

22/2/1961MR. HOEXTER

MR. HOEXTER: May it please your lordships; the  
last accused with whom I shall deal is accused No.21,  
Tyiki.

Dealing first with section A, the overt acts,  
the Crown alleges the conspiracy. As far as the meetings  
are concerned paragraph 2 - I ask your lordships to delete  
the meetings under (a), (b) and (c). I shall be relying  
only on (d), that is the Freedom Charter, Committee meeting,  
and lastly, against this accused, the Crown also relies on  
the Congress of the People.

So here we have simply the conspiracy, one  
meeting, at which we have the testimony of a shorthand  
writer, and the Congress of the People - again shorthand  
notes - so there are no problems of proof as far as the  
recording of speeches is concerned, in the Overt Acts.

(b) Membership of organisations,

(i) Accused 21 was the chairman of the A.N.C.  
Sophiatown branch in 1954 to 1956. There with respect your  
lordships will bear in mind that this was an important  
branch of the A.N.C - its activities loomed large in the  
organisation as a whole.

(ii) Accused was a member of the Executive of the  
Sophiatown Branch of the A.N.C. during the period 1953  
to 1955, and under 2 (b) the Crown refers to the evidence  
of Resha where he said that his secretariat, that is the  
A.N.C. Secretariat, worked closely with the A.N.C. branch  
in Sophiatown.

(iii) my lords, deals with with searches and  
the identification of the accused at the searches, and I  
turn at once, my lords, to documents, Section D, documents

found in the possession of the accused. 1

ST.1, my lords, is the same as LLM.81, that is the Bloemfontein Conference of 1955; I have already referred in the argument against Moretsele to some of the extracts from that report.

KENNEDY J: Well, you itimise them. 5

MR. HOEXTER: Yes, my lord, it's fully itimised, there is nothing which calls for particular mention either on that page or on the next page, and I turn to the meetings on which the Crown must chiefly rely in the case of this accused. 10

My lords, there are thirty-two meetings alleged in Section E which again is divided into two parts, the catalogue of meetings which begins at page 6, and then the commentary on the meetings appears at page 13; I shall begin at once at page 13, my lords. 15

Here, again, I have adopted the procedure of indicating those facts on which the Crown relied.

The first meeting, 13th December, 1953, "Let the People Speak Committee"; this was held in the Trades Hall, and there is evidence that the accused was present at this meeting, and I refer the other details to the Court on which the Crown relies. 20

Meeting No.2, 14th March, 1954, an A.N.C. Sophiatown meeting, witness Helberg, who said that the accused was present at this meeting and that he addressed the meeting in Xhosa. The witness says that Resha was the chairman at this meeting, and a portion of Resha's speech as testified to by Helberg appears on page 14. He said they must know that properties in Sophiatown have been 25

bought with their lifetime savings, "Shall we move? No." 1  
Shall we move? No. All the people, young and old, are  
being called to this meeting to protest against the removal  
of people from Sophiatown," and then he refers to the  
speakers at that meeting and he calls on the accused to  
address on the removal of the black spots. It was put to him 5  
("Q) Did he then address the meeting?-- (A) He addressed  
the meeting in Xhosa."

After that Resha again spoke; he introduced  
Mr. Nokwe, the accused Nokwe, No.16, was the next speaker,  
he gave an account of his travels in London, Bucharest, 10  
Moscow - page 15, his speech is further reported where  
he says "The Chinese people told us of their struggle for  
freedom for thirty years; the Chinese were struggling  
against American and British Imperialism", and then in  
the concluding portion of his speech which is quoted here 15  
he says: "The removing of people is exactly what Hitler  
did in Warsaw; I say the people of Sophiatown look upon  
the removal of the people from Sophiatown as a mass removal  
of people in South Africa. The people must rely on soli-  
darity and stand together and the Government of this country 20  
is in their hands. The lesson which I learnt is this, about  
freedom: in China the young boys stood up for their free-  
dome; we learnt from the Afrikaners that the youth stood  
up and struggled against the British Imperialism, and to-day  
they are free, but they make a dirty mistake. They oppress 25  
us. I will tell you whether you like it or not these  
masses of people are marching forward and nothing will  
stop them."

And then according to the witness Resha spoke 30

again and he said, "I emphasise unity is strength, Dr. Verwoerd cannot separate us; we all want freedom; some of us will die on the road to freedom. We all want freedom but none are prepared to sacrifice", And then he made an appeal for money.

According to the witness the next speaker was Henry Gordon Magothe; his speech is set out on page 16, he starts off by saying that in Poland there are books on the Defiance Campaign; a little lower down, some ten lines from the top he says "In Poland I saw the grave of a young boy of 7 years, he died for freedom; these people had no guns, but when the war started they joined the struggle; even if it means walking through blood the people will get their freedom; a little lower down he refers to "In Kenya the slaughter of the people is going on; we are not deceived by talk of Mau Mau; we know that the people of Kenya are fighting for freedom." He refers to . . . . .

RUMPTF J: We have had that.

MR. HOEXTER: As your lordship pleases.

My lords, then accused Resha spoke again and said they had spoken to the Government in all languages, and my lords, on pages 17 - at the top of page 17 that note should read "Not in cross examination but in chief". In chief Resha commented on this meeting. I give his comments and, my lords, that note 2 at the foot of page 17 - that is the comment in cross examination. It also goes on to page 18, my lords, and I say that in the light of what was said there in chief and in cross examination by Resha I make the submission on page 18, "With reference to this meeting it is submitted (i) that Helberg's notes read well, and

coherently, and (ii) that neither in his cross examination  
nor - - that is neither the cross examination of Helberg  
nor the comments by Resha served to cast doubt on the  
substantial correctness of his testimony concerning this  
meeting, and lastly, that the Crown is entitled to rely on  
all the speeches made at this meeting." The Crown says  
that the nature of the comments and the type of cross  
examination afford an excellent index to the quality of  
Helberg's reporting as far as this speech is concerned.

Page 19, my lords, the next meeting on the list  
11th July, 1954, A.N.C. Sophiatown, the witness said that  
the accused whom he described as being chairman of the  
Sophiatown Branch, addressed the meeting and appealed for  
volunteers; the only other features upon which the Crown  
relies are here set forth.

Meeting No.4 on the list, my lords, 5th September  
1954, A.N.C. Sophiatown, the witness was D/Sgt. Ngcai; there  
was no cross examination in respect of this meeting; the  
witness said that the accused was chairman of this meeting  
and a quotation is made from a speech of F. Madiba.  
The chief burden of his speech seems to be the determina-  
tion of the Europeans that the non-Europeans should perish  
and the fact that they wanted them to die and starve.

The next meeting, meeting No.5, 12th September,  
1954, A.N.C. Newclare; the Crown sets forth the facts on  
which it relies as against this accused.

Meeting No.6 on the list, my lords, 31st October,  
1954, A.N.C. Newclare; the witness Ngcai said that the  
accused was chairman of this meeting, and according to Ngcai  
the accused spoke and considered the role of the A.N.C.

and expressed their determination to fight; he announced  
 his first speaker as Mr. Malupe; according to Ngcai he  
 said that the organisation is non-violent; 'Today Sophia-  
 town is being taken from them by force because they have  
 guns; the Dutch only want to shoot the Africans; today  
 our people are being shot." I beg your lordships' pardon,  
 my lord, the portion I have just read is not the speech  
 of Mr. Malupe but I see from my notes that it's a portion  
 of accused's speech which was introduced in cross examina-  
 tion of the witness Ngcai.

At any rate, my lords, I set forth the speech  
 made by Malupe, by the accused, and Malupe's speech starts  
 at the foot of page 21, and goes on on page 22 where he  
 says "So, fellow Africans, we have nothing to say, the  
 time to speak is finished; the time is for action. I  
 want to tell you that the people of Basutoland are in  
 trouble. Their Chief Mansepo wants to give their land  
 to the English, so those are the people who call themselves  
 Christians. They are criminals, they are killing the people  
 of Kenya, and now they want to kill the people of Basutoland.  
 Ngcai who is taking notes here of what I say will die like  
 Judas Iscariot",

And then the chairman spoke and there follows  
 a quotation from what he said; after the chairman, that  
 is the accused spoke, towards the foot of the page, I  
 quoted the speech of Robert Tunzi . . .

BEKIER J: You say the accused spoke again?

MR. HOEXTER: Yes, my lord; that is the portion  
 that was introduced in cross examination. My notes here  
 read "And then the chairman makes some remarks after Malupe

spoke.....

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BEKKER J: Just pause there; did the chairman after that make some remarks?

MR. HOEXTER: Yes, my lord.

BEKKER J: Is that the portion that was read in. .

MR. HOEXTER: Yes, my lord.

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BEKKER J: What do you say about that?

MR. HOEXTER: My lord, I shall comment on these speeches at the end of my argument again, and I shall show your lordships where I refer to the speech,

BEKKER J: What I want to put to you at this stage is; might this not be regarded as an act of dis-association with the idea of violence, as may arise from a speech by Tunzi?

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MR. HOEXTER: Yes, my lord, it may.

BEKKER J: If that is so . . .

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MR. HOEXTER: I say that here, as in every other case, where there are any disavowels of violence, those disavowels must be seen in the light of all the evidence against the accused . . .

BEKKER J: Against this one?

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MR. HOEXTER: Against this accused, my lord, and evaluated against that context and the submission is that making such an evaluation, my lords, your lordships will see turning to the section which deals with Overt Acts - it may be convenient to refer to that, my lords at this stage. Your lordships see on page 2 that the Crown makes the submission (b) Taking into consideration certain facts, the Crown submits that the only reasonable inference to be drawn is (i) support of Liberatory Movement, (ii) Destruction

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of State, (iii) Support of unconstitutional and illegal  
action. 1

Then, with regard to (iv), my lords, I say the  
accused knew of the unconstitutional and illegal action to  
be employed, that would likely lead to clashes between the  
masses and the forces of the State, that such clashes  
would involve physical violence and the loss of life. 5

Now, with reference to that submission, my lords,  
the Crown says "In drawing the inference set forth in (b)  
(iv) above, the Crown relies more particularly on the  
speeches made at the following meetings attended by the  
accused, and here, my lords, the Crown has abstracted from  
this list of 32 meetings all meetings dealing more specifi-  
cally with violence, and my lords, where there are disavowals  
- apparent disavowals of violence, then, my lords, those  
disavowals will be tested against the background which is  
here provided by collating these meetings . . . 10 15

BEKKER J: You are going to deal with these.

MR. HOEXTER: I am going to deal with these spe-  
cifically, my lords.

BEKKER J: Right. 20

MR. HOEXTER: My lords, some of these meetings  
will occur in this section with which I am dealing now, but  
I shall refer to them again at the end of my argument.

Then, my lords, after the chairman Robert Tunzi  
spoke and according to the witness he said, "I am determined  
to speak about these African detectives; I want to warn my  
brothers that these notes they are taking will be records  
against them; when we take over this country within five  
years, they will have to answer to the Court of the  
Africans." 25 30



Then a little later on he says, "Go tell your Government we don't recognise Verwoerd; they are ruling us with machine guns. They are not prepared to listen. Instead of listening they will point a gun". I say the Crown relies upon all the speeches quoted above, that is including the speech by the accused where he says 'non violence'. I'm not losing sight of it, my lords, of that.

Meeting 7 on the list, meeting of the 7th November 1954, A.N.C. Sophiatown; witness was H/Const. van Papendorp, he said that the accused was a speaker at this meeting, that Robert Tunzi also spoke; Helen Joseph attended and Vundla was the chairman.

KENNEDY J: Was the appointment of chairman an ad hoc one at the various meetings, or was it a permanent one.

MR. HOEXTER: My lord, the procedure apparently was this; I don't know that it was possible to make ad hoc appointments, but in Sophiatown where this man was chairman in the meetings here your lordships will see that he was very often the chairman.

KENNEDY J:  
Yes, but invariably?

MR. HOEXTER: Not invariably, no, my lord.

KENNEDY J: What does that say there? What does the Crown say?

MR. HOEXTER: The Crown says that whatever the mode of selection once he is chairman, then by virtue of that fact - association and approval is more readily to be inferred than in the case of another man.

KENNEDY J: No, I'm only referring to section (b) (i) of your notes, where you say he was chairman during the period 1953 to 1956.

MR. HOEXTER: That is of the branch, my lord.

KENNEDY J: Of the branch? 1

MR. HOEXTER: Yes, my lord.

KENNEDY J: Well, that is not entirely borne out  
by the meeting.

MR. HOEXTER: Well, my lord, with respect, it does  
not follow automatically that his position as chairman of 5  
the branch implies that he must inevitably have been chairman.  
Dealing with this meeting of the 7th November, 1954, van  
Papendorp said that Resha spoke at this meeting, and his  
speech is set forth here below the middle of the page where  
he says: "The Government must realise that it is not to 10  
remove cattle but people. We said so many times on the  
same Square that we are not prepared to remove from Sophiatown  
- - this speech is well known, my lords. This is the one  
where he says he is not afraid to assault the imbeciles here,  
- - my lords, Resha's speech on the following page was taken 15  
down by the witness Ngcai and the Crown submits that Ngcai's  
notes - van Papendorp's notes of Resha's speech compare well  
, and my lords, paragraph (e) I've set forth the comments  
of the accused Resha in examination in chief on his speech 20  
and I say that in the light of that, my lords, paragraph (g)  
on the next page, the Crown relies on Resha's speech.

Paragraph (f), my lords, makes the point that  
cross examination of the witness Ngcai does not relate to  
Resha's speech. 25

Meeting 8 on the list, my lords . . .

BEKKE R J: Who was chairman of this meeting

MR. HOEXTER: Vundla, my lord.

BEKKE R J: The accused was present there.

MR. HOEXTER: Yes, my lord. 30

MR. HOEXTER

And accused was present and he also made a  
speech at this meeting, my lords. 1

RUMPF J: The speech isn't here.

MR. HOEXTER: No, my lord. The next meeting  
2nd January, 1955, A.N.C. Sophiatown, the Crown relies  
only on the facts here set forth; 5

Meeting No.9 on the list, 2nd February, 1955,  
A.N.C. Sophiatown, the relevant features are again set forth.

Meeting 10, my lords, of the 6th March, 1955,  
A.N.C. Sophiatown, the Crown sets forth the few facts on  
which to rely. 10

Meeting 11, a meeting of the 1st May, 1955,  
A.N.C. Sophiatown . . .

BEKKER J: The same applies to most of the  
speeches set out; I don't know whether it's necessary for  
you to read them. 15

RUMPF J: You've given us the list.

MR. HOEXTER: Yes, my lords, it applies to the  
rest of the meetings on that page; it applies to 13, 14,  
and the next one that requires attention is 15, my lords.  
This is the Congress of the People, Kliptown; the evidence  
shows that the accused attended both days. 20

Meeting No.16, A.N.C. Sophiatown, the Crown re-  
lies on certain facts only; the same applies to the meeting  
No.17, Newclare; I pause at meeting No.18, my lords,  
that is the Freedom Charter Committee Meeting 18th September,  
1955; shorthand writers, my lords. Sharp said he made  
notes of people present; he saw the accused there. My  
lords, this meeting has been so fully dealt with at other  
stages that it doesn't require special treatment here. 25  
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I set forth the speech of Sejake on page 29 and 30; this is the clash with the armed forces. . . .

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BEKKER J: Does the evidence show in what capacity the accused attended this meeting?

MR. HOEXTER: No, my lord. This particular meeting, my lord?

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BEKKER J: Yes.

MR. HOEXTER: No, my lord.

BEKKER J: He might have been a member of the audience; I don't know whether I raised this matter with you before, or with somebody else, Mr. Hoexter. If there is a person in the audience and he hears something which might not in his view be consistent with policy, what is he to do?

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MR. HOEXTER: Well, my lords, that depends on his position; if he occupies a position - if he is chairman of an important branch, one would expect him to take the matter further.

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BEKKER J: Where?

MR. HOEXTER: Firstly, my lord, at branch level, if satisfaction isn't obtained . . . .

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BEKKER J: Do we know whether that wasn't done?

MR. HOEXTER: Well, my lord, of course the other alternative is to take the witness stand and say 'I heard this speech but I thought it was nonsense; I didn't do anything about it because it was awkward for me for the following reasons'. That's a very logical thing to do, my lords. In fact, my lords, that with respect is the obvious thing to do, if in fact there was real difficulty.

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BEKKER J: What turns on the question of onus?

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What if he says , "Well, you haven't proved your case,  
there is no need for me to do it', but leaving that aside,  
I'm rather puzzled about what the position is, assuming  
there are on the platforms senior office holders, more senior  
than he happens to be, and they set out what they regard to  
be policy. It may or may not agree with his view. Now  
do you suggest that he should get up at that meeting.....

MR. HOEXTER: No, my lord, not necessarily.

But I do suggest in all seriousness that it would be open  
to such a man, and in fact it would be his duty - particularly  
where one has a speech like Sejake's here, it was the clear  
bounden duty to take the matter further. Accepting your  
lordship's structure on onus, without going into the witness  
box, if such steps had been taken, then to take steps to  
ensure that through other witnesses such steps be brought to  
the attention of the Court, my lords. But, my lord, with  
respect, it's unthinkable that a man, a senior official in  
the Congress, can hear such a speech. can disapprove of it  
and not (a) not do something to voice his disapproval, and  
(b) having voiced that disapproval in a case of this sort,  
not bringing that disapproval to the attention of the  
Court, whether or not he takes the witness stand. That  
he hasn't done. But, of course, my lord, the enquiry  
may be an academic one in this sense, that again in testing  
the position here your lordships will not do so in isola-  
tion; your lordships will look at this longish list of  
meetings and consider whether that is a real probability  
or even a real possibility in the case of this accused.

My lords, I was dealing with Sejake's speech.  
The submission is - now that your lordship puts this point

to me - - that it's a very strong speech; I've made my  
 submissions about how it can be construed in the case of  
 other arguments; I repeat that submission, and I say  
 that from the facts of the case as a whole the only reason-  
 able inference to which your lordships will be driven is  
 that if this man was present at this meeting - and he was  
 according to the evidence- he approved of this speech.

My lords, after lunch the evidence is that  
 Resha was the chairman; his speech which has often been  
 considered - - the one where he says the struggle is non-  
 violent, but that if there is a pool of blood they must go  
 through - - we set forth brief extracts from the speeches  
 of Lilian Ngoyi, Leon Levy and the closing speech of Masina  
 are also set forth.

BEKKER J: Was the accused present during the  
 whole session?

MR. HOEXTER: Well, my lord, there is no evi-  
 dence to say that he was kept under surveillance . . .

BEKKER J: What does the evidence say; was he  
 present when Sejake spoke?

MR. HOEXTER: No, my lord, it just says that  
 he was seen at this conference.

BEKKER J: Is this laid as an overt act against  
 the accused?

MR. HOEXTER: Yes, my lord.

BEKKER J: Was he seen on the evidence whilst  
 the speeches were being delivered; what does it mean he  
 was seen at the conference?

MR. HOEXTER: If your lordships will bear with  
 me for a moment I will get the reference in the evidence of

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Sharpe and make sure exactly what Sharp said there. My  
 lords, I read in Vol. 51 from the evidence of Sharpe, page  
 10144, by the Prosecutor: - ("Q) I hand you document marked  
 G.857, are those notes in your handwriting?-- That is cor-  
 rect, my lords." The witness then explains that they refer  
 to this meeting.

("Q) Did you attend that meeting?-- (A) I did."

("Q) And did you make notes of the people that were present  
 at the meeting?-- (A) Correct."

("Q) Are those the notes that you made at the meeting of the  
 people present?-- (A) Correct."

("Q) I want you to refer to your notes; just follow the  
 question and give the following information if it is con-  
 tained in your notes. Among the people present, the first  
 name you've got is S. Lollen; then a whole list of names  
 is put to the witness, and No.32 on the list is S. . . .

BEKKER J: That's when the meeting started, was  
 it? Doesn't it show that?

MR. HOEXTER: It doesn't show, my lord, and my,  
 lords, I haven't made a note here of the place where Sharp  
 was cross examined but I shall be surprised - - my recollec-  
 tion is that that wasn't the juncture at which the names  
 were taken down - - that wasn't canvassed with this witness  
 in cross examination, my lords.

BEKKER J: Was what?

MR. HOEXTER: Was not canvassed, my lord, so  
 the position - - I argue on the position that the witness  
 says 'I went to this meeting, I made a note of people pre-  
 sent there; one of them was this man' and I say again,  
 looking at all the facts of the case . . .

BEKKER J: Well, would that justify finding he

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was present when Sejake spoke, and/or Resha spoke?-- 1

MR. HOEXTER: Yes, my lord., because again that is an enquiry which should and cannot be considered in isolation; your lordships will consider this man's position and your lordships will ask for what possible purpose he could have gone to this meeting and whether, having regard to his position in the organisation . . . 5

BEKKER J: Pamphlets were being sold - your table is all loaded; things are being sold . . .

MR. HOEXTER: That may be so, my lords; your lordships will still pose the question what are the reasonable possibilities as far as this man's motive and intention is concerned in going to this meeting? Could it have been - - does there exist a reasonable possibility at all that he went there save for the purpose of attending the meeting in the ordinary course and hearing the speeches? 10 15

BEKKER J: I don't know.

MR. HOEXTER: Well, my lord, there I can only make the submission that your lordships will exclude any possibility, save that one, and, my lord, this is a meeting laid as an overt act - again it was a well attended meeting; evidence is led of exactly who was there, who was seen by the witness; again, my lords, even without taking the witness stand it would have been the easiest thing in the world for this - - if the true facts are that this accused was not present when the speeches were made, nothing would have been easier than to throw out that suggestion in cross examination of the witness. 20 25

BEKKER J: Nor, by the same token, would it have been less difficult for the Crown to ask the witness when was he there; was he there when the speeches were made? 30



MR. HOEXTER: My lord, with respect, having regard to the nature of the meetings with which we are dealing in this case, large public attended meetings, the answer to that, my lord, is that frankly it would have been a matter of impossibility.

KENNEDY J: Must we assume that he was there during the whole time that the speeches were made?

MR. HOEXTER: As your lordship pleases.

KENNEDY J: I mean, taking your own knowledge, that people do leave meetings and attend only part of them; that's well known. They sometimes attend in the morning and not in the afternoon and vice versa.

MR. HOEXTER: As a matter of normal human behaviour with respect, my lord, the Crown concedes that, but, my lord, the argument of the Crown is that that doesn't end the enquiry in this case, having regard to the significance of the occasion the Crown says that if the accused were not present throughout; if the accused did not in fact attend all these meetings, it is reasonable to expect some information, even short of the accused taking the witness stand - some intimation of that fact, and there was none. My lords, I can't. . . .

KENNEDY J: That goes perilously close to putting the onus on the accused, does it not?

MR. HOEXTER: With respect, my lord, not. It's an argument on probabilities; I can, I have made the submission - - my lords, with respect, it doesn't put any onus on the accused at all. There is evidence here that he was present at this meeting, there is no counter suggestion from him that (a) that he was not present, or that (b) although he was present he was only there for

portion of the time. 1

My lords, the other speeches at this meeting have been dealt with; meeting No.19 is again - - it requires no special mention. Meeting 20 is one of the 10th October, 1955, A.N.C. Moroka, and the witness was Makoenda and he said that the accused spoke at this meeting after Resha. 5

My lords, paragraph (d), thereafter Resha and the accused spoke; their speeches were reported as follows: First of all the speech of Resha is there set out; he again refers to the Dutch who were killed by Chief Moshesh and why they were killed, because the chief in question had the sense to realise that they were stealing his land; he refers again in his usual fashion to Jan van Riebeeck, and he says 'I said to those who do not believe that they must know their days are numbered; he refers to Natal, the Zulus and Bloed River, and he says that he urges unity upon them and he refers to the Bantu Education Act. And the witness says: "And then there was a resolution regarding passes; ("Q) It was passed at the meeting?-- Yes." ("Q) After that who was the next speaker?-- Simon Tjiki." 10 15

This speaker appealed to the audience to fight the pass laws and said that on the 27th October, 1959, men should throw away the passes . . ("Q) Is that correct?-- (A) Yes." And he concludes by saying that he is chairman of the Sophiatown branch of the A.N.C, and the witness says yes. 20 25

My lords, the witness is briefly cross examined on this meeting - that is the witness Makoena. It was put to him: ("Q) Now I want to put it to you generally that there is a great deal of material in this exhibit which one cannot make sense of at all; perhaps during the lunch 30

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adjournment you would look at it and tell me whether you agree or not; that is all I want to ask you about that".

As far as I can gather after this particular lunch adjournment the matter was not ever explored further and I want to make the submission that far from containing a great deal of material which is unintelligible these notes read reasonably well and their sense can easily be understood. My lords, here the Crown relies on the speeches of Resha and the accused.

The next meeting, my lords, is that of the 27th November, 1955, A.N.C. Sophiatown, and that requires no special mention.

Meeting 22 is the Bloemfontein Conference of December, 1955, and there is evidence that the witness - that the accused was present.

The next meeting, my lords, is of the 5th February, A.N.C. Sophiatown; witness Ngcai; he said that the accused was chairman at this meeting, and he said that Tshabalala spoke at this meeting and the speech is set out here. It ends up by a reference to Jan van Riebeeck, and then it says 'You must know, my people, that when you want to achieve your freedom there must be a stream of tears and there must be a flood of blood. In this country there will never be peace since there is segregation on the basis of colour', and here the submission is, my lords, that accepting the correctness of the reporting a man who is chairman is prepared to hear sentiments like this without cavil - - is not likely to flinch if he did hear, on the assumption that he did hear Sejake's speech.

My lords, a reference is also made here to the  
 speech of Rampalyane (?); he also, my lords, I say spoke  
 and said - - this is a speech in intemperate language, my  
 lords, and the theme is strongly anti-church but I don't  
 think it takes the matter very much further. I give the  
 reference in the record, my lords.

The cross examination in respect of this meet-  
 ing was as follows: - I deal with the speech of Tshabalala  
 only, my lords, which is a very strong one: Ngcai was  
 cross examined and, my lords, one can only say that the line  
 pursued in cross examination so far from being destructive  
 of the witness' notes serves as a mild confirmation because  
 what he says is this: "I want to refer you first of all  
 to some of the meetings you referred to; I want to refer  
 you to the meetings held on the 5th February, 1956 - that  
 is this one. You remember at this meeting that you quoted  
 Henry Tshabalala as having said amongst other things - -  
 and towards the end of the speech, "Do you know, my people,  
 that when you want to achieve your freedom there must be  
 a stream of tears and there must be a flow of blood. In  
 this country there will never be peace since there is se-  
 gregation on the basis of colour.?"-- (Witness) Yes, I re-  
 member."

("Q) And do you remember that that was at the end of the  
 speech in which he endeavoured to outline the hardships  
 under which alledgedly the non-Europeans were suffering  
 from?-- (A) Yes."

I submit, my lords, that that type of cross  
 examination must serve as confirmation, not as destruction  
 of the witness.

At a later stage, by Counsel: -

At a later stage of cross examination of this witness, my lordships, Counsel contrived to put an omnibus question; he said: ("Q) Now, sergeant, you heard these constant references by a number of the speakers to the fact that they say the police have been shooting them at various parts of the country, and that their policy is one of non-violence, and I want to put it to you that speakers at many meetings which you have attended, appeared to believe, rightly or wrongly - they appeared to believe that in the past innocent Africans had been attacked and shot by the police in various parts of the country; is that not so?-- (A) Yes, from what they say it appears so."

("Q) And that they have said on many occasions at these meetings that although their struggle is on non-violent lines they nevertheless expected violence to be used against them?-- (A) Yes."

Again, my lords, that is nothing to detract from Ngcai's reporting of Tshabalala's speech at the meeting on the 5th February.

Lastly, as far as cross examination is concerned, on speeches at this meeting other than Tshabalala, Counsel again returned to the meeting and said "I want to return to this meeting merely for the purpose of reading in something which was not referred to by the Crown. Simon Tjiki opened this meeting and he opened it with the following words: 'The A.N.C. says that love thy neighbour as you love theyself, the Europeans are just a small clique yet they rule such a big number. We are appealing to the Dutch that we should all stay in peace in this country;' that is how the meeting was opened?-- (A) That is correct."

MR. HOEXTER

And then references are made to some of the other speeches. Here, again, would have been an opportunity to challenge Ngcai on the reporting of the speech; no attempt whatsoever was made, my lords, and the Crown's submission is that looking at the quality of these notes as they read and looking at the cross examination of the witness the Crown is fully entitled to rely on the speeches of Tshabalala made at this meeting, a meeting at which the accused was chairman.

The next meeting, my lords, is 18 on the list; 18th March, 1956, A.N.C. Newclare; the relevant facts are set forth.

The next meeting, No.25, on the list, witness Ngcai; he says this was an A.N.C. meeting; the accused was chairman. Resha addressed this meeting and he said there was a reference to the issue of passes at Winburg and he also is reported by Ngcai as having said 'I say to the Afrikaners today they may laugh at us as the English laughed at the Afrikaners at Krugersdorp in 1899, but their day is coming; I might not be present by then; whether they like it or not we are going to rule this country.'

("Q) And did the chairman then make some remarks?-- Yes."

("Q) What did he say?-- These young Dutch must go and tell Swart and Strydom that the Africans won't take the passes."

Again no cross examination at all, my lords, in respect of this meeting.

The next meeting, my lords, No.26, 24th June 1956, C.O.P. anniversary, speeches recorded by van zyl Schoeman; my lords, this is not laid, as your lordships will have seen, as an overt act against the accused; here, too, all these speeches can be proved in assessing his

hostile intent, and his adherence to the conspiracy; the evidence of the witness Masakanye, Sharp and Dunga show that the accused was present at this meeting. 1

My lords, page 39, the next meeting - - my lords, I have dealt with these meetings in the case of Moretsele and two other accused; I don't intend repeating that argument. 5

The next meeting 18/11/56, Anti-Permit Committee - witness Ngci, the witness said that the accused was the first speaker called upon by the chairman at this meeting. My lords, this is the meeting at which Kathrada spoke, and at which Matlou spoke - that speech well known to which I referred yesterday - the very bloodthirsty one. My lords, I don't propose referring to those speeches of Kathrada and Matlou but on page 40, paragraph (e) I refer to cross examination on this meeting. Firstly on Matlou's speech, and on Kathrada's speech. My lords, in the light of that cross examination here, again, the Crown makes the submission that the Crown is fully entitled to rely on these reportings of these two speeches. There is no reason at all to assume that these speeches were not substantially correctly reported. 10 15 20

The next meeting, my lords, is that of the 27/6/54, Anti-Apartheid Conference, here again this has not been laid as an overt act against this accused, as was the case with many other accused. The witness Ngcai said that the accused was present at this meeting; speeches were taken down in shorthand. These speeches too have been considered often and at great length and I repeat my submissions that I have already made on these. 25 3

MR. HOEXTER

BEKKER J: Has this been laid as an overt act  
against other accused who were merely present? 1

MR. HOEXTER: I regret, my lord, I cannot hear  
your lordship.

BEKKER J: Has this been laid as an overt act  
against other accused who were merely present? 5

MR. HOEXTER: Yes, my lord.

BEKKER J: The accused was present?

MR. HOEXTER: Yes, my lord.

BEKKER J: Well, why shouldn't it be laid against  
him, or conversely why should it be laid against other  
accused who were merely present? 10

MR. HOEXTER: My lord, that would have been a  
good question two years ago, but I think it would be wrong  
for the Crown at this stage, unless there is a clear invita-  
tion from your lordships . . . 15'

BEKKER J: There is no invitation at all; I am  
puzzled.

MR. HOEXTER: Well, your lordships will see - you  
will recall that I asked your lordships to delete the  
reference to . . . . 20

BEKKER J: Oh, yes.

MR. HOEXTER: My lords, I can only say that it  
was a very unwise step that the Crown may have cause to  
regret; that is how the matter stands, my lords.

BEKKER J: Yes. 25

MR. HOEXTER: My lords, I was busy dealing with  
a meeting on the 10th October 1954, A.N.C. Sophiatown.  
The witness again D/Sgt. Ngcai; he said that that at  
this meeting he observed the accused; the chairman was



Vundla; the first three speeches were Sibande - the accused  
 Hutchinson and Lilian Ngoyi. After them J.M. Kumalo and  
 Resha addressed the meeting, and I set forth here the  
 speeches of Kumalo and Resha as reported by the witness.  
 Firstly Kumalo; he said 'I feel I must follow the Riotous  
 Assemblies Act because our leaders are banned'; then  
 he said 'When the police assault they must assault the  
 police back,' This meeting has been dealt with before, my  
 lords, as also has the speech of Resha in which he says  
 that the Western Areas would bring about a clash and that  
 the Government was busy provoking violence, and that the  
 young blood of the African people was boiling.

Paragraph (e) I make the point that there was  
 no cross examination in respect of this meeting. I refer  
 to the explanations given by Resha in examination in chief  
 at page 43, page 44, page 45 - I quote sub-paragraph (e)  
 - the relevant pages of the record where the matter was  
 dealt with in cross examination, and I say looking at  
 three factors (a) the absence of cross examination in res-  
 pect of Ngcai, the explanation given by Resha in chief  
 and thirdly the explanation in cross examination; I say  
 that the Crown is fully entitled to rely on the reportings  
 of these speeches., and they are very strong speeches, my  
 lords.

The next No.30 on the list is the 29th May  
1955, a Youth League Conference at Sophiatown. I rely  
 merely on the presence of the accused as shewn by the  
 evidence in the presence of several other people.

The same applies to meeting No.31 which was  
 the Orlando Conference in 1956, and my lords, the last

meeting there is 29th April, 1956, a Youth League meeting 1  
 at Sophiatown; my lords, this again is the celebrated  
 language of the beerhall meeting which is fresh in your  
 lordships' minds; it was considered at an earlier stage  
 this morning. Sub-paragraph (a), the witness said that  
 the accused was present at this meeting. Another witness 5  
 said that the chairman was Ntiki. My lords, paragraph  
 (c), I refer to the parts of my argument on other accused  
 where the speech was commented on. (d) I say that in  
 the cross examination of Ngcai it was put to him that  
 he attributed certain remarks to Maloao which were not 10  
 contained in Schoeman's version. It is noteworthy, how-  
 ever, that the notes of Schoeman and Ngcai compare very  
 well in their reporting of the speech of Resha. There  
 was no cross examination at all of Schoeman on Resha's  
 speech, and the Crown relies on all the speeches made at 15  
 this meeting.

My lords, then I come to the last chapter,  
 proof of overt acts; as far as the conspiracy is concerned  
 the customary allegations have been made about hostile  
 intent, and adherence to the conspiracy. The facts more 20  
 particularly relied on are summarised, (a) refers to  
 the position of the accused; (b) I say the extent of  
 accused's activities in the Congress Movement can be  
 gauged in part from section E hereto - that is the  
 section with which we have just dealt, in which details 25  
 are given of at least 32 meetings attended by the accused  
 during the period December 1953 to November, 1956; it  
 should be noted that of the 32 meetings listed in Schedule  
 E, (i) accused acted as chairman at 12 such meetings. My

lords, I think that 11 of those were meetings at Sophia- 1  
town, and one a meeting at Newclare.

(ii) Fifteen of the 32 meetings were also at-  
tended by the accused Resha, at 11 such meetings accused  
and Resha were both speakers, and lastly accused was  
chairman at six of the meetings addressed by Resha. 5

Then I say (d) The Crown submits that taking  
into consideration first, of all the position held by the  
accused in the A.N.C; secondly, the extent of his activi-  
ties as indicated by the extent of his attendance at  
meetings, and iii) the nature of the speeches made at 10  
such meetings the Crown submits that the only reasonable  
inference to be drawn -and then I allege firstly knowledge  
in support of the Liberatory Movement; secondly, a desire  
for the destruction of the State and the substitution of  
a very different State; iii) knowledge and support of 15  
the intention of Congress to achieve the new State by  
unconstitutional and illegal action; iv) I have already  
referred to, my lords; the accused knew that the afore-  
said unconstitutional and illegal action to be employed  
was likely to lead to clashes between the masses and the 20  
forces of the State, and that such clashes would involve  
physical violence and the loss of life.

In drawing the inferences set forth in (b)  
(4) above, my lords, the Crown relies more particularly on  
the speeches made at the following meeting attended by the 25  
accused; and here, my lords, from the 32 meetings, of the  
32 meetings taken - set forth in section (E) I have men-  
tioned ten meetings and I have indicated more particularly  
on whose speeches at such meetings I rely, and the submission

is that looking at these meetings, the speeches made thereat, and in each case I have tried to evaluate the worth of the witness' notes -- the Crown's submission is, looking at those meetings, assessing them at their proper value, then this submission is fully borne out. The accused knew and accepted that the use of these tactics would result in the use of violence.

My lords, the meetings -- such difficulties as there are -- have already been explored, I think; there is only the Freedom Charter Committee meeting, I've made my submissions there; this is a meeting recorded by a shorthand writer; if the Crown's argument is correct on the probabilities that he attended and stayed at this meeting there the matter ends; the last overt act was the Congress of the People at Kliptown; again the speeches were recorded by a shorthand writer, and the evidence shows that the accused attended on both days. The Crown submits with respect that this overt act has been proved against him.

That concludes, my lords, the argument against the accused with which I have to deal. My learned leader Mr. van Niekerk will now proceed to demolish the rest of the Transvaal accused.

(COURT ADJOURNED).

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