hof te kry. Dit blyk vir my oor verskillende sake is daar 'n soort van (20) 'n dooie punt, soos byvoorbeeld oor hierdie kwessie van Sebokeng Kollege het ons ook nog niks gehoor nie en waarskynlik oor ander aspekte ook. Ek wil nie op daardie ding ingaan nie, want ons is nou besig met 'n borgaansoek. Maar dit is 'n aspek, of 'n persoon in gevangenis was of nie in gevangenis was nie, waaroor daar sekerlik nie getuienis in hierdie hof gelei hoef te word nie.

MNR. FICK : Sekerlik. Ek wil dit net op rekord plaas dat ek nie kennis dra dat daar so 'n erkenning versoek was nie.

(30)

Ek/...

Ek wil eerstens antwoord op My Geleerde Vriend se betoog, sekere aspekte daarvan.

Eerstens bladsy 7 van die hoofde, van My Geleerde Vriend se hoofde. Ek wil aan die hand doen - dit is paragraaf 13 - eerstens, die Prokureur-generaal werk nie met aangehouenes ingevogle artikel 3 van die Veiligheidsmaatreëls nie. Hy weet nie wat die posisie is van hierdie mense nie en behalwe dit, dit sal ondersoek totaal in die wiele ry as hier gesê moet word onder eed in die hof ten aansien van elke persoon wat genoem word as h samesweerder wat die (10) ondersoek teen hom is. Is die ondersoek aan die gang, hoe ver is die ondersoek en hoekom is daar h verskil tussen sy geval en dié van die beskuldigdes voor die Hof. Dit kan nie gedoen word nie. Dit is totaal onprakties en dit benadeel die Staatsveiligheid totaal as so iets gedoen moet word.

Dan op bladsy 8 van die hoofde. Daar het My Geleerde Vriend na h aantal beskuldigdes verwys en gesê hoe verskil die posisies van hierdie persone. Ek wil daar net verwys na die eerste geval wat My Geleerde Vriend na verwys op bladsy 8. Hy sê hoe verskil die posisie van beskuldigde (20) nr. 8 ten opsigte van nrs. 7, 9 en 15.

Toe die borg van die beskuldigdes aanvanklik toegestaan is, was dit voordat enige van die beskuldigdes getuig het, maar ek wil aan die hand doen as h mens kyk na beskuldigde nr. 15 byvoorbeeld. Daar was net getuienis gewees ten aansien van dat hy op 3 September by die kerk was, maar daar was ook getuienis gewees dat na die mars ene Mahlatsi hom in die veld gekry het en toe het hy gesê "Nee, maar ek het ook weggehardloop toe hulle daar na Caeser se huis toe is." Hierdie geval, dit is wat daar teen Hlanyane is met betrekking (30)

tot/...

tot 3 September. Om daardie rede kan sy geval totaal onderskei ten opsigte van beskuldigde nr. 8.

As h mens kyk na beskuldigde nr. 7 - die getuienis teen hom was dat hy was op die vergadering van 19 Februarie 1984 in Gebied 12. Hy was h spreker op h vergadering van die VCA aan die begin van 1984 Gebied 7. Hy was op 24 Augustus by die huis van beskuldigde nr. 10 waar h vergadering gehou was en dan was hy op die laaste deel van die mars, of stuk van die mars, terwyl as ons kyk na beskuldigde nr. 8, dan vind h mens hy was die voorsitter gewees van die vergadering (10) van 26 Augustus waar geweld beweerd word. Hy was by die opmars gewees. Hy was deel van die opmars. Daar is gesê hy was een van die leiers gewees. Hy was by verskillende vergaderings gewees, huisvergaderings. So, net om na die eerste geval te verwys, is totaal h onderskeid tussen die gevalle van beskuldiges 7, 9 en 15 ten aansien van dié van beskuldigde nr. 8. Die onderskeid wat My Geleerde Vriend probeer maak gaan nie op nie.

Dan op bladsy 13 van die hoofde van My Geleerde, as h mens kyk na paragraaf 24, handel dit met die paspoort (20) van eerwaarde Chikane. Dit is duidelik wat die fout daar was. As u kyk na BEWYSSTUKKE V4 en 5. Ek hoef dit nie vir die Hof te lees nie. Dit is duidelik dat toe daar navrae gedoen is in verband met die heer Chikane se paspoort is daar laat weet skriftelik maar hierdie man het net h paspoort wat geldig is vir een jaar en dit het al verstryk en die man was in die buiteland en hulle kon nie vasstel hoe dit gebeur het nie. Volgens die volgende bewysstuk is dit duidelik dat h ander kantoor het foutiewelik h paspoort vir vyf jaar uitgereik terwyl daar net amptelike magtiging vir een jaar was. (30)

Dit is n fout wat daar vasgestel is ten aansien van Chikane.

Dan sê My Geleerde Vriend in paragraaf 26 op dieselfde bladsy, bladsy 13 daar is geen bewering êrens in die Staat se

dokumente dat die veiligheidstoestand dieselfde is of dieselfde gebly het nie. Ek wil u verwys na BEWYSSTUK V12.

Dit is die vergadering van die Staatspresident. Daar sê Sy Edele, die Staatspresident, op die inligting tot sy beskikking is dit so, het die noodtoestand dieselfde gebly. Daarom het hy weer n verdere, n derde noodtoestand afgekondig.

Dan wil ek u verwys na bladsy 17 van My Geleerde Vriend(10) se hoofde. Daar word beweer dat die beskuldigdes sê hulle het geen kennis daarvan, van UDF se beleid en wat dit is nie. Ek wil met respek u verwys na BEWYSSTUK C100, een van die bewysstukke voor die Hof. Dit is ook deel van My Geleerde Vriend - van die Staat se stukke. Daarvolgens blyk dit dat lank terug al het die - is gepropageer dat daar alternatiewe strukture moet kom en dit is die tyd toe die beskuldigdes nog deel was van die UDF.

Nou is die Staat se saak dood eenvoudig, wat nou gebeur en wat gebeur sedert hulle in aanhouding is basies, die (20) vrugte wat gepluk word van die beplanning wat gedoen was en die organisering terwyl die beskuldigdes nog deel van die UDF was en van die plaaslike organisasies.

Dan op bladsy 18 paragraaf 31 van My Geleerde Vriend se hoofde word gesê "That the UDF is a lawful organisation carrying an acceptable political activity." Ek nooi My Geleerde Vriend om te bewys waar staan dit in die stukke wat hy ingehandig het. Dit staan nie daarin nie, dat die Minister sou gesê het dat UDF met "acceptable political activity" mee besig is nie.

(30)

Dan/...

Dan op bladsy 19 van My Geleerde Vriend se hoofde, paragraaf 32. Daar word verwys deur My Geleerde Vriend na die verklaring van die heer Lodge waarin hy 'n uiteensetting gee van die ANC se uitsending oor Radio Freedom of verklaring maar ek wil u verwys in dieselfde verband na BEWYSSTUK V15 paragraaf 32 op bladsy 19 en bladsy 832. Daar sê die ANC in 'n stuk wat handel oor hulle jaarlikse verklaring van die heer Thambo uitdruklik skriftelik in die Mayibuye dat die ANC sê hy het onder andere the UDF gestig.

Ek sal dan na my hoofde toe gaan voorlopig. Soos die (10) Hof te kenne gegee het, die Hof het dit gelees. Ek sal bladsye 2 tot 4 nie verder behandel nie. Ek staan by wat skriftelik gesê is. Dit sal nie beter word deur dit te herhaal nie.

Dan verwys ek u verder na bladsy 18 van my hoofde. Bladsye 18 tot 21 is voorbeelde van wat UDF self sê van hoe sy mense die polisie en die gesag ontduik, hoe hulle voortgaan en vergaderings hou ondanks noodtoestande, ondanks verbannings van vergaderings en hoe hulle mense wegkruip vir die polisie, dat die polisie hulle nie in die hande kry nie, sedert die (20) eerste noodtoestand. Hulle haal selfs die voorbeelde aan dat van hulle leiers vlug voor die polisie.

Dan wil ek u verwys na bladsy 27 ten opsigte van die meriete van die aansoek. Dit is so, dit is die Staat se submissie dat die Hof moet kyk na wat is aan die gang op die oomblik. Dit is die Staat se submissie dat die kampanjes van UDF bly steeds aan die gang, dit is kampanjes wat begin is reg aan die begin van die stigting van UDF. Dit is nog deurentyd aan die gang en as 'n mens byvoorbeeld na die kwessie van die huurkampanje. In hierdie hof is te kenne gegee dat (30)

dit/...

dit is maar huurders wat ongelukkig is met die kwessie van die huurverhoging en dit is 'n spontane reaksie, maar as die Hof kyk na bladsy 40 tot bladsy 42 van my hoofde sal u vind dit is glad nie wat die ANC sê en wat UDF self sê nie.

Beide sê in die stukke daar aangehaal dat dit is metodes om die massas te mobiliseer, byvoorbeeld op bladsy 32 sê die UDF net een sinnetjie "The rent boycotts are a way of mobilising and politicising residents around broader political issues." Dit sê die UDF in sy Up Date van November 1986.

In die Vaal is hierdie kampanje nog steeds aan die gang. (10) Die ander kampanje moet nog steeds gevoer word wat begin was toe die beskuldigdes nog deel was van die organisasies voor hulle arrestasie. Dit is een van die vrylating van politieke gevangenes.

As die Hof kyk byvoorbeeld na dokument N1, dit is 'n verklaring van die ANC wat hy vir die Organisasie van Afrika Eenheid loop stuur het. Ek verwys daarna op bladsy 48 van my hoofde. Dit word gesê dat Nelson Mandela en Thabo en andere word gebruik, dit is 'n "rallying call" vir "masses actions, of the masses against the regime". Dit is wat (20) die ANC sê. In BEWYSSTUK V14 op bladsy 819 kom die UDF en hy sê min of meer dieselfde ding en in dieselfde dokument V14 onder dieselfde hoof waar hulle Mandela behandel sê die UDF uitdruklik dat hierdie dinge wat nou aan die gang is, se straatkomitees en die tipe van dinge, wat in die Swartwoongebiede versprei, kom van Mandela af. Dit is sy M-plan wat hulle nou implementeer, so sê die UDF.

Dan wil ek u verwys na bladsy 46 van my hoofde waar die ANC self sê dat hulle het so ver gevorder om die staatsstrukture onwerkbaar te maak en die regering onregeerbaar (30)

dat/...

dat daar nie n ander manier is vir die Regering as om n permanente noodtoestand af te kondig nie. Dit sluit aan, met alle respek, by wat die Staat probeer voorgee dat die - probeer aantoon dat die rewolusionêre klimaat het sedert die eerste noodtoestand tot nou nog nooit verander nie. Dan verwys ek u verder na bladsy 56 van my hoofde waar die UDF sê in November 1986 in sy Up Date aanhangsel A4 dat nie-teenstaande al die verbannings van die vergaderings, is daar nog metodes ontwerp deur die massas om vergaderings te hou "right under the noses of the troupes and the Casspirs". (10) "Street committees were set up after 12 June."

Dan wat ek u vroeër na verwys het, BEWYSSTUK C100, dit behandel ek op bladsy 57 en 58 van my hoofde. Daar het ons dit duidelik uit C100 dat hierdie straatkomitees is nie spontane liggame wat gevorm is nie. Dit is in C100 al gepropageer. Dit is n UDF dokument voor die beskuldigdes se arrestasie. Dit is n UDF beleid. Dit is nie spontane reaksie nie en dan soos ek vir u gesê het in V14 blyk dit verder dat hierdie ding kom van 1953 af volgens V14 bladsy 820 dat die UDF self sê "Dit is Mandela se M-plan wat ons (20) implementeer."

Dan verder wil ek u verwys na bladsy 61 van my hoofde. Daar sê ek onder aan paragraaf 3.10 dat as die Hof kyk na die verskillende statistieke, bewysstukke, aanhangsel B en aanhangsel V dan is dit opmerklik dat die aanvalle teen die magte wat die gesag moet handhaaf, wet en orde moet handhaaf het min of meer dieselfde gebly oor die tydperke.

Dan verder wil ek u verwys na bladsye 63 tot 66 met betrekking tot die vraag van die moontlike ontvlugting van die beskuldigdes. Eerstens wil ek aan die hand doen dat die (30)

feit/...

feit dat van die persone wat op borg uitgelaat is nog nie ontvlug het nie, is niksseggend. Dit is ondenkbaar dat hulle sal vlug, hangende borgaansoek vir die ander beskuldigdes, want in my submissie, as hulle so iets sou waag, dan kelder hulle enige verdere borgaansoeke. Hulle sal dit nie nou doen nie. Tweedens is dit so dat die ANC ontsnappingsplan nog steeds bestaan. Dit is voor die Hof. Derdens wil ek u verwys na die persone wat wel gevlug het. Daar is Stompie Mokhele, waarna My Geleerde Vriend ook na verwys. Dit is n persoon wie se naam in hierdie saak ook al genoem is. Hy(10) het ook uit die Vaal geopereer. Die man is weg na die ANC toe. Die Staatsgetuie Edith Lethlake is weg tot vandag. Die klomp persone wat by die "stay-away" van 5 en 6 November 1984 betrokke was, Tami Mali en sy kollegas is weg. n Leier van die UDF, Steve Tswete, hy is weg na die ANC toe. Esau en Dorcas Raditsela is weg. Dié belangrikste mense in die saak met betrekking met die organisering en beplanning.

Dan wil ek u verwys na beskuldigdes nrs. 19 en 29 wat handel in hulle verklarings oor hierdie kwessie van die UDF wat sê dat hulle het "emerged from hiding". Dit is insig-(20) gewend dat hulle in hulle eie verklarings waar hulle hierdie ding probeer verduidelik word daar gesê deur beskuldigde nr. 19 hy het dit sy besigheid gemaak om uit die pad van die polisie te bly en beskuldigde nr. 20 het gesê hy het uit die openbaar uit gebly en hy het net verskyn wanneer dit absoluut noodsaaklik is. Dit, met respek, staaf wat UDF sê dat hulle "emerged from hiding" en dit is nie deel van n verduideliking nie.

Met betrekking tot die kwessie van die Staatsveiligheid, die ander aspek waarom die Staat sê die borg nie toegestaan moet word nie, betoog die Staat dat die kampanjes nog steeds(30) aan/...

aan die gang is van UDF. Ons sê verder dat die UDF in aanhangsel A4 roem daarop dat dele van die Republiek al onregeerbaar gemaak is, dat hulle nou voortgaan met die volgende stap "people's power", word daar ook gesê dat hulle reeds alternatiewe strukture gestig het "people's courts" en ander strukture.

Ook die kwessie van, wat die Vaal self betref, is die kampanjes nog steeds volstoom aan die gang. Ek verwys u na aanhangsels W1, W2, W3, W4. W1 gaan oor 'n kampanje wat aan die gang is om politieke gevangenes vry te laat. W2 is 'n(10) kampanje wat aan die gang is om die noodtoestand opgehef te kry. W3 is 'n kampanje vir "united action", natuurlik gekoppel met 'n dreigement teenoor die Regering dat daar massa aksie gaan kom as die regering nie gehoor gee aan die versoek vir die opheffing van die noodtoestand nie. W4 is 'n kampanje wat hulle voer vir die opheffing van die onwettig verklaring van COSAS. W8 vra hulle dat hierdie vervolging gestop moet word. W7 is 'n "living wage" kampanje wat daar gevoer word. In W8 vind ons dat daar "unband the ANC" is kampanje. W10 is daar 'n staking aan die gang. W11 tot 16 is waar die Weermag uit die Swartwoongebiede gekry moet word. (20)

Wat van belang hier is by hierdie aansoek is onder andere BEWYSSUK V17 bladsy 842. Ek wil die Hof net op 'n kort stukkie attent maak. Dit is onder "Editorial" dit is VOW van die ANC van nr. 1 van 1987, Die goed het nie datums nie. Daar vind u wat van belang is in hierdie borgaansoek 'n baie, baie belangrike aspek en dit is die volgende. Dit is die tweede kolom op bladsy 842 die tweede kolom van Editorial ongeveer die agtste reël van die tweede kolom self. Daar word daar gesê "We have to change from our style of work where our (30)

work was most visible, both on national and regional level. The national and regional leadership should play the role of working out plans and strategies and co-ordination with affiliates. We have to take on a more higher profile. Our higher leadership should work semi-underground."

Saam hiermee moet die Hof met respek lees Vl. Dit is bladsy 646. Dit is die Mayibuye nr. 3 van 1987. Ook die Editorial en ek verwys u meer spesifiek na die derde paragraaf. Daar sê die ANC die volgende oor organisasies in die binneland "In the past we have emphasised the need to work(10) underground in order to counter the enemy" en dan gaan hy aan "and however the need to have organisations operating openly cannot be over-emphasised. We need them to mobilise the broad masses into action on all the issues that affect the daily lives. These legal organisations are important to strengthen one of the pillars of our struggle namely mass political activity which must exist side by side with the other pillars, namely the ANC underground MK armed activity as well as international action to isolate the regime."

Dit is my submitisie dat hierdie beskuldigdes is aange-(20) kla vir dade van geweld wat werklik plaasgevind het in die Vaal as gevolg van sameswering. In die Vaal is daar nog steeds die kampanjes aan die gang waarvoor hulle onder andere teregstaan. Oor die hele land is die ander kampanjes ook aan die gang behalwe net in die Vaal. Ek het ander aspekte ook na verwys in die Vaal en dit is my submitisie dat aan die een kant die verdediging nie bewys het dat die beskuldigdes sal nie ontvlug nie sou hulle vrygelaat word, dan nie onmiddellik nie, dan wel op 'n later stadium in hierdie verhoor, soos die verhoor vorder. Met respek die Staatsveiligheid (30)

word wesenlik benadeel as hierdie beskuldigdes wat aangekla word van dade van geweld en kampanjes wat hulle beplan het en waaraan hulle deelgeneem het, nou vrygelaat word op borg en weer kan teruggaan in die samelewing, terwyl die kampanjes nog aan die gang is.

Ek vra die Hof om die aansoek van die hand te wys.

MR BIZOS : There are a number of things that I want to reply to. Firstly may I deal with C100, because an attempt was made to make use of this document in cross-examination and I think Your Lordship indicated then, if my memory serves (10) me correctly, that it is not a UDF document but a position paper arguing for a certain situation and I want to refer Your Lordship to the fact that this referred to in the affidavit of Captain Kleynhans at page 302 and the accused deny any knowledge of it on page 564 paragraph 12.3 and the internal evidence is that although it was found - it appears to have been found at the UDF offices that it was at a time after the accused's arrest. At any rate they say that they have no knowledge of it. So, that is the one aspect that Your Lordship ought to take into account. It argues for a (20) situation. It argues for a position to be taken and it is not dated.

MNR. FICK : Kan ek u dalk net help as my geheue my reg bedien BEWYSSTUK AAD5 is dieselfde dokument maar net volledig.

HOF : AAD5 is net die lys van erkennings. Hierdie dokument is erken in AAD5.

MNR. FICK : Dit moet AAS wees, die lys van erkennings. AAD is dokumente wat later ingehandig is.

MR BIZOS : Be that as it may, as far as the bail application is concerned, those are the references. (30)

The/...

The situation that we find ourselves in this trial is this. That there is an allegation that we were in conspiracy with the African National Congress. Ten of the accused have given evidence and all then of them have said we had nothing to do with the ANC, we did not see any ANC documents, we were not in conspiracy with them.

Not one of the accused was confronted with any evidence whatsoever that his evidence in that respect is incorrect. Practically all of the accused said in the early part of the case that they never saw any ANC documents. After a while (10) we even stopped leading them in chief in relation to this, because although a few boxes full of ANC documents have been placed before Your Lordship, none of them were put to any of the accused that have given evidence.

When we come to apply for bail we get a further hefty batch of ANC documents and what the State argues is, that because the ANC says something or other, then that is a reflection on the accused and that it should be taken into consideration in refusing the accused bail.

Why should accused no. 10 who said that he had nothing (20) to do with the ANC, never saw any of its documents, be refused bail as a result of what the ANC may have said in some document which was produced whilst he was on trial here? We can again not emphasise strongly enough the FOURIE judgment "the likelihood of conduct by the accused".

What the State's argument amounts to is this, that there are a number of campaigns for the release of political prisoners. That is a campaign which Mr Mokoena who is free to move about as the chair person of the Free Mandela committee on the papers before Your Lordship goes about carrying (30)

on/....

on openly throughout the Republic of South Africa. Your Lordship is being asked to deny bail to Mr Hlomoka and to Mr Malindi and to the others here because they may engage in that campaign, when we offer Your Lordship that a condition should be imposed that they should not take part in any activity. How does that make sense to anyone?

There is a campaign, we are told by the State, not to pay rent. The facts as far as the accused are concerned were that it is true that they had meetings at which it was said that the increased rent should not be paid. As it turned (10) out in relation to the Vaal they may not have known it at the time, but in any event the advertised increase was not properly done and they were probably right in law in not paying it, but be that as it may, what has happened in the country since their arrest is that there is a campaign not to pay rent at all and we have figures of million of rands in the papers which are not being paid. What has that got to do with the conduct of these accused? In terms of the FOURIE judgment what has it got to do with the accused or are these accused to be held as hostages whilst they are being (20) tried in relation to offences because people have decided in South Africa not to pay their rent by way of protest or for whatever reason.

The State has powers under the Internal Security Act. under the emergency regulations, under the ordinary law of the land, to regulate conduct of persons who commit offences. It is not necessary for Your Lordship to be used as a rubber stamp in order to deprive the thirteen people who are still in custody of their liberty whilst they are being tried on these charges on the basis that they may take part in (30) these/...

these campaigns when it can be regulated by bail conditions, by daily reporting, by keeping out of the Vaal and taking other steps, but the State says that it was impractical for it to investigate the doings of the 118 co-conspirators who are free to do what they want to do. That is with the greatest respect an admission of the incorrectness of the argument advanced by the State as to why these accused persons should be kept in custody, by way of refusing of bail. The presumption of innocence prevails until such time as Your Lordship has heard all the evidence and Your Lordship(10) has given judgment. If anybody does anything wrong, there are enough powers for the State to deal with people. Refusing them bail must be the very last resort.

If they stay in Johannesburg how can they possibly affect - and they do not address meetings in the Vaal - the situation? We disagree with the greatest respect with the State that the State President's address to parliament is an indication that there has been no change. I submit that a careful reading of this means this, that the emergency powers taken have brought the country back to normality. However,(20) because there are unlawful organisations and particularly those committing acts of violence and that is what the weight of the address really addresses itself to. It is necessary for the State to retain those powers in order that we may not have a recurrence of the chaotic conditions that existed in the past. That is what is meant at page 794 where the President says although the extraordinary measures of the past year have led to a reduction in visible incidents of violence, I am in the light of the information furnished to me by the security services of the opinion that if such(30) measures/...

measures are no longer enforced a serious and actual danger exists that there would again be an escalation in internal violence.

So, if we read that carefully with respect, if we read Minister Stoffel Van der Merwe's statement and Mr Ralph Meyer's statement on the papers before Your Lordship, Your Lordship will see that in fact that that is probably the best proof that there has been a change in the situation.

Your Lordship had occasion to say in the previous judgment that Your Lordship gave refusing bail that whether (10) there is a declared state of emergency or not, is a mere technicality. Your Lordship will recall those words. The question is whether there is turmoil or not and Your Lordship came to the conclusion on the evidence then before Your Lordship that there was such turmoil when the previous application was brought and the application was refused despite the absence of a formal declaration of a state of emergency by a similar line of reasoning in our submission.

The fact that there was an emergency declared for the reasons set out by the president as explained by the two (20) ministers of State is again only a matter of technical importance. The situation is that the President went to the Vaal, that people according to Mr Robinson could move about freely in Alexandra township, that there has been a tremendous drop in the acts of violence and that is the changed circumstances.

May I just ask Your Lordship to note this which My Learned Friend, Mr Marcus, has dug out of the documents. That C100 is part of AAD5.

COURT : And AAD5 is what?

MR BIZOS : It is the same except that it has been augmented (30) which/..

which indicates that C100 was a part of it.

COURT : Yes, but where was each found?

MNR. FICK : Mag ek dalk help. AAD5 uit my geheue uit is h erkenning. Hy is gevind by UDF kantore in Pretoria.

MR BIZOS : That is correct. AAD2 says the following. This is a document headed "From protest to challenge, from a mobilisation to organisation" and it says underneath "The national general council adopted the above slogan as its theme.

What does it mean?" Then underneath "This is a summary of a discussion paper which was prepared by the Transvaal (10) Education Committee. The views expressed in this paper are not the official views of the UDF."

If Your Lordship compared AAD2 Your Lordship will find that it is a summary of C100, but may I return to this question of trying to hold the accused responsible for what is said in ANC publications in an attempt to deny them bail, and this is what we are concerned with at this stage, reference was made to page 832. Your Lordship will recall it where the Mayibuye page 8 says "In many parts of our country we have already made important advances towards the creation(20) of these mass revolutionary bases. We have destroyed many of the enemy's organs of apartheid rule. The masses of the people have played a central role in this process as active participants of the struggle for their own liberation."

I am reading it deliberately because I am going to compare what Mr Lodge said about this, because it is proof absolute of the correctness of what Mr Lodge has put before you.

"We have also succeeded to create mass democratic organisations representative of these conscious and active masses ranging from street committees to COSATU, the UDF, the (30)

NECC and their affiliates and other democratic formations.

We have a situation that the ANC claims credit or responsibility for forming practically everything which is opposed to government policies.

We have a situation that COSATU is operating lawfully. It has some million members we are told. The ANC Document speaks of the masses of the people and the State says because the ANC says that, we must be refused bail.

COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : I have referred Your Lordship again to the (10) passage relied on by the State at page 832 which is an extract from Mayibuye on page 8 and the claim that is made that practically everything that has happened is as a result of the initiative of the African National Congress.

I was about to refer Your Lordship to the affidavit of Mr Lodge whose expertise for present purposes is to be assumed having regard to what he says in his affidavit. If Your Lordship has a look at page 1 000, Your Lordship will see that this - what he says about this sort of claim "I have been asked to present my valuation of the meaning of the (20) Radio Freedom broadcast on the assumption that the SABC's version of it is correct, although I understand that that is denied. In making this evaluation I have looked at the language of the broadcast and taken into account the extensive reading which I have done on Radio Freedom broadcasting other ANC material."

Then he offers the following observations. "That from the text of the transcript it is clear that the ANC uses the first person plural both 'we' and 'our' in a very broad sense so as to associate itself with almost any (30) manifestation/...

manifestation of mass opposition which takes place inside South Africa regardless of whether the ANC was directly involved or not."

What we will ask Your Lordship to do is, he sets out the BBC monitoring of the Radio Freedom passage, Your Lordship will see that the similarity in language in using the we in a broad sense in both the passage "The apartheid President P.W. Botha reimposed his twelve old state of emergency. This means that our residential areas (it claims all the residential areas in South Africa as ours) will continue (19) to be occupied by heavily armed troops and police. That many of our comrades will be arrested without committing any crime." It cannot really be referring to cadres of Mkhonto we Sizwe. "Many of our people will be murdered by those occupationist forces and the real truth about what happens will continue to be hidden from the public eye through the press." Again "many of our people will be murdered." I am not suggesting that they would be people who are really members of the - and he goes on to say "From the context of these opening words it is clear that the (20) speaker uses the word 'our' to refer generally to the people of South Africa. This is not a unique example of the ANC'S use of words 'we' and 'our' in a general sense. In all ANC documentation there is the use of the word 'we' to denote we , the people. This is an accepted form of address from an organisation which is of the nature of the ANC. There are times when the ANC issues statements using the word 'we' or 'our' which clearly mean the ANC. It is necessary, however, to read ANC texts with extreme caution if one is going to apply them as a guide to the nature of (30) activities/...

activities taken by the ANC itself."

Then he goes on in relation to that that in any event Radio Freedom does not - a lot of people speak on Radio Freedom who are not officials of the ANC and he says that the official spokesman has denied it, but what is important on page 1 003 is an examination of the statement itself indicates that reliance upon it would be dangerous. The claim that the UDF was formed under the shade of marshall law is patently false. The UDF as a national organisation was formed on 20 August 1983 at the time when there was clearly no marshall law indeed a (10) state of emergency. For this reason alone I would regard the SABC report on the statement on Radio Freedom as unre-liable.

So, that we have the same sort of situation in relation to the ANC documents and the claim, but, let us assume that Your Lordship finds on these documents that the ANC makes these claims, what bearing has it got on the issue before Your Lordship on the question of bail.

Your Lordship will have to find as a fact at the end of the trial that these statements are admissible evidence (20) against accused no. 13, to take as an example, that he knew that this statement was made after his arrest and for some reason or other that bit of evidence can be used as evidence against him for - even though he was not a member of the structures. One does not know what use to make of this, but there are two other points that I want to make in reply to Our Learned Friend, Mr Fick.

He says that it would have been very difficult to investigate the 188 co-conspirators. Does Your Lordship realise what, with the greatest respect, that means? It means this, (30) that/...

that the activities that the accused are supposed to be prevented from taking part in, are being conducted by 118 people. The State finds it difficult to monitor those people, therefore it says to you keep these accused who are presumed to be innocent in jail so that we do not have 131 people to monitor. We cannot monitor the 118 and if you give us another 13 that is going to make our life difficult. Can it mean anything more than that? That people who have the presumption of innocence operating in their favour must remain in custody and the 118 co-conspirators in many cases (10) senior to them in status in a lawful organisation.

The other point which I find very difficult to understand with the great respect if this. I do not think that it could have been thought out when the submission was made. Your Lordship is told well, yes, you would not have expected the six that have been admitted to bail to have escaped at such an early stage, they would not do it now. Does that mean that the State decided to offer bail to these six people without being sure - nobody can be absolutely sure, but on the probabilities that these persons would (20) stand their trial. What does Mr Fick say? Did he cross his fingers when he agreed that the six should go out on bail.

There is no answer in our respectful submission to the two main points that the main ground of opposition has fallen away.

I want finally to deal with what we are really debating in this case. One can understand that if the accused were charged with being members of Mkhonto we Sizwe and there was an issue whether the cash of arms was in their possession (30)

or/...

or not or whether certain bombs were exploded as a result of their activities that this was a case where one could not take a chance and let people out on bail because they may continue with their activities.

This is not that sort of a case. It is true that the charge is treason, but what are we debating in this case? We are debating what happened at an area committee meeting. We are debating as to whether or not any direct claims to violence were made. I do not want to - we do not expect a decision at this stage as to whether that is correct or (10) not, but the debate, the cross-examination in this case is about 2% as to whether direct violence was used or not. The rest of the debate in this case is about political beliefs. The acceptance of the policies of the government, their rejection, the effect of that rejection, what did we expect to happen and what the State has really done, it has switched in its cross-examination well, if you did not directly call for the violence - for violence against councillors, you actually attacked them verbally. You called them names. That is what we are debating. (20)

We are debating in this case whether or not the council in Lekoa was a corrupt body or not and whether it was or not, whether the accused were entitled to publicly attack it or not and whether or not in law we will argue at the end even if there were such verbal attacks, whether there is any causal connection between those attacks, those verbal attacks and the unfortunate events that took place on 3 September and whether or not there an novus actus interveniens with us contending that there indeed was from the evening of the 2nd from Bophelong where there was trouble, but (30) there/...

there will be much evidence in relation to that.

We are debating here as to whether or not it is treason to carry out overt political activities. It may be. Whether it was treason to speak in front of 800 or 1 200 people on the 12th and the 19th and the 26th of August and on 2 September.

It may be that it is treason. It may be that there was an incitement to violence, but the accused most certainly have shown that they have a defence. Whether it is going to be good or not, is going to be decided by Your Lordship at (10) the end, coupled with that that we have at least a 118 of our alleged co-conspirators carrying out the same activities, issuing pamphlets, putting advertisements in the newspapers, having meetings, issuing pamphlets which are produced before Your Lordship from time to time when an application for bail is made or whenever cross-examination appears to be admissible in that regard.

If the government believes that the United Democratic Front ought to be declared an unlawful organisation, it has the power and the machinery to do so, but the State cannot (20) ask Your Lordship to keep these persons in jail as if Your Lordship is to assume that their activities were unlawful. This is what really Your Lordship is being asked to do.

The ANC is an unlawful organisation. It makes certain claims. We are going to suggest that the UDF did these things and these things were unlawful. The UDF is continuing to do substantially similar things, but keep these accused in jail. It does not help the situation to keep persons in custody for that purpose, nor is it fair to an accused person, let us take a person like accused no. 19. He is (30)

going/...

going to go into the box not to talk about bombs or caches of arms or what is the meaning of this word and what is the meaning of that word which was publicly and openly uttered at meetings three years ago. He will have to deal with documents which were available to the State for a couple of years before his arrest. He is going to deal with document of which the authors are at the back of the court watching him being cross-examined, but he has got to give that evidence under the pressure of separation from his family, his children, his friends and his associates and(10) be limited in his consultation by the fact that he is in custody.

I submit with the greatest respect that once there is this change and once there is the atmosphere and spirit of reconciliation around, a strong case has been made out for the admission of all the accused on bail and that the State has not really answered the two main points that have been made in the original application.

Thank you.

COURT : I will give judgment on this bail application tomorrow morning at 09h00.

COURT ADJOURNS UNTIL 30 JUNE 1987.

DELMAS TREASON TRIAL 1985-1989

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