

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-09-05

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. YACOBS  
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

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(Bladsve 26 871 tot 26 928 )

THE COURT RESUMES ON 5 SEPTEMBER 1988

MR BIZOS: As your lordship pleases. All the accused are before your lordship. I intend making submissions on behalf of the accused in relation to the happenings in Sharpeville on 3 September 1984, and what I want to draw to your lordship's attention at the outset is that the indictment took a form of dealing with different areas in different paragraphs up to 2 September 1984 and then in paragraph 77 which deals with the happenings of the 3rd the areas are brought together. Now that is of some importance because of the submission (10 that we are making to your lordship that in relation to Sharpeville the case pleaded has not been proved and that is after all what we are here to make submissions to your lordship about. The Sharpeville paragraph is paragraph 73 to be found on pages 320 to 330 of the indictment and your lordship will see that at page 330 it comes to an abrupt end as far as continuity is concerned, that there was a meeting on the 2nd on which certain allegations are made which are supported only by what we submit the discredited witness IC.8 and that is the end of that paragraph. (20

In order to see what the allegations are in relation to what happened on the 3rd, your lordship has to turn to page 353 of the indictment, paragraph 77 and that is the paragraph which really deals with how the state alleges violence came about in the Vaal triangle on the 3rd. Now it firstly deals in sub-paragraph (1) with the management bodies of every organisation that has been mentioned in evidence in this court after of course the usual preamble that it was in furtherance of the conspiracy. Your lordship, for the purposes of the submission that I am about to make can ignore sub-paragraph (30

2, 3, 4, 5 and 6 because they relate to Boipatong. And if your lordship takes sub-paragraphs 8, 9, 10 and 11, the allegations are what happened at Small Farms right up to Motjeane's home. Your lordship can also for the purposes of my submission ignore sub-paragraphs 12, 13, 14, because that deals with what the activists - your lordship will recall in dealing with the Sebokeng 3rd of who the activists were and how they were limited in the further particulars and we repeat those submissions because this is, they were going to play cards on the other matters; your lordship will remember what those paragraphs were about, 12, 13 and 14. Now your lordship will see that there is no mention of a march in Sharpeville. And if your lordship goes to page 359, your lordship will see sub-paragraph 50: After the majority of the activists who had played a leading role in inciting and leading the masses to become a mob and to commit acts of revolt, violence and riots had withdrawn the mob continued with the revolt, riots and violence which lasted until about the end of September 1984 in the residential areas in the Vaal triangle, in which of course Sharpeville is, but we do not have to interpret it because I will refer your lordship later that Sharpeville, the Sharpeville violence is attributed to the incitement of the activists that are referred to on sub-paragraph 7 of paragraph 73 - no, I am sorry, activists paragraph 7 of paragraph 77 at page 355. And if your lordship has a look at sub-paragraph 15, that the mob..

COURT: 15?

MR BIZOS: Sub-paragraph 15 on page 359. That is after the Motjeane incident. They say in sub-paragraph (1) that this mob went to Dipoko, I have already dealt with that, then

went / ..

went to the house of Jacob Chikane in zone 14 and in sub-paragraph (3) on page 360, and we submit that this is vital and this is the case that the accused came to meet, that on 3 September 1984 the mob went to the house of councillor Khuzwayo Jacob Dhlamini in Sharpeville and hurled stones at the house and then set fire etc. Now if your lordship turns back to the preamble of sub-paragraph (15) on page 359 it is abundantly clear that the state case is that the mob left Motjeane's house and went to Dhlamini to kill him. There is no allegation in the indictment that the violence of 3 (10 September arose as a result of the incitement of anyone to commit any of the acts alleged in paragraph 77 at the meetings of the 12th, 19th, 26th August 1984 or indeed 2 September 1984.

ASSESSOR: The Sharpeville meetings?

MR BIZOS: The Sharpeville meetings, yes. So that on this indictment even if your lordship were to find that our submissions that IC.8, Koago and IC.9 can possibly be believed your lordship cannot find the Sharpeville related accused, that is 1, 2, 3 and 16, of any offence on this indictment; that the state is bound by the particulars of its charge (20 is clear. My learned..

COURT: But wouldn't there be a possibility under the terrorism act? Let us call it the terrorism act, the internal security act, the other sections - incitement to violence?

MR BIZOS: With the greatest respect in relation to that there would have to be another finding because we submit that on that alternative the state has bound itself to prove a violent conspiracy so that your lordship would theoretically have to find that even if someone did call for any form of violence at any of the meetings of the 2nd, that he did it (30

in furtherance of the grand conspiracy alleged in the preamble of every paragraph. So that on none of the alternatives - m'lord, we would submit that your lordship consider the argument that has been advanced both by my learned leader Mr Chaskalson and myself, that this is an indictment on which the state stands or falls upon proof of the violent conspiracy as alleged. It would of course have been different if your lordship were able to find some individual act particularly on the 3rd but neither no.3 nor no.1 nor no.16 were in the Vaal on the day in question and accused no.2 was in any (10 event at Sebokeng and not in Sharpeville. We would like to give your lordship a reference in our argument where the question and the authorities quoted by my learned leader Mr Chaskalson, your lordship will find that in volume 432 page 25 322, but of course we have already advanced argument that those three witnesses cannot be believed and I do not intend repeating the argument in that regard. So that the submission is that there is no evidence as to who committed the violence in Sharpeville on the 3rd. The evidence of Brig Viljoen relied upon by the state and the other police officers in (20 the "betoog" on pages 301 to 316 does not assist the state to bring home to any of the Sharpeville accused any of the charges brought against them. Even if your lordship does not disregard the evidence of Brig Viljoen that there were some people going about with a placard or placards saying: "Kili Dhlamini, we will kill Dhlamini" and "Away with high rents, councillors must resign" and that "We want Moselane" and even if your lordship were to find that there were some people in these groups that were armed with sticks and stones and even if your lordship were to overlook the fact that (30

like the other attempts to connect any of the accused even most indirectly with any form of violence, that this was not pleaded either in the indictment or in the further particulars and that it was a come lately bit of evidence like that of IC.8, IC.10, Branders and other witnesses - even if your lordship were to overlook all that and find that as a fact we submit that what unidentified people do cannot be held against the Sharpeville accused before your lordship. The attempt to connect the accused with these events because there was a disputed sprinkling of T-shirts, is not a way (10 in which an accused person can have a charge brought against him established nor indeed by the slogans that these unidentified people have shouted or what they may or may not have been singing. Even if we are wrong in this submission that the state is bound, we submit that your lordship will find on what we have already submitted on the strength of the evidence of three of the accused and no less than ten witnesses the names of whom have been given to your lordship, who testified on behalf of the defence to contradict the shaky evidence of IC.8, IC.9 and Koago. The evidence of those (20 ten defence witnesses is corroborated we submit with the film and sound track and more particularly the transcript EXHIBIT V.31 which was made by Mr Kevin Harris at the meeting of the 26th and the contemporary publication of the main happenings at the meeting of the 19th in EXHIBITS AAQ.6 and 7 being the newspaper reports of Mr Nkabindi and Mr Raboroko. During the course of the case the state and the court asked many questions particularly of accused no.3 that he must have foreseen that the holding of the meetings in which the councillors were accused of being puppets, sell-outs and (30 corrupt/..

corrupt would have led to some form of violence. We submit that there is no basis on this indictment upon which any - the main charge of treason or the alternatives can be contemplated against the accused because we have already given your lordship a long list of witnesses including councillors including employees of the development board and above all Brig Viljoen himself and no trouble was expected on the 3rd. Again an attempt was made to bring home to accused no.3 that his conversation with the then captain and later Major Steyn in which the accused was forewarned by Major Steyn (10 according to his evidence, does not assist the state. Insofar as it would be necessary we would submit that if your lordship were to make a finding of fact, a positive finding of fact in favour of the state cannot be made on Major Steyn's evidence.

ASSESSOR: Have you a reference to Brig Viljoen's evidence?

MR BIZOS: I will be referred to it - I have already referred to it in the long list of not expecting trouble and have actually read one or two passages out, but I will give you a reference in due course either to the argument where this is already there or I think I have it here as well. If (20 your lordship were to subject the evidence of Major Steyn as to what occurred in his office on the 29th between him and accused no.3, the Rev Moselane, the sort of analysis that the Chief Justice did in relation to the evidence of Major Swart and Miss Ellison in the passage that I read out to your lordship early on, your lordship will find that on over a dozen occasions Major Swart says either I do not remember or I am unable to admit or deny it. The evidence is short m'lord and a perusal will in my respectful submission..

COURT: Are you now referring to Captain Steyn? (30

MR BIZOS / ..

MR BIZOS: He was major at the time he gave evidence.

COURT: Steyn?

MR BIZOS: Steyn, yes. A perusal of that evidence, it is a short cross-examination and if your lordship reads the whole of it, your lordship will see that he was really not in a position to really deny most of what was put to him on behalf of the Rev Moselane.

COURT: Why did he call him in?

MR BIZOS: Because no.3 gives the evidence as to why and that was to persuade him not to allow his church to be used (10 for the taking place of meetings.

COURT: What type of meetings? Why would the security police be interested in meetings if they are not riotous?

MR BIZOS: Because they had been before, m'lord, they had been before. M'lord, with the greatest respect what is riotous to the security police is not riotous in law. Calling for the cancellation of the proposed increase of rent..

COURT: That is not riotous, Mr Bizos. I am not referring to that type of meeting, I am referring to the type of meeting where people do something violent. (20

MR BIZOS: Yes. Well, m'lord, let me - if your lordship assumes..

COURT: I am not assuming anything. I am merely asking you to tell me why was he called in? On either version?

MR BIZOS: On either version because he wanted the meetings to be stopped, because and I will refer your lordship, remind your lordship of the evidence, that an application had been made to the magistrate to ban the meetings and the application had been refused. There was a running contest between the council and the administration board in relation to the (30



use of churches for meetings.

COURT: But did you put to Major Steyn that he was being used by the councillors to harass political opponents?

MR BIZOS: No, I did not put it that way, but I am not addressing your lordship on that issue. What I am saying to your lordship is this, that Major Steyn could not have had information that there was incitement to murder or violence at the meeting of the 19th and 26th and let me make a submission as to why I say that.

COURT: Yes. (10

MR BIZOS: Major Steyn knew that there would be a meeting on the 2nd because he says that he asked Moselane to cancel that meeting and to make sure that there is no stay-away or marching on the 2nd. Had Steyn had that information on the 29th would the meeting of the 2nd have been allowed to go on; if Steyn had what he says he had, that accused no.16 Mr Manthata had advocated violence at the meeting of the 19th, wouldn't he have rushed to the magistrate in order to ban the meeting?

COURT: That is presupposing certain type of conduct on (20 the part of the security police.

MR BIZOS: Well, the debate between me and your lordship started, why would the police call Moselane in. If we do not know how the security police behave in given circumstances then what is sauce for the one is sauce for the other but where do the probabilities lie? This is why I would submit that your lordship subject Major Steyn's evidence to the scrutiny that his lordship OGILVIE-THOMPSON CJ did in the French-Beytach case, that the mere fact that he is a major, he comes here and says that he knew that violence was (30

advocated/..

advocated on the 19th and he did nothing about it, other than call in the Rev Moselane, accused no.3, in order to tell him I expect your co-operation, does not accord with the probabilities. He would have gone to the magistrate and ban the meeting; he would have had police present in the immediate vicinity on that morning of the 2nd and above all, if Steyn had evidence of reliable information that violence had been advocated on the 19th and he decided to call the Rev Moselane in, and his intention was to really see to it that this choice was not used in order to advocate violence, again (10 the matter must be taken on the probabilities. If indeed the Rev Moselane had allowed his church for violence to be advocated on the 3rd, would he have telephoned his arch deacon, the Rev Wilson, to come with him and if Major Steyn had information that violence had been advocated on the 19th would not Major Steyn have welcomed the presence of Arch Deacon Wilson rather than closing the grille door of the security headquarters in Vereeniging on him? Where do the probabilities lie m'lord? If the head of the security police in the Vaal triangle had that information that no less a (20 person than a senior official of the South African Council of Churches had come on the 19th to advocate murder and here he has a ready reference to the Rev Moselane senior to call him in and say Arch Deacon, I am very glad you are here. D- you know what is happening in your church and this is your area of jurisdiction? The fact that it did not happen is because nobody seriously expected the trouble on the 3rd and I refer your lordship to all the references that we have already advanced in the argument in due course, and that Major Steyn wanted to put an end to the difficulties. (30

There / ..

There is another probability. The evidence of the Rev Moselane, accused no.3, is that he was not a person who allowed his church to be used for the purposes of violence but he himself was a victim of violence the night before and that he went and reported the matter to the police station and that the perpetrators of the threats and the intimidation were the posse of councillors and their hangers on. Major Steyn on the evidence of the Rev Moselane took no interest in that. He said well, the police will investigate. Now there is in answer to your lordship's original question another probability in favour of the Rev Moselane's version and that is that this newspaper accusing those who are supposedly in charge of the administration of the Vaal triangle of an unlawful and improper conduct. But the evidence of Major Steyn came early on. Whether the probabilities lie that the chief of the security police in Vereeniging has got a reliable report that Manthata, accused no.16, advocated murder on the 19th and does nothing about it until February of 1985, some seven months later. Your lordship will recall that and I am not complaining, your lordship was with (20 respect probably correct in stopping the inquiry because it would have led us to all sorts of other things that were outside the indictment as to what information he may or may not have had in relation to accused no.16, but his evidence does not square up with the probabilities; it does not square up with the evidence of Moselane as corroborated by Arch Deacon Wilson. Again we submit that on the evidence the allegation that the activists from Sebokeng that converted the march into a mob were responsible for the violence that broke out in Sharpeville, does not bear critical examination and is (30

completely / ..

completely contrary to the evidence, much of it emanating from witnesses for the state. I have the reference now of Brig Viljoen. Brig Viljoen testified that nobody had mentioned to him any specific information that these people or their properties would be attacked; Viljoen was not informed of any specific threats against specific councillors; Viljoen stated that should he have been informed he would have taken steps to prevent such attacks. Your lordship will find that in volume 65, page 3 417 line 18 to 3 418 line 2. And if I may continue m'lord as to what violence occurred in (10 Sharpeville which could not have been as charged or as pleaded.

On Sunday, 2 September 1984, the house of Mokone..

COURT: Sunday?

MR BIZOS: The Sunday, the 2nd, the house of Mokone the headmaster of Mohlodi High School in Sharpeville was attacked and set alight. Mr Mokone had nothing to do with the councillors or the council system or the rent increase. That your lordship will find in the evidence of Masemanga, volume 341 page 19 475 line 6 to 25. Early in the morning of 3 September and long before the march at Small Farms was even coming (20 together, Nozipo Mjeza who was a central figure at the meetings of particularly the 12th and was there on the 19th and the 26th and on the 2nd and her companion were mistaken as councillors, threatened with violence and forced to join a group of people bent upon destroying property. Mjeza, volume 313, 17 971 line 1 to 17 972 line 1. This group long before the march alleged to have been the cause of the violence in Sharpeville was involved in setting alight the house of Michael Sekobane - the same reference, m'lord. This group again and before the march was formed attacked the (30 house / ..

house of Mogomotse. Mjeza, volume 313, page 17 974 lines 24 to 30 and under cross-examination in volume 317, page 18 185 line 7 to 18 186 line 13. None of these persons who forced Mjeza to join their group were familiar with Mjeza or her companion. Volume 313, 17 973, 3-24. The question on the probabilities obviously arises, that if this unruly mob had been or any member of this unruly mob and certainly its leader had been to any of the meetings of the Anglican Church they could not have missed Nozepo Mjeza at these meetings. They would have recognised her on the morning (10 of the 3rd and would not have accused her of being a councillor. Early in the morning of 3 September the vehicle of Mr Msimanga himself who had identified himself with the protest and was present at the meeting of 19 August 1984, his vehicle was pushed out of his yard and later on that day it was set alight. Msimanga, volume 341, page 19 477 line 7 to 19 478 line 4. These people were strangers to Msimanga. Volume 341, page 19 477, 12-14. From this we submit that the probable inference to be drawn is an obvious one. The violence in Sharpeville started late on Sunday.. (20

ASSESSOR: Have you a time for the burning of headmaster Mokone's house?

MR BIZOS: I did not note it, I am sorry. I will have to go to the record, but it was early in the morning.

ASSESSOR: Thank you, you have given the reference. We can find it.

MR BIZOS: Early in the morning. But let us possibly leave that Sunday evening out of account because it may have been coincidental. One thing is abundantly clear, that unbridled violence had come to Sharpeville certainly before 09h00. (30

We have already made the submission to your lordship that Mr Dhlamini was killed by 08h30 in the morning, which is ample corroboration in our respectful submission that having regard to the geography in relation to Bophelong where the violence started in earnest on the 2nd to Sharpeville that it slowed over to Sharpeville from Bophelong where there was no VCA presence, where there was no UDF presence, where there was no AZAPO presence; where no protest meetings had been held by any other organisations mentioned although there was a meeting called by an ad hoc committee and spilled over to (10 Sharpeville. What sparked it off in Bophelong we have already submitted, events which unrelated to the stay-away, unrelated to any march and the state's failure to take note of the facts either because they did not have them, which it is difficult to believe because much of what happened in Bophelong was deposed to by police officers or did not realise the significance of the genesis of the violence in the Vaal triangle and that is they they have pleaded it this way and this is why we submit that so much of the court's time was taken in putting us on a defence to an indictment which (20 does not correspond with the reality as deposed to both by the state witnesses and by the numerous defence witnesses. That it was unbridled violence of young people is amply corroborated with submit with respect by those witnesses who saw the sort of violence that was being committed in the early morning in Sharpeville and also your lordship heard evidence of looting of bottle stores, small supermarkets, of people carrying out more food than they could actually carry and drop it along the way; your lordship heard of attacks on shops belonging to persons of Indian origin near (30

zone 3 and in Evaton. I do not think that anyone seriously suggested that it was as a result of the incitement of the UDF or the VCA or AZAPO or any other political organisation for people to go and attack shops belonging to all sorts of people not connected with the councillors and I would submit with respect that on an individual basis your lordship having seen the accused before your lordship that whatever sharp differences there may be politically between them and others that looting and wanton destruction is completely out of character. Once violence starts for whatever reason its (10 escalation can hardly be controlled. In relation to Sharpeville your lordship heard evidence of intemperate and unjustified behaviour on the part of the police. I will give your lordship the references and make certain submissions on the probabilities. This behaviour has been described by the witness Khambule in volume 355, 20 387, line 27 to 20 388 line 10; 20 391, 12-15; volume 356, 20 392, 13-15; 20 392 6-8; 20 393 line 18 - could your lordship just make it 20 392 to 20 393 line 18. It has been a little broken up unnecessarily but that is where your lordship will find it.(20 Mbutuma, volume 363, page 20 945, 20-29 and again at 20 946 19-24. Depetso, 364, 20 964 line 19 to 20 965 line 30. Morobe, 367, 21 147, 27-29. These witnesses taken together with the evidence of Major Crauss - Cross..?

COURT: Crauss - the one who flew.

MR BIZOS: Crauss, the one who flew over, yes. Insofar as he can be relied upon and your lordship will recall the difficulties that he had, but the photographs, some of the photographs that he has taken actually show that what these witnesses have told your lordship was the truth, that there(30

were /..

were no riotous crowds on Seiso Street or in the main street in Sharpeville on the morning of the 3rd. They are in EXHIBITS AAR.6, 7, 8 and 9.

COURT: AAR?

MR BIZOS: AAR.6, 7, 8 and 9. Your lordship will recall that this was a batch of photographs and we marked them 1 to subsequent numbers.

ASSESSOR: Did you have copies of those photographs?

MR BIZOS: We do not have them, m'lord.

ASSESSOR: Were there only originals? (10

MR BIZOS: Only originals, yes.

COURT: Did we identify the streets on the photographs? I do not think so. It may well be that in one case we did.

MR BIZOS: I think Seiso Street we did identify.

COURT: Crauss could not. Who identified it?

MR BIZOS: One or other of the witnesses did so. I do not remember whether - I think it was accused no.3, but I would have to check on it, because your lordship will recall that we put these photographs with these isolated small groups and there was a debate as to whether some little specks on the (20 road were obstructions or not. They were according to him taken between between 07h00 and 09h00 and he did describe according to my note, that those photographs show Seiso Street in Sharpeville and that was 6 and 7 and 9 the centre of Sharpeville.

COURT: What is your reference?

MR BIZOS: 71, 3 813, 16, to 3 815, 2. The excuse that these photographs which supported the defence version were not representative of their happenings and that he took no photographs which were representative of the happenings (30



as he described them, can hardly be an acceptable explanation for a person who was sent up for the purposes of taking photographs. Your lordship will also have regard to what he says about this in the same volume, 3 817, 9 to 3 819(a) line 4. Well, if it were not so sad it might have been described as highly comical. He said that he had not in fact been instructed to take photographs of what was happening but that he was merely testing whether it was possible to take photographs with a 35 mm camera at 500 feet. Your lordship will find that at volume 71, page 3 819(a) 8-21. (10

The state submitted that the defence had failed to prove that the police behaved in any way improperly but let me again repeat, we are not saying that the police started the violence in Sharpeville but what we are saying is that isolated violence having been started, the police behaviour on the evidence is shown to have exacerbated the position which led to the further unbridled violence that took place. The following are important aspects which have been deposed to which are not really in dispute. On the morning of 3 September 1984 at approximately 07h30 police fired teargas over (20 the house of the Rev Moselane in the direction of the church. The evidence of accused no.3, volume 233, page 12 346, 16-27. AT the time that this happened there were no people gathered around the church, there was in fact nobody in the vicinity of the church. Your lordship will find that in volume 233, 12 347, 3-7. The house of accused no.3 was attacked during the evening of 3 September 1984. Shots were fired, window panes were broken and it was discovered that teargas had been fired at the house. According to the evidence two motor vehicles followed by a police truck stopped near this (30 house/..

house and again teargas was fired and a cannister landed in front of his door, near a window next to the door. Volume 233, 12 352 line 27 and subsequent.. There was no riotous crowd anywhere near no.3's house when this happened. Volume 233, 12 354, 24-28. Six bullets, rubber bullets - sorry, one of the bullets was found inside the house and six outside the house. Volume 233, page 12 357, 3-7. Two teargas cannisters were found. 233, 12 357, 24-26. We have not given your lordship the references but a complaint was made by the police that the carpet was "burned". All those must be (10 fresh in your lordship's memory, and that the culprits were never found. Of course the question may well be put by the state: how do we know that it was the police? Well, the public perception associates the use of teargas cannisters with the police. We do not know of anyone else who has free access to rubber bullets and teargas cannisters. Khambule testifies that at 6h55 on 3 September 1984 he heard gun shots and the police were chasing children in school uniforms. 355, 20 389,15, to 20 903. As early as 08h00 police fired shots at people standing in small groups. Khambule, 355, (20 23 911 1 to 8.

COURT: I am sorry, 23 91? It cannot be.

MR BIZOS: Volume 355..

ASSESSOR: 20 391? Not 23 91?

MR BIZOS: Oh, 20 391.

ASSESSOR: That is better.

MR BIZOS: Yes. Testified that a rubber bullet was fired in the direction of his house and hit his front door whilst he was standing in his yard with about five other people.

Khambule, 355, 20 391, 16-25. Mbutuma testified that the (30 police / ..

police fired at people at random, even shot in the direction of a house whilst a couple of people were standing outside the house. People were also sjambokked. This happened just before 09h00. Mbutuma, 363, 20 943, 26; 20 946 line 3. Depetso testified that towards 08h00 the police fired tear-gas at people near a bus stop who were apparently waiting for the bus to go to work. I deal with the criticisms of the state in a moment. Depetso, 364, 20 965, 7-13. Morobe described similar chasing of people, a shooting of teargas and bird shot and that the victims of these were people (10 standing on street corners and who apparently wanted to go to work. 367, 21 148 10-19. Brig Viljoen conceded that there had been complaints against members of the security forces under him.

COURT: Just a moment. His regulars complained about another group, one member of the other group had gone haywire.

MR BIZOS: I will accept your lordship's recollection of that. Although my note is slightly different it is possible that..

COURT: Yes, his own men complained to him that another policeman.. (20

MR BIZOS: A group from Pretoria.

COURT: .. was too harsh.

MR BIZOS: Well, according to my summary of that, that the reinforcements from Pretoria were unnecessarily aggressive towards the public. I think that was the..

ASSESSOR: Have you got the reference there?

MR BIZOS: Yes, 65, 3 421, 5-10. We would submit that if I am correct, that there were such complaints and your lordship will remember also that this came about as a result of the documentation of Prof Van der Walt which was put and also (30

a document prepared by the bishops' conference in which a number of these complaints were documented.

ASSESSOR: Are you sure about the reference, please Mr Bizos?  
3 421, 5-10.

MR BIZOS: Yes.

ASSESSOR: "Het n mens nie n reg om sy medemens sonder geweld en sonder dreigemente van geweld te probeer oortuig omsekere stappe te neem vir die rede waarom hy dit beskou as n verbetering van die lewe in die gemeenskap?" Antwoord: "Hy het seker n reg om hom te probeer oorreed". (10)

MR BIZOS: Well, then it is the wrong reference but it is in that vicinity. I think the lines are probably, they are probably unlimited but it was in that vicinity in which I was putting to him that people were..well, I see that we are almost at the end. I will find the line, but it is in that immediate vicinity. I am sorry.

ASSESSOR: It is probably somewhere around there.

MR BIZOS: Yes, it is somewhere around there. Now the state has listed a number of contradictions and relies on a general improbability that the police would behave in the manner (20 described by this witness, but of course EXHIBIT 27, that is the short video showing Brig Viljoen himself not very long after 3 September on a truck where his visibility must have been perfect, whilst in our respectful submission that your lordship has on film conduct unbecoming of any undisciplined force and the question arises if Brig Viljoen allowed or condoned that behaviour at that funeral, why should those under him have behaved any better on the 3rd? Like any other witness Brig Viljoen was entitled to say that he refuses to answer further questions on the grounds that he might (30 incriminate/..

incriminate himself, but..

COURT: But did he? Did he?

MR BIZOS: He did, m'lord. I will give your lordship the reference. Volume 68, 3 559 to 3 565. I remember well that I would be the last not to support him in his stand not to answer any further questions and I did not ask him any more questions about it. I do not even want to repeat the explanations attributed to Brig Viljoen by Mr Mokoena, accused no.6, at the funeral. But as your lordship indicated earlier on however removed it may be by a couple of weeks (10 from the 3rd, it does show what kind of man was in charge of this police force on the 3rd. Of course as his lordship VAN DER WALT J and his lordship PREISS J, and we will make that judgment available in relation to the approach of witnesses in this regard in another case arising out of the same troubles, it does show what kind of person he is and any general improbability that may be presented by the cross-examination of the defence witnesses whose evidence I have referred your lordship to, the particular probabilities do not assist the state. In all these matters there is no evidence to the (20 contrary and we submit with respect that that led to the exacerbation of the violence. This of course is of some importance because the indictment in paragraph 77 that I earlier referred your lordship to, says that the accused are responsible for all the violence that took place until the end of September. We submit that there is no basis for those submissions, for that allegation and for those submissions in the "betoog". After violence was started on the 2nd in Bophelong and early on the morning of the 3rd in Sharpeville, it became by unknown persons, it became a most (30 unfortunate/..

unfortunate free for all, for which the accused and the organisations to which one or other of them belonged cannot be held responsible. I was hoping to finish this section, I have another three pages, for my learned friend Mr Chaskalson to take over on another aspect of the case - I do not know whether your lordship wants to take the adjournment. I see some agitation by those around me, about my overstepping the time limit.

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR BIZOS: I looked for the reference on the concession by (10 Brig Viljoen about the people who came from Pretoria and I could not find it in the limited time available. I will let your lordship have the reference but one thing is clear, it is not 65, 3 421 or near there. I will have to find the reference. I did see it last night, it was part also of a document published by the bishops' conference and that is really the phrase that will enable us to pick it up.

ASSESSOR: As regards the police operation there at the funeral, I cannot remember the name of the person who was being buried but if I remember the evidence correctly it (20 was to the effect that a group of young people had - what is the word I am looking for..

MR BIZOS: Defied perhaps the..?

ASSESSOR: No, no, I think the evidence was this that they hijacked a bus by chasing all the old people who had gone into the bus from it, they occupied the seats and also clamored on top of the bus and that is the bus that was in this particular operation, the EXHIBIT 27 video that we saw and this was the reason why the police acted against these people, this particular group. That is as I remember the evidence. (30

MR BIZOS / ..

MR BIZOS: Well, I have no clear recollection of that evidence but the film shows people being thrown out of the windows of buses and people hanging onto the roof of the ..

ASSESSOR: And people on top of the bus.

MR BIZOS: There are people hanging on the top of the bus and their hands are pushed off so that they can fall down. Now what I am saying is this, we have not set up on ourselves the task of showing irregular conduct by the police as the initial cause of the violence. What we do say is that that is a graphic account of how police officers ought not to (10) behave, even if young people had not acted with sufficient respect in allowing older people to go into the buses or even if they are on top of a bus. If people are on top of a bus they do not deserve to be thrown off it, nor are people at random entitled to be, as the one person was on the film, kicked whilst they were on the ground. Now once that sort of..whatever the cause may be, once that sort of behaviour was allowed to take place, then I submit that the inference that we seek to draw is a justifiable one.

ASSESSOR: I cannot remember all the detail that you give (20) Mr Bizos, but we will have a look at this again.

MR BIZOS: Well, the film speaks for itself and also your lordship will recall the unfortunate note done by Mr Sutherland which I used in cross-examination of Brig Viljoen that led to the newspaper and some difficulty, but that sort of behaviour is consistent with firing teargas into houses, consistent with firing rubber bullets at people standing in their front stoep and that is all we want to say and that as a result of that violence was exacerbated after the 3rd and there is no evidence to connect any of the accused with (30) any/..

any of that violence.

ASSESSOR: You cannot have a fire without fuel.

MR BIZOS: Yes, but if the fire has started don't let us put any fans to spread it. That is really - because one can understand that once there was this early violence, that once there was this early violence started by someone whom we do not know and certainly none of the accused have been shown to have had any part of it, it may well be that the duty to try and restore calm is even greater and shooting - Brig Viljoen in one vehicle went along Seiso Street with one (10 police officer and the two of them shot teargas on his own evidence, to the left and the right as they were going down Seiso Street. What harm did that do to the tranquility of that community?

ASSESSOR: Have you any suggestion as to how they could have stopped the violence, Mr Bizos?

MR BIZOS: Well, once I am invited then I will make a number of submissions. First of all they should have gone and spoken to the people that were leading the march in Sebokeng. Secondly, by not firing teargas at small groups of people (20 along Seiso Street - I mean what sort of danger was Brig Viljoen and his lieutenant in, if he was able to drive in one vehicle all the way down Seiso Street. What did he hope to achieve? What did he hope to achieve, assuming that there were small groups of people on various corners; would the teargas have dispersed them or would this have given an opportunity to others to form bigger groups and to go and commit further violence.

COURT: Just help me, Mr Bizos. The march, we know the time of the march; the time that Brig Viljoen was in (30

Sharpeville/..



Sharpeville, what was that, what time..

MR BIZOS: 06h30.

COURT: He was there at 06h30.

MR BIZOS: He left, m'lord, and this is significant. According to his evidence he left Sebokeng because all was quiet and went to Sharpeville because he had a report that there was trouble there.

COURT: Yes, thank you.

MR BIZOS: That was the evidence. I have further evidence, a further reference to the evidence of Khambule, Mbuluma, (10 Depetso and Morobe which I would like to give to your lordship in answer to the state's suggestion of the probability of it all, Khambule at volume 355, 20 385, 28-29; 20 387 9 to 13; 20 387, 23-26; and the whole version from page 20 391 line 9 to 20 394, 25. Mbuluma, 353, 20 941, 6-7; 20 945, 15-19; Depetso, 364, 20 964, 30 to 20 965, 2. Morobe, 367, 21 147, 22-26. In relation to the obstructions on the road, we submit that the evidence of all the Sharpeville witnesses are clear, that unknown persons started putting obstructions on the road in order to prevent the (20 police from coming in or using the roads after there was teargas. We submit that there is no reason to reject all this evidence of intemperate conduct; there is certainly no reason why no.3's evidence, the Rev Moselane's evidence should be rejected that there was a teargas attack for no reason whatsoever on his church, no reason for his house being attacked. Now in relation to the funerals of the 15th and the 23rd, we submit that there is no evidence that any violence arose as a result of any conduct of any of the accused. Your lordship will remember the exhibit AN.59, (30

K1536

if / ..

if my memory serves me correctly, that is the one bit of evidence about..

COURT: AN?

MR BIZOS: AN.59. Your lordship will recall, I may be wrong about the number, but we will - that is the pamphlet about which there was much debate with the witness McCamel by your lordship and your lordship's assessor, as to whether or not this was not a pamphlet which called for violence. Your lordship will recall that, it is a printed pamphlet..

COURT: Yes, but has it got anything to do with the funerals? (10)

MR BIZOS: It is coupled, it is for the period.

COURT: Oh I see, you are not dealing with the funerals as such?

MR BIZOS: I am dealing with the funerals but I am dealing with the period post 3rd and the end of September. Your lordship will..

ASSESSOR: It is not AN.59. We haven't got an AN.59.

MR BIZOS: That is the one that accused no.6, Mr Mokoena said that his wife burned, the 5 000, because it was not in accordance with the instructions given. (20)

ASSESSOR: I think it was AN.15..

MR BIZOS: I am sorry about that.

COURT: Yes, we know about that one. I was just surprised that this cropped up in relation to a funeral.

MR BIZOS: No, it is post 9, because it just occurred to me that it is the other aspect that was canvassed during the evidence but the state no longer relies on it, despite the long debate with the Rev McCamel by members of the court; that was never distributed and in fact the responsibility of that document has not been placed on anyone. (30)

ASSESSOR / ..

ASSESSOR: I believe it is AN.15.7.

MR BIZOS: Thank you, m'lord, yes, that is the..I am sorry that I introduced that in relation to the funerals . I merely want to add two other matters. The funerals are pleaded as having given rise to any violence and I may remind your lordship that in volume 67 page 3 541 to 3 545 your lordship expressed doubt as to the admissibility of that evidence on this indictment and even if admissible, what weight if any was to be attached to that evidence and I may say it was on the basis of that, that we other than the accused that may (10 have been present, we did not lead any evidence in relation to them.

Finally in relation to this period in the "betoog" reliance is placed on a number of documents in order to prove what the state alleges the position was. These are various publications which purport to tell your lordship what happened in the Vaal. Your lordship has already heard arguments from my learned friend Mr Chaskalson that this type of document even if admissible for a limited purpose cannot be used to discredit witnesses who have given direct (20 evidence to the contrary and the final submission that I want to make in this regard is that none of the accused before your lordship are to be held responsible for any of the violence that broke out on the morning of the 3rd, or thereafter in Sharpeville, or indeed elsewhere as previously submitted.

My learned leader Mr Chaskalson will take over.

MR CHASKALSON: May it please your lordship. I want to go back to volume 1 of the "betoog" to complete the portions of volume 1 which have not yet been dealt with in argument. (30

ASSESSOR / ..

ASSESSOR: Page number, please?

MR CHASKALSON: I shall start at page 63.

COURT: And the subject is?

MR CHASKALSON: It is paragraph 10, I shall begin at paragraph - I will be dealing with three subjects, m'lord. I shall be dealing first of all with the state's argument on the November stay-away; I shall be dealing with the state's argument in regard to the two phases of protest and challenge and I also intend to address your lordship on education.

COURT: You start at page?

(10)

MR CHASKALSON: Page 63 of the "betoog". It is where the state makes this submission and says:

"Hierdie argument word verder versterk deur die feit dat n wegbly- en protesaksie deur die samesweerdere georganiseer was vir 5/6 November 1984. Die getuienis bewys dat werkers en skoliere grootskaals hieraan deelgeneem het en dat hierdie protesaksie uitgeloop het op geweldpleging. Weer eens was geslaag om die massas hierby te betrek."

Now the state does not refer to the evidence relied on in (20 evidence relied on in support of this proposition. Now it appears to us that in the - that direct evidence concerning the November stay-away has been given by only three state witnesses. Certainly in the sections of the "betoog" dealing with what were originally the 31 areas we noticed only three references to people who gave direct evidence about this. First in volume 122 at page 6 099 line 18 to 6 100 line 9 evidence was given by a Warrant Officer Nkozi who was a security policeman who lives in Kwe-Thema. He produced a document which was EXHIBIT ABA.64 and that document was (30

handed / ..

handed in in evidence. The document does not say by whom it was issued. It does not on the face of it give any indication as to the organisation, group, individual or individuals on whose behalf it has been prepared and distributed. So it was really an anonymous pamphlet not issued in the name of the UDF or of any other organisation. Warrant Officer Nkozi described himself having seen people hiding in the veld near a bus stop who used sjamboks he said to chase people who wanted to catch buses in the morning. He did not identify who the sjambok-wielders were, he did not say how many people were (10 prevented from catching buses; he did not say how effective the stay-away was in his area and his evidence does not link the UDF or any other organisation to the events which he described. The second witness who discussed the stay-away was Warrant Officer du Toit of Atteridgeville and his evidence your lordship will find at volume 98, page 4 812 line 18 to 4 813 line 22. I am going to return in a different context a little later in our argument to deal with Warrant Officer du Toit's evidence. For a moment I want merely to draw your lordship's attention to the fact that his evidence was to (20 the effect that a group of trade unions had decided to arrange a general stay-away on 5 November 1984. He said that roads were blocked and buses and police vehicles were stoned by youths and he produced a pamphlet, EXHIBIT AAW.10 which he said had been distributed during that week and he identified it as having been found by him on 1 November.

COURT: Just a moment, the reference is W..?

MR CHASKALSON: AAW.10 and he said he found that on 1 November. NOW AAW.10 is a statement in the name of a number of unions supporting a call for a stay-away on 5 and 6 November. As (30 far / ..

far as the incidents which he described, his evidence does not identify the youths who stoned the vehicles and it does not really link the UDF or any other organisation to that event. And the third witness who gave evidence was Warrant Officer Fourie of Daveyton and he produced an EXHIBIT Z.1 Z.1 is a pamphlet which purports to have been issued by a body describing itself as the Transvaal Stay-away Committee. According to Warrant Officer Fourie there was a stay-away at Daveyton on 5 and 6 November..

COURT: When did he find this? (10

MR CHASKALSON: I cannot remember the exact date but it was linked to the November incident. I can perhaps check the record but it is linked to it. And he said that there was a stay-away on 5 and 6 November and he said that he observed - what he described that he saw that there were some people who were being prevented from entering taxi's or buses and he also described having seen youths put up road obstructions. Once again he did not identify the youths. He did not identify, he did not give any evidence to link the UDF or any other organisation to these events. And I am not sure whether I (20 gave your lordship the reference to Warrant Officer Fourie's evidence but it is at volume 121, page 6 071 lines 1 to 26. We are not aware of any other direct evidence led about the stay-away. And the reason probably is that the stay-away is not an overt act raised pertinently in the indictment. The only reference that we can find in the indictment to this incident is at page 9 where it seems to be part of paragraph 4 of the "Aanhangsel" and there in dealing with an executive committee meeting - I think I have given your lordship the wrong reference. I am sorry, m'lord, it is paragraph 9 of (30  
the / ..

the indictment, page 62. I gave your lordship the wrong reference, I have it as page 9 instead of paragraph 9. There after the general preamble linking all the meetings to plan to overthrow the state by violence, there is a reference which reads as follows:

"n Verslag van afgevaardigdes van Transvaal streekraad van UDF ontvang, toegelaat en bekragtig, waarin:

1. UDF se deelname aan n massa wegbly-aksie in Transvaal.."

and another eight incidents are referred to which are not (10 relevant to this part of my argument -

"..genoem is."

So all that the indictment refer to was that a report was made to the national executive at its November meeting by the Transvaal regional council in which the UDF's participation in a stay-away was mentioned. And apart from producing the minutes in which there is a reference to this report and the documents which seem to be relevant here are EXHIBITS J.1 and J.9. Apart from that the state did not appear to lead evidence concerning the stay-away or the UDF's participation (20 in it, direct evidence.

I am going to come back to EXHIBIT J.1 and J.9 shortly, but first as far as accused 19, 20 and 21 were concerned, in November accused nos.19 and 20 were in detention. So they had no personal knowledge of a stay-away though they knew from reports what had happened. Accused no.21 was the only accused person able to give information concerning the stay-away and the UDF's participation in it. Now his evidence your lordship will find in two places, first at volume 300, page 17 043 line 13 to 17 044 line 26. Secondly at volume 295, page 16 563 (30

line / ..

line 16 to 21. And his evidence in those sections of the record is broadly to this effect. I must have given your lordship the wrong reference there. I think I have given your lordship a reference to Mr Lekota's evidence at 295 - I am checking it, but Mr Chikane's evidence at volume 300, page 17 043 to 17 044 and those passages that I have given to your lordship, the effect of his evidence really was this. He says first that the UDF did not organise the stay-away. He indicated that it was organised by a group of organisations some of which were affiliates of the UDF and some of which (10 were not; that the UDF itself took no initiative in regard to the calling of the stay-away, it was not done at its instance. He said that basically the UDF did not attend meetings at which the stay-away was discussed; certainly he did not and he was not aware of that. And he drew attention to EXHIBIT J.9 and here I think I should take your lordship to EXHIBIT J..I told your lordship that I would refer to J.2 and J.9. In EXHIBIT J.9 there is a reference on the second page, it is to some handwritten notes which refers to the fact that - it says "stay-away com. formed, UDF not present". Mr Chikane (20 confirmed that the UDF did not take part in the stay-away committee.

ASSESSOR: At what page of the hand-written notes are this?

MR CHASKALSON: It is the second, it is J.9. There are a number of handwritten notes - do you have J.9?

ASSESSOR: Yes.

MR CHASKALSON: It is the second page of J.9 under "Reports, Transvaal".

ASSESSOR: School boycotts, stay-away committee formed, UDF not present?

(30

MR CHASKALSON / ..



MR CHASKALSON: Yes, that is where he refers, he refers to that note, he confirms the fact that that was - that in fact the UDF had not been party to the organising of that stay-away. His evidence was to the effect that the UDF played a supportive role through asking lawyers to be on standby. He says that the UDF played a supportive role through asking lawyers to be on standby for people who were distributing pamphlets calling for the stay-away. And the other reference which I said..

COURT: What is the rest of this paragraph: mini stay- (10  
away supported by UDF affiliates. Or is that a maxi stay-  
away or a mini stay-away?

MR CHASKALSON: I am not sure that Mr Chikane was questioned about it. In fact his evidence was accepted. What I have said to your lordship was not challenged in cross-examination at all. But there is a reference in EXHIBIT J.1 at page 2 of J.1 where it says:

"Transvaal delegates gave an account of the situation  
Their report included UDF participation in the stay-  
away, the schools boycott, the relationship with trade (20  
unions, Fosatu's call for Black Christmas, the Vaal/  
Soweto rent increases, forced resignation of community  
councils, patterns of detentions."

Now Mr Chikane when he was dealing with the UDF relationship with the stay-away said that all that happened was that it asked lawyers to be on standby for the people who were distributing the pamphlets calling for the stay-away and that the UDF itself took no part in the discussions or in the organisations, and as I have said to your lordship it does not appear to us that the state cross-examined him on this issue at (30

all. It seems to have left his evidence concerning that unchallenged and that being so, there was no need to take it any further and indeed that is understandable that that might be so because the stay-away was never really an issue. It was not an overt act. It enters the proceedings merely as an oblique, well not an oblique but a reference in a report made. It was never part of the state case that the UDF organised the stay-away on such and such a date and that there were certain consequences resulting from that - that was never the state case. It was simply that it reported. (10 on this day about that event and so one can understand why there might not have been any cross-examination on it. If one pieces together some of the other documents, one can find out probably what happened. It seems as if a call for a stay-away was initiated by COSAS. If your lordship looks to document AB.7.2 that emerges. That COSAS approached the unions for their support, that we see in the AB.7.4; that the unions decided to give their support to the proposal, that we see in AB.7; that the stay-away was then organised by an ad hoc committee including COSAS, a number of unions and a number (20 of other organisations which called itself the Transvaal stay-away committee. That is AB.7 document 8. And according to the evidence the UDF as an organisation was not part of the stay-away committee and neither organised nor participated in the planning, nor played any active role in regard to the stay-away. It was only the UDF Transvaal that had any contact with this matter and all that it did was to make arrangements for lawyers to be on standby to assist people who were distributing pamphlets. That being so, the submission which we make to your lordship is that there is no evidence to (30

support / ..

support the proposition advanced in paragraph 10.18.2.3 of the "betoog".

I want then to move to page 66 of the "betoog" and to deal with paragraph 10.18.3.1 where the state makes the submission that from the very beginning it was UDF strategy to conduct the freedom struggle in different phases, that the first phase of the planned strategy was protest and the second phase was challenge and they then go on to deal or make submissions in regard to the challenge phase. Now the first submission which we make to your lordship is that this statement is (10 purely speculative and it proceeds from the position that because the UDF in retrospect characterised its activities as having moved from protest to challenge, it had planned it that way from the beginning. Now there is in fact no evidence to support the proposition that there was such planning, that it was as it were being conceived when the UDF came into existence on 28 August, that it would conduct its struggles in these phases. And your lordship will recollect the evidence, I do not want to go back to it m'lord, I have already dealt with it; how Mr Molefe had explained that (20 the UDF had been formed primarily around the opposition to the constitution in the Koornhof laws; and how its activities certainly in the first year of its existence were directed towards - were centrally concerned with those campaigns, the campaigns concerning the Koornhof laws and the campaigns concerning the constitution. We have not found, and I do not say it is not there, but we have not found that the proposition was ever put crisply to Mr Molefe that there had been as it were a preplanning in two stages. There may be something but we just have not found it. The only person we (30

found / ..

found it having been put to was Mr Chikane where it was rejected by him, and that is at volume 303, page 17 252 line 26 to 17 253 line 14. And indeed if one wants to approach it, the state approach it as we suggest speculatively going backwards, saying that because you said that we have moved from our first stage of protest into our second stage of challenge, therefore you have planned it that way. But if one thinks about the number of factors which influence the decision it becomes apparent - well, let me put it to you differently, that if one thinks of a number of factors (10 which must have influenced the activities of the UDF, it seems highly unlikely that there could have been such precise planning. First of all, how the UDF's activities were developed and how it would develop and what role it would play on society obviously depended on a variety of factors. Initially one can mention a number of them, obvious factors. The success or failure of the campaign against the Koornhof bills; the success or failure of the campaign against the new constitution.

COURT: Could you just pause there? When did the acts (20 regarding the black local authorities come into force? Was not that before August 1983?

MR CHASKALSON: I think it was m'lord, I think it was. That is my recollection.

COURT: So there could be no campaign against black local authorities which could stop that act - that act was a fact.

MR CHASKALSON: No, that is right. I was not thinking of it so much that way m'lord. There were also the very important provision of the Koornhof bills relating to influx control the orderly movement and settlement of black persons. (30

COURT /..

COURT: Yes, now when did they drop that one?

MR CHASKALSON: Quite late. I do not think it was dropped during the period of the indictment.

COURT: So it was just left in abeyance in the meantime?

MR CHASKALSON: Throughout the period of the indictment. If your lordship asks me from my own personal recollection, I think it was dropped in 1986 but I can establish that one way or another.

COURT: Yes no, it is not that important. I also had the impression that that was just moved on from parliamentary (10 to parliamentary session.

MR CHASKALSON: There is, there may be some evidence about it. I will have to look for it. I know a bit about it and I do not want to talk about what may have happened when it is not on the record but there was - the bills were put in, were withdrawn, were changed, were taken back or withdrawn they went through a commission known as the Grosskopf Commission, there was a lot of debate and modification of those proposals over a period of about three years and then they were ultimately withdrawn. And if it becomes important to (20 your lordship I can find the gazettes. Most of these were published in government gazettes.

COURT: No, you will be able to pick it up in current law, they have got a section in there which says which bills are before parliament and which are still in process.

MR CHASKALSON: If it becomes important..

COURT: So it is easy enough, I can do it myself.

MR CHASKALSON: I can always find it but I think that is what happened. They were withdrawn, modified, there was the Grosskopf Commission which was appointed to look into the (30

subject / ..

subject, it was reported; its report was not initially accepted; new proposals came out, it was rejected and changed but that was going on throughout that period of time. But when I talk about the success of the campaign against the Koornhof laws one has to bear in mind that part of the campaign was to get a low poll because when the thrust of the campaign as far as the black local authorities was concerned, was to persuade people to boycott the local authority elections and a great deal of the - we know that the UDF was running a campaign to persuade people to boycott the elec- (10 tions and also to boycott the voting for the tri-cameral parliament. And when talk about the campaigns against the Koornhof laws and the new constitution that was an integral and actually fundamental part of the campaign, and obviously the future of the UDF - if in fact the black local authorities came in with an 80% poll and the constitution received an 80% poll from the constituents the whole core of the UDF's opposition would fall away. It had been brought into existence to show opposition, it would have been a failure. So how it would proceed would obviously depend upon that. A number of other factors would be relevant. How successful or unsuccessful would it be in its attempts to - or how successful or unsuccessful would the affiliates be in their attempts to mobilise membership and increase their status within the community. What sort of relationship would grow up between the affiliates in this loose structure where bodies retained their own independence. What would the response of the state be to the success or failure of the UDF? And what would the response of the UDF be to the state's response? Now these are the dynamics of the situation and we do see (30

these / ..

these things being discussed m'lord, we have referred to them previously and perhaps interminably in some of the documents which keep cropping up and I do not want to go back to that but we see all this being discussed within the UDF structures towards the end of 1984. What is the UDF going to do? Should it become a political organisation, should it remain a front? What type of structures best suit the purposes of the front; what tactics are best to be adopted in the situation which has arisen? All that was under discussion and the issue only becomes formalised in April of 1985 at the meeting of (10 the national general council when the UDF describes itself as having moved from protest to challenge. So really what was happening was a process, that it started off, events developed and in the course of time the UDF had to consider its position and what its tactics should be and at the April 1985 NGC meeting it describes itself as having taken a decision to move from protest to challenge. And I am going to look later to what sort of challenge it had in mind, but one of the documents the state relies upon here, it relies on AAD.5 and AAD.2 and it also relies upon the secretarial report (20 and certain other documents which I am going to take your lordship through. It is in those pages from 66 onwards. Now K1537 AAD.5 is a UDF document, it is an undated document - AAD.5 is an undated document headed "Protest to Challenge"..(recording faulty)..saying what does the NEC mean when it talks about the UDF moving from protest to challenge:

"Some comrades have expressed surprise at the idea that the UDF has ever been a protest movement, but it must be remembered that the UDF was launched as a front to protest against and oppose the new (30 constitution/..

constitution and the Koornhof bills."

Now though that document is not dated we can in fact date it. The reason why can date it is that there is another document AAD.2, and AAD.2 is the UDF Update and by comparing - I think this comparison was made in court at the time, by comparing AAD.2 and AAD.5 and I should tell your lordship that the UDF Update is dated July 1985 so that we know that this document was prepared after the April NGC and before July. We do not know - I assume it was some time before July because the AAD..the UDF Update bears the date July. Now the UDF (10 Update at page 8 has a page called "Viewpoint" which it describes as "Your page. You are welcome to submit letters articles or interviews on any topic of educational value. Viewpoints hopes to encourage discussion across national boundaries in the UDF. Please feel free to contribute" and there we have published under the title "From Protest to Challenge, from Mobilisation to Organisation", and then if your lordship would look in the first paragraph we see:

"The National General Council adopted the above slogan as it seem. What does it mean? This is a summary of (20 a discussion paper which was prepared by the Transvaal Education Committee. The views expressed in this paper are not the official views of the UDF."

So we can now locate both the time of the document and the nature of the document. It is an edited document and there are a number of - if I could stay just for a moment with that document whilst we have it. If your lordship would look under "From Protest to Challenge", we will see the reference to the UDF having been launched as a front, the reference to the campaign against the new constitution and the Koornhof (30

bills / ..



bills and a statement saying:

"We have learnt many lessons from this protest phase of our struggle. That is, that our actions have often been too localised, fragmented and unco-ordinated. The national executive committee's theme takes us a step further. The theme points the way forward to challenging the state on all fronts."

Now if I could pause for a moment. It characterises the activities of the United Democratic Front throughout the period of the - not the whole period of the indictment but (10 really up to April as being primary the protest phase. And it says that the national executive decision points away forward and that is the way to challenge the state on all fronts. So if one would have regard to this document it seems to support the theory that the decision to go over to challenge was taken only at the April NGC.

The other matter of some importance is it refers after saying that the theme points the way forward to challenging the state on all fronts, it refers m'lord, we find this passage: (20

"Where challenge has been spontaneous.."

I am reading from Viewpoint which is on page 8, m'lord. I am not sure whether the court's copy is numbered differently to mine - sometimes the court's copy has a..

COURT: We have got a typed page.

MR CHASKALSON: A typed page 8 of Viewpoint?

COURT: Yes.

MR CHASKALSON: Well, then our pagination is the same. It is in the first column. It says after drawing attention to the - after stating that the national committee's theme (30

takes / ..

takes us a step forward to challenge, it says:

"Where challenge has been spontaneous, it must now be part of coherent strategy and where challenges have limited political contact, it must now aim at fundamentally changing our society."

And it then proceeds from there forward. Now what it is doing, is to contrast the emergency of spontaneous challenges with a coherent strategy of challenge, and it implies that no coherent strategy of challenge had existed before then. And that in fact contradicts the state's assumption of a (10 detailed planning of different phases of the struggle which were being pursued systematically by the UDF. It is also important to link this reference to the spontaneous challenge to the evidence I have previously referred your lordship to which was that one of the matters which was of concern at the NGC was the lack of discipline and the fact that the need to bring the people, to try to bring people who had been engaged in spontaneous actions, spontaneous undisciplined actions, to bring them within organisations which would be affiliated to the UDF and through those organisations hope-(20 fully, that those organisations might be able to exercise some discipline on such persons and as Mr Lekota put it, and I gave your lordship the references previously; I do not want to go back to that, the sporadic violence and the danger the people were experiencing, of people being injured as a result of violent action could then be minimised. If people would subject themselves to disciplined organisations they would not have the type of experience which was taking place where spontaneous undisciplined, uncontrolled, undirected activity was taking place which spilled over into violence.(30

And / ..

And I have also referred your lordship to the fact that the evidence is that at the NGC meeting of April 1985 the type of challenge which was decided upon and which was under discussion was non-violent direct action and that the concern was as I have said, to take people out of a situation in which spontaneous undirected violence was taking place in different parts of the country. Now the fact that one can talk about non-violent forms of challenge, apart from the evidence actually given to your lordship really appears from one of the documents which the state itself cites and re- (10 lies upon. At page 68 of the "betoog", where it begins your lordship will see at page 68 that the passage is cited out of EXHIBIT T.2. It talks about challenging the legitimacy of the BLA's and CC's. It points to the fact that the UDF and its affiliates had succeeded in calling for an effective boycott of the BLA's and community councillors: "The next phase of the campaign is to challenge the support and therefore legitimacy of each councillor in each ward. The secretariat is putting together information in relating to the number of councillors, wards and people who voted for (20 wards in each township. Once that has been done, affiliates will go on a signature campaign to prove that those councillors are unpopular and therefore unrepresentative of the residents on the basis of the concrete support shown in the signature form, affiliates will call for the resignation of those serving in the black local authorities and community councils. The challenge to the UDF and its affiliates is to provide an alternative to these structures. We need to develop a common understanding of this alternative and it proceeds as follows". Now that is an extract from a report (30

of January 1984 and the type of challenge that is being talked about there is a signature campaign to prove the lack of representivity of the councillors. So the use of the word "challenge" does not necessarily connote violence.

The state then proceeds at pages 70 to 77 of the "betoog" to develop an argument that the concept of people's power became official UDF policy at the NGC meeting of April of 1985. And it relies there primarily on three documents, C.102, which is the Protest to Challenge booklet; C.106, which is the amalgam of typing and handwritten notes which (10 the state contends was Kernick and Slovo's keynote address, and AAA.10 which are the minutes of the national general council. Now if I could deal with them in a somewhat different order to the one the state deals with them, I would prefer to deal with them chronologically. If we look at C.102, that is the secretarial report and the state refers to page 3 of the secretarial report. Maybe not page 3 of the secretarial report but page 3 of the document. I think that it must be - yes, it is that. It is page 3 of the document under the heading "Introduction". It is the first page of (20 the secretarial report. I am sorry, I gave it to your lordship wrongly, it is C.102; the secretarial report should be the third page of that bundle and I think it must be page 1.

ASSESSOR: It is not the third page.

MR CHASKALSON: Oh well, then I do not know what the reference is on page 3.

COURT: Are you dealing with the first page of the secretarial report?

MR CHASKALSON: I want to deal with the first page of the secretarial report.

(30

COURT: Yes well, we have got that.

MR CHASKALSON: Yes. And it says: The national general council takes phase after we have just completed the first phase of our campaign against the so-called new dispensation in particular and apartheid as a whole:

"Although we were successful in mobilising the masses to reject the government's schemes, the Nationalists are going ahead with the tri-cameral and black local authorities scheme. This means that our broad front must move to the second phase of challenging this new (10 dispensation because it has no democratic approval of the people."

So what we see here is a statement that we must move to - which implies that we are not yet in the second phase of challenging this new dispensation. And the challenge to the dispensation is to say that we challenge it because it has no democratic approval of the people. And it is then said that that is why the theme "Protest to Challenge, Mobilisation to Organisation" is relevant. And it refers to the context in which the NGC is meeting, to state oppres- (20 sion, to detention, to treason charges and to the bombing of homes of activists; and to a determination on the part of the state to destroy the front. Now since almost all - let me say by far the overwhelming part of the violence upon which the state relies in this case, I think there were still some acts of violence after April; but the great bulk of the allegations concern the period before April 1985. The fact that the move was only - that violence occurred if I may put it that way during the period of protest, so the state's thesis that challenge was to be violent challenge (30

does / ..

does not really derive any support from what it subsequently says: well, look at all the acts of violence that are committed around the country. What we are saying to your lordship is this, that the violence occurred as a backdrop to everything, violence was there, we know it was there. It has not in our submission been linked to the UDF; it has not been shown to be part of its policy; it has not been shown to be something for which it was responsible, and since the move was only going to be interchallenged there can be no connection drawn between the change of policy if I might put it (10 that way from protest to challenge which occurred in April 1985 to the violence which had been occurring around the country. The second document which they rely on is AAA.10 and at page 3 under sub-paragraph (a) in the discussion of the secretarial report we see that what is noted was clarification was sought on (a), whether late responses to rapid intensification of mass struggles displayed a weakness within the UDF. This is referred to the commission on the organisational aspects of the front. Now clearly what..

COURT: You are at what page? (20

MR CHASKALSON: Page 3 of AAA.10.

COURT: Where the secretarial report is discussed?

MR CHASKALSON: Yes, under sub-paragraph (a) - 1.4(a). Now this talks about a late response to the rapid intensification of mass struggles which in fact is quite strong corroboration of the evidence given to your lordship that none of that violence was UDF initiated. It also ties in with what Mr Lekota says was talked about at the meeting and that is the need to discipline and the concern for discipline and if one were to turn then to 2.3 on page 5 of the minutes, under (30

2.2.3 there are a number of items discussed but the very last item which was recorded was a code of conduct can ensure discipline and build greater maturity and comradeship. So again we find here in the document relied upon by the state support for the evidence which was in fact given to your lordship by Mr Lekota to which I have previously referred.

If I could move away from that to 10.18.4.3 on page 71. I should really read it in conjunction with 10.18.4.2 on the previous page where the state contends that the concept of ungovernability had already manifested itself at the (10 youth rally in July 1984 at which Seppy Kekana spoke and I have already dealt with Seppy Kekana's speech and I do not have anything to add to it, but what the state seeks to do is to link the Kekana speech of July 1984 with the document CA.45 which it discusses at the top of page 71 in paragraph 10.18.4.3.

ASSESSOR: CA..?

MR CHASKALSON: CA.45, and the passage which they underline is:

"Let us all unite in our schools and become uncontrol-(20 lable and ungovernable, let us call meetings in our schools to show this government that we shall not obey the order on us."

The order on them is not clear but it seems to be a reference back to a banning of COSAS or the possible banning of COSAS because he says - alright I think I should give your lordship the whole document. I think there is a reference to the banning in CA.45.

COURT: They have now banned all meetings until 31 March 1986.

(30

MR CHASKALSON /..

MR CHASKALSON: And the next sentence says:

"This we see as another attempt by the government to crush this student movement and in fact they are banning our organisation COSAS."

And I am not sure that one has to - it seems to be, when they say: "We shall not obey the order on us", it seems to be a reference back to that, but it is difficult to tell but I cannot think of another construction. It seems as if there must have been - when they say "they are banning our organisation COSAS", there must have been some talk of banning (10 COSAS at that stage. That is all one can assume but we have to speculate and the reason why we have to speculate is that we really had no evidence of any significance concerning this document. The document was put in through a witness called Khayi, at volume 416, page 24 381 line 30 to 24 383 line 21. Now according to the evidence given by that witness the document was received by him, he got that document at a conference of the Eastern Cape - I think it is the coastal region of COSAS but I may be wrong, but he attended an Eastern Cape conference of COSAS. He attended it on 17-19 June (20 1985 and there was no evidence of any discussion of the contents of the documents or of any decision having been taken regarding that document or any decision to implement anything which might have appeared in that document. So the matter is left very much in the air. What it seems to be saying in part at any rate is let us refuse to obey the order of the government, let us refuse to obey any order that the government may make upon us to ban our organisation; let us unite in our schools and become uncontrollable and ungovernable. So he is talking about doing something in (30 the / ..



the event of something happening. The first part, well the first relevant fact is that the dates of this incident is 17-19 June 1985. That is what was put I believe to the witness from other documents. Now that is at the very end of the period of the indictment. Certainly beyond the indictment as originally framed and I think that there may have been one or two areas in which the period of time was extended beyond April 1985. All the accused were in custody at that time. There has been no attempt made by the state to link this particular document to any behaviour of COSAS or any (10 individual COSAS member or indeed to relate this document to any overt act charged in the indictment. The message on the face of it purports to - the signature to the document is the signature of a person who purports to be an organiser employed by the Eastern Cape regional executive committee. I am not sure whether we had any evidence at all about such a person, whether he is a conspirator, an alleged conspirator. I am not sure whether the document is receivable for any purpose other than that. It was something which was handed out at a meeting in June of 1985. There is certainly no (20 evidence that CA.45 was adopted or reflects the general policy of COSAS at that time. At the most it might give an indication of the attitude of the Eastern Cape regional executive. But since no evidence was given of any decision either by the COSAS Eastern Cape region either to adopt the document or to implement it in whole or in part, and since it really falls beyond the indictment, it is of very little, if any, evidential value.

I want to move from there to deal with the next document which the state discusses. It discusses it in paragraph (30

10.18.4.4. It is an extract from an article which appeared in Isizwe of March 1986.

COURT: Haven't we dealt with this before? This is 10.18.4.4?

MR CHASKALSON: Yes.

COURT: Yes well, it is in my other book but I have got a note that you have referred to it already, but I do not know exactly in what context.

MR CHASKALSON: I am also not sure, m'lord.

COURT: I haven't got my book here.

MR CHASKALSON: I am not sure myself. I may have referred (10 to it in the context of saying that it was not - that there was a statement in that document recording that it was not the official views of the United Democratic Front. At page 2 of the document it says:

"The views expressed in these pages are not the official views of the UDF or any section of the front, they are designed to encourage discussion, debate and education amongst comrades."

So I may have referred to it in the context of it having not been put out as an official UDF policy statement. But I (20 do not think I have dealt with its contents and I think I should deal briefly with that, but I do notice that - I do not know whether my watch is running fast or not.

COURT: Yes, but we are going overtime.

MR CHASKALSON: Oh, good.

COURT: We are catching up on Mr Bizos' credit.

MR CHASKALSON: I am happy to continue. Will your lordship then tell me when you wish me to stop?

COURT: We will go on until quarter past.

MR CHASKALSON: Quarter past, right. I have drawn your (30

lordship's/..

lordship's attention to the fact that the document itself indicates that it does not purport to set out the official views of the UDF, but if one examines the document in its context one sees first of all that when it talks about the struggle in the schools and the talk of control over education, what does it give as examples? It says in some places they have begun to exert real control over the appointment and dismissals of teachers. Well, I think that is something I think your lordship knows white schools have already. They talk about the "gains we have made, we have won often with (10 our own blood". Well, that is a clear reference to the protest action during which people had been shot. It is referring back to the fact that the state has responded to the struggle but in the course of it people have lost their lives.. Then we see a reference, I think it is in the next passage and I may have to take that in its own context, there is a reference to the fact that something important has begin to happen and I shall just find that for your lordship; I have it marked up. I seem to have lost my note on it but I can find it for your lordship, but the point I want to (20 make in regard to that is that it is talking about something which has happened recently, something which has begin to happen. It is doing so at a time in 1986 so this is outside the period of the indictment and at a time when all the accused were already in custody. It is March of 1986. So we are dealing with comparatively - well, let me put it to your lordship differently. We are dealing with something which has happened relatively recently in the context of this document and that in fact has not been investigated at all in this case. We have not really investigated what has (30 happened / ..

happened during the period mid 1985 to mid 1986. And so, exactly what happened and how it happened is not the subject matter of this case and we do not really know what it is referring to. It contains a descriptive account of the collapse of the community council system. It is not clear to me what the state seeks to derive from this. If it contends that in some way this article does not reflect the views of the UDF but as a matter for discussion is in some way approving of what has happened, can I make the simple submission to your lordship that there is - our law does not recognise (10 the doctrine of criminal responsibility by ratification, so if it is seeking in some way to say that because there is reference here to the destruction of "councils and the like, that in some way that approves or indicates approval of what has happened. It is something which is outside the period of the indictment and about which we know very little. We see also the passage cited at page 72, the reference to street committees emerging. Once again street committees is not a part of this indictment. We have not investigated the street committees or what they were; nothing in that (20 document to suggest that the street committees were in any way committed to violence and the document itself also seems to be saying that people must prepare themselves for the future and the sort of preparation that they are called upon to undertake is to acquire skills which would be useful in the future. If you look at the page numbered 3 in print at the top of the page:

"Even in the present we must start to build the beginnings of our future society, developing.."

COURT: I am sorry, Mr Chaskalson, do you have a page (30  
numbered / ..

numbered 3?

MR CHASKALSON: I have a page with a typed, printed 3 on it.

COURT: Our document starts at page 4, it seems. We have not got the original here it seems. We will look for it.

ASSESSOR: The only pages referred to were pages 4, 5 and 6.

MR CHASKALSON: I understood m'lord, I was told apparently only three or four pages were put before your lordship but Mr Marcus called for the document and was given the document and apparently.. did your lordship not have the page which (10 says: "The views expressed in these papers are not the official views of the UDF or any section of the Front"?

COURT: I do not know, what page is that?

MR CHASKALSON: It is the second page of my document.

COURT: We have got page 4, 5, 6 and 7 of this document. That is all that is an exhibit before this court, plus the note that it is volume 1, no.2 of Isizwe of March 1986.

MR CHASKALSON: Well, I have been handed a document..

COURT: Then you are lucky, Mr Chaskalson.

MR CHASKALSON: .. which calls itself CA.38. (20

COURT: It may be that I have got the original which is much - has a wider scope than this one that I have before me.

MR CHASKALSON: Yes well, I do not know, I was not aware of that until your lordship mentioned this to me. This has been the document, this has been in my papers.

MNR JACOBS: Mag ek net miskien help hierso. Toe die dokument ingehandig is, was daar aanvanklik net bladsye ingehandig maar die hof het gevra dat die hele dokument ingaan. Ons het die oorspronklike ..

HOF: So is die oorspronklike by my oorspronklike (30  
dokumente/..

dokumente?

MNR JACOBS: Dit is by die hof ingehandig die betrokke dag, die hele dokument, die gehele dokument.

HOF: Dankie. Well, then we will look for the original. It must be among the original documents.

MR CHASKALSON: It is important m'lord, because the second page - what was handed in originally did not reflect the fact that this was an extract from a document which records that the views expressed in these papers are not the official views of the UDF or any section of the Front. "They are (10 designed to encourage discussion, debate and education among comrades". That won't be with the document your lordship has been working off. Your lordship also won't have a passage I am about to draw attention to which deals with building people's power which talks at page 3 of this document - it says:

"Even in the present we must start to build the beginnings of our future society. Developing people's power now will help to ensure the fullest growth of our society in a South Africa free of apartheid. If P W (20 Botha's government collapse tomorrow, would our people be able to run the machinery of an advanced industrial society? Would women be sure of an end to their three-fold impression as workers, as suppressed blacks and as household slaves. Building people's power is a training ground, a school for the future. People need to know that even after apartheid they will be their own liberators, the confidence and many of the skills must be gained now, not in the distant future."

So the context shows that what is being written about is (30

to / ..

to prepare yourself for the future by acquiring the skills which are going to be needed in the future if there is to be a new society. And your lordship will see that there is a reference to the building of power through trade unions, that at page 8 there is a condemnation of the militant youths and others who have taken up the initiative and set up independent people's courts. It says while the idea behind that was possibly well intended the results have often been negative and it criticises ..

COURT: Could you have that document photostated so that (10 we have a copy?

MR CHASKALSON: We will ask for it to be done.

COURT: If you give it to my registrar he can do the photostating.

MR CHASKALSON: Yes. In any event I will arrange for that to be done, but all I want to put to your lordship is that in the context of the document as a whole one must see the passage which has been cited by the state as something which emerges some time after the event. It is talking about preparation for the future, it is talking about recent events (20 and it seems to be not focussed on anything relevant to this case. It does talk in the context of what has happened in the past about the first street committee which emerged in Cračock in 1980, but I do not think we have had - we have had some evidence I think, from Mrs Skweyiya about that. But clearly the evidence shows it to be non-violent and there is nothing in the article which contradicts that. Then the state refers to two further documents, CA.1 which is again a November 1986..

COURT: You are on the "betoog" at page..?

(30

MR CHASKALSON / ..

MR CHASKALSON: At page 73. It is a UDF Update of November 1986. It says:

"In 1985 and 1986 (the state cites this) saw the government declaring open war against our people. The people's answer is clear, recognising the dismantling of apartheid and the genuine transfer of power to the people has become a historic necessity, the people have declared their own war."

First of all it is something which appears in November of 1986, so it is presumably referring to a response to the (10 events of 1985 and 1986 which is outside of this indictment. It is not clear what is meant by the fact that the "people have declared their own war", but if one looks at the document as a whole one will see that what is referred to in the document is rent boycotts, consumer boycotts and stay-aways, all of which are non-violent. The article itself begins with an introduction which indicates that the growth of the UDF and the success of the UDF has been at a level far in excess, well, let me put it this way, the level of success few envisaged three years ago. It says that the mass action has(20 completely wrecked the government's plans and has thrown the Nationalists into a crisis of enormous proportions and then it starts examining - it starts examining what achievements have been and then it has a second section on which it analyses the situation and indeed its heading says: "Here we assess our achievements and analyse the current situation to point the way forward". Now there seems to be nothing in the history of achievements which suggests that the achievement was procured through violence. In fact defeating the new deal is described as how - it is described as (30 something / ..



something which happened in the first year of existence of the UDF and how the affiliates campaign tirelessly against the black local authorities and the tri-cameral elections, that the result was that 90% of eligible votes boycotted the black local authority elections and in the following year 84% of Indian, Coloured votes boycotted the tri-cameral elections, by refusing to participate in the apartheid elections the majority of our people indicated decisively that they rejected the new deal, were opposed to any form of government imposed bodies and would be satisfied with (10 nothing less than majority rule.

Then there is a reference to the collapse of bodies and it is traced to the raising of rents, the state draws attention - if one turns to page 74, if one sees the passage cited by the state one will see that it cites it in numbers of page 74.1, 2, 3, 4 - that is not how it appears in the document. Those are actually extracts taken by the state from the document and it has numbered them itself. What it calls paragraph 1 I have read to your lordship. In paragraph 2 it begin paragraph 2 by referring to the uprising in the Vaal (20 triangle, but it leaves out everything that preceded that. And what they said there is in fact that the councillors raised rents and service charges but did nothing to improve living conditions despite their election promises, and that becomes an important component of the collapse of the local authorities and they draw attention to the campaign against the authorities through rent boycotts which is cited by the state. Then the next passage which is called "increasing apartheid activity", is really some time further forward. It leaves out some paragraphs which have gone in between, it leaves out (30 the / ..

the section dealing with the bantustan structures, it seems to leave out the section dealing with the building of organisations and the movement away from mainly youth led resistance to the involvement of all sections of the society. It does include - it has that one on the movement away from the youth led resistance and it then goes on to deal with the section of building national unity and it draws attention to creative strategies such as consumer boycotts which spread regionally and nationally in mid 1985. There is a reference to a November 1984 stay-away, something is left out at that (10 stage and then they continue with the historical review of education in 1984 and 1985, marking the growth of COSAS. Then they leave things out and they move to the section which is headed "From ungovernability to people's power" and there is talk about election of civic and youth organisations who have elected people to take control of local administration. All of this is something which has happened after the period of the indictment and about which we know really nothing at all, and as such is not really relevant to this case. We do not know in terms of - we cannot face it really to (20 anything which was part of any defined policy which was agreed or accepted during the period of the indictment and we do not know exactly how it developed, what methods were precisely used or how it can in any way reflect upon the position of the accused who have been in custody since April at the latest of 1985 and many of them for much longer than that.

It draws attention to the fact that - how undisciplined elements, that is at the top of page 76, how undisciplined elements should be brought under the control of the people. And then it continues in paragraph 6 and it has now moved (30

quite / ..

quite a long way away from the text in the sense that passages have now been taken out under an entirely different section because 7 is put to your lordship as a recording of an achievement of the UDF and it is put that way in argument. It was said to your lordship that they list their successes, it is all put forward as successes in the UDF but in fact if one looks at the context of that paragraph which refers to the ANC and to some of it that goes before it, we see that it is part of an analysis of a political situation in the country at that time, and it is the second part of the article which(10 deals with the analysis of the political situation and is in no way put forward as some form of achievement or as a success of the UDF. So what it in fact is, is an analysis of the then current situation of which that is one component and linking paragraph 7 to immediately what goes before could create an incorrect impression on the reader.

COURT: We take the adjournment now. You are in debit of 10 minutes.

THE COURT ADJOURNS FOR LUNCH.

## **DELMAS TREASON TRIAL 1985-1989**

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