

*This is the written judgment
referred to on page 3341 A of the
CASE NO. R. 58/1960.
typed record.*

Rt 22/11/65

IN THE COURT OF THE MAGISTRATE OF THE REGIONAL DIVISION
OF SOUTH TRANSVAAL, HELD AT VEREENIGING.

In the case of

THE STATE

against

JOHANNES MONYAKE AND OTHERS.

JUDGMENT DELIVERED ON 22nd JUNE, 1961.

INTRODUCTORY AND GENERAL:

1. These proceedings started in the district court of Vereeniging, and were transferred to the regional court on the 20th June, 1960. There were then seventy-six persons before the court, cited as accused numbers 1 to ⁷⁶36. The charge was at this stage set out as one of public violence, with four alternative charges all framed as contraventions of various provisions of Act No. 8 of 1953, Act No. 17 of 1956, or Act No. 67 of 1952, as amended.

2. On the 17th June, 1960, the attorneys for certain of the accused asked the prosecutor for further particulars, and on 18th July, 1960, they lodged a notice of exception and application to quash. The Prosecutor furnished certain further particulars on the 9th August, 1960, and on 12th August, 1960, once again the defence lodged a notice of exception and application to quash. On the 17th August, 1960, the prosecutor withdrew the charges as they stood at that stage against fifty-three of the accused. The defence exception and application were argued, and/...

argued, and the court delivered a considered written judgment, filed of record, on the 7th September, 1960, dismissing the exception and application in respect of the main charge of public violence, and quashing the four alternative charges. The hearing of the case was then set down for 27th September, 1960.

3. Meanwhile, on the 21st September, 1960, the Prosecutor gave notice of an application to amend the charge, as it was left as result of the judgment of the 7th September, 1960, by the public violence charge being labelled Count I; and by the addition of a second count, with alternatives, alleging contraventions of certain provisions of Act No. 8 of 1953, and of Act No. 17 of 1956. He added rather full particulars in respect of this count. On the 27th September, 1960, the Prosecutor's application was considered, as also a motion to quash the new count II. The Court delivered an ex tempore judgment appearing on pages 3 to 8 of typed record, authorising the amendment, and dismissing the motion to quash the new Count II.

4. The following twenty-three accused were then still on trial, and were asked to plead. Pleas of not guilty were entered for all, although accused Nos. 1, 3, 4, 8, 38 and 39 refused to plead on the basis that the laws, the subject of the charges, were formulated at a time when Bantu (or "Africans" as they called themselves) were not represented in Parliament:-

No. of Accused

Name.

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Johannes Monyake
Thaddea Ntoampe
Nyakane Tsolo
Thomas More

7./...

<u>No. of Accused</u>	<u>Name.</u>
7	Albert Matlala
8	Emanuel Teketsi
19	Adam Sakwane
22	Isaac Motaung
24	Azael Kutoane
27	Johannes Seretho
30	Anna Lethege
31	Thomas Msimanga
36	Peter Thabane
38	Stefaans Lepee
39	David Ramodibe
41	Simon Mhlambi
43	Edward Moloto
52	George Qotzwa
63	Lechael Musibi
65	Hophne Morobe
74	Moses Mooi
75	Paulus Moleko
76	Peter Molefe

5. The hearing of evidence commenced on the 29th *Sept.* 1960, and was concluded only on the 15th May, 1961. In the meanwhile the Prosecutor had withdrawn the charges against accused No. 74, Moses Mooi, who was found not guilty on both counts on the 20th December, 1960. The Court acquitted accused Nos. 24 and 52 on both counts on the 26th April, 1961, when a judgment filed of record, was delivered as result of an application for the discharge of the accused at the close of the case for the prosecution. In this judgment certain of the other accused were also acquitted on the second count, and/...

and its alternatives. In terms of this judgment, the Court is now concerned with having to give a final judgment -

(i) In respect of COUNT 1 against the following accused: 1, 2, 4, 7, 8, 19, 22, 27, 30, 31, 36, 38, 39, 41, 43, 63, 65, 75 and 76.

(ii) In respect of Count II against the following accused:-

1, 2, 4, 7, 8, 38, 39, 75, 76.

6. Accused No. 3, Nyakane Tsole, disappeared during the hearing of evidence, and the prosecutor applied to proceed without him against the remaining accused, intimating that he would be tried de novo if found. The arguments and the court's views on this position are set out on pages 2941 to 2953 of the typed record. No further argument has been addressed to the court on the consequences of this enforced separation of trials, and it is the court's view that the evidence affecting accused No. 3 only which was led up to the stage at which he disappeared, and also the evidence affecting his acts and utterances after that stage, must be left on record and must be considered by the court. The prosecutor, in his charges as particularised, has alleged a common purpose between this man, the other accused, and certain persons alleged to be members of the Pan Africanist Congress, and the evidence is receivable, whether or not accused No. 3 figures as an accused in the case, to prove the existence of the common purpose and to prove whether his acts and utterances were in the furtherance of the common purpose. (Rex vs. MILLER AND ANO. 1939 A.D. 106 at pages 116/7) The complaint that the other accused could/...

could be prejudiced by the absence of the third accused, in that his evidence may have assisted them, has no sound foundation because he may have elected not to give or call evidence at all - and in any case the other accused had ample opportunity to give or call evidence rebutting any evidence affecting him only. In all the circumstances the court will, in terms of section 155 of Act No. 56 of 1955, abstain from giving a judgment in respect of accused No. 3.

7. Before going on to a consideration of the charges and of the evidence the Court must consider, in general at this stage, the credibility, the veracity, the reliability of the witnesses.

8. The Prosecutor sought, in terms of Section 286 of Act No. 56 of 1955, to impugn the credibility of the following witnesses called by him:

- (i) Ephraim Nyembezi (pages 1657 to 1666 and 1679 to 1689 of the record)
- (ii) Alfred Mabuya (pages 1986 to 2,000 and 2060 to 2061 of the record).
- (iii) Matthews Ngumbuxa (pages 2190 to 2209 of the record).
- (iv) Isaac Tatai (pages 2473 to 2485 and 2490 to 2507 of the record).
- (v) Isaac Ngwenya (pages 2633 to 2645 and 2656 to 2658 of the record).
- (vi) Richard Mtinkulu (pages 2645 to 2653 and 2658 to 2659 of the record).

In respect of Ephraim Nyembezi, Alfred Mabuya, Isaac Ngwenya and Richard Mtinkulu the Court is satisfied that they had given to the police statements so materially/...

materially inconflct with their evidence that, not withstanding a desire by the Court to consider even these parts of their evidence favourable to the defence, it is in the interests of justice to ignore their evidence altogether as being that of throughly unreliable persons. But in respect of Mathews Ngumbuxa, a detective constable in the South African Police, and Isaac Tatai, the Court rules that their police statements are not clearly in conflict with their evidence, and consequently their evidence will be considered and their police statements are ruled inadmissible as such, although they were available to the defence for purposes of cross-examination.

9. The State has based its case, to a large extent, on the evidence of members of the South African Police and of Municipal officials stationed at Sharpeville location. These witnesses, and other persons, have deposed to the activities of the Pan Africanist Congress (referred to as the P.A.C. hereafter) and of various of the accused in support of Count II of the indictment, and they have deposed to the acts and utterances of the accused and others during the period from about 9 p.m. on Sunday the 20th March, 1960, to about 2 p.m. on Monday the 21st March, 1960, in support of Count I of the indictment. The allegations of the State are, in very broad outline, that during the period covered by Count II i.e. 1st August, 1959 to 24th March 1959, the accused, in concert with the P.A.C. advised, encouraged or incited natives to contravene the "pass laws" by way of protest against these laws. The State further alleges, in Count I, acts constituting public violence over the period 18th to 21st March, 1960, but the Court feels that it need concern itself only with such acts as are alleged to have

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been committed during the period 9 p.m. on the 20th March, 1960, to 2 p.m. on the 21st March, 1960. These were committed at a large number of private houses, and in Seciso street and environs, and at the Police Station and environs, all in the township of Sharpeville, and they culminated in the killing, by the police, of some 70 bantu's and the wounding of about 180.

10. In view of this death roll and large number of casualties, admittedly inflicted by the police by means of sten guns, rifles and revolvers, and of the absence of any serious casualties in the police ranks, it would perhaps be natural for the police to colour their evidence or at least minimise the seriousness thereof. This is a factor which must be prominent in the court's mind when assessing the value of the evidence of these witnesses. No serious suggestion of collusion has, however, been made in respect of the police evidence, and the Court is satisfied that there can be no question of such conduct on the part of the police. As is natural when evidence is given as to acts and happenings relating to events during great excitement and confusion, there are many instances of apparent contradiction in the evidence. Witnesses, in general, have not hesitated to contradict each other. There is e.g. wide divergence as to whether or not certain shots were heard presumably fired by somebody among the crowd of Bantus outside the police station just before the police opened fire on the crowd. Many policemen say they heard the shots, others that they did not and there is disagreement as to the number of shots, and the direction from which they came/...

came. But Mr. Unterhalter, for some of the accused, and some of the undefended accused in person, have levelled charges of untruthfulness or unreliability at many of the witnesses, and the court proposes, at this stage, to consider the position in general in regard to some of the more important witnesses.

11. MR. M. SMUTS (pages 2500 - 2603) is chief Bantu Commissioner for the Witwatersrand. BRIGADIER C.J. ELIS (pages 2959 - 2974) is the Assistant Commissioner of Police. These two highranking State officials gave evidence, mainly, as to a rumour that a highranking official was to address the crowd of Bantu at the police station at 2 p.m. on the 21st March, 1960. There can be, and there is, no doubt whatever as to their integrity, veracity, and reliability.
12. COLONEL G.D. PIENAAR (p 943 to 1011) was the police officer in command of the police at the time of the shooting. He has given evidence as to the mood of the crowd, and as to his reasons for lining up his men, ordering them to load their firearms, and the necessity or otherwise of their having fired, although he had issued no command to fire. He has said that the position was so dangerous that he would in any case have hesitated only a little longer before giving such an order. He was severely cross-examined for not doing anything about personally addressing the crowd, or seeking out its leaders, so as to quieten the crowd. He was, however, in an extremely difficult position, and the Court is satisfied that he did his very best in all the circumstances. ~~His veracity has not been challenged. It is impossible, making full allowance for all the~~
circumstances/...

~~Circumstances.~~ His veracity has not been challenged. It is impossible, making full allowance for all the circumstances, to hold that his actions were in any way unreasonable. The Court feels that it can place full reliance on his evidence.

13. COLONEL SPENGLER (p 698 to 747) the head on the Witwatersrand of the security branch of the Police, arrived at the police station some little while before Colonel Pienaar. He was in civilian clothes, and effected a number of removals of apparent leaders of the crowd. Three of these people were taken into the police station for questioning, and the effect of their removal was to aggravate the mood of the crowd. As the colonel was busy with the last of those removals the crowd, so it is alleged, committed acts of discharging a firearm, throwing stones at the police, bending the fence of the policegrounds, and entering the grounds through the western gate. These acts led directly to the firing by the police. The court has to ask itself, therefore, whether Colonel Spengler's actions were not illadvised, and the direct cause of the crowd's actions and the firing. Colonel Spengler had knowledge of the intentions of the P.A.C. to organise large demonstrations at police stations and elsewhere on the day; he had come from certain other places where there had already been trouble on the same day; he had undoubtedly heard of the incidents earlier that day in Seeise Street; and he found a crowd of at least 10,000 bantu on the outside of the fence, and up against it; the crowd was, in his view, noisy, insulting, threatening, and dangerous. What is more natural than for him to seek out the leaders, and have them removed for questioning, so as to try to ascertain just exactly what they wanted? It is true

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that the evidence suggested that he did not merely invite them in, but physically apprehended and took them in by holding them by the arm. In one case he is alleged to have struck one man (accused No. 76), but he has denied this. The Court does feel that he might have acted a little more tactfully, but that is a for cry from saying that, in all the circumstances, his actions were unreasonable vide remarks of v.d. Heever J. on similar conduct of a police officer in R vs Lekhoala 1946 O.P.D. 7. He is obviously mistaken as to the identity of one of the persons brought in by him, and this position will be gone into more fully when the Court considers the case against accused No. 76. He was very close to the crowd when the shots, heard by others, were fired from somewhere in the crowd - but he has not hesitated to say that he did not hear those shots. He is a highranking police officer, of integrity, and on the whole made a good impression as a witness obviously trying to be fair and objective in his evidence.

14. MAJOR VAN ZYL, the district commandant at Vereeniging, has given evidence relating, in the main, to events earlier on the 21st March, 1960, in Seeise Street, he was not present, later in the day, at the time of the shooting. He was cross-examined in detail and vigorously as to an allegation that in the vicinity of Seeise Street shots had been fired by someone of the Bantu then being dispersed. He made a good impression on the Court, and although there are naturally discrepancies between him and other witnesses as to events committed in a state of confusion, he has given good and convincing reasons for his conclusions that the shots were not fired by the police themselves. Other police witnesses/...

witnesses, e.g. head-constable, Heyl, Sgt. Grobler, and constable Grove, have corroborated him. In general his veracity and reliability were not challenged, and he made an excellent impression on the Court.

15. CAPTAIN CAWOOD, (p 645 to 697) who is second-in-command to major van Zyl, is one of the witnesses labelled by Mr. Unterhalter as fully reliable. The Court is in full agreement with this conclusion. His evidence centres mainly around the events during the period 11 p.m. to about 7 or 8 a.m. on the 20th and 21st March, 1960. He deposes to seeing a large number of groups of Bantu during the night, coming across accused No. 4 about to hold an unauthorised meeting, and as to events in Seeiso Street up to the time of the police using teargas bombs to disperse the crowds there. Thereafter he was sent to van d r Byl Park, and knows nothing as to the events at the Sharpeville Police Station.

16. LIEUTENANT VISSER (p 1454 - 1484) of the Vereeniging Criminal Investigation Department, deposes to the mood and behaviour of the crowd and certain of the accused at the police station. He made an equally favourable impression on the Court, and his veracity and reliability have not been challenged. He readily made concessions in favour of the defence, and the Court could detect no signs of exaggeration in his evidence.

17. CAPT. THERON (p 749 to 834) was senior officer at the police station before Captain Brummer, and Colonels Spengler and Prinsloo, and ultimately Colonel Pienaar arrived on the scene. He has deposed to the mood and behaviour of the crowd. He did not post guards at the gates in the fence, and apparently did not do anything substantial to quieten them down or to mediate

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with them through their leaders. Members of the crowd had, on this hot day, brought a supply of cold drinks for the police, but this was not accepted, and Captain Theron's reasons for the non-acceptance are not very convincing. The truth probably is that the European Police did not want to accept cold drinks brought to them by Bantu. But in general, there is ample corroboration of the evidence of the witness, and there is no reason to suppose that, on any of the material points, it cannot be relied upon.

18. CAPTAIN BRUMMER (p 868 to 942) Mr. Unterhalter has invited the court to hold that this witness has told a deliberate untruth on an important point. The witness was in charge of the three "saracens" which stood on the police grounds facing the crowd. He has maintained that he did not see any armed policemen on top of them immediately after the firing by the police and as the crowd was running away in headlong flight. The charge against him is that he deliberately attempted to shield three men when giving evidence before Mr. Justice Wessels, and although shown certain photographs contradicting him, he has deliberately persisted in his evidence. It is a fact that three such policemen were in fact on top of one of the saracens, and their actions are obvious from the photographs, exhibits 41 and 42. They are apparently on the northernmost of the three saracens two of which stood on the northern half, and one on the Southern half, of the lawn on the western side of the police station. The captain deposed positively to not seeing these men there both in this Court, and before Mr. Justice Wessels, who conducted some form of judicial enquiry into the events. The men were in that position
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when there was obviously great confusion, and there is no evidence as to the length of time they spent on top of the saracen. Captain Brummer has explained that he had been keeping the three "saracens" in view all the time, and that immediately the firing started he went around to each to see to it that the machine-gunners in them did not use their devastating weapons. In fact they did not do so. Apart from the confusion in general his attention may for some substantial period have been focussed on the fleeing crowd, and the persons being shot and falling down; he may in fact at the particular period when the three men were on top of the saracen, have been at the southernmost saracen, which was facing in a different direction, and which was in fact nearer to the area in which the majority of wounded bantu were. In all the circumstances his evidence on the point cannot be held to be false, and probably is true. On the contrary, he made an excellent impression on the Court. He is a person of strong and impressive personality. In his evidence he was, at times, somewhat vague as to the sequence of events, but that is quite natural in the circumstances. He certainly did attempt something, in contrast with one or two others who had arrived before him, to induce the crowd to go away - he used a microphone and loudspeaker and urged them in English, Afrikaans and by means of the word "hamba" to go away or they might get hurt. He was simply shouted down. On the whole the Court is satisfied that he is a truthful witness, and that there is no substance in Mr. Unterhalter's submission.

19. CAPTAIN GOETZEE (p. 1484 to 1504) was in charge
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of a detachment of police outside the grounds. They were in Zwane Street somewhere to the east of the police station, whereas the main concentration of the crowd was outside the Western fence. The captain deposed to the behaviour and mood of the portion of the crowd in his vicinity, and also maintained that none of his men fired any shots when the defence was investigating the possibility that the two shots, preceding firing by the police in the grounds, were in fact from police and not from a member of the crowd. The witness became, understandably rather emotional when speaking of his past experiences of the behaviour of bantu crowds at Brighton, near Port Elizabeth, and at East London. The court must, consequently, be on its guard when assessing his evidence as to whether the crowd in his vicinity was dangerous. He was, however, an obviously honest witness.

20. MR. LABUSCHAGNE (P. 327-549) the location superintendent of Sharpeville, and a former member of the South African Police, gave lengthy evidence affecting both counts of the indictment. It covers the P.A.C. activities of certain of the accused, and the whole series of events during the whole of the period with which the court is concerned in the public violence charge. He admitted he was confused as to which of two of the accused were seen by him in the house of accused No. 4 in February, 1960, but himself made a point of informing the court and correcting the error. Some of the undefended accused have challenged various of ^{his} statements affecting them, but have, in the long run, not called evidence to contradict him. It is alleged that his evidence as to a group of bantu alleged to have been led by accused differs from his evidence on the same point as given before Mr. Justice Wessels. In all the circumstances his memory was, at times, faulty and the court will have to bear that factor in mind. At the same time he was a patently honest witness, and a person who was held in high esteem by the population of Sharpeville.

21. SGT. GROBLER, the station commander of Sharpeville police station also gave evidence covering events during the night of the 20th/21st March, 1960, and up to the time of the shooting on the 21st. In general he paints a more serious picture than Labuschagne as to the mood and behaviour of the crowd (and that is, of course, always a question of impression), and is contradicted on a number of other points. This is to be expected in the circumstances. He, also, did not hear any shots from the crowd at the police station, and he is mistaken as to major van Zyl being present at the time of teargas bombs being used in Seeiso Street - the major had left the scene temporarily. But, once again, he is an obviously honest and truthful witness.

22. Head-CONSTABLE HEYL, (p. 1125 to 1239) was the first European Policeman to arrive at the police station the 21st March. He arrived there with Sgt. Grobler, and has also deposed to the mood and behaviour of the crowd. He mentioned shots, other than from the police, alleged to have been fired in the Seelso Street area before the crowd went to the police station. Mr. Labuschagne had already deposed to the same events, and mentioned no such shots. Other evidence, however, corroborates him on the point, namely that of Sgt. Grobler, Major van Syl, constables Kallis, Grové and others. He was extensively cross-examined on the point, and the court is satisfied that, substantially, his evidence is correct. He admitted to having submitted a return that a constable Penneman had used ten rounds of ammunition, but that Penneman later admitted having used five only. He took no steps to have the misstatement in his return corrected. But the court is satisfied that no adverse inference as to his credibility can be drawn from this conduct. On the whole, there is no reason to doubt the witness.

23. DETECTIVE SERGEANT WESSELS, (p. 1011 - 1125; 2991 - 2599) is the local security branch officer of the police. He has given important evidence as to the acts and utterances of accused No.s 1 and 2 just before their arrest near the hostel in Seelso Street on the morning of the 20th March. When this aspect of the case is dealt with in particular the court will ^{ex}amine the position more closely. But a disturbing feature of his evidence is that he could not identify these two men at an identification parade, he had made a note of their names at the time of their arrest, he was uncertain as to the order of their arrest, and even in court he confused the one with the

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other. However, he identified them in court, not because he recognised them, but because he had meanwhile, in the course of keeping certain observation in the precincts of the court in the course of his ordinary duties, had the two men pointed out to him, ascertained their names and then identified them when giving evidence. This is obviously not an honest way of giving evidence, and is to be deprecated. Had he said that two persons who gave their names as, say, A and B, had respectively done or said this or that he would have acted correctly, leaving it to the prosecutor to establish their identity by other evidence. In fact, in this case, their identity is well established by other evidence. In the circumstances the court will have to be very careful, and to seek corroboration, of his evidence, in particular as to the acts and utterances of these two accused. But Captain WILLERS, a fully reliable witness, has given evidence covering the same ground.

24. DETECTIVE SERGEANT MULLER, (p. 834 to 868) also of the security branch, has deposed to certain incidents near and also at the police station. He has alleged an assault by a member of the crowd on himself. Accused No. 76 has alleged that both Sergeant Muller and Colonel Spengler assaulted him. Muller has denied this. In the circumstances the court must approach his evidence with care. But except for the allegation of accused No. 76 his evidence has not been seriously challenged.

25. CONSTABLE BEYL, (p. 1576 - 1616), was at the police station, and has identified a ^{number} ~~number~~ of the accused as having been in the crowd, and as having done certain acts and given utterance to certain words. He is the gentleman with the sjambok. Exhibits 45 and 46 clearly show it in his hands. In carrying it in those circumstances he clearly acted in breach of police regulations.

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His explanation that he had earlier taken it from a bantu constable may be true, but his explanation as to why he then carried it in his hands when on duty, instead of putting it away somewhere, is unacceptable. In giving evidence he obviously "hedged" under cross examination, and he clearly exaggerated when asserting that every individual member of the crowd that he set his eyes on was shouting, dancing, giving the "thumbs up" sign, and so forth. It is better that the court should not act on his evidence, unless there is good corroboration.

26. BANTU DETECTIVE MALAKIA MMOTONG (p. 1239 to 1372; 1658 to 1690), is the bantu assistant to Detective Sergeant Wessels. There were many unsatisfactory features in his evidence. In deposing to an alleged P.A.C. meeting on 10th January, 1960 he stated that accused No. 2 was present, and that he noted his name in his pocket book; the pocket book contradicted him; when cornered in cross examination he was inclined to ask questions instead of answering them; he professed to have been able to read printed letters not more than 1/4 inch high at a distance of 15 paces, but could not read the numbers, several inches high, on the lapels of the accused in court only some 7 or 8 paces from him; he did not impress the court as being a particularly intelligent person. His evidence will have to be approached with great care, and unless well corroborated or not challenged and contradicted had better be accepted with caution.

27. A number of constables have given evidence affecting individual accused persons. In general they have deposed to the actions and utterances of these individuals, forming part of and in amongst a crowd of thousands of Bantu outside the police stations. In most cases the persons identified by them were total strangers to them. With a few exceptions these constables were stationed elsewhere. The accused persons concerned have, mostly, admitted their presence at or near the police station but disputed their actions and utterances, and the points at which they were alleged to have been seen. The constables professed to identify people and their actions at a stage when there was obviously great excitement and confusion and when many others were behaving in the same way. In view of all these circumstances there is ample room for mistaken identification, and the Court will have to be circumspect in its approach to this evidence by the constables. The position will be examined in detail when the facts affecting each of these accused is examined.

28. Certain press photographers and newspaper reporters were present at certain stages and the photographers took photographs of what they saw. Some of these have been produced. They obviously afford valuable evidence as to the behaviour and mood of the crowd. The photographers themselves have deposed to their own observations. On the face of it they should be impartial as between the police and the Bantu, but whether in fact they are is another question. They are human, like everybody else, and as a background to their work they cannot but be influenced by the political inclinations of the newspapers which they represent. And unfortunately the question of the attitude of the police against the Bantu,

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and the Bantu against the police, is one in which politics do not play an inconspicuous part. Be that as it may, as they are persons of integrity the Court will have to pay serious attention to their views and impressions of the crowd.

28. COURT II.

29 In their addresses to the Court the Prosecutor and Counsel for the Defence dealt with Count II before dealing with Count I. This course resulted in the two Counts to the charge being considered in chronological order as to the dates of commission of the offences, and also in the matters in issue being dealt with in that order, and, therefore, in the evidence being understood more easily. The Court proposes to adopt the same course.

30. As the Court has come to the conclusion that the Main charge of Count II has been established against some of the accused, acting in concert and in furtherance of a common purpose amongst themselves and with others who were members of the P.A.C. the two alternatives need not be considered. The essence of the Main charge is that the accused advised, encouraged, incited, commanded aided or procured natives in general to contravene these provisions of Act No. 67 of 1952, as amended, which required them to be in possession of their reference books, or to produce them on demand to authorised officers, by way of protest against, or in support of a campaign for the repeal of, the relevant provisions of Act No. 67 of 1952, as amended.

31. The Court will, in the circumstances, consider:-

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- (i) The policy and aims of the P.A.C.
- (ii) The nature of an "anti-pass laws" campaign waged by the P.A.C.
- (iii) The association of the following accused with the P.A.C.: Nos. 1, 2, 3, 4, 7, 8, 38, 39, 75 and 76.
- (iv) Their association with the "anti-pass laws campaign).

32. In order to prove the policy and aims of the P.A.C., and the nature of the campaign, the State called a large number of bantu detectives to depose to a number of meetings held in Alexandra Township, and in other townships, in the Johannesburg district. Whether or not the State succeeded in doing this does not really matter, for the defence afforded the State a golden opportunity to prove its case on these points by calling two prominent office-bearers of the P.A.C., that is Robert Mangaliso Sobukwe, the National President, and Potlako Kitchener Leballo, the National Secretary. These two men were, by virtue of the offices they held, in a position to give direct and reliable evidence on the matter, and in fact did so.

33. But as the State originally set great store by the evidence of the detectives who attended the meetings, it is just as well for the Court to deal with their evidence shortly. They all took notes, in English, of what speakers said at the meetings. In general they described the P.A.C. flag hoisted at the meetings. They took down the names of the speakers, sometimes already known to them and sometimes ascertained from the speakers or other ex post facto. Sobukwe has given a description of the flag and has deposed ^{to} the fact that many of the speakers were members or office bearers of the P.A.C. On this evidence, prima facie, it is evident that the meetings

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were in fact P.A.C. meetings. But is there reliable evidence of the correctness of the speeches of the speakers? That depends to a very great extent on the proficiency of the detectives. They are of varying degrees of education and intelligence; their ability to understand, and translate into English, the bantu languages used by the speakers, is also of varying degrees; in many cases the bantu languages used were not the home languages of the bantu detectives; the detectives made their notes in longhand, and obviously did not note everything said; some made better impressions than others as witnesses - one fool e.g. professed to have noted every word said, whilst another witness estimated that he noted no more than about a third of what was said. In these circumstances there is the substantial possibility that many parts of the speeches were recorded incorrectly, and, in any case, the recorded portions of the speeches may be totally out of ^{context} ~~accord~~. Moreover the fact that a person, perhaps even an office bearer, of such a political organisation as the P.A.C., says something at a P.A.C. meeting, is not proof that he is setting forth the views and aims of the P.A.C. - they maybe his personal views, or his personal interpretation of the policy and aims. For these reasons the Court has decided to ignore the evidence as to the contents of the speeches, i.e. as set out on pages 9 to 325 of the record and in Exhibits A. and C. to X.

34. Sobukwe and Leballo are both men of education; the former being a degreed man and formerly lecturer in bantu languages at the University of the Witwatersrand; and Leballo being a person who had matriculated and was the holder of a teacher's certificate. Sobukwe gave his evidence in a much more impressive manner than Leballo, who was inclined to be

/persistent.....

persistent and dogmatic on matters on which he could not give reliable evidence, e.g. as to the distribution of certain P.A.C. pamphlets, and as to whether or not certain of the accused were delegates to a conference of the P.A.C.

35. Sobukwe has given THE POLICY AND AIMS OF THE P.A.C. as follows, and there is no reason to doubt his evidence:-

- (i) To organise the African people under the banner of African Nationalism.
- (ii) To overthrow "white domination".
- (iii) To establish a new social order, original in concept, Africanist in orientation, socialistic in content, democratic in form, creative in purpose.
- (iv) To strive for the realisation of a United States of Africa, from "Cape to Cairo and Madagascar to Morocco".
- (v) and to promote the concept of African personality, Pan Africanism, (and so forth - see page 3226 of the record).

The P.A.C. was formed in April, 1959, and its struggle was to be continental and not local, and the words "African" and "Africanism" were to be given their popular meaning, i.e. they referred only to the indigenous inhabitants of the continent of Africa (in other words, agreeing with certain statutory definitions of a native, namely, and aboriginal inhabitant of the continent of Africa). Europeans, Indians and others were only to be regarded as "Africans" "in agreement with our philosophy of Pan Africanism in a post reconstructed era", (page 3313) and then they would have to "accept the democratic rule of an African Majority, and their only allegiance to Africa". In other words the P.A.C. advocated "one man, one vote" (page 3225) - in which case the Bantu would, ofcourse, be the ruling majority

/in....

in a government "of the Africans, by the Africans, for the Africans" (page 3224 and 3225). Membership of the P.A.C. was confined to "Africans" in the narrow sense.

The white man in this country was regarded by the P.A.C. as a foreigner. They came to this country and by means of unfair laws, superior weight of military power, and the Bible suppressed the African Masses (page 3247) and took possession of the land.

The P.A.C. aimed at the overthrow of "white domination", which Sobakwe defines as white supremacy, white "baasakap", the entrenchment of the white man in the economy, military power, political power of the country (page 3249). In other words one of the P.A.C. aims was the overthrow of the existing system of government in this country, and that necessarily entailed the white man, the government of the white man, and the police, as officers of the law, being regarded by Bantu as hostile to them, at least until this aim had been realized, which the P.A.C. hoped to attain by 1963 (page 3242).

The P.A.C. advanced its policies by means of speeches at public meetings, including its congresses, and by circulation of a publication called "The Africanist", and of circulars and pamphlets, and other means.

It used a form of greeting in which one person would say "Isive lethu" (our country) and the other would reply "E. Afrika". The P.A.C. salute is demonstrated by many of the men depicted on a photograph, Exhibit 110, taken at an identification parade.

Members were issued with membership cards after they had taken an oath of allegiance. Exhibit 50 is such a card. On the card the member was expected to sign a pledge such as appears on the exhibit.

The "anti-pass laws" campaign and the actions of certain

of the accused, and of all members of the P.A.C. are to be regarded with the foregoing facts set out in the paragraph as a back ground.

36. THE ORGANISATION OF THE P.A.C. i.e. its structure, is roughly as follows:-

As a rule a minimum of 15 members form a branch, and they elect a branch executive committee consisting, i.a. of a chairman, a vice-chairman, a secretary, and a treasurer. Their duties are set out in paragraph 16 of Exhibit 117, which is the constitution of the P.A.C.

Regional conferences at which branches are represented are held, and in respect of each region there is a regional executive committee.

Above the regional executive committees is the National Executive Committee and Sobukwe and Leballo occupy their posts on this National Executive Committee. Its composition is set out in paragraph 9 of the constitution, and its members are elected in open conference consisting of one delegate for each 15 members.

37. The origin of the "ANTI-PASS LAWS" CAMPAIGN is not clearly established by the evidence. The total abolition of these laws was not regarded by Sobukwe as "part of our aims and objects... it was a campaign ... part of the P.A.C. structure ... just an issue that flows as part of a programme to be carried out" (page 3242). It was, no doubt, designed to catch the popular imagination, and increase membership of the P.A.C.

At a widely attended conference held on 19th and 20th

/December....

December, 1959, at the Communal hall, Orlando, Johannesburg, a resolution was adopted (Exhibit 120). Certain of the accused attended this conference. According to the resolution the National executive was instructed "to call the Nation on a positive decisive action against the pass laws."

Whatever may thereafter have been said by speakers at meetings, the National executive certainly seems to have embarked on the campaign by the issue of four circulars or pamphlets. Copies of these figures as exhibits 47, 49, 6 and 5. They were issued in that order. Sobukwe has identified them all as being issued by the P.A.C.

38. EXHIBIT 47, which came into the possession of Detective Sergeant Wessels from an undisclosed source, was the first pamphlet, issued early in March, 1960. It is headed "The Dawn has come - The great awakening has started". The "nation" is asked "are you playing your role in the positive and final act against the passlaws?" It gives particulars of the sufferings, oppression, and exploitation of 15,000,000 "Blacks" under the "pass laws", and concludes "Let's talk about passes and pass raids".

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39. EXHIBIT 49 - was issued a week or so later. It is headed "Passes must go now" "No bail, no defence, no fine", and is addressed to "sons and daughters of Africa". It remind people of the campaign, and to save money, food, and sending cash donations to the P.A.C. to assist the dependants of the nation. The call to action was to come from their leaders only, and not others. They were to be on the alert, to know what they were fighting for. But there was "no need for bloodshed. What is needed is unity and sacrifice."

In 1960 we take our first step, in 1963, our last, towards freedom and independence."

40. EXHIBIT 6 - was issued a few days before the fourth and final pamphlet. It is headed "Alerting the Nation". "No bail, no defence, no fine". Once again the nation is reminded of the conference resolution and to save food, money, send donations, to keep the circular, to remember that the leaders will lead them into action, and to obey their orders only ; to be ready for the call, to be disciplined, faithful, to cling together; and "we will do away with the pass laws once and for all. There is no need to die from police bullets"

41. And then came the final circular, exhibit 5, issued on or about Friday, 18th March, 1960, i.e. only a few days before the tragedy of Sharpeville. It stated that on Monday the 21st March, 1960, "we launch our positive, decisive campaign against the pass laws in this country".

It listed their demands:-

- (1) That pass laws be totally abolished.
- (ii) A minimum wage of £35 per month.
- (iii) A guarantee that their leaders will not be victimised.
- (iv) A guarantee that no worker will be dismissed.

SOBAKWE/.....

Sobekwe then gives his orders as follows:

- (i) All men must leave their passes at home;
- (ii) Under the leadership of the P.A.C. the men will move to chosen police stations and surrender themselves. The leader will tell the police: "We all have no passes, we will not carry passes again, millions of our people are arrested under the pass laws, so you had better arrest us all."
- (iii) If stopped on the way by the police, and they demand passes, surrender there and then for arrest.
- (iv) All men will go to gaol under the slogan "no bail no defence no fine". Women must make sure all men go to gaol.
- (v) Nobody except the National President will call the campaign off, and he will do so at meetings of the people.
- (vi) So long as the campaign is on nobody will go to work. Various slogans are repeated.

42. All these pamphlets were issued in English, and in one or other of the bantu languages. On the whole the translations by the draughtsmen were substantially correct.

43. These are the actions of the National Executive of the P.A.C. What was done about the publication and distribution of these pamphlets to the Bantu Population at large? Two named members of the National Working Committee (probably a sub-committee of the National Executive Committee) were responsible, according to both SOB^UKWE and LeBALLO, for the distribution of the pamphlets in the Witwatersrand area, which includes Sharpeville.

The probabilities are that these two men would not personally have done the distribution, as LeBALLO insists, but that they would have got others, with local know-

knowledge/....

knowledge to assist them.

Who would, in the circumstances, be more likely to do so than local P.A.C. members? Be that as it may, there is ample evidence that the pamphlets were widely distributed in Sharpeville township: - Mr. Labuschagne, the superintendent, deposes to many copies of exhibit 5 being found in the streets and post boxes in the location on the evening of 20th March, 1960. He himself picked some of them up, and says they were widely distributed in the location. Sergeant Grobler saw pamphlets which he handed over to Det. Serg. Wessels, and the latter has deposed to obtaining possession of exhibits 47, 48 (a copy of exhibit 6) and 49; and has stated that they were displayed in prominent places like bus stops and telephone booths.

Bantu Det. MAIKIA MMOTONG saw such pamphlets and received some from "informers". Bantu constable PIERCE SEROBANYANE had a pamphlet, similar in content to exhibit 5, pushed under the door of his house in Sharpeville. Accused No. 76, PETER MOLIFE, stated that he received a P.A.C. circular signed in the name of SOB^UAKWE, dealing with the abolition of passes and a minimum wage of £35 per month (that would be exhibit 5).

44. But it is time to consider the position nearer home. The evidence deals with certain gatherings of a P.A.C. Native in Sharpeville; with certain admissions made by certain of the accused; with their presence or otherwise at these gatherings, and at the National Conference in Orlando in December 1959.

45. Mr. Labuschagne, on information, went to the house of accused No. 4. There he found certain of the accused/.....

the accused, and took possession of a large number of exhibits, Nos. 15 to 35 inclusive. These will, in due course, be examined in detail. For the moment, however, the Court is concerned with exhibits 15 and 28.

Exhibit 15 contains minutes of certain meetings, all held after the date of the establishment of the P.A.C., the 6th April, 1959. Exhibit 28 is a loose piece of paper on which is recorded the minutes of a meeting held on the 9th September, 1959, and which is signed by accused No. 65, ^{Morobe} HOPHNE MOSOKE, who was then a member of the P.A.C. He has identified this exhibit as also the minutes of a meeting held on the following day and recorded on the 3rd page of exhibit 15. Now it is clearly established by the evidence of accused No. 65 which is evidence ⁱⁿ ~~of~~ the contents of the documents in question, that accused No. 4 was at all times ~~material~~ the vice-chairman and a member of the Sharpeville branch of the P.A.C. That being so the documents found in his possession are admissible in terms of section 263 bis. Act No. 56 of 1955, as inserted by section 3 of Act No. 9 of 1958. In terms of sub-section 1/c) of section 263 bis. exhibits 15 and 28 afford proof of the holding of P.A.C. ^{branch} ~~board~~ meetings on the following dates:-

- (i) 23/4/59, at which certain members are recorded as having paid their sub-scriptions.
- (ii) 25/5/59, at which accused ^{no 4} was present.
- (iii) 28/5/59.
- (iv) 9/6/59.
- (v) 7/7/59.
- (vi) 9/9/59. Apparently there were two local executive committees by now, one of which is described as ^{be} "Mr. MOROBE's Executive." After discussion ^{by others.} Morobe's committee seemed to become permanent, and was to be augmented ^{by others}. Morobe signed/.....

Morobe signed the minutes.

- (vii) 10/9/59, when certain other persons including accused No. 4 were elected "as office bearers to fill Mr. Morobe's Executive".
- (viii) 20/9/59.

At the back of exhibit 15 is a list of names, addresses, and amounts, under the heading "Levies 1959". This obviously is a list of members, and is prima facie evidence of membership against them in terms of section 263 bis. (1) (a).

46. Bantu-detective Malakia Mmotong attended the Conference in Orlando on the 19th and 20th December, 1960. He was a mere Observer, outside the hall, and saw certain of the accused entering it. Their presence at the conference obviously connects them with the resolution mentioned in paragraph 37 Supra.

47. MR. LABUSCHAGNE'S visit to the house of accused No.4 took place on the 21st February, 1960; and he found that accused, certain of the other accused, and some other persons, obviously conducting some sort of meeting. As some of the exhibits particularly No. 15, and exhibit 6, were on the table at which accused No. 4 was sitting with the others, it is equally clear that it was a P.A.C. meeting, at which exhibit 6 dealing with the pass campaign was probably being discussed.

48. The next gathering figuring in the evidence was one at the house of Accused No. 8 on Sunday 10th January, 1960. MALAKIA MMOTONG attended this gathering, which seemed to cover a good deal of eating and drinking, and only a small proportion of P.A.C. business. It is clear, however, that many people had small etiquettes, designating either support or membership of the P.A.C. on the lapels of their jackets. Un-

doubtedly some of/.....

undoubtedly some of the accused were present and wore such etiquettes. One JOB TSOLO made a short speech, He had welcomed the detective and invited him to take notes. Tsolo is alleged to be party to the common purpose mentioned in the charge. In any case he spoke in the presence of certain of the accused, and said: "We are ready to destroy white domination in Africa. The only weapon is to fight. There is no freedom without bloodshed," or words to that effect. He then added something unintelligible sounding like the following: "There are 80 motor cars in the country, and they intend to borrow 40 of the 80 cars, so that they could face each other." The evidence of MALAKIA MMOTONG will be the subject of further examination when the case is being examined against accused No. 2 individually. But the Court has no doubt that it can accept his evidence as to the facts set out in this paragraph being substantially true .

49. The evidence also indicates that accused No. 4., according to the evidence of MR. LABUSCHAGNE, had applied for permission to conduct a public P.A.C. meeting in Sharpeville, but that the application had been refused. Exhibit 22 seems to be a draft of a letter, on behalf of the P.A.C., for such permission. After the wide distribution of exhibit 5 in Sharpeville on the evening of the 20th March, 1960, accused No. 4 was found, on at least two occasions, about to address a gathering of Bantu some considerable time after midnight on open ground and on the football field at Sharpeville . He told captain CAWOOD, Lieutenant FOURIE, and others, that he was conducting a meeting. Others, including
No. 3/.....

No. 3 accused, had been rousing the men-folk urging them to come along, or to go to the police station without their passes, and the evidence of one or two witnesses, particularly BERNARD XINGWANE and sergeant KUMALO, suggests that the men were being urged to go in the direction and to the place at which accused No. 4 was addressing people. The Court's ^{conclusion} condition is that accused Nos. 3 and 4, and particularly No. 4, were busy at this stage, by means of attempting to address the men at a meeting, to persuade them to go to surrender themselves for arrest after leaving their reference books at home. They would then not be in possession of their reference books, nor able to produce them on demand. For fuller details of these nocturnal events reference should be had to paragraph 70 et seq infra.

50. However the police dispersed these nocturnal gatherings and for a few hours there was apparent peace. But early in the morning of the 21st March, 1960, and after effective steps had been taken to have the bus service from Sharpeville to Vereeniging, where most of the menfolk were employed, discontinued, persons gathering at the bus stops and from elsewhere were led by certain of the accused on the way towards Vereeniging. The only reasonable inference in all the circumstances is that they were being led to the police station in Vereeniging. The police barred their way, and after certain incidents the subject of the charge of public violence, certain leaders turned and led the procession to the Sharpeville police station.

A rumour was spread that the people should gather there as a high ranking official would address them at 2p.m. on the subject of "passes". Some of their leaders actually told the police that they had no reference books on them, and had come to surrender themselves for arrest, thereby setting an example to their followers to do the same/....

sane.

51. But there is evidence by some few of those disturbed during the night that they would be assaulted if they did not accompany those waking ^{them} their up. Others received no such threats. Quite a few, although not threatened, forced repercussion if they did not co-operate. There is no evidence that anyone was threatened into joining the procession to Vereeniging, and later to Sharpeville police station. On the whole, such threats of violence as were uttered ^{were} more intended to induce the persons threatened to come to the meeting to be held by accused No. 4 during the night. There is, therefore, no ground for holding that these persons would have acted under intimidation, is not carrying their reference books, of such a nature that they themselves would not have the necessary mens rea in committing the offences against Act No. 67 of 1952, as amended (Rex vs. Sesidi 1953(4) S.A. 634; Rex vs. Mpekwa 1958 (1) S.A. 10; and Rex vs. BOLO P.H. 1960 (2) H.290).

It is further clear that the men committing the offences were to do so as part of a campaign to have the laws relating to "passes" repealed. The P.A.C. pamphlets referred to supra make this quite clear.

52. From the facts set out so far it is clear to the Court that the P.A.C. set about inducing natives to contravene the "pass" laws, by way or protest against them, or to have them repealed, and that certain of the accused, clearly those who were members of the P.A.C. in Sharpeville, made common cause with the P.A.C. in this campaign: they conducted meetings, probably assisted in the distribution of the/.....

of the pamphlets, led processions, urged people not to carry reference books, and in other ways assisted in trying to attain the ends of the campaign. Their actions and that of the P.A.C. in general amounted at least to advising, encouraging, or inciting the bantu to contravene the provisions of sections 15/1) (a) (1) and 15/1 (a) (11) of Act No. 67 of 1952, as inserted by section 24 of Act 79 of 1957.

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(53) But what does the evidence prove as to the participation of accused No. 3 and each of the accused still facing this charge: i.e. Nos. 1, 2, 4, 7, 8, 38, 39, 75, 76. The Crown has proved what one may, for convenience sake, call the "conspiracy". It still has to prove the identity of the various "conspirators", and that their action brings them in as "conspirators".

(55) ACCUSED NO. 1, JOHANNES MONTAGU :-

(i) On the evidence of Malakia Mmetong he attended the National Conference at Orlando. This evidence has not been challenged, and there is no reason to disbelieve it. On the evidence of Laballe only branch delegates and office bearers attended this conference, and it is not unreasonable to infer that the accused attended as a delegate for the Sharpeville branch.

(ii) On the evidence of Mmetong the accused also attended the gathering on the 10th January, 1960, at the house of accused No. 8. Vide paragraph 48 supra. He wore a "P.A.C." etiquette on the lapel of his coat. At a certain stage the accused told Mmetong not to enter the house, and Job Tsolo intervened on behalf of Mmetong. In cross-examination the accused, who gave or called no evidence, did not deny his presence, but contended that the gathering was "only a party". That may have been so, but on the evidence it was certainly a party of P.A.C. adherents.

(iii) On the evening of the 10th February, 1960, accused No. 2 was caught printing P.A.C. etiquettes without permission on the printing press of his employers,

his employers, African Cables. Accused No. 1 was also an employee of the same firm, and he and certain other employees were seen wearing these etiquettes at the time when accused 2 was found printing them. On being interviewed on the matter they falsely explained that they had picked them up in Sharpeville location.

(iv) Accused No. 1 was known to Mmotong, and also to one Isaac Tatai, by the name of Dhlamini, and a P.A.C. membership card was issued in the name of Molefi Monyake. It is exhibit 50. But on the reverse side the holder's name is given as Johannes Monyake. Detective sergeant Wessels has deposed to finding exhibit 50 in the possession of accused No. 2, but he corrected his evidence and then said it was found in possession of Johannes Monyake together with exhibits 38 and 39, on the reverse side of which he had there and then endorsed the name given to him by their wearer, i.e. Johannes Monyake. He is obviously confused as to the identities of accused Nos. 1 and 2. Both accused wore "P.A.C. etiquettes" at the relevant time, and it is unlikely that one of ~~them~~ would be carrying the other's membership card. It is most highly probable that accused No. 1 carried the card. The other evidence makes it quite clear that it is his card.

(v) On the morning of the 21st March, 1960, the accused was seen leading an unarmed group of native men from the premises of a hostel for men in Seeiso street, Sharpeville. He led them in the direction of the town of Vereeniging. This group of men was

/ joined.....

joined by another group, some of whom were armed with sticks, also emerging from the hostel premises. They were all intercepted by the police after progressing a little distance on their way. But they had meanwhile been joined by other groups from the location including women and children, and i.a. the P.A.C. greeting "Iswe lethu - Africa" was being shouted by them all. He wore exhibits 38 and 39 on his clothing, reading respectively "Africa for Africans P.A.C." and "away with passes P.A.C.". The accused was, by his actions, obviously their leader, together with accused No. 2 and others. This aspect of the case will be examined more closely when the Court considers Count 1. Both these accused were arrested, and other persons took over the leadership, and led the mob towards Sharpeville police station. From this evidence it is obvious to the Court that accused No. 1, with others, was leading a large group of bantu men towards Vereeniging, and obviously doing so as part of the P.A.C. "anti-pass laws" campaign.

(vi) In all the circumstances set out in this paragraph it is obvious to the Court that he not only associated himself with this campaign, but took an active part in it.

(56) ACCUSED NO. 2 THADDEA NTOAMPE :

(1) There is no evidence that the accused attended any of the P.A.C. gatherings in Sharpeville, except an allegation by Malakia Mmotong that he attended the gathering at the house of accused No. 8 on 10th

/ January

January 1960. The nature of the gathering has been described in paragraph 48 supra. But the accused has strongly challenged his presence there. Kmetong had to admit that he did not note the name of the accused on a list of names taken by him at the gathering. He had, before production of the list, stoutly maintained that the name was on the list. When it was found not to be there, he had the rather tame excuse that he had been given "fair treatment" at the gathering. In the course of his cross-examination it was put to him that the accused would say that on that day, Sunday, 10th January, 1960, he was in fact doing overtime work for his employers, the aforesaid firm African Cables. The Prosecutor, naturally, retaliated and proved conclusively by the production of the pay cards of the accused, on which in the ordinary course the workman himself by manipulation of the card in a "clock-in" machine indicates the date and time of his attendances at work, that the accused did not work at all on that day. These pay cards are exhibits 81, for the week ending 10th January, 1960, and 96, for the week ending 17th January, 1960. The accused himself has given no evidence, but the state has proved that he did not work overtime on 10th January, 1960, but did do so on the following Sunday. The accused had no reason to think back as to which Sunday it was on which he worked overtime, until several months later, and was probably thinking of the work on the 17th when faced with the evidence as to the 10th, and the Court cannot infer that he was not truthful in his instructions on the point

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to his counsel. On the evidence of Mmotong, standing unsupported and strongly challenged, it is impossible for the Court to hold that he did attend this "P.A.C." party-for that is all it really was - on the 10th January, 1960.

(ii) On the night of the 10th February, 1960, accused No. 2 was found at the printing press of his employers. He had no right to be in the room in which the press was, particularly at that time of the night when the press was not in use at all. His own duties had nothing to do with his presence there. He was admittedly printing certain P.A.C. etiquettes. Specimens have been produced to the Court, exhibit 67. The words on the etiquettes read "Africa for Africans P.A.C. ". When caught doing this he lamely said that he was practising to use the printing machine. Mr. van Vuuren, who so caught him, found four other employees (accused No. 1 being one of them) wearing these etiquettes on their clothing. On the 21st March, 1960, accused Nos. 1 and 2 were found wearing etiquettes (exhibits 38, 39, 51 and 52), which were printed, on the evidence of Mr. vanVuuren of African Cables, by a machine showing the same type of printing as that of his firm, and it is highly probable that they were printed on that machine - not necessarily by accused No. 2 as other employees also had access to the machine. But his explanation that he was merely practising on the machine is utterly unconvincing.

(iii) On the morning of the 21st March, 1960, accused No. 2 was seen to act as a leader of certain of the Bantus going along ^{Seliso} Seleroo street, in the direction of Vereeniging. He has asserted,

/by ...

by means of cross-examination that he was not a leader but merely in amongst the crowd - but he has given or called no evidence on the point. A number of witnesses have deposed to his actions, which will be examined in more detail at a later stage, and the Court is satisfied that he was leading a group of Bantu coming from the location as distinct from the hostels already mentioned, in the direction of Ver-
 eeniging. He wore etiquettes on his clothing, exhibit 51 and 52, reading "Africa for Africans P.A.C." and "Passes must go P.A.C."

In the possession of accused No. 2 was also found : (a) exhibit 53, a small notebook with his name in it, and a list of members of the cabinet and their portfolios, and certain other notes.
 (b) Exhibit 54, a damaged reference book ; and
 (c) exhibit 55, containing i.a. a document similar, in part, to exhibit 47 the first of the "anti-pass laws" pamphlets issued by the P.A.C.". The group led by accused No. 2 was also intercepted by the police, and he and accused No. 1 were arrested as already mentioned, others took over the leadership of the crowds, and led them back into the location and to the Sharpeville police station. It is clear also in the case of accused No. 2 that he was one of the leaders, leading the Bantu behind him towards Ver-
 eeniging, and obviously doing so as part of the "anti-pass laws" campaign that had been set in motion by the P.A.C.

(iv). The evidence as a whole against accused No. 2 clearly establishes that, although
 /there

there is no actual proof that he was a member of the P.A.C., his sympathies were with the P.A.C., he assisted in printing etiquettes to be used by them in their campaign, and he led a group of people as part of the campaign. In other words, not only did he associate himself with the campaign, but he also took an active part in it.

(57) ACCUSED NO. 3 . NYAKANE TSOLO :

This man is no longer on trial. The evidence clearly establishes that he was the Secretary of the Sharpeville branch of the P.A.C. During the night of the 20th March, 1960, he took an active part in the disturbances in Sharpeville - disturbances aimed at inducing bantu men to gather for the meeting of accused No. 4. He was seen in the crowds in ^{Leiso} Seliso street at a time just before the crowds were being led to the police station, and he was one of the early arrivals there and entered the police station grounds. He was obviously a leader there, and actually offered himself for arrest to the police on a charge of not possessing or being able to produce his reference book. He played a very prominent part in the incidents at the police station, and was removed into the police station shortly before the shooting took place. It is overwhelmingly established that he took a very active part in the "anti-pass laws" campaign. And those who took part with him are in law liable for his part.

(58) ACCUSED NO. 4 . THOMAS MORE :

/(1)

42.

(1) There is clear evidence, undisputed and not challenged, that accused No. 4 was at all material times the vice-chairman of the Sharpeville branch of the P.A.C. The chairman was apparently one Job Tsolo.

(11) On the 21st February, 1960, Mr. Labuschagne visited the house of the accused in the "site and service" section of the location. The nature of what he found in progress has already been set out in paragraph 45 supra. He seized a number of documents including exhibit 6, the pamphlet headed "Alerting the Nation", and also exhibits 15 to 35 inclusive. Among these documents there is ample proof of the activities of accused No. 4 :

- (a) exhibit 15, the minute book, proves his presence at almost all of the meetings held, and the fact that he was very active in such matters as explaining the policy and aims of the P.A.C.
- (b) exhibit 16 is a "manifesto of the Africanist Movement" relating to the inaugural convention of the P.A.C. on the 4th to 6th April, 1959 ;
- (c) Exhibit 20, is apparently a rough draft of a P.A.C. speech in which the Sharpeville advisory council and the Superintendent are criticised;
- (d) Exhibit 22, is a draft letter for permission to hold a P.A.C. public meeting in Sharpeville. The permission was refused.
- (e) Exhibit 23, is a circular to all branch secretaries calling a regional conference on the 31st May, 1959.;
- (f) Exhibit 24 reflects the minutes of a meeting / held

held on 21st and 22nd April, 1959, at which the accused within about two weeks of the inauguration of the P.A.C. explained its aims, and its financial position.

(g) Exhibit 26 is a circular from P.A.C. headquarters to all branch secretaries.

(h) Exhibit 28 has already been dealt with - vide paragraph 45 and the evidence of accused No. 65;

(j) exhibit 29 is a draft of a speech in which certain people are asked to join the P.A.C.;

(k) exhibit 30 contains copies of letters from accused No. 4 to one Madsunya, at that time chairman of the Alexandra branch of the P.A.C., on P.A.C. matters;

(l) exhibit 32 is a draft letter from the P.A.C. to somebody not to occupy a certain shop;

(m) exhibits 34 and 35 are copies of the "Africanist" the official organ of the P.A.C. From these exhibits it is clear that accused No. 4 was playing a very prominent part in the P.A.C. The houses of other P.A.C. office bearers were searched, and very little found, and it is, therefore, clear that the house of accused No. 4 was virtually the headquarters of the P.A.C. in Sharpeville.

(11) Mr. Labuschagne discussed the subject matter of exhibit 6 with the accused, and warned him that if he was not happy in Sharpeville he should pack up and leave, and not get the inhabitants into trouble. The accused admitted that the pamphlet was his. Mr. Labuschagne told him that there had been complaints against the P.A.C. that people were being threatened, but the accused replied that he would remain a member.

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(iii) Detective sergeant Wessels took over exhibits 15 to 35 from Mr. Labuschagne, and interviewed the accused who admitted to him that he was the vice-chairman of the P.A.C. He also informed detective sergeant Wessels that he had applied for permission to hold a meeting to the local authority and that it had been refused.

(iv) Malakia Mmotong saw accused No. 4 go into the conference hall at the time of the National Conference at Orlando. There is no reason why the Court should not accept this evidence, notwithstanding certain unsatisfactory features in the evidence of the witness.

(v) Accused No. 65, Hophne Morobe, identified exhibit 28. His evidence has already been dealt with. Apart from referring to exhibits 15 and 28, he stated that the accused was a member of the P.A.C. and also that the witness attended certain meetings at which the accused presided.

(vi) During the night of the 20th March, 1960, accused No. 4 was seen on at least two occasions with groups of men. This aspect of his activities has already been dealt with in paragraph 49 supra.

(vii) The evidence does not disclose his whereabouts at the time of any of the incidents in Seliso street during the forenoon of the 21st March, 1960. This would be at the time of the march by the crowds in the direction of Vereeniging, and later towards the Sharpeville police station.

(viii) However, he arrived at the Sharpeville police station during the forenoon, and there indulged in activities which clearly stamped him as

a leader of the crowd then present there. The details of his conduct will be examined at a later stage.

(ix) From all these facts the conclusion of the Court is that he was a very prominent P.A.C. office bearer in Sharpeville, and was prominently concerned in the activities of that organisation and took an active part in furthering its "anti-pass laws", campaign.

(59) ACCUSED NO. 8 : EMMANUEL TEKETSI :

(i) On the 10th January, 1960, the P.A.C. gathering already mentioned was held in the house of accused 8. It seems to have been a P.A.C. social gathering at which members wore P.A.C. etiquettes on their lapels, and the chairman, Tsolo, made a short speech. Malakia Mmotong has deposed to the presence of accused No. 8 at the gathering, and not withstanding the witness's unsatisfactory evidence about the presence there of accused No. 2, the Court is satisfied that he is correct in his evidence that accused No. 8 was there. At one stage of his evidence Mmotong said that the name of accused 8 was not in his list of names, but Mmotong obviously had accused 2 in mind when saying so. In fact accused No. 8, in cross-examination, admitted his presence at the house.

(ii) During February, 1960, detective sergeant Wessels interviewed somebody by the name of Emmanuel Teketsi in his office. This person admitted that he was a member of the P.A.C., and Mr. Wessels

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i.a. noted his name (Emmanuel Teketsi) and his address (Stand 8171, Sharpville). The address is that at which Malakia Mmotong attended the gathering on 10th January, 1960 - vide the previous sub-paragraph.

(iii) On the 23rd March, 1960, Det/Sgt. Wessels searched the house of the accused, and there found the following exhibits: (a) Exhibits 86 and 87: These are copies of the programme for the National Conference at Orlando. There is no direct evidence that accused 8 attended this conference; (b) Exhibit 88: "The Africanist" for November, 1959; (c) Exhibits 88 and 90 which seem to be of no particular evidential value; (d) Exhibit 91, a document obviously concerning P.A.C. affairs. These documents confirm his membership of, and interest in, the P.A.C.

(iv) On the 18th March, 1960, Mr. Labuschagne, on information, went to the bus terminus in Sharpville, and there saw Accused nos. 8 and 38 going in and coming out of various houses. He followed them up to the house of accused No. 8, and there inspected their reference books and, although not in order, found them undamaged. Some time later on the same day, he again went to the bus terminus, found certain members of the Police there, and they (Sergeant Grobler and others) had these found exhibits 3 and 4. These were portions of reference books. The Police and Mr. Labuschagne later pieced these together and established that exhibit 3 was the remains of the torn reference book of Accused No. 38, and exhibit 4 (which consisted of torn and half-burnt remains of reference books,) included portion of the reference book of accused no. 8. Although the destruction of reference books was not part of the actual campaign of the P.A.C., this sort of action did enter the mind of

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at least one prominent member, Josiah Madzunya, as one way of ^{the} defeating the pass laws. He was expelled for this attitude. But why should other P.A.C. members not have had the same view? The evidence discloses support for this view by accused No. 8 and No 38 and further tends to prove their interest and participation in the campaign, although not in accordance with the official P.A.C. tactics.

(v) On the 21st March, 1960, after the apprehension of accused Nos. 1 and 2, accused 8 was seen next acting as a leader of the crowds in Seeiso Street. He actually spoke to Major van Zyl, then in charge of the Police contingent there, and said something to the effect that the Major must come to the Police Station, and turning to the crowd he told them: "Come let us march to the Police station"; and he then led them towards the Police station.

(vi) Various witnesses later saw him in amongst the large crowd that had gathered at the Police station still acting like a leader. This aspect will be dealt with more fully at a later stage.

(vii) He was not arrested until about a week after the 21st March, 1960. He was on that day seen by Mr. Labuschagne and other municipal officials on a footpath near a dam on the outskirts of Sharpville. The actions ascribed to him by Mr. Labuschagne are not such as would enable the court to draw any inference from them. He did, however, attempt to evade arrest by riding away on his bicycle, but was overtaken and arrested.

(viii) This man too, on this evidence, was a member of the P.A.C. and took an active part in its affairs, and in leading the crowds to the Police station as part of the execution of the "anti-pass laws" campaign. In other words not only did he associate himself with the campaign, but he

took an active part in its execution.

60. ACCUSED NO. 38, STEFAANS LEFSE:

(i) The accused was one of those present in the house of accused No. 4 on the 21st February, 1960, when it was visited by Mr. Labuschagne, and when he found a P.A.C. meeting in progress, and seized exhibits 6 and 15 to 35. These have all been detailed and described already. Apart from his presence there exhibit 15 discloses that the accused had attended the first meeting of the P.A.C. in Sharpville, i.e. on 23rd April, 1959, and paid his subscription - under the name of Stephen Lefse.

(ii) Accused No. 38 also destroyed his reference book, exhibit 3, on the 18th March, 1960. The court can do no better than to repeat its remarks as set out in paragraph 59 (iv) supra on this point.

(iii) There is no evidence of any active participation by accused No. 38 in the events during the night of 20th March, 1960, or in the forenoon in Seeiso Street on the 21st March, 1960. He was, however, at the Police station in amongst the crowd, and at one stage before the shooting he was at the Western gate, i.e. where the ultimate events immediately preceding the shooting occurred. Whilst in the crowd and also at the gate he gesticulated to the crowd by means of i.a. the "thumbs up" sign, and shouting "Afrika".

(iv) On these facts he was not one of the more prominent P.A.C. members. He led no crowds, in the streets; he acted as a leader only at a late stage at the Police station - and this conduct of his will receive attention when count 1 is considered. Otherwise he has done little except to destroy of his reference book, in furtherance of the

P.A.C. "anti-pass laws", campaign. The evidence against him is not very clear and convincing.

61. ACCUSED NO. 39: DAVID RAMODIBE;

(1) Exhibit 33, found in the house of accused No. 4, discloses this accused as treasurer of the P.A.C. and that on the 6th December, 1959, he delivered a speech on the question of "unity", and so on.

(ii) Malakia Mnotong saw him enter the conference hall at the time of the national Conference at Orlando.

(iii) The accused also attended the gathering at the house of accused No. 8 on the 10th January, 1960.

(iv) A person giving the name David Ramodibe admitted to Det/Sgt. Wessels that he was the treasurer of the P.A.C. at Sharpeville. Mr. Wessels cannot identify him, but his assistant, Malakia Mnotong, does, and says that he is the accused.

(v) Exhibit 28 records that on the 9th September 1959, the accused was the treasurer of the P.A.C. This evidence is confirmed by accused No. 65, Hophne Morehe, who also states that the accused was a member of his provisional branch.

(vi) Mr. Labuschagne's evidence proves that the accused was present at the house of accused No. 4 on the 21st February, 1960, when exhibits 6 and 15 to 35 were found there. Exhibit 6 is, of course, one of the pamphlets of the P.A.C. dealing with the "anti-pass laws" campaign. But it is not the final circular giving detailed instructions.

(vii) About a week or two before the 21st March, 1960, the accused and the witness Gladwin Mekhoe had a general discussion. It was to the effect that the Bantu should get together "oneday" and discuss the question of passes,

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so that after that meeting they could enquire from the white authorities about "passes" which were no longer similar to "passes" that had been carried previously. There was some uncertainty as to whether current "passes" were to be carried for five years only or not. This discussion is so vague and general that the court cannot connect it definitely with any "anti-pass laws" campaign.

(viii) Accused No. 39 conducted the examination - in - chief, on behalf of himself and the remaining undefended accused, of the defence witnesses Sobukwe and Leballo. In doing so he used the word "we" in such questions as "what do we mean by this "Africa for Africans"? This tends to associate himself with the P.A.C.

(ix) There is no evidence whatever of the presence of accused No. 39 at, or participation by him in, the events during the night, or in Seciso Street in the forenoon. A number of witnesses have deposed to his presence at the police station on the 21st March, 1960. But he has, not on oath, denied his presence there, and has in fact called the evidence of Gilbert Gabuse to prove that they had gone to Evaton at the time. In his unsworn statement, supported as to his whereabouts by Gabuse, he says that he woke up in the morning, heard noise in Seciso Street, and connected it with the expected demonstrations. He felt that it was his responsibility to stop the noise, and he tried to do so but failed. In the circumstances he went to Evaton, apparently in order to receive advice from one Moletj there. He says "I felt things were a bit heavy on me" This defence of his cannot be rejected.

(x) To sum up the evidence against him is that he was a member of the P.A.C., and that he knew about the campaign, but sought advice as soon as he saw that the position was getting out of hand. The evidence as to the part he may have taken in the campaign is very vague, and

not of such a nature that the court can with certainty say that he did take a part covered by the charge as particularised.

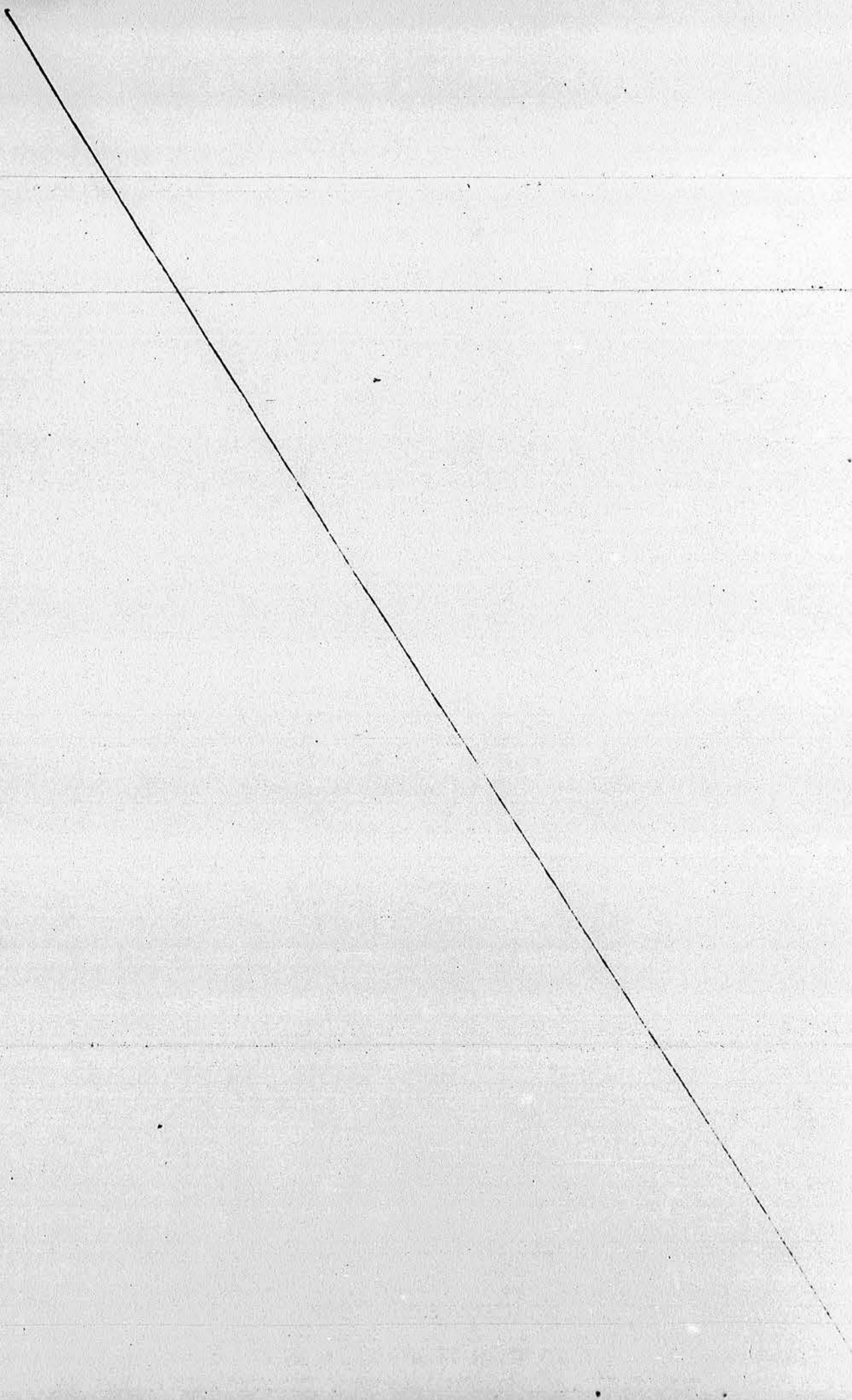
62 ACCUSED NOS 7 (ALBERT MATLALA), 75 (PAULUS MOLEKO) AND 76 (PETER MOLEFE)

At the close of the case for the State the Court refused an application for the discharge of these three men, mainly on the ^b basis that there was evidence disclosing certain activities by them during the night of the 20th March, 1960, or at the Police station on the 21st March, 1960. In view of the conclusions reached by the court as to those activities—and they will be detailed at a later stage — the court has feels that there is insufficient evidence to connect these men with Count II of the charge.

63 SUMMING UP ON COUNT 11:

The state has succeeded in proving that the P.A.C. and certain of the accused, by their common association in the P.A.C. "anti-pass laws" campaign, did advise, encourage, or incite the natives in general in Sharpsville to contravene Sections 15(1)(a)(1) and (11) of Act 67 of 1952, amended as aforesaid, by way of protest against that legislation; and that they did so by means of printing and distributing the four P.A.C. pamphlets exhibits 47, 49, 6 and 5; by their part in the gathering of crowds during the night of 20th March 1960; and by leading natives to the Police station for the Purpose of having themselves arrested for these contraventions and in that way proceeding ^{using} these natives to do so. In other words the charge is proved as set out on page 1 of the annexure to the charge, and in paragraphs (b) and (c) on page 2 of the annexure. The evidence is quite clear against accused nos. 1,2,4 and 8, and they are found guilty on the main charge of count 11. The evidence inconclusive against

accused nos. 7, 38, 39, 75 and 76 and they are found
not guilty on the main and the alternative charges of
Count 11.



EDB

COUNT 1 :

(65) The allegation of the State is that the accused committed public violence during the period 18th to 21st March, 1960, and in a document covering some 5½ pages of typing and containing many particulars in some 17 sub-paragraphs to the main paragraph, it has set out the charge in a full and detailed manner. Evidence was led as to certain happenings on the afternoon and early evening of the 18th March, 1960. But this evidence does not disclose public violence at all, in that it merely consists of hearsay evidence of certain threats to people, and of two of the accused, Nos. 8 and 38, destroying their own reference books. On the following day, the 19th March, 1960, nothing whatever happened. The incidents forming the real basis of the charge started at about 9 p.m. on Sunday, the 20th March, 1960, continued throughout that night, and on the next day until the police shot a number of bantu members of a large crowd outside the Sharpeville police station at about 1.35 p.m. on Monday, 21st March, 1960.

(66) The incidents during this period must be considered in the light of what had gone on before. As already stated the P.A.C. had launched an "anti-pass laws" campaign. It had issued and circulated pamphlets explaining the campaign. The last circular, exhibit 5, was issued on the 18th March, 1960; it gave detailed instructions for the execution of the campaign, and was found widely distributed in Sharpeville at about 9 p.m. on Sunday, 20th March, 1960.

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/ avoidance.....

EDB

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/ avoidance.....

avoidance of violence in the campaign: e.g. exhibit 49 says that there is no need for bloodshed; exhibit 6 says "there is no need to die from police bullets"; exhibit 5, the final pamphlet, calls on the men to surrender immediately if stopped by the police. At various meetings P.A.C. leaders emphasized that the campaign was to be "non violent". In his letter to the Commissioner of Police (exhibit 122), posted so as to be received by the latter only on the 18th March, 1960, Sobukwe writes that he had given strict instructions to the "African people in general" and to his P.A.C. members not to allow themselves to be provoked into violent action, and he made the same appeal to the police. Unfortunately he used vilely insulting language about the police in the same letter: they are dubbed "sadistic bullies" and "trigger - happy and African hating"; such language is not, in the Court's view, conducive to obtaining co-operation from the police; in the letter he asks the police to give any assembled Santu ample notice should they wish to disperse them instead of arresting them. But nowhere in his pamphlets does he ask either the P.A.C. leaders or the people in general to disperse when asked to do so by the police. He says he did make such a request at a public meeting in Cape Town, many hundreds of miles from Sharpeville, and at other meetings and expected the leaders of the people to know of his wishes. If he wished them to do so, if he was serious, why not issue a special circular to those leaders? Why not circulate to them his remarks at the meetings? All he did was to issue the four pamphlets, without an instruction on this

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point. So much for Sobukwe's contention that "strict instructions were given against any possible use or encouragement of violence" (p. 3220). He admitted, however, that violence could be expected. At p. 3221 he says that it can happen in any mass organisation that "undisciplined elements" could force people to the police station or prevent them from going to work, and his specific instructions were intended to forestall this. One is reminded, on this point, of the views expressed by Mr. Justice Claassen on appeal by Sobukwe himself (^{R.} vs. Sobukwe and others T.P.D. 8/11/60) : "It is clear and true on the evidence " that there was no intention to commit violence, " but one also has to take into consideration common " experience in this country. Where large numbers " of people set out to defy the laws of the land then " it very frequently happens that violence does result, " and that in spite of the hopes expressed by the " leaders of the movement."

Moreover, the crime of public violence does not mean that the organisers of demonstrations need have the express intention of committing violent acts. In R. vs. Wilkens and others 1941 T.P.D. 276 Mr. Justice Murray says: " In order to fix criminal " responsibility upon the present accused it was " sufficient to show that the accused persons were " associated with others in the execution of some " common purpose the result of which, either as " deliberately intended by the associated persons " or as being the natural and probable consequence " of their acts, was a riotous public invasion of the " rights of others." See also R. vs. Mgati 1952

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(3) S.A. 112 N ; R. vs. Rada 1953(2) S.A. 345 E; and R. vs. Maxaulane 1953(2) S.A. 252 E. These cases stress (on charges of incitement to commit public violence) that an objective test must be employed, and that the words and actions of the accused must be such that the reasonable and probable consequences thereof would be the commission of acts of public violence. The Prosecutor has invited the Court to hold that the P.A.C., as such, was merely paying lip service to a "non-violence" slogan. It is not necessary for the Court to do so, but it does find that as violence could be expected the P.A.C. did not take effective steps to guard against it, and the steps which Sobukwe says it did take were clearly inadequate to any reasonable person.

(68) Within an hour or so of the distribution of the final pamphlet, exhibit 5, in the location it was found that the telephone cables to Sharpeville had been cut. This resulted in the township being completely isolated telephonically, and also in all the telephones inside the location being out of order. Telephone communication was restored only by about 1 p.m. on the 21st March, 1960. There is no evidence available to prove who was directly responsible for this act. The Court has its suspicions, but that is all. Probably some P.A.C. sympathisers were responsible, but it is also reasonably possible that certain hooliganistic elements, taking advantage of the position, cut the cables. In the circumstances the Court cannot hold the accused persons responsible. The same conclusion applies to the destruction of

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parts of Municipal beer halls.

(69) The Municipal and S.A. Police were called out on patrol at about 11 p.m. on the 20th March, 1960. By then the last pamphlet had been distributed, and many hundreds of Bantu were out in the streets of the township. Those who distributed the pamphlet had done so before many of the inhabitants had gone to sleep.

(70) Groups of men were going about in the location during the late night hours waking the men, and telling them to come along with them. The men went along, and were in some instances told just to come along, in other instances to leave their reference books at home and to go to the police station. In some few instances window panes were broken in the process of waking the people, and a few were threatened with violence if they did not obey, others, thinking discretion to be the better of valour, obeyed without any actual threats of violence. This aspect of the case has already been mentioned, in general, in paragraphs 49 and 51 supra. Among the people so disturbed were : -

(i) Philemon ^{Shogana} Shogana, who was told by a group of young men to get up or to give them his reference book. He accompanied them. They said some misfortune would befall him if he did not obey. He accompanied them, but managed to escape.

(ii) Jan Nyepesi: Woken up by knocks at his door at about 11 p.m. He found about 10 men outside, and they merely told him that he should come, accompany them, they would wake up other people, he should leave

leave his reference book at home, and he "would hear in front" what was to happen. He saw others being woken up, but was later told to go direct to the police station, when he explained that he had an injured foot. There he was not taken into custody, but allowed to go home.

(iii) Jan Motse, a neighbour, of Jan Nyepesi, was told to leave his pass on the table in his house, and that they were all going to the police station. He told them he would go there directly. He left his pass at home and in fact did go to the police station. He too was allowed to go home by the police.

(iv) Joseph Salanyane was woken up and told "leave your pass at home, greet your children and accompany us". He also went to the police station, but had in fact not left his pass at home. He was allowed to return home by the police.

(v) Arial Mabote had heard during the day that in the evening some announcement about "passes" would be made, and people must have them at home and go to the police station. He remained awake, and at night people came along the street saying "wake up" loudly. He then left his reference book at home and went to the police station, and was told to go home.

(vi) Municipal sergeant Piet Kok, a ^{Grigua} Grigay was woken up at his mother's house. Window

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panes were broken, and men came in saying " Ons soek Afrika, ons land"; they told him " staan op laat ons saam loop". But somebody remarked that a policeman was living there, and ultimately they left the sergeant alone but left accompanied by his two brothers.

(vii) Elias Mvala was woken up at about 12.15 a.m. and was simply told "let us go". When he asked where to he got the reply "Iswe Lethu, Africa" (i.e. The P.A.C. greeting).

(viii) Christmas Mpempe was induced to open his door as he feared that the men outside might come in through the window, at which they were knocking loudly and broke 9 panes. One of those who entered his house said: "man, wake up, why are you asleep; there is nothing you can say here; you will see where we are going". He was forced out of his house, and described the intruders as young "tsotsis". When he was with them police appeared and dispersed them, and he was assaulted by the police, necessitating treatment in hospital.

(ix) Aaron Mokoena was woken at 12.30 and told "get up. We are waiting; do not waste our time". One of the intruders assaulted him, and when he said he would not go with them he was left alone".

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(x) Paul Olifant was woken up, told to dress and come along. He opened his door, and found a group of men outside adopting a threatening attitude. He went with them into the main street, where the police disperse them, and he hid in a tree until it was safe to go home.

71. Certain bus drivers were subjected to similar treatment, and were all conducted to a secluded spot outside Sharpeville and held captive there until sometime after the bus service should have commenced its operation. In that way the bus service was disorganised to such an extent that no buses whatever were available to transport the inhabitants of Sharpeville to their places of employment in Vereeniging and elsewhere:-

(1) Edwin Moahloli, had overheard certain conversations in the bus driven by him on Friday, 18th March, 1960. Consequently he and certain other drivers felt apprehensive and spoke to their employers, the proprietors of the only bus service operating into Sharpeville. The bus drivers all live in Sharpeville and are fetched by a bus driven by a European employee at 4 a.m., and then taken to the sheds to drive their buses to and from. This early bus did not call for the witness and others. He was not disturbed, as others were, and on finding people in the streets when on his way to work, he returned home.

(2) Zaphenia Maphitane, another driver, had come off duty at 8 p.m. At 3 a.m. he was woken up by men who told him to leave his reference book behind, and accompany them. They were taking him away, they said, "because if we bus employees go to work all people would go to work; we are supposed to go to the police station without passes". He was told to go with them if he did not want trouble. Although he saw no weapons on them he was afraid of assault or damage to his house, and accompanied them to a spot near trees on the outskirts of the location. He found a number of his co-drivers there. They were kept there, under

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guard, until well after the hour at which the bus service should have commenced.

(3) Joshua Mota, another bus driver, was woken up at about midnight. A small group of people were outside and told him that he should get up, get dressed, and asked if he did not know what this day meant? "We want to take all of you drivers outside the location; if we do not they may go and fetch buses and drive people here, and cause trouble, and we do not want any trouble". He accompanied them to the spot already mentioned on the outskirts of Sharpeville, and remained there with his co-drivers until after the bus service should have started.

(4) Daniel Seetsi, another driver was not subjected to the same treatment, but when he left for the bus terminus to go in by the first bus he was informed by people in the streets to go home, and wasted no time in doing so.

(5) Aaron Gribishe, also a driver, had heard that people would not go to work on the Monday morning. He and some other drivers had interviewed their manager, who ultimately told them that they should go to work. When he did so at 3.30 a.m. he saw police vans in the street, and the police dispersing people. One person told him that "salt had been sprayed" on the people. Consequently he did not go on duty.

72. In a separate category in regard to these nocturnal events is the evidence of four more men:-

(1) Izak Rampai was woken in the middle of the night by knocks on the doors and windows of his house. He found

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many people walking away, as he opened the door. They were saying "let us go", and as he was afraid he followed them in his night clothes and overcoat. He heard them say "We are proceeding to the ground there" - obviously a reference to the sports grounds or football field. On the way the police met them and they split into two groups, one saying "let us go" and the other going to other persons' premises. The police dispersed them and he ran home.

(2) Francis Motsoahole was woken up at about 11.30 p.m. The people responsible broke three window panes in his house. When he came out he was told "Father, we want to tell you that all the men should go into the street; all men should go out because of passes". He argued with them about the broken panes, and a promise was made that these would be repaired the next day, although they maintained that "Tsotsi's" had broken them. He was told that they would go to Seeiso Street where he would be told what was to be done. On the way to Seeiso Street, more people were awoken. When the police approached the leaders asked the crowd not to run away "because the police had something to say". According to the witness the police, in fact, had nothing to say but dispersed the crowd and assaulted him. This witness would, therefore, not be favourably disposed to the police, but he did not hesitate, in answer to the court, to identify accused No.3 as one of those who woke him up, as one of the members of the crowd. He knew accused No.3 quite well, and had ample opportunity to recognise him in view of the length of time that he was with these people. Admittedly he did not point him out at the identification parade, and did not notice him there.

This /....

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This is quite possible when a man is faced with a parade of some 77 persons. Accused No.3, still on trial at the time of the evidence, challenged the witness's identification, but in all the circumstances the court is satisfied that Accused No.3 was there.

(3) Bernard Xingwane, a responsible Bantu public servant, was woken up by violent knocks at the door of his house. He was told to leave his reference book at home and to follow the men outside the house. When he enquired where they were going he was told that he would be told "when we get there". He went with them. Some were armed with sticks. Many of his neighbours were similarly roused. They moved towards Seeiso Street, and at the corner of this street and an unnamed street a person, apparently some sort of leader, came and addressed them all. He said "We should not be afraid, we are more in numbers than the police". Ultimately the police met these people, and dispersed them. The witness and Sergeant Kumalo joined the police, and later found a crowd near the sports grounds. The events at this incident will be dealt with more fully when the actions of Accused No.4 are considered.

(4) Sergeant Kumalo, of the South African Police was woken up during the night by a number of Bantu men, who told him to "get up". He asked why, and was told that they wanted him outside "to come out to protest against carrying of pass books". On being told that he was a policeman, they said it did not matter whether he was a policeman, minister, or teacher, as long as he carried a pass book he had to come out. They threatened to break his door, and did break a window pane. On going out dress.

partly /....

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partly in his uniform he was told to leave his reference book on the table in his house, and he did so. He accompanied them as he feared that his wife and children may be harmed. More people were woken up by these men, who said they were doing so because they wanted them to join a procession to protest against the carrying of reference books. The leader said he wanted them to go to the Putsao Setenie section of the location, to join other groups, one of which was at the "Site and Service" section of the location. This is the section in which Accused No.4 was living, and near which he was found later that night by the police apparently addressing or about to address a group of people of which he was the leader.

The police came upon these people, and dispersed them, and the sergeant and Bernard Xingwane joined the police.

73. The South African Police, under Major van Zyl, Captain Carwood and Lieutenant Fourie, and the Municipal Police and Mr. Labuschagne patrolled the township throughout the night. At times there was only one patrol, and at times more. They came across many men and women who complained about the activities of the groups of men going about disturbing them. Many of those with complaints went directly to the police station. A number of women pointed in the direction of the sports grounds, near and on which the police on later occasions found accused No. 4 conducting his activities already mentioned.

74. The Police found groups in Seeiso Street and in many other streets throughout Sharville. Many of the men in these groups were armed with sticks, pick-handles, choppers and other weapons, and adopted an aggressive attitude to the police by shouting, swinging their weapons in the air, whistling, throwing stones at the police damaging, i.e., a police van as shown on exhibit 70. Many wore "P.A.C." badges. Throughout the night many of these groups of rioting men were met. At times the groups were several hundred strong. On many occasions they were ^{dispersed} dispersed by the police. One particular gathering was found on open ground near the schools. There were about 300 bantu, who immediately on the approach of the police threw stones at them, damaging their vehicles. Among the weapons seen in their possession was a chopper (handbyl). This riotous conduct continued until 3 or 4 a.m., after which there was a lull for an hour or two until it was time for workers to go to their work.

75. On at least two occasions, and possibly on three, a police patrol came across accused No. 4 in the course of addressing or about to address a gathering. Captain Carwood has spoken of two such meetings, and Lt. Fourie about two, intimating that on one occasion

Captain... ..

Captain Cawood was with him, and on the other that the captain was absent in Vereeniging:

(1) Captain Cawood with a patrol met a large group on open ground near the football ground, moving towards houses. He told them to go home. They had their "kieries" in the air, whistled, shouted "Afrika". He was forced to fire two shots with a rifle into the ground to disperse them. They fled through a fence on to the football field where the police dispersed them. The Captain then deposes to coming across a meeting on the football field. This must have been some time later, and after the earlier dispersal, for he says that he went to this meeting after receiving a report. On this second occasion he found about 500 men with accused No. 4 standing in front of them addressing them. Accused No. 4 came towards the captain, with his hand raised, saying "Afrika", and told the captain that he was holding a meeting, and that he had applied for permission but had received no reply. This is an obvious reference by accused No. 4 to his application to conduct a P.A.C. meeting. Accused No. 4 was told that the meeting was illegal and that they should disperse. He argued and was warned that the police would have to use force. Most of this group were armed with "kieries" and sticks. One was seen to have a pickhandle. They raised these weapons and came nearer to the police, blew their whistles, and the captain ordered a baton charge. As they were being dispersed two firearm shots were heard from their direction. As they ran some threw their weapons to the ground. These were collected, and exhibited (as exhibit 37) to the court. ^{The} This nature of this exhibit is fully set out on page 3346/7 of the record.

(11) Lieutenant Fourie, in the temporary absence of captain Cawood, came across a group of about 100 natives on open ground in the same vicinity. He was then accompanied...../

accompanied, i.e., by head-constable Heyl and Det. Constable Malakia Mmotong. Accused No. 4 was the leader of this group, and told the police that he was holding a meeting. The lieutenant told him that it was irregular, asked if he had permission to ^{do so} No. 50, and was told that he did not. A further discussion followed, and the group was told to go home. The police left them there. The lieutenant was present about an hour later, when the second of the two gatherings mentioned in the previous sub-paragraph, was come across by Captain Cawood.

76. From the foregoing facts it is quite clear to the court that at least two of the accused, Nos 3 and 4, played a prominent part in these nocturnal riots and disturbances in Sharpeville. ACCUSED NO. 3 has been definitely identified as being with one of the groups rousing people from sleep, breaking window panes in doing so, and urging the menfolk to come out and go with them "because of Passes." ACCUSED NO. 4 was determined to hold his meeting. He was warned by Lieutenant Fourie to disperse, but persisted and was ultimately found with more people in his group, now about 500 strong, many of whom were armed (one at least with a firearm) on the football grounds. He was obvious a leader amongst these men going about at dead of night. Some of them may have used more force and violence in the course of their activities than he had anticipated. But he, although personally unarmed, was present when his followers wielded their dangerous weapons and advanced on the police, and was, therefore, fully aware of their arms, and their actions. He must have known of people being woken up at dead of night. ACCUSED NO. 8 must also have been present in the streets at some time during the night, for in the course of cross-examination he agreed (p.442) with Mr. Labuschagne that women were crying and complaining that their menfolk were being taken away. In other...../

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other words, he knew what was happening. But there is a total absence of evidence as to anything that he may have done, either in approval or disapproval.

77. Many of the inhabitants of the location were stopped by others from going to work. Several employers came to the municipal offices, on the outskirts of the location, and themselves offered to convey their workmen, more often than not without success. One, Mr. J.C. van Wyk, had his car stoned by the crowd in Seeiso Street. Industry in Vereeniging was brought to a virtual standstill for that day, the 21st March, 1960. Certainly one firm, African Cables, among whose employees were several P.A.C. members and sympathisers, including some of the accused, could not carry on with its activities. Among the inhabitants who were so stopped, either personally or by what they saw, or who had to follow some out of the way route to work, were: Bernard ^x Springwane, Jan Salanyani, Philemon ^k Shosana, Izak Rampai, Edwin Mahloli, Sgt. Kumalo (who was in uniform, on the way to work, and was seriously assaulted, and had to flee and discard his uniform and borrow other clothes to escape - but there is no evidence as to the identity of his assailants); Paul Malgas, Paul Olifant, Piet Mokoena, Anthony Ndaba, Isaac Motaung (accused No. 22), Johannes Seretho (accused No. 27), Paul Moleko (accused No. 75) Hophne Morobe (accused No. 65) and others.

78. Crowds started gathering in the early morning at the bus stops in Seeiso Street. There were no buses to convey them into Vereeniging. Some of them were becoming noisy and excited, and were obviously being egged on by certain persons. One poor old man, Paul Mavimbela, set off for work in his rather delapidated car, and could not get through. There were many people in the Street, singing, shouting, and uttering the P.A.C. greeting "Izwe lethu; Afrika". His car was stoned, and damaged fairly...../

fairly extensively as illustrated by exhibits 8 and 82. He was forced to drive over veld to get to the police, and was struck by a stone when he got out of the car. One bus with an European driver was sent to the terminus. He has not been called as a witness, but he returned and refused to go back into the township. At the terminus many people asked when the buses were coming, only receive a reply of "Afrika", shouting, and the "thumbs up" sign from a large group of Bantu standing there. The police and Municipal officials were at the terminus at about 6 am. but then decided to go back to the Municipal offices, which are more Easterly in Seeiso Street, and at the exit of Sharpeville nearest to Vereeninging. A perusal of exhibit 2 will show the points referrec to, and many of these still to be referred to in the rest of this judgment.

79. A crowd estimated at several thousand started to move in an easterly direction along Selise Street, i.e. towards Vereeniging. Many displayed P.A.C. badges in their lapels, and some were armed with sticks, stones, metal rods. They were marching and singing songs, shouting "Africa", and were defiant towards the police who were in front of them, in the vicinity of the Municipal offices, and barring their way. Several young men acted as leaders of this crowd, walking in front of them, talking to them, and signalling to them to come on. Two groups of men came from the hostel grounds - one group, unarmed, led by accused No. 1, and the other group armed. These two groups joined forces. The police tried to force these people back at the Municipal offices. They were told to "get back; move back" and warned properly, and fully to do so. They responded by defiance and abuse, and Captain Cawood, in the temporary absence of Major van Zyl, sent for teargas bombs and used them, but to no avail. Persons in the crowd, which consisted of people of both sexes and all ages, including children, had gathered heaps of stones which were stacked on the road. The shouting and screaming persisted, and the Captain decided that he did not have enough men for a baton charge. Major van Zyl returned and dispatched Captain Cawood to Van der Byl Park. Up to this stage Captain Cawood had not judged it necessary to use fire-arms. He was, however, definite that the crowd was being led to the town of Vereeniging; certain of the accused in cross-examination suggested that that was not so; The captain said that they had already left the residential part of the location, and some of the crowd actually said that they were on the way to Vereeniging. If not on the way to Vereeniging the only other place they could have been making for was

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the Municipal building in which Mr. Labuschagne and his staff had their offices, or the beer ^{brewery} ~~brewing~~ opposite. Nobody suggested these as their destination. Ultimately, as a matter of fact, they turned and went to the Sharpville^e police station. The sole purpose of the campaign was to go to police stations. Going to the police station in Vereeniging would have served the purposes of the campaign much more effectively than going anywhere else in Vereeniging. In ^{all} ~~all~~ the circumstances the Court is satisfied that their destination at that stage was the police station in the town of Vereeniging, only some two miles or so from the point at which the police stopped them.

80. Major van Zyl had left Captain Cawood in charge, and had gone to Vereeniging to report to police headquarters and ask for reinforcements. He returned after teargas bombs had been used, and found the crowds belligerent, insulting and provocative (uittartend). He addressed them and was ignored and shouted down. It was a dangerous position in his view, and he formally addressed them, holding up the five fingers of a hand: "Ek gee julle vyf minute om uitmekaar te gaan; as julle dit nie doen nie sal ek geweld gebruik". He repeated this warning three times. It was now about 8.20 a.m. He was shouted down, and some took up stones from the heaps. He walked up to them and tried to speak to their leaders, and was greeted with "jy moet huistoe gaan; Africa for Africans; kom moenie bang wees nie; ons sal vandag hier doodgaan". Mr. Labuschagne was a little more successful on the other side of the street, in that they crowd temporarily stood back, for him and at least gave him an opportunity to talk. Apparently the crowd wanted two of their leaders, already arrested

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released. Ultimately the Major ordered a baton charge, but the police were met by a shower of stones. They charged the crowd west-ward up Sekiso Street, and into many side streets. The Major remained at a point in Sekiso Street so as to see as many of his men as possible. Two firearm shots were heard from somewhere behind the houses; some members of the police were virtually surrounded and were compelled to use their firearms. Constable Coetzee received a fairly severe blow on the head from a stone; at the same time more shots were fired by the crowd in the vicinity of the hostel, now somewhere to the rear of the Major, and he hastened in that direction only to have stones thrown at his vehicle on the way. He attended to the position there and went back up Sekiso Street. By now the crowds had grown in numbers. Many of course, were not combatants, but ^{mere} onlookers. The Major found the street very full ("Een swart massa saamkeer seer soos die oog kon sien"). Reinforcements arrived under Captain Coetzee.

81. At about this stage accused No. 8. was noticed for the first time. Although Major van Zyl does not depose to any such incident, deposed to by Mr. Labuschagne and others, Accused No. 8. spoke to the Major, waved a finger in front of the Major and said "You must come to the police station; come, come". But the Major, apparently not having noticed, turned his back on Accused No. 8. who then turned to the crowd (estimated now by Labuschagne at 4000 to 5000) and said: "Come let us march to the police station. The crowd followed him. At another stage of his evidence Mr. Labuschagne put it that Accused No. 8. said "iets van Sersant Francis" en "iets van geroep by polisie stasie", and then led the crowd back along Sekiso Street, and towards the police station. Malakia Mamotong also

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identifies Accused No. 8. as leading the people. He saw him in Seliso Street in the vicinity of the Post Office, waving the people to follow him, just before the witness and others left for the police station by a devious route. Bantu Detective Constable Sidwell Kele saw Accused No. 8. and others, leading the crowd, shouting "Afrika" waving their hands, and demonstrating, in an ~~eastern~~^{westerly} direction in Zwane Street. He heard such shouts as "from to-day we will carry no passes". On all this evidence there is no doubt whatever that Accused No. 8. took a prominent part, as leader of the crowds, and actually was one of those who led them to the scene of the ultimate tragedy.

82. All the police witnesses have described the mood of the crowds in Seliso Street as being provocative, dangerous, threatening, insulting. The Court has the views of a few respectable European business men as well)-

MR. J.C. VAN WYK went in in order to find his absent workmen. In Seliso Street his car was stoned, and he found the Bantu shouting and making a noise. Exhibits 10 and 11 show the damage to his car.

MR. A.T. CARNIE went to Seliso Street for a similar purpose. He managed to persuade one load of employees to leave the hostel; on a second visit only one employee came and they were threatened and shouted at, and left. He saw the car of an elderly man (that would be Paul Mavimbela) and other transport being stoned.

MR. W.J. OLIVIER was in Mr. Carnie's company. He is a Sesotho linguist, and heard such expressions as "laat hulle maar kom, ons sal die honde reg sien" from individuals in the crowd. On the police evidence, as supported by such evidence as has just

/been..

been detailed, the Court is satisfied that a substantial portion of those crowds in Seliso Street, egged on thereto by their leaders, acted in an insulting and gravely provocative manner when faced by the police, forcing the police, with full justification to use teargas bombs on them and later to disperse them by means of a baton charge, and that, of course, led to shots being fired by the crowd and to their stoning the police and others.

83. At this stage it will be convenient to consider the activities of three persons who have been identified as taking part in the events in Seliso Street and near the hostel and Municipal offices. They are Accused Nos. 1, 2, and 3.

(1) ACCUSED NO. 3 is identified by Captain Cawood, who also identified him at an identification ^{parade} conducted, in so far as this Court is concerned, in a fair and efficient manner notwithstanding certain criticisms levelled by the defence. He saw Accused No. 3. somewhere opposite the hostels in Seliso Street at a time before the use of teargas bombs. Accused No. 3. was one of those in front of the general body of the crowd, unarmed but singing loudly, shouting, screaming saying "Afrika"; he spoke to the people, and wore a P.A.C. badge on his clothing. Captain Cawood was so near him that he noticed an old scar on his face. By his conduct the captain took him to be one of the leaders. And the Court has no difficulty in finding that he was a leader

(ii) ACCUSED NOS. 1. and 2.

It will be convenient to consider the allegations against them together. There was considerable confusion in the evidence affecting them, but they were admittedly arrested in the vicinity of the hostels in Seliso Street at about the same

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time.

(a) DETECTIVE SERGEANT WESSELS was directly responsible for their apprehension. He did not call it an arrest, but a mere taking away. To observers, which included the crowd, it appeared to be an ordinary arrest, and the Court is satisfied that in fact it was one. The Court has already, in general terms, commented on the credibility of Sergeant Wessels - vide paragraph 23 ^usupra. The Sergeant saw the large crowd advancing towards the police station. The vanguard of a group consisted of women and children, and in front of them was one male, with his back towards the police, waving the crowd on, and obviously one of its leaders. He was shouting "Isiwe lethu - Afrika", turned on Wessels and said: "I am the leader; why don't you arrest me? We are fighting for freedom." He had 2 etiquettes on his lapel. Wessels took him by the arm and led him away, and identified him as Accused No. 1. Mr. Wessels saw another person at the head of the crowd (aan die voerpunt van die optog). He also wore two etiquettes; and was a leader. He said to Wessels: "What the hell are you doing here? Ek dra nie n donderse pas nie". This man Wessels identified as Accused No. 2. He took the names of these two persons at the time, Johannes Monyake and Thaddea Ntoampe, and noted them on the reverse sides of the etiquettes he took from each. The name of Accused No. 1. so appears on the reverse side of exhibits Nos. 38 (Africa for Africans. P.A.C.) and 39 (Away with passes P.A.C.). The name of Accused No. 2. so appears on exhibits 51 (Africa for Africans P.A.C.) and 52 (Away with passes. P.A.C.). He also found exhibit 50, a P.A.C. membership card in the name of Accused 1. in the possession of Johannes Monyake, and exhibit 53, a note book with the name of Accused 2. inscribed in it in the possession of Thaddea Ntoampe. He maintains that both arrests were

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effected before the use of the teargas. In cross-examination, however, it soon became evident that he could not really identify these two men; he did not do so on the identification parade; but he professed to do so in Court after he had, in the meantime ascertained who in Court were Johannes Monyake and Thaddea Ntoampe. This sort of conduct on the part of any police officer is to be deprecated and I trust that the Sergeant will heed what has just been said. He further was confused, understandably, as to the order in which they were arrested, and the order in which they were placed into the police van. The witness gave reasons which are quite acceptable for his view that the women and children had been placed in the vanguard of the crowd on purpose, i.e. so as to hinder the police in taking forceful action against the men. The witness's evidence was not in agreement with the evidence he gave before Mr. Justice Wessels on certain material points. He was cross-examined thoroughly by Mr. Unterhalter. But in all the circumstances it would be better, in the Court's view, to be cautious and not accept his evidence without ample corroboration, particularly as to the conduct and words of these two accused. He expressed uncertainty, under cross-examination as to who used which of the two utterances quoted earlier.

(b) MR. LABUSHAGNE saw Accused No. 1. leave the gate at the hostel at the head of some 200 men, all unarmed. They were joined by an armed group. The Accused stood on a rock in the road and shouted "Afrika" and waved at the others to follow him. He was their leader, and the police intervened. The followers of Accused No. 1. and others gathered stones into heaps, and after the teargas bombs were used these men threw stones at the police. He does not state at what stage Accused No. 1. was arrested.

- (c) Sergeant GROBLER'S evidence is not of much assistance. He saw the two arrests but does not say at what stage they were effected. The two men were both young men (as both accused are) and marched up and down in front of the others and addressed them.
- (d) HEAD CONSTABLE HEYL: - saw a man come to the front, wearing on "away with passes" etiquette, and put his thumb in the air. Wessels arrested him, and he gave his name as JOHANNES MONYAKE. At that stage another prisoner was already in the van. Mr. Heyl identified accused No. 1 as Johannes Monyake, both in Court and on the identification parade already mentioned.
- (e) MALAKIA MNOTONG: Saw accused No. 2 at the Municipal Offices, leading the crowd, and wearing etiquettes on his lapels, and he saw Wessels take accused No. 2 to the van. Accused No. 1 and 2 were together, ^{he} ~~accused~~ he witnessed both arrests, ^{group} but cannot recollect in what order. ^{Accused no. 1 also led a} He confirms that accused No. 2 had already been arrested at the time of the teargas attack. This man knew both accused.
- (f) CONSTABLE KALLIS - says he saw people being removed, one of these, accused No. 1, he had noticed before removal. According to the constable's description of his actions, accused No. 1 was a leader. This constable, by the way, was hit by a stone thrown by some person at the police. He also pointed accused No. 1 out at the/..

at the parade.

(g) CONSTABLE BEYL: Saw accused No. 1 leading a group at the hostel. He was obviously their leader. He was arrested, the constable thinks, by Wessels. Constable Beyl saw two persons in the van of which he was the driver, and says accused No. 1 was brought to the van before the other. Both had "away with passes" etiquettes.

(h) CONSTABLE JULIUS POKWANE: searched accused No. 1 and 2 at about 8 a.m. at Sharpeville police station. They must have just been brought there from Seeiso Street. He found exhibit 54 on accused No. 2. It is a mutilated reference book.

(j) DAVID ^{Isamae} ISO-MAE is a municipal employee, and effected one of the two apprehensions on the instructions of Wessels. But he cannot say which of the two accused it was. The arrested person had been standing in front of the people at the hostel, and shouting "Afrika" and that they did not want passes.

(k) But the evidence of CAPTAIN WILLERS has been of great assistance. He gave his evidence clearly and impressively, and was sure of what he was saying. In Court he identified both accused, although he identified accused No. 2 only at the parade. He first saw accused No. 2 walking up and down in front of the crowds. He was among the vanguard, pushed some forward, and signalled others to follow him. He ascertained that his name was Thaddea Nto^ampo; the accused wore a brown jacket, to which were attached exhibits 51 and 52 already described. He instructed Wessels to arrest the man, and Wessels did so. The witness then describes/.....

described. Seeing accused No. 1 marching at the head of some 10 or 12 others through the crowd and right ahead of the crowd. The accused wore a brown felt ^{hat} and grey raincoat. Wessels instructed a municipal constable (that would be David Tsamae) who then physically lifted accused No.1 off the ground. The accused wore an "away with passes" P.A.C. etiquette.

(1) Both accused, in the course of cross-examination, admitted their presence in the crowd, but maintained that they were not leaders. Accused No. 2 maintained that he wore no "away with passes" etiquette. But they have called or given no evidence. That, of course, does not absolve the State from satisfying the Court that the evidence of its witnesses is the truth on all material points. The Court is, on the evidence as a whole, satisfied that both of them were leaders, accused No. 1 of a ^{coming from the hotel} group and accused No. 2 of the crowd already in the street. They were both indulging in prominent actions, drawing the attention of the police on to them. They were the only two persons apprehended on that day in Seeiso Street. Each wore an "away with passes" as well as an "Africa for Africans" P.A.C. etiquette. They were apprehended before the teargas attack by the police. But their violent, provocative and insulting conduct, their refusal to go back into the location with the people they were leading was, probably, the main cause of Captain Cawood's decision to send for teargas bombs because the men he then

had were/.....

had were insufficient in number for the purposes of a baten charge.

- (iv) In other words accused Nos. 1, 2³ and 8 have been proved to be the leaders of a crowd indulging in seriously riotous conduct.

84. The next and final stage of the case concerns the events at the Sharpeville police station. In the previous paragraphs the parts played by accused Nos. 3 and 8 has been detailed. On the police impeding the way of the crowds towards Vereeniging accused No. 8 led the crowds back into Sharpeville and to the police station. Accused No. 3 was also seen present in amongst the crowd, probably shortly before they turned back, and was one of the leaders. The crowd went to the police station where accused Nos. 3, 4 and 8 - as will be detailed later - were seen.

85. At a very early stage, soon after the crowd started concentrating at the police station outside the fence thereof, accused No. 3 was seen inside the fence on the premises, and accused Nos. 4 and 8 was seen outside walking in front of the crowd. Members of the crowd were shouting "To-day we won't carry passes", and accused No. 3 was gesticulating and shouting "Izwe leth^u - Afrika". And the crowd ^{said} ~~said~~ "To-day, if they do not arrest us, we are going to destroy this police station". The crowd had at this stage increased in numbers from that seen by the same witness (Bantu det/const. Sidwell Kele) previously in Seeiso Street. In ^{fact} ~~fact~~ the crowd increased numerically over a period of some four hours or more, until at the time of the shooting, i.e. about 1.35 p.m. it numbered, the court is satisfied on the estimates of the various witnesses, at least 10,000.

86. This was the position at the police station before the arrival there of any European members of the police. In so far as senior officers are concerned these European members of the police seem to have arrived in the following order:-

(1)/...

- (i) Head-Constable Heyl and Sergeant Grobler.
- (ii) Lieutenant Visser.
- (iii) Captain Theron.
- (iv) Captain Coetzee, outside the grounds in Zwane Street.
- (v) Captain Brummer
- (vi) Colonels Spengler and Prinsloo
- (vii) Colonel Pienaar.

87. HEAD-CONSTABLE HEYL (with sergeant Grobler) says that he had to go from Seeiso Street to the Police Station in a round-about way, arriving there at about 9.30 a.m. He found about 3,000 bantu on the side-walks of Zwane Street. The strength of the police force at the station was then some five Europeans and a dozen Bantu. Mr. Heyl remained in charge until the arrival of Lieutenant Visser at about 10.30 to 11 a.m. Mr. Heyl found accused No. 3 on the front steps of the police station and asked him what his trouble was. He was wearing a P.A.C. etiquette "away with passes", and pushed his thumb under it and said "this is what we want", and that he was Nyakane Tsolo, and Secretary of the P.A.C. The witness had a short discussion with him, but left him where he was. He was asked to quieten the noisy crowd, and spoke to them, gesticulated and they reacted by shouting "Afrika" and becoming more unruly, and then calming down somewhat. Mr. Heyl did not apparently find it necessary to address the crowd himself, or to place guards at the two gates of the police station.

88. LIEUTENANT VISSER described the position at his arrival at about 10 a.m. to 11 a.m. He had earlier passed/...

passed via Zwane Street, where he found the people standing about in groups, the biggest concentration being at the South-Western corner, i.e. the corner of Zwane Street and an unnamed street running past the western fence of the police station, and between it and the clinic. On his return there was a crowd of some 8,000. He also saw accused No. 3 and concluded that he was the leader. The ^vstiquette he was wearing was similar to exhibit 39.

On accused No. 3 being questioned he told Lt. Visser that he was the local secretary of the P.A.C. and that he and the people outside did not have reference books and wanted to be arrested. He was told that this was impossible, but replied that he would go away, but return and worry the police until they had all been arrested, and that the P.A.C demanded a wage of £35 per month, and wanted inhabitants of Ghana and Basutoland admitted into the country freely. There was further discussion. Mr. Visser asked him to tell the people to remain behind the fence, and not to press it down, and the accused spoke to them - they stood back but returned almost immediately and a few of the younger ones pressed against the fence deliberately and behaved provocatively.

The crowd increased in number. And ultimately Mr. Visser, fearing for the safety of the police station, sent a message for reinforcements by two native constables in uniform to Captain Coetzee whom he had last seen in Seeiso Street. The two constables were not called as witnesses. They went in full uniform, and returned safely and probably left the police station over the fence on the north or Eastern side, where there were hardly any Bantu. They were not seen to leave by either of the gates/...

gates, where the crowd was. In cross-examination Mr. Vissar, a reliable and fair witness, stated that he sent for reinforcements on account of the increase in size of the crowd, and the pressure against the fence, which at times was at an angle of about 50 degrees to the horizontal. The pressure may have been from those at the back of the crowd, and not deliberate by those then against the fence. He however, thought the position was such that that crowd should not be excited or provoked. He also did not post guards at the two gates but of what use would that have been with such a large number of people outside?

89. Meanwhile CAPTAIN COETZEE had apparently arrived with police and municipal reinforcements, and he had stationed his vehicles and men in Zwane Street, some little distance to the East of the Police Station grounds. Mr. Labuschagne arrived with him and was allowed, without hinderance, to enter the grounds by climbing over the fence somewhere in the vicinity of the South-Eastern corner, which was away from the main concentration. After the captain had placed his men and vehicles in position certain of the Bantu in Zwane Street went behind the policemen, by going around via certain side streets. This force therefore had Bantu both to the East and to the West of them, and had to keep their eyes open in both directions. The captain, wisely, thought it better to remain outside the grounds of the police station. He had had instructions from Major van Zyl to take up such a position that he could stem any march by the crowd from the police station to the town of Vereeniging. One of the elderly constables, Grove, who had been on duty since the previous night, found it possible, whilst/...

whilst others were keeping guard, to doze in the shade next to his van for a short while. The captain estimated the crowd at 10,000 to 15,000 on his arrival, which was at about 11.30 a.m. Some of these moved nearer to his vehicles and filtered past them. He also described one separate group of persons nearby as mere spectators, not associating themselves with the crowd. His men were never attacked, but in general merely provoked, cursed and threatened. He saw a young "Tsotsi" try to hit Constable Gove with an iron rod which the constable grabbed from him. The captain told the constable not to apprehend the man, as he did not want to rouse the crowd. His men were jeered at to such an extent that he told them to be ready and point their firearms at the crowd, who then quietened down. He saw agitators moving in among the people, the insults continued, and he concluded that, although at times quiet, they were "spoiling for a fight". Among the language he heard from the crowd were such expressions as: "Jou bleddie boer, jou bleddie moer" "jou fokken hond", "come along, lets fight". He saw no friendly face. On the contrary he saw many worried ones, particularly that of one woman with a child on her back when driven into the crowd "like an animal" by a "Tsotsi". He saw an European Press Photographer moving unharmed through the crowds, but thought that the press were not regarded by the Bantu with the same degree of hostility as they regard the Police. He probably is correct, unfortunately.

30. CAPTAIN THERON arrived at the police station at about 11.45 a.m. was in fact the senior officer there for some time. He found Lt. Visser there as senior officer.

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86.

He and his men found thousands of Bantu congregated in the vicinity of the gate in the Western fence. This is a big double gate, and the only one large enough for use by large motor vehicles. He was not accorded a free passage, natives jumped in front of the "Saracen" accompanying his detachment, and he was delayed at the gate. People in the crowd swung their "kieries" in the air. He found the crowd threatening, "kieries raised", pressing against the fence, and making a terrific noise. Those swinging their "kieries" were moving amongst the main concentration of the crowd to the West of the police station. He heard such expressions as "Jou moer"; "Afrika"; "We will kill all you bastards today"; "Africa for Africans" from the crowd. He also did not post guards at the gates, but moved about between the police, now some 30 Europeans and 30 Bantu strong, and the crowd so as to watch developments, and avoid any "incidents". He thought it advisable to wait for further reinforcements. By climbing on to a "Saracen" he could see the people still coming on from the rest of the location, and the crowd became larger and larger. Certain aircraft had been sent for, and dived low over the crowd, but that had no effect in dispersing, or for that matter even frightening, them. Certain of the young constables manifested signs of fear, and suggested that positive action be taken there and then but the captain would not agree.

91. Captain Brummer, senior in his rank to captain Theron, arrived at the police station in charge of three Saracens and a number of policemen. He puts the time of arrival as about 1 p.m. In each of his vehicles was a machine gun, operated by experienced men of the rank of first class sergeant. These weapons could fire something like 250 bullets in a minute, and were formidable. He didn't want these used unnecessarily, and gave strict orders that they were not to be used without his express order. In fact they were never used. This officer placed his saracens in position straightaway on arrival, two on the northern lawn and one on the southern lawn on the west side. Before entering the grounds the Saracens had been stoned by members of the crowd. As soon as he had placed the Saracens this officer, in contrast with those before him, decided to do something about inducing the crowd to go home. He addressed them through a microphone and loudspeaker, and told them in English and Afrikaans: "hulle moet loop, hulle moet huistoe gaan, want hulle sal moontlik seerkry; Hamba." He did this repeatedly and in doing so walked up and down in front of the crowd on the Western side of the police station. The only response that he got was to be shouted down, and to have the fence pressed over inwards. He heard the A.N.C. slogan "Afrika, Mayebuye," and saw its greeting of "thumbs up"; he saw sticks being swung in the air, and gained the impression that the people were working up their emotions so as to go over to the attack. He concluded that the position on his arrival was serious - so serious that he did not think it necessary to consult Colonel Frinsloo, not of the uniformed branch,

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who had arrived at the same time as he did.

92. (i) Colonels Spengler and Prinsloo, two detective officers arrived at about the same time as Captain Brummer. In a vehicle in their convoy were Captain Willers, and det/sergeants Wessels and Muller. When nearing the police station a Bantu in the crowd grabbed Muller, who was driving, by the arm and pulled at his arm; Muller had to wrench himself free. The colonels got to the police station at about 1 p.m. Colonel Prinsloo was not called as a witness.

(ii) Colonel Spengler found a large crowd congregated, they were shouting around his car as it was driven in. His conclusion was that they were "baie oproerig." By counting 100 persons and then examining the extent of the crowd, he estimated it to be 15,000. On the Western side they covered the whole width of the unnamed street. This officer decided to get hold of the leaders of this crowd, and to take them into the police station for questioning.

(iii) A few minutes after his arrival he saw accused No.3 inside the grounds, still wearing an "away with passes etiquette," and he and Wessels went up to the accused who told the colonel "I represent these people." And when asked why they did not go home, he replied "we will not call this off unless Sobukwe has spoken." The accused was quite prepared to accompany Colonel Spengler and to be interviewed, and the colonel took him, by the arm, into the police building. This aroused the mood of the crowd, who became more rowdy and demonstrative. On the way in the accused admitted that he had no reference book on him.

(iv) A while later Wessels drew the colonel's attention to accused No.4, who was then outside the fence, and

told/.....

told him that this man was More, the vice-chairman of the P.A.C. This accused wore no etiquette, and was brought to the colonel by Wessels and introduced to the colonel. Accused No.4 said: "I am the leader of these people - we want our freedom, I and these people gathered here." He was taken into the building in the same manner, and also did not have his reference book on him. The intention of the colonel in removing these two men was to have them questioned, and also to get them away from the crowd so as not to enable them to incite the crowd.

(v) Colonel Spengler next saw another apparent leader of the crowd active at the gate when Colonel Pienaar's car was about to enter through the gate. The latter's car had great difficulty in entering through the gate; Colonel Spengler spoke to Colonel Pienaar; he had heard the "Afrika" slogan shouted, as well as several references to "Cato Manor" (where a number of Bantu had within then recent times killed several policemen); so he went to the gate where he again found this apparent leader, and on the gate being opened this man tried to retreat but was forcibly apprehended by Col. Spengler and handed over to Det./Sgt. Muller. This aspect of the case will be examined in more detail when the individual case of accused No.76 is considered.

(vi) Another bantu was seen by the colonel near the gate. According to the colonel this man wore a red shirt, and appeared to be inciting the crowd, but disappeared. The colonel is possibly confusing this person with accused No.76, who did wear a red waistcoat.

(vii) A fifth bantu came forward from among the crowd to the gate, and said: "I wish to surrender myself;

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me and my people don't want passes." A number of people from the crowd came towards the gate, which was opened by them, and the colonel was pushed over, and portion of the crowd entered through the gate, stones were thrown at the police by the crowd, and the shooting took place. The colonel was of the view that pressure from others at the back forced the surge in through the gate.

(viii) The colonel had not anticipated that the crowd would actually commit acts of violence, and was surprised at what they did. He maintains that, in all the circumstances, he did not do anything to provoke an attack. He felt that the position was still reasonably safe after he had taken in the first three persons, (who in fact were accused Nos. 3, 4 and 76); he had not followed the man who, he says, wore a red shirt, into the crowd as that would have been foolish. The fifth person was on the way in when the storm broke. The Court has already, in general, commented on these actions of Colonel Spengler - vide paragraph 13 supra. If the P.A.C., and its leaders, expected to have all men arrested, it is difficult to understand why a section of the crowd should object to the apprehension, not with unnecessary violence but perhaps somewhat tactlessly executed, of three, or even four, men? Their attitude towards these apprehensions may, of course, have been affected by a certain rumour about a high-ranking official due to speak at 2 p.m. But whoever spread that rumour did so falsely - as will be shown later. In all the circumstances this Court is of the view that Colonel Spengler's actions were reasonable and bona fide.

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The crowd's unexpected violent reaction must be ascribed to something other than the alleged "non violence" aims of the P.A.C.

93. Colonel Pienaar, attached to the Divisional Headquarters of the South African Police in Johannesburg, went to the trouble spots at van der Byl Park and Vereeniging to have a personal look around. He was, ultimately, the senior officer at Sharpeville Police Station, arriving there some while after Colonel Spengler. When nearing the police station from Seelie Street he saw a small motor car being bounced about by Bantu in the crowd he found there. He estimates the crowds at 20,000 to 25,000. He concluded, from their conduct, that the crowd was in a rough mood. They were prancing about, waving sticks, giving the "thumbs up" sign, and shouting "Afrika." He had approached the police station under the escort of a Saracen, but got detached from it. His driver slowly edged his way through the milling masses towards the Western gate. The colonel was dressed in full uniform, his blue epaulettes designating him as an officer of high-rank. When the car was nearing the gate the Bantu refused to open a way for him, and he was forced to frighten them out of his way by telling the driver to drive fast, the car flinging them aside. They hit his car with sticks causing damage to its paintwork. His conclusion was that they were in such a dangerous mood that he might expect anything. It is true that he was probably influenced in this conclusion by an mistaken impression that teargas bombs had previously been used unsuccessfully at the police station. They had, of course, been used some hours before his

arrival/.....

arrival near the Municipal Offices and he did, apparently, not know of Captain Coetzee and his men in Zwane Street. However, he decided at once that the position was potentially so dangerous that he should at once line up his men, and he did so, at a distance of at the utmost perhaps seven or eight yards from the Western fence. There was so much noise that he had to shout his orders, give manual signals, and get the assistance of his officers to line the men up. And they had to do that often by going to each man and telling him what to do. While he was so busy he noticed that Colonel Spengler and Det/Sgt. Muller had held of a man at the gate, and that there was some tussle others also holding on to the man and freeing him. A few stones were then thrown from the crowd, and the colonel gave an order for the men to load. ("laai"). There is a good deal of disagreement as to the exact terms of this order, but the Court has no doubt that an order to load their firearms was given by the colonel. He gave this order so as to be ready for action. His next order, according to the circumstances, would have been either "unload" or "fire." The position seemed to deteriorate. The crowd took no serious notice of the lining-up of the policemen, of their loading their rifles and revolvers, and of their being obviously ready for action. They were certainly not overawed by these steps. The colonel saw colonel Spengler at the gate once more, saw him being violently flung back, and some of the crowd bursting in at the gate. He heard

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two shots from the crowd, there was a heavy shower of stones, and the police - without any order from him - fired on the crowd. He himself was prepared to give the order to "fire" should the crowd come in through the gate, but there was no need to do so.

94. Before going into the details of the shooting, and the immediate causes and results thereof, the Court must consider the question of the rumour already mentioned. It had been rumoured fairly extensively in the location of Sharpeville on the day of the shooting, i.e. 21st March, 1960, that the people should go to the police station in order to hear what was going to be said about reference books. Such a rumour would, of course, attract large numbers of people, possibly even women (who might, so it was rumoured, also have to carry these books). Any question about reference books, or "passes" as many still call them, would arouse wide-spread interest among the Bantu anywhere. Many of the Bantu witnesses and accused persons, have deposed to hearing of this rumour, but the police and other officials only heard of it after everything was over. Certain witnesses have said that, certain bantu constables, also told people to go to the police station. One of the discredited witnesses, Alfred Mabuya, said that a European policeman, wearing short trousers, told him to go to the police station. But none of all the policemen called, from the Brigadier to the lowliest Bantu-constable, have admitted anything to this effect.

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The rumour developed in the course of the morning from one that the people should go to the police station, to one that at 2 p.m. a highly-ranked official would address the people on the subject matter of reference books. The State called two such officials: Mr. Smuts, the Chief Bantu Affairs Commissioner, and Brigadier Els, the Assistant Commissioner of Police. Mr. Smuts had the intention of addressing the Bantu on the matter. He tried to do so at first at Evaton, and then left for Sharpeville with the same view in mind. Several others knew of his intentions, and somehow news of his intentions may have leaked out and become known to people in Sharpeville. Brigadier Els never had any such intentions. But there was no question whatever of any time, or for that matter place, being mentioned by these two officials, or any other official, for any proposed address. All talk, therefore, of the official coming at 2 p.m. was definitely false. But many heard the rumour so early, e.g. accused No.31, Thomas Simanga between 6 a.m. and 7.30 a.m., that it could not have had its origin in Mr. Smuts' intentions, which were formed at about 9.30 a.m. at Evaton. Who was responsible for this false rumour? One of the accused, No.76, has given valuable evidence on the point. He says (p. 3208) that the absent accused No.3 used the words that "this official should come at 2 o'clock --- before he told the people to get off the roof of the clinic". That would have been when Lieutenant Visser spoke to accused No.3 at perhaps 11 a.m. Lieutenant Visser definitely told accused No.3 nothing of the kind. But the Court feels that it will be rather dangerous to hold that this action of accused

No.3/.....

No.3 was one in the ^{purpose} execution of any common purpose affecting the public violence charge, and will, therefore, not hold it against any of the other accused. However, the rumour was widely circulated, and there can be no doubt that it caused many thousands, probably the great majority of the crowds, men, women, children and old people, to gather at the police station. In general the conduct of these merely curious people was, probably, not of a riotous character. The people guilty of such conduct constituted a minority, albeit vigorous and vociferous, of the vast crowd.

95. Many police officers and other members of the police force have deposed to the mood, the attitude, the behaviour of the crowd outside the police station and as to whether the position was dangerous or not. The main evidence of these men is set out in paragraphs 86 to 93 ~~supra~~. But there has been evidence by other witnesses, some for the State and some for the defence, which must also be given full consideration. Prominent among such witnesses are the following :

(1) MR. LANUSCHAGNE. On his arrival in Zwane Street with Captain Coetzee this witness found some 3,000 to 4,000 Bantu there. They were men, women, and children. He saw at least three leaders come to the fore waving their hands, gesticulating and shouting "Afrika". His impression when the aircraft dived low over the crowd was that, temporarily, they wanted to disperse, but came together again ("saangedrom"). Whenever the leaders did something the others came forward and shouted loudly. When going along to get to the fence so as to enter the police grounds he spoke to those nearby, and they made room for him. Those that he saw on the eastern side had no weapons, but on the southern side he saw "kieries", although not in the possession of many. He saw that the cars bringing the three named colonels had difficulty in getting through the crowd. At one stage a number tried to come in through the western gate but were pushed back by the police. After Accused Nos. 3 and 4 had been apprehended by colonel Spengler there was a terrific shouting and noise, so much so that one could not hear anything being said. The witness felt perturbed. The fence was pushed inwards at places to an extent of about

30 degrees/.....

30 degrees. In general the womenfolk were very vociferous, shouting, jumping and pulling up their dresses. The crowd seemed to be angry (die massa was kwaad). At the time of the men being lined up the crowd was hostile and the position dangerous. Many then displayed "kieries", and they were firmly pressed (bankvas) against the fence.

(ii) BERNARD KINGWANE: Was at the police station, and in amongst the crowd later on, for nearly five hours up to about noon. He left before the shooting. He saw a few young men who, to him, were evidently leaders. Some of the people were singing. They appeared, on the whole, to be friendly and curious. The mood of the crowd changed, however, after the police had taken one person away. He noticed no sticks, but did see an elderly Bantu carrying a sjambok and persuading children to leave the scene. In amongst the crowd he had acquaintances who were public servants, and not agitators. Two leaders were seen by him, inside the fence. One told the crowd to stand away from the fence, and it obeyed but came back as soon as he moved away. He heard these leaders using the "Izwe lethu" slogan from time to time, and occasionally a man would approach a bantu policeman and offer him his reference book.

(iii) ARIEL MABOTE also spent some time in the crowd, but left when the aircraft came over, i.e. a considerable time before the shooting. He found a crowd of such dimensions that he could not get near to the police station. Some were singing, some shouting "Afrika", but the crowd to him appeared to be peaceful.

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(iv) ISAAC TATAI, one of those who were wounded, had gone to the police station on account of the rumour already dealt with, and was near the corner of Zwane and the unnamed streets. He saw a European drag a person by his shirt at the western gate, and pulling him into the police station. He saw a second person taken in in the same manner. He noticed the police getting their firearms ready, and heard the word "shoot". He saw only one stone being thrown from the crowd adding unasked, that he did not know whether it was a child or not, when the police were already firing. He became confused ("ek het dan gewerd"). The people had been singing Basuto songs, but he had also heard "Iswe lethu". He confirmed that the crowd behaved as is illustrated by exhibits 45, 46 and 77. Two of these photographs show a police car coming in to the accompaniment of some obviously shouting and giving the "thumbs up" signs at the western gate. But they also show a large proportion of apparently peaceful, but perhaps inquisitive, bantu onlookers. They were taken before Colonel Pienaar had lined up his men, but after the arrival of the saracens of Captain Brunner.

(v) JOSHUA NOTA: This man had been one of the abducted bus-drivers, and had been told by a certain young man not to cause trouble, but to come to the police station. Once there he made two attempts to return home, but was prevented from doing so by certain young men; they said "you go back there - where are you going to?" - and he was apprehensive of reprisals and remained. He witnessed people inside the fence asking the crowd not to lean against it, and not to cause damage to property. He could not see what was going on at

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the gate, but heard the order "skiet" and was shot when running away. He saw one Tsolo (presumably the absent Job Tsolo) at the time of the aircraft coming over, trying to persuade the people to accompany him to the football grounds, but he received no response. In cross-examination by the defense he said that the people were friendly and well-mannered, and he saw no sticks carried as weapons. He thought there was nothing in the behaviour of the crowd to justify the shooting. (But then he could not see what was going on at the gate). He related an incident, after the shooting, disclosing a rather callous attitude by an unidentified policeman. This man's language was most uncalled for, but probably used in a time of stress very shortly after the shooting. It discloses, however, an utterly wrong attitude by a European policeman towards the Bantu. He saw no stones or weapons picked up among the wounded, and saw only "one umfaan" carrying a stick. Among the police he had earlier seen "sjanbeks", home-made of fan-belts on sticks. This witness was obviously prejudiced against the police.

(vi) MR. B.J. VAN BELOW, a photographer of "The Star" flew over Sharpville at about 11 a.m. and took Exhibit 13, a photograph showing the police station and the crowd around it, at that comparatively early stage. This was very soon before he saw Jet aircraft diving on the crowds. Generally the photograph depicts a peaceful crowd. He estimates the crowd at 4,000 to 5,000.

(vii) MR. J.Z. ^{Hoch} HASK is a reporter for the "Rand Daily Mail". He travelled from the Municipal Offices up to the vicinity of the police station, and got through

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the large crowds with some difficulty. They did give way for his car. The crowds were excited, and made the "Afrika" sign and shouted. He and one Pograd stopped some 200 yards beyond the police station, and then went to a point somewhere to the North-East of it. They heard a noise like a shot, and a few seconds later gun firing in the distance, and saw the crowds running away. One of the Bantu struck him on the ear, and their car was stoned. But the Court is taking no note of these incidents, committed immediately after a number of Bantu had been shot.

(viii) MR. HAROLD SACKS^K, the crime reporter of the "Rand Daily Mail" was at the Municipal Offices when he heard the shooting at the police station, probably a mile or more away, and set out at once by car for the police station. On the way his car was stoned and shot at by means of a firearm by someone in the crowd fleeing from the police station. These acts were committed like those on Hoek and Pograd, very soon after a large number of Bantu had been shot, and cannot be held against any of the accused, or perhaps even against the persons directly responsible in the circumstances. But the evidence does tend to prove the possession of a firearm by someone in the crowd, and is relevant to the question whether or not someone in the crowd at the police station had used a firearm before the police used theirs.

Mr. Sacks^K, on arrival at the police station, must have seen what would appear to have been a battle-field:— the fence at the corner and the western fence (leaning inwards) was damaged; among the dead and wounded he saw small benches (many had obviously brought these to sit on while waiting), shoes, clothing, bicycles, stones and so forth.

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He saw stones inside the police grounds being collected (Sergeant Grobler was in charge of this operation), and also saw daggers, "kieries", "knobkieries", stones and lumps of iron shown to him by the police.

(ix) MR. W.D.P. ROBINSON was with Mr. Sachs, and in general corroborates him. Three of the photographs exhibited (Nos. 84, 98 and 99) were taken by him and depict the scene very shortly after the shooting.

(x) MR. I.G. BERRY was called by the defence. He is also a press photographer, and took photographs exhibits 41, 42, 43, 45, 46, 71, 77 and 79.

Some were taken from a point some distance North East of the police station and ^{some} seen from the South. Exhibits 41 and 42 show the crowd in headlong flight, and the three policemen on top of a saracen. Exhibits 45, 46 and 77 were taken some time before the shooting, and before the policemen had been lined up. The witness also took exhibit 71, in Zwane Street. The defence produced this exhibit, which is only a half of a photograph. Perhaps the face (not shown) of the man whose thumb is in the air is that of one of the accused. Be that as it may, the court expressed its disapproval of placing half the picture before the court, and still does so.

Mr. Berry had no difficulty in moving about among the crowd. He was not molested, and is probably the pressman referred to by Captain Costsee. He agreed with Mr. Unterhalter (in answer to a rather "leading" question) that the crowd was, in his view, not behaving in a wild

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and dangerous way. To the crowd he was obviously a press-representative, carrying no less than three cameras. The witness, however, agreed that there were a large number of shouts of "Izwe lethu; Afrika", and that these were directed pretty well continuously at the police. He heard an isolated shot coming from the crowd before the police fired.

(xi) THE REVEREND ROBERT MAJA, another defence witness had been in amongst the crowd for some time before the shooting. He described their mood as very happy, and not angry or aggressive. He had no fear of a riot and saw no weapons. Whilst at a house some distance away and practically due North of the ground on which the police had been lined up, he heard the shooting, saw people run and fall, and heard bullets pass near him. He went and rendered assistance. (When giving evidence he gave his attention to the audience in Court, and asked them to write down what he was saying). He deposed to the crowd singing "Nkosi Sikelele Afrika" - which is in fact a hymn, but also, according to Sobukwe, is regarded as the National Anthem of the "Africans" in this country and also in Rhodesia. The witness contradicted himself as to whether he had seen any of the P.A.C. pamphlets, and grudgingly admitted to the prosecutor that some young boys, small boys, were shouting "Izwe lethu - Afrika" and throwing their hats in the air at the aeroplanes. He was an obviously partial witness.

(xii) ACCUSED NO. 27, JOHANNES SERETHO: Deposed to the singing of "Nkosi Sikelele Afrika", and to shouts of "Afrika": Izwe lethu" and to the fact that some of

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the people walking up and down in the crowd had etiquettes on their clothing.

(xiii) ACCUSED NO. 36, PETER THABONE, heard the noise of happy people singing, conversing and laughing only. He did not hear "Izwe lethu - Afrika."

(xiv) ACCUSED NO. 31, THOMAS NSIMANGA: The crowd was not dangerous; it was singing, happy and laughing. "A Nation was standing in front of me";

(xv) ACCUSED NO. 76, PETER MOLEFE, says that when he was being removed from the gate, the people were still singing hymns. The last three witnesses seem to have been attending a Sunday School Picnic.

(xvi) Many of the constables and other have deposed to the language of members of the crowd towards them. There is no doubt in the court's mind that expressions like the following were used :-
"Cato Manor"; "ons sal julle wys, julle polisie honde"; the police were spat at repeatedly "Vandag gaan ons julle doodmaak; jou moer; wat soek julle witmense in ons land?"; "Boer, jou moer, ons sal julle vandag almal doodmaak"; one constable saw a number of knives displayed at the police - this is not impossible, as such weapons were found and produced, - e.g. exhibit 44; fists were shaken at the police and so forth, but it is not necessary to go into further details.

(xvii) After the shooting the police gathered stones, sticks, and other weapons at the scene. The stones were picked up inside the police grounds, and had not been there previously; sticks and other weapons were picked up inside/...

inside and outside the grounds. They are detailed by the court on Page 3346/7 of the record, and comprise exhibits 36 and 40. From this evidence it is clear that a not inconsiderable proportion of the crowd was armed with some very dangerous weapons.

(xviii) From all this evidence the court concludes that whilst the great majority of the crowd at the police station was unarmed, and had obviously not come there with any intent to commit acts of violence, there was a vociferous and vigorous minority, led by a few unarmed leaders, which was armed, noisy, insulting, provocative, threatening, and generally riotous towards the police.

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96. With this general picture before it, the Court will now proceed to consider the events leading up to the shooting. The Court has listened to the evidence of several scores of witnesses - given over many weeks, tested by very thorough cross-examination, and recorded on many hundreds of pages of the record - as to the incidents immediately preceding the shooting, as to details of the shooting itself, and as to the incidents immediately thereafter. The Court has since read through the full record at least twice, and has also made very extensive notes under many different headings. In these circumstances it is not proposed to go into these matters in great detail. The events preceding, and finally causing the shooting are as follows:-

- (i) Colonel Spengler apprehended Accused No. 3, who was then inside the police grounds, and obviously a leader; He took him in by the arm.
- (ii) Thereafter he similarly apprehended Accused No. 4, and took him in by the arm. Accused No. 4. showed signs of having a painful arm.
- (iii) Then Colonel Spengler and Detective Sergeant Muller took Accused No. 76 in. This was accompanied by a good deal of violence, and on the whole there can be no doubt that Accused No. 76 was assaulted.
- (iv) After these three incidents a few isolated stones were thrown from the crowd, and Colonel Pienaar ordered his men, then lined up, to load their fire-arms.
- (v) Colonel Spengler had returned to the Western gate where another Bantu offered himself for arrest. There was some further incident, and a number of Bantu came in through the gate-way, and Colonel Spengler was pushed over.

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- (vi) Pressure by the crowd against the fence was such that the police reasonably had fear that the fence might be pushed over or broken in parts, and would then no longer serve as a barrier to keep the crowd back.
- (vii) Two shots from a firearm were discharged by someone in the crowd.
- (viii) The crowd stoned the line of police, striking many - particularly those mentioned in paragraph 17 of the further particulars.
- (ix) The police then opened fire with sten guns, revolvers and rifles.

97. THE SHOOTING:

There is a good deal of evidence that, after the two shots from the crowd and the commencement of the stone throwing, a few single police shots were fired before there was general firing by the police; and also that many policemen (and even one of the victims, Joshua Mota) heard the word "Skiet". The Court is, however, convinced that this order was not given by any of the officers who gave evidence. The word must have been uttered by some other policeman without the authority of Colonel Pienaar. Many others heard no such order, and decided on their own that it was necessary to shoot. The firing lasted, at the longest, about twenty seconds. But in that period hundreds of bullets were shot into the densely packed crowd from a distance of some seven or eight paces away. Only one or two policemen have deposed to first firing into the ground or over the heads of the crowd. The great majority fired directly at them. Among the policemen who used stenguns were: (i) Constable J.P.M. van Zyl who fired at least 50 bullets at the crowd; (ii) Constable P.M. Steyn fired some 60 shots; (iii) Sergeant Joubert who fired 10 shots, on "single" fire; (iv) Sergeant Oosthuisen /who...

who fired 22 shots and (v) Constable L.C. van Wyk who fired 37 shots; and there were many others who discharged large number of shots from revolvers and rifles. The machine guns in the Saracens were never used - these weapons fire some 250 shots in a minute. The firing resulted in about 250 casualties, killed and wounded.

98. All the officers who have given evidence, and Mr. Labuschagne and others, did all in their power to stop the firing as soon as possible. They must all have realised that the first few shots were sufficient, and that to continue the shooting was unnecessary. The point was made by the defence that no casualties fell inside the police grounds, and therefore it is questionable whether in fact a number of Bantu had got in through the gate. But the evidence is quite clear and convincing that they did. Most of the casualties fell South of the gate and towards the South East, i.e. in the vicinity of the intersection of Zwane Street and the unnamed street.

99. There may really be no need for this Court to express any views as to whether or not the police were justified in shooting, for the conduct of the accused and the crowd, riotous or otherwise, which is the subject of the charge, had come to an end at this stage. But the Court feels, all the same, that it should express its views on the point.

In this Court's view the use, by the police of fire-arms was justified. There had been riotous conduct since about 11 p.m. the previous evening and virtually continuously up to the time of firing, i.e. 1.35 p.m. During the night armed bands of men had had to be dispersed by baton charges; these men had amongst them somebody who used a firearm; many innocent inhabitants had been threatened; in the morning large crowds were on their way to

/vereeniging...

Vereeniging, some armed, threatening and taunting the police, a teargas attack had been useless, and a further baton charge resulted in the use of firearms by both sides; the crowds then turned to the police station; grew to a strength of at least 10,000; were insulting, threatening and provocative throughout; and ultimately indulged in the conduct set out in paragraph 96 supra. Many police officers of experience had deemed it necessary to gather a force of men formidably armed, and in "saracens"; this full display of armament had no effect. In view of all these considerations there can be no doubt whatever that the position was so dangerous just before the shooting that the use of firearms was justified.

But there is also no doubt in the Court's mind that in fact there was not sufficient justification for the very extensive use of firearms which did take place. The Court is, in particular, not satisfied that it was necessary to use several stenguns on "quick fire" directly into this closely packed crowd.

100. THE LAW:

All this evidence proves, in the Court's view, the commission of the crime of public violence throughout the whole period from about 9 p.m. on 20th March, 1960, to the time of the shooting at about 1.35 p.m. on the 21st March, 1960. During this period the crowds, organised and going about in Sharpeville, committed, on the Court's findings, many acts of actual

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actual violence. Two of the main aspects of the activities of the crowd were:

(i) The march towards Vereeniging along Seeiso Street, and

(ii) The march from there towards the police station, and the actual gathering at the police station.

The State has not proved, if ever it thought of being able to do so, that the deliberate intention of the people taking part in these two aspects was to attack the police or other people in their way. But in each of the two processions was a substantial armed minority, vigorous and vociferous, and lead by definite leaders, which was provocative, insulting, threatening, and ready to resist the police should they in any way attempt to stop them.

This minority and its leaders were determined to bring into final execution the goal of the "anti-pass laws" campaign of the P.A.C., i.e. to fill the gaols to overflowing and to cripple industry, and to demonstrate to the public at large and to the authorities how powerful and united they were. The processions^{were} were organised, undoubtedly, by certain of the local leaders of the P.A.C. The whole of the conduct of these leaders, and those following them and concerned with them in the execution of the campaign, falls well within the definition of this crime.

In deciding what the elements of the crime are the Court can do no better than to refer to the definition as given in GARINER AND LANSDOWN, VOC II 6th. Edition (at page 1012). Their definition has been approved of repeatedly in various decisions of the Supreme Court, particularly in R. vs. NDABA AND OTHERS, 1942 O.P.D. 149. IN R. vs. SEGOPOTSI AND OTHERS,

/1960..

1960 (2) S.A. 430 (T) Roberts, A.J., after a full consideration of all the authorities, suggested the elements of the crime to be an act:

- "1. In concert,
- "2. of a considerable number of people (whether armed or not).
- "3. With an illegal object,
- "4. Calculated to disturb the public peace,
- "5. By violence or threat of violence;
- "6. The place where the act was done and reaction of members of the public would then be relevant only in so far as they showed that the act was calculated to disturb the public peace.

The actual commission of acts of violence, nor the deliberate intent to commit them, do not necessarily seem to be elements of the crime. The matter is put thus in R. vs. WILKENS AND OTHERS, 1941 T.P.D. 276, by Mr. Justice Murray;

"In order to fix criminal responsibility upon the present accused --- it was sufficient to show that the accused persons were associated with the others in the execution of some common purpose the result of which, either as deliberately intended by the associated persons or as being the natural and probable consequence of their acts, was a riotous public invasion of the rights of others---

This case is remarkable for the similarity to the present one, for there too the organisers and leaders of a large band of people set out in what in the ordinary course of events was a well-intentioned and legal procession. The offence was proved to have been committed by what were the reasonable consequences of the acts of the accused persons.

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In R. vs. SCYMELE AND OTHERS 1958 (1) S.A. 157 (T.)
the facts were, perhaps, more clearly indicative of actual
proposed violence. Rival, armed native gangs marched about
for several days threateningly, ready to use force, and
Maritz, J.P., and Galgut J. held:

"These acts were such as a reasonable person would
realise would be most likely to cause fights and
assaults, and would cause fear and disturbance among
the citizens, and as the natural and probable conse-
quence was an invasion of the rights of other inhabi-
tants, and as fear and clashes must inevitably result
and danger must be present in the streets, these acts
constituted public violence".

The persons taking part in the processions and other
acts set out supra can be said to be comprised of three kinds:
(1) leaders; (2) Active Supporters of these leaders; and
(3) innocent and curious followers or onlookers, who would
not be guilty.

In regard to leaders certain observations of Mr. Justice
Murray in the case of Wilkins are apposite:- "Accused Nos.
1, 2, and 3. as the organisers and leaders of the pro-
cession stand, in my opinion, in a different position
from the ordinary rank and file. I accept at the outset
that there is no proof, and in fact that it is unlikely,
that they had any deliberate intention of inflicting any
physical injury upon the Minister or his associates —
On the other hand I cannot escape the conclusion that
they clearly intended from the commencement to take con-
trol of the United Party's Meeting even though not to
break it up — Even though these three (leaders) had

/not...

"not taken an active part in the dispassion of the
 "platform --- I should hold them responsible for the
 "natural and probable results of their action --- The
 "ensuing scenes of violence consequent upon resis-
 "tance to their plan were the results which as ordinary
 "men of common sense they must have expected. It is
 "true that Nos. 1. and 2. held up their hands and attempt-
 "ed to restore order among their adherents --- but their
 "attempts were too late, they had already let loose the
 "whirlwind. They had no right to anticipate a peaceful
 "surrender and must have appreciated the temper of their
 "supporters".

Another case in which appropriate remarks were made is
 that of R. vs. MARTINUS AND OTHERS 1941 C.P.D. 319 in which
 van Zyl, J.P., said:-

"It is not necessary that there should be a deliberate
 "intention to make an organised attack --- The accused
 "were riotously assembled in a street in Cape Town ---
 "the police were there to maintain law and order --- It
 "would only take some shouts of excitement to violence
 "and a few individual acts of aggression in such a crowd
 "to lead, without any previous arrangement or organiza-
 "tion, to an acting together on the part of some persons
 "in that crowd, in an attack upon the police ---"

In regard to the acts of a mob in the absence of the
 leaders one finds the following in TAYLOR ON EVIDENCE, 12th
 Edition, paragraph 592:

"Thus the cries of a mob with whose proceedings the
 "prisoner is connected, though made in his absence, are
 "admissible against him as explanatory of the object

/"which ..

"which he, in common with the multitude, had in view..."

In regard to persons not leaders, but alleged to be active participants, the Court must be very careful when weighing the evidence against them. In R. vs. CELE AND OTHERS 1958

(1) S.A. 144 N. a warning is sounded in the following terms:-

"In view of the elastic nature of the crime of public violence, and the fact that, by dealing with the accused as a mass, their relative degrees of guilty, if any, may be obscured, none should be found guilty of the crime merely because some acts of violence have been committed by some members of the crowd, unless it is shown that he was a party to those acts".

The Court will bear these remarks in mind in considering the individual cases of a large number of the accused who were not clearly leaders.

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/CMM

101. With all the foregoing facts in mind, and the law as set out in the previous paragraph, the court will now summarise the case as it has been proved against the individual accused ³ still on trial. The State has proved the common purpose set out in the charge as drawn, and has proved (in general) the preamble on the first page, and the following paragraphs of the particulars: 1, 3, 5, 7, 8, 11, 14, 15, 16 and 17.

102. ACCUSED NO. 1:

(1) Is a proved member of the P.A.C., and he actively took part in its "anti-pass laws campaign.

(ii) He led a group of men, unarmed, from the hostel on ^{21st} ~~20th~~ March, 1960 and his group was joined by an armed group. He continued as a leader of this combined group, which was indulging in riotous conduct, and was on its way to the town of Vereeniging with the intent set out in paragraph 100 supra. The behaviour of this accused, other leaders, and the crowd generally was such, and they were in such numbers, that the police, in trying to stop them had to use tear-gas bombs and a baton charge to disperse them. There is, in the circumstances, no doubt as to his guilt, and he is found guilty.

103. ACCUSED NO. 2:

(1) Although he has not been proved to be a member of the P.A.C., he undoubtedly was a supporter of, and active participant in, its campaign.

(ii) At the time of accused No. / leading his group of men from the hostel, accused No. 2 was leading a mixed group of men, women, and children, some armed and others gathering heaps of stones, in the same vicinity. All these groups were obviously proceeding to the same destination, i.e. Vereeniging. The group led by accused No. 2...../

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No. 2 behaved in the same manner as the other groups, and was also indulging in riotous conduct. Their conduct too was such as to cause the police action already mentioned.

(111) Mr. Unterhalter has argued that up to the time of the apprehension of accused No. 2, there had been no acts constituting public violence, but that the offence was committed only later, i.e., when the crowds stoned the police in Seeiso Street. The court does not agree with this view. The conduct of accused No. 2 (and also for that matter of accused No. 1) and his followers was such that the reasonable and probable consequences would have been action by the police to stop them, and that, inevitably, would have led (and in fact did lead) to violence.

Accused No. 2 is also found guilty.

104.

ACCUSED NO. 3:

It is sufficient to say that this man was an office-bearer of the P.A.C. in Sharpeville, that he took a prominent part in the series of happenings throughout the whole period, i.e. during the night, in Seeiso Street, and at the police station. He did silence the crowd, ask them not to damage the fence, and not to get on to the clinic roof. But he had already "let loose the whirlwind". In any case his requests were interspersed with gesticulations and slogans in support of the campaign. He is now absent, and the court will abstain from giving judgment. But he is clearly party to the common purpose, and the others convicted must be held, in law, responsible for his acts in furtherance of the common purpose.

105.

ACCUSED NO. 4:

(1) He is the vice-chairman of the P.A.C., and his house was virtually its headquarters in Sharpeville.

(11) He actively supported, and took part in

the...../

the execution, of the "anti-pass laws" campaign of the P.A.C.

(iii) He took a prominent part in the proceedings during the night of the 20th March, 1960, when he organised with the assistance of a lot of others, a meeting in furtherance of the campaign. He was actually seen, although personally unarmed, addressing an armed group of men. Without doubt he was party to at least some of the acts of violence committed during the night.

(iv) There is no evidence as to his presence anywhere in Seciso Street in the morning, but his presence at the police station is fully proved. Many policemen have given evidence as to his acts and utterances there. At an early hour he was an obvious leader, calling out slogans, in Iwane Street; later he was inside the police grounds, walking up and down, addressing the crowd, and shouting slogans; when he addressed the crowd they listened, and then responded vociferously; at another time he was again outside, shouting "Izwe lethu" and "Cato Manor"; he arrived at the police station with accused No. 8, who was one of the leaders of the crowd from Seciso Street towards the police station; he and accused No. 3 had ^{discussions} ~~discussions~~ in the grounds, ultimately he was apprehended and taken inside the building a short while before the shooting. His removal incensed the crowd further. He was obviously one of their leaders, jointly with accused Nos. 3, 8 and others. He is found guilty.

106. ACCUSED NO. 7:

(1) There is evidence incriminating this man in that of Piet Kok, who alleges that the accused was one of a crowd who came to his house and disturbed his nocturnal rest. Vide paragraph 70(vi) supra. Piet Kok was not a satisfactory witness. The Prosecutor could, on Kok's evidence, have called Kok's mother and two brothers to support him.....

support him, but did not do so. Kok in court said that, in the confusion, he saw the face of the accused, whom he knew, and also recognised his voice. But at the identification he told the officer in charge that he had not seen him, but had recognised his voice only.

(ii) Constable Bayl has deposed to seeing the accused along the Western fence at the police station. The credibility of this witness has already been touched upon. He is the gentleman carrying a sjambok on duty - and his explanation for that action is unsatisfactory. He exaggerated grossly when maintaining that every single man and woman present sang, ^{danced} danced and gesticulated. He knew accused No. 7 previously.

(iii) Although the accused has not given evidence, the evidence against him is of such an unsatisfactory nature that the court is unable to find that his presence at Kok's house and at the police station has been satisfactorily proved.

He is found not guilty.

107.

ACCUSED NO. 8:

(i) He took an active part in the execution of the P.A.C. campaign.

(ii) He was the leader who took over after the apprehension of accused No. 1 and 2, ^{waved} waved his fingers in the face of major van Zyl, and told the crowd to follow him to the police station, where he arrived in the company of accused No. 4.

(iii) At the police station he was seen acting like a leader, going up and down amongst the people, and shouting slogans, by Mr. Labuschagne; by det/Sgt. Wessels just shortly after 1 p.m. (the accused disputed that Wessels had identified him at the parade, but the officer-in-charge corroborates Wessels); by Det. Const. Malakia Mnotong;

and...../

and by Bantu Det. Const. Sidwell Kele who also saw him leading the crowd, some of them carrying sticks, from Seeiso Street, and ultimately at the police station, where he said "From today we won't carry passes; Iswe lethu - Afrika".

(iv) The accused has called or given no evidence.

There is no doubt about his guilt, and he is found guilty.

108. Accused No.19:- Three police witnesses have deposed to seeing the Accused near the police station in the area stretching from Zwane Street to the Western gate. The Accused has admitted being in this area. Two of the three witnesses, Malakia Mnotong and Matthews Ngumbuxa merely saw him standing or moving about among the people in that area, but the third witness, Pierie Serobanyane, has given evidence that the Accused was among people and "They were shouting there, saying 'Afrika'", and on being asked what the Accused was doing, he said: "He was staying there, saying 'Afrika', Izwe lethu'". This the Accused had^s denied on oath. The witness was obviously mistaken in identifying Accused No.1 (who had been arrested hours previously) as being among the crowd at the police station. He can, therefore, be mistaken as to the identity of the person he heard using the words just quoted. In all the circumstances the State has not proved that the Accused did anything more than standing or moving about in the crowd, and he is, for these reasons, found not guilty.

109. Accused No.22:- Malakia Mnotong says he saw the Accused at about noon, walking, in the company of a girl, in the crowd towards the Western gate. Pierie Serobanyane (the witness who is obviously wrong in identifying Accused No.1 as being in the crowd at the police station) says that he saw the Accused, wounded, being loaded into a van. Bantu Detective, Amos Doubada, saw the Accused who he knew, in Zwane Street, at about noon, walking past the crowd and joining them in shouting "Afrika". But he added that he would not deny the defence assertion that the accused was not

in /....

in Zwane Street, bur near the library. The Accused has given evidence that he was never in Zwane Street, that when near the library he was wounded, struggled home and was never loaded into any van, neither did he ever shout anything. He called his mother to support him. The court is unable to reject his defence; the State evidence is not convincing. The Accused is found not guilty.

110. Accused 27:- Malakia Mmotong only saw the Accused walking about in the crowd. Constable Beyl (whose credibility has already been dealt with in paragraphs 25 and 106 supra), says that he used the "thumbs up" sign, shouted "Afrika", and adopted a threatening attitude. Pierce Serebanyane (mistaken as to Accused No.1 being in the crowd at the police station) says he saw the Accused in Zwane Street, shouting "Afrika - Izwe lethu". The Accused has, in evidence, admitted being at the corner of Zwane and the unnamed streets, behind the crowd, where he was shot. He has denied gesticulating, singing or shouting. The evidence against him is unsatisfactory, his evidence cannot be rejected, and he is, therefore, found not guilty.

111. Accused No.30:- This Accused was the only woman on trial. She was identified by one witness only, Constable Fouché. He was in the police grounds, and says that she was against the fence some seven paces from him, that she threw a stone at the police, shouted "Afrika, vandag sal die blood loop", and that she was dancing and jumping into the air. The witness did not fare very well under cross-examination. He at one stage said that he did not see

her /....

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her throw the stone, but merely saw it in her hand and inferred that she was going to throw it; later, however, he persisted that he saw her throw it. He admitted that he told Mr. Justice Wessels nothing about her throwing any stone. At another stage of cross-examination it became evident that he was not sure on which side of the Western gate he saw her. The Accused has denied, in evidence, being anywhere near the Western fence or gate; she maintained that she was never nearer to the police station than the shops, some considerable distance Northwards. She cannot speak Afrikaans. She was wounded at the shops. Her state of health is such that she could not possibly indulge in vigorous exercise like jumping about. In this she is corroborated, to some extent, by the evidence of the District Surgeon, Dr. Lambinon, who examined her on an occasion when she was absent from court. In all the circumstances there is very considerable room for the possibility that she is not the person seen by the constable and about to throw a stone at the police, and she is found not guilty and discharged.

112. Accused No. 31:- This Accused is the only full bearded man among the Accused, and on that account was quite prominent in court. Constable Beyl says he saw him in the area from the small gate in the Southern fence to the big gate in the Western fence, and that his conduct was "omtrent dieselfde as die van andere", i.e. gesticulating and shouting "Afrika". Constable Grové says he saw the Accused in the morning in Seiso Street, and again in Zwane Street, near the police station, near the place at which Captain Coetzee and his men had taken up their

position; /....

position; and that the Accused was walking about there inciting others. Constable van Schalkwyk (who is clearly mistaken as to the stage at which Accused No.3 was apprehended by Colonel Spengler) says that he saw the Accused outside the Western fence, shouting battle cries (slagkrete). When shown Exhibit 71, depicting a bearded man and others, Grové said (correctly) that the bearded man was not the Accused, but van Schalkwyk said that it was. The Accused is an old man, who has lived in Vereeniging for some thirty years, and has received a badge from his employers for long and faithful service, and has admitted his presence at the police station, but denied the actions ascribed to him by the State witnesses. He was shot when somewhere in Zwane Street. He says that he was the only bearded person on the identification parade, and this possibility has been conceded by the officer in charge of the parade. Exhibits 41 and 71 depict at least two other bearded men in the crowd, and there were probably many others. The evidence of the Accused has not been discredited. In all the circumstances there is a substantial doubt as to the identity of the bearded man seen by the police witnesses indulging in incriminating antics at the police station. The Accused is found not guilty.

113. Accused No.36:- The only witness who has identified the Accused as shouting "Afrika" and giving the "thumbs up" sign is the aforementioned Constable Beyl. The Accused has given evidence contradicting him. In the circumstances there can be no question of the court convicting him, and he is found not guilty.

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114. Accused No.38:-

(1) There is proof that this man was a member of the P.A.C. He destroyed his reference book on the 18th March, 1960. The court has already commented on these aspects, and has concluded that the evidence was not sufficiently clear to justify an inference that he was actively participating in the "Anti-pass laws" campaign of the P.A.C.

(2) Constable Beyl, whose evidence as already pointed out is not of a satisfactory nature, has deposed to seeing the Accused many times in the crowd gathered outside the police station. The constable, who was stationed at Sharpeville, says that he knew the Accused well by sight.

(3) Constable R.W. Olivier says that when the police had already been lined up, i.e. only shortly before the shooting took place, he saw the Accused at the Western gate, facing the people, with his hands in the air, shouting "Afrika" at them, and inciting them, and that the crowd reacted by the "thumbs up" sign and shouting "Afrika". In other words, he was acting like a leader. The witness identified the Accused and another Accused (No.36) at the identification ^{parade} in Boksburg on the 19th April, 1960, but identified Accused No.38 only in court, saying that he was no longer sure of the identity of the other person. He gave his evidence on the 15th December, 1960, i.e. some nine months after the date of the incidents he was deposing to. The constable made a good impression on the court, was clearly honest, and withstood cross-examination by Mr. Unterhalter on behalf of his clients well.

(4) /....

(4) The Accused declined to cross-examine the witness, although specially invited by the court to do so. He has called or given no evidence, and in these circumstances the court is satisfied that the actions ascribed to him by the witness have been proved.

(5) To sum up: the position is that the Accused has been proved to be a member of the P.A.C., to have destroyed his reference book at a time when the P.A.C. was launching an "anti-pass laws" campaign, and to have taken quite a prominent part in the acts of a vociferous, vigorous, riotous section of the crowd outside the police station, a short while before they actually went over to acts of violence, like throwing stones and dangerous weapons at the police. He associated himself, by active participation perhaps only at a fairly late stage, with them in their riotous conduct. He is found guilty.

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115. ACCUSED NO. 39: (i) There is ample proof that the accused was a member of the P.A.C., but there is no evidence that he participated actively in its "anti-Pass Laws campaign". He knew all about it, as is evident from the unsworn statement he made. This part of his activities has already been dealt with earlier in this judgment.

(ii) But there has been evidence to the effect that he was present at the police station. (a) Mr. Labuschagne said that he was one of the leaders there, but later admitted that he only thought that the man he had in mind was the accused - whom he did not point out on the parade as he was not certain. (b) Malakia Mpotong, an unsatisfactory witness, says he saw the accused in Zwane Street, waving his hands, calling people to follow him, and shouting "Izive Lethu". He was acting as a leader and had a P.A.C. "etiquette on his lapel.

The witness professed to be able to read the letter "P.A.C." about 1/4 inch high from a distance of some fifteen paces - this was impossible, as he could, in Court, not read 2 inch high figures from seven paces away. In the course of cross-examination the point the witness "hedged" and evaded markedly

(c) Constable White has also deposed to seeing the accused at the police station, but is not at all sure as to the time or point, or even as to whether the accused is the person he pointed out on the parade. In fact the constable there pointed out others, and not the accused.

(d) Constable S.G. van Nickerk, says he saw the accused, just after the policemen had been lined up, to the West of the police station, shouting "Afrika; this will be the next Cato Manor". But this witness also expressed doubt, and in fact did not point the accused out on the parade.

(iii) / The accused

(iii) The accused did not give evidence, but made an unsworn statement alleging that he was in Evaton at the relevant time. He called a witness, Gilbert Gabuse, who deposed to being with the accused in Evaton at the time. The witness was not discredited, and his evidence cannot be rejected.

(iv) In his unsworn statement the accused said that he woke up on the morning of the 21st March, 1960, heard noise in Seeiso Street, and connected it with the expected demonstrations. He felt it was his responsibility to stop the noise and tried to do so, but failed. He then went to Evaton apparently for advice from one Molete, as he felt "things were a bit heavy on me". In other words, whatever he may have done previously, he sought advice as soon as he became aware of the possibility of violence.

(v) There is no evidence connecting him directly with the events during the preceding night, or in the morning in Seeiso Street. The evidence as to his being in the crowd at the police station is that of either an unreliable witness, or of witnesses who are doubtful. His defence of an alibi has not been discredited. In all the circumstances there is no definite evidence of his being in the crowd at the police station. He has not been shown to have participated in any of the riotous events at all, and is, therefore, found not guilty.

116. ACCUSED NO. 41: Three constables have deposed to seeing him at the police station. (1) Constable Kallis, saw him in ^{Jwane} ~~Jivane~~ Street, with a woman, and both were prominent, jumping around, shouting "Afrika";

Isive lethu" /.....

^wIsiwe lethu". The constable knew the accused by sight, and identified him on the parade, but would not have been able to identify the woman. The constable could not say whether the accused was armed or not, or how he was dressed. (ii) Constable C.R. Meyer also identified the accused, both in court and at the parade, as being a man he had seen on the Western side of the police station, behaving riotously, shouting, singing, giving the "Afrika" sign, and so on. He saw him once only, some considerable time before the shooting, but could not give a description of the clothing of the accused. (iii) Amos Doubada also saw him, he says, in the vicinity of the western gate, indulging in similar conduct, but says he was walking past at the time.

The accused has given evidence that he was wounded in the vicinity of the corner of ^{Swane} ~~Zwane~~ and the unnamed streets and did not dance, sing, or shout anything. He was wounded when walking past on the way to his brother's place. He places himself in the vicinity where Doubada saw him. He was not discredited by the Prosecutor's cross-examination.

The three constables are no doubt bona fide. But in view of the general remarks of the court, as set out in paragraph 27 supra, there is substantial room for the possibility of wrong identification, or of their ascribing to the accused the actions of some other person near him. He has denied these actions on oath and has not been shaken in cross-examination.

In all the/.....

In all the circumstances his participation in riotous conduct has not been proved satisfactorily. He is found not guilty.

117. ACCUSED NO. 43: - (i) The allegation of the State is that this accused was in the crowd armed with a formidable dagger, exhibit 44.

(ii) Malakia Mmotong identified him in court, but not on the parade although he says he did so. Later in evidence he admitted uncertainty. But all the witness can say is that he saw the accused among the crowd, and that was common cause.

(iii) There seems to be competition between two constables as to who found the dagger. Constable Struwig says he found it on the accused, who was discovered lying in a dazed condition among the wounded. But he cannot identify the accused, and that is done by others. Struwig says he retained the dagger when the accused was carried into the police station. Constable J.P. Prinsloo supports Struwig. Both were stationed in Johannesburg. But constable M. W.E. Fourie claims that he found the knife on the accused, and that he retained it. He says that he gave it to the other constable with him (and that was Struwig), who then told him he would see the case through (by sal die saak vat). Several other witnesses gave evidence that they saw the accused, and the dagger already in the possession of a policeman - none of the others saw the finding of the dagger. This kind of evidence, and this conduct of both Struwig and Fourie, are highly unsatisfactory, and

to be depreciated/...

to be depreciated. It is not the type of evidence on which a court can rely.

(iv) The accused has not given or called evidence. In all the circumstances there is grave uncertainty that the dagger was found on his person, and, therefore, that he carried it. There is no other evidence to incriminate him, and he is found not guilty.

118. ACCUSED NO. 63: (i) Constable L.C. van Wyk says he saw a person, whom he thinks is the accused, in the crowd with his bicycle, and "hy het ook maar saam geskreeu met die ander".

(ii) Constable J.P. van Zyl says he also saw the accused "baie oproerig geskreeu, kon nie presies hoor wat hy sê nie".

In cross-examination the witness admitted that possibly the accused was telling the crowd to go home.

(iii) Constable Pretorius has also deposed to seeing the accused with his bicycle in the crowd, and that he continuously shouted "Afrika" and gesticulated with his hands.

(iv) Constable P.M. Steyn says that the accused incited the Bantus, shouted loudly and made the "thumbs up" sign, shouting "Afrika".

(v) Bantu Detective Constable Amos Doubada also saw the accused, but did not see him say or do anything, except to look at others who were shouting "Afrika". When attending an identification ^{parade} he did not, at first, point out the accused, but only on leaving made the remark: "Our people, I have seen nobody except the teacher who was doing nothing and was on a bicycle

at the far/.....

at the far corner."

(vi) The accused has given evidence and has admitted being on his bicycle in amongst the crowd, but he had^s denied all allegations of gesticulating or shouting slogans. He has been a teacher since 1943, and has a wife and five children. He gave the police a statement, presumably in agreement with his evidence, was released pending his attendance at the parade, where a number of witnesses pointed him out, resulting in his arrest. He has made a point of the fact that identifying witnesses may have seen his photograph in certain newspapers before the court, and that the attention of some of them may have been drawn to him just before the parade. The witnesses have denied these contentions, and there is no reason to disbelieve them. In any case, he does not deny identity.

(vii) Only two witnesses have given evidence which is definitely incriminating, i.e. constables Pretorius and Steyn.

The evidence of the accused is contradictory of their evidence. He has not been discredited in any way. There were many other Bantu with bicycles in the crowd: vide exhibits 42 and 84. The two constables have given a rather impossible description of a man moving about in a dense crowd up against the fence with his bicycle. In all the circumstances it is quite possible that the person behaving as the witnesses describe may be some other cyclist or that some other persons near the accused behaved in the manner described and that the constables are ascribing his behaviour to the accused.

There is a /.....

There is a very substantial doubt, and the accused is found not guilty.

119. ACCUSED NO. 65:- (1) Joshua Mota saw the accused stopping people from going into the police station grounds.

(11) EDWIN LITEBU saw him in amongst the crowd about 9.a.m. onwards. The crowd were shouting "Izi^wre lethu: Afrika" and the accused lifted his hands in the P.A.C. salute. But he did not hear him say anything.

(111) The accused has admitted having formerly been a member of the P.A.C. He was, after a quarrel with other local members, no longer either a member or on any committee. He has denied the incriminating allegations of Edwin Litebu, and maintains that he left the crowd long before the shooting. His defence has not been discredited. As a matter of fact the evidence of Joshua tends to prove that he dissociated himself from the campaign. There is, consequently, insufficient proof that he in any way associated himself with any portion of the crowd indulging in riotous conduct, and he is found not guilty.

120. ACCUSED NO. 75. There is no evidence that he was in the crowd at the police station. But Elias Mvala has alleged that the accused is one of a group of men who came to his house during the preceding night, roused him and tried to induce him to leave the p^eace and security of his home. The witness could not have had much more than a momentary glance by candle-light of the man who did this. He knew the accused well, and professed also to recognise his voice. His wife was present, but was not called, and the witness definitely balked at the suggestion that she should be called. The accused was never placed on a parade, and was arrested only about three months later, and brought to the witness who straightaway professed to recognise him.

(ii) The accused has given evidence denying any participation in any of the activities during that night, and called his wife to support him. He spent the night peacefully at home. Their evidence has not been discredited.

(iii) In these circumstances it is quite possible that Mvala has made a mistake. The accused is found not guilty.

121. ACCUSED NO. 76.

(i) The allegation of the State against this man is that he came in through the Western gate, said to Colonel Spengler "I wish to surrender myself, me and my people do not want passes", and that this happened very shortly before the stone-throwing preceding the shooting. The man had, however, by that time been taken into the building.

(ii) Before going into the evidence further, the Court must state that it finds that the accused on that day/...

day wore a red waistcoat, and a Basuto straw hat.

(iii) Colonel Spengler says that a man with a red shirt was inciting the people at the gate. He used the words "Afrika" and "Freedom" often. The crowd reacted. When the Colonel invited him in, he stepped back and disappeared into the crowd. The Colonel talks of another man, not dressed like the accused, who came walking calmly out of the crowd and said to him: "I wish to surrender myself; me and my people don't want passes". Later in his evidence the colonel talks of a man, presumably the same man; who when there were references to "Cato Manor" wanted to jump back into the crowd, and who was then grabbed by the shirt by the Colonel. Be that as it may, the Colonel's evidence as to the facts concerning accused No. 76 is not the same as the evidence of many other State witnesses. There is obviously confusion in the Colonel's recollections. The colonel has denied assaulting anybody.

(iv) Constable P.M. Saaiman has deposed to assisting Colonel Spengler to take away from the gate a man in a red shirt. This man wanted to withdraw into the crowd, but colonel Spengler caught hold of him, and Saaiman went up and took the man over from Spengler and handed him over, a little distance forward, to another detective (presumably Detective Sergeant Muller). Saaiman did not see the colonel assault anybody.

(v) Detective Sergeant Muller has deposed to seeing Colonel Spengler busy with a third man at the gate, and says this man is accused No. 76. The witness saw accused No. 76 bursting in through the gate, and the Colonel spoke to him. Muller heard him say: "We do not want passes; we want our freedom". The Colonel told Muller to take/...

take accused No. 76 into the building for questioning. Muller admitted that the accused may have been wearing a red waistcoat. In leading the accused in Muller says he tripped himself, and had a firm grip of the accused, who then apparently resisted. There was in the first instance no need for Muller to grip the accused, and he has freely admitted this, and has said that he just did it.

(vi) A good deal of other evidence was led concerning some such incident at the gate between Colonel Spengler and a bantu, but none of the witnesses were sufficiently close to be able to give the Court reliable details, particularly as to the language used by the Bantu.

(vii) Ultimately accused No. 76 was in custody inside the building, and being guarded by Sergeant Daniel Mokabela. He had seen a struggle when the accused was apprehended, but saw no one hit the accused. The accused was brought into the building a few seconds before the shooting took place.

(viii) Bantu constable Amos Dou^abuda went and spoke to the accused inside the building. He had seen an "European Sergeant" hit the accused when taking him into the police station.

(ix) Isaac Tatai saw the arrest of a man wearing a Basuto straw hat at the gate. The hat fell off, and the man was being hit whilst being arrested or removed.

(x) The accused has given evidence, and says that he was at the gate, among the crowd singing hymns. He saw Colonel Spengler approach, and opened the gate for the Colonel, after telling the people to keep quiet as he thought the colonel might want to address them; unexpectedly the Colonel grabbed him by his red waistcoat, pulled him in and hit him; Saaiman took him past the lined/...

lined up policemen, and handed him over to Muller; Muller took him by the arm and tried to pull him to walk faster; he resisted; and there was then some form of tussle and Muller fell down. Muller had slapped him twice. He was led inside. This evidence is not in accordance with a suggestion made in cross-examination that Colonel Spengler had assaulted the accused "brutally". There are other grounds for criticising the evidence of the accused, but on the whole it cannot be rejected as false. The accused gave the police a statement and was released that evening. His first appearance in Court was on the 20th June, 1960, which means that he was arrested only some three months later.

(xi) The State evidence as to the identity of the person who used the language deposed to by Colonel Spengler and Muller is vague and indefinite. The accused has denied using such language. The Court cannot find it proved that he has used such language. But even if he did say: "I wish to surrender myself; me and my people don't want passes; we don't want passes; we want our freedom", at a time when others nearby were referring to the tragedy of Cato Manor, is that proof that he was actively concerned with the execution of the campaign of the P.A.C. against passes? Or that he was associating himself with the riotous conduct of others? The answer is, in the view of the Court, in the negative. For these reasons the accused is found not guilty.

122.

THE VERDICTS IN RESPECT OF EACH ACCUSED:

The verdicts in respect of each of the accused who pleaded to the two counts of the charge are as follows:-

Accused/...

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ACCUSED NO. 1: (Johannes Monyake):

Guilty on Count I, and guilty on the Main charge of Count II.

ACCUSED NO. 2: (Thadde^a Ntoampe):

Guilty on count I, and guilty on the Main charge of Count II.

ACCUSED NO. 3: (Nyakane Tsolo):

The Court abstains from giving judgment in terms of Section 155 of Act No. 56 of 1955.

ACCUSED NO. 4: (Thomas More):

Guilty on Count I, and guilty on the Main charge of Count II.

ACCUSED NO. 7: (Albert Matlala):

Not guilty on count I and on Count II.

ACCUSED NO. 8: (Emmanuel Teketsi):

Guilty on Count I, and guilty on the main charge of Count II.

ACCUSED NO. 19: (Adam Sakwane):

Not guilty on Count I and on Count II.

ACCUSED NO. 22: (Isaac Motaung):

Not guilty on Count I and on count II.

ACCUSED NO. 24: (Asael Kutoane):

Not guilty on Count I and on Count II.

ACCUSED NO. 27: (Johannes Seretho):

Not Guilty on Count I and on Count II.

ACCUSED NO. 30: (Anna Lethage):

Not Guilty on Count I and on Count II.

ACCUSED NO. 31: (Thomas Msimanga):

Not Guilty on Count I and on Count II.

ACCUSED NO. 36: (Peter Thabane):

Not Guilty on Count I and on Count II.

ACCUSED NO. 38: (Stefaans Lpee):

Guilty on count I and not Guilty on Count II.

Accused/...

ACCUSED NO. 39: (David Ramodibe):

Not Guilty on Count I and on Count II.

ACCUSED NO. 41: (Simon Mhlambi):

Not Guilty on Count I and on Count II.

ACCUSED NO. 43: (Edward Moloto):

Not Guilty on Count I and on Count II.

ACCUSED NO. 52: (George Qotzwa):

Not Guilty on Count I and on Count II.

ACCUSED NO. 63: (Lechael Musibi):

Not guilty on Count I and on Count II.

ACCUSED NO. 65: (Hephne Morobe):

Not guilty on Count I and on Count II.

ACCUSED NO. 74: (Moses Mooli):

Not guilty on Count I and on Count II.

ACCUSED NO. 75: (Paulus Moleko):

Not guilty on Count 1 and on Count II.

Accused No. 76: (Peter Molefe):

Not guilty on Count 1 and on Count II.

(Sgd) P.M.O'BRIEN
REGIONAL MAGISTRATE.

VEREENIGING,
22nd June, 1961.