

MR. TRENGOVE: My lords, the inference to be drawn from this passage - - your lordships have the document CM.34; your lordships have the speech of Mgee - as the liberatory struggle grows the reaction of the white people would become more brutal and more vicious. Now, that is confirmed, my lords, by Mr. Luthuli who says in his evidence that in making their plans and in planning their campaigns they foresaw that the white people would react up to the extreme point. They foresaw that, and my submission is, my lords, that on his evidence not only that they foresaw that as a possibility but they foresaw that that in fact would be the reaction of the white people; that they would crush the liberatory movement by vicious and sadistic measures, and that that resistance on the part of the white people would continue up to the extreme point. And, my lords, they also foresaw that the resistance, the reaction of the white governing minority in crushing the liberatory movement would, or could result in bloodshed on a countrywide scale.

Now, my lords, how are the white minority going to react - through which agencies do the white minority act in crushing the liberatory movement? And with whom is it going to clash? The African National Congress foresaw that the instrument that it was going to use in the liberatory struggle was going to be the masses, and I put it, my lords, that a fair interpretation of what they have said, that the nature of their of their campaigns is that they would at various stages by mass action carry forward their liberatory struggle,

and the masses would involve not only the trained members
of the African National Congress, not only people who are
subject to the Party discipline, but that the masses
throughout the country would in general be harnessed
for this campaign that would be used to carry out their
Programme of Action, whether it's strike action, or
whatever the form of action may take. In doing that,
the African National Congress says "We know as a fact
that we are coming into conflict with the white minority
who want to dominate us; the white minority are going
to crush this movement viciously, sadistically and
ruthlessly. That may involve the country in bloodshed
unless the white minority gives in before the time.

BEKKER J: May I just interrupt you. I'm
rather puzzled where this argument comes in. You are
addressing us on the form of State contemplated, or is
this a new topic?

MR. TRENGOVE: My lords, at this moment I was
making this point in order to indicate that when they
call this State a Nazi State or a Fascist State they
know it is the type of State that will react like this.
I was just, my lords, trying to reply as a fact. Now,
my lords, his reply to his lordship Mr. Justice Bekker
"WE say that their condemnation of the State, in des-
cribing the State as Fascist, they call the State brutal
vicious, sadistic. They say that that type of State
reacts ruthlessly and viciously. And they plan their
campaigns with that knowledge and on that basis.

Now, just to clear up this point, my lords,
it boils down to this, that the African National Congress

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embarked on a campaign in which they well knew they
would provoke the Government into violent action.
That's what they say, that that could involve country-
wide bloodshed, and that notwithstanding that they
they carry on their struggle.

BEKKER J: Well, I think it was conceded by
some or other more witnesses that the idea was "We'll
sit down, we'll take action which may compel the State
to take action; violent action. But if that happens
the fault isn't ours, it's the State taking violent
action". There is evidence to that effect, isn't there?

MR. TRENGOVE: Yes, my lord. It's like the
man who sets out to rob and he is quite prepared to re-
frain from attacking if his victim will hand over the
goods without resistance. But he knows, my lords, he
knows - - if he knows that this man is going to defend
himself, and in spite of that he attacks, who is pro-
voking the attack? The one who is being attacked?

Well, let me put it this way. Assuming I
do an act which is lawful and violence is directed
towards me, it can't be said that I provoked violence.
Isn't that so?

MR. TRENGOVE: It depends on what your lord-
ship means by lawful.

BEKKER J: Assuming for argument's sake
that a sit down strike would be a lawful act. I know
what your submission has been, but just assume for the
purpose of argument that a sit down strike would be a
lawful act, but the State to break that strike uses
violence, would the strikers be provoking violence in

law? 1

MR. TRENGOVE: Of course, my lords, they would be provoking violence.

BEKKER J: Why? If they are doing something lawful? And the State then, to overcome the effect of a lawful act, uses violence. Wouldn't the unlawfulness be on the part of the State? 5

MR. TRENGOVE: My lords, may I answer this question by framing, or posing a question? Why does the State have to break up the strike? Why does the State have to call out the police, or the army? Is the State doing it because the State wants to be vicious, wants to be sadistic? In whose interest is the State acting - in the interests of the safety and security of the State? 10

BEKKER J: Well, that argument is really directed to show that the act of the striker is unlawful, but I'm on a narrower basis. Assuming an act which would be a perfectly lawful act, a particular strike, let's say a strike to get higher wages, and the employer of the factory comes along and he uses that violence, that violence would be unlawful, wouldn't it? 15 20

MR. TRENGOVE: No doubt about that, my lord.

BEKKER J: Right. And in that setting it can't be said that the strikers provoked violence.

MR. TRENGOVE: My lord, it wouldn't make the violence lawful. 25

BEKKER J: Right.

MR. TRENGOVE: It might have been provocation - just as an assault - but it would still be unlawful - it might have been an assault that was provoked. 30

I say, my lords, by libellous language I can provoke an assault; the assault is unlawful, but I provoked it. 1

BEKKER J: Would you be responsible in law for the assault?

MR. TRENGOVE: My lords, is your lordship talking about criminal or civil law? 5

BEKKER J: Criminal law.

MR. TRENGOVE: In criminal law the man who assaults would be guilty of assault. It would be a mitigating fact that he was provoked, but, my lords, that analogy with the greatest respect, that analogy doesn't fit in with the present circumstances. 10

BEKKER J: I'm not suggesting that, Mr. Trengove; I'm trying to find out what the position is as far as the African National Congress is concerned; in its claim that we were going to embark on a certain course of action, we realised that the State may have to use force, but if they believe that that action is a lawful action and the State used violence to break that action, did they embark on a course of violence? 15

MR. TRENGOVE: My lords, it's no excuse to say 'You think that your conduct is lawful'; that was settled, my lords, in cases like Strauss' case; it's no excuse, my lords, to say . . . 20

BEKKER J: So that is no answer at all?

MR. TRENGOVE: That's no answer, my lords. That's no answer, particularly if you know if you are doing something which is unlawful. 25

BEKKER J: Yes.

MR. TRENGOVE: But, my lords, the thing becomes much worse if you realise that you are breaking 30

the law and that the Government would not only be entitled
to but would be obliged to stop that breaking of the law;
that that would result in a clash between the masses who
break the law and the Government - that could involve the
country in bloodshed, and you expect that to be the reac-
tion; and notwithstanding that you persist in your cam-
paign. It's what is in the mind of the man who is acting.
But, my lords, their whole Programme of Action - I ask
your lordships to find - coming to that - that what went
on in the minds of the people was that they had embarked
on a campaign and it didn't matter to them, it was of no
consequence whether their actions were going to be legal
or illegal, and that the Defence witnesses have stated and
their documents state over and over.. Your lordships,
on the evidence - can evaluate what was in the minds of the
people who formed Congress policy - - that at a particular
time, a particular action which is directed at the Govern-
ment might be lawful. That doesn't excuse them because
their policy is our campaigns and our actions and our attack
upon the Government is going to be carried out whether it's
lawful or not; it's going to be carried out whether it's
lawful or not, legal or illegal. And if that is one's state
of mind, and if that is your programme, you deliberately
provoke the Government into having to take measures to
maintain law - my lords, you're not only responsible for
what happens, but you intend violence and bloodshed as
one of your objects, in chieving your freedom. That was
what was said, my lords, in Viljoen's case and Erasmus'
case. In trying to find out what is in a man's mind you
look at his actions. It doesn't avail him, my lords, if
his actions clearly show that he is undermining the safety

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and security of the State - it doesn't avail him to say
"Well, we knew there was another alternative and we thought
well, either of the two may happen, and we would have been
very happy if bloodshed hadn't resulted, if they had been
brought to their knees before that point.

My lords, I don't need to quote much more autho-
rity on this question of how they regarded the State.
There are other documents, in which the same sentiments
regarding the State have appeared - - this Fascist State
as they call it - - my lords, I can refer your lordships
to an Exhibit we have already had, TT.28, which was iden-
tified by Resha at page 17129 - they are resolutions,
my lords, of the A.N.C.Y.L. Conference of April, 1953,
and I refer to the first resolution which was adopted at
that Conference in which they say that the Nationalism
of the A.N.C. and the Youth League is a healthy and pro-
gressive Nationalism aimed at the destruction of Fascism
and Colonialism and the creation of a new Africa in which
man's inhumanity to man would be a thing of the past.

My lords, there is also the report ZKM 6
which we dealt with yesterday; this report refers - it's the
1953 National Conference, Queenstown - - this report refers
inter alia, at page 4459 of the record - - perhaps I should
refer to page 4458 where they say the struggle is being
carried on, the leaders are ready to make the supreme
sacrifice, the Defiance Campaign report says it's never
been called off, our organisation is merely re-building
its forces for a different stage of the fight. Then, my
lords, at page 4459 it refers to the fact that the Nationalist
Party had been returned to Parliament with an increased

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majority which clearly demonstrates the support of the
white voters of this country is for Baaskap, and under
the the circumstances there is no middle road, the choice
is either to side with the Nationalist Party and its
policy of apartheid which affects the democratic rights
of all South Africans, or to join the non-white people
in their struggle for freedom. At page 4459 there is a
paassage referring to the measures passed in Parliament to
deal with the Defiance Campaign - - at the bottom of page
4459 and top of page 4460 - and it says that Minister
Swart knows, with false complacency.....
but let the Government of the day be forewarned that
the African people are not cowed down; they are getting
ready for the next round of the fight. Long live the
Defiance Campaign."

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But, my lords, there is no change in their
attitude towards the State in this report.

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Then, my lords, I refer to Exhibit A.55,
1954 - I'll be referring to it in another context still -
A.55 is the Presidential Address - - Pre-Conference
Presidential Call to branches and officials of the African
National Congress. Now, my lords, this Call was made
just before the National Conference in December of 1954,
and it's been read into the record at page 333, and it
deals, my lords, with volunteers mainly - - I'll still
be referring to that aspect of it, my lords - - but at
this stage I just want to point out that it concludes
with this statement that's been consistently made,
"Remember this, no freedom has come to any people without
blood and tears....." "Take courage in the knowledge

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that no matter how dark the future must seem right must triumph over wrong." That's dated November, 1954. This was put to the witness Luthuli by my learned friend Mr, Maisels at page 11716, this document, and also by the accused Nokwe when he re-examined Luthuli at page 13888 and 13583.

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My lords, then there is . . .

BEKKER J: Was this Luthuli's Call?

MR. TRENGOVE: Luthuli's call, my lord.

BEKKER J: Did Luthuli admit this was his Call?

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MR. TRENGOVE: Oh, yes, my lords; it was put to him. Then, my lords, there is Exhibit A.40 to which I have also referred. Now that was the Presidential Address to the Transvaal Conference in October, 1954 which as I said yesterday, my lords, is the same as Exhibit RR.28. Resha identified this document as being by Moretsele President of the Transvaal - as being Moretsele's Presidential address, my lords, and it was read into the record at page 293, and I refer, my lords, to the passage at page 294 which deals with the situation in South Africa. It says: "The position of non-Europeans in general - and that of the Africans in particular - has never been a happy one in South Africa, but with the advent to power of the Nationalists the position has been much aggravated. There is no fundamental difference in the policy between the present and past governments, the Nationalists or the United Party; the policy of all white South African governments has been, and still is that of keeping the Africans in a state of perpetual subjugation. In other

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words the African is treated like a beast of burden, 1
 a hewer of wood and a drawer of water until Doomsday.
 It is against these ignominious policies that the
 A.N.C is leading the millions of itson to their
 emancipation." Then he says: "Because of the ever
 growing consciousness of the people coupled with the 5
 effective leadership given by the African National Con-
 gress the Government in their fear of the masses have
 decided to unleash various forms of terror with a view
 to intimidating and breaking up the organisation of the
 people." 10

Then, my lords, the report refers to a number
 of leaders such as Mandela, Bape and Marks who were
 ordered to resign from the Congress and continuing it
 says at page 295: "This attack on your leaders
 and the organisation does not show signs of abating; 15
 on the contrary it's being intensified." Then at page
 296, referring to the election it says "The Malan
 government derives its support from the politically back-
 ward and reactionary section of the white electorate in
 this country, the big farmers and the landlords. This 20
 section of the white community has swallowed hook, line
 and sinker the Government's policy of apartheid which
 is(inaudible). The results of the recent
 Provincial election was disappointing but not surprising.
 It exposed the political shallowness of the electorate 25
 and their readiness to fall victim to the clever demago-
 guey of the Nationalist politicians; thus they are
 running away from reality and civilisation. Because
 of these and other successes the Government has become
 bolder in forging ahead with its plot to transform South 30

Africa into a Police State. In this triumphant march forward towards Fascism the so called white opposition has collapsed, so that now the only effective opposition to the Government are the National movements and their Allies. Theirs is to grapple with the potential Fascist beast to the bitter end. "

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Then, my lords, he concludes after referring to their tasks, he concludes the report at page 304 by saying: "The Government was provoked and attacked but we have remained disciplined. In other words, we have not allowed the Government to choose the time, the place and the battle ground for us.

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BEKKER J: Where is that?

MR. TRENGOVE: That's at page 304, the last four lines of the speech, my lords: "The Government has provoked an attack but we have remained disciplined; in other words, we have not allowed the Government to choose the time, the place and the battleground for us." "Today I say to the African people intensify your organisation, stand by"

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BEKKER J: What page, Mr. Trengove?

MR. TRENGOVE: Page 304, my lords.

BEKKER J: Line?

MR. TRENGOVE: Line 23, my lords. "The Government is becoming more and more ruthless, more brutal, and they will have to grapple with this beast until the end....." My lords, the same attitude is expressed in Exhibit 101 - Exhibit A.101 which is the message of W.M. Sisulu, Secretary-General of the Congress. My lords, it is the same as Exhibit ET.79 and A.101 was read into the record at pages 686 to 690.

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My Lords, I don't propose . . . 1

BEKKER J: Well, is it proved that this is Sisulu's document? What is this document? Does it prove that it is Sisulu's message?

MR. TRENGOVE: My lords, it is Sisulu's message found in the possession of the African National Congress, document A.101 and it's a statement on his resignation - a farewell message, my lords. TT.79 is the same document, page 3826, my lords. 5

My lords, the same theme - "We have moved towards the establishment of a Fascist State but their task, the task of the African National Congress, is to build up the movement in order to crush the reactionary rulers of the day, and they pledge themselves to fight till the dawn of freedom." 10

A.24, my lords, is an Annual Executive Report of the Natal Conference in 1954; it was read into the record at page 225 and it is the same as Exhibit SDN.61 which was read into the record at page 4160, and my lords, it was identified by Lithulu - this contained his message, my lords, and that was read in by the Defence at page 984 of the record, and it was identified as being the message of Lithulu by Lithulu himself at page 13249 of the record, Vol. 62. 15 20

Now, my lords, may I just explain that this A.24 consists of a Report to the Conference, an Executive Report, and attached to that is also Lithulu's Address. Now the report, my lords, was read in at page 225 of the record, and the report refers to the forthcoming Congress of the People; it refers to the measures by which the people are being intimidated, and then, my lords, Lithulu's 25 30

Address deals with the Congress of the People, a number
of passages were read in by the Defence; there are
references to Church leaders's views on certain laws,
acts - - my lords, the passage that I want to refer to
is at page 13249 which was put to Lithulu under the
heading of "Complacency" and there he complains that in
Natal they suffered from a deadening complacency, and
he says their complacency might be the result of a
fear to pay the supreme sacrifice for freedom which
throughout history has only come to any people when they
were prepared to pay the supreme sacrifice for it - -
that is death itself.

Then, my lords, Lithulu refers to the question
of the vote being fundamental; at page 11560 there's a
passage read in by the Defence as to the vote being the
fundamental key issue in any democratic state, and
then he refers to the Anglo Boer War and he says
"Of course, Congress doesn't advocate a bloody struggle,
but has wisely chosen the way of the non-violent struggle,"
and he concludes, my lords, by saying: "The vote is the
key".

Now, my lords, I'll just make one or two
observations about this point. Lithulu says the vote
is the key, but two points arise in this connection
- I'll deal with them more fully at a later stage - -
the vote is the key to what? And the vote is the key
to the creation of some type of state that they want,
political, social or economic changes. Of course they
can do that when once they've got the vote, but how do
they get the vote? And in order to get the vote you've

got to tell people what you want to do with the vote. 1

And, my lords, they were not going to get
the vote constitutionally, and we will be arguing that
they could not expect, or that they did not expect the
white people to give them the vote because it wasn't
merely the vote that they wanted, they wanted to destroy 5
the present system and put in its place an entirely dif-
ferent system economically, politically and socially.
My lords, it doesn't take one anywhere merely to say
"We want the vote". If you say "I know I can't get it
constitutionally - if you don't want to persuade the 10
electorate, but you want to force them into giving it,
the question is then can you expect them to give it unless
you tell them what you want to do with the vote, and to
what extent the white electorate would have to change
their position if the vote is given. Those are the 15
important matters, my lords. But now here we find this
message in November, 1954, and it may create the impres-
sion, even at its best, that the question of the vote
may not involve much - getting the vote; so he says they
must be prepared to make the supreme sacrifice. But, 20
my lords, take another document written by Lithulu -
RF.54 . Rf.54 is a document which was found in the
office of Ruth First in her presence on the 29th Septem-
ber, 1955, and there was an admission by the Defence
that D/Sgt. Wolmarans found - - he gave evidence to that 25
effect in the Preparatory Examination - - that is at
page 1424 of the record, and this document itself was
identified by Lithuli as being a letter addressed to
Dr. Dadoo, at page 13304 to 13306 of the record, and
pages 13312 to 13313 of the record 30

BEKKER J: Is this RF.54 or RF.76?

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MR. TRENGOVE: RF. 54, my lords. Now this document, my lords - portions of it were read into the record at page 4360(a) and 4360(b) and the letter itself was also put to Lithuli at page 13305. Now it's addressed to Dr. Dadoo on the 2nd September, 1955, and it says: "I feel honoured to join this happy throng of wellwishers and I'm happy to greet you as the senior champion of the cause of freedom in our land, the Union of South Africa and the World in general. In sincerely wishing you good health and strength and longevity of life, both for your sake and for the sake of the successful prosecution of our struggle for freedom I wish to say that we are under no illusion as to what the payment for freedom will cost us in pain and suffering before victory is gained. We know that those who directly or indirectly support the maintenance of the status quo will subject us to untold brutalities, slander and abuse. In their efforts to fulfil their basiskap - apartheid policies the Nationalist Party, supporters of their policy will unleash against us in all fury and ferocity, all deadly and diabolic measures in an effort to cow to submission the masses of the oppressed people, but these efforts are sure to meet with ignominious failure for we are already witnessing heartening signs of the awakening of the people. Already the persecution we are going through is steeling to noble resistance many of the ranks in our liberation army who are forming a mighty inner core of our freedom army. The days ahead will see the great and effective army of liberation which will grow in strength and gain in momentum to become an

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avanlanche which will will fight theto oppression - - 1
'which will strike the death blow to oppression in South
Africa. May courage arise with danger. A.J. Lithuli."

My lords, the Exhibit number in the record I
understand is 76, it should be RF.54.

My lords, even that letter - a personal letter 5
written by Mr. Lithuli to Dr. Dadoo shows that they didn't
expect this type of State to act in any other way than
in a brutal and vicious manner.

My lords, there is Exhibit B.29; that was the 10
document headed "A Call to the people of the Natal Mid-
lands". It was identified by Lithuli - by Conco, my
lords, at page 11183, as having been issued by the
Natal Midlands Regional Committee of the Congress of the
People. But, my lords, the document is the same as SDN. 15
62, page 4130. My lords, the document - - your lordships
will remember Dr. Conco said that he was hoping for a change
of heart, and then this document was put to him and the
passage to which I will be referring, my lords, was read
out to him and he said well, he was shocked when he saw 20
this, because this document says "We are not expecting a
change of heart". He was shocked when he saw this but
he did nothing about it, and then eventually, my lords,
he said Well - after some questioning and some suggestion
that there might be some other way out of it, he said 30
"Well, I explain my attitude by saying we really expected
a change of mind, not a change of heart", but he couldn't
explain, my lords, why he was shocked by the statement in
this document; he could only have been shocked, my lords,
if they had expected a change of heart, and this document

says they were not. I'm not dealing with Conco now, I'll have to deal with his personal position. I just want to refer to Lithuli. This document was also put to Lithuli, my lords at page 13274, at line 20, where he says this document was distributed amongst the people; then, my lords, the passage was put to him: "The document starts off by saying 'Never before have the people in South Africa stood on the brink of such disaster as they do to-day. What was until recently only a threat after totalitarianism has now become a reality. The minority government of this country is bent upon establishing a Police state complete with all the bestialities characteristics of the Fascist set-up."

And then it was summarised to him: "And then it deals with the fact that Hitler was destroyed at the cost of millions who paid with their blood and millions who made the supreme sacrifice", and posed the question: "Who can deny that South Africa is slowly but inexorably moving towards the hated Fascist set-up? And who can deny that the people of South Africa stand on the brink of disaster?" Then the question is put to him:

"(Q) That type of statement has the support of the African National Congress; do you agree with that?-- (A) My lords, again it is one of those types of statements where one cannot be categorical because one would not know what the writer had in mind when he said 'brink of disaster'. I would submit, my lords"

"(Q) Mr. Lithuli, I'm not asking you at the moment for an explanation of it; I'm just putting this question to you, that this statement had the support of the African National Congress". He said he wouldn't

agree to that. And then he is questioned on the composition of the Regional Committees, and, my lords, we get back to the phrase 'the brink of disaster' at line 20 - about the meaning of the 'brink of disaster' and he deals with that, my lords, at page 13278. The question on page 13277 is: "Well, what could it mean, Mr. Lithuli?-- (A) My own view is that this means this: after all, after the coming into power of the Nationalist Government it became evidence as we saw it that the question was becoming intensified and therefore it meant that our struggle would be very sharp. The oppressed people were pressing their claims strongly and we had a government which showed no kind of any approach at all to the oppressed people."

("Q) Mr. Lithuli, can you just give the two possible meanings of the 'brink of disaster', which you say it can have", and then he deals with that and says that you can have economic disaster, or some other disaster.

And then, my lords, he says at page 13278 - 'It could also be given the interpretation of disaster in the sense of a possible violent clash'.

Then, my lords, he is referred to a part of the document which is headed "Is there no hope". The question to him is this: "(Q) This article then goes on; there is a heading "Fascism marches on"; after dealing with the way in which Fascism marches on in this country the writer says that - 'Is there no hope'?', and he poses the question whether there is an effective answer to the Fascist onslaught which is made upon the lives and liberties of the people. Then in regard to the second paragraph

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inder the heading "Is there no hope", the pamphlet 1
 says: "Are the large masses of this land for ever to
 endure the status of the hewers of wood and the drawers
 of water. Will it be for everslavery for
 the vast majority. Each of these answers to each of
 these questions are answered in the negative. No people 5
 have for ever endured the shackles of slavery or.....
 People the world over have fought to overthrow Fascism,
 Colonialism, exploitation and oppression. The people
 of South Africa should be no exception. So you encourage
 the people to take up the struggle", and the answer is 10
 "Correct".

Then he deals with "Who can achieve demo-
 cracy". The pamphlet says the Nationalist Party can't,
 and the United Party can't. It poses the question "Can
 the Liberal Party achieve democracy" and the answer to 15
 that - the words of the writer are quoted - the answer
 is in the negative because they aim to establish demo-
 cracy by bringing about the most elusive spontaneous
 change of heart of the white section which in essence
 means that it is the white electorate who will sooner 20
 or later establish democracy in South Africa. That
 it is 44 years since Union and the morale and the change
 of heart has receded further and further, and he points
 out to show how the elections, Parliamentary and Provincial,
 if they are any indication of the change of heart, point 25
 in the reverse direction, and he says the only people who
 can bring about this change is the mighty force of the
 vast majority of the people in South Africa - some
 whites and other non-whites. The question is: "I put
 it to you that that also represents - directly represents 30

the view of the African National Congress at that time?-- 1

(A) Yes, my lords, that does represent the views of the African National Congress at that time."

Now, my lords, this document shows very clearly that they did not expect at any time that the white electorate would through the ballot box give them their rights. 5

BEKKER J: Even though pressure was exerted?

MR. TRENGOVE: Even though pressure was exerted, my lord.

BEKKER J: Why do you say that?-- I say - - he says "The answer is in the negative because they aim to establish democracy by bringing about the most elusive spontaneous change of heart in the white electorate which in essence means that - - -" He says it is forty-four years since Union and the morale in the change of heart has receded further. He says the only people that can bring it about are the forces of liberation. 10 15

My lords, EPN.15 is the Bloemfontein Annual Report; it's the same as LLM.81 and, my lords, it was identified, my lords, by Conco and other witnesses. Your lordships will remember that this was the conference to which Luthuli referred in his evidence-in-chief; he had prepared a message on the Freedom Charter. He had in his possession a note, Exhibit AJL.1 which was referred to in his evidence at page 11561 in Vol. 58 where he was going to point out certain reserves he had about the Freedom Charter; your lordships will remember that. He did send a message to the Conference, my lords, but it was not that message; it was a message in which the people were asked to approve of the Freedom Charter as 20 25 30

it was. 1

My lords, in the course of his message . . .

BEKKER J: Which one?

MR. TRENGOVE: The message that was actually sent, my lord, and which appears as part of EPN.15. In the course of his message, again at page 2614 to 2615 he again makes this point, my lords, - - my lords, may I refer firstly to another passage? Page 17146, my lords. The passage was read in and was put to Resha, in which Luthuli made this point that the whole citadel of white supremacy had to be attacked. The whole network of discriminatory laws designed to keep the African people and the European people in general in a state of perpetual servitude. It was not anything to do with a particular government, it was an attack on what he calls the citadel of white supremacy. And, my lords, he says in the course of that speech - the passage that was read in at page 2614 to 2615, that although they are fighting on non-violent lines - 'you are not really worthy of freedom until you are prepared to make the supreme sacrifice.'

And, my lords, the theme of his speech says - another passage at page 2614 - "We are fighting against the white man's hostility." The theme of the speech is that it's not a matter of a particular party or a particular government - the white man in this country is dominating through parliament, and it is that citadel that we must attack. That is our submission.

My lords, then there is another document which has already been referred to, 3259; it is the Presidential Address - Moretsele's Presidential Address to the A.N.C. Transvaal 56th Conference which, as I said

yesterday was identified by Resha at page 17142 of the record, and in a passage read into the record at page 1335 and 1336, the Transvaal President says, "The whole country be told without delay that the Nationalist Government, like all Fascists, have learnt to treat thethose who do not want to submit to their reactionary policy. The Congress does not conceal its violent hatred of the racial policies of the Government and has avowed to fight oppression to the bitter end. As your President I call upon you to dedicate yourselves unconditionally to the greatest cause for which we fight, the fight for freedom. I call upon you to participate fully and without reservation in this great task, and to reckon with death and disaster without flinching from that task. Only by doing so can you save the people of South African from the ravages of Nationalist rule. In spite of all the efforts of the Government to suppress democracy in South Africa the Congress Movement is growing in strength and influence. It is rapidly becoming the real voice of the people of South Africa". Then it refers to the election of the people to go to the Congress of the People, it refers to the march of the women to Pretoria and it says: "All over the country the people are prepared - vitalagainst exploitation have been fought and important victories are being won. In this connection I think it is proper to refer to the wellknown Evaton boycott where the people have successfully carried on a militant struggle for more than a year. This is extremely significant for the lesson it shows, that

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important victories can be won by the movement once
people are united." We will still be referring, my lords,
to the meetings that were held in Evaton. 1

And then, my lords, there is another document
to which I attach to this - it's the memorandum on the
Anti-Pass campaign, 1340, which was also distributed at
this conference with this address, and my lords, I'll be
referring to that still - the passage appears at page
1341 and I get to the struggle on passes which shows,
my lords, that what they want is - they say that final
victory can only be achieved by the overthrow of the
ruling class, and by the achievement of the Freedom
Charter as the ruling policy. 5 10

My lords, another document which I want to
refer to in this connection is Exhibit A.17. My lords,
A.17 was handed in with a translation, Exhibit G.1065,
and the translation is - - the translation states that
this is an A.N.C. Cape Annual Report to the Cape Provincial
Conference held at Port Elizabeth in June, 1955. The
translation exhibit number is G.1065 and it was read
into the record at page 211 to 212. My lords, the
Report states that it was prepared by Tshungwe, Cape
Provincial Secretary, and chapter 1 of the Report con-
sists of the Minutes . . . 15 20

BEKKER J: What proof is there concerning the
authenticity of this report? 25

MR. TRENGOVE: My lords, it's Minutes of an
organisation found in the possession of the organisation.....

BEKKER J: That's what I want to know, where
was it found? 30

MR. TRENGOVES: Found in the possession of the African National Congress, my lord. And, my lords, apart from that, this report was also put to witnesses in cross examination. My lords, this report firstly refers to the Minutes of the Cape Provincial Conference at Uitenhage in 1954, it refers to the fact that it is opened by Luthu and that it was addressed by Sisulu; it refers to the election of certain members. Those facts were set out and read into the record at page 211 and 212. Then, my lords, at page 213, certain portions of the Report were read in, which is the annual report of the Conference at Port Elizabeth in June, 1955. The report consists firstly of an introduction. From the introduction were read in certain passages at page 213 and page 214, and it says, my lords, at line 21. It says: "We have come to a period when the Government of this country is determined to tighten the yoke of oppression. While doing so, still having in their hands a big cudgel poised over our heads, in order to crush any opposition from those who are the victims of this painful suffering. This is why we try to say: We are confronted with two alternatives: the first one comprises those who, however painful their suffering is, are to suppress any emotion in accordance with the fantastic conviction of 'Blessed are those who are have prostituted their righteousness for theirs is the Kingdom of Heaven'. This group are always crying out loud, "The white people conquered us, they are far better than we are, we can do nothing to them". Their cowardice has fooled them and they keep

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on discouraging. Those who make their voices heard from under the yoke of oppression. The second alternative consists of those who are prepared to raise their voices in opposition to the suffering of which they are the victims. It is therefore time for all intelligent people to find a choice between these two alternatives. We are aware of just that fact, freedom is achieved by people who are prepared to buy at the price of their blood, making themselves sacrifices for the cause of their liberation". He refers to the example of the Son of God.

Then, my lords, that report concludes on page 215 where it says "We do not know what others - what course others may take, but as for we, the African National Congress, give us freedom in our lifetime or give us death."

Then, my lords, there is a further part of this report read into the record at page 216 where they say: "Indeed we are heading for the worst in this country, for even in the very Parliament where the laws are being made there is no effective opposition, nor is there any helpful extra-Parliamentary opposition. The predominantly English speaking United Party have not identified itself as an effective opposition against these laws, nor have the other parties in Parliament shewn any unwillingness to co-operate with the Government. There has been one organisation which has pledged itself to fight ruthless persecution, tyranny and oppression known to the African National Congress."

Then, my lords, just as the 1954 report of the National Conference did, so this conference sets forth

certain activities which they claim are being attempts made to check the highminded action of the Government. These, my lords, include the Witzieshoek uprising.

RUMPF J: Why did you refer to this last reference to the parties....

MR. TRENGOVE: The point we are making, my lords, is that they didn't look to any constitutional party for any assistance, any constitutional party. Their attitude is not "We are not fighting a particular party; we are fighting a system".

RUMPF J : Yes.

(COURT ADJOURNED FOR 15 MINUTES).

ON THE COURT RESUMING:

MR. TRENGOVE: My lords, on the same theme may I give the Court some other references? My lords, there is the bulletin "African Lodestar", 1951, JDM. 10 . . .

BEKKER J: Are you going on to unofficial documents now?

MR. TRENGOVE: Well, my lords, not reports. Yes, one could call them semi-official documents, my lord. In calling them semi-official, my lords, I am not conceding that their effect is of any less force than the other documents . . .

BEKKER J: What's the exhibit number?

MR. TRENGOVE: JDM.10, my lord. It's a "Lodestar" of October, 1951, article "The Nations must prepare" - portion was read in at page 3150, 3151,

and my lords, this bulletin also contains an article "Opportunism and Chauvinism, and a portion of that article was read in at page 3152, and then at page 3153 - at the bottom of 3152 and the top of 3153, the article makes the point that in the struggle for liberation the African people have the white Imperialists as their enemy.

Then, my lords, there is a document A.78.

Now, my lords, A.78 is a typed document without any heading; it's just a typed document which was found in the possession of the African National Congress and it was read into the record at page 380 - portions on page 380 and portions at page 385. Now, my lords, certain passages in this document were put to Luthuli; there was a passage which was put to him which appears at page 380 of the record. It says: "The African National Congress has become a political force in the light of South Africa. Even nations of the world look forward to the day when the Government of this country will pass from the hands of the reactionary oppressors into the hands of the people, the African National Congress". And the passage goes on and says: "The importance and prestige it enjoys is due to its correct policies, and the consistent lead it has given to the broad masses of the people; the policy of goodwill to other people, and it says its design is not to replace white domination by black domination.

Now, this passage, my lords, that the African National Congress has become a political force, and that the people of the World look forward to the passing of government from the hands of the reactionary oppressors

to the hands of the people, the African National Congress. That, Luthuli was not prepared to accept the African National Congress policy, my lords. And, my lords, one can understand that he was not prepared to accept it; this is an official document, this is the thing which the Crown alleges they really had in mind, that they want to take over the government - even though they are - even though they say they are not going to dominate other sections - - they want the government; they realise that if they have their way the people will rule and to them that means the African National Congress.

Now, my lords, Luthuli recognised the significance of this passage and he said "That is not our policy". But, my lords, the African National Congress publishes an official bulletin called "Congress Voice", and Exhibit T.M.M. 1 was identified as being a Congress bulletin by Luthuli at page 13304. My lords, it's the same as Exhibit G.1066 and I.J.M.34. It has certain portions which were read into the record - it starts off "Editorial" towards the Congress Youth Paper, and at page 13303 it says in the first place our own newspaper published in various languages would be a tremendous help in placing Congress policy to the people, and in educating them - explaining and training them to support Congress members. And page 13303 also refers to the adoption of the Freedom Charter.

And then, my lords, the second page of this bulletin contains an article headed "Organisation on the road to Victory". That was read into the record, my lords, at page 8693, the portion to which I am now referring.

And that says, my lords, "Many organisations have come and gone, but the African National Congress has become a political force in the life of South Africa, and the world looks forward to the day when the government of this country will pass from the hands of the reactionary oppressors into the hands of the people, the African National Congress." So that, my lords, it's exactly the same as A.78 and it's published in this bulletin Congress voice. And, my lords, A.78 contains a further passage which was read into the record at page 381 and 382, and it states "The last forty years of Congress existence have been almost devoted to agitational work and propaganda work to the complete negligence of the organisational aspect, although we must concede to the fact that this agitational and propaganda aspect was absolutely essential in restoring the confidence the people had lost in the face of the powerful forces they are faced with. It served an important function in raising the political consciousness of the masses of the people, and it also dispels any illusion about the false hope for a change of heart in the rulers. As a result they became convinced that freedom does not come as a gift to the people, but they shall pay a high price for it." And then it deals with the organisational aspect.

Now, my lords, that same paragraph is contained in this official bulletin "Congress Voice", November, 1955; it's part of the same article to which I have now been referring, and it was put to Luthuli, that particular passage, at page 13303.

My lords, although we have A.78 which is obviously the basis for this article, it makes two points, that the government is going to pass into the hands of the people, that is the African National Congress and for that they will have to pay a high price. But notwithstanding the fact that Luthuli denied the first portion as representing Congresspolicy, it is set forth in this bulletin "Congress Voice".

Now, my lords, this A.78 and the "Congress Voice" deals with organisational aspects, and A.78 states that one of the important things is organisation to meet the new situation and that was read in at page 383, and that was that the organisation should be highly centralised on national and provincial plains, and that it be centralised on branch and membership levels. It must be organised along the lines laid down in the "M" Plan. I mention this, my lords, because apparently the Defence make quite a point of it, that in terms of their Constitution they were a highly de-centralised organisation. It is quite clear, my lords, that as far as the carrying out of their campaigns are concerned - putting their policy into action - they felt the need of a highly centralised organisation, nationally, provincially and de-centralisation at the bases. . . .

Now, my lords, there is another bulletin, A.205, also a "Lodestar" - a 1954 - a January, 1954, issue, the same as O.R.T.60 and it's the same as R.R.9, page 4137 and O.R.T.60, page 3425, my lords.

My lords, we were referring to some other 1954 "Lodestarts" yesterday, and this "Lodestar" contains article, page 1 and page 2, which was read into the record

at pages 861 to 864. My lords, this article was put to Resha at page 1696, 16896, page 80 -- the whole article beginning at page 861 and 864 was put to him, and he agreed, my lords, that this put forth the policy of the Youth League; he also said, as far as he was concerned, the A.N.C.Y.L. policy was the same; and he also says, my lords, that this article is an Editorial to the bulletin. Page 16896, my lords - the passage was put to him - the question is, ("Q) Do you accept this as A.N.C.Y.L. policy?-- (A) In general terms". ("Q) Is there anything that you object to in that?-- (A) Not particularly".

His lordship Mr. Justice Bekker says, ("Q) Is the A.N.C.Y.L. policy the same as the A.N.C. policy?-- (A) That is so". Then I put the question: ("Q) This is the Editorial?-- (A) Yes." And then there were some question by his lordship, Mr. Justice Kennedy, as to whether that appears from the record, and the answer is 'No'.

My lords, the report says at page 861, "It is normal procedure at the beginning of each year to take stock of the events of the preceding year, the trials, the victories, the disappointments" and the report then proceeds to analyse what it calls - page 862 - "A post mortem of the whole sordid history of Colonialism and Imperialism in our beloved Motherland." In order the better to be able to counterbalance the past with an inspired vision of the future when thesoil shall have gone back to the tillers."

Now, my lords, the report refers to the arrival

in this country of Jan van Riebeeck and, my lords, the report states at page 862, after referring to that, "Thus one of the numerous talons of the Octopus that is white civilisation found a foothold on our beloved mother land, Afrika; thus began an era of plunder and usurpation, of looting and robbing, of deceit and deception as ever the world has known, or is likely to know, Throughout two centuries the greedy and bloodthirsty nations of Europe led by the Island of Britain unleashed campaigns of subjugation andsuch as Africa shall never forget. It was against countries far ahead in the science of war and disregarded human life, and Afrika was initiated into a new way of life. Resistance to tyranny and refusal to be wiped out areof the people." Then it goes on, my lords, at page 863, and continues in the same strain: "The people who settled in Africa during this period against whom the Africans had to conduct a struggle." Page 863, it says again "These paid murderers - - it was against these paid murderers coming from generations of professional and debased human beings, the renegades of England, Holland, Portugal, Russia, Belgium, France, that the sons of Afrika took up arms to preserve their way of life, their homes and families, their religion, their green pastures teeming with wild game." It deals with that aspect of the matter, my lords.

Then it comes back to 1954, my lords, "In this year of 1954 - 302 years since Imperialist contamination defiled our sacred mother land we have reached the glorious path to draw inspiration from - - - our task is by no means an easy one; this year, more than the past,

will see an intensified effort on the part of the un-Godly to make yet another concentrated effort to render a death blow to our aspirations of brotherhood and comradeship of mankind. The renegades, the cowards..... those who over years of corruption and repression have knocked out all sense of manhood page 864. "No one with the slightest knowledge of this tragedy that has befallen compromisescan fail to appreciate the futility and the danger of placing any trust in the word of those who hurt us for our own good. The youth will have to give a straightforward and practical answer at this conference, not only by passing resolutions but by painstakingly translating those resolutions into hard facts. Thus giving our reply to Mr. Sisulu's injunction to make 1954 a year of mass activity to wipe out Fascism from the country of our birth."

My lords, that type of language was used for the political education of the youth; does that type of language indicate the expectation of negotiation with the Government? Does that hold out any hope to anybody that the African National Congress might get to a point where it can negotiate? My lords, it has the contrary effect, that the youth must know that in 1954 there has been no change from the struggles of the past - the attitude of the white oppressor has not changed, and Fascism will have to be wiped out. There was going to be no getting rid of Fascism because this white Imperialist oppressor who came to rob this country - these white imperialist oppressors are going to agree at the ballot box to a change.

The article, my lords, was put to Luthuli and he said in his evidence that they were trying to wipe out Fascism; he didn't accept or adopt the language used - as I understood his evidence; he merely said they were trying to wipe out Fascism.

My lords, while I'm dealing with Resha's - this article was put to Resha and he said that that was A.N.C. policy - - he said that was in agreement with the general terms of A.N.C. policy. Exhibit A.204 was also put to him, my lords, immediately following upon that - - at page 16898 it was put to him that this was also a "Lodestar" of May, 1954 - a "Lodestar", A.204, dated May, 1954 - and another Editorial was put to him, and your lordships will remember that is the article dealing with "We have long memories". We'll be coming to that, my lord. About this passage Resha says he couldn't really understand this article.

My lords, the next is also a "Lodestar", A.206, and this is early 1955, because it says - it's an Editorial dealing with 1955, the year of decision. Now I just want to refer to this article first, my lords. This was read into the record at page 871 - this starts off with a quotation and then deals with 1955 as the year of decision. It deals with the upsurge of political consciousness and at page 871 the article says: "The decision of the masses to carry on with the removal of the Western Areas and to enforce the notorious Bantu Education has ushered in a new situation in this country. It is a situation characterised by (a) the sharpening of the contradictions between the oppressive group headed by the Nationalists on the one hand

and the oppressed masses by the Congress Movement on the other hand, (b) the tremendous upsurge of the political consciousness amongst the masses. These conflicting tendencies, progressive, anti-progressive, could not but be intensified at such a stage when the Nationalist bandits have settheir oppressive machinery, when their fully fledged Police Stat with its terror and violence has become a hindrance to the further development of the country, and when the masses of the people have reached a point of no retreat. The elimination of the Nationalist Fascists handling of the people is the major task of the day, and it is/^ajust cause in the interests of human dignity, justice and peace, but it will take the best sons and daughters of the country to do it." And then he deals with demonstrations and the tasks facing the youth and then it says: "Hence the day arrives for the burning need firstly to be in a state of preparedness for the approaching conflict between the progressives and retrogressive forces, and certainly the need to keep pace with and develop the ever growing political consciousness of the masses."

And it says, my lords - it deals then with what are the specific tasks of the militant youth movement in a situation when protests and demonstrations can be regarded as impotent, when to speak of opposition without following it up by action has become meaningless. And, my lords, it concludes - the portion I want to deal with - at the bottom - - from the middle of page 873 - - by dealing with the role of the youth and it says the youth has to serve as the spearhead and shock brigade of the liberation movement on the one hand, and on the other hand

it has to serve as the propaganda agitators and organisers of the liberation movement.

Now, my lords, this article was put to Luthuli. Now this is 1955 - you have the two groups - the masses on the one hand, the bandits, hangmen, the Fascists, on the other hand; there is an approaching conflict, a conflict which will have to be resolved - - protests and demonstrations are a thing of the past - - programmes have to be translated into action. And even at that stage, my lords, was there any hope that there would be a change in the attitude of those people who have the power? And this was put to Luthuli at page 13250. My lords, the passage was put to him at page 16 - - the question is, - it was put to him (inaudible)....."and at that date the masses have reached a point of no retreat". It talks about the sharpening of the crisis and the question put to Luthuli is, "Do you agree that that is the politicalin South Africa during about the end of 1954 and the beginning of 1955," and he replies "Generally that is so". ("Q) In your view that is so?-- (A) Yes, my lords." ("Q) That being the position there was very little hope of negotiation at that point?-- (A) There were no signs in that direction". Page 13251 - his Lordship Mr. Justice Bekker asks: ("Q) Was there any hope?-- (A) Hope, my lord? Hope is always there".

Then, my lords, the same bulletin contains the article which was also put to Luthuli in which it speaks of "On the ideological front" - - the passage was put to him that the Liberals of the country are criticised

because they are not interested in changing or destroying the system, they want to reform it. The article says the African National Congress want to destroy the system. And, my lords, he says in his reply well, he doesn't quite agree that they want to destroy to the very foundation.

Now, my lords, the article on the ideological front was read into the record at page 875 to page 877. The same bulletin, my lords, also contains a message from the organising and propaganda officer of the A.N.C. Y.L. which is in the record at page 878, and which he also says "If we go back we die, if we go forward we die; we had better go forward and die".

Now, my lords, there are other references which will emerge when we deal with the cases of the particular accused; I don't want to burden the Court at this stage. My lords, just finally one other document, N.R.M.35; this was a lecture "How South Africa is Governed" and Mandela in his evidence said that this was being used as a lecture for the political education of the people and portions of this document were read in at page 15853 of the record to 15854, and at page 15856 and 15897. Page 15853 to 15854, and 15855

RUMPF J: Just a moment.

MR. TRENGOVE: This is a lecture, my lords, used by the African National Congress to educate its members, and it's headed, my lords, "How South Africa is Governed". At page 15853 it deals with the Constitution of Parliament. At page 15854 there is a passage on the powers of Parliament. Page 15897 there is a passage dealing with how Parliament works in practice; page 15855

page 15855 contains a passage dealing with discriminatory laws. And then, my lords, in the evidence in chief of Mandela this document was put to him and then also in cross examination - the passage was read to him "How the laws are enforced"; that is at page 15856 - 15897. It says: "Once laws are passed by Parliament they have to be enforced. A whole machinery exists to enforce these laws; a whole army of civil servants, policemen, magistrates, native commissioners..... None of these people are ever elected by the voters, nor do they change with the changes of government. Behind Parliament there stands this body of men, armed with force to see that the laws are carried out. None of these bodies is impartial; none of them act against the ruling class because they are hired to enforce the rule of the ruling class. For Africans there is a special body to enforce the law, the Native Affairs Department, standing as a weapon of the ruling class to impose its will on the African people in the same way as the police force. All these bodies of men are there to enforce the laws, together with the Government, its Cabinet, its Ministers, and they make up the machinery of oppression of the people, which we call the State."

Now, my lords, can there be a more vicious, misrepresentation of what the function of the State is? To hold out, my lords - and one asks oneself with what object - - to hold out that the State is a machinery of the oppression of the people, that the State is the tool in the hands of the ruling class in order to dominate the people, and that first and last it is an instrument of oppression.

Now, my lords, they want a change in the Consti-
tution; they want a new State; they say, my lords, "Now
to-day we wanted some amendments to the existing state of
affairs, and that in fact what we are asking is just to
regularise the position and we carry on in the same way
with the same Constitution." My lords, why are the
masses of Africans being educated on the lines that behind
Parliament stand the body of men armed with force to see
that the laws are carried out; a body of men of Civil ser-
vants, the policemen, the magistrates and the Native Com-
missioners and the soldiers. These people with whom the
African people come into touch with every day. They are
held out as being a group of people who are not impartial.
None of them act against the ruling class. No Magistrate,
no policeman, no civil servant, no Native Commissioner,
acts against the ruling class, and the ruling class is
the white voters of this country. And he says, my
lords - the lecture says: These people are being hired
to enforce the rule of the ruling class, not impartially.
And it suggests, my lords, that these people, that this
machinery which enforces - is not impartial because none
of these people are ever elected by the voters, nor do they
change with changes of government.

Now, my lords, we say that this type of
education of the masses is consistent only with one thing;
that they were not merely protesting against certain laws,
they were using that - the legitimate grievances of many
people against certain laws - - but they were using that,
my lords, to establish a kind of State, whatever it may be,
which is foreign to any State which is based on ordinary

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Parliamentary procedure, and to the type of State which is based on our Constitution. It's not a question of black people getting the vote, it's a type of State which they want to be entirely different representing the State as a tool of oppression of the people.

That is why I say they wanted something entirely different, my lords; that's why we say, my lords, in our allegations that they wanted a radically different form of State, a State which they call a Peoples Democracy., or a Peoples Republic - or a True Democracy.

And, my lords, we say that it's relevant in a consideration of this nature for the Court to have regard to the changes which they envisaged in the State - in deciding whether they ever contemplated getting that through the ballot box.

Now, my lords, I don't want to deal with all the references to the Freedom Charter; there are many, many references in this case to that, my lords; I'll just refer your lordships to some references to show that they accepted the Freedom Charter as being something entirely different, something which fundamentally alters the position.

My lords, L.L.M. 81, E.L.M. 51 - the National Conference Report, and your lordships will remember that at Bloemfontein in 1955 this Report was adopted. This was the Conference to which Luthuli wanted to send a message, A.J.L. 71, which was never sent. Now, my lords, at this Conference where the Freedom Charter had to be adopted the African National Congress, as part of the Congress documents, publishes the fraternal message from its Ally, the Congress of Democrats. That will be dealt

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