

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

SAAKNOMMER: CC 482/85

PRETORIA

1988-12-07

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. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACCOB
ADV. G.J. MARCUS

FOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

COURT RESUMES ON 7 DECEMBER 1988.SAMUEL MOKGETHI MOTSUENYANE: d.s.s.

EXAMINATION BY MR BIZOS: Dr Motsuenyane would you give his lordship a short resume of your background. You are a businessman? -- I am indeed a businessman, president of the National African Federated Chamber of Commerce, chairman of the African Bank. I hold many directorships and chairmanships in various companies.

Do those companies include your own private companies involved in commerce and in construction? -- Yes. (10)

And are you in addition a director of Barlow-Rand? -- Yes.

And a director of the Small Business Development Corporation? -- Yes.

And a director of Barclays Bank? -- Yes.

COURT: Does it still exist?

MR BIZOS: I beg your lordship's pardon, yes First National Bank?-- Yes.

The danger of reading from a curriculum vitae that was printed before the change.

COURT: Yes, two years ago. (20)

MR BIZOS: Two years ago. Are you a council member of the International Chamber of Commerce? -- Yes, since 1974.

Where are its headquarters? -- The International Chamber of Commerce has its headquarters in Paris.

Have honorary doctorates been conferred on you by the University of the Witwatersrand and the University of Cape Town? -- Yes.

In Commerce and Economic Science? -- That is correct.

Now were you educated at the Wilberforce Institute in the Vereeniging district in the Vaal triangle? -- Yes, I did (30)

my/....

my high school work at that school.

And did you attend the University of North Carolina in the United States? -- Yes. I was enrolled in the University of North Carolina as a graduate in the Department of Agronomy.

Was a degree of Bachelor of Science conferred on you? -- Yes.

And were you the recipient of a Diploma in social work by the Jan Hofmeyer School of Social Work? -- That is correct.

Now were you given copies of his lordship's judgment. Perhaps my lord, could I set the pages out for the sake of (10) convenience, from pages 30 to 48 and 491 to 507, page 181 to 82, 216 to 288 and his lordship's conclusion on pages 722 to page 729. Were you advised Dr Motsuenyane that you must accept these findings for the purposes of your evidence before his lordship? -- I do accept the judgment and have been advised accordingly.

Yes. Now in order that some of the things that you may say to his lordship may be explained would you mind giving us some background to your own political activities Dr Motsuenyane? Were you a member of the African National Congress? -- Yes I (20) was a member of the African National Congress during the years that I was a student at the Jan Hofmeyer School of Social Work and until that organisation was banned in 1960. I was unfortunately away from the country when it was banned in 1960, being in the United States. I joined the African National Congress in those years because it was the only black recognised national organisation fighting for black political rights in our country. It enjoyed popular leadership of persons in the 50's such as Dr A.B. Puma(?) and later Chief Luthuli. People like Seloki Tema(?) and leaders of great character and (30) leadership/....

leadership ability and for that reason we felt this was the only organisation that we could support at that time as it was indeed, from my point of view, necessary for this country South Africa to undergo change towards involving blacks more in the political life of the country.

You have mentioned some of the leaders. Were you acquainted with the late Dr Moroka? -- I knew Dr Moroka personally as a farmer in the Free State and I being involved in farming I spent some time in his house at Taba Nchu.

Was he one of the presidents of the African National Congress? -- He certainly was one of the reputable presidents of the African National Congress. (10)

And did you know Professor Z.K. Mathews? -- I knew Professor Z.K. Mathews at Fort Hare and did in fact have a great deal of admiration for his scholarly abilities.

Now did you know either Mr Nelson Mandela or Mr Oliver Tambo in the 50's? -- I certainly know Mr Mandela very well, as well as Mr Tambo. I knew them as lawyers and as friends.

You have described the esteem that other leaders of the African National Congress enjoyed. Did Mr Mandela and Mr Tambo enjoy the same esteem and reputation? -- In their time as leaders of the ANC they certainly had popular support of the black community in general. (20)

Did they in your opinion divert from this venerable view that you have expressed for other leaders of the African National Congress?

COURT: What does that mean?

MR BIZOS: Well I understood

COURT: Are you asking the witness whether he in his view they were held in as high an esteem as the firstmentioned (30)

number/....

number of people?

MR BIZOS: It would have been a clearer way of putting it, thank you my lord. You have heard his lordship's question. What is the answer Dr Motsuenyane? -- I believe that, I stress the fact that the ANC enjoyed popular leadership in its early days, committed to non-violence and I believe these two gentlemen were also committed for some time to the same course except that in the early 1960's there was need for them to change direction and emphasise the importance of an armed struggle against the government because for all the years (10) of peaceful protest in this country they had seen no visible signs of change on the part of government and they felt justified in seeking an alternative that would precipitate a quicker response from government.

Do you know what sort of violence Mr Mandela and Mr Tambo and the African National Congress decided to embark upon in, when the organisation was banned in 1960, or after the organisation was banned in 1960?

COURT: Were you present? -- I came back only in 1963 from the United States. (20)

MR BIZOS: Did you keep yourself informed with the affairs in South Africa? -- Well I naturally would be interested in getting current events from home. I did know that in the early 60's an organisation was formed which was dedicated towards the armed struggle called Mkhonto we Sizwe.

Have you met Mr Tambo after he left South Africa in 1960? -- Yes sir. As recent as 1986 I led a delegation of businessmen to Lusaka to confer with the ANC because we regarded it important from our point of view to meet with the leadership of the ANC and to discuss the future together. In our view (30) there/....

there is no way that any solution to the problems of our country can be reached without implicating the ANC because it does have a constituency, a silent constituency although it is banned. When I went to Lusaka then I met Mr Oliver Tambo in the presence of his whole executive and we had a two day meeting with him to discuss mainly matters relating to business, the economy, as well as the political future of South Africa.

Do you know from what you were told by Mr Tambo or other persons as to how easy or difficult the decision to take up (10) violence as part of the strategy of the African National Congress? -- Unfortunately as will be seen in the appended information on this interview we discussed more the political issues and stayed clear of discussing the violent option.

Yes. -- We were in fact at that time coming to Lusaka just after the group of eminent men had failed to find a solution for the peaceful settlement in the country. Therefore we were still pursuing a peaceful option; a peaceful negotiation, with the ANC. We did not talk about the violence.

You spoke of the appended information. Did you report (20) to you annual meeting after you returned from Lusaka? -- Yes. This is what I am referring to as the appended information. I did report fully to my national organisation on the discussions between NAFCOC and the ANC and Lusaka.

Was that done privately or publicly? -- My report was given very generous publicity throughout the country and it was done publicly.

What sort of South Africa do you want in the future Dr Motsuenyane? -- Our aspirations are to see a South Africa of the future that would generate a spirit of togetherness (30) among/....

among all South Africans of all racial groups. A democratic non-racial type of political dispensation in our country. This is what we would substantially agree with the ANC on.

What do you personally say, as your personal view, in relation to the part of the programme taken up by the African National Congress of violence Dr Motsuenyane? -- I regret the violence although I have not personally condemned the violence because I have a very deep appreciation of why the ANC had to take this option of violence. But I do not personally subscribe to violence as an option. If negotiation could be (10) our first option I would go for negotiation.

You have told his lordship that you have not condemned the violence of the ANC. Have you seen that as a support by you or those associated by you with the programme of violence of the ANC? -- The men who have in desperation and out of sheer frustration committed themselves to the violent option enjoy a considerable amount of credibility in my community and it is hardly an easy matter for a man like me to stand on public platform in condemnation of the violence that is being generated. I believe we applaud most of these men as (20) heroes in the black community because they are working for the change which all of us believe must take place in our country.

The violence and the other efforts undertaken by the ANC do you know to what end they are directed? -- I would think that the attempt by the ANC in generating violence is really to evoke some quick response from, on the part of the authorities in this country to come to the negotiating table. I would think this is the main object. If in fact we could see people coming in a very serious way to negotiate about a just future for all South Africans I believe the violence would (30) automatically/....

automatically cease.

You have told his lordship that in your view the men like Mr Mandela and Mr Tambo are regarded as heroes in your community. Why precisely would you say is there this feeling Dr Motsuenyane? -- These men have sacrificed professions which would have brought them prosperity and affluence, they have spent their lives and their time in jail sacrificing for the benefit of the many who are not jailed but who nevertheless share the same views and aspirations and therefore they are being applauded and held in high regard for the sacrifices (10) that they have given for the freedom of the many people who hold the same views in my community.

We were told during the course of this trial Dr Motsuenyane that the leaders of black people in the community and especially those in the ANC and the UDF, to use the words of the state, that they exploit the so-called grievances of the black people. Would you like to tell his lordship anything about whether these grievances are so-called or otherwise? -- Many of the grievances that are experienced in the black community must be seen as legitimate. I myself am a member (20) of a family that has had grievances which are real. My uncles and grandfathers were the first people to buy land in the area between Potchefstroom and Klerksdorp where the mining town of Stilfontein is now situated. If that place was not declared a white area and the people consequently removed from that area to another area where later platinum was discovered in the Rustenburg district, there again they had to moved in order to give way to the mining companies that are now drawing wealth out of the ground. We believe that this is a real grievance and one of many such grievances that are experienced by (30) black/....

black people in South Africa and therefore I do not think that the leaders are exploiting grievances. They are really having a legitimate case about which to raise their voices.

It might be suggested to your Dr Motsuenyane that you have not done too badly personally? -- Well if a little autobiography were to be written on my life then it would reveal, perhaps to the amazement of a lot of people, about the struggle that I personally had to endure in the early years of my life.

COURT: No doubt you will write your autobiography at some stage doctor but is it necessary to give it in court? -- I (10) am merely answering a question which I thought wanted me to say something about my own case.

MR BIZOS: Has it been an easy road to the position that you have reached? -- It has not been an easy road. This is why I say it has been a process of overcoming difficulty after difficulty.

I want now to turn to the United Democratic Front. Have you had close contact with the United Democratic Front since its formation in 1983? -- No I have not had very intimate connections with the United Democratic Front except that I (20) have heard and read a great deal about the United Democratic Front.

And how have you perceived it since its formation? -- My perception is that the United Democratic Front fulfils a needful role in our community. It preaches non-violence in the first instance, it preaches unity of all people, black and white and it preaches against the injustices that all of us recognise in our community.

What was your personal attitude to the Black Local Authorities as they were instituted in the late 60's and (30)

continued/....

continued in various forms up to 1984/85 Dr Motsuenyane? --
The black community has been subjected to a number of toothless advisory bodies for a long long time and I regarded the creation of these local authorities as the creation of another toothless system that is not going to give black people the executive control and power that they desire to have in their country. Therefore I personally rejected them as being relevant to the aspirations of the black community.

Did you know, either personally or by reputation, any of the leaders of the United Democratic Front Dr Motsuenyane? (10)
-- I did not know them very intimately but I have heard of them and I know that they enjoy tremendous support among the black people that I move amongst.

Did you know of Mr Molefe, accused no. 19, Mr Lekota, accused no. 20, Mr Chikane, accused no. 21 whilst the UDF was operating during 1983, 1984 and a portion of 1985? -- Yes I got to know them not very intimately and read a lot about their activities in the UDF and I have great admiration for the spirit of fortitude with which they led their organisation.

Would you like to express any view as to whether or not (20) they would have any meaningful role to play in any process of reconciliation in our divided society? -- I have no doubt that first of all as young men, much younger than myself, that these men have a role to play in the South Africa of the future in reconciling existing differences between races in, and as well as ethnic groups in our country because this happens to be the motive, the main motivation in the setting up of their organisation.

Are you familiar with the freedom charter Dr Motsuenyane?
-- I am familiar with the freedom charter. (30)

Has/....

Has your organisation drawn up any charter, particularly related to business, for a future South Africa? -- We found it necessary to formulate a charter which we regard as complementing the freedom charter that does not touch on certain vital aspects of business, especially after our discussions with the ANC in Lusaka. We have a NAFCOC charter.

Did you become aware of any other business charter being drawn up at or about the time that your own charter was being drawn up? -- Yes I am aware that the Federated Chamber of Industries drew their charter just before ours was adopted. (10) We were consulted about that charter as well.

Is this a copy of your charter? -- It is.

COURT: How is that relevant Mr Bizos?

MR BIZOS: Well it is relevant on the issue on which your lordship made the finding of fact in relation to the freedom charter.

COURT: Yes, I am not interested in anything that goes against the grain of any finding of fact of this court.

MR BIZOS: No my lord, what we are entitled to place before your lordship, with respect, is not what goes, contradicts (20) the judgment. The year in which the freedom charter has been circulated was discussed by the accused and in relation to sentence we are entitled to draw to your lordship's attention that the freedom charter was not the only document to use the sort of language that is used there, not the only document which makes claims which are fundamentally different to the present situation in South Africa.

COURT: But what are you busy with Mr Bizos? I found that the UDF chose the violent option. I did not find the UDF guilty because they had adhered to the principles of the freedom (30) charter./....

charter.

MR BIZOS: But my lord I do not want to debate your lordship's judgment at this stage but ...

COURT: You are taking, throughout this evidence the last couple of days you have taken a number of portions of the judgment out of context and attempted to lead evidence to contradict it. But you are setting up targets and shooting them down which are irrelevant.

MR BIZOS: Well we do not know what your lordship's approach on the question of sentence is going to be but we would (10) have thought, with respect, that the, your lordship's finding was made in a particular milieu, in a particular set of circumstances. Much time was spent during the course of this trial in relation to the freedom charter.

COURT: Now if you had all that opportunity why lead it in mitigation again?

MR BIZOS: No because we are entitled, with respect, in mitigation to lead additional evidence in order to show the circumstances and milieu in which the accused did what your lordship has found ... (20)

COURT: Well I am not interested in NAFCOC's charter Mr Bizos and it is not allowed.

MR BIZOS: We will have to accept your lordship's ruling in that regard and I will leave it at that. The violence and the disorder that took place during 1984 and 1985 could you describe to his lordship in what sort of atmosphere that violence took place? In your opinion were there or were there not justified grievances amongst the population as a whole? -- I think the violence of 1984 and 1985 took place against the backdrop of increased tensions in the land, against the local (30) authorities/....

authorities, the creation of local authorities as well as the Tricameral parliament which people did not really accept and there was a lot of turbulence in the schools and it has to be regretted. We as businessmen suffered a great deal of hardships at that time because it is known that among the victims were many business people and who lost not only lives but property. But it is of course those who were seen to be part of a system that had to be done away with. So that background to me paints a picture that requires you to give accommodation and compassion in your judgment. (10)

Do you think that the severity or otherwise of the sentence in this case would have any general effect on the black community? -- I believe that the severity of sentence will certainly impact on the attitudes of people, particularly the black people in South Africa. It could erode the spirit of goodwill which this country requires at this time and on the basis of which possible negotiations for the future need to be negotiated.

Thank you my lord, I have no further questions.

CROSS-EXAMINATION BY MR FICK: Dr Motsuenyane did you belong (20) to any organisation affiliated to the UDF at any time? -- No our organisation is not affiliated to UDF.

Are you conversant with the aims and objects of the UDF? -- I have read, as I said, some of the aims of the UDF in their declaration.

Is that all? -- Yes.

You have not seen any other UDF documents? -- I have seen mainly the declaration and the founding documents.

When? -- 1983.

Now is there any reason why your organisation did not (30) affiliate/....

affiliate to the UDF? -- Well we regarded the UDF as a national body. We are a national body and we have to get our people together and get a mandate to talk to UDF before we even affiliated. I think this is the reason. There is no real division, severe serious division between the aspirations of the UDF and that of NAFCOC.

Yes but why then did you not affiliate? -- Well we would really be doing just about the same thing. I think we see ourselves as playing a meaningful role in the economy. Bringing about the correct climate in the economy whilst the (10) UDF was looking at a much broader field.

How would you describe yourself Dr Motsuenyane, as a capitalist or what? -- I am not a capitalist.

What are you? -- I am a businessman.

What is your attitude towards socialism? -- My attitude is that socialism has got very good aspects in it which are in fact operating in our economy at the present time. South Africa has a quasi-socialist order. In the black community certainly we regard the system to be inclined more towards socialism because government owns everything. We own (20) nothing. Properties, houses and everything is owned by government and we are suffering because there is socialism in the black areas.

All your companies are owned by the government? -- Many companies are still owned by government or para-statal organisations.

I am talking about your companies Dr Motsuenyane. -- Pardon?

I am talking about your companies. -- My companies?

Yes, are they owned by the government? -- My companies are now owned by us but this is a recent development. The, (30)

up/....

up until 1975 my lord we were not even allowed to form a company in this country.

Now do you still support the ANC? -- I do support the objectives of the ANC, except for the violence.

And what is your attitude towards the alliance between the ANC and the Communist Party? -- Well I believe that the ANC has a right to negotiate with whatever group in the world as all countries are free to do. We in this country, in South Africa, are talking to the communists across the border, we are talking to Angola, we are talking to Mocambique and I do (10) not see any harm in the ANC talking to the communists.

Ja but that is not the question. I am talking about the alliance, not talking. -- I do not know much about their alliance.

You did not question them in Lusaka about the alliance?
-- We did not discuss the alliance.

Now do you know what sort of South Africa the ANC or the South African Communist Party seeks to establish? -- I would like to speak for the ANC although I am, at the moment the ANC is not here but I have had meeting which make me believe (20) that the type of country the ANC would like this to be is a country in which all people, black and white, would have equal rights politically. It would, we would seek to establish a just order where the minority does not dominate the majority.

Do you agree that the ANC is not interested in talks, it is interested only in taking over the government by violence? -- I do not believe that. I think the ANC would, if the proper climate were created in this country, come to the conference table and talk.

Now are you aware of the fact that the government (30)
asked/.....

asked Mr Mandela to forswear violence? -- I am aware.

And are you aware of the fact that Mr Mandela refused to do that? -- I am aware. I think in principle when a man has done his sentence it is not fair for him to be asked to abide by other conditions which do not normally apply in the case of a man who has done his sentence. I think it is unfair to have to ask Mr Mandela to forswear violence when the country itself is being accused of being violent.

Now do you agree that the ANC is not prepared to forswear violence at this stage? -- I believe that in the absence of (10) a realistic plan which will show the light on the other end of the tunnel, what sort of direction South Africa is going to move to, in the absence of a plan that reveals the type of future that the government has in mind it is very difficult for anybody who is trying to bargain, I would like to say that the ANC wants to bargain with the government and the government must see this as an honest attempt to get them to a conference table where all of us, black and white, would structure a future that is sustainable and just. That is the sort of feeling I have, perception I have about the ANC and its (20) attempts.

Do you have any knowledge about the conditions set by the ANC or the UDF before they are prepared to talk with the government? -- As a non-member I would not say that I know all the conditions. I would certainly say that some of the conditions, before the cessation of the violence, is that the government must reveal its intent to allow people equal opportunity and participation in the government of the country. I think this is one of the preconditions that, and of course it has been said that the political prisoners must be freed to (30) participate/....

participate in any negotiations about the future of the country.

And the return of the exiles? -- And the return of the exiles.

And the disbanding of the ANC and the PAC? -- Of course I would agree that how else can we negotiate if the ANC has its hands tied and are not able to participate in any meaningful talks. I think that it is realistic and logical to have the ANC unbanned before the discussions take place so that some of the ANC people can participate in creating this new (10) dispensation for South Africa.

And the disarmament and disbandment of the police and the army? As a condition? -- I would say about that I do not believe that any country can run without an army and a police force, but I believe that the type of arm and police force that is now practising in my view is seen to be buttressing as system that is totally unacceptable to the black community at the present time.

You gave evidence to the effect that you knew accused no. 19, 20 and 21 since 1983 and you have great admiration for (20) them and with their ability to lead their organisation. Is that the perception you got that accused no. 19, 20 and 21 are the brains behind the UDF? -- I think they are leaders, young leaders in their organisation and for the role that they play they have got the support of the black people.

COURT: For what role? -- The role of leading their organisation, the UDF, which is seen as an instrument that would bring about desirable changes in the political climate in our country.

Now you also gave evidence to the effect that the (30) severity/....

severity of the sentence would have a certain effect on the community. Now on what do you base that opinion? -- It is based on previous judgments of a similar nature. We have seen over the last twenty years a lot of our black leaders sentenced for long terms of imprisonment to Robben Island and other places and I know that this has impacted on the feelings and the attitudes of the black community in a very negative way. Because the cause for which these men stand appears in our view to be a just cause.

Ja, but do you agree they were not sentenced for the (10) cause for which they stood but for their actions, their violent actions? Murder, petrol bombs, car bombs, land mines? -- We regret, I have already said I personally regret the violence.

COURT: Well may I just get your personal point of view Dr Motsuenyane. Should a court sentence a person who has planted a bomb? Even if he does it because he is an ANC terrorist? Or is your view he should not be sentenced? -- Much depends very much on the compelling factors. We cannot disregard totally, I know the planting of a bomb is not an acceptable thing.

Well the question is easy. Should a court sentence (20) such a man? -- Well the sentence must be weighed, if it has to be done must be weighed against the overwhelming evidence of the compelling factors. I do not believe we should isolate in sentencing any man who has done that, we should isolate the compelling factors from the sentence.

Yes now having said all that what is your answer? -- My answer is I stand here to plead that if sentence has to be passed, and I have already said I have respect for the judgment, it has to be in extreme mitigation.

Doctor let us just get down to brass tacks. Do I (30) understand/....

understand you to say that a man who has planted a bomb, let us take the extreme case, should (a) not be sentenced or (b) not be sentenced to imprisonment? -- I would say a man who has planted a bomb is guilty and should be sentenced but then in considering the sentence, and which is I think the purpose of my being here, is to plead that if guilt is established that there be a consideration of the compelling factors.

Yes that, you can take it for granted that that will be done. I want to know where you stand as far as imprisonment is concerned. We have been talking around the issue at the (10) moment. -- In the case, in this particular case ...

No, no, the case where a man who plants a bomb. This particular case I will decide on its merits. -- Well I think this is something hypothetical now.

Yes. -- We have to move away from a practical situation to a hypothetical situation.

It is not so very hypothetical because on Robben Island there were quite a few people who planted bombs. So, but even if it is hypothetical what is your answer? -- I have said if the person is found guilty of having planted a bomb (20) that person should be sentenced.

And should he go to jail? -- He should go to jail.

Yes. -- But then the term ...

Well that is a different matter.

MR FICK: Are you aware of the fact that Mr Mandela, in 1962, received military training in Algeria? -- I am not aware of that. Am I permitted to ask any question.

COURT: If it is relevant to the case. -- Because I would like to know why this question is asked.

MR FICK: You call him your leader. -- Pardon?

(30)

You/....

You call him your leader and a hero. Do you still regard him as a hero? -- I do.

When he received military training in Algeria? -- Unquestionably so.

And is he still your hero if he planned a violent revolution and the killing of many people? -- I believe I have already explained the circumstances, the prompting factors. Mr Mandela and many of us who believe in what he believes hold the view that this country must change its policies. I believe that we, everything that is done by the groups we are now talking, (10) I mean that are now facing judgment this morning, are doing these things in an attempt to prompt change in our land. The whole world talks about change in South Africa and Mr Mandela is no exception.

What do you say if I put it to you that Mr Mandela seeks a communist government in South Africa? -- I would disagree that Mr Mandela is in fact construed by all of us a nationalist rather than a communist.

Are you aware of the fact that he wrote a book on communism, "How to be a Good Communist"? -- The overwhelming (20) membership of the ANC, traditionally and historically, is a membership of nationalists, not communists. They do not hold the preponderance and I believe, in my judgment, Mr Mandela's - and I want to say this is based on authoritative information that I gathered from our interview with the Lusaka people, is that their views are seriously being misinterpreted for deliberate reasons in this country.

Is it not so that the ANC leadership was hijacked by the communist party? Is it not a well known fact? -- I do not believe that is true. (30)

Now/....

Now you still have not answered my question. Do you know that Mr Mandela wrote a book with the title "How to be a Good Communist"? -- No I am not aware of that.

Would you support the ANC if they seek a communist government in South Africa? -- I would be in the opposition. But I do want to concede that the system that ultimately governs our land must be based on a democratic assessment or a democratic agreement by the people of our land. We cannot impose a system unwillingly on our nation. We have got to allow people to vote. (10)

Lastly do you know what the ANC or the SACP means when they talk about a democratic government? -- Well I take it at face value that democracy means ...

No, no, no, do you know what they mean? -- I take it that they mean what democracy means.

You are ...

MR BIZOS: The witness was interrupted. I would appear that he is not interrupted my lord.

COURT: Yes. Do you have anything to add? -- In concluding I want to make an impassioned appeal, based on my leadership (20) involvement in this country I think things need to be made easier for us to get together as South Africans, black and white, and any sentence that is so severe as to erode the goodwill that must be generated and persist throughout the negotiating period would be counter-productive in my view and therefore my appeal is to the judge that as light a sentence as bearable and considerate a sentence be considered.

MR FICK: No further questions my lord.

RE-EXAMINATION BY MR BIZOS: No questions.

NO FURTHER QUESTIONS

(30)

MR BIZOS:/.....

MR BIZOS: My lord what may be the last witness we are about to call. We have reports which we have shown to the state which will make it unnecessary to call a further witness but as they are both involved I wonder whether your lordship would take the adjournment now because a district surgeon may have to be consulted by them in order to interpret the reports of the doctors. The doctors examined Mr Matlole, accused no. 17, at 21h00 at night. They make appointments weeks, if not months, ahead and it is no sign of disrespect that they cannot just be here, having regard to their hospital and other - but I (10) think it can be dealt with by way of an admission.

COURT: Yes. Now what sort of time do you expect will be needed by the state to study your report?

MR BIZOS: Well let us give it to them and they can at least take the time available, say the next twenty minutes to possibly half an hour, to study that and also to decide whether they are going to call a district surgeon to interpret it for them or not and to see whether we need to formulate the facts and then call the witness so that the district surgeon can do whatever he may have to do whilst we are (20) busy with the next witness. It is clear, in terms of the reports, that he has atrophy of the brain but I do not know whether your lordship wants to take judicial notice of what that means or what the extent of it is.

COURT: If you explain it to me I probably could.

MR BIZOS: I do not want to set myself up as an expert on that issue.

COURT: How much time do you think you need Mr Jacobs?

MNR JACOBS: Edele ek is bly mnr Bizos het gesê hy sal nou vir ons die verslag gee. Ons het een verslag gekry gister (30)

van/....

van hulle oor die X-straal fotos wat geneem is en wat ons hom tekenne gegee het vanoggend ons is bereid om dit ter erken. Ek weet nie watse verdere verslag is nou nodig nie. Ek het dit nie insae gehad nie. Ek weet nie die dikte daarvan nie, ek weet nie hoe lyk hy nie.

COURT ADJOURNS. COURT RESUMES.

MNR JACOBS: Edele net voor my geleerde vriend aangaan. Ek wil voorstel dat die ander getuies solank aangaan.

HOF: Ekskuus?

MNR JACOBS: Ek sê ek wil voorstel dat die getuie wat mnr (10) Bizos nog het wat hy wil lei, dat die solank getuienis gee want terwyl die ander getuie getuig het is mnr Smit met die verslag na die Distrik Geneesheer toe om opklaring te vind. Hy het nog nie teruggekom nie en ons verwag hom enige tyd terug. Ek kan nog nie op hierdie stadium vir die Hof sê nie. Dus wil ek voorstel dat ons voortgaan met die getuienis wat hier is.

BRUNHILDE HELM: d.s.s.

EXAMINATION BY MR BIZOS: Professor Helm what are you a professor of? -- I am a Professor of Sociology, Applied (20) Sociology.

What appointments have you held as a sociologist at various universities? -- I have been a professor holding the chair of applied sociology in the University of Cape Town since 1969 and I retired from that chair at the end of 1986 since when I have held the chair of social work in the University of Bophuthatswana.

Was that part of the, were you seconded there as part of the University of Cape Town's assistance to new universities? -- Yes the University of Cape Town had offered assistance (30)

to/....

to new universities and I had been working at the University of Bophuthatswana as a consultant in setting up its School of Health and Social Sciences as from 1979. But at the request of that university to my University of Cape Town I was seconded to the University of Bophuthatswana for two years which ended at the end of 1986 and then I volunteered to stay on for two further years at Bophuthatswana where I at present am.

Professor Helm have you studied, taught in the United Kingdom and in America and have you published widely on topics of sociology and more particular practical sociology? -- Yes(10) I studied in the University of London, the London School of Economics, as a graduate student and I have also studied at the Institute of Social Studies in The Hague which was set up by the ten universities of Holland. I have taught at the University of Cambridge. I was an Honorary Fellow of Newman College in the year 1973 and I have held a chair at the University of Hull in the United Kingdom in social administration in the years 1978 to 1979. I have also been a guest professor in the United States at the University of Tennessee.

Yes. Although there are others I think that we will (20) assume that for the purposes of this case that you are an expert sociologist, for a time being unless you are asked any more questions about your experience.

COURT: Which is unlikely. -- It is a relief.

MR BIZOS: Dr Helm, I may say my lord that in the main a report has been prepared for your lordship's convenience. Some of these are preliminary matters that I am going to ask. You have been given the portion of his lordship's judgment on the Vaal triangle? -- Yes.

And did you, in the limited time available did you try (30)

to/....

to read it and understand it all in relation to the Vaal?

COURT: Did you have time to read it, the first question, and the second one is did you understand it? -- Well I must make it clear that the defence approached me at rather short notice to come today to give evidence as an expert witness. I protested at the very short notice and asked whether there would be any possibility whatever of this being postponed but I was assured that that would not be possible. So in the circumstances and beside all my other duties I have done my best at least to read those sections of your lordship's judgment(10) as seemed to me to be the most applicable to the things that I have to say. Whether I have understood it sir is another matter but I have done my best.

Well that will soon become apparent.

MR BIZOS: Professor Helm do you know Profess Van der Walt of Potchefstroom University? -- Yes I know him personally as a colleague and a friend and I have been particularly interested, I was particularly interested therefore to see what he had to say in his report after he had investigated the circumstances of the disturbances in the Vaal Triangle in 1984. (20)

Did his report come to your notice before you were asked by us to give evidence in this case? -- Yes I saw the report shortly after it was issued and read it at the time. I have had an opportunity only fleetingly in the last day or so to refresh my memory as to its content.

Yes. In addition, for one aspect of your evidence contained in the report, did you see some half a dozen or so residents of the Vaal in order to verify one particular fact that will appear from your report this morning? -- Yes I had an opportunity this morning to see some half dozen residents(30) from/....

from the Vaal and to exchange some information with them, or some comment with them, some opinion.

Yes. Now did you, were you asked to draw a report in relation to the contributing factors that lead to disorder or rioting Professor Helm? -- Yes. I have done so and the document is before your lordship.

Well your lordship's registrar has it and I would ask your lordship to receive it as DS4. Would you please read your report and we will ask you to comment on it as you go along Professor Helm. -- Thank you. I have drawn up this (10) report under four headings. The first concerns Factors Contributing to Disorder in Crowds. The report mainly concerns the behaviour of people in crowds. The second section of the report deals with the characteristics of crowd behaviour. The third deals with the preconditions for civil disorder and the final one, which is rather brief, touches upon some consequences of aggressive behaviour. So with your lordship's permission I will present the report in that order, starting with the factors contributing to disorder in crowds and I recall that especially in the past two decades postwar (20) Britain has been plagued by urban riots and violence of increasing severity and Lord Scarman, after the widespread disorders of 1981, was appointed to inquire into their nature and origins and his report, which is known as the Scarman Report and which was published in 1981, sparked off renewed scientific inquiry in Great Britain into crowd behaviour. The Economic and Social Research Council in Britain, of which South Africa's Human Sciences Research Council may be regarded as the local counterpart, is a major source of funding for research in the social sciences and as early as 1978 this (30) council/....

council had concluded that the study of crowd behaviour had been neglected. Consequently with the added impetus of the 1981 riots and the Scarman Inquiry, this council, the Economic and Social Research Council in Britain, set up a multi-disciplinary panel of leading British academics to study crowd behaviour and this panel is now known as the Crowd Behaviour Panel of the ESRC. Now the reason why I am referring to this panel is that the extensive researches which have recently been done in Britain as a result of the work of these panelists was to discover, one of the objectives was to discover the (10) factors that led to the distinction between peaceful or orderly crowds and disorderly crowds. And in this connection a group of social scientists from the Sheffield City Polytechnic, they being led by the names which are in the report - Waddington, Karen Jones, Critcher and Fielding - concluded that "it remains impossible to make any definite statement about the 'causes' of crowd disorder". But it is possible to identify a number of what these researchers have called "key processes" which may increase or decrease the likelihood of crowd disorder and these key processes I have presented in the report (20) in two columns. The first headed "Factors Contributing to Order" and the second as "Factors Contributing to Disorder" and if your lordship will bear with me I will read them briefly. Positive and organised liaison between the police and crowd representatives will contribute to order and poor or none-existent liaison will contribute to disorder. The focussing of crowd attention on speeches and music will produce orderliness and the crowd, a crowd left to its own devices is more likely to disorder. I will read them in that order now. First the ones that contribute to order (30) and/.....

and then those contributing to disorder. Low-key sensitive police intervention as against over-aggressive police intervention in relatively minor incidents. The presence of women and children as against a masculine culture amongst the crowd and the police. A shared sense amongst all those involved of a joint stake in the maintenance of order or groups that perceive each other as them and us in a polarised position as it were, and that we have therefore got to stand together against them. The next a belief amongst the crowd that expression of their rights has to be orderly or a belief (10) amongst the crowd that their rights have to be defended by any means necessary. Next media reporting which gives a balanced portrait of the event and several points of view as against media reporting which over-emphasises violence and adopts the police view of events. A political climate which encourages the moderation of conflict as against a political climate which encourages the discrediting and the vilification of one group of participants. And then finally public opinion which is informed and sympathetic to the crowd's right to be heard as against public opinion which is ignorant of or hostile (20) to the beliefs of the crowd. Now I am, my opinion is that the facts that we know to have existed in the Sebokeng march of 3 September 1984 strongly support the belief that the factors in the above list that are likely to have contributed to crowd disorder clearly outweigh those that are likely to have contributed to crowd order. Hence, regardless of the activities of its leaders, the crowd in question was likely to have become disorderly. The court has found that the leadership had responsibility for the disorderly outcome. In view of the findings of the Sheffield researchers, however, (30)

the/.....

the sole responsibility for the violence cannot have been theirs. Now the Sheffield researchers list "positive and organised liaison between the police and crowd representatives" as a factor that is conducive to order. In the case of the disorders of 3 September 1984, although the police ought to have known that the march was to take place, optimum communication with leaders in the community does not appear to have been sought.

Now could I ask you to pause there for just one moment.

-- Yes.

(10)

By asking you to accept what the evidence before his lordship was, one person was called by the head of the security police to be asked to co-operate with the police, who is no longer before the court, the person that was asked is no longer before the court and coming from an area where there was no march. But the other fact that I want to bring to your attention is this that this march was decided upon at a meeting where over 800 people were present and the evidence before his lordship was that the day before, that is 2 September 1984, for a number of hours the people were

(20)

called to gather at the Catholic Church where the meeting, where they met together for the purposes of marching, throughout Sebokeng. Under those circumstances what do you say the, in terms of that report the police duty was? -- Well I would not like to make a pronouncement as to what the police duty was but I would merely point to my evidence which is that when there is positive and organised liaison between the police and crowd representatives you are more likely to get an orderly demonstration or an orderly protest than if there has not been this type of connection. So I would assume

(30)

from/....

from that that if it had been possible for the police, or if it had been their intention to seek some kind of communication with the leaders in the community about the march it is possible that it might have taken place without the violent outcome which eventuated. That is speculation. But it is based on the evidence we have before us, my opinion based on the evidence I have quoted here that positive and organised liaison between the police and crowd representatives is a factor conducive to order.

And you quote a portion of his lordship's judgment (10) in the middle of page 4 of your report? -- Yes.

Will you read that out please? -- Yes, that your lordship has found in judgment on page 734 that the City Treasurer of Lekoa Town Council had no inkling of dissatisfaction about rent increases until 3 September 1984, and that the Orange Vaal Development Board did not expect trouble either. And that suggests to my mind that there was no a good communication between authorities and leaders in the community and the residents in the community themselves.

Would you go on to the next topic in your report please?(20) -- Yes, well the next one I am dealing with is the characteristics of crowd behaviour. There is probably widespread support among social scientists for the Economic and Social Research Council conclusion that the study of crowd behaviour has been neglected but nevertheless over the years it has been studied by a considerable number of eminent social scientists. And while they do not always agree with one another there is general consensus that there are some characteristics that are common to all crowds, and it has been my purpose here to select those characteristics that social (30) scientists/....

scientists agree about as common to all crowds and to address only those. And the first one I would like to mention is the relation of the crowd to its social and cultural environment. The crowd is, and I quote, "a product of the community and its system of social relations" and my report gives the reference. In other words leaders cannot make a crowd nor imbue values in it. Secondly crowd behaviour is in a large measure unpredictable. There is irrationality present and people are capable of excesses (when acting jointly in a crowd) of which they would be incapable when acting on their own. Shared emotion heightens the excitability of people in a crowd. Rumours spread very quickly, but one cannot predict which way the crowd will interpret them. The individual finds his everyday judgment suspended. There is a sense of immunity - as if the normal consequences of an act can be escaped when the actor is a member of a crowd. Even when a crowd is being shot at, people in that crowd might believe that they will not be hurt. Gustave Le Bon, who is widely regarded as the classic authority on crowd behaviour, has this to say:

(10)

"Participants feel, think and act in a manner quite different from that in which each individual would feel, think and act if he were in isolation."

And the effect of this is to reduce the accountability of members of a crowd for their individual actions, just as a drug or alcohol, may be said to reduce the accountability of an individual under the influence. A leader of a crowd, if he is not a trained social scientist well-read on crowd behaviour, cannot be expected to be aware of the nature of crowd behaviour. I then go on to quote Serge Moscovici

(20)

who/....

who is a modern French authority on social psychology linked to the Institute of Advanced Studies in the Social Sciences in Paris and to Churchill College, in the University of Cambridge and he has this to say - and I am quoting from his work on *The Age of the Crowd* published in 1985:

"Once men have been drawn together and fused into a crowd, they lose most of their critical sense. ... Their consciousness gives way to the thrust of illusions like a dam swept away by a river in spate. Thus, individuals forming a crowd are borne along by limitless waves of (10) imagination and tossed about by emotions which are strong but have no specific object."

The famous French author Guy de Maupassant puts it as follows:

"A popular saying tells us that crowds 'do not reason'. But why not, if each individual member of them does? Why should a crowd unreflectingly do what none of its component units would do? Why is a crowd subject to irresistible impulses, fierce desires and stupid, uncontrollable impulses and carried away by the latter, to the extent that it commits acts that none of its (20) members would commit. A stranger cries out, and suddenly everyone is seized by a kind of frenzy, and all are caught up in the same unreflecting movement which none tries to resist. Carried along by the same thought which immediately becomes common to all, despite differences of social class, opinions, beliefs, customs and morality, they will hurl themselves upon him, massacre him, drown him, without any real reason, whereas each of them, if he were alone, would dash forward to risk his life saving the very man he is now killing." (30)

Now/....

Now De Maupassant is asking questions here but in asking the questions he is describing a phenomenon that is characteristic of crowd behaviour. Now the third heading of my report deals with the preconditions of civil disorder and perhaps the best known and most widely read sociological authority in this field is Neil J. Smelser whose standard work is entitled "Theory of Collective Behaviour" published in 1962. Now Smelser's methodology was to compare numerous events in which crowds had got out of control with those in which crowds had almost got out of control, and he tried to establish the (10) difference between the two. He identified certain factors as necessary and sufficient conditions for an out of control crowd situation. I have selected of these that Smelser has so identified four and these four are structural strain, sorry structural conduciveness first, then structural strain, then the growth and spread of a generalised belief and finally precipitating factors and I will speak briefly to each of these four. Now as to structural conduciveness the point is that the structure of societies, of some societies more than others, permits or encourages episodes of collective (20) behaviour. Under conditions of economic pressure for instance the structure of some societies might enable those under pressure to take remedial action, such as to vote the government of the day out of power. But your lordship in judgment found on page 732 and 33 that for instance economic recession, the slump in the steel industry, unemployment and inflation were predisposing factors for unrest in this case. Legitimate and effective counters to such economic pressures are not available to black people in South Africa. Your judgment my lord also found that there was "black disappointment and (30) bitterness/....

bitterness about the new constitution and a heightened sense, a heightened political awareness, and all this constitutes what Smelser would call structural conduciveness. Then on structural strain, the type of societal structure that induces violent protest also produces an intense sense of strain. The two in combination radically reduce the chances of peaceful reactions. Professor Tjaart van der Walt in his report when he was appointed to investigate "Black education in the Vaal Triangle with reference to the events of 3 September 1984" devotes the whole of Section 3 of his report to what he (10) entitled "Local Circumstances". He highlights conditions of deprivation and inadequacy and concludes as follows:

"The effect of general socio-economic problems on the schools boycott and on the widespread unrest and violence in the Vaal Triangle should not be underrated. In the absence of these conditions there would probably still have been protest actions, but certainly not on such a scale, not with such intensity, and not over so protracted a period of time."

C.1568

I go on to the third of Smelser's characteristics, namely (20) the growth and spread of generalised belief. This generalised belief, says Smelser, identifies the source of the structural strain. A widespread belief has developed among black people throughout South Africa that the country's political system is the root cause of all their social ills, especially of poverty and that the government is discriminatory in its laws and its action. This belief might be exaggerated. If apartheid were to disappear, this would not guarantee the simultaneous disappearance of poverty. Yet the belief is real and has real consequences. Community Councillors in the Vaal (30)

Triangle/....

Triangle were not perceived as acting in the interests of their constituents in combatting the effects of apartheid. They were not seen as effective people in that role. Your lordship found in judgment on page 814 that:

"What is clear from all the evidence, however, is that at the meetings of the VCA councillors were attacked and vilified in strident language and accused of being spineless marionettes and traitors who were corrupt and in office only for their own monetary gain."

So there was this generalised belief about the situation in (10) which, the situation which existed in the communities in question. Then I go on to dealing with precipitating factors. Conduciveness, strain, and a generalised belief, says Smelser, "do not by themselves produce an episode of collective behaviour in a specific time and place". It is always a specific event or events which spark things off. Under conditions of racial tension this is particularly true. The coincidence of rent increases and the implementation of the new constitution which granted no real increase of political power to the majority of the country's population was the precipitating (20) factor in this case and your lordship's judgment commences its discussion on the Vaal triangle as follows:

"On 3 September 1984, the day the new constitution creating the tricameral Parliament became effective, the day upon which the first executive state president took the oath of office, the Vaal exploded and unrest and rioting spread country-wide."

Then the final section of my report deals with some consequences of aggressive behaviour. Overt aggression can sometimes have a healing effect in that it might constitute an (30) outlet/....

outlet for intense emotions. This is known to social scientists as catharsis, which has come from the Greek word meaning cleansing or purification, and social scientists define this as "the release, the liberation or reduction of emotional tensions through talking out or acting out" and this overt action might be less drastic than what would otherwise have occurred. Even though there will be many persons in the communities concerned who will in retrospect condemn the acts of violence that resulted from the crowd behaviour of 3 September 1984, the catharsis that they will have experienced (10) will also be remembered. Punishment will most probably serve to inhibit future aggression towards the source of frustration. But it will not destroy the aggression. It will merely displace, delay or disguise the aggression, which will reappear later. My authority for this opinion, besides my own observations over many years of events similar to those of 3 September 1984, is the joint work of George Gaskell, who is a noted social psychologist of the London School of Economics, and Robert Pearton, who is a sociologist on the staff of St Mary's College of the University of London. These two (20) writers have become acknowledged experts on Aggression in Sport, and I give the reference to the quotation. Your lordship will be reminded that Britain has recently had considerable trouble with crowds at soccer matches. Now I have been informed by the residents of the Vaal Triangle that I have had the opportunity to speak to that Councillor Esau Mahlatsi was recently voted out of office (by 38 votes to 4) by one Sam Kodisang. Kodisang's successful platform included cheaper rentals, the reprieve of the Sharpeville Six and "bringing our children from the Delmas trial back into the community". (30)

It/....

It can only be you lordship, I submit to you, in the interests of all South Africans to build bridges, to encourage reconciliation between polarised sections of the population and to effect social reforms. This is the policy of the government. And sentences perceived as unduly punitive will be counter-productive to these objectives. It should be remembered that leaders in aggrieved communities are looked to for hope, and for the reconstitution of values, because aggrieved groups seek to alter the values of society in their favour. The present government, in its reform movement, recognises the (10) legitimacy of the wish to reconstitute the values of South African society in favour of the disadvantaged. I end with the quotation from Smelser:

"The number of determinants for which a single leader is responsible - and the degree to which he is responsible for them - is always an open question."

Thank you my lord, I have no further questions.

CROSS-EXAMINATION BY MR JACOBS: Mrs Helm you said you spoke to half a dozen people before you gave evidence? -- Yes.

Who were they? -- I regret that I did not have the time (20) to take a list of their names but they were presented to me as school teachers and one was a minister of religion.

Were they any of the people who gave evidence in this case? -- I cannot say that.

For how long did you have discussions with the six people? -- It was a very brief discussion. Time did not allow, I would estimate about fifteen minutes.

All six of them, you discussed ... -- Well I asked them, I put a series of brief questions to them and each responded of his own volition. In other words the responses I (30) received/....

received were volunteered.

And would you agree that that is not a representative view of what happened in the Vaal? -- I would certainly agree with that but nor, but I must say that the responses I received did not seem to me to conflict with what I know from other sources of the general feelings and beliefs that are common in black communities in urban areas in South Africa today. The limitations of my opportunity to speak to these people are well known to me and I am thoroughly aware of them. But I have already referred your lordship to the limitations of(10) time that have been placed upon me. It seems to me to be wiser at least to have met some people who were of the communities we have been talking about than to have met none.

And these six people were they all members of the riots and the march on 3 September 1984? -- I did not put that specific question to them but one of them in his response volunteered that he had not been in the area of that time at all, so I took it that he was not a participant in the march.

Yes. Were they members of any organisation in the Vaal? -- Again I did not put that question. There just was not (20) time but my impression was that they were folks who were in the position for instance of school teachers and ministers of religion as I have mentioned. They might well have been members of a specific organisation but that fact is not known to me.

How many were teachers? -- I am speaking from memory now, I think three.

How many were ministers? -- One I believe.

And the others? -- I am afraid I do not know what their occupations were, they were just presented to me as folk (30) from/....

from the community.

Can you tell the court did you study the evidence on the Vaal and the judgment of the court on the evidence on the Vaal? -- No I did not have an opportunity to peruse the whole of the court record and I have not had a chance to acquaint myself with everything that was led in evidence. All that I was able to do

COURT: Do not be guided into doing so Professor. -- I take your lordship's advice.

You will have to take your sabbatical. -- I am a rapid(10) reader sir.

MR JACOBS: Is it possible for knowledgeable leaders in the community to use the characteristics of crowd violence and crowd behaviour for their own purposes? -- I think that the state's question there is opening up to what extent a crowd can be a tool in the hands of a leader, to what extent a crowd is likely to behave in a way that is in complete accordance with the wishes of the leader and the extent to which a crowd is maleable by a strong leader. If that is the question then this would be my answer, yes a crowd can be affected by (20) leadership but ...

And can ... -- No, I am sorry but this is, if I must give a proper answer I must say a little more. Crowds are not uniform. Social scientists recognise different nature of crowds and some would be more maleable to leadership than others. In addition to that whatever the type of crowd in my opinion now crowd is entirely predictable. I have already said that in my former statement and it would be impossible even for the most effective leader to be quite sure that a crowd would carry out his wishes. In fact what has been (30) known/....

known to happen on many occasions is that a crowd having come together for one purpose changes its mind, if I may use that phrase, repudiates the leaders that have brought it together, finds a spontaneous leadership arising from among its own ranks and sets out to do something quite different from what was intended. This is well documented in social science evidence. A crowd will sometimes also throw up its own leader, depending on an incident that has occurred.

Now is it possible for the leaders in a series of meetings to work up the people for their own purposes when they get (10) them together as a crowd? Will that have an effect on the crowd? -- Yes, a series of meetings beforehand might have an effect on the crowd but not, in fact I would go so far as to say never unless the opinions and the feelings were already well established in the community and that this is precisely what people supported and believed within their own ranks. This point has indeed been made in my document.

Well to use a campaign against the Black Local Authorities and to make them out as the enemy of the people, the puppets of the government that must be destroyed, will that have (20) an effect on the crowd if this goes on for a series of meetings? -- I think I have already said that no leader can imbue values in a crowd. He cannot create a crowd with a purpose of his own. He can only succeed in his effect upon the crowd if the crowd shares with him the values that he is advocating. It is in my opinion impossible for a crowd of people to be manipulated by a leader unless the crowd has complete sympathy with the objectives that the leader is advocating. In fact he would not be a leader if this were not so. The crowd would not acknowledge him in that role if he was not embodying (30) their/....

their own beliefs, their own sentiments, their own emotions, if he was not indeed a spokesman for the communal belief or feeling.

Is it possible for leaders from a platform to work up the feelings of a crowd, according to your studies and your special knowledge? -- I think it is unquestionably true that some speakers are more effective than others and that on political platforms, even perhaps in the House of Parliament, some people are more able to carry others with them than others. In that sense insofar as any speaker is effective it is really the (10) same thing as saying that the crowd is responsive to what he says. But that does not in any way detract from the basic point that I have been making here that a leader, if he is to be effective, must be perceived by his hearers as saying things which they share, saying things which they believe in.

Now in your opinion on page 3 you refer to the facts known to have existed in Sebokeng on 3 September 1984. What facts are you referring to, what are the facts? -- Well sir I, in using that phrase I was drawing upon my knowledge of the content of Professor Van der Walt's report. (20)

And do you regard that facts without taking the facts of this case into account? -- No sir, I am talking about the facts known to have existed in the march and I am not aware of the fact that this case has thrown up facts that are at variance with for instance those that are contained in Professor Tjaart Van der Walt's report. In other words I am referring here to the kind of political, to the factors that were present within that crowd. That is all that I meant here.

But can you enumerate some of the facts that you regard, that you took into account that existed at the time of the (30) march/....

march in Sebokeng? -- Yes. I do not think that this march was for instance a march representative of the total population of the communities. It was not a march that contained women and children of all ages as well as men but it was a situation in which the masculine culture amongst the crowd and the police which my list refers to was more in evidence than the other type of crowd such as you might get on a celebration day or a picnic, but this was not that kind of gathering and my reference here is to the facts that are known to have existed in the Sebokeng march of March the 3rd. Also I do not (10) think that it was possible for this crowd to have had much in the way of focussed attention, that there was music and that kind of thing in the background, but it seems to me from, by recall of your lordship's judgment that this crowd was to a certain extent - it was not really a march, it was not really marshalled, it was a fairly disorderly gathering and so it seemed to me to be more of a crowd left to its own devices. I also believe that there was not good communication between the authorities and the members of the communities. That is a fact I regret to have to say has become rather notorious (20) in South Africa, that there has not been good liaison between authorities and black communities and indeed recently there have been very deliberate attempts, with some success, to increase the communication between communities and those who govern them. I also believe that in black communities in South Africa there is a perceived feeling of us and them and there is certainly, in my view and in my experience, a belief that if black people do not stand together and support each other their chances of redress of their grievances will be reduced. It is that kind of fact that I had in mind. (30)

Yes/....

Yes but I cannot understand now. You explained to the court that you believed that, I asked you for the factors, existing factors. You stated in your opinion here that there were certain clearly existing factors that clearly outweighed those that are likely to have contributed to the crowd disorder. I did not ask you for your belief. I asked you for the existing facts. -- Well sir I have quoted the facts as I have understood them from the sources that I have given - in part your lordship's own finding, in part the content of Professor Van der Walt's report and in part my own knowledge of conditions in black townships and the beliefs of the people there. Now a belief is to a social scientist a fact that people believe something is a social fact. (10)

Now on what do you base your finding that that was not a total march, not a mob?

COURT: No, no, -- I am sorry I did not quite ...

No the witness said that the total population did not participate in the march.

MR JACOBS: Okay. What do you say about children? Did you say that there were no children in that march? And women? (20)
-- No I was not present at the march, I do not have any firsthand knowledge and I was not an observer. I cannot say that there were no children. I would have expected there to have been some but what I was saying was different. I was making a different point. I was saying that this crowd was not a crowd that was the kind of crowd you would get in a community situation. In other words where everybody old and young, women and children, all took part as a communal activity but I saw this as a gathering of people that was more selected than that. (30)

And.../.....

And ... -- I was not suggesting that there were no children present. I would have expected some of them, children to be present simply because you cannot do anything in a black township, drive a strange car into it or just walk down the street, without getting hordes of children following you. It is a simple interest reaction. And if there was going to be a gathering of this kind I would certainly expect there to be children spectators. A fact which is not only true of black communities.

If I understood you correctly - I have only a short (10) note - that you said that this crowd or this march had no focus of attention. Is that correct? -- No sir I do not think I said that. I said that it seemed this crowd seemed from your lordship's own judgment not to have been a particularly organised march in the sense that people were in set rank and file and that there does not seem to have been a crowd attending at a situation at which there were speeches and music and a programme and that kind of thing.

Do you know whether this specific march of 3 September had a specific focus in mind on that particular day? -- I (20) cannot answer that question sir.

And you said something about no leaders and marshalls in the march, is that correct?

COURT: I am sorry, what is the question?

MR JACOBS: There were no leaders and marshalls in that march?

-- No sir I do not think I could have said that. If I did say that, if that is indeed on record as my having said that then I must withdraw that because I do not know that there were no leaders or no marshalls. What I was trying to say was that this crowd does not appear from what I know of it, and (30)

I/....

I admit the limitations of my knowledge of it because I was not a participant, I am dependent entirely on secondary sources for my knowledge of the march but what I am saying is that such as what I know of the march does not suggest that this was a highly organised crowd that was behaving according to a set pattern with focussed attention directed all the time. In other words it was not a regimented occasion. That is my impression.

Do you agree then that your facts are so limited that you cannot give an opinion on this? -- If I had thought that(10) my knowledge and facts were so limited that I could not give an opinion I would not have ventured to stand in this box so my answer to that question must be no, I think my knowledge although it is limited and has limitations which I have freely acknowledged I nevertheless believe that I have a right to say the things I am saying here. If I did not believe that I would not have come to say them.

On which pages did you read in the judgment of the court that this was not an organised march? -- I must apologise, I do not have the reference in front of me of that particular (20) page. I have quoted, given several pages references to my references themselves, to your lordship's judgment. That particular one I do not have before me. If I were given an opportunity to consult the judgment I have reasonable confidence that I would find it but I do not have the reference in front of me.

I just want to put to you that it was found by the court on page 891 of the judgment that this was not a spontaneous march but it was an organised march and well planned. -- I think I said something a little different from that. I was(30)

not/....

not contesting that it might have been organised or planned. The question was was the reality, was the crowd when it eventuated, when it came into being, was it a highly organised structured event or not and my impression was that it behaved like crowds usually do, in other words began to assume a life of its own and began to behave in ways which had a great deal of irrationality and spontaneity in it, despite such planning or organisation as there might have been.

Well according to your knowledge and your information how did this crowd behave? You referred to its behaviour. (10) Can you tell us now how did it behave? -- Well it seems to me that the crowd did exhibit the characteristics of crowd behaviour, in other words that it developed its own initiative and if you like its own set of actions.

In what way, be more explicit please? -- Well violence did eventuate from the march which at least in the opinion of some was not the original objective of the crowd.

What was the original objective? -- I cannot say that, I was not an organiser, nor a participant.

Now if you do not know that how can you say this con- (20) tradiction now, the contrary version that you just expressed? -- I am not quite clear what the contradiction is that the state has in mind. If that could be clarified for me I will try to answer the question.

MR BIZOS: I submit, with respect my lord, that our lordship's judgment to the witness has not been accurately referred to. A line of cross-examination is taking place not based upon your lordship's judgment which the witness correctly reported in her report. It appears at page 852 and may I read the passage to your lordship and the witness: (30)

"This/....

"This procession, which was called a march in court, was neither an orderly march nor a sedate session. The participants were not in line or in step. It was a group of people of varying ages jogging to the tune of their song with raised fists and taking up the width of the tarmac road. The march was approximately 500 metres long and the first third thereof mainly consisted of youths."

I think that clearly that supports the witness' quotation in the report and that is the basis upon which she is entitled (10) to have the question put to her.

MR JACOBS: On page 891, for the reasons set out I will read this also - Edele ek dink ek gaan net verwys na bladsy 891, die Hof kan dit daarso kry wat daarso staan. Ek het ook geen verdere vrae aan die getuie nie.

RE-EXAMINATION BY MR BIZOS: Professor Helm please turn to page 12 of your report where you say that:

"I have been informed by residents of the Vaal Triangle that Councillor Esau Mahlatsi was recently voted out of office." (20)

Etcetera. Other than that information that Esau Mahlatsi was no longer the mayor and Mr Kodisang was the new mayor did you rely on anything that the residents of the Vaal told you for the purposes of your report or for the expression of your opinions? -- In the evidence I have given here? No.

Yes. Other than the confirmation of that fact? -- No.

My lord I do not know what your lordship, it was my idea that the witness would speak to people in confirmation of this fact and I want to give your lordship an assurance that none of them were witnesses. They were mainly people that we (30) thought/....

thought originally of calling to prove this and other facts in mitigation but we thought better of it and, consisting of priests and principals, but we thought better of it and thought that the sociologist's report may be both time saving and possibly better for the purposes of our argument. None of them gave evidence in this case on the merits. That is all I wanted to say about that.

COURT: Yes, thank you Mr Bizos.

MR BIZOS: I have no further questions.

NO FURTHER QUESTIONS

(10)

MR BIZOS: Save for what we hope to be an admission in relation to the medical condition of Mr Matlole, accused no. 17, that is all the evidence that we intend leading. I do not know whether my learned friends have any information.

MNR JACOBS: Die verslag wat aan ons gegee is, die eerste een het ek behandel voor, ek weet nie waar my geleerde vriend is nie. Die tweede een, dit lyk na 'n afskrif wat vir ons gegee is, ek weet nie of die oorspronklikes na die Hof toe gaan nie. Ons is bereid om te erken dat dit is die bevindings van die geneeshere in altwee gevalle. (20)

MR BIZOS: We seem to be not communicating very well with the state. We were hoping that the district surgeon would be made available so that we could have agreed interpretation of this because, and that is really the matter.

COURT: Let me just have a look at this report.

MR BIZOS: The neurologist's report. The one is from a neurologist and the other from the radiologist. It is the second one which is the neurologist.

COURT: I take it that the factual situation about his arrest and detention is not entirely correct in the history set (30)

out/....

out in the report. It says here that he was arrested in 1985 and has been in prison ever since. I thought he was out on bail at some stage.

MR BIZOS: He was my lord, that is clearly some ...

COURT: So it must be that he has forgotten that.

MR BIZOS: Well he gave the history my lord.

COURT: It seems to support your case. Yes I have no problem with these reports. Why does counsel have any problem with the reports?

MR BIZOS: Well if your lordship is prepared to ... (10)

COURT: If the reports are admitted as is I think that I will be able to make out what they are about.

MR BIZOS: As your lordship please, then we will leave it at that, if your lordship would record those as the facts, the medical facts contained therein are correct then we will make submissions on that basis. I think it would be carrying ...

COURT: The MRI report dated 5 December 1988 will go in as DS5. The report by Dr Stanley Levy dated 6 December 1988 will go in as DS6. Mnr Jacobs voorsien u dat daar n twis gaan wees oor wat die verslae beteken? (20)

MNR JACOBS: Ek voorsien nie n twis daaroor nie edele.

HOF: Dan gaan ons die saak daarby laat berus. Dit is nou die getuienis wat die verdediging voorgelê het. Het u enige getuienis?

MNR JACOBS: Ek het geen getuienis. Ek mag net sê ons het mnr Bizos nie verkeerd verstaan nie. Professor Loubser sê wat ons genader het en ook ander persone, sedert daardie mense wat daardie verslae opgestel het, die radioloog is die enigste persoon wat sy verslag kan uitlê. Die ander verslag ..

HOF: Wat sy verslag kan? (30)

MNR JACOBS/...

MNR JACOBS: Uitlê en verduidelik. Die ander verslag, die tweede verslag, dan moet daarso observasie gehou word, weer van nuuts af deur iemand anders. Nou dan is dit ook weer net aangewese dat die man wat reeds die observasie gehou het sal dan die uitleg moet gee. So hulle kan nie ander 'n dokter se verslag hier kom uitlê nie.

HOF: Nee dit is gaaf, miskien kan ek dit dan uitlê.

MNR JACOBS: Soos dit u behaag edele, en dan die tweede is ons lei nie getuienis nie.

HOF: Dankie mnr Jacobs.

(10)

MR BIZOS: We intend addressing your lordship, not at great length, in relation to sentence but we would like an opportunity for the record which mostly has become available in type and we would like to have, make reference to that during the course of our address. The main address will be done by my learned friend Mr Chaskalson but we do need to get the authorities together and the record and we would ask your lordship to allow the matter to stand down until tomorrow morning and subject to what the state may have to say, on the assumption that they will not take longer than we will, (20) the probabilities are that we will finish what we have to say tomorrow. I am informed that we are not likely to take the better part of the morning on what we have to submit to your lordship.

HOF: Mnr Jacobs?

MR JACOBS: Ons het, dit is eienaardig dat my geleerde vriende, hulle het oor daardie getuienis beskik voor die tyd ook dat hulle nie bereid is om nou aan te gaan met hulle betoog, sover nie, en die hof toe te spreek nie. Mens sou verwag dat die saak wat al so baie lank geloop het, dat hulle almal sal (30)

probeer/....

probeer om dit klaar te kry so gou moontlik. So ek ...

HOF: Ja ons sal die saak hervat mōre oggend om 10h00.

COURT ADJOURNS UNTIL 8 DECEMBER 1988.