

My lords, the next accused I propose to deal with 1
is the accused Nene, accused No.13.

My lords, there is an Index, my lords right at
the beginning. On page 1, section A I refer to the Overt
Acts. My lords, the Crown is only relying on Overt Acts
Nos. 1 and 2. Overt Acts Nos. 3, 4,5 and 6 the Crown res- 5
pectfully suggests that the evidence in connection with
these be taken into consideration when accused's participa-
tion in the conspiracy is considered.

These two Overt Acts, my lords, 1) is the con-
spiracy set out in Part B of the Indictment, and ii) the 10
accused attended the Conference of the Congress of the People
on the 25th and 26th June, 1955, as set out in Part E of
the Indictment.

On page 2, my lords, Section B, this deals
with membership and the positions held by Nene. The only 15
position, as far as this evidence goes, is that he was a
branch chairman of the African National Congress, Alexandra,
for the years 1953, 1954, 1955 and 1956, which is testified
to by Sgt. Masilele and by Mandela.

My lords, Section C on page 3, Searches: 20
That the accused was searched on the 26th June, 1955, at
Kliptown, by Sgt. Strachan . . .

RUMPF J: Well, you set out the documents

MR. VAN NIEKERK: And I set out the documents
found at that search and the other search, my lord - that 25
second search was carried out by Sgt. Ackerman, and iden-
tified, and I set out the documents there seized too, my
lords.

My lords, the contents of these documents are
set out, firstly PN.6 -- therw are only a few that I want to 30

refer to, my lords. PN. 6, an "African Lodestar" of May 1954, read into the record at page 849 to 861 as A.204. That continues to page 7, my lords, the documents. . . . on page 7, my lords, about ten lines from the top, there is: "On page 860 there is a reference to the application by ANCYL to WEDY and a recommendation to organise Youth Festivals. The word 'application' here, my lords, should be 'affiliation'." 1 5

Then I refer to 'Fighting Talk 1956' of which portions were read into the record

RUMPF J: Yes, well, it says so. 10

MR. VAN NIEKERK: Then page 8, the booklet "South Africans in the Soviet Union" which was referred to as A.197.

My lords, I go over to paragraph E; these are the meetings attended by the accused, and he spoke at some of these meetings. This goes up to page 14, my lords. 15

Now, my lords, in the meetings, subject to your lordships' concurrence, I intend to deal with the meetings in the same way as I dealt with them in respect of the last accused. At this stage I'll only deal with the meetings as to the reliability of the reporting, and on the meeting of the 24th January, 1954, I have just dealt with that matter in the argument on Molife. I would just say that the cross examination on that meeting is to be found at page 8915 of the record, my lords. 20 25

Likewise, the meeting of the 21st February, 1954,

BEKKER J: Was further material read in there, or what was the effect of the cross examination?

MR. VAN NIEKERK: My lord, this is where the witness was asked about the National minded bloc. The effect 3

of the cross examination, my lords, was not directed to the reporting, my lords. 1

The meeting of the 21st February, 1954, my lords, I have also dealt with that. The cross examination was at page 8911 to 8913. My note is to the effect that the witness admitted that apparently there was a mistake when he recorded that a friend of Luthuli was there when in fact Luthuli was there himself. I have dealt with that matter, my lords. 5

Then, my lords, page 21, the meeting of the 22nd February, 1954, that was the Let the People Speak Committee; the witness there was van Papendorp, my lords. Now, my lords, van Papendorp was cross examined at page 8404 of the record and all he was asked to do was to read in portions of the speeches into the record. 10

Then, my lords, on page 22, the meeting of the 28th February, 1954; reporter was Madyuta, and at page 10204 he was cross examined and the cross examination was directed to the fact that the meeting lasted about 3 hours and that his report was contained in about 3 pages of typescript. That was all, my lords. 15 20

At the meeting of the 7th March, 1954, page 23, an African National Congress meeting at Alexandra, Masilele was the witness and he was cross examined at page 8914 of the record and there, my lords, he was questioned as to whether he didn't make a mistake when he said that Luthuli's speech said that as President of the Africans of South Africa it was suggested to him that Luthuli had said "As President of the African National Congress". 25

RUMPF J: What did he say?

MR. VAN NIEKERK: He said, my lords, as president 30

of the Africans of South Africa." That was at page 8914,
 my lords. He said he was speaking English and there was
 an interpreter, and he said "As President of the Africans
 of South Africa I stand for all the people who love free-
 dom; I stand here amongst these people who took a
 to freedom". It's just reading in a portion into the
 record, my lords.

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At page 26, my lords, there is the meeting of
 the 14th March, 1954, also the witness Masilele. My lord,
 this witness was cross examined on page 8917 of the re-
 cord to 8919. There is no attack on Masilele's ability
 to take down notes; he was cross examined and certain
 summaries of speeches were put to him, by Counsel for the
 Defence, my lords. That was what the cross examination
 amounted to, my lords.

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The next meeting, my lords, is on page 28,
 and it refers to the meeting of the 28th March, 1954,
 witness again Masilele. The witness was cross examined
 at page 8918 to 9, my lords. The cross examination was
 just directed to a summary of certain parts of the speech
 which does not in my opinion affect the issue at all, my
 lords, or affect the credibility of the witness.

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Now, the next is on page 29, meeting of the
 4th April, 1954, witness Masilele, and at page 8919 in
 cross examination he was only asked to read in portions
 of the speech of Byanana (?). The submission is that that
 does not alter the trend of the meeting, and on page 33,
 my lords, paragraph 9, meeting of the 23rd May, 1954, an
 A.N.C.Y.L. meeting at the Trades Hall Johannesburg, where
 the witness was Sharp. I referred to that earlier as A.50,
 my lords, the resolutions at that meeting. Then on page 33

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paragraph 10, my lords, the meeting of the 26th June, 1954, 1
witness again Masilele. There was no cross examination on
this meeting.

Meeting No.11, of the 4th July, 1954, African
National Congress meeting at Alexandra, witness Masilele;
he was cross examined at page 8919, my lords and he was 5
asked to read in portions of the speech of Mdzunye.

On page 37, my lords, there is the meeting of the
18th July, 1954, witness again Masilele. There was no
cross examination on this meeting.

On page 42, there is the meeting of the 15th 10
August, 1954, witness Masilele. The cross examination is
to be found at page 8921 of the record, and that amounted
to portions of speeches being read in - portions of the
speech by Madzunye.

At page 43, my lords, there is the meeting of 15
the 19th September, 1954, witness Duncga. There was no
cross examination of this witness on this meeting, my lords.

Then page 44, my lords, meeting of the 31st March,
1956, witness Masilele - that was an ANC Conference at
Orlando, my lords. There was no speeches recorded - there 20
is no evidence of any speeches at that conference.

Page 45, my lords, meeting of the 8th April,
1956, witness Dunga; he is cross examined at page 10056
of the record to 10058, and he was asked to read in a
portion of Nene's speech and he was asked about the dis- 25
agreement between the African National Congress and the
Africanist group.

KENNEDY J: What's the latter?

MR. VAN NIEKERK: The Africanist Group, my lord.

BEKKER J: What was he asked about them? 30

MR. VAN NIEKERK: My lord, he was asked about the disagreement between these two groups. 1

BEKKER J: Did he know anything about it?

MR. VAN NIEKERK: The Crown submits, my lords, that it's not material to this case. To the issue at present. 5

The meeting of the 22nd April, 1956, on page 45, witness Dunga; an A.N.C. meeting at Alexandra. He was cross examined at page 10058 and portion of the speech of Madjunya - - he was asked to read in a portion of a speech which referred to the shooting of Africans. 10

RUMPF J: Whose speech?

MR. VAN NIEKERK: It was a speech by one Lilian Nquanaze, my lords. "You remember she wound up, according to your note, about killing policemen at almost every corner of Alexandra Township", and then he refers to the speech of Gadebe 15

RUMPF J: Is this still the cross examination?

MR. VAN NIEKERK: This is in cross examination, my lord - the witness on the speech of the 22nd April, 1956. 20

RUMPF J: What did he say about Gadebe's speech?

MR. VAN NIEKERK: About Gadebe he said - "If you look at the speech of Gadebe, the portion read in by you refers to this - - 'That we have come here to discuss the shedding of the blood of Africans', and then he talks about a newspaper and of the man who was shot dead by the police. Thousands of people were present at the funeral. Was that the Port Elizabeth incident?-- (A) I think it was that incident, it doesn't say here". 25

("Q) There is some reference to the Cape - how in the Cape an African was shot down dead. Now if you will just turn 30

to page 2 I want you to just deal briefly with the part
of the speech of Nene which you omitted and which was
not dealt with in chief. Do you see that he makes a very
strong complaint against Motsele; have you got that?--Yes."

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("Q) You all know what type of a man Mr. Motsele is. He
is really a bad person. He procured the services of a
lawyer, Mandela, to conduct the defence of all the people
who had been arrested for permits. As a matter of fact
these persons were all found not guilty and discharged.
Motsele started to create a split in the Committee. I
still say that Motsele and Madzunya were responsible for
the introduction of permits in Alexandra Township. That
is what you recorded, isn't it?-- Yes."

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("Q) And which shows that by April 1956 there was very
strong feeling against these two gentlemen who subse-
quently joined the Pan Africanist Congress?-- Yes, there
was quite a strong feeling in Alexandra Township."

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RUMPF J: That's a feeling against Motsele and who?

MR. VAN NIEKERK: Motsele and Madzundja, my lord.

("Q) I want to ask you one or two more general questions.
Have you ever attended any of the meetings of the Pan
Africanist Congress?-- Yes."

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("Q) You know something about the leaders and the suppor-
ters?-- I have heard some of their leaders addressing meet-
ings."

("Q) And do you know for instance that one of their main
theoretical leaders is A.P. Mdou" -- with respect, my lord,
I think this should read Mdou - from the Transkei?-- No."

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My lord, there are further questions on the
Pan Africanist Congress, at page 10059 up to page 10060.

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My lords, with respect my submission is that 1
it does not affect the portion that was read into by the
Crown, and on which the Crown relies.

My lords, the next meeting is that of the 21st
May, 1955 which was a Congress of the People meeting at
Johannesburg and the witness was Schoeman, a shorthand 5
writer. My submission is, my lords, that your lordships
will accept the evidence of the shorthand writer, and on
the 18th September, 1955, on page 48, there is the meeting
of the Freedom Charter Committee; that was reported by
shorthand writer Coetzee. 10

On page 52, my lords, meeting No.20, of the 24th
June, 1956, witness Schoeman, shorthand writer - a Congress
of the People Anniversary, and on page 62, my lords, there
are two meetings; the one of the 11th March, 1956, a 15
Federation of South African Women meeting at the Trades
Hall, Johannesburg, and the Omit Egypt Rally on the 25th
November, 1956.

My lords, with respect, the Crown does not rely
on any speeches made at those two meetings.

My lords, I now come to page 63, Proof of the 20
Overt Acts, "It is respectfully submitted that the first
Overt Act against the accused, namely the Conspiracy as set
out in Part B of the Indictment has been proved.

It is also submitted that his hostile intent and
his adherence to the Conspiracy should be inferred from his 25
activities, and then I refer to his activities, my lord,
that he was chairman of the Alexandra Branch of the African
National Congress during the years 1953, 1954, 1955 and
1956; that he was in possession of the documents set out
in part C hereof; and that the contents of these documents 30

MR. VAN NIEKERK

are set out in Part D hereof;

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It is submitted that these documents contain the following: In PN.6 there is support for the Liberatory Movement . . .

TUMPF J: Well, that's a summing up.

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MR. VAN NIEKERK: Yes, my lord, that's a summing up. Then 5, He attended the meetings as set out in Part E hereof, and spoke at most of them. Particulars of these speeches appear in Part F hereof, and it is submitted that in these speeches the following views were expressed: Support for the Liberation Movement; expressions of support and solidarity with Kenya, Kpree, Ind -China, etc., denunciation of the Present State, demanding its destruction and substitution by another State based on the Freedom Charter; expressing hostility towards capitalism, imperialism and so called Fascism; expressing views which tend to create enmity between the black and the white races in South Africa; defending the Defiance Campaign as a method of struggle; supporting the campaigns against B.E. Western Areas removal and Passes; supporting the recruitment of Freedom Volunteers; advocating unconstitutional and illegal action including the use of violence against the constituted authority.

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7. It is submitted that this is clear from the undermentioned excerpts from speeches at these meetings. I first refer to the meeting of the 21st February 1954, a Colonial Youth Day Rally at Alexandra: "We pledge that every man will eat the riches of this country without fear....."

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RUMPF J: Who said that.

MR. VAN NIEKERK: Yes, my lord, it's an un-

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known person, my lords; he said "We pledge that every man 1
will eat the riches of this country without fear; we
pledge the state of affairs that we will support the
Colonial youth s to fight for freedom. We pledge that
we shall follow the Liberatory Movement until we get our
freedom". 5

RUMPF J: Didn't we have that this morning?

MR. VAN NIEKERK: With respect, yes, my lord,
we had it this morning, the same speech.

Then, my lords, there is the one of the 4th
April, 1954, an African National Congress meeting at Alex- 10
andra, witness Masilele, - that would be the speech of
Mavuso, my lords : "Coming to our own South Africa we see
the division still here. The ruling class depend on
American money to defend the Imperialist. They have in-
troduced suppression of Communism Act to crush the Libe- 15
ratory Movement in order to suppress our workers in the
interests of the American money. They do these things
only in the interest of the Americans."

My lords, on page 65, Nene spoke at the end of
this meeting. (Reference 8846). Now, my lords, the next 20
reference is again to a resolution of the African National
Congress Youth League on the 23rd May, 1954 - A.50, at
page 324 of the record. "The A.N.C.Y.L. should be in-
structed to seek methods of rallying the youth of the
province under the banner of the A.N.C. and A.N.C.Y.L. 25
.... and thus - - I suggest the word 'form' should come
in there, my lords.....

RUMPF J: That's the same as has been referred
to.

MR. VAN NIEKERK: Yes; as your lordship pleases. 30

KENNEDY J: In any event it doesn't refer to the Liberatory Movement so don't worry about it. 1

MR. VAN NIEKERK: As your lordship pleases.

The next, my lords, is a meeting of the 19th September, 1954, where Masimoola spoke and he referred to "Oppression of Malan and imperialists is menace to the people of South Africa and all other lands. Malan made enemies of India, Gold Coast. Encroachment, interference and slavery is savouring war. Oppose war fight independence and liberation of our people. Struggle for freedom justified. Sympathise with other colonial countries for freedom." Nene was chairman at this meeting, my lords. 5 10

My lords, then on page 66, there is the meeting of the Congress of the People on the 24th June, 1954.

KENNEDY J: It contains a reference to the Liberatory Movement you say. 15

MR. VAN NIEKERK: Yes, my lord, and also Luthuli's message which speaks about the Liberatory Movement; that is about five lines down, my lords, and then Ngoyi refers to "I also call on you, Jomo Kenyata and other leaders who are suffering under the Imperialists".... 20

RUMPF J: Is this now also on the 24th June?

MR. VAN NIEKERK: My lord, this is on the 24th June.

RUMPF J: The reference to Ngoyi?

MR. VAN NIEKERK: Yes, my lord. The text of her speech is found on page 56 of this Argument, my lord. 25

KENNEDY J: Page 56?

MR. VAN NIEKERK: My lord, the relevant portion is found on page 58 of this Argument, my lord, where this paragraph about Jomo Kenyata appears. About two-thirds 30

down the page, my lords. 1

BEKKER J: Whose speech is it, do you say?

MR. VAN NIEKERK: That is the speech of Ngoyi, my lords. She refers, my lords, to the giving of the last drop of blood for the liberation of the oppressed people, and then there is the meeting of the 21st February, 1954, 5

RUMPF J: Are the speeches now below the dates? From now on?

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: I just want to know, because on the previous page the speeches at the C.O.P. were set above the date and below the date. 10

MR. VAN NIEKERK: In this instance, my lord, I first quote the date.

RUMPF J: Then you give us the particulars.

MR. VAN NIEKERK: As your lordship pleases. 15
My lords, then . . .

KENNEDY J: Anyway, you set out the two meetings in which you say they support your submission, being expressions of support for solidarity,.....

MR. VAN NIEKERK: As your lordship pleases. 20
Then, my lords, (c) is denouncing the present State - the meeting of the 21st February, 1954, Desai said: "We want to tell Malan that the common man will rule this country".

And the meeting of the 22nd February, 1954, at Wynburg . . . 25

RUMPF J: Just a minute. You say that by saying that the common man will rule the country, this means denouncing the State and demanding its destruction? Or what is the inference that you make there? 7

MR. VAN NIEKERK: My submission is, my lord, 1
that there will be somebody else ruling this country;
that is what he is trying to convey.

RUMPF J: Isn't the common man in any democracy
ruling the country?

MR. VAN NIEKERK: In any democracy, yes, my lord. 5
I don't press that point, my lord, take it out.

Then the meeting of the 22nd February, 1954, Let
the People Speak Committee, Wynburg, "The National pro-
gramme is one of banning the Trade Unions the Liberation
Movement and any kind of progress, decency, human ability 10
and culture and understanding between different races.
Their programme in South Africa is full of hatred and is
found in every piece of legislation". Then he says:
"They have a policy of exploitation which is directed
against the workers in South Africa as well as all workers 15
----- Capitalists can now turn workers into slaves."

That's criticism of the system, my lords, and it
goes on: "Your slogan must be 'This government must go'.
This is the century for the millions and not for the 20
millionaires. The same thing happened under the Czars
of Russia. We must start to fight just and right now.
The signing of the Anti-banning cards at the door is
the beginning of our struggle. Let us mobilise all our
people against this government."

Now, my lords, at the meeting of the 4th April 25
1954, Molewa said: "The Nationalist Government does not
represent people but they represent only their people.
They are not educated and do not progress. That is why
they have seen that the Africans may learn much and
advance more. So as an African we see that we have to 30

fight to win freedom. Now the government ban our people." 1

He goes on: "Let us realise these things, Africans. Our chiefs have been made baas boys by chief commissioners. Our oppression is everywhere, even in the schools. We occupy the third - - from the inferior people. Our struggle is not against any particular person but we are against the system imposed on us." 5

And then at the meeting of the 4th July, 1954, Nene was chairman, he said: "It is the aim of Congress to overthrow Malan and Luthuli must take his place."

Then the meeting of the 18th July, 1954, ANC. Alexandra, Selepe said he wanted a free State in South Africa. 10

And on the 18th July, 1954, Molife said "We are the owners of this country. How can you expect these people of Europe to be of any good to us while they were thrown out of Europe because they were gangsters. Van Riebeeck was thrown out of Holland because he was a gangster. He came to South Africa as a grower of vegetables, but eventually he abandoned. These Afrikaner people forget themselves, that they originally came from Holland. Ever since the formation of Parliament nothing was done for the "fricans." 15 20

RUMPF J: Is this the same Molife we discussed this morning? Or is this another Molife?

MR. VAN NIEKERK: It's the same Molife, my lord.

TUMPF J: We l, need we go over the speech again. 25

MR. VAN NIEKERK: It's the same speech, my lord.

RUMPF J: Then just take it as read.

MR. VAN NIEKERK: As your lordship pleases.

In this speech, your lordships will recollect this is the 30

speech in which he said the system was growing old and 1
and this system will die in the Liberation Movement.

On the 19th September, 1954, my lords, Molewa 5
referred to the Congress of the People and said "South
Africa capitalists virtually dictate to the government
what laws to make to oppress the working classes."

And on the 21st May, 1955, a COP meeting, Johannes-
burg, a person by the name of Maghlo said, "Between now and
the 26th June it is my task and yours to mobilise the people
to come there and to help us, to write into that Freedom
Charter the aspirations of the people of South Africa, and, 10
do not let us make the mistake of thinking that the con-
ference is in itself a means to an end. It will not be
enough for us to write down on paper the way we want to be
governed. We will have to mobilise the people of South
Africa. Every man, woman and child behind that demand for 15
freedom and democracy which we hope to write into that
Freedom Charter.

KENNEDY J: What do you say sub-paragraph (vii)
on page 70 falls under?

MR. VAN NIEKERK: My lord, that is a criticism 20
of the present system.

KENNEDY J: I thought you were under sub-heading
(iii).

MR. VAN NIEKERK: Well, it is a combination 25
of submissions - criticising the State, denouncing the
State, demanding its destruction and substitution by
another State so it is really portion of that,
my lord.

I was dealing with the meeting of the 21st
May, 1955, the speech of Maghlo which I quoted, my lord. 30

Here the Crown submits that the speaker envisages 1
a new form of State based on the aims of the Freedom Charter.

At the meeting of the 19th September, 1955, a
Freedom Charter Committee meeting, Johannesburg, my lords,
Hutchinson said: "It is a matter of history now that on
25th - 26th June the people of South Africa met to draw 5
up a government, a government of freedom and democracy."
The Freedom Charter was read chapter by chapter and was
adopted.

And he further goes on to say

RUMPF J: Haven't we had this speech time and 10
time again?

MR. VAN NIEKERK: Well, my lord, I wanted to
ask your lordships whether it was necessary for me to refer
to this because I think this meeting has been discussed
over and over again. And the same, my lords, with the 15
meeting on page 73, that is the COP anniversary at Klip-
town.

These two meetings have been discussed over and
over again, my lords.

Then I refer to (d) on page 74, a meeting of 20
the 21st February, 1954, a Youth Day Rally

RUMPF J: Well, there Molife we had this
morning.

MR. VAN NIEKERK: Yes, we had this this morning,
my lord. I go to the meeting of the 4th April, 1954 - - 25
we have had that this morning too, my lords. . . where the
world is divided into two spheres.

And on page 75, my lords, there is the heading
of a meeting and an expression by Nene, "that the Boers 30
are really the enemies of the Africans," I've got it under

the heading of expressing views which tend to create 1
 enmity between the black and the white races of South
 Africa, and Mavuso said "Go and tell your children that
 the Europeans are our enemies."

Then, my lords, on page 75 there is the paragraph
 (f) which is the Transport Action Council, Alexandra, on 5
 the 24th January, 1954, witness Masilele.

KENNEDY J: I shouldn't think you need deal with
 that.

MR. VAN NIEKERK: As your lordship pleases.

KENNEDY J: You've set it out in any event. 10

MR. VAN NIEKERK: As your lordship pleases.

And on the 26th June, 1954, at the African National Congress
 meeting Alexandra, witness Masilele: Nene was chairman
 and he said - - he referred to the Defiance Campaign as
 set out. "In 1949 December the day of the 26th June was 15
 decided to start the unjust laws campaign of defiance, and
 from that day the government began to tremble because they
 did not know what the Congress would do with its plan of
 action".

RUMPF J: Just a minute, Mr. van Niekerk. 20
 Where are you?

MR. VAN NIEKERK: Page 75, my lord, the speech
 of Nene.

RUMPF J: Yes, just go over to (g).

MR. VAN NIEKERK: As your lordship pleases. 25
 There is support again for the various campaigns, my lord,
 where Sibande said that if you die for something which is
 yours you will be dying the right way. I say the government
 must destroy Sophiatown under our dead bodies. And the time
 for speeches is past, my lords, "Now is the time for action". 30

"We are waiting for our death only." Nene was chairman at this meeting, my lords. 1

And on the 14th March, 1954, my lords, page 77 "the time of passes is gone"

RUMPF J: Are the particulars now again set above the date? 5

MR. VAN NIEKERK: They are still the same, my lord, the same procedure.

TUMPF J: Alright.

MR. VAN NIEKERK: Your lordship will see there are two references. 10

RUMPF J: Above and below?

MR. VAN NIEKERK: No, my lord . . it was an omission . .

RUMPF J: An omission? 15

MR. VAN NIEKERK: Omission, my lord, then it was inserted afterwards.

"The time for passes is gone, freedom comes with the blood of somebody else - be ready for your death".

Mashamaite spoke against Bantu Education and passes and said: "I am ready to defy the law at any time, ready to be shot dead at any time." 20

RUMPF J: Wait a minute; where is Mashamaite now? At what meeting is he?

MR. VAN NIEKERK: This is the 14th March 1954 meeting - these two, my lord, these two references. 25

RUMPF J: Yes.

MR. VAN NIEKERK: The next reference is to the meeting of the 28th March, 1954, my lord, where Motsele said "Sophiatown will not go - if it goes we are next to go. If it goes it must go under the dead bodies of the Africans." 30

Selepe asked whether the people will allow Sophiatown 1
to go and the answer was 'NO'. The submission is, my
lords, that Nene was chairman at this meeting.

Now the one of the 4th April, 1955, at Alexandra,
we've had that meeting, my lords - we had that this morning;
and on the 26th June, 1954, on page 78, my lords, Nene said 5
"You all know that so long as the Africans are still alive
they will be determined to resist the decision of the
Government to remove Sophiatown. And he goes on to say
that Sophiatown will be removed under the dead bodies of
the Africans. And then the meeting of the 4th July, 1954, 10
Nene was chairman

KENNEDY J: As recorded, there is no need to
repeat it.

MR. VAN NIEKERK: Yes, my lord, and on the 18th
July, 1954, Molife spoke about mass action. "We must be ready 15
to answer the call".. We have had that too this morning, my
lords.

Then on the 8th April, 1956, Nene said inter
alia, "The province of Natal expressed the bitter and
vehement opposition against the extension of passes to 20
African women. They even said that in their province blood
could be rather be shed instead of women carrying passes.
The Cape delegates again said the same thing against the
passes for women. Conference therefore resolved that we
in the Transvaal should stand up on our feet and organise 25
the people against the passes for women.

Then on the 22nd April, 1956, . . .

KENNEDY J: Same thing, anti-passes.

MR. VAN NIEKERK: Yes, my lord; If death is
the only alternative to carrying a pass, then we accept it. 30

MR. VAN NIEKERK

And Nene spoke at that meeting, my lords, and on the 21st May 1955, the COP meeting, Johannesburg, witness Shcoeman. This is a reference to armed police and troops in Sophiatown; a reference of the invasion of Tobruk - what happened there during the invasion of the Nazis. That is an example of the removal in Sophiatown, my lord. 1
5

RUMPF J: Is that Hoola or Bookla?

MR. VAN NIEKERK: Bookla, my lords, I'm sorry. Then he goes on, my lords, to comment on what was happening in our own country, our motherland. "Let us do something about it, or must we just follow the government propaganda and not see what is happening in Communist China?" 10

Then he goes on: "It is your sacred duty to go back to your homes and organise as you have never done before, to make it very difficult for this Nationalist government to carry out this evil scheme, this Fascist scheme of destroying our children." That's again against Bantu Education, my lords. 15

The next paragraph refers to boycotts and then Nkademeng spoke about the viciousness of the Western Areas scheme..... 20

RUMPF J: Yes, and the unity of the various campaigns.

MR. VAN NIEKERK: Yes, my lord. Nene was present at that meeting but did not speak, my lords.

Then the meeting of the 24th June, 1956, a COP Anniversary; . . 25

BEKKER J: Anti-passes.

MR. VAN NIEKERK: As your lordship pleases. That brings me to the end of 'G', my lords. 30

(COURT ADJOURNED)

22997.

COURT RESUMES ON THE 24th FEBRUARY, 1961.

APPEARANCES AS BEFORE.

Accused L. Levy is not in Court.

MR. VAN NIEKERK :

May it please Your Lordships. My Lord, the sub-paragraph (h) refers to the support of the recruiting of Freedom Volunteers, and the first quotation here is from a meeting of the 4th July, 1954. "The Government cabinet is afraid since Luthuli has called for volunteers". The Strength of the African National Congress is not strong yet. The day it is strong we will take over the government. We have not yet received instructions from the headquarters to ask for volunteers, but that day is coming".

And then a second reference also refers to that and so does and (iii)(a), (b), and (iv), (v). They all refer to Freedom Volunteers.

My Lord, I proceed to I. That is Unconstitutional and Illegal Action. There I have the 24th January, 1954, again that "We must have the spirit of Getwayo..." - this was referred to on a previous occasion. Mandela said "If we may die at any time we may die here." Resha said : "Congress will die with you". "The time has come that we will elect a person who is determined to die a fight for the people..." - that is (c) on page 85.

The next one is Colonial Youth Day Meeting, Alexandra, the first portion really deals with an attack

on fascism, and then the second portion says "We shall solidly refuse to surrender but fight these to the last." That is these Acts. "We must sacrifice for this so that we can live in peace". Further down it says : "When they deliver a hard blow we must deliver a harder one, My Lord". It is respectfully submitted that that refers to violence, My Lord.

MR. JUSTICE BEKKER :

Why is that violence?

MR. VAN NIEKERK :

That is retaliation, My Lord.

MR. JUSTICE BEKKER :

What kind of blow? Physical or metaphorical?

MR. VAN NIEKERK :

My Lord, the whole sentence reads : "It is the only way to defeat the government, when they deliver a blow..."

MR. JUSTICE BEKKER :

That is organise, we have got to organise everywhere, that is the only way to defeat the government.

MR. VAN NIEKERK :

"I want you to organise everywhere, in houses, on mines, buses, in factories, so that you can unite. It is the only way to defeat the government,.."
that is organise. But then, after you organise, you must be prepared to give a blow, My Lord. That blow with submission does not refer only to organisation, but refers to a physical act, My Lord.

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Resha also said My Lords, "We are prepared to face bullets, atom bombs, for the cause of our freedom", and "So long as we live in this country we will not allow the fascist government in our country". He says : "We the oppressed people, are prepared to sacrifice with our bodies or blood if freedom should be achieved in that manner. We will organise everywhere..."

MR. JUSTICE RUMPF :

This reference here to sacrifice, blood, bullets, you say that is a reference to violence?

MR. VAN NIEKERK :

My Lord, if one reads the portion of Resha's speech referring to - that they are prepared to face bullets and atom bombs, and further down he says "We are prepared to sacrifice with our bodies or blood if freedom should be ..." My Lord, with respect the Crown submits that refers to violence.

MR. JUSTICE KENNEDY :

Violence against the constituted authority?

MR. JUSTICE RUMPF :

Your I is - your paragraph I is "Advocating Unconstitutional and illegal action, including the use of violence against the constituted authority", advocating that. Now you say that this is advocating violence against the government.

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE RUMPF :

How does it do so?

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MR. VAN NIEKERK :

Well, My Lord, if it does not - if it is not

MR. JUSTICE BEKKER :

I take it you see the point, "advocating violence against the constituted authority", not by the authorities. Not suggesting violence by the authorities, but advocating violence against the authorities. Now where do you read this in this extracts of yours?

MR. VAN NIEKERK :

With respect, the submission is that when there is reference to sacrifice of bodies and blood that will only mean that there will be a physical clash between the forces of the organisations and the forces of the government.

If one looks further down, it says "You will be told of what the second phase will be - be ready because nobody knows the day and the hour". My Lord, with respect, my submission is that that is a suggestion that they must be ready for something, and that something will lead to sacrifice of bodies and blood.

MR. JUSTICE KENNEDY :

How can we infer that? This is just the oft repeated theme, that we expect violence from the state because we constantly oppose them in our struggle for freedom, and in that struggle we are prepared to sacrifice our lives. How is that advocating violence against the state or the constituted authority?

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MR. VAN NIEKERK :

My Lord, I will not press that unduly.

Then I refer to the meeting of the Let
the People Speak Committee, where Hilda Watts said :
"The people must take mass action to remove this govern-
ment. The strength of the people is gathering - it is
like a stream growing in strength which action will
eventually destroy the nazis and fascists in this country.
Freedom is essential".

MR. JUSTICE KENNEDY :

Do you say that means violence?

MR. VAN NIEKERK :

My Lord, that is mass action, at least
unconstitutional action, My Lord.

MR. JUSTICE KENNEDY :

What is your contention on that?

MR. VAN NIEKERK :

My Lord, my contention is that this is an
incitement to people to take mass action against the
government, to destroy them.

MR. JUSTICE KENNEDY :

What do you classify it under?

MR. VAN NIEKERK :

With respect, My Lord, I will classify
that under violence, because it is mass action leading
to the destruction - my submission is that this is a
physical clash, My Lord.

MR. JUSTICE KENNEDY :

Well, I suppose the whole speech will have
to be considered because in this context it may mean

one thing or another, I don't know.

MR. VAN NIEKERK :

Then the next reference, My Lord, the 28th of February, 1954, African National Congress Alexandra, where Selepe said - we have dealt with this previously, My Lord, at the end, page 88, he says "No laws shall prevent Africans to fight for their freedom and if they take me you must come and take my position - as a soldier dies another one shall take over".

MR. JUSTICE KENNEDY :

Well, do you say that is violence also?

MR. VAN NIEKERK :

As Your Lordship pleases, taken in its natural meaning, My Lord.

MR. JUSTICE KENNEDY :

Advocating violence against the state?

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE KENNEDY :

Why?

MR. VAN NIEKERK :

My Lord, there has been reference to the soldiers, wolsiders whose work is to fight and my submission is that when a person talks about a soldier and a soldier dying, that can only refer to a battle field, My Lord, taken in its natural meaning.

MR. JUSTICE BEKKER :

We have had evidence that in the vernacular the word "die" is to be equated with sacrifice. When a man is sent to gaol, in a sense they say he is "dead", he

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is "out". Bearing that in mind, why must this be given its primary meaning?

MR. VAN NIEKERK :

My Lord, I can only submit then that where there must be sacrifice and people must die, when there is sacrifice and people must die, that it is - well, it refers to some either unconstitutional act in which the forces of the government will be forced to take violent action, and that would then be at least unconstitutional action, if not violent action against the constituted authority. In any case, My Lord, I can't take the matter further than that.

Then My Lord, on the 7th of March, 1956, where Nene says that the "time of the Nationalist..." - "Dr. Malan, where he is, he shivers.... The time of the Nationalist government is short." Motsele followed that up by saying that "The Europeans have shown us that they are our enemies. Unless there is blood flowing, the Europeans will always be on our necks". Then he goes on. My Lord : "They have been poking us for quite a time. If there is God, what have we done to be given the foreigners to play us fools. The clever Europeans from overseas will not close the gap. My last word is Africans, unite wherever you are, move to. Your blood will be the manure of freedom. Do not be cowards, be brave. We are sprking to you to come to the A.N.C. and fight for freedom". This is, My Lord followed by: "Prepare yourselves for secret meetings".

And then on the meeting of the 14th March, 1954, where Motsele said : "Freedom comes with the blood

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of somebody else. Be ready for your death". It is all the same, My Lord, that death and sweat wins freedom. "The manure of the tree of freedom is sweat and blood, so be ready for that day".

Further My Lord on the meeting of the 28th March, 1954, Motsela : "Death is for everyone, nobody will live forever. If you really want to live in freedom you must be ready to die. The way we have taken is the same as the one taken by the Dutch people in the Boer War". My Lord, the submission is that that refers to a physical clash.

The next, My Lord : "Congress has no colour bar and it will fight till it forms the government of the people by the people for the people. The Congress knows how it is going to do with the traitors. According to the white people a man who is a traitor to his land and people he can be charged by high treason, that is the death sentence. The resolution passed at Cape is Congress is against the removal of Western Areas".

MR. JUSTICE BEKKER :

This appears to be three separate topics that were discussed, because it seems to be out of context. Just proceed, Mr. van Niekerk.

MR. VAN NIEKERK :

On the 4th July, 1954, Selepe said : "The freedom you have to fight is yours, we have not stopped yet but we will fight and you must have solidarity to face the Dutchman with his rifle with your bare hands." And then he goes on : "We must fight the Nationalists in the sea, on the land and on the air".

"History repeats itself. The climate of South Africa does not suit the skin of the whites, therefore they must go".

MR. JUSTICE KENNEDY :

You say all those three extracts support your submission that there is an advocacy of violence against the state.

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE KENNEDY :

Why?

MR. VAN NIEKERK :

The first is that ...

MR. JUSTICE KENNEDY :

You have only got your bare hands, you must face the armed enemy, you must be prepared to die, that is the first one. The second one is surely the metaphorical use of the words?

MR. VAN NIEKERK :

The first one, My Lord, means that you must fight. "The freedom you have to fight is yours, we have not stopped yet but we will fight"

MR. JUSTICE RUMPF :

But surely it is metaphorical. It must be. Did the A.N.C. have a navy? And an air force? Surely this is metaphorical. It may not have been metaphorical when Churchill used words more or less in the same manner, but that was a different proposition.

MR. VAN NIEKERK :

As Your Lordship pleases. My Lord, the next

is a meeting of the 18th July. "So I want to tell you that the A.N.C. is at war with the government of South Africa. The A.N.C. is the opposition to the government. The Nationalist Government is real at war, ..."

MR. JUSTICE KENNEDY :

That obviously was a metaphorical use. Do you not think so? There was no war in South Africa in 1954.

MR. VAN NIEKERK :

No, My Lord, but it shows the mental element, that they are treating the constituted authority of enemies.

MR. JUSTICE KENNEDY :

So far as I know the evidence in this case hasn't disclosed anything else, that they were against the policies of the present government. What do you suggest this means then? Where do you put it in under paragraph I?

MR. VAN NIEKERK :

My Lord, with respect, my submission is that whenever there is a reference to war, I have taken it to mean, in ordinary language, that it refers to a physical clash between two parties, and unless Your Lordships feel that it should be construed metaphorically I can't take the matter further.

MR. JUSTICE RUMPEFF :

You should convince us or argue it that the word "war" in a particular context refers to a physical clash, as it may not necessarily mean that. We are not going to work out your argument, you have got

to argue that.

MR. VAN NIEKERK :

My Lord, I can't take it any further than that. There is Selepe's speech at the same meeting, he says that "There is still time to check Malan...." "Not Liberal or United Party but African National Congress. Only Malan will not be free unless Africans are liberated they will not rest". My Lord, this with respect refers to unconstitutional action, or it envisages unconstitutional action.

MR. JUSTICE RUMPF :

Why does this refer to unconstitutional action? What does this refer to? This first portion that you referred us to.

MR. VAN NIEKERK :

My Lord, this, according to the text on page 38 says that Selepe spoke against the Western Areas and then stated "There is still time to check Malan. Malan is so bad to us because he sees the end of the road".

MR. JUSTICE RUMPF :

We have that in front of us. We just want to know, to what unconstitutional action does that refer?

MR. VAN NIEKERK :

My Lord, my submission is with respect that what this speaker here envisaged was that they will not be freed by any of the recognised political parties in the country, and therefore they will have to resort to action other than constitutional action.

MR. JUSTICE RUMPF :

Where does that appear in this extract?

MR. VAN NIEKERK :

My Lord, I ask the Court to infer that from the words used.

MR. JUSTICE BEKKER :

First explain to me, the words used, what do they mean? There is still time to check Malan. That I follow. What does this mean : "Malan is so bad to us because he sees the end of the road". What does that mean in your submission?

MR. VAN NIEKERK :

My Lord, if one takes that with the last portion of his speech, "You have to remove Malan out of this country, you - He will travel the same/^{way}which travelled by Hitler".

MR. JUSTICE BEKKER :

That still does not explain to me what - "Malan is so bad to us because he sees the end of the road". What road?

MR. VAN NIEKERK :

I don't know what that means, My Lord.

MR. JUSTICE BEKKER :

Right. Full stop. "Not Liberal or United Party but A.N.C." What does that mean?

MR. VAN NIEKERK :

My Lord, my submission is that they say that not the Liberal or the United Party will form the next government, after Malan has been , but the African National Congress will form the government.

MR. JUSTICE BEKKER :

Where do you get hold of that?

MR. JUSTICE RUMPF :

Why can't it mean you must pin your hopes on the A.N.C., not on the United Party or the Liberal Party for any improvement in the position of the non-Whites in this country.

MR. VAN NILKERK :

My Lord, I think that is a possible explanation. I ask Your Lordship to delete that whole section, My Lord. It is at this meeting, My Lord, where Makiwane referred to "All over the world weread of revolutions, these people have shown us the way". At the top of page 92 : "They - There are preparations being made for the Western Areas. Volunteer corps are prepared. The Congress has appealed to youths to fight against the Bantu Education". Further on : "It is better for a man to die standing than to die sitting down."

At the meeting of the 24th April, 1956, - at the meeting of the 22nd April, 1956, Hadebe says : "We have come here to discuss the shedding of the blood of Africans throughout the Union in the four provinces. Those who read the newspapers have heard how in the Cape an African was shot dead by the police. He was shot dead by the police as an attempt to intimidate other Africans not to attend their public meetings. Thousands of people were present at the funeral to demonstrate the determination in the march towards African liberation. In some other places Africans were also shot by these Dutch policemen, but today we want to show these

Dutch people that we have come to a very important stage in our struggle when we fear neither gaol nor death. These Dutch people were not satisfied with robbing us of our land they also want to waste our blood, but now we are determined to go into gaol and die for our rights. They have done a good job with the poisoning of our children's mentalities through the Bantu Education Act and today they want to test our patience by shooting us. But we do not care for bull's and if they want to see a good repetition of the Defiance Campaign in a more violent manner they should just continue with their murderous actions. Therefore, fellow Africans, you should know just that only enemy of ours and the Dutch people who robbed us of our land and all our rights and who today are disposing of our lives. Even the Detectives who are writing here for the Europeans, helping them as it were, will be kicked in the back tomorrow. We warn these detectives that one day they will answer for the death of the Africans who died for demanding their freedom and their natural rights. Hence I say the day of reckoning is nigh when we shall ask these detectives certain questions regarding the Africans who lost their lives in their fight for liberation." And then My Lord there is this reference, the meeting of the 21st May, 1955, "I take you all to be soldiers of liberation and soldiers do not waste much time, because their existence is to fight".

Then My Lord, on the 18th September, 1955, we have the Freedom Charter Committee meeting. There are the speeches of Hutchinson and Sejake. I don't

think it is necessary, My Lord, to deal with that again. It has been dealt with over and over again. Also the speech of one Ngoyi and Resha, and then on page 97, My Lord, there is the meeting of the Congress of the People Anniversary meeting at Kliptown on the 24th June, 1956. This has also been dealt with fully, My Lord. Luthuli refers in his message to the "supreme sacrifice", and Ngoyi says "an exploiters' grave is not known." The unknown speaker said that the people must be prepared to make the supreme sacrifice, My Lord.

MR. JUSTICE RUMPF :

Now do you say that this message of Luthuli advocates violent action against the authorities?

MR. VAN NIEKERK :

My Lord, it really praises persons who have died - what I understood by the supreme sacrifice is persons who have died defending their country in war. But this is really followed up by the speaker on the Eastern Cape on the next page ...

MR. JUSTICE RUMPF :

I am concerned really about this piece only at the moment. In your submission this extract of the speech advocates unconstitutional, illegal or violent action.

MR. VAN NIEKERK :

With respect, My Lord, my submission is that these people are set up as examples to the audience. This is the type of example you must follow. You must be prepared to make the supreme sacrifice.

MR. JUSTICE BEKKER :

I think the difficulty arises this way, Mr. van Niekerk. We have had a lot of evidence where the Defence witnesses, especially Luthuli, and Professor Murray and the Accused, have said admittedly we said these things; admittedly we talked about bloodshed; supreme sacrifice. Because, when we embark on this type of action we must be prepared to face opposition from the government, and this government stops at nothing, so we have got to warn the people - I think Luthuli used the words, that they are not in for a picnic. They must expect bloodshed, they must expect to pay the supreme sacrifice. Now that is the evidence, rightly or wrongly, there it is. If that is evidence which might be proved, then one must look at these speeches, I suppose, in the light of that explanation, and if that is so, then the question arises, why, unless you can point to the speech itself, why should it be taken in its primary rather than its secondary meaning, in the light of that explanation? It may be that in a speech there is other material which justifies you to say well, whatever explanation may have been advanced, the words in this speech carry the primary meaning, no other meaning. Now if one looks at the speeches in that light, then I think one would probably be in a position to sort out the speeches and say well, this may be, in terms of that explanation this one isn't. That is where I think the difficulty arises.

MR. JUSTICE RUMPF :

Mr. van Niekerk, who is going to deal with

Luthuli?

MR. VAN NIEKERK :

Mr. Trengove, My Lord.

MR. JUSTICE RUMPF :

Will he make a submission on this speech that this advocates violence?

MR. VAN NIEKERK :

I don't know, My Lord.

MR. JUSTICE RUMPF :

What must we do? Assume he deals with this speech and he puts some other construction on this, what must we do? It is a bit awkward for us. You see, where an extract is given, and subject to the criticism that may be levelled against the reporter, the extract might be construed, not unreasonably, as referring to some acts of violence against the authorities, not by the authorities, then one's attention should be drawn to that. I don't say there aren't such passages, I don't say that. But here you quote to us a passage and you say that this passage advocates unconstitutional action or violence. Now I just want to know what you say it advocates. Violence or unconstitutional action?

MR. VAN NIEKERK :

My Lord, I will submit then that it advocates unconstitutional action.

MR. JUSTICE RUMPF :

Unconstitutional action, such action as will force the government to take violent steps to enforce order or to enforce its will.

MR. VAN NIEKERK :

Such action as will force the government to take violent steps to enforce order and to enforce its will.

MR. JUSTICE RUMPF :

Well then, that is not violence - violent acts against the authorities. They didn't advocate that.

MR. VAN NIEKERK :

Wel...

MR. JUSTICE RUMPF :

Well, you must distinguish between that, that is a very material distinction.

MR. VAN NIEKERK :

My Lord, that concludes the argument on the speeches. Page 100 to 109 is a recapitulation - it is really a duplication of what I have just dealt with, My Lord.

MR. JUSTICE KENNEDY :

Don't think - don't you think, Mr. van Niekerk, that (b) on page 98 should come out? It just says that those people who try to exploit others throughout the history of the world as slaves...

MR. VAN NIEKERK :

It draws an example, with respect, between the people of Russia, Chang-kai-Shek, China, Hitler and the present government, My Lord.

MR. JUSTICE KENNEDY :

Well, it refers to them as exploiters and oppressors. They say all those people who have tried to oppress others during the history of the world have

ended up in unknown graves. What do you suggest it means?

MR. VAN NIEKERK :

I was under the impression, My Lord, that the present rulers will ...

MR. JUSTICE RUMPF :

Will in the course of history disappear.

MR. VAN NIEKERK :

Not in the course of history, My Lord, in physical clashes.

MR. JUSTICE RUMPF :

Well, where do you get that?

MR. VAN NIEKERK :

Well.....

MR. JUSTICE RUMPF :

Well, is this advocating violence?

MR. VAN NIEKERK :

My Lord, I was under the impression that this advocated violence.

MR. JUSTICE RUMPF :

Are you submitting that this advocates violence against the state?

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE RUMPF :

Where does it advocate violence?

MR. VAN NIEKERK :

My Lord, when the speaker refers to the Czar in Russia tried to kill the workers of Russia, we know that in Russia there was a revolution, a violent

23016.

revolution; It says In China Chang kai Shek ...

MR. JUSTICE RUMPF :

9 Wait a minute. What do we know about Pharoah trying to kill the Israelites? Was there a violent revolution?

MR. VAN NIEKERK :

No, My Lord.

MR. JUSTICE KENNEDY :

And aren't the Israelites supposed to have escaped Pharoah's wrath? Wasn't there the exodus? Well, then, doesn't this just mean that those who have tried to exploit and oppress throughout the history of the world have failed. That is all it means. Pharoah failed, the Czar failed, Chang Kai Shek failed, Hitler failed, everybody failed. That is all it means. Do you want this to stand?

MR. VAN NIEKERK :

I ask Your Lordship to delete it.

MR. JUSTICE KENNEDY :

It seems to me that the whole tenor of what you have reported under the meeting of the 24th June, 1956, is a day of commemoration for those who have died in the struggle for freedom. Is it your contention that all the extracts, (a), (b), - (b) is now out - (a), (c), and (d) advocate violence against the state? Because if so, I would be obliged if you would refer in detail to the evidence to support your submission.

MR. VAN NIEKERK :

My Lord, as regards Sibande's speech, when he says we have tried, we have spoken in many languages

and these languages never gained any fruit. We have tried by all means that the people must understand. We have spoken in all languages so that the people can understand. If these people fail to understand those languages we are marching forward to freedom. There is nothing that can stand before us. Even if our eyes are being shut, freedom is ours. Fellow Africans, prepare yourselves for freedom. If you yourselves do not rededicate yourselves there is nobody that can reinforce you. The only thing to do is that everybody must be prepared day and night. If we are prepared there is nothing that will stand before us".

MR. JUSTICE KENNEDY :

Well, can that not possibly and reasonably be, be staunch in your stand and if you are nothing will stop us.

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE KENNEDY :

And the next extract following immediately below that is the same, we dedicate ourselves. And is (d) not the same?

MR. VAN NIEKERK :

My submission is, My Lord, that (d) is really with respect in a different category to (b) and (c) My Lord. Here the person says : "We African people must be prepared to make the supreme sacrifice". So they must be prepared to be placed in a position where they will be killed.

MR. JUSTICE KENNEDY :

My difficulty, Mr. van Niekerk, is that

this doesn't seem to support your submission that it advocates violence, presumably by the people concerned against the state. Where does that emerge from? You must be prepared to be shot, they have said that a thousand times. We will be shot in defence of our rights.

MR. VAN NIEKERK :

My Lord, this is at some stage of affairs where the state will have to enforce its will...

MR. JUSTICE KENNEDY :

Unconstitutional - well, it may fall into that category, I don't know.

MR. JUSTICE RUMPF :

You want us to go through these now afterwards and then we must try and find out where to fit in each passage under your submission. You must tell us. We can't do that. We can't try and find out what you really intend. You must tell us. I have told you there is a very material difference between a suggestion that some speaker advocates violence against the state, that is the very clear suggestion by you - and the suggestion that he was advocating action which might lead to the state committing violence. That is quite a different thing. How do we know what you mean if you don't tell us. Your submission in paragraph I is a plain submission. You say unconstitutional, illegal, including the use of violence against the constituted authority. Now some of these extracts may or may not constitute advocacy of unconstitutional acts, but some of them certainly do not constitute advocacy of violence

against the authorities. Now we have got to go carefully through every one of these to try and find out what was the meaning really. You must tell us. When you are quoting an extract, you must be able to say I quote this, because I say this is an advocacy of unconstitutional action which may lead to violence by the state to protect itself. This particular extract is a clear suggestion of violence by the masses against the authorities, or inferentially I say that and that, and then we can mark it and go on.

MR. VAN NIEKERK :

My Lord, then my submission is that this (d) will be in the category of unconstitutional action which might lead to some violence by the state.

My Lord, I then proceed to page 110 of the argument, where it is stated that the Accused Nene attended the Conference known as the Congress of the People, that is overt act No. 2, at Kliptown, Johannesburg on the 25th and 26th June, 1955. There is the evidence that he attended the Congress on the 25th by Madyuta and Sharp; on the 26th June by Madyuta, Moeller, Sharp, Masilele and Strachan; and that he was identified by these various witnesses.

My Lord, then on page 111, the final submission, that if the Court accepts the above submissions then the Crown does not rely on the overt acts nos. 3, 4, 5 and 6 laid against the Accused ...

MR. JUSTICE BEKKER :

Do you put that on a conditional basis?

MR. VAN NIEKERK :

No, My Lord.

MR. JUSTICE BEKKER :

If the Court accepts, then you don't rely.
What if the Court doesn't accept? Then do you rely on
3, 4, 5 and 6?

MR. VAN NIEKERK :

Well, I will put it this way, that the
Crown does not rely on the other overt acts, My Lords.
The Crown therefore respectfully submits that this
Accused is guilty of treason and - in that he committed
the undermentioned overt acts, the conspiracy as
alleged and his attendance at the Congress of the People.

That concludes the whole argument on
the Accused Nene, My Lord.

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