

next one is an article on the Bantu Education Act by P.H. Simelane, also in Zulu. These three articles are typed. Then the next one is a roneod document, by Albert J. Luthuli, the top appears to be Zulu version of 'A' -- I don't know what 'A' means. Then AJL.69, are another series of contributions to this 'Mayibuye' bulletin, the first one by W.Z.Conco, also typed. The next one is not signed, it does not show who the author was. The next one is an article in Zulu by M.B.Yengwa, the secretary of the Natal Branch of the A.N.C. The next one is an article in Zulu, relating to the A.N.C. Conference at Bloemfontein. AJL.70 is Press statements issued by the African National Congress, Natal, in connection with the Provincial Conference held at Pietermaritzburg in July 1956, and it is signed by P.H. Simelane, Secretary, African National Congress, Natal, and dated 6th September, 1956. Then AJL. 71 is the Constitution of the African National Congress, containing various alterations, amendments, in ink. And attached to it is a statement, typewritten, marked "Report of the National Executive Committee of the A.N.C. to the Annual Conference held in Queenstown, December, 1956, and it deals with the international situation. I would like to read two passages from this statement: "We are dedicated to fight for freedom in our land and to support the struggle of the people for peace and national independence in the rest of the world..... In this gloomy situation created by the Imperialist powers have been created international tension once more..... To characterise their plans in the following words: ..." It deals with the invasion of Egypt by Britain and France, and it contains the following: "Britain and France have used Israel as the spearhead to re-establish themselves as the masters of the Suez Canal in order to maintain their domination over colonial countries in Africa and the Middle East. They are

determined to prevent at all costs the enslavement of the world again by imperialist powers of the West and the people of all countries are determined to prevent the general atomic wars with all the miseries and hardship it would mean..... Imperialists must quite Egypt and until they do no friends of freedom and peace dare relax their vigil and their efforts. The African National Congress and its partners in the liberation struggle are unreservedly in support of the cause of peace. We endorse the call of the S.A. Peace Convention held in October in Johannesburg which declares 'It is in this context that Congress must also consider these events in Hungary. We believe that every nation is entitled to settle its own affairs, including the people of Hungary. Enormous publicity has been given to the events in Hungary by the newspapers and the radio. The Government has granted £25,000 to relieve refugees and the Pretoria students are demonstrating on their behalf..... Were the Hungarian disturbances not provoked through imperialism through agencies in Austria in order to restore a reactionary regime. You cannot rely on the newspaper reports. We know all too well from our own experience how biased and unreliable such reports are. We should therefore withhold our judgment on Hungarian events with the spirit of the declaration of Pandit Nehru who declared that there was no comparison between the situation in Egypt and that in Hungary. The Soviet Government has indicated it is prepared to withdraw its troops from Hungary and has offered to negotiate with the Hungarian Government to achieve that end. But the fighting inside Hungary had not ceased. Soviet troops have a duty to put down lawlessness before they could withdraw. Despite the violence and repressions of the imperialists, colonial people of Africa and Asia have maintained their steady march towards freedom and independence. We congratulate the people of Morocco and Tunisia for having attained indepen-

dence after a bitter struggle with the imperialist France. We also express our solidarity with the heroic of Nigeria, Malaya and Kenya. We also salute our brothers in Nyasaland and Rhodesia, Sierra Leone, Cambia. We in the African National Congress believe as a principal and cardinal point of our foreign policy and the destruction of imperialism, and in the policy of world peace. We acknowledge that our efforts have been very limited in educating our people about the horrors of war and about the intertwined struggle of independence and peace. The people's independence and sovereignty can only be guaranteed by maintaining world peace since wars are used by imperialists to crush the rising national liberatory movement with emergent independent states." Then AJL.72, is a roneod document, with the heading "Draft Resolutions by the Provincial Executive Committee, A.N.C. Natal, submitted by the Provincial Annual Conference of the A.N.C. Natal, held at Edenvale, Pietermaritzburg, from 28th-29th July, 1956." AJL.73, roneod document, appearing to be a copy of the draft AJL.64. It has the following heading: Presidential address by Albert J. Luthuli Provincial President, African National Congress, presented to the Provincial Conference at Edenvale, with the heading 'The Struggle Must Go On,' and on the last page appears the name of Archie Gumede, Assistant Provincial Secretary, A.N.C. Natal, and date 30/7/56. There are two copies of this document. AJL.74, is another copy of AJL.73. AJL.75, is a manuscript document with the heading Presidential Address, A.N.C., 44th Conference. AJL.76 is a Croxley examination book, with the name A.J. Luthuli written on the front page, and inside it has an article or address marked 'Camouflage, a brief survey of the political scene in the Union of South Africa.' It deals with the efforts of the Government legislation to destroy the liberatory movement in the country.

It deals with the Industrial Conciliation Act, and various other matters. AJL.77 is another Croxley Examination book which contains an article headed 'The African and Peace.' There is a loose page which contains the following: 'The domination of white nations over Africa is clearly seen in the Suez Canal crisis where Great Britain, France and America challenged the sovereign rights of Egypt in her territory. We applaud Egypt for the stand she has taken in defending her sovereignty. In issues like Africa comes to know who her friends are and who her foes are.' Then one page has the following 'Enjoy Peace. Fruits of Freedom and using Peace Rally for political purpose. The African who for centuries since the coming of whites to Africa has lost his freedom....' I cannot make it out any further. Then it has the following: 'In the present world situation where white domination is in flight in Asia, Africa is faced with the danger of becoming a war arsenal to any major world conflict especially when such destruction involves the Middle East. In the face of the most destructive weapons of war Africa with the rest of the world is faced with the grim possibility of annihilation.' Then it has the following: 'Africa has a heavy stake in the future.' Then AJL.78, is another exercise book, which contains an article on Africa Needs Peace. AJL.79 is a Freedom Charter, which has been used as a cover and inside there are various notes in ink. The first one is headed 'What is the purpose of all this negative and most oppressive legislation.' Then 'Points not to forget.' Then a programme of the African National Congress Provincial Conference at Maritzburg in July 1956. AJL.80, a letter in ink, addressed to 'Dear Friend,' by the Secretary-General, A.N.C., Johannesburg, dated 1st October, 1956, containing the agenda of the National Executive Committee, at its meeting to be held in Bloemfontein in Novem-

ber 1956, and it is signed by O.R. Tambo as Secretary-General. AJL.81, is a copy of a typewritten letter, addressed to 'Dear Friend' by the Secretary-General, A.N.C. Johannesburg, dated 1st October, 1956, and appears to be a copy of the previous exhibit signed by O.R. Tambo. AJL.82, is a typewritten letter addressed to Chief Albert Luthuli, President-General, A.N.C., Groutville, North Coast, Natal, by the Acting General Secretary of the African National Congress, Northern Rhodesia, Lusaka, and dated 28th November, 1956. It reads as follows: "Dear Chief Luthuli, I write to acknowledge the fact of receipt of your letter to Mr. Mkumbula, our President-General. I regret the delay in letting you have the required information, but it was due to the fact that the letter was addressed personally to Mr. Mkumbula. Mr. Mkumbula has been on a protracted tour of the country since the beginning of this month and as yet has not had any time to sit and work in the office. The British M.P. we are asking to come, Mr. James Johnson. I hope however that you might still be able to contact your executive somehow to consider the matter and let us know what you decide. Kind regards, thank you for your press release article on your Congress in Africa today. Yours in the unceasing struggle for black emancipation, signed by Titus Mukupo, Acting Secretary, General." Then AJL.83, is a letter, typewritten, dated 2nd July, 1956, addressed to Chief A.J. Luthuli, and signed by F. Adams for the Transvaal Consultative Committee of the Congress of the people, and this letter relates tothanks the chief for the most inspiring message sent on the first anniversary of the Freedom Charter. AJL.84 is a copy of a typewritten letter dated 30th July, 1956, and written from Groutville Mission, North Coast, addressed to the President, A.N.C., Cape. It has the name Rev. W.S. Gawe written in the top left-hand corner. It is not signed. Then

AJL.85, is a typewritten document, entitled 'A Message to the Cape Provincial Conference, A.N.C. Meeting in Annual Conference in Cape Town in August, 1956.' It has the name Albert J. Luthuli, President-General, African National Congress, and the date 30th July, 1956, and the address P.O. Groutville Mission, typed in at the bottom. And lastly AJL.86, a typewritten letter, dated 28th September 1956, addressed to the President-General, Groutville, by the Assistant-General Secretary of the A.N.C., Johannesburg, and it is signed by D. Nokwe, and it complains about the delays in replying to correspondence addressed to the Natal Branch of the A.N.C., and asking the President-General for assistance in this regard. That concludes the exhibits to be handed in.

BY MR. SLOVO: I wish to have two further paragraphs read into the record. It is from EXH. AJL.73, on page 5. "The African National Congress stands for peace and friendship in personal relationship and in international relationships. It accepts and endeavours to uphold the noble principles of the brotherhood of man, respect for human dignity and the supreme worth of an individual. We strive in our work in Congress to respect in practice the noble concept, that is why the African National Congress wages a relentless war against racialism, rabid nationalism, dictatorship, discrimination and the like. It stands for the outlawing of war and violence as an instrument of settling disputes. That is why in our situation in the Union, while regretting and condemning in the strongest terms possible the mass police raids, and the arrogance of some police, all of which combine to provoke our people to anger and confusion, we strongly urge our people not to resort to violence, even in the face of extreme provocation. We shall win the esteem of the world if we do so.' This is from the presidential report of Chief Albert J. Luthuli, 1956 Annual Provincial Conference.

BY MR. COAKER: With regard to these documents, the Defence admits that they were seized from the residence of Chief Luthuli at Groutville on 5/12/56 by Det. Sgt. Malan of the S.A. Police, Stanger.

DISCUSSION BETWEEN MAGISTRATE, P.P. & MR. BERRANGE:

JOSHUA JOUBERT, beëdig verklaar,

CROSS-EXAMINED BY MR. BERRANGE:

In view of what you said on the last occasion, I am interested in ascertaining what your attitude of mind is in regard to the giving of evidence in Court ?--

BY THE COURT: I think the question ought to be put more specifically, Mr. Berrange.

BY MR. BERRANGE: I am prefacing my question to bring the witness' attention to what I am going to put to him.

CROSS-EXAMINED BY MR. BERRANGE (CONTD.):

Would you say that it is in the interests of fairplay and justice for a senior police officer, even though called as a witness by the Crown, to bring to the Court's notice, matters which might favour the Defence ?-- Dit sou my plig wees om enige soiets onder die aandag van die Hof te bring.

Even if such senior police officer was not asked any questions by the Crown in regard to such matters ?-- Ek weet nie watter besondere vraag nou beoog word.

DEUR DIE HOF: Nee, nee, dis algemene..... Die vraag word gestel, dat onder hierdie omstandighede, al word u nie uitgevra daaromtrent nie, sal u dit dan as u plig beskou om dit onder die aandag van die Hof te bring ?-- O ja.

Dit is n feit wat die Verdediging mag begunstig ?-- Dit is so.

CROSS-EXAMINATION BY MR. BERRANGE CONTD.:

And as you have already told us you have heard many speeches made during 1952, in which speakers repudiated the use

of force and violence, and stated that the Defiance Campaign was to be a passive resistance and non-violent movement, and in which the speakers also advocated racial harmony between the races -- do you remember saying that?-- Ja, ek het nie baie sulke toesprake gehoor nie.

I am not very interested whether you heard one or twenty, as long as you heard some?-- Ek het gehoor, ja.

And you will concede that you did not bring that fact to the notice of the Court, did you, whilst giving your evidence in chief?-- Ja, dit is so.

Well, in view of the fact that you have already conceded that it is the duty of a police officer to bring to the notice of the Court facts in favour of the Defence, why did you not do so?-- Geen besondere rede daarvoor nie.

How long have you been in the police force?-- By die 30 jaar.

And you are accustomed to giving evidence?-- Ja.

You are not embarrassed or timid when you step into the witness box?-- Nee, ek was nie.

And you realise that to have stated that some speakers repudiated force and violence, would have been something in favour of the Defence?-- Ja.

And that is what I meant when I suggested to you on the last occasion, that you didn't endeavour to give the Court a correct reflection of what had happened -- do you say that you gave the Court a full and correct reflection of the facts?-- Ja, tot die beste van my wete.

Even though you admitted facts which you now say would have been in favour of the Defence?-- Ja.

Well, I don't understand your evidence, I am afraid. You see, Captain Joubert, I hope I haven't got to read out all the evidence to you, but senior members of the Security Branch

drawn from all over the country, have testified to the fact that the Defiance Campaign was a non-violent campaign, and that speakers urged that it should be a non-violent campaign, and not one of the numerous senior members of the Security Branch had ever testified to hearing any speaker suggest that the Defiance Campaign was a violent one or was to be a violent one. And I am going to give you a few examples. In view of the fact that this is not a question I am putting to you, but just an extract from a record, I don't think it needs to be interpreted. This is Det. Sgt. Kruger giving evidence. The question is "Do you remember that one of the things that was made very clear by numbers of speakers was that this meeting and this organisation which called the meeting was not directed against the Europeans, but it welcome the assistance and the alliance of the Europeans ?-- Your Worship, I am afraid I cannot recollect that. I know that these things were made clear at previous meetings, that I remember, but at this particular meeting I can't say I remember that." "Do you know that that has generally been one of the things that has been said at meetings held under these auspices ?-- That is correct."

Mr. Von Papendorp:

DISCUSSION BETWEEN MAGISTRATE AND MR. BERRANGE:

CROSS-EXAMINATION BY MR. BERRANGE CONTD.:

When you said that the speakers had emphasised that their object must be attained by force, was that in relation to the Defiance Campaign or not ?-- Ek was nie presies seker wanneer hulgedurende watter periode die versetbeweging aan die gang was nie. Ek glo nie ek wou dit in daardie verband gebring het nie; ek was nie seker daardie tyd nie.

So when you speak about the speakers having said that those objectives must be attained by force, you don't necessarily mean that those speakers were speaking on behalf of the Defiance Campaign ?-- Nee, nie noodwendig nie.

It may have been speakers who were talking about forcible steps being taken in regard to something else ?-- Nee, ook in verband met die verbreking van wette.

But I am asking you whether you are suggesting that the attainment of the objectives by force and violence was in relation to the defiance campaign, or wasn't it, or don't you know ?-- Dit was toesprake wat omstreeks daardie tyd, sou ek sê, die tweede helfte van 1952....

That is still not an answer to my question. My question is, do you say that these speakers were urging force necessarily in respect of the Defiance Campaign, ?-- Nee, nie noodwendig nie.

That is also something which you didn't make clear when you last gave your evidence. According to my notes, you said this, that you cannot say when this sort of thing in relation to the Defiance Campaign was said. However.... Tell me this, you remember the trial of Rex. vs. Njongwe and others ?-- Ek dra kennis daarvan.

This was one of the trials which arise out of the defiance campaign ?-- Sover as ek onthou, ja.

Did you give evidence in that matter ?-- Nee.

You knew the case was before the court ?-- Ja, ek was bewus daarvan.

Did you volunteer to give any evidence in regard thereto ?-- Nee, ek het nie.

Did you send a statement to the Crown Prosecutor about your knowledge of the Defiance Campaign ?-- Nee.

Did you indicate to the Crown at any stage that you had heard speeches made which advocated force and violence, at that time ?-- Nee, ek het nie.

And when were you first asked to give evidence in these proceedings ?-- Ek dink dit was die dag voor ek hier getuienis afgelê het, die dag wat ek daarvan gehoor het.

Was a statement taken from you then ?-- Nee.

But this is the first time that you have ever given evidence anywhere that during the 1952 you had certain speakers advocating force and violence, at any place, at any time ?-- Ja, dit is so.

Did you take steps to have any of these speakers who advocated the use of violence prosecuted ?-- Geen besondere stappe.

I don't know what you mean by the use of the qualifying adjective. What do you mean 'particular steps.' I am asking you generally, did you take any steps to have these persons prosecuted who were advocating the use of violence ?-- Ek het geen stappe geneem nie.

And are you aware of the fact that His Lordship, Mr. Justice Sampson, in sentencing the Accused in Rex. vs. Njongwe gave them suspended sentences ?-- Nee.

You didn't follow that case ?-- Nie wat ek kan onthou nie.

Let me jolt your recollection, if I can. Are you aware of the fact that these suspended sentences were given by His Lordship because he came to the conclusion that this was a passive resistance movement and that the followers of the movement had been exhorted to avoid violence in any shape or form ?-- Nee, ek dra daar nie kennis van nie.

Would you suggest that that was not a correct finding on the facts as you know them ?-- Nee.

And tell me, these meetings that you say you attended, did you keep any written note of what was said and who the speakers were ?-- Nee, ek het nie.

Can you give us the name of a single speaker or the date and place of any single meeting at which such speaker spoke, at which this person advocated the use of violence ?--

Ek kannie besondere datums noem nie, maar die trand van die toesprake was sulks dat ek verplig was om gewapende polisie na die vergaderings toe te stuur om die ander polisiemanne wat daar is te beskerm.

Very interesting, but now do you mind answering my question ?-- Sal u dit herhaal, asseblief.

BY THE COURT: I think he answered the question partly, by saying he doesn't remember any dates ?-- Of die name van sprekers nie.

Jy onthou nie die name van die sprekers nie ?-- Dit is so.

CROSS-EXAMINATION BY MR. BERRANGE CONTD.:

My question is, can you give me the name of one speaker who advocated force and violence, just one ?-- Nee, ek kannie nou 'n naam meld nie.

You know, of course, that after the trouble and the riots at Port Elizabeth, and various other places, that the African National Congress through the Press, and by means of leaflets, deplored the violence that had taken place, and called upon the people to remain calm -- you know that, don't you ?-- Ek kan dit nie onthou nie.

Didn't you read the newspapers at that time ?-- Ek dink ek het.

And you can't remember that here was an organisation which was trying to assist the police by calling upon them to remain calm -- you don't remember that ?-- Nee.

You don't remember that the African National Congress at that time, repeatedly called for a commission of inquiry so that the blame could be placed on the right shoulders ?-- Ek kan soiets onthou.

And if an inquiry had been held then, of course, it would have been much easier to arrive at the facts when the

matters were still fresh in everybody's mind, and witnesses were available, not so?-- Ja, dit sou seker so gewees het.

It would even have assisted you in giving your evidence on this aspect of the case?-- Moontlik.

Only possibly -- well, let me show you how much it would have assisted you. Do you know how many times in giving your evidence in chief you used one or other of the following expressions, such 'if I now can remember' 'ek kannie presies sê nie' 'as far as I can remember' -- do you know how many times you said that in your evidence in chief?-- Nee.

I'll tell you, I've counted it -- twelve times?-- Dis moontlik.

That is why I am suggesting to you, Captain Joubert, it would have helped even you in your evidence on this aspect had an inquiry been granted at that time. Did you give evidence at the trial of those persons who were charged ultimately as a result of their actions and their conduct in the riots that took place?-- Ja, ek het in die magistratuurshof getuienis afgelê.

And in the Supreme Court?-- Nie wat ek kan onthou nie; ek glo nie.

Did you when giving evidence in the magistrates court during the what I shall shortly term the riots case, did you in giving evidence there attribute the blame for the riots to the African National Congress?-- Ek glo nie; ek kannie meer presies onthou nie.

You do know this, however, that these riots started during daylight, did they not?-- Ja.

And not round about 11 or 12 p.m.?-- Dit is so.

By that time, by midnight, the matter, everything had blown over by that time?-- Dit was stil by daardie tyd, in die naturelledorp New Brighton.

And you do know of course that although a certain bios-

cope manager was killed in these riots, that the bioscope manager's wife was not killed ?-- Ja, ek weet dit.

DEUR DIE HOF: Waar was sy; weet u waar sy vrou gewees het daardie tyd ?-- Omstreeks 8 uur op daardie betrokke dag het die vrou/^{nakend}by die polisiestasie aangekom.

Maar weet u waarvandaan sy gekom het ?-- Ek het haar by die polisiestasie gesien. Sy het toe n rapport daar aan ons gemaak.

You don't know that she was also at the bioscope when the trouble started ?--

BY MR. BERRANGE: I have no knowledge of that; I am only canvassing one aspect, and that is the witness talking about.... he said that she was killed. He said that he played a leading part in these riots and he said that she was killed.

BY THE COURT: Is that Mgubasi?

BY MR. BERRANGE: Yes, and it was he who also said if Your Worship will recollect that he was one of those who started these riots, when he came in with the train which arrived at about 11-12 p.m. That is when the riots started.

CROSS-EXAMINATION BY MR. BERRANGE CONTD.:

Would you agree with me, that it is not only members of the African National Congress who made use of the cry 'Afrika' or 'Mayibuye' ?-- Ek glo dit kan gewees het.

Would you agree with me if I were to say that on the occasion of these riots, some of the African police were themselves calling out 'Afrika' and 'Mayibuye' ?-- Ek kan dit nie ontken nie.

And anybody who gave that evidence in 1952, any member of the Police Force who gave that evidence in 1952 might well be giving correct evidence ?-- Ja.

(No further questions)

MR. COAKER & MR. SLOVO: NO QUESTIONS:

RE-EXAMINED BY P.P.:

Were you at that time attached to the Security Branch,
Captain ?-- Nee, ek was nie.

(No further questions)

DISCUSSION BETWEEN MAGISTRATE, P.P. AND MR. BERRANGE:

COURT ADJOURNS:

COURT RESUMES 10/9/1957:

MR. COAKER ADDRESSES COURT:

Accused Absent -- Same as yesterday.

Accused No. 41, in default.

LEAVE GRANTED FOR PROCEEDINGS TO CONTINUE:

MR. COAKER ADDRESSES COURT: (Re Bail conditions)

DISCUSSION BETWEEN MAGISTRATE, MR. COAKER AND P.P.

YUSEF BOKHARI, duly sworn.

EXAMINED BY P.P. (MR. VAN NIEKERK):

You gave evidence yesterday, and you are the proprietor of Royal Printers, Wolhuter Street, Johannesburg ?-- Yes.

Did you firm print the publication 'Liberation' ?-- Yes.

Nos. 5 to 11 and Nos. 22 to 26 ?-- Yes.

Now, Nos. 5 to 11, who gave instruction for the printing ?-- Mr. Farrid Adams and Mr. Dan Tlume.

Mr. Farrid Adams you pointed out yesterday ?-- No.

Can you identify him ?-- Yes. (Accused No. 1.)

And Nos. 22 to 26 ?-- Mr. Dan Tlume.

You hand in the copy ?-- Yes. (G.1150).

Did these people who ordered the printing supply the copy ?-- Yes.

(No further questions)

No CROSS-EXAMINATION:

SAMBASILLAN PILLAY, duly sworn.

EXAMINED BY P.P.:

Are you employed by the firm Speedy Printers, 54 Prince Edward Street, Durban ?-- Yes.

Did you firm print a booklet, an album "Congress of the People, Pictorial Issue of 'The Call.'" ?-- Yes.

I think your order form is 4401 -- who ordered the printing of this document ?-- Congress, Natal Indian Congress.

How many copies were printed ?-- 200.

On what date was it ordered ?-- 19/8/1956.

Was the order completed and delivered ?-- Yes.

To whom ?-- To the office of the Natal Indian Congress.

Do you recognise this booklet SD(W). 37 ?-- Yes.

(No further questions)

CROSS-EXAMINATION RESERVED:

MR. VAN DER WALT NOW APPEARS FOR THE CROWN:

CASPER ANDRIES WILLEMSE, beëdig verklaar:

VERHOOR DEUR P.A.:

U is n hoofkonstabel, S.A.Polisie, gestasioneer te Pretoria, Veiligheidstaf, Hoofkwartiere, Pretoria ?-- Dis reg.

Gedurende February 1954 was u op kantoor ?-- Ja.

And was deel van u pligte om korrespondence oop te maak ?-- Ja.

Ek verwys nou na Bewys. G.1002. die koevert ?-- Ja.

Het u dit in die pos ontvang ?-- Ja.

Kan u sê of Bewys. G.1003, of u dit saam met die koevert ontvang het ?-- Ja.

Toe u die Bewysstukke ontvang het, wat het u daarmee gemaak ?-- Ek het die kantoor datumstempel daarop gedruk, op die koevert (G.1002.)

En daarna, wat het u daarmee gemaak ?-- Ek het die lêer gekry waar die bewysstuk moet inkom en dit aan Kapt. Buys oorhandig.

Het u die bewysstukke weer daarna gesien ?-- Ja, al die lêers kom weer van Kapt. Buys af deur my, en dan word dit liaseer.

Waar hou u die lêers ?-- In rakke in ons kantoor.

Is dit n versterkte kantoor ?-- Ja, dis n versterkte kantoor, dit het staaldeure.

(Geen verdere vrae nie.)

CROSS-EXAMINATION RESERVED:

JOHANNES MICHAEL STRYDOM, beëdig verklaar:

VERHOOR DEUR P.A.:

U het reeds getuienis gegee ?-- Ja, dit is reg.

4 Op 1/4/56 het u gegaan na Weststraat 37, Johannesburg,
?-- Ja.

Het u daar beslag gelê op dokumente ?-- Ek het.

Vanwie het u die dokumente geneem ?-- Van Dr. Press,
H. Barsel.

Is hy een van die Beskuldigdes ?-- Hy is. (Besk. nr. 4.)

En was daar n konferensie aan die gang ?-- Daar was.

En u handig die dokumente in, G.1151, (i) tot (13) ?--
Ja, dit is reg.

In die omslag is daar ook n verklaring deur u waarin
die dokumente uiteengeset word ?-- Ja, dis reg.

Dit is gearafeer deur my geleerde vriend, mnr. Coaker
?-- Ja.

En by dieselfde geleentheid, het u nog ander dokumente
geneem ?-- Dis reg.

Vanwie ?-- Dis op die tafel voor Dr. Press.

Is Dr. Press een van die Beskuldigdes ?-- Hy is. (60.)

U handig die dokumente in G.1152, 1 tot 14 ?-- Ja.

Ook gearafeer deur mnr. Coaker ?-- Ja.

En in die omslag is daar weer n verklaring van u waarin
die dokumente uiteengesit word ?-- Ja .

(Geen verdere vrae.)

BY MR. COAKER: I should like to make it clear, Sir, that the
only aspect of these statements which my attention has been
directed to, when initialling them, is the description of docu-
ments. Nothing else in the statement, nothing in the documents
is in any sense admitted. It is an act of identification, and
nothing more, to save the trouble of handing in each individual

document and marking it separately.

CROSS-EXAMINED BY MR. COAKER:

Constable, who were the people seated at the table in the immediate vicinity of Dr. Press ?-- Aan die eenkant was Sidney Shall, Joan Anderson.

Waar het sy gesit ?-- Sy is ook aan dieselfde kant as Dr. Press.

And some others as well ?-- Dis reg.

Whose names you cannot now immediately recollect ?-- Regoor Dr. Press het Barsel gesit, anderkant die tafel.

And any others ?-- Ek kannie die ander se name onthou, maar daar was n persoon van Kaapstad.

To cut the matter short, there were several people sitting round this table ?-- Daar was.

And on the table there were a number of documents ?--
Ja.

And when you seized these documents, you took those which you found close to a particular person and handed them in now as being his documents ?-- Dit was voor, en ek het ook gevra aan wie die dokumente behoort het.

And Dr. Press denied at the time that these were his documents ?-- Hy het.

Nevertheless you took these documents and you have now handed them in, and you say that you took them from Dr. Press ?-- Deurdit dit voor hom gevind was.

I didn't ask you what your reason was, I asked you simply whether it was correct that you took these documents from the table and you have now handed them in as being the property of Dr. Press, is that right ?--

BY THE P.P.: I don't think that is what the witness said. He said he handed in the documents and he found them in front of Dr. Press.

BY MR. COAKER: My learned friend may be correct, in which case

I stand corrected. You do not assert that they were Dr. Press' property; you say they were in front of him on the table ?--
Dit is reg.

(No further questions)

MR. SLOVO: NO QUESTIONS:

NO RE-EXAMINATION:

PETRUS JOHANNES COETZEE, duly sworn.

EXAMINED BY P.P.:

You have already given evidence ?-- That is so.

On 1/4/56, did you proceed to 37 West Street, Johannesburg ?-- I did.

Was there a conference in progress ?-- Yes.

Congress of S.A. Democrats ?-- Yes.

Did you take possession of certain documents ?-- I did,
From whom ?-- From the gentleman who acted as chairman,
Mr. P.A.B. Beyleveld.

One of the Accused ?-- Yes. (No. 6.)

Was Const. Strydom, the last witness, with you ?-- Yes.

Where did you actually find the documents ?-- I found
the documents lying on the table before the Accused.

You hand the documents in G.1153, 1 to 13 ?-- Yes.

Inside the cover there is a statement made by you giving
a description of the documents ?-- Yes, I typed it out.

And that statement is also initialled by Mr. Coaker ?--
Yes.

Did you ask Mr. Beyleveld whose documents they were ?--
I did.

What did he say ?-- I asked Mr. Beyleveld whether he admitted that the documents were his, and he answered in the affirmative, and I thereupon gave him the duplicate of a receipt which he also signed.

(No further questions)

NO CROSS-EXAMINATION:

MARTHINUS BEKKER DIEDERICKS. beëdig verklaar,

VERHOOR DEUR P.A.:

U het alreeds getuienis gegee ?-- Ek het.

Op 13/6/54, het u n bandopname gemaak ?-- Ja.

Van wat ?-- Van toesprake en verrigtinge gehou in Kortstraat 4a, Johannesburg, in die destydse kantore van die Transvaal Indian Congress. Die vergadering was gehou deur die Transvaal Indian Youth Congress.

I also hand in an affidavit by the Minister, Exh.G.1154, it is similar to affidavits previously handed in, excepting the name of the Organisation as well as the place are different. Nou, kan u sê wanneer die verrigtinge begin het ?-- Dit het ongeveer 9.30 vm. begin.

Tot hoelaat ?-- Tot ongeveer 1.15 nm., dieselfde dag.

Na u die bandopname geneem het, wat het u met die bandopname gemaak ?-- Ek het dit met behulp van konstabel Schoeman op skrif geplaas.

U het n oorskrif daarvan gemaak ?-- Ja, dis reg.

En na u die oorskrif gemaak het, wat het u toe gedoen ?-- Ek het die name teruggespeel en vergelyk met die oorskrif wat ek gemaak het.

En wat het u gevind ?-- Dit het ooreengekom met die bandopname.

In alle opsigte ?-- Ja, behalwe 'n paar gevalle wat ek aantoon in die verslag, soos bv. die sekreteriele rapport, en waar die bestuur gekies is, net die name van die lede, soos hulle gekies is. Ek het nie dit woordelik daar.

En ook ek dink waar die boodskap gelees is ?-- Dit is so.

Maar andersins waar die sprekers gepraat het, word al die woorde wat die sprekers geuiter het weergegee ?-- Presies net so.

Nou, terwyl u die bandopname gemaak het, het u ook inge-

luister ?-- Ja.

Wat kon u hoor ?-- Ek kon alles hoor wat gesê was op die vergadering.

Is dit onafhanklik van die bandopname ?-- Dit is onafhanklik van die bandopname self.

Toe u die oorskrif van die bandopname gemaak het, of na u die oorskrif van die bandopname gemaak het, hoe het dit ooreengekom met wat u gehoor het ?-- Die inhoud van die toesprake die trand daarvan, het ooreengekom met wat ek gehoor het.

En u het nou n oorskrif by u, is dit reg ?-- Ja.

Wat het van die bandopname geword ?-- Die bandopname self is nie beskikbaar nie.

Wat het daarvan geword ?-- Dit is gebruik vir ander doeleindes daarna.

Verduidelik net n bietjie, wat het julle daarmee gemaak ?-- Dit kan weer uitgegee word; ons het die uitgegee.

En julle het dit gedoen ?-- Ja.

For what purpose ?-- Die band, die rol self was benodig vir ander doeleindes.

Om ander opnames te maak ?-- Ja.

Wanneer het u die oorskrif gemaak van die bandopname ?-- Ek het daarmee begin die volgende dag, d.w.s. die 14de Junie, 1954.

Hoelank het u dit geneem, omtrent ?-- Ongeveer 3 dae.

En kon u toe nog onthou wat u gehoor het, toe u ingeluister het ?-- Ja.

U handig nou die oorskrif in ?--

BY MR. COAKER: I must object. I am placing on record my objection to this witness handing in this transcript. (Transcript handed to Mr. Coaker.) Will Your Worship allow me to cross-examine the witness at this stage, solely with reference to certain matters which might affect the admissability or otherwise of this evidence.

BY THE COURT: Yes. (Affidavit by Minister handed to Mr.Coaker)

CROSS-EXAMINED BY MR. COAKER:

I take it Sergeant, from the evidence you have already given, that you could neither see the speakers at this meeting nor hear them directly ?-- Ek konnie die sprekers sien nie. Maar die hulp van die tegniese apparaat kon ek hulle hoor, maar nie met my blote ore nie.

I take it too that what you could hear, through your hearing apparatus, came to your ears from the band ?-- Nie van die band self nie. Ek kan dit miskien net kortliks verduidelik.....

If the Court will allow you to explain, in view of the Minister's affidavit, I have no objection, of course, but I am not certain about how you stand.

BY THE P.P.: I might just indicate, I will object to that, if he is asked to explain the method.

BY THE COURT: Do you mean it would expose the method adopted of taking the recording ?-- Yes.

CROSS-EXAMINATION BY MR. COAKER CONTD.:

I don't want to ask you anything about the method, but let me just ask you this question, what you could hear was a result of some form of technical or scientific or mechanical reproduction ?-- Dit is reg.

You of course do not claim to be able to identify the voice of any person who spoke at this gathering ?-- Nee.

Has any of these voices been identified to you by any person ?-- No.

What were the portions of these proceedings which you did not transcribe in full ?-- Dis waar dit onhoorbaar was en waar die spreker onduidelik gepraat het.

I think you also said something about elections ?-- Ja.

What was the position there ?-- Dis n kwessie van iemand stel n persoon voor, en n ander persoon sekondeer, jy kannie

leiding kry nie; ek het net finaal soos dit aangekondig was die lede wat gekies was.

In fact, what you did, you made a note, you have in this transcript a particular office, such as president, and then a particular name, that would be the particular person who was elected to that office ?-- Ek het in werklikheid nie 'n nota gemaak nie, en het van die bandopname, soos die name aangekondig was, het ek dit afgeskryf.

Are you saying that what appears in this transcript with regard to elections, is a copy of what somebody said over the tape ?-- Ja, behalwe waar ek die woorde in hakkies daar het, wat ek nie duidelik kon hoor nie, het ek die name in hakkies gesit. Met ander woorde, ek is nie seker van daardie name nie.

So what the words in brackets, are they what you think you heard, but you are not sure ?-- Dit het my so gegaan maar ek het dit opsetlik in hakkies gesit omdat ek dit nie duidelik kon hoor nie.

I have the impression that this transcript is a carbon copy of some original, can you tell me if that is so ?-- Ja.

Where is the original ?-- Sover ek weet, is die oorspronklike gestuur na Pretoria destyds.

And you personally have not seen it since ?-- Nee.

Did you erase the words from the tape ?-- Nee, ek het nie woorde uitgevee nie. Daar was nie woorde uitgevee nie. Ek verstaan miskien verkeerd die vraag....

You have told us that the recording on the tape of these proceedings has been erased, and the tape is for that reason no longer available ?-- Ja, ek het dit gedoen.

You did that deliberately so that you could do it again ?-- Ja.

At the time that you were listening in to the proceedings

did you make any written note of what you heard ?-- Nee.

You made no notes in writing until you started preparing this transcript ?-- Dit is so.

And you say that when you made the transcript you could still remember that the trend of the speeches was similar to what you had heard. ?-- Dit is reg.

But of course you couldn't recollect these speeches word for word ?-- No.

And you couldn't say that you have transcribed word for word what you heard ?-- Ek moet net duidelik wees, wat ek daar ten tye van die vergadering gehoor het, het ek nie woorde delik oorgeskryf nie.

For example, you were unable to fill in from your memory any of the gaps which you couldn't hear on the tape ?-- Ek konnie.

And there is no means today by which the Defence can check your transcript against the tape itself ?-- Nee.

Of course a recording mechanism such as you were using can be stopped and started at will, can't it ?-- Ek kan die apparaat stop en dadelik weer laat aangaan.

And it is also possible to obliterate any portion of such a record ?-- Dit is moontlik, ja.

And it is possible that some of the words recorded on the tape were wrongly heard and wrongly transcribed by you into this transcript ?-- Ja, ek toon dit aan in die verslag, waar ek nie duidelik gehoor het nie. Dit is tussen hakkies.

Apart from your brackets, leave that out of consideration, apart from your brackets it is also possible that some of the words which you think you heard were misheard ?-- Dit is moontlik.

(No further questions)

MR. SLOVO: NO QUESTIONS:

HERVERHOOR DEUR P.A.:

Afgesien van die woorde wat u aandui op die oorskrif wat onduidelik was, hoe was die ander woorde ?-- Dit was baie duidelik.

Het u enige moeilikheid met die ander woorde gehad ?--
Nee.

(Geen verdere vrae nie.)

BY MR. COAKER: Your Worship, I am objecting to the procedure suggested by the Crown, viz. that where they have made a technical recording, then from that made a transcript and then destroyed a technical recording, they can then come along and put in as evidence a transcript that was prepared. I am suggesting that such evidence is inadmissible, the transcript. Of course, this field of recorded evidence is a comparatively new one in our courts, but the ordinary principles of evidence apply. This I submit quite clearly infringes against the rule relating to hearsay evidence. Where there is

BY THE COURT: If your argument is correct, doesn't it infringe on the rule of best evidence.

BY MR. COAKER: I will refer later to the best evidence rule. But what we are doing here, in effect, is we are seeking to put before the Court a document which purports to give the context of words spoken which was admittedly prepared by a person who was not present at the proceedings and was prepared from a source other than his own recollection or his own temporary notes. He prepared it from another source, viz. playing over of a record.

BY THE COURT: Do I understand you correctly that your submission is that this witness was not there?

BY MR. COAKER: The witness has told us, Sir, that he was not present. That he could not hear the speakers own voices and in any event that he didn't prepare this record from his recol-

lection, he prepared it from his technical transcription, from his technical recording. It is analogous, therefore, Sir, to this witness coming into Court and saying X who was present at the meeting, but who is now dead, told me shortly after the meeting that he heard speakers use the following expressions, which would quite obviously infringe against the hearsay rule. So far as the best evidence rule is concerned, we appear to be in the position where we are now to be offered a copy of a transcript taken from a tape. This is not even the original transcript; it is the copy of a transcript that was made by this witness and which he hasn't seen since.

BY THE COURT: It is a duplicate, I understood.

BY MR. COAKER: Well, the witness said a carbon copy.

BY THE COURT: It is a duplicate which is, in effect, equivalent to the original.

BY MR. COAKER: With submission not, Sir, unless the Court is satisfied that a diligent search has failed to disclose the whereabouts of the original; there is no evidence of that.

BY THE COURT: I don't know that that part of your argument has any grounds. A duplicate original is regarded on the same basis as an original. If this has been a copy of the original transcript, then I can understand your argument.

BY MR. COAKER: With respect, the rule is that the original of a particular document has got to be produced, unless it can be shown that it is not available for some reason or other. Once it is not available, of course, secondary evidence documents are admissible. However, I am not going to detain the Court very long. I want to refer to one or two cases which have dealt with this type of matter. I refer in particular to Rex vs. Berman 1957 Vol. I S.A.L.R., page 433, it is contained in the February number of the S.A. Law Reports of this year. In that case certain technical recordings had been made, they were

tape recordings, had been made of certain conversations and the Crown sought to read transcripts which had been prepared by two Head Constables. This is what was said in the judgment at page 434. "The recording said to have been made at the time of the conversation between Appellant and Captain Pretorius was contained on a tape, and efforts were made to elicit the contents of this tape by two head constables. One of them, Heyman, said he could ascertain very little, but he said there were two voices, one of which he could recognise. At this stage it was conceded that Heyman and Head Constable Fourie listened to the exhibits for the purpose of making transcripts, of which copies were produced. But it was admitted that the task was very difficult and at times voices were not audible at all, that in playing back the needle could be placed either too far in front or too far towards the back...." That is something technical which I don't understand. His Lordship then dealt with the difficulties in the recording and then he said this: "The magistrate admitted the transcripts on the common sense point of view and concluded on this aspect with these words: ' Mr. Anderson himself said that he regarded the disc as audible after he had treated it. Well, to the Court itself it was not so, but I think that in view of this fact that there is this best evidence available, and the Court in itself is not there to usurp the functions of witnesses but to decide on those witnesses, the question must be answered in favour of the Prosecution and the objection of the Defence is overruled.'" That is the end of the quotation. "The Reasoning is not very compelling. It seems to me that where evidence of the present description is sought to be admitted, there must be correspondence between the original and the dubs, and between the various transcripts of the latter. Here we have transcripts introduced in respect of which the Defence has been

able to compile numerous omissions and inconsistencies. (See the list handed in.) Moreover it seems too that whereas here the protracted efforts to elicit the contents of the original tape might leave some room for uncertainty there should have been evidence to identify all the voices. This is a somewhat new field in the law of evidence...." and His Lordship then refers to certain authorities. He refers to an American case in which this method was used, but the tape was played in Court, and each voice was identified by evidence at the time as the tape was played. And at the end of that His Lordship says: "In the circumstances, I do not think that the transcripts were admissible." Now, that was the majority judgment of the Court which consisted of their Lordships, Mr. Justice Bresler and Mr. Justice Williamson. There was also a minority judgment delivered by His Lordship Mr. Justice Hiemstra, in which he differed from them on the question of admissibility, but he expressed his views on the circumstances under which transcripts could be admissible. He said this: "In regard to the transcripts I express the opinion that they were correctly admitted. In my view the dictaphone is a device useful for establishing the truth, and if the following procedure is followed it would nowhere violate the established rules of evidence. (1) There must be proof that the recording tape could not have been tampered with and in fact contains the relevant conversation and no other. (2) The Court need not listen and transcripts may be handed in, provided that the tape is made available to the Defence to enable to challenge the accuracy of the transcript. (3) The number of the transcript is only relevant insofar as their reliability is challenged," and then there are two other conditions, which I think don't arise here. Now, I draw especially attention to the second condition, where His Lordship says 'transcripts may be

handed in provided the tape is made available to the Defence to enable it to challenge the accuracy of the transcripts. Now here we are in this position that the transcript cannot be handed in because it is no longer available and so there will never be, there can never be any opportunity for the Defence to challenge the accuracy of the transcript. In other words, we are confronted here with secondary evidence of secondary evidence, with a copy of a transcript of a recording, in which there is no possibility of the Defence being able ever to challenge the correctness of the transcript. And I submit that in these circumstances where the only reliable original evidence has been deliberately destroyed by the Crown, that its secondary evidence in regard to that matter ought not to be admitted and is indeed not admissible.

BY MR. SLOVO: I have nothing to add. I just associate myself with the remarks of Mr. Coaker.

BY THE P.P.: In connection, Your Worship, with the original transcript I admit that the document which was handed in is a duplicate original, and no check actually has been made on where the original actually is. I handed a copy to Mr. Berrange and as far as I know that maybe the original document, but in any case, my submission is, nothing really turns on this point. A duplicate original is available, but if that point is pressed, further investigation can be made, and perhaps I can satisfy my learned friend, and I suggest starting to find out what copy was handed to Mr. Berrange.

BY THE COURT: That approach places the Court in a difficulty, Mr. Prosecutor.

BY THE P.P.: Well, Your Worship can still decide at the time....

BY THE COURT: This is the point that I have to decide, to clear the ground for the main point.

BY THE P.P.: If the Court holds at this stage that a duplicate

original can't be used.....

BY THE COURT: You have got to argue at this stage.....

BY MR. COAKER: Perhaps I could simplify the Court's task by saying this, that at this stage in these proceedings, I am not going to press that argument, because the real question of principles.....

BY THE COURT: If you are not pressing that argument.....

BY MR. COAKER: The real question of principle with which we are concerned

BY THE COURT: You want a decision on the main point. As Your Worship pleases.

BY THE P.P.: But I take it my learned friend is reserving the right to mention it at a later stage, if he deems it necessary.

BY THE COURT: Yes, he can't raise the point now.

BY THE P.P.: Now, in this matter, Your Worship, the question is not really whether the contents of tape recordings is admissible or not. The question is really how the Crown may produce the evidence in Court; in other words, what methods are open to the Crown, and I ask Your Worship to distinguish here very clearly between these two aspects, not to decide what is the weight of the evidence, but whether the transcripts are admissible; that is all.

BY THE COURT: Yes, I think Mr. Coaker has put it in that form.

BY THE P.P.: Because it seems always to be confusing at some stage or another. Now, no doubt, the contents of tape recordings is admissible. That has been held in our Courts, and I would like to refer Your Worship to the case of Rex vs. Koch 1952 (3) pages 29 to 30, S.A.L.R. It was a case in the Transvaal Provincial Division. Behrman's case was also TPD. In the Koch case, certain methods were discussed and the Court held that where the tape recording can be played and is audible, to both or to all parties, it should be played in Court and

the magistrate or the Court listens in the ordinary way as though a witness is giving evidence. But it goes further and it also is an authority for this submission, which I submit to Your Worship, that transcripts are admissible under, I should add, certain circumstances. I refer to page 30 of the same case. "Where however the record can only be played so as to be heard by one person only, there is in my opinion no doubt that the contents of the record are admissible in evidence and this was not disputed. In such a case it would be improper for a magistrate himself to listen to the playing, whether he did so in Court, in the presence of the Accused, or out of the Court. So to do would be analogous to his holding an inspection in loco, in the absence of the Accused. If the record can be heard by one person only at one time, it is in my opinion perfectly proper to call as witnesses persons who have listened to the record to say what they did, and then should the Accused so wish he should be given an opportunity either for himself or for some person on his behalf to listen to the record to satisfy himself that the Crown witnesses heard what they say they did." So my submission, Your Worship, is there is an authority to say that transcriptions are admissible. In other words, the Crown may proceed to produce the evidence in Court, to lead the evidence by that method. But this case indicates that the interests of the Accused should be looked after, should be guarded. That is why in my submission it says "...should the Accused so wish he should be given an opportunity to listen..." And then Behrman's case, goes much further supporting the contention of my learned friend. But I will deal with the case of Behrman. It is clear that His Lordship held that transcriptions were not in that particular case admissible, and two reasons were given for deciding that fact. The one reason was that there should be complete...or leave out

the word complete.... there should be correspondence between the transcripts and the tape recordings, and in that case the Defence succeeded to satisfy the Court that there were numerous inconsistencies and omissions between the transcripts and the tape recording. In other words, there was no satisfactory correspondence between the tape recordings and the transcriptions. The second reason that was given in my submission is, in that case there was no voice identification; in other words, the persons who spoke or whose voices appeared on the tape recording, were not properly identified, and it appears for those two reasons His Lordship held that the transcriptions were not admissible. My submission, Your Worship, is this, that Behrman's case has no application whatsoever in respect of the present situation. Here the witness Diedericks gave evidence and he has indicated that there is -- I put it as highly as this -- complete correspondence, except a few instances which were mentioned. In any case, I make a further submission that in this case it makes no difference whether there are a few portions which do not completely correspond with the tape recording, because the speeches transcribed, or take any one speech, is relevant to the issue in this case, and according to this witness that speech corresponds, or the words of that speech, correspond completely with the tape recording.

BY THE COURT: You say now that there is only one speech.

BY THE P.P.: No, Your Worship, I say any speech delivered there is relevant. So if the Crown can only succeed by placing one speech before Your Worship by means of this method, my submission is that is sufficient, and the other portions which do not completely correspond may be ruled inadmissible. It won't affect the Crown's case. Secondly, voice identification plays no part in this case. Once the Crown has satisfied Your Worship that it was a meeting of that particular organisation then every

speech made there is admissible in evidence before this Court. So for those two reasons I ask Your Worship to hold that the case of Behrman is not applicable at all, but there is another point that is also against the Crown, mentioned by my learned friend, and that is the dicta of His Lordship Mr. Justice Hiemstra, where he held that transcriptions are admissible provided the tape is made available to the Defence so that the evidence contained in the transcriptions can be checked. But that in my submission goes.....

BY THE COURT: I thought that that was a condition which the majority of the Court.....

BY THE P.P.: No, that was the dissenting judgment, the minority judgment. His Lordship goes so far, he mentioned that transcriptions are admissible, and he made that proviso, provided the tape recording is made available to the Defence. He also indicated, it is not a question of admissibility, but it is a question of the probative value of evidence. That is why the tape recording should be made available. And that is one of my submissions. The fact that the tape recording is not produced must assist the value of the evidence.....

BY THE COURT: One must be careful here not to mix the two issues, which you try to separate in the first place. We have to do here with admissibility and not the probative value.

BY THE P.P.: Yes, that was actually what His Lordship Mr. Justice Hiemstra said.

BY THE COURT: It seems to me that the judge took into account that question in order to arrive at a decision as to whether the evidence tendered was admissible.

BY THE P.P.: No, in my submission not, Your Worship. He started off 'Is the evidence admissible,' and then to decide what the weight of the evidence was.

BY THE COURT: He was not concerned with the weight of the evidence really, was he?

BY THE P.P.: No, but he merely went on to mention the fact that the tape should be produced in order to assess the value of the evidence. That is where it plays an important part, but not on the question of admissibility, although that portion read by my learned friend I think indicates that the evidence is admissible only where the tape recording is produced. But in my submission that goes too far. The tape recording is only there and necessary to assess the value of the evidence. In any case I am going to make further submissions why this is admissible. But I really want to dispose of Behrman's case first, to make it quite clear that in my submission it has no application whatsoever, in respect of the particular facts of this matter before the Court. If my learned friend's submission is correct, then it really means this that the Crown is completely debarred from leading evidence or facts recorded on tape recordings where such tape recordings are missing and cannot be produced. It will, certainly, then go too far and must be incorrect. And I would like to compare it, for instance, with documents. There is no difficulty as far as documents are concerned. If the original documents are lost or missing, then secondary evidence can be led. I have considered the question whether I could make a submission that tape recorders should be treated as documents, but I am not prepared to submit that argument to Your Worship. It is only interesting to note that in the Criminal Procedure Act, Section 64(ii) Act 56/1955, there provision, special provision is made, of recording evidence in Court, and it indicates that the original record of evidence is where mechanical means are used, is the tape recording. But it goes further to say that any transcript made of that will be treated as the original record. In my sub-

mission, that Act treats the tape recording, the tape itself, as the original record, more in the sense of a document, the same as where shorthand notes were used. But I also want to point this out. Say, for instance, an Accused person in an ordinary theft case, makes a statement to the police who asks him 'Where did you get this coat?' He says 'I bought it from an unknown person.' Nothing is recorded, nothing is said. The Crown is entitled to lead evidence, so it will be a grave injustice if the Crown cannot under the present circumstances lead evidence which was recorded obviously by technical means, mechanical means, and is debarred from producing the evidence. And my submission is the correct approach must be this, the Court must regard the tape record as a method of preserving the voices and words of the speakers. In this case these Accused are not. Now, when the witness Diedericks made these transcripts from the tape recordings, he was actually listening to the Accused as such. In other words, they were making a statement to him....

BY THE COURT: I don't appreciate that. He couldn't have been listening to the Accused when he made a transcript. He was listening to the recording

BY THE P.P.: Yes, to their voices.

BY THE COURT: We don't know who these people are who spoke. You refer to the Accused.

BY THE P.P.: Yes, I said Accused, or it might be other persons. But he was actually listening to voices collected on the tape recording, and it is not hearsay. They were making statements directly to him, like an ordinary other case, which I have mentioned, a theft case, where an Accused person makes a statement to a police officer. Then the police can come and say 'The Accused said so-and-so.' Now, in this case, Diedericks can come and say 'I listened to these voices.' They spoke directly to him, in other words to put it in that way.

BY THE COURT: Actually, that is not in accordance with the evidence. He had no direct means of hearing that. It was by technical means that he

BY THE P.P.: No, I am not dealing with the aspect of what he heard himself, apart independently from the tape. I am merely dealing with what he heard from the tape and when he made his transcription. When he played the tape, in other words. Then the speakers were then and there making statements to the witness Diedericks.

BY THE COURT: No, I fail to see the force of that argument. In fact, I think that is not a correct statement of the facts.

BY THE P.P.: I would like to know in what way it is not, Sir.

BY THE COURT: The persons who were speaking there were certainly not speaking to Diedericks. They were addressing a meeting.

BY THE P.P.: Yes, at the time when they were addressing the meeting.

BY THE COURT: Yes, you can't alter that state of affairs, Mr. Prosecutor.

BY THE P.P.: My submission is that it is a new line of evidence and the Court must take a common sense view.

BY THE COURT: Well, if there is nothing by which the Court is bound, then the Court would have to decide. The facts here are different, excepting that Behrman's case seems to indicate a line which Mr. Coaker has relied upon, that the Crown has to supply the original evidence, and the Defence is no longer in a position to test the accuracy of the tape recordings. Therefore the evidence should be excluded. I think that is the whole crux of his argument.

BY THE P.P.: Well, my submission is every time, it doesn't matter whether it is Diedericks or Sgt. Kruger who listens is, when the tape recording is played it makes no difference, then statements, or those speeches are made to him and he listens again,

directly. My learned friend referred to the question of hearsay. In my submission it is not a question of hearsay; it is original evidence on the tape recording and the witness gets it directly from that. Therefore, to sum up, in my submission Diedericks or any other person who listens in hears the speakers speak again and in so doing is aided as Wigmore said, by scientific instruments of accepted correctness, and therefore the question in my submission is that it is not hearsay.

BY THE COURT: Wigmore also referred to tape recordings?

BY THE P.P.: Dictaphones., in my submission similar to tape recordings. And on account of the peculiar method used, that is why I am making that submission. It is unfortunate for the speakers, for maybe some of the Accused, that this method was used, so as to preserve or perpetuate their voices, so that anyone can go and listen to them again. But that is on account of the peculiar method used.

BY THE COURT: A further unfortunate feature is that the Crown has itself destroyed the evidence, the original recording.

BY THE P.P.: Yes, that is so, but surely this is not the only case or occasion where an Accused person is placed in that predicament, call it that. It can happen in many other instances. It has happened. And in this very case; take for instance the affidavits of the Minister of Justice. There they are debarred from cross-examining to a certain extent. It is actually the same principle, it is not a new principle at all. And Accused persons were faced previously, on many occasions, with similar difficulties, or other difficulties. What will happen if an Accused person wants to call a witness, and just before he is called he dies? So that, in my submission, will not affect the admissibility of the evidence, it will affect the weight of the evidence, whether the Crown has destroyed the original tape record or not. Or, if I do not misunderstand Your Worship, is it

suggested that the Crown is actually to blame in this instance -- why should the Accused suffer? In any case, my first submission, to sum up, is that all that the witness Diedericks says to Your Worship is this, 'When I played the tape recording the speakers there made their speeches, I heard them, I wrote them down, and here it is.' That is summing up of the evidence of this witness Diedericks. That is at the time when he played it, and then the question of hearsay can't affect the case at all.

BY THE COURT: Yes, but as I suggested right at the commencement, it may infringe on the best evidence rule. I am not inclined to regard this as a transgression of the hearsay rule.

BY THE P.P.: Yes, but when the best evidence is employed, then surely the Crown or any party to a case may decide to use secondary evidence, unless of course there are definite legal rules excluding it, then the Crown as well as any other party will be bound by it. But may it be as it is, on that argument I agree with my learned friend, it is a new line of evidence in our law, and the onus or burden is now placed on Your Worship, but that is my submission, how it can be solved. I will go further and on the second submission of mine, I submit there can't be any difficulty whatsoever. That is on the facts before the Court, the witness Diedericks listened in, independently of the tape recording, and when he transcribed, made this transcription, he read it again, he checked it again, and it agreed with what he actually heard, more or less the context, and so on. We can't of course, say every word agreed in that respect. But I don't think it is expected of the witness to go as far as that and to say that every word which appears on the transcript is what he heard, but he can say from reading the documents shortly after the speeches were heard by him, independently, that that is actually what he heard. And then my submission is that he re-

refreshed his memory or he verified the documents, and he is entitled to refresh his memory from that document. Then, of course, the procedure will be slightly different. He can't hand in the documents, not through the Crown, but I ask Your Worship to allow the witness to refer to the document in order to refresh his memory in the same way as where a person like Sgt. Coetzee took down shorthand notes, and he is then entitled to refer to his shorthand notes. Here it was slightly a different procedure, to get the document, but once the Court is satisfied that he has verified the document, that he can say 'That is what was said' then he should be allowed to refer to the document. I would like to put this example before Your Worship; say for instance a person goes to a rugby match, and next day he reads a report in any newspaper, and about ten minutes afterwards, he is asked to go and give an account of what happened at Ellis Park, or any other place, then if he says 'I can't remember, I have no independent recollection, but on account of this newspaper report which I read the following day I can tell you if you give me an opportunity to refer to that newspaper report, I can tell you exactly what happened.

BY THE COURT: He'll have to go further and say 'At the time I read the newspaper report I was satisfied that that was an accurate account.'

BY THE P.P.: Yes, well, that is exactly what this witness Diedericks said.

BY THE COURT: To a modified extent, but I don't think that line of investigation is going to help us here. I think the question of refreshing memory can only apply where a person himself has taken down this report.

BY THE P.P.: No, Your Worship, I'll quote to Your Worship authorities on that point. It is quite clear that it is not necessary for a person to make the notes himself; he can refer to notes

made by any third party, provided it is verified, shortly after the event when his memory is still fresh as to the events.

BY THE COURT: That is correct, yes.

BY THE P.P.: Perhaps I could refer Your Worship to Phipson; this unfortunately is only the eighth edition, page 462 and 463. It really starts at page 461. It says "The writing may have been made either by the witness himself or by others, provided in the latter case that it was read by him when the facts were fresh in his memory and he knew the statement as to be correct." So my submission here is, although witness Diedericks did not see the speakers, did not hear them with the naked ear, so to speak, only by using this particular method, by technical aids, he actually heard the speakers and when he saw this document, when he read it, he could say that was or is a correct version of what was said. And then unfortunately this case -- I couldn't trace this case, I was referred to page 463. It is under 'Production, Inspection, Cross-Examination.' It says "Where the witness has no independent recollection of the facts, the document used to refresh his memory must be produced, and even where he has such recollection this course should be adopted in order that the opponent may have the benefit of cross-examination and of the witness refreshing his memory by every part." And then it gives a case here, which is very much to the point, but unfortunately I couldn't find it. In Burton vs. Cummings 71 SJ -- I don't even know what it stands for -- page 232, "a dictaphone record of witness' recollection of an interview made by him immediately after the interview was allowed to be put in to refresh his memory." So apparently what happened in this case, is the witness listened to, say a speech, and afterwards he made a dictaphone record of it, and then at some later stage he was allowed to refer to that to refresh his memory.

BY THE COURT: Do I understand you to say that he stated what

he heard, or what he is supposed to have heard?

BY THE P.P.: Yes.

BY THE COURT: That would be equivalent to writing down; I see no objection to that.

BY THE P.P.: No, Your Worship. In this case exactly the same, what he heard he, instead of saying what he heard, he made a tape recording there and then of the actual words, and he can verify that; that is a tape recording of that. So my submission is he is entitled to refresh his memory from his own recording which he himself made at the time of the speeches. My submission is either the evidence is admissible because the speakers made their speeches directly to Diedericks, or secondly he should be allowed by Your Worship to refresh his memory from the transcripts.

BY MR. COAKER: My learned friend, I submit, has not succeeded in showing Your Worship that Behrman's case is distinguishable.

BY THE COURT: May I get clarity on this point. In Behrman's case it is not suggested that the original recordings were not available? They were available.

BY MR. COAKER: They were available, but they were inaudible. The Court itself gave a finding....

BY THE COURT: They were inaudible to more than one person, is that it?

BY MR. COAKER: The Court listened to them, and the Court itself gave a finding that it was very difficult to hear their contents.

BY THE COURT: Yes, but it could be heard by a single person?

BY MR. COAKER: The Court listened to it as a single person.

BY THE COURT: Yes, but how did the judge suggest that provided the tape is made available to the Defence; if it was inaudible then it would have been useless.

BY MR. COAKER: That was the minority view of His Lordship Mr.

Justice Hiemstra, who was purporting to lay down a set of general rules relating to the admissibility, and it is quite clear that he was dealing there with admissibility and not with weight, because immediately after those general rules, he then says this:.....

BY THE COURT: Just before you proceed. A transcript has been made of the tape recording

BY MR. COAKER: A number of transcripts have been made of the tape recording.

BY THE COURT: So it must have been audible to the person who made that.

BY MR. COAKER: Presumably so, Sir. And the Court listening to the same tape recording, and to what is called a dubbing of that recording, i.e. a re-recording of the same recording the Court listened both to the original recording and to a dubbing prepared by experts to try and eliminate background noises, and so on, the Court said in its findings, that it was extremely difficult to hear what was on either the dubbing or the original recording. But the Court admitted originally, the magistrate admitted, the transcript that had been prepared by a certain head constable at an earlier stage.

BY THE COURT: Do I understand that the transcripts were regarded as the Court as inadmissible, is that correct?

BY MR. COAKER: That is correct, by the majority of the Court.

BY THE COURT: And what was the actual reason stated for that? By the majority decision.

BY MR. COAKER: Perhaps I should read Your Worship the whole of the judgment from the moment at which the Court starts to deal with the magistrate's admission of the transcripts. It says this: "The magistrate admitted the transcripts on the commonsense point of view and concluded on this aspect with these words: 'Mr. Anderson himself said that he regarded the

disc as audible after he had treated. Well, to the Court itself it was not so, but I think that in view of the fact that there is the best evidence available and that the Court in itself is not there to usurp the functions of witnesses, but to decide on those witnesses, the question must be answered in favour of the Prosecution and the objection of the Defence is overruled.' In other words, the magistrate said 'I personally, listening to the recording, found it unintelligible.' But the witness Anderson, and presumably too these two head constables Heyman and Fourie had found it intelligible and had made transcripts of it." And that being so, it is not for me to usurp the function of this witness who says he heard these things, it is not for me to say I can't hear them, I must let that evidence in, and so he let in the transcripts. Now the learned judge goes on to deal with that dictum as follows: "This reasoning is not very compelling. It seems to me that where evidence of the present description is sought to be admitted, there must be correspondence between the original and the dubs and between the various transcripts of the latter. Here we have transcripts introduced in respect of which the Defence has been able to compile numerous omissions and inconsistencies -- see the list handed in. Moreover it seems too that whereas here the protracted efforts to elicit the contents of the original tape might leave some room for uncertainty, there should have been evidence to identify all the voices. This is a somewhat new field in the law of evidence, but an instructive example is furnished on the need to identify voices and procedure by Wigmore, where he refers to the procedure followed in vs. Clark 123 PA (Supra) 277 187, which I quote: 'The Accused was charged with bribery and attempted extortion. The conversation with the Attorney-General was material. In his office had been installed a form of phonograph called a 'Speakaphone' by the makers, the micro-

phone being in his room, and the amplifier and the recorder equipped with earphones being in an adjoining room. The listeners in that room were not acquainted with the Accused's voice. Proof was made by operating the recording discs at the trial so as to reproduce the words of the conversation, and by the Attorney-General testifying to the identity of each speaker's voice, as the reproduction proceeded. Meanwhile the jury was furnished with previously prepared typed transcripts of the conversation as recorded so as to follow the oral reproduction and the Attorney-General's testimony. In the circumstances, I do not think that the transcripts were admissible."

BY THE COURT: I have some difficulty; I couldn't follow every word.

BY MR. COAKER: I can make this report available to Your Worship.

BY THE COURT: If you will just read some of the last portion; what was the motivating factor in the Court rejecting these transcripts, the production of the transcripts? Was it because of the bad recording?

BY MR. COAKER: No, I don't think so, Sir. It is simply, as far as I can see from the judgment, and I will make the judgment available to Your Worship. I have a copy here in Court and I think my learned friend has as well. There seem to have been two reasons which motivated the Court. The first was that the proper procedure in such an instance is to play the original recording, and not to introduce transcripts made by other persons outside the Court. In other words, that the magistrate erred when he said that it was not for him to take the place of witnesses. So far as real evidence is concerned...

BY THE COURT: So long as there is a tape recording, he should have listened to it.

BY MR. COAKER: Well, as a matter of fact he did listen to it.

BY THE COURT: But he should have made his decision.

BY MR. COAKER: He should have made his finding on it.

BY THE COURT: His own notes.....

BY MR. COAKER: And not on what somebody else told him was its context. The other reason appears to have been that the procedure in regard to voice identification which was followed in this American case had not been followed in this particular case. Well, of course, in the present matter, the question of voice identification is hardly relevant.

BY THE COURT: So I take it that the difference between Behrman's case and Koch's case is, that in Koch's case the recording could only be audible to one person at a time, therefore the Court allowed the transcript to go in

BY MR. COAKER: But at the same time the view was expressed that even then it would be proper for the Court to listen to the recording on the analogy of an inspection in loco. That instead of proceeding to a place, the Court should sit down and listen to the recording.

BY THE COURT: The Court couldn't by itself do that; the record must be played back in open Court.

BY MR. COAKER: Yes, that will be so.

BY THE COURT: So that where it is audible to more than one person, everybody can hear what has been recorded.

BY MR. COAKER: Yes, that appears to be so.

BY THE COURT: In Behrman's case, apparently, that was not done.

BY MR. COAKER: That was not done. In fact, it was done in Behrman's case, in fact numerous people listened to this recording, including the Defence, and the Court, and the Crown, but

BY THE COURT: The Court found it too inaudible to enable it to come to a decision.

BY MR. COAKER: The Court itself couldn't find anything intelli-

gible in it, and so it admitted the evidence of other persons who said 'We were able to hear the following in the recordings' and in that respect it erred.

BY THE COURT: Yes, quite so, Mr. Coaker.

BY MR. COAKER: Now, so far as my learned friend's contention that these speeches were made directly to the witness, is concerned, and that therefore his transcript is not an infringement of the hearsay rule, I find his point difficult to understand. I think it would follow from that that if I were to be recorded when I was singing in my bath, and my song included a contractual offer, then some person subsequently playing back that offer/^{to himself}would be entitled to accept it and create a contract. I submit that that argument is one which can scarcely be accepted by the Court. My contention is this, to put it briefly, that the Crown cannot be in a better position because they have deliberately destroyed a recording than they would be if they had retained it. If they couldn't have introduced this transcript at a time when the recording was available, they should not be placed in a better position as a result of having deliberately destroyed the recording, and thereby deprive the Defence of any opportunity of checking the correctness of the transcript against the recording. I submit that the Court will be astute to watch the interests of Accused persons in these circumstances and will not lightly admit this new type of evidence in circumstances which do not allow of any checking or verification either by the Court itself or by the representatives of the Defence.

BY THE COURT: Perhaps I ought to deal with the last point made by Mr. Coaker first. He is now concerning himself with the probative value of the evidence, because, as he argues, and there is ground for that argument, I concede, that the Defence is deprived of the opportunity of challenging the cor-

rectness of the transcripts made. That is how he put the proposition in the first place. Well, I don't know that I can altogether agree with him that the Defence is altogether deprived of that opportunity; certainly the Defence is placed at a disadvantage, but the Defence would still be able by the production of witnesses who have made the speeches, or persons who listened to these speeches, to be able to say to the Court, 'We dispute the correctness of the transcripts.' So that is, in effect, a form of challenging the correctness of these transcripts which would always be open to attack. Transcripts as we know can never be 100% accurate; there must be room for inaccuracies or discrepancies, but in the first place, the Court is not concerned with the probative value of the evidence. But with the crisp point as to whether in the circumstances the evidence should be allowed. Now it seems to me that the present position can be distinguished from the circumstances in both cases of Behrman and Koch. Here we have a totally new position. Here we have a position where the tape recording has been destroyed by a deliberate act of the Crown; I don't know to what extent that would affect the decision. I doubt whether it could. It may certainly throw open the evidence to further criticism. But this is a totally new position and a novel point for decision has arisen. I have listened very carefully to the arguments advanced by both the Crown and the Defence, and I have come to the decision that in all the circumstances the evidence ought not to be excluded. I find the position somewhat analogous to the position where a document has been lost. The rule there of best evidence would come into play here. Where an original document is lost and it is proved to the Court that it is irrevocably lost, then the person seeking to place evidence as to the contents of that document on record would be allowed to do so, if the Court is satisfied that

the original is lost or destroyed. I say the present position seems to be analogous to that position. I certainly can't compare it with the rule of hearsay evidence. It is rather a rule of best evidence that should be put into operation here. Now we have it on record that the best evidence has been destroyed, it is true, by a deliberate act of the Crown. But the record is destroyed, and the Crown is now seeking to put in evidence of a secondary nature, and we know what the nature of that evidence is, it is a transcript. What has been played back on the tape recording. The witness Diedericks has told us that he made a tape recording of the speech made at this particular meeting, and he played back those recordings, and then the notes were made of what was played back. He admitted that certain inaccuracies, but it would appear from his evidence that on the whole the transcript is an accurate transcript. It is true as I have said before, that the Defence is placed in a difficult position here, but the Crown by its own act has made itself vulnerable to severe criticism here. But that can only affect the probative value of the evidence. And the Defence would in the circumstances have to do the best it can to attack this evidence, and to criticise it in the light of the circumstances. But it does seem to me that the evidence ought not to be excluded, and my ruling is therefore that the evidence tendered ought to be admitted.

BY THE P.P.: As Your Worship pleases.

DISCUSSION BETWEEN MAGISTRATE, P.P. AND MR. COAKER:

EXAMINATION BY P.P. CONTD.:

U handig nou die transkript wat u gemaak het in ?-- Korrek.
(G.1155.)

Op die transkrip kom voor 'Speaker' ?-- Dit is reg.

Dit is aan die begin van die transkrip ?-- Dis reg.

Kom daardie woord op die bandopname voor ?-- Nee.

Het u dit daar geplaas ?-- Ja.

En dit geld vir al die gevalle waar die woord 'Speaker' voorkom ?-- Ja.

Nou, op bladsy 5 van die oorskrif, kom dienaam 'Molefe' as n spreker voor. Wie het die naam daar geskryf ?-- Ek het.

Hoekom het u die naam daar geskryf ?-- Hy was aangekondig as die spreker.

En op bladsy 7 kom daar 'Chairman' en ook 'Secretary' as sprekers voor; het u dit daar geplaas ?-- Ja.

Dit kom nie voor op die bandopname self ?-- Nee.

Nou sal u na bladsy 8 verwys, van die transkrip; daar kom n klompie dooitjies voor ?-- Dit is korrek.

Hoekom het u dit daar geplaas ?-- Dit was n deel wat onhoorbaar was.

En op bladsy 9, u het n paragraaf tussen hakkies 'Chairman read messages' -- wie se woorde is daardie ?-- Dit is my eie woorde.

Is dit alles wat tussen hakkies daar is ?-- Dit is so.

En op bl. 17, tussen hakkies 'Die Treasurer's financial report inaudible,' wie se woorde is dit ?-- Dit is my eie woorde.

Onderaan die bladsy, onder die hoof 'Elections' het u daardie presies van die bandopname oorgeskryf wat daar gebeur het ?-- Nee, dis my eie woorde.

En op bladsy 20, na die woorde 'The meeting is now open for discussion' het jy weer twee paragrawe tussen hakkies ?-- Ja, dit is weer my eie woorde.

Sal u verwys na bladsy 3 van die oorskrif, dit is n toespraak van n onbekende spreker, is dit reg ?-- Ja, dis reg.

En sal u net lees van die tweede laaste paragraaf 'On the international side....' ?-- "On the international side in the world we see people fighting, we see troubles, and we see the

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