guilty of?

COURT: Why is it set out he attended the meeting of 25 August 1984 in zone 13 where he took the minutes? That could have been left out as well. One can leave out everything.

MR BIZOS: No but my lord one assumes ...

COURT: One sets out all facts to give a full picture of this man and his activities so that in the end you can draw a conclusion. If you take each fact on its own you can tackle each fact on its own and you get a totally distorted picture. That has been set out in the judgment. That is the correct approach and if that approach is wrong well then everything is wrong. Good luck to you Mr Bizos.

MR BIZOS: Well thank you my lord. What we really want is leave to test whether our submissions are correctly founded or not. Luck may play a part in it but we would really like an opportunity of advancing reasoned argument. All these matters that your lordship has set out, with respect, relate to ordinary political activity and political beliefs. Then we submit that the statement at page 919 at the top, that had Raditsela been there he could not have done it better himself, for the reasons that we have set out as to the person who called for the march, that that axiom, with the greatest respect, is not well founded on the facts. The second paragraph on page 919, the fact that accused no. 10 asked accused no. 5 to explain what happened at the meeting, we submit that no sinister inference can be drawn from that. It is not unusual for the chairman or co-chairman or a helper of the chairman to ask the proposer of a motion to explain questions that are asked in relation to it. We submit that the middle paragraph of page 919 shows a contrast in your lordship's

approach./....

approach. Where a young man is charged with having been, is actually charged with having participated in a gruesome murder and the only evidence of his being in the vicinity, albeit as an innocent spectator by one most unsatisfactory witness and where that evidence cannot be relied upon because the witness is unreliable we may persuade the appellate division that he was actually deliberately untruthful. We submit that the way your lordship fails to make a finding on it, despite the fact that the accused made a, gave evidence, or even to find that his denial could reasonably be true in order to exculpate (10) him from this terrible allegation shows with the greatest respect lack of generosity on the facts of the case. Then at page 919 your lordship relies on the documents that were found in the possession of accused no. 5 in order to attribute knowledge and motive to him. Now what we want to say, this is taken up at page 919 and goes on to page 921. Mr Malindi, accused no. 5, admitted that he had these documents in his possession. He was not cross-examined on them. It was not put to him whether he had read them. He was not asked when he had received them, whether he had just put them aside (20) or whether he read the particular article which was published more than a year before, whether he remembered it or what effect that he had to it, whether he agreed with it or did not agree with it and it forms a very important part of your lordship's judgment on the final question, and the question is whether mere possession of a document is to be used in the absence of cross-examination on it. Your lordship does not know what his answers would have been, whether they would have been satisfactory or not and in our respectful submission this would be a misdirection, if we are correct in our submission. (30)

It also was not investigated whether these were the only documents that were in his house. One does not know how many others there were, what magazines there were, what newspapers there were.

COURT: Why did you not lead evidence on it? The state put this document in by way of an admission. So it was before the court in the same way as if a witness had proved the document and handed it in. It was handed in for a purpose, not for nothing. It was up to the accused then to explain the document. If it was innocious(?) it is innocious. But if it is not innocious he had to explain it. Why did he not? And why should there be cross-examination if there is no explanation?

MR BIZOS: Yes but my lord, with the greatest respect your lordship is putting an onus on the accused ...

COURT: There is no onus on the accused. It is common sense. Something is put before court which is against him prima facie.

MR BIZOS: Why is it against him my lord? Why on this indictment was it against him? Why on this indictment what SASPU wrote is against him?

COURT: Well Mr Bizos that is another point. You are now dealing with the indictment. We are not dealing with the indictment, we are on the supposition that it is covered, that the finding is covered by the indictment this is against him.

MR BIZOS: Yes but ...

COURT: So do not evade the point. The point is if the indictment covers the eventual finding why did you not deal with this fact?

MR BIZOS: Because in my ...

COURT: Why blame the court if the court makes deductions from facts which you do not deal with?

MR BIZOS: A document is put in and if I remember correctly your lordship, finishing my sentence in relation to a submission that I had to make about documents his lordship told me that I do not require to refer your lordship to any authority because your lordship had the Khoran. Now presumably there can be, in anybody's house, newspapers over the years found and produced. Attention is not drawn in the particulars or at the application for a discharge or at any other stage that any use is going to be made in relation to these documents.

COURT: At the application for the discharge attention was drawn to these documents in the sense that I wanted clarity whose documents were these, the brother's or his. (10)

MR BIZOS: Yes.

COURT: So it is not a question that the documents were forgotten.

MR BIZOS: No the contents of the documents we are talking about my lord. An inference to be drawn against an accused person on a document found in his possession, it is for the party in our respectful submission that is seeking to draw that adverse inference to put that adverse inference to that witness and it is not for the counsel of that witness to sift through every document that was found in his possession and put in by the state to try and explain what effect that particular thing had on his mind. We submit that our submission is correct. If your lordship's view of the law is different then we would submit that this is yet another reason why we should be given an opportunity to test the correctness of your lordship's view by arguing the matter in the appellate division. There is no cross-examination in relation to Soweto which your lordship relies on, put to him, (20) (30)

C.1582

and your lordship relies on it on page 922. Then your lordship's finding on the basis that coercion was a necessary element of the stayaway was not put to him and in the absence of these matters being put to him and heavily relied on by your lordship on page 323 and 324, 924 I am sorry, 923 and 924, we submit with respect that the finding is not warranted. As I indicated to your lordship we could do the same in relation to the other accused that have been convicted. The time required for this is not available but I want to make this submission ... (10)

COURT: Just a moment. Let us now get clarity. What does that mean, does that mean that you want time to do it in respect of each and every accused. Then I will hear the matter in August. It is your choice Mr Bizos, but do not take the point in the appellate division. If you want to take the point take it now and I will hear the matter in August. It is your choice.

MR BIZOS: That sort of Hobson's choice ...

COURT: No it is not Hobson's choice Mr Bizos. It is now 10h35. We sat until 18h45 last night to accommodate you. (20) We started at 09h00 this morning to accommodate you and if you need more time I will accommodate you but there are other interests also that have to be accommodated, not only Mr Bizos.

MR BIZOS: I would like my lord to ...

COURT: So I would just like to know exactly where I stand. You have now alluded to this question. We do not have time, we are not ready etcetera. Let us know where we stand.

MR BIZOS: I would like to believe that I am asking your for accommodation for the benefit of presentation of the accused's case and not for my personal benefit. But be that as it may (30)

what I was about to tell your lordship was this that if accused no. 5 is entitled to leave to appeal by parity of reasoning so are the others. As the case, or I can put it the other way, if your lordship finds for one or other reason that the case has to go to the appellate division in any event then that would be a factor to be taken into consideration in granting leave, even though your lordship may be of the view that not adequate grounds may exist and that this may be a borderline case as to whether leave should be granted or not to these particular accused. The choice that your (10) lordship gives me is that it would be unfair on everybody concerned, and more particularly the persons whom we hope to get some relief for from the ...

COURT: I asked you yesterday how much time you needed. You said three quarters of an hour. The time, double that time has now been spent.

MR BIZOS: Well does your lordship really believe that I wasted your lordship's time this morning my lord?

COURT: I believe that you were repetitive in some instances and I believe that you mentioned a lot of trivial matters (20) which you could have left out. That is what I believe.

MR BIZOS: Well that is your lordship's view but as counsel for the accused I must be credited in knowing what I submit are proper submissions to make on their behalf. But be that as it may on the choice that your lordship has given me I would rest the application for the Vaal accused on what I have said up to now.

COURT: Now there is one aspect I want to ask you. This document handed in, "Questions of Law to be Reserved in relation to the Vaal Case", where does that come in? (30)

MR BIZOS:/.....

MR BIZOS: It was handed in yesterday and I told your lordship that insofar as it had to be argued it would be argued by my learned friend Mr Chaskalson.

COURT: Yes but this is not part of the alleged irregularities or special entries?

MR BIZOS: No my lord, yesterday I alluded to it and my learned friend handed it in and told your lordship that there were questions of law. Not special ...

COURT: Now who is to argue it?

MR BIZOS: It was made clear yesterday that if it was to be argued that it would be Mr Chaskalson.

COURT: Yes well then we will leave it to him.

MR BIZOS: As your lordship pleases. There is just one other aspect of the question of sentence that your lordship mentioned. The, we have looked at the cases in relation to the conditions. I do not want to argue it at length before your lordship or refer your lordship to the cases but it would appear that there is a distinction between imposing a condition , preventing a person from committing a crime, which are clearly conditions provided they are clearly expressed there is no objection to. There are other conditions compelling persons to do some good. Either to themselves or others in relation to the events but conditions to forebear from doing lawful acts we have not been able to find and I must argue it from general principles. Let us assume that a father assaulted his child. It would be a proper condition to say well that you are not ...

COURT: May I just pose a problem that I have. In case you succeed on this point would the state not be entitled to say well then the initial sentence should be imposed and that

is that they should go to jail?

MR BIZOS: No my lord. Not, with respect. Your lordship made a judgment and your lordship ...

COURT: I made it clear that in my view they should actually go to jail. I was lenient because I wanted them back with their families and I laid down certain conditions to keep them out of mischief in those fields where normally they might be tempted to mischief. That is all. Now you attack the conditions. But in fact I tried to help the accused.

MR BIZOS: This is really the fundamental difference of approach, that your lordship considers political activity mischief. (10)

COURT: No Mr Bizos, definitely not. If you read the judgment you will see otherwise.

MR BIZOS: No this is what the judgment says. But what your lordship has just said ...

COURT: That is not what I intend to say Mr Bizos. Not political activity is mischief. In the political activity they come to mischief.

MR BIZOS: Yes. What we are saying is that because of the novelty of the conditions we would like an opportunity of arguing it and the other point that I want to make is that what the appellate division's view may be, even if everything else fails in relation to accused no. 5, that I can understand, with respect, that your lordship would want to give effect to the fact that accused no. 5 had a previous conviction. And let us assume that I was incorrect in the submission that it is of a different character. To serve, to be distinguished and to have to serve a period of five years imprisonment because of a conviction some eight years, (20) (30)

seven years earlier may be considered a sentence which is in disparity with the sentences imposed on the others. And the appellate division may come to no. 5's assistance in that regard. Finally I am not unaware of your lordship's desire to send to the appellate division 40 000 pages of record and documents. But if the case is going to go there anyway, and because on what I may call the main thesis of the indictment your lordship has made a finding against the state that actual violence not advocated it is possible to trim the record substantially and it must bear upon the, the responsibility must be taken for those who prepare the record to see to it that that is done. Thank you my lord, I have nothing more to say.

COURT: Yes Mr Chaskalson?

MR CHASKALSON: May it please your lordship, I shall put the points as tersely as I can. If your lordship would, the first point really relates to the form of the indictment. It is a matter I think which we have argued before in relation to whether the state ties itself to conspiracy 1, it can seek to achieve a conviction on conspiracy 2 even if the facts may reveal a different conspiracy. I think I gave your lordship authorities at the time. I do not want to repeat that.

COURT: Yes, is that the point that is made?

MR CHASKALSON: It is really the point. If your lordship would have regard to page 979 of the document your lordship will see there the finding in relation to one of the accused. I think it is accused no. 15. We have found that the leadership of the VCA was bent on the demise of the Black Local Authority. Its methods included mass action, accepted that violence was an inevitable and necessary component. No. 15's action and

his position of VCA leads to the inevitable conclusion that he made common cause with the others, endorsed their action. Well knowing the possible violent component of what they were doing. The fact that this was a minor role may be taken into account when a suitable sentence is determined. So in effect what the accused were charged with was a nationwise conspiracy to overthrow the state. I might call it the UDF conspiracy. Your lordship acquits them on that but finds a different conspiracy, a VCA conspiracy. Now that is an entirely different self standing conspiracy with different goals, different membership and different purposes. Our submission, very tersely, is that that is not covered by the indictment. The second point is really again on the indictment ...

COURT: This is now point 1 with all its sub-paragraphs?

MR CHASKALSON: All its sub-points. It was an attempt to formulate it as a question of law that way. The second point is the question again where the state gives particulars, basically the particulars given by the state were that apart from the broader particularity if one assumes that they could have been charged on the, what I might call the narrower conspiracy because if the first point is good that is the end of the matter. But if one assumes they could be charged on the narrower conspiracy, they were actually charged with going out and committing specific acts of violence. It was not really the charge that they foresaw that the stayaway would be enforced by coercion and that the march would lead to violent confrontation with the police. In other words the particulars of violence for the purposes of the terrorism charge were entirely different particulars and what they

have been convicted is of particulars which were not the subject of the charge. That too is putting it very tersely. The third point I need to refer your lordship to the act. Again it arises from the form of the judgment because the judgment is based on this question of, that they foresaw the confrontation with the police and so on. The key section is 54(ii) because I think 54(iv) refers back to this:

"Performs any act which is aimed at causing ...
or contributing to such act or ..."

Well let me read it: (10)

"Performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence or attempts, consents or takes any step to perform such act."

And (iv) is the incitement. Now the submission we would want to make here, that as far as terrorism is concerned within the context of the crime of terrorism that, if I might put it the "change", just in inverted commas, that violence is the medium. In other words people should be terrorised by the violence to change, not that violence, in other words that (20) you should aim at violence to cause the change. Not that you should aim to cause the change by means which violence is not the primary part of but violence might be foreseen as a consequence of. In other words your goal is not violence, your goal is something else. It may be some other offence ...

COURT: Just a moment now. I have not got the section here. Is not the first part of the section, the introductory portion of section 54(1), does that not say if you have certain aims?

MR CHASKALSON: Certain intent.

COURT: Certain intent. Yes an intent. (30)

MR CHASKALSON:/....

MR CHASKALSON: And then the other is method.

COURT: That is the intent to change something and you then do something violently then you are guilty of terrorism. Is that not so?

MR CHASKALSON: Well I am not sure that that is necessarily so because sub-(2) talks of performs any act which is aimed at. In other words the, as I understand terrorism if you use violence as your method that is terrorism. In other words you put, your methodology is violence.

COURT: Yes now ... (10)

MR CHASKALSON: In other words your aim is violence, you are aiming specifically at violence.

COURT: But let me stop, stop there. Let us say you want to disrupt the municipal elections. That is now the example that we had and that was the stories we were told, the ANC wanted to disrupt the municipal elections, whether that is true or not is irrelevant. A terrorist is sent in with hand grenades to disrupt the elections. So the aim is to disrupt the elections so that they do not take place, they should not take place. The method is violent. That would clearly fall under (20) the act.

MR CHASKALSON: That is what I would say the act is aimed at.

COURT: Now how would that differ except in grade from the current matter where we have the aim to coerce the local authority to do something and the method one that entails violence?

MR CHASKALSON: Well the method is, well where I would base the argument, if I were to argue it, is on the use of the language within the context of the offence of terrorism. In other words where your methodology is violence. In other (30)

words/....

words you use the violence and that is the methodology. I will bring about change by letting off bombs so people will be afraid and there will be change. That is terrorism. If you say I will, the method which I will use is to go out on a march, your methodology is not violence, but you can foresee that as far as these accused ...

COURT: Well let us take it a bit more extreme than the case and on that march - it is now not to the left, it is a march to the right and they have a lot of pistols and all things, packing all that, and you clearly foresee violence and there (10) is shooting in the end. They all shoot the pistols. Now would that not fall under the section?

MR CHASKALSON: I do not say it is not another offence. I would understand that within the framework of the statute there may be other offences within the framework of the common law there may be other offences. Whether it is the offence of terrorism is a different question because it is of course a question of degree. But if in fact you are, if your primary purpose is violence, in other words you are setting out to commit an act of violence then it is terrorism. If you are (20) setting out to commit a different act but should foresee violence it is not terrorism. Because your act is not aimed at violence. It is simply a linguistic, and also within the context of the statute. Because if one is talking about terrorism, terrorism properly so-called one understands as people saying I will put a bomb unless you do this. In other words your primary goal is violence. If your primary goal is not the violence but your primary goal is something different but incidental to that you should foresee violence you may be guilty of some other offence. It may be subversion, it (30)

may/....

may be something else. Depending upon the statute, the statute is quite a difficult one. But the argument which we would advance would be that where you do not, that you would have to make the finding that these particular accused intended to commit violence because, that their act was aimed at violence. As I understand your lordship's finding you did not make such a finding. You did not say that what they set out to do was aimed at violence. You said they should have foreseen it, and therefore they are liable. And that would be the argument. So those would be the law points which we would want to raise. (10)

COURT: Yes thank you.

(20)

(30)

MNR. FICK SPREEK HOF TOE TEN AANSIEN VAN AANSOEK OM VERLOF OM TE APPELLEER: Ek sal begin antwoord waar my geleerde vriend nou geëindig het. Dit is die staat se submissie dat hierdie voorbehoud van die regsvraag afgewys moet word. Eerstens, dit hou nie verband met die bevindings van die hof nie. Tweedens, dit hou nie verband met die akte van beskuldiging nie en dit is gebaseer op 'n wanuitleg van die akte van beskuldiging. In paragraaf 1 byvoorbeeld word gesê:

"1.1 The charge against them was based on an allegation that they were party to a nation-wide conspiracy to overthrow the state by violence."

Dit is een deel van die akte van beskuldiging. Van bladsy 13 tot bladsy 18 is die res van die akte van beskuldiging waar gesê word nie net om die staat omver te werp nie, maar ook het hulle gepoog om die regering te beweeg om iets te doen of nie te doen nie of 'n bepaalde standpunt te aanvaar of nie te aanvaar nie, het hulle die dade verrig in die akte van beskuldiging. So, daardie aspek is heel buite rekening gelaat. Verder is die kampanje van die UDF een teen die swart plaaslike besture wat die VCA opgeneem het en in hierdie kampanje van die UDF wat die VCA uitgevoer het, het die hof bevind het geweld plaasgevind en dit is ons submissie dat die verdediging die uitspraak verkeerd gelees het. Die hof het nie bevind dat hulle het voorsien of hulle moes voorsien nie. Die hof het bevind dat hulle het geweld bedoel. In die verband wil ek u baie kortliks net na 'n paar bladsye verwys van die uitspraak, bladsy 804 heel bo-aan:

"The VCA was the main, if not the sole, political active organisation in the Vaal. It organised the stay away and march. It follows therefore that they organised/..

organised or had a hand in the organisation of the violence."

Nou, 'n mens organiseer nie "violence" as jy dit nie bedoel nie. Dan verder die passasie wat my geleerde vriend self na verwys het op bladsy 979 van die uitspraak daar het die hof weer eens bevind dat die VCA was daarop ingestel op die vernieting van die swart plaaslike besture en geweld. Verder kan die hof - op bladsy 868 vind ons die volgende in die hof se bevinding:

"Whichever way the matter is viewed the march was a recipe for disaster. We can come to only one conclusion and that is that it was intended to be that." (10)

Op bladsy 897 van die uitspraak -

"The VCA was the main, if not the sole, politically active organisation in the Vaal. It organised the stay away and march. In the light of all the above considerations we draw the only reasonable inference and that is that the VCA organised or had a hand in the organisation of the violence."

Dit is dus ons submissie, soos hierdie voorbehoud van die regsvraag geformuleer is, is dit foutief. Dit hou nie verband met die uitspraak of die akte van beskuldiging nie. Ek wil net laastens op hierdie argument van my geleerde vriend die volgende sê, dat hy lê klaarblyklik artikel 54 verkeerd uit. Artikel 55 sê iemand wat met die opset om, met ander woorde die opset is onder andere die regering beweeg om iets te doen. Dit is die opset, dan sekere dade pleeg, onder andere geweld of geweld goed praat of geweld aanstig, veroorsaak, bewerkstellig of bevorder. My geleerde vriend het die artikel omgeswaai om hom te pas. Dit is verkeerd. (20) (30)

U sal/..

U sal verder merk, edele, in artikel 54(1)(a)(ii) word uitdruklik gesê dat persone wat -

"performs any act which is aimed at causing violence".

Met ander woorde selfs as geweld nie direk beoog is nie, maar noodwendig 'n voortvloeisel is. Ek vra die hof dus om hierdie voorbehoud van die regsvraag van die hand te wys heeltemal.

Ek wil vervolgens handel met mnr. Chaskalson se betoog oor verlof om te appelleer ten opsigte van die areas behalwe die Vaal. Net ten aanvang, as ek mnr. Bizos se argument reg verstaan kom dit daarop neer dat as die hof in elk geval (10) gaan verlof gee en vir die appèlhof werk gee, gee hom so veel as moontlik, gee hom alles en met respek dit wat hierdie hof gesê het aan die begin van sy uitspraak toe die hof na die voer van hierdie saak verwys het, dit gaan klink na, om die tolk se woorde te gebruik, 'n pryslied as die appèlhof uitvind dat dit die hof se houding moet wees, want ons gee hom in elk geval alles terwyl die saak op appèl is. Dit is nie die toets nie. Dit kan nie geregverdig word nie.

Wat die areas betref sit die verdediging met 'n geweldige probleem, soos met die UDF ook. Die hele verhoor het hulle (20) die werklike getuies weggehou van die hof af, doelbewus. Waar is die Amanda Kwadi's, waar is Albertina Sisulu, waar is Oscar Mpheta, waar is Frank Chikane, waar is professor Mohamed? Die mense wat die geweld gepleeg het. Laat hulle kom verduidelik, maar wat doen die verdediging? Hulle roep mense wat op die kantlyn staan, wat nie eintlik weet wat aangaan nie, beskuldigdes wat sê hulle was nie daar nie, hulle was òf in aanhouding òf in 'n ander kantoor. Hulle moet kom verduidelik en nou draai die verdediging om en nou sê hulle ons het dit nie gedoen nie, maar nou wil ons 'n algemene verlof hê om te (30)

appelleer/..

appelleer op alles. Dan noem my geleerde vriend Somerset-Oos as 'n voorbeeld, maar hy het baie probleme daar. Somerset-Oos - was UDF betrokke, hulle baniere was op die begrafnisse. Hulle mense was daar gewees. Mathews Gonaway was daar. Dit is nie verduidelik nie hoekom die mense - hulle roep 'n getuie wat vir hierdie hof kom sê ek het onder andere die begrafnis georganiseer, ek weet waaragtig nie waar kom hierdie mense van UDF hieraan nie. Nou sê hulle hul wil verlof hê om te appelleer, want die hof het foutiewelik bevind UDF is betrokke, maar die hof kan nie algemene verlof gee nie. Wat van Mankweng? Daar is (10) direkte getuienis dat die leiers van UDF daar sit met ANC-dokumente, hulle het stukke opgestel. Daar is getuienis dat AZASO en al die organisasies, MACA, MAYCO, die hele lot het geweld georganiseer en oorgegaan na geweld op vergaderings. Nie een van daardie mense word geroep nie, maar 'n skoolkind wat toevallig in die pad geloop het. Hy moet kom verduidelik. Wat van Alexandra, waar die getuienis is dat die mense het na die ANC toe gegaan in Botswana, leiers van die organisasies, hulle het teruggekom, hulle het opdragte gekry julle moet geweld gebruik teen die raadslede? Daardie mense is nooit (20) geroep nie. Nou wil hulle verlof hê.

Ons sit hier met 'n ander voorbeeld. HUCA. My geleerde vriend, mnr. Bizos, is op rekord dat hy vir 'n raadslid wat hier getuig het, hy het hom aangeval en gesê ek stuur vir jou 'n uitnodigingskaartjie as Hoffman Galeng kom getuig om te kom sê jy lieg. Hoffman Galeng het nooit gekom nie. Wat moet 'n mens aflei? Het Hoffman Galeng vir my geleerde vriend gesê die getuie het die waarheid gepraat, ek kan dit nie betwis nie, moet my nie roep nie, maar hy wil verlof hê om te appelleer. (30)

Mnr. Chaskalson/..

Mnr. Chaskalson sê vir die hof ja, hier is getuienis van 200 skoliere wat geloop het in die straat en moeilikheid gemaak het, watse polisie is dit nou? Watse rewolusionêre klimaat is dit? Dit is, om die Engels te gebruik, "an understatement of the year". Dit is nie die getuienis voor die hof nie. Hier het duisende mense geloop en geweld gepleeg. Thabong. Dit is nooit verduidelik nie. Skole is vir meer as 'n jaar toegesluit, is geboikot, daar is geweld gepleeg, daar is mense dood oor die hele land, in die Vaal alleen 230 geboue vernietig. Staatsgeboue, die staat se amptenare, se uitvoerende persone is aangeval fisies, maar dan sê hulle daar is nie getuienis van 'n rewolusionêre klimaat nie. Edele, ons sit met die probleem oor Daleside. Hulle sê vir die hof die hof het foutiewelik BEWYSSTUK 710 na gaan kyk, afleidings gemaak, maar hier het ons weer dieselfde moeilikheid. UDF se Training Committee het hierdie ding aangebied en waar was hulle gewees in die getuiebank? Hulle het nooit opgedaag nie. Hulle is nie geroep nie. Hulle is weggehou van die hof af. Dit is nou maklik miskien vir die verdediging om te sê die onus is op die staat, hy moet die getuienis roep, maar ons is mos nie almal kinders nie, ons weet mos nou hierso dat hierdie mense getuig nie vir die staat nie. Die hof is bewus van die intimidasie wat hier aan die gang was en hier is 'n dokument voor die hof waar daar ex facie die dokument blyk die opdrag is "destroy the black local authorities", maar die mense wat van UDF betrokke is, wie se name genoem word by hierdie komitee wat die ding gereël het, hulle word nie geroep nie. Om 'n duidelike dokument te weerlê word daar nie mense geroep nie. Dan kom my geleerde vriend, mnr. Chaskalsen, dan sê hy daar is geen getuienis dat die inligting wat die hof bevind het, het by UDF en COSAS

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se hoofkantoor uitgekom nie. Die verdediging het net hulleself te blameer, hulle het nie daardie getuienis gelei nie. Dit is hulle mense. As die dokumente voor die hof is, deur die staat daar gegee, hoekom roep hulle nie die mense om dit te weerlê nie? Hulle sien hulle staan met die dokumente en hulle kan die mense roep en sê dit is verkeerd of lê die dokument so uit.

Edele, ten aansien van die Vaal, my geleerde vriend, mnr. Bizos, het gesê dat die hof het in ag geneem die taalgebruik by die aanval op die raadslede en die hof gebruik dit om 'n bevinding te maak teen die beskuldigdes ten aansien van die (10) swart plaaslike bestuur-kampanje, maar my geleerde vriend vergeet die hof het gesê hierdie is nie 'n saak oor bloot eenvoudig die vryheid van spraak nie. Dit gaan meer. Hulle het nie net dit gedoen nie. Hulle het dit gebruik om die mense op te sweep. My geleerde vriend ignoreer daardie deel van die akte van beskuldiging en die getuienis daaroor. Hulle ignoreer dit.

Edele, die ander aspek wat ek groot probleme mee het, is die dokument wat my geleerde vriend hier ingehandig het in die hof, die skedule "The schedule of intervenings by the court". Hulle vra vir 'n spesiale inskrywing hierso. Artikel 317 (20) van die Strafproseswet sê hulle is net daarop geregtig as die aansoek bona fide is of as dit nie "an abusive process of court" is nie. Die hof sal homself herinner dat hierdie was 'n punt voor hierdie hof by 'n aansoek om onttrekking van u edele, maar die verdediging het dit laat vaar op daardie stadium. Hulle het nie aangegaan daarmee nie. Op watter basis kan hulle nou weer kom en sê dit is bona fide, ons wil dit weer doen? Dit is 'n misbruik van die regsproses wat hier aan die gang is. Daar is verwys na sekere sake en dan is daar gesê dat hierdie hof is bevooroordeeld ten gunste van sekere - kom ons noem dit (30)

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