

AREA NO 21 - WORCESTER (Betoog pages 582 to 596)

1. It is alleged that "sedert September 1984 het UDF en Wes Kaap Civic Organisation georganiseer en het intimidasie, geweldpleging en oproer plaasgevind."
2. Evidence was led of two pamphlets, ABA (1) and (2) , distributed on 15 September 1984 by a group of approximately 200 black youths, including Matthews Kapa, the Western Cape Civic Association Secretary in Worcester and Miriam Moleleki, the United Women's Organisation chair person.

MacDonald volume 112 page 5584 line 25 to page 5585 line 25; volume 112 page 5597 lines 8 - 16.

At the outset it should be emphasised that the activities of UWO have no bearing on the events in this area as it is the WCCA and not the UWO which is alleged to have been responsible for the violence.

3. ABA (1) is a pamphlet calling on residents to boycott the taxis of councillors Badi and Tsobo. The pamphlet shows the logos of the UDF and the Western Cape Civic Association.
4. General evidence was led to the effect that the boycott referred to in ABA (1) did take place and that

it was accompanied by some incidents of intimidation. It was alleged that some people were forcibly removed from taxis in the course of the boycott. None of the individuals responsible were identified in the evidence.

MacDonald volume 112 page 5587 lines 1 - 5

5. ABA (2) is a pamphlet containing the logos UDF, Western Cape Civic Association, COSAS, United Women's Organisation and another unknown organisation. The pamphlet appears to have been issued by UDF Township Area Committee, Salt River. The front page of the pamphlet criticises the tricameral parliament. The back page of the pamphlet calls for a boycott of a Ciskei bus service.

6. Evidence was led that there appeared not to be any such bus service operating in Worcester in 1984 /85.
MacDonald volume 112 page 5588 line 8 - 9

7. Evidence was led that the Western Cape Civic Association and the United Women's Organisation held meetings in Zwelethemba since 1984, many of which took place at the house of Matthews Kapa. The witness had no personal knowledge of what took place at these meetings.

MacDonald Volume 112 page 5588 lines 19 - 28

page 5599 line 28 - 5600 line 9

8. Evidence was led of reports of death threats made to councillors (which is hearsay) and of attacks on the person and property of the mayor, Tsobo. Evidence was also led that the whole council resigned in 1984 and that following the resignation, no new nominations for councillors had been received.

MacDonald volume 112 page 5589 line 3 to page 5591

line 1

Tsobo's house was the only one that was burned down. However, this occurred after all the councillors had resigned. It seems unlikely, therefore, that the burning was related to the fact that he was a councillor or was intended to induce him to resign.

9. The only State evidence relating to UDF and any of its affiliated organisations is the evidence that ABA(1) and (2) were distributed in Zwelethemba Township in Worcester and that the Western Cape Civic Association and the United Women's Organisation held meetings in Zwelethemba. The witness has no personal knowledge as to what took place at any of these meetings.

10. The Defence Case

10.1. The defence led the evidence of Mrs Moleleki. The State has not submitted that her evidence should be rejected. She is

criticised on the basis that her explanation about why it was said in Exhibit ABA1 that councillors worked only for their own benefits is unacceptable. Even if this explanation is unacceptable there would be no reason to reject the rest of her evidence and indeed no such reason has been advanced by the State.

Betoog: p590 para 1.28

10.2. She is also accused of hiding things from the Court. For this proposition, only one example is cited, namely, that she first said that she did not attend the funeral of Goniwe and it later emerged that she in fact did so but was not interested in what happened there.

Betoog: p592 para 1.30

10.3. It is correct that she initially stated that she had not attended the funeral and later admitted having done so. She did say, however, that she was not well at the time and her memory of the event was vague. More importantly, however, is the fact that the funeral in question took place in July 1985, outside the period relevant to this area. In fact, an attempt by the State to introduce a video of this funeral was refused by the Court.

Judgment: Vol 381 p22089 - p22090

10.4. It is submitted that this criticism cannot be elevated into a general proposition that the witness hid things from the Court.

Furthermore, it was not as if the witness was confronted with a lie she had told the Court. She was asked if she was certain that she had not attended the funeral and then stated that she had. Had she wished to be untruthful she could have maintained that she was not present.

10.5. She said that she had been the chairperson of the Zwelethemba branch of the United Women's Organisation and an additional member of the executive committee of the Zwelethemba branch of the Western Cape Civic Association. Both organisations were formed in 1982, before the launch of the UDF. Both organisations subsequently affiliated to the UDF.

Moleleki: Vol 380 p22024 line 1 - p22025 line 20

10.6. She went to the national launch of the United Democratic Front and did not come to the conclusion that UDF intended to overthrow the government by violence. She herself never

became part of a campaign to overthrow the State by violence.

Moleleki: Vol 280 p22022 line 17 - p22026
line 26

This evidence was not disputed by the State.

- 10.7. It is common cause that, before the pamphlet ABAI was issued and during June 1984, the witness went to a public meeting called by councillors at the Civic Hall in Zwelethemba at which the people present asked about why councillors had not kept promises which they had made in the past. When no satisfactory answer was received, members of the audience called the councillors puppets. The witness first heard the councillors being referred to as puppets when certain councillors who resigned during 1982 referred to themselves as puppets.

Moleleki: Vol 380 p22027 line 4 - -22028
line 24

- 10.8. It is not in dispute that as a result of this, the Zwelethemba committees of the UWO and WCCA met together to consider what could be done. It is not in dispute that these organisations

had tried to talk to councillors before and that the councillors had refused to talk to the civic association. Indeed the witness says 'we in the organisation then decided to sit down and think about what can be done because these people were not interested in talking to us. Whenever we asked for an appointment to meet them, they are not prepared. Therefore we are now to sit down and find a solution'.

Moleleki: Vol 380 p22027 line 29 - 22028
line 3

10.9. A boycott of the vehicles of certain councillors was decided upon and ABAl was prepared by the Zwelethemba branch of the WCCA with the United Women's Organisation 'just merely supporting'.

10.10. It follows that the decision to boycott councillors' taxis would probably not have been taken had councillors not refused to talk to the association.

Moleleki: Vol 380 p22029 lines 9 - 29

This evidence too is not disputed.

10.11. The State did not dispute in cross-examination the witness's evidence that introducing the pamphlet was 'just to show to them how much bad we feel about this' and that the purpose was not to intimidate or to attack.

Moleleki: Vol 380 p22039 lines 2 - 4

p22056 lines 4 - 8

10.12. The witness was in Cape Town when the pamphlet was distributed on 15 September 1984.

Moleleki: Vol 380 p22030 lines 21 - 29

In any event, the boycott appears to have been very short lived and come to an end after it emerged at a meeting that the councillors had already resigned.

10.13. What is clear from this evidence is that the issue was purely local and in no way initiated or influenced by the UDF. It was obviously a matter which affected the Zwelethemba community directly and the initiative came from the local organisations. It is also clear from her evidence that UWO and WCCA did not make use of threats or intimidation to achieve their goals.

Moleleki: Vol 380 p22031 lines 7 - 11
 p22039 lines 2 - 4
 p22056 lines 4 - 8

10.14. The only factual issue between the State and the defence as far as her evidence is concerned is whether or not the witness Moleleki distributed the pamphlet on 15 September 1984. The State did not specifically put to her that she was present. It is submitted that there is no reason for finding that Mrs Moleleki distributed the pamphlet. However, this is in any event not material to the determination of the issue of whether the WCCA, the UDF and the accused were responsible for the violence in the area.

10.15. As far as ABA2 is concerned, the evidence is that it had nothing to do with the Zwelethemba branches of UWO or WCCA.

Moleleki: Vol 380 p22030 line 30 - 22031 line 6

10.16. It also emerged in cross-examination that the Zwelethemba branch of the WCCA never held a mass meeting.

Moleleki: Vol 381 p22071 lines 10 - 13

10.17. Although the Zwelethemba branch of WCCA was affiliated to the WCCA it had the right to take local decisions.

Moleleki: Vol 381 p22067 lines 24 - 30

11. The cross-examination of this witness covered a wide range of issues which do not bear on the central question of who was responsible for the violence which occurred in Zwelethemba.

12. There is nothing in her evidence from which any inference can be drawn that WCCA (or the UWO) were violent. Indeed there is nothing in her evidence to suggest that she was not being truthful when she said that violence was not intended and certainly not part of the plan of these organisations.

13. The State relies on certain evidence concerning school boycotts during July 1985. This evidence, which was elicited by the State from the witness under cross-examination is totally irrelevant as it concerns events which took place outside the relevant period of the indictment.

Betoog: p591 para 1.29(iv) - (viii)

14. A number of observations concerning the evidence of Badi are set out in the Betoog. Many of these are

without foundation, thus:

14.1. The contradiction alleged in paragraph 1.12, p583, does not exist. What was put by the defence related to an 'aangestelde raad' which followed the resignation of the second elected council.

MacDonald: Vol 112 p5595 lines 3 - 11

14.2. The questions concerning the school boycotts in July 1985 referred to in paragraph 1.14 and 1.15 of the Betoog, p584, fall outside the period of the indictment and must be left out of account.

14.3. As in other such instances, the submission made by the State that evidence is false because a different account is reported in an exhibit (para 1.17, p584 of Betoog) must be rejected.

14.4.

14.4.1. The existence of the statement referred to in paragraph 1.18 of the Betoog, p585, the terms of which are in conflict with the oral evidence given, certainly has the effect that Badi's evidence must be approached with great care.

- 14.4.2. Nevertheless, the conclusion sought to be drawn by the State (Betoog, paragraph 1.20, p586) that there is a clear indication of the state of terror of this councillor cannot be sustained.
- 14.4.3. There is nothing in the evidence to suggest that Badi did not live and work in his community from September 1984 to April 1988, when he testified, other than in complete harmony with it.
- 14.4.4. The statement which was produced came into existence only on 16 April 1985, seven months after the alleged threats, and only when Badi was summoned to the police offices.
- 14.4.5. The probability is, it is submitted, as likely as the one argued by the State, that Badi was not aware of the statement's contents - why otherwise would he risk exposing to the public gaze a statement critical of the very people the State alleges

he is terrified of, which otherwise would remain locked away in a police file?

14.4.6. If Badi's explanation for his contradictory statement to the police is rejected as false, it cannot be concluded, as the State does, that what he told the police was true and what he told the Court about the events in Worcester, is false. Nor, can it be concluded that he gave false evidence to the Court out of fear. The reason for the untruthful explanation (if untruthfulness is assumed) is a matter of conjecture and speculation. An equally possible explanation to that advanced by the State is that Badi, who made the statement at the instance of the police, gave false information to them in order to ingratiate himself with the authorities, and provide a reason which he thought would be acceptable to them, for resigning from the council.

15. It is also submitted that a number of the conclusions in the State argument concerning Worcester are not justified.

15.1. There is no evidence that there was a campaign against the Black Local Authorities in the area which was jointly conducted by CAHAC, the Western Cape Civic Association and the UWO. The latter two organisations did conduct a boycott in respect of the taxis owned by two of the councillors in September 1984. As already stated this boycott was extremely short lived.

15.2. There is likewise no evidence of 'gereelde skakeling' between the organisations in Zwelethemba and the UDF through their head office in Cape Town nor of any effort by the UDF to mobilise the masses of the people in Worcester against the constitution and the local authorities. The evidence in fact suggests an absence of co-ordination. Shortly before July 1985 when a conference of UWO was being planned one of the proposals was that a group of people be chosen to investigate how the work of the UDF and UWO could be co-ordinated.

Moleleki: Vol 381 p22064 lines 14 - 17

This suggests that before then there was no co-ordination

- 15.3. Finally, the submission that violence against councillors broke out a week after the distribution of the pamphlets by the Western Cape Civic Association and the UWO is not justified. According to the evidence, a petrol bomb was found at the home of a councillor eight days after the distribution of this pamphlet. The burning of Tsobo's house occurred more than one month after the date upon which the pamphlet was found.

MacDonald: Vol 112 p5590 lines 24 - 25

Betoog: p596 para 6

MacDonald was clearly very uncertain about the date of this event: Vol 112 p5593 line 12 - p5594 line 19

Moleleki believed that this had taken place in 1985: Vol 381 p22031 lines 14 - 22

16. In all these circumstances, the WCCA cannot be held responsible for the violence in the area; nor can it be said that such violence was committed at the instance of the UDF, or that the UDF or any of the accused were responsible for the violence.

AREA NO 27 - SOMERSET EAST (Betoog pages 597 - 666)

1. It is alleged in the Further Particulars (page 80) that "gedurende 1984 tot 1985 het SEYUO (Somerset-Oos Youth Organisation), COSAS en SERA (Somerset East Residents' Association) georganiseer en het intimidasie, geweldpleging en oproer uitgebreek."
2. No evidence has been led in connection with SEYUO. It will be assumed that the further particulars were intended to refer to SEYCO (Somerset East Youth Congress).
3. General evidence concerning unrest
 - 3.1. The witness Du Pisani testified that unrest broke out in October 1984. Before that, according to him, there had been meetings. He was aware of those meetings because he saw placards, but he was unable to say who organised these meetings, presumably because the placards made no mention of any such organisations.
Vol 108 page 5397 lines 20 - 30
 - 3.2. Du Pisani also testified that pamphlets were distributed in Somerset East and that he handed

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these to the security police:

Vol 108 page 5398 lines 1 - 7

3.3. None of these pamphlets was ever presented in evidence and the witness was not asked about the contents of these pamphlets and, it is submitted, the only inference to be drawn is that they are irrelevant to the matters in issue.

3.4. Du Pisani testified also in general terms about various attacks on houses and incidents of stone throwing:

Vol 108 page 5400 line 13 - page 5401 line 31
page 5404 line 31 - page 5406 line 24

3.5. In general, Du Pisani arrived after these attacks and was not in a position to testify on a basis of personal knowledge of what had happened immediately before them.

Vol 108 page 5407 line 2 - 7

3.6. Du Pisani testified also of having seen road obstructions and trenches but dates these as having been after 16 March 1985:

Vol 108 page 5406 line 25 - page 5407 line 1

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- 3.7. Labuschagne mentions sporadic stone throwing at private vehicles at Glenavon Road, in the period leading up to April 1985 when that road was closed by the Provincial Administration :
Vol 109 page 5429 line 3 - 13
- 3.8. Labuschagne testifies about road obstructions having been erected in the area from approximately 11 February 1985 onwards:
Vol 109 page 5433 line 18 - 26
- 3.9. In general, this witness also arrived at the scene of sporadic attacks after the event and is unable to testify about what took place immediately before that:
Vol 109 page 5440 line 29 - page 5441 line 4
- 3.10. Mguba testified about road obstructions on 16 March 1985, after the attack on the Beer Hall:
Vol 110 page 5489 line 27 - page 5490 line 9
- 3.11. In marked contrast with the evidence of the police officers, the township superintendent Rich testified that he came across trenches and road obstructions and other damage in the townships from as early as July/August 1984:
Vol 112 page 5554 line 27 - page 5555 line 4

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It is submitted that he was a witness prone to exaggeration and that this evidence should be rejected.

- 3.12. The evidence of Du Pisani that unrest broke out in October 1984 should be assessed against the evidence of the station commander Lieutenant Labuschagne whose sole reference to unrest before the events of 11 February 1985 is the statement that as at January 1985 when the group of 13 visited him, the only police action being taken was to patrol the area for sporadic stone throwing:

Vol 109 page 5425 line 19 - page 5426 line 30

There is no suggestion in his evidence of anything of consequence before that time.

It is submitted that it is quite clear that no unrest of any significance occurred in Somerset East before the events of 11 February 1985, which will be considered below. There is certainly no identification of any persons involved in incidents of sporadic stone throwing and no inference can be drawn that such incidents were in any way organised.

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4. The Organisations

COSAS

4.1. It is generally submitted that the state was not able to lead any reliable evidence concerning the activities of COSAS in Somerset East, nor in particular did it lead any evidence whatsoever that the COSAS branch in Somerset East had any contact with COSAS regional or COSAS National or with the UDF in any way, in relation to the events and period set out in the indictment.

4.2. The evidence of Mguba concerning COSAS and its office bearers must be entirely disregarded. It was only after June 1985 that he acquired any "personal knowledge" and even then, it is submitted, such knowledge is of an inadmissible sort.

Vol 110 page 5497 lines 1 - 26

In general, Mguba's evidence concerning office bearers of organisations in Somerset East is inadmissible, having come to him in the course of questions put at the police station.

Vol 111 page 5502 lines 3 - 11

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In paragraph 1.17.6 of the Betoog, the state mentions names given by Gqobane as being on the COSAS Executive. It should be noted that in the same passage of evidence cited by the state several names given by Mguba are specifically disavowed by this witness as having been on the COSAS Executive, including Mapela, Ludu Japhta, Ludu Nxayi, and as referred to in Betoog para 1.17.1, Zola Tesana was not even at the school, let alone in COSAS.

- 4.3. Lieutenant Labuschagne gives evidence about COSAS members visiting him in January 1985. The evidence of this police officer identifying individuals is clearly hearsay, being on the basis of what was said to him at the time. In any event, the persons and positions identified are not consistent with other evidence. Thus, Lt Labuschagne said that Andile Ntshudu was the president of COSAS and Panama Njenje was introduced as the organiser of COSAS.

Vol 109 page 5425 line 22 - page 5426 line 13

- 4.4. Sgt Labuschagne of Cradock testified that he was visiting the office of Lt Labuschagne on 10 February 1985 and that he saw 13 people come walking out of that office (evidently having

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thought it important to perform this counting exercise). He too mentions names of people belonging to COSAS without any proper basis being laid for such testimony. Interestingly, he specifically excludes Panama Njenje from the list of people belonging to COSAS.

Vol 119 page 5954 lines 9 - 22

In so far as this information may have come from the list of names set out in Exhibit ABA 54 it is submitted that no regard at all can be had to such evidence or to the list itself. Apart from other objections to the use of such document, the witness himself admitted that he did not know who had compiled the names and nor for what period it was valid.

Vol 119 page 5957 lines 16 - 19

- 4.5. It is clear that Panama Njenje could not have been an office bearer or member of COSAS, since he was a student of Cape College, the teacher training college at Fort Beaufort - and it is clear from the evidence generally that as from May 1982, non scholars were no longer eligible for COSAS membership.

Plaatjie Vol 396 page 23020 lines 4 - 8

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The evidence that he was a student teacher negates the evidence of Labuschagne that Njenje was an unemployed youth who simply acted as the organiser of all three local organisations in Somerset East, referred to in paragraph 8.3 of Betoog page 623.

- 4.6. The evidence of Lt Labuschagne that Andile Ntshudu was the president of COSAS is clearly not relied upon by the state, since it was put to both Mapela and Plaatjie, that Mapela was the president of COSAS. Mapela himself testified that Ntshudu was the president, whereas Plaatjie, who was on the SRC, testified that COSAS in fact had no president at all.

Mapela Vol 395 page 22958 line 7 - 13

Plaatjie Vol 396 page 23008 lines 2 - 6

- 4.7. The position is further confused through the evidence of Mguba who testified that Ntshudu was the organiser of COSAS. Elsewhere he testifies that Ntshudu was introduced at a November 1984 meeting as being the organiser and chairman of SEYCO.

Mguba Vol 110 page 5471 lines 9 - 12

page 5475 lines 17 - 23

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4.8. It is submitted that in these circumstances no clear picture can be extracted of the position of individuals in the COSAS executive structure. It is submitted further in general that no inference can be drawn from the presence at any incident of one or more of the persons named in various capacities as being on the executive of COSAS in Somerset East, that such presence was pursuant to any decision of COSAS. Save where there is reliable evidence that a particular event was organised by COSAS, it is in fact impossible to differentiate between COSAS and the student body generally, since it appears that all the scholars considered themselves to be members of COSAS.

Plaatjie Vol 396 page 23008 lines 19 - 30

At the same time, it is clear that this was a very informal arrangement and that no formal steps were taken by all these scholars to become a member of COSAS:

Vol 396 page 23038 lines 13 - 20

4.9. The evidence of Plaatjie establishes also that COSAS and SEYCO never co-operated on anything:

Vol 396 page 23019 lines 8 - 18

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- 4.10. In so far as the witnesses Mapela and Plaatjie may be considered to be COSAS members, both of them have testified that they did not at any time and in any discussion hear anything concerning violent action to be taken against any person or any property.

Mapela Vol 395 page 22952 lines 2 - 3

Plaatjie Vol 396 page 22989 lines 23 - 25

This evidence was not challenged and, specifically, it was not suggested to either of these witnesses that they had been party to any discussion or plan to implement a UDF campaign of violence, whether in relation to black local authorities or any other issue.

- 4.11. Various criticisms were levelled in the Betoog against particularly the witness Mapela. It is conceded that he was a faltering witness in respect of dates, sequence of events and detail in relation to events at and connected with the school. At the same time, it is submitted that Plaatjie was a particularly good witness and that he furnished a full, coherent and reliable account of these events. He has described how a school boycott began in August 1984 at a meeting

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called by COSAS and that it was then called off in the course of September 1984, again at a meeting called by COSAS, at which Andille Ntshudu among others called for students to go back to school in order to be able to sit exams. Vol 396 page 22991 line 10 - page 22992 line 15; page 23009 line 1 - 24

Material corroboration in respect of COSAS and the boycott is to be found in the evidence of Gqobane. It is submitted that his intitial reference to December 1984 as the end of the boycott was an error which he himself corrected. Further corroboration for the fact that the boycott came to an end in September 1984 and that exams were in fact written at the end of the year is to be found in fact that both Mapela and Plaatjie passed and were promoted at the end of 1984.

Gqobane Vol 394 page 22862 lines 19 - page 22867 4

Mapela Vol 395 page 22951 lines 16 - 20

Plaatjie Vol 396 page 22989 lines 8 - 10

The conflict alleged between the evidence of Gqobane and Plaatjie in paragraph 3.4.1 , page 608 of the Betoog does not emerge from the

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evidence cited there and no basis is established for it.

It is correct, as submitted in para 3.4.2 page 608, that Plaatjie contradicts Mapela's evidence that the scholars only went back on 1 October 1984. However, Plaatjie and Gqobane both testify that the scholars went back on the Monday following the meeting and, it is submitted, that that evidence should be accepted.

4.12. It is submitted that the evidence concerning the role of COSAS in relation to the 1984 school boycott shows that the origins were particular problems experienced at the school. There is no suggestion that it was embarked on as part of any regional or national strategy. There is also no suggestion that the UDF was in any way involved in it.

4.13. Gqobane gives a detailed account of a further public meeting called by COSAS which was held in November 1984. This concerned again the problems of the school and mention was made of problems experienced in the community. Andile Ntshudu in the course of his address referred to councillors, saying that if they were

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experiencing problems about how to solve problems they should call a public meeting with the community since they were responsible to that community. However, nothing was said about councillors having to resign or that they may get hurt if they did not resign or of any action to be taken against councillors, nor was anything said about people who remained friendly with the police being burnt.

Vol 394 page 22867 lines 5 - page 22868 line 24

Paragraph 5.16.3 (Betoog page 612) suggests that there is a conflict in the evidence of Gqobane concerning this meeting. It is submitted that there is not and the fact that it was remarked that councillors are doing nothing for the community does not mean that the meeting as such was concerned with the councillors.

SEYCO

- 4.14. Mguba purported to give evidence about this organisation, stating inter alia that it was active in 1984 and held joint meetings with SERA and COSAS. An indication of the extent of his knowledge concerning SEYCO is given right at the beginning of his evidence where he described the body as being the Somerset East Youth Civic Organisation, a title which he persisted with,

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despite the correct name of Somerset East Youth Congress being put to him by the court.

Vol 110 page 5469 line 28 - page 5470 line 3

It is common cause that Mzukisi Banzana became the president of SEYCO. However Mguba's evidence that Andile Ntshudu was on SEYCO is clearly hearsay and unreliable. It is directly contradicted by Plaatjie who was one of the founders and an organiser of SEYCO.

Vol 396 page 22996 lines 4 - 10

- 4.15. A patently unreliable attempt to connect SEYCO and the UDF was given by Rich. He testified that during November 1984, three persons came to speak to him in connection with booking a hall for a meeting of the UDF. The one introduced himself as president of the Somerset East Youth Congress. The person who actually spoke to him about the hall booking said that he was "Balazana". He was the Somerset East president of the UDF. The third person was unknown.

Vol 112 page 5556 line 14 - page 5557 line 2

It is quite clear that Rich got his lines crossed. Balazana is evidently a reference to Banzana, but in place of referring to him as

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president of SEYCO, Rich makes him hold a non-existent office - Somerset East president of UDF. In any event, Rich refused permission and there is no suggestion in his evidence that any such meeting thereafter took place.

- 4.16. A full account of the circumstances leading to the formation of SEYCO has been given by Plaatjie who was one of its founding members. He has testified that the initiative for the formation of this body came from Njenje in October 1984 and related to the problems in the Somerset East township, particularly concerning drunkenness and fighting amongst the youth. This led to a public meeting in December 1984 and the election of an interim committee. Andile Ntshudu was not elected onto the executive at that or at any other time.

Vol 396 page 22993 line 21 - page 22996 line 10

A second public meeting was held in January 1985 where the executive was elected.

Vol 396 page 22996 lines 11 - page 22997 line 1

- 4.17. SEYCO held no further public meetings. It did not affiliate to the UDF. It only acquired a banner in approximately June 1985.

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Plaatjie Vol 396 page 22998 lines 9 - 14

At the meeting in January 1985, SEYCO adopted colours, being yellow, green and black. This information was given in a frank and forthright way by Plaatjie when it was raised in cross-examination. He states also that around the beginning of 1985 he became aware that the ANC also had these colours. He denies however that that was the reason why SEYCO adopted them.

Vol 396 page 23022 line 18 - page 23023 line 21

Paragraph 7.16.7 of the Betoog, page 620, points out that Gqobane was silent on the question of colours of SEYCO. This can not be a criticism of him as a witness; he was simply never asked about this, nor about the constitution (cf. Betoog para 7.16.6).

The submission in paragraph 7.16.8 (Betoog, page 620) that Plaatjie was telling blatant lies about the SEYCO banner is rejected. He has explained that before June 1985 they did not have sufficient funds for the banner.

Vol 396 page 23023 line 25 - page 23024 line 17

As emerged subsequently through the evidence of

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Mbotsha, SEYCO was one of the organisations whose meetings were banned in the government notice of 29 March 1985. This was for a period of three months. In those circumstances obtaining a banner in June 1985 (in possible anticipation of being able to operate again) is not remarkable. The renewal of this restriction at the end of June 1985 does not alter this.

- 4.18. Gqobane only became aware of SEYCO in January 1985. He was never a member of this organisation and the evidence of Mguba that he was should be rejected.

Gqobane Vol 394 page 22861 line 28 - page 22862 line 2

Mguba Vol 110 page 5481 lines 26 - 28

In Betoog paragraph 1.17.7 reference is made to Gqobane's evidence that he could not say precisely when SEYCO had begun. The same portion of evidence however makes clear that at the January 1985 meeting, there was only an interim committee of SEYCO:

Vol 394 page 22882 line 26 - page 22883 line 2

The witness Mbotsha testified that he for the first time heard of SEYCO towards the end of

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1984.

Vol 406 page 23655 lines 8 - 11

- 4.19. The evidence concerning SEYCO establishes that it arose as an independent initiative, that it did not affiliate to the UDF and, in the circumstances, it is submitted that whatever finding may be made in connection with SEYCO, no connection whatsoever can be drawn with the UDF in general or with the accused in the present matter in particular.

SERA

- 4.20. The circumstances of the formation of SERA are detailed by one of its founders and executive members, Mbotsha. He has testified that it arose in consequence principally of the question of rent increases. SERA was formed in response to this in April 1985, at a stage when meetings of certain other organisations had been banned.
Vol 406 page 23655 line 13 - page 23656 line 7
See Government Gazette no 9665 dated 29 March 1985;
Vol 407 page 23700 lines 8 - 17

- 4.21. The people elected were then mandated to go as a

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delegation to Rich to discuss the issue of the rent increase with him. Mbotsha testifies that when they went to Rich, the latter was not prepared to listen to them.

Vol 406 page 23656 line 12 - page 23657 line 18

Direct corroboration for this is to be found in the evidence of Rich himself who testifies that he came to hear of SERA for the first time in April 1985, when a delegation came to him.

According to Rich, the people in the delegation said that they had come to discuss matters with him, but he himself would discuss nothing with them and the delegation had turned down the suggestion of a meeting with his head office.

Ruch Vol 112 page 5557 line 25 - page 5558 line

22

- 4.22. SERA also held no more than two public meetings; it never had a banner, nor did it ever issue posters or pamphlets. It had nothing to do with the UDF.

Mbotsha Vol 406 page 23659 line 20 - page 23660

line 3

- 4.23. The evidence that SERA was formed only in April 1985 is supported by the witnesses Gqobane and

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Plaatjie

Gqobane Vol 394 page 22862 lines 3 - 10

Plaatjie Vol 396 page 22998 lines 15 - 25

- 4.24. Mbotsha has testified that there was never any talk of violence against any person or property. Vol 406 page 23655 line 5 - 7

It was never suggested to him that any such planning had taken place or that SERA was concerned with the carrying out of a UDF campaign of violence.

- 4.25. In paragraph 18.3.6 of the betoog, page 661, it is remarked as a matter of criticism of the evidence of Mbotsha that he cannot remember who the secretary of SERA was. In fact the evidence shows some uncertainty, but he actually puts forward the name of Ntoyanto. It is therefore inaccurate to represent this as being "kan glad nie onthou nie". There would be absolutely no reason for the witness to prevaricate on this. He has placed himself on the Executive of this organisation. It is submitted that what the evidence in fact points to is that after the first two public meetings in April 1985, SERA in fact achieved nothing more and the organisation

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became dormant.

The criticism offered in paragraph 18.3.7 of the betoog page 661 is misplaced; a proper reading of the evidence does not show that Mbotsha was an evasive witness. His evidence that the community was behind the initiative to form SERA is not unacceptable. It was given as a result of vague questioning. It was only when the court intervened with the crisp question "maar wie bespreek die saal" that an equally crisp answer was given - where the witness was perfectly willing to place himself directly on the scene. Vol 406 page 23672 line 5 - page 23673 line 1

4.26. In the light of the foregoing, it is submitted that the evidence of Mguba that all these organisations were active in 1984 and that they issued joint pamphlets and placards and held joint meetings in the course of November 1984 must clearly be rejected.

5. Meetings in Somerset East

5.1. Only one witness called by the state gives direct evidence concerning the content of meetings held by community organisations in Somerset East. This is Sgt Mguba. It is

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submitted immediately that his evidence is demonstrably unreliable and should be rejected.

- 5.2. Mguba testified that SERA, SEYCO and COSAS held joint meetings during 1984 and that these meetings would be advertised by pamphlets or posters bearing the names of all three organisations, and in some instances these would also say "Viva UDF" and occasionally "Viva ANC".
Mguba Vol 110 page 5471 line 25 - page 5472 line 13

Mguba testified that he gave the posters which he removed to the station commander. In fact, the station commander had already testified (this is Lt. Labuschagne), but neither produced any posters nor made any mention of such posters.

Mguba Vol 111 page 5506 lines 14 - 23

No pamphlets were produced in evidence either, although Mguba says that he handed them to "the security."

Vol 111 page 5507 lines 28 - 31

In fact it emerged that Mguba did not see any pamphlets relating to any of the three meetings

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which he allegedly monitored.

Vol 111 page 5508 line 22 - page 5509 line 3

- 5.3. Mguba then testifies about what is alleged to have been said at a meeting on a Sunday in November 1984. He could not see the speakers but heard the names of those who were being introduced, being Mzukisi Banzana, Andile Ntshudu and Rev Msiza. He then proceeds to give evidence about what the speakers (plural) had to say. This was to the effect that the community council does nothing for the community and that the council oppresses people and mention was made of increase of rents and it was then said that councillors should resign. An oblique idiomatic expression was used, to the effect that councillors would be standing in front of the wheel of the people if they did not resign and that "daardie wiel sal hulle pootjie". In his interpretation this meant that they could be injured or killed, although he also went on to say that "pootjie" could also mean "trip". According to Mguba, it was further said that councillors were to be invited to a meeting in the following week where they should resign. It was also said that people should not associate with the police, and if they continued to do so

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they would be burnt. Mguba testified also that there was no one from the UDF at this meeting. Mguba Vol 110 page 5474 line 8 page 5477 line 11

5.4. The evidence that this is what "speakers" said is of course hopelessly vague. It is not clear from this evidence in chief who spoke about the wheel of progress or of people being burnt if they remained friendly with the police. It is not clear who was on the platform at the time. it is not clear what the reaction of the other persons was. As it stood, this evidence took the matter nowhere.

5.5. Further details were elicited in cross examination, where it appeared that Mzukisi Banzana was speaking at the time that Mguba started monitoring this meeting - evidence which immediately raises the problem of how Mguba knew that the speaker was Banzana since there is now no earlier speaker to perform the necessary introduction. From the details given, it emerges that Banzana was the person who spoke critically of councillors and urged their resignation. Vol 111 page 5515 line 4 - page 5517 line 1

Andile Ntshudu is identified as the next speaker

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and he concerned himself only with education and the role of parents.

Vol 111 page 5517 lines 2 - 23

- 5.6. In conflict with his evidence in chief Mguba says that Rev Msiza did not make any speech but only tried to put the disorder straight. It is quite unclear in his evidence as to what occasioned this "disorder", but on his sequence it evidently arose at a time when unidentified people may have been speaking.

Vol 111 page 5517 line 24 - page 5518 line 14

- 5.7. The most remarkable aspect of this part of Mguba's evidence is that, despite being prompted to recall every detail of what was said, he leaves out entirely the metaphorical threat of harm to the councillors referred to in his evidence in chief, which is undoubtedly the most salient part of that evidence.

Vol 111 page 5518 line 15 - page 5519 line 9

It should be borne in mind that this witness had been in the police force for 19 years and had had considerable experience in giving evidence.

Mguba Vol 111 page 5519 lines 24 - 28

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Equally remarkable is the fact that in cross examination, Mguba omitted to make any reference to the evidence initially given by him that people who remained friendly with police were to be burnt. This, Mguba said, he had also forgotten.

Vol 111 page 5521 line 24 - page 5522 line 22

It is submitted that this simple test under cross examination was dismally failed by Mguba and that it points so strongly in the direction of the evidence having been invented in the first place as to render it entirely unreliable.

A further question mark over this evidence comes from Mguba himself, in his reply that he (an experienced police officer) did not consider that either of the speakers had committed an offence; he testifies also that he thought the reference to the community councillors who were to resign was reasonable.

Vol 111 page 5523 lines 15 - 28

- 5.8. Mguba then gives details of a subsequent meeting in November 1984, at which councillors were allegedly asked to resign. On this occasion, the image of the "wheel of the people" is again

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employed - but this time attributed to Andile Ntshudu:

Vol 110 page 5478 line 25 - page 5479 line 16

In cross examination, these remarks (with amplification) are attributed to Panama Njenje, now identified as chairman and speaker.

Vol 111 page 5535 line 17 - page 5537 line 2

When confronted with this inconsistency, Mguba testified that he was quite aware that the two statements were inconsistent and, furthermore, that he had been aware since the previous day of having given mistaken evidence. It is submitted that this substitution of a speakers' identity from one day to the next underlines again the complete unreliability of Mguba's evidence and that this is exacerbated by the fact that, on his own evidence, he was content to leave an error (of which he was aware) uncorrected until taken up on it.

Vol 111 page 5537 line 3 - page 5538 ine 23

- 5.9. It is submitted that the underlying reason for the unsatisfactory quality of this evidence is that it is basically false and that these allegedly joint meetings of SERA, SEYCO and

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COSAS in November 1984 , as described by Mguba, simply never took place. In so far as any meeting took place in November 1984 it is submitted that it is the one deposed to by Gqobane, being the meeting called by COSAS which has already been dealt with above. (see Vol 394 page 22867 line 5 - page 22868 line 24)

6. Campaign against the black local authority

6.1. Mguba gives evidence that there was in 1984 a campaign carried out against black local authorities. This began with pamphlets and there were also posters. These had as their contents that the councillors oppressed the people, that they were used by the government, that they were "puppets" and also "sellouts". Mguba then becomes more specific and says that the pamphlets had UDF written on them and the placards carried the names of the three local organisations being SERA, SEYCO and COSAS. Vol 110 page 5473 line 12 - page 5474 line 7

6.2. As already noted above, Mguba has testified that he gave some of these publications to the station commander and others went to "the security". No explanation whatsoever has been

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furnished for the failure to produce any of these posters and pamphlets. In terms of the best evidence rule it is submitted that the evidence relating to the contents of these posters and pamphlets is in effect hearsay and should be disregarded.

- 6.3. In any event, when tested under cross examination, Mguba's evidence concerning pamphlets and posters fell apart, as set out below.
- 6.4. The first noteworthy point to emerge was that there was in fact only one pamphlet from the UDF and this turned out not to have been in 1984 but in 1985. The evidence does not show when in 1985 this pamphlet was seen and no inference can be drawn that it was during the period of the indictment and must therefore be left entirely out of account
Vol 111 page 5506 line 29 - page 5507 line 10
- 6.5. In conflict with the evidence in chief that the three local organisations had jointly produced posters with regard to this campaign against the black local authorities, Mguba in cross examination stated that there were pamphlets

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from these local organisations during the period August to October 1984, which were criticising the community council.

Vol 111 page 5509 lines 4 - 13

- 6.6. Under further probing, it soon became clear that Mguba's evidence concerning these pamphlets was extremely unreliable. Asked to give details, he testified that he thought the first pamphlet he saw was a COSAS pamphlet. This had something to say about education, although Mguba was unable to furnish any details.

Vol 111 page 5509 line 20 - page 5510 line 9

This pamphlet obviously has nothing to do with criticism of the community council and, save in so far as it demonstrates the unreliability of Mguba's evidence, should be left out of account.

- 6.7. Asked about other pamphlets, Mguba then says that there were some bearing the names of the two organisations SEYCO and SERA. These were the only two names that were on these pamphlets. The evidence about the contents is extremely vague, but includes making the community aware of what the aims of the organisations were, reference to the community councils, and also saying

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something about grievances. Mguba then repeats that the names of these two organisations were the only ones mentioned on any of the pamphlets seen by him during this period.

Vol 111 page 5510 line 10 - page 5511 line 14

From this evidence it is clear that other organisations such as COSAS and the UDF had not produced any pamphlets making reference to the community councils. As has already been submitted, the evidence clearly establishes that neither SERA nor SEYCO existed during the period August to October 1984, which is the period referred to in this portion of the evidence of Mguba. It is submitted that his evidence must be rejected. In any event, neither SERA nor SEYCO was ever affiliated to the UDF. Even if there had been a pamphlet issued by these organisations containing a "reference to the community councils", this could in no way be construed as part of any UDF campaign or as being in furtherance of the conspiracy alleged.

- 6.8. Despite his repeated testimony that these pamphlets bore only the names of those two organisations, Mguba when confronted with the contradiction in his evidence, simply reverts to

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saying that these pamphlets had written on them at the end "Viva SEYCO" "Viva SERA", "Viva COSAS", and "Viva UDF".

Vol 111 page 5511 line 15 - 25

It is submitted that this conjunction of evidence alone demonstrates palpably the inventiveness and unreliability of Mguba. This point is driven home even further when compared with his evidence in chief, when it is said in relation to posters that they contained "Viva SERA", "Viva SEYCO", "Viva COSAS", "Viva UDF" and some even "Viva ANC".

Vol 110 page 5472 lines 1 - 13

- 6.9. The witness Rich also testifies that he saw pamphlets from late August 1984. These spoke about UDF and COSAS. However, Rich could not say who had issued these pamphlets and save for giving the uselessly wide evidence that they spoke about UDF and COSAS, no indication was given as to their contents. There is no suggestion in the evidence that any of these pamphlets mentioned the community council; ex facie his evidence, they did not.

Vol 112 page 5555 lines 5 - 16

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This evidence is not to the effect that these pamphlets dealt with the Activities of COSAS and UDF, as submitted in Betoog para 2.2, page 602.

6.10. Inconsistently with the evidence of Mguba, but in consonance with the position of the defence, Rich testified that he did not remember any one pamphlet which made mention of all three local organisations, namely COSAS, SERA and SEYCO.
Vol 112 page 5566 lines 27 - 29

6.11. In sum, it is submitted that nothing remains of the state's evidence concerning this alleged campaign against the community council in Somerset East. Not only has the state failed to prove such campaign, but the further evidence positively disproves the existence of such campaign - which is of course the critical link between the events in Somerset East and the accused - through the evidence of the following defence witnesses, who squarely deny the existence of pamphlets and posters during 1984 to the end of April 1985 in respect of SERA, COSAS and SEYCO and similarly deny the conducting by anybody or organisation of any campaign against the community council in Somerset East.

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Gqobane Vol 394 page 22862 lines 11 - 18

Plaatjie Vol 396 page 22989 lines 15 - 25

Mbotsha Vol 406 page 23654 line 26 - page 23655
line 7

The criticism advanced in paragraph 1.17.10 of the Betoog is based on the fact that Gqobane testified that he did not know when the Somerset East Council was elected. There is in fact no evidence as to whether an election took place or whether the councillors were nominated unopposed. Similarly, Gqobane testifies merely that he does not know whether councillors held mass meetings - and not a denial that such meetings were held as set out in the Betoog. It is submitted that this evidence in no way detracts from his capacity to testify to the matters to which he has testified.

7. Apostolic Church Meeting

7.1. Once again, the only state witness to testify about this meeting is Mguba. Once again, it is submitted that his evidence concerning this meeting is patently unreliable and must be rejected. From the point of view of the state's case, the purpose of Mguba's evidence was

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clearly to establish a connection between the organisations in Somerset East and the UDF - through the medium of Goniwe. The evidence cannot stand.

- 7.2. Mguba testified about three meetings which he monitored - two meetings in November 1984 and this meeting at the Apostolic Church early in 1985. In chief, Mguba was unable to say whether the meeting was in January or February 1985. Mguba testified that this meeting was organised by the three organisations SEYCO, SERA and COSAS. Amongst the local persons whom he says accompanied the Goniwe party, he places Gqobane, whom he goes on to identify, as a member of SEYCO.

Vol 110 page 5480 line 20 - page 5481 line 28

- 7.3. As with the other two meetings monitored by him, Mguba was not present in the hall. He could not see who the speakers were. He evidently depended once again for identification of the speakers upon the introductions. On his own account Mguba is quite unable to give a coherent, complete and properly contextualised account of what was said. In respect of Goniwe's speech, he says at various places:

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"toe hy begin praat, het hy van COSAS
gepraat, maar ek kon nie hoor wat hy
presies se van COSAS nie",

"Ek wil nie leuens vertel nie. Ek het
nie so goed gehoor wat hy gese het nie"

"Ek kon nie alles hoor wat hy se nie.
Ek het net hier and daar gehoor".

Vol 110 page 5481 line 29 - page 5483 line 29

- 7.4. Mguba directly contradicts himself on the question of advertising of this meeting. In the course of being asked about pamphlets relating to the meetings which he monitored, he is asked the following question:

"Did you yourself see or pick up any pamphlets calling the third meeting that you monitored?" and answers directly : "No".

Vol 111 page 5508 line 22 - page 5509 line 3

When asked the same question some time later, Mguba answers that he did see a typed pamphlet bearing the names of the three local organisaitons. Despite having been uncertain in

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the course of his evidence in chief, he now testifies that "it was during February 1985".
Vol 111 page 5544 line 30 - page 5545 line 15

- 7.5. In his evidence in chief, Mguba testifies that he heard the chairman of the meeting introducing Goniwe as a speaker and that he thereafter heard Goniwe deliver a speech. He goes on to specify that he heard the chairman introducing Goniwe as someone who had come to speak on behalf of the UDF.
Vol 110 page 5482 line 2 - 8

Although he set out in evidence in chief how he observed Goniwe et al arrive at the meeting, in cross examination Mguba says that on his arrival the meeting had begun and that Goniwe was the first person he heard speaking. The chairman (and the introduction) appears here to have fallen away.

Vol 111 page 5545 line 23 - 31

Notwithstanding this evidence Mguba immediately thereafter goes on to declare that Gqobane was also a speaker who spoke before Goniwe. He is unable to say whether Gqobane was the chairman or not. It is clear therefore that Mguba does

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not testify that Gqobane was the chairman who introduced Goniwe. The sequence now appears to be Gqobane - chairman - Goniwe. In order to be able to identify Gqobane there would have had to be an earlier introduction of him by name. Clearly, if Goniwe was the first person he heard speaking this could not have taken place. In short this evidence from Mguba is again completely unsatisfactory.

Vol 111 page 5546 lines 1 - 6

- 7.6. The unsatisfactory evidence of Mguba is met by three witnesses for the defence. For present purposes it is necessary only to set out in essence what they testify. This is to the effect that the meeting was in fact a prayer meeting at which the role of Goniwe was confined to interpreting for Dr Boesak. Gqobane did not accompany the official party and did not speak at any stage. Nothing was said about COSAS or street committees.

It is submitted that the evidence of these three witnesses is materially consistent. There are some differences between them, but it is submitted that such differences are in respect of detail of an immaterial sort and that it

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would, indeed, be surprising if after the passage of more than three years there were not such minor differences.

Gqobane Vol 394 page 22870 line 25 -page 22872
line 24

Plaatjie Vol 396 page 22992 line 19 - page 22993
line 20

Mbotsha Vol 406 page 23660 line 4 - page 23661
line 19

It is submitted that the matters raised in the Betoog as "contradictions" amongst the defence witnesses, do not on a proper reading of the evidence detract from the essential material consistency of their description of the proceedings at this event. (see betoog paragraphs 7.16.1 - .5 and 7.17.1 - 3_.

8. Events of 11 February 1985

8.1. It is common cause that violence broke out in Somerset East on 11 February 1985. What is in dispute is how that violence arose. Evidence was tendered by the state that a group of thirteen, including a number of members of COSAS, had come to see Lt Labuschagne, the police station commander, in connection with a variety of grievances, saying that they wanted him to help

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in resolving these grievances in order to prevent unrest. The grievances raised by this group make for interesting reading, reflecting what is submitted to be a wholesome range of concerns with local problems. It is submitted also that the range of concerns and the fact that the local police commander was approached in the first instance is hardly consistent with the State case concerning the manner in which the UDF campaign of violence was to be promoted.

These concerns included the following :

They wanted the beer hall moved out of the black township and the building in which the beer hall was currently based to be used as a library;

They wanted the roads of the township to be tarred;

They wanted street lights to be erected;

They wanted the police actions in the township to be stopped;

If the beer hall was unable to be removed, then

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they wanted it at least to be shut on Sundays;

They wanted the school ground to be fenced;

They wanted qualified teachers to be brought to do the teaching at the school;

They wanted the council system to be replaced by one that was acceptable to the black people.

The evidence continues that on 10 February 1985 the same group returned and Lt Labuschagne told them that their grievances had been referred to higher authority. On this information, they left his office dissatisfied.

Vol 109 page 5425 line 22 - page 5427 line 20

The evidence that this group left dissatisfied is apparently tendered by the state in order to connect this group (and therefore COSAS) with the violence of the following day.

- 8.2. There is no direct evidence of any decision to launch violent action on 11 February 1985. There is also no evidence of any decision on the part of the group of thirteen or any of them or of COSAS generally that led to the events of 11

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February. On the contrary, there is direct evidence, which effectively negates the speculative inference sought by the state in respect of the 10 February 1985 meeting, of events at the Somerset East High School which bear no relation at all to the alleged visit to the police commander on 10 February. In this regard it is submitted that the account given by Plaatjie of the events at the school is clear and acceptable, being to the following effect.

- 8.3. On Monday 4 February 1985, notices were found on classroom doors to the effect that classes were not to be held. SRC members made enquiries and then called a meeting of all the scholars in the school hall on the same day. At this meeting a range of complaints concerning school conditions were raised and the SRC mandated to take them to the principal. This happened and the Department of Education and Training was contacted. On receipt of information that inspectors would come out after two days, the scholars decided that they would continue with the class boycott. On the following day, the Tuesday, two scholars were detained by the police. A delegation, including the inspector of schools, went to the station commander on the Thursday of that week,

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which resulted in the two scholars being released. On the same day the inspector undertook to take up the scholars' complaints at the offices in Uitenhage. In the meanwhile the boycott continued.

Vol 396 page 22999 line 8 - page 23001 line 29

- 8.4. On Monday 11 February 1985 the scholars called a meeting at the school hall and summoned the SRC there. One of the scholars then put the position of the scholars forward as being that they felt that the class boycott should continue for the time that their complaints were being considered. The SRC then proposed that the community hall should be obtained in order to hold a meeting with parents in order to get the view of the parents. After some discussion, it was agreed that the scholars as a body should go in order to apply for permission to use the hall, since if the SRC were to go on their own it might not be seen to have the necessary weight. In the result some 200 scholars went to the offices. Approximately ten went into the office itself.

PlaatjieVol 396 page 23001 line 30 -page 23002 line 30; page 23003 lines 8 - 18

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It is noteworthy that the proposal to obtain the hall which led to the decision to proceed to the Board offices came from SRC members and not from COSAS. Evidence is on record that a clear distinction was drawn between the SRC and COSAS. Plaatjie explained that they did not want the same people to be in charge of everything at the school. They wanted different people to do different things so that everyone could make a contribution.

Vol 396 page 23008 lines 19 - 27

It is clear also that the decision to go to the Board offices arose directly out of the immediate problems at the school and not from general grievances in the community and certainly not because it had any connection with a campaign against the black local authorities or anything else to do with the UDF.

When the scholars came out of the office Memese also did, bearing a rifle which he pointed in the direction of the scholars, two others, employees of the beer hall also came out, including Pete Antonie. In the recollection of Plaatjie, Antonie had a stick and the other had a "knife", measuring about half a metre.

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Vol 396 page 23003 line 19 - page 23004 line 11

8.5. Three state witnesses give evidence bearing on the events at the board offices. It is submitted that material conflicts in such evidence emerge on a proper examination of it.

8.6. Du Pisani says that a group of one hundred marched to the offices. He observed that they went into the offices and shortly thereafter came out. Rich and Memese also then came out and when they drove off in their vehicle, that vehicle was stoned by the group. The group of youths then left the offices. No police action was taken there.

Vol 108 page 5398 line 8 -page 5399 line 8

8.7. Lt Labuschagne says that on 11 February 1985 he received a telephone call from the administration board saying that their offices were being attacked by approximately 200 blacks. He then went there and some of the group departed and the others were dispersed by the police.

Vol 108: page 5427 lines 21 - 29

8.8. Rich testified that a group of some 500 youths

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stormed on his office, in the manner of people who were attacking a place. (In fact, no damage was done).

Vol 112 page 5559 lines 9 - 12; page 5575 line 25 - page 5576 line 1

After driving everyone out of the gate to the premises Rich and Memese drove to the police station to report that people were attacking the office; the van was stoned as they left.

Vol 112 page 5560 lines 2 - 24

Rich drove to the police station to make this report because he could not raise the telephone exchange.

Vol 112 page 5577 lines 23 - 28; page 5578 lines 28 - 30

When he left the office, no one remained behind and nothing happened to the offices that morning.

Vol 112 page 5578 line 31 - page 5579 line 3

The police returned with Rich. On his way to the house of Memese he had to pass his office; there was no one there.

Vol 112 page 5560 line 27 - page 5561 line 6

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8.9. The only state witness to identify any one in the group that went to the board offices is Du Pisani, who testified that Andile Ntshudu led the group of 100 on the way there.

Vol 108 page 5398 lines 15 - 21

This is directly disputed by Plaatjie who testified that there was no leader of the group and that although Andile Ntshudu was amongst the students he did not at any time lead them.

Vol 396 page 23003 line 1 - 7

8.10. The initial account of events in the office is given by Rich as follows :

He went to meet the people coming in and told them that they must leave as the space was limited. The clerk (who was also the chairman of the community council) said to him that the people wanted him: "...die mense wil hom hê". The scholars apparently then made a similar statement to Rich, being "hulle het ook vir my gesê hulle soek vir Memese". Rich then said that they must leave, that they could not have Memese, because he was on duty.

Vol 112 page 5559 line 16 - 26

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8.11. In the course of cross examination on this event, Rich introduced the startling evidence that Memese had reported to him that "hulle wil my doodmaak".

Vol 112 page 5571 line 7 - page 5572 line 25

In so far as this evidence purports to convey a threat made by the scholars to Memese, it is inadmissible hearsay - if for no other reason than that the conversation between the scholars and Memese had taken place in Xhosa a language which Rich did not understand. It is submitted that the true significance of this evidence is that it displays a preparedness on the part of Rich to be wildly inventive in his evidence. It was introduced by him immediately after the tea adjournment, in order to justify, it is submitted, what was otherwise excessively peremptory conduct on his part, in immediately ordering everyone out of the office without making any enquiry as to what business they sought there.

8.12. When challenged on this aspect, Rich offered the lame explanation that he did not mention these words in his evidence in chief because they had

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been used by someone else. This is completely unacceptable, since his evidence in chief purported to do precisely that, i.e. to convey what Memese had said to him. The only, but crucial, difference is that "hulle wil my hê" had become "hulle wil my doodmaak".

- 8.13. Similarly unsatisfactory is his further explanation that he did not mention those words in his evidence in chief because he had not actually thought that they wanted to kill Memese. The absurdity of Rich's evidence emerges inter alia from the following sequences, testified to by him:

Memese tells Rich that they want to kill him'; the scholars tell Rich that they want Memese; Rich then answers that they can't have him, because he is on duty.

Vol 112 page 5572 line 26 - page 5573 line 31

- 8.14. Rich's own evidence makes abundantly clear that there could not have been any such intention on the part of the scholars and that the evidence that Memese reported that they wanted to kill him is massively improbable. In addition to his own evidence that Rich was not under that

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impression, he testified that he was easily able to get everyone right out of the premises single handedly, with the aid of nothing but a wooden kierie.

Vol 112 page 5575 lines 4 - 11

8.15. It is noteworthy also that the ease with which Rich drove out the scholars is in complete conflict with the impression given in his evidence in chief that a group of 500 stormed on his office in the manner of people intent on attacking it. It is clear on the evidence overall that this was not a mob bent on murder and destruction. The overall picture - before the peremptory conduct on the part of Rich- is consistent with the evidence of Plaatjie and Mapela that they went there for no purpose other than to book the hall. It may be remarked that this was the understanding also of Du Pisani.

Vol 108 page 5407 lines 13 - 15

8.16. Of the scholars who went into the office itself, Mapela has testified. Although his evidence is subject to criticism in other respects as has already been observed, it is submitted that his evidence that no threats were made there by the scholars should be preferred in all the

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circumstances to that of Rich. Mapela and
Plaatjie both testify that no stones were thrown
there.

Vol 395 page 22954 line 26 - page 22955 line 18

Vol 396 page 23004 lines 13 - 18

8.17. Even if the court were to find that stones were
thrown at the departing hakkie of Rich and
Memese, such finding can have no consequence in
relation to the issues in the present trial.
Although he himself saw no stones being thrown,
Plaatjie has quite candidly agreed that the
scholars were very angry with Rich and Memese
after they had been driven from the office.

Vol 396 page 23035 line 20 - 26

This anger can by no stretch of the imagination
be coupled with the UDF, a campaign against
local authorities or a conspiracy to overthrow
the state by violence. On the contrary, the
roots of the anger are clear and immediate. They
are to be found in the fact that a group of
scholars who want to arrange a hall for a
discussion with their parents proceed to the
Board offices for that purpose. Their efforts to
do so and to speak to the mayor of the community

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council are frustrated by the white township superintendent who, without any enquiry, says to them that they cannot have the mayor, because he is on duty. The grievance potential of a situation where the council mayor is employed as a clerk under the direct control of a white official needs no elaboration.

8.18. It is common cause that the houses of Memese and Antonie were attacked after the events at the Board offices. There is however no direct evidence of who took part in this. Du Pisani mentions a group of three hundred which threw stones at his vehicle, this group being three times the size of the group he saw marching towards the Board offices. Undile Ntshudu was not seen amongst the larger group. His speculation as to whether or not this was part of the same group is of no value.

Vol 108 page 5399 lines 9 - 27

8.19. In paragraph 9.30 of the Betoog page 629, it is submitted that Gqobane concealed things from the court in respect of incidents of violence during that period. Against this submission is the fact that he was in the course of February 1985 on course in Uitenhage for a period of one week,

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and it is not clear precisely when this took place, nor that there was any reason for any reports to have been made to him about incidents of violence.

Vol 395 page 22911 lines 11 - 30

8.20. The precise nature and extent of the incidents of violence after the events at the Board offices are of no material consequence. The only relevant question is whether the violence was set off as part of the UDF campaign. On the evidence viewed overall, it is submitted that that question must be answered decisively in favour of the accused.

9. Early March 1985

9.1. Lt Labuschagne testifies to an incident early in March 1985 when he came across a group of approximately 800 people gathered in front of the beer hall. Some stones were thrown at his patrol van, whereupon he requested reinforcements. On his way out of the black township, a black man stopped him who introduced himself as Mzukisi Banzana. He asked Labuschagne what he intended to do, since in his view the gathering was peaceful. Curiously, Labuschagne

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then informs him that all open air gatherings had been prohibited - this being the complaint and not the stonings. Banzana then requested five minutes to disperse the people and was evidently successful in this.

Vol 109 page 5429 line 14 - page 5430 line 2

9.2. Identification of Banzana through the medium of his own introduction amounts of course to hearsay and this evidence in effect comes to nothing. In any event it apparently shows that Banzana was on this occasion able to persuade the crowd that they should disperse peacefully.

9.3. Lt Labuschagne testifies further that on another date in March 1985 he saw Banzana at the police station on which occasion Banzana allegedly said to him that he was a big supporter of the UDF. Labuschagne testifies also that he made a photocopy of a diary which Banzana had with him.

Vol 109 page 5430 lines 3 - 24

9.4. It is submitted that the evidence that Banzana said he was a big supporter of the UDF is inadmissible. It is submitted that this is clearly hearsay; at the time the court observed that this prima facie appeared to be the

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position.

Vol 110 page 5454 lines 10 - 15

- 9.5. At a later stage in the proceedings, Sgt Labuschagne of Cradock testified that he had received a photocopy of Banzana's book from Lt Labuschagne and this was tendered as Exhibit ABA 56. It is submitted that this document too is inadmissible. The photocopy was not proved by Lt Labuschagne as the one made by him. There is no independent proof that this was in fact a copy of the diary belonging to Banzana or that any of the entries in it were made by him. Banzana himself is nowhere cited as a co-conspirator. The only admissible evidence before court is that he was the president of SEYCO - which was an organisation not affiliated to the UDF. It is accordingly submitted that there is no basis upon which any of the content of ABA 56 can be utilised in respect of the present accused. In general it is submitted that since there is no admissible evidence connecting Banzana with any of the accused, evidence concerning his acts and/or omissions is ultimately irrelevant.

10. Funeral of 16 March 1985

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10.1. A preliminary item of evidence is given by Lt Labuschagne concerning a visit to him on 15 March 1985 of Banzana, Ntshudu and Njenje. The evidence is that "they" sought to guarantee that the police would not take action during the funeral to be held on the following day. It may be presumed that not all three spoke at once and this is clear from the further evidence that "ek het hom meegedeel..." that no guarantee could be given, but that no action would be taken if the funeral proceeded peacefully.

Vol 109 page 5430 line 27 - page 5431 line 2

It is not clear who advanced the request. More pertinently, there is no evidence whatsoever as to the capacity or lack thereof in which any of these persons appeared on this day. It is submitted that there is no basis to draw any inference in respect of any of the organisations with which these persons may have been connected. Certainly there is no basis to infer that they were in a position of control in relation to the large number of mourners who attended the funeral on the following day.

10.2. Lt Labuschagne testifies that before the funeral on 16 March 1985 he encountered a group of some

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4 000 in front of the home of the deceased. They were singing freedom songs and giving clenched fist salutes. Banzana emerged from this group and came to Labuschagne's vehicle. He raised his hand and the crowd then became quiet. A similar discussion to the one of the previous day then took place.

Vol 109 page 5431 lines 3 - 19

The only implication of this evidence is that the people who were singing were willing to stop when Banzana went to speak to the police officer. Banzana was a third year B Proc student. He was a young man and on the evidence behaved responsibly and maturely. No inference can be drawn that Banzana (or any other person) subsequently directed the crowd to go over to attacks on buildings. In particular it cannot be inferred that because this crowd of 4 000 Somerset East residents at one stage responded to Banzana, it would remain under his control. In any event, as already observed, the position of Banzana in Somerset East has no consequences for the accused in this trial.

- 10.3. Two defence witnesses specifically deny having seen any signs of the police being in attendance at the home of the deceased before the funeral. The number of persons gathered there at that

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stage is also put by them in the region of
between 200 and 300.

Gqobane Vol 394 page 22872 line 29 - page 22873
line 18

Ngwalangwala Vol 395 page 22935 line 18 - 28

The evidence of Gqobane that Banzana was master
of ceremonies at that stage does not provide
confirmation of Labuschagne's evidence that
Banzana negotiated with him at the house, as
contended in Betoog paragraph 14.31.1.

- 10.4. Only one state witness testifies about the
proceedings in the church. This is Mguba. Once
again he is not present in the church itself but
relies on what he hears from outside. According
to Mguba, he heard a woman speaker introduce
herself as Elizabeth Sibanda, who is "Mama
General". This person delivered a very sharp
speech in which she is alleged to have said that
she is a member of the ANC and that it was clear
to her that people were not working in Somerset
East. She said that she observed that the beer
halls were still standing here and that the
municipality offices were still standing but
that these things which she saw standing here at

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Somerset East had already been done away with in Cradock.

Vol 110 page 5485 line 8 - page 5486 line 1

This is evidence of clear incitement to attack the beer halls and the municipal offices.

Despite this there is no suggestion whatsoever in Mguba's evidence that he, as an experienced police officer, took any steps at all in response to it. It is clear in particular from the subsequent events that he took no steps to arrange for police protection of these buildings or for any other intervention by the police following this speech. It is submitted that this failure to take any action in itself sets up a substantial improbability against any such speech having been delivered. The general submission is repeated that Mguba's evidence as a whole is unreliable and should be rejected in toto.

- 10.5. A full account of the proceedings in the church and the addresses that were given has been furnished by Gqobane. It is submitted that his account is coherent and reliable and that there is certainly no basis upon which the evidence of Mguba can be preferred. Gqobane, himself a

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school teacher, lists the speakers as having been Banzana, Goniwe, Mama General, the priest of the church, the class teacher of the deceased and one of the SRC leaders. Gqobane then provides an entirely plausible version of what Mama General spoke about. She did not say anything about being a member of the ANC nor did she speak of doing away with beer halls or municipal offices, nor did she or any other speaker in any way suggest that violent action should be under taken.

Vol 394 page 22874 line 28 - page 22875 line 26

Paragraph 14.31.4 (Betoog, page 645) deals with the speech of Goniwe. Unlike the impression given there, Goniwe did not direct his speech to the ANC. He gave a brief history of the people of South Africa, in the course of which he spoke about the formation of the ANC and the history of the ANC - up to the point of it being declared prohibited. He then went on to speak also about the Black Consciousness Movement and was quite clearly concerned with giving a balanced overview. Unlike the manner in which it is put in the state's Betoog, he did not appeal to people to unite under the UDF. This was specifically canvassed with the witness. He

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merely said that the UDF wanted to unite the people in the "freedom struggle".

Gqobane Vol 395 page 22920 line 16 - page 22921 line 13

- 10.6. Quite at odds with the notion that there should have been a speech blatantly inciting violence the evidence is further that the master of ceremonies, then Fort Calata, made a request that people should move in good order from the church to the grave side and that there would be marshalls in control of the funeral procession.

Gqobane Vol 394 page 22875 line 27 - page 22876 line 7

Mbotsha Vol 406 page 23662 lines 12 - 21

- 10.7. Various defence witnesses testified that there were no banners displayed in the course of this funeral. The question arose in the course of defence evidence for the first time in the cross examination of Gqobane.

Gqobane Vol 394 page 22912 line 25 - page 22913 line 8

Also raised in cross examination : Ngwalangwala Vol 395 page 22943 lines 1 - 13

Also in cross examination : Mapela Vol 396 page

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22985 lines 10 - 14

Mbotsha dealt with it in chief : Vol 406 page
23663 lines 14 - 15

In Betoog paragraph 14.31.2 it is said that the existence of banners was never disputed during the state case. In fact, only Mguba speaks of banners, which came in response to a question about whether any of the mourners were carrying placards.

Vol 110 page 5484 line 31 - page 5485 line 7

The two other police officers who kept the funeral proceedings under observation, Du Pisani and Lt Labuschagne, make no mention at all of banners. Mguba mentioned inter alia a banner of SEYCO and a banner of SERA. It is submitted that the evidence of Plaatjie that SEYCO did not then have a banner and the evidence of other witnesses that SERA did not even exist at that time is sufficient to disprove this evidence of Mguba.

It is correct that this evidence of Mguba was not challenged in cross examination. It is appropriate here to draw attention to the

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continuing difficulties experienced by the defence in obtaining instructions in relation to events from places such as Somerset East. The position had in fact been particularly difficult in relation to Somerset East and these problems were discussed at some length in relation to the witness before Mguba, Lt Labuschagne, who had testified on 16 June 1986.

Record Vol 109 page 5441 line 13 - Vol 110 page 5447 line 21

It is submitted that in the circumstances no inference can be drawn from the fact that a detail of this sort was not challenged or that some of the detail put in the course of cross examination was inaccurate, as became clear once the evidence in chief of defence witnesses was led.

- 10.8. It is common cause that the beer hall and other places in Somerset East came under attack on 16 March 1985. The real issue for determination is whether these attacks followed upon direct incitement by Mama General or whether they came after the use of a sneeze machine at the home of the deceased.

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10.9. It is submitted that there are fundamental inconsistencies in the evidence of the state concerning events once the mourners gathered at the home of the deceased.

10.10. Lt Labuschagne says that people were singing and that, after a speech given at the home of the deceased, there followed attacks upon the beer hall and other buildings, involving stones, iron bars, sticks and burning. The police then moved in and a warning was given that the crowd should disperse. However, the crowd did not disperse and Lt Labuschagne then called in the sneeze machine which was under the control of Du Pisani.

Vol 109 page 5431 line 22 - page 5432 line 13

Lt Labuschagne testified further that he was in charge of the police force and that he had left Warrant Officer Du Pisani at the police station with the sneeze machine. He called him in just after the buildings began burning.

Vol 109 page 5436 lines 19 - 25;

page 5438 line 18 - page 5439 line 16

10.11. Du Pisani was in fact the first state witness on Somerset East. He conveyed an entirely different

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picture in his evidence. He testified that he had the funeral under observation from a point about 1 kilometre from the deceased's home. Whilst he was observing, he saw that there was an attack on the beer hall and that it and other buildings then went up in flames. He testifies specifically that he did not see anything further happening there. He is then asked: "Is die groep uiteen na die gebou aan die brand gestek is?" and answers "Ja. Daar het nog groepies agter gebly, maar die grootste gedeelte van die groep is toe uiteen." There is no suggestion in his evidence that the portion of the group which did disperse, did so as a result of his action with the sneeze machine. There is also no mention in his evidence of Lt Labuschagne's force having gone to the scene. Vol 108 page 5402 line 12 - page 5403 line 23

Du Pisani later testifies that he was not at the house of the deceased after the funeral. When asked whether he saw the sneeze machine at or near the house he says "no" and adds that he was coincidentally in charge of it later, after the attack. It is clear also that he had the house under observation from the ridge. Vol 108 page 5415 lines 15 - 20; page 5416 lines

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When it was put to him that his evidence was incorrect and that the sneeze machine was near the house, he simply denies it. There is no suggestion in his evidence that he took it to the house later in order to disperse an attacking crowd.

Vol 108 page 5416 lines 24 - 26

10.12. Mguba is again the sole witness on the content of a speech allegedly made at the deceased's home by Mama General, in which she repeated in direct terms the incitement allegedly made by her at the church. Immediately thereafter a furious attack was commenced by the crowd on the beer hall and the administration offices as well as other places.

Vol 110 page 5486 line 28 page 5488 line 28

10.13. Despite the scale of the violence unleashed as a result of this direct incitement, according to the evidence of Mguba, it is clear that no steps were taken by him to secure the arrest of Mama General. It is clear also that no criminal prosecution was ever launched against her since Mguba was never asked to testify at any such

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case. He gives the implausible explanation that "because of things that were happening there, so many things that were happening, it may have slipped the authorities to charge her in a case where I would be called as a witness."

Vol 111 page 5550 lines 11 - 31

10.14. A vital part of Mguba's evidence is that he had a full view of the deceased's home. In chief he testified that he could see the house through the opening between the two streets.

Vol 110 page 5486 lines 21 - 27

In cross examination he repeated that he could see the front of the house from his observation point.

Vol 111 page 5549 lines 14 - 21

Upon a question from the court he drew a sketch showing that he had a view directly onto the house of the deceased.

Vol 111 page 5552 line 27 - page 5553 line 23

This evidence is palpably false. The photographs DA189 and DA 190 show conclusively that the house cannot be seen from the point where Mguba says he took up position. See also the evidence

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of Mbotsha Vol 406 page 23666 line 25 - page
23667 line 12

10.15. Mguba contradicts himself also in relation to time. In his evidence in chief, he stated that Mama General had spoken immediately after he took up position at the house and that the attack then took place directly after her words and that he then had to leave.

Vol 110 page 5487 lines 3 - 30

At a later stage, in answer to the court, he testified that he had kept observation at the house for some 15 - 20 minutes.

Vol 111 page 5552 lines 9 - 24

10.16. For the defence reliance is placed on the evidence concerning events at the home of the deceased given by Gqobane, Ngwalangwala and Mbotsha. It is submitted that they gave materially consistent accounts of what took place. Their evidence is to the overall effect that after the mourners assembled at the home of the deceased for the customary hand washing and partaking of a meal, a police hippo pulled up outside the house and an announcement was

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made that people there had a period of five minutes within which to disperse. As a result of this announcement a number of the people did leave, but there were still many people remaining there and others were still arriving. Some several minutes after the hippo had been there, a sneeze machine arrived and pulled up on what is called the "Square" diagonally across the road from the deceased's home. Banzana and Goniwe approached this vehicle. The machine however started spraying out teargas powder and people then dispersed from the area. This was at a stage before the attacks on the beerhall and other buildings had begun. It emerges from this evidence that the warning to disperse had been largely ignored and that there is, it is submitted, nothing implausible in the deployment thereafter by the police of the sneeze machine to disperse the large number of people gathered there.

These witnesses all deny that any speech was made by Mama General at the house. From the evidence of Mbotsha it is clear that it would have been contrary to custom for any woman to make a speech at the home of the deceased after the funeral.

Gqobane Vol 394 page 22876 line 15 - page 22878

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line 20

Ngwalangwala Vol 395 page 22936 line 19 - page

22937 line 23

Mbotsha Vol 406 page 23667 line 22 - page 23670

line 16

10.17. In paragraph 14.31.14 of the Betoog, page 647, it is submitted that the defence version is inherently improbable. The basis for this is that if the police wanted to take action, why should they allow them to walk from the graveside singing freedom songs but then take action when everything was peaceful. It is submitted that no such improbability exists. There is evidence from both defence and state that the people moving from the graveside to the home did so in groups and not as a single procession and that the police may well have thought that the entire proceedings were in the process of breaking up. When they saw a large group assembling again at the home of the deceased, the action taken by them to disperse this large gathering is not extraordinary in any way. In regard to evidence that the mourners were moving as groups and not as a single mass, see: Gqobane Vol 395 page 22925 lines 3- 7
Mguba Vol 111 page 5547 line 21 - page 5548 line

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10.18. It should be borne in mind that Mama General is nowhere cited as a co-conspirator. There is no suggestion that she was on the management of any UDF affiliate. On the versions given by the state witnesses there is no evidence that Goniwe or any UDF official was present when the attack on the beer hall and other buildings began or when Mama General delivered the incitement testified to by Mguba.

10.19. Various grounds are set out in Betoog paragraph 14.32.3, page 648, that the evidence of Ngwalangwala must be rejected as false. It is submitted that the grounds relied on by the state should not lead to that conclusion. The witness was clearly an unsophisticated person. Although she placed herself jointly in charge of the arrangements for the funeral with the father of the deceased (Vol 395 page 22938 lines 18 - 19), it is clear that her actual role in this was in connection with food for the funeral and buying something to be slaughtered for it.
Vol 395 page 22935 lines 7 - 10

The evidence as a whole shows clearly that in the course of the funeral proceedings she was

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preoccupied with food and engaged in respect of cooking and serving food and nothing else. The fact that she was not able to comment on the place at this funeral of persons with political profiles in no way means that her evidence is to be rejected as false. There is no reason why she should be able to comment on whether or not the deceased was a member of COSAS. Given also that the father of the deceased was himself a sickly man who spent long periods in hospital out of Somerset East, there is no reason to describe her evidence as "leuenagtig" that she did not return there to discuss the events of the funeral.

The lack of sophistication of this witness is underlined by the fact that she remembers only the warning in Xhosa. That she did not recall it in its English version, does not amount to a contradiction, as alleged in paragraph 14.32.4 of the Betoog page 650.

This witness evidently saw the sneeze machine vehicle for the first time when it had crossed the road from the square and was at the tree on the side of the road at the deceased's home. She would therefore not have seen anybody

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approaching it. There is no contradiction as suggested in para 14.32.6 (Betoog, page 650).

10.20. The evidence of Mbotsha that Goniwe was in a Kombi towards the end of the vehicles in the procession does not conflict with the evidence of Gqobane. It is clear from his evidence that the vehicles were immediately behind the people bearing the coffin and therefore in the front portion of the march as testified to by Gqobane: Vol 406 page 23683 line 8 - 15

The submission in paragraph 14.34.2 (Betoog page 653) is not borne out.

In respect of paragraph 14.34.3 concerning whether or not songs were sung on the way back, it should be borne in mind that there were different groups of people as set out above.

In paragraph 14.34.4 (Betoog page 653) it is submitted that the father of the deceased made a "toespraak" and that this conflicts with the other evidence that no speeches were made. Properly read, the evidence establishes quite clearly that the deceased's father gave no more than "a word of thanks", and, it is submitted

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that there is no material conflict.

Vol 406 page 23668 line4 - 9; page 23684 line 29
- page 23685 line 14

The evidence of Gqobane cited in relation to paragraph 14.34.6 of the Betoog page 654, does not establish that he saw a white and a black policeman making announcements. It is perfectly possible that this was an inference drawn by Gqobane from the voices that he hears - it was not clarified.

Vol 395 page 22927 lines 3 - 9

Para 14.34.7 of the Betoog page 654, elevates to a contradiction the difference between a "policeman" or "bakkie" and a "landrover". In fact Gqobane was never asked to exclude that it was a landrover and, in any event it is submitted that this sort of difference in the evidence is of no consequence.

Paragraph 14.34.8 of the betoog page 654, lists certain differences in the evidence of the defence witnesses concerning the precise movements of the landrover. It is submitted that these differences are to be expected when regard is had to the time lapse between the events and

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the giving of evidence, the fact that the "square" forms a continuum with the road outside the deceased's home , that the events happened rapidly, that there were on any account a very large number of people in the vicinity, that the spraying of the teargas powder would have had an instant and shocking effect and that in these circumstances it would be a matter for suspicion if these witnesses were all able to give an account clinically precise and identical in all respects. It is submitted that the differences in observation and recall testify to the authenticity of the evidence.

11. Attack on Mguba's House

11.1. Mguba testifies that on 17 March 1985 a group of some 250 youths attacked his house. He gives the names of some of the persons and testifies that they belong to COSAS.

Vol 110 page 5491 line 17 -page 5493 line 27

11.2. It is clear that this evidence concerning the organisational affiliation of these three persons is hearsay and that no regard whatsoever can be given to it.

Vol 111 page 5551 lines 14 - 27

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12. In paragraph 19.1 of the Betoog, page 662, it is submitted that the details put by the defence have the effect of annihilating the credibility of the defence witnesses subsequently called. The difficulties in obtaining instructions at the time of cross examination of the state witnesses has already been dealt with. It is submitted that the credibility of each of the defence witnesses is not undermined by such considerations. There is nothing to suggest that they (or any of them) were the source of the instructions.

13. In the light of all the evidence, properly assessed it is submitted that the matters contended for in paragraph 19.2 of the Betoog page 662 cannot be found as having been proved.

14. It is submitted in conclusion that the violence which broke out in Somerset East and the damage which was done to buildings there arose as a result of localised factors and that there is no basis on which it can be found as proved beyond reasonable doubt that those events arose at the instance of the UDF and consequent upon a campaign against the black local authorities, or that the UDF, or the accused in this matter, can in any sense be held responsible for them.

AREA NO 30 - ADELAIDE (Betoog pages 667 - 685)

1. It is alleged that during the period 1984/85, Adelaide Youth Congress and UDF organised and intimidation, revolt and violence broke out.

2. Evidence was led of a UDF pamphlet calling for a national stayaway on 28 March 1985 (ABA3) which was distributed in Newtown township in Adelaide.
Springbok: Vol 113 p5601 lines 12 - 15
Waters: Vol 113 p5622 lines 7 - 14

3. Evidence was led of a crowd of approximately 500 people who stoned the houses of witnesses Mantewu and Springbok on the night of 11 April 1985. The crowd allegedly chanted 'Viva Tambo, Viva UDF, Viva ANC, Viva Mandela' and 'Botha voetsak'. They threatened to kill Constable Springbok before they were dispersed by the police, being the stage when Waters arrived.
Mantewu: Vol 108 p5386 line 8 - p5388 line 21
Springbok: Vol 113 p5601 line 19 - p5604 line 12
Waters: Vol 113 p5622 line 18 - p5623 line 30

There is also evidence that incidents of this nature did not occur before 11 April 1985. That is to say this was the first occasion upon which the constable had seen instances of this sort.

Mantewu: Vol 108 p5396 line 23 - p5397 line 5

4. Evidence was led of unrest at the Amajincqi Senior Secondary School from Friday 12 April until Tuesday 16 April 1985. Students marched around the school chanting certain slogans. The witnesses were not consistent about the slogans chanted. The witness Springbok referred to slogans relating to Tambo, Mandela and the UDF. Waters is the only witness to refer to an AYCO slogan being chanted.

Springbok: Vol 113 p5604 line 25 - p5606 line 31

Waters: Vol 113 p5625 line 31 - p5629 line 2

5. No people involved in any of the incidents described above were identified.

6. Evidence was led of slogans painted at Khobongaba School: 'Viva ANC, Viva AYCO, Viva Mandela, Viva UDF'. No photographs of these slogans were taken.

Waters: Vol 113 p5625 lines 3 - 30

7. Evidence was led that the Adelaide Community Council had resigned in March/April 1985, and that the township was now controlled by a 'Committee of Six'. The committee was elected by residents to negotiate with the East Cape Administration Board in relation to improvements to be effected in the townships and to

identify and communicate problem areas. Two of its six members, including its chairman Mkaya Mhana, are members of the Adelaide Youth Congress.

Waters: Vol 113 p5629 line 6 - p5630 line 17

8. The defence evidence was aimed at showing:
 - 8.1. That AYCO came into existence after April 1985 (the cut-off point of the indictment period) and that, in any event, neither AYCO nor the UDF could be held responsible for any of the violence which occurred in Adelaide.
 - 8.2. That Constable Springbok acted precipitately and excessively in opening fire on the group outside his house.
 - 8.3. That the procession on 11 April was spontaneous and not something planned by any organisation.
9. It must be pointed out at the outset that the defence did not set out to show that COSAS was not connected with the incidents placed before Court in the course of the State case concerning Adelaide. There was no need to. COSAS forms no part of the State's allegations concerning Adelaide. Furthermore, a careful scrutiny of the State evidence reveals that

the word COSAS is not mentioned at all therein. There were no COSAS slogans, no COSAS banners, and no songs in which COSAS was referred to. It is submitted that the evidence of the State itself establishes that there was no COSAS presence in Adelaide during the relevant period.

10. The witness Nkonki has given evidence that AYCO was formed during May 1985. He said that the idea was born while he was in custody together with certain other people. The aim of the organisation was basically to take part in cultural activities. This discussion led to a public meeting at which the body was launched. The witness was elected as an additional member.

Nkonki: Vol 409 p23892 line 20 - p23894 line 10

As against this evidence, the evidence led by the State is that the witness Waters saw a slogan saying 'Viva AYCO' and heard a slogan to this effect. It is more than significant that neither of the other State witnesses, who lived in the black township, refer to this slogan. It is especially noteworthy that it is absent from the list of 'Viva' slogans testified to by Mantewu in relation to the events of 11 April 1985 (Vol 108 p5386 line 31). It is submitted that the evidence of Waters concerning 'Viva AYCO' as something

heard before the end of April 1985 should not be accepted.

11. The Events of 11 April 1985

11.1. Nkonki also gives evidence that, on 11 April 1985, he heard some singing coming from the direction of a shopping centre. He went there to find that the reason for this singing was to celebrate the release that afternoon of a scholar who had been in detention. This group then started walking through the township singing 'Siyaya', 'Senzeni Na', and a song mentioning Mandela. He said that they did not chant 'voetsek Botha' or slogans about Tambo. As it proceeded more people joined the march while others again left it.

Nkonki: Vol 409 p23894 line 12 - p23896 line 15

12. Nkayi heard the people singing and joined these people much later while they were near his house. At the stage when he joined it, there were approximately 150 people there. He too learnt that it was a celebration of the release of the scholar July.

Nkayi: Vol 415 p24349 line 16 - 24352 line 16

There is no State evidence in regard to precisely how the march started. The only direct evidence is that

furnished by the defence witnesses. It is submitted that their account is clear and that it should be accepted.

As already observed, there is nothing in the State evidence to connect AYCO (or COSAS) with this incident. When the group passed the house of Const Mantewu, the latter raised his fist. No stones were thrown at this house. The group had already passed the house of Const Tom without incident.

Nkonki: Vol 409 p23896 line 16 - p23897 line 30

The house of Mantewu is only two metres from the street.

Nkonki: Vol 410 p23935 lines 1 - 11

Nkonki said that his house is located somewhere in between the houses of Mantewu and Springbok but along the same street and that he left the march before it reached the house of Springbok. At the stage when he had reached his front door, he heard the screams of people, people running and the firing of shots. He was concerned because he had reason to believe that his friend Botha might have been under the influence of liquor and might get himself into trouble. He went to Botha's house and found him there safe. He was arrested there.

Nkonki: Vol 409 p23898 line 1 - p23899 line 25

He goes further and says that that night, Mantewu, Springbok and others came into the house assaulted Botha and himself with batons and sjamboks, asked them why they had thrown stones at the house, and took them to the police station. He says that from there, they were taken to hospital.

Nkonki: Vol 409 p23900 line 2 - p23901 line 23

The witness Nkonki said that he pleaded not guilty to the charges against him and that the charge was withdrawn on 28 July 1986, being after all three State witnesses had testified to this incident in this Court. This evidence is not disputed.

Nkonki: Vol 409 p23901 line 24 - p23902 line 9

13. The witness Nkayi has given evidence that after he joined the group, he heard two shots being fired in the vicinity of the house of Constable Springbok. The people began to walk more slowly after the first shot had been fired. When the second shot was fired everyone ran away. He testified that no stones were thrown at that stage.

Nkayi: Vol 415 p24353 line 25 - p24355 line 2

14. The evidence of the State in this regard is, it is submitted, riddled with unsatisfactory features and inconsistencies.

15. In the first place, Springbok's account of exactly how this incident occurred is highly improbable.

15.1. He said that he heard some people singing. He went outside to investigate and saw people at Mantewu's house throwing stones. This means, of course that it was sufficiently light for him to see this. This carried on for some time after which someone said that all of them should proceed to the house of the witness. There was some statement to the effect that 'Botha se honde moet uitkom'. His evidence was that while he was standing outside his house, they said that he should come out and indicated their intention to kill him. There were about 500 people who stood outside his house. The children continued to throw stones. Some of them entered his gate. (A remarkable aspect of this is that Springbok's front door is only a metre or metre and a half from the road: Waters Vol 113 p5637 lines 4 - 5.) The witness shot into the air. Some person said that he was firing only in the air. The people then advanced and he fired at them, six shots. Someone then said the bullets were finished and they should go forward. He then managed to get onto neighbouring premises where he began to reload his gun. The police vehicle then arrived.

Springbok: Vol 113 p5601 line 18 - p5604 line 15

15.2. There are the following difficulties in this version. Firstly, it is highly improbable that 500 young people would continue to stand there at the stage when shots were being fired at them (at what must have been point blank range). The overwhelming probability is that they would have dispersed immediately. In the unlikely event of this group having remained there despite the shooting, the overwhelming probability is that the witness would not have had an opportunity to reload his gun without being attacked, particularly if the crowd was aware that the reloading was necessary as appears to be the case on his own evidence.

Furthermore, the people there must have seen him. This is demonstrated by his own evidence that he was able to see the children at Mantewu's house while he was at his house. Accordingly, there is no possibility that the children would not have seen him (Springbok) standing outside his own home. His own evidence is that he had lights on in his house. In these circumstances, and if the intention to kill him had been present, it is

impossible to understand why no real attempt was made to execute it. Though his house was apparently extensively damaged by the stoning, he himself was not hurt. The improbability in this is made clear when it is recalled that his front door is no more than a metre and a half from the street.

Furthermore, it is impossible to imagine 500 people throwing stones at his house from this very narrow street across an even narrower strip of yard. In addition, it seems that this group ran away as soon as they saw a police vehicle but remained there while the witness fired shots. The fact that they remained there becomes more implausible if one accepts (and this appears to be common cause) that two children were injured. One of these children had been shot in the back of the head; another had a stomach wound.

Waters: Vol 113 p5623 line 26 - p5625 line 3

16. The evidence of the witness Waters does not square with the evidence of the witness Springbok. He said that he left his home after he heard shots. He proceeded to the police station and from there to the street in which the constable stayed. When he

arrived, he saw young people throwing stones. They ran away when they saw him. He said that that he picked up four knives at the scene, and that the vehicle parked outside the house as well as the window panes of the house were damaged.

Waters: Vol 113 p5622 line 28 - p5623 line 19

16.1. The impression given in the evidence of Springbok is that the incident happened quickly. However, if the evidence of the witness Waters is to be accepted, sufficient time elapsed from the time the first shot was fired until the group ran away to enable Waters to get into his car, travel to the police station, arrange for assistance, and then find the group at Springbok's house. He would need to find it by travelling in the general direction of the noise he heard. The distance appears to have been almost a kilometre. On his account this took some minutes. If the notion of 500 youths bent on a murderous attack where some had already entered premises as small as set out above, is to be taken seriously, then the critical time at Springbok's house would have been a matter of seconds and not minutes. From the time he left his house to the time when he got to

Springbok's street, Waters heard no further shots: Vol 113 p5652 lines 22 - 24. The longer the duration of the incident lasted at the house of Springbok, the more improbable it is that Springbok would escape unharmed. However, the shorter the incident at the house of Springbok, the more improbable it is that the witness Waters got to the house while the young people were still there throwing stones.

16.2. The witness found four knives on the scene, when the group ran away. There are two difficulties with this. Firstly, neither the witness Springbok nor Mantewu mentions these knives. Secondly, one wonders why the knives were not used particularly at the time when he was in the process of reloading his gun. It is inconceivable that the knives would not have been used if there had been an attack as described by Springbok.

17. The witness Mantewu said that, on 11 April 1985, he was at home at about 21h30 in the evening.

17.1. He went outside his house as a result of having heard a noise and saw many people outside. They lifted up their fists and shouted the slogans 'Viva Mandela, Viva Tambo, Viva UDF, Viva ANC' and 'voetsak Botha'.

Mantewu: Vol 108 p5386 line 5 - p5387 line 6

They said that he should come out of his house so that they could kill him. He stood in front of his house. They threw stones and went away in the direction of Springbok.

Mantewu: Vol 108 p5387 lines 7 - 23

17.2. There are a number of difficulties with this version. Firstly, they appeared to have threatened him with harm if he came outside, yet he was already outside and they must have seen him. This clearly emerges from the fact that it was sufficiently light for Constable Springbok to have seen the children at the house of Constable Mantewu and Mantewu's house is two meters from the road. If this were so, it is inconceivable that the children would not have seen him. Despite the threats having been made, they did nothing. Moreover, they called upon him to come outside when he was already outside. If they intended him harm (and this would seem to be so if they asked him to come outside with the threat of harm), it is impossible to explain why he was in fact not stoned. The witness says nothing about the youths saying that they wanted to go to

the house of Springbok, as Springbok from some distance away says he did.

He then said that he heard stones being thrown at the home of Springbok who fired some shots. The people fled. Springbok then came to his house and he accompanied Springbok to Springbok's house where he inspected the damage. The incident was then reported to the commanding officer.

Mantewu: Vol 108 p5387 line 24 - p5388 line 11

The difficulties for the State with this aspect of his evidence are as follows: According to Mantewu, the group flees after Springbok shoots but before the incident is reported to Waters. This bears out the sequence in the defence account of the events.

The evidence of Springbok is different: he says he went to Mantewu after the process of arrests had been completed: Vol 113 p5610 lines 2 - 13

Waters gives a third version: after he had dispersed the attackers, Mantewu came to Springbok's house and he Waters, spoke to them

both to draw up a list of names: vol 13 p5623
lines 20 - 25

An unsatisfactory feature of the evidence of Mantewu is that he did not mention slogans having been used in the statement which was made to the police on the first occasion but only on the second. The first occasion was a few days after the incident occurred while the second was in December 1985.

Mantewu: Vol 108 p5394 lines 2 - 26

An important aspect of his evidence is that he had not heard slogans of this nature in the township before 11 April.

18. The evidence of the defence witnesses concerning the events of 11 April 1985 is criticised by the State largely on the basis that it is improbable, and to some small extent inconsistent with what was put. Generally, it is submitted that the argument of the State is ill-founded, being based on the assumption that the police will always act regularly and properly and without ever reacting inappropriately to an unusual situation - which this singing group constituted, and that it ignores the fact that people are giving evidence about incidents which happened

almost three years ago, does not take into account the fact that the charges against Botha, Nkonki and their co-accused were withdrawn, and fails to take into account the improbabilities in the State's case.

Betoog: p681 para 3 to p685

The differences in what was put to State witnesses and the evidence given by the defence witnesses called to testify is, it is submitted, of no material consequence. Argument concerning this has in general terms been advanced elsewhere.

Of greater moment in relation to credibility and probabilities is the fact that the serious assault testified to by Nkonki and medical treatment necessitated was never disputed by the State.

Vol 409 p23900 line 8 - p23901 line 10

19. The Situation at School

The witness Nkayi is the only witness who gave evidence in relation to the background of what happened at the school. Although his evidence in relation to the formation of COSAS is not good, in the light of the fact that the State led no evidence in connection with COSAS at all, there is nothing to displace his denial in connection with the existence of COSAS in Adelaide during April 1985.

In the light of the fact that there was neither any allegation nor any State evidence in regard to the activities of COSAS as a cause of any incident in Adelaide, the lengthy State criticism concerning the evidence of the witness Nkayi about COSAS over eight pages ultimately is quite fruitless.

Betoog: pp671 to 679

19.1. Nkayi's evidence in regard to what happened at the school is uncontradicted.

19.2. He said that before 1985, the sharing of textbooks was a very important problem in the school. The prefect system, the implementation of the age limit, and excessive corporal punishment also caused concern. He pointed out that the textbook problem was raised during 1984 with monitors in the classroom but nothing was done.

Nkayi: Vol 415 p24355 line 3 - p24356 line 23

19.3. Books still had to be shared during 1985. The matter was again reported to the prefects. He learnt that other classes had reported the matter as well. He said that when nothing had happened by the end of February 1985, there was a meeting which was held with the

permission of the principal. The prefects agreed to resign. A body which he called 'the acting board' was elected and asked to take the complaint to the principal. These complaints were written out at the meeting.

Nkayi: Vol 415 p24357 line 5 - p24358 line 29

19.4. It transpired that the matter was to have been raised by the principal with the school inspector, and that the inspector came back a week later to say that SRC's would be appointed but that the other problems would take some time to sort out. It was then decided that they would not participate in classes until their grievances had been resolved. This carried on until the arrest of the scholar July.

Nkayi: Vol 415 p24358 line 30 - p24361 line 19

19.5. Scholars went to school on 12 April 1985 but did not go into their classrooms. Nothing happened on that day. On the morning of 15 April when only half the number of the pupils were there, there was no incident. On the morning of 16 April, the principal told the scholars not to leave the school premises because he was going to call the education

committee to solve their problems. The vice-principal then arrived and told the scholars that they should leave the school because the police had said so. The police arrived and announced by loudhailer that they should leave. They asked the vice-principal to go and talk to the police. While the vice-principal was on his way to the police teargas was fired and the witness ran away.

Nkayi: Vol 415 p24363 line 17 - p24364 line 9

20. The evidence of the policemen is somewhat different but is also supportive of the evidence of this witness.
- 20.1. The witness Springbok says that on 16 April 1985, the pupils were climbing in and out of the windows of the school. There was an announcement that they should disperse. One of the children stood on a stool and asked the children not to disperse. The police then fired teargas.
- 20.2. The witness Waters says that, on 16 April 1985, he went to the school in order to disperse the children. He told the children that they were attending an unlawful gathering and that they should leave immediately.

Teargas was used and the crowd was dispersed because the witness got the impression that the children might attack them.

Waters: Vol 113 p5627 line 28 - p5629 line 2

20.3. When examined by the Court the following emerges. He says that while he told the children to leave immediately, he also gave them a certain amount of time to disperse but that he could not remember what this time was. In any event, his version is consistent with that of the witness Nkayi to the extent that he says that the teargas was fired before the period expired. His impression that something was to happen was gained from his observation that a group was approaching him in the company of the vice-principal of the school. He said that teargas was also fired at the vice-principal.

20.4. It is submitted that precipitate action was taken here even on the version of the police.

As far as what happened at school is concerned, the evidence was tendered to show (and did show) that the events were a direct result of local grievances only.

21. It is accordingly submitted that the UDF, AYCO and the accused cannot be held responsible for what happened in this area for the following reasons.

21.1. The only evidence relating to the UDF is the pamphlet ABA3. The following submissions are advanced in this regard. In the first place, the witness Nkonki testified that he did not see ABA3 in the area. He also said that there was no UDF presence in the area as at the end of 1985. There was no stayaway and no discussion about any stayaway: Vol 409 p23892 lines 11 - 17. He was not cross-examined at all in regard to this evidence. In any event, even if the pamphlet ABA3 had been distributed, no connection at all can be drawn between it and any incident in Adelaide. Even if the UDF was mentioned in slogans that were chanted at the school and painted on the walls no organisational presence can be inferred.

21.2. As far as the responsibility of AYCO is concerned, there is no State evidence about when AYCO was formed. The defence evidence that AYCO was formed only in May 1985 must, it is submitted, be accepted. In any event, there is no evidence at all of a connection between AYCO and the UDF.

21.3. All the evidence in relation to COSAS is irrelevant in relation to the allegations made and the evidence led by the State. It must be borne in mind that Exhibit CA45 is not a UDF document. The fact that it was distributed only in June 1985 at a conference places it outside the period of the indictment and cannot support the State case in the manner contended by it.

Betoog: p685 para 6