

Ass

SAAKNOMMER: CC 482/85

DELMAS

1987-06-29

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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COURT RESUMES ON 29 JUNE 1987.

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

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

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

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

can look it up then.

MR BIZOS : We welcome that indication.

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

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

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

HOF : U kan dit aan my griffier gee.

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

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

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

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

MR BIZOS : What we say on top of page 5 is the following.

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

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

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

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

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

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

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

"The likelihood of conduct by the accused which may endanger the security of the State or public safety has been held to constitute an exception to the general principle that an accused person should not be denied bail unless the administration of justice would be prejudiced by granting it." (30)

So/...

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

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

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

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

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



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

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

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

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

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

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

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

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

Then the submission in the State's heads of argument that since the Court has ruled that there is a prima facie case, the probability is that the accused will not stand their trial is not well-founded. Too many times in Your Lordship's experience has a prima facie been defeated by a mere denial. In this case not only have there been denials, numerous witnesses are to be called in support of their version. (30)

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

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

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

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

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

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

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

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

But/...

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

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

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

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

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

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

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

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

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

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

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

Then/...

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

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

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

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

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



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

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

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

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

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

its/...

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

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

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

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

to/...

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

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

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

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

MR BIZOS : If this is the same interview.

COURT : I do not know.

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

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

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

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

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

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

organisations strongly opposed to government policies.

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

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

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

COURT : I read all that.

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

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

It/...

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

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

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

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

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

Lordship/...

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

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

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

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

because/...



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

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

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

in/...

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

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

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

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

should he be kept in jail?

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

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

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

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

Botha/...

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

Botha in reply contends himself with the bold alle- (10)  
gation that according to his information the person mentioned in O1 is the same person as accused no. 14, but it is a question of record as to whether a person was a detainee in terms of Section 29 or not. If the State does not admit it, we will be able to call a jail authority to say that he was in safe custody during these periods. I hope that it will not be necessary, but it was raised with Mr Fick as soon as we started our case.

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

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

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

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

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

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

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

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

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

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

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

something/...

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

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

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

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

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

by/...

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

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

In/...



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

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

COURT : You should bear in mind my retirement date.

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

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

find/...

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

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

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

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

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

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

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

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

his/...

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

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

I am indebted to Your Lordship for a patient hearing.

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

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

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

(30)

Ek/...

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

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

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

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

tot/...

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

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

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

Dit/...

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

Dan sê My Geleerde Vriend in paragraaf 26 op dieselfde bladsy, bladsy 13 daar is geen bewering êrens in die Staat se dokumente dat die veiligheidstoestand dieselfde is of dieselfde gebly het nie. Ek wil u verwys na BEWYSSTUK V12.

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

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

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

Dan op bladsy 18 paragraaf 31 van My Geleerde Vriend se hoofde word gesê "That the UDF is a lawful organisation carrying an acceptable political activity." Ek nooi My Geleerde Vriend om te bewys waar staan dit in die stukke wat hy ingehandig het. Dit staan nie daarin nie, dat die Minister sou gesê het dat UDF met "acceptable political activity" mee besig is nie. (30)

Dan/...

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

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

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

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

dit/...



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

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

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

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

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

dat/...

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

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

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

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

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

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

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

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

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

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

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

Saam hiermee moet die Hof met respek lees V1. Dit is bladsy 646. Dit is die Mayibuye nr. 3 van 1987. Ook die Editorial en ek verwys u meer spesifiek na die derde paragraaf. Daar sê die ANC die volgende oor organisasies in die binneland "In the past we have emphasised the need to work(10) underground in order to counter the enemy" en dan gaan hy aan "and however the need to have organisations operating openly cannot be over-emphasised. We need them to mobilise the broad masses into action on all the issues that affect the daily lives. These legal organisations are important to strengthen one of the pillars of our struggle namely mass political activity which must exist side by side with the other pillars, namely the ANC underground MK armed activity as well as international action to isolate the regime."

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

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

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

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

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

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

MNR. FICK : Dit moet AAS wees, die lys van erkennings.

AAD is dokumente wat later ingehandig is.

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

The/...

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

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

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

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

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

on/....

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

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

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



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

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

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

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

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

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

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

COURT : And AAD5 is what?

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

which indicates that C100 was a part of it.

COURT : Yes, but where was each found?

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

MR BIZOS : That is correct. AAD2 says the following. This is a document headed "From protest to challenge, from a mobilisation to organisation" and it says underneath "The national general council adopted the above slogan as its theme. What does it mean?" Then underneath "This is a summary of a discussion paper which was prepared by the Transvaal (10) Education Committee. The views expressed in this paper are not the official views of the UDF."

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

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

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

NECC/...

NECC and their affiliates and other democratic formations.

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

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

COURT ADJOURNS.

COURT RESUMES.

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

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

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

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

What we will ask Your Lordship to do is, he sets out the BBC monitoring of the Radio Freedom passage, Your Lordship will see that the similarity in language in using the we in a broad sense in both the passage "The apartheid President P.W. Botha reimposed his twelve old state of emergency. This means that our residential areas (it claims all the residential areas in South Africa as ours) will continue (10) to be occupied by heavily armed troops and police. That many of our comrades will be arrested without committing any crime." It cannot really be referring to cadres of Mkhonto we Sizwe. "Many of our people will be murdered by those occupationist forces and the real truth about what happens will continue to be hidden from the public eye through the press." Again "many of our people will be murdered." I am not suggesting that they would be people who are really members of the - and he goes on to say "From the context of these opening words it is clear that the (20) speaker uses the word 'our' to refer generally to the people of South Africa. This is not a unique example of the ANC'S use of words 'we' and 'our' in a general sense. In all ANC documentation there is the use of the word 'we' to denote we , the people. This is an accepted form of address from an organisation which is of the nature of the ANC. There are times when the ANC issues statements using the word 'we' or 'our' which clearly mean the ANC. It is necessary, however, to read ANC texts with extreme caution if one is going to apply them as a guide to the nature of (30) activities/...

activities taken by the ANC itself."

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

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

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

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

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

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

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

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

or/...

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

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

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



there will be much evidence in relation to that.

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

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

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

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

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

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

Thank you.

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

COURT ADJOURNS UNTIL 30 JUNE 1987.