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SAAKNOMMER: CC 482/85

PRETORIA

1988-08-31

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

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THE COURT RESUMES ON 31 AUGUST 1988

MR BIZOS: All the accused are before your lordship. With your lordship's leave I would like to interrupt my learned friend Mr Yacoob and address your lordship in connection with your lordship's ruling yesterday in relation to the conduct of this argument. We have been informed that your lordship gave our learned friend Mr Yacoob an opportunity to address your lordship before your lordship made a ruling yesterday. However, as will appear from what I am about to say Mr Yacoob through no fault of his own because he has (10 been working on an entirely separate part of the case was not fully aware of what precisely the rest of us were busy doing and what we want to do in order to do justice to our clients' case. We are aggrieved by that ruling and I am going to ask your lordship with respect after what your lordship has heard what I have to say, to change it. We want to inform your lordship that we have been working for very long hours. Each one of us is putting in in excess of 15 hours a day into this case including the weekends and as a result of your lordship's ruling denying us time to (20 prepare an answer and we hope to have heads of argument in the beginning, we have had to work in isolation from each other Mr Chaskalson and Mr Marcus have been working as must have become apparent to your lordship on the UDF side of the case Mr Tip and I have been working on the Vaal side of the case and some of the issues of law that arise there. Mr Yacoob was asked to do the 31 areas. Because of the pressure under which we are working in our own areas we have had little or no opportunity to discuss with each other what the others are doing on important issues and our discussions have been (30

confined / ..

confined to very brief and hurried meetings before going away to prepare the next part of the argument. I had hoped to be in court all the time in order to act some sort of co-ordinator of what was happening but unfortunately I have had to go out in order to prepare portions of the argument. Some of the drafts prepared by Mr Tip for me I have to study in the middle of the night in order to add my comments to them and to go to the "betoog" and try and find what the state has said, what we have to say to your lordship. Portions of the argument that I have delivered to your lordship comes fresh from Mr Tip's pen without even my having an opportunity of studying it because of the pressure. I am informed by my learned friend Mr Chaskalson that the same sort of situation pertains to the part of the work that he and Mr Marcus are doing. Your lordship knows the numerous issues that are involved in this case. I would like to believe that your lordship would want us to do our work in as professional a manner as we possibly can, consistent with our duty to our clients. We have been particularly careful not to make loose statements or generalisations but to go to the record or to the books as we believe is the correct way of presenting an argument and your lordship expects and deserves such an argument. I want to assure your lordship that some of us are in fact physically exhausted, in addition to everything else we have two hours of travelling to do every day to and fro. We do not believe that we can do justice to our clients' case by reducing parts of our argument to writing.

We submit that your lordship's ruling deprives us from the opportunity of debating with your lordship such difficulties as your lordship may have with our argument and (30

trying/ ..

trying to persuade your lordship that what we are saying is correct, or if some unwarranted submission is made to your lordship, your lordship may make us wiser and we may find an alternative argument to the one that we have submitted on any particular point. I submit with the greatest respect that there is a difference between being heard and being allowed to talk, or being allowed to make written submissions. We have had fifteen and a half days on which to make our submissions. Taken in the abstract it may sound a lot of time but we would ask your lordship that there are nineteen (10 cases that we have to prepare and your lordship must take into consideration what has been said in authoritative judgments that the seat occupied by any person in a conspiracy trial is an uncomfortable one; that there is a danger that unless his personal position is carefully studied and submissions are made on his behalf that there is a great danger that he may be swept into prison because of the doings of others. Let us assume m'lord - is not each one of these accused entitled to a day after two and a half years of evidence and over some 10 000 pages of exhibits not (20 entitled to a day on which his legal representatives are entitled to make submissions on his behalf? I am sorry that I was not here yesterday. This is what I would have said to your lordship if I had been here, but your lordship having made this ruling, I would urge your lordship to tell us by all means that we must hurry the pace possibly, that we may try and get some references down into writing in due course but to deprive us of the right to present the case of each one of the accused is not correct in the circumstances.

We do not want to hand up handwritten pieces of paper (30

or / ..

or even typed pieces of paper such as the state handed out on the last day of its argument in relation to the individual accused's culpability - ours of course would be non-culpability. On your lordship's ruling what opportunity will we have to do that when we have to address your lordship on what happened on the 3rd, what happened after the 3rd in relation to the campaigns, in relation to submissions that are made in the "betoog" which we want to challenge. A bold paragraph in the "betoog" giving three or four pages may take one as much as half a day to chase references to the (10 record which are contrary to what the state says. We consider it our duty to bring that to your lordship's attention. I submit with the greatest respect that your lordship ought to not to put us at the disadvantage that your ruling will certainly put us in. Thank you.

HOF: Wil u iets sê daaroor, mnr Jacobs?

MNR JACOBS: Ek kan miskien net een ding onder u aandag bring In hierdie saak was dit al van Meimaand af bekend gewees dat die verdediging al gewerk het aan die betoog; dan het een van die advokate, van die vyf advokate wat opgetree het (20 hier in die hof verskyn terwyl die ander vier aan betoog gewerk het. Die hele Juliemaand wat die hof in reses gegaan het aanvaar 'n mens dat hulle moes gewerk het aan die betoog. As 'n mens dit neem van Meimaand af dan is dit al vier maande wat die verdediging aan die betoog werk en dit was in hierdie hof die aanmerking gemaak dat hulle sal gereed wees om te betoog die dag as hulle saak sluit. Dit is eienaardig dat daar nou na vier maande nog nie 'n betoog kon uitgekome het nie. Mens sou verwag het dat die betoog wat uitgewerk is oor daardie tydperk sou aan die hof beskikbaar gestel (30 gewees/..

gewees het en dat dit dan net nodig sou gewees het om te antwoord op die betoog van die staat. Ekskuustog net, edele. Dit word ook onder my aandag gebring toe die stelling gemaak is dat hulle sou bereid wees om te betoog as die verdediging se saak gesluit het dan moes daar op daardie stadium 'n betoog beskikbaar gewees het wat die getuienis tot op daardie stadium ten minste alreeds opgesom of ernstige punte wat aan die hof voorgelê moes gewees het, dat dit uitgeneem was alreeds en reeds beskikbaar was. Meer as dit kan ek nie sê nie. Ons was die geleentheid gebied, ons het ook baie kritiek in ons betoog gehad omdat ons nie alle aspekte gedek het nie maar die staat het binne die maand - ons is eintlik net twee advokate wat vir die staat moes optree en binne die maand wat ons gekry het wat die reses geduur het, het ons 'n betoog na die beste van ons vermoë voorgelê wat voor die hof is en wat ons afgelewer het soos die hof gereël het. Mens sou verwag dat die verdediging sal ook meer aandag gee en meer probeer het om ten minste dan skriftelike betoog voor die hof te lê wat hulle dan kon uitgebrei het in mondelinge betoog indien hulle dit nodig geag het. Ons het nie eens dit gehad na maande werk aan die kant van die verdediging nie. Behalwe dit is daar eintlik niks wat ek verder aan die hof kan sê nie. Ek dink net hier is twee botsende belange; aan die een kant was daar genoegsame tyd gewees en aan die ander kant is dit so, die beskuldigdes moet 'n eerlike verhoor kry en hulle moet geleentheid kry om hulle saak te stel, maar iewers moet daar 'n balans getrek word. Mens kan nie net voortgaan en sê omdat die beskuldigdes 'n eerlike verhoor moet kry, dan verwag 'n mens dat die mense wat hul verdedig het ten minste aan die hof op hierdie stadium al sou stukke (30

voorgelê / ..

voorgelê het want dit hou die staat ook op, edele; ons moet sit en wag om te hoor watse regsargumente daar kom, ons moet nou wag tot op die laaste oomblik om daarvan te hoor, dan moet ons sekerlik weer sinvol daarop antwoord en terug gaan na die gesag toe om te kyk of ons ander gesag aan die hof kan voorlê. Dit hou al daardie aspekte ook op. Dankie.

COURT: Mr Bizos?

MR BIZOS: I am not unmindful of what I told your lordship in May but your lordship will recall that as a result of your lordship's intervention the pace of the evidence (10 increased in May in relation mainly to the 31 areas witnesses and although I told your lordship in May, in April or May I am not sure, that Mr Tip was out preparing the argument your lordship will recall that the pace at which witnesses from the 31 areas were being called quickened substantially and Mr Tip came back into court to lead a number of witnesses and he became involved in the case. We have not left it to the last moment. My learned friend Mr Chaskalson told your lordship that we had over a thousand pages of notes. There is a difference between having notes and responding to an (20 argument which was put up by the state in responding to matters which may have been raised by your lordship during the course of argument.

I have always thought that professional people did their work in a professional manner and when we give your lordship an assurance that we are working over 15 hours a day..

COURT: Tell me Mr Bizos, what happened to your promise that we would finish your whole argument today?

MR BIZOS: How often in your lordship's experience have counsel been wrong about the estimate of the time? (30

COURT / ..

COURT: But even up to now I have no estimate except Mr Yacoob's evidence that it would finish on Friday next week.

MR BIZOS: Yes, this was our estimate. This was our estimate in the discussion that we had during the weekend and Mr Yacoob was quite correct but when counsel expresses an opinion as to how long a case is going to last I know of no court which has regarded it as a binding contract. How often has your lordship been told with respect when practising and how long has your lordship told advocates when practising that we are very poor calculators or estimators of the time that (10 the case is going to take. This is what I thought at the time. The state's submissions were - I do not want to judge them. Well, your lordship said that it was not necessary for them to read it. Maybe the state was satisfied in putting their case up in that way. We would like to be heard in order to persuade your lordship.

May I give your lordship just one simple example in order to illustrate what I mean? Yesterday when I read to your lordship the evidence of Mr Molefe in connection with C.110, your lordship said but it is hearsay. Now assume (20 that we had made that submission in writing, your lordship read it in the privacy of your lordship's chambers and your lordship said I will disregard that because it is hearsay. As a result of the exchange between your lordship and myself I think that there was a concensus that it is not hearsay and then we debated as to what weight could be attached to it. If we had done that in writing, if we had done that in writing we would have lost the opportunity of persuading your lordship that your lordship's prima facie view was incorrect and it is a substantial document because much of the state's case (30

on / ..

on the liability of the three UDF accused depends on that document.

COURT: But you have not lost the opportunity to address me orally. I gave you a further week as from today. You can lift out all the salient points, you can deal with the whole UDF case, you can deal with the whole Vaal case. All you can you do in your last three days which you lose, you can hand in written argument on your areas. I do not think that is unfair. Your own estimate was you would finish on Friday. (10

MR BIZOS: I have said what I wanted to say m'lord. Thank you.

COURT: My ruling stands, Mr Bizos. I will meet you in the following way. If at the end of the oral argument you feel that a week is inadequate to prepare the written submissions on what remains then we can discuss how much time you need. The oral argument will conclude on Tuesday next week.

MR BIZOS: As your lordship pleases. I am going to ask Mr Yacoob to complete Tembisa and in view of your lordship's ruling we have to reshuffle the situation. I will then (20 with your lordship's leave take over and deal with the events of the 3rd in the Vaal. I will try and do the best I can.

COURT: Yes.

MR YACOOB: As my lord pleases. We were dealing when we finished yesterday with paragraph 6.2 of "betoog" at page 1 003 and there I was making the point that it is not correct to say that the TCA conducted a campaign against the councillors as conducted by the UDF. There is no evidence that it was the same campaign; there is no evidence that there was a similarity in the campaign conducted by the UDF and (30 overall / ..

overall there was no evidence that the UDF had anything to do with the campaign of the TCA itself. The witness Sergeant Smith in my submission took it no further. The next point we make which is 6.3, is that COSAS initiated the school boycotts and the grievances which schools had were the same as those which COSAS held out as grievances. Now there is no evidence that the grievances are false as indicated by the second half of their submission; secondly, there is no evidence at all that the school boycotts were in fact started by COSAS. Even if your lordship disbelieves the witness (10 Modise in making another leap to say that in the circumstances I come to the conclusion that the boycotts must have been started by COSAS, the argument would have been correct if there was some statutory provision which said that the onus would be on the accused to establish that a boycott was not in fact started by COSAS and if they failed to do so then the state must be seen to have established that it has. If there was such a statutory provision then the submission here might have some basis but there is none and in the circumstances coming to a conclusion in that way would (20 certainly amount to making a leap which is totally unjustified

Then the submission at paragraph 6.4 simply says that the school boycotts did not originate spontaneously but was organised, aimed at forcing the governing to concede to their demands. Again it is in a sense repeating what was said before but there is evidence before your lordship that COSAS had nothing to do with it and as I said, even if that evidence is rejected how does one make the leap from that to an organised boycott in circumstances where the state itself was content to lead the evidence at the level that COSAS was (30

active / ..

active. Now what the state expects your lordship to do is to come to the conclusion from a statement from a Sergeant Smith that COSAS was active in a particular area to come to the conclusion that the boycott was in fact organised at the schools at a particular point in time. Having made that leap, we make the following leap which is at paragraph 6.5:

"Die geweld wat ontstaan het gedurende die boikot beplan was as deel van die aksie om die regering te dwing om toe te gee aan die eise van COSAS."

Now the words "beplan was" - is there any evidence before (10 your lordship of planning? One of the difficulties in this argument is that the state does not say why it said these things. Why does it say that the action was planned? There was no evidence of planning, there is no evidence of the planning of any violence at all. In fact the violence was so widespread that the conclusion goes the other way. We do not know where in the record this appears; we do not know precisely how this inference was drawn, if it is indeed an inference. Then 6.6 said that the violence which occurred in 1984 was the result of joint action between the TCA (20 COSAS and UDF after mobilisation and organisation of the masses in Tembisa around issues such as rent, education as part of the general plan to overthrow the government and to establish a people's government there. I have not seen no evidence that there was any design to establish any people's government in Tembisa. Secondly, I have seen no evidence of joint action between COSAS and the TCA except for an admission by the witness to the effect that one letter as I pointed out was received, a document was received from COSAS which was taken into account in making the representations in (30 connection/..

connection with the rent during March or April 1984, some six months before the violence actually intensified. Secondly to some extent the state relies on the document W.46. If it does that then it asks your lordship to make certain further leaps. W.46 is a document which simply says that speakers from various organisations including UDF were to speak at a funeral during November. Now it does not mean that there was joint action between them, joint action implies preplanning beforehand. If someone organises a funeral and ask ten organisation to speak there and ten people speak (10 there it cannot really be joint action in the current circumstances. The other problem of course is that this joint action which is supposed to have caused this violence, that is speaking at the funeral if the UDF speaker in fact did speak there and the evidence is that they did not, the funeral occurred in November after the violence is alleged to have intensified. In fact 28 days after.

Then there is no evidence of any general plan to overthrow the government in Tembisa. It was never even put to the Tembisa civic association officials who spoke there (20 that they in fact planned any kind of violent campaign. It is specifically alleged.

Finally I want to make the point that the state's argument is correct at least in one respect. It does not contain any submission to the effect that UDF, the activists of the UDF including accused 19, 20 and 21 gave any guidance as a result of which the violence broke out in connection with the campaign against the black local authorities. The state is quite correct in not making that submission because there is no evidence to justify it. In that sense it may well be (30

common / ..

common cause that the allegation in paragraph 66 have not been proved and in the circumstances the accused cannot be held liable for any of the events which took place in Tembisa during October/November. Thank you, m'lord. May I be excused?

COURT: Yes. Yes, Mr Bizos?

MR BIZOS: M'lord, we have already addressed your lordship in relation to the Vaal; the events that led up to the March of 3 September 1984. The question of the legality of the march is a matter on which we want to make certain sub-(10 missions. Other than the fact that the march together with all acts detailed in the indictment form part of the set of activities alleged to have been undertaken in furtherance of the unlawful conspiracy and achievement of violent revolution. There appears not to be any allegation that the marches organised for 3 September or the march organised for 3 September 1984 were in itself or in themselves unlawful; that is the one from Boipatong and the other from Small Farms. It certainly does not form part of the structure of the charges against the accused that they have organised a (20 march in contravention of the prohibition promulgated in terms of the internal security act. As far as we are able to determine the first occasion on which the legality of the march was directly raised, was when your lordship took up the matter of Masenya's question relating to arrests arising out of the stay-away in March. Questions were then asked why the - by your lordship, why mass rallies were not held in the open field opposite accused no.10's house which was a question asked by your lordship of accused no.10 in order possibly to elicit an answer that he knew - well, in fact your lordship(30

made / ..

made it clear in your lordship's question that he must have known if you could not hold meetings in the open field over his house, on the other side of his house, he could not have been a party to any decision to organise a march. It was however, the understanding..

COURT: Could you just give me that reference, please?

MR BIZOS: Yes, I have it. Accused no.10 - I will just finish off and give you them for both.

COURT: Yes, certainly.

MR BIZOS: It was however the understanding of accused no. (10
10 that open air gatherings at one point were not permissible
but that a march moving from one point to another was not
affected by the prohibition. Your lordship will find that
in volume 161 page 7 904 line 28 to page 7 905 line 24. Now
it emerged further and I may say that insofar as any criticism
may be levelled against accused no.10 as a witness, that he
was with the greatest respect subjected to lengthy cross-
examination and also to a great number of questions by your
lordship on matters on which he did not have personal know-
ledge such as many UDF documents and other hypothesis (20
being the first defence witness he practically had to face
the whole of the state case in cross-examination. I think
that his cross-examination lasted some eleven days and I
would urge your lordship to view him as a good and intelligent
witness who sometimes did argue but who would not when the
whole of his cross-examination was of an argumentative nature,
him having to explain what he thought the working principles
of the UDF were and whether 6.4 and 6.6 had to be read
together or disjunctively. So I would urge your lordship
to find accused no.10 a particularly good witness even (30
though / ..

though his answers tended to be a bit lengthy, but that may be a failing of people who take part in public affairs generally speaking. It emerged further in response to the court that accused no.10 knew of no discussion amongst the executive and the area committees of the VCA at the stage of the meeting of 26 August 1984 as to whether the march of 1 September 1984 would be legal or not. Accused no.10, volume 161 page 7 935 lines 1 to 8. Before the meeting of 26 August 1984 the VCA committee had not discussed the question of the legality or otherwise of the marches; accused no.10 (10 reiterates his understanding that the march is not an illegal gathering in volume 168 page 8 602 line 3 to 18. Your lordship again adverted to the question from Masenya on the basis that at least somebody thought that this would be an illegal march. Accused no.10 explained that his understanding of this reference to arrests was to be, was for the possibility of detention by security police afterwards or people who had taken up leadership positions generally and not particularly of the march itself. Despite Masenya's question the matter of the legality or otherwise of the (20 march was not raised by anyone at the meeting. Volume 10 I am sorry, accused no.10, volume 168 page 8 602 line 19 to page 8 603 line 27. I would ask your lordship to take into consideration at this stage that Masenya's evidence actually was that this question was not in relation to the march but in relation to the failure to pay rent and your lordship will recall that the submissions that I made at the time that it was as a result of these questions taken up by your lordship that the state itself forgot apparently what Masenya's evidence was and they proceeded to cross-examine the other (30

accused / ..

accused on the basis that Masenya had said that it was in connection with the march.

COURT: Was there not a bit of uncertainty amongst the witnesses as to what exactly Masenya had said?

MR BIZOS: It may be..

COURT: Some speaking of arrest for not paying rent, some speaking of arrest on the march.

MR BIZOS: If my memory serves me correctly certainly the accused - I cannot give your lordship an assurance in relation to all the witnesses because my concentration was not (10 as keenly directed to the defence witnesses as it was to the accused, but I think accused no.8, accused no.7, accused no.9 and who else was there - accused no.10 - all agree that it was as a result of the march because it was consistently..

COURT: Do you mean as a result of the rent?

MR BIZOS: No, the accused say as a result of the march.

COURT: I am sorry, I am getting mixed up now. So your argument is that the accused say the question was arrest on the march?

MR BIZOS: That is so. (20

COURT: And the answer was no, it is legal. That is the argument.

MR BIZOS: They thought that it was legal despite what Masenya said. The point that I am making on the tangent is that Masenya's evidence was that the arrest would flow from the failure to pay rent.

COURT: One cannot have it both ways. Either he asked what would happen to the people who were arrested on the march or he was asked what would happen to the people who were arrested because of non-payment of rent. Now on which one do you (30 stand/ ..

stand?

MR BIZOS: I stand on the basis that your lordship finds Masenya an untruthful or unreliable witness and accept the evidence of the accused and defence witnesses that it was the second occasion on which Masenya spoke and that it related to the march.

COURT: Yes, thank you.

MR BIZOS: Again in the course of the cross-examination of accused no.8 your lordship expressed the view that it would become of importance to have the precise wording of the (10 prohibition on gatherings which was in force at the time of the march; the possibility was expressed that it might be advisable to do this as soon as possible in order that it would be canvassed with the witnesses. Your lordship will find that in volume 175 page 9 019 lines 11 to 19.

Despite your lordship's expression of that view by the conclusion of the re-examination of accused no.8, the notice in question had not been produced and had not been canvassed with the witnesses. Your lordship then tabled the notice. Your lordship will recall that we then referred your lord- (20 ship to the case of S v Mahlangu 1986 1 SA 135 (T) which ruled the notice to be ultra vires.

COURT: Yes, could I just have the reference again? I have written it down four times already but it is at different pages - 1986 1 SA..?

MR BIZOS: 1986 2 SA 135 (T).

COURT: Thank you.

MR BIZOS: Of course accused no.8 and accused no.10 did not know about this notice.

COURT: Or the court case?

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MR BIZOS / ..

MR BIZOS: Or the court case. The notice was formally placed before the court as EXHIBIT CA.2. Your lordship will see all that in volume 179 page 9 194 line 13 to page 1 197 line 6. The exhibit was not thereafter again referred to save that we would like to draw your lordship's attention that accused no.8 was aware that open air gatherings were not allowed - gatherings in his sense but he did not couple a march with the prohibition. Accused no.8, volume 176, page 9 070 line 21 to page 9 071 line 16. An aspect related to the question of the legality of the march is the foreseeability of con- (10 frontation with the authorities and particularly the police and violence breaking out. From the testimony of accused no.8 it emerged that there had not previously been an instance where police had taken action against the residence and that he therefore had no experience of how residents might react to such a situation. Your lordship then asked him whether the residents of Sebokeng had forgotten what happened in 1960 in Sharpeville during the confrontation between the residents and the police. His answers was that he had no knowledge of the circumstances of those events although he (20 had heard about them. Accused no.8, volume 177 page 9 106 line 30 to page 9 107 line 20.

A similar answer applied in respect of events in Soweto in 1976 insofar as accused no.8 did not know what caused those events. He nevertheless believed that it was from what he called the spirit of the people as observed by him at the meeting of 26 August 1984, that the people would accept it normally if the police were to stop the march. Asked by the court whether he had deduced the spirit from the singing accused no.8 replied that he had deduced it from the (30 audience's /..

audience's willingness to go to Houtkop, from the reaction of the audience to his appeal that they must behave themselves well upon the march. Accused no.8, volume 177 page 9 107 line 21 to page 9 108 line 11. In relation to the issue of foreseeability the events in Tumahole appear first to have arisen in evidence in the course of a reply given by the Rev McCamel to a question again from your lordship. Your lordship will see that it was actually in midsentence of a question framed by Mr Chaskalson. Although the events of Tumahole had been present in the mind of McCamel when (10 discussing the coming protest march with Raditsela he evidently did not mention this to Raditsela but only reminded him about the incident at Sharpeville, an incident which in the understanding of the witness had been one where the police had failed to exercise restraint in circumstances they should have. Your lordship will find this in the evidence of McCamel, volume 36, page 1 634 line 3 to page 1 635 line 20. Page 1 635 line 15 to 28. This discussion with Raditsela took place on 1 September 1984 when Raditsela had come to invite McCamel to the meeting of 2 September 1984 which was (20 to be held in preparation of the march for the following day. It is clear that the Rev McCamel felt affronted because he considered himself to have been overlooked in respect of other meetings and that preparation had already been made for the march on 3 September. He was opposed to this proposed march because of the possibility that trouble might result if the marchers were to encounter the police. Raditsela had said to him it will be a peaceful march and said further that he did not foresee any difficulties arising from it. Volume 35 page 1 576 line 17 to page 1 578 line 3. It was the (30

Rev McCamel/..

Rev McCamel's understanding that if the police did not confront the marchers but allowed them to continue there would be no problems. When Raditsela left McCamel the latter was under the impression that a peaceful march had been planned. The actual events of 3 September came as a shock and surprise to him and from his subsequent contact with Raditsela it was apparent to McCamel that what had happened had also come as a surprise to Raditsela. McCamel, volume 36, page 1 631 line 24 to page 1 632..

COURT: I am sorry, I missed that. 36? (10

MR BIZOS: Volume 36.

COURT: Yes, and the page?

MR BIZOS: 1 631 line 24 to 1 632 line 16 and again page 1 633 line 16, 1 634 line 5. The events then in Tumahole was again raised by the court as having begun with a protest march which resulted in four days of unrest and the police had to take action. Although accused no.8 knew of the events at Tumahole he was not very well informed and did not know what the cause was of those events. The thought that a protest march planned for Sebokeng might have the same (20 results did not occur to him. Accused no.8, volume 177, page 9 111 line 12 to page 9 112 line 8. At the conclusion of the re-examination of accused no.5 questions concerning foreseeability which referred inter alia to the events in Tumahole were raised by the court again. The gravamen of the answer of accused no.5 was that the events in the Vaal triangle on 3 September were entirely unexpected. Accused no.5, volume 212, page 11 212 line 11 to page 11 215 line 4.

An issue which bears on the question of foreseeability(30

of / ..

of unrest erupting from the protest march is whether or not it was intended to be kept secret from the authorities in the Lekoa area. This issue arose in relation to the pamphlet produced by Raditsela which was to have contained all the resolutions taken at the meeting of 26 August 1984 and is before your lordship as EXHIBIT AN.15(2). This pamphlet does not speak about a protest march. The question was then put to accused no.8 whether this omission did not imply that at least Esau Raditsela knew that the march was unlawful and that he did not want to give notice of it to the authorities beforehand. In reply accused no.8 could do no more than to state that when the pamphlets were delivered to him, he noticed that there was no mention of the march but when he distributed the pamphlets he orally told everybody to whom he gave a pamphlet about the march. It would follow from this that accused no.8 evidently had no such purpose. (10
Accused no.8, volume 177, page 9 085 line 8 to page 9 086 line 7.

Accused no.8 testifies directly that there was no attempt to keep the stay-away or march a secret. Volume (20
179 line 9 188 line 3 to 28. There were policeman and members of the army living in the area. It would not have been possible to organise a stay-away and march without them getting to hear about it. Accused no.8, volume 179 page 9 189 line 1 to page 9 190 line 1. I may say that I will refer your lordship when dealing - I hope I get there some time - when dealing with the personal liability of accused no.3 who your lordship will recall had a conversation with Major Steyn in his office on 29 August. Major Steyn knew about the march. I will give your lordship that reference in due course but (30
your / ..

your lordship may just want to make a note of this here at this stage. It was certainly not a secret to Major Steyn, that there was going to be a march although he talks about, that his information was about the Sharpeville march - Mr Tip just reminds me - nevertheless, that there was going to be a march, according to Major Steyn's information. Did I give your lordship a reference about the policemen and the members of the army living..?

COURT: Yes, 9 189.

MR BIZOS: Thank you, yes. When accused no.9 and 17 made (10 announcements about the stay-away and the march through a loudspeaker on 2 September 1984 there was no attempt to keep it secret from the police because it was impossible, no-one suggested to them at any stage that they were advertising an illegal event. The evidence of accused no.9, volume 180, page 9 275 line 21 to page 9 276 line 26. In the account given by accused no.5 the people went about their business normally in the course of Sunday, 2 September 1984. The atmosphere was normal. An announcement was heard by him over a loudhailer concerning the stay-away march. Three (20 policemen live in the vicinity of accused no.5's house, there was no attempt to keep the march a secret from the police and the authorities. It had been a subject matter of talks since 26 August 1984 and he says that reporters had been present at that meeting. Accused no.5, volume 206, page 10 812 line 22 to page 10 814 line 21.

COURT: What do you say about the evidence of I think it was Mr Raboroko who said he also knew about the march but he did not publish it because that would be incitement to violence?

MR BIZOS: I will check on that evidence.. (30

COURT / ..

COURT: I think that is the evidence.

MR BIZOS: No, I think with respect m'lord, that is not how I recall it.

COURT: Well, I may be wrong with the incitement to violence but he thought there was something wrong should he publish the march.

MR BIZOS: Precisely, m'lord, the stay-away and the march - the stay-away and the march. And that is because it is not only Raboroko who gave that evidence but there were other people who gave that evidence, that there was a pamphlet (10 saying that this call was a false call and that people should not heed it and there was a debate going on as to whether or not there would be stay-away and/or a march and Raboroko's evidence was that where there is no concensus it would have been wrong for him to publish because then it may be deemed that his paper is taking sides in making known something that only a section of the community wanted and presumably the other section of the community did not want and become angry. There is a lot of evidence..

COURT: Is that the normal way of reporting? Then we will (20 have nothing in the newspapers.

MR BIZOS: Well, unless we adopt the Star that X says and Y says which may be a form of journalism which may not be bad journalism, but this is the reason because I do understand the point of view of a newspaper that they do not want to create events but they will report on events and if there is no concensus - he only had Raditsela's word according to Raboroko, that there was going to be a stay-away and a march. He had different reports from other people and he thought that in the circumstances it would be wrong to publish (30 because / ..

because it may have had the effect of confusing people but certainly no secret, m'lord.

Accused no.13 arrived in the Vaal from Johannesburg on 2 September 1984. In the course of the afternoon an announcement was made over a loudspeaker from a car, reminding residents of the decisions taken by the community at a meeting which had been held by the VCA as well as reminding them of the time and starting points of the march. Accused no.13, volume 243, page 12 965 line 3 to 11. Accused no.13 rejected the notion that the march had been kept a secret. He had (10 heard about it in Johannesburg, he was at home when he heard of the announcement from the vehicle. There are two policeman living in his immediate vicinity. Accused no.13, volume 243 page 12 966 line 7 to 25. In order to establish the probability of anyone concerned with the organisation of the march having a notion of keeping it a secret, it was not necessary to look beyond the fact that Masenya was at the meeting of 26 August 1984 where a decision to march was taken. Even if it were unknown to some people when he stood up to speak on the first occasion, the furor which broke out (20 when he was interrupted would have left no-one in any doubt that this was a person who had connections with the councillors. This was a public meeting attended by hundreds of people and there is not the slightest suggestion anywhere in the evidence that anyone of these hundreds was told not to convey the decision to march to others in his neighbourhood. One would have expected some sort of... A number of state witnesses testified or gave evidence relevant to the question that they came to hear of the decision to stay away and the march of 3 September, among them Masenya was of course present when (30

the / ..

the decision to march was taken at the meeting of 26 August 1984. It was of considerable significance that he was in favour of the march, so he says - I referred your lordship to his evidence when dealing with his credibility, with some nonsense that the only thing that really remained for him to join this march was whether he could get the express or tacit approval of his wife, otherwise he would have had no objections to it at all. All of us are perhaps subject to that constraint but he certainly did not think there was anything unlawful about that. And even more pertinently (10 he did himself did not anticipate any trouble in relation to such march. Masenya, volume 13, page 633 line 3 to 10; page 634 line 5 to 23. It is worth remarking that the events of Tumahole or for that matter Soweto and Sharpeville evidently according to his own evidence did not present themselves to the mind of a court interpreter such as Masenya as matters that prompted any anticipation of violence. Despite the version given by Masenya or what was said at the meeting which is in some respects disputed, he did not take mention of the killing at the meeting seriously and in (20 respect of the intention to march he did not have in mind that people may possibly be killed or that houses may be burned. Masenya, page 714 line 1 to 31. There is no suggestion in the evidence of Masenya that on the morning of 3 September 1984 he was aware of violence which had taken place already anywhere in the Vaal triangle. Now if a court interpreter does not know about it why does the assistant electrician like Mr Ramakgula that led this march know about it and why does the furniture salesman like accused no.8 know about it and why does the seller of chickens like (30

no.7/..

no.7 know about it?

The witness IC.8 confirms that the proposed march on the 3rd was not kept a secret from anyone in the community, that the whole community had been invited to participate and that access to the hall was not screened. That the hall, the church hall on the morning of the 3rd. IC.8, volume 21 page 1 001 lines 11 to 18. IC.8 considers himself a peace-loving man who would not take part in the killing of councillors or in the destruction of property of any councillors or damage government or administration property. In his (10 view the fact that he joined the march did not mean that he was not a peace-loving person. IC.8, volume 21 page 1 002 line 6 to 20. There is similarly nothing to suggest that this peace-loving man had heard or observed anything to induce in his mind the expectation of violence when he set off with accused no.2 and others to Small Farms on the morning of 3 September. It is the same reference as before.

COURT: Can it be argued that IC.8 lived in zone 3 and that the violence was localised and there was not violence in zone 3? (20

MR BIZOS: But we are dealing, with respect..

COURT: He was, I think if he was in zone 3 he would have crossed the open field and gone to Small Farms.

MR BIZOS: Yes.

COURT: And I think the other areas had violence, some of the other areas.

MR BIZOS: We are going to come to that and your lordship with respect is making an important point, because neither IC.8 nor Mahlatsi, the two state witness, the morning of the 3rd gave evidence that they saw any violence whatsoever (30

until / ..

until the first piece of violence that they deposed to which is disputed, is the transport kiosk and they would probably, if the college that we have heard so much about, if the college that we have heard so much about was on fire, on their way to the church hall on the morning of the 3rd, accused no.2, IC.8, Mahlatsi and accused no.8 could not have failed to see it. They were not led on the college.

COURT: We as at present advised feel that the state has not made out a case that the teachers' training college was on fire. (10)

MR BIZOS: Well, we are indebted to your lordship for that indication but it goes - we have a section on that.

COURT: Yes well, let us not run backwards and forwards because we are wasting your time.

MR BIZOS: As your lordship pleases, but I am indebted to your lordship for that indication because what we are now dealing with is the question of foreseeability and what I want to submit to your lordship is this, that not only was it not foreseen but as soon as I have finished dealing with the evidence I want to submit to your lordship that the (20 possibility of violence breaking out is not the case that the accused came to meet. With the greatest respect to your lordship we would have no quarrel with your lordship raising this question of foreseeability because it may go to question of credit. It may go to a question of credit if a person says I saw the college burning, I saw the buses being stoned and I was going to take part in a march and I thought that it was a ladies' afternoon party, then it obviously..

COURT: Yes, apart from that, I have always felt that it is the duty of the court to raise a matter with an accused or (30 with / ..

with a witness should it crop up rather than leave it in abeyance and possibly see in argument that the accused or the witness has not covered it and have the thing hanging in the air.

MR BIZOS: We accept that without any reservation but what I would submit with respect is that as soon as I finish this and the reason why I am mentioning it is because I do believe in projecting the submission that I am going to make before we actually take the adjournment, that it does not really help the state on this indictment that if your lordship (10 finds objectively, objectively, that the people that organised this march ought to have foreseen that violence may break out, that is not the state's case. They did not plead the unlawfulness of the march..

COURT: Just a moment. Are you limiting the submission to "ought" to have foreseen or are you including "did" foresee?

MR BIZOS: Even if they did foresee, this is not the case. Let us assume..

COURT: No, I just want clarity on what the submission is.

MR BIZOS: That even if the accused (simultaneously) (20

COURT: To "ought" have foreseen one must add or "did" foresee.

MR BIZOS: Yes, I would submit that even if one of the witnesses, which has not happened, even if one of the accused said that as I was gathering there - there is going to be trouble here today, there is going to be trouble.

COURT: Yes?

MR BIZOS: Even if he had said that, it does not help the state on this indictment. What the state has pleaded was that there was a conspiracy to kill and destroy not an agreement(30

to / ..

to have a march which they foresaw might lead to violence. They are two completely different things. And let me tell you how important it is in this case. You will see with respect, with the confidence almost amounting to bravado in which the cross-examiner put on this march people that the witnesses had not put on the march. Accused no.9 had not been put on the march, accused no.7 had not been put on the march, and here we stand up and we tell the state witnesses it was not X who led the march, it was the assistant electrician, Mr Ramakgule, accused no.9; because it (10 was a lawful march and we conducted our case to rebut the allegations in the indictment, not the question of foreseeability which was raised primarily by your lordship in the course of the case.

COURT: No but - sorry, I do not understand this argument. You surely would not have led your evidence differently and said somebody else was in the forefront of the march had this been the indictment?

MR BIZOS: No, with the indictment as it stood, if taking part in the march placed anyone in jeopardy of being (20 convicted of..

COURT: Yes?

MR BIZOS: Or anyone, and the witness comes in and he does not mention accused no.9 at all, what is counsel's duty in relation to that? To put him on the march, like I did?

COURT: That depends on the circumstances of course because it may well be that somebody else is the next witness who does put him on the march, so it depends on the circumstances of the cross-examination. One cannot say.

MR BIZOS: One of the circumstances is this, that we read (30
an / ..

an indictment and further particulars which say that you were party to a conspiracy, in agreement with others to commit the acts of violence.

COURT: But is the march not one of the central features of the acts in the indictment?

MR BIZOS: Yes, in furtherance of the conspiracy.

COURT: Yes.

MR BIZOS: And if they do not prove that it was in furtherance of the conspiracy, the fact that anyone may have had mental reservations that violence might possibly break out (10 as a result of the march does not help the state one iota.

COURT: Let me just pose a problem here. If it is stated in an indictment that a march is in furtherance of a conspiracy, that Mr X, Y and Z conspired by means of the march to create havoc in a certain township.

MR BIZOS: To kill and to destroy property.

COURT: Yes, let us take it that far. It cannot be proved that Messrs X, Y and Z were part of a conspiracy. They were in total innocence in that march. It is only proved that Mr X had this in mind. In fact Mr X comes and tells the court (20 I did it just for that purpose, he is the only man who organised the march for that purpose. Would you say that that does not fall under this indictment?

MR BIZOS: No, then he would be found guilty as charged on the indictment because he will have admitted or it would have been proved that he was party to the conspiracy and he

COURT: No, no, there is no conspiracy anymore. On my basis that I put there is no conspiracy at all but it is proved beyond doubt that Mr X, but only Mr X organised this march for that particular purpose. Now would it not be covered (30

by / ..

by the indictment?

MR BIZOS: In general principles your lordship would have been able to convict him because if you allege that three people committed a murder in furtherance of the conspiracy and you can acquit accused no.1 and 2 that they did not hire no.3 to kill the deceased, but nevertheless no.3 killed the deceased then he is guilty of murder, so that..

COURT: No, can't that apply to this indictment?

MR BIZOS: It might m'lord, it might. If your lordship had any facts that any one of the accused was party to the (10 conspiracy alleged.

COURT: No, we have now - we argue on the basis there is no conspiracy.

MR BIZOS: Yes?

COURT: We argue on the basis that Mr X, an accused had it in mind, I organised this march for the purpose of killing Mr Y.

MR BIZOS: You would be able to find him guilty of the murder of the councillors.

COURT: So isn't your argument not a legal one, I mean if (20 your argument seems to be not a legal one on the meaning of the indictment but a factual argument on the evidence and how far does it go, but I am taking it up with you whether the whole thing is covered by the indictment?

MR BIZOS: Yes, a person may be found guilty in his personal capacity.

COURT: That is no.1.

MR BIZOS: No.1. But now what I am arguing to your lordship for instance I am presupposing that your lordship will not accept the evidence of IC.8 that Raditsela said let us go (30 out / ..

out and kill them. Now the people that were on that march cannot be found guilty on this indictment merely because they foresaw that trouble might break out. If one of them, it was alleged that accused no.9 for instance took part in the killing of Dipoko; if that was proved there is nothing to be said for it. In his personal capacity he would have been guilty of that, or if you could find that a small group organised the march in furtherance of that conspiracy then perhaps they would be guilty under this indictment, but your lordship cannot convict, taking accused no.5 as an (10 example - yes, he was at the meeting at which the march was agreed upon; yes, he did propose the stay-away resolution and I am even prepared to assume, which we will ask your lordship not to find, that he suggested the march even - which is disputed, but leave that out for a moment. And he went onto the march, there is no evidence that he went onto that march in furtherance of the conspiracy alleged in this paragraph. That preamble says that this march was in furtherance of that conspiracy. If that fails, the main count and all the alternatives fall away with respect, because all (20 the alternatives deal with the same conspiracy, that all the acts were committed in furtherance of that conspiracy. So that there is no rule here for any objective test to be applied on any basis on this indictment. They were either members of this conspiracy and if they were not members of the conspiracy they are entitled to be acquitted.

My learned friend Mr Tip correctly points out that there is an allegation that they are charged because they took part in their personal capacity, or because of the - because of the conspiracy or in their personal capacity, but then you (30 have / ..

have got to show that that person did an unlawful act charged in the indictment in order to convict him of anything in the indictment and what unlawful act anybody did anybody commit.

COURT: That is another question because the court has now found that the march is a legal march. I mean.. (simultaneously)

MR BIZOS: Yes, well, the finding seems to be inevitable.

COURT: ..by inference, yes.

MR BIZOS: Inevitable.

COURT: It seems. Well, that is another matter.

MR BIZOS: What we submit with respect is, the reason why we(10 are going into this detail m'lord, is that it does not really matter even if your lordship finds objectively well, you had mental reservations, and bonis paterfamilias would not have taken part in this march.

COURT: No, that was why I asked you at the outset whether you only dealt with "ought to" or whether you also dealt with "did in fact" foresee, but you said to me it covers both.

MR BIZOS: It covers both because it may have been different if the march was unlawful, I do not know. It may have been if the pleading had been done differently, some other (20 consequences may have followed, but on this indictment taking, planning or taking part in this march your lordship cannot find any of the accused guilty of any offence on this indictment.

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR BIZOS: There is just one matter that I want to raise but believing that I would not have to be in court tomorrow complicated arrangements were made a long time ago for me to be in Johannesburg at 16h30. I will not be able to make it unless I leave here at about 15h15. I do not want to lose any / ..

any time. I do not want to ask Mr Tip to take over because of the continuity and it looks to me as if I will be busy with the 3rd in the Vaal and Sharpeville until tomorrow. Is your lordship prepared to sit in order to give us - first of all to grant me that indulgence and secondly to allow us to take the time as we have done in the past when this sort of situation has arisen by 15 minutes during this long adjournment or earlier in the morning?

COURT: Yes, we may even go into the luncheon adjournment for half an hour or so if you want to. (10)

MR BIZOS: That would be most helpful, m'lord. May I then leave the arrangement?

COURT: Yes, leave your arrangement standing and we will go into lunch until we are tired and then the next day as well until we caught up.

MR BIZOS: As your lordship pleases. I am indebted to your lordship. Now we were dealing with the question of in any event, in any event the people in the Vaal did not expect trouble on the morning of the 3rd which is a relevant factor on credibility, a particularly important factor on the probabilities as to whether there was a conspiracy or not, and I was busy giving your lordship the references of a number of state witnesses who supported the defence case that there was no trouble expected. (20)

The next witness that I want to refer your lordship to is Petrus Mohatla who had heard some talk about a stay-away but did not believe that it would really take place. There is no suggestion in his evidence that until he was awoken at 06h00 on the morning of 3 September by the noise of the people at Motuane's house that he had encountered anything (30

to / ..

to invoke in him the expectation of trouble on that day.

Your lordship will recall that this is the couple who gave evidence who are neighbours of Motuane's. Mohatla, volume 31 page 1 450 line 5 to 1 451 line 4.

ASSESSOR: 31?

MR BIZOS: 31. There is no suggestion in the evidence of Rina Mokoena that when she arose on the morning of 3 September she was expecting any arrest or any trouble in the area. The first element of violence in the evidence of Peter Mohape concerns the report he received at the square in Boipatong (10 on the morning of 3 September about sjambokking having been carried out by police and groups approaching the square. This has been dealt with by my learned friend Mr Tip when he dealt with the question of Boipatong and your lordship will recall that the evidence of, or rather the submission in the "betoog" is that Mohape probably was misled. If one can mislead the vice-chairman of the organisation alleged to be responsible, how can your lordship be asked by the state to find the people that took part in the march responsible. In the evidence of the Rev Mohlatsi there is nothing to (20 suggest that he was anticipating violence as he went to Small Farms on the morning of 3 September. In fact right up to the time that he heard shots in zone 11 he believed that he was taking part in a peaceful march, that is right up to the time of the approaching the intersection when he heard the shots and ran away on his evidence. Volume 42 page 1 986 line 15 to 1 987 line 12. Towards the end of August councillor Piet Mokoena knew that there would be a march to Houtkop on 3 September. He says that this was not yet a secret, it was advertised. It was talked about all over the township (30 including / ..

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including in the offices of the Lekoa town council. This councillor did not feel any urgent need to come together with other councillors since he never thought that it was going to materialise and this despite the fact that he had received a report from Mayor Mahlatsi that there was going to be fighting on the Monday and despite the fact that four councillors including the mayor and the witness met with some members of the development board and police to discuss security, it was his judgment that they did not at all expect any violence to be involved in the whole thing. The (10 report that there was to be fighting he did not consider serious. On the morning of 3 September 1984 he left his family at home without any guards or without any special arrangements in relation to the safety of his property and family. The events of 3 September..

COURT: What party did he belong to? Was he a Bafutsana?

MR BIZOS: No I think that this is the Mokoena that had a bottle store.

COURT: Oh, he went over to Mahlatsi?

MR BIZOS: No Piet Mokoena - may I just check? No, this (20 was particularly - he had been a personnel officer as I recall, a person who was particularly well-dressed, suave gentleman. The first Mokoena who gave evidence and that he - I do not know how he started but he was certainly in the inner circle. I remember that he is the one that got the beer garden, so he is the person with the motorcar that drove if I remember correctly and did not see any "padversperrings" and that sort of thing. Yes, my learned friend Mr Tip confirms that this is the man, m'lord. And your lordship will find Mokoena's evidence on all that in volume 46, 2 266 (30

line / ..

line 18 to 2 271 line 4. May I pause here for a moment? It is all very well for the state to tell your lordship in the "betoog" that accused no.8 and accused no.7 and accused no.9 were unsatisfactory witnesses because they said they did not anticipate trouble but when we look at the record and we are not talking about people who were really favourably disposed towards the accused, we are talking about Mr Mokoena. They did not expect any trouble. It is abundantly clear from the account given by this councillor that notwithstanding the various reports received by him, the events in Tumahole did(10 not present themselves to his mind as something that might find repetition in the Vaal triangle. There is no basis on which it can be concluded that any of the march organisers or in particular any of the accused ought to have formed a different view of the mood of the people in Lekoa area or that they should have foreseen the eruption of violence. If they did not foresee it on what basis is your lordship being asked to disbelieve the accused on the basis of what happened in Tumahole and what happened in Sharpeville in 1960 or in Soweto. Councillor Mgcina of Bophelong testified that he (20 did not hear at any stage before 3 September of a march to Houtkop or of any stay-away on that day. Between 29 August and 3 September he did not see any of his fellow councillors. It came as a complete surprise to him when he noticed on the morning of 3 September that these people had not gone to work. Mgcina, volume 48 page 2 388 line 19 to page 2 389 line 15. This evidence underlines the voracity of the defence evidence that there had never been a decision in Bophelong to march or to participate in the march. It underlines also the complete absence of any substance to the state's submission (30 that / ..

that Raditsela had co-ordinated a meeting in Bophelong in order to secure such a decision. The evidence makes it clear further that despite the security meeting held by Mayor Mahlatsi and three other councillors, the talk of fighting on 3 September deposed to by councillor Mokoena had apparently not been taken seriously enough for councillor Mgcina to even be informed thereof. Mgcina did testify that he had moved his family to another place in Sebokeng on 26 August but this was allegedly as result of a threat made by Stompie Mokele and Hlanyane that he should resign otherwise they (10) would kill him. As such the apprehension testified to by this witness has no connection at all with the organisation of the stay-away of March. In any event this evidence should be weighed against the fact that he did not even report the threat to the police. May I pause here one moment in relation to Stompie, m'lord? This evidence establishes that he came from Bophelong. Your lordship will remember what we have already drawn to your lordship's attention that the trouble contrary to the allegations made by the state that violence occurred in Small Farms, in the first instance that (20) violence really started in Bophelong. Stompie is mentioned by name by IC.6 as a person who was a recruiting agent for the ANC. Your lordship will recall it was Stompie, an old man, and another name that I have...

COURT: Wilberforce.

MR BIZOS: Wilberforce, yes.

COURT: The great anti-slavery man.

MR BIZOS: Well, your lordship in the bail papers before your lordship, I do not know whether you can take it into account or not.. (30)

COURT / ..

COURT: Can one?

MR BIZOS: I do not know.

COURT: I do not think so.

MR BIZOS: You cannot.

COURT: It makes it dangerous if you start that. It can go either way.

MR BIZOS: Well, yes because it can go either way, so I think I had better leave it alone. But on the evidence that is available, reading IC.6 together with Mgcina, together with the fact that that is where the violence started before the (10 3rd, inferences may be drawn which are completely destructive of a VCA conspiracy and the violence erupted elsewhere.

Taking that together with the bit of evidence by Mongesa of these young people calling themselves a force in Sharpeville early on the morning of the 3rd and threatening her and her father that if she was not a councillor then she had better join the force in order to prove her bona fides. All those are relevant factors.

COURT: Is it of moment or can one do something or say something about the fact that nobody seems to be able to say (20 who the real culprits are.

MR BIZOS: That is the point, m'lord.

COURT: Yes, but is that not strange? Mazipo cannot tell us who the force is. There are numbers of other witnesses who have been asked now who were these people and they say we do not know. The witness living next door to Caesar Motuane cannot recognise anybody in the crowd killing Caesar Motuane. What is going on?

MR BIZOS: Well, there is a possible explanation on the evidence. Take the killing of Dlhamini for instance, (30 where / ..

where this force, this group of people came along and they did not know where Dhlamini's house was.

COURT: Yes.

MR BIZOS: Which would tend to suggest that they were people who were strangers to that..

COURT: That particular neighbourhood.

MR BIZOS: That particular neighbourhood.

COURT: Yes, but it would also suggest then an organisation?

MR BIZOS: Yes, possibly that somebody without - well, we have not heard Stompie and we must not try him, but somebody whipped up the street children in Bophelong on the 2nd when the football captain was killed. These factors cannot be ignored. (10

COURT: Yes well, we will get to that when we deal with the riots. I was just thinking I would mention this aspect to you that it is strange that nobody and neither any of the accused can point a finger to any culprit in the Vaal and the riots erupted all over.

MR BIZOS: Well, most of the accused were on the march and they say that there was no trouble on the march, so an accused person, that does not affect the accused's credibility adversely in any way. It may well be.. (20

COURT: But nobody ever suggested who was behind it, if it is organised. If it is not organised then the whole point falls away.

MR BIZOS: Yes, but..

COURT: Yes the moment you have organised riots I feel that it is strange that nobody can say who organised it.

MR BIZOS: Well m'lord, it presupposes that it was organised.

COURT: Yes well, that I will hear you on. (30

MR BIZOS / ..

MR BIZOS: Right. Now it seems..

COURT: And then the next step I will also hear you on when we get to it, because you need not answer it now. I am taking you out of your course.

MR BIZOS: Yes, I welcome this. I welcome this because it gives us an opportunity to really put our case. It may well be that in troubled times, in troubled times people do not come forward to identify wrongdoers. One does not require a great deal of experience in order to come to that conclusion with respect, and it may be that the neighbours of Caesar (10 Motuane genuinely did not recognise or if they may not have wanted him and if they recognised their neighbour's teenager throwing stones at Motuane's house, that they keep quiet about it. It is strange, it is regrettable that it should happen but it does not assist your lordship in this inquiry. It only shows that his lordship VAN DER WALT J said in that judgment, that it is most unfortunate that the culprits cannot be brought to book but that does not mean with respect that people who were on the march, who were not there when Motuane was attacked, who were not there when Dhlamini's house was (20 attacked, were not there when Dipoko's house was attacked; what inference can one possibly draw against them? If your lordship would bear with me for one moment. The references to Mgcina, I do not think I have given that to your lordship, volume 48, page 2 385 line 17 to 2 386 line 28. The other is the witnesses Fosisi, your lordship will remember her, moved from her house in Sharpeville to Sebokeng on 2 September. I am prepared to assume that she was telling the truth in relation to this because I think she has been thrown overboard in relation to her alleged observations of the march.(30

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This was as a result of threats given over the telephone. Again there is no suggestion that the move was prompted by any general sense that there was to be violence and there is also no suggestion that there was any recommendation from other councillors that security precautions were necessary. Your lordship will find that in volume 52 page 2 684 line 1 to page 2 685 line 18. Of course the reference or rather the evidence of the warning by telephone is quite inconsistent with a conspiracy for a mass attack to take place at her house on the 3rd. Your lordship will recall that she was (10 elected on the ticket of the Party of the Poor and then had gone over to the Party of the Rich, Mr Mahlatsi's party. Now a telephone call in this sort of circle does not carry the case any further, but there is even more important evidence that the accused are to be believed when they say that they did not expect any trouble despite the debate we had about what would have been the position in law if they did know that some trouble might arise and I just want to add one thing in relation to that. That if an individual or a group of individuals organise a march for the purposes alleged in(20 the indictment then the question falls away. The cross-examination in this case was if what you say is true, that you wanted to go to Houtkop to present your grievances, you should have expected some trouble to take place. The mere fact that you expect that and that trouble takes place due to no fault of your own, does not make you guilty of any offence. It may be foolhardy so it does not help the state nor the answers given to your lordship to say, well, you are not convincing when you say you did not expect any trouble because it was put on the basis that if there was rioting (30

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in Tumahole and there was rioting in Soweto and there was rioting in 1960, well, how could you not expect trouble because the police would have stopped the march. You do nothing wrong on the facts of this case.

COURT: So on your basis do you say well - or let us not say on your basis, let me put to you a certain proposition. A person organises a march which he thinks is illegal but which in law is legal. As he thinks it is illegal, he expects the police to stop it; but as in law it is a legal march, the police are not entitled to stop it. Can that person be (10 held and be found guilty of anything, or of attempt to do something?

MR BIZOS: No, I submit not except that I think that in order to bring it into the ambit of our situation in this case your lordship will have to postulate one other factor, that he thinks it is legal for the wrong reasons.

COURT: Yes well, if he thinks it is legal it falls away.

MR BIZOS: Yes.

COURT: I can give you..

MR BIZOS: No, it need not always fall away. (20

COURT: It might fall away?

MR BIZOS: It might fall away if he thinks it is legal because of the absence of mens rea.

COURT: Yes.

MR BIZOS: But the position is that it is legal, it is legal but for reasons other than those the person thought, but it cannot avail the state on anything because let us assume m'lord, let us assume very simply that the charge was attending, organising an unlawful gathering and he goes and gives evidence that: I thought that it was not a gathering (30 because / ..

because when people walk there it is not a gathering and a case in the magistrates' court as often happens is conducted without the magistrate's attention being drawn to the law or no argument being advanced and he says no, you cannot get away with no mens rea plea, you are a man in public life and you are convicted. His counsel then or his attorney finds out that the matter is unlawful, that the proclamation is invalid; the conviction cannot possibly stand on an invalid thing. So the mere fact that they thought it was legal for the wrong reasons cannot really help the state in any way. (10 But in relation to, as often happens, trouble breaks out when it is least expected and this is what happened here, the officer in charge of the police task force which was sent into the Vaal triangle on 2 September 1984, Brig Viljoen, testified that the information available to the police was that problems might arise in the Vaal triangle in consequence of rent increases which were to come into effect. Now that is a startling bit of evidence but your lordship with respect whatever criticisms may be levelled on other scores in relation to Brig Viljoen must accept his evidence. Your (20 lordship will find this in volume 63 page 3 357 line 23 to page 3 358. Mark you, no suggestion of the stay-away, no suggestion of a march. I do not know what the police expected possibly that people would not pay their rent on the 1st, I don't know but that is what his evidence says. Did I give your lordship the reference?

COURT: 3 357.

MR BIZOS: On 2 September 1984 this commanding officer held no consultations with councillors or officials of the board and was unaware that there had been decisions to stay away (30

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on 3 September and that there was to be a march on that day. Volume 65, page 3 413 lines 1 to 25. No measures were taken to provide protection specifically for the houses and businesses of councillors. Nobody said to him that there was a plan that people were to be attacked. He was not advised that there had been any specific threats towards specific councillors. Viljoen, volume 65, 3 417 lines 18 to 30, and we submit that the only reasonable inference to be drawn from this is that the rumours to this effect that there would be trouble deposed to by Mahlatsi were not taken seriously (10 to be conveyed to this senior police officer. That is Mayor Mahlatsi, not the reverend. As far as Brig Viljoen was concerned this was the first unrest in 1984. In reply to the court he said that he could not recollect there having been unrest earlier in Tumahole or elsewhere. Your lordship will find that in volume 67 page 3 488 lines 21 to 25. Now this man, was that a colonel if I remember correctly, and he is in charge of the unit to control possible unrest. He did not connect what he was called for to Sebokeng with what had happened in Tumahole. If he, the person respon- (20 sible for the safety of people and property in the Vaal area because apparently there is some connection between - although stationed in Krugersdorp, apparently that is where the divisional headquarters for the area are; if he did not - have I given your lordship the reference, 3 488, 21 to 25. In reply to your lordship Brigadier Viljoen repeated that the information given to him was that rent increases had been announced and that in consequence of this announcement it suspected or believed by the division of police concerned therewith that unrest might result. Volume 67, page 3 526 (30 lines / ..

lines 12 to 19. The witness Van Deventer, apart from some residual teargas which he smelled at his workshop in zone 13 he an employee of the development board noticed nothing unusual as he drove to work on Monday, 3 September. Volume 70, page 3 750 lines 2 to 14.

COURT: Are you now on the riots or are you still on this topic?

MR BIZOS: No, on foreseeability.

COURT: Because you will come back on this again when we deal with riots?

MR BIZOS: Yes.

COURT: Well, won't there be duplication?

MR BIZOS: No, we are not going to spend a lot of time on what has been noted as happened in different area on your lordship's map. We will accept that what your lordship has plotted on the map is sufficient indication. We are not going to give your lordship any..

COURT: Blow by blow account?

MR BIZOS: Blow by blow account.

COURT: We will just have the last round?

MR BIZOS: Yes, as your lordship pleases. That is the important one. What we are saying here is that the credibility of the accused is that you have foreseen this.

COURT: No, I understand the point.

MR BIZOS: And what we say is that so many people did not foresee it. How can the state ask your lordship to disbelieve the accused when they tell you that they did not foresee it, that is what we ask. His employer told him, Van Deventer - the board had told him about the stay-away which was to take place on the Monday, but no warning had been given to him (30

in / ..

in connection therewith. He accepted this because nobody considered it serious and he personally did not expect any trouble. Volume 70, page 3 751 lines 2 to 15. The witness Nienaber was employed as an inspector by the development board. He came on duty at 07h45 and had carried out patrol duty in zone 13 and 14 from 08h00 to 09h00 when he received a report that Van Deventer was in difficulty. That was the first occasion that morning that he heard that anything unusual had happened in the area and until then he had not heard that there were road obstructions, police (10 action or stone throwing or anything of the sort in the entire area. In his view the day had begun normally. Nienaber, volume 70, page 3 757 line 1 to page 3 758 line 21. It is interesting to compare the evidence of this witness an inspector who patrolled in a radio-equipped van for an hour until 09h00, who had neither seen nor heard of anything unusual, with that of the evidence of the accused who testified that when they assembled at 09h00 at Small Farms for the purpose of the march, they had not come across anything unusual. The cross-examination of the accused and defence (20 witnesses was: how can you say with all the smoke going around and all the trouble going around and all the burning and the shooting going around, how can you possibly be believed when you tell us that you came either from zone 3 or from zone 7 or from zone 8 to Small Farms, the church hall, how can you tell us that you did not see any trouble? Well, the accused may have had the motive for not telling your lordship what they may have seen. The defence witnesses may have had the motive for not telling your lordship but what motive did Mr Nienader who was out on patrol duty (30

have / ..

have? The general impression attempted to be made by the state in cross-examination was that you could not move an inch in Sebokeng without obstructions on the road, shooting gas, fire, killing, mayhem, taking place. That is not so. There was trouble at various spots but one thing is clear, that the quietest place in the Vaal triangle was the place which had been appointed as the starting off point of the march. A number of defence witnesses in addition to the accused have also testified about the non-secretive nature of discussion concerning the stay-away and the march and (10 have indicated their perceptions of the legality or otherwise of the march. They include the following:

Namane, who testified that the stay-away and march was something that was being discussed openly by many people during the week leading up to 3 September 1984. During this period he heard nothing to indicate that this march was going to be one out of which violence would erupt. Volume 318, 18 202 line 20; 18 203 line 15. The witness Zulu said that having been told that they would be going to Houtkop and that it would be done peacefully, she decided that he would go (20 along. 319, 18 288 line 17 to 25. She in fact did not go to the march due to her husband's illness. I won't give your lordship the reference. Mapala decided to go on the march. He did not think that there would be anything illegal and stayed away from work or taken part in this march. The march was being discussed openly in public. He had in fact heard about it in the course of such discussions which was taking place all over there, in the buses, wherever people were together. Mapala, volume 320, 18 331 lines 11 to 16 and again at 18 332 lines 2 to 29. (30

The / ..

The cross-examination of the defence witnesses took a curious turn. They were asked whether they were paying their rent or whether they took part in the stay-away, in the belief that if those facts were established that they did not pay their rent or that they took part in the stay-away and possibly on the march then they were not worthy of credit. On that basis the 300 000 people or almost 300 000 people living in the Vaal triangle would be excluded as credible witnesses on any issue relating to the community affairs; a startling proposition we would submit. And the contra- (10 dictions between witnesses referred to are of no moment but we will deal with that later. According to Mgudlwa the fact that there was going to be a stay-away and a march on 3 September was known to everybody in the township. Volume 322, 18 418 lines 26 to 28. The witness Ndaun(?) did not feel that in making the decision to go to Houtkop he would be doing anything unlawful. He deemed it necessary and right to go there. Vol. 323, 18 501 lines 27 to 29. Mokati heard about the 3rd of September march approximately a week before. He heard from people discussing this on their way to work (20 and in buses and also from discussions in the community. Vol. 324, 18 558 line 25 to 18 559 line 4. The witness joined the march and did not believe that he was committing any unlawful act by doing so. Mokati, vol. 324, 18 564 lines 15 to 18. Similar evidence has been given by - and I will not give your lordship the references because I want to give your lordship the assurance that it is to the same effect, by Dhlamini, Meyembe, Oliphant..

COURT: You are going a bit fast.

MR BIZOS: Sorry, Dhlamini - if your lordship wants the (30 references / ..

references I will give them to your lordship.

COURT: I think you can quickly give it to me. Dhlamini?

MR BIZOS: Dhlamini, 425, 18 603 lines 26 to 30. Meyembi, 327, 18 687, 29-29. Oliphant 328, 18 785 line 30 to 18 786 line 4; Mazibuko, volume 338, 19 263 lines 27 to 30 and Vilakazi, volume 347, page 19 851 lines 24 to 26. I may also say here in parenthesis that the fact that a particular witness lived in Evaton and was not directly affected by the rent increase, does not mean that he is an untruthful witness because he decided to take part in the march or to go to (10 a meeting. It shows that he is a person who, to use the words of the political arena, to show solidarity with his fellow men; that does not mean that he is an untruthful person about the matters that he has deposed to. Nor is the care-taker, Mr Ratebisi to be criticised for taking part in the march in solidarity with these people; he is a furniture salesman as well and he wanted to identify himself with what was an important issue in his community. I will submit in due course that Ratibisi was a very good witness whose evidence - no reason exists for his, for suggesting that (20 his evidence should be rejected. According to Mr Ratebisi nothing was said at the meeting of 26 August that the decisions to hold the stay-away and the march were to be kept secret. In fact they were discussed all over the place during this week. Volume 306, page 17 569 lines 13 to 25. Now let me make this submission.

It is natural that the court should speculate as to what might have been if Mr Raditsela was here, if he was either in the dock or in the witness-box. Unlikely he would have been in the witness-box, more likely in the (30 dock / ..

dock and there are all sorts of factors from which some speculation may be made or some inferences may be drawn. We will deal with it in due course because we do not represent Mr Raditsela and he is not on trial before your lordship. We represent these accused. I would say that a couple of thousand pages - perhaps it is an exaggeration, many pages of this record occupy as to whether - relying on the absence of mention of the march on AN.15(2) on a tangent that because the march was not mentioned on that exhibit, therefore there was a conspiracy to keep it secret. Well, the weight of (10 evidence is completely the other way. An explanation as to why Mr Raditsela who was responsible for producing the exhibit did not include the march can only be speculated on. It may be nothing more than lack of care or incompetence or a mistake along the way but let us assume that he did it deliberately. It does not avail the state to prove anything against the accused before your lordship.

We now want to draw your lordship's attention to the state's case as pleaded in relation to the events of the 3rd. Although the state's case in relation to the alleged (20 decision making concerning the unleashing of violence remains vague despite the further particulars. Insofar as the state proved itself unable to allege a particular place and a date at which such decision was taken, there is nothing vague about the manner in which it was pleaded. The precise mechanism through which the violence erupted on 3 September 1984 and continued thereafter. They made themselves very clear. The preamble to paragraph 77 which your lordship will find at page 353 was the usual preamble.

COURT: Yes, go ahead Mr Bizos.

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MR BIZOS / ..

MR BIZOS: Yes, the preamble is the usual allegation, repetitive allegation that this was done in furtherance of the conspiracy or conspiracies and paragraph 77 unambiguously attributes the outbreak of violence to the two marches. That is the one from Small Farms and the other the square in Boipatong. And the sequence of it is equally and clearly pleaded as:

"The masses gathered as planned at the square at Boipatong and at the Roman Catholic Church at Small Farms, Evaton, and thereafter.." (10

and I emphasise the words "thereafter"

"..resorted to acts of revolt, riots and violence." The "thereafter" is clearly not used fortuitously or thoughtlessly for the same sequence is echoed in the substantial paragraphs that follow the preamble. The same approach is reiterated in paragraph 41.3.3 of the further particulars on page 112 of the further particulars where again "die voorafgereëde versamelpunte" is assigned to a seminal role pleaded in relation to the totality of the evidence in execution of the general object of the UDF and its affiliates and supporters and/or the ANC and/or the SACP to destroy the system of black local authorities in the Vaal triangle through violence and unrest which was to contribute to the rendering as ungovernable the Republic or any part thereof. In relation to the events in Boipatong, the same sequence is pleaded throughout, paragraphs 77.2, 3, 4, 5 and 6. With paragraph 77.7 the state shifts its attention to the assembly at Small Farms where it says that the black masses gathered. In paragraph 77.9 the group is moved along until it arrives at the offices - at the offices, mark you - at the offices (30 of / ..

of the Vaal Transport Corporation. 77.9, where when it reaches there it is not a black mass anymore and it is not a group but it becomes a mob. The mob, and the first act of destruction is performed at the offices of Vaal Transport Corporation. Thereafter the mob moves to the house of Motuane where inter alia two murders are carried out, that is 77.10; it is the same mob which then screams that they are finished with Caesar and they must now go on to other councillors, 77.11; it is from the mob that the activists withdraw once the mob had been thoroughly incited in 77.12;(10 in paragraph 77.15 it is again made unambiguously clear that the state case is that the activists played a leading role in inciting and leading the masses to become a mob and that the mob continued with the revolt, violence and riots at the Vaal triangle until the end of September 1984. In the course of this, the mob killed councillor Dipoko; the mob went to the house of councillor Chikane and killed him; it was also the mob which murdered councillor Dhlamini; finally the continuation of the revolt and violence and riots in respect of a range of events as set out in 77.15.4 is also (20 attributed to the mob. Now that is the case that the accused have come to meet.

Now one wonders on what evidence or on what information this indictment was drawn in this way. Wiggell says that investigators become flabby and lazy if the rule against self-incrimination is abolished and expecting people to incriminate themselves takes the place of proper investigation. We submit that on the facts that had been placed before your lordship this case was not investigated. Let me take a simple example. Where are the offices of the (30

Vaal / ..

Vaal civic association, of the Vaal Transport Corporation. Instead of having five interrogators programming IC.8 one of them could have taken a walk to Sebokeng and say where are these offices which were the first target of the mob? He would not have found them, if one of the interrogators took a small trip from wherever the interrogation of IC.8 was done to Sebokeng. And if that was not done why were not the neighbours of Caesar Motuane approached and say when did the attack on Caesar Motuane's house take place? Why did your lordship have to hear of that on our cross- (10 examination of IC.8 which must indeed have to come as a great surprise to your lordship, having read this indictment and further particulars, and getting poor Mrs Fosisi late in the day to perjure herself in our respectful submission to correspond to the indictment does not help the state because it was shown that she had perjured herself by removing herself 32 houses away from the one that your lordship so carefully asked her to explain and place it on the lane. How could these allegations have been made on the evidence that you have heard from the state witnesses, never (20 mind the defence witnesses. Did anybody take any trouble when they had a statement, when they had two statements that accused no.5 was at the murder scene of Caesar Motuane, at the same time at the murder scene of Dipoko? I have been waiting for a long time to say this, m'lord. I am sorry if I raised my voice. The state's evidence does not support the case pleaded. What it does show is that the disturbances of a serious order commenced in the Vaal during the night of 2 and 3 September 1984, and long before the commencement of the march. The evidence shows clearly that the (30 disturbances/..

disturbances in the Vaal began during the early evening of 2 September 1984 in Bophelong, where the situation had been tense for several days since 29 August and that forceful action was taken by police and board security personnel including the use of firearms, accompanied by loss of life. On the 2nd, never mind the 3rd, road obstructions appeared in the course of this and a number of buildings were damaged. From early on the events constituted unrest on a major scale. These events we have already summarised in the course of evidence - I beg your pardon, in the course of the argument (10 Your lordship will recall that it was my learned friend Mr Tip that dealt with the Bophelong issue.

We reiterate the submission already made that these events in Bophelong can in no sense be attributed to the VCA, AZAPO, ERPA, UDF, AZANU, COSAS or any other organisation. In particular they cannot be attributed to any of the accused. If the captain of the football team of a township is killed even though it may be, and there is no evidence of it but he was actually guilty of looting; the direct evidence is to the contrary, but even if he was suspected, it does not (20 take much imagination as to how someone either for his own motives or because he may be a cadre of an unlawful organisation or even a common criminal, it does not take much imagination as to how that fact can be exploited on the night of the 2nd and I have already indicated to your lordship that far from the march turning into a mob on the north-east bringing violence to the south-west it is the other way around. The violence really chronologically started from the antipodes of the allegations by the state. Far from the march turned into a mob, being responsible for (30 anything / ..

anything that happened at Sharpeville, unrest related incidents in Sharpeville is from after midnight, that is the night of the 2nd/3rd, when Schlebusch saw two road obstructions and there was an incident of stone throwing. Schlebusch volume 69 page 3 700 lines 28 to 31, volume 70 page 3 711 lines 11 to 14; volume 70, page 3 716 lines 11 to 15. By about 01h15 Warrant Officer Coetzee was in Sharpeville when he came across burning car wrecks and tyres used as road obstructions. The vehicle and house of a policeman had been set alight. Coetzee, volume 68, page 3 575 line 21 (10 to 3 576 line 14. From about 02h00 Warrant Officer Bruyns was attacked by groups of youths in Sharpeville and he used teargas and rubber bullets. Bruyns, volume 68, page 3 620 line 17 to 3 621 line 29.

Boipatong was one of the areas patrolled by Schlebusch. After midnight he came across a road obstruction; there was some sporadic stonethrowing. Volume 69, 3 700, 28-31; 3 701, 9-19, 3 711, 24-26. The Sebokeng, Evaton, Small Farms complex was quiet throughout the night and remained so until approximately 06h00 the next morning. And let us see (20 what was happening at the place where the state says the genesis of the trouble was at Sebokeng. There was a police patrol throughout the night on 2/3 September from approximately 22h00 in zone 13, 14 and 15 in Sebokeng. There were no incidents and there were no road obstructions. Niemand, volume 70, 3 726 line 9 to 25. Brig Viljoen was in charge of Sebokeng. There were general patrols in the streets of the area. Everything was calm throughout the night until about 06h00 on the morning of the 3rd. Volume 63, 3 359, 9-20. At about 02h00 Jogosela, your lordship will recall (30 that / ..

that is the person with the dry-cleaning business in the most colourful clothes, checks his dry-cleaning business in zone 7A. It was all very quiet. Volume 48, 2 418, lines 5 to 22. From midnight, Motsuaneng, a board inspector, patrolled Evaton, Small Farms and part of zone 7. He noticed absolutely nothing untoward. Volume 70, page 3 770 line 22 to page 3 772 line 9. The trouble in part of Sebokeng only commenced after 06h00 approximately three hours before the march set off from Small Farms. Please remember the state's case is that the march started off at 09h00 and trouble started (10 as a result of the march becoming a mob. It is common cause that it started at 09h00. This was when incidents of stone throwing at buses and also at police vehicles commenced. This was principally from bus stops at which people were gathered. At that stage there were no mass crowd formations and the roads along which Brig Viljoen moved were free of obstructions. Viljoen, 63, 3 359, lines 21 to 31.

Other incidents testified to by the state witnesses included the following: at about 07h10 there was an attack by about 200 to 300 people on the board workshop in zone (20 13. Warning shots did not deter them. A vehicle was overturned and set alight. Petrolbombs were used. Van Deventer volume 70, page 3 736 line 1 to 3 739 line 21. This group then broke into a nearby bottle store and looted it. They then returned to the workshop. Assistance then arrived. Van Deventer was brought out, as they left the vehicle was stoned. Volume 70, 3 739, line 29 to 3 742 line 7. At 07h15, Masenya who walks from zone 7 to zone 13, then to zone 14. At the zone 14 shopping centre shops were ablaze. There were large groups walking up and down. We will not (30 deal / ..

deal with the evidence of major Crous. Your lordship will recall that is the person who took photographs from the air. We submit with the greatest respect that because of his lack of knowledge of the area, he was completely mixed up and no reliance can be placed on his evidence. What this shows is that the thesis of the state that the VCA organised the march, that the march started off, that the march became a mob, is just not borne out by the evidence at all. Remember what was said, that after the offices of the Vaal Transport Corporation were destroyed they went and killed Motuane and (10 after they killed Motuane, they went and killed someone else, this mob that started off at 09h00. The attack of Motuane and Matibede commenced long before the march reached the house and long before it began forming itself at Small Farms.

COURT: Attacked Motuane and..?

MR BIZOS: Matibede, the body guard.

COURT: Oh, yes, Matibede.

MR BIZOS: And this is the evidence that I am referring to that must have come as a surprise to your lordship. By 06h00 there was a commotion at Motuane's house which was (20 diagonally opposite the Mohatla home. There were people from both sides of that street and some had come from the lane. There were many people, they were busy stoning Motuane's house. Motuane and Matibede were shooting at the others, people would flee and then return. This occurred several times. The evidence of Mohatla, 31, 1 450, line 24 to 1 454 line 13. Alinah, Mrs Alinah Mohatla, volume 58, 2 399, line 2 to 2 401 line 19, and again at 2 409 line 14 to 2 410 line 4. Mrs Mohatla describes the people who stoned Motuane's house as children "nog besig om te groei". Volume 48, page(30

2 399 lines 10 to 19. This is the sort of evidence which your lordship will take into account and not the evidence of one of the police officers who said that it appeared that it was prearranged for the violence to break out at precisely 08h00 on the morning of the 3rd. Mrs and Mr Mohatla who were the neighbours of the late Caesar Motuane know better, and this attempt to prove cases of conspiracies on the basis that .. I can go on if your lordship ..?

COURT: Yes, we can go on for a quarter of an hour.

MR BIZOS: Thank you. Alinah Mohatla describes the people (10 who stoned Motuane's house as children. Asked to clarify that because of the various definitions, "nog besig om te groei" she told your lordship, whatever that may mean. Vol. 48, page 2 399, lines 10 to 19, but although this was happening at Caesar Motuane's, things were comparatively quiet in other areas of Sebokeng and Small Farms. From about 06h00 Captain Keyter patrolled the bus route in zone 12, Sebokeng. Everything was normal. Only about 07h00 a group of 50 to 70 youths set up road obstructions near the bus terminus. Vol 69, 3 653, line 10 to 3 654, line 10. At 06h30 Pete (20 Mokoena left his house in zone 3 on his way to the mayor's house in zone 11. He was driving. On the way in zone 7 he saw that there were many people in the streets. They were mostly adults, but they were doing nothing, just standing in the streets outside their fences. Nothing happened whilst he was driving through them and there was also no indication that in all his travels he encountered any road obstructions. Only in zone 12 could smoke be seen. People there warned him that he should not proceed because the police had already fired teargas there. He then drove off to Evaton. Later (30 at / ..

at an unfixed time when the witness was still in Evaton, Small Farms, smoke was seen coming from zone 12 and 13.

It is noteworthy that he makes no mention of any smoke in or near Small Farms. Mokoena, volume 44, page 2 151 line 21 to 2 153 line 17. I have already dealt with the evidence of Mr Nienaber and I do not intend repeating it. Then the Small Farms march. A number of witnesses have testified that whilst they were making their way to Small Farms in order to take part in this march, they encountered no road obstructions or signs of unrest or burning. Accused no.8, (10 volume 171, page 8 809 lines 10 to 14. Accused no.9, volume 180, page 9 278, I have not got a line, it missed - to page 9 279 line 7.

ASSESSOR: 927 line 8?

MR BIZOS: I have not got a line, m'Lord, I have not got a line in 9,278 to page 9 279, line 7. Somewhere on page 9 278.

ASSESSOR: Oh, I see. I am sorry.

MR BIZOS: I am sorry, I haven't got a line there. We can look it up, but.. Accused no.7, volume 201, 10 516 lines 9 to 19. Accused no.2, volume 220, 11 682 line 27 to 11 683 (20 line 28. Accused no.13, volume 243, page 12 967 line 19 to page 12 968 line 21. Now because there were obstructions at some places and because there were looting at other places the accused were cross-examined at great length, that they cannot be believed when they say that they walked to the meeting place without seeing any obstructions or becoming aware of any troubles. Sebokeng is a big place, and more particularly the zones at which Mokoena saw smoke are a fair distance away, and if there were no road obstructions when Mr Mokoena was driving through why should there have been (30 obstructions/..

obstructions when the accused walked along? That is not the sort of basis upon accused persons are disbelieved as witnesses.

Witness IC.8 gave a detailed and circumstantial account of what happened on the morning of the 3rd before he and accused no.2 and others eventually arrived at Small Farms. On his account, which is disputed, accused no.2 and others came to his home at approximately 07h30 to 08h00 where there was a discussion about the Small Farms meeting. IC.8 explained how AZAPO put on an AZAPO badge - how accused no.2 (10 put on an AZAPO badge. Sorry, an AZAPO T-shirt so that they had to go back to the home of accused no.2. How from there they went in the direction of zone 3 shops, how they walked past the school, how they eventually got a lift in order to get to the meeting. In all this IC.8 does not give the slightest indication that there was anything happening along the way, that they saw signs of arrest or road obstructions or anything of the sort. And it also negatives the suggestion that no private cars would be allowed to move in the township - they got a lift. Volume 16, page 774 line 6 to (20 775 line 10.

Again Mahlatsi, this is the Rev Mahlatsi, testifies how he and Dibate - no, sorry, he was called for by Debate between 08h00 and 08h30. How they went to the home of accused no.8 and how the three of them drove on to Small Farms. There was no suggestion that they encountered any problems, any road obstructions or witnesses any scenes of unrest or burning. We will show your lordship later that the first bit of trouble that he noticed was when he heard the shot at Motuane's. Mahlatsi at page - volume 41, (30 page / ..

page 1 959 lines 19 to 31. It has already been pointed out that Motsuaneng the board inspector was on duty in the area from midnight and had observed nothing unusual. And this really shows how much time was taken up by the Sebokeng college unnecessarily because when he drove from the administration offices to Small Farms church to have a look at the assembly there, there was nothing obstructing the road. He did not mention anything else. Volume 70, page 3 774 line 8 to 26. The witness Mapala saw no obstructions on the way to Small Farms. Volume 320, page 1 833 lines 2 to 8. (10 Mapala confirms further that..

COURT: Sorry, 320?

MR BIZOS: 320 the volume.

COURT: And the pages?

MR BIZOS: 1 833 lines 2 to 8.

COURT: Can it be?

ASSESSOR: Nee, dit kan nie wees nie.

MR BIZOS: Sorry, it is probably 18 000, one of the figures - we have an index here, we will..

COURT: What is the point you are making on Mapala? (20

MR BIZOS: Mapala, 18 389 is the next reference that I have for Mapala so it is probably 18..I am sorry, we will find it in a moment. It is 18 000, not 1 800.

COURT: You can go on with your next point.

MR BIZOS: Yes, Mapala confirms further that before arriving at Small Farms everything was peaceful and calm in the area. Mapala, 18 389 lines 21 to 26.

COURT: Where did he come from?

MR BIZOS: May I just have a look, m'lord?

COURT: It is 89 not 81? (30

MR BIZOS / ..

MR BIZOS: 18 389 - volume 321, 18 389 lines 21 to 26. He lives in zone 7A. Mgudlwa, the bus driver, has testified how he travelled by bus from Mosekeng via the Sebokeng post office to Evaton bus depot in the early hours of the morning without seeing any obstructions. At 04h30 he loaded at Mosekeng. There were no obstructions and he had a normal load. On his return, when he arrived back at Evaton at 08h15 he encountered no obstructions. He saw no trouble or burning or disturbances. Volume 322, page 18 420 line 6 to page 18 422 line 20. Your lordship will recall that this was the bus driver that drives bus drivers to work.

ASSESSOR: His name again, please?

MR BIZOS: Mgudlwa.

COURT: He is a busman busman.

MR BIZOS: I wonder what sort of busman's holiday he has, but be that as it may. The reference that was patently wrong is 18 333 lines 2 to 8. One of the 3s was dropped. Your lordship will recall that this witness was sharply attacked for not knowing too much about the business of local affairs of his community, but there is no reason in our respectful submission to suggest that his evidence in this regard is incorrect. After all, he drove the bus and he brought it back and nothing happened. The witness Taos saw no road obstructions on the way to Small Farms nor any property burning, nor any damage to any bus company property at Mosekeng, nor was the teacher's training college burning. Volume 323, page 18 503 line 12 to 18 504 line 13. Mokate did not see any obstructions or any property which had been destroyed or any ticket office of the bus company which had been destroyed or any property burning whilst on the way to (30

Small / ..

Small Farms. Volume 314, page 18 562 lines 3 to 11. Dhlamini saw no property being destroyed or burnt or any vehicles being destroyed or burnt or any other unlawful act being committed on the way to Small Farms. 325, 18 602, lines 2 to 4. The witness Nyembe left home between 08h15 and 08h20 and saw nothing unusual in the immediate vicinity. She went past the house of councillor Mokoane and at that stage there was nothing wrong with it. In fact Mrs Mokoene was busy cleaning the stoep of the house. There were no obstructions on the road and the witness did not see any police patrols. (10 327, 18 688 lines 2 to 18 689 line 26. Oliphant saw no obstructions or any property burning or being destroyed on the way to Small Farms. Volume 328, page 18 786 line 9 to 14. Lepele saw no obstructions on the way to Small Farms nor any smoke or an unusual nature. 336, 19 157 line 18 to 23, and again at page 19 159 line 17 to 26. Mazibuko saw no property having been burnt or otherwise destroyed or being destroyed whilst walking to the church. Volume 338, page 19 264 lines 20 to 23. Vilakazi, the erstwhile accused no.18, left home at 08h30 but being late joined the march (20 after it had passed Mosekeng. Along the way he saw no obstructions nor any property being destroyed or having been destroyed. 347, 19 852 line 14 to 19 853 line 5.

Of course if the state manage to show that there was apparent trouble or obvious trouble near the church before the march started, it may have been able to ask your lordship to draw an adverse inference, that you knew that there was a lot of trouble there and you took part in the march and it affects your credibility, but the weight of evidence is tremendously against the state. I am going on to one of (30
the / ..

the other allegations that is made by the state. It may be a convenient stage to adjourn.

COURT: Yes, you have a credit now of 18 minutes.

MR BIZOS: I will start a ledger sheet, m'lord.

THE COURT ADJOURNS FOR LUNCH

COURT RESUMES AT 14h00.

MR BIZOS: There is one point that I must correct. My memory played tricks on me. Mgundla that I gave your lordship as the bus driver of the bus drivers, he was actually the bus driver that took farm workers to work and not the, it is another bus driver. I am sorry about that. And then it is almost inevitable that there should be discussion during the break and there are two matters that I want to allude to, or rather to go back on which were discussed in the earlier section. That is your lordship's question who is responsible. It is (10) inevitable, we submit with respect, that where there are difficult circumstances such as these that there should be difficulty in determining who is responsible.

COURT: Just a moment Mr Bizos, I must put in my cross-reference otherwise I do not pick it up again.

MR BIZOS: Yes, I understand that my lord. What I want to say about that, of course it is difficult to find precisely who is responsible and the investigating officers must indeed have had a very difficult task to perform as described by Van der Walt, J. who makes the remarks that your lordship would no doubt (20) want to associate yourself with in relation to the difficult circumstances under which they work in order to find out where the truth lies, in relation to this sort of event. But if it is difficult for the investigating officers to find out it is as difficult, if not more difficult, for the people in the dock or their legal representatives. The only thing that we can do is to say for these reasons we are not responsible, although we have been accused, but the fact that we can only point to certain indications as to who might be responsible is not a factor, we cannot take that matter any further. The other (30) matter/....

matter that I want to refer to is this, your lordship will recall that I said that on proper investigation the indictment could not possibly have taken this form. That part does not really present much difficulty of investigation because most of the statements that we have referred your lordship to are police statements. The information as to where the violence commenced and how it progressed is to be found in the main in police statements and whoever was responsible for the drawing of the indictment either did not have them or the wrong information was placed before him. It cannot be explained on any (10) other basis. But be that as it may one thing is clear, that it did not happen the way it is alleged, that the accused who are responsible for putting the march together were wrongly accused of having started the trouble in the Vaal. Now if we go back to the indictment again, the next point that I want to make, in 8.1 page 356 your lordship finds that ...

COURT: 8.1, 77?

MR BIZOS: 7(8)(i) page 356:

"At the abovementioned church and before the march began, and before the march began, some of the crowd (20) obstructed the street in front of the church with stones." Now what is the evidence in relation to that? The accused have denied this allegation but can I adopt a form of shorthand, number of accused, volume, page lines, so that I do not have... No. 8, 171, 8 822, 4 to 11; No. 9, 180, 9 286, 10 to 18; No. 2, 221, 11 694, 10 to 15; No. 13, 243, 12 970, 19, 12 971, 5. But the state witness IC.8 was asked in his evidence-in-chief a very proper question, whether at the stage that the march began the road was clear or not. He says that the traffic could not have been able to drive through there (30) because/....

because they, the people on the march, would have prevented that since they were walking in the street. He makes no mention of stones being placed in the street. 17 780, 21, 781, 2. The evidence of the Reverend Mahlatsi is also in conflict with the allegation in the indictment that the stones were placed on the road whilst the march was proceeding. He says that there were large stones of approximately sixty centimetres which were placed on the road by members of the march. Members of the march had to climb over these stones. 41, 1 968, 6 to 31. The unreliability of this account given by Mahlatsi (10) is clear from the replies given in cross-examination. The march, according to Mahlatsi, was proceeding in a sort of a jogging trot. This despite accused no. 17 having to keep pace. He did so in spite of the fact that he had to climb over the boulders. The stones were put in the road by members of the march who went out and pushed them into the street. 42, 2 031 10, 2 032, 19. In further cross-examination it is made clear that there were no stones whilst the march was approaching and that the stones had been put on the road whilst marching. 43, 2 093 11 to 29. Aside from the inherent improbability of members (20) of the marching being able to push these large stones into the road whilst the march as a whole proceeded at a jogging trot Mahlatsi proceeds to contradict himself as to who was affected. Having evidently forgotten his evidence that accused no. 17 had to climb over these stones he testified that the people at the front of the march were not impeded at all by these stones. 43, 2 093, 30 to 2 094 11. Confronted with the contradiction concerning no. 17 Mahlatsi immediately changed his evidence to meaning that those in front of the march also were obstructed by the stones. 43, 2 094 12 to 23. It is submitted that (30)

his/....

his evidence concerning the stones should be rejected. On the probabilities what purpose would it serve by say the 25th row of the marchers putting a boulder, boulders across the street to obstruct the 27th and 29th row of marchers. But the evidence is not supported by IC.8, contradicted by the indictment, no statement, we have never seen any statement from anybody to explain any of these possible contradictions. A number of accused have testified in relation to the content of the placards - is the next point. Accused 8 and accused 15 wrote the placards with the following inscriptions ... (10)

COURT: 8 and accused number?

MR BIZOS: 8 and 15.

COURT: 15.

MR BIZOS: 8 has given evidence, 15 has not. With the following inscriptions: "Away with Rent Hike, Asinamale, Councillers Must Resign". There were no posters calling for Mahlatsi and his brothers to be killed. 8, 171 8 809 19 to 8 810 14. 9, 180, 9 282 19 to 24. Against the solitary evidence of IC.8 that there was a placard reading "Kill Mahlatsi and His Brothers" it is worth noting that other state witnesses make (20) no mention of this placard. Fosisi testifies about ...

COURT: Just a moment. Is there not a police officer somewhere who gives the same wording? Not necessarily in respect of the march but that he saw that sort of placard somewhere? I have a recollection.

MR BIZOS: The nearest that your lordship probably, and we will deal with it Sharpeville. There was, according to Brigadier Viljoen, somewhere along Seeiso Street.

COURT: Oh in Seeiso Street.

MR BIZOS: In Seeiso Street. Or near Dhlamini's, no it (30)
was/....

was about Dhlamini Mr Tip reminds me, not in Seeiso ...

COURT: At Dhlamini's?

MR BIZOS: At Dhlamini's.

COURT: That was in Sharpeville.

MR BIZOS: That would be in Sharpeville, yes. But we will deal with the Sharpeville events of the 3rd in due course. I do not recall where I stopped in relation to Fosisi. Did I give your lordship the references?

COURT: Not yet.

MR BIZOS: 52, 2 688, 17 to 2 689 line 1. She says that (10) she only saw "Away with Rent Hikes, Away with Councillors, Asinamale". Rina Mokoena saw the march heading along zone 7 to zone 11 and the only inscription of the placards testified to by her was "Asinamale". 37, 1 710, 28, 1 711, 19. Before joining the march accused no. 2 looked at the placards deliberately in order to ensure that there was nothing in their contents which could compromise his position as a member of AZAPO. On the strength of this scrutiny he testified that there was no placard reading "Kill Mahlatsi and His Brothers". Had there been such a placard he would not have joined the (20) march. 220, 11 691 line 1, 11 692, 1. Whilst people on the premises at Small Farms were forming up in a march accused no. 13 saw the placards and he testifies also that none of them read "Kill Mahlatsi and his Brothers". He had a view of these placards because he waited outside the gate in order to join the march as it left the premises. 13, 243, 12 969, 24, 12 970, 28. A number of defence witnesses testify about the contents of the placards. Ratibisi, who saw accused no. 8 busy with the placards. The way he remembers it is that there was some writing indicating that the increase of the present (30) rent/....

rent should not be paid. He did not see anything suggesting that violence should be used against any councillor or councillors as a whole. Had anything like that been seen by him he would have strong steps against the person since this was on church property in respect of which he was responsible. 306, 17 572, 13, 17 573, 7. Again we submit that this is a witness to whose evidence criticism, valid criticism, cannot be levelled. And on the probabilities if we disregard the evidence of IC.8 and Mahlatsi that Raditsela - we will deal with that later - that Raditsela called for violence, if we (10) leave that aside as not pleaded and fanciful evidence - not pleaded, we will show your lordship that. What Raditsela did that morning is set out in the indictment. This is not there and if we disregard that putting up a placard like this would be so inconsistent with the probabilities of the case. There was the meeting of the 2nd, people are called and asked to march to Houtkop. It would presuppose, it would presuppose that on the morning of the 3rd thousands upon thousands of people would go behind a placard calling for the murder of Mahlatsi and his brothers knowing that the police would be somewhere (20) along the way and that the eventual destination was Houtkop, in order to hand over a memorandum. I know that the state says that your lordship should not accepted that, in the "Betoog", but of course there is no reason why uncontradicted evidence of over half a dozen witnesses should be rejected just because a memorandum cannot be found and a couple of other peripheral reasons that are given by the state in the "Betoog". Maphala remembers placards reading "Asinamale, Away with High Rent". He did not see anything reading "Kill Mahlatsi and His Brothers". Volume 32, page 18 335, 1 to 20. Dhlamini saw the placards (30) earlier/....

earlier by the Small Farms march. There was no placard advocating any sort of violence against any of the councillors or their property and had there been the witness would not have joined the march. 325, 18 605, 21, 18 606 6. Nyembe did not have an opportunity to see all the placards but amongst those that he did see there were none saying that Mahlatsi and his brothers must be killed. 327 18 904 line 16, 18 695, 2. Evidence was, to similar effect was given by Oliphant. 328, 18 790, 15, 18 791, 2. Radebe, 333, 18 998 7 to 15. Lephele, 336, 19 162 14 to 29. Mazibuko, 338, 19 266 4 to 20. The (10) witness Selo that as the march approached his house he saw the placards. He did not see one "Kill Mahlatsi and His Brothers". 388, 22 464, 8 to 24. The cross-examination of the defence witnesses on this issue was of the pattern where you could not have seen all of them. There were concessions by a number of witnesses that they indeed did not see them. But when we have three other state witnesses who did not see it, oh no three may be wrong I am sorry. It is Fosisi, Rina Mokoena and the, oh yes I am sorry I have forgotten that the Reverend Mahlatsi was illiterate so we cannot count him. There are (20) two state witnesses, one state witness that saw it, two state witnesses who did not see it and twelve defence witnesses, including the accused, who did not see anything like that. Well we have made general submissions in relation to the credibility of IC.8 and his programme over a period of four months and I submit, with respect, that your lordship will have no difficulty in finding that the weight of evidence is in favour of the accused. Had there been obstructions along this road, had there been such a placard, how many of the people living along that road would have been able to give evidence about it? (30)

None/....

None were called. How many of the people living along that long road on which the march was from about 09h00 to just before 11h00, how many houses must it have passed? Not a single person, or is the state going to say to your lordship that the investigating officer could not find one single honest person in Sebokeng that would have been prepared to admit that the house in front of their, that the road in front of their house was obstructed or that a screaming murderous mob passed in front of them with a placard "Kill Mahlatsi and His Brothers". It is the absence of that sort of evidence that must persuade (10) your lordship that the presence of the evidence from one accomplice about numerous red lights - to use your lordship's metaphor - apply, is hardly proof beyond reasonable doubt. The placard depicted as EXHIBIT AAO shown partly covering the body of the late Motjeane was not one of those prepared at Small Farms and accused no. 8 details the reasons for coming to this conclusion. No. 8, 171, 8 810 line 15, 8 811 line 15. Your lordship will recall that there is much to corroborate accused no. 8 in that regard that, from accused no. 6 and accused no. 9 that Raditsela went away to get cokey chalks and cardboard (20) and come back with children and that sort of thing and that all the placards were handwritten roughly with cokey chalk, hurriedly and in a makeshift fashion. Your lordship will remember the two exhibits, one in a newspaper and one in the actual photograph in AAO, that that is a stencilled placard, the origin of which has not been proved. What we do submit...

COURT: But is it accepted that there were placards at Motjeane's house at the time when he was killed?

MR BIZOS: There is a conflict of fact on that. There is only one of the, one of the Mogatla(?), I think it is Mrs (30)

Mogatla/....

Mogatla who was called afterwards, said that she did see - if my memory serves me correctly but we will check it - she did see that at some time or another some of the people coming up the lane having a placard or placards. Now ...

COURT: If that evidence is accepted would that then mean that they came from the march or would that mean that there were other people carrying placards around the place that morning?

MR BIZOS: Well the probability is the latter because your lordship has the evidence of many witnesses that the group of 300 that was coming from the right-hand side were carrying (10) placards. That is clear on the evidence.

COURT: Yes thank you.

MR BIZOS: There are, and that they were really waiting, either as a loose group or as a march as the, they are coming. We will give your lordship the reference to that in due course. But the attempt by the state to connect this march with the placards through the evidence of Masenya came to a sorry end in our respectful submission. He said that he saw a placard on the corpse of Motjeane reading "Assassinate the Sellout, Asinamale" and "Away with Rents". Now we submit, this is to (20) be found in volume 12, page 607 line 20 to 30. And may I add that that group that came from that side, there is no evidence as to what the origins of what that group was. Whether we call it a march or whether we call it anything else there is no evidence as to who was pulling the strings or doing anything else in relation to that group. There is no evidence about it. And then he says that he saw "Assassinate the Sellout, Asinamale" and "Away With Rents". Volume 12 607, line 20 to 30. He pegs himself to details concerning the placard which he saw before a newspaper cutting was shown to him, EXHIBIT AAN. And we (30) submit/....

submit in relation to that that the small fold which appears in that photograph is no material significance and the explanation tendered by Masenya that the photograph must have been posed some time after 3 September was to say the least inventive. Volume 13, page 613 line 6 to page 618 line 18. We submit that the same applies in respect of his attempt to deal with the photograph EXHIBIT AAO. Volume 14 page 657 line 3 to page 659 line 22. Before criticising Masenya's evidence I want to draw your lordship's attention to the evidence of Selo, your lordship will recall that that is the witness (10) that lives near BP garage. He went to the house of Motjeane and found his body there which was covered with a board on which was written "Asinamale" and "Away with High Rents". The placard did not have written on it "Assassinate the Sellout". 388 22 467, 24 to 29. Again at volume 389, 22 501 line 17 to 22 502 line 28. Maphala apparently, obviously without any precognition because it came out in cross-examination, was shown EXHIBIT AAO by our learned friend Mr Jacobs who put it to him that this was one of the placards that was being made at the, I am sorry I lost my thread of thought, he said (20) that he saw the placards being made at Small Farms and AAO was not the sort of placard that was done at the.. May I also inform your lordship, and we will find the specific reference, that IC.8 says that each placard prepared at Small Farms had one slogan on it only.

COURT: Is that accepted or not?

MR BIZOS: My lord?

COURT: Do you accept that?

MR BIZOS: We do not have to accept or ...

COURT: No, no, in your argument. What is the accused's (30)
case?/....

case? I just want to know.

MR BIZOS: Well I do believe that that is the general trend of the evidence. It is a general trend of the evidence although I cannot remember, it is the general trend of the evidence. Now this is how contrived evidence is exposed and the party that contrives evidence must have the other evidence that has not been as clearly exposed as contrived tested with a magnifying glass rather than excuses being made with respect, such as the state makes in its "Betoog" about some of the unsatisfactory features. And let me deal with this because your lordship (10) did place on record your lordship's own observation in relation to the first exhibit that was from the newspaper report. Now newspaper report photographs are not very clear and this is why we went to the trouble of actually getting the photograph, the second exhibit is a photograph and not a newspaper photograph. I asked Masenya, your lordship will recall, about the size of the letters and where it was written and where it appeared. He told your lordship that they were three centimetres and "Asinamale" was written in the same way as "Assassinate the Sellout". He gave a description and then (20) when the newspaper cutting, he has got a ready answer, oh there is a little fold there on top and "Assassinate the Sellout" must be folded over which of course is in complete contradiction with his evidence that all the letters loomed large and the letters of "Asinamale" as your lordship see it in any form of scale cover half the chest or the back of Motjeane and it is clear, although it is not the same, precisely the same photograph that it is a photograph of the same incident. The people around there, the placard on his body. There is no fold shown on the photograph itself. Certainly not to excuse the (30) banner/....

the banner, or certainly the writing on a poster "Assassinate the Sellout". It could not be, on that photograph. There are two exhibits, AAN ...

COURT: AAN, AAO.

MR BIZOS: AAO. Now but if there was any doubt about it Selo's evidence puts it beyond any doubt whatsoever. And the reason why, given by Masenya, as to why this is untrustworthy evidence and he sticks to his own guns so to speak is nonsensical. Your lordship will recall the reasons that he has given. Because the newspaper was dated the 9th, it (10) being a Sunday newspaper, was dated the 9th he insisted that this was a posed thing taken, that the picture was taken on the 9th and this was not he saw there on the morning of the 3rd. That was his evidence. On the strength of the fact that the newspaper report was published on the 9th, or the photograph was published on the 9th. Which was really a, for a person who is an interpreter in a court a ridiculous explanation. How can this person be relied upon with that sort of bit of evidence? He describes what the letters were ...

COURT: But now Selo as well saw a placard on the body. (20)

MR BIZOS: Yes my lord, there is no dispute that there was a placard.

COURT: So the main point in his evidence is that the body was under a placard. You are criticising Masenya maybe correctly because his evidence differs on the content of the placard but the reason why the evidence was led, I am sure, is because there was a placard. In an attempt to connect the body to the march and Selo as well saw it.

MR BIZOS: I see what your lordship means. I see what your lordship means. (30)

COURT:/.....

COURT: Whether the attempt is effective, that is a different matter but the gravamen of the evidence is the fact of the placard on the body.

MR BIZOS: Well then I overemphasised the other part, that there was a placard saying "Assassinate the Sellout". That is what I, now it is correct that there was a placard there. There is a photograph of it, well we see it, and it would be really carrying suspicion too far that it was enacted for newspaper purposes. The people are there with the body obviously filled with sadness at what has happened. There was (10) a placard. The contrived bit of evidence is that it said "Assassinate the Sellout". That is the contrived evidence. That there was publicly distributed, that there was publicly distributed a placard saying "Assassinate the Sellout". That is the contrived bit. But now in view of what your lordship has said in relation to the other matter which I did not emphasise I want to make this submission, the mere fact that it is common cause that there was a placard on top of Motjeane's body is not proof that it came from the march on which the accused were because there are, well first of all there is (20) the evidence that it is a different type of placard. Secondly let us assume for one moment that it was identified as similar to the placards that the accused were carrying. There is no evidence as to when that placard was placed there.

COURT: At what time did Selo arrive at the corpse?

MR BIZOS: 12h00.

COURT: 12h00?

MR BIZOS: 12h00. About midday I think he said.

COURT: And Masenya?

MR BIZOS: Masenya says that he was earlier, about 11h00. (30)

I/....

I am not sure, I would have to check it. I am going to submit that he was cross-examined as to what he was doing there at all completely out of the way. But let us assume that he was, there is no evidence to directly contradict him that he was there. But there were placards from the 300, there were placards from this march. The march was dispersed. Tear-gassing, sjambokking ...

COURT: Could we pause there a moment. Is the evidence that Masenya passed the main road between Vereeniging and the post office before or after the march had been dispersed? (10)

MR BIZOS: I cannot remember.

COURT: Because he crossed from zone 14 to zone 11 and then in zone 11 he saw the body.

MR BIZOS: I cannot remember the evidence, we will have to check it.

COURT: Because if he was there after the dispersal he would probably have been caught in the cross-fire so it may well be that he crossed that street before the dispersal.

MR BIZOS: Then he would have come across...

COURT: Before the march reached it but after Motjeane had (20) been killed.

MR BIZOS: Then having regard to the proximity of Motjeane's house to the road on which the march was he could hardly have missed the march. Even if it had not reached the post office at that stage he would have been travelling at most one street parallel.

COURT: It depends on what route he took.

MR BIZOS: Depending on what, but once he had to cross the road at some time or another he had to be, to cross the road and at one stage or another walking towards Motjeane's house, (30)

one/....

one block at most away from the road on which the march was going. He does not describe the march, does not describe any singing having taken place, does not deal with it. But ...

COURT: But did you not put to him that he was in the march?

MR BIZOS: Did I do that my lord?

COURT: I think so.

MR BIZOS: That Masenya was in the march?

COURT: I think so. I am not sure.

MR BIZOS: I do not think so.

COURT: Not.

(10)

MR BIZOS: That he was on the march?

COURT: Yes.

MR BIZOS: It is possible that I have forgotten. Mr Tip will check it. If that is so, I do remember his saying that he wanted to go.

COURT: Yes he did not go on the march he said but I have an idea you put to him "You were on the march".

MR BIZOS: It is possible my lord, if those were the instructions.

COURT: But I am not sure Mr Bizos, really I am not sure. (20)

MR BIZOS: Mr Tip nods and usually that means that he is fairly certain that your lordship is correct. But we will check that. But be that as it may that that placard, when seen, when it was put there, could have been put, well it was clearly put after the man had died because, not necessarily that the person who was carrying the placard was there at the time of his death. Let us assume that a disgruntled young man or woman, particularly after the march was dispersed, threw this as a sort of an epitaph. I think that that is what the newspaper people called it. To the late Motjeane. Well how(30)
would/....

would that prove that this person came from the march? And let us take it at the worst possible for the accused that someone from one or other of the two groups did go up and put it there. Once the offending words are not there what does it show? Against the accused or the organisers of the march? So that any, I want to summarise this on the basis that the evidence that the offending words were contrived and that the state case is not proved in the absence of evidence as to who put it there and when. But the attempt to put the offending words there I submit does the state's case tremendous harm. There(10) is of course another question. Even by some stretch of the imagination that these words were there but they were folded, unlike newspaper people not to go for the dramatic thing. Who would have folded them and for what purpose? Why? Your lordship was correct. I did put it to him and he denied it. Page 664 line 3 to 5, that he did not march. But, he denied it. I put that:

"You see I am going to put to you that you actually participated in this march? -- No I did not march."

But then in relation to the time he is completely vague. (20) Shall I read it to your lordship because no inference can really be drawn at all in relation to time.

"The time that you gave us as seeing this body is 09h30. Do you purport to give an accurate time to his lordship or just an approximate time that you thought about some seven months when your statement was made? -- That is an estimation.

Could it have been earlier than 09h00 or later than 10h30? -- Because of it being an estimation I am not in a position to dispute whether is being put to me (30) because/....

"because I cannot be specific and say this was the time. That is why I give it an estimation.

Well can you be an hour out each way? -- I would not know because I did not check on the time whether I was an hour out."

COURT: What is his guesstimate? What is his time?

MR BIZOS: It looks that it, originally in his evidence-in-chief he said 09h30 which must be wrong because ...

COURT: 09h30 when he was at Caesar Motjeane's house?

MR BIZOS: Yes, that is apparently his evidence-in-chief (10) but in cross-examination his, I am correct my lord. It does not come in-chief but earlier in cross-examination apparently. But it is put to him that he said 09h30 on that page. But be that as it may we do know that the march was dispersed between 10h30 and 11h00. That seems to be the... I can see nothing of his ...

COURT: Just a moment Mr Bizos. Yes Mr Bizos?

MR BIZOS: A lot of questions are asked by me and a number of questions asked by your lordship in relation to his movements. He came from zone 14, etcetera. But there does not appear (20) anything that he came across the march in any ...

COURT: No, that is why my impression from his evidence is that he must have crossed the main road before the march, and before it was dispersed.

MR BIZOS: Well if that is so then my lord it is strange that he does not say anything about it because ...

COURT: Well he was not asked by anybody.

MR BIZOS: Yes, but be that as it may the real enquiry ...

COURT: And that places him on the scene reasonably shortly after the death of Motjeane. (30)

MR BIZOS:/.....

MR BIZOS: Could be. It could be, and that he saw a placard there.

COURT: He saw a placard.

MR BIZOS: He saw a placard. But once we do not know where the placard came from and once it was different to the ones done at Small Farms and once it does not have, the one that we know was there did not have the offending words it does not assist the state. Now the other, and perhaps the most important, oh Mr Tip has found the passage. But even, the question was:

"But even on the assumption that you did not use (10)
the tarred road as you say but went through the veld
could you have failed to see the march going along this
tarred road before 21h30."

I do not know why it is 21h30?

COURT: 21h30.

ASSESSOR (MR KRUGEL): That is half past nine.

MR BIZOS: It must be nine ...

COURT: It was pitch dark.

MR BIZOS: No it must be 09h30, consistent with, it must be a mistake in the recording perhaps. (20)

COURT: Or of the cross-examiner?

MR BIZOS: Or of the cross-examiner. No I will tell you why I am pretty confident that it is not my mistake because I have not learned to tell the time ...

COURT: Not yet?

MR BIZOS: Not yet, this new way.

COURT: It is official.

MR BIZOS: Well it may be but as you get on you are not influenced unduly by it. So I am reasonably certain that I did not put it. (30)

"-- I/....

"-- I am not saying that I would not have seen that. What I am saying is I did not see it. If they were there I cannot dispute that."

That is in relation to the march. That is in 663 line 2 to line 12. He did not see the march at all.

COURT: No that is so.

MR BIZOS: Now having being asked whether he saw it he says he did not see it. But it does not carry the case very much further. It may have been, it would appear that it cannot be excluded, it cannot be excluded that people were waiting, (10) that people were waiting for the main march had placards. That is overwhelmingly proved. That one of other of those persons went up.

COURT: Yes you have made the point.

MR BIZOS: As your lordship pleases. Now the most important bit of evidence that would have got the state out of all its troubles if your lordship could accept it, or at least some of its troubles, was that Raditsela called for violence at the meeting of the, in the morning of the 3rd. Because what happened would really be laid at the door of Raditsela who (20) shortly before the event said go out and do this. But we say that your lordship will find as a fact that that evidence is contrived. If your lordship has a look at page 356 of the indictment the state obliges your lordship and the defence with the particulars as to what happened at this momentous occasion.

"At the abovenamed church, before the march began, some of the crowd, etcetera ..."

Then 4:

"Esau Raditsela in particular organised the taking up of positions for the march." (30)

Now/....

Now this is a crystal clear mirror that the draftsman of this indictment had a statement before him as to what was happening on the morning of the 3rd at the church and the name of Raditsela featured prominently in that statement in that, in particular, he organised the taking up of positions for the march. This indictment was presented to the court and served on the accused in June 1985. This was after IC.8 and Mahlatsi had made their statements. The format of the indictment is to try and be as helpful as possible by setting out what everybody did. Look at it. Look at the other paragraphs (10) in the indictment, the detail that we are given. Not a single word about Raditsela having made a speech saying "Go and kill the councillors, go and destroy their property". Has your lordship been given an explanation for this? Is your lordship not entitled to an explanation. In the absence of an explanation is your lordship not entitled to say that it is inconceivable that the most vital piece of evidence in the possession of the state from two witnesses whose statements were made before the service of the indictment, the most important speech that Raditsela ever made in his life that probably (20) changed the history of South Africa is left out? It does not make sense.

COURT: You are making him just as important as Jan van Riebeeck.

MR BIZOS: No not as important. But nobody could pass an articulated clerk's examination for leaving that out if it was in the statement. And there were further particulars. Not a word of it. Not a word of it in the further particulars. I receive numerous mentions from my learned friends as having put some detail which was not borne out. What would your (30) lordship/....

lordship have thought of us if when we chose to make an opening address we did not tell your lordship what the accused came to tell you later, that Raditsela said you must behave yourself on this march? Even more important because after all an opening address is not a pre-requisite. Here is an indictment which leaves out the most vital bit of evidence that the state led but which we will submit was again contrived. Too good to be true, which was not there in the statement. Not there in the indictment and it could not have been in the statement because it is not alone. We are going (10) to show your lordship well both orally and when we are dealing with Tumahole in particular that there was a time when the difficulties that the state has were realised in some quarter or other and new evidence, in 1986, was led which was not in the statements and which was contrived during 1986 in order to try and convict the accused by introducing direct allegations of violence. There is no other explanation and into this class falls this evidence of IC.8 and Mahlatsi, the evidence of Branders making Mr Lekota, accused no. 20, a thrower of stones, the young woman IC.10 who says that Mr Lekota gave a lecture (20) to 200 people as to how to make petrol bombs, and that violence was advocated at the meeting of the 26th. We have already dealt with that, that Masenya put words into the mouths of accused persons that were not there, in the further particulars or in the indictment. If for no other ground the evidence of Mahlatsi and IC.8 must be rejected. But we have already given your lordship a great number of others. And the evidence of these two witnesses that gave evidence in 1986, and who are still in detention, of IC.8 and Mahlatsi is in fact contradictory. And we will deal with the evidence in detail in (30)

order/.....

order to show how the contrived evidence was shown to be contradictory and completely unreliable. IC.8 testifies that he went into the hall together with accused no. 2 and amongst those on the platform were accused nos. 8 and 15. Volume 16, page 775 lines 11 to 16, page 776 line 20 to 31. He says that Esau Raditsela spoke saying that the time was now come to march to Houtkop and "we are going to kill Mahlatsi and his brothers". He said houses belonging to the councillors must be destroyed or anything that belongs to the councillors. Property belonging to the police must be destroyed. Properties belonging (10) to the Vaal Transport Corporation must be destroyed. But all that belongs to the ordinary people must just be left alone or as they are. At this the audience were so incited that should a councillor have chanced to appear there that person would seemingly have been bitten or chewed up. That is a fair summary of his evidence in volume 16 page 777 line 8 to 22. According to IC.8 in the initial stages of his interrogation he made no mention of Raditsela's speech ...

COURT: Just a moment now. Are you now contrasing IC.8 and Mahlatsi? (20)

MR BIZOS: No I am dealing inherent ...

COURT: What are you doing then?

MR BIZOS: I am dealing with inherent improbabilities in IC.8's evidence itself, in relation to this particular point.

COURT: Yes. Thank you.

MR BIZOS: In the initial stages of his interrogation he made no mention of Raditsela's speech. He did, however, make mention of it in the course of a discussion with Captain Kruger but says that this police officer nevertheless released him without pursuing the matter or of trying to identify (30) the/....

the other persons who were present. He also says that mention of the content of his speech was contained in his statement signed several months before the indictment was served in June 1985.

COURT: Pause there a moment. Was he asked and did he say that these words allegedly spoken by Esau Raditsela were in the statement?

MR BIZOS: We will deal with it because he has contradicted himself along the way. He blows hot and cold on it. We will refer your lordship to the whole history of it. (10)

COURT: Just give me a moment Mr Bizos. Can one say that - I am sorry we are taking your out of your stride.

MR BIZOS: No it is quite in order my lord.

COURT: But we have now just got AAN and AAO. Can you say that they are the same placard or are they different placards? Not that it matters so much it seems.

MR BIZOS: I think that it is the same placard. What I think is that it may be on a different position on the body because..

COURT: That is clear, the one ...

MR BIZOS: A photographer takes a number of photographs. (20)
Presumably the one that was published found itself in the ...

COURT: No, no, the placard must have been moved around.

MR BIZOS: It is possible. It is possible because his relatives came there, it may have been over his head, the position may have been moved from the one photograph to the other.

COURT: Yes, because the sun moved.

MR BIZOS: Possibly. Possibly.

COURT: So you get a better photograph.

MR BIZOS: I do not know, whether it was adjusted or not. It may or ... (30)

COURT:/.....

COURT: No, no but that is not the point. The point is is it the same placard? Because it ...

MR BIZOS: Well I did not study it from, I assumed it was but ...

COURT: Ja it seems to us that the words "We say" right at the bottom are not on the other placard.

MR BIZOS: I did not look at that with that point of view but...

COURT: But I do not think it is very important.

MR BIZOS: As your lordship pleases. Could I just, that the photograph which makes it quite clear that if the words (10) "Assassinate the Sellout" ...

COURT: Are not there.

MR BIZOS: Are not there. I think that is the only purpose for which we really tendered the evidence. Now....

COURT: So the question I asked you is were these words according to IC.8 in his statement to the police, that is it is now time we are going to kill Mahlatsi and brothers etcetera, etcetera, and you say well he prevaricated and you do not know what his answer is.

MR BIZOS: Yes. Well on one occasion he said yes they were.(20) On, at page 1 107 ...

COURT: Of what volume, 16?

MR BIZOS: 23. I have told him that it is not in the indictment and not in the further particulars.

"Will you like to comment on the first statement that I have made? -- Yes I would like to comment to that.

Yes? -- That Raditsela's speech is not in the indictment or the further particulars I do not know. What I am saying is in my statement I did make mention of that." (30)

COURT:/.....

COURT: Yes.

MR BIZOS: "In which statement did you make mention of it?

-- During the interrogation when they were taking my statement, that is Mr Kruger.

Was it before or after June 1985? -- It was before June 1985.

And those words that you put into Raditsela's mouth were in your statement when you signed it you say? -- Those are not the words I put in the mouth of Raditsela."

This is what I mean. (10)

"And secondly the words I referred to as having been said by Raditsela were contained in my statement at the time when I signed it."

Well maybe he was objecting to the words ...

COURT: "Put in the mouth of".

MR BIZOS: "Put in the mouth of" I think.

COURT: I also raised my eyes at that.

MR BIZOS: Yes, I think ...

"Can you tell us how long before you signed it, do you know how long before June was ..." (20)

COURT: No but, well here he says that they were in his statement.

MR BIZOS: Yes.

COURT: Is there anywhere else that he says they were not in his statement?

MR BIZOS: They were not in the first statement which your lordship will find...

COURT: No but that does not matter much. The statement he says they were in his June 1985 statement, or before June 1985.

MR BIZOS: Yes. (30)

COURT:/....

COURT: That is before the indictment was drawn? Is that not so?

MR BIZOS: Yes.

COURT: What was in his first statement, that was a much much more meagre statement.

MR BIZOS: Yes.

COURT: But is there anywhere that he says he never told the police this or is his version his first statement was not as complete as his second statement but at least in his second statement this is set out? (10)

MR BIZOS: If he is to be believed it was in his second statement. The question is can he be believed.

COURT: No, no, that is an entirely different matter. What I am investigating at the moment, and I must put it on the table clearly, is whether the occasion should have arisen for the state to present you with his statement because of a discrepancy between his evidence and his statement. But if it was in his statement and he stuck to that then there is no duty on the state to give you his statement though one may say something about the fact of it not being in the indictment. (20)

MR BIZOS: Yes. Well except that there is another point really which I have already made that when you challenge a witness in this way there is no better way of corroborating him than producing his statement. A challenge which was not taken up.

COURT: Yes. That is a different point.

MR BIZOS: It is a different point. But I do agree...

COURT: No, but we, but I was actually dealing with a question of ethics and that is the duty on the prosecutor to hand you the statement of the witness.

MR BIZOS: No, if that passage is correct and it was there (30)
then/....

then that is it, as far as the ethical duty in terms of the Steyn judgment is concerned. But what I am asking your lordship to put an extra red light on is this that it is inconceivable that it would not have been pleaded. There what I am saying is ...

COURT: Yes, you are saying that ...

MR BIZOS: He cannot be believed when he says it was in his statement.

COURT: Yes.

MR BIZOS: He cannot be believed when he says that it was (10) in his statement. Especially as the Raditsela, as the Raditsela, what Raditsela did or did not do was pertinent to the mind of the pleader.

COURT: Yes we are not certain. Does it mean then that you say that on the evidence as it stands there was no duty on the state to hand over the statement of IC.8?

MR BIZOS: On that point alone ...

COURT: Unless I find of course that IC.8 is a liar and that it could not have been in his statement.

MR BIZOS: Could not have been in his statement. (20)

COURT: Yes.

MR BIZOS: Could not have been in his statement. The, I cannot take it any further than that. I have made the point.

COURT: I have got the point.

MR BIZOS: Also, with respect, when you say that the earlier statement was the more meagre statement. His evidence is that he said this to Kruger and that Kruger did nothing about it, let him go, did not ask him any questions about it. And when it was put to him that that cannot possibly be correct...

COURT: It depends on what Mr Kruger was investigating at (30) the/....

the time of course. I do not know, we do not know what he was investigating.

MR BIZOS: He is the investigating officer in this case.

COURT: Yes he is now the investigating officer. But what was he investigating at the time?

MR BIZOS: Well the ...

COURT: We do not know.

MR BIZOS: No IC.8 says, among the things that he was asked was the murder of Caesar Motjeane. One of the charges against these accused. (10)

COURT: Yes.

MR BIZOS: The then Captain Kruger was investigating what happened in the Vaal, according to this witness. Is it conceivable that what he says happened with Captain Kruger could be correct? That here is the greatest break through that any investigating officer could have, that there were three people on the platform, Raditsela, well Captain Kruger could not do anything about Raditsela but he says that there were two other people associating themselves with the call to murder and Captain Kruger does not even ask him any questions about it, (20) who these people were. Now but your lordship will recall how Professor Mathews put it that how innocent matters become criminal conspiracies in detention and interrogation. If your lordship has a look at some of his answers the innocent became culpable in his mind during the, during this four months of programming and the point that we make is that despite his evidence-in-chief cataloguing Raditsela's targets of attack and his evidence of how inflamed the audience was at his words IC.8 agrees in cross-examination that Raditsela said that when they meet the police they must not divide up or disperse (30)

but/....

but that they should proceed straight to Houtkop. Volume 21, 999, lines 29 to 31. How is that consistent with "Go out and kill the councillors"? We submit that this injunction that the march was to proceed direct to Houtkop makes nonsense of course of the evidence that Raditsela should in the same speech have detailed a series of targets for murderous attacks. When questioned about why he as a peaceful and honest man, that is the description that he gave of himself, should have agreed to participate in the march in view also of the several placards saying that Mahlatsi must die IC.8 declares (10) that he went along with the march because it was said that the march was proceeding to Mr Ganz. He goes on to explain that this thing that people are to be killed, "I thought this was going to take place after we have been to Ganz". Volume 21, 1 004 line 23 to 1 006 line 14. Your lordship will recall in my urging your lordship to analyse this sort of evidence in the manner in which his lordship the chief justice analysed it in the Ffrench-Beytag case in the Allison and Swart dispute. It has got to make sense and it does not. Then of course he could not explain why if that was the programme of the march, (20) to go to Houtkop and thereafter to go to the councillors how could there possibly be a placard held up, placards - quite a number of them I am reminded - that Mahlatsi and his brothers must be killed? Does it make sense that we were going to, that the march was going to go to Houtkop with placards "Kill Mahlatsi and His Brothers" and thereafter go and do it? It does not make sense. This is fantasy. In order to justify a previous statement made whilst this man was being programmed by five interrogators. He is unable to explain it, volume 21 page 1 006 line 15 to page 1 007 line 9. There is only one (30) explanation/....

explanation and that is that Raditsela did not say so. Let us see how he fares with the people that he puts on the, at the meeting, on the platform of the meeting. In his evidence-in-chief he says that it was accused nos. 8 and 15 that were on the platform. Volume 16 page 776 lines 20 to 31. In cross-examination he said that they were outside the hall. In response to a question from the court he then reverts to putting them both in the church hall and when the contradiction is put to him he tries to cover up the contradiction by saying that it is some time ago and that they had changed (10) appearances in the meantime. Now your lordship will find that in volume 21, page 1 012 line 2 to page 1 015 line 9. The evidence of Mahlatsi does not support him. Mahlatsi did not go into the hall because of the many people around the entrance. He could hear what was going on inside the hall but could not hear everything in consequence of the noise he says. Despite that he purports to give your lordship a detailed account of what Raditsela said and he says this is what Raditsela said, this was that it was now time to set off on the march, people had to stand in order with the placard bearers in front, it (20) was then said that from there they would go to the houses of the councillors and would call there in order to show them these placards that they must resign or accompany them to Houtkop. If they did not do this then they were to be killed and their shops would be set alight. Volume 41, 1 964, 25, 1 965, 17. I do not have to analyse these two passages for your lordship. The fundamental contradiction stares on in the face.

COURT: Yes now that, the fundamental contradiction is clear. Did you take up with Mahlatsi the question of this aspect not being set out in the indictment? (30)

MR BIZOS:/....

MR BIZOS: I am sure that I did. I have not got those notes that I ...

COURT: No I remember that you dealt with Mahlatsi at one stage. I just want to know whether you put to him that it cannot be the position as that it was in your statement because it is not in the indictment, that line of cross-examination.

MR BIZOS: I will have to check on that.

COURT: And what was his answer then.

MR BIZOS: I will have to check. (10)

COURT: Yes I would like to just have the references please.

MR BIZOS: I cannot recall but we will look into it. I do recall, it is, if I did not do it I do recall that a number of matters were taken up by the learned assessor with Mahlatsi and I actually decided to leave him at a certain stage. I am not saying that as an excuse but I do remember that there were lots of matters ...

COURT: Well the learned assessor normally took his questions right at the end.

C.1529 MR BIZOS: No I think that this was before the end because (20) Mahlatsi said something strange and I remember the learned assessor's words.

COURT: Well have a look at it and let us not waste time on it now.

MR BIZOS: No. I remember the learned assessor's words because he said "Will the real Mr Mahlatsi please stand up" or words to that effect I think, that, but we will look at it and I also have the note, I still have the note when I dealt with Mahlatsi. Now here are two people who do not agree where the march was going. Was it going to Houtkop to present a (30) memorandum/....

memorandum and thereafter to go to Ganz, and thereafter go and kill the councillors or was it going to go to the councillors and take them with them to Ganz and if they did not come they must be killed? In cross-examination these differences expanded. In direct conflict with IC.8 Mahlatsi says that he did not hear a thing about the police, nor did he hear anybody say that the property of the Administration Board must be destroyed. Nor did he hear anyone say that the buses and the bus installations must be destroyed. He testifies specifically that if Raditsela had said any of these things then (10) he would have heard that. Your lordship will find that in volume 42, page 2 026 line 15, page 2 027 line 9. I may say that in the "Betoog" little contradictions as to who was standing to the left and who was standing to the right and whether a speaker was on the platform before he spoke or not, those are not contradictions which in our respectful submission suffice to discredit a witness but when the two witnesses upon which the state relies contradict themselves, and may I borrow a phrase from the "Betoog", which version is your lordship being asked to accept? Are you, is your lordship being (20) asked to accept that Raditsela said that the police or the property of the administration board must be destroyed or that the buses must be destroyed as IC.8 says? Or Mahlatsi who says none of these things were mentioned? Did I give your lordship 42, 2 026? In conflict again with the evidence of IC.8 who testified that Raditsela repeated what he had said inside the hall to the people gathered outside Mahlatsi says that he did not repeat the speech given inside in the hall while outside and that he merely gave instructions about forming up at the church. If he had done so Mahlatsi would have heard (30)

him/....

him. Yes forming up for the march. Now your lordship will recall ...

COURT: Yes just give us the two references.

MR BIZOS: Sorry. Volume 42, 2 027 lines 10 to 25, to be compared with volume 21, 1 010, 718. Now this is the state's evidence, such as it is. But the state evidence is met by the evidence of the following witnesses. At the Small Farm church there were marshalls who called people who arrived to go into the yard and not to wait in the street. In the view of accused no. 8 they were not set up in the street simply because it (10) was not yet convenient. Your lordship was concerned and asked a number of questions in relation to this. Although accused no. 8 did not express it it may well be that this belief that it may have constituted a gathering was one of the reasons why they did not want a large group to be around. Your lordship will recall that earlier on Raditsela had given instructions that people must not hang around outside the hall. Your lordship will find the evidence of accused no. 8 on page 171, page 8 811 line 16 to page 8 812 line 6. Esau Raditsela had asked accused no. 9 to go to the gate and see to it that people (20) came in. The court again raised a question as to why this was necessary and accused no. 9's answer was that it was because people were to meet in the yard. Volume 180 9 282 lines 8 to 18. Some people went into the church building but not accused no. 8. Those inside were singing, in particular Siyaya i Petoli. 8, 171, 8 812 14 to 8 813, 4. Approximately 200 people were in the hall. There were a further 300 people outside. Accused no. 8, volume 171, 8 813 lines 25 to 28. Now let it be remembered that none of the accused have said that they were in the hall, they were busy with placards outside and (30) arranging/....

arranging the march. But I submit that a very important witness gave evidence about what happened inside. The caretaker Ratibisi confirms that approximately 200 to 300 people went into the hall. The hall was not full, since the majority of the people who came in did not move deep into the hall but congregated around the entrance. Now I will give your lordship the reference to that because it negatives a suggestion made by the state in the "Betoog" that it cannot be right, the defence witness who have given evidence cannot be right when they say that the hall was not full because Ratibisi really(10) explains it because people, when they expect to be there for a very short while do not move right in and they block up the entrance. Volume 206 page 17 573 lines 26 to 29 and volume 307 page 17 622 24 to 29. In further contradiction of the evidence of IC.8 that the hall was full Dhlamini testifies that it was not and that whilst she was inside more and more people gathered around the door, 326, 18 630 2 to 27. Shortly before 09h00 the placards were finished and Raditsela went into the hall to ask the people there to come out. He informed the people that the march was heading for Houtkop and they must(20) behave themselves on this march. In accordance with the discussions that there had been on the 2nd, that is the previous day, the meeting of the area representatives. Your lordship will find that in the evidence of accused no. 8, 171 8 813 29, 8 814, 11. No. 2 testified that when he and IC.8 arrived at Small Farms they went to the hall but were unable to gain entrance because of the number of people congregated at the door. From this door they did not have sight of the platform. Accused no. 2 could hear someone speaking saying that it was now time to go to Houtkop. People then came out of the (30) hall/....

hall in an orderly fashion. 220, 11 687, 1, 11 688, 24. Five defence witnesses have said what was said inside the hall. Ratibisi was in the hall and head Raditsela speak saying this is now the time which has come, the time that you have been waiting for to go to Houtkop. He was saying that the people were to behave themselves and that nothing would happen and further said, and assured the people that even if the police were to emerge nothing would happen as long as they were well behaved. He further said that there would be people supervising the march. He is a man who is not given(10) to extravagant language but he said it is a lie that Raditsela said that they must go and kill councillors and destroy their property or that he said that they must go and destroy the administration's property. Ratibisi understood the purpose of the march to be to go to Houtkop and knew nothing of going to any councillors houses. It did not have as its purpose the destruction of the property of the Vaal Transport Corporation. Your lordship will find that in 306, 17 574, 9 to 17 575, 10. Let me pause here for one moment. I do not know what recollection one can have after one has heard almost 300 witnesses.(20)

COURT: One had quite a good recollection but it sort of fades during the argument.

MR BIZOS: Yes well, but let me remind your lordship that this man is a man who is a caretaker at a church, has a family, he has a job. He says that he was at this meeting. He joined the march but his sense of duty sent him back when he saw that there was some trouble ahead at the intersection because he was concerned about his property. He has not contradicted himself. There is no reason that can be validly advanced as to why the caretaker Ratibisi should be untruthful. Which (30)

is/.....

is more probable? A man who has spent, who is accused of murder, who was beaten up, who was detained, who denied that he had any part of, who spent four months under interrogation? Who is more likely to be telling an untruth? IC.8 or Ratibisi? When your lordship knows that IC.8, not this dock, the other dock, stood there and brazenly lied to your lordship as to how he broke his teeth.

COURT: Yes but you are now running across the same field again.

MR BIZOS: No.

COURT: I can remember what your argument was. (10)

MR BIZOS: Yes. Well my lord we have advanced numerous reasons why IC.8 should be disbelieved. We can find no valid reasons in the "Betoog" as to why Ratibisi should be disbelieved.

COURT: Yes there is one consideration that I had and that is this that Ratibisi being the caretaker of a Roman Catholic church can hardly admit to an inflammatory speech being made in that church. That would look very bad.

MR BIZOS: But of course it would look very bad, but why did he join the march if there was this inflammatory speech? Did he, could he possibly have struck your lordship as a man (20) who would join a march to go and kill councillors? And is his word to be rejected against the word of a man like IC.8 who you know told your lordship a number of demonstrable lies, about the tape, about the assault, a man who has made a statement which binds him to repeat it in court at pains of five years imprisonment. It only has to be stated for the answer to fall very readily and this is what we are asking your lordship to do. And Ratibisi does not stand alone. Dhlamini, that in the hall ...

COURT: You need not repeat the evidence, just give us the (30) reference/....

reference.

MR BIZOS: Right. 325, 18 602, 21, 18 603, 6. Nyembe, 327 18 690, 20, 18 691, 23. Oliphant, 328, 18 788, 16-25. Lephele, 336, 19 160, 20 to 19 161, 14. No valid reasons have been advanced in the "Betoog" as to why the evidence of these witnesses should be rejected. Your lordship may have noticed that I have not yet told your lordship the obvious, and that is that there is an onus in this case ...

COURT: That is not news.

MR BIZOS: That is not news. I will not say it again. But (10) we have two tarnished witnesses against five people without any substantial contradiction against them as against two tainted witnesses with contradictions on the very points in issue. One does not even have to look at the question of onus. And when the people came out from the hall Esaud Raditsela addressed those assembled in the quadrangle at the church saying that they were now going to leave on the march for Houtkop, that they must behave themselves in a proper manner, that there would be marshalls and that he further spoke of what was to happen if the marchers should be stopped by the police. This was to (20) effect that they should not panic, that the leaders would speak to the police and if the police refused to permit the march to continue it would then have to disperse. Now the accused who were outside support this. No. 8, 171, 8 814, 12 to 8 815, 13. Accused no. 8 himself spoke briefly, telling people to watch for the marshalls and ask the marshalls not to allow the march to move too fast because of the number of elderly people in it. 171, 8 815, 14 to 8 816, 6. No. 17 also spoke as to how people were to behave. Accused no. 8, 171, 8 816, 7 to 20. Accused no. 8 says specifically that he heard no incitement to (30) violence/....

violence from any speaker there. 171, 8 816, 21, 8 817, 11. And this all the witnesses agreed with. Raditsela did not suggest that people should have wet cloths with them in case the police threw teargas. As had been raised in the course of the cross-examination of the witness IC.8 by defence counsel. Your lordship will find that 177, 9 123, 26 to 9 124, 12. IC.8 did not hear Raditsela talking about wet cloths in the case of teargas. 21, 1 000, 13 to 15. Mahlatsi too did not hear any talk from Raditsela about wet cloths in case of teargas. His observation that he had noticed people wetting (10) some cloths has no connection at all with what Raditsela might have said since Mahlatsi makes it clear this happened before Raditsela spoke. 43, 2 086, 31, 2 087, 5. Further confirmation of the fact that Raditsela did not say anything about having wet cloths in the case of teargas is to be found in the evidence of Ratibisi. 307, 17 634, 29, 17 635, 17. Dhlamini, 326, 18 639, 19 to 21. Nyembe, 328, 18 750, 25 to 27. Now since it was I who put this it is necessary for me to make a submission in regard to it. It is true that what is being put on behalf of an accused may be used, if it goes to (20) admitting a fact, to an admission of fact, or displaying a particular attitude. But then before that can be used against the accused there are certain pre-requisites. Firstly that it was the accused who gave the instruction.

COURT: Could we pause there a moment. You may be quite right but say for example the state had a number of witnesses on this aspect and they did not lead it because you had put this as the position.

MR BIZOS: Yes.

COURT: What would the position be then? (30)

MR BIZOS:/.....

MR BIZOS: No my lord, it would be an admission of fact. It would be an admission of the facts that they had to prove.

COURT: Yes?

MR BIZOS: Let us assume that I put, we agree that it was thought that there would be violence. Then they did not have to call any further witnesses. The accused agree, the accused agree that Raditsela said this but this, but this is something which was denied by the two state witnesses, denied by a number of defence witnesses and it was said at a place where none of the accused were, on their versions. And your lordship is entitled to an explanation, with respect. Because this is as to whether they were going to have lappies or not is not one of the main facts in issue in this case. If they had evidence that violence was advocated I think that they would have been most foolhardy to have been misled by what I put in relation to lappies. It was put, it was put - I am not allowed to make ex parte statements but your lordship, once your lordship knows that there were no accused there what has happened in this case? We have had to seek information about many matters to which the accused were not a party. (20)

COURT: Yes well it would then appear that these five witnesses who gave evidence on what happened inside either were not consulted on this aspect and somebody who was consulted was not called, or that they changed their stories.

MR BIZOS: Well that, what you would have to find is, with the greatest respect, that any one of these witnesses, that any one of these witnesses had mentioned this detail in passing. And also you would have to exclude the possibility that an attorney doing research as to what Raditsela said in the hall, that someone - either as a result of faulty memory or because (30)
he/....

he thought that he may be improving the accused's case in some way - said this to the attorney and this instruction was carried to me and I put it.

COURT: Yes obviously, but you got that instruction so we must either take it that it came from these witnesses or that it came from somebody who was not called.

MR BIZOS: Well one of those.

COURT: That is the only conclusion.

MR BIZOS: That is the only conclusion. Or that it was mentioned by one or other witness and during the course of (10) consultation it turned out that that witness was unreliable and that witness was not called. Or any one of those possibilities. I am not allowed to give your lordship ex parte statements in the same way as the state cannot give your lordship ex parte statements. But to elevate this into an admission of what? The context in which it has been put was this, that there has to be such discipline that even if the police use gas we must try and get to Houtkop. That is the context in which it was put. If your lordship has a look at it, not because there would be violence or that he was ad- (20) vocating violence but the moment witnesses deny it, and your lordship will decide it on the evidence, the state witnesses denied it, there was fanfare made by the state, "Ah you see Mahlatsi says they were at the tap". But I am indebted to my learned friend Mr Tip for having dug up this little bit of evidence that I have referred your lordship to, that it was actually before they went into the hall, before Raditsela had spoken. So what does one make of it? That is in volume 43, 2 086, 31. Right at the bottom of 2 086:

"Did he say anything about not allowing themselves (30)

to/....

"to be provoked by the police?"

This is the context my lord.

-- No.

Did he say that they should provide themselves with wet cloths in case the police threw teargas and this would be an aid? -- I noticed people wetting some cloths but that was before he had spoken."

Now how on earth can this be elevated as corroboration of the evidence of IC.8, who denies it, or corroboration of the evidence of Mahlatsi who denies it and how can your lord- (10) ship make a finding of fact in relation to a matter that was put about which the accused have no personal knowledge. It would have been different if there was only one accused or any one of the accused said that he was inside. Then of course it would have been a permissible question to ask. You heard Mr Bizos put that, if it was not said why did you allow it to stand or why did you not correct him. But they were not there, what could they say, in Delmas. Not, and in custody at the time. So that that is the sort of thing on which cases are not decided despite the state's attempt to elevate it to (20) such. I do not know if your lordship wants to take another fifteen minutes or so?

COURT: No you can add two minutes to your credit, it makes it twenty.

COURT ADJOURNS UNTIL 1 SEPTEMBER 1988.