

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

A

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-18

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21
ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST en
ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS
ADV. P. FICK
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

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

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 441

(Bladsve 25 918 tot 25 999)

COURT RESUMES ON 18 AUGUST 1988.

MR BIZOS : My lord, I do not know how conveniently it would be. I spoke off the top of my head yesterday in relation to the case in which Mohage was the investigating officer against the case against accused no. 16 when I was dealing with Mohage. Your lordship will recall that I mentioned it in passing and I then could not find - I tried to find a reference and could not and was afraid that I may have heard about it only in consultation and not on the record, but the accused were good enough to make a thorough search to find it. That (10) Mohage was the only witness against the case against accused no. 16, Mr Manthata. This is to be found in volume 276 page 15 031 line 9 to 27.

COURT : Do we have a date for that case?

MR BIZOS : Yes. Only if I am said to be a competent witness in the case, because I told your lordship at the time, your lordship asked that very question and I went on record to say that I have Mr Wentzel's brief in my brief showing the march 1981.

ASSESSOR (MR KRUGEL) : Whose evidence was that? (20)

MR BIZOS : Mr Manthata's himself. I have not been able to find any cross-examination.

COURT : Do we have on record what the charge was?

MR BIZOS : Yes, that he was charged and acquitted as a result of addressing the meeting about which Mr Mohage gave evidence.

COURT : In Soweto?

MR BIZOS : In Soweto, yes. I must be careful because I had the brief. If I confine myself to the record that it was as a result of what was said at the meeting. I do believe that there was no cross-examination on this. (30)

COURT/...

COURT : You could hardly have been cross-examined on it?

MR BIZOS : I only gave evidence on the date. I was not asked to produce the brief by the opposition.

COURT : It is not that important.

MR BIZOS : I want to go on with the meeting of 25 August 1984 at zone 13. This meeting is covered in some detail in paragraph 75 of the indictment, starting at page 339 and going up to 346. That is to be read together with a very important allegation from the point of view of pleading by the state in the further particulars in paragraph 39.1.4 (10) to be found on page 107. It is the usual preamble and with the usual allegations of the conspiracy, but had it not been for this allegation in the further particulars as to who was responsible for calling this meeting, it may well be that an application for a misjoinder in relation to some of the accused may have been brought to your lordship, because it says on page 107 that the persons responsible for this meeting were the management structure and officialdom of the UDF, the management structure of the VCA, COSAS, AZAPO Vaal, FEDSAW Vaal, AZANYO and the persons expressly mentioned in paragraph(20) 75.

We submit that the evidence by the state was existent in relation to this meeting. No explanation has been given as to why there has been no evidence and I merely draw your lordship's attention that it may well be that such prejudice as there may have been present in the form that this trial has taken, we as the accused counsel could do nothing about it in view of this very wide and completely unsupported allegation. It would have been useless to bring an application for separation of trials or complain of non-joinder, once all (30) the/...

the organisations had been brought together into this allegation. No effort whatsoever was made to prove any portion of it.

In paragraph 75 in the further particulars these organisations are said to have intended by holding this meeting to bring about riots, revolt and violence in the Vaal Triangle. In paragraph 75(1) to be found on page 340 to 75(5) up to page 342 details are given concerning COSAS and the close collaboration between COSAS and the VCA. In paragraph 75(6) to be found on page 342 to 345 details the content of a number(1 of militant speeches alleged to have been made at the meeting of 25 August and paragraph 75(7) sets out the resolutions alleged to have been adopted at this meeting. There are no less than nine resolutions which are set out and I would like to draw particular attention to resolution (v) to be found on page 345 which reads

"The masses must march to the administration building at Houtkop to demonstrate."

And that resolution (ii) that the march was to start off at the Roman Catholic Church Small Farms. (20)

It is the state case that it was at this meeting that all these resolutions were passed by all these organisations and paragraph 75(7) also includes a resolution that the other areas in die Vaal region should adopt the same resolutions in order to enable the forces in this area to take united action, quoting the words of the indictment. In these various subparagraphs grave allegations are made against certain of the accused. However, no evidence was led by the state to support any of the allegations made in these paragraphs. (30)

In/...

In paragraph 75(2) for example it is inter alia alleged that on 16 June 1984 memorial service organised by COSAS - although this does not deal with the meeting of the 26th; the paragraph deals with it. There was - as an continuous preparation of this. A memorial service organised by COSAS. Alex Sikosana and accused no. 14 spoke and "propagated and condemned so-called police brutalities, defended and popularised a violent action of black youths and denounced and condemned the current education policy and encouraged youth action against it." No evidence at all was led by the (10) state in support of this.

Accused no. 5 dealt with this meeting in the course of his evidence.

ASSESSOR (MR KRUGEL) : Which meeting was this now? The memorial service or 25 August?

MR BIZOS : 75(2), I think it is the memorial service. Let me just check.

COURT : But are we now jumping back? I thought we were dealing with the meeting of 25 August?

MR BIZOS : Yes, I am dealing with it paragraph by para- (20) graph and it is all in this paragraph as part of a continuous action from June 1984 to 25 ... (Court intervenes)

COURT : Yes, I know, but your heading was part of the paragraph dealing with the meeting of 25 August. So, can we change the heading?

MR BIZOS : Could I ask your lordship to amend the heading and the allegations relating to it prior to the 25th leading up to the meeting of the 25th. Let me just check, 75(2), the specific allegation. Yes, it would appear that it is that meeting that is referred to in subparagraph 2 of 16 (30)

June/...

June. Dealt with this meeting in the course of his evidence, that he spoke in an effort to revive the working groups which were to develop a youth congress in the Vaal and the point that we make is that there appears not to have been any suggestion made to him in the course of the cross-examination that speeches were made as alleged by the state in paragraph 75(2). His evidence-in-chief is to be found in volume 210 page 11 048 line 6 to page 11 49 line 16 and again at page 11 056 lines 6 to 23.

The state alleges in paragraph 75(3) and 75(4) that (10) there were conversations and planning between Raditsela and COSAS and in paragraph 75(5) it is alleged that accused no. 5 distributed pamphlets on the morning of 25 August 1984. There is no evidence from the state that the allegation is - to support this allegation and it is denied by accused no. 5 in volume 206 page 10 787 lines 2 to 3.

We are giving your lordship this detail because - in relation to these matters - the state throughout this case tried to elicit matters in respect of which it had not led any evidence and COSAS seem to be the favourite prize (20) being looked for by the hunter of the information, but nothing has come out and we submit that not only has there not been any evidence that COSAS played any role whatsoever in the happenings of the Vaal Triangle, unless one elevates the wearing of COSAS shirts by people on the morning of the 3rd into evidence of a conspiracy. All the accused have denied that there was any such contact and the planning, but on this particular allegation not only is there no evidence but again accused no. 2 dealt with it in volume 206 page 10 787 lines 2 to 3. (30)

ASSESSOR/...

ASSESSOR (MR KRUGEL) : Then volume 206 must be a very thick volume. We have not got one volume that is 300 pages thick. The previous reference was to page 11 087 and this one is to 10 787. So, we must have a volume that is 300 pages thick. We have not got anyone.

MR BIZOS : The immediate previous reference is volume 210?

ASSESSOR (MR KRUGEL) : I am sorry, I have it 206. I do not know why.

MR BIZOS : There is a line 6 going on.

ASSESSOR (MR KRUGEL) : Sorry, my mistake. (10)

MR BIZOS : No, quite in order. I have already referred your lordship to the particulars that the meeting of 25 August was organised by COSAS Vaal, AZANYO, FEDSAW, VCA. Although inconsistently with itself the state alleges that a report made by Raditsela was to the effect that the action committee of zone 12 was going to hold this meeting. Paragraph 74(6)(iii) to be found on page 339. It is alleged that the action committee in zone 12 Sebokeng was going to hold a mass meeting on 25 August 1984 at the Anglican church zone 13 Sebokeng and that this meeting could not unfortunately (20) take place on 26 August 1984 like all the other meetings because the church in question would not be available on that day. That is prefaced by a preamble on page 338 and at this meeting Esau Raditsela reported to the meeting that and then goes to subparagraph (3).

No explanation has been furnished to your lordship how these contradictory allegations come to be made in the indictment and the further particulars, more particularly if we are correct and not over suspicious that the allegation may have been made in order to save the indictment. (30)

If/...

If there is another explanation to be given, we will naturally accept it.

A pamphlet was issued in relation to this meeting, EXHIBIT AN15.4 which merely refers to the Vaal Civic Association. One assumes that that exhibit was in the possession of the state when the further particulars were given ... (Court intervenes)

COURT : Was there not a placard on this meeting?

MR BIZOS : I do not remember.

COURT : I have an idea there was a placard. (10)

MR BIZOS : It could have been.

COURT : It will be in the AN15 range somewhere. That placard sets out more the organisers of the meeting than the VCA. I think it mentions the UDF and COSAS, but I am not sure.

MR BIZOS : It may be that - I do not remember it. Some placards were produced late in the day. I do not know whether there is any evidence whatsoever as to who produced that placard and when and with whose authority, but it looks at any rate that it certainly was not available to the state at the time that it drew the indictment because it says (20) that the ... (Court intervenes)

COURT : Well, sorry, if I am wrong, I am wrong. I will look it up at a stage.

MR BIZOS : We ourselves will look for it and possibly come back to it, because it could not have been available to the state when the state drew the indictment and they relied on the report of Mr Raditsela as to who was responsible.

Accused no. 5's understanding was that it was a VCA meeting and the evidence of accused no. 5 is to be found in volume 210 page 11 057 lines 10 to 17. (30)

Accused/...

Accused no. 5 was the only witness who testified about this meeting. None have been called by the state. He gives the following account of the proceedings there. He himself arrived at the meeting well after it had started. It is common cause that he also arrived late at the meeting of the 26th, the next day. When he was first called he was not there. So, insofar as the state relies on the probability or improbability of late coming, at least he would have been consistent it being common cause that he was late.

COURT : He is a johnny come lately. (10)

MR BIZOS : Johnny come lately. It may be a good excuse for it. At that stage an elderly man was busy speaking about how great the burden, the rent increase, would be. After this Mrs Letanta spoke. Also opposing the rent increase and calling on the women - calling on women to unite against it. Although it is alleged in 75(6)(ii) that accused no. 5 made a speech, he himself denied that he spoke at this meeting. Your lordship will find that in volume 260 page 10 787 line 2 to page 10 788 line 17.

Raditsela then took over as chairman from Mr Molantoa(20) who had been acting as chairman and asked accused no. 5 to come to the table in order to take notes, clearly something that had not been pre-arranged. Accused no. 5, volume 206 page 10 788 line 18 to page 10 789 line 13.

Raditsela then asked people to return the papers on which they had written their proposals. Discussions followed and resolutions were taken and that they were that the increase of R5,90 would not be paid, that councillors were asked to resign, that Monday, 3 September 1984 was to be a stay-away and that on that day protest rallies were (30)

to/...

to be held. Accused no. 5, volume 206 page 10 789 lines 14 to 24.

We submit that the only evidence before your lordship is significant that there was no talk of a march at this meeting. An indication of the degree of spontaneity which accompanied the organisation on efforts concerning the rent protest. Accused no. 5, volume 206 page 10 789 lines 25 to 26.

In the course of the discussions of the proposals Oupa Moraletsi said that there was nothing illegal about calling for a stay-away and protest rallies but raised the matter (10) of people engaged in essential services. Discussion followed with the result of the call for a stay-away was not extended to people who had to do with the essential services. Accused no. 5, volume 206 page 10 789 line 30 to page 10 790 line 19.

Much confusion was introduced in the evidence and particularly during cross-examination by the state of the accused and the defence witnesses as a result of failing to distinguish what the witnesses were saying and what counsel for the state thought they meant. Giving evidence through an (20) interpreter of course - and your lordship and I do not know of the new answers, but accused no. 5's evidence is clear in this regard, that the call for the people performing essential services exempted people in that category from taking part in the stay-away. The state reads that that every one else would be prohibited by force from going to work, but the others would be allowed to go to work. Even lawyers and draftsmen of statutes find difficulty between an exception exemption or a licence and I submit with the greatest respect that those who use language carefully, (30)

like/...

like accused no. 5, made it clear that these people would be exempted from the call and that is how the evidence is to be read, not on the basis that everyone would be prohibited except those in those services. A call exempted the people. No call was made to them. This is what the evidence means. Even those who used the word allowed, either later in their cross-examination or re-examination said that there would have been nothing to prohibit those that wanted to go to work as far as the organisers were concerned from going to work.

Accused no. 5 categorically states that there was no(10) discussion about what people in other zones might do about this issue. Volume 206 page 10 790 line 28 to page 10 791 line 3.

Accused no. 5 denied that the whole question of the stay-away action and the march was planned beforehand, that he himself was party to such decision and undertook to convey this position to the meeting of the 26th August 1984 where Raditsela could not be present. Accused no. 5, volume 210 page 11 075 line 11 to page 11 076 page 5.

This was nothing more than speculation on the part of(20) the state and when speculation is denied by direct evidence, we submit that ... (Court intervenes)

COURT : Could you inform accused no. 1 that if he is really interested in the newspaper, he can ask for leave of absence.

MR BIZOS : I am sorry, I will most certainly - I have had occasion to say this to accused persons before. I cannot remember this particular one, but certainly, it is not acceptable behaviour.

COURT : Go ahead.

MR BIZOS : In conclusion in relation to the meeting of (30)

25 August 1984 it is observed that no evidence at all was led to support the allegation that another of the person was present and made a militant speech. He chose an unfortunate time to be reading the newspaper, because this is an allegation which is actually made against him in paragraph 75(6) (iv). However, it was not even suggested in cross-examination to accused no. 5 that anything of this nature took place at the meeting at which accused no. 5 was.

We could not find any mention of this meeting in the "betoog". It has advanced no reason why the account given(10) by accused no. 5 of the proceedings there should not be accepted. In particular no reason has been advanced why the important evidence that there was no talk of a march at that meeting should not be accepted by the court.

On the evidence presented before your lordship there is no suggestion that this meeting was held in furtherance of any conspiracy and your lordship will, in our respectful submission, make that finding. It also shows that there was in fact - well, let me put it not as high as that. There is no evidence that there was any co-ordination or(20) co-operation between the people in the various zones as to what ought to be done about this issue of the high rent. I already submitted to your lordship yesterday that the resolutions passed at this meeting might have filtered through to one individual like Botha and Mokgema in Sharpeville.

Bophelong is an interesting matter, because despite the state's allegations, and I will refer to it in greater detail, Bophelong had a meeting on the 26th and the only evidence before your lordship in relation to that was that(30)

it/...

it was resolved to call the councillors to a meeting as soon as possible to explain their conduct. That is the evidence of Nobantu Maketswa. We will refer to Bophelong in greater detail later. So that we have on the 25 and the 26th a stay-away arranged for 3 September. No resolution about 3 September at all in Sharpeville call the councillors together in Bophelong and of course Nobantu's evidence is corroborated by the fact that the councillors were expected on the 28th and they actually turned up on the 29th. So, the state cannot dismiss it. The reason why I am referring (10) to this now is this. The question that may well have been posed is it a coincidence that all of a sudden there was this flurry of meeting. No, obviously it is not a coincidence. These people were - all these people in the various areas were very concerned about the rent, that they were told would come into operation on 1 September, come what may. That is why there was a flurry of meetings, not because there was any conspiracy. Then when the probabilities that may be drawn of the desperate attempts to do something about it at three places, why should the evidence of accused (20) no. 5 stand uncontradicted and we submit that he was a good witness. Why should his evidence be rejected or even any doubt expressed about its veracity?

We now want to go on to the meeting of 26 August 1984 at Small Farms. Again there is the usual preamble in paragraph 76 of the indictment to be found on page 346 to page 352 of the indictment. Of course we would ask your lordship to take into consideration the argument advanced to your lordship under the previous heading about the house meetings at the home of accused no. 10 that were responsible for (30) bringing/...

bringing together the people of zone 3 and zone 7 and that the state witnesses themselves do not support the allegations that this meeting was held as a result of any conspiracy.

The evidence in this respect is that accused no. 8, accused no. 10 and Oliphant and the Reverend Mahlatsi drove around on the morning of 26 August 1984 advertising the meeting with a loudhailer. The purpose of the meeting was made known to the public by the loudhailer, that it was to discuss the rental and to elect an area committee for zone 3. No other purpose for the meeting was suggested. Using a (10) loudhailer to call the community to a meeting is hardly a conspiratorial act. Accused no. 10, volume 160 page 7 881 lines 15 to 24. Accused no. 8, volume 179 page 8 751 line 25 to page 8 752 line 24.

When he arrived at the venue for the meeting accused no. 8 was requested by Raditsela to take the chair for a while and gave him a list of speakers. His evidence is that Raditsela did not explain to accused no. 8 where he was going to. There is no evidence to support the allegation in paragraph 76 that Raditsela informed accused no. 8 (20) that he was going to address a meeting at Bophelong and co-ordinate meetings being held at Sharpeville and Boipatong.

A number of points can be made in relation to the evidence of accused no. 8, to be found in volume 170 page 8 754 lines 2 to 24.

Would, if this was going to be a conspiratorial meeting, Raditsela have called up on a person who was not in the VCA to take the chair without telling him, as accused no. 8 says that he did not tell him what resolutions should be pushed through, without telling him how he, accused no. 8, should(30)

be/...

be part of the co-ordination that the state alleges that Raditsela ...

Then we know that Nobantu Maketswa gave evidence that he did not go to Bophelong. He did not address a meeting at Bophelong. He made no attempt to co-ordinate with what was happening in Bophelong. We know that subsequent events ... (Court intervenes)

COURT : What is the reference to Maketswa?

MR BIZOS : I will have to give your lordship ... (Court intervenes) (10)

COURT : You will be coming to that?

MR BIZOS : We will be dealing with Bophelong. I am merely drawing attention to the lack of co-ordination, but she says that he did not come there and the subsequent events that the councillors were expected on the 28th to come to a meeting to explain themselves and their coming to the unfortunate meeting with the police walking back to back at the meeting of the 29th, clearly indicates that there was no co-ordination at all. It has been proved beyond any doubt whatsoever that Raditsela did not go to Sharpeville on the 26th. (20)

A number of witnesses, the long list of eight witnesses that I gave your lordship yesterday, gave evidence that Raditsela or a stranger did not come up. I stopped asking the defence witnesses the question, because after the first couple were not questioned about the presence of Mr Raditsela and if the co-ordinating leader came along in order to really co-ordinate the meeting on the 26th, Mr Kevin Harris must have been a very unobservant film maker which I submit would not be the impression that he would have given your lordship to have missed the triumphant entry of the leader that (30) came/...

came to co-ordinate matters.

I may say that I find it difficult to believe that the state is serious in its "betoog" on page 145 and subsequent pages that the reasons why this evidence is to rejected is that I put something which was not borne out by the evidence. Let us see what the putting that was not supported was.

Your lordship will find it in "betoog" page 148. It says

"Getui Mahlatsi het getuig dat Esau Raditsela met die aanvang van die vergadering opgedaag het en aangekondig het dat beskuldigde nr 8 die voorsitter op die ver- (10) gadering sal wees aangesien hy self ook nog elders vergaderings moet bywoon naamlik Sharpeville, Bophelong en Tsirela (Boipatong). Esau het verduidelik dat die rede wat die verhoogde huurgeld en poging om raadslede uit hulle poste as raadslede te laat bedank."

Then your lordship is given volume 41 1 937.

"Dit is ons respekvolle betoog dat hierdie weergawe gestaaf word deur die volgende feite.

(1) Dit is korrek dat Lord McCamel asook beskuldigde nr. 6 nie beskikbaar was vir die vergadering (20) nie."

If that follows logically, it bypasses and I will submit that it will bypass your lordship and the learned assessor.

"Dit is korrek dat Esau werklik na vergaderings gegaan het soos getuie beweer."

No evidence is quoted for that. No reference is made, but the evidence is to the contrary. How can the state make this submission, with the greatest respect?

"Die getuie se getuienis word in hierdie verband bevestig deur h verweer (now, I have always understood (30)

a/...

a defence to be something more than a little detail about a particular little issue) wat gestel was deur mnr. Bizos (and then I am quoted as people from both zones 3 and 7 and zone 7 were there, it would not be right to have a chairman either from the one zone or the other and that the meeting should indicate a neutral chairman)

"Yes, but are you in a position to deny it? -- No, I cannot."

En verder gestel

(10)

"Do you recall that there was an announcement that a completely impartial chairman should be appointed for the meeting. That is Mr Mokoena, that is accused no. 6, but then he did not turn up?"

And the reference is given for that.

"Dit is opmerklik dat hierdie verweer drasties verander het namate die verhoor gevorder het soos die meeste ander verwere nooit gerealiseer het nie."

The issue, if I understand it correctly is did Raditsela say that he was going to other meetings in order to co-ordinate that? How anything that I have read to your lordship corroborates Mahlatsi except on one possible detail and that is as to whether Raditsela said anything before he left the meeting or not. (20)

The state is correct that no defence witness supported what I had put to Mahlatsi and because the state is trying to build a case on a couple of these puttings, it is perhaps that I should address your lordship now on the issue.

This has not been an easy trial. We decided, rightly or wrongly, that we are were not going to ask (30)

your/...

your lordship for lengthy adjournments every time a witness gave evidence. Many of our instructions were on loose pieces of paper, sometimes from the accused, sometimes from witnesses. Your lordship must also realise that at times the memory of one or other of the accused may not have corresponded with any of the other accused in relation to detail. Where we could not take instructions from the accused on matters on which they had no knowledge and there was much of this evidence in this regard, we had to be informed by witnesses or prospective witnesses of what (10) the position was. We would accept the information that was given to us in faith. When it came to consult with some of these people, your lordship's trial experience must correspond with that of ours, with respect. For one or other reason a witness is rejected, a prospective witness is ejected for a variety of reasons. May be on the ground of intelligence, on the ground of age, on the ground that he had been detained frequently during the period that this trial has been going on. He may even have been in detention at the time that it was time for him to give evidence. (20) So, that having said all that, I want to add one other and I will refer your lordship to authority in due course.

An accused person can vouch for his own credibility. He cannot vouch for the credibility of others. So that to pick up three or four examples of matters that were put in relation to detail and were not proved, hardly proves a case for the state, but let us turn to the particular. How does this putting establish the fact in issue as to whether Raditsela had said that he was going to other meetings? I submit that I have said enough in that regard. (30)

In/...

In relation to the other matter that comes down later is what Raditsela might have said inside the hall on the morning of the 3rd. We will deal with that in greater detail in due course, about the "lappies", the wet "lappies" that people should have. Your lordship knows that none of the accused were there according to their evidence.

COURT : Well, if you are going to deal with it later on in detail, do not give us a trailer of it.

MR BIZOS : I submit that on this issue ... (Court intervenes) (10)

COURT : Just come to the issue. What do you say did Raditsela do after he left the meeting?

MR BIZOS : We know that he left with Edith Lethlake.

COURT : And came back with her?

MR BIZOS : And came back with her.

COURT : Together with a number of youths?

MR BIZOS : There is some evidence as to what Lethlake did at the meeting of Boipatong. My learned friend, Mr Tip, will be addressing your lordship in Boipatong - on Boipatong probably tomorrow. (20)

I recall your lordship's remark that at the time he was just acting as a chauffeur for this. Apparently Miss Lethlake who we did not have an opportunity to see was described as a particularly attractive young person, but be that as it may, the probabilities are that he went with her. Not only for the purposes of giving her a lift but in order to have discussions with her or to do anything with her. But the issue is whether the state has proved what is alleged that he went to co-ordinate the other meetings and on that issue the evidence is against the (30) contention/...

the contention of the state.

If we are to reason, we must reason on all the facts available. The other facts that we have is that she got a group of young people with a banner and UDF sunshades I think what people wear at sporting functions. Presumably it took him some time to get this group together. We do not know where he got them, where he had to drive around for the purposes to get them. We do not know where the banner was. He probably went to get it. It would have been up about in his mind. Organisations do that. Wherever there (10) are lots of people, they want their flag to fly. She was a person supportive of the UDF. She knew that there was going to be this meeting there. The absence of pre-planning is in fact to a certain extent corroborated by this fact. I do not know what accused no. 19, Mr Molefe, would have thought of one of the members of the council of the UDF Transvaal if the UDF banner came there at the tail end of the meeting, what sort of organisation that was and it shows the makeshift way in which the matter was done. If the UDF was behind this meeting, would its banner have (20) come there as an afterthought at the tail end of them? Once we know that he did not go to Sharpeville and once we know that he did not go to Bophelong, is Mahlatsi's evidence for that and the numerous issues that we will address your lordship at the end when we deal with the 3rd because the witnesses that have given evidence on the 3rd, that is IC.8, Mahlatsi and Rina Mokoena, even though she - we do not know whether the state abandoned her or not, they certainly not make any reference to her in the "betoog". We will deal with the credibility of those witnesses then, because (30)

th n/...

then the whole picture will be before your lordship. I will deal with the credibility of Masenya in dealing with the meeting of the 26th.

Mahlatsi cannot be believed that this announcement was made. Even though I was wrong in saying that there was an announcement about the impartial chairman. What has the one got to do with the other? How is the one in corroboration of the other?

Speaking subject to correction - I have not studied that portion of the record, because Mr Tip is dealing with(10) it, but my recollection is that there was no evidence that he addressed the meeting at Boipatong, but I think he may have taken some part. I am not sure. I would rather not say anything about it. Your lordship will get the facts from Mr Tip in relation to that.

In his opening remarks, according to the evidence for the defence, accused no. 8 outlined the purpose of the meeting and explained the procedure to be followed when persons wanted to speak. This evidence is incapable, we submit, of supporting the allegation that "expounded propaganda (20) against the councillors and black local authorities and assured the audience that they had found a solution with regard to councillors and increased rent." This is the allegation that is made in paragraph 76(3) to be found on page 347 of the indictment. Accused no. 8, volume 170 page 8 756 line 18 to page 8 757 line 2. Accused no. 10, volume 160 page 7 883 line 23 to page 7 884 line 5.

There is a dispute of facts as to who delivered the prayer insofar as it is of any importance. We submit that contrary to the evidence of Reverend Mahlatsi, it was (30)
accused/...

accused no. 17, Mr Matlole, who opened the meeting with a prayer. We will give your lordship only two references which suffice to disturb the balance in favour of the defence of accused no. 10 and the witness Mazibuko to be found in accused no. 10, volume 160 page 7 883 lines 18 to 22.

Mazibuko, volume 338 page 19 255 lines 26 to 29.

COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : The state's submissions on page 149 are not borne out by the evidence. They are difficult to reply to specifically because no references are given in relation (10) to the submissions made and I would refer your lordship to page 149 volume 1 of the "betoog" paragraph 2.

"Dit is gemeensaak dat geselekteerde sprekers wat verskillende groepe in die gemeenskap verteenwoordig VCA, ERPA, Vaal , trade unions en die jeug moes optree by die vergaderings."

That is not "gemeensaak". The evidence is completely to the contrary. Let us take the question of the trade unions. Accused no. 10, Mr Vilakazi, did not attend the trade unions there. In fact his evidence was that the trade unions (20) have got one job to do and the civic organisations have got another job to do. Where does the "gemeensaak" come from? Nobody really was going to represent the VCA. This was an area representative of the VCA calling a meeting together in order to form a committee and in order to discuss this and Mr Kabi happened to be there as part of the audience. He was not representing ERPA.

I do not know with respect what the next paragraph is supposed to prove. It is true that accused no. 17 was taken to one of the council meetings together with (30)

accused/...

accused no. 7 but really what happened - the issue is what happened at the meeting of 26 August?

Accused no. 5 is said to be a representative of the youth. He was at pains to say that he was chosen because he was a young person. There was no youth organisation and then it is considered particularly significant that he was previously a member of - a chairman of COSAS. Generally speaking, people who are - who hold office in youth organisations generally speaking become leaders of organisations of adults. It happens. If you are a chairman of the SRC (10) at a university you will probably find yourself in the political arena as soon as you have left university. But what has it got to do with what happened at the meeting of the 26th that accused no. 5 had been chairman of COSAS in 1981 and 1982?

It is common cause that he attempted to get the Vaal Youth Congress going over a period of eighteen months but we have a contemporaneous document of June 1984 to say - which says comrades have been trying to get together for a long time and nothing has come of it and the contradicted (20) evidence is that nobody turned up at that meeting. How does this prove what happened at the meeting of the 26th?

We again have - your lordship is being asked in relation to what happened at the meeting of the 26th that accused no. 10 is from the VCA, it is true that he is an area representative and he was mandated way back on 9 October 1983 to get an area committee together and he started getting it together in August. "n Verteenwoordiger van die werkers." He is not even a member of a trade union. He is a trainer of trade unionists. (30)

It/...

It is true that Rina Mokoena, Mercia Oliphant and Mrs Motsaneng were people who were involved in the women's organisation with Dorcas Raditsela and Edith Lethlake, but how does that help your lordship as to whether or not this was a conspiratorial meeting on the 26th? The fact that accused no. 8 took part at one or two of the house meetings can hardly be of any significance.

"Maruping het n aktiewe rol gespeel tydens die huisvergaderings en die beplanning vir strategie en was ook verkies op die gebiedskomitee." (10)

Then of course my learned friend for the state adds that he was the person who suggested the march. This was part of the oral argument. To quote Mr Fick "So what." He was a member of the committee, of the ad hoc committee to form an area committee. He also happened to be a person who suggested the march. Kabi was a member of ERPA and then we have the respectful submission being made by the state, so it says, that the people who played a prominent role went there with a pre-determined strategy in order to organise what happened on 3 September 1984 and it says (20) the cherry on the top in the state's case "Look at CA22 found in the possession of Young Vilakazi, the erstwhile accused no. 18, therefore they were busy taking part in united action. There is no attempt to analyse the evidence. There is no attempt with the greatest respect to identify the issues that have arisen in relation to the conflict in the evidence and no valid reasons as to why the version that is deposed to by the accused should be rejected, that the version deposed to by the defence witnesses should be rejected and that of the state should be accepted. (30)

We/...

We intend showing your lordship that the weight of evidence on the probabilities favour the accused's version and that your lordship will find that there was no furtherance of any conspiracy at this meeting. As we will show your lordship in detail that much of what Masenya said was actually not even put to the accused especially in relation to the violence and that the inferences sought to be drawn are not justified by the evidence.

I will give your lordship the defence evidence in the main first and then give your lordship reasons why Masenya (10) who has said things to the contrary and Mokoena who has said things to the contrary and Mahlatsi who has said some things to the contrary cannot be believed. In fact unless we have missed something we believe that there is nothing in the argument on Rina Mokoena. No attempt is made to analyse the contradictions between the state witness Mahlatsi and the state witness Masenya and no attempt is made in this argument to deal with the weight of evidence on the probabilities.

We are not unmindful that accused no. 17 has not (20) given evidence. We will refer your lordship to authority in due course, that no adverse evidence can be drawn against an accused person who has not given evidence when his co-accused have given evidence about the same matter, but in any event, in relation to accused no. 17, the evidence of accused no. 7 was not contradicted, that he does not know from one day to the next whom he saw and whom he spoke with the day before.

The evidence of his co-accused is that he did not call for violence against councillors or for attacks against (30) their/...

their property. He did not incite the people to do anything unlawful. Accused no. 10, volume 160 page 7 884 lines 17 to 20. Accused no. 8, volume 170 page 8 759 lines 24 to 29.

Neither accused no. 17 nor anyone else at that meeting said anything variously about violence being used against councillors or against their property or against anyone else. This has been denied by accused no. 9, volume 180 page 9 260 lines 1 to 28. Page 9 261 lines 5 to 21. Again at page 9 262 lines 4 to 5.

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It has been denied that violence was advocated at (10) this meeting by accused no. 5. Volume 206 page 10 799 lines 6 to 8. Accused no. 7, volume 201 page 10 509 line 27 to page 10 510 line 4. And a number of defence witnesses. Oliphant, volume 328 page 18 779 lines 9 to 14. Zulu, volume 319 page 18 283 lines 15 to 25. Mgudlwa, volume 322 page 18 413 lines 18 to 28. Mazibuko, volume 338 page 19 256 lines 10 to 12, page 19 263 lines 8 to 10. Nyembe, volume 326 page 18 676 lines 17 to 22. Namane, volume 318 page 18 199 lines 2 to 9. Tsotso, volume 330 page 18 886 lines 3 to 5. Vilakazi, the erstwhile accused no. 18, volume (20) 347 page 19 850 lines 10 to 14. With the reservation that it was only during the periods that he was there and he was not there all the time, the caretaker Ratibisi, volume 305 page 17 565 lines 15 to 20 and again in volume 307 page 17 643 lines 23 to 26.

Accused no. 10 addresses a meeting according to the defence evidence and outlined the need for the VCA area committee in zone 3, discussed the problems of the township and the question of the coming rent increase, mentioned that the people had the right to demand that the councillors(30) solve/...

solve these problems and that should they fail to do so, that they had a democratic right to call upon them to resign as in the instance of what happened at Ratanda. Accused no. 10 described this as being "a fully democratic" process. Volume 160 page 7 885 line 9 to page 7 887 line 22.

In the course of his address accused no. 10 said nothing about teargas or the police. Accused no. 10, volume 160 page 7 888 lines 6 to 8.

Accused no. 10 did not call for violence in his speech. Volume 338 ... (Court intervenes) (10)

COURT : You must have that reference already because you gave us a long list of people who said it was not mentioned.

MR BIZOS : What happens is, there is this distinction that we start off with asking about each one of the accused and then we generalised it. I actually have specific reference about accused no. 10 from two of the early witnesses. Once we saw what the cross-examination was - I have the specific references but if the general one is enough, then that is it. I would not give them to your lordship again, but we started off when we dealt with accused no. 8 and the one (20) of the first witnesses, Mazibuko, we asked him specifically in relation to each of the accused.

Rina Mokoena did not advocate violence in her address at the meeting and I have the references just in case the state tries to revive her. I am in your lordship's hands. I do not know what the state's attitude is in relation to Rina Mokoena, but I am able to give your lordship the references of three accused and four defence witnesses having denied that she has done that.

COURT : You can hand this in later if you wish. The (30)
references/...

references. It will be an awful waste of time because very many of your references are very near each other and by the time you have read the page you have picked up three allegations and you would have to repeat it every time.

MR BIZOS : I am quite happy with that and I do not want to take up time unnecessarily especially if she is not referred to by the state.

The evidence is that accused no. 5 returned to the meeting whilst Rina Mokoena was busy speaking. In the portion that he heard of her speech, he did not hear her (10) mention the killing of councillors or any other violence. According to accused no. 5 there was no such talk at the meeting. Accused no. 5, volume 206 page 10 798 line 11 to page 10 799 line 8.

We would like to draw your lordship's attention that paragraph 76(5) which outlines what Rina Mokoena is deposed to have said, is to be found on page 348 of the indictment. There is no allegation that she advocated violence, certainly no allegation that the councillors should be killed. I will read what she says - what the indictment says she (20) said :

"When Rina Mokoena addressed the meeting, she launched an attack against the councillors and the council system and incited the audience not to pay their rent. She incited black women and encouraged them to join women's organisations and to actively take part in the struggle in the Vaal Triangle. She employed the area struggle of women in the fifties in her address to convince the women to take part in the so-called struggle in the Vaal Triangle." (30)

Was/...

Was there in this woman's statement a paragraph saying what she said to your lordship here? If there was, why was it not pleaded? We submit that this is yet another example that after the drafting of this indictment witnesses gave evidence about matters that could not possibly have been in their statements.

It is appropriate also to record here that the allegations concerning the addresses of accused nos. 5, 8 and 17 similarly do not contain the averment that these accused called for the violence and that councillors should be (10) killed. Your lordship will recall that although Mr Masenya jumped around about which accused it was that called for violence. He mentioned 5, 8 and 17. Your lordship will find in paragraph 76.3, 76.6 and 76.11 no allegation that anyone of these three accused called for the killing of councillors, a matter which might weigh very heavily with your lordship against the credibility of Masenya. 76.3 is to be found on page 347; 76.6 is to be found on page 348 and 76.11 is to be found on page 350.

The furthest that they go in relation to accused (20) no. 17, Mr Matlole, is the following :

"The accused, Hlabeng Matlole, addressed a meeting and among other things explained the aim of the VCA and attacked the councillors, demanded their resignation incited the people and said that they were not looking for cowards because they were fighting for their rights. Incited the audience and told them to take part in the stay-away action and the protestmarch on 3 September 1984."

The direct evidence of Masenya that he called for (30) councillors/...

councillors to be killed is not in the indictment and the question is, once the state took the trouble to give us all this detail, if that was in Mr Masenya's statement when they drew the indictment or when they furnished the further particulars, why did they not say so? I will show your lordship actually that it was after an adjournment in the middle of his evidence-in-chief that Masenya actually tightened up his evidence in order to specifically allege that there was a call for violence against the councillors, but do not let me anticipate my argument. (10)

Accused no. 8 is said by Masenya to have said kill the councillors. According to Masenya :

"The accused, Naphtali Mbuti Nkopane, opened the meeting and expounded propaganda against the councillors and black local authorities and assures the audience that they had found a solution with regard to councillors and increased rent."

No allegation of kill them.

In relation to accused no. 5:

"The accused Gcinumuzi Petrus Malindi, spoke on (20) behalf of COSAS which is affiliated to the UDF."

Do not let us become sidetracked with that allegation.

"And popularised VCA and COSAS among the audience and stressed that the Atteridgeville school was closed as a result of the attempt of COSAS to reject the prefect system and replace it with student councils. (Very interesting) He decried the councillors and council system and incited the people to stay away from work on 3 September 1984 and to take part in the march."

Where is the allegation deposed to by Mr Masenya that (30)

accused/...

accused no. 5 called for the killing of councillors? We will in due course submit that this is the sort of evidence of the quality proffered against Mr Lekota, accused no. 20, that he threw stones after a funeral and that he taught people to make petrol bombs, because had decided that there had better be some direct evidence of violence. We are glad to see that the state has abandoned that, if we read the argument correctly, but it is not enough for the state to have abandoned it. Once such blatant untruths were told to your lordship, your lordship has to sit back and say (10) well, if that is the sort of evidence that was tendered, how can I be sure that the remnant of some other evidence of a similar nature, if there are other reasons to criticise the evidence, can really be true? Merely because the state decided to leave it out of its argument, one cannot merely put the blue or red pencil through it and an adverse inference has got to be drawn against the state's case.

Accused no. 10 confirmed that accused no. 5 came into the hall during the speech of Rina Mokoena. Accused no. 10, volume 160 page 7 889 lines 2 to 6. (20)

Accused no. 10 gives an account of the speech of accused no. 5 who inter alia spoke of the resolutions which had been taken at the meeting the previous day. Accused no. 10 denies that accused no. 5 called for violence. He says further that neither accused no. 5 nor anyone else mentioned COSAS at the meeting. Accused no. 10, volume 160 page 7 889 line 17 to page 7 891 line 19.

Contrary to the state's thesis that the role of accused no. 5 at this meeting and the fact that he tabled at it the resolutions taken on the previous day, that is (30) the/...

the meeting of the 25th, was part of a pre-arranged and orchestrated plan. Accused no. 5 has testified that he was listed as a speaker at the last minute to replace Chipa Motobatsi. This was after the conclusion of the ERPA meeting held at the same venue that morning. Accused no. 5, volume 206 page 10 797 line 22 to page 10 798 line 10.

There is no reason to disbelieve accused no. 5 on this. He was a good witness in our submission, but there is also an overwhelming probability in his favour on the common cause facts and we know that probabilities and common cause (10) facts are a surer guide to credibility than most other factors.

The state's thesis is that there was a plan by the UDF and its affiliates to call a stay-away on 3 September and a march to go over to violence. The state allegation is that everybody in the Vaal including Evaton was to take part in this. What did accused no. 5 do at the morning meeting? Not a word about the stay-away, not a word about the march, where does the argument take us? Why did he keep quiet about this if he was the factotum of Raditsela? Was that (20) not a wonderful opportunity for him to say by the way, brothers and sisters, we will be staying away on the 3rd and we would expect the people of Evaton to support us and it is part of the same struggle? The fact that he did not do it clearly shows that his evidence that he was asked to speak at the meeting, the afternoon meeting, came about the manner in which he has deposed to and that there was in fact no conspiracy such is as alleged by the state.

Accused no. 5 furthermore told your lordship that it was only in response to a rhetorical question raised by (30)

Rina/...

Rina Mokoena in the course of her address concerning what she could do about this rent problem that accused no. 5 decided to make mention of the resolutions of the meeting of the day before. That is the evidence of accused no. 5, volume 206 page 10 799 line 9 to page 10 800 line 1.

That there was a conspiracy is nothing more than speculation on the part of the state. That there was no conspiracy is deposed to by a number of witnesses. Speculative submissions have been made about a conspiracy but the direct evidence is to the contrary. The probabilities favour (10) the accused's version that there was no conspiracy. It was not even suggested to accused no. 5 or to accused no. 6 who gave evidence about the early morning meeting.

It goes even further than that on the probabilities. Your lordship will recall what accused no. 6 was doing on the morning of the 3rd. He stayed at home. If this was a march of UDF affiliates in order to bring down the government or to create riots by the affiliates, what was Mr Mokoena, accused no. 6, doing at home on the morning of the 3rd? (20)

Accused no. 5 details the contents of his address in which he dealt with the problem of the high rent, the inadequacy of the council system, the failure of councillors to respond to the complaints of the residents and to make an appeal for the community to unite. He concluded by mentioning the resolutions taken at the meeting of the previous day and proposed that those should be adopted at this meeting. He did not, however, propose a march, nor did he propose that businesses of councillors should be boycotted. Accused no. 5, volume 206 page 10 802 line 10 to page 10 803 (30)

line/...

line 17.

Mazibuko confirms inter alia that the resolution mentioned by accused no. 5 related to the proposed stay-away, that councillors should resign and that the increase in the present rent should not be paid. Mazibuko, volume 338 page 19 258 lines 1 to 16. Nyembe, volume 327 page 18 683 lines 15 to 28.

Vilakazi, the erstwhile accused no. 18, confirms also that accused no. 5 mentioned only a stay-away. Vilakazi, volume 347 page 19 849 lines 1 to 6. (10)

Accused no. 5 did not at any stage suggest that any person who did pay rent might be killed, nor that shops should be closed, nor that children should not go to school on 3 September 1984, nor that buses should not run on that day, nor that factories would be informed by letter of the stay-away. Accused no. 5, volume 206 page 10 804 lines 3 to 13.

In the course of his address accused no. 5 referred to councillors as puppets and sell-outs and he uses words to the effect that as far as he was concerned that this was powerful a course in the community in which he lived. Accused no. 5, volume 206 page 10 803 line 18 to page 10 804 line 2. (20)

Accused no. 5 did not advocate any violence against the councillors or their property at the meeting. He is supported by this ... (Court intervenes)

COURT : That you have told us four times already.

MR BIZOS : Then I have a note that we could not find anything that he was challenged on that denial by the state. He also said, he referred to the election promises that had been made to the effect that the rents would be kept low. Volume 206 page 10 804 line 20 to page 10805 line 9. (30)

He/...

He confirms the evidence given by others that he did not speak on behalf of COSAS and that no one else did so at that meeting. Volume 206 page 10 805 lines 10 to 12: 10 810 lines 12 to 19.

He is corroborated in relation to the COSAS allegation by Mazibuko, volume 338 page 19 259 lines 20 to 24. I may remind your lordship that throughout the cross-examination once it was established that COSAS was out of the way, the attack on the defence witnesses or what the state tried to elicit, was that he represented the youth or that he (10) spoke as a youth representative. He is of course young, was younger then and also it can be said that in choosing speakers people may say well, let us have an elderly person, a middle-aged person, a woman and a youngster. In that sort of way he represented the youth, but I submit with the greatest respect that too much time of the court's time was taken up in this case about the participation of your organisations. This is a case about the UDF and its affiliates. There is no evidence of any youth organisation having been formed in the Vaal despite the banners that were raised (20) on a couple of occasions. There is no evidence that any youth organisation in the Vaal affiliated to the UDF. What young people may have done or may not have done, can hardly be the serious concern of this court in a case in which it was specifically alleged that the accused's responsibility arises out of either their membership of the management structures of the UDF or one of their affiliates or what they themselves did personally. The pre-occupation of the state with youths or the youth in lengthy cross-examination, was nothing more than an attempt to supplement - no, (30) you/...

you cannot supplement what does not exist - was an attempt to try and clutch some straw in the air to prove its allegations that COSAS had to do something, COSAS Vaal had something to do with the Vaal situation and once it had nothing against COSAS, it fished for slightly older fish among the youth and I must say the impression must have been created that almost in the absence of any allegation that the youth organisation which was affiliated to the UDF, that much, too much attention was paid to accused no. 5 in particular because of his youth. The evidence is overwhelming. (10)

that there was no youth organisation and we will in due course refer your lordship to the evidence as to - at least how one banner came into being. Your lordship will recall the evidence of the young man who said that and the absence of any evidence as to what was happening in Bophelong, but in dealing with the meeting of the 26th, the Masenya incident is something upon which much time was taken up in your lordship's court. We will advance argument on the credibility of Masenya in due course and ask your lordship to find the version ... (Court intervenes) (20)

COURT : You are dealing with the Masenya and IC.8 on the basis like an advertisement. Watch this space, next week we will fit it.

MR BIZOS : Well, I hope I am attracting interest, because we cannot really argue their credibility until all the issues on all the facts are ...

In essence the evidence establishes that on the first occasion when Masenya rose to speak, he was not threatened with death as he says and that at a later stage he rose to speak to ask a question which was properly dealt with. (30)

It/...

It is clear also that the reason for the interruption initially by Dlamini was that he appeared to be presenting a double face in relation to councillors. He appealed to the chairman to confine Masenya to the rent issue ... (Court intervenes)

COURT : Her name was Dlamini?

MR BIZOS : Maria Dlamini. She appealed to the chairman to confine Masenya to the rent issue and not to allow him to voice a criticism of councillors, at the same time being an active supporter of councillors. In the "betoog" much (10) is being made to my shorthand for all that to repudiate the councillors and they say well, which version is your lordship going to accept, but let us give your lordship and an analysis of it.

Accused no. 8 as chairman invited Masenya to continue once order had been restored after the first interruption, but Masenya declined to do so, but and this is important, he did, however, later in the meeting ask a question. Your lordship will find that in the evidence of accused no. 10 and accused no. 8. Accused no. 10, volume 160 page 7 894 (20) line 22 to page 7 896 line 11. Accused no. 8, volume 170 page 8 765 line 5 to page 8 766 line 23.

Accused no. 9 also confirms that Masenya was interrupted when he spoke about councillors, but that he later spoke again after the question about people being arrested. Accused no. 9, volume 180 page 9 262 line 19 to page 9 263 line 21. Again at page 9 265 lines 3 to 10.

Nyembe confirms this in volume 327 page 18 681 lines 1 to 10. It is again confirmed by accused no. 7 and accused no. 5 in volume 201 page 10 502 line 28 to page 10 503 (30)

line/...

line 18; page 10 506 lines 11 to 21. Accused no. 5, volume 206 page 10 800 line 2 to page 10 801 line 10. Again accused no. 5, volume 206 page 10 808 lines 12 to 23. I do not wish to read out the references to the other five defence witnesses who corroborated the accused's version that that is what happened and what we say is this. That the evidence of Masenya that he feared for his life the moment he opened his mouth and was interrupted by Maria Dlamini, cannot possibly be correct once he himself concedes that he spoke more than once. (10)

I want to read to your lordship the following which appears in Masenya's evidence, volume 13 page 630 line 9.

"Now, did you get up at that meeting more than once in order to speak yourself? -- I got up and asked the first question, that is pertaining to the children, I have already said. When I was stopped was when I was getting up again.

Well, is your answer that you did get up more than once to speak? -- That is so.

Now, would you please tell us when the threat was made, (20) after your first standing up at the meeting or after the second standing up at the meeting? -- It was when I was up for the second time."

COURT : How does that support you?

MR BIZOS : It supports me in this way, that if you read his evidence-in-chief he gives the impression that the moment he got up he was not allowed to speak the first time and that he was terrified, that he sat down for a short while and that he thereafter sought an opportunity to get out for the fear of his life. (30)

COURT/...

COURT : Did he say - well, I am not clear. Did he say in chief the subject upon which he got up to speak was this of the children or was that not mentioned in chief? Because the main thing as far as his evidence is concerned in chief is that he got up, the woman made a certain remark, he feared, he sat down.

MR BIZOS : He sought an opportunity to leave.

COURT : And he wanted to leave and he left later on?

MR BIZOS : He left. He did not mention a second occasion at all in his evidence-in-chief. (10)

COURT : No, the first occasion? It may well be that the first occasion was not deemed relevant and that it only came out in cross-examination.

MR BIZOS : In dealing with his credibility I will refer your lordship in detail to his evidence that the picture that he painted as "I was not allowed to speak at this meeting."
"The moment I got up, they told me to keep quiet."

COURT : Yes, but does that exclude the fact that he had already spoken?

MR BIZOS : Well, let me find the passage and refer your lordship ... (Court intervenes) (20)

COURT : When you deal with his evidence later on, you can refer to it.

MR BIZOS : We will do it, but - we will develop it then. The evidence further is that Mrs Motsaneng and Mrs Oliphant both spoke about VOW and the benefits which women could obtain by becoming members. Neither of them made any mention of Soweto 1976 or riots and neither called for violence in any way. Accused no. 10, volume 161 page 7 899 line 1 to page 7 900 line 30 and the evidence of accused no. 5 in (30)

volume/...

volume 206 page 10 801 lines 20 to 21.

The witness Namane and Nyembe confirm that some women spoke at this meeting remarking on the burden that the rent increase would create and discussing bulk buying schemes. It was not said that councillors must be killed and that their property should be destroyed and both Namane and Nyembe confirmed this. Namane, volume 318 page 18 195 line 24 to pag 18 196 line 7. Nyembe, volume 327 page 18 678 line 28 to page 18 680 line 4.

Now we again have one of those inexplicable matters.(10) Although it is alleged in paragraph 76.7 that the erstwhile accused no. 4 Mohapi Lazarus More addressed the meeting and informed the audience that he was a member of COSAS and stressed that the increased rent would also affect the schoolgoing youths and that the activists in COSAS would help the activists of VCA in the struggle in the Vaal Triangle. He attacked the council members in his address and incited the audience to destroy and sold everything which belonged to the black local authorities. That is the nearest that any allegation is made in the indictment directly of (20) actual violence.

We know that at the time the erstwhile accused no. 4 was 25 years of age and that he was a trade unionist from other evidence. The simplest of enquiry would have led the investigating officers to suspect the deposition of anyone who described him as a member of COSAS and the evidence clearly shows that there is no substance whatsoever, there was never any substance in relation to this allegation. Again was it Mr Masenya or Mrs Mokoena or Mrs Mahlatsi that put accused no. 4 there? Your lordship does not know, but the fact (30) that/...

that there is affirmative evidence that he was not there at all and the allegation that he spoke on - the most unlikely allegation that he spoke in the name of COSAS, must of necessity in our submission disturb the court's reasoning process as to whether your lordship has heard the truth about this meeting from the state witnesses that gave evidence.

The evidence of accused no. 10 is that Lazarus More was not there at all. Volume 161 page 7901 lines 1 to 15. Similarly accused no. 8 testifies that accused no. 4 was (10) not at the meeting at all and that nobody spoke about destroying and stoning everything belonging to the black local authorities. Accused no. 8, volume 170 page 8 769 line 11 to page 8 770 line 6.

Mr Kabi of the Evaton Ratepayers Association spoke. The state would have your lordship believed that he said that he would be happy if Mr Liphoko's shop was burnt down. Accused no. 10 denied this. Volume 161 page 7 903 lines 10 to 11. Accused no. 8, volume 170 page 8 775 lines 8 to 13. Accused no. 9, page 9 266 line 17 to page 9 267 line 2.(20) Accused no. 7, volume 201 page 10 507 line 28 to 10 508 line 12. Accused no. 5, volume 206 page 10 805 line 20 to page 10 806 line 7.

In addition to the accused and I am not going to give your lordship the references, Namane denied that this was said by Mr Kabi. Mazibuko denied that this was said by Mr Kabi. What do we have on the weight of evidence?

We have three witnesses for the state, one whom has, if we read the argument for the state correctly, being thrown overboard, that is Rina Mokoena. We have Mahlatsi (30)

and/...

and Masenya who not only do not corroborate each other but we will show your lordship that they actually contradict each other in very material respects and we submit that no court with the weight of the evidence as it stands would find such an allegation proved in this court. I am almost certain that Mr Kabi's inciting remarks, if they are inciting remarks, are not referred to in the indictment and besides, if the case had been properly investigated and Mr Kabi is alleged to have made that statement and he is the chairman of the Evaton Ratepayers Association, where is he? On (10) what basis was it decided that such an important office bearer of an important affiliate should not be before your lordship? Your lordship does not know, but obviously I cannot use what I hear from my right, but be that as it may. The situation that people were advocating violence from the 19th in Sharpeville and Sebokeng and the police just stood by, when there were policemen present at the meeting and whether there were court interpreters present at the meeting and nothing was done about it, is the sort improbability which in our respectful submission is so overwhelming that your (20) lordship cannot really take the evidence of the state seriously in that regard.

What we are really concerned with as to whether there was an agreement between the various people in the Vaal to hold the stay-away and the march on the morning of the 3rd. It is no good for the state to submit that there must have been such an agreement, because they would have to ask your lordship to disbelieve accused no. 8, the chairman of the meeting of the 26th at Small Farms, that he did not even know that there had been a meeting in zone 13 the previous day (30) which/...

which accused no. 5 had attended before accused no. 5 had mentioned it. Volume 170 page 8 768 lines 4 to 6.

We ask your lordship to recall that the chair of the meeting of 26 August 1984 was entrusted to accused no. 8 by Raditsela himself, the very person who is alleged by the state who has made it his business to orchestrate a number of meetings in the Vaal Triangle in order to secure an identical result at each one. Then the fact that he allowed the chairman of the Small Farms meeting to remain in ignorance of what was intended, exposures even further what we submit to be (10) a very rickety nature of the conspiracy structure which the state has obliged itself to provide evidence before your lordship and which we submit it has failed to do.

The state contends that the march was something which had been decided upon before the meetings of 26 August. All very well having theories, but we submit that the state witnesses do not support the state theory. Reverend Mahlatsi's evidence which is disputed was that Raditsela said that he was going to other meetings in Sharpeville, Bophelong and Tsirela. He explained that the reason for going there was (20) in connection with the increase in the rents and also an attempt that the councillors should resign their positions. Even though he was asked specifically by your lordship whether nothing had been said about the march. Mahlatsi insisted that this had not been so.

Mahlatsi was in a special position. There would have been no need to keep any secrets from him on his own evidence. He was on the area committee of zone 3, the ad hoc committee. The state suggests that there was jerrymandering in relation to the election of office bearers. He was elected an office (30) bearer/...

bearer at the meeting of the 26th your lordship will recall. He knows nothing about the march. Volume 41 page 1 937 line 15 to page 1 938 line 8. He has been examined by our learned friend Mr Jacobs and for the sake of completeness I better start at line 7.

"Wat het hy gesê? (This is Raditsela) -- Deur die mense in kennis te stel dat die persoon wat eintlik hierdie vergadering moes gehou het nie teenwoordig is nie, naamlik Lord McCamel. In daardie gesprek het hy toe gesê dan sal hy vir mnr. Nkopane vra om op hierdie (10) vergadering te dien as voorsitter van die vergadering.

Dit is beskuldigde nr. 8? -- Ja, dit is so.

Ja? -- Na dit het hy toe gesê hy sal weggaan na 'n ander vergadering te Sharpeville.

Hy en wie? Hy alleen of iemand saam met hom? -- Hy het niemand se naam genoem nie. Hy het net van homself gepraat. Ek weet nou nie of hy alreeds met die mense daar buite gepraat het saam met wie hy sou gegaan het nie, maar ek dra geen kennis nie. (20)

So, het hy gesê hy moet na 'n ander vergadering in Sharpeville gaan? Net Sharpeville of nog 'n ander een? -- En Bophelong en Tsirela. Dit is al wat ek kan onthou.

Waar is Tsirela? -- In Vanderbijlpark.

Het hy aan die vergadering verduidelik hoekom hy hier drie vergaderings moet gaan bywoon? -- Die rede hoekom hy soontoe gegaan het was oor die verhoging van die huurgelde asook in 'n poging dat die raadslede uit hulle poste as raadslede moet bedank. (30)

Nog/...

Nog h rede? -- Hy het nie h ander rede verder as dit gegee nie. Daarna is hy toe uit en weg.

Was daar niks gesê oor die 3de se gebeure nie? Die 3de September 1984 se gebeure nie? -- Nee, hier by ons nie. Toe hy hier weg is het hy geen melding daarvan gemaak nie.

HOF: Was daar nie gepraat van h optog nie? -- Nee, nie daar nie. Nie in hierdie vergadering toe hy ons laat weet het dat hy weggaan nie. Ek neem aan dat hy alreeds besluit het wat sy toespraak gaan wees by die (10) ander vergaderings.

Het hy gesê hy gaan weg Lord McCamel is nie daar nie en beskuldigde nr. 8 sal voorsitter wees? Het hy enigiets aan beskuldigde nr. 8 oorhandig? -- Ja, hy het aan hom h papier gegee."

That was the list of speakers according to some of the evidence.

How does that support the conspiracy and it is not only the march. Before your lordship asked him about the march, there was no mention at all about the 3rd. That is the (20) stay-away. It goes further

"After accused no. 5 had made mention of the resolutions taken at the previous day's meeting, a person unknown to him made a further proposal that there should not simply be a stay at home, but there should be a demonstration march to the offices of the board in order to submit the complaints of the people."

Accused no. 5, volume 206 page 10 806 lines 12 to 29.

It is true that accused no. 5 says that the person who made the suggestion of the march was not known to him, but (30) that person has been identified as Maruping.

COURT ADJOURNS UNTIL 14h00.

THE COURT RESUMES AFTER LUNCH

MR BIZOS: According to the evidence the purpose of the march that was proposed by the person unknown to accused no.5 but who was later identified as Maropeng should be to demonstrate to the offices of the board the complaints of the people. Volume 206 page 10 806 lines 12 to 29. We submit that the purpose for which the march was undertaken is important on the charges faced by the accused and it has been established through a number of witnesses that that was the purpose and the conspiratorial purpose alleged by the (10 state is not supported by any of the evidence. Accused no.5 does not stand alone in this. The evidence of Namane, volume 318 page 18 196 line 8 to 18 197 line 7, the evidence of Zulu paragraph 319 - volume 319, page 18 285 line 28 to 18 287 line 11. The further evidence by defence witnesses in support of that of the accused was that people should go to Houtkop in large numbers in order to present the grievances of the people in relation to this increase. The evidence of Mguduwa, volume 322 page 18 414 line 1 to 18 415 line 2. Myembi in volume 327 page 18 683 line 28 to page 18 684 line 5 and (20 Mazibuko volume 338 page 19 260 line 28 to page 19 261 line 11. Your lordship will recall the evidence repeated by a number of accused that numbers were of importance because if you merely sent a delegation they either will not speak to you or they will say what right have you got to speak on behalf of others and it was thought appropriate that the officials that were considered to be the people that had the real power in the Vaal should be shown that there would be large numbers in order that the objections to the increase would be taken seriously. And the evidence is further that Marupeng (30 had / ..

had said that the people should hand their grievances over at Houtkop as a basis for opening up negotiations between the board and the community. This was said by accused no.10 volume 161 page 7 904 lines 2 to 3 and page 7 905 line 30 to page 7 906 line 10. Vilakazi, volume 347 page 19 849 line 7 to 13 and Oliphant volume 328 page 18 776 lines 4 to page 18 777 line 19. Accused no.10 confirms that this was the purpose and the suggestion was made by Marupeng. Your lordship will find that in volume 161 page 7 906 line 21 to page 7 907 line 1. The evidence of accused no.8 is to (10 similar effect, volume 170 page 8 769 lines 2 to 10. Consistently with the position of the accused and contrary to the state's submission that everyone had known beforehand that the stay-away and march were to be proposed, accused no.9 had heard no suggestion of either before the meeting. His understanding was that these proposals had come forward from the audience at the meeting, that explains in any event he did not understand much of what accused no.5 said because he spoke in Zulu. Accused no.9, volume 180 page 9 265 lines 12 to 27. Accused no.9 also understood the purpose of the (20 march to make the board realise the dissatisfaction about the rent increase as specifically stated by accused no.9 himself, volume 180 page 9 269 lines 1 to 18. Marupeng proposed that there should be a march coupled with a stay-away because a mere stay-away would not convey anything to the authorities and that the majority of the meeting supported this. Accused no.7 volume 201 page 10 505 line 17 to page 10 506 line 10.

Now I submit that it is important that this uncontradicted evidence should be considered in relation to the consequences
(30
of / ..

of the persons planning or joining the march. The question of legality of the march has in our respectful submission been settled by the full bench of this division and we do not want to say anything further about that.

COURT: Just give me the reference again. Have you got it?

MR BIZOS: Mahlangu's case, I do..

COURT: I wrote it down somewhere so I can get it out..

(simultaneously)

MR BIZOS: I will give it to your lordship. It is..

COURT: Mahlangu's case? (10

MR BIZOS: Mahlangu, m'lord, in 1985 - 1985 or 1986. We will find it. But now the purpose for which the march was held may be of some importance. The uncontradicted evidence is that it was for the purposes of registering the protest against the increased rental. There is nothing wrong with that in our respectful submission and it certainly does not support any of the matters that have to be found in relation to any of the charges that the accused are facing. The evidence goes further that reacting to these proposals a taxi owner, Mr Maseko, asked about whether his taxi would (20 be attacked with stones on 3 September. The question may well be asked, m'lord, why should Mr Maseko ask this. It is part of the South African history that unfortunately on certain occasions and sometimes, not always, not as an invariable consequence, trouble is experienced when stay-aways may be called for and obviously he wanted to ask this question. The fact that he did ask the question goes to show that this was an open meeting at which the affairs of the community were openly discussed and creates an improbability against the over-all impression attempted to be created by Masenya. (30

Accused / ..

Accused no.5 answered that he did not believe that stoning of taxi's would take place and again the questioning may be asked why should accused no.5 have answered the question. Because the answer we submit is a simple one, because it was he who suggested the stay-away. It is of some significance that accused no.8 and some of the other witnesses seem to suggest that accused no.5 merely reported on what the resolutions were that were taken on the 25th. We submit that accused no.5 is entitled to consideration about the forth-right manner in which he said what he thought to be (10 correct and nothing unlawful about it; that having reported on the resolutions he himself suggested that they should be adopted by this meeting. And he said that the call was extended to taxi owners and drivers and that they, being part of the community, should also stay away. Your lordship will find that in volume 206 page 10 807 lines 2 to 25.

COURT: Would the position change as far as the march was concerned should that case, Mahlangu's case be wrongly decided?

MR BIZOS: I submit not on the facts of this case because (20 the subjective mind of the accused may be for the wrong reasons, for the wrong reasons felt that they had to do this and questions of mens rea arise. The question is not whether this type of means rea - let me try and put it this way, let us assume that the accused was charged with how an unlawful gathering is defined to wit a march. Let us assume that for a moment. The question that they did not know that a march was covered by a gathering may or may not have helped them. And I do not think that it is necessary for your lordship to decide that, but having told your lordship that they (30 thought / ..

thought that it was a lawful gathering their wider mens rea in relation to any of the offences on which, with which they are charged here would be that your lordship would have to find as a fact that they acted defiantly or for one of the purposes alleged in the indictment. I think that your lordship is familiar with the Cooper judgment of BOSHOFF J in that Currie's Fountain rally that the SASU people held. There the meeting was banned. The police warned them not to have this Frelimo rally. Your lordship recalls the facts in that case, and there was direct evidence from an accom- (10 plice that they had a meeting and said words to the effect "Never mind what they say, we are going to do what we have advertised; we are going to do it. We will be damned if need be." Now that is a sort of mens rea that may make people responsible for some sort of act. Well in that case it was a terrorism act, before the amendment of the act but where people tell your lordship that they went on this march for the purposes of airing their grievances and they appointed marshalls and they say possibly for the wrong reasons, that they did not know that this was unlawful and that this (20 been been done before and that no trouble had inured for people. It cannot make any difference even if the notice was valid but I don't know whether your lordship requires argument as to whether the case was incorrectly decided or not because I submit with respect that your lordship is bound.

COURT: Yes, I am bound by the case it seems.

MR BIZOS: As your lordship pleases. I do not know if your lordship requires any argument, after all the law is what the court says it was and for these purposes..

COURT: The law was but the court now says it is. (30

MR BIZOS / ..

MR BIZOS: Yes, now says it is. So I do not think that it is going to assist the state in any way. If anything it can insure to the accused's benefit, because there was in fact no defiance and that is why it would not be necessary for your lordship to even look into that case. And of course let me just go a little ahead without doing it too often watch the space. One of the matters that your lordship has got a lot of difficulty, with the state case here, is something which has not been touched by the state at all. There is a fundamental issue between the state and the defence in this (10 case as to whether this was a murderous mob or an orderly march at the time that they reached the garage, Hunter's Garage. Who would have been in a better position to resolve that conflict than a couple senior officers that barred the way of the marchers on the morning of the 3rd, would say that this was a murderous mob; there were structures in the road. We called upon them to stop, to disperse and they defied our authority. Where is that evidence and why has it not been led? There can be only one answer, because it did not happen, because this was an orderly march. Has your (20 lordship been furnished with any explanation why the man that ordered that this march should be fired on, was fired on? Of course at the time this march reached Hunter's garage considerable damage had been done in the township and one assumes that that was to the knowledge of the police officers that did this to the march. But therein lies the rub that without enquiry from the people leading this march, without your lordship having any evidence as to what the behaviour of the march was other than that of the accused themselves and their witnesses; the group that killed Depokgo, the group (30 that / ..

that killed Matuane; the group that killed Dhlamini, are treated in the same way as if they had committed those crimes even though the march may be led by elderly accused no.17, accused no.9 and marshalls who keep the march in order. Any group of people that was on the scene was fired on. Need we speculate to a very great extent if the senior police officer went up to them and said what is all this? We do not know what would have happened but we do know what happened on the 9th in Tumahole. Thousands upon thousands of people made this sort of protest and handed over their memorandum on (10 9 September and they quietly dispersed because a responsible police officer conducted the proceedings properly. If there is an answer to any one of these submissions we certainly have not heard them from the state. This is what we mean that police conduct exacerbates violence. There was violence before this march was broken up. The question is whether the marchers had anything to do with that violence and we will address your lordship in due course, but what really set me off on all this is your 'lordship's question as to what is the legal effect of holding the march. I submit on these (20 charges nothing because the state, as submitted by our learned friend Mr Chaskalson bound itself to a violent conspiracy and once the little bits of late acquired evidence is discounted and we are left with the accused's version nothing has been proved against them. If the violent conspiracy has been proved well then don't let us waste any more time but if that is not proved then the whole of the indictment falls to the ground in our respectful submission. And certainly m'lord, and certainly there is uncontradicted evidence on the purpose of the march. Now everyone of the thousand (30 people / ..

people there went on this march on what the undisputed evidence is as to what the purpose of the march was, namely to present the grievances so that people who joined the march and took part in the march or even spoke at the meeting encouraging the march did so in relation to a march to go to Houtkop to complain about the increased rental and other grievances in relation to the administration of the townships in the Vaal. Now once that was said at the meeting and it was believed on what possible basis can there be any offence committed by any of the accused? This is why I submit that however - (10 even if it were not for that full bench decision binding on your lordship about the invalidity of the proclamation, an unlawful march for a purpose such as that described would not support any of the charges or any of the alternatives furnished. This is why we will submit to your lordship that it would not even be a worthwhile exercise going into the question as to whether or not the case was correctly decided or not.

Before we knew about the case and speaking for myself at any rate, it was after the commencement of this case that (20 the case came to my personal notice, we might have settled with the case early on on the basis that we held an unlawful march without possibly knowing of the invalidity of the notice, but it does not support any of the charges that require this sort of special intent that is required.

The evidence is that whilst saying that taxis would not be stoned accused no.5 said that he did not believe that this would happen because this had never happened in the Vaal before. Well, the evidence is again heavily weighed in favour of the accused. Vilakazi says so in volume 347 (30

page 19 952 line 6 to 29, Myembo volume 327 page 18 682 lines 18 to 30, Mgudlua volume 322 page 18 415 lines 5 to 15, Mazibuko volume 338 page 19 262 lines 3 to 14.

Now I think I should, I am duty bound to draw your lordship's attention to the fact that from some other witness it was elicited that there was some stone throwing at buses earlier on in Evaton but if my memory serves me correctly it was in relation to bus fares, not a stay-away which may be a qualitatively different thing m'lord, the stoning of buses if the company increases the fares; one does not (10 know. It is clear from this reply that accused no.5 hoped that the stay-away would be successful and that accused no.10 interpreted his statement in that way. Volume 10 - sorry, volume 160 page 7 891 line 20 to page 7 892 line 11. Whilst hoping that the stay-away would be successful accused no.5 also made it clear that the aim was to have a peaceful march and stay-away and that people wanted to go to work - and that people who wanted to go to work could do so. Accused no.8 volume 170 page 8 773 line 8 to 23. Namane confirms that it was up to each person whether or not that person wanted (20 to go to work; there was no discussion in the course of the meeting about preventing people who were going to work on 3 September. Namane volume 318 page 18 216 line 16 to 18 218 line 2. Upon the question concerning vehicles being stoned accused no.8 himself made an appeal on people that they should behave themselves well on that day. Private vehicles were not singled out for discussions there. Accused no.8, volume 176 page 9 046 line 16 to page 9 047 line 7. I had occasion to look at the evidence of Masenya that your lordship raised during the adjournment. I will be addressing your (30 lordship/..

lordship on that; I am merely referring now to the version that we are asking your lordship to accept of the defence witnesses.

Masenya raised a question about what would happen to the children of those people who were arrested in the march. This is what the weight of evidence really shows and what I said was partly influenced as one always is by one's own side's version. A member of the audience answered to the effect that if it was decided to go on a stay-away then there was a responsibility on the community as a whole to (10 look after the children of such a person. Accused no.17 also dealt with the subject, appealing to people to act responsibly when it came to decision making; that once a decision was made people should stick to it and not to be half-hearted. He also said that it was the responsibility of other people in the community to look after such children. There was no discussion about the UDF helping people who might be arrested. Accused no.10, volume 160 page 7 892 line 12 to 7 894 line 21. If your lordship bears with me for just one moment? (20

There was some mention of assistance to be provided by the organisers together with community. However the VCA itself did not have any funds to provide legal assistance and there was no agreement with the UDF to do so. The evidence is accused no.10 volume 168 page 8 610 line 2 to page 8 612 line 10. M'lord, the reference to legal assistance in EXHIBIT AN.15(vii) was the assistance from the South African Council of Churches and clearly arose after the events of 3 September 1984. Your lordship will recall that it was said if people required assistance they should contact so (30 and / ..

and so, and so and so. Volume 168 page 8 613 line 18 to 8 14 line 19. Accused no.5 was one of those who gave replies to Masenya's question of the children of those who might be arrested on the march. It was accused no.5's view that it was not illegal and as far as she was concerned there was no possibility of such arrests. Accused no.5 volume 206 page 10 808 lines 10 to 27. Namane recalls that it was said that there was no question of people being arrested because this was going to be a peaceful march. Namane volume 318 page 18 238 lines 10 to 20. Also the evidence of Zulu volume (10 320 page 18 317 line 6 to 18 318 line 3. Mazibuko, volume 338 page 19 261 lines 12 to 25.

There is also evidence that accused no.5 raised the question of essential services which led to an extended discussion. Accused no.5, volume 206 page 10 808 line 27 to page 10 809 line 8. In the result the view was expressed that the stay-away should not include essential services. Accused no.10 volume 161 page 7 911 lines 2 to 12. An attempt was made to interpret this that ambulances were to come in in order to take away the injured. There is no evidence to (20 support that. There is also - have I given your lordship the references to Namane and Mazibuko in relation to this? Now accused no.8 also confirms that mention was made of the essential services as being exempted from the call for a stay-away on 3 September; ambulances and police fell under this general category. Accused no.8, volume 176 page 9 042 line 30 to page 9 043 line 18. There was no talk or understanding that vehicles from outside the area would not come into Lekoa on 3 September. Accused no.8, volume 179 page 9 192 to line 25 to 9 193 line 13. The evidence shows (30 that / ..

that Raditsela and his companions came into the meeting towards the end while the last reading of the resolutions was proceeding. The evidence of accused no.10, volume 161 page 7 908 lines 14 to 24. Raditsela did not address the meeting but acted as electoral officer for the zone 3 area committee elections. Accused no.10 volume 161 page 7 909 lines 19 to 27. Accused no.8 confirms that Raditsela returned towards the end of the meeting and that he did not participate at all in the discussions concerning the resolutions. The evidence is overwhelming to this effect. Accused no.8, (10 volume 170 page 8 778 line 29 to page 8 779 line 20. Oliphant, volume 328 page 18 783 line 29 to page 18 784 line 11. Mazibuko volume 338 page 19 263 lines 11 to 20. Vilakazi volume 347 page 19 850 line 26 to 19 851 line 3. Accused no.5 volume 206 page 10 810 lines 20 to 3. The evidence is that Raditsela did not mention similar resolutions having been passed at other meetings in the Vaal triangle. Accused no.8, volume 17..

COURT: Well, aren't these all at the same pages? They must be. I am sure the witnesses would have dealt with (20 these two subjects right in the next sentence?

MR BIZOS: Well, let me just check. Accused no.8 is different but only by one page. Accused no.9 was not led on it. There are only two references - no.7, let me just see. They are different accused in fact that have been..

COURT: Yes very well.

MR BIZOS: Accused no.8, volume 170 page 8 787 lines 2 to 8; accused no.9 volume 180 page 9 270 lines 2 to 19; accused no.7, volume 201 page 10 508 line 27 to 10 509 line 17.

Accused no.5 says that Raditsela arrived late. He (30 specifically / ..

specifically says that he did not mention the other meetings at Sharpeville, Bophelong and Boipatong. Accused no.5 volume 206 page 10 810 lines 20 to 30 and at page 10 812 lines 9 to 17. Other witnesses too have no recall of Raditsela having made reports of other meetings in other places. Oliphant in volume 329 page 18 826 line 22 to 29 and Huhudwa volume 323 page 18 475 lines 8 to 29.

COURT: Just give me that last reference again?

MR BIZOS: Volume 323 page 18 475 lines 8 to 29. Let me in turn to what the state says, that there are marginal (10 differences as to the precise time of the return of Raditsela. but whether it was whilst the resolutions were being taken by - one by one or how many there were still left to be taken, the overall picture is that it was at the time of the resolutions and that he did not say the thing that - because this co-ordination is the very core of the state case. I have referred your lordship to about a dozen witnesses including the evidence of the accused who say that this did not happen. The state has got the Rev Mahlatsi, an accomplice, a single witness. A witness who was told by your lordship's (20 assessor at one stage: well, with which voice are you speaking on the material aspect of this case because he was contradicting himself. Now if the rules relating to the probabilities and the weight of evidence are applied there can be no doubt in our respectful submission which way the finding of facts should be made. As to what the resolutions were your lordship has had so much evidence that I do not intend reading them over again, unless your lordship wants me to for the purposes of convenience and to give your lordship the references. But if your lordship - merely make a (30 reference / ..

reference where the resolutions are. They are really dealt with fully by accused no.10 in volume 161 page 7 910 lines 10 to 20. Now again in the absence of any evidence in relation to the troublesome affiliate according to the state, COSAS, through which it hoped to prove much of its case and because there is no evidence as to the doings or non-doings of COSAS in the Vaal much time was spent in cross-examination about the position of scholars. The evidence is clear, m'lord. The teachers are considered part of the community. The calling for a stay-away included the teachers. It was a (10 necessary corollary of that that the children should not attend school during the stay-away. The scholars were not specifically asked to join the stay-away or the march but they would not be stopped if they arrived and they were elderly enough - old enough and appeared to be responsible. Now trying to interpret some of the AN-exhibits that there were meetings of scholars in order to do this or to say that they must have been in COSAS, or it must have been in furtherance of some campaign or other does not help because there is no evidence whether COSAS had three members or three hundred (20 members in the Vaal. There is no evidence whether its committee was active or inactive. There is no evidence as to whether there were any school boycotts. In fact your lordship will have heard about them and all the evidence is to the contrary because your lordship will remember that practically all the female witnesses at any rate told you that they were busy doing something or other in relation to their children going off to school; so there were no school boycotts in the Vaal. And in our submission it was a task which bore no results whatsoever to support the state's suspicions in (30

this / ..

this regard. The evidence of accused no.10 is clear and satisfactory in this respect in our respectful submission. Accused no.10, volume 161 page 7 962 line 11 to page 7 963 line 7. The accused have denied that the meeting was organised as part of any conspiracy to promote violence in the Vaal triangle. Accused no.10 in volume 160 page 7 882 line 5 to line 14. Accused no.7, volume 201 page 10 500 lines 24 to 28.

It is similarly denied that this meeting was held in order to mobilise the people to reject the black local (10 authority system or that it formed part of the national struggle for liberation. Accused no.10, volume 167 page 8 546 lines 23 to 26. Page 8 548 lines 23 to 25. Did your lordship hear any word from any state witness or from any defence witness or anything by the state in the cross-examination of the accused in relation to the Koornhoff bills or the tri-cameral system at the meeting of the 26th at Small Farms? To the best of our recollection not a single word about it. The two pillars that were the foundation on which the UDF was built were not, did not merit a single sentence (20 and what must have been a lengthy meeting at which long speeches were made yet your lordship is being asked to infer that this was a UDF inspired meeting in order to make the country ungovernable. Your lordship did not hear a single word about any UDF campaign at this meeting. Even the neighbours, the Indian traders within a stone throw's distance of the meeting place that were to vote two days later were completely forgotten. Your lordship has not heard a single word that let us send in furtherance of the UDF campaign word to the shopkeepers nearby that they must please stay away (30
from / ..

from the polls in order that we may further this grand scheme that the UDF has set afoot. Not a single word at this meeting about the ..

COURT: What do you mean? When was the election of the Indians - on the 28th?

MR BIZOS: On the 28th. That would have been on the Tuesday. Where is the grand design? There was also no mention of the UDF leaders having been arrested. Has your lordship heard a single word about AZAPO. Did anybody say let us go to the chairman of AZAPO, where is the chairman of AZAPO; why (10 is he not here today to also help us? After all the state's thesis is that there was an agreement to help each other and if this was going to be the beginning of the ungovernability how could the chairman of AZAPO be left out of the picture? Questions were asked about these of the accused. They all denied that anything like that happened; they were not challenged on it. Accused no.8 in volume 171 page 8 787 line 9 to page 8 788 line 16. Accused no.9, volume 180 page 9 271 lines 12 to 16. Accused no.10 volume 168 page 8 621 lines 2 to 8. At the end of the meeting people dispersed (20 normally. There was no sense that they were going to do any harm. Accused no.10, volume 161 page 7 933 lines 15 to 24. Accused no.8 said that the people dispersed in a disciplined and peaceful manner. Accused no.8 volume 170 page 8 782 lines 11 to 15. The orderly nature of the dispersal of the meeting is confirmed among others by Radibitsi, that is the caretaker; volume 306 page 17 569; lines 5 to 12. Oliphant volume 328 page 18 784 lines 25 to 30. It was suggested to accused no.8 that EXHIBIT AN.15(ii) which was produced after the meeting referred to inter alia the meetings of (30

COSAS / ..

COSAS. There is no basis for this suggestion that it can be interpreted in that manner. Accused no.8 did not interpret it in that way but in any event your lordship is being asked to interpret AN.15.2, as if it were a statute capable of some meaning or other to include COSAS because they were at meetings of children workers - it is just a bit of rhetoric in our respectful submission. But there is no evidence whatsoever that COSAS had anything to do with this or other matters in the Vaal.

Insofar as to the use of this expression "children", (10 if your lordship has a look at another exhibit, AN.15.7? which only refers to one meeting. It refers to meetings of children and there was only one meeting. That appears from the evidence of accused no.8 in volume 179 page 9 194 line 1 to 11. Now we are going to show by way of contrast..

COURT: What is the point you are making Mr Bizos, in AN.15.7?

MR BIZOS: May I just get the exhibits? Your lordship will - I am comparing the suggestion that AN.15.2 is to be interpreted that there had been resolutions of residents' children, parents and workers at the meeting held during this month (20 against the increases. The suggestion was made that this meant that there were meetings at which residents resolved, meetings at which children resolved, meetings at which parents resolved. Now if we have a look at 7, meeting - at the bottom of the page:

"Residents, children, parents and workers, let us meet at the Catholic Church at Small Farms on Sunday."

The only point that I am making is that it is Shakespearian rhetoric of Antony's speech: "Friends, Romans, countrymen".

His friends and the Romans and the countrymen it would (30

have / ..

have been m'lord, but he uses three words. That is all it really means in this context, m'lord, that it is really all-embracing: residents, workers who would have been residents anyway, children who would have been residents but not necessarily workers. It is part of the rhetoric. But m'lord your lordship is being asked to find a conspiracy on the translation of the pamphlet when there is absolutely no evidence of public meetings. There would have been pamphlets advertising them, posters advertising them, places where they were being held and it is not there. Why couldn't we (10 have the caretakers or the people where the meetings were held for a start, that gave permission; or the priests in charge who gave permission? Why must your lordship be left to speculate on this sort of thing? Your lordship has had some five accused giving evidence, approximately ten witnesses that no violence was called for at that meeting and the state would ask your lordship to find that violence was advocated at this meeting inter alia on the strength of the evidence of the witness Masenya. Let me bring to your lordship's attention that this person said he was a court interpreter. (20

COURT: Are we now starting on Masenya?

MR BIZOS: Masenya, m'lord, at last.

COURT: Yes, having heralded it so often one should not slip into it unnoticed.

MR BIZOS: As your lordship pleases, will make a little more fanfare for IC.8 in due course. He was an interpreter so that he is not unfamiliar with the giving of evidence and what happens in court. He is the only witness in this case who has complained about the interpreter. Your lordship will find that in volume 13 page 648, line 13 to page 650, (30

line / ..

line 18 and again at volume 14, page 699, line 26 to page 700 line 2. We will deal with the contradictions that he tried to explain later. I refer your lordship to a judgment of LE ROUX J in another context in due course where his lordship says that the interpreter that his lordship had in that case was the best that he had ever heard. I am sure that your lordship would want to say that about Mr Skosana in this case. He has really with the greatest respect served witnesses both for the state and the defence particularly well and with diligence and distinction if I may be (10 allowed to so so, and for Mr Masenya, a court interpreter to come and complain about the interpreter when he got into trouble in cross-examination is I would submit an impudence. He is the one who said that violence was advocated at the meeting of the 26th. Because of the comings and goings - because of some of the difficulties that he had earlier on your lordship when we started early in the morning on 31 January 1986 asked him a number of questions, and the following appears at page 609 line 26 and I submit with respect your lordship with the greatest respect was not only (20 entitled but obliged because of the confused nature of the evidence that we were left with the night before to try and clarify the position on a vital matter, on a vital matter such as which of the accused advocated violence and your lordship starts - well, it does not start with that but on this issue:

"U het ook gister melding gemaak dat van die beskuldigdes voorgestaan het, met ander woorde gepropageer het geweld aan die hand gedoen het. Watter van die beskuldigdes het geweld aan die hand gedoen? -- Ja. (30

Verstaan / ..

"Verstaan u die vraag? -- Ja, ek verstaan die vraag.
Gee vir my die nommers asseblief. -- Beskuldigdes nr.17
8 en 5.
Net om duidelikheid te hê sal beskuldigde nr.17 opstaan
en nr.8 en nr.5?"

And presumably they stood up, m'lord -

"Is dit die persone? -- Ja, dit is die persone."

And then Mr Jacobs takes over. Now let us have a look at
what he says in cross-examination. If your lordship turns
to the same volume 13 page 645. Has your lordship also not (10
got it? I am sorry.

COURT: Go ahead, I remember the evidence.

MR BIZOS: As your lordship pleases. It says "No" but
obviously "Now" -

"Now please tell us again which other accused said what
about violence".

He mentioned 8 and 5.

"Tell us again. -- Now let me do this. The three I
have pointed out here I have already told you about
the two, that is nos.8 and 5. (20
Yes. Now was there..

COURT: Let the witness complete what he is saying.

MR (BIZOS?): As your lordship pleases. -- Now I am
saying those are the people who spoke about violence.
Did no other accused speak about violence? -- No, there
is none.

No other accused spoke about violence of whatever nature?
-- I have already explained to his lordship about the
other incidents and what was said there. Those that I
have mentioned are not pertaining to any violence. (30

Now / ..

His answer was no.17, 8 and 5:

"You are making it very difficult for the interpreter for it is so easy. -- I will try".

Your lordship will remember with the greatest respect that sort of adding a bit of comment that says well....

"What is put to you is that in answer to my question as to who advocated violence you answered no.17, no.8 and no.5? -- Yes.

Have you any explanation other than the one that you have given for your answer? -- Yes, I do have an answer. (10

Yes? -- The answer is that I mentioned them as you have read them to me now. Up to now I still maintain I did mention them as put to me at the present moment.

Have you finished? -- Yes, I have finished.

Do you think that your answer is an answer to that question? -- I take it that I have answered.

Now tell me this. When his lordship asked the question were you particularly careful that you should no do any injustice to anybody in this court? -- Yes, I was. (20
And as a person who is not unaccustomed to court proceedings? -- That is so.

You listened to the questions both as they are spoken and through the interpreter carefully? -- That is so.

Now you see I want to give you an opportunity before we take up too much time again, that answer that you gave me a short while ago in relation to accused no.8 is not consistent with what you said about him in your evidence-in-chief. You told us a short while ago that accused no. 8 used the word "kill" and you remember him (30

particularly /..

"Now just listen to the question please. Other than accused no.8 and no.5 did any other accused make mention of any violence of whatever kind? -- I have said these are the only two and no-one else.

Yes. Now do you recall how many accused you mentioned this morning when his lordship asked you a similar question? -- Yes, I counted accused nos.8, 5 and 17 except those that I was asked to point out who were attending the same meeting.

Yes, right. Now why did you include accused no.17 in (10 answer to that question of his lordship this morning? -- I included accused no.17 because I was explaining to his lordship who were the speakers there."

Now your lordship went to great pains to frame the question clearly and succinctly and asked him whether he understood the question and he says yes, he did.

"But that was not the question that his lordship asked.

-- If you would help me, what was the question.

Similar to the one that I asked you. -- I pointed them out included accused no.17 as one of the speakers. (20 I will read to you the precise words of his lordship's question."

I then only had a note m'lord and not the record:

"Gister melding gemaak dat die beskuldigdes geweld aan die hand gedoen het, wie het so gedoen", and the old man accused no.17, Mr Matlole topped the list. Now will you accept that I have correctly put his lordship's question and your answer? -- I do not think that I asked or stated that no.17 topped the list and I do not think that no.17 topped the list." (30

His / ..

"particularly well having used that word "kill", not so?

-- That is so.

That was not your evidence-in-chief. In your evidence-in-chief you said that the councillors and now we will use the Afrikaans because that is the word the interpreter used "verwyder" and to make it clear that the interpreter or a member of the court used the expressed "to get rid of them", do you recall that? -- Yes, I do.

Right. -- It was said by me which was interpreted as "verwyder" but in answer to the question from his lordship from the bench about whether it meant to get rid of them I explained there as to what I understand it to mean. It is correct that the words "get rid of them" were used. Then in fact went further than that in explaining my understanding of "get rid" in the context. Yes, do you recall what you said? -- Yes, I do.

Do you say that you explained that you understood by in relation to accused no.8? -- Yes.

Did you realise whilst this clarification was taking place that his lordship was concerned, that he wanted the proper meaning of the word that was used by accused no.8? -- I did not in fact understand it that way or pay particular attention to realise that.

You see, because I am going to put to you that in relation to accused no.8 who was specifically asked after the expression "get rid of" was used, "het verduidelik" and your answer is: "Kan nie onthou dat ek so 'n verduideliking gegee het, of hy dit breedvoerig oorgedra het."

Do you accept that that is what you said about accused no.8? -- Yes, I remember that.

(30

You /..

"You remember that. But did you mention the word "killed"?

-- Because I was not asked by this court to quote them in their words that they used precisely.

I am going to put to you that that is not at all correct. Can you explain if the word "killed" was used, how the interpreter came to the word "verwyder" and why it was necessary for, I think it was his lordship, to ask you further to try and clarify what this meaning might have been. Can you deny that? -- I am not denying that. To remove a person or get rid of a person is the same (10 thing as killing a person."

We refer your lordship to the passage where you actually asked him:

"What did you understand by the name, by "verwyder" or was there any explanation?"

He said no, there was not. And I did not know how to take it.

"What you are now saying is that the word "killed" was not used? -- As far as I am concerned to get rid of a person and kill a person, he used it.

Now just one moment, please. Are you standing there -(20 please make up your mind, what did accused no.1 say?

We must get rid of the councillors or we must kill the councillors. What did he say? Make up your mind. -- He said they are supposed to be killed.

Have you any explanation why you did not use that clear and unambiguous word in your evidence-in-chief? -- Well, it may be that it is my poor use of the language of Sotho."

And then we have the complaint about the interpretation. He mentions no.8 as one of the first speakers at the meeting. (30

He / ..

He says accused no.8 said that councillors were not trust worthy, they were sell-outs and that these people will have to be "verwyder"-ed which he describes as meaning "get rid of". When asked by your lordship what was meant he said that councillors had got to be rid off, Masenya says accused no.8 did not explain what he meant and that appears in volume 12 page 591 line 25 to 592 line 21. Obviously your lordship wanted the ambiguous word to be clarified. If your lordship would bear with me for just moment. Oh, yes this is in chief that we get into difficulty already. From page 592. (10 I gave your lordship a slightly wrong reference, it is 592 line 12:

"Het hy nog iets verder gesê omtrent "sell-outs"?

(Page 12) -- Hy het toe verder gesê hierdie tipe persone sal verwyder moet word.

HOF: Watter soort woord is gebruik vir "verwyder"?

Beteken dit dat hulle uitgestem moet word of beteken dit iets anders? -- Laat ek dit so stel, ontslae te raak, "to get rid of".

Hierdie "to get rid of" het hy enige iets verduidelik (20 hoedat hulle "get rid of" hierdie mense" -- Ek kan nie onthou dat hulle so 'n verduideliking gegee het nie, of hy dit miskien breedvoerig gestel het nie.

Het hy aan die gehoor enige iets oorgedra wat hulle moes doen omtrent hierdie.."

etcétera. Now m'lord, from a court interpreter to get this sort of answer when a court asks him that question, very properly not wanting to lead him into a situation, to then thereafter, after the adjournment to say that the witness said they must be killed is a serious contradiction in our (30

re'spectful/..

respectful submission. He goes on on volume 13, page 644 line 1 to 30, that accused no.8 said that they should be killed. He then denies that he used the words "get rid of" in chief but says it means the same thing anyway. When he is informed that you lordship specifically asked what this meant he did not explain and I read the passage out to your lordship earlier on in relation to the matter. He says that he is speaking in Southern Sotho for the benefit of the accused, when his home language is in fact Northern Sotho. He agrees that he has been interpreting in English and Afrikaans and into (10 Southern Sotho and vice versa since 1977. That would have been approximately ten years by the time he came to give evidence. That is to be found in volume 13 page 648 line 13 to 650 line 8.

Masenya says that the next speaker was accused no.17, who said that each and every councillors should be visited in his or her home on 3 September because that day was a day that was going to be a stay-away. After going to the houses of the councillors they would march to Houtkop. The shops were to be closed and transport would not operate. He (20 said nothing else. Your lordship will find that in volume 12, 593 :

"Het hy toe ook 'n toespraak gelewer, beskuldigde nr.17?

-- Ja, hy het.

Kan jy onthou wat hy gesê het? -- Sy woorde, sy toespraak was omtrent dieselfde. Eintlik het hy beskuldigde nr.8 se toespraak beaam.

Wat het hy nog gesê? -- Hy het toe verder gesê dat hierdie raadslede, dit sal verplig wees dat elkeen van hulle gesien moet word by hulle wonings. (30

Kan / ..

"Kan ek duidelikheid kry? As jy sê gesien moet word by hulle wonings. Wel, ek weet nou nie, het dit 'n spesiale betekenis of is dit net dat hulle moet besoek word of wat bedoel jy nou? -- Ek wil nog iets gesê het.

O, ekskuus. -- Dat hulle vir redes gevra moet word aangaande die verhoging van die huurgeld sodat die gemeenskap daarna weer bymekaar moet kom by die Roomse sodat die gemeenskap daarvandaan sal moet gaan na die verskillende wonings van die raadslede op 3 September 1984. Op daardie dag is die mense nie verplig om werk toe te gaan nie.

As jy sê daardie dag, watter dag is dit? -- Dit is 3 September 1984.

Die mense nie werk toe gaan nie? -- Hy het verder gesê daardie dag is "stay away".

Het hy nog-iets gesê? -- Nadat hulle nou die wonings gesien het van die verskillende raadslede op die dag van 3 September 1984 sal die gemeenskap dan gereed moet wees om Houtkop toe te gaan.

Wat is Houtkop? -- Dit is die hoofkwartiere van die (20 beheermense van Sebokeng.

Is dit die hoofkantoor wat vroeër bekend was as die administrasieraad? -- Ja."

Now there is no mention at all of accused no.17 having called for violence against the councillors. If anything that they should be visited. This version was not put to any of the defence witnesses and it may well be that it led to the confused evidence of IC.8 and Mahlatsi in relation to the morning of the 3rd but we will come to that. He says specifically that accused no.17 was one of those who propagated violence (30

We / ..

We have already given your lordship volume 13 page 609 line 26 to 610 line 4. But he denies this in cross-examination. We have already dealt with it on page 645 lines 12 to 29. The defence witnesses have denied that this was said. How can your lordship reject the evidence on the lack of quality of a state witness of this stature. He says that accused no.5 introduced himself as a member of the VCA. There is no suggestion anywhere in the evidence that he is a member of the VCA or that he introduced himself in that way. Volume 12, page 598 line 25 to 28. He comes out with something (10 which the state did not put to the state witnesses. He says that accused no.8 and our learned friend Mr Jacobs really struggled to get this out, that those who were going to pay the rent should be killed. No, I am sorry, it is accused no.5 he said who says this, age page 600 line 25 to page 601 line 7. None of the other witnesses have said anything like this and it was not taken up by the state. When asked what was the violence that accused no.5 mentioned, Masenya says that accused no.5 said that the councillors are government puppets and sell-outs and are bound to be killed, despite the (20 fact that he did not mention any express violence in his evidence in chief. Your lordship will find that in volume 13 page 645 line 1 to page 645 line 5. Initially Masenya says that when he was giving his evidence-in-chief he mentioned that accused no.5 said that councillors should be killed. Your lordship will find that in volume 13 page 650 lines 21 to 25. He later concedes that he made no such mention in his evidence-in-chief. Volume 13 page 651 line 1 to 3. He says that he forgot to mention it because it was a long time ago and it slipped his mind. I am going to read this (30 passage / ..

passage to your lordship because your lordship will be able to recall to your lordship's memory the lack of quality of this witness' evidence. I am going to start at 650 line 9:

" Now tell me, did you have any trouble in expressing yourself in relation to the precise words that were used by accused no.5? -- There was no problem at all in doing that but the way I have put it to his lordship here is how I understood him to have been saying it at the time.

Do you recall what you said in relation to accused no.5 and his advocating violence? -- Yes, I do. (10

What did you say in your evidence-in-chief? -- I said that he affirmed or confirmed the previous speakers in their speeches and thereafter he said that the councillors are sell-outs and further added that they are the government's puppets.

Yes, what else did he say? -- That they should be killed.

That is the word that you used? -- That is how I recall that.

And that is how you recall it whilst you gave your (20 evidence-in-chief? -- I believe so.

And if I were to put to you that what you said was, and I will the Afrikaans - m'lord, perhaps I should go to my learned friend's notes, I beg your lordship's pardon, I am sorry, I just want to find the completely accurate note because mine seems to be sketchy. Are you sure that you told his lordship accused no.5 said that councillors must be killed in your evidence-in-chief? -- No, that one if I remember well I did not mention that. (30

Did / ..

Did you not mention that? -- Did you recall what language accused no.5 spoke? -- Zulu.

In Zulu? -- Yes, he spoke in Zulu.

Now I am doing it with some diffidence because my own note may be confused but I am reassured by my learned friend that you did not say that accused no.5 said the councillors must be killed. I do not know what your lordship's note is.

COURT: He has just told you that if he remembers well you did not mention it and he is quite correct you (10 did not. -- Yes.

MR...?: Now once you did not mention that in your evidence-in-chief, why did you mention it later? -- I did not mention that because it was a mistake. In fact it happened a long time ago and it was a mistake in the sense that it slipped my mind.

Well, when did you discover this mistake? -- When you started asking me about this question.

Did you only now remember a short while ago when I asked you about accused no.5, did you remember while (20 standing here and looking at him, accused no.5? -- I then remembered that.

But now then it was the first time whilst you were in the witness-box that you remembered that accused no.5 spoke about violence? -- It was at the time when this question was put to me who of them advocated violence.

Yes, but now you remembered accused no.5 yesterday. You told his lordship that he spoke. How could you have forgotten the most material part of your evidence in relation to him in your evidence-in-chief? -- Let (30

me / ..

me put it this way. I remember that after having given my evidence-in-chief. I decided that I am not going to make mention of it because I have already passed it in giving evidence. When the question was put to me by his lordship this morning to mention the names or the numbers of the people who advocated violence it was only then that I deemed it fit to mention it, in fact to make it known.

If his lordship had not asked you the question would you have kept quiet about it? -- Well, because I (10) believed I had passed it already.

I do not understand that. -- What I am saying it was not that his lordship questioned me about that, that I would not have made mention of it because I had already left it out in giving my evidence and not made mention of it.

And if his lordship had not asked you question you would not have made any further mention of it? -- I would not have.

In your experience as a court interpreter do you (20) know that very often honest witnesses come back after an adjournment to say my lord or your worship, I made a mistake, I thought about this and this is what happened? -- Not in my experience. I have never come across that, where a witness has given evidence-in-chief to come back and say no, I want to rectify it for likely it has been put to me by the defence.

Tell me, I suppose you did say in your statement that accused no.5 had expressly said that the councillors must be killed? -- I believe so but the position is one (30)

must / ..

must bear in mind that this happened a long time ago, some time back. I cannot remember in detail for instance exactly what I said in my statement."

One would have thought again that the state in order to show that the witness had been consistent with himself would have made that available but then of course that is also syndroming to the contrary in relation to this case. When the contradiction was put to him again and given an opportunity to give an explanation he said that he had no explanation. Your lordship will find that in volume 14 page 682 lines 3 to 17. And I would like to remind your lordship again that there was no allegation in the indictment about these. (10

He also gives another reason for not mentioning this specific allegation in relation to accused no.5. He says he was too lazy to mention it. In volume 13, page 652 line 31 to page 653 line 7. Under cross-examination he initially says that the only violence that accused no.5 advocated was against councillors. As an afterthought he adds that those who did pay their rents should also be killed. Volume 14 page 680 line 20 to page 681 line 11. (20

Now Mahlatsi did not say that accused no.5 or any other accused advocated violence at this meeting and despite a thorough search I am assured to find any cross-examination directed to accused no.5, that he said that councillors must be killed and/or people who did pay their rents should be killed was not challenged by the cross-examiner. Now under those circumstances in relation to the accused where he is standing alone for all practical purposes except with the possible exception of Mokoena and where the weight of evidence is so heavy on the other side, how can he possibly be believed/.. (30

believed. He then puts violence in the mouth of a woman from the women's association of the VCA as he calls it. He makes it absolutely clear that it was the woman who spoke after accused no.17 and that it was the first woman, volume 12 page 596 line 5 to 7:

"Nadat hierdie beskuldigde gaan sit het of nadat hy sy toespraak gelewer het wie het toe 'n toespraak gelewer? -- 'n Vroumens het gepraat wat redelik oud is.

Weet jy wie is sy? -- Nee, ek weet nie.

Was sy voorgestel as 'n verteenwoordiger van enige (10 organisasie? -- Ja, dat sy van "women's association" gekom het.

Van watter "women's association"? -- Van die Vaal civic association. "

Now according to the witness, page 596, this woman, the first woman that spoke said: "Die raadslede se bestaan vernietig moet word", which he explained later as meaning that the councillors must be killed. 596, volume 12, page 596 line 28 to 597 line 4.

"Het sy gesê wat daaromtrent gedoen moet word? -- (20 Sy het gesê dit is nou tyd vir die vroumense om op te staan en in hierdie geveg baklei. Dit is die huurgeld.

Het sy nogiets gesê? -- Dat die raadslede se bestaan vernietig moet word.

Het sy uitgebrei hoedat die raadslede se bestaan vernietig moet word? -- Op die manier wat sy dit oorgedra het aan die publiek het die publiek dit verstaan en sy het dit net so gestel soos wat ek dit nou vir die hof vertel.

Hoe het sy dit gestel? -- Ek herhaal dit, dit het (30

beteken /..

beteken dat die mense gedood moet word, dit is die raadslede."

Asked in cross-examination as to whether the first woman that spoke made any mention of violence he said no, she did not.

Volume 13 page 653 lines 18 to 20.

"What word did the woman use in relation to violence?

-- The first woman that spoke did not speak about violence. The first woman speaker in that meeting she is the one who made mention of the rent at the time when they moved in the houses at zone 7, Sebokeng (10 and what the situation was about the rent. She further said that it was now time that women must unite and fight against the issue of the rent.

What did she say about violence? -- She did not make mention of any violence.

Let me just get absolute clarity so that there is no misunderstanding. You say that the first woman that spoke did not make any reference to violence? -- I believe so, yes.

And so you say? -- That is what I say. (20

And is that woman that spoke immediately after the announcement was made that taxes had been raised and the buses were arranged for nobody to go to work on the 3rd? -- The woman I am talking about she was the first after the main speakers I have already mentioned.

Yes, and is that the woman that you gave us a description of this morning? -- Yes, that is the woman I was talking about who was in fact quite a grown-up lady.

The woman you are talking about moved into zone 7 from Evaton? -- Yes, that is the one. (30

But / ..

But now you see, I cannot understand your evidence because you put very violent words into this poor woman's mouth in your evidence-in-chief. -- How?

Do you not remember what you said about this poor woman in your evidence-in-chief? -- I do.

Well you told us that she did not speak of violence but that is not what you said in your evidence-in-chief. Mr Masenya, in your evidence, people have been in the dock for one year and this woman has been in detention."

Then your lordship says that I should put to him what he (10
said in chief:

"You said in chief: "die bestaan" of these people must be destroyed, that the "raads".."

and then your lordship corrected me:

"Dat die raadslede se bestaan vernietig moet word."

MR BIZOS: Thank you, m'lord. Did you say that? -- That what I said.

But you told us a moment ago that this woman did not say anything about violence? -- I think it is because I took it that I have explained everything." (20

That is the answer, m'lord.

" Now I am going to put what you have got to say about the suggestion that I am making, do you realise that the accused in this dock have been in custody on the basis of your evidence for so long.."

etc. Well, that was really a bit of premature argument.

But again I reiterate how can a witness of that calibre be believed against the plethora of witnesses that have given evidence to the contrary. Later in his cross-examination

Masenya says that he cannot recall the first woman speaker (30

saying / ..

saying anything about any women's organisation, nor can he recall if she was attached to the VCA. Volume 14, page 691 lines 8 to 11. Then he said he had no reason to believe she was attached to the VCA except for her uniform which he concedes he does not know to have any connection with the VCA. In volume 14, 691, lines 11 to 17 and I do not want to give your lordship the references of 1, 2, 3, 4, 5, 6, 7 witnesses among the accused and among the defence witnesses who said that the VCA did not have a uniform and there is really no evidence to the contrary. (10

Masenya then came to the second woman who spoke on behalf of the women's..who also belongs to the VCA. That is to be found in volume 12 page 598 lines 1 to 6. Just in case it is thought that there may be some confusion between the first woman and the second woman in relation to violence no such explanation exists because your lordship will see on page 598 the clear statement in chief that this woman, the second woman said nothing except that "die vroumense vir haar hulle persoonlike besonderhede moet gee, byvoorbeeld die name en adresse, dit wil sê dit sou plaasgevind het na die (20 vergadering."

"Het sy gesê hoekom moet hulle die name en adresse gee?

-- Daardie verduideliking het ek nie gehoor nie.

Het sy enige iets anders gesê? -- As ek reg onthou was dit die einde.

Van haar toespraak? -- Ja."

Having said that he recognised them by their uniforms he then says in volume 14 page 690 line 25 to line 691 line 2 that he knows nothing about a women's organisation in the Vaal.

I am going to go on to the so-called Masenya incident (30
and / ..

and for the sake of continuity I do not know whether your lordship wants to start that tomorrow morning?

COURT: I think we can go on until 16h00.

MR BIZOS: As your lordship pleases.

COURT: We will remember what you said the previous day.

MR BIZOS: As your lordship pleases.

COURT: We are not like Masenya.

MR BIZOS: I am sure not, m'lord. This incident relates to the occasion when Masenya's life was allegedly threatened. Once again his evidence is not only contradictory we submit(10 but also contradictory evidence of the accused as well as the evidence of the defence witnesses and the state witnesses. Masenya claims that he asked a question as to what would happen to the children of those parents who would get arrested because they did not pay the rent. Your lordship will see that in volume 12 in his evidence in chief page 600 lines 25 to 28. And leaving aside the objection that came in the middle:

"Jy sê jy het toe 'n vraag gevra? -- My vraag was wat van 'n persoon van 'n gesin, dit wil sê 'n man met 'n (20 vrou en kinders indien die persoon besluit om nie huurgeld te betaal nie en hy word gearresteer, wat sal word van sy kinders.

Ja en toe, wat was die antwoord? -- Die antwoord was die "Vaal civic association" sal voorbereidings maak aangaande sulke kinders wat alleen agtergebly het. Verder was dit gesê in antwoord met betrekking tot die ouers wat gearresteer is, dit wil sê die moeder of die vader van die kinders die Vaal "civic association" sal voorbereidings maak of reëlings tref vir die (30 verdediging /..

verdediging. Dit was verder gesê dat diegene wat 'n kans gaan vat om te betaal sal in die moeilikheid beland van om doodgemaak te word.

Wat wat betaal? -- Huurgeld.

Goed, gaan aan. Wat gebeur vervolgens? -- Terwyl ek nog so gestaan het was daar gesê van 'n sekere vroumens dat ek moet sit want ek is een van die raadslede, ek sal doodgemaak word. Ek het toe gesit. Nie lank na ek gesit het nie het ek gesien dat dieselfde vroumens wat gesê het ek moet sit uitgaan. Sy is onbekend aan (10 my. Ek het die vroumens gevolg na buite waar ek haar toe vrae gevra het daarbuite. Toe ek die vrae van my gestel het aan haar was sy in die teenwoordigheid van 'n ander manspersoon."

Now this is the only incident that he described in his evidence-in-chief.

COURT: We can deal with his cross-examination tomorrow.

MR BIZOS: As your lordship pleases.

THE COURT ADJOURNS UNTIL 19 AUGUST 1988.

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