

people used violence methods because those methods are forced upon them by the oppressor? --- My Lords, it is very hard to give a round answer on behalf of the organisation. I am only a member of the organisation, but not the ruling power in the organisation. I may lack knowledge at this stage concerning that question".

And then it is put to him that he was one of the people used at public meetings to expound their policy, and then he gets out of that by saying - it is put to him;

"Not only you, but many other speakers used to refer to liberatory struggles in these various countries, particularly Kenya? --- I say My Lords, that was me taking it on my own. I was never instructed officially by the A.N.C. office to do so."

Now Your Lordships are not going to find, we submit, that his speeches and his references to Kenya were frolics of his own. He was busy expounding what he knew and believed A.N.C. policy to be.

Then My Lords, at page 12, on being asked whether it was not a fact that he, Ntsangani, Mayekiso, and Ndinba used to refer to liberatory struggles in countries such as Kenya, he said he did so on his own. Then My Lords, we make a submission and we have further references. It is put to him :

"I am not asking whether you were ordered. The things that you said about these countries, were they consistent with the views held by the African National Congress as an organisation? --- They were not in line with the A.N.C. organisation". And then, My Lords, that

matter has to be canvassed.

"What was the difference between the views that your propagated about these liberatory struggles and those held by the A.N.C. as an organisation? --- Well, the African National Congress, as it stands, it stands for non-violence, and I was always speaking for myself, now at this stage, making certain references concerning what is happening in Kenya, giving the light to the people that was bad. I never appreciated what was happening in Kenya, I never agreed with it. But I 'used to blame the authorities." Then My Lord, there is a long explanation, Your Lordship will see at the bottom of that page, about twelve lines from the bottom, he gives an explanation and that is why perhaps there are people called so-called Mau-Maus, because the people ran to safeguard themselves from the arrest of the police, and hid in mountains, and police might have been instructed to go and hunt for them, because now they became whilst there they get no food, they eat cattle belonging to people and sheep belonging to people, to maintain their lives. And then there is a long explanation of what happened when the people ran to the mountains. And then at the top of page 13, My Lords, the end of the first paragraph, he is pressed on that, My Lords, and he is asked :

"Now the only thing I want from you is what is the difference between the view that you held and the view of the African National Congress? --- My Lords, I said I do not know - I do not recall exactly the view of the African National Congress on this aspect".

That is Kenya. I ask Your Lordships to reject that, it is dealt with fully by Luthuli at least in N.R.M. 11, and many other documents in the Eastern Cape.

So My Lords, then there is a question by His Lordship Mr. Justice Kennedy, in which he eventually agreed, My Lords, that they condemned the people who got control of the country, and they are the people who should rather submit and give the oppressed what they want instead of resisting their aims.

And then My Lords, at the top of page 14, he is asked about Luthuli's speech, that portion of the speech is quoted to him, the third paragraph from the top, the revolt in Kenya is no doubt prompted by the legitimate aspirations of the African people, and he says must those people must be given is their freedom, not bombing and shooting, and he is asked whether he agrees with the statement and he says yes, he agrees. And it was also his attitude, the fault lay with the governing authorities because they used force to maintain law and order. And then My Lords, that matter is canvassed about Kenya, he repeats at the bottom of that page, his version of the people going to the forests, and then being called Mau-Mau, and then he says at page 15, he got all his knowledge not only from the Eastern Province Herald but from speakers on platforms. And then he is asked to give the names of speakers where he got this information from on A.N.C. platforms, and he can't give that, My Lords. And My Lords we quote a number of passages there also dealing with other struggles, and My Lords, I don't want to

weary Your Lordships with that, but I say that his evidence is entirely unsatisfactory, and Your Lordships will not accept that he knew as little as he professed to know.

We deal fourthly with his attitude towards the present state.

COURT ADJOURNS.

COURT RESUMES.

MR. TRENGOVE :

My Lords, I came to page 19 of this Summary, his attitude towards the state. My Lords, Your Lordships will see in the first paragraph (a) there what was put to him was Dr. Mji's opening address, Exhibit C.M. 34.

MR. JUSTICE BEKKER :

Is that also A.37?

MR. TRENGOVE :

No, My Lords, A.37 is the 1954 African National Congress Report. C.M.34 is the Report of a speech inter alia - a speech made by Dr. Mji at a Cape Conference in February, 1953. C.M.34 Your Lordships will remember the passage which has often been quoted is the one where the Liberals were referred to as belly crawling amphibians, that speech of Dr. Mji. In any event, Dr. Mji in the course of his Address pointed out that the struggle in this country was one between the haves and the have nots, and Dr. Mji also made the point that as the struggle of the have nots progresses, the haves become more vicious and sadistic in their

attempt to crush the movement of the oppressed people. Now that position was accepted by Nkalipi, he says he agrees with that, he accepted that position, and he also accepted that the haves are the big farmers and the Nationalist Party and the industrialists in the United Party, who are allies in an attempt to keep the people in a state of oppression. The next matter, My Lords, that was put to him, was Luthuli's Address, N.R.M. 11 which he had in his possession, as S.N. 5, and he was asked whether he agreed with this chapter where Luthuli says the Union of South Africa is becoming a fascist state. And his evidence, My Lord, is - he is asked if he also regarded the Union as a fascist state, and he says "I don't know what the meaning of the word fascist was". Questioned by the Court as to whether he heard the expression at meetings, he says "My Lords, I never heard it in Xosa, I have heard it used in English, and once it is used I don't know where I am, I am lost, I am at sea". My Lords, he said he never enquired what it meant, because it never came to his mind. And there, My Lords, I also ask Your Lordships to find that Nkalipi was being much too modest, he had this report in his possession, he used inter alia this report for purposes of telling people what the policy was, and My Lords, he would have known very well if his President-General talks about the Union becoming a fascist state, he would know very well what that means. At a later stage in the evidence it was suggested to him that he accepted that a violent clash with the state was inevitable. It was pointed out that

he previous conceded that they accepted that as their struggle progressed the ferocity with which the state would hit back would grow worse. He suggested - he rejected the suggestion, saying that he thought the government was composed of people who could think. It is respectfully submitted, My Lords, that the evidence on this matter is also contradictory, unsatisfactory and evasive. And My Lords, we quote the passages there. Just the second passage, My Lords, where the matter was referred to, His Lordship Mr. Justice Kennedy asks him: "Was that your view, that the government would turn, would change its mind, and if so, when was that your view? --- All the time, ever since I was in this campaign." And then it is put to him: "I was under the impression, correct me if I am wrong, that this morning you said that the African National Congress accepted in 1955 that the oppressor would get more brutal and that according to you the risk of being shot by the police would be increased? --- No, My Lords, I do not recall that". My Lords, that is in fact what he said at page 15681 to 15682. He did say that the oppression would increase, and that matter is then dealt with, My Lords. Then he tries to get out of it. He says, "I quoted you the speech of Dr. Mji, I quoted the 1955 report of the Conference at Korsten, where the whole attitude of your organisation, to which you this morning said you subscribed, the whole attitude was that the government would become more brutal and more sadistic as your struggle progressed? --- That was my belief, I was telling you now of my own belief".

"Did you in this respect differ from the official attitude of the African National Congress? --- It can be so".

He is pressed, and he says : "My Lords, it is difficult to say what the views or the intentions of a man was with the people, and people won't (?) have no discussion".

And that matter is then further canvassed with him, and My Lords, ultimately he concedes - Your Lordship the Presiding Judge said "I think the question was this. Was the opinion amongst members generally that - in the African National Congress that as the struggle continued and extended, to that extent the government would try to suppress the African National Congress and its allies, and that the fight would become more bitter, bitter and more bitter. Was that the view of the A.N.C. members? --- Yes, I think so".

"And from speeches you heard? --- Yes, My Lord, but I did not take it that it would become bitter, blood would flow as through there was a war".

My Lords, he was present at the meeting of the A.N.C. Cape Provincial Conference in June, 1955, where he testified in his evidence that Exhibit A.17, which was the Report by Tshunungwa, where that report was read and approved. And Your Lordships will remember that Report, Exhibit A.17, states that they - their attitude to the government is that they are poising a cudgel over their heads, and that Report says there are two groups of people. Those that are prepared to submit to the - I am using my own words - to the tyranny of the government, and on the other hand those people that are prepared to sacrifice with their blood - Your Lordships will remember that the example of

the Son of God is used in that connection, and how that particular passage of the report ends, "as for us, give us freedom or give us death", That Report then proceeds to deal with the way in which the African National Congress had resisted the government, referred to yesterday, inter alia, the Witzieshoek disaster where people were killed.

My Lords, I say Your Lordships will not accept the position this witness testifies to, that he never thought that actually even the government in its viciousness would go to the extent of blood flowing. That was their attitude, and Your Lordship will find that he knew and ascribed to that attitude.

Then we deal with the Freedom Charter, and My Lords, we submit that the evidence shows clearly that he accepted the Freedom Charter, he supported the aims of it, and he realised that radical changes would have to take place before - if the Charter was to be implemented. We give his evidence in chief there, My Lords, and on the next page 23, we give a summary of what he said under cross-examination and he accepted the position - he knew that the Freedom Charter involved big changes insofar as franchise and the division of the land, monopoly industries, mineral wealth are concerned. My Lords, paragraph 6, the unconstitutional struggle. He accepted the 1949 Programme of Action and the methods of struggle set forth therein, and he accepted that the Freedom Charter would be implemented by unconstitutional struggle, such as boycotts, resistance movements, strikes on a mass scale. It is

submitted, My Lord, that he appreciated that such action would result in bloodshed, because it was directed against a brutal government. In cross-examination he was referred to Luthuli's Presidential Address, which deals with the way in which they were going to achieve their aims, and it deals with the way in which their disabilities were going to be removed, and he says, he subsequently got the Address and the resolutions. Then My Lord, arising out of that certain matters are put to him, which are set forth in subparagraph (i) and (ii). At the top of page 25, - he agreed with the statement at page 12 of the Report under the heading, How Will These Disabilities be Removed. Your Lordships will remember that paragraph says, "Certainly not as some people fondly and foolishly believe that it will be by the voluntary benevolence of the White man. These disabilities will only be removed, as happened with other people in other lands, all through the ages to our day, by the united struggle of the oppressed people themselves to exert pressure on the rulers to grant freedom." Your Lordships remember that passage. Now that is dealt with, and although he pleaded that he didn't quite understand what Luthuli had in mind, he didn't know what the expression "ages up to the present day" really involved, and he probably would have understood, he said, if the names of the countries had been mentioned. My Lords, may I just quote to Your Lordships paragraph - the paragraph on page 15671 in this connection. This is My Lords, just after he said that he is at sea when he is asked - when

he comes across the words fascist state. And then at 15671 he is referred to the passage where Luthuli refers to the imperialist forces over the world oppressing the people, and he is asked, My Lords, on this Report, it is put to him: "Chief Luthuli is here dealing with Africa and the rest of the world. Now who are the freedom forces outside South Africa, in Africa and the rest of the world, that Chief Luthuli is referring to? --- Chief Luthuli alone can answer that".

"You did not know what he was referring to when you read this speech? --- No, I did not".

"You see, he goes on and talks of countries in the grip of imperialistic powers of Europe. Do you know who the imperialistic powers of Europe are? --- I cannot say, I know which are those races".

"It is put to him, Soviet Russia? --- I do not know".

"You don't know what that means? --- I only know that is the Russian government, that is all".

"Then Chief Luthuli concludes his speech on page 12 of this document under the heading How Will These Disabilities be Removed," and he is referring to the land question, the economic and political restriction on African people, and he said "Certainly not as some foolishly think that it will be by the voluntary benevolence of the White man", and that he agrees with. And then the passage is put to him that the disabilities will only be removed as in other lands, and he is asked whether he accepts that and he says "I hear what he says or what he is saying now, but I do not know what Luthuli had in his mind, and I do not know of the ages up to the present

day. I would probably understand if he quoted the countries, mentioning their names".

"Nkalipi there is quite a lot in this document you say you don't understand? --- Yes".

"And this is a speech by your President-General which is in your possession? --- Yes, that is so".

"And you accept a speech like this as a policy making speech, explaining policy? --- Yes, I accept that".

"And you as chairman of your branch must convey this policy to your people? --- Yes, that is so".

"Did you ever make any enquiries from your co-executive members as to what the President-General meant when he made these statements in his address? --- I never made any such enquiries".

"Why not? --- Because I personally found nothing wrong in that speech."

"But you say you don't understand the speech? --- I don't understand it altogether. I said in regard to the last portion, I said I would understand it if he mentions the places, because I had names that I associated it with, and he could have meant those when he delivered that speech. Places like Egypt, India and Ghana and some other places where they have been liberated, where people never took up arms and went to the Whites (?)."

"Nkalipi, I put to you that you are misrepresenting the position and that there are crucial passages in this speech that you didn't understand. You say you don't know what a fascist state is, you don't know what he refers to when he refers to the imperialist countries of Europe, you don't know what he means when he refers

to the forces of freedom in the world, you don't know what unequivocally means, and what in our lifetime and not in infinity means, you don't know what countries he is referring to. Why did you not ask someone to explain these things to you? I am putting it to you that you didn't ask them to explain because you knew full well what the speech and the words meant? --- I don't agree with that, that I know full well, because I interpret the speech in my own way".

Then he is asked, "When - well if you do interpret it in your own way, how did you interpret fascist state? --- Just because there is fascist state, that is why I put that aside. I do not understand the whole speech too well because there is no such word in Xosa".

And then he is asked how he did understand it, and then he says "Well, I have seen the word in papers during the war when the Italian government was called by that name".

My Lords, we ask Your Lordships not to accept that type of explanation from the witness.

Then My Lords, Accused [?] 17 was also questioned on the A.N.C. Cape Conference at Korsten which he attended, Exhibit A.17, and that My Lords is that document to which I just referred just now. He remembers the Minutes of the 1954 Cape Provincial Conference, which were presented and approved, and he also remembers that the Secretarial Report was presented. That is the Secretarial Report which says give us freedom or give us death. Passages from that report are then dealt with My Lords. My Lords, we quote the passages here, and then

My Lords, I don't want to deal with then fully, that whole question of supreme sacrifice has been dealt with, My Lord, and at the bottom of page 26, My Lord, we refer to that passage : "Do you see the heading there at the top of page 2, just after this quotation, 'give us freedom in our lifetime or give us death'? --- Yes." "Now you can read through the general survey when you have time. I just want to put it to you, based on the survey, that in 1955 the attitude of the African National Congress was that the oppressor in this country was becoming even more brutal and even more vicious as time went on", and he agrees with that, and at the top of page 27 it says : "And that the risk of death for the oppressed people was becoming greater and greater," and My Lords, he says that that can be so. I ask Your Lordships to accept that there is no difference between his view and that view of the African National Congress. It is not that he thought that the government would change, whereas the African National Congress would not change. I ask Your Lordships to find that he subscribed to the view that the government was, as time was progressing, as the struggle was progressing, the action would become more brutal and more vicious.

MR. JUSTICE BEKKER :

Here in the witness box or at the time?

MR. TRINGOVE :

At the time.

MR. JUSTICE BEKKER :

This passage,....

MR. TRINGOVE :

My Lords, I say at the time, because he

policy of
knew exactly what the/African National Congress is, he propagated that. To suggest that he had another view on this matter, My Lords, that is a fantastic suggestion. He may have subsequently changed his mind, but certainly not during the period of the Indictment.

Accused 23 accepted that the implementation of the Freedom Charter would be achieved by unconstitutional and extra-parliamentary action, we repeat that, My Lords, and we refer to the evidence. Now My Lords, just one or two paragraphs again to show what his attitude is. "Now the African National Congress, although it started off with the defiance of a few volunteers, envisaged that there would ultimately be a mass defiance of laws, a defiance by the masses of the African people to those unjust laws, is that not so? --- I have never heard that before, but I am not prepared to dispute it". My Lord, is it probable that this man is speaking the truth? When he took that leading part in the Defiance Campaign during 1952, to say that he didn't know that the ultimate object was a mass campaign. But whatever it may be, My Lord, he agrees with it, even if it was a mass campaign, he would nevertheless have supported it. "Do you agree that if people on a mass scale defy the laws of the state, then it would hinder and hamper the state in the enforcement and application of those laws? --- Yes, I accept that position". Then My Lords, he agrees that the police and the army - he said that it can be that the army would also be called in to enforce the laws, and it is put to him at the top of page 28 : "If the police are called out to enforce laws against people who defy them, that would create a situation

which is dangerous to the security of the state? ---
 It could be, I don't know". And then My Lords he
 quotes the example of Pharoah and his persecution of
 people, and in the middle of that page, My Lords, it
 is significance, Your Lordship will see it is the same
 phrase that Ntsangani used to describe a fascist state,
 and he used it quite spontaneously : "And you say the
 state would not be entitled to enforce - to use force,
 in those circumstances to maintain the safety and
 security of the state? --- Let me answer that like this.
 The question is being put to me now here, this question
 is surprising me, that I, taking no part in the making
 of the law that governs this country, that it becomes
 an offence if I protest. That is why I said that the
 government who comes like that, I would call it a
 brutal elephant. Then if that government is like that,
 then he is like that, we cannot help it."

"And if you don't want to do what the brutal elephant
 tells you to do, what will happen? Will he tramp on
 you? --- Yes, he will tramp on me." And he continues :
 "So if he will trample me, I think God will someday,
 because this is what He said,", and he refers to the
 Scriptures, "even your blood will be ^{leaked ?} licked (?) the
 same way. That is my belief under the government,
 under this type of government that Counsel for the
 Crown is mentioning."

"Who is going to lick the blood of the government of
 the day? --- We are speaking about the elephant, that
 it can tramp on me, because of my right, that is my
 right, that elephant does not want me to get, so will

- so God will answer in that respect one day, someday that I am expecting". And then, My Lords, we continue dealing with that subject on page 29.

My Lords, I respectfully submit that this attitude supports the submission that I made that he did take up - his attitude towards the state was that it would use force to maintain law and order against those that were defiantly breaking law and disturbing order.

Accused 23 was also questioned on his views as to the possible effect of a strike on a mass scale. He agreed that - I am sorry, My Lords, that should be "the working class", - that it would bring the working people and the ruling class up against each other. He also conceded that if it is a nation wide strike, it would affect commerce, industry, transport and other matters vital to the state. He also conceded that if the state were to intervene it would make use of the police and the army to break the strike. When first questioned he was not prepared to concede that he knew that if that happened there was also always the possibility that the masses might retaliate. When pressed he conceded the possibility, but he said that he did not have that in mind. It is respectfully submitted that having regard to his political activities, his training and his experience, he was aware that in a nation wide strike on a mass scale, it could result in a violent conflict. My Lords, there is no group of people in this country who are more aware of the fact that the masses might retaliate, if brought

into conflict with the armed forces of the state, than the people at Port Elizabeth. The 1952 incident is an example, My Lords, of what happened, not if masses of people are brought into contact with the state, but if two policemen or one policeman arrest two men for stealing a tin of paint. That, and it has been an explosive situation, created by friction between the masses and the state, gives rise to a riot which they themselves say subsequently - the effect of that spreads to East London and Kimberley. If any group of people know, My Lords, the consequences of creating that type of atmosphere, these people from Port Elizabeth know that, including Nkalipi.

Now My Lords, we deal with his evidence on this aspect, at page 31 and 32, and My Lords, his statement at page 32 that that isn't what he had in mind does not excuse him, My Lords, that is what he reasonably foresaw. He admits, at page 32, at the bottom, that they would keep on with this type of action, defiance, resistance, strike action, until ultimately the government of the day gave in. He said yes. "You didn't expect them to give in voluntarily, you would have to force them into that position? --- They are suppressing the conditions of trade (?)", and then he tries to get away, My Lords, on economic boycotts. My Lords, on the issue of economic boycotts, the Defence made a great issue of that as far as the Eastern Cape was concerned. Many speeches refer to economic boycotts, but My Lords, the economic boycotts in the Eastern Cape were never embarked upon as part of

the campaign to bring the government to its knees. In the Eastern Cape, in Port Elizabeth, they were boycotts of certain shops in the Port Elizabeth area in order to get better service for the Africans. But as a campaign on a nation wide scale, boycotts, economic boycotts were not embarked upon by the African National Congress. As far as the national campaigns were concerned, the Eastern Cape supported Western Areas, Bantu Education and passes, together with the other people in the African National Congress.

Then My Lords, at page 33, dealing with what we say is relevant to the consequences of mass action, illegal mass action against the state, we make the point in paragraph (c) - in this connection it is respectfully pointed out that although Accused 23 professed to know very little about the 1952 riots in Port Elizabeth, where masses retaliated violently against authority, that is our submission, he knew about the riots, he knew that buildings had been burnt down, he heard that property had been damaged and that cars had been overturned and burnt by the rioters, and we quote his evidence there. His point is, My Lord, he didn't know who the people were who did the shooting, the burning and the rioting.

The Western Areas Campaign, M¹ Lord, we submit that he knew of this campaign, he supported the attitude of the African National Congress. He accepted that people would not move except at the point of a gun, he accepted that armed police, armed soldiers would be used to force the people out of their homes, he accepted that according to law people had to move. He supported their

resistance to the enforcement of law, it being one of their forms of struggle. And he accepted that if one resists the law of the government, which he describes as a brutal elephant, it will tramp on him. We deal, My Lord...

MR. JUSTICE BEKKER :

Did he accept these things at the time of the campaign or did he accept it here in the witness box?

MR. TRENGOVE :

My Lords, he accepted them at the time of the campaign. My Lords, I can analyse his evidence.

MR. JUSTICE BEKKER :

There would be a difference, I suppose, if the witness says well, I didn't know it at the time, but now that I see certain things here I agree with you.

MR. TRENGOVE :

My Lords, his evidence as at this date, could be confirmation of his state of mind during the period of the Indictment. For instance, My Lords, assuming that he said - assuming for the moment that they had a campaign to resort to violence, say in some area in the Transvaal, violent resistance. It is put to him now, he says I didn't know about it, but if I had known about it, I would have agreed with it. That is evidence against him as to his state of mind at that stage. He says if I had known about it, I would have agreed with it. It is not evidence as to his state of mind now, but evidence as to his state of mind at that stage, and it is evidence against him - it depends on his answer, My Lord. My Lord, could I just quote to Your Lordship this example at the

top of page 35, where this article from New Age on the Western Areas is put to him...

MR. JUSTICE RUMPF :

On this issue of the time question, page 36, the question was put on that page, and the answer seems to indicate that part of it at least concerns the time of the occurrence.

MR. TRENKOV :

Yes, My Lord, in this first paragraph too, My Lords, his reference - that article put to him from New Age, about Nats. Creating an Explosive Situation, the first paragraph at page 35, he says well, "I would not support that because I would not have been in Johannesburg, but spiritually yes, I would." He now says he would have. My Lords, at the bottom of page 36, there he says - it is put to him : "Is it correct that in any event you did expect either armed police or armed soldiers to force them to go out? --- Yes". My Lords, I respectfully submit that his evidence on the Western Areas, the passages quoted here, show My Lords that at the time he realised what was involved, and he fully supported the attitude of the African National Congress. My Lords, as I said, in Port Elizabeth, and with his experience in 1952, he perhaps realised even better than the people in the Western Areas, how a conflagration could start if you bring not two people in touch with two police, but if you bring a mass of people up against a mass of police. He must accept full responsibility for that campaign, My Lords

My Lords, we deal, at page 40, with the

question of the Freedom Volunteers ...

MR. JUSTICE RUMPF :

In regard to the Western Areas I think the passage that he intends - that tends to explain his state of mind is the passage in the middle of page 37, the question starting : "Now at that time, casting your mind back to that time..." and then his answer. That is his state of mind according to his evidence, at that time.

MR. TRENGOVE :

My Lords, we deal with the Freedom Volunteers, page 40, he was a volunteer, My Lord, in all these campaigns. He was a member of the Volunteer Board at Korsten. He says volunteers were being recruited as part of the C.O.P. organisation, and we make summaries of his evidence there, My Lords, the Defiance campaign volunteers, and My Lords, Your Lordships will remember that he was the witness who said that during the Defiance Campaign - paragraph (c) - as far as he is concerned, in his area, there was no particular requirement as to religious or political background of recruits, and on that basis six thousand volunteers were recruited in the Port Elizabeth area. The only thing that was required of them, is did they subscribe to policy, and policy was explained. And My Lords, when Luthuli's call for volunteers came, the volunteers were transferred (E) and he also became a freedom volunteer. He said, My Lords, at the top of page 23 we say one of the duties of the volunteers was to spread the voice of the oppressed, and he said he had heard Conco and

Luthuli say in their evidence that political education of its members was regarded as one of the vital tasks of the A.N.C. He stated that he first became aware of this at the time of the trial, and so far as he was concerned it was the first time, because he was never politically trained. We respectfully submit that having regard to his activities as a freedom volunteer, particularly as a member of the C.O.P. Volunteer Board at Korsten, his evidence as to his lack of knowledge or inability to remember what was being done in connection with the political training of volunteers is unacceptable, and should be rejected. Then we give his evidence ...

MR. JUSTICE KENNEDY :

Are the extracts that you set out from page 41 to 47?

MR. TRANGOVE :

Yes, My Lords, and the submissions that I make. Your Lordships will remember particularly, he had in his possession at one stage, it was found in the possession of Nogaya (?), that bulletin published, "Welcome Freedom Volunteer", it has his signature on, and he says that that was used - My Lord, that bulletin in itself, although he says he didn't pay much attention to it, that bulletin in itself would have told him exactly how essential the political training of Freedom Volunteers was, because volunteers had to go out and teach the people. That, My Lords, if Your Lordships were to look at page 47, just before paragraph (g), he admitted that Exhibit A.A.N. 6, Welcome Freedom Volunteer, had his signature on the cover. He says he

didn't take much notice of it. But, My Lords, the whole purpose of that bulletin is to explain how essential it is for volunteers to study because they have to go out and tell the people how to be liberated. And then, My Lords, we deal with A.84 to A.86, and we say, My Lords, that here again his evidence is evasive and unsatisfactory. My Lords, he admits that the bulletin was being distributed by the Regional Action Council of the Congress of the People at Port Elizabeth, and Your Lordship will see at the bottom of page 48, where we say, "And you were in touch with the Eastern Cape Regional Committee of the Action Council, because you were a member of the Korsten Branch of the Congress of the People Committee? --- Yes, but the people who were doing all the work were the secretaries".

"When you got this lecture, A.84, The World We Live In, were you told for what purpose it was being given to you? --- There were directives that came from the National Action Council, with the object that we should teach one another, but because of the bulk of the work I do not remember that in my branch we were able to use them" and that matter is then canvassed. And he says, My Lords, in the middle of the page there, page 49, that these copies were received - he was questioned by His Lordship Mr. Justice Bekker : "Were there more than one copy supplied? --- I think the secretary had many copies".

"For distribution? --- Yes".

"Do you know whether he did distribute them? --- I have no knowledge of that", He says they were intended for

distribution. Now My Lords, for this man to say that he didn't know that Volunteers had to be trained, and that he didn't read this bulletin - at the bottom of page 49 Your Lordships will find a question by His Lordship Mr. Justice Bekker : "What do you mean when you say you had a fleeting glance at it? What exactly do you wish to convey? --- By that I mean I read a bit, but I do not know how much."

"You read a portion of it, is that what you wish to convey? --- Yes, but I mean I did not read the whole thing". My Lords, his explanation is that he didn't read the whole thing because when he read it, he saw that that was exactly what he was doing, that type of training, - no, I am sorry, My Lords, that refers to the other one, Welcome Freedom Volunteer.

My Lords, page 50, four paragraphs from the bottom, he says "Educating the people, training them to think along the lines was an important part of the work for the preparation for the Congress of the People, was it not? --- My Lords, what I think was contained in those lectures or in that document, is what I had been using. That is what I assumed it to be, what I had been using even before that date." And then he confirms, My Lord, that he had a Xosa copy and that it was probably translated, interpreted by the Eastern Cape Regional Council. My Lords, Your Lordships know that document A.84, his alleged ignorance of world affairs and so on, and that first lecture deals with those very matters, and I ask Your Lordships to find that his evidence in this respect is

unacceptable. That matter, My Lords, is dealt with up to page 54, his evidence in regard to these lectures.

My Lords, at the top of page 52, I would just invite Your Lordships' attention to a passage there, the second paragraph from the top : "I put you the question because you say that it came from the National Action Council of the Congress of the People, the work those Councils did was mostly with the organisation of the people and so on? --- Yes, that is so".

"When you got the directive to read and study the document so as to teach others, and that came from the National Action Council, did you consider it to enlighten the people before they make their demands? --- I take it that was the object".

"Now if that were so, why didn't you read the document and use it or use the contents? --- Because I was already doing the work". Having regard to his position, My Lords, he is not only on the Congress of the People Action Committee at Korsten, he is also a Congress of the People Volunteer Board at Korsten, and I ask Your Lordships to find that his evidence is entirely unsatisfactory.

My Lords, then at page 55 we deal with his knowledge of other bulletins, and My Lords, generally it was put to him : "The African National Congress encouraged its members to read certain bulletins and certain literature, did it not? --- Well, I do not remember specifically, except just hearing a speaker in a public meeting speaking about reading papers, like daily papers from the press, to enable that everybody

must know what is taking place in the country".

"You say the only knowledge you have of African National Congress encouraging people to read papers and bulletins is what was said at public meetings? --- Yes, My Lord".

"And what were the bulletins the people were encouraged to read by speakers at these public meetings? ---

General newspapers, My Lord, such as the Eastern Province Herald and the Evening Post, New Age and Forum".

"Any others?", and he says he can't remember. My Lords, that evidence too Your Lordships will reject as being entirely unsatisfactory. This man knows that the African National Congress had a certain attitude towards the capitalist press, which they always say gave a slanted version, and they wanted the people to be trained by reading certain specific bulletins, and a man in his position would have known that. He knew Inyaniso, he didn't know Isizwe. He says he heard of it for the first time during the trial. Isizwe was published by Matjie, the banned Secretary of the Eastern Cape Provincial section of the African National Congress. My Lords, it is highly unlikely that this man would not have known that. And then Fighting Talk, My Lords, we quote that, because he had a number of Fighting Talks in his possession, and My Lords, his attitude towards Fighting Talk was, My Lords really that he got that bulletin, we give the passages there, we submit the effect is that he didn't realise that there was any specific relationship between Fighting Talk and the struggle in which he was involved. Then My Lords, he was cross-examined on his evidence of the A.N.C. attitude

towards Ndimba's speech on the duties of volunteers. My Lords, he says, as one would expect him to do, if he comes to testify as to the non-violent policy of the African National Congress, that he would have condemned Ndimba's speech. But the explanation that he gives, My Lords, is that Ndimba is alleged to have told him that he was feeling frustrated and that he thought of the condition in which the African people were living, and that he made that speech and that it was all a mistake. He says that is what Ndimba told him. On that basis they arranged for the defence of Ndimba. He was present in the Magistrate's Court, My Lords, he confirmed that Ndimba repeated in the Magistrate's Court that his speech was substantially correct as reported, and My Lords, at the bottom of page 59 we quote the passages, and it is put to him "Well, if Ndimba repeated this in the Court and says that was the duty of volunteers and that was the oath that he took.." - at the bottom of page 59 he is asked, "If your explanation of Ndimba's conversation is correct, then Ndimba - then was Ndimba speaking the truth when he said that in Court? --- No, My Lords, he was not talking the truth, that is in regard to the A.N.C., I think he was talking the truth about himself, admitting what he had said himself". But Ndimba went further, My Lords, than merely admitting that he made the speech. He confirmed in the Magistrate's Court that that was the position. And that issue is then canvassed, My Lord. My Lords, he is asked why, if Ndimba had once again repeated in the Magistrate's Court not only that

he had said, but that that was a fact, why did you not take it up with Ndimba. That matter is canvassed, My Lord, and at the bottom of page 61 he explains. He is asked, "Now, Nkalipi....? --- My Lords, now to defend himself he said that was in the oath, when a volunteer takes the pledge. That was only a matter of defending himself." Then he is asked, "But would that have defended him, would that have been a defence? --- My Lords, my answer to that question is I do not say that - that is what I say I think he must have had in mind". My Lord, the whole cross-examination was directed at asking this witness why, if Ndimba repeated in the Court that that was the position, why didn't you take that up with him again. And he said well, it wasn't his job to cross-examine Ndimba. My Lords, I say that his whole explanation of how Ndimba explained the speech is unacceptable in the light of his conduct.

Then My Lords, paragraph 9, we set forth - My Lords, in view of the fact that this man appears to be rather unaware of the attitude of the African National Congress to many matters, we set forth his positions and also the people with whom he was associated. We make the point, My Lords, that he was actively associated with the most prominent members of the African National Congress in that area and in the Cape. My Lords, it is unlikely that he would have known so little about so much of the African National Congress attitude towards various matters.

And then, My Lords, we deal with the meetings. We say he started making public speeches from

A.N.C. platforms round about April, 1952. In 1952 public meetings were held twice a dweek, once a week from 1953 to 1956. He spoke at the majority of meetings, he always spoke in Xosa, and he says people were taught how to struggle by speakers from public platforms, speakers knew exactly how to campaign and how to fight, and what the methods are that would be used, and the purpose of the meetings was to educate the masses and the methods by which the A.N.C. was seeking to achieve its objects. The people who addressed these meetings knew the A.N.C. policy, both as to objects and methods.

Then My Lords we set forth his evidence in relation to meetings. First My Lords is the meeting of the 14th of February, 1954, which was dealt with at page 15701 in his cross-examination. He didn't recall the meetings, and on being questioned on references as to the speeches - in the speeches as to the struggle in Kenya, he said that the time he used to make mention of Kenya and the K.A.U. in his speeches. He explained that the object was to point out that meetings were banned, also in Kenya, that a state of emergency had been proclaimed, leaders were arrested, with the result that there were no spokesmen for the people and people were becoming loose. They went to stay in the woods, My Lords, that would be because they were chased away by the laws arising out of the state of emergency. His object he said, was therefore to illustrate that was not a nice thing of the government to ban meetings and responsible leaders, but he said his object was not to encourage physical combat (?). My Lords, in this speech at this

meeting, the speech of Ndimba was also quoted, in which the Ndimba referred to his struggles for freedom in the Gold Coast, and in Kenya, placing them all on the same basis. He also refers to the sacrifice made by the Son of God who fought like us and fought until He was crucified. The second meeting referred to is a meeting of the 28th of February, 1954. Your Lordships will remember that is a meeting which according to the report of Detective Sergeant Thomas, the witness Umtintwana is alleged to have said that they will show the Boers and that they will fill sugar bags with their brains. Now his comment on it, My Lords, was that if that had been said, he would have repudiated it. I ask Your Lordships to find that in fact the report of Thomas is acceptable. At the same meeting Jack spoke, My Lords, and the passage is quoted there. He says - he was chairman at this meeting, My Lords, he does not dispute that Jack referred to these various countries who were also fighting for freedom.

The next meeting, the 12th of March, it is a meeting at which Sisulu and - Sisulu spoke, and we dealt with it during the speeches of Sisulu. He is reported to have spoken after Sisulu, and the passage which he denied was that - he said he would not have said that - Your Lordships have it here on page 67 - he would not have said that people are prepared or are determined to fight against the scheme until the last drop of their blood. My Lords, in the cross-examination quoted at the bottom of page 67, he is questioned about that, and he is asked about the Western Areas Campaign. He was adamant, My Lords, that as far as he was concerned

he would not have made that statement. We give the statement on his speech. My Lord, that was a speech reported by Segoni. My Lords, it was entirely consistent with the type of speech that was made at the Western Areas at that stage.

Then the meeting of the 16th May, 1954, a report by Thomas. His own speech was put to him in chief, and he says, My Lords, he remembers that he said 'we want freedom and we shall fight for freedom without shedding blood'. As far as Ndimba's speech is concerned, My Lords, he did not recall Ndimba's speech. We quote Ndimba's speech at the top of page 69, My Lord. "We are gathered under the auspices of the A.N.C. I want to speak about the The Europeans came to Kenya, took a place called the Highlands and took it from the Natives who were dying in - from hunger. In South Africa there are properties belonging to the government lying waste. These gold mines in the Free State belong to this country, we are to dig the gold there. If the people in Kenya want their earth they will take this..." - Your Lordships have had this, My Lord. In commenting on this speech, My Lords, Accused 23 said he cannot remember references in speeches at which he was present to Kenyatta and what he did for the people of Kenya or about Stalin who fought the capitalists and brought freedom. My Lord, I say that is most unlikely, particularly the reference to Kenyatta.

Then the meeting of the 13th June, 1954, he made certain admissions. Your Lordships will remember

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I dealt with that yesterday in Ntsangani's speech. He could have referred to the fact that the Europeans had Bible as a ?? been using the violence weapon to enslave them. He said he would not have said there is no Satan or hell other than the Europeans. He remembers that what he said was there is no Satan and evil that surpasses the way they are treating Europeans. My Lords, I say that builds up the hatred between the two sections of the population. And then Ntsangani's speech, My Lords was dealt with yesterday. I don't propose dealing with that again. His comments on that speech are set forth there, referring to the tin of paint incident and the way this government of this country is carrying on...- My Lord, that was dealt with this morning.

Then the 5th September, that meeting, My Lords, he was asked to comment on Koyo's speech, that - he was chairman, Koyo and Ndimba and Jack were there. My Lords, it is not necessary for me to comment, I set forth the passages there, My Lords. We make this point that he says it is possible,, at page 73, that his comment as chairman on Koyo's speech was as set out in this report.

Then My Lords, the 3rd of October, 1954. We quote the speech of Jack. He says he doesn't know, but it is possible that Jack could have made that speech.

Then 13 March, 1955, C.O.P. Korsten, My Lords, that speech was dealt with fully by Mr. Terblanche. We set forth all the evidence here, that was the speech at which the volunteers' pledge was

administered to about a hundred volunteers. The Accused 23 acted as chairman. He said in his evidence that he will not deny the evidence of Gazo and Mredlane that Mboya could have said, as part of this pledge 'I shall die fighting as a volunteer'. He explained, My Lords, when B.35 was put to him, that he thinks, on reconsidering the matter that that formal oath in the paper, that that was the thing that was read. Then My Lords, in connection with this speech, he is asked to comment on the speech of - the next speech, the 20th March, 1955, a speech which I dealt with this morning, My Lords, and he was asked to comment on the speech of Accused 27, the references to Judas Iscariot, the statements by the Minister of Justice, and he says he cannot remember the speech, he says he cannot remember the statements ascribed to the Minister of Justice, nor does he recall the references to Judas Iscariots or traitors in speeches at Port Elizabeth, although it is possible that such references could have been made.

Then My Lords, 18th-19th June, 1955, the A.N.C. Conference. My Lords, that was the Conference at which Exhibit A.17, which - to which he has already testified - where A.17 was submitted. My Lord, then this speech of the 26th June, 1955, that speech my learned friend Mr. Terblanche dealt with very fully yesterday, where - made at the time of the Congress of the People. Your Lordships put the passage to my learned friend in the evidence of the Accused, that he would not have said the American Republic was formed after bloodshed, and so will South African Republic

be formed after bloodshed. The Russian Republic was also achieved through bloodshed at the time of Lenin. The Chinese Republic is achieved..... My Lords, whatever the position may be, it does show a fair knowledge of the revolutionary struggles in these countries, knowing that Lenin led the revolution in Russia, Chou-en-Lai was involved in the struggle of China. My Lords, I don't propose making any further submissions to Your Lordships, except saying this, that in that context it is most unlikely that he would have said, after referring to America and before referring to Russia and China, that he said our republic would not be achieved after bloodshed. Their attitude was that the Minister of Justice was going to cause the rivers of the countries to be filled with blood before freedom is achieved. We deal with this evidence, My Lord, and also at page 75, deal with the speech of Vanga and his examination on that.

My Lords, then there are a number of meetings which we quote at page 77, which we rely on his attendance at those meetings. My Lords, as far as the first three meetings there are quoted, we are just relying on the fact that he attended that meeting. As far as the meeting of the 6th February is concerned, the A.N.C. Korsten meeting, My Lords, he spoke and Ndimba spoke. He refers to the 12th February, calling upon the people to come there and referring, My Lords, to the Western Areas Removal. The people in Johannesburg said that Europeans will take their souls but their dead bodies will be left behind. Same here in P.E.

Then My Lords, as far as the other meetings

here are concerned, we merely rely on his attendance at those meetings.

My Lords, as far as his overt acts are concerned, My Lords, we make the same submission as regards the conspiracy in respect of this witness; we make the same submission as we made in the case of Ntsangani. On his own evidence and on his own admissions, if Your Lordship finds that there is a conspiracy, we say My Lords his own evidence and the evidence of meetings against him show that he had the hostile intent, and on his own admission, My Lords, he was - there is sufficient evidence for Your Lordships to find that he was party to this conspiracy. As regards the overt acts, My Lords, we are only relying on one overt act, we are asking Your Lordships to take the other two overt acts into consideration against him, as far as - Your Lordship will remember the other overt act is the meeting on the day of the Congress of the People, where he referred to the various republics receiving their freedom after bloodshed, and I ask Your Lordships to take that into regard as to his part in the conspiracy and his mental state. We ask Your Lordships to find that - to find one overt act against him in addition to the conspiracy, the administering of the pledge to the freedom volunteers at Korsten, which is confirmed, My Lords, by his own admission and also the evidence of Gazo and Mredlane.

My Lords, that concludes the case against this Accused. And this includes the case against the Accused in the Eastern Cape. Just this one general

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submission, My Lords, that Your Lordships would be entitled to have regard to all the evidence in the Eastern Cape to see what the nature of the A.N.C. struggle in that area was, paying particular regard, My Lords, to the positions of the Accused and what they should have known about the struggle if they had been active in that area.

My Lords, at this stage now the Crown asks Your Lordship's permission to deal with the position of the Accused Lollan. My learned friend Mr. van der Walt will deal with that, and after that, My Lords, he will deal with the position of the three Accused who were connected with the Indian Congress, Adams, Kathrada and Moolla.

Collection: 1956 Treason Trial
Collection number: AD1812

PUBLISHER:

Publisher:- Historical Papers, The Library, University of the Witwatersrand

Location:- Johannesburg

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