

"We are wasting our time by speaking in this square. We must come in millions and fight these Dutch....."

COURT ADJOURNS:

COURT RESUMES:

BY MR. PIROW: Your Worship, the next point I come to is the enumeration of acts done in pursuance of such methods of propagation and in particular to the incitement to violence and ostensible preaching, I might almost say ostentatious preaching, of non-violence. The point I want to make in that connection is one I have already touched on, and that is, that although they were very free with their statements during speeches, there must be no violence, when you consider them in their context, you will find in most of the cases, in many of the cases, that there was no necessity to make any such appeal at all. It was an appeal which in fact was intended to focus the attention of the audience on the question of violence. So you say "No violence," but if you look at the context there is no call for any such admonition, and in fact they merely want to draw the attention of the audience already worked up to violence, I will ask Mr. Van Niekerk to continue with the references.

BY MR. VAN NIEKERK: At page 7325 of the record, Your Worship, a speech of Resha, Accused No. 63, the Volunteer in Chief, the Transvaal, also member of the National Executive Committee of the African National Congress. "We know that in the African National Congress we have people who love the organisation and spend their time in discussing and in planning for this organisation. Those people my friends, are not volunteers, those people who are going to discuss whether clause 9 is right or wrong in the African National Congress are not volunteers. Volunteers are those people who do and die. Volunteers are those people who when they are given leaflets to do, they go out and distribute those leaflets. Volunteers are those people

who don't ask questions. A volunteer is a person who has pledged himself to carry out the work of the African National Congress, whatever is involved without questioning. A volunteer is a person who had dedicated his entire life to the liberation of the African people during the whole time. A volunteer is a person who is disciplined. This is the key of the volunteer, discipline. When you are disciplined and you are told by the organisation not to be violent, you must not be violent. If you are a true volunteer, and you are called upon to be violent, you must be absolutely violent, you must MURDER, MURDER! That is all....."

BY MR. PIROW: Now, Sir, I attach a great deal of importance to this particular speech, because we remember it was one of the speeches recorded by a recording machine, was recorded by a microphone, under circumstances which I don't think have been fully disclosed. Maybe they will later. But at this stage it stands uncontradicted, and it is also a reply to my learned friend's remarks about the volunteers. The volunteers according to my learned friend are people who are charged with the distribution of leaflets, they are charged with the task of seeing that there is no violence. Well, you couldn't have it more aptly expressed in this speech which they did not know was being recorded, where there were no officers present, this speech by the chief volunteer, "Fifty thousand volunteers have been called for," and these fifty thousand volunteers must be disciplined people, and if they are told not to be violent, they are non-violent. But if you are a true volunteer you are called upon to be violent, you must be absolutely violent, you must murder, murder, murder.

BY MR. VAN NIEKERK: At page 2660 of the record, a meeting of the African National Congress at Newclare on the 28th August, 1955. Speech by Resha, Accused No. 63. "The Afrikaners are to make a choice either to live in brotherhood or to leave this

country. There are more pangas in Kenya than cigarettes you are smoking. Don't think that the African National Congress will fold its arms if attacked by other men. The day we are organised no police will be near us." On the 9th January, 1955, the African National Congress meeting at Sophiatown, the same Accused (page 6342) "I want to put a very pertinent question to you. If I say you will not move, what will you say? You will say you will not move and by saying that you mean that you will sit down and you will not move. But a man who is determined to move you, will lift you body and soul and put you outside, and what will happen then? I can answer that question or perhaps you will answer it for me. I can answer that question, yes, but I cannot decide for you. You must decide for yourselves." On the 27th November, 1955, at the S.A. Coloured Peoples' Organisation at Korsten, Port Elizabeth (page 4391) the same Accused No. 63, said this: "In die fabriek gaan hulle julle geld vat en vir die hongersnood boere gee, dit is die boere se goewerment. Moet ons die boere gaan vat en die boere doodskiet. Moet ons messe vat en die boere doodsteek. Moet ons die boere in die see jaag. Is dit die goed wat ons moet doen? Die vrae wat ek nou gevra het sal 'n man nog vir homself moet antwoord. Ek sê nie dat julle enige ding moet doen nie. Ek wil nog vir julle bid sodat julle kan niks raakvoel nie eendag. Julle moet sterk wees want die tyd is naby, die pad wat na freedom gaan is nie maklik nie." On the 9th May, 1954, at the African National Congress meeting, Johannesburg, same Accused, No. 63 (page 1801) said this: "I want the youth to come forward. You will see that the boers who are driving in the pick-ups are young Boers. This will only happen when we, the youth, come forward. Won't it be good, my mothers and fathers, when the blood of the youth of the African people is spilling for a good case?"

On the 7th November, 1954, African National Congress meeting, page 2138 of the record, the same Accused (63) said this: "We will and must remain in our houses to the last. Tell Dr. Malan that the removal of the Western Areas will bring about a major clash in this country. Through this the African people will march nearer to their freedom. If the government of this country is prepared to rob us of our aim we must resist. The motto of every African must be "To die like a man for the struggle." If you are prepared to die like a man, it is your duty to come forward and to register as a volunteer in the forces to resist apartheid....." At page 2811 of the record, speech by the same Accused. "We are prepared to die with our children. We are not prepared to sell our children like the teachers. There has never been an armistice in this country, only there has been a truce. Things are where Chaka and Hinza left them as much as we say that our struggle is non-violent but we cannot stand and fold our arms when our children are being taken from us....." On the 4th July, 1954, Accused No. 51, P. Nene, at the African National Congress Meeting at Alexandra, said this (page 1970) "The police were armed just to frighten our people. The black giants of Africa will no longer be frightened by machine guns or anything. The Government may continue to raid our meetings, but by so doing they would be giving the Africans more power than ever. We want our Africa back no matter what circumstances may be." At page 5759 of the record, speech by L. Ngoyi, 18th September, 1955, at the meeting of the Freedom Charter Committee, Johannesburg. She said this: "In Europe there are countries which are free, because of their liberation fighters. This freedom truck is a very heavy truck. There are some people who oppose us, but the time will come when they will be taken alive and thrown into the fire....." At page 6072 of the record, speech by the same person, Lilian Ngoyi, Congress of the People meeting

at Kliptown on the 24th June, 1956: "I also call upon you Jomo Kenyatta and other leaders who are suffering under the imperialists, you are not forgotten, we are with you, the oppressed people of South Africa. We shall give the last drop of our blood for the liberation of the oppressed peoples in South Africa." And on the 14th March, 1954, at the African National Congress meeting in Johannesburg, Accused No. 56, Nkwe said this : (page 1654) "If it means walking through blood, the people will get their freedom..... The African people are on the march. In Kenya today the slaughter of the people is going on. We are not deceived by talk of Mau Mau. We know that the people of Kenya are fighting for freedom; we know the truth, the future is ours" And on the 29th April, 1956, at the African National Congress Youth League meeting at Sophiatown, Accused No. 57, P. Nthithe, page 2968 of the record, "I said to you last week that it is a law in this country, that if you have committed murder you must be hanged. These bastards of white people every day murder us. Why should they not hang? Who is going to do the hanging?" At page 2935 of the record, a speech by B. Seitshiro, Accused No. 64, on 26th April, 1954, a meeting of the African National Congress at Newclare: "Our policy is non-violence. Our policy is that the police will shed blood...." And later on: Let us show them that if they apply apartheid we shall play the game. So it is better for them to repent when there is time. Let us speak the truth. We know that they fail to understand, but let us make them understand. Let us not be frightened by the sten guns. I am sure that the steun guns will not refuse if you take it from the owner and point it to him....." And on the 18th September, 1955, Accused No. 65, Sijake, at a meeting of the Freedom Charter Committee, 18th September, 1955, said this: "One must be

prepared to clash with the servants of the State. And if this struggle assumes very large and countrywide dimensions, one shall have to clash even with the armed forces of the country. That is the test we must pass before we can have work and security...." And on the 7th March, 1954, at the African National Congress meeting at Alexandra, G. Sibande, Accused No. 71, said this: (page 1720) "The time of speeches is past. The time is for action. The leaders is to show the people the way. We are waiting for our death. We spoke in English language to Swart Government, but he did not hear us." On the 21st January, 1956, African National Congress meeting at Newclare, H. Tshabalala, Accused No. 77 said this (page 2849): "You must know my people that when you want to achieve your freedom there must be a stream of tears and there must be a flood of blood." And on the 19th December, 1954, at the African National Congress meeting at Port Elizabeth, Accused No. 110, said this (page 4250): "Here in South Africa we say stop Dr. Malan and his followers with your unjust laws. We in Africa as black people are no more prepared to obey unjust laws and we demand freedom in our lifetime. We are not prepared to shed blood, but if those in authority are determined to do so, we shall not be responsible....." On 23rd December, 1954, at the African National Congress meeting at Port Elizabeth, Mqota 118 said this (page 4258): "The teachers should preach this to the children. This is not a game, but in Kenya when education was interfered with, they decided to fight and die. If I am attacked and on my retaliation.... it is nobody's fault....." On the 19th March, 1955, Tshunungwa, Accused No. 124, at an African National Congress meeting at Adelaide said this: "There were armies that forced people to Meadowlands, so they said people went there in peace. Congress says no bloodshet as yet." Speech by Ndimba, Accused No. 119, at the

African National Congress meeting at Port Elizabeth on 1st May, 1955, "We must change this Government to a democratic Government. Let us move forward to freedom. Let us demand our country by force and volunteer to be strong. If the instructions are given to the volunteers to kill, they must kill. If a man does not want South Africa he must go out of this country." On the 27th May, 1954, at the African National Congress Youth League meeting at Port Elizabeth, F. Ntsangani, Accused No. 121 said this "In Kenya the people active are the African youth. The African National Congress don't expect arms to be carried, but it informs us to expect bloodshed from those in authority. The Government of this country is prepared to have bloodshed, because it doesn't want to give out the piece of bread. If a man beats you, one is there to retaliate. The Europeans are going to force to form up Mau Mau in this country, and we have already heard about the Cheesa Cheesa army. We are going to oblige to stand as men."

On the 9th January, 1955, the African National Congress meeting at Port Elizabeth, F. Ntsangani, Accused No. 121, said "Whether we beg the white people the time is going to come when there will be a shooting retaliation from people." And Ntsangani, Accused No. 121, on the 20th March, 1955, at the African National Congress meeting at Port Elizabeth: "In the new Africa we don't promise people with happiness and before we achieve freedom blood will be shed. The mothers and fathers whose sons have betrayed us need not worry about the mourning dress. The African nation in South Africa is going to act as the Kenya people did and achieve freedom." On 22nd June, 1956, at the Natal Indian Congress Conference in Durban, Accused 154, Dr. Letele, said this: "We are heading for a crisis that are harder than even some of the ricts that we have seen and I think there is still plenty of time to link yourself in some way with

organisations that stand for national liberation. .." On the 7th March, 1954, at the Let the People Speak Committee, in Sophiatown, a meeting, Mandela Accused No. 32, said this: "You must all remember and understand that the methods of passing resolutions at meetings and then send them to the Government has been found useless. Also begging for favours from those who govern never helps, because those in Parliament never pay any attention to those things. Those who want freedom are those who are prepared to support a violent rebellion and militant action..... People like General Hertzog and General Smuts, who were famous lawyers, took up arms and fought for their people. That is the only way to be prepared in South Africa, is to prepare the people for a violent rebellion. We are in a better position to fight against the forces of reaction than the Afrikaner people were when they fought the British Imperialists. I say we have ten million people against two million whites. We can force a mental hatred against the oppressors and anyone who stands against freedom. I know as I know that the sun will rise in the East tomorrow that a major clash will come and all forces of reaction will collapse against the forces of liberation." Exh. A.9, found in possession of the African National Congress, Johannesburg, on 27th September, 1955. "The youth of Africa and the world cannot but salute the great victories of the people of Indo-China who like the people of Korea have routed the imperialist bandits. Dien Bien Phu, is a clear writing on the wall for the Western aggressors..... The world youth day is a day of sorrow. It is a day of mourning for those that have died for the cause. Let us think of our young brothers who are daily murdered by the imperialists in Kenya, in Malaya and Guatemala. The flow of blood of these finest sons of the working and exploited peoples is enough to seal and reinforce the solidarity of the fighting youth in the colonial

countries and the world over." And Exh. ZHM.6, found in possession of Professor Matthews, Accused No. 109, which is a report of the National Executive Committee to the African National Conference at Queenstown on the 18th December, 1953: "The sentencing of Jomo Kenyatta and others to seven years imprisonment and hard labour by a Kenya Court for alleged participation in what is infamously called Mau Mau activities, was a definite travesty of justice. It is becoming clear daily to the colonial people that they will gain their freedom not by constitutional methods but through the hard fight by revolutionary tactics."

BY MR. PIROW: Here we have, Sir, a direct reply to Mr. Berrange's contention about constitutional methods. The document makes it quite clear what the alternative is to constitutional methods. We will obtain freedom not by constitutional methods but through the hard fighting, by revolutionary tactics. Now, Sir, these quotations, and the references to Korea, Indo-China, Kenya and Malaya, must be read against a background of what happened in those places, those countries. Mr. Berrange tried to get away from the references to Korea and Malaya by saying that a particular witness referred to the fact that they were organising to have the same state of affairs in South Africa. The man was unreliable, and therefore all reference to Korea and Kenya loses its value. That with submission is an argument which is completely at fault. We are relying on the references to violence in Korea, Indo-China, Kenya and Malaya for quite another purpose. We are relying on it for two reasons. In the first place, the speakers and those who listen to them and those who were on the platform with them, identified themselves with Communist bloodshed in other places. Let me leave Kenya for the moment. There can be no question that Korea, Indo-China and Malaya are Communist activities, large-

scale Communist activities amounting to warfare. They allied themselves to that type of procedure, they admired it, and they suggested, or some of them suggested, that that type of resistance should be created in South Africa. And as far as Kenya is concerned, we called evidence to show what really happened in Kenya, and we called evidence to show what happened in Korea. The other two places I ask you to take ^{judicial} cognisance of. And it is quite clear that the struggles in those countries were not struggles which by any stretch of imagination could be called non-violent. These so-called non-violent Congress men had the greatest pleasure in identifying themselves with the struggles, the bloody struggles, the struggles carried out at tremendous sacrifice, with a real flood of blood, found great pleasure in identifying themselves with the struggles in those countries. Those are the two reasons, Sir, why we are emphasising the frequent reference -- certainly more than occasional reference -- to Korea, Indo-China and Malaya. And you will also bear in mind, Sir, that with the possible exception of Kenya, which seems to be more of a murder gang than of political movement, the parties fighting, were fighting as Communists. They were fighting as Communists. And when I say that these people identified themselves with Communist fighters, it goes a good deal further than Mr. Berrange's suggestion, that it is not high treason to say that certain things are good or better elsewhere. That would be a very harmless remark. But when you refer, and when you identify yourself, with warfare going on, backed by the Russians, backed by Russian arms, backed by Russian influence, then you are entitled to say, Communism and Communist methods have been approved of and may possibly be applied if the chance allows in this country. Now, I will ask my learned friend just to read the evidence, referring to Indo-China, Korea, Kenya and Malaya.

BY MR. VAN NIEKERK: At page 4639 of the record, a speech by Jack, Accused No. 104, at the African National Congress meeting at Port Elizabeth on 25th April, 1954. He said this: "Our godland and that of the people in Kenya are the same. We want freedom." At page 4803, J. Jack, Accused No. 104, on the 3rd October, 1954, at an African National Congress meeting in Port Elizabeth: "Now we have reached a stage where we are going to take the freedom from the Government. In Kenya the authorities are using bombs against the Africans, but they have no effect. The Kenya African struggle and the Chinese struggle is ours." On the 1st August, 1954, Mkwai, Accused No. 117, at an African National Congress meeting in Port Elizabeth, said "Jomo Kenyatta did organise his people and was arrested for that, and the Mau Mau will never be finished at Kenya and we will have them in this country. If the Europeans is hitting you, you should hit him back." On the 1st August, 1954, Ntsangani, Accused No. 121, at an African National Congress Meeting at Port Elizabeth said "We are going to say something, that is happening in Kenya will happen here." M.P. Naicker, Accused No. 140, at a Stalin Memorial Committee Meeting, on the 11th March, 1954, said this: "Today Russia is an ideal state. Leadership given by Stalin. We re-dedicate ourselves for the cause he stood for. It is vitally necessary for us to say that we believe in great cause for what Stalin stood for....." And Sisulu, Accused No. 70, on the 8th May, 1954, African National Congress meeting at Johannesburg, said "When we talk about freedom we know that we are going to get freedom. In Kenya, people are fighting for freedom. They are being shot down. The Africans will get their freedom, even if the white man likes it or not, but we are going to get our freedom....." And on the 8th November, 1953, the meeting of the S.A. Society for Peace and Friendship with the Soviet

Union. Accused No. 63, Robert Resha, said: "We have great interest and admiration for the youth of the Soviet Union, and what they have gained, and we realise that when they have become so advanced. We know these facts despite the cheap and malicious propaganda that was spread of the achievements of the Soviet Union. We were told that they have achieved nothing, but that is of course what one gets on this side of the iron curtain. Today the world is changing into two hostile groups. On the one hand it is America and its satellites who are busy driving the world towards a rule of violence and brutal force, war of hydrogen bombs. On the other hand, it is the challenge of democracy spread out by the Soviet Union. We pledge our solidarity with the Soviet Union and we salute occasion of this great day....." On the 18th July, 1954, at an African National Congress meeting at Alexandra, Accused No. 27, Makiwane said: "The time of speech is past. All over the world we read of revolutions. All over in Indo-China, Kenya, Malaya, Gold Coast, people are fighting for the cause. Is that the people demand their rights. These people have shown us the way. India bought out the British. The war in Indo-China they do not read about it already. When the war at Kenya started the British said it was only a mere fight of gangsters, but today it is already two years. The people of Kenya have shown the British that the black man can fight. We are not lagging behind in South Africa."

BY MR. PIROW: Now, Sir, we come to another feature of this case which I cannot underline too strongly. It is the admitted emotional state of the Bantu population, particularly in the urban areas. It is possible for quite a lot of what we have quoted to be preached in Hyde Park without leading to trouble. But there is very little of what we have quoted which can be preached to a meeting of Africans in an excited state. I em-

phasise that in connection with non-violence. You will remember the one case where it was stated that the A.N.C. stands for non-violence, and then at a later stage in the speech real violence was advocated. Now, we say you must read these speeches and you must judge of the effect of these speeches against a background of the admittedly emotional state of the Bantu population. What you could say on other occasions to another audience will almost inevitably in these words lead to trouble in South Africa. I shall deal presently, Sir, with the cases of violence that actually did take place, and I shall not make the point that we have proved that the A.N.C. or any particular organisation organised such violence. That is quite unnecessary. It is sufficient to show that speeches which, with an hysterical population, must inevitably lead to violence, were made, and then you show that violence actually took place, even if the real instigators saw to it that they were far away at the time. I will now ask Mr. Van Niekerk to read the references to the emotional state of the Bantu population.

BY MR. VAN NIEKERK: I am referring to exhibit ALG.32, found in possession of Accused No. 85, Alex Ia Guma. It is a handwritten document entitled "A single spark can start a prairie fire." "There are those who believe that a revolutionary upsurge will inevitably arise. They do not believe that it may arise soon. They have no profound notion about establishing political power among the people. They seem to think that since the upsurge is still far away it will be labour lost to attempt to build up our political power by hard work. The people must first be educated. Once the masses throughout the country have been won over, or more or less won over, then only should political power be established. Their theory, that is we should on a nationwide scale and in all regions win over the masses first and establish political power after-

wards does not fit in with the situation..... i.e., although the fire is only a small one it will rapidly develop. If it is asked whether the upsurge will arise soon in South Africa, we can give a definite answer only after studying carefully whether the contradictions leading to the revolutionary upsurge are really developing. Contradictions are developing internationally between imperialist countries, between imperialist countries and their colonies, between imperialists and the proletariat of these countries. The imperialists and the people of Africa. The contradictions between the imperialist oppressor in South Africa and the vast masses of non-Europeans, the exploitation of the African people, the pass laws, the lowering standard of living of working people, the various oppressive laws passed against the people. Once we understand all these contradictions, we shall see how desperately precarious is the situation. South Africa is littered all over with dry firewood which will soon be kindled into a conflagration. We need only to look at the development of the militancy of the people, the Defiance campaign, the strikes of non-European workers, the Congress of the People, to see that it will not take long for these sparks to become a prairie fire." On the 10th October, 1954, an African National Congress meeting at Sophiatown, Accused No. 63, Resha, said: "Yes, they say we are ten millions, but we have come to a stage when we have to sacrifice nine million. We call upon.... to the government of this country to bring our leaders back there can be a riot in this country. It is true Chief Luthuli, Dr. Dadoo and Sisulu, that there is not yet trouble. The young blood of the African people has been boiling. We the youth who are determined that no flying squad will be moving about during our time whilst our people are starving in the reserves...." On the 19th June, 1955, Accused No. 63, Resha, African National Congress meeting at Port Elizabeth: "The day is not far off

when the forces of freedom will march forward. Malan, Verwoerd, Swart and his police will perish..... My work is to start fires. Whoever starts fires does not get burnt....." Speech by Jack, Accused No. 104, at the African National Congress meeting at Port Elizabeth: "Now we have reached a stage where we are going to take the freedom from the government. In Kenya the authorities are using bombs against the Africans, but they have no effect. The Kenya African struggle and the Chinese struggle is ours....." And on 2nd September, 1956, at an African National Congress meeting at Sophiatown, Accused No. 18, Kathrada, said: "New industry is going up. As I was in Hungary I have never seen a child like this one standing here without shoes. I am asking you my people, when we get our freedom, what will happen to the people like those?" And then the audience said "We will kill them."

BY MR. PIROW: I want to draw your attention particularly, Sir, to the document found in possession of La Guma. Because there one sees quite clearly the whole background of their planning. You see he first deals with those who say the time is not yet, and then he says, very careful, because there are police at the meeting -- this is a document, it may fall into the hands of the police, he is very careful "I don't say the time is yet, but I say" this is my paraphrasing, the time will come when the contradictions are there, and then he names the contradictions. Contradictions are developing between imperialist countries and between their colonies. This struggle, in other words, is supposed to be a struggle directed against certain local difficulties like the pass laws, and so forth, this struggle is now said to be part and parcel of the world-wide struggle, between imperialists and colonies. And then he goes on to say the exploitation of the African people, the pass-laws, the low standard of living of working people, the various

oppressive laws passed against the people. Once we understand all these contradictions we shall see how desperately precarious is the situation. That, Sir, shows how all these things are linked up together. Why is the position so desperately precarious? Not because native women have to carry passes, but because the objection, the fight against the passes, the Defiance Campaign, all these campaigns launched by them, are part and parcel of one big plan, one big plan which is linked up with the general plan, the general position as between imperialists and the colonies. South Africa is littered all over with dry firewood which will soon be kindled into a conflagration. No violence, Sir, oh no! Merely a conflagration through the width and breadth of South Africa. We need only look at the militancy of the people, the Defiance Campaign, the strikes of non-European workers to see that it will not take long for these sparks to become a prairie fire. Quite clearly, the whole object of this is to prepare for such a conflagration. This is quite opposed to those theoretical principles which my learned friend referred to. These people are not being oppressed and deprived of freedom. These people are preparing to carry out bloodshed and incendiarism on a large scale. That is what this means. Here we have their state of mind: "I am asking you my people when we get our freedom, what will happen to people like these?" Audience: "We will kill them." Now, I am not going to deal in detail with the various cases of incendiarism, riots and disturbances, except just to mention them, but I say that it isn't necessary to link the A.N.C. or any one of the other associations with these outbursts. When I say that they knew -- as they did, as I understood when they said there was dry wood -- they knew that if they went on persisting in their campaign -- they were driving the people to a frenzy. Blood and tears; all right in the first instance there are blood and tears. Why? Because what

they are doing forces a legal government to stop them. They make it clear: "Today they will shoot us, tomorrow we will take the sten guns out of the hands of these people and the sten gun will not refuse if directed against the police." Now, Sir, we have had a very very sad report of disturbances. You have listened to the evidence, Sir, -- I will shortly refer to them -- disturbances at Germiston and elsewhere; incendiarism on a large scale, the Eastern Cape, Kimberley and elsewhere, Riots and murders of the utmost gravity -- I won't say 'utmost gravity -- but of a shocking nature. At East London, New Brighton, Kimberley, Evaton and so forth. It isn't necessary for me to tie up the A.N.C. with that, to show that it was an A.N.C. man who did it, or that the A.N.C. flag was flying, as it apparently did in some cases. It is sufficient for me to say, this is the result of the agitation that had been going on, and this is the desired result, It has been the result aimed at, and it is the result which will multiply, from day to day, from month to month if these people are allowed to carry on. Now, the evidence is not all the evidence available. We know that only too well. We have merely picked out certain portions of the evidence which seemed to us to be effective, without listening to much more of this. But I do submit we have produced more than sufficient evidence to show that we are dealing with a dangerous, a highly dangerous Communist conspiracy, aiming at the over-throw of the State, and its replacement by a People's Communist Republic, and such a conspiracy, I say Sir, amounts to high treason.

BY MR. BERRANGE: It will of course be necessary for us to be permitted to have a look at the documents which Mr. Pirow so kindly said that he would make available to us as soon as he is finished.

BY THE COURT: I don't quite appreciate this, according to law you have no right to apply. It is not a question of fact. On

any legal argument which has been raised by the Crown you would be allowed such an opportunity, Mr. Berrange.

BY MR. BERRANGE: Yes, I am aware of that, and that is what I propose to do.

BY THE COURT: Why do you need to study all this to enable you to

BY MR. BERRANGE: But I think I need to study it Sir for the purposes of my reply.

BY THE COURT: The document which you refer to and which the Crown has read from is a document containing facts, and not any legal argument.

BY MR. BERRANGE: In my submission, Sir, I would address a legal argument to you which would be based upon the facts; in order to do so it is necessary for me to acquaint myself with the facts.

BY THE COURT: To acquaint yourself with the facts?

BY MR. BERRANGE: Yes, acquaint myself with the facts referred to by my learned friend Mr. Pirow.

BY THE COURT: I don't think that there is any need for you, Mr. Berrange.....

BY MR. BERRANGE: Well, I am after all

BY THE COURT: to acquaint yourself with the facts. The legal issues that are involved in this case are not new. They have been referred to from time to time.....

BY MR. BERRANGE: The legal issues that have been referred to by Mr. Pirow are in some instances completely novel, I might even say amazing, but at least they are novel.....

BY THE COURT: Can you state which legal issues you have in mind?

BY MR. BERRANGE: Yes, I propose to deal with the legal issues in regard to Mr. Pirow's suggestion, that because a certain state of tension exists in this country therefore one must as-

sume that certain things were intended in a manner different than what would ordinarily be the case.

BY THE COURT: Before you proceed on any other point

BY MR. BERRANGE: No, I'm not, I'm proceeding with this point. And in order to deal with that, I want to deal with it on a strictly legal basis, to show the manner in which one should approach this legally, and I propose also to endeavour to satisfy Your Worship from the law, that the manner in which I say the matter is to be approached, is not the manner in which Mr. Pirow says the matter, in law, should be approached.

BY MR. PIROW: Sir, may I just intervene. I have promised the other side these summaries of facts. I have not done so for the purpose of having them dispute my conclusions as legal issues. In other words, I am not prepared to hand them these summaries unless it is within the ambit of what is permissible. I say that any inference which I may draw is not necessarily a legal inference, it is a factual inference.

BY THE COURT: I appreciate the position, Mr. Pirow. I think Mr. Berrange is merely quarrelling with certain inferences that you have drawn from the facts that have been detailed.

BY MR. PIROW: Quite;

BY THE COURT: And that is certainly not a legal issue.

BY MR. BERRANGE: I am not endeavouring to do that, Sir, I am endeavouring to advance to you, a legal submission which arises from what Mr. Pirow has said, and from what Mr. Pirow has submitted.

BY THE COURT: I am afraid, Mr. Berrange,

BY MR. BERRANGE: And until such time as I am in a position to indicate by argument and in argument what my submissions are in law, I think, if I may say so with respect, that Your Worship is a little premature in arriving at a conclusion that my reply will not be upon legal issues and upon a legal basis.

BY THE COURT: I know of

BY MR. BERRANGE: ... possibly satisfy Your Worship until such time as I have presented my argument.

BY THE COURT: I don't think I mis-state the situation, the illustration given by you is certainly not a legal issue. It is merely a quarrel you have with conclusions drawn by Mr. Pirow on certain facts.

BY MR. BERRANGE: I am not arguing with that. I am not going to possibly suggest for one moment that I should reply to Mr. Pirow in regard to the inferences which he draws from the documents and which he asks the Court to draw from the documents. I am not concerned with that, I don't want to reply to it. I don't think it is necessary to reply.

BY THE COURT: No, quite.

BY MR. BERRANGE: I am concerned, however, with addressing Your Worship on what is the correct legal approach in regard to the facts which have been placed before Your Worship by Mr. Pirow in this matter. That is all I am concerned with.

BY THE COURT: I want to make the position perfectly clear. Your only right is to reply on a legal issue, a legal argument which the Crown has raised, and which you have no opportunity of dealing with in your own address.

BY MR. BERRANGE: I accept that.

BY THE COURT: So that clearly is the legal position. Now, unless you can indicate what particular legal point of argument you have in mind, I shall not be disposed to grant your application.

BY MR. BERRANGE: My application to ...?

BY THE COURT: For an adjournment to allow you to reply.

BY MR. BERRANGE: Well, it would appear then, Sir, that I will have to, as a result of Your Worship's ruling, embark upon an argument on legal issues, which I have only now been forced to

deal with at short notice, in regard to which I am not being given the opportunity to prepare adequately, but of course if Your Worship wishes to handle the matter in that way, that is all I can do.

BY THE COURT: That is my ruling the, Mr. Berrange. Unless there is some other matter that you want to raise.

BY MR. BERRANGE: I would have appreciated it if I could have been given an opportunity to prepare my argument to Your Worship on the law a little bit more adequately and effectively than being asked to address Your Worship on the spur of the moment. It would have been welcome to the Defence had it been allowed to do so, but if Your Worship rules against me, I am not prepared to question you, Your Worship's ruling. I shall do the best I can with ^{the} limited preparation that has been allowed to me. Your Worship will recollect that Mr. Pirow opened by stating that that which I had submitted to Your Worship was more appropriate to an appeal to the United Nations Organisation, rather than to the Court, and I take it, Sir, that he had reference to my remarks concerning democracy, freedom of speech and assembly, equality, rights for all, and all that which I had suggested was implicit in this term. Now, Sir, for legal reasons which I shall deal with in a moment, I want to indicate to the Court that my repeated references to democracy were deliberate, they weren't intended to be for tub thumping purposes.....

BY THE COURT: Mr. Berrange, I must appeal to you. You have my ruling.

BY MR. BERRANGE: Yes, I

BY THE COURT: You have my ruling and you must restrict yourself

BY MR. BERRANGE: I will continue if Your Worship would allow me to continue.

BY THE COURT: I'm afraid you can't continue on these lines.

BY MR. BERRANGE: They are put before the Court advisedly and they are part of a legal argument, that is what I am trying to tell Your Worship.

BY THE COURT: You are not allowed to continue on these lines. You know what the Court's ruling is.

BY MR. BERRANGE: Yes, and I want to

BY THE COURT: This is not a legal argument you are addressing me on.

BY MR. BERRANGE: I am going to address Your Worship on a legal argument, but I have got to lay the foundation for it first. If Your Worship doesn't wish to hear me and stop me, well, good and well, but I am going to address you on a legal argument.....

BY THE COURT: Unless you are prepared to indicate the argument that you have in mind.....

BY MR. BERRANGE: I am endeavouring to do so if Your Worship would allow me a little bit of time

BY THE COURT: You must do so.

BY MR. BERRANGE: Yes, I propose to do so. I am saying that these concepts placed before the Court, were placed before the Court advisedly, as part of a legal argument, and as part of a legal approach, and the whole theme of Mr. Pirow's address, in my submission, supports my contention. In short, what I desire to submit to this Court is this, that inasmuch as we in this country and our laws in this country are part of the democratic system of Government and part of the democratic world, that where it becomes necessary in cases of doubt to endeavour to discover how a certain law or certain laws should be interpreted, then in so endeavouring to ascertain how they should be interpreted, in my submission the Courts will apply, in an interpretation of such laws the concepts of democracy.

BY THE COURT: Mr. Berrange, no. I'm afraid you are not dealing

with any legal argument at all. I have endeavoured now on three occasions to get you to indicate what the legal point is. You haven't done so and I can't allow you to

BY MR. BERRANGE: If Your Worship is really seriously suggesting that I am addressing Your Worship as to the manner in which certain laws are to be interpreted, that that is not a legal argument, then I am afraid that I can take the matter no further.

BY THE COURT: That is not a legal argument arising out of any point that was made by the Crown.

BY MR. BERRANGE: It is, it is for this purpose..... Mr. Pirow has suggested to you that the laws in the country must be interpreted in a manner other than the way in which they would be interpreted in a democratic country, when he said to you that which is legal, perhaps, in Hyde Park, is not legal in this country. Now, if that is not a question of the interpretation of our laws, I would like to know what it is.

BY THE COURT: That is not an interpretation of our laws, it is not a legal argument at all. Mr. Pirow merely intended to draw an analogy in an argument advanced by him.....

BY MR. BERRANGE: No, Sir,

BY THE COURT: the same way that you have drawn....

BY MR. BERRANGE: No, Sir, Mr. Pirow.....

BY THE COURT: It is certainly not a legal argument.

BY MR. BERRANGE: Mr. Pirow went on record as stating that that which is legal possibly in other countries in this world is not legal in this country because of the state of tension which exists here. And I think Mr. Pirow will be the first to confirm that that is one of his main submissions.

BY THE COURT: That is not a legal argument, Mr. Berrange.....

BY MR. BERRANGE: If that is not a legal argument.....

BY THE COURT: I am not going to argue this issue with you. If that is the only point that you want to raise on the legal issues

then I must ask you to sit down.

BY MR. BERRANGE: Well, the only point I desire to raise is this. I desire to raise the question as to whether in this country we are to interpret our laws in the framework of democracy, or in the framework of Fascism. That is what I want to argue to Your Worship, and if Your Worship doesn't want me to argue that, I don't want to take the matter any further.

BY THE COURT: That is my ruling. I propose giving my decision tomorrow morning, and the case will be adjourned until tomorrow at 9.30 a.m.

BY MR. COAKER: I should be much obliged, Sir, if Your Worship would repeat the request I have made to the Accused this morning.

BY THE COURT: The Accused are again asked not to leave the Court, as Counsel wishes to consult with them.

COURT ADJOURNS:

COURT RESUMES 30/1/1958:

APPEARANCES AS BEFORE:

BY MR. COAKER: May it please Your Worship, the 95 Accused are all present in Court this morning.

BY THE COURT: It is the Court's decision that the application for the discharge of the Accused must be refused, and that refers to all the Accused. It is necessary now to comply with certain formalities. The Accused have still an opportunity of answering to the charges, and that is a formality that I feel must be complied with. I want to request all the Accused to remain in their seats until that formality is complied with.

BY MR. COAKER: Well, so far as that is concerned, Sir, I have had some opportunity of consulting with my clients, and I am authorised to say on behalf of all my clients, that their answer to the charge is that they are not guilty of any of the charges put, and that they reserve their defence to those charges.

BY MR. SLOVO: As Your Worship knows, I appear on my own behalf, and I indicate to the Court that I also plead not guilty and I reserve my defence.

BY THE COURT: I have recorded, and each Accused is required to sign this individually, "I am not guilty of any of the charges preferred against me. I reserve my defence." Now, after the Court adjourns

BY THE P.P. (MR. VAN NIEKERK): Before Your Worship adjourns, it might save time if Your Worship will also ask the Accused to elect in terms of Section

BY THE COURT: I shall do so as soon as I have committed the Accused. But after the Court adjourns, this form and two other forms are required to be signed, and I wish to make a request to the Accused to remain in their seats, so that these matters can be dealt with. Each Accused will have to sign these three

times, so that there is no disorganisation. The Court's decision then is that there is sufficient reason for putting all the Accused on the trial on the main charge of high treason, and all the Accused are committed on the charge of high treason.

BY THE P.P.: The next thing then is the election in terms of Section 113 of the Act.

BY THE COURT: There is first of all the question of short service.

BY THE P.P.: The Crown is not calling upon the Accused to elect short service.

BY THE COURT: There is another formality remaining, and that is I am required to inform the Accused of their right to elect to be tried by a judge and jury, always subject to the Crown's right to constitute a special criminal court. The Accused can make that election now, or they can elect within three weeks from today, or within one week after they are notified that they are being indicted before the Supreme Court for trial.

BY MR. COAKER: I think, Sir, with respect that it would probably be most convenient and administratively most easy, if the Accused were given an opportunity of making this election now. I also think that probably the Accused would all be likely to elect in one way, and I would therefore ask for a short adjournment to enable me to consult with my clients and to indicate to the Court in the event that they all make an election in the same way, what that election is.

BY THE COURT: Yes, that would facilitate matters.

BY THE P.P.: Sir, I mentioned the matter of short service. The Accused, of course, have the right to elect short service if they wish to do so. The Crown is not calling upon them, but the right is theirs.

BY THE COURT: Then I should mention this aspect, that the Accused can elect to accept short service and if they do so there

is a form to be completed and signed by them.

BY MR. COAKER: That is also a matter, Sir, which I think I might briefly discuss with my clients, and I think I shall be able to indicate the answer after the adjournment.

COURT ADJOURNS:

COURT RESUMES:

BY MR. COAKER: I have had the opportunity, Sir, of consulting with my clients, and they unanimously desire me to state on their behalf that they elect to be tried by a judge and jury, and that they do not wish to accept short service.

BY MR. SLOVO: May it please Your Worship, I, on my own behalf too elect to be tried by a judge jury and I don't accept short service.

BY THE COURT: Here again each of the Accused is required individually to sign the form, and I have recorded here that "I elect to be tried by a judge and jury." In so far as the short service is concerned, I don't think the form needs to be signed then. It will be recorded that the Accused do not elect to accept short service. Before the Court adjourns, I wish to again ask the Accused to please remain in their seats after the adjournment. These forms will have to be signed individually by them and to facilitate matters, each Accused should remain in his or her seat.

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