IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING) KRUGEL

SAAKNOMMER: CC 482/85

DELMAS

1986-01-21

DIE STAAT teen: PATRICK MABUYA BALEKA EN 21 ANDER

VOOR: SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRÜGEL

MNR. W.A. JOUBERT

NAMENS DIE STAAT:

ADV. P.B. JACOBS
ADV. P. FICK
ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON
ADV. C. 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 3

(Bladsye 47 - 116)

IC3, v.o.e. (Deur tolk)

ONDERVRAGING DEUR MNR.JACOBS : U is 'n konstabel in die Suid-Afrikaanse Polisie op Vereeniging? -- Dit is korrek.

Aan watter afdeling is u verbonde? -- Murder and robbery squad.

Is jy ook die ondersoekbeampte in die saak van na die dood van Velapi Philemon Letsele? -- Dit is korrek.

Uit die aard van jou ondersoek, waar is hy vermoor? -- In die lokasie.

Waar? Kan jy vir ons meer besonderhede gee van die plek(10) waar hy vermoor is? -- Zone 13 in die straat.

Het jy volgens die ondersoek vasgestel hoekom hy vermoor is?

HOF : Net 'n oomblik. Van watter woongebied praat ons nou? Van Sebokeng of een van die ander woongebiede? -- Sebokeng.

MNR. JACOBS : As gevolg van jou ondersoek waarom is hy vermoor? Weet jy? Wat het daar gebeur? -- As gevolg van my ondersoek het ek vasgestel dat die oorledene doodgemaak was omrede hy, die oorledene, 'n familielid van die moordenaar gearresteer het. Die persoon was 'n lid van COSAS. Die persoon is gevonnis (20) en hy is tronk toe.

Het jy 'n persoon gearresteer in verband met daardie moord? -- Drie persone.

Wat is hulle name? -- Isaac Zwane, Daniël Maleka en Elliot Stuurman.

Wie was die familielid van die persoon wat gearresteer is? -- Daniël Maleka.

CROSS-EXAMINATION BY MR BIZOS : Could you please tell us whether there are any shebeens at the place where the late Constable Letsele died? -- That is correct. (30)

COURT : What is correct? Is there a shebeen or are there many

... / shebeens

shebeens near the place where he died? -- I know of one shebeen there.

MR BIZOS : Was Mr Letsele and the persons that you eventually arrested, were they in the shebeen before the killing took place? -- That is correct.

Were they drinking together? -- No. The deceased and his companion were having their liquor apart and the others were also drinking their own liquor, not in the same company with the deceased.

Was there any argument in the shebeen itself? -- That (10) is correct.

What was the argument about in the shebeen? -- It started with the accusation that the deceased arrested the member of the COSAS who was related to one of the people in the shebeen, but in fact this started in the following way, in this fashion that the murderer of the deceased spilled some beer on the deceased.

Whose version is this that you are giving us now? -- The witnesses are saying that.

So, there was the spilling of beer on the deceased (20) and did that lead to a quarrel? -- That is correct.

At what time of the day or night was this quarrel in the shebeen? -- According to information from those who told me, it was in the vicinity between 24h00 and 01h00.

At night? -- Yes.

COURT : Is the allegation that there was an argument in the shebeen, about an accusation that the deceased had arrested somebody, connected to the spilling of the beer or not? -- I would not say so, but what I can tell the Court is the one who spilled the beer over the deceased is the one who in (30) fact was (the word used in his language is ambiguous) looking

... / for

for trouble or trying to start something with the deceased, words to that effect.

MR BIZOS : Was the beginning of the quarrel the spilling of the beer? -- That is correct.

And do I understand you correctly that during the argument in the shebeen about the spilling of the beer, there was also an accusation that the deceased had also caused the arrest of a relevant of his who was a member of COSAS? -- That is correct.

COURT : Was the spilling of the beer on purpose or was it accidental? -- I would say it was purposely done. (10)

MR BIZOS : You say you would say. Is there any conflict on the statements in the docket? -- No, the statements are the same.

WITNESS STANDS DOWN.

COURT ADJOURNS. COURT RESUMES.

IC3, still under oath

CROSS-EXAMINATION BY MR BIZOS (continued) : This was between 24h00 and 01h00 at night. Do you know for how long Mr Letsele was in the shebeen? -- I do not know.

Was he accompanied by anyone? -- The information is that(20) he was in the company of somebody, but I cannot trace that person.

You cannot trace him? -- No.

Can we infer from that that his companion was not a police-man? -- That is correct.

He was moving about freely, not in the company of other policemen in the middle of the night? -- I do not know. May be he was on duty. I cannot tell.

What duties would he have had between 24h00 and 01h00 at the shebeen? -- To look around or look for those people who (30) are involved in this, the COSAS people.

... / On

On the basis that a policeman is always on duty? -- Yes, that is true, because everyone has got a duty.

Were the three persons that you arrested admitted to bail? -- Yes, they were released on bail, but the two were re-arrested again.

Did the State oppose the granting of bail to these people charged with murder in the shebeen or near the shebeen? -- Yes, it was refused by the State, but their attorneys communicated and they were present with the State and later the State decided to give them bail. (10)

So, they got bail by consent. So, that the seriousness of the case may or may not be judged by it. Can you please tell how much bail they were admitted? -- From the information I got the prosecutor said it was R300,00.

The two of them that have been re-arrested, have they been re-arrested for the charge of robbery? -- That is true.

The third one is still out on bail? -- Yes.

Were you a party to the decision as to whether bail should be granted or the amount that should be fixed? Were you consulted by the prosecutor on behalf of the State? -- No, I was(20) not a party to that. In fact I was refusing them bail and the Prosecutor said to me there is nothing the prosecutor can do, because their attorneys are appearing on behalf of the people and want them out on bail. So, I could not do what I want.

Would you agree that if we had to characterise this case, that it was really a case of private revenge, because of an argument or even because somebody who was belonging to COSAS was arrested, coupled with lots of beer at the shebeen? -- That is true.

HERONDERVRAGING DEUR MNR. JACOBS : Geen vrae. (30)

GEEN VERDERE VRAE.

.../ KADISANG

IC4 v.o.e. (Deur tolk)

ONDERVRAGING DEUR MNR. JACOBS : Jy is 'n adjudant-offisier in die Suid-Afrikaanse Polisie gestasioneer te Vereeniging waar jy verbonde is aan die veiligheidsafdeling? -- Dit is korrek.

Die getuie in die saak wat hier sou getuig het, Isabella Lethlake, ken jy haar? -- Ja, dit is so, ek ken haar.

Op 15 Januarie 1986 het jy opdrag van majoor Steyn, jou bevelvoerder, gekry? -- Dit is korrek.

Om die getuie te gaan haal? Te gaan kyk by haar huis of jy haar kan kry? -- Ja. (10)

Het jy na haar huis gegaan? -- Ja, dit is so, ek het.

Toe jy by die huis aangekom het, wat het jy daar gevind? -- Met my aankoms daar was haar moeder en suster tuis. Ek het aan hulle vertel dat ek daar is met 'n doel en die doel van my besoek is om Isabel Lethlake daar te kom sien, na aanleiding waarvan hulle aan my gesê het dat sy nie tuis nie nie. Hulle het my verder meegedeel dat sy na haar oom toe is te Soweto.

Is jy toe weg daar? Het jy teruggerapporteer? -- Ek het teruggekeer om die boodskap te gaan aflewer by majoor Steyn.

Die volgende dag, dit is die 16de, die Donderdag, het (20) jy weer gegaan om haar te gaan soek? -- Ja, ek het. Dit is so.

Was sy toe daar? Kon jy haar kry? -- Sy was nie daar nie.

Die Vrydag het jy weer gegaan, dit is die 17de? -- Ja, dit is so, ek het gegaan.

Kon jy haar kry? -- Nee, ek kon haar nie kry nie.

Wat het jy toe gedoen? -- Ek het toe navrae by die ou vrou gedoen, die moeder van die getuie, of sy my van die adres kan voorsien waarheen sy na haar oom toe gegaan het. Toe sy met my daar gepraat het, het ek opgemerk dat sy naar is, waarop (30) sy vir my gesê het dit is nie nodig nie, sy weet nie wat die

... / adres

adres is nie.

As jy sê dat sy naar was, wou sy opgebring het? Is dit wat jy bedoel? -- Daarby bedoel ek sy wou nie verder met my gepraat het nie. Sy het haar gesig getrek.

Het jy toe gegaan om die adres op 'n ander plek vas te stel? -- Ja, ek is na die werksplek van haar ander dogter, waar sy vir my die adres gegee het.

Wie se adres is dit? -- 2238 Soweto.

Is dit die adres van die oom van die getuie? -- Ja, dit is so. Dit is waar die oom woon. (10)

Het jy toe gegaan na die adres toe? -- Ja, ons het soontoe gegaan.

Wat het jy daar vasgestel? -- Daar het hulle gesê sy was nooit daar gewees nie.

Was sy daar toe jy daar kom? -- Sy was nie daar nie.

Sedertdien, het julle haar tot vandag toe gekry? -- Tot vandag toe het ek haar nog nie gesien nie.

CROSS-EXAMINATION BY MR BIZOS : Warrant Officer Mohage, would you please tell us whether a subpoena had been served on Miss Lethlake or not? -- No, that I do not know. (20)

Was Miss Lethlake in detention? -- Yes, she was.

For how long? -- No, that I do not know.

Months? -- Yes, it was for quite some time, though I am not able to tell for how many months.

Do you know whether she took kindly to detention or not? -- Seeing that I never met her while she was in detention, I am not in a position to tell whether she took it or not.

Do you know when she was released from detention? -- I only heard that she had been released, but when that was, I do not know. (30)

Did you introduce yourself to the mother as a member of

... / the

the security police? -- She knows me. I am not very far from where she lives.

And she knows that you are a member of the security police? -- Quite well.

No charges were brought against Miss Lethlake, her daughter? -- No, that I do not know. All I know is, she was a State witness.

That is what you were told? -- That is what I know.

HERONDERVRAGING DEUR MNR. JACOBS : Geen vrae.

GEEN VERDERE VRAE. (10)

105, v.o.e.

ONDERVRAGING DEUR MNR. JACOBS : U is 'n kolonel in die veiligheidspolisie gestasioneer te Pretoria? -- Dit is korrek.

Wat is u ondervinding in die veiligheidspolisie? -- Ek is al 22 jaar lank verbonde aan die veiligheidstak.

Wat is u pligte daar? -- My pligte behels hoofsaaklik die ondersoek na terroriste-bedrywighede van die African National Congress en die Pan Africanist Congress.

Uit die aard van u werk is 'n deel van u werk die bestudering van die dokumente van die African National Congress? (20) -- Dit is korrek.

Wat se dokumente word daar dan in u besit gehou en waaruit u u bestudering doen? -- Die African National Congress-dokumente waarna ek sal verwys is hoofsaaklik die Sechaba. Dit is die amptelike mondstuk van die ANC.

Behalwe dit, werk u ook met ander persone wat vroeër verbonde was aan die ANC? -- My pligte behels hoofsaaklik die ondervraging of onderhoude met hierdie persone, oud-lede van die ANC of lede van die ANC wat gearresteer word.

En gerehabiliteerde persone, wat die polisie beskou as (30) gerehabiliteerde terroriste? -- Dit is deel van my plig om

... / hulle

hulle te probeer rehabiliteer.

Het u ook enige verantwoordelikheid - is u ook verantwoordelik vir hulle beveiliging en sulke tipe dinge? -- Dit is korrek, tot aan die einde van Desember 1985.

Uit die aard van u ondervinding in die 22 jaar diens wat u die werk doen en met die ondervraging en hierdie tipe dinge, kan u vir die Hof sê wat die ANC se houding is teenoor getuies, vroeëre lede van die ANC wat kom en getuienis gee in howe? -- Ook mense wat afvallig word van die ANC? -- My ondervinding en die inligting wat ek ingewin het, dui daarop aan dat die(10) ANC die persone beskou as verraaiers en dat die ANC 'n sogenaamde "heatlist" byhou en dat hierdie "heatlist" die name bevat van mense wat gerehabiliteer is of wat nou saam met ons werk in Suid-Afrika.

As u sê saam met ons werk, wat bedoel u? -- Saam met die Suid-Afrikaanse Polisie of die Suid-Afrikaanse Polisie se veiligheidstak. In ander woorde, nie meer saam met die ANC werk nie.

Het u enige aanduiding waar die ANC hierdie tipe dinge duidelik verklaar? Kan u vir die Hof verduidelik wat u (20) vasgestel het in u ondersoeke? -- Behalwe met die onderhoude of ondervragings waarmee ek betrokke was, het ek ook dokumente hierso waarin genoem is dat die ANC verantwoordelikheid aanvaar vir die doodmaak van sekere getuies, of sogenaamde verraaiers.

Kan u nou hierdie dokumente vir die Hof identifiseer en aan die Hof oorhandig en vir die Hof sê wat se soort dokumente dit is en wat u daarna verwys, watter dele spesifiek? -- Goed, ek sal so maak. Ek het net een probleem sover as wat dit die dokumentasie aanbetref. Ek het afdrukke gemaak van die relevante stukke, maar ek wil net 'n versoek aan die Hof rig, (30) meeste van my dokumente is in ander sake vas en dit is al

... / omtrent

omtrent wat ek in die hande kon kry op kort kennisgewing gistermiddag. Ek wil net 'n versoek rig dat ek hierdie dokumente weer kan terugkry, as dit moontlik is.

U het die oorspronklike dokumente en dan van daardie spesifieke oorspronklike dokumente het u fotokopieë gemaak wat u aan die Hof wil gee? -- Vanoggend hier in die hofgebou het ek afdrukke gemaak.

Dit is beskikbaar, as die Hof na die oorspronklike wil kyk is dit hierso.

HOF : Net voordat die getuie voortgaan. As u die dokumente(10) inhandig, watter sisteem van nommering gaan u gebruik? Ons het nou baie dokumente alreeds met baie A's en B's daarop. U moet nou reg kies. Is dit nou 4A of 5A en dan 'n nommer?

MNR. JACOBS : Daar gaan nog dokumente kom. Kan ek net op my lys kyk hier?

HOF : Ja.

MR BIZOS : May I make a suggestion which was proved useful in the past in this sort of situation, that we start a new category and we can call them PROS for prosecution and then name them 1 to whatever we may reach and if they eminate (20) from the defence, we can call them DEF for defence, 1, 2 or whatever the position may be. Or if they are not going to be exhibits in the trial perhaps, I suggest this for the trial itself, if these are only going to be for this limited purpose of this hearing, perhaps we can call them INC and not ANC for In Camera 1, 2, 3 et cetera. It will help us if we have some category which shows where they eminate from.

HOF : Sal dit enige probleem wees as ons hulle IC nommer, 1, 2, 3, ensovoorts? In camera?

MNR. JACOBS : Ons kan dit so noem. (30)

HOF : Dan kan u hulle maar in 'n donker doos bêre. Goed, die

... / eerste

eerste dokument is IC1. -- Ek het agt afdrukke van elke dokument gemaak.

MNR. JACOBS : Sal u die eerste een vir ons net merk IC1 en dan net vir ons identifiseer waar hy uitkom? -- Die dokument bestaan uit twee bladsye wat aanmekaar gekram is.

HOF : Hierdie dokument, dokument IC1 het nie 'n datum op nie en wil voorkom slegs 'n bladsy te wees van 'n hele publikasie. Is dit korrek? -- Hy is ongelukkig 'n bietjie dof, maar net langs die logo op die voorblad, die man met die spies, sal u die datum daar sien "Volume 12 First Quarter 1978." (10)

Is dit 1978? -- Dit is 1978. Ek het die oorspronklike hier ter insae.

MNR. JACOBS : So, die eerste bladsy is dan die naamopskrif, die buiteblad van die oorspronklike? -- Die buitebladopskrif is "Sechaba" en dan daar onder "Official organ of the African National Congress South Africa."

HOF : Die afskrif wat ons het, het net bladsy 4? -- Dit is korrek. Met verlof van die Hof wil ek net op bladsy 4 die relevante stukkie voorlees in die tweede kolom die tweede paragraaf "Traitor Nkosi is Dead!" Mag ek maar voorlees? (20)

Ja, lees dit uit, asseblief. --"Security policeman, sergeant Mandla Leonard Nkosi, was killed in a spray of bullets while in his bed at his KwaMashu home near Durban. Bullets fired from an automatic weapon hit him, one going through his right shoulder and coming out through his chest. Several cartridges were found outside the house. Photographs taken later showed the walls of his room riddled with bullets and his bed covered in blood. A fitting end for this traitor of the people. Nkosi gave evidence as a State witness in nearly all the ANC trials since 1968. These include the trial of Dorothy Nyembe, who(30) was subsequently hailed for 15 years, and the recent

... / Pietermaritzburg

Pietermaritzburg trial. Nkosi had become increasingly arrogant in the months before his death, openly boasting about his activities and spending his spare time terrorising our people, especially ex-Robben Island political prisoners. His work for the oppressors was described in a fitting manner at his funeral when he was buried with full military honours. He was described as an 'upholder of the law' and his bosses found it shocking that he was 'gunned down in cold blood in the sanctuary of his own home'. Brigadier C.F. Zietsman, Chief of the security police said that Nkosi 'had worked fearlessly in the fight (10) against communism'. Nkosi had at first been involved in the ANC/ZAPU operations on the eastern front. But he joined the enemy to give evidence against his comrades of those campaigns and did good service for Vorster from that time until his death. His death is a lesson for those who betray the people's cause." Dit is die aanhaling uit daardie Sechaba. Die volgende dokument is van 'n Sechaba gedateer Januarie 1985. Ek merk die dokument met u toestemming IC2. Die voorblad dui duidelik hierdie keer die voorblad aan "Sechaba January 1985." Dan die opskrif "Official organ of the African National Congress(20) South Africa." Die dokument bestaan uit twee bladsye. Bladsy 20 is vasgekram aan die buiteblad.

MNR. JACOBS : Hierdie twee is dan ook weer 'n fotokopie van 'n oorspronklike wat u daar by u beskikbaar het? -- Ek het die oorspronklike hier by my.

HOF : Watter deel is vir u van belang? -- Ek voel ek moet maar die stukkie lees aan die onderkant van die bladsy, die eerste kolom "Targets of a just war." Vanaf "South African Police and Army Personnel, van daar af wil ek lees tot by die volgende kolom so drie-kwart af waar dit eindig met die (30) vetskrif daarso "It expresses the fact that due power exists

... / in

exists in South Africa." As ek mag voorlees. "South African Police and Army Personnel and installations have been attacked and these are surely lucid targets in a just war. They are part and parcel of the oppressive apparatus which attacks the South African people. The South African Press waxed indignant the loss of life when the Airforce Headquarters in Pretoria was attacked. It is noteworthy that all the 19 people killed worked in the building and the fact that there were not more deaths shows that there was discrimination on the part of the ANC. A military installation is a legitimate target and (10) it is the duty of those who would place major installations in civilians areas to guarantee the security of civilians in the area. It is surely easier to bomb buses and cinemas but the ANC has rightly refused to do so. Were Umkhonto interested in simply causing death, its cadres would have bombed civilian targets. The fact that this was not done in Pretoria reflects the fact that the concern of the ANC was to attack a military target and that Umkhonto is not a terrorist organisation like the South African Army and Police. Umkhonto we Sizwe has been responsible for the assassination of notorious(20) informers and collaborators for the apartheid regime. This is not properly speaking an act of war, but constitutes the administration of vigilante justice by an organisation recognised by the press in South Africa as its own government. It expresses the fact that due power exists in South Africa." Dan die volgende dokument, met u verlof wat ek sal merk IC3. Weer eens het ek die oorspronklike dokument hier by my en die buiteblad, soos u kan sien, dui net 'n maand aan, maar nie 'n jaar nie. Toe het ek die binneblad ook 'n afdruk van gemaak en dit wys daarop dat dit die "May issue 1979" is. Dit is (30) weer eens 'n kopie van Sechaba. Soos ek sê, ek het die

... / oorspronklike

oorspronklike hier by my. Dit is Mei 1979. Ek het 'n afdruk van bladsy 10 aangeheg waaruit ek sal aanhaal.

MNR. JACOBS : U het net nou verduidelik van 'n tweede bladsy? -- Ja, ek het die binneblad van die buitebladsy ook 'n afdruk van gemaak om aan te dui watter datum dit is en daar reg oorkant die naam Sechaba is dit "May issue 1979."

HOF : Watter deel is vir u van belang in hierdie dokument? -- Die deel op bladsy 10 aan die regterkantste kolom omtrent halfpad af. Dit begin by "The strengthened capability of our organisation is also". Dit is net daardie kort paragrafie (10) en die volgende paragraaf.

"People's cause"? -- Tot by "People's cause." "The strengthened capability of our organisation is also reflected in the actions taken against known informers and traitors. Abel Mthembu and Leonard Nkosi, both former ANC members who served as State witnesses in many trials, were shot dead and a third traitor was seriously wounded at his home near Durban. Two known BOSS agents, Lloyd Ndaba and Orphan Chapi were also eliminated in this way. These are just reprisals against these

K16 traitors of our people's cause." Die volgende uittreksel wat(20) ek het of afdrukke wat ek gemaak het, is van 'n dokument by die naam Umsebenzi nr. 3 van 1985. Die opskrif daar is "Voice of the South African Communist Party." Ongelukkig met die afdrukke kom die naam nie uit nie. Hy is net so swart, maar die dokument is hierso. Met die kleur kom hy net nie uit nie. Ons kan hom nie kry dat hy die naam uitspel vir ons nie.

MNR. JACOBS : Wat is die Umsebenzi? -- Die onderskrif is hierso "Voice of the South African Communist Party."

HOF : Dit sal BEWYSSTUK IC4 wees? -- IC4. Ek het hom so gemerk.

Staan daar "South African Communist Party" of "SACP"? (30) -- "South African Communist Party.

... / Waar

Waar vind ons die datum? Is dit ook in die swart blok? -- Hy het net 'n nommer, hy het nie 'n datum nie.

Is sy nommer ook daar ingeskryf? -- Die nommer is ook in die swart geskryf "No. 3 1985." Nr. 3 1985. Ek sien nie 'n datum op hierdie dokument op enige bladsy nie. Daar is twee stukkies wat van belang is.

Is dit die amptelike orgaan van die Suid-Afrikaanse Kommunistiese Party? -- Dit is 'n dokument wat vanaf 1985 deur die Kommunistiese Party na bewering uitgegee is. Ek kan nie bewys dit is die Kommunistiese Party nie, maar hulle naam kom (10) daarop voor. Ek het die voorblad en dan 'n stukkie op die tweede bladsy. Ek sal nou hom merk as ek daarby uitkom. Op die voorblad net die stukkie, aangesien dit veronderstel is om 'n publikasie te wees van die South African Communist Party oor hoe hy nou by die ANC bykom. In die tweede paragraaf - ekskuus in die tweede kolom omtrent halfpad af "Arm struggle, dialogue and the SACP." Ek wil maar net die laaste paragrafie lees daarso "Those who dream of breaking the life-giving alliance between the ANC and the SACP will strike a rock. We will continue to march hand-in-hand in a liberation alliance which (20) is made up of completely independent organisations who share the common immediate aim of destroying racism in all its forms." Dan op bladsy 2, die eerste kolom onder "People's war. An answer to apartheid war." Ek wil net lees die eerste helfte van die paragraaf tot "informer's puppets, et cetera." Dit is omtrent halfpad af voor die volgende opskrif. "A people's war is a revolunationary war in which our entire nation, our people's army, MK, workers, the rural massas, women, students, intellectuals, religious community et cetera use all forms of revolutionary violence to attack and destroy apartheid (30) power. This includes a political and military assault on all

... / those

those who are the main instruments of this power, soldiers, police, informers, puppets, et cetera." Die laaste dokument is 'n geelbladsy publikasie. Die bladsy is nie genommer nie, maar op een van die binneblaaie staan daarso "Issued by the African National Congress. Please pass this on."

Dit sal IC5 wees. Is daar 'n datum op die publikasie? -- Nee, hier is nie 'n datum op hierdie publikasie nie.

MNR. JACOBS : Is dit 'n pamflet of wat is dit? Wat sal u hom klassifiseer as? Het u inligting wanneer hy uitgereik is? -- Ons het hierdie dokumente al verskeie kere in die afgelope (10) jare gekry hierso. Ek het nie 'n datum op hom nie, maar beslis sedert die begin van die 80's is hierdie dokument in omloop. Ek het nie 'n presiese datum nie. Dit is moeilik om 'n klassifikasie te gee. Hy lyk soos 'n vlugskrif, 'n gevoudé vlugskrif, maar ek glo nie hy voldoen aan die omskrywing van 'n pamflet nie. Die bladsye het verskillende opskrifte en die een bladsy bevat sewe foto's van persone. As ek net mag verwys daarna. Soos die dokument gefotostateer is, die eerste bladsy "Their case is closed." Dit is normaalweg die voor bladsy van die dokument. Hier onder die opskrif "Their case is closed" die(20) woorde "Death to traitors." Die volgende bladsy is die opskrif "No easy walk to freedom" en onder aan die bladsy is daar 'n logo 'n man met 'n spies en skild en die opskrif daarso is "Death to all traitors." Die volgende bladsy is in Swarttale geskryf. Ek is nie 'n kenner van die Swarttale nie, maar ek neem aan dit is Zoeloe, Xhosa - ek kan die ander een nie uitmaak nie. Dan die volgende bladsy "Kill the traitors" is die opskrif." Dan weer ook in twee Swarttale. Die volgende bladsy waarop die foto's van die sewe persone voorkom is die opskrif "Habashwe, Habathe, Death to the Mpimpis , Death to the traitors." (30) Dan die laaste bladsy is ook weer in Swarttale geskryf. Ek

... / wil

wil net so twee bladsye teruggaan waar die opskrif is "Kill the traitors." As ek mag voorlees aan die Hof. Ek sal net die Engelse gedeelte voorlees. "Patriots of our motherland. We could have long defeated the White oppressors if it was not for the Black traitors who are prepared to work for them. The above are some of them that have helped the enemy to arrest and kill our brothers and sisters in the struggle. They have escaped from the African National Congress and its military wing Umkhonto we Sizwe. They have given evidence against our cadres and against people who struggle to get freedom. (10) They work hand in hand with the police and soldiers in capturing and exposing the freedom fighters in the streets, buses and trains. Some of these traitors penetrate our meetings in factories, townships, schools and churches to spy on us. These Black dogs of the boers can never stop the wheel of history. They cannot stop our coming liberation. Our strength is growing day by day. Let us expose and isolate the traitors, let us strengthen out democratic organisations, death to the traitors. Traitor or no traitor, the struggle continues. Victory or death, we shall win. Release our leaders: (20) Nelson Mandela, Walter Sisulu, Govan Mbeki, Ahmed Kathrada and all others, Amandla Ngawethu. Issued by the African National Congress." As ons dan oorgaan na die volgende bladsy toe waar die foto's op verskyn, is daar name onder die foto's van die persone en dan heel onder aan die bladsy aan die regterkant kom die woorde "These are the unforgivable traitors of our people" voor. "They deserted from the ranks of ANC MK to continue their tasks as servants of racist, dogs and SP's. They will never stop the people's struggle. Never. They should never be left to live a minute longer." Dit is die inhoud (30) van die dokument.

... / HOF

HCF : Is dit nou persone wat getuig het? Persone wat getuig het in sake in die Hooggeregshof? -- Meeste van hulle het getuig in sake in die Hooggeregshof.

ASSESSOR (MNR. JOUBERT) : By almal behalwe twee staan daar "trial". -- Dit is korrek.

Weet u of hulle getuies was? -- Die persoon Silverton trial het daar getuig en die James Mange trial het getuig en die Cape Town Supreme Court trial het getuig. Die persoon onder aan die bladsy het nog nie getuig nie. Die persoon regs bo het nog nie getuig nie en dan die ander twee persone het ook getuig. (10)

MNR. JACOBS : Uit u ondersoek en die stukke wat nou hier is, wat is u gevolgtrekking? -- My eie ondervinding en my ondervinding met lede van die ANC wat ek ondervra het, tydens die poging tot rehabilitasie, vind ek die vrees by die persone dat indien hulle met ons sou saamwerk, hulle lewens in gevaar sou wees.

As hulle saamwerk in watter opsigte? -- Saam met ons werk in die opsig van getuienislewering. Ek vind baie dikwels dat die persoon sê hy sal met die veiligheidstak as sulks saam by ondersoeke betrokke wees, maar hy wil nie graag in 'n hof getuig nie, aangesien hulle weet van die "heatlists" in die buiteland en dat hulle voel hulle lewe sal in gevaar wees sou hulle getuig in hofsake namens die Staat. (20)

In hierdie saak is daar 'n moontlikheid van drie getuies wat gerehabiliteerde terroriste is, soos u hulle noem, wat moontlik sal getuig. Het u met hulle ook self skakeling gehad? -- Ja. In 'n mate is ek miskien verantwoordelik vir hulle rehabilitasie en ek het met al drie van hulle gepraat en al drie het teenoor my die vrees uitgespreek. (30)

Afgesien nou van wat u in die amptelike dokumente van die

... / ANC

ANC en die SAKP wat u nou hier ingehandig het vasgestel het dat sekere mense of dat daar gemeld word dat sekere mense dood is, uit u eie kennis as die persoon in beheer van die rehabilitasie van terroriste vir 22 jaar, weet u uit eie kennis of hier mense wat getuienis gegee het in die Republiek, dat hulle wel vermoor is, doodgemaak is? -- Ja, ek weet van gevalle en ek weet van gevalle waar daar pogings tot moord was op hierdie persone.

Kan u vir die Hof 'n idee gee van die omvang van die gevalle wat u van weet waar mense dood is, of dit nou baie is of (10) nie veel nie? Ek aanvaar dit is miskien bietjie 'n moeilike vraag op hierdie stadium, maar ek dink tog miskien kan u vir die Hof leiding gee daar? -- Nee, die omvang is nie baie groot nie. Daar is besliste aanslae op die persone, maar die omvang is nie baie groot nie. In 'n mate kan dit miskien toegeskryf word aan die voorsorgmaatreëls wat ons tref. Meeste van die persone woon onder ons beskerming, direkte beskerming.

Die ander aspek is, indien persone doodgemaak is, was dit die feit dat hulle getuienis gegee het? Kan u sê of dit bygedra het tot die feit dat hulle toe lateraan doodgemaak is (20) of nie? -- As ek net 'n voorbeeld mag noem, die geval van Bartholomias Hlapane was beslis 'n voorbeeld. Hy is reeds in 1979 deur die ANC genoem as 'n "traitor" en 'n "sell-out", maar dit is eers nadat hy in Amerika getuig het voor die Denton Kommissie, The Denton Sub-Committee on Terrorism, wat hy om die lewe gebring is. Hy is om die lewe gebring direk as gevolg van getuienis wat hy gelewer het. Dan is daar die geval van Abel Mthembu. Abel Mthembu is doodgeskiet na hy gedagvaar is as 'n getuie in, ons het dit destyds die "Bordergate" saak genoem, S v SEGWALE. Dit was in 1978. (30)

In u ondervinding in hierdie tyd, u weet nou van hierdie

... / gevalle

gevalle, as mense nie die beskerming kry nie, kry u gevalle dat hulle dan weier om getuienis te gee? -- In my eie ondervinding, beslis. Ek het heelwat persone gekry wat gesê het onder geen omstandighede sal hulle getuig nie. In daardie geval wil hulle liewers nie saamwerk nie, hulle sal maar liewers aangekla word, hulle wil nie gerehabiliteer word nie.

HOF : Wat weier om te getuig as wat nie gebeur nie? -- As hulle nie beskerming kry nie.

MNR. JACOBS : Wat se beskerming? -- In die eerste instansie identiteit. Beskerming van hulle identiteit. (10)

En nog? -- Die ander ding is, hulle wil natuurlik gedurigdeur van ons beskerming hê en ons gee ook daardie beskerming.

Wat se beskerming van identiteit? -- Dat hulle identiteit nie ontbloot word indien hulle in sake sou getuig nie.

Bemoeilik dit dan u werk om sake te bewys in howe? -- Baie beslis.

Gebeur dit dan as mense weier, dat as hulle nie beskerming sal geniet as hulle getuienis gee nie, dat sake selfs nie verhoor kan word nie? -- Ons het al sulke gevalle gehad.

KRUISONDERVRAGING DEUR MNR. CHASKALSON : Kolonel Buchner, (20) u het melding gemaak van getuies wat doodgemaak is. -- Dit is korrek.

En u het melding gemaak van die naam van Hlapane? -- Dit is korrek.

Van Mthembu? -- Abel Mthembu, dit is korrek.

En van sekere name wat op BEWYSSTUK IC5 voorkom? -- Maar hulle is nie doodgemaak nie.

Die bewysstuk wat u sê nie eintlik 'n pamflet is nie, maar van die African National Congress kom "Their case is closed"? -- Ek het die dokument. (30)

Daar was sewe foto's op een van die bladsye? -- Dit is

... / korrek

korrek.

En soos ek u getuienis verstaan het sekere van daardie mense in die hof getuig? -- Dit is korrek.

U het daardie dokument voor u? -- Ek het 'n afdruk daarvan.

Mnr. X van die Silverton Trial. Weet u, het hy getuig in camera? -- Ja, hy het in camera getuig.

En het hy later vir die polisie gewerk? -- Dit is korrek.

Die tweede naam daar mnr. X James Mange Trial. -- Dieselfde situasie met hom.

Hy het in camera getuig, maar hy het later vir die polisie gewerk? -- Dit is korrek. (10)

Weet u wanneer hy doodgemaak is? -- Hy is nie doodgemaak nie.

O, ek is jammer. Hy werk nog vir die polisie? -- Hy werk nog vir die polisie.

En die derde een mnr. X van die Cape Town Supreme Court Trial? -- Dieselfde geld vir hom. Hy het getuig in 'n saak in camera en hy het later vir die polisie gewerk.

En die naam hier onder, die laaste naam op daardie bladsy? Die laaste foto? -- Hy het nog nie getuig nie. (20)

Hy werk vir die polisie? -- Dit is korrek.

Die tweede kolom die eerste naam Peter Magoai? -- Dit is reg. Hy het nog nie getuig nie.

Maar hy werk vir die polisie? -- Hy werk vir die Suid-Afrikaanse Polisie.

Die derde naam Patrick Madiba? -- Hy het getuig. Hy het in camera getuig. Hy was 'n lid van die Suid-Afrikaanse polisie maar hy sit in die gevangenis op die oomblik.

Hy het vir die polisie gewerk, maar hy is nou 'n gevangene? -- Dit is korrek. (30)

Het die polisie probleme met hom gekry? -- Hy is aangekla

... / van

van moord en ek dink hy het 10 of 12 jaar gevangenisstraf gekry.

Terwyl hy 'n polisieman was? -- Hy het sy vrou vermoor.

En die laaste naam op daardie bladsy mnr. X? -- Dieselfde geld vir hom. Hy het <u>in camera</u> getuig en hy het later 'n lid van die polisie geword. Hy het vir die polisie gewerk.

Daar was die twee ander name waarvan u melding gemaak het. U het melding gemaak van 'n sekere Hlapane? -- Dit is korrek.

En u het gesê dat hy het voor die Denton Kommissie in Amerika getuig? -- Die amptelike benaming, ek het hom 'n (10) bietjie vinnig gegee, was United States Senate Sub-Committee on Terrorism and something else. Ek kan nie die volledige naam onthou nie. Dit was in 1982 of '83.

Was dit een van daa die komitee's wie se werk voor die televisie gekom het? -- Nee, dit was nie voor die televisie gewees nie, maar dit was in die United States Senate Chambers.

Maar was daar televisieprogramme daaroor? -- Nee, die gevoel was dat dit miskien publisiteit sou kry, maar die ding het baie weinig publisiteit geniet in die VSA.

Daar was wel publisiteit oor die feit dat mnr. Hlapane (20) getuig? Ons het dit hier gelees? -- U het dit miskien hier gelees. Ek was nie hier op daardie stadium nie.

Ek dink ons het dit gelees. Ek verstaan dit was in die koerante. U kan dit nie ontken nie? -- Ek kan dit nie ontken nie.

Ek kan dit nie presies onthou nie, maar my opdrag is dat daar publikasie was? -- Ek kan onthou dat ek skêrsnitte gesien het uit die koerante uit daarna. So, daar was publisiteit gewees.

Hierdie man Hlapane, was hy voorheen 'n hoogaangestelde (30) persoon by die ANC? -- By die ANC en die SAKP.

... / Was

Was hy op die nasionale raad van die ANC? -- As ek reg onthou was hy 'n "Transvaal Provincial" opperbevel van die ANC gewees.

Hlapane? -- Hlapane, ja.

In ieder geval, hy was 'n hooggeplaaste persoon? -- Hy was 'n hooggeplaaste persoon.

En hy het getuig in 'n reeks sake? -- Veral in die vroeë 60's, ja.

Dit was welbekend dat hy getuig het? -- Dit is korrek.

Na sy getuienis voor die Denton Kommissie is hy doodge- (10) maak? -- Dit is korrek.

Hy het openlik in Soweto gewoon? -- Hy het openlik gewoon.

Almal het geweet waar hy woon? Wel, dit was welbekend? Kan ek dit so stel? -- Ek glo dit was welbekend.

Dit was ook welbekend dat hy getuig het? -- Dit is korrek.

Weet u of hy <u>in camera</u> getuig het of nie? -- Nee, ek was nie bewus van sy getuienis in die vroeë jare nie. In die Denton Kommissie het hy nie <u>in camera</u> getuig nie.

Maar die hofsake waarvan u praat, u kan nie sê of hy <u>in</u> camera getuig het of nie? -- Nee, ek weet nie. (20)

Maar dit was eintlik 'n welbekende feit dat hy 'n hooggeplaaste persoon was wat teen sy vorige maats getuig het? -- Vir my as lid van die veiligheidstak was dit 'n welbekende feit dat hy in die sake getuig het, dat hy, Hlapane, getuig het en ek onthou dat ek die stuk gelees het in 1979 of 1969 in 'n Sechaba wat hom uitgekryt het as 'n verraaier, maar ek weet nie of hy <u>in camera</u> getuig het nie.

U sê hy was lankal op die "heatlist"? -- Van 1969 af.

En u kan nie sê of hy tans <u>in camera</u> getuig het of nie? -- Nee, dit weet ek nie. (30)

Die laaste man van wie u melding gemaak het Mthembu, hy

... / was

was ook 'n hooggeplaaste persoon in die ANC? -- Nee, ek wil my nie vereenselwig met daardie stelling nie. Kan ek dit so stel laat ek liewers sê ek kan nie sê watter posisie hy beklee het nie. Ek weet net hy was 'n opgeleide kader.

Ek wil iets aan u stel, want ek was in 'n saak in die vroeë 60's waarin hy getuig het, dat hy wel op die Transvaalse Provinsiale Raad van die ANC was. -- Ek kan nie stry daaroor nie.

U kan dit nie ontken nie? -- Nee, ek kan dit nie ontken nie. (10)

Hy het eintlik in die Rivonia saak getuig? -- Ek kan dit ook nie ontken nie.

Teen mnr. Mandela en andere? -- Ja, ek kan dit nie ontken nie.

En hy het in talle sake daarna getuig? -- Ja.

Is u bewus daarvan of weet u nie? -- Ek weet nie.

Was hy op die "heatlist" of weet u nie? -- Ek is nie bewus daarvan nie.

U is nie seker nie? -- Ek is nie seker nie.

U kan nie sê of hy vir jare as 'n verraaier deur die (20) ANC beskou word nie? -- Ek kan nie sê nie.

Weens dit wat hy in die sestiger jare gedoen het. U weet nie? -- Ek weet nie.

Die Segwale saak, hy het in daardie saak getuig. Ek dink dit was 1978 of 1977. -- Die saak was in 1978, as ek reg onthou. Die eerste arrestasie was aan die begin van 1977.

En hy was eers voor DAVIDSON, R. Is u bewus daarvan of nie? -- Ek was betrokke by die ondersoek van die, wat ons genoem het, "Bordergate" saak, maar in die ondervragingshoedanigheid. Ek het nie in die hof opgetree nie. (30)

Hy het eers voor DAVIDSON, R. getuig. U is seker bewus

... / van

van die feit dat DAVIDSON, R. oorlede is voor daardie saak afgehandel is? -- Ek is bewus daarvan.

Is u bewus van die feit dat maande daarna, dit was 'n lang tydperk, ek is nie seker presies wat die tydperk is nie, maar maande daarna is hy terug en het hy voor MYBURGH, R. ook getuig. Is u bewus daarvan? -- Ek is bewus daarvan dat MYBURGH, R. later op die saak ingesit is, na die dood van DAVIDSON, R.

Na die Segwale saak het hy openlik in Soweto gelewe? -- Ek het verstaan dat hy in Soweto gewoon het.

En hy het vir maande daar op 'n normale manier gelewe (10) en toe is hy weer as getuie geroep voor MYBURGH, R.? -- Dit is heel moontlik.

En hy het weer getuig in die saak? -- Dit is moontlik.

Weet u hoe lank daarna is hy dood of weet u nie? -- Ek weet hy is in 1978 dood. Ek weet nie watter datum hy dood is nie.

Kan dit 1979 ook wees? -- Ek is nie seker daarvan nie.

U sê dat die mense wat voorheen vir die ANC gewerk het en nou saam met die polisie werk, het beskerming nodig? -- Wel, ons verskaf beskerming op hulle versoek. (20)

Soos ek u getuienis verstaan, daardie soort mense, dit is nodig dat hulle identiteit as getuies nie geopenbaar word nie? -- Sover moontlik, ja.

Dit is die rede daarvoor, wat u alreeds gegee het? -- Dit is korrek.

Daar is iets anders waarna ek wil oorgaan. Ek sal miskien later terugkom na die dokumente. Ek wil 'n paar vrae aan u stel in verband met aangehoudenes. Mense kan deur die polisie in hegtenis gehou word vir ondervraging? -- Hulle word aangehou, ja. (30)

En die polisie is geregtig om hulle aan te hou tot hulle

... / vrae

vra tot die bevrediging van die ondervraer antwoord? -- Ek dink die wet sê daar tot bevrediging van die kommissaris.

Maar in elk geval, die ondervraer sal sê of hy tevrede is of nie? -- Dit is artikel 29 se bewoording.

Maar in praktyk sal die ondervraer sê of hy tevrede is of nie? -- Ja.

En die kommissaris werk op daardie rapport? -- Ja. Dit is die bewoording van artikel 29.

Ek aanvaar dit, maar dit is die ondervraer wat in die (10) praktyk tevrede moet wees? -- Ja, ek stem saam.

Dit is dikwels nodig om die mense vir lang tydperke aan te hou? -- Dit is korrek.

En dikwels is dit nodig om hulle vir lang tydperke aan te hou voordat hulle bevredigende antwoorde verstrek? -- Dit het gebeur.

En soms word die mense as getuies vir die Staat in veiligheidsake geroep? -- Dit is korrek.

En hulle kom direk van hulle aanhouding tot in die getuiebank? -- Streng gesproke, ja. (20)

En hulle besef dat nadat hulle getuig het hulle na aanhouding terug gaan? -- Hulle besef dit seker.

Veronderstel 'n persoon soos die mense waarvan u gepraat het, die ANC lede wat voorheen vir die ANC gewerk het, besluit om saam met die polisie te werk en as polisieman op te tree, as hulle direk van aanhouding na die hof kom en die hofsaak geskied <u>in camera</u>, in daardie omstandighede is die hof gesluit. Die lede van die publiek is nie daar nie? -- Dit is korrek.

Die publieke gallery is leeg? -- Dit is korrek.

Maar die polisiemanne bly in die hof? -- Dit is korrek. (30)

En die ondersoekbeampte is gewoonlik in die hof? -- Dit is

... / korrek

korrek.

En die polisiemanne en die ondersoekbeampte luister na die antwoorde van die getuie? -- Dit is korrek.

Die getuie weet dat hulle luister na sy antwoorde? -- Dit is korrek.

En hy weet dit is nodig om hulle tevrede te stel anders gaan hy terug na die aanhouding? -- Ek dink ek moet net hierso noem. Gewoonlik - ek het nou hier gesê ja, direk van aanhouding, maar gewoonlik as hy as 'n getuie geroep gaan word, word hy oorgeplaas na artikel 31. (10)

Maar hy sien niemand nie? -- Nee, hy sien niemand nie. Hy word aangehou as 'n getuie.

Hy is onder volle beheer van die polisie? -- Dit is reg.

En hy gaan terug na die polisie? -- Dit is korrek.

En hy besef dit? -- Dit is korrek.

Dit is net die polisie wat na hom luister, die publiek luister nie na hom nie? -- Dit is korrek.

U sê dit is nodig dat die naam van die getuie nie geopenbaar word nie? -- Die naam en enigiets wat sy identiteit kan openbaar. (20)

Anders, sou u saamstem, behoort dit in die ope hof te wees? Of sê u dit is wenslik dat alle sake in die privaat plaasvind? -- Dit is moeilik om 'n skeidslyn te trek daarso van wat sal nie sy identiteit openbaar nie. As ek net 'n voorbeeld mag noem, met u toestemming. Indien 'n man op 'n spesifieke tydstip in 'n spesifieke kamp was en 'n spesifieke posisie beklee het, as hy daardie getuienis in 'n ope hof gee, gaan dit, as daar iemand anders is wat daardie inligting oordra byvoorbeeld aan die pers, kan sy identifikasie soveel makliker gemaak word. Daar is net sekere persone wat sekere poste beklee het op (30) sekere datums.

... / Ek

Ek dink in een van hierdie dokumente was melding gemaak van twee name van persone wat dood is. Ek dink dit is IC3. -- Ek het hom hierso. Hulle noem eintlik vier name daarso.

Hulle praat van Abel Mthembu. U het reeds daaroor getuig. Die tweede naam waarvan melding gemaak is, is Leonard Nkosi. -- Leonard Nkosi, ja.

Is hy die man wat vir die polisie gewerk het? -- Hy was 'n speurder sersant gewees in die Suid-Afrikaanse Polisie.

Is hy die man wat in een van die ander bewysstukke na verwys is as die man wat sy vorige kamerade ondervra vir (10) die polisie? -- Dit is korrek.

Dit is dieselfde man. Daar is ook melding gemaak van "Two known BOSS agents Lloyd Ndaba and Chapi." Hulle het wel vir die polisie gewerk? -- Soos die aanduiding daar is, dit is vir die Nasionale Intelligensiediens.

Hulle het vir BOSS gewerk? -- Ek weet nie of hulle vir hulle gewerk het nie, maar die aanduiding is so.

Dit is die rede wat hier gemeld is? -- Laat ek dit so stel. Ek weet hulle was lede van die ANC gewees. Ek weet hulle het teruggekom na die RSA, maar hulle het nie vir die(20) Suid-Afrikaanse Polisie gewerk nie.

Maar u aanvaar dat hulle BOSS "agents" was? -- Ek kan dit aanvaar.

Dit is die enigste name waarvan melding gemaak is, waarvan u weet. U sê daar was nie baie gevalle nie? -- Daar is verdere dokumentasie, maar ek het dit nie hier ingehandig nie. So, ek sal nie daarop ingaan nie.

Ek wil nie besonderhede van die name hê nie, maar het u baie vorige ANC lede gerehabiliteer? -- Ja.

Is daar honderde van hulle of duisende? -- Dit is minder(30) as 'n honderd.

... / Daar

Daar is iets wat ek ook aan u moet stel. ANC lede kom - ons praat nou van die mense wat terug na Suid-Afrika kom. Die ANC sal altyd bewus wees as daardie mense oorloop na die polisie toe, want hulle het geen verdere kontak met hulle nie? -- Dit is korrek in 'n mate. Die ANC, as hulle kontak verloor met 'n man in die RSA, dan neem hulle gewoonlik aan dat hy oorgestap het na ons toe of dat hy in 'n arrestasie is.

En hulle het 'n baie goeie idee van wie daardie mense is? -- Dit is korrek.

HOF : Wanneer u praat van 'n verhoor wat in camera gehou word of gehou moet word, bedoel u daarmee 'n verhoor waar die naam van die getuie nie by wyse van die pers geïdentifiseer mag word nie of bedoel u daarmee 'n verhoor ook waar die naam van die getuie hoegenaamd nie aan of die Hof of die advokate of enigiemand anders bekend gemaak word nie? -- Nee, ek het geen beswaar daarteen nie. Ek dink dit is die reg van die Hof om te weet wie die getuie is. Dit is die publikasie van die naam in die media hoofsaaklik en dan die teenwoordigheid van persone in die hof wat kan sien dat die man getuig, maar ek het geen beswaar dat die naam van die persoon aan die Hof bekendgemaak word nie.

HERONDERVRAGING DEUR MNR. JACOBS : Geen vrae.

GEEN VERDERE VRAE.

VOLTOOI GETUIENIS WAT STAAT AANBIED IN HIERDIE AANSOEK.

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MNR. CHASKALSON VRA VIR 'N KORT VERDAGING TEN EINDE HULLE POSISIE TE OORWEEG.

HOF VERDAAG. HOF HERVAT.

C17 COURT : Mr Chaskalson, are you presenting any evidence?

MR CHASKALSON : No. We will deal with the matter on the basis of argument.

... / MNR. JACOBS

MNR. JACOBS SPREEK HOF TOE : Edele, by hierdie aansoek van die Staat dat die getuienis in camera aangehoor word, dink ek dat ons kan dit as gemene saak beskou of ek reken so, dat die toetse wat vasgelê is, is (1) dit kom daarop neer dat daar 'n redelike moontlikheid bestaan dat 'n getuie leed aangedoen word en dan kwalifiseer die gesag hierdie redelike moontlikheid tussen twee pole en dat die Hof dan 'n mediaan moet vind tussen die twee pole. Die pole wat dan daar gestel word is die redelike moontlikheid moet nie 'n vae en vergesogte moontlikheid wees nie en die ander pool is, die vereiste is (10) dit moet ook nie so hoog gestel word dat dit 'n waarskynlikheid moet wees nie. Tussen hierdie twee moet 'n mens 'n balans kry, soos ek die gesag verstaan en in hierdie verband, ek dink dit word so uiteengesit in die sake van S v MADLAWO AND OTHERS 1974 (4) SA 218 (E) op 222 F - G. Dit is gevolg in S v SEKETE AND OTHERS 1980 (1) SA 171 (N) op 172 F - G en dat hierdie, my submissie is dat hierdie toets is ook aanvaar in die saak van ACKERMANN, R. in S v LEPILE AND OTHERS, 'n ongerapporteerde saak van 98/85 (WLD). Dit is gelewer op 10 September 1985 op bladsy 5 waar dit bevestig word. Dit is my uitgangspunt,(20) dat hierdie mediaan tussen die twee pole waarop 'n basis gevind word, is. Dan is dit my betoog dat in S v LEPILE van ACKERMANN, R., soos ek dit verstaan, lyk dit asof, kom dit vir my voor dat hy 'n verdere vereiste stel en dit is dat daar 'n kousale verband moet wees tussen leed wat bedreig word vir 'n getuie wat in die hof getuienis moet gee. Nadat die regter 'n hele deel behandel het op bladsy 22, kom hy tot 'n gevolgtrekking in sy uitspraak. As ek dit in eleketaal moet uitspel, lyk dit vir my, dit kom my voor dat hierdie laaste vereiste, verstaan ek dan dat getuie, byvoorbeeld getuie A wat nou in (30) hierdie saak sal moet getuienis gee, moes bedreig gewees het.

... / Daar

Daar moes een of ander dreigement teen hom gewees het. In hierdie opsig reken ek dat hierdie saak te onderskei is van die andere, want dit is my respekvolle submissie, die vraag kan nou met reg gevra word of so 'n vereiste die toets wat ek reeds genoem het, wat hierbo gestel is gestand doen en wat ACKERMANN, R. self ook aanvaar het en of dit daar teen werk. Ek vra my dan self die vraag af, kom hierdie verdere vereiste wat gestel is, dan nie nou daarop neer dat nou 'n vereiste gestel word wat bots met die vereiste in die toets dat dit nie so hoog gestel moet word dat die leek 'n waarskynlikheid is (10) want my submissie, soos ek die hele aspek verstaan, kom daarop neer.Om te bewys dat 'n getuie werklik gedreig was wat getuienis in hierdie saak moet gee, word daar dan wel vereis dat 'n bewys gelewer moet word dat leed waarskynlik sal aangedoen word. Daar is dan 'n baie waarskynlikheid dat leed aangedoen word. So, my hele argument kom dan in hierdie onderskeiding wat ek in hierdie opsig bring, daarop neer dat ons gaan nou weer terug en sê dat daar nou nie 'n mediaan tussen die twee pole moet wees nie, maar dat die tweede been van die pool, om die kousale verband in te bring, soos in hierdie geval dat (20) daar direkte getuienis dat hierdie getuie in hierdie saak gedreig moet wees, dat dit die probleem dan skep. In die lig van hierdie argument wat ek so pas dan aanhaal, kan ek dit so stel dat ek verstaan waarom in die ander sake die toets aanvaar is en dat daar aanvaar is dat die getuienis van kolonel Stadler, wat dan die algemene <u>nexus</u> dan gee, aanvaar is in daardie gevalle en nie in hierdie geval nie. In al die sake is die algemene dreigement wat die ANC opper teenoor alle persone wat in sulke sake gebruik word, nie as "far fetched" beskou nie. Met ander woorde, dit het die mediaan gevorm.(30) Dit sien ons duidelik in die bevindinge van die howe in

... / S v

S v SEKETE, die saak - AND OTHERS - wat ek reeds aangehaal het op pagina 134 tot 174 - 173 - 174 en dan ook in MADLAWO se saak wat ek reeds aangehaal het op 222 F - G en MOTOPENG se saak - AND OTHERS - 1978 (4) SA. Daar is dit ook aanvaar dat daardie getuienis is nie "far fetched" nie, maar my submissie is in die saak van ACKERMANN, R. word dit gesê dit is "too remote". Dit is te ver verwyder. Daar is die mediaan dan verskuif na die tweede been toe. As ons hierdie argument van my toets, dan wat die praktiese gevolge is in ACKERMANN, R. se saak, dan kan dit soos volg na vore kom - as ek 'n praktiese voorbeeld miskien kan stel aan die Hof. Gestel dat getuie A was 'n lid van die ANC. Gestel ook hy is bereid om getuienis af te lê en te getuig. Veronderstel ook hy het nog nooit getuig in 'n hofsaak nie. Hy is dan alleen bereid om getuienis af te lê as hy beskerming kan geniet deurdat sy getuienis in camera geneem word, want hy is bewus van die ANC se verklaarde beleid oor sulke getuienis en getuies wat in sulke sake getuienis gee. As 'n mens dan nou aanvaar dat die ANC onder omstandighede nie bewus is dat die man wel gaan getuienis gee nie of dat hy wel oorgeloop het en dat hy 'n wegloper, 'n "deserter" is van die ANC, dan kan hulle hom tog nie dreig dat hy bedreig word omdat hy in hierdie saak getuienis gaan gee nie. As hhierdie kousale verband toets dan toegepas word, dat hy moes gedreig gewees het omdat hy in hierdie saak getuienis gee - ek noem nou maar hierdie saak as 'n voorbeeld as die saak waarin die voorbeeld geld en die saak waarin hy dan getuienis gee, dan kan dit nie geld nie, want hy was nog nie voorheen bedreig nie, behalwe vir daardie algemene bedreiging wat voorheen aanvaar was as die mediaan. Beteken dit dan nou dat so 'n getuie dan nie die beskerming van 'n hof kan verwag nie? In geen omstandighede nie. Vir die

... / eenvoudige

eenvoudige rede dat in die saak van ACKERMANN, R. word dit verwerp dat daar 'n algemene dreigement aanvaarbaar is. So, dit is die basis waarop ek dan sê dat ek hier 'n onderskeid probeer tref of probeer 'n ontleding maak tussen die vorige gesag en die vorige toets wat gemaak is en die toets wat in die huidige saak is, wat dit dan in die huidige saak - bring dit mee dat sekere persone sal dan nooit beskerming van die Hof kan geniet nie. As 'n mens in so 'n geval dink aan die gevalle dat die kousale verband moet so nou wees dat 'n mens moet bewys dat hy is spesifiek gedreig omdat hy in hierdie (10) spesifieke saak getuig. My submissie is dan dat 'n mens eerder toepassing sal verleen aan die vorige twee sake waar die toets aanvaar is van die mediaan tussen twee pole. Die argumente gaan wyd op dat die regspleging gedien moet word en dat dit in 'n ope hof moet geskied. Dit is die aanvaarde beginsel dat sake in die ope hof geskied, maar daar is die uitsonderings waarvoor daar in die artikel voorsiening gemaak word wanneer daar afgewyk kan word van die aanvaarde algemene beginsel. 'n Mens moet aanvaar dat ook 'n getuie is geregtig op die beskerming van die Hof en die getuie is in die besonder aangewese op (20) die Hof vir beskerming. Hy het nie ander plekke waar hy kan gaan vir beskerming nie. Dat die howe daar is om die getuies te beskerm word ook aanvaar en dat die regspleging ook geld ten gunste van 'n getuie en nie alleen ten gunste van 'n beskuldigde nie, is in SELEKE se saak aanvaar op 176 C. Die feit wat baie ter sprake gaan kom in hierdie aansoek, is die feit of 'n getuie net gedeeltelik - wanneer hy net gedeeltelik beskermingswaardig is en of hy beskerm moet word. My submissie dat die beginsel is ook al duidelik uitgestryk in die howe en aanvaar dat die feit dat 'n getuie slegs gedeeltelik beskerm (30) kan word, beteken nie dat die Hof daarom nie beskerming wat

... / wel

wel binne sy vermoë is, moet uitsluit nie. Ek verwys in hierdie verband na S v MOTOPENG AND OTHERS 1978 (4) SA 874 (T) op 876. Dan S v MOTOPENG (dit is die tweede saak) 1979 (2) SA 180 op 183 B - D en hierdie beginsel is ook weer bevestig in S v SEKETE EN ANDERE 1980 (1) SA 171 (N) op 175 G - E. Dit is tog belangrik dat as dit die enigste rede is omdat dit net gedeeltelike beskerming is of ken geniet, om te weier dat so 'n getuie beskerm word. Dan is daardie getuie sonder hulp, soos ek reeds gesê het, want die instansie wat hom kan help is die Hof. So 'n persoon is tog, ek wil graag 'n paar voorbeelde (10) noem, waar dit tog van betekenis kan wees dat hy gedeeltelik beskerm word. So 'n getuie is nie algemeen bekend nie en nou kan 'n lid van die gehoor hom identifiseer en die inligting oor sy huidige bewegings kan oorgedra word. Dit kan 'n Hof help verhoed. Dit mag wees dat die ANC se mense na so 'n persoon soek en nie weet waar om hom op die oomblik te kry nie en 'n goeie plek om te hoor waar mense is wat getuienis gee teen of in politieke sake is juis in politieke verhore. As hulle dan sulke verhore bywoon kan hulle hom sien en hom so identifiseer, want dan identifiseer hy hom eintlik uit sy eie mond uit (20) daar. In hierdie verband wil ek dan ook net verwys dat Eric het daardie selfde getuienis gegee dat dit 'n proses is terwyl hy nog in die ANC geledere was dat hofsake is plekke waar mense geïdentifiseer word, maar die regspleging vereis ook dat 'n getuie sy getuienis moet gee en subjektief gesien, is so 'n getuie self subjektief bang en sy subjektiewe gevoelens behoort ook in ag geneem te word en dit is beskerming wat die Hof hom kan verleen, want die vrees bestaan subjektief dat hy identifiseer kan word en dat hy leed aangedoen kan word. 'n Ander moontlikheid is outomaties is die risiko groter dat hy (30) identifiseer kan word, want as 'n hofsaal vol mense sit, is die

... / geleentheid

geleentheid dat hy fisies geïdentifiseer word baie groter as in 'n in camera verhoor. Hierby uitgebrei dan verder, niemand weet wie is die mense wat in 'n hofsaal sit nie en die feit dat 'n getuie dit weet en onder die publiek kan sulke mense wees, maak hom onwillig om te getuig en dit maak ook vir homself die vrees groter dat 'n onbekende persoon wat in die hof was, hom later kan konfronteer. Dit het ook uitgekom in Eric se eie getuienis waar hy gesê het hy wil 'n man van voor af sien, hy weet nie wie in die hof is en wat hom van agter af nader nie. Dit is 'n wesenlike vrees. Dit is dan ook my submis- (10) sie dat vir die behoorlike administrasie van die reg in die beregting van sake nodig is dat getuies hulle getuienis moet aflê en die feit dat dit in camera afgelê word, gaan nie 'n moontlikheid vergroot dat persone leuens vertel nie, want daar is - hulle word onderwerp aan streng kruisondervraging. Daar is vrywarings. Dit is nie 'n kwessie dat daar in geheim word daar nou geknoei en allerhande dinge gedoen nie, maar daar word in 'n hof gekyk dat reg en geregtigheid geskied. Die beginsel dat dit vir die behoorlike beregting van die saak nodig is dat getuies hulle getuienis moet aflê, was (20) ook al bevestig in S v SEGWALA 1978 (3) SA 427 (T) op 428 H tot 429 C en dan S v SEKETE, reeds aangehaalde saak op pagina 175 F tot 176 A. 'n Ander moontlikheid wat ook - 'n beginsel wat ook al oorweeg was, is dat die aard van die aanklagtes - in hierdie saak is die akte van beskuldiging lywig. Dit is hoogverraad, terrorisme en in al hierdie aktiwiteite het mense hulle lewens verloor en ek dink vir jurisdiksionele feite kan die Hof ook hier geregtelike kennis neem dat op 'n landswye basis het daar oproer plaasgevind en dat toestande in die woonbuurtes uiters gevaarlik is waar gedurig mense om die (30) lewe gebring was, soos hulle sê hulle het 'n "necklace" gekry.

... / Baie

Baie is wreed vermoor en aan die brand gesteek omdat hulle sogenaamde "sell-outs" is. In elk geval dat die aard van die aanklagtes word dan ook in S v SEKETE op pagina 175 B - is die beginsel aanvaar. Dit is eintlik 'n algemene beginsel, as ons na die omringende omstandighede kyk wat die aanklagtes insluit. 'n Verdere aspek in hierdie verband, wat die Hof kennis van kan neem en wat in beginsel ook in die ander sake aanvaar is, is die oorheersende klimaat en omstandighede wat in die woonbuurtes heers waar hierdie mense woon. As ons ons in die getuie se skoene kan plaas vir argumentsonthalwe, (10) dan moet ons onthou dat as hy hier weggaan gaan hy na 'n woonbuurt toe waar daar algemene vyandige gesindheid is teen enigiets wat met die Regering te doen het. In elk geval, hierdie beginsel is vasgelê ook in S v SEKETE op pagina 176 en is gevolg in die saak van S v MADLAWO EN ANDERE, die saak reeds aangehaal op bladsy 225. Ek het, om tyd te spaar en gesien ook al die gesag wat ons hier gehad het, het ek nie die passasies uitgelees nie, maar ek het hulle spesifiek vir die Hof genoem omdat die Hof, ek het nou maar 'n aanvaarding gedoen, het self alreeds daardie of meeste van hulle gelees. Ek (20) wil tyd spaar daarmee om nie elke passasie uit te lees nie, maar ek het probeer om vir u hierdie passasies in die gesag, waarop ek steun, dan duidelik uit te bring. Dit kon miskien meer impak gehad het, as ek dit sou uitgelees het in die hof, maar ek dink dit is so algemeen die beginsels, dat dit nie nodig was dat ek dit uitgelees het nie. Dan op 'n tweede - op die reg het ek probeer om vir die Hof 'n onderskeid te gee tussen die saak van ACKERMANN, R. wat ek in sien met die ander oor die toets. 'n Tweede onderskeid wat ek wil maak gaan eintlik oor feitlike aspekte. Ek reken dat op die feitlike aspekte (30) kan ons die volgende onderskeid maak dat in die saak van

... / ACKERMANN

ACKERMANN, R. het hy net getuienis gehad oor die breë algemene vrese van getuies, soos deur die polisiebeampte getuig wat soortgelyk was aan die van Buchner in ons saak. Ons saak kan onderskei word van daardie saak, dat ons het die algemene en ook dan die besondere. Oor die algemene het kolonel Buchner getuig van wat die houding van die ANC is in die algemeen. Dan in die besondere het kolonel Buchner ook getuig dat hy het in die besonder kontak gehad met die getuies wat in hierdie saak geroep kan word en dat daardie drie getuies onwillig is om te getuig en werklike vrees het om te getuig, subjektiewe(10) vrees. In hierdie verband het ons dan ook Eric, wie een van die getuies is wat gaan getuig, wat direk sê dat hy is bevrees en hy sien nie sy weg oop om te getuig as hy nie beskerming kan geniet nie. In die besonder het ons in hierdie saak ook getuienis van getuies wat reeds verdwyn het. Ons het in hierdie saak getuienis van 'n getuie wat reeds dood is, wie se huis aan die brand gesteek het oor sy verbondenheid aan COSAS. Ons het in die besonder in hierdie saak die geval dat hier het ons te make met 'n sameswering tussen die ANC en UDF. Die ANC is in die buiteland, dit is 'n onwettige organisasie, (20) hulle erken nie die bestaande Regering of die howe nie, en word beskou as alles is onwettig en weens die feit dat dit onwettig en in die buiteland is, is daar geen manier om <u>viva voce</u> getuienis te kry en voor 'n hof te lê oor die ANC se bedrywighede vanaf die buiteland nie, behalwe deur middel van die getuienis van die mense wat beskerming van die Hof gevra het, ex-terroriste. Dan om weer terug te kom na wat ek netnou gesê het dat die regspleging moet gedien word, nie alleen deur die ope hofverrigtinge nie, maar ook deur getuies te beskerm, want hoe kan reg geskied as getuies nie aangemoedig word nie. (30) Dit is ook tog 'n beginsel van die reg dat getuies moet aangemoedig

... / word

word om hulle getuienis te lewer voor howe. My submissie aan u is dat die getuienis wat die Staat aangebied het, toon dan die besondere as 'n mens dan gaan na die kousale vereiste van ACKERMANN, R. dat ook in hierdie geval daar 'n kousale verband is tussen dreigemente van leed en die werklike vrees vir leed wat daar bestaan. So, my submissie dan aan u is, dat in hierdie omstandighede is daar 'n wesenlike gevaar dat hierdie getuies vrees vir hulle lewe. Daar is 'n wesenlike gevaar dat getuies geïntimideer word of gekry word om te verdwyn of in lewensgevaar verkeer. Dit is nou oor die getuienis van (10) die raadslede. Ons het ander getuies. Daar is ook mense wat aangehou word onder artikel 31 op hierdie saak. Die Staat gaan vra dat hulle getuienis in hoofverhoor en kruisondervraging in camera sal wees.

HOF : Ek wil net duidelikheid kry, mnr. Jacobs, watter klasse getuies het u? U het getuies, soos ek nou al gehoor het, wat voormalige lede was van die ANC en nou kom getuig.

MNR. JACOBS : Dit neem ek as een klas.

HOF : 'n Ander klas sal wees getuies wat in aanhouding is, maar nie noodwendig lede van die ANC was nie? (20)

MNR. JACOBS : Ja. Laat ek dit vir die Hof so stel, getuies in aanhouding wat deel is van die aktiwiteite van die UDF, wat daarop sal neerkom dat hulle gewaarsku moet word dat hulle medepligtiges was, medepligtige getuies. Daar is 'n ander klompie getuies van mense wat werklik 'n vrees het en wat uit die gebiede uitgevlug het, die ex-raadslede. Dit is 'n derde klas wat so bang is dat hulle sal ook nie wil getuig nie, omdat hulle werklike vrees het vir hulle familie en vir hulle self. Ek moet die Hof ook dan meedeel dat in konsultasies met van die getuies wat medepligtig is wat ek sover gehad het, (30) is daar van hulle wat botweg weier om te getuig as hulle nie

... / beskerming

beskerming van die Hof kry nie en dit is wesenlike belangrike getuies.

HOF : Daar is seker nog 'n vierde klas en dit is gewone getuies?

MNR. JACOBS : Ja.

HOF : Ek hoor daar is ook van hulle in hierdie saak.

MNR. JACOBS : Op die oomblik het ek nog die gewone ooggetuie wat 'n ding sien en wat nie deel gehad het nie en is nogal bereid om te getuig. Dit is wat ons sal probeer om die ander getuies te bring. Daar mag van hulle wees, maar u kan verstaan in die omstandighede hulle is baie en hulle is lands- (10) wyd. Ons kan eers met hulle konsulteer as hulle hier kom.

HOF: Nou wil ek van u weet wat vra u ten aansien van elke klas? Vra u nou, is u aansoek nou gerig net ten aansien van die drie oud-ANC lede waarvan ek weet? Ek wil weet waaroor moet ek beslis? Of gaan ons dit behandel soos dit voorkom? Ek wil nie graag elke keer 'n betoog hê oor hierdie saak nie.

MNR. JACOBS : Ek wil net graag probeer en ek weet nie hoe om dit werklik eintlik te doen nie, om argumente uit te skakel. Daar is die een geval, die een besliste saak, waar HEFER, R. gesê het maar elke keer agterna dan moet ek eers gesê word.(20) Daar kan probleme ontstaan en dan moet 'n mens elke keer en ek wil ook nie graag dat die verhoor moet so uitgerek word dat elkeen van die getuies - dat die getuies kom en dan moet ek elke keer 'n nuwe aansoek bring nie. Dan sal ons oneindig tyd mors. U kan verstaan ek sit met 'n groot probleem. Getuies kom landswyd en elke keer om getuies te kan kry wat spesifiek op daardie geval getuig, dan moet 'n mens elke keer - miskien 'n verhoor-binne-'n-verhoor word. Daarom het ek hierdie getuienis en u sal sien hier is getuienis van die mense wat geïntimideer is in die Vaal en mense wat anderkant is. So, (30) my aansoek is ... (Hof kom tussenbei)

... / HOF

HOF : Wil u hê dat ek die saak hanteer op die basis dat ek beslis nou wat betref die oud-ANC lid of lede en dat ek 'n oop bevel maak wat betref ander getuies, dat u verdere feite voor my plaas of nie voor my plaas nie, ek dit dan aan die hand van die beslissing wat ek hier gee beslis. Kyk, hierdie getuies is nie weer terug geroep te word wat ons klaar gehoor het nie.

MNR. JACOBS : My aansoek dan by die Hof is, ek doen aansoek dan dat die Hof vir my 'n bevel sal maak dat die bevel wat u gee, indien u sal sê dat dit in camera geskied, dat dit dan geld vir al hierdie vier klasse van getuies waar getuies werklik by my aansoek doen dat hulle hulle getuienis in camera gee. Dan kan ek die Hof meedeel dat daardie getuies dit versoek.

HOF: Ek kan nie die bevel nou maak dat dit in al die gevalle geld nie, behalwe as ek die feite voor my het van die besondere gevalle en die besondere feite het u ook nie, want u het nog nie met die mense gekonsulteer nie.

MNR. JACOBS : Dit is reg. Die artikel 31 aangehoudenes met wie ek gekonsulteer het, is almal huiwerig en almal wil die beskerming van die Hof hê. Hulle het sover gegaan om te sê hulle weier as hulle nie beskerming van die Hof kry nie.

HOF : Wat verstaan u onder die beskerming van die Hof presies? Presies wat se soort bevel soek u?

MNR. JACOBS : Hulle versoek uitdruklik aan my was gewees ...

(Hof kom tussenbei)

HOF : Afgesien nou van daardie, vir almal, wat wil u hê, hoe sê u moet die bevel lui?

MNR. JACOBS : Dat hulle hulle getuienis in camera gee.

HOF : Dit wil sê dat alle persone wat nie direk betrokke is by die hofsaak nie, die saal verlaat?

... / MNR. JACOBS

MNR. JACOBS : Ekskuus tog, ek het nie mooi gehoor nie?

HOF : Dat alle persone wat nie direk in amptelike hoedanigheid hier is nie, behalwe die beskuldigdes en hulle regsverteenwoordigers die saal verlaat?

MNR. JACOBS : Dit is reg.

HOF : En nog?

MNR. JACOBS : Dat hulle identiteit dan nie geopenbaar word nie.

HOF : Identiteit nie openbaar word aan wie nie?

MNR. JACOBS : Indien die pers enige berigte ... (Hof kom tussenbei)

HOF : Wil u hê die pers moet toegelaat word of nie toegelaat word nie?

MNR. JACOBS : As die Hof 'n bevel maak dat die pers nie toegelaat word nie, dan dink ek het hulle nog toegang tot die oorkonde. Dit is 'n publieke dokument. As die pers dan onderneem om nie ... (Hof kom tussenbei)

HOF : Ek wil weet of u nie daarmee akkoord gaan dat die pers toegelaat word onder sekere beperkings nie of wil u hê dat die pers glad nie toegelaat word nie?

MNR.JACOBS : Die pers kan toegelaat word onder sekere beperkings.

HOF : Wat is die beperkings?

MNR. JACOBS : Dat hulle niks publiseer wat die identiteit van 'n getuie kan openbaar nie, die name, adresse. Dan die ander aspek is dan getuienis - 'n deel van getuienis waaruit hulle identiteit vanselfsprekend na vore kom.

HOF : Wat betref die identiteit van die getuie, wat sê u daarvan?

MNR. JACOBS : Watter getuie?

HOF : Moet getuies hulle korrekte name hier gee? Wat is u submissie daar?

... / MNR. JACOBS

MNR. JACOBS : Ek het nie daaraan gedink nie.

HOF : Moet 'n getuie mnr. X wees of moet 'n getuie mnr. Eric Maleka wees?

MNR. JACOBS : Kan die Hof my net 'n oomblik gee. Ek het nie op daardie aspek so ingegaan nie. Ons het die getuienis van kolonel Buchner dat die getuies se name in die hof geopenbaar kan word, maar dit moet net nie gepubliseer word nie. Ek dink dit sal voldoende wees as die Hof 'n bevel maak dat die getuies se name nie gepubliseer word buitekant nie. In die hof kan hulle verskyn onder hulle name. Dit is al. (10)

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... / MR CHASKALSON

MR CHASKALSON ADDRESSES COURT: My Lord the matter arose because a particular witness My Learned Friend indicated he intended calling, he mentioned his name and he asked that the witness' evidence be given in camera. Now My Learned Friend is now asking you a lot more than that. He is suggesting not only that the named witness but really any witness who tells him that he would like to give evidence in camera should be allowed to give evidence in camera and the result of that is to suggest that for practical purposes the real trial should take place in camera. Now our submission to Your Lordship (10) is that that is so far reaching an application that Your Lordship would not make an order now which would have that effect but will deal with each witness, or each class of witness, as and when the occasion arises. We have here two people whom in my respectful submission it would be appropriate for Your Lordship to deal with now. There is the man who was identified as Lungile Tom Ndlovu who we have not seen, and we have another man Eric Maluleke who actually has given evidence and says that he is going to, that he is required as a witness later. So we know about those two persons. We know that (20) Ndlovu was a former ANC person, we know that Maluleke was a former ANC person, we have been informed of the circumstances of Maluleke by himself, we know little about Ndlovu other than the name which My Learned Friend mentioned to us. And I would suggest to Your Lordship that Your Lordship is not really able to make an order in regard to any other witness. It may be that the principles which Your Lordship lays down in relation to the facts which have arisen will guide the parties later in the case but we would object at this stage to any order being made other than in regard to the two persons about whom we (30) have been specifically informed, and would ask that those two

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persons be dealt with in relation to the facts as applicable to them. That indeed is what ACKERMANN, J. did in the LITSILE case and that is what HEFER, J. did in the SEKETE case and in this sort of trial it seems the appropriate approach to be adopted. Your Lordship will find in the SEKETE case at page 176D-F that that was the approach of HEFER, J. That is a judgment reported in 1980 (1) SA. Now I am going to come back to this because it is our submission that in each instance one is partly a question of fact and partly a question of law and the facts which are relevant to witness A are not necessarily relevant to witness B, and that we need to be informed on each occasion about the relevant facts. The starting point of the enquiry is, in our submission, the provisions of Section 152 of the Criminal Procedure Act which provides the ordinary rule that a trial is to take place in open court. And then the exceptions appear. Now the exception relied upon by the State is the exception contained in Section 153 and the terms of the section really guide Your Lordship. The application has been made under Section 153(2) and that section provides that if it appears to any Court at criminal proceedings that there is a likelihood that harm might result to any person other than the accused if he testifies at such proceedings the Court may direct (a) that such person shall testify behind closed doors and that no person shall be present when such evidence is given unless his presence is necessary in connection with such proceedings, or is authorised by the Court. So Your Lordship has a discretion to authorise persons in court beyond necessity, anybody whom Your Lordship permits to be in the court at that time. The second sub-provision is that the identity of the person shall not be revealed or that it shall not be revealed for a period specified by the Court.

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Now there are really then two separate questions. The first question is has it been shown that there is a likelihood that harm might result to a particular person as a result of giving evidence in open court. I shall come back to that second requirement because it is there that, with all due respect to My Learned Friend, he seems to have misunderstood the judgment of ACKERMANN, J. And the second point is whether the facts and circumstances are such that Your Lordship should exercise the discretion. In other words a discretion is conferred upon the Court if certain jurisdictional facts are satisfied. (10) Those jurisdictional facts are the facts referred to in sub-paragraph (2). Those have to be established by the State in regard to the individual concerned. If the State establishes those facts then and only then does Your Lordship have the discretion. Otherwise the ordinary rule of open court hearings applies, and I am talking here in regard to applications under 153(2). There are other provisions under the statute which permit the closure of the court, acts of indecency and generally other, sub-section 153(1) also provides a discretion that it could be in the interests of the security of the State or (20) of good order or of public morals or the administration of justice that such proceedings be held behind closed doors, it may direct. Once again it is a factual state which has to be established, then the discretion arises. So the submission we make to Your Lordship is first that it is for the State to determine in each circumstance in respect of each witness that the factual state exists which gives Your Lordship a discretion and secondly to establish in respect of each witness that the circumstances pertaining to that witness are such that it will be proper for the discretion to be exercised. (30) That is why we suggest to Your Lordship that it would not be

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appropriate to make a blanket order in all cases. The discretion is a discretion given to the Court, it is not a discretion given to the witness, nor is it a discretion given to the State. So the mere fact that the witness asks to give evidence in camera, the mere fact that the State asks that the witness gives his or her evidence in camera is not adequate. It is only if the Court is satisfied in the circumstances pertaining to that witness that the discretion should be exercised and can be exercised that the order can be made. Now if I could turn to the argument, turn to the judgment in S v LIPELE because it is the latest case and it contains a full review of ACKERMANN, J. of all the earlier decisions, and our submission immediately to Your Lordship is that the approach adopted by ACKERMANN, J. is correct and correct for the reasons given by ACKERMANN, J. We support every one of the reasons advanced by His Lordship in that case, and indeed I do not intend to read the full judgment to Your Lordship, Your Lordship will have read it. There are going to be passages to which I will draw attention. But the whole judgment is in our submission convincing, correct and should give guidance to Your Lordship as to how to deal with the particular problems which have arisen here. If I could immediately deal with what I suggest may possibly be a misunderstanding by My Learned Friend of the judgment of ACKERMANN, J. My Learned Friend says that there is a conflict in the judgment, that at page 5 ACKERMANN, J., after referring to the various cases dealing with expressions such as possibility or reasonable possibility and different combinations of those words refers to the SEKETE case and says that, and quotes a passage from CLOETE, J.'s judgment in that case that the harm to any person who testifies must be a reasonable

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possibility and not a remote far-fetched or fantastic one, and then goes on to say that the requirements should not be set so highly that a probability must exist that harm will result and he says that that construction had been adopted in SEKETE's case and had been accepted as correct by counsel on both sides, and he said it seemed to him to be a sensible construction as the juxtaposition of the words "likelihood" and "might result" really require some sort of flexibility such as that and he said that that is an approach he is going to follow. I am going to come back to that approach just now (10) in a different context to suggest that it can be refined still further and perhaps a slightly more precise formulation of the test can be determined. But the passage which My Learned Friend suggests may be in conflict with that is really derived I think from what appears on the next page, page 6:

> "Mr Farlem also emphasised, correctly in my view, that there must be a causal link between the act of testifying and the harm to the witness which is envisaged before the jurisdictional facts are established."

Now there is in our submission really no conflict between (20) the two passages. I think all that ACKERMANN, J. is stressing is that the harm must result, and must be shown to result, from the act of testifying in open court. And it is clear if one looks at his judgment later that where he deals with the people who have been killed by the ANC, to examine whether their deaths were the result of their having testified in open court or whether their deaths, does Your Lordship, I have assumed Your Lordship has a copy of ACKERMANN, J.'s judgment.

COURT: Yes I have it here.

MR CHASKALSON: Yes. Otherwise I can hand one up. And he (30) looks very carefully, and he shows that, and indeed I am going

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to go through the evidence here today, I hope I will be able to show Your Lordship the same on the evidence which has been produced here, that the threat does not come from the mere act of testifying in open court, it comes from other factors. I will have to look at the evidence which has been put to Your Lordship but the test is will the fact that this, if there is a risk, is it a risk which comes from, put simply, from the fact that the man is a defector or is the risk because he has testified in open court? And that is really, I suggest as far as the ANC people are ... (10)

COURT: And if the risk is increased by his exposing himself in court?

MR CHASKALSON: That would be a factor which Your Lordship would take into account and Your Lordship would have regard to that in relation to all the other facts. It would clearly be relevant if Your Lordship is satisfied on the particular facts of a particular witness that to testify in open court would increase the risk. Your Lordship would take that into account and would weigh it in the scales in deciding how to exercise your discretion, that it would be a factor. And there (20) could be cases in which that would be relevant. But could I come back to the test because I think that there is an indication in the judgment of CLOETE, J. as to what might possibly be a slightly more precise test than the somewhat loose test which has been put forward. His Lordship formulated his test about the requirement not being set so highly that a probability must exist but it must not be too remote so as to be farfetched, after having quoted at page 222 from a judgment of GREENFIELD, A.J.A. which was given in the old Rhodesian Appellate Division, and the language there used by GREENFIELD, A.J.A. (30) may possibly offer some guidance. It was put in these terms:

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"It seems to me that the mischief aimed at in the statute we are here considering is an appreciable or reasonable risk."

And I would suggest that what the Legislature has in mind in Section 153 is an appreciable risk. In other words for the jurisdictional facts which would lead Your Lordship to, which would give Your Lordship the discretion there should be an appreciable risk. There is a likelihood that harm might result, not that there is a likelihood that harm will result but there must be a likelihood, and "appreciable" might be slightly more precise formulation than the somewhat loose suggestion that it does not need to be a probability and that clearly it should not be so remote as to be far-fetched, somewhere in between with our dealing with it. I would suggest that "appreciable risk" actually covers the language of a likelihood that something might happen. Now it follows that the element of causality is there as ACKERMANN, J., in our submission, rightly held in LITSILE case because a likelihood must result from the giving of the evidence and it is only there, you have got to look there to see whether the likelihood of harm is attributable to the giving of evidence before the jurisdictional fact is satisfied. So if I could give Your Lordship an example. We have been told by Colonel Buchner of the list of people who are on the ANC hit list. Now I am going to come back to it again in a slightly different context but for the moment just for the purpose of illustrating the submission to Your Lordship I think there were six or seven people in the exhibit which was IC5. Each one of those persons was identified as a target for the ANC, each one of them had gone over to working for the police. Some of them had given evidence in camera, others of them had not

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given evidence at all and I would like to suggest to Your Lordship that in the case of those seven persons, if any one of those seven persons came to court to give evidence the likelihood of the harm coming to such persons, or likelihood of harm coming to such persons, would not be attributable to such person giving evidence in open court. It is there, they are people who are being looked for, they are people who are endangered already and if the additional evidence were to show that their whereabouts were actually known and that they moved about openly then there could be no reason why such persons should not give evidence in the ordinary way in open court. Because though there might be a likelihood of harm that likelihood was there and it existed before the giving of evidence and the giving of evidence in open court did not in any way

C18 add to the harm. ..(portion missing at commencement of new tape) ... on a question of fact if one were to weigh up the additional risk, which I would suggest would not be an appreciable additional risk, against all the need for evidence to be given in open court, and I will deal with that a little bit later in my argument, I would suggest that there neither of the requirements would be satisfied, neither the jurisdictional fact nor the basis upon which the discretion should be exercised because in those particular circumstances the giving of evidence would really be irrelevant to the harm under which that person, the harm to which that person, the potential harm to which that person was subjected. Now it follows from that that each case must be determined on its own facts, on the evidence that is presented to the Court in relation to that and the particular circumstances of each witness in that case. And if I may I would like first to look at the documents which were handed in by Colonel Buchner in support of

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the application and I think Your Lordship will see, when Your Lordship looks at the documents, that these are really the same documents that were put before ACKERMANN, J. It is easy to see they are the same because when one looks at ACKERMANN, J.'s description of them you will see that they are the same documents. There they were produced by Brigadier Statler, here they have been produced by Colonel Buchner. The evidence before Your Lordship of course is the evidence given by Colonel Buchner and not the evidence given by Brigadier Statler and we have to deal with that, it has been cross-examined and (10) we know what the parameters are. If I could begin with IC1 because the submission which I am going to make to Your Lordship is that on a proper analysis of these documents the conclusion reached by ACKERMANN, J. in the LITSILE case on the evidence before him in that case is correct, that his interpretation of the documents is correct and that Your Lordship would, in our respectful submission, adopt the same interpretation in regard to the documentation here. Now in the, in IC1 there is a reference to the death of a security policeman, Sergeant Mandla Leonard Nkosi, and the passage (20) referred to is in the second column and I think the key paragraph is the second paragraph where it is said that Nkosi gave evidence as a State witness in nearly all the ANC trials since 1968. These include the trial of Dorothy Nyembi who was subsequently jailed for fifteen years, and the recent Pietermaritzburg trial and Nkosi had become increasingly arrogant in the months before his death, openly boasting about his activities and spending his spare time terrorising our people, especially ex-Robin Island oppressors. So what is being said here, two facts emerge from this. One of the (30) facts is that Sergeant, that Nkosi had not only defected from

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the ANC but he had joined the police. And that seems to be a key factor if one looks at the ANC documents in regard to singling out people for retribution from them. The revenge and retribution is taken against those who, as it were, join the other side by joining the police and taking part in police activities. There is a document which attempts to justify that and that is also put. And I think that we will see a reference to Nkosi in another document but could I just draw Your Lordship's attention to the fact that ACKERMANN, J. analyses the document at page 22 to 23 of his judgment. And perhaps (10) IC1 needs to be read with IC2 because IC2 really sets out the policy of the ANC. It comes from a sechaba and it deals with what the ANC describes as "Targets of a just war". Perhaps it might be helpful if I were to read it again to give the context which is this:

> "The sabotage campaign between 1962 and 1963 was marked by notable attempts to avoid bloodshed. The few actions which resulted in bloodshed were exceptions rather than the rule. Such incidents are a foreseen but unintended consequence of any armed struggle. (20) Respect for life clearly continues to be a principle stressed in the training programmes of Nkonto as is shown by the testimony of some ANC guerillas caught and tried by the Apartheid regime. South African police and army personnel and installations have been attacked and these are surely licit(?) targets in a just war. They are part and parcel of the oppressive apparatus which attacks South African people. The South African press waxed indignant at the loss of life when the Air Force headquarters in Pretoria was attacked. It is (30) noteworthy that all the nineteen people killed worked

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in the building and the fact that there were no more deaths shows that there was discrmination on the part of the ANC. A military installation is a legitimate target and it is the duty of those who would place major installations in civilian areas to guarantee the security of civilians in the area. It is surely easier to bomb buses and cinemas but the ANC has rightly refused to do so. Were Nkonto interested in simply causing death its cadres would have bombed civilian targets. The fact that this was not done in Pretoria reflects the fact (10) that the concern of the ANC was to attack a military target and the Nkonto is not a terrorist organisation like the South African Army and Police."

And then it goes on to deal with assassinations:

"Nkonto we sizwe has been responsible for the assassination of notorious informers and collaborators with the Apartheid regime. This is not properly speaking an act of war but constitutes the administration of vigilante justice by an organisation recognised by the oppressed in South Africa as its own government. It (20) expresses the fact the dual power exists in South Africa. In conclusion the armed struggle carried out by the ANC is just with regard to both its ends and means it uses. Actions of Nkonto we Sizwe seek to preserve life. Where civilians have been injured this has, on the whole, reflected the fact that the regime has sited military targers in civilian areas. The intention of Nkonto is to bring about a just and lasting peace rather than cause unnecessary loss of innocent life."

So the attempt made in this article is to justify the policy (30) Nkonto and to identify a particular group who are at risk and

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they are identified as "notorious infomers and collaborators". Now, so that is ....

COURT: Now who is a notorious informer and a collaborator?

MR CHASKALSON: Well My Lord the, if one looks at the other documents I suggest that it shows you and the question is whether any of the witnesses who are being asked, who are being called, fall within that category. But I suggest the documents actually give an indication if one looks at them. ACKERMANN, J. dealt with this at page 23 of his judgment, he refers to it. Then if I could go one stage further to IC3. (10)

COURT: Now just a moment, does His Lordship define "notorious informers and collaborators"?

MR CHASKALSON: The page that I have is at page 23 of the judgment. It seems that he does not, he deals with another document at page 23.

COURT: I do not think this document is dealt with.

MR CHASKALSON: I think it may be dealt with elsewhere and I will look for it because he has referred to, when he deals with Nkosi I think maybe earlier on page 22.

COURT: It is dealt with on page 19. But it is not, it is (20) merely quoted, not dealt with.

MR CHASKALSON: Yes. Well I think the other documents give an indication if one could come to them. What it does not say is anybody who gives evidence for the State is a target, which is the construction which is put on it by My Learned Friend. The next document I would like to look at is IC3:

> "The strength and capability of our organisation is also reflected in the actions taken against known informers and traitors. Able Ntembu and Leonard Nkosi, both former ANC members who served as State witnesses (30) in many trials were shot dead and a third traitor was

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seriously wounded at his home near Durban. Two known BOSS agents, Lloyd Ndaba and Orphan Chapi were also eliminated in this way. These are just reprisals against these traitors of our peoples causes."

Now we have had evidence about Nkosi and also about Ntembu. It was put to Colonel Buchner, and he did not dispute the fact, that Ntembu had been, he said he did not know that Ntembu had been a very senior member of the ANC who had defected, for many years, many years back in 1960. I can tell Your Lordship I was in the Rivonia trial and Ntembu was a witness in (10) that case. I think that was the first occasion on which he gave evidence. That was in 1963 or 1964. He is also mentioned by ACKERMANN, J. at page 23 of the judgment. He mentions there Nkosi and Ntembu. Now if one looks at it one sees, perhaps IC5 is a document which shows what the policy is. If one could begin at the first page of IC5:

"Death to Traitors.

Who are the traitors and what of their work? Let everybody be on the alert about SB spies, informers and all those police agents that are paid to delay (20) the people's revolution."

So there is a reference in the first paragraph to people paid by the police and then it is clear that that is what is being referred to, people in the employ of the police.

"Enemy agents of all kind are as old as the struggle for liberation. They had to face the MPLA, where they had to face a firing squad when MPLA liberated Angola. Some left with the Portuguese colonialists when Mocambique was restored to its rightful owners by Frelimo. They could not reverse the revolutionary tide in Zimbabwe (30) and today they are confessing and asking forgiveness

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in the ranks of our movement, the tested and tried African Congress and its military wing Nkonto we Sizwe."

Then who are they, their missing, the third paragraph:

"Their mission is to infiltrate the people's movement and its military wing and bring the information back to their Boer paymasters. Their pay is promotion in the Boer police force and the fascist army, the SADF. They end up frustrated when the Boers no longer need them, they lose their jobs and they are also rejected by their own people." (10)

So clearly they are identified as people who are in the employ and working for the police, they are either policemen or army people. And then if one looks at the next paragraph:

"How are they trained?"

They are told about the training, again it is people who are paid and employed by the police. And their activities, they are defined as to cause confusion and to demoralise cadres within the ANC and MK. They carry out unsuccessful acts of sabotage, such as attempts to assassinate our leaders and cadres and poison our food. And then there is talk which (20) shows again that these are people in the employ of the government and they are referred to later as "these police agents", in the sixth paragraph:

"In spite of some of these police agents trying to sabotage weapons."

Those are them that have become false State witnesses against the Mandelas , the Mahlangus , the Manges the Lubisis and the Tsotsobis, should never be forgiven. Their case is closed and the verdict is passed. So what they are saying is these people employed by the police as police informers or by the mili- (30) tary as military informers and who have given evidence in

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certain cases, they are identified. And then there is a death threat but in the context it is to the people identified on page 1 and if one then turns to the page which begins "Kill the traitors":

> "We could have long defeated the White oppressors if it was not for the Black traitors who are prepared to work for them. The above are some of them that have helped the enemy to arrest and kill our brothers and sisters. They have escaped from the African National Congress and its military wing, they have given evidence against our cadres and against people who struggled to get freedom, they work hand-in-hand with the police and soldiers in capturing and exposing the freedom fighters in the streets, buses and trains. Some of these traitors penetrate our meetings in factories, townships, schools and churches to spy on us."

And then there is again a series of threats in which strong language is used. And then the traitors, and there are seven photographs. Now what is interesting about these is Colonel Buchner went through the schedule and he told us that all seven of the people listed here are actually in the employ of the police, they are now policemen, they are known to be policemen and they function openly as police. They have given evidence previously and what was significant was they had given evidence in camera. The only ones who have given evidence, according to Colonel Buchner, gave their evidence as far as he, in camera. Some of them have not given evidence at all, some of them were working for the police without ever having been called as witnesses. And they are singled and picked out because they are working in the employ of the police. Now, so we make the submission that on a proper construction

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of the documents the threat is to notorious people such as these, notorious to the ANC in the sense that they used to be members of the ANC, that they have defected and are now working for the police, they are known to work for the police and on occasions they are called upon to give evidence. The giving of evidence is not the cause, it is incidental, it is one of the duties which they perform. Some of them are on that list without ever having been called to give evidence. And those are the people, people in that category about whom evidence has been given as having been assassinated by the ANC. (10) There is no evidence at all before Your Lordship of any ass-assination attempt against anybody who does not properly fall into this category.

Now what is the evidence? The evidence which we have here, and that I would suggest comes both from Colonel Buchner's evidence and from the evidence of the witness Eric Maluleke, that as soon as the ANC cadre defects, in the sense that he has given up his work for the ANC this will become known to the ANC. And that is obviously so, the ANC will lose contact with him, he will not report to where he is meant to report and in (20) a very short space of time the defector, the fact that a person has defected is known. Now we have no evidence in respect of the first person whose name was given to us by My Learned Friend, given in open court for everyone to hear. So the fact that he is about to be called as a witness is known to a packed gallery, the world really. We do not know anything about him but we do know something about Mr Maluleke who gave evidence. He tells us that he is living openly at his home, the home that he occupied before he joined the ANC, that his defection is known to the ANC, it must be known to them. (30) And also he said it is known to a wide circle of people. He

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puts it at not more than 100. That is a wide circle. He says that the ANC have all the details of his home and his background. He says that deserters are being hunted by the ANC. Well that may be, that is his evidence. There is no evidence from the police that people who have simply deserted and no more have been dealt with by the ANC but he says he is being hunted. He says he has taken precautions to protect himself and as far as he is concerned he is on risk, he is a man who is being looked for, he is living openly at the place where everybody knows he is and he is waiting to deal with the (10) situation if and when it arises. The submission we make to Your Lordship about this witness is that the additional risk of his giving evidence is minimal, it cannot be categorised as an appreciable risk, giving evidence in open court, and therefore as far as he is concerned the jurisdictional fact is not there. I will come back, if Your Lordship should be against us, as to the circumstances Your Lordship will take into account, or might take into account, in exercising the discretion. If I may at this stage also deal with the only other person about whom we know, and that is the witness (20) Lungile Tom Ndlovu. There was a packed court here yesterday when his name was mentioned. The fact that he is going to give evidence will be well known. The suggestion My Learned Friend makes now is like attempting to close a stable door after the horse has bolted and when one weights that up against that risk, he is not identified as a person working for the police, he is not identified as somebody who is in the high risk category at all. One identifies the minimal additional risk of his giving evidence against the undesirability of evidence not being given in open court and in public. We (30) suggest again that if Your Lordship were to hold that the

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additional risk falls within the, what I have termed the appreciable risk which creates a jurisdictional fact, the circumstances are such that Your Lordship should not exercise a discretion in favour of closing the court. Now My Learned Friend says that there are certain factors which are of particular application to this case and he has referred there to the evidence of Captain Conradie and Constable Matlose, and also to the evidence of Warrant Office Mohage. And they deal with two separate incidents, if I might call them the Litsile incident and the Letlaka incident. Can I deal first with (10) the Litsile incident. Now we are told about Litsile, that he was a policeman who used to be an informer and was known to be working for the police. He would presumably then, though there is no evidence that he ever belonged to the ANC, he is an informer, he is now a policeman and he was at one stage informing on a particular organisation which is referred to as COSAS. He has apparently worked openly for the police since 1984. Now his death was initially put forward, and I do not think there can be any doubt, the suggestion was that his death was in some way to prevent him giving evidence. But (20) it emerges that the death arose out of a shebeen quarrel late at night. At the most it amounts to the settling of a personal grudge for private reasons. Though it seems possibly that more was involved there because we know that the people have been released on bail and some have been rearrested on robbery and that there may have been other motives as well. Constable Conradie, who gave that evidence, made affidavits about the death. He says in connection with the bail application, and he gave evidence, I suggest that after his cross-examination that there really is very little left of his evidence in (30) relation to any causal connection between Litsile's death

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and the giving of evidence. It seems, as I said, at the most to be a personal grudge because he was the policeman who arrested somebody, a relative of somebody. He suggested that some of the people who are charged with the arson case involving Litsile's home have connection with the accused in this case and when it came down to examination that just disappeared like a bubble. There is no suggestion that any of them knew or had any direct dealings with the accused. All that it comes down to is one person told him that he attended the NG Kerk one day where parcels were being packed for (10) people in detention, including these, the present accused. And that is as far as that connection goes. So there is really no connection between the accused in that incident and nothing to suggest that it had anything to do with Litsile giving evidence. As far as Mrs Letlaka is concerned the evidence of Warrant Officer Mohage comes down to this that he cannot find Mrs Letlaka, there is nothing to suggest that she was subpoenaed, she was apparently in detention for several months, that she was released, she later heard that the police were looking for her and she has left her home. And that is as (20) far as that evidence goes. That the State wants to call her as a witness we know. There is nothing to say why she left her home, nothing to suggest that there was anything which in any way would affect Your Lordship in making a decision in regard to the first two witnesses, well not the first two but in regard to the two witnesses of whom we know, which is Mr Ndlovu and Mr Maluleke. I think Colonel Buchner's evidence put in the documents, he identifies the people at risk as the ANC people who work for the police, he agrees that the ANC know who these people are and our suggestion is that if that (30) is so then the giving of evidence is irrelevant. He said it

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was important that, he considered it important that identities, that evidence be given in camera so that the identity of people be not disclosed but once their identity has been disclosed, as in the case of the witness Ndlovu, that requirement falls away. So we would make the submission to Your Lordship that the evidence in this particular case shows neither the degree of likelihood of harm coming from the fact that a witness may give evidence in open court now and the circumstances affecting both the two witnesses about whom we know, nor, and that is what I am going to turn to now, if that (10) jurisdictional fact were satisfied, nor in our submission does Your Lordship, are the circumstances such that in our submission the discretion should be exercised so as to exclude the public in the case of these two witnesses. And that is all I can address Your Lordship on because I have no evidence and know nothing about the particular position or circumstances of anybody else who might be called upon to give evidence. Now the, in the case of LIPILE ACKERMANN, J. deals fully with the earlier cases, distinguishes them and deals with his case on the evidence which he has. I do not want to repeat what (20) ACKERMANN, J. has done already. I would adopt, with respect, his judgment and his basis for distinguishing the others cases. I would point only to the fact that in the MADLAVU case the Court was concerned with a group that was called the Black Power Group. I think that was the name by which it was known. It sets out what the Black Power Group dealt with and he dealt with the particular evidence which had been given in regard to that group at that time and the trials there. The reasons which ultimately moved him there, there was evidence before him there which I suggest justified the decision (30) which he took in that case. It was circulated, circulars and

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that was the reasoning. None of them apply to the present case. The case of SEKETE is of course a different case because there people were on, charged were alleged to be ANC people and the question was ANC people giving evidence against them. Of course the people on trial here are not alleged to be ANC people. There is no such allegation anywhere in the indictment. The furthest the State goes is that there was some conspiracy to further the ANC, some conspiracy to further the ANC conspiracy but there is no suggestion anywhere in the indictment that any of the accused had any dealings directly with the ANC or are, if I might use that word, ANC people. They are charged as UDF people. Then HEFER, J. deals with their particular evidence which had been given in the case before him. Now I do not want to deal with that evidence because the evidence would depend upon cross-examination, what was was put to the Learned Judge and what documents were put to the Learned Judge and how the Learned Judge understood them. Your Lordship, in my submission, will have regard to the evidence which is before you. I would just point out that at page 175G HEFER, J. says that:

> "Having come to the conclusion that there is a real likelihood of harm to State witnesses it is clear that I nevertheless retain the discretion to refuse it and the matters raised by counsel might well afford sufficient for exercising my discretion in that way."

So he, for that reason, that he would not exercise his discretion generally and I suggest correctly so. One other fact I would like to draw attention to in regard to the SEKETE judgment and that is the factor drawn attention to by ACKERMANN, J. in his judgment and that is that the quotation from SCOTT v SCOTT at page 175 at the bottom of the page

is taken slightly out of context. It left out a word which showed that the passage was intended to relate to cases where secrecy was necessary, where the secrecy of a trial was necessary to get relief, and that if the trial took place publicly you could not get the relief which you were claiming. But I do not suggest that that means that nothing that is said in that passage is relevant. Only it must be read in the context which is drawn attention to by ACKERMANN, J. and it cannot be taken as a dictum which was intended to be of general application to all cases. Finally there is the (10) case of MOTOPENG. It is again dealt, it really deals with an entirely different situation, it deals with an organisation identified in the evidence as the Pan African Congress, it deals with threats to Judges, it deals with people on trial for military training, people who, of their colleagues who were coming to give evidence against them. All I want to say again is that there too each case depends on its own facts and would suggest that Your Lordship needs to have regard to the facts of this case. Also to the factor that we are not here concerned with an ANC trial or the trial of an unlaw- (20) ful organisation, we are concerned here with a trial, people who are alleged to have acted openly at meetings, kept minutes of their proceedings, issued pamphlets openly and under their own name. All that forms the sub-stratem of the case. They are not members of a banned organisation, it is a case of very great importance and it is therefore a case above all others where the public should understand and have access to the court to hear what is happening and to see what his happening. Then I would like to turn to deal with the importance of public hearings. Now ACKERMANN, J. deals with that (30) issue at pages 9, at the top of page 9 of his judgment, to

page 12 line 20. And he stresses the need for justice to take place publicly, and the importance to the administration of justice for a variety of reasons for it to take place in public, and the importance of people being able to come into court to hear the evidence, see and hear what people are saying and to know what people are saying so that they can have confidence in what is taking place and confidence in the judgment which is finally given by the Court. Nothing is more calculated to induce suspicion, to induce lack of confidence in the court process, to induce rumour and the like than (10) to have trials conducted partly in secret where people cannot see for themselves what takes place. Now I would like, with respect, to adopt everything said by ACKERMANN, J. in those pages and to stress the importance of public hearings from the point of view not only of the evidence which they may produce, I will come to that later, but also from the general public confidence in the proceedings. And there could never have been a case, I suggest, in which it was more important that that should occur than this one. I would like to refer Your Lordship to a judgment which I think is not dealt with by (20) ACKERMANN, J. It is the judgment of the U.S. Supreme Court in the case of RICHMOND NEWSPAPER INC v VIRGINIA, and I have a copy for Your Lordship, and a copy for My Learned Friend. I am afraid we only have three copies in court and I apologise for that. Now I appreciate that the United States is a country with a different judicial system to ours, a system much influenced by the Constitution and the entrenchment of rights under the Constitution, but I would like to read from the judgment of BRENNAN, J. It is at page 591. BRENNAN, J. at page 591, paragraph 3 says this: (30)

"Publicity serves to advance several of the particular

purposes/.....

purposes of the trial and indeed the judicial process. Open trials play a fundamental role in furthering the efforts of our judicial system to assure the criminal defendant a fair and accurate adjudication of guilt or innocence. But as a feature of our governing system of justice the trial processes serve other broadly political interests and public access advances these objectives as well. To that extent trial access possesses specific structural significance. The trial is a means of meeting the notion deeply rooted in the common law that justice (10) must satisfy the appearance of justice. For a civilisation founded upon principles of ordered liberty to survive and flourish its members must share the conviction that they are governed equitably. That necessity underlies Constitutional provisions as diverse as the rule against taking without just compensation. It also mandates a system of justice that demonstrates the fairness of the law to our citizens. One major function of the trial, hedged with procedural protections and conducted with conspicuous respect for the rule of law, (20) is to make that demonstration. Secrecy is profoundly inimical to this demonstrative purpose of a trial process. Open trials assure the public that procedural rights are respected and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness which in its turns sporns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice. But the trial is more than a demonstrably just method of adjudicat- (30) ing disputes and protecting rights. It plays a pivotal

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role in the entire judicial process and by extension in our form of government. Under our system Judges are not mere umpires but in their own sphere law makers, a co-ordinate branch of government. While individual cases turn upon the controversies between parties or involve particular prosecutions court rulings impose official and practical consequences upon members of society at large. Moreover Judges bear responsibility for the vitally important task of construing and securing constitutional rights. Thus insofar as the trial is the (10) mechanism for judicial fact finding as well as the institutional forum for legal decision making it is a genuine governmental proceeding. It follows that the conduct of a trial is pre-eminently a matter of public interest. More importantly public access to trials acts as an important check, akin in purpose to the other checks and balances that infuse our system of government. The knowledge that every criminal trial is subject to contemporaneous review and the forum of public opinion is an effective restraint on possible abuse of judicial (20) power and abuse that in many cases would have ramifications beyond the impact upon the parties before the Court. Indeed without publicity all other checks are insufficient. In comparison of publicity all other checks are of small account. Finally with some limitations a trial aims at true and accurate fact finding. Of course proper fact finding is to the benefit of criminal defendants and of the parties in civil proceedings but other comparably urgent interests are also often at stake. A miscarriage of justice that imprisons (30) an innocent accused also leaves guilty a party at large,

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a continuing threat to society. Also mistakes of fact in civil litigation may inflict costs upon others than the plaintiff and the defendant. Facilitation of the trial fact finding process, therefore, is of concern to the public as well as to the parties. Publicising trial proceeding aids accurate fact finding. Public trials come to the attention of key witnesses unknown to the parties. Shrewd legal observers have averred that the open examination of witnesses viva voce in the presence of all mankind is much more conducive to the clearing up of truth than the private and secret examination where a witness may frequently depose that in private which he will be ashamed to testify in a public and solemn tribunal and experience has borne out these assertions about the truth finding role of publicity. Popular attendance at trials substantially furthers the particular public purpose of that particular judicial proceeding. In that sense public access is an indispensable element of the trial process itself. Trial access therefore assumes structural importance in our government of law."

Now that is an important factor that Your Lordship will take into account. This, as I have said, is an extremely important trial. None of the accused are alleged personally to have committed acts of violence. Their guilt is sought to be inferred from documents, from the public acts of the United Democratic Front, from other facts. It is important that the public, including the friends and the relatives of the accused, should be able to hear and to know the evidence on which they are standing trial. What confidence will they have in the proceedings if the public is excluded? This is a treason trial but we all know that publicity, above all others in

treason/.....

treason trials, has been insisted upon. Secret treason trials, treason trials where evidence is given in secret, have universally been condemned. Then we have the other factor, the factor of fairness. It was dealt with by Colonel Buchner in his evidence, that witnesses come out of detention, the courts have stressed that their evidence needs to be dealt with with care. If they come into court and if they see only policemen in court how much more likely that they may wish to please their interrogators? It is much more likely that they will avoid exaggerations and untruths if they give their evidence (10) in public. There may be witnesses who have given evidence in other cases and have been discredited and if that fact becomes known, and indeed there have been cases of which I have knowledge myself, security cases, in which witnesses who have been discredited elsewhere, have given evidence and that fact, once it became known, enabled that fact to be brought to the attention of counsel. I myself on occasions have brought to the attention of colleagues cases in which particular witnesses have been discredited of which I have had knowledge, and the same has been done to me. All that gets lost. There may (20) be members of the public who know of a particular person that can prove, when they read about it or hear about it, that what that person is saying is a lie and who will bring that to the attention of their legal representatives, and that sort of evidence will be lost if the trial takes place in camera. Now I do not suggest that Your Lordship does not have regard to the evidence that there are risks but Your Lordship must weigh it in the scales. Your Lordship must first determine whether it is an appreciable risk. And Your Lordship must then decide, weighing up all the disadvantages which will (30) flow from closing the trial, all the potential prejudice to

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the accused, which is of course of great importance, which will flow from closing the trial against the risks which may or may not follow if witnesses give evidence in open court. Only a few people, we are told, have actually been the victims of retribution by the African National Congress and those are all people in very special positions. Our suggestion to Your Lordship is that on the particular facts of this case, so far as we know it now, the situation of the two witnesses about whom we know, the risk to them is minimal, the additional risk, and that the prejudice and the lack of confidence in (10) the public proceedings is so great that the one, weighing the one up against the other, that if Your Lordship were to hold that you have a discretion that discretion should be exercised in favour of the accused. Here I think that there may be passages in the judgment of ACKERMANN, J. which deal with the question as to the effectiveness of closing the court as a method of protection and His Lordship dealw with what was said in SEGWALE's case, and the criticisms of that, and says that really one has to deal with it in each particular case. Here we know the facts, we know that in the one instance (20) the man's name has been mentioned publicly and in the other instance the man's whereabouts are known to the ANC and his defection is known to the ANC. Those are known facts in this case so the additional risks of giving testimony in public are, we suggest, slight.

Now I do not really want to go further now. I would suggest to Your Lordship it would be thoroughly undesirable to rule that the bulk of this case should be heard in camera. If the case, there should be any particular witnesses who are entitled to have their evidence heard in camera then no (30) doubt Your Lordship will decide in the circumstances of those

witnesses/.....

witnesses the nature of the order which should be made. We would submit here that if their evidence were to be heard in camera that the legal advisers and people actually who may not be, qualify as lawyers but who are working on the case for the lawyers, should also be able to be in court at that time. We would of course, they would be aware of their responsibilities. Certainly we would suggest that the Press should be allowed and that the furthest that any order should go, if it is necessary to protect the identity of a witness, is that nothing should be published which would reveal that identity. I (10) think that is all that I have to submit to Your Lordship.

MR JACOBS HAS NO REPLY TO ADDRESS TO COURT.

COURT ADJOURNS UNTIL 22 JANUARY 1986.