

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA  
(TRANSVAALSE PROVINSIALE AFDELING)

A

SAAKNOMMER: CC 482/85

PRETORIA

1988-09-01

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

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KONTRAKTEURS:

LUBBE OPNAMES  
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VOLUME 452

(Bladsye 26 748 - 26 826 )

THE COURT RESUMES ON 1 SEPTEMBER 1988.

MR BIZOS: I want to apologise on behalf of the accused, m'lord. The kombi that served them so well for such a long time was blown up in the unfortunate explosion at Khotso House. Other alternative arrangements had been made but taxi drivers are not as reliable as accused no.15 who has been driving all the time.

COURT: Yes, I am sorry to hear it and my thanks to accused no.22 for letting us know.

MR BIZOS: He did try to get your lordship's registrar. (10 I was wrong yesterday when I said the learned assessors' remarks were made before I had finished. In fact they were made at the end when your lordship's assessor asked questions. That appears in volume 44, 2 115 and subsequent pages. In answer to your lordship's questions as to the circumstances under which Mahlatsi made his statement, I have found the references and I would like to give them to your lordship and submit that this evidence is clear that he made two conflicting statements. It is of some importance in relation to his credibility so I will take a little time in relation(20 to it. The first time that there is mention of it, he denies that he was on a hunger strike although he admits that he had not eaten for eight days. Now the eight days is of some importance because he says he signed the statement three or four days after his detention, but he speaks of one statement only at that stage. Your lordship will find that in volume 41, 175 line 7.

COURT: Sorry, it is 41 - 175 cannot be..

MR BIZOS: 1 975 line 7 going through to 1 976 line 14, the whole of that. Then when he was asked whether he made any (30

other / ..

other statements he says guardingly, after the first statement he made a second statement after about two days because he wanted to clear up certain things and your lordship will find that in 76, 15 to 21.

COURT: I am sorry, 76?

MR BIZOS: Sorry, 1 976, still in volume 41. All these references are in volume 41. 1 976 line 15 to 21.

COURT: That part of the argument we have had already. The question was did you get from him that it was in his statement when the statement - yes, in either the one or the (10 other statement, this story about the violence or did you get from him that it was not in his statement?

MR BIZOS: No, what I did get from him was that it was specifically not in his first statement.

COURT: And in the second one?

MR BIZOS: ..and it was specifically put into the second statement.

COURT: It was in the second statement?

MR BIZOS: In the second statement.

COURT: Yes, well, it is very strange if you take into (20 account that at first he denied everything virtually and then he came out with the story.

MR BIZOS: Yes.

COURT: On his version. But the evidence is at 41,1 976 then that it was in his second statement the allegations that violence has been preached.

MR BIZOS: No, it is later on, M'lord.

COURT: Later on?

MR BIZOS: It is later on, because your lordship will see that his statement - he excuses himself because he was a (30 priest / ..

priest and would not be seen in the eyes of God - I have already given that to your lordship, and that he did not have a happy feeling. That is to be found in 1 978, 1 to 12. And then the subject matter that he added in the second statement was pertaining to the march, to the setting alight of Caesar's house and what happened at the councillors, what was to happen to the councillors. Your lordship will find that in volume 41, 1 978, 22 to 26. Furthermore that in his first statement he did not say anything about violence being spoken about at the meeting of the 26th. (10

COURT: No, that we know.

MR BIZOS: He did not mention that Esau Raditsela called for violence against councillors on the morning of the 3rd.

COURT: In the first statement?

MR BIZOS: In the first statement.

COURT: Yes, you need not go to the first statement. The first statement was expulpatory as far as I am concerned.

MR BIZOS: As your lordship pleases.

COURT: The second one he told the story. Now you say that these references say that the story did cover the incite- (20  
ment to violence by Esau Raditsela before the march?

MR BIZOS: Before the march, yes. After he had made a statement on oath that he knew nothing about violence, that no violence had been mentioned by anybody in the first and he only mentioned it in the second statement. But now on the issue that your lordship asked me on it appears clearly on the subsequent pages that both statements were taken on oath according to him and on the question of disclosing of statements which I understood the gravamen of your lordship's question.. (30

COURT / ..

COURT: Yes.

MR BIZOS: The matter was telegraphed in very clear terms by me on volume 42, page 2 005, lines 20 to 26, by asking him whether Captain Botha has told Mahlatsi of the seriousness of making two conflicting statements on oath because he accepted that what Mahlatsi told him was the truth in the last signed statement and it is clear with respect, if he is telling the truth, if he is telling the truth and there were two statements on oath we were entitled to have the statement on oath saying that there was no violence to cross-examine (10 him on it.

COURT: Yes.

MR BIZOS: And going on his credibility - have I given your lordship the 255 reference?

COURT: Yes, 2 005.

MR BIZOS: 2 005. Then according to his evidence at 2 006 1 to 17, Captain Botha expressed satisfaction when Mahlatsi made his second statement and these are significant words on Mahlatsi's lack of credibility, expressed satisfaction when Mahlatsi made his second statement because it was in accor-(20 dance with what the others had told him.

COURT: That is not very sinister if it was the truth. If a policeman has give people who say no X said kill the coun- cillors and he gets to no.6 and no.6 says I know nothing about it, but after a while no.6 tells him yes, it is true, X said kill the councillors then the policeman will say yes that is quite right because I have heard it from five others. So it is not sinister actually.

MR BIZOS: That is one approach.

COURT: It depends on whether it is contrived evidence or (30 not / ..

not.

MR BIZOS: Well, what we are trying to find out m'lord, whether it is reliable evidence.

COURT: Yes. No, you have made the point.

MR BIZOS: But whether it is reliable evidence that a person makes a statement on oath denying that there was any violence, he is a hunger strike and then he is praised by the officer for making a subsequent contradictory statement; that is a tremendous reward and he is given a radio to occupy himself with according to his evidence. We have a person in detention..

(10)

COURT: I think we covered this ground.

MR BIZOS: As your lordship pleases.

COURT: What you have told me I have all written down, I made my remarks and my comments on the right-side side so you need not cover the ground twice.

MR BIZOS: Yes. What I submit, I am concerned about - I must make submissions and not express my concerns. What my submission is, is that the proper approach in relation to this matter is that where a witness has contradicted himself on oath, to reward him for making a second consistent state- (20 ment with what the police officers believes to be the truth and then that person is brought to court to give evidence in accordance with the second statement without the first statement being disclosed by the state, is both irregular and dangerous and accepting or even seriously considering accepting such evidence is not in accordance, with the greatest respect with the approach in which the cases tell us that this sort of evidence should be approached.

We were busy yesterday on my giving your lordship the people who had contradicted these two most unsatisfactory (30 witnesses / ..

witnesses and I was about to give your lordship that accused no.9 gave evidence, that he heard 8 and 17 saying outside that people must behave themselves and no mention of any killing. Volume 180, 9 283 - 12, 9 284 line 26. The evidence of accused no.2 is to the same effect. Volume 220, 11 688, 24; 11 689, 14. In relation to what was said by accused no.8 and 17, again no.2, 220, 11 689, line 17; 11 690, line 4. No.2 specifically denies that anything was said about going to councillors houses. 220, 11 690, 5-13. The accused are corroborated that no violence was advocated outside, Ratebisi, 306, 17 576, 1-10; Dhlamini, 325, 18 603, 8-14; Myembe, 327, 18 691, 27 to 18 693, line 11. Oliphant, who was both inside and outside, denies the version of these witnesses in relation to both inside and outside, 328, 18 789, 3-12; Mapala, 320, 18 336, 1; 18 337, 17. The arithmetic then is that we have two what we submit completely unsatisfactory witnesses, contradicted by three of the accused and five independent witnesses. We can find no valid reasons advanced in the "betoog" as to why your lordship should reject the evidence of the accused and their witnesses and accept the tainted evidence of these two. (10 (20

Then in relation to the leadership of the march, it is alleged in paragraph 77.9 that the march was led by Raditsela Accused no.17, accused no.5, accused no.13, accused no.15 and accused no.2. In his evidence IC.8 leaves out 5 and 15 from this group of march leaders, but includes no.8, identifies no.13, Raditsela..

COURT: No sorry, does he - well, if he leaves out 5 and 15 it means that no.13 is in.

MR BIZOS: Yes, but he adds - he adds and that is why I put / .. (30

put it, he adds - the adds was in the wrong place, he adds accused no.8.

COURT: Yes, we have that. You say he leaves out 2 and adds 1.

MR BIZOS: And adds 1, yes. Mahlatsi identifies..

COURT: Your reference is, I am sorry?

MR BIZOS: 17, 780, 1-15. Mahlatsi identifies 17, Raditsela and Hughes who had since passed away. Your lordship will find that in volume 41, 1 967, 2-5. May I draw your lordship's attention that Mahlatsi would have known on the evidence (10 the persons who would not have been as well known to IC.8 because your lordship will recall that accused no.15 was on the same area committee as him already he attended only one meeting and one public meeting, nevertheless it was two meetings at which Mahlatsi was and he knew accused no.8 well. He presided at the meeting at which he was on the 26th and was also a person who was on the area committee, but they are not included. These divergent accounts are disputed by the defence and it is the defence case that the leaders were in fact Mr Ramakgula, accused no.9, the Rev Mahlatsi himself (20 and a Mr Ntombeni. Your lordship will find that, accused no.8, 171, 8 817, 14-26; accused no.9, 180, 9 285, 1-10. Oliphant says he was actually ushered on to the march by Mahlatsi, 328, 18 791, 9-14. Accused no.2, 5 and 13 have given evidence to support this part of the defence case. I will give your lordship the references in the order in which I read them out; 221, 11 693, 4-11; 206, 10 818, 20-25; 243, 12 971, 6-11. The evidence evidence is that people were actually chosen from different zones and that he himself was chosen, it is according to accused no.9, and he specifically(30 denies / ..

denies that those mentioned by IC.8 led the march. Accused no.9, 180, 9 287, 8 to 9 289, line 3, 9 289 line 29 to 9 290 line 12. Of course unless it did happen, why should accused no.9, Mr Ramakgula, put himself at the top of the march? No satisfactory reason had been..

COURT: You see - yes, that is so, it becomes a great mix-up but on your theory of contrived evidence one would have expected Mahlatsi at least to tell the same story as IC.8 on who was leading the march and it is totally different. It does not help the state. (10)

MR BIZOS: No, the trouble with contrived evidence is that it is more likely to be inconsistent, it is more likely to be inconsistent.

COURT: Normally in chief it is reasonably consistent and in cross-examination it goes its own way.

MR BIZOS: Well, sometimes contrived evidence goes there, but what has your lordship got to weigh, to weigh up, that here are two people who have selected the people in the dock as leading the march, after their detention and their treatment and their contradictory statements and you have a man who (20 is almost an illiterate simple man who tells you his sense of grievances as to what has happened to him and he says no, I became involved in this and I felt so strongly about this that I accepted this position of leading the march. Why should he say that? Why should he put himself at the head of the march when there was no evidence that he was on the march at all? Unless what he says is true. And the aphorism with respect that the mere fact that contrived evidence could have been contrived better I have always been told is not a good argument with respect, and there was good reason why (30

the / ..

the people involved in the VCA did not go right up to the front, because that was just a ceremonial act at that stage. They were concerned that the march should be got onto the road in an orderly fashion, that is the evidence, and there is no improbability in that. Accused no.8 positions himself in the middle of the march and says that Raditsela was there as well no.8, 171 -

COURT: Oh you mean you are going on to the position where Raditsela was?

MR BIZOS: No, I am merely saying that Raditsela was not (10 among those that led the march out of the church premises. 171, 8 821, 17-27. Ratebisi says that Raditsela and he and another remained behind to check that the hall was properly locked up and that the windows were closed etc. 306, 17 578 21-27. Much cross-examination as to the position of the windows and who closed which window and other ancilliary matters took up much of your lordship's court time but I submit with respect that that is no reason why this evidence should be rejected. And it is not denied that Raditsela took a leading role in the organisation of this march. It is (20 not that the accused tried to minimise his role for some reason or another. They are merely saying that he, being the person responsible, he did not as the state witnesses say go behind the placard holders. Now I submit that the presence of marshalls and the plethora of evidence in relation to their participation in this march creates a probability in favour of the accused that those responsible for the march wanted it to be a peaceful march. A mob does not need marshalls. I will merely give your lordship the list of people that had given this evidence.. (30

COURT/. .

COURT: Well, is it not common cause that there were marshalls?

MR BIZOS: I think, yes, I do not think..

COURT: I think the state witnesses said so and the defence witnesses said so.

MR BIZOS: Thanks m'lord, that leaves out part of the market report, part of the argument. The composition of the march is described by accused no.8 as consisting approximately 75% of the people being between the ages of 30 and 60; some over 60 and approximately 25% were between 18 and 30. No.8, 171, 8 818, line 8, 8 819, line 1.

COURT: Where was the rest of the population? The spread of the population in the townships is normally that those below 18, or let us make it 20; that those below 20 are 60% of the people. Where were they?

MR BIZOS: Well, m'lord..

COURT: Just standing at the gates?

MR BIZOS: Possibly standing at the gates but I do not know what experience your lordship has of young people, but they were probably sleeping until 11 o'clock.

COURT: When a march passes by? The greatest event in years?

MR BIZOS: Well, not everybody was sure that it was, but one thing is clear that this question of the age and the orderly manner of the march was put in issue right from the beginning. It approached a platoon of police officers. I do not want to repeat myself but why weren't they called to put this matter beyond any dispute. No explanation has been given to your lordship and how does one excuse the party on whom the onus rests on so fundamental an issue? A responsible police officer coming into the witness-box saying that this was a mob of children or youths, unbridled, disorganised, a(30  
mob / ..

mob. Where is this evidence? It is common cause that it was an orderly march when it got to Hunter's Garage and it creates a tremendous probability in favour of the accused that none of the people in this march did anything at Caesar Motuane's house. How does a murderous crowd become an orderly march. There is no evidence that - I know that many enquiries were made during the course of this case about the role of the children, but there is no evidence from the state or from the defence that this was the irresponsible youth that was marching. There is evidence of gangs of people going to (10 Motuane's house who were mostly young but there has been no nexus whatsoever between those groups and the people on the march. And I would urge your lordship with the greatest respect not to take seriously that AN.15 pamphlet which loomed so large during the course of the trial saying: Residents, Workers, Parents, Children. That is not evidence of the composition of the march.

COURT: Nobody has said so.

MR BIZOS: Well, it is the only suggestion in the evidence that the children would have any role to play in this and (20 also whilst I am on it, I think that because it really belongs here as well, it is significant that in the Vaal there were no school boycotts. What happened to this grand conspiracy of using COSAS and using - in order to ferment revolution and ungovernability. Not only is there no evidence that there were no school boycotts in the Vaal before 3 September but your lordship will have heard with monotonous regularity particularly the women in the case describing how they got up to see whether their children could go to school and what the situation was like outside and accused no.5 when (30 specifically/..

specifically asked says there was not anybody there under the age of 16. 206..

COURT: Yes, I heard the evidence.. What is your reference?

MR BIZOS: 206, 10 821, 20-29.

COURT: Now what do you say to the proposition that it is rather strange because we know the children would join the march if they get the opportunity and they were not prevented from joining. It is a great fun occasion. Here people are with placards and singing a happy song: "Siyiya eHoutkop" and the children do not join?

COURT: I have not seen a march, m'lord. I have not seen a march of this size in my life ever. I saw a few marches of students in my day.

COURT: Ja when you were 16 wouldn't you have joined? At the moment you might have a bit of a problem but..

MR BIZOS: (Laughs) Yes. They might or they might not but the point that I am making is that the evidence is that they were not and let me also take it - and this is a matter of concern that your lordship and learned assessor and my learned friends asked many questions about it. Let us assume that there were children on this. Where does it take the state?

COURT: Oh, that is another point. I was just mentioning it as a point of credibility.

MR BIZOS: Well, it is not unknown for defensive positions and I will refer your lordship to authority in relation to this, for defensive positions to be taken by persons in the dock on serious and sometimes not so serious charges. The accused's impression of the age group is the expression of an opinion. It is not really something that..what percentage or whether there were any children, the mere fact that your(30  
lordship/..

lordship is of the view that there is an improbability in relation to this sort of detail, it does not really go to the heart of the matter. It does not really help in the process of making a finding of fact relevant to the main issues in the case and what I would submit with the greatest respect that this whole question of youth and this whole question of children may have been of some relevance, if foreseeability had anything to do with any of the charges that the accused are facing on this indictment. We submit that this was not the case that we had to meet. I do not know if people (10 calling for marches have got in certain circumstances to be careful as to who really joins it, but it has nothing to do with the charges in this case. On what basis can it fit into anything that the accused..

COURT: No, you have made the point.

MR BIZOS: As your lordship pleases. A number of witnesses have testified about the age of the marchers, the common effect of which is the majority were adults including towards middle-age and I have again a list of 7 witnesses - I do not know if your lordship want the references, but this is the (20 evidence that the vast majority of the people there were adults. There is no reason to reject the evidence with respect and it creates a probability that the march was of people concerned about the increased rental who wanted to go to Houtkop. Ratebisi, 306, 17 577, 11-28. Mapala, 320, 18 340 1-15. Mokati, 324, 18 565, 5-12; Oliphant, 328, 18 791, 28-30; Radebe, 333, 18 999, 2-5. Mazibuko, 338, 19 264, 29; 19 265, 2. Celo, 388, 22 465, 3-7; and our submission is insofar as it may be necessary to make a finding, that the finding should be that that was the position. I have not (30 noticed / ..

noticed any satisfactory evidence from any state witness to the contrary.

It was not the state case on the evidence that this was a march of unruly children. I have no specific, we might have to look specifically whether they were asked about it but I certainly have no recollection of their telling your lordship that there were groups of unruly children in this march.

Then the next section is the march up to the intersection. It appears to be common cause that the march started off at 09h00 or thereabouts, a few minutes before or a few minutes (10 after. If your lordship wants a reference to that, accused no.8, ..

COURT: I do not think you should burden us with this.

MR BIZOS: As your lordship pleases.

COURT: There are a couple of points on which there is wide diversion but on points like this where there is a couple of minutes this way or that way, it does not matter at all.

MR BIZOS: As your lordship pleases, but the time is of some importance in view of what happened elsewhere before that and in view of that is alleged in the indictment to make (20 the accused liable for what happened, for the things that happened earlier even before their march started. Not all the accused who participated in the march were in the front of the march at the start. Although not alleged to have been a participant Mr Mphuthi, accused no.7, testified that he had taken part. After assisting with the march due at Small Farms at the time of forming up of the March, he went to his brother because your lordship will recall he saw Mr Ratebisi there, he had left his bicycle at the caretaker's place and he thought it wise to go and put his bicycle at his (30 brother's / ..

brother's place. Now the evidence of accused no.7 is of some importance on the probabilities because your lordship will find his evidence..

COURT: Yes but now on which probabilities?

MR BIZOS: As to where the march was going, m'lord, as to where the march was going. Because he was not challenged on this. Your lordship will find his evidence at volume ...

COURT: But is there a debate that the march was going to Houtkop? Isn't there a debate as to whether the march was going to pass the houses of the councillors? (10

MR BIZOS: Yes. M'lord..

COURT: But eventually it had to land up at Houtkop.

MR BIZOS: No, but if IC.8 is to be believed on one of the versions that he has given and accused no.7 had heard Radit-sela he would not know where the march would be because it had to go along to councillors' houses and pick up councillors and take them with him, but he believed it that it was going directly to Houtkop and he cut across zone 7 to join it at that point.

COURT: Yes, but did he hear him say it is going directly (20 to Houtkop? Because if he merely gathered that the end of the line would be Houtkop, then he might have made his own conclusions.

MR BIZOS: Yes, but..

COURT: I am not arguing your thing with you. The point I am making is if a point you make is a very small point you need not make it because we will pick it up in the wash, it won't be washed away.

MR BIZOS: As your lordship pleases. The only point that I want to make is this, that in the "betoog" actually the (30 state / ..

state says that no.7 was not on the march. It does not rely on the march if I remember it correctly, as one of the matters in relation to accused no.7. Nor is any argument advanced that his story in relation to this is incorrect, his version is in any event incorrect.

COURT: And then if the state's case against no.7 is that he was not on the march then you need not deal with the march so far as no.7 was concerned, unless you want to do shadow boxing.

MR BIZOS: No, I do not want to do shadow boxing but we (10 actually believe rightly or wrongly that we have to present the facts to your lordship as they are and not as the state says they are.

COURT: No, you are quite right, but you need not present all the facts. I have not been sitting with closed ears for three years.

MR BIZOS: As your lordship pleases. I won't give your lordship the references. If there is anything on the point I agree with your lordship that there are better points to be made and I will not.. (20

COURT: But is it not common cause that the march went to the intersection? Isn't the great debate whether at the intersection a portion of the march flowed off into the direction of Motuane's house and how that came about?

MR BIZOS: That is one of the issues, but what happened between the church and the intersection on the weight of evidence is inconsistent with IC.8's and Mahlatsi's conflicting, both conflicting versions.

COURT: Well, you have made the point along the way in the cross-examination they they did not go to the houses of (30  
the / ..

the councillors on the way. I have got that.

MR BIZOS: Right.

COURT: It might be countered to a certain extent by saying well, the main councillors lived in other zones and not zone 7. It might or might not be said, but I mean the point I have and the answer I have whether it is good or bad..

MR BIZOS: Right, if your lordship does not want that then I will just mention it very briefly that nothing happened to the commissioner's office.

COURT: I have got the point. (10

MR BIZOS: Nothing - the fact that all the defence witnesses including IC.8 and Mahlatsi do not say that there was any trouble or any smoke or any obstructions on the road despite what is alleged on the indictment.

COURT: Apart from Mahlatsi who said they were climbing over rocks. We have dealt with that.

MR BIZOS: We have dealt with that, that was afterwards. After the..

COURT: You mean it was after the intersection?

MR BIZOS: No, not after the intersection. The indictment (20 says that before the march started it was "padversperrings".

COURT: That you have dealt with.

MR BIZOS: That I dealt with. He says that some time there- after along the way but before the intersection because on his version he did not continue after the intersection.

COURT: Yes, that is what he said.

MR BIZOS: Well, there is the direct contradiction that Mahlatsi says expressly that when they left the premises it was with the aim of going to the houses of the councillors. Now that is in 41, 1 967, 8-13. I want to pause there (30

for / ..

for a moment, as to how this question of going to councillors' houses came about. IC.8 in his cross-examination found himself in difficulty when he was being cross-examined as to why were you going up, why didn't you go into the adjoining zone and then he started getting into difficulties by saying no, first they would go to Houtkop and then to the councillors' houses. Mahlatsi gave evidence some time afterwards after IC.8.

COURT: You mean on the meeting of the 3rd?

MR BIZOS: No, he came into the witness-box.. (10

COURT: Yes, but are you now dealing with what said on the morning meeting of the 3rd?

MR BIZOS: No, I said what they both had to square up in cross-examination, what they said they heard Raditsela saying and what actually happened.

COURT: Yes, this idea of going to the councillors' houses was not a new idea pertaining to the 3rd, this idea cropped up pertaining to the 26th, because the evidence pertaining to the 26th was that no.5 and no.8 and one other accused, I am not sure who it was - possibly no.17 - on the meeting (20 of the 26th said we must go to the houses of the councillors not necessarily to do something wrong there, but the idea of going to the houses of councillors cropped up on that meeting already, on the state evidence.

MR BIZOS: Well, that is certainly not a fact which I would submit with respect, your lordship will find as proved. I believe that it was Mokoena..

COURT: Well, you can add to that the following fact and that is that you did not dispute it in cross-examination, if I have it correctly, as far as the meeting of the 26th is (30

concerned / ..

concerned.

MR BIZOS: Am I correct in remembering that it was Mokoena who actually said that?

COURT: I think Masenya said it.

MR BIZOS: I have no recollection and I would have to go into it.

COURT: But I do not want to muddle up the picture, but I just want to put to you that my impression is that this idea of going to the houses of councillors was not a new idea thought up to get out of a difficulty in cross-examination (10 pertaining to the 3rd because it was also raised pertaining to the 26th.

MR BIZOS: Well, I will have to check it out. Obviously your lordship has applied your lordship's mind to it, I had not applied my mind to the 26th. I will have to have a look at it and possibly make submissions as to whether that is credible evidence or not, but what I submit with respect is this. That the fact that this march continued all the way up to the intersection and we will deal with the intersection in due course, without any credible evidence of any unlaw- (20 ful act having been committed along the way; creates a probability in favour of the accused. And let me also say because of the pace that we have to go at, even if one or other of the witnesses of the 26th mentioned that they should go to the houses of the councillors in truth and in fact the weight of evidence is overwhelming and it is the evidence of IC.8 that we were not going to the houses of councillors, we would only go afterwards. So even if that was said on the 26th by one or other person, the evidence of IC.8 and the evidence of all the accused is that we were going directly (20

to / ..

to Houtkop so I do not know what can be made of the.. The fact that there was nothing untoward there around it, I do not want to know if your lordship wants the references.

COURT: No, I know what IC.8 said and I know what Mahlatsi said and that they differed on this point and that nobody went to the councillors' houses.

MR BIZOS: No, I actually..

COURT: ..up to the intersection.

MR BIZOS: No, actually that there was no smoke or other activity - any other activity up to the point of the inter-(10 section to arouse anybody's suspicions about anything untoward happening.

COURT: I have myself made a list of the witnesses who say that and the other factors.

MR BIZOS: Well, let me just give your lordship, that Ratebisi, Mapala, Mgudlwa, Oliphant, Vilakazi, have all said that there was nothing untoward happening. Not only was there nothing happened at Center's College or at any other place. And I do not have to recall to your lordship's memory the cross-examination, that your lordship actually suggested (20 to our learned friend who was doing the cross-examination that what happened deep in one zone to the left or to the right at an unspecified time, sometimes even an hour before or an hour and a half before, was not evidence that it was visible or what was happening to people. If your lordship does not want those references I will not burden your lordship with it.

COURT: No, it is your presenting the argument so if you think it is necessary, you must give them, but you can take it for granted that we will bear in mind when we weigh the argument of the state that there was smoke etc, etc, then (30

one / ..

one must first determine was the smoke visible. First of all was there smoke and then secondly, was it visible to the particular witness at the particular time, at the place where he was standing.

MR BIZOS: As your lordship pleases. There is one other submission that I want to make in relation to this. Let us assume that your lordship has doubt about the voracity of a particular witness or a particular accused in relation to smoke being visible, the evidence is and I do not know whether your lordship has ever been to this area early in the morning. The evidence is that visibility is poor, that fires - it is certainly not a smoke free zone that we are accustomed to in the northern suburbs of Johannesburg and. I do not know what the precise equivalent is of Pretoria East in Pretoria. (10)

COURT: It has improved in Pretoria of late, but I remember the olden days.

MR BIZOS: As your lordship pleases. It is not a smokeless zone and people tell your lordship that there are fires all over the place, but let us assume that even that is not accepted, how does it help the state to show that a particular accused or a particular witness was not entirely frank when he says that he did not see smoke, or he did not associate the smoke with arson; how does it help the state? Other than an adverse comment in relation to the credibility or to the frankness of that particular person. If the weight of evidence is that this was a peaceful march proceeding along the way, singing "Siyaya e Houtkop", how does it help the state that a group of young people may have attacked the shops owned by Indians some distance away? One might say well, if he admitted it he might have opened himself to (30)

cross-examination/..

cross-examination as to what did you think it was; did you think that public violence had broken out; all these things are of course possible and this may have been the motive of one or other of the defence witnesses, but how does that prove the state case that this was a march which became a mob and did the things that it alleges in the indictment? The evidence is that the march increased during this period but no-one was forced to join. Now this is a matter upon which one would have expected quite easily to have had evidence from the state from people other than the two (10 detained witnesses. If they were people who were compelled to join this march why weren't a couple of them called and it is no good saying they may not have given evidence. Mr and Mrs Mohatla gave evidence, other people gave evidence as to what happened in their neighbourhoods. Why was it left to the two detainees. That nobody was forced to join the march was confirmed by no.8, no.9, no.5, no.2. I do not know if your lordship wants those references but your lordship must remember that evidence to that effect.

IC.8 gives a fairly graphic account how people were (20 forced to join the march. Those who were not willing to join the march were hit and as a result would join. He certainly does not give a picture of - some of those who went to compel others to join the march did so on instructions of Esau Raditsela, whilst others did this of their own accord. Now here would have been evidence of ordinary residents who could not have been difficult to find. Your lordship had none of them. His description is in volume 18, 782, 24 to 783, 19. Now of course the bankruptcy of this witness as a witness is illustrated because what one must bear in mind is that the (30 witness / ..

witness placed Raditsela at the very front of the march and we ask your lordship to take note that his evidence in response to a question whether some of the groups that were joining towards the front, that he could not see what was happening right in front of the march, yet as far as Raditsela was concerned he was right in front all the time. Volume 22, 1031, 21-29.

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR BIZOS: I am indebted to your lordship about this indication. It was in fact Masenya who said that accused no.17 (10 said that. I do not know if your lordship wants the reference but in chief he said at 593, volume 12, 593 line 24 to 594 line 18.

COURT: This is now the councillors, visiting councillors.

MR BIZOS: Yes, where it is said they must go and see the councillors and the person leading him tried to get - he actually used the Afrikaans: "hulle gesien moet word", and he wanted some clarity so he said no, they would just go there.

Now the only portion of cross-examination that I could find in relation to that, there are really two portions. The one is in volume 13 page 636, where what is supposed to have been said in general terms and not in specific terms, questions are asked from page 636 line 20 to 638 line 23. There is nothing there specifically saying that no.17 did not say that but what is implicit in that cross-examination is the following. That accused no.17 prayed originally, your lordship will recall that there was a dispute as to who actually did the praying and that he then answered the question. Now it does not expressly during this bit of evidence, this bit of (30 cross-examination/..

cross-examination, it does not appear that I expressly said there was nothing mentioned about councillors. I do recall but it may have been put to Mahlatsi and not to Masenya that accused no.17 only uttered the prayer and answered the question I may not have put it directly to Masenya. And your lordship of course would be correct if this was in fact mentioned, it was not something new but what I would like to draw to your lordship's attention is that resolutions were taken at the meeting of the 26th. No state witness has said that there was a resolution to do this and certainly no defence witness said that this was decided or discussed or considered nor was it put to any of the accused who gave evidence that there was such a decision or such thought so that if your lordship's thought was that it may afford some sort of corroboration of IC.8 and Mahlatsi, the boot is on the other side with respect. It was put to none of the accused, none of the defence witnesses that there was a decision to do this on the 26th and it was not put to anybody that gave evidence about what happened on the 2nd, that there was any such suggestion. And the cross-examination with respect (10 was the other way and the questions from the court were the other way. (20

ASSESSOR: When you say that it happened on the 2nd, it was not put that it happened on the 2nd - do you mean the 2nd? Or the 3rd?

MR BIZOS: Yes well, the meeting of the 2nd, the planning meeting of the 2nd. The people who gave evidence of the planning meeting of the 2nd. In fact the cross-examinations and the court's questions were directed that you, your attitude was that the councillors count for nothing. You did not (30 even / ..

even bother to inform them that they should be at Houtkop because you do not recognise their authority and the evidence of the witnesses was that we really wanted to go and speak to Gantz; we wanted to go to speak to the people in actual authority so in our respectful submission even though it is mentioned by Masenya it does not assist the state in any way. And insofar as not specifically putting it in issue I will have to check at Mahlatsi's evidence was in regard to that. Your lordship will remember that in general terms the cross-examination of Masenya was not on what precisely was (10 said by the speakers because his contradictory evidence was that people at the meeting of the 26th advocated violence and the..

COURT: You will have to repeat your last sentence because it was not recorded. You were turning away from the microphone.

MR BIZOS: I am sorry I did that. The cross-examination was directed to the fact that no violence was advocated because your lordship will recall that at one stage although he changed his evidence and I do not want to go through the ground again, the violence was put into the mouth - a call for violence was put in the mouth of accused..

COURT: Is there an indication before the end of the state case that it was disputed that there was a thought of going to the councillors to get them to go along to Houtkop?

MR BIZOS: I will have to check on that. I will have to check on that but it was not really - well, with respect it was put very directly to IC.8, very directly.

COURT: Well, the difficulty with IC.8 is of course that he said well, we go to the councillors afterwards.

MR BIZOS: Well, except that it was put to him that there (30 was / ..

was no thought either before or after. It was very, very clear to IC.8 and to Mahlatsi and not a single defence witness was asked and no accused person was asked how can you tell us you were going to Houtkop - assume that I omitted to put it directly and I am not looking for excuses, I take responsibility for my actions, but your lordship knows of the problems that we have had, there is evidence of the problems we have had with accused no.17's memory. But the state made no issue of it, at no stage made an issue of it, does not refer to it in the "betoog"; it did not take it up with (10 the defence witnesses who with monotonously regularity told your lordship that we were not going to the councillors, we were going to Houtkop and that was most certainly made an issue with Mahlatsi and with IC.8, so with the greatest respect it would really be giving the state a bonus on a point along the way which was not canvassed at all by any of the defence witnesses who gave contradictory evidence. They may have had an explanation, one of which may have been that either it was not said or they may have put the blame on me which they would have been entitled to do of course, but there is no (20 reason for disbelieving the accused on that ground. No part of the defence case, it was certainly not put how can you tell us that that was so in view of what Masenya has said. In any event the gravament of Masenya's evidence really was that accused no.17 had advocated violence and as result as to what precisely was said at the meetings was not really a matter which was taken up at great length. In relation to the approach of Raditsela ..

COURT: You mean the speech of Raditsela?

MR BIZOS: No, in relation to, as to whether Raditsela (30  
would / ..

would have marshalled people to force others to come on to the march, one of the state witnesses said that when a suggestion was made to him by Raditsela that he should come to the meeting a free choice was given to him. Not a big point but Molontua volume 71, page 3 823, line 29 to 3 824 line 28. Again witnesses have said that they did not see anyone being forced on to the march and of course if the seven witnesses who have given evidence that no-one was compelled to join the march and IC.8 is untruthful about that, how can he be believed on other matters? And I do not know if your lordship (10 wants the witnesses who have actually said that there was no compulsion.

Of course the final nail in the coffin of the state's case and IC.8 in relation to his evidence is that this compulsion was not pleaded.

COURT: Yes well, I do not know whether one would put this in an indictment. This does not go to the kernel of the case which is the incitement to violence and the incitement of a mob to violence. How you get your mob together is not that important. (20

MR BIZOS: No, but with respect m'lord, with respect the state pleaded minutia in this case..

COURT: And after it had done so you asked for more.

MR BIZOS: No, m'lord, your lordship has said that before but with the greatest respect we submit that if your lordship has a look at the indictment and what the state set out people did, if at the time of the drawing of the indictment they had a statement..

COURT: Mr Bizos, I take your point. If on the question of the violence it is importance if you plead that you set out (30 incitement/..

incitement - I am not debating that with you. I am debating the question whether this compulsion of people being drawn into the march here and there, whether it should have been pleaded or not. You cannot expect the state to set out every little factor that happened. We will have no end to indictments. You may as well hand over all statements.

MR BIZOS: No, but if your lordship has a look at what they did plead..

COURT: Yes, I know what they pleaded.

MR BIZOS: The minutia that really carried the case no (10 further and what we do have as a syndrome in this case, that the allegations of specific violence are not in the indictment. The incitement to violence is not there, the forcing of people to march is not there and - I do not want to repeat the whole list, the kernel of the case of the state - violence, the evidence in our submission became available to the state for some reason which has not been explained to your lordship after the indictment was drawn. The only specific allegation of incitement to violence in the indictment in its original form was from accused no.16, Mr Manthata. In 400 pages we (20 do not plead what this case turned out to be all about. There is no other explanation in my respectful submission.

COURT: You have made the point.

MR BIZOS: In regard to what they were singing along the way, there are references. There can be no reason to believe that there was anything else other than "Siyaya eHoutkop". Once that is common cause where is the suggestion, on what basis can it be found that they were on their way to council-lors. That there was no attack on any property - sorry?

ASSESSOR: Did Mahlatsi not testify that they were singing..(30

COURT / ..

COURT: "Somlandela"

ASSESSOR: "Somlandela", I think.

COURT: "uMandela".

ASSESSOR: I am not quite sure, but there was one on Tambo as well.

MR BIZOS: I have no recollection of it. I can only tell your lordship that I have no recollection of that and I have certainly no recollection of the accused and the defence witnesses being contradicted that "Siyaya eHoutkop" was the only song sung. They certainly did not put Mahlatsi's (10 evidence to any of the accused.

COURT: Yes well, we are just taking you up on the point that it is common cause.

MR BIZOS: Well, if it is not common cause then I am sorry. What I do say is that this is the evidence for the defence and it was not challenged.

ASSESSOR: I may be wrong, it is only recollection.

MR BIZOS: Well, I did not remember yesterday what I had argued to his lordship about Mahlatsi's statement even though I had notes and I had read them out before, so I am not.. (20 M'lord, that there was no damage to any ticket office - I am not going to repeat the point about the offices of the Transvaal Transport Corporation. No damage at all has been given by accused no.8, accused no.9, accused no.2..

COURT: Is the indictment that the ticket office was damaged before they came to the intersection or was it merely a general statement?

MR BIZOS: I will have to look.

COURT: Don't look it up now. You may think of that in the luncheon adjournment. I have the idea it is a general (30 statement/..

statement. It is not placed historically before they get to the intersection. I am not sure.

MR BIZOS: I will have a look as to whether it is.. But of course we have no evidence of any other transport place being destroyed as far as I can remember; the offices of the transport company. And if that is so of course, if that is so then..

COURT: Wasn't there somebody who got out a couple of chairs from an office?

MR BIZOS: No, the ticket office. (10)

COURT: That was the ticket office?

MR BIZOS: The ticket office and this is what the evidence relates to from accused no.8, no.9, no.2 and no.13, that this office was not - that nothing was damaged along the way. And again this was put in issue with IC.8 and Mahlatsi and why couldn't we have had a neighbour that usually bought their tickets there or why couldn't we have had someone from the company whose property it was - once there was the sharp conflict of fact, and the weight of the evidence is completely in favour of the...I had the reference to what IC.8(20 says about this office, volume 17, 783 line 25 to 785, line 26.

Now there is no reason why the evidence for the defence should be rejected and that of the two accomplices, detained, contradictory statements on oath should be accepted. I am sorry, I have just done Mr Mahlatsi an injustice, because I see the next note is that Mahlatsi confirms that the march went past the bus terminus or bus ticket office and that he did not see anything happen there. Volume 41, 19 681..

ASSESSOR: Would not the position that a person occupied (30  
in / ..

in the march itself have bearing on what he saw at any particular point in time?

MR BIZOS: Of course.

ASSESSOR: So that nos. 8, 9, 2 and 13 may have been past this particular spot before IC.8 saw this?

MR BIZOS: There is a possibility except that all these four persons gave their positions. I think that it became almost standard practice, they occupied different positions and here we have the uncorroborated evidence of one person and the other state witness did not see it, the four accused (10 did not see it. If it did happen, if it did happen, it certainly was not - and so many people did not see it. It does not appear to have been part of the purpose of the march to destroy property.

It is clear that it is historically placed before the intersection because it is in sub-paragraph (9) on page 356 where they say in sub-paragraph - they say in paragraph 8  
K1531 at the church, sub-paragraph (8) and then they say that they set off singing songs until they came to the offices of the Transport Corporation on page 356, sub-paragraph 9, where (20 they came to a..- I am not sure what "gepeupel" means, is that the..

COURT: The rabble.

MR BIZOS: The rabble.

COURT: You translated it as a mob, but I think rabble is the correct translation.

MR BIZOS: The rabble stopped. The rabble stopped "en die kantoorgeboue van die Vaal Transportkorporasie vernietig het na die aanval op die geboue van die VTK het die gepeupel vertrek na die huis van raadslid Caesar Motuane. So that (30 they/ ..

they actually stopped, so that the possibility - if the indictment is correct, if the indictment is correct then the explanation that it could not be seen because they were in different parts of the march is not available as an inference. They actually stopped. At the time that they were a rabble before they came to the intersection and that they stopped at the offices of the Vaal Transport..that is what I was referring to yesterday about the investigation. That whoever's statement that was based on could not possibly be telling the truth on the most elementary of investigations. There are (10 in addition to the three accused that I gave your lordship earlier, four accused that I gave your lordship earlier, that there was no damage.

COURT: You gave us three, no.9, no.8 and no.13.

MR BIZOS: And no.2. I don't know if your lordship wants the..

COURT: I did not write it down but I have it now.

MR BIZOS: Yes. There are a further nine witnesses who said that they saw no damage to this property before they reached Motuane. I do not know whether your lordship wants the names and the references. So that m'lord, contradictions - had (20 I put this because I am.. practically the whole of the "betoog" in certain sections is "Mr Bizos put that" and look at the little detail. If I had put that to the witnesses and none of the accused had supported it I wonder what the state would have had to say then? But no explanation has been given to your lordship as to why they call this the rabble and that they stopped. Although the indictment repeatedly speaks of the mob going to the houses of the various councillors. The evidence established an absence of any such plan and we refer your lordship to the evidence of accused no.8, 171, 8 834, (30

line / ..

line 10 to 8 835, line 24. The leader of the march, no.9, knew of no plan to visit the councillors' houses. 180, 9 290 13-25. A number of the witnesses said they knew where Mayor Mahlatsi lived and the march went past his house.

COURT: Mayor Mahlatsi?

MR BIZOS: Yes. There is very clear evidence about that.

COURT: But didn't Mayor Mahlatsi live next to Hunter's?

MR BIZOS: Yes, and we established and I will give your lordship the references, beyond any doubt that if there was any intention to go to any councillor including - and there (10 could be no more leading a councillor than Mayor Mahlatsi the vanguard of the march have gone past the intersection where they had to turn left in order to go to Mayor Mahlatsi's office.

COURT: Yes, but his house was on fire at the time.

MR BIZOS: But nobody would have known.

COURT: Well, how do we know?

MR BIZOS: Well, except that it was not put that that was the reason.

COURT: And what is more the police were right in front. (20

MR BIZOS: But the evidence actually were, were very careful to lead that, that at the stage when they were there the police were not visible but let me take it this way. If the intention, if this was a mob - let me take up on your lordship's premise, if this was the mob which the state would have your lordship believe, who and how would have made the split-second decision to change the plan at the last minute. How does one control a mob of many thousands..

COURT: Mr Bizos, I was under the impression that Mahlatsi lived so near Hunter's Garage that there would not even (30

have / ..

have been time to go to Mahlatsi's house before the police took action.

MR BIZOS: No, with the greatest respect, we put it in cross-examination and the evidence of the accused was given that they had gone past that, that they had gone past that point before they were dispersed. I have no definite recollection as to whether or not..

COURT: I have the recollection that Mahlatsi lived in the street which enters or crosses the main street just before you get to Hunter's garage. (10

MR BIZOS: Yes, I think your lordship is correct in that but they had passed that point. Definite evidence that they had passed that point, that the vanguard of the march had passed that point. Of that I am certain.

COURT: Yes, but..

MR BIZOS: But I will take your lordship's point that there may have been a change of plan.

COURT: And I was also under the impression that at that stage, that when you get to that point already you can see the police. The police vans, vehicles, were parked in the (20 street.

MR BIZOS: But let us assume, let us assume that that is so, that the original plan was to go to councillors' houses, who makes the sudden decision? It was not put to accused no.9 that anybody said hey, there is the police - don't go to Mahlatsi's house anymore.

COURT: Yes, how far beyond Hunter's were the police? Isn't it uncertain where exactly they were? Some says they were at Hunter's and some said they were beyond Hunter's and that sort of thing. (30

MR BIZOS

MR BIZOS: No, I think that..

COURT: But it is a very small point that we are wasting a lot of time on. Isn't your point that they did not go to the others?

MR BIZOS: To any other councillors, m'lord, to any other councillors and insofar as it may be suggested that the reason why they did not go to Mahlatsi, that they knew that his house had already been attacked and I do not think with respect that there is any evidence that it was burning or smoking at the time that the march reached Hunter's, but (10 leave that aside for a moment. It was not put to accused no.9, it was not put to any - to accused no.8 - it was not put to any of the accused that there was a change of plan because they saw the police. So it would be mere speculation with the greatest respect in view of the weight of evidence that the march did not go to any councillor's house. The only evidence is and it is completely unsatisfactory, that a small group of people may have individually gone off from the march to Motuane's house. That is all the state has got a bit of evidence about and that has not been proved, (20 but in relation that there was no intention to go to councillors' houses, there is a plethora of defence evidence which cannot be rejected and I propose giving that to your lordship. Accused no.5, 207, 10 828, 15-22; Ratebisi, that the purpose was to go to Houtkop and not to any councillors' houses, 306, 17 574, 29; 17 575 line 5. Mapala, 321, 18 398, 7-10; Myembe, 328, 18 749, 21-29; Oliphant, 328; 18 790, 12-14; Radebe, 334, 19 039, 18-25; the evidence of the last witness, I did not want to bother your lordship with detail is indirect that there was no intention of damaging. He does not say (30 anything/..

anything in relation to going, but the others are direct evidence that there was no intention to go to councillors' houses. None of those witnesses were cross-examined along the lines - well, Masenya said so on the 26th or it was not a new idea or anything like that.

As far as the evidence of Mahlatsi, that there were obstructions, in addition to the accused that have given evidence, nine defence witnesses have given evidence that there were any obstructions. I have already made the point that even IC.8 said there were no obstructions. I do not (10 know whether your lordship wants the names and the references to these nine witnesses?

COURT: Yes, you can give them.

MR BIZOS: Ratebise, 306, 17 579, 10-14; Mapala, 320, 18 346 line 4-6; Tao, but only for a limited purposes because he only from the post office - 323, 18 508 24-28; Mokate, 324, 18 565, 2-4; Dhlamini, 325, 18 604, 4-7; Myembe, 327, 18 695 10-13; Oliphant, 328, 18 792, 1-3; Radebe, 333, 18 998, 1-3; Mazibuko, 338, 19 265, 28-29; Vilakazi, 347, 19 853, 19-20. Also the evidence of Raboroko to be read with the evidence (20 of Tsele is of importance. Raboroko, 361, 20 757, 23 to 20 754 line 23..

COURT: 757 to 754?

MR BIZOS: 750 line 23 to 20 754 line 23. Your lordship will recall that your lordship - I think it was your lordship who actually asked him about his route and he gave evidence as to what he did not see, but he saw "padversperrings" on the road at one spot.

COURT: Two, two spots.

MR BIZOS: Was it two spots? I do not...

(30

COURT / ..

COURT: Two spots on the one road.

MR BIZOS: Two spots on the one road. Be that as it may, but the one was near the buses there that the..

ASSESSOR: The damaged buses.

MR BIZOS: The damaged buses. And that your lordship will recall that Raboroko's evidence was that it was certainly before 09h00 that it happened.

COURT: Yes, 08h45.

MR BIZOS: Now Tselo says that the buses and the obstructions were removed so that by the time the march reached (10 there, there would have been no obstructions and Tselo's evidence is to be found in 388, 22 459 line 13 to 22 464 line 10. Now the fact that a group was up to no good and the rabble, the mob, was up to now good at about 08h00 some kilometres away from the starting off of the march and the ground had been cleared by that stage, there is no relevance on the issue, the main issue before your lordship as to whether this was a mob or an orderly march going about its intended business. Then the events at the intersection and we again submit that before examining the events relating (20 to the events at or near the intersection, it is necessary to have regard again to the precise nature of the case pleaded against the accused. The events at the house and the manner in which Motuane and his body guard Matebidi met their deaths occupies a pivotal position in the state's case in relation to the Vaal triangle. Evidently recognition of the importance of this particular averment, the state has detailed precisely what it alleges had occurred at the house in paragraph 77.10 (1) (ix) which your lordship will find in the indictment at page - m'lord, the long promised English rendering is (30 available / ..

available if your lordship..

COURT: English version.

MR BIZOS: English version is available which may or may not be of any assistance. I will just put it here for your lordship's registrar in due course.

COURT: Can it be known as the authorised English version?

MR BIZOS: Well, it is the one we have been using. Your lordship will realise that some of us, some of the accused have difficulty..

COURT: Yes, thank you. Will you hand it to my registrar? (10

MR BIZOS: I will put it there, yes. Because in sub-paragraph 10 we find after the attack on the buildings of the Vaal Transport Corporation the mob moved on to the house of councillor Caesar Motuane where the mob - I will continue using the word "mob" although I agree that there may be .. through stones at the house and broke down the fence in front of the house. The mob continually shouted out the name of Caesar and said that the dog must come out so that they can kill him; drew back a little when the police who had been summoned arrived at the scene with a police car. That is of some (20 importance, m'lord, as the allegation because we know there was a police car there much earlier on. After the police car had left, descended on the house again and hurled stones at it. When Caesar Motuane came out of his house the mob threw stones at him and he firstly fired warning shots and then fired into the mob and then fled. One Phineas Matebidi who was with Caesar Motuane was hiding in the house, was dragged out and beaten to death and then petrol was poured over his body and set alight. After Caesar Motuane had fled into the neighbour's house the mob dragged him out and killed (30 him / ..

him, the house was set on fire and the lorry was burnt. Then it goes on, after the arson and the murder at the house of the late councillor Motuane the mob at the scene screamed that they are now finished with Caesar and must go to other councillors. After the mob - now thoroughly incited, the majority of the activists who had incited the mob, withdrew from the mob; revolt and violence then..and they went elsewhere where they went and played cards. So that after Motuane's house apparently the activists..yes. And then it says that after these leaders withdrew the mob continued its activities. (10 May I draw your lordship's attention to page 359: after the majority of the activists who have played a leading role in the inciting and leading of the masses have withdrawn, then the completely unwarranted allegation on the evidence because we know that by this time there had already been attack on the house of Dipoko in Evaton, he is blamed for that and..

COURT: What time was the attack on Dipoko's house?

MR BIZOS: At 08h00.

COURT: 08h00?

MR BIZOS: Thereabouts if my memory serves me correctly. (20

COURT: Did he die at 08h00 or was he mortally injured at 08h00?

MR BIZOS: No, his bottle store was broken into early in the morning and then there was a running battle from about 08h00 to about 11h00 I think but his daughter gave evidence..

ASSESSOR: Yes, but the thing with Dipoko - I may be wrong but I think it was much later in the day.

MR BIZOS: The actual killing, but the attack started on the bottle store early in the morning by a group of people.

COURT: Yes, that is not excluded by paragraph sub.15.(i) (30 because / ..

because that sub(i) deals with the killing of Dipoko by the mob.

MR BIZOS: Yes, I can only remember this that on the evidence which when fresh in my memory and it must have been fresh on your lordship's memory, because accused no.5 was put at the scene of Caesar Motuane's house at the time when we knew that Dipoko was being killed. And I remember your lordship, when putting the probability to one of the witnesses, your lordship saying unless he had a helicopter he could not be at both places. So that is why I say, that is (10 why without any proper preparation of the references, that is why I am fairly certain that the two murders were set on the evidence to have taken place at more or less the same time. I remember your lordship's response particularly well and that is why I say that it was more less..

Then we have evidence that Chikane was attacked early on if my memory serves me correctly and Dhlamini of course we know it was before 08h00. That is in sub-paragraph (3). So whatever the position may be in relation to Dipoko as set out - there can be no doubt that the state at the time (20 of drawing the indictment was apparently ignorant of what in fact happened to this march which is the central part of its case. It did not know what senior police officers must have done that the march continued to - on its way to Houtkop, that it was stopped, that there was a whole military operation to be seen on the ground and in the air, but it somehow or other escaped the notice of the investigating officer or the person responsible for drawing the indictment.

At the risk of being repetitive it is to be observed that it is not that a small number of people may have (30

broken / ..

broken off from the march to go to Caesar Motuane's. That would have had serious implications to the state's case. What - well, I had better not say these things. That the state case that after the attack on the non-existent building that the whole mob who had once been a march, then went berserk, was necessary to plead it that way because it would not have helped the state on its indictment and on its thesis if in fact a small group of people from the march broke away and went to Motuane because those people may have been guilty of murder, which would have had to show that it had (10 the authority; the small group had the authority of the organisers of the march so for some reason or other an unnecessary and not very straight short cut was taken; let the march break up into a mob from the time the non-existent building was destroyed and thereafter of course, on that basis, we can make anybody that put these people on the road responsible for everything that happened in the Vaal on that day and thereafter. Well, the short cut in our respectful submission led the state astray and has taken up about two years of your lordship's time.

Your lordship will see that a crucial aspect of the details and in particular at paragraph 77.10, is that it was the mob who threw stones at the house; called out for Caesar saying that he should come out so that they could kill him and it is the mob which drew back a little when the police arrive, on the premise that the whole of the march went up and that the whole of the march initiated the attack on Caesar Motuane's house. One wonders when in truth and in fact the statements of Mr and Mrs Mohatla were taken, because if they had been taken before the drawing of the indictment(30

this / ..

this nonsense would not have been pleaded with the greatest respect. The sequence pleaded is clear and unambiguous as it is false. It positions the mob which is equivalent to the march reduced to a rabble, turn into a rampant engine of destruction at the house of Motuane both before and after the arrival of the police cars. It is not the state case that the march or a mob joined a different mob which has already commenced the attack. It is not the state case that the march turned into a mob, making it impossible for Motuane and Matebidi to escape from the attack of the different mob(10 that started the attack and let there be clarity with respect that just as there is an allegation of only one march in Sebokeng which left from Small Farms, Evaton, so this set-out of allegations relates only to one mob. It cannot be read in any other way.

And we submit not only did the evidence led for the state fail to support the case pleaded by it, but that the evidence for the state is entirely destructive of it. Mr Petrus Mohatla and Mrs Alinah Mohatla both testified to an attack on Motuane which commenced several hours before the (20 march leaves Small Farms. The arrival and departure of the police car is referred to by them. There can be no question whatsoever that the mob referred to in the state indictment as being the one which drew back a little when the police arrived and described in the evidence of the Mohatla's cannot be associated with the march. And the four months of interrogation could not have been very clear to IC.8 as to what the state case was because this point is rammed home by the fact that there is no suggestion even in the evidence of IC.8 that whilst he and others of the march went to Motuane (30 the / ..

the events were at that time interrupted by the arrival of the police. We submit that cogent reasons have been given not to accept the evidence of IC.8 and the Rev Mahlatsi and that in any event there is no satisfactory evidence that anybody from the march went up the lane to the house of Caesar Motuane. We submit that there is however a preponderance of evidence from witnesses for the defence which is materially consistent and on the probabilities to be preferred to that of IC.8 and Mahlatsi.

In addition to the submissions that we have already (10 made about the unsatisfactory nature of IC.8's evidence there are also unsatisfactory features in his evidence in relation to this very point at the intersection and what happened outside Motuane's house. He said, IC.8 that the ticket office of the VTC's zone 11 was attacked. It is clear from his evidence and other evidence that this ticket office is what became known in the evidence part of the Fowler's bus stop. Your lordship will find that in volume 23, 1 130 3-6.

COURT: It could not have been Masenge? (20

MR BIZOS: No, because he gives distances.

COURT: Yes, thank you. He says that he was standing and watching this incident when he heard someone shout: "Daar is 'n hond" after which he and others went to the house of Motuane where arson and murder were being committed. It is submitted that the account given by IC.8 in regard to these events is inherently inconsistent and in any event his evidence points strongly to the inference that the march in overall terms proceeded on its way along the route to Houtkop. IC.8 testified that at that stage the march was some 500 (30 metres / ..

metres in length. 17, 784, 27 to 785, 21. There was some talk about it as to whether there was 300 or 500 but it was fixed at 500 at page 1 097. At one stage of his evidence IC.8 testified that when the front of the march reached Fowlers he was only some 10 metres from the front of it. 22, 1 035, 16-27. In his evidence-in-chief, however, he testified that while the march was passing the ticket office of the VTC the people who attacked it broke away from approximately the middle of the march which is where he also was. 17, 783, 27-31. 785, 22-26. On his estimate this group (10 therefore broke away from the point of the march some 250 metres from the front of the march and that IC.8 had shifted his position in relation to the march by some 240 metres. IC.8 also gave an estimate of the distance from Fowlers to the house of Caesar Motuane. The measurement of the distance indicated varied from 60 metres by the defence to 150 metres by the state. 22, 1 032, 21 to 1 033, line 7. Even adopting the greater distance of 150 metres this distance would be reduced if the end point where the intersection and not the house of Motuane. In addition IC.8 testified that (20 he was past the Fowler's bus terminus when he heard the remark: "daar is 'n hond". It must be remembered that according to his evidence, he heard that remark whilst standing and watching the incident of the attack on the VTC office. 22, 1 053, 26-31.

COURT: But did he say he was in the middle of the march at the time?

MR BIZOS: His evidence is contradictory.

COURT: But I thought you said he said he was in the front of the march or at the front of the march. (30

MR BIZOS / ..

MR BIZOS: Yes, but he (simultaneously)

COURT: But he saw people..

MR BIZOS: ..says on one occasion..

COURT: He saw people breaking away from the middle of the march.

MR BIZOS: On one occasion he said he was in the front and on the other occasion that he was in the middle.

COURT: He was in the middle or he saw people breaking away from the middle?

MR BIZOS: Again your lordship, the reference is at page (10 783; our summary is the people who attacked and broke away from approximately the middle of the march which is where he also was. This is what he says on that page.

ASSESSOR: What volume was that, please?

MR BIZOS: 17, m'lord. 783 in the first instance and 785 in the second instance. It has got to be read with 785, 22-26.

MR BIZOS: It is: "Ek sal sê omtrent in die middel van die optog, in dié omgewing". It must be remembered that he heard the remark whilst standing and watching the incident of the attack. We submit that it becomes a matter of simple (20 arithmetic computation to determine that the front point of the march must have been well beyond the entrance of the lane to Motuane at the stage that IC.8 was standing at the point where he heard: "Daar is 'n hond". Because of..

COURT: If he gives two versions, one in the middle of the march and the other in front of the march, how can you arithmetically determine anything?

MR BIZOS: Well, I'll be satisfied that he is completely at sixes and sevens and that he should not be believed in relation to anything that he says, that he is not (30 corroborated/..

corroborated by any competent and trustworthy witness, and that this business of "Daar is die hond", people going off..

COURT: That is a different tangent you are going off on.

MR BIZOS: Yes.

COURT: I am asking you how can you make calculations when you do not know where to start?

MR BIZOS: Well, once a witness that your lordship wants to rely on has given a version which he has contradicted we are entitled with respect to take the one version on which the state relies that this person was in a position to see (10 that the thing going down, the non-existent building which he describes as an office and then he says he heard something else, the story that your lordship is being asked to accept does not make sense, then how can your lordship rely on the witness? If he contradicts himself as to where he was when he heard these words when..

COURT: I understand all that, Mr Bizos, it is not the first time I have been sitting in court. The point is where do you start your calculation to arrive at beyond the intersection because the man is guessing. At a stage he is in front (20 and at a stage he is in the middle. Now how can you then start calculating?

MR BIZOS: No the calculation was on the basis that let us assume that the one version is correct. Let us assume that..

COURT: Which one, that he was in the middle?

MR BIZOS: That he was in the middle.

COURT: And that he was where? At Fowler's?

MR BIZOS: That he was at Fowler's.

COURT: But Fowler's is a long drawn-out thing. There are a lot of sheds in a row. Now where was he at Fowler's? (30

MR BIZOS / ..

MR BIZOS: At the office in respect of which he gives a distance. I am not unmindful of the difficulty that a cross-examination and an argument in relation..

COURT: But has he given us an exact distance between the office and the intersection?

MR BIZOS: No. I am not relying on the exact..

COURT: Or a guesstimate between the office and the intersection.

MR BIZOS: Or a guesstimate. We must take a broad aspect.

COURT: Yes, now what did he say what is the distance between the office and the intersection? (10)

MR BIZOS: I have given your lordship the figure.

COURT: The 250?

MR BIZOS: I have given your lordship the figures. I do not want to repeat them with respect.

COURT: No, you say the middle, he was approximately "in die omgewing van die middel van die optog. The front of the march was approximately at the intersection.

MR BIZOS: Yes.

COURT: The march was approximately 500 metres long. Now (20 where do we land up?

MR BIZOS: No, let me make a submission in regard to what I am saying. There is a vast difference between being ten yards from the front of the march and in the middle of the march when we know that it was hundreds of yards long.

COURT: That point has been made.

MR BIZOS: Right. But that he says that he heard that remark: "Daar is 'n hond" at that stage, having said that he heard it at the stage when the bus shed was being destroyed; the ticket office was being destroyed. (30)

COURT /..

COURT: Yes.

MR BIZOS: And then having changed it to ten yards from the front makes him a completely unreliable witness as to whether or not he heard "Daar is 'n hond", and it makes him a completely unreliable witness in relation to the movement of the people in the intersection. That is all I want to make.

COURT: But that is a different argument. The argument you started off with was you wanted to place him in the middle of the march and then say well, you are so far away you could not have heard anything. (10

MR BIZOS: No.

COURT: You are not getting anywhere there.

MR BIZOS: That would only be trying to get the best of both worlds in saying - I am not unmindful of that - I am only concerned to show your lordship that this is an inventive and..

COURT: Yes, I understand that. Your point is that he says he is at the middle of the march and now when you ask him: how could you have heard, he says no, he was in front - 10 metres from the front. (20

MR BIZOS: I will be satisfied with..

COURT: That is a point one makes and you go on to the next one.

MR BIZOS: As your lordship pleases. Now there is one passage in his evidence which completely negatives the state's case and it is in volume 22, page 1 068 lines 10 to 26. Now may I start a little earlier on:

"The moment you entered the intersection, the intention was to turn to the right to go to Houtkop? -- No, the intention was that we were going to walk along the (30  
tarred / ..

"tarred road, not turning to any right.

COURT: Yes, Mr Bizos, I think you and the witness are at cross-purposes to put to you is that when the leaders of the procession came to the intersection they kept on following the tarred road but that tarred road veered slightly to the right.

MR BIZOS: Thank you, m'lord. -- That is correct, I understand the question now, they were supposed to have gone in that direction.

And they did go in that direction? -- Yes, but some(10 of them were present at Caesar's house.

We will come to the people that you say were present. but a procession is held, it followed the tarred road? -- The last of I saw of this procession was when I deviated into the lane with the other group which also broke off from the procession into that lane. As to whether the other people proceeded along the tarred road or not I cannot tell. Until I reached Caesar's house that is the only thing I can tell you.

Now before the front rank of the procession entered(20 the intersection I am going to put to you that there was a general confusion at the intersection because of the different groups that had come to the intersection from different directions. What do you say to that? -- As I have already explained, what is being put to me I am inclined not to agree with that.

Yes, right, we will leave it at your inclination. Did the people who were there - I know that you are inclined to disagree with how many there were, but did the people who were in the intersection also sing when they (30

formed / ..

"formed groups in order to join the procession etc.."

Well, that does not really matter m'lord, but what does matter with respect, at the bottom of page, or the passage that I have read to your lordship, that the march according to him veered to the right and although there may have been some little misunderstanding, it was clear that they kept to the tarred road.

This evidence should be read together with his evidence-in-chief that it was not the entire march which turned in order to hurry to its place where there was a dog. Volume (10 17 page 786 lines 9 to 13. It should also be read with his evidence-in-chief that whilst the attack on the ticket office was taking place the march continued on its way. 17, page 784, 21 to 26. That the call of "Daar is 'n hond" came from a person who was not part of the march, but part of a group of people standing in the street on the corner in zone 11. 17, 786, 2-8 and this group according to the witness was between 20 and 25 people strong. 22, 1 035, line 30 to 1 036 line 13. This group was in the immediate vicinity of the lane on a street turning off towards the stadium, that (20 would be to the left.

COURT: It is on that corner.

MR BIZOS: On the intersection, but the street leading to the stadium leads to the left.

COURT: The street to the stadium is directly at right angle and the lane to Caesar's house is diagonally.

MR BIZOS: That is so.

COURT: The one is east/west and the other one is north-west, it runs north-west to south-east.

MR BIZOS: As your lordship pleases. Now this group was (30  
in / ..

in the immediate vicinity of the lane on the street turning towards the stadium and they were there and this is the important part, m'lord, before the procession reached the intersection. 22, 1 043, 8-17; 1 045, 6-13.

COURT: And the point you make is?

MR BIZOS: The point that I make is this, that it is hardly consistent with what the state has set out to prove.

COURT: No, it is not consistent with the indictment. The case as I understand it now is that there must have been or was a raging battle going on at Motuane's house and these(10 people then came from that battle and said there is a dog or something like that.

MR BIZOS: Well, on whose version did the state plead?

COURT: Why ask me?

MR BIZOS: Well, I would have expected your lordship to have asked the prosecutor, m'lord, because this case must be decided on the indictment.

COURT: You have made the point, Mr Bizos. It does not become better or worse by repeating it.

MR BIZOS: As your lordship pleases. But your lordship (20 has not been given any explanation at all, how can they plead a case which is contradicted by their main witness and either different things were said in the statement or the person who - I had better not say anything more, but either way it cannot be accepted. Then IC.8 testifies that the people he referred to in a group of twenty plus are the only people who joined the march and which have now reached the intersection because the street referred to there, Stadium Street is the only street joining that intersection from that side of the road he says. Now that is in 22, 1 045, 14-22. The fact (30 that / ..

that this group from which someone called out "There is a dog" joined the march is later repeated by IC.8.

COURT: Are you saying that they joined the march or that or that they called to those on the march and then they ran back to Motuane's house, which on your version is not joining the march?

MR BIZOS: No, he says that these people joined the march.

COURT: I am sorry, but I understood it that these people called to people on the march, that not the whole march went up the lane according to the state evidence but let us say (10 a number of people not in a group but a number of people from amongst the marchers then ran up the lane.

MR BIZOS: Yes.

COURT: Now what did they join? Did they join those people or did they join the remainder on the tarred road?

MR BIZOS: It would appear, 22, 1 052, 20-31, that they joined the march. But perhaps we should have a look at it.

COURT: But would the witness know that because he himself ran up the lane.

MR BIZOS: What I am saying is what he said. So that we (20 have a situation, a confused situation that far from people leaving the march en masse to go to Motuane's, you have people joining the march. 22, 1 052, 20-31.

COURT: Let me just have a look, Mr Bizos. That is not how I have understood it so far. Yes, but I asked the witness and the witness answered: "the group that was joined is the group that is in the dirt road that leads to the stadium".

MR BIZOS: But look at it now, m'lord, look at it now. It appears that we might have understood the passage. It is at least ambiguous and it is certainly more probable the (30

way / ..

way your lordship interpreted it than we have, but be that as it may. Your lordship's interpretation makes even greater nonsense of the state case, because the people that went up the lane with them were not people from the march but people who were there already and I would accept your lordship's interpretation of that passage. And it makes even a more valid point that the people who joined IC.8 were there already. May I just make one general submission on the probabilities. If the picture that he paints, taking it not in great detail and nit-picking and doing what I have been (10 doing up to now, but painting it with very broad strokes. If there was a conspiracy and a plan to attack Motuane, is this how it would have happened? That somebody would say: "daar is 'n hond" and that a few people would break away? If there was an intention to show the power of the mob, placards and banners flying, let us go to the first important victim or our revolutionary fervour. Mr Motuane's house might not have been a bastille but if it was a plan as alleged by the state, Raditsela would have been there in the forefront and say: "Charge it, forward". What do we have (20 from the state?

COURT: This is of course what IC.8 says.

MR BIZOS: No, he does not.

COURT: Let us go and look, Raditsela said, so they went up the lane.

MR BIZOS: No, he said let us go.

COURT: Let's go.

MR BIZOS: And may I..

COURT: So I do not think you should draw your metaphors too far.

(30

MR BIZOS / ..

MR BIZOS: No, because there is a point to be made. Does your lordship recall on this record when Raditsela was introduced into Motuane's place?

COURT: At the re-examination.

MR BIZOS: Yes.

COURT: But he was not asked in chief.

MR BIZOS: But it makes the very point, m'lord, it makes the very point, and of course I am glad that your lordship noticed that it was in re-examination. What were we to do at that stage? We were not privvy to Mr Raditsela's move- (10  
ments. We could not get any instructions from the accused even if we ask for leave to cross-examine, but is that how a planned assassination, planned political association in order to show the power of the people on the state's understanding of it, that somebody shouts out: "Daar is 'n hond" and some motley group of 20 people go up and find unknown persons there already attacking and your lordship knows that the attack was going on from early morning, where does the state case make any sense? This is why we submit that it is perfectly clear that even on IC.8's version, the impetus (20  
for his having gone to the house of Motuane did not come from the march or from anyone else. The person who cried out: "Daar is 'n hond", had nothing to do with the march. IC.8 agreed that it would have been contrary to the instructions from Raditsela that the march had to proceed direct to Houtkop, for everyone to go into the lane leading to Motuane's house. Now how is that consistent with the state case, m'lord? Volume 22, 1 066, 3-10. And let me say that there is no onus on us, the onus is on the state to explain to your lordship how they came to plead this sort of case (30  
and / ..

and to call the main witness who in fact supports in the main what the main purpose of the march was, contrary to what is alleged in the indictment. And in relation to the debate about the origin of the placard on the late Motuane's body it is significant that IC.8 testified that he did not see whether there was anybody carrying placards going into the lane. 22, 1 066, 22-29. It follows from this that IC.8 was not following placards down the lane or I think it is slightly up the lane. I may have an advantage over your lordship, there is a slight incline I think - up the lane (10 and this reinforces further the submission that his going up the lane and I would say if he did so indeed, had nothing whatsoever to do with the march and more particularly with those who had organised or were leading the march. We submit further that the unreliability of IC.8 as a witness generally and his account of what happened at the intersection is underlined by further consideration of what prompted him to leave the march according to his own evidence. In re-examination he stated that anyone who had stood up to object to the content of the placards after Raditsela had spoken (20 before the march, would have been in danger of being hit. This was his state of mind, m'lord. 22, 1 138 line 23 to 1 139 line 2. Thereafter in response to questions from the court IC.8 clearly set himself out to convey the impression that the people on the march were ready to fight, meaning to fight physically and that he himself was in that same condition. 23, 1 146, 18 to 1 147, 6. In the course of his cross-examination however, he deliberately set his face towards projecting an entirely different image. There he described himself as a peace-loving man who would not take part in (30

the / ..

the killing of councillors and that he was not a person who would destroy the property of any councillors. I quote his own words, and not a person who would damage government or administration property. 21, 1 002, 6-15. When asked why he went on this march when killing and destruction had been called for, if his evidence was true, he declared: "A peace-loving person is bound to go out and help people who are not peace-loving and bring them back to the line of living a peace-loving person". He has now become a missionary of peace. (10

COURT: Depends on what you mean by peace.

MR BIZOS: Well, that they must not destroy things, m'lord, in that context. I know of the contradictory statement to fight for peace, but it is clear what is meant here in the context that they must not destroy. Your lordship will find that in volume 21, page 1 002, 21-27. And I submit with respect that there can be no danger, more dangerous a liar as one who is prepared to lie about himself. He tries to excuse himself, but those are matters that does not really matter, that you have to do what other people are doing and (20 that sort of thing. IC.8 is also at sixes and sevens in his attempt to detail the manner in which people broke about. Initially he testified that a distinct group had broken away from the march. Volume 23, 1 140, 16-20. He then gave a different description which was that people broke away from different points of the march and then came together and formed a group whilst walking towards the lane. 23, 1 140, 28; 1 141, line 18. Which of the two versions to borrow an expression from the "betoog" is your lordship being asked to accept? But on either version it gives a lie to the (30 state's/..

state's case.

IC.8 then proceeds to give a detail description of the events at the house of Motuane which include the following sequence of events. I have the sequence, I do not want to read it out but your lordship will find it in volume 17, page 786 to 791 line 25. IC.8 then gives the incredible evidence that when he re-entered the tarred road, the procession was still in the Small Farms direction from where he was, despite the detour undertaken by IC.8 and the amount of time which would have had to have been spent for all the (10 events at Motuane's to have been played out.

COURT: How many blocks from the intersection did he enter? How many blocks south of the intersection did he enter the main road again, Wessels Mota Road again; one block or two blocks? He did not enter at the intersection.

MR BIZOS: I will have to check that. I do not know that your lordship might with respect - I may be confused - but my recollection is that he actually came back to the intersection.

COURT: Through the lane to the intersection. My recollection (20 is that he took a bit of a short cut but not a very short cut and re-entered the Wessels Mota Road somewhere further on.

MR BIZOS: Could I check that, m'lord?

COURT: Yes, you can do that in the luncheon adjournment.

MR BIZOS: As your lordship pleases. We will do that but let me give your lordship the reference to this - to what we say that he came there and I submit that for this point it does not really matter where, if he took..

COURT: No, I have the point but will you just give me the (30 reference/..

reference?

MR BIZOS: Volume 22, 1 092, line 30 to 1 094 line 20. Of course when coupled with IC.8's evidence that the march continued to move normally when he left it, this piece of evidence alone must decisively lead to his testimony being rejected. It barely needs remarking that the entire march would not have been at Motuane's house if for no other reason that it is physically an impossibility of having a march of some 500 metres long with people marching shoulder to shoulder across the width of the tarred road be channelled through a (10 narrowed lane to the side street where Motuane's house was..

COURT: Where did he say did he join the march? Middle or front or back when he rejoined it?

MR BIZOS: I will have to check that.

COURT: Very well.

MR BIZOS: But the evidence there is clear that they were still approaching the intersection which throws considerable doubt about his evidence as a whole.

COURT: No, no, they were not still approaching the intersection. They were in the Small Farms direction after (20 looking in the Small Farms direction from him when he entered. This means they were to the north of his point of entry when he entered. It does not mean that they have not yet passed the intersection. But the argument remains the same. How could he have caught up with the march and gone to Motuane's.

MR BIZOS: And watch the murder of Motuane, yes. Especially if he was ten metres ahead when - ten metres from the front when he went off. No, that does not take it any further.

COURT: Well, it depends on where he rejoins the march. If the march is very, very straggled out and going very (30

slowly / ..

slowly then he might have caught up with the tail end, it depends.

MR BIZOS: Yes. The vanguard he says, the vanguard of the march was on the..

COURT: Yes, that is so.

MR BIZOS: Yes, on that side. Then we say that the evidence of Mrs Mohatla to the effect that she was unable to say whether people which returned after the police had been there were greater in number or lesser in number or the same number as those who had been there before. Your lordship will (10 find that in volume 48, 2 403, 28 to 2 404 line 1. That being so it is submitted that the implication is clear that there was no striking difference in the number of these people - the number of people that had attacked earlier or the number of people that attacked successfully the late Motuane and his body guard subsequently. So that in our respectful submission it is not that we are asking your lordship to say well, look under what circumstances this witness' evidence or statement was taken, or that he is an accomplice. Therefore, even though his evidence reads well, you have got to reject (20 it for those grounds. Here on the very point in issue he contradicts himself. He tells improbable things and above all does not support the case.

I want to turn to the evidence of Mahlatsi.

COURT: Yes, I think we should take the adjournment now.

You have a further 20 minutes to your list.

MR BIZOS: I am glad, m'lord.

THE COURT ADJOURNS FOR LUNCH.

COURT RESUMES AT 14h00.

MR BIZOS: Mahlatsi having given evidence after IC.8 his initial attempt in his evidence-in-chief was at least some sort of attempt to go along with at least a small portion of what the state alleges. But we will show that in cross-examination he fared so badly that his evidence must be completely disregarded. The account given by Mahlatsi is in essence that when the march had gone past the BP garage it arrived at a point near the lane from which a group of people appeared. These people were talking about the dogs, being councillors, who (10) were busy shooting. After this he could hear the shots which was proof for Mahlatsi that the fighting had "al lang daar begin". After the shots were heard Raditsela said "Come let's go, let's go". Mahlatsi then decided to flee. Your lordship will recall that there was some difficulty about the translation from the vernacular but "Kom laat ons gaan" I think ...

ASSESSOR (MR KRUGEL): "Kom julle ons gaan". "Kom ons, julle gaan".

MR BIZOS: "Kom ons julle gaan" or whatever. Yes what it really means "let's go". He then says that after Raditsela (20) had said these words that the front point of the march ran in the direction of the plan where this report about the councillors busy shooting had been made. He specifically says that they ran through the lane. Volume 41, 1 969, 6, 1 970, 13. Despite the general terms given in his first answer concerning what the front point of the march did Mahlatsi we submit proves unable to give reliable answers to specific questions which really shows that he is not telling the truth. Thus although he declares that Raditsela, to whom he refers as "Esau", ran in respect of accused no. 17 who is a man who experiences (30) problems/....

problems with his feet Mahlatsi is unable to say whether he also ran or whether he moved slowly. But that is the least of the troubles. When asked specifically in what direction he moved he says that he did not see that because he had already fled. Similarly when asked specifically what became of the placard carriers he says that as a result of the fact that he had become confused he could not see whether the people with placards also ran or what became of them. 41, 1 970, 14 to 31. Despite the specific avowals of capacity to testify about accused no. 17 and the placard bearers he then immediately (10) afterwards says again that "die voorpunt van die optog" went into the lane. 41, 1 971, 1-4. Mahlatsi then says that according to his observations some of the people in the march just remained standing and did not follow. 41, 1 971, 5-7. After having fled the march Mahlatsi said that he was in the veld and that he saw smoke from the point near where he had fled from. After that he saw accused no. 15 also in the veld. 41, 1 972, 1, 1 973, 1. I submit that Mahlatsi's account varies from that given by IC.8 in certain material respects. The first is that the talk of the dogs comes in an un- (20) differentiated way from a group running out of the lane. IC.8 does not refer to this group but instead to a singular announcement from amongst a group which is not mentioned by Mahlatsi which is one in the immediate vicinity of the lane standing on the corner of the road leading to the stadium. And in assessing this it must be borne in mind, we submit, that IC.8 was some distance from the immediate vicinity of the lane, being in the position where he was standing watching the attack on the VTC offices. A second even more irreconcilable difference is that IC.8 speaks of shots being fired only after he is (30) at/....

at Motjeane's house and sees the stoning and breaking of the windows. In Mahlatsi's version shots are heard before Raditsela makes his equivocal statement "Come let's go". We would submit that Mahlatsi's account suffers from this problem also. He hears shots after the people come bundling out of the lane but the very report that they make is that the dogs of the councillors are shooting. However these shots do not form part of Mahlatsi's evidence and although he agrees that he would have heard the shots before the people managed to run all that distance he evidently did not. 43, 2 102, 13-24. These (10) differences concerning the shots cannot be explained away on the basis that the people on the march were singing. It cannot be contended that IC.8 would have heard a single announcement "Daar is n hond" but not shots prior from that very vicinity. Similarly the time that it would have taken a group of frightened people to run through the lane would not be such as to account for Mahlatsi hearing the second series of shots but not the first series which compelled those people to run. If it is accepted that the shots testified to by IC.8 are the shots heard by Mahlatsi then it means that the march (20) generally would have had to be frozen in time for the critical period during which the breakaway group testified to by IC.8 formed itself and walked down the lane to Caesar's place where the breaking of windows took place and then the shots, and only after these shots could the march be unfrozen so that Mahlatsi's account can be placed in gear with that of IC.8. Again it may be remarked that on IC.8's version when he heard "Daar is n hond" the front point of the march was just before the lane and it continued moving normally whilst he broke away from the procession. We have already submitted that the front point (30) of/....

of the march would have been well beyond the lane when the remark testified to by him would have been said. It is worth remarking also that IC.8 makes no mention of having heard Raditsela say loudly and clearly "Come let us go" although in Mahlatsi's view he believed that maybe a quarter or the majority could hear. 43, 2 101, 2-15. We submit that it is clear from Mahlatsi's evidence itself that the leadership of the march as a whole did not move down the lane and it is clear too that his evidence does not amount to a statement that the march as a whole went down the lane. Although he initially gave the impression(10) that the front point of the march went into the lane he later makes clear that the front point split and that he is quite unable to say what happened to them later after splitting and that he is not in a position to tell the court as to what happened further on with the people who were "behind me backwards in the march". That is a quote from his own evidence, 44, 2 121, 17 to 2 126 line 3. We also want to deal with the evidence of Phosisi. We are not unmindful that your lordship, during the argument on the application for a discharge made certain observations which may make it unnecessary for us to (20) deal with this witness at great length in view of her concessions in cross-examination but we submit that she in fact has done the state case a tremendous amount of harm because there can be no doubt that her evidence was false and contrived and that she could not possibly have given the evidence that she gave unless she was directed in some way or another. The fact that the witness turns out to be a witness who has given false evidence has consequences sometimes for people who call them. She came much later and I would submit at a time when it became clear that the evidence given about the march by IC.8 and (30)

Mahlatsi/....

Mahlatsi did not fit the bill at all. Her evidence was called in order to support what was in the indictment that the entire march went down the lane to Motjeane's place. And she invented a relative on the lane where she spent the night of the 2nd to 3rd September 1984. And she identifies the house as house number 12 726 Zone 11. Volume 52 2 628, 28-31. In cross-examination she repeated this address and furnished details of the Mokoena family alleged to have been living there. 52, 2 694, 1-17. The witness then gave a detailed description of the position of this house from which she was keeping ob- (10) servation in relation to the house of Caesar Motjeane and positioned her point of observation as being the second house from the lane leading to Motjeane on the right-hand side as one would enter the lane from the tarred road. What could be more cogent for the state case? Here was the prize witness. 52, 2 686, 1-30. And note we do not call the occupiers of, the usual occupiers of the house, we call Mrs Phosisi who happens to have come to this house by the lane for safety reasons on the fateful night of the 2nd to the 3rd. Your lordship wanted to satisfy your lordship completely about precisely from (20) where because this was very important evidence and your lordship asked her detailed questions and she pinpointed herself very accurately to that house. 52, 2 690, 31 to 2 692 line 2. The witness then describes how she saw the march coming from Evaton at about 09h00 or shortly thereafter. There were about 1 000 people or more on it. 52, 2 687, 2-21. She describes quite clearly that when she first saw the march the front point was not yet at the lane, being two or three houses away from where she was on the Evaton side. Wonderful inventive imagination in view of what is to follow. 52, 2 688, 12-16. For (30)

good/....

good measure she describes in detail how some of the marchers were carrying bottles with liquid and paraffin tins. They were not in one group by everywhere in the march. An attempt had been made to lead IC.8 as to whether he saw anything like that and he denied that there was anything like that on the march. We are unable to find the same question having been put to Mahlatsi. The IC.8 reference is 17, 795, 4-11. Again if the evidence of Madam Phosisi was to be believed there was to be, there was no better evidence to prove the conspiratorial violent purpose of the march. The entire march, according (10) to her, disappeared into the lane which she had spoken about, leading to the house of Caesar Motjeane, some of them moving at a trot. 52, 2 690, 10-30. She repeats later that the entire march, some 1 000 people, went into the lane. None of them came back down it. 52, 2 698, 14 to 2 699, 11. This witness then goes on to describe that some time after the march had disappeared into the lane she saw smoke from the direction of Motjeane's house. 52, 2 692, 9-17. Before the smoke was seen by her shots were heard in that vicinity. This was after the marchers went into the lane. 52, 2 692, 18-25, (20) 2 693, 9-14. What we have set out here is a summary of what appeared to be very damaging evidence in respect of everybody who participated in the march. We submit that however it soon became clear in cross-examination that regard to certain important details the witness was at odds with what had been said by other state witnesses. Thus although she had been awake from 06h00 to 09h00, before the march arrived, she had heard no shots nor sounds of stones breaking windows or landing on a roof which is of course inconsistent with the evidence of the Mogatlas. 52, 2 695, 11 to 2 696, 4. Similarly before (30) the/....

the march went into the lane she heard no shots and saw no other group running in the opposite direction down the lane. 52, 2 695, 24-30. She also heard no one shouting "Come let us go" or any other shouting. 52, 2 697, 23 to 2 698 line 6. These differences, however, are as nothing to the central feature of the evidence of this witness which is that further cross-examination revealed that the witness had been in an entirely different house. After having been asked for some preliminary details about the family of the house where she initially said she had been keeping observation the witness (10) returned on the following morning and volunteered the information that the house 12 726 had been mistakenly cited by her and that in fact it was house 12 778 that she had been. 53, 2 700, 3-6. I would suggest, I would suggest with respect that your lordship knows now, after the further cross-examination, that someone had been there after she gave that evidence and she came the next morning to really rectify the position, and say oh by the way I made a mistake in relation to the number. The witness did not indicate that the description given by her of the location of the house was different and deliberately (20) sought to give your lordship the impression that it was a mere correction of number and not place. I submit that this was a deliberate fraud on the court and the question arises why does Councillor Phosisi attempt to commit a fraud on your lordship? That it was a mere, that it was a mere change of number was clearly understood by your lordship because in relation to a reference by me that house no. 12 726 was a kilometre away from the place indicated by the witness and that the defence had come to court on that day convinced that she had to face the situation that this house was a kilometre (30) away/....

away the court observed:

"Well actually not Mr Bizos because I took the trouble going through a long drawn out process to determine exactly where the house is and I know exactly where it is and so do we all. So you could not have thought it was a kilometre away, the house she was speaking of."

Of course your lordship - I am not saying this as a criticism of your lordship - your lordship generally speaking is entitled to rely, generally speaking, on what witnesses say. Your lordship did not have the benefit of my instructions that the (10) house was in fact a kilometre away, as it eventually transpired. Your lordship will find your lordship's remark in volume 53, 2 704 line 19 to 2 705 line 12. It was then observed by me that the house which is 12 778 does not correspond with the point that the witness has given and as the enquiry proceeded further your lordship observed:

"We are wasting a lot of time Mr Bizos. I wonder if it would not be advisable to send her out with the investigating officer with one attorney from your side to point out the house she had indicated." (20)

53, 2 707 27-30. Well I do not know what steps were actually taken on your lordship's advice but according to the record it became common cause that house 12 778, being the number now deposed by the witness, was the 32nd house away from the intersection of the lane and the tarred road on the Houtkop side and along the tarred road. This was fixed as the second house from the corner of the second intersection past the lane, to the Evaton side of that intersection. Your lordship will find that admission in volume 53, page 2 727 line 13 to 2 726 line 28. As I see that your lordship's assessor is looking (30)

at/....

at the map it may be of some assistance ...

COURT: We gave it a number I think.

MR BIZOS: Yes, I do not need to spoil my aerial photograph with that information but the point was later recorded as point 60.

ASSESSOR (MR KRUGEL): Do you want me to take them apart again Mr Bizos?

MR BIZOS: No, no ...

ASSESSOR (MR KRUGEL): I just had them nicely fixed up.

MR BIZOS: No this is why, I did notice that you had ...

COURT: Point 60? (10)

MR BIZOS: 60, six oh my lord. I saw your lordship's assessor stretching for it, I did not see that they had been opened up. 53, 2 741, 28-31. What followed was that an entirely different description was given by the witness of the movements of this march. Instead of having turned into the lane going to the house of Caesar Motjeane the witness then testified that the march had in fact gone past the house where she was and had then turned into the lane after the next door house. 53, 2 729, 26 to 2 730 line 11. This was recorded as being the second street to the west of the lane. 53 2 734, (20) 9 to 24. It is submitted that this evidence was a palpably false attempt by the witness to retrieve her position and that there is on no version before the court any suggestion that this march of 1 000 people should have taken a left turn into the narrow street now deposed to by this witness. It turned out further that after it had been established that the house in which the witness was was in fact an entirely different one from that first testified to by her the smoke originally said by her to have been from Motjeane's place had in fact come from the vicinity of the board offices. 53, 2 735, 15 (30)

to/....

to 2 736, 10. This witness quite clearly knew that Motjeane's place was to the left of the place from where she had seen the smoke rising. 53, 2 743, 8-26. We submit that it is perfectly clear that this witness was knowingly giving false evidence and highly prejudicial evidence concerning the movements of the march.

ASSESSOR (MR KRUGEL): Mr Bizos there is one point about this particular witness' testimony. She has always maintained that she was talking of a "march" of 1 000 people.

MR BIZOS: Yes. (10)

ASSESSOR (MR KRUGEL): Is it the march that we have been talking about all along?

MR BIZOS: But there is no suggestion that there was any other march. There is no suggestion that there was any other march. But I want to come to this, that is a benign explanation for the false evidence that was placed before your worship. I call it benign, and let us assume for the purposes of my argument that that is an acceptable explanation, let us assume that it is an acceptable explanation. Why does she put herself on the lane to Caesar Motjeane's house in her evidence-(20) in-chief? Why? And, which is really the point that I am making that the benign explanation is not acceptable but let me take even the benign explanation. Here are fourteen odd of the accused who stand to be convicted of very serious charges, including murder. And a witness is called by the state which gives evidence which has been proved to be false. Whether it was knowingly false or not let us accept the benign explanation. Is it not clear that from the manner in which evidence has been produced in this court that this court, had it not been for Miss Nichols' overnight trip into Sebokeng to (30)

determine/....

determine that the Mokoenas did not know, the Mokoenas of the lane did not know Miss Phosisi at all, that today I would have been told by your lordship that I am talking nonsense if I suggest that this march coming from Small Farms had not gone up to Motjeane's house and would have brought about a certain conviction, on false evidence. This, by the time she was called this case had been going on for some time. It only needed a little bit of investigation, just a little bit of investigation. Now this is really what I am saying to your lordship. That a party who calls false evidence or evidence which (10) becomes, is established clearly to have been false, even if a benign explanation for its falsity may exist, must make your lordship very wary of other evidence where we were not able to check as readily as we were able to check with the household of the Mokoenas living on the lane. The person that called Phosisi could not have been a stranger to what the state case was, could not have been a stranger to the difficulties that IC.8 and Mahlatsi had presented to the state case. The evidence fitted too well into the pattern to have been taken by some unconnected constable in the Vaal. It must have (20) been one of the investigating officers in this case. And once that sort of evidence is presented on a charge of treason or a charge of murder how can your lordships have any confidence of any tainted witness who has been through the hands of such investigating officers? Let us assume that we led this defence witness as a defence witness and we put her in a house 32 houses away from where she was and quite by accident there happens to be another Mokoena 32 houses away, the probabilities are overwhelming that she was neither at the one house nor the other, that the evidence was fabricated. She was cross- (30) examined/....

examined about the other Mokoenas. She did not fare particularly well, the 32 houses away. And besides once this was put in issue in order to clear its own reputation I would have submitted that the investigations team would have been only too happy to explain the bona fide mistake. But leaving that aside let us absolve the investigation team of any wrongdoing for the purposes of our argument. How competently was this aspect, this vital aspect of the case, investigated in order that the truth may be established? If the investigating officers knew that there was a family called Mokoena on the lane on Caesar (10) Motjeane which was sufficiently favourable to a councillor like Mrs Phosisi would not an honest investigator gone and asked the Mokoenas what do you know about this, you are here? Would he have relied on IC.8 and Mahlatsi and would he have relied, without at least going and looking, to look? Can this woman really see these things from this house, let us have a look at it, let us investigate it, let us find corroborating evidence. How dare the defence put a version of an open event, of thousands of people moving up the lane for all the neighbourhood to see. We cannot confine ourself to IC.8 and (20) Mahlatsi, let us call half a dozen neighbours. Let us really throw this back, this false defence back onto their face by calling the sort of evidence that will really silence them once and for all, and persuade the court of the justice of our cause. What happened to all that? It is a serious case, we are not dealing with traffic violations. Let us look at the circumstances under which the statements were made. Initially she testified that one statement had been given by her in September 1984 on the events of 3 September and the prosecutor was good enough to furnish a date for that, 1 October 1984. (30)

52, 2 694 line 18 to 2 695 line 6. She later says that the events of 3 September were contained in a second statement made in January 1985. There was nothing about 3 September in the first statement. The events of 3 September arose in the second statement because the person taking the statement asked "How far were you from Caesar's place, that is while being at this address". This is the question that she was asked. 53, 2 737, 14 to 2 740, 10. She testified further that the person who took the statement did not try to position the smoke the witness was talking about. It was the prosecutor who asked about (10) that. In the witness' judgment she connected it with the house of Motjeane. 53, 2 742, 12 to 2 743, 11. Despite that this witness then testified that she did not realise at the time that her statement was taken but only realised from defence counsel's questions that it had to do with the circumstances of the death of Caesar Motjeane. Well if one is expected to believe that then one can believe anything, and the reference is volume 53, 2 744, 12-23. Now had she been the only witness who demonstrably gave false evidence nothing much could be made of it but as she is not and there are a number of (20) others and if it turned out that more prejudicial and more direct the evidence was in relation to violence the more forcefully it was established beyond any reasonable doubt that it was false. I am referring to Phosisi, I am referring to Branders, I am referring to IC.10 in particular. We have given your lordship the reasons why your lordship cannot accept the version of the three witnesses - well one was conceded because Phosisi is not really mentioned at all as far as we can see, not relied upon by the state. But we submit that a coherent account has been given in relation to these (30) events/....

events and although in the "Betoog" some puttings, or some tellings are shown to have been not quite consistent with every one of the witnesses evidence in relation to some of the details we submit that a coherent, completely coherent and probable account has been given by the defence. In the main it is this, that in the vicinity of the curve in Zone 11 a big group of people joined the march from the opposite direction. The vanguard of the march had already entered the curve when accused no. 8, who was some distance down, saw the other group. No. 8, 171, 8 826 line 15 to 8 827 line 28, 9 132 line 27, (10) 9 133 line 6. The group which joined the march from the opposite direction appeared to be organised, they were on the tarred road. Some of them were carrying placards. Again 8, accused no. 8, 177, 9 131, 26 to 30, 9 132, 22-24, 171 8 833, 8-17. When the other group joined the march at the front there was some disruption. The other group passed through the leaders of the march and fell in behind them. During this period there was some confusion and the march slowed down. Accused no. 8 lost sight of Raditsela for some five minutes during this time. I may say that your lordship will see (20) that although we could not say precisely where Raditsela was at any given time I will submit that if your lordship takes the evidence of all the witnesses together as to when they saw Raditsela during the time of the intersection the inevitable result must be that he was there at the intersection all the time. It is true that some of the witnesses were unable to say whether or not he slipped up the lane or not but if we take all the evidence together it was an afterthought in re-examination that IC.8 deposed to. Your lordship will see that 178, 9 138, 17, 9 139, line 7, 171 8 829 line 12, 8 830 line (30)

20 or have I given those already? I am not sure. One of the leaders of the march, accused no. 9, testifies about a group of 200 plus approaching from the opposite direction of the march. I am giving this because the state, with the greatest respect, could not make up its mind what the situation was. it was cross-examining some witnesses on the basis that this was so and some not. Some had placards, they turned as if they wanted to take over the leadership of the march. They were told to join but not to lead and then they drifted into the march behind the original leaders. That is no. 9, 180, 9 291, 6 to(10) 9 292,1. At that stage Esaud Raditsela was at the front of the march, appearing to be telling people on the sides of the march to join it. After the disorder had been straightened out he disappeared. That is at 180, 9 292, 1 to 9 293, 15. No. 5 similarly testifies that at the intersection a large group merged with the head of the march, at that stage the march slowed down until it nearly stopped. Then it picked up its pace again. No. 5, 206, 10 822, 14, 10 823, 10. In the recollection of accused no. 2 as the march approached the BP garage a group of approximately 50 joined. 221, 11 696, 11 (20) to 20. As the march was approaching the intersection it was met by a group of 300. The march was then slowed down and it took some time before it resumed its normal pace. 221, 11 697, 9-28. Although no. 13 could not clearly see the front of the march he did notice a group of some 200 approaching in the opposite direction. They had placards with them. This group became part of the march. Whilst this was happening the march slowed down for about two minutes and then regained the original pace. 243, 12 794, 2-22. In the vicinity of the intersection there were other people milling around on both sides of the (30) road./....

road, it was clear that something was happening and smoke could be seen a little distance from the road in zone 11. No. 8, 171, 8 828, 11-29. No. 8 saw some movement of people up and down the lane but they were not people from the march. 171, 8 832, 4-16. No. 8 saw no one from the march break away to enter the lane. 178, 9 145, 19 to 9 146 line 6. The smoke was seen by accused no. 8 before the other group had infiltrated the march. It was the first smoke he had seen on that day. Now we could not find any challenge of accused no. 8's evidence on this point, 178, 9 149, 14-18. Of course (10) the significance that the smoke was already there before they came into the intersection for the infiltration to take place it really means that the attack, the fatal final attack had already commenced. No. 8 did not hear any shots nor any calls for people to leave the march and to go up the lane nor did he hear the reference to the dog. He only heard about Motjeane's death on the following day although he had heard of damage to the property some time after the march had been dispersed. 171, 8 831, 9-26. No. 8 testifies clearly there was no attack on Motjeane's by the marchers. No. 8 himself never deviated(20) from the route of the march. The march itself took a turn and proceeded on its way. 171, 8 825, 13-30, 8 828, 30 to 8 829, 11. The witness the Reverend Mahlatsi testified that he had fled as soon as he had heard the shots, did not leave the march at the intersection. He was still present when the march dispersed. 171, 8 833, 18-26, 8 840 19-21. No. 9 paid no attention to the lane when he went past. He did see smoke from that side as the march approached the intersection but did not know what it was. The march did not stop. 180, 9 293 25, 9 294, 25. No. 9 heard no shots nor remarks about a (30) dog./.....

dog. The march stuck to the tarred road. 180, 9 295, 3-30. On the 3rd, 1984, accused no. 5 did not know where Caesar Motjeane lived. 206, 10 820, 1-4. As the march approached the intersection no. 5 saw smoke to his left and ahead. He did not hear anyone calling anyone a dog. No. 5, 207, 10 825, line 6 to 30, 206, 10 824, 22-24. The march itself continued on the road to Houtkop. It did not leave the tarred road. It did not go to the lane to Motjeane's house. Accused no. 5 himself did not leave the march and was never in the vicinity of Motjeane's house. 206, 10 823, 15, 10 824, 5. No. 2 testifies that he (10) saw people running in different directions in the lane and he received a report that the house of Caesar Motjeane had been attacked that morning. 221, 11 697, 28 to 11 698 line 17. No. 2 heard nothing about people talking about the killing of a dog. He himself saw smoke in the direction of what he later learned was Motjeane's place. He heard no shots and saw no one leaving the march in the direction of the lane. 221, 11 700, 1 to 11 701, 7. The march continued on the tarred road in an orderly fashion and accused no. 2 himself did not go up that lane at any stage. No. 2, Volume 221, 11 701, 12-15 and (20) again 11 698 line 18-20. When accused no. 13 was in the vicinity of the BP garage he saw smoke ahead and to the left. At that stage the vanguard was approaching the intersection. 13, 243, 12 972, 15, 12 973, line 6. Accused no. 3 heard nothing being shouted about a dog. 13, volume 243, 12 972 lines 8-12. Accused no. 13 and the portion of the march where he was went past the place of Caesar Motjeane, the place where Motjeane lived, at that time accused no. 13 did not even know who he was or where he lived. Accused no. 13 was not in the vicinity of the house whilst attacks were made against (30) Motjeane, /....

Motjeane, his guard and his property. He did not go up the lane. Accused no. 13, volume 243, 12 971, line 23, 12 972 line 7 and again at 12 974 lines 23 to 27. Despite the state's argument that there were no groups joining in there the state witness Mahlatsi confirms that groups of people were joining the march as it was proceeding. According to his evidence a group which joined from zone 12 side created some confusion when they joined. This group had placards and when they joined some of the people came into the march in front of him and some came from the march behind him, leading to some disorganisation (10) of the march towards the front. That is clearly contrary to the state's case that there was no disruption of the march at any stage and your lordship will recall that that was considered some sort of nonsense story in order to explain the, but your lordship will find the evidence that I have referred to your lordship to, to volume 43, page 2 096, line 25 to page 2 098 line 8. The account given by the accused concerning the joining of the march by the group approaching from the opposite direction is corroborated in material respects by the witnesses. I will not give a description of the evidence (20) because your lordship has the general, I merely give the references. Ratibisi, 306, 17 581, I have not got a line I am sorry, to page 17 582 line 6. Maphala, 320, 18 341 line 18 to 18 343 line 25. Dhlamini 325, 18 604 line 20, 18 606 line 8. When Nyembe reached the BP garage she became aware that the pace of the march was slowing down and noticed that there were people joining the march at the front and she, it corroborates the version in - I have not got the volume unfortunately - 18 696 line 8, 18 608 line 11. Radebe gives evidence about this at volume 333, 19 000 line 20 to 19 002 line 20. Lepele (30) became/....

became aware of the march slowing its pace and noticed that there was a group of people joining the march right up front. He then describes what happened in volume 336, 19 164 line 10 to 19 166 line 19. Mazibukho noticed smoke to the left of the march as he approached the intersection but then describes what happened, volume 338, 19 266 line 21 to 19 268 line 4. Also at, sorry Vilakazi at 347, 19 853, 25, 19 855 line 7. And again at 19 856, 11 to 26. Selo's evidence is also supportive of the defence version in volume 388, 22 465 line 17 to 22 466 line 29. We submit that it is clear from the, all this (10) evidence that the march as a whole proceeded this way past the curve in the direction of the post office. None of these people saw people going up the lane towards Caesar's house. It is not our submission that every one of them kept the lane under scrutiny nor is it suggested that any one of them can say definitely that nobody from the march broke away to go up this lane. We nevertheless submit that the evidence clearly establishes that the state case pleaded is incorrect, that the much lessers state case supported by three most unsatisfactory witnesses has not been established. I want (20) to make certain submissions in relation to what is said about all this in the "Betoog" and also to argue that even if some isolated individuals or a small group of 20 of them or so, may on the probabilities have gone off the march in order to observe what was happening at Motjeane's house that that does not assist the state to prove the case pleaded or any part of the case or make any of the accused guilty. I am going up to the next topic is the march up to the point of the dispersal. I do not know whether your lordship wants me to continue with that. Possibly another five minutes. (30)

COURT:/....

COURT: You can go on as long as you ...

MR BIZOS: As long as I am safe to give you the home time.

COURT: As you do not get caught by the traffic inspectors.

MR BIZOS: Yes I do not want to do that my lord. Well it will be, this will be the point where I do want to go on to a new topic and refer your lordships to some of the reasoning in the "Betoog". I will appreciate it very much if your lordship will take the adjournment and then we will try and make the rest of the 55 minutes that your lordship has graciously granted me an indulgence in tomorrow possibly or some other time. (10)

COURT: Tomorrow is Friday. We will not make it up tomorrow. We will do it next week. Tomorrow I am going to adjourn on or slightly or before 13h00.

MR BIZOS: We will bear that in mind. Thank you my lord.

COURT ADJOURNS UNTIL 2 SEPTEMBER 1988.